

Dr. Martin Sampath (Deceased)

Tuesday, December 19, 1995

SENATE

Tuesday, December 19, 1995

The Senate met at 1.30 p.m.

PRAYERS

[MR. PRESIDENT *in the Chair*]

DR. MARTIN SAMPATH

(DEATH OF)

Mr. President: Hon. Senators, the Senate is asked to take note of the passing of former Senator, Dr. Martin Sampath, who served in this Senate during the period 1989 to 1990. At this time, I ask that the Senate stand for one minute's silence in observance of his passing.

The Senate stood in silence for one minute.

SEASON'S GREETINGS

(President Noor Hassanali)

Mr. President: Hon. Senators, I have received the following letter from His Excellency, the President of the Republic of Trinidad and Tobago:

“8th December, 1995

The Honourable the President of the Senate,

Red House,

St. Vincent Street,

Port of Spain.

My Dear Sir,

On behalf of my wife and myself, I wish you and the other Honourable Members of the Senate and your respective families good health in Peace and Happiness during the Christmas holidays and throughout the New Year.

Yours sincerely,

Noor M. Hassanali,

President of the Republic of Trinidad and Tobago.”

Season's Greetings

Tuesday, December 19, 1995

The Minister of Public Administration and Information (Sen. The Hon. Wade Mark): Mr. President, we on the Government Benches extend warmest season's greetings to His Excellency the President of the Republic of Trinidad and Tobago and his family.

We also take this opportunity to wish him and his family the best of health, happiness and peace for the coming period. We hope that the season of good will would bring and shower the kinds of blessings that are necessary so that His Excellency could progress and continue in the best of health and strength.

Thank you very much, Mr. President.

Sen. Vernon Gilbert: Mr. President, on behalf of the Opposition, I extend seasons greetings to His Excellency the President of Trinidad and Tobago. We thank him for the inspiration and guidance he has offered us during the year.

Most of the times when His Excellency spoke, he advised about the need to be humble, benevolent, loving and generous. The Opposition is intent on heeding his advice especially at this time of the year and to give special consideration to our needy ones.

Thank your, Mr. President.

Sen. Prof. John Spence: Mr. President, on behalf of the Independent Senators, may I request that our thanks be conveyed to His Excellency for his kind expressions. May we also take this opportunity to convey to His Excellency and his family, our best wishes for the Christmas season and for 1996. As has been said, his leadership is extremely important to us, and we thank him for that as well.

Thank you, Mr. President.

Mr. President: Hon. Senators, I wish to thank His Excellency for his gracious letter and to reciprocate the kind sentiments which he has conveyed to us and our families. His Excellency would be sent an appropriate letter thanking him for his good wishes when we also would convey to him our season's greetings and best wishes.

**SEASON'S GREETINGS
(Tobago House of Assembly)**

Mr. President: Hon. Senators, I have received a letter from the Chairman, Tobago House of Assembly which reads as follows:

Season's Greetings

Tuesday, December 19, 1995

December 18, 1995

The Clerk of the Senate,

Red House,

Port of Spain,

Trinidad.

Dear Madam,

The Tobago House of Assembly (1992 to 1996), at its Plenary Sitting, (Forty-First Meeting) held in the Assembly Chamber on Thursday December 14, 1995, by resolution, directed that the Season's Greetings for a Blessed Christmas and a Happy New Year be extended to the President and other Members of the Senate.

Yours faithfully,

Lennox Denoon,

Chairman, Tobago House of Assembly.

SESSIONAL COMMITTEES

Mr. President Hon. Senators, in accordance with Standing Order 64, I have appointed the following Senators to serve on the undermentioned sessional standing committees of the Senate:

Standing Orders Committee:

Mr. President (Chairman)

Dr. Daphne Phillips

Mr. Nathaniel Moore

Mrs. Nafeesa Mohammed

Mrs. Diana Mahabir-Wyatt

House Committee

Mr. President (Chairman)

Mrs. Deborah Moore-Miggins

Rev. Barbara Gray-Burke

Sessional Committees
[MR. PRESIDENT]

Tuesday, December 19, 1995

Ms. Penelope Beckles

Prof. John Spence

Committee of Privileges

Mr. President (Chairman)

Mr. Wade Mark

Mr. Philip Hamel-Smith

Mr. Vernon Gilbert

Mr. Martin Daly

Regulations Committee

Mr. President (Chairman)

Mrs. Carol Cuffie-Dowlat

Mr. Selwyn John

Mr. Mahadeo Jagmohan

Rev. Daniel Teelucksingh

1.40 p.m.

MUNICIPAL CORPORATIONS (AMDT.) BILL 1995

Bill to amend the Municipal Corporations Act, 1990 [*The Minister of Local Government*]: read the first time.

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

Question put and agreed to.

PAPERS LAID

1. Report of the Auditor General on the accounts of the Trinidad and Tobago Export Development Corporation for the year ended December 31, 1993 [*The Minister of Public Administration and Information (Hon. Wade Mark)*]
2. Report of the Auditor General on the accounts of the Trinidad and Tobago Export Development Corporation for the year ended December 31, 1994 [*Hon. W. Mark*]

3. Annual Report of the National Insurance Board for the period July 1, 1994 to June 30, 1995 [*Hon. W. Mark*]
4. The Patents (Amendment) Rules, 1995 [*Hon. W. Mark*]

ORDER OF BUSINESS

The Minister of Public Administration and Information (Sen. The Hon. Wade Mark): Mr. President, I beg to move that the Senate proceed with the item under Bills Second Reading before the item listed under Motions.

Assent indicated.

IMMIGRATION (AMDT.) (No. 2) BILL

[Second Day]

Order read for resuming adjourned debate on question [December 12, 1995]:

That the Bill be now read a second time.

Question again proposed.

The Attorney General and Minister of Legal Affairs (Hon. Kamla Persad-Bissessar): Mr. President, may I take this opportunity, Sir, to congratulate your good self on your appointment to the Office of President of the Senate. We know that you possess those capabilities and qualities which will enable you to perform this duty to the best, and with the greatest of grace and we congratulate you for that.

With your leave, I rise to support the Immigration (Amdt.) Bill 1995 and to emphasize the importance that this piece of legislation has for justice in this country.

It is important because the evil that is meant to be cured by this Bill dates back to December 1993. The *TNT Mirror* dated December 4, alleged that there was a scam with respect to the payment of moneys for the issuing of false certificates of indentity to Hong Kong and Chinese nationals who wanted an easy route to Canada. As early as 1993, the previous Government was aware of the issuing of false, fraudulent or tampered passports.

It is instructive to look at the words of the then Minister of National Security, Sen. The Hon. Russell Huggins, in his budget debate contribution of December 10, 1993, when he justified the introduction of new passports for Trinidad and Tobago. At that time he was at pains to point out the many problems that were being experienced with the old passports. These problems ranged from the change

Immigration (Amdt.) (No. 2) Bill
[HON. K. PERSAD-BISSESSAR]

Tuesday, December 19, 1995

in photos, the change in pages in the passport, the addition of forged immigration stamps, to the manufacture of a complete passport using genuine passport paper. He pointed out that between 1990 and 1993 there were 260 cases of forged passports which had been brought to the attention of the authorities. As a result of these problems, new passports were to be introduced and the existing passports would have gone out of circulation by June 30, 1995. In other words, the old passports would have continued in circulation up to that date. We now understand that the deadline for use of the old passports has been extended to December 31, 1995. It was not until June, 1994 that the previous Government agreed that section 40 of the Immigration Act, Chap. 18:01 should be amended to prosecute a person in possession of a fraudulent or tampered passport or, one that had been fraudulently issued.

The former hon. Minister of National Security said that the Chief Immigration Officer's advice was that couriers were often caught in possession of fraudulently issued passports but they could not be prosecuted under the existing section 40 (b) unless it could be proved by their photograph on the passport that they knew that the passport was forged or false. The knowledge of the offence had to be proven as an element of the offence.

By January 3, 1995 the Bill had been drafted and on January 19, 1995 the Government agreed to introduce the Bill to Parliament at the earliest opportunity. The Bill was introduced by the previous Government in the House of Representative on January 20, 1995. Regrettably, it did not get a second reading until nine months later on September 20, 1995 and all stages were completed in the House on that date.

Thereafter, the Bill was laid in the Senate and received its first reading on September 26, 1995 and it remained thus until it lapsed on October 6, 1995. That basically is the history of the piece of legislation which is before this honourable Senate.

Over the years there have been numerous reports of the need for speedy action to prosecute persons apprehended and who could not be charged because of the limitations of the Immigration Act.

Public concern with respect to that has been well documented and we have seen the headlines in the newspapers over the past two weeks, "Visa Scam", "Passport Racket", "Passport Fraud". We saw those newspaper reports in the *Daily Express* dated December 17, 1993, *Newsday* dated November 1, 1994, *Newsday*

dated June 4, 1995, October 14, 1995 and more recently, in the *TNT Mirror* dated November 17, 1995.

Mr. President, at this point, may I compliment the *TNT Mirror* on the pursuance of this story with respect to the passport scam. They have over and over made reference to it and set out matters within their newspaper and the latest of those, was on Friday, November 17, 1995 calling upon this Government to take some steps with respect to the immigration racket.

1.50 p.m.

It is interesting and I was surely surprised, as those of us on this side were, to note the comments of Sen. Martin Daly, when he said that this Government was moving with sloth to govern. There was a crying need for this piece of legislation since 1993, but it was not brought by the previous government until 1995, and after the Second Reading not until nine months later in 1995, and it was this Government that moved posthaste to bring that legislation, recognizing the crying need for it, and to be told that we are moving with sloth to govern and instead we should—[*Interruption*] If the *Hansard* reflects it correctly this is what it says. *Hansard* dated 95.12.12 at 2.20 p.m. states:

"I am one of those becoming somewhat impatient at what I perceive to be the sloth of the new Government to govern. Indeed, I am quite surprised that we have so much time to debate this measure, as important as it is, and I would have expected to be gearing up for the budget debate."

With the greatest respect to the Senator, it is my respectful view that we have moved posthaste to deal with a problem that has been existing since 1993. With the greatest respect to the hon. Minister of Finance, whilst he may be a man of tremendous capabilities possessing fine qualities, regrettably, he does not have the capabilities of superman to present the budget within one month of our coming into government. I was a little surprised that that comment had been made. This is why we had moved posthaste to correct a defect in the law with respect to passport frauds and which was clearly shown to be in need of correction since 1993.

Having looked at the background of this Bill, the figures pointed out by the hon. Minister of National Security clearly show that there are those who are escaping the law because of this *lacuna* in the law, to have as an offence where

the passport is tampered with and have it in their possession, or to attempt to leave or come to Trinidad with such a passport. It is our respectful view that this Bill will go a long way to apprehending and charging criminals and bringing them before the courts.

Specific comments were made with respect to particular provisions of the Bill. I am grateful to all hon. Senators and thank them for their comments with respect to making this Bill a better one in that sense, and suggesting particular amendments to it. We have taken all those comments into consideration. Indeed, on the last occasion when we adjourned this Senate, we did so because this is a government of national unity and is concerned with consultation and listening to the views of all persons.

We were very happy to have the contributions of hon. Senators on the other side and the Independent Bench. We adjourned the Senate in order to give proper consideration to the contributions which had been made, and to see if we could incorporate those views which we thought were necessary and relevant to the legislation. It was not that this Government pulled back the Bill. There is no question that we are pulling back the Bill, because we intend to have it amended and put into our law. The need is there.

With respect to the concern expressed by Sen. Martin Daly that in clause 2 (b) the words "comes into or remains in Trinidad and Tobago"; and the words "attempting to gain admission into" should be in both clauses. If I may respectfully point the Senator to section 25 of the Interpretation Act which makes it very clear that an offence includes an attempt to commit the offence. If we have the words, "comes into" the attempt to come into is also covered in section 25 of the Interpretation Act. We did not think that it was necessary to amend that section further to put the words "attempts to gain admission into Trinidad and Tobago".

If one reads section 40(j), it clearly encompasses persons. With respect to section 40(b) that it should cater for attempting to enter or leave Trinidad and Tobago by fraudulent means, a concern was expressed that, this amendment should be included in section 40(b). The point here is that this section deals mainly with non-nationals. Mr. President, a note has just been passed to me. My apologies. Through an inadvertence I said section 25 of the Interpretation Act. It is section 65 of the Interpretation Act which includes an attempt to commit the offence an offence.

With respect to section 40(b) the point that I am making is that this deals mainly with non-nationals. This is why there is a distinction between the proposed 40(b) and the proposed 40(j) and why it will not be prudent to incorporate them into one omnibus clause as has been suggested. Section 40 (b) deals with mainly non-nationals. If a non-national is caught attempting to enter Trinidad and Tobago with a false or altered passport he/she will simply be refused entry and sent back to the country from which he/she embarked. The embassy of that country will be notified by our immigration officials.

The same rules apply where a non-national is attempting to leave Trinidad and Tobago with a false or fraudulent passport. As a matter of policy, we do not look to prosecute foreign wrongdoers for attempting to leave because they leave. We simply notify the embassy here or the embassy of the country named in the false documents. In our view, from the advice of the drafting department and the technical officers of the Immigration Department, it was felt that it was not necessary to incorporate that within section 40(b).

Another point that was made is that the new paragraph (j) of section 40 makes possession or using a passport that has been tampered with an offence. It should also be an offence under section 40(b)(i) and (ii).

Sen. Mahabir-Wyatt: Mr. President, I wonder if the hon. Minister would just clarify a point. Do we understand her to say that if a foreign national commits fraud in Trinidad and Tobago we have no objection to allowing him/her to leave without being charged or punished?

Hon. K. Persad-Bissessar: If that foreign national commits fraud with respect to a Trinidad and Tobago passport or document, then he/she would be caught in section 40(j). The offence created there is with respect to using these documents to stay or to come to Trinidad, whereas in (j), the offence that is being created is coming into or leaving with respect to any fraudulent document. There are two offences in a sense. There is one in (b) where the offence is the coming or remaining with the fraudulent documents. In (j), it is having the fraudulent documents or attempting to come into or attempting to leave. They are distinct and therefore should be kept as two separate sections.

What we must bear in mind with respect to the concern that was expressed by the Senator is that the amendment to section 40 makes possession or using a passport that has been tampered with an offence. That should also be an offence under section 40(b) (i) and (ii). What we must bear in mind is that while section

40(b) does not exclude Trinidad and Tobago nationals entirely, it is really intended to deal mainly with non-nationals since 40(j) deals with nationals and those holding false Trinidad and Tobago passports. The point is that immigration officials cannot be familiar with all foreign passports in the ways in which they can be tampered with.

2.00 p.m.

Realistically, immigration officials are better able to detect a false or improperly issued foreign passport, rather than one which has been subjected to sophisticated tampering. It is for this reason that the word "tampering" was not included in section 40(b).

There is also concern that possession of a fraudulent or tampered passport is a strict liability offence which should be in a separate clause. With respect to that, if one reads section 40(j) carefully, it clearly encompasses persons entering or leaving Trinidad and Tobago or attempting to do so. They are also at the time in possession of the passport. If they are attempting to leave or come in with it, they are in possession of the passport, but the offence for which they are charged involves actually using the passport. So that there are two offences created—strict liability of "in possession", and the use of that tampered or false passport.

The paragraph, for the sake of completeness, also catches the person in possession of a passport who may have already entered on it, but is, at the time of apprehension, simply in possession. There was further concern if the words "whether or not it has been issued to him", should have also been included in clause 2 (b). It is our view that it is not necessary to specify this, since it is the possession and use of the passport which is the offence created in clause 2 (b).

We are very grateful for the contributions of all Senators with respect to sentencing. We have considered the sentence at the end of section 40 and we would have wished, in the light of recent concerns about sentencing policy, to consider all the penalties in the Immigration Act and to propose a comprehensive review with respect to all those offences. However, that is a longer term measure. Bearing in mind the concerns that have been expressed often about persons associated with the drug trade who are in possession of false travel documents, and the levels of penalties in the Dangerous Drugs Act, 1991, as amended by the Dangerous Drugs (Amdt.) Act, 1994, we wish to amend the end of section 40 to increase the fine for a first offence. I am grateful to Sen. Daly for his recommendation with respect to the quantum. Having spoken to him, we then did

Immigration (Amdt.) (No. 2) Bill
[HON. K. PERSAD-BISSESSAR]

Tuesday, December 19, 1995

some research on the Dangerous Drugs (Amdt.) Act. So, for a first offence we propose an amendment that the fine be increased to \$50,000 and imprisonment to three years; the penalty for a subsequent offence will be \$100,000 and up to five years imprisonment.

This Government has always said that those who do the crime will pay the time, and with the concerns about sentencing, whilst we would have wanted to do a comprehensive review of all the offences within the legislation, bearing in mind we have this particular mischief, an evil which needs to be addressed now, we have taken the liberty to amend the sentencing with respect to the offences under section 40 of the Immigration Act. I would like to point out, however, that we would have to go further—this would take us some time—but not to be kept back, we will go with this one. There must be an overall review of sentencing with respect to offences generally. I know that Sen. Mahabir-Wyatt will be very happy to hear that.

While these are maximum sentences, there still remains the whole area of judicial discretion. I think that this point was raised on the last occasion—and of course it is being raised by the public because of recent events—the whole question of judicial discretion within the range of the sentencing set in the legislation. I wish to make it quite clear, and I am sure that hon. Senators will all agree, that whilst we cannot interfere with the functioning of the Judiciary—it is not for us to comment, intervene, or in any way hamper the independence of the Judiciary—we were very, very happy to note that the hon. Chief Justice, as reported in an article in the *Daily Express* of Thursday, December 14, 1995, under the headline, "CJ Plans Judges' Retreat", has set aside a weekend for discussing guidelines for sentencing. That is within the purview of the Judiciary.

There is yet another point which remains, which has been raised here and outside. That point is the state's right of appeal with respect to sentencing. The Director of Public Prosecutions has pointed out in certain reports that he, on several occasions, had made representation for something to be done with respect to the state's right of appeal against unduly lenient sentences. Regrettably, I cannot say why the past administration did not take that up. What I can say is that this administration is seriously considering it and the DPP has agreed to furnish us with a report with respect to the state's right of appeal against sentencing.

If I may point out, when I came into office, I visited the office of the DPP and one of the first concerns raised by the attorneys there was the question of a right of

appeal of the state with respect to criminal matters. That was raised right away and I had asked them to get the information to me because we were prepared to look at it. They felt that it was very important to their functioning within the DPP's department. Thereafter, there was a furore with respect to another matter of which you are all aware. We are still awaiting the report from the DPP's department to assist us.

Having done some research within our own Department, it is interesting to note that in the United Kingdom, by sections 35 and 36 of the United Kingdom Criminal Justice Act, 1988, where the Attorney General considers that an offender was sentenced unduly leniently in proceedings in the Crown Court, he or she may refer the case to the Court of Appeal, Criminal Division, for review of the sentence. This is subject to:

- (a) the Court of Appeal granting leave; and
- (b) the offence on which sentence was passed being one which is triable only on indictment, or one which is triable either way and specified in an Order made by the Home Secretary by statutory instrument.

Upon an attorney general sentencing reference, as the procedure is known, the Court of Appeal may quash the sentence passed by the Crown Court and replace it with a sentence it thinks appropriate.

This is parallel legislation in another jurisdiction and within my department we are in the process of requesting parallel legislation to deal with this particular problem and we will certainly be looking at it with a view to, as far as possible, giving the state the right to appeal sentences considered to be unduly lenient.

Mr. President, with those words, I would like to thank again hon. Senators for their contributions. I would like to say further—and I hope my words will not fall on deaf ears—that if we come to Parliament with a Bill, and through the process of consultation—which is what this Senate is about—there are contributions from the other side, this Government is committed to taking into consideration all views. Because this Government decides that it will adjourn the sitting to permit us to take those views into consideration, it does not mean that we have given up. All it means is that we wish to encompass what everyone has to say.

At the committee stage, the proposed amendments will be circulated. I hope I have covered the legal points raised by hon. Senators, and my colleague, the Minister of National Security, responded to others.

Immigration (Amdt.) (No. 2) Bill
[HON. K. PERSAD-BISSESSAR]

Tuesday, December 19, 1995

2.10 p.m.

To summarize, Mr. President, the concern expressed with respect to sentencing is a major one. We have dealt with that in this particular Bill by attempting to make an amendment to increase sentencing to the maximum penalties for the various offences set out in section 40.

It is important to note that these sentences are not only for section 40(b) and (j), these will also be operative for the entire section 40. Those are the maximum penalties, and therefore judicial discretion will be utilized in deciding where, within that range the sentencing will go. That has brought into focus the whole question of sentencing, and, as I said, we were very happy to see that steps had been taken by the appropriate authorities, namely, the Chief Justice, with respect to judicial discretion and sentencing guidelines.

Thirdly, to address the problem of sentencing, this Government is committed to looking at parallel legislation and at the views from all concerned citizens of this country with respect to putting into place the right of appeal on the part of the state against unduly lenient sentences.

With those few words, Mr. President, I commend this Bill to this honourable Senate.

I thank you.

Sen. Penelope Beckles: Mr. President, it was reported last Sunday that our hon. Prime Minister was ill and had to attend the Mount Hope Medical Complex. We on this side express our concern and wish our hon. Prime Minister a speedy recovery.

As I address this honourable Senate for the first time, it would be remiss of me if I did not join my parliamentary colleagues who preceded me in congratulating you, and extending best wishes on your election to the most distinguished Chair in this august Chamber. Mr. President, I know you bring with you considerable experience which I have no doubt will serve us in good stead.

I also take this opportunity to congratulate all my parliamentary colleagues on their appointment to this honourable Senate.

I have listened to the hon. Attorney General with respect to the Bill presently being debated in this honourable Senate. I have heard her make heavy weather of the need to have speedy action as it relates to dealing with the particular situation

that has arisen in Trinidad and Tobago over the last few years, with respect to both foreigners and Trinidadians and Tobagonians being in possession of tampered and otherwise documents that have not validly originated from the Immigration Department.

Mr. President, I think the question is not one of speedy action, it is one of ensuring when amendments are made to particular pieces of legislation that there are no ambiguities and that the persons entrusted with the responsibility to do justice would have absolutely no difficulty in understanding what the framers intended.

On the last occasion when this Senate adjourned, Sen. Daly recommended certain amendments to the legislation as presented by the hon. Attorney General. She has indicated that her major concern is ensuring that this piece of legislation is passed speedily, and that all efforts be made to deal with the difficulties encountered over the last few years with persons who have been illegally in possession of Trinidad and Tobago passports.

The hon. Attorney General is very much aware of the difficulty encountered in our courts when legislation is not clear. Very often persons would say that certain things—if I may put it literally—do not mean what they say. What happens then, Mr. President, is that the legislation is then subject to several interpretations. We on this side were very much persuaded by the contributions made by the Independent Senators as they relate to those particular amendments, which I think have now been provided to all the Members of this honourable Senate.

I must submit that it is important that in the drafting of legislation, that every effort is made to ensure that persons who are interpreting those legislations are left in no doubt as to what the framers of the legislation intended. Particularly section 40(b) as provided by Sen. Daly which would make the actual possession of a passport an offence. It would leave absolutely no doubt in the mind of any magistrate or judge what ‘possession *simpliciter*’ means.

Therefore, if we were to accept the amendment as suggested by Sen. Daly, the ambiguities, to my mind, would be absolutely clear. What would happen, is that the onus would then shift to the person appearing before the court to explain how one came into possession of that passport. The prosecution would therefore have—I should not say little or no work, but definitely the person who would have to establish the validity of that passport and how one came into possession of that passport would be that person appearing before the court.

Immigration (Amdt.) (No. 2) Bill
[SEN. P. BECKLES]

Tuesday, December 19, 1995

I am, therefore, suggesting that when we speak about speedy action and who commits the crime must do the time, we want to ensure that justice is done. I think that once the mechanisms are put in place, the procedures are followed properly and the legislation is clear and simple, the speedy action to which my Friend refers would undoubtedly come into the forefront. It is not a question of simply quickly passing legislation through this honourable Senate. It is not a question of saying that on another occasion there would be a total overview dealing with the issue of sentencing and other matters.

Sen. Persad-Bissessar: Mr. President, would the hon. Senator give way?

Sen. P. Beckles: Yes.

Sen. Persad-Bissessar: When I said we would have a total overview with respect to sentencing, this is in respect to legislation as a whole.

Sen. P. Beckles: Mr. President, I understand that that is what the Attorney General meant and she said that in the context of sentencing overall, but she indicated in her contribution that at some particular time she would be looking at sentencing overall. I do not think I misunderstood her at all.

2.20 p.m.

The point I am making is that, on the one hand she is saying that yes, this is a piece of legislation that she is presenting, but she also wants to indicate that at some particular time she would be doing an overall job with respect to sentencing. I am suggesting and submitting that it is not sufficient to say that on this particular occasion this is what she is presenting, and then in the other breath that she is going to do an overall review, which I imagine, would also include the piece of legislation that is before this honourable Senate.

I know my Friend also stated that the whole issue of attempting would be dealt with again in the interpretation section. Therefore, if there is any ambiguity or any difficulty that matter can be cleared up by simply going back to the interpretation section. Mr. President, again, I would suggest that the need to go back to the interpretation section, should only be necessary—and I may even suggest should not even necessarily arise—if it is not possible to have clarity in the particular Bill that is before this honourable Senate. I am saying that with the particular amendment suggested by Sen. Daly, I do not think that it would be necessary to go back to the interpretation section because that amendment would be clear and

there would be no need for the magistrate or judge to go back to the interpretation section to have the issue cleared up.

Mr. President, my Friend indicated that on the other side their concern is with respect to consultation, with respect to listening to contributions made by Senators on this side and certainly the Independent Senators before they come to a conclusion with respect to taking a particular position. On this side, our situation is such that we are also very open to hearing contributions made by the Government and certainly those made by Independent Senators.

Therefore, we listened very carefully on the last occasion and, as I indicated before, we were persuaded by the Independent Senator, Sen. Daly, with respect to these amendments. I have listened to my Friend, the hon. Attorney General, and she has gone through the entire Bill, she has attempted to justify why they would want the Bill to remain as is with the exception of the amendment dealing with sentencing. As I indicated, I now have in my possession the amendment recommended by Sen. Daly.

Mr. President, our concern is with speedy action, but also with the justice of the case. Our concern is to ensure that when a Bill becomes an Act and when it goes into the statute books that there is absolutely no difficulty in the mind of the offender, the prosecutor, the judge or magistrate, as to what is the intention of the legislators. Therefore, we are saying we would be supporting the amendments as stated on the last occasion by Sen. Daly.

Thank you, Mr. President.

The Minister of Public Administration and Information (Sen. The Hon. Wade Mark): Mr. President, I rise to make a limited intervention on this very important matter. I sometimes wonder if the PNM is still in a state of shock. You hear one contribution coming from Sen. Danny Montano supporting his Government's legislation. He made it very clear and I wish to quote from the *Hansard*. It says:

"We have noted this legislation, and we have seen it before; what we have seen is that not a comma has been changed, not an "i" dotted or a "t" crossed."

This was Sen. Danny Montano in full flight. It goes on.

Immigration (Amdt.) (No. 2) Bill
[SEN. P. BECKLES]

Tuesday, December 19, 1995

"In fact, I would especially like to congratulate the Minister on introducing a piece of PNM legislation."

Then a short while ago we had Sen. Beckles contradicting and confusing. I can only assume that the PNM is still in a state of shock, they have not recovered. Mr. President, here we are introducing their legislation, the Senator said that we have not changed an "i" or crossed a "t" and there is the hon. Senator coming immediately after, contradicting and confusing what her previous colleague has said.

I want to continue to quote from Sen. Danny Montano's contribution. He said:

"This apparently simple piece of legislation, as the Minister outlined, was designed to reduce the incidence of fraud with respect to passports, and to plug any loopholes in the legislation. However, it is not an isolated piece of legislation, it is part of a broader, comprehensive policy of legislative reform that the former administration had."

So their administration had a comprehensive policy. They came with this amendment one year ago, they told the whole country and the Parliament that there was a lacuna in the law and we had to plug it. It is part of a comprehensive reform policy that they intended to bring but they come here this evening innocent and attempting to hoodwink the population. Having regard to the fact that we have taken into account some of the amendments that have been proposed and suggested by the other side, not the PNM—the PNM said that they supported it completely until the intervention made by the hon. Senator.

Mr. President, we can only conclude that the PNM still seem to be in a state of shock from their recent electoral ordeal and there does not appear to be any serious communication and co-ordination on the part of that Front Bench. Maybe they need to hold more caucuses, I do not know if they do, but they need to .

2.30 p.m.

We are saying, Mr. President, that sentences have to be a policy, and they have to be comprehensive if one is sentencing persons. The Attorney General outlined these facts. It is not to say that we would not want to take on board some of the suggestions that had been advanced, but we are saying that this is a matter that has to be addressed with some degree of urgency and this is why we have brought it. So we find it very strange that the PNM, having introduced this Bill when they were in power, could now make all kinds of contradictory statements to what they

said on these Benches without really understanding the importance of the very legislation that they had introduced some time ago.

Sen. Prof. Spence: Is the hon. Senator suggesting that one should not take on board amendments suggested by other persons on legislation which has been presented?

Hon. W. Mark: All we on this side are saying is that it is highly contradictory because the Opposition Benches, the former Government, brought the legislation to this Parliament some time ago, supported it in another place, came here and supported it initially and then there is back pedalling. We have a difficulty with that. We believe that one has to be consistent and all we are saying is that we have decided in a very honourable way to examine the amendments, suggestions and concerns expressed by the Independent Senators, and make some limited amendments. We have indicated that because of the urgency of plugging this loophole, we need to address this matter quickly. We have also indicated that we would have to make a comprehensive review of the Immigration Act to address a number of loopholes that currently exist, and we thought that the other side would have appreciated this matter.

Sen. London: Mr. President, may I ask the hon. Senator if, when the Bill was brought before the Senate, it was a PNM Bill or a UNC Bill?

Hon. W. Mark: Mr President, may I just indicate to my colleague from Tobago, what his colleague said:

"We have noted this legislation, we have seen it before; what we have seen is that not a comma has been changed, not an "i" dotted or a "t" crossed. In fact, I would especially like to congratulate the Minister on introducing a piece of PNM legislation."

Sen. London: Mr. President, may I enquire from the hon. Senator, whether by bringing the Bill to the Senate, he himself or the Government has not indicated that it is in full support of the Bill?

Hon. W. Mark: All we are saying is that this is a very simple and straightforward piece of legislation. As I said, we have recognized this and have taken a number of the comments that have been made and we intend to have a comprehensive review of this matter insofar as the Immigration (Amdt.) Act is concerned. Many points that have been raised would then be considered in an effort to avoid the difficulties that the hon. Senators have pointed out. It is a

limited intervention. I was a bit confused by the contribution made by Sen. Beckles earlier and when I looked at what was said previously by Sen. Montano, I thought it was necessary to, at least, bring this matter to the attention of the Senate so that in our final deliberations on this Bill, we could really discern the contradictions and confusion that exist on the other side.

Mr. President: The hon. Minister of National Security. Will the Minister of National Security be willing to give way to any of the Senators on the other side?

Sen. Theodore: By all means, Mr. President.

Sen. Orville London: Mr. President, let me join the long list of Parliamentarians who have congratulated you on your elevation to the office of President of the Senate. I also join my colleagues in offering best wishes to the Prime Minister, hon. Basdeo Panday, for a complete and speedy recovery.

May I indicate my support for Sen. Martin Daly's comment on the Government's reluctance to govern, and I think it is very much evident in their reaction to this particular Bill. I have travelled from Tobago to this Senate for a 22 minute session and another 63 minute session at which most of the contributions from the other side focused on recycling PNM's legislation and UNC campaign rhetoric. It is as if the Members on the other side are not aware that election was decided on November 6, and from November 7, they are responsible for the welfare of over a million Trinidad and Tobago citizens whose myriad problems must be dealt with expeditiously, and attempting to make maximum mileage out of a single piece of legislation while other critical issues are left unattended, that just does not cut it.

I am intrigued by the ease with which the hon. Attorney General, whose Government has insisted that who commits the crime must do the time, accepts credit for increasing the penalties for offenders under this Bill when she had to be persuaded by the compelling arguments of the Independent Senators. I am just as fascinated by the efforts of the hon. Leader of Government Business who attempts to malign hon. Sen. Beckles for doing the exact thing which the Senators on the other side did, that is, to be persuaded by compelling arguments.

2.40 p.m.

The Government had the option to revise the Bill before bringing it here. The fact that they brought it here without revision is a clear indication that they are in complete support of the Bill. And if, at the end of the day, 16 Members on the

Government side are aware, because of the argument which we heard, that they can make changes to the Bill, why can we on this side, also, not be persuaded by these same arguments in this same Chamber? Something has to be wrong.

I am in support of the Bill. I am also in support of the Government's continuous call for consensus, but I wish to assure them that we on this side would be very diligent in our efforts to ensure that consensus is not used to mask incompetence, because I am getting the feeling that every time something goes wrong and there is evidence of incompetence, the individual would just say, "All right, we are a caring Government which likes consensus and consequently we are going to ensure that there is consensus and we will change our minds, but that level of consensus oftentimes masks incompetence.

May I state that we on this side are in support of the Bill, but I wish to close with a word of advice. Members on the other side would recognize very soon that in Government the corridor of manoeuvrability is very narrow and that rhetoric does not solve problems.

Thank you very much, Mr. President.

Sen. Mark: Manning realized that, that is why he is out of Government.

Sen. Deborah Moore-Miggins: Mr. President, I am happy for this opportunity, to rise in response to the arguments which have been presented on the other side. Before I do so, Sir, may I express to you my own congratulations on your elevation to the position you hold, and to pledge the cooperation of this side as you set about your task of managing this honourable Senate.

Mr. President, perhaps, one ought to make it clear that when a party on the hustings makes certain promises to the electorate and the electorate supports that party, that is not rhetoric. We rather say it is promises. And our Government, Sir, is committed—once promises are made to the population on the basis of which we are voted into office—as far as is practicable and possible, to seek to make those promises a reality. If our Friends on the other side choose to call that rhetoric, then, perhaps, that is the type of operation to which they are accustomed. We would certainly like to distinguish ourselves from that approach. [*Desk thumping*]

I think it is very unfair to say, Sir, that the hon. Attorney General sought to accept credit for the amendment to the penalty which she proposed today. It can only be that our Friends on the other side had turned off their hearing aids as, perhaps, they were accustomed to at a time gone by, when the hon. Attorney

Immigration (Amdt.) (No. 2) Bill
[SEN. O. LONDON]

Tuesday, December 19, 1995

General was making her contribution, because on several occasions *ad nauseum* in her contribution, she credited Sen. Martin Daly with proffering the amendment. She said on several occasions that she commended him for so doing and having studied it, the Government was disposed to accepting the amendment which was proposed. I certainly do not interpret that—and I am sure hon. Senators on this side did not—as being an attempt by the hon. Attorney General to accept credit for the amendment to the penalty which she has piloted so ably before this Senate today.

Further, it is indeed a misconception, that one should interpret Sen. Mark's contribution as an attempt to malign Members of this honourable Senate. I am sure, Mr. President, that you would not be persuaded at all that that is what was intended, or indeed, what was achieved at the end of the day. Hon. Senators on the other side, are, perhaps, not familiar with the procedures which take place in this Senate.

Mr. President, what Sen. Mark, in our opinion, purported to do and in fact achieved, was to highlight the glaring inconsistency which has emanated from the contributions on the other side—an inconsistency which had me virtually at a loss for words; and I support him wholeheartedly. If the Senators on the other side were, today, saying that they have reconsidered and they would like to support Sen. Daly's contribution, I am sure we on this side would not have found it necessary to rise, as Sen. Mark had to do, to point out these inconsistencies. Certainly one makes room for reconsideration, and certainly we would extend to the other side that opportunity and understanding when it occurs. But to rise as blandly as happened before our very eyes today, Sir, and seek to have us forget a contribution made by Sen. Montano some time ago on this very Bill and to stay quiet about it in an effort that we would not remember, had to elicit a response from somebody on this side. I am sure that Sen. Mark did a perfect job in drawing it to the attention of this Senate.

Mr. President, before I sit, I need to say again what this Government is committed to. Others may find a word such as "incompetent" to describe it. The population would have to judge us on that, Sir. I repeat that this Government is saying we have been selected merely to guide the affairs of this country. We intend to do so, but we want the citizens of this country—all the democratic institutions of this country—to be committed and on board as we seek to run the country in a way that makes it a place in which everyone would be happy to live. That is the commitment we are making to this country. [*Desk thumping*] We have

acknowledged that we cannot do so unless we get the collective wisdom of this country.

We are willing to pull back, to listen, to accept criticism when it is forthcoming and made in an atmosphere of genuine concern for the development of our country. If others find that is incompetence, then, perhaps, that is why they are on that side of the Senate.

Mr. President, I thank you.

Mr. President: Sen. Montano, only on the amendment.

Sen. Danny Montano: Mr. President, in considering what has come since I spoke on the previous occasion, we on this side were somewhat persuaded by the comments of Sen. Daly. In looking at the amendments which the Government has sought to bring before this Senate this afternoon, we wonder who is really doing the consulting, whether it is the declared policy of the Government, or whether it is the practice of the Opposition. Who is listening to whom? *[Interruption]*

Sen. Prof. Spence: On a point of order, Mr. President. Is it appropriate for a Senator to make a second contribution? I do not think that the amendments are, in fact, before us until the committee stage. *[Interruption]*

Mr. President: I am advised that the amendments put by the Attorney General were circulated; and also Sen. Daly's.

2.50 p.m.

Sen. D. Montano: Thank you, Mr. President.

In looking at the amendments and in listening to the contributions of all my colleagues here in the Senate, I thank the hon. Minister of Public Administration and Information for repeating my previous contribution. My comments there were worthwhile and relevant and I thank him for repeating them. I was not maligned, aligned or re-aligned and will never be re-aligned. Our business here is a very serious one and the Government sought, in the first instance, to bring a piece of legislation that was drafted by the previous administration and brought it with no change at all. On the suggestion of an Independent Senator certain suggestions were made and it is my submission that they really did not understand them and do not know what to do, but changed a few commas, a few words, and came back and said that they are going to consider it and change it again some time later on.

Our business here is a serious one and we have a duty here to make the best laws possible; to look at Bills seriously and to think things through carefully and

not to rush through and make silly laws. If it can be made better, then we have a responsibility here to do that. We need to take the time, make the effort and make the best laws that we can.

Mr. President: Will the hon. Senator address the amendments, please?

Sen. D. Montano: Mr. President, it is our view that the amendments as put forward by the Government are insufficient and we are in support of the Sen. Daly's amendments.

The Minister of National Security (Sen. The Hon. Joseph Theodore): Mr. President, thank you for the opportunity to address a few concerns that were expressed from the Independent Benches at our last sitting. I trust this will clear the air on matters that were raised. For instance, a question was raised about whether or not the Government has a policy on immigration. It is clearly articulated in the Immigration Act what the Government stands for and what the state expects of its immigration.

I would like to simplify it and point out that as far as immigration goes, because of the size of the country, immigration is not encouraged. We are not trying to add to our population, but rather we encourage visitors, tourists, businessmen, investors, peoples whose stay would not be permanent, because we have neither the resources nor the acreage to continue an increasing population. There is also the matter of unemployment which is a matter that is being looked into at this time.

Another point raised was how passports are checked. Concern was raised about passports not being checked when passengers are departing at Piarco Airport. I thank the hon. Senator for bringing it to our attention and I assure Senators that the arrangement for passports not being checked on departure is a practice that is being developed internationally. What is happening is that these passports are not checked in a structured manner. There are no longer desks at Piarco where you go to show your passports. What happens is that airline clerks were trained by the immigration officers to make sure that these documents were authentic and that their visas and so forth were valid. This practice started on October 1, 1993 and continues to this day. The immigration officers do make spot checks. They are simply not away from the job. Spot checks are conducted in the departure hall before passengers board the aircraft.

The ministry has undertaken, nevertheless, to have a look at this entire system, because while the rostering of immigration officers may have been simplified and

delays in aircraft departure have been minimized, we intend to look at the security implications brought about through this lessening of immigration control. Spot checks by immigration officers at the departure gates cannot possibly correct the inadequacies of the system without causing delays.

Another point raised was the ability of the Immigration Department to investigate matters concerning visitors who overstay their time. The staff of that department has been sadly depleted over the years and right now is not in a position to investigate very much. The staff is far too small and I am concerned that we should be in a position to identify people who remain in this country by whatever means they arrive, legally or otherwise, and deal with them accordingly. The Ministry of National Security has already taken a look at the establishment of the department. Together with the Chief Immigration Officer, I will be addressing the staffing needs in the new year.

One of the hon. Senators revealed, quite lucidly, at our last meeting that there was a passport rental racket. I investigated the report and I must confess that such a racket does exist and it is done by changing the photographs on passports, be they legitimate or otherwise, and the person using the passport will carry the name that is on the passport. It is quite accurate that such transactions do occur.

We expect that with the old passports becoming invalid on December 31, 1995, the incidence of these substitutions of photographs on passports will decrease drastically. Changing the photographs on the new Trinidad and Tobago passport will be difficult without damaging the document and any such action will be relatively easy to detect.

Sen. Prof. Ramchand: On this point I have further information. People who have no intention of travelling are being paid to take out passports and they find people who resemble fairly closely and they use that. So that somebody can take Kenneth Ramchand's passport and travel under the name, Kenneth Ramchand, without having tampered with the passport. I also found out that people lend their passports for a consideration as part of the rental scheme. So I do not know whether the new Trinidad and Tobago passport which presents a problem when changing the picture would answer every aspect of this racket.

Hon. J. Theodore: Thank you, Senator. I appreciate your comments and I can assure you that we will certainly be taking stock of what you have said when continuing our investigations. The Ministry is not stopping at this point where these new passports are being issued. However, with the phasing out of the old

Immigration (Amdt.) (No. 2) Bill
[HON. J. THEODORE]

Tuesday, December 19, 1995

passports, we are looking at introducing improved measures whereby tampering of passports would be resisted altogether.

I am grateful for the contribution made by the hon. Senator concerning this matter of the passports being wrongly used, not only with the changing of the photographs, but with the upgrading of the investigative unit of the Immigration Department; we are also looking at the matter of the procedure, whether or not it may be prudent to introduce the checking of passports when people are leaving this country.

I assure this honourable Senate that we will certainly be addressing this matter seriously and the Immigration Department will be performing the functions it is there to do.

I beg to move.

Question put and agreed to.

Bill accordingly read a second time.

3.00 p.m.

Bill committed to a committee of the whole Senate.

Senate in Committee.

Clause 1 ordered to stand part of the Bill.

Clause 2:

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

Mrs. Persad-Bissessar: Mr. Chairman, I beg to move that clause 2(a)(ii) be amended by inserting the word “any” before the word “other”.

Sen. Daly: Mr. Chairman, I am proposing that section 40(b) should read:

“comes into or attempts to gain admission into or to leave or remains in Trinidad and Tobago by means of;”

I simply say for the record that I am not satisfied with the advice that the Attorney General has received. In my view, “coming into” and “admission” are two completely separate things.

I did not propose this amendment simply to stick in the word “attempt”; I proposed this amendment in order to try to capture the ‘gaining of admission into

Trinidad and Tobago'. In my respectful view, coming into Trinidad and Tobago is a physical coming, but admission is a quite different thing; that is the act which the immigration officer performs under section 4.

It is for that reason that I proposed the amendment. It is, of course, a matter for the Government whether it accepts my amendment, but I am not withdrawing it for that reason. I think it is quite possible to come into Trinidad and Tobago without necessarily being admitted by an immigration officer under section 4.

Mrs. Persad-Bissessar: Mr. Chairman, the word "admission" carries a particular meaning within the Act, which is stated in the interpretation section of Chap. 18:01, section 2 which reads—

"admission" means the coming into Trinidad and Tobago from a port outside Trinidad and Tobago of citizens and residents of Trinidad and Tobago and includes entry of permitted entrants and other persons under this Act."

There is a particular interpretation of the word "admission". In my respectful view, "comes into" is sufficient to cover the contemplation of the Senator. It covers "attempting to come into" and it covers "coming into" by whatever means.

Sen. Prof. Ramchand: Mr. Chairman, the original legislation has "comes into by force or stealth", are the words "force or stealth" being deleted?

Mrs. Persad-Bissessar: That is right because there is now the other "false, misleading or fraudulent method". Basically, section 40(b) was a redraft which was contemplated to really clarify 40(b). This was my understanding of what was happening in section 40(b), rather than to create any new offences.

Sen. Prof. Ramchand: But if "force or stealth" is deleted and one comes by pirogue from Venezuela and lands in Cedros, or if there was an attempted invasion and one stayed, nothing here covers coming into by force or stealth.

Mrs. Persad-Bissessar: If one looks at subclause (ii), which should read:

"any other false, misleading or fraudulent method, knowing it to be false, misleading, fraudulent or otherwise improper;"

Would that not cover "any other method"?

Sen. Prof. Ramchand: In a manner of stretching, but I must say that I support Sen. Daly's amendment.

Immigration (Amdt.) (No. 2) Bill
[SEN. DALY]

Tuesday, December 19, 1995

Sen. Daly: Mr. Chairman, I always take the view that this is not the place for debate between lawyers. I would like to make one other point. I really do think there is a problem with this section.

If one has a passport that is fraudulent or tampered with, one may be presenting oneself fraudulently as a citizen with a right to be admitted. I do not think that "coming into" covers that. I am surprised that we are passing one section based on nationals and one based on non-nationals. I could be a citizen of Tuvalu and tender a Trinidad and Tobago passport in an attempt to gain admission as of right. If I gain admission as of right then here are certain other consequential rights that go with that as opposed to if I gain admission as a resident. I think Sen. Ramchand was quite right, thereby proving that the law is merely the use of the English language. We have got rid of stealth and these other methods but we have not carefully—

So, there are other permutations; one can be a Trinidadian with a fraudulent passport of some other country; one could be a citizen of some other country with a Trinidad and Tobago passport that is fraudulent, and depending on the use of the passport one can gain different rights depending under what section one is admitted—and may be able to be admitted as a right. I do not know whether this matter has been thought out. Anyway, my position is that I am not withdrawing my amendment.

Question, on amendment, [Mrs. K. Persad-Bissessar] put and agreed to.

3.10 p.m.

Clause 2(b).

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

Mrs. Persad-Bissessar: Mr. Chairman, I beg to move, that clause 2(b) be amended:

- "(i) by deleting the word "or" occurring after the semi-colon ";" in paragraph (h) and adding immediately after paragraph (i) the following new paragraph:"
- (j) comes into or attempts to leave Trinidad and Tobago by means of a passport or has in his possession a passport that—
 - (i) has been tampered with;

- (ii) is fraudulent; or
 - (iii) has been fraudulently or improperly issued, whether or not it has been issued to him."
- ii. by inserting between the words "into" and "or" occurring in line 1 of paragraph (j) the words "remains in".

Mr. Chairman: The question is that we delete and substitute as follows:

2. Section 40 of the Immigration Act is amended by—

(a) deleting paragraph (b) and substituting the following:

"(b) Comes into or remains in Trinidad and Tobago by means of—

- (i) a false or improperly issued passport, visa, medical certificate or other document; or
- (ii) any other false, misleading or fraudulent method knowing it to be false, misleading, fraudulent or otherwise improper,".

Sen. Daly: Mr. Chairman, before that amendment is put, may I just respectfully point out that we have already amended sections 2 and 3 with the word, "other." If my amendment is put without the word "other" we may be in effect, reversing what we did earlier. At least that is how it seems to me.

I am respectfully suggesting that my amendment be put and the word "any other" be included in Roman (i), otherwise we would be reversing what we put before.

I do not know what is happening or who is advising the Government on these complicated drafting matters. It seems to me that we have already agreed to insert the word "any". If we now pass my amendment in its present form without the word "any" we would be reversing what we did before. I do not know much about this. I need to be guided.

I would be amenable, if what I am saying is correct, to inserting the word, "any" in my amendment before it is put. I do not understand this procedure. I need help.

Sen. Mahabir-Wyatt: Mr. Chairman, could I get some clarification on this? Earlier on, the hon. Attorney General said that there was in this Bill a definition of the word, "admission" which Sen. Daly has in his little (b) . Could we get

guidance from the legal drafting personnel about the purport of putting "attempts to gain admission." Is this going to have a legal meaning different from what Sen. Daly is intending by virtue of the definition that exists in the Bill? I need clarification because I am confused.

If we put in "whether or not it has been issued to him" at the end of passport. You say you are willing to leave out "attempts to gain admission." I am confused by that one.

Mrs. Persad-Bissessar: Mr. Chairman, I am uncertain what is the difference between "comes into" and "gains admission into." If we look at what admission means in the interpretation of this section 2. 'Admission' in section 2 which I read previously means 'comes into Trinidad.' What is the difference? I do not understand with the greatest of respect. Having said that the only difference is in the word, 'attempts.'

Sen. Daly: It is not.

Mrs. Persad-Bissessar: If the difference is not in the word 'attempts,' if there is a difference between 'comes into'—the two phrases we are looking at are 'comes into' and 'gains admission'. The word "admission" in the interpretation section means coming into. With the greatest respect, it is repeating itself.

Sen. Prof. Ramchand: Mr. Chairman, 'comes into' has been limited here to mean comes into by means of a passport. Whereas comes into could mean by force or stealth, landing by pirogue without passing through any immigration officer.

Mrs. Persad-Bissessar: Sure. It is in the second part of it. There is Roman (i) and Roman (ii). "Gains admission" and "comes into" mean the same thing.

Sen. Daly: Mr. Chairman, I am prepared to withdraw the word "admission." I am not withdrawing the rest of my amendment which is, that there is no logical difference to leave in one section and not the other. It seems to me logically you can come in and leave by a false or improperly issued passport.

Mrs. Persad-Bissessar: Mr. Chairman, we have no difficulty with inserting in (b) "comes into, remains in or attempts to leave" in clause 2(b). It really does not change the substance of the Bill.

Sen. Daly: May I enquire what is the difficulty of including in clause 2(b) "a passport that has been tampered with" as one of the means?

Immigration (Amdt.) (No. 2) Bill

Tuesday, December 19, 1995

Question put and agreed to.

Clause 2(b), as amended, ordered to stand part of the Bill.

New Clause 2(c).

Mrs. Persad-Bissessar: Mr. Chairman, I beg to move that a new clause 2(c) be added to the Bill as follows:

(iii) Delete the full-stop at the end of (j) and substitute a comma, and add a new paragraph (c) as follows:

(c) deleting the words "one thousand", "twelve months", "two thousand" and "eighteen months" and substituting therefor the words "fifty thousand", "three years", "one hundred thousand" and "five years" respectively."

New Clause (c) read the first time.

Question proposed, That new clause 2 (c) be read a second time.

Question put and agreed to.

Question proposed, That new clause 2 (c) be added to the Bill.

Question put and agreed to.

New Clause (c) added to the Bill.

3.20 p.m.

Mrs. Persad-Bissessar: "Tampered with" is caught in (j). I had pointed out that what we need to bear in mind is that section 40(b) whilst not excluding nationals of Trinidad and Tobago, is intended to deal with non-nationals. This is the rationale for leaving out "tampering with" and including it in section 40(k).

Sen. Daly: Logically, in the case of non-nationals, how are we going to detect a false passport? It does not make sense logically. If we do not have the ability to discern whether our passports have been tampered with, how will we have the ability to discern whether it is false?

Immigration (Amdt.) (No. 2) Bill
[MRS. PERSAD-BISSESSAR]

Tuesday, December 19, 1995

Mrs. Persad-Bissessar: The offences created in (b) and (j) are different. The offence in (b) is the coming into or the remaining. In (j) the offence is the possession. This section deals with only passports.

Sen. Mahabir-Wyatt: What are the words in the provisions which make the first part apply to non-nationals, and the second part to nationals? I think that would clarify my mind on the matter. Do the words indicate that (b) is for non-nationals and (j) is for nationals?

Mrs. Persad-Bissessar: The Immigration Department has advised that this creates the offence mainly for non-nationals; people who are coming into or remaining.

Sen. Mahabir-Wyatt: That is not the way it is interpreted. The words do not actually say that.

Mrs. Persad-Bissessar: You are totally correct. The words do not say that.

Mr. Chairman: What are the exact words that have been accepted as an amendment to clause 2 (a) (b)?

Mrs. Persad-Bissessar: "Comes into or remains in or attempts to leave Trinidad and Tobago by means of."

Sen. Mahabir-Wyatt: Under (b) where we are dealing with the non-nationals, insert the words "any person not being a citizen". That would make it clear and then we would not have any problems. If that is the way it is used by the Immigration Department maybe it would make it clear. Obviously, it was the original Act that was a bit fuzzy in its ruling and not this amendment. It might make it clear for future generations and immigration officers.

Mrs. Persad-Bissessar: With respect, we would not be able to agree to that, Mr. Chairman.

Mr. Chairman: Once again I read the agreed amendment:

- "(b) comes into or remains in or attempts to leave Trinidad and Tobago by means of—
- (i) a passport that has been tampered with or a false or improperly issued passport, visa, medical certificate or other document whether or not it has been issued to him or;
- (ii) other false, misleading or fraudulent method, knowing it to be false, misleading, fraudulent or otherwise improper."

Mrs. Persad-Bissessar: Maybe we can deal with the first part because there is agreement on clause 2(a) (b), that is "comes into or remains in or attempts to leave Trinidad and Tobago by means of..." I think we have consensus on that.

Question put and agreed to.

Sen. Daly: Mr. Chairman let me capitalize on your wise intervention. Can you now discuss the remaining issue? What is the Government's objection to including among the rules in (b) "a passport that has been tampered with"? Logically, I do not accept this national/non-national thing. If the immigration officers can detect a falsely issued foreign passport, then they must be able to detect a foreign passport that has been tampered with. The tampering will be easier to spot with the naked eye. We should include "tampered with" among the rules in (b).

Mrs. Persad-Bissessar: Mr. Chairman, we have no difficulty with inserting the words "tampered with".

Sen. Daly: Thank you.

Mrs. Persad-Bissessar: I am sure it will make Sen. Daly happy.

Sen. Daly: I am not doing this for myself. I could not care less. My passport is validly issued.

Mrs. Persad-Bissessar: Mr. Chairman, I withdraw the words, "it will make Sen. Daly happy".

3.30 p.m.

Mr. Chairman: The question is, that clause 2(a)(b)(i) should read:

"a passport that has been tampered with or a false or improperly issued passport, visa, medical certificate or other document, whether or not it has been issued to him; or"

Mrs. Persad-Bissessar: We have agreed up to the words "other document", "whether or not it has been issued to him" has not been agreed upon.

Sen. Daly: I will not pursue that part of the amendment.

Mr. Chairman: Would you delete it, Senator?

Sen. Daly: I delete it.

Immigration (Amdt.) (No. 2) Bill
[SEN. DALY]

Tuesday, December 19, 1995

Part of amendment accordingly deleted.

Mrs. Persad-Bissessar: Clause 2(b)(ii) appears to be identical to what we have here.

Sen. Daly: I would put in the word "any". I withdraw my amendment with respect to clause 2 (b) (ii).

Amendment withdrawn.

Sen. Daly: Are we on clause 2 (b) (ii)?

Mrs. Persad-Bissessar: The proposed new (j).

Sen. Daly: May I enquire why is the Government so insistent that it will not make possession a completely separate offence by taking it out of (j)? Why is it being expressed in the alternative in (j).

Mrs. Persad-Bissessar: The question really goes the other way. Why should it be taken out of (j) if it is a drafting style, or is there some other cause why it should be removed from (j)? It does not seem to us that there is any reason why it should be removed from (j).

Sen. Daly: There may be arguments about "coming into" and "about to leave". There may be all kinds of technical, factual arguments about whether the person was going to buy duty free and was not really trying to leave. This is how, regrettably, some members of my profession earn their living. I can see all kinds of arguments arising about, "I was not really trying to leave, I was going to the duty free shop." Why do we want to tie possession into this section and not detach it and make it very plain that that is a strict liability offence on its own? That is my only difficulty.

Sen. Prof. Ramchand: It is true that "or" separates them here, but there is an ambiguity which can be taken advantage of and which the hon. Attorney General herself fell into in her presentation in the other place. When she said that in the other place, she said "as long as one is in possession of such a document and one attempts to enter or leave Trinidad, one would be guilty of an offence." With all due respect, I think that the Minister fell into the ambiguity herself.

Mrs. Persad-Bissessar: If I did so, it was perhaps due to speed of speaking, but the section is clear that it is disjunctive. "Or" is totally disjunctive. There is "and", but "or" in the English language is totally disjunctive. It seems to me that it does not affect the subject of the clause at all and is merely a drafting style.

Sen. Prof. Ramchand: But then the whole context of a case where someone is before the immigration officer has been invoked. By putting them together with the "or", you invoke a context of standing before an immigration officer with a passport and we want to make it clear that if we find this in your home, it is an offence. I think that would be a good reason for separating it.

Sen. Daly: If the Government is advised to form a consensus [*Inaudible*] discuss the first case in the court of appeal subsequently.

Mrs. Persad-Bissessar: This is what we are considering, Sir. If it is really in form, we may have no difficulty with this. This is what I am trying to confirm with my colleagues. [*Consultation*] We will leave it as it is in our proposed list of amendments.

Sen. Daly: Mr. Chairman, I will not pursue it. I think we are making a fundamental mistake. We are in fact weakening the protection and creating a situation where if one jumps off a pirogue without a passport, one can say one has not done anything wrong because one tried to come in without a passport. I think we are making a mistake. I have put forward my amendments, but if the Government insists, I withdraw mine.

3.40 p.m.

Sen. Prof. Ramchand has pointed out that we have taken out: "coming in by stealth". I withdraw my amendment, Sir, I would not prolong the issue.

Mr Chairman: Sen. Daly's amendment to clause 2(b)(b) and (c) is withdrawn.

Amendment withdrawn.

Mrs. Persad-Bissessar: Mr. President, we have already agreed upon and accepted the amendment with respect to the sentence, which reads as follows:

"is liable on summary conviction for a first offence to a fine of \$50,000.00 and to imprisonment for three years and for a subsequent offence \$100,000.00 and imprisonment for five years."

Mr. Chairman: We now move on to paragraphs (h) and (i).

Mrs. Persad-Bissessar: I have no difficulty with paragraphs (h) and (i) which read as follows:

(h) In paragraph (h), delete the word "or" appearing at the end.

Immigration (Amdt.) (No. 2) Bill
[MRS. PERSAD-BISSESSAR]

Tuesday, December 19, 1995

(i) In paragraph (i), delete the comma “,” at the end of the paragraph and substitute the word “or.”

Question put and agreed to.

Clause 2, 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 amendment; read the third time and passed.

MUNICIPAL CORPORATIONS (AMDT.) BILL

Order for second reading read.

The Minister of Local Government (Hon. Dhanraj Singh): Mr. President, I beg to move,

That a Bill to amend the Municipal Corporations Act, be now read a second time.

Mr. President, before proceeding I would like to congratulate you on your appointment as President of the Senate. Also, I congratulate all Members of this esteemed Senate on their appointment as Senators.

The term of office of the municipal councils which commenced on September 28, 1992, expired on September 27, 1995. The existing legislation governing local government bodies requires that local government elections be held within three months of the expiration of the term of office of mayors, councillors and aldermen comprising the council. In this regard local government elections are constitutionally due by December 27, 1995.

The relevant section to be amended, or which endorsement by the Senate is required, is Part II, section 11(4) of the Municipal Corporations Act which states:

“The term of office of Councillors shall be three years, and they shall retire together on the last day of every triennial period, the first of which shall be deemed to have begun on the day on which the Councillors were elected to office.”

Furthermore, section 11(4A), as amended by the Municipal Corporations (Amdt.) Act No. 8 of 1992, states:

“An election referred to in subsection (1) shall be held within 3 months of the expiry of the term of office of Councillors and Aldermen comprising the Council”.

The prime objective of this Bill which was duly passed in the Lower House is to provide for the extension of the period of holding election under section 11 of the Municipal Corporations Act, 1990, from the stipulated three months to nine months for the next local government elections. That is to be interpreted as six months from December 27, 1995, the date on which such elections are constitutionally due.

In addition, it also seeks to enable that:

- (a) the Councillors and aldermen of each Corporation whose terms of office expired on the 27th day of September 1995 shall comprise an Advisory Committee of that Corporation on the same terms and conditions of service that they enjoyed as Councillors and Aldermen; and
- (b) the person who held the office of Deputy Chairman of the Sangre Grande Regional Corporation on the 26th day of September, 1995 shall assume the office of the Chairman of the Sangre Grande Regional Corporation.

Mr. President, with respect to (a) of the foregoing, local democratic representation is essential in ensuring the delivery of quality service to citizens. However, recognizing that the terms of office of councillors and aldermen had expired, it was necessary to establish a mechanism that would ensure such representation is continued. That the former councillors and aldermen of each corporation shall comprise an advisory committee of that corporation, was therefore, the most effective method of not only ensuring continued democratic representation, but also facilitating the delivery of local government services promptly, efficiently and effectively.

In the case of (b), this was occasioned by the fact that the Chairman of the Sangre Grande Regional Corporation, Mr. Roger Boynes, was a successful candidate in the November 6, 1995 general elections, and had to vacate office in accordance with section 8(f) of the Municipal Corporations, Act, 1990.

Municipal Corporations (Amdt.) Bill
[HON. D. SINGH]

Tuesday, December 19, 1995

This honourable House must take cognizance of the fact that, had local government elections been called in September, 1995 instead of the now historic November 6, 1995 general elections, this Bill would not have been presented here today.

3.50 p.m.

The Government of which I am a Member, has made its position unambiguous on its subscription to the law and the Constitution in all matters, none the least of which is the holding of local government elections with unwavering resolve.

The principle of constitutionality was so uppermost in our thoughts that consequent upon assuming office and pursuant to our election promise to convene and hold local government elections on December 18, 1995 my Ministry communicated with the Elections and Boundaries Commission enquiring about its state of readiness to hold such elections.

Mr. President, for the benefit of hon. Senators, I am obliged to quote from my letter, dated November 27, 1995, to the Chairman, Elections and Boundaries Commission. It says:

"Dear Sir

Local Government Elections are constitutionally due before December 27, 1995. The honourable Minister of Local Government would like to be advised on the state of readiness of the Elections and Boundaries Commission to administer this election within the period it is due.

Your urgent response will be appreciated.

Yours sincerely

Dhanraj Singh

The Minister of Local Government."

Significantly, the response thereto from the Elections and Boundaries Commission by letter dated November 29, 1995 indicated to the Minister, in no uncertain terms, the Commission's inability to administer the holding of local government elections by the constitutionally due date.

For the benefit and guidance of the Members of the Upper House, I take the liberty once more, to quote from the aforementioned response under the hand of the Chairman of the Elections and Boundaries Commission. I quote:

Municipal Corporations (Amdt.) Bill
[HON. D. SINGH]

Tuesday, December 19, 1995

"Thank you for yours of 27 November in reference to the state of readiness of the Elections and Boundaries Commission to conduct the next Local Government elections which, as you state, is constitutionally due before 27 December, 1995.

It is a requirement of Rule 40(6) of the Election Rules that every elector after marking and folding his or her ballot should immerse his or her finger in the electoral ink provided before such elector is allowed to insert such ballot into the ballot box.

However, the Commission is at the moment without a supply of electoral ink and the materials for its manufacture by the Government Chemist, ordered through Caribbean Chemicals Ltd. on November 15, 1995 are not expected in the country before the end of the year. Please be guided accordingly."

The case of the Electoral ink—as this Bill or Act when it has passed all its stages may be popularly called—has been a cause for concern and evoked public dissatisfaction during and after the just concluded November 06, 1995 general elections, as all hon. Senators here ought to recall. The general concern associated therewith by a large section of the voting population on the date of the said elections was that the ink, which was expected to remain on your finger at least five days as proof of voting, disappeared after washing, in some cases, within hours after the voting exercise.

This Government, being responsible and responsive to ensuring efficiency and effectiveness in the administration of an election, which, *inter alia*, is related to the citizens perception of it being free and fair, therefore recognizes that the Elections and Boundaries Commission requires some time to organize and mobilize itself to ensure a smooth election whenever it is called.

In closing, may I state that the purposes of this Bill recently passed in the House of Representatives are as follows:

- (i) to provide for the extension of the period of holding elections under section 11 of the Municipal Corporations Act, 1990 from the stipulated three months to nine months for the next local government elections only.
- (ii) To enable that:

Municipal Corporations (Amdt.) Bill
[HON. D. SINGH]

Tuesday, December 19, 1995

- (a) the Councillors and Aldermen of each Corporation whose terms of office expired on the 27th day of September, 1995 shall comprise an Advisory Committee of that Corporation on the same terms and conditions of service that they enjoyed as Councillors and Aldermen;
- (b) the person who held office of Deputy Chairman of the Sangre Grande Regional Corporation on the 26th day of September, 1995 shall assume the office of Chairman of the Sangre Grande Regional Corporation.

Mr. President, I beg to move.

Question proposed.

Sen. Penelope Beckles: Mr. President, I rise to support the amendment of the Municipal Corporations Act, 1990. First of all, I commend the hon. Minister of Local Government for his maiden presentation in this honourable Senate. We all recognize that by virtue of the fact that next week Tuesday, December 27, the local government elections would have been constitutionally due, therefore, it is absolutely necessary that everything possible should be done to ensure that the local government and the municipal corporations continue to provide quality service for their respective burgesses.

The Minister of Local Government gave reasons why it was necessary to bring this Bill before this honourable Senate to extend the time for holding local government elections by six months. He read a letter from the Chairman of the Elections and Boundaries Commission which indicated that ink would not be available until the end of this year. He further indicated the difficulties that were encountered during the recent general elections which made it necessary for the import of ink for the holding of the local government elections. But I would suggest that it would have been more prudent for the hon. Minister of Local Government to lay that communication that was sent to him by the Chairman of the Elections and Boundaries Commission.

To my understanding, if as the communication seems to suggest, the Chairman is saying that the elections could very well have been held by the end of this year, that is the end of 1995, then the question arises whether or not there is need to extend the time for holding elections until March 1995. Nonetheless, we are now just a week away from that constitutionally due date of December 27, 1995, and therefore, as I indicated, we on this side would support the amendment of the Bill.

Mr. President, I was hoping that, having regard to the difficulties that are normally encountered as it relates to local government bodies, the hon. Minister of Local Government would have also seized the opportunity to indicate to this honourable Senate his vision for local government and the method that he would employ to ensure that local government bodies run more efficiently.

4.00 p.m

Mr President, we are well aware of the difficulties that are normally encountered with respect to the unavailability of material; the tendering procedure; the difficulties with respect to industrial relations matters in the local government bodies and it is normal that the majority of work, and certainly, with respect to the allocation of funds that are normally disbursed to local government means that there is a considerable reduction in productivity in most of the local government bodies. I was hoping that my Friend would have indicated to this honourable Senate, using the opportunity in his maiden speech, to indicate his vision for local government.

Local government bodies over the last couple of years have been complaining about the release of moneys for the development programme which usually occurs during the rainy season when maximum use cannot be made of these moneys. I hope that when next the Minister of Local Government addresses this honourable Senate, we would, in some measure, hear from him what his vision is for the local government bodies.

I did not hear the Minister of Local Government indicate to this honourable Senate that the amendments presented were actually suggested by the PNM and accepted by the UNC/NAR coalition Government. Then again, my Friends on the other side seem to think that when one is persuaded to change one's mind, it is a question of sneaking in some amendment. I am happy that we on this side were able to persuade those on the other side that the amendments now before this Senate were actually the best amendments to deal with this particular piece of legislation.

As I indicated when I first started, we recognize that the date for the holding of the elections would have been next week Tuesday and therefore, we are in a predicament where it is absolutely necessary—notwithstanding, of course, the fact that notice of this amendment was sent to us only yesterday—that we support this Bill to ensure that the nation and all those who benefit from the local government bodies would not suffer.

Municipal Corporations (Amdt.) Bill
[SEN. P. BECKLES]

Tuesday, December 19, 1995

Mr. President, on behalf of those on this side, I rise to support the amendment to the Municipal Corporations Act.

Sen. Prof. John Spence: Mr. President, I, of course support the Bill. I just want to make a comment on the question of ink, because it seems to me we are in a rather strange situation if it is the shortage of ink that seems to be the principal reason for the need to extend the date on which the elections are to be held.

In these days of modern transport, there must be at least three aircrafts that arrive in Trinidad every day. I wonder if the hon. Minister in winding up could tell us why it is not possible to freight the ink in rapidly. It seems to me, if that is the main reason, that is a very, very serious situation for a country to be in and I am surprised that the issue has not been taken up. There may be other very good reasons of which I am not aware, but that being given as a reason, it seems to me that we are in a very dangerous situation. Suppose there is some other emergency other than holding local government elections and we cannot get some chemical for spraying for mealy bugs and we cannot airfreight it in. I think that is a very, very unusual and alarming reason for postponing local government elections. They have agreed now that there has been a postponement and I support the Bill for that reason. I really would like some comments from the hon. Minister on that score.

Thank you very much.

Sen. Martin Daly: Mr. President, I am becoming somewhat confused about whether things that appear to me to be common sense really are, especially in light of the last debate which we had. I am very, very disturbed about the situation that is presented by this Bill. Of course, we have to support it because we have a *fait accompli*; we have a situation where, for some reason which we have to explore, elections that are supposed to be held are not being held.

I wonder if anyone has considered carefully how grave it is for the country to be told you are supposed to exercise your franchise within a certain time frame and you cannot do it. I wonder if it has occurred to anyone what a grave statement that is when we profess to be a working democracy—and this is no reflection on the Minister. When there is a situation where a supposedly working democracy and the population has to be told there cannot be an election, then, in my respectful view, a good reason has to be given. This is not about not giving out priority bus route passes this term, this is not about something trivial, this is a very

serious matter and, therefore, one expects to hear some very credible and very compelling reasons.

Apparently, we could not have an election because there was no ink, or alternatively, apparently, if there was ink, there was some reference to it washing off and so forth. Well, I have news for the Elections and Boundaries Commission: There is no ink that can be introduced to the mind of a wily Trinidadian that he would not be able to get off his finger.

Anyway, we cannot have an election because we have no ink.

Mr. President, let us consider the seriousness of that situation, where there are governments in other countries, we are not talking about here—theoretical proposition. There are Governments with majorities of two and three, and God forbid, for some reason completely unconnected with everyday events—a plane crashes, or a car crashes, or there is a political disaffection on a large scale, four Members cross the floor and we need to have an election—there is no ink! You know, the antithesis of world class is mickey mouse. That is the antithesis of world class! God forbid if we have to have an election in this country for any one of a number of totally unforeseeable reasons and we have no ink!

I think that is totally unacceptable, but, as usual, we have a situation that is totally unacceptable and the Parliament, which is the only means of informing the country, would go through some kind of wishy-washy exercise today and pass this legislation and the next time there must be an election, maybe in some unexpected way, we will have no ink, and then what? The country will go without its normal constitutional processes because we cannot bring the ink in by courier, as Sen. Spence has suggested.

4.10 p.m.

I find it absolutely incredible, and really deserving of some kind of condemnation by the country, that our democracy could not be exercised because we did not have ink. Mr. President, that is the reason that I am making a contribution on this Bill. It is total slackness, and we cannot be taken seriously as a country, and this is no reflection on the Minister. I do not know who is responsible for the supplies of the ink, or for testing the ink from time to time to make sure that if it is in stock, it is in good condition. I think it is very serious and deserving of comment and fuller explanation. I would like to know who is responsible for ordering the ink and for keeping it in good condition. I would like

Municipal Corporations (Amdt.) Bill
[SEN. M. DALY]

Tuesday, December 19, 1995

to know those things and what sanction is going to be applied for this egregious failure that could, conceivably, result in our democracy failing, because we do not have any ink. It is absolutely incredible!

This is why Parliament and politicians are held in such disrepute, because anything that is serious or that has deeper implications we just glide over it—we just read correspondence and glide over it. What is to prevent this situation arising again? What happens if four Members of a Government with a slim majority cross the floor, and there is to be an election quickly? Are we going to tell the population, "Well, maybe, the election is going to be held when we get ink"? It is a very serious matter. These are practical things and that is why I wonder, sometimes, whether my view of common sense is really failing.

This is not something we can just glide over like that, and I would like a very full explanation of why it is, if the Minister of Local Government wanted to hold elections, or the Government of which he is a Member wanted to hold elections on December 18, in keeping with the constitutional requirements—and I emphasize, in keeping with the constitutional requirements. This is not a fete match, or a bus outing to Cedros to take a sea bath! This is something to do with the Constitution and the workings of our democracy, and I expect a much fuller explanation than we are being given, because I absolutely refuse to accept that the Government says, "We want to have elections within the time they are constitutionally due", there is no ink and then we are told, "Well pass this Bill" and then we have to wait another nine months, incidentally.

Well, I am not going to interfere with this, because this is something, apparently, that has been a part of some agreement between the major players. We are not elected representatives; it is not our business to change it—so another nine months. Is it going to take us nine months to get the ink? I do not know—why nine months? Why must we go along in this semi-disenfranchised state for nine months if the holding of elections is important? Give us some explanation of why nine months, if it is only a problem with ink. Why, if it was important to keep a promise and hold elections on December 18, we are now putting it off for nine months? I do not understand any of this, and I absolutely refuse to sit here and allow us to glide over all these problems that could have long-term consequences for the country and embarrass us, when somewhat unpredictable, or not so unpredictable events take place.

Indeed, Mr. President, this is not the time to debate it, but it raises the whole question about this practice of calling elections within a specified period, but in

the discretion of someone. I think one way of dealing with this problem, certainly in relation to local government elections, is to start discussing whether or not we should not have fixed dates for these things; and then we will not be able to play around with them.

Maybe nobody else will take it seriously, Mr. President, but I think it is a serious matter because this is all part of the "slackness syndrome" where they cannot catch a thief because there is no car; they cannot have elections because there is no ink; or they cannot build an industrial estate because all their studies are wrong. These things cost us—either money or credibility; or they just cost us in terms of chaos. So I hope the Minister, in his winding up, will recognize that there is, at least, one Senator here who would like to hear a little about why this is so, and how it is going to be avoided in the future; who is responsible and what is the sanction.

Thank you, Mr. President.

Sen. Prof. Kenneth Ramchand: Mr. President, I share in the misgivings of Sen. Daly and in his indignation, but since he has been sufficiently eloquent on the subject, I just want to take the opportunity to observe that it is a sad reflection on our notion of self-sufficiency that we have to import electoral ink; and that the scientists and bush doctors of this independent Republic have not been invited to produce our own electoral ink.

Thank you, Mr. President.

Sen. Selwyn John: Mr. President, you have been congratulated by everybody. Let me join them in saying that I, too, congratulate you on your appointment. I also congratulate all those Senators who have spoken for the first time. This is new to me, too. I am a Senator for the first time and it is the first time I am speaking in the Parliament.

On the matter before us, Mr. President, I think one has, at least, to give credit to the Minister that, after a few days being appointed Minister, he sought to move on to elections for the local government bodies. We are wondering—and I agree with Sen. Daly—whether, in fact, when people are appointed to govern, the business of the people is important to them, or not. If the term of office of the local government bodies came to an end some three months ago, at least, some consideration should have been given to have, if not simultaneously with the snap

Municipal Corporations (Amdt.) Bill
[SEN. M. DALY]

Tuesday, December 19, 1995

general elections, either shortly before or after, the local government elections held.

It is not new to us, Sen. Daly, that we have had occasion to postpone local government elections. To us it is a perennial problem in this country that the last government never placed much emphasis on the work and operations of the local government bodies. For that matter we have witnessed a deterioration of the work that has been done by them. Moreso, it was not surprising that in carrying out tasks, workmen could not get materials because moneys were not voted and workers were on jobs standing up daily. The public is criticizing workers for being lazy but, in fact, they are willing to work, but do not have the materials to do so. There is a string of complaints that would take us a long time to correct as a government now coming to power.

However, Mr. President, I think that the Senators would know that three months have already gone from this nine-month extension that has been proposed. It is not that the Minister is saying that the elections will be held six months from now. It is any date that the Elections and Boundaries Commission indicates that it could hold it, up to six months from now. I would feel that it is a credit to him and the country that such a Minister, within days of assuming the portfolio of Minister of Local Government, could have moved so quickly and, at least, attempted to do something about calling these elections as soon as possible. I congratulate him and all of us on this side would hope that—[*Sen. London rose.*] I am sorry, I did not see the Senator.

4.20 p.m.

Sen. London: I just wish to ask the hon. Senator whether the Elections and Boundaries Commission will determine the date of the next local government elections.

Sen. S. John: All that we would hope to get from them is their readiness to conduct such an election. In this instance they said that ink has been the problem and that they would hope to have it before the end of the year. If they could hold it on January 2, we would say let us have it.

Sen. London: So, can we hold you to that?

Sen. S. John: No, you cannot, but I say, if they say they could hold it on January 2, nothing is wrong with the Minister attempting to hold it. But you see again, a government now coming into power has to take the blame for a

government that was in power and refused to have this election. *[Interruption]*
Well, that was madness whoever decided to hold a snap election.

Mr. President: Will the hon. Senator refrain from the language he is using.

Sen. S. John: I apologize, Mr. President, and I withdraw the word. In winding up, may I state that we must, as a Senate, do everything in our power to satisfy the needs of the public and one of which is to have early elections in the local government bodies and the Government is making every attempt so to do.

I thank you, Mr. President.

The Minister of Local Government (Hon. Dhanraj Singh): Mr. President, firstly I would like to respond to hon. Senator Penelope Beckles that while she made reference to a vision for local government, I wish to report to this honourable Senate that the vision of the previous administration was one of frustration; frustrating the efforts of local government bodies. Every one of the corporations had problems of funding. Two of the corporations, namely the Penal/Debe Corporation and the San Juan/Laventille Corporation, had no headquarters for many years. I wish to report to this honourable Senate that within two weeks of this new Government we have been able to secure headquarters for one of the corporations. *[Applause]*.

Mr. President, may I also state that we are serious about local government and that our vision is one of empowerment and not frustration. *[Applause]*.

As regards Sen. Martin Daly's comments, he being an expert in this honourable Senate, I took note of what he said but may I report that the EBC is an independent body and it indicated to me that it had no ink. It is on that basis that I am reporting this to the Senate.

May I also state for the records that the postponement period in question here is one of the shortest postponements of local government elections. The records will show that in the 1970s it was postponed for many years.

Sen. Prof. Spence: Mr. President, I want the hon. Minister to indicate how the ink is acquired by the Elections and Boundaries Commission. Do they order it themselves or does the Government provide it? Would it be improper for the Government to provide it with ink if it does not have any? Would that be improper?

Municipal Corporations (Amdt.) Bill
[HON. D. SINGH]

Tuesday, December 19, 1995

Hon. D. Singh: Mr. President, I did not go into that in detail. Again, the EBC is responsible for administering elections. I think it was outside of my jurisdiction to get into that.

I also wish to state here that whenever the EBC indicates to my Ministry its readiness to hold local government elections, we will set the date accordingly.

Sen. Daly: Mr. President, may I ask the Minister, if we pass this Bill; if I vote for this Bill, which he is asking me to do—it is my vote; he does not have to have it—what guarantee do I have that at the expiration of the nine months from September that we will not be back here seeking to do this again because we have no ink? Is it that we just pass the Bill and wash our hands of it? What is the Government going to do to see to it that the EBC has ink? That is what I want to know, otherwise I will not vote.

Hon. D. Singh: I wish to assure the hon. Senator that we will hold that election within that period. *[Applause]*

Mr. President, I beg to move.

Question put.

The Senate voted: Ayes 25 Noes 0

Mark, Hon. W.

Kuei Tung, Hon. B.

Theodore, Hon. Brig. J.

Baksh, Hon. S.

Phillips, Hon. Dr. D.

Gangar, Hon. F.

Moore-Miggins, Mrs. D.

Maharaj-Tota, Mrs. V.

Hamel-Smith, P.

John, S.

Cuffy-Dowlat, Mrs. C.

Gray-Burke, Rev. B.

Moore, N.
 Baksh, N.
 Gabriel, A.
 Gilbert, V.
 Mohammed, Miss N.
 London, O.
 Montano, D.
 Beckles, Miss P.
 Jagmohan, M.
 St. Cyr, Dr. E.
 Mc Kenzie, Dr. E.
 Ramchand, Prof. K.
 Marshall, P.

The following Senators abstained: Sen. Prof. J. Spence, Sen. D. Mahabir-Wyatt, Sen. Rev. D. Teelucksingh, Sen. M. Daly, Sen. Prof. J. Kenny.

Question agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

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

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

Senate resumed.

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

Mr. President: Hon. Senators, this sitting is now suspended until 5.05 p.m.

4.35 p.m.: *Sitting suspended.*

5.07 p.m.: *Sitting resumed.*

The Attorney General and Minister of Legal Affairs (Hon. Kamla Persad-Bisessar): Mr. President, I beg to move the following Motion:

Be it resolved:

That this honourable Senate take note of the Seventeenth Annual Report of the Ombudsman for the period January 1, 1994 to December 31, 1994 (hereinafter referred to as “the said Report”):

And be it further resolved:

That pursuant to Standing Order 71, this honourable Senate appoint six members to sit with Members of the House as a joint select committee for the purpose of considering the said Report and the functions and duties of the Office of the Ombudsman and to make recommendations for a more effective machinery for the Office of the Ombudsman so that Part II of Chap. 6 of the Constitution of the Republic of Trinidad and Tobago can be given effect.

Question proposed.

Sen. Deborah Moore-Miggins: Mr. President, I rise to support the Motion which is before this Senate. This Government has given serious consideration to the Seventeenth Annual Report of the Ombudsman. We have noted that it carries a litany of complaints by citizens of injustice which they perceived have been meted out to them by governmental and administrative agencies in this country.

More importantly, we notice that the report is punctuated with several instances where there was a lack of timely response to the Ombudsman’s inquiries in relation to these complaints, and an inordinate delay in implementing the Ombudsman’s recommendations.

The Ombudsman has cited several agencies and ministries of Government and you would forgive me, Sir, for noting that he has also cited the Tobago House of Assembly against whom he has recorded some 25 complaints in 1994, two of which have been withdrawn, or not continued, and one not sustained. The other 21 are still under investigation. This is the picture that emerges in relation to several of the ministries and they are recorded in the Ombudsman’s report.

Mr. President, this Government has made a decision to act decisively on this matter as it regards the office of the Ombudsman, an extremely important institution in this democratic country of ours.

The Ombudsman is one of the key checks and balances provided in our Constitution to protect the citizen against arbitrary exercise of power by the state. He is intended to act as a buffer between the state and the helpless citizen. This Government, therefore, is committed to ensuring that the office of the Ombudsman is treated with the respect it deserves in order that it can accomplish the objectives which have been set out in sections 91 and following of the Constitution.

As a Government, we accept that if the office of the Ombudsman is to become more effective in addressing the needs of members of the public who obviously rely on its intervention in matters applicable to government's mal-administration, then this Government feels that the initiative must begin with it. We must, in our decisions and response to the Ombudsman's concerns, telegraph to members of the public and also to public officers, ministries and governmental agencies with whom the Ombudsman interfaces, that his functions are critical to the preservation of the democratic traditions which we all cherish and that his inquiries must be dealt with expeditiously.

Mr. President, this Government is a solution-oriented one. It does not wish to indulge in blame-sharing and finger-pointing in this matter. It has sensed the mood of the people in a matter such as this, and has sensed that people now have little or no patience with those who would try to score points on issues of such weight as that of the Ombudsman. We are aware that the main preoccupation of the citizenry at this time, as we face a new millennium, is not so much who is to blame for the problems that confront our nation, but rather what are the solutions to these problems.

Our Government, therefore, in a mature response to this mood of the national community has decided that the correct course of action to follow in this matter is to refer the entire issue for consideration by a Joint Select Committee of Parliament. This committee would consider the report of the Ombudsman and it would have the power to send for persons, papers and records and to make firm recommendations to Parliament on how to make the office of the Ombudsman achieve the results that were intended under the Constitution.

5.15 p.m

The argument for referral of such matters to a committee has been ably postulated by Dr. Sahadeo Basdeo in his discussion paper entitled *Trinidad and Tobago's Parliamentary System*. In that paper Dr. Basdeo argues for the

Ombudsman Report (Seventeenth)
[SEN. D. MOORE-MIGGINS]

Tuesday, December 19, 1995

effectiveness of the parliamentary committee system. He said that it is an important and vital part of our country's legislative procedure. He goes on:

"In the context of an ever expanding administration, the growing magnitude of state activity today, the pressure on parliamentary time, the size of Parliament, its operational procedures and the growing volume of work which now reaches the Parliament it has become almost impossible for the legislature to adequately respond to this workload from the floor of the House."

He further argues that the parliamentary committee system will allow for a more detailed scrutiny of reports by persons who will have the time to consider every angle of the matters which are raised. We certainly affirm or believe that the committee system is an ideal way by which we can deepen the democratic process. We feel there is not a more ideal subject with which to begin than this one which pertains to the Ombudsman and his effectiveness in our society. If we can look at the number of complaints that had been made to him, it is clear that citizens see the office of the Ombudsman as holding a solution to their grievances against the state. In this regard, this Government intends to bring before this Parliament shortly a freedom of information bill which will facilitate access of the ordinary citizen to a whole array of information now considered the private domain of the state.

This measure can contribute in no mean way to alleviating the problems now being experienced by a citizen in obtaining governmental information.

Mr. President, this Government is also happy to note that several of the ministries and agencies, which have been cited, have already initiated their own internal solutions and mechanisms to address some of the problems identified by the Ombudsman. For instance, we have been advised that the Tobago House of Assembly has decided to reinstitute the practice whereby it had established a desk in the Assembly to deal specifically with complaints, or with the request for information from the Ombudsman to answer these complaints as expeditiously as possible, overtaking the previous practice where it was left to individual divisions within the Assembly to respond when they considered it fit.

In setting up this committee, therefore, the Government wishes to make a specific appeal to the citizens of this country to take advantage of the committee by making their suggestions known to the joint select committee, either in person

or through their representative. Suggestions are particularly solicited from those persons who reside in far-flung areas in the country.

As you are aware, Sir, in small societies and societies removed from the decision-making process governmental action can have very great impact, perhaps greater than in other urban areas where the glare of public scrutiny seems to shine much brighter. The Government is conscious of this and feels that the perspectives of these residents, like the perspectives of other districts in Trinidad and Tobago, are vital in this type of exercise. We intend to keep the door open for such persons to contribute to the discussions. We on this side of the Senate believe that proposing the joint committee mechanism is the best response to the Ombudsman's Report. We think that in proceeding this way we would have an opportunity to address the problems more effectively and expeditiously.

Thank you, Mr. President.

Sen. Nafeesa Mohammed: Mr. President, the Motion before this honourable Senate is, indeed, a very simple one. It is a Motion that deals with the Seventeenth Annual Report of the Ombudsman and the functions and duties of the office of the Ombudsman.

Before getting into the substance of this Motion, we, the Opposition Senators, take this opportunity to publicly congratulate the Ombudsman, and indeed, his dedicated and hard working supporting staff for their unstinting services that they have been rendering to the people of Trinidad and Tobago. We recognize as well the importance of the role of the office of the Ombudsman. As I said some time before in this honourable Senate, we on this side will support any measures that are designed to improve the welfare of the citizens of this country. We are, therefore, in support of this Motion that is before this honourable Senate.

However, I would just like to take the opportunity to set the records right by correcting the perception that has been existing for some time relating to the office of the Ombudsman. The first Ombudsman in the world was appointed in 1809 in Sweden. Thereafter, the office was introduced in other Scandinavian countries. It was introduced in Finland in 1919; in Denmark in 1953 and in Norway in 1962.

In 1962, New Zealand became the first Commonwealth country to adopt the concept of an Ombudsman. In 1967, the United Kingdom also followed suit. The office of the Ombudsman reached the Caribbean in 1966 when Guyana became the first country in the western hemisphere to introduce the office of the Ombudsman. In Trinidad and Tobago the office of the Ombudsman was

Ombudsman Report (Seventeenth)
[SEN. N. MOHAMMED]

Tuesday, December 19, 1995

introduced by the Republican Constitution of 1976 and the Ombudsman Act, Chap. 2:52, of the laws of Trinidad and Tobago was passed in 1977 to give effect to these constitutional provisions.

It is instructive to note that the Trinidad and Tobago office of the Ombudsman is based on the New Zealand model and this model is known to be one of the most progressive models in the world.

Our Ombudsman is constitutionally an officer of Parliament. He is appointed by the President and is supposed to be entirely independent of the Executive, and responsible only to Parliament.

When we look at the various provisions in the Constitution that govern the Ombudsman, we see that the Ombudsman has a very critical role to play in our society. We know that the main function of the Ombudsman is to investigate mal-administration and to remedy any administrative injustices. But more significantly, we know that of the other means of redress that are available to the Ombudsman, he provides a very cheap, quick and simple avenue for redress, especially to those in need in our society.

As I said before, the provisions in the Constitution relating to the role and functions of the Ombudsman do indeed confer broad powers on the Ombudsman.

I have been hearing, from time to time, that our Ombudsman needs to be given more teeth, but it is my respectful submission that that is not the problem. In fact, my information is that the Ombudsman has very little problem in getting his information. However, there are other problems that confront him.

Mr. President, if we were to look briefly at page 4 of the Seventeenth Annual Report of the Ombudsman, we would see that the Ombudsman has listed several common types of complaints that he has been receiving over the years. Examples of some of these complaints are: too much legalism; failure to deal reasonably with administrative fairness; misinterpretation or wrongful application of government policies, procedures, rules and regulations; failure or refusal to meet with members of the public to discuss their problems and so arrive at a just solution, taking unilateral decisions, intolerable delay, as the hon. Senator pointed out; arrogance, hostility, insensitivity and indifference; incompetence and inefficiency; failure to use initiative; denying fault and laying blame on another department or agency; intolerable delay in paying compensation, persisting in faulty methods.

These are some of the common complaints that the Ombudsman has listed in his report.

5.25 p.m.

To deal with many of these problems what is really required are fundamental changes in our system of administration. I see the hon. Minister of Public Administration and Information is sitting right before me. I am sure he will agree with this. If we were to look at the performance of the previous government, we would see that the PNM's track record with regard to public service reform was indeed very significant. I would read a very short extract from the 1991 manifesto of the People's National Movement. I am referring to this extract because we are talking about problems that the Ombudsman has been confronted with from time to time. As was mentioned, the question of delay is a very big problem. In this regard, there is a section that deals with the public service. Page 44 states:

"The public service in any country plays an important role in both formulation and implementation of public policy. In an increasingly dynamic world, the demands and challenges facing the public service are becoming more varied and complex. An on-going programme of public service reform must form part of any approach to the public service.

The PNM is therefore committed to reforming the public service in consultation with the public sector trade unions so as to ensure:

- greater responsiveness to the needs of the citizens
- an improved quality of service
- speedier delivery of services
- greater efficiency in revenue collection
- elimination of archaic systems which result in wastage of financial and human resources
- greater accountability.

The PNM will approach the question of public service reform by initially introducing its review and implementation programme in four (4) designated ministries:- Health, Agriculture, Finance and Industry. These four ministries will serve as models for implementation of reforms in other ministries.

To achieve this an implementing task force reporting directly to a minister with responsibility for the public service will be immediately directed towards addressing these concerns.

Among the priority areas to be reviewed in the public service are:

- organisation structure of the service
- classification systems and job descriptions
- financial management and budgetary systems
- disciplinary procedures.

In addition, all ministries will be required to develop a five-year strategic plan and an annual plan against which they will be evaluated."

I have referred to this extract because it is my respectful submission that the PNM had a vision for the public service and recognized that the core of the problem was in the system of administration, and that fundamental reforms in the public service were needed. The PNM had therefore embarked on a programme of public service reform which certainly was redounding to the benefit of the office of the Ombudsman.

Testimony to this fact can be had when we look at the Ombudsman fifteenth and sixteenth annual reports. May I be permitted to read one paragraph from *The Ombudsman Fifteenth Annual Report* for the year January 1, 1992 to December 31, 1992. Page 3 states:

"The Government to its credit, has appointed a Minister in the Office of the Prime Minister with responsibility for Public Administration. The Minister has undertaken many aspects of public service reform. The objective is to achieve a cost-conscious, efficient and client-oriented public service. This is being undertaken against a background of changing world, political and economic situations.

Towards this end, the Ministry has undertaken retreats for Government departments in order to make staff more aware of public service reform and the concept of strategic planning for the future. . .

At the present time, the Ministry is dealing with information systems which include the use of technology, management systems and attitudinal training."

In *The Ombudsman Sixteenth Annual Report* similar comments were made by the Ombudsman. Page 3 states:

"It is heartening to note that the Minister charged with responsibility for Public Administration has carried out a number of reforms in order to achieve a cost-conscious, efficient and client-oriented public service. There has been an increase in the training of public officers and an implementation of management and information systems. There has also been an increase in the use of computer technology. Ninety (90) public officers have been trained as customer contact officers for the purpose of establishing links between the public and the departments whose services are being used. This augurs well for the future of the public service and for the general public whom it serves."

Seeing these extracts, it is clear that the last administration was putting those elements in place within the public service that would have gone a long way in dealing with some of the problems that confront the office of the Ombudsman. The previous government was effecting fundamental changes in the public sector. They were putting in place human resource management systems such as computerization, training and other essential ingredients which are required for making the public service more responsive and indeed more customer driven. The previous PNM administration had a vision for public sector reform.

When I look at the manifesto of the UNC for 1995, I see absolutely no mention being made in this document about the public service, far less the question of public service reform. When I look at NAR's manifesto for 1995 it is also silent on the whole question of public service reform. I therefore wonder what policies and programmes we can expect this new coalition Government to be pursuing with regard to the public service.

I recall just a few weeks ago—in fact this is the only mention I have heard about the public service—I had been hearing promises being made that public servants will be paid moneys owed to them. Now the Government is already renegeing on that promise.

Mr. President: Will the hon. Senator not depart too far away from the subject at hand, please.

Sen. N. Mohammed: Mr. President, I was merely trying to make the link with the whole question of the public service and public service reform. I was merely remarking that from this present administration, there has been a deafening silence. The only word I have heard about the public sector is in relation to moneys, which two days ago, I think the Minister of Finance was even questioning whether it could be paid.

All I can say is that the PNM had a vision for public service reform. In fact, I would even go further to say that they had a world class vision for public service reform [*Laughter*] in what has been accomplished in the public sector since 1991. With the absence of any vision at all by this new coalition Government I suppose we can expect to see our reform agenda being continued as is being done in many other areas of government.

I have dealt with this issue of public sector reform because I see it as being directly linked to measures aimed at improving the operations of the Ombudsman. However, this is not to say that we do not recognize that there are other reforms that may be necessary for improving this office. We recognize that part of the problem lies with the treatment of the reports of the Ombudsman when laid in Parliament.

5.35 p.m.

It is true that sometimes recommendations may go unheeded, but that does not mean that we are not committed to improving the operations of the office of the Ombudsman, hence the reason why, today, we are supporting the Motion before the Senate.

Mr. President, my information is that the former government did agree to the setting up of various parliamentary committees and, in fact, was awaiting the input of the then Opposition for the functioning of those committees. However, time did not permit the former government to fully implement those recommendations.

In any event, if one were to look at the statistics pertaining to the legislative agenda of the former government, one would see that the agenda was indeed very heavy. In 1995, some 34 Bills had been passed by the then Parliament; in 1994, 32 Bills were passed and, indeed, these included some very controversial pieces of

legislation where allegations of being obstructionist were being made. Nevertheless, Mr. President, we on this side support the Motion before this honourable Senate.

Mr. President, before I take my seat, I urge hon. Senators that whatever we do in our deliberations, we try our utmost to ensure that the independence of the office of the Ombudsman is in no way fettered.

I thank you.

Sen. Dr. Eastlyn Mc Kenzie: Mr. President, it is indeed an honour to be at this level, but I think it is a distinct honour to be serving here with you as President. My congratulations to you.

I take the opportunity to say thanks to those who have been here before me—for their encouragement and their patient guidance, especially the Acting Clerk of the Senate and staff. They have been unduly patient and willing to guide us.

To those of us who are newcomers, I say that we are supporting and encouraging one another.

With respect to the Report of the Ombudsman, there are a few things I would like to say. I have had occasion to use the services of the Ombudsman and, having gone through all the processes, at the end of the day, the person who had the accountability and the responsibility to do something about it never knew anything about my complaint, despite the fact that I was receiving correspondence signed on his behalf. The correspondence, although coming from the Permanent Secretary, were all handled by junior officers who wrote me some very rude letters.

When I took the matter to the Ombudsman and he had it settled, I was accused of going directly to him without pursuing the course before. What I am saying is that at times we blame the heads of sections and they are really not the ones to be blamed. So I would support and encourage an action taken by the Clerk of the Tobago House of Assembly.

If we go back to the Fifteenth Report, on page 51, it says:

"The Tobago House of Assembly is one of the most cooperative government bodies when it comes to responding to my enquiries and implementing my recommendations."

Ombudsman Report (Seventeenth)
[SEN. DR. E. MCKENZIE]

Tuesday, December 19, 1995

This was because, at that time there was a centralized system and, in 1994, when they departed from that centralized system and allowed divisions to do what they pleased, there was the very adverse report recorded in this 1995 report. So I would recommend that the system of centralization be adopted in certain areas where the accountable officers are aware of the problems being put to the Ombudsman.

In reading through the report I get the feeling of disrespect for the office of the Ombudsman. I think that when one is written to and no response is forthcoming, it is a sign of disrespect. I think that this disrespect for high office is becoming very much ingrained in our people. I think this is something that we must look at when a joint select committee is set up.

Finally, I would advocate public education of our citizens, by whatever means. As you would read, some of the complaints taking up the time of the Ombudsman are really very trivial. If the public is aware of the level and types of complaints that should be handled by the Ombudsman, I am sure that much time will not be wasted.

I support the proposal being put for the joint select committee.

The Attorney General and Minister of Legal Affairs (Hon. Kamla Persad-Bissessar): Mr. President, I thank hon. Senators for giving support to the Motion. Let me say that the difficulties being experienced by the office of the Ombudsman are not simply with respect to getting information. He has mentioned things like staffing. Many matters have been mentioned within that report. The whole purpose of a joint select committee is to elicit views, options and strategies that can be devised to give this office more teeth and to make it function in a better manner, as envisaged under the Constitution.

It is interesting to note that when the hon. Sen. Nafeesa Mohammed spoke she pointed to the vision of the PNM with respect to the public service. In fact, she went so far to say world-class vision. Regrettably, that remains merely a vision and did not become a reality.

If we look at the special reports which were brought to Parliament, there is one which was laid this year, 1995, in which there was a case which was investigated and a recommendation made in 1977. Cabinet had voted that the money owed should be paid in 1980. By 1985, the money was still outstanding. The one special report of 1995 was the subject of a follow-up special report by the Ombudsman

presumably because no action had been taken previously. That first special report in 1995 was laid on March 2 and it concerned the failure of the Ministry of Health to issue a certificate of indebtedness to a former employee so that he could collect gratuity due to him under contracts performed prior to his retirement.

5.45 p.m.

The complaint had been laid on February 5, 1993. Neither Parliament nor the Ministry had taken any action with respect to this special report. So what did the Ombudsman do? The Ombudsman described this Ministry as having a subtle intention to deprive the complainant of moneys lawfully due to him and he made recommendations to the Permanent Secretary in which he required him to reply by May 28, 1995. These have not been complied with.

Mr. President, with no compliance at that point, the Ombudsman brought a second special report in July, 1995. Needless to say that to the date of the elections, and the coming into office of this Government, nothing had been done with respect to that special report, the report dates back to 1993. So when we speak about world-class vision and dealing with the problems in the public service and so forth, one has to be a little careful because it seems to me that the problems set out by the Ombudsman in his various reports continued from report to report.

It is important to note that in 1989 the NAR Government provided for a committee to be set up. That committee was set up and made recommendations. The recommendations came back, but at that time, in 1991, the NAR Government went out of office and the PNM Government assumed office. Needless to say the recommendations of that particular committee were never put into place.

We trust and hope that the joint select committee which we are advocating would be set up as we feel this would provide us with avenues. We totally accept the Senator's contribution that the office and the independence of the office of the Ombudsman is to remain unchecked, we have no difficulty with that and we have never attempted to interfere. Whilst we were in Opposition we made it clear that all the independent offices set up by the Constitution were not to be touched. We were very clear about that. [*Desk thumping*]. Indeed, I may even go so far to say that it was the Members on the other side, in those years who seem to interfere with many of the independent offices, and perhaps that accounts for where they are sitting today.

Mr. President, I beg to move that this Senate adopt this Motion standing in my name on the Order Paper.

Adjournment

Tuesday, December 19, 1995

Thank you.

Question put and agreed to

Resolved:

That this honourable Senate take note of the 17th Annual Report of the Ombudsman for the period January 01, 1994 to December 31, 1994 (hereinafter referred to as “the said Report”):

That pursuant to Standing Order 71, this honourable Senate appoint six Members to sit with Members of the House as a joint select committee for the purpose of considering the said Report and the functions and duties of the office of the Ombudsman and to make recommendations for a more effective machinery for the office of the Ombudsman so that Part 11 of Chapter 6 of the Constitution of the Republic of Trinidad and Tobago can be given effect.

ADJOURNMENT

The Minister of Public Administration and Information (Sen. The Hon. Wade Mark): Mr. President, before I move the adjournment, I would like to serve notice on the Senate, that the Finance (Variation of Appropriation) Bill, 1995, will be debated and would be taken through all its various stages once it is passed in the other place on Wednesday, with the leave of the Senate.

May I also indicate to this Senate that it is not our intention, nor is it our practice to engage in rushed legislation. In the case of the Municipal Corporations (Amdt.) Bill, it had to do with the fact that December 27, 1995 would have been the deadline for passage of this amendment, hence the reason we brought it in such haste.

I must indicate that our practice would be one in which we would give the Senate adequate time to deliberate and to dialogue before we engage in serious debate at this level.

I now beg to move that the Senate do now adjourn to Friday, December 22, 1995 at 10.00 a.m.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 5.51 p.m.