

THE  
**PARLIAMENTARY DEBATES**

**OFFICIAL REPORT**

IN THE FIRST SESSION OF THE FIFTH PARLIAMENT OF THE REPUBLIC OF  
TRINIDAD AND TOBAGO WHICH OPENED ON  
NOVEMBER 27, 1995

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SESSION 1995 - 1996

VOLUME 4

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**SENATE**

*Tuesday, July 30, 1996*

The Senate met at 1.33 p.m.

**PRAYERS**

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

**CONDOLENCES**

**(MR. EVERARD DEAN)**

**Mr. Vice-President:** Hon. Senators, it is with a deep sense of sadness that I refer to the sudden passing of the former Sen. Everard Dean who served as a Senator from 1991—1995 inclusive.

Mr. Dean was a man who never lost his common touch, and he was loved by all. It is difficult in times like these to find words to console those who are left to mourn his loss.

I extend to his wife, children and other bereaved relatives and friends my heartfelt sympathy on this sad occasion. May his soul rest in peace.

The floor is now opened to anyone who would like to pay tribute to the former Senator.

**The Minister of Public Administration and Information (Sen. The Hon. Wade Mark):** Mr. Vice-President, we too learnt today with much grief and sadness of the sudden passing of our former Sen. Everard Dean.

Mr. Dean served with distinction during the term 1991—1995 as a Member of the Independent Benches. He was also a member of long-standing of the Credit Union Movement in Trinidad and Tobago. In fact, he became a member of the Trinidad Cement Employees Credit Union Co-operative Society some time in 1954 and he was elected President of that said credit union in 1974.

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He was also President of the Victoria Chapter of Credit Unions and a member of the Board of Directors of the Co-operative Credit Union League of Trinidad and Tobago from 1972, serving as Assistant Secretary, Vice-President, as well as President.

Mr. Dean was also a member of the Board of Directors of the Central Regional Chapter of Credit Unions where he served as Vice-President for two years. He was also President of the Board of Directors of the Caribbean Federation of Credit Unions and served in that capacity for some six years. In addition, the former Senator had been a member of the said organization since 1979. He was also a foundation director of CUNA Caribbean Insurance Society Limited, the insurance company which was formed exclusively to service co-operatives in Trinidad and Tobago.

In 1985, Mr. Dean was elected to the Membership Council of the World Council of Credit Unions. In 1989, he was the recipient of the Humming Bird Medal for devoted service to Trinidad and Tobago in the field of promoting national welfare and community spirit through the credit union development process.

Mr. Everard Dean led a very distinguished career and served his credit union, his family and his country well. We on the Government Benches are extremely saddened by his sudden passing and extend our deepest condolences to his bereaved family.

May he rest in peace.

**1.40 p.m.**

**Sen. Orville London:** Mr. Vice-President, on behalf of the Senators of the Opposition, I wish to associate myself with the sentiments expressed by you and Sen. Mark on the untimely passing of former Sen. Everard Dean.

We offer our sincerest condolences to his family, his friends, and his associates in the co-operative and credit union movements.

I am certain, that despite his passing, his life and his career would continue to serve as an inspiration to the citizens of this country.

Thank you.

**Sen. Prof. John Spence:** Mr. Vice-President, it is indeed a shock to me because I was not aware of the former Sen. Dean's passing until I heard it announced by you a few minutes ago.

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Just two weeks ago he contacted me and came to my office to discuss, with a visiting credit union person, a matter dealing with cocoa.

I first came into contact with Everard Dean when we sat on a committee on agriculture during the term of office of the NAR government. Of course, we became close colleagues over the four years that we both sat as Independent Senators.

It certainly is a great shock to me. On behalf of the Independent Senators, I would like to extend our sympathy to his family. He was a very humble person and it is clear that he was always well-prepared for the presentations which he made here. He took his contributions to the Senate very seriously and I am sure we will all miss his presence, particularly the credit union movement.

Thank you.

**Mr. Vice-President:** Hon. Members, I have directed the Clerk of the Senate to send a suitable condolence card to the bereaved relatives on behalf of Members of the Senate. At this stage I ask that the Senate stand in silence for one minute.

*The Senate observed one minute's silence.*

#### LEAVE OF ABSENCE

**Mr. Vice-President:** Hon. Senators, I have granted leave of absence to Sen. Dr. Daphne Phillips, Sen. Finbar Gangar, and Sen. Prof. Kenneth Ramchand from today's sitting of the Senate. I have also granted leave to Sen. Deborah Moore-Miggins to be absent from sittings of the Senate from July 29 to August 12, 1996.

#### SENATORS' APPOINTMENTS

**Mr. Vice-President:** I have been advised by his Excellency the Acting President that he has appointed Mrs. Elizabeth Mohammed-Ali as a temporary Senator with effect from July 30, 1996 and continuing during the absence from Trinidad and Tobago of Sen. Dr. The Hon. Daphne Phillips.

I have also been advised that he has appointed Mr. Vincent Cabrera to be a temporary Senator with effect from July 30, 1996 and continuing during the absence from Trinidad and Tobago of Sen. Finbar Gangar.

I am further advised, that he has appointed Mr. Carlton A. D. Callendar to be a temporary Senator with effect from July 30, 1996 and continuing during the absence from Trinidad and Tobago of Sen. Deborah Moore-Miggins.

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**OATH OF ALLEGIANCE**

*The following Senators took and subscribed the Oath of Allegiance as required by law: Elizabeth Mohammed-Ali, Vincent Cabrera, Carlton A.D. Callendar.*

**PAPERS LAID**

1. Annual audited accounts of Trinidad and Tobago Methanol Company Limited for the year ended December 31, 1992. [*The Minister of Public Administration and Information (Sen. The Hon. Wade Mark)*]
2. Annual audited accounts of Trinidad and Tobago Methanol Company Limited for the year ended December 31, 1993. [*Hon. W. Mark*]
3. Annual audited accounts of Trinidad and Tobago Methanol Company Limited for the year ended December 31, 1994. [*Hon. W. Mark*]
4. Annual audited accounts of Trinidad and Tobago Methanol Company Limited for the year ended December 31, 1995. [*Hon. W. Mark*]
5. Annual audited accounts of Telecommunications Services of Trinidad and Tobago Limited for the year ended March 31, 1996. [*Hon. W. Mark*]
6. Report of the Supervisor of Insurance for the year ended December 31, 1994. [*Hon. W. Mark*]
7. The Matrimonial Causes (Amdt.) Rules, 1996. [*Hon. W. Mark*]
8. The Matrimonial Causes (Amdt.) (No. 2) Rules, 1996. [*Hon. W. Mark*]
9. Eighteenth Annual Report of the Ombudsman for the period January 1 to December 31, 1995. [*Hon. W. Mark*]
10. Report of the Auditor General on the accounts of the Public Library of Trinidad for the year ended December 31, 1993. [*The Minister of Finance (Sen. The Hon. Brian Kuei Tung)*]
11. Report of the Auditor General on the accounts of the Public Library of Trinidad for the year ended December 31, 1994. [*Hon. B. Kuei Tung*]
12. Report of the Auditor General on the public accounts of the Republic of Trinidad and Tobago for the year ended December 31, 1995 and on other selected audit activities. [*Hon. B. Kuei Tung*]
13. The Weights and Measures (Amdt.) Regulations, 1996. [*Hon. B. Kuei Tung*]

*Copyright Bill*

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**1.50 p.m.**

**COPYRIGHT BILL**

Bill to make provision in respect of copyright and neighbouring rights, in substitution for the Copyright Act, 1985, and for related purposes [*The Minister of Legal Affairs*]; read the first time.

*Motion made*, That the next stage of the Bill be taken at the next sitting of the Senate. [*Hon. W. Mark*].

*Question put and agreed to.*

**PROTECTION AGAINST UNFAIR COMPETITION BILL**

[SECOND DAY]

*Order read for resuming adjourned debate on question* [July 25, 1996].

That the Bill be now read a second time.

*Question again proposed.*

**Sen. Prof. John Spence:** Mr. Vice-President, my contribution is very brief. It is just to support a proposal that has been made by Sen. Daly for a select committee. There is no doubt that this Bill represents movement into a new area for Trinidad and Tobago. I think it is a most important area, because I am sure that there are a number of issues that would not have been foreseen which will arise from a more global approach and, therefore, from which we would need protection. For example, reading the amendments proposed by Sen. Daly, on the face of it, it would seem to be useful to limit the scope of the Bill in this way, but on the other hand, how do we deal with the situation where a conglomerate which had a number of different subsidiary companies, one of which may not be directly in competition with another one but which the parent company has an interest in? Is that a competitor?

So I do not honestly think that we can deal with it in this way. I believe that if we all put our minds to it, I do not think it need necessarily take a very long time. I think what it needs is for Members of the Senate who are put on the select committee to meet with the experts in the field who can explain to us some of the issues that are arising; they can react to amendments such as the one that Sen. Daly has put in, and then we can come to a conclusion. It would seem to me that it would be possible, if we are so inclined, to finish this exercise by next week, so that we need not postpone the passage of the Bill in the Senate for more than a

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week. I do not think it should be a long, drawn-out affair. I do not see why we cannot, in one session in the morning or in an afternoon, perhaps, where we might go on later, complete these deliberations. Once this has been done, it seems to me we would have a much better Bill and we would be able to address all the issues.

I certainly think we need the protection and I do not think that limiting the protection is necessarily the way to achieve that. That is my proposal.

Thank you, Mr. Vice-President.

**Sen. Prof. Julian Kenny:** Mr. Vice-President, this Bill has two words in it, confusion and misleading. I would not suggest for a minute that the Government confuses or deliberately misleads, but I have become very, very confused with legislative programmes. We are going through many, many Bills and there is already a large volume of legislation which has not been proclaimed. What confused me recently was the alacrity with which the Government appears to have made a decision to acquire the Naipaul house in St. James, something which might more properly have been done by a national trust, had it been proclaimed.

When I talk about being misled, about six months ago I brought a Motion on the adjournment of the Senate concerning the proclamation of the National Trust Act and the Government explained that they were holding discussions with Citizens for Conservation. That was six months ago. I have even spoken with some members of the Citizens for Conservation and I got the impression that the discussions had been rather superficial and we do not seem to be any farther ahead.

So when I say the Bill is about confusion and is misleading, I am confused and misled and I find myself in the position today of being given some research material which I cannot possibly read in the Senate to arrive at a position on this Bill. So I urge the Government to consider the suggestion made for a select committee on this matter so that we can have a little more time to read the additional legal material; so that the select committee can, in fact, meet with the technical people and have the matter completed within a reasonable time.

Thank you, Mr. Vice-President.

**Sen. Rev. Daniel Teelucksingh:** Mr. Vice-President, in the Explanatory Note at the beginning of the Bill reads: "This Bill seeks to introduce legislation..." It means that we have had no legislation dealing with this particular matter. I feel very troubled and disturbed because our industrial and commercial environments have always included investors, both local and foreign. What has happened over

the years? That is the question that I will ask. Where was this important piece of legislation over the years, particularly when local businesses needed protection? I think it is tragic that indigenous businesses and manufacturing concerns struggled in that jungle where the law was survival of the fittest and where might was right.

The question I would ask is: Why have past administrations and even ourselves today, been prodded only by international conventions and agreements? Where was the local initiative over the years?

**2.00 p.m.**

I feel very sad that companies like Dunlop and similar indigenous industries and companies have almost disappeared from the scene. Small industries and manufacturing organizations have disappeared from the scene because there was no protection. I am very worried. Today I am hearing about the agreement called TRIPS, and more agreements. Why have so much of our legislation and initiatives been foreign inspired? I feel very disappointed about how we allow ourselves to be led. I do not believe that this piece of legislation is the initiative—is it the Government or the people of Trinidad and Tobago or have we been inspired by some convention? I am worried about that. Maybe, we need to clear the air on this. Have we been pushed by someone else or some foreign agency in order that we can have this? The question we have been asking is: How much will this small nation be protected against unfair competition and what are the stakes?

Mr. Vice-President, I personally believe that the intention and the purpose of this Bill is commendable because I see this Bill as a sort of ethics Bill for the community. It is a Bill that has to do with morality in business—at least one aspect of it—and in that sense I think that the Bill is good. I have a problem with clause 4 (1) which reads:

“In addition to the acts and practices....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.”

I ask the hon. Minister, to tell us in his response, if there is any authority which will be responsible for monitoring and dealing with allegations and complaints. I am not seeing that in the Bill.

Then, there is subclause (2) which states:

“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 of Trinidad and Tobago.”

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I have two questions: “Any person damaged or likely to be damaged by an act of unfair competition...”, I remember the hon. Minister referring to “protection for the consumer”; I like the Bill because of that. The question is: Can we handle this? What can the consumer say? It is happening now in Trinidad and Tobago, you go to the grocery and there are foodstuff being sold with the expiry date being 1994 or 1995.

I remember raising this matter in the Senate in 1994 or 1995, and a Minister of government told me—and I still remember it—why do you not speak to the grocery owner, the man who runs the business? It seems as though that law still operates. If we are saying a Bill like this is to protect the consumer—there are vitamin tablets, there are foodstuff in the groceries that have been imported, and the dates are there—I do not think that the stamp can be removed—but they are all expired goods. We are asking whether a Bill like this would protect consumers. Who is going to monitor the quality, quantity and characteristics of products? Who is going to talk about unfair competition when there are imported products that have long passed their expiry dates but because of brand names they are still being sold? They primarily come from North America.

Then there are similar products being manufactured in Trinidad and Tobago. Things made in 1995 but because they are imported under popular brand names people tend to go for them than for products made in Trinidad and Tobago possibly, in June 1996. Is that not a type of unfair competition? Both parties will be hurt: the consumer and the local manufacturer. Is there a complaints authority? I would like the hon. Minister to answer that question.

I strongly suggest that we defer this Bill for about two weeks and in this sense, I strongly support the suggestion that there should be a joint select committee to look at this Bill again. Since this is such an important piece of legislation, as it is brand new for us, although we have experience and we know of our disadvantages all along the line, it will not hurt if we delay the passage of this Bill today.

Mr. Vice-President, I thank you very much.

**Sen. Dr. Eric St. Cyr:** Mr. Vice-President, as I seek to make a few remarks, I begin by reminding Senators that for better or for worse, we have opted as a country, to shift policy from an inward-looking perspective, which we have pursued for about three decades, to a more open international thrust. In that context a piece of legislation such as this, has to be part of the general package.



The concerns I heard from Senators on this side, I would make bold to suggest, it is not that anyone thinks that we should not do this but simply that we must be clear on what we are doing to ensure that the measures in the Bill are workable, practicable and in our own interest.

I have a few detailed comments and a couple general points I would like to make. It seems to me that the clauses are very general and I think the word “vague” was used by one of the earlier speakers. A great deal of judgment will be left to the courts whenever matters arise and I hope that since these matters would be in the civil courts, perhaps, a special court should be dedicated to hear these matters so that over a period of time some consistency would be developed in interpreting matters which come up under this Bill. We should dedicate a special court, not exclusively for these matters, but matters coming up under this Bill should all go to the same court.

I also heard comments suggesting that the boundaries which must be applied to matters which could be raised under this Bill are far from clear. The concern was expressed that we could spill over into areas which are not intended to be covered by this Bill. I hope, when we come to the committee stage, we could apply our minds to seeing how best we could define those boundaries so that the purpose of this Bill is not perverted.

### **2.10 p.m.**

On a general point, I have a concern about the “operationability” of this Bill, and until we start seeing some concrete cases that would help us to say that, yes, this matter properly relates here, and that matter does not, I am afraid that, for some time, we would want to be cautious as we define these matters.

I just want to make a general comment about the practice of democracy. Some time ago, I referred to the doctrine of the mandate and I argued that the way we choose a government is that we go to an election, and the party that commands the majority is invited to form the government. If there is no Parliament in existence, by definition, there is no government—all we have is a caretaker government. The issue I want to allude to, today, is the threat to the democratic system of Cabinet dictatorship. I do not mean this unkindly, and I do not mean it to refer to any particular Cabinet. But it is one of the difficulties to which all democratic systems, such as the one in which we operate are exposed, as business and commercial life becomes increasingly complex, and legislative bodies are on a part-time basis with insufficient time, insufficient backup facilities, and quite frankly, insufficient expertise within the Parliament itself.

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That means that a government discharging its rightful responsibilities to govern, lead and move the country in the direction which the country must go, and for which the government may have a mandate, on the one hand is anxious to press on with its programme. On the other hand, the Parliament carries the responsibility for the legislation that we pass; and on reflection, Mr. Vice-President, I am beginning to wonder whether we all are conscious of the tremendous responsibility which falls on our shoulders.

We determine things like whether capital punishment is carried out, or not—in other words, whether that piece of legislation is on our law books, or not. In other words, we could determine things like life or death. This is very, very serious business. To be put in a position where one has to agree, or approve, when one is not really comfortable, I think, is not giving due regard to the responsibilities that we all hold.

While on the one hand, I know the complexities, the technical details, would prevent an amateur Parliament from being *au courant* with the Bill and would cause each and every one of us on our own to make an exact technically based judgment, I do think that there should be a mechanism by which this could be dealt with. Sen. Daly's suggestion, last time we met, was that there should be a committee system of some form, where the technical advisers could meet with a committee of the Parliament with adequate time and opportunity for informal detailed exchange, and people could become assured that what we are doing really has a good, firm technical base, and we could be more comfortable in doing this.

What I am putting on the table, today, Mr. Vice-President, is that we want to guard ourselves against this terrible danger of, for want of a better word, I use the handle "Cabinet dictatorship" in the legislative process, and I am sure that the Government would not wish to come over in that light. I am making a plea for the Government, anxious to discharge its responsibilities, not viewing or regarding those who have not yet come to the position where they are happy with a measure from being thought of in the way of being obstructionist or opposing.

With those few remarks, Mr. Vice-President, I would be happy to support this measure, though I would, myself, at this point really prefer to see some of the detailed issues raised dealt with to my own personal satisfaction.

I thank you, Mr. Vice-President.

**Mr. Vice-President:** Sen. Mannelle, were you trying to catch my attention?

**Sen. Elizabeth Mannelle:** Mr. Vice-President, this Bill deals with unfair competition. The essence of the law of unfair competition is that competition between rivals must be fairly and honestly conducted. The Bill is not meant to prevent competition, as I understand it, or even exaggeration of one's company's products with respect to another. Indeed, if competition drives a business to ruin, then that is not cause for protection. The Bill is meant to restrain dealings based on deceit, dishonesty, and fraudulent competition.

Generally, in order for there to be unfair competition, there must be some sort of competition. In reading this Bill I did not really get the sense that the Bill is trying to restrain competition between parties which are competing against each other. It seems that it is quite broadly worded and, indeed, as a number of Members have pointed out, is quite vague in certain respects.

I would like to say that, after speaking with a couple of people in the business sector, there is a concern that once any sort of Act is in place, businesses must be able to plan their marketing activities and their business practices with some degree of certainty and understanding as to what the repercussions would be, if they run afoul of the law. As this Bill is drafted and presented to us, it does not give the business sector that level of certainty they require.

**2.20 p.m.**

I would start with clause 4. I believe a number of Senators, including my colleagues in the Opposition and on the Independent Benches, have expressed some concern with clause 4 and I have to support their concerns. I do not know what "an act or practice that is contrary to honest practices" means. Is there some sort of precedent which the Minister of Legal Affairs can share with us so that we can be enlightened as to what sort of acts are really meant to be captured by this phrase "contrary to honest practices"?

The following clause 5(1) 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 this I was confused myself, and I know I was not the only one. I did some research with respect to American law because I believe this Bill, in part, is based on some aspects of US law. I came upon a principle which is enshrined in Florida law, that the "confusion" that unfair competition is meant to prohibit is

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confusion as to the source of products or confusion which is likely to lead the public to believe that persons and products are in some way connected when they are not.

The Minister of Legal Affairs referred, in her presentation, to Angostura Bitters and a company with a disinfectant called Angostura. That sort of confusion, where one is trying to make an association between a disinfectant and an established product, is the type of confusion which unfair competition is meant to prohibit. That is not clear from this clause. This clause says—

"...confusion with respect to another's enterprise or its activities..."

and it seems to cover everything under the sun. Indeed, I think it is so vague and broad that it may run afoul of a principle that is enshrined in US law which deals with violation of due process. If a law is so vague then one can argue, under US law, that it is unconstitutional. One cannot comply with a law if it is too vague or broad so that one cannot understand what one is supposed to do. *[Interruption]* I understand we operate under Trinidad law, but I am just sharing that point.

Another point is that the provisions are so broad that they may tend to include activities of the media or even advertising agencies which activities clearly are not supposed to be covered by an unfair competition law. I would like to bring the attention of this Senate to an article in the *Newsday* of July 29, 1994, on page 8, in which the reporter mentions that with respect to the definition of commercial activity—

"...every newspaper in this country is a 'commercial activity' and would therefore be banned from publishing anything that the Government deemed to be 'secret'."

The article was referring specifically to clause 9. I think to clearly establish that this Protection Against Unfair Competition Bill is not meant to apply to publishers, broadcasters or advertising agencies, some sort of provision should be included. Again, I found an example which could be helpful. It is from Florida law. Florida's Unfair and Deceptive Trade Practices Act states that the Act shall not apply to a publisher, broadcaster, printer or other person engaged in the dissemination of information or the reproduction of printed matter insofar as the information or matter has been disseminated or reproduced on behalf of others without actual knowledge that it violates the Act.

I recommend that Government consider having some sort of limitation in this Bill so that it does not apply to publishers, broadcasters and the like.

I also suggest that the provision dealing with secret information, clause 9, should be clarified to state that this sort of secret information is not the type of government information about which the reporter in the *Newsday* was concerned. The secret information is secret trade information that a company would want to keep from its competitors; that is what we are trying to deal with and with good reason. It should be clear that is the only trade information we are trying to deal with.

My other main concern is that the Bill's only form of penalty or redress is in clause 4(2) which states:

"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 of Trinidad and Tobago."

That is very nice but it is not much help to the honest entrepreneurs to whom the Minister referred in her opening. The honest entrepreneurs, and I know a few, do not have money to go to court to seek to get some civil remedy. The honest entrepreneur is trying to run his or her business. If this Bill is really to help the honest entrepreneur, then I would have liked to see some sort of non-judicial remedy. Sen. Teelucksingh referred to the enforcers or monitors who are really to keep track or ensure that companies do not run afoul of this Bill.

I would now share with this Senate, the system under the US law of administrative remedies. I believe this may be helpful to the Minister of Legal Affairs and the Minister of Trade in determining how we are going to ensure that this Bill is really effective and really helps honest entrepreneurs and small business people.

The Federal Trade Commission (FTC) is a body that is empowered and, in fact, directed to prevent persons and corporations from using unfair methods of competition that affect commerce and also unfair and deceptive practices with respect to commerce.

I am not suggesting that we create a whole new bureaucracy or system, but it would be helpful if some official or authority assigned to the Ministry of Trade or Consumer Affairs or to some other ministry, has the power to initiate action against companies that are violating this Act or to represent consumers or the public with respect to activities that run afoul of the Act.

Such a non-judicial body could also be used in the anti-trust area. I recall that the Minister mentioned in her presentation that she is looking into the anti-trust area with respect to restrictive business practices. I think it would be a good

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opportunity within unfair competition and within anti-trust to have some sort of administrative remedy.

My final point is that in addition to the civil remedies of law and even the administrative system, to give some real teeth to unfair competition law we should have some penalty—a fine of some sort—that a company would have to pay if it runs afoul of this law. I think that would certainly keep people on their toes and ensure that the system we are trying to put in place really works effectively.

I could think of many other things to say about this Bill but it would probably take too much time and I may be accused of trying to rewrite the Bill. So, I to support Sen. Prof. John Spence's request that this Bill should perhaps go to some sort of joint select committee so that we can discuss a few more ideas.

Thank you.

**The Minister of Legal Affairs (Hon. Kamla Persad-Bissessar):** Mr. Vice-President, I would use this opportunity to thank the hon. Senators for their recommendations and suggestions with respect to the Bill under debate at this time.

In closing, I would make some comments on both the general and specific criticisms that have been made about this Bill, and hopefully, I would be able to allay some of the fears and concerns that have been raised by hon. Senators in this Senate.

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

There were some general criticisms. Sen. Daly spoke about the fact that Parliament sits on a part-time basis and does not automatically send all Bills to be considered firstly by select committees. He spoke about the lack of research or expert assistance in respect of any Bill which is brought to the Senate. There were some general comments about the workings of our parliamentary system and the fact that the Senators are sitting on a part-time basis without any assistance.

With respect to the suggestion that all Bills go to committees, this Government has made efforts in terms of the setting up of joint select committees. Several Senators are Members of the Joint Select Committee that I chair, that was set up to consider the opinions of the public with respect to the Ombudsman. That committee has made history in Trinidad and Tobago in the sense that it is the first time that a joint select committee has gone out to the public, outside of the Parliament to solicit views from members of the public.

Another joint select committee of Parliament is being set up to consider the whole business of integrity legislation. It is not that this Government is averse to the suggestion of joint select committees. Whilst we were sitting on the Opposition Benches it was a position that was advocated on many occasions by Members on this side. It is not something that is foreign or alien to us and we find repugnant. It is something which we believe can assist all of us in Parliament.

If every Bill which comes to the Senate or the House must be sent out to joint select committees of Parliament, given the constraints with respect to the part-time Parliament that was spoken about, it may well be that we would end up with a legislative agenda which would be totally stymied in some respects. *[Interruption]* I am hearing the suggestion that not every Bill should go; it has been suggested that this Bill should go to a joint select committee. With respect to that, in my response, I would attempt to deal with some of the issues which have been raised. I trust that in some way we would reach a consensus with respect to those issues.

I would have thought that the position taken by the Members of the House of Representatives on the Opposition Benches was fully in support of this piece of legislation. Today, I am taken by surprise by the confusion which appears to be in the ranks of the Opposition Benches. The Members of the House of Representatives fully supported this Bill, however, the Members of the Opposition in the Senate appear to be saying something different from what we heard in the House.

**Sen. Prof. Spence:** Mr. Vice-President, I wonder if the hon. Minister was listening to Sen. St. Cyr's presentation. I think he was trying to suggest that as individual Members of the Senate, we have certain responsibilities. One of the things that has worried me over the last few weeks is the great insistence in toeing the party line, rather than the free debate and discussions of importance for the country on the issue.

**Hon. K. Persad-Bissessar:** I thank the hon. Senator for his intervention. I would speak in response to Sen. St. Cyr. At the moment, I am speaking in response to the contributions of the Opposition Benches. Perhaps they too, like Sen. Spence should get up and say that it is quite all right for them not to toe the party line.

I would respond to the comments made by Sen. Prof. Spence, Sen. St. Cyr and the other Independent Senators. At the moment I am saying that my response is with respect to the comments made by the Opposition Benches. If they are also

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saying, like Sen. Spence, that they have no difficulty with saying that they would not toe the party line, then, they should tell us and we would have a clearer position with respect to the Opposition Members in the Senate.

Perhaps you would permit me to go into the background of the legislation. In my presentation I spent some time on that, but with respect to dealing with the specific concerns which have been raised, permit me some time to do it again. We need to remember—I think that Members on the other side and on this side are aware—that we are part of an international committee. I think he has made that point and he appreciates it. Our hope for sustained growth and development would be the lioness becoming a full member of that international and regional community. If we are to accept the benefits of that situation, we also have to take the responsibilities as responsible world citizens. If we expect our copyright, patented goods and trade marks to be respected abroad, in order to encourage investor confidence in our standards, we must also reciprocate protection against unfair competition in line with the international conventions by which we are bound.

When I was introducing this Bill I had pointed out that we were a member of the Paris Convention for the Protection of Industrial Property, and by Article 10 of the Convention, there was an obligation on member states to provide protection against unfair competition. What does this mean? It means that we are not alone. I heard a concern raised that this is new and we would go into some dark uncharted waters and have difficulty in that sense. We are not alone in this. All the members of that convention have the obligation to put legislation in place. Some have done so. I would point out where else legislation such as this exists. That legislation also exists under the TRIPS Agreement.

This Bill implements the obligation by defining clauses 5 to 9 and the principal acts or practices against which protection is to be granted. It does so by providing the basis for protection against any other acts of unfair competition which are dealt with in clause 4(1). It should be noted that in addition to establishing the basic protection against unfair competition which is in clause 4(1) of the Bill, there is a general definition of acts of unfair competition. In that respect it follows that other member states have agreed to put that into their legislation.

The decisive criterion is that the act is contrary to honest practice. This notion of honest practice will have to be interpreted by the judicial authorities in this country and in other countries where such wording is included in the legislation. In



interpreting this legislation, it is obvious that the Judiciary can be assisted by case law of other nations which have similarly worded legislation, and by codes of practice and guidelines which are issued by voluntary self-regulatory bodies.

**Sen. Mahabir-Wyatt:** Before the hon. Minister winds up, particularly on this point, would she take into account Sen. Daly's point about the legislative context in which such pieces of legislation fit? I gather from the comments that were made that the TRIPS Agreement does allow variances. We do not have the first amendment on how the entire American legislation reflects. The context now defines how it applies here. I wonder if the Minister would answer that point as she goes along.

**Hon. K. Persad-Bissessar:** Concerning the expression that this is American legislation, the other point I have to deal with is other legislation, so that we would clear up the view that this is copying the American legislation. It is not. As far as I understand, it is not American legislation and it is not modelled after American legislation. That question about the first amendment being based on American legislation and there being a first amendment, hopefully, that sort of confusion would be clarified. Understand that it is not based on American legislation.

**Sen. Beckles:** Mr. Vice-President, can I ask the hon. Minister if she could indicate what is the present legislation model?

**Hon. K. Persad-Bissessar:** I am going to tell you about the other legislation. I started off by saying that it is not American legislation. If you permit me I would certainly go into it.

The question was raised about the other jurisdictions. The Senator spoke about the United States having constitutional protection, which is the same point that Sen. Mahabir-Wyatt has raised about the first amendment which would prevent truthful, accurate, newspaper reports from infringing the Protection Against Unfair Competition Bill. It is a very valid and serious concern. I can appreciate the voices which have been raised with respect to this. It is a matter which would concern all of us in the sense that we are all committed to a free democratic press.

I am happy to say that the other countries have put forward their obligations under the convention. In Australia, the Trade Practices Act 1974 contains similar provisions. In New Zealand, the Fair Trading Act 1986, the Medicines Act and the Food Act 1981 contain similar provisions.

**2.40 p.m.**

The following countries have put specific statutes into place on this topic and they are in alphabetical order as follows—some of them are common law jurisdictions, some of them are not—Austria, Belgium, Bolivia, Brazil, Bulgaria, Canada, Colombia, Denmark, Finland, Germany, Hungary, Japan, Luxenborough, Mexico, Peru, Republic of Korea, Romania, Spain, Sweden, Switzerland and Venezuela. This list is not exhaustive, these are some of the countries which have put statutes into place. Obviously, many of these countries do not follow the common law jurisdiction that we follow. However, Australia, New Zealand and Canada are common law jurisdictions, so that we would be able to have some guidance in terms of these other common law jurisdictions. So that this list of countries and all the world trade organization countries are committed to putting legislation in place in terms of dealing with unfair trade practices and unfair competition practices.

In a growing number of countries, it is very clear that the importance of unfair competition law has been on the statute books, and others are stepping into place to put theirs in. We are in that set, where we are taking steps to put our legislation into place. We are not going into the totally unknown territory. From the legislation in the other countries, our judges, in my respectful view, will not be totally in the dark, they will have some of the practice and precedents from these other nations, including Commonwealth nations to draw upon. So we are not really creating new causes of action. In my respectful view, we are introducing this to Trinidad and Tobago. In that sense it is new, it will be introduced to Trinidad and Tobago, but in other jurisdictions those causes of action do exist.

**Sen. Mannette:** Mr. Vice-President, I would like to ask the hon. Minister one question. Is the Minister saying that the legislation in other countries contain similar language? I read the Australian Trade Practices Act, and it says very clearly:

“a corporation shall not in trade or commerce be engaged in conduct that is misleading or deceptive or is likely to mislead or deceive.”

That is clear to me. So I would like to know if the same language is in this jurisdiction.

**Hon. K. Persad-Bissessar:** Well, I am not sure. Is the Senator asking whether every clause in our Bill is identical to theirs? I did not say that. I said there are

similar provisions within the Australian legislation. In fact, if we look at the other clauses, we will see that some of the wording is identical and some of it is similar. The Bill is not identical.

**Sen. Daly:** It is very important that the Minister come to this point. In relation to which of those countries have we used their legislation as a model? What is our model? In particular, can she point to any legislation in any of those countries, in any language that is drawn in the language of clause 4? That is what we want to know.

**Hon. K. Persad-Bissessar:** As I understood it Sen. Daly, your objection was to clause 4(1). I am not sure whether it is to both clauses (1) and (2). I got the impression it was to one of those subclauses. You sent us an amendment with respect to clause 4(2). Perhaps you would want to clarify that.

**Sen. Daly:** Mr. Vice-President, I am asking a simple question. Every Attorney General, and every Minister of Legal Affairs, if there is an analogue or a model for the legislation, refers us to that model. Now what I am trying to find out is, in relation to which of those countries have we based this Bill? Have any of those countries got a clause similar to clause 4? That is what I want to know.

**Hon. K. Persad-Bissessar:** As far as I understand it, and I have been advised, there is no single model that we have used. It has been drawn from the unfair competition law of several jurisdictions and put together—some of those countries I have mentioned. We have not taken one model and gone with that model totally, so it is a combination of the laws relating to unfair competition from those other jurisdictions. This is how I understand it.

**Sen. Daly:** Mr. Vice-President, this is really very important. We raised misgivings about this a week ago. Can the Minister tell us whether any one of those countries has a clause similar to clause 4 and whether any of those countries contain the media exemption to which Sen. Mannette has referred?

**Hon. K. Persad-Bissessar:** If you would permit me to respond with respect to the media exemption, and that whole question of the media, in terms of the examples which were used by you. You said if someone had secret information about thalidomide, if I recall, and they had printed that information and, therefore, it destroyed or damaged someone's enterprise or business, whether then they would be caught under the Act as unfair competition. My respectful view is obviously no, because then it would not be unfair, if it is justifiable or truthful, then it is not unfair; if the truth is there it will not be caught under the legislation, it is

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no longer unfair. Once it is the truth that is being reported then it is not unfair. So that the information about thalidomide, for example, would obviously not be caught under the legislation. This is how I understand it hon. Senators.

I am saying that the legislation does not follow a single model. We have not lifted it from one country and taken everything from that and made our Bill that is before us; it is a consolidation of provisions from several jurisdictions with respect to unfair competition. The experts who have assisted us in the drafting of the Bill, were not drawn only from Europe, the United States or Geneva, they were drawn from several countries across the world. In my opening I had indicated some of those countries.

On this question of the newspaper articles, the issue is, is there really unfair competition? The whole question of whether the person writing the article, whether it would be unfair competition, and would it be caught under the legislation. Both Sen. Daly and Sen. Montano on the last occasion, and today Sen. Mannelle have raised that issue. I want to repeat that the clause says any act or practice, in the course of industrial or commercial activities, that damages or is likely to damage and so forth.

The point is that a newspaper and even less so its reporters, cannot be said to be in competition in the business sense, with the person or thing that is written about. We have libel and defamation laws which protect individuals against false or misleading publications and newspapers are already aware of these libel and defamation laws, in terms of what a breach of these entails. So with respect to these issues under the Unfair Competition Bill, it is my respectful view that if the report is neither misleading nor deceptive, it will not be caught under the Unfair Competition Bill.

The other criticism was levelled with respect to the word “confusion”, in terms of establishing a breach of clause 6(1). The word “confusion” in that sense would obviously be—and I think Sen. Mannelle has raised that—the question of a blurring of the distinctiveness from one to the other. So if there is any confusion between one product and the other in terms of the distinctiveness of the product, so that one is led to think that it is another product that is being produced by someone else, the word “confusion” would carry there. We would come back to that whole issue of “confusion”.

The concern with clause 4(1)—and that concern still continues. Sen. Mahabir-Wyatt and Sen. Montano were critical of 4(1), and Sen. Daly has proposed an

amendment which we would look at in the committee stage, but clause 4(1) in a sense is a catch-all clause

**2.50 p.m.**

**Sen. Mannette:** Mr. Vice-President, is the Minister trying to say that if a newspaper prints an advertisement which gives the impression that the product is associated with, supported by, or from a major company, when in fact, it is not so, that under this Bill, clearly, such an advertisement would not cause the newspaper to run afoul of this unfair competition law? That was the amendment I was proposing.

**Hon. K. Persad-Bissessar:** If the newspaper publishes an advertisement it is not liable for the advertisement; it would be the advertisers who would be liable for the advertisement. I am not sure I understand what the Senator is asking.

**Sen. Mannette:** Under the wording of the clause 7(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 an enterprise, shall constitute an act of unfair competition.”

I am of the opinion that if there is a special exception under one's jurisdiction law, it means that sort of advertisement might arguably run afoul of the law. This is Florida's law.

My question is: Is the Minister saying that there is no need for a provision exempting newspapers or advertising agencies or publishing houses which run certain advertisements or disseminate information, that clearly, under the words of this Bill, would run afoul of the Bill? Is the Minister saying there is no need for any such exception or limitation?

**Hon. K. Persad-Bissessar:** I am sorry; are you dealing with a specific clause within the Bill? The issue that was raised, as I understand it, was with respect to the clauses dealing with secret information. That is how I recall it. So that if there is another argument under the one dealing with advertisements now, perhaps the Senator would need to clarify that.

What I understood the concern raised on the last occasion to be was that if a newspaper got wind of secret information that was detrimental to a product, or a manufacturer of a product, and it published this secret information, would it then be liable under this Bill. The example was thalidomide; if there was something like

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thalidomide where a newspaper reporter got wind of secret information that this thalidomide would be detrimental to human beings and he published it, whether the newspaper would be liable. My answer to that was, as far as I understand it, that those persons would not be liable for having produced or published that secret information, because that information would have been justifiable; that information would have been true. This is how I understand it. We are dealing with acts of unfair competition, and that would not be unfair. If the report is a true report, it will not be caught within this Bill.

The concern that the Senator is raising now is about misleading advertisements, so I am not sure what her question is with respect to the newspaper.

**Sen. Mannette:** In my presentation, hon. Minister, I did state that the Bill as it is currently worded brings within its ambit, activities that were not meant to be covered. I stated that clarification is needed to specify that activities of a publisher, printer, or broadcaster, with respect to disseminating information on behalf of others, without actual knowledge that such information violates the Bill, such activities or practices would not run afoul of the Bill.

**Hon. K. Persad-Bissessar:** I really must say that I do not grasp the question that the hon. Senator is posing. Perhaps we can move on and if she can clarify it in some ways, but I really do not see what is the question being raised because the Senator is not pointing me to any specific clause within the Bill that we are dealing with. I am sorry, if we keep doing this, we will be here—I am sorry, I do not know if debate means that I should stop at every point that someone decides to stand. I do not know if that is debate.

**Mr. Vice-President:** Hon. Senators, I suggest that specific questions related to specific clauses be held and dealt with in committee stage, if we get there.

**Hon. K. Persad-Bissessar:** Thank you, Mr. Vice-President.

Within clause 4 (1) the word “practice” is used in addition to the word “act. Any practice, any act, to clarify that it is not only an act in the strict sense, but also behaviour that consists in an omission to act which would constitute an act of unfair competition. So either an act or behaviour that consists in an omission to act will be caught under an act of unfair competition.

Clause 4 of the Bill is not limited, so the act complained of must be an act of competition. Consequently, in a situation where there is no direct competition

between the party who commits the act, and the parties whose interests are affected by the act, this would be covered by the Bill.

Now, in considering this legislation, protection against unfair competition effectively, in a sense, supplements the protection of industrial property rights such as patents and registered trade marks, and the notion of unfair competition covers a great variety of acts. Experience has shown that there is a need for legislation because in theory, consumers could deter dishonest entrepreneurs by disregarding their goods or services; other factors such as price, determine whether or not they will deal only with the honest entrepreneurs.

Sen. Montano began his contribution on the Bill by calling it very vague and very subjective, with very wide room for interpretation. As a specific example, he drew attention to clause 5(1), which he describes as causing confusion with another enterprise or its activities as constituting an act of unfair competition.

Sen. Mahabir-Wyatt also had difficulty deciding which definition we would want to use for the word “confusion”. They both mentioned that in the Trinidad and Tobago situation the word “confusion” relates to disorder. We have a different view of the word “confusion” from what the average Trinidadian and Tobagonian understands by “confusion.” The use of the word “confusion”, in my respectful view, in this legislation, connotes—we want to remember that “confusion” is a term of art as used in the Bill as well as under the strict English language meaning of the word “confusion”. That is the effect. The unfair competition causes confusion in the mind of the consumer to mistake one thing for another. It is in that sense, in the ordinary English language sense, of the word “confusion”.

I think if we go with the English language regular meaning of “confusion”, we should have no difficulty; that is, mistaking one thing for another. For instance, in launching a product one enterprise may well cause disorder in another enterprise.

Sen. Montano used an example to illustrate difficulties with the clause, and talked about hostile takeovers—we were warned not to speak of what may be a hostile takeover—but in terms of the issue of takeovers. So that the successful launch of a new enterprise or a new product on the market by one enterprise may cause confusion, may cause disorder in another enterprise.

Much like the present confusion in the Senator’s own party, where there is launching of one product as against the other, if they are both similar, then there may or may not be confusion. If the new product is very similar to the old product, you may mistake one for the other. *[Laughter]* If the activities are carried out

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fairly so as to avoid confusion, then the launch of the new product itself can only be considered to be good competitive practice.

In Sen. Montano's presentation he also referred to clause 7 using the example of advertising that might mislead children into smoking and drinking. He also felt that this could not be the intent of the clause. Indeed, hon. Senator, misleading advertising is, in fact, one of the acts that the clause intends to address and seeks to say that it is unfair.

**3.00 p.m.**

If this legislation allows us to stop children from becoming alcoholics or suffering from lung cancer as the hon. Senator talked about with the advertisements on alcohol and tobacco, then surely the hon. Senator will not object to this legislation because it is dealing with exactly what he spoke about.

He then ended his presentation with perhaps what one could call the saddest indictment of all and the strongest recommendation that could indeed be made for this legislation. He revealed that the concerns he enunciated were a brief somewhere on the comments of a number of manufacturers and trade persons he had consulted, and I quote:

“They find that the Bill does not give them sufficient guidance on what they should and should not be doing.”

Hon. Senator, if it is that the businessmen themselves cannot distinguish between what are honest and what are dishonest practices, then surely this legislation is required even more at this time. He said that the business persons with whom he spoke could not distinguish between business practices that are honest and fair from those that are unfair or dishonest. I am saying then, that is obviously the strongest reason we need to put legislation in place in terms of unfair business competition.

Sen. Mahabir-Wyatt had a particular concern with clause 9. May I say that clause 9(3)(a) is not to be read in isolation since the conditions described by all three paragraphs must be satisfied for the information to be considered secret information. They are not exclusive; they will be taken together.

If we look at the obvious example of the circle of people who hold any secret formula—for example, the hon. Senator spoke about Angostura Bitters. The concern is that for the less clear areas, for example, the production method that is being kept secret by a company, one would be concerned about that, but if the



production method is known to chemical engineers even outside of the company, then it could not properly be considered to be secret information. If it is not widely known, but with little effort it could be determined, then this too, cannot be secret information. In other words, all three conditions need to be fulfilled to qualify as secret information. If the company engineers, however, have developed the product uniquely, uniquely it has a commercial value, it is kept confidential within the company, then it will be considered secret information. All three conditions would need to be satisfied.

Persons complaining that they come into the category of being within the circle are persons usually party to secret information, and will indeed have to put it to the test in terms of having a decision on it. This matter, too, in my respectful view, will also have to be one of common sense and sticking to ordinary dictionary meanings in terms of the meanings of the words rather than going into very complicated definitions, and in terms of the case law, that will be developed.

I recall, for example, that within our very own Constitution there was a time when the words “reasonably justifiable in a society that has a proper respect for”—were words that needed judicial definition and interpretation. In the early days, we did not have many case law precedents that would tell us how to interpret “reasonably justifiable in a society that has a proper respect for” the individuals in the society. Words that sound very grand, very wide and very vague, but are subject to common sense, they are subject to interpretations within a society and in other jurisdictions where similar provisions would have been found, and in that way, we develop over time the jurisprudence and, therefore, the definitions of the terms that we would need to use in the legislation.

To say that there are some words that are relatively new and would need interpretation, we will go first with the dictionary meanings, the English language meanings and over time within a society, within a jurisprudential building, those words will be developed and meaning defined and given to them.

Mr. Vice-President, I trust that the comments made on this Bill, Senators would have had some answers for the concerns that they raised. I want to reiterate that this is not some inappropriate concoction that we have put together and we are attempting to thrust it down your throats. It is not something that foreign agents have given to us and said, “Do that” and we must do it in this way. I have said before, these pieces of legislation are not things that have been done over the last few months; they have been developed over a number of years. I remember

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when we were doing the other pieces of intellectual property legislation, the hon. Senator on the other side had pointed out that he was heartened by the fact that the legislation had gone through two administrations and when I thought about it, in fact, it had gone through three administrations, because it had gone through the NAR, the PNM and into this administration.

This is not something that we have grabbed out of thin air; the foreign experts are saying take this and run with it. It is not that, in my respectful view; it is part of our attempt to bring this Bill against unfair competition as part of the package. It is legislation that is sadly lacking in our jurisdiction and yes, we want to meet international obligations. At the same time, in this country of ours—and many of you have mentioned it—there are areas of unfair competition that have gone untouched and unchecked; the example that Sen. Montano used with respect to advertising and advertisements, these are things that need to be addressed.

The point was made earlier that Sen. St. Cyr spoke about a special court or some kind of organization that could hear matters on unfair competition. That suggestion is an excellent one, not just for unfair competition, but indeed for the whole area of intellectual property rights. The suggestion that there be some special tribunal or special body that may have the expertise to deal with it, hon. Senator if I may say, through you Mr. Vice-President, is something to which we are giving consideration. We are putting the package in and what we are doing does not preclude the setting up of such a body. It is something at which we are looking. As may well be appreciated, it takes time and each will come in its time, but it is something, Sir, that we are giving consideration to with respect to the entire area of intellectual property rights and intellectual property law. It is a highly technical area and it may well be that the suggestion made can be accommodated, if not in the sense of a court, but indeed in the sense of some kind of tribunal or body that will be able to look at that.

In the meantime, I think the concern was raised on the question of who is to monitor unfair competition, and in a sense, at this time it will have to be the members of the public, the consumers, the businessmen themselves. If a businessman acts in an unfair way that will damage another's enterprise, the competitors themselves will have to monitor and take steps. So the consumer, general John Public and the competitors, they are the ones who will need to monitor. I am saying that we are giving consideration to the setting up of some kind of body that could assist in this whole area of the law of intellectual property.

**3.10 p.m.**

I trust that some of the concerns have been addressed. I thank you, Mr. Vice-President.

*Question put and agreed to.*

*Bill accordingly read a second time.*

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

*Senate in Committee.*

*Clauses 1 to 3 ordered to stand part of the Bill.*

*Clause 4.*

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

**Sen. Daly:** Mr. Chairman, I have proposed an amendment to clause 4(2) as follows:

Insert after the words “any person”, the words “who is a competitor or customer of another person or is a user of the goods and services of another person and who is”

Insert after the words “unfair competition”, the words “committed by that other person”.

**Mrs. Persad-Bissessar:** Mr. Chairman, regrettably, we would not be able to accede to this amendment. We feel that it would restrict this provision in a way that would not be to the best benefit. The amendment seeks to limit the people who would take action under the legislation to those who can show that they have a trade relationship or a consumer relationship. If we go with that amendment, we will not be able to catch the kind of practice to which I had referred in my opening. For example, where Angostura is manufacturing bitters and someone else is producing Angostura disinfectant. There are two different categories of goods and in the strict sense there is no competition between the person selling Angostura Bitters and the one selling Angostura Disinfectant and, therefore, they would be restricted and would not be caught if we were to go with the amendment.

**Sen. Daly:** My response to that, Mr. Chairman, is that we can take care of that in the proposed Trade Mark (Amdt.) Bill which we are supposed to look at next. That is a trademark question that the Minister is raising. That situation with Angostura will be taken care of in the Bill we will be debating next, so that is no answer to the point we are raising.

**Sen. Prof. Spence:** Mr. Chairman, could I raise a different point? Suppose the affected party is not in direct competition, but is related to one in direct competition. There are large conglomerates which have different divisions and it may be that one division takes action to protect another, but because it is restricted to divisions that are in competition with each other, under the Bill they may not be caught. This is the point I made in my presentation. I have some difficulty with Sen. Daly's amendment from that point. I do not know if he can answer it.

**Sen. Daly:** I can certainly answer it. The question of the agency being a subsidiary is a different point. If the amendment is deficient because it does not cater for agencies, that is a separate point. The fundamental issue we have to decide is whether we are limiting this new cause of action or not. The point which has been raised about Angostura will be covered under the trademark legislation which we will debate next. I would like to hear the Minister's answer to that: whether it is covered by the trademark legislation that we will debate next.

**Mrs. Persad-Bissessar:** One moment, Senator. We will deal with that issue.

**Sen. Daly:** The advisers know that. Mr. Chairman, may I draw attention to clause 6 of the next Bill, the Trade Marks (Amdt.) Bill, which deals with well-known trademarks.

**Mrs. Persad-Bissessar:** Those are registered marks. Mr. Chairman, can we leave clause 4 for the moment and go on.

**Sen. Daly:** Madam Minister, it is very important that you receive balanced advice. I do not represent any trademark agency, and the whole purpose of trademarks in the next Bill is that it extends protection to trademarks that are not necessarily registered. That is the whole point of the next Bill.

**Mrs. Persad-Bissessar:** I take the point of the hon. Senator, but can we move on as we check on the concerns raised about clause 4?

*Clause 4, by leave, deferred.*

*Clauses 5 to 8 ordered to stand part of the Bill.*

*Clause 9.*

*Question proposed, That clause 9 stand part of the Bill.*

**Sen. Daly:** Mr. Chairman, I have proposed an amendment to clause 9 as follows:

In subclause (1), line 3, delete the words “secret information” and replace with the words “trade secrets”.

In subclause (2), lines 1 and 2, delete the words “secret information” and replace with the words “trade secrets”.

In subclause (3), line 2, delete the words “secret information” and replace with the words “a trade secret”.

**Mrs. Persad-Bissessar:** Perhaps the hon. Senator would be kind enough to give me his reasoning.

**Sen. Daly:** My reasoning is that I am quite convinced that there has been no answer to the point that we have raised about the publication of secret information by the media. Unless the amendment I have proposed is accepted, then your liability is not a prerequisite that you be in a competitive relationship with the person whom you have damaged. The words “secret information”, in my respectful view, is too wide, and “trade secrets” is a term of art in intellectual property, one which is more readily understood than “secret information”.

I would like to point out, in particular, that in this country, unlike many of the countries on the list read out by the Minister, there are state enterprises which are businesses in which the Government has an interest, and the kind of enquiry the media may make into a state enterprise may also, in the peculiar circumstances of this country, bring it into collision with this Bill. I do not know if there are state enterprises in Austria or Peru, but we have a particular problem here. The Government is involved in business and, therefore, someone commenting on the business activities of the Government, through the medium of the state enterprise, may fall foul of this, and it is no good saying in general terms what the situation is in other countries. We need to know what are the analogues of these clauses in particular countries so that we can see whether the social conditions are the same.

That is my reasoning. I do not like the idea that the Government is involved extensively in business here and the secret information clause could be used to stifle criticism of that aspect of Government’s business.

**3.20 p.m.**

**Mrs. Persad-Bissessar:** Mr. Chairman, having listened to the comments that were made, it is my respectful view that we can go with the words “trade secrets” if it limits it in a manner that is acceptable and, therefore, will not create the concern that has been raised. A trade secret can be manufacturing, industrial or

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commercial, so perhaps in that sense we can catch a wide array of categories of information under the words “trade secrets”. So we will go along with the amendment.

**Mr. Chairman:** I would like the Senator who proposed the amendment to consider that in subclause 2(e) the words “secret information” are again repeated.

**Sen. Daly:** That would have to be “a trade secret”. I have used the expression “trade secrets” where it is secret information and “a trade secret” where—

**Mr. Chairman:** Could I suggest also in subclause 3(b) that the words “a trade” be inserted before the word “secret”?

**Sen. Daly:** Yes. I accept that suggestion, Sir.

**Mr. Chairman:** There are some amendments which I will detail as follows:

- (a) In clause 9, subclause (1), line 3, the words “secret information” would be deleted and replaced by the words “trade secrets”.
- (b) In subclause (2), lines 1 and 2, the words “secret information” are deleted and replaced by the words “trade secrets”.
- (c) In subclause 2(e) in the first line the words “secret information” are deleted and replaced by the words “a trade secret”.
- (d) In subclause (3), line 2, the words “secret information” are replaced by the words “trade secret”.
- (e) In subclause 3(b), before the word “secret”, the words “a trade” should be included.

*Question put and agreed to.*

*Clause 9, as amended, ordered to stand part of the Bill.*

**Mr. Chairman:** We will now revert to clause 4.

*Clause 4, recommitted.*

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

**Sen. Dr. St. Cyr:** Mr. Chairman, on the proposed amendment to clause 4, I think it is a basic tenet of the scientific method that one cannot operationalize unless bounds are put. If an issue is left without any limits, one is almost operating

in the realm of metaphysics and cannot really determine whether something is one way or the other. I think that is a philosophical argument for putting the amendment that Sen. Daly has proposed so that we put some limits to the applicability of this measure.

**Sen. Daly:** Mr. Chairman, I will also like to rejoin the debate and say that such research that I have been able to do into this series of unfair competition torts show that the objective is always to deal with the provision of goods and services by persons who are in a position to direct or distort competition. I have not found anything as wide as this and that is why I press the Minister to tell me what is the analogue for this and if it turns out that there are dishonest practices that are not caught within the limited clause which I suggested, then the Government has the opportunity, based on that experience, to come back and amend.

We are introducing five or six completely new torts and we have not been given any information from where they derive. I do not care from where they derive but we have not been given anything that we can look at that is comparable. My researches reveal that this unfair competition tort, in the countries that I have been able to research, are linked to persons who are in a competitive relationship and the whole purpose of it is designed to prevent it distorting competition.

**Sen. Mahabir-Wyatt:** Mr. Chairman, while I accept the points about the amendments, I would like to bring our attention back to the need to amend the amendments if they are going to be acceptable, because what we have in a very small country with a limited population and a limited market, are two or three very powerful conglomerates—which is an unusual situation because of the size of the country—where we may have one conglomerate deciding to use its ownership of a newspaper to fight a subsidiary of another conglomerate which produces beers. It is not in competition and it would not be covered by this amendment but it could destroy an unfair means of someone who is not a competitor—someone who is not connected with it at all but is connected with the holding company or the conglomerate with which it works. In a country this small, that kind of thing happens because the competition is so keen in business now.

**Mrs. Persad-Bissessar:** This is also the concern that is being raised here, I am advised.

**Sen. Daly:** Mr. Chairman, in the third line, picking up from the words “by an act of unfair competition committed by that other person or a person connected with him” “or it” as the case may be, that takes care of it. That is a technical detail

that does not impinge on the policy question of whether we are opening up this tort to any and everybody outside of a trade relationship. It is fundamental.

**Mrs. Persad-Bissessar:** The explanation given by Sen. Daly a moment ago, raised the question as to what if they are not connected at all in that sense, but it might be a consumer agency or an NGO which might be affected and is not connected in any sense. What happens then? The concern with keeping it wide is to deal with those kinds of situations even in respect to the marks. The section referred to in the trade marks legislation covers well-known marks and registered marks but there will be other traders whose goods may not be identified as a well-known mark and they may be affected unfairly in this way.

**Sen. Daly:** Absolutely no justification has been offered for introducing a tort where there is no limitation on the type of plaintiff when the whole stated objective of the Bill is unfair trade competition. It is a complete disjunction between the two things.

**3.30 p.m.**

**Mrs. Persad-Bissessar:** Can we compromise in some way if we were to reword it as follows: "any person who is a competitor...?" The only change I am making to the proposed amendment is that instead of the word "customer" we can use the word "consumer."

**Sen. Daly:** In which line?

**Mrs. Persad-Bissessar:** The first line.

**Sen. Daly:** "Consumer of another person?"

**Mrs. Persad-Bissessar:** So, "any person who is a competitor or consumer or is a user of the goods and services of another person".

**Sen. Daly:** Can you read it again please, Minister?

**Mrs. Persad-Bissessar:** Yes. "Any person who is a competitor or consumer or is a user of the goods and services of another person", and the rest of it as you have it. In other words, we want to change the word "customer" and use the word "consumer".

**Sen. Daly:** But you want to protect the customer as well. A consumer is taken care of under the concept of user. I want to protect the competitor, I want to protect the customer, I want to protect the consumer.



**Mrs. Persad-Bissessar:** But a customer connotes custom; that is to say, time; trade, overtime.

**Sen. Daly:** Well, can I offer another compromise? I think it is important to protect the customer, that is the person who has a contractual relationship as well as a consumer who may not have a contractual relationship. Therefore, the other compromise I would offer is to say "any person who is competitor or customer of another person or is a consumer or user". I think it is tautological, but fine; "or is a consumer or a user".

**Mrs. Persad-Bissessar:** We will accept the compromise, Mr. Chairman.

**Sen. Daly:** The Minister is always very gracious, thank you.

**Sen. Prof. Spence:** Mr. Chairman, may I ask whether Sen. Daly's further amendment is included? That is, "or a person connected with him".

**Mrs. Persad-Bissessar:** As Sen. Daly has pointed out, we may well have to come back with it if we find that there are other categories that we have left out. Then we keep adding categories, and the way we had it was very wide which would have included anything that happened. But out of caution, and the concerns which have been raised, as I said, we would compromise it. It may well be, that we may have to come back with it if that should prove to be necessary.

So, we can take the other category of person, and that is, "or connected with".

**Mr. Chairman:** Could I ask Sen. Daly to read the now re-amended amendment of both parts of clause 4(2)?

**Sen. Daly:** Well, if Members would be good enough to look at the way the clause is reproduced below the line:

"Any person who is a competitor or customer of another person, or is a consumer or a user of the goods and services of another person and who is damaged or likely to be damaged by an act of unfair competition committed by another person or a person connected with him shall be entitled..."

I might point out Mr. Chairman, that consequent upon the grace of the Minister, "connected with" as you will appreciate, is wider than a simple agency.

**Mr. Chairman:** "Shall be entitled?"

**Sen. Daly:** "Shall" is what the Bill has.

**Mr. Chairman:** Yes. Okay.

*Question put and agreed to.*

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

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

*Senate resumed.*

*Bill reported, with amendment, read the third time and passed.*

#### ARRANGEMENT OF BUSINESS

**The Minister of Public Administration and Information (Sen. The Hon. Wade Mark):** Mr. Vice-President, by agreement among the parties, we have decided not to pursue the Trade Marks (Amdt.) Bill, Chap. 82:81 under Bills Second Reading at this time. Instead, we would allow Sen. Rev. Teelucksingh from whose time we took last Tuesday, Private Members' Day, to introduce his Motion.

*Agreed to.*

#### VAGRANCY

**Sen. Rev. Daniel Teelucksingh:** Mr. Vice-President, I beg to move,

*Whereas* the vagrancy problem continues to be an outstanding social issue which demands urgent consideration; and

*Whereas* any further postponement in finding a solution to this problem will result in the prolonged agony of certain of the dispossessed among us:

*Be it resolved* that a Joint Select Committee of Parliament be appointed to consider the problem of vagrancy; and

*Be it further resolved* that there be consultation with non-governmental organizations and other appropriate agencies engaged in the care and rehabilitation of vagrants and that the Committee submit recommendations to Government for its prompt and immediate action.

Mr. Vice-President, I thank the Government for including in our very demanding and onerous Senate schedule, some time for us to look again, at such places like Charlotte Street, Woodford Square, or to tour the Lapeyrouse cemetery at dusk or midnight, or symbolically to take off our jackets and ties, and leave our air-conditioned, darkly tinted twin-tower offices where none can see us,

and just simply to view, or even to view from the Red House balcony Sir, those who wrestle with the mealybugs for tenancy at Woodford Square.

Mr. Vice-President, I say thanks for parliamentary time to glance at the wretched of Port of Spain, through the Vagrancy Motion on our Order Paper; to see again the world of the mental ones; the not so mad, and those who play mad; to see the "druggies" on the move, the careless ones, society's dropouts; the diseased ones, those who are scorned and shunned, as for example, the person who died recently on the streets of Port of Spain with a maggot infested leg; or maybe those who carry dreaded, contagious viruses and germs. I hope through this Motion that we will see the homeless ones again in the city, and not only in Port of Spain, but in other parts of the country, the homeless ones who live in the ever-expanding cardboard city. To see the tragedy, Sir, through the Motion before us; the tragedy of living broken neglected humanity, sleeping in the shelter of grave stones at Lapeyrouse or St. James or the Woodbrook cemeteries. Is it madness or is it bravery, or are people so sick that they are impervious of the fear of the dead?

### **3.40 p.m.**

You see some of them on cold, but friendly doorsteps of commercial banks or insurance buildings where, on the inside, rages the sound of fury about rights to stocks and shares. See the vagrants; see them under spreading samaan trees, in parks, or in the Queen's Park Savannah; see them not only in Port of Spain, but in San Fernando, in Tunapuna, in Arima. Who are they? Oh, how they make us ashamed sometimes. They should be kept off the clean benches of the Brian Lara Promenade; these, who are so close to the city's visitors' gate, the shipping complex, not our best ushers for the tourism industry. Their offensive odours, their blackened pots and pans, their disgusting dressing habits, their questionable bathroom behaviour in public; oh, how embarrassing for the capital of the Association of Caribbean States.

The vagrants, aliens in their homeland, people without a country and possibly without an ID or a passport; no hope; the dispossessed; the minority who do strange things for recognition. The latest I read was about those who disrupt the funerals at city cemeteries and provoke mourners in broad daylight, or, as on July 13, 1996, when a woman dressed in a tattered outfit and was partly naked, wielded an iron bar and smashed windscreens of four new vehicles on upper Frederick Street; remaining nameless, without a face; suddenly got the attention even of those who passed her unnoticed several times before.

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Who are they, the inhabitants of the new city; the new ghetto people, social lepers and community outcasts? Once upon a time they evoked a certain feeling of pity, but now they deserve contempt, some of us say, to be shunned and to be avoided, even to be feared; to be beaten, to be driven, to be stoned, to be imprisoned, to be chained. Is ours a society with a soul; a soul without a social conscience? How much do we care? How much should we care? Are these city dwellers our burden; the vagrants, those who wine and dine in our dustbins and wrestle daily with the dogs for food in black garbage bags? To whom do they belong? That is a question that we have to ask ourselves. Do they belong to us? Is being a brother's keeper and a sister's keeper a 1996 ethical, political and social imperative if we are to be a successful and prosperous people? Yes, I contend it is, hence the reason for this Motion before us.

I submit that the vagrancy problem has been sidelined for too long. We cannot say that we never had money to rid the streets of the vagrants. Money was no problem. We had more than enough money to lend, to give and to forgive. We found money for every conceivable programme in this country. What we could not earn, we borrowed. We found money from the IDB; we went to the IMF and got money. Then we went to the Bank of Tokyo and got money. We found money on the Euro-bond market for everything; but the vagrants remained on the streets. We spent money on everybody's dream, the latest being possibly more than \$200 million—nobody knows the exact figure as yet—that was lost and swallowed up in the La Brea pitch lake project, an ill-advised project. We sold an airline; electricity and water plant mortgaged; energy-based industries auctioned off; executives live like kings and queens. To have said that the vagrancy problem costs too much money was a lame excuse over the years.

I submit that we lack the political will, the social determination and the human compassion to lift up the fallen among us. Somebody asked recently: How is it that during the curfew and the state of emergency in 1990, not a vagrant could have been found around Port of Spain? Since the 1970 social consciousness movement, a wide variety of action plans were put forward. Successive governments have produced more task forces than vagrants. A 1993 seminar suggested that vagrancy was a medico-social catastrophe, whatever that means. From that seminar came a suggestion that was repeated often afterwards: that the pavement dwellers of Port of Spain should be placed at Chacachacare. The Port of Spain City Council rejected the idea. Then we remember the 1986/1991 NAR government's promise to rid the streets of vagrants in 90 days. The old YTC building at Golden Grove, if

you remember, was to be one centre. Thirty police officers and mental health workers were trained to tackle the vagrancy problem.

There were pockets of success, and we know that. For example, at one time and in one blow, 11 persons were taken off the streets and housed at St. Ann's. Maybe the more lasting of these effects is seen in the Centre for Socially Displaced Persons at the Riverside Car Park, and this was supposed to be a short-term experiment—since 1991.

Why am I so sceptical about another action plan? The new government of 1991 considered setting up a decanting centre for vagrants at Chacachacare on Nelson Island. We all would remember this one. The then Local Government Minister, the Port of Spain Mayor and some councillors, the Social Services Minister and other government officials, in November, 1992, went to inspect the facilities at Nelson Island to accommodate the vagrants from Port of Spain, but someone forgot the keys in his Mercedes, parked near “vagrants” lane in Port of Spain. The expedition was a disaster and the project was scrapped. The suggestion was blown to bits by the then parliamentary Opposition. The plan was described in those days by the parliamentary Opposition as inhumane, callous and in serious breach of the constitutional and fundamental human rights of these persons. Those were the days of rights.

Then who will forget the Caura plan? It was called the "Huggins Plan" of 1995. The then administration was criticized endlessly. No sooner they said that \$7 million will be used for the vagrancy plan with Caura featuring, there were criticisms, and the Opposition led the way. Some argued that it was no good—and listen to this one, strong argument—taking the vagrants too far from Port of Spain which was their natural habitat.

### **3.50 p.m.**

Mr. Vice-President, the vagrancy plan prior to the last general election, the Caura plan, became a platform issue effectively used by the then parliamentary Opposition, the present Government—somebody said it is the 1995—2015 Government that rejected the Caura plan.

I submit by this very short historical review that the vagrancy problem has been used as a political football in this country. I know that in the course of this debate there will be another Government's plan hence the reason I decided to focus on a few plans. In fact, there is another plan.

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I congratulate the hon. Minister of Social Development for his persistence in wrestling with the problem of vagrancy. His Nelson Street drop-in centre for street children deserves commendation. I commend the Government for plans like that. I do not want to challenge the ability of the present administration. I do not challenge their ability to find a solution but I contend that the problem has transcended—and this is how we see it in Trinidad and Tobago—the wisdom of many a good government in the past. We have had good governments.

I believe it has confounded and bedeviled even a government that received such a mandate to have in the Lower House 33/3 representatives. Hence, the suggestion and the Motion to depoliticise the vagrancy issue. The time has come when we must do this. To begin, there is need for that kind of committee which will involve in the Parliament the various interest groups, and not merely be guided by what has been called a Cabinet Note and a Cabinet decision. This is a problem that is bigger than this Cabinet and many a Cabinet. This is what we have seen. The time has come when we need to tackle the vagrancy problem by incorporating the wider community. The present Government needs to look at this with humility and to seek the assistance and advice of all the interest groups in this territory.

I close by paying tribute to the non-governmental organizations, and this is why I have included them in the Motion: the church groups, the business community, and civic-minded individuals who have been moved to caring, concern and service. The NGO's expertise in this field will always be useful.

God has used, in a mighty way, the St. Vincent de Paul Society, the Salvation Army, the Hindu and Moslem organizations and other religious and non-religious bodies who maintain homes for the aged, hostels, geriatric homes, night shelters, halfway homes and children's homes.

Mr. Vice-President, vagrancy is a national problem which requires the awakening of national compassion and total community co-operation. I plead with the Government to recognize this.

I am very pleased to move that this honourable Senate consider the Motion listed in my name. Mr. Vice-President, I thank you.

*[Seconded by Sen. Diana Mahabir-Wyatt.]*

*Question proposed.*

**Sen. Danny Montano:** Mr. Vice-President, I rise in support of the Motion as a new Member of Parliament and a relatively new active Member of my party. I

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share the sentiment of Sen. Rev. Teelucksingh, that this is not a political issue and I certainly share the sentiment that we should try not to make it a political football.

I would quote some of what he said. We must not let the words that he spoke merely be words. We must try to translate our words and our thoughts into action. In addressing the whole issue of vagrancy the first thing that comes to mind is, who are these persons? It is very easy for us to walk or drive around in our cars and to see these wretched persons on the pavement and to give very little thought as to who they are and where they come from and what their lot in life, in fact, might be. It is very easy for us to say to our children who look at them with some curiosity and interest, “do not worry with that, do not pay any attention, do not even touch them or do not let them touch you.”

Mr. Vice-President, those persons as wretched and as filthy as they are, are human beings. At some point in their lives they were born in the same manner as you and I; they were held in arms by their mothers in the same way that you and I were held; they were cherished, and their mothers had the same hope for a decent, fulfilling and good life for them as our mothers had, and we must not lose sight of that, Sir.

In looking at the situation I would like this Senate to address what can and what must be done for those in the society who are so wretchedly unfortunate.

I spoke to a few persons about the issue to find out and to learn a bit more about it for myself. Vagrancy, as we know and see it on the street, is not a simple matter of destitution. To some extent, in the old days, perhaps, 30 or 40 years ago, most of the vagrants as we knew them were, in fact, persons who were destitute but perhaps, who were living on the streets as they are referred to in the United States, as homeless persons.

#### **4.00 p.m.**

I am advised that the number of vagrants that fall into that category is relatively small, thank goodness—I am happy to hear that. But what happens and what tends to mislead some of the Members, is that those who are, in fact, destitute because of their lot in life and the conditions in which they live, quickly fall into mental ill health. Most of the adults we see on the street are suffering, in one form or another, from mental ill health.

That is not to say that their condition is justified, or that there is nothing we can do. It is almost an intractable problem but it is not one that we can, or should,

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ignore. These are persons who, notwithstanding their mental ill health, still do have feelings and sentiments; and the psychologists and psychiatrists will tell you that they still have feelings, and do think about their own lot in life, however strange it may be to us. When we go to bed at nights, or when we break for tea and sit in the air-conditioned tea room and fill our bellies with all the goodies we have, I ask you to consider the wretchedness of these poor souls.

An increasing problem leading to vagrancy, Sir, is the plight of drugs in our society and with increasing frequency, more and more young persons are being infected with this terrible thing and are losing everything they have in life—all their values, as well as their possessions, and they sink to the absolute bottom of society and quickly sink into mental ill health and become, in fact, as we know it, “vagrants”.

The plight of these persons who are suffering from mental ill health is very much a matter for the health authorities, Sir, but it is a peculiar situation in that many of these persons, I am advised, have families who try to help, but for a number of reasons find that the type of help they can offer is limited. To some extent the individuals themselves become so difficult to deal with that everything breaks up into a mass of confusion and they walk out onto the streets and end up living there. They prefer the independence of living on the streets, rather than being put into an institution. So it is not as simple as rounding them up and putting them into an institution.

Of increasing concern, Sir, and in my discussions the shocking news that came to me, is the level of what was described to me as the “street children” we have on our streets. Apparently, we do not see too many of them during the day time, but I am advised that during the evening in the city areas, they are coming out in full force. I am also advised that there is no ethnic bias to the children on the streets. The problems which are driving them to the streets are affecting every society we have, equally. There is no bias, whether it be ethnic or gender: there is no bias. That is a shocking thing to learn, Sir.

I am advised that the children on the street have come there from a variety of most unfortunate situations, and I would address the attention of this honourable Senate to a document which I received from UNICEF entitled *Situation Analysis of Children in Especially Difficult Circumstances in Trinidad and Tobago*. It was written by Dr. Jacqueline Sharpe and Joan Bishop. I cannot read the entire document I have here—



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**Sen. Mark:** Could the hon. Senator indicate when that particular document was written?

**Sen. D. Montano:** I believe it was 1993, Sir. Yes, 1993. It was funded by UNICEF.

**Sen. Cuffy-Dowlat:** During the PNM years.

**Sen. D. Montano:** I heard a comment, which I will ignore because, again, I would venture to suggest that this is not a political issue. This is a human, social issue, and if any of us in this Senate have any consideration at all for children, that transcends the political allegiances of all of us here. [*Desk thumping*] I will read little excerpts from the document, Sir:

“The information that this study of children in especially difficult circumstances reveals to us about their situations, can be summarised simply; they live in families that are in distress or they used to be part of families that have disintegrated. The distress and disintegration may have a number of proximate causes.... domestic violence, substance abuse, and other factors, but frequently at the root of the problems are fundamental developmental difficulties originating in the generation before.”

It continues:

“The task that faces us, therefore, if the cycle is to be broken, is to develop strategies of intervention that really affect the root cause of the difficulties.”

These are words, Sir, important, intelligent, well-written words. It is a task. As the Senator before me said, it is a task which has, in fact, been addressed by other good governments that have tried. It is a good thing, a right and honourable thing that the Senator has brought this Motion at this time, at this point, for this Government to address. It is most appropriate.

That is not to suggest, Sir, that the Government has ignored it. We have heard statements from the Minister of Social Development about the abuse of children and, therefore, we are mindful of the fact that their minds are being cast to the issue. The Senator has brought the matter directly to the forefront of the Senate, and we must, therefore, together find a way.

The Report goes on:

“As the year 1993 draws to its close, 10 children have been murdered in this year, 8 by their fathers and 2 by their stepmother. Many others have been grievously wounded in attacks of extreme violence.

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The responsibility for the children in especially difficult circumstances must be accepted by the national community; there needs to be a national consciousness that the lot of these children reflects on the development of the nation as a whole.

We fail them at our peril.”

Sir, as Sen. Teelucksingh said, it is a national problem, and we must have national compassion to find a way to assist them. One of the things I discovered is that there is an organization called the “Marian House” which shelters young men between the ages of 15 and 25. The population sheltered in this institution varies between 20 and 30. Since 1987 the Government has provided a fixed stipend of \$28,000 and the rest of the funds, approximately \$10,000 a month, is underwritten by the Living Water Community. In other words, approximately \$38,000—call it \$40,000—is spent monthly to house 30 young men. So it is just over \$1,000 per person.

That is not an absolute number because if, in fact, the Government were to consider building new facilities, one would have to look at the capital cost, and so forth. It is an indication that when government reaches out to society people would put their time and effort into it if the cost of managing the facility can, in fact, be brought down. I say that only to draw the issue to the attention of the community and the Government, in the hope that other facilities can be prepared and funded both by the Government as well as the private sector.

#### **4.10 p.m.**

I am advised that the terrible thing which is taking place with the children is that the boys live on the streets, and the girls find some sort of accommodation, usually with a man even when they are as young as seven years old. By the time the children reach the age of 20 years, they are infected with HIV, which means that it is a literal death sentence to go onto the streets.

The fact that that disease is contracted primarily by sexual contact should tell us a shocking and terrible story as to what the lives of these children are really like. From the reports and what we see we would all know that the victims of HIV suffer an agonizing death, and these children are going to die in the most awful circumstances, under the most dreadful conditions. If we ignore the situation this is what we are relegating these young children to. These children have been brought into the world by no wish of their own. They did not say, “I want to be here”. They simply arrived here in the most unfortunate circumstances that were not of their

own making. I venture to suggest that it is the duty of the society to shelter and protect its children.

The fact that the children are being abused in the families is a clear indication that the social fabric—the value system that we once held dear—is breaking down. Almost all of the ills that we try to deal with, by passing laws to deal with the administration of justice and so on, are aimed primarily at the breakdown in the social fabric of our society. We have to address how and why this is taking place.

I ask the Members in this Senate to really look to themselves to see what is causing it and what are the factors that contribute to it. One of the things I would venture to suggest is that we are being inundated, if not bombarded, through the media—I mean specifically the television and the movies—with information and behaviour patterns that are totally inappropriate for any society, much less ours.

One of the things we should begin to think seriously about, is whether or not we should begin to have more stringent laws with regard to what can and cannot be seen in terms of entertainment on the television. The raucous violence with which our children are bombarded; we see murders taking place every day on the television—albeit fictional—and we think nothing of it; and horror upon horror is put into the minds of our own children. When there are legitimate murders in our country and we see photographs on the television, and in the press, it is nothing. It is nothing at all when a human being is lying there with his life destroyed. It is as if it never happened. It is just a photograph. It is not someone's father, mother or brother; it is just a lifeless body. We are so accustomed to seeing lifeless forms being flung about as if they are of no value at all.

Mr. Vice-President, we need to think about that issue, and with regard to what is happening in our society, we need to think carefully as to what type of values we need in our country.

The Senator before me raised the questions: Do we have the political will and the social compassion to do something? How much should we care? These are good questions that we cannot answer: How much should we care? What should we do about the men, women and children who are living on the streets? How much should we care, Sir? The issue again needs to be addressed.

In closing, Sir, I wholeheartedly support the sentiments of the Senator and I certainly support the Motion.

Thank you.

**Sen. Vimala Tota-Maharaj:** Mr. Vice-President, I wholeheartedly agree with Sen. Montano, that vagrancy is not a political football and we are not here to score political points. However, I cannot understand why a document such as this which presented a holistic proposal for addressing social development; a study conducted by the Ministry of Social Development in 1993, into the root causes and consequences of vagrancy and homelessness which supports the general perceptions about the nature of the population of socially displaced persons, was not taken seriously.

I agree with Sen. Montano that, yes, we have a vagrancy problem, but that problem and all these issues he has been speaking about did not begin last week or five months ago, and they did not begin one year ago. Those problems have been there for numerous years, but what has been done by previous governments to address these problems?

Kudos to our NGOs. I must say I feel as strongly as Sen. Rev. Teelucksingh does. He knows I have worked in the vagrancy field in my religious group for about 10 years. In our group, we try to prevent vagrancy from taking place. We try to address the needs of the family unit. We have been doing that for numerous years without government's assistance and now we are here to change that.

I am not scoring political points, but I would like to tell hon. Senators that under the Minister of Social Development, vagrancy has been broken down into several categories. The causes of vagrancy status are: unemployment; illness, including mental illness; substance abuse; abandonment and rejection, and family disputes. So, what we have done already—not the Government alone; the NGOs, the churches even schools, because as an educator in a primary school for three or four years, I was instrumental—especially the Hindu board—in identifying where there were families in need and we were trying to put a stop to issues such as these; trying to put a halt which we know probably we cannot stop because it is like a runaway freight train right now.

#### **4.20 p.m.**

The Minister and his team realize that something has to be done and he has started work immediately. A networking is taking place with several ministries getting together to address different problems. In December, 1995, the Minister of Social Development and the Minister of Health held discussions and mandated a committee comprising senior staff of both ministries to formulate an action plan for treating the problem of social displacement, not only of senior citizens, adults in

the 30—40 age group, and children, but an entire package, broken down into the grouping or category, to address social displacement of all groups of people. This is being done in a very systematic manner and is being addressed slowly. Recently, a centre for street children was opened.

I agree with Sen. Montano that we cannot herd our vagrants—I hate to use this word “vagrants”—and ship them off to one point. That will never solve the problem. We have to identify that problem. We have to identify why they have become vagrants. This is very time consuming. Many of them are not co-operative. We are going to set up certain programmes and centres to address these needs.

When I listened to Sen. Montano speaking about the wretchedness of souls, his heart going out and our hearts bleeding; I believe all of us feel the same way when we go outside or stand on the balcony right here and see the vagrants out there. We wonder what would happen next. Will they move in on us where we are? We have this fear and scorn for the vagrants. Recently, while leaving the Red House after sitting one evening about 5.30 p.m., I was stopped by a senior couple of African descent. I was getting into my car which was parked out there and I saw the old gentleman prodding his partner to talk to me. I knew what they were coming for. I saw them with their bag of clothes. The lady walked up and asked for a little help. I asked what she was doing there. She said that they had nowhere to stay because their children had put them out; they were too old and were a problem for their children. This is the kind of situation we meet. That is why this Government has recognized that it has to start addressing this problem at this basic unit.

Education is imperative. We have to start educating the members of the family and advocating the extended family to ensure that when we become senior citizens, there would be a place for us in our children’s homes. We would know that we have an old age to look forward to and we would not be put on the pavement. I assure you that under the Ministry of Social Development—the Minister feels very strongly about the vagrancy issue—all these aspects would be addressed.

It might be very difficult to go through this document to highlight some of the areas of work which would be taking place. Some of the headings are as follows:

Programme for Substance Abuse (Caura facility);

Programme for Mentally Ill (St. Ann’s; Tumpuna Road, Arima; Nazareth House);

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Programme for the Elderly;

Co-op Housing (St. Vincent de Paul Society; Salvation Army);

Public Education (Collaboration between Government and corporate citizens to provide public education programmes on a national scale aimed at preventing social displacement);

Establishment of a Social Displacement Fund and Implementation.

This is where our businessmen would come in. We can speak and have numerous proposals and reports, but by stages, we are implementing programmes to help alleviate this vagrancy problem.

I assure Sen. Teelucksingh and Sen. Montano that when the Minister of Social Development comes to make his presentation, they would see that this programme is being addressed slowly but surely.

Thank you.

#### ADJOURNMENT

**The Minister of Public Administration and Information (Sen. The Hon. Wade Mark):** Mr. Vice-President, I beg to move that this House do now adjourn to Monday, August 5, 1996 at 10.30 a.m.

We shall address the Bill to amend the Trade Marks Act, Chap. 82:81 and the Copyright Bill, 1996. If we are successful in concluding these matters, it is quite possible that this Senate would be able to proceed on recess.

*Question put and agreed to.*

*Senate adjourned accordingly.*

*Adjourned at 4.27 p.m.*