

Senators' Appointment

Thursday, July 20, 1995

SENATE

Thursday, July 20, 1995

The Senate met at 1.30 p.m.

PRAYERS

[MR. VICE-PRESIDENT in *the Chair*]

SENATORS' APPOINTMENT

Mr. Vice-President: Hon Senators, I have a letter from His Excellency the President appointing Mrs. Norma Lewis-Phillip to be a temporary Member of the Senate with immediate effect and continuing during the absence from Trinidad and Tobago of the President of the Senate, Sen. Joseph Emmanuel Carter.

I have also a letter from His Excellency appointing Mr. Verne Richards to be a temporary Senator with effect from July 20, 1995 and continuing during the period of illness of Sen. Wade Mark.

OATH OF ALLEGIANCE

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

MRS. KALAWATEE PERMANAND

(Death of)

Mr. Vice-President: Members of the Senate, I have also been informed that Mrs. Kalawatee Permanand, who served as an Opposition Senator during the period November 19, 1966 to January 23, 1970, has passed away. The Clerk of the Senate will convey the condolences of all Senators to the bereaved family.

ORAL ANSWER TO QUESTION

The following question stood on the Order Paper in the name of Sen. Martin Daly, SC:

Potential Investors

(Hong Kong)

39. Could the Minister of Trade and Industry state whether:

- (a) The Government of Trinidad and Tobago or any agency of Government has held discussions in Hong Kong or in Trinidad and Tobago with potential investors from Hong Kong?

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- (b) If the answer is in the affirmative, will the hon. Minister state:
- (i) who are the potential investors; and
 - (ii) whether or not these investors have been screened?

The Minister of Planning and Development (Sen. Dr. The Hon. Lenny Saith): Mr. Vice-President, I seek leave of the Senate to defer this question for one week.

Question, by leave, deferred.

CONSTITUTION (AMDT.) (NO. 3) BILL

Bill to amend the Constitution of Trinidad and Tobago [*The Attorney General and Minister of Legal Affairs*]; read the first time.

Motion made, That the next stage be taken forthwith. [Hon. K. Sobion]

Question put and agreed to.

STANDING ORDER 35(8)

(Ruling)

Mr. Vice-President: Hon. Senators, before the debate on this Bill begins, I want to draw the attention of all Senators to Standing Order 35(8). I will read it for those of you who do not have copies of your Standing Orders available. It says:

"The conduct of Her Majesty, Members of the Royal family, the Governor-General, the Governor, Members of the Senate or the House of Representatives, or of Judges or other persons engaged in the administration of justice shall not be raised except upon a substantive motion moved for the purpose; and in any amendment, question to a Minister, or debate on a motion dealing with any other subject any reference to the conduct of any such person as aforesaid shall be out of order."

I just wanted to refer Senators to that Standing Order.

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The Attorney General and Minister of Legal Affairs (Hon. Keith Sobion): Mr. Vice-President, I beg to move, that a Bill to amend the Constitution of Trinidad and Tobago, be now read a second time.

The Bill, Sir, seeks to amend the Constitution to provide for the vacation of the office of Speaker of the House of Representatives where a motion to that effect has been passed in the House, and for the procedure to be followed in those circumstances.

What the Bill seeks to do effectively is to provide an additional mechanism whereby the presiding officer of the other place would be required to vacate office.

1.40 p.m

However, if one considers what may be termed a broader purpose or if one gives it a more general look, one would see that what we are seeking to do by this measure, is to incorporate into the Constitution one of the more well-recognized conventions of the Constitution and put it in legislative form.

I say "one of the more well-recognized conventions of the Constitution," because if one considers the writings of some of the learned people in this area, and the practice adopted in countries which have a similar constitution to ours, or a constitution which derives from a similar source, one would see that the provision contained in this measure is a well-recognized and accepted constitutional convention.

I can refer to one authority for that proposition and that is the text called *The Office of Speaker* written by Phillip Laundry. Phillip Laundry is the Clerk Assistant to the Canadian Parliament and is the author and co-author of several texts relating to Parliament. Among them, an *Encyclopaedia of Parliament* which he co-authored, *The Office of Speaker*, the text to which I just referred, and *The Office of Speaker in the Parliaments of the Commonwealth* which is a more recent text and which analyzes the operations of the Speaker in 40 Commonwealth countries.

In that text, the following statement appears and I refer to page 102:

"The moving of a resolution of censure against the Chair is necessarily a distasteful procedure, but the right to do so is indispensable to the machinery of a free Parliament. Were such a resolution ever carried a Speaker would have no alternative but to resign—in fact, in these days, he would probably feel compelled to do so if the motion received the support of a substantial minority. He would find it difficult to fulfil the functions of the Chair knowing that he lacked the confidence of a sizeable body of opinion in the House."

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This is a convention which is well-recognized by all the authorities. Also, it is a provision which appears in many of the constitutions of the Commonwealth. What we are doing by this measure, is effectively giving legislative force to what is a well-recognized and established constitutional convention.

Over the last few weeks, the Parliament, and indeed the nation, has been traumatized in a certain specific way. My reading of that situation is that this trauma really springs from the fact that a convention, which as I say is well-recognized and well followed, has not been accepted as part of the tradition of the operations of our Parliament. Therefore, I propose to spend a few minutes dealing with the concept of conventions in the context of a written constitution.

One may very well ask: What really are these things called conventions? Again, if one turns to the learned authors who have written on this matter, one would see that there have been differing views, not only on the nature of conventions, but also on their applicability in certain circumstances. However, one would also see that there are certain clear conventions which have been accepted worldwide and particularly within the Commonwealth.

It may be instructive to again refer to the learned authorities on this matter in order to demonstrate the approaches which have been taken in dealing with the applicability of conventions, particularly in circumstances of written conventions. I refer to the text *Constitutional and Administrative Law* by Wade and Bradley, the 10th edition. At page 19, the authors have this to say:

"Constitutional writers have applied a wide variety of names to these rules: the positive morality of the constitution, the unwritten maxims of the constitution, and 'a whole system of political morality, a whole code of precepts for the guidance of public men.'"

Those are some of the terms that have been used to describe constitutional conventions. Dicey who was one of the foremost authorities in this area, says that:

"conventions, understandings, habits or practices which, though they may regulate the conduct of the several members of the sovereign power ... are not in reality laws at all since they are not enforced by the courts."

The concept of a convention is a practice which, though it may have the effect of being binding on persons, does not have the force of law. The authors continue:

"Most discussion of constitutional conventions has gone beyond description of conduct which is merely a customary practice and has suggested that conventions give rise to binding rules of conduct. John Mackintosh described a convention as 'a generally accepted political practice, usually with a record of successful applications or precedents;'"

Other authors have described the conventions as rules of constitutional behaviour which are considered to be binding by and upon those who operate the Constitution but which are not enforced by the law courts.

Again, one sees the concept of rules of practice that are binding on the persons on whom they impact, but not necessarily enforceable by the courts. In fact, the constitutional authorities will show that they can be used by the courts in the aid of interpreting provisions of the law but will not themselves be enforced, standing on their own.

So this is what we have—an existing constitutional convention which is said to be binding on the persons upon whom it impacts, but is not enforceable by the courts. I may say as well that you will no doubt note that the underlying thread running through the concept of conventions, is the concept of morality to some extent. I may say in passing that this Senate some time ago approved a resolution that the Government lay a Green Paper with respect to proposed changes in the law relating to the Integrity Commission.

1.50 p.m.

I want to say, for the benefit of Members, that the Government has proceeded assiduously to ensure that that Green Paper is laid. In fact, only on July 13, 1995 I received the second report of the working team which was appointed to review the present integrity legislation. That second report discloses some of the issues which the working team had been dealing with between the first and second reports. Among them—and I refer to one particular item of the five items listed here—"whether legislative sanctions should be attached to a general code of ethics applicable to all persons exercising a public function."

I raise that, as I said, for the information of Members of this Senate, and also to underscore the point that whilst there are some who, in their own pious way—and I refer here not to Members of this House—claim some monopoly on ethics and morality, we, as a Government, with the sanction of this Senate, have proceeded to review, in full detail, legislation relating to integrity in public life.

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I would like, before proceeding to the terms of the Bill itself, to look at some of the conventions which are well recognized and see how those conventions have operated in other places. I want to refer, again, to the text, *Constitutional and Administrative Law*, just to give one or two examples. The whole concept of conventions really originated in a society where there was no written constitution and the practice of those conventions was very important to the operation of any democracy, for example, "the Sovereign's legal power to refuse assent" which is a power which vests in the Queen of England.

The Queen can withhold assent to any Bill passed by Parliament and thereby frustrate the Parliament in having a law enacted. One notes in the text to which I refer, that: "the Sovereign's legal power to refuse assent was last exercised by Queen Anne in 1708", and even then, apparently with the approval of the Ministers. So that some conventions are well defined and they are well accepted as a general principle in democratic societies.

In the case of an unwritten constitution, there are several ways whereby a convention can have that binding effect, although not a legally binding effect in the sense of enforceability by the courts, and there are perhaps three ways that that can arise. First you can have conventions by practice and usage; you may also have incorporation by general reference and you can have incorporation by specific enactment.

In the Constitution of Trinidad and Tobago we have instances where conventions which continue to be treated as conventions in other places are enacted into our legislation. We also have instances where conventions are incorporated by general reference. Perhaps one can give an illustration. In the Constitution of India, the framers of that constitution did not include a specific provision which said that the President must act on the advice of the Ministers. That is a provision which is enacted in our Constitution. It is very interesting to note that the situation was discussed in a text entitled: *The New Commonwealth And Its Constitutions*, by S. A. de Smith. I read at page 79:

"According to the Constitution, the President is to be aided and advised in the exercise of his functions by a Council of Ministers with the Prime Minister at its head. The Council of Ministers is to be collectively responsible to the lower House, and Ministers are to be appointed on the Prime Minister's advice. Yet, although it was clearly understood by the Constituent Assembly that the President was to be a constitutional head of state, the Constitution refrains

from stating that the President must act on the advice that he receives from the Council of Ministers, and it leaves him with an unfettered discretion in the choice of Prime Minister, the dismissal of Ministers, the prorogation and dissolution of Parliament and other important matters."

He goes on to say that although this was so, the President never sought to exercise what, by the Constitution, appeared to be discretionary powers vested in him. The following reason is advanced:

"In the event, political and personal factors have so far ensured the maintenance of the understandings on which the Constitution was based,..."

That is an example of a situation where an important constitutional convention was not written into the provisions of a constitution of a member state of the Commonwealth. We have, as I said, enacted that specifically in our Constitution and there are provisions whereby the President must act on the advice of the Minister or the Prime Minister.

I made reference to incorporation in a general way. Again, there is an example of that in the Constitution of Trinidad and Tobago at section 55(3). They are talking here of the privileges and immunities of Parliament and they detail one or two of those provisions. At 55(3) the Constitution reads:

"In other respects, the powers, privileges and immunities of each House and of the members and the committees of each House, shall be such as may from time to time be prescribed by Parliament after the commencement of this Constitution and until so defined shall be those of the House of Commons of the Parliament of the United Kingdom and of its members and committees at the commencement of this Constitution."

That is an illustration of "incorporation by general reference." It is enacted in the law but does not relate to a specific convention as such, but incorporates the practice as it may be in existence in relation to the British Constitution.

2.00 p.m.

So that there are those rules, and one would see that in all instances there is the concern that these practices are binding on the persons upon whom they impact.

Very often it is necessary to consider—and it is the difficulty which the constitutional and legal draftsmen have, and one which has exercised the minds of those who are involved in that kind of exercise—to what extent should we enact conventions into specific law.

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There is an interesting comparison, and one has to consider why certain draftsmen do things in a certain way and not in another. For example, I refer to the Indian Constitution where the office of President was not hemmed in by writing in the convention and it was expected that because of the position of President, there was a clear expectation by the draftsmen that the convention would continue to apply.

One can look at the comparison in the Trinidad and Tobago Constitution where at section 77 there is a specific provision relating to a vote of no confidence in the Prime Minister. There is no such written provision in relation to the presiding officer of the House of Representatives.

Again, one can understand that. A draftsman looking at the nature of conventions and how they are treated and applied, would consider that perhaps, in relation to certain offices it may not be necessary to specifically write in the convention; the President, in the case of India, the Speaker, in the case of Trinidad and Tobago. One must remember that the Speaker of the House of Representatives carries that office and the dignity of the entire Parliament, and in our constitutional circumstance, the Speaker is second in line in relation to the presidency.

It is a difficult exercise in determining at times which conventions should be written in and which ought not to be. I would refer to the authority but just to make the point that there are several difficulties, the first being that some conventions are ill-defined. The second is that one cannot properly put every possible eventuality into a constitution or other laws. So what the draftsman has to do is to try to determine which he should put and which he ought not to put.

In the text *The New Commonwealth and its Constitutions* the author, on page 83, has this to say:

"Two arguments can be adduced in favour of incorporating certain conventions by reference: it makes for flexibility, and there are greater practical difficulties in codifying the conventions on such matters as the dissolution of Parliament and the dismissal of Ministers. These difficulties must be admitted..."

It goes on to say that the special merits of flexibility sometimes have to be balanced against specific enactment which is the third method by which conventions can be incorporated into the Constitution.

The Bill, therefore, to turn to the specific terms of the Bill, seeks to incorporate, specifically, the well-established convention to which I referred and to which the authorities on the matter dwell.

What we have sought to do is not only to incorporate a specific convention, but we have also sought, by establishing a particular mechanism, to ensure that some of the other principles of democratic societies are maintained in the machinery which we have established by the amendment. I refer to three of these fundamental safeguards which our democratic traditions accept. They are:

- (i) that a person should not be a judge in his own cause;
- (ii) that notice of allegations against a person must be made and that it must be brought to the attention of that person;
- (iii) that that person ought to have an opportunity to reply.

In establishing the mechanism for enacting the convention, we have also established a mechanism which recognizes and enacts those fundamental principles.

If one looks at the Bill, one would see at clause 3, which is the substantive clause, that the resolution—and I would take them in the order in which I said them—at clause 3(b) says—

"by inserting after subsection (8) the following subsections:

'(9) Upon delivery by the Clerk of the House to the Speaker of a resolution signed by a majority of the members of the House that the Speaker be removed from office...the Speaker shall vacate his office temporarily and cease to perform his functions as Speaker.'

The concept there of a person not being a judge in his own cause.

I know the argument has been made that the presiding officer in Parliament is not a judge, and one accepts that. The fact is that the presiding officer in Parliament has the capability under the Standing Orders and so forth to do certain things in relation to matters which may come before that presiding officer. If a presiding officer can summarily remove a motion, then that is being a judge in one's own cause because one makes a judgment as to the acceptability of that particular motion, whatever it may be. So, the concept of one not being a judge in one's own cause is contained in the mechanism which informs this Bill.

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The concept that a person must have notice of allegations is contained in the new subclause (10) which states:

"The resolution shall state the grounds on which the Speaker's removal from office is proposed."

So the grounds upon which the resolution is being proposed must be stated within the document itself.

The third fundamental safeguard, the right to be heard, is contained in the new subclause (11) which states that:

"The Speaker may, within twenty-one days of the delivery of the resolution, supply to the Clerk of the House in writing any grounds on which he resists his removal from office, and the Clerk of the House shall supply a copy thereof to each member of the House."

2.10 p.m.

The concept of being able to respond, the concept of the right of being heard—and I know that there are many lawyers on the other side—but the right to be heard, in this context, is the right to submit a written response, and that has been accepted by judicial authority as satisfying that need. I am sure that Senators opposite are well aware of the recent decision in the matter involving Justice Crane where statements to that effect can be found. I may say as well that even within the rules of Parliament itself, the Members of Parliament can afford to the presiding officer, who has vacated office, the right to make an oral response depending on the circumstances. So that the right to be heard is encompassed there.

Those are the specific terms of the legislation. It incorporates the convention and it establishes a mechanism which recognizes the fundamental safeguards to which we are accustomed in a democratic society. The matter, however, does not necessarily stop there. There are other constitutional questions which have arisen surrounding the passage of this legislation.

It is appropriate because of public comment generated with respect to those matters that they should be addressed in this debate. The principle of those, if I may say so, because the others may be procedural only, the substantive constitutional issue which has arisen is whether this legislation requires any special majority.

I would like to look at that in two ways, having regard to the doctrine of separation of powers, having regard to existing constitutional provisions and having regard to the role of the courts in relation to Parliament.

Our Constitution recognizes the separation of powers in a specific way. Section 53, which relates to Parliament, states as follows:

"Parliament may make laws for the peace, order and good government of Trinidad and Tobago, so however that the provisions of this Constitution or (in so far as it forms part of the law of Trinidad and Tobago) the Trinidad and Tobago Independence Act 1962 of the United Kingdom may not be altered except in accordance with the provisions of section 54."

It gives the Parliament the right to make law subject to the Constitution itself. Section 2 of the Constitution reinforces that position. It says:

"This Constitution is the supreme law of Trinidad and Tobago, and any other law that is inconsistent with this Constitution is void to the extent of the inconsistency."

The review mechanism is the Judiciary, so that Parliament has the right and authority to make laws. That is quite clear. Whatever laws it makes, however, by virtue of section 2 of the Constitution are subject to review and that review can only take place after Parliament has made a law. A Bill, in other words, is not a law. An Act which is a Bill passed by Parliament is what can be challenged under the Constitution by the proper review body, the Judiciary.

So that, there is a clear separation as to what Parliament can do and what the Judiciary can do, and also when it can be done. For emphasis, if you would permit me to refer to a Privy Council decision which is contained in the 32 WIR (West Indian Reports) [1984]. It is a case of the Privy Council which came out of this jurisdiction and is well known to many. It is the Attorney General and Another v. McLeod and very interestingly this case deals with almost exactly the same point with which this Bill seeks to deal. The Privy Council in the person of Lord Diplock had this to say:

"For Parliament to purport to make a law that is void under section 2 of the Constitution, because of its inconsistency with the Constitution, would deprive no-one of the 'protection of the law' (section 4(b) of the Republican Constitution), so long as the judicial system affords a procedure by which any person interested in establishing the invalidity of that purported law can obtain

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from the courts of justice a declaration of its invalidity that will be binding on Parliament itself and upon all persons attempting to act under or enforce the purported law."

Lord Diplock, then, clearly recognized that it is only when a Bill becomes an Act, when it is passed by Parliament, that any challenge as to its constitutionality or not, it is only then that such a challenge can arise. Even if one wanted to consider the substantive argument whether this Bill requires a special majority or not, one would also get specific guidance from several sources. In fact, May's *Parliamentary Procedure and Practice*, the 21st edition, speaks in relation to the court and privileges; that the courts historically have refrained from interfering with matters which fall within the purview of Parliament.

I can give perhaps, very quickly, one instance—one does not want to unnecessarily belabour this point.

At page 159 of the 21st edition of May's *Parliamentary Procedure and Practice*, it says:

"When in 1987, the Attorney General sought an injunction against a number of Members of the House of Commons with the intention of preventing them from showing a film in the House until the House had an opportunity of deciding whether or not the showing of the film should be allowed, the court refused the application, apparently on the ground (which was not set out in writing) that the matter could and should be under the control of the House authorities, even in advance of a formal decision by the House."

A clear distinction between the operations of Parliament and the operations of the courts.

2.20 p.m.

If one refers to the authority of McLeod, one would see there is a similar rationale. What happened in that case is that the Parliament passed legislation which provided for another mechanism for Members of Parliament to vacate office, and that legislation was challenged on the basis that Members of Parliament had an entrenched right under the Constitution to sit in Parliament, and therefore another mechanism could not be adopted for removing them. It is very similar to what this Senate is now asked to consider. The Privy Council says:

"On the true construction of the Republican Constitution of Trinidad and Tobago, the provisions of section 49(2) of the Constitution are not entrenched (under section 54(3) by infection from section 49(1) (as so entrenched); accordingly, the Constitution of the Republic of Trinidad and Tobago (Amendment) Act 1978, section 3, validly added paragraph (e) to section 49(2) of the Constitution even though it had not been passed in accordance with the procedure requisite for an amendment to an entrenched provision."

The argument was that Members of Parliament were entrenched by section 49(1) which is a protected provision under section 54 of the Constitution; section 49(2) was not so entrenched and because section 49(1) was entrenched, section 49(2) has to be entrenched. That argument was rejected by the Privy Council. The rationale was given in the course of the judgment by Lord Diplock. Page 456 states:

"Broadly speaking it is those provisions of the Constitution that deal with the institutional characteristics of Parliament, as the organ of the State in which by section 53 is vested the plenitude of the legislative power of the sovereign Republic of Trinidad and Tobago, that are protected by entrenchment; those provisions that deal with the qualifications of individuals for membership of either House and with the internal procedure of either House are not."

Even though section 58 establishes the Office of Speaker and President of the Senate as the presiding officers of Parliament, it does not take away from the right of the Parliament by a simple majority under section 50 to amend those provisions relating to their qualification or their vacating office. I thought that in the light of the comments that have been made in relation to this matter, we should deal with it even at this stage.

There is one other procedural matter which had been raised. I think perhaps it should be raised at this stage as well. The concern was that there was no consultation on this matter. There was the concern that in any attempt to amend the Constitution there should be consultation. We must understand that one has to look at each case on its own. In a situation where there is a well-recognized convention which is not being adhered to and accepted as part of our constitutional arrangements, for the purposes of enforcement alone it is necessary to entrench it.

I am not making any judgment on any matter. All I am saying is that if there is not an acceptance of a constitutional convention, as there ought to be, and because

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that convention, whilst it might be binding on the individual is not enforceable in the courts, it is necessary to entrench it in the Constitution to give it the force of law. What we have simply is a convention which everyone accepts as a convention, but which cannot be enforced in a court of law, and is now being put in that form in order to give it enforceability. I am not sure whether in circumstances such as these, and particularly having regard to the wide debate and discussion on these matters, that consultation is a necessary prerequisite.

In considering the terms and position of this Bill I sought to demonstrate that we are seeking to enact a convention and establish a mechanism which carries some of the fundamental safeguards known to democratic societies.

It is with some reluctance that one should have to enact into law a convention which is so clear and so widely accepted in the Commonwealth, and put it in the Constitution. It demonstrates the view that this Government has expressed the need to look at the Constitution which is 33 years old, modified as it were in 1976, to see whether from our experiences changes are necessary in order to ensure that constitutional conventions and other practices are accepted generally.

In closing, let me say this. Perhaps that is the silver lining in the dark clouds which have threatened this country over the last few weeks. I therefore beg to move.

Thank you.

Question proposed.

Sen. Surendranath Capildeo: Mr. Vice-President, in this honourable Chamber we have been through some trying times, but today is a wretched day in our parliamentary history. We have come to a sorry pass in what is supposed to be the repository of the will of the people of our Republic, their highest forum in this land. This Parliament brings to mind Fitzgerald Omar Khayyam:

"Ah love! could thou as I with fete conspire
to grasp this sorry scheme of things entire
Would not we shatter it to bits—and then
Re-mould it nearer to the heart's desire!"

Sen. Barnes can really envisage the hon. Attorney General and the hon. Minister of Education whispering these sweet nothings in the infuriated scorned ear of Madam Speaker?

2.30 p.m.

Mr. Vice-President, it is time to call a spade a spade. This is supposedly a Government of fine and finest minds descended from—is it the second or third greatest genius the world ever did see?—said to have many management geniuses in the Cabinet—boasting of these management geniuses. This Government has been outwitted, outfoxed, outmanoeuvred, outplayed, outmatched, outdone and now undone, by a single little lady whom they themselves in their great born-again, eternal wisdom appointed to the Speaker's Chair. How Gopaul's luck has dramatically become Seapaul's luck!

But this, Sir, is what creeps in with the arrogance of power, this bane of Third World administrations; a contempt for the very people who put them in power to serve the country. This is PNM mentality: "If you do not like it, get to hell out of here," and "When I talk, no damn dog bark," and the dark magic of making Ministers and high officials millstones. It is the kind of callousness that we have witnessed throughout the Third World; we are no exception. We lose the human touch, we abandon it when we are slightly touched with the power of office. This kind of humiliating, embarrassing fiasco takes place when one tries to govern this country with a soup kitchen mentality, looking for a quick-fix solution to fundamental deep-seated, deep-rooted problems.

Every time this administration is confronted with a problem, it seeks to tamper with the rights and freedoms entrenched in our Constitution. This is a most dangerous trend being developed here. The Maxi-taxi Bill, the Preliminary Enquiry Bill, the Bail Bill, the Constitution (Amdt.) Bill, 1994, the Constitution (Amdt.) Bill, 1995, which incidentally bears the same title as this Bill—slipshod drafting again—the Constitution (Amdt.) (No. 2) Bill, and now this Bill. On every occasion with respect to all these pieces of legislation, the United National Congress had to amend the amendments to save the day and to protect the rights and freedoms of the citizens of this country. If one checks the records, one will see that they are packed with UNC amendments.

Cornelius Tacitus had a saying: *corruptissima re publica leges*—laws were most numerous when the Commonwealth was most corrupt. With respect to this "admission of defeat" piece of legislation, we have an apt quote. I will spare Sen. Barnes the Latin, but I will give the translation. *Memoriae proditur Tiberium, quotiens egre deretur Graecis verbis in hunc modum eloqui solitum: O Homines ad serritatem paratos. [Interruption]* Listen carefully because you fall under this!

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Tradition says that Tiberius, as often as he left the Senate House, used to exclaim in Greek: "How ready these men are to be slaves!" So I ask all Senators here: How ready are you to be slaves?

Look at the pattern! They want to control obscene music—they tamper with the Constitution. They want to reduce the crime rate—they tamper with the Constitution. They want to hang people—they tamper with the Constitution. They want to get rid of the Public Service Commission—they tamper with the Constitution. They want to get rid of the Commissioner of Police—they tamper with the Constitution. They want to get rid of the Speaker of the House—they tamper with the Constitution. Who is next? The President of the Republic? The Chief Justice? The Ombudsman? The Leader of the Opposition? Where will it end? The door is being opened to a wholesale attack on the principle of security of tenure for high office holders in this land. If this amendment is allowed, the precedent will be allowed for all time.

All it will take is a simple majority to get rid of anyone who holds high office. There will be disaster in the making here of such magnitude that we will never be able to recover. Democracy will be lost to us because who will accept office under such conditions? Only lackeys, 'yes-men' and party hacks, and by God we have a surfeit of them.

Mr. Vice-President, with your leave, I warn all Senators here, be they Independent, People's National Movement, United National Congress, whoever they are, history will not absolve them if they go along with this pettiness of mind and crudity of vindictive purpose. The Government just cannot interfere with the Constitution every time it comes up against a problem. Worse, it cannot and must not do it without adequate consultation.

We have just heard the Attorney General's views on consultation. Our Constitution—this Constitution of the Republic of Trinidad and Tobago—begins with the words—I do not know if they have read it; if they have read it, they do not understand it:

"Whereas the people of Trinidad and Tobago—

(a) have affirmed..."

This is the Constitution of the people, not only of one man and some brainless lackeys and stooges. The people must be consulted. This debate ought never to have taken place without the input of the people. I call on the Government to

adjourn this debate to a date to be fixed and to arrange consultations throughout the length and breadth of this country to obtain the views of our people. I say, stop this farce now!

Let us, begin at the beginning. Why is this Bill in the Senate? Let us be blunt here. This Bill is designed for the instant moment. It is designed to sack the Speaker. This is not a Bill which is carefully considered and thought out to provide for future regulation and procedure with respect to the high office of Speaker. It is a savage, senseless, selfish piece of legislation with one objective in mind—get rid of Occah Seapaul at all costs. It has nothing to do with the office of Speaker. It is personalized and, as far as I am concerned, it has lost all credibility and will not stand the test of time.

So, I repeat: Why bring this Bill to the Senate? Where is the honesty of purpose? Those who seek to amend the Constitution at their whim and fancy have ignored the spirit of the Constitution. The Constitution says quite clearly in section 56(1):

"Subject to the provisions of this Constitution, each House will regulate its own procedure."

I ask, Sir, in all seriousness: Has the office of the hon. Speaker been transferred to the Senate? Is the other House on vacation? Is there a halfway prorogation limited to the other House? Section 50(1) says clearly:

"When the House of Representatives first meets after any general election and before it proceeds to the despatch ..."

2.40 p.m.

Mr. Vice-President: Sen. Capildeo, you are aware that we are not in that other place.

Sen. S. Capildeo: We are not, Sir, but I am reading the Constitution. I am avoiding the other place. They are on prorogation. I am merely reading the Constitution to set out what it says in section 50(1):

"When the House of Representatives first meets after any general election and before it proceeds to the despatch of any other business, it shall elect a person to be the Speaker of the House;

That is all I wanted to say, Sir. Section 50(2) says:

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"The Speaker may be elected either from among the members of the House of Representatives ... from among persons who are not members of either House."

Clearly, Sir, common sense and any reading of the Constitution would tell you, that what the Constitution is saying, in effect, is that the Speaker comes usually from Members of the other House. That is the golden thread which binds the Speaker to the people of this country because the Members of the other House are elected. I ask again: Why are we debating this amendment in the Senate? Not because one can, one must. It is this sleight-of-hand political expediency which has got us into trouble and into so many embarrassing situations at home and abroad. We are now the laughing stock of the Commonwealth wherever parliamentary democracy is practised. After today's debate, the laughter would be even greater.

I say again to the Leader of the Senate: Stop the debate! Go back to the people and then to their elected representatives because that is where the link is. The link is not in the Senate. The Government should not use the Senate as a back-door to get at what it wants. Have the courage of your convictions to confront. Do not use us.

Look at how stupid the situation is now. You said it before we began. How often are Senators cautioned about references to the other place? In fact, the very words, 'the other place' suggest that we, as Senators, cannot willy-nilly pass our mouths on what happens in the other place. Why are we asked to debate an amendment which belongs to the other place? *[Interruption]* How come? What kind of backward trick is this?

Sen. Dr. Saith: Mr. Vice-President, having asked me to consider stopping the debate I would like to clarify a point. Is the hon. Senator saying that in order to pass any Bill, it must only be debated in the Lower House and the Senate has no role in passing Bills, or even this particular one? I want to be clear.

Sen. S. Capildeo: No, Sir. What I am saying is that it would be morally right, ethically right and honest to put this Bill before the other House. It is dishonest, immoral and unethical to bring it in the Senate.

Sen. Huggins: Read section 63.

Sen. S. Capildeo: Read section 63? You all do not have the courage or conviction to go downstairs in the other place.

It is beyond the shadow of a doubt that what we are doing here is solely concerned with the other place. This is legislative stupidity. It is a moronic use of this illustrious Senate. Moreso, Sir, and you quoted it; Standing Order 35(8) states, and it is very clear:

"The conduct of ... Members of the ... House of Representatives, ... shall not be raised except upon a substantive motion moved for the purpose;"

What do we have here? Section 21(1) of the Standing Orders of the House of Representatives says:

"Public Business shall consist of Motions and public Bills."

Is this a substantive motion? *[Interruption]* It is a public Bill. What is it about? It is a public Bill on what? It arrives and derives from what? The conduct of the Speaker. Do not run from the issue. It comes straight from the conduct of the Speaker, yet we cannot refer to the other place and to the conduct of the Speaker. What are we doing? People cannot be fooled like that. How are we going to proceed if we are going to be ruled out of order? For example, if I say that the genesis of this confusion began with statements made by my Friend the hon. Attorney General—Let me quote from *Hansard*, Mr. R. L. Maharaj's contribution.

Sen. Dr. Saith: That is your boss.

Sen. S. Capildeo: I do not have a boss. Do you not know my name is Capildeo? Have you ever heard of a Capildeo having a boss? *[Laughter]* Mr. Vice-President, they are stealing my time very delicately. I quote from *Hansard* dated July 12, 1995, 10.40 to 10.50 a.m. I think the Attorney General should listen to me very carefully now. I want to protect him.

"When this Government presented this motion—this is all part of the illegality—it should have satisfied this House as to whether the Attorney General took it upon himself, before any decision was made by Cabinet, to ask the Speaker to step down from office. Whether on June 28, 1995, the Attorney General of this country had in his Chambers the Speaker, and informed the Speaker that the Prime Minister had requested an opinion from the Attorney General on the Victor Jattan matter—which he had not yet given—and that the Prime Minister and leadership were adamant in insisting on the Speaker's resignation. Whether the Attorney General did not tell the Speaker that the Prime Minister was a very stubborn man and his decision was political and not legal.

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When did the Cabinet of Trinidad and Tobago take a decision—if it has taken a decision—that the Speaker should demit office? Is the Government coming to Parliament because the Prime Minister is stubborn...?"

It goes on.

Mr. Vice-President: Sen. Capildeo, please. Before the Attorney General introduced and presented this Bill, I cautioned the Senate that we wished to stay away from matters on which there was no substantive motion. Please be guided, Sen. Capildeo.

Sen. S. Capildeo: With all due respect, Sir.

Mr. Sobion: Mr. Vice-President, I wonder if the hon. Senator has considered how it is that a personal and private conversation between two persons could come to the attention of Mr. Maharaj, and be misrepresented as well. I wonder if the Senator has ever considered that.

Sen. S. Capildeo: That is why I said I wanted you to pay close attention. Since this statement was made in Parliament—and there was another statement even more damaging on the same date—I have not heard any statement coming from the office of the Attorney General denying that it had taken place. That is, that the Attorney General had summoned the Speaker to his office and told her that from now on the going would be rough and things would get nasty.

Mr. Sobion: I have principle.

Sen. S. Capildeo: I do not know about principle. If that took place and if it forms the basis of this movement to get the Speaker out, then something is radically wrong.

Mr. Vice-President, to this present time, as I stand here, there has been no denial, no refutation of those statements made in the other place. They are dangerous statements. It brings the high office of the Attorney General into equal disrepute with that of the Speaker, as alleged. The Attorney General is on par with the lady. He can now whisper sweet nothings in her ear.

If that is true, how can we in this Senate begin to consider this amendment? The amendment reeks of personal vendetta. I want to be clear, I am not defending Miss Occah Seapaul. That is not my business. I hold no brief for Miss Occah Seapaul. Miss Seapaul is doing well enough. *[Interruption]* What I am about here is the dignity of the office.

Hon. Senator: She is doing well enough?

Sen. S. Capildeo: She is doing well enough; she had the whole Government capsized in two days. *[Laughter]* It has taken us three years to get the Government out and 'Occah' did it in two days. *[Laughter]*

2.50 p.m.

Sir, I am about the dignity of the office of Speaker. That is my concern. I want to ask the Attorney General if what was said in the other place is true, is that how the business of the Attorney General is conducted with respect to another high office in the land? Then, Sir, we have the extraordinary press releases of my Friend here; we cannot be blind and deaf to those releases; we read them. In an editorial in the *Trinidad Guardian* of July 05, 1995 at page 08, it says:

"...Mr. Sobion said on Monday that Government had asked the Speaker to resign, not because of anything which his investigation turned up but because of public perception.

What one has to deal with is the question of the office of the Speaker, and the perception that remains in the mind of the public."

The Government's view is based on the normal principles that one cannot be a judge in one's own cause; one cannot properly preside over the Parliament which is the highest court in the land in a matter which involves oneself.

In the *Express* of July 06, 1995, the Attorney General says:

"The Speaker as a witness in the case gave evidence on oath which directly conflicted with physical evidence as well as corroborating independent testimony."

I ask, Mr. Vice-President: What is it then? What is the basis of the Government's action? Up to now we do not know; up to now we have to infer what is the basis. Why is this amendment being brought? What specifically irritated them to bring this amendment? Up to now we do not know the reasoning; we have to infer it. So I have to ask questions: Is it public perception? Or, is it that the Speaker committed perjury? Or, is it that the Speaker cannot be a judge in her own cause? Or, is it a combination of all three? Is that what brought this amendment here?

Well, let us take them one by one. Are we going to tamper with the Constitution on the basis of public perception? Is that the precedent we are going to set for this nation? This Senate has to think carefully. All Senators seated here must think carefully. Is public perception going to be a measure of what we are using to tamper with the Constitution to alter sections of it?

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If it is perjury, is that not the province of the magistracy and the Director of Public Prosecutions? Are we going to amend the Constitution to deal with that? Do hon. Senators have any idea of what goes on in our courts today? Today, I invite all to attend any magistrates' court, and psychiatric treatment will be needed after. It is a disaster area. At the rate we are going if that is the kind of measuring stick we are going to use, we will amend our Constitution out of existence.

Then, a judge in your own cause—Mr. Vice-President, you will know this, and will recall it—I do not know why this Attorney General, honourable as he is, wants to embarrass the Senate. The President of the Senate sat as a judge in his own cause, in the complaint against Senators Hosein and Capildeo. *[Interruption]*

Mr. Vice-President: Senator Capildeo, you have been getting into a debate on what essentially happened in the court dealing with a specific matter which I had cautioned you we ought to stay away from. Please get back to the Bill.

Sen. S. Capildeo: Mr. Vice-President, I appreciate your intervention. In fact, I want to support your intervention because what you are saying to me is that this amendment is a total farce. It cannot be debated here, we cannot go into the root of this amendment here; we cannot go into what brought this amendment here; we cannot do justice to the people of this country as the Senate of the Republic of Trinidad and Tobago, and all because of the sleight-of-hand motion to bring this amendment here and not in the other place.

Since we are now confined into discussing nothing—you know you are the management expert, and you led them into this disaster; you could not even handle the lady—we are now faced with the jurisprudential problem of the separation of powers, but I would not lecture my learned Friend on that; he seems to be well up to date on that doctrine.

But I want to ask: If the Executive is acting unconstitutionally and then the Parliament follows that unconstitutional act, then would not the Parliament be acting also unconstitutionally and be opening itself to litigation and the striking down of laws? We know that there are several decided cases to this effect. It seems to me this is what is taking place here today.

Let us look at our Constitution. I will try to make it simple. By virtue of section 54, the office of Speaker in section 58 is entrenched. That is to say, a two-thirds majority in each House will be required if there is a desire to alter section 58. With respect to section 50, under which this amendment comes, that spells out

the grounds on which a person shall vacate the office of Speaker. It is not an entrenched provision.

So that the Government has seized this provision to add another subsection to provide grounds for the removal of the Speaker, but this is not as simple as it appears. Let me repeat. Section 54 entrenches the Speaker in section 58; section 50 spells out the grounds where the Speaker will vacate the office. The Government now seeks to add grounds to section 50, so that it would require merely a simple majority; but it is not that simple.

My position is, the very fact that this section can be altered by a simple majority should have led this Government to consulting the people, because it is possible by a mere simple majority to interfere with the high office. I again ask: Who would operate under such conditions where his or her independence is forever threatened by the guillotine of a simple majority in Parliament? Who is going to take that? The only people who would take that is, as Tacitus said, slaves. So I ask Senators: Do you all want to be slaves? If so, vote for this piece of legislation.

We must go back to what was intended; we must return to first principles, and among the first principles was that the office of the Speaker was not one to be interfered with lightly; it is entrenched—a special majority is needed to alter this section. It follows then that if they want to lay down rules for the demitting of office by the Speaker, then they must go the same route. That provision must also be entrenched and if not, go back to the people and ask them if that is what they desire.

If the people want the office of Speaker to be ordinary, should be commonplace, should be reduced to that of a mere functionary which could be removed at the whim and fancy of a simple majority, then give them the opportunity to so say. Go back to them. Because, Sir, what would happen if there is a wicked Government and an excellent Speaker is that the wicked Government would remove the excellent Speaker by a simple majority.

3.00 p.m.

That is why I say this amendment did not have any thinking behind it; this amendment is for the instant case; it is not for the future. So I ask the Senators to think carefully before exercising their vote in this matter.

We have reached a situation where, in the press, an ex-President of the Senate is talking about the removal of the Speaker by physical means; you have an ex-

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President of the Republic making a weird statement about the mental condition of people in high office. This bungling, slipshod Government is driving supposedly intelligent people to make statements that are clearly aberrations, and if, we continue on the path of proving that we are incapable of making the Westminster system work, if this Government continues to show that it cannot manage a well-established parliamentary democracy, then I say to it, it is paving the way again for a third party to enter upon the scene with an offer to rule the country out of the barrel of a gun.

If the Government is proving to the community that it cannot make the system work, it is inviting people to come here and say, "We will work it for you." If that is what it wants after our bitter experience, then go the way of rushing amendments through the back door.

I heard the Attorney General just now with a lot of glib talk about customs and conventions and I was delighted to see that most of his arguments with respect to customs and conventions leaned back on the Privy Council; he referred to decision after decision of the Privy Council. I did not hear one from a West Indian Court of Appeal or a Caribbean Court of Appeal, I heard "the Privy Council." I have heard all the Privy Council's decisions being mentioned as a safeguard, and that pleased me greatly. But, it is all well and good to quote the recent text on customs and conventions as if they just came into being.

As you would know, Mr. Vice-President, this is an age-old debate; it occupied great, great minds from Aristotle, and Plato, and Herodotus and Aquinas and Montagne and Hume and Locke and Rousseau and a host of others. Customs and conventions, a Bill with us since mankind has been civilized and Thomas Aquinas, Sir, has the best one, and this is what he said: Custom has the force of law, it abolishes law and is the interpreter of law because precisely it operates through the habits of people.

And I take the words, "the habits of people," and I lean on Thomas Aquinas because, have we not developed a custom in this country that nobody, but nobody, resigns from office for any reason whatsoever? Everybody is glued with crazy glue down to the seat of the office; nobody resigns at all for any reason. Is that not a custom in the country, or are we blind to that fact, or are we being a nation of hypocrites by not admitting it? And should not the great constitutional brains and geniuses of this land pay attention to this fact? If they did, would they not have stumbled on the solutions contained in the Standing Orders of this Senate, and of

the other place? And they would have found themselves referring to committees, and if they had made the committees work, we would not have been in this sorry pass today.

Would it not have been more civilized for a parliamentary committee to have looked into this whole question and then come up with a solution? Do not both Houses have regulations to take care of that? But, no, the arrogance of little people with petty minds and personal agendas takes over, and we ignore our Standing Orders; we ignore our parliamentary system and we are now faced with this impasse. But take heart, Sir, this is a growing democracy; we are in an evolutionary process, we are discovering ourselves as a nation.

We have a tradition in the legal history of the Commonwealth of breaking barriers with respect to the laws of libel, pardon, rebellion by soldiers. We created history with judge suing Chief Justice. We are growing up; these are growing pains, teething problems. The only problem, is that the teeth are biting the people and the people are bawling for justice; that is the only problem.

I want to end by appealing again to all Senators to think carefully before they vote on this amendment, because what they do here today will lay the foundation for a long time to come for all holders of high office in this land. If it is that you feel justified in your mind that a holder of high office could be removed by a simple majority in Parliament, then you go ahead and vote for this amendment and, I say, live with your conscience.

I thank you, Sir,

Sen. Martin Daly: Mr. Vice-President, I share the concern of Sen. Capildeo over this Bill being introduced in the Senate and it is a matter which has given me very grave concern, as indeed many other matters about the circumstances which brought us here today. I had intended to begin by saying—and having listened to Sen. Capildeo, I feel even more so—I do not feel much like a slave at the moment; I feel much more like an egg in a rock-stone dance, because the circumstances surrounding this Bill are very much like a rock-stone dance and it is going to be very difficult for those of us who are eggs to participate without getting our shells cracked, but I will do my best to manoeuvre my way across the floor.

The way I have reconciled in my mind taking part in this debate—even though this problem originates somewhere else—is that the country does have a serious problem and someone or some group of people has to attempt to resolve it.

Likewise, I measure the wisdom of the Senate participating in this debate by the size of the problem.

3.10 p.m.

There are many things which Sen. Capildeo has said with which I agree. I am very concerned that during my time in this Senate so many attacks have been made on the Constitution outside this Parliament, and so many attempts have been made to amend it. But the fact is that I do not regard any attempt to deal with the problem which the country has, by amending the Constitution, as tampering with the Constitution in the circumstances of this case, for two reasons.

First of all, we do have a serious problem. Secondly, the surrounding circumstances, which we are not, by your ruling to examine, with which I respectfully agree; I do not wish to examine—are such that the issue has dominated every facet of the media which has—I shall illustrate in due course—done a very responsible job with this problem. The issue has dominated every facet of the media for nearly two weeks now. It is a consistently front page story and it is consistently a front page problem. It is consistently an editorial problem. We have seen the intervention of everyone, from the Inter Religious Organization (IRO) to two former presiding officers of this Parliament. That is just the measure of the magnitude of the problem. Therefore, if it is that the problem is sufficiently big that there is some justification for amending the Constitution, then we have to grasp the nettle, and I will attempt to do so, but I do not do so very easily, for the reasons which I have advanced.

Against that background, I would like to, first of all, repeat and, indeed, as you have indicated, Sir I do not think it is any part of anyone's function in this debate to examine the case for the removal of any individual. I am very clear about that in my mind. But that has a plus and minus for the promoters of this Bill, because if it is that we ought not—and I agree that we ought not—to examine the case for the removal of any individual, then we have got to fashion a piece of legislation that does not only deal with the circumstances that have brought us here, but fashion a piece of legislation that will attack the problem and the issue. That is what I have attempted to do in my examination of this piece of legislation.

I start from the position that recent events have shown that an expressed provision dealing with the removal of a Speaker is necessary. Indeed, it is somewhat anomalous that however difficult it is to remove a judge, there are provisions for the removal of a judge; however difficult it is to remove the

President of the Republic, there are provisions for the removal. I do not plan to quote from any law books or from any legal history, but for whatever reason that provision is not there and my reading of the Constitution is that we need such a provision. We need it, not only because of recent events, but also because we have to look at a broader picture.

To me, the two critical issues that we have to balance in examining this piece of legislation are these: First of all, is it right that anyone, however high the office, should hold that office on terms and conditions which make that person irremovable? Should he hold office under terms and conditions that make him irremovable, albeit for a fixed period, that is to say, a period between general elections? You have to balance that on the one hand—and that is why I say there are pluses and minuses for the Government as the promoters of this Bill—but you also have to examine very carefully what, if any, is the appropriate security of tenure for the office under scrutiny.

So if we start from the premise—and this is how I start—that no one ought to hold office in some way that makes him irremovable, as we say, "irregardless," then nevertheless we have to examine the particular office away from the circumstances of the case and ask ourselves what is the appropriate security of tenure for that office. That is the critical question that this Bill has raised: "What is the appropriate security of tenure for the office of Speaker?" That is the fundamental issue in this legislation and that has nothing to do with any personality or any political crisis. That is the fundamental issue.

If we then seek to answer that question, I have basically to agree with Sen. Capildeo, not because I have any fear of being a slave, but because it is not appropriate that the security of tenure of the Speaker depend on a simple majority. That is simply not appropriate and I will explain why. Before I explain why, let me say that—and this is a corollary to my suggestion that no one should hold office under irrevocable terms and conditions—one has to be very careful that those who hire have absolutely no power to fire. One has to be very careful about that. If one is taking that position, then one has to take that position very carefully.

So that in essence, if a majority of the Members of a House do not want to have a particular person presiding because, for good reason, they have lost the confidence of that House, then in essence that is a matter to be resolved by the House wherever it takes place. More importantly, it is a matter to be resolved by

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those who have appointed the person, that is to say, the House over which that person presides.

So that I am proposing an amendment of which I will speak in due course, the essence of which is that ultimately the House must deal—and I do not mean deal in the pejorative or threatening sense—with the Speaker. The question is: Should the House be permitted to deal with the Speaker purely on the basis of a simple majority? I have answered that question in the negative. Why do I do so? I do so for this reason: We have heard much talk about conventions—I note very carefully that they are British conventions—but we have to examine what is right for us under our conditions.

The Speaker in our system is a little different from the Speaker, as I understand it, in other systems. First of all, the Speaker acts as President when the President and the President of the Senate are not available. So that we are not only examining the security of tenure of a Speaker; we are examining the security of tenure of a possible President. The way life is these days, I believe the expression always is, "a heartbeat away." For the purposes of my argument it makes no difference whether it is one heartbeat or two heartbeats away.

So let us be very clear. We are not examining what is appropriate for the office of the British Speaker; we are examining what is appropriate for the office of Speaker in this country which is also an office that is a platform for being the President of the Republic in certain circumstances, which may or may not include times of insurrection or other things. Many people think that the President just rides around all day in a car and goes to social functions, but the Presidents of our Republic and acting Presidents, have been sorely tested in the course of our political development. So it is very important that we understand our Speaker is not the British Speaker and therefore security of tenure has to be very carefully examined.

3.20 p.m.

Likewise, we do not have a Parliament that is big enough. We do not have any tradition of backbench revolt so that a vote by Government Members may be diluted by a backbench revolt. Indeed, we are the other extreme. Some parties—and I do not say which they are—may be more disciplined than others, but the fact is that they have to act according to party discipline.

So that really, once the party in majority in the other House—and I like to speak colloquially so we understand what we are doing—"takes a lag behind the

Speaker, he or she gone through," because it is preordained. It is preordained that the persons who are in majority when they take that lag would win the vote. That is what makes this Bill, without some amendments—it does not have to be the one I am proposing—seriously flawed. Perhaps I should say deficient because I do not really have much of a problem with it as far as it goes.

What underlines the deficiency—the Attorney General in one of the more scholarly modes in which I have seen him—underlines the three fundamental principles of justice as: not being a judge in one's own cause; having notice of the allegations; and having opportunity to reply. Whether they are called fundamental or not, they are relevant. There is another principle, due process which requires that one has an unbiased, or to use a more even-tempered word, a neutral tribunal.

Under this Bill, the Speaker would not face a neutral tribunal. She would face a group of people whose consciences are ensnared by party discipline and the dictates of their political leaders. And there is no opportunity for a backbench revolt or any of the other possibilities that might exist in larger countries to give the Speaker a sporting chance.

Worse, one would have the unseemly situation where the persons under this Bill who sign the resolution—one presumes, even if subject to party discipline—would only sign that document if, at first sight—*prima facie* is the lawyers' term, but we do not want to get into that today—they are satisfied there are grounds to remove the Speaker. So, having committed themselves on paper to at least a provisional or possible view that they have grounds to remove the Speaker, they are the same people who will be examining the Speaker's reply when it comes. That is not right. It cannot be right. They have already committed themselves to a view—I would not go so far as to say they are prosecutors, but they are very close—they are subject to party discipline and then they are going to examine and debate the reply/answer, or whatever it is called, of the Speaker. And that cannot be right.

What this Bill lacks is some provision for a neutral tribunal, or in my mind, a review body. All of my colleagues, I know in the short time that I have returned from a trip abroad, have wrestled with the problem of what is the appropriate check and balance. Clearly, one wants as little intervention in the affairs of the rock-stone hall, by eggs. One really wants the rock-stone hall to settle and regulate its own business.

In the course of the many excellent commentaries that have been written about this problem in all the newspapers, without exception, the conflict between

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providing some independence for the Speaker, on the one hand—well the conflict between providing some independence for the Speaker—is a problem that is recognized. Another problem that is recognized is basically the House should regulate itself, and, really, that we ought not to amend the Constitution in a piecemeal or ad hoc way. I would come to the dangers of doing that if time permits.

My major difficulty with this legislation is that it is good, as far as it goes. That is to say, the House initiates the process, examines the answer, debates the matter, and comes to a conclusion. I cannot accept that that must be the final situation in the matter.

None of these things are original. Many others have examined what is the solution. I do not like special majorities because the obtaining of special majorities is also dictated by narrow political considerations and party discipline. So I have a problem with saying, "Well, you need to have some special majority in order to bring the resolution or matter to an end.

We do not seem to have developed that degree of political maturity that there are any issues in public life today which we can approach in a non-partisan way. This is something I have complained about repeatedly in debates on crime, the drug problem and other things. We do not seem able to ever have a bi-partisan or non-partisan approach to a problem. Against that background, dealing with the problem, as I see it, by a special majority is not going to work.

One of my colleagues, Sen. Prof. Spence who, I think, is one of the persons who guard the Constitution most carefully, has confided in me—and I think I am free to say it—that he has considered the possibility of provision being made for this particular problem, but it is then allowed to lapse. There are some problems with that, but least of all, we really do not want the Constitution to have add-on bits, like perforated slips, so one can print a page and just tear it off when one is finished with it. That is not appropriate for a constitution, so perhaps, providing for some limited life would not work.

What I am suggesting is that we have to add to this Bill in order to support the independence of the office. I want to emphasize that despite all the trauma, of which the Attorney General has spoken, the public of Trinidad and Tobago never get fully carried away, and they have it at the back of their minds that we cannot solve one problem by creating another, or by exposing ourselves to any form of political tyranny, or if one chooses to go as far as Sen. Capildeo's, conclusion, to some kind of slavery.

People have recognized, as I have indicated, that we do have to protect the independence of the office of Speaker. That would not be protected by a simple majority. Not only is the Speaker a potential President, but as the Attorney General recognized in a fairly objective presentation, although not a judge, the Speaker has to adjudicate every time he or she sits in the chair. The lawyers' word for it is *quasi* judicial, like a judge.

Let us make it practical and not get involved in legalese. The fact is—and this is not about this Government, this Opposition or this Speaker—that nearly every week a presiding officer—at least that is my experience here; I cannot speak about anywhere else—has to decide whether to grant leave. The granting of leave is very important. In my experience in this place, the granting of leave is more frequently sought by the Opposition than by the Government. Therefore, the presiding officer must be free to decide whether to grant leave at the behest of the Opposition without being worried, or fearful that by a simple majority, if the leave is granted either on a particular issue or too often to the Opposition, a lag would be taken. We must protect that.

3.30 p.m.

The Speaker must be free to make an adjudication in favour of a minority party or minority representation in the other House, without incurring what, in effect, is a summary dismissal. Nothing in our political history suggests to me that if the Speaker is removable by a simple majority—and I have moved away from the Speaker being a potential President—as a presiding officer/adjudicator, that it is going to be possible for that office and those adjudications to be made with the requisite degree of independence. That is another reason why a simple majority is insufficient and there must be some protection.

This brings me to the question of piecemeal reform. Every time there is a problem we get hot and sweaty; there is a Constitution Commission, there is a special sitting of the Senate and we gather all the eggs together to deal with the rock-stones and then we ignore the results and everything that was said.

There have been two Constitution Commissions. The Hyatali Commission recognized expressly the importance of the Speaker having no political obligations. If one is appointed by a simple majority, whether one is a Member of the House or not, one had better believe that one has political obligations, and has to fulfil them if called upon to do so. Therefore, one must be protected from an unlawful demand on one's political obligations. A report of one of the two

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Constitution Commissions just lies there because we do not ever take these reports and do anything about them. These are very high-powered commissions. Much money is spent on them going around the country and taking people's views. And we do nothing with their reports. When there is a problem, there is a rush to have some piecemeal solution.

Mr. Vice-President, do you know what is the most glaring irony of this piecemeal solution? As an aside, I almost felt unable either to participate in this debate or to vote in support of this measure if I so choose, because it is so piecemeal. Here we are discussing expressed terms for the removal of the Speaker, who is the presiding officer of one place but there is nothing in the Constitution dealing with the removal of the person and persons of such excellence as yourself, Mr. Vice-President, who preside in this Senate. I am between the devil and the deep blue sea. I am straining to find some formula that will support the independence of the Speaker. I do not care much about the Speaker because I do not deal with the Speaker. I am spending much energy trying to find a formula to protect the office of the Speaker and the independence of the Speaker, and I can do nothing, because I am confined by a formal debate, to protect your office, Sir. I cannot do anything about it because we are approaching this in a piecemeal fashion.

Here we are legislating whether for the Government's way or my way, for one office and there is another office that is completely analogous, and we are doing absolutely nothing about it and that is the glaring irony of piecemeal constitutional reform. We are about to make the same mistake again.

Mr. Sobion: I thank the hon. Senator for giving way. Just on a point of clarification on the last point the Senator made. The appointment of the President of the Senate is quite different because he must be a Senator and, therefore, is a Government appointee, and has less tenure of security. He can be removed at any time merely by the Government revoking his appointment.

Sen. M. Daly: As if I did not know that, and as if that is not the point I am making. That is the point I am making, that my presiding officer is extremely exposed. A fax is just sent to the President informing him that his appointment is revoked. That is precisely why I am complaining about crisis management and piecemeal reform. Here, I am, complaining that I am expending much energy to protect a presiding officer with whom I have no business and my presiding officer is removable by fax. At the very least, whatever form the legislation takes, we

ought to be dealing with both offices in the same Bill at the same time. Then we would be doing some kind of interlocking or serious constitutional reform.

I regret that I cannot subscribe to Sen. Capildeo's invitation to adjourn the debate because we do have a problem. If we adjourn the debate, the problem is put off, but I have a difficulty with doing this very ironical thing. The danger of piecemeal legislation really is quite worrying as far as I am concerned, and is a disincentive to my participating in this debate, participating in a piecemeal exercise.

I do not know what is going to be the result of it all. We have to express a view on the problem and the country is expecting us to do so. It is not a question of greatness being thrust upon one. Sometimes "pikant" is thrust into you, not onto you. This is pikant! I do not want to be in this fight. This is almost a family dispute and I do not have any business in it. It has capsized the mind of the country and, therefore, we have to express a view about it and I am doing my best. I do not believe that we can simply accept this legislation on the basis that we are enacting a British convention. If we are going to enact any convention, we must enact a Trinidadian convention, not a British one. We must examine this office in our context and decide what has to be done. It is the only thing I will take the Attorney General to task for, and I do not say this in any disrespectful way. He has a client and the client is the Government, and it wants him to solve the problem, as all clients would want.

There really is some inconsistency in the approach, not only because it is piecemeal, but I heard the Attorney General say they are enacting a British convention. He did not say British, but he read from the British books, so we know. Even those who are not lawyers and follow the debate would know who these authors are. Thorn was mentioned and he came from Canada. We are always very careful about Government's selection of countries for precedents. We did not hear anything about our favourite island state with which we are soon to be twinned, and the name has been mentioned.

It is very inconsistent because I heard the Attorney General say we were enacting a British convention and there might be further protection for the Speaker because, if the circumstances warranted, the Parliament might give the Speaker the opportunity to make an oral response in the course of the proceedings. I do not see that in here. Where is that in here? Is that some kind of grace or favour that we are going to give to the third highest office holder in the land?

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Mr. Vice-President, I can bet you any kind of money—although I should not take bets with you on this official basis—but I bet you any money that informally and unofficially and within the Standing Orders, the biggest concern of any office holder whom we are seeking to remove from a presiding slot, is that he or she has no right to talk back or at least, until recently we thought the person did not have any right to talk back. That must concern someone. If one comes out of the chair or vacates the chair and all this pious business about judge in one's own cause, who is going to talk for you and who has the facts? Is it that I must retain someone in the Parliament, whether a lawyer or not, to put forward my point of view, who knows the facts and who can express my sentiments?

3.40 p.m.

If I come out of the chair every single person might condemn me left right and centre, and under the cloak of parliamentary privilege say anything about my ancestors. You know that sometimes we like to go at home when we are insulting people. There is the ridiculous spectacle that no one will speak for the office holder in the tribunal—for want of a better word—when the person is being attacked.

I examined my trousers when Sen. Capildeo talked about crazy glue because I thought about "laglee." If somebody was going to attack me and prior to that I was put out of the room, and there were no arrangements for me to make an oral response, or any response, I think I would buy all the crazy glue and laglee that was available. I make these points in order to illustrate how important it is to ensure that the office holder is not only heard, whether orally or in writing, but by a neutral tribunal. That is very important.

Whenever people are baying for blood whether it is to hang or fire people, we must always ask about the future. People like us, the eggs, who are brought into the rock-stone dance suffer all kinds of reprisals, Mr. Vice-President, as you well know. In fact in the case of my profession, a well established body in this country advocated a trade boycott of some of my colleagues who defend people in certain circumstances. When people get so hot for blood, they say to boycott those fellows and make them starve, when what those fellas are doing is fulfilling the obligation of their profession. I give you that as an example. I always have to remind people that I am in favour of the death penalty. These big organizations that are financed by bigger organizations have these people baying for people's blood. Trade boycott!

What would happen if the Speaker is removable on a simple majority? If the Speaker has any other business interest, or any other interests that are crushable, will people call for a trade boycott or some other way to crush the person because he or she has given a ruling without fear or favour to one side or the other? It is totally inappropriate in my respectful view.

I spent a long time on this in order to set the stage to try to persuade all my colleagues, including those on the Government side, that this Bill does not go far enough. I confess that I have devised my own amendment, but I am very open to any suggestion which gives the office holder the protection of the situation being looked at by some other tribunal. That is what I am after. I do not want to get hung up on the personalities or character of the tribunal.

I cannot support the Bill in this form. I am proposing an amendment in which a third party will review the case and make a non-binding recommendation to the House. I emphasize "non-binding." This is causing me much anxiety and I accept the argument. As I said, it is made in all the excellent commentaries which have been written in the editorials of the newspapers in this country, that really, fundamentally the House should deal with its own presiding officer. That is why I have come to the conclusion that the recommendation should be non-binding, so at the end of the day, if the House wants to throw it out it may do so.

I emphasize that I am open to any other safeguard. What I have done in simple terms is to propose an amendment that would result in a whole new subsection. At the end of the process as is contained now in the Bill, the record of the proceedings, as I see it, would consist of the resolution, the Speaker's answer and the speeches made in the debate.

I have chosen the Integrity Commission for reasons which I would explain. It would be sent to the third party to review the matter and the reviewing body would have two options—either confirm that the office holder should be removed, or withhold its confirmation that the office holder should be removed. I have been persuaded—and I have had a lot of help from colleagues on all sides—to take out intermediate steps like censure and suspension, so much so that I want to caution the House into looking after its own procedure. If what I have provided is confirmed, out the office holder goes.

I have put in how it should be done and what documents must be served. If confirmation is withheld the House can meet again and move another resolution, albeit by a simple majority, to say they are not accepting the recommendation.

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That would introduce a neutral tribunal to review the case, not subject to party discipline and political obligations. It would make the promoters of the removal weigh the political risks of not accepting an order that confirmation be withheld.

I have provided that the confirming tribunal must give short reasons for what they have done so that the public would see what the prosecutors or the neutral persons have said and then they can decide whether the Government is acting properly in the event it decides to veto or override the withholding of confirmation.

I have heard so many views in the last sleepless hours. Some people say that no government would have the brass to defy a recommendation to withhold confirmation. Ironically, not only have parliaments withheld confirmation of the recourse of constitution commissions, but on the occasion of the first Constitution Commission, chaired by Sir Hugh Wooding, who I think is generally accepted as probably our finest jurist, and at the time had well known political scientists and advisors to politicians, future chief justices and ambassadors—not only were the recommendations with regard to proportional representation not accepted by the government of the day, but the commissioners were lambasted for their recommendations.

Government did not have any problem. It took the political risk. It said, 'Do not worry with those light-headed fellows. All their judgments were wrong.' It is not as though we cannot cite that and other examples of governments not taking political risks in ignoring the recommendation from some third party. I do not regard it as a given that no government would take the risk. It may well do so. That is only one example. It is just that time does not permit the adducing of other examples.

At least if any monkey business is going on and a third party thinks so, somebody would have spoken for the office holder. That would be the mitigating circumstance or why there would be a rush to judgment and withholding of confirmation. That is my amendment which I am proposing and I have indicated the reasons why I am proposing it.

Why did I suggest the Integrity Commission as the tribunal? I emphasize, whatever the tribunal is, as long as it is not appointed by the Cabinet, I agree with it. I chose the Integrity Commission because all the commentators in all the newspapers have made links with this matter and the need to speed up integrity legislation. Commentators see links with all that is happening here and broaden

functions with the Integrity Commission. This is a good place to start without a green paper, a yellow paper, or any other paper.

I do not know if the Green Paper would ripen. I am involving the Integrity Commission in a more meaningful way in political affairs. It has been called for by many commentators. All its members are appointed by the President after consultation with the Prime Minister and the Leader of the Opposition, so they are not Cabinet appointees. I am not inflexible on the Integrity Commission as a body, but there must be some other body that is not necessarily a body appointed by Cabinet.

3.50 p.m.

Not only do I reaffirm my support for the death penalty, but I always say that I am not a parliamentary draftsman. I do not know if I drafted it right. If there are other constitutional problems in my amendment—I have not had the time to think them out properly. I do not think there are. If it is that we have to amend the Integrity in Public Life Act, then so be it, because we are writing something for the future that has nothing to do with the personality of the particular office holder.

At the risk of repetition, I am not wedded to my solution, but I see a gaping hole in the legislation, and I think it has to be filled in some way for the reasons which I have indicated.

I will summarize some of the things that concern me. By putting up an amendment I run the risk of something like its being accepted and I would have to support the legislation. I am running a political risk of a sort because I still do not like what we are doing. I do not like it because it is legislation for one office and not the other analogous office; it is piecemeal; it is rushed and it is tainted with narrow political considerations.

Much of our thinking is based on British conventions that simply do not apply here, either because the office is not analogous to the office in Britain, or there are other peculiar features of the office. I would like to repeat that I, too, am reluctant to interfere with the Constitution, but I judge the particular problem that we are trying to solve to be big enough to justify our intervention. I also think that it is very unfortunate that the problem could not have been solved either by diplomatic means or by the House concerned. It is patently obvious to me that someone else has to bring at least some thought to bear on this issue because, at the moment, it does not seem that it can be resolved in the place to which it properly belongs.

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You must forgive me, Mr. Vice-President, for taking such a practical approach, but I believe that the public wants a practical solution to an existing problem.

There is one contentious matter—

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

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

Question put and agreed to.

Sen. M. Daly: Mr. Vice-President, there is one contentious matter to which I must refer and I really do not want my colleague the Attorney General to get upset. If it is the fact that he was the emissary to the Speaker, I am really not surprised that this matter reached the confrontation stage. This is not because the Attorney General was other than I know him to be—a jovial person and so forth—and today very scholarly. That is not the point. One cannot send a Member of the House, Attorney General or not, to ask the Speaker and potential President, and third in the line of protocol, to pack his or her bags. Who thought up that?

Just as I believe that the laglee in the chair is as a result of not having anyone to speak on one's behalf, and no neutral tribunal to go to, I certainly believe that a Speaker and potential President, whether put in office by those Members or not, might reasonably say, Well, who has come to persuade me, you?

I do not say this in any way to impugn the Attorney General. Perhaps he was subject to party discipline or political obligation and that is why he went. I think it is very important that we understand, without in any way defending anyone or going into the merits of the matter, that people can be sorely provoked either by lack of protection of their situation, however bad it may be, or by the approaches that have been made, and the inability to rely on some neutral tribunal that they trust.

So the main thrust has been very long, Mr. Vice-President, but I think it is a very important moment in the political history of the country because this is something that has dominated the front pages of the news for days. The whole thrust of what I am saying is summarized this way: by and large the House must deal with its presiding officer but the presiding officer's rights must be fully protected, including a neutral review tribunal.

I am sorry, but I really ought to say, as I do about many of the amendments that I introduce, that none of them have I dreamt up. None of them are original. I

wish they were. What I have done is adapted them from various other things. For example, in the case of courts martial and the Defence Act, I think it is section 114, there is a confirming authority for the sentence, to sanitize the decision.

On the Constitution (Amdt.) Bill we had a joint select committee, the report of which has never been brought forward for debate. The majority of the committee adopted the formula of a non-binding recommendation for determination of the appointment of a service commissioner because there was anxiety that service commissioners were becoming indispensable. I have tried to draw together these different threads in my amendment.

I want to emphasize, as I have done repeatedly, if there is some other formula which will provide some neutrality for examination of the behaviour of the office holder, I would unhesitatingly look at it and be inclined to accept it. This is the best I can do and, therefore, this is my contribution and my remarks in support of the amendment I have introduced.

Sen. Michael Mansoor: Mr. Vice-President, I do not know if it is a matter of tradition, convention or indeed just a matter of pure wisdom on the part of the President of the Republic, but the Independent Senators have always had the good fortune of having as one of its members one of the leading luminaries of the time, and I believe that we have been well served by Sen. Daly this afternoon. I am sure that I would be speaking on behalf of my colleagues on this bench when I congratulate him on his contribution which was replete, not only with legal learning, but with more than a tinge of the vernacular, and I refer particularly to the words "laglee" and "pikant." I thank him for this.

I believe this is the third occasion, in my tenure in office, when rather difficult matters have been brought to this Senate, simply because of one persistent and pervading trend in the Constitution where it seems that we have made very definite and precise arrangements for people to be put into office, but similar precise and defined arrangements have not been made for them to demit office.

I remember very early in 1987 we had a difficulty in the life of that Parliament. I believe that this is the second, if not the third time, that we are dealing with this very fundamental problem. This perhaps argues for, and I hesitate to use the words, "constitutional reform," because we have heard it so often. The Constitution does not seem to have addressed the very real problem of dealing with situations where people, for whatever consideration, should leave office. This is really the problem that we have here today.

When I first thought about this problem I made the very simplistic calculation that if any office holder accepted appointment on the basis of a simple majority of the other House or the Senate, that office holder should be prepared, ready, willing and able to demit office, if, on the basis of a simple majority, leaving office was required.

4.00 p.m.

That is really a very simple, logical, common-sense approach to things. If one is anxious, willing and able to accept an appointment on the basis of a simple majority, why should it be so difficult to accept a set of circumstances where that same simple majority requires that one leaves office?

This really gives rise to a very serious difficulty. A presiding officer in a political situation—where there are two sides of the House—should really be appointed on the basis of almost a unanimous appointment, not on the basis of a simple majority. I think that is the genesis of this problem. The person who presides over the rules and regulations of the House has been appointed effectively by a political contingent within the House.

We all know, even if Members of the Opposition had said, this or that, for or against, the matter would have been resolved in exactly the same way—the nominated or anointed person would have been elected. That is a very simple position. If one is appointed by a simple majority, why does one not go when that simple majority requires one to go? The problem, Mr. Vice-President, is much deeper than that.

The reality is, if 19 Members of that House decide, for whatever reason, that the person who must administer and run the House, the umpire, if you will—whether it is a bad ruling or whether one is told to sit and shut up, however whimsical—if the political party in that House can get 19 Members to support a resolution against the eminent position of Speaker, that person must demit office. It is therefore a very difficult problem, because no one would want to have a situation where a Speaker felt compelled to adjudicate in such a way that at all material times at least 19 Members of the House would be in support of what he or she is doing. That puts severe limits on the freedom and independence of the Speaker.

We have a problem. What do we do? In considering this problem I had many discussions with people, including my Friend, Sen. Daly. I looked through the

Constitution; section 36 which deals with what the Constitution requires us to do in the unlikely event that the President of the country should leave office. Section 36(a) says the first step in that procedure is that:

"a motion that his removal from office should be investigated by a tribunal is proposed in the House of Representatives;"

Notwithstanding the difference in the essential type of office which we are talking about, the Constitution is not totally silent on what might be done. The first point in 36(1)(a) speaks of the appointment of an independent tribunal. It goes on in 36(1)(d) to say:

"a tribunal consisting of the Chief Justice and four other Judges appointed by him, being as far as practicable the most senior Judges, investigate the complaint and report on the facts to the House of Representatives;"

It goes on to say that having the report of that presumably independent tribunal, the Senate and the House of Representatives would then meet and there would be a two-thirds vote in favour of the resolution that the President demit office.

In a very simplistic way we have a benchmark as to what should happen in the unfortunate circumstances that we are envisaging. I ask myself the question: Could this model or benchmark not have been used to some extent in the preparation of the amendment Bill which we have here today? What is particularly devastating about this amendment is that the Speaker is required—under the amendment—to vacate office temporarily, upon delivery to him of the resolution signed by the majority of Members, by the Clerk of the House of Representatives.

Something very real happens immediately that resolution signed by, let us say, 19 Members of the House is submitted by the Clerk. The Speaker must vacate office temporarily. That is traumatic, perhaps, as equally traumatic as what we are dealing with today. We, therefore, have to ask the question: Is that simple resolution—signed by 19 Members—enough to cause us to legislate that the Speaker should temporarily vacate the chair? Should we not ask that the Speaker vacate the chair when the House is considering matters relating to the resolution for the removal from office or any related matter?

That might be a less agonizing type of first clout. We have to accept the fact that a simple resolution signed by 19 Members causes something very dramatic to happen and that is the first difficulty that I have. *[Interruption]* The omens are bad, Mr. Vice-President.

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The Constitution (Amdt.) Bill speaks about the ability to present the other side of the case. The reality is, that it is a very harsh result for this resolution signed by 19 Members of the House. Could the Attorney General state whether or not he would consider an amendment which would make that preliminary type of censure—because it is censure—a little less difficult and less traumatic for the holder of the office?

With respect to the problem of due process, it is a fact of life that in the current dispensation, a resolution that is supported by 19 Members of the House would, in fact, carry. This is where the tribunal that I talked about seems to become necessary. I do not have the legal learning to know whether a tribunal is appropriate in these circumstances, but I would certainly ask the Attorney General to look at section 36 very carefully to see whether or not something can be gleaned from this.

I have looked at the amendment submitted by Sen. Daly and, indeed, in great measure it answers the difficulty which I have attempted to overcome—that there should be some type of independent tribunal. Moreso than Sen. Daly, I am very hesitant in trying to propose amendments to the Constitution, but it seems to me that his amendment satisfies some of the problems and difficulties which an immediate vacation of office would create for this country. Whether we use the Integrity Commission or an independent tribunal headed by the Chief Justice, I am certainly saying that we need to have a situation where—to put it in very blunt terms—it is not just that one is appointed by a simple majority and fired by a simple majority.

4.10 p.m.

Mr. Vice-President, I would leave the point and I look forward to listening very carefully to what the Attorney General has to say as to whether or not it should be an independent tribunal or, indeed, the Integrity Commission.

I have another concern. What happens to this Bill if it is passed by this Senate? Can the Attorney General tell this Senate exactly what is going to happen to it? I will try to be very careful. Let me put it this way. We need to be very certain, or maybe the Government needs to be very certain, that there is a plan that would end up in the desired situation. I really worry as to whether or not, after all this debate, all of this talk and all this agonizing, we would have a Bill and not very much would happen with it.

Mr. Vice-President: We do not want to be anticipating what might happen in the other place.

Sen. M. Mansoor: Mr. Vice-President, I just ask the question because, going along very carefully with your ruling that we should not talk about what has caused all of this, I believe it is important that we set in place a certain set of procedures that would lead us to an effective resolution of this problem. I worry because in very many ways the exalted position, if you will, of Parliament has been examined in the last few weeks. I hesitate to imagine what the media would do with us if this Bill goes the way of all flesh—whatever that means. I ask the Attorney General to tell us—because he is an expert—what is going to happen.

Let me wind up by saying that while all this is going on, a view that I have heard expressed in very many quarters is that this nation, faced with so many real human problems, is it really appropriate that Parliament should be spending all this time on what is essentially the resolution of a constitution—if one wants to be kind—or perhaps a ceremonial matter? I agree fully with Sen. Daly that there is a problem. It is not the kind of problem that should totally take the focus of the country away from all the other important things that have to happen. Unfortunately, this difficulty has been given a position of prominence which, in terms of the provision of services to the people of this country, it really does not deserve.

I make the point again. However we amend this Bill—and I am very anxious to hear from the Attorney General—we should have a very clear action plan as to what will happen, so that we do not end up with more problems than we now have or we appear to have. It would be a great pity if much of the good work that is being done in this country gets frustrated on the altar of constitutional complexities or, perhaps, constitutional trivia, whichever way you want to look at it.

Mr. Vice-President, with these few words, I look forward to getting clarification and the wisdom of the Attorney General.

Thank you.

Sen. Rev. Daniel Teelucksingh: Mr. Vice-President, throughout the past few days I had hoped—and I am certain I share the sentiments of many of my colleagues—that the problem which emanated in the other place with regard to the motion of no confidence in the Speaker of the House would have been resolved and would not have spilled over into this honourable Senate. Sir, no one can deny

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the genesis and the matrix of this Bill, and you really have to forgive us if we step out of line, because this Bill just was not created out of thin air. I cannot help interpreting the introduction of this Constitution (Amdt.) (No. 3) Bill as the unfortunate use of the Senate as a sort of escape hatch and emergency exit.

To continue on the last point raised by Sen. Mansoor, I, too, am very saddened that so much parliamentary time, both here and in the other place, should be spent on this matter when there are thousands of people who are hungry, sad, homeless and jobless. We are spending so much time on this and I predict that more parliamentary time will be used; special meetings called for this purpose, as is the case this afternoon. I am very saddened and disappointed that this is so high up on our priority list. I know we have already disappointed so many people out there—thousands—whom we represent and serve and whose destiny, in so many ways, is in our hands.

This parliamentary tragicomedy in which the Government attempted to remove the Speaker, now demands that we revisit section 50 of the Constitution. I, too, believe that if Members of the House lose confidence in the Speaker there ought to be provisions to address that situation. It is somewhat disappointing though, that the apparent deficiency in section 50 of the Constitution remained unnoticed until now, and we have to be victims of that. I have no problem, Sir, in including in that section provisions for a resolution to vacate office. As developed in the amendment Bill before us, I have some very serious reservations to which I will return later.

In the light of the present impasse, we may as well set our house in order, no matter how painful it might be. Although it is terribly unfortunate that this amendment to the Constitution is occasioned by circumstances involving a Member of the Lower House, again, we are learning that it is out of life's experiences that traditions are hallowed, conventions are respected and constitutions are written. I hold the view that our Constitution and its principles are sacred, but not infallible. We have noticed within the past years that we have had experiences which indicate the need for constitutional reform, but, as pointed out by Sen. Daly, no serious attempt was made beyond receiving reports from various commissions. What we witness today is the piecemeal and emergency approach to updating the Constitution, and this is highly undesirable and frustrating, too, as the Government has learnt within the past few years.

4.20 p.m.

One lesson we must learn from the seeming deadlock in the other place is that when convenient, we yearn to appeal to conventions—and we have heard a lot about conventions. How we long to appeal to the conventions of the English and the Westminster system! This bothers me, because some of these conventions to which we yearn to appeal and to which we have now been appealing conveniently, have been consistently ignored by some of our politicians in Trinidad and Tobago. I want to specially mention, in this context, conventions pertaining to morality and integrity.

In England, and in true Westminster style, there are numerous instances of parliamentarians who have stepped down from public office to avoid their political party, their Government, or their nation being embarrassed, even though such parliamentarians are innocent of accusations made against them. Not to mention, with the slightest hint of impropriety they demit office forthwith; they do not wait to prove their innocence, and that is something we have to learn.

Also, it is true that similarly, if a Government is overwhelmingly embarrassed by its servants, then resignation is in the cards. What we are witnessing today, and this is how I want to interpret the spirit of the amendment—it is hopefully an unmistakable signal that Government intends to launch a crusade for morality and integrity in private and public life for all its servants. Is this the signal of a new political culture, or is this the impossible dream?

I think Sir, we must be consistent and not have "different strokes for different folks." Let us not amend the Constitution—as I suspect we are attempting to do—to affect only a specific isolated case, but let us now invoke and let us all be faithful to the appropriate conventions and revisit all the relevant sections of the Constitution, so that we should be receiving very early, the resignation of others who, a long time ago, should have demitted office.

Let us remember that in the same way we judge others, we may also ourselves be judged. This is the logical conclusion implied in the amendment Bill of 1995, nothing else. This is the inescapable, terrifying to some, but laudable, ripple effect of the Bill. This amendment must be transparent in its intentions and such intentions must apply to all and sundry, otherwise we make a mockery of this exercise. Without the immediate application of the purist intentions of this Bill, equally to the Speaker, as well as all of us, we are reducing this Bill to a disgraceful, singularly punitive and wicked piece of legislation.

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I support unhesitatingly any call for a standing committee of the Parliament with responsibility for matters of ethics and integrity among its Members. This is long overdue, but we wait for a crisis, and I do not think any Member of this honourable House will object to having a Standing Committee included in our Orders.

Concerning the actual provisions of the Bill, I have some serious reservations on them in their present form. I want to mention these two very important ones alluded to by previous Senators. Subclause (9) could make the Bill a dangerous piece of legislation which may threaten the independence of the office of Speaker. We must at all times—and I support the previous speakers on this—maintain a certain degree of independence for the Speaker with safeguards against manipulation by any government at any time.

Let us be mindful that the Speaker serves the total House, and not just the party with the majority in the House. That is very important. At the point of election a simple majority might be necessary but, thereafter, the Speaker is not the property of the party that rules the Government and the Parliament. From then on, that person becomes the Speaker of the House and that includes the minority groups—all of them. It is something we have to understand.

This tricky subclause (9) provides for a resolution signed by this simple majority. Such a resolution, in my opinion—and other Senators have recognized this—puts the Speaker under heavy manners by the Government at all times. Subclause (9) holds for that office its ever present threat and haunting discomfort. Somehow or other, subclause (9) gives me the impression that the office of Speaker is up for grabs like a "10-days" appointment. It is another "10-days" and we have to watch that. This is why I believe it is a dangerous subclause. Such a resolution may reduce the Speaker to a tool, or a toy in the hand of any ruling party at any time, subject to the whims and fancies of a government with a slim majority regardless of the opinion of minority representations in the Parliament.

I therefore most respectfully advise that subclause (9) be further amended to ensure that the resolution be signed by a special substantial majority of the Members of the House.

Secondly, another of my concerns with the Bill is in subclause (14), which is very interesting. I cannot imagine that whoever is responsible for the drafting of this would mean that a resolution would be left at the office of the Speaker and this would be deemed to be delivered at the time it is so left. Sometimes I reach

home and I see some envelope is slipped under the door, and that is implied in this subclause (14). To slip the resolution under the door is not good enough. That is the force of it. Common Entrance children would interpret this subclause (14) that way.

The resolution is slipped under the door and it becomes effective, and it is received by the Speaker. To deliver it in the mail box does not guarantee that the resolution is received. That is not good enough. In fact, the very act of delivery is enshrined in that subsection—so impersonal and unjust—immediately causes the Speaker also to cease functioning whether or not he or she receives it. How callous, distasteful and insensitive! It smacks of malice, a very denial of the preamble to the Constitution which affirms the dignity of the human person.

For the purpose of subclause (14) we should definitely change it around and make it very simple—that the resolution shall be delivered to the Speaker. That is all. We know how it is done. Or find some other more humane way of doing it. The Clerk can do it. But there must be some better way of expressing this desire of conveying the resolution to the Speaker.

I would like to close, because I, too, believe that today's exercise is for future generations, so we must proceed with great caution. I believe today that only with reasonable amendments to subclauses (9) and (14) would I feel comfortable with this Constitution (Amdt.) (No. 3) Bill. In its present form, I believe that the Bill is unacceptable.

I thank you very much, Sir.

4.30 p.m.: *Sitting suspended.*

5.00 p.m.: *Sitting resumed.*

Sen. Kamla Persad-Bissessar: Mr. Vice-President, as I listened to this debate and as I have been following events in the newspapers, and on my way to this Parliament, and hearing what Senators have said here today, I cannot help but agree that today, in my respectful view, is a very tragic day in the history of this nation.

It is a tragic day when this Government is attempting to use this Parliament to perpetrate what, in my respectful view, is a travesty of parliamentary democracy. It is a tragic day when this Government brings a Bill to this Parliament which, if it becomes law, would have such far-reaching consequences on the office of the

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Speaker in that it affects parliamentary democracy. It is tragic, too, in that the PNM Government has taken a decision to remove the Speaker and is now coming to this Parliament and asking us to ratify that decision by rubber-stamping it *ex post facto*. The Government has done it before on many occasions; it comes back to the Parliament and says, "Ratify it; rubber-stamp it; pass this Bill and support this Bill *ex post facto*."

On many occasions, regrettably, I have had cause to point out, what I call, drafting errors. My Friend, Sen. Suren Capildeo, today spoke about sloppy drafting. The Government speaks about typographical errors. In reading this Bill before the Senate—regrettably the hon. Attorney General is not here yet, but perhaps one of the other Senators could help—I wonder, once again, whether there is not another typographical error in it. This Bill says, "The Constitution (Amdt.) Bill, 1995," but when I open it and I read the provisions, it seems that the Bill is incorrectly named. I wonder whether, as far as the Government is concerned, this is not a Constitutional (Amdt.) Bill, but, in fact, a "Fire Occah Seapaul Bill." Because when you read the provisions of the Bill, you really have to wonder at the amazing antics of this Government.

It seems as though the Government is becoming pyromantic, with the amount of firing it is engaging in. It is firing by fax; firing by television; attempting to fire by no confidence motion, and bringing the Bill now to the Senate to fire by Bill. So it fires Lau; it fires Ralph Maraj; it fires Gift; It wants to fire Bernard; fire the Public Service Commission; fire the Police Service Commission; fire Seapaul. Then what next? When it is through, the question is, who is next?

Sometimes you hear the talk on the street amongst the people who are asking, why does the Government not call an election and give the people the opportunity and the pleasure of firing it? Is it perhaps that the Government has a higher office for her? Certainly, it had higher offices for others whom it had fired. The Government seems to be locked into a "hire-fire" mode. So it fired Lau and hired him; it fired Ralph Maraj and it re-hired him also. I want to repeat the question that Sen. Mansoor asked: What would happen after the debate on the Bill is completed in this Senate? Would there be negotiations for some higher office for her and this would end up as being another exercise in futility?

I am sure everyone in this House is aware of a very common saying: You can fool some of the people some of the time; you can fool all of the people some of the time, but you can never, never, fool all of the people all of the time. So to

disguise this Bill by saying that it seeks to amend the Constitution to provide for the vacation of the office of Speaker, in my respectful view, is an exercise in semantics and it fools no one. The Explanatory Note says:

"This Bill seeks to amend the Constitution to provide for the vacation of the Office of the Speaker of the House of Representatives..."

But when you look at the clauses of this Bill you see that the proposed new clause 3(9) says:

"Upon delivery by the Clerk of the House to the Speaker of a resolution signed by a majority of the members of the House that the Speaker be removed from office..."

The proposed subclause (10) reads:

"The resolution shall state the grounds on which the Speaker's removal from office is proposed."

The proposed subclause (11) says:

"The Speaker may, within twenty-one days of the delivery of the resolution, supply to the Clerk of the House in writing any grounds on which he resists his removal..."

The Explanatory Note speaks of vacation of office. This is a Bill, in its very wording, on the face of it, for the removal of the Speaker from office.

I want to make it abundantly clear—and my colleague has already done so—that neither I nor my party hold any brief for Miss Seapaul. I am not dealing with the person who holds the office of Speaker. We have said it over and over again. When I stand here today, I want to make it very clear that I am speaking of the office of Speaker and not the present holder, whoever that may be at this time. Because you see, perhaps at the end of the day there may be nothing wrong with attempts to remove Miss Seapaul from that office. There may be valid grounds. If that is so, I am sure the UNC, the Opposition, would be the first to say she has to go. But as it stands, at the end of the day, this Bill, if it becomes law, will stand on our books as law for the nation; it will not stand as law for one person.

In the Government's great haste and single-minded purpose—in fact, I was speaking to someone earlier today who said what it appears to be is tunnel vision; that is the only way it can be described—to remove Miss Seapaul, rather than deal with the office of Speaker, a very important office, that of office of Deputy

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Speaker, was not dealt with. Nowhere in this Bill does a single clause make provision for the office of Deputy Speaker. Is the Government saying that the Deputy Speaker will stand above the provisions for which the Constitution is now being amended? Is the Constitution being amended to get rid of the Speaker but no provision is made for the office of Deputy Speaker? Is he not also in a parallel office? Is he not to be removed at all by virtue of these provisions?

I would ask the hon. Attorney General now that he is back to address that question, because, in my respectful submission, if you are seeking to do this properly, you would have to make mention of what happens with the office of Deputy Speaker.

5.10 p.m.

So provision is made for removal of the Speaker, but I see no provision with respect to the Deputy Speaker. It seems to me, with the greatest respect, that this is an absurd situation and I would be grateful for whatever explanation the Government can offer.

The Government is not concerned about laws for order and good government of this nation, which is what this Legislature must be concerned with. Has the Government left out the Deputy Speaker, perhaps, because it has no quarrel with him now? It begs the question: Would the Government need to come back with a further amendment to include "Deputy Speaker" when it speaks of the Speaker? Surely, if its concern was to properly frame laws for this country, it would have included the office of Deputy Speaker within the amendment.

Mr. Vice-President, my colleague has already adverted to the question of consultation and I must again ask: Why this haste in rushing this Bill from Tuesday to today? If the Government has found itself in an impasse and a conflict, it has created that conflict on its own, but it is subjecting the nation and this Parliament to the trauma of what is happening here, and what I call a travesty of our parliamentary democracy. *[Interruption]* Those of us who come from South pronounce it differently from the Northerners. *[Laughter]*

Sen. Barrack: That is how the Prime Minister says it.

Sen. Persad-Bissessar: South people know the proper pronunciation.

Sir, we are now at the crossroads of our parliamentary democracy. What we do today would determine what would prevail for the future of our children. What we do in this Parliament today would stand as precedent, not just for this nation, not

just for this Parliament, but for other Commonwealth jurisdictions; other parliaments in the international community.

The circumstances may be Miss Seapaul today, but the larger issue in this entire debate, in my respectful submission, is the issue of the democracy of the Parliament. The larger issue is of the ability of the Speaker to perform the role of an independent Speaker. The larger issue is the proper functioning of parliamentary democracy.

Again, in the Government's great haste, as I said, single-minded, narrow-minded, tunnel-visioned purpose, seems to have lost sight of this. We who sit on these benches—and my colleague has already called on Senators to examine their consciences carefully—cannot afford to forget the role of the Legislature. We cannot afford to let our eyes be clouded by the dust storms and creatures of the PNM. It is my respectful submission, that in the life of every person, there comes a time when he must stand up and be counted.

We must ask ourselves in this debate, and when we vote on this Bill, whether, as a nation, we are prepared to be looked at in the annals of history as shirking our responsibility. We must ask ourselves whether we are prepared to set a precedent for the future and for the international community by supporting this Bill knowing the circumstances and motives for this Bill and always remembering that as we sow, so shall we reap. So that what we pass into law today is what we would reap in the future. And we cannot say we do not know what is in the future, because just from lessons of the past in this very Parliament we are all very aware. We have seen the tyrant with a gun try to wrest democracy from us in this very month five years ago:

So, when we make laws which deal with the powers of the state and provisions within the Constitution, it is very crucial that we ensure that proper safeguards, checks and balances are put in to prevent any tyrant and despot from oppressing us. So, where, I ask, in this Bill, is the check and the balance against the power of the state?

We must not forget that as the Constitution now stands, the check is there; the balance is there. We must remember what a constitution is. A constitution gives a power to the state but at the same time, it subscribes the manner in which the state uses that power. Therefore, anytime a provision is to go into that Constitution we must be very clear and sure that there is that check and balance.

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The existing check and balance in our present Constitution is that of the office of Speaker and, therefore, the Speaker cannot be removed from office by a majority of a government. The Speaker cannot be so removed at present. That is a check. The Speaker would vacate office in certain instances as set out within the Constitution, but there is no provision for removal of a Speaker by a majority of the House. That is to say, by the majority which is the Government.

Therefore, what you have, in effect then, is a check or a balance on the power of a government; of a government that may be a despotic, one or a tyrant who would impose his will, as others have said, whims and fancies, to seek to remove an office holder from office. There must be a check. This proposed amendment makes no provision whatsoever for a check. All the Government is saying is that it is now introducing provision to remove the Speaker, but it has placed no check and no balance on that removal as against a majority of the persons in the Parliament.

The Attorney General has said that the Government has complied with fundamental due process. The three factors the Attorney General has listed—points which have been raised elsewhere about fundamental safeguards are that the person must not be a judge in his own cause; notice of allegations made would be brought to the attention of the person and the person would have the right and the opportunity to be heard by putting in his statement in response.

With the greatest respect, all of this is a joke and a farce, because at the end of the day—and the point has already been made—the 19 persons, the majority of the Members who signed that resolution, are the same majority that is going to remove the Speaker, whether right to be heard or no right to be heard or whatever. It would be a bygone conclusion from the start of that resolution being put into place.

To say the Government has safeguarded the rights of the person, with the greatest respect, whilst it has attempted to do so with respect to being heard—natural justice principles—it is my respectful submission that it has not safeguarded and provided the check and balance to prevent an abuse of power by the majority. Therefore, the office of Speaker loses that independence and impartiality, which is now a feature of our Constitution and our parliamentary democracy.

It has been referred to in terms of tenure of office. If it is that the Government can come with a resolution with a simple Government majority and move the

Speaker, then there is no tenure of office. And this is the third highest office in the land, as we all know.

Sen. Huggins: The fifth.

Sen. K. Persad-Bissessar: The fifth highest office in the land, but the third in terms of after the President. There are the President of the Senate and then the Speaker of the House of Representatives who would act in the position of the President.

Here is this office that is being given no security of tenure, therefore putting this office lower than other offices in terms of security of tenure. In the case of a judge, a judge has security of tenure. One cannot remove the judge in that manner. The Government cannot come with a simple majority of Parliament to remove that judge. There is no security of tenure, in my respectful view, with respect to the Speaker of the House.

If there is no security of tenure what does that mean? What does it mean for the Parliament and the democracy that we espouse in this nation? It means that that Speaker would be subject to the whims and fancies of the leading 19 people. As Sen. Capildeo has said, he would be, in effect, a mere slave, because the day that the Government does not like something the Speaker does, whether it is a perception that it is wrong or, in fact, wrong, the Government is going to bring a resolution and have the 19 people say the Speaker must go. When the motion comes back to you it is the same 19 people who would vote and say, "Move the Speaker."

5.20 p.m.

How can there be independence and impartiality if there is no security of tenure of that office? Do we want the office of Speaker to be subject to the whims and fancies of the Government? If we pass this Bill as it stands, then that is what we would be doing. We would be removing the independence, the propensity and the possibility of impartiality.

I respectfully ask that we look at the spirit of the Constitution. What is a constitution? For what purpose is the Constitution? Undoubtedly, we all know the Constitution is the supreme law of the land. It is supreme even over Parliament, and the organs of state must do what the Constitution says. However, that same Constitution certainly gives the power to this Parliament to make laws for peace, order and good government, and that is the widest possible law-making

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power that could be given to any legislature. Even if that power is given to the legislature the making of legislation is still subject to the provisions of the Constitution. This follows from the Constitution being higher than any other law, including laws made by Parliament. I am sure the hon. Attorney General is well aware of that and it is so sad that knowing that, he still brings a Bill like this to the Parliament asking for our support.

The Constitution gives the power to the courts to be the guardian of the Constitution. The courts could strike down any legislation passed here that infringes on the Constitution. Yes, we can make the law but we must be careful in making it that we ourselves are not guilty of infringing on the Constitution.

I agree with the hon. Attorney General that section 50 needs nothing more than a simple majority. But where do we go from there? There is legislation which whilst not amending the Constitution itself could be framed in such a way that it collides with other provisions of the Constitution.

For example, when we deal with the Land Acquisition Act and other kinds of legislation which collide with other provisions of the Constitution—we are not altering, but we are colliding with it—we have to change the law in a particular manner. We must follow the procedure, the whole procedure of entrenchment of provisions within the Constitution.

Yes, there is a section 50—simple majority—but what implications would the legislation have for the rights and freedoms enshrined in section 4 of our Constitution? What implications would there be so far as fundamental rights and freedoms are concerned? Then this Bill cannot be passed by a simple majority. If it is, as the courts have upheld, that entitlement to office is a property right and section 4 of the Constitution guarantees protection of property, not to be deprived of property save by due process of law and enshrines that provision—that provision is enshrined and entrenched.

Then we come to section 13 of the Constitution which makes provision for any infringement of section 4—a certain procedure needs to be followed. This entitlement to occupy office is conferred, in my respectful view, by section 58 of the Constitution. If we interfere with section 50, I am submitting that we are also interfering, with section 4. If that is so, section 13 makes clear provision that we would need a three-fifths majority of the House to pass such legislation.

It is all well and good to shake one's head in disagreement and this is why we have reached to the very impasse we are in now. At each point the Government

has been either stumped out or bowled out! Listen to the law and read the law so that you would not be stumped or bowled again!

It is our respectful submission on this side, and we make it very clear, that as this Bill now stands, we cannot support it. Basically, our problems with it are twofold. Firstly, it takes away from the independence and impartiality of the office of Speaker. Secondly, we have a difficulty as to whether it collides with and infringes section 4. I am sure the hon. Attorney General has his views and we would be grateful for those views, in court, if necessary. Perhaps in his winding up he can deal with that problem because it is a cause for concern—what could be the position with respect to section 4.

Why has he left out the Deputy Speaker from the amendment? He told us that he looked at the Indian Constitution. Would he be good enough to also tell us whether the Indian Constitution, which has similar provisions for removing a Speaker from office, has a provision like our section 58 which entrenches the entitlement to office of Speaker? From my reading of it, the Indian Constitution does not entrench that entitlement as ours does in section 58.

I have read in the press that the Constitution (Amdt.) Bill has been, perhaps, following precedent elsewhere—that the Cook Islands amended its Constitution to make provision for removal from the office of Speaker, so therefore, nothing is wrong. In fact, that ours has gone even further, we have been told, because we are putting other safeguards in terms of natural rights and natural justice.

The most important matter in Act 22 of 1978/1979 from the Cook Islands—what that did is not what we are attempting to do here. This is our entire grouse with this amendment. The Government wants to bring a simple majority to remove the Speaker but the Cook Islands which we have been hearing so much about, did not ask for a simple majority. The amendment brought said:

"If the Assembly passes a resolution supported by the votes of not less than two-thirds of all the members thereof requiring his removal from office."

There is an entrenched provision. There is protection of a two-thirds majority and that, in my respectful submission, could give security of tenure and could give to the office of Speaker the independence the Government is seeking to take away.

Mr. Vice-President, with those words, I thank you very much.

Sen. Everard Dean: Mr. Vice-President, as I said elsewhere, today is a sad day for Parliament, it is a sad day for the country, it is a sad day for our Constitution and, ultimately, a day of decision for the office of Speaker.

We are asked to amend the Constitution to include a provision for the vacation of the office of Speaker of the other place and for the procedure to be followed in the circumstances. Perhaps there are circumstances that should be taken care of in the best parliamentary tradition and convention which requires that the holder exercise his moral conscience and vacate the office when it is signalled to him that he no longer enjoys the confidence of the majority of the Members of the House that elected him in the first place.

5.30 p.m.

There is a crisis in the political culture of Trinidad and Tobago. We need good top management that is not tainted. Government officials, politicians and religious leaders should be models of good behaviour, but in recent times we see people from these ranks as leading players in a series of scandals. While the nation is preoccupied with the office of Speaker, Trinidad and Tobago is wallowing in a moral morass and it should come as no surprise that unethical conduct of society's leaders is reflected in the general public.

We have had a tradition of standards that seems to be no longer fashionable. There do not seem to be any moral landmarks at all. Is it that public office is an open charter for any form of opportunistic behaviour? The Integrity Commission has been calling for a stronger piece of legislation. In fact, in the 1993 report the commission considered that there should be three enactments which would serve to put in place what they thought was required for the establishment of a satisfactory integrity standard.

Page 9 of that report states:

"We consider that there should now be three enactments which would serve to put in place what is required for the establishment of satisfactory integrity standards, viz:

- (a) an Act to establish the ethical standards that should apply across the board to all public service activity, which might be entitled the 'Ethics in the Public Sector Act';
 - (b) an Act to amend the Integrity in Public Life Act so as to give enabling powers to carry out the functions of the 'Ethics in The Public Sector Act';
- and

- (c) an Act to amend the Constitution so as to enable the purposes of the above Acts to be carried out."

The establishment of a set of integrity standards is absolutely necessary for this country. Not only did the Integrity Commission consider these areas; it said:

"By way of a footnote, we would say finally that in those countries in which we have observed similar powers of control by Ethics Commissions, the results have been threefold, viz:

- (a) Breaches of ethical standards can be brought to light by thorough investigation, and dealt with appropriately;
- (b) Persons who wish may seek guidance as to their conduct before any breach can occur, and so avoid falling into error; and"

Listen to this. I think this is in keeping with the comments made by Sen. Daly and Sen. Mansoor.

- "(c) Allegations of breaches of ethics can be examined by an impartial body in a fair enquiry, and false accusations will be dismissed, so that a person wrongly accused can have his name vindicated. Without such an enquiry, a false accusation may often be bandied about with impunity, and so gain currency in the public mind from the sheer frequency with which it is repeated."

I think we know only too well what has happened and what is happening at the present time with some persons in respect of some act or acts in the past.

I am sure that the Government will take into consideration the amendments proposed by Sen. Daly and Sen. Mansoor and further amend the amendment, so that we can get the kind of legislation this country deserves, not only a provision simply for the Speaker to demit office by popular vote, but also a mechanism by which this can be done.

I am a strong supporter of the independence of the office of Speaker, but it should be understood that if the majority of the Members in the other place, who in fact represent the faces of the electorate, indicate that the Speaker should be removed from office, then I am of the view that the Speaker should, in keeping with the highest tradition of the Westminster system, step aside and let the business of the country continue without the cloud of uncertainty that now prevails.

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I know some of us live by certain principles but it is sometimes wise to rise above those principles and do what is right, for in the final analysis the office is bigger than the person and must be represented with dignity, integrity; and, most of all, the holder must enjoy the confidence of the majority of Members of the other place. It is high time that a new political culture was developed in this country.

As I said earlier, I strongly support the amendments presented by Sen. Daly and Sen. Mansoor and I give my commitment to the support of this Bill if those amendments are accepted. In fact, the proposal for a tribunal can only complete the exercise by ensuring that neutrality exists in the whole process.

Thank you.

Sen. Prof. John Spence: Mr. Vice-President, I started thinking about this matter from the position which I have always taken, which is that one should be very reluctant to make changes in the Constitution. Members who have been here for some time would recall, and indeed Sen. Daly referred to it, that I have taken that position on a number of occasions before, when it was suggested that we make changes, when I felt that the matters at hand could have been dealt with in other ways without having to make those changes.

Having said that, I think one has to recognize that one cannot take a rigid inflexible position and continue on that path, even if it is clear that there is a situation to be dealt with. I think in this case it is clear from the public discussion which has been taking place over the last few weeks, that there is a situation that must be dealt with. Again, my first reaction to the Bill was perhaps that we should deal with the situation immediately by a change such as the one proposed, but that we should limit the time of that action so that we would have a longer time to reflect on the matter and come up with a more acceptable solution.

Having listened to the contributions this afternoon, particularly to that of Sen. Daly, I have modified that position somewhat and I now recognize that perhaps putting a time limit on the change would not be the best way to move, if one is talking about a change in the Constitution. One would then have to consider how we address the two problems which were enunciated, namely that of trying to give security to the office of Speaker and not have the Speaker removed lightly; and on the other hand, not having the situation where the Speaker cannot be removed at all.

I would just point out to Sen. Persad-Bissessar that while it is true that one wants to protect the Speaker from arbitrary removal, so does one not want to have the balance the other way and have the Speaker being the dictator. We do not want a dictatorship of the Government, but also we cannot have a dictatorship of the Speaker.

5.40 p.m.

Somehow we have to find a device that creates a balance. In that case it would seem to me that the modifications that have been suggested by Sen. Daly or perhaps the further modification of Sen. Mansoor would get us as close as possible to filling the bill to meet these two conflicting problems and to achieve a balance. It is true that we will, by so doing, have addressed the problem piecemeal, having had to do this because of a situation that must be dealt with. We cannot have our country disturbed in the way it has been for the last few weeks and not resolve the issue. At this stage I can see no other way myself of resolving the issue.

Earlier on I had said that perhaps it might have been resolved by more extensive consultation. Indeed, the statement made by Mr. A. N. R. Robinson seems to suggest that he felt that part of the problem was due to lack of consultation. Be that as it may, I think the time for that is now past. It seems to me that we have to act now. In this regard, I hope that what would happen in the future is that we would have another look at the Constitution in a more comprehensive way. So we will look at the service commissions if they create problems; we will look at the offices we have created and which we have enshrined in the Constitution, perhaps, in a way that presumed that individuals would act in a certain way, but we now find that that does not always happen. We may now have to extend our Constitution.

I would say that putting in additional provisions is somewhat different. Although we refer to it as amending the Constitution, putting in certain provisions is different from altering or taking out provisions. Perhaps an additional safeguard, as in this particular instance, is not to be resisted as strongly as I perhaps have resisted other changes in the past.

I have listened to all the discussions, which I think have been very valuable, very good. The debate has had a higher standard of contribution than many that we have listened to in the past and I have now come to the conclusion that we should support this amendment with the further amendment proposed by Sen. Daly

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and modified by Sen. Mansoor. In other words, I think that perhaps the Integrity Commission is not the right body to give an impartial position on the motion presented with respect to the removal of the Speaker, but that we should have a tribunal appointed in some way that we can mutually agree here, if we deliberate for a few hours further, and arrive at the best possible solution to this problem.

Thank you, Mr Vice-President.

Sen. Diana Mahabir-Wyatt: Mr. Vice-President, I will be very brief. The President of the Senate, under Standing Orders, has told us that we should not repeat points that have already been made in a debate, and I do not wish to do so.

I would like to echo the sentiments of Sen. Prof. Spence that I think that this has been a debate of an extremely high standard, much higher than many we have ever had. It is only fair because we are making history here today. The fact that we have to amend the Constitution because unforeseen circumstances have arisen which call for this, is simply another way of saying that in developing our own traditions and conventions, we have to do so on the basis, historically, of what happens; and we are definitely dealing with an historic occasion. Because of that, we have started a debate here today that has been certainly very gratifying. I would like particularly to commend Sen. Daly on bringing out the philosophy and context that I think we all needed to have put in.

My purpose in asking to speak was simply to support the suggestion that has been made that we combine the amendment suggested by Sen. Daly with the comments made by Sen. Mansoor. I think that most of us would feel more comfortable with a tribunal as suggested under section 36, rather than with the Integrity Commission; Unless and until we amend the governing legislation to make the Integrity Commission something which deals with principles and ethics and problems of public morality, or some other body is developed to do that, I think that I would feel more comfortable going along with Sen. Mansoor's suggestion that we use something similar to section 36.

The other point I would like to make before closing is on the question of independence. I am worried about the independence question as well. I think that having a three-fifths majority, rather than a simple majority might be a good idea to appoint a Speaker in future, so that more care, attention, consultation and joint responsibility will be taken in who is appointed, and the responsibility will also be accepted if and when the time ever comes that that person and/or the President of the Senate has to be removed.

Following along one of the points made by Sen. Daly, small countries like ours with small populations and parliaments do get entrenched positions where the Government takes one side and the Opposition automatically opposes. The Opposition, throughout the West Indies, tend to see their job as opposing. They are there to oppose what the Government proposes. I do not think we can get away from this and while I think we have to make provisions for it, we must accept that we are what we are and find ways that are not the ways of Great Britain, and not the ways that May's *Parliamentary Procedure* suggests. We have to find our own ways of dealing with this, and perhaps set an example so that other places like the Cook Islands can deal with it.

In closing, I would just like to express my concern, along with everybody else's, that we are amending the Constitution in the way we are and to appeal to the Government to have a comprehensive review of the entire Constitution in as short a period of time as is feasible. We have had too many proposals coming up to amend bits of it, including the amendment that we are dealing with today, if it goes through. The whole thing has to be looked at, with all the provisions, including these and the service commissions and everything else that we have been arguing about. It has gone to the point—and I do not think that we can take it anymore—that we are taking a little bite here and there and the animal will bleed to death.

I thank you.

Sen. Verne Richards: Mr. Vice-President, it is indeed a very sad day, this day, as has been said by many speakers. On the few occasions that I have attended this honourable Senate, it was to deal with similar amendments—constitutional amendments. However, when one looked at the genesis of the problem, there was conflict between the Government and some person or institution under the Constitution, which resulted in the proposed legislation. It was not that the Constitution needed changing. It was conflict between Government and a particular office holder. We are having what I would call personalised legislation.

The word malice was used and one can look at the way the problem unfolded with respect to all these changes for proposed legislation—those for the service commissions, and those dealing with the Strategic Services Agency Bill. These resulted in the hiving-off of functions from certain institutions or tacking on certain amendments to the Constitution.

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5.50 p.m.

As a result, we were having the Constitution continually being amended in an ad hoc fashion. There was no thought behind it. It was generated only by personal considerations. It had nothing to do with the people. The hon. Attorney General said, there was no need for consultation with the people. The Constitution concerns the people. It is about the people.

We all know the problem which caused this piece of legislation to come before this Senate. Our problem is, to have the Speaker removed by a simple majority—as all the previous speakers have said—would have a destabilizing effect on whoever was appointed Speaker. That is a problem we cannot deal with. We would not accept that at all. We are not legislating here for this particular office holder; we are legislating for future generations.

Certain amendments have been proposed, but we are saying that the Integrity Commission, or the tribunal as proposed, is unacceptable. Who would be appointing these people to the tribunal? We know this is a very small country and everyone knows everyone; as a result, there might be the perception of partiality. Then, when one gets behind it, somebody else is pulling the string; the Government is pulling the string. So we are saying to remove the Speaker, we must have an entrenched provision. The hon. Attorney General spoke extensively and scholarly, of course, about conventions, but the conventions he spoke about were basically English conventions. He spoke about how the Indian convention was working with respect to the president. The only convention we have here is that public office holders do not demit office when circumstances dictate that they should. That is a problem we have with the people on the street and that is having a deleterious effect on the whole country, as Sen. Dean said.

Mr. Vice-President, we are unable to support this Bill as it is. With respect to the suggestion of the amendments relating to the Integrity Commission and the tribunal, we think that would be of no effect and that the position should be entrenched.

I thank you, Mr. Vice-President.

Sen. Hydar Ali: Mr. Vice-President, Sen. Capildeo mentioned several Bills which came to Parliament which sought to amend the Constitution. Each time these Bills came to Parliament they have been greeted with paranoia, fear, skepticism and suspicion. I could use some hyperboles to further describe these incidents, but I would not do that.

Why is it so, Mr. Vice-President? Is the Constitution sacrosanct, as it is made out to be? Is it like the scriptures? After all, any constitution is the product of human beings. In our case, it is the product of some of our best minds—as some may say, our finest minds. But as Sen. Rev. Teelucksingh said, this is certainly not an infallible document. It is a man-made document which cannot cater for all situations in all eras and epochs. I maintain that if the situation demands it, the Constitution must be amended. This does not imply that amending the Constitution is a trivial everyday matter and ought to be approached in a whimsical manner. I think if it is justified, the Constitution ought to be amended.

Unfortunately, in this debate, 'genesis' and several other words have been used to describe this Bill. Some Members have even questioned the reason for its being laid in the Senate in the first place. One wonders if this is the approach, why it was not used before. I do not know if this has been described as errors—I do not want to repeat some of the terms which have been used by other people, but apparently those approaches have not yielded the goal and this approach is now being used.

I was very pleased that the Attorney General went to great lengths to describe our Constitution, especially the conventions which are related to it. The problem we have here is that there has been a failure of office holders to observe these conventions. The particular case being referred to here is that of the office of Speaker. The question which arises is: Has the Constitution failed us, or have our office holders failed us? This poses a dilemma for me. Are these two events mutually exclusive? If we say that the Constitution has failed us, could we conclude that our holders of high office have not failed us? It is a bit tongue in cheek, but it does reflect the dilemma which others and I face.

I agree with some of the other Senators who have spoken before me that if this is our attitude, if conventions are not being observed; if our officeholders are paying scant respect to the conventions—these conventions are a major part of our way of life and are part of our Constitution—I am wondering if we should not go through the Constitution and where it allows for conventions to be adopted, in certain instances we should amend the Constitution. We should not wait until a situation such as this arises and it becomes a personal matter and we then have to bring legislation.

It seems that we are not prepared to follow certain conventions. We follow certain conventions only in a ceremonial manner, for example, one's entry into this hallowed

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Chamber—it is conventional, ceremonial. Apart from that we are not prepared—perhaps for the reasons Sen. Dean has mentioned—to follow those conventions.

Many Senators have asked that we should go through the Constitution, amend it and forget about conventions because that is not going to work here; we have to write everything here. This is why I see no difficulty in the concept of bringing this Bill to Parliament. Take note of my word, Mr. Vice-President, the idea of bringing this—if the Constitution has failed us; how can we remedy the situation? Should we allow the status quo to remain until 1996—one of the ways in which to solve the problem? I do not think so; we have to do something about it.

In principle, I agree that something has to be done and if this Bill does that, with modifications and amendments, I think I would support it.

6.00 p.m.

Just to spend a minute or two on the Bill itself, since we are in the section of the Constitution that lists certain instances in which the Speaker may demit or vacate office. I was wondering whether the resolution should not list certain specific instances. I think this would remove some of the fear that is in some people's minds—that the Speaker can be thrown out at any time for political and personal reasons. If we can have some idea as to what additional things we can include in this resolution—I was hoping that there would be some appendix here that would list these things—we would have some idea as to what we are looking for. Then the debate would have zeroed in on certain areas and any fear of suspicion would have been reduced, although not eliminated.

I do not know whether this is legal language, but I find it rather strange to see that this resolution should be signed by a majority of Members of the House. What does that mean? Clearly, it could only mean that it is coming from the Government; theoretically, it does not mean that, but in practice it means that. So if we want to allay some of the fears that have been expressed here, why is it we cannot modify it, and perhaps include Members from the Opposition among the people who make up the majority or something like that? It is better that we have the problem at that stage rather than not debating it at all.

I had another problem and I am glad Sen. Daly spoke before me as it helped me a bit. If one looks at the order in which this procedure is going to be adopted to have, in the first instance, the Speaker vacate the chair. Firstly, there is a resolution from the majority of Members of the House and then within a certain

number of days—and I am a bit suspicious of the number of days; I am glad Sen. Daly has reduced the number of days because, as I have noticed from reading the newspapers, lawyers wait until the last day or even the last year to file motions.

I suspect Sen. Daly was bearing that in mind when he suggested that the number of days be reduced from 30 days to 14 days. In situations like this where there will be a little disruption when the Speaker vacates office, we should try to do everything possible to tighten this and reduce the time in which there is this uncertainty.

What happens now is, the resolution is sent up, there is a reply from, perhaps, the Office of the Speaker and then that is the end of the Speaker's input into it, as so many people have said. The Attorney General mentioned the components that make up natural law, judge, reform and so forth. All the Speaker does in this case is submit something, and that is it. That will be debated and the Speaker has nothing else to do with that again. That is why I agree with the idea suggested, firstly, by Sen. Daly that there ought to be some neutral tribunal because that is the only way both sides are going to be heard.

I disagree with my colleague here that subsection (14) should be amended. I feel it should be struck out. I have never seen any case where something is delivered to the Clerk, then one has to write at the end of it when it is delivered, then it becomes law. When I call the Clerk of the Senate and say that I cannot come today, I expect the Clerk would give that message to the President and I expect the President would act on it. I do not know if there is any other interpretation for that. I do not know why this was put in specifically here, that when something reaches the Clerk one has to specify that it is deemed to have been delivered. I think in all other areas in which we operate here, that is taken for granted.

I do not believe that this is a gloomy and sad day; I think it is a day in which we can have open discussions and try to resolve this difficulty that is affecting all of us.

Sen. Junior Barrack: Mr. Vice-President, one of the things that we have come to be familiar with in this debate is the word "convention." The Attorney General repeated it many times in his contribution and almost every other speaker after him did the same.

When I heard that probably or most presumably the convention that we speak of is a British convention, I got a little worried, because one of the reasons we were

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bogged down in this Parliament dealing with a matter of significant historical importance, recently, was that historical convention which affected very important people and groups in our society. I do not know if we are totally oblivious of our history. I do not want our country to be run by British conventions; I would like it to be run by conventions that are developed by the people of Trinidad and Tobago for their lasting peace and security.

I have to support Sen. Martin Daly again—and it is becoming a regular thing—because he made this very significant point. We know for a fact that after 1797 it was as a result of the intervention of the British that a type of racism in terms of colour was instituted in our society.

We know what happened under the Chacon administration; it was called the Golden Age of Trinidad and Tobago where blacks, whites and free coloureds roamed freely in the society. But it was under the British colonial system, dating from even after the abolition of slavery right up to our independence, that many of our people suffered tremendously. I am making this point because two individuals are in this Parliament representing significant groups in this society.

The Attorney General said that the Bill before us is the silver lining in the dark cloud that has hung over this Parliament for the last few weeks. What is that dark cloud? What particularly is the matter that is now dominating the minds of our people so profoundly that we now have to look for a silver lining, to have hope that this dark cloud will pass eventually?

6.10 p.m.

Mr. Vice-President, it appears that we are amending our Constitution to deal with this dark cloud, and since the dark cloud cannot be in any way the office of the Speaker of Trinidad and Tobago, it may be that it is the office holder that is called the dark cloud, and that is the reason why the Government wants to amend our Constitution. If Government is amending our Constitution to remove one individual because it believes there is no other way of going about it, I would like to examine the possible options that were available to the Government other than amending our Constitution.

There is a gentleman who is known as the foremost authority on constitutional matters in Trinidad and Tobago and it is said—he is not a UNC member—that that individual was involved in drafting this piece of legislation that that is the way we must go. Whenever this piece of legislation is passed for that specific purpose, it

must be repealed or allowed to lapse and we must revert to our old ways of doing things, because all we want to do is simply remove the dark cloud that is hanging over our Parliament and our country.

Based on newspaper reports, it has been brought to our attention that the Attorney General approached the office holder and asked the person to resign. That was one option. It appears, based on newspaper reports again, that that option was rejected. There appeared to be another option, which was that the Attorney General and the Government could have considered a diplomatic round of initiatives, getting qualified and respectable persons deemed to be impartial by the individual concerned—because it has to be something like an arbitration—to deal with the matter. That option, we were told was taken up by a former member of the party and that apparently failed, while we heard many apologies coming out of that particular initiative.

If the diplomatic option were used and it failed, I think we could have relied on convention, or the way we have dealt with matters of this nature in the past. That would have meant that the individual would have retained his or her office; the Government would have said it was the person's private business and it does not want to have anything to do with it; that the individual concerned would have been given additional functions in the party at the time when this matter was being dealt with to ensure that the confidence of the public was not lost; that it would have been waited out and when another issue of great public importance came up, it would have died naturally.

That is the convention. Clearly, that was not an option as far as this Government was concerned. It meant that the convention was not going to be carried and the individual would have had to be taken out of office forthwith.

There is another option. That option is that under section 50(5)(b) (i) of the Constitution, the Government could have called an election and after the dissolution of Parliament and its resumption, the office of Speaker would have been vacated automatically and there you have it. You have got rid of the dark cloud that hung over the country.

These are the options which I have looked at, and I believe if these options—the last one would have worked, Mr. Vice-President, I am certain; we needed no amendment to the Constitution to effect the last option here. The Prime Minister has the power to do so and it would have been done quite easily and he could do it at any time. It would not have to take 20 or 30 days; he could do it with almost immediate effect.

Sen. Capildeo: Like a thief in the night.

Sen. J. Barrack: Well, like a thief in the night he likes to do it.

These are the options we have at our disposal, and clearly, none of these options were taken up. Instead and this is where the danger is—the Government appeared to have proceeded with a public relations campaign against the office of Speaker or the individual in the chair, trying to bring public pressure to bear on the office-holder to demit office and in the process, whatever that individual may have done to warrant the request for removing that individual from office, the action that preceded it in order to remove the Speaker or whoever from office, was one of the most horrendous blotches on the pages of the history of Trinidad and Tobago.

The Government proceeded, led by the Attorney General—

SITTING OF THE SENATE

The Minister of Planning and Development (Sen. Dr. The Hon. Lenny Saith) Mr. Vice-President, I beg to move that the sitting of this honourable Senate continue until the completion of the debate and the passage of this Bill.

Assent indicated.

6.20 p.m.

CONSTITUTION (AMDT.) (NO. 3) BILL

Sen. J. Barrack: Mr. Vice-President, the Government, as must have been dictated to by its public relations officer—and he must be fired—began a public relations campaign against the office of the Speaker to remove her. As that was done, the office of Speaker became a laughing stock in all of Trinidad and Tobago. Everybody who was looking on at this matter became concerned, and that is when the dark cloud really began to hang over the office of Speaker.

We cannot and should not condone the actions of this Government as it relates to the office of Speaker. What the Attorney General and his Government tried to do by forcing the Speaker out of office on the basis of public opinion, should never be condoned and it should be condemned unequivocally by every right-minded parliamentarian who sits now, in the past, or ever will sit in this Parliament.

Numerous articles began to appear in the media. There were people calling on the Speaker to go, using derogatory terms, all sorts of things, inspired by this Government. To this day we are not in possession of the facts of the matter—

Mr. Vice-President: And we will not deal with them here this evening, Sen. Barrack. Please be guided. I see you were going very well all the time, so please come back on track. We are dealing with the Bill before us.

Sen. J. Barrack: We do not know the facts of the matter and by your ruling we do not need to know them here.

Mr. Vice-President: That is right.

Sen. J. Barrack: Mr. Vice-President, we are very much circumscribed in this Parliament by the way in which we are allowed to look into the circumstances of this Bill. If the Government brings a Bill before us in this Parliament and we are unable to examine it and its origin in any manner that will give us some kind of grasp as to why we are doing what we are doing—I feel, as Sen. Capildeo and others before have expressed, that a matter of this magnitude is not being given sufficient ventilation of the points that should be debated.

We are asked to do something that is of tremendous importance to the people of Trinidad and Tobago, which is to amend our Constitution, and we cannot properly examine the circumstances under which that matter arose. It is not your fault, Mr. Vice-President. You are only carrying out the dictates of the Standing Orders, and I am telling you that you are correct in your ruling. I am not attacking the Chair. As a matter of fact, you are my favourite person. I told the Vice-President of another time he is my mentor. The fact that we are dealing with a matter of such gravity and cannot properly examine all the details surrounding it is, in fact, a very unfortunate circumstance in which we, as Members of the Senate, find ourselves.

I would now like to look at clause 3 of the Bill and see how the Government decides to proceed in 3(b) of that clause. Under 3(b) it states:

"by inserting after subsection (8) the following subsections:

(9) Upon delivery by the Clerk of the House to the Speaker of a resolution signed by a majority of the members of the House that the Speaker be removed from office, (hereinafter referred to as 'the resolution') the Speaker shall vacate his office temporarily and cease to perform his functions as Speaker."

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When this clause is taken in conjunction with subclause (12), which is also part of the amendment and states that "the Speaker shall vacate his office" but where it is not passed "the Speaker shall resume the performance of his functions as Speaker";—

And proposed subsection (14) states:

"For the purposes of subsection (9) a resolution left at the office of the Speaker shall be deemed to be delivered at the time it is so left."

I cannot believe that whoever drafted this, whether considered by minds to be the foremost constitutional authorities or not in this country, could have the audacity to draft legislation of this nature and bring it before conscious men and women of integrity in this Parliament and expect them to allow that to happen. Not in this Parliament! There will always be voices, especially in these Opposition Benches, that will speak out against it.

6.30 p.m.

Mr. Vice-President, the Government, based on what is here, is first the accuser; it accuses the Speaker; suspends the Speaker; tries the Speaker and then fires the Speaker.

Sen. Rooks: Sen. Barrack, I have to go to San Fernando.

Sen. J. Barrack: You have lost your way? *[Laughter]* Well, I would tell you where you have to go.

Mr. Vice-President: Senator, please address the Chair.

Sen. J. Barrack: Mr. Vice-President, the very thing that the Government accuses the present office holder of, is the very thing it tries to perpetrate here, and worse. It is judge, jury and then executioner in this case because it seeks to do all this with a simple majority. A simple majority suspends the Speaker; a simple majority brings the matter to Parliament to be heard; and a simple majority deliberates and fires her.

Sen. Draper: One man could fire you.

Sen. J. Barrack: Your position is very tenuous, because as you would see, your ruse for public relations activities—

Mr. Vice-President: Senator, this is being recorded in *Hansard*.

Sen. J. Barrack: Well, I would put it there. *[Laughter]* I want the future generation to know what this man has done. He, Sen. The Hon. Gordon Draper, said he wants it to be more relevant, and I am making it more relevant.

Sen. Ojah-Maharaj: Another one of your mentors.

Sen. J. Barrack: Another mental—

Mr. Vice-President: Can the Senator be allowed to continue his contribution.

Sen. J. Barrack: Mr. Vice-President, this is very serious and I suspect that the Government would alter its intended actions here considerably and make way, not only for the withdrawal of this matter, but also for this matter to be handled by way of a general election. It is one of the easiest and most appropriate ways to handle it, since the so-called dark cloud is part of the Government's making, and the way in which the Government handled this matter was wholly irresponsible, tactless and in some ways, a demonstration of gross ignorance.

Now that it has happened, I think the easy way to get out of this matter is to simply call an election and on the first sitting after the dissolution of Parliament, the Speaker would vacate office and the UNC would be in power.

Mr. Vice-President, the present legislation also presupposes that the Government would always have a majority. There is no provision in the legislation for when it gets into Opposition in the next year. *[Interruption]* What if? Not "if"—when it happens that the United National Congress gets into office, and the Speaker appears to be partial (and God forbid! that would never happen with us; this is a very hypothetical situation) and we move to remove the Speaker on the basis of this proposed legislation, this bunch of men and women opposite would scream because they would believe then that impartiality is very important and they would not like the Speaker to be subjected to the whims and fancies of the Government. It is for their own protection. The present Government would not be there for long.

The United National Congress is very clear on its stance. Our position was quite ably and eloquently put forward by Sen. Capildeo, Sen. Persad-Bissessar and Sen. Verne Richards, and we stand by that.

Sen. Capildeo: They still have to face Occah next week, you know. I want to see how they are facing Occah.

Sen. J. Barrack: Mr. Vice-President, finally, I would like to say that I am doing this only because of the benevolence I have for my good Friend Sen. Rooks,

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who has to go to San Fernando. When he first asked me the question I thought he had lost his way, but really what he meant was that he wanted to leave now.

I thank you, Mr. Vice-President.

The Attorney General and Minister of Legal Affairs (Hon. Keith Sobion): Mr. Vice-President, there are a number of matters to which I will respond and I would endeavour to do so quickly. The fact that there are so many matters raised tells me, as had been said before, that the debate was of a very high standard—well, generally speaking.

As a general matter, there is some cynicism which comes through on matters such as these and they relate to the concern that some Members have that persons would act in a whimsical fashion, and the worst case scenario is always anticipated. I do not intend to make any pronouncement about that, whether it be right or wrong. The fact of the matter is, however, that in the political arena there are prices to be paid for whimsical action.

I do not carry that kind of cynicism that is sometimes expressed, but I am sure that persons realize that a Government, or indeed, an Opposition party, when it acts, or if it acts, in a whimsical fashion would be exposed to other institutions within the society including the media, generally. These are some of the checks and balances which exist in our system. Indeed, the voice of the people in present-day society is heard very often and very loudly on a daily basis. So, I do not share that cynicism although I understand that it exists.

Another matter of general import to which I should refer, perhaps, is the concern which was expressed by at least two or three Senators about the approach to the Senate in this matter. Quite apart from the fact that it is constitutionally possible—which I assume Senators are aware of—it is quite clear that the Government had to act in a certain way in relation to this matter. There is nothing improper and, in fact, one of the guiding considerations was that this matter should be brought out of the pure political arena and the views of Independent Senators should be heard on this issue.

There has been talk about conventions, and there was an implied pointed criticism about British conventions coming from Senators on the other side. My own view is that conventions must be adapted to the society where those conventions are to operate. I thought I had made the point quite clearly that this particular convention is not really a British convention. It may have originated in the British society, but a convention that a presiding officer should take a certain

stance if a vote of no confidence is expressed, certainly, is a convention of almost universal application.

6.40 p.m.

If one is presiding over a body and that body expresses no confidence in one's ability to continue to preside, it seems to me that that cannot be limited and described as a British tradition. Good sense must dictate that one has lost the confidence of the persons whom one is supposed to guide in the course of their debate. If I may reply to the contributions of some of the Senators, and I will go in the order in which they spoke.

Sen. Capildeo questioned the honesty of purpose in this matter and he made reference to the fact that the Government was outfoxed. Quite clearly, this Government has approached this entire episode in a way which it has sought to maintain the dignity of the Parliament and with a view to ensuring that proper procedures were followed at every step. Indeed, I express the Government's regret that it was forced to reach this path when a certain course of action ought to have been followed a long time ago.

If I understood a point Sen. Daly made about hiring and firing—that point may have collided with something that Sen. Mansoor said—he was a bit concerned with the concept of the hiring and firing of a person. Sen. Mansoor made the observation that if one is hired in a particular way then it is only commonsensical that the same procedure ought to be adopted when the reverse applies.

An interesting question was raised by Sen. Daly as well, and I think by at least one or two other Senators, that is, the role of the Speaker in the Constitution of Trinidad and Tobago, where the Speaker, quite apart from a substantive role, was second away from the presidency. In developing proper conventional norms, I indicated that when one started to reduce conventions into writing, they, perhaps, can be adapted to suit particular conditions.

The only concern I had about the argument advanced from that point of view was the fact that in a sense, a vote of no confidence in the Speaker, the presiding officer, is not a vote of no confidence in the office but in the officeholder. The argument about whether a higher standard should be fixed in relation to that particular office simply because it was second in line from the presidency or two heartbeats away as he puts it, seems to me inconsistent with the concept of a vote of no confidence which is in the person as opposed to the office.

Sen. Mansoor raised the concern about the presiding officer being asked to temporarily vacate office when the resolution was delivered to the Clerk of the House. This provision which is the new subclause (9) under clause 3 of section 50 is not entirely unknown to our Constitution. If one looks at section 137(4) of the Constitution, one would see that that kind of temporary removal is also contemplated in relation to the high office of judge. The relevant provision is 137 and I will read it:

"Where the Prime Minister, in the case of the Chief Justice, or the Judicial and Legal Service Commission, in the case of a Judge, other than the Chief Justice, represents to the President that the question of removing a Judge under this section ought to be investigated, then—

(a) the President shall appoint a tribunal..."

Subsection (4) says:

"Where the question of removing a Judge from office has been referred to a tribunal under subsection (3), the President, acting in accordance with the advice of the Prime Minister in the case of the Chief Justice or the Chief Justice in the case of a Judge, other than the Chief Justice, may suspend the Judge from performing the functions of his office,..."

The question of temporary removal before a full hearing is not a situation which is unknown to the Constitution and, perhaps, because of the sensitive nature of the particular office, one may need to have that kind of power.

There is another matter which Sen. Mansoor raised to which I thought I should reply, but I will save it for the end. Sen. Rev. Teelucksingh raised the question of removal by a simple majority which we dealt with, and the question of delivering in the new subsection (14).

One has to read the new subclause (14) in relation to subclause (9), which requires the Clerk of the House to deliver to the Speaker, and subclause (14) where one sets time limits of a specific nature. It is normal to provide for some means of calculating that period of delivery. It is common in other areas. In relation to companies, delivery to the registered office is one such means of delivery. Subclause (14) really relates to the fact that we are dealing with a particular office and we are dealing with the question of specific time limits.

Sen. Persad-Bissessar raised the question about the Deputy Speaker. One takes that point. One, however, must recognize that the Deputy Speaker operates—the

Constitution of Trinidad and Tobago does permit for a Speaker to be appointed from outside the elected Members of Parliament. There is no such provision in relation to the Deputy Speaker and different considerations can, and will apply, in relation to the Deputy Speaker.

Sen. Persad-Bissessar: Perhaps, the hon. Attorney General would tell us if one has such an impasse with the Deputy Speaker what one would do under the Constitution without making the amendment.

6.50 p.m.

Hon. K. Sobion: Mr. Vice-President, for the moment let me say the basic position that the Government has is that there is a well-recognized convention, and one would expect that convention—whether or not the amendment relates only to the Speaker, does not mean the end of that particular convention.

Even though I have not referred to all the points raised by the different Senators, I think I have touched on the matters of critical concern which were raised and implied in some of the other contributions made by Senators on the other side. Perhaps, there are two other matters to which I ought to refer. One is the question of consultation. I raise it now merely because I did not wish to interrupt the contribution of Sen. Richards.

The point I made about consultation with respect to this matter is that whilst it is desirable to have consultation on almost everything, and particularly matters relating to the Constitution, in relation to this particular matter we were dealing with an attempt to include in the Constitution, a well-recognized convention which is universally accepted and contained in the constitution of many a country, particularly in the Commonwealth.

In those circumstances and having regard to the fact that this matter has been subjected to public debate for some time now, maybe there was not the urgent requirement that there be consultation on this Bill. I also explained a little earlier in my reply that that was one of the reasons which guided us to come to the Senate first. We felt that it was important that the views of the Independent Senators, as opposed to those who were purely divided on political partisan lines, should first be obtained in relation to this particular matter.

Before I close, the other matter is; What happens with the Bill when it goes to the other place? This question was posed by Sen. Mansoor. Without seeking to anticipate any matter, the procedure as I understand it, is that it goes under the

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agenda item "Bills brought from the Senate," and the debate ought therefore to be properly proceeded with in the normal course of things.

However, I raised the question as to whether a parliament can be prevented by the judiciary from proceeding with a debate which was within its purview. I expressed the view that it appeared from all the authorities, including the Constitution, that no such interference would be expected from the Judiciary having regard to the authority. I would anticipate that the Constitution of Trinidad and Tobago, the Standing Orders and all other authorities will guide the deliberations on this Bill in the other place.

Thank you.

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

Senate in committee.

Clauses 1 and 2 ordered to stand part of the Bill.

Clause 3.

Question proposed, That clause 3 stand part of the Bill.

Mr. Sobion: Mr. Chairman, there are several amendments which have been circulated to clause 3. They deal with the new subsections (12) and (13) of section 50 as they now exist and create several new subsections (14) to (19). These amendments are new additions to clause 3. Subsections (14) to (19) of section 50 essentially are a modification of the amendments which are being proposed by Sen. Daly. We have essentially modified the amendment to ensure that the independent tribunal which is now being suggested is a body that is independently appointed by the President after consultation with the Prime Minister and the Leader of the Opposition.

We recognize that there is a role for the Integrity Commission in these matters, but for this particular purpose it would probably not be the appropriate body having regard to the concept of the supremacy of Parliament, and the existing limitations within the integrity legislation. As I pointed out earlier, the role of the Integrity Commission is now being reviewed and matters relating to the conduct of persons who hold public office would be dealt with in those amendments.

I move the amendments to clause 3 as they appear in the amendments as circulated.

Sen. Daly: Mr. Chairman may I just point out that in my original amendment I numbered my new subsection (14). I just wanted the Attorney General to be aware that if he is keeping the new (14), it would need to be renumbered. That is the deeming provision.

Mr. Sobion: Because of what happened at subsection (17) onwards, I deleted subsection (13) because it is now no longer necessary. Subsection (14) would become subsection (13).

7.00 p.m.

Sen. Persad-Bissessar: Will the hon. Attorney General clarify this position? What is the purpose of the tribunal if, by proposing subsection (18), the Government goes ahead and removes the person when the tribunal withholds confirmation? What then is the purpose of the tribunal if the Government is not bound by its findings?

Mr. Sobion: The purpose of the amendment as has been explained by Sen. Daly and accepted by those of us on this side, is that it gives the opportunity for an independent review of the decision of the Parliament. That independent review, when it returns to the Parliament, will return with a statement, if one looks at subsection (16), whether it confirms the decision or not. It also recognizes the supremacy of Parliament and the fact that Parliament, in relation to regulating its own procedure, must maintain that final say. Again, the checks and balances will be that if an independent tribunal sets out cogent reasons why it should not be confirmed, it would be a foolhardy Parliament which would continue to press for the removal of the Presiding Officer.

Sen. Persad-Bissessar: Surely, whether foolhardy or otherwise, the point is that the provision is there to allow a foolhardy or a despotic Parliament—the way the provision is framed—to bypass whatever finding a tribunal may come up with. The whole thing just seems to be wasting time.

Mr. Sobion: With respect, the tribunal is not wasting time. The tribunal will look at what the Parliament looked at, and if it was a whimsical decision on the part of the Parliament, the independent tribunal will say so, and in the face of the other institutions to which I referred in closing, if that Parliament continues to proceed in the way it was proceeding, then there is a political price to be paid.

Sen. Dr. St. Cyr: May I suggest that subsection (18) can read, "Where the tribunal withholds confirmation the House by resolution may by a two-thirds majority, resolve not to follow ...". In other words, force the House to show that it has wider support for its original position.

Mr. Sobion: Mr. Chairman, it would seem to me that if the reasons given by the independent tribunal are sound, it does not matter what majority is used. The fact is that the Parliament remains supreme at the end of the day. The independent tribunal refuses to confirm and gives its reasons. If those reasons are good, they remain good. The fact that one can overcome those reasons by a special majority does not detract from the reasons themselves. The question is whether a parliament, faced with reasons from an independent tribunal, feels that it should continue along the path it was proceeding. It is a check on the Parliament, but the supremacy of the Parliament is a doctrine which also must be maintained.

Sen. Capildeo: I have listened to the Attorney General and he seems to be getting more and more confused.

Let us look at subsection (16):

"The Tribunal shall review the record and within twenty-one days of its receipt of the record shall make a recommendation to the House accompanied by a brief statement of its reasons therefor either-

- (a) confirming that the Speaker should vacate office; or
- (b) withholding confirmation."

So under subclause (16), the tribunal can withhold confirmation. If it withholds confirmation, what takes place? We go to subsection (18):

"Where the Tribunal withholds confirmation the House by resolution may resolve not to follow the recommendation of the Tribunal and to confirm the motion ..."

At that point, what is the purpose of the tribunal if it is withholding its confirmation and the House by resolution can say: "I am not bothering with the Tribunal, man?"

Sen. Dr. Saith: The House has to have the final say.

Sen. Capildeo: No, no, no. If the House has to have the final say, then it must be an entrenched say. It must be two-thirds in the House. It does not end there. It goes on.

"(19) During the period of review by the Tribunal the Speaker shall not resume performance of his functions as Speaker."

So there will be a situation where the Parliament will be without a Speaker for practically 21 days.

Mr. Sobion: There is provision when the Speaker's office is not there.

Sen. Capildeo: Coming back to the same point, when the tribunal is withholding confirmation, the House can easily say: "We are not concerned with this tribunal. It can withhold as long as it wants, we are passing a resolution and going ahead."

Mr. Sobion: Mr. Chairman, I have already answered that question. Apparently, Sen. Capildeo was not awake when I answered the issue raised by Sen. St. Cyr.

Sen. Capildeo: You did answer his two-thirds entrenchment.

Mr. Sobion: I answered both of them.

Mr. Chairman: The issues have been ventilated. We have basically three amendments and the addition of new subsections. We will take them in order. The first amendment is to clause 3(12)(a):

Delete the word "thirty" and substitute the word "fourteen."

The second amendment is to clause 3(12)(b):

Delete the word "thirty" and substitute the word "fourteen".

And an amendment to clause 3(13):

Delete subsection (13) and renumber subsection (14) as (13).

Question, on amendments, put and agreed to.

Mr. Sobion: I beg to move the following new subsections to section 50.

Insert after subclause (13), as renumbered, the following new subclauses:

"(14) Where the motion in subsection (12) is passed, the Clerk of the House shall within seven days of the passing of the motion referred to in subsection (12) transmit the records of proceedings in the House to a special tribunal comprising a chairman and two other members appointed by the President after consultation with the Prime Minister and the Leader of the Opposition, (hereinafter referred to as 'the tribunal')."

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- (15) The record shall include the resolution, the grounds supplied by the Speaker and the speeches made by Members of the House upon debate of the resolution.
- (16) The tribunal shall review the record and within twenty-one days of its receipt of the record shall make a recommendation to the House accompanied by a brief statement of its reasons therefor either-
- (a) confirming that the Speaker should vacate office; or
 - (b) withholding confirmation.
- (17) Where the tribunal confirms that the Speaker should vacate office the Speaker shall do so immediately upon delivery to him of the confirmation of the tribunal by the Clerk of the House.
- (18) Where the tribunal withholds confirmation the House by resolution may resolve not to follow the recommendation of the tribunal and to confirm the motion that the Speaker should vacate office and when such a resolution is passed the Speaker shall vacate his office immediately."
- (19) During the period of review by the tribunal the Speaker shall not resume performance of his functions as Speaker.

Question, on amendments put and agreed to.

Clause 3, as amended, ordered to stand part of the Bill.

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

Senate resumed.

Bill reported, with amendments.

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

The Senate divided: Ayes 24, Noes 6

AYES

Saith, Dr. The Hon.L.

Huggins, Hon. R.

Barnes, Hon. B.

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Yuille-Williams, Hon. J.

Draper, Hon. G.

Robinson-Regis, Hon. C.

Callender, S.

Ojah-Maharaj, D.

Elder, Miss J.

Rahael, J.

Gosine, Pundit R.

Hassim, A.

Maloney, A.

Nanga, J.

Lewis-Phillip, Mrs. N.

Mansoor, M.

Spence, Prof. J.

Rooks, J.

Mahabir-Wyatt, Mrs. D.

Ali, H.

Daly, M.

Dean, E.

Teelucksingh, Rev. D.

St. Cyr, Dr. E.

NOES

Capildeo, S.

Barrack, J.

Persad-Bissessar, Mrs. K.

Gray-Burke, Rev. B.

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Mejias, O-ga E.

Richards, V.

Question agreed to.

Bill accordingly read the third time and passed.

Motion made, That the Senate do now adjourn to Tuesday, July 25, 1995 at 1.30 p.m. [Sen. Dr. The Hon. L. Saith]

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 7.12 p.m.