SENATE

Tuesday, May 11, 1999

The Senate met at 10.00 a.m.

PRAYERS

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

LEAVE OF ABSENCE

Mr. Vice-President: Hon. Senators, I have granted leave of absence to Sen. The Hon. Joseph Theodore from sittings of the Senate during the period May 9—15. Leave of absence has also been granted to Sen. Vimala Tota-Maharaj for the period May 7—15, and Sen. Martin Daly during the period May 10 and continuing.

SENATORS' APPOINTMENT

Mr. Vice-President: I have been advised that His Excellency the Acting President has appointed Kelvin Ramnath a temporary Senator with effect from May 10, and continuing during the absence from the Senate of Sen. The Hon. Ganace Ramdial, President of the Senate.

I have also been advised by His Excellency the Acting President, that he has appointed Roodal Moonilal a temporary Senator with effect from May 10 and continuing during the absence from Trinidad and Tobago of Sen. The Hon. Joseph Theodore; Dave Cowie a temporary Senator with effect from May 10 and continuing during the absence from Trinidad and Tobago of Sen. Vimala Tota-Maharaj; Kenneth Ayoung-Chee a temporary Senator with effect from May 10 and continuing during the absence from Trinidad and Tobago of Sen. Martin Daly.

OATH OF ALLEGIANCE

The following Senators took and subscribed the Oath of Allegiance as required by law:

Kelvin Ramnath, Dave Cowie, Kenneth Ayoung-Chee and Roodal Moonilal

PAPER LAID

1. The Botanic Gardens (Amendment) Regulations, 1999. *[The Minister of Public Administration (Sen. The Hon. Wade Mark)]*.

REGIONAL HEALTH AUTHORITIES (AMDT.) BILL

Order for second reading read.

The Minister of Health (Dr. The Hon. Hamza Rafeeq): Mr. Vice-President, I beg to move,

That a Bill to amend the Regional Health Authorities Act, 1994", be now read a second time.

Mr. Vice-President, the Regional Health Authorities Act of 1994 established five regional health authorities, four in Trinidad and one in Tobago, as autonomous bodies with the mandate to deliver health care to the population of Trinidad and Tobago.

The Regional Health Authorities are governed by a board of directors, and they are managed by a Chief Executive Officer and a management team. The services are delivered by employees of various disciplines.

The Regional Health Authorities are empowered to employ workers to assist in the delivery of health care services, and to set the terms and conditions of such employment including a pension scheme for employees. However, most of the workers in the health sector are employees of the Government and belong to the public service. These workers have—so to speak—been inherited by the Regional Health Authorities and, therefore, I think it is urgent for employees in the public service to be either seconded or transferred to the employer of the Regional Health Authorities.

10.10 a.m.

As a condition of transfer or secondment, their pension benefits for their periods of service in the public service must be preserved. The amendments to the Regional Health Authorities Act being proposed here today outline the means by which the pension benefits of workers transferring from the public service to the Regional Health Authorities will be preserved; whether they transfer before the establishment of the pension scheme or after the scheme has been established. The Bill basically, therefore, seeks to do two things: firstly, to preserve the pension benefits of officers who transfer to the Regional Health Authorities; and secondly, to guarantee a pension calculated at the final salary in the Regional Health Authorities.

Mr. Vice-President, it is Government's intention to preserve the superannuation benefits which have accrued to a public officer who transfers to a Regional Health Authority. The preservation will be done on the basis of the pensionable emoluments applicable to the office which he held immediately prior to his employment by the relevant Regional Health Authorities, and will be extended to the implementation date of the Regional Health Authorities pension plan. This also seeks to ensure that public service employees' pension rights and expectations are not prejudiced as a result of transfer to the Regional Health Authorities.

Where, for instance, a former public officer may be in receipt of a salary higher than the quantum he received at the time of transfer, the superannuation benefit will be based upon the higher salary and the increased cost in benefits will be met by the appropriate Regional Health Authorities. The intent, Mr. Vice-President, is reflected in clause 6 of the Bill by the insertion of section 30A after section 30 of the Regional Health Authorities Act No. 5 of 1994.

A public service officer with accrued superannuation benefits in the public service who transfers to a Regional Health Authority will have a natural expectation to have his or her terminal benefits computed on the basis of the total combined period of pensionable service in the public service and the Regional Health Authority. In other words, a public officer, for instance, who would have had 20 years accrued pensionable service in the public service and 13 1/3 years pensionable Regional Health Authorities service would be entitled to expect a pension calculated on the basis of 33 1/3 years.

At the present rate in the public service, therefore, he would be entitled to 66 2/3 per cent of his final salary. Thus, it is proposed to amend the Regional Health Authorities Act by inserting after the new section 30B another new section 30C which would read as follows:

> "Where a person who transfers in accordance with section 27(1) or exercises the option referred to in section 29(1)(a) retires or dies while being a member of the pension scheme, he shall be paid superannuation benefits by the pension scheme at the amount which when combined with the superannuation benefits payable under section 30A, is equivalent to the benefits based on his pensionable service in the public service or in a Statutory

Authority combined with his service in the Authority and calculated at the final salary applicable to him on the date of his retirement or death as the case may be."

It should be pointed out, Mr. Vice-President, that the particular former public servant who transferred would have his or her full expectations met by a combination of payments from two sources. Firstly, from the Consolidated Fund via the Government's preserved superannuation benefit as at the date of transfer or at the date of implementation of the Regional Health Authorities pension plan and, secondly, from the Regional Health Authorities pension plan which would include normal formula calculations and a top up required to take care of the enhanced benefit.

The enhanced benefit is derived from the fact that the Government-preserved superannuation benefits would have been calculated on the basis of salary, lower than the Regional Health Authorities final salary in most cases. I will give an example: A nurse who transfers to a regional health authority from the public service with 20 years Government-preserved annuation benefit at an annual salary of $42,000 per annum—$3,500 per month—will have 20 years at 2 per cent, which will be 40 per cent of $42,000, which would be a pension of $16,800 per annum.

That nurse retires from the Regional Health Authorities after taking 33 1/3 years pensionable service at a higher salary of $4,500 per month, with an annual pensionable salary of $54,000. That is 13 1/3 years at 2 per cent, and that would give a total of $14,396. When $16,800 is added to $14,396, that is a total annual pension of $31,196. However, the expectation would be 33 1/3 years at 2 per cent—that is 66 2/3 per cent—of the higher salary—that is $54,000—and that would work out to $35,996 per annum, so there is a shortfall of $4,800. That would be the top up that would be paid by the Regional Health Authority in addition to the 13 1/3 years. The Consolidated Fund will pay $16,800 and the Regional Health Authorities pension fund will pay $19,196. Her total pension would be $35,996, 66 2/3 per cent of her final salary of $54,000 per year.

With respect to clause 3, this amendment merely defines the expression "pension law" which is mentioned in the amendment to section 30 which reads:

"'pension law' has the meaning assigned to it by the Law Reform (Pensions) Act, 1997 except for the reference to the Defence Act;"

Pension law, as defined in the Law Reform (Pensions) Act, 1997 means a written law set out in Schedule 1 of the stated Act as follows: the Defence Act, Police Service Act, Pensions Act, Pensions Extension Act, Municipal Corporations (Pensions) Act, Fire Service Act, Teachers' Pensions Act, and the Assisted Secondary School Teachers' Pensions Act.

For the sake of clarity and to avoid unnecessary ambiguity, reference to the Defence Act, Chap. 14:01, is accepted since there are unique conditions associated with the pension provisions for members of the defence force. For example, there is a lower than normal pensionable age.

Mr. Vice-President, in clause 4 of the Bill—section 26(1)(b) of the Act says *inter alia* that an authority may fix qualifications and terms and conditions of service, except that salaries in excess of $130,000 per annum shall be subject to the Minister's approval. Under section 26(2), the Minister may, by order, alter the limit stated in subsection (1). In the light of experience to date, the opportunity is being taken to modify and clarify the limit by deleting the words "salary in excess of one hundred and thirty thousand dollars per annum" and inserting the words "salaries and allowances in excess of one hundred thousand dollars per annum in the aggregate".

With respect to clause 5, section 30(2) of the Regional Health Authorities Act states:

> "Notwithstanding the provisions of the Pensions Act and subject to subsection (1), an officer who transfers to an Authority shall be treated, in respect of his pension and death benefits, as if he had not so transferred."

Retention of this provision would be in conflict with the enhancement that is proposed in the amendment relating to the calculations using the higher Regional Health Authorities salary if applicable. Thus, section 30 of the Act is amended by deleting this subsection. For the purpose of subsection 30(c)(1), final salary has the meaning given to it in the Regional Health Authorities pension plan referred to in section 30.

Clause 7 of the Bill, in effect, seeks to amend the Pensions Extension Act, Chap. 23:53, by deleting section 4(2). Section 4(2) of the Pensions Extension Act requires the Minister of Finance to compute accrued superannuation benefits of persons transferred to Designated Pensions Extension Act posts in certain statutory authorities and transfer the actual funds involved to such statutory

authorities that set up their own superannuation scheme or pension plan. The indicated deletion seeks to obviate that requirement which, in the case of the Regional Health Authorities, would result in unnecessary and excessive double payments.

At present there is a degree of uncertainty concerning their pension benefits among staff in the public service who would like to transfer to Regional Health Authorities employment. This Bill seeks to explicitly enshrine the pension rights of staff who wish to transfer to the employ of the Regional Health Authorities.

As you are aware, Mr. Vice-President, it is a highly undesirable situation for the Regional Health Authorities to have responsibility for the delivery of health care while having no direct authority over the staff who deliver this health care. This Bill which guarantees the pension rights of the transferred workers from the public service is paving the way for the Government to be able to offer the option of transfer to the public service employees to the Regional Health Authorities.

Mr. Vice-President, I hope we will have the support of hon. Senators for this measure. I beg to move.

Sen. Prof. Spence: Could I ask whether a person who is transferred would be eligible to continue payments to the Widows and Orphans Fund?

Dr. The Hon. H. Rafeeq: We will clarify that during the debate.

Sen. Prof. Spence: Thank you very much.

Question proposed.

Sen. Joan Yuille-Williams: Mr. Vice-President, let me first welcome the hon. Minister whom I have not seen since his return. I am glad to see that he is looking in the best of health and I hope I can ensure a soft landing in the Senate today. *[Laughter]*

Before I make my comments on the particular aspects of the Regional Health Authorities (Amdt.) Bill, there are just a few questions I would like to ask of the Government through the hon. Minister. One of them is whether the Government is fully behind the whole system of the Regional Health Authorities. I know it might sound very strange, but I would really like to know whether the Government truly wishes to see this succeed, or whether it is business as usual and we will go along with it as the years go by?

I do not think that is an unusual question to ask, because very little has happened in terms of pushing forward this whole decentralization process since Government took office, as far as I am concerned. I remember speaking some time ago and one of the Members of the Government said to me, "Any failures in the Regional Health Authorities, we want to attribute to the last Government, because we told them not to institute it; we opposed it". That is why I asked that question.

I could remember very well during the debate that some members of the then Opposition did not support the whole concept of the Regional Health Authorities, but I also know that since they have come into office, they did nothing to revoke or repeal the Regional Health Authorities Act and, therefore, it gives me the impression that the Government has accepted the concept. Once they have accepted it, it is their responsibility to move ahead with it. That is why I asked the question.

Mr. Vice-President, in this country there are things that many of us do not accept, do not support or do not like. Right now, we have something going on here about which a number of persons have voiced differences. People felt it was not the time or that the money was not well spent, but when the decision is made and the national pride is at stake, we noticed that everyone decided that this is Trinidad and Tobago and we do not want to be embarrassed, therefore, people will do nothing to hinder the success. Thus, I hope that the Government will look at the Regional Health Authorities and look at that kind of spirit. They have accepted it and therefore it is their responsibility to ensure that it succeeds! Until that time, if they have to repeal it, repeal it, but do not have people in the balance, in limbo, as to what is really happening. That is really an important point to me. We have the political will at this time to ensure that it succeeds.

10.25 a.m.

I know that there are vested interests in this thing. I know that a lot of politics is being played, but we have to make a decision somehow. This is not the first country in the world that has gone this way and I know that some people have to take some hard decisions to get it to succeed, but the first decision we have to make is, do we really want it to succeed? That is the important thing and if we want it to succeed, what do we do?

Mr. Vice-president, you remember that there was much criticism about the health services in Trinidad and Tobago and the former Minister decided that he had to do something about it and he went the way of the Regional Health

Authorities. He thought of decentralizing the services, making sure that the problems and the solutions were quite close to each other. The people to make the solutions were those who could really appreciate the problems. People had complained that when they have problems it took months and months of sending them somewhere and waiting for responses—that kind of thing. That is one of the reasons for the decentralization.

Also we felt that primary health care was very important—providing medicines—and, therefore, in this way we felt that we could give it a priority. Those were some of the reasons at that time why it was done. He felt that this would benefit the country; he had the political will, and as everybody saw, all over the country there was refurbishment and improvement of health services, the quality of primary health care and development of these five Regional Health Authorities. He had the will to do it, and also the government.

This is not something where you are just going to sit down and look at some former pattern and say, we will go this way. This is a case where the Minister and his team have to be creative and come up with something to make this move along if they want to do it. They have to be creative. I want to compliment the former Minister. He thought this would work and put it in place. We accepted it and we are going to try to make it work. As I said before this has happened in other countries, but each country is unique and you really have to want to make it succeed and sit down and decide what is the next step to take. It is very important that, that should happen.

I would hope that the hon. Minister would take that on board and recognize that it is important, because so much is happening these days with our health services and still there are many criticisms and we have to look for solutions.

I want to use another example and, probably, the concept of decentralization is not the same with the Government as it is with us. If we look at another ministry where decentralization was, in the local government bodies; that came in—not with the People's National Movement but with the National Alliance for Reconstruction administration—the whole process of decentralizing these 14 regional corporations.

I remember the PNM had some criticisms of the whole matter, saying that the bodies were going to be too large and whatnot. However, it was accepted by the Government. When the PNM administration came in, we did not repeal it and, therefore, we had to move ahead to ensure that it succeeded and that which had to

be done was done. Even though we criticized the whole concept then, we did not repeal it and, therefore, it was our responsibility to move in such a way that the whole concept of the decentralization of these 14 regional corporations would succeed. In that case we knew that we had to give each regional corporation a certain amount of money because part of the whole matter of decentralization is, again, that the problems and solutions were in one area and, therefore, the local councils would be responsible for what happened in the local areas. A budget was made and the money was spent accordingly. That is what decentralization was. It seems to me however, that the interpretation for decentralization is changing.

Sen. Mohammed: Under the UNC.

Sen. J. Yuille-Williams: It is changing and if I look at the local government bodies, I am seeing less and less of the decentralization and something else is creeping in. I do not know if you call it re-centralization or what, but I am seeing a lot of foolishness. *[Laughter]*

A local government body has carpets and they are saying so much money was spent on carpets for the Chairman's office and, therefore, we are taking back some of the money that should have been spent under that local government body. We are talking nonsense! Every day you would hear "no you are not paving the roads in your area, I will now pave those roads and, therefore, I will spend the money to pave the roads." That is not decentralization, and let us be fair. If it is decentralization you have to give the money over to the corporations and, in turn, they should spend the money according to their needs *[Desk thumping]* That is bringing the problems and the solutions together.

All I am saying now is, that it seems to me that the authority which lies within that whole concept of decentralization is being lost, and I use the whole business of the local government bodies to show that I do not think there is decentralization again at all, where it is now centrally controlled again, and if we continue we will see that less and less authority is being given to those local government bodies.

I am not saying the same is happening as yet, in the Regional Health Authorities, because they do not have much authority at all, but I am saying to the hon. Minister that we must be aware of that and if we are moving in the area of decentralization, we must try to give as much authority as possible to these bodies, otherwise the whole concept would break down. There is no sense trying to pad it and go along with it. We are either this way or that. We could not be anywhere in the middle. If you say that you are going to decentralization then the Regional

Health Authorities must be in a position to solve the problems that arise within their scope and plans as the case may be.

I am really saying this because it needs to be said up front and not wait until what has happened with local government happens to the Regional Health Authorities because it takes just a little each day—a little chunk comes off every day. You could check and see where that whole business of decentralization is breaking down in the local government and the same could happen to the Regional Health Authorities.

I want to tell you, for example, in the case of the Regional Health Authorities, I know at the moment that they have the responsibility for the plant and equipment—the buildings. That has gone to them and, therefore, if you want to give it the authority and I look around my building and I want to change the roof of the hospital or do something, I must have some money for capital development in the budget.

As far as I understand—and I was trying to look through some of the files that I had—there was no allocation for capital development and I think you need to look at that and see whether or not I am correct. For example, if you go through San Fernando hospital—and I am sure you visited it because you have known that hospital—as you walk through the plant physically you feel sick yourself. You just walk up the steps and look around and you are ready to go back down the steps. Besides the overcrowding, look at the whole place and see what it is like.

In the budget debate I talked about all the leaking roofs and so forth. I know it would cost a huge amount to change that roof, but there are certain things that those who are there could do, if they had money, to at least, make the building look like something. The unsanitary toilet facilities, the leaking taps need changing. The money to do that is not there. I understand that when they are attempting to do it they have to take money probably from recurrent expenditure to make stop gaps for those things. Go up the stairs and you cannot even see a proper handrail and a fire alarm system—and I am not talking about substantial renovation of the old building. I am talking about things that they can do while they are waiting, probably, to finish the new extension to move the beds and the patients over there so that you can change the roof. I am not talking about changing the whole roof which is in a poor condition. I am talking about money to do things like that, but they do not seem to have the money and I am wondering if

you could tell me something about how this budget allocation is done: why do they not have money to do things like that? I think it is very important.

As I said before, if you give me something to manage I must have the resources. Of course, you will say that at the beginning it was that they would soon raise money to do things for themselves, but we have not reached that stage as yet. One just cannot charge people for that kind of care, you have to carry the care to a certain standard before one could think about charging and you have to put NIS and all those kinds of things in place—health insurance and many things need to be addressed.

So at this point in time, we have to be giving these bodies money. This is a Government that can find money when it wants to find it, and I am so happy for them and, therefore, health is important. If you have to do it, just find the money. *[Desk thumping]*.

10.35 a.m.

We know what we need, and I remember earlier, I spoke to one chairman of the board at a conference and he said we had done little to move the Regional Health Authorities (RHAs) forward and I told him we had just put it in place. I also told him do not say anything now, and two years later I would talk about what you have done. I have not asked him what he has done, but I hear him talking every day and I know he is covering because he can do little. I am not blaming him, but there is little that he could do now, because he does not even have the authority or the wherewithal to do it. I am asking if the RHAs are decentralized, we have to ensure that there is sufficient funding so that they could, at least, do what they have to do.

You may want to talk about the development budget and recurrent expenditures. One of the things I noted when I started working out percentages on how the money for the recurrent expenditures are allocated was that it seems to me that there is no real system for the allocation and I would like the hon. Minister to prove me wrong and tell me there is a system for the allocation. Is it according to the patient flow, the population that the particular hospital and its environs serve? If that is so, I think in the South we serve about 40—45 per cent of the population. If you look at the area the authorities there would serve, and if you look at the budget allocation, much less than should be allocated is allocated. This means clearly that the funding is inadequate. In fact, I would say it is an *ad*

hoc way of funding, and I wish the Minister would prove me wrong by telling me expressly how the funding is allocated to these RHAs and on what basis. Is it according to population, bed patients—because San Fernando hospital has more bed patients than in Port of Spain—or however it is done even though there may be some overcrowding? Let us see how the funding is allocated, because we have that and the health centres around and there must be some way, but from all I have done and the research at which I have looked, there is no special way to allocate the funding. We need to look at that very carefully because that in itself is going to constrain the boards and at the end of it, it is the boards which will make the most noise. When the funding runs out, when you have to take so much from recurrent expenditure and do work from the capital development programme, the boards will get the little extra and when they cannot use it effectively we are going to see it coming up in protests and we are going to hear all the confusion emanating within the hospitals while these people are struggling to do what they can. I feel we need to look at it and see whether or not we want to give them the authority or not.

I understand that the NIPDEC system is working all right in terms of procuring drugs but, again, there seems not to be a proper system in place even to allocate the drugs. It is an *ad hoc* system and, therefore, you get as much drugs from what you have been allocated and I think that expenditure runs out very early too. When you do not have enough funding, then you do not get quality care. In terms of the drugs, I would like to know how this allocation is done. My research tells me that most of it is on an *ad hoc* basis and that goes for most of the authorities, except in the Central Regional Authority where there is Mount Hope and they take the greatest amount out of the budget.

We are looking at your allocations and I am saying too, that I know that with the allocations the Ministry of Health should be much better because globally, any country that is really serious about its development—I know that a healthy nation is a wealthy nation—would always be looking at expending a certain amount on health and I do not think our health budget is large enough. You still need to have some more money for health so you could do most of the things that need to be done. A large part of what is handed over is taken up in salaries and less than 30 per cent in some other areas. Therefore, you have to be very much aware of it and I know the messenger would say this is the amount of money I have to give you. But I would continue to say the money is there, it can be found and I am saying find some to give to those in charge of the health system.

I want you to look at the funding allocation. My research tells me the funding allocation is skewed, and again I would say it is *ad hoc* and not based on any particular criteria. We need to level the playing field even in health. There is no equity in the funding and I feel very strongly about that. We have to look at the areas which these bodies serve and try to allocate whatever you have in such a way that those who have the greatest needs would get the largest amounts.

When we look at today's amendments and when Sen. Dr. St. Cyr brought his Motion on what is the Government's policy, I looked at section IV of this Bill and if I am right, I feel that it seems to contradict what we have been doing for some time. It says that "salary in excess of $130,000 per annum" is being amended. Let me tell you what I understood. At the beginning when this was included, the whole concept was new and it was an attempt to keep the budget of these RHAs in control for a while. It was new. The sum of $130,000, which is just between $10,000 and $11,000 per month for somebody, was for salary. If you are telling me that I have the authority, we are decentralized, I have to hire my own staff, make quick decisions, get consultants, auditors and professionals on my staff, is $130,000 per annum too much for me as chairman and members of a board to make a decision on? Executive secretaries in some of these firms are getting $9,000 and $10,000 per month. So if I am a professional, tell me why do you find that was excessive?

I heard you say this morning, based on experience, but clearly that could not be too much for a board to make a decision. Why should the board have to come to you now to get your blessing or your sanction for salaries and allowances in excess of $100,000? Before, it was only salary, now it is salaries and allowances which mean you are paying $7,000 and $6,000 per month. To whom are you paying that? Who is getting that money? That means the board can no longer hire any professional, none whatsoever, and you are telling me you are decentralizing and giving authority to the board, but you are not doing it, because nobody, no professional would come to that board and get $7,000 or $8,000 as salary and allowances. Before it was salary alone. I am still seeing that kind of control coming forward that all the professionals we are going to hire must be hired by you and you will say "no", but I am saying "yes". It is still going to be the Ministry of Health doing it and the board is almost powerless out there. I really regret to see that. That is why I referred to Sen. Dr. St. Cyr's Motion. What is the policy?

Last week we were here with NIPDEC and in the old law, I think it was $18,000 a year the board had, and the new figure is $150,000 per year that the

board can pay in salaries per year without the consent of the Minister, and we noted it, but we did not say too much about it because we know what is happening these days with qualifications, we know where salaries run when you want to get good staff. Then you are contradictory. If last week for NIPDEC you could go up to $150,000 for the board, how this week for health you are going down to $100,000 for salaries and allowances? That is why I say you have no policy. *[Desk thumping]* You cannot be looking at things in both ways and you would have recognized last week we just accepted it. People said the salaries were inadequate, professional salaries are so much and we must give the board that kind of power and we allowed it to go through from $18,000 to $150,000. You wanted to be realistic, and today from $130,000 for salaries, we have gone down to $100,000 for salaries and allowances. What is the policy? I would like someone to tell me.

Listen to the case where we are. We want to get the best people because this is the health of the nation about which we are talking. How long is it going to take to get somebody to even make a decision? We now have to send to you and wait and wait before we could find the person when an emergency comes up. I am very much against it. I could not understand and I do not think the reason the Minister gave was satisfactory. He just said from experiences and I do not know what experiences, but I am very saddened by this. If you had raised it, we might have taken in the $150,000 you did with NIPDEC, we might have closed our eyes to it and said it was the same policy, but to lessen salaries and allowances, it means—and I am saying it clearly—this Government does not intend to give any authority to any of these boards and we are looking at it. They are moving with the concept of decentralization, their own concept, and I am also saying if we are not careful, subtly, everything is going to be run by the Ministers. Wherever they are, they are going to control everything.

I am sorry, Mr. Vice-President, but we have seen it coming when we first looked at the Land Bill, we cried out, we said; "No, do not do it that way." We saw it in several other pieces of legislation and when the Minister of Trade and Industry and Minister of Consumer Affairs came, he brought his own like that too, and then, of course, with the amendments he took it back and brought something which was much more acceptable. We congratulate him for that, but we have seen in several instances where the Minister—and I am not speaking particularly to this Minister, I am talking about Government's policy—has now been controlling things even at a point where the intention was to decentralize, and we need to look at that.

That is why I am saying I am not looking at this legislation in isolation to what is happening in other ministries. I cannot, because I would be dishonest if I look at this and say this particular Minister has a particular reason why he wants to do it. I cannot do it because everybody would have a particular reason. What is the policy then? What is the concept of decentralization? How much authority do you want to give out? Is it a fact that you want to hold on to power? And for what reason? When I say power, power in terms of the authority to do things. And the authority that I would like you to hold on to is that kind of creativity where you would do something to push this whole process of the RHAs forward, and that is why I asked at the very beginning: what is your concept and do you have the political will to put it forward? The reason I am asking that is because I am seeing that things are not going forward.

The RHAs are out there, they are recruiting some staff and they are trying to work and I compliment those who are out there trying to do the work, but they could do nothing more unless the Government has the will and puts things in place to do it. It is not a question of what do I put in place? Why do you not tell me? It is like the former Minister did—sit down, look at the things, see what needs to be done and do it if it has to be done. If it is not being done, you can just say so. Therefore, I disagree very much with this amendment in the reduction of the amount of money that the board has been given authority over, in terms of recruiting staff. I am very hurt about it.

When we come to the benefits, I understand at this point that you would have had this problem which is something we saw at the time we were talking about the movement of public servants to the RHAs. I do not know if that would solve the problem, but it has to be done, and I am not sure whether or not security of tenure and other things would still not get them going over to the RHAs. I felt that it took a long time for the RHAs to be able to put their pension plan in place. We knew it had to be done and I thought when the Government took office it realized that one of the things which had to be done was that a pension plan had to be put in there. I understand that some money has been found through the IADB, or somewhere, so there is some money which would now go into paying some of those people in the RHAs especially those at Mount Hope hospital. Some of them have been working for years without a pension plan and some are going because I understand that this new plan is contributory. Therefore, those who were working before there is some money now to put in the plan on their behalf. I am wondering, $25 million—I do

not know how much money you really got for it but why has it taken us so long, in a country where we can always find money to do what we want?

10.50 a.m.

If we had found this money up front, we would have been more forward in the process of decentralization, because if the Minister felt that this was one of the reasons why public servants were not moving over, therefore, this should have come in early. As a public servant I would not have moved if I was not sure what would happen to my benefits. I had security of tenure, I do not know if I could lose that security if I moved across. Therefore, we knew that this was one of the problems and that we needed to have funding to do it and that the Regional Health Authority (RHA) needed to have its pension plan in place, so we should have gone into it a long time ago. Whereas I am not saying that we are against what we are doing here this morning, but I am saying it is a little late, and that this would not solve the entire problem.

I am sure the Minister quite rightly knows that there is more to be done to move from one side to the other. I understand that somewhere the Public Services Association had to be involved in this whole process and that they were doing an actuarial review. I am not sure if the actuarial review was finished. I think they asked for the opportunity to do a review, but at the same time, what we are doing today, we could have done before to move the whole thing forward, so people could be comfortable if they wished to move over to the RHA.

I want to tell the hon. Minister, and I will say it again, this is just one area within the whole debate concerning the RHAs, the movement of the RHA and the progress to be made—there is still something more to be done. What has to be done is that the Minister himself has to be creative and come up with suggestions for it. We have a two-tiered dichotomy now because we are going to have a pension plan where some people would be part of the non-contributory, added to the contributory part, and then there are some of them who would just be in the contributory part, those whom you are now recruiting at Mount Hope and other places, those who are already there. Therefore, we are going to have to manage this whole thing as we move on.

The Minister went through the figures and the advantages of this amendment. I understand that there would be some advantages with the RHA system, in that, I think survivors benefits or whatever, would be better, which is probably what you think might attract people, but I do not know how many senior people might be

attracted. In the case of the doctors, I still think as a medical doctor himself, the Minister knows that he would have to do a little more than this, whatever is necessary. I understand that all kinds of suggestions were made to him in terms of agencies recruiting and contracting out doctors to the hospitals as they do in some parts of the world. I do not want to talk too much about capping, because that is very political and very explosive in terms of the doctors and the amount that they need, but I know some people said that agencies were set up and doctors were contracted from the agencies to the hospitals.

I am saying that you have to get down there and do the work, and I am quite sure that the Minister has been put there because he has the ability to do that kind of work. I hope it does not make him ill in any way, because I know it is a lot, but it has to be done. We have reached here, and we just have to do it. We need to spend time on this movement, because this is a very troubling area. There is no doubt about it, the health service is a very troubled area, and the Minister has to find some kind of solution to the problem. We have problems and he cannot turn away from them. It is all well and good to patch little things here, but at the end of the day we can ask him, "What have you done?" "Have you gone on with business as usual and maintained the system as it was?" What have you done as a Government—I would not even say as a Minister because you have to get the support of your colleagues—to really make some kind of dramatic change to the health system?

I would wish to compliment the last Minister, because for whatever it took, he did something and it is all left for everyone to see. He said that he wanted to do this, tried it, and left it there, unfortunately he did not have time to finish it, but he did something. He worked with the health centres. I understand that the preventive care area has been doing quite well. From what I am hearing, the boards are now trying to ensure that people appreciate the health centres. Before, they had some kind of cultural stigmatization, or whatever it was, and people did not wish to go to them, but now many of them have been upgraded and had face lifts done to them. Some of them have been quite creative. Teams of doctors have been assigned to some of these health centres, and people are finding them very useful, and they are taking the strain off the major hospitals. This is part of what it was all about. You have to carry it forward, you cannot just stay on what you see.

This is not just politics. I have noted that when the Government came in there were a number of projects that the last administration left behind, of which we are very proud. Those projects which were incomplete and easy to follow, this

Government continued them, took the laurels for them, and even said why the other administration had not done them. But those which were initiated and were in the embryonic stage like this one, we blame the Government for them. If we had done more to it, and we had more time, and it was easy for the Government to run with, then fine. The Government would have taken praise. Now, I am not hearing anything else, but I know the blame would go on the last administration for the RHAs because of the fact they were left at a very critical stage. This is where the Government's strength, creativity and its best come in. How can it handle this situation? This is the test.

The test is not when the last administration had done the work, the funding was there and you just continue to go along with it and smile. This is the test and, therefore, we have to see how this works out. This is not the only test the Government has failed, the one on the highway is a failed test too. The highway programme was another test that came forward and was there. Any good government should have been getting kudos for it, instead there is a very negative result coming out of it. So there are some projects you can carry and some that you just have not been able to do.

When you come to critical conditions like this, then it tells us what mettle you are made of as a government. This is the real test of the whole thing, not boast that you could say why they did not do it before, and that you are doing it now and all that foolishness. Mr. Vice-President, I am hoping that the hon. Minister would see how important this is and move on with it, to get these RHAs in a position that they could really function.

I think the Minister put the boards in place; I have no criticism with the boards. My criticism is that they do not have the authority or funding. They still have to wait on the Minister, and he is taking away slowly buy surely, this whole avenue for decision-making.

Mr. Vice-President, there is one other area I noted, I am still looking at the ambulance service. It was good to look through the *Public Sector Investment Programme,* because I think, as a former Minister myself, that these things come back to haunt us. I know when people tell you to put your programmes in, you have to do so, and they look good, but at the end of the day you are judged on this. When I look in the 1998/1999 *Public Sector Investment Programme* and I see things like money voted, $48.4 million for major upgrading works and the equipping of regional hospitals: Port of Spain, Mount Hope, San Fernando, and

Sangre Grande. We are still in May, we have some time left, so we have to monitor it to see where the money would come from. We could get the money to do it. I know that we have some IADB money to complete the extension at the San Fernando hospital and some of the other places, but I am talking about the old structure. What is happening to those things?

Incidentally, I was out in the East and I was looking at that eastern region, and I remembered that the former board had put up a health centre where they were going to do a lot of computer work and things that they wanted to do in an experiment there. I cannot remember the details of it, but the other day I asked them about the work they had done, and to my great surprise, it had been transformed into a police post. I am sure the Minister would have known that they had taken the building away from the health authorities. That last experiment that the former board had tried, they have now turned it into a police post. When I looked at it I said that when we look between ministries, we ask ourselves, what is really going on. A police post is essential, but they were going to do something out there which probably the rest of the country could copy, that had not been done before. Therefore, to see that the whole thing was stopped and a police post put in place, I was a little saddened about that, because I passed there just to see what had happened to it.

Then there was the refurbishment of the district health facilities, and a number of them were to be refurbished. I am hoping that all could be upgraded. We put all these things down, and now I am looking at it. I am reading all these things here and wondering if it is the same Government I am talking to and the same Ministry of Health. What is going to happen? This is May: conduct health needs assessment, management systems, quality assurance, audit for public health facilities, current degree programme—a number of areas, management training for RHAs and Ministry of Health and primary areas. Under "Management Training for the RHAs", I do not know how they are going to manage to get that training.

Then there was the National Emergency Ambulance Service, and National Community Care Programme would be further advanced in 1999. I am still on the National Emergency Ambulance Service because I understand that one of the RHAs had decided that it wanted to train the drivers as paramedics and so forth, so they would be more efficient. I would like to know what has happened to some of those things.

It is not just a criticism, these are critical things to the health of any country. As long as I see them here in the *Public Sector Investment Programme*, I go back to see what has happened. The last thing I want to hear is that we could not fund it, because we have to give priority to the health needs of the country. Therefore, I would like the hon. Minister to try, at least, to find some time today to bring the Senate up-to-date on what is really happening with the RHAs. I do not want to call it a grey area, because it is not really grey. It is just that unless you go out and ask questions—and people are not very willing to say too much, and I can appreciate why. Some people just feel that we are here to do a job and we would try to do as good a job as possible. Of course, you know that they would really like some kind of system for exposure to let people hear their needs so that they can move on. As I said in the beginning, this is something that we are all interested in, the concept of the RHAs and moving them forward.

Finally, Mr. Vice-President, when we are talking about the needs, I want to go back a bit to the health centres and school care. I want to go back to things that happened when I was a child. I remember at that time, there was a case for visiting people who were assisting schools and communities. There are some communities where, for some reason or another, you cannot get the parents to take their children out even to the health centres. In fact, some of them just do not even think that is still necessary. There are some communities where you still need to have someone out there as it used to be before, maybe the visiting nurses or doctors, whoever they are, moving them on, because in the final analysis they are going to be a burden on the state. We are going to have to pay for them when things have become quite chronic. You look at them, you look at their teeth, the children are growing up, they need maybe more programmes, you perhaps interface with them closely.

11.05 a.m.

I do not know how that could be addressed because it is important that that happens. Sometimes, through the schools, it used to happen. I remember doctors and nurses used to come through the schools to identify children, even for the dentists, and there were special days when they used to go down. I do not know whose responsibility it is now, but when we talk about primary health care, I think we could also look at programmes to be put in place to assist those people who do not recognize the need for early intervention in a number of things. In fact, so bad is it, that even when they become adults, they still do not recognize the need for

some kind of intervention. I believe if it started with our younger ones, we would be able to save much in this country in terms of the needs that we have.

Although they told me that the National Insurance Property Development Company had a fairly good system, I have not seen as yet where they were marrying—I think social development said it was going to—the ability to acquire the drugs to the cost of the drugs. I had heard it said that the Social Development Ministry had brought forward programmes to do that kind of thing and to get drugs cheaper—I think it was for the elderly at that time.

There are a number of people who receive public assistance and they still have to face these drug stores and the drugs are very, very expensive. With the viruses going around now, when someone goes to a doctor, gets a prescription and tries to procure it, the cost of the drug is appalling and, in many cases, the health centres do not have enough. Especially when there is an epidemic, by the time a few people have gone to the health centre, there is nothing left for the others. Then, people are given prescriptions by the doctor to go to the pharmacies to get the drugs, but they are very expensive. Some of those people are on public assistance and I think that we need to put something in place so that public assistance recipients could get cheaper medicine.

As I said before, this is nothing new—I think I have heard it coming from the other side—what I am saying is that I have not seen it happening and I just sound a note here this morning to remind the Minister of that particular area.

So, Mr. Minister, in closing I really wish you would pay some attention and give us some information on the Regional Health Authorities. I hope that you have taken note of some of the suggestions I have said this morning. I think we have been neglecting amendments for some time but I think we should prepare an amendment in the area—I think it is clause 4 of the Bill. In fact, I think it might be quite easy to leave that and go back to what was there before.

Those are some of the concerns that I have on this particular Regional Health Authorities (Amdt.) Bill and on the whole health system, reminding the hon. Minister that we need a healthy nation if we are to perform as the Government would like the citizens to perform. We do not only want to do things when we are on show, we want to ensure that we do them all the time, so that the last minute show is absolutely unnecessary because visitors come at all times, day or night, and we appreciate all of them.

If we are saying that we want to attract people here, we want to let them know that we are attracting them to a very healthy country and, therefore, it is necessary that the Ministry of Health through all the agencies should all play a part in this. If you notice, everything is inter-related. As I said before, when Trinidad and Tobago is on show, regardless of who initiated it, even if we did not agree with it, we try to put our best foot forward.

Therefore, I ask the hon. Minister to ensure that we are prepared at all times. Since the decision has been taken to go with the Regional Health Authorities, to ensure that it succeeds, we would have to refer to the original concept of decentralization.

Thank you, Mr. Vice-President.

Sen. Nirupa Oudit: Mr. Vice-President, I have no problem giving this Bill, an Act to amend the Regional Health Authorities, my unqualified and total support.

I listened very attentively to the Minister in his introduction of the Bill because I had hoped to hear from him some indication concerning the wider performance of the Regional Health Authorities. I think, as a member of the public, meaning someone who is not actively working in the health sector, there are two perceptions concerning health in the country and, in particular, the Regional Health Authorities, which the Minister could have used the opportunity presented by this Bill to clarify.

The first public perception is that the health sector is still not delivering the quantity and quality of services to the population which we deserve. We do not even know if the money allocated to health every year is spent in the best way possible and I think as money becomes tighter—and it does—we are more and more concerned about that.

The second issue is, whenever we hear the Regional Health Authorities mentioned in the public domain, in the media, *et cetera*, we are still not very comfortable that the Regional Health Authorities and the other elements of people who make up the health services sector in the country, are working as a team. We always seem to hear some sort of cross-dialogue, or doctors talking, giving one opinion and the Regional Health Authority another.

Looking at the original Act that put the Regional Health Authorities in place in 1994, which means that this has been in operation now for five or six years, I

would like, through you, Mr. Vice-President, to ask the Minister in his winding up on this Bill, to give an opinion—I am not asking here for data because I do not know if he walked with any, but as a member of the public who pays taxes—on whether the regional health authority structure, which was set up as a management structure to help improve the efficiency of the health services in this country, is indeed the best structure. In your professional opinion, as the chief executive officer for health in this country and, also, your experience as someone who has worked in the health sector, is this the best structure to deliver health resources or health services to the people of this country? Through you, Mr. Vice-President, I am simply asking an opinion of the Minister.

I thank you, Mr. Vice-President.

Sen. Diana Mahabir-Wyatt: Mr. Vice-President, in looking at this amendment, I would like to support a couple points made by Sen. Joan Yuille-Williams. Also, if I just refer back to what Sen. Oudit said, I think it would be a very good idea to get an up-to-date report on what is going on in the Regional Health Authorities.

We are all very sensitive about our health—I think the whole country is—and there are many worries the public has about how these are operating, some having to do with the dichotomy of being partly public service and partly health authority and how that relationship with staff is going—and I would come back to that in relation to the amendment which is being discussed here. But, I think that we have argued over the past number of years—I cannot remember how long—that it would be such a salutary thing for the country if all ministries and all government departments could issue an annual report on their activities to include personnel, expenditure, what they are doing; problems, difficulties, how they have pursued them. If we can get these once a year and be informed about that, by the time we get to a budget debate, we would know and have some facts with which to operate. That is one point.

The second point is when we are looking at the whole question of the Regional Health Authorities and how they are operating, I think that the publicity that has been put forward recently in relation to certain aspects of the Regional Health Authorities, has been alarming, and I hope that the Minister will be so kind as to reassure us as to what is happening.

For example, at the San Fernando General Hospital, there were recent reports of nursing care which is certainly not nursing care, where a woman died on a floor

during child birth with no help being given to her whatsoever. None of these reports have been contradicted. Could we have some indication as to what sort of upgrading of nursing personnel is being done?

This is International Nursing Week and I think that we ought to pay tribute to nurses in Trinidad and Tobago who have provided such yeoman service over the years, particularly in situations where they lack resources, money, bandages, drugs and, very often, medical expertise in the form of doctors not being available immediately. The nurses have carried a tremendous burden.

When something happens, as was reported to have happened at San Fernando, it not only casts a shadow on the reputation of nursing generally in this country, it also makes one wonder about the stress under which nurses are put. What sort of supervision of nurses goes on in terms of the stress levels which they themselves have to bear?

It seems to me that no normal, sane person who is in the medical profession could dismiss somebody writhing on a floor bleeding to death in the course of labour and shrug it off as not being important. It indicates to me that whoever participated in that exercise must have been under enormous stress in one way or another, and I think that rather than censuring people who are in that kind of situation, we should look to see what sort of assistance can be given to them. This is what performance management is all about. It is not about disciplining people and firing them. It is about saying this should not happen. How do we improve performance? So that no woman in this country will ever have to go to any hospital to have a baby and to worry that in labour she will be treated worse than she will be treated at the Veterinary Hospital.

The third point I would like to get some guidance on from the hon. Minister, has to do with the persistent, I can only say, reports that one gets about the split between the Port of Spain General Hospital and the University of the West Indies in terms of the co-operation that exists between them. I do not mean in having medical students intern there, but in terms of higher level research and co-operation amongst the medical staff at the hospital and the university. It does seem to be a pity that we keep getting reports that there is very little co-operation amongst them in terms of collaborating with research and other things which this country certainly needs.

The fourth point which I would like to get some guidance on, from the hon. Minister, has to do with another point which Sen. Yuille-Williams brought up. I

really do need guidance on this. It had to do with her point about preventative health care in pre-schools, in primary and secondary schools. I can imagine that all of us remember as children having that kind of attention in early education, even in kindergarten, so that medical problems could be caught way in advance.

Since the emphasis from the World Health Organization now is on prevention rather than cure, and this is something which Trinidad and Tobago has endorsed, it does seem to me to be an excellent point and I would just like to know from the Minister if the Ministry of Health does have a programme that extends to pre-schools, kindergartens and primary schools where children are taught about general health principles over and over again, so that by the time they do become adults, we do not have to spend the amount of money that we now have to spend in dealing with crisis situations, such as the AIDS epidemic, such as general respiratory diseases that seem to continue because of problems of viruses which we are told could be prevented by greater cleanliness in and around buildings, mosquito handling and that kind of thing.

11.20 a.m.

I am sure that there is something. It is just that I do not have any idea what the details are. I am sure it will reassure all of us, if the Minister could give us an idea of what is happening in that regard.

One other point I would ask the Minister to comment on—recently, I was going over a brilliant document which has been drawn up for the Tobago Strategic Development Plan. An absolutely brilliantly-written document. One of the main tenets in that document has to do with the provision of health-care for elderly tourists in Tobago. In fact, it is promoted as being the new concept of health tourism which is an area we have not yet got into, but could profit by. I mean that in a sociological sense, not just a financial sense: to promote a country like Tobago, which as far as we are concerned is paradise, as a wonderful place for the elderly to retire. But you cannot do that—although it would bring economic benefit to Tobago as the Tobago Strategic Health Plan mentions specifically—unless we have got adequate health-care in the country to deal with Tobagonians to begin with. There is also the added strain that would be put on the system to deal with retirement persons.

My last point, Mr. Vice-President, has to do with clause 4 of the Bill. I agree here with Sen. Yuille-Williams again. I have argued many times in this honourable Senate against what I regard as being the ludicrous situation in which

we keep putting in dollar figures which, within a very few years, become meaningless because they are eroded by inflation. To me, this one is even worse, that you are deleting the words:

> "salary in excess of one hundred and thirty thousand dollars per annum"

and putting in the words:

> "salaries and allowances in excess of one hundred thousand dollars per annum in the aggregate."

This means that you are down-grading the salary levels by implications, that are going to be given to people, professional people, who are working for the Regional Health Authorities. I would like to suggest that we delete this amendment because it is hard enough now to attract professional people to go and work for Regional Health Authorities. Qualified people—and I say this as a matter of personal experience—have serious doubts about working for Regional Health Authorities because people are not yet confident that this kind of organization is going to be either efficient or continuous. To down-grade this level, from not only the quantum—I think it was mentioned that it was up to $150,000—It is not just salary this is also:

> "salaries and allowances in the aggregate"

which means that you are lowering this considerably. I would like to know:

(i) is this applied to contract workers as well as permanent workers? and

(ii) why it was changed to $100,000 per annum in the aggregate?

There is a lot of precedent in this world for people who are experts in a particular field being paid more than the chief executive officer who is the administrator of an organization. There is absolutely nothing wrong with that, because very often the experts in a particular specialization have expertise that you cannot get otherwise. What this seems to be implying to me, I could be wrong—I would be glad if the Minister would tell me that I am wrong—that the idea is that nobody should be paid higher than the chief administrative person in a Regional Health Authority, and for anyone to attract special expertise above, now $100,000, the permission of the Minister would have to be sought.

We all know how long it takes to get these permissions through the various levels of bureaucracy—with all the greatest of respect to the Ministry of Health and the Regional Health Authorities. To deliberately down-grade this, to include

salaries and allowances as well as lower the quantum seems to me, to be a most retrograde step. I will recommend at the appropriate time that clause 4 be deleted.

Thank you, Mr. Vice-President.

Sen. Muhummad Shabazz: Mr. Vice-President, honestly, what this Bill seeks to do, seems to be honourable enough. This Bill seeks to ensure that persons coming into the Regional Health Authorities (RHAs) will be able to be part of a pension plan. We understand that. But, what we have to look at—and these are the points that are being made here this morning—is that they may not have so much to do with what is happening with the Bill, but what is happening in the health services.

Let us look at it in a very serious way. We are trying to make a provision for persons who will be coming into the Regional Health Authorities, but who would be leaving—mainly these would be persons employed by the service commission. These persons have a certain sort of security where they are employed. Are we really thinking that we are going to get these people to come over to the Regional Health Authorities, where they would not be so secure, and where conditions of work would be different? It is nice to set it up, but do we really believe that will happen? Okay. Even if it is going to happen, what are the problems that we see that could take place? It is happening right now throughout the hospitals. There are persons who are employed by two sets of people, as far as the health services are concerned. One set by the Regional Health Authorities with, probably a different culture or a different working arrangement, and another set by the Service Commission Department. As a matter of fact, there seem to be certain problems, for example, a service commission person who might be senior and speaking to someone or an RHA person who might be senior speaking to someone employed by the Service Commission Department could easily be told: "well you know, you cannot tell me that because of my condition". What we sought to do—I think this is where we need to bring the thing.

When the PNM set up this Bill the first problem was the lack of support from the people on that side. I just want to read the Hon. Trevor Sudama's contribution from the other place when the Regional Health Authority Bill was brought. He said:

> "That is our position and we make that appeal today, that we are not going to support this Bill."

Mr. Vice-President: What is the reference?

Sen. M. Shabazz: *Hansard* 1994/02/04. I was just making a brief quote, Mr. Vice-President, from the *Hansard* of the other place.

Mr. Vice-President: On what issue was the *Hansard* being used?

Sen. M. Shabazz: The Regional Health Authorities Bill, Sir.

Mr. Vice-President: When the Act was being debated?

Sen. M. Shabazz: Yes, Sir. I repeat:

> "That is our position and we make that appeal today, that we are not going to support this Bill."

That was one of the main problems at the time; lack of support, a feeling that this Bill could not work, that the PNM was just trying to bring something to force it on the people, how would it be managed?

What we have seen today is that indeed they have endorsed it. They have realized that it has worked. It is still working. As a matter of fact, this was set up in 1994. We came out of power in 1995. It meant that we supervised this for one year. They are now supervising it for four years and still coming again or wanting to say it is the PNM. That was one of the bills which the Government had four years to deal with. What have they done? We say, probably, absolutely nothing. It is just a question of letting the thing ride and hoping that it will work out.

11.30 a.m.

What is the position? One, you are guaranteeing people a pension when they are transferred to the Regional Health Authorities but to date there is no pension fund for Regional Health Authorities workers. Are you going to set up the contributory pension fund? What type of pension fund are you going to set up for Regional Health Authorities workers? You are asking me to come over and when I come over I am guaranteed a pension but the people who are there are not guaranteed a pension. Why are you not looking at that? Why are you not trying to make that happen and make that work after four years?

Mr. Vice-President, it is really not good to talk about the Ministers and how they function because, indeed, this Minister gives the vibration of being a nice Minister, but that niceness will not carry the health service forward. What the health service needs to be carried forward is competence and from what we are seeing, in the whole of Trinidad, regardless of what this side or the Government

may say, the health service seems to be at a standstill. Somewhere it is not moving. The kind of initiative and creativity we were putting into it, somehow that seemed to have slowed down. The country is aware of that.

Take the question of ambulance services in this country. People are now paying for ambulance services. The last thing we heard was that there was one ambulance from Chaguaramas to Toco. I said this here before, Mr. Vice-President. There is one ambulance and it is out of service. So if one needs an ambulance right now, one has to pay for it. I said something some time ago in this Senate, Mr. Vice-President, and I was very serious even though it may have sounded like a joke.

This Government came in on a platform of crime. Crime was the big issue. Crime is still the big issue as though it is obsessing them all to this point. They only want to deal with the criminals. I appreciate that but I said the last time that a man could chop off another man's hand somewhere in Sangre Grande, the police jeep would arrive and an officer would lock up the fellow who chopped off the man's hand, but the victim is taken to the hospital and he would not get anyone to take care of his hand. So not only in health but in all other things they seem to be focussing incorrectly and in the wrong direction. When we try to put forward that point to them they feel that we have no right to talk.

Again, I want to make the point that this Regional Health Authorities Bill has been in your hands for four years. There is no ambulance or proper care. We see what is happening at the hospital, the type of problems they are having with all different things such as pharmaceuticals and the Minister is not saying anything or making any statement. We came here last year, Mr. Vice-President, and put forward the point that from an important Ministry like Health—and again it was not taken seriously and I want it to be understood at the level of the national community. Health is such an important thing, Sir—over $25 million was removed; a Ministry with so many things to do. When we brought the point up there was a lot of talk generated.

There is need to have a certain confidence. If we are to go along with this, there must be a level of confidence and somehow that confidence seems to be eroding because the main thing here is pension and health care in the country. When we talk about pension, even though we understand that this is well intended, the nation keeps remembering being told, “We are going to pay you

$1,000.00 in pension," and then to be told that it was not so. We, therefore, do not know how serious they are when they talk about pensions.

We have the elderly, a large number of people, looking forward to getting $1,000.00 in pension and you are saying 15 years from now. Is this proposal in the Regional Health Authorities Bill to be implemented in the next 10 years? Is it going to be immediate? Are you serious? What is your real position on pension? That is what we want to know. That is the point here. This is good, you know. To give people benefits is good but you have adopted a position where you seem to talk and you double-talk. You seem to say one thing and mean another and this is where we have to bring our points up all the time.

There are other things at which we need to look. At this point in time it is an important point to look at the question of the two employers. Responsibility and authority must be at one point. We understand what is happening in the Regional Health Authorities. These are things that we would have straightened out. As a matter of fact, the last Minister not only presented this Bill but he brought to this Senate a situation where we tried to regularize the question of who will have the authority and the responsibility. We even spoke about it to the point where we were asking the Service Commission Department to delegate the authority to employ and to hire people.

You have to bring it quickly, however you are going to do it. Do not just introduce bills in the Senate as you introduced some other bills. This one will need a three-quarter's majority to be passed. Introduce it and look for the support of the Senate and get your three-quarter's majority. Do not just introduce it the way you are introducing other bills, whether they need a three-quarter's majority or not, saying they need a simple majority and situations like that. Introduce it seriously and if it is done properly we most likely will give you the support needed to regularize these people's situation and conditions.

As I see the hon. Minister of Public Administration smiling, Mr. Vice-President, I think he should give them some advice to ensure—because he is a trade union person and there are a number of them on that side who should be understanding and bringing forward these Bills with a better heart than they seem to be doing. They know. The way they operate is as though they do not know better. When we were saying that they were new in government and did not know better, now, with one year to go where they are going out of Government, it does not seem as though they do not know better. Mr. Vice-President, it seems as if they really do not care. They do not care. [*Interruption*]

I have said to that gentleman, Mr. Vice-President, although he sits on the Benches of the UNC he is really ULF minded. He seems to be back in time. [*Interruption*] Yes, he reminds me of Joey Lewis and people like that. You are not in modern times. [*Interruption*] You are back in time.

In truth and in fact, there is no need to be lengthy on this matter, Mr. Vice-President. What we look forward to seeing is that the Government develop all the things that we had on track for the health services, look at the Regional Health Authorities closely and try to bring everything into one. The question of the Tobago hospital which has been brought up here is important. For four years it is as though they were playing games with the people in Tobago concerning the hospital.

You talked about them in order to get a certain type of support from them, now you seem not to have that support, you are not studying the hospital. These things are important. How will you be setting up the infrastructure and the ambulances? The type of care we get at hospitals, the question of what happened with the doctors, all these things need to be put in place.

If the hon. Minister would take these points not as criticism of himself but in an effort to bring these points into focus and give us certain guarantees that within the next year he will do certain things to ensure these things happen, I think it will bring some form of comfort to the minds and hearts not only of the people in this Parliament but to the people outside who would be assured that there would be some type of good policy for them and good health care when they go to our hospitals. That is what we need most, Mr. Vice-President. Thank you very much. [*Desk thumping*]

Sen. Dr. Eastlyn Mc Kenzie: Mr. Vice-President, I will be very brief. I would like to congratulate the Minister for attempting to regularize a situation that is a problem. I, therefore, support the small move that has been made. I also recognize the problems outlined by other speakers and I am sure that in due course measures will be taken to make this Regional Health Authorities Act better and better as time goes by.

I want specifically to refer to clause 4 of the amendment. My interpretation, Sir, is that we have taken some of the power from the board and placed that power in the Minister's hands. I am not concerned about the money because, as far as I am concerned, the authority to hire people within that wage range would be still there. All that will happen is that it is going to be removed from the board

above $100,000.00 and placed back into the hands of the Ministry and the Minister.

I do not know, Sir, but I am wondering why the Minister wants this extra work? Why do you want all this extra work of screening and approving appointments of people over a certain level of remuneration. That is where I am skeptical. I get the uncomfortable feeling that you want—and when I say you I do not mean you personally—that authority to control the appointment of people over a certain range and that is what makes me uncomfortable. I am wondering, Sir, whether you should go with this. Thank you very much, Mr. Vice-President.

The Minister of Health (Dr. The Hon. Hamza Rafeeq): Mr. Vice-President, I want to thank all those who have contributed to this debate so far and I have observed that really only one reference has been made to the Bill before us and that concerns section 4. I would like to deal with that first and then we will go on to some of the other issues that were raised because that has been the only substantive issue that has been raised as far as the Bill is concerned.

Mr. Vice-President, the central government, whenever it sets terms and conditions for the public servants, there is a mechanism by which this is done, through the Chief Personnel Officer. The Chief Personnel Officer, of course, will get advice as to the ranges of increases that can be made or the ranges of salaries that can be given to public servants from the Government. The Government, of course, has an interministerial team that deals with public servants' negotiations so there is some reference to the national purse when determining salaries for public servants.

The point is, Mr. Vice-President, in the Regional Health Authorities there is no such structure that exists at this point in time. There is no bargaining unit within the Regional Health Authorities at this point in time, so there must be some reference to the central Government as to what salaries the Regional Health Authorities can offer. It is not that every time a regional health authority has to hire a doctor and pay a salary of $8,000.00 the authority has to get the Minister's approval. That is not the intention of this clause. The intention is that a post of house officer within the Central Regional Health Authority will carry a certain salary and that has to be approved by the Minister once it is above $100,000.00. The same goes for the different Regional Health Authorities. So it is not that every time a doctor has to be hired permission has to be sought from the Minister to deal with that. That is not so; it is a combination of the post and the salary.

Mr. Vice-President, when we came into office we realized that the Regional Health Authorities, some of them in certain ways, had run away with this salary issue. There was no reference to the Ministry and to the national purse and they sought to get around this. The stipulation here is that they should get the approval of the Minister for salaries above $130,000.00. They sought to get around this by giving a salary of $125,000.00 and allowances may be close to that amount. They sought to get around it by doing that.

11.45 a.m.

So, it is that sort of mischief—if I may use that word—that this is intended to correct, and that is that some reference should be made in setting salaries—even the Regional Health Authorities—some reference should be made to the national purse. We have set it at $100,000.00, maybe there is room for negotiation at some point in time to increase that ceiling, but we have set it at this point in time for $100,000.00.

The point is, Mr. Vice-President, that there is the necessity for some reference to be made to the national purse in determining salaries for Regional Health Authorities employees. I just wanted to clarify that. It is not that we want to control, and it is not that the ministry will be determining who gets employed, it is just that—as I said—some reference has to be made to the national purse as far as setting salaries is concerned. *[Interruption]*

I will deal with some of the issues that have been raised as far as the—*[Interruption]*

Sen. Yuille-Williams: Are you saying that all Regional Health Authorities will be paying the same salary for all the people there?

Dr. The Hon. H. Rafeeq: No, I am not saying that. I am saying that if a Regional Health Authority says that we have posts for house officers, and we would like to pay them $8,000 or $9,000 a month, that can be approved by the minister for that particular Regional Health Authority. But each Regional Health Authority has the autonomy to set its own terms and conditions with this restriction.

Mr. Vice-President, I want to deal with some of the issues, and as I said, that was the only reference that was made as far as the Bill is concerned, but we have had a lot of issues raised as far as the status of the health sector is concerned in Trinidad and Tobago. I think it will be a little bit dishonest if members of the

population say that there has not been an improvement in the delivery of health care services over the last three or four years. There has been in Trinidad and Tobago, particularly in Trinidad.

Mr. Vice-President, let me just give one reference. In 1995 when we took office the budget for drugs was $48 million. In 1996 we increased that to $60 million. *[Interruption]*.

Hon. Senator: You took back $28 million.

Dr. The Hon. H. Rafeeq: They did not take back any from the drugs budget.

In 1997 the drug budget went to $72 million, and in 1998 I think it was $78 million. The point is, Mr. Vice-President, we have increased the drugs budget from $48 million to $78 million in the three years that we have been in office, but not only that, reference was made to the programme that we mentioned earlier this year. We had made a commitment to the nation that during this year we would be making drugs available in the private pharmacies to patients who suffer from chronic illnesses at a much cheaper cost than they were available previously. I want to inform this honourable House today, that that programme is already in place; that programme has been in place from March 1. *[Desk thumping]* The reason we did not make a public announcement so far is that—tomorrow we are having a press conference to announce this—we wanted to iron out the little bugs in the system before we went public with it. I want to say that there are about 15 drugs that have been identified that are already sold in private pharmacies at approximately 50 to 60 per cent of the price it was sold previously. We already have that programme in place.

Sen. Prof. Spence: Mr. Vice-President, I want to congratulate the hon. Dr. Rafeeq if this is indeed so. Should I ask him to look again at the list of drugs, now that he has probably realized there are some drugs that are needed by heart patients which are not on the list. *[Cross talk]*.

Dr. The Hon. H. Rafeeq: Mr. Vice-President, the drugs that are available are drugs for conditions like: high blood pressure, diabetes, asthma, glaucoma, and I think two other conditions. Those are the drugs that are available at present, as I said, at about 50—60 per cent of the cost.

I just wanted to respond to Sen. Joan Yuille-Williams, and I want to thank her for her contribution.

As to whether the Government is committed to the health sector reform programme and whether it is committed to the decentralization process, Mr. Vice-President, when we came to office one of the first things that Cabinet did was to appoint an inter-ministerial committee to review the health sector reform programme to see whether any changes were necessary. That exercise was conducted within the first few months in office, and we decided, as a Government, that we would go with the health sector reform programme with certain changes, particularly dealing with the issue of decentralization, we are totally committed to the issue of decentralization. Over the years, there has been a lot of action taken as far as the decentralization process is concerned.

The Regional Health Authorities—and this is why we are here today dealing with this particular issue—have the responsibility to deliver health care, but they do not have the authority over the workers who are employed in the public service and that really takes the greatest share of the health budget, as the Member mentioned. So, they can only control effectively their financial resources, if they have full control over the human resources, and this is the reason we are here today. When the pension fund is established to offer options to public servants to go across to the Regional Health Authorities, the Regional Health Authorities can have greater control over their staff.

As far as the development budget is concerned, we are sort of locked-in, in a health sector reform programme, and most of the development programme is funded by the Inter-American Development Bank and there are certain conditionalities that are attached to the disbursement of those funds. There are certain big projects that are overseen by the Project Administration Unit which is centrally located, but a lot of the small works are done by the Regional Health Authorities themselves.

Mr. Vice-President, if you go to the eastern region—and I always use this as an example—they refurbished on their own with funds from the Ministry of Health, about 10 or 11 of their health centres. They did that on their own and this is part of the decentralization process.

You would have seen recently advertisements in the newspapers for the refurbishment of most of the health centres in Trinidad, and these will be done through the Regional Health Authorities. The decentralization process, we feel certain—*[Interruption]*

Sen. Mahabir-Wyatt: Mr. Vice-President, I am genuinely puzzled. I do believe that the Minister is sincere when he talks about the decentralization process which I accept as something which is laudable, but I cannot understand the contradiction between the ideal of decentralization and the amendment in clause 4, which is saying if somebody needs a neurosurgeon in one of the Regional Health Authorities, the only way they can get around the restrictions in the Act have been by, sort of, using allowances. Why do you want to remove this power from the regions, because if that is how you get around it maybe that is what you need. It sounds to me like some administrator somewhere is so frightened that a medical person can get more money than they are, that they are trying to restrict this. Is this a conditionality that you are doing this, or is this a bureaucratic thing, because it certainly is not decentralization. I just do not understand it.

Dr. The Hon. H. Rafeeq: I sought to deal with this, but I will explain it again. I am saying that it is not that every time a doctor or a nurse has to be hired, the permission of the minister has to be sought. It is for the package that will deal with that category of staff, and if you are dealing with a special category of staff—*[Interruption]*

Sen. Mahabir-Wyatt: Contract workers as well?

Dr. The Hon. H. Rafeeq: Contract as well. Remember, the Regional Health Authorities do not only hire doctors and nurses, they hire all categories of staff: accountants, auditors, and all these categories of staff. We are saying that some reference must be made to the national purse when these appointments are being made. If there is no reference, then the Central Regional Health Authority can hire an accountant today for $20,000; the South-West Regional Authority can hire one for $30,000; North-West Regional Authority can hire one for—there must be some reference to the national purse when these appointments have to be made.

We are saying there are certain categories of staff that will carry the same basic salary, and we agree with you that allowances may be different in different cases. That is the point I was making earlier on, that a nurse in the central region does not necessarily have to be working for the same salary as a nurse in the eastern region. There may be a particular reason to enhance the package to attract people to the eastern region. We recognize this, but I am saying that when the package has been agreed, some reference should be made to the national purse. Because, at this point in time none of the Regional Health Authorities, except the

Central Regional Health Authority, has raised its own funds. All the funds came from the central government and some reference must be made to that.

11.55 a.m.

Sen. Yuille-Williams: Mr. Vice-President, this is my last question. That $100,000 with allowances just permits a salary of about $7,000 to $8,000 per month. Therefore, it seems to me that with the professionals, all of them, reference will have to be made to the Minister. Who will one pay $7,000 per month? One can get an executive secretary for that salary. So, it seems to me that they are still hiring all the professionals.

Dr. The Hon. H. Rafeeq: I am not hiring anyone. It is not true. As I said, some reference has to be made to the kind of money we can afford. The other point that was raised, and I think I need to respond to this, Mr. Vice-President, is the issue of how resources are allocated to the different regions.

We are in the period of health sector reform for about 3 or 4 years now and the resources have been allocated so far on historical basis. However, this is not what it is intended to be. There is an instrument that is being developed, and the first was signed a couple weeks ago. It is called the Annual Services Agreement. This is the instrument which will be used to determine the allocation of resources to the different regions. That Annual Services Agreement is an agreement between the Regional Health Authority and the Ministry of Health as to what we would like it to deliver within this year, the services we would like it to deliver in that particular region within this year, and it is on the basis of that agreement that allocations will be made. So far it has been done on an historical basis, but we are moving away from that system.

I think I need to respond to an issue that was raised by Sen. Shabazz about the length of time it has taken for this pension fund to be set up. As soon as we came into office in 1996 we established a broad-based committee to develop this pension fund, and in 1997, we sent a letter to the Public Services Association asking for their comments on the pension fund. This is 1999 and so far we have not got the comments of the Public Services Association as far as this is concerned. While we have done our bit as far as this pension fund is concerned, the PSA still has not responded.

The Senator also mentioned that there is no security for people who work in the Regional Health Authorities as far as pension is concerned. This is not true.

There is a parallel establishment in the Regional Health Authorities that mirrors the establishment in the public service, and those posts from the public service that have gone over to the Regional Health Authorities are catered for in the Pensions Extension Act. So, people who have filled those posts, their pensions are already covered by the Pensions Extension Act.

Sen. Shabazz: What about the people who have been employed directly by the Regional Health Authorities? What is the position with that?

Sen. Yuille-Williams: Mr. Minister, before you respond, concerning that Annual Services Agreement which you spoke about, I am glad to hear you have an instrument, because "historical" tells us that below the Caroni bridge is a different thing to above. The Annual Services Agreement you talked about, which you said is based on the delivery of service, does that take into consideration, population-wise, the number of people you are serving?

Dr. The Hon. H. Rafeeq: To answer the question from Sen. Shabazz, those who have been employed directly by the Regional Health Authorities, most of them have been employed, as I said, in the parallel organizations. They will be taken care of. Most of the others who have been hired are on contract and, as such, they are not entitled to pension, but they do get a gratuity. There are a few others who are not, and they will now come under this scheme when it is promulgated.

I want to mention the National Emergency Ambulance Service, Mr. Vice-President. In 1998 alone, we added 20 ambulances to the present fleet of ambulances, and I am sure my friend from Tobago will attest to the fact that the ambulance service in Tobago has also improved tremendously. The idea is to establish a National Emergency Ambulance Service for the entire Trinidad and Tobago, and the ambulances will be properly equipped with communication equipment and they will be staffed by properly trained paramedics.

We have already developed this pilot project in the South West Region and we are close to signing a contract for that particular programme. We have already done two negotiations and we are close to signing a contract, and that pilot project should come on stream within the next couple months. That pilot project will last for about 12 to 15 months, it will be assessed and then it will be done on a national basis.

I do not know if there are any other issues. Sen. Prof. Spence mentioned the issue of the widows and orphans. My advice from the technical officers is that

those who already contribute to the Widows and Orphans Fund, that option to contribute will still remain after they have transferred to the Regional Health Authorities.

May I just say in passing that as far as school care, home care and these community activities are concerned, this is really a strong part of our Health Sector Reform Programme. I was just looking at the figures here. We have trained district health visitors and district nurses, and we have continued our programme. As a matter of fact, we have increased the training of these categories of staff to deal particularly with the issue of community care. May I just mention that as part of our primary health care thrust as well, we will be starting a training course for family physicians within the next couple months to deliver care in the community.

Mr. Vice-President, these are the major points that have been raised and I want to, again, thank Senators for their support of this Bill. 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 to 3 ordered to stand part of the Bill.

Clause 4.

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

Sen. Mahabir-Wyatt: Mr. Chairman, I want clause 4 to be deleted in its entirety because I really think it is contrary to the spirit of decentralization, and the fact that it has put allowances in addition to salaries has restricted the power of the Regional Health Authorities to attract the kind of staff they are going to need when they need it. In spite of the Minister's assurances that it is just in terms of classifications, we know how long it takes to get anything like this through any ministry, and it just seems to me that it is assuming that wrong is going to be done, instead of allowing for the fact that the system has arisen out of necessity which reflects the needs of the authorities. I just suggest that we remove the whole thing. I am sorry I did not have a chance to put it in writing.

Sen. Prof. Spence: Mr. Chairman, I understand the point the Minister is making about some reference to a central purse ministry, but it seems to me that

the Government only makes certain allocations to this health authority and they have to live within that. Therefore, if one is suggesting that a health authority would act completely irresponsibly and use up a large part of its budget only on salaries without reference to the total budget, one is really saying they are not competent to run the authority. It seems to me that if they do not understand that, why put them in charge at all?

The Minister could address the problem by issuing guidelines to the health authorities, and the guidelines should give the salary scale to the Government service and, therefore, they can make reference to it when they are making sensible decisions with respect to salaries for that particular area. In any event, even if one is not going as far as to remove the clause, it seems to me strange that one should have reduced the sum after six years because, certainly, now one would expect the salaries to be higher than they were in 1994, but in addition to that, one is further reducing it by including the aggregate.

I understand the need that the Minister has given for the aggregate, however, if one is going to increase the aggregate, one should then increase the total. So, instead of increasing the total, he has reduced it. It would seem to me logical if he has increased the aggregate and said $150,000, first because salaries have gone up since 1994, and secondly because he has assumed that the Regional Health Authorities would act sensibly. So, I certainly would prefer that if one is not removing the clause altogether, the sum should be increased to take into account the fact that we are now including the aggregate and that salaries have increased since 1994.

Sen. Dr. St. Cyr: Mr. Chairman, just before the Minister replies, would it not be easier to amend the formation that is there to say "salary and allowances in excess of $130,000"? That would take care of getting around the measure of control we seek to get. In other words, instead of deleting "salary in excess of $130,000 per annum", amend that to say "salary and allowances in excess of $130,000".

Dr. Rafeeq: Mr. Chairman, through discussion here, I would feel uncomfortable to remove that section altogether, but I understand the points being made by the Senators opposite and I think we will be willing to concede to increase the ceiling from $100,000 to $150,000; both for salary and aggregate. *[Desk thumping]*

Sen. Mahabir-Wyatt: I prefer the guidelines.

12.10 p.m.

Mr. Chairman: Minister, I take it that you propose an amendment to the effect that after the word "one hundred" you include the word "and fifty".

Dr. Rafeeq: Yes, Mr. Chairman.

Mr. Chairman: Hon. Senators, clause 4 would now read in the penultimate line "salaries and allowances in excess of $150,000 per annum in the aggregate". Everybody got that?

Question put and agreed to.

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

Clauses 5 to 7 ordered to stand part of the Bill.

Schedule ordered to stand part of the Bill.

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

Senate resumed.

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

Mr. Vice-President: Members it is just about 12.15 p.m. I think it is appropriate at this time to take our lunch break, so I propose suspending the sitting to 1.30 p.m.

12.15 p.m.: *Sitting suspended.*

1.40 p.m. *Sitting resumed.*

MENTAL HEALTH (AMDT.) BILL

Order for second reading read.

The Minister of Health (Dr. The Hon. Hamza Rafeeq): Mr. Vice-President, I beg to move,

> That a Bill to amend the Mental Health Act, Chap. 28:02, be now read a second time.

Mr. Vice-President, the Bill before us seeks to amend the Mental Health Act to allow the next of kin of mentally ill patients who are not mentally institutionalized to apply to the High Court for an order to exercise control over

their property and affairs. The Mental Health Act, as it now stands, makes provisions for such an order to be made on behalf of patients who have been admitted to a hospital or a psychiatric ward. At present, there are many patients who are suffering from senile dementia, Alzheimer's disease and other mental illnesses who are being treated at home or at various clinics as outpatients. In addition, it is the trend in health care all over the world to treat mentally ill patients in the community as far as possible, rather than as patients in a hospital setting.

At present, there is no provision in the Mental Health Act for these patients or their relatives to approach the court to appoint someone to deal with their property affairs. This Bill seeks to regularise this while putting in place the necessary safeguards and controls.

As such, clause 3 of the Bill seeks to redefine the word "patient" to include both institutionalized and non-institutionalized persons. The rest of the clauses are mainly consequential amendments and the inclusion of some measures to safeguard the right of the patient.

The Act as it now stands defines the word "patient" to mean a person who is suffering from or is suspected to be suffering from mental illness or who is mentally subnormal and has been admitted to a hospital, a psychiatric ward, an approved home or a private hospital. Accordingly, the existing Act does not take into account persons who are mentally ill and to whom health care is given at home.

Part VII of the existing Act deals with the protection of a patient's property. When one examines this section, it is clear that the powers of the court to protect a mentally ill person's property are limited to persons who are institutionalized in a hospital, or a psychiatric ward.

Section 38 of the Act confers on a Judge power to do or cause to be done all such things which he may consider necessary or expedient—

"(a) for the maintenance or other benefit of the patient or members of his family or both;

(b) for making provision for other persons or purposes for whom or which the patient might be expected to provide if he were not suffering from mental disorder; or

(c) generally for administering the patient's property and affairs."

Section 39 provides that:

"in the exercise of his powers, under section 38, the Judge may make such orders and give such directions and authorities as he thinks fit for the purpose of that section, and in particular may for those purposes make orders or give directions or authorities for—

(a) the control ...and management of any property of the patient;

(b) the sale, exchange, charging or other disposition of or dealing with any property of the patient;

(i) the conduct of legal proceedings in the name of the patient or on his behalf;

(g) the dissolution of a partnership of which the patient is a member."

Mr. Vice-President, the Ministry of Health has been approached on numerous occasions for advice and assistance arising out of the following not atypical circumstances, that is, an individual who is elderly and is suffering from senile dementia, or is mentally retarded which has the effect of impairing the person's judgment, if that person owns property and the relative wishes to access his property to support the individual, and the extent of his mental impairment is not such as to require hospitalisation whether in a psychiatric ward or otherwise.

Further, such a person cannot grant a power of attorney because of their mental impairment. The only recourse is to approach the court, so that the High Court can exercise control over the patient's property by authorizing the carrying out of certain functions, or by the appointment of a committee or receiver. The current Act is an obstacle to such a course for individuals who are not institutionalized.

Mr. Vice-President, it is unfortunate to say, but numerous situations exist today where persons are mentally unable to care for themselves, or even to consent to someone else giving such care through a power of attorney. In those situations therefore, the courts should be allowed to exercise control over the patient's property for the benefit of the patient. It is important to know that the statutory source of the court's power in the Mental Health Act has its origin in two ordinances namely, the Petition of Lunacy Ordinance and the Lunacy and Mental Treatment Ordinance. The latter dealt with the control of persons confined, while

the former dealt with the procedure for the protection of the property of persons of unsound mind. This ordinance was concerned with the management of the property of persons of unsound mind generally, and not with persons who were confined under the provisions of the Lunacy and Mental Health Treatment Ordinance. Both these ordinances were repealed in 1975, Parliament acting then in this regard on the advice and recommendation of the Fourth Report of the Law Reform Committee dated June 1964.

The committee not only recommended the repealing of both ordinances, but also suggested that the existing supervisory power of the High Court over property of persons of unsound mind addressed in the Petition of Lunacy Ordinance should continue to apply.

Mr. Vice-President, somehow the drafting of the Act in 1975, inadvertently lost sight of the fact that prior to the enactment of the Mental Health Act, 1975 the court had power to exercise control over the property of a person suffering from mental disorder both when institutionalized and when not institutionalized.

Moreover, the combined effect of section 2 and section 37 deprived the court of its century-old statutory power to exercise control over property and affairs of a person who is incapable of doing so by reason of mental disorder without admission to an institution. This oversight has only had the effect of failing to protect mentally disabled persons by rendering their property more or less vulnerable to loss, damage and depreciation by excluding such persons from the courts protective jurisdiction.

Mr. Vice-President, in the light of this serious injustice and inequity, clause 4 of this Bill before us would amend section 36 of the Act to allow a next of kin of an institutionalized patient to make an application to the court in order to exercise control over the patient's property and affairs. The clause would also allow a next of kin of a patient who is not institutionalized, but who by reason of a mental disorder is incapable of managing his affairs to make an application to the court in order to exercise his control over the individual's property and affairs.

Clause 5 seeks to amend section 37 of the Act permitting the certificate of a qualified psychiatrist as to the patient's mental condition to be submitted to the court. This stringent requirement is to ensure that only mentally ill persons are so deemed by qualified specialists in the field of psychiatry.

Clause 5 would also require the applicant to furnish the court with a statement giving a detailed description of the patient's property and its value. This clause

would make it mandatory that the court be satisfied that service of summons was affected on at least one of the patient's next of kin when application is not made by the next of kin. This is to ensure that the Act is not abused or misused by public officers and that the relatives of the patients are kept informed.

To further ensure and guarantee no misuse of this power over mentally ill persons, clause 6 introduces a new section 37A which would require that periodic medical certificates be filed stating the mental condition of the patient and the duration of the disorder. Accordingly, the High Court would then have the authority to continue or to discharge the committee.

Clause 9 seeks to repeal section 48 of the Act since it further restricts the application of this part of the Act.

Mr. Vice-President, before I close, I wish to inform this honourable Senate, as I mentioned, that the majority of mentally ill patients are treated in the community and live at home. In the mid-1990s, the total number of beds available for care of the mentally ill in this country was about 1,300 and the population at St. Ann’s Hospital ranged between 900—1,000. The estimated number of mentally ill patients in the community at that time was between 50,000—60,000. At least more than one third of those were psychotic, that is, had severe mental illness with impairment disabilities and handicap. The majority of these ill patients living at home were cared for by next of kin or other first degree relatives or members of extended families. Many of those would have been entitled to benefit from the estates of others, for example, their parents. Moreover, they may have had property of their own prior to becoming ill and because of the nature of the illness, these patients are not capable of managing their own affairs, or even to take care of themselves without the help of others.

Mr. Vice-President, all mentally ill patients, whether institutionalized or not, definitely require someone to look after their affairs. Some on a short-term basis, others for a longer period. This Bill seeks to correct this injustice which has existed for over 25 years or so. In some instances, patients actually had to be hospitalized in order to satisfy the requirements of the law to have someone look after their property rights. With our thrust in community care for mentally ill patients, this amendment would make it easier for them to be able to deal with their property affairs. Accordingly, I seek the support of this honourable Senate for these measures. I beg to move.

Question proposed.

Sen. Danny Montano: Mr. Vice-President, I rise in support of the Bill and I can see that maybe the Minister is having a change of heart. He has obviously looked at a piece of excellent legislation which was passed in 1975 and he is seeking to make what was good legislation better legislation, and I think that is a very good thing. I think very often, that is the role of the Opposition and certainly, we try to do our part, therefore, what the Minister is trying to do here is a good thing.

I did not realize, however, that there was such a need for legislation of this kind. I read this Bill yesterday in anticipation of the debate today, and this morning I opened the *Daily Express* and on page 17 there was an article quoting the Minister who apparently spoke yesterday saying that mental problems affect 20 per cent of the population of Trinidad and Tobago and I was astounded. I thought to myself: I wonder who the Minister was talking about, because if one were to apply that across the population, that would mean that at least three members on that side are suffering from mental problems. I have no difficulty in understanding that, but I assure this honourable Senate that on this side, I am sure none of us fall into that category.

1.55 p.m.

Mr. Vice-President, mental health is a very sensitive issue and a very personal thing for many families. In the context of what we are talking about, it is a tragedy that the Government is not being perhaps a bit more proactive with the mental health of our nation.

I am not a physician but I have done some reading on the question of mental health. What research is now beginning to show is that mental instability is not necessarily something that comes from your childhood or is emotional, it can, in fact, very often be almost engineered by poor diet. I am sure that the Minister would understand that something as simple as low blood sugar can have a very serious effect on some persons and how they will go about doing things. When you consider the effect of diet on persons in the society, something as simple as sugar, you can see where a lot of violence, and particularly a lot of domestic violence, is coming from. Persons may come home, particularly men, they may not have had a proper meal for the day, and they have had the stresses and frustrations of their working environment, and have not had a proper meal.

Historically our economy was based on sugar, and we still have a habit in this society of trying to quell our hunger pangs with doses of raw sugar, sugar and

water, soft drinks or whatever. What that tends to do is cause a momentary lift in the spirit and, as the Minister would know, your spirit shortly afterwards comes crashing down, the irritations and frustrations start to boil over. It is simply a matter of chemistry.

What is a tragedy is that the Government is not looking at the ills of society from the standpoint that the diet of the nation is poor at a particular level because of the extent of poverty. It comes right back down to economics. Unless the Government takes a proactive stand in terms of looking after those who do not have enough, and by contrast—when I talk about proactive measures—I will point out that it was not this administration that started the school feeding programme. It was a prior administration with which I am associated. Certain members of the party that formed that administration, brought in the school feeding programme.

You can well imagine the stresses of young children if they have not had a proper breakfast or meal. When they go to school how can they properly absorb what they are being taught? As matters now stand on the roads today, with the number of cars being put on the roads, the traffic lines are growing longer and longer, the working class and the children of the society are spending longer hours going to work and coming from school and work. Unless their diet is properly regulated and we ensure that we feed our people properly, we are going backwards, and that is where I see this country going.

We have had a complete absense of leadership on the part of this administration, particularly in the area of agriculture and feeding our people. [*Desk thumping*] It all relates back to mental health because the health of the nation generally, physically and mentally, is dependent primarily on its diet.

Mr. Vice-President, with that I would like to move on to the actual clauses of the Bill. As I indicated when I started, I have no particular difficulty with the provisions of the Bill, and certainly I support its general intent. I would take issue with the Minister in his saying that persons who were not institutionalized could not benefit from the original legislation. That is not entirely so, because section 28 clearly says that a minister could, in fact, approve a house as a home and it would fall within the definition. It meant that you had to go through another step, but it was doable. However, if he is making it easier here, I accept that and have no difficulty with it. Anything to make things better, smoother, and easier, I would support, and the Bill seems to do that.

I would draw the Minister's attention, however, to the fact that nowhere in this legislation or the parent legislation are the words "next of kin" defined. It is certainly a legal term used in certain other pieces of legislation where it may be defined there, but I think in the context of what we are talking about here and in the context of modern society we could be looking at certain problems. For instance, is a *de facto* spouse, although they are not married legally, the next of kin? Supposing a person has left his legal wife and is living with a *de facto* spouse, who is the next of kin in that situation? I do not know and I do not think that this Bill would resolve that. We need to pay attention to situations like that, which boil down to my next point.

Neither the original Act nor this Bill really makes provision for any accountability of the "committee" as the original Act calls the person to whom all the property is going to be entrusted. I would just give you an idea of how it is now. If you look at clause 5(c) there is a new section being inserted there which states:

"a statement by the applicant..."

The applicant could be the next of kin.

"...giving a detailed description of the patient's property and the value thereof;"

In fact, 37(1)(c)(ii) says that the applicant must indicate what he proposes to do with the patient’s property during the illness. That presupposes that the applicant is going to make a complete disclosure of what the property is and that the court knows what the person is talking about. The danger is that the disclosure statement is going to be incomplete and the applicant is going to have personal designs on the property of the patient. Therefore, what I would suggest to this honourable Senate is that that statement be independently verified by a reputable chartered accountant who will, at least, take some measures to determine as to whether or not the statement presented is a complete statement. That is the issue I am driving at.

Following on from that, even in the parent legislation there is nothing that requires the committee—and the committee is not a trustee and, therefore, is not bound by the Trustee Act as far as I can determine here. There are no rules, apparently, governing what the committee must or must not do with the particular property; therefore, it is a question of accountability.

The original Act contains certain sections that deal with when a will has to be made and such things, but assuming that the persons are relatively young and have heirs, sons, daughters, or whatever, they must be accounted to properly, particularly in situations where the committee or the person who has custody of the assets and the property, is not a blood relative. It might be a stepmother or stepfather. I think that the court, or we, in the legislation here, must put down provisions whereby the custodian of the property must account regularly to the court or whatever, or the apparent heirs of the patient, or something of the sort.

I tried to consider whether, in fact, I could draft an amendment, but quite frankly I was not able to, the issue is a little complicated, and I am not that familiar with the definition of "next of kin", and who would fall in what category. It falls outside my skill. But the point is still there. The custodian must be accountable on a regular basis. We would be fixing one part of the problem and that is, on a regular basis the medical officer under the new 37A, the High Court can require the person appointed as the committee, to file periodic medical certificates, so it is not as if the person could be locked away for the rest of his life and he never again sees the light of day. He would, at least, have the benefit of the supervision of the court on a regular periodic basis, and that period would be defined at the time of the committal of the award, which is quite reasonable I think, under the circumstances. The point being that we really want to do something with the assets. We want to assure that there is accountability for the assets on a regular and periodic basis, and that the assests are not being frivously used and squandered.

Mr. Vice-President, the Bill is relatively short and I think that I have exhausted my notes on it, with that I thank you .

Sen. Dr. Eastlyn Mc Kenzie: Mr. Vice-President, again I congratulate the hon. Minister for trying to make a situation better. However, I would share some experiences of people who were not even mentally ill, but just old and institutionalized.

Before I do that, I want to say that in addition to the legal and the health aspects of this Bill, we also have a cultural aspect. For example, in Tobago whenever you put an old person, a relative or a mentally ill relative in an institution, you are looked down upon. You are considered very ungrateful or as someone who has abandoned or neglected your relative. So there is a cultural stain to the whole thing. Therefore, I want to say how happy I am that people who would be kept at home would also fall under this Mental Health (Amdt.) Bill.

We have also had within the last number of years, prominence given to some of the diseases we have actually never heard about or thought would have been common to us in Trinidad and Tobago—Alzheimers and so forth. When we read of it in the newspapers, we are stunned by the effects of it. We look at drugs, so many people who are on hard drugs are actually very crazy indeed, and we look at that also. These were things that did not happen 20 or 30 years ago.

I have had the experience of hearing nurses in geriatric wards complaining of people who are very old and have been put in these wards, and relatives come and get them to sign their old age pension cheques and go away with the money. I often hear nurses threatening the relatives when they come back to sign the next cheque the next month, that they would have to tell the social services division not to release the privilege to them anymore because the old people cannot get any toothpaste or soap, they only see them once per month. That is the fear I have, and probably in support of what Sen. Montano said.

We have to watch for those who claim to be "next of kin". Who are they? I think we need to say who would be considered next of kin. It just does not go to stepparents and so forth, you could have siblings. An old mother or father could have four or five children, one has been taking care of him or her for a number of years, and then you hear about someone being in charge of their affairs and property. This one comes up and says, "I would like to take granny or dad for the weekend," and dad never goes back, although that person is just having them for the weekend. They never take them back, just because of the privilege. I am saying that we have to be very careful into whose hands we put the privileges and responsibilities that we are looking to enforce in this Bill.

2.10 p.m.

I am saying, Mr. Vice-President, that these people need to be monitored over time. There needs to be something put in the Bill where people could probably appeal or seek to have the order reversed, because we can have real advantage being taken of people who cannot manage their affairs.

Mr. Vice-President, there is one other thing to which I wanted to refer. I looked at the amendment to section 37 and I need clarification. We have here where we are deleting the words “Director or a duly authorised medical officer” to be replaced by “Director, a duly authorised medical officer or qualified psychiatrist”. This is the amendment to section 37, but when we go to sections 44(2) and 47 of the parent Act, those remain. My question is: Is this amendment

only pertinent for certifying the patient's mental state so there is no need for a change in sections 44 and 47?

In my perusal of the parent Act, there were the words "Director or duly authorised medical officer" and we are now changing that to "Director, a duly authorised medical officer or qualified psychiatrist", but we are only doing it, according to this amendment, in section 37, yet we have references to these people in sections 44(2) and 47.

My point is, if the reason for changing it here is only for the certifying of the patient's mental state, fine, because in those other sections, the reason, or the calling into being of these officers is for a different reason. I would like to have some clarification there. If not, then it means we will have to change those terms in sections 44 and 47.

Thank you very much, Mr. Vice-President.

Sen. Diana Mahabir-Wyatt: Mr. Vice-President, like everybody else, I start by congratulating the Minister on this Bill which I think is an excellent one. I have a few queries, however, as usual, and I wonder whether he could help me with some of them.

Before I get into that, I wonder if I could just make a comment on the debate so far. Sen. Montano made a very interesting point about nutrition and mental health. He made a comment that sometimes the lack of nutrition can affect people, particularly, he said, men who came home after work tired and wanting something to eat. I would just like to mention that very often, women also come home after work tired and in need of something to eat but their condition is probably worse off, because they usually make sure that their children and husbands are fed first, but they do not beat their husbands as a result. I just thought I would mention that in passing. I could not let it pass.

One comment following this morning's debate, because I was very impressed when the Minister told us about the educational system that talks about family health and so forth in schools, and I was just wondering if mental health was going to be included in this. I think there is an awful lot of ignorance when it comes to mental health problems in the country. There is a stigma attached to mental illness whereas I believe that the statistic that 20 per cent of the population has problems as mentally ill, is very low, because mental illness, after all, covers things like depression, "tabanca", just some of the normal stress-induced

frustrations that we all get and none of us is immune from mental diseases. I think if we can get the understanding of this in the schools, the children, from young, will understand what stress does to people.

There is an excellent programme which has been operating for some time in Jamaica in the schools there run by a Trinidadian incidentally, called "Peace and Love in Schools" which teaches children conflict resolution, peer counselling and how to deal with emotional problems as they arise. They have put it into force because they have a particularly violent society. Well, ours is not all that far off, the way we are going these days. They deal with mental health problems as part of life and I just wondered if this was included in the help that is being given in the excellent programme that the Minister mentioned this morning.

Also, family medical health care; because mental health is part of family tensions why, very often, we end up in domestic violence situations and child abuse and abandonment. It is my experience working in the field of domestic violence that many medical practitioners themselves do not understand the effect of stress on people which gives rise in the end to child abuse and various other problems.

Likewise, with the paramedical scheme, I know that this is mental; I know they are there to deal with things like coronary problems and strokes, but there is a mental illness side of family medical health care and community medical health care that sometimes needs emergency paramedical help as well. I just thought I would mention that and ask a question of the Minister so that in his winding up, perhaps he could address these.

I also ask, because we are talking about mental health: What has been done about the recommendations made in the Quamina Report on the unfortunate incident at St. Ann's some time back? The public has not had an open and transparent report about what the final outcome of those recommendations were. I am trying to choose my words carefully because I do not want to make this more aggressive than it might otherwise sound. There were a number of people who died and I think that the most helpless people in our society are people who are institutionalized due to mental illness and if we, as a Senate, should be concerned about anything, we should be concerned about the most helpless and the most powerless people who cannot speak for themselves. I would like to know what has happened as a result of that.

Insofar as the Bill itself is concerned, I do not have any real problems with it. I am glad to be reassured that an approved home can include a private home. In

other words, if I were taking care of my ancient grandmother or my ancient mother who, in fact, did die of Alzheimer's and I know at that point people need 24 hours and 36 hours a day care, could that be called an approved home? I think from what Sen. Dr. Mc Kenzie said that this is what was implied there. I would just like to be reassured on that point.

The intentions of this Bill are laudatory. There is much that is noteworthy and I am hoping that the good intentions behind this Bill will go some way towards reassuring the public that mental health is an issue which is of recognized importance by this Government.

We recently had a very unfortunate incident when Commander Penco and his colleague both ended up dead. This was, obviously, an instance that arose out of a mental health problem. Mental health comes in different degrees and in different guises and I think that most people in this country understand the stresses in which this kind of situation can result.

But, Mr. Vice-President, I think that what happens is that the public as a whole is put under an awful lot of stress when its confidence is eroded by public statements being issued officially which are later disproved and later shown, generally in the press by subsequent investigation by persons who were obviously on the spot to comment on the evidence, that the official statements which were made in relation to the events were not, in fact, so.

As members of the public who are adults, I do not think we deserve to be lied to. I do not think we deserve the contempt that assumes that we cannot cope with the stress of hearing about a simple emotional triangle that ends in disaster. We have all known these in literature and, in fact, for most of our lives, and I do hope that this kind of attempt to cover up what the genuine facts now obviously appear to be, will cease.

It is parallel to my concern about the outcome of what happened with the Quamina Report when we have not really heard what has happened to the recommendations that were made about disciplinary action, for example, to be taken for those who were responsible. I really feel that if we are talking about mental health and we accept the fact that 80 per cent of the population is regarded as certifiably mentally healthy, then we ought to accept the fact that the majority of this population is adult enough and mature enough to be told the truth when a

tragedy occurs and not have some fabricated cover-up to try to reassure us that nothing, in fact, has happened, when something did.

Thank you, Mr. Vice-President.

Sen. Prof. Kenneth Ramchand: Mr. Vice-President, I just have a brief contribution mainly asking questions.

First, I would like to congratulate the hon. Minister and the Government for bringing this amendment to the Senate, but I hope I am not misreading it. It looks to me more like a Bill about the disposition of property, than about mental health. This does not really talk about what you are doing for the mentally ill. You are talking about what you do with their property. So, I am congratulating you on taking care of their property at this stage, not their health. I hope I am not misreading the Bill.

Dr. Rafeeq: What the Senator has said is partly correct, but the property will be used for looking after the patient as well.

Sen. Prof. K. Ramchand: Thank you, Minister, because I was going to ask that question next. In the section where the person making the application has to state what he proposes to do with the patient's property during the latter's illness, I was going to ask whether the legislation as it stands, would protect somebody who feels, "I am mentally ill and I am not running the empire well"; or, "I am not running the factory properly"; or, "I have a 14-year-old sweetheart and I want to sign everything over to her, so they want to control me, stop me from giving away the stuff or changing my will." Is the legislation going to be able to allow somebody who wants to interfere with someone in that way, to interfere with him? Or is it water-tight that all the applicant can do when he gets to take care of someoone's property is to use it for that person's maintenance and medical expenses?

I feel it would be a very serious matter if the legislation did not lock the use of the property into that specific purpose. If they wanted to say someone is mad and wanted to give his property to his 12-year-old girlfriend, they have to find other ways to stop him. But, this legislation should only allow them to take someone's property to use the assets to pay that person's bills and maintenance. I hope the Minister will clarify that and I hope that his legal-support team will be able to give us an assurance.

I would like to add my support to Sen. Montano's suggestion that the detailed statement of what the property consists of is a certified statement and I wonder if we can solve that by making an amendment to insert "certified".

I would very much like to lend my support to Sen. Montano's other proposal that the person who is taking care of the property should have to account regularly, either to the family, the heirs-to-be, the court, or some other authority. There must be an annual accounting of what is done with this person's property.

2.25 p.m.

I think the family has an interest in it too. Because if the member of the family who is in charge of it, is finding ways of signing it over to his own name, the rest of the family needs to know how the account is moving every year. I would not be satisfied with only the court receiving these reports. If the court gets the report, then members of the family should have access as well.

Finally, Mr. Vice-President, the introduction of a psychiatrist is very good. That is the man I am going to trust most, of the three people who are certifying that my nephew should take over my property. Because, the director of the hospital may not be a qualified psychiatrist. The duly authorized medical officer may not be a qualified psychiatrist. I am wondering whether the panel that makes the decision should not be beefed up to make sure that there are two qualified psychiatrists making that judgment.

Mr. Vice-President, those are just some questions that have come to my mind looking at the original legislation and looking at the amendments.

I thank you very much.

Sen. Cynthia Alfred: Mr. Vice-President, this Mental Health (Amdt.) Bill seeks to do certain things that are good. The intentions there are good and like my other colleagues, I would like to support the intent of the Bill.

I would like to express, however, one or two concerns. First, I would like to take the point made by Sen. Montano in respect of "next of kin". I think that term does need some sort of qualification. I say this because of something which happened in Tobago.

There was this particular person who was not so well. One part of his family decided that they would be the ones to see about his welfare. Whether he was pressed upon to give them his moneys and so forth, we do not know for sure. His common-law wife who had a child for him was kept out of the picture. The family who got all his wherewithal ceased to do anything for him—but, of course, they kept the moneys. That left the common-law family in some sort of predicament,

because the common-law wife could get nothing to support the child—a young woman—and so forth. What eventually happened is the Social Services Division in the division of health, took a decision. They decided when they looked at the case, the person who should have moneys to see about the gentleman had to be the common-law wife and child.

In a case like that, it goes to show how unscrupulous some persons could be. That is the thing that really worries me with this Bill. We have to have an element of trust, but there are unscrupulous people and I am glad to see provisions have been made with respect to accounting to the court *et cetera*. As Sen. Prof. Ramchand said also, the family of the mentally ill person must be involved as well, to ensure that no irregular practices take place.

I would like to commend the various institutions who see after the mentally-challenged people. For instance, there is a Tobago Council for Handicapped Children. It is for the mentally handicapped. That was established in 1974 and has been doing an excellent job. There is also the psychiatric ward adjacent to the Scarborough hospital. The nurses there are dedicated people, and when one visits one can see the difference in the patients. That ward takes care of persons who are temporarily, mentally challenged. The nurses are doing a very good job.

I would like, Mr. Vice-President, if you would permit me, to digress a little to talk about a situation which exists in Tobago. This situation is one where most persons would be surprised that a particular category of persons is causing mental stress to the Tobago population. I refer to a category of doctors. I repeat, Mr. Vice-President, a certain category of doctors at the Scarborough hospital, is subjecting the Tobago population—not only the Tobago population but even visiting people—to a form of mental stress that could only be described as cruel. I would give you some examples, Mr. Vice-President.

A patient is taken to the hospital. This particular patient—these are factual cases—goes in with abdominal pains. Plenty pains. One of the doctors said: "Nothing is wrong with you". So, he gives her a particular form of pharmaceutical. I am sure that the firm which makes that particular brand of pharmaceutical must laugh every time they get an order from Tobago, because, almost every patient who goes to that hospital—"Nothing is wrong with you"—and they are given this—

Sen. Shabazz: Panadol.

Sen. C. Alfred: Right, I do not want to call the name because I do not know if that is against the rules. The young lady was taken back home and a few hours later she had to be rushed back to the same hospital. At the time she got to the hospital she could not get out of her vehicle. She said: "I cannot walk".

Mr. Vice-President, all they did, was say: "Take her up to the ward, and tomorrow we will see what it is". They prescribed some more of the same.

Sen. Shabazz: Panadol.

Sen. C. Alfred: Fortunately, another doctor was passing, saw the person and asked what was happening. By that time the person was in and out of consciousness. That other doctor called for an immediate operation. Immediate! They said it was a 50-50 chance for the person to survive. After months of remaining in the hospital, the person finally survived. It was an intestinal problem. One of the doctors in that particular category of which I am speaking had said: "Nothing is wrong with you."

There was another instance, just a few days ago. A gentleman was taken in because his family realized that he had a stroke. The family was told: "Nothing is wrong with him; you Tobago people like to think that everybody is sick. Nothing is wrong with him. You all like too many X-rays". So, they sent him home. Of course, the man was already half-way to having a stroke. He went home. The family was frantic. They finally got a private doctor who went to look at the patient and said: "But this man should have been in hospital". He, as a private doctor, could not send him to hospital, because if he did he would not be looked at by some of these same people. Eventually they had to take him back to the hospital twice.

The second time, one of the category of doctors said: "I do not know what is your problem, there is nothing wrong with the man". Back home he went. When they took him back the third time, the man was deteriorating. Another doctor, outside of this category, said the man had a stroke. He recommended that the man come to Trinidad and go to certain institutions and get certain tests done and so forth.

Mr. Vice-President, the effect that this is having on the mental processes of the Tobago population is terrible. People are afraid to take their patients to that particular hospital because of that category of doctors.

What is even more interesting is this: that same category of doctors, on another mission, would go out into the community and supply free health-care to people in the community; much better service than they are rendering in the hospital. So, we have to conclude that the primary objectives of this category of people are to either bring the Tobago population to an early demise, or to send the Tobago population crazy.

Where would one expect to get health-care, if not in the hospital in the area? I know I have only given two instances, Mr. Vice-President. Every single day one can get at least six complaints from the general population with respect to these particular doctors.

2.35 p.m.

One of the conclusions reached is that they are not qualified. We do not know the process by which doctors are hired but we would like to have some sort of investigation into these people. If, in fact, they are qualified, then they are not doing their job properly, and they need to be looked at. If this continues, Mr. Vice-President, many people in Tobago are going to die and when they die those whom they leave behind are going to go off their heads because these are occasions when people, if attended to properly, can survive. It is only by the grace of God and some other doctors who are much more alert that people survive.

This situation has reached crisis proportions. I have spoken to one or two persons in the Assembly about it. They are aware of it and they are not happy about it either. I do not know if the initiative has to come from them, most likely, but I am making it public because, Mr. Vice-President, I have been besieged by people from Tobago to raise this question about this particular category of doctors. Notice I stress “this particular category”. There are other doctors in the hospital who are very good; they are caring, they prescribe adequately and so forth. They do not simply tell you, “Nothing is wrong with you”.

People are not mad to go to a hospital if nothing is wrong with them. They believe something is wrong and so they go to the doctor. When doctors keep saying “Nothing is wrong with you” and they start telling you things that are wrong with you as a person from Tobago, you begin to feel that something is mentally wrong with you. What is their objective? Mr. Vice-President— [*Interruption*]

Sen. Ramnath: What is this category you are talking about?

Sen. C. Alfred: If I wanted to say what the category was I would have said so.

Sen. Ramnath. Then you are misleading the Senate.

Sen. C. Alfred: Mr. Vice-President, there are some people who love to hear their own voices. Having made that point, if the Minister of Health is interested in further information I shall be glad to provide it. I will certainly not say, at this stage, what the category of doctors is. That would be most unfair, I think, to everyone. [*Interruption*] Mr. Vice-President, there are some people who understand and there are some people who do not, and then there are some of us who cannot understand and some people fall into that category.

I would like to thank you, Sir, for the opportunity to talk about that particular incident with respect to mental health. Once again I commend all those persons and the Minister at the Ministry for bringing in this area where other persons could look after people who are mentally ill. As I said, my reservation and fear are that, of course, we will have the unscrupulous but, then, if we do not have a certain element of trust and if, indeed, we seek to define "next of kin", I think that would go a long way towards making this amendment most effective. I, therefore, Mr. Vice-President, thank you.

Sen. Rev. Daniel Teelucksingh: Mr. Vice-President, this month is surely going to be an historic and exciting one for us in Trinidad and Tobago with the focus on the beautiful, the ugly and the mad; the beautiful of Chaguaramas, the ugly of Tamarind Square, the citadel of vagrant city—and this seems to be the side plot of the main story—and the mad who commit murder in high places and low places; very interesting month indeed.

It is noteworthy that while we relish the presence of our international visitors we once again become embarrassed about the ugliness in our streets. Yesterday, as was mentioned by previous speakers, the hon. Minister of Health at the Mental Health Workshop made that nerve-shattering revelation about 20 per cent of ourselves. He said that 20 per cent and possibly more of the Trinidad and Tobago population suffer from mental health problems. What a task for us! Fantastic revelation! While we look at the beautiful and we are embarrassed about the ugly in town, now we are 20 per cent mad.

Today, while on my way to the Senate, a fellow gave me a bad drive, Mr. Vice-President. I immediately wrote it down at the next traffic stop. He gave me a

bad drive while driving his little blue car with a bumper sticker which read "Innocent lunatic". I did not get the number of his car—"Innocent lunatic". Before I make a comment on the Bill and these concerns of mine, I want to agree with Sen. Mahabir-Wyatt where she made reference to that unfortunate incident at the Prime Minister's residence and the promise that the security forces of Trinidad and Tobago will be provided by the Government with more counsellors and psychological help.

I want to agree because I had a problem and I am glad she raised this. This is the madness I am talking about in high places. Suddenly we realize as a Government and as a people that the security forces need counsellors and psychologists, so much so that the next day the media—we come back to the media—was able to tell thousands and thousands of people in this country what was responsible for that, while the security forces and the Government said, "We are going to do investigations". This is why I said without a free press we will not be a free people. [*Desk thumping*].

There is a Ministry of Information. The police, the regiment and the coast guard are saying, "We are going to do an investigation", but thank God for the others who are investigating on our behalf. [*Desk thumping*] I just would like to advise the Government, you have the mechanism there, there is a Ministry of Information, there are departments of the media at your disposal, just level with the population and be honest with them and you will maintain the trust of the people. That is very important. Do not wait for others to do it. These are things that concern us and things that matter for us. Let us know and we would have so much respect for you.

Mr. Vice-President, I want to join with my colleagues in supporting the Mental Health (Amdt.) Bill, 1999, which focusses on the non-institutionalized mentally ill patient, giving the next of kin rights to manage the patient's affairs and property. I really want to compliment the hon. Minister of Health. I share this view with my colleagues that it is very difficult to legislate for all human behaviour. We know, and I share this concern which it seems we are all unanimous in saying, that there are instances—and I do not know how the framers of the Bill did not catch this one—of relatives and friends of a mentally ill patient being very dishonest in managing his affairs and property. I do not know how the framers of this Bill do not know that.

We have a chance to formulate a Bill like this—and I know it is a good Bill. The intention is good—but I feel—I wonder if I am right in using the word, "lacuna"—there is a major omission that we are going to discover tomorrow when the Bill is passed. Where is that missing clause in the Bill that spells out the question, as Sen. Montano stated it and others repeated, of responsibility and accountability for any who seek legal rights to control the property of the patient? If I support this Bill I want to support this Bill saying there is a major omission and it has to be included, if not today sometime in the future. You have to come back again. Something is wrong. You are really not protecting the patient. There have been so many instances of exploitation and injustice by those who now want to claim legal rights.

Mr. Vice-President, I want to close with a thought. I want to refer to some of those non-institutionalized mentally ill patients who roam the streets of Trinidad and Tobago. I am concerned about them. I understand they have an association now. Oh yes, they have an association and they are right. Last night some of them must have slept among the city's tombs in Lapeyrouse or under the stores on sheets of cardboard or on the cold but friendly doorways of Charlotte Street and Frederick Street.

These mentally disturbed are to be counted with the other socially displaced persons sometimes called vagrants. I hope that the same urgency of Government in removing them from the streets in May of 1999 will see us in June and thereafter really making an effort to remove all socially displaced citizens, including the mentally disturbed, from the streets of Trinidad and Tobago. I firmly believe, whatever the talk about rights, that no human being should be allowed to sleep on the streets whether they are poor, indifferent, careless or mad.

I remember the days of the Nelson Island Project. That was politically frustrated. Now I am hearing about the Wallerfield plan, but I believe that we must have a plan. We must utilize, whether it be land in Wallerfield or wherever, or the vagrants might say that is too far away, they were born and bred in Port of Spain and they want to be nearby. Get some land in Diego Martin, if we could find land, anywhere.

Sen. Ramnath: Goodwood Park.

Sen. Rev. D. Teelucksingh: Yes. I was about to say Chaguaramas, Sir. Yes, thank you. Get some land for them. We could find land for them.

Sen. Ramnath: Put them in Westmoorings.

Sen. Rev. D. Teelucksingh: Yes, put them anywhere we could find the land. We have the land. Find any suitable site, Mr. Vice-President, and build proper facilities for these our brothers and sisters in whom there yet may be some beauty that defies any pageant, the beauty that is the image of God in every human face. [*Desk thumping*]. There is too much wealth circulating in Port of Spain for us to be so insensitive to broken humanity and so lethargic in resolving this social problem. I might add, you know, not being facetious, if there are any profits from the Miss Universe Pageant, we may do well to use some of the profits to wash the faces and clothe those who are sometimes shunned as mentally disturbed and socially ugly. Thank you, Sir. [*Desk thumping*].

2.50 p.m.

Sen. Nafeesa Mohammed: I just would like to make a very brief contribution to this debate this afternoon. After that very passionate plea by Rev. Teelucksingh, we, too, on this side would like to endorse the concerns he expressed, and indeed, call on the Government to do something decisive about those socially displaced persons.

Mr. Vice-President, all day we have been sitting in this Chamber debating a Bill on the health sector, and we are now debating an amendment to the Mental Health Act. The amendment that is being proposed today seeks to expand the present provisions, so as to allow the next of kin of a non-institutionalized mentally ill patient to be able to apply to the court for an order allowing him to manage the patient's affairs and property.

All the previous speakers expressed some concerns in terms of the actual amendments, especially in relation to the words "next of kin," and the need for a proper definition of "next of kin". These are very legitimate concerns, Mr. Vice-President, and in fact, I would like to go a bit further, and suggest that the Government considers not just defining "next of kin", but also including in these amendments the word "spouse", which would include a *de facto* spouse, and proceed thereafter to use the usual definition that is being used nowadays to define a *de facto* spouse, because when you are dealing with mentally ill people, some of them could well be married.

In terms of a definition of "next of kin", Mr. Vice-President—I know Sen. Cowie is here, he is an attorney and is accustomed to the courts, and he too, would

be able to relate to this. As far as I am aware there is one definition in terms of next of kin, that I have come across in legal circles, and that is a definition that can be found in the Administration of Estate Ordinance. It is a very controverted kind of definition.

This is a 1950 piece of legislation which deals with the laws pertaining to the administration of estates in cases where a person has died without a will. In the definition we have in our statute books, as it relates to next of kin, it actually excludes a spouse, and for obvious reasons, because here it is you are dealing with an estate situation, and other provisions exist with respect to the status of a spouse in relation to an estate. Talking about extending the provisions of the Mental Health Act to persons who are not institutionalized, I feel that we should, in fact, go one step further and actually spell out the definition, a more modern definition of "next of kin", and to include, as well, a category of spouse, which will also include *de facto* spouse.

If I may just give an example of this definition of "next of kin" as it relates to this Administration of Estates Ordinance. It says in section 3(2) of the Administration of Estates Ordinance, Chap. 8:01 of the 1950 Laws of Trinidad and Tobago (Revised Ordinances):

> "(2) By the "next of kin" of a deceased are meant the person or persons nearest in degree of relationship, among those of kin within the meaning of the last preceding subsection, each step to or from the common ancestor reckoning as a degree of kinship; the half-blood reckoning together immediately after the whole blood of the same degree."

The previous section says that:

> "(1) No person shall be deemed of kin to a deceased person intestate for the purpose of beneficial succession to his estate who is not either lawful issue of the deceased, or his father or mother, or a grandfather or grandmother or great grandfather or great grandmother of the deceased, or the lawful issue of any such person."

It is a very controverted kind of definition, and it suggests a kind of blood relationship when you are defining "next of kin". That is why we are suggesting that perhaps, you would consider looking at including in these amendments a specific category of persons, namely the spouse, which will include a *de facto* spouse, and we proceed to define what a *de facto* spouse is, to keep it on par with

the more recent pieces of legislation that are being proposed and, as well, to specifically define the words "next of kin".

Mr. Vice-President, I came across a book, it is the *Eighth Report on the World Health Situation Volume 1*. It is entitled *Implementation of the Global Strategy for Health for all by the year 2000*. In this report it states that some time in 1977, there was a resolution passed, and this is something that has been adopted by all the member states of the World Health Organization, that these were the attainments by all citizens of the world by the year 2000, of a level of health which would permit them to lead a socially and economically productive life.

This is a goal that countries throughout the world are working towards and we are not far off from the year 2000. It is against this background when we are talking about amendments to the Regional Health Authorities Act, and so forth, that the whole decentralization process has been taking place. It is a global phenomenon.

Earlier on in this debate, Sen. Mahabir-Wyatt raised a question about the outcome of the *salmonella* report, I think. I suspect she was really referring to the Hyatali Commission that had been appointed some time in 1994, when there was an incident at the St. Ann's Hospital, that we can all remember as the "eggnog" incident. Coincidentally, whilst looking through the *Hansard* report this morning on the Regional Health Authorities Act that was passed in 1994, the then Minister of Health, the Hon. John Eckstein, as he was then, made reference to that incident at the St. Ann's Hospital. The outcome was that having identified the causes of the problem, whatever it was, even as a Minister of Health, his hands were tied. He was unable to take any action.

This is the justification that was being advanced for the move towards decentralization of the health system by the creation of Regional Health Authorities, because, there was a situation where, with the highest level of centralization, there was very little that could be done in terms of taking action, whether disciplinary or otherwise.

I think when it comes to this whole concept of decentralization, regardless of our political affiliation, we all seem to recognize the need for this process. And as we talk about decentralization, it is relevant because we are talking about amendments to the Mental Health Act. We know that in Trinidad and Tobago the St. Ann's Hospital is, in fact, the main mental health institution in our country. Only this weekend—it is rather coincidental I think—we were bombarded with a

documentary on our main local television station—I have always mentioned that I do not have immediate cable access, and therefore, I am stuck with TTT, TV6, and whatever it is called. The names are changing so rapidly under this administration sometimes I lose touch—but this weekend, on nearly every channel that I switched on, there was a documentary about the North West Regional Health Authority. I could not help but wonder if this is a deliberate propaganda kind of programme that was being aired to coincide with this debate.

In that documentary they zoomed in to the St. Ann's hospital, and they talked about some repairs that are taking place. Today we heard talk about the health sector reform programme, and I think the hon. Minister should be very open with us and tell us about the extent of the infrastructural work that is really taking place, if any, in terms of the main mental health institution in our country. I gather that some improvement to some wards may be going on, or may have taken place; we do not know. Let us know the extent of it and that they are serious and things are really happening in terms of improvement, particularly with the infrastructure.

3.00 p.m.

Certainly, if I have to visit the St. Ann's hospital, I would be a little apprehensive or intimidated to go, and I would like to know that it is a more user-friendly place. Am I free to walk into the compound and not be molested or harassed? Let us know to what extent you are making the institution more user-friendly. In other words, let us know what is happening in terms of mental health. I understand there is a workshop taking place now. Let us know what is happening in relation to the whole Health Sector Reform Programme.

Mr. Vice-President, in talking about mental health, we have heard of different categories of mental health patients. I would just like to give some statistics here from a global perspective, and I am quoting from the *The Implementation of the Global Strategy for Health for All by the Year 2000 Eighth Report*. It says here in terms of mental and neurological disorders:

> "In the world today there are at least 300 million people suffering from a mental or neurological disorder or impairment that mars their lives and presents a heavy burden for their families and communities.
>
> In terms of amount of suffering, epilepsy affects around 8 million people in developed countries and over 35 million in the rest of the world.
>
> The world population of the mentally retarded numbers between 90 and 130 million. Schizophrenia and other psychoses affect 55 million and some

120 million suffer from affective disorders. The senile dementias affect 5—8 per cent of the population aged over 65, or around 30 million old people. Worldwide, 15—35 per cent of all first-level care consultations are mainly for psychological disorders."

Mr. Vice-President, when we look at our local situation, I cannot recall if the hon. Minister in his presentation gave us any idea of the numbers of registered mentally ill persons or patients in our country.

Dr. Rafeeq: They amount to 60,000.

Sen. N. Mohammed: Those would be the people of whom the Government has a record. When we talk about extending the provisions of the current legislation to include non-institutionalized patients, we certainly would like to have an idea of the numbers of non-institutionalized persons who exist in our country.

Certainly, this will have a very significant impact in terms of the fact, Mr. Vice-President, that in Trinidad and Tobago, we know there is a very serious drug problem. There are hundreds, if not thousands, of persons who are not in any institution and have become mentally unsound by virtue of substance abuse, whether it is as a result of cocaine, marijuana or alcohol consumption. We have serious social problems associated with drugs in our country.

If we are talking about assisting the non-institutionalized persons, we would like to know something more about how they are going to reach out to those persons. The Minister made mention in his presentation about community care for mentally ill persons. I think he said that is the new focus of the Ministry, but do we have the personnel, the relevant trained persons, to go out there and reach out to the mentally ill persons in our society? I am talking specifically about our social workers. Do they have the level of training that is required of them to go out into the communities and to genuinely reach out to those persons in our society who are in need of help?

Mr. Vice-President, with these few words, I would simply like to endorse the comments made by previous speakers, particularly by my colleagues on this side, and to indicate that we do, in fact, support the intent of the legislation, but we would like to see the definition of "next of kin" clearly spelt out and, as well, to include a definition of "spouse" which would, include "*de facto* spouse".

I thank you, Mr. Vice-President.

The Minister of Health (Dr. The Hon. Hamza Rafeeq): Mr. Vice-President, we had some very worthwhile contributions from the other side, and I would just like to deal briefly with a couple of them. Sen. Montano mentioned non-institutionalized patients. In a way, that was already taken care of by section 28 which says that the Minister may approve a house as an approved home, but section 48 of the Act, where a judge can make an order, says:

> "The provisions of this Part do not apply to a voluntary patient…in an approved home or a private hospital."

It only applies to a psychiatric ward or the hospital. So, even if one designates a private home as an approved home, that section does not apply.

The second issue I want to deal with is the issue of mental health promotion. Sen. Mahabir-Wyatt asked about this. We have developed a mental health plan. It has taken us a couple of years, but it is in its final stages now. One would have read in the newspaper that there is an on-going workshop on mental health promotion at this point at one of our hotels. The mental health plan is quite exhaustive. It deals with mental health promotion at all levels, including the school. I would like to give some more information on the mental health plan, but maybe on another occasion.

Sen. Mahabir-Wyatt: Mr. Vice-President, I am sorry to interrupt the Minister, but we are a little unsure about the explanation he gave to Sen. Montano. Does this mean that if one is looking after a couple of elderly relatives in one's own home, one can designate that home as an appropriate approved home?

Dr. The Hon. H. Rafeeq: I was just saying that the Minister can approve a house as an approved home for mentally ill patients. That, however, does not qualify for a person within that institution to approach the court. It specially states here that for one to approach the court, one must be either in a psychiatric ward or a hospital. So that does not qualify. The amendment will deal with that.

I just want to mention to Sen. Alfred that I am not too sure, myself, of the group of doctors about whom she is speaking that is giving this level of care in Tobago, and I suspect she is talking about foreign doctors. The Tobago House of Assembly and the Tobago Regional Health Authority, of course, have certain responsibilities for health in Tobago, but we would like to get—and I am saying it publicly—reports of these incidents so that we can institute our own action.

Mr. Vice-President, I think there is need to seriously look at some of the issues that have been raised in terms of amendments like defining next of kin and so forth, and I would like, at this point in time, to move that we adjourn the debate on this Bill. I will consider the amendments and we will resume the debate at another session. *[Desk thumping]*

Question put and agreed to, That the debate be adjourned.

Sen. Rev. Teelucksingh: Since you are pulling back the Bill to look at it again, will the question of accountability be considered?

Dr. The Hon. H. Rafeeq: Yes.

Sen. Rev. Teelucksingh: Thank you very much. That is very important.

DOMESTIC VIOLENCE BILL

Order for second reading read.

The Minister of Culture and Gender Affairs (Sen. Dr. The Hon. Daphne Phillips): Mr. Vice-President, I beg to move that,

> That a Bill to provide greater protection for victims of domestic violence be now read a second time.

The purpose of the Bill is to offer victims of domestic violence greater protection by increasing the power and jurisdiction of the court, enlarging the scope and ambit of the protection order, by providing harsher penalties and by giving the police greater powers in respect of their ability to intervene in domestic violence situations.

Mr. Vice-President, in Trinidad and Tobago, between 1990 and 1995, a total of 80 women, two men and 23 children were murdered as a result of domestic violence, yielding an average of 14 women and four children per year. In 1996 there were 16 murders of this type: four children, three men and nine women. In 1997 there were 12 such murders: three children, one man and eight women. The 1998 figures indicate that 23 persons were killed through domestic violence: 13 women, 6 children and 4 men.

The annual incidences of murder certainly have not declined. Indeed, 1998 witnessed the highest annual figure of the decade with murders of children being the highest in any one year, while murders of women through domestic violence always constitute the vast majority of persons killed in this manner.

Statistics on assault and battery in relation to domestic violence have, however, declined substantively from 1,143 reports in 1993 to 1,003 in 1994, 501 in 1995 and 352 in 1996. The year 1996 is the last year for which these statistics are available. This may be an indication that while the available legislation and other measures have had some success in reducing the less serious incidences of domestic violence, there is much room and justification for strengthening the provisions of the legislation.

3.15 p.m.

Mr. Vice-President, the issue of violence against women has been a major concern both nationally and internationally. Violence against women whether it be in the form of domestic abuse or sexual violence undermines the fundamental rights and freedoms of women. It deprives women of their right to a life of dignity and is an obstacle to achieving equality.

Mr. Vice-President, if you look at the policy initiatives which have been undertaken, and these are non-legal, non-legislative activities, we see that the whole of non-governmental agencies cannot underscore the efforts to address violence against women in the domestic environment. Non-governmental agencies have been addressing the issues through public awareness initiatives for several years and have been instrumental, through agitation and lobbying, in influencing Government's decision to implement legislation on domestic violence which was eventually enacted in 1991.

In 1996, in the context of an increasingly disturbing trend of murders of women and children, the now Ministry of Culture and Gender Affairs, undertook the preparation of a comprehensive programme including plans and provision of a National Domestic Violence toll-free hotline 800-SAVE; the creation of a Domestic Violence Unit to concentrate on public awareness, community preventive programmes and educational exercises on the issue of domestic violence; as well as, the initiation of action for the reform of the Domestic Violence Act.

In 1996, the Community Policing Unit was also instituted and mandated to engage in preventing policing exercises including the addressing of domestic violence matters.

The Domestic Violence Unit manages the domestic violence hotline and offers a 24-hour seven days per week service to the public. It also promotes integrated

policies for the protection and promotion of persons vulnerable to domestic violence; it collects and analyses data related to this matter.

The Gender Affairs Division in collaboration with several non-governmental organizations, mounts workshops and training sessions which target the police, various shelters and hotline workers. Counselling is also provided by the Family Services Division of the Ministry of Social Development now Social and Community Development.

Mr. Vice-President, continuing with the non-legislative measures, the division of Gender Affairs has created male support groups and programmes; it pursues the policy of gender training and sensitization aimed at attitude change and the elimination of prejudices, whilst supporting initiatives of women's organizations and other non-governmental organizations in the field of violence protection against women and children.

In 1998, the Ministry of Culture and Gender Affairs launched a community-based "Drop-in Information Centre Project" with some assistance from the UNDP which offers members of the public the opportunity to access assistance for matters related to domestic violence including rape, sexual assault, family conflict and other matters within their communities. The Ministry is now seeking Cabinet's approval for the retention and strengthening of this project.

Cabinet also approved a multi-sectorial team of professionals, including representatives from Government agencies, non-governmental agencies and the University of the West Indies. These include among the government agencies, representatives from the Ministries of Planning and Development, National Security, Social and Community Development, Health, the Judiciary and Magistracy. There are also representatives from non-governmental organizations including the Rape Crisis Centre, Families in Action, the Shelter for Battered Women and representatives from the University of the West Indies, St. Augustine, including a demographer, statistician and information specialist. These people will form a committee to work towards the production of a comprehensive, integrated national policy on domestic violence and an action plan for social programmes. Report of that committee is expected shortly.

Mr. Vice-President, we turn to international initiatives. Trinidad and Tobago is a signatory to a number of conventions relating to the rights of women. Amongst them are the United Nations Convention on the Elimination of All Forms of Discrimination Against Women, the Draft United Nations Declaration

and the Inter American Convention on the Prevention, Punishment and Eradication of Violence Against Women.

Increasing violence against women has also been the concern for other fora—the Commonwealth Ministers of Gender Affairs, the Commonwealth Women Parliamentarians and the Commonwealth Law Ministers. The most recent meeting of this last named body took place in Port of Spain last week, at which the matter of domestic violence was accorded some degree of prominence on that agenda.

Violence against women is also on the agenda of CARICOM in CARICOM's Women's fora, as well as, on the programme of the Organization of American States, the Inter-American Commission on Women which is known as "CIM" and on programmes and world projects such as the 1995 Beijing Conference, which produced the Beijing Platform for Action which strongly supports action for the elimination of violence to women and children.

Mr. Vice-President, Trinidad and Tobago is seeking to effectively respond to the challenge of compliance with international standards and endorses the initiatives by Canada in formulating and piloting the adoption of model strategies and practical measures and securing its adoption by the United Nations Commission on crime prevention and criminal justice and the subsequent endorsement of these model strategies by the United Nations General Assembly.

Mr. Vice-President, if you look at the impact of these international mechanisms on what we do, the United Nations Declaration on the Elimination of Violence Against Women calls upon member states to enact appropriate laws and procedures to give women redress and to sensitize judges, lawyers and policemen to the problems of violence against women.

In Trinidad and Tobago, despite the enactment of the 1986 Sexual Offences Act and the 1991 Domestic Violence Act, both statistics and media reports reveal a disturbing trend in the society. There is concern that the existing law does not adequately address the issue and that there is disproportionately low sentencing, judicial bias, police indifference and procedural regulations which seem to punish the victim rather than the accused.

Mr. Vice-President there is also concern that the law does not address the cause of violence and its wider implications for society at large.

3.25 p.m.

There is now a demand for more effective legislative provisions to address the various manifestations of violence being perpetrated against women. It is

generally felt that if women are to receive the protection of the law, then the state's response must be strengthened and new legislation should address the issue of appropriate penal sanctions such as the non-bailability of such offences; mandatory minimum sentences; in camera video link trials to facilitate the giving of evidence, and compassion for victims.

Mr. Vice-President, we turn to the Domestic Violence legislation, the 1991 Act. At the time of its enactment, it was model legislation. It empowered the Magistrates' Courts for the first time to grant injunctive relief in the form of protection orders to victims of abuse. It was designed to protect from violence by making available a simple, inexpensive and speedy form of relief. The legislation has, however, proven to be unsatisfactory as it has made no serious impact on the incidence of domestic violence. The upsurge of violence in domestic situations continues unabated regardless of legal or non-legal provisions and circumstances. One report estimates that violence now occurs in over 75 per cent of relationships in Trinidad and Tobago.

Research and consultation have shown that there are elements in the system which deter women from approaching the courts and restrict the capabilities of law enforcement officers in dealing with these offences. The Law Commission has discovered that there are four major obstacles which hinder the effectiveness of that 1991 legislation and which render it difficult for abused women to take full advantage of, or receive the protection of the law.

The first of these four obstacles is that financial considerations often militate against the full utilization of the remedies provided in the law as persons who receive protection orders are often left without financial support.

A second difficulty is that the intervention by the police in domestic violence cases is not timely, moreover, the lack of clarity as to their roles and functions in such cases often leads to an indifferent and lukewarm response.

Thirdly the definition of domestic violence in the 1991 statute fails to address financial, psychological, emotional and sexual abuse.

Fourthly, the court is not vested with sufficient jurisdiction to provide the type of remedies which would afford protection and relief whilst at the same time imposing abuser accountability.

The 1999 Domestic Violence Bill seeks to effectively address these shortcomings and employs a range of strategies in order to allow the criminal justice system to respond more effectively to domestic violence.

I turn now to the Domestic Violence (Amdt.) Bill. There are four major objectives of the Bill which are: to enhance the powers and jurisdiction of the Magistrate's Court, to enlarge the ambit of the protection order, to ensure that the response of the police is efficient and effective, and to provide harsher penalties.

The Bill accomplishes these objectives by making 15 reform measures. These measures are: the definition of domestic violence is extended to include sexual abuse, emotional and psychological abuse, and financial abuse. Secondly, the Bill introduces the concept of cohabitant or former co-habitant in the definition of spouse and it extends the range of persons who may make applications for protection order to include police officer, probation officer and a social worker who may apply on behalf of the abused.

Thirdly, the Bill extends the ambit of the protection order to include a member of the same household.

Fourthly, it enlarges the ambit of the protection order by conferring on the Magistrates' Court additional property remedies by prohibiting the conversion of property. It widens the jurisdiction of the court by allowing an order to be applied for the benefit of a child or a dependant person who is not before the court. It also provides victim compensation. It empowers the court to provide financial relief for the benefit of an applicant or any child by directing payment of interim monetary relief and also directing the continuance of payment in respect of rent or mortgage.

The Bill also orders that firearms and other weapons be relinquished and it mandates victim assistance on the part of the police. It also seeks to put in place a system which will allow the court to monitor counselling orders; it extends the duration for which a protection order may be made up to three years; it allows the court to take into consideration the history, or the pattern of violence in respect of a respondent's behaviour when making a protection order. Next, it limits duration of an interim order to 21 days in the first instance, but for a maximum of 42 days in cases of extension.

Where a protection order is made in respect of a child or dependant person, the Bill mandates the court to take into account the views of the child or the dependant person. Next, it extends the ambit of substituted service to include

service by advertisement in a daily newspaper. The Bill also increases penalties for breach of the protection order; it mandates the response of the police and establishes a domestic violence register; it confers powers of entry to the police allowing the police to enter premises without a warrant in order to investigate certain incidences of domestic violence.

The Bill will allow the court to place a respondent on a bond of good behaviour in certain prescribed circumstances, and finally, it provides for an order of the court to remain enforceable even though an appeal has been lodged. These are the changes to the Bill.

Mr. Vice-President, these changes are so comprehensive that this Bill will repeal the 1991 Act. I turn now to the Bill and move from clause to clause.

In clause 1 the concept of cohabitant is introduced as such a person who would now be entitled to seek the protection of the court and obtain injunctive relief. This would allow for consistency in the terminology being used in the new legislation which seeks to accord rights to persons who are not in formal marriage relationships.

The definition of domestic violence has now been enlarged to include not only physical violence, but also sexual, emotional or psychological abuse and to also include financial abuse. Unlike the existing Act, the proposed new definition is comprehensive and seeks to adopt the broadest possible definition of acts of domestic violence by generally defining the various forms of violence whilst incorporating into the definition a wide range of established offences as listed in the First Schedule. It is felt that legislation should now entitle an individual to apply for an order where the court is of the view that the behaviour engaged in is of a controlling and abusive type, and in many jurisdictions financial control which is aimed at ensuring the dependency of the person is now considered to be the type of controlling behaviour which should trigger the entitlement to apply for an order.

Clause 4 enlarges the category of persons in respect of whom a protection order may be granted, and to also include members of the household of the spouse of the respondent. Existing legislation on domestic violence already affords protection to a wide category of persons in family relationships such as a spouse which now includes a cohabitant, or a former cohabitant, a child, a dependant person, a person who has a child in common with the respondent. The proposed Bill now seeks to extend this category even further to include any other person who may be a member of the household either of the victim or of the respondent.

The policy behind the proposed new legislation is that domestic violence legislation should seek to target only those categories of persons who are in stable family-life or cohabiting relationships and who are emotionally involved, vulnerable, dependent and prone to ongoing abuse. We are also concerned that the limited resources of the court and police should focus primarily on the domestic situations and this extension to members of the same household is in keeping with the approach taken in jurisdictions like the United Kingdom, Canada, the United States of America, Barbados and St. Vincent. Other persons who are in informal visiting or dating relationships can avail themselves of the existing criminal law.

In clause 6 of this Bill, it attempts to make great strides by introducing a number of new remedies designed to protect and enhance the well-being of a person who has been subjected to abuse and who is seeking the protection of the courts. It would provide a wider array of remedies, in particular, remedies relating to the seizure of weapons and firearms and the occupation of the home.

Clause 6(1)(a)(v) is significant in that it attempts to address the situation where the court makes a protection order allowing a victim of abuse to remain in the home or perhaps to have use of a motor vehicle and the respondent easily circumvents the court’s order by disposing of property which may be legally in his name.

3.40 p.m.

Mr. Vice-President, clause 6, therefore, extends the jurisdiction of the Magistrate's Court to make an order which would prohibit a person from dealing with property in which the applicant may have an interest. The conferral of property remedies on the Magistrate's Court must now be viewed as necessary, if the legal response to domestic violence is to be effective and the courts are to be assured that the orders are not easily circumvented.

Clause 6(1)(b) is also significant in that it gives the court the discretion when making a protection order for the benefit of an applicant, to extend that order to any child or dependant of the household, and this is considered necessary. Such discretion would allow the court to extend protection to other persons within the household, in particular in those circumstances where there are children, very old persons, disabled, or dependant persons who may be incapable of making competent decisions and who may have no alternative but to remain in the household in which the violence and abuse is taking place. The objective of this clause is to allow the courts in such a situation to provide relief for those persons

even though they are not before the courts. Precedent for such an approach could now be seen in New Zealand and other Australian jurisdictions, such provisions could now be considered reasonably justified when one considers the prevailing circumstances of our society.

Mr. Vice-President, clause 6(6) in an attempt to create a more effective legal response to domestic abuse, would empower the court to direct a police officer to assist victims in certain circumstances and to remove a respondent from his or her place of residence. It is well known that separation from an abusive partner increases the risk of violence, and the state's response should be to reduce the overall risk as far as possible by mandating the right response from the police. In many jurisdictions victim assistance after an order is made is seen as an essential component in preventing the escalation of abuse, and the court and the police are critical at this stage in ensuring a coordinated and effective response. The philosophy behind the new Bill is that legislation should now mandate the response of the Police. Failure of the Police to act upon a direction of the court can, in these circumstances, amount to contempt.

Clause 6(1)(c)(ii) proposes the payment of compensation to victims of abuse for monetary loss incurred as a result of violence perpetrated. This would not include physical injury but would be limited to loss of earnings, medical and accommodation expenses, and legal costs as stipulated in subsection (4). Whilst the paramount concern of domestic violence legislation should be, indeed, protection from violence, it is felt that everything should now be done to strengthen the criminal justice response. Legislative reform should now seek to reinforce abuse accountability, while at the same time addressing the financial losses suffered by victims.

It has been discovered that under the existing legislation, financial considerations often militate against the full utilization of the remedies provided, as persons who receive protection orders are often left without financial support. The ability of our courts to now provide victim compensation and other forms of monetary relief, would encourage those victims of domestic violence who are otherwise afraid to seek relief because of financial constraints, and the fear of losing financial support from their partner.

In other jurisdictions, abuser accountability has been seen as one way of imposing swift, consistent and meaningful sanctions against abusive behaviour, and many American and Canadian statutes, and statutes from Singapore now include provisions for compensation.

Apart from compensation, clause 6(1)(iii), (iv) and (vi) allow the court to make orders for interim monetary relief in respect of maintenance for a child, where there is no existing order, and also to direct the continuance of payments in respect of rents and mortgages, that is for premises occupied by the applicant, and to generally ensure that reasonable care is provided in respect of children and dependant persons. The effect of all these remedies is to safeguard the financial status of the victim and to guarantee that the respondent cannot use monetary dependence as a weapon against his partner, and as a means of defeating the protective barrier which the court is attempting to create around the victim.

Another important reform which the Bill seeks to bring about is also contained in clause 6(3). It seeks to put in place a mechanism which would allow the court to monitor the counselling orders which are now easily ignored. It is felt that it is important for the court to be able to monitor the prognosis of a respondent and to penalize him or her for failure to submit to therapy or counselling.

It is observed that under clause 20(2) a specific penalty of $3,000 is prescribed where the respondent refuses or neglects to comply with the direction for counsel. There must now be greater emphasis through some counselling and therapy, and it is now incumbent on the Magistrates' Court to put in place the type of administrative machinery which will be necessary to ensure compliance with these orders.

Again, clause 6(7) is also intended to facilitate the applicant by allowing the court, when making a protection order, to also make an order under section 25 of the Family Law. This is the Act for the duration of the protection order and to allow the breach of a maintenance order, made under this Act, to be also considered and dealt with as a breach of a protection order. This would assist an abused person or victim from having the expense and inconvenience after an experience when they must appear before the courts at different times in order to obtain the different types of orders which are needed.

In clause 6(9) the lifetime of a protection order has increased from one year to three years. This would allow victims an extended period of time to consider the options available to them in dealing with their personal relationships.

The provisions of clause 7 now exist in the present legislation, except that paragraph (a) would allow the courts to take into account the history and the pattern of violence which has occurred, and whether any previous protection or interim order has been issued when considering whether or not to impose any of

the prohibitions or directions specified under clause 6. In order to facilitate the type of information which the court has before it when making a protection order, clause 7 must be considered in conjunction with clause 21 of the Bill, which now mandates the police to complete a domestic violence report in the form of a national domestic violence register. It is intended that this information would be made available to the courts in order to assist in the determination of the penalties and the type and extent of protection which would be afforded to a particular victim.

Clause 8 provides for the making of interim orders. This is not new, but it now limits the period from which an interim order may be made to 21 days in the first instance, and not exceeding 42 days after the date of the application. Under the present legislation, interim orders are being made for long, extended periods before coming back to the court for a determination. This is not desirable, as when an order of this type is made it affects the constitutional rights of a person, depriving him or her of property and liberty and should, therefore, be dealt with speedily. Clause 8, therefore, seeks to address the situation by making it compulsory for an interim order to be determined by the court within specified time periods.

Part III of the Bill contains no new provisions as it is mainly procedural. What should be noted, however, is that while under the present law procedural matters are found dispersed throughout the legislation, the Bill now attempts to bring all these matters under one part, so that the legislation may be more structured and made simpler and more easily understood by both legal practitioners and the public at large.

Clause 17(1) seeks to address the problem often experienced by victims in effecting service upon a respondent. An attempt is made in this Bill to allow service by advertisement in the daily newspapers in those circumstances where the respondent is seeking to evade service. This is another attempt to ease the victim of domestic violence, to allow the law to alleviate some of the day-to-day problems now experienced in the criminal justice process.

Part IV of the Bill repeats the provisions of existing law with respect to variation and revocation of orders, and contains no new reforms. In Part V it is now important that domestic violence legislation address concerns dealing with the adequacy of penalties now provided in respect of violations for a breach of protection order, or an undertaking. Part V therefore, introduces increased

penalties on a sliding scale to affect the extent of violation to send a clear message to society that domestic violence will not be tolerated and would now attract very heavy penal sanctions.

Part VI deals with the police powers of entry and arrest, and is revolutionary, in that, under clause 21, duties of the police officers in dealing with domestic violence are stipulated, and they would now be mandated by law to respond to every request for assistance and take steps to enforce the law effectively. The domestic violence register to be established in accordance with clause 21 will facilitate access to information for both law enforcement officers and the courts. Bearing in mind that the police response to domestic violence cases has often been identified as a major obstacle in dealing with the scourge, it was considered necessary that the new legislation now state clearly the role and function of the police, so that request for protection is not assigned a lower priority, and reports alleging domestic abuse are not trivialized.

3.55 p.m.

It is to be noted that model domestic violence legislation prepared by the United Nations Commission on Human Rights in 1996 recommended that states seeking to enact comprehensive domestic violence laws, address the issue of police duties and specifically provide for it.

Attention is to be drawn to Form 7 of the Schedule which prescribes a very detailed report to be completed by an investigating officer who will be required to state clearly the reasons why an arrest is not made or charges preferred in any specific case, and to recommend follow-up action in dealing with reports of domestic violence. This will ensure that a more proactive approach is taken towards the problem of domestic violence. These clauses will enhance the police response to domestic violence and will enable the building of information in respect of a respondent so as to assist the police and the court in future prosecutions.

In order to assist the police in providing protection to victims, clause 23 provides additional powers to enter premises to investigate alleged incidences of domestic violence and to make an arrest without a warrant where there is reasonable cause to believe that a person is engaging in violent, excessive and life-threatening conduct towards a person, and failure to act may result in serious injury or death.

Without such clear powers of entry the police are, indeed, hamstrung and are not in a position to render immediate assistance or intervene in domestic crises and, therefore, cannot offer assistance, or safeguard the rights and interests of an abused person, or even attempt to prevent further abuse or serious injury until a warrant is obtained.

The underlying philosophy of this proposed clause 23 is that fear, however, legitimate of abuse of police power, should not take precedence over a person's basic human rights to physical safety and the protection of the law.

It is now necessary that the law of privacy be balanced against the welfare and safety of women and children. It is to be observed that certain safeguards have been introduced in this clause to act as a check on any alleged abuse of police power, namely, the mandatory reporting of any such entry without a warrant to the Commissioner of Police.

By clause 23(4), it will be compulsory for a police officer exercising such powers to immediately submit a written report to the Commissioner of Police indicating his reasons and the circumstances under which he was compelled to exercise such authority, and the manner in which he conducted his investigations. This power is not new.

Mr. Vice-President: The speaking time of the hon. Senator has expired.

Motion made, That the hon. Senator's speaking time be extended by 15 minutes. [*Hon. W. Mark*]

Question put and agreed to.

Sen. Dr. The Hon. D. Phillips: Thank you, Mr. Vice-President.

The power of police entry without a warrant is not new, as under section 3(6) of our Criminal Law Act, the police have been afforded the power to enter any place without a warrant where an arrestable offence is being committed. Moreover, Barbados in its Domestic Violence Act, enables a member of the police force to enter private premises without a warrant to investigate any alleged incidences of domestic violence. The provision is clearly aimed at expanding the breadth and depth of protection which the law now offers.

The intervention of the police to help victims of abuse and increased powers to do so, can now be justified having regard to the recent spate of violence being meted out to women and children in our society. There is now a necessity to achieve a more realistic relationship between the law and the victims and, in this

regard, strong legislative action is necessary and is in the best interest of the country as a whole. Our statistics clearly reveal the dire need for immediate intervention by the police on behalf of domestic violence victims.

Clause 25(2)—whilst the previous clauses do call for the heavy hand of the law, clause 25(2) takes into consideration those unfortunate incidences which may occur at one time or another in any relationship which give the court a discretion to place a defendant on a bond of good behaviour where the incident is perhaps only an isolated one, and where the conduct is not sufficiently grave to warrant any of the harsh remedies provided in clause 6.

There are indeed times when in the interest of preserving the family unit, the court must exercise such a discretion while still ensuring that a person is protected from violence. To ensure that this is done, clause 25(3) prescribes that the court may, in these circumstances, order counselling and report back to the courts to guarantee that a domestic situation is not deteriorating.

Clause 26—one of the hindrances to effective prosecution of domestic violence cases has been the failure or the refusal of the witness, who is usually the victim, to proceed with the complaint. This is usually due to fear, or to false promises being made by the accused, or to his coercing the victim to withdraw the complaint. This has led to a certain amount of inertia by the police in proceeding to prosecute these cases. To address this situation, clause 26 will allow the court to deal with a refractory witness by allowing the statement originally given to the police, on forming part of the police record, to be admitted into evidence. So that the court may draw any reasonable inferences from the conduct of the victim and from the content of that statement. It must be recognized that domestic violence must now be dealt with by the state as a criminal offence and not as a private matter.

Under Part VII, the existing provisions with respect to bail reappear. One final reform is however contained in clause 28(1) which addresses representations made by several attorneys and other persons concerning appeals from making of a protection order which, under the present law, operates as a stay of an order or judgment. This, in effect, removes the court's protection from the victim where an appeal has been lodged against the making of a protection order. The respondent, therefore, subverts the effects of the court by simply lodging a notice of appeal. It is, therefore, necessary to specifically provide in the domestic violence legislation that an appeal from an order or judgment under the Bill shall not operate as a stay of proceedings unless the Court of Appeal otherwise directs.

This Bill will require a three-fifths majority as it infringes the fundamental rights guaranteed to the individual by the Constitution. These measures are, however, necessary if we are to further empower the courts and the law enforcement officers to deal more effectively and efficiently with the rising incidents of behaviour in this area. The reforms can be considered as being reasonably justified in a society which has proper respect for rights of the individuals and which seeks to provide legal measures to accord with the prevailing circumstances in our society.

Mr. Vice-President, these are the reform measures which reflect that the time has come when legislative action has to be taken to create greater enforcement power in order to stem the escalating tide of domestic violence and domestic abuse in our society.

Mr. Vice-President, I beg to move.

The Minister of Public Administration (Sen. The Hon. Wade Mark): Mr. Vice-President, would you like to put the question first? I want to move to have the Senate adjourned, Sir.

Question proposed.

ADJOURNMENT

The Minister of Public Administration (Sen. The Hon. Wade Mark): Mr. Vice-President, before moving to have this honourable Senate adjourned to May 18, 1999 may I take this opportunity to inform Senators how we are going to proceed at the next sitting of this honourable Senate.

We are going to continue our discussions on this Bill, an Act to provide greater protection for victims of domestic violence; then, we would like to proceed with an Act to establish a system of plea discussions and plea agreements. We will go on to an Act for the promotion of investment in Trinidad and Tobago—that is Bill No. 3—and we will then proceed to deal with an Act to amend the Mental Health Act, Chap. 28:02. We intend to proceed thereafter with Bills Nos.10, 11, 12, 13, 14 and 15.

I beg to move that this Senate do now adjourn to Tuesday, May 18, 1999 at 1.30 p.m.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 4.10 p.m.