

Senator's Appointment

Tuesday, January 24, 1995

SENATE

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The Senate met at 10.00 a.m.

PRAYERS

[MR. PRESIDENT *in the Chair*]

SENATOR'S APPOINTMENT

Mr. President: Hon. Senators, I have been advised that His Excellency the President has appointed Mrs. Norma Lewis-Phillip to be a temporary Senator with effect from January 24, 1995 and continuing during the absence from Trinidad and Tobago of Sen. The Hon. Dr. Lenny Saith.

OATH OF ALLEGIANCE

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

LEAVE OF ABSENCE

Mr. President: Hon. Senators, I have granted leave to Sen. The Hon Dr. Lenny Saith to be absent from sittings of the Senate during the period January 24—31, 1995 as he will be out of the country on Government business.

Sen. Ainsley Mark, Vice-President of the Senate, has indicated that he will be a little late this morning

I have been advised that Sen. Persad-Bissessar also called to say that she will be a little late this morning.

BWIA INTERNATIONAL AIRWAYS LIMITED (VESTING) BILL

Bill to vest the undertaking of Trinidad and Tobago (BWIA International) Airways Corporation in BWIA International Airways Limited, brought from the House of Representatives [*The Minister of National Security*]; read the first time.

Motion made, That the next stage be taken at a later stage of the proceedings.
[*Hon. R. Huggins*]

Question put and agreed to.

PAPERS LAID

1. Report of the Supervisor of Insurance for the year ended December 31, 1993. [*The Minister of National Security (Sen. The Hon. Russell Huggins)*]

2. Report of the Auditor General on the accounts of the Public Library of Trinidad for the year ended December 31, 1988. (*Hon. R. Huggins*)
3. Report of the Auditor General on the accounts of the Public Library of Trinidad for the year ended December 31, 1989. (*Hon. R. Huggins*)

ORAL ANSWERS TO QUESTIONS
Amoco Trinidad Oil Company
(Classification of Expatriates)

3. **Sen. Wade Mark** asked the Minister of Energy and Energy Industries:
 - A. How many expatriates are employed at Amoco Trinidad Oil Company at the present time and their respective classifications?
 - B. The precise number of expatriates, and their respective classifications, employed at Amoco Trinidad Oil Company during the period 1991, 1992 and 1993?
 - C. The total number of expatriates employed in the oil and gas industries as well as their various classifications for the period 1991, 1992, 1993 and 1994?

The Minister of Energy and Energy Industries and Minister of Public Utilities (Sen. The Hon. Barry Barnes): Mr. President, I regret that I must ask for a further deferral of one week for question No. 3.

Mr. President: Only on question No. 3?

Sen. The Hon. B. Barnes: Only on question No. 3, Mr. President.

Question, by leave, deferred.

Drilling Fluids Limited (DFL)
(Existence of)

4. **Sen. Wade Mark** asked the Minister of Energy and Energy Industries—
 - A. Is the Minister aware of the existence of a service company by the name of Drilling Fluids Limited (DFL)?

- B. If he is so aware, could the Minister state what relationship, if any, exists between this company and the Government of Trinidad and Tobago in respect of the provision of services to most, if not all, the major and recently attracted oil and gas companies?

The Minister of Energy and Energy Industries and Minister of Public Utilities (Sen. The Hon. Barry Barnes): Mr. President, the Ministry of Energy and Energy Industries has no record or knowledge of any company by the name of Drilling Fluids Limited (DFL) operating in Trinidad.

Extensive checks by the Ministry's representatives with the oil and gas companies now operating in Trinidad have failed to identify Drilling Fluids Limited (DFL) among the service companies serving the industry.

I thank you, Mr. President.

Sen. W. Mark: Mr. President, could the hon. Minister indicate to the Senate whether he is aware of a company by the name of Drilling Fluids and Engineers Limited (DF&E)?

Sen. Draper: That is a new question.

Sen. The Hon. B. Barnes: Mr. President, that is a new question, but there is a company DF&E that is operating in Trinidad.

Sen. W. Mark: Mr. President, could the hon. Minister indicate whether he could provide the Senate with any information on the operations of DF&E, or do I have to file a question again? The hon. Minister knows what this question is about, so he is playing games with a word.

Mr. President: Senator, the question was very specific, so I do not think it is in your place to say that the Minister has to know what you are talking about.

Sen. W. Mark: But I spoke to him about it, Sir. He knows about it.

Mr. President: Hon. Minister, do you need notice of the question?

Sen. The Hon. B. Barnes: If the Senator wishes to file a question on DF&E, by all means, and I will respond to that.

Sen. W. Mark: I will.

10.10 a.m.

**Trinidad and Tobago Electricity Commission
(Insured Replacement Value)**

5. Sen. Wade Mark asked the Minister of Public Utilities:

Could the Minister state the precise insured replacement value of the plant, equipment and machinery at the Trinidad and Tobago Electricity Commission (T&TEC), in respect of the generation capacity for the years 1992, 1993 and 1994?

The Minister of Energy and Energy Industries and The Minister of Public Utilities (Sen. The Hon. Barry Barnes): Mr. President, the Trinidad and Tobago Electricity Commission has advised that it has been the policy of the Commission to insure T&TEC's generation plants, equipment and machinery on the basis of the full current costs of replacing such plants. It should be noted, however, that the depreciated written-down value of the plants, equipment and machinery is considerably less than the full replacement cost.

T&TEC has advised that the insured value and corresponding depreciated written-down value of the equipment and machinery for the required years are as follows:—

	Insured Value <u>(TT\$ Million)</u>	Depreciated Written-Down Value <u>(TT\$ Million)</u>
1992	3,644	344
1993	4,189	322
1994	4,783	298

Sen. W. Mark: Mr. President, could the hon. Minister indicate to this Senate, or provide to this Senate, the name of the insurance company or companies involved in this particular arrangement with T&TEC, and state whether he would be prepared to make a copy of the insured value statements available to this Senate?

Sen. The Hon. B. Barnes: Mr. President, again, I am quite sure that we can find a listing of the insurance companies and I have no difficulty in presenting that to the Senate. In terms of the actual copies of the transactions, I have not seen them, but I will enquire.

Sen. W. Mark: Mr. President, will the hon. Minister indicate to us whether the insurance companies are located in Trinidad and Tobago, or abroad, or both?

Sen. The Hon. B. Barnes: Mr. President, with respect, I will have to research that to give the Senator a proper response.

ARRANGEMENT OF BUSINESS

The Minister of National Security (Sen. The Hon. Russell Huggins): Mr. President, I beg to seek the leave of the Senate to deal with "Government Business" (Bills Second Reading), instead of "Private Business" at this stage of the proceedings.

Mr. President: You want to go on to the Committee stage?

Sen. The Hon. R. Huggins: Yes, Mr. President.

Sen. W. Mark: Mr. President, we on this side, have no difficulty in doing so, but I just want you, as the President, to know that we have agreed that next Tuesday will be Private Members' day. We are giving it up today in order to recoup it next Tuesday. I want that to be recorded, Sir.

Agreed to.

Mr. President: The Senate will normally resolve itself into committee at this stage to consider the Bill clause by clause, but I am advised by the Leader of Government Business in the Senate that there are some amendments to be circulated and we should probably take a suspension for 15 minutes so that these can be distributed during the suspension.

Sen. W. Mark: Are these new amendments, Mr. President?

Mr. President: I would expect so.

Sen. W. Mark: So we would need some time to study these.

Sen. Huggins: Mr. President, they are basically revised amendments of the amendments which were tabled by Members on the Independent Benches, as well as the Opposition Benches, because of certain drafting matters.

Mr. President: We will discuss the amendments when Senators have a chance to read them.

The sitting is suspended for 15 minutes. The sitting will resume at 10.30 a.m.

10.15 a.m.: *Sitting suspended.*

10.40 a.m.: *Sitting resumed.*

Mr. President: Hon. Senators, I understand that agreement has been reached among leaders of the respective parties and groups in the Senate that the committee stage of the Environmental Management Bill would be postponed until 1.30 p.m.

As a result, the sitting is suspended until 1.30 p.m.

10.41 a.m.: *Sitting suspended.*

1.30 p.m.: *Sitting resumed.*

ENVIRONMENTAL MANAGEMENT BILL

[THIRD DAY]

Bill committed to a committee of the whole Senate.

Senate in committee.

Clause 1 ordered to stand part of the Bill.

Clause 2.

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

Sen. Prof. Spence: I am really concerned about the fact that there is no definition to the two terms used, "environmentally sensitive species" and "environmentally sensitive area". I really think they should be defined. I have suggested different terminologies and given definitions to them. The terms "environmentally sensitive species" and "environmentally sensitive area" are used in other countries, in a completely different sense. Take for example in the United Kingdom—I have a book here *Incentives for Countryside Management The Case of Environmentally Sensitive Areas*—this is a completely different concept. I think it is confusing to have laws in Trinidad and Tobago that are out of phase with the way the terms are used in other countries.

My proposal is that they have protected species and areas as defined in the amendment. In the United Kingdom, "environmentally sensitive areas" refers to areas in the countryside which the government pays farmers not to disturb. For example, hedgerows and wooded areas within farms are protected by legislation. There is special designation for that. In our legislation there is no definition except "as stated," as 'X' or 'Y'. One may say if we are going to use "sensitive areas", then at least we should define them.

Sen. Mahabir-Wyatt: I wonder if Sen. Prof. Spence could tell us whether or not the term "protected areas" is used in any other legislation, for example, Town and Country Planning, and if so, is it used in the same sense as it is here?

Sen. Prof. Spence: I think it is used in other legislation. I checked with Sen. Daly and he assured me that this does not preclude it being used in this Bill, provided that it is defined in a particular way.

Sen. Hosein: With regard to "sensitive areas", we would prefer to see all of Trinidad and Tobago earmarked as sensitive areas because of our small land mass. It is the Jamaican experience. We do not have the luxury of large land mass as those other countries.

Mr. Sobion: Mr. Chairman, this committee sitting has the potential to be long. I have gone through all the proposed amendments. I want to make one general observation. While going through some of these amendments, I got the feel that there is an attempt to reduce the effectiveness—I am not saying that it is deliberate—of the authority and the commission.

The proposed amendment to define "environmentally sensitive area" falls within that general category.

Clause 41 of the Bill has to be viewed in the context of the Preamble and the general intent of the legislation. It also permits the authority to designate a defined portion of the environment within Trinidad and Tobago as an environmentally sensitive area, or of any species of living plant or animals, as an environmentally sensitive species requiring special protection to achieve the objects of the Bill.

When one looks at that clause in the context of the wide objectives of the Bill, I do not think that it is necessary for the authority, as it is constituted, to be hamstrung by a definition which may cause problems down the line. I think the idea is to give the authority a wide ranging view of the legislation and to make such designations under clause 41 as it thinks necessary. For that reason, "environmentally sensitive areas" is not defined and I think that it is quite correct to leave it the way it is.

Sen. Prof. Spence: I am even more concerned after listening to the Attorney General because, surely, one should know what one is after when one is drafting legislation. Here, in effect, he is saying that he does not really know what the Government wants or means by this, so we would leave it to this new authority to decide whatever it may feel should be environmentally sensitive areas or species. Surely, we have some concept as to what we are after. If we have a concept then we should say so in the legislation. It is clear that we do not know what we are talking about.

Sen. Daly: I am also disturbed by that opening statement by the Attorney General. It is very frightening. Once the reigning authority says so, it is so. It is a

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sort of 'Sparrow' authority. It is really quite inconsistent because later on in the Bill, terms such as, 'hazardous substance', 'natural resources' and 'noise pollution' are defined. I am quite alarmed that this authority is so wide and it could ignore definitions like these. I think we must pay some regard to the fact that people who are proposing these particular amendments know something about this subject. I do not see what harm it would do to define these things.

1.40 p.m.

Mr. Sobion: Before many people respond to my opening statement, let me say that if one looks at clause 41 closer, one will see that the authority cannot act outside of the objectives of the Bill. All it does is give it the latitude to determine what an endangered species or an environmentally sensitive area may be.

It says quite clearly that it is an area which requires special protection to achieve the objectives of the Bill. If, therefore, the authority were to declare an area for reasons that are outside of the objectives of the Bill, then that designation can be struck down. The fact is that we are in a new area, the environmental policy is to be prepared by the authority, if we seek to restrict and hamstring it from the outset, then we may very well run into problems.

The Bill is clear on its objectives, and in acting under clause 41, it must act within the objectives of the Bill. It is not a runaway horse. I think the problem is that if the legislature gets too involved in some of these details—and I will point it out in some of the other amendments which will come up—we may unnecessarily restrict the authority from being effective. While some of us here may have some expertise in the area, I do not think it can be said of all of us. Whilst I appreciate the suggestion of Sen. Prof. Spence, I think we ought to tread a little carefully in not seeking to unwittingly restrict the authority.

Sen. Capildeo: Again, in response to what the hon. Attorney General says, I think I heard the word "provocative".

With due respect to the learned Attorney General, when one looks at the objectives as stated in clause 4, and then one looks at clause 41, they have one thing in common; they are vague. They are very vague. I am inclined to agree with Sen. Prof. Spence in his amendment which is very clear and which cannot at all go against the grain of the objects of this Bill. In fact, it meshes with the objects of the Bill. It is clear.

"'protective areas' means areas of natural habitat supporting unusual but characteristic assemblages of organisms, which may include protected species ... and so designated under Section 41."

Now, when one looks at clause 41, it refers one back to the objectives of the Bill. But the only part of the objectives which would deal with Sen. Prof. Spence's amendment in any way—and it is so vague we have difficulty fitting it in—is:

- "(d) develop and effectively implement written laws, policies and other programmes for and in relation to—
 - (i) the conservation and wise use of the environment to provide adequately for meeting the needs of present and future generations and enhancing the quality of life."

Those are very, very pretty words, but they are very vague when compared with this amendment. I think the Government would be wise to accept the amendment. It will in no way run counter to the objects of the Bill, nor hinder its operation. In fact, it will facilitate whoever the authority is, and whichever Minister has to direct policy. I think the Attorney General should go with it and put it in. It will in no way be harmful.

Mr. Sobion: Mr. Chairman, I would like to make one further observation. If one looks at the definition proposed by Sen. Prof. Spence, we will have to engage in a very serious exercise of defining terms.

"'protected areas' means areas of natural habitat supporting unusual but characteristic assemblages of organisms, ..."

One will probably have to define "natural habitat" and "assemblages of organisms," and when one gets to "protected species", one is talking about biological characteristics and restricting in a serious way, without setting the parameters for some of those words, and one will end up in an exercise of creating a definition section of this Bill which might be longer than the Bill itself. It is quite clear what the objectives are. They are general in nature, yes, but they are specific enough to allow an authority, composed as this is supposed to be, to exercise its technical expertise in determining some of these matters. I do not think it does any harm or injury to the Bill to allow the authority that latitude in designating "protected areas" and "protected species".

Sen. Daly: I would be interested to know—this is not really a legal matter—whether those advising the Government have rejected these definitions on

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scientific grounds. Do they know what natural habitat is or what organisms are and so forth? I would have thought that these were scientific terms. It would be interesting to know whether this has been rejected on the grounds that it was technically incorrect.

Mr. Sobion: It is not being accepted on the basis that it is unduly restrictive of an authority which has a particular mandate by the legislation and which has certain expertise among its members according to the way the authority is composed. It is for those persons, not necessarily the Parliament, to set those kinds of strict parameters in a matter such as this.

Sen. Prof. Spence: The Minister is suggesting that these definitions would restrict the authority. I am interested in the example that one would give to indicate how these definitions cannot be used in the business of the authority. Then I can understand what he is getting at.

Mr. Sobion: That question demonstrates the difficulty I am talking about. Obviously, Sen. Prof. Spence is one of those who have a greater knowledge and expertise of this area and can pose such a question. The Government's concern is that we do not put a definition which has the potential to restrict the authority in discharging its functions under the Bill. Because of the particular experience and expertise of Sen. Prof. Spence, he is probably confident that it will not do that. I am not as confident, and that is the difficulty that we have. We feel that an authority, appointed as it is under the Bill, would have that wider expertise that this Parliament does not have.

Sen. Prof. Spence: There are two points I would like to make. It depends on whether there are things that the authority would want to do which may even be outside the objectives and which it would use the legislation to do. I cannot think of a case in which it would be necessary to go outside the definitions.

The second point is that this is precisely why I suggested that there should be a select committee. In select committees, one can get experts to determine, as lay people, precisely what they are trying to get at.

Sen. Hosein: Mr. Chairman, the vibes coming to me from the other side is that the Government really did not think this Bill through properly and does not really know what it wants. I can give one example, the bull finch is a wild bird, which is sometimes found in populated areas. If one were to designate an area, it could easily overlap with all the other species. I am sure Senators have all experienced this. Trinidad and Tobago is a small land mass, this is why I feel that we would give ourselves very few problems if we took the Jamaican experience

and make all of Trinidad and Tobago into a sensitive area. This would make matters easier.

1.50 p.m.

Mr. Sobion: Mr. Chairman, I do not know whether Sen. Merritt—Sen. Hosein, sorry. *[Interruption]* I was looking at the name plate—is proposing another amendment.

Sen. Hosein: Mr. Chairman, if that is the route the Attorney General wants to go today, we can go that way. We really could, because we could mix it. *[Interruption]*

Mr. Sobion: I got the impression that the hon. Senator is proposing that all of Trinidad and Tobago be declared a protected area. Again, that is a matter which the authority can consider, and it can make the necessary designations as it sees fit as the expert in that area. It is for the authority to determine; it is not for me as an attorney-at-law to determine what is a sensitive protected area.

With respect to the observation made by Sen. Prof. Spence, the authority cannot act outside of the objects of the Bill. If it does so, its designation can be struck down because it would be outside the objects of the Bill. Clause 41 quite clearly says that it must act within the objects of the Bill and make its designation.

Sen. Daly: Mr. Chairman, I know we are spending a long time on this, but it is fairly fundamental. The Attorney General has told us that this is a view in relation to a number of amendments. This is why I talked about people departing from our traditions. This authority is the creature of the Parliament—it is being created by the Parliament—and it must do what the Parliament tells it. It cannot be above any definition that is put down for it by the Parliament.

Listening to the Attorney General I get the impression that the authority has been created, formed and appointed already, and is dictating to the Parliament how it is going to conduct its business. I think it is the other way around. It is the business of the collective wisdom of the Parliament, and all the various disciplines that are represented here, to put down guidelines for this authority.

Sen. Prof. Spence: I would certainly not make it an issue that it becomes personal, as if I am trying to get through something that I have put down. I think the legislation should go through. I think we are making an error, but, Mr. Chairman, perhaps we should just vote on it and then move on to the next clause.

Mr. Chairman: Are you willing to withdraw the amendment?

Sen. Prof. Spence: No, I would not withdraw it, let us vote on it.

Sen. W. Mark: Mr. Chairman, we are dealing with a very environmentally sensitive piece of legislation and I realize that the Government is a bit naked on its side in the context of experts. As we get deeper into this issue, it is going to be extremely difficult. For instance, if we are going to vote on these matters, the Government would be defeated on every one. We certainly do not want that sort of thing to develop and it would probably be best for us to have this matter referred to a special select committee of the Senate so that we can resolve this issue. This issue is not going to end now and because of the fact that the Government does not have experts on its side at this time to advise its Senators, they certainly cannot handle the situation. The Attorney General has admitted that he is not in that field, and, therefore, he cannot debate an issue that he does not understand. If we just vote on it, and they say "aye" and we say "nay" as the case may be, where do we go from there, Sir?

I am therefore suggesting to the Attorney General, in light of the sensitivity of this matter, that it may do him well to consider referring it to a select committee of the Senate.

Mr. Sobion: Mr. Chairman, having regard to what has been said on the other side, I am recommending that we move on and return to this particular matter whilst further consideration is given to the views expressed.

Mr. Chairman: We are still on clause 2. There is another amendment proposed by Sen. Prof. Spence to clause 2 and another proposed by Sen. Mahabir-Wyatt. The proposal by the Attorney General is that we suspend consideration of the definition clause and return to it later.

Sen. Daly: The hon. Attorney General said that we are going to run into problems with some members of the authority not wanting to accept anything from the Parliament. He said so!

Mr. Sobion: Mr. Chairman, that is a mis-statement of what I said. There is no authority until this Bill is passed, in the first place, and I think Sen. Daly is being cute about this. The fact of the matter is that I have seen in some of the amendments—and I will point them out as they come up, they are not very many—certain areas that I think, as a general comment, can be said that we are perhaps unnecessarily restricting the authority. I am all for some degree of control and as we meet those particular proposals, I think we can deal with them in the way that I have tried to explain the objections to the amendments in clause 2. I do not think there is any need for us to proceed along the line that Sen. Daly is attempting to take us.

Mr. Chairman: The proposal by the Attorney General is that we leave clause 2 in abeyance, the whole definition clause, and proceed with the other clauses in the Bill. After we have completed the other clauses we would return to the definition clause.

Sen. Persad-Bissessar: Mr. Chairman, with respect to the hon. Attorney General, if we have to do that then we will have to, but in a sense we would run into difficulty. If, for example, clause 2 has to be amended, then amendments will in effect have to be made to clause 41. If we leave clause 2 and go to clause 41 and come back to clause 2 we will have to go back to clause 41.

Mr. Sobion: Mr. Chairman, I do not want to presume difficulties that have not yet arisen, and clearly, if one has to amend clause 2 and it would mean an amendment to clause 41, then we will deal with it when we get there. I really do not understand the apprehended difficulty. If the question of procedure is causing a problem, perhaps we should merely vote on clause 2 at this stage. *[Interruption]*

I find all of this very strange. I am trying to make suggestions so that the committee can deal with this matter. I have made one suggestion which apparently does not find favour with Sen. Persad-Bissessar; the Senator is of the view that we would run into difficulties when we get to clause 41. Both sides have articulated their position with respect to clause 2. If the suggestion that we defer clause 2 is not acceptable, then in the normal course of the committee's deliberations the committee would then vote on the proposed amendment. I do not think I am being irresponsible by making alternative suggestions.

2.00 p.m.

Sen. Hosein: Mr. Chairman, our point of view is that this Bill is too important to simply just vote on something on which there is a division. There is a marked division on this particular Bill, and by admission the Attorney General has indicated that he does not have the expertise. Therefore, if that is the case I think the suggestion—*[Interruption]*

Mr. Sobion: Mr. Chairman, again, that is a misrepresentation. I am saying that the determination under clause 41 should be done by the authority which will have the expertise when established, and not necessarily by the Parliament, in a matter which is linked to the objects of the Bill. It is not that the authority is unrestricted, it is restricted by the objects of the Bill, and it is for the authority to make that determination. That is the argument that I put forward.

Sen. Hosein: Our position is that if it goes to a select committee then we can sit with the experts and bring forward a bill acceptable to the Parliament. I find it difficult that Mr. Sobion does not understand that.

Mr. Sobion: Mr. Chairman, am I mistaken? Is it that the Senate voted that this Bill be referred to a committee of the whole Senate? That was decided a long time ago.

Sen. Capildeo: Yes, but we are dealing with the environment; this is a very important Bill. This is not a national thing.

Sen. Hosein: There is no need for haste.

Sen. Capildeo: This is not Government and Opposition business.

Sen. Hosein: I find it unacceptable.

Sen. Prof. Spence: Mr. Chairman, I would like to support the Attorney General's position for deferring clause 2. Let us see how we can get on with the rest of the Bill.

Sen. Mahabir-Wyatt: Mr. Chairman, I also have two amendments proposed for clause 2 and I also agree that we should defer clause 2 and get on with the rest of the Bill.

Mr. Chairman: It is suggested that clause 2 be deferred for consideration at a later stage of the proceedings of the committee.

Assent indicated.

Clauses 3 and 4 ordered to stand part of the Bill.

Clause 5.

Question proposed, That clauses 5 stand part of the Bill.

Mr. Sobion: Mr. Chairman, I move the following amendment:

Delete and substitute the following:-

"5. The Minister may from time to time give the authority directions of a special or general character in the exercise of the powers conferred and the duties imposed on the Authority by or under this Act."

Sen. Daly: Mr. Chairman, the amendment proposed by the Government takes care of part of what I was suggesting. But I wondered what was the difficulty about having the Minister give the ultimate to these very, very far-reaching

decisions—close down people's businesses and so forth. I wonder what was the objection to that.

Mr. Sobion: Mr. Chairman, what we were able to deduce from the debate is that there was some concern that this authority may not be subject to control by the Executive. The matter was expressed in that way in the course of the debate. We have taken that point and we have sought to have authorized by the new clause 5—the Minister giving directions of a special or general character.

When I made my earlier statement—again it is demonstrated by this particular proposal by Sen. Daly—we do not consider it necessary if the authority is the one which is going to have the expertise to make decisions such as those under clause 25. We do not see it as necessary to give the Minister that overriding right of approval before the authority's decision is implemented. We want to give the authority sufficient leeway to act within the provisions of the legislation.

In accordance with the views that had been expressed during the debate, we want to have some degree of Executive control. We do not think it necessary to go as far as Sen. Daly has suggested in his proposed amendment. If one looks at clause 25 which is one of the provisions referred to in Sen. Daly's amendment, it says:

"Whenever the Authority reasonably believes that a release or threat of release of a pollutant or hazardous substance, or any other environmental condition, presents a threat to human health or the environment, the Authority may, in co-ordination with other appropriate governmental entities, undertake such emergency response activities as are required to protect human health or the environment,"

Quite clearly, the authority has to co-ordinate with other governmental entities in a matter of an emergency nature, and they will bring their expertise to bear, together with such other bodies as they may consult. It is really unnecessary to have the Minister approve the authority's decision after that exercise of consultation and so forth. We feel that the authority, acting under the provisions of the Act, must have some liberty to deal with those matters, bearing in mind their expertise.

Sen. Mansoor: Mr. Chairman, would the Attorney General not concede that any of (a), (b), or (c) are matters of monumental importance? The remediation or restoration of environmentally degraded sites can put someone out of business. I would not wish for some inexperienced person to close down some of the businesses in this country and put people out of work without due process. To put

someone in charge of an authority like this and give him the ability to essentially bankrupt businesses overnight is a matter of monumental importance.

Sen. Daly: Mr. Chairman, I would also like to ask a question. When they make a decision here, and it is wrong, they not only close down a business, but they might move a whole village or a town. They might tell people to move from their homes, and if it turns out to be a wrong decision, to whom are they accountable for having closed down a business, removed a whole village or whatever? To whom are they accountable? The purpose of the ministerial approval is if the Minister approves it then he would come to the Parliament and face the music.

Mr. Sobion: Mr. Chairman, I do appreciate the views that have been expressed on this matter. Let me say it another way. What is being created by this legislation is a regime whereby the authority is given power to do certain things set out in the legislation. There is also provision in the legislation for persons who are affected by a decision of the authority to go through a judicial process, through the commission, to challenge some of these decisions.

2.10 p.m.

If one were to interpose a ministerial fiat, it would compromise what essentially is a quasi-judicial administrative function and the overall scheme of the legislation should be permitted to operate as it has been conceived. While we accept that there should be some Executive control and responsibility, we think that need has been satisfied by the Minister ultimately having responsibility for giving specific and general directions. To introduce a provision which places the Minister virtually as the authority, one may consider whether there is need for the authority, or whether it should be a ministerial responsibility to make these kinds of determinations.

Our view on this side is that the protection of the environment will best be served by an authority which has certain expertise which is subject to some degree of Executive control but which is allowed to function within the overall scheme of the legislation. That is the difficulty which we have in going the full route as proposed by Sen. Daly.

Sen. Daly: Mr. Chairman, when we debated the Central Bank (Amdt.) Bill there was this situation about giving the Central Bank the authority to act quickly in a crisis, and that was resolved by making provisions for the Minister to make a statement within so many days after the Governor of the Central Bank takes emergency action. Also, when we dealt with the Economic Sanctions Bill where provisions were made for the Minister to make a statement about why the trade

boycott has been imposed. I may be cutely alarmed or alarmingly cute, but I am getting more and more alarmed that this authority is to have more power and privilege than the Governor of the Central Bank or the Cabinet that imposes a trade boycott. It is fundamentally a question of accountability.

If they go in a village in the middle of the night and tell everybody to get out in their nighties. Then, all a person's belongings may be left behind; and when one goes the next day the place may be looted or burnt or whatever, and it turns out to be a false alarm or a wrong scientific judgment, who would be accountable? If the Governor of the Central Bank could be made accountable and the Minister, under the Economic Sanctions Bill, could be made accountable, there is need to address this matter; if not my route, then some other route.

As far as I am concerned—and that is why I engaged the Attorney General as early as I did—there is a fundamental problem that this is some special body of persons who may run amok. I am not going to stand for it and I shall vote against it every time, even if it is I alone.

Sen. Mansoor: Mr. Chairman, I ask the Attorney General to look at clause 50 or 51 to see what we are doing. The power which will reside in this authority is crippling. It really is a very fundamental issue that if the Minister wakes up next morning and reads in the newspaper that any of these things had happened on the fiat of this authority, which is not accountable to anybody, as was established in the debate, that is really an intolerable situation. Clearly, Ministers of Government need to take responsibilities for these important matters.

Sen. Mahabir-Wyatt: Mr. Chairman, I agree with the point made by both Sen. Daly and Sen. Mansoor but I am a bit worried about the words in Sen. Daly's amendment—"by notice published in the *Gazette*"—because the *Gazette* sometimes takes a while to get out. I agree with the Minister having the accountability. Can those words be left out?

Sen. Daly: The words "by notice in the *Gazette*" can be left out because we have the experience of how long it takes to get things published. Fundamentally, we want to have somebody accountable for what this authority is doing. I am prepared to take out the words "by notice in the *Gazette*". Minister's approval—somebody can get on the telephone and say that there is gas escaping at O'Meara or wherever and the authority is proposing to take the following steps.

Mr. Sobion: Mr. Chairman, as I said during the course of the debate, we do not have a problem with greater Executive control over authorities or commissions. However, I want Members to be a little careful about what we are

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proposing. If the authority's decision is reviewable by the commission established by clause 81—that is a clear part of the framework of the legislation. I do not know how much greater weight, responsibility or accountability would occur if the Minister has to approve the authority's decision.

If there is some benefit to be gained by doing that, then we also have to be careful against whose decision the affected person would be appealing. Would he be appealing the Minister's decision? Would he be appealing the authority's decision? If a provision is required that the Minister shall give notice in the *Gazette* of the authority's decision—but we are interfering in a way that does not address the scheme of the legislation in a very fundamental way. Is it a ministerial decision? Is it the authority's decision? Whom does an affected person appeal against?

If it is a question of notification, then a Minister could stand in Parliament and make a statement saying that the authority has made a decision to do (a), (b) and (c). It is quite clear by introducing the provision of specific and general directions, there is ministerial responsibility for the acts of the authority, and I do not think that one needs the kind of detail which is set out in Sen. Daly's amendment.

Sen. Daly: Mr. Chairman, I take the Attorney General's point but that is his problem of allowing people to take us away from our normal traditions.

Mr. Sobion: That is our problem.

Sen. Daly: There must be a provision that the Minister is informed prior to the authority taking action.

Mr. Sobion: Mr. Chairman, if the words, "after consultation with the Minister" are introduced before the words "and in co-ordination with other appropriate government entities" in that clause, would that address the concerns which Sen. Daly has?

Sen. Daly: Mr. Chairman, that would address my concern in clause 25, but I also have 25, 41, 47 and 50. I just want the Minister to be in the picture; that is why I introduced it in clause 5. I cannot live in a country where the only person I can turn to when a mistake is made, is the Minister. I cannot turn to this authority. I cannot be able to serve the chairman of the authority with my writ.

Mr. Sobion: Mr. Chairman, I think we are losing sight of the legislation. In my view, if a Minister is authorized by legislation to give special or general directions to an authority, it is quite clear that the Minister would be responsible for the actions of that authority. If one looks at the scheme which the legislation

seeks to establish, if the authority makes a decision which affects an individual, or a corporation, there is a procedure whereby one can seek redress, and the commission which is established by clause 81 provides the avenue for seeking redress against an act of the authority.

2.20 p.m.

It is in my view, therefore, not necessary to interpose the Minister in what is clearly the functions of the authority in carrying forward the scheme of the legislation. There is clear redress by virtue of clause 81; and I think we understand the scheme of the legislation. From that point of view there is politically the responsibility of the Minister; legally there is a well-defined route whereby a person aggrieved can pursue recourse against a decision of the authority.

Sen. Daly: If the commission has the power to stay the decision of the authority; that is fine, but I do not recall it having the power to stay. That is the point, and it is after the fact—after you have moved me out my village; and after I have left my belongings behind. So, maybe, the way to deal with it is to provide for the commission to have the power to stay, which it does not have.

You see, this was my point in the debate. Whoever put up the Government to this, has gone so far away from our normal traditions, we are completely at sea. I do not want to get damages three years after you move me out my village in my nightie! I want it stopped and I do not want any commissions that can go temporarily crazy, and victimize people! You see, I do not like the political stripe of this village, so I am going to move everybody in the middle of the night. That is not our tradition. That is why we are having trouble with it.

Mr. Sobion: Mr. Chairman, I understand Sen. Daly's point. I wonder if he would assist me in trying to find a way of resolving this matter. If we accept the recommendation that the decision of the authority will only be effective once the Minister gives his approval, I wonder how does that solve the other questions that have now been raised? Does it mean that there is a stay? What is the functional value of having the Minister, who is going to be acting on the recommendation of the authority? How, by inserting that requirement for approval, are we going to solve some of the other problems that he has sought to raise now?

Sen. Daly: Because he is politically accountable. They can protest outside his office.

Mr. Sobion: Does that give you a say not to be taken out of the village in your nightie?

Sen. Daly: I do not mind if you are prepared to consider amending clause 86 to include a stay. That is fine.

Sen. Capildeo: I would like to suggest that we defer this matter and move on with the rest of the Bill. We can come back to it. Let us defer it.

Sen. Prof. Spence: I thought we had got fairly close to agreement, because both Sen. Daly and the Attorney General seem to be accepting some form of notification.

Sen. Capildeo: We are reducing them one by one.

Mr. Sobion: We are not reducing them.

Sen. Mansoor: Mr. Chairman, I think that the important point here is that a lot of damage can be done while the lawyers and the commission fiddle, if you know what I mean. In other words, businesses can be closed down, people moved, all sorts of things can happen; people can be told: Do not move machinery, do not do this, or that. Nobody is accountable except some authority which is run by a person who is really accountable to no one except his monthly salary, perhaps. So that, what has to happen here is that Ministers have to be responsible for these edicts that come out and say you can do this and cannot do that, because they are the ones who are responsible to the citizens of this country!

Sen. Capildeo: If there was a Joint Parliamentary Committee you would be cool. You would be here—accountable to Parliament.

Mr. Sobion: Mr. Chairman, I really need some assistance on this. I am having a difficulty. Is it that the concern that is being expressed by Senators Mansoor and Daly—is it the fact of political responsibility tied to the Minister? Because if that is the difficulty, where a Minister has the right to give specific and general directions, he is accountable for the acts of that authority. So if that is the difficulty, then it is catered for by the amendment which we have proposed. If it is that you want to give the Minister some sort of—

Sen. Capildeo: Power?

Mr. Sobion: —intermediate right between the authority and the commission to give approval for matters which are under the purview of the authority, then that is a different matter. We need to know what exactly the concerns are and what exactly we are trying to address.

Sen. Mansoor: In simple terms, Mr. Chairman, the concern is that specific, general, or whatever kind of policy is just that—policy; and Ministers may interpret that however they wish.

What we are trying to do is put the locus of the responsibility for these edicts, about ten of them, with the Minister, so the Minister cannot say that that is a policy matter, or it is not a policy matter. The word 'policy' can be used to cover a lot of sores. By giving the Minister and requiring the Minister to get involved in the decisions that will be made under these clauses, makes it very clear that he has a responsibility to the authority and to the country to look after these matters in these various clauses.

Sen. Prof. Spence: Mr. Chairman, may I suggest an amendment to the Attorney General's amendment which, I think, may take what Sen. Mansoor said. Suppose it read: "The Minister may from time to time give the Authority directions of a special or general nature in the exercise of the powers conferred and the duties imposed on the authority by and under this Act." So it means that the Minister could intervene, if it were necessary. Instead of "directions of a special or general character on the policy", it just says: "directions of a special or general character in the exercise of the powers conferred." So delete the part about policy. If you delete "policy" then I think you—

Mr. Sobion: I have no problem, Mr. Chairman, with the amendment suggested by Sen. Prof. Spence on the policy to be followed:

"...special or general character in the exercise of the powers conferred and the duties imposed on the Authority..."

Question put and agreed to.

Clause 5, as amended, ordered to stand part of the Bill.

Clause 6.

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

Sen. Hosein: Mr. Chairman, I beg to move the following amendment to clause 6:

- 6 After the words 'in writing' in line three of clause 6(1) insert the words 'on the advice of the Prime Minister and the Leader of the Opposition' before 'and consisting.'

Re-number subclauses (3) to (7) as subclauses (4) to (8)

After subclause 6(2) insert a new subclause (3) as follows:

"The Board shall appoint a Managing Director who shall be the Chief Executive Officer and an employee of the Authority."

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- 6(1) Delete sub-clause (b) in clause 6(1)
- 6(1)(c) Delete the word "nine" at the beginning of line one of clause 6 (1)(c) and insert the word 'eleven' before 'other members'.
- 6(1)(c) After the word 'organisations' at line 5 of clause 6(1)(c) insert the following sentence: 'At least two of the eleven Board members shall be drawn from non-profit environmental non-governmental organizations and at least one from labour'.

We are suggesting, Mr. Chairman, that the appointment of the Board of Directors be done by the President in consultation with the Prime Minister and Leader of the Opposition. We want this, particularly, because we see here an avenue for "jobs for the boys" and we want to avoid that. I think the other side is well aware that this Bill carries with it big, big money. We cannot afford to allow the political directorate to appoint the Board.

Mr. Sobion: Mr. Chairman, again, if I may make a general statement. In approaching legislation, one has to be careful not to deal with it in a hodge-podge fashion and there have to be certain main themes which run through the legislation. If, as has been so eloquently argued, there should be ministerial responsibility for the acts of the authority, it is very difficult to accept that in the appointment of the Members of the authority that someone other than the Minister who is to be responsible should be brought into the picture.

Sen. Hosein: But there are precedents set. This is not the only Bill where this is so.

2.30 p.m.

Sen. Huggins: Give me some more.

Sen. Hosein: The police service.

Mr. Sobion: Who is responsible for the police service?

Sen. Hosein: That is right.

Sen. W. Mark: Mr. Chairman, the environment is an all-embracing subject matter and we feel that civil society should have a direct say in the formulation of policies, and moreso, in the appointment of personalities to this particular board. I do not believe that the Attorney General could seriously argue against the proposal that has been suggested in the context of the democracy involved in this

exercise. We talk about public participation in this particular piece of legislation that is before us, therefore, we believe that in the assignment or appointment of these officials who are going to constitute this board, that democracy must at least prevail in this context. We are suggesting very strongly that the Prime Minister and the Leader of the Opposition be consulted in this matter.

Sen. Capildeo: Mr. Chairman, I want to suggest that the Attorney General looks at the very wide powers in Part IV "Rules and Public Participation". Clause 26(1) and (2) from (a) to (m) has real power being exercised by the authority. Then in clause 27, the authority has the right to submit rules. In clause 28, the authority has enormous power. In fact, Part IV in itself could warrant the inclusion of this amendment because it gives tremendous power to the authority.

Mr. Sobion: Mr. Chairman, quite the opposite. If I were to look at the scheme of the legislation, the fact that there is so much opportunity for public consultation on these matters tells me that there is no need for the amendment proposed by Sen. Hosein.

Sen. Capildeo: All the more reason why.

Mr. Sobion: There is ministerial responsibility—we have developed that arising out of this debate—and it is quite clear that if there is to be ministerial responsibility, there must be some degree of ministerial and executive control. For those reasons, Mr. Chairman, I do not think that this is a major point that ought to detain us. Quite simply, the views have been expressed on both sides and I think it is quite clear that we should vote on it.

Sen. W. Mark: Mr. Chairman, with your protection, may I suggest, Sir, the preamble of this Bill speaks about developing a national strategy for sustainable development, and that can only take place if the Government is serious in an atmosphere of democracy. We are saying that this Bill requires, not the fiat of the Cabinet of this country—they are the ones who are going to determine who is going to sit on this board; the Cabinet is going to do that—and what we are saying is that because of the nature of the particular matter at hand— Because we have conceded, Mr. Chairman, on many occasions, the right of the Cabinet to execute its duties and responsibilities, but in the context of the environment and based on what the Government is committed to in the preamble of this Bill, there can be no excuse for the Government wanting to renege on—not renege, but to at least not support—this proposal that we are advancing in this amendment.

Sen. Capildeo: They want to exclude the Opposition.

Sen. Merritt: Mr. Chairman, there is an additional concern here in clause 6(1)(b). I am seeing where the President is going to appoint:

"(b) a Managing Director who shall be the Chief Executive Officer of the Authority;"

Mr. Chairman: We are in committee and we are dealing point by point. There are about four sets of amendments and each set has amendments to it so we are dealing with Sen. Hosein's amendment to clause 6 right now.

Sen. Capildeo: Mr. Chairman, I do not believe there is any argument against the proposition that if this is going to be in the national interest, there is any argument that could exclude the Leader of the Opposition. There cannot be any argument. Of course, if it is going to be on a partisan interest, and if this is going to be a PNM Bill run by PNM people, exclude it; but if this is going to be in the national interest, put it in. What is the problem? Why are you so scared about the Office of the Leader of the Opposition? It may change. The individual may change.

Sen. W. Mark: It is the Office of the Leader of the Opposition.

Sen. Hosein: I think this is a good time for the Government to show some kind of understanding.

Sen. W. Mark: Mr. Chairman, we have advanced our position. We feel very strongly about it and we will now leave it up to the other side to decide what the position is. But we are very strong on this point.

Sen. Capildeo: In fact, it might be one of you people occupying the office.

Mr. Chairman: We are dealing with the amendment proposed by Sen. Muntaz Hosein that clause 6(1) be amended as follows:

After the words 'in writing' in line three of clause 6(1) insert the words 'on the advice of the Prime Minister and the Leader of the Opposition' before 'and consisting'.

Question put.

The committee divided: Ayes 5 Noes 20

AYES

Mark, W.

Capildeo, S.

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Merritt, Miss C.

Hosein, M.

Persad-Bissessar, Mrs. K.

NOES

Huggins, Hon. R.

Barnes, Hon. B.

Yuille-Williams, Hon. J.

Draper, Hon. G.

Robinson-Regis, Hon. C.

Callender, S.

Mark, A.

Ojah-Maharaj, D.

Elder, Mrs. J.

Rahael, J.

Gosine, Pundit R.

Hassim, A.

Maloney, A.

Nanga, J.

Lewis-Phillip, Mrs. N.

Mansoor, M.

Rooks, J.

Mahabir-Wyatt, Mrs. D.

Ali, H.

Daly, M.

The following Senators abstained: Prof. J. Spence, E. Dean, C. Mahadeo,
Rev. D. Teelucksingh

Amendment negatived.

Mr. Chairman: The next amendment, Sen. Hosein.

Sen. Hosein: Mr. Chairman, I beg to move the following amendment:

Delete subclause (b) in clause 6(1).

This is so that the managing director could be appointed by the board. The chief executive officer of this authority is going to wield a lot of power, therefore, we feel that if he or she is appointed by the board, it will be properly done and he or she will be accountable to the board which has appointed him or her, rather than have the Government appoint the CEO.

Again, for a reason that I advanced earlier on, Mr. Chairman, we are trying to protect the interest of the public to avoid having square pegs in round holes. This Government has a record of putting square pegs in round holes. Already, we see square pegs in round holes lurking around and we understand that they are earmarked for that position and we have to be very careful what is done, because this Bill is too important to be monkeying around with. I hope that the Government will understand our point of view.

2.40 p.m.

Sen. Merritt: Mr. Chairman, I was saying previously—I jumped the gun—that it is the norm in Trinidad and Tobago that a managing director or a chief executive officer, be appointed by the board instead of the President of the Republic of Trinidad and Tobago. Why are we going outside the norm? I think we need an explanation here if we have to go outside the norm.

Sen. Prof. Spence: Mr. Chairman, it would seem to me reasonable that the board should appoint the executive officer, but that he should then be on the board *ex officio*. It would mean re-wording the clause to give effect to those two points. It seems to me that since this appointment is going to require very detailed assessment, I really do not see how the President is in a position to make that assessment. The executive officer has to have some technical expertise as well, and it would seem reasonable that the board be appointed by the President and then the board select the managing director. Certainly in institutions that I have sat on, all operated in that way, and then the executive officer becomes a member of the board *ex officio*.

Sen. Hosein: Mr. Chairman, we also feel that the position of CEO should be advertised so that the board would be able to consider all the nationals of Trinidad and Tobago for that position, as opposed to the Executive appointing somebody.

Sen. Daly: Mr. Chairman, I would like to support this amendment. I think there is a great deal to be said. I do not want to get into a debate as to what is the

norm. Let me put it a different way. I think it is very important that the chief executive officer of a company be appointed by the collective responsibility of the board for two reasons which I think are well known in business. The first is that the chief executive officer must enjoy the confidence of the persons that he has to work with on the board, and that is better engendered if he is selected and hired by them. Secondly, having regard to the type of board that this is and the wide expertise—I am trying to put this in as neutral a way as possible—of the members of the board, it really would be better for that reason as well if the chief executive officer was appointed by the board, rather than be, in the best sense of the word, imposed on the board by the Cabinet. It is very important.

Sen. Mahabir-Wyatt: Mr. Chairman, I agree with that, and also we have to take into consideration the possibility that the chief executive officer may change and it is easier, quite apart from everything else, for a board of directors to interview and recruit than it is to have this go through Cabinet and through the President. It also is one of the chief responsibilities of a board of directors to appoint a chief executive officer. If it is not the board of directors that appoints a chief executive officer, then the chief executive officer very often feels that he or she does not have to report to the board and is autonomous and can make decisions outside of the purview of the board. It is a familiar phenomenon and I really do not think that this is what we want to do in this instance.

Mr. Sobion: Mr. Chairman, the views that have been expressed all seem to have merit. What I would like to do is to propose an amendment which would be formulated shortly, to allow for the board to appoint the managing director and chief executive officer who shall be *ex officio*, a member of the board. An appropriate draft would be prepared.

Mr. Chairman, you should probably bear with me a bit, but for stylistic purposes, if we say it this way—we are deleting clause 6(1)(b). Clause 6(4) will now read:

"The Board shall appoint:

- (a) a managing director who shall be the Chief Executive Officer and *ex officio* member of the board;
- (b) a corporate Secretary who shall be an employee of the Authority."

Sen. Prof. Spence: Mr. Chairman, could I just ask a question of the Attorney General? Will that formulation create any difficulties by the fact that clause 6(1)

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says the board shall consist of? If it does, would it not be better to say: 6(1) The board shall consist of: (a)—previous (c) which now becomes (b) and a managing director who shall be appointed...

Mr. Sobion: We would run into the same problem that we have now, because all of clause 6(1) deals with presidential appointments and terms and conditions of service. By deleting (b), what we would have done is effectively reduced the board to 10 appointees by the President and one *ex officio* appointed by the board.

2.50 p.m.

Sen. Prof. Spence: My only question is if you had said in clause 6(1) "the board shall consist of" that is not really correct because it consists of that group plus one that is appointed under clause 6(4). I am only asking if it is a problem. If so, can you deal with it?

Mr. Sobion: Clause 6(1) does two things. It establishes the authority in the first instance.

"There is hereby established a body corporate to be known as the Environmental Management Authority,"

It then says that authority shall be governed by a board and what persons shall be on the board—a chairman—and it would now read nine other members. The board would then appoint a chief executive officer who shall, *ex officio*, be a member of the board.

Sen. Prof. Spence: Could you not leave out "and consisting of"? It seems to me that you have a problem if you say the board consists of these persons, and then you added one under clause 4. If you just omit "and consisting of".

Mr. Sobion: There is a problem with an *ex officio* member of the board. That can be done by separate clauses as we have set it out there. He is *ex officio*.

Sen. Persad-Bissessar: Mr. Chairman, through you, there will be a problem if the hon. Attorney General looks at it. In clause 6(1) the board is established. I believe that is the point that Sen. Prof. Spence is making. It states:

"...which shall be governed by a Board of Directors appointed by the President"

When you take him out of clause 6 completely, he would no longer be an appointee of the President. Therefore, he does not fall under the board as established under clause 6(1). That picks up the point about *ex officio*, but then that is not the board that is established. I believe that there is a difficulty. You said

that the authority shall be governed by a board appointed by the President. This member would not be appointed by the President, therefore, there is difficulty.

Mr. Sobion: That is why he is *ex officio*.

Sen. Daly: The intent is that we leave it to the draftsmen to give it to us.

Sen. Hosein: Yes Mr. Chairman. I am in agreement here, that we should leave it to the draftsmen.

Mr. Chairman: There are many other proposed amendments to the same clause 6. By the time we are finished with that, it might be about 4.00 p.m. They might have drafted this one by then.

Question, on deferment, put and agreed to.

Sen. Hosein: Mr. Chairman, I beg to move that clause 6(1)(b) be deleted.

Question put and agreed to.

Sen. W. Mark: Mr. Chairman, I would like to suggest to the hon. Attorney General once more, but in a different form this time, if we can select two persons from each side of the Senate, informally establish a committee and give them about four days to work out the details, I think that we would save a lot of time this afternoon. I think this view is acceptable to the Independent Senators as well.

Hon. Senators: Is it?

Sen. W. Mark: I am sorry about that. It is not all the Independent Senators. I have been through it with Sen. Prof. Spence. It is a suggestion. I would like the Attorney General to look at it and consider it.

Sen. Hosein: Mr. Chairman, I beg to move the following amendment:

That clause 6(1)(c) be amended by deleting the word "nine" at the beginning of line one and inserting the word "eleven" before "other members".

There is a typographical error. It is intended to remain with "nine", but we want two seats on that board reserved for non-governmental organizations specifically, and one for a labour representative specifically.

Mr. Chairman: Are you withdrawing that?

Sen. Hosein: I wish to withdraw my amendment.

Amendment withdrawn.

Sen. Hosein: Mr. Chairman, I beg to move that clause 6(1)(c) be amended as follows:

By inserting after the word "organizations" in line five the following sentence:

"At least two of the eleven board members shall be drawn from non-profit environmental non-governmental organisations and at least one from labour."

Mr. Sobion: The nine you are referring to would be clause 6(1)(c). At least you are saying of those nine.

Sen. Hosein: Mr. Chairman, this environmental organization is very important to the nation. I believe that the Government has recognized the work being done by non-governmental organizations. We on this side also recognize the invaluable work being done by them. I think it would be a bad thing to leave them out or only give them one place on the board.

If you recall, the original Bill presented before had two spaces reserved for NGOs. I want to suggest to the Government that we should go back to that and have one space reserved for labour.

Mr. Sobion: Mr. Chairman, I appreciate the concerns expressed by Sen. Hosein. Quite clearly, if one looks at clause 6(1)(c) we are dealing with a wide range of disciplines. In fact, at a quick count 11 disciplines are specified there, out of which one has to choose nine persons.

Sen. Hosein is correct. When the Bill was first drafted, it did include two non-governmental persons. The Bill went out for public comment in August and it was as a result of the comments received that that provision was changed. We have some degree of flexibility. There are 11 odd disciplines set out and one can find a proper mix in order to choose nine out of the 11. If we are to limit it in the way suggested, it would further restrict the range of choice available.

3.00 p.m.

Sen. Hosein: If the Attorney General would look carefully, he would see that ecology is one of them, and from the NGOs he is sure to find somebody with ecology. We do not want to leave it up to the Government, to find later on that only one member from the NGOs, or none from the NGOs, is chosen.

Mr. Sobion: We may very well find that all are from the NGOs. The fact is that the NGOs have no special claim above anybody else. It is only fair that there be as wide a range of choice as possible. One may very well find that someone

active in an NGO may come in under business or economics. We are trying to have as wide a range of choice as possible to get these nine members.

Sen. Mahabir-Wyatt: May I be allowed to come in on this since I have proposed a similar amendment? While I did not propose that a place be reserved for labour, I did propose that labour be one of those disciplines from which the seven other individuals could be drawn.

Government has, in its manifesto, spoken about its desire to involve the whole community in what it is doing. Many policy statements have been made in which the Government has stated that it wants to work with NGOs. In fact, in this whole area of social development—and this has been quoted very often in the MacIntyre Report—the idea is that the Government would direct policy, much of which will be carried out by the NGOs. I think it is a retrograde step to turn around and deliberately say that they are removing the places reserved for the NGOs and leaving it to appointments which will be made by the Government. I think there is a gesture of carrying out the policy statements which have been made and goodwill generated. In my case at least, I have specifically spoken about non-profit, non-governmental organizations which deal with specific natural resources issues and I do think this is important.

Mr. Sobion: Mr. Chairman, it has been part of the Government's policy as well to consult with the public in respect of legislation. As I indicated, the original draft bill did reserve two spaces for non-profit, environmental, non-governmental organizations. Coming out of the public consultation on this Bill, we found that the weight of opinion suggested that one should not closely restrict the available choices. If one looks at the disciplines which have been identified, not only is there reference to non-governmental organizations, there is also reference to community-based organizations, so that quite apart from the skills like environmental management and environmental health, there are a range of other interests which can be represented on the board. I think that we are debating a matter which may not in fact be a real issue, having regard to the range of disciplines identified in clause 6(1)(c).

Sen. Mahabir-Wyatt: It could very well be because [*Inaudible*] there are at least 11 [*Inaudible*] that you could just leave out NGOs, and the NGOs are the ones that have kept the whole idea of the environment alive and that have done all the preliminary work in terms of public awareness. To downgrade them at this point seems to me to be a retrograde step.

Mr. Sobion: Mr. Chairman, I get the impression that the justification appears to be the amount of work that NGOs have done in leading this charge. If I were to

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accept that as a view, I may very well find myself in the position where I may have to concede that they should be given four spaces, if one weighs the value of work that they have done. The point I am making is that the NGOs quite clearly, have done a lot of work in this environmental arena.

There are persons on the boards of these NGOs who have a certain range of skills. We are doing three things. We are not excluding NGOs; we are not excluding community-based organizations, and we are providing for persons with specific skills who may very well come from NGOs or community-based organizations to also access the authority. So that, I do not think it does any violence to the work the NGOs have done over the years. I think their representation will be based on the fact that they have done good work over the years.

Sen. Hosein: We also see the presence of NGOs on this board as a balance among all these disciplines. The labour of love for the environment that the NGOs are engaged in and doing free of charge is the type of attitude and the kind of people that we need on the board of this authority. I think we are very fortunate in Trinidad and Tobago to have these people doing this kind of work for the love of it. I think that the Government should recognize this and reserve the two spaces there for them, and for the work of the trade union movement. They are doing tremendous work.

Sen. Mahabir-Wyatt: Is it possible if we went back [*Inaudible*] to make it eleven other members and then we can cover eleven other disciplines? It means that there will be a board of 13.

Mr. Sobion: I am trying to see where we can get with this. Can Sen. Mahabir-Wyatt give me an idea of how many NGOs are involved in environmental matters?

Sen. Mahabir-Wyatt: I am directly involved in one way or the other with five. There are others, but I have been involved with five.

Sen. Hosein: There are at least five of them actively involved.

Sen. Mahabir-Wyatt: They are very active and are genuine organizations, not just one guy who sets himself up as an institute for self-aggrandisement.

Sen. Hosein: I really do not think that the Government should fight on this matter.

Sen. Mahadeo: A while ago, the Attorney General did mention that the NGOs were doing such a good job that he thought perhaps he should give them four seats

rather than the two suggested. Why not then go along with that amendment and give them the two seats and then one from labour?

3.10 p.m.

Mr. Sobion: I wonder if Sen. Mahabir-Wyatt would, perhaps, accept a compromise. I am going to propose this compromise on the basis that there seems to be a concern that the NGOs may not be represented at all. What if we draft a provision which would provide and ensure that there is at least one NGO represented on the authority? Would that be an acceptable provision? Could we do a draft?

Sen. Hosein: We have a concern about labour, Mr. Chairman.

Sen. W. Mark: Mr. Chairman, what is the proposal advanced by the Attorney General? I did not get it.

Mr. Sobion: That we draft a provision which would provide and ensure that there is at least one NGO represented on the authority?

Sen. W. Mark: And then at least one—

Mr. Sobion: And one business, and one environmental health, and one ecology—

Sen. W. Mark: No! No! Attorney General you must have a little patience, you know, this is going to be a long debate here. When one is talking about safety, health and the environment, it is the workplace one is talking about. I cannot see any objection.

Sen. Hosein: Mr. Chairman, we have been asking for labour because the track record has been that labour has been left out of many boards and this is the reason we are seeking to make certain. It is not that we want to put someone from every discipline. That is not the reason.

Mr. Sobion: Quite clearly we cannot, because there are 11 disciplines identified and there are only nine members. I think one can justify the NGOs' position on the basis that they have been at the vanguard of this type of issue, otherwise I am sure that a case could be made for business; I am sure that a case can be made for someone in ecology, someone in environmental health, as well as labour. The concession which we have made is one that recognizes the value of the work done by a particular grouping of persons, and that could be justified.

Sen. Prof. Spence: Mr. Chairman, if we are redrafting, then I prefer the formulation "at least one of whom should be actively involved in non-profit, non-governmental organizations". "Actively involved in", rather than "drawn from".

Mr. Sobion: What we are doing in this clause is identifying categories of disciplines and I think it is sufficient to give the assurance to the NGOs that someone would come from the NGOs. Once that is done, the NGOs would have to be consulted in order to pull someone out for the authority. I do not think the question of active, non-active or hyperactive is really necessary.

Sen. Hosein: The Attorney General is saying that perhaps there is a case for the NGOs but not a case for labour. I do not agree with him because if one looks at all the natural disasters all over the world, the people who suffer are not the business people, they are the workers and they ought to have their representative in any such environmental management committee.

Sen. Daly: Mr. Chairman, I am very reluctant to get into this debate. The Parliament is being presented with a very serious provision here. If we are going to be consistent in how we normally do things, we do not normally reserve seats. All these commissions, boards and so forth refer to disciplines. So we are really departing from the norm and I merely—with some regret—want to underline the risk that one would run even if both suggestions are accepted. What one is really doing is personalizing or introducing a personality element into this. I would have thought that it was the business of labour and the business of the non-governmental organizations in the best sense of the word, to lobby the Government to ensure that their representatives get appointed under the appropriate discipline.

I am having some difficulty—particularly because of the stance I am taking on other parts of this Bill—in introducing this element of character or personality into the selections that are going to be made. Speaking for myself, I cannot see the basis on which one can concede one and refuse the other if it is being sought in a committee like this. I really think we should follow the traditional formula.

Sen. Prof. Spence: I am emboldened by Sen. Daly's comments to say that I agree with them.

Sen. Capildeo: There is a very practical example of that, because under section 40 of the Constitution, the President shall appoint Senators:

"(2)(c) nine shall be appointed by the President in his discretion from outstanding persons from economic or social or community organisations and other major fields of endeavour."

I see where the nine comes from, but then you see they ought to be outstanding persons from economic or social or community organisations and other major

field of endeavour. Having regard to our experience, I see we are now narrowing the definition of the people who are to come, that is why we say one NGO, or two NGOs and one labour and so forth.

Mr. Sobion: Mr. Chairman, I have been trying to strike a compromise with Sen. Mahabir-Wyatt, but I do share the views expressed by Sen. Daly and as endorsed by Sen. Prof. Spence. I think we were trying to bend a little backwards, I do not know whether Sen. Mahabir-Wyatt, in the light of those last two comments, would want to withdraw the amendment.

Sen. Mahabir-Wyatt: Mr. Chairman, I do not agree at all that this is personalizing, I think that is twisting the word "personalizing" out of what the dictionary has. This is not personalizing, this is referring to disciplines and contributions.

I do not have Sen. Daly's fear of something that has always been there and it is traditional. I think that every once in a while one does have to move out of the crease and do something which is innovative. If this is innovative, I think it is innovative in the right cause and consistent with policies that Government has spoken of over and over again, and I maintain my point.

Sen. W. Mark: Mr. Chairman, I have a strong objection with the question of discrimination, because if the Attorney General is able to rally sound arguments in order to ensure that at least one of the NGOs is properly represented, I do not understand on the other hand, at the same time, he is not in any way enthused with at least one person coming from the labour community. I do not understand why the Attorney General—because I do not agree with Sen. Martin Daly when he says that it has not been our practice in Trinidad and Tobago to deal with disciplines and characters and so forth. The fact of the matter is that there are many pieces of legislation in this country that stipulate. The National Insurance Board, and the Minimum Wages Act are two examples where one specifically identifies how many people should come from the labour movement or from labour. It is not something inconsistent with our tradition.

The environment is a national issue, the people who are directly involved in the environment are workers, and we are saying that there are 11 disciplines here and it is quite possible in this anti-trade union and anti-labour atmosphere that the Government could, by an error of judgment—they seem to be committing errors every day. We want to ensure that there is no error of judgment or that anything is erroneously laid or done. We would like to ensure at least that they consider labour as one of those personalities, disciplines or one of those representatives that would be part of this environmental authority.

3.20 p.m.

Mr. Sobion: Mr. Chairman, I think I was slightly misrepresented. In trying to strike a compromise with the view expressed by Sen. Mahabir-Wyatt, I expressed the view that the rationale appeared to be that the NGOs were in the vanguard in this area. If that was the view as it was being expressed, then it may have been possible to use that as justification for a special exception in the case of NGOs.

No such argument has been advanced in respect of labour; no such argument that it has been at the forefront—I do not know because one can make that argument with respect to community-based groups as well. Not only workers, but people who live within the community have an interest in environmental matters. If we were to analyze each of these categories here, we can possibly make an argument for each of them. I think perhaps, in the light of that, it may be best that we proceed with it the way the Bill is drafted at present. Mr. Chairman, I would like to suggest that.

Sen. Daly: Just for the record, I am sorry if the use of the word, "personalized" was misunderstood. What I am saying is that these things involve valued judgments, and for each one of these groups you will find someone who will say, "my group has done more work on this than anybody else". This is what I mean about "personalized". It becomes personalized in the sense that the person is saying my group is superior in the amount of work that is done. That is all I am concerned about.

Mr. Chairman: Well, I think all Senators have had the opportunity to have their views heard and I now put the amendment proposed by Sen. Hosein to the vote.

Question put.

The committee divided: Ayes 9 Noes 19

AYES

Mark, W.

Capildeo, S.

Merritt, Miss C.

Hosein, M.

Barrack, J.

Persad-Bissessar, Mrs. K.

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Mansoor, M.

Spence, Prof. J.

Rooks, J.

NOES

Huggins, Hon. R.

Barnes, Hon. B.

Yuille-Williams, Hon. J.

Draper, Hon. G.

Robinson-Regis, Hon. C.

Callender, S.

Mark, A.

Ojah-Maharaj, D.

Elder, Mrs J.

Rahael, J.

Gosine, Pundit, R.

Hassim, A.

Maloney, A.

Nanga, J.

Lewis-Phillip, Mrs. N.

Dean, E.

Mahadeo, Miss C.

Mahabir-Wyatt, Mrs. D.

Ali, H.

Sen. M. Daly and Sen. Rev. D. Teelucksingh abstained.

Amendment negatived.

Mr. Chairman: Sen. Hosein, do you have one more amendment to clause 6?

Sen. Hosein: Yes, the renumbering we could leave to the draftsmen because there are so many things that we have done already. The other one has been taken care of because it is being redrafted by the Government. So we withdraw the amendment to clause 6(3), "The board shall...", so that the Government can put its drafted amendments.

Amendment withdrawn.

Sen. Hosein: I think now we should deal with Sen. Mahabir-Wyatt's amendments.

Mr. Chairman: The amendment that is being proposed is to have clause 6(4)(a) and (b), so I do not think that we have to renumber. Anyhow, we would leave that out if it is necessary. Sen. Mahabir-Wyatt, your amendment to clause 6(1) has been more or less argued. Do you agree?

Sen. Mahabir-Wyatt: No.

Mr. Chairman: I did not say that you agreed on the decision, that it has been argued and a decision has been taken that should include the amendment that you proposed. I think your other amendment is taken care of in the list of Government amendments to substitute for subclause 6, "The President may remove from office any member of the Board, at his sole discretion."

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

Sen. Hosein: Mr. Chairman, did I understand you to say that the Government has agreed to at least one NGO? Is that correct?

Mr. Chairman: No, no. Sen. Mahabir-Wyatt had proposed certain amendments and I believe that what she had proposed was argued in discussion with your amendments. She has not agreed with the decision, but just to accept—so she is not worrying to pursue that amendment all over. So that clause 6(1)(c) stays as it is in the Bill, it will be 6(1)(b) now.

Sen. Daly, I think your amendment to clause 6(6) is contained—

Sen. Daly: Yes, Mr. Chairman. I withdraw.

Mr. Chairman: I would therefore put the amendment proposed to clause 6(6), which says—

Sen. W. Mark: Is that the Government's amendment?

Mr. Chairman: It coincides with amendments moved by Sen. Daly and Sen. Mahabir-Wyatt.

Sen. W. Mark: Are we going to get some discussions on the amendments?

Mr. Chairman: Well, once I propose it there can be discussion.

Sen. W. Mark: Mr. Chairman, which clause is it?

Mr. Chairman: Clause 6(6). I am just trying to get rid of all of them which would be the last one besides the one which has to be redrafted. We will take the Attorney General's proposed amendment to 6(2) first.

Mr. Sobion: Mr. Chairman, I move the following amendment:

Substitute for the words "of not less than two years or more than five years, and" appearing in lines 1 and 2, the words "not exceeding five years".

The effect of the amendment which has been circulated is to give some flexibility with respect to the period for which persons are appointed to the authority. As it is now drafted, there is a minimum and a maximum period and we are recommending to the committee that the minimum period be removed and that persons could be appointed for periods not exceeding five years.

3.30 p.m.

I believe that this matter surfaced during the course of the debate. It was felt that there should be some flexibility. By keeping a maximum period, persons can be appointed for shorter periods if need be. For example, there may be someone who is at an age where he may not want to accept an appointment for a longer period but because of work which he has been doing, he would accept an appointment for a shorter period—a year or so. All this does is provide flexibility. When one looks at it in the view of the other matter which was raised in the debate—the revocation at any time—then it really is not a problem as far as we are concerned.

Mr. Chairman: In clause 6(2), substitute for the words " of not less than two years or more than five years, and" appearing in lines 1 and 2, the words "not exceeding five years,".

Sen. Rev. Teelucksingh: Mr. Chairman, will such a person be eligible for re-election and how many times over? Would someone serve six terms or life-time on the board? That is important. There needs to be some clause to control this—maybe two terms or something like that. Someone serving too long can lead to corruption.

Mr. Sobion: Mr. Chairman, there is much legislation which restricts the right to appoint persons for successive terms. Sometimes that can be very restrictive, particularly in an area like this where there are persons with certain specialties and who may be performing. Performance should be the test rather than some restrictive provision limiting tenure. We are trying to experiment with this as a means of seeing how some of the problems experienced with other legislation can be solved. That is why there is no restriction in this one.

Sen. Rev. Teelucksingh: Did the Government think about it?

Mr. Sobion: Yes.

Sen. Mahabir-Wyatt: Mr. Chairman, one of the problems, especially with environmental issues, is that there are few persons in Trinidad and Tobago who are qualified to deal with this, and it is hard to get them to serve on anything, so once you get them you would want to keep them.

Sen. Rev. Teelucksingh: Because it was voluntary or free but now it is a different story.

Sen. Mahabir-Wyatt: People who are committed to the environment do not necessarily change their commitment as a matter of money.

Sen. Rev. Teelucksingh: The Senator will learn.

Question put and agreed to.

Mr. Chairman: The proposed amendment with respect to clause 6(6) is as follows:

"Substitute the following:

- (6) The President may at any time revoke the appointment of a member of the Board other than the ex officio member."

Sen. W. Mark: Mr. Chairman, we would like to get a rationale because we are not in support of any blanket power being given to any Cabinet of this country. On some whim and fancy, somebody could be removed. The original proposal at least clarified some of the bases the Cabinet can use in removing somebody, but if there is a blanket kind of arrangement, how are we to know what justification is advanced for the removal of X or Y? There is need for some justification from the Attorney General as to why there is this fundamental departure from the initial proposal that was tabled.

Mr. Sobion: Mr. Chairman, the recommendation that is contained in the circulated amendments is one of the recommendations which arose out of the

debate. The feeling that was expressed by Senators on the Independent Benches was that we should be moving to a culture where people can be terminated for non-performance. Where there is an authority of this nature there is need to ensure that the persons who are appointed operate and that there be some freedom in dealing with persons who are on such an authority. The Government is mindful of those views which were expressed, hence the reason for the amendments which are now before us. If Sen. Wade Mark wishes to suggest some other alternatives to deal with the issues which arose out of the debate, the Government would be prepared to consider them.

Sen. W. Mark: Mr. Chairman, we would prefer to go with the original clause. The Attorney General did mention that some views were expressed during the debate on the question of non-performance. Who is to decide this? We are giving blanket power to a group of politicians who could determine on their own criteria what is performance, what is non-performance. If they want to get rid of a very active person on the board, somebody who has been standing up for the country—our middle name is corruption!—they can remove someone for no reason, and there is no justification, they do not refer to Parliament.

We think that is an arbitrary abuse of the process. Therefore, there ought to be criteria clearly established for the removal of persons. To give the Government blanket power, honest people could become likely targets for a vindictive and wicked government—and we know the PNM is wicked and vindictive. Therefore, we feel that we should go with the original clause. We do not support the amendment as proposed by Government.

Mr. Sobion: My recollection is that the sentiments which came out of the debate were based on the feeling that there should be greater ministerial control and responsibility over the authority. In that context, the argument was made that there should be that kind of control.

Sen. Daly: Mr. Chairman, there is a two-level system here where the authority will have executive responsibilities—not run away responsibilities—and one of the checks and balances is the commission. It is a two-level thing. Where the Cabinet is responsible for appointing people to the authority, it is reasonable that it should have the ability to remove them. It is a different matter when it comes to the commission. That was the rationale of those of us who proposed that amendment.

Sen. Hosein: Mr. Chairman, we are arguing that, yes, there must be the power to remove but there must be some criteria for removal. We are not saying that there should not be the power to remove. We accept that.

Sen. Mansoor: Mr. Chairman, accepting at all times that it would be a subjective judgment, if for example, in the existing clause 6(6) in the Bill we said, "in addition to misbehaviour, inability or refusal to satisfy the terms and conditions"; if the word "incompetence" is added—which is what I am most concerned about; totally incompetent people just taking up places on boards—that would be a subjective judgment. That is the primary reason I would wish to remove someone from the board, because of incompetence. Inability can apply to a person being ill. I am not talking about that, I am talking about "incompetence".

Sen. Persad-Bissessar: Mr. Chairman, we would have no difficulty if Sen. Mansoor wants the word "incompetence" added in, but we strongly feel that clause 6(6) should remain as it is and should not be amended. With respect to Sen. Mansoor, it is my feeling that it is already covered by the wording there, but if it would make him feel more comfortable, we would have no difficulty with that; and clause 6(6) remains as is.

Sen. Mansoor: If it reads: "misbehaviour, incompetence, inability or refusal to satisfy"—

Mr. Sobion: Mr. Chairman, I think before we hasten to conclude this matter—as I said, the suggestion came out of the debate and not really from this side.

3.40 p.m.

Having looked at it, there was the concern that, arising from the ministerial responsibility aspect, this authority is going to be performing some serious executive functions and that is why the whole question of ministerial control and responsibility should be included. In that context, where persons are performing high level executive functions which, really, are delegated by the Cabinet or by a Minister, it would seem to me that the power of appointment should be tied closely to the power of disapproval in those circumstances and that, perhaps, there really is a case for leaving it as wide as the amendment now proposes. I would, therefore, want us to consider it from that point of view.

Sen. Mansoor: Mr. Chairman, I would agree with the Attorney General's position. I was just trying to accommodate the views of our distinguished Members in front.

Sen. Barrack: That is quite generous. I have never heard that kind of generosity coming from the Back Benchers.

Sen. Mansoor: My preferred position would be to go with the amendment.

Sen. W. Mark: Mr. Chairman, before you put the question, Sen. Mansoor had said that he had no problem with incorporating the word "incompetence" and there was no objection. So I am wondering if we can incorporate that word, so that we can—

Sen. Mansoor: Except that, on reflection, Mr. Chairman, I wonder whether or not a disenchanted board member who has been fired may have a cause of action against someone. That is another concern, so that my position really is that, on balance, I prefer the amendment as proposed by the Attorney General.

Question put and agreed to.

Mr. Chairman: The proposal is that we defer the last part of the redrafting of the amendment to replace the deleted 6(1)(b) and proceed with clause 7 and we will come back to 6(1)(b) at a later stage when it has been redrafted.

Assent indicated.

Sen. W. Mark: Mr. Chairman, I think, on reflection, it would make it easier, in fact, for the incoming Government to remove all the PNM tax on boards. On reflection, it is a good amendment. We will go along with it.

Clauses 7 to 9 ordered to stand part of the Bill.

Clause 10.

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

Sen. W. Mark: Mr. Chairman, I beg to move the following amendment, which is consistent with the earlier amendment under 10(1)(a):

"Delete the word 'President' in line one of clause 10(1)(a) and insert the word 'Board'".

The President has no authority here to determine the conditions of employment—salaries, remuneration and allowances. The board has that authority. It says it is appointing this person, so we think that consistent with our earlier position and agreement, we should delete from 10(1)(a) the word 'President' and replace it by the word 'Board'. That is how we have to deal with that, to be consistent, Sir.

Sen. Capildeo: Drucker will agree with that, too.

Sen. W. Mark: Of course, Drucker has no choice—logic demands that.

Mr. Sobion: Mr. Chairman, I suggest an amendment to the amendment that has been suggested. If we can say the "The Managing Director shall be entitled to

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such salary, remuneration, allowances and other conditions of service as the Board with the approval of the Minister may determine"

Sen. Persad-Bissessar: Would the hon. Attorney General be kind enough to tell us the rationale for that? Why?

Mr. Sobion: In almost every piece of legislation where authorities like this are established, there are two ways of dealing with it. You either say that in order to retain some degree of control you do not want a board to give a person a salary of \$60,000 a month, when it is not responsible for the Treasury. So sometimes we include a provision which says that any salary in excess of X will be approved by the Minister. Normally, a managing director will fall in that category, so in the normal course of things, the Minister will approve the salary of someone in that position.

Sen. Capildeo: Salaries Review Commission—you would not consider that?

Sen. Hosein: Mr. Chairman we have no objections to that.

Sen. Mahabir-Wyatt: Mr. Chairman, could the Attorney General repeat the amendment?

Mr. Sobion: "The Board with the approval of the Minister may determine" the salaries.

Question put and agreed to.

Clause 10, as amended, ordered to stand part of the Bill.

Clauses 11 and 12 ordered to stand part of the Bill.

Clause 13.

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

Sen. Hosein: Mr. Chairman, I beg to move the following amendment:

Re-number subclause (3) as subclause (4).

Insert a new subclause (3) as follows:

"Another Committee shall coordinate a national effort to promote, translate and implement the national strategy for meaningful and effective sustainable development."

Sen. Prof. Spence: Mr. Chairman, one of the things I would like to see included is that the reports from this particular committee should also come to

Parliament with the board's report. I think the Attorney General told me he was accommodating it somewhere in the amendments.

Mr. Sobion: Mr. Chairman, yes, I did promise to consider it, and I have considered it. This committee seems to be a committee which is involved in exercises which include personnel exercises—the assessment, the functioning of environmental officers. I do not know that the Parliament needs to be concerned about that type of matter.

I was, therefore, trying to see whether we can draft some words which might lead to a position where the board will find it necessary to include it in its own annual report, without necessarily reproducing all of that personnel stuff. If you are going to have before Parliament whether environmental officer X in Nariva Swamp was late for work five times in each month, or something like that, it is not the kind of thing that is necessary.

3.50 p.m.

I think the important thing is that the report of the board should be submitted. Certainly, if there is anything significant coming out of the committee, one would expect that the board would include that in its annual report which would be laid in Parliament.

Sen. Hosein: Mr. Chairman, if we look at clause 13(2)(a), we would see that one of the reasons for establishing this committee of the board is:

"investigate, assess and report on the effectiveness of co-ordination between the Authority and other governmental entities, including the functioning of Environmental Officers, and make appropriate recommendations to the Board;"

It has to do with that key function of investigating the effectiveness of the co-ordination. The co-ordination between the board, the authority and governmental organizations is a very important part of this whole exercise, because it is the governmental organization that will be doing most of the work. I think that it is important.

Sen. Prof. Spence: Mr. Chairman, I wanted to make the point to the Attorney General, whether we could remove or put into a separate category, the functioning of environmental officers, because certainly my reading of this clause was not that it should be reporting on individual performances of environmental officers. That is a separate exercise altogether. But as Sen. Hosein has pointed out, this really is the crux of the matter, the way in which this board will operate.

Indeed, one point that I made when I saw the committee which was consulting with the public, was that I did not believe that the authority would be able to get the individual ministries and other government entities to act and I questioned whether it had the teeth to make it act. I think the whole thing is going to stand or fall on this point, so I think it is important for us to be aware of whether they have been able to effectively co-ordinate their activities in different government organizations. Take out the part about environmental officers and put it somewhere else.

Mr. Sobion: Mr. Chairman, the way I view it is that some committee of the board operates on behalf of the board and if the board is required to submit an annual report, the board will report on the activities which it is conducting either directly or through a sub-committee. In my view, it may not be necessary to do anything and under clause 14, the board is required to report on its activities during the preceding year and its plans and programmes for the current year. Certainly, in preparing such a report, there will no doubt be reference to how the board or the authority has been able to relate with governmental agencies.

I think that as a matter of course, those matters referred to in clause 13(2) will be reported on and I think that if a report is laid which does not make reference, certainly Members of Parliament would be entitled to ask questions about it, so I do not know that there is any need. The point I was making is that having reviewed the position to be advanced, I did not think that there was a need to do anything further but that those reports or portions of those reports will come as a matter of course.

Sen. Prof. Spence: Mr. Chairman, sorry to press the point, but I think it is important to do so. The fact is it is very strange to put into legislation of this sort that there should be a particular sub-committee. The fact that it has been put in means that clearly there is something in it of great significance. If we have put it in and that sub-committee is going to report, it seems to me important that we are able to scrutinize the report as well, because the board might not want to give aspects of the report which are adverse to itself.

Sen. Persad-Bissessar: Mr. Chairman, if I may, I would like to support Sen. Prof. Spence on that point and perhaps to suggest a compromise, which is to say that clause 14 could be amended to include the reports that we get under clause 13(2)(a), but the annual report must remain.

Sen. Prof. Spence: That indeed is what I mentioned but the Attorney General pointed out to me that he has altered clause 14 altogether. All I was asking at this

stage is that instead of having to put it into clause 14 and find that clause 14 has been altered, that it be appended to in some way. Indeed, I did alter clause 14. My other amendment is really to clause 14, to include this sub-committee's report by adding "13" before "79 (3)(b)", but since clause 14(e) is going to be altered itself, that makes nonsense of my amendment. I am asking that it be considered when all the amendments are being made. I really do think it is extremely important.

I think the original Bill had an ombudsman or something outside of the authority to look at the authority. Now it is decided to put that within. I think that is probably more sensible but at least let us be able to scrutinize the process by which this authority is looking at itself.

Mr. Sobion: I wonder, Mr. Chairman, whether this proposal will satisfy Sen. Prof. Spence. If at clause 14(1)(b), we amend that provision to read as follows:

"a description of the activities of the Authority..."

and we add these words:

"... including an assessment of the co-ordination between the Authority and other governmental agencies during the preceding year..."

Would that be okay?

Sen. Prof. Spence: Could we put it differently?

"... including the assessment that is being made by a committee referred to under clause 13(2)..."

Mr. Sobion: I am afraid I cannot go that far for the simple reason that we cannot expose a board or a sub-committee of the board in that kind of way which could create conflict between the board and its sub-committee. I think it is sufficient the authority is charged with a responsibility by clause 14 and it is for it to submit a report to Parliament, not for a sub-committee's report to be tendered before Parliament.

Sen. Prof. Spence: Could the Attorney General read the clause again please?

Mr. Sobion: After the word "authority", include:

"...assessment of the co-ordination between the Authority and other governmental agencies..."

Sen. Prof. Spence: Mr. Chairman, if the general opinion is that that will suffice, then I would accept it.

Mr. Sobion: That amendment will be made when we get to clause 14. It is an amendment to clause 14, not clause 13 and we are at clause 13 now. I was just proposing something that would solve the problem.

Sen. Mahabir-Wyatt: Mr. Chairman, before that gets written down, I thought that the Attorney General had said when he first said it:

"... including an assessment of the effectiveness of co-ordination between the Authority..."

When he said it the second time, he left out "the effectiveness". I just wanted to make sure those words got back in.

Mr. Sobion: I actually had it crossed out so I did not read it the first time. I had taken it out in fact.

Sen. Mahabir-Wyatt: Taken out "an assessment of the effectiveness of the co-ordination". But is that not what is wanted? That is what clause 14 says, "an assessment of the effectiveness of the co-ordination".

Mr. Sobion: Well, it would coincide with the wording in clause 13, so perhaps if that is acceptable, I would have no problem with that.

Sen. Hosein: We will agree to go along with the way they are dealing with it now.

Mr. Sobion: We will amend clause 14 and Sen. Hosein will withdraw his amendment.

Mr. Chairman: Withdrawing both?

Sen. Hosein: No. No.

Mr. Chairman: Are you withdrawing your proposed amendment to clause 13(2)(b)?

Sen. Hosein: Yes.

Amendment withdrawn.

4.00 p.m.

Sen. Hosein: The next amendment to clause 13 is as follows:

Renumber subclause (3) as subclause (4).

Insert a new subclause (3) as follows:

'Another Committee shall coordinate a national effort to promote, translate and implement the national strategy for meaningful and effective sustainable development'.

Sen. W. Mark: Mr. Chairman, the Bill seeks to focus on "sustainable development". As you know, if you are talking about "sustainable development", there ought to be some kind of recognition in this legislation of the Government's serious commitment towards this particular end. What we are suggesting here is that civil society requires full participation in this process. Therefore, all representative bodies, whether it is political parties, labour groups, business organizations, women organizations, youth organizations, religious organizations, should be involved in a committee that would be working towards the achievement of this goal that has been outlined in the preamble of this Bill.

We have all recognized that the question of the environment involves poverty, unemployment, destitution, inequalities and injustices, and if we are to have this Bill work properly, there has to be some element, some provision, some location, in this Bill to reflect the concept of sustainable development. I am suggesting that a committee be established, as we said, "to co-ordinate a national effort to promote, translate and implement the national strategy for meaningful and effective sustainable development."

I feel that if the Government is serious about "sustainable development" and if it is not just mere words and cosmetics in the preamble, we have to find a mechanism within the structure of this Bill to so reflect this particular objective and desire. This is the framework in which I am seeking to locate the particular issue which I have raised here. I do not know if the Attorney General would want to address that question.

Mr. Sobion: Mr. Chairman, this proposed amendment is one of the amendments which led me to the view that we were, perhaps, seeking to over-legislate. The authority has certain objects as set out in clause 4, and it is for the authority to determine which committees it ought to establish, having regard to the preamble, having regard to the objects of the authority. We made one concession to establishing subcommittees and that was the committee which we felt was necessary in order to ensure that the implement process was effectively monitored. That is the committee which is contained in clause 13.

I think it would be wrong for us to over-legislate and try to determine exactly what subcommittees this authority should establish. Quite clearly, the preamble

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to the legislation points the authority in the direction of "sustainable development". In fact, preamble one says that the Government "is committed to developing a national strategy for sustainable development, being the balance of economic growth with environmentally sound practices.."

Based on that preamble and the "objects" of the Bill as are set out at clause 4:

- "(a) promote and encourage among all persons a better understanding and appreciation of the environment;
- (b) encourage the integration of environmental concerns into private and public decisions;
- (d) develop and effectively implement written laws, policies and other programmes for and in relation to—
- (i) the conservation and wise use of the environment to provide adequately for meeting the needs of present and future generations..."

Those are the mandates of the authority. So it is already there, in fact. And whether it chooses to do it by way of a subcommittee or by a full committee of the board, is a matter which it will determine. Whether it is done in consultation with group A, B and C, is a matter that the authority will determine on its own accord. So I do not think it is necessary to seek to restrict the authority in the way suggested.

Sen. W. Mark: Mr. Chairman, it is either we are serious about the environment or we are not. The question of sustainable development, cannot be dismissed or ignored, and you cannot leave it up to individuals on a board to decide whether they are going to establish X or Y. I am saying that the question of sustainable development is critical to the sustenance of the environment. If we are talking about environmental development, we must talk about sustainable human development. I am saying that if the Government is indicating in its preamble that it "is committed to a national strategy" towards achieving this objective, how is this reflected in the legislation? It is either they are telling us that they are going to bring separate legislation to address this question so that we can move towards addressing the question of sustainable development. And this is the point I am making.

Mr. Sobion: Let me respond in two ways. If you look at all of the preamble, do you suggest that we also, in the legislation, appoint another committee to report on the management and conservation of the environment, and the impact of

environmental conditions on human health? The preamble sets the general tone and direction for the authority. The "objects" clause at clause 4 mandates the authority to do certain things, among them:

- "(d) develop and effectively implement written laws, policies and other programmes for and in relation to —
 - (i) the conservation and wise use of the environment to provide adequately for meeting the needs of present and future generations..."

Let us deal with "sustainable development". That is what it is mandated to do. There is no need for us to sit here to determine whether it should be done by a subcommittee of the board. It is empowered to do it. Whether it chooses to do it by a subcommittee, whether it chooses that the entire board will sit and deal with this matter of "sustainable development" is something that it is already, by the Bill, required to do. That is the point that I am making. It is not that we need to do anything further; it is already there.

Sen. W. Mark: Mr. Chairman, I do not support the arguments being advanced by the Attorney General. I think that it is clear. It seems to me that the Government really needs some expertise to advise it on "sustainable development". In the context of this piece of legislation I can see no serious objection coming from the Government, if it is serious about the question of "sustainable development" in establishing a permanent mechanism, either in this Bill or in preceding Bills, because we want some continuity.

Mr. Sobion: The authority is the agency.

Sen. W. Mark: But you see, what I am saying is that whilst the authority is the agency, if you do not, for instance, establish mechanisms in the Bill so that they can, at least, be guided—if you leave it up to the committee—

Mr. Sobion: Clause 4(1) does that. Look at clause 4(1).

Sen. W. Mark: Do you mean the "objects"?

Mr. Sobion: Yes.

Sen. W. Mark: No. I am saying that I am not convinced.

4.10 p.m.

Mr. Sobion: Mr. Chairman, I think we have exhausted the arguments on this matter.

Sen. W. Mark: Am I to get from the Attorney General that the Government is not committed to establish any mechanism within this Bill, or any future legislation, to ensure that there is mass participation by various interest groups to promote and translate the concept of sustainable development, in the context of promoting environmental health in Trinidad and Tobago?

Mr. Sobion: All you would get from me is a statement that there is a mechanism set up in the Bill for that matter to be addressed, and there is a clear power vested in the authority to deal with it. I do not think that we should over-legislate to determine how it should carry out the mandate which is given to it under the Bill.

Sen. W. Mark: Thank you, very much, Sir.

Question put and negatived.

Clause 13 ordered to stand part of the Bill.

Clause 14.

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

Mr. Sobion: There are two amendments. Perhaps we can deal with the one which was raised while we were discussing clause 13.

Mr. Chairman, I beg to move that clause 14 be amended by adding at (1)(b) "including an assessment of the effectiveness of co-ordination between the authority and other governmental entities" to meet the concerns of Sen. Prof. Spence and others.

Question put and agreed to.

Mr. Sobion: Mr. Chairman, I beg to move that clause 14(1)(d) be amended by substituting for paragraphs (d) and (e), the following:

"(e) any disclosure made in accordance with section 79(3)."

Before we take a vote on that amendment, I just want to ensure that we have referred to the proper clause. The reference to clause 79(3) appears to be incorrect.

I would merely suggest that we refer there to clause 79 without reference to any sub-clause, because clause 79 contains the power to prepare and keep audited accounts. I think we should just refer to clause 79 so that 81(4) is replaced by clause 79.

Sen. Persad-Bissessar: With respect, Attorney General, I do not believe that would deal with the matter, by just referring to clause 79. It is really 3(b) "disclose such matters in its annual report as required under section 14". When we went to clause 14 you had outlined in detail what this report would disclose and now you want to take out the details. It would mean difficulty.

Mr. Sobion: If you try to understand what is happening here, clause 79(3)(b) states:

"disclose such matters in its annual report as required under section 14."

The matters which are set out in section 14 are (a), (b), (c) and (d). I am not moving (d). I am saying that we are removing (e) because it does not make sense there; it comes out. Subclause (d) is the accounting of any financial assistance with respect to matters not processed through or accounted for by the fund which is what clause 79 provides for. I would just refer to clause 79. It would be "as required by clause 79".

4.20 p.m.

Mr. Sobion: Mr. Chairman, I beg to move that clause 14 be further amended as follows:

Delete paragraph (e) of subclause 14(1).

Question, put and agreed to.

Mr. Sobion: Mr. Chairman, I beg to move that clause 14(2) be amended as follows:

Substitute, for the word "sitting" the word "session", at the end of the subclause.

Question put and agreed to.

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

Clause 15.

Question proposed, That clause 15 stand part of the Bill.

Mr. Sobion: Mr. Chairman, I beg to move that clause 15 be amended as follows:

Substitute for the words "this Act" occurring at the end thereof, the words "its business."

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This is to differentiate between the board making rules for its own procedure as opposed to the Minister, who will be making rules for the operation of the Act. So, we have deleted the words "for the operation of this Act" and limited the rule-making power of the board to its own procedure.

Sen. Daly: Why do we have to put this in the Act at all? Everyone can run his own business. Even if this is user-friendly, I think we would be the laughing stock of the world that we are legislating for a board to run its business.

Mr. Sobion: The usual provision that you find appearing in legislation is that the authority may make rules to regulate its own procedure. So it is not to say that such a power is not specifically included in legislation. That is a common provision in legislation—giving an authority the power to regulate its procedure. What we have done here is moved away from the position where the board is making rules for the operation of the Act and we have now limited that to its own procedure. That is not an uncommon provision.

Sen. Daly: Why are we not using those words when we all know what they mean? Why are we constantly being taken by the draftsmen into these new areas where we have no established precedence? I am all in favour of new things but for a reason.

Mr. Sobion: Would Sen. Daly be comfortable with the words "The Board may, by resolution, make guidelines for the operation of its own procedure."?

Sen. Daly: I would be a lot happier because we all know what it means.

Mr. Sobion: Mr. Chairman, may I suggest that as a form of words which varies the amendment which I circulated—"its own procedure" instead of "its business".

I would like to change my circulated amendment to clause 15 as follows:

Substitute for the words "this Act" occurring at the end thereof, the words "its own procedure".

Question put and agreed to.

Clause 15, as amended, ordered to stand part of the Bill.

Sen. W. Mark: Mr. Chairman, I have an announcement to make. We have been informed that this PNM Government has taken a decision to rearrest the Leader of the Opposition and we can no longer take part in the proceedings. They have rearrested the Leader of the Opposition on the instructions of the Attorney General. The Attorney General and the PNM are responsible for this matter. We have to go to the Couva jail at this time.

Sen. Capildeo: They are making things hard for me. I have to go all the way down to Couva to arrange bail now. Mr. Chairman, I have to leave.

Mr. Chairman: The sitting is suspended for approximately 30 minutes.
We will resume at 4.55 p.m.

4.26 p.m.: *Sitting suspended.*

4.57 p.m.: *Sitting resumed.*

Clauses 16 and 17 ordered to stand part of the Bill.

Clause 18.

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

Sen. Mahabir-Wyatt: Mr. Chairman, I had an amendment to clause 18 but I withdraw that in light of the Attorney General's amendment.

Amendment withdrawn.

Mr. Sobion: Mr. Chairman, we have an amendment which we will stand by. It reads as follows:

Insert the following new subclause (6):

"The Minister shall, within one month of the approval of any policy submitted under subsection (4), cause the policy to be laid in Parliament."

Mr. Chairman: The amendment proposed by the Attorney General is contained in the list of amendments circulated by him on page 2, to insert a new subsection (6) to clause 18. Are there any comments?

Sen. Prof. Spence: Mr. Chairman, does the clause imply anywhere—it seems to me that it may not imply—that the policy should be updated?

Mr. Sobion: Yes, in clause 18(5):

"The Policy may be revised from time to time in accordance with the procedures specified in this section."

It goes through the same procedure.

Sen. Prof. Spence: Thank you very much. My apologies.

Question put and agreed to.

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

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Clauses 19 to 21 ordered to stand part of the Bill.

Clause 22.

Question proposed, That clause 22 stand part of the Bill.

Sen. Mahabir-Wyatt: Mr. Chairman, I had an amendment to clause 22 but I am withdrawing that because I realize that it is limiting rather than expanding, which is what I want it to do.

Mr. Chairman: Sen. Mahabir-Wyatt is withdrawing the proposed amendment to clause 22(1).

Amendment withdrawn.

Clause 22 ordered to stand part of the Bill.

Clauses 23 to 25 ordered to stand part of the Bill.

Clause 26.

Question proposed, That clause 26 stand part of the Bill.

Sen. Daly: Mr. Chairman, I would like to ask, through you, Sir, why are we not talking about regulations, why are we using the word "rules" as opposed to "regulations", is there some reason for that? It is not a big point, but normally we talk about the Minister making regulations.

Mr. Sobion: Sen. Daly, I am not able to identify that issue as you raised it now, but I believe it was designed that way to differentiate between another power where they have used regulations in that aspect. I suspect it may be the regulations relating to the commission. So to differentiate between the two, they used rules in relation to the authority and regulations in relation to the commission.

There is a circulated amendment. Mr. Chairman, if I may, before I move to the written amendment, the section I referred to before is clause 95(1), where:

"The Minister may make regulations prescribing matters required or permitted by this Act..."

Clause 26 is limited to rules for these specific matters at (2)(a) to (m).

Sen. Daly: My amendment to clause 26 is that I would be more comfortable with "regulations", but I would not pursue it.

Mr. Sobion: Mr. Chairman, this is really an amendment which moves away from the subclauses. So there will be one clause 26, which will now read:

"The Minister may, in accordance with section 27, make rules subject to negative resolution of Parliament, for the following:"

Then (a), (b) and (c) and so forth. As a result, there will be no clause 26(1) and (2).

5.05 p.m.

Mr. Chairman: The amendment is to the existing 26(1).

Sen. Mansoor: Mr. Chairman, just one point. I do not know whether the Attorney General can consider whether or not it should be negative as opposed to positive. What are the reasons for the negative? Having regard to the nature of the items in (a) to (m), one would have thought that it required a certain amount of definite consideration of Parliament, rather than depending on the alertness of someone to bring a motion. I believe a motion must be brought to the Parliament.

Mr. Sobion: It has been difficult to find a proper rationale for the use of affirmative as opposed to negative resolution. When one considers in this case that the kind of consultation that is to take place, the technical nature of the rules and so forth, it would seem to be more appropriate for it to be negative and that someone can, if he so wishes, then raise a motion. That is how we assessed it in this particular instance.

Sen. Mansoor: I have to agree that it is a rather specialist activity. On the other hand, most of the items are rather all-pervasive, if you will. If you look at (l) for example, design, construction—well, that is a very specific matter. I do know whether there is any support from anyone else on this matter.

Sen. Prof. Spence: Could I ask what the procedure is for negative resolution? Does the motion have to be taken, or would it go into Private Member's Motion?

Mr. Sobion: On the one occasion we did something of this nature. There is a time period fixed by the Standing Order—I think it is 30 days—so we usually fix it for hearing within the period and not allow it to lapse because of time.

Sen. Prof. Spence: Will the regulations go into effect until the Motion has been held?

Mr. Sobion: Yes, they will go into effect, unless varied on the hearing of the Motion.

Sen. Mansoor: But they do not go into effect before the institution of *[Inaudible]*.

Mr. Sobion: Yes, they go into effect immediately on being laid.

Sen. Mansoor: That, perhaps buttresses my view that we should consider affirmative.

Mr. Sobion: As I said, the rationale in this case was the fact that there was going to be sufficient public consultation, the fact that it is the specialist area, and the fact that it may be necessary to have these things come into effect immediately.

Sen. Mansoor: Well, it is a mitigating circumstance. Mr. Chairman, on this occasion there is no point asking for a division on this matter. I feel very strong here. *[Laughter]* but I would not press the point.

Question put and agreed to.

Clause 26, as amended, ordered to stand part of the Bill.

Clause 27.

Question proposed, That clause 27 stand part of the Bill.

Mr. Sobion: Mr. Chairman, I beg to move that clause 27 be amended as follows:

- 27(1) A. Substitute for the word "Authority" in line one, the word "Minister".
- B. Substitute for the word "it" in paragraph (b), the word "he".
- C. Delete paragraphs (c) and (d), and substitute the following:
 "(c) cause the rules to be published in the Gazette and laid thereafter in Parliament."
- 27(2) A. Substitute for the word "Authority" the word "Minister".
- B. Delete the word "final" in both places where it appears."

Mr. Sobion: Mr. Chairman, all of it is really consequential on the change from the "Authority" to the "Minister" making rules. The procedure which is set out in all of clause 27 has been amended to reflect that change which we approved at clause 26 a while ago. We also provide for the rules to be published in the *Gazette* and laid in Parliament.

Sen. Mahabir-Wyatt: Mr. Chairman, are they to be laid in Parliament?

Mr. Sobion: Yes.

Question put and agreed to.

Clause 27, as amended, ordered to stand part of the Bill.

Clause 28.

Question proposed, That clause 28 stand part of the Bill.

Mr. Sobion: Mr. Chairman, I beg to move that clause 28 be amended as follows:

28(1) Re-number paragraph (a) to read paragraph (b) and paragraph (b) to read paragraph (a).

Question put and agreed to.

Clause 28, as amended, ordered to stand part of the Bill.

Clauses 29 to 34 ordered to stand part of the Bill.

Clause 35.

Question proposed, That clause 35 stand part of the Bill.

Sen. Mahabir-Wyatt: Mr. Chairman, I beg to move that clause 35(1), be amended by inserting the words "industrial, manufacturing or processing" after the word "other" in line 2.

I am concerned here that the certificate of environmental clearance does not have to apply to domestic dwellings. If you are going to add a room on to your house, which is a modified construction, it just seems both for the purposes of the householder and for purposes of expanding employment in the construction sector and even in tourism, that to have a certificate of environmental clearance is pushing it a bit. I do not mind for industrial manufacturing or processing, but is it essential to have it for any activity?

Sen. Daly: I also have an amendment here, a very substantial one. Since we have started to make some progress with the compromises I have very big problems with this clause.

First of all, my amendment was really designed to avoid the duplication of Town and Country Planning activities with the authority. The purpose of my amendment was in the first place to limit the circumstances in which you would have to apply for an environmental certificate for permission to develop land. Can I call it planning approval? That is what we know it as. It seems to me that as a first step this certificate could readily be made part of the whole planning approval process and be administered by the Town and Country Planning Division, rather than have this whole new approval processed. That is stimulated by the fact—let

me put my cards on the table that clause 35 in its present form is the widest and most objectionable of all the clauses in this Bill.

5.15 p.m.

Firstly, the authority—not the Minister—will be the one to designate the activities. Secondly, there is no provision for it to come to Parliament. While I did not have the strength of feeling that Sen. Mansoor had in relation to the other more specialist things, this, to me, is like the prudential criteria, to use the example of the Financial Institutions Act. This is very wide. I gave the example, on the last occasion, of Peter Samuel emitting something on the stage. It is as wide as that. I have many problems with this. Basically, this authority, that is not accountable to anybody, can ban almost anything or, at any rate, require a person to get a certificate for it.

My first attempt in re-drafting was to make it, in the first instance, part of the Town and Country Planning process; maybe it could be expanded later on. Because of the lateness of the hour and the absence of numbers—I am realistic—I ask the Government to consider amending this so that the Minister makes regulations subject to an affirmative resolution of Parliament for all this construction process work activity. This is a classic case of over-legislation. Then we can take care of Sen. Mahabir-Wyatt's point about if it would be required for domestic dwellings, or for a factory of a certain size. The country will have some idea of what activity we are talking about.

I am not being facetious when I say they could stop a Peter Samuel costume—it is wide as that—if he comes out emitting smoke from his belly. It is very serious. For any activity, this authority could say one must get a certificate. As a realist, I do not suppose I can go very far with the town and country thing although I feel very strongly about it. There is a well recognized agency which works tolerably well and now the Government is going to put something as fundamental as this, and it is very wide. I am putting my cards on the table and saying if that has to be done, the Minister must do it by regulations subject to affirmative resolution of Parliament.

Mr. Sobion: Mr. Chairman, under clause 35 the authority will list activities which would require a certificate of environmental clearance. It is not a ban on activities, but the identification of certain types of activities whereby if a person seeks to engage in those activities, he must first get a certificate of environmental clearance. That is the first point one must note in relation to this clause.

Further, one would note that in clause 5, for any application which requires environmental assessment, there is provision there for public comment in relation to matters which proceed to that stage. It is not that we are preventing activity, it is merely the authority regulating activity and persons who wish to engage in that kind of activity must satisfy the authority and obtain from it an environmental clearance certificate.

I do not know whether the matter relating to town and country planning would be made any clearer if one looks at the provisions of clause 38 which reads as follows:

"Where an activity designated under either subsection 35(1) or 39(1) constitutes a development requiring the express grant or permission under the Town and Country Planning Act, the developer shall deal directly with the entity responsible for town and country planning with respect to the application for a Certificate and any environmental impact assessment which may be required."

It is not a creation of another level of bureaucracy, but merely for the purposes of procedure; where the activity is one that requires town and country planning approval, one deals only with Town and Country Planning Division both for the town and country planning approval and for the certificate of environmental clearance.

Sen. Daly: Does that mean the Town and Country Planning Division will issue the certificate?

Mr. Sobion: That is how I understand clause 38. Effort is not being duplicated.

Sen. Daly: Mr. Chairman, what conceivable other modifications, construction process works or activity can one engage in without dealing with the Town and Country Planning Division—anything one wants to do; build a factory, extend one's house? Why is this needed? Clause 38 makes my point better.

Mr. Sobion: One does not need to get Town and Country Planning approval for drilling oil wells for example. One does not want to list the kinds of activities. There are different kinds of activities which one may not be aware of at this stage. Where a particular activity is listed under clause 35, a person must apply for a certificate. If it is an activity which requires Town and Country Planning approval, one only needs to apply to the Town and Country Planning Division for both the regular approval and the certificate.

Sen. Daly: A person cannot drill an oil well without the permission of some government agency.

Hon. Senator: The Ministry of Energy and Energy Industries.

Sen. Daly: So why can the Ministry of Energy and Energy Industries not deal with that?

All I am saying is new or significantly modified construction process or other activity must put one in touch with some existing government agency which deals with these things already. You gave me the example of the Ministry of Energy and Energy Industries. The entrepreneur will have to go to the Ministry of Energy and Energy Industries and then go to the Environmental Authority. That is what I do not like about it.

Mr. Sobion: Mr. Chairman, I take the point and I understand the concern. If one were to do an analysis one would soon find that there are a number of activities which may not fall under any requirement that ministerial or other approval is required. For example, excavation in the Nariva Swamp is one thing for which Town and Country Planning approval may not be required. The use of certain fishing methods in the Gulf of Paria may be something which does not require approval from anyone, but it may be the kind of activity which the authority may want to have fall under the provisions of clause 35. I am also told that there are a number of other things—change of a manufacturing process in a factory; a new type of process may be developed in the future and it may be the kind of activity which you may want to have listed under clause 35 and it will not perhaps fall under any other authority.

I think that the fear of Peter Samuel being banned is really stretching it. I think there should be a bit of flexibility in a provision such as this because one does not know what scientific progress may take place 15 years from now.

Sen. Daly: Mr. Chairman, my biggest problem with this clause is that it is the authority and not the Minister by regulations who would give the list. I keep referring to things which we got the Government to accept before. In relation to everything under the Financial Institutions Act, the prudential criteria and all these other things are subject to an affirmative resolution of Parliament and there is usually a wrap up provision which permits the Minister to add to the list without coming back to Parliament. At least, in the initial list of things which we are going to deal with here, if a person is refused a certificate, the activity has been banned. I am arguing that the initial list should be done by the Minister by regulations subject to affirmative resolution.

The Attorney General is in very good voice probably because there is nobody in front blocking his voice. It is very important that this authority, that is not accountable, can make a list of activity and then refuse a person a certificate and then the activity is banned.

Sen. Mansoor: I support that. For example, I can have a factory which is three-quarters built to follow a process and then, all of a sudden, I see it is listed as a prohibitive activity in the *Gazette*. What recourse does one have?

Mr. Sobion: I would tend to agree with Sen. Daly if it was a list of activities which will not be permitted at all. The authority is charged with the responsibility for the environment and in that scheme of things it is establishing a list of activities whereby a person who wishes to engage in those activities must approach the authority and get clearance before the person can proceed.

5.25 p.m.

Sen. Daly: How long are they going to keep your application before you can get a VAT number?

Mr. Sobion: We must also appreciate that within the scheme of things we must not lose sight of the fact that the legislation provides recourse for any arbitrary action or any failure to act on the part of the authority. If one makes an application for an environmental clearance certificate, and it is pending over a period of time, one can get recourse, in the normal course of things, compelling the authority to deal with one's application. But, you see, Mr. Chairman, I do not think that one can draft legislation to try to meet every possible turn and twist that may occur in the exercise of the authority's power. So I have noted the concerns, but because of the fact that it is not a list of banned activities, and it is a list of regulated activities, I would recommend that we leave it as is.

Sen. Prof. Spence: Mr. Chairman, could I ask: Where does it state that these are regulated activities? It seems to me that it just says: certificate of clearance for the activity to be carried out. So that must mean that they could say, "no, do not carry it out."

Mr. Sobion: Yes, that is correct. That is quite correct; and if they say no, you can appeal to the commission.

Sen. Prof. Spence: But you have not got the provision to say, "yes, but do it in this way". I thought you were implying that the certificate would say that you could do it in this way, but it seems to me from what is in 35(1) that you either say yes or no.

Mr. Sobion: No, no, no.

Sen. Daly: Town and Country can give you conditions.

Sen. Rooks: Mr. Attorney General, I would like to find out which Minister you apply to, as we must be the only country in the world that manufactures potholes and paint some white to make sure that their beauty can be enjoyed. [Laughter]

Sen. Daly: This is very, very serious. This is a major departure. I keep referring to town and country because it has a practice, and all these various provisions. But this simply says, if this authority says no, you gone!

Mr. Sobion: No. The regulation of construction activity is well known and well established under the town and country process. We are establishing an environmental authority asking it to manage the environment from that point of view. What the Act provides is that certain activities will be controlled by the authority because of the, perhaps, inherent damage to the environment which such activity may cause; and a person who is about to engage in such activity must apply for a clearance certificate. He must satisfy the authority that, look this is one of your listed activities; this is what I propose to do; this is how I propose to do it. The authority's rules are going to be made under subclause (3). One has to go to clause 36—

"After considering all relevant matters, including the comments or representations made during the public comment period, the Authority may issue a Certificate subject to such terms and conditions as it things fit,..."

Sen. Prof. Spence: Where is that?

Mr. Sobion: This is 36(1)—

"including the requirement to undertake appropriate mitigation measures."

Clause 37 provides for the authority to monitor the activity where permission has been granted:

"The Authority shall monitor the performance of the activity to ensure compliance with any conditions in the Certificate, and to confirm that the performance of the activity is consistent with—

- (a) the description provided in the application for a Certificate; and
- (b) the information provided in any environmental impact assessment."

It is really a regulating function and if one is aggrieved by a decision of the authority, one can proceed to file an appeal against that decision, and say, look, I have produced expert evidence to say that, look, these are the things that we have suggested to the authority that we have put in place to lessen the impact on the environment and they have unreasonably refused my application for a certificate. I really do not think that it is as dangerous as one—

Sen. Mansoor: But there is the question of the listing of the activity as required in the certificate. I mean, people have to get certificates in this town—I do not have to say it, I mean—there are endless problems getting certificates. That is really a very important power. Because you could be treated as two-thirds built and all of a sudden the activity could be listed. So that all I am saying is the problem is with the list of activities requiring the certificate.

Mr. Sobion: Where is that?

Sen. Mansoor: Clause 35(1). That is where the problem is. There may be all sorts of other recourses, but it is the listing of the activity which is totally within the control of this authority; and as I say, there is nothing to stop the authority from listing "playing cricket in church" for example, to use a silly example.

Sen. Daly: May I also point out, Mr. Chairman, that we do not even have the safeguard that the Government has introduced under clause 44. If you look at page 4 of the amendments, for example, the point that is being raised by Sen. Mansoor is, at least, taken care of where there is a transition provision. There is not even a transition provision in clause 35.

Mr. Sobion: Well, I do not know if Sen. Daly has looked at clause 39(2)—
"Sections 35 to 39(1) inclusive shall not apply to—

- (a) any activity with respect to which, prior to the date on which review under this section first became applicable, all final approvals necessary to proceed already had been obtained—

Sen. Daly: Point taken.

Mr. Sobion:—from all other governmental entities..."

So that Sen. Mansoor's concern is really addressed by that provision.

Sen. Mansoor: But if I can go back to the question of these activities, that is a very important power. It covers everything—all sorts of economic activity—all sorts of things. What is the problem? Why not have it ventilated and aired? It is better in the end. It will stop all the litigation and confusion with people going to commissions and all sorts of things.

Mr. Sobion: This Bill has attempted to treat with public consultations on a number of matters; and I think that approach is one which suggests that there is not going to be whimsical exercise of any of the powers contained herein. I think that one has to look at the positive—what the legislation is seeking to achieve; and certainly if the authority were to list "playing cricket in church", I am most certain that the provisions relating to the power of the Minister to terminate the members of the authority will be invoked.

I think we have to understand that one cannot sit here in 1995 and attempt to list all kinds of activities, some of which may not yet come into play in 1995. I think we have to give a responsible authority sufficient leeway to operate the provisions of the legislation.

Sen. Daly: Mr. Chairman, I keep referring to what we have done already. In the Financial Institutions Act we listed certain things in the Schedules and then we gave the Minister power to amend those Schedules. All I am contending for, is that the original list of activities should not be left in the hands of the authority by itself. That is all I am contending for—that the Minister may, by regulation, declare these activities.

Mr. Sobion: It is not a regulation.

Sen. Daly: It is very important, because an authority that is accountable to no one will decide on a list of activities on which the country, through Parliament, has had no say. It is very important.

Sen. Mansoor: Let me, perhaps, use a better example. If, for example, the drilling of oil becomes one of these activities and this authority decides, well, you know, you need a certificate, it is an activity, and the way this is written you may require a certificate to do that; and the question of sustainable development—

Sen. Barnes: Perhaps if I could just come in on this one. I think the Minister of Planning and Development certainly outlined the process during his contribution in the debate. In the particular case of drilling, before you can get permission to drill a well, the person has to apply to the Ministry of Energy and Energy Industries on what is a Drill 2 application. We have a pollution section—

an environmental section—within the Ministry of Energy and Energy Industries. But—the guy's name is here—he is not only doing it for Trinidad, he is also the convener of what we call the Southern Caribbean. In terms of that application, those Ministry people will be deemed environmental officers under this Act, so that in terms of looking at that application, the application will come to the Ministry of Energy and Energy Industries and the certification of the environmental impact assessment will be part and parcel of the Ministry's approval, so they will get one approval. They do not have to go anywhere else, for as long as the authority is responsible.

5.35 p.m.

Sen. Mansoor: Assuming there is a perfect world.

Sen. Barnes: Well, I am not assuming. I am merely saying that this is—

Sen. Mansoor: But I would want to suggest that if this clause 35(1) remains as is, they could override the Ministry of Energy and Energy Industries, because the authority could say this is an activity which it has responsibility over and the Ministry of Energy and Energy Industries will be suspended. That is the danger of this, that we are putting in the hands of an authority—employees of an institution—a very sort of vague and ambiguous accountability. We are putting in that authority this kind of responsibility. It can tell the Ministry of Energy and Energy Industries to get lost. They will be able to do it under this. I do not know if Sen. Daly agrees with me.

Sen. Daly: I feel very strongly about this.

Sen. Mansoor: It could tell the Ministry of Energy and Energy Industries to get lost. That is what it can do with this.

Sen. Daly: Mr. Chairman, I know it is very late, but I want my position on this recorded. This is the clause in the Bill that I feel most strongly about. Because of certain events, I cannot pursue my printed amendments in the form in which they are, but I am going to respectfully ask, Sir, to pass an amendment in writing to you. All I am asking at this stage is that we remove the words "the Authority shall designate by publication in the *Gazette* a list of activities" in the second line after the words "or other activity," and instead we put in the words "the Minister may make regulations subject to an affirmative resolution of Parliament listing activities requiring a certificate of environmental clearance". I do not mind if my vote is the only one in favour, Sir, but I would ask that that proposal be accepted.

Mr. Sobion: Mr. Chairman, regrettably, it would be difficult to accede to that request. I want to put it this way again. It is not a question of regulations, it is a question of the authority which has responsibility for the environment specifying certain activities and saying if one is getting involved in drilling for oil or trawler fishing in the Gulf, one needs to get an environmental clearance certificate. The key thing is the assessment of the application; it is not the listing of the activity that is the problem, it is the assessment of the application for the certificate.

Sen. Daly: That is exactly what I am saying.

Mr. Sobion: And whether the Minister makes this list and lays it in Parliament or whether the authority does it, the fact is that the critical part of that provision is the making of the application for the certificate and if that machinery works, I do not think that the fears that are being expressed will be valid. It is really a question of the authority managing the environment meeting and treating with persons who need to get these certificates and the list that is referred to in clause 35(1) is only a broad list of activities. It is not any regulations or any such thing. For that reason, I cannot accept that this requires—

Sen. Mansoor: Mr. Chairman, let me try again. Remember when the bureaucracy went crazy and we had all kinds of approval from all kinds of different bodies, we decided on this miraculous solution of one-stop shop and this is really creating the need for such a thing again in the future. I mean, the fact that this authority can list activities without coming to Parliament, the ministers might be very surprised that all of a sudden such an activity requires a certificate. Ministers have been surprised at other kinds of matters that happen that they do not know about, so that the suggestion is that this particular clause is really power in the hands of bureaucrats that can stop all kinds of economic activity, can stop all kinds of activity, can stop the Minister of Energy and Energy Industries from approving the drilling of oil in some part of the country, because this says that one has to get a certificate approved.

Sen. Daly: Mr. Chairman, experience in business has taught us that anytime one has to apply for these clearances—and perhaps I should keep looking at Sen. Rahael while I speak—it takes four weeks to get a VAT number. There are clients who want to pay the Government money—new companies being formed as a result of the investment thrust—but it takes four weeks to get a VAT number and business cannot be started because a VAT number cannot be had to start paying the Government money. One of the things the VAT Office says is when one gives an address, they now have to go and inspect the premises and they do not have

enough inspectors. Mr. Chairman, can you imagine what is going to happen with this? How long is it going to take to get a certificate?

Mr. Sobion: Mr. Chairman, I appreciate the concerns but I think it is important to appreciate that whilst we in this forum must express concern from time to time about the implementation of legislation, I do not think that we should adopt the position that legislation should not be approved because we fear the implementation process may not be to our satisfaction or liking.

There are a number of areas in everyday life where one requires approvals from one authority or the other; for a simple thing like operating a restaurant, one needs to get a special restaurant licence, to apply to the court and to get Town and Country Planning approval if it is a first application. Life has to be regulated.

We may not appreciate how some of these things operate in fact, but it is at the heart of this legislation for the authority to have a say over certain areas of activity. It is at the heart of the authority's obligation under this legislation and if it requires that minimum where one is required to obtain a certificate of environmental clearance, then I do not see that we can get around it. Otherwise we will be creating an authority that will have no control over impact on the environment by persons who engage willy-nilly in any kind of activity. This is not only a list which does not ban activity, it is a list which says, for oil drilling one needs to get a certificate of clearance. Show us what is proposed to be done, get the certificate of clearance and proceed.

Sen. Mansoor: Will the Attorney General say whether or not it would frustrate the Minister of Energy and Energy Industries?

Mr. Sobion: It can.

Sen. Mansoor: Because what is being said is that this authority, staffed with a few people can tell the Minister of Energy and Energy Industries that he cannot drill until the year 1998.

Mr. Sobion: What I understand, Mr. Chairman, is that—

Sen. Daly: Did he say can or cannot?

Mr. Sobion: Cannot.

Sen. Prof. Spence: With respect, I happen to agree with this provision of the Bill that the Minister of Energy and Energy Industries is mistaken. It will be able to override. At least, I do not understand the Bill if it does not, nor the intent.

Sen. Mahabir-Wyatt: Mr. Chairman, can I ask the Attorney General a question please because I am getting lost. Can the Attorney General just explain something? This debate is going on and I do not think that anybody does not understand what is being said, but it does not explain why the Government does not want to have the listing of activities subject to an affirmative resolution of Parliament. Obviously, the authority has got to give a certificate. I do not think anybody questions that. That is its job. But why can the list not come here?

Mr. Sobion: One creates an authority staffed with specialists, persons who have experience and expertise in these matters. What I am now hearing is that when the authority employs its expertise and experience and creates a list of one, two, three or five areas of activity which it feels should be regulated, that the Parliament must approve that before it becomes effective and our view is that it is not really the business of the Parliament insofar as that assessment is concerned.

5.45 p.m.

Sen. Mansoor: It is not the assessment.

Sen. Mahabir-Wyatt: All Parliament is saying is, "yes, fine."

Mr. Sobion: When I say, the assessment, the assessment of what activity should be included.

Sen. Daly: All business activity in Trinidad and Tobago could stop with this, and when foreign investors see this, "crapaud smoke we pipe", if that is parliamentary language. We are finished! This is the end of business in Trinidad and Tobago! So I would like you, Sir—I know it is very late and very unorthodox—to please accept my amendment so I could record my vote that I tried to stop the absolute cessation of new business activity in Trinidad and Tobago. Four weeks to get a VAT number, if you are lucky!

Sen. Mansoor: Mr. Chairman, the point again, if I could just repeat it, perhaps *ad nauseam*, we are just saying that the activities which should require the certificate should be brought here. It is a generic type of thing. It does not mean that every time a certificate is to be issued it comes here. We are saying, generically, these activities will require certificates. I think that is very generous. We are saying that, basically, this authority should not be able to decide one morning that this activity requires a certificate.

Mr. Sobion: Mr. Chairman, let me also try again. For myself, if it is that this list of activities is to come to Parliament, I am of the view that the only way that Parliament should interfere with it is by someone filing a motion. In other words, I

am suggesting that if it is to be laid, let it be laid subject to a negative resolution. I may point out that I am advised by those who are expert in this particular area of the law that this provision relating to this grant of certificates is included in legislation throughout the world.

Sen. Daly: If the prudential criteria under the Financial Institutions Act would be the subject of an affirmative resolution, then these must be the subject of an affirmative resolution also. I am advised by experts in constitutional law that we always need an opposition. That is my last word on the subject. It is only the list for which we are asking.

Mr. Sobion: Mr. Chairman, I really am concerned at the extreme position being adopted in relation to this matter. There are a number of areas where, at present, there is the need for control. The Minister of Energy and Energy Industries reported that if you are going into oil drilling activity, you need to go to the Ministry of Energy and Energy Industries to get your licence. The ministry does an assessment and a licence is granted. It is nothing that is unusual. To suggest that a list of activities, whether it be drilling for oil, whether it be trawler fishing, should come to Parliament for an affirmative approval when you create an authority with the expertise to deal with these kinds of matters, suggests to me that we are taking an extreme position.

Sen. Mansoor: I think the Attorney General is making the point. Let us take the matter of drilling. If it is that this authority wants to believe that it could stop drilling on which the economic life-blood of this country is dependent, maybe it will decide that that is not for it; that is for the Minister of Energy. That is why we are saying it needs the kind of exposure that we are suggesting, because the Minister of Energy and Energy Industries, perhaps, should have the final say in that matter, because of what determines whether we have money or not in this country. So all we are saying is that the activities should be brought here and ventilated.

Mr. Sobion: Mr. Chairman, as I say, I fail to understand the rationale for bringing the activities here, and moreso, where it is to be subject to affirmative resolution. Because right now, some of the areas which are going to be prescribed under this clause are already regulated.

Sen. Mansoor: So be it.

Sen. Daly: It is for the society, through the Parliament, to decide what activities should be the subject of this new regulation. It is a simple constitutional point. It is not the business of the authority that is not elected and is not controlled by Parliament. It is the business of the society through the Parliament to

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decide what activities should be subject to this new and very extensive regulation. It is a fundamental point.

Mr. Sobion: Mr. Chairman, I do not know that I could seek to explain the matter any further. I certainly do not share, what apparently is the extreme fear that Sen. Daly seems to have about this matter. Regulation is commonplace and everyday in any society, and the listing of areas, not the banning of activity, is not a matter that necessarily requires any affirmative resolution from this Parliament.

Sen. Rooks: Has any progressive cost been looked at for this operation? If you are going to bring it into the Pointe-a-Pierre refinery which is going through upgrade now, what would it cost them to go in? The same thing with the oilfields operating in Point Fortin, in Palo Seco, offshore in Trinmar—the cost of all this is going to be a lot of money. Where is this money coming from? If these things are put into place, then I can assure you the oilfields are going to shut down, because they just cannot afford it.

Sen. Barnes: With respect, Senator, you are right, in the sense that our drilling has been going on for 100 years. Pointe-a-Pierre started in 1960 and the pollution equipment met the requirements of that era, and, in fact, have been maintained. But we are now talking World Bank guidelines, and so forth. In that upgrading process we have US \$40 million to upgrade the pollution equipment. This is why the real authority will remain with the Ministry of Energy and Energy Industries which has specialist people dealing with that.

In the debate here we heard about lead in gasolene of 2.35 grams per litre in 1985. The fact of the matter is, today it is .40 grams per litre and we have been reducing it every year and we are going to be at .15 grams per litre in 1996. So it is being looked at and controlled, and phasing was allowed for. Under this legislation, the new authority will merely designate the people in the Ministry of Energy and Energy Industries who are dealing with this, as environmental officers. No doubt the same will happen in agriculture and so forth. So there is not an additional bureaucracy or anything else. If you do it for energy, you will have to do it for agriculture, then factory inspectorate, and then you have got to do it for everybody.

Sen. Mahabir-Wyatt: I do not think we are on the same debate, Mr. Chairman.

Sen. Barnes: You have asked for a report on how it relates with the other entities that have to carry out these functions.

Sen. Mahabir-Wyatt: Mr. Chairman, we are not saying, for a minute, that we do not understand the need for regulation. We understand the need for regulation. We do not think that the Parliament is the one to draw up the regulations. We do not even think that Parliament has the expertise to draw up the list. All we are saying is: Why can the list not come to Parliament for affirmative resolution? What is wrong with that? It is not going to stop the regulation; it is not going to stop the inspection; it is not going to stop the certificate; and with all the greatest of respect to Sen. Daly, it is not even going to stop the length of the time it is going to take to get the certificate. It is just that Sen. Mansoor's point brings up a worry that we all have. Why can we not just have the voice of the people? Because that is what we are here for, for Parliament to say, "yes, okay, these things should be listed and now go ahead and let the authority deal with you all." What, possibly, could be against that?

5.55 p.m.

Mr. Sobion: I think that the argument which you have raised is against it, because you are saying that Parliament does not have the expertise, but then it should be the one to approve the list prepared by the persons who have the expertise. It seems to me that your very argument is against the suggested amendment.

As I indicated, we are of the view that if this mere list is so critical and important, then we are prepared to agree to a position that the list be laid in Parliament and be subject to negative resolution. That is an attempt to meet the concerns of those who would like to see the list floating around the Parliament. As I said, the critical aspect of this section is how the implementation flows when one applies for the certificate. It is not in seeing the list. The list is of little consequence. The real important part of this matter is the bureaucracy involved in obtaining a certificate of clearance. That is where the crux of the matter really lies. That is as best as I can do it.

Sen. Prof. Spence: I would like to support the Attorney General's position that it be subject to a negative resolution of Parliament. I would also like to get a point cleared up because I think there is still some obscurity in this point. It is clear to me, through legislation, that the authority could in fact overrule an individual ministry. It appears to me that there is no doubt in that case. I would like him to express his opinion on that.

The second question I would like to ask arises out of something Sen. Barnes has said. Does the legislation allow environmental officers to issue the certificate?

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If they cannot, then it means that even if they are designated individual ministries, it still has to go back to a central authority to issue the certificates.

Mr. Sobion: The certificate is to be issued by the authority. The authority would make rules for its own procedure, whether it is a certificate to be signed by the chairman, the secretary or some appointed officers. In the case of town and country planning, the Town and Country Planning Division would issue this certificate of clearance.

Sen. Prof. Spence: It does not even say that in this legislation. I would like you to look at that also. I am saying that we must be careful in what we are setting out to do and what we actually do. My reading of it is that the environmental authority and not the Town and Country Planning Division would issue the certificate. Look at the last sentence in clause 38(3). I am not against it. I am just saying that I think we ought to be clear as to what we are doing.

Mr. Sobion: It does appear that the way it is drafted, it is intended.

Sen. Prof. Spence: My own position is that I am not against the authority having authority over the other ministries. Indeed, that was a point that I raised when I discussed it with the board. Personally, I think it should. I think we all ought to understand what we are doing. I think that is paramount. I certainly think it would be a good idea if we could have it at least laid in Parliament because even though the technical expertise may be residing in the authority, I think we would get a wider view of the matter, taking into account other aspects of the issue. I would be happy to see a negative resolution of Parliament. If we want to get the Town and Country Planning Division to issue certificates, then we would have to amend the legislation as it now stands.

Mr. Sobion: I believe there is also a power of delegation at clause 9. It states:

"The authority may, either generally or on such terms and conditions as it thinks fit, delegate any of its functions or powers to—

- (a) the Managing Director; or
- (b) any governmental entity."

The bureaucratic system will be aided by that provision for delegation.

Mr. Chairman: Sen. Mahabir-Wyatt you had a proposed amendment to clause 35(1). Are you pursuing that?

Sen. Mahabir-Wyatt: No, Mr. Chairman. If we have the negative resolution of Parliament, I will leave it at that because it would probably be able to be better pursued. I wish to withdraw my amendment.

Amendment withdrawn.

Mr. Chairman: Sen. Daly, you had your proposed amendment in the list, but you have a new amendment which is subject to affirmative resolution.

Sen. Daly: I have no choice but to accept the negative resolution.

Mr. Chairman: Would you like it to be put subject to negative resolution?

Sen. Daly: Yes, Mr. Chairman. I have no choice.

Sen. Mansoor: In this clause, is it conceivable that one of the activities, such as beating the steelpan, could be contemplated? That is noise pollution. This authority can decide one morning that it has to issue certificates so people can prepare for Panorama. That is why we want it passed here. Maybe, Parliament would agree to that. That is what I am thinking about.

Mr. Sobion: The Parliament would have the opportunity to deal with any ridiculous listing which the authority—

Sen. Mansoor: That may not be so ridiculous to some people, you know.

Mr. Sobion: We could delegate Pan Trinbago.

Sen. Daly: Mr. Chairman, I propose the following amendment to clause 35(1). Delete the words, "the authority shall designate by publication in the *Gazette* a list of" and substitute the following, "the Minister may make regulations subject to negative resolution of Parliament listing."

Mr. Chairman: If the amendment to clause 35(1) is accepted, it would read, "For the purpose of determining the environmental impact which might arise out of any new or significantly modified construction, process, works or other activity, the Minister may by Order,"

Mr. Sobion: "subject to negative resolution designate a list of activities requiring a certificate of environmental clearance."

Mr. Chairman: "For the purpose of determining the environmental impact which might arise out of any new or significantly modified construction, process, works or other activity, the Minister may by Order, subject to negative resolution designate a list of activities requiring a certificate of environmental clearance."

Question put and agreed to.

6.05 p.m.

Mr. Sobion: Mr. Chairman, I beg to move that clause 35(2) be consequentially amended to read:

No person shall proceed with any activity which the Minister has designated as requiring a Certificate unless such person applies for and receives a Certificate from the Authority.

The words "from the Authority" should come after "Certificate".

Question put and agreed to.

Mr. Chairman: Are there any other consequential amendments? Sen. Daly had some amendments to clause 35.

Sen. Daly: My faith in the Town and Country Planning Division is not shared by the Government, so I have to withdraw my amendments.

Amendments withdrawn.

Question put and agreed to.

Clause 35, as amended, ordered to stand part of the Bill.

Clause 36.

Question proposed, That clause 36 stand part of the Bill.

Sen. Daly: I withdraw my amendment.

Amendment withdrawn.

Clause 36 ordered to stand part of the Bill.

Clause 37.

Question proposed, That clause 37 stand part of the Bill.

Sen. Daly: I withdraw my amendment.

Amendment withdrawn.

Clause 37 ordered to stand part of the Bill.

Clause 38.

Question proposed, That clause 38 stand part of the Bill.

Sen. Daly: I withdraw my amendment

Amendment withdrawn.

Clause 38 ordered to stand part of the Bill.

Clause 39.

Question proposed, That clause 39 stand part of the Bill.

Sen. Daly: Mr. Chairman, I have a huge problem with clause 39. It is almost fascist, because here is a situation where the Bill provides for every conceivable situation and then they say, "Never mind that we have made rules, we can jump on your bones."

"Notwithstanding sections 35(1), (3) and (4), the Board may at any time act on a case-specific basis, by resolution and with proper notice to the affected person, to require the person to apply... "

All that is saying is, never mind all the rules and regulations, the authority, on a totally subjective basis—a case-specific basis being one of the so-called user-friendly phrases—if it cannot get through by normal regulated activity, which we in this country understand, it can mount an individual persecution. I make no apology for using those words. I have never seen this. They may have it in other parts of the world. Notwithstanding all the regulations that we have laid down, on this so-called case-specific basis, they can resolve, nonetheless, to move against a person.

If it is only my word, that is fine. History will bless me. I am sure about that. "case-specific basis, by resolution", I do not accept this at all, Sir, I think it is a total over-kill. I ask the Government to delete it.

Mr. Sobion: Again, the fears being expressed by Sen. Daly have taken the turn of an extreme position. If we intend to have an environmental authority which has sufficient muscle to deal with problems, then one can really have no objection to this provision. One cannot look at it in isolation. We must recognize that persons who are affected adversely or who feel that they would be adversely affected, have rights under the legislation. We cannot ignore that. To ascribe a fascist approach to the authority is really disregarding the provisions of the legislation.

If we look at clause 36(2),

"where the Authority refuses to issue a Certificate, it shall provide to the applicant in writing its reasons for such action."

There is nothing fascist about that. It means that if one refuses a certificate where one is required, whether it is on the general principle in clause 35, or whether it is on a case-specific basis, one must provide reasons for so doing.

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If we look at clause 40:

"Any final decision by the Authority to refuse issuance of a Certificate or to issue a certificate with conditions may be appealed to the Commission by the person seeking such Certificate."

There is nothing fascist about that. The legislation provides a procedure and provides for the authority, in the case of some new development, to act under clause 39, in a particular instance. The person's rights under the legislation are still protected nonetheless. If one adopts that extreme approach to legislation, one will never get anything passed.

Sen. Daly: Would the hon. Attorney General care to tell us, for the record, from which legislation they got this phrase, "act on a case-specific basis"? They may have gotten it from a handbook or a manual, but can they give us legislative precedence for this?

Mr. Sobion: In the legislative drafting department, we do have a few innovative ideas which may find no root in any existing legislation. Mr. Chairman, perhaps I can find a way of resolving this if you give me one second.

6.15 p.m.

Mr. Chairman, with a view to attempting to meet with concerns expressed by Sen. Daly, may I suggest the following course of action. That clause 39(1) be deleted and that subclause (2) be renumbered—well there is no 3, so that subclause (2) would effectively become clause 39, and where it refers to "39(1)" in the portion of clause 2 should now read:

"Sections 35 to 38 inclusive, shall not apply to—"

Sen. Daly: I am very grateful to the Attorney General, I knew all along that he would see the danger in this provision.

Mr. Sobion: I may say for the record, that the intent of clause 39(1) was to provide an emergency capability in the authority to act in circumstances which it may not have been aware of at the time. For example, a plutonium shipment coming through the Gulf of Paria, it may be able to react to that with the flexibility which clause 39(1) was intended to provide for.

Sen. Mansoor: [*Inaudible*] then we could have a debate on it. Negative is bad; that is why we should put affirmative.

Mr. Sobion: Once it is negative it is passed, there would be no need to call Senators out. [*Laughter*]

Sen. Daly: I am sorry it took such extreme examples to make the point, but surely one could act under clause 25 in the case of an emergency. Whoever suggested that clause 39 was needed for an emergency was not really helping, because one could act under clause 25. In any event I am very grateful, Sir. I do not want to modify my gratitude, it is great and exceeding, and no doubt it would extend to clause 44 when we get there.

Question put and agreed to.

Clause 39, as amended, ordered to stand part of the Bill.

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

Senate resumed.

PROCEDURAL MOTION

The Minister of National Security (Sen. The Hon. Russell Huggins): Mr. President, I wish to report progress on the Environmental Management Bill in committee, and to seek leave that the sitting of the Senate continue up to the third and final reading of the Bill. I beg to move,

Question put and agreed to.

ENVIRONMENTAL MANAGEMENT BILL

Committee resumed.

Clause 40 ordered to stand part of the Bill.

Clause 41.

Question proposed, That clause 41 stand part of the Bill.

Sen. Daly: The Government has an amendment which I do not quite understand.

Sen. Prof. Spence: I asked if 26(1)(h) still exists. Did we do something to clause 26 which removed (1) and (2)?

Mr. Sobion: That should be 26(e).

Sen. Daly: That brings us back to clause 2 that has been deferred.

Mr. Sobion: We will get back to that.

Sen. Daly: I am withdrawing my amendments.

Amendments withdrawn.

Mr. Chairman: There is a consequential amendment to the reference in clause 26(h). "sections 35 to 39" would now be "sections 35 to 38", inclusive. Sen. Daly has withdrawn his amendment to clause 41—

Sen. Prof. Spence: Mr Chairman, does clause 41 allow the authority to put a time limit into the designation of "sensitive area" and "sensitive species"? Would you say it could put a time limit, say for five years or ten years?

Mr. Sobion: Yes, I think if we could do such a designation it would have the power to fix the time period, if it thinks it necessary. But, remember as well, that under clause 26 there are rules to be made by the Minister and all of that would be detailed in those rules.

6.25 p.m.

The rules will be subject to public comment, and I am advised that all of those matters will be dealt with at that stage.

Sen. Rooks: May I ask whether the "environmentally sensitive area" is the twelve-mile or the twenty-five-mile limit?

Mr. Sobion: This is any area within the territory of Trinidad and Tobago.

Sen. Rooks: There is some definition which is twelve miles in Trinidad, and there is two hundred miles as well.

Mr. Sobion: I do not know whether I would be able to answer you as fully as I would really like to, but perhaps I can refer the goodly Senator to the definition of environment which talks about the sea, marine and coastal areas within the jurisdiction of Trinidad and Tobago. I think that we have a certain legal authority over the economic zones. Insofar as we have legal authority, it would be captured by the definition of environment.

I beg to move the following amendment:

Substitute for the words "by rule" the words "in accordance with section 26(e)."

Question put and agreed to.

Clause 41, as amended, ordered to stand part of the Bill.

Clauses 42 and 43 ordered to stand part of the Bill.

Clause 44.

Question proposed, That clause 44 stand part of the Bill.

Mr. Sobion: Mr. Chairman, I beg to move that clause 44 be amended by deleting all the words which appear in the present Bill, "Notwithstanding clause 41 and so forth. If you look at page 4 of the circulated amendments, what is there as clause 2 will now become clause 44 *simpliciter*, which is the similar section we saved in 39, the previous existing activity. There will be one slight amendment as a result, because subsection (1) of clause 44 will also have to be deleted. "Sections 41 to 43 shall not apply to any activity..."

Mr. Chairman: The amendment proposed by the Attorney General is that clause 44 be deleted and substituted with the following:-

Sections 41 to 43 shall not apply to any activity with respect to which, prior to the date of designation of an "environmentally sensitive area" or "environmentally sensitive species", all final approvals necessary to proceed had already been obtained or for which application had been made from all governmental entities requiring such approvals.

Sen. Prof. Spence: Mr. Chairman, I wonder if that blanket exception really is sensible. Suppose for example, approval was given to export parrots and it came to your notice that—I am arguing in favour now for more power—they were being exported in such numbers that the parrots became endangered, would you not want to be able to stop it, even though approval was given before?

Mr. Sobion: If you were acting outside the approval—if you are exporting more than you are permitted to—you would be in breach of the licence.

Sen. Prof. Spence: Suppose in all fairness, when the licence was granted, the information that you had at that time indicated that it was all right to export them in the quantities that you are exporting, but then new information became available—hurricane blew away half of the birds and therefore the remaining half should not have been exported. Is there any way of dealing with that situation?

Mr. Sobion: I think it is really a question of the authority revoking whatever permission it first gave and giving new permission. What this clause intends to achieve is where someone is not prosecuted because of a change in circumstances where he has prior permission and the authority does not think it is necessary to revoke.

Question put and agreed to.

Clause 44, as amended, ordered to stand part of the Bill.

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Clause 45.

Question proposed, That clause 45 stand part of the Bill.

Sen. Daly: I withdraw my amendment.

Amendment withdrawn.

6.35 p.m.

Mr. Chairman: Clause 44 was deleted and the proposed clause 44(2) which is at the top of page 4 of the list of amendments circulated by the Attorney General was put in as the new clause 44.

Sen. Daly: Sen. Prof. Spence raised a point about revoking permits if situations changed.

Mr. Sobion: My understanding of the legislation is that the board will have the authority to revoke permits which it may have granted. The question does not arise in that sense. Clause 44 makes provision so that a person who already has permission will not unwittingly fall foul of the authority's action. It is really protective of the person who has permission.

Sen. Daly: Mr. Chairman, the hour is very late, but I try to make sure that when it is in the Government's favour, we get it right, too. I wonder if the Government is not doing itself a disservice with the point that has been raised. Is there power to revoke in this Bill?

Mr. Sobion: The basic proposition is contained in the Interpretation Act. A person or authority who has power to give permission has power to revoke.

Sen. Daly: Fine!

Clause 45 ordered to stand part of the Bill.

Clauses 46 to 61 ordered to stand part of the Bill.

Clause 62.

Question proposed, That clause 62 stand part of the Bill.

Mr. Sobion: Mr. Chairman, I beg to move that clause 62 be amended by deleting the "(1)" appearing at the commencement of this clause because there is no subclause (2).

Sen. Rooks: Mr. Chairman, several years ago a tanker coming up from South America ran across the shallows between Trinidad and Tobago, it caught fire and,

eventually, with the high tide, came off the rocks and into the sea. Eventually it sank while it still had much oil aboard. It was quite a distance away from the first place where it hit and it kept on leaking oil for several weeks after that. Who is responsible for that?

Mr. Sobion: I do not understand the problem. If it is a default under a provision of the Act, the Act would apply. It does not matter where the first damage occurs as opposed to where the second—

Sen. Barnes: I do not think the Senator is concerned about the damages, he is concerned about the clean up. As I think the Senator knows, there is now a South and Central American group with a Southern Caribbean response. It is an international response whether it is Curacao or anywhere in the Caribbean, and it includes the existing companies. It is a sort of everybody comes together in common cause. In fact—and perhaps I should not say this—at the moment, we are seeking very hard to get Trinidad and Tobago appointed as a convener because it means that the clean-up equipment will be located here and the response will be from here. There is the recognition that a big oil spill in deep waters is not something that one country can handle. There is that grouping that meets regularly.

Sen. Rooks: The point I was making was that I hope Trinidad and Tobago would not get stuck with the bill.

Question put and agreed to.

Clause 62, as amended, ordered to stand part of the Bill.

Clauses 63 to 65 ordered to stand part of the Bill.

Clause 66.

Question proposed, That clause 66 stand part of the Bill

Sen. Daly: Mr. Chairman, I was wondering whether any consideration was given to the amendment proposed by our absent Friends with regard to the level of the fine.

Mr. Chairman: Have you been authorized by them?

Sen. Daly: No, I have no power of attorney, so we better leave that alone.

Mr. Chairman: Any Senator who is duly authorized to raise the amendments can do so. I ignored them because no Senator said that he or she has a power of attorney to raise any matter on behalf of the absent Senators.

Sen. Prof. Spence: How would the fines be upgraded?

Sen. Mahabir-Wyatt: Mr. Chairman, I have a problem with the power of attorney, in a sense, because I raised this in the debate. Should not the actual amount be up to the Minister to declare by order of whatever? I made this point over and over that when it comes to salary, if specific amounts are put, they very often become obsolete and within a few years this could become passage money between Trinidad and Tobago and Caracas. I know we can always come back to amend the legislation but if the Minister, by Order, has the power to publish the amount of the fine, life would be made so much simpler and the Parliament would not be clogged up with legislation with which we do not necessarily want to have to deal.

Sen. Daly: I think Sen. Huggins gave us a formula under the Dangerous Drugs Act which permitted some fine to be increased without—

Mr. Sobion: Mr. Chairman, where a penalty is akin to a criminal penalty, I have a difficulty with having the Minister address that kind of figure. Quite frankly, I would not want to have that responsibility.

6.45 p.m.

Sen. Mahabir-Wyatt: Mr. Chairman, we will just have to come back and do it all over. It happens.

Mr. Sobion: That is one of the things that is probably in the ability of the Parliament to increase.

Sen. Mahabir-Wyatt: Okay.

Mr. Chairman: The amendment to clause 66(1)(d) is as follows:

Delete the words "and (4)" appearing at the end of this paragraph.

Question put and agreed to.

Clause 66, as amended, ordered to stand part of the Bill.

Clauses 67 and 68 ordered to stand part of the Bill.

Clause 69.

Question proposed, That clause 69 stand part of the Bill.

Mr. Sobion: Mr. Chairman, I beg to move the following amendment:

Substitute for the words "(l) and (m)" the words "and (l)".

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The (m) was removed so the reference there should be only to "and (l)" in 69(1).
Line 3: except paragraphs (c), (d) and (l). There is no longer an (m) in 62(1).

Question put and agreed to.

Clause 69, as amended, ordered to stand part of the Bill.

Clauses 70 to 73 ordered to stand part of the Bill.

Clause 74.

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

Mr. Sobion: Mr. Chairman, I beg to move the following amendment:

"Delete, and re-number subsequent paragraphs accordingly."

We are deleting clause 74(b), removing from the coffers of the authority funds which are collected as administrative civil assessments. So we are deleting (b) and re-numbering the rest.

Question put and agreed to.

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

Clauses 75 to 78 ordered to stand part of the Bill.

Clause 79.

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

Mr. Sobion: Mr. Chairman, I beg to propose the insertion of the following new subsection, which is to be found at the top of page 5 of the circulated amendments. This amendment is to take into account the change we made at 74 and to provide as follows:

"(5) All monies collected by the Authority by way of an administrative civil assessment under section 66 shall be deposited with the Comptroller of Accounts for the account of the Consolidated Fund."

Question put and agreed to.

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

Clauses 80 and 81 ordered to stand part of the Bill.

Clause 82.

Question proposed, That clause 82 stand part of the Bill.

Sen. Mahabir-Wyatt: I withdraw my amendment.

Amendment withdrawn.

Clause 82 ordered to stand part of the Bill.

Clause 83 ordered to stand part of the Bill.

Clause 84.

Question proposed, That clause 84 stand part of the Bill.

Sen. Daly: Mr. Chairman, I beg to propose the following amendment:

"Insert after the words 'in addition to' the words 'with the consent of the parties'"

All I am really asking, in sub-clause (12), in relation to written arguments is that, since everything else has been modelled on the Tax Appeal Board Rules, written arguments in place of an oral hearing require the consent of the parties. That is the position with the Tax Appeal Board on which this part of the legislation has clearly been modelled.

Mr. Sobion: Mr. Chairman, I am not as fully locked in to tradition as Sen. Daly is, apparently. We have given due consideration to that provision. What we feel is that the authority should have the power to regulate its own procedure and if it makes a determination that it can proceed without an oral hearing, then I think it should be left free so to do.

I know that the Tax Appeal Board is modelled somewhat differently and it requires the consent, but what I fear is that, if you leave the procedure of the court up to the parties, we are going to run into the problem of not being able to proceed, except by way of oral hearings. If a party is advised that the court is proceeding without oral hearings he can make an application to the court; and if he is not satisfied, it may very well be a ground of appeal, in addition to the other grounds of appeal. But I think the question of having the court depend on the parties to determine the procedure is something that we should try to move away from; particularly in this type of court where, as we saw, there are provisions for dispute resolution. We think that quite apart from the Tax Appeal Board's provision, we should try to move in this direction, even if it is on an experimental basis.

Sen. Daly: Well, I will not pursue it, Sir. May I just say I am wedded to tradition, because I see the difficulties that arise when we depart from these things. The Recognition Board, right now, is attracting a record number of writs,

but I daresay it is a matter for the Government. I will not pursue it. But it is not tradition for tradition sake, let me make that plain. So I will withdraw that.

Amendment withdrawn.

Sen. Mahabir-Wyatt: Mr. Chairman, I withdraw my amendment, it is not necessary in light of the amendment which the Government has made to clause 84(15).

Amendment withdrawn.

6.55 p.m.

Mr. Sobion: Mr. Chairman, I am not sure which amendment I am looking at.

Mr. Chairman: Insert the words "to the Commission" after the word "appeals" occurring in line three.

Mr. Sobion: ". . . in connection with appeals and other proceedings," and then:

Delete the words "including appeals to the Court of Appeal".

So that it is quite clear the the rule-making power only extends to appeals between the authority and the commission. The other rules are renegeged by rules of court.

Question put and agreed to.

Clause 84, as amended, ordered to stand part of the Bill.

Clause 85 ordered to stand part of the Bill.

Clause 86.

Question proposed, That clause 86 stand part of the Bill.

Mr. Sobion: There are some amendments to clause 86 at page 5 of the list as follows:

86(2) Insert after the word "no" in line three the word "substantial".

86(3)(d) Delete all the words appearing after the word "reconsideration" in the last line.

86(4) and (5) Substitute the following:

"(4) Subject to rules made under section 84(15), the Commission may make an order for the payment of costs to the successful party in relation to the whole of the proceedings before it, or any part thereof including costs incurred in the summoning and attendance of necessary witnesses."

86(6) Renumber as 86(5).

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Under clause 86(2), we are seeking to strengthen that provision by adding the word "substantial" after the word "no" in line three.

"...that there is no substantial evidence supporting such findings of fact."

I believe that Sen. Daly has an amendment which is to excise all of clause 86(2) from the Bill.

Sen. Daly: Let me put it this way because my good Friend, the Attorney General, has an unfortunate turn of phrase sometimes. This would not be my problem if it goes wrong, but we have a responsibility to the wider community. Let me try to explain it as simply as I can. I am sorry it is traditional, but it works.

Normally, if someone's appeal is going to be restricted to a question of law, the legislation usually says what this says under clause 86(6).

"The decision of the Commission is final on a question of fact..."

It is well understood what that means. There is a small area of escape on fact and this is well documented in our courts as well as courts abroad that if there is no evidence—as they attempted to provide in clause 86(2)—to support the findings of fact, that becomes an error of law. If clause 86(2) is introduced, we are creating a confusion, and worse, from the Government's point of view, if we now go on instead of saying "no evidence", to say "no substantial evidence", then it is being made worse, because it has always been understood by the courts that "no evidence" means that, as opposed to "no substantial evidence". There can be no argument about whether the evidence is substantial or not. By introducing "substantial", it is not being strengthened, it is being made worse. I think "substantial" is a bad idea.

My objection to clause 86(2) remains, that apart from there being another phrase there that—I do not know—may be someone's initiative. Fine for us, the private practitioners, but I think a grave confusion is being created between clause 86(2) and clause 86(6). Certainly I must tell you, in your own interest that putting "substantial" is going to make it worse rather than better because an area is opened up for argument about what is substantial. I really think we should stick to what we understand. Final means final and so on. It is a matter for you.

Mr. Sobion: Mr. Chairman, if I may just say one thing. What we are seeking to do here is to provide a small avenue for a member of the public who may be aggrieved by a decision of the authority, to provide that small opportunity for him to contest grounds of fact at that stage, because he will be shut out entirely from

raising questions of fact in the stage between the authority and the commission. That is why the word "substantial" is also introduced now. It provides a wider opening than the general law which relates to it becoming an error of law. I take the point that perhaps if I could undertake Sen. Daly to have the matter reviewed when we get to the other place, because I understand the concern. We can continue to look at it, but rather than take it out at this stage, I am certain that we are going to be able to discuss it at the other place and perhaps we would then make a final decision.

Sen. Daly: I really would like to see presumption and regularity come out, but I am not going to pursue it. It is not my problem. I think it is a mistake.

Mr. Chairman: Sen. Daly, are you pursuing your amendments to clause 86.

Sen. Daly: Sir, I really feel a mistake is being made but I will withdraw them.

Sen. Mahadeo: Mr. Chairman, I do agree with Sen. Daly here that this word "substantial" is opening up a large and as yet untrod field. The word "substantial" is going to make the situation worse than what we have got at the moment. It is something like developing on the word "recklessness" or the "degree of negligence" that we will be opening up for wide avenues, negotiations among people and the private practitioners as Sen. Daly says, will be the ones to profit from it, but if Government wants to hold on—

Sen. Daly: A terrible position.

Sen. Mahadeo: Yes. It will be for you.

Mr. Sobion: Mr. Chairman, I have heard the concerns but because this provision seeks to give additional protection to members of the public, if it may need redrafting to get that proper effect, then we will have to redraft it, but the intent is really to provide protection to the public and I would really hesitate to take this out at this stage when it could be further reviewed in due course. I have given Sen. Daly that undertaking.

Sen. Daly: Sir, on the basis of that, I would withdraw my amendments.

Amendments withdrawn.

Question put and agreed to.

Clause 86, as amended, ordered to stand part of the Bill.

7.05 p.m.

Clause 87.

Question proposed, That clause 87 stand part of the Bill.

Sen. Daly: Mr. Chairman, I beg to move the following amendment:

Add a new sub-clause (6) 'The Rules Committee under the Supreme Court of Judicature Act may, subject to the provisions of this Act make rules governing appeals to the Court of Appeal.

Someone has to make rules governing appeals to the Court of Appeal.

Mr. Sobion: That provision is already there. The Court of Appeal's rules provide for the Rules Committee to make rules governing appeals to it from any inferior tribunal. So there is no need to have this specific provision.

Amendment withdrawn.

Clause 87 ordered to stand part of the Bill.

Clause 88.

Question proposed, That clause 88 stand part of the Bill.

Mr. Sobion: Mr. Chairman, I beg to move the following amendment:

In clause 88(10)(c) delete all the words appearing after the word 'reconsideration' which includes 'allowance'.

Delete clauses 88(11) and (13).

Sen. Daly: Mr. Chairman, I am very sorry. Under clause 86, you will recall that in the context of the discussion of the deferred clause 2, we were supposed to look at a stay. May I just remind you about that, Sir?

Mr. Sobion: Mr. Chairman, I intended to say at the end when we completed this exercise, we have done a draft of clause 86, but I am not completely happy with it and I would want to get to treat it in the other place before I come back here with it.

Sen. Daly: To save time, Sir, may I just suggest that clause 10(1)(b) of the Industrial Relations Act might be a useful precedent to follow?

Question put and agreed to.

Clause 88, as amended, ordered to stand part of the Bill.

Clauses 89 to 95 ordered to stand part of the Bill.

Clause 6 recommitted.

Question again proposed, That clause 6 stand part of the Bill.

Mr. Sobion: Mr. Chairman, I beg to move the following amendment:

"A. Substitute for subclause (1) the following:-

"(1) There is hereby established a body corporate to be known as the Environmental Management Authority which shall be governed by a Board of Directors consisting of the persons appointed in accordance with this section.

(2) The President shall appoint—

(a) a Chairman; and

(b) nine other members drawn from the following disciplines or groups, namely environmental management, ecology, environmental health, engineering, labour, community-based organisations, business, economics, public administration, law and non-profit environmental non-governmental organisations.

(3) The Board shall appoint a Managing Director who shall be the Chief Executive Officer and *ex officio* member of the Board.

B. Renumber subclauses (2) to (7) as (4) to (9).

C. Insert the words 'other than the *ex officio* member' after the word 'Board' in renumbered subclauses (4), (7), and (8).

D. In renumbered subclause (4), substitute for the words 'of not less than two years and more than five years, and appearing in lines 1 and 2, the words 'not exceeding five years,'.

E. Substitute for renumbered subclause (8), the following:-

'(6) The President may at any time revoke the appointment of a member of the Board.'

Sen. Prof. Spence: Mr. Chairman, I second the new proposal.

Question put and agreed to.

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

Clause 2 recommitted.

Question again proposed, That clause 2 stand part of the Bill.

Mr. Chairman: The amendment reads as follows:

- A. Delete the words "environmentally sensitive area" means a portion of the environment so designated under Section 41 and substitute the following:

"protected areas" mean areas of natural habitat supporting unusual but characteristic assemblages of organisms, which may include protected species, prone to use and perturbation or destruction by human activities, and so designated under Section 41.

- B. Delete the words "environmentally sensitive species" means any species of living plant or animal so designated under Section 41 and substitute the following:

"protected species" means a plant or animal species whose biological characteristics habitat requirements, rarity commercial value or scientific interest make it prone to become endangered or threatened with extinction, and so designated under Section 41."

Sen. Prof. Spence: Mr. Chairman, to take the Attorney General's point, I would say that if you look at my amendments, there are two words which tend to limit the concept that the board might have, in effect. Under "A" in the definition of what I have called "protected areas", the word, "natural" before "habitat" and the word "unusual" after "supporting" would tend to limit the scope of the protected area designation.

What I would like to suggest so that we may move forward, is that if the Attorney General would agree to reconsider the insertion of these definitions and make the necessary amendments, if they are agreed to in the House, then I would, at this stage, not pursue these two definitions. I think it is important that they be so considered and I would offer to give any assistance that may be required in this process.

Mr. Sobion: Mr. Chairman, I would go along with what has just been said. Is it the suggestion that we should change the term from "environmentally sensitive area" to "protected areas?" So it would mean an amendment to clause 41 of the Bill as well.

Sen. Prof. Spence: There are a number of consequential changes. "Sensitive areas" is referred to in a number of clauses, so everywhere that it says so, it would have to be changed, and both "area" and "species". There are two changes.

Mr. Sobion: Yes. I am with you. I would consider those two definitions.

7.15 p.m.

Sen. Mahabir-Wyatt: I also had amendments to clause 2, but after discussions with the Leader of Government Business, I have withdrawn them.

Amendments withdrawn.

Mr. Chairman: Both Sen. Diana Mahabir-Wyatt and Sen. Prof. John Spence have withdrawn their amendments to clause 2.

New Clause 62

Mr. Chairman: We have now disposed of all the clauses and we now have a proposal for a new clause 62.

Sen. Mahabir-Wyatt: Mr. Chairman, I am also withdrawing my new clause 62 because of the amendments that we had already moved to clause 26(1).

Amendment withdrawn.

Preamble ordered to stand part of the Bill.

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

Senate resumed.

Bill reported, with amendment; read the third time and passed.

ADJOURNMENT

The Minister of National Security (Sen. The Hon. Russell Huggins): Mr. President, now might be a good time to move the second reading of the BWIA Vesting Bill. [*Laughter*]

Motion made and question proposed, That the Senate do now adjourn to Monday, January 30, 1995 at 10.00 a.m.

Question put and agreed to.

House adjourned accordingly.

Adjourned at 7.20 p.m.