

**SENATE***Tuesday, February 17, 1998*

The Senate met at 1.31 p.m.

**PRAYERS**[MR. VICE-PRESIDENT *in the Chair*]**PAPERS LAID**

1. Auditor's Report and Financial Statements on Taurus Services Limited for the year ended September 30, 1994. [*The Minister of Finance and Tourism (Sen. The Hon. Brian Kuei Tung)*]
2. Auditor's Report and Financial Statements on Taurus Services Limited for the year ended September 30, 1995. [*Hon. B. Kuei Tung*]
3. Auditor's Report and Financial Statements on Taurus Services Limited for the year ended September 30, 1996. [*Hon. B. Kuei Tung*]
4. Report of the Auditor General on the accounts of the Chaguaramas Development Authority for the year ended December 31, 1994. [*Hon. B. Kuei Tung*]
5. Report of the Auditor General on the accounts of the Chaguaramas Development Authority for the year ended December 31, 1995. [*Hon. B. Kuei Tung*]

**ORAL ANSWERS TO QUESTIONS**

**The Minister of Public Administration and Information (Sen. The Hon. Wade Mark):** Mr. Vice-President, may I inform the honourable Senate that questions 7, 8, 9 and 14 are ready for oral responses. The rest of the questions, Sir, we would like to be deferred for two weeks.

*The following questions stood on the Order Paper:*

**International Treaties**

5. A. Could the hon. Minister of Foreign Affairs inform the Senate of the International Treaties, other than Bilateral Treaties, to which Trinidad and Tobago has acceded since 1976, the dates of accession or ratification and the subject matter of each treaty?

- B. Could the hon. Minister also inform the Senate whether any of these treaties requires passage of special or new domestic legislation or amendment to existing legislation?
- C. Could the hon. Minister also inform the Senate of the status of preparation of any legislation required under international treaty and of the timetable for tabling any such legislation? [*Sen. Prof. Julian Kenny*]

#### **Attorneys-at-Law**

- 10.** A. Could the hon. Attorney General state:
- (i) the total number of attorneys-at-law retained by Government since it assumed office in 1995;
  - (ii) the cost the Government incurred in retaining these attorneys-at-law;
  - (iii) the purpose for which the attorneys-at-law were retained;
  - (iv) the amount of moneys paid and owed to the lawyers;
  - (v) the reason/s in each case, for retaining the attorneys-at-law instead of using attorneys employed with the state.
- B. Could the Attorney General also state whether:
- (i) Statutory Boards
  - (ii) Statutory Authorities
  - (iii) Public Authorities
  - (iv) Service Commissions; and
  - (v) Government-owned companies
- retained attorneys after the Government assumed office in 1995?

If the answer is in the affirmative, could the Attorney General give particulars of:

- (i) the names of the attorneys;
- (ii) the dates of their retention;

- (iii) the nature of the case which they were retained to do;
- (iv) the amount of moneys paid or owed to them; and
- (v) the reasons for retaining them in preference to using attorneys employed with the state. [*Sen. Penelope Beckles*]

**Advisors and/or Consultants  
(Appointment of)**

- 11.** Would the Minister of Public Administration and Information please state:
- (a) the names of the advisors and/or consultants who were appointed during the period November 1995 to January 5, 1998 at the Ministries of Tourism, Sport and Youth Affairs, Labour and Co-operatives and Education, and
  - (b) the qualifications and salaries of the advisors and/or consultants who were appointed. [*Sen. Penelope Beckles*]

**Counting Unremunerated Work Act, 1996**

- 12.** Could the hon. Prime Minister tell this Senate what measures have been put in place by the Central Statistical Office to implement the provisions of the Counting Unremunerated Work Act of 1996? [*Sen. Diana Mahabir-Wyatt*]

*Questions, by leave, deferred.*

**Lead Acid Batteries**

- 7. Sen. Prof. Julian Kenny** asked the Minister of Planning and Development:
- A. Could the hon. Minister inform the Senate whether lead acid batteries are currently being recycled in Trinidad and Tobago?
  - B. If the answer is in the affirmative, could the hon. Minister inform the Senate of:
    - (i) the sources of lead acid batteries employed?
    - (ii) the measures taken by Government to regulate recycling, with particular reference to the protection of workers employed in recycling; the handling and disposal of spent electrolyte slag, from smelting and battery cases?

- C. If the answer is in the negative could the hon. Minister inform the Senate of measures taken by Government to deal with the disposal of unserviceable lead acid batteries which may be accumulating in the country?
- D. Could the hon. Minister also inform the Senate of measures taken or planned to decontaminate sites affected by lead slag pollution?

**The Minister of Planning and Development (Hon. Trevor Sudama):** Mr. Vice-President, preliminary investigations undertaken by the Environmental Management Authority in 1997, indicate that there is minimal recycling of batteries being carried out in the country. The two major battery manufacturers, Automotive Components Limited and Lenwayne Manufacturers Company Limited, no longer recycle batteries locally but export whole batteries to Venezuela for recycling.

In the informal sector, however, an unknown number of backyard operators are involved in the repair of batteries and recovery of lead for sale as raw materials and/or fishing equipment. These establishments source their lead batteries from dumpsites or directly from the public.

There are no existing regulations or programmes in place to regulate battery recycling but this matter is currently being addressed. At present the Factories Ordinance makes some provision for the protection of workers engaged in the manufacture of batteries. Several programmes are being developed to control the environmental and health impacts of a number of activities, including battery recycling. These programmes are as follows:

- (i) Hazardous and oily Waste Management Programme. This programme involves the design of administrative and regulatory systems as well as the technical infrastructure including recycling and final disposal necessary to manage hazardous waste in Trinidad and Tobago.
- (ii) Development of water pollution regulations. The Environmental Management Authority, in conjunction with the Trinidad and Tobago Bureau of Standards, is currently involved in the development of standards to control the discharge of liquid pollutants in the waters of Trinidad and Tobago. A draft standard has been developed to date and it is expected to be published shortly.

- (iii) Occupational Health and Safety Act. The Factories Ordinance will be subsumed under the Occupational Health and Safety Act upon its finalization this year. This Act will seek to provide regulatory protection for all workers on the job on occupational health and safety issues and greater attention will be given to the enforcement of regulations.
- (iv) Mandatory deposit legislation. Government is actively exploring the feasibility of implementing mandatory deposit legislation as a tool in addressing several solid and hazardous waste issues, including activities involving lead acid batteries, used tyres, beverage containers, used oil and derelict vehicles. It is envisaged that consumers will be required to pay a deposit when purchasing goods which will be refunded to them when returned to an authorized return centre. The waste will then be recycled or properly disposed of. Consideration is being given to use of this tool in addressing the problem of lead pollution.

During 1995, Automotive Components Limited, one of the major battery manufacturers in this country, undertook a massive clean-up operation of its facility. Eight hundred and forty tonnes of waste from battery operations were exported to a recycling plant in Venezuela. Trade statistics for 1996 show that this country exported 1,300 tonnes of lead scrap to Venezuela.

While statistics do not suggest an accumulation of lead acid batteries in the country, Government is aware that there are sites in Trinidad and Tobago that are contaminated with lead and lead slag. In an effort to address the decontamination of these sites, the Environmental Management Authority, as part of its 1998 work programme, is conducting an inventory of these sites and will systematically carry out remedial and monitoring processes to ensure that human health and the environment are protected. The following specific activities are scheduled to be undertaken:

- (i) Review of existing information and recommendation of priority sites for clean-up and mediation based on risk to human health and the environment.
- (ii) Conduct of studies to define the extent of contamination of selected sites with particular emphasis on the impacts on surface and ground water and watersheds.

*Oral Answers to Questions*  
[HON.T. SUDAMA]

*Tuesday, February 17, 1998*

- (iii) Identification of appropriate agencies to co-ordinate clean-up action; establish the amount of lead waste produced in the country and secure lead contaminated material collected from sites.
- (iv) Development of subsidiary legislation to control the use and disposal of lead waste.
- (v) Public awareness and education programmes on lead and its impact on health and the environment for the public and for producers and users of lead waste.

Currently, Government is focussing on the lead contamination problem at Demerara Road, and a decision has been made to resettle the residents of that contaminated site. Construction of starter houses at Wallerfield under the National Housing Authority will be completed later this year. Remedial action will be taken as soon as the residents are relocated.

Thank you, Mr. Vice-President.

**Sen. Prof. Kenny:** Mr. Vice-President, a supplementary question to the hon. Minister. We all know that the Demerara site is one of the main sites of contamination. I wonder whether the hon. Minister would let the Senate know whether the state would be responsible for the cost of decontamination or will the lead recyclers be responsible?

**Hon. T. Sudama:** Mr. Vice-President, initially the state will undertake this activity and, if it is possible, we would seek a reimbursement from the manufacturers.

**Sen. Mannede:** Mr. Vice-President, a supplemental question to the hon. Minister. Could the Minister tell us whether or not the state has accepted liability for those persons who were victims of lead poisoning?

**Hon. T. Sudama:** Mr. Vice-President, the state has not accepted liability for the victims of lead poisoning but, of course, the state has a responsibility to see that this matter is rectified and remedied in the shortest possible time.

**Sen. Dr. Chamely:** Could you tell us whether or not an assessment is being done on all the people in the area to find out what their lead levels in the blood are like?

**Hon. T. Sudama:** Mr. Vice-President, I do not have that information at hand, but I know that the Ministry of Health has been conducting analyses. If the Senator

requests at a later stage, I can get that information but really, technically, it is another question.

**Environmental Commission  
(Establishment of)**

8. **Sen. Prof. Julian Kenny** asked the Minister of Planning and Development:

Could the hon. Minister inform the Senate whether the Environmental Commission, required by the Environmental Management Act 1995, has been established?

If the answer is in the negative, could the Minister state:

- (i) when the Commission would be established;
- (ii) the estimated capital costs of establishment of the Commission and the estimated annual recurrent cost of operation of the Commission?

**The Minister of Planning and Development (Hon. Trevor Sudama):** Mr. Vice-President, the Environmental Commission has not yet been established. I think it is well for Members of the Senate to understand that this requirement is for the establishment of an environmental court and all that that entails. There has been some delay on account of the discussions on the organizational structure and the staffing requirements.

A preliminary assessment of needs indicates that the following staff would be required, in addition to the Chairman and the Deputy Chairman and under the Environmental Management Act, the Chairman and the Deputy Chairman must be attorneys-at-law of no less than 10 years standing. In addition to these, as I said, a preliminary assessment indicates that the court would require for its functioning, a Registrar, a Secretary to the Chairman, Secretary to Deputy Chairman, Secretary to the Registrar, a systems analyst, a court administrator, transcriptionist, research analyst, assistant librarian, process servers, clerical officers, customer service officer, office attendant, security officers, janitorial services, *et cetera*.

**1.45 p.m.**

The estimated capital cost of establishing this commission is approximately \$4,060,000 comprising rental of office accommodation, cost of preparation for the courts, computer hardware and software and office facilities. The estimated annual

recurrent cost of operation would be in excess of \$1 million per year, comprising salaries and emoluments for the personnel outlined above and other office expenses.

**Sen. Prof. Kenny:** Mr. Vice-President, a supplemental question, please.

The budget documents which we received for this year—I cannot remember the exact one—says that the commission will be established in 1998. Could we have some clarification of this from the hon. Minister?

**Hon. T. Sudama:** Mr. Vice-President, we have to get the organizational structure in place, we have to staff the commission, we have to get the rental accommodation organized and so forth. That is going to take a little while but we expect to do all this in 1998. The first task of trying to get a chairman and a deputy chairman of 10 years standing as an attorney-at-law is quite a formidable task, given the kind of emoluments which would be payable. As I said, it is going to take a little while but I give the hon. Senator the assurance that we are working speedily towards the establishment of the commission.

### **Churchill Roosevelt Highway (Continuation of)**

**9. Sen. Penelope Beckles** asked the hon. Minister of Works and Transport:

- (i) Could the hon. Minister state when his ministry will commence continuation of the Churchill Roosevelt Highway between the Omera Road, Arima and Wallerfield;
- (ii) the estimated cost of the said road; and
- (iii) the anticipated date of completion?

**The Minister of Works and Transport (Sen. The Hon. Sadiq Baksh):** Mr. Vice-President, the continuation of the dualling of the Churchill Roosevelt Highway, between Omera Road and Wallerfield has not been programmed, although the idea was first conceived in the early 1960s and the designs for the section between Omera Road and Tumpuna Road were completed during the 1980s.

At present, there is no immediate plan for its continuation. The present estimated cost for this project is \$40 million.

Mr. Vice-President, part (iii) of the question does not apply.



**Sen. Beckles:** Mr. Vice-President, through you, could the hon. Minister indicate why in the near future no consideration would be given to the continuation of this road?

**Sen. The Hon. S. Baksh:** Mr. Vice-President, we, in the Ministry of Works and Transport, are really trying to implement all the plans which were conceived since the 1960s and during the other years. We have not reached that road as yet.

**Sen. Beckles:** Mr. Vice-President, is the hon. Minister aware of the distress persons from the East/West Corridor face coming from that area every day?

**Sen. The Hon. S. Baksh:** Mr. Vice-President, we, in the Ministry of Works and Transport continue to be less than proud about the decaying state of all the infrastructures in Trinidad and Tobago. However, we are trying, as expeditiously as possible, to redress the decay which continued over the last three decades. I assure the hon. Senator that they will all be receiving attention in due course.

**Special Reserve Police  
(Compassionate Gratuities)**

- 14. Sen. Diana Mahabir-Wyatt** asked the hon. Minister of National Security: Could the hon. Minister state what action has been taken with respect to paying compassionate gratuities to members of the Special Reserve Police who, having retired prior to 1992 have not yet received such gratuities?

**The Minister of National Security (Sen. Brig. The Hon. Joseph Theodore):** Mr. Vice-President, this honourable Senate is advised that the practice with respect to the payment of compassionate gratuity to Special Reserve Police officers who retire has been to adhere to the provisions of the Pensions Regulations, Chap. 23:52, which states in part:

- “14. (1) An officer holding a non-pensionable office may, in the circumstances contemplated by this regulation as hereinafter set forth, be granted, unless the President otherwise directs, a compassionate gratuity not exceeding twelve days pay for each year of the service under the Government.
- (2) The circumstances contemplated by this regulation are that the service of the officer under the Government is terminated in consequence of the abolition of his office...or on or after he has attained the retiring age of sixty years, and that in any such case he has been in the service of the Government for not less than seven years.

*Oral Answers to Questions*  
[HON.T. SUDAMA]

*Tuesday, February 17, 1998*

- (4) For the purposes of this regulation—
- (a) no calendar year in which the officer has worked less than one hundred and fifty-six days (hereinafter called a non-effective year) shall be reckoned for gratuity;”

Mr. Vice-President, the Adjutant of the Special Reserve Police officers has confirmed that Special Reserve Police officers who have met the criteria set out in the Regulations quoted above, and who retired prior to the year 1992, have all received a compassionate gratuity.

Thank you, Mr. Vice-President.

**Sen. Mahabir-Wyatt:** Mr. Vice-President, through you, could the hon. Minister tell us whether this includes those Special Reserve Police officers who were on duty during the troubles in 1990, who were called out to work extra hours and days, and who were promised, by a letter from the then Minister, that they would be given special compassionate gratuities, but as of three months ago have not yet received them? Does the hon. Minister’s answer assure this Senate that they have, in fact, since received those gratuities?

**Sen. Brig. The Hon. J. Theodore:** Mr. Vice-President, I can only repeat that the qualifying period in any one year should not be less than 156 days. For me to answer this question correctly I would have to calculate the service of the officers referred to by the hon. Senator. I cannot give an answer now that persons who served in 1990 are, in fact, covered by this Regulation.

**Sen. Mahabir-Wyatt:** Could I be guided, Mr. Vice-President? Am I allowed to return a question naming the persons who were involved? I am. Thank you, I will do so.

**1.55 p.m.**

**CONSUMER PROTECTION AND SAFETY (AMDT.) BILL**

[Second Day]

*Order read for resuming adjourned debate on question [December 16, 1997]*

That the Bill be now read a second time.

*Question again proposed.*

**Sen. Diana Mahabir-Wyatt:** Mr. Vice-President, in considering the amendments which have been proposed for the Consumer Protection and Safety (Amdt.) Bill, I wonder if I might be allowed, just at the beginning, to start off with

an appeal to this honourable Senate in reference to the importance of language. I do this, not to stray from the Bill but because of the way in which language has been used in this Bill.

Over a number of years, I have made similar comments in relation to drafting of various bills that have gone through in this honourable Senate. One of those was in relation to the Maternity Protection Bill where I pointed out some pretty sloppy drafting which I have constrained myself from doing over the last 18 months, because I think I overdid it in the last Parliament and I was continually asked: "Please, go slow, because after all, our parliamentary draftsmen continue to draft legislation under such pressure and we cannot expect everything to be perfect"; there may be typographical errors and so forth.

If you devalue or debase the language in which people try to communicate you would not only devalue or debase a communication, you would also debase the culture and the civilization with which you are dealing. I am very proud to know that Trinidad and Tobago is a bilingual country; we speak the language of Paul Keens Douglas and the immortal Tanty Merle who, incidentally, I understand was absolutely horrified by what went on at the Queen's Park Oval over the weekend, and who was even more shocked—I gather she has taken to her bed—over the front cover of yesterday's *Independent* newspaper. Tanty Merle's language, be as it may, and honoured and loved as it is, we also are expected in this country to speak what is known as English and this is the language which something like two-thirds or three-quarters of the world uses to communicate for trade, international relations and for various other reasons. While I do accept that both these languages change, adapt and move as society does, I think that the language of this Parliament and the official language of this country still remains English. I would make a special appeal that those who work in the Parliament drafting laws, dealing with laws and speaking about laws would make an effort to honour and respect English.

I would like to point out on page 2 of the Consumer Protection and Safety (Amdt.) Bill, under "Explanatory Note," it says:

"The purposes of this Bill therefore are as follows:

(a) To alter the composition of the Consumer Guidance Counsel;"

Spelt "Counsel". It is extremely difficult to alter the composition of any counsel or Member of the Bar without killing him or her.

*Consumer Protection (Amdt.) Bill*  
[SEN. MAHABIR-WYATT]

*Tuesday, February 17, 1998*

To “alter the functions of said Counsel” can presumably be done through re-engineering, reorganization or chopping off various limbs surgically. But it would appear that we have replaced the “c-o-u-n-s-e-l” by going further down the page with our Consumer Guidance Council which is spelt “c-o-u-n-c-i-l” which is quite different from a “c-o-u-n-s-e-l.” This error, which is a spelling error, I grant you, which is not picked up by spell check on the computer, but should have been picked up by editors, was repeated from the earlier typed Act and put on to the printed Bill, which means that it went through several hands without being noticed or changed. Mr. Vice-President, we think in words and I think it is important that we start to pay a little more attention to the quality of the editing with which we bring various documents to this Parliament.

If I can just refer to the amendments which have been proposed themselves, I would like to make some general comments about the Minister’s statement which was made in Parliament last week or the week before. Before I do, to put them in context, I would like to refer to the actual legislation itself. Let me start off with clause 3 in the amending Bill which says:

“The Act is amended by deleting section 5, and substituting the following:”

Section 5 in the existing Act says:

- “(1) There shall be established an advisory council to be called the Consumer Guidance Council...
- (2) The Council shall consist of not less than nine and not more than twelve members...”

Subsection (4) states:

“...the Council will include—

- (a) one or more persons...qualified to advise on practices relating to goods supplied to consumers in Trinidad and Tobago or produced with a view to their being so supplied...
- (b) one or more persons appearing to him to be qualified to advise on such practices...”

In other words, somebody who understands a little about consumer law.

- “(c) one or more persons appearing to him to be qualified to advise on such practices by virtue of their knowledge of or experience in organisations established or activities carried on, for the protection of consumers.”

In other words, people representative of consumers, of suppliers of goods and services, of various non-governmental organizations and legal advisors, have been replaced by Members of the Cabinet. No more NGOs, no more people who supply goods and services, no more people who have expert knowledge in the law relating to consumer matters or in any other expertise. As much as we must respect the Members of Cabinet, many of them have only been involved in the particular discipline in which they are now involved for a relatively short period of time, having come from other disciplines before this particular Government got into power. They are now removing from the council, persons who are specially qualified to advise on any of the matters on which the council has to pronounce. This disturbs me enormously.

You would notice that the proposed section 7 A(1)(b) in clause 6 says that the purpose is:

“to advise the Cabinet on matters relating to the implementation of the policy.”

But it is the Cabinet because all Members are Cabinet Members. It is a question of himself to himself. That, I think, is removing the whole question of participation which this Government has, over and over again, declared itself to be in favour of as a policy, and did so in its platform leading up to the elections and has done so ever since. With one hand, it is removing the participation of non-governmental organizations and persons in the community who are actually involved in supplying goods and services and using them, and replacing these by Cabinet Ministers.

### **2.05 p.m.**

I am not saying Cabinet ministers do not consume various items themselves, they are frequently seen doing so in the newspapers and on the television. I would imagine in certain specific areas they may be well advised on the quality of certain products, but that is a bit different from being involved in organizations or having special expertise in these areas.

Mr. Vice-President, if I may go on to clause 4, which says:

“The Ministry with responsibility for consumer affairs, shall be responsible for the duties of the Secretariat to the Council.”

Now, this is replacing section 6 which set up the Council. I was wondering if the Minister could tell us, because there were staff people involved in this, what has happened to the existing people? Is this putting the responsibility for consumer affairs as part of the secretariat of this particular ministry, a money saving device? Or is there another reason for it? I am not quite sure.

*Consumer Protection (Amdt.) Bill*  
[SEN. MAHABIR-WYATT]

*Tuesday, February 17, 1998*

As we go on to clause 5, one will see that section 7 of the Act is amended by deleting subsection (1), which simply changes the amount of the quorum, but it also deletes subsections (3) and (4). Mr. Vice-President, this is extremely serious. Subsection (3) talks about conflict of interests and it says that:

“A member of the Council whose interest is likely to be affected whether directly or indirectly by a decision of the Council on any matter whatsoever, shall disclose the nature of his interest...”

Subsection (4) says that:

“A disclosure...shall be recorded in the minutes of the Council...”

after the disclosure and procedures are outlined. These two provisions have been removed.

Mr. Vice-President, given all the problems which have been ventilated very widely in the press over the last few days; is it wise, is it sensible, is it politic, is it rational to remove provisions which say that a conflict of interest has to be announced, examined or declared? Now no interest need be declared. Is this saying that the new members of the council, who are all Cabinet Members, have no interests other than the work that they do in this particular Council or in Cabinet; that these are the only affairs they have to deal with and, therefore, they do not need to declare a conflict of interest? That I would doubt very much.

The reason for the removal of the conflict of interest provisions is not explained either. Given the issues of interest, corruption, misuse of power, questionable commissions, kickbacks, appointments of shady contractors with no qualifications, disclosure of privileged information and so forth, charges have been laid recently which have been extremely distressing to people in this country, it seems to me, passing strange, that a provision dealing with conflict of interest, when it comes to something as involved as money, finance and business as a consumer council, is something which needs far more explanation. We did not get any explanation and I hope that the Minister will address this in some depth, because, I think, we need to be told the reason for it.

The next statement with which I have a problem is clause 7 which says:

“The Heading occurring immediately under the words “PART II” is deleted and the following heading is substituted, “PROTECTION OF THE CONSUMER”.”

The old heading was "References to the Council" and this is what that section dealt with.

Now, I did, for a period of my life, for two or three years, teach a course at the University of the West Indies called "The use of English". I know that we are often quoted, as "the Bard" says:

"What's in a name,

A rose by any other name would smell as sweet"

Presumably, when we change a name from "References to the Council" to "Protection of the Customer", we are expected to immediately understand, that this particular section is going to give the consumers protection. But, "the Bard" was not the only one who wrote about what is in a name. There was a gentleman called George Orwell who wrote a book called *1984*, in which he talked about "newspeak". You can change the name of something, but you do not convince everybody that by changing the name you have changed the substance.

Right beneath this, in clause 8, one will note section 9 of the Act is repealed and the following section substituted as follows. Now section 9, as was indicated by the previous heading, talked about references to council, it gave a list of matters which could be referred to the council. For example, whether or not a consumer trade practice would adversely affect the economic affairs of Trinidad and Tobago. It gave provisions as to what the council should do in relation to this. One will notice that section 9 is repealed and it is replaced by a statement:

"Subject to this Act, the Director shall determine—"

Note, Mr. Vice-President, "the Director shall determine". No input from consumers, no input from those who serve them, from the commercial sector, nor from the social partners, whom apparently, we are told are very important in the affairs of this new Government.

"Subject to this Act, the Director shall determine whether any consumer trade practice adversely affects the economic interests of consumers in Trinidad and Tobago."

The Director has a lot of power.

Sections 10 and 11 of the existing Act are also repealed, which makes it quite clear that no references would be made to the council under certain circumstances and then there is the question of the First Schedule. If I am being a bit vague here

*Consumer Protection (Amdt.) Bill*  
[SEN. MAHABIR-WYATT]

*Tuesday, February 17, 1998*

it is because I presume everybody has taken the time to read this. So if I make references to the First Schedule, one will understand the First Schedule includes various areas which are not to be touched by the old Consumer Protection Act. I, incidentally, am very pleased to see that the First Schedule has been removed, because amongst the things which did not come under the Consumer Protection Council were:

- “1. Services consisting of the provision—
  - (a) of primary, secondary or further education within the meaning of section 6(1) of the Education Act; ...
2. The services of ministers or other persons of religion in their capacity...”

Given the recent scandal about school books, which I will come back to, it would be nice to know that these things will now be under the jurisdiction of whatever body is being set up to protect consumers. I would like to make it quite clear, I am not objecting to the establishment of a Consumer Protection Council. I think it is a very good idea. It is just that I am very disturbed to see that it is being set up in such a way as to exclude comment and provision from people who will be affected as consumers, both as provisioners of goods and services and as consumers of them. All of a sudden, the entire responsibility is being handed over to a Cabinet committee—in fact, this is what it is—who will appoint a director who will report directly back to it, but the director will determine whether any practices adversely affect the economic interest of consumers in Trinidad and Tobago. I do not understand why this is being done. It is going to take some persuading to make me believe that this is a good idea.

### **2.15 p.m.**

As the Minister pointed out in his opening statement, the first Consumer Guidance Council was established in 1972 and was merely for consumer education. When it was anticipated that the Consumer Protection and Safety Act was coming up in 1985, proposals were submitted for the appointment of a new council, but just because their recommendations were never submitted for Cabinet approval, the Minister is saying that we have found ourselves in this situation; we have no effective consumer protection.

It seems to me, that statement in itself did not warrant a complete change from consumer involvement to Cabinet direction. While I agree that Act No. 30 of 1985 needed to be given more teeth—because we do need more protection when it



comes to consumer and safety matters—I am not sure that we need to replace a lack of teeth with dragon teeth, breathing fire and swallowing ourselves whole. He did say that the Consumer Affairs Unit which was of low priority, was tucked away somewhere in some ministry—now it is going to presumably be tucked away in his Ministry—but the decisions seem to be made by the director without reference to anyone else.

There are a couple of issues which I would like to commend; one of those is deleting subsections, (1), (3) and (4) in section 12. These particular provisions, for some reason, were trying to protect unscrupulous providers of consumer goods and services. It said that people who promoted unfavourable trade practices would not have their names appear in the *Gazette*. I am assuming that the Government has removed it because it feels that people's names should be mentioned, and will be, if it is shown that they have committed unfavourable trade practices.

However, it goes on in section 12, having deleted subsections (1), (3) and (4), and keeping in subsection (2)—which I think is important—by substituting the last six lines of subsection (1) and replacing them by:

"The Director may recommend to the Minister that he should exercise his power under this Part with respect to that consumer trade practice";

Since it is the council that makes the decision and the Minister is part of it, and the director is appointed by the council, it seems to me once more, that this is himself to himself, monitored by himself. I hope the Minister can reassure us that there are checks and balances set in to ensure transparency, and carry out the provisions of this Act. It is not enough to say that this is going to be done in the regulations or in practice, or intentions are honourable, when the actual involvement of members of interested organizations have been removed from the legislation itself. It takes more than something in the regulations, our practices or good intentions to replace those, because we cannot always be sure that we will have a Minister with such good intentions and such a democratic approach towards his duties.

Under clause 13 it points out that section 14 has been amended. In this case I am not really complaining, it is just that I do not understand what subclause (d) means. It seems that whoever drafted it did not read the same piece of legislation I have in front of me. It says:

- "(d) by deleting from subsection (3) the words -
- (i) "any such proposals" occurring in line three;"

*Consumer Protection (Amdt.) Bill*  
[SEN. MAHABIR-WYATT]

*Tuesday, February 17, 1998*

I am presuming it means line two because line three in the legislation I have does not have those words in it. Then (ii) says:

- (ii) "specified in the reference in which the proposals are made" occurring in lines three to four;

That occurs in line four in the legislation I have, which is in Acts and Legal Notices 1985, put out by the Government of Trinidad and Tobago. I am not quite sure.

The next line says:

- "(iii) "specified in the proposals" occurring in line eight."

Is the Minister sure that this is what he wants to do, because it does not make any sense to do that? If those words are removed it would read:

"...transactions which are relevant consumer transactions in relation to that consumer trade practice and are of a description and 'specified' (elsewhere than in those expressions) means specified in the proposals."

I do not know what that particular amendment was intending to mean. Since we have to put this into law I am hoping we can do some consequent juggling there.

I would make one more comment about the removal of the Schedule. In paragraph 1.5.5 of the *Report on Textbooks* laid in Parliament in the Senate last Tuesday, the last sentence in that paragraph reads:

"There are no established guidelines and no specific legislation to govern the performance of authors."

I wonder if the hon. Minister is winding up, would assure us that the removal of the First Schedule would mean that provisions for establishing guidelines for the performance of authors will come under this protection of consumers. It seems to me that textbooks are something which we do consume in rather large amounts in this country, at enormous amounts of money. Then we have to throw them out and re-consume because they are not done properly. If the new council, will, as a result of the removal of the First Schedule, have the authority to set up some consumer protection guidelines, I think that would be a great boon to parents in this country. I ask the Minister to specifically take a look at this.

Could the Minister explain a comment he made in his opening statement, which I really do not understand? He made the statement between 3.45 and 3.55 p.m. in which he said that without a consumer there is no business—I agree with that—

and went on to say that so many businessmen fail to realize this. I do not know who the Minister does business with, but the business people I deal with, certainly do realize that without a consumer there is no business. I am wondering if this belief is why businessmen have been removed from the council. If this is so, would he please expand on his reasons for this belief. For all the years I have been involved in business and business organizations in Trinidad and Tobago, I have not found businessmen to be ignorant of the fact that consumers are what make their business.

Mr. Vice-President, in relation to the removal of the First Schedule, I am most interested in what the long-term results are going to be, particularly, when it comes to sections (1) and (2) which I referred to briefly before, about the services of ministers or other persons of religion in their capacity as such ministers or persons. These people provide a service to this country, whether they provide it coming from other countries or within our own, these services will now be—I presume—subject to regulation by the Consumer Protection and Safety Council, which I have no objection to whatever, because some very strange things have gone on in this country under the name of religion such as beating children half to death. I would like the Minister to tell me how regulation of such services is envisaged.

One of the services not specifically mentioned here but which I would make a strong appeal to the Minister to be included if there are going to be regulations or specific orders drawn up for certain sectors, has to do with services provided in the care of the elderly.

### **2.25 p.m.**

In this country, more and more, elderly people are being removed from the care of their families, in many cases simply because the families cannot afford to take care of them, and being put in homes for the aged where there are inadequate services, where there is an enormous amount of abuse. I am not saying this happens in all the homes for the aged because I know of several in which this does not happen. But the extent of the abuse and lack of inspection of services provided for the elderly in this country is nothing less than a scandal. I feel very strongly that when people have managed to survive to old age and have made whatever contribution they have been able to make along the way, they should be protected if they are too helpless and weak to look after themselves. The conditions of cleanliness, medical care, the provision of nutritious food and just basic decent human living conditions in addition to the care provisions which they are supposed to get and do not because caring involves caring about, not just physical caring for.

*Consumer Protection (Amdt.) Bill*  
[SEN. MAHABIR-WYATT]

*Tuesday, February 17, 1998*

We have never had any licensing provision for homes like these and no Social Ministry has seen it fit to establish any procedures to monitor them. Since it does, I believe, come under consumer protection and safety I am hoping the Minister can tell us if there will be provisions under this council to deal with the elderly. Thank you, Mr. Vice-President.

**Sen. Elizabeth Mannette:** Mr. Vice-President, I am pleased to make a contribution on this Bill to amend the Consumer Protection and Safety Act of 1985.

Certainly, the protection of the consuming public is a very important objective and we support that objective. However, we have some concerns with respect to the Bill that is before us.

This Bill, in its preamble, states that the amendments are in furtherance of the consumer policy document which was laid in Parliament on May 21, 1996. That consumer policy document, I believe, was a statement of the Government's policy with respect to consumer education and protection of consumer. I hope I will be able to refer to that policy document occasionally as I comment on the Bill before us.

The main change in the Bill, as I understand it, deals with the composition of the Consumer Guidance Council and Sen. Mahabir-Wyatt, who just spoke, mentioned her concerns with respect to clause 3 of the Bill. We also have some similar concerns with respect to that same clause. Clause 3 of the Bill seeks to delete section 5 of the Act and, as the previous speaker already identified, that section defined the category of persons who could have been appointed to the council and included persons with some experience in consumer matters and certainly professionals and others with technical experience.

We see in this Bill that those persons who could have been appointed to the council are being removed and in their place Ministers of Cabinet are to be appointed. The Minister of Consumer Affairs has not made any persuasive statement or argument as to why this is necessary. In his presentation he stated that the existing council had no real power to influence decision-making. This is in the *Hansard* of December 16, 1997 between 3.45—3.55 p.m. That was his first reason. His second reason was that the council could not initiate investigation of trade practices—of questionable trade practices, I assume.

My questions to the Minister—and I hope my questions are conveyed to him—are: first of all, how was it determined that the council was ineffective? He is

saying here that the council could not function because of the way it was composed. I am not aware that the council actually was established so I would like the Minister to tell us how he determined, before the fact, that the council would have been ineffective. If he thought the council was ineffective because it could not initiate investigation of trade practices, then the way to remedy that is not necessarily to change the composition of the council, but to authorize the council to take those initiative steps. I cannot see why, under clause 6 of this Bill, which outlines the functions of the council, the authorization cannot be included there. If those are the main reasons for changing the configuration of the council, then I do not see how what he is proposing here really solves that problem.

We must have a concern when you are replacing consumer advocates with politicians and Government Ministers. As was pointed out, and as we are all aware, at this point in time politicians and Government Ministers, sad to say, are really viewed under a cloud and when I look at the list of Ministers and Members of Cabinet who will be on this council, I am even more concerned. You will realize, Mr. Vice-President, that, as the Minister himself pointed out, part of the aim of this Bill is to allow consumers to file complaints or to have their complaints against various state enterprises and ministries addressed.

In fact, the Minister of Consumer Affairs, when he was presenting this Bill, put his colleagues on a red alert. I noted that he made a statement that the Minister of Energy and Energy Industries should be aware of this Bill, should listen very carefully and he also spoke about the Minister of Public Utilities and the Minister of Works and Transport. They were all put on red alert that this Bill might bring them under fire from consumers who would no longer tolerate any sort of service or goods from the Government or private sector. Therefore, you are putting your colleagues on alert that they will now be questioned and monitored in a certain way, yet you are taking away this independent body that was supposed to facilitate in identifying the adverse trade practices. It seems to me that, indeed, not only is it himself to himself, but you are really removing the independence that would have been there if the council were comprised as originally proposed.

When I consider that a significant part of this consumer policy is to ensure that consumers are not misled and that false and untruthful statements and advertisements are reduced, and I look at the Members of this Cabinet who will be sitting on the council, I really have to wonder whether or not you are serious. The Minister of Agriculture, Land and Marine Resources; it may be that these are the

*Consumer Protection and Safety (Amdt.) Bill*  
[SEN. MANNETTE]

*Tuesday, February 17, 1998*

very persons we want to be protected against; the Minister of Education, this Minister is going to formulate policy that deals with consumer goods such as—

**Mr. Assam:** Will the hon. Senator give way? I was wondering, Mr. Vice-President, whether the Senator was not imputing improper motives to Members either in the House, outside the House or belonging to another Chamber. To suggest that we are under a cloud and that people like the Minister of Agriculture, Land and Marine Resources should not be there suggests, to me, with great respect, that the Member may be imputing improper motives contrary to the Standing Orders.

**2.35 p.m.**

**Mr. Vice-President:** Yes, Sen. Mannette, the Standing Orders seem quite clear. I think you have crossed the line and I would like you to keep your contribution in line with the provisions of the Standing Orders and please refrain from any imputing of improper motives, or anything similar to that.

**Sen. E. Mannette:** Very well, Mr. Vice-President, I would not cross the Standing Orders, but I believe the *Hansard* report indicates that statements were made in the Lower House which were inaccurate. I am saying that the consumer policy document which this Government put out, contains inaccuracies—which I will get to—but if part of its thrust is to ensure that consumers get accurate information, perhaps the politicians, or the Members of the Government, who themselves are accused of providing this inaccurate information, should not be on the council.

Assuming that this Government intends to go forth with its plan to have the council comprise Members of Cabinet and not independent members of the public and consuming public, I want to question exactly why they selected the areas they did. In their consumer policy, they stated and I will quote page 26 of this policy document:

“Women comprise the largest group of consumers, buying both for themselves and for their families. Women should, therefore, play a leading role in establishing and influencing consumer trends.”

Therefore, I want to ask why was the Minister of Community Development, Culture and Women's Affairs not included in this list? Indeed, my colleague is pointing out that the present Minister of Agriculture, Land and Marine Resources is male, the present Minister of Education is male, the present Minister of Finance

is male; indeed, all the Ministers on this list are male, which is not a problem *per se*, but if you are saying that you recognize that women play an important role and that women should play a leading role in establishing consumer trends, then why did you not include the Minister of Community Development, Culture and Women's Affairs? I do not want to impute any improper motives to the Minister, but I wonder why this Minister of Community Development, Culture and Women's Affairs was ignored? Is it a reflection of your consideration of women's issues, or the Minister of Community Development, Culture and Women's Affairs? In any event, I would like you to address that.

As well, why was the Minister of Public Administration and Information not included in this list? That is taken as a joke, but in all seriousness, if a major part of this consumer policy thrust is to educate and inform the public, then I would think that the Minister of Public Administration and Information would have some value to add, but maybe I am imputing an intelligent motive to the Minister of Public Administration and Information. I do not want to do that.

**Sen. Daly:** You do not want to mislead the Senate.

**Sen. E. Mannette:** Indeed, a previous speaker pointed out that some of the Members of Cabinet listed here really have little or no more than two years experience in their field. We wish the Minister of Social Development well, but I do not think that this is where he should really concentrate his energies. I think it is clear that consumer groups on this council would actually serve the public much better than Ministers of Government.

I am also confused, because the same consumer policy document at page 34 stated that the Ministry would look into the role of the Consumer Guidance Council. The document says:

“The Council should consist of representatives from all consumer interest bodies and other relevant organizations in the country.”

So the government puts out a document in May of 1996 which says that:

“The Council should consist of representatives...”

—and comes with a Bill in 1997 which changes that. Now, it is inconsistent.

Does it mean that you have gone back, looked at the policy and considered that, maybe, that is not in the best interest of the country? Or is it that, maybe, you are not aware of what is in this policy document? There are many interesting

statements in this document, but one objective of this consumer policy document really caused me a lot of concern and humour. In fact, I asked my colleague to read it to ensure I was not misunderstanding what was stated. Mr. Vice-President, the Government put out a document stating its objectives and one of the objectives on page 5 is:

“(b) to promote measures to counteract threats to the economic interests of consumers, in order to protect effectively fraudulent practices relating to the provision of goods and services.”

I cannot understand this. They are promoting measures:

“...to protect effectively fraudulent practices relating to the provision of goods and services.”

I am either misreading this, misunderstanding it, or this needs an errata sheet. Maybe we should have a policy task force to look at this document. Because, how can we trust a government that puts out a document that says it is going:

“...to protect effectively fraudulent practices relating to the provision of goods and services.”

They are going to appoint themselves to do that. Well, we will not be surprised if they do that successfully, but I would not impute improper motives to that Government. The public can do that on its own.

Clause 6 of the Bill before us states that the functions of the council would be to monitor and implement the consumer policy. As I mentioned, there are some things in this consumer policy that are valuable and helpful, and will be beneficial to the consuming public, and I wanted to take this opportunity to ask the Minister of Consumer Affairs about the status of some of these proposals, because some of them are listed as priorities, yet to this day, I have not seen or heard of them on the national agenda. They are certainly not in this legislation and we do not have any legislative agenda yet, notwithstanding what the Minister of Public Administration and Information stated, so we do not know if they are in the pipeline.

For example, in terms of their legislative plans, on page 31 of this policy, they indicate that:

“A small claims Tribunal should be established as a matter of priority.”

This, of course, would be to provide consumers with an inexpensive forum for redress of consumer complaints.



I do not know what is this Government's definition of priority. Indeed, whenever I think of the Minister of Health and his statements about health sector reform, it is clear that they do not have any clue about what is priority, but nonetheless, I wanted to ask the Minister what is the status of that small claims tribunal, because I raised a similar point when we were debating the Unfair Trade Practices Bill, 1996. I raised the point that it is okay to bring a piece of legislation that would empower consumers, but generally an individual does not have the time, the money, or the resources to pursue any sort of judicial avenue and a tribunal, a non-contentious sort of forum, would be a good place for a consumer. So if it is the Government's intention to spur on consumer action, I would like to know what is the status of this proposal.

In addition, one of the proposals for new legislation in this policy is that of consumer credit legislation to provide some sort of enforcement and control of the advertising of credit disclosures, *et cetera*. I wondered what is the status of this legislation, given that the dishonoured cheques legislation has already been debated in the Lower House and it is on our agenda. That, to me, is one side of the spectrum. It seeks to protect certain persons who receive cheques that are not honoured, and seeks to protect the banks, perhaps, from liability.

**2.45 p.m.**

I wanted to know about the other side of the spectrum, whether this legislation would protect the consumer from inaccurate disclosures and from irregular practices. If the Minister could address that I would appreciate it.

In the review of existing legislation, this Bill before us is first on the list, so clearly they have been able to get started on that. But I noted that in their analysis of the legislation in 1996, they stated that the First Schedule to this Act would be repealed from paragraphs 3 to 13. Sen. Mahabir-Wyatt was pleased that the entire schedule was repealed, and not without some merit. I am wondering why at that time they saw it fit to not include the services of ministers or other persons of religion, or the services in relation to educational institutions under the Consumer Council, and now they are, for some reason, including all the services on the schedule, as they are repealing the entire schedule.

I just wanted to raise that and ask the Minister exactly what is the whole status of this consumer policy. You are not doing things which you said you would do; you are doing things which you did not say you would do and there are things in here which, if you do, we would ask you please not to do. So at this point we are

*Consumer Protection and Safety (Amdt.) Bill*  
[SEN. MANNETTE]

*Tuesday, February 17, 1998*

concerned with respect to this Bill, with respect to the policies that this council would implement as well.

My final point regarding the actual Bill before us is in clause 16 which amends section 44 of the Act, and includes the identification of recalcitrant traders. My question is: How do you define recalcitrant traders? I am not seeing a definition in the Act or the Bill; I am not seeing any reference in the policy document and, therefore, it would leave a door wide open to interpretation. I understand the point and the policy and perhaps you need to refer to a section in the Act which deals with traders who do not comply with certain sections.

I would like to close by, again, calling on the Minister to clarify the Government's position; whether, indeed, they really plan to protect, effectively, fraudulent practices and whether they have launched the Minister of Finance as the person to do that. They must clarify, as well, their stated purpose in giving women a leading role in establishing consumer trends and also he should deal with one or two other points I made with respect to the Bill.

Thank you, Mr. Vice-President.

**Sen. Rev. Daniel Teelucksingh:** Mr. Vice-President, in listening to the legal minds, I, too, have my doubts about the composition of the Consumer Guidance Council and I hope that later in the course of this debate that some clarifications would be given so that I would be clear in my mind as to what should be my stance on this most important clause in the legislation.

Nevertheless, I want to compliment the hon. Minister for his tireless efforts in maintaining high standards in consumer services in this country. The hon. Minister, in piloting the Bill, reminded us that consumer protection encompasses all goods and services, extended beyond the Food and Drugs Division, and he is certainly correct. With this in mind, I wish to highlight some issues and concerns with respect to consumer protection which goes beyond the traditional scope. He led me to think this way, reminding me that consumer protection is concerned with all goods and services, extended beyond food and drugs.

I am thinking a little beyond expiry dates on jams on grocery shelves—I have heard a lot about that—or the quality of pharmaceuticals, or warranties on household appliances. I see the state as a consumer, in a sense—and this is important—and I want to enquire about consumer protection at that level—at a higher level—beyond expiry dates of jams and jellies on grocery shelves and the quality of pharmaceuticals.

I see the state as a consumer, as having a shopping list and I am asking if there is consumer protection as far as the state is concerned. Let me illustrate. Much has been said about a new sugar mill recently installed at Ste Madeleine. The state or its agents went shopping. The Dhanpur Sugar Mills Company of India was contracted to refurbish our mills. The cost to Caroni (1975) Limited was \$20 million. The *Trinidad Guardian* of January 21, 1998 carried a headline: "New Mill Fails - Caroni burnt old lumber; Charcoal to power the factory."

The state is shopping. You are talking about consumer guidance. The state is a consumer. Other reports indicate that the consequences of this purchase might be costly; fears that we may not keep our commitment as far as our European or US quota goes, not even on the local market, because we are planning—and it seems as though everything is just falling in line; these are not empty predictions; we are planning to import sugar.

The questions we are asking are: For a large consumer as this state enterprise to spend \$20 million on services, is there a warranty? This goes beyond the osterizer in our kitchen. Is there a warranty? Is there an insurance coverage? Is there consumer protection at that level, where so much money is used? Are there contractual commitments from Dhanpur Engineering?

Trade missions are good and Government ought not to engage companies or consultants on, what I called the last day, two-line recommendations. What are the *bona fides* of Dhanpur? Where are invitations for tenders? What other firms were considered? Is the state, as a consumer, concerned about the protection of people's assets entrusted to its care, in this instance, \$20 million? That is a lot. Where is the manufacturer's guarantee to its consumer and to this customer? Is this a piece of expensive junk worth \$20 million with which we are stuck?

I want to add another illustration with the state and Government as a consumer and the whole question about consumer protection and who operates as the Consumer Guidance Council. I want to make reference to the motor ferry *Panorama*. We gave TT \$12 million to somebody in Curacao to do repairs and the boat lazily drifts in after 33 hours.

**2.55 p.m.**

Mr. Vice-President, when I visit my mechanic, there is some kind of warranty at that level. The state spent \$12 million. Is there any warranty for the state as a consumer? What protection does the state have? Is it a bad job that is left there with no protection from friends within Caricom? They are our neighbours! A Norwegian engineer is now being asked to step in.

You will recall in January this year, there was a protest by certain maxi taxi owners who have been fed-up over their vehicles' performance. The new maxitaxis smoke so very quickly. The owners complained that the engines quality is suspect. Rings and pistons, they say, do not last in these new vehicles. Vehicle bodies rust easily. Vehicles cost so much but I am being told about consumer protection. Who really protects?

Since 1996 the Government promised regulations for the used-car industry in Trinidad and Tobago. The question of vehicle servicing, consumer protection and environmental issues should have been dealt with. How long will it take to get regulations on foreign used vehicles? How can we protect the consumer? That is my concern because our market is flooded. This is how this Bill lives for me. What of the importer of substandard vehicles? Can Government treat with the local businessmen who shop for and import and sell substandard goods? Do we send inspectors whose job it is to monitor quality control? Could a small nation as this find the strength one day to return to manufacturers a fleet of inferior vehicles? Do not put them on the *MV Panorama*. Find another ship and send them back from whence they came and make noise on the international marketplace. We are consumers and customers. The question is: Will anybody listen? When will we close dealings with those who dump inferior junk goods on us? I wonder if the tigers in the Asian markets are now reaping the world wind. They have flooded the world's marketplace with the cheapest quality goods in the 20th Century. They have been famous for inferior products. I say no more.

In yesterday's *Trinidad Guardian's* Business page, there is a quite hopeful heading. I like it. "Ease for CNG owners" I want to say something about my concern because the state or a state enterprise went shopping. They bought substandard, possibly second-hand CNG dispensers, NP purchased these and unleashed these on an unsuspecting population. How many millions were spent on those CNG dispensers? Do you know that since they were purchased not one worked properly? We are saddled with that as a consumer. The question we ask: Were there guarantees when the state did its purchasing? Have these things been insured at all? Did the state enterprise—I cannot remember which one—that did the purchasing and spent so many millions ever consider returning all that bad commodity from whence it came? This is my thesis. The state is a consumer and we spend a lot of money. Are we protected when we make large purchases like these illustrations I am sharing? Maybe, they are planning to shop at the same place in the future. This is what they do all the time. The nation has lost badly on

that kind of deal and we are asking about a coverage that is far different from the little warranty I get from the home appliance which I may purchase.

Mr. Vice-President, will you allow me to mention the NFM rice fiasco because we did purchasing? We are customers and consumers, as a nation. What about compensation for losses in a \$30 million investment? Do you spend and just lose? To whom can we as a small nation complain? Was the rice insured? Are the ship owners liable? Do we pay \$30 million upfront on an international market and face great losses with little redress?

Is our power in a situation like this only limited to the firing of the CEO and the management team? Is that all the power we have in a situation like this? Is that all the satisfaction we will get after investing \$30 million—fire the CEO, the management team and the board? I am not saying they are to be forgiven and to be excused completely, but are they to be the scapegoats all the time for certain evils that plague us? What about the 10,000 small shareholders? Are they not consumers too in their investment? They are consumers in a sense. What about the Government owning 51 per cent equity in the company? You lose as a consumer. Are you just going to sit and allow this to pass? Is there any power to recover any sum from our losses?

Mr. Vice-President, in consumer protection strategies the local grocers or the store managers are not the only ones to be held accountable. We need to be protected from the sharks in the international marketplace.

Last week there was a word making the rounds by both Government and Members of the Opposition, the word, “rogue.” To use this term, not merely the local rogues we need to watch, but we need to beware of international rogues at whose hands we suffer in their dishonest trading practices.

The hon. Minister reminded us of understanding international trade against the backdrop of globalization. Then, what of consumer protection in the world’s marketplace? Is the playing field levelled for small nations such as ours? Can we appeal to the World Trade Organization of which we are part? Would anyone listen to people like us? Do we make ourselves heard at all, since we send hefty delegations to all these international conferences? I think our Government must not rush into markets in our various trade missions and invite all and sundry to trade with us, leading us, enticing us to buy junk on the world market or trade with international comen.

Mr. Vice-President, I am inclined to think and I share this thought that sometimes the state or its agents are quite irresponsible when they go shopping. Possibly, it is because they go shopping with other people's money, but the people's money that you spend deserves more responsible spending. I thank you.

**3.05 p.m.**

**Sen. Prof. John Spence:** Mr. Vice-President, I congratulate the hon. Minister for the particular interest he has taken in problems of the consumer. I know that for some time now he has made known his views on this subject in various fora. I certainly think that we ought to support that thrust he has made, because clearly, it is an extremely important issue. We also ought to support the efforts which he has made in this Bill to extend the powers of a consumer guidance council.

Having said that, I find it very difficult to understand the change in the composition of the Consumer Guidance Council. In this regard, I am at one with Sen. Mahabir-Wyatt. Before speaking about that briefly, I would look at the particular council which he has proposed in this Bill and the composition as it is proposed here with relation to ministers. The number of ministers with responsibility for various subjects are listed. I find it difficult to determine the rationale in this council as proposed.

In making his contribution, the hon. Minister referred to transport and the issue with British West Indian Airways. Yet the Minister with the responsibility for works and transport is not listed among those ministers who would comprise the council. Similarly, he referred to the fact that the new powers of the council would allow them to look into issues dealing with the Water and Sewerage Authority. The Minister of Public Utilities is not listed among the members here. I am not to agree with this type of council anyhow, but even with the council as proposed, it is difficult to understand why certain ministers were selected and others were not.

We all have stories to tell about difficulties as a consumer, especially when one is a consumer of government services. I would tell one which indicates that the Minister of Works and Transport and the Minister of Local Government should be members of any council, if we are to support this sort of council. It happens to be one that I get very hot in the collar about and which I see happening periodically and, it happened recently outside my house. That is an attempt to weed the road.

This is what happens: Workmen arrive perhaps at 8.00 a.m. and leave about 9.30 a.m. They bring along their hoes and then proceed on the side of the road to remove weeds. To do this, the edge of the hoe is brought down sharply on the

asphalt. Of course, this takes not only the weed, but also a large chunk of asphalt. This has been going on for years in Trinidad and Tobago. For years workmen dig up the road to remove weeds. What happens? Because the asphalt is being removed, there is more dirt and, because there is more dirt, more weeds grow. [Laughter] So they have to remove some more road the next time they come.

When I lived in Coblenz Gardens, Port of Spain, near the hon. Minister, this used to happen outside my house. Once I tried to get hold of an engineer in the county council to try to determine why this practice was continuing. Of course, it is impossible to get hold of any such person if one exists in there. Surely, there are engineers and experts. By now we know that if one wants to get rid of weeds in asphalt, one would use the chemical which kills the weeds and not to dig up the weeds with the asphalt.

There are two problems. I say the Minister of Works and Transport and the Minister of Labour and Co-operatives should be included. Fortunately, these people work for one and a half hours for a day's work. If they worked a full day's work, heaven knows how much of the road they would dig up in that time. [Laughter]

I hope Sen. John would comment on the second problem which is the continuing practice of task work in this country, where a day's work is equated to one and a half hours work in the morning. In the year of our Lord, 1998, how do we expect to become a quality nation or to be competitive with the rest of the world, if we pay for a day's work and get one and a half hour's work out of it? Yet this goes on and on and millions of dollars are spent doing this. As a consumer who has to drive on these roads and put up with the unsightly unaesthetic sight of weeds growing at the side of the road, I ask that some attention of the Consumer Guidance Council, in whatever form it takes, be paid to that issue.

We can all give stories of this sort to do with the government services. This just happens to be one which I came across recently and I am concerned about it. One of the previous Members mentioned the Minister of Public Administration and Information. If we are looking at services, many of them which we consume are from government agencies. I thought it important to have the minister responsible for the public service, or perhaps the Prime Minister to be a member of this council.

In a developed country one of the important protections which can be given to consumers is the information which is handed out. Whenever I have the opportunity to go to the United Kingdom I always read magazines named *Which*.

These magazines identify consumer items in various fields such as properties, gardening and others. There is one on insurance which one can go through to get comparisons of the various insurance firms and the various types of policies. It seems to me that the important thing about protecting the consumer is to provide the information which would allow the proper choice to be made.

When I was driving down here today, I gave a young man a lift and he pointed out to me the difference in prices which one can get for electronic equipment between here and the United States. Many people are now getting their information from the television, so that the particular item which one can purchase here at a certain price may be sold in the United States at a lower price. We are getting some of the information in that way. An important part of whatever activity we set up with respect to the Consumer Guidance Council is the information which would be collected and given to the public. This would be expensive. In larger countries it is done by commercial entities and consumers buy the publications for their protection. In a small community it is more difficult to run commercial activities of that sort. I would expect that one of the important methods which can be used to protect the public would be to give the information in this way.

Returning to the Bill which suggests a change in the composition of the council, like previous Members, I find it very difficult to understand why we are changing from an independent body to one which is a cabinet sub-committee. As the hon. Minister has pointed out, if we wanted to do something of this sort to give more strength to the council, we could have made the Consumer Affairs Council as it was previously composed, responsible to a cabinet sub-committee and then have the sub-committee with the various ministers present on it. I would add the Minister of Labour and Co-operatives, the Minister of Works and Transport and the Minister of Public Utilities. Why a sub-committee and not the Cabinet? This is what the council should be responsible to through the relevant minister.

I cannot see the reason for having an Act which names a cabinet sub-committee as the council. To me that does not make sense. If they want to set up a cabinet sub-committee, they should do so. Make the council responsible to the minister and then the Cabinet can arrange its affairs in any way that it wants to, including setting up a sub-committee every time it wants to look at the reports of the Minister of Trade and Industry and Minister of Consumer Affairs. This must be unique in Westminster type parliaments or any parliament for that matter, of having a cabinet sub-committee named in legislation in this way. I would not



support that thrust. My solution to this problem would be to keep those sections of the Act that would expand its activities and give further strength to what there is now, and ask for the deletion of clause 3 of the Bill.

**3.15 p.m.**

It is my intention to table an amendment—and I have already submitted it—which simply says “delete clause 3 and renumber the subsequent clauses”.

So, Mr. Vice-President, I am in support of those changes in the current Act, set forward in this Bill, which would give the Act further strength. I am not in support of setting up a Consumer Guidance Council composed of Cabinet Ministers. To me, it does not make sense, and certainly would not get my vote.

**Sen. Philip Marshall:** Mr. Vice-President, I do appreciate the interest taken in the consumer by the hon. Minister. I suggest that his proposed amendment to this Bill has missed its mark. I say so because one can see from the contributions of the previous speakers that there is really no end to the scope of services rendered to a consumer.

I think that this is where, possibly, the Bill went wrong—in suggesting the names of the Cabinet Ministers responsible for the various services. If one looks at these, one can see that they all refer to the provision of collective services. This is why we have a government. We have a government to direct national policy on the provision of collective services. I believe that this Bill was intended to follow the previous one relating to trade practices and the provision of commercial services in a private business environment. This would mean that virtually every service rendered in Trinidad and Tobago falls under the ambit of this provision. I cannot see how a cabinet committee can come back to the root cause of lack of investment in decades gone by if, for example, a citizen complains that our primary education is not up to standard or that he did not receive water.

In other words, the real problems that our citizens complain about have not arisen in the last week, the month before or the year before. It is just that, maybe, we did not have money within the last 10 years’ negative growth—that paradox in terms—and now that we have some ability with the energy sector to put things in place, maybe improvements are not taking place at the rate at which we anticipated. Using the education example, the only way we can improve the delivery of our education is to have greater investment in teachers, schools, or the parental support in non-school hours. There is no way that this committee can do anything about it.

Let me draw another example for you, which is more relevant to what is being sought. Clause 6 states:

“(b) to advise the Cabinet on matters relating to the implementation of consumer policy or economic issues.”

Maybe I have quoted from the wrong section.

Let us take, for example, the collection of VAT. I am sure we have all experienced the situation where we have gone to a retail outlet, which is not a formal retail outlet, and they ask whether we want an invoice. Here is a good example, I think, of what this Bill is intended to do. This adversely affects the economic interest of consumers in Trinidad and Tobago. Very often, whether one requests an invoice or not, one is charged VAT, but the collector of the VAT does not have to hand over the money to the Minister of Finance. He is really asking whether one would like an invoice in that if one is not a commercial entity, one would not deduct that VAT from one's input. What is happening is that the consumer is paying the VAT and the Government coffers are not receiving the money.

I think we should rethink this Bill, confine it precisely to business trade practices that affect individual consumers. Let us look at our existing laws, such as the Sale of Goods Act, and all the relevant issues that were raised, such as how do we purchase at Government level. Are there proper tendering procedures? Are there proper advisory procedures? There must be laws dealing with the whole issue of fitness and quality of purpose and those transactions can fall under those laws. Let us just confine this Bill, maybe, to the man-in-the-street who cannot afford a lawyer, a general body of business ethics and a council, to which he can complain, and let matters be speedily resolved. Remove from this Bill collective services such as airports, roads, bridges, education and so forth. There is nothing an individual consumer can do about them in one specific instance.

This Bill and section 8 of the original Act, I think, really were intended to deal with the situation where people, through false advertising and lack of proper information, were misled into making incorrect choices. Just as in Sen. Prof. Spence's example of the *Which* magazine, it is because of this lack of information that people deliberately, through bad tactics or salesmanship, try to mislead a consumer to make a choice that he otherwise would not have made.

I am trying to be pragmatic. I am sure that Members of the Cabinet would be aware of the latest management thinking—and I am introducing a word here,

“ROM”. It stands for Return on Management. ROM is a very important measure. The numerator is the effect and benefit to the society as a whole and the denominator is the amount of management time spent. In other words, the denominator is the time of Cabinet Ministers and the numerator is the complaints with which they have to deal. What we will find is that the essential direction of this country, the key and difficult issues that need to be attended to, will be dissipated by thousands of small complaints which should otherwise be dealt with.

I would like a total rethink of this legislation, although I do appreciate the intent with which it was drawn up. That is my brief contribution.

**Sen. Selwyn John:** Mr. Vice-President, I rise in support of this Bill to amend the Consumer Protection and Safety Act, 1985. In doing so, let me say that there are many things which have been done and which must be done. What we are gathering in doing all these things, including amendments to legislation, is that a rut has been in place for the last 40 years and the authority has failed to act during that time. Everyone is expecting this Government, even though we have been in power for just two years, to correct all that. Mind you, people feel that we are going too slowly.

**3.25 p.m.**

Mr. Vice-President, maybe we ought not to pay attention to those provisions in the Act, but deal with the issues like workers digging the pitch off the road. I think Sen. Prof. Spence must know that the area about which he spoke might be part of the Port of Spain Municipal Council, or the Port of Spain City Council. I may be wrong.

**Sen. Prof. Spence:** I now live at Trincity.

**Sen. S. John:** I have observed this in Port of Spain. Contrary to most of the other areas in Trinidad, the Port of Spain Municipality digs the grass in between cracks in the pavements and the roads, maybe it is a policy which they have and, have been deliberately doing it so, rather than buying chemicals and weedicides to remove it. The workers are not to be blamed for it and if they have to dig it out, I am sure that there would be some damage to the paving. I see them on the pavement all through the city and they use the back of the cutlass to hit the grass at the edge and a lot still remains in the cracks and so forth. Maybe our operations have not been meeting the modern scientific way of dealing with these things.

*Consumer Protection (Amdt.) Bill*  
[SEN. JOHN]

*Tuesday, February 17, 1998*

I have seen on a trip to Denver, Colorado in the United States of America, new pavements being built and all the under-soil is removed which is the first thing in rehabilitating. The Trinidad lake asphalt pitch is used in putting a sealant some 18 inches below the level. It is sealed off first before any concrete is poured. We do not seem to do it here, even though we have heavy rains and our problem is that the water does damage to the under-soil and which requires us to do it.

The trade union movement has been fighting these authorities to sit with them and deal with some issues that are non-crisis. We may have ideas on how things could be done much easier than they are being done, but the response has not been what we would expect. Workers have contributions to make and many engineers in the various ministries at times consult workers as to how to attack a problem and, mind you, some of them come up with very good ideas.

The other point which I am very sorry to say is that we have been dealing with an issue that had created problems from the time someone decided to create employment under the Better Village Programme, which later became the DEWD which is now the URP. The question of productivity and the result of persons coming out to work, working for an hour, and not seeing them after.

As a trade union leader myself I had to deal with workers who would be doing a job a few feet away from some other workers who would come at 7.00 a.m. and leave at 7.30 a.m., and they are required to remain the whole day carrying out their tasks. I say that this definitely had its repercussions. The workers who saw what was being done became lazy too, and we have a fight on our hands as trade union leaders in educating and trying to create within them a sense of accomplishment and pride when they do a job.

Maybe things are changing. We have had the difficulty of having to deal with a situation in which the InterAmerican Development Bank insisted on a loan agreement that the methodology of carrying out works be changed by contracting it out, rather than doing it by direct labour. May I say that we have witnessed a change in the application of workers' involvement in carrying out those tasks. I was not surprised recently when I found a gang of workers mixing concrete at 3.30 p.m knowing that they would break off at 4.00 p.m. I want to congratulate Members for seeing that. There is a whole change in work methods and application and I congratulate the hon. Sadiq Baksh as one of the first Ministers who personally led a crusade to increase productivity. That has had its effect, in that workers realizing now that if Government has to access funding from the

multilateral lending agencies, which would insist that because of high costs and other requirements of employing direct labour, it might be cheaper to contract jobs because workers are not paid for sick leave, vacation leave, or even meet the fair wages clause where trade unions negotiate rates of pay and conditions for workers. The workers themselves are changing, education and other things have made them realize that their jobs are at stake and they have to protect it.

The criticism is well-taken. We cannot deny that these things used to happen, it may be still happening, but we have been recognizing this change and because of that change, the conditionality of that loan agreement is not insisting that workers be retrenched or laid off and the jobs be given to contractors.

I am not blaming this Government or the other one, but we inherited that from the PNM in 1994 when they negotiated that loan. As a trade union, we had to fight because there were between 8,000 to 10,000 workers who would have been retrenched and sent home. My union would have had 2,100 of those workers involved.

Mr. Vice-President, may I say that we find ourselves having to deal with issues which may not be relevant but it was raised by Sen. Prof. Spence and he called on me to deal with the issues. I say that not only do we have to deal with these issues, but we also have to deal with workers feeling a sense of accomplishment of having done something in a certain way. We want to get that instilled in them. One sees a piece of road work and he stands back and watches it knowing that he took part in that and be proud that the public can see what we are doing.

With these few words, let me say that I support the Bill and I hope that Members on the other side will give their support too.

Thank you.

**3.35 p.m.**

**Sen. Nafeesa Mohammed:** Mr. Vice-President, I sat here in amazement listening to Sen. Selwyn John make a contribution on this particular piece of legislation dealing with the Consumer Protection and Safety Bill, 1997. I say amazement because every time he speaks in this Chamber, I immediately remember the very famous words of his leader, the "Mahatma", who is now the Prime Minister of this country, when, very often, he used to go on platforms and say, "Some will sell their souls for a mess of pottage, a jacket and a tie."

*Consumer Protection (Amdt.) Bill*  
[SEN. MOHAMMED]

*Tuesday, February 17, 1998*

Mr. Vice-President, I say this because the hon. Senator is speaking about trade unions and how much cheaper it is to contract out work. Sometimes I really wonder if he has his own personal difficulties coming to terms with the responsibilities entrusted to him as head of a trade union and as a Senator—

**Mr. Vice-President:** Point of order.

**Sen. N. Mohammed:** What is the point of order?

**Sen. John:** My point of order is, I never said it was cheaper to contract out work.

**Sen. N. Mohammed:** Mr. Vice-President, there is no point of order. What is misleading? That is not misleading; those are statements of fact. I am developing a point.

**Mr. Vice-President:** There is a point of order that is being raised. My understanding of the point of order is that the Senator has alleged that he is being misquoted. From what I recall, what he has said was not consistent with what you are alleging. I ask you to restate your position without mis-stating the Senator's contribution.

**Sen. N. Mohammed:** Certainly, Mr. Vice-President. The point I was trying to make was the personal difficulty the hon. Senator seems to have, being the head of a trade union movement and having to sit on the Government side and stay quiet with respect to issues of the day. Here we are dealing with a Bill to amend the Consumer Protection and Safety Act and until this point in time, I am not sure what contribution the hon. Senator has made with respect to this particular piece of legislation. I could not help but wonder if the Senator was not trying to “take front before front take him” because it was only last week I read where 800 workers’ services are likely to be terminated at WASA.

**Mr. Vice-President:** I ask the hon. Senator to make a contribution on the Bill before us and not comment on what possibly could be the reason for previous speakers’ contributions. I do not think anything said in the last few minutes is relevant to the Bill. [*Desk thumping*]

**Sen. N. Mohammed:** Mr. Vice-President, this is a debate which is taking place in this honourable Chamber, to deal with a Bill to amend the Consumer Protection and Safety Act. We just had an hon. Senator who stood for about 20 minutes to speak on this Bill and I am still wondering what contribution he made on this particular piece of legislation. I am merely responding to his contribution.

**Sen. John:** Point of order.

**Sen. N. Mohammed:** I will not take my seat. I will get on with my contribution before he continues to waste our valuable time in this Chamber.

**Mr. Vice-President:** Let us hear the point of order.

**Sen. John:** The Senator is challenging the ruling of the Chair, and under the Standing Orders she cannot do that.

**Mr. Vice-President:** Sen. Mohammed, proceed.

**Sen. N. Mohammed:** Thank you very much, Mr. Vice-President.

When we look at the Explanatory Note to this Bill, we see that this Bill is seeking to amend the Consumer Protection and Safety Act of 1985. It is also seeking to further the new Consumer Policy that the hon. Minister of Trade and Industry and Minister of Consumer Affairs spoke about when he piloted this Bill several weeks ago.

Mr. Vice-President, it is very interesting indeed, that we are debating this Bill against a background in Trinidad and Tobago, where for the past several weeks we have been bombarded with the fiasco, if not the scandal, that has taken place with respect to the importation of rice from India, arising out of the infamous trip to India made by the hon. Prime Minister of this country last year, other members of Government and individuals and, indeed, the hon. Minister of Trade and Industry and Minister of Consumer Affairs.

I am commenting on the timing of this debate and this particular piece of legislation because we know all the facts, we have seen samples of the rice that came in with the first shipment. We are still left wondering where the second shipment of rice is. Is it in Brazil or is it in the Gulf? What is the condition? I even read a newspaper report where it is being said that this rice has been found to be infested with weevils and the Brazilian authorities have had to take action to spray that particular shipment. We need to get clarification and information from this so-called Government of transparency and all the other descriptions they like to ascribe unto themselves, in order to protect the thousands and thousands of consumers in Trinidad and Tobago who have to consume this particular product.

The hon. Minister made mention of the Consumer Policy which he had the pleasure to lay in the Parliament of Trinidad and Tobago some time ago. When I

*Consumer Protection (Amdt.) Bill*  
[SEN. MOHAMMED]

*Tuesday, February 17, 1998*

look at this White Paper, I see on page 4 where they refer to the objectives of the Consumer Policy in 4(a). One of the objectives of this policy is:

“to devise and promote measures for the effective protection against products, production processes and services which are hazardous to life and health;”

Here we are receiving reports that one shipment of rice was infested with rat faeces. Is that true or is it not true? And here we are seeking to further this kind of policy to protect the citizens of this country against matters of this type. If that is the case, who is there as an authority that we can turn to in order to get information, to seek assistance and to ensure that the food that is being sold to us meets a particular standard?

Mr. Vice-President, this policy document is a rather interesting document and, certainly, in terms of the implementation of this policy, we will support measures that are designed to further this policy and put it into effect. But when we examine the policy closer we would see where, with this particular piece of legislation, there is something fundamentally wrong with this Bill that is before us today. I will come to that in a short while, but as I move on, page 17 of this policy document under “Consumer Information” says:

- “(a) Sufficient information should be made available to the consumer of goods and services to enable him/her to assess their basic features such as the nature, quality, quantity, price, performance and safe use;
- (b) On the basis of such information the consumer should be able to make a rational choice between competing products and services and use them safely and to his/her satisfaction.”

Under “Priorities” on page 17 of this policy document, it says:

- “(a) To ensure that there are proper rules for the labelling of products which will provide for clear, legible and unambiguous labelling requirements.”

Mr. Vice-President, we have in Trinidad and Tobago today, a shipment of rice that is now in the supermarkets throughout this country and we have to wonder about the labelling, whether it is unambiguous. I have heard people asking about this particular kind of rice, how can you identify it and what recourse do you have if you do not wish to use this kind of rice? When my colleague, Sen. Montano spoke on this particular Bill on the last occasion, he referred to the debate that took place in 1985 on the Consumer Protection and Safety Bill. The hon. Mr. Basdeo Panday, who was then the Leader of the Opposition, spoke at that time. It



is in the *Hansard* record, there for all to see. This is what the hon. Mr. Basdeo Panday, who is today the Prime Minister of Trinidad and Tobago, had to say in dealing with that particular Bill which is so relevant to the amendments that we are dealing with today. Mr. Panday said:

“I am plugging for an amendment to this bill, whereby Ministers who are responsible for the department that supplies goods and services which turn out to be shoddy and in breach of this Act should be sent to prison.”

[*Desk thumping*]

Mr. Vice-President, we on this side are calling for an amendment to this particular piece of legislation that will certainly take action against those persons, and especially, those Ministers who are responsible and who bear responsibility for the fiasco involving the shipment of rice that came from India. I want to make it abundantly clear, we have been reading reports that the Government has threatened to fire the entire board at the National Flour Mills or, they intend to take action along those lines. Instead, they should be firing a Minister or two.

I wish to qualify this by saying that the present Minister of Trade and Industry and Minister of Consumer Affairs is a gentleman for whom I have tremendous respect and regard. I say this because I have had the pleasure and the privilege of serving on a joint select committee of Parliament, involving legislation to deal with integrity in public life. The hon. Minister of Trade and Industry and Minister of Consumer Affairs is, in fact, the Chairman of that committee. Throughout this whole fiasco I have noticed an almost deafening silence from the Minister. With this debate here today, we are calling on the hon. Minister of Trade and Industry and Minister of Consumer Affairs to please, tell us—and put some sanity into this whole thing—are we going to be subjected to another shipment of rice that we have read where weevils have already infested? When is it going to arrive in Trinidad and Tobago; at what cost, at what damages?

Mr. Vice-President, it is rather unfortunate that a statement has been made by the Chairman of the National Flour Mills Board sometime ago, that the quality of the rice that came from India was fit for dogs, and so, the description “dog rice” is now being used to describe that kind of rice. It speaks volumes in terms of the quality of the product that is coming in and this is a matter that affects consumers throughout the country. We heard that samples were sent to various places—Caribbean Industrial Research Institute (CARIRI), and some were sent abroad. We are yet to hear from all the sources to which these samples were sent, the exact

*Consumer Protection (Amdt.) Bill*  
[SEN. MOHAMMED]

*Tuesday, February 17, 1998*

quality and fitness for consumption, with respect to that particular first shipment of rice. We want to know how much it has cost the taxpayers of this country. Now, with the second shipment of rice, we want to know when it is going to come into the country—if it has not already arrived—and what steps are going to be taken to ensure that those reports that we have gotten that it is infested with weevil, that it is not the case. Or indeed, if that is the case, that that kind of rice would not be supplied to the country so that consumers would be compelled to purchase it.

Mr. Vice-President, in the past in many communities when you had certain social events, particularly in the East Indian community, when a wedding is going to take place or a religious occasion, days before that event a lot of time and effort goes into preparation. I remember as a child growing up, you would see relatives spending hours upon hours, if not days, picking rice. That was a tradition over the years and I raise this in the context of—

**Sen. Cabrera:** Mr. Vice-President, according to—

**Sen. N. Mohammed:** Mr. Vice-President, I am making a point in terms of a cultural feature in our country. With respect to that feature in the culture of our country, I am merely making this remark against the background that if 20 years ago we used to do that, is it that now in 1998 when we are heading into the 21st Century, we are going to have to revert into that scenario? Do you know how happy I feel when I have to cook I can simply take rice out of a pack, rinse it and just put it in the pot to boil, and the days for picking rice is over? Is this what this so-called Government with all the business acumen UNC style, bringing Trinidad and Tobago to in 1998, as we are heading into the 21st Century? Is this the total quality nation that they would like us to have? Is this total quality rice?

These are the standards they are setting for us to be a total quality nation.

**3.50 p.m.**

**Sen. Mark:** What is the relevance?

**Sen. N. Mohammed:** We are talking about the quality of the rice which came from India, in terms of its effects with respect to our consumers. Here it is, we have a policy paper in which one of the objectives is to ensure that measures are devised and promoted for the effective protection against products, production processes and services which are hazardous to life and health.

The Explanatory Note of the Bill says that it is being proposed to further the new consumer policy document, therefore this is very relevant to what we are

dealing with today. Perhaps the hon. Minister of Public Administration and Information could take some time to read the Bill. *[Interruption]* Mr. Vice-President, that is the trend; whenever we speak out, Senators opposite are only concerned with muzzling any comment or criticism made. They are obsessed with making themselves look good but they must realize that they can fool some of the people some of the time but not all of the people all of the time.

In this particular piece of legislation we have heard so many Senators make the comment—and our position is very clear with respect to clause 3 of this Bill, which seeks to set up a consumer guidance council which would comprise of Members of the Cabinet. Never before have we seen a measure of this type being introduced where a government is seeking to establish a council and to have Cabinet Members appointed to serve on that council to deal with important matters.

We already have a Minister who has been mandated to come up with a report on the NP fiasco—another scandal in the country—and to this date he cannot present a report. Mr. Vice-President, himself having to report on himself. We are dealing with certain Ministers who are listed in this particular Bill.

For example, clause 3(2) of the Bill says:

“The Council shall be comprised of members of the Cabinet to whom responsibility for the following subject matters are assigned—”

The first Minister who, it is being suggested, should be part of this council is the Minister of Agriculture, Land and Marine Resources. We have a national crisis on our hands involving the Minister of Agriculture, Land and Marine Resources. It was because of his decision to introduce the froghopper, on a large scale, that we have the crisis in the sugar belt where so many thousands of canefarmers are being affected.

We all know the froghopper disease was as a result of the Minister of Agriculture, Land and Marine Resources giving instructions to the board of Caroni (1975) Limited to use only the biological control of the disease in the company. That decision brought about the crisis where, today our canefarmers are suffering. God alone knows how they would see through the year 1998.

Many persons, and thousands of consumers, are likely to be affected by this crisis. Mr. Vice-President, some soft drink manufacturers have indicated that they do not have a sufficient supply of sugar to run their factories. If sugar is imported

*Consumer Protection (Amdt.) Bill*  
[SEN. MOHAMMED]

*Tuesday, February 17, 1998*

there is the great likelihood that the price will increase. When the price does increase it means that the price of soft drinks will also increase and this will affect consumers throughout the country. *[Interruption]* Whatever the hon. Minister may say, even the board at Caroni (1975) Limited has been talking about increasing the price to canefarmers. To whom do we complain, Mr. Vice-President, to a council made up of Ministers?

The question was raised whether improper motives are being imputed. Mr. Vice-President, the facts are there for the entire nation to see. On more than one occasion it was proven in the Parliament of Trinidad and Tobago where Members of this Government have been found to be openly lying. The facts are there! *[Interruption]* That is not imputing improper motives, these are statements of fact. A classic example is when the issue of the ranking of the project co-ordinator's position took place with respect to the Minister of Agriculture, Land and Marine Resources. There are other instances where the Minister of Works and Transport stood in this Chamber and lied.

**Sen. Cabrera:** Mr. Vice-President, I rise on a point of order. I am wondering whether the hon. Senator is not being irrelevant to the Bill before us.

**Mr. Vice-President:** I would allow the Senator to continue her line of debate. I warn you, however, that with respect to the issue of imputing improper motives, you are referring to a number of Ministers here. You can discuss the suitability otherwise, but not along the lines of imputing improper motives.

**Sen. N. Mohammed:** Thank you very much, Mr. Vice-President. As I indicated, I was certainly not imputing improper motives but merely stating facts.

**Sen. Mark:** Mr. Vice-President, on a point of order. With respect to Standing Order 35(5), I think the hon. Senator is going overboard. The Senator is not only challenging your ruling, she is imputing improper motives; she is alleging certain things which she cannot prove. Sen. Mohammed is accusing Ministers of lying, therefore she is imputing improper motives. Unless the lady can prove what she is saying, I am asking that she withdraw those remarks.

**Sen. N. Mohammed:** Mr. Vice-President, if you wish I can amplify, clarify and prove—

**Sen. Mark:** Mr. Vice-President, I am on a point of order and the Senator cannot speak until you have ruled.

**Mr. Vice-President:** Hon. Senators, the point of order which has been presented relates to the accusation of more than one Minister being identified as having lied to the Chamber. I am not aware that any evidence exists where these Ministers have been proved to have lied in the Chamber. I would therefore prefer if the Senator does not make reference to that.

**Sen. N. Mohammed:** Mr. Vice-President, I will abide and be guided by your ruling. I will continue with this debate because the facts speak for themselves.

I was dealing with clause 3 of the Bill where, under this legislation, Government is seeking to set up a consumer guidance council comprising Members of the Cabinet. I have a grave difficulty—as indeed all of us on this side—with this particular provision because it would be a recipe for more confusion in the country and it would be a waste of taxpayers' dollars.

A few months ago, I distinctly remember seeing the hon. Minister of Trade and Industry and Minister of Consumer Affairs—I do not know if it was in a restaurant or not—urging the nation to eat more bread. The Minister of Trade and Industry and Minister of Consumer Affairs encouraged citizens of Trinidad and Tobago to eat more bread and everybody knows the main ingredient of bread is wheat. When persons are encouraged to eat more bread it means more wheat would have to be imported and that would cost our taxpayers more money. On the other hand, the Government is seeking to set up a council which would comprise the Minister of Trade and Industry and Minister of Consumer Affairs and the Minister of Agriculture, Land and Marine Resources.

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

The Minister of Agriculture, Land and Marine Resources should be encouraging people to produce more food locally and to buy local, not to encourage the importation of a basic ingredient from abroad. This is what this coalition Government represents: confusion and chaos. The right hand is saying one thing and the left hand is doing something else. It is a reflection of how they are running the affairs of this country. Perhaps that is why the hon. Minister of Trade and Industry and Minister of Consumer Affairs has been so quiet in recent times, especially with this whole question of the National Flour Mills' fiasco. I know him to be an individual who, at the appropriate time, would do what he feels is necessary to be done. It is just a matter of time.

Apparently, the hon. Minister of Finance and Minister of Tourism specializes in froghoppers and froghopping so he would know what it is like to go over.

*Consumer Protection (Amdt.) Bill*  
[SEN. MOHAMMED]

*Tuesday, February 17, 1998*

*[Interruption]* Mr. Vice-President, as he speaks about Miss Hulsie Bhaggan, I am sure he is referring to the former Member of Parliament, Miss Hulsie Bhaggan, who was once a UNC Member of Parliament for the constituency of Chaguanas. In this policy document it deals with women as consumers. Last week we sat here in this Parliament and participated in a very interesting debate, that is, the Maternity Protection Bill. Page 26 of the consumer policy document says:

- “(a) Women comprise the largest group of consumers, buying both for themselves and for their families. Women should, therefore, play a leading role in establishing and influencing consumer trends.”

And it goes on to list the priorities:

- “(a) To facilitate participatory research in which women themselves identify their needs and concerns;
- (b) To involve women in the national and regional decision-making process;
- (c) To encourage networking links between women’s organizations and other groups such as the university, environmentalists, trade unions and development agencies which will facilitate access to and exchange of information on consumer issues;
- (d) To encourage the development of countervailing economic power by providing alternatives, such as co-operatives and alternate technologies, including the use of traditional medicines;”

Mr. Vice-President, I deliberately read out these provisions in this consumer policy document because my colleague on this side, Sen. Mannette, made reference to the involvement of women in this whole process. Where there is a piece of legislation that is seeking to further this policy document presented by the Government, and when one looks at the composition of the guidance council that would drive this process and monitor the implementation of the consumer policy, you will see at no time, any consideration is given to representation by women. I commend my colleague and support her call in terms of why the hon. Minister of Community Development, Culture and Women’s Affairs is not included.

With that aside, we are very, very strong in our position that we do not support clause 3 of this Bill which seeks to set up a council made up of ministers of Government. We feel that if there is to be a council it should be comprised of representatives from certain key ministries in the issue involving consumer protection and so forth.

Indeed, I think Sen. Mahabir-Wyatt made the point about having the NGOs involved as well. We would really urge the Government, instead of having this council made up of ministers to, perhaps, have representatives from a broad cross-section of those persons with the necessary expertise to take this whole policy forward. Mr. Vice-President, when I continued to go through this policy document on page 29 of this consumer policy, it was rather interesting.

**Mr. Vice-President:** Hon. Senators, so far in the debate I have allowed certain references to be made with respect to the consumer policy document. My reading of the Explanatory Note may be slightly different to what some of your readings may be, and I just want to state as a matter of guidance that I am not going to allow continued reference to that document. The Explanatory Note in front of me states:

“The amendments to the Consumer Protection and Safety Act, 1985 are being proposed in furtherance of the new ‘Consumer Policy’ document...”

It merely tells me that the stimulus for the Act is to be found:

“Under the heading of ‘Administrative Action’ in the Policy document...”

Therefore, I am not going to allow any more exhaustive reference to that policy which is not the subject of this debate. You may continue but without going through the policy document as a source of the debate contribution.

**Sen. N. Mohammed:** Thank you very much, Mr. Vice-President. Just by way of edification, if I may just quote a paragraph that was made by the hon. Minister of Trade and Industry when he piloted this Bill a couple weeks ago. Perhaps hon. Senators may have forgotten what the hon. Minister said, but it was said here in this honourable Chamber when this debate started. This is the hon. Minister of Trade and Industry and Minister of Consumer Affairs saying:

“You would recall that some time ago I had the honour to lay in this honourable Senate, a consumer policy for this country that incorporates a number of issues, an action plan and an agenda, and which incorporates the efforts of all agencies and ministries in the country to achieve its stated goals and objectives. In pursuance of some of the things in this policy, there is need for a review of existing legislation. There are several pieces of legislation which impact upon consumers’ rights. These should be reviewed and revised with a view to harmonization and, more importantly, to confer on the consumer the widest possible protection.

*Consumer Protection (Amdt.) Bill*  
[SEN. MOHAMMED]

*Tuesday, February 17, 1998*

One of the pieces of legislation in this National Consumer Policy that has been slated and accepted by this honourable Senate for review is the Consumer Protection and Safety Act No. 30 of 1985. I am here today to implement parts of the National Consumer Policy beginning with Act No. 30 of 1985.”

In light of this statement by the hon. Minister, I seek your guidance as to whether I can continue to quote from this document.

**Mr. Vice-President:** I have listened to you carefully and I have not been persuaded otherwise, in fact, it confirms that the Bill before us right now has serious genesis under the heading “Administrative Action” out of the said policy document. Therefore, I do not see the relevance of introducing into this debate other aspects of the consumer policy.

**Sen. N. Mohammed:** Thank you very much, Mr. Vice-President. I continue with my contribution to the Consumer Protection and Safety Bill 1997, which seeks to amend the Consumer Protection and Safety Act, 1985. I have been referring to clause 3 of this Bill which seeks to make amendments to the Consumer Protection and Safety Act of 1985. The point we have been making time and time again, in terms of the composition of this council, and one of the facts that have not been in dispute is that in terms of the composition of the council, it should consist of representatives from all consumer interest bodies and, indeed, other relevant organizations and persons in the country who have to deal with consumer matters.

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

Mr. Vice-President, it is our view and position that this particular Consumer Guidance Council should be responsible to the Parliament of Trinidad and Tobago, so that there will be accountability to the people, not just to the Cabinet and the Government. It is a clear case of himself unto himself. So that, this basically is our main concern with the Bill that is before us here this afternoon.

I have to revert once again to the comments made by Sen. Selwyn John when he spoke this afternoon. He talked about dealing with the rut that has set in for the past 20 years. Earlier today we heard the hon. Minister of Works and Transport talking about decades of whatever. Everything that happens in this country, and is happening, all the criticism that this Government is getting because of their own mismanagement, their incompetence and their own ineptitude, they are looking for scapegoats and red herrings, but the shipment of rice, some people feel it is rotten rice. The PNM is not responsible for that particular shipment of rice. I end my contribution by once again calling on the hon. Minister of Trade Industry and



Minister of Consumer Affairs to please, let us hear his side of the story with respect to this whole NFM fiasco.

I thank you, Mr. Vice-President.

**Sen. Cynthia Alfred:** Thank you, Mr. Vice-President, for allowing me the opportunity to make a small contribution. I will not reiterate what other Senators have said in respect of clause 3, but I would state that in the hon. Minister's presentation, he mentioned that:

“Moreover, a number of countries have been putting groups together called consumer groups to ensure and protect consumer interests. These groups have become quite vocal in many parts of the world. In Trinidad and Tobago, we are attempting to form these groups islandwide.”

I would just like to put it to the hon. Minister that, knowing the people of Trinidad and Tobago as I do, and as I am sure the Minister does, if, in fact, these groups have been established or, indeed, are about to be established, and they become very vocal—that is vocal to the extent that they are there to protect the interests of consumers—I do not think that having a council of Cabinet ministers will serve the purpose. Because, I read here another section which says:

“There are several pieces of legislation which impact upon consumers' rights. These should be reviewed and revised with a view to harmonization and, more importantly, to confer on the consumer the widest possible protection.”

So, this having been said, can one, in all reality, appoint a Cabinet-appointed committee? Cabinet ministers are always hard working people. They have a great responsibility, to add to their already overburdened responsibility with this new council or this new body. I notice that there is a quorum of five. I can predict that when the going gets rough, instead of having five as a quorum, three ministers may turn up, two may turn up, one or none may turn up. Because the very ministers are going to see that in addition to all their responsibilities, they are given this additional thing. When the time shall have come, I would assume that they would concentrate more on their particular responsibilities to their communities in their particular roles, rather than having this additional burden placed upon them.

So whereas I believe the intention of the Minister of Trade and Industry and the Minister of Consumer Affairs is good, I would like to ask him to revisit this whole question of having ministers being the persons who would be responsible.

*Consumer Protection (Amdt.) Bill*  
[SEN. ALFRED]

*Tuesday, February 17, 1998*

Let us assume for a moment that these groups that will be formed start to make representations to this council, what do you think is going to happen? It will mean that the questions would be fast and furious and I am almost certain that the ministers would have neither the time, perhaps, nor the inclination to be able to address those questions. So the very purpose for which this provision has been put in will be defeated.

Having said that, I would like once more to reiterate that whereas the intention might have been good, in light of the developments being articulated here this afternoon, I suggest that the Minister rethinks. In all honesty, we will not be able to support a Bill that says that a committee is going to be made up of ministers. It will definitely be a case of Caesar to Caesar. I am sure that we have passed that stage in our development.

I thank you, Mr. Vice-President, and hope that the Minister, if he does not agree with my submission, at least, will give some clarification to what has been said here.

I thank you.

**Sen. Martin Daly:** Mr. Vice-President, this is an awful Bill. It was drawn to my attention by my colleague, Sen. St. Cyr, that in that part of the White Paper, *A Consumer Policy For Trinidad And Tobago*, which deals directly with clause 3 of the Bill, there is a statement on page 34 which states:

“The role and function of the Consumer Guidance Council should be redefined in order to carry out its mandate under the Act. The Council should also advise the Minister on Consumer matters and be responsible to Parliament. The Council should consist of representatives from all consumer interest bodies and other relevant organizations in the country.”

Now, when I lay that alongside—and this was in 1996, so I do not know if it is excused by, “we have only been in office for two years”; this guide was put out in 1996—the existing clause 3, it seems to me the crazy ants are back.

Mr. Vice-President, I have fundamental objections about the way in which this Bill is framed. I am not the world's greatest constitutional lawyer, but I think I have some idea of constitutional theory. There are a number of things that disturb me. I notice in the Minister's presentation he said the national consumer policy was accepted in the Senate. I quote from his contribution. I am not aware that we ever had any debate on this policy. It was probably laid as a paper and I am a little frightened to know that if something is laid and we have no means of debating it, that is taken as acceptance of it. I really think the crazy ants are back.

I think we are proceeding on a whole number of mistakes upon mistakes here, commencing with the fact that the policy of the Bill is completely at variance with the policy in the White Paper. Then we have the suggestion that we accepted this policy when it was not debated. I certainly do not accept Taurus using \$533 million and that was placed before us today; I certainly do not accept it. So we may have to protest these papers each time they are laid.

**4.20 p.m.**

Then I noticed that the Minister said we were changing the focus, powers and composition of the Consumer Guidance Council to place it squarely under ministerial control. I do not understand—because the Ministers are the council—how they are going to do that, unless through some highly esoteric form of self-control. I do not understand how a council comprised of ministers is going to be placed squarely under the control of the Minister. That seems to me to be a total contradiction.

Mr. Vice-President, much more fundamentally—I am going to be very brief about this—I feel very strongly about it, and I think Sen. Spence's amendment is absolutely right. I do not see how the legislature can establish a council and direct the executive to be members of that council. As far as I know, we pass legislation in order to facilitate executive action. I have not come across any legislation, in my limited experience, where the legislature tells the executive of the country what they must do. I think that clause 3 is fundamentally flawed, from that philosophical point of view.

If the Cabinet, as the previous speakers have said, want to form some kind of national security council, consumer guidance council or crazy ants council, they are free to do so by a completely voluntary act, they do not need us to legislate for it. What I am overlaying on the statements made before, is the fact that I think it is quite wrong as a legislature. We would be the laughing stock of the world, if we, as the legislature, legislate telling certain ministers of Cabinet that they should comprise a council. I think that is absolutely *Alice in Wonderland*, from the point of view of constitutional theory.

I also have a fundamental problem with clause 6, which is the laying down of the functions of the council. It seems to me that the stated function of the council, namely, to monitor the implementation of consumer policy and advise Cabinet on matters relating to the same—I assume—is in the portfolio of the Minister responsible for consumer affairs. Why are we legislating to put in a statute what is in the Minister's portfolio? Moreover, why must we have a subcommittee of Cabinet in order to do what the Minister of Trade and Industry and Minister of Consumers Affairs has to do?

*Consumer Protection (Amdt.) Bill*  
[SEN. DALY]

*Tuesday, February 17, 1998*

This has nothing to do with this particular Minister, but is it that the Minister of Consumer Affairs, whoever he or she might be, is so weak that he needs the whipping boy of a Cabinet subcommittee to make him do his job? It simply does not make sense. This is what the Minister is supposed to do. Let him do it. If internally they want to have some supervisory or oversight subcommittee of Cabinet to help the Minister implement, or to see that he does it, that is a voluntary matter.

Therefore, from my point of view, this is an awful Bill because the things proposed here the Cabinet can do on its own, voluntarily, without any directive from the legislature. I am extremely uncomfortable as a legislator, telling the executive what they must do. As far as I know we pass laws to facilitate executive action. We cannot legislate and tell the executive they must sit on this or that council. Mr. Vice-President, if that was so, then I will have a flood of Private Members' Bills telling various Members of the Cabinet where I would like them to sit and I use the word "sit" advisedly. I want to do it quite quickly if we are now to have the powers to legislate to tell the Ministers of Government where to sit.

Finally—I cannot resist the temptation, because my colleagues have made the point—there is something extremely ironic about ministers forming a consumer guidance council. I agree with the Prime Minister, we have to take a historically, long view of the extremely poor job that successive governments have done in spending our money. Whether we were buying Lockheed 1011s, fighting game cocks or, in more recent times, whether we were destroying the sugar-cane—well "Taurus" and "Toro," I think mean the same thing, again it is perhaps very seasonal that we should be dealing with "Taurus" or "Toro" today. It is extremely ironic. If anybody needs a consumer guidance council, it is ministers of government. It is really a question of the lame seeking to help the lame.

One could, of course, argue the other side of the coin, that ministers are eminently suited to be on a consumer guidance council because they are the biggest consumers in the country. The point has been made that they consume our money and not theirs because they have access to our money mainly in the form of taxpayers' money. On the one hand, they are eminently experienced to be consumer guidance councillors. On the other hand, the track record of successive governments—which until recently we thought might improve—suggests that they themselves are in need of a consumer guidance council.

I end by stating it in this way—the Minister for whom I have the highest regard, is a scholar. It is the only Latin word I remember—*infra dignitatem*, which means doing something below the high office which you hold. I think it is extremely *infra dig* for ministers of government to suddenly descend to being consumer guidance counsellors. I think it is the only way to state it!

When we go to the lovely conferences held for people to get tax free trips or trips that they can write off against their taxes, and the man from Fiji and all these people are there, I am going to have a lot of difficulty when I am asked—over the excellent lunch which the President puts on in the former cubby hole—about the composition of our Parliament and how our constitution works and I say, "By the way, our ministers are consumer guidance counsellors." Because that seems to suggest—and you will forgive me, Mr. Vice-President, that means they are going to be bending down in the gas station to see if the tyres that are being sold and the air pressure pumps are working properly. Is that what we are going to send them out to do? There are other forms of consumer guidance counselling that they are going to find even more uncomfortable than checking tyres in tyre shops. Just think about it. Are we going to make them lavatory inspectors? It really does not make any sense.

Unfortunately, whoever drafted this Bill either fell asleep or in some way missed what the policy statement was, and came up with something that is extremely unpalatable. I think it infringes constitutional theory and puts our Ministers in an extremely undignified position to make them consumer guidance counsellors.

Finally, let us get real: anybody who has served on a select committee knows that it is almost impossible to find any day in the working week to get all the members of the committee present. Understandably, those Ministers who sit in the House of Representatives have their constituency days which are all different; Thursday is out because they have Cabinet, Friday is out because they have the House, and Tuesday is out because they have the Senate. Then we have a dog fight over the other two days of the week when everybody's constituency day is different. So let us get real. When are these ministers going to find the time to meet? I do not criticize them for it, but they do not even have time for select committees. When are they going to find the time to have a consumer guidance council meeting? I am very glad that the Minister of Energy and Energy Industries is not included in the list because he now has to write reports, so he has another difficulty. [Laughter] And the way things are going now they are all going to be writing reports so we have another call on their time.

*Consumer Protection (Amdt.) Bill*  
[SEN. DALY]

*Tuesday, February 17, 1998*

Let us withdraw this awful Bill or take the Adjournment now or soon, and see if we can sort it out. [Desk thumping] Thank you, Mr. Vice-President.

**Mr. Vice-President:** Hon. Senators, we will, in fact, recess for tea and would resume at 5 p.m.

**4.29 p.m.:** *Sitting suspended.*

**5.00 p.m.:** *Sitting resumed.*

**Mr. Vice-President:** The debate on the Bill to amend the Consumer Protection Safety Act, 1985 will continue.

**Sen. Dr. Eastlyn Mc Kenzie:** Mr. Vice-President, I would just like to make a few comments because much of what I had to say has been said by other speakers.

When I looked at the composition of the council, not only was I concerned about the council being comprised of only Cabinet members, but I thought that this Government was fortunate in having Ministers in ministries where those particular Ministers had the expertise. For example, there is a Minister of Energy and Energy Industries who is an engineer and so forth. There is the exception; for example, the Minister of Education is a dentist. When I looked at that type of situation I wondered whether it would not have been better if the council did not specifically state that it should be comprised of the Ministers and probably the technical people within the particular ministries because many times the technical people within the ministries are versed in the subject matter or the discipline of that particular ministry.

My other point, Mr. Vice-President, is the size of the quorum. I have sat on a joint select committee and we have had the misfortune to have aborted meetings because of lack of a quorum and that was because of the absence of Ministers. I am not saying it was because of delinquency, it is simply because of the fact that the Ministers had so much to do. I do not think that it is wise for them to put themselves as the monitoring council to see that the policies are implemented. I think that is a little too much for them.

Finally, Mr. Vice-President, I want to ask the hon. Minister whether this Bill, in its present state, could be implemented effectively and efficiently. If he thinks that it could be implemented in its present state, without any changes, then I wish him well. I do not think so. I think we need to look at it carefully and to make sure that when we have this monitoring body, it can do its work and can do it well.

I would also like to see, Mr. Vice-President, that it be compulsory that the Minister for Women's Affairs or a representative of her Ministry be put on the council. It should be compulsory. One of the greatest sectors of consumers in the population is the women, therefore I think that it should be compulsory that, if not the Minister for Women's Affairs, somebody from her Ministry be delegated to serve on this committee because women are really the consumers in this society. Even the men know that. Their wives go out and buy their shirts, clothes, colognes and so forth. We are the consumers and I think we should have, as a compulsory part of the council, some representative of the Women's Ministry.

Thank you very much, Sir.

**Sen. Penelope Beckles:** Mr. Vice-President, I am not going to be very long. I just have a couple of comments to make in relation to this Consumer Protection and Safety Bill.

I would start where Sen. Mc Kenzie left off, particularly in relation to the issue of women. I would like to say that as far as I am concerned this Bill, in its present form, is discriminatory. I think it is quite unfortunate that this is the second occasion because there was the task force to deal with education. That task force which was appointed by this Government did not have a single woman on it. I think it would be, again, unfortunate if this Government were to set up a Consumer Guidance Council without one woman on that council. In addition to the Minister of Community Development, Culture and Women's Affairs, there are the Minister of Legal Affairs and the Minister of Sport and Youth Affairs in the Government so they cannot say they do not have women within the Cabinet whom they could have considered in terms of putting them on the council. That is not to say that I am agreeing with putting the members of Cabinet but I am saying, in terms of the idea, that it clearly means that they have not thought it fit to have that as a serious issue.

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

Mr. Vice-President, we have the housewives' organization and several other organizations, in which women would have been agitating over the years to deal with the whole issue of the protection of the consumer. Certainly, in terms of the housewives, who really are the ones who are actively involved in the market-place in terms of purchasing and being able to compare the price of goods, I think they are the best persons, more than anyone else, to serve on those committees. Certainly, in terms of what might be inequitable distribution, in terms of the Government, if it does not have sufficient women in the Cabinet and it is saying it

*Consumer Protection (Amdt.) Bill*  
[SEN. BECKLES]

*Tuesday, February 17, 1998*

wants to empower women more, then clearly, this present arrangement of using Cabinet Ministers, would not do justice to the whole philosophy behind protection of the consumer. So, I think even on that score, this Bill needs to be looked at, and that particular clause 3 needs to be deleted.

Mr. Vice-President, at the end of the day, the average consumer should be asked what is his or her concern over the years and whether or not this present amendment would satisfy the concerns of the consumer. I think that is the real issue, whether or not the consumers in Trinidad and Tobago are concerned about purchasing a used car and being given one month's guarantee; whether or not this Bill is going to give them the type of protection for which they have been clamouring.

It is no secret that recently, about two or three years ago, a certain company brought in new vehicles and almost every single person who purchased one of those vehicles had a complaint. They were not able to get parts for the cars and, in most instances, the cars were defective and those were new vehicles. Mr. Vice-President, I am being careful in not calling the name of the motor vehicle, because I think most persons know exactly what vehicle I am speaking about. That is the issue. The consumers are concerned as to whether or not the protection that they badly need is going to be sorted out in this Bill.

Personally, I think what is really wrong is that the whole issue of the regulations would have solved some of the problems which exist in relation to this Bill. The existing Act had indicated that regulations would have been made to ensure that the Act was properly implemented. Those regulations were never made, for whatever reason, and I think if the regulations are made, many of the concerns expressed about this Bill would have been dealt with through the regulations.

Mr. Vice-President, at present, there is no director in relation to the Consumer Guidance Council and I think if that person is appointed, some of the problems could be sorted out as well. I do not know whether or not this Government has plans to appoint that director, or if the Minister can indicate what are the reasons why no director has been appointed for a while, but I think if those issues are sorted out, if that person is appointed, then we can put to rest, as well, some of the concerns that have been expressed.

I would not want to spend too much time dealing with the whole issue of clause 3, but I would just question, in terms of the issue of time, whether or not



this Government is really convinced that the Ministers of Government would have the time to be committed to an issue as serious as protection of the consumer.

Several speakers spoke about the difficulty in terms of attending to other issues, but I really do feel that when one looks at the intention of the protection of the consumer, I do not feel that there is any other legislation, be it in the West Indies or in any other part of the world, where one would find a sub-committee being appointed to take on the role of a consumer guidance council. If the Minister could point out to me, one other country in the world that has a similar section, I would be extremely interested. I have done my research and I have not been able to come up with any country that has a similar section as clause 3. I am sure that in dealing with the legislation, what the Government would have obviously intended was to pattern this legislation on some other part of the world.

Mr. Vice-President, it would be extremely helpful, as is the norm, if the Government tells us that it has looked at the legislation from New Zealand; it has taken it from Australia, from the British, from Singapore; whatever it is; whether it is that the Prime Minister when he went on his trip to India, got a similar piece of legislation; wherever it came from—

**Sen. Kuei Tung:** Fiji.

**Sen. P. Beckles:** —I would really love to know, because I have not seen any similar legislation with a section such as clause 3.

Mr. Vice-President, the Minister of Finance mentioned Fiji. I would be very glad if he would give me a copy of the Fiji legislation.

Seriously, when legislation is being drafted, very often it is patterned on some other country and I do not feel this is patterned on any other country. This has to be a novel piece of legislation and I would say they have not given it sufficient thought. I think what needs to be done is they need to go back to the draftsman, discuss it again and also discuss it amongst the Cabinet members who are intended to form part of this council, and really decide whether this is what they want to do. *[Interruption]* I do not know why the Minister is getting so upset.

**Sen. Mohammed:** This is the only country where we will have a guidance council with only Ministers.

**Mr. Assam:** We are always novel.

**Sen. Mannette:** You will have the opportunity to respond.

**Sen. P. Beckles:** Mr. Vice-President, it is unfortunate that the Minister is getting a little upset.

**Mr. Assam:** I am not upset at all. I am surprised that you do not think it is novel.

**Sen. P. Beckles:** Mr. Vice-President, I also want to mention the amendment as it relates to clause 4. In terms of the deletion of subsections (3) and (4) which is the whole issue of the declaration of interest, I think that section ought to remain in place. The proposed section 7A(2) says:

“For the purpose of performing the functions described at subsection (1), the Council should have the power to request information on any aspect of the Consumer Policy.”

That is an extremely wide section; it gives to the council; it does not specify from whom. It appears as though that could be from anybody, whether it be here or wherever. Is it a state organization? Is it a private body? Who are the persons to have the power to request this information, Mr. Vice-President?

Certainly, in section 9 repealed, and I am referring now to clause 8 which says:

“Director to determine economic interests	9. Subject to this Act, the Director shall determine whether any consumer trade practice adversely affects the economic interests of consumers in Trinidad and Tobago.”
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That clause is so wide that I cannot understand, bearing in mind how it is framed, how it is that the director is going to determine those economic interests.

Now, Mr. Vice-President, they indicated in clause 11 that:

“Section 12 is amended—

‘the Director may recommend to the Minister that he should exercise his power under this Part with respect to that consumer trade practice’...”

Again, “exercise his power”, may not sound very important, but I think at this stage, obviously they are assuming, as usual, that the minister would be male. The Minister must know that in terms of legislation, especially in 1998, it is fine for him to assume “his” means “her” and “her” means “his”, but as a lawyer I do no such thing, except if it is specified in the legislation. As his Government has this male-oriented vision, he only thinks in terms of men and not women.

**5.20 p.m.**

All the speakers have indicated their concerns, particularly as they relate to clause 3. When I look at the Minister's presentation on December 16, 1997, he indicated the several ministries that would be involved once this legislation comes into effect. I wondered, in terms of the other pieces of legislation, for example, that would affect T&TEC, WASA, BWIA. There are other pieces of legislation which exempt these various state organizations from liability and the whole philosophy behind that would have been the claims that the state is likely to pay arising out of certain incidents that may occur from time to time. He spoke about the Minister of Energy and Energy Industries; the Minister of Public Utilities.

It is almost as though this piece of legislation was not read together with the various other pieces which affect the other ministries, because it is not simple as the Minister is putting it, that is to say, when the Consumer Protection and Safety (Amdt.) Bill becomes law, it would simply attach liability to these several ministries if they do not provide, as he said, goods or services in relation to clause 11.

With regard to education, he indicated:

“Do you see how deep this amendment goes? It even tackles quality education because we are attempting to move this country into a total quality nation with total quality persons.”

“(b) of university or other higher education not falling within subparagraph (a).”

If we think of the recent textbook fiasco, one wonders if this Act were in place, what would have happened to the existing Minister of Education who, obviously, would have had to take responsibility for what happened with regard to that fiasco in the Ministry of Education. That is why I say this is not just a question of lip service and simply giving to the public the impression that we now have legislation which would make the several ministers accountable and that it would be easier for the consumers in Trinidad and Tobago, not only to complain, but to be aware that the several ministers would be accountable for whatever fiascos and different problems which would occur from time to time in their ministries.

He mentioned the whole issue of sea and air transport. I am sure that all the Senators from Tobago would be extremely happy over the fact that the Minister is saying that one of the issues specifically—and I am reading from his contribution:

“10. The carriage of passengers and goods by sea between Trinidad and Tobago by the Port Authority of Trinidad and Tobago.”

*Consumer Protection (Amdt.) Bill*  
[SEN. BECKLES]

*Tuesday, February 17, 1998*

He spoke about the complaints that persons had over the years in relation to their cars being damaged on the ferry and the fact that those persons had no recourse. He said with this Bill becoming law, it would mean that some liability would be attached to the Port Authority of Trinidad and Tobago in relation to the carriage of vehicles and, by extension, the persons who suffer hardship by not being able to travel between Trinidad and Tobago because of the difficulties of the *MF Panorama* or any other vessel which we may subsequently own, that those persons would successfully be able to obtain compensation from either the Port Authority or the relevant Ministry of Works and Transport, if they do not realize that carriage of either goods or passengers.

We knew that over the Christmas vacation several persons in Tobago, particularly the hardware and supermarkets, were complaining about discrimination as it relates to goods not being able to leave Trinidad for Tobago. So whilst this may sound very nice and certain persons may be comforted by what the Minister has said in his presentation, the major complaint of the consumers over the years is: "To whom can I complain? And having complained, who is going to accept liability; who is going to be responsible and at the end of the day, how soon will I get my compensation?"

That is basically it. I am sure that if this legislation is able to make the citizens of Trinidad and Tobago comfortable so that at the end of the day this is what would happen, then I would have absolutely no difficulty in supporting the legislation as it is. I am not satisfied that this legislation in its present form would be able to add some comfort to the several consumers who, over the years—and even much more recently, particularly having regard to the whole used car market and other things which the Government has been almost allowing to enter into the country without having limitations, that the consumers would be any more protected than certainly in years gone by.

I do hope that if amendments are to be made, they would reflect the concerns of the Senators who spoke and when the Minister is winding up, that certainly he would be able to have both the Parliament and the public more comfortable. I end by saying that the issue is not whether the Minister has succeeded in bringing a novel piece of legislation, because I do not think we are here about the issue of novelty, the point is that even if something is novel, it ought to be sensible and workable. Once it is sensible and workable, if it is novel, we would support it, but we do not feel that this novelty is in the interest of the consumers of Trinidad and Tobago.

I thank you.

**Sen. Dr. Eric St. Cyr:** Mr. Vice-President, I want to make just a few brief remarks focussing especially on clause 3, where I have a difficulty. Before I do that, let me just say that from casual observation, it seems to me that we are approaching another consumer spending or an impending spending boom in the country and so addressing this matter of consumer regulation is quite timely.

The difficulty I have with clause 3 might be put in context if we think of the suppliers of goods and services, on the one hand, that is private suppliers and public suppliers; and on the other hand, the purchasers of goods and services, private and public consumers. If we make that separation, we would immediately see that constituting the council exclusively of Government ministers would pose a difficulty since the very ministers are both suppliers and users of goods and services.

### **5.30 p.m.**

In my view, there should be representation of the various suppliers and separate representation of the various users and so, there should be on the council people from both the side of the suppliers and of the consumers. I also have a difficulty that as a Parliament we are setting up a subcommittee out of the Cabinet since, in my view, the person responsible for organizing and directing the work of the Cabinet is the Prime Minister and we seem really to be encroaching on that area of his responsibility.

In sum, I understand the urgent need for addressing the matter of consumer protection at this time, but I do not think that clause 3 is the right formula. It struck me that we might better have something resembling the old Consumer Council and that council reporting to a subcommittee of Cabinet such as this one that will give the overall balance and monitoring to this policy. With those brief remarks, Sir, I thank you.

### **ARRANGEMENT OF BUSINESS**

**The Minister of Public Administration and Information (Sen. The Hon. Wade Mark):** Mr. Vice-President, having regard to the various concerns and observations made, the Government would like to look at those concerns expressed and would want to continue the debate on this particular Bill at the next sitting of the Senate. I suggest to the Senate that if that is accepted, we would then proceed with the introduction of the second reading of the DNA Forensic Analysis Bill by the Minister of National Security.

**Mr. Vice-President:** I take it there is a motion to adjourn the debate. What is being suggested is that the debate which is being presently dealt with here, the Consumer Protection (Amdt.) Bill, be suspended until the next sitting of the Senate, and that we proceed with the second reading of the DNA Forensic Analysis Bill 1998.

*Agreed to.*

#### DEOXYRIBONUCLEIC ACID (DNA) IDENTIFICATION BILL

*Order for second reading read.*

**The Minister of National Security (Sen. Brig. The Hon. Joseph Theodore):** Mr. Vice-President, I beg to move,

That the Bill to provide for DNA forensic analysis, to include a DNA report as evidence, to provide for the use of DNA to determine parentage, and other related matters be now read a second time.

The primary purpose of this Bill is to permit for the obtaining of samples of body substances from detainees, arrestees and to allow for the analysis of these substances by the Forensic Science Centre. The Bill pursues the further objective of allowing the police to use the generated DNA reports to assist in criminal investigations and to be admitted as identification evidence in criminal proceedings.

The capability for DNA testing is presently available in Trinidad and Tobago at the Forensic Science Centre. The state of the law does not enable samples to be obtained from suspects of an investigation for comparison with any results obtained from analysing samples found at crime scenes. The only forensic evidence currently admissible in criminal proceedings are the findings for post-mortem examinations. Even so, where post-mortem reports are prepared prior to the laying of criminal charges, the law does not permit the samples to be taken from suspects. Despite, therefore, a post-mortem report evidencing foul play in certain deaths, it is not always possible to lay charges because evidence linking the arrestee to the unlawful death is insufficient. Today, we are quite aware that in most developed countries DNA evidence is an acceptable form of evidence for determining culpability of a suspect by linking the suspect through the scientific evidence, placing the suspect at the scene of the crime.

At present, we are fortunate to have trained individuals based at the Forensic Science Centre who are capable of conducting the DNA analysis and they have been trained in systems of DNA analysis. We expect that the equipment at the Forensic Science Centre which we have been gathering for the commencement of

DNA analysis will be in place by July, 1998. We are catching up with the science that is at our disposal to now ensure that the law is changed or amended to cater for such evidence being admitted in a court of law. The capabilities at the Forensic Science Centre, in this respect, find support in clause 17(3) of the Bill which permits the centre to store the data obtained for educational and research purposes. The Director of the Centre is also empowered by this Bill to continually recommend and monitor the standard for testing the proficiency of conducting DNA analysis and the methods of such analysis. As a result, the director may maintain and revise the standard of proficiency for conducting DNA forensic analysis and for the protection of DNA samples and data.

On the matter of protection, there are several sections of this Bill which ensure that safeguards are in place to preserve the samples that are taken either from the suspect or from the scene and that such samples, as far as possible, will not be tampered with. The centre of course, will not be responsible for taking these samples and this is where the police service becomes involved. Such responsibility would revolve on the police service in respect of non-intimate samples and qualified medical personnel where intimate samples are concerned. As I go on, we would look specifically at what constitute intimate samples and non-intimate samples.

Careful provisions are made in the Bill for receiving the consent of persons from whom samples under the Bill may be obtained. Because of its proposal to legitimize the violation of privacy rights in certain circumstances, the Bill requires a prescribed majority if it is to become law. In this case we are dealing with sections 4 and 5 of our Constitution which deal primarily with the recognition and declaration of rights and freedoms. Chapter 1, section 4(a) states:

“the right of the individual to life, liberty, security of the person and enjoyment of property and the right not to be deprived thereof except by due process of law.”

Section 5(1) on the protection of rights and freedoms states:

“Except as is otherwise expressly provided in this Chapter and in section 54, no law may abrogate, abridge or infringe or authorize the abrogation, abridgement or infringement of any of the rights and freedoms hereinbefore recognised and declared.”

**5.40 p.m.**

That is the reason we require this majority. I would like the hon. Members of this Senate to appreciate that what we are doing here is keeping up with the scientific developments in the world. As most of us would know, DNA evidence has been accepted in the developed countries. I believe we have made progress in Trinidad and Tobago where our Forensic Science Centre is the training facility for forensic officers throughout the Caribbean. There is no doubt in my mind that we have the capability and with time we would expand and improve our competence.

The participants in our training programme come from an area spanning from the Cayman Islands in the north, to Guyana in the south and includes areas like Belize, the Bahamas and the Turks and Caicos Islands. Under the United Nations Development Training Programme our Forensic Science Centre has been designated as the training centre for forensic trainees in the Caribbean.

The Bill also provides for the destruction of samples. We would find that where persons are not charged or prosecuted for offences after specific periods, or are discharged after a preliminary enquiry, the samples can be destroyed. However, the court would also be empowered to order preservation of DNA samples where it is satisfied that the sample may otherwise be reasonably required in a related investigation or prosecution. While the samples can be destroyed once someone has been dismissed or the charges have been dismissed or the preliminary enquiry determines that there is no charge to answer, there is provision for samples to be retained. The Director of the Forensic Science Centre would be responsible for ensuring that these samples are properly labelled and kept as determined.

The Bill will also allow for convicted persons who have filed appeals to request from the Commissioner of Police DNA forensic analysis of DNA material already available or give DNA samples for analysis. It is quite clear in this Bill that the giving of samples is a voluntary exercise. People cannot be forced to give samples. However, depending on the circumstances, the court has the power to order that samples be given. I will come to that when we go through the various clauses of the Bill.

The DNA Bill proposes amendments to the Evidence Act, Chap. 7:02 and to the Status of Children Act, Chap 46:07. The Evidence Act would be amended to include a DNA report among the documents admissible in criminal proceedings as evidence of the facts stated without proof of the signature or appointee of the government expert responsible for its preparation.



The amendments proposed to the Status of Children Act are to replace the definitions of “blood samples”, “blood tests” and “tester” currently used in the section of the Act with “DNA sample”, “DNA forensic analysis”, “qualified person” and “tester” in sections 13 to 17 of the said Act where scientific evidence is admissible on the issue of paternity.

Under the Bill, the police powers are very strong, so police officers would be trained by the Forensic Science Centre on how the samples are handled, delivered and transported. At present, there is an arrangement between the Forensic Science Centre and the police service on the collection of samples whether they be blood samples or otherwise, how they are packaged, transported, delivered and stored. This Bill is far more precise in the handling of samples which is one of the provisos I mentioned earlier, whereby as far as possible one would be ensured that the tampering of samples is prohibited.

The powers and responsibilities of the police would be significantly modified so as to enable the police to avail themselves of the technological advances in the field of forensic science to obtain and present evidence which is now unavailable to the court, under the present law. The following are to be noted in respect of the proposal to give the police greater powers. It widens the authority of investigators to collect, access, preserve and present forensic scientific evidence. Such evidence is liable to stand up well to cross examination and is not subject to the vagaries and unpredictability of human testimony. It means that the police can present a far stronger case with scientific evidence.

The Bill clearly outlines the circumstances in which a police officer becomes empowered to take a DNA sample. Clause 4 of the Bill provides especially for persons under 18 years of age, including the right to consult with an attorney-at-law, parent or adult relative. Where there is a situation requiring the taking of an intimate sample as described in the definition in Part II, the Bill provides that the police officer must *inter alia* inform the person of the nature of the offence committed; the reason for giving the sample; the consequences that may result where consent is refused and that the result of the test may be used in evidence. The person from whom a sample is requested must be fully *au courant* with what the sample is for, why it is being used and give his consent.

On the other hand, persons refusing to consent to give intimate samples may request a police officer to record the reason for his refusal if he does not wish to do so himself. The officer must record the reasons and sign the records. This is covered in clause 9 of the Bill. It is to be noted that in the taking of non-intimate

*DNA Identification Bill*  
[HON. J. THEODORE]

*Tuesday, February 17, 1998*

samples, written authority must be taken to do so by a police officer of the rank of Inspector and above. Only a female police officer may take a sample from a female person where non-intimate sample is to be taken. Clause 10 of the Bill provides for this. Again, the police officers have a responsibility and they are to give written authority for the taking of non-intimate samples. In the presence of the Justice of the Peace, they must inform the person from whom the sample is to be taken that the authorization was given, the nature of the offence suspected and that the results may be used as evidence. Clause 11 of the Bill covers this.

The proposed legislation grants the police the new responsibilities to take and collect intimate samples and to ensure their proper storage and labelling prior to delivery to the Forensic Science Centre. This delivery must be made within 10 days of the taking or collection of the sample.

Clause 21 of the Bill provides for where an offence is committed where persons willfully and unlawfully obtain DNA samples without consent, disclose or obtain a DNA sample or data without authorization, breaks the seal of or opens or causes to be opened any container or package holding DNA samples and in any manner tampers with such a container or package.

**5.50 p.m.**

The Minister of National Security would be empowered to make the necessary regulations to give effect to the provisions of the Act. I see these regulations as becoming necessary if there are aspects of the Act where the constraints are not sufficiently spelt out. Regulations would, perhaps, be created to deal with these specific incidents. Right now, no draft regulations have as yet been made.

Mr. Vice-President, for a few minutes, I would like to deal with certain specific items of this Bill. The Bill contains 25 clauses, and a schedule showing the amendments that would be required to the existing laws to include the samples of DNA.

Clause 1 is the Preamble. Under Interpretation, “Central Authority”—Senators would remember that in the Mutual Assistance in Criminal Matters Act the central authority was identified as the Attorney General.

We have all the meanings of the various areas. “DNA” means deoxyribonucleic acid. I wanted to say that all the time. I have been practising it all afternoon. *[Laughter]* I certainly would not say it again. We are dealing with DNA samples, meaning an intimate sample or a non-intimate sample. I would like to spend some time dealing with these two types of samples and how they are treated.

An “‘intimate sample’ means a sample of blood, semen or other tissue fluid, pubic hair or hair taken from an intimate part of a person’s body, or a swab taken from a person’s body orifice”. It has been clearly stated that qualified persons alone must take such samples.

Non-intimate samples, which can be taken by the police are samples of saliva or urine, samples of hair other than pubic hair or hair taken from an intimate part of a person’s body; samples taken from fingernail or toenail or from under such a nail, a swab taken from a part of a person’s body other than the body orifice, a footprint, handprint or fingerprint, or a similar impression of a part of a person’s body.

This is what distinguishes the two types of samples. In taking the intimate sample, as I said earlier, the Bill spells out that the police officer must give the grounds for taking such a sample. First of all, he must inform the person from whom the sample is to be taken:

- “(a) of the grounds for taking it,
- (b) of the nature of the offence in which it is suspected that he has been involved,
- (c) of the nature of the procedure by means of which an intimate sample is to be obtained from that person,
- (d) that the results of the DNA forensic analysis may be used as evidence against him,
- (e) in the case of a person who has not attained the age of eighteen years, the rights of that person under clause 4(2) and (3), and
- (f) of the consequences that may result, as stated under clause 7(2) or clause 9(2), where he refuses to consent to the taking of the sample.”

All the information contained in these clauses must be communicated to the person from whom the sample is to be taken. This must be witnessed and signed by the Justice of the Peace and, if he so agrees, by the person.

The matter of written consent deals with the person under 18 years. He has to be notified that he can consult an attorney, an adult or a parent. I think what is important here is that while we are moving into a very scientific area for gathering

*DNA Identification Bill*  
[HON. J. THEODORE]

*Tuesday, February 17, 1998*

evidence to be used in prosecuting people, the safeguards are fairly stringent in themselves to make sure that advantage is not taken of such a system to accuse people unduly of things for which they are not guilty.

Subclause 9(1) states quite clearly that:

“Where a person refuses to consent to the taking of an intimate sample he may, in the presence of the police officer and the Justice of the Peace, record the reasons...”

but subclause (2) states that:

“Where a person refuses, without good cause, to consent to the taking of an intimate sample in any proceedings against that person for an offence—

- (a) the court in determining whether to commit that person for trial, or,
- (b) the court or jury in determining whether that person is guilty of the offence charged, may draw such inference, if any, from the refusal as appears proper in the circumstances.”

For non-intimate samples, again the rank of the officer must be inspector, and the reason must be given in writing and signed by the authorizing officer. The responsibility of the police officer who gave the authorization is also spelt out. He must inform the person from whom the sample is to be taken:

- “(i) that the authorisation has been given,
- (ii) of the contents of the authorisation,
- (iii) of the grounds for giving that authorisation,
- (iv) of the nature of the offence in which it is suspected that he has been involved,
- (v) of the nature of the procedure by means of which a non-intimate sample is to be obtained from that person, and
- (vi) that the results of the DNA forensic analysis may be used as evidence against him.”

Mr. Vice-President, the point I am making is that throughout this Bill there are numerous safeguards to ensure that persons’ rights are preserved and that all good cause is given for requesting such evidence.

Under clause 12, there is provision for taking a DNA sample after conviction.

“Where a person, who is serving a term of imprisonment,

- (a) has not given a DNA sample,
- (b) has been convicted of an offence, and
- (c) has exhausted all avenues of appeal or the time to file an appeal has expired,

a DNA sample shall be taken from him in accordance with the provisions of this Act.”

Again, on the matter of the preservation of the sample, clause 13 states:

- “(1) A person who takes a DNA sample shall seal the sample in a container and affix a label with an identifying mark to the container so as to distinguish it from any other container...”

Such a practice is already carried out with samples at the Forensic Science Centre. I assume that the matter of the identification of the container by labelling will be so arranged that they will be very distinct and the risk of mistaking one sample for another will be totally removed.

“...and that person shall then seal the container in a package and affix a label to the package with the same identifying mark that is shown on the label affixed...”

Another matter that is dealt with at subclause (4) is:

“A person who takes a DNA sample shall also provide a report in writing to the court stating the following information:

- (a) the name and address, date of birth, race and gender of the person from whom the sample is taken...”

In connection with the storage and delivery of the samples, as I said earlier, the police officer is obliged to deliver such a sample within 10 days from the date of collection or taking. Information, which makes it quite clear that the package is properly sealed, labelled and identified, is to be passed on with the sample. This information gives the name of the person delivering the package, the name of the person receiving the package, the date of receipt, the information on the label attached to the package, and a statement that the seal of the package is not broken, opened or tampered with. This will ensure that no rodents or other vermin interferes with the package while in storage.

**6.00 p.m.**

**Sen. Prof. Spence:** I wonder if the hon. Minister could comment on two points, and perhaps, if not now, he could address them in his winding up.

One is the cleanliness of the container. Nowhere in the legislation is there anything which provides that the container in which the person is taking the sample be a clean container. If it is contaminated in any way, that would be carried through, no matter how it is preserved afterwards.

The second point is whether there is any need for ensuring that the director of the laboratory carries out the monitoring process. Could we, perhaps, specify that he must send samples to another internationally recognized laboratory at periodical intervals to check? I know it says that he should monitor. Should we state something in the Bill which forces that monitor?

**Sen. Brig. The Hon. J. Theodore:** Yes, Sen. Prof. Spence, the point is taken. The matter of the container, as I said at the beginning, maybe in regularizations one can spell out these things. It does not really say from where the containers come, or whether they would be supplied by the laboratory, or the person on spot would produce his own container. The point is well taken.

Under clause 18 with respect to cross-checking findings it says:

"18.(1) In recommending and monitoring the standards for testing the proficiency of conducting DNA forensic analysis and the methods of conducting such analysis, and generally for conducting the business of the Forensic Science Centre as it relates to DNA forensic analysis, the Director shall consult such persons trained in the sciences as he may think suitable."

It is a fairly wide interpretation, but such consultation could lead to another opinion and checking on a certain matter. As to the container and where it originates and the fact that it has been sterilized would certainly be something that would need to be part of the regulations affecting the day-to-day administration of the centre.

Mr. Vice-President, under "Disclosure", again this deals with persons' evidence not becoming public knowledge. Clause 17 states:

"17.(1) The Director shall not disclose any DNA sample or DNA data obtained, stored, or maintained under this Act, except:—

- (a) to a law enforcement agency of the State in the course of a criminal investigation or proceedings;

- (b) to the person from whom the DNA sample was taken where such a sample is requested for his defence;
- (c) to a party in proceedings under the Status of Children Act, or under any other written law in which the question of parentage arises; or
- (d) to a country making a request, which is accepted by the Central Authority, for mutual assistance in criminal matters."

Again, under the administration of the Forensic Science Centre, one would need to ensure that the area where such samples are stored are not easily accessible to the general staff, and there would be limited access to such samples. We all know it is a small country and someone working at the centre could easily be acquainted with one whose DNA is there for testing.

In keeping with the spirit of the Bill, one sees absolute secrecy and confidentiality as far as the DNA goes and limited access to samples: only to persons who are authorized to handle such samples.

With respect to the destruction of DNA samples, clause 19 states:

"19.(1) Subject to this section, a DNA sample shall be destroyed by the Forensic Science Centre as soon as it has fulfilled the purpose for which it was taken.

(2) Where a DNA sample has been taken from a person who is arrested or detained for an offence and he is not charged or prosecuted for that offence, he may,

(a) in case of a summary offence, after six months from the date of the arrest or detention; or

(b) in case of an indictable offence, after two years from the date of the arrest or detention,

request in writing, that the Director destroy the sample."

"(5) Where a DNA sample has been taken from a person who is prosecuted for an offence and he is acquitted of that offence or the proceedings are dismissed for want of prosecution or any other offence in respect of the same transaction, without prejudice to any right of appeal of the State, the court may order the Director to destroy the DNA sample."

*DNA Identification Bill*  
[HON. J. THEODORE]

*Tuesday, February 17, 1998*

There is provision, however, for the court to direct that a sample be preserved. This is the other side of the coin. Clause 20 states:

20. "... a court may order that a DNA sample, that has been taken under this Act, shall not be destroyed during any period that the court considers appropriate if the court is satisfied that the DNA sample might reasonably be required in an investigation or prosecution of that person for an offence or of any other person for the same offence or any other offence in respect of the same transaction."

Basically, there is provision for the sample to be destroyed and by the same token, for samples to be preserved on the order of the court.

I mentioned that clause 21 creates an offence for persons who obtain a DNA sample without consent. It states:

- "21. A person who wilfully and unlawfully—
- (a) obtains a DNA sample without consent;
  - (b) discloses or obtains a DNA sample without authorisation;
  - (c) discloses or obtains DNA data without authorisation;
  - (d) breaks the seal of or opens or causes to be opened any container or package holding a DNA sample; or
  - (e) in any manner tampers with such a container or package..."

Clause 22 states:

- "22. Where, before the coming into force of this Act, a person—
- (a) was convicted of an offence, and
  - (c) has filed an appeal against that conviction or sentence or both,
- he may make a request, in writing, to the Commissioner of Police for a DNA forensic analysis and such analysis shall be carried out if—
- (i) evidence containing DNA material was collected in connection with the trial and it still exists, and
  - (ii) he is willing to give a DNA sample."



This person may be pleading in a sense, and if there is forensic evidence, he may volunteer to have a sample taken from him to prove that the evidence held does not connect him to the case.

Mr. Vice-President, I visited the Forensic Science Centre recently. I was prompted to do this because when I was in Jamaica last year I visited their Forensic Science Centre and was very impressed with it. I thought it would be worth my while to see what ours looked like.

I must confess that our centre is definitely streets ahead of any similar centre in the Caribbean and the equipment which we possess are of an extremely high standard. I think I may have said at an earlier date that our main problem is recruitment, getting suitable persons with the qualifications at the salary we are offering them.

I have received permission from Cabinet to have certain posts go before the Salaries Review Commission for regrading, and in the meantime a number of our scientists and technical persons who are extremely well-qualified are on contract, so we do have some flexibility. We have been experiencing problems and the director of the centre has informed me that it is difficult to keep these persons when they reach the top of their profession because other firms and agencies are willing to recruit them at far better terms and conditions. There is a battle to maintain the standard and I assure this honourable Senate that the standard which has been achieved and which we hope to maintain and expand upon is extremely high and very reliable.

### **6.10 p.m.**

Under Schedule, second column, I mentioned the laws which would be affected and I would briefly touch on them. The Evidence Act, Chap. 7:02, where,

“...by amending the definition of ‘report’ by inserting after the words ‘post mortem report’ the words “or a DNA report””.

The Status of Children Act, similarly, including a DNA sample:

“...‘DNA sample’ means a sample of blood, semen or other tissue fluid, urine, saliva or hair or any bodily substance taken from a person;”

In Chap. 29:53, there is the matter of defining:

“...‘qualified person’ means a registered medical practitioner or a person registered under Part II or Part III of the Nurses and Midwives Registration Act;”

*DNA Identification Bill*  
[HON. J. THEODORE]

*Tuesday, February 17, 1998*

The Act is very specific about who such a person would be to take an intimate sample:

“Section 13 is also amended:

- (a) by deleting the heading ‘Blood Tests’ and substituting the heading ‘DNA Forensic Analysis’;”

Basically, we are simply widening the existing law to include DNA testing and DNA samples.

As I pointed out, growth in the technological capacity of the Forensic Science Centre can only redound to the benefit of the fight against crime, locally and regionally. The police need the help to get convictions and I am sure the judiciary would be far more comfortable with more cogent evidence upon which they could base their decisions when dealing with the criminal element.

It is not inconceivable that in future the purpose to which the DNA forensic analysis is put may be widened. As the number and expertise of the trained personnel increase and as technological advances emerge—as I said earlier, we are having difficulties but we are taking steps to ensure we get the best scientists available—further legislation can be introduced to facilitate the use of DNA analysis in other relevant procedures.

This proposed legislation seeks to bring crime-fighting technology in Trinidad and Tobago into the 21st Century. It attempts to provide the legislative framework to harness national security resources by placing mutually dependent responsibilities on the police service and the Forensic Science Centre.

The co-operation of other agencies in the health and judicial system is also necessary for the effective implementation of the proposed provision.

Mr. Vice-President, I beg to move.

*Question proposed.*

#### ADJOURNMENT

**The Minister of Public Administration and Information (Sen. The Hon. Wade Mark):** Mr. Vice-President, I beg to move, that the Senate do now adjourn to Tuesday, March 3, 1998 at 1.30 p.m., at which time we shall continue with the debate on the Consumer Protection (Amdt.) Bill and the Deoxyribonucleic Acid (DNA) Identification Bill.

*Question put and agreed to.*

*Senate adjourned accordingly.*

*Adjourned at 6.14 p.m.*