

*Petition*

*Tuesday, May 02, 1995*

**SENATE**

*Tuesday, May 02, 1995*

The Senate met at 1.30 p.m.

**PRAYERS**

[MR. PRESIDENT *in the Chair*]

**PETITION**

**St. Joseph's Convent  
(Incorporated Trustees)**

**Sen. Martin Daly:** Mr. President, I wish to present the petition on behalf of the Sisters of St. Joseph of Cluny who are desirous of introducing a Private Bill in this Senate.

I now ask that the Clerk be permitted to read the petition and that the promoters be allowed to proceed.

*Petition read.*

*Question put and agreed to,* That the promoters be allowed to proceed.

**PAPERS LAID**

1. Thirty-fifth Report of the Salaries Review Commission [*The Minister of Planning and Development (Sen. The Hon. Dr. Lenny Saith)*]
2. Report of the Auditor General on the accounts of the Point Lisas Terminals Limited for the year ended December 31, 1994. [*Hon. Dr. L. Saith*]
3. Report of the Auditor General on the accounts of the Point Lisas Industrial Port Development Corporation Limited for the year ended December 31, 1994. [*Hon. Dr. L. Saith*]
4. Report of the Auditor General on the accounts of the Trinidad and Tobago Television Company Limited for the year ended December 31, 1994. [*Hon. Dr. L. Saith*]
5. Report of the Auditor General on the accounts and financial statements maintained by the Restructuring Support Unit (RSU) in respect of the Business Expansion and Industrial Restructuring Project for the year ended December 31, 1993 as required by section 4:01 of Loan Contract No.3432-TR between

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- the Government of the Republic of Trinidad and Tobago and the International Bank for Reconstruction and Development. [*Hon. Dr. L. Saith*]
6. Report of the Auditor General on the accounts of the National Broadcasting Service of Trinidad and Tobago Limited for the year ended December 31, 1994. [*Hon. Dr. L. Saith*]
  7. Report of the Auditor General on the accounts of the Legal Aid and Advisory Authority for the year ended December 31, 1993. [*Hon. Dr. L. Saith*]
  8. Annual Report of the Legal Aid and Advisory Authority for the year ended December 31, 1993. [*Hon. Dr. L. Saith*]

#### JOINT SELECT COMMITTEE REPORT

##### Presentation

**The Minister in the Office of the Prime Minister and Minister of Consumer Affairs (Sen. The Hon. Camille Robinson Regis):** Madam Speaker, I wish to present the report of the Joint Select Committee appointed by the Senate and the House of Representatives to consider the entire question of Public Holidays and to report no later than March 31, 1995.

#### ORAL ANSWERS TO QUESTIONS

*The following question stood on the Order Paper in the name of Sen. Wade Mark.*

##### **Retrenched Employees (Outstanding Money Owed)**

16. Could the Minister of Labour and Co-operatives state:
  - (i) The outstanding sums of money still owed by employers to employees who were retrenched during the period 1981 to 1991?
  - (ii) The names of the companies and the number of workers involved?
  - (iii) What steps are being utilized by his Ministry to have these sums settled?

**The Minister of Planning and Development (Sen. The Hon. Dr. Lenny Saith):** Mr. President, some of the information is still being checked and I would ask the Senate for a deferment of this question for one week. I understand that it will be ready next week.

*Question, by leave, deferred.*

**Volvo Motor Vehicle No. PM 100  
(Registration of)**

**29. Sen. Wade Mark** asked the hon. Minister of Works and Transport:

Could the Minister of Works and Transport provide the Senate with the following information pertaining to Volvo Motor Vehicle, registration No. PM 100:-

- A. Has the motor vehicle PM 100 been officially registered with the Licensing Authority?
- B. If it has been registered, could the Minister provide the Senate with a registered Certified Copy of Ownership of the vehicle PM 100, giving the exact date on which it was registered?
- C. When, and with which Insurance Company in Trinidad and Tobago, was the vehicle insured?

**The Minister of Works and Transport and Minister of Local Government (Hon. Colm Imbert):** Mr. President, the Minister of Works and Transport wishes to advise this honourable Senate that motor vehicle PM 100 was registered with the Licensing Authority of Trinidad and Tobago on December 21, 1994. The registered certified copy of ownership is available and will be made available to the Clerk in due course.

The vehicle has been registered under the Ministry of National Security. As a Government vehicle it is insured by the Government of Trinidad and Tobago, the Comptroller of Accounts via the Re-insurance Company of Trinidad and Tobago.

**Sen. Mark:** Mr. President, could the hon. Minister indicate to this Senate when this registered certified copy of ownership will be made available? Is it now?

**Hon. C. Imbert:** Mr. President, I have the copy with me, I will give it to the Clerk within the next minute or two.

**Caura Chest Hospital  
(Plans for)**

*The following question stood on the Order paper in the name of Sen. Carol Merritt:*

- 31. A.** Could the Minister of Health outline the Government's plans for the Caura Chest Hospital?

B. Could the Minister state:-

- (i) the precise number of premature babies who died between January 12 and February 01, 1995 in the neo-natal unit at the Mount Hope Maternity Hospital, Mount Hope?
- (ii) whether the number of deaths referred to at (i) were due to the absence and/or unavailability of a doctor to monitor the respiratory machine?
- (iii) whether an investigation has been initiated into the death of Nickolai Francis Day, who died on January 24, 1995 at the neo-natal unit at Mount Hope?

**The Minister of Health (Hon. John Eckstein):** Mr. President, the answer to that question is not ready and I ask Members' indulgence to have that delivered at the next meeting of the Senate.

*Question, by leave, deferred.*

#### **UN Social Summit (Copenhagen)**

*The following question stood on the Order Paper in the name of Sen. Carol Merritt:*

**32.** Could the Minister in the Office of the Prime Minister responsible for Public Administration and Public Information please state:-

- (a) the reason the Minister of Social Development left for the UN Social Summit at Copenhagen three days after the Conference had started?
- (b) the reason for the non-attendance of the Prime Minister to this Summit?
- (c) the total cost of the Government's delegation to Copenhagen? [*Sen. C. Merritt*]

**The Minister of Public Administration in the Office of the Prime Minister (Sen. The Hon. Gordon Draper):** Mr. President, the answer for this question is not ready. I ask for a deferment of one week.

*Question, by leave, deferred.*

**1.40 p.m.**

#### **INTEGRITY OF GOVERNMENT OFFICIALS (Attack on)**

**The Minister of Public Administration in the Office of the Prime Minister with responsibility for Public Information (Sen. The Hon. Gordon Draper):**

Mr. President, last week in a statement to this honourable Senate, I outlined the Government's findings in its preliminary investigations of an institution called "The Centre for the Study of the Harassment of African-Americans".

**Hon. Senator:** Mr. President, the Senator comes back with that again!

**Mr. President:** Can I have some order, please?

**Sen. The Hon. G. Draper:** Hon. Senators would recall that the Government's investigations at that time had revealed:

1. One of the purported officials of that centre, Dr. Faye Williams, was known to be a long time business associate of Mr. Mervyn Dymally, who is a leading member of the official Parliamentary Opposition.

**Hon. Senator:** Mr. President, the Senator said that the last time.

**Sen. The Hon. G. Draper:** I continue:

2. The centre could not be located at the address stated in the report which had been presented to the media on Monday, April 24, 1995.

**Sen. Barrack:** Did you investigate O'Halloran and Prevatt?

**Mr. President:** Can we have some order, please?

**Sen. Barrack:** Yes, I will try.

**Sen. The Hon. G. Draper:** The statement to this honourable Senate concluded by indicating the Government's intention to keep Parliament and citizens informed as our investigations continue. Today, the Government advises the Parliament and the national community as follows:

1. An office for the centre has been located; not at the address indicated in the report, but at Room 503, 100 Maryland Avenue N E, Washington D.C.

**Sen. Barrack:** Eventually!

**Sen. The Hon. G. Draper:** I continue:

Enquiries at that address revealed, however, that no one had been seen in that office for over five months. The listed telephone is out of service. A note on the door of the office advised callers to leave messages at an adjoining office. No one answered the door at that adjoining office.

2. Discussions with former US Senator Clarence Mitchell III, chairman of the centre, confirms that Mervyn Dymally is a founder of the centre and its inspiration. Those discussions also confirm that Mervyn Dymally planned, initiated and guided the study in Trinidad and Tobago.

**Sen. Barrack:** A very powerful man!

**Sen. The Hon. G. Draper:** Mr. President, I continue.

3. Clarence Mitchell III, Faye Williams and Serita Spencer visited Trinidad and Tobago in December, 1994. They spoke for the main part with the Leader of the Parliamentary Opposition and members of his party.

The Office of the Attorney General has also completed its preliminary review of the report and has made the following findings:

1. The report contains statements which "*prima facie*" amount to a criminal contempt of court.
2. The report contains inaccuracies in relation to factual matters as well as a lack of appreciation or understanding of the procedure and operation of our criminal justice system.
3. The report is clearly biased and wholly unreliable as the facts relied upon were not impartially collected nor assessed. Indeed, a portion of the report appears to be a reproduction of the statement of claim filed by Mr. B. Panday in his civil proceedings against the Attorney General and the Director of Public Prosecutions.

It is noteworthy as well that no claim to copyright in the report is made by the authors, but rather, there is an invitation to all and sundry to reproduce and distribute the report.

This, in the Government's view, represents the further contempt for this country by the foreign authors of the report and those persons, foreign and local, who sponsored its preparation.

The Government continues to view with concern, this attack on the Executive, Judiciary and individuals of the sovereign State of Trinidad and Tobago.

Thank you.

**CONSTITUTION (AMDT.) (NO. 2) BILL**

*Order for second reading read.*

**The Attorney General and Minister of Legal Affairs (Hon. Keith Sobion):**  
Mr. President, I beg to move,

That a Bill to repeal the Constitution (Amdt.) Bill 1994 and to amend the Constitution of the Republic of Trinidad and Tobago be now read a second time.

Hon. Senators would recall that in December 1994, Act No. 30 of 1994 was debated in this Senate and approved by this Parliament. Since that time, the Act, as passed by this Parliament, was subject to further scrutiny by persons who were required to operate the legislation and that in turn has led to some further review of the drafting of the legislation.

Hon. Senators would recall that the amendment to the Constitution was an amendment to section 127 of the Constitution which provides for the delegation of certain powers entrusted into service commissions, permitting the delegation to other bodies and public officers.

The policy which was contained in what remains as Act No. 30 of 1994 is in no way being altered by the Bill which is before the Senate at this time. I emphasize that there has been no policy change between the matters contained in Act No. 30 of 1994 and the Constitution (Amdt.) (No. 2) Bill of 1995. What happened was that certain legal opinions were expressed as to the effectiveness of the original amendment to section 127 of the Constitution. Some of us may know that one can sometimes get as many opinions as there are lawyers giving the opinions in relation to some of these matters. We have therefore decided to err on the side of caution and to present this Bill which, quite clearly, will take care of the concerns which have been expressed since December 1994.

Section 127 of the Constitution provides that a service commission may delegate, with the approval of the Prime Minister and subject to such conditions, the powers contained in the Constitution and granted to that service commission.

Act No. 30 of 1994 is thought by some persons to treat with regional health authorities as though they too are service commissions. It has merely to do with the positions in which the amendment was placed in relation to section 127 as it now stands. For the purpose of further clarification, section 127 says:

"A service commission may ... delegate—

- (d) in the case of the Regional Health Authorities, to the Boards of the Regional Health Authorities."

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The view of some of the legal persons who had cause to look at Act No. 30 of 1994 suggest that the amendment equated regional health authorities with that of service commissions.

The amendment proposed seeks to make it quite clear that it is the Public Service Commission which, in the exercise of its function in relation to Regional Health Authorities, will have the authority to delegate. There is a new clause 127 (1) (b) which is introduced to ensure that the reference to "commission" in section 127 (1) is repeated in relation to the Public Service Commission in subclause (b) (i).

Mr. President, the Bill before us really seeks to tidy up the positions. As I said, it seeks to err on the side of caution because there were conflicting views as to whether the amendment was effective and there were differing views as to whether it was effective as it stood in Act No. 30 of 1994. For the purpose of making it quite clear that it was an exercise by the Public Service Commission and its right to delegate, we thought that we should re-word section 127 (1) as is now reproduced in the Bill before us.

In those circumstances, I beg to move that this Bill be read a second time.

*Question proposed.*

**1.50 p.m.**

**Sen. Wade Mark:** Mr. President, we are very pleased and happy that this Bill has been re-introduced in this Chamber because there are certain elements about which we are very concerned. Certainly, the Attorney General would have to provide us with some very convincing arguments this afternoon if we are to lend any support to this measure that is now before the Parliament.

Recognizing, as he has said, that the Bill was here before and that there has been no policy change, we would like to suggest that this measure entitled the Constitution (Amendment) (No. 2) Bill of 1995, represents another sharp and incisive incursion into the nation's Constitution by a very desperate regime which is bent on seizing power by constitutional means and establishing a dictatorship.

This Bill may appear to be very innocent in its content, but it is extremely dangerous in its implications for the public sector and for public sector employees. I want to say from the very outset that the Government has not seen it fit, even with this amendment, to hold consultation with relevant parties, individuals and groups. This Bill will impact very adversely on very important sectors of the public service. They had no consultation with the Trinidad and



Tobago Medical Association on this amendment that is before this Parliament, nor with the Public Services Association, nor with the nurses and/or their representatives, nor with the Public Service Commission, as I understand it, nor with the official Opposition.

We wonder about the haste behind this measure when we understand that a Commonwealth conference is expected to focus very shortly on the role and function of service commissions. This conference is to take place in Malta some time next week and that particular subject matter is on the agenda. We understand that the hon. Minister in charge of Public Administration is leading a delegation to this conference and it is made up of the former President of our Republic, Mr. Ellis Clarke, and Mr. Kenneth Lalla, the Chairman of the Public Service Commission.

We ask, in light of this conference that the Government is going to attend, having regard to the fact that they are anti-service commissions, why is this Government seeking to rush this measure? This was only tabled last week Tuesday in the Parliament and there has been no consultation, as I said. We would like to know whether, for instance, it is an attempt to pre-empt any possible decisions that may arise in favour of these commissions at the Malta conference and they want to get through this before.

You would no doubt recall that the Government sought earlier, as was indicated by the hon. Attorney General, to have the Public Service Commission delegate its authority to these regional health boards. Of course, that failed, and as the Attorney General indicated to this Parliament, the measure was extremely flawed because it had the effect of converting these RHAs into virtual service commissions. The Manning regime is now seeking to address this defect, and the amendment, as you would see in the Bill, seeks to, as it says:

"(b) in the case of -

- (i) the Public Service Commission, to any public officer or in respect of the Regional Health Authorities to the Boards of the Regional Health Authorities established under section 4 of the Regional Health Authorities Act."

This amendment, from our perspective, is dangerous for a number of reasons. I shall identify, in the first instance, two salient points in this regard. As you would know, under the Republican Constitution of Trinidad and Tobago, the Public Service Commission can only delegate its function to another entity when it is in a

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position to exercise authority over that body or that entity. I want to repeat this point, because it is very important for us to note it. Under our Constitution, the Public Service Commission can only delegate its function or its authority to another entity when it is in a position to exercise authority over that body or entity.

**Hon. Eckstein:** Mr. President, I would like the Senator to assist me in responding. Could he identify the relevant section of the Constitution that sets out this requirement?

**Sen. W. Mark:** The very section 127(1) which states:

"A Service Commission may, with the approval of the Prime Minister and subject to such conditions as it may think fit, delegate any of its functions under this Part other than any power conferred on the Commission by section 129, to any of its members or—

(a) in the case of the Judicial and Legal Service Commission, to a Judge."

In other words, they can delegate their authority through a judge and a judge falls under the purview of the public service. It goes on:

"(b) in the case of the Public Service Commission or the Teaching Service Commission, to any public officer."

So we are talking about someone like a permanent secretary. Again, that person falls under the purview of the Public Service Commission and the public service. It goes on:

"(c) in the case of the Police Service Commission, to the Commissioner of Police or a Deputy Commissioner of Police."

In other words, the point I am making is that the Constitution and the framers of the Constitution sought to have these buffers to ensure that they do not have an alien force or a strange being imposed on the country and seeking at the same time to delegate the responsibility of the Public Service Commission to this particular body.

**2.00 p.m.**

More than this, I want to indicate that the Regional Health Authorities Act of 1993, Part II, section 4, makes it very clear that—

"Each Authority is hereby created a body corporate to be known by the appropriate name given in the first column of the First Schedule."

We are talking about a body corporate—virtually a statutory authority. This is what we are dealing with. I want to make it very clear that delegating such authority to the RHA would virtually be tantamount to throwing 10,000 public servants, whether they be nurses, doctors, clerical officers and other healthcare workers, to the wolves. That is what this amendment would amount to.

We see a very important defect in this amendment which we would clarify and elaborate on as we proceed. One cannot take the power of the service commission and put it in the hands of a stranger; and the RHAs are strangers; alien beings; corporate bodies, statutory authorities. One cannot delegate the powers of the service commission to this agency. I believe that the Government—maybe it is an oversight on its part—needs to address this matter.

Since the RHA is a statutory authority or body, the appropriate body, really, to delegate authority to this body, should be the Statutory Authorities Service Commission. The Public Service Commission cannot delegate its powers to a statutory authority or a body corporate. That is the point we are making. The trick here is that the RHA would be using public servants whilst the SASC has no control over public servants. This is a very dangerous incursion that is taking place. As I said, it may appear to be simple and straightforward, but it has implications for the public sector and the public servants in this instance.

Mr. President, the SASC is not a body established by the Constitution of Trinidad and Tobago, it is a creature of the Cabinet. Therefore, it is a politically appointed body. Members of this commission, like Mr. Alexander Lo of Hong Kong, can be fired by fax, but not so with the members of the various service commissions established under the nation's Constitution.

I am making the distinction that in the case of the SASC, which is a political body appointed by the Prime Minister, these people can be fired at will, but in the case of the service commissions, that are creatures of our Constitution, the Prime Minister does not have that authority; no Government Minister has that authority to fire any independent service commissioner.

We on this side would like the Attorney General to provide this Senate with the relevant and/or various legal opinions on this matter, since this Bill before us goes contrary to the spirit of our Constitution. How can the Public Service Commission be asked to delegate its authority and powers as outlined in section 121? I quote section 121, so this Senate can understand what we are dealing with in this Parliament:

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"(1) Subject to the provisions of this Constitution, power to appoint persons to hold or act in offices to which this section applies, including power to make appointments on promotion and transfer..."

So, it is power to appoint, power to promote, power to transfer, and

"...to confirm appointments, and to remove and exercise disciplinary control over persons holding or acting in such offices shall vest in the Public Service Commission."

What we are dealing with here is a situation in which this Government is seeking to amend the Constitution. The Government continues to tamper with the nation's Constitution unnecessarily, in an effort to subvert the culture and democratic tradition that we have developed since independence in 1962. That is what this amendment is about.

What the Government is seeking to get this Parliament to approve, is a measure that would encourage the Public Service Commission to delegate section 121(1) of its powers under the Constitution to the RHAs. That is what is before us.

We have to be very clear about what we are dealing with here. This is no footsie arrangement. This is serious business where this Government is seeking to undermine the Public Service Commission and it is going to put pressure on the service commission to do what this amendment says it must do. If the service commission does not do it, the Prime Minister would then go public and attack the Public Service Commission saying that it is an obstacle because the Government is on the path of subversion of the Constitution of Trinidad and Tobago.

We are asked to approve a measure that is going to vest these RHAs with the powers of appointments, promotions, hiring and firing, transferring and removing people, but as we speak here today, these so-called RHAs have not been able—publicly, at any rate—to outline terms and conditions of employment for those workers who are going to come within their purview. They have not done that. They have not promulgated rules and regulations. We do not have any information on rules and regulations of these RHAs. They have not outlined emoluments for the workers who are going to be working for these RHAs. Pensions, gratuities, disciplinary action and redress have not been outlined.

We are being asked to sign a blank cheque here today. We cannot support such a measure unless we are convinced, beyond any reasonable shadow of a doubt, that there is, in fact, provision to safeguard the interest of the public workers in question.

As I said, none of these things have been done, and the Government of this country is asking the Parliament to instruct or request the PSC to delegate its authority to this particular body.

**2.10 p.m.**

Mr. President, all the members of the various RHA boards have been appointed by the Minister of Health. He is a politician so these people are political appointees. The Cabinet is made up of politicians. In the first instance, the service commissions have been created to insulate the public servants from the politicians. Here the RHA boards are being appointed by the Minister of Health on instructions from the Cabinet. The PSC is being asked to give these people power to hire and fire and promote workers. To whom are these people going to be accountable? They would be accountable to the Minister of Health. That is the problem that we are dealing with.

It is a dangerous incursion into the Constitution of our country. Unless the Attorney General is able to convince this side of the merits of that particular case, we would have great difficulty in lending any support to this very dangerous measure which is being introduced by a desperate and unpopular government. If the hon. Minister or if the Manning regime were committed to openness and fairness in respect of appointments, they could have, in fact, approached the recognized, relevant representative bodies and organizations to have them select persons to be appointed to these boards, rather than have the minister choose people and the Cabinet approve them. This is one of the dangers involved in this whole exercise. The Minister's control is total and absolute. He is a young dictator in this Bill.

If one looks at the RHA Act, Part II section 5 (1), it states:

"A Board shall exercise its functions in accordance with such specific or general directions as may be given to it by the Minister."

The Minister is the Ayatollah in this arrangement. The Minister is the real controller of power under these RHAs. If the PSC is asked to delegate authority to these regional health authority boards, what this Parliament would be doing is taking away the powers of the PSC and giving them to the Minister of Health and his political appointees to do whatever they wish with 10,000 public servants who are currently covered under the Public Service Regulations of Trinidad and Tobago. That is utter madness and it is unacceptable.

As I said, this amendment appears to be simple and innocent, but it has dangerous implications for our Constitution and the separation of power as we

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know it, in terms of the insulation of the public servants from the politicians. We are saying that if we examine totally the purpose of our commissions, we would realize that the protection that workers in the public service have been entitled to and enjoyed is now being threatened. That is the issue at this time and the Government is seeking to get parliamentary approval to institute this arrangement.

We understand that some sort of reform is taking place in the public service, but it is taking place in an atmosphere where the changes are being undertaken within and under the purview of the public service. If the Government is talking about health sector reform, why should it be outside of the public service? Why can the reform of the health sector not take place within the public service? Therefore, this amendment before us today would not have been necessary and the Government would not have to create this creature called the RHA which is a body corporate and outside the purview of the public service.

The people these boards would be employing are public officers. That is the issue. Therefore we want to find out from the hon. Attorney General why were these bodies created in the first place. Could they not have been put within the purview of the public service, so that they could have been accountable to some body? As it stands, the RHAs are accountable only to the Minister of Health and nobody else. There is no parliamentary committee monitoring the activities of these RHAs.

As the official Opposition and the alternative Government of Trinidad and Tobago, we are concerned about the rights, freedoms and protection of public servants. If there is a new monarchy emerging under the PNM where the name of the game would be patronage, then we are laying the basis for the wholesale destruction of the public service and the limited efficiency and morale that it possesses at this time. We cannot tolerate that in this country. Whilst this is a simple amendment which requires a simple majority, the Government is playing with fire in this matter. This is a dangerous thing.

We ask the question: Are the rights of people in the public service, the freedom that they have enjoyed over the years, the protection that they have won over the years, now expedient luxuries to be easily disposed of by some simple and innocent amendment that is brought before this Parliament by the Attorney General who fails to give this Parliament justice in terms of what its implications are all about?

They tell us that one of the reasons for the changes they are proposing is that the services are not working; they are not performing and nobody is accountable.

We ask the question: Why are these things not working? Has the Government been able to examine severely and seriously why the various public services are not working? Is it, like the police service, because of the absence of vehicles? Is it because of the absence of proper amenities, equipment and tools? Is it the absence of drugs and linens in the hospitals where people have to sleep on the floor? What is responsible for the collapse of the public service? These are issues that we have to discuss and deal with in a very detailed way.

Do not blame the service commission and try to create this strange body called the RHA and ask the PSC to give this RHA power to hire and fire workers. The RHA has no authority under the law in Trinidad and Tobago to hire and fire workers. Today, the Attorney General is trying to get this Senate to give the RHA, an alien being, a corporate body, a statutory authority, the power of the Public Service Commission to hire and fire public servants. How can that be fair and right? How do they expect us to support this? This is a dangerous thing. This is part of the drive to overthrow the Public Service Commissions in this country. This is a backdoor approach by the Government of this country to undermine and subvert the service commissions in this country.

They want us to support that. How can we support the subversion of people's rights under the Constitution of this country? We cannot support that unless we are convinced in a very profound way.

**2.20 p.m.**

Mr. President, it appears to the UNC that the Government is not interested in independent members of commissions. They want patsies, footsies and playthings; they want people that they can manipulate. That is what this Government is looking for—manipulation. If for one moment the Government could have had a public service commission as in the days gone by—one that they could have manipulated—you would not have heard a whisper coming from their lips about the service commissions not functioning; about their being obstacles and relics of the colonial past. It is because they cannot control these commissions that they are now seeking to destroy them and trying to get this Senate to be a part of this diabolical machination. How can this be? That is a diabolical machination on the part of this Government.

**Sen. Daly:** I wonder whether, to assist us in the debate, the Senator would identify for us which commission was manipulated and by which previous government.

**Sen. W. Mark:** That will have to be the subject of an independent commission of inquiry. We will have to call an independent commission of inquiry to deal with that question. Maybe, we will invite the Centre for Harassment to deal with that. We are very, very concerned about this amendment. It is a grave incursion, and we cannot, in all conscience, deal with it lightly.

Mr. President, if this amendment is passed in its present form, it can result in much dissatisfaction among the public workers involved. It could involve dissatisfaction among doctors, nurses and healthcare workers in this country. We are not engaged in an easy exercise. This is what I would refer to as a bikini amendment bill; it conceals more than it reveals. I think the danger in this Bill is that it is innocent on the surface. It is just one page, but it is explosive. It is heavily loaded and we need to examine, in a very detailed way, its implications. It is therefore the responsibility of the Senators on this side to safeguard the rights of public servants under the Constitution. Public servants have rights and those rights are not negotiable. We have to understand that.

The fundamental issue in this Bill before us is really political control. The Executive arm of the state is seeking total and complete political control. That is what the issue is today. We have to determine whether we want to establish the spoils system or we want to continue the Westminster style administration that we have inherited. We have to decide whether the PNM wants absolute control to hire and fire like the kings of the past. You know their leader is a young monarch. Talk to the hon. Ralph Maraj and he will tell you! Anyway, he talked about meanness of spirit. I do not know what he meant by that.

I think the Government wants to control the appointment of people. This is dangerous. The service commissions must do so. The Government wants to discipline and fire people, but that is the role of the service commissions. They are doing so through their political appointees on the RHA Boards. This Government would need to give us as much clarification as possible to convince us that this measure is necessary. We do not believe, on the face of it and upon a detailed study of the measure, that it is necessary. However, we believe that it is consistent with the Government's drive to marginalize and make service commissions irrelevant. That is what this is about. We, therefore, have the responsibility to safeguard the rights of these servants of the state.

Mr. President, if you look at the Bill I referred to, the Regional Health Authority Bill, you will see, under Part VI, and I read it for the records:

"26. (1) Subject to this section and sections 27, 29 and 30, an Authority may -



- (a) appoint such employees as it considers necessary for the due performance of its functions."

So they have the power to appoint, but they have no staff. They want to use public servants as their staff and to use them they must get the power of the PSC to delegate authority so that they can take public servants out of the realm of the public service and put them under this arrangement.

It has the authority to:

- "(b) fix qualifications and terms and conditions of service, except that salaries in excess of \$130,000 per annum shall be subject to the Minister's approval."

It also has the power:

- "(c) to transfer employees, either permanently or on secondment, between that Authority and other Authorities and such other bodies as may be considered necessary or desirable."

The RHA already has the power to appoint and transfer people and to fix the qualifications of those persons. We would like to find out from the Government what will happen to these workers. As they attempt to garner our support and to force or coerce the PSC to delegate its powers of appointment, promotion, discipline and transfer to this new body, we would like the Government—the Minister of Health or the Attorney General—to tell us what will happen to these 10,000 workers in the public service who fall under the purview of the health sector.

We have some difficulty with the measure. We do not want to say from the outset that we will not support this Bill, but we have to be convinced that it requires our support. At the moment we are not convinced that it requires and will get our support. The Minister of Health and the Attorney General would have to give us some directions on why we must support this measure. We urge others to intervene decisively on the side of the nation's Constitution, as well as the Public Service Commission and public servants.

### **2.30 p.m.**

Let us make no mistake about it. What we are witnessing in Trinidad and Tobago today is PNM creeping dictatorship. This group of young men and women, which is a "never see come see" group, wants absolute control of the state's machinery, and is prepared to trample upon the nation's Constitution in an effort to assume this control. This is what we are faced with here.

*Constitution (Amdt.) (No. 2) Bill*  
[SEN. W. MARK]

*Tuesday, May 02, 1995*

If this Government cannot convince the Opposition and others of the importance of this measure, we would urge the Attorney General, as he did with the Constitutional (Amdt.) Bill, to graciously withdraw this Bill.

**Hon. K. Sobion:** Mr. President, I wonder whether Sen. Wade Mark could let us know which Bill was withdrawn by this Attorney General?

**Sen. W. Mark:** The Bill that you proposed that you would withdraw.

**Hon. K. Sobion:** Is that on the Order Paper?

**Sen. W. Mark:** No, I am saying the Bill that you propose to withdraw and amend. You told us this. Did you not tell us that? Do you want me to expose this whole issue now? You know I would deal with confidentiality at this level, but do not provoke me, you know.

All we are saying to the hon. Attorney General is that he should—as he did in the meeting with us—tell this Parliament, quietly, that he is going to withdraw this Bill. We do not believe that this Bill is going to achieve the objective that has been envisaged. We believe that we have to maintain stability and sanity in this arrangement, therefore, I think that what we are engaged in here today is what they call in legal language, tabulated legalism.

The Government is seeking to hide behind the fact that it is attacking the very fabric and core of the Constitution of Trinidad and Tobago. This measure is altering the structure of our Constitution and therefore workers' rights are going to be trampled upon. The Government of Trinidad and Tobago recently spoke about a new Jerusalem. They talked about taking this country out of bondage and into the promise land.

**Sen. Capildeo:** Who said that?

**Sen. W. Mark:** The Prime Minister of this country.

**Hon. Senator:** Were you there?

**Sen. W. Mark:** It was recorded in the newspapers that the Prime Minister told the people of this country that the PNM will take this nation out of bondage and into the new promised land. This is what was reported in the press and the Prime Minister has not denied it. The PNM has been promising, since 1956, to take this country out of bondage. I do not understand what this Government is about. We would like to advise the Government to withdraw this measure, go back to the drawing board, think it through properly, because it is going to result in the destruction of the public service as we know it today.

We would like the Government to tell this nation whether it wants to introduce the spoils system, where the winner takes all, so that when we come into power we would have to get rid of all those political appointees on the RHA boards, or whether it wants continuity and stability. The Government has to determine that.

The power of patronage seems to be on ascendancy under this PNM Government in a big way. We are committed to the continued security of tenure of public officers in the public service. Therefore, we wish to advise the Government not to engage in this exercise of attempting to tamper with the rights of the workers' representatives by giving their authority and power to an alien being called the RHA. We think that it is a dangerous thing, they are playing with fire and we on this side will not add any fuel to that raging fire that the Government is now seeking to establish in this country.

On these points, I hope that the hon. Attorney General would be gracious enough to respond positively and appropriately to our concerns. They are real, they are deep, and I can say that the Trinidad and Tobago Medical Association and the Public Services Association which represents under law, close to 30,000 public servants in this country, have not been consulted about this measure.

The Public Services Associations is on record as saying that it opposes this measure which is now before this Parliament. The Medical Association is holding a press conference at about this time to denounce this measure. The doctors are against this measure; the nurses are against this measure; the health care workers are against this measure; we on this side, at the present time, are against this measure. Mr. President, I would say that any right-thinking citizen of this country would be against the measure that the Government is now piloting, seeking to ram down the throats of Members of this Parliament; a measure that is unpopular, that does not have the support of the representatives of the people in this country, in terms of health care workers. There has been no consultation and this Government comes like a thief in the night to impose this measure on this country.

I believe that the Government has a responsibility to discuss this matter with the relevant and appropriate representative bodies. Just as they called in the Law Association before they tentatively withdrew that Bill, I am suggesting that they do the same thing; withdraw this measure, call in the various parties, have a comprehensive discussion and come back to this Parliament with a consensus; with a Bill that would have the acceptance and support of all those workers and organizations which are directly or indirectly affected.

*Constitution (Amdt.) (No. 2) Bill*  
[SEN. W. MARK]

*Tuesday, May 02, 1995*

Mr. President, I could only urge the Government to heed the advice, because as you know, time is longer than twine, and it is just a matter of time, if they continue to ride roughshod over the rights of people, they are going to get a political shock worse than the NAR got in 1991. They cannot continue to play games with people's lives, and they cannot play games with the job security of 10,000 people. They are putting 10,000 people at risk if they shift the powers to the RHA. We are saying that is a dangerous trend which the Government is engaged in. We urge them to withdraw this measure and let good sense prevail before we have an uprising of public sector workers; led by doctors, nurses and other workers of this country. Only then the Government would understand when people are serious and they are fed-up and frustrated with this administration.

Thank you very much, Mr. President.

**Sen. Rev. Daniel Teelucksingh:** Mr. President, a few days ago I looked at this Bill and I could not help but interpret the intention and purpose of this Bill, only within the context of the ongoing debate on the role and functions of service commissions today. I could not study this Bill or understand this Bill in isolation of the debate on the role and functions of service commissions in our country. I fail to see, Mr. President, this as a simple Bill. Certainly not comparable with the brevity of the presentation by the hon. Attorney General.

The Constitution (Amdt.) No. 2 Bill of 1995 allows the Public Service Commission to surrender certain of its constitutional powers to another agency, and today I am asking myself—we are dealing specifically with the boards of regional health authorities—what would be the next move? Which commission would be next? I believe that this Bill is a blow below the belt for the Public Service Commission, this is how I see the Bill, I stand corrected.

I see this Bill as an indirect, but a very decisive step to emasculate the commissions. I see this Bill as the first step to sabotage the commissions. I see this Bill as a deadly shot from a silencer, [*Interruption*] with no exploding noise.

**2.40 p.m.**

**Mr. Sobion:** I wonder if the hon. Senator appreciates that the power to delegate contained in the Constitution is a power which is exercisable by the commission of its own volition. All the Constitution does is to give the commission a power, if it so wishes, to delegate. Nobody can force the commissions to delegate the powers of the Constitution.

**Sen. Rev. D. Teelucksingh:** A layman is trying to understand this. I will ask the hon. Attorney General for an answer when he is replying later. Has there been precedent of this nature and magnitude before? This is something before us that I consider to be new. We are stepping into a completely new area in that so much authority is delegated to somebody else—*[Interruption]*

**Mr. Sobion:** Mr. President, if I may answer one time. The power to delegate is contained in section 127 and there is nothing strange about giving a body which has authority to act, the power to delegate, if that body so wishes. There is absolutely nothing strange about it. This is a matter that was debated in this Parliament in December last year and approved and all we are seeking to do is correct what appears to be a drafting deficiency, giving the power to delegate to the boards of the regional health authorities.

**Sen. Rev. D. Teelucksingh:** Thank you very much, I am willing to learn. I will still ask: Why is legislation necessary to do that? If the authority is there, why legislation today? Let it be automatic and go ahead.

Let me continue. Mr. President, I really feel that this is a very serious Bill. It is making a very decisive and fundamental change and bringing to our awareness something that is very serious. We all know that the service commissions provide certain checks and balances necessary in our democracy to protect us from political biases and political manipulation by those who are employed in the public service; this protection is necessary. I do not believe that it is wise to encourage, through legislation, the transfer of such authority from the Public Service Commission to persons so close to the political directorate. I am very suspicious of that.

I know there are many citizens engaged in this ongoing debate, of which we are a part, concerning the place of service commissions within our systems today. There are many persons who still believe that it is necessary that we maintain and preserve the neutrality and impartiality of the public service. This is essential. The independence of the commissions must not be seen by the political directorate as an obstacle. They certainly have not outlived their usefulness. This will be true, and God forbid, only if we have a totalitarian rule or if we are moving in that direction. Only a dictatorship will see commissions as obstructionists. The public service should certainly be insulated against patronage and political influence. The commissions provide that kind of insulation.

I believe that if we suspect the commissions as being obstructionists and in our experience there are inordinate delays in appointments, in promotions, in

transfers or disciplinary control within the public service—then we must reform the commissions. That is the better way to go. Re-examine the bureaucratic wheels which seem to work so casually and slowly. I believe if those commissions are to be replaced then we must develop similar mechanisms.

Mr. President, I close by saying, I am very hesitant to support the Bill, only because of the suspicions I have of its underlying, very subtle intentions and motives.

I thank you, Sir.

**The Minister of Health (Hon. John Eckstein):** Mr. President, let me deal with some of the remarks made by Sen. Wade Mark in his contribution. Firstly, the allegation that there was no consultation. Perhaps, we have short memories, but the policy underlying this amendment as the Attorney General has said, has not changed. We are simply correcting a flaw in the legislation that was passed by this Parliament in December, 1994. It is the identical measure that was debated here and supported. Nothing has changed, the intention is the same as was expressed in that earlier debate. During the course of the debate that launched the Regional Health Authority Bill, I spoke at length on the consultation that I had with all the actors in the health sector. Extensive consultation. So that we are not bringing anything new to the Parliament. It is the identical piece of legislation which came and was approved.

As I said, we held discussions with the Public Service Commission. We found the commission's members willing to co-operate in every way with the Government, but they pointed out that as far as they were concerned, the legislation as drafted was flawed. It did not, in their view, give them the comfort that they required. It was flawed in its grammatical construction. They did not feel it gave them the authority to delegate and that it should be constructed differently. It is in fact reflective of those discussions that the Chief Parliamentary Counsel's office has amended, and the Cabinet has approved and brought this new construction. The policy remains the identical one which informs the establishment of the Regional Health Authority.

Sen. Wade Mark made the point that a commission can only delegate to individuals over whom it has control. That is a deduction on his part that is not written in the Constitution. In other words, he looks at the individuals and draws a conclusion from that, but the fact is that the commission can delegate to any organization or any individual which is provided for in the Constitution. The Parliament has the power to determine individuals or organizations to which the

commission can delegate its power if the commission, in its independent judgment, so wishes to do. That is the role of the Parliament.

**2.50 p.m.**

Mr. President, when we pass this amendment in this Parliament, that act will not compel the commission to do anything if it does not wish to do so. The commission will then have to sit down and, in its own deliberate judgment, take a decision. If the amendment is not passed, it cannot delegate whether or not it wants to. What the commission said in the discussions is that the amendment as worded does not really give them the authority, even if they wanted to, to delegate. This amendment does not undermine the authority of the commission; it does not take away any power from the commission. If I have a power that I delegate, I have not given up the power. I can revoke that delegated authority at any time. It is really the commission acting through the authority. The commission remains ultimately responsible.

The question was asked whether this has ever been done. Hundreds of public servants provide service to the Tobago House of Assembly. The commission has delegated all its power to one individual in Tobago, the Clerk of the Tobago House of Assembly, who answers to the Tobago House of Assembly, a political body. One man promotes, disciplines, hires, fires and does everything. We are asking the commission to sit and consider delegating to nine individuals. I cannot understand why that should present a problem. The commission has to take a decision and this Government, this Parliament, cannot compel the commission to delegate its power. It has to look at the situation and decide what it wants to do, but if the power is delegated, it is not surrendered.

Further, the RHA legislation was amended to compel the RHA to report to the commission every three months on the exercise of that delegated power and in a form that the commission will decide. That amendment was passed in this Parliament. Having been delegated power, the RHAs are not left to do whatever they want; the commission remains ultimately responsible for the exercise of that power. They are acting as agents of the commission. It is the commission which is discharging its functions, as it does in Tobago through the Clerk. If it is unhappy with the Clerk, it can take back the power which it has given to him or her. It has delegated power to permanent secretaries which they exercise on behalf of the commission, and if it is dissatisfied it will take back that power.

There is a document prepared by the service commissions themselves discussing extensively the whole question of delegation. If one reads this

document one would see that they say that the effort at reform is by no means confined to Trinidad and Tobago alone, it is part of a growing global trend. Everywhere in the world commissions are recognizing that they cannot deal with the human resource problems of 65,000 people. It is just not practical. In this document they say that there are something like 200-odd disciplinary matters before a tribunal awaiting resolution. It just cannot be done. No agency or nine persons can sit down, meeting once per week, and deal with the human resource problems that arise from a workforce of 65,000 public servants. It just cannot be done so they have to delegate some of those functions.

We are asking that they delegate to nine individuals who have been very carefully selected and whom we believe can stand scrutiny. People might say they are political appointments, but of the 45 persons, nobody has been able to go through and say that Mr. X or Mr. Y is a PNM or whatever. Even if they were PNM, that cannot disqualify them from appointment if they have the competence and the capability because that is the major consideration. If you are telling me that once a party captures political power, none of its supporters is eligible for election to any office, then this will make absolutely no sense. I feel that all board members who are political appointees should not wait on a new administration to send them packing, they should go because it is their job to implement the policy of the government of the day.

**Hon. Senator:** Ralph is under the sapodilla tree. Do not go and join him.

**Hon. J. Eckstein:** A new government has come into office and it would want to appoint people with whom it is comfortable and who can implement its policies. Would you be comfortable working on a board where I am a minister and you totally disagree with everything that I say?

**Sen. W. Mark:** I may put you on a board.

**Sen. Prof. Spence:** Mr. President, I am a bit worried about the last point the hon. Minister has made. He was making the argument that these people are there for their expertise and not because of any particular political inclinations. I find the two arguments a bit confusing.

**Hon. J. Eckstein:** Mr. President, I do not feel that the arguments are in conflict. If one thinks it through carefully one would find that there are very competent people on all sides of the political spectrum who are committed to carrying out the policies of the Government of the day.

In my view, two things are needed to be appointed to a board. Firstly, one needs to be committed to the policies. I cannot see if a government is elected to



office—it has espoused policies, the electorate has supported those policies, and they have put the Government into office—that it will appoint people on a board who are saying that they will not implement the policies because they disagree with them fundamentally. There is need for people who are committed to implementing the policies of the Government which the people have supported. Secondly, there is need for competence. The two things must go together. There is need for competent people who are committed to implementing the policies for which the people have voted.

Mr. President, one of the very surprising things I found in Sen. Wade Mark's contribution is his apparent complete indifference to the people of Trinidad and Tobago. Not once in his contribution did he express the slightest concern about the welfare of the people who have to receive treatment at our nation's hospital and the quality of care. The other side claims to be an alternative Government. Is that what they will do when they come into office; deal only with job security and terms and conditions of public servants and do not care what the hell happens to the people in the hospitals? Is that the kind of Government they will provide? I am making this deduction because that is the kind of argument he put forward.

**3.00 p.m.**

**Sen. W. Mark:** Mr. President, on a point of clarification. I want to indicate to my good Friend and colleague that he may have come to that conclusion based on his own assessment, but we are dealing with a specific issue here, and our policy on health has already been outlined. We have a specific matter before this Parliament and we are dealing with that issue.

**Hon. J. Eckstein:** Not once, Mr. President, during a contribution lasting close to an hour, was there anything at all in terms of the people of Trinidad and Tobago—not a word of concern. I just hope that the people of this country would get something better if they support his party to form the Government.

He is concerned about the role of the Minister. We set this out very clearly and I have no qualms about that. Every time something happens in the hospitals, in the health centres, a parliamentarian on the other side calls me to account—calls the Minister of Health or whichever Minister it is in the particular ministry to account. Nobody calls on any other agency of Government to account. It is the Minister who is called upon to account, and I am prepared to account if I have some measure of authority.

The arrangements that we have in place completely emasculate the Minister. The Minister has absolutely no authority under the present arrangements, but yet

the Minister is called upon—and in my view, quite properly, because he has to account to the Parliament and the people. That is why I am saying, if you articulate policies and you do not implement them, the country has every right to vote you out of office. Therefore, you have an obligation to try to implement those policies, but you must have the authority so to do.

The suggestion is that you must appoint people who have no interest whatever in your policies, but at the end of five years, what are you going to tell the people? That you appointed 45 persons who did not share your conviction so you could not implement anything? The thing is not making any sense.

The Government Minister must be responsible, has to be responsible, is, in fact, responsible and has to answer to the Parliament. As I say, if he fails to discharge that responsibility, he and possibly his whole government, should be "kicked" out of office. But you must have some basic authority to go with that.

Sen. W. Mark is concerned about, as I said, the rules and regulations governing the employment of public servants. If the commission delegates its power, the RHA cannot have any independent rules and regulations; it is the commission's rules that it must operate. If I have certain rules and regulations and I am delegating my power to you, you can only operate my rules and regulations. What other rules and regulations are you going to operate?

He is concerned about pensions and gratuity. He has no concern for the health of the poor man or how he is going to be taken care of, but he is concerned about the pensions of the workers. I have no problem with that, but I wish he would have balanced it. That is all. As an alternative government, he should have balanced his presentation with some slight indication of concern for the poor man.

The public servant is in no way threatened because the rules and regulations that are going to govern his work are the identical rules and regulations that operate now, and it is the same authority, the Public Service Commission, which is ultimately responsible. To the extent that there is any deviation from that, the commission is entirely within its right to take back that delegated power. You cannot compel them to delegate; and if they do, the delegate must operate their rules and regulations—nobody else's—in respect of public servants. If they are not happy with them, they will retrieve them.

**Sen. Persad-Bissessar:** I thank the hon. Minister for giving way. If he says that they must follow the rules and regulations of the Public Service Commission, who are the "they" of which we speak? Is it the RHA and the board of the RHA that the Minister is referring to, that they must follow Public Service Commission rules and regulations? Is this what the Minister is saying?

**Hon. J. Eckstein:** Yes, Sen. Kamla Persad-Bissessar, it is the board of the RHA. It is the board of the authority to which the commission will be delegating its power. All other arrangements, like terms and conditions of service, the RHA, as employer, will obviously sit down with the responsible union and determine them. In fact, the legislation provides that the PSA will continue to represent the workers. The workers will have the same representation that they now have. So that I would assume that they would sit down with the representative union, as the normal industrial relations practices require, and negotiate terms and conditions.

I do not find any great merit in the Senator's contribution, notwithstanding the passion with which he spoke, and I do not believe that the workers' job security, their tenure, is threatened in any way. In fact, since the RHAs have been in existence, the workers are becoming more and more accustomed to the new arrangements. I held a meeting with the medical association not too long ago. It was reported widely in all the newspapers. In fact, they held a press conference after our meeting and in reading the reports of the press conference you got the clear impression that they were prepared to work with the Regional Health Authorities.

**Sen. W. Mark:** Just on a point of clarification. Could the Minister indicate to this Senate, if this is so harmless, as he pretends it to be, why for instance, are the Public Service Association, the Medical Association, the doctors and the nurses, so up in arms about this amendment? I know that a press conference took place at 2.00 p.m. today with the Medical Association. If he is having these consultations and everything is honky-dory and things are harmless, why is the PSA asking us not to support this measure in the Parliament?

**Hon. J. Eckstein:** The PSA's position has been the same throughout. For the last three years the PSA has made its position very clear, that it is opposed to any change in the *status quo*. That is the PSA's position. That is not the Government's position.

**Sen. W. Mark:** Are they supporting the change within the public service, decentralization?

**Hon. J. Eckstein:** We are pursuing the policies on the basis of which we were elected to office. The PSA and I have met on several occasions. They hold the view that we should not go along this route, but it is we who have to account to the country for the delivery of health services; it is we who are charged with that responsibility. We understand the PSA holds a different position, but we do not support the PSA's position. We listen but we are not persuaded by their arguments, so we have to go forward with our view.

**3.10 p.m.**

**Sen. W. Mark:** You are trampling on the workers' rights.

**Hon. J. Eckstein:** Are you asking that they should trample over us? *[Laughter]* I have made it clear that we are not trampling on the workers' rights in any way. As I have indicated previously to the Senator, his one attempt at a fundamental point is flawed. If, as is said, the legislation which was passed in this House is flawed, then his point is flawed. I want to repeat that the commission is empowered to delegate to any individual or agency set out in the Constitution. The Senator is making a deduction that it can only delegate to people over whom it has control. It has control over the powers it delegates to a regional health authority in that it can revoke that delegation.

If the commission has certain powers, it can delegate some of its powers and not others. It can say it is delegating the power to transfer people, but not the power to dismiss people. It does not have to delegate all the power it has. If it wants to be concerned about job security, it can say it is holding that aspect of its power. The commission decides what it wants to do. This legislation only facilitates the commission, it does not compel it to do anything. The commission is not delegating its power to one person, as it has done in Tobago. That individual could possibly harbour very undesirable qualities of character, but with nine people exercising a delegated power there will be greater moderation and reason than would be the case with one individual doing the work of the commission.

**Sen. Merritt:** Mr. President, the hon. Minister, in his deliberation, kept harping about the board comprising of a political spectrum, but he did not speak about people who are technically equipped in the various skills as from the medical profession and so forth. All the Minister seems concerned about are the politically equipped people who would carry out the policies of the Government.

The other point is that in the PNM's manifesto—I do not have a copy here—was it indicated to the people of Trinidad and Tobago that the regional health authorities would be created? Was that one of the policies?

**Hon. J. Eckstein:** Mr. President, I am very happy that question was asked. Not only did the PNM set that out as one of the policies to be implemented, but so too did the National Alliance for Reconstruction and the UNC. *[Interruption]* So too did the United National Congress and the National Alliance for Reconstruction.

In fact, as I said in my contribution, when the National Alliance for Reconstruction demitted office, they left a proposal to set up a board to run the Port of Spain General Hospital, and that would have been the prototype for all the hospitals. I made the point that all the major political parties that faced the electorate in 1991 had in this area one thing in common, they all said, including the UNC—who said it better than most—that they would decentralize. *[Interruption]* Whichever party the Senator was in then, that party said that it would decentralize. I applaud all the political parties for taking that position because the present arrangements cannot work.

Sen. Merritt raised one other point which I would touch on. She said that I was only expressing people's political qualification. I have never stressed that. I said they must be committed to our policies, not necessarily supporting us politically, but they must be committed to those policies. They do not necessarily have to support us politically. *[Interruption]* I also said that the fact that one is a PNM should not disqualify one from being eligible for appointment. The point is that one must be committed to supporting the policies.

The second thing is, competence. Senators might have forgotten, but it was on the insistence of this Senate that we included on the boards of the RHAs, a doctor, a nurse; and in the case of the University of the West Indies—again on the basis of representations made; it seems that the memories here are not as long as they ought to be—the Dean of the Faculty of Medical Science is a member of the board of the Regional Health Authority. So there is the competence—accountants, business managers and all sorts of qualifications—

**Sen. W. Mark:** Hon. Minister, have you given thought—

**Hon. J. Eckstein:** I am not going to give way unless the Senator pledges to do something for the people when he gets into office. *[Laughter]*

**Sen. W. Mark:** Hon. Minister, have you reflected on the possibility of having included on those boards—seeing that you are talking about staffing problems and industrial relations matters—a labour representative?

**Hon. J. Eckstein:** I know it is not usual for the Minister to ask questions, but if the government puts nine people in labour on the Board would the Senator support the proposal then?

**Sen. W. Mark:** I simply asked a question.

**Hon. J. Eckstein:** Mr. President, I believe I have dealt with the points raised. I beg to move.

*Question proposed.*

**Sen. Kamla Persad-Bissessar:** Mr. President, the hon. Minister is a man of words.

**Hon. Senators:** And action!

**Sen. K. Persad-Bissessar:** That is yet to be seen with respect to the Minister, but he is a man of words. There was tension in the Senate a few moments before he spoke when Senators were beginning to question the wisdom of supporting the Constitution Amendment Bill, but he seems to have brought all of that into pleasantness. When he finished speaking we were all smiling and laughing.

I would like to join my colleagues and say very clearly that I have serious concerns about the Constitution Amendment Bill, despite the fine words of the Minister. He has allayed some of our fears, but there are still others which need to be addressed, and I believe the hon. Attorney General, in his winding up, should deal with some of those issues.

The first one has to do with the very question that I asked the Minister a short while ago, when he said that the RHAs would have to follow the rules and regulations of the PSC. I ask: Since the board of the RHA is not a creature of any service commission and is not part of the civil service or the public service, what is there legally to compel the RHA board to follow those regulations the Minister spoke about? It is my respectful view that there is nothing, and I would ask the hon. Attorney General to address that. What is there to make the RHA board follow rules and regulations of the PSC and of the civil service as a whole?

It is instructive in this debate to note that whilst it is true, as the Minister has said, that the Constitution has set out that the Public Service Commission can delegate its functions, there is something interesting in that this is the first time, in my respectful view, that it would be delegating to a private corporate body; a statutory body. This is the first time it is happening. Again, it is important that when we consider that the composition of those boards of the RHA, whether they are political or not—I would not go into the issue of whether they should resign when the PNM goes out of office or not—the issue is that they are political appointees and this is the first time the service commission is being asked to delegate to political appointees. That is where our concern lies because the board is comprised of political appointees.

**3.20 p.m.**

If the Attorney General could allay that fear—because whilst it is true that persons should not be disqualified from sitting on a board, as the Minister has said, because they are of a particular political persuasion—we must consider that we are dealing with the job security of these particular healthcare workers. The function that is going to be delegated is not any other function. It is true that PSC delegates a host of functions, but in this case the functions that are being delegated are those under section 121 of the Constitution. This section, as my colleague has well pointed out, deals with appointments, transfers, promotions and disciplinary proceedings. In fact, what is being delegated is the power to hire and fire. If that is so, the other side will have to convince us that there will be checks and balances to prevent abuse of that power by the boards, against political appointees, that the Government is now giving to them.

In this whole debate, as Sen. Teelucksingh has said, we cannot look at this Constitution (Amdt.) Bill that is before us in isolation. We must look historically at both the public service commissions and the whole question of delegation. We must look at it in the context of the ramblings which have been coming from the other side as reported in the press. Whilst allusion has been made to it, there are several newspaper articles on this. In the *Newsday* dated March 27, 1995 there was the headline, "PM: Service Commissions Hindering Reform"; the *Express* dated Monday, April 3, 1995, page 4 carried the headline, "Government Prepared to Dump Service Commissions". There were several others but the tenor of it, as reported in the newspaper, was that the view of the other side, as espoused by the Prime Minister, is to get rid of the service commissions.

I am saying that if we look at the Bill as it is, as my colleague has pointed out, it appears very innocent. It is one page with a few lines but the implications are far more than that. In a sense, it appears to be, as my Friend mentioned, diabolical machination, but this is what you call Machiavellian machinations. On the surface it is innocuous. It is a few lines to correct as the hon. Attorney General has said, a sloppy drafting that took place in Act 30 of 1994. I will say a sloppy drafting error which we have pointed out on numerous occasions. To correct that is simple; we are just coming to correct a few words.

It is instructive for us to look at the historical origins of the delegation functions of the PSC and the Public Service as a whole. When I say historical I am speaking about legal history of the particular sections 127 and 121. We would go back to where all of this started, back to 1950. This is the first legislative

provision relating to the service commission which was the Trinidad and Tobago Constitution Order in Council which established the public service commission. At that time it was the Governor; a public service commission was created and the Governor under section 65 of that Order referred questions relating to appointment—the same questions that we are now dealing with—including promotion and transfer or dismissal or other disciplinary control of public officers which in his opinion affected the public service.

At that time it was the Governor who would refer it to the Public Service Commission. The Public Service Commission did not act as the executive authority; it was the Governor who would refer. At that time the powers of the service commission could be delegated to any of its members. When they started to delegate functions to any of its members, they did not go outside the commission. The principle and concept of delegation has been there. When I started off, the point I made is that this departs from what has been happening in terms of delegation. [*Interruption*] If the hon. Senator would permit me I would continue my contribution. Perhaps he would be kind enough to respond instead of muttering under his breath across the table.

In 1956, again a Trinidad and Tobago Constitution (Amdt.) Order in Council amended the first 1950 Order and there was a new section which created the Police Service Commission in 1956. In 1950, there was only a service commission and at that time all the public servants had fallen under it. In 1956, we then had the Police Service Commission. Thereafter, by the 1959 amendment, a new Public Service Commission was established, a Judicial and Legal Service Commission was established and the Police Service Commission continued. Each commission had the power to appoint, transfer, promote, discipline and dismiss.

In the 1962 draft Constitution which was pre-independence, a few months prior to independence the Government of the day produced a draft Constitution and invited comments on it and asked for these to be submitted by March. By April 1962, there was a public consultation and the then Attorney General proposed that constitutional provisions in relation to the civil service and the Police Service Commission were merely extensions of the existing 1950, 1956 and 1959 Orders. He said that some people felt that too much power was being given to the Prime Minister and he went on to state that to avoid party political interference, that individuals could not become members of the public service for certain periods after they held public office.

The point that he made on page 245 of the report of that consultation was that in supporting the 1962 Constitution, he said for the first time, the Public Service



Commission was given the power on its own to appoint, dismiss, transfer, promote and discipline. There was no veto from the Prime Minister and no advisory function from the Governor General at that time. He then went to the 1962 Constitution which was our Independence Constitution. Here we see the various commissions, Judicial and Legal Service Commission, Police Service Commission, the Teaching Service Commission, all having the power to appoint, promote and transfer. The same powers as section 121 of our Republican Constitution which the present amendment is seeking to vest in the RHA board, each commission had that power.

On the question of delegation, in the 1962 Constitution, section 93 of the 1962 Order in Council, the powers to appoint persons to hold or act in offices including power to make appointments, promotions, transfer, to remove, exercise discipline and control over persons holding or acting in such offices were vested in the Public Service Commission providing that the commission may, with the approval of the Prime Minister, subject to conditions as he thinks fit, delegate any of its powers under this section by directions in writing to any of its members, any public officer. Each of the commissions was given the power to delegate.

The present provisions as read by my colleague Sen. Wade Mark, fall under section 127 of the Constitution. Here we see that the power to delegate, as my Friends have pointed out, is discretionary. That is to say that the service commission "may". The question I ask is—because much weather is being made of the fact that it is not a compulsion to delegate—what would happen if the service commission did not delegate? The present amendment is to allow them to delegate. The question is: What would happen to the RHAs and the staff if they did not delegate?

The Government is saying that they do not have to do it. Then, why come to the Parliament to give them the power to do it if they do not have to? The further question is that if it is not done, what happens? That is a crucial question. What would you do then and how would the boards and the RHA staff function if it is not done? The argument that you are presenting is to correct a drafting error, because the service commission has the ultimate discretion not to delegate, the question is, if they do not do it, what will happen? That is why the Government found it necessary and important to bring this amendment to the Parliament.

### **3.30 p.m.**

Further, when we look at it, this is where the principle of delegation is embodied in the Constitution. That point has been made by the other side. We

accept that, but the difference is—I started off saying it and I will end with it—in the case of the Judicial and Legal Service Commission, it is to a judge; in the case of the Public Service Commission and the Teaching Service Commission, to a public officer; in the case of the Police Service Commission, to the Commissioner of Police or Deputy Commissioner of Police. For the first time, we are giving that delegated power to a statutory authority, this corporate body. The point cannot be repeated often enough.

When we were looking at the various studies that have been carried out and consultations held on the Constitution—and I am speaking here about the Wooding Constitution Commission Report, the Hyatali Constitution Commission Report—there is a common thread running through that first Order in Council, in 1950, all the way to the present provisions in the Constitution, that there should seemingly be no political interference. No political appointee should have power over hiring and firing. That is the golden thread which runs throughout the legislative history as it relates to the service commissions, and the public service workers who fall under the service commissions. It is a golden thread because when you look at the 1950 Order in Council, during the period 1956 to 1959, no member of the legislature could sit on those commissions. Those points became very clear at paragraphs 380 to 382 of the Wooding Commission Report, 1974, which was prior to the Republican Constitution.

Before I quote from the Wooding Report, let me say that it is interesting to note that, in 1976, when in the Parliament of this country the Government of the day had the constitutional majority in the House of Representatives to change anything in the Constitution, these checks and balances were maintained in the 1976 Republican Constitution. It is very important to note that. So when one hears rumblings from the present administration that it needs a certain majority to pass legislation, one really has to wonder at the motive behind that because at that time they had the constitutional majority to change or throw away, to give ultimate power in the hands of the political directorate. When I was looking at this it was really a matter of great interest to see that at that time the government of the day maintained the safeguards and checks and balances. That is why we ask them to show us the checks and balances, because they are now putting the jobs of these workers in jeopardy.

Whilst it may be true that my colleague, Sen. Wade Mark, did not speak of the people of Trinidad and Tobago, he spoke about 10,000 healthcare workers, multiply each one of those 10,000 by four—the dependents of those people. There are 65,000 public servants; multiply that by four and then you can say whether or

not he has not spoken about the people of Trinidad and Tobago. He is speaking about hundreds of thousands of people in this country and it is unfair in my view to say that.

I say that the hon. Minister is a man of words because he left us smiling when he had finished, but you see, that is the skill of the Machiavellian politician—he smiles with you but he comes from behind like a thief in the night. That is what this amendment before us could be if we allow it to go without examining the implications of what we are doing. It would be like a thief in the night. It would take us by surprise and those hundreds of thousands of persons that we spoke of by multiplying the workers we are dealing with, would be robbed of the protection and the insulation that the Constitution has granted to them.

Permit me, Mr. President, to quote from the Wooding Constitution Commission Report, 1974, paragraphs 381 to 383. Part XI of that report deals with the whole business of the Service Commission:

"380. In the period pre-dating full internal self-government, total identification of the public officer with the political administration produced no contradictions because the political administration never changed except in so far as one Governor replaced another. And to many the role of the Governor as the local fountain-head of political authority was never very obvious. He appeared to be merely another public servant.

382. With full internal self-government, and subsequently independence, complications were inevitable. The political administration could now be subject to sudden change. The opposition critic of one day could be the government Minister of the next. Yet, if the administration was to be a success, the public officer had to be responsive to the policy demands of whatever government might be in power and show equal skill and dedication in their implementation. Understandably the political administrators would wish to have some say in the management of a machine the proper operation of which was important for their success. Any attempt to do this might very well savour either of victimisation or of favouritism.

383. The solution to this problem adopted in the present Constitution was to create independent Service Commissions to which was entrusted the power to appoint, transfer, promote and discipline persons in the public service. This was intended to insulate public officers from direct political influence. Thus protected, they would be free to serve any political administration with equal dedication. This structure appears to have worked well and we recommend

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that it should be continued. We accept also that the political authorities have a legitimate need to exert some influence on the management of the public service to ensure that it is efficient and responsive."

That is the very thing that the Minister spoke about—he must have some authority and responsibility.

"For this reason we recommend the retention of the Prime Minister's veto over appointments to certain top posts in the service."

So that the general service would be subject to the independent service commission. But, to allow the Government to be able to have the responsibility that the Minister spoke about to carry out those policies, the Prime Minister would veto certain top positions and those that remain in the 1976 Constitution.

Now, chapter X111 of the Hyatali Commission Report, which was more recent, 1987 to 1990, pointed out that:

"303. ...It was felt that the public needed to be assured of public service neutrality by entrusting its composition, control and discipline to a body that was insulated against political interference and influence.

304. The original rationale for the establishment of the Commissions and the circumstances which gave rise to their peculiar membership continue to be of much relevance today. The Commissions enjoy a status similar to that of the Judiciary and are independent of the Legislature. For this reason public officers feel assured of protection against discrimination of all kinds and have a reasonable guarantee that political patronage and preferment would not undermine the integrity of the Service."

It was pointed out at the end of this Committee report that independence of the commissions should be retained.

The Government has not convinced us that it is necessary to take away that insulation and protection which was afforded to healthcare workers along with all the other public workers. This present amendment does not give them that protection. It does not insulate them in the manner in which they have been protected.

It seems that when we say that, we are saying that we want to hinder the Minister from carrying out his policy. That is not so, Mr. President. When one is looking at job security, promotions and transfers, it is too crucial to the very livelihood of persons to be subject to a body which is not an independent body.

The golden thread, as I have said, running throughout legislative provisions, has always been to provide that insulation and protection from political interference. Convince us that they can do that with their proposed amendment, and we will be very happy to support them. As it is now, we have not been able to find that reassurance.

So, I support my colleague, Sen. Wade Mark, in his contribution to this Senate and I thank you very much.

**3.40 p.m.**

**Sen. Martin Daly:** Mr. President, I think it is very important in this debate—although it is something of a repetition of a debate we had in December—there are two things, and before I identify what they are, I would say that if there was confusion, then the Government only has itself to blame. I would explain why shortly.

It is very important that we do not confuse two things. This legislation is designed to permit a delegation by the service commission of certain of its powers to an identified body. It does not matter for the purposes of argument, who the delegate is at the moment; whether it is a private body or an individual. The fundamental point is that it permits the service commission to delegate certain of its powers. That, Mr. President, is a very different thing from any attempt to remove those powers from a service commission. I think it is very important that we make that distinction. Generally when we deal with these questions of service commissions there is some confusion about that.

The certain features about this delegation that I do not find threatening, first of all, as has been pointed out by the Attorney General, the delegation has to be an act of the commission's own will. One can speculate I suppose, as previous speakers have done, whether it is possible to bend the will of a commission and so on. I am not on that for the moment. One of the features of this amendment is that the commission has a say; has the only say really—well the Prime Minister also has to approve the delegation—as to whether the delegation should take place at all. I have not looked it up today, Mr. President, but I am fairly sure if an original power like this which we have under the Constitution is delegated, one can revoke or call back that delegation at any time.

In the event that the boards of these regional authorities abuse the powers that were delegated to them, the Public Service Commission would have the remedy of recalling the delegation, and that in itself is a check or balance.

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Also, insofar as this particular delegation is concerned, it is not as unusual as is feared. Over time, the commission has been delegating various of the powers that it possesses in order that the whole system might function better. The best example of this—and I may have quoted it before—was in the middle of 1987 when a Bill was passed—and I checked on this, Mr. President—unanimously with the support of the party that was then in opposition, which now forms the Government, to extend the delegation's powers in respect of the Police Service Commission, beyond Deputy Commissioner to a wider range of the police officers. It was seen by both sides of the Parliament, at the time, as a measure which would be helpful in administration. That is one example of the widening powers of delegation. There is precedent for a service commission to delegate some of its powers in order that the system function better.

I am not as alarmed by the introduction of this Bill—leaving aside for the moment the fact that we debated it before, I would come to that—as some of my colleagues on different sides of the Senate. If there is confusion, it is because this Government—and this is what the Government has only itself to blame for—has, from time to time, uttered very threatening noises about the future of service commissions. Of course, it is entitled to do that, but I fear that sometimes those threatening noises are made in the exercise of frustration and its inability to deal with one problem or another. The political survival probably demands that they find a scapegoat and blame someone else and probably they find the commissions as a scapegoat.

I want to urge the Government, in the context of this debate, to perhaps consider more carefully, if it is that it wants to put up the future of the service commissions for debate, to do so in a more orderly fashion. Of course, we do have a Bill on the Order Paper relating to the Police Service Commission that it does not seem to be the intention of the Government that we ever reach. I do not understand why, because that would be one good occasion on which—regardless of the result—to put up in the future the service commissions for debate in an orderly fashion.

I am quite sure that the party that forms the Government now was suitably outraged in 1987 or 1988 when a somewhat ebullient Government Minister—I think it was of Works—not only talked about obstacles in the public service to the progress of the Government's administration, but actually identified his Permanent Secretary—and so to speak—gave him a number of punches. I am quite sure that this Government was outraged at the time that such a thing had taken place.

I want the Government to examine its conscience very carefully and see whether some of the statements that have been made, at all levels of this Government about the public service, do not approximate to the same degree of recklessness as that statement made in 1987 or 1988. I think the Government must examine its conscience very carefully on that issue, whether it is not in fact embarking on the same kind of "bobolee" beating that was embarked upon in 1987 and 1988. I think that is a very bad thing for the country.

No doubt, because the Government has created that atmosphere, that is one reason why several of my colleagues might be viewing this Bill with a great deal of suspicion, and thinking that it is Machiavellian, because we have had these kinds of statements which are very unfortunate. No one is saying that the commissions are sacred, but if one is going to debate their existence, one must do so in an orderly way. Indeed, this Minister has set an example for doing it in an orderly way, because he said quite plainly on more than one occasion, that if we support him in this particular endeavour and then we have more eggnog, he would take a certain course. He has committed himself to that in a way which I think would affect not only his tenure of office as Minister of Health, but any Minister of Health of any party that followed him. The Minister said that a major promise of this experiment—which is what it is—is to broaden the delegation of powers in the health sector. This will have certain political consequences. I said on a previous occasion that based on that undertaking—and he was not at all oblique about it—that one would be prepared to support this experiment. This is a very different thing from suggesting that these powers are to be taken away—which this Bill does not do—from the service commissions and being vested in the boards on all occasions.

Of course, this Minister too, unfortunately today, went into the corridor of uncertainty when he started talking about the requirements for boards. It really does not help people to make up their minds about measures like this when one starts saying that people have to be comfortable with boards and so on. I feel very strongly—and it is based on some experience—that the requirement for appointments to boards must be competence first, second, third, fourth, fifth, sixth, seventh, eighth, ninth and tenth, and then it may or may not be necessary to consider what is euphemistically called, being comfortable with the appointment of the person.

Indeed, one of the many sins of this Government when it was previously in office, is that towards the end of its life, it really had created cliques, cliques which could not be broken into and people who had a contribution to make or

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who might have been willing to make a contribution could not break into those cliques. There is always a fear—because of the Government's track record where that is concerned—that the Government would repeat that mistake.

When I hear this Minister going into that corridor of uncertainty about boards resigning when a new government takes office, I want to remind the Minister that at the thin end of that wedge was the suggestion that the Independent Senators had to resign when a new President was appointed. If I may suggest to the Government in the mildest of ways, that they should not stray back into that corridor of uncertainty to start creating cliques that cannot be broken into, and describing people who want to serve the country as political appointees. I think that is a very, very unfortunate form of thinking and it creates problems to the Government—whatever it is—because naturally people who do not belong to cliques, and people such as my colleagues become very suspicious that this legislation is not all what it seems. I think it is very important that the Government sets the right atmosphere where that is concerned.

**3.50 p.m.**

I always like to remind people that in a democratic society one must have healthy tension between various institutions in the country. It cannot be that for the time being of a particular government's life everybody must be a "yes" man or a "flunky". Therefore, this Government did set a good example when it came into office and retained certain people in certain positions on the basis that they were bi-partisan and they were not political appointees and I would not like to see them depart from that. I do not know whether the Minister was making what I would like to describe as a Nevisien stroke—and a Nevisien stroke in my definition is a stroke that is made by persons who enjoy the security of tenure in a team because their captain is comfortable with them, regardless of the fact that they are no good at all. You see, the ultimate logic, placed in the present context of being comfortable with your board members, is that one could have, say a darts team, where the captain is comfortable with the people on his team because they come from the same region, and in fact, they cannot make any strokes at all, and ultimately are responsible for bringing the whole team down.

I would like to suggest that we really must not be Nevisien in our appointments to boards. We need to be very careful about that, because, as we all know, that usually leads to defeat, sometimes by an inning. I give you these examples to show that outside of political life this sense of false loyalty, of being comfortable, will lead to really disastrous, and for many of us, quite painful



results indeed. To carry on the analogy, sometimes we perpetuate this when we go abroad, whether it is to England or Hong Kong. We perpetuate the same mistake—we carry the wrong team with sometimes disastrous results. Against that background, we must be careful what we are telling the country when we debate a measure like this.

I would also like to say that the Government is to be complimented to this extent. Very grave doubts were expressed about the drafting of the original Bill. The word "comfortable" has been somewhat devalued today, but I feel comfortable in saying that mine was among the many opinions that were sought about the drafting of the original Bill. At the end of the day, I think the Government is right, that if there is a substantial body of opinion that a piece of legislation is flawed, it is far better not to bury one's head in the sand but to come to the Parliament and say, "Look here, we have conflicting advice and we want to put the matter beyond doubt." I think that is a very commendable thing that the Government has done. Unfortunately, with other legislation which we have in prospect—and I do not anticipate any debate—they seemed to have buried their heads in the sand. Since I will have to talk about that in the context of the securities industry and other things, I think it is important to remind the Government what a good thing it is to correct a mistake, even if it has existed for eight or nine years or longer.

Against that background, and without in any way diluting my resoluteness about service commissions reform, and my resoluteness about any attempt to 'take away' as opposed to 'permit' the delegation of the powers of service commissions, Mr. President, for those reasons, I would support this Bill.

**Sen. Carol Mahadeo:** Mr. President, actually I am taking up from what the hon. Minister of Health gave utterance to earlier in his contribution to this debate. I am trying to take him back to the time we debated the Regional Health Authorities Bill last year. Today he has changed the tune quite definitely by saying "as the Minister he does not have the power to do X, Y and Z," but when people have all their worries, complaints and so forth, they come to the Minister with these complaints and these complaints must be answered and rectified by the Minister. This is what he said this afternoon. On that occasion last year, happily for me but unhappily for him, in answer to a question that I had posed, he had mentioned some of the regional health authorities boards that were already appointed. Among them was the Sangre Grande Regional Health Authority Board. I am just reminding him, Sir, that on that occasion he said that if there were any politically

motivated appointees on that board of eight, he, as Minister, would see that they were fired forthwith.

This afternoon I am quite confused as he is telling us that as the Minister in control of these regional health authorities boards, he is unable to function at all and that he would have no control. I want the hon. Minister, if he can, to reconcile these two statements: the one that he made last year, and the one that he gave here this afternoon. This is my grave concern. All afternoon while others have been contributing, and soon after he contributed, I have been turning this question in my mind and I am very, very puzzled about it. It is a very big problem with me at this point in time. I do acknowledge that this hon. Minister is a very genial person and for the time being, as Minister of Health, we may have no problems at all with him and his administration of the health facilities. But what happens if we give charge of this Bill proposed here to delegate authority, which I am told can properly be delegated by the Public Service Commission, to the regional health authorities boards and to these Members who are comprised there with the Chairman?

I am still worried about what the position will be because the hon. Minister is saying today that he has no power or control. How then will he be able to fire if he does not have the powers that we are now proposing to pass from the Public Service Commission to these respective authorities?

**4.00 p.m.**

Mr. President, I have been talking with one or two members of the special board—I hope they will not be taken to task for this by the hon. Minister after I have spoken—and they said that they are still in the dark, as it were, feeling themselves in the woods as to the rules and regulations they are to follow in order to carry out their jobs. I do not know whether they are working at all or if they are working effectively. This is my other grave problem.

Last year when the Regional Health Authorities Bill was debated, the Minister postulated the fact that he would ensure that the clinics and health centres would be working effectively and patients would be getting a better health care service than obtained prior to this position. I confess that I have been told and I also experienced a very marked deterioration of the health services. Patients have gotten prescriptions for panadol, vital medicines for heart problems and rheumatism—luckily I do not have to go for that there again—for eyes, special ear drops, all these things and they have to go outside and get those things because the health centres, clinics and hospitals do not have them.

I am told that even babies are being born and kept on brown paper. They come to life on brown paper. They are not even given a bit of cotton or bed sheeting on which to be delivered. This is where our health service has actually gone since we have gone into these regional health authorities boards.

My understanding is that expired drugs are also coming into the country. I want the hon. Minister to take note of that. It comes from a very authentic source that expired drugs are coming into the country by certain agencies that are authorized to bring drugs into the country on behalf of the Ministry of Health. Expired drugs which the big metropolitan countries no longer want are dumped in this country.

**Sen. Huggins:** Mr. President, I rise on two points of order. Firstly, I think the Senator is being irrelevant from the point of view of what is being debated here this afternoon.

Secondly, the Senator is making certain accusations and unless she has proof of what she is saying, I ask that she withdraw the statement that the Government is bringing expired drugs into the country. That is a serious allegation.

**Mr. President:** The first point of order is sustained. The Senator really should not go into all the ramifications of the operations of the various institutions under the Ministry of Health. Remember that the Regional Health Authorities Bill was passed in this session. This is the twin bill that was passed to delegate authority which is being repealed. I ask the Senator to stick to the Bill that is before the Senate.

Insofar as the other accusations are concerned, if the Senator is making points that are really derogatory or detrimental to the health authorities, she should have some sort of proof to substantiate what she is saying. I cannot force her to do it—she has freedom of speech—but normally when these serious accusations are made, the Senator should be responsible enough to provide something to substantiate what she is saying.

**Sen. C. Mahadeo:** Mr. President, I bow to your ruling but, as you rightly mentioned, I am not bound or compelled at this time, as the service commission is not compelled to delegate. Because of this analogy I shall continue. It is not that I have great proof as to accusations being made; it is not accusations made but things that have been said by members of the public that I am picking up on their behalf. While they are not able to air them in this august Chamber, they are hoping that I might be able to do that for them so that it gets to the ears of the

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competent authority—in this case, the hon. Minister of Health—if he has not heard it before. This is precisely the reason I have brought it before this honourable Senate. It is not any spurious accusation or allegation that I intended. I hope that the hon. Minister takes it in the spirit in which I have brought it out, so that he can look into it.

As the Minister of Health rightly mentioned, the policy has not changed. I appreciate that. He said that it was some grammatical error which was sought to be corrected. The hon. Attorney General also said that it was a grammatical error that was sought to be corrected. I am yet to be told what is this special grammatical construction that is flawed. We have not yet heard from the other side where in the Constitution (Amdt.) (No. 2) Bill, which looks very innocent really, in just about a page and a half, is the flawed grammatical construction which is sought to be corrected by Government. If we could get that, we would be able to know where we are. I took down the words of the hon. Minister of Health and the hon. Attorney General when both these gentlemen mentioned what was being sought to be done. If it is only a grammatical error in construction that might seek to make us misunderstand the whole concept of the idea behind this Bill, why not leave it as it is and leave the inherent powers that are there under the Constitution to the Public Service Commission, as the hon. Attorney General rightly pointed out, as are there to be delegated whenever they so feel? Why not leave them as is?

If I remember, the hon. Attorney General, when he was doing something else on the Constitution last year, mentioned that the Constitution is not interred in mortar and it can be changed. So that we are not averse to that concept of changing certain parts of the Constitution which we are allowed under a different section of the Constitution.

As Sen. Persad-Bissessar alluded to, these things have been passed on historically from time immemorial, so that we ought to keep these checks and balances in place so that not only people in the health sector but throughout the public service will be protected by the various service commissions that govern the terms and conditions of their working life. This is all we are seeking to preserve.

**4.10 p.m.**

I would be the last person to say do not change something if I know that it is going to be for the welfare of the public sector workers. But we have to make sure that for posterity, for the time being—as I said, our present Minister of Health, a

genial person, will not—how shall I say it—take, I hope, any very serious sidelines. But what happens if there is a change of Government and we get another Minister of Health who may be very temperamental?

So we must not go into that cement and mortar situation and crack it wide open for any sort of self-service situation. One of my colleagues on the Independent Benches alluded to something else earlier in his contribution. It was very saddening to hear, coming from very high up in Government, as reported in the news media—if we are to take the reports in the news media as being correct, both grammatically and otherwise—that service commissions have outlived their usefulness. In other words, they have become obsolete and ought to be, perhaps, disbanded.

This is the reason many of us are so concerned and worried, and I believe the greater part of the population of Trinidad and Tobago. Because these checks and balances, they think, as we do also, will not be preserved to our public sector officers. For this very reason we want to be assured that whatever is done this evening in the Senate, when we get out of here at the end of this term, we will not say we have subscribed to an animal with ten feet and four pairs of ears that cannot be tolerated by people of Trinidad and Tobago. This is what we are concerned about at this point.

So that in spite of the laughter and the chuckles—

**Hon. Senator:** Disrespect!

**Sen. C. Mahadeo:** I will not say it is disrespect. I would believe that it is a bit of thoughtlessness, because I have passed the stage of disrespect. *[Interruption]* My irrelevance is subject to censure by the hon. President of the Senate and not by the hon. Minister of National Security. So please be aware of that, thank you very much and please be guided accordingly.

As I said, these two main areas of concern remain with me as my problems and I do wish that the hon. Minister of Health might be able to straighten out, as well as the hon. Attorney General, the flawed grammatical construction, exactly where it is and what, so that we know what we are looking at.

The hon. Minister knows that I spoke about—I do not want to repeat that aspect of it because it might bring some unpleasantness, but he did say that if there were any politically motivated appointees, he was going to see that they were fired, as I said, summarily. Again, it showed where he had the power last year when we were debating that Bill but he does not have it this evening when the twin Bill is being debated.

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So please clear up that aspect for me. I thank you very much for allowing me to make my contribution.

**The Attorney General and Minister of Legal Affairs (Hon. Keith Sobion):** Mr. President, when I moved the second reading of this Bill, I was very brief, for the reason that I indicated. There was no policy change to that which is contained in Act No. 30 of 1994 which we were seeking to repeal. In fact, when I look at the *Hansard* report of that debate in December, 1994, I find it somehow difficult to measure those comments with some of the comments which I heard today. For instance, it was said by Sen. Merritt on December 13, 1994 in relation to this matter, that:

"The new subsection (d) empowers the Public Service Commission to delegate the above mentioned functions and powers to the boards of the regional health authorities. This seems to be a practical amendment aimed at decentralizing the personnel functions of the health service, and would be in keeping with the spirit of the Act."

From the Independent Benches, the statement was made, quite simply and quite differently from that which I heard today:

"Mr. President, I rise to support both Bills as piloted by the hon. Minister."

As my colleague, the Minister of Health observed, we seem not to have very long memories in some of these matters.

The Bill which was moved in December 1994 and which was passed in this Senate—and whilst I am not saying that one does not reserve the right to reflect upon what one may have done—I thought it markedly strange that there were different views being expressed today on a Bill where the policy is essentially the same in every material aspect and it was merely a structural change in the way the clause was presented, as pointed out by some of the legal experts who had looked at this matter. The Government, as I said in the introduction, had conflicting views, but thought that it was in the interest of all that the Bill should be re-introduced to make it quite clear exactly what the policy position was.

A matter which has entertained us for most of this afternoon seemed to have to do with the question of delegation and understanding the concept of delegation. I am certain that Senators would have been grateful for the review of the constitutional history of service commissions, as outlined by Sen. Persad-Bissessar. Whilst it was not strictly relevant to the Bill—and I am being generous in framing it in that way—I think that what we missed in that analysis is the

question of what are our present constitutional arrangements. I think if one addresses the existing constitutional arrangements, some of the fears which have been expressed would probably not have been expressed.

On the question of delegation, there must be an expressed power in the Constitution for the person with the authority to delegate. Section 127 of the Constitution makes it quite clear that the commissions in respect of certain specified entities can delegate their powers. It is a determination that is made by the commissions and left up to the commissions. The extent to which they exercise that discretion is also left up to the commissions. It is not that every power contained in section 127 would be delegated. It is not that all those powers of the commission are automatically transferred to any other entity; it means that the commissions in their own deliberate judgment can determine which, if any, of their powers they ought to delegate.

I think the second point that ought to be made on delegation has to do with the control and there are probably two or three aspects of control that need to be emphasized and underlined. One, the power to delegate includes within it, if one looks at the Interpretation Act, the power to revoke that delegation. So it is always within the purview of the commissions. I think I should also underline, in relation to the first point, that it is not a 'taking away' of the powers of the commission; it is permitting the commission to give those powers 'on loan' to another entity and it includes with it the right to revoke that delegation.

**4.20 p.m.**

Quite simply, we are confirming what we did in December 1994, giving the commission the power to delegate to the regional health authorities, and included in that power to delegate is the extent to which the delegation should take place and the reserved right to revoke that delegation if at any time the commission thinks fit.

Much has been said, and I think Sen. Persad-Bissessar repeated the statements of Sen. Wade Mark about delegating to—as Sen. Wade Mark put it—an alien entity. Much concern has been expressed about the fact that under the existing section 127 the persons to whom the commissions can delegate are persons who fall within the purview of the commission. I know of no rule of law which says that a delegate must be under the control of the person delegating, save and except in the manner in which that delegated power is exercised.

There need not be any other kind of formal link or control for a delegation to be a proper delegation, or for a delegate to be a proper delegate. Where there must

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be control is that the delegate, in the exercise of that power, must exercise it within the framework in which the person delegating is able to exercise. That is where the control is. The control is over the exercise of the delegated power, not a control over the delegate.

The rules and regulations of the Public Service Commission form part of the terms and conditions of public servants. Therefore, in the exercise of the power, whether in its original state, or whether in its delegated state, must be exercised in accordance with those rules and regulations. If a delegate fails to do that, that would be a good ground for revocation of the delegated power.

More importantly—and our constitutional historian, as I said, was a little off the mark in that, whilst what has happened in the 1950s and 1960s has some relevance, particularly, for academic purposes—I think any analysis of the power of delegation in this Bill would not be complete without reference to section 132. Section 132 says quite simply that—

"(1) An appeal shall lie to the Public Service Appeal Board from any decision of a Service Commission, or of any person to whom the powers of the Commission have been delegated..."

Quite apart from the control which the commission has in permitting the delegation to continue or revoking it, there is the additional control for the 10,000 public servants in that their right of appeal to the independent Public Service Appeal Board remains firmly in place. Any attempt to exercise the powers of the commission delegated to the regional health authorities in a manner outside the scope of the commission or outside the scope of the contract of service of the public servants would be subject to review by the Public Service Appeal Board.

Mr. President, I ask, where are the demons that have been identified by some of the Senators sitting on the opposite benches?

**Sen. W. Mark:** Mr. President, can I get some clarification? What guarantees do we have that this private body corporate would be compelled by law to follow all the rules and regulations stipulated by the Public Service Commission? In other words, what guarantees do we have, as a Parliament, that these people would not *[Interruption]*

**Hon. K. Sobion:** Mr. President, in the exercise of its delegated power, that delegate can only properly and legally act within the framework of the rules and regulations which the original holder of the power can act. It can only act in accordance with those guidelines. If they were to act outside of those guidelines,



it can be subject to challenges either in the regular courts or subject to challenge by virtue of section 132 of the Constitution.

If an individual has the right to be heard on a transfer and a delegate chooses to exercise that power without giving the right to be heard, it is a matter which can be challenged in the regular courts of law and also under the appeals procedure.

Mr. President, the guarantee is in the law and in the Constitution itself.

**Sen. W. Mark:** Mr. President, could the hon. Attorney General tell this Parliament what would happen to this whole arrangement if the PSC refuses to delegate its authority to the RHA?

**Hon. K. Sobion:** Mr. President, I respect the independence of the service commissions, therefore, I do not intend to speculate, particularly at this time when we are debating this Bill, as to what would happen if some speculative event takes place.

The point of fact is that, as has been observed by Senators opposite, this is a practical amendment which would do much to improve the operations of the regional health authorities. It is within the power of the Public Service Commission to determine whether or not they ought to delegate. We, as a responsible Government, did not attempt to second-guess what an independent service commission would or would not do, but, what we do appreciate is that as a responsible independent body, if they see it fit to allow a delegation, it would be because they recognize that a delegation in these circumstances where the RHAs would be in direct control of the public servants, would be in the best interest of our health service and our country generally.

I thought it was important to clarify these issues insofar as they relate to delegation, because I think the amount of hysteria that arose out of Sen. Wade Mark's mouthings about Government control and totalitarianism really does not accord with the reality of the legislation which is before us and it is clearly a distortion meant only to be sensational.

What we have here is a serious effort to attempt to ensure that the regional health authorities, if the Public Service Commission is so minded, can operate in a way where it would be more effective in discharging its responsibility to citizens of Trinidad and Tobago.

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Mr. President, I am happy to have been asked by my colleague, the Minister of Health, to raise this Bill in this Senate this afternoon, therefore, I beg to move.

*Question put and agreed to.*

*Bill accordingly read a second time.*

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

**4.30 p.m.**

*Senate in committee.*

*Clauses 1 to 4 ordered to stand part of the Bill.*

*Senate resumed.*

*Bill reported without amendment.*

*Question put, That the Bill be now read the third time.*

*The Senate divided: Ayes: 22 Noes: 6*

**AYES**

Saith, Hon. Dr. L.

Huggins, Hon. R.

Barnes, Hon. B.

Sen. The Hon. Yuille-Williams, J.

Draper, Hon. G.

Robinson-Regis, Hon. C.

Calender, S.

Mark, A.

Ojah-Maharaj, D.

Elder, Mrs. J.

Rahael, J.

Gosine, Pundit R.

Maloney, A.

Nanga, J.

Mansoor, M.

Spence, Prof. J.

Rooks, J.

Mahabir-Wyatt, Mrs. D.

Ali, H.

Daly, M.

Dean, E.

Mahadeo, Miss C.

**NOES**

Mark, W.

Capildeo, S.

Merritt, Miss C.

Hosein, M.

Barrack, J.

Persad-Bissessar, Mrs. K.

*Sen. Rev. D. Teelucksingh abstained.*

*Question agreed to.*

*Bill accordingly read the third time and passed.*

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

**5.02 p.m.:** *Sitting resumed.*

**FIREARMS (AMDT.) BILL**

*Order for second reading read.*

**The Minister of National Security (Sen. The Hon. Russell Huggins):** Mr. President, I beg to move,

That a Bill to amend the Firearms Act, Chap. 16:01, be read a second time.

Thank you for the indulgence in awaiting the return of the Opposition Senators.

The purpose of this Bill is fourfold. It seeks, in effect, to fulfill the following objectives:

- (1) to increase the penalties which at present attach to specific offences in respect of firearms and ammunition;
- (2) to establish an appeal board to be known as the Firearms Appeal Board to hear and determine appeals from decisions of the Commissioner of Police under sections 17 and 21 of the Firearms Act;
- (3) to establish a new procedure for lodging with the police firearms and ammunition in the possession of pleasure craft visitors;
- (4) to include as a further category of persons authorized to have in their possession a prohibited weapon or authorized to purchase, acquire or to have firearms or ammunition in their possession under sections 6 and 7 of the Firearms Act, respectively, the Director of the Trinidad and Tobago Forensic Centre and officers designated by him.

Mr. President, I shall take the Senate through the Bill clause by clause.

Clause 1 indicates the short title of the Bill and clause 2 says that reference to the Act in this Bill is reference to the Firearms Act.

Clause 3 seeks to amend section 6(2) of the Act, first to provide for the inclusion of the Director of the Trinidad and Tobago Forensic Science Centre or any scientific officer so designated by him as a further category—

**Sen. Mahabir-Wyatt:** I wonder if the Minister would do us the favour of reminding us what prohibited weapons are. I know it has come up before, but we are having problems on the Independent Benches.

**Sen. The Hon. R. Huggins:** This is defined in the legislation. I will come to it eventually.

Clause 4 contains a corresponding amendment to section 7(1) of the Act to exempt the Director of the Forensic Science Centre or officers designated by him from the provisions of section 6(1) of the Act. Section 6(1) of the Act provides that a person may not have in his possession any prohibited weapon unless he is acting in the capacity of a police officer, a member of the defence force, a customs officer or a prison officer.

"Prohibited weapons" under the Act is defined to include, among other items, artillery or automatic weapons.

Section 7(1) further exempts different classes of persons from the requirements of section 6(1) which prohibits persons from purchasing, acquiring

or having in their possession a firearm or ammunition without a firearm user's licence.

The necessity for this amendment has arisen largely as a result of the day-to-day operations of the Forensic Science Centre. As you are aware, this centre was established in 1980 to provide forensic services to, in the main, government agencies charged with the responsibility of investigating crime, law enforcement and the administration of justice.

One of the major services offered by the Forensic Science Centre is the examination of firearms and ammunition, in instances where the discharge or possession of these articles may be relevant to enable a charge to be made against someone for the commission of an offence under the Act or otherwise, or in a particular court matter. At times it is required that these scientific officers take the weapon from the centre to the external ranges in order to carry out ballistics tests, as well as discharge these weapons, probably at indoor ranges. One of the problems which this amendment is seeking to cure is a situation where a scientific officer is off the premises with a weapon in his possession, for the purpose of carrying out ballistics tests, and he is accosted by a police officer and asked to produce a firearm user's licence.

#### **5.10 p.m.**

It is not as impossible as it may seem and in order to avoid the kind of embarrassment that would occur by virtue of such a situation, we felt that it was necessary to pass this amendment.

Clauses 3(b), 5 and 8 of the Bill seek to increase the fines or prison sentences contained in sections 6(3) and (4), 15(3) and 31(3) respectively of the Firearms Act. The purpose which this amendment seeks to achieve, in augmenting the severity of fines or prison sentences under the Act, is to provide a further deterrent or disincentive to persons who may be inclined to commit an act in breach of the Firearms Act. The relevant offences relate to:

- (1) The purchase, acquisition or possession of a firearm or ammunition, or to the possession of a prohibited weapon under section 6.
- (2) The manufacture of any firearm or ammunition by persons other than a licensed gunsmith under section 15.
- (3) The importation of firearms or ammunition into Trinidad and Tobago under section 31.

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Mr. President, crime statistics show that 2,928 offences involving the use of firearms were committed during the period 1992 to March 1995. Further, over the same period, 1,961 charges were laid by the police against persons for illegal possession of firearms or ammunition and 967 charges against persons for serious offences committed with unlicensed firearms.

It is of increasing concern to the Government that a large number of these unlicensed firearms in circulation in this country are used in the commission of offences, and this has shown a marked proliferation over the past three years. The amendment in question is being tabled here today in an effort to curb this kind of activity by the introduction of stiffer penalties.

Clause 6 of the Bill seeks to amend the Act so as to give a person aggrieved by a decision of the Commissioner of Police, with respect to the issue or revocation of a licence, certificate or permit under sections 17 and 21 respectively, the right to appeal that decision to an appeal board.

Clause 7 of the Bill establishes a Firearms Appeal Board to hear and determine such appeals. This clause proceeds further to describe the composition of the board; the criteria to be used to determine membership of the board; the terms and conditions of appointment of such members—such appointments to be for a period of three years—and the revocation of such appointments; the procedure to be invoked in hearing and determining an appeal; and finally, the staff which may be employed to assist in carrying out the functions of the board.

**Sen. Daly:** Mr. President, I wonder whether the Minister would indicate whether there are any written criteria or guidelines concerning the issue of revocation of firearm licences; either in existence at present and used by the Commissioner of Police or proposed for the Firearms Appeal Board?

**Sen. The Hon. R. Huggins:** Mr. President, I will deal with that in due course.

A brief review of the factors which have influenced the introduction of this amendment would reveal that applications may be made under section 17 of the Act to the Commissioner of Police for a firearm dealer's licence, a firearm user's licence, a firearm disposal permit, a firearm import permit, and under section 18 of the Act a firearm user's (employees) certificate.

The grant of such licences, permits and certificates is deemed to be in the sole discretion of the commissioner. The criteria to be employed by the commissioner in arriving at a decision in respect of applications for a firearm import permit or firearm user's licence or the firearm user's (employees) certificate are laid down in section 17(4) of the Act. These include:

- (1) That the applicant should show proper justification for the application, in that he should have a good reason for importing, purchasing, acquiring or having in his possession the firearm or ammunition in respect of which the application is made.
- (2) That the applicant must not be of an intemperate nature or unsound mind.
- (3) That the applicant must not for any reason be unfit to be entrusted with a firearm or ammunition.

In exercising the authority given to him under section 17, particularly in respect of firearm user's licences, the Commissioner of Police has advised that for an application to be given favourable consideration, the applicant must establish that he has some interest to protect or to pursue and that the firearm is needed in order to do so.

Widespread concern has been expressed by a number of persons, especially persons involved in the business sector of our community, who it would appear experience great difficulty in establishing a sufficient need for the grant of a firearm to them. This concern stems largely, I am informed, Mr. President, from the population's perception that police assistance may not be so easily accessible when crimes are being committed against them.

Whilst this Government feels assured that the commissioner, in exercising his judgment or arriving at a decision, would act with the necessary degree of astuteness, the Government is also of the view that in measuring the concern expressed by the population at large, it is in the best interest that an appeal tribunal be established to adjudicate on the issue or on appeal of refusal to approve, or revocation of a licence and in this way, to put paid to any fears of prejudice or impartiality that may be expressed by an applicant.

Records reveal that over the last three years, to date, there have been 5,328 applications for firearm user's licences, out of which 1,440 were refused. One of the reasons, by way of justification for establishing this appeal tribunal is, as I said earlier, the grant or refusal of a firearm user's licence which is in the sole discretion of the commissioner. When the commissioner refuses the application, requests are made to the Minister of National Security for him to intervene. Requests are made by members of the public, and quite often, by Members of Parliament calling upon the Minister to correct this obvious act of discrimination as to why a person was not given a firearm user's licence.

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Under the Firearms Act, the Minister of National Security has absolutely no power to interfere with the commissioner's decision. I would go further to say that I do not believe any Minister should have any say insofar as the grant of a firearm user's licence is concerned, hence the reason for the proposal that there should be an appeal tribunal established for the purposes of determining whether the commissioner was justified in refusing an application or whether the application was in order.

**Sen. Mahadeo:** Mr. President, I am not trying to annoy the hon. Minister, I am just trying to get some clarification. I am very happy that he is on this trend because at the moment no reasons are given to applicants on the refusal to grant a new licence or to reinstate ones already there. We would like to know whether, when applicants go before this review tribunal if the commissioner would be expected to give reasons for his refusal so that that could be embedded into the new exercise.

**Sen. The Hon. R. Huggins:** Mr. President, I take the point.

Normally when such applications are made to the Minister of National Security to enquire into the refusal of a firearm user's licence, it is commonplace for the Minister of National Security to write to the commissioner asking him to give reasons for the refusal of the application. I know it is a fact that when communication is made between the commissioner and the applicant, the simple reply is that, "your application has been refused", and any attempt to get a reason is strongly denied.

I must say that, to the request of the minister, reasons are normally forwarded and the basic reason given is "having regard to all of the circumstances it is felt that this person has not made a justifiable case for having a firearm user's licence".

**5.20 p.m.**

I believe that these are circumstances that the appeal board will then have to enquire into and the commissioner will have to give his reasons in greater detail. As you will see, the appeal board will have the authority to reverse the decision of the commissioner and to grant the firearm user's licence.

**Sen. Rooks:** Does the commissioner have the authority to pass that decision on to somebody else in his organization, rather than make the decision himself?

**Sen. The Hon. R. Huggins:** Not in accordance with the legislation, Mr. President. The legislation requires that all applications for a firearm user's licence, as well as



for any other licence or certificate, to be issued under the Firearms Act be made to the Commissioner of Police. The procedure is that the Commissioner of Police refers the application to the district police station, that is, in the district in which the applicant lives. The police in that district will then carry out investigations. In the application a person is required to state the reasons for which he wants this firearm user's licence. The reasons given are usually to protect property and self. The investigation really revolves around what circumstances have arisen which would prompt someone to want to own a firearm to protect property and self. The reasons normally given are that over the past six months they have had five robberies and the police never responded, or they carry a great amount of cash because they own businesses or, in some cases—and this may sound funny—some people want the firearm to kill rats on their premises, and to shoot manico. The district police station then investigates the reasons put forward by the applicant as to why he wants to have a firearm user's licence. A recommendation is then written by the officer in charge of the district police station and it is referred back to the commissioner's office and the decision is really made on the basis of the recommendation made by the senior police officer. It is the commissioner who then either communicates with the applicant saying whether the application is granted or refused. It is only at that point in time that if it is granted, then a person is required to pay \$150.00 to get his firearm user's licence. The licence is renewable annually at whatever the prescribed fee is at the point in time.

Mr. President, clause 9 of the Bill seeks to amend section 32 of the Act to allow upon disembarkation, for the lodging of any firearm or ammunition in the possession of a pleasure craft visitor with a customs officer, for storage at the Chaguaramas port facility, where the visitor intends to stay in Trinidad and Tobago for a period short of four weeks. However, where his stay is intended to exceed four weeks, such firearms or ammunition is to be delivered by the customs officer to the nearest police station, which, in this case, is the Carenage Police Station.

This proposed amendment is one of a series of recommendations contained in the report of the committee that was convened by the Minister of Trade, Industry and Tourism to consider the development of the visiting pleasure craft trade and recommend solutions for the constraints which ail that industry at present. The Government recognizes that the past three years have seen an unprecedented growth in the visiting pleasure craft industry. That was due mainly to the upgrading of the local repair and maintenance facilities and the quality of

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telecommunications services available in this country. Moreover, in recent times, pleasure craft visitors have come to recognize Trinidad and Tobago as a relatively safe haven from hurricanes; its people to be hospitable and the country to possess a unique culture.

The committee consulted with the Yachting Associations and other interested private sector parties, as well as the Police, Customs and Immigration, the Maritime Services Division, the Tourism Development Authority, the Chaguaramas Development Authority and the National Business Advisory Board, in arriving at its recommendations.

In reviewing the present system of storage and retrieval of firearms and ammunition, the committee concluded that the system of taking the items to the Carenage Police Station, by a customs officer on the disembarkation of a pleasure craft visitor, would become inefficient and onerous on customs personnel, due to the steady growth of the trade. Hence the committee arrived at a recommendation that a facility should be installed at the Chaguaramas port for the purpose of storing firearms, lodged with customs officers, by pleasure craft visitors on short stay, that is, for periods not exceeding four weeks. Cabinet accepted this recommendation which further suggested that the present system should continue to obtain where such stays are in excess of four weeks. Mr. President, the facility has already been established and there are now at the Chaguaramas port facility, Customs and Immigration Offices, so this amendment is just to facilitate the implementation of this recommendation of the committee.

In closing, I wish to point out to Members of this Senate that some of the amendments tabled here today have resulted from much public lobbying for these changes. For example, the need to establish the Firearms Appeal Board, as well as the increase in penalty for firearms offences. However, this Government's approach was one of consideration and consultation, I seem to recall some of the lobbying emanated here back in 1992. This Government's approach was really one of consideration and consultation prior to the drafting of the appropriate legislation.

Mr. President, I, therefore, beg to move.

*Question proposed.*

**Sen. Muntaz Hosein:** Mr. President, it is quite pleasing to me, Sir, to have this Firearms (Amdt.) Bill brought before the Senate, especially since I moved a Motion in March, 1993 regarding the issuance of licences. It pleases me to see

that part of the recommendation which I suggested on that occasion forms part of the amendment before us today.

**5.30 p.m.**

Mr. President, there are some areas of concern on this side of the Senate, and I would like to draw your attention to the amended section 15. Clause 5(a) states:

"...imprisonment for ten years and to a fine ..."

The gist of it is that the Bill seeks to impose heavier penalties and fines on people who are found in possession of an illegal weapon and ammunition.

We, on this side, have no problem with regard to harsher penalties because we know the realities, and the Minister, in his presentation, indicated some statistics to show what is happening in the society with regard to unlicensed firearms. We should examine who are the people who buy hot guns. It is not only the element that is committing the crime in this country. We have no sympathy for bandits and criminals with regard to that. There are concerned and frightened citizens of Trinidad and Tobago who feel they need to protect their property and family. They, too, revert to buying hot guns and ammunition.

The Minister indicated that there are some 5,000 applications. There are many more who have been discouraged from applying because of the track record. Only today the Minister was able to tell us the criterion for the issuance of these applications. The public never knew what the criterion was. If the criterion was known to the public at large, many applications may not have been brought to the commissioner and more people who are in need of a firearm would have been encouraged to come forward.

We have to go a little beyond that. We have to ask ourselves the question: Why would a law-abiding citizen in Trinidad and Tobago seek to buy an unlicensed hot gun knowing fully well that it is against the law? To do it, one has to come in contact with undesirable elements. The majority of people would not want to do that, so it changes hands before it gets to the rightful owner. It is a tremendous risk one is taking. To own a gun and to have it in one's home or on one's person is a tremendous responsibility. One of the popular places where people put their firearms, licensed or otherwise, when they go to bed at nights is, perhaps, the night draw on the bed head and it remains open for obvious reasons. I am told that some put it under the pillow. There is a danger because in many homes there are children and one can forget to lock the draw and remove the key and a child can find the gun and use it. The responsibility is very grave. We ask

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ourselves the question: Why would someone do all of that? Also, there is the added danger if people find out that one has a weapon, they would want to steal it. All these dangers are there. The reason is the state of the country as it is now—unemployment, breakdown of law and order, senseless violence, robberies and murders taking place with ominous regularity.

Mr. President, I put forward for consideration that the events which are taking place daily in our country are the reasons that cause law-abiding citizens who have been refused permission to get a licensed firearm to go out and buy one.

**Hon. Senator:** Is the hon. Senator encouraging that?

**Sen. M. Hosein:** They believe that the police service in Trinidad and Tobago, by and large, is incapable of protecting them in the manner in which they would like. Recently, I read in the newspaper about some part of the country where the police said that the only jeep which they have went into the garage about a month ago and they cannot respond to any calls for assistance. Mr. President, imagine you live in that area. This is not an isolated case that happens once in a blue moon; it happens all the time. That, given the situation with crime, frightens people to the point where they feel that they must protect their property and their family.

The Government has a responsibility for the security of our citizens and their properties, and unless it can demonstrate that it is doing this properly, it would be difficult to justify harsher penalties. We are in agreement with harsher penalties but, side by side, we would want to see that greater protection is being provided to the citizens.

Mr. President, let us go to the composition of the board in clause 7, the new section 22B. It states:

"The Board shall consist of -

- (a) the Chairman of the Complaints Authority, established under section 4 of the Police Complaints Authority Act, who shall be the Chairman;"

As far as I am aware, the Complaints Authority Bill has not been proclaimed, but we are putting that the chairman of the Appeals Board will be the chairman of the Complaints Authority. I wonder what is the delay in proclaiming the Police Complaints Authority Bill. We do not even know who will be the chairman. In the Minister's winding up, I would like him to clear the air for us in this Parliament as to why bills are passed and it takes such a long time before they are proclaimed. I, for one, do not know the reason. We would like to know what is the reason for the

long delay in proclaiming bills. Whose fault is it? Is it a case like the TTUTA cheques—you just cannot process more than so many per day?

**Sen. Huggins:** Mr. President, there is no need for the Bill to be proclaimed. The Act is in force.

**Sen. M. Hosein:** It has been proclaimed, then!

**Sen. Huggins:** The Act is in force and the board has been established.

**Sen. M. Hosein:** Mr. President, would the hon. Minister be kind enough, in his winding up, to tell us who is the chairman?

**5.40 p.m.**

It goes on:

"(b) two other members to be appointed by the President."

Why is the appointment of the board being done by the Cabinet? The history before this present Commissioner of Police is dismal with regard to the issuance of firearm licences. It was used as a political tool. We do not want a repeat of that. There were simply too many complaints.

**Sen. Huggins:** Is the Senator suggesting that the Cabinet appoint the commissioner?

**Sen. M. Hosein:** No, I am not suggesting that. I am saying that at one particular time when there was no appeal body that there was a collusion between the Executive and that particular body, the Police Commissioner—not this present commissioner—whereby only certain people were allowed to own firearms.

**Sen. Huggins:** Does he have proof of that?

**Sen. M. Hosein:** I will give it to him in good time. Do not worry. I am saying that if the Cabinet appoints the board, what is to prevent the same thing from happening again? You are going to have a board of people who are in league with the present regime and who will issue licences only to people for whom they wish to issue licences. Therefore, I am saying, if we want independence of the board, we want the President of the Republic of Trinidad and Tobago, after consultation with the Prime Minister and the Leader of the Opposition, to appoint the board.

**Sen. Daly:** Is it the intention of this amendment that the consultation would be made public as has been done recently?

**Sen. M. Hosein:** I cannot speak for anybody else but myself. You see, this is a very sensitive matter. *[Interruption]*.

**Mr. President:** Get on with the debate, please.

**Sen. M. Hosein:** You see, Mr. President, the regime in power uses every living trick in the book to try to stay in power. They use the state machinery. To get a simple dehumanizing "10-days" work, you have to join the PNM, and I am saying that they are going to use this same mechanism for political purposes.

**Sen. Rahael:** Mr. President, on a point of order. Does the hon. Senator have any evidence that anybody has to join the PNM in order to get a "10-days" or any such thing? If not, I will ask him to withdraw it.

**Mr. President:** You can be sure that there are Senators who can handle what he is saying in their reply to him.

**Sen. M. Hosein:** You see, it is important, the issuance of firearms must be dealt with in a rational, even-handed manner. If that is left to the Cabinet of Trinidad and Tobago to appoint these people, I am saying categorically that will not happen. We will not get that at all. To understand that, you have to understand what goes on in this country. To understand that people are held to ransom with water, you would understand what is going on in this country. This is the reason that we are going to fight for equity in this country. Come what may, and regardless of what the other side thinks, we are going to continue to fight for equity.

You have a committee of three. I think with a committee of three you may be taking a risk, because assuming that—and which happens all the time in most of these committees, you will have people absent. When one person is absent you only have two and to get a majority decision there would be very difficult. Therefore, in order to expedite matters—because if there are already about 5,000 applications, and many more will come up, the committee will have quite a lot of work—I am suggesting we should make it five instead of three so that we would be able, at all times, to carry on the work of the committee.

I would now like to deal with the revocation of appointment under clause 22G(c) which states:

"22G. The President may revoke the appointment of a member of the Board where he is satisfied that the member -

(c) has at any time been convicted of an offence."

I wonder if we are not going a bit too wide here. Littering could be an offence. Must that exclude a person from sitting on this appeal board because at some time

he may have been found littering? Or he may be demonstrating without permission of some kind? Does an offence like that cause him not to be able to sit on that board? I do not think so. Perhaps we may want to say, criminal offence and offences of that nature, but not these minor offences. There may be very upright citizens in the country who, when they were, perhaps, 16 years old, might have used obscene language and a policeman might have been there and put a charge on him for that. I do not think we should do that. I am asking the Minister to reconsider this and make a change there. Maintenance might be an offence as well and there may be circumstances why that may have occurred.

The list is long and I do not want to go through it all. I simply want to make the point that these trivial matters ought not to be brought into this. I can understand you saying, criminal offence and I think they should give consideration to that. We should be a bit more specific.

When we look at clause 22H(2), it reads:

"The Board shall hear applications in camera and may permit an applicant or his representative to appear before the Board."

I wonder why it is not possible for both the representative and the applicant to appear. Suppose the applicant wants to be there as well but he wants to have a representative with him? Is there any problem in allowing both of them to be there?

**Hon. Senator:** The applicant has a right to be there.

**Sen. M. Hosein:** The clause says, "or his" not "and/or."

**Sen. Huggins:** It means "and/or".

**Sen. M. Hosein:** If that is what it means, then I want it spelt out clearly.

**5.50 p.m.**

All right, if you say so.

Staff: Clause 22I states—

"The Board with the approval of the Prime Minister may by regulations or otherwise confer powers and impose duties on any public officer or any authority of the Government of Trinidad and Tobago to exercise the functions of the Board."

It seems to me that the functions of the board is to hear and determine appeals of the decisions of the Commissioner of Police. What is stated under staff is not very

clear to me, and I would ask that the Minister explain what this means when he is winding up the debate.

It says—

"The Board with the approval of the Prime Minister may by regulations..."

Of course, the question of regulations is always a sore point in this Senate—regulations which we know nothing about.

"... or otherwise confer powers and impose duties on any public officer or any authority of the Government of Trinidad and Tobago to exercise the functions of the Board."

It appears to me that this is a situation whereby the board could be bypassed and another person appointed to exercise the functions. That is how it is reading to me. This is ambiguous and I wish the Minister would clarify that because it is not clear at all.

Clause 9, amending section 32 states:

- "(3) A pleasure craft visitor shall upon disembarking in Trinidad and Tobago lodge any firearm or ammunition in his possession with the officer of customs at the Chaguaramas port facility.
- (4) Where the stay of the pleasure craft visitor is for a period exceeding four weeks, an officer of customs shall deliver the firearm or ammunition referred to in subsection (3) to the Carenage Police Station."

I ask the Minister: What is the latest condition of the storage areas in police stations in Trinidad and Tobago? We read of a few instances of property being removed from police custody and found to be missing, including firearms. I would feel a bit more comfortable if the Minister, when he is winding up, can assure us that this has been rectified, that all is well and there is no problem.

I ask the question: Why only at Chaguaramas? Why is this Bill referring to Chaguaramas only? Why not Tobago? Many pleasure craft visitors prefer to sail from Grenada to Tobago and stay there, then go onwards from there. My understanding is that by coming to Trinidad, it is more difficult to sail from Trinidad to Tobago. Of course, there are many good reasons for going to Tobago; the serenity of the Tobago environment is there. It is testimony.

I do not know what the position is in Tobago. I tried, but was not able to find out whether there are facilities there. Think of what we would do to the tourism drive if pleasure craft were able to go straight to Tobago without having to come



to Trinidad. It would help and there would be less difficulty for the people coming down.

Even right here in Chaguaramas we have our problems. I am made to understand, from my investigations, that many pleasure craft sail into Chaguaramas undetected by the customs or the coast guard, and are only detected days after. Who knows what may have taken place before they are detected; arms, ammunition or drugs may have been transported by those craft. It is a serious matter.

I shudder to think what is happening in the less protected areas of our coastline if that is now happening at Chaguaramas. A check with the yachting association there indicated that in many instances it can be four or five days before they are aware that a craft is using their facilities, and it is only then the customs and coast guard are informed. Although my understanding is that the coast guard has been doing a pretty good job there, it seems to me that more has to be done under the circumstances. Too many are slipping through.

In passing, I want to ask the Minister if he is aware that the ambassador of one of the leading coke-exporting countries leased a property on the water front? Is there a reason for concern over such a transaction? If so, what is being done about it? I would pass on further details to the Minister as I get them.

On March 23, 1993, as I indicated, I brought a Motion on the Adjournment of the House on the issuance of firearms licences which was supported in the press by many private citizens. With your permission, Sir, I would quote a few excerpts of that debate from *Hansard*.

Mr. President, in part, what I was saying in 1993 is that—

"...the police are poorly armed, poorly housed and poorly equipped by way of vehicles to respond."

Now, after two years, Mr. President, this situation has not changed. Very little has changed in the country and to date, as far as crime is concerned, we are in a worse position. The vehicle position has changed slightly—I must admit that—but it is still far from what we expect to see.

In that same debate, I continued—

"Therefore, I ask, firstly, that the Minister make it absolutely clear what the criteria are for citizens to qualify for owning firearms."

*Firearms (Amdt.) Bill*  
[SEN. HOSEIN]

*Tuesday, May 02, 1995*

A matter which he addressed a little while ago. After two years, we are now hearing from the Minister what that criteria is. All the same, I am happy.

**6.00 p.m.**

The hon. Minister is missing the point. It is not for me but the public to be aware. He must publicize it so that people would know. I will quote again from that debate. It states:

"These steps are necessary and if one qualifies for such weapons and one is refused, there must be some mechanism for appeal to some authority."

I am very happy that this appeals committee is now before this Senate. It would make our side very happy if we can get the Government to make the necessary changes to make it work properly.

There are other factors that need to be looked at in the question of firearms. What is the mental competence of applicants of firearms user's licences? Is it not opportune for us at this time to insist on a drug test and a psychological evaluation test before issuing licences for people to own firearms? Another area to which I would like the Minister to pay attention is the question of training in the use of such firearms. There are many persons who own firearms and one would be surprised to know they do not even know how to use them. They have never fired it; in some cases it is over 20 years.

**Sen. Huggins:** When last did you fire yours?

**Sen. M. Hosein:** Mr. President, I just wish to assure the Minister that the movements and use of firearms should be kept completely secret. He should know better than to ask such a question. If he asks me privately I will tell him. I assure him that I will not speak publicly about that.

There are many holders of firearms and if one owns a firearm and does not know how to use it one could be in great danger. There might be persons who are 80 years old who own firearms and they have never fired them. If one day someone walks into their house and they fire them they might fall from the deafening sound of the gun. They can even fall from the click of the gun and the next thing is that they might be overcome and the thief would not only go with their jewellery, but also their firearm. It is important. It is not a trivial matter.

It is time to make it mandatory that prior to giving a licence for firearms, one must be able to ascertain that the person can use the firearm. There are many persons such as the police who can make some money out of that by running

some courses. The Rifle Association could be brought in. *[Interruption]* They do not have money, but now I am giving them ideas of how to make money, they laugh. It amazes me that when a Bill as this comes before the Senate and important concerns are brought, this is the kind of response from the other side. To whom the Gods wish to destroy they first make mad. *[Interruption]* Have you ever heard that monkey cannot see its own tail?

I also ask the Minister to consider seriously the use of mace by women for their safety and protection. There are many women who are already carrying mace illegally in their purses for the same reason which I gave earlier on. They feel forced to carry something to protect themselves. I do not think we should allow that. We should try to get them into the ambit of the law by legalizing it.

**Sen. Merritt:** So why gun for you and mace for women? *[Laughter]*

**Sen. M. Hosein:** There could be both. I think she was trying to rig me. It is a question of choice. I do not know many men who would go around with mace, although these days one never knows.

Finally, the law says that the firearm user's licence must be carried whenever one has one's firearm. The book is made of paper and every year they paste on a new licence. In a short while that becomes tattered and it is difficult to carry around because it would not fit properly in a wallet if one is a wallet user. I am suggesting that the Minister considers using laminated identification cards and do away with those old books. That would be easier to carry around.

With that I wish that the Minister would take into consideration all these very important suggestions which we have given and make this Bill one which can be easily passed by all of us today.

Thank you.

**Sen. Carol Mahadeo:** Mr. President, I have not got up here on my own volition, but I cannot disregard the request of the Leader of the Independent Benches. I had already closed up my papers and I was listening intently to Sen. Hosein. I was also hoping that at the end of his contribution it would have been winding up time for the hon. Minister of National Security, but my Leader came to me and said that he thought that the Independent Benches ought to make a contribution and I had to open my papers.

Unhappily, I had already indicated that this Bill is rather belated. I think that I said earlier on in a question before the tea break to the Hon. Minister, that we were hoping that this Firearms (Amdt.) Bill would be passed unanimously.

**6.10 p.m.**

I will now preface my remarks by asking the question, which I know the Minister has answered, as to the reasons not being given at all in the case of a refusal to grant a new licence or to reinstate one that has been taken away from an applicant or a user. He satisfied my mind when he gave the answer that this appeal board will properly deal with it with the Chairman and two other members. When Sen. Hosein asked what would happen when one member is absent, I said in my mind that the other two would make a quorum to deal with it.

I made notes of my own, but I shall not, at this point, look at them. I will look at the Bill and the two points that I underlined. I do think that it is a very good Bill considering the number of crimes committed by licensed and unlicensed firearms.

Clause 7, amending section 22C, under "Disqualification", states:

"(d) a person who holds or is acting in any public office or has held public office within a period of three years prior to the date of his appointment."

This applies to the disqualification of people to the board. This includes Senators and Members of the House of Representatives. The Bill goes on to state:

"22I. The Board with the approval of the Prime Minister may by regulations or otherwise confer powers and impose duties on any public officer or any authority of the Government of Trinidad and Tobago to exercise the functions of the Board."

To my mind there is a conflict of interest and of powers, in that clause 22C(d) states that a person who holds or is acting in any public office or has held public office within a period of three years is disqualified—

**Sen. Huggins:** To avoid any repetition of that point, I think in reproducing the Bill there was an omission. The provision was taken out of the Public Service Appeal provisions and the words "for the purpose of the" apparently have been omitted.

**Sen. C. Mahadeo:** This is what bothered me most. So that phrase will be put into it to give it the significance it really needs. Thank you very much. It now makes it much clearer, so I shall not flog that any further.

Without more ado, I do think it is a very good Bill. As I said it has come a little too late in time, but better late than never. I do give my wholehearted support to it.

**Sen. John Rooks:** Mr. President, I would like to make one addition to this Bill. I have been down several times to pistol ranges in the South and I see people who use handguns regularly and who still do not know how to handle them. I think it should be a requirement of getting one's firearms user's license (FUL) that you pass a test in handling guns. I am not talking about the police because, as I understand it, the police get basic training when they enter the force. However, after that they get no further training or updating. If they have not used their firearms for a year or more, they have no further training. There are firms around which give training in handling guns safely. I would like to suggest that as a necessity prior to getting one's firearms user's licence.

#### ARRANGEMENT OF BUSINESS

**Mr. President:** Before the Leader of Government Business moves the adjournment, there is some business on the Order Paper, three Private Bills to be exact. I crave your indulgence to deal with these matters. Let us put the question for the second reading of these Bills.

*Agreed to.*

#### VISHWANATH HINDU SOCIAL AND CULTURAL ORGANIZATION (INC'N) BILL

*Question put and agreed to,*

That a Bill to provide for the incorporation of the Vishwanath Hindu Social and Cultural Organization and for matters incidental thereto, be now read a second time.

*Bill accordingly read a second time.*

*Bill referred to a special select committee of the Senate chosen by the President as follows:* Sen. D. Ojah-Maharaj (Chairman), Sen. S. A. Maloney, Sen. Rev. D. Teelucksingh, Sen. J. Barrack.

#### SAN FRANCIQUE SPORTS, EDUCATIONAL AND CULTURAL COUNCIL (INC'N) BILL

*Question put and agreed to,*

That a Bill to provide for the incorporation of the San Francique Sports, Educational and Cultural Council of Trinidad and Tobago and for matters incidental thereto, be now read a second time.

*Bill accordingly read a second time.*

*San Francique (Inc'n) Bill*  
[SEN. MAHADEO]

*Tuesday, May 02, 1995*

*Bill referred to a special select committee of the Senate chose by the President as follows: Sen. J. Rahael (Chairman), Sen. D. Ojah-Maharaj, Sen. Rev. D. Teelucksingh, Sen. J. Barrack.*

**FLAMING WORD MINISTRY (INC'N) BILL**

**Sen. Wade Mark:** Mr. President, I beg to move,

That a Bill to provide for the incorporation of the Flaming Word Ministry and matters incidental thereto, be now read a second time.

This Bill originated in the House of Representatives. In that place a committee was appointed to consider the Bill and report its findings. The Committee held two meetings and examined the Bill clause by clause. No objection to the Bill was received. The Committee reported to the House of Representatives that the facts and allegations set forth in the Bill are true and correct and recommended that the Bill be allowed to proceed. The Bill is now before the Senate for its concurrence.

*Seconded by Sen. Surendranath Capildeo.*

*Question put and agreed to.*

*Bill accordingly read a second time.*

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

**6.20 p.m.**

*Senate in Committee.*

*Clauses 1 to 10 ordered to stand part of the Bill.*

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

*Senate resumed.*

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

*Motion made and question proposed, That the Senate do now adjourn to Tuesday, May 9, 1995 at 1.30 p.m. [Hon. L. Saith].*

*Question put and agreed to.*

*Senate adjourned accordingly.*

*Adjourned at 6.24 p.m.*