SENATE

Wednesday, September 23, 1998

The Senate met at 1.30 p.m.

PRAYERS

[MR. PRESIDENT *in the Chair*]

ARRANGEMENT OF BUSINESS

The Minister of Public Administration (Sen. The Hon. Wade Mark): Mr. President, I seek leave of the Senate to deal with "Bills Second Reading" under "Government Business" instead of "Motions".

Agreed to.

COHABITATIONAL RELATIONSHIPS BILL

[Second Day]

Order read for resuming adjourned debate on question [September 22, 1998];

That the Bill be now read a second time.

Question again proposed.

Mr. President: I wish to point out that the Minister has already spoken for 25 minutes.

The Attorney General (Hon. Ramesh Lawrence Maharaj): Mr. President, when the adjournment was taken, I was dealing with some of the comments which were made by distinguished Senators in respect of some of the provisions in the Bill. This afternoon I would like to deal with some of the comments that were made in respect of the section relating to maintenance, and in particular, clause 15 of the Bill.

Mr. President, the concept is that there is no general right to maintenance but if a maintenance order is made by the court after it exercises its discretion in accordance with the criteria set out in the Bill, then the maximum period of time for which the order can be made is three years. However, there is provision in the Bill before the order has expired where an application can be made for the extension or the variation of the order. So you can have a situation where an order is made for three years and before three years have expired—after two years—a person can apply and ask for it to be continued for an additional two years after

the expiration. The maximum period of time for which an order can be made is three years. One would see that even in respect of clause 22 where the court makes an order for less than three years, there is provision for the extension of the order. The principle of that is that the court must have a time-frame because the principle of the Bill is that there should not be a permanent maintenance order. Therefore, the court makes an order for a particular time-frame and depending on the circumstances, the court would look at the matter again and determine whether to extend it.

I think that probably clause 15(1) has not been fully appreciated and probably the fault really rests with me in presenting the Bill. What clause 15(1) says—and I would read it and then try to explain:

"A court may make a maintenance order, where it is satisfied as to one or more of the following matters:"

So for any one of these matters, if the court is satisfied, it may make a maintenance order.

"(a) that the applicant is unable to support himself..."

And himself in law means herself also.

"adequately by reason of having the care and control of a child of the cohabitational relationship, or a child of the respondent, being in either case, a child who is—

(i) under the age of 12 years; or

(ii) in the case of a physically disabled or mentally ill child, under the age of 16 years.

That was amended in the other place to 18 years. Let us take that first.

There may be a situation where the woman of this relationship has a young child under the age of 12 and she has to see about that child, and because she has to do so she cannot work. So it is not an application for or a provision for maintenance of the child because, as we said, this Bill does not deal with maintenance of children; that is dealt with in other measures. If the court is satisfied that the wife is unable to support herself adequately by reason of having the care and control of this child because the child is under 12 years of age—she cannot leave the child

with someone else or does not want to—then that is one of the reasons. Either the child is under the age of 12 years or in the case of a physically disabled or mentally ill child, under the age of 18. So if either situation arises, then that would be a reason why maintenance should be ordered in favour of the spouse. It is not a situation where the court is giving maintenance to the child under 12 years, the child under 16 years or the child over 12 years. The fact is that she is disabled from properly supporting herself because of the responsibilities she has for the child who is under the age of 12 or a physically disabled child.

> "(b) that the applicant's earning capacity has been adversely affected by the circumstances of the relationship, and in the opinion of the court a maintenance order would increase the applicants earning capacity by enabling the applicant to undertake a course or programme of training or education;"

In (b), for example, there would be circumstances where this lady might have been working, doing a particular trade or education at the time, but because of the relationship has had to stay at home or she was influenced to do so in order to see about the home. As a result of all that, she was not trained in any particular area or she needed special training in order to get a job. So the court would look at all that and in the opinion of the court, a maintenance order would increase the applicant's earning capacity by enabling her to undertake a course of programme, or training or education. So there is a situation where, if a partner has been so disabled by the relationship, in the sense that he or she made sacrifices, and there is a situation where she can show that she has been adversely affected by the circumstances and needs maintenance in order to pursue some course or programme to get productive employment to support herself, the court can also take that into consideration as a separate and independent factor in ordering maintenance.

Sen. Mahabir-Wyatt: Mr. President, through you, I wonder if the hon. Attorney General would address the situation which is very common in instances where the person asking for the maintenance is somewhere in their 60s. In clause 19 you said that the purpose of the Bill is not to provide ongoing maintenance, that it should not exceed three years or come back and ask for an extension. Should this not just be left up to the court, the way it is in the family law generally? If you are 62, none of these two situations is going to help and the maintenance may justifiably be necessary for longer, depending on the length of the relationship.

Hon. R. L. Maharaj: Mr. President, I was going to deal with that because clause 15 deals with another circumstance that the court can consider.

> "(c) Having regard to all the circumstances of the case, it is reasonable to make the order."

So one sees that the court is not restricted. There is a situation where the applicant is unable to support oneself because of the care and control of the child, the applicant's earning capacity has been affected, or having regard to all the circumstances of the case. In those circumstances one can take the situation where the person is 60 and cannot support one's self. Even if the person is 60 and deserves maintenance and it is made for three years, the person can ask for an extension of the order after one year or two years. So that is the formula which has been used in order to strike a balance so one can have a continuous monitoring of the situation by the court and putting the court as the institution to determine whether in the justice of the circumstances an order should be made.

I hope, Mr. President, I have satisfied the concerns of hon. Senators in respect of clause 15. Obviously, when legislation like this starts working, one would see probably, if there are some faults and shortcomings. As you know, Parliament is not restricted; one can always come back to Parliament to make changes if they are necessary in order to make it more workable. I give the undertaking that I know this is novel legislation in Trinidad and Tobago and after it starts working and there is a problem, we would come back to Parliament. I do not want to introduce any politics here, Mr. President, but in the light of things one sees that we are going to be here for a very long time so we will come back to the Parliament and make whatever changes—in light of a recent vote in the other place.

Mr. President, I would like to deal with some of the specific submissions made by some of the Senators. I think that I have dealt with the concerns expressed by Sen. Mahabir-Wyatt. Sen. Alfred proposed that the maintenance rights of cohabitants should be on par with that of a legal spouse. It is not the intention of this legislation to equate the two types of relationships, that is, marriages and cohabitational relationships. The policy of this legislation is intended to relieve the economic injustice to one party of that relationship, but on a temporary basis, and depending on the situation, for it to continue as the circumstances warrant as determined by the court. It is really not to put the cohabitational spouse on an equal basis as a legal spouse. I regret I cannot accede to that request because the whole policy of this legislation is not to do that.

I have given instructions to the Law Commission to provide a copy of the working paper to all Members of Parliament. I do not know if they have done that, but if they have not I am sure it would be distributed. I do not think in the research that the Law Commission has done, we were able to find any jurisdiction in the world, which went with this kind of legislation, that has been able to equate both relationships.

Mr. President, Sen. Prof. Ramchand suggested that the Bill be called the common-law marriage bill because cohabitation suggests a sort of "shacking up" relationship. Perhaps, common-law relationship is really a wrong term because the Common Law does not recognize a common-law relationship; it does not recognize any relationship outside of marriage. It is equity that, to some extent, recognizes that. Perhaps, that is really a misnomer, so to call it a common-law relationship would be perpetuating a misnomer. Some legislation like this has called it a *de facto* relationship bill. We have opted for this name and I do not think there would be any harm, and I do not think Senators would withdraw their approval of the Bill if we maintain that it remains Cohabitational Relationships Bill. If at some time in the future we believe there is another name for it, we can always come back and have it changed.

Sen. Nafeesa Mohammed submitted that the Bill would create a conflict between legal spouses and *de facto* spouses. Under clause 10(1)(c) of the Bill, on an application to the court by a cohabitant for an adjustment order, the High Court is conferred with the jurisdiction to make such order as is just and equitable, having regard to *inter alia*:

"(c) the right, title, interest or claim of a legal spouse in the property."

One sees that it is specifically provided in clause 10(1)(c), that the court would consider the legal interest or claim or the right, title, interest or claim of a legal spouse in the property. So it would not cause a conflict. On the contrary, it would recognize that it has to consider the interest of the legal spouse in making the order.

Then under clause 15:

"In determining whether to make a maintenance order and in fixing the amount to be paid pursuant to such an order, the court shall have regard to—

(d) the responsibilities of either cohabitant to support any other person."

So one sees whether it is in the property adjustment orders or in the maintenance order, the court would have to consider in one case with respect to property, the right, title, interest of the legal spouse and in respect of the maintenance, the responsibilities of either cohabitant to any other person.

1.50 p.m.

The point has been made by Sen. Mohammed that the Bill may foster situations where there may be three and four relationships. We did consider that and that is a problem that any Bill like this would have to face. That is why the Bill has been drafted in such a way that the court must be satisfied that for there to be a cohabitational relationship as defined in the Act is where the parties in a relationship live together or have lived together as husband and wife on a *bone fide* domestic basis.

What I can say is that looking at cases in the jurisdictions in which this has been certified one sees that the court has placed great emphasis on showing that there was the intention of the parties to have a family and by their conduct this intention was manifested. It is not a case where there is a person who is going from house to house having relationships and that person would have obligations in that kind of situation. It is really to protect situations in which there is a *bone fide* intention to create a domestic relationship.

Mr. President, I think that I have dealt with most of the comments. There was the other point raised that I should look at clause 28 to see what happens if the court decides one way and the party finds another. Under clause 28 there are conditions which the court must be satisfied with in respect of the agreement and the effect of the agreement and under clause 28(2):

> "Where, on an application by a cohabitant for an order Part III, the court is satisfied that there is a cohabitation agreement or separation agreement between the parties, but the court is not satisfied as to any one or more of the matters referred to in subsection (1), the court may make such order as it could have made, if there is no such agreement in existence.
>
> (3) The court may make an order referred to in subsection (2) notwithstanding that a cohabitation or separation agreements purports to exclude the jurisdiction of the court."

What that means is that if the parties have agreed to regulate their future relationship by an agreement and if, for some reason, the court finds that the agreement is not a proper agreement and the agreement does not subsist in law, that is not the end of the matter, the person is not unprotected. In other words they will go back to the ordinary provisions of the Act and one will have to be able to get the maintenance or the property rights on the basis of the ordinary provisions of the Act.

Even if the agreement ousts the jurisdiction of the court and says the court will have no jurisdiction in these matters, that will have no effect because the court would have jurisdiction whether the agreement says so or not.

Sen. Dr. Mc Kenzie: Thank you, Mr. Attorney General. I just want to find out whether you have any comment on the point I made yesterday which is, if you would refer to clause 7(10) of the White Paper on page 17 especially the final clause which reads:

> "Where the deceased person leaves no legal spouse but has issue and has cohabited with a person continuously for a period exceeding three years prior to his death then the de facto spouse should be entitled to that part of the estate which they would have shared with a legal spouse."

The content of it rather than the phraseology; I am not so sure the phraseology would be what I would want but just the idea of someone dying, there is no breakdown in the relationship but someone dies and then the case I brought where the mother could come in and claim the part of the estate of the relationship.

Do you have any comment on that? I think the matter was looked at when the White Paper was done and it is on page 17, clause 7(1).

Hon. R. L. Maharaj: Mr. President, I have that in mind and I did make the point when I opened debate on this Bill that this Bill would not deal with the succession rights of a cohabitee and I indicated that we were coming with a measure in which the Succession Act of 1981, which was not proclaimed, had attempted to deal with some of these matters. I take the point in that right now there is a major problem in that the mother or father may step in and take total control and the wife, who has worked all the time, has been left and then there is the position in the law where she cannot apply for administration. It is in that context that this Bill would—for it to be complete there has to be the other aspect of the Bill to deal with the situation when there is death and there is no will.

If, for example, there is a will made then there is no problem but most people in Trinidad and Tobago do not make wills. There are situations where the woman may be living with the man for years and they have children and there may be a wife who was living with somebody else. What happens is that after all this occurs either the wife or the mother comes in and a grave injustice is done to them. That is one of the situations that I mentioned in my opening that the Dependent Relief Succession Bill which will be coming to Parliament would not only have what is contained in the Succession Act but will also have matters that will make it more liberal in a way in which common law spouses would be protected on death.

Mr. President, I think from the notes I have made and from what I went through this morning when I looked at this in order to come and respond, I think I have dealt with the major comments made on this matter. There was one matter, however, which was not connected with the Bill but which was said. I regret very much it was said but if I may just put my part in it. Sen. Shabazz was very dramatic and he said it was Republic Day and he would not cohabit with the Government on Republic Day because he has other plans and in relation to what he was doing. I can understand his position because his leader has decided that Death Row prisoners must cohabit all the time in the prison, they must not have the death sentence and they must have a fundamental right to go to a human rights body. His leader or one of his leaders—because I do not know if he is the leader—has said that they do not want to cohabit with the Government in order to pass an important piece of legislation so I do understand the policy and the philosophy of the Hon. Senator.

Mr. President, notwithstanding all that, may I say that we appreciate very much the comments made not only by the Opposition Senators on this matter, but also by the Independent Senators. Speaking for myself it has given me a better opportunity to explain the Bill and the provisions of the Bill.

Mr. President, thank you very much and 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.

Mr. Chairman: Members, I seek your consent to deal with the clauses by parts *en masse* rather than 31 individual clauses and where there are proposed amendments we will deal with those clauses individually. Do I have your consent?

Assent indicated.

Clause 1 ordered to stand part of the Bill.

Clause 2

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

Mr. Chairman: There is a proposed amendment by Sen. Mahabir-Wyatt.

Sen. Mahabir-Wyatt: Mr. Chairman, on the basis of the Attorney General's undertaking that he will look into the broader law dealing with the family—and he has always been true to his words so far—I withdraw these two, subclause (1) and (2).

I would like to just ask a question: under the definition of child I am wondering if there is a typo there. It says:

> "'child' when used in relation to the parties of a cohabitational relationship means a child of both parties."

Does this not mean a child of either or both parties because it could be a child of either one or both together? The Bill does envisage in clause 15 the child of the cohabitational relationship or a child of the respondent. So it envisages that it could be a child of both or just one of the cohabitants. I think it should be either or both.

Mr. Maharaj: I think that is correct Senator, because when one looks at clause 15 it is the child of a cohabitational relationship or a child of the respondent so it should really be a child of either or both parties. "Child" when used in relation to the parties of a cohabitational relationship means a child of either—insert after "of" "either party or both parties". Thank you very much.

Sen. Dr. Mc Kenzie: Mr. Chairman, sorry that I seem to be going back but is it right that it is a relationship in 1887 in the short title? The short title comes as clause 1.

Mr. Maharaj: We will amend that. It is 1998.

Mr. Chairman: Hon. Members the question is that clause 2 be amended as follows, under interpretation and application 2(1):

"'child' when used in relation to the parties of a cohabitational relationship means a child of either party or both parties and includes an adopted child."

2.05 p.m.

Question put and agreed to.

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

Clauses 3 to 13 ordered to stand part of the Bill.

Clause 14

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

Sen. Mahabir-Wyatt: Sen. Prof. Ramchand had a proposed amendment to the Bill. He did not actually make any arrangements, but I know what his argument is. It is that particularly in long-term relationships, although it is not so defined here, morally, the maintenance rights and responsibilities should be the same as they are in a legal married relationship. He feels very strongly about this, obviously, as he pointed out yesterday, because this is a situation about which he has personal understanding.

I understand that the Attorney General has made it very clear that he does not intend to have the two kinds of relationships made equal, so I think we should just go to a vote on this one. This is one which one is either for or against, so I think we should just go to vote on it. I am afraid there is not much more that can be said. The Attorney General has already given his comments on it a few minutes ago.

Mr. Maharaj: Mr. Chairman, what Sen. Mahabir-Wyatt said is correct, and that is to say that obviously Sen. Prof. Ramchand feels very strongly about this amendment, but as I indicated and she indicated also, the policy of this Bill, as decided by the Government, is different and, therefore, we could not accede to the amendment because we could not equate it on the same basis as legal spouses. I regret that I could not accede to the proposal.

Sen. Mahabir-Wyatt: Mr. Chairman, we will continue to battle with the Attorney General for this down the years.

Sen. Dr. Mc Kenzie: Mr. Maharaj, would this not fit into the very answer you gave me about one party dying and leaving a will; not the same point, but in the same Bill you would bring later on? Would this not be taken care of in that same type of Bill?

Mr. Maharaj: The amendment of clause 14 would cover that, but that has to do with equating the rights of a common-law spouse on the same basis as the rights of a legal spouse in respect of maintenance.

Question put and negatived.

Clause 14 ordered to stand part of the Bill.

Clause 15

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

Sen. Mahabir-Wyatt: Both Sen. Prof. Ramchand and I want clause 15 (a)(i) to be amended. We both suggested 18 years, but in relation to the point made by the Attorney General when he pointed out that he did not want to equate the rights under marriage with the rights under common-law relationship, and this had nothing to do with child maintenance, it had to do with the family responsibility within the relationship, I still think that a child under the age of 12 years in any family, although this is not for the child, the interest of the child must be paramount. I think it should be at least 16, if not 18.

While I recognize the House recognized that it should go up to 18, in this respect, I do not think anywhere else in law is there, except in the old Hindu marriage law, anything relating to a child under 12 years of age. A 12-year old child is extremely common-place in the society. I ask that we at least put it up to 16 years of age in the case of a sound child, and 18 years of age in the case of a mentally ill child.

Mr. Maharaj: If we put that, we may have to delete clause 15(1)(a), because the whole purpose of 15(1)(a) is to be able to give a basis for the court to provide maintenance for an applicant who is unable to support herself because she has to take care and control of a young child. If the child is over 12, the child would normally be in school and, therefore, it would not be a basis, because a child of 14 would normally be at school and so, the age factor of 12 years is a factor which has been used in relation to where the woman has to take care of the child and be at home instead of the child being at school.

Sen. Mohammed: In any event, she would have to take care of the child. I think it should be much higher than 12 years of age.

Sen. Mahabir-Wyatt: When my children were small and ill, I would have to stay home to look after them. I would not leave a 13 year-old to look after himself. I believe the school-leaving age in Trinidad and Tobago is much higher than 12 years. I think it is 14 years.

Mr. Maharaj: If the child is going to school, then the mother would not be able to say she has to take care of the child by keeping the child at home and looking after him. Twelve years old and under is the age at which one would have to do that.

Sen. Mohammed: At the age of 12 and under, one is in school.

Mr. Maharaj: The degree of care is greater for a child under 12. It is not whether they need more care, it is a matter of the parent being able to spend the time with the child, so the parent cannot work. That single parent does not work and, therefore, the single parent needs maintenance for that. It is not for the maintenance of the child.

Sen. Mahabir-Wyatt: Can a person obtain child maintenance in addition to this? Is this maintenance being paid by the court or the other parent?

Mr. Maharaj: It is being paid by the other parent. It is for the maintenance of the partner, not the child.

Sen. Mahabir-Wyatt: Can the cohabitant apply for child maintenance in addition to this?

Mr. Maharaj: Yes. Under the Family Law Act, they can apply for maintenance. This does not take away the right of getting maintenance for the child. In other words, under 12, the parent will have to pay maintenance for the child and also have to pay maintenance for the spouse. This is a ground devised to provide some relief for mothers who would want to take care of children of tender age and the age which has been used in the legislation is 12 years old. That is what we have done. We have tried to provide an additional remedy to that kind of injustice.

2.20 p.m.

What I can say is, if it does not work and we want to extend it later, we can come with it, but I would ask members to give us a chance to see how it works at 12.

Sen. Mahabir-Wyatt: Well, we will see.

Mr. Maharaj: What I am thinking is because of the time factor we have for the legislation, if it goes to the other place and there is no time to deal with all these amendments, the entire legislation would lapse, apart from any other considerations.

Sen. Mahabir-Wyatt: I would not want that to happen. That is not the point. I think sometimes it takes us many years for social legislation to get before Parliament and that worries me, because the Succession Act has been since 1981, we are almost at 2000.

Mr. Maharaj: What I can undertake to say is that even though we are passing this, we will look at it and even in the new session we can come back.

Sen. Mahabir-Wyatt: All right.

Sen. Dr. Mc Kenzie: Mr. Chairman, if I may ask a sort of spin-off question. Many times when it comes to matters dealing with children and maintenance, I know this is not for the maintenance of the child, it is for the mother, these wicked men like to say, as we said yesterday, that the child is not his. Could we not use the system of the tax returns? Where they are claiming for this child all the time as a tax break and when it is time, they say they do not know anything of the child. We could use this, as I said, this is an off-shoot question, but they are claiming and legally saying and swearing that this child is theirs, as soon as they are told to pay for the child, they do not know anything about the child, they want DNA, blood test and all kinds of things.

Mr. Maharaj: Well I am sure a good lawyer like Sen. Nafeesa Mohammed would be able to use that sort of thing.

Sen. Dr. Mc Kenzie: I just thought that we would expose this. That we could find a little loophole sometimes and trap the scamps. Thank you for allowing me to stray, Sir.

Mr. Chairman: Sen. Mahabir-Wyatt, you have an amendment that you are withdrawing?

Sen. Mahabir-Wyatt: Yes, 4(a)(1)(ii) has already been put in by the Lower House. So that is no longer necessary, that one is already passed.

Clause 15 subclause 4(a)	(i) Delete the word "12" and replace by the word "18".
	(ii) Delete the word "16" and replace by the word "18".

Amendment withdrawn.

Question put and agreed to.

Clause 15 ordered to stand part of the Bill.

Clauses 16 to 18 ordered to stand part of the Bill.

Clause 19

Question proposed, That clause 19 stand part of the Bill.

Mr. Chairman: There is a proposed amendment by Sen. Prof. Ramchand.

19(1)	After the word "court" delete the commas and the rest of the sentence. Insert full stop after "court"

There is also a proposed amendment by Sen. Mahabir-Wyatt. It appears to be the same as Sen. Prof. Ramchand's.

19(1)	Delete the words "but shall not exceed three years from the date on which the order was made".

Mr. Maharaj: I wonder if Sen. Mahabir-Wyatt, having regard to what I have said, would—

Sen. Mahabir-Wyatt: On this one I will not concede. As persuasive as the Attorney General has been so far, I feel extremely strong. I think it should be left up to the court and let the court determine. On that one I am not going to back down. I really feel strongly about this.

Mr. Maharaj: I wonder if I could take another shot at it. What the court would do in such a matter would be to make the order for three years. That does not mean that the order would only be for three years.

Sen. Mahabir-Wyatt: They can come back under 20(2) and ask for an extension, but it means that in the case of an elderly person—the courts have experience in this, you pointed that out yourself, they know how the *bona fide* relationship is, they can look at all the things: the age of the people, the circumstances under which they live. This envisages somebody who has been, perhaps, living with another person for 20 years, to have to come back every two and a half years—and people like this do not have access to lawyers, they do not have money, it is very difficult. The court, in its wisdom, can decide what the

length of the time should be. This is a real hardship on people, especially women and elderly women.

Sen. Daly: Can I suggest something? Would it help if it said, "shall not, save in exceptional circumstances, exceed three years". So you indicate to the court that the norm is no more than three years, but if you have the type of case that the Senator is describing, such as somebody elderly. I mean, I have a problem only because I understand the policy reason behind the three years, the order might exceed the duration of the relationship if it is for too long a period.

Sen. Mahabir-Wyatt: Would the court be that blind? The court has to look into all these circumstances.

Sen. Daly: Remember Brooks and the rape?

Sen. Mahabir-Wyatt: I do.

Sen. Daly: The court can be blind. Would it help if we left an escape clause?

Mr. Maharaj: Mr. Chairman, Sen. Mahabir-Wyatt is so persuasive at times, perhaps—there is a draft here that my technical people have done depending upon whether I wanted to go with it at this time. I will read it and I am prepared to do it, bearing in mind that one of the risks that could be faced is that the Bill could lapse if there is no time tomorrow to complete this matter, because tomorrow is the last date that the Parliament is sitting. What I would have preferred to do, was to give an undertaking to you that it is a matter that I would look at and before the Bill is actually assented to, come back early in the session, but I will read what I would give you a commitment that I would pass early in the session, and if you take that commitment, I will come back with it. It reads:

> "A new subclause (3), notwithstanding section 19(1), where the court makes a maintenance order under section 15, the cohabitant in whose favour the order was made may at any time before the expiration of the order apply to the court for an extension of the period of maintenance beyond the maintenance prescribed. Where an application is made under subsection (3), the court may make an order extending the period of maintenance by such further period as the court considers just and equitable having regard to the circumstances."

Sen. Mahabir-Wyatt: Okay. I know this is like playing chess, but I do not want it not to go through tomorrow, and I trust the Attorney General would keep his word.

Mr. Maharaj: I give the undertaking that what I would do is that before the Bill is assented to, I will come back to the Senate with this amendment and with some other amendments that may possibly be looked at. Okay?

Sen. Mahabir-Wyatt: Thanks a lot. I wish to withdraw the amendment.

Amendment withdrawn.

Question put and agreed to.

Clause 19 ordered to stand part of the Bill.

Clause 20

Question proposed, That clause 20 stand part of the Bill.

Mr. Chairman: There is a proposed amendment by Sen. Prof. Kenneth Ramchand which was circulated.

20(2) Delete.

Sen. Mahabir-Wyatt: That would no longer be necessary, since we have just agreed on 19. I cannot withdraw it on his behalf, but it will no longer be necessary or applicable.

He wanted to have it deleted because he was hoping that the amendment that he and I had both made to 19 would be accepted. If that had been accepted, then 20(2) would not be applicable. So we have agreed to the undertakings. So this more or less takes into account 20(2).

Mr. Chairman: Since Sen. Mahabir-Wyatt cannot withdraw the amendment, I will be required to put the amendment to the House and take a vote on it.

Question, on amendment, [Sen. Prof. K. Ramchand] put and negatived.

Clause 20 ordered to stand part of the Bill.

Clauses 21 to 31 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.

2.35 p.m.

TOBAGO HOUSE OF ASSEMBLY (AMDT.) BILL

Order for second reading read.

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

> That a Bill to repeal and replace the Tobago House of Assembly Act, Chap. 25:03, to provide for the membership, powers and functions of the Tobago House of Assembly and its Executive Council and matters incidental thereto be now read a second time.

Mr. President, the purpose of this Bill is to make miscellaneous amendments to section 71 of the Tobago House of Assembly Act, and the existing procedure for consultation on appointment to the office of Chief Administrator in order to make it clear that the Public Service Commission must consult with the Prime Minister in relation to that appointment. That formula is one which is in the Constitution of Trinidad and Tobago relating to certain public officers and the Prime Minister must signify his approval before such appointment is made.

It also proposes to alter section 72 of the Tobago House of Assembly Act to regularize the status of the Clerk of the Tobago House of Assembly and vest with him the status of a public officer.

It also purports to amend section 74 of the Act so as to state that the Government of Trinidad and Tobago is the employer of the staff of the Tobago House of Assembly and to enable the Chief Personnel Officer to perform the same functions in relation to the staff of the Tobago House of Assembly as it performs in relation to the civil service. It also expands the areas of responsibility of the Tobago House of Assembly which is stated in Schedule V to the Act to include the following: consumer affairs, labour, gender affairs, quarries, mining and water resources and other certain consequential and minor amendments which have been made in relation to the Act.

Mr. President, the Tobago House of Assembly Act was passed in 1996 and one would recall that based on that Act, there was devolved greater autonomy for the people of Tobago and the functions and powers of the Tobago House of Assembly were redefined and given additional powers in order to have more effective management in Tobago.

One of the officers of the Tobago House of Assembly is the Chief Administrator and section 71 of the Act itself, is being amended in order to make it clear that before the Public Service Commission makes an appointment to the office of Chief Administrator, the Public Service Commission shall consult with the Prime Minister and the Chief Secretary. A person shall not be appointed to the office to which section 4 applies unless the Prime Minister signifies to the Public Service Commission and the Chief Secretary that he does not object to the appointment of that person to the office.

Mr. President, I think Members who are familiar with section 121 of the Constitution, in relation to the Public Service Commission know it specifically says in section 121(3):

> "Before the Public Service Commission makes any appointment to an office to which this subsection applies, it shall consult the Prime Minister."

Section 121(4) says:

> "A person shall not be appointed to an office to which subsection (3) applies if the Prime Minister signifies to the Public Service Commission his objection to the appointment of that person to that office."

The officers who are mentioned are permanent secretaries, chief technical officers, Director of Personnel Administration and so forth. So one sees that in relation to the people of Trinidad and Tobago and to the Constitution of the Republic of Trinidad and Tobago, the formula is that for such high positions in the public service, the framers of the Constitution entrenched in section 121 where, whoever is the holder of the office of Prime Minister would have to be consulted and he can signify his objection. In other words, the appointment cannot be made if the Prime Minister signifies his objection to it.

Mr. President, the other main aspect of the amendment in addition to what I have stated is section—

Sen. Prof. Spence: Mr. President, I wonder if the Attorney General could explain to us why this particular process is being used as an amendment to the Tobago House of Assembly Act, because as he has pointed out, it really is a matter for the Constitution, and surely, the normal procedure would have been just to add Chief Administrator to the list of persons mentioned in section 121(5) of the Constitution.

I wonder whether doing it through the Tobago House of Assembly Act would give the same force as the other persons mentioned in the Constitution. Can the Constitution be in fact amended in this way, or added to in this way? It seems to me a rather different way of doing it.

Hon. R. L. Maharaj: Mr. President, the Act also takes the opportunity of dealing with other matters of the Tobago House of Assembly and what this is doing is really making it clear that this is the position for the Chief Secretary in relation to his appointment to the Tobago House of Assembly.

If I may answer Sen. Prof. Spence, the Tobago House of Assembly Act provides for the Chief Administrator to be appointed and the Act can provide that before he is appointed that the Prime Minister must be consulted by the Public Service Commission, and if he signifies his disapproval the appointment cannot be made. I do not think it has to be done by an amendment to the Constitution.

Sen. Prof. Spence: Does the Prime Minister derive his functioning with respect to all the other officers through the Constitution as you pointed out?

In this particular case we are not providing for the Prime Minister's authority through the Constitution as in the case of the other officers. I was just wondering if this does not strike you as being a bit unusual.

Hon. R. L. Maharaj: No. There are different ways of doing things and since it has to do with the Tobago House of Assembly in relation to what was happening in Tobago, and the Tobago House of Assembly, it was given this special relationship and one was going that route. I do not see there was a necessity to amend the Constitution.

Mr. President, the cosmetics may be different but, in substance, that is what it is and the important aspect is for the Civil Service Act to apply to public officers who are employed with the Tobago House of Assembly in the same manner as it applies to other public officers who fall within the purview of the Act. There was the question as to whether these officers would have the protection of the Public Service Regulations and be insulated from political interference and it was considered that the Civil Service Act should apply to public officers so that there can be no doubt that they were under the jurisdiction of the Public Service Commission.

In relation to clause 6 of the Bill it is all in keeping with the requirements in giving greater autonomy to Tobago in relation to adding to some of the matters

which are contained in the Fifth Schedule. Members would recall that under the Tobago House of Assembly Act, the Cabinet has the overriding authority and it is not that the Tobago House of Assembly can administer these matters without being inconsistent with the policy of the Government and they are subject to the same accountability and other matters in relation to other public institutions.

Sen. Mahabir-Wyatt: Mr. President, could the Attorney General just expand on that a bit. In the amending Bill—and I am referring to the original one—it has listed 33 areas in which the Tobago House of Assembly had jurisdiction. Is my understanding correct that the Tobago House of Assembly has jurisdiction over the administering of the affairs in relation to these items, and they can only do so subject to laws of Trinidad and Tobago and the existing laws of Trinidad and Tobago are the overriding laws when it comes to the administration of any of these areas?

Sen. Daly: Mr. President, in the absence of this amendment, is section 121(3) of the Constitution going to apply to the Chief Administrator? Let us assume for the moment that we do not have this amendment. If it is a public office for the purpose of section 121(3), section 71 of the Tobago House of Assembly Act says it is a public office for the purpose of section 121 of the Constitution. My reasoning therefore, is that it has become a 121 office and therefore, section 121(3) applies. It says:

> "Before the Public Service Commission makes any appointment to an office to which this subsection applies, it shall consult the Prime Minister."

I am not saying whether we should pass the amendment or not, I am just seeking clarification as to whether section 121(3) applies.

Hon. R. L. Maharaj: There has been some doubt as to whether it applies, that is why I said when I was presenting the Bill that the question arises as to whether it applies and this was to make it certain that it does apply. If the Members feel that it would cause some uncertainty because it was felt that it was not sure and if the Public Service Commission which has to administer it, and if there is doubt and it is felt that legal advice cannot deal with the matter, that is how it has to come to the Parliament to get it.

2.50 p.m.

Sen. Dr. St. Cyr: Would it not be simpler to call the Chief Administrator Permanent Secretary?

Hon. R. L. Maharaj: That is a very difficult question, and then somebody might say why do we not call him Comptroller of Customs? Can I ask that we accept the Chief Administrator instead of changing it at this time to Permanent Secretary.

The question Sen. Mahabir-Wyatt asked was in relation to the Act itself. If I may take Sen. Mahabir-Wyatt to the Fifth Schedule of the Tobago House of Assembly Act. The Fifth Schedule contains areas of responsibility of the Tobago House of Assembly but that is related to section 25 of the Act.

It says:

> "And it says without prejudice to Section 75(1) of the Constitution, the Assembly shall in relation to Tobago be responsible for the formulation and implementation of policy in respect of matters set out in the Fifth Schedule".

And section 75(1) of the Constitution states:

> "There shall be a Cabinet for Trinidad and Tobago which will have general direction and control of the Government of Trinidad and Tobago and shall be collectively responsible therefore to Parliament".

What happens is, that although the Tobago House of Assembly has certain areas of responsibility, it works within the arrangements through the Ministries, and therefore the Cabinet has the responsibility with respect to the policies. The Tobago House of Assembly carries out the policy of the Government of Trinidad and Tobago and it is subject to the Constitution and the law.

Mr. President, as a matter of fact, when the debate on the Tobago House of Assembly Bill was being done, it was made quite clear that what was being given to the people of Tobago was greater autonomy in the affairs of Tobago. Two different Constitutions were not created; one for Tobago and one for Trinidad. As a matter of fact, it was being recognized in the law that you had a Parliament for Trinidad and Tobago, and that only the Parliament of Trinidad and Tobago can pass laws.

The Assembly can pass laws, but they would not have effect unless the Cabinet decides to accept the policy of the laws and passes the laws in this Parliament.

Similarly in respect of administration, the Tobago House of Assembly can administer, can carry out decisions, can take steps with respect to projects, but it all has to be done in relation to the policy of the Cabinet and of the Government of Trinidad and Tobago.

That is why in respect of the Exchequer and Audit Act, in respect of all the areas of accountability the Tobago House of Assembly is subject to all those matters within the provisions of the Constitution.

So, Mr. President, it is a simple Bill, but I do take the point that there can be an argument that it is already covered for, but there is some problem as to the interpretation, and therefore we wanted it to be quite certain that there can be no doubt that in relation to this appointment, in relation to the Chief Administrator, these provisions apply and that is to say the process applies in relation to how it is done with all senior public officers.

Mr. President, I beg to move.

Question proposed.

Sen. Prof. John Spence: Mr. President, I would like first of all to make the comment that when the Tobago House of Assembly Act was being discussed and I sat on the Select Committee—in fact, I wrote a minority report to the effect that we did not have sufficient time to effectively look at that Bill; and indeed the fact that we are here this afternoon discussing this matter, is proof to the accuracy of my comments at that time. *[Desk Thumping]*. The matter was rushed, and I think this is good proof that we were quite right, not to rush the Planning Bill as we were trying to do over the last few weeks.

I raised a couple of points with the Attorney General during his presentation and I still would like to make them again, because it seems to me that the correct procedure, if one wants to obey the Constitution and to include the Chief Administrator amongst those officers to which section 121 subsection (5) applies, would be, to add the name of "Chief Administrator" to the list of posts.

It seems to me a bit strange that the matter of the Permanent Secretary *vis-a-vis* the Prime Minister and the Public Service Commission should be laid out in the Constitution, and that we are trying to achieve a similar process by way of putting it into the Tobago House of Assembly Act.

I do not see how having it in this Act, can have the same force as having it in the Constitution; and I would have thought that if we want to achieve this objective, the correct thing for us to do is to make a change in the Constitution. So that is my first comment on that particular section of the Bill. This differs a bit Mr. President, from the position taken by Sen. Martin Daly who seems to be suggesting that since the Tobago House of Assembly Act refers to section 121 in

the Constitution and makes the Chief Administrator a Public Officer, a member of the Public Service, therefore, all the provisions of section 121 apply. But in my opinion, the officers are further specified by 121 subsection (5).

With respect to the last change in Item 6 of the Bill in which there is a change in the matters that are put under the jurisdiction of the Tobago House of Assembly under Schedule 5 of that Act—the Tobago House of Assembly Act. I, myself, would like to suggest, that we consider a further addition in the light of recent discussions that we have been having in the Senate. I would come back to that in a minute.

First of all, I would like to just comment on the position that the hon. Attorney General took with respect to the force of the Tobago House of Assembly Act, and the Constitution.

Of course, I accept entirely, that the Constitution of Trinidad and Tobago must override anything that would occur in the Tobago House of Assembly Act. In my opinion, the Tobago House of Assembly Act does in fact modify some of the laws in Trinidad and Tobago, and if it is enacted after those laws, it would seem to me that it must have precedence.

I am not a lawyer, but I will really be grateful to know, if you have one Act which says "X" and you subsequently pass another Act which contradicts "X" which then applies.

Of course, this is why we are trying to be so careful with respect to the Planning Act—again to refer to that, because of the aspects of that Bill which seem to contradict or go against certain provisions in already existing Acts namely, the Environmental Management Authority Act, and the National Trust Bill.

But my understanding is, and I will be grateful if the Attorney General could correct me, or otherwise. If you have a certain Act which says "X" and then you have a subsequent Act which says "X" is no longer valid, the law is, that "X" is no longer valid.

In passing the Tobago House of Assembly Act it seems to me, that notwithstanding the laws of Trinidad and Tobago we have passed a new law which says that in certain areas the Ministers will no longer be responsible for certain activities, but the Tobago House of Assembly will. That was certainly, my understanding of the Act.

I think it is an extremely important issue that at some time we need to air. I would like the Attorney General to respond specifically to that. In response to Sen. Mahabir-Wyatt, he seems to give a rather general overview that the Constitution overrides everything else. Of course it does. But, we can make laws and once they are consistent with the Constitution, or if they are changing the Constitution in certain respects, we have a special majority. We can make laws which would then guide us as to how the Constitution is to be implemented; and if we make a law, which says with respect to consumer affairs in one part of the nation of Trinidad and Tobago, the functions which were normally performed by the Minister of Consumer Affairs will now be performed by certain bodies that will be set up—we are quite at liberty to do so under the Constitution; and that is my opinion of what we did when we set up the Tobago House of Assembly Act

As we return to clause 6 of this Bill, I certainly think it will be appropriate given recent discussions, to add to Item 15 of the Schedule which says, Town and Country Planning.

3.00 p.m.

Now, when this Act was passed, the terminology of "physical planning" had not come into vogue. But in the Bill that we are discussing on Planning and Development, the new terminology that we are using is "physical planning" and indeed in those discussions it was suggested that Town and Country Planning did not cover physical planning. So I think it is appropriate that we now add to 15, before "Town and Country Planning", "Physical Planning to include..." That, I think, would be very appropriate, in the light of the discussions that we have been having now.

I would be grateful for a reaction from the Government side, with respect to those two points.

Thank you very much.

Sen. Cynthia Alfred: Thank you, Mr. President, for the opportunity of making my contribution to this very important piece of legislation.

Mr. President, there is a saying: "What morning sun does not dry, evening sun cannot" and in respect of this piece of legislation, this term applies. I will explain how, Mr. President.

When this piece of legislation was at the committee stage, the committee asked for further time so that they could consult, and so forth. They were not given the time. So what has happened? We have come here with an Act that has never been complete. If it was not complete then, it is not complete now, and it will never be complete until that particular aspect is addressed. *[Desk thumping]* So that is the first thing, Mr. President.

Now, I am asking the question, Mr. President—an important piece of legislation like this, that affects Tobago, the Tobago House of Assembly, an amendment to the Tobago House of Assembly Act—we note that it was said it would be presented by the Minister of Tobago Affairs. *[Desk thumping]* We note his absence, Mr. President. *[Desk thumping]* And we would like to ask the question, albeit rhetorical—why? Why is the Minister of Tobago Affairs not here? *[Desk thumping]*

We are hoping, Mr. President, that other Members on the Government side from Tobago will have the opportunity, or will be given the opportunity, to speak on this Bill. *[Desk thumping]* Because, you see, Mr. President, the question is, what is the thinking behind this piece of legislation? It appears to us that there is more to this than meets the eye. *[Desk thumping]*

Page 4 of the Bill, clause 3, says:

"Section 71 of the Act is amended—

(a) in subsection (2), by deleting the words 'without any break in service' occurring immediately after the word 'Administrator'".

We do not have a problem with that, Mr. President. That seems all right. I do not think it really needed to be articulated or to be stated. I think this was just a lead up to the real crux of the matter which is, repealing subclause (4) and substituting subclause (5). I will come back to those, Mr. President.

"4. Section 72 of the Act is amended:

(a) in subsection (1), by inserting immediately after the word 'who' the words 'shall be a public officer'"

We like that amendment, Mr. President, because it spells it out. It will read something like this:

"There shall be appointed to the Assembly, a Clerk who shall be a Public Officer".

So that is all right. He/She is a public servant.

"5. Section 74 of the Act is amended by inserting—

(a) immediately before the word 'Except' the word '(1)'";

(b) immediately after the word 'Assembly' in line seven, the words 'and shall continue to be in the Public Service as defined by section 2 of the Constitution'";

That also is all right, Mr. President.

"(c) the following new subsection:"

We do not have a problem with this, which says:

'(2) The Civil Service Act shall apply to the public officers employed with the Tobago House of Assembly, in the same manner as it applies to other public officers who fall within the purview of that Act'.

That also is fine, Mr. President. Because here it is saying, without any shadow of a doubt, that the public servants in Tobago fall under the same Civil Service Regulations, as all other public servants. So those are all right.

However, Mr. President, to come back to this whole question of 3(b):

"by repealing subsection (4) and substituting the following subsections"—

71(4) of the Tobago House of Assembly Act says:

"Prior to consultation with the Public Service Commission on the appointment of the Chief Administrator, the Prime Minister shall consult with the Chief Secretary".

It says here that the Prime Minister should consult with the Chief Secretary before consultation with the Public Service Commission—even though it gives the impression that in fact the Prime Minister will be the one who will virtually be making the appointment, that still is far superior to the amendment.

The amendment, 3(b)(4), says:

"Before the Public Service Commission makes any appointment to the office of Chief Administrator, the Public Service Commission shall consult with the Prime Minister and the Chief Secretary".

3.10 p.m.

Before I go into the meat of this, Mr. President, we were of the impression—I think that the whole of Trinidad and Tobago was of the impression—that the Tobago House of Assembly was a special institution. Yes, the Prime Minister has overall responsibility for Trinidad and Tobago, but we thought that, on the question of Tobago, there would be a special case.

To make the point even stronger, here are some of the things that the hon. Attorney General said in the debate on the Motion on the Unitary State of Trinidad and Tobago held on January 26, 1996.

> "It is the view of this administration that enough is enough. The people of Tobago have waited too long; they have been fooled by the PNM; they must enjoy security and they must not be subjected to the promotion of their security by political parties only at election time."

Hear this one:

> "The people of Tobago need such a structure that the concept of Trinidad and Tobago, being a sovereign democratic state, would be implemented."
>
> He went on to quote the view expressed by the Joint Select Committee in House Paper No. 6 of 1978:
>
> > "The preponderance of opinion therefore favoured some form of governmental structure with appropriate constitutional and/or legislative safeguards to ensure its permanence. Such a structure should be designed to remove the deficiencies referred to above and to achieve the following objectives:—
>
> (a) the effective co-ordination of the various services of the Central Government in Tobago;
>
> (b) the promotion of liaison and co-operation with the Elected Body in Tobago and to institute and maintain consultation with that Body especially with respect to budgetary proposals as well as the operation of state-owned enterprises which serve Tobago—viz. sea and air communications."

You may not recall, Mr. President—I said it at another time in this very place, but you were not in the seat at the time—there was the question of a new boat for Tobago. We were reading that Ministers, in Trinidad, from the Government of

Trinidad and Tobago, were speaking about a new boat going to Tobago, and the Chief Secretary knew nothing about it. Where then is the consultation?

> "(c) policy formulation and implementation by the people through the democratic process in terms of the functions here described."

I am not convinced that the hon. Attorney General is convinced that the position he is taking now is comfortable. The question was asked: "Why not simply put in the words 'Permanent Secretary' in respect of Tobago, which might answer the whole question?"

I am answering the question. He cannot put in "Permanent Secretary, Tobago House of Assembly" because we know that the Chief Secretary's salary was equated to that of a Minister of Cabinet, but in the course of time, was cut. If his salary has been cut, then he cannot be equated with a Cabinet Minister and, naturally, he cannot have a Permanent Secretary. It is giving with one hand and taking back with two. We are not convinced that this Government is truly genuine in its relationship with Tobago. If it were, why bring this amendment?

We go back to subsection (4).

> "Before the Public Services Commission makes any appointment to the office of Chief Administrator, the Commission shall consult with the Prime Minister and the Chief Secretary."

It does not say whether the Public Services Commission will consult with them jointly or separately. We assume that it will be separately, and to compound the whole issue, subsection (5) states:

> "A person shall not be appointed to the office to which subsection (5) applies unless the Prime Minister signifies to the Public Service Commission and to the Chief Secretary that he does not object to the appointment of that person to that office."

I know that the first thing that the hon. Attorney General will say is that it is taken care of in sections 3 and 4 of the Constitution. However, as I said before, we were of the impression that Tobago would have been given certain authority and autonomy and, therefore, there would be no question of spelling out that the Prime Minister has veto powers with respect to Tobago. Why then do we have a Minister of Tobago Affairs?

Why do we have here that the Public Services Commission must talk with the Prime Minister and the Chief Secretary before he makes an appointment. The Chief Secretary may say he wants Mr. "X"; the Prime Minister may say he wants Mr. "Y"; the Public Services Commission may decide that it wants Mr. "X". What happens then? When the proposition is put to the Prime Minister, he may say: "I do not want Mr. 'X'. I want Mr. 'Y'." We will then have a situation where the Prime Minister is able to foist on the Tobago House of Assembly an administrator with whom, perhaps, the Chief Secretary cannot work.

We know that for any ministry to work effectively, the minister or the equivalent of the minister, in this case the Chief Secretary, and his Chief Administrator or Permanent Secretary, must be in accord. We do not understand why these two subclauses have been put in.

The hon. Attorney General mentioned that certain powers were given to Tobago to run its own affairs. I submit that this is saying so at this juncture. He continued to say that:

> "Tobago must not be considered in the same position as a regional corporation. It is a special arrangement and therefore the people of Tobago must be entitled under our Constitution to have the arrangements which they have deserved for a long time but were denied by the previous administration."

These are the words of the hon. Attorney General. However, he comes here this afternoon with this piece of legislation and tells us that he wants us to accept that there is a special reason why they are doing this. That is not good enough, Mr. President—not from the hon. Attorney General who is usually so articulate on other matters. He could not come up with a sufficiently credible answer, so he asked us to go with it. We are not going with it. Of course, we may be outvoted, but if we are giving the Tobago House of Assembly certain responsibility, it must not only be in talk, it must be in fact.

From what we have been hearing recently, there are matters with respect to the Assembly which are not right with this Government. We have been getting the distinct impression that there are certain things that the Assembly is doing or wants to do and that the Central Government is not at all happy about that.

3.20 p.m.

This is from the *Tobago News* of Friday, September 4, 1998. At page 13, in an article headlined "Happy 36th birthday T&T", the Chief Secretary said:

> "However, the Tobago House of Assembly Act, 1996, contains no provision which gives to the Assembly even a minimum allocation of funds to ensure effective implementation of the policies formulated as mandated, policy-makers in Tobago cannot read the Act and derive from it or any other law in Trinidad and Tobago any quantifiable and predictable basis on which to plan for the financing of the Assembly's policies..."

The Chief Secretary is not happy with the way things have been done as far as the Central Government is concerned. He goes even further and makes a very strong statement. I understand great objection was taken to this statement. Part of it says:

> "...the people of Tobago are committed to strengthening and deepening this kind of democracy, and to end the undignified, disrespectful, undemocratic and inappropriate approach to planning in the nation today..."

That is the Chief Secretary.

Mr. President, something is not right with respect to the question of Tobago and the bringing of this piece of legislation tells us a story. It is saying to us that this Government wants to muzzle the Assembly; it wants to keep the Assembly in its place. The Chief Secretary, in his desire to see a better relationship between Trinidad and Tobago, goes further to say:

> "Even as we do so, however, we must use our minds and our best intentions, and speed up the process of effective integration in the Nation and the Region. So, on behalf of the people of Tobago, the Executive Council and the Assembly, I am inviting the nation to host in Tobago a series of consultations on the appropriate relationship that must exist between the islands of any multi-island state in the region."

The Chief Secretary is crying out to the Central Government; he is crying out to the nation. He said that now is as good a time as any for countries where there are twin-island states—not only here but there is St. Kitts/Nevis and so forth—to meet and discuss the relationship between one island and the other.

Now, what we are recommending, Mr. President, is that in subclause (4)—and I am not a legal draftsman, but we should have something to this effect—before the Public Service Commission makes any appointment to the office of Chief Administrator, there shall be consultation between the Prime Minister and the Chief Secretary. I will tell you why we are making this suggestion.

In other legislation it says that the Public Service Commission must consult the Chief Secretary and the Prime Minister. We are saying if we want good governance in Tobago, if we want to establish a proper relationship between the Assembly and the Central Government, let there be consultation on important positions such as the Chief Administrator, first between the Prime Minister and the Chief Secretary. In that way, they are able to meet face to face. In that way, the Chief Secretary will be able to convince the Prime Minister that having Mr. X is preferable to having Mr. Y.

One would hardly think, if the Prime Minister is really interested in the development of Tobago, that he will stand out for the person that he would like to have as Chief Administrator. Do we want the Tobago House of Assembly to be effective? The answer, Mr. President, is obviously yes. Why is the Minister of Tobago Affairs not here? I would really like to know. We want the Tobago House of Assembly to be effective; in order for it to be effective, there must be a senior public servant. That senior public servant is the Chief Administrator. Why then must we bring in this piece of legislation to have all this contention? Either leave it as it was, with which I did not particularly agree, or have consultation between the Chief Secretary and the Prime Minister. Let them have consultation first.

Subclause (5), where the Prime Minister has veto powers. It makes total nonsense to have subclause (4), however it may be phrased but, certainly, in the way it is phrased here it does not make sense, but it will make total nonsense as it is here and as it is in the original Act, if we have the Prime Minister having veto powers. Now, we know that section 121(4) of the Constitution says that the Prime Minister has veto powers, but I want to reiterate—because I know the Attorney General will take me up on this point—that in his own words, special attention should be paid to Tobago. Tobago should be given greater autonomy.

We do not expect to have the Prime Minister vetoing important positions like these. If there is a standoff, then what happens to the administration of the Tobago House of Assembly? The Tobago House of Assembly administers the entire Tobago population. If something is good, it starts at the head and if something is bad, it also starts at the head. When there can be no agreement or proper agreement between the Chief Secretary and the Prime Minister on a matter as important as this, or worse, the Prime Minister says, "I am sorry; I am not in agreement, and that is the way it is." In his usual—I would not bother to say that part.

So, we are aware that the reason we were not asked to change the Constitution is because the Attorney General and, perhaps, all on the Government side, are afraid of the two-thirds majority but, in being afraid to go to the Constitution, in fact, they are creating a monster for themselves. Of course, it is much easier to repeal the Tobago House of Assembly Act than to repeal the Constitution.

Mr. President, we believe that the Chief Secretary must have a greater say in the choice of the Chief Administrator, it is the only way that Tobago will be able to be properly run. [*Desk thumping*] If this Government, as it was so well articulated by the Attorney General in the article from which I read, is really and truly interested in the development of Tobago, it will withdraw those two amendments and consult with us and others on this side, so that a solution could be arrived at that will be good for all.

Mr. President, the PNM in Tobago fought long and hard for this institution that now exists, the Tobago House of Assembly. When we fought for it, we did not call it "Tobago House of Assembly". The name is not important. What we fought for and gained under the PNM was greater autonomy for Tobago.

Sen. Cuffy-Dowlat: The people in Tobago did not believe that.

Sen. C. Alfred: It was made clear then as it is being made clear now, that Tobago is not another corporation; Tobago is not a local government institution; Tobago is a separate island within the unitary state of Trinidad and Tobago and, in spite of what one may want to say, Tobago is an island.

Every day we come here, we have to fly. If somebody comes from Cedros, they drive. We have to fly every single day we come to Parliament, therefore, Tobago must not be regarded as something to be brushed aside. We understand that sometimes when matters relating to Tobago come up, lip-service is given to the Assembly but after the lip-service, what happens? Nothing. One reverts to the original.

It is very ironic and it is known that the PNM has not been winning in Tobago for quite some time [*Desk thumping from Government Bench*] and, indeed—do not thump the desk, yet—whether it was the DAC, or the NAR, or whomever, they attributed the success of their party to the failure of the PNM administration in giving them what they wanted.

Today, we are not dealing with the PNM administration; we are dealing with a Government that talks about a Government of National Unity, yet, in the very next

breath, they want to bring separation, contention and confusion to this noble institution called the Tobago House of Assembly. This is indeed disrespect.

As a matter of fact, I would like to echo the Chief Secretary in taking the opportunity at this time to have consultations—invite the other islands where there are twin-island states—sit and work out the whole question of the relationship between Trinidad and Tobago, the relationship between one island and the other. Because, as long as this continues and the disrespect was shown in the fact that at committee stage, the committee was not allowed to have just one week which was asked for so that they could consult with the people of Tobago, consult with the Tobago House of Assembly and with whomever, that was denied. Why was it denied? Because somebody is saying, "Oh, the Tobago House of Assembly is always making confusion. It does not really count. We are the ones."

Did I hear the Attorney General earlier on say that whatever powers are given to the Assembly are subject to the laws of Trinidad and Tobago? Yes, indeed, Mr. President, but when he spoke here he did not say that. He said, "Oh, they have been fooled so long. It is time for the people of Tobago to get their just deserts." So, we are asking this Government of National Unity to give Tobago its just deserts: have the Minister of Tobago Affairs play the very important and significant role that he should play in respect of being Minister of Tobago Affairs.

I know that the Tobago Senators on the Government side are in an invidious position. I would not say much, except that I know according to party principles and so forth, they cannot say what they would like to say but I would adjure them to remember that this Government is a Government of the UNC/NAR/Independent coalition. Therefore, why are the NAR representatives on this Government not allowed to articulate their views as they should?

These are questions that have to be answered and they must be answered expeditiously, because, we can go on and on day after day, month after month, year after year, and we shall get nowhere unless this Government decides to compromise.

3.35 p.m.

In my winding up, Mr. President, this Government castigated the PNM government, as the Attorney General did, for the Tobago House of Assembly Bill that was proposed just before the PNM went out of power. I would like this present Assembly and this august House to know that what was proposed in that Bill was far superior to what is proposed in this one and that is one of the reasons they are

having problems now. This Government never had any intention of accommodating the Tobago House of Assembly. They were accommodated, that is why they became this Government. [*Desk thumping*] It is because of the accommodations by Tobago this UNC Government is now in power. We are of the distinct impression that this Government now feels it can do without Tobago; it can do without the NAR supporters in Tobago and that it can go on its own.

All I am saying to Tobago is, "Look out, be careful. You have been used and now you are in danger of being discarded." Having said that, Mr. President, let me reiterate very briefly and quickly, that the amendment as it stands, we cannot support. We ask Government to look at it again; make it simple for everybody; put something that is acceptable to the Chief Secretary; something that is acceptable to the Tobago House of Assembly; something that is acceptable to the Minister of Tobago Affairs—albeit the fact that he is not here; something that is acceptable to all of us. Let us bury this bogey of Tobago/Trinidad, Trinidad/Tobago once and for all. As long as there appears to be inequality, we shall talk about it and if this is the only thing we can do, we will articulate our position not only as Tobago people in the Senate, but my colleagues here on the PNM side as well, until real justice is done to Tobago. So we are asking this Government to please look at this legislation again and come up with something that would be acceptable to all of us.

I thank you, Mr. President.

Sen. Martin Daly: Mr. President, it is said that the man upstairs wears pyjamas but he does not sleep. Is that right?

Sen. Dr. Mc Kenzie: Yes.

Sen. M. Daly: We have a very interesting situation here where, if one can read the currents running through the Chamber, the perfidy of the Government is going to cost them some embarrassment. We had an agreement which, I believe, is actually evidenced in writing—and I only refer to Sen. Hamel-Smith because he is the first lawyer that struck my eye for approval of the phrase evidence in writing—that we were going to do—I cannot remember whether it was nine or 10 bills—a number of bills for the month of September. The evidence in writing is all over the place. Several people took notes. [*Senator offers note*] You have a note too?

We have tripartite agreement, evidence in writing by all three parties that we were going to do nine bills and a couple of motions for the rest of September. We struck that agreement because the absurd and irregular hours of sittings of the Senate was dislocating all three parties. Two of the parties could admit to it, the

third could not, but clearly the dislocation was such that they came to this agreement. Notwithstanding this agreement, we had Sen. Prof. Spence and Prof. Kenny coming to the Red House six days out of seven for two consecutive weeks, including Saturdays, in order to do committee business that was assigned to them to complete in two weeks.

One or two ageing commentators have said that the Independent Senators do not work hard enough. Well, I do not know if they do public service—I do not know if they go to work six days out of seven—and I certainly do not know whether they do public service six days out of seven, which my two distinguished and venerable colleagues have been doing.

As a result of the persistence of Sen. Prof. Kenny and Sen. Prof. Spence, we reached another agreement last night—I am reliably informed—that the Planning and Development of Land Bill which was the subject of the unrealistic two-week target, will be allowed to lapse, not least of all because of the power of the minority report of Sen. Prof. Kenny. In theory, when the Senate rose last night we had completed the agreed timetable, so there really was no reason to come here today—none whatever, and indeed, assembling here—and I use the word advisedly—today to do the Tobago House of Assembly Act, represents a breach of the agreement that was reached at the beginning of September.

Having broken their agreement with us and, indeed, having told us some quite uncomplimentary things, we now have to put our tripartite heads together and say, never mind you broke your agreement with us; never mind you caused reckless commentators to write up Sen. Ramchand—and I can confirm on the record that I am doing my best to restrain him from taking my advice and issuing a certain writ. So the disorderly conduct of Government business has affected the health and the family lives of Members, caused them to break family commitment to the stress of their spouses. What time does the last boat leave for down the islands? I think it is 11.00 p.m., and if you keep Members here who have to keep a family commitment with guests from abroad after 11.00 p.m., they cannot catch the boat and their dutiful spouse, vex though she is—he has not turned up—calls the police to find out what has happened; has the boat sunk? She cannot believe that he is still stuck in the chair.

So when you make these stupid arrangements, there are consequences for all of this, and happy days the Government is paying today. Happy, happy days, because they have brought us back here to do the Tobago House of Assembly Bill in breach of the agreement that we arrived at, and there seems to be a bit of a

pickle. I have never seen Sen. Williams leave her chair so frequently and for such long periods. *Sen. Williams and Sen. Moore leave the Chamber*. [*Laughter*] And they are going again. Sen. Moore is going too. At this rate I would strongly advise Sen. Moore that Sen. Marshall and I would make our cellular phones available for anymore phone calls he wishes to make. We do assist the Government. We do not assist the Government in a spineless way as certain ageing commentators have suggested. We assist the Government and the Opposition as well, frequently. In fact, I am going to give them a piece of historical advice about forming coalitions in a minute, but we would get to that, Mr. President.

Today is Independents "betty goatee" day. You treat us bad, you break the agreement, and look the trouble. We have been telling you all along we have to run the Parliament by co-operation. So here we are. I am going to get even Sen. Gangar to crack a smile over this because he has taken a certain view about the belligerence of the Independents and their agenda. Let me tell you how thick the head of the Government is on the question of agenda.

I attended a function where I met the ambassador of a foreign country who said very kind things to me about my contributions in the Senate. He usually says them laughing because I think he thinks they are a bit odd. He said to me a few days ago—I would not give away anything by trying to imitate the accent—"I read very carefully, everything you say, and you have been telling them 'agenda', 'agenda', 'agenda'." The foreign ambassador got it and they are living here and did not get it. Agenda, agenda, agenda, and now we have agenda problem today. [*Laughter*] A real agenda problem. The thing is, they did not even plan it. The right hand pass one way, the left hand pass another way and now we have agenda problem.

Sen. Shabazz: Plan B.

Sen. M. Daly: Even Sen. Shabazz is going to laugh at you today. Anything worse than that, to give Shabazz a chance to laugh at you? Imagine that, he is calling it Plan B. This is not a plan, Sen. Shabazz, this is accident B. Accident T actually; accident "T-H-E". Anyway, I suppose we must have our moments of levity and move on, but really, think of the words of His Excellency, the ambassador, for agenda, agenda, agenda. Incidentally, as I said before, we do not gang up on anybody, with anything, for anybody, against anybody. We had a vote yesterday that was so evenly split among the Independents who are now being accused of a gang, one would need a calculator to work it out to whose benefit it was. So let us stop talking all this stupidness.

More importantly, I personally do not care if Government recognizes the hard work we do but I could live with my conscience. My secretary is counting the number of amendments I proposed to this Government and to the last, that were accepted. I think if she is diligent, we would get close to three figures, but that is another matter. So here we have a problem and I am going to do my best, Mr. President, to outline the problem as I see it because one or two of my colleagues have said they do not quite understand the legal arguments that have been going back and forth. I had hoped that I might—oh, Sen. Williams is back. I am so relieved because I frequently look at her when I am speaking. That does not have anything to do with the contents of the legislation; it is other contents. Today, of course, I am going to look at her in relation to the contents of the legislation. I think Sen. Moore is back on the phone. [*Laughter*] If we go on like this and do not resolve this matter, 639 is going to become a foreign exchange. Anyway, Mr. President, I must restrain my joy at agenda, agenda, agenda. The old man upstairs got up, stretched, rolled up his pyjama sleeves and he got to them, so let us go on.

I do not think it is going to be very productive to discuss this legislation and, indeed, I would not because then I would be an egg in the Tobago rock stone dance. I do not think it is going to be very productive to discuss this legislation in terms of Tobago putting UNC in power because I think if you stand alone Tobago would not stand with you. We really have to purge all this stupidness. People have to be accountable for what they say. If you reject somebody, you give them tabanca, you say, "Me ain't want you; I ain't standing with you" you cannot come now and complain that they are standing with somebody else. That is stupid, man.

I think we also have to bear in mind, I keep saying, Mr. President, that we need to break with our colonial past. We have a lot of difficulty doing it. One of the traditions we need to break with is colonial traditions. I allow myself one political remark to set the record straight about who put who in power. If you stand up, car will pass you, dog will pass you, Granny Luces will pass you running. That is the peril of standing up alone, so I will allow myself only that political remark because I want to keep all my Tobago friends, starting on my immediate left. We need to break with our colonial traditions and I believe that prior to independence, Tobago changed hands 34 times. Every time there was a World War and a negotiation breaker was needed, Tobago was thrown in the negotiation. Well, it looks like we are doing the same thing today. We have war and we are throwing Tobago in the negotiation too. That is not right; it is ours. We must not be throwing it anywhere. We really must not do like the colonial masters—the Dutch and others—and keep

having war and throwing Tobago in the pot. If this war continues we might have to cut it up into three to throw it in three different pots. We have to stop this.

Here is the problem. We created the office of Chief Administrator. This is a new office that did not exist at the time the Constitution was passed. The first thing we did by section 71(1) of the Tobago House of Assembly Act, was to assign the new office of Chief Administrator, the characteristic of a section 121 office. I am going to try to take it step by step. The first thing we did was created an office, then we said what characteristics we are going to give this office. We said it is going to be a 121 office because section 71(1) says:

> "There shall be assigned to the Assembly, a Chief Administrator who shall be a public officer for the purposes of section 121 of the Constitution."

The next question that arises is, because we have assigned it to 121, do any or all of the provisions of 121 apply to this office? I have not counted them but let us assume there were five provisions, does none out of five, one out of five, do two out of five, three out of five, four out of five, five out of five of those characteristics apply to this office? And in particular—and what this debate is about—one of the apparent characteristics of a 121 office is that once someone is the holder of a 121 office, before the Public Service Commission can appoint a particular person to that office they must consult with the Prime Minister. That is one of the five characteristics of section 121.

So the next question is, does that particular characteristic apply generally to 121 offices or, if not, does it apply to particular offices, and is the Chief Administrator one of those offices? Is it getting confusing? Does it apply to the office of Chief Administrator? If it does not, that is, if 121(3) that requires consultation with the Prime Minister does not apply to a 121 office, and if it is the policy of the Government—the coalition I should say—to make 121(3) apply to that office, and it does not, then you need to pass this amendment. Similarly, if one of the other characteristics of 121, which is the "no objection"—well clearly a veto—if a veto power of the Prime Minister applies to all 121 offices, and if not, is this one of the offices to which it applies? We are examining whether two characteristics of section 121 apply to the newly created office of Chief Administrator. One characteristic is, must there be consultation with the Prime Minister; and the second characteristic is, does the Prime Minister have to signify no objection? For short, let us call it a veto power.

3.55 p.m.

A question of amending the Constitution is a separate issue and let us not cloud the issue with that, we will come to that. Let us, first of all, see what it is we are trying to unravel. I do not want to make a long boring speech about this. To my mind it is reasonably clear—and I have accepted Sen. Prof. Spence's advice on this, as I frequently do because if ever there is an immortelle tree lawyer, he is one and he is a good one. I understand that the Attorney General's Ministry has learnt in the last two days that we have another lawyer but apparently his opinions are so forceful that I give Sen. Prof. Spence the distinction of being an immortelle tree lawyer—of course because I want to make it clear that they are trees and not lower forms of vegetation. Indeed, the Attorney General would know that was applied to me by a colleague of his who was doing a case with me. It was applied to me and the Chief Justice, actually, by a rather "farse" Australian lawyer. He remembers that well. Of course we succeeded in the end albeit on different grounds. He probably was a bush lawyer too; he was a "ti marie" and when de La Bastide and I touched him he closed up. But that is another story.

I have taken the advice of Sen. Prof. Spence. I have not had time to consult Sen. Prof. Kenny but I want to acknowledge that he is also a formidable legal "interpretest"—if there is such a thing—I understand that he is a "poui" lawyer because he delivered an opinion so firm that last night he succeeded in causing even the somewhat recalcitrant Minister of Housing and Settlements to face reality. I was unable to do it by more brutal methods in committee.

I think Sen. Prof. Spence is right. If we look at section (5) of the Constitution it makes it clear that consultation with the Prime Minister only applies to the specific offices named there and, of course, Chief Administrator is not one of those offices; it did not even exist at the time. I think we will go along with the legal view that says consultation with the Prime Minister only applies to the offices specifically mentioned in section 121(5). I think, although we have not been able to follow it—we did not know this was coming up today. It was not on the agreed list. It was *vaille-que-vaille* but it was not on the agreed list.

I think if we had performed a similar analysis we would probably find that the veto power only applies to specific offices as well. I have not examined that. So it does appear that if the intention of the Coalition Government, in a unified way, is to apply these two characteristics to the office of Chief Administrator then we do need this Bill, it is not an unnecessary piece of legislation.

Mr. President, I am not going to trespass into whether these characteristics should or should not apply to the office. That is uniquely a matter for the partisan politicians in this Chamber. I do not think we have any business in it at all other than, perhaps, to offer some technical advice and, therefore, that may have certain consequences later this evening if we decide that this does not concern us. I do think we need to identify the problem so that everyone concerned can see what the problem is. I am not saying our view is right. I have tried to analyze the problem so that everyone, including the coalition, can consider carefully how they want to resolve this problem and if they want to resolve it today. They may not want to resolve it today; I do not know. I am quite sure that Sen. Dr. Mc Kenzie was somewhat startled to find she had to stay another night in beloved Trinidad.

That is the problem, Mr. President. I think that if we do want to apply these characteristics to this office then this Bill is necessary insofar as the Attorney General is acting on advice to the effect that it is necessary to pass this Bill in order to have these characteristics apply to the office. In my opinion he is acting on correct advice.

The second problem that has emerged is whether—assuming that you want to do this—you have to amend the Constitution to do it. I think the answer is no because you are not changing anything in the Constitution. What you are doing is taking existing provisions of the Constitution and applying them or wrapping the new office in them. I do not see that as changing the Constitution. If, for example, we decided the Governor of the Central Bank, who could cause inflation, among others, is such an important office—as I happen to think it is—that it should be subject to these provisions then you can take that office and wrap it in these provisions and you are not amending the Constitution. What you are doing is applying constitutional characteristics to a particular office. I do not see this as requiring an amendment to the Constitution.

In any case if it requires an amendment to the Constitution then section 71(1) would be invalid as well because if you could wrap the office of Chief Administrator into section 121 by an Act passed with a special majority, then logically you can wrap the other characteristics around it as well by a special majority. So if this is an amendment to the Constitution then section 71(1) originally was an amendment to the Constitution and that also required a special majority. Logically we would be accepting that section 71(1) is invalid if we now say we need an amendment to include these additional characteristics. Maybe 71(1) was done wrong; I do not think so.

Mr. President, as much as I would like to return to the "vengeance of moco"

Sen. Prof. Spence: I wonder if I could ask Sen. Daly if the characteristics of the new office that you are rapping differ sufficiently from the characteristics of the original office whether his opinion would still apply. I agree with him that it might mean that the original Tobago House of Assembly Act was in error in referring to section 121 of the Constitution. Suppose the characteristics of that office were markedly different from those which are specified in section 121(5), would that not be of some significance?

Sen. M. Daly: I do not think so because 121 is a series of options. I do not think they are markedly different. It is a series of options and you apply some of those options to certain officers so my answer is no.

Mr. President, as much as I would like to say some more about the "vengeance of moco" and agenda, agenda, agenda, I think I have trespassed on the good humour of everyone on that subject sufficiently. What I tried to do is outline what the issues are in this matter. Not for one moment am I suggesting that the opinions of the immortelle and the poui are as correct as they have been throughout this Parliament, but I do suggest that their opinions are right. I tried to outline the problem as I see it.

There is no point anyone saying this debate must not be politicized because it is quite clear that Tobago is a gem of many varieties but it is absolutely beyond doubt a political pearl beyond any price. We, therefore, have to accept that the price of that pearl is going to be the subject of some considerable dissension. Those who stood alone may be regretting that they did and those who did not stand alone may be regretting that they did not. The "dids" as well as the "did nots" might be regretting it terribly.

Just so my good friend Sen. Montano does not speak to me in forceful tones about my view of history, let me just say that those who did not stand alone may be suffering the same degree of regret right now. Particularly as—let me put it this way: we know who appoints the nine of us, we do not really know who appoints—*[Laughter]* should I complete the sentence? I got Sen. Gangar to laugh at last. That is laugh and cry living in the same yard but he is laughing. He is trying to tell me, like another colleague over there when he spoke on the Dental Bill, do not go there and he still went there.

I, unlike the person who was told do not go there and still went there, I know that Sen. Gangar is telling me do not go there and I will take his advice. But I

would say with some conviction that we know who appoints us. I hope that even else—should I include the PNM in this or leave them out? We did have a Beckles problem. Anyway we know who appoints us and I hope all the other Members know who appoints them. I rather suspect that the powers of appointment—and this is a general statement so my good friend, Sen Gangar, who laughed eventually can relax—of Senators from the non-urban areas are, perhaps, as sufficiently in doubt as the provisions of section 121.

Thank you very much, Mr. President.

Sen. Dr. Eastlyn Mc Kenzie: Mr. President, we are dealing with a very ticklish situation but it is not a situation that cannot be resolved in a peaceful and co-operative way. We have a situation where we cannot pin wrong on any side and this is what makes it so interesting. We have a situation where we have a new type of agreement in the form of the Tobago House of Assembly Act in which some of the rules or regulations we did not look at in relation to how they impact on, or descend from our Constitution. If we go with the Constitution and we are dealing with the country of Trinidad and Tobago then the Prime Minister in the appointment of a certain range of people in offices has a say.

Within that context, we have to admit that the Prime Minister must be concerned with public officers over a certain range whether they work in Trinidad or in Tobago. But in the situation with the Tobago House of Assembly we have as head of the Assembly a post that we do not have in any Ministry in Trinidad. We are dealing with a new type of dispensation and, therefore, we would have new relationships.

4.10 p.m.

Even in the THA Act, if we look at clauses 25, 30(a) and (b) and 31, there are mechanisms written into the Act to assist us to resolve matters of this nature in a very cordial, co-operative and understanding way. If we look at clause 25(3), we talk about the statutory authorities, and so forth, and entering into a memorandum of understanding with the Assembly. Closer to this situation, Mr. President, there is clause 30 which says:

> "The Chief Secretary may, if invited by the Prime Minister so to do, attend meetings of Cabinet in order that the Chief Secretary may:
>
> a) apprise Cabinet of decisions taken by the Assembly in the exercise of its powers under this Act, or

b) represent the interest of Tobago in any matter having or likely to have an adverse effect...

They do not have the right to vote.

I go to clause 31:

"The Prime Minister and the Chief Secretary shall hold regular discussions with a view to formulating administrative and legislative mechanisms for the promotion of harmony in the affairs of Trinidad and Tobago."

Mr. President, we have these safeguards where big people could sit and talk, argue, debate and iron out difficulties, and come with a consensus that we could be happy and pleased with what is happening.

We have agreed to all the amendments except clause 3(b)(5). That is the clause that is mainly causing trouble. Clause 4 states:

"Before the Public Service Commission makes any appointment... the Public Service Commission shall consult with the Prime Minister and the Chief Secretary."

I do not think that is causing any problem. Clause 5 is the problem:

"A person shall not be appointed to the office to which subsection (4) applies, unless the Prime Minister signifies to the Public Service Commission and the Chief Secretary that he does not object to the appointment of that person to that office."

The impression is given, Mr. President, that the Prime Minister can veto someone whom the Chief Secretary would want. I am saying that if the Chief Secretary has to feel comfortable with who works with him, he must have some sort of say in the decision-making.

We have seen it happen. When this Government took office, the Minister of Education thought that he could not work comfortably with the two Permanent Secretaries who were assigned to his division and he said so. I give him right if he thinks that they are not going to work comfortably together, and if I were in their place, I would not feel happy either to work with someone who does not want to work with me.

Mr. President, the Chief Secretary has a right to signify to the Prime Minister, "Sir, I do not think for such and such reasons that I would be comfortable with this person to work with me as my Chief Administrator." So, I would like to propose that we amend clause 5 to read—I did not consult with my unpaid voluntary

amendment legal officer, Sen. Daly, but I am going to say it in layman terms, and I know he would listen, take note and correct me. I am open to that type of correction:

> "A person shall not be appointed to the office to which sub-section (4) applies, if after consultation with the Chief Secretary, the Prime Minister signifies to the Service Commission that he does not..."

In other words, just as we have normal civil behaviour, civil co-operative behaviour, consultation with the Chief Secretary is necessary, "Mr. Chief Secretary, I want to take this person. What is your opinion? How do you feel about that person?"

The Chief Secretary is consulted by the Prime Minister and he signifies his feeling. It gives the overall impression that the Prime Minister is still in charge. He is still the head of everything. It does not give the impression that we have a Prime Minister who is on par or under. This, I think is important. So, I am saying that we amend that to read:

> "if after consultation with the Chief Secretary, the Prime Minister signifies to the Service Commission that he does not object to..."

There must be this consultation with the Prime Minister and the Chief Secretary, and they must agree or the Chief Secretary must say, "I do not want that person". I think that if we amend the clause to take that type of procedure into consideration, all of our problems will be over and we will be "honky dory" again.

Thank you very much, Mr. President.

Sen. Joan Yuille-Williams: Mr. President, first of all, I am wondering why are we sitting here this afternoon tampering and tinkering with this Bill? What is the purpose of our so doing, and why could we do it so easily? In fact, it seems to me, as it stands now, a simple majority is needed to change the Bill. I remember sometime ago when we were first putting this THA Act in place, as far as I could recollect, we wanted this Act so entrenched that one could not just come to the Parliament at any time and change parts in this Act with a simple majority. I remember that was the original intention. It was to be firmly entrenched, and the fact that this Act is not firmly entrenched, and we can come here on a whim and fancy and change part of it, is the action of this particular Government. I believe that is why they left it not entrenched and, therefore, this evening they could ask us to make these amendments.

When I heard Prof. Spence this afternoon, I looked at some of the *Hansard* from before, and I recollect reading where Prof. Spence had asked that we defer the debate on the committee stage so that consultations could be done with the people of Tobago, and this Government did not accept that advice. I stand corrected. What I think happened was that the original Bill was withdrawn, and certain clauses were removed and the Bill was brought back to this Parliament so it could be passed with a simple majority, and that is why we feel we could easily tamper with such an important bit of legislation today, affecting the lives of the people of Tobago.

When I heard Sen. Alfred reading what the Attorney General had said concerning those who fool the people of Tobago, I ask now, who is fooling who? What are we doing here today? We are quite clear that we are not going back to the Constitution, but what are we trying to do today? As far as I am concerned, this amendment is a retrograde step. It is taking Tobago backwards. I want to make that quite clear. We are doing it under the guise of the Constitution where it says that consultation must be between the Prime Minister and the Public Service Commission on the appointment of such a senior officer. We decided to use the cover of the Constitution, although we did not intend to amend the Constitution. We stayed outside and used the cover of the Constitution to change something in the THA Act which the Government does not like.

I heard Sen. Alfred saying what she would like, but I want to go back to what is there in the Constitution. First of all, in the Constitution, what are we trying to repeal? "Prior to consultation with the Public Service Commission on the appointment of the Chief Administrator, the Prime Minister shall consult with the Chief Secretary". That is already there in the THA Act. Why are we changing that? It states that the Prime Minister should consult with the Chief Secretary prior to his speaking to the Public Service Commission. It is only courteous. This is the head of the THA. Why would they want to change that to do anything else? Why go back and use the cover of the Constitution where the Prime Minister speaks with the Public Service Commission on the appointments of these senior members of staff? They are using the cover of that to get away from the fact that the Prime Minister must speak with the Chief Secretary. That is in the THA Act. There is no need to repeal it. There is no need to have any amendment at all on that. I am saying that I do not agree with repealing it at all.

We have reached a stage where, I know that the Prime Minister carries the image for the party or the Government, and when things are heating up in this

place, I usually ask for the Prime Minister, and on more than one occasion, he is not here to get involved in what is happening. I am wondering now, here we are saying that when an appointment of Chief Administrator has to be made, the Prime Minister has the veto powers. The Prime Minister will speak to the Public Service Commission. As it stands now, he must speak to the Chief Secretary.

I am saying quite clearly that the amendment tells me that the Prime Minister wants to write into law that he is not going to speak with the Chief Secretary on this business of appointment of the Chief Administrator. They are now putting it into law that they will not speak with the Chief Secretary. The Prime Minister will speak to the Public Service Commission, the Chief Secretary will speak to the Public Service Commission, and then he uses his veto powers. How is that for consultation? How will the views of the Chief Secretary be transmitted to the man with the veto powers? How will the Chief Secretary be able to influence or even tell the Prime Minister who has the last say in this appointment? Let us be fair and honest.

I understand the last time something happened with the Government, a fellow Senator said they were clever. This is not clever at all this afternoon, because it is very clear. If they do not want to speak to the Chief Secretary, we are not voting for this because we feel—and I like it as it is—the Prime Minister must speak with the Chief Secretary, talk to him, hold discussions. Consultation means meaningful discussion. The Chief Secretary must be given the opportunity to say who he would like, discuss whom the Prime Minister likes, come to some agreement and then go to the Public Service Commission. That is a human and courteous way to do things. Do not try to move this to the Constitution, because we have seen quite clearly the trick in it.

I am saying to Sen. Spence, if they really wanted to do it, they would have gone across to the Constitution and amended it. That is not what they wanted. They wanted it in a place where they could tamper with it all the time. They have put in that "prior to consultation with the Public Service Commission on the appointment of the Chief Administrator, the Prime Minister shall consult with the Chief Secretary." We are saying that we will vote for nothing else. We want the Prime Minister to consult with the Chief Secretary. We want him to talk to the Chief Secretary. We do not want him to do it through the Public Service Commission. We do not want him to talk to him through any other medium; come face to face, look him in the eye, have the discussion, arrive at something, and then continue.

4.25 p.m.

I see the Prime Minister has veto powers, but I still feel, at least, talk with the Chief Secretary: why have you now put it in such a way that the Public Service Commission will talk with the Chief Secretary, and the Prime Minister will talk with the Public Service Commission, but there is no place where you are saying that the two important people and the most important man in Tobago in this—because that Chief Administrator works with the Chief Secretary, at least allow him to talk. And I do not want you to say—because somewhere I think you had said in some other place that it will happen, they may meet and talk; no, no, no. Leave it in the legislation, I am not leaving anything to chance, it must be in this legislation.

Prior to consultation with the Public Service Commission on the appointment of the Chief Administrator, the Prime Minister shall consult with the Chief Secretary. That is clear. There is no need for us to amend this at all. That is why I am saying, and I am not only looking at this, somehow we have to have this Tobago House of Assembly firmly entrenched so that you will not be able to come and tinker and tamper with it. *[Crosstalk]*

Mr. President: Order, please.

Sen. J. Yuille-Williams: This went through the Lower House in spite of the objections to it, because you had a simple majority and you railroaded it through there, even though the Opposition objected to it, but you have come here hoping to get the support for it, but people have seen it quite clearly.

Now, I heard some people talk about other amendments, some of those are not important, some of those other things only came in because this had to come with a cover and, therefore, you look for the little words and breaks in it to bring this in. This is important. I live in Trinidad and Tobago. I sit here, I look at the Bills—as you know quite clearly—I go through all the legislation that comes, I take up a position. Therefore, this afternoon, even though we were told today this was going to happen today, I am going to do it.

Let me tell you something. When this was presented in the other place, it was not presented by the Attorney General, it was presented by the Minister. Most likely he probably did not even know, and he did not expect it would be rushed through the Parliament today, that he himself did not even know this was happening. He made a presentation in the other place and when he was finished with his presentation, two days after he was finished with it, he put out a press

release and in that press release he was asking the Chief Secretary to agree with the PNM's position.

Mr. Maharaj: Do you believe everything you read in the newspapers?

Sen. J. Yuille-Williams: You see it here? I have a copy of the press release, Minister of Tobago Affairs' letterhead, it is not from the newspaper. This is the Minister of Tobago Affairs, Finance Building, August 26, 1998, Dr. Morgan Job. I do not want to read this to you, it might be a bit embarrassing. But in this press release, he had asked the Chief Secretary to agree with the PNM's position. This is just part of what he said, "This is a unique moment of opportunity for advancing the devolution and cause of Tobago's autonomy. The PNM is willing to liberate the Chief Secretary from any Prime Minister's veto". Look it is here. He wrote that. This is his letterhead. That was written after he presented the Bill. No wonder he is not here this afternoon, I am not surprised. *[Desk thumping]* But you came forward as the vanguard to present it.

Mr. President: Senator, in the light of what you have just said, I think you ought to give the date of that communication and to whom it went.

Sen. J. Yuille-Williams: This was just a press release for August 26, 1998. Sorry for not doing what I should have, thank you for your guidance. I would not go any further into it, because that is not the purpose of it being here. You see, people ask questions and I am just asking what has transpired and probably, through that, it might give reasons why certain people are not here this afternoon. Because after all, people have consciences and after things have been done, people think and when one cannot get through certain barriers, one tells somebody else to go forward. I am not giving any reason for it.

All I am saying here Mr. President, is that I see no need to amend this section at all. I do not know if Tobago is happy with it as it was, but whatever you do, the Chief Secretary and the Prime Minister must consult, do not leave it to chance. I am very glad to hear that you will do it, Mr. Attorney General, but I needed to state that it should be so.

This is the main area in which I would like to make any contribution now that the Attorney General has said informally that he intends to do it. As I just reminded the Attorney General, when we did another piece of legislation, I asked him, he quickly said he will go to the Law Commission and look after it, that concerned public servants and the Ombudsman's Report. I was asking for assistance for those public servants who were not paid. I wrote to him. I did not

hear anything from him, but today he gave me the assurance that he had passed my correspondence to the Law Commission.

Therefore, why I have to put this into the record today, and I am also saying that we were given the assurance that this amendment will be withdrawn, this whole amendment, it might be useless, we could have gone on very happily without it. I also want him to listen to what Sen. Alfred said, that the people of Tobago are very uneasy. Because what is there could be easily changed with a simple majority and we could go on tampering with that all the time. I think we need to have it entrenched.

I might say this in closing, when I looked at the *Hansard* sometime ago it was said that they did not—

Mr. Maharaj: Would you agree that the PNM would support any Bill, even if it means altering the Constitution to give more power to the people of Tobago?

Sen. J. Yuille-Williams: I was just going to tell you something. The last time when this came through, I understand that the Government had said that they withdrew it, because they felt that the PNM would not support it. I think that is the reason why you took out certain things from it. That is what I was just going to say, you felt that. I was also going to tell you, strange enough, when you know we are not supporting a certain Bill you still bring the Bill, I do not know how it is you felt that you were going to bring it and we would not take it up. But it is the PNM's way that we needed this entrenched and we had it in such a way that the Tobago House of Assembly would have been entrenched so we could not be tampering and tinkering with it. It is not only for us, it is to make the people of Tobago feel comfortable with what they have got and that it could not be changed very easily. If things are not to be changed very easily, it means that they must be entrenched in the Constitution. Therefore, entrench that Bill so that no government—yours, mine or any other—will change it.

I thank you very much, Mr. President.

ADJOURNMENT

The Minister of Public Administration (Sen. The Hon. Wade Mark): Mr. President, I am indeed very sorry to intervene and interrupt such an energetic and profoundly lively debate, but in light of the various legal points raised and Government's unswerving commitment to consultation and genuine participation, and having consulted with the hon. Attorney General of the Republic of Trinidad

and Tobago, we will want to give further consideration to all the points raised here.

I want to take this opportunity, before moving to have this honourable Senate adjourned to a date to be fixed, to extend warmest greetings to all Senators, the President, your family and the people at large on a very happy and productive Republic Day.

Mr. President, I take this opportunity to invite all our Senators to the Queen's Park Savannah Grand Stand at 11.30 a.m. where there will be a thanksgiving service organized by the Inter-Religious Organization (IRO) and the Government of the Republic of Trinidad and Tobago.

I thank all the Senators. We worked very hard and I know Sen. Daly in particular, has admired the pace at which we have gone. At times the pace has, in fact, worn some people's resistance thin, we know this, but we know for a fact that we are here to do the people's business and we hope that in the new session, we will, in fact, be able to accommodate, as far as possible, some of the legitimate demands made by the opposite benches.

I take this opportunity as well to thank all the members of staff, particularly the staff here, *Hansard* and all those people in Parliament who have worked extremely hard during this particular session of Parliament. *[Desk thumping]* I also take this opportunity to thank the police officers who have protected us very, very well, during the period that we have been here. And we thank the media, of course, for giving healthy coverage to our debate and we hope they will continue to do so.

Mr. President, with these few remarks I take this opportunity to move the adjournment of the Senate to a date to be fixed.

Sen. Nafeesa Mohammed: Mr. President, I merely wish to take this opportunity to say a few words as well, seeing that our colleague has just taken the opportunity to wish everyone the best and, of course, he took the opportunity to wish the nation—was it a Happy Republic Day? Well Mr. President, we on this side, as the party that had seen the Constitution enshrined in 1976 and given this nation the Republican status, we certainly would like to wish everybody in Trinidad and Tobago a very happy Republic Day, notwithstanding the fact that the present administration has now removed the significance of the occasion.

Mr. President, I know that the Senate is about to be adjourned. I take this opportunity to congratulate the two Senators on the Government side from

Tobago for the patience and the courage that they have shown here in this particular debate.

I wish to put it on record that whilst the Leader of Government Business had thanked everyone for the energies in terms of the work load that we had recently, I have to put it on record that we are totally annoyed and upset at the manner in which we were forced into this kind of situation and we hope that it will not happen again. I convey my sympathies to all members of the parliamentary staff and all others who had to endure this lack of organization and total disarray by this UNC administration.

Thank you, Mr. President.

Sen. Prof. John Spence: Mr. President, may I echo the greetings of my colleagues on Republic Day, but may I also endorse, particularly the sentiments which have been expressed with respect to the staff who supported Parliament. *[Desk thumping]* I really do think the way that they—not just that they worked hard, but the pleasant way in which they have attended. That includes all the staff at every level and, as has been pointed out, the police who serviced the Parliament.

Thank you very much.

Mr. President: Hon. Senators, I, myself, would like to join with the others in paying compliments to the members of staff and all those concerned with the operations of this Parliament for the service they have been giving us over this session. I would like again to thank Vice-President, Sen. Philip Hamel-Smith, and Sen. Diana Mahabir-Wyatt for chairing most of these sittings during this session.

Thank you very much.

Question proposed.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 4.40 p.m.