

*Leave of Absence**Tuesday, April 27, 1999***SENATE***Tuesday, April 27, 1999*

The Senate met at 1.30 p.m.

**PRAYERS**[MR. PRESIDENT *in the Chair*]**LEAVE OF ABSENCE**

**Mr. President:** Hon. Senators, leave of absence from today's sitting has been granted to Sen. Joan Yuille-Williams. Leave of absence has also been granted to Sen. Brian Kuei Tung for the period April 26, 1999 to May 2, 1999.

**SENATOR'S APPOINTMENT**

**Mr. President:** I have received the following communication from His Excellency, The President.

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

\s\ Arthur N. R. Robinson  
President.

To: MR. ROODAL MOONILAL

WHEREAS Senator Brian Kuei Tung is incapable of performing his functions as a Senator by reason of his absence from Trinidad and Tobago:

NOW, THEREFORE, I, ARTHUR N. R. ROBINSON, President as aforesaid, acting in accordance with the advice of the Prime Minister, in exercise of the power vested in me by section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, ROODAL MOONILAL, to be temporarily a member of the Senate, with immediate effect and continuing during the absence from Trinidad and Tobago of the said Senator Brian Kuei Tung.

Given under my Hand and the Seal of the President  
of the Republic of Trinidad and Tobago at the  
Office of the President, St. Ann's, this 26th  
day of April 1999."

*Oath of Allegiance*

*Tuesday, April 27, 1999*

**OATH OF ALLEGIANCE**

*Sen. Roodal Moonilal took and subscribed the Oath of Allegiance as required by law.*

**PETITION**

**Association of Professional Psychologists**

**The Minister of Public Administration (Sen. The Hon. Wade Mark):** Mr. President, I have the honour to present the petition on behalf of the Trinidad and Tobago Association of Professional Psychologists.

I now ask that the Clerk be permitted to read the petition and that the promoters be allowed to proceed.

*Petition read.*

*Question put and agreed to, That the promoters be allowed to proceed.*

**PAPERS LAID**

1. The National Insurance (Contribution) (Amendment) Regulations, 1999. [*The Minister of Public Administration (Sen. The Hon. Wade Mark)*]
2. The National Insurance (Benefits) (Amendment) Regulations 1999. [*Hon. W. Mark*]
3. The Fifty-first Report of the Salaries Review Commission of the Republic of Trinidad and Tobago. [*Hon. W. Mark*]
4. The Fifty-fourth Report of the Salaries Review Commission of the Republic of Trinidad and Tobago. [*Hon. W. Mark*]
5. The Fifty-fifth Report of the Salaries Review Commission of the Republic of Trinidad and Tobago. [*Hon. W. Mark*]
6. Report of the Auditor General of the Republic of Trinidad and Tobago on the accounts of the Tunapuna/Piarco Regional Corporation for the year ended December 31, 1995. [*Hon. W. Mark*]
7. Report of the Auditor General of the Republic of Trinidad and Tobago on the accounts of the Tunapuna/Piarco Regional Corporation for the year ended 31 December 1996. [*Hon. W. Mark*]
8. Report of the Auditor General of the Republic of Trinidad and Tobago on the accounts of the Environmental Trust Fund for the year ended December 31, 1998. [*Hon. W. Mark*]

**INTEGRITY IN PUBLIC LIFE**

**The Attorney General (Hon. Ramesh Lawrence Maharaj):** Mr. President, the importance of establishing and maintaining high standards in public life can never be overemphasized. Today, the conduct of public officials is not only more rigorously scrutinized by the general public and the media than it was in the past, but there is also a demand, both nationally and internationally, for higher standards of transparency and accountability in public affairs.

This Government recognizes that the standards of conduct observed by Members of Parliament and other persons performing governmental functions are crucially important to the political well-being of the nation. [*Desk thumping*] It is vital to good governance, the rule of law and the democratic process. We consider the gradual, yet constant, erosion of public confidence in the holders of public office over the last two decades to be a serious matter, and one of the aims of proposed integrity laws is to rebuild this public confidence by ensuring the provision of an adequate institutional mechanism to examine and monitor the integrity system.

Mr. President, it is also now vitally important to ensure that persons who enter public life are clear, not only as to what is expected of them, but also to establish the boundaries of acceptable behaviour so that they can be guided by the legislation and live up to and maintain the stipulated standards. This is another principal reason for a review of the legislation in this area.

The laying of the three Bills in a few minutes' time in this honourable Senate today demonstrates this Government's commitment to the protection of standards of conduct in public life and to promote transparency and integrity in public affairs. The measures also demonstrate Government's commitment to make holders of political and public offices more accountable to Parliament and to the people.

This Government also supported the international movement to improve standards of conduct in public life. In 1999, this country signed and ratified the Inter-American Convention Against Corruption and is, therefore, committed to implementing the necessary legislative and administrative measures to give effect to the provisions of this Convention. The Convention calls for States Parties to introduce, and I quote:

“Standards of conduct for the correct, honorable, and proper fulfillment of public functions.”

Standards which will

“prevent conflicts of interest and mandate the proper conservation and use of resources entrusted to government officials in the performance of their functions.”

**1.45 p.m.**

Mr. President, in September, 1997 Trinidad and Tobago also became a party to the Lima Declaration thereby committing this country to the international fight against corruption. One of the principal requirements of that declaration is that and I quote:

“Countries should improve the effectiveness of their laws dealing with corruption to the maximum extent possible...to make both prevention and prosecution more effective.”

Mr. President, the declaration also recommends the following steps be taken by all participating countries:

- (1) The introduction of a system of declaration of assets by persons holding public positions of trust (and their families), and placing on them the obligation to justify possession of property wholly disproportionate to their legitimate sources of income.
- (2) Monitoring of the assets and lifestyles of significant decision- makers by an independent agency.
- (3) Enacting laws which effectively empower the freezing, seizure and confiscation of the illicitly acquired wealth.
- (4) Introducing legislative code of conduct so that Government could examine and enforce the ethics and integrity of the administrators.

Mr. President, it is now timely that new integrity laws be introduced and enacted so that the general principles of conduct which underpinned public life, that is objectivity, openness and honesty, can be restated and vigorously enforced.  
*[Desk thumping]*

Mr. President, Members of this honourable House would be aware that the Constitution in sections 138 and 139 provides for the setting up of an Integrity Commission and that in 1987 enabling legislation in the form of an Integrity in Public Life Act, was brought into force to give effect to the provisions of the Constitution by establishing an independent commission with responsibility to monitor the finances of persons in public life.

Mr. President, that Act which has never been amended, and which remains in effect today, has failed to be an effective instrument in creating a culture of integrity as its provisions severely restrict the power of the Integrity Commission. It has failed to set standards of conduct or to even create the proper procedures and mechanisms necessary for enforcing such standards. Despite its independence, the authority and the effectiveness of the Integrity Commission have been curtailed over the years by the limited scope of the legislation and the inadequate enforcement powers granted to the Commission.

Mr. President, it is important that any law on integrity should ensure that the most appropriate mechanisms are employed to bring about effective monitoring and control in instances of conflict of interest. It has been recognized throughout the world that imposing obligations on public officials and introducing systems to deal with conflict of interest situations, are fundamental if corruption and misconduct are to be detected and prevented.

Mr. President, the lack of teeth and power of the Integrity Commission has been severely criticized over the years by the public and the media. The Commission itself has over the years in its annual reports to Parliament consistently called for a review of the legislation and has brought to the attention of this Parliament the tremendous strides taken by countries such as Canada and North America in enacting reform of its laws in this area so that misconduct in public office may be effectively addressed.

Mr. President, likewise the Hyatali Constitution Commission in 1987 concluded in its report that the Integrity Commission, as it is presently structured, is an ineffective tool in the detection of corruption and proposed then that the Commission be strengthened with appropriate investigative and enforcement powers if it was not to be reduced to the role of a “super filing cabinet”.

Mr. President, despite the demand for the reform of this legislation, it will be recalled that it was not until August, 1994, when at the instance of the then Opposition that this Senate resolved that it was timely to undertake a review of the Integrity in Public Life Act, with a view to empowering the Integrity Commission to exercise greater control and oversight with respect to the activities of persons performing governmental functions.

Mr. President, that Motion and its resolution led to the formation of a working team, comprising of appropriately qualified persons headed by the Chairman of the Law Commission and to the subsequent publication in April, 1995, of a Green

*Integrity in Public Life*  
[HON. R. L. MAHARAJ]

*Tuesday, April 27, 1999*

Paper entitled “Integrity in Public Life—Towards a Reform of the Law.” The Green Paper which was laid before this honourable House found that the present Integrity Commission had no rule making power, no means of tracing a transfer of enhanced assets to a third party; no power to detect the divestment of illicit gains to family members, or dummy corporations established for such purpose; and no mechanisms which would enable the Integrity Commission to detect any conflict of interest or to be able to resolve such conflict.

Mr. President, additionally, the Green Paper indicated that the current Integrity legislation established no standards of ethical conduct, nor did it seek to impose any sanctions for the misconduct. This paper was laid in Parliament in 1996 and has since received the attention of a Joint Select Committee of Parliament which presented its report in November, 1997.

Mr. President, the three Bills which will shortly be laid in this honourable Senate will set the recommendations of the Joint Select Committee. The Integrity in Public Life Bill would repeal the existing law and seek to give effect to the amendment of sections 138 and 139 of the Constitution as proposed by the Constitution (Amdt.) (No. 4) Bill.

The provisions of the Integrity in Public Life Bill would enable the Integrity Commission to exercise greater jurisdiction and control over the financial activities and ethical conduct not only of persons in public life as prescribed by the Constitution, but also that broad category of persons exercising public functions.

The scheme now proposed in the new legislation reflects a distinction between those persons in public life who, by virtue of their office, are engaged in the formulation of Government policy and who are therefore required to file a financial declaration with the Integrity Commission and those persons who are not involved in policy formulation or in the disbursement of public funds but who, nonetheless, perform public functions.

Mr. President, furthermore, the Bill seeks to widen the net of persons who would now constitute persons in public life. A definition of persons in public life would, therefore, now encompass not only Members of Parliament and Ministers of Government and their Parliamentary Secretaries, but also members of the Tobago House of Assembly; members of Municipalities; members of Local Government authorities; members of boards of statutory authorities and state enterprises, as may be prescribed by Parliament from time to time. This will allow

Parliament to bring other bodies within the ambit of Integrity legislation without having further to amend the Act or the Constitution.

Mr. President, those persons exercising public functions who would not be required to file a declaration would include such persons as Senators, Advisors of Government and the broad group of public officials holding office under the various service commissions.

While this category of persons would not be required to file a financial declaration and not be subject to the general integrity law, they would be required, like persons in public life, to adhere to the code of conduct in Part IV of the Bill.

Mr. President, another important feature of the new Bill is that it invests the Integrity Commission with the necessary authority to prepare a public disclosure statement. The statement will be compiled by the Integrity Commission from the financial declarations filed and would reveal only those areas of a declarant's financial dealings which will impact upon his decision making and which could create a perception of a conflict of interest. It would not, however, reveal the net worth of the declarant of those interests which do not conflict with his public functions. The public would therefore have information in respect of the financial dealings of all persons in public life as prescribed.

Mr. President, the Bill would require a person in public life to declare, in addition to his income assets and liabilities, any gifts received by spouse or dependent children. It would also allow the Integrity Commission to deal with any gaps or inconsistencies between income received and assets declared and/or found. This would effectively place the onus on a person in public life to explain any sudden accretion in the value of his net assets and to establish the source of income which would have given rise to such accretion.

Mr. President, the intention is that corruption can easily be detected by the Integrity Commission where, on examination of a declaration, it is found that the income and assets which have been declared would be insufficient to fund the growth in the net worth which is disclosed, so as to raise the presumption that there must be other income to account for the growth. The person who is making the declaration would then be deemed by the Commission to have been in possession of such other income and the onus would lie upon him to establish to the contrary.

Mr. President, in order to enhance the investigative ability of the Integrity Commission to carry out its functions in an effective manner, the Commission

*Integrity in Public Life*  
[HON. R. L. MAHARAJ]

*Tuesday, April 27, 1999*

will be allowed to draw upon the expertise of the various law enforcement agencies. The Integrity Commission may also direct the Commissioner of Police to carry out further enquiries and investigations which it thinks necessary and expedient. Clause 36 further empowers the Commission to investigate the complaint against a person in public life upon its own initiative.

**1.55 p.m.**

Mr. President, the Bill also increases the penalties and criminal sanctions which may be incurred from any breach of the provisions of the Act. A person in public life who fails to adhere to the provisions of the law would now be liable to a fine of \$250,000 and to imprisonment for a term of five years.

Provision is also made for the forfeiture to the state of any property which a person in public life fails to disclose. The code of conduct provided for in Part IV, enables the proposed integrity legislation to embrace ethics and morality, thereby ensuring the public that high standards of propriety are being maintained. The introduction of a legislative code of conduct follows closely the trend within the Commonwealth and operates as a reminder to public officials that their responsibility is to serve the public interest.

Part IV essentially provides a framework against which acceptable conduct can be judged; and creates a new offence of public misconduct. It seeks to address issues of public morality such as conflict of interest, insider trading, influence peddling, acceptance of gifts and the practice of lobbying so as to safeguard public confidence.

Mr. President, this code would apply not only to members in public life, but across the board to every person performing governmental functions. It is to be noted that the functions of the commission would also be enhanced and it would now be mandated by law to carry out a programme of public education. In carrying out this function it is hoped that the Integrity Commission would be able to draw on the necessary resources and create within our society a culture of integrity.

Mr. President, the Constitution (Amdt.) (No. 4) Bill will amend sections 138 and 139 of the Constitution to widen the jurisdiction and powers of the Integrity Commission. This Bill would do three things:

1. It would provide for the widening of the net of persons currently required to submit declarations to the Integrity Commission.



2. It would provide for integrity legislation to establish higher standards of conduct; and
3. It would invest the Integrity Commission with additional powers.

The Constitution (Amdt.) (No. 5) Bill effects a simple amendment to sections 121, 123 and 125 of the Constitution so as to empower the various service commissions to make regulations governing the conduct of its members, thus in keeping with the general scheme of Integrity in Public Life Bill where service commissions would be charged with a statutory duty of receiving declarations from its members.

The second amendment to the Constitution would empower these respective service commissions to monitor the financial dealings and ethical conduct of its members. The combined effect of this amendment in clause 30 of the Integrity in Public Life Bill would be to enable the service commissions to maintain integrity standards within their ranks. It must be understood that all persons exercising public functions, whether they be Senators, Ministers, public officers, or Government advisors would be subject to the code of conduct prescribed in Part IV of the Integrity Bill and would also fall under the supervisory jurisdiction of the Integrity Commission.

Mr. President, when enacted, the Bills would provide the reform of the legal framework which would effectively promote integrity in public affairs and safeguard against official corruption and misuse of public office. The Bills would have the overall effect of creating a more formidable, empowered, and investigative integrity commission. These measures would build public confidence in our institutions and in those individuals which perform governmental and official functions.

Mr. President, the three Bills would require a special majority of both Houses of Parliament and the Government hopes to get the support of the Opposition and Independent Senators.

Thank you.

#### **MENTAL HEALTH (AMDT.) BILL**

Bill to amend certain provisions of the Mental Health Act, Chap. 28:02, [*The Minister of Health*]; read the first time.

#### **INTEGRITY IN PUBLIC LIFE BILL**

Bill to repeal the Integrity in Public Life Act No. 8 of 1987, [*The Attorney General*]; read the first time.

*Constitution (Amdt.) (No.4) Bill*

*Tuesday, April 27, 1999*

**CONSTITUTION (AMDT.) (NO. 4) BILL**

Bill to amend the Constitution of the Republic of Trinidad and Tobago, [*The Attorney General*]; *read the first time.*

**CONSTITUTION (AMDT.) (NO. 5) BILL**

Bill to amend the Constitution of the Republic of Trinidad and Tobago, [*The Attorney General*]; *read the first time.*

*Motion made*, That the next stage be taken at the next sitting of the Senate.

*Question put and agreed to.*

**PROCEDURAL MOTION**

**The Minister of Public Administration (Sen. The Hon. Wade Mark):** Mr. President, today the Senate should be dealing with private business. However, based on discussions among the leaders of this honourable Chamber, we agreed that we would proceed with public business therefore, I seek leave of the Senate to deal with Bill second reading under “Government Business” instead of Private Business.

Also, before we go to bills second reading, there is a motion on the Supplemental Order Paper which we would like to proceed with before going to bills second reading.

*Question put and agreed to.*

**NATIONAL INSURANCE (AMDT.) BILL**

**House of Representatives Amendments**

**The Minister of Public Administration (Sen. The Hon. W. Mark):** Mr. President, I beg to move,

That the House of Representatives amendments to the National Insurance (Amdt.) Bill listed in the appendix be now considered.

*Question proposed.*

*Question put and agreed to.*

*Renumbered clause 15.*

*House of Representatives amendment read as follows:*

“Add at the end of line of proposed section 32A(1) the words ‘National Insurance contribution’”.

**Sen. Mark:** Mr. President, I beg to move that the Senate doth agree with the House in the said amendment.

*Question proposed.*

*Question put and agreed to.*

#### CRIMINAL INJURIES COMPENSATION BILL

*Order for second reading read.*

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

That a Bill to establish the Criminal Injuries Compensation Board to make provision for the payment of compensation to victims of criminal injuries and matters related thereto be now read a second time.

Mr. President, this Bill seeks to establish a system whereby there can be applications made to a board for the payment of *ex gratia* compensation in respect of the injuries or with respect to certain effects of certain crimes as specified in Schedule 1. The Bill in its context must be taken to involve a philosophy that the state has an obligation to assist in providing some form of relief to victims of crime.

Mr. President, as we know, under the present system, if one is injured as a result of a violent crime, one could file a civil action against the person and that matter can take years to be determined. Even if the person succeeds, the judgment can be ineffective because the defendant who committed the crime can be a person of straw, a person of no means. There is also the situation when there is a criminal case, the High Court or the Magistrate's Court can order compensation to be paid and there may be attempts to enforce it, but it is normally made on the basis that if the compensation is not paid, the person can suffer imprisonment. And in many cases there have been instances where the compensation is not made because either the person who has committed the crime has decided not to pay the compensation, or he or she does not have the means to pay the compensation.

**2.10 p.m.**

So, what this bill does, is to try and start a system whereby the state would fund the payment of moneys to provide assistance to victims of crime. It is a starting process. We have to start somewhere; and what we envisage is, that apart

from starting this, there will be a system whereby gradually there would be the growth of a victims programme whereby not only assistance would be given during a case, but there will be assistance given to victims even after the cases are finished where people need attention, psychologically and otherwise.

Mr. President, the way I intend to make this presentation, is to try to show how countries have had to battle with this problem, what has happened in the Commonwealth, and then to come into the provisions of the bill.

Mr. President, crime victim compensation is regarded as one of the pillars of victim assistance. For many victims worldwide, it serves as the primary means of financial aid in the aftermath of victimization. While restitution laws requiring reparation to crime victims date back to the 1800s, there is one important distinction between the two sources of financial relief for crime victims. Victim compensation does not require the apprehension and conviction of the offender to provide financial relief to the victims.

Mr. President, one should note that while the physical and psychological impact of crime may be the most obvious and serious toll taken by a crime, the financial impact, can also be very devastating. It is in this context with that philosophy in mind, that the Government decided that there should be some starting point where the state would fund a programme in which financial assistance would be given to victims of crime.

In doing this, however, the Government recognizes that no amount of money can eliminate the trauma and the grief suffered by crime victims. But financial assistance has been recognized as necessary in helping victims through the recovery process.

Several models of state compensation programmes have existed since the 1960s. There have been criminal injuries compensation schemes created in countries worldwide, and there are some also created in the Commonwealth. Therefore, this concept of state compensation in these circumstances, is not new. Ancient archives indicate that a form of compensation was available in the Babylonian civilization before 2380 BC. Indigenous groups in Latin America, and elsewhere have utilized informal community justice procedures incorporating victim compensation for hundreds of years.

Mr. President, in general, compensation for victims of crime was paid mainly to the victims of violent crime—that is state compensation. It is paid mainly to the

victims of violent crimes. Property loss is typically not covered. If a victim's losses are covered by insurance schemes or other sources, compensation from the state may be reduced or denied.

Mr. President, some schemes specify exclusions such as relatives of the offender, or members of criminal organizations. Others are more liberal in their coverage and extend, for example, to victims of domestic violence; and may I say Mr. President, that one of the issues that we had to battle with in this Bill is whether we should start it with domestic violence—and there have been several reports and studies which we have done, and I can give to this Hon. Senate the assurance that the inclusion of domestic violence is being considered, but not at this stage. But, bearing in mind that we wanted to start a scheme, and domestic violence is a serious matter—there would also be cases made for other offences—the Government certainly could not fund it at this time. Therefore, one is considering incorporating domestic violence with another range of offences. But certainly, it is one of the areas which ultimately should be included in such a scheme.

Mr. President, the schemes in Finland and France, for example, also cover, on a discretionary basis, victims of property offences; and there are schemes in Canada where compensation programmes provide the possibility of emergency payments pending the final decision on the award.

The New Zealand scheme of 1973 is often cited as an example for other jurisdictions to follow. It provides victims of crime with the same level of awards as the victims of industrial injury and motor vehicle cases.

Mr. President, the United Nations too has recognized the need to compensate victims of criminal acts. In the 1985 Declaration on Basic Principles of Justice of Victims of Crime and Abuse of Power—Article 12 states that:

“When compensation is not fully available from the offender or other sources, the state should endeavour to provide financial compensation to:

- (a) Victims who have sustained significant bodily injuries or impairment of physical or mental health as a result of serious crime; and
- (b) The family in particular, dependants of persons who have died, or have become physically or mentally incapacitated as a result of such victimization.”

The European forum for victim services, has urged states to ensure that in cases of violent crime, victims receive compensation from public funds for their injuries, emotional distress, loss of earnings and loss of maintenance as soon as possible after the crime has occurred, regardless of whether or not an offender has been identified.

Mr. President, I thought of giving that little overview on the world scene to show how governments have had to grapple with this problem, and how the schemes differ from country to country, and from region to region.

What is the concept and rationale of such compensation? Mr. President as I said, it is really to provide some assistance to innocent victims by using public funds to allow these persons to recover to recoup some of the expenses they have incurred as a direct result of the violent crime which has been perpetrated against them.

The underlying rationale really for such a scheme cannot be simply stated. But may I mention that on the one hand it has been argued that such compensation is the tangible expression of the state's sympathy and concern for those who through no fault of their own, suffer invasions of their personal integrity. It has also been suggested that the belief in the need for compensation arose in response to the perception that crime is out of hand, criminals have too many rights and the state is not doing enough to prevent crime. Those are the arguments which have been made in several countries as to the underlying rationale.

**2.20 p.m.**

There is another body of opinion, however, that argues compensation schemes to be considered as a state-endorsed alternative to expensive and often futile litigation. Whatever rationale one uses, it is clear, however, that as far as we are concerned, the ordinary principles of justice require that something be done in order to ultimately have a proper scheme in Trinidad and Tobago and that we cannot ultimately have a proper scheme unless we start by having a compensation scheme whereby innocent persons who are the victims of this direct violence by criminal acts can get some financial assistance.

Mr. President, in the operation of these schemes in the Commonwealth, there has emerged one main approach to the establishment of compensation schemes for the victims of crimes. The approach taken has been the adoption of compensation boards, generally by statute, but in England it was under the Royal Prerogative. The British scheme provided that an application can be brought by a

victim, or if deceased, by his spouse or dependant. The Northern Ireland laws, however, not only provides for these three categories of persons, but also for certain other persons who have incurred expenses as a result of the victim's injury or death.

Eight of Canada's provinces have instituted programmes to compensate innocent victims of violent crimes. The schemes are administered by the provinces with financial help from the Federal Government. The Manitoba plan is closely aligned with the workmen's compensation programme in that province. There exists in Canada an active association of crime compensation boards.

In Australia, the compensation scheme operates along lines similar to those of the British. In the former Soviet Union, the system resembles that of the French, in that the victim of the offence may bring a civil action against the accused in the criminal proceedings brought, so that the same court deals with both the criminal charge and the civil claim. Under this scheme, only proved financial loss is recoverable. So one would see that in some countries there is a state compensation programme and there are some dependent upon the outcome of criminal and civil litigation.

Interesting and apparently unique is the policy adopted in Cuba which is to establish a national fund for the indemnifying of victims of crime. Criminals who work for prison wages are ordered by the court to make payments in compensation for their offences and this money is paid into the fund which is also built up from other sources, including national subsidies. This unusual provision is also found in Mexico where the victim's interest is put before the state's and must be satisfied out of the criminal's assets. So, in our country, we had to decide to come up with one that would suit our particular need.

Mr. President, the majority of the Commonwealth countries which introduced compensation schemes have expanded and amended their legislation to keep pace with the increased losses being sustained with the rise in criminal activity.

Before I go to the Bill, the scope of the compensation in the Commonwealth scheme is generally restricted to compensation for crimes of violence. Compensation for property loss has been excluded because the general view is that compensation involving property loss might encourage a number of fraudulent claims. There was also the suggestion that since monetary loss and rights of ownership relate more to economic interest, that type of loss should be addressed by private insurance, or through the courts.

The same argument has been used for the exclusion of victims of motoring offences. Again, the consensus was that compulsory insurance would take care of these categories of offences and, therefore, it was unnecessary for the state to take that burden.

In Victoria, Australia; New Zealand, the United Kingdom and Canada, the schemes specifically provide that the victim may be awarded compensation, notwithstanding that the person causing the injury has not been brought to trial. We have put that in our Bill in that one does not have to wait on all that for a person to get compensation for crime, this *ex gratia* payment.

The rationale for doing that appears to be that if the aim of the compensation is to meet the urgent financial needs of the victim, then the monetary award should be given speedily and the victim should not have to await the outcome of the criminal trial before being able to pursue the application for the *ex gratia* compensation.

Mr. President, there is a common thread running through the various compensation schemes that exist in the Commonwealth. All the schemes are wide in scope trying to compensate, as far as possible, all the persons who suffer loss as a result of crime. The Manitoba Compensation Act provides that compensation shall be payable to any person dependent upon the victim's income or who is a surviving spouse, parent, child or other relative.

In Ontario, the compensation is payable to the victim, the person or the persons responsible for the maintenance of the victim, or who suffered pecuniary loss or expense as a result of the injury or the victim's dependants or any of them where the victim is deceased. Western Australia, however, has confined compensation only to the victim.

In general, therefore, these schemes provide that an application may be made by the victim, or if deceased, his spouse or dependants. Some of the jurisdictions, for example, Northern Ireland, provide not only for these three categories of persons, but also for certain other persons who have incurred expense as result of the victim's injury or death.

Mr. President, in respect of the awards, on an analysis basis, awards have generally been related, as closely as possible, to the nature of the injury sustained by the victim and pecuniary loss suffered. For example, the loss of employment. Generally, tribunals have made deductions in respect of moneys paid to the victim under other beneficial schemes. For example, workmen's compensation or private



insurance. The justification generally is that the purpose of the state compensation is not to underwrite in full the offender's liability, but rather to give some measure of relief.

For example, section 7(1) of the Ontario Act provides:

“7(1) Compensation may be awarded for—

- (a) expenses actually and reasonably incurred or to be incurred as a result of the victim's injury or death;
- (b) pecuniary loss incurred by the victim as a result of total or partial disability affecting the victim's capacity for work;
- (c) pecuniary loss incurred by dependant as result of the victim's death;
- (d) pain and suffering;
- (e) maintenance of a child born as a result of rape;
- (f) other pecuniary loss resulting from the victim's injury and any expense that in the opinion of the Board, it is reasonable to incur.”

Mr. President, one would see, therefore, that in order for us to try to get a scheme, or a policy for Trinidad and Tobago, we had to consider and take all these schemes and matters into consideration. May I say that this matter has taken us some time and the Law Commission has done much work on this matter. The Bill before us is really taken from the Commonwealth model, obviously, with changes here and there; to provide a system of state assistance for victims of certain violent crimes. The payment of compensation shall be paid by the state—and it is through a board established for that purpose under clause 5—to innocent persons who suffer personal injury as a result of crime and the board shall also provide payment of compensation to dependants of deceased victims.

The Bill seeks to make provision for compensatory relief to be paid to persons who suffered personal injury as a result of their efforts to prevent crimes or to apprehend persons committing or attempting to commit crime.

In arriving at a decision to pay compensation, the board would be asked to consider whether the victim contributed to his own injury and where this is the case, there can be a proportionate reduction in the amount of compensation—that

is in clause 25. Compensation shall not be paid to a victim who caused or contributed to his injury as a result of a breach of the law.

The procedure for determining compensation has been so structured to be as informal and as simple as possible and when one looks at clauses 24, 26, 27 and 28 of the Bill, it is in the hope that claims will be determined as expeditiously as possible and with little expense.

The award of compensation shall be generally paid out as a lump sum except that in the case of a protracted disability, the board may provide that compensation be provided for by way of periodic payment to compensate for the loss of earnings. That is in clause 35. In fixing the amount of compensation, moneys received by the victim or dependant from any other source will be considered.

**2.35 p.m.**

We have tried to make the definition as wide as we possibly could, to cover all the relevant, serious situations, or most of the serious situations in Trinidad and Tobago.

“Dependant” which is also a very important definition, means—

- “(a) a spouse or former spouse who was being maintained by the victim at the time of the victim’s death;
- (b) a person who was living in a cohabitational relationship with the victim for not less than three years before his death;”

I know the Cohabital Relationship Act has five years, but we wanted to make the Bill as friendly as we possibly can, so we, in effect, provided that there would be cases in which there would be persons having a cohabitational relationship for three years and therefore we felt that Members of this Honourable Senate would not want to come in their way. But, we will hear what you have to say.

“(c) a child under the age of eighteen; or

- (d) a person who at the time of the victim’s death was financially dependant on him;”

Mr. President, so that Members would understand, I was amazed when this other definition was put in. There is a definition of “GAAP”. I understand that is:

“Generally Accepted Accounting Practice which includes the International Accounting Standards adopted by the Institute of Chartered Accountants of Trinidad and Tobago (I.C.A.T.T)”.

Mr. President, victim is important, and the Minister who would have responsibility for this Bill would be the Minister responsible for social services that is the Minister of Social Development.

“ ‘victim’ means a person who suffers criminal injury...”

we have just heard what criminal injury is—

“or is killed by any act or omission of another person which act or omission is a crime listed in the First Schedule.”

Mr. President, in the First Schedule states:

“CRIMES TO WHICH THIS ACT APPLIES

- (a) Murder;
- (b) Manslaughter;
- (c) Wounding with intent;
- (d) Inflicting injury with or without a weapon;
- (e) Using a drug with intent to commit an offence;
- (f) Administering poison or other destructive or noxious substance so as to endanger life or inflict grievous bodily harm;
- (g) Administering poison with intent to injure or annoy;
- (h) Offences under the Sexual Offences Act.”

Mr. President, I know that one of the points that can be raised is: how did we pick these things out? All that I can say to the Members of this Senate, is that there is a long list. The Law Commission, with consultation with the various groups, looked at it and felt that there had to be a starting point, and this is what has been recommended, bearing in mind that we could not start with all, and we really want to start with some. If we try to start with many more, the Bill may not be able to be implemented.

When one looks at Part II of the Bill, one sees that it deals with the establishment—I should mention the Application of the Act:

“4.(1) This Act applies to a—

- (a) person who suffers injury; and
- (b) dependant of a person who dies, as a result of a crime listed in the First Schedule.”

When one looks at Part II of the Bill, one sees that it deals with the establishment, composition and procedure of the Board. There is where the Criminal Injuries Compensation Board has been established. It consists of a Chairman and six other members.

“(2) The Chairman shall be an attorney-at-law with no less than ten years experience...”

The other members of the board—there is a medical practitioner; an attorney-at-law; a psychologist; a representative from the Ministry with responsibility for social services; and a duly appointed representative of the Tobago House of Assembly.

Clause 7 deals with the tenure of office of board members and states at (1):  
“...an appointment to the Board shall be for a period not exceeding three years and the members shall be eligible for reappointment.”

It provides that members can resign where they are unable to perform their functions. There could be other persons appointed where persons are absent without leave.

Clause 8 of the Bill deals with remuneration and allowances.

Clause 9 of the Bill states the functions of the board:

“The Board shall be responsible for receiving and considering applications for compensation and deciding what compensation, if any, shall be paid.”

Clause 10 deals with the meetings and procedures. It shows that:

“(1) The Board shall meet at least twice a month and at such other times as may be necessary...”

It means to say that they can meet as often as they can, as they consider necessary.

“(2) Meetings of the Board shall be held at such place and time and on such day as the Board determines.”

This was deliberately put so the Board does not have to meet only in Port of Spain. It can meet in San Fernando, Cedros, Toco or Tobago. It was a very informal procedure.

Clause 10(9) states:

“The Board may co-opt any person to attend a particular meeting of the Board for the purpose of assisting or advising the Board, but no such co-opted person shall have a right to vote.”

The policy direction is that the board will act in accordance with the general policy directions of the Minister.

Clause 13 deals with execution of documents.

Part III of the Bill deals with staff and it provides the normal arrangements with matters like these where persons can be seconded, *et cetera*.

Part IV deals with the financial provisions.

“19(1) The Board shall establish a fund consisting of such sums as are appropriated by Parliament from the Consolidated Fund for the purpose of meeting its operating expenses.”

The moneys would be for the expenses of the board and also for the payment of compensation. There will be a separate appropriation for the payment of compensation to victims or dependants as the case may be.

In clause 22 one sees where the report and financial statements would be prepared in accordance with GAAP.

Application for compensation is in Part V, starting at clause 24.

“24(1) A victim or his dependant may apply to the Board for compensation in accordance with the provisions of this Act.

(2) Every application shall be made to the Board in the manner prescribed in the Second Schedule.”

If we could quickly look at the Second Schedule, one would see that there are the particulars of being a victim of a crime or a dependant. The particulars which are there give the occupation, earnings, *et cetera*—crime committee; nature of injuries; loss suffered; number of dependants; particulars of the report; status of court proceedings, *et cetera*.

“(3) An applicant shall submit the following documents with the application:

- (a) a medical certificate, evidencing the injury sustained, where the application is being made by the victim; or
- (b) the death certificate of the victim, where the application is being made by a dependant.

(4) The applicant shall also submit other relevant documents and other information as requested by the Board.”

There is a provision where the person is an infant, the application may be made on his behalf by a parent or guardian. A mentally ill person—there is a corresponding amendment circulated which deals with where the dependant is an infant or a mentally ill person—the application can be made by the person with whom he normally resides or a duly authorised medical officer.

In the case of an infant,

- “(a) an application may be made on his behalf by a parent, guardian or person acting in *loco parentis*;
- (b) a mentally and ill person within the meaning of the Mental Health Act, the application may be made by the person with whom he normally resides or a duly authorised medical officer.”

Under clause 25(1):

“The Board shall conduct its own inquiries with reference to an application and may consider any statement, document or other information that may assist it in making its decision.”

**Sen. Mahabir-Wyatt:** Mr. President, I wonder if the hon. Attorney General, while he is going through these provisions, can just explain in the provision which he has just read—subclause (5)—why the amendment has been removed under (b) which now reads:

“a mentally and ill person within the meaning of the Mental Health Act..”

the following words:

“...the application may be made by the person with whom he normally resides or a duly authorised medical officer.”

Why has it been changed from the little “b”? Is there any special reason? It is underneath there. Is this because the application can be made, both in respect of the infant and the mentally ill person? [*Inaudible*] I am just wondering why it is changed around.

**2.45 p.m.**

**Hon. R. L. Maharaj:** I must confess what you are saying is correct. I do not know why the draftsman did this but we could look at that at the committee stage. But it seems to me that it certainly cannot be made, in the case of an infant, by the person who normally resides or medical officer. So it may have been better to leave it as it was. I will look at that, Mr. President.

Clause 25(3) says:

“In determining whether or not to pay compensation, consideration shall be given to—

- (a) the nature of the injuries suffered; and
- (b) whether there was any provocation by the victim.”

Very important is that. Subclause (4) says:

“In determining the amount of compensation, consideration shall be given to—

- (a) the amount received or receivable from any other source by the victim or his dependant, as a result of the criminal injury;”
- (b) the conduct of the victim which contributed to the injury.”

Mr. President, in clause 25(6) the point made there is that:

“...where the infliction of injury to the victim was attributable to the conduct of the victim ,the application for compensation may be rejected or the amount of compensation reduced, having regard to the contribution of the victim to the criminal injury.”

It is in (7) where it says:

“Where injury of the victim was due to his effort to prevent a crime or to apprehend a person who had committed a crime or to aid or attempt to aid a member of the security forces so to do, the amount of compensation shall not be reduced.”

and gives a description of the security forces.

In the procedure before the board, Mr. President, one sees clause 26 is trying to make the point that it:

“...shall not be bound to entertain submissions from legal or other representatives of a victim or dependant and shall not be bound by the rules of evidence or legal procedure.”

The reason for this is that it must have the power to make its decision without being kept back. However there is stated in clause 27(5):

“...the applicant shall be entitled to be assisted in presenting his case by a legal adviser or by any other person of his choice.”

*Criminal Injuries Compensation Bill*  
[HON. R. L. MAHARAJ]

*Tuesday, April 27, 1999*

It is hoped, therefore, that by the provision in 26 that one would not be—  
[*Interruption*] 27(5) and 26 relate to not being bound by a legal procedure. Obviously, being a board, it can be subject to judicial review if there is not a fair hearing and determination in all the circumstances. In 27(7) it states:

“All hearings shall be in private.”

Under 28(1) it states:

“...the Board shall make its determination regarding an application within thirty days of acknowledgement...”

We decided to put a specific time:

“of receipt of the application and all other supporting documents and information.”

Subclause (2) says:

“The decision of the Board shall be final.”

But we all know that if there is a breach of the rules of natural justice or the board acts without jurisdiction it can be set aside.

On the payment of compensation, it is there in 29 where it says that compensation is to be paid to:

- “(a) the victim;
  - (b) a dependant of the deceased victim; or
  - (c) the person responsible for the care and maintenance of the victim or dependant, where that person has suffered pecuniary loss or has incurred expense in the care of the injured victim or dependant, as the case may be.
- (2) Compensation may be paid in respect of—
- (a) expenses reasonably incurred as a result of the injury or death of the victim;
  - (b) loss of earning power as a result of total or partial incapacity of such victim;
  - (c) pecuniary loss to the dependant of the deceased victim;
  - (d) other pecuniary loss or expenses incurred resulting from the personal injury or death of the victim which the Board determines to be reasonable.”



We have tried to put these matters in mind in order to try to address the needs of the victim at the time.

Compensation, in clause 30:

“...may be paid whether or not a person is prosecuted or convicted of the crime on account of which the application was made.”

Subclause (2) states:

“The Board may suspend consideration of any application for such period as it thinks appropriate on the ground that the prosecution for the crime, out of which the injury occurred, has commenced or is imminent.”

Clause 31 states:

“Notwithstanding the incapacity of the person responsible for the injury or death by reason of age, insanity, or otherwise, compensation may be payable under this Act.”

So that even if the person who did the act did not have the necessary mental capacity or was a person under the age limit, that would not prevent the board from considering paying compensation.

Under clause 32:

“No compensation shall be paid unless the application is made within one year after the date of the injury or death or after that date, upon determination by the Board, that good cause exists for the delayed application.”

Well, there was a situation—

**Sen. Dr. Mc Kenzie:** Mr. Attorney General, in clause 32, I was wondering whether this limitation has any ties with an inquest or a preliminary inquiry to determine anything there?

**Hon. R. L. Maharaj:** No. The intention is that whether it is an inquest or court case, civil or criminal, this would not prevent the board from making its decision. I must say, however, Mr. President, that in all the models there is a time period because there must be a time period. There have been strong arguments that we should not have given the board the discretion to extend that time period. I felt, however, that there may be instances where good cause would exist and, therefore, we should consider giving that discretion. As I am on this part of the Bill I should let you know that there is—and in most of the legislation there is—

no discretion. There is a fixed time-frame and that is it. In one or two of the pieces of legislation there is a discretion.

**Sen. Montano:** On that point, I would just like to ask the Minister, in view of the fact that there is a one-year time period when this Act is finally passed and made law, does that mean the victims of crime over the previous 12 months can claim? Because they would fall within that one-year time period.

**Hon. R. L. Maharaj:** Mr. President, it does not have any retroactive effect. When it comes into force it will have to be from that period of time. In other words, a year will have to pass. It would not be situations where people would have had injuries—[*Interruption*] Yes, if one had injuries before the Act came into force I do not think that one will be able to file. It is not structured that way. [*Interruption*] Well, I think it is, but if you want to make it clear we can—if we feel that we want to make it absolutely clear, but obviously when the Act comes into force it will only be in respect of injuries after that date.

Clause 33 states:

“No compensation shall be paid where the victim—

- (a) was guilty of a contravention of, or failed to comply with, any law which caused or contributed to his injuries;
- (b) was injured as a result of the operation of a motor vehicle, boat or airplane unless the same was used as a weapon in a deliberate attempt to do the victim harm or to cause bodily injury.”

We have tried to do what is in the English legislation, Mr. President. As those of us who are familiar with the English practice in this matter would know, in 1964 such a scheme was created in England but it was not created by an Act of Parliament, it was created by merely what is called the prerogative powers. That scheme operated from 1964 until 1994. In 1994 the scheme was changed, in that, initially the board had a discretion as to what to award and then the Minister, the Secretary of State, decided that for every injury he would put a tariff.

The placing of a fixed tariff was challenged, and the House of Lords, and I think some of the Senators here, especially Lord—I was saying Lord Daly—Sen. Daly, would be familiar with the case of the *Queen and Secretary of State for the Home Department ex parte Fire Brigades Union 1995*, two or three cases, and it was a House of Lords decision by a three to two majority. The majority was led by Lord Brown Wilkinson and he declared that the scheme was unlawful because

there was a fixed tariff. Then the British government introduced legislation setting up the scheme and they said that one could have set up the scheme, if there was legislation, by putting a fixed tariff but the Minister could not have put a fixed tariff.

What we have done, as in the English Act, is try to make it clear in clause 34 that it is in the absolute discretion of the board and then shall be in the nature of an *ex gratia* payment. You know what *ex gratia* means. It is not a recognition that there is any legal liability or obligation to pay but it is given as a consideration for the circumstances of the matter. There is a maximum limit to the amount of compensation, as you know. The maximum limit is \$25,000.00, but under clause 34(3):

“The Minister may, by Order, increase the amount payable generally up to a maximum of fifty thousand dollars.”

So that if the Minister wants to change the maximum limit—let us say we have passed this law and one wants to change it to \$50,000.00 one does not have to come back to Parliament to change it by an order. It could be changed to \$50,000.00. I know some may believe that amount is too small, \$25,000.00 but, Mr. President, I will ask Senators to bear in mind that we really want to get this thing started and once it is started it will be easier to get further reforms.

Mr. President, the scheme is not directed for the benefit of the estate of the deceased victim, that is to say, it is not a claim, it is really for the dependants and for the needs of the victim or the dependants.

Under clause 36 there is a duty for the repayment of compensation:

“Where a victim or dependant to whom compensation is paid subsequently receives a settlement by way of damages or an award, he shall repay to the Board so much of that settlement that does not exceed the amount of compensation paid to him by the Board.”

Under clause 37 it provides that:

“A victim or dependant who—

- (a) provides false information to the Board;
- (b) fails to disclose the amount received from any other source...;
- (c) fails to refund the compensation...

commits an offence and is liable on summary conviction...”

Then there is a discretion at 38:

“Where the victim or a dependant fails to comply with the requirements of section 36, the court...”

It is not the Minister:

“the court may in its discretion, having regard to all the circumstances of the victim or dependant, decide whether or not the amount of compensation paid to such victim or dependant shall be refunded to the Board.”

Clause 39 deals with subrogation and 40 deals with regulations.

Mr. President, one would see that in clause 25, one of the riders in subclause (3) is as to whether the victim or the dependant co-operated with police and prosecutors in the investigation and prosecution of the case. In a few recent schemes in the Commonwealth there has been this addition, I understand, where one of the matters that has to be considered is the question of whether the victim co-operated with the police in order to bring the person to justice by giving a statement and matters like that. This is a good thing, in my view, because it would provide interest in a way in which the victim will have to co-operate with the police in providing the necessary evidence for the court to consider.

Mr. President, this is really new kind of legislation in the Caribbean. There is no precedent for it anywhere in the Caribbean. As you see, although there are Commonwealth countries that have done this kind of matter, it has taken some time for them to have it done. It is the kind of legislation which the non-governmental organizations, local, regional, worldwide, international organizations have been clamouring for in many countries; and it is the kind of legislation which the United Nations have been demanding that countries try to enact.

### **3.00 p.m.**

Countries have always put this on the back burner, because it is not important. In light of pressing matters we have taken the view that this is important and, we have tried to come up with a piece of legislation which can provide, as I said, a starting point and a legal framework to provide these *ex gratia* payments by the state to these victims and their families, in the given circumstances.

I must confess that it is not perfect legislation for the circumstances, in that one could argue that there should be more offences included in the First Schedule; one could also argue that there should be more moneys given; there should be

inclusion of, not only acts of personal violence, but property. There can be many arguments. But, Mr. President, what we are asking for in this matter is for the hon. Members to recognize that it is—*[Interruption]*

**Sen. Montano:** Mr. President, I thank the hon. Minister for giving way. I see that he is winding-up and, therefore, I just wanted to ask him a few questions before he finishes. The Bill calls for a chairman and six members, could he tell us what the cost of those salaries is expected to be, or what the cost of the total administration of this fund will be? What is the expected cost of the benefits over an annual basis? And as this Bill is about to be passed, do we have any budgetary provision already made in the concern of the country?

**Hon. R. L. Maharaj:** Mr. President, the Bill would have been examined by the Financial Advisory Committee, in the Ministry of Finance. Those matters were gone into. I have not brought that information here. But, the way we have looked at it, is that whatever the cost of it is, there is an important need to be redressed and, therefore, we could not do this as a business exercise to see on a long-term basis, how much you are going to get out of it. What we decided we were going to get out of it, is that we were going to provide relief for human beings in these circumstances. So that, it was not one of those projects, it was not done as a business exercise. It was one of those projects in which you had to have an idea of what it was going to cost.

What I am talking about, Mr. President, is that, if for example, the percentages in the First Schedule are greater, if the amount of money is going to be larger, then obviously, what the finance people have budgeted for this, would obviously change. But this is a matter which, obviously, would be considered depending on what happens here, in relation to the budget for the next financial year, which—as you know—has been changed.

What I have been saying is that we have an opportunity here in order to make a difference, in order to start something, and I would like to get the support of the hon. Members in this project.

Thank you very much.

*Question proposed.*

**Sen. Nafeesa Mohammed:** Mr. President, as we sat here this afternoon and listened to the hon. Attorney General present this Bill, I recalled the hon. Attorney General attempting to outline the philosophy behind the Bill, and he made reference later on in talking about the concept and rationale, to the need to provide

assistance to innocent victims of crime, on the one hand, and then, he made mention of a particular kind of criticism that is often made in our society today, in terms of criminals having too many rights.

It is very heartening to sit and listen to the present Attorney General expressing his concern for the rights of the victims of crime. I am sure like so many other people in the society, we would all remember the days when the hon. Attorney General was in private practice because he used to champion the cause and fight for the rights of the criminals. Now that he is in Government we have to be very relieved to know that he does have some concern for the rights of the victims of the crime, because I remember in 1994, when one of his own parliamentary colleagues had been all over the country criticizing Mr. Maharaj, for his obsession with protecting and defending the rights of the criminals—without calling names, Mr. President.

When I listened to the reply given to my colleague in relation to the cost factor that is involved, in terms of the implementation of this new system, and the very vague response we got from the hon. Attorney General, I have to raise concern. And this is, I am sure, our major concern with respect to this piece of legislation, in terms of the practical aspects of it and its actual implementation.

I am saying this in the context of a comment I had read several months ago, where—in fact, it was a joke that was published in the newspapers. I do not have it with me and I cannot recall the exact date, but I remember a reference had been made to the hon. Attorney General referring to him as “Billy Maharaj”, and the comment was that all he was doing was bringing Bills and more Bills to the Parliament. This is a concern that I must express, because when we look at the types of Bills that the hon. Attorney General has been bringing to the Parliament, they all sound very nice, but in terms of the practicalities of implementing these new measures, we have to express our concern. Over the last few months, many of the Bills that have been introduced here, one would see that new layers of bureaucracy are in fact being created. We have to express our concern, whether the fact of passing legislation alone is going to really tackle the problems that are affecting us in our society, and whether we need to look and focus more attention on the enforcement of existing legislation.

**3.10 p.m.**

Mr. President, I just wanted to make that point because when we look at this piece of legislation, we see that, in effect, it is again creating a whole new layer of

bureaucracy. It was very interesting to hear the Hon. Attorney General say that references to the Minister here refer to the Minister of Social Development.

Only last week, we were in this Chamber debating the National Insurance (Amdt.) Bill and the Public Assistance (Amdt.) Bill, and there are so many thousands of citizens in this country who can testify to the hardships they experience on an almost monthly basis when they have to go to these agencies in order to obtain whatever little grants or assistance. There tends to be a lot of bureaucracy involved.

Here it is we are setting up a system to be administered and, in terms of that administrative machinery that will be required, we have to express concerns, because I heard the Hon. Attorney General referring to a clause in the Bill that set a time limit to make an application. I think it is clause 28 he was referring to when he made mention of the fact that the Board shall make its determination within 30 days of acknowledging receipt of an application. Whilst the Bill provides for the setting of a time limit with respect to the hearing of applications and the determination of the applications, I wish that in this piece of legislation there could have been a clause that would have also stipulated a time limit for the actual payment of that award that would have been decided upon by the Board. I would really like to throw this out for the Attorney General to consider.

Mr. President, we on this side do not have any quarrel or any difficulty with the underlying philosophy of this kind of legislation. However, as I indicated, we do have concerns insofar as the practical aspects are concerned. It is rather unfortunate that in the Hon. Attorney General's presentation, when he made mention of the issue of domestic violence, he said that there were some reports and that they had to do a balancing act and in the end, they decided that they were not going to include domestic violence as one of the listed offences at this stage.

Perhaps the hon. Attorney General is waiting for when we return to Government for us to do it, but it is rather unfortunate, because we know that if we are serious about tackling the problems in our society today, domestic violence is, indeed, one of the most serious and pressing problems affecting so many families and citizens in this country. I know of several cases of victims of domestic violence who, by virtue of the fact that they approached the courts to get a restraining order, in some instances, these persons who had been brutalized and battered have to suffer so many indignities. And, it is rather unfortunate that the opportunity is not being taken at this stage to include victims of domestic violence as one of the first categories on the list in the First Schedule to this Act.

*Criminal Injuries Compensation Bill*  
[SEN. MOHAMMED]

*Tuesday, April 27, 1999*

The First Schedule refers to:

“CRIMES TO WHICH THIS ACT APPLIES

- (a) Murder;
- (b) Manslaughter;
- (c) Wounding with intent;
- (d) Inflicting injury with or without a weapon;
- (e) Using a drug with intent to commit an offence;
- (f) Administering poison or other destructive or noxious substance so as to endanger life or inflict grievous bodily harm;
- (g) Administering poison with intent to injure or annoy;
- (h) Offences under the Sexual Offences Act.

It is rather unfortunate, and I wish that the hon. Minister could elaborate a bit in his winding up on the actual reasons for the exclusion of domestic violence. He talked about a report and perhaps he might be in a position to make the particular report available to us, but it is a matter of serious concern. I am sure that our colleague, Sen. Mahabir-Wyatt, will also be concerned about this issue.

Mr. President, when we look at this Bill, particularly the definition section, clause 4(1) says:

“This Act applies to a—

- (a) person who suffers injury; and
- (b) dependant of a person who dies, as a result of a crime listed in the First Schedule.”

I am wondering if, perhaps, there was not an omission in clause 4(1)(a). Perhaps the hon. Attorney General can enlighten us a bit on it. There is just a general statement that the Act applies to a person who suffers injury. Should it not be a person who suffers injury as a result of a crime listed in the First Schedule, just as it is in clause 4(1)(b)?

**Mr. Maharaj:** *[Inaudible]*

**Sen. N. Mohammed:** Thank you very much, hon. Attorney General. As we move on, Mr. President, we see that clause 11 states:

“In the performance of its functions the Board shall act in accordance with any general policy directions of the Minister.”



Immediately, this clause raised some concerns to me. I do not know what is the rationale. Why are we legislating for this kind of activity for the Minister to be directing? In these times, we are hearing where our own Prime Minister is seeking to direct certain media houses in terms of how they are to project the news—they must only give the good news. We must express our concerns in terms of clause 11 where, in fact, it is being legislated that in the performance of its functions, the Board shall act in accordance with any general policy directions of the Minister. Mr. President, I would just like to know of the rationale. It immediately rang some alarm bells in my mind when I saw it. Why have it?

Mr. President, when we move on to Part IV of the Bill that deals with financial provisions—I am sure my colleagues will develop this point—clause 19(1) says:

“The Board shall establish a fund consisting of such sums as are appropriated by Parliament from the Consolidated Fund for the purpose of meeting its operating expenses.”

It is a very legitimate and valid question to inquire or to solicit some idea from the hon. Attorney General as to the cost factor that may be involved in terms of operating expenses for this Board. We need to know, because we are concerned about its implementation. We want to know that it is, in fact, going to be implemented and it is not just one of those Bills that the hon. Attorney General has brought, like in the past when they all sounded nice and good, but in truth and in fact, where was the money to implement them?

Cane farmers have to protest to get their moneys. The public assistance recipients and pensioners have to go through tremendous hardships to get their moneys, and in these hard times where our resources are becoming more and more scarce, we need to know from where the money is going to come.

Mr. President, clause 20 goes further to say that:

“Parliament shall also appropriate moneys from the Consolidated Fund for the payment of compensation to victims or their dependants, as the case may be.”

What kind of allocation is expected? If this Bill sets a limit of \$25,000 per applicant, there must have been some study done in an effort to have an idea as to the cost factor that may be involved. Whoever the Minister is, I am sure that appropriate applications will have to be made in order to get that budgetary allocation. So, my colleague's questions are very relevant to this issue.

Mr. President, Part VI of the Bill goes on to deal with the payment of compensation, and I am a bit concerned about these clauses. I know that the Attorney General in his presentation sought to refer to some of the models that exist in other parts of the world, and our Bill seems to be a combination of the English scheme, together with the Canadian, and we are in the process of formulating something that will be relevant and appropriate to us here in Trinidad and Tobago. But one of the issues that concerned me is clause 29, which deals with the persons entitled to compensation. Clause 29(2) says that:

“Compensation may be paid in respect of—

- (a) expenses reasonably incurred as a result of the injury or death of the victim;
- (b) loss of earning power as a result of total or partial incapacity of such victim;
- (c) pecuniary loss to the dependant of the deceased victim;
- (d) other pecuniary loss or expenses incurred resulting from the personal injury or death of the victim which the Board determines to be reasonable.”

These concepts have special meaning, especially in the area of civil law, and we know that over time, when one is dealing with claims for damages in the courts of law, when time comes to assess the award of damages in a particular case, there are several cases that have been previously decided, and one tends to use the case law as a general guide for determining what the amounts may be in terms of compensation.

I know for a fact that in the office of the Attorney General, and in particular, in the Solicitor General's Department, very often these are issues which have to be dealt with by the state counsels in that department, where they may have to make recommendations and say, if they are seeking to settle a matter, how much compensation should be paid. It is a very specialized area of law, and one needs the expertise to be able to quantify these matters.

What is of interest is that I came across some reference to the provisions that exist in Australia with respect to compensation for injuries. I think their Act was passed in 1982, and in their original piece of legislation, they stated their maximum amount. Later on, in 1985 and in 1988, there were, in fact, amendments made to the Australian Act.

One of the areas that had been dealt with is this area to which I am referring. In dealing with the amounts that are payable, I think in Australia they have actually set a ceiling in respect of, for example, pain and suffering. They have stipulated in their legislation that for pain and suffering, one would be entitled to get a maximum of "X" amount, whatever the amount may be. For medical expenses they have stipulated a maximum amount; the same for loss of wages. I think in the 1988 amendment they tied in the concept of loss of wages with their Workmen's Compensation Act. I think it might be useful in our legislation to, perhaps, itemize some of these issues and set a ceiling one time so that it will be an appropriate guide for the Board.

**3.25 p.m.**

Mr. President, another area of concern is a matter in terms of the layout of the Bill. I suggest that clause 34, which sets out the maximum payment of compensation, should in fact be where clause 29 is at present, and after you set out what the maximum payment is, I am suggesting that you then proceed with clause 29 and continue thereafter. Just for the sake of clarity and to be able to have a very quick and precise view of how you would go about determining the amounts that may be payable.

Another area of concern with this Bill is whether there is any right of appeal to an appropriate court, in terms of the amount of compensation that is being granted by the Board. Throughout this legislation we are seeing that it is the Minister who may, by order, increase the amount payable. It is the minister to do this and that, but if a victim is dissatisfied with the award that has been made, does that victim have a right of appeal and if so where can the victim lodge that appeal?

Mr. President, I think in clause 36 it speaks here:

"Where a victim or dependant to whom compensation is paid subsequently receives a settlement by way of damages or an award, he shall repay to the Board so much of that settlement that does not exceed the amount of compensation paid to him by the Board."

Who is going to oversee or impose that particular clause? Who is going to determine, or go after the victim who has gotten that particular award, in order to have that individual refund any amounts that may have been paid?. It is very vague and we need something to clarify this particular clause.

Mr. President, when the honourable Attorney General was referring to the definition section, and in dealing with dependants, he commented on the fact that in this definition section, “dependant” also means a person who was living in a cohabitational relationship with the victim for not less than three years before his death. He said he was trying to make it more friendly. I have no particular position except, I was a bit concerned, in the last few years, about the kinds of legislation that are being introduced into the Parliament, that deal with cohabitational type relationships, or what we commonly refer to as the *de facto* spouse concept. There has been a general tendency to stipulate a five-year period so I thought that for the sake of consistency we would have retained that five-year period, but according to the Attorney General, he wants to make it more friendly and we have no hard and fast position on that, except the fact that it would be a bit inconsistent. It means that the future pieces of legislation would be reducing that period of the tendency now on an ongoing basis.

Mr. President, when we talk about compensating the victims for criminal injuries, one of the issues that I know that is very relevant to this kind of compensation is the issue of who is to pay. In this case, it is the state assuming the responsibility of offering some kind of assistance to the victims of crime, which we have no problem with: it is a very honourable intent.

However, I know that in some jurisdictions, they have gone a bit further to actually provide for recovery proceedings, thereby, after a Compensation Board has determined that a particular victim is entitled to some compensation and after they have determined the amount of compensation to which the person is entitled. They then seek to take action against the offender in an effort to recover, whether it is by way of property or what have you, they would look at the offender’s capacity to pay and they would have that kind of authority to go after the offender to get some of that compensation, and that would have to be paid to the victims of the crime.

I think the Australian Act in particular, has some provisions on that issue and when the last amendments were introduced in 1988 or thereabout, that was one area that had, in fact, been cleared up a bit because they proceeded to stipulate that, in terms of allowing the state to recover the amount awarded from an offender, it shall be from a convicted offender because you can have a trial taking place and at the end of it, the offender may be acquitted. So they have now stipulated that it is from the convicted offender and we need to consider having some kind of system of recovering some of this compensation.

For example, perhaps, the Board can be allowed to have hearings to determine whether an order for recovery should be made and in that process, the Board should be allowed to take into account, for example, the amount of the award and then look into the offender's ability to pay. That is the kind of mechanism that I am talking about, and I would like to commend that to the Government in terms of this piece of legislation, because in these hard times when our resources are very scarce and slow, it is a question of trying to see if we can get, basically, the offender to compensate the victim. I think we had some piece of legislation that has been passed—some drug legislation—I cannot recall the exact piece of legislation, but we should look at a possible mechanism for that procedure.

Mr. President, in looking at the Bill as well, my observation is that in terms of how the Board is to conduct its affairs, the legislation is very vague. Now the honourable Attorney General went so far as to point out that to speed up the process and so forth, they have introduced clause 26:

“The Board, in considering an application, shall not be bound to entertain submissions from legal or other representatives of a victim or dependant and shall not be bound by the rules of evidence or legal procedure.”

It is an okay thing and I would just like to know whether the Board would, in fact, have the powers if need be to actually conduct a hearing. Would they be allowed to call witnesses? How are they going to get pertinent information to be able to determine the amount of the award that should be made? In other words, would they have that discretion? Would they have the opportunity to call the alleged offender or, indeed, to have the victim come in to give some evidence? It is very vague and, perhaps, we need to have some kind of guidelines as to how the Board would actually conduct its inquiries.

Mr. President, our concerns are that we are in support of the intent and purpose of the Bill and if it is that we are seeking to come up with a model that is relevant to us here in Trinidad and Tobago, I would urge the honourable Attorney General to please give some consideration to some of the issues that I have raised, so that at the end of the day, we will have a Bill that will, in fact, be keeping up with the times.

At the same time we need to get some assurances or some more information from the honourable Attorney General in terms of the cost factor that will be involved in this exercise. We have to get that because I remember, not too long ago, when a Bill was brought here to deal with amendments to the Legal Aid Act,

*Criminal Injuries Compensation Bill*  
[SEN. MOHAMMED]

*Tuesday, April 27, 1999*

that was a very real and legitimate concern, because while all the provisions are founded, it is a question of to what extent we would, in fact, be able to implement these measures.

I note that the honourable Attorney General made it clear, that in fact the one-year period will start to run from when the Bill comes into effect. So it means that they are really catering for next year, when it is an election year, but we will wait to see to what extent they are really serious about dealing with this situation and in terms of compensating the victims of crime. Mr. President, I thank you.

**Sen. Diana Mahabir-Wyatt:** Mr. President, like the hon. Sen. Nafeesa Mohammed, I am very glad to see that this Bill has come to this honourable House, because I think that we have had so many victims of violence and crimes in this country over the years who have suffered twice or three times. Firstly, with the crime itself; secondly because they had to face the legal system in making reports and thirdly, because they have had to pay for medical bills and various other bills as a result of the crimes which have been committed against them.

So I am really glad because, as the Attorney General pointed out, very often the perpetrators of the crimes are themselves persons of straw, so that the country has seen fit to be humane enough to fund compensation for victims.

### **3.35 p.m.**

I have, however, a couple of questions which I would like to ask the hon. Attorney General. The first has to do with the composition of the board which is in Part II clause 6. I am a bit disappointed, because here we are talking about compensation for victims of crime and there is a medical practitioner which seems to me, to be a fairly obvious choice because in many cases what we need for victims of crime is medical care. The legal practitioners, the Attorney General and the attorney-at-law with experience in civil law, and one in criminal law, I can understand, as well as the psychologist, but it does seem to me that there should be someone who, at least, has a voice on that board who can talk about the concerns of normal, ordinary people.

Take the cost of providing for child care. I think there should be someone who can understand, if the victim is a mother who has been killed and the dependants are children, the cost of child care, bringing up children; the cost if there is an elderly dependant in addition to looking after the children; a representative, surely, who has some experience in financial matters. I would quite honestly suggest someone who has experience in household management and domestic management because I

think this is where many victims are going to be and where the needs are going to have to be filled. I wonder if the Attorney General would think about that.

There is a second point which I want to bring up where naturally I am once again concerned. As the Attorney General, I am sure, knows I would have been concerned, and would have been very disappointed and surprised had I not brought up the question of victims of domestic violence. He did say when he was making his initial statement that the Government could not fund compensation for victims of domestic violence at this time, but that the general idea of compensation was to give at this time, tangible expression of the state's concern and sympathy for victims. I believe even if it was not the intention of the drafters to include victims of domestic violence in the Bill at this time, this, in fact, has been done.

I want to refer to that in two stages because this has come up before. I was trying to get a reference earlier, but I could not find it out and I was not able to get reference quickly enough. I believe in its first budget speech—I do not know if anyone here remembers, perhaps Sen. Dr. Mc Kenzie may remember—there was a reference made by the then, I believe, Minister of Social Affairs who said that there would be compensation paid to victims of domestic violence, and I distinctly remember the sum of \$3,500 mentioned. I remember it being mentioned because I was in the throes of delight, because I knew perfectly well the Government could not afford it. I made a point of bringing it up when I made my contribution just so that I could see the Minister of Finance wince, which he did, and it is always a delight to make the Minister of Finance wince in a budget debate.

In fact, I think you will find that a certain provision has been put aside under the Ministry of Community Affairs which does go, from time to time, to assist victims of domestic violence, but it is not something which has been legislated. I am concerned, and I continue to be concerned on a policy basis, and while the hon. Attorney General has assured me in the corridor that many of the victims of domestic violence have been covered—and I would come to the point to indicate exactly where they have been covered.

The fact that domestic violence, as a crime, has been left off the list of what is regarded in the Schedule, concerns me, because I have been waiting and hoping for a long period to find an official policy statement by this Government, or any government, indicating a serious concern about the extent of domestic violence and the need for legislation which does more than provide a comforting statement about how much we care, and I have not been able to get one.

During my budget contribution this year, you would recall I made a very simple statement requesting a policy statement from this Government simply regarding condemnation of spousal abuse by anyone in the position of leadership in any government. That was all I said, and it raised a furore which was absolutely incredible. I did not get any policy statement. I was called irresponsible, and this, mind you, when I made no mention of anyone by name, rank, political party, or period in government. I did not refer to any of these, but I was called irresponsible. I was called racist, although no individual or race was ever certainly identified by me, and could not be identified by me because from my experience it goes across all races and ethnic groups. I am taking legal action on that on a private basis, but that is beside the point. That was just a little slander that was unnecessary.

It just brought home to me the fact that there would be no policy statement, and if people would react so violently to a simple request for one, then domestic violence is definitely very much a secondary issue when it comes to concerns of, not just this Government, but every government under which I have served in the Senate and that concerns me. However, it concerns me because there are more people wounded and hurt through crimes of domestic violence in this country than through any other kind of crime and we still continue to treat this as though its secondary. [*Desk thumping*]

Mr. President, could I just refer everybody to the First Schedule, the crimes to which this Bill applies? You will notice that first on the list is “murder”. We have had in recent times a number of instances of murder where a man has killed his wife. I have a whole profile here on one where SRP Eric George brutally murdered his wife and that is murder. What I was asking the Attorney General for was an assurance that when such a crime ends up in murder, if compensation would be given to the victim’s dependants under this Act.

The second one is “manslaughter”. In very many instances where a man kills his wife in this country—it does not happen very often when a woman kills her husband, that rarely happens—but when a man kills his wife and the case is taken to court, it is more often than not reduced to a charge of manslaughter. I want to make sure that in an instance when that happens, the dependant of a woman who is killed would also be compensated.

The third one has to do with “wounding with intent”. Again, I want to make sure what crimes and victims are covered.



Mr. President, could I just refer you to a report in the *Newsday* of Monday, April 19, 1999 on page 3 and if you would indulge me I would read a short passage. It says:

“According to police reports, early on Friday morning the girl complained that she was not feeling well. She was taken to the Chaguanas Health Centre by her 24-year-old sister, where she was treated for her illness and sent home.

At Chaguanas, the two sisters boarded a taxi and journeyed to Chin Chin Junction where they were supposed to get another vehicle to take them to their Las Lomas home. When they reached the transition point...no other taxis were readily available and a man offered to give them a drop home.”

The child was ill and the older sister agreed.

However, the driver detoured into Ramgoolie Trace where he stopped the car and whipped out a cutlass from under his seat.

The elder sister was ushered into the trunk of the car and locked inside. The teen girl was thrown on the bonnet of the vehicle.

The taxi driver allegedly attempted to rape the girl, a virgin, but was unable to do so. The man then slit the girl open with his cutlass in order to penetrate her, which he did repeatedly. He then freed the sister in the trunk, left them at the side of the road and drove off. They managed to reach the Cunupia Police Station where they lodged a report of the incident.

With blood gushing from the wound between her legs, the teen girl was rushed to the Eric Williams Medical Sciences Complex, Mount Hope, where she was treated and warded in serious condition.”

This happened just a week ago, and I have seen no comment in the press, or anywhere else about the brutality of this crime. That is inflicting injury, it is wounding with intent, a sexual offences act. I know that medical care at Mount Hope is not cheap, and the psychiatric care this child is going to need as well as her sister—if the child recovers—for the rest of her life possibly, is also very expensive. I would like to be reassured that in this crime as well as compensation is going to be covered under this Act.

**Mr. Maharaj:** Mr. President, may I explain further that in respect of the offences in the First Schedule, if the offences which are committed by one spouse to another spouse, or via a spouse to a child or dependant of person or parent, the category of persons under the Domestic Violence Act, it would be covered.

What, however, would not be covered are all the offences under the Domestic Violence Act, and as you know, there are several offences and that is what I meant when I said it would not cover domestic violence, but all the offences in the Schedule as long as they arise as a result of domestic violence, and those offences have been committed, they would be covered.

**Sen. D. Mahabir-Wyatt:** Thank you. Mr. President, I really wanted to get it into *Hansard* and I am grateful to the Attorney General for doing so. I would also like to point out that the last number under each of those crimes are the offences under the Sexual Offences Act which do cover many of the offences, for example, offences such as incest and rape of children and we have had an inordinate number of sexual abuse attacks on children between the ages of 9 and 14. I have a whole file and every page you will see has at least two or three reports on this.

**3.50 p.m.**

Fathers on incest charge, stepfathers on incest charge and the children are between the ages of 8 and 15. Here is one for a 4-year-old child, another one, a 9 year-old, a 13 year old; another 13 year old, a 15 year old; I am very pleased that some of the psychiatric and medical help that these children are going to need is going to be covered by compensation—and, although I agreed with the Attorney General that \$25,000.00 is a picayune amount, I have argued over and over again in this House, that we should not put specific amounts into legislation because within a very short period, two or three years, with inflation, the amount is of very little relief to meet the needs of reality. I do accept his statement that we have to start somewhere. I am just hoping that we will be able to get amendments to this and other similar legislation and more quickly in the future than we have in the past.

Thank you Mr. President.

**Mr. President:** Senator Montano.

**Sen. Danny Montano:** Mr. President, I am happy to speak on this Bill. I think it is a very important piece of legislation. I am sorry that I had to speak after Sen. Mahabir-Wyatt, because the account that she gave of what occurred a week ago is upsetting to say the least, and it is a tragedy that our country has come to this state of affairs.

Mr. President, as the Minister indicated when he was introducing the Bill—and in fact the Bill says so—that one of the objectives of the Bill is to effectively

subrogate the claim by a victim against an offender who might be a person of straw; and in effect, the state takes the place of the offender and will compensate the victim, but he subrogates his right. But it does one other thing too, and that is, it seeks to compensate the victim in a situation where the victim might be able, in fact, to recover damages for negligence from the state for the state's failure to protect them. It is an interesting idea, and I think that it moves us forward in a very strong and purposeful way. However, there are concerns that I do have about the Bill and how it is actually going to operate.

It is unfortunate, that the crime statistics which used to be previously available from the Police, do not seem to be available to us anymore. I have made enquires myself, and I just do not seem to be able to get them any more. Once upon a time I could. I get a shuffle inside there that is just impossible. I just cannot get the information at all. I take that with great fear and trepidation Sir, when I hear statements being made by the Government to media houses that are controlled, that they should be recording only good news.

While I can support the object and intention of this legislation, it becomes a little dangerous when we begin to feel that, maybe, this is just a cover-up job, particularly in the light of statements, that have been made. Not only that when one starts to talk about crime and criminals, and sees the apparent rampant increase in crime, and the efforts on the part of the Ministry of Education to prosecute teachers, one wonders why the same effort is not being made. There are genuine concerns in this society. It seems to be that—it is despondent.

Mr. President in the *Express* this morning, *April 27, 1999*. You know, there was an article written by Darryl Heeralal and I would like to put it on record Sir. “‘Frightening’ spate of crime in Central

‘Unsafe in central’, is how some police officers have described rising crime especially the number of gun-point robberies, burglaries and rapes in Central Trinidad over the past few weeks.

Several detectives who spoke to the *Express* yesterday said the recent crime surge was ‘frightening’.

Over the past month there have been more than 20 firearm related hold-ups, and more than half a million dollars in cash, jewelry, cars and electronics stolen.

Many of the items have been recovered.

Over the past three weeks, there have been three rapes including that of a 15-year old schoolgirl who was raped by a PH-taxi driver.”

I think that was the one to which Sen. Mahabir-Wyatt was referring.

“After the assailant finished the act, he took a cutlass and slashed the teenager between her legs.

The most recent attack occurred yesterday. While a family was asleep at their Cunupia home when four masked men invaded the home around 2.50 a.m.

The robbers, one of whom was armed with a gun, wore handkerchiefs as masks.

While the armed man kept his gun trained on the family, his three accomplices ransacked the house taking an undisclosed sum of cash and jewelry.

Not satisfied, one of the bandits forced one of the family members’ a 23-year-old woman into a toilet where he raped her while his friends stood outside keeping watch.

The four men then got into a green car and drove off into the darkness.

Last Thursday four armed bandits on a robbing spree held up five people, raping a 15-year-old girl and taking over \$200,000 in cash, electronic jewelry and a car.

‘The situation is out of control,’ one officer lamented, likening the upsurge in the crime rate to the wild, wild west.”

Mr. President, I would draw your attention to an article, I think it was in the *Time* magazine about three years ago that referred to the wild wild west and the Government objected strongly to the use of the term, and here we have a police officer saying exactly the same thing; and this was a Government that said that they would deal with crime and have done everything else but.

Mr. President, notwithstanding that, we have a bill in front of us that seeks to make an attempt to compensate those victims of crime. But, I share the view of Sen. Mahabir-Wyatt, and I would come in a few minutes to show that in terms of the treatment of women this Bill may not work as it is intended as we on this side would like to see it work, and we do have some problems with it.

Mr. President, I would like to draw the Minister's attention to clauses 3 where the term "dependant" is defined; and "dependant" would mean a spouse, or former spouse who is being maintained by the victim at the time of the victim's death, and it goes on to deal with death.

Mr. President, I think the Bill is going to fall short because there are going to be situations where the victim in fact does not die, but he could be suffering from brain damage or he might be in a coma. In which case, the dependants of that person will be excluded from the benefits of this bill. At the appropriate stage I would ask that an appropriate amendment be made.

The other issue that I would like this honourable House to consider, is whether in fact it is desirable that this bill be administered by a board as envisaged in the Bill, or in fact by the courts. It is true that I think the Minister indicated that in most of the jurisdictions they are administered by an independent board. But in Australia, it is actually administered by the courts—in fact, the Supreme Court.

I would draw your attention to clause 25 where it says:

“The Board shall conduct its own inquiries with reference to an application...”

**4.00 p.m.**

Now, Mr. President, we know the composition of the board, but you have to appreciate that the board is going to be nominees of the Minister. They are not necessarily independent of the Government. They are nominees of the Minister, which means that we can probably expect that with the change in each administration, we are going to have a change in this board.

Now, when you consider that, with regard to clause 25(3)(b) and (4)(b) dealing with provocation by the victim and the conduct of the victim, you can see, and I will show shortly, that we can run into some serious difficulties. Coupled with that is the fact that as the Minister indicated in clause 26, the board is not bound to entertain the submissions of the victim's attorney. Later on in clause 27, it said that subject to clause 26 the victim has the right to have an attorney. But we are going to have serious difficulties.

In clause 11, it says that:

“...the Board shall act in accordance with any general policy directions of the Minister.”

*Criminal Injuries Compensation Bill*  
[SEN. MONTANO]

*Tuesday, April 27, 1999*

Now, the reason that is improper is basically this. It is just the way that things are. There is bound to be political prejudice in the workings of any of these institutions and in a quasi-judicial institution, there should be no form of prejudice whatever, and it must be seen as being completely independent, completely impartial. [*Desk thumping*]

Why is it that we have to have the board appointed by the Minister, instead of by the Judicial and Legal Service Commission, or some other independent body? Why is it the Minister? We are asking for problems.

Now, one of the problems is this. When you have a situation where the Government's finances are constrained, the policy directive coming from the Minister could very well be, "Listen, cut back on the awards because of the overall financial constraints of the Treasury." That must not be. If, in fact, this thing was being administered by the courts, there is no way that any government could tell them, "Do not make the awards be over a certain limit because of budgetary constraints and whatnot." It would be completely independent. Therefore, I am making a case that we must remove this, as far as possible, from any form of political or governmental interference.

The other thing is that this is going to be a very adversarial set up when you have it as a board here, because the state has a natural desire to minimize the amount of the reward and, therefore, you are going to have state attorneys, prosecutors or whatever it is, investigators, who are going to work against the interests of the victims and it is going to place burdens on the victims. In fact, in other jurisdictions, this is what actually happens. I wonder if that is really what we want to do at this time.

I would like to read Report No. 6 of the Community Law Reform Committee of the Australia Capital Territory. At paragraph 286 it says:

"For some victims, the psychological trauma caused by opposition to their claim can outweigh any benefits from the recognition of their plight inherent in the payment of compensation. In the aftermath of the trial, many victims find the prospect of further cross-examination terrifying, so that some refuse to pursue claims for compensation. Generally, the need for the victim to be cross-examined again at the compensation hearing is questionable. The Magistrates Court is able to determine the proper amount of an award in most cases without cross-examination of the victim on his or her evidence."

We did hear the Minister say, I think it was in France, that the matter is handled at the same time that the prosecution is taking place. The report goes on at paragraph 303 to say:

“The Committee considered whether a specialist Criminal Injuries Compensation Tribunal should be established in the ACT. It does not think this is necessary. It has no doubt that the courts, including, of course, the Master and the Registrar, deal adequately and quickly with applications when finally they come before them. The Committee is of the opinion that greater efficiency results from criminal injuries compensation applications being heard within the same court which heard the related criminal matter. In this regard it is useful to note the report of the Tasmanian Inter-Departmental Committee on Victims of Crime which includes the following:—

The Committee is of the view that the criminal injuries compensation system as exists in this State works very well. It can be described as speedy, accessible, cost effective, sensitive and fair.

On lodging an application for compensation a victim can expect that the hearing of the application will be heard within a matter of weeks.

The Master [of the Supreme Court who alone has jurisdiction to deal with such applications] on receiving applications refers them to the Director of Public Prosecutions. With rare exceptions, the Director of Public Prosecutions always concedes criminal conduct and a lack of an adequate civil remedy. The attitude of the Director of Public Prosecutions to these applications is one of the major reasons why the system works so well in this State.

The hearing time for the application is usually from 10 to 15 minutes. Applications are informal and the victim rarely has to recount his or her experiences before the Master. As a result, the applications are dealt with in a sensitive fashion and with as little discomfort to the victim as possible.”

Mr. President, not all the situations are going to be cut and dried, but we are hearing, as we heard from Sen. Mahabir-Wyatt, where women today are victims of the most heinous crimes, and I would certainly be an advocate of any system that would deal with their claims in a most sensitive and fair manner.

One of the problems of having a tribunal is this. There is a basic concept that taxpayers do not want to compensate those who are the authors of their own misfortune. So, we come now to deal with the situation. In clause 25, it deals with

*Criminal Injuries Compensation Bill*  
[SEN. MONTANO]

*Tuesday, April 27, 1999*

provocation and conduct, and when we set up a board of individuals, all be they lawyers or whatever, they are going to be sitting on that board with their own subjective views and standards of what the behaviour should or should not be in certain circumstances. There is no independent measure of behaviour. It becomes a very subjective measure.

You also have inherent in all societies, societal values and prejudices, particularly towards women. When you have a situation where the members of the board are political appointees, you could also find a very real political bias in the awards. [*Desk thumping*] This is the appeal, to make it as neutral as it possibly can.

I would just share with Senators what happens to women in a situation like this. I read excerpts from the Murdoch University Electronic Journal of Law, Vol. 3, No. 2 (July 1996). The article was written by Linda Jurevic. This lady deals with a number of issues concerning compensation for victims who were women. I mentioned earlier about societal values and subjective prejudices and it happens.

In a situation of mutual combat between a man and a woman, whether they are spouses or not, there are prejudices and we hear all over town, "She asked for that". That exists in a very real sense in the minds of many persons and I would be inclined to think that our judges are trained to dismiss those thoughts from their minds. This is what Ms. Jurevic wrote.

"Abusers, police, prosecutors, and other officials often minimise violence..."

—to women—

"by viewing it as a situation of mutual combat. The victim gave as good as she got;... Firstly, a woman often uses violence in self-defence, and, is usually not the initiator of an attack. Secondly, when women do in fact initiate violence, they may do so because 'they sense impending violence from their partner... Finally...mutual combat...injuries resulting from the violence are so disparate: 'A shove by a woman may enrage her partner; a shove by a man can knock a woman down and cause a concussion'."

But we have seen, Mr. President, worse situations where in fact, situations like that have been taken by the tribunals in Australia, or in other jurisdictions, to reduce the amount of the awards to women and it is quite clear the concept of mutual combat completely ignores the obvious differences between the physical strengths of the two parties.



I continue citing a particular example which goes like this:

“The applicant was the cousin of the offender’s girlfriend. On the night of the criminal incident, the offender came to the applicant’s home where his girlfriend (her cousin) was staying. The offender banged on the door and was verbally abusive. After the girlfriend admitted him into the applicant’s home, the applicant asked him to leave twice before finally pushing him toward the door. He punched her twice in the jaw and once in the head. She suffered a broken jaw. After the assault, the applicant’s cousin pushed the offender out and locked the door. The offender was convicted of assault... The Assessor awarded \$7000, but reduced the award by 10% for contribution.”

Now, that is exactly what we are setting up here. By the lady trying to shove this abusive man out the door, she was held to be contributing to the violence that was meted out to her. I read another case.

“In this case, the male applicant was the defacto of the female offender. The offender had been drinking heavily and was upset that the applicant’s old girlfriend had returned to town. The couple argued throughout the evening and the applicant admitted slapping the offender on a number of occasions. The offender’s father was also present and bashed his daughter. The offender left the home and got into her friend’s car for a lift. The applicant...”

—who is male, I would remind you—

“...followed her to her car and ordered her out. She stabbed the applicant and was subsequently convicted of causing grievous bodily harm. The applicant was awarded \$7500 with no contribution being found.”

**Sen. Daly:** Well, you know Australians stupid. [*Laughter*]

**Sen. D. Montano:** I would like to be sure that we could be so fair.

**Sen. Daly:** They do not “tief” so much.

**4.15 p.m.**

**Sen. D. Montano:** Mr. President, there is another case I would like to read for you.

“The offender had previously bashed his defacto, broken her hand, and caused cuts to her face. The criminal incident in the application consisted of his pushing her head into a wall and attempting to rape her. Though the matter was reported to the police, the offender was not charged because there were no witnesses and the police believed the applicant had provoked the offender

*Criminal Injuries Compensation Bill*  
[SEN. MONTANO]

*Tuesday, April 27, 1999*

while under the influence of alcohol. Relying on this police statement, the Assessor reduced the \$3,000 award by 20 per cent. ”

Mr. President, it is quite clear that there are prejudices against women. It is going to work in that way. I would like to cite one final case. I would just like to remind you what this Bill states. Clause 25(3)(b) states:

“whether there was any provocation by the victim.”

Clause 25(4)(b) states:

“the conduct of the victim which contributed to the injury.”

This is going to necessitate an enquiry into the conduct of the victim that would not ordinarily take place in a trial. In a trial provocation is not a defence to most crimes. We are making it, here, universally applicable as a defence, to minimize the amount of compensation. Why is that so? Why are we setting up a double standard?

Mr. President, I want to look at a situation here because it is going to involve a real scrutiny of the conduct and the life of victims. One particular case that I would like to alert the Senate to, was written in the *Sunday Express*, of April 04, 1999—“A Survivor’s Story.” This was a case where a young girl and her boy friend had stopped to get a ride and four “fellas” picked them up and they brutalized her. They tied up the young “fella”, and they beat him and they brutalized the young lady. I do not want to give the gruesome details. The issue here is the enquiry into the conduct of the young lady’s life. This is what she said here, she said:

“At the worst of times I feel to laugh so hard. I’m sure I was smiling, I don’t know why—that’s just how I deal with things. If I’m nervous, I laugh; if somebody threaten me, I laugh; even if I’m scared, I laugh.”

Now, Mr. President, if this young lady was laughing at the time or during her assault, or prior to the assault when the boys were fondling her in the car and so forth, is that going to be taken by the assessors to mean that she contributed to the crime? The point that I am making here is this: by setting this thing up and by removing it from the courts and the trial itself, you are going to burden this young lady with a second enquiry into her conduct. An enquiry that knows no legal limits, knows no legal rules and it is just a complete free for all. Mr. President, I have great difficulty with that.

In civil law a victim's behaviour is relevant only to a limited extent, for example, to determine the degree of that person's own negligence. This scheme is going way beyond that. I think that we need to look very seriously at limiting the extent to which provocation and the conduct of victims are going to be enquired into. Particularly, in a situation where you have government-appointed members of the board and a situation where she might be there without her attorney—that is what we are looking at. How do we govern this? There is no appeal from the judgment of the board; there is no appeal.

The Attorney General said that a person can call for a judicial review, but there is no appeal, so the victims are left entirely on their own at the board's mercy. There are no judicial rules. There are no yardsticks by which damages or awards can be set or measured—we heard nothing from the Minister on that. There are no yardsticks at all. There do not seem to be any measures whereby the judgments or awards will be documented and compiled in any one place and will be used as a guide for precedents. The Bill is silent on that and the Minister has said nothing on it. So—at the whim and fancy of the board—is that what we are looking at?

Mr. President, the legal system has certain rules, but this board does not seem to have any rules by which it must operate. It seems to me that we are operating here in somewhat of a vacuum. While the accounts of the board are going to be subject to the review of the Public Accounts Committee, the actual workings of the board are not going to be subject to review by anybody. That seems to me to be an extraordinary state of affairs. I do not know if, in fact, the information is going to be available to anybody under any circumstances. I find that it is incomplete, Mr. President. The Bill strikes me as being incomplete. I think it needs a second look and it needs some serious rework.

I have only one other note to make, Mr. President, that is in clause 14 which states that the accounting officer shall be a qualified accounting technician. I am not sure what that term is. I really wonder if that is in the best interest of anybody, unless we define what an accounting technician is. I know what a member of the Association of Accounting Technicians is but I really do not know what an accounting technician is. I do not know what standard or how many years' experience he has or what training he has. I think we need to [*Interruption*] At another time, perhaps I can help you with that.

Mr. President, with those few words, I thank you.

**Mr. President:** I think we will break for tea at this stage. We will resume at 4.55 p.m. This sitting is now suspended until 4.55 p.m.

**4.23 p.m.:** *Sitting suspended.*

**4.57 p.m.:** *Sitting resumed.*

**Sen. Prof. Kenneth Ramchand:** Mr. President, I have one or two comments to make that are really questions rather than statements; also the expression of one or two wishes. First of all, I would like to say that this is a very important and humane piece of legislation and I welcome it and look forward to its extension to other kinds of crimes in due course. I welcome it, Mr. President, but I have certain questions about to whom it shall apply.

One of the clauses speaks about people who suffer pecuniary loss as a result of some of these crimes. I was wondering whether the rules that will be applied would raise the question of hardship, for instance. I think whenever the State is offering welfare it has to target groups which are more in need of the welfare. I would like to know whether the rules that would decide if one gets compensation or not would take into account whether the pecuniary loss that comes about would bring hardship to the dependant or spouse as the case might be.

The second consideration, Mr. President, is, I was wondering whether for victims of crimes of violence, particularly, there might not be a way to grant medical attention rather than cash. For instance, if my leg is broken or my neck is badly damaged and I have to be put in traction and so forth, would it be possible for the state to arrange for me to get medical attention and take care of me until I get better? I do not know if the framers of this piece of legislation considered the possibility of that, but I would certainly like to have that considered: medical attention till I am pronounced fit instead of cash.

Another question I want to raise was also raised by Sen. Montano but I think it can bear repetition. I noted in the explanation the phrase, "innocent victims" was used and then I noticed that there was this phrase about provocation:

"In determining whether or not to pay compensation, consideration shall be given to—

(b) whether there was any provocation by the victim."

That seems to me to be a very slippery category.

For instance, if I tell a taxi driver, “You owe me a dollar,” and he says, “No, no, I do not owe you a dollar.” I say, “Yes man, I gave you \$5.00 the fare was \$3.00 and you only gave me back \$1.00,” and then he says, “No.” Then I say, “Well, keep it. If that will make you feel better, keep it.” And then, because he feels I have insulted him he lashes me. Have I provoked him? [*Interruption*] I would be lucky if I only got a lash but I do not feel it could be said I looked for it. So I think this clause about provocation is a very slippery one to deal with and we may even be suggesting that a certain amount of provocation is allowed but after a certain point they will tell you, “You looked for that”.

I think the intention of the legislation would be that if Sen. Kenny and I get in a fight and he beats me up—

**Sen. Prof. Kenny:** I am too old.

**Sen. Prof. K. Ramchand:**—I cannot then say I am a victim.

**Mr. Maharaj:** I do not think that would be provocation, that is advantage.

**Sen. Prof. K. Ramchand:** So we are not talking about people who have gotten into a fight, people who are contenders in a fight, we are talking about somebody who was going about minding his own business and who was behaving properly and who got lashed; I think I would have preferred not to say anything at all about provocation in the legislation and leave it to those who are interpreting it and applying it, perhaps, to raise the question of provocation, off the record if they want.

Finally, Mr. President, if I might introduce a personal note about the crimes for which one gets compensation, I really feel something has to be done about theft. If a man steals my money and he spends it and he is charged, I am obliged to go to court three times a year for four years, wasting my time, until he is found guilty. He is found guilty, and he cannot repay anybody any money, and he goes to jail. What good is that to him or me? I just want back my money. I do not want him to go to jail. I do not want him to get licks. I just want back my money, Mr. President. So I wish there was some way in which victims, people who lose their money like that, could be compensated by the State. If I lose US \$1,100.00 I cannot afford that, Mr. President, and the man who stole it and spends it cannot give it back to me. So where is the protection for me, Sir?

Those, therefore, are the main questions I have, Mr. President, the most serious one being whether it is possible to give medical attention instead of cash. Secondly, I would like to suggest the slipperiness of the whole notion of provocation and the possibility of that slipperimen bringing it about, that somebody who needs compensation does not really get it. Thank you.

**Sen. Mahadeo Jagmohan:** Mr. President, I am glad for the opportunity to make a short contribution on this Bill. Since this Bill has a nexus with crime I just seek your kind permission to make reference to what was reported on the television, radio and in the newspapers regarding the concern of the hon. Prime Minister with respect to the type of shows and the type of reporting in the newspapers that incite or encourage crime.

I want to say, Sir, right here under your direction, in the presence of the hon. Minister of National Security, during the tenure of this Senate I raised the matter three times, on three different occasions, that the type of shows on television and the type of reporting of crimes should receive our attention and something should be done about it. I believe now something might be done because of the timely intervention of the Prime Minister. I hope the Prime Minister is dead serious about this one. I am saying, Sir, that we all are concerned about the situation of crime in the country and it is not the business of the Government alone or the public alone or the Opposition; it is everybody's business.

I want to observe, with your permission, Sir, the hon. Attorney General, who I happen to know for a little while. I observe his legal practice and the way he championed the cause of people affected in many ways and so forth. There could not be a better Attorney General to bring this matter. I am, however, disappointed with the way the Bill is written up. The hon. Attorney General's name would go down in history when human rights matters are written about by the historians but this Bill will not be too good for reference.

The statements made by the hon. Attorney General and other speakers in explanation of the Bill will go in the records of the *Hansard* but will in no way, except amendments are made, affect the Bill because law enforcement people do not deal with what is said in the *Hansard*, they deal with what is a final Bill proclaimed by His Excellency, the President of the Republic, and regulations made to operate the Bill. So I have a concern there, Sir.

With respect to the Bill, I see in the Explanatory Note and also in the main Bill a number of important matters raised, but I commend the Explanatory Note

highly in this Bill. Mr. President, I want to refer to page 9, Part II, clause 6. This was alluded to by previous speakers but, because of its importance, I wish to also make mention of it. Clause 6(1) reads thus:

“The Board shall consist of a Chairman and six other members, all of whom shall be appointed by the Minister.”

This is a dangerous proposal, very dangerous. The Minister will consult his advisors to make this appointment. Our view is, the appointment of this board should be made by the Cabinet and, quite obviously, the Minister in charge of this will, of course, be present in the Cabinet when other Ministers are present. If the Ministers operate the way Ministers of a Cabinet should operate, when certain names come up and so on in Cabinet which operates in a confidential manner, I hope, they will have an opportunity to criticize, condemn or speak unfavourably of any particular appointee.

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

My argument, Sir, is that the hon. Minister may recommend that the Cabinet should approve the composition of this board, referred to in clause 6.

I was alarmed when I read further provisions. Clause 6

“(2) The Chairman shall be an Attorney-at-law with no less than ten years experience in the practice of criminal law.”

What I am saying, Sir, even if an attorney is practising criminal law for 10 years, he will be a very wealthy man in Trinidad and have no need to sit on any board to adjudicate in small criminal matters; or an attorney with 10 years of practice in criminal law would have become a senior counsel, a judge or some other thing, other than the chairman of this board referred to in the Criminal Injuries Compensation Board. So, we are advocating that the period of qualification should be cut by 50 per cent and, an attorney with a practice of five years. Because an attorney is not someone whom we picked up by the roadside. An attorney is one who goes through the whole system of training, having been articled to a senior person and so forth—I do not know if that is how it is called in law, “one is articled to a senior lawyer”, whatever. But whatever it is, it means the same thing. Therefore, this should be cut by 50 per cent—I am sorry the Attorney General is about to leave the Chamber.

**Sen. Mark:** He is not leaving.

**Sen. M. Jagmohan:** All right. Under clause 6:

“(3) (a) a medical practitioner of no less than ten years experience;”

I am also advocating, Sir, that the qualification be five years of experience after internship. Six years to study and train, two years internship and, then five more years in practice as a full-fledged medical doctor. Ten years is too much.

Under clause 6 on page 10, another attorney-at-law is mentioned, that is in civil law.

“(c) an Attorney-at-law of no less than seven years experience in the practice of criminal law;”

That is three attorneys on this board. It is something to be lauded that we have a number of attorneys. Attorneys are very, very important people, from a professional standpoint, and the help they can give. But the argument is, that is maybe one too many attorneys on this board. What we are suggesting—clause 6 (3) (d) says “a psychologist;”, I imagine they mean a clinical psychologist. I leave this to my imagination. At. (3)(e):

“(e) A representative from the Ministry with responsibility for social services;”

Can this be a Clerk I, Clerk II, Clerk III or Clerk IV? Or is it going to be a professional person who is specialized in something else? This is another flaw in the Bill that should be dealt with. I am suggesting to the Attorney General that he give immediate instruction for amendment to clause 6(3)(e), and let it be someone with 5 years' experience in a particular post, as might be desirable, or as would be advisable. “A representative....”, it does not seem to be too good there, so this is the suggestion with regard to clause 6(3)(e).

On page 10, clause 7—before I move away from clause 6, with your permission, I am returning to it. We have a strong feeling that this tribunal, even if you have to extend it by two members, or as it is, there should be a representative from the wider community: attorneys, clinical psychologists, doctors, comprise part of the citizenry of the country, but they do not have that kind of connection with the public at large, as would somebody from the church, labour, or business. Consideration should be given to include either a church person, a labour person or a businessman—in good standing, of course. I mean that.



Page 10, clause (7)

“(6) Where the absent member is the Chairman, the Minister shall appoint a member, not being a temporary member, to act in his place.”

This is exactly what my colleague, Sen. Danny Montano, was referring to. Even at that stage, the Minister alone makes decisions for the other members of the board. In so many boards that exist, when the chairman is absent, except the Act says so, they elect a person to preside from among their members. This says, no way, only the Minister can appoint. That is not good for a democratic organization.

Page 11, clause 8(1). This is straightforward English language.

“Clause 8 (1) The Board shall pay its Chairman and other members such remuneration as the Minister approves.”

We get the feeling that the Minister will have the authority to approve, but who will propose, who will recommend? Nowhere in the Bill it says who will propose and recommend. That is another flaw in the Bill with which we need to deal.

Under clause 10:

“(3) The Chairman, or in his absence, a member elected by the Board, shall preside at all meetings of the Board.”

This is confusing the other clause to which I have just referred. Something has to be done. This has to be looked at. Subclause (4):

“Four members of the Board shall form a quorum.”

Four members of the board. They should have qualified: at least one from that four should be an attorney, or one of the attorneys, because they are dealing with the law and criminal matters that were already dealt with, from a legal standpoint. In about two previous Bills I have made reference to this.

On page 12, clause 12 states:

“(12) The Board shall have an official seal that shall be kept in the custody of the Chairman or otherwise as the Board determines.”

This is a simple administrative matter, but in the majority of organizations in Trinidad, the secretary is the custodian for the seal. He may apply the seal to important documents in the presence of the President or the Chairman. The Act

should say so. *[Interruption]* It says so, but the Chairman is keeping it, and that is trouble.

On page 13, clause 15, while the language is couched in this manner:

“(3) The Board may terminate the Secretary’s appointment by giving one month’s notice or salary in lieu thereof.”

What, for no reason the board will proceed to terminate the service of a secretary at its whim and fancy? Somewhere it should state if he is accused of misdemeanour or displays shortcomings, or whatever. It says nothing.

On page 14, clause 19 (2)(a) and (b). We believe—and I want to put it clearly—salaries and wages or remuneration, or any board or any organization, if it is coming from the Consolidated Fund, or any other fund, they would have salaries to pay rent or to pay miscellaneous expenses, and salaries and wages should be under a separate vote, or there should be an allocation at the beginning of the year to be approved by the Minister of Finance, or whatever the case may be. If additional moneys are required, some kind of supplemental vote or additional sums of money can be voted. This is a lot of problems to have: whether it is overseas travel, the cost of hiring attorneys outside of the system, rent or entertainment, whatever, everything comes out of the Consolidated Fund, because it simply says “expenses.” We are suggesting that salaries and wages be a separate vote under that system.

**5.20 p.m.**

Mr. President, on page 16, clause 24(5)(b) looks strange where it says:

“...the application may be made by the person with whom he normally resides or a duly authorised medical officer.”

The medical doctor could be the advisor, but we believe that a probation officer or some such person who is well-placed within the public service should be one of the persons making such an application.

I then move to page 17, clause 25(4), which says:

“In determining the amount of compensation, consideration shall be given to—

- (a) the amount received or receivable from any other source by the victim or his dependant, as a result of the criminal injury;
- (b) the conduct of the victim which contributed to the injury.”

What I am saying, Sir, is that if an affected person under this proposed Bill—which we are satisfied will become an Act very shortly—has the appropriate kind of life insurance or assurance policy, and they have already paid for 20 years or 35 years for a particular kind of injury and are given some grant or relief by the insurance company, when they make a claim under the Act, we find it extremely harsh for that person to have whatever he receives from his insurance company deducted by the board. Can some consideration be given to this?

On page 18 under the same clause 25(8)(d) it reads:

“Defence Force to the extent that such member has been assigned to act in aid of the Police;”

My understanding of this is that if a soldier or a Coast Guardsman, or any other rank of officer from the Defence Force is present and somebody is about to commit a crime, if the soldier or the Defence Force personnel can do something to prevent the occurrence of the crime, he may not do so because he is not assigned to act in aid of the police. That is a big one.

Also, I have some real difficulty with clause 26 where it says that the board shall not be bound by legal representation. We are already proposing three lawyers—for good measure, perhaps, but we do not agree—on the board, and now clause 26 is saying that they will not be bound by legal representation. This means that if there is any point of law which the affected person or the victim of a crime wants to have advanced on his/her behalf, they cannot take it to the board because it is self-explanatory here.

The Attorney General took us through clause 28 quite nicely in indicating that any decision of the board shall be subject to judicial review, but judicial review would be very expensive for anyone pursuing that course. *[Interruption]* Do not worry. Some of the best lecturers in law in the world are not practising attorneys. There are other people educated in law, but they are not practising attorneys. So, do not worry!

Mr. President, I, too, hold the strong view, as expressed by my colleagues before, that there should be a time limit for settlement of claims awarded by the board to affected claimants. And, unless that is stated in the Act, we would have another kind of spectacle in the country, like when the Government daily-paid workers are not paid and they drop a demonstration on us—10,000 people around the Parliament; or when the teachers are not paid, all sorts of things are taking place that would implicate and embarrass the Minister to the extent that he cannot

*Criminal Injuries Compensation Bill*  
[SEN. JAGMOHAN]

*Tuesday, April 27, 1999*

even duck out of it. So, that is the difficulty. We therefore propose, Sir, that a time limit be stated after settlement when payment would be effected.

Mr. President, I am glad for the opportunity to speak on this Bill and I thank you very much, Sir.

**Sen. Prof. Julian Kenny:** Mr. President, I will be brief in the true meaning of the word. I am particularly interested in actually getting a bit of education with regard to the crimes, in particular, murder and manslaughter. First of all, may I just say that I support legislation of this kind. I know it is going to be difficult, but I give it my wholehearted support.

Mr. President, there are many ways of killing people. They can be shot, hung, poisoned or whatever have you, but—and it is actually a question I am asking of the hon. Attorney General—one of the realities of the world, and this globalization, is HIV. I know that adults, behaving as adults, may not be aware of their condition, and this, of course, causes the spread of HIV, but not long ago, there was a rather remarkable incident where a woman of Swiss nationality who knew she was HIV positive landed in Tobago. Her name was Simona Fricker, and I am sure that, knowing she was HIV positive, she must have known that her behaviour was going to end up killing a few citizens and spreading the disease even further.

I am interested in environmental law, I do a lot of reading and I am afraid I am totally ignorant of the meaning of murder. To me, if a person knowingly has been diagnosed with HIV and behaves in such a way to a person who is unaware, it is the same as putting a gun to them or poisoning them. I am really asking whether we recognize this sort of situation. I think in my readings, I get the impression that other administrations may deal with the problem.

I am also raising it because, perhaps it is only folklore, but more than one person has said to me that in certainly sub-Saharan Africa—and in certain parts of the West Indies—men who know that they are HIV positive are told that one cure is to behave with an underage virgin. I have heard it.

**Mr. Maharaj:** Behave or misbehave?

**Sen. Prof. J. Kenny:** Misbehave. I am using the word behave in the scientific sense. We do not judge behaviour. Behaviour is neutral. *[Laughter]*

Mr. President, I hope the Attorney General would help me out of my ignorance of the law. Thank you.

**The Attorney General (Hon. Ramesh Lawrence Maharaj):** Mr. President, I express my thanks to all Senators who have contributed to this matter. If I do not take all of the comments on the floor of the House, I will certainly take them during the committee stage.

I cannot resist saying that it is so unfortunate in our society that everything seems to have a party political dimension. Here it is that we came with this Bill, and as far as I can, I see no politics in this. This is something for the benefit of people to improve our society. Some of the matters which have been raised are important politics, but what I think we need to do is focus on the measures and see whether we could go along with them.

Mr. President, I think it was King Solomon who said that justice will only be achieved when those who are not injured by crime feel as indignant as those who are. I think that this is a philosophy which we will want to underpin in this Bill. Here it is that yes, there is a crime problem—it may be even regarded as an escalating problem—but this is not a Bill dealing with the question of crime and the causes of crime and matters like that. Yes, those are important matters, but this is a Bill to see how much we can alleviate the problems which exist as there are crimes and there are victims of crime.

I merely want to refer to the manual on the implementation of the United Nations declaration on basic principles of justice for victims of crime. There is a handbook on justice for victims which has been published by the United Nations, and under section 2, Victim Assistance Programme, Victims' Compensation and Restitution, we see at page 57 the major matters which are considered by boards, commissions or tribunals which have to consider the payment of *ex gratia* payments to victims of crime. It says:

- (1) The victim must report the crime to the police within an established time frame.
- (2) The victim must co-operate with the police and prosecutors in the investigation and prosecution of the case.
- (3) The apprehension or conviction of the perpetrator is not generally a prerequisite to receiving compensation.
- (4) The victim must submit a timely application to the programme and provide other information as requested by the programme.
- (5) The victim must be innocent of criminal activity or significant misconduct that caused or contributed to the victim's injury or death.

Mr. President, the question, therefore, that we have to address in this Bill is whether the Bill provides a machinery for the executive to be able to be considered reliable to assess the *ex gratia* payments.

**5.35 p.m.**

This is a function. This is not a Bill which is taking away the rights of victims in filing cases under the ordinary law or depriving them of the jurisdiction of the court to get compensation under the ordinary law. This is in addition to whatever rights they have and this does not give them a legal right. It is *ex gratia* payment, but what this Bill does is create a legal framework, so that there can be as fair as possible an assessment of what compensation or what *ex gratia* payment the executive would like to give, bearing in mind that the policy decision is that there should be a certain maximum amount at this time and it makes the provisions for an increase in that maximum. So it has nothing to do with whether a court in Australia could decide whether somebody should get compensation, or whether a tribunal set up under a different scheme can decide whether a person can get compensation.

In Trinidad and Tobago, for example, a person who is a victim can still go to the courts and file his case against the individual who has committed the crime. The court would still have the power to award compensation for that person. What the Bill does is to say that whatever is given, the person must not get twice for the same injury. So, therefore, if the person gets in excess of \$25,000.00 for the injury which he has suffered, the board can consider whether that sum should be deducted from the person. So that is basically what this Bill is about. It is about trying to find a way in which the executive can be able to determine what *ex gratia* payment to make to the individuals.

Mr. President, that is why it is under a Ministry; it has a Minister. I am quite prepared, at the committee stage, to consider whether there are any ways and means in which we can say that the decision of the Board is not subject to ministerial review. I do not have any problem with that. I do not have any problem if it wants to make clear that the policy relates to the administrative functions of the particular tribunal, but it would be quite illegal if a Minister interferes with the discretion of the tribunal and it would, in effect, be illegal if the—"illegal" probably is the wrong word—unlawful if the Board does not act fairly.

As a matter of fact, Sen. Mohammed would know that in England although there was a system in which you did not have a statutory scheme, there was the

question of judicial review and it was held in that famous case involving the Compensation for Injuries Board that it was amenable to judicial review.

Therefore, although the person does not have a legal right the victim would have a legitimate expectation to have the Board consider his or her application fairly. Now we do not want a set up whereby the persons will continuously have to go for judicial review, but if there is any other system that could be recommended that could deal with this matter, I will be prepared to consider it.

**Sen. Mohammed:** Judicial review would deal with situations where there have been some breach of natural justice or what have you. I have raised the issue too of what recourse a victim would have in the event that the amount of compensation that is being awarded is in dispute. Would they have a right of appeal? Also, this would not be taken into account in judicial review proceedings.

**Hon. R. L. Maharaj:** Mr. President, I am really a bit disappointed because here it is you have a situation where we are going to assess the quantum of an *ex gratia* payment. If you have an appeal procedure with that, you are then going to make it very cumbersome. The question is in all of the systems there is none that has any appeal procedure when it comes to an *ex gratia* payment, because the whole purpose is for it to be done very quickly. You have systems for compensation to be assessed on a legal basis. This is not a legal assessment of damages, but if there could be some suggestions as to how I could deal with it I will be prepared to consider, but I have not heard anything. I have heard many criticisms from the Opposition Benches—an appeal to a Master of the Supreme Court.

**Sen. Mohammed:** One of the suggestions I was making is that in itemizing for example, in determining the quantum of compensation, we could have actually stipulated a ceiling like with respect to payments for loss of wages, or whatever it is. It is difficult to do an amendment if you do not know what kind of court. We need the guidance of the Government on that.

**Hon. R. L. Maharaj:** Mr. President, I have not seen an amendment, but if I can deal with part of it—to specify an amount in a country with a written Constitution you have problems with that kind of legislation, because it is an amount which is pre-determined and in effect it takes away from the consideration of the particular matter. So that all these matters were considered, and all I can say Mr. President, the best way we could have done it is to set up a board in order to assist in determining what is the amount, bearing in mind, the principles which

have to be followed. Obviously, we would see how it works and as time goes on we may have to improve it but, basically, this is the way I think that we have to go.

Mr. President, on the question of domestic violence, I gave the assurance in response to the honourable Sen. Diana Mahabir-Wyatt, but I want to make it quite clear that this Bill will cover instances of domestic violence, in so far as the offences that are specified in the First Schedule. When I made the comment about domestic violence, I was thinking about all the range of offences in the Domestic Violence Act, but I also want to give the undertaking that that Schedule is going to be under continuous review because there are other offences, obviously, from time to time that one would want to see included in that, so therefore, this is a starting point. It is something which we would have to continue.

In respect of the section dealing with the policy of the Minister in relation to this matter, that is clause 9, I would be prepared to look at that if we could come up with any proposal or amendment. I would be able to consider it, but this is not a new clause. In every piece of legislation which has been passed it has to deal with a board or body under a Minister: it is subject to the general direction of the Minister. That has been passed under the PNM and NAR administration, so that it is not something new and it has to do with the question that the Minister is responsible for the policy, because he carries out the policy of the Government.

In respect of the quantum of the compensation, yes, I take Sen. Mahabir-Wyatt's point, the quantum of the compensation should be looked at continuously and I wish to give that undertaking. If there is anything that could be put in the Bill in order to ensure that it can be looked at, I will be prepared to look at it at the committee stage.

Mr. President, what I have found in my short experience as a Minister, is that the best way to get something going forward is that you cannot really solve all of the problems with a particular issue and, therefore, if it is that you can carry forward a piece of legislation which relates to a particular issue, as the problems come up the piece of legislation would be improved and, at least, there will be something to start with and we can continue building on it.

On the question raised by Sen. Ramchand, in respect of medical expenses, it would seem to me that if you are injured and it falls under one of the offences for medical expenses, it is covered under the Bill.



With respect to the other point, I think I have dealt with the question of provocation. If the person has contributed to the crime then, obviously, it is a factor which can be taken into account and the tribunal would take that factor into account.

**5.45 p.m.**

Sen. Prof. Kenny raised a very interesting point and I do not know whether I should express my view on this, but I would try to say what the law is. It would seem to me that it is arguable that if a person who has a disease which can cause fatal consequences to an individual knowingly and deliberately participates in some activity with that individual, if I may use those terms, and it is foreseeable that death can result, certainly questions would arise whether that is murder or manslaughter. I understand in some of the jurisdictions—not in the Commonwealth, but in the United States—with the ordinary law of homicide, persons have been prosecuted for that.

I want to say that is one of the issues which have been attracting our attention in the law relating to HIV and in relation to the Sexual Offences Act. As a matter of fact, in a short while we would come to the Parliament with a new Sexual Offences Bill, or alternatively, a major amendment to the Bill. They are already drafted; we have to make a decision on which one, and there are going to be radical reforms of the law relating to sexual offences.

One of the matters which we are considering in that bill is the question of people who have AIDS and if they have sexual intercourse with individuals. That is an issue which many governments had to address and I suppose important decisions would have to be made, but there has been a working paper prepared by the Law Commission on AIDS and its legal effects and impacts, and that working paper was published for public comment. We got comments, and legislation is also being drafted in relation to that. We are collaborating with the Ministry of Health and in a short while they are going to get some kind of legislation on those matters.

Mr. President, I may not have answered all the queries, but may I give the undertaking that the ones which I did not answer can be raised at the committee stage and I would be prepared to deal with them as best as I can.

There is one matter, however, in which there was a point raised on Accounting Technician. I cannot remember who raised the point. I think it is the distinguished and hon. Sen. Montano. Because of the industry of Sen. Mark, I was passed a

*Criminal Injuries Compensation Bill*  
[HON. R. L. MAHARAJ]

*Tuesday, April 27, 1999*

booklet, “Association of Accounting Technicians—Improve your Prospects”. I do not know whether he is thinking of improving his prospects as an accountant, but it says that an Accounting Technician performs a range of jobs and typical job titles include management accounting, financial analysis, accounts, payable manager and it give some descriptions.

I have also been advised by the accounts department of one of the ministries that an accounting technician is a person who holds a diploma declaring him as such. Such a person writes an examination, and on being successful, is awarded that diploma by the Association of Accounting Technicians.

**Sen. Montano:** I did say I was very aware of the Association of Accounting Technicians. I would also say that I do not know why you would want to limit this only to members of the Association of Accounting Technicians. A UWI graduate with a B.Sc. in accounting would have a higher academic qualification—

**Hon. R. L. Maharaj:** Mr. President, it is quite clear, however, that accounting technicians seem to have an association.

There is one other point which Sen. Mahabir-Wyatt raised which I think is important. It is clause 6 of the Bill and concerns the composition of the board. I am wondering whether someone representing the Ministry of Social Development would not be able to satisfy some of the concerns raised. If there are any suggestions that we could put other representations on the tribunal, one has to understand that you do not want to load it with too many people. This is something which would have to be looked at again, to see how it works and bearing in mind that the Opposition has raised the question of budgeting and it may be, that they know how difficult it is to sometimes get a measure through if one goes through all the bureaucracy.

If, for example, I had to wait for all the reports in this matter, this Bill would not have been introduced until the year 2010, and I am certain I would not be here in the year 2010. All I am saying is that there is a situation in which there are so many reports that come in respect of a Bill, finance, and all sorts of things and this is what we have come up with, and unless it is fundamental, I would ask Members to let us go with it and we can always ask for an amendment.

Mr. President, I beg to move.

*Question put and agreed to.*

*Bill accordingly read a second time.*

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

*Senate in committee.*

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

*Clause 3.*

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

**Sen. Montano:** The definition of “dependant”, seeks to limit it to a relative if the victim is dead, not if the victim is in a coma or suffering from a brain injury or something of the sort, in which case he cannot bring the action himself. Is that the intention of the Bill?

**Mr. Maharaj:** As long as somebody could—if he cannot sign, the law ordinarily provides for someone to be appointed to bring the action.

**Sen. Mohammed:** That would be under the Mental Health Bill.

**Mr. Maharaj:** A “‘victim’ means a person who suffers criminal injury or is killed by any...” Is that what you are talking about?

**Sen. Montano:** The definition of “dependant”.

**Mr. Maharaj:** That only applies if a person is dead.

**Sen. Montano:** What happens if the victim does not die, but he is in a coma?

**Mr. Maharaj:** That applies to both victim and dependant.

**Sen. Mohammed:** What if he is a vegetable?

**Mr. Maharaj:** You can have an application made on his behalf. In the ordinary court proceedings you have an application made on his behalf.

**Sen. Mohammed:** Under the Mental Health Act, or whatever it is, depending on the circumstance.

**Mr. Maharaj:** I do not think we should put that here because the Bill clearly states that a victim is entitled to make an application.

**Sen. Montano:** Are you satisfied this would work?

**Mr. Maharaj:** If there is a problem, we would look at it in the other place, but I am satisfied.

*Question put and agreed to.*

*Clause 3 ordered to stand part of the Bill.*

*Clauses 4 and 5 ordered to stand part of the Bill.*

*Clause 6.*

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

**Sen. Montano:** Mr. Chairman, I am proposing that clause 6(1) be amended to read:

“The Board shall consist of a Chairman and six other members, all of whom shall be appointed by the Judicial and Legal Service Commission.”

So that we would delete the words “the Minister” and substitute the words “the Judicial and Legal Service Commission”.

**Mr. Maharaj:** Mr. Chairman, for a board, or a commission, or a tribunal to be appointed by the commission, it has to be a commission which is performing judicial functions and affecting the termination of rights of individuals and the Judicial and Legal Service Act actually specifies what the commission covers. It is legal or judicial officers and this cannot be a court. It is a different policy altogether.

**Sen. Mohammed:** Even if this is a quasi kind of tribunal, are you not creating a right by virtue of this Act, a right to compensation?

**Mr. Maharaj:** No. It says it is an application for an *ex gratia* payment. If you understand the concept of this, there is no legal obligation on the Government to do this, and no legal obligation on the state to provide this. There is what is considered to be a moral obligation in order to try to assist. Normally, people can apply to the ministries and there can be an administrative set up. What we are trying to do—because it has been found out if you have some legal framework, you have a better system, so you get away from all the claims of nepotism, politicking, and non-action, but if you set up another court, you are, in effect, having parallel rights and you cannot do that.

**6.00 p.m.**

**Sen. Mohammed:** But this Bill is in fact creating a legal obligation on the part of the state to compensate.

**Mr. Maharaj:** No, it does not. It does not create a legal obligation. It is probably the move should be a legitimate expectation of the individual to get his

application to be considered. For example, let us say that we pass this Bill and your administration takes office by some unlikely event. *[Laughter]*. This Bill which has become law can be repealed, and there is no right of the individual. So it is not a right. So I do not see how the Judicial and Legal Service Commission comes into this really.

**Sen. Mohammed:** It is not as though you are creating it to operate as a court, but certainly in terms of the appointment all we are looking for is some independent body to make those appointments; and you are dealing with attorneys of a certain standard.

**Mr. Maharaj:** Mr. President I do not think that even if we put this in the law the Commission would be acting lawfully to appoint someone to a board like this. It says, the Commission has to appoint a court or court-like functions.

**Mr. Chairman:** A State Counsel.

**Mr. Maharaj:** Sorry. Yes, a State Counsel is not a judicial person, a State Counsel is a legally qualified person. It is a legal officer. It is attached to departments specified in the Judicial and Legal Service Act. The Commission can appoint magistrates, judges, and if you want them to appoint them for the Industrial Court you could pass laws to make them do that or whatever it is. But, it has to be judge-like functions.

**Mr. Chairman:** In light of this, are you pursuing this?

**Sen. Montano:** No.

*Amendment (Sen. Montano) withdrawn.*

*Clause 6 ordered to stand part of the Bill.*

*Clauses 7 to 10 ordered to stand part of the Bill.*

*Clause 11.*

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

**Mr. Chairman:** There is a proposed amendment by Sen. Montano which reads—it was not circulated.

**Sen. Mark:** It was not circulated. Okay.

**Sen. Montano:** I wanted to include in my amendment that Clause 11 be deleted.

**Mr. Maharaj:** Yes, yes.

**Mr. Chairman:** And as a result to renumber subsequent clauses. Sen. Montano!

**Sen. Montano:** Yes.

**Mr. Maharaj:** I was thinking in order to appease some of the consensus whether I would not have amended it to—I could amend it to put; in the performance of its administrative functions the Board shall act in accordance with any general policy direction of the Minister.” Is that satisfactory?

**Sen. Mohammed:** That would be satisfactory.

**Mr. Maharaj:** Okay.

**Mr. Chairman:** Would you repeat?

**Mr. Maharaj:** Yes. Between “its,” and “functions”, I would insert “administrative”.

**Mr. Chairman:** Are you withdrawing your proposed amendment?

**Sen. Montano:** Yes.

*Amendment withdrawn.*

**Mr. Chairman:** Proposed amendment by the Attorney General, clause 11 in the performance of its Administrative functions, the Board shall Act in accordance with any general policy directions of the Minister.

The question is, that clause 11 be amended by inclusion of the word “administrative” between “its” and “functions” in the first line.

*Question put and agreed to.*

*Clause 11 as amended ordered to stand part of the Bill.*

*Clauses 12 and 13 ordered to stand part of the Bill.*

*Clause 14.*

**Sen. Montano:** “Accounting Technician”, clause 14 (2).

**Mr. Chairman:** Sen. Montano wants to make a suggestion.

**Sen. Montano:** Mr. President, I would revert to the point I was making in that there really is no specific designation such as an accounting technician. There is

such a thing as a Member of the Association of Accounting Technicians. But, a graduate from the San Fernando Technical College, or a graduate from John Donaldson their qualification in accounting which is a technical programme, would also be entitled to call themselves an accounting technician. So we are going to run into difficulties. I would, if I understand the intention of what you are saying here, that what you want is someone who has achieved the level of qualifications or academic qualifications that is equivalent to a full member of the association of Accounting Technicians. I think that is what you are really trying to say.

**Mr. Maharaj:** Let us understand what this is supposed to be. You have this Board . The board would be getting two sets of moneys:

- (1) For the running of the administration of the board.
- (2) A vote in respect of the moneys to be paid out to applicants; and he is an accounting officer for the purposes of the Exchequer and Audit Act. So that, he accounts to the relevant authorities for the moneys.

An accounting technician, is a post in the Public Service I am told. For example at the Ministry of the Attorney General, I have been informed by the Chief Parliamentary Counsel Department, there are persons employed as accounting technicians.

So that it was thought by the Ministry of Finance—it went there, that this is an appropriate position holder for this kind of position.

**Sen. Montano:** I accept that. The Public Service is quite free to call anybody in accounting whatever they want. But when you describe it as a qualified accounting technician, what then is a qualified accounting technician?

**Mr. Maharaj:** Well it means that the person would have got a certificate.

**Sen. Montano:** A certificate from where?

**Mr. Maharaj:** A diploma...

**Mr. Chairman:** An ACCA.

**Mr. Maharaj:** From the Association of Accounting Technicians.

**Sen. Montano:** That is exactly the point that I was just making; that you can have a qualified member of the Association of Accounting Technicians, but you

are talking about a very limited group of persons. As this reads here, you are going to include all those technicians who have other qualifications.

**Mr. Maharaj:** Could we put “shall at least be”?

**Sen. Montano:** That is the point I am trying to make.

**Mr. Maharaj:** Do you want to put that?

**Sen. Montano:** Shall at least have that level of qualification.

**Mr. Maharaj:** So we can pass on Senator, “shall at least be a qualified accounting technician.”

**Sen. Montano:** I am not sure that if that would work, because Level 1 of ACCA is equivalent to accounting technician, and I am not sure that within this—

**Mr. Maharaj:** All I can say is, that the Ministry of Finance has looked at this; and this is a post in the Public Service. This person, would obviously have to be a person with that qualification.

**Sen. Prof. Spence:** Mr. Chairman, the only point I would make about using this post in the public service—I happen to be looking at a bit of legislation today which was drafted in the 1950s, and the names of those persons no longer exist. I wondered whether that legislation is any longer valid.

The point is, the public service does reviews periodically and changes their names. Perhaps Sen. Montano has a point. It might be useful to say qualified to be a member of the association, something like that.

**Sen. Montano:** I have no difficulty with the qualification or the level that you are talking about. I am trying to advise you, that by putting it that way you are limiting the number of candidates that were qualify. That is what I was trying to put across to you.

**Mr. Maharaj:** But I said, “shall at least be...”

**Sen. Montano:** Someone who shall have attained at least the academic level of a qualified member of the Association of Accounting Technicians.

**Sen. Daly:** Are there accounting officers in the public service?

**Mr. Maharaj:** Accounting.

**Sen. Daly:** No, no. Are there people in the public service who you designate as accounting officers or something?



**Mr. Maharaj:** An accounting officer is a Permanent Secretary.

**Sen. Daly:** Like you know you have travelling officers, you have accounting officers?

**Mr. Maharaj:** Yes.

**Sen. Daly:** What rank are they?

**6.10 p.m.**

**Mr. Maharaj:** This clause is saying that the Secretary must be an accounting technician who would be the accounting officer under the Exchequer and Audit Act. That is all that it says.

**Sen. Montano:** If you are talking about five members being accounting technicians, can we then say, "must be a qualified member of the Association of Accounting Technicians or its equivalent"?

**Sen. Daly:** I have another question. "...the Accounting Officer for the purpose of the Exchequer and Audit Act", does the Exchequer and Audit Act tell you who such a person is?

**Mr. Maharaj:** Under the Exchequer and Audit Act, there must be an accounting officer for the Ministry, department or the board and the person does not have to be an accountant.

**Sen. Daly:** Oh. I see.

**Mr. Maharaj:** For example, the Permanent Secretary in every Ministry is the accounting officer for the Ministry. It is not that the person has to be an accountant. He or she is the person who is responsible and would have people under them. So, the point I was mentioning was, I said for example, in ministries now, there are accounting technicians. For example, in the Ministry of the Attorney General, there are accounting technicians; in other ministries, there are accounting technicians. The purpose of it is that the Secretary would be an accounting technician who will be the officer under the Exchequer and Audit Act.

**Sen. Montano:** If you are going to do that, then what you are saying is that the person who comes in as the bookkeeper must, first of all, be a member of the public service. So, you are limiting the persons you can hire here. What I think you are really after and everything that I have heard is saying what you want is someone who is at the level of a qualified accounting technician or its equivalent.

**Sen. Mahabir-Wyatt:** May I suggest that we just stick in after—

**Mr. Chairman:** Sen. Dr. St. Cyr wanted to make a point.

**Sen. Dr. St. Cyr:** Mr. Chairman, I was going to suggest that we stop at “accounting officer” and delete the words “for the purposes of the Exchequer and Audit Act” all the way down to accounting technician.

**Mr. Maharaj:** Well, I think that since this is a board in which you would not have much staff really, they wanted someone who had some accounting experience, not a very expert accountant, but someone midway because there are two sets of money that would be going to the board. It is not going to be a big administration, it is just the board.

**Sen. Prof. Spence:** Mr. Chairman, do we have to put that in here? I am supporting Sen. Dr. St. Cyr’s position. I do not think we have to put that in here.

**Mr. Maharaj:** Can we go with it? We still have to go to the other place, which means that I could look at it, because it is not really fundamental and I could give an undertaking to look at it.

**Sen. Daly:** Do you have accounting technicians in the public service who are not qualified?

**Mr. Maharaj:** I was told that the qualification related to some certificate that they got, a diploma.

**Sen. Daly:** So what is the problem about “qualified accounting technician”? What is the problem with it? Well, then use a common “a” and a common “t”.

**Mr. Maharaj:** I suggest that we go with it and I would look at it in the meantime.

**Sen. Montano:** Why do you not include “or its equivalent”? What is the objection?

**Mr. Maharaj:** Well, I do not know all the financial matters.

**Sen. Montano:** What harm is there in doing that? You are opening it up.

**Mr. Maharaj:** Can I suggest that the Opposition will still have an opportunity to raise it in the other place and I undertake to look at it.

**Sen. Mahabir-Wyatt:** Mr. Chairman, may I just have some words here. We have just been discussing this and I think that maybe a simple way of dealing with

this would be just change the capital “A” and capital “T”, to a common “a” and common “t”, which would mean that it would have to be a qualified accounting technician, not necessarily tied to a particular job. Is there no such thing as a qualified accounting technician?

**Mr. Maharaj:** I wonder if Senators would take my undertaking that I would look at it. We have another opportunity to look at it.

**Sen. Mahabir-Wyatt:** I will take a note of that. “A member of the Association of Accounting Technicians or its equivalent” is fine. It is obvious.

**Mr. Chairman:** I will take the question now.

*Question put and agreed to.*

*Clause 14 ordered to stand part of the Bill.*

**Sen. Daly:** Mr. Chairman, Sen. Williams wants to help us.

**Sen. Williams:** I agree with Sen. Montano on clause—

**Mr. Chairman:** I am sorry. We have gone past that clause.

**Sen. Williams:** All right.

*Clauses 15 to 23 ordered to stand part of the Bill.*

*Clause 24.*

*Question proposed, That clause 24 stand part of the Bill.*

**Mr. Chairman:** There is a proposed amendment by the Attorney General.

**Mr. Maharaj:** I withdraw the amendment. I agree with Sen. Mahabir-Wyatt in respect of clause 24. The amendment to 24(5) is not necessary.

**Mr. Chairman:** Proposed amendment by the Attorney General withdrawn.

*Question put and agreed to.*

*Clause 24 ordered to stand part of the Bill.*

*Clause 25.*

*Question proposed, That clause 25 stand part of the Bill.*

**Mr. Maharaj:** I move that clause 25 be amended in terms of the circulated list as follows:

In subclause (3)—

A. Delete the word “and” at the end of the paragraph (a);

*Criminal Injuries Compensation Bill*  
[HON. MAHARAJ]

*Tuesday, April 27, 1999*

- B. Delete the full stop at the end of paragraph (b) and substitute with “; and”;
- C. Add the following paragraph:
  - “(c) whether the victim or dependant co-operated with the police and the prosecutors in the investigation and prosecution of the case.

I did explain this on the floor of the Senate and the others are consequential amendments really.

**Mr. Chairman:** Anybody wishing to say anything on the proposed amendment to clause 25?

*Question put and agreed to.*

*Clause 25, as amended, ordered to stand part of the Bill.*

*Clauses 26 and 27 ordered to stand part of the Bill.*

*Clause 28.*

*Question proposed, That clause 28 stand part of the Bill.*

**Mr. Maharaj:** Mr. Chairman, I wonder whether I could accede to something that in clause 28(2):

“The decision of the Board shall be final.”

And shall not be subject to ministerial review. Would you want that? Because you did express fears that the Minister could interfere in these awards. I am just offering. So we go without it? All right. Okay.

*Question put and agreed to.*

*Clause 28 ordered to stand part of the Bill.*

*Clause 29.*

*Question proposed, That clause 29 stand part of the Bill.*

**Mr. Chairman:** I think we have a proposed amendment by Sen. Nafeesa Mohammed.

**Sen. Mohammed:** Mr. Chairman, I was simply suggesting that clause 29 really be what is in clause 34, in effect, and, thereafter, we renumber clauses 30 to 34 as clauses 29 to 33.

It is simply because we are dealing here with the payment of compensation and I was just simply suggesting that we put up front in that section there, that the maximum payment provision as clause 29 and then we continue with these other clauses. A further amendment in clause 29 is that we add a subclause (3) to read as follows.

“After the Board makes its determination regarding an application, payment of the award shall be made within three months of the determination by the Board.”

I just used an arbitrary period with the idea being to put a time limit to the actual payment because if you are talking about a speedy award, after an award is made, you put a deadline for the payment of the award. I am suggesting that it be put as a separate subclause.

**Mr. Chairman:** This is on existing 29.

**Sen. Mohammed:** On the existing 29 which will, thereafter, be renumbered. I think it will be 30.

**Mr. Maharaj:** Mr. Chairman, I really cannot accede to that because I think the Senator does not see the spirit of this legislation. If you try to put all these time-frames, really where a time is not specified, it must be done within a reasonable time. If the board is not paying the money, it is really a political—

**Sen. Mohammed:** We know of the hardships that people experience when it comes to getting money from the state and it was simply in an effort to kind of set a deadline so that machinery will be put in place to ensure an expeditious payment.

**Mr. Chairman:** Hon. Senators, before we proceed, it seems as though we will be required to sit beyond 6.30 and, in order to do that, a procedural motion is required but it cannot be taken in committee stage. I must resume the Senate.

*Senate resumed.*

#### PROCEDURAL MOTION

**The Minister of Public Administration (Sen. The Hon. Wade Mark):** Mr. President, in accordance with Standing Order 9(8), I beg to move that this Senate continue to sit until the conclusion of the matter now before the Senate.

*Question put and agreed to.*

**CRIMINAL INJURIES COMPENSATION BILL***Senate in committee.*

**Mr. Maharaj:** Mr. Chairman, I just want to ask that assuming we even put this and the Minister does not pay in three months: What is the redress?

**Sen. Mohammed:** We will need more judicial review.

**Mr. Maharaj:** So it is a useless clause.

**Sen. Mohammed:** Well, under the circumstances, I do not know if he will accept.

**Mr. Chairman:** Proposed amendment by Sen. Nafeesa Mohammed withdrawn.

*Question put and agreed to.**Clause 29 ordered to stand part of the Bill.**Clauses 30 to 35 ordered to stand part of the Bill.**Clause 36.**Question proposed, That clause 36 stand part of the Bill.*

**Mr. Maharaj:** Mr. Chairman, I beg to move that there was an error discovered in that clause. The amendment is as follows:

Delete the words beginning with the word “so” and ending with the word “of” in line 5 and substitute the words “an amount equal to the”.

**6.25 p.m.***Question put and agreed to.**Clause 36, as amended, ordered to stand part of the Bill.**Clause 37 ordered to stand part of the Bill.**Clause 38.**Question proposed, That clause 38 stand part of the Bill.*

**Mr. Maharaj:** Mr. Chairman, I beg to move that clause 38 be amended as follows:

“A. Delete the marginal note and substitute as follows:

‘Court’s discretion’.”

Mr. Chairman, in “A” for some reason it has been printed: “the Minister’s discretion” and it should be “the Court’s discretion”. Also:

- “B. Delete the words ‘the Minister may in his discretion’ and substitute the words ‘the Court may in its discretion’.”

*Question put and agreed to.*

*Clause 38, as amended, ordered to stand part of the Bill.*

*Clause 39.*

*Question proposed, That clause 39 stand part of the Bill.*

**Mr. Maharaj:** Mr. Chairman, I beg to move that clause 39 be amended as follows:

“Delete the clause and substitute as follows:

- (1) The Board is subrogated to all the rights of the person to whom payment is made under this Act to recover damages by civil proceedings in respect of the injury or death and may maintain an action in the name of such person against whom action lies.
- (2) Where the Board pursues an action under sub-section (1), any amount recovered shall be applied—
  - (a) first to the payment of costs actually incurred in the action;
  - (b) second, to the reimbursement to the Board of the value of the compensation awarded; and
  - (c) finally, in respect of the balance, if any, to the payment of the person whose rights were subrogated.”

Mr. Chairman, we have redrafted clause 39. Actually, this is a case where the person waives his right to go against a person; and he gets compensation, where the board has the discretion to go against the individual and, obviously, would give the moneys to the victim, minus the cost and whatever expenses.

**Mr. Chairman:** Any questions, any contributions?

*Question put and agreed to.*

*Clause 39, as amended, ordered to stand part of the Bill.*

*Clause 40 ordered to stand part of the Bill.*

*Criminal Injuries Compensation Bill*

*Tuesday, April 27, 1999*

*First and Second Schedules ordered to stand part of the Bill.*

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

*Senate resumed.*

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

#### ADJOURNMENT

**The Minister of Public Administration (Sen. The Hon. Wade Mark):** Mr. President, before moving to adjourn this honourable Senate, I would like to inform Senators that next week Tuesday, May 04, 1999, we are going to concentrate on Private Members' Business and the following Tuesday we shall start at 10.00 am and go on to approximately 10.00 p.m. We have a full agenda and we would like to alert people in advance. We give them two weeks' notice so at least they would be advised.

Mr. President, I beg to move that the Senate do now adjourn to Tuesday, May 04, at 1.30 p.m.

*Question put and agreed to.*

*Senate adjourned accordingly.*

*Adjourned at 6.35 p.m.*