SENATE

Tuesday, September 22, 1998

The Senate met at 10.02 a.m.

PRAYERS

[MR. PRESIDENT *in the Chair*]

LEAVE OF ABSENCE

Mr. President: Hon. Senators, leave of absence from today's sitting has been granted to Sen. Brig. The Hon. Joseph Theodore.

SENATOR'S APPOINTMENT

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

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency ARTHUR N. R. ROBINSON, President and Commander-in-Chief of the Republic of Trinidad and Tobago.

\s\ Arthur N. R. Robinson

President.

To: MR. VINCENT CABRERA

WHEREAS Senator Joseph Theodore is incapable of performing his functions as a Senator by reason of illness.

NOW, THEREFORE, I, ARTHUR N. R. ROBINSON, President as aforesaid, acting in accordance with the advice of the Prime Minister, in exercise of the power vested in me by section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, VINCENT CABRERA, to be temporarily a Member of the Senate, with immediate effect and continuing during the period of illness of the said Senator Joseph Theodore.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 22nd day of September, 1998."

OATH OF ALLEGIANCE

Sen. Vincent Cabrera took and subscribed the Oath of Allegiance as required by law.

INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS (ISKCON) TRINIDAD AND TOBAGO (INC'N.) BILL

Bill to provide for the Incorporation of the International Society for Krishna Consciousness (ISKCON) Trinidad and Tobago, brought from the House of Representatives [*The Parliamentary Secretary in the Ministry of Agriculture, Land and Marine Resources*]; read the first time.

Motion made, That the next stage be taken at a later stage of the proceedings. [*Sen. V. Tota-Maharaj*]

Question put and agreed to.

UNITY OF TRINIDAD AND TOBAGO (INC'N.) BILL

Bill to provide for the Incorporation of Unity of Trinidad and Tobago and for matters incidental thereto, brought from the House of Representatives [*Sen. Nafeesa Mohammed*]; read the first time.

Motion made, That the next stage be taken at a later stage of the proceedings. [*Sen. N. Mohammed*]

Question put and agreed to.

PETITION

Chief State Solicitor

(Request for Hansard)

The Minister of Public Administration (Sen. The Hon. Wade Mark): Mr. President, I wish to present a petition on behalf of the Chief State Solicitor of No. 22—84 Queen Street, in the City of Port of Spain, the Republic of Trinidad and Tobago.

I now ask that the Clerk be permitted to read the petition.

Petition read.

Question put and agreed to, That the petition be granted.

10.15 a.m.

PAPERS LAID

1. Report of the Auditor General of the Republic of Trinidad and Tobago on the accounts of Trinidad and Tobago Export Credit Insurance Company Limited for the year ended December 31, 1996. *[The Minister of Finance (Sen. The Hon. Brian Kuei Tung)]*

2 The Transfer of Functions (Permanent Secretaries, Heads of Departments and Chief Administrator) Order, 1998. *[Hon. B. Kuei Tung]*

SELECT COMMITTEE REPORTS

Presentation

Planning and Development of Land Bill

The Minister of Public Administration (Sen. The Hon. Wade Mark): Mr. President, I seek the Senate's approval to defer presentation of report No. 4 on the Second Supplemental Order Paper to a later stage of the proceedings.

Leave granted.

Management Structure of Parliament (Reform of)

The Minister of Public Administration (Sen. The Hon. Wade Mark): Mr. President, I beg to present a report of the Joint Select Committee of Parliament appointed to consider and report on the Working Paper on the Reform of the Management Structure of the Parliament of Trinidad and Tobago.

Standing Orders Committee

Sen. Nathaniel Moore: Mr. President, I beg to present a report of the Select Committee appointed to consider and report on the Standing Orders Committee.

United Islamic Organizations of Trinidad and Tobago (Inc'n.) Bill

Sen. Vimala Tota-Maharaj: Mr. President, I beg to present a report of the Select Committee appointed to consider and report on a Bill for the incorporation of the United Islamic Organizations of Trinidad and Tobago and for matters incidental thereto.

ARRANGEMENT OF BUSINESS

The Minister of Public Administration (Sen. The Hon. Wade Mark): Mr. President, today is Private Members' Day and I have raised the matter with Sen. Prof. Spence and Sen. Nafeesa Mohammed in an effort to accommodate Sen. Dr. St. Cyr's Motion. We had started to debate that Motion, but there are a number of other matters before us which we would like, at least, to complete. We hope that we will be able to address his matter. If we are not able to do so, we will probably have to continue that debate in the new session of the Parliament.

Because certain things are in train and the Parliament has to come to a close and a new session starts shortly, I appeal to Sen. Dr. St. Cyr, if we are unable to deal with the Private Member's Motion or to complete it, we shall do so in the new session of Parliament.

I seek leave of the Senate to deal with the following matters under Public Business. Firstly, we have some private business—the second reading of the International Society for Krishna Consciousness (ISKCON) Trinidad and Tobago (Inc'n.) Bill and the Unity of Trinidad and Tobago (Inc'n) Bill. We then proceed to Motion No. 3, which deals with some amendments to the Regulated Industries Commission Bill. These were circulated to Senators.

On the point of how we will proceed with our substantive matters, I had informed fellow Senators that we would have dealt first with the DNA Bill, then the Cohabitation Relationships Bill and the Dental Profession (Amdt.) Bill. However, Sen. Brig. The Hon. Joseph Theodore is not well today and we would have to deal with the DNA Bill a little later in the proceedings. The Attorney General would not be able to come until after lunch, so I have received the support of both the Leader of the Independent Senators, Sen. Prof. Spence and the Leader of the Opposition, Sen. Nafeesa Mohammed to proceed with the continuation of our debate on the Dental Profession (Amdt.) Bill.

We will deal with the Dental Profession (Amdt.) Bill first. We will then proceed with the DNA and later on, the Cohabitational Relationships Bill.

10.25 a.m.

Sen. Prof. John Spence: Mr. President, may I just request that after the Minister has finished his winding up that we have some time to study two documents which we have just received. One seems to be an incorporation of the amendments in a new version of the Bill and the other is a list of amendments. I

have just been trying to make sense of clause 3 and I cannot. We would certainly need some time to look at them. So, could we break after the Minister's winding up to be able to make sense of these documents that we have just received?

Sen. The Hon. W. Mark: Mr. President, we have a few matters which we have to deal with in advance, like the amendments to the Regulated Industries Commission Bill and the two Private Members' Motions which I mentioned and, maybe after the Minister concludes his winding up, we probably will break for a little while so Senators will have some time to look at those amendments.

Agreed to.

INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS (ISKCON) TRINIDAD AND TOBAGO (INC'N.) BILL

The Parliamentary Secretary in the Ministry of Agriculture, Land and Marine Resources (Sen. Vimala Tota-Maharaj): Mr. President, a Special Select Committee of the House of Representatives was appointed to consider and report on the Bill. The Committee's report was adopted by the House and the Bill was passed.

Mr. President, I beg to move,

That the Bill for the Incorporation of the International Society for Krishna Consciousness (ISKCON) Trinidad and Tobago, be read a second time.

Question proposed.

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

Senate in committee.

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

Clause 3.

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

Sen. Jagmohan: Mr. Chairman, on clause 3(g), I want to make an observation. I have a concern with the first line which states:

> "...to establish and maintain temples and education and welfare institutions dedicated to Krishna..."

Nowhere before in the Hindu tradition or in the Hindu literature have we seen the house of worship being referred to as "temples", they are always "mandirs". Then, those which are organized or structured for meditation and other kinds of worship have other names, but not "temples". I have a concern and I am drawing this to your attention, Sir.

Mr. Chairman: Sen. Tota-Maharaj, do you want to say anything? It is just an observation that has been made.

Sen. Tota-Maharaj: No, Mr. Chairman.

Question put and agreed to.

Clause 3 ordered to stand part of the Bill.

Clauses 4 to 9 ordered to stand part of the Bill.

Preamble ordered to stand part of the Bill.

Senate resumed.

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

UNITY OF TRINIDAD AND TOBAGO (INC'N.) BILL

Sen. Nafeesa Mohammed: Mr. President, I beg to move,

That a Bill to provide for the Incorporation of Unity of Trinidad and Tobago and for matters incidental thereto, be now read a second time.

Mr. President, a Special Select Committee of the House of Representatives was appointed to consider and report on the Bill. The Committee's report was adopted by the House and the Bill was, in fact, passed.

I now move that the Bill be read a second time.

Question proposed.

Question put and agreed to.

Bill committed to a committee of the whole Senate.

Senate in committee.

Clauses 1 to 10 ordered to stand part of the Bill.

Preamble ordered to stand part of the Bill.

Senate resumed.

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

10.40 a.m.

UNITED ISLAMIC ORGANIZATIONS OF TRINIDAD AND TOBAGO (INC'N.) BILL

Special Select Committee Report

Adoption

The Parliamentary Secretary in the Ministry of Agriculture, Land and Marine Resources (Sen. Vimala Tota-Maharaj): Mr. President, I beg to move that the Senate adopt the Report of the Special Select Committee appointed to consider and report on a Bill for the incorporation of the United Islamic Organizations of Trinidad and Tobago, and for matters incidental thereto.

Mr. President, at a sitting of the Senate held on Tuesday, June 16, 1998, Senator Nizam Baksh presented a petition on behalf of the United Islamic Organizations of Trinidad and Tobago seeking leave of the Senate for the Petitioners to proceed with the introduction of a Private Bill for the incorporation of their organization.

Leave was accordingly granted and the promoters lodged the undermentioned documents with the Clerk of the Senate within the specified 3-month period, thereby satisfying the requirements of Standing Order 76(5)(a)(b) and (c) of the Senate:

(i) two copies of the Bill;

(ii) a certificate from the Comptroller of Accounts certifying that the sum of one thousand dollars to cover the cost of advertising, printing and miscellaneous charges, had been paid to the Comptroller of Accounts; and

(iii) a bond duly executed and signed by Faiz Amin, Chairman, and Imtiaz Ali, Secretary, obliging them to pay on demand to the Clerk any excess of the deposited sum.

In accordance with the provisions of Standing Order 76(2)(i) and (ii) of the Senate, notice was given to the public of the intended introduction in the Senate of a Private Bill entitled "An Act for the incorporation of the United Islamic Organizations of Trinidad and Tobago and for matters incidental thereto". This was accomplished by way of Notices appearing in the Trinidad and Tobago *Gazette* on June 25 and July 02 and 09, 1998 and in the *Trinidad Guardian* Newspaper on June 26 and July 02 and 09, 1998, respectively.

Objections to certain clauses of the Bill were received from three organizations:

(i) The Tackveeyatul Islamic Association of Trinidad and Tobago, otherwise known as the TIA;

(ii) The Anjuman Sunnat-ul-Jamaat Association, also known as ASJA; and

(iii) The Trinidad Muslim League Inc., also known as the TML.

At a sitting of the Senate held on Tuesday, June 16, 1998, Senate Bill No. 8 of 1998 the United Islamic Organizations of Trinidad and Tobago (Incorporation) Bill, 1998 was introduced and read a first time.

Appointment of Committee: At a sitting of the Senate held on Tuesday, July 21, 1998, the Bill referred to in paragraphs 3 and 5 was read a second time and as mandated by Standing Order 76(8) of the Senate, the Hon. Philip Hamel-Smith, Vice-President appointed a Special Select Committee comprising the following Senators:

Mrs. Vimala Tota-Maharaj	Chairman
Mr. Nathaniel Moore	Member
Mr. Mahadeo Jagmohan	Member
Dr. Eric. B.A. St. Cyr	Member

Mr. Neil Jaggassar, Parliamentary Clerk II, served as Secretary to your Committee.

Terms of Reference: The terms of reference of your Committee were:

"to consider and report on a Private Bill entitled 'An Act for the incorporation of the United Islamic Organizations of Trinidad and Tobago and for matters incidental thereto' ".

Your Committee held a total of three meetings. The first was on Wednesday, August 12, 1998 and at that meeting, your Committee took oral evidence from the promoters represented by:

Mr. Imtiaz Ali	Secretary
Mr. Kwesi Atiba	Vice-Chairman
Ms. Marion Williams	Attorney-at-law

At its second meeting held on Wednesday, August 26, 1998, your Committee heard evidence from each group of objectors separately, but at all times in the

presence of the promoters. The promoters were represented by the following persons:

Mr. Faiz Amin	Chairman
Mr. Imtiaz Ali	Secretary
Ms. Marion Williams	Attorney-at-Law

The objectors were represented as follows:

(i)	TIA	Mr. Agrrangzeib Ghany	President
		Mr. Rafeeq Mohammed	Secretary
		Mr. A. Khan	Executive Member
(ii)	ASJA	Mr. Kamal Hosein	General Secretary
		Mr. Sayeed Sattar	Second Vice-President
(iii)	TML	Mr. Azid Ali	President General
		Mr. Noble Khan	Committee Member

Copies of the objections were forwarded to the Office of the Chief Parliamentary Counsel, Ministry of the Attorney General for legal advice and at its third meeting held on September 10, 1998, your Committe deliberated on the advice received and a redrafted Bill was submitted by Ms. Marion Williams of Ashmead Ali and Co., Attorneys for the promoters.

Your Committee wishes to report that it will be unable to complete its deliberations before the end of the current session and therefore recommends that a new Committee be appointed in the next session to continue consideration of this matter.

Mr. President, I beg to move.

Seconded by Sen. M. Jagmohan.

10.50 a.m.

REGULATED INDUSTRIES COMMISSION BILL

House of Representatives Amendments

The Minister of Public Utilities (Hon. Ganga Singh): Mr. President, I beg to move,

That the House of Representatives amendments to the Regulated Industries Commission Bill listed in the appendix be now considered.

Question proposed.

Question put and agreed to.

Clause 5.

House of Representatives amendment reads as follows:

In subclause (1), delete the words “industrial relations” and substitute the words “human resource management”.

Mr. Singh: Mr. President, I beg to move that the Senate doth agree with the House of Representatives in the said amendment.

Question proposed.

Question put and agreed to.

Clause 6.

House of Representatives amendment reads as follows:

In subclause (1)(h), delete the words “where applicable”.

Mr. Singh: Mr. President, I beg to move that the Senate doth agree with the House of Representatives in the said amendment.

For the benefit of Senators, clause 6(1)(h) says:

“where applicable, establish the principles and methodologies by which service providers determine rates for services”.

What is sought here, is the grant of the commission sub powers and duties and we are seeking to delete, “where applicable”.

Question proposed.

Question put and agreed to.

Clause 14.

House of Representatives amendment reads as follows:

"Delete the words 'for any of the reasons excluding death referred to in section 8(3)' and substitute the words “whether by signature, revocation, effluxion of time or otherwise”.

Mr. Singh: Mr. President, I beg to move that the Senate doth agree with the House of Representatives in the said amendment.

You will recall Mr. President, this matter was raised in the debate here previously and this is merely for tidying of the drafting.

Question proposed.

Question put and agreed to.

Clause 40.

House of Representatives amendment reads as follows:

In subclause (1), renumber paragraphs (b)(ii) as (a)(ix).

Mr. Singh: Mr. President, I beg to move that the Senate doth agree with the House of Representatives in the said amendment.

This amendment, Mr. President, would make the minimum quality and service standards applicable to the service mandatory rather than discretionary.

Question proposed.

Question put and agreed to.

Clause 43.

House of Representatives amendment reads as follows:

In subclause (2)(b), delete the word "him" and substitute the words "the Commission".

Mr. Singh: Mr. President, I beg to move that the Senate doth agree with the House of Representatives in the said amendment.

Mr. President, this amendment, really, in terms of the tidying of the drafting, when one looks at the whole provision it would be clear that it was not meant to be the Minister but rather the Commission.

Question proposed.

Question put and agreed to.

Clause 49.

House of Representatives amendment reads as follows:

In subclause (2), delete the words “where applicable” appearing in line 1 of subparagraph (a)(ii).

Mr. Singh: Mr. President, I beg to move that the Senate doth agree with the House of Representatives in the said amendment.

Mr. President, this is another exercise in tidying up the drafting.

Question proposed.

Question put and agreed to.

Clause 61.

House of Representatives amendment reads as follows:

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

Mr. Singh: Mr. President, I beg to move that the Senate doth agree with the House of Representatives in the said amendment.

Mr. President, notwithstanding the restructuring exercise in the post, it was felt that 14 days might have been too short a period and a more convenient period would be 30 days in dealing with this matter.

Sen. Dr. St. Cyr: Could we have an explanation?

Mr. Singh: This clause 61, this is where the service provider gives notice of his continuance. I will read the whole provision for the benefit of hon. Members:

> "Subject to section 55, a service provider shall, before discontinuing service to a consumer, give to the consumer notice in writing of its intention to discontinue the service, stating the reason for the proposed discontinuance and the date when the discontinuance is to be effected except that the service provider shall not effect discontinuance before fourteen calendar days from the date the notice has elapsed."

What it sought to do is to replace 14 with 30. So it is more customer-friendly in that sense.

Question proposed.

Question put and agreed to.

DENTAL PROFESSION (AMDT.) BILL

[Third Day]

Order read for resuming adjourned debate on question [September 01, 1998]:

That the Bill be now read a second time.

Question again proposed.

Mr. President: Hon. Members, the debate on the Dental Profession (Amdt.) Bill which was in progress when the Senate adjourned on Tuesday, September 17,

1998 will be resumed. Minister of Health, shall I point out that you have already spoken for 10 minutes. *[Desk thumping]*

11.00 a.m.

The Minister of Health (Dr. The Hon. Hamza Rafeeq): Mr. President, before I make my concluding remarks on this Bill, I would just like to make two observations. Firstly, I would like you, Mr. President, to forgive my incoherence this morning because, together with my other colleagues in the other place, we were in these Chambers until 2.30 a.m. this morning and I did not get to bed until 4.00 a.m. then got up by 6.00 a.m. to get on the road again.

Secondly, Mr. President, I apologize to Members for the way in which these amendments were circulated. As you know, we tried as best as possible to accommodate the suggestions from the other side on the amendments and we did them so, piecemeal. However, on Thursday last, when this matter was being debated we tried to consolidate the amendments and circulated one document this morning. We will even have to make some minor adjustment to the document that has been circulated today and I will mention these as we go by.

In addition to that document which outlines the amendments, the Bill has also been circulated and the amendments have been placed there in bold letters just so that Senators can follow the flow of the Bill itself. As I said, there will be some minor adjustments to these as we go along. I do not intend to respond to all issues that have been raised on the other side because I think this Bill has been dealt with comprehensively. In the debates that I have been participating in so far I think this one has really been like pulling teeth.

Mr. President, on the last day when we took the adjournment on this particular Bill, I was dealing with the amendment that had to do with the composition of the council. I mentioned that we had amended it so that the council will now consist of four office holders who will be elected by and from the dental board, two other members who will be elected by and from the medical board, two dentists from the dental school, one lay person, which gives a total of 10. This means that nine of the 10 persons on the board will be dentists and out of those, six will be elected by and from members of the dental board.

We have included, as I said, two dentists from the dental school. May I just clarify—and I think Sen. Prof. Spence raised this issue—that “dentists” is defined

in the parent Act as meaning "a person who is registered or deemed to be registered under the Act to engage in the practice of dentistry". It means that the representative from the dental school would have to be registered by the dental board.

Sen. Prof. Spence: Mr. President, I wonder if the hon. Minister could say whether temporary registration qualifies as registered. This is very important.

Dr. The Hon. H. Rafeeq: Mr. President, I would think so, but at the committee stage I would discuss it with our lawyers who are here.

Mr. President, as I said, we have included two dentists from the dental school because one of the perennial problems that both the dental school and the dental council have mentioned is the fact that communication is difficult between the dental school and the dental council. We feel that by putting dentists from the dental school on the dental council at least that would be one of the things that will be achieved, in that it will facilitate communication and collaboration between both the dental council and the dental school.

One of the Senators mentioned, as well, that the dental council should be represented on the board of the dental school. We have no problem with that and we can pursue it, but I must say that we had made that suggestion some time previously to the dental council. The dental school and the dental council thought that it may not be in their best interest to do so as they wanted to maintain a sort of objective position from outside. They did not want to get involved in the actual running of the school, but we can still pursue that. I think I mentioned the reason we are intending to put a lay person on the board, so I will not deal with that again.

Mr. President, as far as the schedule is concerned, there is an existing schedule at present. In the interest of time, this is the one we have used in the Bill. We have included in that schedule the University of the West Indies Dental School. Previously, the dental council was given the responsibility of reviewing that schedule—of producing it, first of all, publishing it and reviewing it from time to time. We wanted to formalize that arrangement and we have now included in the Bill whereby it gives the authority to the Minister, together with the dental council, to review that schedule from time to time.

In addition to that, we have now included in the amendment that the order given by the Minister to amend that schedule will now be subject to an affirmative resolution by both Houses of Parliament. So, even though in the House of

Representatives, and in the Senate, the technical expertise as to accreditation of dental schools might not reside, at least the process can come under review in both Houses of Parliament. We have put in that safeguard as well.

Sen. Montano: Thank you for giving way. You said that there was previously a schedule and this was just a copy of the original one. Are you saying that there was a schedule attached to the original bill or there was a schedule that was merely published by the council?

Dr. The Hon. H. Rafeeq: Yes, there was a schedule published but it was not attached to the Bill.

Sen. Montano: Not part of the Bill?

Dr. The Hon. H. Rafeeq: No, we are now including this as part of the Bill.

Mr. President, we wanted to deal with two things in this Bill: one was to allow for the students who have graduated from the University of the West Indies Dental School to be able to practise their profession; secondly, we wanted to include some kind of mechanism whereby we can monitor the performance of the school to ensure that the standards are acceptable. At present there is no such formal arrangement. We have included in the Bill, as you have seen, that the Minister, in collaboration with the dental council will review the school from time to time. We have now put it that the Minister "shall"—it was before—and said "at least once every five years". The Minister himself cannot review the school and, of course, this is that the minister has the authority but will have to get the competent people to do it in collaboration with the dental council.

Mr. President, the question was asked with respect to the present graduates from the University of the West Indies Dental School—those who have graduated with a DDS Degree—as to what will happen to them when this Bill comes into being. The answer is that those who already possess the DDS Degree from the University of the West Indies Dental School will now come under the Act and would be registrable under the Act.

A query was also raised, I think it was by Sen. Prof. Kenny, on the other amendments to the Dental Profession Act which the dental council has been after for some time. Several meetings have been held and we have had discussions. There was one sore area that had not been resolved—we feel that we are close to resolving it—which is the issue of the unqualified dentists; the quacks. We want to find an acceptable way of dealing with them. That is the issue that was keeping back the comprehensive amendments from coming to Parliament.

11.10 a.m.

Mr. President, we have also included in the amendments that have been circulated a new clause as to how the new Council will be elected, and we have also put a sort of contingency arrangement in the amendments. I would now like to go back a bit to the list of amendments that have been circulated, and I would like to have some things tidied up, which I would mention briefly.

Sen. Yuille-Williams: Mr. President, before the Minister goes on, could he go back to the new Council and the contingency arrangement dealing with the Interim council? What are the implications? Apparently, he is having this if the Dental Council is not established. So, there is an interim council. I am just wondering what is the long-term arrangement. How long will the council last? He is having a Council here in case the board is not established.

Dr. The Hon. H. Rafeeq: In the amendments here, the Dental Council that exists at present, within one month of the promulgation of this amendment, will have to call a meeting to elect a new council. After one month, if that is not done, then the Minister appoints an interim council, and within one month that interim council will have to appoint a council. That is stated here.

Sen. Yuille-Williams: Based on the same amendment?

Dr. The Hon. H. Rafeeq: Yes.

Sen. Yuille-Williams: The council at this interim will now appoint after the month. Would it be from members of the dental profession similar to this? Apparently the Minister is giving me the impression that the Dental Council might not respond. Is it that? I would like to know who the members of this permanent council and the new interim council will now appoint.

Dr. The Hon. H. Rafeeq: The interim council will consist of the Senior Dental Surgeon at the Ministry of Health, two dentists from the UWI Medical Faculty, a lay person, and also adding this—this is one of the amendments I will propose—a member of the previous council. We are putting it in proper drafting terms that a member of the previous council should be there.

Then, on the other side, the interim council shall, within one month of appointment, convene a general meeting of the board to elect a new council. That interim council will convene a meeting of the entire board, and the board consists of all the dentists who are registered by the Council.

Sen. Yuille-Williams: I am getting the impression that the Minister is not quite certain whether this board will wish to be established. The board was not established and he brought the interim council to do it. I am asking him now, how could this interim council call a meeting of this board? Suppose they refuse? To me, that is the reason he put the interim council in the first place, because the board was not responding. How is he going to ensure that the board will respond now?

Dr. The Hon. H. Rafeeq: I think there is a little misunderstanding here between the board and the council. The board comprises all the dentists in Trinidad and Tobago who are registered by the Dental Council. The board and the council are two different organizations. The council is elected from among members of the board. The council will have to summon the 160 dentists to come together, and then they will form among themselves the Dental Council.

Mr. President, I want to go through the amendments that have been circulated, and as I said, there are a couple little drafting things I want to correct. On the first page at clause 3(a):

> "'Diploma' means any diploma, degree, fellowship membership, licence or certificate granted by—
>
> (a) any university, college or other institution referred to in the Schedule;"

In light of the new composition of the council we are suggesting, we are also amending the definition of the word "council" because council is defined in the parent Act as meaning, elected by the Dental Board under this Act. Now, under this Act we will have elected and nominated members, so we are also amending the definition of the word "council" deleting the word "elected" to the end, and inserting the words "established under section 9 of this Act". So "council" will mean that instead.

Sen. Prof. Spence: Mr. President, this is getting more and more difficult, because in addition to the amendments that have just been circulated, the Minister is now adding more amendments to the amendments, and it is extremely difficult to keep up with this. Could we have these new proposed amendments in writing please?

Dr. The Hon. H. Rafeeq: I will attempt to get those. Those are the new amendments we would like to add to what has already been circulated. I would not really like to say much more. I just want to say that we were able to make all

of these amendments, and one will realize that there are substantial amendments we have made to accommodate the suggestions from all sides of the Senate. We were able to make these because we really have no other agenda in this, except the interest of the people of Trinidad and Tobago. I hope that we will be able to receive the necessary support so that they will participate.

Mr. President, I beg to move.

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

Senate in committee.

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

Clause 3.

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

Sen. Prof. Spence: Mr. Chairman, I raise the point about clause 3(b), in relation to new clause 8, because it would seem that in clause 8(a), one is removing from the functions of the Council the power to view the professional qualifications, and so forth, of those people who are in the schedule. Now, (b) seems to give the Council recognition to adjudicate on institutions that are not in the schedule. What is the rationale of their adjudication on the colleges under (b)? I do not understand (b). I understand (a), but does (b) allow registration for persons from institutions who are not in the schedule?

Dr. Rafeeq: Yes.

Sen. Prof. Spence: So, what is the point of changing the Schedule by affirmative resolution of Parliament? In a sense, the Schedule means nothing if we have (b).

Sen. Montano: While I support the question of Sen. Prof. Spence, the problem is further confused in the sense that according to paragraph (b), the Council can add, effectively, colleges that are recognized, but cannot remove colleges that are no longer worthy of certification. There is also the conflict with clause 5. There is no real rationale at all. It does not make any sense.

Sen. Mahabir-Wyatt: Mr. Chairman, under clause 8, delete paragraph (d); paragraph (d) in the Act is the one that says, "publish for general information a list of universities, colleges, or other institutions diplomas which are recognized by the Council". That is going to be deleted, so the Council no longer has that

function. When it no longer has that function, as Sen. Spence is pointing out, it is brought back by clause 3(b), because any university, college or other institution recognized by the Council as furnishing guarantee of the possession of the requisite knowledge and skill for efficient practise in dentistry; what is being deleted in clause 8 is brought back here, and it seems to be a bit strange. Why take it away with the left hand and put it back with the right hand?

11.25 a.m.

Dr. Rafeeq: The removal of (d) really takes away the responsibility of the Council to publish a list of universities. We would still like the Council to have the authority to recognize diplomas from universities that it feels eventually can be put on the Schedule by the mechanism established. But we recognize that this is not a comprehensive schedule. As the Senator pointed out there are schools in Ireland that are not on the schedule, but the Council should still be given the authority as an accredited body to assess these students and determine whether they are able to be registered.

Sen. Prof. Spence: I think that is fair enough, but why should they not now publish so that the general public could comment before you bring it to Parliament to put it on the schedule? Why remove the right to publish? You can remove the right but it could still publish the list, but why remove as one of its functions to publish the lists of those not on the schedule but which are now recognized because—

Sen. Daly: There is something illogical about the Council being able to recognize other schools and not having the formal responsibility to publish a list. Maybe when we get to clause 8 we could move an amendment to put back this publishing function; that would solve the problem.

Sen. Dr. St. Cyr: Mr. Chairman, there are further conflicts in clause 5 which states that the Minister may by Order after consultation with the Council amend the schedule. It seems interrelated in a way that is difficult to unravel.

Sen. Prof. Spence: I will support any amendment that would help the Council to play a role, so while I agree with Sen. Dr. St. Cyr, I support the Minister's position for still, at least, keeping the Dental Council having some say in which schools we recognize or not.

Dr. Rafeeq: Mr. Chairman, we have dealt with what is here at present as clause 3(a), but as I mentioned in my winding up there are some small amendments I would make at this stage. We want to insert a new 3(a) which would redefine the word "council" taking into consideration that we now have elected and nominated members on the council. Thus, it would now read in the

definition of "council", "by deleting the words “elected by” at the end of that sentence, and inserting the words "established under section 9 of this Act".

Sen. Daly: May I make a suggestion? The Minister has shown us a lot of goodwill and flexibility, could we have, at least, an informal agreement to these amendments and we could perhaps suspend the committee at that stage and the other amendments could be circulated? If we have to try to do them on the hoof we may have a difficulty. Therefore, when we get to the end of these amendments we could suspend the committee further.

I am not a public administrator but I have an idea about administration and maybe that is the sensible solution. First and foremost your office would not have to keep taking down the things in long hand so why can we not do it that way? Let us leave it understood that there are other amendments to come to the committee.

Dr. Rafeeq: Mr. Chairman, we have no problem with that.

Mr. Chairman: The question is that we defer consideration of clause 3 amendments to a later stage.

Agreed.

Clause 4.

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

Dr. Rafeeq: Mr. Chairman, this amendment just corrects the name of the faculty. It is the Faculty of Medical Sciences rather than "Medical Faculty".

Sen. Dr. Mc Kenzie: I would like to get some clarification. I had suggested that we delete clause 4(1A)(b) which begins "a person who has registered under paragraph (a)..." and also delete 15(b) of the parent Act, and let 15(a) be the conditionality.

Dr. Rafeeq: Mr. Chairman, we do not want to remove the authority of the Dental Council and have examinations for students from universities—that they may feel compelled to do so, in case they decide that.

Sen. Daly: The net effect of what we are doing here is that the UWI people will not have to take an exam but they may want to recognize Tuvalu under the powers we have given them in clause 3, but they may say we want you to take a little exam. Therefore, this examination provision is not for **UWI** but for other schools that are not in the schedule. Have I understood it?

Dr. Rafeeq: That is correct.

Sen. Dr. Mc Kenzie: My impression was that the council only uses 15(b) for UWI students, and if we are saying that they were lacking in clinical experience and we have 15(a) to help us take care of that, why are we not using 15(a)?

Dr. Rafeeq: The Dental Council does not only use the examinations for the UWI students, but also for students from other universities which are not in the schedule.

Sen. Yuille-Williams: I know we have not gone into all the details, but have we thought out this thing about the one-year vocational training, how it is going to operate or anything at all about it? Who is doing it? Would the students have to pay? Where would they be attached? Where would it happen?

Dr. Rafeeq: That is an administrative arrangement that would be made by the university. We have taken the responsibility here to review the curriculum, training and so forth, but they have given us their commitment that they are adopting the Bristol University curriculum and vocational training programme and it would be run along those lines.

Sen. Daly: If this Bill is passed completely in accordance with the amendments which you have proposed, someone who at present holds a UWI degree still cannot go directly to full registration, is that right?

Dr. Rafeeq: After they have gotten their DDS degree they will be given temporary registration and will have to undergo the year of vocational training and will be certified at the end of it before they can be registered.

Sen. Daly: I appreciate that, but what about persons who already have the UWI DDS?

Dr. Rafeeq: Persons who already have the DDS would still have to go through the one-year period of vocational training.

Sen. Daly: Thus, when we pass this legislation we are still not sending the UWI DDS graduates automatically to full registration.

Dr. Rafeeq: That is right.

Sen. Montano: Mr. Chairman, in that clause it says that the Faculty of Medical Sciences, Dental School is the certifying agent for the successful completion of the vocational training. Is it that the training is to be done by the student working in a registered dentist office? Is that how he gets his training? Where is it done?

Dr. Rafeeq: It will be a structured programme by the UWI Dental School.

Sen. Montano: Are they not already doing this programme? Is this not already part of the programme?

Dr. Rafeeq: Yes, but it would be restructured in a more formal arrangement.

Sen. Montano: Is this not the part of the programme that the Dental Council suggested is inadequate?

Dr. Rafeeq: The Dental Council suggested that it is more than the internship programme that is inadequate.

Sen. Montano: You said that the standards here are going to be improved under the Bristol method. The Dental Council still claims there would be other areas of deficiencies, but you are legislating what is claimed to be a deficient standard. Is that what we are being asked to agree to?

Dr. Rafeeq: We are not of the view that the degree is substandard.

Sen. Montano: After the award of the DDS and the one-year vocational training, would these dentists be accredited or recognized by any other institute anywhere else in the world?

Dr. Rafeeq: They would be recognized by the Dental Council in Trinidad and Tobago. At present, I think even the medical degree for most countries abroad you have to take an examination before you can enter to practise.

Sen. Yuille-Williams: I listened to the hon. Minister as he explained this vocational training, I am happy to hear that. This means to say—and I am going back on what Sen. Daly has just said—that the students who are waiting, following us for all these weeks, UWI has agreed to accept them to do this one-year in-service vocational training. [*Cross talk*]. They have done it already. I thought that the Bristol model was a new one they have started.

Dr. Rafeeq: It is just going to be more formally structured than it is at present.

Sen. Yuille-Williams: What I am trying to have clarified is, what is the position now of the students waiting from 1996 or 1997?

Dr. Rafeeq: You mean those who have already completed their DDS and the year of internship?

Sen. Daly: Have they got the certificate? [*Cross talk*]

Dr. Rafeeq: I am advised that once they have successfully completed that one year they are certified by the university.

Sen. Daly: Some of them have completed it already?

Dr. Rafeeq: Yes, and those who have not completed it would be given temporary registration until they have.

Sen. Montano: The position we have right now is that the students who have done the DDS and the one-year vocational training, have been the ones unable to pass the examination set by the Council. Is that correct?

Dr. Rafeeq: No, some of them.

Sen. Montano: So what we are legislating here is, in fact, tantamount to a deficient professional standard.

Dr. Rafeeq: That was the purpose of the entire debate that we have had here for the last couple days. There are differences of opinion as to whether it is, in fact, deficient.

Two years ago, the general Dental Council was invited by the Dental School to do a review of the school and they made about 50 comments on the school, most of them negative, and the Dental School has sought to address most of them, and they are in the process of addressing the others.

11.40 a.m.

Sen. Montano: I understand that and I accept everything you have said. However, it seems to me that in this legislation you are accepting that the Council has the wherewithal, integrity, professional standards and the ability to access the competency of every other school which may come here and wish to have accreditation except the University of the West Indies (UWI) and you are getting around it by saying you cannot adjudicate on UWI.

We have decided as a matter of law, that the University of the West Indies' standard is sufficient and you are saying that as part of clause 3(b) you are accepting and recognizing that the Council has the competency to assess the qualification of any dentist coming from any school except the University of the West Indies. And in clause 4(b) you are saying it is a matter of law that the University of the West Indies graduate must be registered. How do you reconcile the two approaches and why would you want to create two complete distinct approaches to the same problem?

Sen. Prof. Spence: Mr. Chairman, I have no doubt in my mind that the problem of lack of registration of UWI graduates has to be solved. As a country, we have set up a dental school and I have no doubt that the standards are acceptable and that they can be approved and we would address that later on. A country which has 500 quacks should not be arguing about whether students who have paid $0.25 million to go to a reputable university and who have done a five-year programme of training cannot practise dentistry.

With respect to the future, there are some views which I would try to express by amendments further on, but I have no doubt that we have to do this. Even though I accept what Sen. Montano has said, it is an unusual situation for which we would have to take unusual methods and that is why my position is to have a time limit in this unusual measure which we are taking.

Sen. Montano: Mr. Chairman, what I would like to point out is that there does not seem to be any answer for what I have just asked. I accept that also. We are looking at it clause by clause, but it seems that the whole matter is related to everything else and that is why I chose to make my point now.

The reality is that we on this side would accept the position that after years of representation to the students and their expectations that they would, and could, and should be accepted by the Council, we accept the position that there ought to be a grace period during which they would be entitled to registration, but at the same time, we do not feel that it is a matter of absolute right that should exist in perpetuity and we support, ultimately, the position of Sen. Prof. Spence and we would come to that issue in a minute.

I wanted to make our position very clear in the sense that in an absolute sense, we cannot support this clause on its own unless we have some reservation in the clauses which are coming up which set some kind of a time limit within which everybody must be satisfied that the UWI standards have reached a proper and full professional level. The point I am making is that we are prepared to accept this if we have an undertaking that there is going to be some kind of limit on it down the line. I do not want to put the cart before the horse, but at the same time, I do not want anybody to be misled that we are agreeing with everything. Unfortunately, it all relates backwards and forwards. The point of the matter is that we are prepared to go along with this, provided there is a check and balance on the system which is acceptable.

Question put and agreed to.

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

Clause 5.

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

Sen. Montano: Mr. Chairman, I had a list of amendments, which in the face of the proposed amendments from Sen. Prof. Spence, I would like to withdraw at this point because I feel that we would probably come closer to a solution if we go along those lines.

Dr. Rafeeq: Mr. Chairman, in the amendments we had said that clause 5 would be renumbered as clause 6 because my advice is that just for proper drafting, clause 7 would now become clause 5, but if you wish to deal with clause 5 as it is, we can deal with it as the renumbered clause 6.

Sen. Daly: What appears at the top of the page and is at present numbered 5, is that really clause 6 now?

Dr. Rafeeq: To which document are you referring?

Sen. Daly: I am looking at the compendium with the bold type, the Bill.

Dr. Rafeeq: I do not think we should be using that.

Sen. Daly: I am sorry. Are we discussing the clause which has affirmative resolution in it? Maybe I can identify it that way.

Dr. Rafeeq: We are discussing the clause which deals with the composition of the Council.

Sen. Daly: What has happened to the clause which deals with the Minister amending the Schedule? Where does that come in?

Dr. Rafeeq: Clause 5A in the amendment.

Sen. Daly: I do not understand. Is clause 5 dealing with the composition of the Council?

Sen. Prof. Spence: I presume we are dealing with the printed Bill. Is that right Mr. Chairman? So clause 5 deals with the composition of the Council.

Mr. Chairman, I have an amendment which was circulated but since the hon. Minister has once again amended the composition from the last time, I have a second amendment. Originally in the parent Act, the Council had six elected members and one person who was the chief dental officer who was also elected which is a strange provision in the original Council. In effect, it was six to one because one was *ex officio.*

The composition as set out here would be six to four. I would like to maintain more of a majority of members of the board so I would suggest under (e) that instead of two members you say three, and that would increase the number on the board from 10 to 11.

My second point I had already tabled is under (g). I do not think it is under (g) in the original one, but it is here.

> "two members appointed by and from the University of the West Indies and the Medical Sciences Dental School who shall be dentists."

The parent Act defines dentists as persons registered or deemed to be registered under this Act to be engaged in the practice of dentistry. If that includes temporary registration, then I ask that my amendment be considered. If it does not and the Minister wants to ensure that two from the Dental School need not be members of the board, then he has to change the definition. My position is that it is not appropriate that we could ask to have members from the Dental School on the Dental Council who would not qualify for full registration. It is inappropriate that we should ask to have in our regulating body for the profession, persons who are dentists but who cannot register and practise in Trinidad and Tobago on a permanent basis, they may have temporary registration.

In fact, what we should be saying to the Dental School is that it should not be employing persons to teach our dental students who cannot register as dentists in Trinidad and Tobago but clearly, it cannot be done overnight. At least we should have given them a signal by saying to them when they are sending representation to the Dental Council the person sent must be qualified to be fully registered in Trinidad and Tobago. That is why my amendments said members of the dental board, because if they are members of the board, they have to be fully registered.

Sen. Daly: Mr. Chairman, I had made a suggestion which might deal with that if we look at subclause (2) which says:

> "The members referred to in subsection (1)(a) to (e) shall be elected by and from among members of the Board who are dentists."

Maybe Sen. Prof. Spence's point could be met if we provided that the members referred to in (1)(a) to (e) and (g) are not only dentists, but persons who are entitled to full registration. In fact, I made that suggestion informally.

Sen. Prof. Spence: I have no objection for it to be done that way. It may be a better drafting device. It says the same thing really.

Sen. Prof. Ramchand: Mr. Chairman, I wonder if I could get in my bit here. I think the problems which we are having have to do with the existence of a schedule. Are you telling me that the people who are lecturing in the University of the West Indies Medical School are not worthy of registration? They are not registered because the university is not on the schedule, so a more flexible method of registration has to be devised. You just cannot have this solid schedule and if your university is not on the schedule you cannot be registered.

Dr. Rafeeq: That can be done under clause 15(a) and (b).

Sen. Mahabir-Wyatt: Mr. Chairman, I would like to support what Sen. Prof. Spence says. It seems to be ridiculous to have persons who are professors of dentistry who cannot practise dentistry and are not qualified to practise in Trinidad and Tobago. How come they teach others to do it if they cannot do it themselves?

Dr. Rafeeq: Mr. Chairman, we have no problem with the amendment, we are just trying to get the proper wording of it. In principle we agree with it.

Sen. Prof. Spence: I support Sen. Daly's point if you just say (a) to (e) and (g). I think that covers it. The only disadvantage of that is that it means that the dental board has to elect the two persons who are coming from the dental school.

Dr. Rafeeq: I think the draftsperson is suggesting at the end of (g), "those who are dentists other than those who hold temporary registration".

Sen. Dr. St. Cyr: Mr. Chairman, I do not want to cause any confusion, but it seems to me if we admit a lay person as a member of the Council, what is the difficulty of admitting somebody who is qualified in dentistry elsewhere and qualified to teach in the school?

Sen. Prof. Spence: There are two points, Mr. Chairman. One is that you would be facing a number of persons who are not fully qualified to practise in Trinidad and Tobago on the Council, and I do not like that. Secondly, I do not like admitting formally in legislation, the dental school would have such persons on their staff, so let us not recognize it in our legislation.

11.55 a.m.

Dr. Rafeeq: Mr. Chairman, the draftspeople are suggesting here that in (g), at the end of the sentence:

"who shall be dentists other than those who hold temporary registration"

And the same phrase at the end of (2):

"The members referred to in subsection (1)(a) to (e) shall be elected by and from among members of the Board who are dentists other than those who hold temporary registration."

So that takes in everybody.

Sen. Prof. Spence: I just want to ask this question from this legal point which I cannot adjudicate myself. Does that mean that somebody who is not registered at all would qualify?

Dr. Rafeeq: They would not be dentists according to the amendment.

Sen. Prof. Ramchand: Mr. Chairman, I want to sound another warning. I do not think we should pass legislation which carries the implication that the University of the West Indies employs people to teach at the Dental School who are not qualified to practise dentistry. I think that is a woeful implication; it cannot be true, and we are not passing legislation which has that implication.

Sen. Prof. Spence: I took care of it.

Sen. Prof. Ramchand: You took care of it?

Sen. Prof. Spence: Yes.

Dr. Rafeeq: Mr. Chairman, I would like to propose an amendment in clause 5, section 9(1)(g):

"two members appointed by and from the University of the West Indies Faculty of Medical Sciences Dental School who shall be dentists other than those who hold temporary registration."

Mr. Chairman: Is that okay?

Sen. Prof. Spence: Yes, but we are not taking the whole clause yet because I had another suggestion which I do not think the Minister has responded to as yet.

Mr. Chairman: I want to deal with all of clause 5 at the same time.

Sen. Prof. Spence: All right. Well, I made another suggestion that under (e), it should read "three". I would also like to ask this question: if you look at section 9(3) of clause 5—I am getting confused; the clause we are dealing with—it says:

> "At the conduct of any meetings of the Council there shall be a quorum of five, at least one of whom shall be a member appointed under paragraph (g)."

But if you look at the numbers now, it means that you could, in fact, have a quorum without any of the officials of the Council being present. That is, you could have a quorum without the Chairman, Vice-Chairman, Treasurer or Secretary. I wondered whether we should not have at the end of that sentence:

"and one of whom shall be an official of the Council."

It seems to me a bit unusual to have a possibility of a quorum where none of the officials need to be present.

Mr. Chairman, there are two points. One is the number of elected members under (e) to be increased to three and whether in the quorum, we should suggest that there should also be a member of the Council.

Dr. Rafeeq: Mr. Chairman, I propose that clause 5, section 9(3) be amended to include at the end of the clause where it says "(g)":

> "at least one of whom shall be a member appointed under paragraph (a), (b), (c) or (d).

Sen. Prof. Spence: Could I ask the Minister to respond to (e), Sir?

Dr. Rafeeq: Mr. Chairman, I want to respond to Sen. Prof. Spence on (e). We have already amended this quite a few times to reflect this way and we now have six members who have been elected by the board and two from the Dental School who are also dentists and the senior dental surgeons, so that is nine dentists. We do not feel it is necessary to move more than that, Mr. Chairman.

Sen. Prof. Spence: Should we say "appointed" or "elected", because (a) to (d) are elected?

Mr. Chairman: We have "appointed".

Sen. Prof. Spence: I am asking if that is the correct legal terminology because they are not appointed, they are elected.

Mr. Chairman: "Elected", okay. "one of whom shall be a member elected under (a), (b), (c) or (d).

Dr. Rafeeq: I thought they were appointed by election. [*Laughter*]

Sen. Prof. Spence: I do not know.

Question put and agreed to.

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

Clause 6.

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

Dr. Rafeeq: Mr. Chairman, I beg to move that clause 6 be renumbered as clause 8 and subsequent clauses be renumbered accordingly.

Sen. Prof. Spence: With respect to clause 10, I wonder if it is necessary to delete section 12(d), because in any case there is nothing in the Act to stop them doing this; they can still publish, and remember we are still asking them to adjudicate on those that are not in the Schedule. Is that what we are doing?

Sen. Mahabir-Wyatt: Mr. Chairman, what clause are we on? I got lost.

Sen. Prof. Spence: Clause 8 renumbered as clause 9 of the Bill. That is, "to amend section 12 by deleting paragraph (d)".

Mr. Chairman: We have, no—

Sen. Prof. Spence: I am just asking why it is necessary to delete 12(d) from the original Act because they could still do it; there is nothing to stop the Council from doing this. It would seem to me if they are being asked to adjudicate on institutions that are not on the Schedule, it is useful for the dental profession to know which are recognized in that way. Why do we not let them still have the function of publishing the list? If you want to say the list other than those that are on the Schedule, okay, but—

Wherever it is possible without doing an injustice to what we are trying to achieve, I am for not emasculating the Dental Council. So if deleting (d) is necessary to achieve what they are trying to achieve and they can do it anyhow, because there is nothing in the Act which prevents them from doing it, I would say it is just a little further irritant which we could remove.

Dr. Rafeeq: Mr. Chairman, in discussions I have been advised that power is already given to the Dental Council to the recognized schools for the purposes of registration, so there is no harm in keeping that. So we will delete clause 6.

12.10 p.m.

Dr. Rafeeq: There was an amendment to this clause from the Lower House, so we will be deleting (b).

Question put and agreed to.

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

Clause 7.

Mr. Chairman: We will take this clause last. It is a new clause.

Clause 8.

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

Dr. Rafeeq: Mr. Chairman, I beg to move that clause 8 be amended as follows:

Delete the proposed section 48 and substitute the following:

"Minister may Review Curriculum of Dental School	46. The Minister shall at least once every five years, review, in collaboration with the Council the curriculum and training programme of the University of the West Indies Faculty of Medical Sciences Dental School and make recommendations thereon to the Dental School.

Sen. Prof. Spence: I would like to make a couple suggestions on clause 8. As it is worded at present, the first review can take place five years from now. I suggest that we say: "The Minister shall, in the year 200, and at least once every five years thereafter, review..." Also, where it says at the end, "make recommendations thereon to the Dental School", I think it would be better for us to say, "to the Council of the University of the West Indies."

If we make it direct to the Dental School, then we are not involved in the university as a whole and they may or may not accept our recommendation. However, if it is put to the University Council, which is the governing body of the university, the university would be expected to take action.

There are two suggestions here. One that the first review should be in the year 2000 and at least every five years thereafter; and the second is that the recommendation should be to the University Council.

Dr. Rafeeq: Mr. Chairman, we have no problem with that, in principle, but instead of saying "the year 2000", I think we would be more comfortable saying "within two years in the first instance and, thereafter, once every five years".

Sen. Dr. St. Cyr: Mr. Chairman, there are several professional schools at the university, would the other professional schools come in for similar periodic reviews by the relevant Minister? Are we introducing something that may cause difficulties elsewhere?

Dr. Rafeeq: I think that is outside the scope of this legislation, but we can probably discuss that at another forum. Because of the peculiar problem that we have with the Dental School, I think this is necessary.

Sen. Dr. St. Cyr: This amendment will require you to make regular five-year reviews and it would seem that even after this whole problem is resolved, the Minister would be bound to do it. Have we really thought this through?

Sen. Prof. Spence: I have no problem with the review. To comment on Sen. Dr. St. Cyr's point, I think it would be a very good idea if the professional bodies reviewed university professional programmes periodically. The universities themselves do promote such a review, but they use professional bodies from abroad. Engineering is reviewed by the Association of Mechanical, Civil and Electrical Engineers in the United Kingdom, as indeed is the Faculty of Medicine by the United Kingdom Medical Council. I think it would be good if, in addition to these external reviews, we also had an internal one.

On the question of how long this legislation should be in place, I would like to make the point that the Dental School did apply, but was unable to get recognition by the United Kingdom Dental Council. I say that to say that we should limit the timescale of this legislation.

Dr. Rafeeq: Sen. Prof. Spence, what is the correct term for the council at the university?

Sen. Prof. Spence: It is just the Council of the University of the West Indies.

Sen. Rev. Teelucksingh: Mr. Chairman, a very important issue is being raised here about autonomy of the institution and how long there will be executive involvement. We hope that the time will come when in a matter like curriculum review the executive does not have to be involved. The ideal is to have the Council and the Dental School, that is the Council and the University of the West

Indies, go ahead and review the curriculum from time to time without the executive being drafted in. I have a problem with "the Minister shall...review". Is he the one to institute? How long will this go on? Something is not right here. We want the university to do this. We want the Dental Council to be involved.

Dr. Rafeeq: I really do not have difficulty with this as is. The Council and the University can review. The Minister can have—as you suggested—a much more broad-based task force to review rather than these two organizations alone.

Sen. Rev. Teelucksingh: What about the principle of recommendation—that you are there to recommend or to co-ordinate?

Dr. Rafeeq: That is what it is. The Minister does not have the technical know-how to review. He will have to appoint people to review. He cannot do it on his own.

Sen. Rev. Teelucksingh: If that is implied in the word, "review", I have no problem with that.

Sen. Montano: In order to meet the concerns of Sen. Rev. Teelucksingh and to leave the *de facto* authority in the hands of the council, why do we not reverse the situation and say, "the Council shall, at least every five years, in collaboration with the Minister or the Ministry", putting the initiative on the part of the Council.

12.20 p.m.

Sen. Prof. Spence: Mr. Chairman, I think really we have to recognize that it is the Government of Trinidad and Tobago that pays the cost of the Dental School. The students may pay some fees, but they certainly do not pay the full cost of the Dental School. In any case, even if we did not put this into the legislation, what we are doing here is to force the Minister to do something that perhaps he should be doing anyhow.

In any case, if the Minister said, "I want to review the Dental School", or "I want to review the Medical Faculty", the university would be hardpressed to say no, because Minister Kuei Tung may say, "Oh, yes. You would not get your subvention next year."

Sen. Daly: Mr. Chairman, may I join in this debate? Why is it that we keep straying from the fact that platinum parliamentary time is being given to dentists in preference to every other group in the society. Surely, the purpose of this clause is to ensure that after the initial, shall I call it politely, "confoffle", these two groups of people have put us in a problem. These two groups of people have been

unable to conduct their affairs in a mature fashion and they have created a problem for us. As I understand it, that became the Minister's problem and, therefore, this is a very sensible clause, because at the heart of the "confoffle" is the quality of the curriculum and we are doing all this now by striking these various compromises. This is a perfect clause. It leaves the obligation on the Minister to revisit the "confoffle" in five years' time and it has nothing to do with engineering, law, medicine, or anything else because none of those other bodies has put us in this problem. So, this is a specialized provision for a specialized situation created by the inability of professional people to act maturely. What is wrong with this clause?

Sen. Mahabir-Wyatt: Hear! Hear!

Sen. Prof. Ramchand: The only thing that is wrong with the clause is that it should be necessary at all.

Sen. Daly: Get on with it.

Sen. Mahabir-Wyatt: Mr. Chairman, I really do agree with Sen. Prof. Spence that this clause has to stay. I mean, it has to be the Government. He who pays the piper has to have some responsibility for overseeing the writing of the music.

Question put and agreed to.

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

Clause 9.

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

Dr. Rafeeq: There is a proposed amendment, again, to include the correct name of the faculty.

Mr. Chairman: There is one by Sen. Prof. Spence.

Sen. Prof. Spence: This really is a new clause, Mr. Chairman. I do not know how you want to take it.

Mr. Chairman: All right. We will take that later on.

Sen. Prof. Spence: I suppose it should come before the Schedule. It should come before this original clause 9.

Mr. Chairman: We have a proposed amendment by Sen. Prof. Spence which reads as follows:

"Insert a new clause 9 after clause 8 as follows:

(a) Clauses 4, 6, 7 and 9 will lapse upon the expiration of five years from the commencement of the Act; and

(b) Renumber clause 9 of the Bill as clause 10."

Sen. Prof. Spence: With the renumbering, I do not know whether the numbers referred to here are valid. But, my argument in this case is, we have a special circumstance which everybody recognizes which has to be dealt with but, since our motto of both political parties is "A Quality Nation"—I think they have both accepted this—we should certainly get to the situation where we have a quality Dental School which is recognized internationally, and I think the best way of ensuring this is to put a bit of pressure on all concerned, especially the university by saying, "Look, we have had to do some very unusual things here deliberately, which we would not have had to do, if you had recognition from the sort of bodies from which the other professional faculties have had recognition. If you had kept your standards up to that quality, we would not have had to do this at all. So, we are doing this for five years with the expectation and with the review that the Minister is going to do, so that in five years' time it will not be necessary." Because, had it been of the quality that everybody wants, then this would not have been necessary at all. If they had been recognized by the United Kingdom Dental Council, the local Dental Council could not have said, "You must take an exam."

Dr. Rafeeq: Mr. Chairman, we have just amended one of the clauses to say that the first review must be conducted within two years and then every five years after that a review must be conducted. I think at some point in time, we have to be able to trust some organization and I think the Government has shown some good faith in this. If, after the first two years' review, the Government makes recommendations to the Dental School and, on the basis of the review, the Government makes recommendations to the Council of the university and, if these are not adhered to, then the Government can intervene again. The thing is, if this is only going to be there for five years and they do not come up to scratch, then what after that? This can always be reviewed. I mean, no legislation is cast in stone and this can always be reviewed from time to time.

Sen. Montano: Mr. Chairman, I have difficulty with that. You are flying in the face of conventional wisdom which has said that the standards are not up to scratch at this point. Notwithstanding that, you are imposing on the council and on the society at large, what is in fact a deficient standard that will shortly be a

matter of law. I am afraid that in the face of that action, I cannot take any comfort from what you are saying that two years or five years after that, any action will be taken to ensure that the Dental School is, in fact, up to scratch. You are quite clearly conceding to certain pressures which are not entirely inappropriate, however, we have no assurance and what you have clearly signalled is that you will bend in the face of the pressure and, therefore, what we can fully expect is that in two years, if the school is not up to scratch, you will bend to the pressure and five years again after that.

Dr. Rafeeq: Not at all. Mr. Chairman, the thing is, as we said, all the clauses are connected together, particularly two clauses. One is that the review will take place with recommendations made and the second thing is, the Minister in consultation with the Dental Council can amend the Schedule. So, if after the review, the university does not come up to scratch then we can come back to Parliament to remove the University of the West Indies from the Schedule for automatic registration.

Sen. Dr. St. Cyr: Mr. Chairman, I do not agree with that at all. You see, the fundamental problem we have here is that prior to 1989, we did not have a dental school, so the only dentists we had were trained elsewhere. Now, we have, in this jurisdiction, our own Dental School and we have to put our own Dental School firmly in the centre of the practise of dentistry and the regulation of that profession. So, I do not think we could think that we will ever be going back to where we were before 1989 and so, we have to get our Dental School functioning as best we can, and we have to get a council functioning to regulate that and it must be, as in every other jurisdiction, that our Dental School graduates must have automatic registration. It has to be.

Sen. Montano: How does one go about ensuring that the standards are maintained? That is the issue. What you have done is removed the authority of the council from establishing its own professional standards, the standards of the profession, and what you are saying is that by means of legislation, we are going to set any standard we deem sufficient and I have great difficulty with that. That is the effect of this piece of legislation.

Sen. Daly: Mr. Chairman, may I just say something. I do not understand why we are proceeding in Committee on the assumption that the standards at the Dental School are deficient. That is an allegation that has been made by one group of qualified people and the Dental School has produced support for its programme by another group of qualified people, which is why we have a problem here.

There is no unanimity about this and I do not think we should proceed on the basis that the Dental School is deficient. There is a substantial allegation that it is and we should proceed on that basis.

I am supporting Sen. Prof. Spence's amendment, but I want to make it clear I am not doing so because I am satisfied that the Dental School is deficient. What I am satisfied about is that there is a sufficient body of evidence to suggest that it is and for that and the reasons that I gave in relation to the other clause, we have had to deal with the problem. I think that the trade-off here has to be that if by legislation we have resolved the problem in favour of the university by compelling the Dental Council to accept UWI, then the trade-off has to be that UWI has to have some stimulus to look at itself. So, to me, it is a perfect trade-off. Against the wishes of the Dental Council, we have compelled them to accept UWI and now UWI must be under a similar compulsion, and I agree with Sen. Prof. Spence that the best compulsion is to know that their place in the Schedule is not guaranteed.

Indeed, my other reason for supporting Sen. Prof. Spence's position is that I do not think that Oral Roberts, Loma Linda and Marquette should have a place guaranteed for life either. We keep talking about UWI, as though these are other places of learning of God's anointed and I am saying that this whole question of a schedule should disappear. Therefore, that is why I support Sen. Prof. Spence's amendment. It forces UWI to look to its standards and it also does not guarantee that Oral Roberts, Linda Loma, Marquette, Farley Dickinson and all these different people, will be guaranteed forever. That is why we need a five-year limitation to defeat this whole idea that we have to have a schedule and in the next five years, presumably the warring factions, by being on the same council, will learn to respect and live with each other. I think the limitation is a good thing.

12.35 p.m.

Sen. Yuille-Williams: Mr. Chairman, I would want to also support Sen. Prof. Spence's motion. In fact, we are giving in to this at this time simply because you know that there is this immediate problem and a number of students are suffering. This is short term to solve an immediate problem. I never thought that this was going to be long term, and we said during our presentations, we would really like the professionals to regulate their own professions.

Therefore, I think the five-year limit is enough time. If we did not have those students there waiting for some type of registration, we would not have supported this. We would have asked you to go through your consultations with the Council, the University and see what could happen. But, we have an immediate problem and we said yes, we would put this legislation in place to satisfy those students. Once that is done, you have five years to see what you can do with both the Council and the University, to bring it up to standard.

I would not like this legislation to remain on the books, because you can bring other legislation like this on the books. This legislation has no place within our legal system at all. This is temporary. When I say temporary, I agree with the five-year limit.

Sen. Prof. Spence: Mr. Chairman, I would like to make another point and that is, it may also act as a stimulus to the young graduates to take an interest in the Dental Council. I have spoken to a number of them, and I made this point repeatedly. In 10 years' time, the present set of Council members should be replaced by a new set of young vibrant well-qualified dentists who would hopefully, in the future, not bring this problem back to us.

Sen. Prof. Ramchand: Mr. Chairman, I am tired saying this, but I will keep on saying it. I want to support what Sen. Prof. Spence was saying, that when the Dental Council was given the authority to register dentists there was no University of the West Indies Dental School and it was never envisaged that the Dental School should have the authority to prevent graduates of the University Dental School from practising. In fact, all other country's legislation imply that "the University College or Institution confers authority to practise dentistry in the country or place where granted". That is an assumption in the legislation of most countries.

I am not unhappy to remove the Dental Council from having a say but the question is, can we ensure that the University of the West Indies' standards are built up? And if we want that, we do have to go with the thing as a temporary piece of legislation that this is not forever and ever. In five years we are going to clean up.

Sen. Mark: Mr. Chairman, I am wondering to what extent the matter could not be subject to review after a five-year period, because at any rate the legislation

would be subject to review. But if you put a stipulated period of five years, it means to say that the legislation after five years will automatically lapse.

In terms of a review, why could we not have a review in the Parliament to determine, for instance, whether what we have agreed to, would in fact be effected?

Sen. Prof. Spence: Chairman, there are other bits of legislation that have to come up to be approved by Parliament for continuation. The Rent Restriction Act is one. I have no difficulty if it is worded in that way, but the lapse is, unless Government comes to Parliament and renews it.

Sen. Daly: But more than that, a good administrator will diarize the date five years from now that this Act would lapse, and it would also stimulate the Government into starting to review the Act—well, not this Government because they reviewed it the night before and bring us here on a Wednesday at 2.30 a.m. But generally, it ought to stimulate the Government well in advance of the lapse date, to say that "we have an Act that is going to lapse, let us start looking into it and deciding what is our policy". It does not follow that it is going to lapse. It is only going to lapse if the Government is inactive or does not keep a diary, or does not know what day of the week it is.

Sen. Prof. Spence: Not quite. That could be my position. However the legal wording would be—I would like to see it like the Rent Restriction Act. If you want to continue it, you would have to come back to Parliament.

Dr. Rafeeq: Mr. Chairman, we have dental students who are in the University at this point in time, and who are entering now, and they are given a sort of expectation that when they graduate, they will automatically be registered after their period of vocational training and so forth; they will be registered to practise in Trinidad and Tobago.

Sen. Daly: Five years would take care of that.

Dr. Rafeeq: No, no. I am coming to my point now. There are also students from other Caribbean countries who are in the same position. If we make a stipulation now that we are doing this for five years, then any student entering from next year will know that there is no expectation at the end of this, that they would not have to go back to square one again. This will affect, not only students from Trinidad and Tobago, but even the other Caribbean countries; because we

have a situation right now where Barbados has said that they will not send their students because they are not registrable after they graduate.

Mr. Chairman, I keep making the point that there is no legislation that is cast in stone. Every legislation is temporary and this can come back if the need arises. But, I am saying that we have 89 universities on the schedule here that we do not know—well, the Dental Council probably knows, but we do not know what the standards are. We do not have any review mechanism.

We are putting in review mechanisms, we are putting in the necessary checks and balances to keep the school up to scratch and, as I said, if the need arises for the legislation to be amended, so be it.

Sen. Prof. Spence: Mr. Chairman, only the Government can bring legislation. The complication of having a Private Members' Bill to stop legislation being inactive is very cumbersome, and clearly will not be used. However, if the Government has to bring the legislation for continuation, that is a different situation altogether.

If the Minister is worried about the next two years, I would be prepared to extend the period to seven years, because his review is going to take place in two years' time. And if in two years' time he cannot guarantee that the Dental School will be acceptable at University, then I think we have a serious problem. And perhaps, we should seriously consider closing it down.

Sen. Mark: Mr. Chairman, we are having some difficulty and I think probably we can pause and have some discussions, because this is going to be part of the Dental Profession Act. The amendments that we are engaging here will form part of the dental profession act; and it means to say that in five years' time this Act could lapse. We are having some difficulty in terms of accepting the proposals, so maybe we could pause and have some discussion and return.

Mr. Chairman: This might be an appropriate stage to break for lunch; and the Committee stage will be resumed after the luncheon interval. We resume at 2.00 o'clock.

12.45 p.m.: *Sitting suspended.*

2.00 p.m.: *Sitting resumed.*

Mr. President: The Senate shall resume in Committee.

Senate in Committee.

Mr. Chairman: Hon. Senators, when we broke, we were discussing an amendment to a new clause 9 proposed by. Sen. Prof. Spence.

Sen. Prof. Spence: Mr. Chairman, may I modify my proposal? May I suggest 10 years, instead of five?

Dr. Rafeeq: Mr. Chairman, we did have discussion on this during the luncheon interval, but we did not come to a final position.

Mr. Chairman, I am all for compromises on this Bill—you would have seen the number of amendments which we have done—but we on this side are really uncomfortable with putting a time limit on this piece of legislation. We are saying that we have entrenched in the law now that the first review will be in two years' time and after that review every five years. If there comes a time when we feel that the school is up to scratch and there is accommodation between the school and the Dental Council, and there is no need for this piece of legislation, we can come back and revisit it. But, I do not think we should put a time limit on the legislation. We are really uncomfortable with that, Mr. Chairman.

Sen. Dr. Mc Kenzie: Mr. Chairman, can I just get clarification? I am not uncomfortable with his position. I would like to find out from him, if within this two-year or five-year period—because he said the school has adopted the Bristol programme—the school applies for international recognition from, say, the British Dental Council or the Bristol Council, and gains that recognition, having brought itself up to scratch within that time, would there still be any need for this? Because then that Council will regulate, certify or decertify the school.

Dr. Rafeeq: I accept that. As I said, I am reluctant to put a time-frame on it; but if and when we are satisfied that the school is up to that kind of standard, we will revisit the Act.

Sen. Dr. Mc Kenzie: Yes, but what I am saying is that the decision may not even be yours. If the school goes ahead and does its work and applies to an international organization for recognition, then that body becomes the regulator. It could decertify the school at any time if it thinks the school does not meet its standards.

Dr. Rafeeq: And that will inform the review process.

Sen. Prof. Spence: Mr. Chairman, I would be grateful if my revised amendment could be put. That is:

> "Clauses 4, 6, 7 and 9 will last for an expiration of ten years from the commencement of this Act".

Now, we have changed the numbering of the clauses so much that these 4, 6, 7 and 9 refer to the original Bill as printed, and not to the various amendments which we have put in. So the appropriate clauses might have to be changed to

reflect the changes which we have made. But clauses 4, 6, 7 and 9 refer to the original printed version of the Bill.

Sen. Rev. Teelucksingh: Mr. Chairman, somehow or the other, I am persuaded to go along with the Government here; in that the track record of governments in the past proved that they were very irresponsible with respect to certain very important matters of legislation. Some legislation has been on the books for the longest while and not proclaimed for many years, and this one blames the other. I would not like to know that we have a clause like this; the Act lapses and the entire institution is in jeopardy: blaming this Government, the last government, and all this. I think it should stay just as proposed by the Government at present.

Sen. Prof. Spence: Mr. Chairman, if I may refer to that—the institution is in jeopardy if it does not come up to scratch. Let us be quite clear about that. I do not think Trinidad and Tobago is going to be putting up with a dental school which some people believe is not up to scratch. I am saying, let us ensure that it is such that everyone can say without fear of contradiction or reservation: "This is a dental school that is the equivalent of our medical faculty".

Sen. Rev. Teelucksingh: Can I add, that somewhere before the end of this discussion which we are having at this stage, I still would like a commitment from the hon. Minister. In the light of all the criticisms and allegations about the dental school—I have not heard this from him in his reply—but we need some kind of commitment that there will be some kind of enquiry into what is going on at the school. The passing of this legislation does not solve the problem.

2.10 p.m.

I would like to get a response from the Government side on this. What about all the allegations, concerns and issues raised by the Dental Council? Passing this piece of legislation is not going to deal with it.

I will be very pleased if you give us the assurance that, at least, you will initiate some kind of enquiry into all of these allegations with a view to bringing to the attention of the University of the West Indies the need to upgrade the school.

Sen. Kuei Tung: Mr. Chairman, behind the Chair I had tried to make the point that I am not convinced that the university sought the interest of its graduates sufficiently. Therefore, I am not convinced that if this lapses in five, seven, 10 or 15 years we are really going to do any more to assist graduates who come out of university.

As a matter of fact, I am a little dismayed by the attitude that the University of the West Indies has demonstrated, that it has had its students not registered. To my mind the University of the West Indies did precious little to bridge the gap. Instead, it adopted a holier than thou attitude and said, "we did the best we could. We have good standards." There was no attempt, in my view, to make sure its graduates, of whom it should be proud—

I am also very much for raising standards but I do not believe that lapsing of legislation is going to force the University of the West Indies, given its history and behaviour in the past, to change its quality control. I think that Government—and I have made this point, as I said, behind the scenes—has an obligation to choke, literally—pardon the use of the word, it seems to be a bad word these days—the University of the West Indies into action. One of the ways to do that is to choke its funds. But the University of the West Indies cannot go about collecting Government's money and putting out people who cannot be registered because of certain tests.

Incidentally, I want to make it clear that, to my mind, from where I sit and listening to all of the arguments for the last few weeks, the blame cannot be on one side, it has to be on both sides. We cannot sit here and legislate for people to be nice, no matter how much we fuss about it. Therefore, I feel that the question of a time-frame really is immaterial to all of us. The question is, how do you get the University of the West Indies to be concerned about its own standards? Because obviously—and I say this without any fear or favour—the University of the West Indies does not seem to be concerned about its standards, when to my mind, it has done precious little, as I said, to ensure that those graduates have been registered. Therefore, I am not sure if putting a time-frame on it really makes much sense and I really do not think that we will go very far.

If we sit here and we can find a compromise of five, 10, 15 or 20 years, I do not think it is going to solve the problem. I think it rests with us, as a Government, to ensure that the university shoulders its responsibilty to its graduates and to all of its students and not seek to do it by trying to legislate niceness on the part of the University of the West Indies.

Sen. Prof. Spence: Mr. Chairman, I agree entirely with the hon. Minister but I must say that I do not believe that passing this legislation is going to help with improving the school. In fact, I think the reverse.

Sen. Montano: Mr. Chairman, I rather share that view. What the Minister is saying is that it is the responsibility of the Government to ensure that the University of the West Indies' standards are up to scratch. If that is so, and I certainly share that view, then there is no basis for this legislation at all. What they should be saying is the Government will undertake to do this, that and the other and we will have it up to scratch by a certain time-frame. It has no business being in this Parliament at all.

Sen. Kuei Tung: Not quite, because we do have a problem to be resolved at this point. Not only a problem now, but we have an impending problem because another batch will come out this year and next year. I am suggesting that we need to do both. We need to bring legislation but we need to go back to the university to find what is happening, even if we have to bring an independent and objective party to evaluate the standards. All of that can be done.

The fear I have—that is why a question of five, 10 or 15 years will worry me—is that we have done so much damage to the Dental School's reputation over the last few years that I do not know which parent in conscience can say they will invest in their child's future by sending him or her to the Dental School. That is my fear now, that is why putting a five-year limit, to my mind, might further dampen that by saying, "if my child reaches there after two or five years and they review this, what is going to happen to my child?" He is half way or quarter qualified, therefore, there is a bigger risk, in my view, in putting a time limit on it.

Instead, I think we should give the commitment that we will ensure that a standard can be established even if it is by independent and objective people and that the University of the West Indies meets those standards in the shortest possible time. That is the obligation that we have to give.

Sen. Montano: Maybe you are on to something there. Maybe what we should have in this piece of legislation is that within two or five years some external third party be contracted to come down and review that standard.

Sen. Kuei Tung: *[Inaudible]*

Sen. Montano: We are not legislating anything.

Sen. Daly: As in a debate I can move for a vote now because we have now spent more time in committee on the dentists than we have spent on the Capital Punishment Bill and I am telling you that people out there are looking. This is an

elitist issue and we are spending platinum parliamentary time on it. This has to be a joke that we are spending this kind of time on this.

Mr. Chairman: Hon. Members, I agree that we have exhausted the discussions and I shall now put the question.

Sen. Montano: I do not agree with that, Mr. Chairman.

Mr. Chairman: I have ruled, Sir.

The amendment to clause 9 as proposed by Sen. Prof. John Spence is as follows:

"Insert a new clause 9 after clause 8 as follows:

(a) clauses 4, 6, 7 and 9 will lapse upon the expiration of 10 years from the commencement of this Act;

(b) renumber clause 9 of the Bill as clause 10."

Question, on amendment, put.

The Committee divided: Ayes 10 Noes 20

AYES

Mohammed, Mrs. N.

Montano, D.

Jagmohan, M.

Shabazz, M.

Alfred, Miss. C.

Yuille-Williams, Mrs. J.

Spence, Prof. J.

Mahabir-Wyatt, Mrs. D.

Daly, M.

Kenny, Prof. J.

NOES

Mark, Hon. W.

Kuei Tung, Hon. B.

Baksh, Hon. S.

Phillip, Hon. Dr. D.

Gangar, F.

Cuffy-Dowlat, Mrs. C.

Tota-Maharaj. Mrs. V.

Hamel-Smith, P.

John, S.

Gray-Burke, Rev. B.

Moore, N.

Baksh, N.

Gabriel, A.

Williams, Mrs. A.

Cabrera, V.

Teelucksingh, Rev. D.

St. Cyr, Dr. E.

Ramchand, Prof. K.

Marshall, P.

Mc Kenzie, Dr. E.

Question negatived.

Clause 9 ordered to stand part of the Bill.

Mr. Chairman: We should revert to clause 3 before taking the new clause 7.

Dr. Rafeeq: Mr. Chairman, we have circulated a supplementary list of amendments that deals with clause 3 mainly. We are dealing with clause 3 and it is just a tidying up of the drafting really; the definition of the word “diploma” which comes in clause 3(a) which will now be (b) in the amendments. Clause 3(b) will be renumbered as 3(c).

2.25 p.m.

The only substantive amendment is the definition of the word "Council" which has been amended to reflect the composition of the Council, that there will be elected as well as nominated members of the Council; and in (b), by deleting the definition of "temporary registration". Those are the amendments we have made in clause 3.

"3(a) Delete and substitute the following:

'(a) by deleting the definition of 'diploma' and substituting the following:

'diploma' means—

(a) any diploma, degree, fellowship, membership, licence or certificate granted by any university, college or other institution referred to in the Schedule; or

(b) any university, college or other institution conferring authority to practise dentistry in the country or place where granted and recognised by the Council as furnishing a sufficient guarantee of the possession of the requisite knowledge and skill for the efficient practice of dentistry;'."

Mr. Chairman: Are there any contributions or comments?

Sen. Prof. Spence: Are we on a new clause 7, Sir?

Mr. Chairman: No, clause 3.

Question put and agreed to.

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

New clause 7.

Dr. Rafeeq: Mr. Chairman, I propose a new clause 7 which reads as follows:

"'The Act is amended by inserting after section 10 the following new clause:

"New Council to be elected	10A(1)	Within one month of the coming into operation of the Dental Profession (Amendment) Act, 1998 the Chairman of the Council shall convene in accordance with this Act a general meeting of the Board for the purpose

of electing a new Council.

(2) Members of the Council established under the Act and holding office at the commencement of the Dental Profession (Amendment) Act, 1998 shall continue to hold office until the election of the new Council in accordance with subsection (1)

(3) Where within one month a general meeting is not convened in accordance with subsection (1) and notwithstanding section 9 the Minister shall appoint an Interim Council consisting of—

(a) the dentist holding the most senior dental post in the Ministry of Health;

(b) two dentists from the University of the West Indies Faculty of Medical Sciences Dental School;

(c) One lay person.

(4) The Interim Council shall within one month of appointment convene a general meeting of the Board to elect a new Council under the Act.'."

New clause 7 read the first time.

Sen. Prof. Spence: I have a couple of comments on this new clause, Mr. Chairman. The first is that with respect to 3(b), I am a little unhappy about having on the Interim Council, two dentists from the University of the West Indies Medical Faculty of Dental School. I would rather 3(a) read this way:

"three dentists, one of whom shall be the dentist holding the most senior dental post in the Ministry of Health."

The Minister, if he wants to appoint two persons in the Dental School, he can do so. It seems to me it would be better if he had the flexibility on the Dental Interim

Council, that he can appoint whoever he wants rather than legislating that two of those persons must—

Mr. Chairman: Which one are you looking at?

Sen. Prof. Spence: The new clause 7.

Mr. Chairman: The first one?

Sen. Prof. Spence: The one dealing with the new Council to be elected. I am talking about the Interim Council, Sir. I am just suggesting that the Minister should have more flexibility if section (a) read:

> "Three dentists, one of whom should be the dentist holding the most senior dental post in the Ministry of Health."

Delete (b). If he wants to appoint two persons from the Dental School, he may do so but he does not have to. And then delete (b). And I think another one has just been added:

> "A member of the Council established under the Act holding office..."

That is the one point.

The other point I wanted to ask under (4):

> "The Interim Council shall within one month of appointment convene a general meeting of the board to elect a new Council under the Act."

Is there value in considering whether there should be a quorum for that meeting of the Board? Do you still go ahead if four persons attend the meeting or do you put a quorum?

Dr. Rafeeq: Mr. Chairman, I understand the point being made by Sen. Prof. Spence. Even the parent Act does not call for a quorum in electing the Dental Council at this point in time. I take the first point that it is tidier that way—the way the Senator has suggested.

Mr. Chairman, we are amending (3)(a) to say:

> "three dentists, one of whom shall be..."

And then the rest remains. We delete (b).

Sen. Prof. Spence: You could substitute for (b), "the member of the Dental Council".

Dr. Rafeeq: It is the same thing, yes. You can delete (b) and put (c) as (b) and there will be a (d). There is a (d) in the supplementary list which will become (c).

Sen. Prof. Spence: Since that person is also a dentist, would it not be neater to put (a), (b) and (c) as dentists and then the layperson as (d)? It does not matter, but it looks good.

Mr. Chairman: The question will now be put on the new clause 7 as per amendments circulated with the new amendments.

Dr. Rafeeq: Mr. Chairman, the point was made this morning on the question of electing and appointing. Some of the members of the Council will be elected and some will be appointed. Our draftspeople here have suggested that we change the word “elect” to “appoint”. I do not know if that is a significant amendment, but they have suggested that.

Sen. Mahabir-Wyatt: Mr. Chairman, is that not only in relation to the Interim Council? The democratic process of election is quite different from the non-democratic process of appointment. It is not just as simple as changing a word, it is changing the entire philosophy there. I can understand about the Interim Council because that one is “appoint”.

Mr. Chairman: I shall now put the question of the amendment to the proposal.

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

Question put and agreed to.

Question proposed, That the new clause be added to the Bill.

Question put and agreed to.

New clause 7, as amended, added to the Bill.

Mr. Chairman: The Minister has just advised me that we did not deal in the first round with the amendment on the first clause 7.

Clause 7.

Question proposed that clause 7 stand part of the Bill.

Dr. Rafeeq: Mr. Chairman, I beg to move that:

"A. Clause 7 be renumbered as clause 5.

B. Renumber proposed section 5A as 5A(1) and insert the following new subsection:

'(2) An Order made under subsection (1) shall be subject to affirmative resolution of Parliament.'."

Mr. Chairman: Are there any comments on this?

Question put and agreed to.

Clause 7, renumbered clause 5, ordered to stand part of the Bill.

2.40 p.m.

Schedule.

Dr. Rafeeq: Mr. Chairman, I beg to move that the Schedule be amended as follows:

Under the heading "Trinidad and Tobago" delete the words "Faculty of Medicine" and substitute the words "Faculty of Medical Sciences".

Question put and agreed to.

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

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

Senate resumed.

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

DEOXYRIBONUCLEIC ACID (DNA) IDENTIFICATION BILL

Select Committee Report

Adoption

The Parliamentary Secretary in the Ministry of Housing and Settlements (Sen. Carol Cuffy-Dowlat): Mr. President, I beg to move that the Senate adopt the report of the special select committee appointed to consider and report on a bill entitled "an Act to provide for DNA forensic analysis, to include DNA report as evidence, to provide for the use of DNA testing to determine parentage, and other related matters".

At a sitting of the Senate held on Tuesday, March 3, 1998, the Senate adopted the following Motion moved by Sen. The Hon. Wade Mark, Leader of Government Business:

Be it Resolved that the following Senators be appointed to serve on a select committee of the Senate to consider and report on a bill entitled "an Act to provide for DNA forensic analysis, to include DNA report as evidence, to provide for the use of DNA testing to determine parentage, and other related matters":

Brig. Joseph Theodore	Chairman
Mrs. Carol Cuffy-Dowlat	Member
Mrs. Agnes Williams	Member
Prof. John Spence	Member
Mr. Danny Montano	Member

The committee was empowered to discuss the general merits and principles of the Bill. Miss Norma Cox, Clerk of the Senate served as secretary to your committee.

It was evident during the debate on the DNA Bill, at sittings of the Senate held on Tuesday, February 17, 1998 and Tuesday, March 3, 1998, that Senators favoured the use of DNA typing and methodologies in scientific criminal investigation. Senators, however, felt that because DNA typing is a powerful tool used in determining the culpability of a suspect by linking him, through scientific evidence, to the scene of the crime, there was need to ensure that proper safeguards are put in place for the collection, storage and delivery of evidentiary samples and that only qualified persons, using approved international procedures, would be performing the tests and analyzing the samples.

In an effort to ensure that proper provisions would be made to take care of the concerns expressed by Senators, and mindful of the fact that in order for DNA evidence to stand up in court, counsel and judges must be confident and jury convinced that proper procedures would be adopted. Your committee:

(1) examined DNA legislation from the United Kingdom, New Zealand, Australia and Canada;

(2) examined DNA literature from other countries;

(3) invited persons with knowledge in the field to appear before it to assist Senators in their deliberations; and

(4) placed advertisements in the daily newspapers inviting the public to submit comments and suggestions.

Your committee held meetings on the following dates:

Tuesday, March 10, 1998

Tuesday, March 17, 1998

Tuesday, March 24, 1998

Wednesday, April, 1, 1998

Tuesday, April 21, 1998

Tuesday, May 12, 1998

Tuesday, June 9, 1998

Tuesday, June 16, 1998.

Additionally, the committee held six informal meetings because it was not properly constituted as all Senators were not present. At its first meeting, the committee agreed that three Senators would form a quorum and that the three would reflect the balance of the composition of the Senate. The above meetings were held on:

May 5, 1998

May 26, 1998

June 23, 1998

August 25, 1998

September 4, 1998

September 10, 1998.

The result was an amended Bill as proposed by the select committee of the Senate. This new Bill represents major alterations in the original Bill which is closely drafted along the British model.

In summary, what we saw in the British model, as seen in sections 62 to 65 of the Police and Criminal Evidence Act, 1984, differentiated between intimate and non-intimate samples. A non-intimate sample could have been taken by the police if the person consents, but a non-intimate sample could only have been taken by the police where the person is detained and an officer, at least at the rank of superintendent, authorizes it to be taken without consent. Where a person refuses to consent for an intimate sample to be taken, the court may draw such inferences as appear proper for that refusal.

The committee, having examined similar DNA legislation in Canada, Australia and New Zealand, decided to amalgamate certain provisions of those legislations to propose a unique model for Trinidad and Tobago. Strictly speaking, DNA legislation does not create what can be termed substantive law, but rather procedural law. Essentially, this Bill seeks to set out the law governing the taking, packaging, storing and testing of DNA samples and using DNA data as evidence in court.

The American experience, and particularly the O. J. Simpson case, has shown how important is the chain of custody of DNA samples. Since DNA evidence will eventually lead to criminal proceeding and conviction, it is important that the process of taking, storing and testing of the sample be done without any question of impropriety or even of interference.

When DNA evidence is used in court, we know from experience that defence attorneys, faced with powerful scientific tools, can attack the evidence on two grounds: that the chain of evidence was faulty and cannot be relied on, and that the standard and processes of testing are questionable and, therefore, the DNA evidence is not good evidence.

The committee found that it is important that any legislation must strive to establish a balance between the rights of the individual and the right of the state to use DNA evidence as a tool to detect and prosecute criminals. The committee felt that because of this fact and because the Bill requires a special majority vote, the right of the individual should be protected. This is the dominating principle upon which this new Bill is proposed.

I will give a few examples. The old bill had allowed a police officer to authorize the taking of a non-intimate sample. The committee felt that a judicial officer, that is the court, rather than an agent of the Executive, that is a police officer, should be the person to authorize a sample to be taken if the necessary consent is not given.

In the case, *Chief Justice Collymore vs the Attorney General,* the Judiciary had long been established as the guardian of the Constitution, hence the recommendation that the court make the order. Thus, any infringement of the right of privacy should be done by the Judiciary and not a police officer. These matters have been addressed in Part III of the reprinted Bill, particularly clauses 18, 20 and 24.

The Bill also seeks to protect the rights of the individual in the following ways:

> a police officer must have reasonable grounds for believing that an offence had been committed and that a person either committed it or was a party to its commission before he requests the person to give a tissue sample.

Clauses 5 and 6 address this matter.

2.50 p.m.

Clause 6(3). The bodily substance given from a victim or taken from the crime scene must be first sent to the Forensic Science Centre before the police officer makes the request for consent.

Clauses 8 and 9. Consent must be given in writing and can be withdrawn.

Clause 10—the right to counsel before consenting.

Clauses 13, 14 and 15. Certain information, including a statutory notice, to be given to the person before the request for consent is made.

There are several other examples of procedural safeguards within the redrafted Bill such as the use of a prescribed form, the presence of a Justice of the Peace, the right to have an adult present when the sample is to be taken and the right to have part of the sample for independent testing.

Another point to note is that the new Bill provides that where consent is not given, the state has the right to apply to either a Magistrates' Court or the High Court for an order to take the tissue sample. A similar provision obtains in Canada, New Zealand and Australia, except that in these states, there is no such alternative judicial application. The creation of this optional application to an inferior or superior court is a unique facet of this Bill. Notice that the Magistrates' Court application is defended, but the High Court application is *ex parte*.

In the document entitled, "Reasons for the Proposed Amendments" at page 7, No. 17, an explanation has been given as to why this option was created. Because, at times, if I may summarize, it may become important that the state goes to the High Court to get an *ex parte* application for immediate effect. Outside of that, there is always the option to go to the Magistrates' Court where the application can be defended.

In summary, it was felt that the state should be able, in some cases, to expeditiously get an order, rather than be bogged down because of delays in the

administration of justice which can, in fact, and does at times, result in lengthy trials at the Magistrates' Court.

Another point in this new redrafted Bill, seeks to give special protection to incapable persons, whether physically or mentally challenged persons and children. Where the victim of an offence is an incapable person or child, a bodily substance can be taken from such a person only if their guardian or parent consents but, where such a person is arrested, detained or charged for an offence, a tissue sample can only be taken by a court order. In either case, all the rights enjoyed by a normal person under this Bill, are also extended to incapable persons and children.

Further, the original Bill had attempted to allow the state to store DNA data derived from all samples whether the person consented to its storage if he was not convicted, or whether he was convicted. This wide position was rejected by the Committee and the DNA data will now be kept in specified cases. Clause 39(2) and (3) refer to those specified cases in which DNA data will be kept.

The Committee felt, like with cases of fingerprints where they are destroyed in cases of non-conviction, DNA data should also be destroyed unless the person consents. This position reflects the position as obtains in the United States, Canada and New Zealand. Although originally it was felt that if you kept all the DNA data collected, you will be helping your data bank, it was nevertheless felt that in all the circumstances in considering the rights of an individual, the person should either consent to having his DNA data kept if he is not convicted, or if he is convicted then the state has a right. Subclauses (2) and (3) of clause 39 mention the limited circumstances in which the DNA data can be kept.

Finally, the Committee felt it was necessary that the powers and duty conferred on the Forensic Science Centre by this Bill should be monitored by an independent body which can check and balance the operation of the testing process. Hence, a DNA board was created under clause 41. This board would grant an annual certificate of approval to the Forensic Science Centre if approved international standards are being followed by the centre and can also give advice to the director of the centre. So, what we have now done is established a board under clause 41 which would monitor, advise and approve the Forensic Science Centre for the purposes of DNA testing.

At the end of all the Committee's deliberations, Members agreed that there was, in fact, need to amend the Bill which was based on the British model. Your

Committee rejected the British model and agreed to follow the New Zealand model, along with elements from the Australian and Canadian models. The proposed amendments seek to reflect a unique model in keeping with our local needs. Essentially, the new model will allow tissue samples to be taken by consent, failing which a court order must be sought to take it only from a suspect.

The role of the police service is restricted to collecting, storing and delivering DNA packages for testing by the Forensic Science Centre. Procedural safeguards, more numerous than those in the original Bill, are proposed in order to protect the integrity and privacy of the individual, while allowing the state to use this new scientific tool as a means of fighting crime.

Your Committee agreed to the following significant changes to the Bill:

(1) the deletion of clauses 3 to 23.

(2) the insertion of new clauses 3 to 55.

(3) the renumbering of clauses 24 and 25 as clauses 56 and 57.

Clauses 1 and 2 were retained.

Appended to the report are:

(1) The proposed list of amendments (Appendix A).

(2) The Bill as amended by your Committee (Appendix B).

(3) The reasons for making the amendments (Appendix C).

Your Committee recommends that the Bill be accepted by the Senate subject to the amendments attached.

Your Committee also takes this opportunity to thank the following persons who assisted in its deliberations:

Mr. Samraj Harripaul	-	Parliamentary Counsel II, Office of the Law Reform Commission
Mrs. Yolanda Thompson	-	Director, Trinidad and Tobago Forensic Science Centre
Mr. Emmannuel Walker	-	Scientific Officer, Trinidad and Tobago Forensic Science Centre

Prof. Ramnath Chandulal	-	Chief Forensic Pathologist, Trinidad and Tobago Forensic Science Centre
Dr. Shaheeva Barrow	-	Special Medical Officer, Senior Pathologist, General Hospital Port of Spain—Representative of the Medical Association
Dr. Felicia Hosein	-	Lecturer, Department of Plant Science, University of the West Indies
Prof. Julian Duncan	-	Department of Plant Science, University of the West Indies
Dr. Umaharran	-	Department of Plant Science, University of the West Indies
Mr. Michael Thomas	-	Acting Senior Superintendent of Police, Court and Processing Branch
Mr. Sylbert Peters	-	Superintendent of Police, Western Division
Mr. Errol Pilgrim	-	Permanent Secretary, Ministry of Health.

The Chairman of the Committee also wishes to express his thanks to the Members of the Committee for their contributions to the amendments which have been made and the attention to the details. Special mention of Sen. Prof. John Spence, who assisted greatly in pointing out the expertise required by identifying the experts in the field who appeared before the Committee.

The Chairman also wishes to take this opportunity to record his appreciation to Sen. Danny Montano for his positive approach to the exercise and for bringing to the attention of the Committee, the results of his research into this relatively new field of DNA analysis.

On behalf of the Committee, the Chairman wishes to thank all those who have assisted in one way or the other in getting this work done. Again, special mention and thanks to Mr. Samraj Harripaul from the Law Commission, Office of the

Attorney General, for his advice and co-operation which took into account ideas put forward by Members and which has resulted in a Bill which addresses the needs of and is acceptable to the Trinidad and Tobago society.

I beg to move.

Question proposed.

Sen. Danny Montano: Mr. President, after having spent many long hours working on this legislation, I am not going to stand this afternoon to criticize it. In fact, the reason for standing is really to offer my congratulations to the Minister for receiving the comments that we made in this Chamber when he first brought the legislation.

If you recall, Mr. President, I was the one who spoke first after him and I led the debate and pointed out certain weaknesses in the original legislation. We found it too intrusive, too restrictive and, in some areas, without sufficient teeth. I think it redounds to the Minister's credit that he listened to the wisdom presented on this side of the Senate, both Benches.

In particular, I would like to send my special respect and commendations to Mr. Harripaul who was the parliamentary draftsman in this matter who had a particularly difficult task, and I would have to say that he set a very sound and proper example to this honourable Senate. He received the ideas which we presented to him with very much of an open mind, as I am sure that the original legislation must have been his original handiwork, but he accepted the recommendations made by the Committee with complete open-mindedness and he worked extremely hard in doing the necessary research to meet the demands and requests of the Committee.

He has set a standard of professionalism and open-mindedness that I think every Member of this Senate should take note of, and I would like all my colleagues here to take special note of the most excellent work that this young professional has done. [*Desk thumping*] I was really impressed. We worked very hard. A tremendous amount of research backwards and forwards in terms of the different countries and so on was brought and we had to digest the information, and while we had a general idea of where we wanted to go, he really assisted us in helping to sort it all out.

I would just say at this point that we support the legislation as it is wholeheartedly and, again, I would like to commend the Minister in his wisdom for recognizing the wisdom on this side and, again, to congratulate Mr. Harripaul.

Thank you very much.

Sen. Martin Daly: Mr. Vice-President—Mr. President. I am sorry. Unaccustomed as I am, Sir, trauma takes a long time to die. I am going to try another approach to the Government. Not being a public administrator, I have been trying to show the Government the stupidness of what we have been doing recently. I have not really gotten anywhere because, despite a lot of sweet talk and back pats and so forth, Senate is now on a Wednesday so it is clear that the disruption of our schedules which are not readily rearranged, is not appreciated.

As I keep trying to point out, having an orderly way of doing things in the Senate is the proper way of doing what, I believe the jargon is, the "people's business". When one listens to Sen. Montano and look at this report there are five things that are very instructive.

3.05 p.m.

First of all, one will see that this debate took place in February and March, and as a result the matter went to a select committee. The select committee has had, by my calculations, six months to do the work and it has produced a document of which everyone is proud. So the first thing to be noted is that in order for this select committee to be a success, it needed six months. We can see that the committee did work because it is obvious. Not only was there work done on the drafting, but it is clear from the report that there were wholesale policy changes and a different model legislation from the one that was originally used, was looked at. So the select committee was able, not only to achieve drafting changes but actually influenced policy changes and, indeed, it is one of those rare occasions on which we see everyone is pleased and Sen. Montano, despite being an Opposition Senator, is pleased to associate himself with the report.

That is clearly a desirable objective. When one compares this piece of wisdom with the stupidness of a Planning bill, where a select committee is given two weeks to report on major legislation, maybe by singing the praises of how this was done, I can make the point more diplomatically, in the way I have been making before. This committee is not going to achieve anything as was achieved by the committee on the other bill, where it is given two weeks to report. Indeed, as I was saying in committee today, and I repeat, it is also stupidness when one

considers the number of hours and the number of amendments that were made to the Dental Profession Bill which probably affects less that 2 per cent of the population. It becomes clearer and clearer how foolishly we are doing the nation's business.

Despite our condition, which is well-known, this Bill has nothing to do with party affiliation. This, par excellence, requires the joint effort of everyone in the Parliament, and I daresay that the Planning Bill, while it may have certain ideologies attached to it, nevertheless, should be the subject of the same kind of process; and generally all of the heavy work that we do should be subject to this kind of process.

I know that everyone has to toe the party line, but are we not going to look at this piece of work and feel pleased to be a Member of the Senate? Do you not feel pleased, I ask rhetorically through you, Mr. President, when our colleagues have accomplished this as opposed to a hurried piece of stupidness to be done in two weeks, for no good reason because it has been on the Order Paper for several months and has never been brought forward? A properly planned agenda would require that the heavy legislation be brought forward as soon as possible; get a number of representative speeches and then send them to a committee, or allow the people who are involved in the drafting on all sides to have a reasonable amount of time to deal with it. I am speaking on this to make the contrast. The committee had several sittings. I happen to know and I want to pay public tribute to them because people think we only come here to vote. Professors Kenny and Spence—and I am identifying them as professors deliberately although they are also senators. They are probably Senators, Professors Doctors, I do not know, but the fact is we had one occasion recently when both of these colleagues of mine—and they are far too modest to say it—spent six days out of seven in the Red House. Is that reasonable, to ask people to do that, and more importantly is it necessary?

If there is a proper timetable, when one compares the sittings of this committee which proceeded at a more gentle pace, with asking people to come here two, three days a week at uncertain times and spend the rest of the time in committee. Here is an example of how parliamentary work should be done. It was not only well done because good people made a sacrifice to do it, it was well done because it was heavy legislation, introduced early in the session with a sufficient amount of time for the committee to do its work, and as I have indicated, Mr. President, I am going to be tireless in fighting. I got us out of the cubby-hole and I

am going to devote the same amount of energy in fighting for us to have an orderly parliamentary agenda.

Last but by no means least, it is very refreshing to hear what has been said about the parliamentary draftsmen because clearly, unlike the days of my predecessor Senator Furness-Smith, the parliamentary draftsmen are apparently taking the view that we are not adversaries. We are not the adversaries of anyone, even Prime Ministers misunderstand this at times. We are here to try to get the best results possible for the country. It is not always that result can be arrived at by consensus because that is the nature of politics, people have conflicting views, but even within those conflicting views we are here to get the best results for the country. It is no good people trying to excoriate persons on other benches, either by saying they are a team, they are ganging up or their integrity is in question. We are here to get the best results for the country and as soon as our political leaders recognize the maturity of doing that—that is why I also want to make the comment for the record, that whatever the views—I wanted to say this before certain people came but any way—about the matter that went to committee yesterday, it is a matter in which 99.9 per cent of the population have an interest, strong interest and strong opinions, and from all reports that matter spent less time in committee, less negotiating was done, than we have spent on the Dental Profession Bill.

Of course, they did not have the beneficial influence of my colleagues to assist them in the negotiations, but all of these things indicate that we are running the business of this Senate wrongly. I am going to pound it in, we are doing it wrongly. You cannot ask people out there to understand that we spend all that time on the Dental Profession Bill—and I accept Sen. Kuei Tung's estimate that it affects 2 per cent of the population, but of course, we feel victim to the lobbyists, because we had powerful forces on both sides lobbying us for their own interests and the lobbyists dictated that we spend all this time on that Bill and rushed the Planning Bill and apparently, in the other place, did not spend sufficient time negotiating a matter in which 99.9 per cent of the population are interested.

This provides me with an opportunity to join in congratulating all those who worked on the committee but to try to show that it did not come about by accident and it is yet another testimony to the fact that we need to have a properly organized parliamentary agenda.

Thank you.

Sen. Prof. Spence: Mr. President, it is not necessary for me to repeat what my colleagues have said but I would just like to associate myself with the remarks of Sen. Montano and most of the remarks of Sen. Daly. I too found this a very interesting and pleasant committee to sit on; because we had the time, we were able to consult the people that we needed to, and particularly because we had excellent support from Mr. Harripaul, the parliamentary counsel. I think it is a very good example, as Sen. Daly has said, of how we can address our select committees on our Bills. I commend the Bill to the Senate. Thank you.

The Minister of Public Administration: (Sen. The Hon. Wade Mark): Mr. President, I just want to make a brief intervention on this very important matter before us. I want to join fellow Senators in congratulating all of us for efficiently and effectively addressing a very complicated and technical piece of legislation over a period of time, I do not think it was extended.

I think that the point raised by Sen. Daly in terms of having matters like these addressed by select committees of Parliament is one that we fully endorsed because it allows opportunity for dialogue, debate, consensus, serious exchanges and the Government is in fact committed to the establishment of Parliamentary committees to deal with the nation's business and we are hoping when we introduce the Constitutional (Amdt.) Bill which is going to deal with the establishment of Parliamentary Committees, that the question of full-time parliamentarians could be addressed because one of the difficulties that we have is that a number of our parliamentarians are part-time and if we are to run the affairs of the nation effectively we need to have full-time parliamentarians. I think that is an area that the Salaries Review Commission is looking at so that, for instance, in the not too distant future, we would establish parliamentary committees on every particular area of Government activity, as well as matters that come before the Parliament.

3.15 p.m.

That is one of the objectives that we are working towards.

Mr. President, I also want to join in congratulating all Senators who sat on this particular special select committee of the Senate. I know that there are many other committees that have been established and fellow Senators have had to spend inordinately long hours addressing very complex issues. However, at the end of the day we are seeking to have consensus because all of us are in the business of working towards producing and establishing a total quality nation. I think we

want a total quality nation for our country and, in that regard, we can arrive at consensus, engage in dialogue and really friendly communication as we move towards arriving at this particular consensus.

Mr. President, I intervened to express my own congratulations and hope that we continue along these lines in terms of trying to get the work of the Parliament and the people done in a manner that is acceptable to all our parliamentarians.

Thank you, Mr. President.

The Parliamentary Secretary in the Ministry of Housing and Settlements (Sen. Carol Cuffy-Dowlat): Mr. President, on behalf of the Chairman and Members of the committee, I thank all Senators for the sentiments expressed and again, special thanks to Mr. Harripaul.

I beg to move.

Question put and agreed to.

Report adopted.

Question put and agreed to, That the Bill be now read the third time and passed.

Bill accordingly read the third time and passed.

COHABITATIONAL RELATIONSHIPS BILL

Order for second reading read.

The Attorney General (Hon. Ramesh Lawrence Maharaj): Mr. President, I beg to move,

> That a bill to confer on cohabitants rights and obligations, to give the courts jurisdiction to make orders with respect to interests in property and maintenance, to make provision for the enforcement of agreements and for matters incidental thereto be read a second time.

Mr. President, in Trinidad and Tobago the common-law union has always formed part of our social landscape and there is a large and growing class of such persons in this country and in other parts of the world. A report done by the Central Statistical Office in 1990 estimated that there are over 40,000 couples in Trinidad and Tobago living in common-law unions.

Although many of these relationships are stable, long-standing and have even produced children, a sufficiently large portion of our population have entered into, and continue to enter into, such arrangements. The law in this country has failed

to provide adequate remedies to meet the social and economic consequences which attend the breakdown of these relationships.

Mr. President, cohabiting spouses receive none of the benefits of the provisions of the Matrimonial Proceedings and Property Act, Chap. 45:51. These provisions were designed expressly for marital unions and a person who may have lived in a relationship for over 20 years is not entitled to make an application to the court under that statute. As a consequence, these cohabiting relationships carry with them serious financial implications, particularly for the dependent partner who may have assumed the housekeeping role or even the child-bearing role—*[Interruption]*—or both, my colleague, the Minister of Finance, who seems to have a lot of knowledge on these matters has advised me. *[Laughter]*

Mr. President, there are so many known cases where serious injustice has had to be borne when one cohabiting partner has been allowed to reap all the economic benefits of a relationship. Although our courts have demonstrated a willingness to apply the concept of the trust to afford some relief with respect to property distribution among cohabitants, the decisions and the approach of the courts have not been consistent.

Whenever two people live together and they are not married, and after years there has been a breakdown of the relationship which caused separation and one party is alleging that she made contributions to the household and she even pooled her resources, financial and otherwise, in order to make the family a better one, under the present set-up she has to go to the court to establish a relationship of trust and to see whether the court will be able to use the principle of equity in order to see whether she gets relief. Although there are some decisions of the courts which have been able to do this, the decisions have not been very consistent.

Mr. President, this unsatisfactory state of the law has been recognized and the Law Commission thought that there was urgent need to look at the situation. As far back as 1994 the Law Commission planned, in its three-year programme, that this aspect of the law should be looked at in relation to the whole question of the law relating to the family.

3.25 p.m.

When this Administration took office the previous Attorney General, now Minister of Legal Affairs, requested that the work in this area by the Law

Commission be expedited and to have a paper prepared outlining any proposals for reform. By June 1996 the Law Commission was able to prepare a Green Paper entitled *"Cohabitational Relationships—Towards Reform of the Law"*. That Green Paper was considered by Cabinet and it was agreed by Cabinet that the matter be released to the public for the public to have comments sent in respect of the Green Paper.

A Green Paper was published in August of 1996 for public comment and discussion. Comments were received from a very wide cross section of the community and, if I may say, not only from individuals but also from organizations. There was much support for the proposals for reform as contained in the Green Paper.

In early 1997 the Cabinet accepted the recommendations of the Law Commission and a draft Bill was prepared. That Bill has been reviewed and that is the Bill which is before us. There is no doubt that attempts have been made over the years by our Parliament to ease the plight of the common-law spouse and this is evident by a handful of statutes which today afford some relief of such persons. For example, recognition has been given by the Parliament of this country to the common-law spouse in the National Insurance Act, in the Rent Restriction Act and in the Domestic Violence Act which allows the court to grant a protection order in favour of a common-law spouse.

Mr. President, mention must also be made of the recognition given in 1981 by the Parliament of Trinidad and Tobago in respect of the Succession Act which was enacted into law but has not been proclaimed to date. That Act demonstrated the intention of the Parliament of Trinidad and Tobago, as the representatives of the people of Trinidad and Tobago, to address the needs of cohabiting spouses. That Act sought to reduce the financial hardships being experienced by allowing a certain class of cohabitants to be eligible to inherit upon intestacy; that is, when a person dies but does not leave a will. A single or unmarried person who has been living with a single person for not less than five years under that Act was eligible.

The provisions of the Succession Act of 1981 have to be revisited. Mr. President, may I say the Cohabitational Relationships Bill which is before this House seeks to address claims relating to the allocation of property interests and maintenance upon the termination of a cohabitational relationship. Drafting of legislation has been completed in order to address the need to extend the rules of intestacy to allow surviving cohabitants to share in the estate of the deceased person. Not this Bill, but there is a Bill which is the Dependants Relief Succession

Bill which has been drafted and has been vetted and would be coming to the Parliament. I know I made promises about that but may I say that we looked at the Succession Act of 1981 to see whether certain parts of the Act could have been proclaimed but it could not have been proclaimed without proclaiming the whole Act or other parts and it was not possible to do that. The Ministry of the Attorney General with the Law Commission and the Chief Parliamentary Counsel's Department involved, have drafted a Dependants Relief Succession Bill and that will be coming in order to give some of the relief which is under the Succession Act which has been unproclaimed and also to give some additional relief.

Mr. President, the approach of the Government to the need for reform in this area has been twofold in nature. Firstly, the enacting of the present Bill to provide remedies upon the termination of the relationship and, secondly, amending the laws relating to the succession to cure the inequities which result when one partner dies. That is the second Bill which I am talking about, the Dependants Succession Relief Bill.

Mr. President, before I go into the actual provisions of the Bill I think it is important for me to give some overview of what other jurisdictions have done in this area. During the last two decades many jurisdictions have sought to grapple with the problems posed by these special relationships and to find innovative ways of curing the financial hardships experienced, without disturbing the status accorded to the institution of marriage. This has led to a significant development of the law in this area in countries like New South Wales, New Zealand, Australia, Queensland and in certain of the Canadian provinces. Not surprisingly, within our own Caricom region the Parliaments of Barbados and Guyana have long addressed the reality of this situation and recognized the need for legislative intervention in this area to enable the courts to do justice when a cohabiting union ends upon separation.

In 1982 Part IV of the Barbados Family Law Act conferred on their courts the power to award maintenance and to adjust property interests where it is established that a man and a woman have cohabited for a continuous period of five years. That law also provides for the parties to a union to enter into a cohabitation and separation agreement and for the agreement to be put in a registrable form under the Act.

Mr. President, while Barbados has confined its definition of a union and it recognizes only a five-year relationship, the New South Wales De Facto Relationship Act of 1984 empowers the courts in that jurisdiction to adjust

property interests or award maintenance on the breakdown of relationships which have lasted for only two years, where there is a child of the relationship, or where significant contributions have been made to the welfare of the family.

The court is also given the power to take into consideration a wide range of contributions by either party to the acquisition or improvement of the assets of the family. The Victoria and Queensland legislatures have also enacted statutes which largely mirror that of New South Wales. South Australia also has comprehensive legislation governing the property and maintenance rights of cohabitants and their Family Relationships Act defines a common-law spouse as a person who has been in a cohabitational relationship for a period of five years. Similarly, the Matrimonial Property Act of New Zealand allows the court to take into account the length of the relationship, the contributions of the parties and the presence of children when applying its matrimonial law to a common-law relationship or a de facto relationship.

Although the Canadian provinces have not enacted separate legislation to provide for cohabitants, several provinces such as Ontario, New Brunswick and Nova Scotia have amended their laws to accord limited maintenance rights to cohabitees. New Brunswick, for example, amended its Family Services Act of 1981 to provide that where a man and woman have cohabited for a continuous period of three years and the relationship is one in which one party has been substantially dependant on the other, an application for maintenance may be made to the court.

New Foundland and Nova Scotia, however, only required a cohabitation period of one year but there must be a child born out of the relationship for the spouse to be able to receive maintenance for herself or himself.

One sees the different ways in which the governments and the people of these countries have tried to recognize that in their societies there exists these relationships and that as result of the termination of these relationships, injustice and financial hardship occur and this can have an impact upon society and, therefore, there is a responsibility of the governments to deal with these matters: recognizing the institution of marriage but also trying to make provision for the injustice which would be caused as a result of the termination of a common law relationship.

Mr. President, whatever the differences in the various models pertaining either to the length of the relationship or the circumstances of the parties, the philosophy underlying the laws in all these jurisdictions is the same—that persons who enter into stable, cohabiting unions should not suffer any financial disadvantage and the rights and responsibilities of these persons should be contained in legislation so as to afford them necessary protection. This is the philosophy which has served to inform the present Cohabitational Relationships Bill which was before the House and is now before this Senate.

Before I go into the Bill I would like to say that in relation to the Succession Act of 1981, in furtherance of Government's commitment to improve the welfare and status of women, and in keeping with the assurance I gave to this Senate on May 6, 1998, a study was made of the provisions contained in the Succession Act of 1981 to determine whether those provisions targeted at benefiting persons living in cohabitational relationships and other dependant persons could be implemented independently of the remainder of that Act. Proclamation of only those provisions affecting those persons in cohabitational relationships was not a feasible option.

3.40 p.m.

To effect the desired reform, it was thought necessary also to amend the provisions of the Administration of Estates Ordinance, Chap. 8:01, 1950, and the Wills and Probate Ordinance, Chap. 8:02. Accordingly, Mr. President, a new Bill has been drafted, as I stated, and it is in the process of being submitted to Cabinet for its approval. Like the Succession Act, 1981, this Bill would grant inheritant rights to cohabitants. It would also allow cohabitants to apply to the court for financial relief where distribution of the estate of a deceased partner, in accordance with that partner’s will, or in accordance with the statutory rules for distribution on intestacy would fail to yield reasonable provisions for the surviving dependant cohabitant, or would not give effect to a contract made to benefit the surviving cohabitant under the will of the deceased.

In certain respects, the Bill advances reform even beyond the Succession Act, 1981. This Bill, if approved, would allow a surviving cohabitant to be granted Letters of Administration in the estate of a deceased partner in prescribed circumstances. This matter was necessary to be mentioned because I did give an undertaking to this Senate some months ago, and it has taken longer than I anticipated, but I want to give the assurance to the distinguished Sen. Diana Mahabir-Wyatt that the matter is being considered, action has been taken and in a month or two, there will be fruits of that.

Mr. President, before embarking upon an analysis of the provisions of the Bill, there are three preliminary points which should be clarified. First, the proposed legislation is not intended to interfere with the rights of a legal spouse, nor is there any attempt to equate a cohabitational relationship with marriage. The Bill is not designed to give legal status or does not seek to legitimize common-law relationships. It is designed only to recognize the relationship for the purposes of enforcing the financial obligation of the parties towards each other; obligations which are generally pecuniary in nature, and which this Government considers should come into being when two people choose to live together in a *bona fide* relationship. It is the obligation which the Bill seeks to recognize and enforce. Obviously, the relationship would form part of it, but the obligation is going to be enforced, not the relationship itself.

Mr. President, it must be noted that the proposed legislation will not govern relationships which would have ended before the Act comes into effect, and would therefore not be retrospective in its operation. I notice there is a sigh of relief among some of the Members of the Chamber. *[Laughter]* Mr. President, believing in the promotion of equality, I did not want to confine it to the Government side of the Senate; that is why I said the Chamber. *[Laughter]* To do otherwise would be opening the floodgates of litigation. The new legislation will apply to all cohabitational relationships which are in existence at the date when the Act comes into effect, and to those relationships which are entered into subsequently. This is made very clear in clause 2(ii) of the Bill.

Mr. President, thirdly, this Bill does not address the maintenance rights of the children arising out of these relationships, but seeks to address the circumstances under which one cohabitant will be obliged to maintain the other. The maintenance rights of all children, whether born to married, single or cohabiting parents are already adequately addressed under the Matrimonial Proceedings and Property Act and the Family Law (Guardianship of Minor, Domicile and Maintenance) Act.

The primary purpose of the Cohabitational Relationships Bill, 1998 is to confer on parties who cohabit the right to apply to the courts for an adjustment of property interests; the right to apply to the courts for maintenance in certain prescribed circumstances, and the ability to regulate their own financial affairs by entering into cohabitational or separation agreements which the court would recognize and enforce.

Mr. President, the clauses in Part I of the Bill are straightforward and common to most of the legislation of this kind. Of particular importance, however, is the definition of "cohabitant", which is gender neutral, and which makes it clear that the provisions of the Bill are not restricted to the common-law wife. It also makes it clear that the Bill does not extend to other unions, such as homosexual unions, which has been done in other jurisdictions, but in relation, solely, to a man and woman relationship.

Under Part II, clause 3 gives a person who qualifies as a cohabitant under the Bill the right to apply to the court for relief. One of the prerequisites for the court making an order, is to ensure that the person applying under the legislation has a sufficient connection with Trinidad and Tobago. One way that a sufficient connection can be shown is by both parties having lived together in this country for a period of time, or by one partner having domiciled in Trinidad and Tobago.

Similarly, under the Matrimonial Proceedings and Property Act, the requirement of domicile or one year habitual residence must be met before proceedings for divorce can be entertained by our courts. This requirement is similar to what obtains in New South Wales. The Queensland Act, on the other hand, is quite different, as it only requires both partners to live in Queensland for one year, or to prove that there are substantial assets located in Queensland. Mr. President, I am giving this information so that Members would have an idea of how other countries have dealt with this, in order for them to appreciate the impact of this Bill.

Clause 4 of the Bill vests jurisdiction in the courts to grant relief, and it is important to observe that whilst the High Court may make orders with respect to property or maintenance, the jurisdictional limits of the Magistrate's Court remains confined to maintenance matters only.

The heart—if I may say so—of the proposed legislation is contained in Part III of the Bill. Clause 7 specifies that the court can only grant relief if it is satisfied that either the relationship is one that exceeds five years, there is a child arising out of the relationship, or the applicant has made a substantial contribution of the kind specified in clause 10. That is a financial contribution made directly or indirectly to the acquisition or improvement of assets or non-financial contributions in the capacity as a home-maker, housewife, or parent.

Mr. President, this is a very liberal approach as in most jurisdictions, including Barbados, it is the duration of the relationship alone which determines whether or not relief can be granted. This, if I may say so, may lead to injustice

where, for instance, a relationship may have lasted only four years, but a party may have made significant financial contributions towards the purchase of the home and there is the question of what order or what benefit should be made on determination of such a relationship to the party who has made the contribution.

In addition, where there is a child arising out of a relationship, a certain degree of dependency may be imposed upon the person having the care of the child. It was therefore felt by this Government, that in all these cases, the court should be empowered to provide relief so as to prevent financial hardship.

Clause 8(2) gives the court a discretion to allow an application to be made out of time if hardship would be caused either to the cohabitant or a child of the relationship. It gives the court a discretion, notwithstanding the time factor, to intervene in any case of exceptional injustice.

Mr. President, all of the provisions of the Bill are intended to remedy the situation or the consequences so as to avoid economic distress to families when there is a breakdown.

3.55 p.m.

The underlying philosophy of the Bill is to provide a remedy in these circumstances, recognizing that there would be these difficulties and distresses to families when there is a breakdown of such relationships.

Mr. President, clause 9 is interesting, if I may say so, in that it requires the court to make orders that would finally determine the financial relationship between the parties, so as to avoid further proceedings between them. This represents what is known as the "clean break" principle adopted by most countries, as it allows parties to settle their disputes once and for all and to begin new lives.

Clause 10 of the Bill allows the court to take into consideration the same matters that can be considered under the Matrimonial Proceedings and Property Act, in particular, those contributions made in the capacity of homemaker or parent. It is to be noted that the order of the court may relate to the property of either or both of the cohabitants. Orders would, therefore, not be confined to the matrimonial home, and a male cohabitant may become entitled to an interest in property held by his partner.

As we all know, under the existing Matrimonial Proceedings and Property Act, husbands can get maintenance from wives depending on the circumstances. I suppose that was in anticipation of the equality movement in the world, but as it

has turned out, the facts and figures show that really and truly, it is seldom made. But a Bill like this one can also anticipate that there may be circumstances where a male cohabitee would be entitled to an order against the female cohabitee. [*Laughter*] I notice there is also a sigh of relief on this side for that provision.

In clause 10(1)(b) it states:

"...any other contributions, including any contribution made in the capacity of homemaker or parent, made by either of the cohabitants to the welfare of the family constituted by them;"

Before I go further, I would say that like the New South Wales legislation, the court is not directed to consider the financial resources of the parties when making an adjustment to property interests. The order is made simply to prevent injustice from arising and is not based on any other factor but on providing justice to the parties. Even if the applicant has a regular income, the length of the relationship and the financial and non-financial contributions made to the assets would entitle that person to apply for an adjustment of property interest. The way the clause is drafted, if the cohabiting partner does not own any property then no application can be brought.

Clauses 11, 12 and 13 deal with the orders on adjournment, change in circumstances, deferment of order and the effect of death on the application. The maintenance obligation provisions, clauses 14 and 15 of the Bill, make it clear that a cohabitant has no right to maintenance but the court would entertain an application and make an appropriate temporary order only if the applicant is unable to support himself or herself by reasons arising out of the relationship.

Thus, one sees that apart from the property adjustment orders, that in respect of maintenance, although there is no right to maintenance, the court would entertain an application and make an appropriate order if the applicant is unable to support himself or herself for the reasons arising out of the relationship. These clauses are modeled along the New South Wales Act and is similar in many respects to what obtains in Barbados, Queensland, South Australia and to the approach taken in many other jurisdictions.

Maintenance under the new Bill is to be seen in the nature of temporary financial relief until self-sufficiency can be obtained. The philosophy underlying the award of maintenance in these cohabiting relationships is that maintenance is not to be viewed as a lifetime pension, but is to be seen as a temporary solution until self-sufficiency can be obtained. This is the more acceptable approach as women, where this Bill applies, should not be seen as being helpless and

dependent all the time. They must be seen as taking their place as equal partners in all aspects of society including the workplace and workforce. Similarly, where the Bill applies to a man, that kind of philosophy would also apply; it is not a lifetime pension.

Clauses 14 and 15 seek to be a reflection of this principle, and it is felt that the law should be careful not to allow cohabitants, male or female, to lull themselves into a state of dependency by depending on maintenance payments, but should strive as far as possible to maintain their capability for self-support.

Clauses 16—20 are straightforward and deal with such issues as the effect of marriage, death and the duration and modification of the orders.

Clause 21 lists the varieties of orders and the powers conferred on the court which largely reflect the powers conferred under the Matrimonial Proceedings and Property Act and is very similar to what obtains in all other jurisdictions which have legislated for cohabitants.

Part IV of the Bill enables cohabitants to enter into legally binding agreements or contracts, thus affording them the privilege of regulating their own financial affairs. The obvious advantage of legislating for such agreements is that cohabiting parties can settle their own disputes according to the terms of the agreement and not necessarily by litigation. I do not know that would be very popular with lawyers. [*Laughter*]

Mr. President, these agreements would be enforced under the law of contract and can be set aside on the same grounds as any other contract; for instance, if there is undue influence or misrepresentation.

Under this part, any man and woman not married to each other may enter into a cohabitation or separation agreement for the purposes of determining only their interests in or division of property, their maintenance obligations and their children's education and upbringing. Therefore, the agreement should not be related to or affect the rights of property of a legal spouse.

Where a cohabitant is also the legal spouse of another person, his failure to disclose his assets, debts or liabilities when entering into an agreement would entitle the court to set aside that agreement for non-disclosure. In the Queensland legislation, the parties are specifically required to disclose their property, financial resources and liabilities either by statement or affidavit. This may be useful in ensuring that the rights of a third party are not affected by the agreement.

In no jurisdiction in the world has cohabitational relationships been given full legal equivalents with marriage. The policy has been to recognize that the

enforceable by law. It is not the purview of this Government to decide whether people should live together, but it is the responsibility of the law to ensure that

This Bill and the amendments to the Administration of Estate Ordinance and the Wills and Probate Ordinance which are to come before this Senate shortly,

unredressed for too long.

In effect, the Bill seeks to confront the realities of conjugal life in Trinidad

when parties to common-law unions do not recognize their obligations to each other on the termination of these relationships.

these relationships form part of the family life of our nation. When they go well the nation benefits. When there are problems in the family—whether it be a

have adverse effects on the nation. Therefore, it is the responsibility of a government and a parliament in a society like this, to take steps, and for us to

the realities of the injustices which can be caused when these relationships are terminated.

recognize, endorse and enact laws to provide a legal framework for the victims of these relationships to get justice.

Question proposed.

: Mr. President, I start off my contribution this afternoon by saying how happy and privileged I am to be participating in this

This debate affords us an opportunity to look at the whole question of reform, especially as it relates to the family laws of Trinidad and Tobago and it is, indeed, a very significant debate.

4.10 p.m.

Mr. President, I wish to take this opportunity to congratulate all those persons who have been working very hard behind the scenes, especially the members of the Law Commission who have been working on this particular piece of legislation, amongst others. In the hon. Attorney General's presentation, he did indicate that this particular piece of legislation was, in fact, being looked at, I think, since 1994. So we on this side are very happy to see this Government is continuing where we left off, especially in this very important area that involves family life in Trinidad and Tobago.

I indicate on the outset, especially after hearing the hon. Attorney General emphasizing that with respect to this piece of legislation, there is a need to strike a balance, that we on this side are certainly in support of this particular piece of legislation, contrary to what they may go around the country telling people I am sure in the fullness of time—this is a very important piece of legislation and we support it. [*Interruption*] I was merely making a passing reference, especially to last night's events as we await plan B.

Mr. President, I think what is very clear is that there is, in fact, a need to reform our family laws. The hon. Attorney General made mention of several other pieces of legislation that are in the making, especially as they relate to updating and, I suppose, modernizing the Administration of Estates Ordinance and the Wills and Probate Ordinance and so forth, because all these pieces of legislation will eventually have an impact in this particular field. What is more significant is that it is important that we look at this particular area, especially as it relates to children. I know the hon. Attorney General referred to the present laws that are in our statutes that deal with children born out of wedlock and so forth, but I will come to that later.

Mr. President, when I was looking at this Bill, I found myself in a dilemma. To begin with, I was very excited at the contents of the Bill because I remembered my student days at the Cave Hill Campus of the University of the West Indies. I am sorry Sen. Carol Cuffy-Dowlat is not here at present, but certainly, the present Minister of Legal Affairs, I am sure, would endorse what I am saying. In those days when we were at the regional institution, Cave Hill, studying law, one of the areas we paid a lot of attention to—not because it was an examination area but,

indeed, it was a very topical area—is in this aspect of family law and family life in a Caribbean context.

Bill reference is made to cohabitation, but in our days studying this *de facto* spouse. At

Barbados, their family law was enacted in 1982 or thereabouts and it was, in fact, revised in 1985. hen one looks at the Barbados legislation, a copy of which I have here, in their Family Law Act one would actually see a reference in the Act there is a part

In P V of the Act, in another definition section, there is, in fact, a definition

"'union other than marriage' or 'union' means the relationship that is established when a man and a women who, not being married to each other,

cohabited within the year immediately preceding the institution of the proceedings."

over time to take into account this reality that we have to accept in our society today. I think the West Indian situation is even a more—how should I put it—

exists not just in Trinidad and Tobago or in the Caribbean, it exists, I think, in every single society in the world today. The fact that we have recognized there is

As I said, I was in a real dilemma because there are certain convictions that keep on cropping up as you delve deeper and deeper into the development of the *de facto* spouse relationships. Some of the questions that

a question being asked—is the legal institution of marriage serving any useful purpose? Imagine that is how far the discussions have been going as we look at

purpose? Another issue that arises: should any of the legal consequences of marriage be extended to unmarried couples? Even more significant concern, I am

Bill like this would create conflict between legal spouses and *de facto* spouses. I am sure that is an area of concern that would be in the minds of many people.

The reality is, Mr. President, there are thousands of couples who are today not legally married. The hon. Attorney General indicated that there are over 40,000 persons in Trinidad and Tobago who are involved in relationships of this type and there is a need to protect the partners in these types of relationships, and more importantly, the children of such partnerships.

This discussion reminds me of the debate we recently had in the Senate as it related to squatter regularization. Whilst on the one hand we know that over the years the fact of squatting has been an illegal act, the reality is that in our society today, it is, in fact, a reality that we have had to accept and we have been trying to deal with in order to regularize it in an orderly way. I see the same situation existing here with this particular piece of legislation. Indeed, to some, if not to many—I do not know—I am sure it is a welcomed piece of legislation. In order to understand the significance of this Bill, I think it is important that we appreciate or at least have some understanding of the existing law in Trinidad and Tobago as it relates to property matters, maintenance matters and so forth. In all that I have said so far, I keep emphasizing one thing, and that is the dilemma that I have been in, in preparing for this debate. I speak for myself when I say that I do adhere and uphold certain very traditional values, but at the same time I am very mindful of the realities of the time.

Mr. President, in an effort to highlight some aspects of our laws, I think we need to appreciate, or at least to identify the sources of our laws and, indeed, to trace the development of these laws in order to appreciate where we are today. Very briefly—and I am talking here in the context of our family laws in Trinidad and Tobago—we all know that our legal system has been inherited; it is based more or less on the English legal system. In our system, we can discern that our laws are based on cases that have already been decided and, indeed, from statutes that exist in our statute books. One of the things you would discover is that if you look at our statutes, for example, and you look for a definition of the word "marriage", you would have great difficulties in finding a legal definition of it. However, based on our case law system, there is, in fact, a well-known case to any student of family law—in fact, this is the starting point of family law—that was decided since 1866 in England. In that case there is a particular statement that was made by Lord Penzance, who said that marriage is the voluntary union for life of one man and one woman to the exclusion of all others.

Mr. President, when we look at the origins of our laws, we would see that this is a definition we in Trinidad and Tobago have subscribed to from a legal point of

is called “the doctrine of the unity of a husband and wife”. Husbands and wives were deemed to be one. In those early days, it is a fact that women had very little

we inherited. When we go to the statutes now and look at our statute books, we would see that one of the statutes that has had some influence in our system over Under that ct there is a section 17 which is now codified under a more recent statute—I think it was in

the Married Person’s Act. In that old Married Women's Property Act of 1882, it established a limited kind of procedure to deal with property disputes as it related

4.25 p.m.

We see, over the years, in terms of the development of family laws, that in

solemnization and registration of marriages. In 1945, the Hindu Marriage Act which provides for the solemnization and registration of Hindu marriages in

was enacted, which relates to the solemnization of marriage, divorces and their registration. This is found in Chap. 45:02 of our laws. The Hindu Marriage Act is

Perhaps the most significant piece of legislation to be enacted to deal with family matters is the Matrimonial Proceedings and Property Act, which came into

amends the grounds for divorce, nullity and judicial separation; to facilitate reconciliation in matrimonial causes; to regulate matrimonial proceedings; to

connected with the matters aforesaid.

Later on, there was the Married Persons Act, 1970, which consolidated and

and the liabilities of husbands. In this very statute we will find, in Chap. 46:01, the Children’s Act, which relates to the protection of children and young persons;

context of this debate, the Status of Children Act, 1983, Chap. 46:07. The last Act

on this particular statute book is the Family Law (Guardianship of Minors). There is also the Domicile and Maintenance Act of 1981 which defines and regulates the authority of parents as guardians of their minor children whether or not born out of wedlock.

As mentioned just now, the most significant statute is the Matrimonial Proceedings and Property Act, 1971. Some 10 years after that Bill was enacted, there was a seminar hosted jointly by the Law Society of Trinidad and Tobago, as it then was, and the Bar Association. A gentleman from whose tutorship some of us have benefited at the Hugh Wooding Law School—he is now a prominent attorney practising in the courts of Trinidad and Tobago—Mr. Stanley Marcus, delivered a paper which looked at this Matrimonial Proceedings and Property Act since its enactment in 1983. A copy of his paper, which is in the book I hold, gives a historical review of our family laws and points out that much of that Act was based on the United Kingdom's Divorce Reform Act.

It is interesting to note that prior to that Act there was only one ground a person could have relied on to get a divorce, that is adultery. With the enactment of the Matrimonial Proceedings and Property Act, there were several new facts on which one could rely to obtain a divorce, for example, unreasonable behaviour, desertion, two-years' separation with consent and five years' separation. The significance of this Act is that it codifies several matters as they relate to property rights, rights to maintenance and other ancillary relief matters in the event of a marital breakdown. That is especially contained in sections 24 and 26.

An interesting development under this Act is that there is a provision in section 27 of certain guidelines that the courts are required to look at when determining these ancillary relief matters in the event a marriage breaks down. There are matters such as maintenance and rights to property.

A person can apply for a lumpsum settlement for a clean break from the spouse, or for periodic payments. Some of the factors by which the court would be guided are the financial resources of the parties to the marriage, their financial needs and obligations, the standard of living enjoyed by the family before the breakdown of the marriage, the age of each party, the duration of the marriage, the physical and mental disability of either party; and a most significant provision, which was something new in the laws, the provision which deals with contributions made by each of the parties to the welfare of the family, including any contribution made in looking after the home and caring for the family. Sometimes that provision is referred to as the good housewife-keeping provision.

When a marriage breaks down, certain basic issues have to be dealt with. If assets were acquired during the course of the marriage, one would now have to determine who gets what and how much. These are some of the factors which will guide the court in making an appropriate order.

In many circumstances, a husband would have had his name on the deed for the matrimonial home. So the woman who has spent 30 years being married and whose name was not on that legal document, would be in a predicament if the marriage breaks down. These guidelines show that even though a wife remains at home taking care of the children, cooking and cleaning, she too is entitled to a particular share in the matrimonial asset in the event of a breakdown in the marriage.

I have gone into these particular provisions because some of the issues which arise when a marriage breaks down are similar to what could arise in these cohabitational relationships. It has been of tremendous significance in the development of case law in this area of family law. Several landmark decisions have been delivered by the courts over the years on these issues.

Especially in the 1980s, this concept of *de facto* spouses was gaining a certain momentum and that was in large part due to certain decisions delivered by an eminent English jurist, Lord Denning. Lord Denning is a well-known judge who, from the 1930s to 1983, sat on the Bench and delivered landmark judgments that even had an impact on our legal system. He was a judge with a social conscience. It was in this area of *de facto* spouses that many developments took place.

Lord Denning, in several cases which came to him for decision, sought to stretch certain basic decisions that existed to enable someone involved, for a number of years, in a union other than a marriage; who had cohabited with that person, in the event of a breakdown in the relationship, in some of the cases that went before the court of law, Lord Denning had used the concept of trust to afford some rights and protection to a spouse in that situation.

4.35 p.m.

There are certain leading cases in point. There is a case of *Cook v. Head*, for example. Let me just make a brief reference to this case where a *de facto* spouse for a number of years lived with a gentleman. They had acquired a property and had, in fact, constructed a bungalow during the course of this relationship. In the facts of this case, it was said here that the *de facto* spouse did not contribute financially towards the acquisition of the property but, during the construction of

the home, she used a sledge hammer to demolish some old buildings; she filled the wheelbarrow with rubble and hard core and wheeled it up the bank; she worked the cement mixer which was out of order and difficult to work and, based on these contributions, at the end of the day in the judgment, Lord Denning ordered that she had an interest in the property and was therefore entitled to a particular share in that property.

There was also the case of *Eaves v. Neeves* in 1975 and in that case, Lord Denning said that the *de facto* spouse there, stripped the wall paper in the hall; she painted woodwork in the lounge and kitchen; she painted kitchen cabinets; she painted the brick work in front of the house; she broke up the concrete in the front garden; she carried the pieces to a skip; she helped to demolish a shed and put up a new shed and, based on these kinds of contributions by using a trust, Lord Denning ordered that that spouse as well was entitled to a share in the property.

In our own jurisdiction of Trinidad and Tobago, there is a landmark decision that was delivered since 1982 by Justice Sharma who is now in the Court of Appeal. This is the well-known case of the *Ramratie Harrinarine and Rasheed Aziz and Kadar Aziz*. In this case, I see here that the attorney for the plaintiff was Mr. A. Fitzpatrick and the attorney for the defendants was Mrs. L. Maharaj, so I am sure the hon. Attorney General would probably have some idea of the facts in this case. It was a case that concerned an unmarried couple and on the first page, it said:

> "...it shows the tragic circumstances which arise when one of them dies (usually the man) leaving the woman (more often than not with children) in occupation of the house they both shared at the time of his death."

In this case, I think the gentleman had another relationship and had other children and, after many years of cohabiting with this particular woman, when he died his other children came and were claiming an interest in the property. But, over the years of this relationship, the woman who was 57 years old at the time of the case had kept cattle and livestock; she also worked as a labourer at Caroni and, during the course of that relationship, she assisted tremendously in the construction of a home and they itemized the various contributions that were made.

In the judgment of Justice Sharma, he referred to several of the English cases that have dealt with similar kinds of situations involving these common-law relationships and, what is very significant is that in this judgment, Justice Sharma referred to the social realities, in that he made mention of the fact that there are many, many people living in Trinidad and Tobago today who, one would think

are married but, from a legal point of view, because of circumstances of the past,

legally registered.

For example, I am sure in the Hindu community, Sen. Vimala Tota-Maharaj

marriages and, even in the Muslim community, there are marriages which take place—religious ceremonies of marriage—that are not registered. So, in the

those marriages is almost the same, or identical to the status of the parties to the relationship that we are talking about today with this particular piece of

This is what is so significant about this Bill, because it seeks to codify much of these decisions that have been given by the courts over the years, decisions

That is the direction in which the laws have been developing from the court's point of view, from the case law perspective.

one would see that throughout the world, it is almost like a paradox existing in all our societies because, in all countries, I am sure that there are laws enacted in

deal with marriages. That is how the legal systems all over the world operate. But, the reality is that whilst the laws would give an idea of the legal framework for

Twenty years ago we hardly heard things about these kinds of relationships but over the years, it is a more accepted recognition that it is a fact of life and,

we have to accept.

It brings me back to my dilemma because whilst—

Senator, having regard to the time, perhaps we can postpone your dilemma until after tea. We shall resume at quarter past five. We are now

4.45 p.m.: *Sitting suspended.*

Sitting resumed.

Sen. N. Mohammed: Mr. President, as I seek to get out of my dilemma, I want to continue by making reference to a newspaper clipping from the *Express*, page 42, dated June 29, 1997. The headline is "Palimony or pain", and it refers to an actual case that took place in Jamaica, involving the man who is in charge of the Red Stripe Beer company, an 87 year old man. I quote:

> "So far, Helga Stoeckert's legal battle for half her ex-lover's wealth has been all about Helga, who in 1958 left East Germany for Jamaica, where she met and fell in love with the wealthy Paul Geddes, only to be dumped 32 years later for a woman less than half his age.

The story continues"

> "Most of the basic facts will be similar to the ones that came out during the hearing: she was 27 and poor. He was 20 years older and the successful co-manager of Desnoes and Geddes (D&G), brewers of the internationally acclaimed Red Stripe Beer.
>
> She was childless, still is; he had two daughters by his first wife, from whom he was separated at the time."

This is an article of the case that has been going on.

> "After testimony from Stoeckert, who swore that during her years with Geddes she played an active role in his business interests, both locally and internationally, Justice Neville Clarke decided that she should get a sixth of Geddes' possessions as they stood when the relationship ended in 1991."

That decision apparently was appealed and in the course of the hearings, there is a commentary here that:

> "Everyone involved—Geddes, his lawyers, Stoeckert and her lawyers—made it clear that the case wasn't really about palimony, but pain…the pain of being put out of the home where she shacked up with Geddes for 18 years; and the humiliation of seeing the man who for 32 years refused to marry her, turned around and marry a woman half her age within a week of the break-up. Imagine what it must have been like…kicked out in the bitter winter of her years..."

[*Interruption*] Our hon. Minister of Finance says, "that is man."

Mr. President, regrettably, at the end of the day, in fact in the course of the hearing, I think a statement had been made by Mr. Geddes, that eventually she will be the richest corpse in Jamaica, that is to indicate how very heated the

hearings were and I think at the end of the day the court ruled against her and she even had to turn around and pay his cost. That was at the level of the Court of Appeal, a part of the article is cut off because the copying machine did not get it, but I believe that a further appeal had been made to the Privy Council, so the actual outcome is rather worrisome.

I made mention of that case simply to highlight the kind of situations that can arise with these types of relationships; after 32 years of cohabitation, she was kicked out for someone younger at a time when she is in the winter of her life. So if this Bill is seeking to provide some kind of relief to a partner in a relationship like that, I am sure that even those of us who subscribe to those traditional values and institutions as we know them, would agree that it is a piece of legislation that will in some way assist those persons who are in need of protection by the court, because it affords them the opportunity to claim relief in certain circumstances.

I came across a book entitled *Marriage and Cohabitation in Contemporary Societies*, which is an international study that had been done by John Ekeller and Sandford N. Katz; and what is interesting is that there are several articles in this book. I would list some of the titles to show the kind of discussions that had been taking place globally with respect to this issue of cohabitation:

Cohabitation without Marriage in Sweden

Changing Conceptions of the Family and the Reform of Family Law in Finland

Formal Marriage under the Crossfire of Social Change

Lifestyles of Cohabiting Couples and their Impact on Juridical Questions

Marriage and Cohabitation—Cross Cultural Comparisons

The New Marriage and the New Property

Marriage—an Unnecessary Legal Concept?

Supporting the Institution of Marriage in the Republic of Ireland

Ends and Means—the Utility of Marriage as a Legal Institution

The Changing Nature of Marriage

The Relevance of the Australian Experience

Formal Marriage Law and its Underlying Assumptions in Nigeria

Moral Premises of Contemporary Divorce Laws—Western and Eastern Europe and the United States

The Elimination of Fault in Swedish Divorce Laws

Entry into Marriage—Should it be made more Difficult?

The Transformation of Legal Marriage

Through No-Fault Divorce

The list continues and refers to articles from Canada, the United States of America and England. This highlights the fact that throughout the world there is this phenomenon of *de facto* spouses or these cohabiting types of relationships.

5.25 p.m.

This is where, when you look at those articles, you would see the kind of contradictions that arise when you talk about reforming your laws in order to take this reality into account.

This book starts off with a reference to the fact that societies have changed so much that we have moved away from the traditional type of society. Societies around the world are now more industrialized. As a result, family lifestyles have changed. So the traditional family lifestyle that we know of has now shifted to a more individualistic approach, where the nuclear family is the norm. More and more people, young people in particular, are shying away from committing themselves to a marriage, preferring to be involved in these living-in types of relationships. This reality is prevalent, not just in Trinidad and Tobago and in the West Indies, but throughout the world. This matter confronts reformers of the law, as it relates to family laws, and so forth, throughout the world.

The hon. Attorney General in his contribution made mention of the fact that over the years there have been certain changes in our laws that suggest a growing recognition or acknowledgment of the need to cater for parties involved in a cohabitational type of relationship. He did point out that since 1981 there has been a Succession Act—yes, an Act was passed.

I remember recently we were discussing an appropriate definition for "spouse". The Succession Act in fact sets out a very lengthy definition. I believe the Act provides for parties who were cohabiting for a period of seven years; then they will be entitled to make certain types of applications relating to estate matters, upon the death of a party, in a relationship like that.

Mr. President, this brings me to the Bill we are looking at. To begin with, I am a bit concerned about the definition used in clause 2, as it relates to cohabitational relationships. I am just saying that I feel we ought to look at this matter again when we are looking at the evolution of the laws in Trinidad and Tobago.

I read here:

> "'cohabitational relationship' means the relationship between cohabitants, who not being married to each other are living or have lived together as husband and wife on a bona fide domestic basis;"

I certainly would like the hon. Attorney General to explain the rationale behind this definition. I am not saying that it may not be a good definition. It is just that when you look at the developments in the law, you would see that in referring to these types of relationships what is looked at at times is the actual relationship of dependency between the parties and the time—

Mr. President: Hon. Senators, the speaking time of the Senator has expired.

Motion made, That the hon. Senator's speaking time be extended by 15 minutes. *[Sen. D. Montano]*

Question put and agreed to.

Sen. N. Mohammed: Thank you very much, Mr. President, and thank you to all my colleagues.

I refer to the Barbados Family Law Act which talks about a union other than marriage and they define it as:

> "A relationship that is established when a man and a woman who not being married to each other have cohabited continuously for a period of five years or more".

So it puts a particular kind of framework within which you can deem persons to be involved in that kind of relationship. What if a person is involved just for a few months with somebody—just happens to have a 'mistress' outside—does that mean that he or she could be regarded as being on a "bonafide domestic basis"? We can "shack up" for a year in an apartment.

I would really like to know the rationale for using this definition because it has emerged in this Bill, and I know recently we were dealing with another legislation and this particular definition was in fact used. I feel we should try to be consistent, because when we look at the Succession Act we would see that it refers to a single man and a single woman; I think the relationship dependency for

a period of time is also set out there. So I am suggesting that this matter be looked at.

Mr. President, clause 7 of the Bill says:

"The court shall not make an order under section 6 unless it is satisfied that—

(a) the applicant lived in a cohabitational relationship with the respondent for a period of not less than five years;".

And it goes on to refer to a child arising out of that relationship, contributions made, and so forth. The Attorney General indicated that this is the most significant part of this Bill.

I am sure other Senators will refer to the qualification "of a period of not less than five years;" but the fact of the matter is that there is even a different point of view. Should you use time or should you establish as well that link, that relationship of dependency?

Then reference was made to clause 13 that deals with the death of a partner. I am very relieved to hear the hon. Attorney General mention that the administration of estate laws will be updated because this was a concern which I had, looking at the Bill, in terms of whether it would take into account the position of a party who has died, just as the case that Justice Sharma had given his judgment on. So I am glad to know that something is happening with that.

I see Part IV deals with these cohabitation and separation agreements. I wonder about some of these agreements. It is as though a whole relationship is being based now on purely economic matters and before you enter into it you will set out the terms and conditions in black and white. I wonder if this may not even encourage a breakup situation down the line. I do not know what these agreements would look like; it would really be interesting if perhaps the hon. Attorney General had one.

I came across a separation agreement referred to in this book; I think it is from Philadelphia. It was quite amusing reading the terms and conditions of that particular agreement. I am sure the courts will have to deal with this matter in the fullness of time and indeed lawyers will get some additional work in having to draft these kinds of agreements. I wish we had more guidelines.

Mr. President, there are so many levels of contradiction that arise when you look at this kind of legislation because we know that legally our systems talk about marriages and here we are seeking to reform our laws to give recognition to

these unions other than marriage. In our particular context, we have to take note—I stand here and speak as a member of the Muslim community in Trinidad and Tobago. I know that legislation of this type is going to impact tremendously on the Muslim community, for the simple reason that under the Muslim laws and practices you have ceremonies of marriages that are carried out, known as *nikha* marriages, a religious ceremony of marriage. These marriages are not registered under our law because very often they cannot be registered because in Trinidad and Tobago, you can only have one legally registered marriage. A debate has taken place in the Muslim community as to whether *nikha* marriages actually constitute a criminal offence: bigamy. It has been debated. I know some very prominent judges have participated in discussions on this issue.

It is a rather contentious matter because there are some within the community who misconstrue a particular verse in the *Holy Koran.* In that verse it does, in fact, provide a kind of permission, in very extreme circumstances, where it says that you may marry more than one person. However, if you fear that an injustice will be done then marry one. There are different interpretations given to that verse.

5.35 p.m.

I feel strongly that was a mere permission in very exceptional circumstances but now some people carry out this permission as though it is a Koranic injunction. There are some places in Trinidad and Tobago where you may see a man with more than one wife living right around, sometimes even in the same house.

Recently I have been involved in a case, fighting for the custody of two children belonging to a man who *nickered* with a woman and who had three other wives and wanted them all to live in the same house with 17 children. He was sending them all to Egypt and I had to go to court to fight for the custody of these children. It is a reality we have to deal with. Therefore, legislation of this type is certainly going to have an impact in terms of the Muslim community in Trinidad and Tobago. For some it may be welcome and for others it would not be. Particularly as the majority of people, I think, subscribe to this concept of a monogamous relationship.

I know of few women who, perhaps, would not suffer an injustice if their spouse has another relationship. That injustice can be emotionally and otherwise. In some instances this thing is being practised to such an extent that now there are some family units where they actually say Monday, Wednesday and Friday I will be here and Tuesday, Thursday and Saturday I am there because they are trying to

be equitable in the circumstances. This is a fact of life, something that is existing in our society. For those men, thank God they have new products on the market. I am sure they will have to be very healthy, indeed.

Coming back to this particular piece of legislation, I just want to go back to some of the burning issues that arise when we look at this kind of legislation. When I say burning issues, they are just questions and they are: whether the legal institution of marriage serves any purpose; should any legal consequences of marriage be extended to unmarried cohabiting couples; and would this Bill create conflict between legal spouses and common law spouses?

On this note, Mr. President, I certainly wish to state that I feel in our society today where we have so many burning problems, where crime is one of the most pressing of problems in our society—not too long ago I, myself, was a victim of crime and when I saw the youthfulness of those persons who perpetrated that crime it just brought home to me that really, when we talk about crime, apart from dealing with the death penalty issue, that we need to approach this in a holistic way and we need to go back to some very basic values in the context of improving on our family relationships and putting our houses in order. Whether in a cohabiting or legally married family it is said that a family that prays together stays together and if you create that kind of environment in the homes you know that your children will be well rounded citizens of the country who will desist from the vices that we are exposed to in our society.

I want to wind up my contribution by making that call for everybody in Trinidad and Tobago to go back to basics and let us try to restore the dignity that is required in our family lifestyles and relationships. It is not economic matters that count. Marriage is prescribed under natural laws. The fact of the matter is that in a marriage, which is deemed to be really a contract, there are certain basic things that go with it: love and kindness to each other that help make people better citizens of a country.

I wish to wind up by reiterating what the hon. Attorney General said when he stated there is need to do balancing act. This Bill is a welcome piece of legislation because it will certainly try to regularize or afford some relief to persons who are in relationships like these and who are in need of help. Thank God that under the existing laws of the land children are provided for to a large extent because there is the Status of Children Act which equates the status of a legitimate child to that of an illegitimate child.

This Bill seeks to give protection to parties, be it the man or woman. I see it as a very positive development in terms of updating our laws and keeping up with the times and accepting the fact that times have changed and there are certain realities that we have to deal with.

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

Sen. Diana Mahabir-Wyatt: Mr. President, since this is the first time I have had an opportunity to speak since you returned, could I just say how happy I am that you have come back to Trinidad and I must admit that I have a totally new appreciation of the difficulties of your job and the graciousness with which you deal with it. I also have a very new appreciation of the wonderful support that the staff of the Parliament provides to the Presiding Officer and I would like to comment on that. *[Desk thumping]* It was a real learning experience for me.

If you would allow me a moment, one of the things that happened to me was that I realized what enormous political sophistication people in Trinidad and Tobago have. When I talk about people, I mean people like nuns in a convent, pavement philosophers, people who sell newspapers, community workers, the university of taxi drivers, receptionists, telephone operators. The comments that I think all of us received—we often think that nobody really cares about what happens in the Senate or knows what goes on, but when people are faced with it, not only do they know what is going on but they show that they care passionately and the level of passionate caring in this country was very impressive. I am very happy to have you back and have you back looking so well. We hope you will not go away again for a long time.

Mr. President, in relation to the Bill that is before us, I do not want to be lengthy. I think we all support this Bill. I think it is important and I am eternally grateful to the Government for bringing it before us. The comments that I have to make—and I want to talk to the amendments that I have proposed as I go along—have to do with a realization of the nature of our own culture in relation to cohabitation. I realize, from what the hon. Attorney General has said, that a lot of research was done into various Commonwealth laws which dealt with the same subject. I respect the amount and depth of that research.

One of the things which is, perhaps, different in Trinidad and Tobago than the other countries is one of the things Sen. Mohammed mentioned when she talked about the *nikha* relationships in the Muslim community. As any student of sociology will tell you, what is defined as "family" has changed considerably in the world since the 1800s when the concept of "family" went into our family law and our various family legislation. In Trinidad and Tobago what "family"

implies—and this is coming up in other legislation dealing with social issues—is people living in, as this Bill mentions, “bone fide domestic relations” or *bone fide* family situations where there is a mutual dependency amongst the people in the family.

In Trinidad and Tobago, this does not necessarily mean a man and woman living as husband and wife. It could be a brother and sister who are bringing up his children and her children together. It could be two sisters living together bringing up their children. We all have people like this in our families. We may have a mother and a son who are living together and both work and contribute to the household. There are these types of relationships in the Muslim, Hindu, and Christian communities all over and, as I am sure that those of us who have done social work will tell you, this is more and more common.

The purpose of this Bill is to confer on parties who cohabit, the right to apply for an adjustment of property interests. This applies just as much to a brother and sister who are living together with or without either or both of their children and contributing to the property that the whole family lives in. If one of those parties decide after a period of 10 years when they have been contributing to the property, to leave and get married, or the one in whose name the property is leaves, there can be a definite conflict in relation to dealing with the property interests for which this Bill is passed. Then you would have to get into some sort of a relationship which talks about a separation agreement.

I have proposed that we change the definition of cohabitation to one which is just as gender neutral as the Minister mentioned, because I realize that it is part of our public policy now to be gender neutral. We do not have to be gender blind if we are being gender neutral, to define cohabitants as persons who are living or have lived in a cohabitational relationship.

5.50 p.m.

I am not arguing about marriage or common-law unions between man and woman. I have left "cohabitational relationships" to include those kinds of relationships where you have people who are living together as husband and wife on a *bona fide* domestic basis. I would add to that other persons who have lived together as a family on a *bona fide* domestic basis, and leave it up to the courts to decide what is a "bona fide domestic basis".

As soon as anybody sees this, they immediately think that it implies homosexual relationships. I do not know why we are so obsessed with sex. I have to listen to the television and the nonsense going on in the United States—you

would think that they would have learned a lesson to get off that track. I do not know why people immediately jump onto homosexual relationships, or why people are so frightened of this, that they refuse to even listen to what, in fact, is a genuine cultural phenomenon in Trinidad and Tobago, that is, people who live together as a family without having any kind of sexual relationship. They are just as much a family legally in other countries for social legislation as any other kind of family. It does not depend on the nature of the sexual relationship to make a family.

I agreed with everything Sen. Mohammed said about families and the importance of having parents bring up children. I think it is a very important thing, but there are situations where there may be a brother and sister or cousins living together and it is as though we cannot think of any other situation where people live in a state of mutual dependency, other than involving a male or female.

This brings me to my annual attack on the gender bias inherent in law, because Commonwealth law traditionally regarded women as property—which, thank the Lord, we do not anymore—but the attitude is still informing the law, whereby a man living by himself is a person, or woman even, living by herself is a person, but the only way the law could contemplate two people living together is if it is a man or a woman and they have to be living in a spousal relationship. This is not necessarily so.

It is like in the National Insurance Act, which has yet to be amended, where the same attitude that the Attorney General spoke about—the woman is a helpless creature—still obtains, and where, if a man is married to a woman or is a *de facto* spouse and he dies, she will continue to get his pension for a certain period or until she remarries, if she is over the age of 55, or for a certain period until she gets married, as though it is her obligation to get married so some man can support her.

The opposite does not occur. It does not assume if a woman works all her life and contributes, that her husband will automatically get her pension after she dies. That is beside the point of this law, but I am just saying that those attitudes still exist in terms of the law.

We saw it in the squatters legislation—and I could not comment because I was in the Chair, and it just about drove me crazy—where when we got to that point where we were talking about two people squatting who were in a spousal

relationship, it meant a man and a woman as though you could not contemplate two women living together in a squatting relationship.

We have them leaving the shelter all the time. We have had women who lived in the Shelter for Battered and Abused Women and Children and when they leave they are usually very broke. They do not have jobs or money and they have children to look after. Very often they go and squat, two or three of them live together; one looks after the children, the other goes out to work, or they work in shifts. This legislation will not cover them, because everybody assumes that you have to be in a spousal relationship to be a family. That is not so. A spousal relationship is a wonderful thing for children to experience and grow up with, but it is not essential in terms of what a family is.

There are many situations that I could quote and I am sure you can as well, in every village in Trinidad and Tobago. In Cumuto, there are two people who have lived together for 20 years. There is a piece of land in the name of one of them, one of them has a fairly respectable income-earning job, and one stays home, looks after the livestock, plants up and so forth. But both of them contribute substantially to that property. At the end of 20 years the one who stayed at home decides that he or she—and I am deliberately not giving the gender of these people—wants to, all of a sudden, sell the property, go off and get married, this leaves the other one—because they are not in a spousal relationship—high and dry, and there is no redress under the Cohabitation Relationships Bill, even as we are looking at it.

I think this Bill, in fact, contemplates that kind of broadened definition of family, because clause 10(b)—and I compliment the Government on this—states:

> "any other contributions, including any contribution made in the capacity of homemaker or parent, made by either of the cohabitants to the welfare of the family constituted by them;"

We are talking about “family” here, and the definition of family has changed considerably in the world since the 18th Century definition, with which Sen. Mohammed started off her contribution, that underlies this whole spousal relationship.

I know that the definition that I have suggested would be broad, but it is up to the court to decide what a *bona fide* family relationship is. It is unlikely that the courts in this country are so misguided or wicked that they are going to define a

bona fide family relationship as something which is pernicious, immoral or illegal.

Mr. President, I agree that people in common-law relationships need protection, and above all the interest of the children need to be protected. I have moved an amendment to clause 15(1)(a) because I can see no reason why the maintenance for children living with this family in the cohabitational relationship should cease when they are 12 years old. Surely it should be when the child reaches the age of majority.

Under the laws of Trinidad and Tobago Chap. 46:08, Family Law (Guardianship of Minors, Domicile and Maintenance) Act, the child is taken care of until the age of majority, which in this case is 18 years. There are special provisions if you want to go past that. I do not know why children should be discriminated against under this Bill, and I do not agree with it. Therefore, I have moved an amendment where in both cases, whether the child is physically or mentally disabled or not, the maintenance should continue until the child is 18 years old.

The last amendment I have proposed is to clause 19 which deals with the duration of maintenance orders. I would explain why I have done this. While I understand the Minister's point that we do not want this to be a life-long pension, there are a number of situations where there are people cohabiting for many years and you get to the position—and Sen. Mohammed brought such a quote from a newspaper about people who have lived together for about 30 years—where all of a sudden, the bright and sprightly gentleman who is in his sixties leaves his common-law wife who is also in her sixties, and goes off with someone half her age, leaving her unable to get a job because she may be over 65 or between 60 and 65. To limit the maintenance order to three years on the grounds that she should be able to get herself a job, is unfair and unrealistic.

I think that the period for the maintenance order should be determined by the courts. Our courts are reasonable and have much experience in this, and it should be left up to them to determine how long the maintenance order would last.

To bring this full circle, that if we are genuine in drafting legislation that is going to take care of problems which, after all, relate to the family—in his introduction the Minister specifically spoke about family law and legislation—we should be a little more liberal in our definition of what a family is. Every other country in the world has come to the realization, and every social work and sociology department in every university has come to the understanding that

family cannot be defined along a narrow basis any longer. If people are worried about homosexual unions, it would be left up to the courts to decide what is a *bona fide* domestic relationship. I do not think that we need to worry about that.

It is specious, to say the least, to deny the very common family relationships that exist in Trinidad and Tobago, on those grounds. As I said before, I am all for the institution of marriage and the protection of children. I have to be, having been married twice myself and I have four children, three stepchildren, three foster, five children-in-law and 17 grandchildren. I am very much a family oriented person. [*Laughter*] I believe strongly in the protection of the family and that families should take care of each other.

Something that the Minister of Finance is always telling us is that we must learn to shoulder our own responsibilities, but it should be as a family. Families have duties to each other and to the people with whom they live in a genuine family relationship. All I am asking is that we recognize this for what it is and not allow people to negate that, because the law is using an 18th century concept to look at what is a very 20th century problem.

We all know of situations where mothers and their sons or daughters run into problems with property, because although they had been living together for many years and contributing to the property, when one of them decides at some stage to break up that relationship, they get into many battles over what should be done. That is a cohabitational relationship. It gives a lot of work to lawyers, but our responsibility is to try to avoid that and to work for the unity of the family or family unity, however that is defined.

Thank you.

6.05 p.m.

Sen. Cynthia Alfred: Mr. President, as mentioned by the Leader of the Opposition, we do support this Bill and we think it is a good thing that a bill of this nature has come to this Senate.

However, very briefly, I have certain points to raise. One of them concerns clause 2(1). There is stress on the words "*bona fide* domestic basis**".** "*Bona fide*" means real or genuine. I agree with the submission of Sen. Mahabir-Wyatt that it does not necessarily have to be a man and a woman and I take into consideration what she mentioned about the family unit. Seeing that we are talking about a *bona fide* domestic relationship, in clause 7 where it says:

"The court shall not make an order under section 6 unless it is satisfied that—

(a) the applicant lived...for a period of not less than five years;"

I suggest that instead of five years, it be three years.

The reason is that a man and woman may live together for four years and then the man dies. If the court is to make an order, it would say that they have not lived together for five years. To me, three years is a reasonable time because in those three years, many commitments would have been made.

I have the distinct impression that clause 14 was drafted by men. It says:

"Except as otherwise provided by this Act, one cohabitant is not liable to maintain the other cohabitant and a cohabitant is not entitled to claim maintenance from the other."

I see a bit of male chauvinism here. It might not necessarily be so, but it leaves a loophole.

If two persons are in a cohabitant relationship, there should be some sort of commitment. If one says that he is not liable to maintain the other, and the other is not entitled to claim maintenance, that is too great a loophole. As we are talking gender neutral, it can go either way. This should be looked at again. Perhaps it can be removed altogether. Once persons live together, there should be certain commitments to each other.

Clause 17(1) says:

"The court may not make a maintenance order in favour of a cohabitant who has entered into a subsequent cohabitational relationship or has married or remarried."

Suppose a man and woman lived together for 25 years. At the end of that time, as in one of the cases brought by Sen. Nafeesa Mohammed, the man decides that he does not want the woman any longer and she is practically thrown out. She enters a new relationship in desperation because she looked to the right and to the left and there was no one to help. We have to take the age of the person into consideration. She felt that the only thing she could do was to go with somebody else who would look after her or she might find herself in a real pickle.

The hon. Attorney General mentioned that maintenance is not a lifetime pension. A man or woman must not depend on the other to the exclusion of a job for himself or herself. This is the ideal position, but it is not always practical.

Therefore, I suggest that the question of entering a subsequent cohabitational relationship be looked at again.

Subclause (2) naturally follows:

> "A maintenance order shall cease to have effect on the marriage or remarriage of the cohabitant in whose favour the order was made."

If we delete or rearrange clause 17(1), then we have to take (2) into consideration.

With respect to clause 19, I agree with the amendment posed by Sen. Mahabir-Wyatt. Clause 19 states:

> "(1) A maintenance order may apply for such period as may be determined by the court..."

It then goes on to qualify that statement by saying:

> "...but shall not exceed three years from the date on which the order was made."

I think that a maintenance order may apply for such period as may be determined by the court, full stop. The term of three years should not really satisfy any particular condition.

Sen. Nafeesa Mohammed asked whether there could be areas of conflict between legal spouses and cohabitational relationships. I put one big, yes. I have known of instances of men who were married but not divorced, for whatever reason, who have lived with women who were perhaps single for years and died without making a will. Immediately upon the death of the man, the legal wife descends upon the house and seizes most of the possessions because the man was her husband. Something should be put in this legislation to prevent that sort of action. I do not know if it will be addressed under clause 30(1):

> "The provisions of a cohabitation or separation agreement relating to the payment of periodic maintenance, shall on the death of the cohabitant who is required to make those payments, be unenforceable against the estate of the deceased."

Maybe we need to have some sort of legislation which would restrain or restrict the legal spouse.

Those are the points I would like to make. We support this legislation and we hope that, in the final analysis, justice will be done to those persons who, for reasons of their own, decide to enter this type of relationship.

I see the question of children is well taken care of and I applaud that decision. We know that so very often the children are the ones who suffer.

6.15 p.m.

Sen. Rev. Daniel Teelucksingh: Mr. President, just a few brief remarks. First of all, I want to begin with one of the possible fears of the hon. Attorney General about how this Bill will be interpreted. In fact, it is being interpreted already, in that, our society has seen this piece of legislation and people are responding. They wonder how it will affect our understanding of home and family life in Trinidad and Tobago and, possibly what is best for the home and family in our nation. His concern is a very real and genuine one, one which I also have and, at the same time, there is this kind of sympathy that we have.

As Sen. Mohammed mentioned, last week we looked at the regularizing of squatters and I wonder if common-law living is matrimonial squatting, and if we do not have to look at the Bill with the same kind of sympathy that we were forced to come up with on the last day. This is how I see it. Sen. Mohammed is quite right in reminding us of something there.

This Bill really touches on a very sensitive social nerve, since cohabitational relationships are very much a part of our communal story. It is a way of life in Trinidad and Tobago and I am not surprised when the hon. Attorney General mentioned 40,000 or so families in this country who live in these cohabitational relationships, arrangements and agreements. I have a feeling there might be many more. This Bill touches so many of us and I know there are many cases that are exemplary in this kind of spousal relationships. This is how I see the Bill; it deals with spouses.

I know of a couple who lived common-law for about 50 years and must have been the number one couple in our little village. By the way, it is for their sake that I will support a Bill like this. We have to be sympathetic with cases like those because they are very much a part of our experience and a part of our society. Yet, I tell myself that we cannot ignore that in our country there are many other relationships upon which we must frown and that is where the problem crops up.

This is where our little doubts and maybe the unease of the hon. Attorney General and others seem to evolve. We have our sons and daughters before us; they are young people; we have our children in the schools and maybe for their sake, we must ask: Are we searching for a definition of marriage? We know that

it is not merely the vows in the church—I am being very liberal here—the temple or the mosque that make the marriage; it is not really the vows that they take in the presence of their priest; it is not the civil ceremony in the Red House that makes the marriage and it is not the legal certificate from the Registrar General's Department that makes the marriage. But, we have to find a definition and a comfortable one, too, about marriage.

Marriage is a bond. There has to be a standard. There must be a standard. Marriage is a covenant in which two persons—and this Bill is about spousal relationships—have committed themselves to each other, to be faithful to each other through all the changing fortunes of that relationship. Tell me of another standard. I can do no other but stand by this and by us as a Parliament supporting this as the ideal and the best.

There are certain general features of cohabitational relationships that will cause us some concern and there are sufficient cases which illustrate that, generally speaking, common-law relationships in Trinidad and Tobago, as we know them, are not the best formula for home and family life. It cannot be, notwithstanding the good and exemplary cases that we know of very well. The Bill, therefore, must never send signals that all cohabitational relationships are okay. No. It seems as though there must be types of spousal relations, some with little commitment while the others that are unshakeable.

I want to remind you, Mr. President, of some of the features that become the regular kind of cohabitational relationships we have in this society that are causing so much concern. One of those features is that common-law living for several couples in Trinidad and Tobago carry a limited commitment. This cannot be doubted. We know this. They are our neighbours, maybe they are our family, too. There is no security of tenure, to use a term in the last Bill. The Bill at least attempts to deal with something like that in the property sharing clauses.

But this is a feature of that kind of spousal relationship in Trinidad and Tobago, a fluidity in relationships which is not binding. Couples could separate at any time, but that is not the ideal for marriage and home and family life in Trinidad and Tobago. We have suffered enough. This feature of many cohabitational relationships is one of instability, a looseness in man/woman relationships, a looseness where responsibility is sidelined and we are suffering because of that.

I want to add, further, that there are examples in our community of common-law living where, it seems as though there is this agreement based on an

experiment. It is a marriage that is based on experimental relations. It is not to be a trial and, yet, this is what we are seeing, with no strings attached. It is the kind of "shacking up" syndrome and I wonder if we are going to tell this to our sons and daughters and to what extent we are going to teach and preach this to sixth formers and teenagers. Is this good for Trinidad and Tobago? We have a social dilemma that we have to handle—Government—a social dilemma where these relationships seem to dissolve so quickly. Just as soon as they get into it, they get out of it although there might be children.

Another feature is that these cohabitational relationships—I am not guessing; we know. I say they belong to us; they are our neighbours and maybe in our family, too—are the result sometimes of adultery, infidelity and loose living. This feature is the result of an unhealthy series of multiple partners in the story of one's personal love life and one wonders if this is the best for our society. How good are these kinds of relations for social stability and the future of the institution of the family, particularly the nurturing of children?

Mr. President, cohabitational living, as we know it—I am generalizing—is not a good model for the future family in Trinidad and Tobago and we certainly need a better standard of family life. We certainly need a better one. We certainly need a better model for individual morality when it comes to man/woman relationship. We must find it, otherwise we are in serious trouble.

The abandonment of children is something that is plaguing this society and we have to safeguard our community. We are suffering now. Did we read recently of about 10 or 11 young boys—look at the ages, between 15 and 18—who are in the Youth Training Centre? They are children who moved out the wire gauze from their little prison, young children who had to escape and run because they had been imprisoned in a different kind of home.

We have studied this over the years, looking at the whole question of youth in crime and we realize that so many of them come from single-parent homes, from broken families. Something we have to look at and ask about is the relationship of the parents who have been in this kind of in and out arrangements in common-law living, cohabitational relationships.

I will support one amendment of Sen. Diana Mahabir-Wyatt at clause 15, which is that the maintenance arrangement should not stop at age 12. It must go on to maybe 16 or 18, in harmony with separation and maintenance legislation that we have. This is one amendment that I am strongly supporting. There is need for spouses to be committed to the maintenance of their children and for a long

time, too. I am surprised that the people who drafted this Bill only stopped at age 12. That is the critical age. Fathers and mothers should be responsible for the material, physical welfare and maintenance of their children, especially during that critical age. That is one amendment that I am surely supporting.

I close by saying that I have a feeling that all of us will support this Bill because 40,000 families are expecting us to speak on their behalf and to assist them because they are suffering.

To summarize, these concerns of mine are merely intended to emphasize fidelity in the man/woman relationship, whether it is the common-law relationship, which is important. I cannot see how we could be against it but in that common-law relationship, fidelity is very important whether it is done there in the loose kind of arrangement, or it is done at the Red House downstairs, fidelity is important and parents definitely must be responsible for the nurture and welfare of the children and, finally, whatever we do—I know this seems to be an *ad hoc* kind of arrangement. We are under pressure.

As I was saying on the last day, this, too, falls under the genre of crisis legislation. This is a piece of crisis legislation but we definitely must emphasize, after passing this Bill, or put in the appendix to the Bill to let the world and all our people see that the home and family, as the nation's premier institution, must never be undermined in any way by a piece of legislation such as this one.

I thank you very much, Sir.

TOBAGO HOUSE OF ASSEMBLY MEMBERS (PRESENCE OF)

Mr. President: Hon. Members, I acknowledge the presence in this Senate of the Chief Secretary of the Tobago House of Assembly, Mr. Hochoy Charles; Mr. Allan Richards, Chief Administrator; and Dr. Vanus James, Chairman, Policy Research and Development.

COHABITATIONAL RELATIONSHIPS BILL

Sen. Prof. Kenneth Ramchand: Mr. President, this is a very interesting Bill

Bill and I am glad for the opportunity to say a few words on it.

Let me begin with the least controversial part which is Part IV, the part for which I commend the Government—Co-habitation and Separation Agreements. It seems to me that Part IV recognizes that in modern societies, many couples come together in a very calm, rational and considered way; they have seen bad

marriages, broken relationships and the economic consequences of some of these relationships and they sit and say, “Listen, let us make an assessment of what each of us has and if we are going to live together, let us make sure that if we break up, there is no long contention afterwards.”

6.30 p.m.

And although I can see that these kinds of agreements and these kinds of relationships are not a church marriage, they are not a legal marriage as we call it, nevertheless, they are happening more and more everyday, and therefore the duty of the legislators is to make sure that people do not offend one another's rights, or take away one another's rights. The duty of the legislator is not to dictate to people that they must go into this kind of relationship or that kind of relationship. It is to say you are going into such and such kind of relationship and we are going to legislate to protect the innocent and to make sure nobody is victimized.

Mr. President, I just want to commend the Government on Part IV. When I first saw the Bill, I wondered why it was not called the common-law marriage bill. What is the difference between a cohabitational relationship and a common law marriage? And the difference is, if you call it a cohabitational relationship you are going to allow Sen. Teelucksingh to come and talk about "shacking up", because the connotation of the cohabitational relationship is the "shacking up" thing.

Whereas, if you call it the common-law marriage bill, you are saying that there are different kinds of marriages, and as in the example quoted by Sen. Teelucksingh of the couple he knew who lived together in common-law for a very long period these relationships can be just as binding as the ones we call legal marriage.

Now, there is another reason I wanted it to be called the common-law marriage bill—although the Attorney General said that was not his intention. He said, first of all, this Bill does not intend to interfere with the rights of legal spouses. He says that this Bill is not to equate marital unions with common-law relationships, this bill is not to legitimize common-law marriage.

Now, I am a very contrary man. When he says that nobody in the world has equated or has legitimized common-law marriage entirely, being a “Trini”, I say, “well we could be the first and the only”. What is wrong in doing it? Why could we not legitimize common-law marriage since common-law marriage is such a

fact of our society, and is such a historical fact in our society. What is wrong in legitimizing common-law marriage?

So, although the Attorney General has said it is not his intention to do so. I would say to him perhaps it should be his intention to do so. One advantage that would come out of it is that if a common-law marriage is designated a marriage, then one person cannot have a so-called legal marriage and a common-law marriage, he would be a bigamist.

Then, the problem that Sen. Nafeesa Mohammed was talking about would disappear. I cannot say I have a legal wife and I have three of them out there who are not my legal wives. The society is saying that if you have this kind of relationship with number two and number three you are a trigamist. You are breaking the law. You cannot participate in legal marriage and common-law marriage at the same time. It seems to me, that would clear up many legal difficulties and a lot of confusion. Although one person cannot participate in the two kinds of marriages, the two systems may coexist.

I may choose to live a common-law marriage and that is just as binding as the legal marriage that you may choose to enter into.

Mr. President, there is another point that has struck me and has been striking me as a reader of books and as a person who listens to peoples, troubles, and who have trouble of my own, of course, over the years, that the greatest defenders of marriages, are really defenders of family. We have yoked the two. If you are in favour of family you have to be in favour of legal marriage; and as Sen. Diana Mahabir-Wyatt was arguing or suggesting, there are many kinds of relationships where people live together, where legal marriage does not exist but where a serious family has been constituted. We know many times a fellow would say, "I cannot live with that 'b', but I am staying with her for the children, I am staying with her for the family".

There are many women who would like to leave a marriage, but say, "I will put up with some of the difficulties of the marriage because I have two lovely children and sometimes my husband behaves okay". People stay together not for the marriage, but for the family.

So, let us not lose sight of the fact that what is really important to us, is that family unit, and we must be open-minded enough to wonder whether you can preserve the family unit, even if you did not have legal marriage; and my opinion is that you can. I am not defending legal marriage *per se,* I am defending a relationship that permits a couple to form a family.

Therefore, I do not feel there is anything impious in saying that a common-law marriage should be given the legal status of a marriage because it can produce the same kind of commitment, the same kind of bonding and the same kind of family life as legal marriage. It is just two different systems and the second one, the common-law marriage, is the system that this society is operating for many years.

I was a bastard until age 18. My parents were not married. They only got married when I had to go to university. I did not feel that it did me any harm. They had a common-law marriage for quite a long time, but because the law discriminated against common-law marriages, and against the children of common-law marriages, many people went and did a legal marriage; and they were quite happy to go along and have a wonderful warm and loving family in the so-called common-law marriage.

Mr. President, I am wondering whether you would not like to go the full distance and recognize the possibilities in the common-law marriage. But the Attorney General has already said that is not his intention. Still, I had to say what my thinking was on the subject.

I would like to go now to the amendments I am proposing. Firstly, with respect to clause 14, if you are saying as the Attorney General has said, that you do not want people to be financially disadvantaged “not suffer any financial disadvantage”, why deny the general right to maintenance? So if you wish not to inflict financial disadvantage then I feel the logic of that wish is to delete clause 14 and substitute my amendment:

> "In a cohabitational relationship as defined the liability of one cohabitant to maintain the other cohabitant and the entitlement of one cohabitant to claim maintenance from the other shall be the same in every respect as in a legal marriage relationship".

If you want these common-law marriages to be more bonding than they are, then give them that. It follows—if that amendment is accepted, you would have to delete the caption.

Clause 15(1)(a), Mr. President, which says that you get the maintenance in respect of a child who is under the age of 12 years. Why is 12 such a golden number? This seems to me to be very arbitrary. In other relationships in the legal marriage it is 16 or 18. I thought it was 16 and that is why in my amendment I

proposed 16. Perhaps Sen. Diana Mahabir-Wyatt can tell me which is the correct one for legal marriage.

Sen. Mahabir-Wyatt: It is 18.

Sen. Prof. K. Ramchand: Well then, if it is 18, I would change my amendment from 16 to 18, and fully support her proposal.

In Clause 19(1), Mr. President—

> "A maintenance order may apply for such period as may be determined by the court, but shall not exceed three years from the date on which the order was made".

The absurdity of that can be seen when you look at 15(b)—

> "That the applicant's earning capacity has been adversely affected... and in the opinion of the court a maintenance order would increase the applicant's earning capacity by enabling the applicant to undertake a course or programme of training or education".

6.40 p.m.

So this sixty-five-year-old woman who has been in a common-law relationship with somebody; or cohabitational, for let us say 30 years, finds that the man is leaving her. She must go and ask Sen. Kuei Tung to lend her money to buy a computer, take a computer course at home, and then support herself. How can you expect an old person, at the end of such a relationship, to take three years of maintenance money and re-tool to enter into the job market? She might be too old.

I say "she" because there are not enough rich women around for men to marry. Usually it is a woman. This woman has lived with the man, putting all kinds of things into the relationship, as a good wife, and now she is 58/59, the relationship has ended. She gets three years maintenance. Why? So she would go to UWI and take a dental degree? They will not even register her. *[Laughter]* So what are we trying to impose on these people? Why should there be a three-year limit on the maintenance order?

Mr. President, following that, clause 19(1)—I am agreeing with Sen. Mahabir-Wyatt.

Clause 20(2):

> "Where the court makes a maintenance order for a period shorter than the period permissible under section 19(1), the cohabitant in whose favour the order was made may, at any time before the expiration of that order, apply to the court for an extension of the period."

It follows that if we do not put a limit on the order 20(2) then becomes irrelevant.

Finally, Mr. President, I would really like, after clause 13, to include a new clause 14. Now the hon. Attorney General has said that there is legislation coming that will take care of the situation I am envisaging and he said that it is not possible to bring that piece of legislation by itself without the total Bill. Well, I do know his answer to this amendment would be that there would be something wrong about including this amendment on this particular Bill.

This amendment has to do with the fact, that if you are in a common-law relationship, and the man dies without making a will—although the children are entitled to their share of two-thirds of the estate—the common-law wife has nothing and gets nothing. The legal wife can come up the road and say "I want my one-third".

Now, I do not see why we have to wait for the new legislation to include this provision. So I am proposing that we include a new clause 14 as follows:

> "Where one party to a cohabitational relationship dies intestate, the other cohabitant shall have the same claims on the estate of the deceased, as if the relationship had been a legal marriage relationship."

So the common-law wife is now entitled to what a wife would have got.

Again, I am very glad that this kind of legisation is coming to the Parliament. I know it is very controversial. Many of us have traditional positions on this. It has been very hard for me watching my children growing up and accepting the new patterns of living and marrying. It is very hard. In Uttar Pradesh I would have rejected it; but in Trinidad and Tobago and in the modern world, released from that tight control, I have to learn to—not so much swim with the tide—but I have to learn that the things that I believed in and the things that worked for me may not work for my children or my grandchildren. I have to believe that they are not stupid; that they are developing the muscles to deal with their situation; and they are developing the forms of living that will deal with their situation. I must have the understanding and tolerance to accept the new forms that evolve.

Mr. President, I welcome the sensitivity of legislation of this sort, which recognizes that laws, customs, and traditions change to deal with new needs and to respond to new pressures in a society.

Thank you.

Sen. Dr. Eastlyn Mc Kenzie: Mr. President,. I will be very short.

Mr. President, the prevalence of cohabitational relationships had, as one of its reasons, the fear of some people that if they got married they would have had a tremendous amount of responsibility. And so to shy away from that responsibility, they decided to just live together. This Bill, in my opinion, will say to the people who are so inclined that, whether you live together or you are legally married, your responsibility to the marriage/relationship would be there. It is on this course that I support this Bill very, very, strongly.

My second point—and I drew this to the attention of the hon. Attorney General—I wondered to a certain extent whether the new clause 14, as proposed by Sen. Prof. Ken Ramchand, took care of this. The fear in some of these relationships, Mr. President, is not only a legal wife coming and claiming the estate or the possessions of the man who dies. It is: a man lives with a woman for years and they have children, he is not legally married to her. He dies suddenly and does not have a will. The mother goes in and claims—it is not anybody else who goes in and claims—in fact, the mother goes in and claims the body; cleans out the house; takes everything and gets everything for herself. It is not the wife who does this. I have concrete examples of this and I am sure that my fellow Senators from Tobago will tell you that this is a common thing; a very common thing. If the man is not married, he does not make a will, he dies suddenly, the mother of the man comes in and claims everything. The children many times are left defenceless. We have very, very many examples of this in Tobago.

My final point, Mr. President, this Bill seems to take into consideration only when there is a dispute, only when there is a break-up: you have a relationship, there is a break-up of this relationship, and you begin to sue and pursue what is yours. However, I am wondering whether this Bill will take into consideration a normal situation where somebody just dies: the woman/man just drops down dead from a heart attack and there is no court matter as for maintenance or claiming of property. What happens in a normal case?

I am not finding the answer to this in the Bill and I am hoping that in the Attorney General's winding up some sort of clarification would be given on situations which I have quoted because I am not sure whether these are taken care of in other Bills that he has mentioned.

6.50 p.m.

I think when we come to the committee stage I will make my comments on the amendments proposed by Sen. Mahabir-Wyatt because I see some things that I would like to speak on.

Thank you, Mr. President.

Sen. Joan Yuille-Williams: Mr. President, unlike the others who have welcomed you to the Chamber, I have not met you before. I have not had that opportunity. I do not think I can say welcome. However, in your absence when I joined the Senate, I asked my colleagues about the President. I will not tell you what they said. However, I looked forward to meeting you and when I saw you on Thursday I thought, from just looking at you, that you fit the part.

Unlike the others in the Chamber, however, who said, that you should not go on another holiday, when I came in I met Sen. Hamel-Smith and I admired his parliamentary discipline so I am saying, talk to each other before so that one of you can stay there and allow us to be a little more comfortable. In your absence we were threatened. That is all I can say.

I am just going to make a few remarks. In fact, all evening I was thinking whether I should say anything on this Bill. But when Sen. Rev. Teelucksingh made his contribution, I thought we were saved because before I got a copy of this Bill sometime ago I had casually looked at the *Independent* and I read an extract by a pastor concerning the Bill—I recognized there was some opposition on one side in the case of the legal verses the moral—"Cohabitational relationships for societal liability".

When I read this article I noticed where the hon. Minister of Legal Affairs was slightly chastised by a pastor. He said that she indicated that the difference between cohabitation and marriage is the notion of legal. He went on:

> "On the contrary, the difference is primarily moral and spiritual then legal."

So before I even saw the Bill I felt I was not going to touch it at all. Later on, what made it even worse, he said:

> "The Government's enactment of law that changes the legal status of common-law living can never change the moral and spiritual wrong incurred."

And I wondered whether or not this Bill was going to change the status of common-law living. All these things had me thinking before, but after I listened to Sen. Rev. Teelucksingh, I felt he had dealt with the spiritual and he has done his job there for all of us.

I remembered when I was a young teacher at St. John's Anglican in Friendship Village I noticed that a number of the students who came—most of them were East Indian—on their birth certificates was written "illegitimate". I did not understand it because as far as I was concerned they came from stable families and I knew their parents. I had seen marriages and almost every other Sunday there would be a wedding in the village. I just did not understand what had happened until one day, I saw two young children who came very late and they said they now lived with their grandmother. I asked why and they said that their father, who was much older than the mother, had died in the previous week. What had happened was that the man's parents had moved into the house and taken it over and the mother had to go back to her family with the two children. Then the Principal of the school took time off to tell me exactly what was happening in the terms of the relationship. They were married and it was not registered in the Red House and now that the father had died the mother was not entitled to the property. It was just a small wooden house with a few things in it and the children went back to live with their grandparents.

When I saw this Bill I remembered that incident and those children out there and I knew that there were several other children like those and my heart went out to them. In those circumstances, if a Bill like this could assist, then certainly, it needed my support.

There was another case that I remembered. A very good friend of mine living in one of those residential areas cohabitated with someone. Both of them were working and they bought a very large house but it was bought on his name. She never bothered to try to get it on her name. As far as she was concerned she did not even want to upset him. The mortgage payments was taken out of his salary, therefore, she saw about the house and bought the food and so forth. When they separated she just took her personal belongings and left.

I spoke to her about it afterwards and as far as she was concerned it is not her house and she did not want to spend all that money trying to get something from the courts. I thought she should be much more sensible than that but for people like her who found themselves in those situations—admittedly she had contributed substantially to the home—I would support a Bill like this. Although sometimes when people find themselves in relationships people may say that suits you fine but then we cannot let Peter pay for Paul, therefore, all will benefit.

That is why I said I wanted to be very careful because at the back of this, as a country, we must realize legislation like this must be brought because people do not accept their responsibility and I think somewhere along the line our people

must grow up; they must accept responsibility. If people who had responsibility were honest with each other we probably would not have had a need for legislation of the type; but they have not been accepting responsibility and through this Bill we are trying to ensure that people get what they deserve.

I want to tell the Attorney General, my problem is not so much with the legislation. I have some other concerns about the institutions which support the legislation especially where spouses are claiming maintenance under this law for his or her children. In Trinidad and Tobago claiming maintenance is the most difficult and humiliating experience which a person can go through. I would like to talk about that a little this evening because children suffer because their parents find the process of collecting maintenance degrading. They have to be in the same places where the criminals are to pay their fines. They go where everybody else goes. They have to jostle with large crowds and hear the police officer shouting their name and saying they were there last week and asking why they came back this week because there was nothing there for them. I, therefore, would like to see an improvement in the whole system of the collection of maintenance.

If we had a family court this situation would not occur. I am hoping that the Attorney General will look at the court system and the whole area of maintenance and put the whole idea of a family court on the front burner. I think this is extremely important. When we look at all the legislation that comes for the family we need to get them together.

There is another area which I think I need to allude to in terms of why people do not feel that they are responsible. I think sometime ago we talked about the whole business of valuing the unwaged work. I am asking again that we try to put that system in place where we can value the work, otherwise, even with this legislation, there will be a number of people arguing that those women or men did not contribute because they still do not have a notion of what or how to value the work of people.

7.05 p.m.

Children do a lot of work at home and in the fields and they are all about selling and helping their family. At the end of the day it is almost like child abuse. They get nothing out of it and, in fact, if they attempt to get or ask for it they are turned down and told, "You have not been working, I have been doing this and that." Again, if you are even valuing their work, people would appreciate the contribution that the children are making to the entire family.

Mr. President, I am asking that we look at the Bill again in which we value the women's unwaged work. I would also look at another point, a support system and again this whole business of the irresponsibility of the spouse, especially the

male—I cannot help talking about it at this time—where a female would apply for maintenance for the child.

It has happened that the female applies for maintenance and the father has to either accept paternity, as the case may be, or say no. A blood test is taken, but it takes almost two years to get the results of that test because there is only one person in the whole country who is actually testing that blood to decide whether or not this person is the father of the child. During that time that child is suffering. We need to look at all these situations.

It is all well and good to bring this legislation but we have to look at what is happening in the field, two years almost before the results come back to the courts to say "Yes, he is the father". I believe the mother might be able to get some money over the period, I do not know. That is why they become irresponsible, because those men know that it would take two years before they get the results of the test, so they go very quickly to the court and say, "That is not my child, take a blood test." That happens very often. The Government should look at that and see how best it can help-out to ensure that those children do not suffer.

When I looked at the Bill—and I think it must have been cleared up by now—there was just one area which I thought I needed to raise, and that is the maintenance of the spouse with the child. I am hoping that the spouse is not included in that five-year limit. I am taking for granted that any woman and child, whether they had lived in the relationship for one or two years, would be entitled to maintenance for that child.

I do not know why that came in terms of the child because I know the child was taken up in another Act, but I was hoping I was wrong to think that the five-year limit also applied in this case. I would like the Attorney General to tell me if the person lived for about a year and a half and there was a child at the end of that relationship, and there was a separation, whether or not that person was still entitled to the maintenance.

These are some of the main things I felt I needed to relate as some of the reasons I would support this legislation. I also noted that in some cases the charge before was on the state, where some of these people used to apply for social assistance. Now I do not think that it is on the state but on the other partner who is responsible for the position that the person who has left the home is now in.

I agree with Sen. Dr. McKenzie, but I was not too clear on this business of the education of the person and whether the person could go back to work. We have to look at it in the long-term that at some point in time it might not be the case where that person can go back to work. Therefore, the time limit as I see in some areas, I would want to agree that we should leave it up to the judgement of the court as to how long this maintenance should be for.

You cannot tell me that I have lived with you for 25 years and through your own fault you might have walked out, but because we were not legally married I am sent out there. For three years you will support me and then I am left there as if I did not contribute to the home.

These are some of the main issues that I see in the legislation. As I said before, this legislation cannot take the place of the whole family life education system where we teach our people to accept their responsibilities. I still say that must go hand in hand with it, but I recognize that in Trinidad and Tobago there are a number of people suffering financially from a system that is almost endemic in our society.

Therefore, I compliment the Government for bringing this legislation. I must say that it is very fortunate in that it met so many good pieces of legislation in the pipeline and brought them out so very proudly. I commend the Law Association for assisting in putting this together.

In closing, I want the Attorney General to talk a bit about the drawing up of the cohabitational agreements. In this society, I think it is almost very difficult to get some of these spouses at the beginning of a cohabitational relationship to sit and draw up these agreements. It sounds good, it looks good on paper, but it is very difficult. In fact, in most cases from the time you start to think about agreements the relationships probably would have ended before it started. It probably might be a good thing. Unless it is two persons who feel they do not like the whole institution of legal marriage, otherwise, I cannot see you getting people to sit and draw up these two agreements. I will like the Attorney General to say something about putting these agreements together and the effect they will have.

I had a note on clause 28(1), something about the satisfaction of the court. What happens if the partners agree but the court is not satisfied? What is the status then?

Mr. President, with these few remarks, I thank you for the opportunity to make my comments.

Sen. Dr. Eric St. Cyr: Mr. President, I would make some general remarks, a few specific remarks and to record that I am in some considerable difficulty over this piece of legislation.

I know that there is bi-partisan support for this Bill. I also think it is an enormously, politically popular measure and I dare say, Sir, that it is in many respects very humane and kind, and on those bases, warrant sympathy.

One of the things that has bothered me about some of the fundamental changes we are making to many of our existing laws, is that we seem quite often, to look at a problem and bring a short-term solution regardless of the long-term consequences. I would give an example from a couple weeks ago. We did bring a practical solution to the problem of squatting, but I do not think I got out of this Government a statement that in its mind squatting was wrong. Thus, what we might have done is undermine the fundamentals of private property and perhaps time would tell.

I am not naive about the society we live in. In fact, I would give you this very wonderful story of a 50-year old West Indian mother of six children, who for 30 years faithfully lived in a relationship with a husband, not legally married, who to her surprise on coming home from work one day, the man asked , "Would you marry me?" She agreed; they got married and to her utmost dismay, two years later he said to her, "You know I love you." [*Laughter*]

Expediency is often good in the short run, but if we do not take a principled approach to serious business we could be putting in place what could fundamentally undermine the principles—I nearly said, moral principles, but such they are—on which the entire society is based.

In the Bill as a whole what I see is concern with what happens to property and maintenance if things go wrong and we are breaking up these relationships. In other words, we are dealing essentially with common-law divorce. I see a practical difficulty where we said three or five years. In a legal marriage there is a clear date on which the marriage took place, that is unambiguous, and if there is a separation or divorce there too could be a clear cut-off date. But in many of these relationships, I dare say, there could well be a long run-up period and a long period of fizzling out. So I very much worry how we are going to determine this period of three or five years. That is a relatively, simple, practical consideration.

In relation to the 40,000 persons in common-law relationships spoken about, I have gone to the Census Report of 1990—which is the latest data we have—and I make the case that legal marriages are the norm in this society. The figures are clear: of 703,000 persons over 14 years of age in 1990, 323,000 were married. If we put it in a way that we could get the comparison with that 40,000. Of the females 14 years old and over in 1990 there were 353,000 and of those 164,000 were married, 46 per cent that comes out to be.

The common-law number was 40,725 or 12 per cent. I am making the case that legal marriage is the norm in this society and the common-law relationship is the exception.

7.20 p.m.

I quite understand what marriage is. It is a covenant—in fact, a blood covenant—between a man and a woman, which I would not necessarily want to take place at the Red House or one of the religious organizations. That is where you go to have the marriage registered formally. There could be in the sight of our Maker a proper blood covenant marriage between a man and a woman, which is a commitment for life.

We have been told that many of these common-law relationships last 50 or 60 years and are more stable than those which are legally registered and recognized. I do not think that is the issue. I think the real issue is that when someone goes properly into a covenant relationship, there is, first and foremost, a system of social sanction. In other words, a young man and woman, simply do not go and live together. There must be social sanctioning.

The main point I want to discuss today is the pernicious consequence of irresponsible living together; irresponsible procreation and the absence, in so many cases, of proper parenting of most of the children born to these loose arrangements. Again, I have some figures from 1990.

I see that in 1990, of the 113,000 women 14 years old and over to whom a child was born in the previous year, 26,000 or 23 per cent were born to married people; 9,500 were born to common-law unions; but hear this: 63,935 were born to women who never had a husband or common-law partner. That is where our problem is. When we talk about unfathered children, angry young men, irresponsible males or young women who have not needed to account to anyone in the process of getting a spouse, what we are dealing with is the seeds we sow in these improper, irresponsible relationships.

In my view, legal marriages and proper socially sanctioned marriages which may not have been formally legalized—those from which we know stable families have come and those which, for all intents and purposes have honoured that covenant—those are the norm in this society. The relationships I fear we are about to legitimize, despite what the hon. Attorney General has said, are a counterfeit of marriage. Just as we would not legalize counterfeit money, I do not think that we should be seen to be legalizing counterfeit marriages.

Our Constitution tells us that our nation is founded on respect for God and God tells us that marriage is honourable. Therefore, where a relationship is not a marriage, I feel reasonably satisfied in concluding that it is not an honourable thing in the sight of our Maker.

We also have in our Constitution that we have respect for family life. From the statistics I have before me, I believe that the chaotic state of our society derives in large measure from the nature of our mating patterns and procreation, which carries with it no responsibility for caring for our children. What I fear most is that we are sending a message that we are shifting the norm in the society from the honourable state of marriage to some modern concept of how males and females come together for meeting physical needs. I really do not think that as a Parliament we are well advised in going in that direction.

I know that I am swimming against a very strong tide, but I think that I should in all conscience, humbly state my view here, so that at the very least there is in people's mind the idea that, perhaps, this measure is not for the long-term benefit of our society.

I thank you.

The Minister of Culture and Gender Affairs (Sen. Dr. The Hon. Daphne Phillips): Mr. President, after listening to all the comments and concerns of Senators and agreeing with many of them, I would like to make a few points, perhaps, to put a slightly different spin on what has been said in some quarters—that whole very contentious issue of whether this Bill will legitimize what may be seen as something that is not legal and should not be legitimized, especially as just outlined by Sen. Dr. St. Cyr and others.

From the evidence, it seems that we can be safe in saying that indeed monogamous marriage is one of the avenues for the formation of families, the family being a unit which is responsible for the care and proper development of children and adults.

7.30 p.m.

Mr. President, if we look at some of our statistics—I am quoting here from the Central Statistical Office Continuous Sample Survey of the Population, 1994 and 1995. In general we are saying that marriage is a sacred institution and that is the basis on which most of our families are created. But when we look at the divorce statistics, indeed, I was quite surprised at the number of divorced women per 1,000 married women. This is 1994. We know how statistics go.

For those women under 25 years, 30.4 per cent of every 1,000 were divorced. If we go up the age groups, from 25—29, 138 were divorced; 30—34, 391 were divorced; 35—39, 544 were divorced; 40—44, 807; 45—49, 718; and 50 and over, 779. It means, Mr. President, that as the age group increases, that is, as women get older, more and more are divorced. Out of every 1,000 women over age 50, 779 are divorced. In fact, the highest number of divorced women, according to this statistic, seems to be in the 40—44 age group, 807; that is less than 200 women in the 40—44 age group who were married, are divorced and, as the age increases, the numbers tend to increase, although they tend to peak at that middle 40—45 age group. This is the divorced women per 1,000 women according to the Central Statistical Office. The 1995 figures are similar.

Sen. Dr. St. Cyr: Would the Minister permit a question? Does the Minister have, of those divorced women, any data on how many have remarried?

Sen. Dr. The Hon. D. Phillips: No. I do not. This is divorce. I would think that they are divorced. I do not know if they have been remarried.

Sen. Prof. Ramchand: Mr. President, I would just like the hon. Minister to repeat that. Are we saying that out of 1,000 women in that age group, 800 are divorced.

Sen. Dr. The Hon. D. Phillips: Yes. According to this data here, of 1,000 women in the higher age groups, by the time they reach age 50, only 200 or less are married.

Sen. Dr. St. Cyr: Yes, but some of those are remarried. I am sure of that. Some are remarried.

Sen. Dr. The Hon. D. Phillips: The data do not say that.

Sen. Prof. Ramchand: But some of those who are remarried are re-divorced. [*Laughter*]

Sen. Dr. The Hon. D. Phillips: Whether remarried or not, the issue is that marriage is not as stable as we may perceive it to be, because people marry because I guess that is the legitimate and moral thing to do, but the instability of marriage increases with age and, even if there is remarriage, we still have a high percentage of divorce.

In fact, in other countries like the United States of America, one in every two marriages ends in divorce. That is a statistic we have.

But, more than that, what is happening with our situation in Trinidad and Tobago is that the nuclear family is itself highly unstable. The family where there is man, woman and children, especially if those children are the product of that man and woman, is the norm. Let me say that itself is becoming very unstable.

We have remarriages; we have break-ups; people living common-law. In fact, in some of the countries in the Caribbean, there is the pattern that people move from one type of relationship, from visiting, to common-law, and then into marriage. That is particularly so among the poorer people. So, I think we have to temper our understanding of marriage and common-law with the reality that we find which is reflected in our statistics.

Another thing we note is that we have a fairly high percentage of households headed by women and these units come out of failed marriages, broken common-law and visiting relationships, or divorce. For 1990, households headed by women were 77,401; households headed by men were 197,745 and, therefore, we find that approximately 39—40 per cent of our households were headed by women. That becomes important when we look at the issue of poverty and those who are living in dire circumstances.

Again, I have some statistics about persons who are living in poverty in Trinidad and Tobago and we find that according to a study done by Henry and Melville—this is Dr. Ralph Henry and Dr. Juliette Melville—in 1988, those persons living in incidences of poverty in Trinidad and Tobago by sex of head of household, again, those households headed by women were 31.3 per cent poor and those headed by men were 18.4 per cent poor.

The point I am making, Mr. President, is that the breakdown of the various relationships, be they common-law, marriage or otherwise, results in households that are headed by women and too many of them are disproportionately poor, hence the need for measures like those in this Bill which will assist some of these households.

So, Mr. President, first, this Government defends the family and, I think, tries to protect family in its efforts, because it is in the family unit that we have young people growing up, the children growing up, who need proper parenting and that unit must be protected.

If we look at the common-law relationship and its prevalence in accordance with educational levels in Trinidad and Tobago—again, these statistics are from the Central Statistical Office—we find that for females with secondary school education as the highest level of education attained, those who were married were 59,935; those who were common-law, 13,750; visiting unions were 3,451; those who were not with their husbands 6,849; or not with a partner 4,440. What these statistics are saying is that females who had the highest level of education as secondary education, those in a marriage relationship were 67.7 per cent; those not in a marriage relationship were 32.3 per cent, and not in marriage means not with husband, not with common-law or visiting partners. A visiting relationship is a substantial one as well.

But, when we look at those with university education, we find there is also a pattern. Marriage, 4,048; common-law, 2,063; visiting, 74; not with husband, 631; not with partner, 173. Again, we are seeing here that those in a marriage relationship total 4,048 and those not in a marriage relationship total 1,141 or 22 per cent.

So, we are saying that according to educational level, we see a pattern: that a certain percentage of persons are in a non-marriage relationship, but those with university education are about 22 per cent and those with secondary education, 32 per cent. I do not have the statistic for those with less than secondary education and I would assume it is a higher percentage. What we are seeing is that marriage is also related to level of education as well as skills and income levels which are all associated with educational levels, so we should be looking at that kind of factor. Okay.

I would disagree that it is just a matter of irresponsibility in relationships, but it is a matter of these other factors which we need to look at and address. I am not saying that marriage is not the most appropriate form of relationship, but I am saying more than that; what I am saying is that we need to protect the family. We need to protect the children and the dependants in a relationship that has existed in any form because we see that statistics show us that the poverty—and we know that poverty—according to who was it, Shadow?—is hell. Poverty breeds all kinds of abuses and problems and it reproduces itself.

This Bill that is brought here today will help those persons who, in the existing situations, have nowhere to turn to except to the social welfare system of the Ministry which is itself very limited. Indeed, the point Sen. Joan Yuille-Williams made about easing the social welfare system by putting the responsibility on the partner is, I think, a good point.

There is another matter which I think is a crisis in domestic violence in this country which gives rise to a number of the break-ups happening. It also occurs within marriage and that, also, is very destructive to children, because there are so many abuses and so many negative experiences that the children have. There is a crisis in violence in the family, which is what we need to look at as well, which today is reaching proportions where we see so many women and children being killed and murdered within the family. It does not occur only in common-law situations, but in marital situations as well.

7.45 p.m.

I think that some of these things we need to look at and to really understand what we mean: Are we talking about the importance of care and protection of children and individuals? Because adults need care and attention as well in a unit. Or are we just so concerned with whether we define the relationship as one of marriage or not?

I am saying that we need to realize—some of our Senators mentioned it—that the family is changing and it has been changing through history. From early we know the forms of marriage have changed over time and these are changing in relation to the nature of the society, the nature of the economy, technology, the kind of work people do, whether it is basically agricultural or not; the kind of tenure patterns, land tenure, inheritance patterns and so forth.

So the family must change, and it has been changing over time; and what we are seeing today is that there are a variety of forms and all kinds of combinations. But they are family; they are units in which people would get cared for, people get protected; and that is what is important.

We cannot turn back the clock and go back to the days when the family had a certain kind of form. It must change because the reality around us in our society is changing.

So, Mr. President, I support the Bill. I take note of what has been said, but I want to make the point that what we are concerned with is family unit, family in

whatever form, care and protection of children, parents and dependent ones, as well as equity within the unit.

Sen. Muhummad Shabazz: Mr. President, let me first start by saying a hearty welcome to you back to the House.

When I see Bills like these, I wonder really what is the situation with man in this time. Where has man reached? What is man's position? Has man stopped striving for the highest moral standards? Has man stopped trying to please his God and to live to the highest order? *[Applause]* Has man stopped doing the things that he has been taught that are correct? Or are we now at the position, or at the stage where because we have done so much wrong we are bringing laws to justify it so as to give us some kind of a comfort to continue to do the things that we know that we should not be doing? *[Desk thumping]*.

Are we making it correct so that when that day of reckoning comes we could say to the higher forces," listen, I know it was wrong but everybody else was doing it. As a matter of fact, where I came from there was a law that made it right, so have some form of forgiveness on me". Are we making the world—and I must be concerned with this as a law maker. Are we making the world, Mr. President, a better place? Or because of our weakened situation we are doing what we see to be necessary to keep what is going in the way it is going? As a law maker, I must think how is this going to affect my children? How will it affect generations to come in the next 100 years? I remember one philosopher saying if we could take the negatives out of this world for just one hour the world would change so tremendously in the future that we ourselves would be surprised. Just one hour.

Now, as I have said all of this, where are we going? Mr. President, religion has taught us we are either going to be Hindus, Muslims, Christians or some part of that, and all have taught us from the books that we have to follow by these which is the *Quoran*, the *Gita*, the *Bible*, that marriage is indeed a sacred institution *[Desk Thumping]*

As a matter of fact, the *Quoran* teaches you that you could have more than one person but at least be married to all of them even if it reaches to three or four, and treat all equally. So, we agree with that. When I was growing up, everyone wanted to have a wedding. As a matter of fact, that seemed to have made the difference between a woman and a lady—whether you were married or whether you were not married. Having said all of that, I cannot cast the first stone.

As a matter of fact, I cannot cast the second stone, I cannot cast none at all. I am concerned as a law maker. I am making a law. I cannot judge anybody's situation because mine cannot really stand the scrutiny of judgment. I leave my judgment for the last day. I leave everybody's judgment for that last day, because I think that is the only judgment that matters.

I do not want to take a high moral ground, and be a Jimmy Swaggart in the end or be a Bill Clinton in the end, because I think the problem with marriage and all these things is that many people talk about it and sometimes they are found wanting, and many people now ask, why should I go this way; because the exemplars that they have looked at, have failed so miserably a number of times, that who am I to follow? Let me do my thing, and let me do it in a way that is pleasing to me.

Let me just clear up. There is a difference between a wedding and a marriage Mr. President. Many people had a wedding which they called a marriage. Indeed Mr. President, the commitment is the marriage. Having a wedding does not say anything—maybe this is what we should be trying to do as a society, as law makers, that people should be looking at.

What we should try to do even when we pass Bills like this, is strive, maybe, to be exemplars, to set higher standards for our children to make them better, so that we could indeed create a better world regardless of the Bills that are passed.

Mr. President, I have seen a situation, I remember this, I understand how important getting married or having a wedding is. I grew up like the Senator in a situation where my mother and father lived together until I was age 10, living singly, living in a relationship but not married. They had four children. I remember the day they went somewhere and had a wedding and came back home. I remember the joy on mother's face when she understood that she was a married person. It was like an honour. Marriage is indeed a good thing. It was a nice feeling. Even when she walked among her peers she seemed different.

I remember that even as a child. I so like the institution of marriage, that I have been married twice—not at the same time but on two separate occasions. Rather than have any other commitment or relationship, I like being married. I may not be the perfect person in a marriage, but I like being married. I like the commitment to sit at home to talk to this lady called my wife and somebody said maybe it should be called a common-law marriage.

You see, the church, the institutions that marry us—where the wedding is kept that is not the institution that really marries us you know; maybe, we do not need to go to these places to be married. Maybe the person who is marrying you is breaking his vows of marriage anyway, while he is passing those blessed sacrament unto you. The thing is not about the wedding, the thing is the commitment after this wedding, the marriage. And what should we do? How should we go about this? And how it should be done? That is important.

I think as a society there is where we should be guiding our children to go. Family life is important for the development and the upliftment of our country and our communities.

When we look at the situation where we have heard 40,000 couples live in what is called common-law relationships, or possibly common-law marriages, it is important that something be done about that situation. In this light, I could have no problems in going ahead with any piece of legislation that comes before this Parliament to correct or to make those situations better, because we know the kind of suffering these people go through, we knows the kinds of problems these people have. We understand that and feel that some situation should be brought to make these people live in a much more secured way than they are living at this point in time.

7.55 p.m.

As we have heard by one of our Senators here before, you have done the right thing to bring this Bill—started under the People's National Movement administration—to this House, to have it passed, to bring security to these people.

One of the things I looked at in the Bill, Mr. President, is clause 19(1), "Duration of Orders":

> "A maintenance order may apply for such period as may be determined by the court, but shall not exceed three years from the date on which the order was made".

One wonders why three years. If, in a cohabitational relationship there is a child who is three or four years old and you apply for maintenance which is given for three years, would you be able to go back? Does the Bill provide for some way to re-apply until the child reaches 12 years? This is an important thing to look at because three years is a short period of time and if somebody's position is not correct, and something very good does not happen, three years will indeed be a short period of time, particularly when there may be more than one child in that relationship.

I looked at another point on page 14. You spoke about children under the age of 16, if a child is mentally ill, or if a child is disabled to the point where he is in a bed and people have to take care of him, it should be the responsibility of the parents to take care of this child for a longer period of time and probably throughout the duration of his life. This may be asking too much, but it is something we have to look at because this child will not be able to take care of himself, and that is where the commitment should come in. Maybe this is why sometimes people push to be married because marriage gives a commitment. The child born from a marriage seems to have a greater kind of something. It should not be that way. A child born outside of a marriage, in a relationship like that, must be taken care of, if he is mentally ill or disabled.

These are the things that I feel the hon. Attorney General should look at. Spouses need to take care of children. The important thing is the responsibility to the children, in all relationships; whether a married relationship or a common-law relationship, it is important that the children be taken care of.

It is important to ask that in this Bill you look at the situation of the children better, in a more humane way, for a longer period, so they will be better taken care of and not just left like that. So I would ask the hon. Minister, when we sit, at some stage, that he looks at doing something better about this situation.

Mr. President, we have all types of situations happening in this modern time. Some women want a child without having to live with a male for the remainder of their lives. They want that child as the company to grow up with them, and they do not really want a man living with them. Maybe that is wrong, but that is what modern time has reached to. Maybe it has been so previously; but now it seems to be so, more and more. With the equality of the woman, the female, at times, feels she wants to live independently but would like to have a child. We need to look at that and we need to give the child certain rights, whether the parents lived or did not live together. That child should have some rights and I would like to see this in the Bill.

At this point, Mr. President, I do not have anything more to say on this Bill, other than that I will support it.

I would like to say Happy Republic Day to the whole Parliament: *[desk thumping]*—the Independents, the Government, to you Mr. President, to all Members sitting—Happy Republic Day. I say Republic Day because all the Bills come here, the Republic of Trinidad and Tobago. Imagine the other House will be sitting on Thursday, Republic Day.

I want to tell this Government thanks for the invitation that they sent to me to attend a Republic Day inter-faith service. Mr. President, I think this is false; it is not real; it is almost hypocritical. I have therefore destroyed my invitation. I will not be spending that day with this Government, unless I have to be in the Parliament. I will not be with you. I do not feel this should be, because you cancelled Republic Day and you went to another island somewhere—to India—to celebrate Republic Day. I feel this is hypocritical. I will not be attending any celebration with you on Republic Day.

Again, I support the Bill. I wish that it be read. I do not know what you will be debating downstairs, but again happy, happy, Republic Day to you. All the best!

The Attorney General (Hon. Ramesh Lawrence Maharaj): Mr. President, may I extend thanks to all distinguished and honourable senators who have made contributions on this important Bill.

Mr. President, I think that a Bill like this is really a step. When a government has to take this step in a society like this, it would recognize that there would be criticisms and apprehensions that the Bill may be undermining the institution of marriage. I can geniuninely understand, and the Government appreciates the concerns expressed to the effect that it may be that we should not go this road because if something is "counterfeit" we should not legalize it.

In all societies in which governments had to make a decision like this, those were some of the arguments advanced. In order to put some of those arguments to an end, one has to merely look at the title of the Bill to see that it recognizes the rights and obligations in relation to a cohabitational relationship. It does not, in any event, try to encourage marriages to be broken up, or disrespect for marriage. It is really facing a reality; a factual situation.

8.05 p.m.

It is not only persons who are married who have cohabitational relationships. As a matter of fact many cohabitational relationships exist without either party being married and there may be a situation where the product of those relationships suffer.

For example two people live together and the common-law wife would have worked and after a few years the man gets somebody else. Although the wife would have pooled her resources and would have made the home and built the assets of the family, the children are in school and the husband decides to get

somebody else and probably starts another relationship but he is not responsible enough to recognize his children with the first person. He stops supporting or providing for those children or for the wife. What happens? Because the wife cannot provide for herself sufficiently or because she cannot provide for the children sufficiently, the children's education and prospects in life are affected. This can cause great distress and break down in the family life to the extent that the children's lives are wrecked.

That is what the Government has to confront itself with. When we talk about the family of Trinidad and Tobago we cannot say only citizens of Trinidad and Tobago who are married. We have to talk about all the people who comprise the family of Trinidad and Tobago. If a government wants to ensure that there is justice promoted to all members of the family of Trinidad and Tobago it has to take steps in order to provide the legal framework and the legal protection for those members of the family.

Mr. President, as the debate was going on I looked again at the working paper and there is what I consider to be an important passage quoted at page 10, paragraph 5(4) and quoting a statement of the New South Wales Law Reform Commission. Perhaps this would put into focus the real philosophy behind legislation like this. It is from the New South Wales Law Reform Commission in its 1983 outline report on *de facto* relationships. At page 5 and 6 of the report the commission had this to say:

> "The policy of the law is not and should not be actively to de facto relationships whether by withholding benefits or imposing penalties. In a pluralist society people may chose to live together. The basis for the intervention of the law in conferring rights or imposing obligations on de facto partners should be the minimization of injustice or the removal of anomalies. It should not be assumed that the rights and obligations of de facto partners should be the same as those of married couples. Conflicting claims may be by a person's legal spouse and by his or her de facto partner. In such cases the legitimate expectations of a spouse should be protected against claims of a party to a short-term relationship.
>
> Where there are children their welfare should be the primary concern. The requirement that a relationship should have continued for a specific period will be appropriate in some cases but not in others."

Mr. President, that, in effect, is the underlying philosophy of this piece of legislation. It is really, as it says, "An Act to confer on cohabitants rights and obligations..."—that is to say that for people who live together and have met the test there will be rights but there will also be obligations and—"to give the courts jurisdiction to make orders with respect to interests in property and maintenance, to make provision for the enforcement of agreements and for matters incidental thereto."

That is why in the definition of cohabitational relationship it gives a definition which could be used in some form to ensure that it is not everybody who "shack-up", if I may use that expression, with somebody else and whether it is for a period of time or can really get protection under the Act. The court would have to find that the cohabitants who, not being married to each other, are living or have lived together as husband and wife on a *bona fide* domestic basis.

One sees that there are some safeguards put in the Bill. In these matters you have to give it to somebody to determine whether it is a cohabitational relationship and the only persons under our system we can give it to is the court. Therefore, for somebody to enjoy the protection of the Act, it will have to be shown that this person has been part and parcel of that kind of relationship. The intention of the Bill really is that for families which are really families and in which the two parties have lived as a family as man and wife, not just an occasional relationship, there will be protection for them under the Act.

Mr. President, the Bill really gives the safeguards to ensure that in applying for property rights the conditions under clause 7 must be satisfied. Not all the conditions must be satisfied, anyone of those conditions. The applicant must have lived in that relationship for a period of not less than five years. We know there have been suggestions to make it less than five years. We have given considerable thought to the period of years. As a matter of fact, this matter has been put out for public comment, there has been a lot of study and we have had comments from the public. The matter has been analyzed, we have considered the Barbados position and we believe that having regard to Trinidad and Tobago and in order to ensure that it is not any relationship—there must be some permanence and stability to that relationship—that we should go with a period of five years. We said that even if there is not a period of five years but there has been some permanence or some family relationship to the extent that there is a child from that relationship that also, even if it is not a period of five years.

There are also instances where there is such a family arrangement to show that the person has made substantial contributions, the kind referred to in clause 10. One sees that the aim of the legislative measure is to ensure that there would be input by the applicant in order to have some kind of stable family relationship. It is not everybody who "shack-up" for a few years who can just come and get protection under the Act. That is why we tried to strike a balance in that we did not want to have legislation which can give the impression that it is a licence for people to just live together and get protection under the Act. It is legislation in which, having lived together and having lived as a family and having children or whatever the position is, as mentioned in the Bill, there will be protection if there is a breakup of the relationship and economic distress is caused.

Mr. President, with your leave, I do not intend to complete my contribution tonight. There have been points made and I want to come back tomorrow in order to complete it. What I would like to say before I close for tonight is that the policy of the Bill is really to provide relief for a cohabitational relationship as between man and woman who are living as husband and wife and it is not for other relationships. The reason for that is that for example—and I take the point that was made by Sen. Mahabir-Wyatt that there could be family relationships. It maybe a brother and sister or a whole family living in a house and all the members of the family are working. Having worked one day the big brother decides to put everybody out of the house. They have all lived together and it is a cohabitational relationship but this Bill is not to protect that. This Bill is to protect relationships between and wife.

The Government of Trinidad and Tobago is looking at the whole question of family law and I want to give the undertaking that I will also look at that aspect. I will see whether other countries have had to deal with this because I know, not only as a politician but also as a lawyer, that there are many problems like these. What happens is that people have to go to court and spend a lot of money sometimes which they may not have or sometimes the Legal Aid does not provide for that and people are not protected. It may be that other countries have had to deal with this and this is something I give an undertaking to look at.

I want to say, however, that those people are not without redress. As a matter of fact, under the same principle of trust, if five persons live in a house and one of the persons contributed towards building the house and another person fixed the yard and did things in the yard, the law has developed so that a principle of law called "equity" steps in and the court has been able, over the years, to find ways and means of finding a trust relationship. There are cases in which that kind of

protection has been given but I will like to concede that it is the same position now with respect to a common-law husband and wife and it is not satisfactory. And probably some mechanism should be found to provide some legal framework for people in that kind of situation to also be protected.

8.20 p.m.

Mr. President, the Government of Trinidad and Tobago is looking at the whole question of the law relating to the family. For example, there is a committee which has been hard at work in which the Law Commission has taken the lead role, comprising members of the different departments from the appropriate ministries. A Bill has been drafted in which we are considering establishing a children's authority which would be the umbrella organization charged with the responsibility of administering all matters relating to children, such as foster care, children at risk, adoption and children's home because that is an area of the law which has been neglected.

Law must not remain stagnant. For law to be effective and meaningful it must relate to people and, therefore, if it is outdated and lags behind, it becomes like an antique that you can take down, brush and put back, it would not serve its purpose. The law has to move with the times. That law in Trinidad and Tobago relating to children has not moved with the times. Thus, society and law have to be studied and these archaic laws have to be reformed in order to meet the demands and needs of our time.

We have heard about a family court, that is important, but when we got into office we had the situation where you could take a building and call it a family court. I would mention to this Parliament that I have had extensive discussions on this issue including discussions with the head of the Judiciary and there is no problem in providing a building and calling it a family court. We can have a building, a Hall of Justice, but it does not mean that justice is administered in that building.

What is important is the reforms to deal with the procedures and the way in which these matters are adjudicated before a family court could be set up. As the Chief Justice announced when he opened the law term, there is a judicial sector reform project and one of the areas of the law which is being looked at is the whole question of family law reform. As a matter of fact, there are new family law rules, and the Government is working in collaboration with them to ensure that a family court is not just a building providing children to be away from a particular set up, and when you go to the procedure you still have a judge who is

probably not qualified to deal with family matters and you do not have assessors or people who can work with children to be part and parcel of the adjudicating programme.

Therefore, in countries which have dealt with this matter on a genuine basis, they have not just put up a building and called it a family court, but they have reformed the laws. In Canada for instance, the laws of the family have been completly reformed and there is a family court with reformed laws and procedures. We are committed to that and we are in the process of making that work.

The family also has the question of adoption. The law of adoption has been neglected in Trinidad and Tobago, we still operate under very archaic laws and rules and children are at risk. There is a Bill which has been drafted and it is hoped that the Adoption of Children Act would be amended and brought in harmony with developing trends.

We propose to have reform of the system as to how children are adopted and to bring it in line with the conventions relating to the rights of children. For example, there would have to be a new concept of the Adoption Board and criteria for the members of that board to be administered.

Concerning the whole question of foster care in Trinidad and Tobago there is no legislation to provide for it. I am saying this because statements have been made about the family and children, but I want it to be shown—I am not laying blame on anybody—that these areas of the law have been neglected for years. It has been staring us in our face and has been neglected for years. It is not something that could be solved overnight. The Government is trying its best in order to go at the fastest possible rate.

There is, in effect, no proper measure in Trinidad and Tobago for foster care, so we cannot talk about the law of the family. It does not make sense, if we do not see about these kinds of matters.

Regarding children's homes and institutions, there was a recent report which showed the calamities and injustice which take place at these homes. That also is being reviewed, legislation is going to come to Parliament to set up a proper system for the regulation and the management of children's home.

The point has been made about juvenile penal reform. You have a situation where in many countries you have to deal with family law. You cannot just pass laws dealing with cohabitational relationships or putting up a Hall of Justice. You

have to deal with this, which is regarded as the infrastructure of society. We have done nothing in Trinidad and Tobago, we are still operating under colonial laws; we are looking at that. It is a whole package of family law reforms which is going to come to Parliament in the new session.

The Law Commission with this committee is supposed to give me that report within the next month, and that report will then have the legislation and everything drafted. It would go to Cabinet and depending on what happens there, it would come to the Parliament. I gave you an idea to indicate how much work has been done within the last two and half years in this area. This administration is genuine about its commitment to reform family law in Trinidad and Tobago.

We would give the assurance to the Senate that this law must not be construed in anyway as action by this administration to undermine the family produced as a result of lawful marriages. This law is really to promote the rights of family. It is a law in which we would be able to ensure that there is some justice and balance, so that other members of the society would not believe that they are getting an injustice.

For example, a child of a common-law relationship should not feel an injustice because he or she was born out of that kind of relationship. Similarly, to some extent, a common-law wife must not feel that because she is a common-law wife—and there has been this relationship in which the life of the woman has been so affected and there are children out of that relationship—that she is getting an injustice. Also, you must not give an injustice to the spouse, but if you can find a mechanism whereby you can strike a balance and there could be, as far as practicable, justice for all, then you would, in effect, serve the purpose for such a law.

Mr. President, this would be a convenient time for me to take a break and continue tomorrow.

Mr. President: Hon. Senators, the question is that the debate on the Cohabitational Relationships Bill continue at the next sitting of the Senate.

Agreed.

ARRANGEMENT OF BUSINESS

The Minister of Public Administration (Sen. The Hon. Wade Mark): Mr. President, before moving to have the Senate adjourned, you would recall that I sought your leave and obtained it to have certain matters deferred to a later stage of the proceedings of the Senate. I draw your attention to the Supplemental Order

Paper in which we are seeking to have a number of reports adopted tonight, one dealing specifically with "An Act to provide for the orderly and progressive development of land in both urban and rural areas and to preserve and improve the amenities thereof".

The second report deals with the Joint Select Committee of Parliament appointed to consider and report on the Working Paper on the Reform of the Management Structure of the Parliament of Trinidad and Tobago.

The final report is a report of the Standing Orders Committee.

SELECT COMMITTEE REPORTS
(ADOPTION)
Planning and Development of Land Bill

The Parliamentary Secretary in the Ministry of Housing and Settlements (Sen. Carol Cuffy-Dowlat): Mr. President, I beg to move,

Be it resolved that the Senate adopt the Report of the Special Select Committee appointed to consider and report on a Bill entitled 'An Act to provide for the orderly and progressive development of land in both urban and rural areas and to preserve and improve the amenities thereof, for the grant of permission to develop land and for other powers of control over the use of land and the design, construction and occupation of buildings; to confer additional powers for the protection of the environment, and the architectural and cultural heritage, and for the acquisition and development of land for planning; and to provide for purposes connected with the matters aforesaid'".

At the sitting of the Senate held on Tuesday, July 14, 1998 the House of Representatives Bill No. 12 of 1998 entitled the "Planning and Development of Land Bill" was read a first time. At the sitting of the Senate held on Thursday, August 20, 1998, the Bill was read a second time and committed to a special select committee of the Senate with a mandate to report in two weeks' time.

The committee was unable to complete its deliberations in the time given and submitted a special report to the Senate indicating the same, and requested an extension of time until Tuesday, September 15, 1998.

On Tuesday, September 15, 1998, the Senate adopted the report and an extension of time was granted. On Tuesday, September 15, 1998, the Senate agreed to a Motion moved by Sen. Cuffy-Dowlat, Chairman of the Special Select Committee and granted a further extension of two days for the committee to complete its deliberations and submit its report.

The following members were appointed by the Senate to serve on the Special Select Committee:

Sen. Carol Cuffy-Dowlat	Chairman
Sen. Tota-Maharaj	Member
Sen. Agnes Williams	Member
Mr. V. Cabrera	Member
Sen. Mohammed	Member
Sen. Prof. Spence	Member
Prof. Kenny	Member
Sen. Prof. Julian Kenny	Member.

The committee's terms of reference were to consider and report on a Bill entitled 'An Act to provide for the orderly and progressive development of land in both urban and rural areas and to preserve and improve the amenities thereof, for the grant of permission to develop land and for other powers of control over the use of land and the design, construction and occupation of buildings; to confer additional powers for the protection of the environment, and the architectural and cultural heritage, and for the acquisition and development of land for planning; and to provide for purposes connected with the matters aforesaid'.

At its first meeting the committee agreed that three members would constitute a quorum in accordance with the provisions of Standing Order 73(5) of the Senate. The committee did not specify the composition of such a quorum. Mr. Neil Jaggassar, Parliamentary Clerk II, served as secretary to the committee.

The committee held a total of 10 meetings as follows: Saturday, August 22, 1998; Wednesday, August 26, 1998; Friday, August 28, 1998; Monday, September 7, 1998; Wednesday, September 9, 1998; Friday, September 11, 1998; Saturday, September 12, 1998; Monday, September 14, 1998; Monday, September 21, 1998; and Tuesday, September 22, 1998.

At a sitting of the Senate held on Thursday, September 17, 1998, the committee reported that it still had not completed its deliberations and Mr. Vincent Cabrera was no longer a Senator since his appointment to the Senate ended with the return of the President on September 16, 1998.

The President appointed Sen. John to replace Mr. Cabrera on the Special Select Committee. The committee had requested the assistance of the Interim National Physical Planning Commission and Dr. Asad Mohammed, Chairman of

that body, and Mr. Hugh Robertson, legal draftsman and member of the Commission were present at all meetings.

Other members of the Interim National Physical Planning Commission were present at the first four meetings.

8.35 p.m.

At the meeting held on Monday, September 7, 1998, the Committee examined the following witnesses:

Hon. Dr. Morgan Job, Minister of Tobago Affairs

Mrs. Florabelle Granard-Nurse, Manager, Legal and Enforcement Services; Corporate Secretary, Environmental Management Authority

Mrs. Christine Toppin-Allahar, Director, Environmental Management Authority

Mrs. Granard-Nurse and Mrs. Toppin-Allahar also submitted comprehensive written comments.

At the meeting held on Wednesday, September 9, 1998, the committee agreed to invite a legal draftsman from the office of the Chief Parliamentary Counsel to assist in the drafting of amendments. Mr. Chelliah S. Arunachalan**,** Assistant Chief Parliamentary Counsel, attended the next few meetings of the committee and attended to its drafting requirements.

At a meeting held on Friday, September 11, 1998, evidence was taken from the following persons:

Hon. John Humphrey, Minister of Housing and Settlements

Dr. The Hon. Vincent Lasse, Minister responsible for the Environment in the Ministry of Planning and Development

Mrs. Marlene Coudray, City Clerk, San Fernando Borough Corporation

Mr. Jeffrey Reyes, Councillor/Vice Chairman, San Juan/Laventille Regional Corporation.

At its very first meeting, all members of the committee agreed that the Bill before it was a highly complex and technical piece of legislation with apparent overlap and/or duplication and may even conflict with other pieces of legislation. This was clear from the concerns expressed in the debate on the Bill’s second

reading. The committee, therefore, felt that it was necessary to have some better understanding of the philosophy and background to the Bill and to get some insight as to the intention of the various sections. Members felt that if this was done, some of the apparent complexity of the legislation would be eliminated.

The committee commenced its deliberations with a part-by-part examination of the Bill during which members of the Interim National Physical Planning Commission elucidated on the intention of the various sections. This was followed by a clause-by-clause examination of the Bill when specific amendments were proposed and agreed upon.

During examination of the Bill there were long and extensive discussions on the clause which dealt with matters relating to the Tobago House of Assembly, the National Trust, the environment and local government authorities. Specific amendments were later proposed and accepted by members of the committee.

During the course of deliberations, the main issues raised were:

the role and function of the Tobago House of Assembly *vis-à-vis* the planning function for Tobago in relation to the House of Assembly Act No. 40 of 1996;

overlap and duplication of functions and responsibilities in the Environmental Management Act No. 3 of 1995 and at times what seems to be concurrent jurisdictions;

the perceived reduction of the role and functions of local government authorities;

duplication of functions and responsibilities already provided for under the National Trust Act of Trinidad and Tobago, No. 11 of 1991;

composition of the National Physical Planning Commission—that is the lack of representation from the agricultural sector;

the matter of enforcement proceedings. It was felt that the penalties to be incurred for breaches of the Act were not sufficiently severe.

Mr. President, your committee wishes to apologize to this honourable Senate and to report that because of the highly complex and technical nature of the Bill before it, it was unable to complete its deliberations before the end of the current session despite the extensions of time granted.

The committee wishes to express its gratitude to all those individuals who assisted it by making themselves available to share their time and expertise with the committee, and especially members of the parliamentary staff whose

dedication in the performance of their responsibilities was at times beyond the call of duty.

I beg to move.

Question proposed.

Sen. Prof. John Spence: Mr. President, I think that this is a wise move and I support the report fully. I hope that the Senate agrees to that.

Sen. Prof. Julian Kenny: Mr. President, when one stands on the top of a mountain and looks down, there are very many valleys which can lead one down. In this case, we stood at the top of the mountain and saw one valley that led to a precipice. Fortunately, wiser counsel prevailed and we backed up and are now taking a path down a very gentle valley which will lead to an extremely fine piece of legislation.

I take this opportunity to commend the Government in listening to reason. I thank you.

Sen. Nafeesa Mohammed: Mr. President, I, too, would like to endorse the statement made by Sen. Prof. Kenny. We are very happy that better sense has prevailed, and look forward to further deliberations on this matter.

Sen. Carol Cuffy-Dowlat: Mr. President, I thank Senators for their support on this Motion. I beg to move.

Question put and agreed to.

Report adopted.

Management Structure of Parliament (Reform of)

The Minister of Public Administration (Sen. The Hon. Wade Mark): Mr. President, I beg to move,

> *Be it Resolved* that this Senate adopt the report of the joint select committee of the Senate appointed to consider and report on the working paper on the Reform of the Management Structure of the Parliament of Trinidad and Tobago.

Your committee wishes to report that it has only just commenced its work and will be unable to complete its deliberation before the end of the current session. Your committee therefore recommends that a new committee be appointed in the next session to continue consideration of this matter and that the Senate authorize

that new committee to consider, as part of its record, the written comments received by your committee to date.

Question proposed.

Sen. Prof. John Spence: [*Inaudible*]

Sen. W. Mark: Mr. President, I beg to move.

Question put and agreed to.

Report adopted.

8.45 p.m.

Standing Orders Committee Report

Sen. Nathaniel Moore: Mr. President, I beg to move,

Be It Resolved that the Senate adopt the Report of the Standing Orders Committee.

At a sitting of the Senate held on Tuesday, December 9, 1997, the following Senators were appointed to serve on the Standing Orders Committee:

Mr. Ganace Ramdial (Chairman); Dr. Daphne Phillips (Member); Mr. Nathaniel Moore (Member); Mrs. Nafeesa Mohammed (Member); Mrs. Diana Mahabir-Wyatt (Member).

The Committee held no meetings in the 1997/1998 Session as the Chairman, Mr. Ganace Ramdial, was performing the duties of Head of State for most of the session.

Your Committee therefore recommends that the new committee to be appointed in the next session continues consideration of amendments to the entire Standing Orders.

Mr. President, I beg to move.

Question proposed.

Sen. Diana Mahabir-Wyatt: Mr. President, I would like to support the Motion.

Sen. Nathaniel Moore: Mr. President, I beg to move.

Question put and agreed to.

Report adopted.

ADJOURNMENT

The Minister of Public Administration (Sen. The Hon. Wade Mark): Mr. President, before moving to have the Senate adjourned, may I inform fellow Senators that tomorrow will constitute the last sitting of the Senate and we intend to conclude the debate on the Cohabitational Relationships Bill which we have started today. In addition, we will begin the Tobago House of Assembly (Amdt.) Bill and, once we are through with those two matters, we shall adjourn to a date to be fixed.

I beg to move that this Senate do now adjourn to Wednesday, September 23, 1998 at 130 p.m.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 8.49 p.m.