SENATE

Thursday, July 25, 1996

The Senate met at 1.30 p.m.

PRAYERS

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

ORAL ANSWERS TO QUESTIONS

The following questions stood on the Order Paper:

Murder Statistics

7. A. Would the Hon. Attorney General inform the Senate of:

(i) the number of persons, male and female, charged for murder whose trials, at June 30, 1996 had not been held or completed;

(ii) the number of persons, male and female, sentenced to be hanged for murder who at June 30, 1996, were awaiting execution;

(iii) the number of persons, male and female, sentenced to be hanged for murder who have had their sentences commuted to life imprisonment and at June 30, 1996 were serving their sentences?

B. Would the Attorney General tell the Senate the number of persons, male and female, who at June 30, 1996 were serving sentences of imprisonment for manslaughter?

C. Would the Attorney General give the Senate the comparative data at June 30, 1980?

D. Would the Attorney General also give the Senate for each year 1980—1995, the number of persons executed on sentences of murder? *[Sen. Dr. E. St. Cyr]*.

Education Complex
(Request for Joint Venture)

8. A. Is the Hon. Minister of Education aware of correspondence from the Tobago House of Assembly dated 1996 requesting that a

multifaceted Education Complex be established in Tobago as a joint venture between the Tobago House of Assembly (representing Government) and the Pentecostal Light and Life Foundation in the assisted school principles?

B. If he is aware, could he indicate the status of consideration of the application? *[Sen. O. London]*.

State Lands—Tobago
(Planning Approval)

9. A. (i) Could the Hon. Minister of Planning and Development state the procedure by which planning approvals are granted for state lands in Tobago?

(ii) Could the Minister specify the role of the Tobago House of Assembly in this procedure?

B. Could the Minister also state whether such procedure was applied in respect of the approval granted to Diamond Enterprises Limited to change the conditions of the Lease Agreement signed in July of 1974?

C. Could the Minister indicate the circumstances under which approval was given for Diamond Enterprises Limited to erect a shopping mall on three acres of land situated at the Old Government Farm, Tobago? *[Sen. O. London]*.

The Minister of Public Administration and Information (Sen. The Hon. Wade Mark): Mr. Vice President, I would like to suggest to the Senate that questions 7, 8, and 9 be deferred for two weeks.

Questions, by leave, deferred.

IMMIGRATION (CARIBBEAN SKILLED NATIONALS) BILL

[SECOND DAY]

Order read for resuming adjourned debate on question [July 23, 1996].

That the Bill be now read a second time.

Question again proposed.

Sen. Diana Mahabir-Wyatt: Mr. Vice-President, I support this Bill. I agree in principle on the concepts behind it. In fact, I have agreed in principle with this for many, many years. This is hardly a surprise Bill because it is certainly a subject that has been discussed in this Parliament and throughout the Caribbean for some time. It is perhaps overdue, but, I do have a few concerns about the consistency of a couple of areas on which I would like to ask the Hon. Minister for some guidance.

I was very glad to see the list of amendments submitted by the House of Representatives which came along with the Bill because I had thought that these Bills were standard throughout the Commonwealth Caribbean; that they were sort of more or less rubber stamped from country to country and the fact that we have amendments does indicate that there is a little flexibility where individual countries are concerned.

The whole concept of freedom of movement of skilled, technical and professional people is one which I think can only benefit the Caribbean and, in fact, I would go even further with this freedom of movement of skilled people. I think it should go to the point where it is not just that people have the option, but where it should be organized.

As a management consultant, one of the problems which I have found over the years in trying to get really skilled people placed in industry and in commerce is that very often, people who have never worked anywhere but Trinidad and Tobago are limited in terms of their outlook in dealing with various international bodies. Now that we are becoming so international in terms of trade and dealings with other countries and other companies in other countries, it is important that people develop a regional and an international point of view in dealing with business. This is certainly a step in the right direction. One of the draw backs from which we have suffered in Trinidad and Tobago, because of the size of the country and for no other reason, is our inability to get into a really sophisticated management development programme. For example, multinational organizations throughout the world do this; they take people from Trinidad and Tobago and send them to Kenya, and from Kenya they may go to Brussels and from Brussels, they may go to Jamaica. But they are sent all over the world for development purposes.

We have had a problem in the Caribbean, in Trinidad and Tobago, particularly, because we are limited in terms of size, and to deal successfully in business these days one has to be international in outlook. I would go so far as to strongly suggest that an organized development programme be made in the Caribbean

whereby people from state enterprises in Trinidad and Tobago are seconded to state enterprises in Jamaica or Barbados or other countries to get this kind of international experience. In fact, I strongly recommend that the private sector, once these Bills have been passed throughout the Caribbean, should do so as well, because I think it is very important. We have to try to overcome the xenophobia that exists far too often these days, in the various Caribbean territories. It leads to a sort of provincialism which is inhibiting our progress in dealing with business and in dealing with international affairs. For that reason, if no other, I am very pleased that this Bill has finally come to this House.

1.40 p.m.

There are a couple of questions, as I said earlier, on which I want some clarification in relation to the debate that has gone so far, from the comments which I have gathered. I do not really think that it is a real issue to argue the relative merits of one university against another. There will always be some universities which are regarded more highly than others and to try to limit people from a certain university because you do not think it is good enough, I do not think is really worthy of the whole cause of internationalism. The people who are educated do fall in an elite group. It always has been so and I do not think that is a question, again, with which we really ought to concern ourselves too much.

What I am really concerned with is developing people and developing skills so that we can use them in the region to our own benefit. I think in a period where we have the Internet we cannot encourage people to use nationalism as some kind of a club to defend themselves from the contamination of internationalism. If we allow that to happen, we are only going to damage ourselves seriously, socially, politically and economically.

From the questions which I had, I do not understand clause 3(4) at the bottom of page 7. This is referring to the following:

> "(d) any restriction on freedom to acquire property for use in that person's business, which would not apply if that person were a citizen of Trinidad and Tobago."

Which is the sort of freedom to build a residence, I presume, freedom to set oneself up in business. But then clause 3(4) says:

> "Subsection (3)(d) only applies to a person who at the time of the acquisition of property is engaged in the business of managing or dealing in investment property."

which is not even one of the listed qualifying occupations under Schedule I. There seems to be a logical inconsistency here that was not envisaged. I think it must probably be a typographical error of some sort because it contradicts clause 3(d) which obviously refers to professions such as: accountancy, dentistry, engineering, law and medicine initially included under Schedule I. To then say that this only applies to someone who is in the business of managing or dealing in investment property does not make logical sense, because that is not even a qualifying occupation, as I said.

Even though, as Sen. Spence is just pointing out to me, the amendment has removed Schedule I, it still means that when the Bill was being drafted, the drafters had in mind such professions and it did not include someone who was a property speculator, which seems to be what this clause 3(4) refers to. It is a little strange that property speculation should be an occupation protected by this Bill in countries the size of ours where we have had so many criticisms about—and problems over the years with—foreign ownership of property. So I wonder if I could get some assistance from the hon. Minister in dealing with that.

The other question which I had relates to the new subclause (2) of clause 3 which is in the amendment and which ends up:

> "...the holder of the passport is recognised by the Government of Trinidad and Tobago as holding qualifications which satisfy the conditions for recognition of Caribbean community skills qualification and has gained employment in accordance with his training or experience".

It would appear to me that we are only talking about people who not only have the qualifications but people who have experience. They are seasoned professionals, in other words. There is nothing in this Bill that indicates how one proves that one “has gained employment in accordance with his training or experience”. Was this deliberately omitted, or was this inadvertent, or is there no intention that there be such a proof?

The third question which I had, which Sen. Montano brought up in his contribution, had to do with clause 3(2) on page 7 which states:

> "This section applies to the holder of a passport issued by a qualifying Caribbean Community State who was born in the State issuing the passport..."

It is a limitation which would seem to discriminate against people who have, for example, been born in Venezuela of Trinidadian parents and had subsequently

moved to Trinidad and became Trinidad and Tobago citizens and who have worked here all their lives. If this Bill applies in the same way in Barbados and in Grenada, that person would obviously not have the right to use this freedom of movement, which would seem to be something of a pity. Again, at the risk of making the point over and over again, I think that if we really are serious in what we say every day when we come here, about trying to make a positive contribution to the peace and prosperity of the country, that prosperity does mean economic development and in order to have economic development we have got to get the best brains that we can from wherever, and to unnecessarily limit this, I think, would be unfortunate.

Thank you, Mr. Vice-President.

Sen. Pennelope Beckles: Mr. Vice-President, I, too, would just like to add my comments very briefly with respect to this Bill, and like most of my other colleagues to say that I support the Bill, in principle. I think that in keeping with the desire for Caribbean integration and to ensure that the benefits that could be derived from the movement of skills within the various countries of the region, this Bill is one that we really should support.

If we were really to do an analysis, maybe, over the last couple decades, of the movement of skills in the region, I think we would all agree that the real issue is trying to avoid the elimination of much of the hassle that several professionals from the different areas would have encountered in trying to make such a movement. I imagine that the serious concern here is to ensure that insofar as having an intention to work, or the desire to work in other places, that this Bill would seek to make most professionals a lot more comfortable to know that they would not have the normal hassle in terms of trying to seek employment elsewhere.

I am sure that we all agree that this movement of skills in the region is something that has already been taking place and I think that we have all benefited, to a large extent, in many of our countries from that movement. Like my colleague, Sen. Marshall, I would like to say that one of the areas that I would have really liked to hear about—and maybe the Minister of Foreign Affairs can indicate—is whether or not Caricom, or even Trinidad and Tobago, has any serious analysis in terms of the statistics as they relate to our professionals. I feel that if this piece of legislation is to really work in terms of the intent, we must, as a nation and as Caribbean countries, really do our homework and be able to put together a document that can tell us that in Trinidad and Tobago there are X

amount of lawyers, X amount of doctors, X amount of engineers, what have you, and whether at present we either have too many, too little or that the resources are certainly concentrated in one area and, therefore, we are really looking at the issue of movement of skills." I think that documents can actually be properly exchanged between certain Caricom territories and I think that would help to a large extent.

1.50 p.m.

Very recently, two other colleagues and I attended a Commonwealth Parliamentary Association Conference in the Turks and Caicos Islands. The Deputy Prime Minister of Barbados was saying that in Barbados they are now referring to many of the lawyers there as "hungry lawyers" because not only do they have excess lawyers, but they are actually just moving around the place literally as nomads with little or no cases. I make that point if only to say that in dealing with the Bill, many of the countries need to address the problem where many of the professions have reached to the stage where they are saturated.

This then informs us on another policy. For example, in terms of the Hugh Wooding Law School of the University of the West Indies, one would know, even in terms of one's intake and at the stage of one's exit, to a large extent, how one wants certain professionals and certain areas to move. That, of course, should not take away from a person's right to want to enter a particular profession. In other words, one should not say that there are already 500 lawyers therefore, there should not be any more intake in that profession.

If we have now reached a stage where we are saying there is freedom of movement, I am saying that it would also help us if we can do our analysis and have the kind of information that would assist us in terms of how free we really allow certain movement of skills to be. It is very clear that if one excels in a particular field there should be no doubt that jobs for those particular persons would be available. I make the point if only to say that I was reading the *Independent* newspaper of Friday, July 26, 1996, in which, at page 11 it is stated that the former Attorney General of Trinidad and Tobago, Mr. Sobion, is now assuming duties as Principal of Norman Manley Law School, Jamaica. In that said newspaper it also referred to the fact that the present Principal of the Hugh Wooding Law School, Mr. Austin Davis, will be a judge of the Supreme Court of the Bahamas from October 1, 1996.

Mr. Vice-President, we see, therefore, that this whole issue of the movement of skills is something that is already in progress, and I believe that this Bill seeks to

make it easier for that movement. If we were to go through all the various territories I think we could very well see that they have benefited very much from the skills of persons from the regions.

Doing an analysis in terms of our skills in Trinidad and Tobago, would be further helpful because even in terms of the various outlying areas and the movement of skills, if we were to adopt that policy, we would be able to see that we also have a difficulty in own country in terms of how our skills are moved around. We do know that in many of the outlying areas—and I will just call a few—if you mention to certain professionals about going to work in outlying districts, whether it be Matelot, Cedros, Marac or Barrackpore, the immediate concern is that they are going so far away from the town centre; that is to say Port of Spain or San Fernando.

The statistics of which I spoke in collecting that data, I think, can also help us in terms of the migration of persons from other countries and even in terms of the migration within our country, so that we are sure that persons both in the urban and other areas, are able to benefit from the skills that we have.

I do hope that the Minister can indicate whether or not in the implementation of this piece of legislation, Trinidad and Tobago would be looking very closely at collecting that sort of data which would inform us of the kind of policy position that would assist us in terms of ensuring that our skills, even within our country, Trinidad and Tobago, are actually moved around. Sen. Dr. Mc Kenzie also pointed out the whole issue in terms of Tobago and some of its difficulties. I believe that if we are able to ensure that our skills are properly distributed then it would also assist us in terms of persons who come from the other countries.

Mr. Vice-President, in the whole issue of setting up the University of the West Indies, what would have been conceived, would have been actually to facilitate what this piece of legislation is proposing here today. There are persons coming from different territories to the university and, I think that the idea obviously would have been that at the end of the day those persons would share this knowledge; so that they would have obtained some benefit from these institutions.

In a larger context, therefore, the question raised by Sen. Prof. Spence with respect to the technological institute in Jamaica also raises the question of whether in terms of this Bill, we should not also ask ourselves whether the University of the West Indies, over the years, has not seen the need to look at some of the courses that have been offered traditionally to ensure that they are actually serving the

purpose for which they were intended. It also then requires even Trinidad and Tobago to decide whether or not over the years, in terms of what the University of the West Indies has offered, whether it needs to take a look again to ensure that the University of the West Indies has in its entire core structure courses that are, of course, relevant to the Caribbean.

Finally, I would like to say that the interesting thing about this legislation is the whole idea of the reciprocity. What we have, I think, is at least trying to achieve a certain balance where one has that freedom of movement. I can only compare this piece of legislation to the piece of legislation that came before us some time ago with respect to the Legal Profession Act. In that legislation, we actually have created a situation where a Queens Counsel can come from England with those certain barriers having been removed. We have not been afforded the same freedom of movement to go across to the United Kingdom. This piece of legislation does not have that sort of anomaly.

I have raised those concerns—and as I said, this piece of legislation before us is one that we all should support because, as professionals, we would all want to be able to share our skills and benefit from those skills from other countries, either from those who have come here to live or those who want to move freely, to ensure that the Caribbean countries continue to develop the type of standards which are second to none in the international arena.

Thank you.

2.00 p.m.

Sen. Nizam Baksh: Mr. Vice-President, I thank you for the opportunity to add my bit to this piece of legislation which is before this Senate and to which I give my support.

The Bill before us seeks to remove the restrictions to the free movement of skilled nationals of qualifying Caribbean community countries. This simple move will develop tremendous benefits and opportunities for us as well as other Caribbean countries.

Mr. Vice-President, for many years we have been hearing and witnessing the growth of unification of the European Common Market. We have seen the establishment of trading blocs and trading partners. We would have read about common trade tariffs and common currencies by the European Common Market. All these groupings have taken place within the global arena. We are also

participants in the global village, and to get there faster, we are accelerating the throttle on trade liberalization. All these international events will have varying impact on us and our Caricom partners, therefore, we have to put in place mechanisms that will give us competitive clout and regional recognition as the globalization process moves forward.

The Bill is an important foundation stone in the deepening of the integration process of the Caribbean community which will facilitate the free movement of skilled people. There has always been some movement by the people in the region. This has gone on for a number of years and if I take our minds back to the boom years, we will realize the extent to which we have had movements in the region, and there will always be movements.

Mr. Vice-President, we, in Trinidad and Tobago, and I dare say, in the Caribbean region, seem to have an inbuilt fear of anything innovative and anything new. I would like to take my own mind back to a few years ago when the automobile used to have manual transmission. When it changed to automatic transmission, there was this fear that nothing would work at all, and this seems to be the kind of pattern we have at our end of the world, that not until we get into something and see it work, well then we say, okay, everything is fine. I even think that sometimes people are paranoid when they see change is coming and they talk about the pendulum swinging too far.

I think that this Bill will encourage investment in human resources in the region: We can export our skills. We know that this is happening in the global environment. We hear about Singapore, without any natural resources, only the development of its human resources, being able to do wonders and is now exporting its own human resources. We have situations in Hong Kong and Malaysia as well.

Mr. Vice-President, Trinidad and Tobago has a superior work force, and I think we can use this to our advantage in this situation. You know we have that kind of dedication and commitment, and—if I may coin a word here—"sticktoitiveness" in doing things. I think what we need is the motivation and once we have that we all would work to the success of our own country.

We know that there has been movement, as Sen. Beckles indicated, within the region and we also have opportunities beyond the Caribbean boundaries as well. When we look at the conglomerates in our area, these people who have businesses in other areas as well, and the managerial skills, have been moving around. In the

multinational organizations, they have been taking our skilled people as well, and moving them out of the region. One example we have is Amoco, where they are taking out skilled people and moving them to the USA and the Middle East. So, it is not something that is entirely new, but it is something that is there, but perhaps we are not paying attention to it. We know that these conglomerates and multinational organizations develop the managers to a high calibre and this is what is going to help us as well. We would have an added advantage.

I see too, Mr. Vice-President, that this movement will facilitate opportunities for the cross-fertilization of ideas and culture. We know as we move around, people will mingle on their job sites and there will be seminars and these kinds of things that will allow us to share our ideas and so forth, and this will redound to our own success.

Mr. Vice-President, I see, in essence, that this Bill is extending the playing field for employment opportunities and, in a way, extending our geographical boundaries. Sometimes we get negative vibes with regard to the influx of skilled persons, but as we all know, labour will move according to the supply and demand situation. So that if there are 50 jobs here 200 people will not come in. Certainly, only 50 will come in to occupy the vacant positions. So, this is something that will work well.

I see, too, that this will facilitate the development of downstream skills. By this I mean, that we have a shortage of dentists in this country, and I am sure if there are more dentists coming to this country, certainly we would need more dental technicians. I see too, that the engineering field as well, will have machinists and draftsmen. So that it will allow us an expanded opportunity.

There are other spin-offs as well. I see the opportunity to develop the technical and vocational skills, and it means that we will have to focus on our education to capitalize on the down-stream skills. I am sure that hon. Senators will recall that the Minister of Energy, in his dealing with the multinational companies, ensured that some amount of money would be spent here in the development of skills that would relate to those industries. So this is an advantage for us as well.

I recognize that this will encourage a greater degree of specialization. I heard my colleague, Sen. Beckles, indicating that we may have a surplus of lawyers. But I think this scenario will encourage our lawyers to specialize. I know that we already have a class of persons who are criminal lawyers. We need industrial and

labour lawyers as well. So that lawyers would need to specialize and this will help to enhance the situation as well.

Even in the medical field, I recognize that we will be taking up some additional features there. In the past, I know that we have created history when foreigners came to this country and worked alongside our own specialists in the transplant of organs, like the heart and the kidneys. I think this will serve well, because there might be opportunities for our own specialists here to move to the other regions as well, similarly to work alongside other people of the region. If I may just refer to Sen Beckles again, we might even have the need to do transplant as well. *[Cross talk]* I am speaking about body parts.

There would also be the opportunity for cementing the relationship in this process, and a very good example is our West Indian Cricket Team. I mean, nowhere in the Caribbean, or even outside of the Caribbean, can we see and follow that kind of unity that has been gained by the cricket team.

So Mr. Vice-President, I am sure there are numerous advantages for all of us in this scenario. This Bill provides for the free movement of skilled nationals of qualifying Caribbean community countries. These will certainly redound to our advantage, and I commend this legislation to all Members of this august Chamber. I feel confident that with the globalization process in train, we would soon see the unrestricted movement, not only of goods and services, but free movement of people and capital.

I thank you, Mr. Vice-President. *[Desk thumping]*

2.10 p.m.

The Minister of Foreign Affairs (Hon. Ralph Maraj): Mr. Vice-President, let me, first of all, thank all honourable Members of this House for their contributions to the debate and what I deem to be general support of the Bill.

Some questions were raised with respect to certain provisions of the Bill, certain clauses, and so forth. I suggest that during the committee stage hon. Members may wish to bring these matters up, and I have no doubt that the Government would give very serious consideration to the concerns, queries and amendments during the committee stage. In any case, we on this side have already tabled significant amendments to the Bill, so I expect that at the committee stage we can have vigorous and fruitful discussions on the matter.

Mr. Vice-President, there were one or two questions that were raised which, to my mind, deserve a measure of response, as I am on my feet at this point. One of these matters has to do with the foreign policy of this Government. Let me say that my goal, as the Foreign Minister of Trinidad and Tobago, continues to be that all hemispheric and global highways must lead in and out of Trinidad and Tobago. That is the policy. That, in essence, is what we are seeking to do, as we vigorously try to ensure that Trinidad and Tobago is inextricably linked to the globalized economic system.

We believe it is the way to ensure economic expansion in this country because we live in a world where, if we do not participate in what is increasingly a borderless world, we will not be able to trade. Investment flows will not come into our country if we do not take the kind of policies that we are required to take and which are in our interest. We will not ensure the kind of economic expansion that we need, which in turn, Mr. Vice-President, will ensure that we have long-term sustainable jobs and improvement of the quality of life of our citizens on a sustained basis.

In this regard, Mr. Vice-President, we see our own neighbourhood as being particularly important. We view the world as being very important. We want to be part of the globalized economic system, but even within that vision for the foreign economic policy of Trinidad and Tobago, we see our own neighbourhood as having special significance in this thrust.

Of course, there can be no doubt that Caricom forms an important part of our neighbourhood, Mr. Vice-President. As I said, Caricom is an essential part of that neighbourhood and there can be no doubt about Trinidad and Tobago's commitment to Caricom. Of course, we have been committed. We have put our money where our mouth is on many occasions; and may I make the point that we are committed to Caricom not only for historical, political and cultural reasons, but also for very practical purposes.

The fact is, Mr. Vice-President, in terms of trade alone, Trinidad and Tobago is the major beneficiary in the Caricom integration movement. Our trade surpluses with Caricom countries run into billions of dollars, as our manufacturers in Trinidad and Tobago, because of their growing expertise, have acquired trade with Caricom countries which runs into billions of dollars. They profit a great deal because of the integration movement of which we are a part. When our manufacturers profit by the trade in which they engage with our Caricom countries, they create long-term sustainable jobs in the manufacturing sector.

You will agree, Mr. Vice-President, that in terms of employment generation, the manufacturing sector is becoming, by and large, the major employer in Trinidad and Tobago. In fact, hundreds of thousands of citizens in this country benefit very directly from our country's participation in Caricom. We have to be very careful when we talk loosely about the benefits which Trinidad and Tobago derive from the Caricom integration movement. That question has been raised in this debate, and we must also be especially careful about the isolationist approaches that surfaced sometimes in this debate and which, from time to time, tend to gain currency in the national community. The fact is we cannot be isolationist. We should not be. We must integrate more and more into the global community, and I make the point that, in terms of that long-term goal of integration into the global community, our immediate neighbourhood has a special place. In fact, it is through integration into our immediate neighbourhood that we will be able to join the global movement.

Mr. Vice-President, we see it happening within our own hemisphere. There is Caricom; there are the ACS countries; the Mercosur grouping on the southern cone of the South American continent; there is the North American Free Trade Agreement; the Central American integration movement. All these various integration movements exist throughout the hemisphere and because of their own progress and the fact that they have become concrete manifestations of the integration process, and because they are practising in a very real way "open regionalism" we will ensure, because of these various integration movements, that when we eventually realize a free trade of the Americas it will not be an imposition, but will be something that will be negotiated by the peoples of the region.

This is what we have been a part of. This is what we are seeking to do constantly—to give dynamism and flexibility to our arrangements and relationships with the rest of the world. I am especially pleased, for example, Mr. Vice-President, about the formation of the Association of Caribbean States. We have been talking about that, and that is part of the policy; and Caricom played an integral role in the realization of the Association of Caribbean States.

Trinidad and Tobago ought to be very pleased that the ACS headquarters is here in Port of Spain. Of course, I am very pleased about that because, as you know, Mr Vice-President, I played a very significant role in ensuring that achievement. [*Desk thumping*] I stated then, as well, Mr. Vice-President, and we are seeing it happening now, that Trinidad and Tobago is going to become a major

diplomatic centre in the region. It is happening. We have embassies opening here all the time. The Mexicans have returned; the Panamanians are here for the first time; the Cubans are here for the first time. The Argentineans are going to be here this year—they have already indicated that; so would the Costa Ricans and other countries from South America.

In fact, I got a communication from the Government of Pakistan, a couple days ago, that they want to open an embassy in Trinidad and Tobago. More and more regional and international organizations are locating here: the Caribbean Association of Industry and Commerce, the PAHO regional office, and so forth. We are getting all of them coming here. The fact is that Trinidad and Tobago is becoming more and more internationalized, as we move along the foreign policy directions that we are engaged in at this point in time.

This Bill is perfectly in tandem with the foreign policy objectives of this Government. But the Bill is "chicken feed." There is no doubt about that, we agree with that. What we would like to see is free movement of labour but as I said, it is a step in the right direction. So when people say that the Bill encourages selectiveness and selectivity and so forth, we say, fine. But it is a step in the right direction, and we hope, eventually, that we can move to the point where the integration is so dynamic that we move away from the xenophobia that Sen. Mahabir-Wyatt spoke about; that we get rid of our insecurities and insularities; that we become internationalized, not only in terms of our economic objectives, but also in terms of our whole approach to life and to seeing the world.

Mr. Vice-President, we share the views expressed by various Members here in this debate that we would like to see more movement of labour; more movement of capital. We would like to see freer movement of goods. We want to see our people interacting politically, culturally, and economically. We want Trinidad and Tobago to be so internationalized that we are enriched, in many ways, by the particular experience. I have made the point, as well, that Caricom must take up its bed and walk. Caricom must do more than it has been doing. I have again put the item on the agenda that not only must we deepen the integration movement, which we are seeking to do with this piece of legislation, but we must also widen it.

2.20 p.m.

As a first step, we think that Caricom should seek to include as members of the common market, the Dominican Republic, Haiti and when it is appropriate, Cuba.

So that the market is widened and when the market is widened it will create more opportunities for employment and economic regeneration. One also positions one's integration movement as an attractive location for foreign investment. I want to assure this honourable Senate that whenever I get the opportunity, we would be pursuing these matters in a very vigorous manner.

Mr. Vice-President, it is not only with Caricom and the wider Caribbean that we are seeking to integrate ourselves into the hemisphere in a multifaceted way. We want to negotiate trade agreements with Mexico. We have already had discussions with them on that. We want to negotiate trade agreements with Costa Rica; with the Central American Integration Movement as a whole. The Argentinean foreign minister was in Trinidad and Tobago a few weeks ago, he and I had discussions about the possibility of Trinidad and Tobago getting into a free trade arrangement with the Mercosur grouping.

May I make the point about the Mercosur grouping, Mr. Vice-President, which I have said elsewhere. Since the emergence of the Mercosur grouping as an economic force, it is beginning to be more and more of an attraction for countries. For example, Chile is leaning towards that grouping, so it would be in our own interest to develop that kind of arrangement. I want to make that point here today. Caricom, for example, took a decision when we were at the last Heads of Governments Conference that it would negotiate free trade arrangements with a number of selected countries in the hemisphere: Costa Rica, the Dominican Republic, Central American Integration Movement, Columbia and Venezuela. As you know, the hon. Prime Minister would be paying a state visit to Venezuela. He is leaving the country on the weekend to discuss a whole range of issues, not just fishing; we are looking at the possibility of signing an investment, protection and promotion agreement; we will be signing a double taxation agreement; we are looking at the possibility of a free trade agreement; we would be discussing as well a cultural agreement which could be signed. The hon. Minister of Energy, who is a Member of this Senate, will be on that delegation and we would be discussing the matter of energy co-operation between Trinidad and Tobago and PSVAS which as you know is the dynamic oil company in Venezuela.

So, it is a vigorous, active foreign policy that we are following in this administration. As you know, I visited Curacao recently as head of a private sector delegation. They did a lot of business there; doors were opened to them; they are going to have a return visit to this country led by the Prime Minister of Curacao; a return private sector mission. We went to Puerto Rico recently and that visit

opened our eyes as to how we can deepen the economic integration between Trinidad and Tobago and the United States of America.

So that what we are doing here is really part of a long-term strategy which would ensure that Trinidad and Tobago reaps the best benefits of its relationship with its international partners. I wanted to make that point because the whole question of our foreign policy came up from time to time in the debate. I feel that by making that kind of broad statement on where we are going with our foreign policy it ought to answer a number of questions that were raised. So people asked about the benefits to Trinidad and Tobago, I suppose if we—

Sen. Mohammed: Mr. Vice-President, prior to this debate, could the hon. Minister indicate where we can find this statement of the policies which he has just stated?

Hon. R. Maraj: If the Senator would look back at any of the speeches I have made over the last couple of months, she would see similar sentiments having been expressed.

Mr. Vice-President, somebody mentioned the question of Trinidad and Tobago being altruistic. Let me say that there is a bit of altruism in anyone's foreign policy, but whilst one is part of an integration process one’s self-interest is also of paramount importance. May I say that Trinidad and Tobago pursues its self-interest very vigorously whilst at the same time ensuring that its relationship with its neighbours continues to grow and continues to be as harmonious as ever.

Some questions were also raised about whether we would be able to encourage other professions to come into the country. May I say that as far as I read the Bill, it gives the Minister a measure of flexibility because the Bill talks about amending the regulation and amending the schedule from time to time. The Bill makes for that kind of provision. So that if there is a need to widen the ambit as it were, the Minister can come to the House and make such an amendment which can be debated. I suppose similarly, with respect to the associate degrees and so on, that Prof. Julian Kenny brought up.

I particularly like the approach of Sen. Mahabir-Wyatt with respect to the question about the accreditation of the University of Guyana and the University of Surinam. I like the approach that not all universities can be at the same level or of the same standing. I suppose it is by coming together, by association and by development we can all develop to the level and standards that we would all like to see. So that I recommend and suggest to other Members of the Senate that Sen.

Mahabir-Wyatt's approach to this particular matter might be one that we would want to follow.

May I also say—and this was another thing that was said, that we are doing this simply because Caricom is doing it. I hope I have already answered that question when I talked about the foreign policy of Trinidad and Tobago. People talked about the musicians and the artists and so on. May I also say that as recent as the Heads of Governments Conference a couple of weeks ago, we were already thinking of widening the range of skilled persons who could come into Trinidad and Tobago. I have no doubt that very soon musicians, artists, journalists and so on would be able to move and travel freely in the region.

As I said, it is my interpretation that a particular country, if it so wishes, can go to its Parliament and make the amendment to the regulations and schedules to allow it to increase the categories of workers.

Somebody asked about whether we would have a quota system. I do not think that is practical and that is not on the cards at all.

The question of over-supply, whether we would be able to refuse people entry into the country if there is an over-supply. I do not see us being in a position to do that unless we amend the Bill and the regulations.

Sen. Pennelope Beckles asked the question about the collection of data. I agree with her, Caricom does need to get its information systems updated. We need to have a system whereby we can easily tap into some information system and easily draw upon the required information. I am not in a position to say whether the Caricom Secretariat has that kind of information system with respect to the skills in the countries. I suppose in each country it would be there nationally. We should be able to integrate and have a proper system. May I also assure Members that this matter came up for discussion at the last Heads of Government Conference.

2.30 p.m.

This has been a very enjoyable debate for me. I thank hon. Members once more for participating in the debate. I thank them for their support, lucidity, and at times, their complexity.

Sen. Prof. Ramchand: Mr. Vice-President, before the Minister concludes, I wonder whether he would consider the possibility of there being a central body to issue all the certificates. On that central body there should be people who know about universities worldwide who would be capable of reading transcripts, adjudicating and deciding what a degree is worth. It seems to me that unless there

is a central body issuing the certificates, naturally, there would be different weights of certificates coming in.

Hon. R. Maraj: I do not know how practical that may be. It may evolve over a period of time. I think each country would set up its accreditation system. I am afraid that if we go the centralized route we may run into difficulties as to how we would get it done. Each country is being given the freedom to set up its accreditation systems. If Trinidad and Tobago looks at a particular degree emanating out of a university in the United States and figures it can be accepted as an indication that a person is qualified in this particular skill and allows the person to come to the country, that is how it would be operated.

There may be some common ground when each country sets up its accreditation system, out of the relationship between these various accreditation systems. I fear that if we go towards trying to establish that we would have to take it back to Caricom to get the agreement of the other countries. That may delay the implementation of this. That is my response.

Sen. Rev. Teelucksingh: Thank you very much for giving way. I agree with the hon. Minister on the comment that isolationist tendencies are dangerous for the integration movement. At the summit meetings, does he suspect that these isolationist tendencies still exist even at the Heads of Government meetings?

Hon. R. Maraj: Mr. Vice-President, the process of enlightenment and emancipation is ongoing, incremental and evolutionary. One would find that from time to time people would express fears and have concerns that really have no basis in reality. I think as my good Friend Sen. Baksh was saying a while ago, it is only by involvement, participation and experience that one's fears eventually evaporate.

With respect to isolationism and isolationist tendencies in the Caricom process, may I say, that I am very heartened by the fact that this tendency which may have existed in the past is vastly and quickly diminishing. People are becoming more and more aware that if only for the purpose of self-interest, we must open up, liberalize and deepen the integration process, as well as widen it at the same time, if the countries are to prosper. The very prosperity and survival depend on it. That is my view and I am very happy with it.

Sen. Rev. Teelucksingh: Concerning the disputes with some of our trading partners, recently Barbados and Jamaica, what is the latest on that?

Hon. R. Maraj: We are attacking that matter. They have some concerns about definitions about certain products. We are of the view that Trinidad and Tobago must do its best to free the system as much as possible. Whatever residual barriers remain to free trade must be removed. In any integration process there would be concerns about a product or two. The fact that we have some problems with pasta or electricity bulbs or other matters should not blind us to the fact that there is a significant degree of free trade taking place in Caricom.

I made the point earlier on that the manufacturers in this country earn hundreds of millions of dollars every year in trade with Caricom. They then indulge in industrial expansion and as a result of that they create employment for thousands of persons in this country. We must not turn our eyes from that fact. Whilst we would not allow our businessmen to be stymied in their trade with our Caricom partners, we must also bear in mind that so much has happened and so much continues to happen.

I beg to move.

Sen. Prof. Spence: Could the hon. Minister allow me to ask a question for clarification?

Mr. Vice-President: Hon. Senator, after the question is moved I do not think we can have any more questions.

Sen. Prof. Spence: I got up as he was sitting down. I was trying to ask a question.

Mr. Vice-President: I am afraid I am responsible for not recognizing you.

Question put and agreed to.

Bill accordingly read a second time.

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.

Mr. Maraj: Mr. Chairman, I propose that clause 2 be amended as follows:

(a) In subclause (1) in the definition of the word "Minister" delete the word "immigration" and substitute the words "Caribbean community affairs".

(b) In subclause (2) delete "3(2)(a), (b)" and substitute "3(2)".

Question put and agreed to.

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

2.40 p.m.

Clause 3.

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

Mr. Maraj: Mr. Chairman we have circulated an amendment which says that in subclause (1) we delete "10 and 13(5)" and substitute "11 and 14(5)."

Mr. Chairman: Everyone has that amendment to clause 3(1) of a renumbering of the subsequent sections.

Sen. D. Wyatt-Mahabir: Sections 11 and 14(5) are renumbered sections, because there is no 14(5) in the existing Bill. I got a list of amendments from the House of Representatives, I must have missed that one.

Mr. Chairman: If I could draw hon. Members' attention to the amendments that have come from the House of Representatives dated Friday, June 14, 1996, as a result of which there is a new clause, and a renumbering of the subsequent clauses. We have an amended clause 3. The question is in clause 3.

Sen. Prof. Spence: The Hon. Minister in presenting this Bill indicated that persons from other countries who come in and qualify, could own a property for their business. I pointed out that is not indicated in the Bill. Also, I cannot see the reason for including "trading in property" as a specific activity in the Bill. I think Sen. Mahabir-Wyatt referred to this as well. So the easiest way of killing two birds with one stone—that is allowing persons to own property for their business, and removing this provision that they should allow persons to come in and deal in real estate—is to remove subclause (4).

Mr. Maraj: Mr. Chairman, if subclause (4) is removed, then an attorney or a doctor, or any of the qualifying nationals would be allowed to come into the country and invest, they would buy their houses and their offices. If the restrictions are removed, would you not be allowing them to go speculating and investing and

so forth? It seems to me from the advice which I have had, that this provision prevents a lawyer from indulging in speculative deals or activities for the acquisition of property.

Sen. Prof. Spence: Why can you not say he is a dealer in real estate?

Mr. Maraj: The Bill does not allow for real estate people to come into the country.

Sen. Prof. Spence:. That is precisely what it says.

Sen. Mahabir-Wyatt: The business of managing or dealing with investment property, which is land speculation.

Mr. Maraj: Is there a category of university graduates that one can term real estate agents? Or is there a skill that one acquires from university which develops one's skills in speculation and real estate work?

Sen. Prof. Spence: That is the point, it means that anybody with a university degree—if this clause remains—can come in and set up shop as a real estate agent.

Mr. Maraj: He cannot, he can only come in and set up shop and be allowed to work, if he is working according to what he is trained for.

Sen. Prof. Spence: There is nothing in this Bill that says that. Absolutely nothing!

Mr. Maraj: Clause 3(2), says in the last line "that has gained employment in accordance with his training or experience."

Sen. Prof. Spence: Look at clause 3(3)(c)—I drew attention to that in my contribution—it is contradictory.

Mr. Maraj: What does clause 3(3)(c) say?

Sen. Prof. Spence: It says:

"any restriction on the right to engage in gainful employment or occupation."

shall not be subject to any restriction.

Mr. Maraj: It says:

"any restriction on the right to engage in gainful employment or occupation."

according to—

Sen. Prof. Spence: It does not say that. I pointed out that there is a contradiction between clause 3(2)—

Mr. Maraj: You can only get the certificate of entry into the country based on certain criteria that would have been satisfied.

Sen. Mahabir-Wyatt: Once you are in the country you can do anything. Many people who have studied law, ended up running restaurants. They did not stay in their field.

2.50 p.m.

Mr. Maraj: If it pleases hon. Members, we can consider deleting it completely.

Sen. Prof. Spence: I am really just helping to try to get the Bill to say what the Minister says he wants it to say. My problem is that this has not been saying that.

Mr. Maraj: What one wants to avoid is a Caricom national coming into Trinidad and Tobago as a lawyer or a doctor, and having gained his house and his place of business—at least for now, we want to prevent him from indulging in speculative activity and buying of property.

Sen. Prof. Spence: We are in full agreement.

Mr. Maraj: How do we prevent that?

Sen. Montano: Why do you want to do that? What you are saying is, we want you to come here, to bring your skills here, to bring your capital here; we want you to come and stay here—this Bill says that once you come here, there is no time limit. You can stay here for the rest of your life. You can settle here, and I am advised that after two years a person could vote. He virtually has the right of citizenship.

Sen. Dr. St. Cyr: How does the Aliens Landholding Act tie in with what we are discussing here?

Mr. Chairman: There is no Aliens Landholding Act in force right now. I should draw to the attention of Senators that based on the comment that was just made, clause 3(d) has some words which I think are being overlooked; the words "that persons' business". So that, in fact, the concern that is being expressed does not exist. The non-restriction that is being applied in clause 3(3)(d) is, "any

restriction on freedom to acquire property for use in that person's business" which does not authorize acquisition of business other than properties that relate to the business.

Sen. Prof. Spence: That is why I said that subclause 3(4) should be removed. If it is removed the clause would be okay; he would be allowed to have his business.

Sen. Daly: Do we not still have a problem with clause 3(3)(c)? If you look at clause 3 as a whole, does it not amount to this? You get your permission under clause 3(1) and (2), and after this all of these restrictions are removed. Clause 3(2) does not restrict. It removes, in blanket, you are not subject to any restriction of the right to engage in gainful employment or occupation. So there is a contradiction between clause 3(2)(b) and 3(c). Clause 3(2)(b) gives permission to be a jockey, and then he can become a groom or an owner.

Mr. Maraj: Would that satisfy the Senator's concerns? If, for example, in clause 3(c) we say:

> "any restriction on the right to engage in gainful employment or occupation in accordance with his training or experience".

Sen. Daly: I think we need something tighter than that. It needs to refer to clause 3(2)(b).

Mr. Maraj: In accordance with clause 3(2) then?

Sen. Daly: Is it a certificate one gets in accordance with the permission granted or something?

Sen. Dr. St. Cyr: Mr. Chairman, there is a wider issue. Land is simply an asset at one end of the spectrum. If you allow people to hold assets all along the line: savings in bank accounts; stocks and shares, why not land?

Mr. Maraj: I think we have gone past that. We are agreeing for the removal of clause 3(4).

Sen. Dr. St. Cyr: We had agreed that we can remove that clause.

Mr. Chairman: Basically, adopt Sen. John Spence's suggestion of deletion of subclause (4) and, further, that clause 3(3)(c) be extended to include after the word "occupation" the words "in accordance with the certificate granted under clause 3(2)".

Sen. Montano: Mr. Chairman, I have a problem with that. If we are really trying to attract people to come in here, what we are saying is, they can come in and work only in accordance with their training or experience. Is that rule going to apply for their entire life while they are living here? How long does that apply? How long does that last? Or does he just get the certificate, and then give up the job the next day and stay here? How does this work?

Mr. Maraj: The provision in the legislation says that you come into Trinidad and Tobago and if you are qualified as a doctor, you work as a doctor. If by training and experience from the university, you are trained in that way, you come in and work. That is what we are saying, nothing else.

Mr. Chairman: The amendment is as follows: That clause 3(4) be deleted *in toto*, and that clause 3(c) be extended by adding after "occupation", the words “in accordance with the certificate issued under clause 3(2)."

Sen. Daly: That is what I missed; I am sorry, Sir, “in accordance with the certificate issued under 3(2)”.

May I ask the Minister one other question in connection with this? What are the powers of the state—either the Immigration or other authorities—if this is breached?

Mr. Maraj: You can be deported or you can be refused entry.

Sen. Daly: Where is that provided for?

Mr. Chairman: In clause 14.

Sen. Daly: Thank you.

Mr. Maraj: The new clause 14.

Sen. Dr. St. Cyr: Mr. Chairman, sorry to extend this, but bear with me, Sir. Suppose a medically qualified person came in under this arrangement and worked in the Government medical service, could he or she at some stage rise to Permanent Secretary in the Ministry of Health? Could he or she be transferred as a permanent secretary in another ministry?

Mr. Maraj: I suppose there is a certain criteria with respect to being employed in the public service. A public servant of Trinidad and Tobago will be governed or determined by certain laws that we already have in place.

Sen. Jagmohan: Excuse me, Sir. What would happen if one of these foreigners come in and there are qualified persons around? This allows nationals from overseas—20 years ago when a census was taken in Grenada and a census was taken in Trinidad and Tobago, it was that there were more Grenadian nationals living in Trinidad and Tobago than there were in Grenada. Some people were advocating that the Grenada general elections could be held here.*[Laughter*]

3.00 p.m.

Mr. Chairman: I trust the observations have been noted. Do we have any proposed amendments?

Sen. Montano: The last two lines of subclause (3), "which would not apply if that person were a citizen of Trinidad and Tobago". Could somebody help me with exactly what that means? Is it not perfectly clear without that little addendum? Clause 3(3), the last two lines of sub-paragraph (3), "which would not apply if that person were a citizen of Trinidad and Tobago".

Mr. Maraj: The legal experts advise me that is absolutely necessary.

Sen. Montano: What does that mean?

Mr. Maraj: It means a citizen of Trinidad and Tobago is not subject to the restrictions that have been outlined.

Mr. Chairman: Certainly, it means two things which are: One, having made the amendment to subclause (c) now, that whereas the visiting employee can only engage in work in accordance with the certification, the local is not exposed to that restriction. The other is that in accordance with the interpretation of subclause (d), whereas the local can invest in any real estate anywhere in any quantity, the visitor does have the restriction, it has to be property for use in that person's business. Those are two that immediately come to mind. Could we make some progress?

There are three amendments. The first one was detailed in the circulated list of amendments which was the amendment to subclause (1), the second was the amendments that were read out a short while ago to subclause (3)(c) and the third amendment is the deletion of subclause (4) in accordance with Sen. Spence's circulated list of amendments.

Question put and agreed to.

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

Clause 4.

Question proposed, That clause 4 stand part of the Bill.

Mr. Chairman: We have a circulated amendment on the very said sheet from the Minister of Foreign Affairs.

Mr. Maraj: We are suggesting the following amendments:

(a) In subclause (1), delete "10 and 13(5)" and substitute "11 and 14(5)".

(b) In subclause 2(b), delete the words "in the form prescribed" and substitute the words "in a form which is of a nature equivalent to the form prescribed".

Question put and agreed to.

Clause 4, as amended, ordered to stand part of the Bill.

Clause 5.

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

Mr. Chairman: Again, on the circulated list of amendments, there is an amendment to clause 5. The entire clause is being deleted and substituted for the clause as detailed in the circulated amendment.

Mr. Maraj: The amendment reads as follows:

Delete the clause and sutstitute the following new clause 5:

"5 Permission to enter under section 3(1) or section 4(1) and the rights conferred under these sections and under section 9 notwithstanding the provision of any other law but subject to sections 11 and 14, shall be irrevocable during the duration of the permission except for cause and by procedure which would, apart from this Act, render a member of some category of citizens of Trinidad and Tobago liable to deportation, extradition or other form of expulsion."

Question put and agreed to.

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

Clause 6.

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

Mr. Maraj: Mr. Chairman, I beg to move that clause 6 be amended as follows:

Delete "10" and substitute "11".

Question put and agreed to.

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

Clause 7.

Question proposed, That clause 7 stand part of the Bill.

Mr. Maraj: Mr. Chairman, I beg to move that clause 7 be amended as follows:

(a) In subclause (1), delete "10" and substitute "11".

(b) In subclause (2), delete "13" and substitute "14". Insert after "14" the words "or of a similar offence under the law of a qualifying Caribbean Community state."

Mr. Chairman: Sen. St. Cyr.

Sen. Dr. St. Cyr: Yes. I have a difficulty with subclause 1(a)

Mr. Chairman: Clause 7(1)(a).

Sen. Dr. St. Cyr: Yes. Why should a citizen of Trinidad and Tobago need a certificate?

Mr. Maraj: In order for him to be able to go to another country.

Sen. Dr. St. Cyr: Okay.

Question put and agreed to.

Clause 7, as amended, ordered to stand part of the Bill.

Clause 8.

Question proposed, That clause 8 stand part of the Bill.

Sen. Prof. Spence: Mr. Chairman, I have an amendment to clause 8, the main thrust of it being to put the University of the West Indies to play a central role in the certification and accreditation system. Each of these amendments—and I have three different papers with amendments—is intended to ensure that the University of the West Indies plays a central role.

If you would forgive me for repeating the arguments I used in the debate. First of all, in order to do accreditation or certification, we need to have a certain capability, so that if we are looking at the possibility of certifying for engineering, dentistry or whatever, there has to be a certain in-house capability and the only institution that I can see that has that range of skills to give that certification, would be the University of the West Indies. What other institutions that are trying to certify or accredit have to do, is to draw the expertise from outside the institution. The difficulty there is that the drawing of that expertise is usually voluntary and often there is difficulty in running the system in that way.

In addition to that, of course, the University of the West Indies is a regional institution so that by giving them that central role to play, we would in fact be supporting the integration process in giving the UWI a significant role in this movement of skills. After all, I think the whole idea of movement of skills came from the fact that there is a regional university. What is being said is: How can there be a regional university, people study there and they are not able to work in any country in the region? I think the whole concept of the Bill emanates from the fact that we have the UWI.

Mr. Maraj: Mr. Chairman, in response to that, there are two things. One, how do we know that the university is going to want to accept this responsibility? And secondly, I have a little concern about giving a monopoly to the university with respect to this whole question of accreditation. I think there must be some flexibility and that the various countries ought to be in a position to set up their own accreditation systems. I want the Senator to consider that.

Sen. Prof. Spence: If I could respond, that seems to me to be a rather dangerous way to go. All of my proposals suggest "on the recommendation of". That means that the Minister need not take the recommendation of the University of the West Indies. He does so at his own peril. Or the Secretary General of Caricom need not take the recommendations, but he ignores them at his own peril. That means that we could have Nevis which may soon be independent, setting up its own accreditation system, and then Trinidad and Tobago would have to accept if Nevis says that the University of Nevis is a suitable university for us to give qualifications to. Or if one does not want to go to that extreme, it might be Grenada and they might say that the medical school there is one that has to be accepted, whereas you might not want to have doctors qualified from that institution practising in your country.

3.10 p.m.

Mr. Maraj: Mr. Chairman, with respect to one of the amendments to clause 8A(2) which the Senator put forward, that we delete the words "after taking into account consultations with the University of the West Indies, the University of Guyana and the University of Suriname" and insert the words, "on the recommendation of the University of the West Indies", can the Senator please explain the rationale?

Sen. Prof. Spence: There are two differences really: one is that the Secretary General may consult, especially if he consults with different institutions which may have different opinions to meet. So, again it is the Secretary General who is making the decision.

Secondly, as I said earlier, UWI is the one institution which has a full range of skills. The only activity that I can think of, off-hand, which they do not have is architecture and forestry. Apart from that, there is a full range of skills and our Engineering Department can give us the inputs we need for architecture, and the Faculty of Agriculture can do that for forestry.

Mr. Maraj: Instead of going through the arguments in a global sense, can we just go through them one by one.

Sen. Prof. Spence: Certainly. In clause 8(1)(a), I have suggested, if we must include the University of Suriname and the University of Guyana, then surely the University of Technology in Jamaica, which in my opinion has a better reputation, certainly in technology, than the other two, should be included. The University of Technology in Jamaica now offers degrees in architecture. I have just circulated a brochure.

Mr. Maraj: Does the Senator want to eliminate the words "the University of Guyana and the University of—?"

Sen. Prof. Spence: No.

Mr. Maraj: Let me make this point. Does the legislation not allow for accreditation of institutions outside these three? Why must we include the technology university?

Sen. Prof. Spence: I have an alternative if that is rejected. We can eliminate Guyana and Suriname and retain the University of the West Indies. That will make

sense. In fact, I prefer that one, but I was trying to meet the thrust of the document.

Sen. Prof. Ramchand: I would say that at least a first degree of an accredited university. I believe that we should have an accrediting body. This is a recipe for disaster.

Sen. London: Mr. Chairman, I support Sen. Prof. Spence because by naming the universities we are sending a signal that we have accepted them at a certain level. That is why I would go with just having "the University of the West Indies". If we mention the Universities of Guyana and Suriname, we are sending a signal that this Parliament accepts their accreditation without accepting the accreditation of those institutions which were not named. That is why we should err on the side of caution. If, as you say, we can add as we go along, we should not be sending any unfortunate signals to any institutions in the Caribbean, especially when we are not certain—

Mr. Maraj: What is your suggestion?

Sen. London: That we eliminate Guyana and Suriname and leave the University of the West Indies.

Mr. Maraj: We do not agree with that.

Sen. London. What is your problem then about including the Jamaican University of Technology?

Mr. Maraj: Because we have provisions which allow for additional institutions to be included. This is a Caricom Heads of Divisions decision that was taken after great consideration and due deliberation and we want to be able to—

Sen. Mohammed: Can we then agree that the University of the West Indies be recognized as the accrediting body?

Mr. Maraj: We went through this in great detail and each country is free to set up its own accrediting system.

Sen. Prof. Ramchand: That is what we do not like. It will produce nonsense and confusion. That is why we need "with the approval of the University of the West Indies" where there will be a kind of consulting body which can say—

Mr. Maraj: The Secretary General is free to consult with the University of the West Indies. It says that in the legislation. He is obligated.

Mr. Chairman: In the debate right now, there is a suggestion that the University of Technology, Jamaica is as good as, if not better than Guyana. If that is so, I think the amended paragraph (b) would accommodate Jamaica because it goes on to say that:

> "Any University degree which is by common repute at least comparable in academic standing ...".

Sen. Prof. Spence: That is a clause I am trying to change because it is a strange clause. What do they mean by "common repute". I can ask to delete "common repute" and say "as recommended by the University of the West Indies". That really is an important point. In my opinion, if we are looking at the region from the point of view of its economic development and we read the information from the University of Technology, Jamaica, that is one we would want to put in. I do not know why the Heads of Government did not insert it. I think they were very remiss in not doing so. I doubt they understood the whole thing.

Sen. Dr. Mc Kenzie: Mr. Chairman, does the Government not have the power to refuse an application based on its own assessment of things? It comes back to my refusal of entry.

Sen. Prof. Ramchand: Can the Minister, before he answers that question, say whether Mr. Bird and his friends mean that (a), (b), (c) and (d) has to be satisfied, or only one of them? It does not say either (a) or (b) or (c) or (d). *[Interruption]* So it should say then, "either (a) or (b) or (c) or (d)".

Mr. Maraj: "The following qualifications satisfy the qualification ...", any of those.

Sen. Prof. Ramchand: Well, then they should say "any". In which case, we are in serious trouble, because the Secretary General of the Caribbean Community can issue a certificate and we will not know with whom he has consulted; and whoever (d) may be can issue one and we will not know with whom he has consulted.

Mr. Maraj: In Sen. Prof. Ramchand's claim, if we look at the new clause 8A(2) it states:

> "For the purposes of 8A(1), an assessed qualification is a qualification which the Secretary-General has assessed, after taking into account consultations with the University of the West Indies, the University of Guyana, the

University of Suriname, as at least equivalent in standard to any qualification ..."

So we must consult.

Sen. Daly: Are we on clause 8(1)(a)?

Mr. Chairman: We are on clause 8(1)(a). We have the amendment of Sen. John Spence. Is this still on the table, Sen. Spence?

Sen. Daly: Did I understand the Minister to say that the Secretary General would have the power to decide which university's degree we were accepting?

3.20 p.m.

Mr. Maraj: There is a provision which allows him to consult with the Universities of the West Indies, Guyana and Suriname in order to determine acceptable accreditation.

Sen. Mark: Mr. Chairman, before we proceed, I suggest that having regard to what the Minister has said about the nature of the agreement involving all the Caricom countries and that this has been thoroughly discussed even though we are debating it at this level and deficiencies are being discovered—seeing for instance, that most of the Caribbean countries that are going to implement this legislation have already done so along the lines that the Minister has suggested and has brought to the Senate in its present form. I suggest that we note the concerns expressed by Sen. Prof. Spence and at least we can draw it to the attention of the Caricom Heads at the earliest possible opportunity so that we can have the matter addressed at that level.

Sen. London: Mr. Chairman, if that is the case, then what are we doing here?

Mr. Maraj: Mr. Chairman, Sen. Prof. Spence's amendment is to insert after the words "University of the West Indies or of" the words "Technology University (Jamaica)". Are you insisting that we include the words "Technology University"?

Sen. Prof. Spence: I think it is important.

Mr. Maraj: All right.

Sen. Prof. Spence: Mr. Chairman we have not seen the legislation that has been passed by these other countries. Perhaps they have deleted it there. Jamaica

may have indeed put it in, but we have not seen it. Perhaps if the hon. Minister could produce the legislation for Jamaica I would be interested to see it.

Mr. Maraj: I wanted to ask Sen. Prof. Spence to look at clause 8A(1) which says:

"8A(1) A qualification or combination of qualifications is certified by the Secretary-General for the purposes of section 8(1)(c):

(a) if it is currently listed in an official written communication from the Secretary-General, addressed at least to all the Governments of the member states of the Caribbean Community listed in Schedule 1..."

So can we not include the Technology University in this list?

Sen. London: Can we not include the University of Guyana and the University of Suriname in that list?

Sen. Daly: It is no answer to any amendment that is put forward for consideration in this Parliament that someone else has agreed to it. Let me make my position plain. If that is the basis on which we are dealing, then we should not have a committee. Why are we going into committee? We are just wasting time.

Sen. Prof. Spence: Mr. Chairman, I would also have to say that I would like to see the communiqué coming out of that Heads of Government Agreement that said that. Because I do not think they would have said it in that form. Let us see the communiqué. I think what has happened is that the Heads of Government had a general discussion. They do not go into things in that sort of detail. There was a general discussion, then the Caricom Secretariat drew up the agreement. It may have been even a junior person in Caricom. I know how these things work.

Mr. Maraj: The Caricom Heads of Government took the decision that we would have the movement of skilled graduates from the University of the West Indies, the University of Guyana and the University of Suriname. But, Mr. Chairman, since Sen. Prof. Spence and others seem to be so passionate about this matter, we will accept the amendment to include the "Technology University of Jamaica".

Sen. Prof. Ramchand: Does that mean that a graduate from an American university will not be eligible?

Mr. Chairman: There are other clauses which take care of that hon. Senator.

So the first amendment we are looking at is clause 8(1)(a) to the effect that after the words "or of" in line 2, the words "the Technology University (Jamaica) or of" be included and the line continues, "the University of Guyana..." and so forth.

Sen. Prof. Spence: Mr. Chairman, it is the "University of Technology, Jamaica", that is my error.

Mr. Chairman: "the University of Technology"—is the word Jamaica in brackets?

Sen. Prof. Spence: It does not have to be in brackets.

Mr. Chairman: The amendment hon. Senators, is that the words, "the University of Technology, Jamaica be included after the words "or of" in line 2 of clause 8(1)(a).

Question, on amendment, put and agreed to.

Mr. Chairman: We are now looking at clause 8(1) (aa).

Sen. Prof. Spence: There are amendments to clause 8(1)(c) and (d).

Mr. Chairman: Those will come later. After 8(1)(a) comes 8(1)(aa).

Mr. Maraj: Mr. Chairman, I beg to move that clause 8(1)(aa) be amended by inserting after paragraph (a) the following:

"(aa) a degree of Doctorandus, Meester, Licentiatus, or Doctor of the University of Suriname;"

Question, on amendment, put and agreed to.

Sen. Prof. Spence: Mr. Chairman, my problem with 8(1)(b) is that the term "by common repute" is an extremely difficult one to particularize. I suggest the following amendment:

"Delete the words "by common repute" and insert the words "which is recommended by the University of the West Indies to be . . ."

Question, on amendment, put and agreed to.

Mr. Maraj: Mr. Chairman, I propose that the following 8(1)(bb) be included:

"(bb) any University degree which is by common repute at least comparable in academic standing with a qualification in 8(1)(a) to 8(1)(b);"

Sen. Montano: Mr. Chairman, if I can go back to something that Sen. Prof. Ramchand said, are the subclauses (a),(b) and (c) mutually exclusive? Are they "and" or are they "or" to each one of these qualifications?

Mr. Maraj: You may have two or you may have one.

3.30 p.m.

Sen. Daly: Mr. Chairman, are you proposing (bb) without considering the amendment?

Mr. Chairman: We are now going to look at the amendment to the amendment. There is now an amendment to the clause 8(1)(bb) which requires the removal of the words "by common repute" and inserting the words "which is recommended by the University of the West Indies to be . . . ". Is there any discussion on that amendment to the amendment?

Sen. Daly: Mr. Chairman, I would like to support Sen. Spence. The phrase "common repute" is a very uncertain, and to some extent, subjective test. So that I would reject "common repute" as lacking in merit, quite apart from what Sen. Spence is proposing. I do not think that "common repute" is something that is sufficiently certain, and it has a highly subjective element in it. So, quite apart from the amendment proposed by Sen. Spence, I do not think that "common repute" is satisfactory. For that reason, I also support the amendment proposed by Sen. Spence because it is replacing something that is variable, uncertain and subjective by something that is more fixed and measurable.

Mr. Chairman: The amendment needs a little tidying up. Let me just try to help here. The words he is suggesting be included, are "which is recommended by the University of the West Indies to be", which of course would not let the sentence read properly. So, I am suggesting that the sentence read "(bb), any University degree which is recommended by the University of the West Indies to be at least comparable". You have to delete the words "which is".

Sen. Montano: That is what I meant.

Sen. Dr. Mc Kenzie: Mr. Chairman, having heard that any four requirements would do, could we not have, "any of the following qualifications satisfy the requirements of this Act?" Because it still gives the impression that one has to

satisfy all four. I think it is ambiguous. It can be interpreted that one should have to satisfy all four, or put in "or" after each one.

Mr. Chairman: I do not know whether Prof. Ramchand is prepared to comment on the fact that at the end of each grouping there is a semi-colon instead of a comma. I think his wisdom in this respect might be useful.

Sen Prof. Ramchand: No, I go along with Sen. Mc Kenzie's suggestion. I would have preferred, "the following qualifications satisfy the qualifications, either A, or B, or C, or D." But, if we do not have that, I think we need to have "any of the following qualifications satisfy." And then a semi-colon after each one, would be okay.

But, you know, I am always setting examination papers, so I like my "either or," and nobody can make a mistake.

Mr. Maraj: To my understanding, Mr. Chairman, legally it does not make a difference, but if it would satisfy people to put in the "or", put it in. It does not make a difference, just put it in.

Mr. Chairman: Let us deal with the amendment 8(1)(bb) first and then we would do the housekeeping with the "or".

So, we have the amendment to the amendment. So the question that is before us, is that clause (bb) reads as follows:

“any University degree which is," and the word "by" is deleted

“any University degree which is recommended by the University of the West Indies to be at least comparable,. . ."

Sen. Prof. Ramchand: The word is really “recognise”. You replace “common repute” by "recognise". That is the terminology for these things.

Mr. Chairman: I think Sen. Spence wanted it to be recommended.

Question, on amendment, put and agreed to.

We now have a new clause 8(bb).

Sen. Prof. Spence: I apologise for this in advance, but I wonder if we could just ask a question about 8(1)(b) which deals with membership of the Guild of Graduates.

I wonder if we could be told what the qualifications for membership are? I fear that we may be slipping in, inadvertently, any university at all by that provision. I did try to check, but I was unable to get anybody in the university to give me the information, but my recollection is that to be a member of the Guild of Graduates, one has to be either a graduate of the University of the West Indies or of any other university. If it is any other university, it means that there is no restriction at all in that clause. All one has to do is to join the guild.

The certification is not a certification that the university is the correct one. The certification is that one is a member.

Now, the other point I raised during the debate is that I am not certain that the university is in a position to so certify, because my understanding is that the Guild of Graduates is an independent body and, therefore, it is the guild to certify, not the university to certify. The guild is not a part of the university, so, that whole (b) gives me some difficulty.

Sen. Prof. Ramchand: Yes, Mr. Chairman, I have to go along with that too, that one can be a member of the Guild of Graduates, even if one comes from a university that has five people in the rounds; and there is nobody checking them to see whether that is an accredited university. It is also true that the university is not consulted when the Guild of Graduates is registering people. It really would be better to delete it, I think. It would be safer.

Mr. Maraj: I agree, let us go.

Mr. Chairman: We now have a suggestion by Prof. Ramchand to delete subclause 1(b) in its entirety; and we will now renumber subclause (bb) as (b). So, we now have a numbering of 8(1)(a), 8(1)(aa), 8(1)(b), 8(1)(c), and following.

Sen. Daly: I am not being a parliamentary draughtsman. This is an original Bill, it is not an amending Bill. Could it be explained to me why are we going into all these contortions of (aa), (bb) instead of (a), (b), (c), (d)? Am I missing something simple?

Mr. Maraj: Well, you see we had gone to the House originally and amendments had come from the House.

Sen. Daly: Well, now you have to go back and tidy it up. Put (a), (b), (c) (d) like we understand it and leave out the 8(1)(aa) and so on.

Mr. Chairman: Okay, we have a suggestion from Sen Daly, that instead of the (aa), (bb) and (cc), that we renumber the entire clause 8(1) and the subclauses that follow in sequential order (a) and following the entirety of the alphabet as we need without any double lettering.

So, we now have (a), (b) and (c) in place of (aa), and what was (aa) and (b). So the next subclause that we are looking at which is (c) is now lettered (d) and we have a suggested amendment from Sen. Spence that the new (d) now be extended with the words "such certification to be made on the recommendation of the University of the West Indies."

3.40 p.m.

Mr. Chairman: We are waiting on a response from the Minister.

I got a hand signal that he has no difficulty with the suggestion of Sen. John Spence. So new clause 8(1)(d) previously (c) would now read, as an addition to the sentence:

"such certification to be made on the recommendation of the University of the West Indies."

Question, on amendment, put and agreed to.

Mr. Chairman: There is now a new clause 8(1)(e) which has been circulated.

Sen. Prof. Spence: Mr. Chairman I have a suggested amendment to clause (e) as well. Are you on new (e)? It really is the same as (d). The concept is the same.

Mr. Chairman: The first suggestion on the new clause (e), we have included the words, "and on the recommendation of the University of the West Indies". There is another suggestion which is to insert after the word, "Minister", the words, "on the recommendation of the University of the West Indies." You need to help us on what line that takes place because there are two references here, Sen. Spence.

Sen. Prof. Spence: In both (i) and (ii) because the concept is the same for both.

Mr. Chairman: Does anybody have any comments on that suggestion, that in the new subclause, after the word, "Minister", in each instance, the words, "on the recommendation of the University of the West Indies" be included? For instance, subclause (1)(e)(i) would read:

"compiled from time to time by any authority designated by the Minister on the recommendation of the University of the West Indies, by Order as an accrediting authority for the purpose of this section."

And (ii) would read:

"prescribed by the Minister on the recommendation of the University of the West Indies, by Order as a list of qualifications and combinations of qualifications satisfying the qualification requirements of this Act."

Any comments?

The suggestion, which is a stylistic drafting suggestion, Sen. Spence, is that your words be included after the word, "Order" instead of after the word, "Minister". Is that accepted?

Sen. Prof. Spence: Yes.

Mr. Chairman: Sen. Ramchand, does that read properly?

Sen. Prof. Ramchand: Yes.

Mr. Chairman: The amendment is that:

After the word, "Order" on line 3 in subclause (i) and after the word "Order" in the second line in subclause (ii), the words, "on the recommendation of the University of the West Indies" be included.

Question, on amendment, put and agreed to.

Sen. Montano: Mr. Chairman, do you not include the word "or" after each subparagraph?

Mr. Chairman: Yes. I assume we find favour with that. After each paragraph, with the exception of the last paragraph, after the semi-colon, the word, "or" be included.

Sen. Prof. Ramchand: Mr. Chairman, this is not an attempt to prolong this *ad absurdum*, but I just want to be clear. Every Caricom territory is an accrediting agency—is that right—plus the Secretary General, plus any authority designated by the Minister by Order? These are all the accrediting agencies. So we will have all these people inputting into what is a certificate, and the heads under which they can be given are (a), (b), (c), (d), (e). So I do not know how you permutate that, but we could probably get about 383 different types of certificates coming out. So

that is what we are approving; I just want to be clear about the kinds of permutations possible.

Mr. Chairman: Are we very clear on that?

We are on subclause (2). We have an amendment which suggests:

B. Insert after subclause (2), the following new subclause:

"(3) The Minister shall make available any current list of qualifications and combinations of qualifications under this section and section 9(1)(a) to any person on request, subject to the payment of—

(a) such fees; and

(b) such other conditions, as may be prescribed by Regulations made under section 14."

Question, on amendment, put and agreed to.

Clause 8, as amended, ordered to stand part of the Bill.

3.50 p.m.

Clauses 9 and 10 ordered to stand part of the Bill.

Clause 11.

Question proposed, That clause 11 stand part of the Bill.

Mr. Maraj: Mr. Chairman, I wish to amend clause 11 as follows:

Delete the clause and substitute the following new clause:

11 (1) A qualifying Caribbean Community state's reciprocal rights and privileges comprise the rights and privileges conferred by the law of that state on the holder of a passport issued by the Government of Trinidad and Tobago who would, in relation to that qualifying Caribbean Community state, satisfy conditions analogous to those required under this Act.

(2) A passport holder referred to in subsection (1) is a holder of a passport issued by a qualifying Caribbean Community state who satisfies the conditions of this Act for any right or privilege conferred by this Act.

(3) The rights and privileges conferred by this Act on a passport holder referred to in subsection (1) shall not exceed that state's reciprocal rights and privileges.

(4) A qualifying Caribbean Community state's reciprocal rights and privileges shall in the absence of proof to the contrary be presumed to be the same as the rights and privileges which would be conferred by this Act on a passport holder referred to in subsection (1)."

Question put and agreed to.

New clause 11 ordered to stand part of the Bill.

Clause 12 ordered to stand part of the Bill.

Clause 13.

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

Sen. Daly: Mr. Chairman, can I ask a question about clause 13? Clause 13 is the prelude to the penalties prescribed under clause 14 and it deals with—

Mr. Chairman: That is clause 14.

Sen. Daly: Are we not on clause 13? I beg your pardon.

Question put and agreed to.

Clause 13 ordered to stand part of the Bill.

Clause 14.

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

Mr. Maraj: Mr. Chairman, I wish to amend clause 14, as follows:

In subclause (4), delete the words "the Minister" and substitute the words "the Minister to whom responsibility for immigration is assigned."

Question put and agreed to.

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

Clause 15.

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

Mr. Chairman: Sen. Daly.

Sen. Daly: Let me explain what my concern is. There are provisions for fraud at the time a person sets about obtaining his certificate. My concern is that if a person abuses, as the Minister was pointing out, any of the exemptions that are given about owning a house for residence, for example, is there any offence to cover that? A person might get his certificate without fraud, perfectly truthfully, so that he does not commit an offence at that stage. But have we created any offence for abusing these restrictions? To take the Minister's example, a person acquires a residence and then forms a dummy company and acquires three more residences and so forth, which would be an abuse of the exemption. Have we created an offence or punishment of any kind for that?

Mr. Maraj: The existing laws of Trinidad and Tobago take into account your concerns.

Sen. Daly: What existing laws? There is no law that says a person cannot own more than one house.

Mr. Maraj: Now, according to the legislation, nothing prevents a national from a qualifying Caricom country to come here and own more than one house.

Sen. Daly: The difficulty is that we have done away with the Aliens Landholding Act. I do not know what the fancy name is now, so that a person who is not a national can get a permit by telling the truth under subclause (3)(i) and (ii), and abuse the exemptions they are given under (3) without any punishment.

Mr. Maraj: What exemptions are they given under subclause (3)?

Sen. Daly: Like if they buy more than one house.

Mr. Maraj: But that is not against the law.

Sen. Daly: The Minister talked about speculation.

Mr. Maraj: We were talking about speculation in terms of investment and property and so forth.

Sen. Daly: It is late. I will leave it at that, but I think it is important.

Sen. Prof. Ramchand: I think what Sen. Daly is saying is that if a person comes in with an honest application, he has the right now to live and work here and purchase a residence. However, he can purchase five residences and that would be an offence, because, obviously he has purchased five residences in order to rent them out and do business.

Mr. Maraj: But did we not, a while ago, say that nothing is wrong with that? Did we not agree that somebody can come and if they wanted to invest and speculate and so forth, they should be allowed to do so?

Sen. Daly: I am not pursuing it with respect to everybody's time, including my own time.

Question put and agreed to.

Clause 15 ordered to stand part of the Bill.

4.00 p.m.

Clause 16 ordered to stand part of the Bill.

New Clause 8A

Mr. Maraj: Mr. Chairman, I beg to move that a new clause 8A be added to the Bill as follows:

8A Insert after clause 8, the following new clause 8A:

"Functions of the Secretary General

8A. (1) A qualification or combination of qualifications is certified by the Secretary-General for the purposes of section 8(1)(c):

(a) if it is currently listed in an official written communication from the Secretary-General, addressed at least to all the Governments of the member states of the Caribbean Community listed in Schedule I, purporting to provide a list of assessed qualifications; or

(b) if it is held by an applicant under section 6 and certified by the Secretary-General in relation to that applicant as an assessed qualification, whether or not any such qualification or combination of qualification is listed under 8A(1)(a).

(2) For the purposes of 8A(1), an assessed qualification is a qualification which the Secretary-General has assessed, after taking into account consultations with the University of the West Indies, the University of Guyana and the University of Suriname, as at least equivalent in standard to any qualification in section 8(1)(a) to 8(1)(b).

(3) Any function of the Secretary-General under this section may be discharged by a person authorized to do so in an official written communication from the Secretary-General, addressed at least to all the Governments of the member states of the Caribbean Community listed in Schedule I.

(4) A communication is addressed to a Government within the meaning of this section if it is addressed to—

(a) any Minister of that Government; or`

(b) any public officer designated by office, whose responsibilities include functions relating to any one or more of Caribbean community affairs, education, immigration, labour or the public service."

New clause 8A read the first time.

Question proposed, That the new clause 8A be read a second time.

Mr. Chairman: We now have a new clause 8A up for consideration. There is a circulated amendment by Sen. Prof. J. Spence to subclause (2).

Sen. Prof. Spence: Mr. Chairman, seeing that the Government has already accepted the amendment to 8(1)(c), it seems logical to accept the amendment in 8A, because under 8(1)(c), we have agreed that the Secretary General should use the recommendation of the UWI. But in 8A, you tell them to consult with three universities. We accepted the amendment in 8(1)(c).

Mr. Chairman: Okay, the amendment to the amendment is to be found at the bottom of page 6, four lines from the bottom after the word "Suriname".

Sen. Prof. Spence's amendment is that the words "on the recommendation of the University of the West Indies" be included after the word "Suriname" and before the word "as"; and the words prior to that up to "after taking into account" be deleted.

Let us rerun that. The words "after taking into account" down to the word "Suriname" be deleted, and be replaced by the words "on the recommendation of the University of the West Indies". *[Cross talk]*

Mr. Maraj: But you know, if we are accepting that university graduates from the University of the West Indies, the University of Guyana and the University of Suriname, can come and work and live freely in the region, why are we omitting the University of Guyana and the University of Suriname from the consultative process? *[Cross talk]*

Sen. Prof. Ramchand: The university is really the national university of the region.

Mr. Chairman: Okay, we have an amendment to the amendment.

Sen. Prof. Ramchand: They could come but they cannot be consulted.

Question, on amendment, put and agreed to.

Question proposed, That the new clause 8A, as amended, be added to the Bill.

Mr. Chairman: Could I further suggest that in view of a previous suggestion of a renumbering, that this does not appear as 8A but we renumber it as clause 9 and everything sequentially thereafter.

Question put and agreed to.

New clause 8A, renumbered as clause 9, as amended, added to the Bill.

Schedule I ordered to stand part of the Bill.

Schedule II:

Question proposed, That Schedule II stand part of the Bill.

Mr. Chairman: There is an amendment to Schedule II by the Minister to the effect that the words "the Minister responsible for Immigration" be deleted in two instances, and be substituted by the words, "the Minister responsible for Caribbean Community Affairs"

Question put and agreed to.

Schedule II, as amended, ordered to stand part of the Bill.

Schedule III 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.

PROTECTION AGAINST UNFAIR COMPETITION BILL

Order for second reading read.

The Minister of Legal Affairs (Hon. Kamla Persad-Bissessar): Mr. Vice-President, I beg to move,

That a Bill to provide for protection against unfair competition be read a second time.

This Bill, as the Explanatory Note sets out, seeks to introduce legislation in Trinidad and Tobago in the area of unfair competition and trade secrets. It is part of the general overhaul in our intellectual property legislation, to harmonize it with international treaties and conventions to which we are a signatory, and at the same time, it is our bid to modernize our legislation in this field of law to bring it up to international standards.

Clause 4 of the Bill sets out the general provisions for acts or practices which constitute unfair competition.

Clause 5 makes provision for acts or practices which may cause confusion and sets out examples of when such confusion may be caused.

Clause 6 deals with the damaging of another's goodwill or reputation and lists examples of circumstances in which this may take place.

Clause 7 deals with acts and practices in the course of industrial or commercial activities which amount to misleading the public, and this clause gives examples of when such misleading can occur.

Clause 8 deals with the discrediting of another's enterprise or activities.

Clause 9 deals with secret information and clarifies what may amount to disclosure, and the circumstances from which such disclosure may result.

Mr. Vice-President, protection against unfair competition has been recognized as forming part of industrial property protection for almost a century. This recognition was first manifested by the insertion of Article 10/BIS in the Paris Convention for the protection of industrial property. Trinidad and Tobago is a party to the Paris Convention, and under this, members are obliged to provide protection against unfair competition.

4.10 p.m.

The same obligation exists under Article 2 of the Agreement known as the TRIPS Agreement, which is the Trade Related Aspects of Intellectual Property Rights, and according to this, members of the World Trade Organization are bound by Article 2 of that Agreement, and they are obliged to comply with Article 10 of the Paris Convention, as mentioned before.

Mr. Vice-President, as we pointed out in the debate earlier, on intellectual property legislation, Trinidad and Tobago is a party to the TRIPS Agreement. We must remember that we have been a party to the Paris Convention since l988. We are also party to another agreement known as the Marrakech Agreement, which established the World Trade Organization wherein Annex IC, which constitutes the TRIPS Agreement. In addition, Trinidad and Tobago is a party to the Memorandum of Understanding between the Government of Trinidad and Tobago and the United States of America; and, as we pointed out, in acceding to that bilateral agreement with the United States, as I indicated on the last occasion, we agreed to put into place various pieces of intellectual property legislation before September 26 of this year.

This is a part of that package of legislation, Mr. Vice-President. There is another part which we would hope to have before the Senate next week, which is the Trade Marks (Amdt.) Bill and, eventually, we are hoping to have the final piece, which is the Copyright Bill, to replace the existing copyright law. This Bill, and what it seeks to do, is part of that package on intellectual property legislation, but it is also slightly different. Whereas there was the Patents Bill, specifically

dealing with patents, and there will be the Trade Marks (Amdt.) Bill, specifically dealing with trade marks; the Industrial Designs Bill, specifically dealing with industrial designs, and so forth, this deals with the general commercial practice in terms of unfair competition.

Why is it that we need unfair competition protection? One may argue that within our existing laws there are provisions in the law of tort in common law, which could assist against certain unfair practices. But we feel, Mr. Vice-President—and the former administration felt the same because they undertook to bring this legislation to the Parliament—that instead of the piecemeal protection which is afforded in the common law, all this could be put into statutes and provide further protection such as is not provided within our existing common law in the law of tort.

Mr. Vice-President, acts of unfair competition are liable to occur where there is free competition between enterprises, which is considered the best means of satisfying supply and demand in the economy and of serving the interest of consumers and the economy as a whole. In economic competition, like sport, the best should win; that is, the enterprise which provides the most useful and effective product, or service, on the most economical and satisfying terms. This result can only be achieved, however, if all the participants in the competition can perform or do their jobs according to a certain set of basic rules.

Violation of the basic rules of economic competition can take various forms, ranging from illegal but harmless acts, to malicious ones intended to harm competitors, or mislead consumers. They may consist of a direct attack on an individual competitor, or in deception of the consumer. Whichever form such violations may take, it is in the interest of the honest entrepreneur, the consumer and the public at large that they should be prevented, as early as possible and as effectively as possible.

Experience has shown that there is little hope of fairness in competition being achieved solely by the free play of market forces. In theory, consumers could deter dishonest entrepreneurs by refusing to buy their goods; disregarding their goods or services, and favouring those of honest competitors. In theory, that is what can happen. In fact, I remember some time ago when the prices of certain meats were very high, people were told not to buy those meats, buy chicken. But that is leaving it up to the consumer alone to make a decision as to whether they should purchase from an honest entrepreneur or not. Regrettably, in our respectful view, that would not be sufficient to give the protection to the public and the consumer.

In other words, Mr. Vice-President, reality would be very different from theory with respect to what the consumer would want to do. As the economic situation becomes more and more complex, consumers are less able to act as referees in that competition in the economic world. Often, they are not even in a position to detect, by themselves, acts of unfair competition, let alone to be able to react accordingly. It is the consumer and the honest competitor who have to be protected against unfair competition.

There is another mechanism which has to do with self-regulation within the enterprises of the competitors, but this has not proved to be a sufficient safeguard against unfair competition. If self-regulation by associations of enterprises is well developed and generally observed, then it can play an important role in ensuring honest business conduct, but it will stand or fall on continued observance by all participants. In order to prevent unfair competition effectively, self-regulation in our respectful view, must be supplemented by a system of legal enforcement.

Mr. Vice-President, I was reading very recently about a concern expressed that this Government was seeking to bring legislation to the Parliament, as though laws were going out of style. It was in a very disparaging tone, and to the effect that the Government was seeking to bring legislation about cats, dogs, motor launches and everything under the sun. Whilst that may be taking it to the extreme, Mr. Vice-President, perhaps it is important that we be reminded of the purpose of the Parliament; and every person sitting in this Senate should know what is the purpose of the Parliament.

The purpose of the Legislature: the Senate and the House of Representatives, as set out in the Constitution, is to make laws for the peace, order and good governance of the nation. So when there is a government and a parliamentary system of democracy, it is incumbent upon that government, in my respectful view, to bring legislation to the Parliament to create a legal framework. So to make disparaging remarks that this Government is concerned with bringing legislation for every single thing under the sun is to misunderstand, or deliberately disregard the purpose of the Parliament. As I said, the purpose of the Parliament must be to make laws for the peace, order and good governance of the nation.

Mr. Vice-President, we have seen democracy at work in this very Senate, this afternoon, when amendments that were proposed from the other side were accepted by the hon. Minister of Foreign Affairs. And that is what it is about. I came to this House the week before last and, likewise, amendments proposed by Sen. Spence. [*Interruption*] In case the honourable Senator, who is smiling, thinks

that we accepted amendments because we did not have a majority here today, on that occasion we did have a majority [*Desk thumping*] and the amendment was accepted on this side of the House. That is what parliamentary democracy is all about, Mr. Vice-President.

I just want to put those fears and concerns to rest, because I came back from the Intellectual Property Conference and I am reading about a government passing legislation about the Rousillac ants; and about cats and dogs, and so forth. I am sure no Members of this honourable House would want to feel that when they come to the Parliament they are engaged in a useless exercise. But we are passing laws for peace, order and good governance, and we must understand what it means to live in a democratic society which is governed by the rule of law and not by the rule of the jungle. That is why we make laws, as I say, for peace, order and good governance.

I am saying that self-regulation in terms of the economic environment cannot be sufficient. It must also be supplemented by a system of legal enforcement. The rules on the prevention of unfair competition and restrictive business practices, known as anti-trust law, are all interrelated. Both aim at ensuring the efficient operation of a market economy, but they do so in different ways. Anti-trust law is concerned with the preservation of freedom of competition by combating restraints on trade and the business of economic power. On the other hand, unfair competition law is concerned with ensuring fairness in competition, by forcing all the participants to play according to the same rules. Yet both laws are equally important, though in different respects and, therefore, supplement each other.

Article 14 of the TRIPS Agreement deals with the control of anti-competitive practices in contractual licences pertaining to intellectual property rights. However, no obligations were imposed on members, and TRIPS left it open for each country to adopt appropriate measures to prevent or control restrictive business practices. Government is aware—and as I said, the previous government was also aware—that a law to prevent restrictive business practices is equally important and would supplement the law to protect against unfair competition. Having completed the Protection Against Unfair Competition Bill, we will deal with this now and at a later point try to bring legislation with respect to restrictive business practices.

4.20 p.m.

Industrial property laws concerning inventions, industrial designs, trade names, geographical indications and so forth, are insufficiently comprehensive on their

own to ensure honest practice in the market place. It is true that the protection of industrial property rights is in the interest, not only of the owners, but also of the consumers and the public at large. Therefore, it serves the objective of ensuring fairness in competition.

For example, in particular, the unauthorized use of a trade mark for a competing product would not only constitute undue exploitation of the origin of the product, but will also, in a sense, deceive the public as to the commercial origin of the product.

For example, Trinidad and Tobago is famous for its Angustora Bitters. Under our existing law, and under the legislation that we brought in the package previously, if the trade mark used by Angostura—the name "Angostura Bitters"—were to be used by someone else who manufactured disinfectants but carried the name "Angostura", there would be no breach under the other laws that we have put into place, because in a sense, they would be two different categories or classes of products. That is to say, disinfectant versus the bitters.

In other words, under the other areas of the law dealing with intellectual property, one would not be able to seek redress. This new law on unfair competition would allow one to seek redress because the issue then, in a sense, would be the misleading of the public. Therefore, protection can be given to the manufacturer of the original "Angostura Bitters" as versus someone who uses it for a completely different category of goods.

Trade marks law can be seen as a specific part of the larger field of unfair competition law. The enforcement of trade mark protection serves to prevent acts of unfair competition, in particular, passing off—and that would have been an example of passing off, that is to say of Angostura Bitters versus Angustora Disinfectant or whatever it may be. Therefore, it would be diluting the distinctive quality or advertising value.

In fact, there was a case that was taken by the Court of Appeal in England known as the Tattinger and Albev—known as the Elder Flower Champagne case. In that case the defendants were manufacturing a sparkling fruit juice and they were calling it Elder Flower Champagne. The court held that this would lead to a loss of sales and distinctiveness with respect to the product champagne. Therefore, in a sense, it is the thought of passing off.

Under the UK common law, which we have inherited, we would have been able to bring cases in terms of passing off—using another name as our own—whether it

be Angostura or Carib that are distinctively associated with our products. One of the difficulties within that law, as I understand it, was that much of it had to do with the consumer. That is to say, when the cases do go to court the plaintiff would have to prove, as it were—and therefore would need the assistance and co-operation of the public or the consumer—that the consumer was confused or misled. So the burden that is put on a plaintiff would be greater than in a case such as we are proposing to have it within the present Bill before this Senate.

The other industrial property rights such as patents, protection against exploitation and trade marks would have allowed one to get some measure of protection, but in terms of unfair competition we needed to put in place a comprehensive piece of legislation rather than the piecemeal that existed under defamation and injurious falsehood, inducing breach of contract and unlawful interference with contractual relations and the tort of passing off.

In spite of the common objectives in terms of the other pieces of intellectual property legislation, fair play in the market place cannot be ensured only by protecting intellectual property rights such as we have done before. There is a wide range of unfair acts such as misleading advertising and violation of trade secrets which are not dealt with specifically by the laws on industrial intellectual property. Unfair competition law is therefore necessary, either to supplement the laws on industrial property or to grant a type of protection that such law did not provide for.

To fulfil this function, unfair competition law must be independent of any formality or registration. Remember, for example, the patents and industrial designs would need to be registered and so forth, but this law that we are proposing under the Protection Against Unfair Competition Bill calls for no registration as such. One does not have the formalities of such registration. In particular, unfair competition law must be able to adapt to all new forms of market behaviour. Such flexibility does not entail a lack of predictability.

Unfair competition law can never be as specific as patent law or trade mark law, yet the experience of many countries has shown that it is possible to develop an efficient and flexible system of unfair competition law and at the same time to ensure a sufficient degree of predictability in terms of economic competition in the market place.

Historically, all countries with a market economy system have devised some kind of safeguard against unfair business practices. Trinidad and Tobago, as I have said before, followed the approach of the United Kingdom based on the common law and equity and the United Kingdom still has not developed a separate legal

regime for protection against unfair competition. The tort of passing off which is recognized in the United Kingdom since 1824 is considered sufficient protection for competitors. Consequently, the civil remedies for competitors are still restricted to isolated cases in the United Kingdom under uncodified tort principles. In particular, the protection against passing off, as I said before, claims of injurious falsehood or breach of confidence.

On the other hand, provisions for consumer protection against misleading acts existed since 1962 and these have been supplemented by consumer protection statutes in the United Kingdom by the Merchandise Marks Act which was repealed and replaced by the Trade Description Act of 1984 in the United Kingdom.

The Bill for the Protection Against Unfair Competition for the first time introduces legislation to protect unfair competition by statute. By so doing, Government seeks to honour its obligations, as I pointed out before, under the various intellectual property conventions and agreements whilst at the same time, it is a bid to supplement the protection of industrial property rights. It is anticipated that this protection would assist in protecting Trinidad and Tobago's consumers and, at the same time, would provide an improved investment climate and enhance access to dissemination of information within Trinidad and Tobago.

4.30 p.m.

If I may be allowed to point out, this Bill was developed by the Chief Parliamentary Counsel with the assistance of the World Intellectual Property Organization and the United Nations Organization which is responsible for intellectual property. The World Intellectual Property Organization established a core group consisting of lawyers from several blocs of countries such as Switzerland, the Netherlands, the United States, Japan and our own attorneys in Trinidad and Tobago.

Permit me to pay tribute to the members of the Intellectual Property Committee who have worked to develop this law. They are Mr. Brian De Gannes, Miss Deborah Dane, Miss Mezena Kadir and recently, Mr. Malcolm Spence. They have worked on this together with the Chief Parliamentary Counsel. I ask that you pay tribute to them. They have worked voluntarily with respect to this. [*Desk thumping*]

Sen. Daly: I thank the Minister for giving way. Thank you for that background. Could the Minister indicate to which of those countries mentioned, and if it is not one of those, to which other we might find similar legislation? Where should we look for the precedents, particularly in relation to clause 4?

Hon. K. Persad-Bissessar: I will ask the technical persons to provide us with the answers in a moment. I will be advised accordingly. If you can wait for a moment.

Mr. Vice-President: Hon. Senators, it appears that this is an appropriate point at which we should take our break for tea. We will resume at 5.00 p.m.

4.32 p.m.: *Sitting suspended.*

5.07 p.m.: *Sitting resumed.*

Hon. K. Persad-Bissessar: Mr. Vice-President, before we took the break, I had indicated that the Bill was prepared based on the efforts of several persons from the World Intellectual Property Organization, as well as from the legal drafting department here in Trinidad and Tobago.

Mr. Vice-President, this Bill implements the obligation to provide for protection against unfair competition by defining in clauses 5 to 9, the principal acts or practices against which protection is to be granted, and by providing a basis for protection against any other acts of unfair competition in clause 4(1).

Sen. Daly has raised a query with respect to clause 4(1), and I will give it due consideration if he would permit us some time with respect to that clause, based on the consultations we have had. So that we would proceed, and deal with clause 4(1) in due course.

Clause 5 of the Bill basically provides that:

"(1) Any act or practice, in the course of industrial or commercial activities, that causes, or is likely to cause, confusion with respect to another's enterprise or its activities, in particular, the products or services offered by such enterprise, shall constitute an act of unfair competition.

(2) Confusion may, in particular, be caused with respect to any of the following:

(a) a trademark, whether registered or not;

(b) a trade name;

(c) a business identifier other than a trademark or trade name;

(d) the appearance of a product;

(e) the presentation of products or services;

(f) a celebrity or well-known fictional character."

So that clause 5 creates, as it were, acts of unfair competition, in terms of causing confusion, with respect to another's enterprise, or his activities.

Clause 6 deals with damaging another's goodwill or reputation. So these are specific acts of unfair competition. Clause 6 states:

"(1) Any act or practice, in the course of industrial or commercial activities, that damages, or is likely to damage, the goodwill or reputation of another's enterprise shall constitute an act of unfair competition, regardless of whether such act or practice causes confusion.

(2) Damaging another's goodwill or reputation may, in particular, result from the dilution of the goodwill or reputation attached to any of the following:

(a) a trademark, whether registered or not;

(b) a trade name;

(c) a business identifier other than a trademark or a trade name;

(d) the appearance of a product;

(e) the presentation of products or services;

(f) a celebrity or a well-known fictional character."

Clause 7 deals with misleading the public. It states:

"(1) Any act or practice, in the course of industrial or commercial activities, that misleads, or is likely to mislead, the public with respect to an enterprise or its activities, in particular, the products or services offered by such enterprise, shall constitute an act of unfair competition.

(2) Misleading may arise out of advertising or promotion and may, in particular, occur with respect to any of the following:

(a) the manufacturing process of the product;

(b) the suitability of a product or service for a particular purpose;

(c) the quality or quantity or other characteristics of products or services;

(d) the geographical origin of products or services;

(e) the conditions on which products or services are offered or provided;

(f) the price of products or services or the manner in which it is calculated."

Clause 8 deals with discrediting another's enterprise or its activities. Here any false or unjustifiable allegation in the course of one's industrial or commercial activities that will discredit or is likely to discredit another's enterprise, or another's activities in particular their products, their services offered by the enterprise, that also constitutes an act of unfair competition. Discrediting could arise also out of advertising or promotion, and in particular may occur with respect to the manufacturing of the product, the suitability of a product or service for a particular purpose, the quality or quantity or other characteristics of products or services, the conditions on which products or services are offered or provided, the price of product or services or the manner in which it is calculated.

Finally, clause 9, deals with unfair competition in respect of secret information. It states:

"(1) Any act or practice, in the course of industrial or commercial activities, that results in the disclosure, acquisition, or use by others of secret information without the consent of the person lawfully in control of that information (hereinafter referred to as 'the rightful holder') and in a manner contrary to honest commercial practices shall constitute an act of unfair competition.

(2) Disclosure, acquisition or use of secret information by others without the consent of the rightful holder may, in particular, result from—

(a) industrial or commercial espionage;

(b) breach of contract;

(c) breach of confidence;

(d) inducement to commit any of the acts referred to in paragraphs (a) to (c);

(e) acquisition of secret information by a third party who knew, or was grossly negligent in failing to know, that an act referred to in paragraphs (a) to (d) was involved in the acquisition.

(3) For the purposes of this section, information shall be considered 'secret information' if—

(a) it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;

(b) it has commercial value because it is secret; and

(c) it has been subject to reasonable steps under the circumstances by the rightful holder to keep it secret.

(4) Any act or practice, in the course of industrial or commercial activities, shall be considered an act of unfair competition if it consists or results in—

(a) an unfair commercial use of secret test or other data, the origination of which involves considerable effort and which have been submitted to a competent authority for the purposes of obtaining approval of the marketing of pharmaceutical or agricultural chemical products which utilize new chemical entities; or

(b) the disclosure of such data, except—

(i) where necessary to protect the public; and

(ii) where steps are taken to ensure that the data are protected against unfair commercial use."

So basically clauses 5 to 9 are setting out specific acts of unfair competition. Clause 4(1), which is the clause queried by Sen. Daly gives a wider category of acts that do not fall within these specific cases mentioned. It states:

> "In addition to the acts and practices referred to in clauses 5 to 9, any act or practice, in the course of industrial or commercial activities" that is contrary to honest practices shall constitute an act of unfair competition".

It is a very wide catch-all clause, and as I said, Sen. Daly has expressed concern as to whether, within our jurisdiction, we would be able to delimit within that category what are honest practices such as would constitute unfair competition.

As I said, other Senators may also have thoughts on clause 4(1) and a decision can be made with respect to what we would do with it; whether it is too wide, and not capable of delimitation within our jurisdiction, or whether it provides

protection for acts of unfair competition that may not be covered within the specific instances set out in clauses 5 to 9.

5.15 p.m.

This Bill—in addition to clause 4(1)(a)—in clauses 5 to 9, defines acts that are considered acts of unfair competition *per se* without any need for evidence that they are contrary to honest practices. In addition to establishing basic protection against unfair competition, clause 4(1) serves, at the same time, as a general definition of acts of unfair competition. In that respect it follows the articles in the Paris Convention, and, basically, the decisive criterion would be contrary to honest commercial practices.

The expression “practice” is used in clause 4(1) in addition to "act" in order to clarify that not only an act in the strict sense, but also behaviour that consists of failure to act, can constitute an act of unfair competition. For example, failure to correct or supplement information concerning a product test published in the Consumer Magazine thereby giving a wrong impression of the quality of the product offered on the market.

Clause 4(2) establishes a right to protection against the acts of unfair competition. This is, in a sense, the enforcement of the protection against these acts. It is important as a substantive law of unfair competition. Without provisions for adequate measures to prohibit the acts of unfair competition, to prevent damage or further damage, and to obtain compensation for damages, the protection would remain merely in theory. The clause reads:

> "Any person damaged or likely to be damaged by an act of unfair competition shall be entitled to the remedies obtainable under the civil law in Trinidad and Tobago."

So these specific acts of unfair competition as outlined within the Bill, if a person is damaged—damaged in the wide sense of the word. That is to say, if there is unjust enrichment on the part of the person who is unfairly competing; if a manufacturer would have suffered losses as a result of any unfair acts by a competitor. So the word “damage” in the wider sense, you could use the civil remedies obtainable in the law of Trinidad and Tobago. That is to say, if you want to prevent something from happening before it has actually happened, you would

have the remedy of an injunction; and damages if the act has occurred with respect to damages in terms of compensation for unfair competitive practices. So that clause 4(2) is, basically, the enforcement clause within the provisions of the Bill.

Clause 7 is based on Article 10 of the Paris Convention, and it deals with misleading the public, in particular, misleading advertising. This may well be the most prevalent of all unfair competition practices. It may generally be defined as creating a false impression of one's own product or service or of one's own enterprise. Misleading acts are primarily targeted at consumers, and not directly against competitors—that is, not against any other competitor—but misleading advertisements targeted directly at the consumer. They may cause consumers to take decisions that are prejudicial to the consumer himself or herself when he acquires products based on that misleading advertisement, or when he or she receives services.

Clause 9 deals with unfair competition in respect of secret information based on Article 39 of the TRIPS Agreement. This prohibition of disclosure, prohibition of acquisition or use of secret information without the consent of the rightful holder, applies to all persons. Persons likely to have knowledge of secret information are typically those who have special relationships with the rightful holder; for example, a present or former exployee, partners, members of the boards of directors, and other such persons.

Independent contractors, experts, lawyers, customers, suppliers of goods and services to the enterprise may also have such knowledge. But 'the rightful holder of the secret information' means the person who is lawfully in control of that information and, therefore, would have protection against such other persons who may have some information with respect to the secret information.

As soon as valuable secret information is disclosed to the public without the consent of the rightful holder, the discloser—that is the latter person—will risk losing the economic value of that information including its licensing value and its competition value.

You may recall when we talked about intellectual property rights, that the whole purpose of the package of law of intellectual property rights was to give the rightful holder of that particular item of intellectual property, exclusive rights of exploiting, distributing, selling and so on. So that if it is secret information but it is disclosed without the consent of the rightful holder, in effect, the rightful holder is deprived of the benefits of his information.

The famous secret formula for Coco Cola, for example, has been well protected for a long time; also Angostura Bitters. Those are products that are well protected. Perhaps, even the recipe for Carib Beer. But there may well be recipes in our own life time. In fact, many of the early English laws protected medicinal recipes. So I am sure that there will be many persons in Trinidad and Tobago who would have secret recipies for a range of activities and cures for various maladies. So that those would be, in a sense, secret information that could be protected to some extent.

Commercial strength depends on innovative techniques and a company's know-how in the industrial and commercial fields. If the rightful holder of the secret information takes appropriate measures to preserve the secrecy of the information, its unauthorized acquisition by others should be regarded definitely then as an act of unfair competition. The acquisition by employees of confidential information concerning the commercial or industrial activities of the employers may be necessary for the due performance of their duties. Such acquisition is not covered by paragraph (i) insofar as it is authorized by the employer. So that the acquiring of such information by employees would be done with the consent of the rightful holder.

The acquisition of secret information by third party is covered by clause 9(2)(e). Now it follows basically from the nature of the secret information, that the lawful disclosure or use by others can only take place, obviously, with the consent of the rightful holder. It is the rightful holder who decides that the information should be considered secret by taking reasonable steps to keep it secret.

Former employees generally have the right to use and exploit skills, experience and knowledge that they may have acquired in the course of previous employment for the use of earning a living. So that the borderline between the legitimate use of skills, knowledge and experience acquired during employment, and the unfair disclosure or use of the former employer's secret information, would be a very thin line. It would be difficult to draw. Employment contracts sometimes do make special arrangements to the effect that if one leaves one would not use certain information that has been acquired. It is a very thin line in terms of what would amount to unfair disclosure and what would amount to skills and knowledge that one would have acquired in the course of one's employment which, in a sense, would boil down to what we call experience gained on the job. However, in cases where the contract of the employee involves breach of confidentiality, obligation,

theft, embezzlement, industrial espionage, conspiracy with a competitor, his disclosure or use of information will clearly be unlawful.

Clause 9(2) gives examples of cases in which the disclosure, acquisition or use of secret information, would be considered to be acts of unfair competition and persons would be liable under the provisions of this Bill.

Now, secret information—in terms of the definition of secret information contained in subclause (3)—may consist of manufacturing or commercial secrets, production methods, chemical formula, drawings, phototypes, sales methods, distribution methods, contract forms, business schedules, details of price agreements, consumer profiles, advertising strategies, lists of suppliers or clients, computer software and data bases. Secret information may constitute a patentable invention but its patentability, especially its novelty and inventive stepping patent law sense, will not be a prerequisite or protection here.

5.25 p.m.

It is interesting to see that price agreements may be considered to be secret information. One can see there may be competitors in a particular field where, if one's pricing structure or one's fee structure is known and one is competing with someone else for a contract, if that is disclosed, one may end up losing one's contract and one's competitor having had the benefit of that secret information, could acquire the contract. Absolute secrecy is not required. What is important is that the information should be considered secret as long as it is not generally known or readily accessible to persons within the circles that normally deal with the kind of information.

Clause 9(3) should be looked at. To be protectable, secret information must have a certain commercial value because of its secrecy. In determining whether reasonable steps have been taken to keep the information secret—and this is important on the part of the rightful holder—steps need to be taken to keep the information secret and account should be taken of the amount of effort and money spent by the rightful holder on developing the secret information, the value of that information to him and to his competitors, the extent of the measures taken by the rightful holder to keep the information secret and the ease or difficulty with which it could be lawfully acquired by others.

Clause 9(4) is basically addressed to governments for the protection against unfair commercial use of undisclosed information submitted for the marketing approval of pharmaceutical or agricultural products. However, it is addressed to

enterprises that commit acts after having improperly obtained the information from the authority that had received it from an applicant for marketing approval.

Clause 9(4)(1) relates to undisclosed tests or other data that have been submitted to an authority such as a government or a governmental agency, which is competent for approval of pharmaceutical or agricultural chemical products. The manner in which the information is obtained is immaterial to the act or practice being considered an act of unfair competition. It does not matter how it is obtained, once the person does not have the consent of the rightful holder, it will still constitute an act of unfair competition. It may be obtained from the authority directly or indirectly. The unfairness of the act arises from the fact that the enterprise has not developed the test or other data itself, that is, that it is not the rightful holder and thus is avoided the expense and investment of producing such things.

To be considered protectable against unauthorized use or disclosure, the test or data must be the result of considerable effort in relation to tests or other data already available in the pharmaceutical or agricultural chemical field concerned.

Clause 9(4)(b) provides for two exceptions where disclosure of such test or other data is not considered an act of unfair competition. Exceptions will typically apply to disclosure by a public authority, that is, where the disclosure is necessary to protect the public and where steps have already been taken to ensure that the data is protected against unfair commercial use.

Where the data are the subject of a patent application, Mr. Vice-President, there were special provisions. You may recall under the Patents Bill provision was brought in terms of the employees and the patents office and so forth, to give provisional protection pending the grant of a patent and thereafter when such employees may leave the patents office.

In conclusion, this Bill which provides for protection against unfair competition, will serve, in my respectful view, to improve Trinidad and Tobago's attractiveness as an investment location. Its implementation, as we had said before, is part of the deepening of trade relations in the global marketplace. This Bill has been developed, as was pointed out, with the assistance and in consultation with many international and local legal experts in the field. It places Trinidad and Tobago in a position to honour our international obligations under the international conventions and agreements which we have signed in the area of intellectual property law.

This Bill will create a set of basic rules of honesty and fair dealing in economic competition and it will serve to protect the honest entrepreneur and the consumer from acts of unfair competition, and, at the same time, protect the consuming public from misleading acts and practices. The Bill will have the advantage of making the rules of unfair competition; a body of inherited uncodified tort principles will make that body of law more certain and transparent. As I indicated before, we have piecemeal common law with respect to unfair competition and unfair trade practices and the Bill seeks to draw all that together whilst, at the same time widening the net of protection in terms of unfair competitive practices.

Thank you, Mr. Vice-President.

Question proposed.

Sen. Danny Montano: Mr. Vice-President, I will be brief. Having gone through the Bill now about three times, I do not propose to go through the entire Bill again, certainly not clause 4 which I will leave to some of my colleagues.

In the Explanatory Note, the last line of the first paragraph indicates that the intention of this legislation is "to bring it up to international standards". I have some difficulty with that statement, that this is really up to international standards. I understand what the general intention and purpose of this Bill is, but I do feel that in light of some of the comments which the Minister made in terms of the descriptions of what has been taking place in the legislative drafting rooms, that certainly this is typical of what we have been receiving and, Mr. Vice-President, when I draw your attention to some of the clauses in this Bill, you will see the difficulty that we on this side have with the approach of the Government towards hurrying and bundling of legislation through these Houses.

The first thing that I would say is that this Bill is vague and very subjective and almost, in every single paragraph, requires every single issue to be debated in a court of law. One would assume that legislation like this which is intended for use particularly by the lay person, the manufacturers and the industrialists, should be written in layman's language so the lay person can understand it; it should be clear and straightforward.

When we look at what is happening, beginning with clause 4(1), we see that the room for interpretation is very, very wide. Specifically, I will move on from clause 4(1) to clause 5(1) which says:

> "Any act or practice, in the course of industrial or commercial activities, that causes, or is likely to cause, confusion with respect to another's enterprise or its activities . . ."

When I read that, and thinking about trademarks and so forth, it has a certain relevance, but when I cast my mind to the activities between Clico and Republic Bank—

Sen. Kuei Tung: I wonder if the hon. Senator will give way for one small question. I hear him talking about lay language and I am not too sure if I really appreciate what he is saying. Would he mind giving an example of where in the law he thinks it is legal—As an accountant, I have no difficulty in understanding the law. I am just wondering what language he is speaking about.

Sen. D. Montano: Very well, listen and I will tell you, because this language does not make any sense at all, when we are clearly talking about industrial issues. The language that is written here is so wide that it could in fact encompass the issues between Clico and Republic Bank. In that situation, it is quite clear that one party has caused confusion in the other's enterprise. Now which one could claim that allegation first, is another question. In other words, each one of them, I think, could make that claim under this paragraph and I think they will be quite right.

Hon. Persad-Bissessar: Thank you, Senator. Mr. Vice-President, I am seeking your guidance. If I am to understand it, I believe there are matters in the court with respect to Republic and Clico and I am not sure if the Senator is alleging that any of them are the subject of unfair practices. I am not sure.

5.35 p.m.

Mr. Vice-President: I would like to direct anyone making contributions to this or other legislation to refrain from reference to the Clico/Republic Bank issue until it is fully resolved. You may use other examples.

Sen. D. Montano: Very well, Mr. Vice-President. Certainly, if it is a matter in court, I do not intend to interfere with it. However, the issue is relatively straightforward in the sense that if one company begins to take over another, it will cause confusion in that other enterprise. The way this paragraph reads, the matter quite clearly falls within its ambit, and I do not think that is the intention at all.

Clause 6(1) states:

> "Any act or practice, in the course of industrial or commercial activities, that damages, or is likely to damage, the goodwill or reputation of another's enterprise ..."

There again, I have difficulty. If a newspaper or a television report makes a true statement that damages the reputation of another, it falls under this clause. In other words, if anyone publishes in a newspaper that nicotine contained in cigarettes is harmful to one's health and that people should not smoke, then the manufacturers of cigarettes can legitimately claim under this paragraph that the statement is damaging their goodwill or reputation. Goodwill itself is not defined. We have a general understanding of what it is but I think that it should be clarified.

In connection with clause 7, I heard the comments of the Minister about the consumer. I am not sure that this Bill is intended to deal with the consumer, but apparently it is. Some of the advertisements that we see on television relating to cigarettes and the consumption of alcohol could be interpreted as misleading. Certainly, in the cigarette commercials which we see on television, the posture of the persons associated with cigarettes is deemed as being "cool". As a parent, I would be inclined to feel that this type of advertising should not be permitted and would fall under clause 7. It is misleading children to assume that smoking cigarettes or drinking alcohol is cool or somehow "with it". I wonder if that is really the intent of this legislation.

In closing, Mr. Vice-President, clause 9(1) states:

"... and in a manner contrary to honest commercial practices ..."

Again, linking that with clause 4(1) where the same thing is referred to, I do find that the legislation is very vague. These are not just my comments. This legislation was passed to a number of persons who are likely to be using it. I solicited the comments of the individuals and what I have enunciated here is really a brief summary of the comments which came back to me. The users of this legislation are manufacturers and tradespersons and they find that the Bill does not give them sufficient guidance on what they should and should not be doing. The words are vague and unclear and it seems that no matter can be settled without the resolution or the interpretation of a judge or a court. I do not think it is good legal practice to set up a situation where every matter must be resolved by a court. It must be sufficiently clear that the citizens of the country can conform to the intent and the spirit of the law by being able to understand it fairly clearly.

I hope I have been able to draw some of these matters to your attention.

I thank you.

Sen. Diana Mahabir-Wyatt: Mr. Vice-President, I can see the need for this legislation and I certainly agree with the hon. Minister that we have to carry out the strictures of our international conventions and agreements. From that point of view I do applaud the legislation and take her point entirely, but I demur when it comes to the point about Angostura Bitters and Angostura disinfectant.

I also agree with her opening statement that what we are here to do is work which will result in peace, order and good governance. However, I have a fear, for some of the same reasons as Sen. Montano, that this particular legislation could lead to dissent and disorder in the business community. Quite apart from clause 4(1), which is a problem, and coming from the business community myself, I can see difficulties for many of the people with whom I deal, if in subclause (2), we say that "Any person...likely to be damaged by an act of unfair competition shall be entitled..." This is not even an act committed; it is one that is likely to be committed.

Hon. Persad-Bissessar: I can understand the Senator's concern, but perhaps she may look at it in the sense that she knows a person is manufacturing something in an unfair manner but he has all the boxes waiting in his warehouse, so the act has not occurred. One may get an injunction to stop it. It is in that sense that the damage is likely to occur so that there can be remedies prior to that. In civil law, as far as I understand it, there is a type of relief that a person can get known as a *quia timet* injunction. I think Sen. Daly can perhaps give the Senator details on that. It is where one fears something will happen. If, for example, someone fears that the police will lock him up on unlawful charges, he may be able to pre-empt it from happening. It is only in that sense, he would have a remedy. Of course, he would have the substantive matter with which to deal. I hope that assists her in some way.

Sen. D. Mahabir-Wyatt: Thank you, very much. I must say, Mr. Vice-President that I wish we had the same facility when it comes to domestic violence.

I do have some confusion with the word "confusion". I was not sure whether this was Trinidad confusion or Geneva intellectual, World Property Organization confusion. We may interpret confusion a little differently and I do not think it would be amiss if we had a less romantic approach to this Bill—that we had a little more in terms of definition.

The other point which worried me is in clause 6—and I hope the Minister can help me with this. It states:

"(1) Any act...or is likely to damage, the goodwill...regardless of whether such act...causes confusion".

5.45 p.m.

This again, in terms of the people with whom I am dealing on a daily basis, could cause confusion. People were not quite sure when I asked. I think Sen. Montano actually missed the point. This whole Bill is intended to be a commercial lawyer's dream and it is going to start a whole new industry in Trinidad and Tobago where people will try to sort out what is "contrary to honest business practices", and that is something "likely to damage the goodwill". Regardless of whether or not it does, I think I should go back to Nebraska myself.

The other one which really worries me, and which I was hoping that the Minister in her introduction would give us some more information on, is clause 9(3)(a), the words:

"...generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;".

How does one decide whether or not somebody is a person "within the circles that normally deal with that kind of information in question"? I can think of many applications where people would say that "I should have been in a circle", or "I thought I was in a circle". Once again, this causes some confusion in people's minds. If the Bill is going to be passed in the form that it is, I wish that we could at least get some definitions in there because it is going to be used by many persons in the business community.

I have nothing whatsoever against the legal profession and I am glad to see that finally we are doing something to be able to mop up the thousands of young lawyers that come out every year. It is an expensive proposition for persons in the business community and I hope that we can have some tightening up of some of it.

Thank you, Mr. Vice-President.

Sen. Martin Daly: Mr. Vice-President, this Bill produces yet another dilemma to the conscientious legislator. It really is getting extremely difficult to discharge one's duties in the Parliament and this Bill, in very simple terms, is going to show what the difficulty is. On the one hand, one has to pay due regard in considering what to do with this Bill; one has to pay due regard to the fact that Government with a capital "G" must carry out its international obligations. On the other hand, it is no fault of mine that this legislation which is certainly very new and

revolutionary, and really comes from jurisdictions other than those with which we are familiar, is presented to us on July 24, 1996 and we are told there is a September 26, 1996 deadline. So one has to try and make some sense of this.

Hon. Persad-Bissessar: Mr. Vice-President, the hon. Senator said the Bill was presented to you on July 24, 1996, I was under the impression it was circulated—

Sen. M. Daly: I stand corrected. The Bill was not presented to me, I should say it was presented in the Parliament and I am going to deal with that. What I am really leading up to is that it is a fundamental issue and I intend to spend a little time with it in the context of this Bill because it is an issue which this Government is missing.

It does not matter whether we got this Bill in May, June or July. What I am concerned about is that we are now debating this Bill on July 25; I accept it was not presented with a September 25 deadline. While I could go fairly blind with the patents and the trade marks legislation and the integrated circuits and all those sorts of things, because I know that there are precedents in countries with which we are familiar and they are restricted to a particular subject matter; I can go fairly blind with those and say; "I would not spend much time on it, let the Government comply with its international obligations" however, this is a very different creature.

There is clearly a split in this Government concerning the legislative process because on one hand, certain Members of the Government tell us that they thank everyone for their contributions, they welcome alternative suggestions and criticisms and they do accept amendments. On the other hand, we are sometimes told that this is the subject matter of a prior agreement, this is the subject matter of a treaty, this is the subject matter of an international obligation and we cannot change it. I have a lot of difficulty with that, Mr. Vice-President, and this Bill is a very good example of the problem.

When I read this for the first time, not being a specialist of intellectual property, I thought, what on earth is this? Any act or practice that will cause confusion is going for the first time in this jurisdiction and not in any of the jurisdictions with which we are familiar, apparently. Certainly, not in the United Kingdom, and I gathered from an informal talk that we had during the break, not in Australia, New Zealand or in any of the countries with which we are familiar. For the first time we are creating what we lawyers call "causes of action". That is an ability to sue another person. So for the first time we are introducing five or six completely new "causes of action" or ways in which to sue people and we are considering this two months before some deadline.

Now, it is no good for the side of the Government that does not tolerate criticism and equates criticism with denigration, saying we got the Bill in May. The point is that bills come all the time and in a part-time Parliament without any research facilities, no one here can pretend that they do not simply focus on the bills sequentially. One could give me a Bill in January but if the legislative programme is being hurried, I will not study that Bill until it is scheduled for debate. I cannot, because I will then have to leave the others in the line because we are a part-time Parliament and have no research assistants and absolutely no dialogue with the experts in the field.

My dilemma increased because really by accident, or perhaps by the wisdom of some of the persons who operate in the Parliament, I was able to have dialogue with someone who was not a lawyer who gave me a completely different outlook on this Bill and very nearly persuaded me, really I should just treat it the same way as the Patents Bill and the Trade Marks Bill and just let it go through. I certainly began to understand the necessity for this Bill in our liberalized environment and a number of practical, not legal points—if I want to debate law I go across the road—that really made a favourable impression on me. This says that all of us would benefit if, when bills such as this which we have to locate in our environment are sent to some kind of committee system such as the select committee where we can talk with the experts. Many times, if one had such a dialogue and the report came from the select committee, we may not have to debate the Bill at all because the various misgivings may be settled. I am not talking now about Administration of Justice Bills and bills of general application; I am talking now about specialists types of legislation such as this.

5.55 p.m.

So, my first inclination was, we cannot bring this into Trinidad and Tobago because there are no kinds of definitions here, we do not have the commercial background even in many practitioners, and certainly in many advocates who would have to deal with these matters before the court. We do not have a specialist judiciary, we do not have a commercial court, we do not have a chancery division. We cannot possibly have something this vague. Then purely by accident, or at any rate good hospitality, I was able to get a different perspective on this Bill, I emphasise, by someone who is not a lawyer, which took me to the other extreme to think, well really, I am fussing over nothing. So, I came back and I got a headache looking at it again; and then Mr. Vice-President, I started seeing the practical problems.

Sen. Montano certainly made one point which I do not think he missed. By the way, I should really congratulate him on getting out of Balisier House last Sunday in one piece, but that is another matter. *[Laughter]* Just to strike a lighter note. When I saw his picture, I was somewhat fearful for his safety. But anyway, that is another point.

I listened to Sen. Montano, and he took me back to my original position that this is too vague and uncertain and lacking in sufficient qualification. I am really struggling with this Mr. Vice-President, because he mentioned the word "newspaper". I have a particular interest in the media, and I began to think about this. Let us say we have a reporter—through a source, a whistle blower—who gets hold of secret information without the consent of the rightful holder, let us say a pharmaceutical manufacturer, that shows that there is a 50/50 chance that thalidomide causes birth defects.

I do not know, without careful study and without dialogue with the experts whether that newspaper which published that story, clearly in the public's interest, would be subject to successful litigation; I simply do not know. Of course, we would start to argue about whether the publishing of the article is an act or practice as opposed to a statement; whether a newspaper is a commercial activity. The best consideration I can give to a simple problem like that is that if I were a newspaper owner, I would be very concerned about this Bill because in a number of areas—take a simple example: I got hold of secret information which I ought to publish in the public interest, and I may run afoul of anyone of these clauses. I certainly would cause a great deal of confusion in the manufacturer's business.

Now, I know the experts would say that over time confusion in the area of intellectual property may have a specialized meaning, but, that specialized meaning or nothing like it has been placed in this Bill.

Then, it suddenly dawned on me—and I have not thought it out, Mr. Vice-President, because I do not care what the detractors of those of us who do our work in this Parliament say. We can only study these Bills, reasonably proximate to the day that they are going to be debated, because that is a cycle that is set up by life in a part-time Parliament. I know it applies to all of my colleagues on this Bench, that when you put aside time to look at a particular Bill, you can only put aside the time because you are pressed by the fact that the debate would be taking place soon. As it sometimes happens, colleagues consult each other about the technical points in the different fields; it is always with the debate being proximate. That is because of the type of Parliament we have.

So, it is completely barren and pejorative to say "you have had this Bill since May, therefore, you could have studied it since then". The real world does not work like that anymore. I suppose that in the real world of government and bureaucracies this Bill should have been brought a whole year ahead of the deadline instead of now; and in the real world of bureaucracies what happens is, just like with us, there are other things with more proximate dates that are competing for the bureaucrats' attention, or there are unpleasant things like general elections, getting in the way, or for whatever reason, one always has to put it off because of competing priorities.

So, if we are going to be mature and not childish, we would understand that some of the complaints that are being made about hurried legislation, and going too fast in certain new areas, are serious complaints that require mature consideration, and this Bill is a very good example.

I emphasize, I am not an intellectual property lawyer, but I have some experience in commercial law; I have some experience in the courts and interpreting things; and I am restricting myself to the one practical example that I gave, and I simply do not know where these five or six new causes of action are taking us. I simply do not know what their boundaries are.

Now, I appreciate that in the liberalized environment and, indeed, this is one of the points that was made to me; and really it would have been very nice if the dialogue I happened to have by accident could have been in committee. One of the points that was made to me, is that we cannot be too restrictive with the legislation because we simply do not know what unfair trade practices are going to hit us next. That certainly struck a chord with me, because I am concerned about the fact that the Third World is the dumping ground for a variety of things.

You cannot buy rohypnol in a drugstore here. It is banned in the United States of America because it facilitates date rapes. So, whoever has rohypnol in stock, it is here, and many other places, they are coming with it to dump it.

So, immediately, in relation to a point that was put to me by a non-lawyer, understand well, we need to have laws as wide as possible, and with as few restrictions as possible to catch someone who might be guilty of an unfair practice with rohypnol. So, I can sympathize with that. But then, I come back to my newspaper example and you find out this secret information and you want to publish it.

Mr. Vice-President, what really struck me as being fundamentally wrong about this Bill as good as its objectives are, allegedly it relates to unfair competition and to trade, business, industrial and commercial activities. But it is not really worded like that, if you look at it carefully. It is not really worded like that. Granted that the liability will arise and always will arise in the course of industrial and commercial activities and I have given one example how that could arise, but I do not think that anyone should brush aside the concerns which Members have about "confusion". Of course, "confusion" here does not mean in the Trinidad and Tobago sense. The point about that is that the boundaries of that word could be expanded in the courts, and take us into areas of liability. I do not know where we are going. This is a trip in the dark. It is so, for a variety of reasons which I have already tried to summarize: lack of time—I am not blaming anybody. It has been a bitter fight, but we have got some concessions about the times we sit here, and the conditions under which we sit. But, the point is, these are things that require very anxious consideration.

6.05 p.m.

You see, we have another problem. The more intellectual property lawyers and experts that advise the Government—and I do not say this with disrespect to any particular individual—the more the Bill is going to be slanted in favour of what they want for intellectual property regulation purposes. So there is no balance. All of Government's advice is one-sided, because the people with the specialist input are only seeing one objective, that is the protection of intellectual property. It is not their business—and I do not say it in any way critically—to consider what other impacts it will have in the society. That is our business. We cannot abdicate that business and should not be told that we must conduct that business on 48 hours notice or at some time that is negotiated when we get here, or in conditions that do not permit proper consideration of what we are doing.

As I say, if one is mature about these things; if something follows a well-known and traditional path, one is more likely to let it go by, particularly if one lacks the particular expertise, but one feels confident that the thing has been tried in jurisdictions that are familiar. I want to make it very clear that I am not suggesting that we must only follow the examples of jurisdictions with which we are familiar; I am not suggesting that. But I am going to point out again, in relation to my newspaper example, what concerns me.

When one borrows a legal concept from the United States of America—and I am going to stick with my newspaper example, and I dare say there are others who

will contribute to this debate who will be able to help us with this type of problem—the laws of defamation in the United States are much less restrictive than the laws of defamation in countries that have evolved out of the United Kingdom system. Now again, I am not an expert in first amendment rights either, but I dare say that if one locates this Bill in the United States context, then the first amendment rights of the United States constitution probably protect the reporter in the thalidomide example I have given, because there one is mixing, if you like—well I think I can say this because everyone here voted for more rum on a Sunday—rum and coconut water. They go together, because the first amendment rights blend or chase well with this type of legislation.

We have more restrictive defamation laws and I simply do not know if we are mixing rum and kerosene. So that legitimate activities of a newspaper which is protected by the first amendment in the United States will not collide with this United States-type of unfair competition law. But here, I do not know if there is going to be such a collision at first blush, and I give great credit to Sen. Montano—trouble concentrates his mind wonderfully—for making me think of this, because I really had, kind of, started to think, "well, I do not really have to share my thoughts with Members about this". Then I began to see what it was that was troubling me.

I dare say that if one studied this over time; if one had research assistants or if one could research it oneself, one would see many similar difficulties because we are departing from the fundamental concepts of litigation, as we know them in the intellectual property field. So it did strike me eventually what my misgiving was about this legislation. It may be completely wrong, and I will share it. Of course, the difficulty is, if there is any validity in any of the points we make, we then have to scramble amendments quickly, and may make all kinds of mistakes, particularly if none of us is an expert in the particular field, and I keep saying that this is not the way to pass important legislation.

I am focussing on this because it is something completely new and untried in our jurisdiction and we cannot afford to upset traditional things like proper commentary in newspapers, and so on, without proper thought. We cannot afford to make those kinds of mistakes and we cannot afford to be told, we have to pass this legislation by "x" date—and maybe order dinner—it is like telling the jury, "Well, you know, go into the room and when you have a verdict, come out. So we are staying here tonight; dinner; midnight; we come every day, because we have to pass this Bill. And we have these kinds of things to be concerned about.

I want to share my confusion. In clause 5(1), you get this very broad definition about causing confusion with respect to another's enterprise or its activities, and I have given the newspaper example. I want everyone to keep that in mind. But then clause 5(2) reads as follows:

"Confusion may, in particular, be caused with respect to any of the following:"

Now here again we have the dilemma. If the damaging confusion that we want to contain concerns trademarks, trade names, business identifier, appearance, presentation, celebrity, and so on, let us say so, and then let us find some other phrase—and again it is my lack of expertise in the area—that says, "other forms of intellectual property". I do not know if that will solve the problem, but I do not like the idea that "confusion" is not restricted to these things here or other forms of intellectual property. I do not like that open window because I do not know what unpleasant breeze is going to come through there.

I appreciate that equally the intellectual property lawyers will say, "Well, do not confine ‘confusion’ only to those things, because—and again, I do not care; I show my lack of scientific background—we may get to a point where a trademark is not something that is a hard copy; it might be some kind of laser or intangible thing—star dust; I do not know what the future holds for us. So that if you limit it to trademarks—and as we know them now they are hard copies—and then trademarks become star dust, they are not covered here. So you need to have some other phrase to tie up the whole class or species that you are trying to protect.

The problem is that clause 5(2) leaves it too wide open, although it points "confusion" in a certain direction and it derives from a certain understanding of passing off, and so on, and the common law. That is so in relation to each one of these clauses. The first subclause is a general characterization, usually with a target, agreed: "the goodwill or reputation;” “enterprise or its activities", and then some kind of hint of what we are talking about.

So that leads me to what I think is the difficulty. For the moment, unless and until we have a proper examination of whether this law which is derived from other jurisdictions that have other types of laws, so that we are comparing apples with apples, we cannot pass it just like that. It does not matter if the intellectual property people tell us this is what we should have. They do not know what our legal principles and laws are, outside of the intellectual property field. I do not suppose they have even considered it. If it is US people advising us, they might assume we have first amendment rights as in the United States. They might make

that assumption. They might not even bother to enquire, because their only interest is in protecting their sectoral interest. There is nothing wrong with that. But that is why, when we get into the Parliament, a wide range of interests must comment, and we have time to comment on the legislation so that we can locate this legislation, particularly something that is new and fundamental like this, in our particular context.

6.15 p.m.

What is wrong with this, and I certainly hope that the Government will take a serious look at it, is that the ability to sue for these acts of unfair competition should be restricted to a competitive relationship or a consumer relationship, at least, as I see it. It cannot be simply any person damaged or likely to be damaged by an act of unfair competition. I would prefer to see—at least for the moment—that the plaintiff and defendant, that is the person bringing the action and the person on the receiving end of the action, as a precondition to this type of litigation, the plaintiff and the defendant are in a competitive relationship or the plaintiff and the defendant are in the relationship of supplier and consumer. Of course, I can understand that if one caused confusion in a relationship of that type then there should be no holds barred.

I cannot accept that something written or something said or a commentary about a hostile takeover for example, could be the subject matter of a lawsuit under this Bill because I do not know where it will stop. I simply do not know where it is taking us, and that is because the legislation is one-sided. The persons who have given the advice over this have one particular objective. I am not, to use the fashionable word, "denigrating" their objective but we have to consider all of these things very carefully.

I certainly have not had time to think it out; I certainly have not had the time to draft it, but it seems to me that one ought not to be able to bring litigation under this Bill unless—there may be other types of relationships that are important to protect—one is in a competitive relationship or in the relationship of consumer and supplier, otherwise all kinds of indirect causes of confusion or all kinds of indirect use of secret information may be caught by this.

Clearly, it is not right that one manufacturer of a pharmaceutical should steal another's idea and use it to produce a product of his own and make a profit out of it. I have a difficulty with that. But as a supplier, I would have a problem with a reporter getting hold of the secret information since the reporter is not in any

competitive relationship with the person without whose consent he has got the confidential information, nor is he in a direct relationship; it is indirect. And, without being so boring about this, a fundamental premise of litigation under the British system as we know it, is that the person who is likely to be caught by the litigation must be somewhere in the contemplation of the person who has done the wrong.

I believe that another thing that is wrong with this, no doubt, because it derived from other jurisdictions, is that it does not sit well with what we call the "neighbour" principle, that is, one can only sue someone for a wrongful act when the act or omission, which is when they did it, on an objective test, one must have had it in one's contemplation. I believe that is another fundamental principle of our law from which we may be departing here.

If the law is so generally framed, lawsuits that would traditionally have been considered too indirect or the circumstances or the relationship to the parties which would have been considered too indirect are now caught by this legislation and for want of a better word, justifiable activity, such as the example I have given about the reporter, might be caught by this. Therefore, I sincerely hope—I know we are going to be told there is no time and we have to recess and so forth—that a serious look can be taken of this legislation with the view to harmonizing it with two of the principles that operate in our jurisdiction to which I have referred.

I am really concerned about it and I do not think that it is sufficient to say one has been damaged indirectly by some act of unfair competition because I do not know where that is going to stop. If you are my competitor, and I commit an act of unfair competition, under here I cannot be heard to say, I cannot be liable to you. But you may have some completely indirect relationship and I have given one example, and I dare say given time I may be able to think of others, or be stimulated to think of others as Sen. Montano helped me with this— and all kinds of indirect relationships may be caught under this Bill.

Finally, I was able to articulate what was troubling me. It is not really that the word 'confusion' is too wide if one locates it in a proper context, but all of these things are not sufficiently "pinged" to their context, which is really to prevent consumers and entrepreneurs of whatever kind. It is really designed to stop industrialists, commercial men and consumers from being hurt by persons in a proximate relationship with them. That is the problem I have with this.

Mr. Vice-President, if I am even half-way right about this, then we are now taking litigation in Trinidad and Tobago into a completely new and probably

unintended area because the assumptions that underlie this Bill are assumptions about another type of legal system. For instance, if we say that people in Switzerland know about this type of legislation, they probably have something similar to the French code. We do not operate under a Napoleonic code so it is like mixing water and kerosene.

I am very conscious of the fact that I am taking some time over it but the Lord is good and He sometimes gives you a very good example, particularly to the irreligious. This is a perfect example of why this Parliament cannot be scorned. None of us who sit here, not John Smith or Jane Smith who sit here—that is why Parliament as a scrutinizing body cannot be scorned. These are the things we have to consider. This may be the greatest intellectual property legislation in the world, but does it serve our society? Does it collide with other rules in our society? The way we work is wrong because when we raise queries about these things—and this underlines my point about direct and indirect. I have a direct relationship with the Minister presenting the Bill, I have no relationship at all with her expert advisers. I am just giving an example. We have a direct relationship; we are both Parliamentarians and we have to engage in dialogue, but I have no direct relationship with the advisers. That is what a committee gives and that is the benefit of the committee system. So that one can enter into a dialogue and have the type of experiences that I have had in committees before.

We had a select committee about certain aspects of the Constitution in the last Parliament which was very helpful. We had a select committee about the stock exchange legislation which was very helpful. Many of us came with pre-conceived ideas which the experts were able to break down and reshape and in some cases we were able to show the experts issues that concerned them.

I make no apology for continuing to say that attempting to scrutinize and criticize legislation is not something that can be scorned. It is not activity for which we can allot a small amount of time and it is not an activity about which we can be unrealistic. We had an experience with the last Government. They were in such a hurry that while they were still debating the BWIA divestment, they went ahead and published to a regulatory authority in the United States, that the legislation had been passed. The person who was most vociferous about that, perhaps, has a different view about it now. That is the type of difficulty we have and I personally will not accept that I must accept something either because it has been the subject of an agreement before it is brought to this Parliament or because experts have advised us on it.

When we examine this legislation, we examine it on behalf of the people. We hear all these romantic cries about, "We are here on the people's business", so it does not matter if we sit on the floor, as long as we do the people's business. Of course, if we do the people's business badly, this Bill gives us a prime example of what might happen. I really cannot say that I am right about these examples, but if we have to do this sitting on the floor, without access to books, sure, we can say we are doing the people's business. But we are only fooling the people because we are not examining legislation properly and we are not discharging our duty.

6.25 p.m.

I repeat, it is smug to say that we are about the people's business, if this legislation which is so fundamentally new and different is not the subject of a proper scrutiny, including the type of dialogue that you have in a committee, where you can be advised by experts who may be able to explain to you that you are completely wrong about something. But the point is, these are legitimate concerns which we have to raise and they have to be examined.

So that, frankly, Mr. Vice-President, as much as I support the general intent of this Bill and the modernization of the intellectual property law, I have a fundamental misgiving which is, that it goes further in its present form than it needs to and it is going to introduce litigation between persons who are not in a competitive relationship; who are not in a relation of consumer or supplier nor any other type of trade or supply or consumer relationship that needs protecting.

Thank you Sir. *[Desk thumping]*

Motion made and question proposed, That the Senate do now adjourn to Tuesday, July 30, 1996 at 1.30 p.m. [Hon. W. Mark]

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 6.28 p.m.