THE
PARLIAMENTARY DEBATES
OFFICIAL REPORT

IN THE FOURTH SESSION OF THE FIFTH PARLIAMENT OF THE REPUBLIC OF TRINIDAD AND TOBAGO WHICH OPENED ON NOVEMBER 27, 1995

SESSION 1998—1999 **VOLUME 16**

SENATE

Tuesday, July 6, 1999

The Senate met at 1.32 p.m.

PRAYERS

[MR. PRESIDENT *in the Chair]*

LEAVE OF ABSENCE

Mr. President: Hon. Senators, leave of absence from today's sitting has been granted to Sen. Prof. Kenneth Ramchand. Continuing leave of absence has been approved to Sen. Selwyn John for the period July 2—9, 1999.

PAPERS LAID

1. Report of the Auditor General of the Republic of Trinidad and Tobago on the Special Account and Statement of Expenditure Disbursements in respect of the Business Expansion and Industrial Restructuring Loan (BEIRL) Project for the year ended December 31, 1997 as required by Section 4.01(b)(i) and (c)(iv) of the Loan Agreement No. 3432 TR between the Government of the Republic of Trinidad and Tobago and the International Bank for Reconstruction and Development. *[The Minister of Public Administration (Sen. The Hon. Wade. Mark)]*

2. Report of the Auditor General of the Republic of Trinidad and Tobago on A Special Audit of the Operations of Accounting Units in the Public Service. *[Hon. W. Mark]*

ORAL ANSWERS TO QUESTIONS

The following questions stood on the Order Paper in the name of Sen. Dr. Eric St. Cyr:

Pageant Company
(Money Spent)

11. (i) Would the hon. Minister of Trade & Industry and Consumer Affairs and Minister of Tourism tell the Senate the total sum of

money spent by the Pageant Company in putting on the Miss Universe 1999 and how much of this money came from public funds and how much from private sector funds?

(ii) Would the hon. Minister also tell the Senate how much of these funds was spent on each of the following:

(a) Infrastructure and environmental works;

(b) Airline tickets for delegates and officials;

(c) Hotel expenses for delegates and officials.

Casino Gambling

12. (i) Would the hon. Prime Minister inform the Senate whether it is the policy of his Government to permit casino gambling in Trinidad and Tobago?

(ii) If the answer is in the affirmative, would the hon. Prime Minister consider setting up a Task Force on Gambling and Casino Gambling as had been done in Barbados and elsewhere?

The Minister of Public Administration (Sen. The Hon. Wade Mark): Mr. President, I would like to have the answer to questions Nos. 11 and 12 deferred for one week.

Questions, by leave, deferred.

NATIONAL TRUST OF TRINIDAD AND TOBAGO (AMDT.) BILL

Bill to amend the National Trust of Trinidad and Tobago Act, 1991. *[The Minister of Culture and Gender Affairs]*; read the first time.

Motion made, That the next stage of the Bill be taken at the next sitting of the Senate. [*Hon. W. Mark*]

Question put and agreed to.

ARRANGEMENT OF BUSINESS

The Minister of Public Administration (Sen. The Hon. Wade. Mark): Mr. President, I seek leave of the Senate to deal with Motion No. 1 and then proceed with "Bills Second Reading".

Agreed to.

NATIONAL INSURANCE (HARMONISATION OF PENSION FUND PLANS) (AMDT.) REGULATIONS

The Minister of Finance (Sen. The Hon. Brian. Kuei Tung): Mr. President, I rise and beg to move the following Motion which is standing in my name:

> *Whereas* it is provided by section 57 of the National Insurance Act, Chap. 32:01 that where it is desired to harmonise pension fund plans in operation on the appointed day for the payment of contributions, with the system of national insurance such harmonisation shall be effected in accordance with regulations made by the President in that behalf and that Regulations under that section shall be subject to affirmative resolution of Parliament:
>
> *And whereas* Regulations made under the aforesaid section have been amended by the National Insurance (Harmonisation of Pension Fund Plans) (Amdt.) Regulations, 1999:
>
> *And whereas* it is expedient to confirm the National Insurance (Harmonisation of Pension Fund Plans) (Amdt.) Regulations, 1999:
>
> *Be it resolved* that the National Insurance (Harmonisation of Pension Fund Plans) (Amdt.) Regulations, 1999 be confirmed.

Mr. President, this matter is a relatively easy and simple one, as the Motion which is before this honourable House has been made pursuant to section 57 of the National Insurance Act, Chapter 32:01. Having read the Motion one will see from section 57 that harmonisation is already provided for under existing legislation. Where harmonisation takes place it is the private pension fund plans which have been modified or reduced to accommodate the National Insurance Scheme.

1.40 p.m.

Harmonisation, therefore, allows an employer to take account of pension income promised to an employee under the National Insurance Scheme and to which they both contribute—both being the employer and employee—in providing additional retirement benefits to the employee under a private pension fund plan to which the employer and employee also contribute.

In fact, Mr. President, without a procedure for harmonisation, the result could very well be that the employer and employee are required to contribute to two separate pension fund arrangements with at least part of the employee’s income

being used to cover both plans. This can obviously be very expensive to both parties, particularly in the case of the lower income employee as well as to the small employers.

The legal process for harmonisation appears somewhat difficult at present since harmonisation can only take place where there is an agreement between the employer and all members of the pension fund plan which is to be harmonized. Many pension fund plans have not been harmonized because of the previously insignificant levels of national insurance contributions and benefits of the past. However, because of the significant increases which have been made in recent times, there will be considerable burden on both the employers and employees alike who now require to contribute to their private pension fund plans as well as to the system of national insurance with this increased contribution.

Mr. President, the amendment which is before this Senate serves to eliminate the requirement for the consent of all private pension fund members before a private pension fund plan can be considered for harmonisation. With the proposed amendment, an employer will have greater freedom in deciding whether or not to harmonize his company's pension fund plan with that of the system of national insurance. It is nonetheless expected that employers will broach the issue of harmonisation with his employees before embarking on the harmonisation process. Moreover, where employees are unionised, the practice should be for the employer to elicit the support of the union in executing his decision whether he should or should not harmonise.

Mr. President, the proposed amendment to the National Insurance (Harmonisation of Pension Fund Plans) Regulations, which I would refer to as the Harmonisation of Regulations, will ensure that the existing safeguards outlined in Regulation 4 are retained. The draftspeople have used the words "subject to Regulation 4" to make it abundantly clear that a private pension fund plan may only be modified for the purpose of harmonisation with the system of national insurance where the proposed modification complies with the conditions as set out in Regulation 4 of the Harmonisation Regulations.

For the purpose of this Senate, I would like to indicate that Regulation 4 includes the following safeguards:

1. All accrued benefits in the private pension plan up to the day of harmonisation shall be preserved. Harmonisation could therefore only affect future entitlements arising under a private pension fund plan.

2. Benefits under the modified private pension fund plan, together with the retirement pension payable under the system of national insurance must not be less than the benefits payable under the unmodified private pension fund. The effect of this would be that the benefits provided under the National Insurance Scheme will not be adjusted downwards as a result of harmonisation.

Mr. President, it is clear from the conditions stated in Regulation 4 that it would be quite difficult, if not impossible, for any modifications to a private pension fund plan for the purpose of harmonisation with the system of national insurance to affect the accrued rights of members. However, the existing law provides that Regulation 5 of the Harmonisation Regulations, proposals for harmonisation must be submitted to the Supervisor of Insurance who himself must be satisfied that the conditions set out in Regulation 4 have been observed and that the rights and interests of members are adequately preserved before he gives approval to the proposals.

Furthermore, the Board of Inland Revenue is also required to approve the proposals for harmonisation before implementation of such proposals. So there are, at least, two safeguards to ensure that the harmonisation is done according to law and to ensure that the rights of employees are protected as a consequence of any harmonisation effort.

Mr. President, many companies including state corporations and statutory authorities have pension fund plans for their employees. The majority of these companies provide excellent retirement benefits as well as death and disability benefits. These plans are often supplemented by health and life insurance policies. There are also many companies where tax approved deferred annuity products issued by insurance and trust companies allow for retirement savings in a very tax-efficient manner. With easier access to harmonisation, the employer population would be able to utilize the existing coverage of national insurance benefits as a foundation for the retirement benefits offered in their own employee benefit packages.

Harmonisation, therefore, could help employers ensure a certain quality of retirement coverage but at a much reduced cost to both themselves and those of their employees.

Mr. President, with these few words, I beg to move that the National Insurance (Harmonisation of Pension Fund Plans) (Amdt.) Regulations, 1999 be confirmed by this honourable Senate.

Question proposed.

Sen. Danny Montano: Mr. President, I really have no special problem with the proposal in front of us, but if you read Regulation 3 of the Regulations, what has really happened is that they have amended Regulation 3 to remove the part which requires the employer to get the agreement of all the employees. In fact, the wording is almost identical, except that it says, subject to Regulation 4. The wording is identical up to the word "insurance" and they just put a full stop and delete the rest of the paragraph.

The only thing I have as a concern is that Regulation 4 clearly indicates that the harmonisation process cannot be in any way a lessening of the benefits under the plan, so if anything, it is an improvement so the employees are going to be better off. By deleting that section and not including the fact that the employees at least have been informed or consulted, you are going to find situations where employers are going to take a decision to do this and there would be employees who may not really understand what is taking place and it would create a significant amount of confusion.

Bear in mind that you have the safeguard that the Supervisor of Insurance must have a second look at the scheme to be satisfied that everything is straightforward, so it is not a question so much that—I do not see there is a problem, that wrongs will be done, but the fact of the matter may be the perception that wrongs would be done. We should have taken the precaution to, at least, put in somewhere that the employees must be notified in some special way, and the fact that they have been so notified and informed and the change is explained to them should be included in the documentation that would be submitted to the Supervisor of Insurance. That would simply avoid what I think would be a fair amount of confusion.

Thank you.

The Minister of Finance (Sen. The Hon. Brian Kuei Tung): Mr. President, I think that is an excellent suggestion being made. I am not sure whether the Senator wanted it in the Regulations or not because, while he was speaking, I was thinking to instruct the Supervisor of Insurance to make sure that he is satisfied that all employees have been notified.

Let me tell you why we have flip-flopped with this. What had happened is that you may have an employee on extended leave, you cannot get hold of him and the whole process has to wait until he returns from leave because the old law required that all employees must give their consent.

What we have done is move away from that and say this is really in the interest of both employers and employees and it really should not be so bureaucratic that you have to wait until all the employees have given their consent. I agree with you that all employees should, at least, be notified so even if you are on vacation in Timbuktu they can write and tell you this has come about and why, so at least everybody would be notified.

What I would undertake is to see whether we need to modify the regulations to say that all employees must be notified, or whether we can do it administratively by having the Supervisor of Insurance ensure and be satisfied that all employees have been notified as to what has been happening and that all questions have been addressed. It is a very valid point and I know it is a radical change from where we were before where all employees had to be notified. Now we are able to say basically we really do not have to have the objection of your employees to overcome before doing this because it seems to be in the interest of both employers and employees.

We in the Ministry of Finance do not really anticipate there would be any real objections unless employees feel that their pension rights have been lowered, but there is no question of pension rights being lowered based on what we are doing here.

Mr. President, I am happy for the support which this honourable Senate has given us. I am pleased with the comments made by Sen. Montano and as I said, I would explore and if I need to modify Regulation 3, I will bring back another resolution to this honourable Senate.

With these few words, I beg to move.

Question put and agreed to.

Resolved:

That the National Insurance (Harmonisation of Pension Fund Plans) (Amdt.) Regulations, be confirmed.

RELATED BILLS

The Attorney General (Hon. Ramesh Lawrence Maharaj): Mr. President, Bill No. 1, An Act to provide for the establishment of the Integrity Commission; to make new provisions for the prevention of corruption of persons in public life by providing for public disclosure; to regulate the conduct of persons exercising public functions, to preserve and promote the integrity of public officials and institutions, and for matters incidental thereto; Bill No. 3, An Act to amend the Constitution of the Republic of Trinidad and Tobago (The Integrity Commission) and Bill No. 4, An Act to amend the Constitution of the Republic of Trinidad and Tobago (The Public Service, Police Service, and Teaching Service Commissions) are interrelated. I therefore seek leave of the Senate to deal with them together.

Agreed to.

1.55 p.m.

INTEGRITY IN PUBLIC LIFE BILL

Order for second reading read.

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

> That a Bill to provide for the establishment of the Integrity Commission; to make new provisions for the prevention of corruption of persons in public life by providing for public disclosure; to regulate the conduct of persons exercising public functions; to preserve and promote the integrity of public officials and institutions and for matters incidental thereto, be read a second time.

Mr. President, the three bills—the Integrity in Public Life Bill, the Constitution (No. 4) (Amdt.) Bill and the Constitution (No. 5) (Amdt.) Bill—constitute a package of legislation which, if passed by the Senate and the House of Representatives, constituting the Parliament of Trinidad and Tobago, would provide an effective framework in preventing and combating political and official corruption.

Political and official corruption and the absence of integrity in public life are major threats to democracy, growth and equity. They distort public services, deter investment, discriminate against the poor and destroy public confidence in democratic governments and institutions. The package deals with the promotion

of integrity in public life and they contain radical reforms of our integrity laws insofar as they apply to persons in public life, as defined in the First Schedule which deals with:

"1. Members of the House of Representatives

2. Ministers of Government

3. Parliamentary Secretaries

4. Members of the Tobago House of Assembly

5. Members of Municipalities

6. Members of Local Government Authorities

7. Members of the Boards of Statutory Bodies and State Enterprises as prescribed."

Insofar as they relate to persons exercising public functions, the term "persons exercising public functions" is defined in clause 2 of the Bill as including:

"...all persons holding office under the Public Service, Police Service, Teaching Service, and Statutory Authorities Service Commission, as well as Senators, members of the Diplomatic Service and Advisers to the Government."

Mr. President, clause 2 of the said Bill, as I said, gives the definition of "persons exercising public functions", and one would see, therefore, that the package makes a distinction between persons in public life, and persons exercising public functions. As I said, the persons in public life have been defined specifically as the persons mentioned in the First Schedule which I have just read.

This reform package recognizes that there would also have to be reforms in the laws dealing with corruption. The corruption laws of Trinidad and Tobago were last looked at by the Parliament in 1987. Since then, there have been developments, internationally and regionally, which show that our corruption laws are outdated and the Law Commission of Trinidad and Tobago has prepared, since this administration got into office, a paper entitled, "Strengthening Trinidad and Tobago's Anti-Corruption Laws". These measures are being looked at and the necessary legislation is being drafted for Cabinet consideration.

It would be noticed from these measures in the package that they deal with the promotion of integrity in public office insofar as they relate to persons in public

life and persons exercising public functions, so they deal with the Public Service, the Teaching Service and all the other services of the state. They also deal with the political arm, if I may say so, in the sense that it deals with Members of the House of Representatives; Ministers of Government; Parliamentary Secretaries; Members of the Tobago House of Assembly; members of municipalities; members of local government authorities; members of the boards of statutory bodies and state enterprises. But, although the package deals with integrity legislation, it would mean that contravention of some of the matters which are in these measures can still attract prosecution under the existing corruption laws.

So that if, for example, there is a breach of one of the codes of conduct and the breach is of such a nature, or the facts and circumstances are such that they can amount to a breach of the criminal law whether it is a breach of the law, and so far as they relate to misconduct in public office which is a common law criminal offence, or insofar as they relate to contravention of the Corruption Act of 1987, it can also be prosecuted under the criminal law.

Mr. President, I thought I should make that quite clear because I do not want to give the impression, as when we look through the Bill, although in relation to the persons exercising public functions and even the persons in public life, we would see that there is a code of conduct which, for the first time, is being given teeth; I do not want to give the impression that although it may constitute a disciplinary offence insofar as the public service is concerned and it would constitute a ground even where a Member of Parliament can lose his seat in the Parliament, it does not prevent, if the facts and circumstances are such that they amount to an existing criminal offence, it would not mean, according to this Bill, that the person cannot also be prosecuted for the criminal offence.

So that the state would have the option—and when I say the state, in the context I am using it—not only of enforcing the law under this new package to have the sanctions as prescribed by this package, but also in enforcing the criminal law.

Mr. President, having said that, one would, therefore, see that in relation to the measures which are contained in this package, over the last few years, there has been a movement worldwide to ensure that countries take steps to reform their integrity laws and their corruption laws and in that area, as far as Trinidad and Tobago and this region are concerned, there have been two important matters: a convention and a declaration.

There has been the Lima Declaration on Corruption which was agreed to at the Eighth International Conference Against Corruption which was held in Lima in September 1997; and there has been the Inter-American Convention Against Corruption which has been in existence for some time. Trinidad and Tobago, under this new administration, signed and ratified the Inter-American Convention Against Corruption in 1998—it was a 1996 convention—and Trinidad and Tobago also signed the Lima Declaration on Corruption.

As I go through the Bill, one would see that some of the new areas of the law, which we are trying to introduce, are measures which have been requested and asked for by these conventions.

Mr. President, under the package, the Integrity Commission has been given wider powers and has been permitted to deal with a wider category of persons. Under section 138 of the Constitution of Trinidad and Tobago, the Integrity Commission was set up and that section specified the categories of persons which the Integrity Commission would cover, and section 139 of the Constitution specified the rules and procedures and the functions in respect of which Parliament can legislate in respect of the matters mentioned in section 138.

It is because the Constitution limited the matters in sections 138 and 139, if it is that legislation had to extend the categories, make additional procedures and create additional sanctions, then one had to first amend those sections of the Constitution so that Parliament would have the power in order to effect the necessary integrity legislation. That explains why, Mr. President, we have a Constitution (Amdt.) Bill in relation to sections 138 and 139 of the Constitution.

2.10 p.m.

Mr. President, similarly, in respect of the Teaching Service Commission and the other commissions, section 121 specifies what their functions are. Since the functions of these commissions are going to be increased and they would have greater powers to monitor the financial declarations of officers, one therefore had to extend the jurisdiction—if I could use that expression—in the Constitution to these commissions, in order to give effect to whatever legislation is being passed. So the Teaching Service Commission and the other service commissions would have the authority to exercise their powers under the legislation, as prescribed in the Constitution as amended. That explains why we have two Constitution (Amdt.) Bills.

Perhaps the question could be asked, why is it that the amendments to the Constitution could not be put in one Bill? The answer to that is, since the different

sections needed different kinds of special majorities it was not possible to put them in one Bill, they had to be put in two separate Bills. That explains why we have two Constitution (Amdt.) Bills, and then we have the Integrity (Amdt.) Bill.

What is happening, as far as the Constitution (Amdt.) Bills are concerned, is that, section 138 of the existing Constitution provides for the establishment of an Integrity Commission with the duty of receiving declarations of assets, liabilities and income from five categories of persons, namely: Members of the House of Representatives, Ministers of Government; parliamentary secretaries, permanent secretaries, and chief technical officers. It is section 139 of the Constitution which enables Parliament to enact legislation to deal with matters of procedure and confers such powers on the commission as are necessary to enable the commission to carry out the purposes of section 138, that is, to provide for the custody and maintenance of the financial declarations.

Therefore, any proposed reform aimed at enlarging the ambit and functions of the Integrity Commission must be achieved, not only by amending or repealing and replacing the present Integrity in Public Life Act, but by also amending sections 138 and 139 of the Constitution. Those sections have to be amended first. Integrity legislation in Trinidad and Tobago on a reformed basis can only put in place matters of procedure. It cannot increase the categories of persons affected nor the powers of the commission; that is to say, if we were only going to amend the Integrity Act. Parliament can only legislate in respect of the matters in section 139 if these sections are altered to accommodate the reforms of the Integrity (Amdt.) Bill.

Mr. President, the proposed amendment to sections 138 and 139 of the Constitution which is now before this Senate, seeks to achieve the following:

1) to facilitate the widening of the range of persons required to file financial declarations with the Integrity Commission, to include all persons in public life concerned with the policy making process;

2) to achieve the objective of an enhanced Integrity Commission with powers to enforce standards of conduct not only on those persons required to file financial declarations under section 138 but on all those persons performing governmental functions; and

3) to allow the issuance by the Integrity Commission of a public disclosure statement.

Mr. President, as you know there was a Green Paper on integrity laws which was studied by the Joint Select Committee of Parliament. In essence, the recommendation of the Green Paper was that all persons who made policy, that is, those persons in public life who were concerned with the decision-making process, would be required under section 138 to file financial declarations with the Integrity Commission. On this basis it was recommended that permanent secretaries and chief technical officers should not fall under the scrutiny of the Integrity Commission as they were, in reality, managers and not policy-makers. So section 138 has removed from that section permanent secretaries and chief technical officers. They would not be under the first schedule of persons in public life, but under the reforms dealing with persons who exercise public functions.

The effect of clause 4(a) of the Bill would be to remove permanent secretaries and technical officers from the obligation to file declarations with the Integrity Commission and to now extend this category of persons to include Members of the Tobago House of Assembly, municipalities, local government authorities, statutory boards, state enterprises and holders of such offices as may be prescribed. This last category, Mr. President, would enable Parliament, in the future, to extend the category of persons now covered by section 138, without having again to amend the Constitution.

Mr. President, clause 4(c) of the Constitution (Amdt.) Bill, dealing with section 138, allows Parliament to legislate for standards of conduct in respect of all persons performing governmental functions and to empower the Integrity Commission to exercise supervisory control over all public officers. This amendment to section 138(2) of the Constitution is necessary if the code of conduct now proposed under Part IV of the Integrity in Public Life Bill is to be included.

If one looks at the Integrity in Public Life Bill at Part IV—and I am trying to do it this way so that Senators would follow—one would see that there is a code of conduct. The code of conduct would apply to all persons in public life and all persons exercising public functions. What the amendment to section 138(2) does, is to allow the service commissions to supervise and monitor the standards of ethical conduct which Parliament would prescribe, and to also allow the Parliament to scrutinize and monitor insofar as it refers to Members of Parliament.

It is to be observed that with this amendment the Integrity Commission would be empowered to exercise both disciplinary and supervisory control over the

ethical conduct, not only of those persons prescribed under section 138 but over all persons exercising governmental functions. This would include, as I said before, persons falling within the ranks of the Public Service Commission, the Police Service Commission, the Teaching Service Commission, and the Statutory Authorities Service Commission. The Judicial and Legal Service Commission has been exempted, as the supervision of legal and judicial officers falls under the Chief Justice as head of the Judicial and Legal Service Commission. Mr. President, may I say that when the Joint Select Committee was considering these matters they did say that they would still leave that open for the Parliament to decide.

Clause 5 of the Bill which amends section 139 of the Constitution, allows Parliament to legislate for and confer on the Integrity Commission, the power to issue a public disclosure statement in respect of those areas of a Member's financial interests which may impact on his official duties and the public interest. In respect of persons in public life, it gives power to the Integrity Commission to issue a public disclosure statement based on the returns of the person. As I go through the Integrity in Public Life Bill, one would see that there would be a statement. This statement would be prepared, and supplied to the Clerk of the House so that the public would know the dealings of the persons in public life. It is done in such a way to protect what is not necessary to be released.

Mr. President, if I may deal with the Constitution (Amdt.) Bill so far as it applies to the Public Service and the Teaching Service. The wide range of public officials comprising the civil service can contribute to an environment in which there is a general laxity in accountability and transparency. It is, therefore, necessary for regulations and codes of conduct to create an enabling environment in which civil servants can work effectively and honestly. In addition, the established authorities or the Integrity Commission and the service commission should be vested with the requisite power to administer disciplinary sanctions, whenever the rules are violated.

The remit of integrity legislation must also be concerned with the wider civil service and should extend not only to policy-makers but also to the managers and chief technical officers who assist in the implementation of policy. This is in keeping with the recommendations of the Green Paper and the Joint Select Committee. If activity which is corrupt is in the public service and is to be monitored, or if there has to be the promotion of integrity in the public service, it is

necessary that such officials be required to submit financial declarations whenever there is reason to suspect that an impropriety has been committed.

The discipline of public servants, however, is not within the ambit of the Integrity Commission but falls under the domain of the various service commissions. Like the Integrity Commission, these service commissions are also constituted under the Constitution, and their functions and powers are circumscribed by sections 121, 123 and 125 of the Constitution. If these commissions are to be given the power to look into issues of misconduct amongst their members and are to be empowered to request financial declarations, then the relevant sections of the Constitution must be amended to vest them with the authority to establish and enforce the standards of conduct and enable them to make regulations governing the conduct of their members.

In keeping with the recommendations of the Green Paper and the Joint Select Committee the proposed amendment would enable the service commissions to be charged with the statutory duty of maintaining discipline, monitoring the financial dealings of their members, and making suitable recommendations which they can enforce, so as to maintain integrity standards among the officers. In effect, new powers would be given to the service commissions under these amendments.

The second amendment to the Constitution, therefore, effects a very simple amendment to sections 121(1), 123(1) and 125 of the Constitution by adding the words, "and to enforce standards of conduct on such officers".

2.25 p.m.

Mr. President, as I said, the Integrity in Public Life Bill, having dealt with these two Constitution (Amdt.) Bills, has made radical changes and the main thrust of the new legislation would continue, like the 1987 Act, to be the submission, filing and monitoring of financial declarations with respect to persons prescribed by the new section 138 of the Constitution. The old Act is going to be repealed, that is the 1987 Act, and the new law would seek to establish common standards of behaviour which would be applicable to all persons exercising public functions.

In the general scheme of things, therefore, it is the intention that the Integrity Commission would exercise disciplinary and supervisory control over two categories of persons. One, those persons in public life required to file financial declarations under section 138 of the Constitution, and those are the persons I mentioned in the First Schedule which consist of Members of Parliament, *et cetera*,

and all persons exercising public functions but not required to file financial declarations. So that whilst persons in public life would, on a general basis, be subject to all the provisions of the Integrity in Public Life Bill, only the code of conduct prescribed in Part IV would apply to the broad spectrum of persons exercising public functions.

Since the aim of the new legislation is to create higher standards of accountability and to give the Integrity Commission enhanced powers with respect to investigating and detecting instances of public misconduct, it would perhaps be appropriate to highlight the mechanism now employed in the new Bill in order to achieve these objectives. Part I of the Bill simply re-establishes the Integrity Commission and it would be noted that in clause 5 the new functions of the Commission are clearly outlined.

I should mention that in clause 5 there are two additional functions of the Commission. One would see that those additional functions in clause 5(1)(d) and (e) are to:

> "(d) advise on any breaches of the Act;
>
> (e) carry out a programme of public education so as to foster an understanding of integrity standards;"

So the Integrity Commission would be able to give advice on breaches of the Act—and one would see how that is done—and to carry out public education in respect of integrity and the promotion of integrity.

Mr. President, because also of the enhanced powers of the commission, clause 7 provides for a Registrar to the Commission, this is new, who will be required to perform the duties akin to a court registrar. The duties of the registrar are mentioned in clause 7.

In Part III, and in order to facilitate a more comprehensive disclosure of interest, a declarant under clause 12 will now be required to furnish to the commission particulars relating not only to income, assets and liabilities but also any gifts received in cash or in kind by himself, his spouse or dependant children. So there has been, in relation to that, an increase in the ambit, if I may say so, where under clause 12 a person would have to disclose any gifts received in cash or in kind by himself, his spouse or dependant children.

I should mention that the Joint Select Committee considered the question of family assets, that is to say, not only assets of the person but assets of the family, the immediate family, but the Joint Select Committee decided that it should recommend only this class of persons, that is to say, the assets and liabilities of the person, but in relation to the spouse and dependant children, the gifts which had been received.

In respect to clause 12(4) it is to be noted that there is another innovation in that the philosophy of illicit or unjust enrichment comes into play—and I will read it because of its importance:

> "Where, in a declaration filed with the Commission, a person in public life discloses an income which is insufficient to support the accretion in value of the net assets disclosed so as to raise the inference that there must have been other income to account for the extent of the acquisition of such assets, the person in public life will be deemed to have been in possession of such income which has not been disclosed and the onus shall be on him to establish the source of that further income."

So this is a concept which, in the major conventions on corruption, countries have undertaken to have their national laws amended or have laws introduced so that there would be a situation in which it would be easier to detect whether persons are corrupt or not and it is known as illicit enrichment. Therefore, it will give this power to the commission to be able to look at the statements and to be able to determine—and obviously, as one would see, the persons would get every opportunity to be heard and the onus shall be on the person to establish the source of that further income.

Mr. President, where the person fails to discharge this onus, he will be guilty of nondisclosure and will be liable under clause 21(2) to a severe fine of $250,000 and to imprisonment for ten years. So if we look at 20(5) it says:

> "Every person required under subsection (4) to deal with matters specified therein as secret and confidential who at anytime communicates or attempts to communicate such information or anything contained in such documents to any person other than a person to whom he is authorised under this Act, shall be guilty of an offence and be liable on summary conviction to a fine of two hundred and fifty thousand dollars and ten years imprisonment."

[*Desk thumping*]. I should say that it used to be in effect for—I am subject to correction but I think there was a very small fine recommended which I think was

$10,000, but in order to send a message I think persons who are in public life should feel the heavy hand of the law if this occurs.

Clause 21(2) is clear and it provides that where a person is deemed to have been in possession of undisclosed income or where—it is 21(5), sorry, and I just read that, Sir. Mr. President, this is an—

Sen. Mahabir-Wyatt: Sorry, Mr. President, I am getting a bit confused. In my Bill there is no 21(5). The Attorney General is referring to—do you mean 20(5)?

Hon. R. L. Maharaj: It is 20(5). No, no, I made a mistake. It is 21(2) and I was reading from 20(2). It should be 21(2) which states:

> "Where, a person in public life is deemed to have been in possession of undisclosed income or assets and fails to account for such further income or assets, or where upon an enquiry, it is determined that such other income or assets have existed and the person in public life deliberately omitted to disclose such information in the declaration filed with the Commission, he shall be liable on summary conviction to a fine of two hundred and fifty thousand dollars and imprisonment for a term of ten years, and…"

I forgot to mention this too:

> "where the offence involves the deliberate non-disclosure of property the Court may, in addition—"

order the forfeiture of property to the state. So I am much obliged. It shows that Sen. Mahabir-Wyatt is following my contribution and I am flattered by that. I am indebted to her for doing that.

So this is an effective mechanism aimed at dealing with unexplained enrichment and would enable Trinidad and Tobago to fulfil its obligation under the Inter-American Convention on Corruption which calls for state parties to create the offence of illicit enrichment. This is also echoed in the Lima Declaration which links the offence of illicit enrichment to the establishment of a system for the declaration of assets by public officers. May I say at this stage, in relation to the reform of the corruption laws, illicit enrichment will also be part of the reform package dealing with the corruption laws.

Mr. President, if I may say something more on this clause, the presumption of corruption in respect of the offence of illicit enrichment will serve as a suitable

deterrent against corruption since one may not wish to risk being called to justify one's assets and standard of living. It has been introduced in several countries on a much broader basis than we are doing it here and this is what the Joint Select Committee has recommended and we have it before us, but I think it is my duty to tell the Parliament how it has been introduced also. Some countries have it like this and some countries have it in a much bolder way. It has been introduced in Hong Kong and in Botswana and in a bolder fashion. In Hong Kong the offence has been referred to as the Possession of Unexplained Property and reads as follows:

"Any person who being or having been a Crown Servant

(a) maintains a standard of living above that which is commensurate with his present or past official emolument or is in control of pecuniary resources of property disproportionate to his present or past official emolument shall, unless he gives a satisfactory explanation to the court as to how he was able to maintain such a standard of living or how such pecuniary resources or property came under his control, be guilty of an offence."

This reverse onus clause now introduced in our Bill would enable the prosecution of offences despite evidentiary obstacles and despite the production of direct evidence to be available to prove corruption. As the law now stands, the Integrity Commission is unable to enquire into the accuracy or fullness of a declaration filed by a person in public life and there are times when a declaration may, in fact, yield very little information as to the true nature and extent of a person's interest.

2.40 p.m.

In order to ensure the accuracy or fullness of a declaration filed with the Integrity Commission, clause 13 seeks to empower the Integrity Commission to further request a declarant to furnish other particulars relating to his financial affairs and to attend the offices of the commission in order to verify his declaration. This is also new, giving the power to the commission to request persons to attend the office in order to satisfy them as to their declaration. Moreover, it is only when the commission is satisfied that a declaration is fully made, that it shall forward a certificate of compliance to the person in public life. The Bill, therefore, calls for complete and full disclosure on the part of the person in public life.

Another innovation can be found in clause 14 of the Bill which now mandates the Integrity Commission to prepare and file with the Clerk of the House a public disclosure statement, containing all the relevant information of a declarant which may impact upon his public duties and which may give rise to a possible conflict of interest.

This is a feature of the Ontario legislation which we consider to be of great significance. The thrust of this provision is to identify those areas of financial activity which would give rise to a conflict of interest in the Member's discharge of his official duties. Such a provision would, of course, bolster public confidence in the integrity system of Government, and provide a basis upon which to judge the honesty and integrity of Members of Parliament. Without such a provision there is unlikely to be any improvement in public confidence and state institutions. Mr. President, may I say that on all the major reports on the promotion of Integrity in Public Life, starting with the Bowen Report or the Quilton Report and even further back, the Samaan Committee on standards of conduct in public life, all accepted that without public disclosure the objective of a register of interest would be defeated.

Mr. President, public access to a Member's interest is permitted in Australia, New South Wales, Queensland, Alberta**,** Manitoba, India and the United Kingdom. Whilst the method by which these details are made public may vary somewhat, they are often done by way of declarations which are tabled in Parliament and open for inspection by the public. In order to allow the commission to deal with situations of conflict of interest, the concept of blind trust has been retained in clause 22. This accords with the recommendations of the Joint Select Committee appointed to consider the recommendations of the Green Paper.

Although we support the necessity for public disclosure, we appreciate the need for confidence and privacy with respect to details of a Member's financial standing. In this regard, the Bill follows the approach of the Ontario Conflict of Interest Act which allows for disclosure only in respect of certain areas of financial activity which impinge on a person's decision-making in respect of public matters and not the complete disclosure or the extent of all his financial dealings.

Moreover, such a statement would not disclose the details or extent of the assets of any person. It is to be noted that the Second Schedule to the Bill outlines clearly what is to be the content of the public disclosure statement and precisely those areas which should not be disclosed. When one looks at the Schedule—time

does not permit me to read it or deal with it in detail—one sees that it clearly shows what should or should not be disclosed. That is in an effort to strike a balance in order to protect one's privacy but also to give an indication as to what matters. The public should know whether one is acting in one's own interest or contravening the public's interest.

The commission has also been given the power to summon witnesses, to require the production of documents, and to enter into contracts to obtain the services of persons having specified knowledge in any matters relating to the commission. This is very important because the Integrity Commission would need to get expert advice and, therefore, has been given that power to have specialist advisors.

Additionally clause 9(2) explicitly provides that:

> "The Commission shall be provided with adequate staff for the prompt and efficient discharge of its functions..."

Therefore, if it is necessary for the Integrity Commission to appoint special investigators to assist in its enquiries, it may readily do so under this clause.

Very serious penalties are now provided for offences involving non- disclosure or breach of confidentiality under the Act. Whilst the present Act imposes fines of $20,000 or imprisonment for two years, the reforms now call for fines up to $250,000 and to imprisonment for up to 10 years. One of the major criticisms levelled against the Integrity Commission in the past is that it has failed to establish and enforce acceptable standards of ethical behaviour.

In 1979 the Report of the De La Bastide Commission on Integrity recommended, *inter alia*, that—and I quote:

> 141. "...Rules of procedure for the Integrity Commission should also lay down regulations authorizing the Integrity Commission to promulgate and enforce rules consonant with this law, including a Code of Ethics relating to rules of conduct for Ministers, politicians, heads of departments, and employees of all concerns in which Government has an interest."

Indeed, since that time the trend within the Commonwealth has been to introduce codes of conduct by way of legislation so as to provide a basis for judging behaviour and also an effective mechanism for combating corruption."

Although codes of conduct have been introduced by way of *Gazette* for Ministers and Parliamentarians, and in more recent years the public service departments have introduced codes of conduct for their employees, it is now accepted that integrity legislation should provide a framework against which acceptable conduct can be judged and should create offences against public morality in respect of the following behaviour:

(a) Conflict of interest

(b) Insider trading

(c) Acceptance of gifts

(d) Influence peddling and

(e) Lobbying

These matters are covered in the Code of Conduct in Part IV of the Bill and it is provided that it can be the basis of disciplinary actions and other administrative actions, but as I said, it can also form the basis, depending on the circumstances, if it amounts to an existing offence under the criminal law. May I announce that our corruption laws are going to be reformed in order to take on board some of these principles.

In our rapidly expanding commercial sector, insider trading is becoming important insofar as persons who discharge governmental functions obtain access to private and confidential information.

2.50 p.m.

Mr. President, I know that my time is almost up. May I ask leave of the Senate, in the light of these three Bills I am dealing with, if I could get an extension of 10 or 15 minutes after my time has expired?

Mr. President: To complete?

Hon. R. L. Maharaj: Yes. I would need just about 15 minutes from now, Mr. President.

Mr. President: Go ahead. At the end of your 60 minutes—

Hon. R. L. Maharaj: Thank you, Mr. President. As I said, the concept of the code of conduct for all public officials is promoted both in the Inter-American Convention and the Lima Declaration. Whilst it is not expected to create honest

behaviour, it serves to remind public officers of the standards which are expected of them.

Extensive codes can be found in the legislative models of New Zealand, Australia, Belize, nearer home; and Canada. Whilst a breach of the code would not necessarily amount to breach of the criminal law, it offends against public morality and it encompasses a wide field of dishonest and improper conduct which, though not criminal in nature, should nevertheless attract certain sanctions. Mr. President, the proposed Integrity in Public Life Bill, therefore, embraces this question and seeks to put in place standards of ethical behaviour which should be required not only of persons in public life, but of all persons performing governmental functions, and this includes persons holding senatorial appointments.

In clause 2 of the Bill, persons exercising public functions include all persons holding office under the public service, police service, teaching service and Statutory Authorities Service Commission, as well as senators, members of the diplomatic service and advisors to the Government.

Mr. President, a code of conduct applicable to all persons in public life and all persons performing public functions is established in Part IV of the Bill. This code comprehensively covers the important matters of integrity in public life and is generally found in the Ethics Commission of North America and the House of Parliament of Britain.

What should be observed is that this code does not seek to supersede any other regulation which the Parliament, the service commissions or any other body might wish to make for the control of its affairs. It is, however, legislated in order that the Integrity Commission may exercise supervisory jurisdiction over compliance with this code, as well as any other regulations which may be made by other bodies, and which impact on integrity law.

It is to be carefully observed that the jurisdiction of the Integrity Commission will be exercised only after reference has been made to it by the body concerned. Thereafter, the commission will carry out its enquiry and forward a report, together with recommendations as to the appropriate manner of dealing with such a complaint. It will then be the responsibility of the service commission or other body which made reference to the Integrity Commission to carry out or implement that decision of the Integrity Commission.

Mr. President, the purpose of this procedure is to demonstrate that the various institutions which have the charge of maintaining discipline and standards of conduct within their ranks would bear the responsibility for disciplinary action, but will be assisted in this arduous task by the Integrity Commission which will now be equipped to investigate facts, weigh the merits or demerits of a case, and come to an objective decision as to how the matter should be dealt with, using the code as a framework against which all behaviour must be judged.

The Bill, therefore, declares certain offences and prescribes certain sanctions. Where the alleged breach of code is committed by a Member of Parliament, such a matter shall be dealt with by an appropriate standing committee of Parliament, and the Member may face either severe reprimand and have his seat declared vacant, or may be removed from public office. May I say that in respect of those sections, there are certain amendments to give effect to that, because the way it is drafted this is not quite clear. So I give notice that at either the committee stage or on the next occasion, I will serve those amendments, but the fact is that a Member of Parliament can face severe reprimand and may even have his seat declared vacant and be removed from public office.

Where a breach of the code has been committed by an officer of one of the service commissions, such a commission may invoke disciplinary proceedings against its officer in accordance with its own rules and regulations. As these commissions will now be empowered under the Constitution to enforce standards of conduct on their officers, they will be in a position to enforce the code, and to also request financial declarations to enable them to determine whether there has been compliance with the rules of conduct.

It is intended that in all these instances, the Integrity Commission would adopt a supervisory jurisdiction if these matters are referred to it by Parliament or the particular service commission for an opinion or advice on the corrective action for this breach of the integrity law.

Mr. President: The speaking time of the hon. Minister has expired.

Sen. Wade Mark: Mr. President, with leave of the Senate, I beg to move that the Senate invoke Standing Order 83(1) in order to facilitate the Attorney General an additional 15 minutes to complete his contribution on the three Bills before the Senate.

Question put and agreed to.

Sen. Prof. Spence: May I ask a question of the Attorney General? Mr. President, the Attorney General has referred to a standing committee of Parliament. Could I ask whether such a committee now exists, or would there have to be one in the Senate and one in the House? If it does not exist, is it wise to make the legislation contingent upon such a committee? Because we know that there has been legislation in the past—the Crossing the Floor Act—which is not operative because the House did not change the Standing Orders. We do not want to do that to this legislation.

Hon. R. L. Maharaj: Mr. President, I am glad the hon. Senator raised that point. As a matter of fact, that machinery has been discussed both at the joint select committee stage and at the Executive level, and the only machinery that we have in accordance that we could deal with it is for the Parliament to deal with it, and it would first have to deal with it in the committee and then on the floor level of the Parliament.

It was felt that even though there is a history in respect of other legislation which seems to have different policy considerations applied, in respect of corruption and in order to give effect to it, the Parliament will act very quickly in having those matters done. I can say that on behalf of the Government we will take whatever steps necessary to have those committees set up immediately on the Act coming into force.

Sen. Prof. Spence: It seems to me that those committees could then be removed. So I ask the question, is it wise to have the legislation contingent upon a parliamentary committee, or is there some other device that one can use to make sure that the Parliament looks at it without that allowing clause?

Hon. R. L. Maharaj: I can think of one offhand, in that we can enshrine in the amendment to the Constitution—as we did in another Bill—that there would be such a committee and I will be prepared to support that. I will give that undertaking that we could include that in the amendments we are proposing.

Mr. President, as I was saying, it is hoped that the Integrity Commission would adopt a supervisory jurisdiction if these matters are referred to it by Parliament and the particular service commission would get the necessary advice.

Clause 13 is intended to allow the service commissions to monitor the financial dealings of its officers and make suitable regulations whereby they can enforce and maintain integrity standards. This amendment to the Constitution would allow the

service commissions to enforce the standard of conduct by means of regulations. These regulations may now prescribe that a public officer would submit a financial declaration upon appointment or from time to time as may be required. So there will be a situation where new public officers would have to file and the commission will have the power to make requests from time to time from other public officers. This will be the only effective way of monitoring and combating bribery and corruption in the public service.

Mr. President, finally, emphasis must be placed on the new role which the Integrity Commission will have under this Bill. The Integrity Commission will no longer function—if I may say with the greatest respect—as a super filing Cabinet, but it would now exercise disciplinary and supervisory jurisdiction over all public officials.

The commission will certainly have more powers of enforcement and it will have the wherewithal to enforce those powers which have now been extended to it. Moreover, the commission will be expected to act as an advisory body both to the Parliament, the service commissions and other bodies and persons who may wish to request an opinion or recommendation on a certain matter. This is clearly provided for in clause 35. Moreover, by clause 36, the commission may now act on its own initiative in respect of any matter concerning the public interest and will not have to wait until a particular incident or set of circumstances is referred to it.

The Integrity Commission can, on its own, be proactive and it does not need a referral for it to act. In keeping with today's proactive concept of organizations, Mr. President, the commission has been given the additional role of educating the general pubic in relation to integrity standards, a novel move for a statutory body in Trinidad and Tobago. This is an important part of the usefulness of the commission as it will be able to carry out a programme of education, informing the public as to what integrity in public life really means, and what should be done to bring it about.

Finally, the commission will have the power to make its own regulations to carry out the many matters which flow from the exercise of its powers. Obviously those regulations will have to come to Parliament.

Mr. President, in order to save time, as I said, there would be certain amendments: some of the typing, matters on the Bill and in relation to clauses 14, 31, 32, 33, 35, 37. I will undertake to have them circulated before the next sitting. Whilst the battle against corruption and lack of integrity in public life must be

fought on many fronts, the reform of integrity legislation in this country is but one measure aimed at achieving a strong and transparent state administration.

In closing, we know that there have been several requests in the Constitution Commission Reports; there have been requests from the Integrity Commission to have these laws reformed and, if I may say so, it was the last Opposition which brought a motion to Parliament which started the process to have these reforms done. I am very happy on behalf of this Government to introduce these reforms in this honourable Senate because, Mr. President, I feel that it needs a strong Government to take these measures in order to improve integrity in public life.

Thank you, Mr. President. I beg to move.

Question proposed.

3.05 p.m.

Sen. Danny Montano: Mr. President, I would just like to read from the preamble of the Constitution of Trinidad and Tobago:

"Whereas the People of Trinidad and Tobago—

(b) that there should be opportunity for advancement on the basis of recognition of merit, ability and integrity;

(c) have asserted their belief in a democratic society...

(d) recognise that men and institutions remain free only when freedom is founded upon respect for moral and spiritual values and the rule of law;"

Mr. President, section 138 actually makes provision for an integrity commission and, therefore, it is fundamental to our Constitution that there must be integrity in public life and that public officials must be ultimately accountable to the people of Trinidad and Tobago.

I would just like to read something that Theodore Roosevelt wrote. Two years into his administration there were significant accusations of corruption against officials in the post office in the United States. The accusations involved the taking of bribes and kickbacks, concerning among other things, for the promotion of employees; that was the charge. He instituted an investigation and following from that this is what he wrote:

"There can be no greater offence than the breach of trust on the part of public officials or the dishonest management of his office, and every effort must be exerted to bring such offenders to punishment by the utmost vigour of the law."

Those were the words of Theodore Roosevelt. Against that backdrop and that test—because that is the standard against which we are going to measure this piece of legislation—there can be no greater offence and, in fact, it is underscored by what the Attorney General said—that corruption discriminates against the poor, as indeed it does.

Sen. Mohammed: Go to Caroni and you will see.

Sen. D. Montano: The amount of corruption that has taken place in the past three and one-half years is totalling in excess of $100 million—hundreds of millions of dollars—and it is the poor people of this country who are paying for it. The Attorney General said that the Bill has teeth. I am going to show in a little while that the teeth he is talking about—

Sen. Mohammed: False teeth.

Sen. D. Montano:—are nothing short of false teeth, absolutely.

Mr. President, public confidence is absolutely vital to successful democratic governance; public confidence is essential. Throughout the length and breadth of this country, the people are talking about nothing other than corruption and integrity in the highest offices. *[Desk thumping]* That is the issue and what has happened is that this administration has brought this piece of legislation which really has only false teeth in it. They dare to bring it and they treat it like a bar of soap to try to clean themselves with it after three and one-half years; they smell to high heaven of corruption and this is a naked attempt to make themselves clean. *[Desk thumping]*

Sen. Mohammed: One cannot fool people all the time.

Sen. D. Montano: Mr. President, I am going to show you how it works. I want you to understand something. We cannot legislate integrity, truth and belief in the creator being. Men and women must act from their hearts, minds and souls, that is the only measure. This legislation acknowledges that by the mere fact that it is silent, with regard to the integrity of the Independent Senators behind me, because we, the people, have to trust in their integrity. There is nothing written anywhere that demands that they be loyal and true to the oath that they took. There is nothing that demands it and ensures that it is so.

We rely entirely on their personal, individual integrity. We have to hope and to believe that when they are offered significant government work, contracts and so

forth, for either themselves, their partners or children or whatever, based on their individual integrity, they would act with honour and with true faith and allegiance to the people of Trinidad and Tobago. *[Desk thumping]* That is not legislated anywhere, Sir. It is because we have faith in their individual integrity and it is based on the integrity of the President of the Republic who chooses them. That is how it is based. We cannot legislate integrity here. What we can do is pass legislation to make certain that those persons who are not full of integrity cannot act in an improper manner. That is what we can do, but we cannot legislate integrity, Sir.

Mr. President, any piece of legislation dealing with integrity can only be measured on two bases, and it is these yardsticks that we must keep our eyes on when we are dealing with legislation. Firstly, what is the extent of the powers that are given to the authority to investigate? The words that Theodore Roosevelt used were "the utmost vigour" of the law. Can we say that the Integrity Commission that has been set up here or the standing committee of Parliament is going to prosecute Members with the utmost vigour? Are they going to seek out improper actions with the utmost vigour? There is nothing in this legislation here that gives me any confidence that this is going to take place.

Secondly, what is the standard for initiating an investigation? *[Desk thumping]*. In clause 12 or 16, I think, the part that deals with the declarations that must be filed, it says that the commission can set up its own tribunal to investigate a declaration if it is felt that there is falsehood or some irregularity in the declaration.

The Attorney General made a big fuss of clause 12(4) where if in fact, there is an accretion in value or an accretion in assets that is unexplained by the apparent income then they can initiate an enquiry. Who in his right mind is going to fill in a form accumulating assets and wealth without a reasonable explanation as to where he got it from? If he is so silly, he deserves to be prosecuted for his stupidity. This is useless and it does nothing at all. It is a sham! What is necessary is this.

Sen. Shabazz: Go Danny.

Sen. D. Montano: What is the standard and threshold that is going to initiate an investigation? There is nothing that says that a concerned citizen can write to the commission and that the commission shall investigate. There is nothing here so it is only on the basis of a declaration that the commission feels warrants further—

Mr. Maharaj: I thank the hon. Senator for giving way. I know he probably was not paying attention. It is specifically provided—and I referred to it—that the commission on its own—it is a new power—can do its own investigation.

3.15 p.m.

Sen. D. Montano: Mr. President, that has not answered the question. On what basis, and what is the threshold? It has not answered the question. The only other way that it can conduct an investigation is if it is referred to it by the parliamentary committee, that is the only other way, or else there is no investigation and that is a serious issue, in fact, that is the most serious defect in this Bill. *[Interruption]*

I have amendments for this. I agree to nothing, Sir. We began to deal with this in 1996 and it is now 1999 and given the actions of this Government, everything we have talked about is completely irrelevant, it is passé, it is over with. We have to start from zero all over again. That is where we are.

Mr. President, with the greatest respect, this Bill does not make provision for any serious form of investigation. Assuming that we have crossed the hurdle of the threshold and the commission institutes a tribunal and there is an enquiry. Clause 16(2) says:

> "...the tribunal shall have and exercise the powers of a Commission of Enquiry under the Commission of Enquiry Act save that its proceedings shall be held in private."

So the tribunal has the authority of a Commission of Enquiry. I went to the Commission of Enquiry Act, Chap. 19:01 and it says very clearly under section 11:

> "Commissioners acting under this Act shall have the powers of the High Court to summon witnesses..."

Under section 12(2), what is the penalty if you do not comply with the Commission of Enquiry? "...on summary conviction to a fine of two thousand dollars." You have to be convicted first. So if you decide not to comply with the request of the tribunal for whatever reason, the penalty is $2,000. What teeth does the tribunal really have? It does not have the authority of the High Court to put you in jail for contempt and hold you there until you produce the documentation. The only thing is that on summary conviction you are liable to a fine of $2,000, and Mr. President, you know how things go in this country. Is anybody going to jail one of these fellas? They would take the $2,000 fine. *[Interruption]* Anybody, Sir, anybody. It is not a partisan argument.

Mr. Maharaj: Where are you pointing?

Sen. D. Montano: Where am I pointing? I am pointing to where the corruption lies, that is where I am pointing. *[Desk thumping]* And you want to know why I am pointing there? *[Words Expunged]*

Sen. Mark: Mr. President, on a point of order, I take strong offence to any Senator accusing me or anybody on these Benches of being corrupt. Under Standing Order 35(8) and (9) unless the hon. Senator can prove that—let him bring a substantive motion—I ask him to withdraw that statement, Mr. President.

Mr. President: The Minister is quite correct in pointing out that, unless you can produce evidence of that statement, it is inappropriate and you should withdraw it.

Sen. D. Montano: Mr. Vice-President, there is evidence. The Deyalsingh Report is one, and there is also another matter involved with Petrotrin and Bear Sterns and I would very much like to invite Bear Sterns here. They have the evidence and they have assured me of it.

Sen. Mark: Mr. President, on a point of order, under Standing Order 35(8) which says:

"...except upon a substantive motion..."

I would like the Senator, without bringing substantive evidence here, to withdraw those remarks.

Mr. President: Senator, I repeat; unless you have the evidence to adduce now you are requested to withdraw the statement.

Sen. D. Montano: As you say, Sir. As you say.

Mr. President, if you look at clause 32 this is the clause that says—

Sen. Mark: Mr. President, this is a point of order or clarification. Having regard to the fact that the hon. Senator has withdrawn that statement. I would like, Sir, to get your guidance whether these remarks should be expunged from the records of *Hansard*.

Sen. Mohammed: The country knows, boy.

Mr. President: You did not request it, but since you have mentioned it, yes, I think they ought to be expunged. So that those who take notes are requested to expunge from the record those comments. *[Desk thumping]*

Sen. Mohammed: On Monday you will see the evidence.

Sen. D. Montano: Mr. President, I accept what you say and the point at issue is the threshold. One of the first points which I made was, at what point, what is the threshold at which these investigations must be brought? It is a very important point and we have just seen what can happen.

I would draw your attention further to clause 32(1) which says:

> "Where a Member of Parliament alleges that another Member is in contravention of any of the provisions of this Part, the Speaker of the House of Representatives, shall refer the matter to an appropriate Standing Committee."

The standing committee, as was questioned by Sen. Prof. Spence may elect either—

"(a) to deliberate upon the matter and report its findings to Parliament; or

(b) refer the alleged contravention to the Commission."

Mr. President, we know that the standing committees of the House of Representatives are always dominated by the Government in the majority, so what do you expect them to do? Is himself going to report on himself? No, Mr. President. We have just seen a classic example of where they would whitewash any investigation or any referral and that clause is not worth the paper it is written on; it is not even worth debating in this House. It is of absolutely no use at all.

If by any stretch of the imagination it gets referred back to the commission and the commission goes to investigate again, it goes back to the commission. The commission only has the authority of a commission of enquiry and the only penalty for non-compliance with the commission is a $2,000 fine on summary conviction. In other words a charge has to be laid, you have to go to court, you have to be convicted, and then you receive a fine of $2,000. Is that teeth? Mr. President, this is nothing but an attempt to bathe themselves and to whitewash themselves to make themselves look white and clean.

Mr. President what really needs to happen is this, and I would read excerpts from an article from the *Washington and Lee University Law Review 1515 of 1997*. This was a conference of judges talking about the independent counsel process in the United States, what we know as the special prosecutor. That is how it came about. I would read what Hon. J. Harvey Wilkinson the Chief Judge of the US Court of Appeal said:

> "The Independent Counsel statute is an intersection between the strongest imperatives of the rule of law and the most basic prerogatives of democracy.

> How we approach this statute will have a lot to say about what kind of Republic we would have. The statute asks the most fundamental questions involving public responsibility. It challenges us to consider to what and to whom our highest officials are ultimately accountable."

Mr. President, for those of you who do not understand what I am talking about, the special prosecutors were the persons who were able to find the information that was about to impeach President Nixon and covered the information to impeach President Clinton in the United States of America. I would like to read what the Hon. T. Ellis III said. He is a judge in the US District Court in the district of Virginia. He said:

> "For almost two centuries there was no established institutionalized means for investigating and prosecuting senior level officials in the executive branch. The triggering event for the enactment of the statute was called the Saturday Night Massacre."

Mr. President, just to remind you of what the Saturday Night Massacre was all about, you would recall on October 20, 1973 John Dean who was the White House counsel had been called as a witness by Archibald Cox who was at that point, the special investigator into the Watergate affair. He had said from his recollection that there were tapes at the White House which were voice activated.

Archibald Cox demanded the production of the tapes from President Nixon, Nixon refused and suggested an alternative. He wanted to provide Mr. Cox with a summary of the tapes. Mr. Cox refused and said he wanted the original tapes. Mr. Nixon then instructed his Attorney General to fire Mr. Cox, the Attorney General refused to do that and then resigned. Mr. Nixon then instructed the deputy Attorney General to fire Mr. Cox, he refused and Mr. Nixon fired him. He then instructed the solicitor general to fire Mr. Cox and he did, in fact, fire Mr. Cox and that night was called the Saturday Night Massacre.

Following that fateful event, lawmakers became convinced that legislation was needed to deal with this special and thorny problem of investigating and prosecuting criminal wrongdoing of high-ranking executive branch officials. Originally enacted is Title 4 of the Ethics in Government Act of 1978 and subject to a five-year provision, the statute has been reauthorized by Congress three times since.

In December, 1992 the Independent Counsel Law expired in the face of a Republican filibuster and President Bill Clinton then took steps, being the first President since Carter to endorse the institution of the independent counsel.

On July 1, 1994, Clinton signed the Reauthorization Bill and called that law "A foundation stone for the trust between the Government and other services." He said also that statute has been in the past and has been a force for Government integrity and public confidence. That was Mr. Clinton in 1994.

As you would note, that Bill has now lapsed. It lapsed in fact, on June 30, 1999 and there is now discussion as to whether, in fact, it should be re-enacted. What is the point of bringing this matter into this debate? The point is very simple, this Bill, as it is in front of us, does not give any of us the real authority to initiate investigation. There is no standard of evidence by which any kind of investigation will, in fact, be initiated and, more than that, its powers to access information are severely limited.

3.30 p.m.

In the state-owned enterprises, as in the airport matter, there is virtually nothing that the commission could do there. How could we, the people, ensure that the commission will investigate the airport, that it will investigate the National Petroleum Marketing Company Limited, that it will investigate Petrotrin and Bear Stearns, that it will investigate InnCogen? How can we be certain that it will investigate the National Flour Mills? There is nothing in here that gives us any confidence that these matters can or will be dealt with. It falls way short of the mark.

A wise man once said, "A miss is as good as a mile. If you have not hit the target bull's-eye, you have not hit the target at all." And that has happened here. Yes, it is a marginal improvement on what was there before, but it falls way short in terms of what we now need.

I want to talk about the threshold at which investigations must be started. I read from Mr. William Barr who is now the Executive Vice-President and General Counsel of GTE Corporation—in fact, he was the Attorney General of the United States from 1991—1993 and he was talking specifically about the threshold at which an investigation must be started. He was a former Attorney General of the United States. He said:

> "The standard for starting a preliminary investigation is very low. It is not evidence of crime, it is information sufficient to warrant an investigation as to whether a person has violated the law and once that is triggered, once you get that information, you are basically locked into going to court for an independent counsel."

Mr. President, in the United States, how the independent counsel is appointed is that the Attorney General refers the matter to a panel of three judges and, in fact, they are the ones who appoint the independent counsel. He continues:

> "To avoid the preliminary investigation, you have to say you do not have any credible information and you do not have any specific information."

Every issue that we have dealt with and talked about on the streets, on the platforms and in this Parliament, passed that test. We have credible information and there is specific information. It is specific and credible and yet there are no investigations going on. He said.

> "It is very hard to knock out an allegation on the grounds of lack of credibility because 90 per cent of these things come from the newspapers."

He is saying it is very hard to knock it out on the basis of credibility because 90 per cent of it comes from the media, therefore, you have to deal with it.

What is going to be dealt with under this Bill, Mr. President? What will be dealt with under this Bill? Very little. It does not satisfy anything. This is nothing more than a sham, a complete sham. While, in the United States, they have found that the special prosecutor law can be seen to be used as a political tool and is favoured by some and rejected by others, the fact of the matter is that in July of 1999, this country desperately needs that kind of legislation and an officer with that kind of authority, where he can demand information from any source and if you do not provide it, you sit in jail until you provide it. That is what is necessary in this day and age, and this is not going to give that Government a sufficient cleansing to make them look any cleaner than they now are. It cannot and it would not and the people know it. They know this is not going to clean anybody. This will not clean the UNC.

What is needed is new blood, fresh ideas, honesty and integrity.

Sen. Cuffy Dowlat: And that is not coming from the PNM.

Sen. D. Montano: I would like to know, when you understand the indisputable logic behind the merits of appointing an independent, permanent special investigator/prosecutor, if you understand the merits of that, how can you possibly go against it? I want to hear the arguments. I am waiting patiently for the arguments of the Government.

I thank you very much, Sir.

Sen. Vincent Cabrera: Mr. President, I rise to support—

Sen. Mohammed: Mr. President, I am seeking some clarification please. Just a few minutes ago, the Leader of Government Business indicated to us that after one speaker from our side, we would have adjourned today's sitting and there is now another speaker. I am just seeking some clarification.

Sen. Mark: We would have liked to put it at two speakers.

Sen. Mohammed: If that is the case, what is it? Are we going on with the debate?

Mr. President: I was not privy to any discussions.

Sen. Mohammed: Talk of integrity.

Mr. President: Please, let us hear.

Sen. Mark: Mr. President, the hon. Senator will not be with us next week and he has asked to make a small intervention. As soon as his contribution is through, we will conclude.

Mr. President: In the light of what the other Members are saying, Mr. Minister, would you wish to have your usual discussions with the Leaders before we pursue?

Sen. Mark: I am suggesting that, for instance, we allow—[*Crosstalk*]

Mr. President: Are you pursuing it? I just asked whether you wished to pursue further discussions with the people who alleged that there was a certain agreement. If you wish to pursue it, I have the authority to make a certain declaration, but I would need to know whether any further discussions will take place.

Sen. Prof. Spence: Mr. President, may I say something? It was at the hon. Minister's request that we came to the agreement that after one presentation from the Opposition, we would adjourn—at his request, which we accepted.

Mr. President: Please, I do not want that debate to be in the Chamber.

Sen. Mark: Mr. President, I have indicated that even though we spoke with both the Leader of the Opposition and the Independent Senator, I have asked the Senate that Sen. Vincent Cabrera make a final contribution on this matter for 15 minutes, and they have the right to retire, if they wish.

Mr. President: So that you are not engaging in further discussions?

Sen. Mark: No.

Mr. President: Sen. Vincent Cabrera.

[*Members of the Opposition leave the Chamber*]

Sen. Vincent Cabrera: Mr. President, I rise to speak in support of integrity legislation before the Parliament. It is unfortunate that the Opposition has decided to take up the position they have taken up [*Crosstalk*] but, perhaps—

Mr. President: Please allow the Member to make his contribution.

Sen. V. Cabrera:—the population of Trinidad and Tobago on the whole would be better off without them.

Mr. President, Sen. Danny Montano, in making his contribution to this Bill, sought to taint the three-and-a-half-year regime of the United National Congress/NAR Government as being one full of corruption.

Mr. President: Sen. Vincent Cabrera, do not enter that area at all because any comments made in that regard were expunged from the records.

Sen. V. Cabrera: Mr. President, the UNC Government, after three and a half years, is bringing the legislation to Parliament which would deal with the concerns expressed by Senators today. This legislation was subject to a Joint Select Committee in which the Opposition was involved, and there was no disagreement at that level as to the contents of the Bill, so it is indeed surprising and it is indeed a source of some anxiety on this side, that the Opposition at the level of the Joint Select Committee did, in fact, support the Bill and did not raise any of the issues which they are raising today. But, I think those who have ears to hear and eyes to see would know that this is the season when we have very strange behaviour indeed.

It was the NAR that, in fact, invoked the legislation. The point I want to make to you, Mr. President, is that the opposite side was in power for 40 years and did absolutely nothing—and I am not entering that area at all, as you said, Mr. President—towards bringing the type of legislation which would ensure that the population would be able to use some yardstick by which to judge the integrity of people in public life. Perhaps this is a very sensitive discussion taking into consideration the period in which we are at present, but I, without any fear of contradiction, without any need for apologies to anyone, say that we all must

compliment the Attorney General and, indeed, the Government of the UNC/NAR, for bringing this legislation and tabling it here today in the Senate.

Sen. Daly: Breaking an agreement simultaneously.

Sen. V. Cabrera: Well, I do not know if Senior Counsel could allow me to make my contribution.

The Bill itself falls in line with integrity legislation internationally although all integrity legislation is not and cannot be perfect, because when an individual decides to corrupt himself or to be corrupt, he can go to great extremes in covering up that activity.

The three Bills before us will allow the public—who, over the past 40 years has had cause to question the performance and integrity of public officers—to be given a new faith and a new hope in the integrity of the system. Very quickly, I say that we on this side support the Bill, urge those on the other side to do likewise, and it is important that at times like these, we shed from our hearts the emotions that we have attached to it and decide to go forward for the good of the country. So, I have great pleasure in supporting this Bill.

I thank you.

ADJOURNMENT

The Minister of Public Administration (Sen. The Hon. Wade Mark): Mr. President, in seeking to move the adjournment of the Senate, may I inform fellow Senators that we are going to continue on July 13 with these three Bills started here. We are going to continue on July 20 and July 27 respectively with Private Business. Certainly, Mr. President, I would hope that, for instance, the limited intervention that the Senator has made would not, in fact, fracture any good relations that we have amongst the parties.

I beg to move that this Senate do now adjourn to Tuesday, July 13, 1999 at 1.30 p.m.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 3.45 p.m.