

Dangerous Dogs (No.2) Bill

Tuesday, November 16, 1999

SENATE

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The Senate met at 1.32 p.m.

PRAYERS

[MR. PRESIDENT *in the Chair*]

DANGEROUS DOGS (NO. 2) BILL

Bill to provide for regulating the keeping of dangerous dogs which present a serious danger to the public; to make further provision for ensuring that such dogs are kept under proper control; and for connected purposes, brought from the House of Representatives [*The Attorney General and Minister of Legal Affairs*]; read the first time.

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

Question put and agreed to.

LAND TRIBUNAL (NO. 2) BILL

Bill to establish a Land Tribunal to hear and determine appeals from any decision made in the course of the Land Adjudication process, and from the decision of any other body relating to the use and enjoyment of land, the division, development and the compulsory acquisition of land, and for matters connected therewith and incidental thereto, brought from the House of Representatives [*The Attorney General and Minister of Legal Affairs*]; read the first time.

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

Question put and agreed to.

REGISTRATION OF TITLES TO LAND (NO. 2) BILL

Bill to provide for a register of land titles, and to provide for the registration of estates and interests in land, in that register, brought from the House of Representatives [*The Attorney General and Minister of Legal Affairs*]; read the first time.

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

Question put and agreed to.

LAND ADJUDICATION (NO. 2) BILL

Bill to provide for the adjudication of rights and interests in land and for purposes connected therewith or incidental thereto, brought from the House of Representatives [*The Attorney General and Minister of Legal Affairs*]; read the first time.

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

Question put and agreed to.

PAPERS LAID

1. Report on the terms and conditions relating to the US \$230 million Eurobond Issue. [*The Minister of Public Administration (Sen. The Hon. Wade Mark)*]
2. Financial statements for the National Gas Company of Trinidad and Tobago Limited and Subsidiary Companies for the year ended December 31, 1998. [*Hon. W. Mark*]

ARRANGEMENT OF BUSINESS

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

Agreed to.

ENVIRONMENTAL MANAGEMENT (AMDT.) (NO. 2) BILL

Order for second reading read.

The Minister of the Environment (Dr. The Hon. Reeza Mohammed): Mr. President, I beg to move,

That a Bill to amend the Environmental Management Act be now read a second time.

Mr. President, the primary intent of the amendments proposed in this Bill is to strengthen the effectiveness of the Environmental Commission in compliance with the environmental laws of Trinidad and Tobago by conferring on the commissioners of the Environmental Commission the independence and security of tenure comparable to that of judges of the High Court. Such independence is fundamental to the effectiveness of the commission as a superior court of record. It is imperative, therefore, that the commission be vested with the authority and be

given the wherewithal to allow it to conduct its affairs in a manner that is in keeping with the high standards of professionalism, integrity and transparency, since its decisions must not be seen as pandering to any sectorial or political interests in the society.

This Bill, therefore, bears testimony to this administration's deep commitment to ensuring the preservation of the independence of the Judiciary, social justice and the continued enhancement of the system for sound environmental management of Trinidad and Tobago and its resources.

Mr. President, section 81(4) of the Act spells out the powers of the commission to enforce its own orders and judgments and the same power to punish contempts as the High Court of Justice. Section 81(5) deals with the jurisdiction to hear and determine by the commission, the following:

- Appeals from decisions or actions of the authority as specifically authorized under this Act;
- Applications for deferment of decisions made under section 25 or deferment of designations made under section 41;
- Applications by the authority for the enforcement of any consent agreement or any final administrative order as provided in section 67;
- Administrative civil assessments under section 66;
- Appeals from the designation of environmentally sensitive areas or environmentally sensitive species by the authority pursuant to section 41;
- Appeals from a decision by the authority under section 36 to refuse to issue a certificate of environmental clearance or to grant such a certificate with conditions;
- Appeals from any determination by the authority to disclose information or materials claimed as a trade secret or confidential business information under section 23(3); and
- Complaints brought by persons pursuant to section 69, otherwise known as the direct private party action provision, and such other matters as may be prescribed by or arise under this Act or any other written law where jurisdiction in the commission is specifically to be provided.

Mr. President, these amendments, by strengthening and enhancing the enforcement of the commission, will improve its effectiveness in the discharge of its mandate.

Clause 6 of the Bill amends section 82 of the Environmental Management Act (No. 3) of 1995 that prescribes the composition of the Environmental Commission. According to the provision of the existing Act, the commission comprises a chairman and deputy chairman, both legally qualified to be a judge of the High Court, and four other members who are not specifically required to be legally qualified persons. All members are to be appointed by the President.

The Bill seeks to alter the membership of the commission so as to be confined to two commissioners, a chairman and deputy chairman, both attorneys-at-law of not less than 10 years' standing and shall be experienced in environmental issues. The two commissioners will be appointed by the President on the advice of the Judicial and Legal Service Commission.

Clause 8 of the Bill amends section 83 of the Environmental Management Act (No. 3) of 1995 which provides for the salary, allowances and other conditions of service of members of the Environmental Commission.

The present Bill requires the Salaries Review Commission, in accordance with the provisions of section 141 of the Constitution, to review the salary, allowances and other conditions of service of the two commissioners of the Environmental Commission with the approval of the President.

In order to ensure that the decisions of the commission are equitable and grounded in existing economic, scientific and social realities, an imperative for informed decision-making, decisions must be based on available scientific, environmental, technical and economic information. It is not envisaged nor intended that the two commissioners be themselves a repository of such scientific knowledge and experience.

Accordingly, clause 7 of the Bill introduces a new section 82A which provides for the appointment of six lay assessors to make such expertise available to the commissioners. These lay assessors would be appointed by the President by virtue of their knowledge of, or experience in environmental issues, engineering, the natural sciences or the social sciences. The salaries and allowances will be determined by the President. The lay assessors would function purely in an advisory capacity to the commissioners; that is, they would have no vote in the decisions of the commission. The expertise of the lay assessors would significantly enhance the effectiveness of the Environmental Commission.

Clause 3 seeks to bring the mode of appointment of the Managing Director/Chief Executive Officer of the Environmental Management Authority (EMA) in line with the established statutory arrangements for the appointment of

officers in comparable positions in similar bodies established by Acts of Parliament. This arrangement provides for such appointments to be subject to the approval of the appropriate minister. The present arrangement is for the Managing Director/Chief Executive Officer of the EMA to be appointed by the board of the EMA.

1.45 p.m.

It is to be noted that the requirement for ministerial approval is provided for in the enabling legislation in respect of the following agencies: the Institute of Marine Affairs; the National Institute for Higher Education, Research, Science and Technology; the Caribbean Industrial Research Institute; the National Agricultural Marketing Development Company; the National Carnival Commission of Trinidad and Tobago. In the case of the Institute of Marine Affairs, the substantive Act was amended by Act No. 13 of 1990 to specifically provide for the appointment of this agency's director to be subject to approval by the Minister.

Clause 4 would amend section 80 of the Act to bring the financial year of the Environmental Trust Fund into conformity with the Financial Year Act, No. 23, 1998 by substituting the dates of October 01 to September 30 of the following calendar year for the dates January 01 to December 31 of the same calendar year.

Clauses 8, 9, and 10, made consequential amendments to sections 83, 84 and 85 of the Environmental Management Act (No. 3), 1995 in keeping with the change in the composition of the membership of the Environmental Commission which provides for two commissioners: that is a chairman and deputy chairman, both of whom are legally qualified.

Mr. Speaker, there are a few further amendments to the Bill which were made in the House of Representatives on Friday, November 05, 1999. These amendments are to clauses 4, 5, 6 and 9 of the Bill. The amendments to clause 4 would make the new financial year of the Environmental Trust Fund applicable with effect from this year, and not when the Environmental Management Act No. 3 of 1995 was assented to.

The amendment to clause 5 would alter section 81 of the Environmental Management Act (No. 3), 1995 and includes a new section 81A to provide for the qualifications of the Registrar and clarify the status of that post. Section 81(6) of the Environmental Management Act (No. 3), 1995, while providing for the post of Registrar, does not require the incumbent in that position to have any particular qualifications or professional training or experience. This has now been addressed

Environmental Management (Amdt.) Bill
[HON. DR. R. MOHAMMED]

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by clause 5, which requires the Registrar to be an attorney-at-law of at least five years' standing. Additionally, the Registrar has now been designated a public officer under section 111 of the Constitution of the Republic of Trinidad and Tobago.

The amendments to clause 6 make consequential changes to section 80 of the Act that are required in light of the new structure of membership of the Environmental Commission which comprises two commissioners, as I said before, a chairman and deputy chairman, both attorneys-at-law.

Clause 6 also provides for both the suspension from office and the removal of the two commissioners for reasons already stated in section 82(7) of the Act.

Mr. Speaker, the amendment to clause 9 is merely a matter of housekeeping and it is meant to tidy up the language of that subsection.

Mr. Speaker, I beg to move.

Question proposed.

Sen. Nafeesa Mohammed: Mr. President, before making my contribution on this particular piece of legislation before us, I would like to take this opportunity to congratulate the hon. Minister of the Environment on his recent elevation to the expanded Ministry of the Environment. Congratulations to you, Sir. [*Desk thumping*]

I listened to the presentation by the hon. Minister in respect of this Bill that seeks to amend the 1995 Environmental Management Authority Act. We, on this side, have some very serious concerns and reservations with respect to the proposed amendments. I would like, first of all, to deal, particularly, with clause 3 of this Bill which seeks to amend section 6 of the 1995 Act, to require the Minister's approval for the appointment of the Managing Director of the Board of the Environmental Management Authority.

This proposed amendment certainly highlights the hypocrisy of the United National Congress Coalition Government. If we were to go back to the *Hansard* report on the debate that took place when the Act of 1995 was being debated in this Chamber, it is rather amusing to note that Members who now sit on the opposite side, as Members of the Government, who were then on this side of the House, went to town on the then Bill and objected to that very same clause in the Bill that dealt with the appointment of the Managing Director. The *Hansard* is there.

I am sure Sen. The Hon. Wade Mark would recall when his colleague, Sen. Mumtaz Hosein, indicated what was the objection, and from my reading of the *Hansard* report, the United National Congress proposed an amendment to the Bill then, that would have catered for the appointment or the establishment of an Environmental Management Authority, whose members, particularly the Chairman of that Board would have been appointed by the President, acting on the advice of the Prime Minister and the Leader of the Opposition. They went to town in their contributions as to the need for such an amendment because of the fact that the Environmental Management Authority was viewed and is viewed as a very significant institution in the country and we know that, worldwide, environmental issues are the order of the day.

One would expect that with such an important authority, all efforts would be made to ensure that such an authority remains free from political interference. They who took great pains in 1995 to object to the Bill then, are today bringing an amendment to the Act that seeks to give direct political interference in the running of the affairs of the Environmental Management Authority. We, on this side, strongly condemn that clause in the Bill that seeks to give the Minister the authority to appoint the Managing Director or the Chief Executive Officer of the Environmental Management Authority. Such hypocrisy! You see, when it comes to the appointment of a managing director or a chief executive officer, one would expect that such a decision should properly be made by the Board that has been appointed. A person holding such an office ought to possess a certain level of technical competence and ability and not be “one of the boys,” as this Government has a track record of doing.

Just look over the last four years and you would see how they go about making their appointments. They have gone so far to even interfere with the processes that we know have existed—whether it is in the public service or whatever. We know of that famous Cabinet Minute No. 2868 of October, 29, 1998, which specifically stated that Ministers be fully informed and their prior approval obtained before ministries and departments engage persons on a temporary basis to fill positions that are established either on a temporary basis or on contract.

For years, the Members on their side who are now in Government, have complained about political interference, and now that the shoe is on the other foot, they are breaking all barriers and they are riding roughshod over our very well-established institutions and checks and balances in our country.

1.55 p.m.

On a daily basis they are interfering and all they are seeking to do is assume more and more control and power. We on this side condemn such action, especially when it has to do with the operations of the Environmental Management Authority and giving the Minister the power to determine who should be the managing director or the chief executive officer.

Mr. President, the Environmental Management Authority came into being since 1995 and four years after, to this date, they have not yet established the commission that is proposed under the 1995 Act. While with the amendments that are before us today it seems as though they are clearing the way to set up the commission, look at the hypocrisy in it again. It is like a scorpion with a sting in the tail; they give with one hand but take with the other.

Yes, we want the commission. From since my involvement in the Senate, nearly every six months I have heard Prof. Kenny asking a question about when is the Environmental Management Commission coming. We want it to come. Four years and it is still coming, but look at the catch in it: they bring an amendment where they are proposing that the commission be established and that it would provide for the chairman and a deputy chairman to be appointed by the President acting on the advice of the Judicial and Legal Service Commission.

Certainly, we welcome that kind of provision where the Judicial and Legal Service Commission would have a say in terms of who would be selected as the chairman and deputy chairman of the commission, because we know that the commission is supposed to be a superior court of record and requires individuals of a certain legal background. Mr. President, in Trinidad and Tobago we know that there are two similar institutions—I am using the word similar, but there has been established in Trinidad and Tobago an industrial court as well as the tax appeal board on which I think this commission is patterned with respect to the operations of the Environmental Commission.

While it is a welcome provision to have the Judicial and Legal Service Commission have an input in the selection of the chairman and deputy chairman, on the other hand, Mr. President, look at the irony and hypocrisy in it, in that with this proposed amendment, from a commission that would have comprised a chairman, a deputy chairman and five other members—if I may just read the specific provisions in the 1995 Act, section 82(1):

- “(1) The Commission shall be comprised of a full-time Chairman, and five other members including a Deputy Chairman each of whom may be

appointed to serve in a full-time, part-time or periodic capacity as may be required to fulfil the objects of this Act.

- (3) The members of the Commission, other than the Chairman and Deputy Chairman, shall be appointed by the President from among such persons as appear to the President to be qualified by virtue of their knowledge of or experience in environmental issues, engineering, the natural sciences, or the social sciences.

Here it is, the Act caters for a commission with these members who would represent a wide cross-section of backgrounds, and in dealing with environmental matters, you do need people with a certain level of expertise.

While that provision is there in the Act, they have now brought an amendment that seeks to reduce the commission to only two members. We are now going to have a commission of only two members who would be attorneys of not less than 10 years' experience. They go on to introduce a new clause which would be section 82(A) where they are going to appoint a chairman, a deputy chairman. The new 82(A)(1) says:

“There shall be attached to the Commission, six lay assessors”.

Now, these lay assessors, what would be their role in terms of the operations of the commission? What exactly would be their role and function? What is their purpose?

Although it says that these assessors would be qualified by virtue of their knowledge or experience in environment issues, engineering, the natural sciences or the social sciences, it goes on to say:

- “(4) The lay assessors shall advise the Commission on matters of fact in any case or proceedings before the Commission, but shall have no vote in the decisions of the Commission.’.”

What really would be the effect of their involvement with the commission? Mr. President, it reeks of hypocrisy and the Minister gets up in this Chamber and talks about his Government's commitment to the independence of the Judiciary?

Mr. President, without wanting to stray from the debate that is before us, it is really unfortunate that he has to come here—and I read where Sen. Mark made a remark and I am going to use it: “The UNC coalition is an environmental hazard to this country if not to the region. [*Desk thumping*]

Mr. President, one of the other glaring facts about this piece of legislation before us is the length of time it has taken for the Government to do anything to promote the establishment of this commission. I am saying this because some four years have gone by, and you know what comes across in all this? That it seemed to have been a deliberate policy on the part of this UNC coalition Government not to have such a commission established. When you look at the various contracts and the deals that have gone on in this country from the desalination plant to Innocogen and what have you, you would see why it is not in their interest to have a commission in place. It is only now after they have gone ahead with these contracts that they are now coming to give the impression that they are so eager to have a commission.

Mr. President, with the establishment of a commission that commission would be the agency that would facilitate any kind of reviews or appeals with respect to orders that may be made. The Minister referred to the various sections in the Act under which the commission would have some involvement. For example, section 35 of the Act deals with the need for certificates of environmental clearance. If I may just read section 35(1):

“For the purpose of determining the environmental impact which might arise out of any new or significantly modified construction, process, works or other activity, the Minister may by order subject to negative resolution of Parliament, designate a list of activities requiring a certificate of environmental clearance...

(2) No person shall proceed with any activity which the Minister has designated as requiring a Certificate unless such person applies for and receives a Certificate...”

Mr. President, section 36 deals with the issue of a refusal of a certificate. The fact of the matter is that if there are individuals or groups that may have objections with respect to the construction of a particular plant or what have you, then with a commission in place, you would have the opportunity to come and ventilate your reasons for objecting to the establishment of such a plant or what have you. It seems to be a deliberate policy on the part of this Government to have stalled the implementation or establishment of such a commission, because they know that many of the things in which they are presently engaged would not see the light of day with the way they have gone about doing them.

The members of the EMA over these last few years have been trying to do what they are supposed to. I understand that in their programme dealing with

waste management, they have made some progress. It is in some advanced stage. Yet we are hearing about some of their friends and associates who are already talking to ministers and negotiating deals and contracts with respect to waste management. We are going to hear more about that in this debate, I am sure about that. The hon. Minister who was recently appointed knows what it is I am talking about.

On the one hand, you have the lawful body in the country that is responsible for dealing with environmental matters, dealing with a waste management programme, and yet on the other hand, you have the ministers promoting and encouraging their friends and so forth to deal with waste management. There is a lot of inconsistency—[*Interruption*]

Sen. Mark: Mr. President, on a point of order, section 35(8) of the Standing Orders refer to a Member querying the conduct of a minister. She should either identify the minister or bring a substantive motion to debate this thing. She is alleging and implying, Sir—

Hon. Members: Who is she?

Sen. Mark: The hon. Senator; if the Senator could indicate which minister she is talking about—

Mr. President: Sen. Mohammed, rather than begin pointing fingers at individuals, I ask that you deal with the contents of the Bill before us, and do not waiver.

Sen. N. Mohammed: Thank you, Mr. President, I was simply dealing with the conduct of the Government in my contribution here that deals with the amendments that they are proposing, where on the one hand they are giving the impression that they now want to set up a commission but, in effect, they will end up with a toothless bull dog.

As it stands, the Environmental Management Authority in its day-to-day operations at present, is a toothless animal because without the commission and proper rules and regulations, there is very little in the way of enforcement of the measures of this particular piece of legislation. So that with these amendments, they are now reducing the composition of the commission to two members only. While they are talking about some six lay assessors their role would be very minimal indeed. No matter what the level of competence may be of these lay assessors, if they even give an opinion it may not count. They have no right to vote, they are members of the commission, therefore, their role in the whole process is significantly reduced.

The fact that this Minister is now proposing that the Minister goes so far as to appoint the managing director or the chief executive officer (CEO), it is just further watering down the whole process and opening up the EMA to tremendous political interference, because it means that they would be able to get one of their own—somebody who is supportive of them, their ideas and *modus operandi*—to be positioned as managing director of the EMA. The implications of that are very serious, because it means that whether they want to go ahead with Inncogen, Innercob or whatever the deals may be, they would go ahead, whether they get clearance certificates or not. They would be able to get their way.

The idea is to insulate a body like the Environmental Management Authority. When in 1995 this debate was taking place, the then government took on board the views and concerns expressed by Members of the Opposition and, indeed, Members of the Independent Benches. Mr. President, I remember the then Senator Kamla Persad-Bissessar who talked about the need for a special majority. Certainly, we have been very consistent in that if legislation is going to interfere with people's rights then you do it the proper way.

The fact of the matter is that this political interference in the operations of the EMA is really going to do tremendous harm. There are so many areas to be developed within the Environmental Management Authority. It is a new entity in our country and we would like to see it work.

2.10 p.m.

We have been hearing so much talk about the pollution of our rivers. Look at the confusion that is taking place. Not too long ago, the Minister of Public Utilities went touring the Caroni river and making threatening statements against those corporate citizens who are polluting the rivers, and here you have the legitimately established authority, the Environmental Management Authority to deal with environmental matters on the one hand and you have the Minister of Public Utilities on the other hand talking about river police and what have you. Who is really in charge of what?

Mr. President, with this Environmental Management Authority we know, we have heard it expressed time and time again, that there is need to rationalize the many areas of overlap that exist. We know that over the years there were several ministries and agencies in the country which had power to deal with environmental matters, but now that there is an Environmental Management Authority, one would expect that you would be moving in the direction of rationalizing the whole process so that there would not be one Minister shooting off in one direction and the Authority just being, as I said, like a toothless animal.

If the Environmental Management Authority is an authority that is set up to deal with environmental management in the country, then we should all be moving in the direction that the various ministries would respect the authority of the Environmental Management Authority. Another classic area is when it comes to Town and Country Planning. Some of us have been involved in the discussion dealing with the National Physical Planning and Development Bill and again, in those deliberations, we have seen where there is tremendous overlap taking place. In fact, I think the proposal has been that instead of establishing another area of bureaucracy, that this commission provided for under the Environmental Management Authority should deal with those issues as well.

Through you, Mr. President, I am saying that the present Minister needs to ensure that his ministerial colleagues would respect and understand the role of the Environmental Management Authority in terms of dealing with environmental issues in the country, and moreso, environmental management. The hon. Minister just came from the Ministry of Agriculture, Land and Marine Resources and in that ministry we know of the areas of overlap again. I remember the National Parks Bill and the Wild Life Bill are all areas that would have touched on his ministry and the fact of the matter is, now that he is in charge specifically of the Environmental Management Authority and environmental matters, one would expect that he would use whatever influence he has to ensure that this authority be allowed to operate in the way it was envisaged.

Mr. President, I really hope that in this new portfolio, we would see some positive changes taking place as compared to the Ministry of Agriculture, Land and Marine Resources because the hon. Minister is a gentlemen who—

Mr. President: That is not a fair comment. I do not think you should be making it in this House. Please withdraw it.

Sen. N. Mohammed: Thank you very much, Mr. President. Mr. President, when it comes to the question of ministerial control which would be directly taking place with this proposed amendment today, one of the things is that in this new Ministry of the Environment it seems that it is mainly the Environmental Management Authority that falls under the portfolio of the hon. Minister and this has some very dangerous implications to it. There is need to clearly define the role and draw the line between the Minister's role as a Minister, who under the Act, is expected to give policy directions as opposed to a Minister actually moving into an authority or agency and getting involved in the day-to-day affairs of the particular ministry or agency. Where do you draw that line? Particularly in

these times when Ministers are boasting about micro managing their various ministries.

Mr. President, there are very dangerous implications in this trend that this United National Congress coalition Government has become famous for, and we on this side simply want to put on record our concerns for this direct political interference in our various institutions in the country.

Thank you, Mr. President.

Sen. Prof. Julian Kenny: Mr. President, I hope that you take account of my boldness and allow me a slight digression. This is a very, very important piece of legislation and my digression relates to things which are happening in our country.

We heard recently from Mr. Stanley Ottley that there was some arrangement being made for the generation of electricity in Tobago and we read on the *Sunday Guardian* some of the details from Mr. Reginald Dumas. I have a copy of the document which I am not going to read, but there is a contract between an American firm and the Tobago House of Assembly whereby garbage would be used in Tobago as a feedstock for generation of electricity and the American firm is going to import feed stock. The contract does not say what this feed stock is, but I am absolutely alarmed and that is why having this commission established immediately—I do not know if it would have any effect on that particular contract, but this is why it is absolutely essential that we get this commission appointed without delay.

Mr. President, I will refer to a document which is the “Caribbean Development Programme of the United Nations” which is the United Nations environmental programme of 1991 which deals with trans-boundary movement of hazardous and nuclear material and there are several pages in here of moves by American commercial interests to dump garbage to sell electricity generation by taking their garbage. There are perhaps about 30 properties which they have tried, including importation of sewerage sludge into the Caribbean.

I am not going into all this, but I only use this as an example to emphasize that we must get this commission established and appointed without delay. If we do not do this, we may find other bizarre agreements being signed between possibly ministries of Government, or Government, I do not know. I emphasize that we must get this thing done.

Mr. President, I am distressed to have to speak against these amendments. The environmental commission as constituted in the Environmental Management Act

is another special court. We already have two of them: the Tax Appeal Board which goes back quite a few years, and the Industrial Court which goes back quite a few years. Both of them are superior courts of record.

Taking first of all the Industrial Court, the president or chairman is a High Court Judge or equivalent to a High Court Judge, and the vice-chairman or vice-president is an attorney-at-law of ten years standing. The same thing applies in the Tax Appeal Board and each of these courts uses people who are not legally qualified and they are full members of the court. Therefore, when they are dealing with the matters that come before them which are quite different, tax appeal as opposed to industrial relations, the court sits and decisions are arrived at by majority. The president or vice-president of the Board, or vice-chairman of either court has a casting vote so that if there is a matter being determined and there is some sort of a tie, the chairman rules that he votes, and he votes only in accordance with law.

These courts have functioned for several years and the environmental commission was patterned after this in which case you would have a court, someone of ten years' standing and a vice-chairman and there would be other people from different disciplines and you would sit and meet on matters. The Minister is quite right, he has read out a whole series of things that the court would hear. It was intended that this court functions in essentially the same way as that of the Tax Appeal Board or the Industrial Court.

When I see this amendment, I am alarmed and confused. I consider the whole thing quite bizarre. I wonder how it could have been drafted by competent legal draftsmen. I would just illustrate the problem that arises. You have effectively a court of two and somebody applies for an environment clearance certificate and does not get it and appeals to the court, or the Environmental Management Authority issues an administrative order and there is some sort of a contest, so you go to the court. You are dealing now with a court of two, you are eliminating the sort of consensus that you might hope for in a court and you end up with a court where there is no majority. You either have a unanimous decision of two, or you have a tie decision. How does one resolve this? I am talking about the mechanics of hearing these wide-ranging matters on which the court would have to adjudicate. How do you manage this when you have just two in the court and the chairman says, "yea" and the vice-chairman says, "nay".

I hope when the Minister is winding up he will explain to us how this would operate because I simply do not understand it. I would point out also that this is a

court which would sit in different divisions, which means that the court can function at San Fernando, Chaguaramas, or for that matter Tobago, it could be anywhere. How does a court of two sit? Are you splitting it into two where you have one person adjudicating and then you have a couple advisers? It does not make sense to me.

I would also reinforce the point which Sen. Mohammed was making that we have served on various committees including the Planning Bill and various others, and certainly, the verbatim record of our deliberations has captured statements from the Government that they will use the environmental commission to adjudicate on matters coming from the planning commission.

2.25 p.m.

Mr. President, I do not know whether this was just committee talk or whether it was serious commitment on the part of the Government. It worries me that I have heard these things and I took them at face value. There is a possibility that the way in which the new court might be constituted, it just simply would be unable to deal with these other matters but it is not only the Planning Commission.

In our Order Paper today, we have received—I have not looked at the title—a Bill which talks about establishing a sort of land tribunal. It is going to be another, I assume, superior court of record. Now, I would think that as a matter of policy, the Government really ought to look at all these various activities and, perhaps, come back to Parliament with comprehensive amendments to the Environmental Management Act and others, so that we do not unnecessarily set up these courts, some of which would be overloaded and some of which would hardly meet, instead of using this piecemeal approach.

Mr. President, I would like to comment on something which the hon. Minister has said regarding the ministerial approval of the Managing Director. The Minister listed a number of organizations, I think he said the Carnival Commission, Namdevco, Institute of Marine Affairs, CARIRI and so forth. Now, you cannot compare the Environmental Management Authority with any of these bodies for the simple reason [*Desk thumping*] that if we read the Act as intended, the Environmental Management Authority has immense powers to manage the environment. This is a regulatory body. This is a body with a big stick. So that if an organization down somewhere, starts pumping sulphuric acid into the river, they can come down with a very heavy hand immediately, administrative order, compensation for damages and if people do not like it, go to the court.

Under section 70, there is provision for fines of \$100,000 for people doing this sort of thing. Now, this is not the Institute of Marine Affairs, it is not the Carnival Commission; it is not Namdevco and it is not CARIRI. There is a fundamental difference between those organizations that the Minister refers to and the Authority.

Mr. President, there are a couple other sort of minor matters that I will refer to, one is with Sen. Nafeesa Mohammed—no we have dealt with that. Let me just turn to the amendments. I have thought and thought of possible solutions to this impasse because I am trying to compromise. If we do not do this, this matter might be lost in the legislative programme. The core issue here is the appointment of the two officers of the court. The two officers of the court, under the original Act, would have been appointed effectively by Cabinet. You cannot set up a parallel legal body according to our Constitution. You cannot do this except you go through the Judicial and Legal Service Commission. So this is the core issue. I find that we have radically changed the Act, and we have not been given, to me, any cogent arguments for doing this and, in fact, my view is that we are making a court which would be ineffectual and questionable.

Mr. President, one of the matters that intrigued me also, is that in the amendment at clause 6(a)(1) it says:

“...an attorney-at-law of not less than ten years standing and shall be experienced in environmental issues.”

Mr. President, I cannot imagine why you would want to narrow the field to the point where you might not be able to find such a person. In my oldness, I can tell you the names of three people who might qualify. One of them was actually the drafter of the Environmental Management Act and the other has worked out of Trinidad. There are three people who would fit this Bill of three years' standing with experience in environmental issues. Now, why is this necessary? I would have thought that the Government wanted to get an experienced attorney-at-law at the level of a High Court Judge. It does not say this, but someone who would have that much experience—I do not mean experience in building condominiums and things like—but experience in practising law.

Mr. President, now, if you attempt, as the Government claims that they are doing, to establish a commission by the end of the year—it did not say whether it is the calendar or financial year—I think there is going to be a great difficulty finding such a person. I would have thought that a more sensible solution is to take the spirit of the original one, and try someone who does have the experience

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equivalent to a High Court Judge, and who would only have to adjudicate on law, which comes from the Authority. That is the environmental clearance, if you are not satisfied you could appeal. If it is sensitive areas or sensitive species you could appeal. The person does not need to have extended experience. He has to be a Judge: somebody who can sit back and listen to all the arguments, including the other members of his own court, who might be ecologists, chemists, or whatever. If we use someone like this, we are likely to find someone more readily.

Mr. President, my concern as to the proposed amendments is that the thing is highly defective, you create a court which in my view, cannot possibly function for the reasons I have given, and then you might have the problem of being able to find someone to start. Mr. President, I have thought and thought and thought; in fact, I have spent a lot of time on this. I think that it is possible to salvage something in the committee stage, provided that the Government is prepared to do some really serious deletions, that is, if the Government is prepared to go back to the original section 82, which constitutes the clause, then this is to me a solution. You set up the commission in accordance with the original Act, and take some of the tidying up and send it through the Judicial and Legal Service Commission and then have an Environmental Court by the end of the year. It is possible.

So while I am totally opposed to the Bill as it stands, I think it may be conveying the impression to the public that the Government is not really serious. You know, there are some people, I think the Friends and Fishermen of the Sea (FFS) come out all the time and say, "They are not interested in this Commission." I do not think any Government really wants to have people thinking that. I think that the Government really wants to have people thinking, "Well, yes, we listen to all the consensus and then we arrive nationally at a mature decision."

So, Mr. President, I am not quite sure how we proceed with this. I am opposed to the bulk of the Bill but I think that possibly in committee, we might be able to start tearing things out. I have a list up here, delete, delete, delete, delete, and then we end up with a very tiny Bill, perhaps about three clauses crystallizing. This matter has to be appointed through the Judicial and Legal Service Commission.

2.35 p.m.

The alternative is that the Government might consider withdrawing this and coming back with something. I mentioned this thing because I continue in my oldness to be frightened that I will go on and we will continue messing up our environment. Thank you, Mr. President. [*Desk thumping*]

The Minister of Energy and Energy Industries (Sen. The Hon. Finbar Gangar): Mr. President, I rise to support my colleague, the Minister of the Environment, who has ably, in my view, presented the Environmental Management (Amdt.) (No. 2) Bill of 1999. I start my contribution by dealing with the statement by Sen. Nafeesa Mohammed that the United National Congress Government is an environmental hazard. I think that the goodly lady has demonstrated her ignorance of some of the happenings in the environment as they relate to recent occurrences.

I just ask this honourable Senator, which administration put asbestos in the schools of Trinidad and Tobago? I also ask her, which administration sited the Parrylands Steam Generation Unit where it was? I also ask her, which administration, since 1972, dissolved the Oil and Water Board and for over 26 years refused to appoint people to the Oil and Water Board? You know, the events which transpired after that were that, since 1972, poor people in this country who have suffered losses as a result of petroleum pollution have had no form of redress. Why? Because under the law the Oil and Water Board was vested with this responsibility and since 1972, when the board last sat, the PNM administration refused to appoint the board as was required under the Oil and Water Board Ordinance.

As such, Mr. President, for over 24 years aggrieved persons have had no redress for losses suffered under pollution. They had no option but to accept whatever the polluter gave them because they had no avenue for contesting the quantum. If the polluter denied liability, there was nothing the aggrieved party could do. In 1991 a farmer attempted to have his claim for pollution heard before the courts. The case was dismissed on a preliminary objection that the basis for jurisdiction for oil pollution was properly vested in the Oil and Water Board, a board that has been non-existent since 1972 because of the insensitivity of the PNM administration to the plight of poor people and for what can only be deemed corroboration in polluting the environment. So when the goodly Senator talks about environmental hazards, maybe I think she is referring to the wrong administration, the wrong government.

When I was looking at some factors in preparing for this debate, you see, the environment is a very delicate subject, particularly as it relates to progress. You know, King Austin had a very famous calypso which all of us should know, and that is *Progress*. He always asked us, "Is the price of progress too high?" It has become immortalized in song in this country. We have to ask ourselves if there is an inherent contradiction between progress and the preservation of the

environment. We in this Government feel that there is absolutely no contradiction between progress and the preservation of the environment, and our efforts in dealing with the environment of this country hand in hand with industrialization have borne great fruit.

This Bill, as presented by the hon. Minister of the Environment, surely brings to the forefront our concerns for the environment. As my colleague, the Minister of the Environment mentioned earlier in the debate, the major objective of this Bill is to confer on the commissioners of the Environmental Commission the independence and security of tenure comparable to that of judges. In this regard, Mr. President, the appointment of the commissioners will be made by the President, acting on the advice of the Judicial and Legal Service Commission. This insulates the commission from sectoral interests and is indicative of the importance that the Government of Trinidad and Tobago places on issues relating to environmental management and their judicial independence.

Mr. President, I just want to make a few comments that would illustrate the commitment of this Government to the protection of the environment when one looks at the numerous initiatives that we have taken. This is particularly evident in all sectors of the economy, more so in the major industries which are most susceptible to bringing pollution into the environment, particularly so the energy policy of Trinidad and Tobago. In the exploitation of hydrocarbons, the risk of pollution is much greater than in many, many industries. As I said before, when you look at what had happened in Parrylands, when the steam generators, because of their steam injection into the wells in the Parrylands area, caused certain factors of health and safety to be raised, the Government had to take a decision as to whether the production of this field could have been reduced from 1,100 to 300 barrels a day.

In making such a decision, we had to understand that the cut-back in production had severe economic consequences, but the well-being of our citizens far outweighed these financial resources. You know, Mr. President, we had to deal with the recent issue of the asbestos in schools and again the Government did not have any hesitation in taking the required action once it was brought to our attention. [*Desk thumping*] It is very apparent that our actions have, in fact, allayed the fears of the population of Trinidad and Tobago and the attendance at schools is certainly being restored to normalcy.

I think it is rather unfortunate that the Leader of the Opposition in another place had a serious problem when he tried to impute improper motives to having

Petrotrin remove the asbestos in all the schools. Obviously the Leader of the Opposition may have forgotten what asbestos means in the refining industry. I want to assure this honourable House that of all the institutions in Trinidad and Tobago with experience in asbestos and the removal of asbestos, Petrotrin is at the top of the list. So I think it was rather unfortunate that accusatory insinuations were levelled against private citizens behind the walls of parliamentary privilege.

As I said, Mr. President, the environment is the business of all of us. One cannot overemphasize the significance of the environment. I am sure Sen. Prof. Ramchand would forgive me if I adapt the words of the poet, Keats, when I say in my own words that the environment must be a thing of beauty. It must be a joy forever. Its loveliness must increase and it must not fade into nothingness. I think all of us here would support our commitment to the environment. In all our actions as a Government we have demonstrated our commitment to preserving it.

You know, we have demanded internationally acceptable environmental standards from the retail and wholesale marketers of petroleum fuels. In the service station upgrade exercise, soil remediation programmes have been conducted at several of the sites. The installation of a leak detection system and double-walled fibreglass tanks will complement this initiative and this has now become a standard feature of the service station upgrade network. This, Mr. President, in view of the fact that what we met when we came in office was a service station network in which almost all the tanks were, in fact, leaking and leaking hazardous and noxious leaded fuels into our courses. So I seriously question the statement which Sen. Mohammed made about which government was, in fact, an environmental hazard. I think any impartial observer would come to one conclusion: that it was the PNM government who was the environmental hazard—extremely important deduction to make.

So, Mr. President, I support my Cabinet colleague, the Minister of the Environment, Dr. Reeza Mohammed, in this particular Bill. I have heard some of the concerns expressed by Sen. Prof. Kenny with respect to the composition of the court. In my view, the appointment of lay assessors with experience in technical fields would certainly enhance the performance of the Environmental Management Commission. I think the redistribution of the composition of this court with two appointees from the Judicial and Legal Service Commission, the chairman and the deputy chairman, ably assisted by the various fields of expertise, for example, the environment and engineering, would go a long way in increasing the efficiency and efficacy of the Environmental Management Commission. We must be—*[Interruption]*

Sen. Prof. Kenny: Thank you for giving way, Mr. Minister. I cannot understand what you are driving at because other members of the court appointed under the original one would have the same skills as these assessors. They would be full members of the court, whereas the amended court would have them only as advisers, not full members of the court. So I am not quite sure what you are driving at. Why would the assessors offer more to the court than people of the same qualification who would be full members of the court?

Sen. The Hon. F. Gangar: Thank you very much, Prof. Kenny, for bringing that to our attention. However, it is my view and the view of the Government that we should take the Environmental Management Commission away from the purely legalistic approach. It is also our view that we should get into a more technical way of operating in which the Environmental Commission would have the final say. It would be made up of two persons, but the length and depth and breadth of expertise and work to be done should be done by people who operate outside the confines of the legal system.

So with those words, Mr. President, we fully support the legislation which is being brought to this Senate. Our view is that we would seek to reduce the time lapse which normally gives rise to the saying that, "Justice delayed is justice denied". We think that the employment of lay assessors would, in fact, enhance the efficiency of the courts and that expertise, which would not normally reside in the courts, can be drawn upon.

2.50 p.m.

Moreover, the decisions of the commission would create a new jurisprudence in the area of environmental law in the same way that the Industrial Court has done in the sphere of labour law. We respectfully suggest that this honourable Senate support the amendments which are designed to bring into operation, as soon as possible, the Environmental Management Commission and the Environmental Management Court.

Thank you very much, Mr. President.

Sen. Prof. John Spence: Mr. President, I congratulate the Government and the new Minister, particularly, for moving forward with the appointment of the commission. In that regard, I think it is extremely important what they have done and I congratulate them.

I think what we need to do, Mr. President, is to make some modifications to the amendments, because I find myself in agreement with Sen. Prof. Kenny in the

points he has made with respect to the changes which have been brought in here. I also find it rather difficult to understand why these changes have been made.

With respect to the appointment of the director, I certainly cannot envisage that there is any comparison between this court and, for example, the Carnival Commission, or, indeed, any of the other institutions to which the hon. Minister referred. I think it really is special and, therefore, it is extremely important.

You see, Mr. President, as has been pointed out by the hon. Minister of Agriculture, Land and Marine Resources in another place, it has been the policy of this Government and the preceding governments for Government to withdraw, and that means the more it withdraws from participation in the economy, the more it has got to regulate.

It becomes extremely difficult, in order to make things happen, other than by regulation, if you are withdrawing from the activity yourself, so it is extremely important that the regulatory mechanisms that we put in place seem to be divorced from this Government activity and, indeed, if Government is withdrawing. So they should withdraw from the appointment of the directors of this sort of institution and not be involved.

I did what Sen. Prof. Kenny said he had done, I went through the amended Bill and, in order to get it to what I think it ought to be, I just wrote "delete" in four places. If we delete those, I think we could bring it back to where I think it really should be.

I am also very grateful to the hon. Minister of Energy and Energy Resources for the points he made about actions that have been taken with respect to the environment. I appreciate what he said, and I certainly think with respect to his Ministry, a great deal has been done with respect to energy and making sure that pollution does not occur. Unfortunately, as Sen. Prof. Kenny pointed out in a contribution he made previously, there are still issues which are very much in the public eye which do not carry the same measure of concern as the environment.

Sen. Prof. Kenny pointed out recently that in a number of activities in which the Government had participated, had this legislation been passed prior to those projects being put into place, environmental impact assessments would have had to have been done according to the rules that have been approved by Cabinet. So, it is very strange for me to think that a government which is as concerned with these issues—as I agree with the hon. Minister who said they are concerned—

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would not have used its own rules and carried out these assessments even though they were not mandated to do so by law. [*Desk thumping*]

I am not suggesting in this case that this Government is the only one to be remiss in this regard. I agree with the hon. Minister of Energy and Energy Industries when he points out that this has been so in the past as well. I agree with him entirely. Of course, the issues raised by Sen. Prof. Kenny were the InnCogen plant, the desalination plant and the paving of the savannah.

There are still people living in Demerara Road in lead. The previous government was very much to blame for that, but they are still there and the company that perpetrated that disgrace on the environment and was responsible for the killing of children—

Sen. Prof. Kenny: Two.

Sen. Prof. J. Spence:—is still not in any way even reprimanded. So, we really still have a long way to go. But what will take us forward, is having this legislation in place and the court in place, so I support fully.

What I would suggest is that we have a Special Select Committee. This is a simple Bill. In fact, really, if we delete all the places which I think need deleting, we end up with one operative clause. We must have two or three for introduction and so on, but really one operative clause, to create a commission that would be appointed by the Judicial and Legal Service Commission. That was all that was wrong and that was simply one sentence. Certainly, if we had a select committee which gave a deadline of one week, there is no reason why next Tuesday, we could not, in fact, pass the Bill. I think we should.

Thank you, Mr. President.

Sen. Prof. Kenneth Ramchand: Mr. President, I have a brief contribution but it is one that has the same reservations as expressed by Sen. Prof. Kenny.

First of all, I agree that this is an important, necessary and urgent piece of legislation, and I would like to see the commission appointed almost immediately. Because of that, I am inclined to compromise to some extent. My compromise begins by seeking an explanation, trying to understand the changes that have been proposed to the composition and jurisdiction of members of the court, how and why those changes have come about, and what purposes they are intended to serve. So I begin, Mr. President, by doing a brief comparison of the two provisions.

The original Act of 1995 proposed a chairman and deputy chairman appointed by the President and I think that the amendment is an improvement on that, because the amendment is calling for a chairman and deputy chairman appointed by the President on the advice of the Judicial and Legal Service Commission. I think that is an improvement.

The original Act proposed chairman and deputy chairman plus four members, and the qualifications of the members were spelt out at section 82(3) which says in part:

“...such persons as appear to the President to be qualified by virtue of their knowledge of or experience in environmental issues, engineering, the natural sciences, or the social sciences.”

What we have in the amendment is that these four members are to be replaced by six lay assessors. The six lay assessors have exactly the same qualifications as the four members would have had to have. The six lay assessors would be persons:

“...qualified by virtue of their knowledge of, or experience in environmental issues, engineering, the natural sciences or the social sciences.”

So, in terms of expertise, the lay assessors are not superior to the members. They are superior from the point of view of numbers; they are now six rather than four. So, to the extent that more people with expertise are being appointed to the commission, I would say I halfway agree with moving from four to six, but what for me is the rub, is the demotion of “member” to “lay assessor”.

Now, I really do not understand why this is being proposed, why a court, which is supposed to have at least one person with the status of a High Court Judge, and members who could sit in that court, is being reduced to a two-man enterprise which will have all the kinds of difficulties operating, to which Sen. Prof. Kenny has pointed. Why is it being reduced in that way? Is the Government thinking, for instance, of the Industrial Court? Does it want to make a distinction between people who can be considered judges and people who can be considered technical members?

When I look at the original Act of 1995, where the jurisdiction of the commission is spoken about, I can see that the Act of 1995 wanted to make it clear that the four members—whom I should call, just for convenience, ordinary members—should not be regarded as judges in the same way that the chairman and deputy chairman would be regarded as judges of the High Court.

Because, section 84 of the original Act had built-in dampers. For instance:

“...the jurisdiction of the Commission may be exercised with respect to—

- (a) any matter by the Chairman or Deputy Chairman sitting alone or with one other member if the parties consent thereto;”

Those are built-in restrictions against the ordinary member, and if we go to 84(b) we read of who can sit in certain circumstances:

- “(b) any matter of practice or procedure that is contested by the parties, by the Chairman or Deputy Chairman or any member of the Commission who is an attorney-at-law...”

So the ordinary member who would take part in that would have to be an attorney-at-law, and if we go to 84(c):

- “(c) any matter of practice or procedure which is uncontested by the parties by any Member...”

So the only time that the ordinary member has freedom to sit on a matter is when it is “uncontested by the parties”, but that member still has to be assigned generally or specifically for that purpose by the chairman of the commission.

So, Mr. President, I am saying that if there is an anxiety that the ordinary members might consider themselves judges and they may, therefore, apply for the kinds of salaries and allowances that High Court judges get—they may want a driver, tax free salary and so forth—it is already built into the original Act that these members do not have the standing of High Court judges.

Now, I am not entirely happy about that. I think that an ordinary member of the Industrial Court, for instance, who has served in that court for a certain period, should have the right to aspire to be President or Deputy President of the Court. So, I would have liked to see in the original Act something which says that, notwithstanding these limitations on ordinary members, any ordinary member who has served for 15 years might be eligible to be appointed chairman or deputy chairman, but I would not fight for that.

All I am pointing out is that the original Act has built-in restrictions upon the members, but they are still members and they can help the chairman and deputy chairman by taking part in sittings of the court and, thus, expedite the business of the court.

Mr. President, as I said, I think that this piece of legislation ought to be passed, but I would really like the Minister to explain why he is not satisfied with the provisions with respect to ordinary members that exist in the original Act and

I would like him to explain, too, what advantage, in terms of the operation of the court, in terms of expertise coming to the court, he sees in substituting lay assessors for ordinary members.

Thank you, Mr. President.

3.05 p.m.

Sen. Rev. Daniel Teelucksingh: Mr. President, first of all, I wish to compliment the hon. Minister and the Government for the attempt to get the EMA properly constituted through this Bill, but before I go further, I want to respond, very briefly, to that matter raised by Senator Kenny. Whether it be a rumour of a contract, a proposal or a report of which I have heard a little also, to import garbage or waste material—decently called feedstock material—from the United States or any other place to be used in electricity generation in Tobago or Trinidad, for that matter, for any other industrial purpose, maybe, I understand that that kind of proposal is tied up to a 30-year contract. Could one imagine 30 years of the importation of garbage? That is a long time, enough to cover all of Tobago. *[Laughter]*

I urge the hon. Minister and the EMA to investigate the validity or not of any such rumour or report, and to put an immediate stop to that crazy suggestion, if there be any truth in it, until the proper study has been done. I personally, believe, as I have said in the past, that there have been all kinds of devious reasons and methods by multinationals to find a Third World dumping ground for the waste of the north.

Mr. President, I know enough has been said about the whole business of reducing the size of the commission *vis-à-vis* the original Bill. Maybe we need to consider the question: Why not retain the same number of commissioners in the old Bill and include the assessors with, “if there is need for assessors”? I want to make a comment on the new section in the Bill with clause 82A(1) which provides for the appointment of lay assessors. I quote from the Bill before us:

“qualified in knowledge or experience in environmental issues, engineering, the natural sciences or the social sciences.”

Somehow or the other, I like this. I will tell why from an illustration I will make, because I feel that this certain provision in clause 82A(1) helps to define the widening scope—we see this almost every day—and the comprehensive responsibility of the EMA.

Mr. President, notwithstanding the functioning of the proposed National Trust of Trinidad and Tobago, I am pleased that natural sciences and the social sciences are also the concern of the Environmental Management Commission. In several matters, there must be collaboration among various ministries and various departments. In the light of this understanding, and my support of that section for the adding of lay assessors to the commission, I express genuine concern today about reports within the last few days of certain valuable artefacts dating to the Amerindian period of our history recently unearthed at the Grand Lagoon in Mayaro, though it is reported that some 13 years ago, small pieces of pottery were found there. These, I consider to be other treasures of our environment that must be preserved. *[Desk thumping]*

Will unauthorized visitors show interest in these historical or archaeological discoveries and smuggle them out? Will any be sold or taken away from Trinidad and Tobago? Will any be damaged or destroyed by unscientific hands engaged in unsupervised excavation? This is my contention, because I think this is a very serious matter that needs urgent attention. Since there is at present no constituted National Trust, I most respectfully suggest that the EMA, the Ministry of Culture and Gender Affairs, should take immediate steps to secure that area in Mayaro as environmentally sensitive.

Sen. Dr. Phillips: Mr. President, just to make a comment on the last statement and the concern which I share—and I know we all share—I just want to inform the Senator and this Senate that the Ministry of Culture, through the National Museum and Art Gallery, has already put in place mechanisms to secure that area and to ensure that there is no removal of items and artefacts until, of course, the National Trust comes in place, but really to secure that area. We have already put that in place and we have already sent our people, and measures are in place to secure those items until they can be properly housed. *[Desk thumping]*

Sen. Rev. D. Teelucksingh: Thank you very much. It is the first time I am hearing of this. Yes, there is also the Banwarie man in San Francique. We need to hear about that, too. I will add to this. If necessary, hon. Minister, through you, Mr. President, Government should move towards acquiring that property from the owners rather than taking out bits and pieces to be lodged in Port of Spain. Maybe it might be one of the mittens that cannot be removed, and we need to acquire that place. That is very important. I am not playing with language, but I really believe that areas like those can be designed as environmentally sensitive. There is no doubt about it. It is a new dimension to what is environmentally sensitive.

We have been looking at the whole question of whether or not the EMA has been properly constituted during these four years. If there has not been the appointment of a commission, how is this EMA functioning? That is a very important question. I want to quote from an article in the *Trinidad Guardian* of November 13, 1999, and I understand that advertisement, I recall, was repeated elsewhere. Here, there are organizations expressing a point of view, and I want to quote:

“Not an inconsiderable number of our nationals are being pauperized by the transfer of power to the Environmental Management Authority which, though set up for several years, is non-functional.”

Why will such words be shared with the national community that the EMA, though set up for many years, is non-functional? There are some people who will feel this way and, with respect to this advertisement, reference is made to fishing. So, it seems as though the fishing community, among others, will think that the EMA all these years has been non-functional. How could it be functional when we have a technical problem? Of course, the Bill is trying to rectify this. A problem that we have not addressed for the last four years, the non-appointment of this very important commission. Mr. President, why would these people say this? I feel very disturbed. You know the *Guardian* is a very long newspaper, and this article is half of a page.

“Rush approvals have been given without the requisite environmental impact assessment, unjustifiable delays in the appointment of the commission. People are saying that there is a problem.”

Particular reference is made to fishing in Trinidad and Tobago and our failure to implement the procedures of the Environmental Management Authority Act. The question I want to ask then is: will this Bill satisfy the concerns and the disappointments of the fishing community? Will the Bill, which seems to be a little housekeeping but very serious housekeeping matters, with respect to fishing, satisfy some of these concerns?

I was disappointed, and maybe this is only an example, an illustration, with those three large Venezuelan vessels that were seized fishing illegally in our waters and having 22 tonnes of sharks, jacks and red fish. Mr. President, I have been told that possibly those are the unfortunate three vessels, but this is indicative of the extensive illegal and unmonitored fishing in our waters, both by

nationals and others. Added to this, there is the destruction of our marine life by industrial pollution.

Is there not some justification then? I know the hon. Minister may have advisors of the EMA listening to us. Is there not some justification that people are concerned that we have this massive organization, highly paid officers and so forth, excellent constitution to keep them going, and yet there are problems. Why is there this kind of non-activity and they are non-functional as it were, and subject to so much criticism while we pump millions and millions of dollars into the authority's work?

Is there not some justification when the Fishermen and Friends of the Sea say: "though set up for many years is non-functional"? Maybe they want to say ineffective, possibly lethargic, and we are finding out today, not properly constituted. Who cares about the fish kill also in the peninsula waters off Port of Spain recently? Who cares if waste disposal destroys our marine life around Port of Spain or Tobago? Is there a word from the EMA?

Will the Bill before us make any difference if the parent body does not make a difference? That is a question I want to leave. Mr. President, I want to make a comment on a matter raised by Sen. Finbar Gangar on asbestos and the environment and the role of the EMA. I, too, would like to join with the Senator in recognizing the work of the Government and to congratulate the Government for the very prompt response, particularly of the Ministry of Education's Task Force on Asbestos in Schools. I think the Government ought to be complimented for that.

I just want to make a brief comment and close on that same matter introduced in the debate by Sen. Gangar. Yesterday in the *Trinidad Guardian* of November 15, 1999, already there are indications that there are certain persons in schools—one of them is a high school in the east—where people are questioning the report of the task force in schools affected with asbestos, and they are asking for a more independent evaluation. This story has not ended; not with that report that was made.

3.20 p.m.

I feel whatever our investigations—you see that safe level advice concerning asbestos, that safe level advice given by the experts—I do not think that this will be reassuring much longer. Somehow or the other responses are not so good. Whether it is Caribbean Research Industrial Relations Institute (CARIRI) of the World Health Organization (WHO), explaining to us and teaching us that asbestos levels here may not constitute a health threat, people will remain uneasy and skeptical. We have passed that stage of asbestos tolerance in schools. There must be a programme to remove all asbestos-related materials from our schools no

matter how small the fibre count may be. This should be done during the vacation—this is what I believe—so as not to interrupt classes. It is imperative that Government set a time frame too and treat with urgency, that programme aimed at a total cleansing of asbestos from all our schools in the nation.

Mr. President, I thank you.

Mr. President: I want to remind Senators that when referring to Ministers they should be referred to by the title of their portfolios and not by name.

Sen. Cynthia Alfred: Mr. President, I think everyone agrees that this is indeed an important piece of legislation: the desire to put the Environmental Management Commission in place. The actual clauses of the Bill and the amendments, I will not speak on those. I think those have been very well handled by my colleague, Sen. Nafeesa Mohammed.

I would like to speak on four areas that, I hope, the commission would be able to deal with and perhaps even before the commission comes in place, the existing authority will be able to deal with these matters.

I want to start with the police headquarters. The police headquarters, from my understanding, has not had any air conditioning for some months. The officers there are suffering tremendously from certain factors, which I shall name. Apparently the new building that is being constructed—I think it is the building of the Attorney General—a pitch-like substance is being used, perhaps on the roof or somewhere and the fumes are infiltrating the police headquarters and the dust, of course, is going into the building. As a matter of fact, the persons told me, that right now that area is environmentally unfriendly especially the area of the criminal records section which includes fingerprinting and photography.

What was said is that a lot of chemicals are being used for fingerprinting as well as photography and all the fumes from the chemicals remain in the building. Because of that, the persons concerned are suffering. Their clothes are taken over with the smell. Even their skin—some of them are reacting to the fumes that are remaining in the building coming from the chemicals that are being used inside, and the fumes that are generated from works done outside.

Mr. President, I would hope that the necessary body would take cognizance of this fact and do something, in the meantime, to alleviate that situation.

Sen. Brig. Theodore: Mr. President, on a point of clarification; Sen. Alfred is quite correct, it is a most uncomfortable situation. I visited the building myself. The working hours were adjusted to allow the workers to leave the office at 1.00

p.m. before the office gets too hot. We cannot do anything much about the scent from the building that is being constructed, because in opening the windows to cool the building, the smell of the tar comes in.

The spare parts for the air condition units are here, work has begun. The transformer has been changed and the compressors are being replaced as we speak. It is anticipated that, by the end of the month, the full system would be in operation.

Sen. C. Alfred: Mr. President, I do thank the Minister. I am sure the officers would be happy to know that. Thank you.

The other area I would like to mention is one of garbage collection. It is a particular area. Yesterday I was in an area in the east and I actually saw, for myself, where a garbage truck came around and collected garbage. That is all right because garbage needs to be collected. The problem, however, lay in the fact that the truck is fitted with a smoke controlled mechanism, some sort of device, which burns up the garbage as it is collected. But, in the process of doing that, the smoke is let out where the people live and it goes into their houses, and takes hours before the smell would come out. What we are proposing, Mr. President, is that when the garbage collectors collect the garbage, instead of doing whatever needs to be done for the garbage to be consumed—instead of doing it right away in front of the buildings—they can wait until they go outside in an area where there are no houses and do the operation. Residents are complaining that they are suffering from the fumes and the smoke—it is terrible smoke, I experienced it—which comes off from the garbage trucks.

One proposal was made that perhaps a spout should be put at the top of the truck so that the fumes go up into the atmosphere—somebody may say something else—rather than come down and go into the buildings. That is another area, Mr. President.

Because the word “environment” is such an all encompassing one, I would like to touch on an area, very briefly, that one may say has nothing to do with the environment *per se*. We have to remember that the environment does not only encompass flora and fauna, it talks about it being the life of the people. Very briefly, but this is so important, there is an area in La Resource not very far from Bon Air, I think it is close to Arima, where there is a traffic light on the main road—when travelling from north to south—coming from La Resource there is a stop sign that is placed practically on the main road. Further along, there are traffic lights on the priority bus route. I have been told that over the past 20—25

years there have been at least 10 fatalities right there. For the last three months there have been at least six serious accidents: the last one being on Divali day.

What is happening is that, the stop sign is placed, sort of, on a corner so that when motorists are going from north to south, they are looking at the traffic lights ahead which they think is the main road and when they get to the stop sign, when they actually stop, they are practically in the middle of the main road. That has caused many deaths and a tremendous number of accidents. This problem has been reported and apparently nothing has been done. What the residents there are asking, Mr. President, is that the signs be painted in the appropriate colours—psychedelic colours or whatever—especially in the night so that the weary travellers will know that main road is in fact a major road and they will stop.

3.30 p.m.

So what they need, perhaps, are a few signs before the major road, say, 200 metres ahead, 150 metres ahead, so people would know that there is a main road before they get to the lights on the Priority Bus Route.

The final point I would like to make is in respect of Tobago. Mr. President, it had been said earlier, and I just want to add my voice to what is a very serious matter in respect of Tobago. It has been in all the papers, but in this one, the *Sunday Mirror* of November 14, 1999, on page 3 the headline says:

“THA boss in new stink over waste disposal unit

Charles to convert garbage into energy, electricity

...but new scheme involving imported waste does not have blessings of Environmental Agency.”

Mr. President, this is a serious matter. We heard about it and then we got further information that, in fact, an agreement was signed on September 19, 1999 between the Tobago House of Assembly—or some members of the Tobago House of Assembly. I make the distinction because some members of the Tobago House of Assembly continue to bypass the Assembly as a body and make decisions that do not involve the rest of the Assembly and land themselves in difficulty. Mr. President, with your permission I would like to read some of this:

“Tobago strongman, Hochoy Charles, has plunged the Tobago House of Assembly (THA) into another multimillion-dollar splurge with foreign corporations that could land him in hot waters again with the central government.

According to an informed source in Tobago, the THA Chief Secretary has allegedly authorised the signing of an agreement with US-based firms, UHC Industries Incorporated, Stanley Construction Incorporated, and Cavalier Construction Corporation—for a design, construction, ownership, and operation of a plant for processing and converting waste into electricity and energy.”

The article went on, Mr. President.

What the article is saying, and what we have heard, is that these firms are going to be using the waste material in Tobago which however, they contend, is not enough, so they are going to import feedstock. Now, Mr. President, if ever I have heard of a ridiculous expression, they are going to import feedstock to help generate this electricity. But this raises two questions. The first is: Why would they want to import feedstock, or garbage—really, it is garbage—into a beautiful place like Tobago to generate electricity which Tobago does not need? That is one. The other question is: What guarantee does anyone have that this feedstock is, in fact, that and not nuclear waste?

I understand in the agreement that it has not been spelt out what this waste is. How could anyone contemplate bringing these people in for a service that Tobago does not need? Because here it is we have two new cables running from Trinidad to Tobago to take care of outages and so forth, and you would have additional electricity coming on in a few minutes, but we understand that there is a new building that the Tobago House of Assembly has given—this means we need to have it further investigated. But our understanding at the moment is that the Tobago House of Assembly, in fact, gave to T&TEC the sum of approximately \$36 million to construct a building which would take care of the same problem that the two cables would take care of. So that needs to be investigated.

Mr. President: Sen. Alfred, I do not think you should be dwelling on the details of that transaction, while there might be a connection with the environment, there is no need to go into the details of that transaction.

Sen. C. Alfred: Okay. Thank you, Mr. President. So what I am saying, without going into the details as you advised, we feel that environmentally Tobago does not need such business coming in and we ask that the Chief Secretary, and whoever else is concerned, revisit the matter and come up with something that is much more in keeping with what Tobago really needs, especially in terms of tourism, *et cetera*.

The last point I want to make on the same issue is that it has been said that if the waste substance is used, then, of course, it can bring cancer into Tobago, more cancer than, perhaps, exists already. So, all we are asking at this stage is for the Chief Secretary to come clean, come out in the open and give some more information on this project. Because if we do not get the necessary information and we do our own investigation and find that, in fact, this programme is going to go ahead—because I understand that it is supposed to start some time in February—then we shall take the necessary steps—when I say we, I am talking about the People's National Movement in Tobago, the Tobago Council and all Tobagonians—to ensure that Tobago remains the clean, unspoilt—well, relatively clean, because I know that waste substances are being let out by the yachts in Charlotteville. I will talk about that some more when I talk about tourism. But we want to keep Tobago as clean and as free from pollution as possible.

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

The Parliamentary Secretary in the Ministry of Housing and Settlements (Sen. Carol Cuffy Dowlat): Mr. President, I rise to support the Environmental Management (Amdt.) (No. 2) Bill as proposed by the hon. Minister of the Environment.

Mr. President, I would attempt to restrict my arguments to some of the legal issues raised by Senators this afternoon, but in doing so I think it is important that some bit of background be given as to this piece of legislation.

In 1990, at the Caricom Conference of Ministers responsible for Environmental Matters which convened in Jamaica on September 07, it was noted, *inter alia*, that the need to create a move towards a regulatory framework with power to direct action and informed policy legislation as related to environmental issues was most important. This pronouncement was made about a decade ago, because the region as a whole appreciated that there was acute environmental degradation and this was evidenced by the proliferation of solid waste dumps, the discharge of untreated sewage and industrial effluent, the accumulation of waste, deafforestation, the destruction of wild life and their habitats. Mr. President, the list keeps going on and on.

It is in response to this that the Environmental Management Act was enacted in early 1995, with the laudable intention of developing a strategy for the sustainable development of the environment. For this, we must congratulate the previous government for having made an attempt to address the issue. In furtherance of this, the Environmental Management Authority and the

Environmental Commission were established. In seeking to provide for the enforcement of these agencies, they established an environmental commission. This commission was charged with a myriad of responsibilities, including the exercise of jurisdiction as a superior court of record. What this meant is that the commission had the authority to determine the legality of decisions or actions of the Environmental Management Authority, actions and decisions which would have affected the rights of private and corporate citizens of Trinidad and Tobago.

Section 81(3) of that Act designated the Environmental Commission a superior court of record. The purpose of establishing the court, as I understand it, was to ensure speedy resolution of conflict in environmental matters. However, when this legislation, passed in 1995, was not enforced by the then administration, this administration decided to implement the Act, and discovered that appointments under this Act could not be made because the provisions of the Environmental Management Act were not in accordance with the requirements of the Constitution and the common law for the establishment and appointment of a superior court of record.

You see Mr. President, what was happening, they were passing legislation without realizing the implications of the legislation they were passing, laudable as the intention and policy were. They did not understand the law. They did not appreciate the full implications of the Constitution. Section 81(4) of the Environmental Management Act was intended to confirm the status of the court by giving it power to enforce its own orders, judgments and the same power to punish contempt as a High Court of Justice. That section made that court a very important agency. When we decided to implement, it was not possible. This amendment is to allow for implementation.

This Government, this administration, is committed to abiding by the Constitution and the rule of law of this country. We recognize that the people have given us a mandate, and we must fulfil this mandate. We must obey the Constitution and what it says within the Constitution. We respect the constitutional guarantees and the independence of persons and institutions to perform judicial functions in Trinidad and Tobago. This administration prized this. We appreciate that the persons who hold high judicial office must be respected and accorded the dignity which the office recognizes and which they rightly deserve.

Sen. Mohammed: Hypocrisy.

Sen. C. Cuffy Dowlat: Mr. President, this administration appreciates that the Constitution is the highest law of the land and allows for guarantees to certain persons. It allows for insulation from legislative and executive interference. This administration is fully appreciative of this, Mr. President. We also appreciate that there are specific measures and procedures for amending the Constitution.

We appreciate also the terms and conditions of employment for judges. These are fixed by the Constitution. These provisions are entrenched. It requires a two-thirds majority. Parliament must agree to change or amend terms and conditions. In other words, the provision of any legislation that establishes a superior court of record or similar institution must therefore reflect an intention to protect the independence of the Constitution and guarantees certain rights to the holders of high office.

The Environmental Management Act, 1995, while seeking to create a superior court of record, failed to implement certain vital elements for the existence of such a court. It is necessary that if you were going to establish such a court, then you had to meet the requirements of the Constitution. While the Act attempted to create a kind of division of the High Court, the required qualification of some of the members of such a court fell below what existed for the holders of judicial office at that level. The method of appointment and fixing of terms and conditions of service were inconsistent with the requirements of law as far as judicial officers were concerned.

Mr. President, Sen. Prof. Kenny raised two issues in his contribution, using the Tax Appeal Board and the Industrial Court as two examples in which lay persons performed judicial functions.

3.45 p.m.

The appointment of persons under the Tax Appeal Board was saved by section 6 of the Constitution. *The Constitution of Trinidad and Tobago*, section 6 (1) says, *inter alia*:

“Nothing in sections 4 and 5 shall invalidate—

- (a) an existing law;”

The Tax Appeal Board was already in existence when the 1976 Republican Constitution came into effect and as such was saved. So the composition of that board was already in place.

Insofar as the Industrial Court is concerned, the appointment of the Industrial Court was done by a special majority and the Constitution also allows for this.

Parliament can, by a special majority, give persons the right to perform certain functions, and in the appointment of the Industrial Court, with a special majority, persons were able to perform judicial functions. If we agree to do anything else it would cause conflict with the Constitution. As we say, under the Environmental Management Act, as constituted in 1995, if we had attempted to implement and to allow laypersons to perform judicial functions without the required special majority, then we would have been in conflict with the Constitution.

Further, this matter was raised and discussed by the Privy Council in the case of *Hinds vs The Queen*, 1976, [1]AER (All England Reports). On page 353, the Privy Council accepted that there was nothing in the Constitution to prevent Parliament from establishing by ordinary law a court under a new name to exercise part of the jurisdiction that was being exercised by the higher judiciary

Their Lordships held the view that it was the manifest intention of, in that case, the Jamaican Constitution, that any person appointed to be a Member of such a court, should be appointed in the same manner and entitled to the same security of tenure as judges were appointed. Mere lip service even of a legislative nature is therefore not sufficient when one creates an institution with the powers and responsibilities of a court.

Mr. President, when we look at the *Constitution of Trinidad and Tobago*, section 104 says:

“The Judges, other than the Chief Justice, shall be appointed by the President, acting in accordance with the advice of the Judicial and Legal Service Commission.”

Section 105 says:

“A person shall not be appointed as a Judge or to act as a Judge unless he has such qualifications for appointments as may be prescribed.”

Such qualifications are spelt out in the Constitution; a Judge who holds office, does so in accordance with sections 136 and 137 of the Constitution. Persons who are going to perform the functions of a judge must meet the requirements of the appointment.

In the Environmental Management Act, as constituted in 1995, persons were being asked to perform functions as judges, but they did not meet the requirements as provided for under the Constitution. Therefore, it was important

and it is important that we come before this honourable Senate and make the necessary amendments to the Environmental Management Act, to allow for enforcement. Some concerns have been raised—*[Interruption]*

Prof. Spence: Mr. President, I am wondering if the hon. Senator could inform us whether, if this amendment is passed with a special majority, that would satisfy the requirements of the Constitution.

Sen. C. Cuffy Dowlat: Mr. President, Sen. Prof. Spence had indicated that if this amendment is passed with a special majority—if it would—it just might. You see, what we are attempting to do, when you appoint laypersons with disciplines in certain fields, there is the benefit of a broader spectrum of views and opinions in the implementation of law. You see, when only lawyers implement law, you get the lawyer's interpretation of the law. When you bring laypersons—persons with discipline in certain fields who advise you—you tend to have the benefit of practitioners in the field. I think in legislation as important as this—because we all appreciate the importance of the environmental legislation—that the views of practitioners in the field would assist in the ready implementation of the law.

So we are not really concerned only about meeting the constitutional requirements, in this case, of saying, “let us have a special majority and let us pass it and appoint only judges or laypersons.” We are saying, we can go with it, as is, get your commissioners—there are laypersons who will assist—who will give guidance and support to ensure the implementation, without having to interfere with the Constitution, and the appointment and terms and conditions of persons who perform judicial functions.

Prof. Kenny also raised the issue of Government's commitment to harmonization of courts as part of the Select Committee on the National Physical Planning Bill. I know much discussion had taken place. We had given an undertaking at the committee stage and we came into the Parliament and indicated also, that the Minister may, by Order, subject to affirmative resolution of Parliament, transfer the jurisdiction of the Planning and Development Appeals Board to the Environmental Commission, established under the Environmental Management Act, or any other land tribunal that is established or, hereafter, be established under any other written law.

We have not deviated from this position, and I can indicate at this time—and I know the hon. Minister when he speaks, would further elaborate. When the hon. Minister spoke of the appointment of six lay assessors, he mentioned four disciplines.

Section 82 (3) says:

“The members of the Commission, other than the Chairman and Deputy Chairman, shall be appointed by the President from among such persons as appear to the President to be qualified by virtue of their knowledge of or experience in environmental issues, engineering, the natural sciences, or the social sciences.”

When we discussed the Planning Appeals Board, we had asked for similar disciplines. We had asked for additional disciplines in Public Administration and Town Planning. The hon. Minister has indicated that since the six lay assessors and four disciplines have been named here, he has no difficulty in including two other disciplines: town planning and public administration, which would still keep us with six assessors and which would meet the requirements of the National Physical Planning Bill and the appeals procedure that may become necessary under that Bill.

In any event, you have heard the hon. Minister of Public Administration lay a package of Bills on Land Registration and Land Tribunal before this honourable Senate. That will also be considered in terms of the establishment of courts to deal with issues of this nature.

So that I want to assure Prof. Kenny and Members of this Senate, that this Government does not deviate from an agreement, an undertaking and a policy decision; when we give our word, we honour it. Your word is your honour, Prof. Kenny, and the Constitution is our guarantee to ensure the independence and freedom of the people of this country. We respect that, and we understand that.

I think it is also important that we all agree on the importance of this piece of legislation, and the amendments which are before this honourable Senate, to give teeth to the Environmental Management Authority. I think Prof. John Spence made the point, quite clearly, this afternoon, concerning the Demerara Road residents and the issue of lead poisoning. You see, this Government, the Ministry of Housing and Settlements; the Ministry of Health; the Ministry of the Environment and all the other relevant ministries, made every effort to ensure that the persons who occupy Demerara Road would be treated in the manner as deserving of citizens.

3.55 p.m.

The Ministry of Housing and Settlements, in coordination with the other ministries, built accommodation to ensure that persons move and occupy houses

away from the affected area. The Ministry of Health and the other agencies have afforded medical treatment to children and families affected. Ongoing testing is being done by different agencies as to lead poisoning, but the bottom line remains, that there are persons who occupy Demerara Road who, if you speak with them, will tell you that as far as they are concerned there is no lead poisoning there. As far as they are concerned, if you look at the Bhagi plants and the trees they all look healthy to them, so they are not moving to go anywhere. *[Interruption]*

Sen. Prof. Spence: I wonder, Mr. President, since the people would not move whether we could move the lead. *[Laughter]*

Sen. C. Cuffy Dowlat: Mr. President, at this point in time, the hon. Senator would appreciate that this Government does not say like previous governments that “money is no problem,” so it is easier for us to relocate citizens, at this point in time, to alternative accommodation, while we, in a comprehensive and systematic manner, deal with the issue of lead poisoning as exists in Demerara Road.

We have done everything we could to move these people, but the fact remains that without the Environmental Management (No. 2) Bill and the ability to implement that Bill, we would not be able to forcibly prevent persons from continuing to occupy or to use any other measures to deal with the problem that exists there, hence the need to ensure that this legislation is, in fact, enacted and that we do not continue the errors of previous administrations.

Sen. Mahabir-Wyatt: Mr. President, I wonder if the hon. Senator could just explain in what way the passage of this amendment of this Bill is going to help the situation at Demerara Road, and what powers give the commission the ability to move these people from Demerara Road? I am just a bit confused.

Sen. C. Cuffy Dowlat: Mr. President, if the hon. Senator would give me one minute, I will let her know about the powers of entry and inspection, and the commission being able to seek the necessary assistance and guidance to ensure that those matters are dealt with. *[Crosstalk]*

Prof. Spence: Move the lead!

Sen. C. Cuffy Dowlat: Mr. President, we do, in fact, have—

Sen. Montano: You do not know your Constitution. You cannot move the people just like that.

Sen. C. Cuffy Dowlat: Mr. President, those who seem to have difficulty in understanding the whole issue of relocating persons in a humane fashion must visit the Ministry of Housing and Settlements where we would give them a certificate of comfort and indicate to them how easy it is to move persons.

I would undertake to pass to the hon. Senator the necessary information as to the ability of the Environmental Management Act and the enforcement procedures and regulations to deal with the issue of lead poisoning as it exists in Demerara Road.

This Government is ensuring that we do several things: we deal with the issue of lead poisoning; we deal with the issue of ensuring that we respect the Constitution; we deal with the issue of passing the necessary legislation to put teeth into pieces of documents that are just lying there. We are ensuring that we get—*[Interruption]*

Sen. Yuille-Williams: Mr. President, could the Minister indicate where the houses which they built for these people are located?

Sen. C. Cuffy Dowlat: Again, Mr. President, the hon. Senator might be interested, I will give her the information and tell her that these houses are in Wallerfield. I would invite the hon. Senator and those Senators who have an interest, not only to see how we relocate persons from Demerara Road but how we treat citizens and squatters in this country and other persons who have problems, whether it is a natural disaster as in Piparo, or those man-made disasters as in Demerara Road, how we treat them in a humane manner, how we find suitable, alternative accommodation for them. So in that specific case, accommodation is provided at Wallerfield, one, two and three bedroom houses, hon. Senator, through you, Mr. President. For all other persons affected through natural disasters, we have also found places for them.

In a systematic way, we are not promising to build 100,000 houses in five years; we are not in a position to do that. We would work with citizens of this country in a systematic way, with communities, and we would help develop this country. I hope that hon. Senators who had raised issues as to the composition of the court would now appreciate why it is now necessary for us to bring this amendment before this honourable House and why the situation as to the appointment of judges under the Tax Appeal Board and the Industrial Court is different from the appointment of those persons performing certain functions under the Environmental Management Act.

With these few words, Mr. President, I thank you.

Sen. Martin Daly: Mr. President, my theme today is a play on both their houses. The simple reason is that only last week I had to speak about the cat and mouse game that is played between the Government and the Opposition and their refusal to co-operate on matters of national importance.

Despite the valiant efforts of my charming colleague, Sen. Carol Cuffy Dowlat, she really just fudged the issue and she knows it. As useless as it is, the Environmental Management Authority is a victim of the inability of the Government and the Opposition to get together and make something work; even in this case when it is something on which they agree. Because we now have the UNC attempting to amend a PNM Act and they cannot get agreement on anything. They cannot get agreement on a special majority and that has very serious consequences for the country, which I will try to explain as succinctly as I can.

The point that has to be emphasized is that if there are areas of the environmental legislation that require a special majority, it is inconceivable that on this occasion such a majority cannot be obtained because, at the risk of repetition, the UNC is now amending a PNM Act, if you want to approach it like that. I happen to think that this is an Act for the benefit of the whole country. The environment is one of those issues—*[Interruption]*—well, you already have one vote towards a special majority. I happen to think that this Act is being passed for the whole country. I am deliberately being sarcastic when I describe it as a PNM Act being amended by the UNC, in order, in shorthand, to make the point that there should be no difficulty about getting a special majority, in this case.

The original Act was not passed by a special majority and it provided for a commission that was to have the same powers as a court, that is, it was to be a superior court of record. Now, as far as I know, as soon as you establish a court which can either punish or make orders that deprive people of property or make any kind of material adjustments in their lives, unless you pass that Act by a special majority, automatically you are infringing section 4(a) of the Constitution, which prevents you from passing legislation that deprives a person of life, liberty or property without due process.

So it was originally a huge confidence trick by the People's National Movement to tell the country that there was going to be an Environmental Commission without a special majority. Even the non-lawyers in the PNM of the time, even Sultan-Khan would have known, and he had a very high price paid to him to know it, that you could not establish a court without a special majority. So it was a huge confidence trick to provide for a commission, at that time, without a special majority. *[Interruption]* Two million dollars?

Now, of course, I will deal briefly with how useless the Environment Management Authority is anyway, but the point is they are victims of the complete inability of our politicians to stop playing cat and mouse games. I spoke about it last week. It provoked a certain amount of comment from Sen. Shabazz and others, but we have got to deal with these issues in a bi-partisan way. I do not see how we could play politics with something like the environment; never mind the paving of the savannah.

Now, what you are being told by Sen. Cuffy Dowlat is that they cannot persist in having a multi-disciplinary court, which is what the Industrial Court is. The idea was that the commission would be a multi-disciplinary court, that the President would be a lawyer because, of necessity, if there would be formal legal proceedings, he would need to know about the rules of procedure, the rules of evidence and so forth. But you wanted a multi-disciplinary court where persons, who had other forms of expertise besides law, could bring their collective wisdom to bear on a problem, just like in the Industrial Court where you have trade unionists, economists, *etcetera*.

I have always felt more comfortable practising before a multi-disciplinary court. It does things for the user. It broadens your horizons by discussing problems with people of various disciplines. I am totally in favour of a multi-disciplinary court. So there is absolutely no reason why we should not have a commission that is multi-disciplinary and have it function as a court. But it cannot function as a court in its original form because it cannot make any kind of penal order or property adjustment order or move people unless it is passed by a special majority.

So to come now and say, "Well, the reason we have downgraded the members to lay assessors is because we could only have members if we have a special majority," is, to put it mildly, a half-truth, because you have the much larger problem that the legislation for the original commission is probably unconstitutional. Mr. President, there is the larger problem that the legislation, even this amendment which seeks to pile a problem on a problem, is unconstitutional. The question of the lay assessors is minor.

The first question is: Is the commission valid, either in its original form or the form in which they seek to pass it now? If it is not, then fiddling around with having lay assessors in an attempt to duck the special majority, is absolutely pointless. All we are doing this afternoon is wasting colossal amounts of time. This whole debate, so far as I am concerned—and there are other people who can advise the Government—if I am right, this whole debate is a waste of time. The issue about the lay assessors is minor in comparison to the larger problem.

All I am saying is very simple: let us have a 15 minute adjournment or whenever we have tea, let both sides get together and agree that they are going to follow the original format with such minor amendments that are necessary and then decide how they are going to set about passing it with a special majority. I do not know enough about legislative procedure to tell you whether we can now rectify the original Act, by passing the amendment—I have no idea of how it is done.

First of all, if the two sides get together and agree that a special majority is needed in order to validate the commission, then we do not need to play this stupid game of demoting the members to lay assessors because of the absence of a special majority. Then the whole thing can be fixed in exactly 15 minutes because it is perfectly obvious that everybody wants to have a multi-disciplinary court as contemplated by the original Act. It is perfectly obvious that whatever legislation you pass would not be valid without a special majority unless the Government gets different advice.

I very rarely speak about this question of a special majority, because as far as I am concerned, that is a problem for across the road and not for us. But it is so glaring on this occasion that I insist that both sides should get together, agree on the multi-disciplinary court, agree that they are going to get together and provide the special majority and then find out the method from their legal advisors, the Chief Parliamentary Counsel or whoever. There are very competent people from the CPC physically present in this Chamber, I can testify to their abilities. Get together with them during the tea break and find out what are the mechanics of getting the special majority. So we can have an Act on which, clearly, both sides have agreed.

Sen. Cuffy Dowlat began by complimenting the People's National Movement for passing the Act, so why are we playing this silly game? We have been doing it for years. Mr. President, we had a stock exchange that was set up in the 1980s, and every lawyer in the street knew that the original stock exchange was completely and absolutely unconstitutional because it said that it was the only method by which you could validly transfer shares.

4.10 p.m.

Everybody knew it was unconstitutional and every time there was a problem of insider trading or anything to do with the Stock Exchange, as soon as it tried to enforce its rules, the alleged offender used to say: “Do what you want, but the minute you touch me, I will bring in a constitutional motion to strike down the

whole Act.” And they ran away. So for 20-odd years, or however long it is, we had a stock exchange that was a complete laughing stock because it was always known that the minute they took on an alleged infringer, it was known that the infringer could bring the whole shooting match down and the same thing is going to happen with this commission. I am going to repeat it until I offend the Standing Orders.

On this occasion, there is no reason for the game because, whatever the position about the starving magistrates between the Government and the Opposition, the resolution is obvious. They have admitted that they both agree that they want a commission. They both agree that they want a court, and they both agree they want a multi-disciplinary court so there is no altercation. I am glad that Sen. Shabazz has returned, he does not like my bi-partisan approach apparently. So if one side wants the magistrates to starve and the other side wants them to starve differently from how the first side wants them to starve sideways, that is fine, but on this occasion it is manifest from all the contributions that both sides have agreed that they want a commission, they want a multi-disciplinary commission, and they want it to function as a court.

When I am through, Mr. President, with respect, we can either take the tea break early, or fix the matter in the tea break and stop wasting time. I would advise this Government in particular that they have zero credibility on the environment because of the paving of the savannah. I beg the question whether it was the right thing or wrong thing to do. I am firmly of the view that there is a good arguable case for turning over that side of the savannah to entertainment, but it must be done lawfully. Two of the Ministers who have remained silent while that took place are here talking about the environment today and all I can say is they must have the hide of rhinocerii—is that the plural of rhinoceros? They should run out of the Chamber when we are discussing the environment, and worse, they should run out of the Chamber when we are discussing passing laws for the environment because they have zero credibility on this issue, because they presided over a huge environmental disaster.

I repeat, I am not entering into the political question on the merits of whether that side of the savannah should be turned over to entertainment. There is much to be said for it, but there is a right way and a wrong way of doing things. So in five years' time whoever is here we are going to come with another amendment to say: “Well, you know the legislation did not have this, the legislation did not have that, and we need to fix it up.” By that time we would have paved Banwarie Trace and we would have paved Mayaro, we would had paved the whole world and say

well, you know they could not do anything. Mr. President, I think that the time has come.

Unfortunately, well, I do not want to be guilty of unparliamentary language, but in the case of this Environmental Management Authority, and the lack of a commission, I think it is a euphemism to talk about them lacking teeth. I would like to think they lack something much more substantial, but parliamentary language does not permit me to say what it is, but they lack something a lot more substantial. This problem can be very simply solved and we could stop this silly game about who did what and why we have to do this, and why we have to get around the special majority.

The stock exchange was operated unconstitutionally for 20 years. Do we want the same thing? Do we want more pavings and more this, and more that, and more fish kills, more garbage in Tobago, and more lead and all this business? It is absolutely wrong to say that the commission would be able to forcibly, or without their consent, relocate people unless they are given those powers by a majority. We have a collision with clause 4(a) of the Constitution. We really have a situation where we really must be grown up this afternoon. We must be grown up and settle this problem during the tea break.

What I cannot understand, however, Mr. President, is why should I give this useless authority any teeth or other useful anatomical parts, because notwithstanding their lack of legal validity, so far as I am concerned, they have moral suasion and they have largely remained silent on every important environmental issue that has taken place in this country since they were set up. They have never come out and said we have a position. They do these little ads around carnival time—"doh go too near the band, yuh go get earache." But they have moral suasion. Even if they lack legal validity, they have moral suasion. The Ministers are silent, Environmental Management Authority is silent and so we continue and just blather on most hypocritically about being concerned about the environment.

Mr. President, this is one occasion where we must really stop the charade and stop the cat and mouse game and solve a very simple technical problem with the help of the experts who are present in the Senate today and who I know for certain, can solve this problem in five or ten minutes. Then my good and charming colleague Sen. Carol Cuffy Dowlat would not have to scrape or rake through the book looking for a power that is not there.

Thank you, Mr. President.

Sen. Diana Mahabir-Wyatt: Mr. President, I would like to second the suggestion made by Sen. Daly that we take a few minutes either before the tea break, or during the tea break, and sort out this matter because I think that we have all agreed that we need a multi-disciplinary court. It has worked very well with the Industrial Court, there is precedent, and that court has much respect and believability and has laid down precedence which has stood the test of time. I do not think that anybody doubts that this was the intention of this commission, this is what we want, and I would therefore second that suggestion that we take an early adjournment for tea.

Thank you, Mr. President.

The Minister of Public Administration (Sen. The Hon. Wade Mark): Mr. President, I rise to at least make an intervention in the context of the various submissions made a short while ago, and to indicate that having regard to the various comments which have been made so far, I do not believe that a limited break of five or ten minutes will be able to overcome this problem.

In fact, I wanted to join this debate in earnest, but having regard to its direction, I would respectfully suggest that we adjourn the debate on this particular matter until the next sitting of the Senate, at which time we will meet with Members on the other side and the Attorney General's department and try to resolve this issue as best as we can, so when we resume debate on this question, it would be a collective approach we would be taking on this particular matter.

Therefore, I suggest that we adjourn this particular matter to the next sitting of the Senate and during the period of today and next Tuesday, we would have a team established with Members on the other side, the Attorney General's department and our side to resolve this particular matter. If we have the support and consensus of the Senate, we can proceed along this line.

Mr. President: Do I have the consent of the Senate to move in that direction?

Assent indicated.

Sen. The Hon. W. Mark: Mr. President, if my fellow Senators would permit, we did indicate at the last sitting that once we were able to complete the Environmental Management (Amdt.) Bill we would then proceed to continue our discussions on the Tourism Development Bill, and if we want to take an early tea we can, but I would suggest that we resume after tea at which time we would continue debate on the Tourism Development Bill.

Mr. President: We would break for tea at this stage and resume at 5.00 p.m.

4.20 p.m.: *Sitting suspended.*

5.00 p.m.: *Sitting resumed.*

TOURISM DEVELOPMENT (NO. 2) BILL

[SECOND DAY]

Order read for resuming adjourned debate on question [November 9, 1999]:

That the Bill be now read a second time.

Question again proposed.

Sen. Danny Montano: Mr. President, I do not know if to say I rise in support of the Bill or not. Quite frankly, the Bill is the most odd piece of legislation in the form that it is in. I certainly support the objective of the Bill and, certainly, at this juncture I want to declare that I would like to lend my support to the passage of a Tourism Development Bill but I am not sure, if it is going to be this one. What I am going to suggest later on is, that we would send it to a committee for review, and I will show why we have a number of problems with it.

Mr. President, it has been long in coming and, certainly, I have been waiting for it now for several years. In fact, when the Minister of Finance was in charge of the tourism portfolio, he and I had some discussions on this issue and that was a long time ago. I was aware that the legislation was being drafted. I kept following up on it and we were waiting for it. Eventually, it came in one form and then it lapsed and came back again, and it was presented in the last session. It lapsed again and now it has been brought back finally. It is an incomplete piece of legislation and I will go into some of the details a little later on. I would like to give the hon. Minister my assurances, that I will try to do my best to help get this piece of legislation passed at some point in the foreseeable future.

One of the problems that I really had with the legislation here—and it is appropriate that it comes so soon after the budget—is that I am really in very much of a quandary, as to exactly what Government's overall philosophy is towards the development of our economy. We are seeing certain measures being made in different areas. Certainly, in the petrochemical sector much of the plants that have been brought down and started up again are being given enormous tax holidays and concessions. Now, we are coming and talking about the tourism sector and that the original Bill, which dealt only with hotels, is now being widened to encompass a whole range of new activities.

Obviously, the Government recognizes the importance of the stimulation of the local industry and the tourism sector is an industry on its own. But it leaves

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me in a huge quandary as to exactly what Government's thinking is, as regards the local manufacturing sector. The Minister of Finance is on record as saying, "insofar as exports of locally manufactured products are concerned that within a year or two, the export allowance is going to be removed." Now, the export allowance effectively gives local manufacturers tax-free status for the products that they manufacture and export outside of Caricom.

Mr. President, I know that the Minister of Finance has always been twisted by the World Trade Agreements and so forth, and I understand these things. But I have said also, what you cannot achieve by one measure, you can in fact achieve by another. Whereas, I do not oppose the granting of a concession to tourism projects, I would certainly like to think or believe that a responsible Government is going to look at the local manufacturing sector, and to consider the kinds of concessions and incentives that should be granted to those persons as well.

Mr. President, I went at some length in my contribution during the budget to explain how difficult it is for the local manufacturers to finance their local operations. Unfortunately, I had no reply from the Minister of Finance on that occasion, as to if the Government was thinking about looking at revising the incentives for local industry or not. There was just no response from the Government side, absolutely no response. I was the first speaker on this side after the Minister of Finance, and there was absolutely no comment from any Minister or Senator on the Government side, as to what Government's thinking was, as regards the local industry and the earning of foreign exchange, exports and so forth. I heard absolutely nothing at all.

Mr. President, I even went so far as to point out that there is a brand new industry in town and, that is, the operation of a casino. I indicated that under our laws, the winnings or revenues from gambling are tax-free and, therefore, from the operation of a casino—whether it is a club or otherwise—those gains or profits fall to be completely tax-free profits.

5.10 p.m.

I indicated also that, based on a report in the newspapers, at least one member had invested approximately \$8 million in a casino. That is a tremendous investment and it is tax-free money that he is talking about. Yet, our local manufacturers who are employing tens of thousands of workers and who work very hard on the export market are receiving fewer and fewer incentives on an annual basis and are now being threatened with the removal of the export allowance. That causes me great concern. So while I am not in disagreement with

this—in fact I do heartily support the principle behind this—I am left completely baffled as to what Government's overall policy really is.

Mr. President, I am confused also because it seems to me that there are things being done in a piecemeal fashion, about which we have spoken before, and one of them is this. Some time ago we did the Immigration (Caribbean Community Skilled Nationals) Act, 1996 dealing with Caricom skills. I talked about, with some chagrin, the fact that a Caricom investor who did not have a university degree could not invest money in Trinidad and Tobago and, as of right, come and live here and work his capital. He would still have to go through the routine of getting a work permit. Now, that little anomaly still exists and I have raised it on several occasions with, again, no response on the part of the Government.

As it relates to this particular Bill, the value of villas and condominiums is recognized as being part of a tourism project but we all know that there is substantial foreign interest in projects of this sort in Tobago and, of course, in Trinidad. Now the position is that in the world at large there are many retirees who are willing to invest in a property in Tobago, or wherever. They would like to come here to enjoy their property but the anomaly is that they have no right of access to their property. They are subject to the immigration regulations on each and every visit and they are given a visa allowing them to come in for 30 days or three months, as the case may be. They cannot stay here indefinitely enjoying their property and it is their property, it is not ours.

Nothing has been provided here and we have heard nothing to the extent that the Government is going to make allowances for a certain category of resident, as is done in other countries, whereby if a certain amount of money is invested in a property like this and so on and so forth, one can come here to enjoy one's property but one cannot work. So there is an absolute right to reside in the property but one is not allowed to work. Now this is what happens in many, many, many areas. Coupled with that, of course, comes the question of residency for income tax purposes. If the person is resident here for more than 180 days, what happens with this tax situation? Does he then become taxable on his world income or whatever? It is becoming a problem and it is an issue.

Notwithstanding that fact, which I thought would have hit anybody square on the forehead from the time that they started to draft this piece of legislation, we have heard absolutely nothing about it. It seems to me that we really cannot settle this piece of legislation, particularly insofar as it deals with the villas and the condominiums, without dealing with issues like that because we are literally saying, "Come and invest here but you may not be able to enjoy your property.

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Also, if the immigration officer, for whatever reason, decides not to grant you a visa or to extend your visa, you have to leave your property here”.

Mr. President, that is a completely untenable situation. How can we, as a modern country on the cusp of the next century, be thinking in such a convoluted manner? I just fail to understand how a modern administration, a modern government, can make such a blunder. I just do not understand it. The question is being asked not only by me—[*Interruption*]

Sen. Prof. Spence: Mr. President, I just wondered, could the hon. Senator say whether, if I own property in the United States, I could reside there without immigration approval, or in the United Kingdom for that matter?

Sen. D. Montano: Mr. President, I cannot answer that question vis-à-vis the United States, even though I would like to, but there are similar areas like ours and I would quote Malta, for instance, as an example. I can quote also the Cayman Islands as similar examples where they have a tourism product and they are marketing it in a particular way so that one can enjoy it. I hope that answers your question.

So, Mr. President, I had some difficulty with the philosophy behind the legislation and I really wonder where the Government is going. You see, along these lines I think that if this thing was sent to a special committee we would be able to deal with issues like this; if not as part of this legislation at least it would spawn a parallel set of legislation so that it would complement this.

In dealing with the specifics of the Bill, Mr. President, just to show you some of the difficulties, if you turn to clause 2 we see the definition of a “bedroom”. Now this Bill deals with the same thing in different parts of the Bill. It was an extremely difficult piece of legislation to read and fully understand. [*Desk thumping*] One has to start at the beginning, go to the Schedules, go back to Part II, go back to the Definition Section and then back to the Schedules. You go round and about and it is very, very difficult to understand exactly what is being said here. It is going to cause a tremendous amount of difficulty.

Now I realize this is not this Minister's piece of legislation—after all, he is very new in the chair—and it is against that backdrop that I am suggesting to the Minister that we really cannot deal with this piece of legislation as it is at this time. We need to go back and look at it. [*Desk thumping*]

Now, look at the definition of the word, “bedroom”. Mr. President, I was advised by my colleagues in the industry that under no circumstances, by any

stretch of the imagination, is a hotel room ever described as a bedroom. It is described as a room and the room generally has different facilities. It is not a bedroom. A bedroom is a bedroom in your house and it is your bedroom as opposed to your bathroom. A hotel room might have, in fact, two rooms. It might be a suite, it might have a little sitting area and it has a bathroom and there might, in fact, be a kitchenette included in it, but it is generally described as a room. So the usage of the word, “bedroom”, is completely inappropriate in a piece of legislation like this.

It goes on. It means:

“...the sleeping room of a tourism accommodation...”

So it means the sleeping room but it contains a bathroom. Mr. President, you know, I would not—[*Interruption*] I can appreciate that, but again, with the greatest of respect, it is the wording here that is completely off. Now it says also:

“...that is of a specified minimum size...”

Mr. President, nowhere in this Bill is “a specified minimum size” defined. We do not know if it is 6 by 6; 10 by 10; or 14 by 14. We do not know what “a specified minimum size” is. We are left to presume that the specified minimum size is going to be specified by TIDCO when they make the application, or whatever it is.

The fact of the matter is, why should it be a specified minimum size? Is it that the authorities are going to dictate the size of the rooms to the developers? That is going to put a certain onus on persons who already have plants and facilities in existence and someone could be excluded because of the size of the room? I find that very subjective. I mean, it is not going to be necessarily uniformly applied.

The next thing is:

“...suitably decorated and furnished...”

Suitable to whom? What does, “suitably decorated and furnished” mean? It is an impossible standard. It really has no place in the legislation here. Mr. President, with the greatest of respect to my friend, the Minister, I am not trying to chastise him. I am merely trying to point out the unworkability of the legislation as it is and the need for him to go to a committee. That is the point. That clause, by itself, is unworkable.

In clause 2 again, you could go on to the definition of “dive lodge”. It says:

“...means a tourism accommodation facility that offers a tourism product but is heavily dependent on scuba diving and other recreational watersports”

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What exactly does “heavily dependent” mean? Who decides what is “heavily dependent”? If it is based on revenue, suppose the revenues fall short on the scuba-diving business? Then it means that you are no longer heavily dependent. What exactly does that mean? I cannot see that as being a workable definition. I just cannot see that. I thought about how to fix it but, quite frankly, I think the words should be taken out, just removed and use the word, “includes”, maybe.

Mr. President, we come to clause 2 again, the definition of a hotel. Now again I have real difficulty here. When it comes down to the definition of a hotel I would like to refer hon. Senators to the original Hotel Development Act, Chap. 85:02. That was a piece of legislation that is well drafted. It is evident that it was well thought out, when you read it and you see everything that they have thought through. In truth and in fact, you know, all they really needed to do was to include as an addendum to this Act all of the businesses that they wanted to include here. They should simply have tacked it on and said, “hotels, plus marinas, plus this, plus that, plus that and plus that will be entitled to these allowances”, and they would have achieved the same thing with a minimum of interference. But the whole thinking now is so convoluted. I will show you what I mean.

Hotel is defined here in clause 2. If you go down to, I think it is Schedule 5, you get another kind of a definition of a hotel, but it really is not an all-inclusive business as well. For instance, in the original Act section 39—but let me just read what it says here as to what a hotel is. It says:

“‘hotel’ means an establishment whose entire building is dedicated to a public lodging, which is built and equipped especially to provide lodging and meals on an ongoing basis to its paying guests, as a general rule, and other related services such as reception rooms, sitting rooms, public telephones, and provides daily cleaning and housekeeping services to the rooms and facilities;”

Now, Mr. President, the problem with this definition is this. Section 36 is the one that bestows the tax exemption on a tourism project and included in a tourism project is a hotel. Now, hotel has been defined here but the problem is that this is not all-inclusive and leaves out a number of things.

Let me just show you the kind of thing that was included in the previous Bill. Under section 39, it says:

“...the scope and extent of the hotel business shall be deemed to be limited to the following services:

- (a) the supplying, under any arrangements of rooms, and of laundry, dry-cleaning and valet services to registered guests to the hotel;
- (b) the supplying of food and restaurant services, alcoholic and non-alcoholic beverages, cigarettes, cigars and tobacco by the hotel operator to customers of the hotel whether registered guests or not;
- (c) the supplying of any of the hotel's facilities for meetings, conventions, conferences..."

and so forth. So you see that is not really included here. Now, it goes on to include the supplying of car park services or the rental areas for shops and so forth, so that the whole activity of the hotel resort would be defined as being the hotel operation and, therefore, would be subject to the tax exemption. What we have here is a kind of isolated definition of what a hotel is. It would seem to me that many of the activities of a hotel, what most hotels have, are going to be exempt especially things like the rental of shops and so forth.

5.25 p.m.

Now, I do not know if that is what the intention is, but those shops that sell cigarettes, newspapers, *et cetera*, are really what makes the hotel a viable institution. Therefore, you pretty well have to have these things. I cannot think of a hotel, more than 15 or 20 rooms, that does not have these things. If you go to the Kapok Hotel, you will see all sorts of shops there where you can buy things because many travellers are going to get here, having forgotten their toothbrush, or their hair brush and would need to get a shop on the premises where they can get these things. The Hilton Hotel has it; the Holiday Inn has it; every hotel of a major size that I can think of, has these shops.

Is the rental income from these shops included in the gains or profits as defined in clause 36? It really does not say and it is going to be a nightmare when I have to deal with the Inland Revenue Division on these matters. Because, they can come back and say, "Mr. Montano, if Parliament had intended these things to be tax free, they would have made them tax free."

Now, the problem, when you have these kinds of situations, is how does one isolate what are the profits? Now, one can isolate the revenues out of the accounts of the hotel. But, how does one truly isolate the profit of those taxable areas? It is going to be an accountant's nightmare and it is just a formula for confusion with the Inland Revenue Division. So, it makes more sense to do it the way it was done in the original Act, that is, to be very specific as to what you are including and what you are actually leaving out.

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Looking at this thing, I had, in fact, drafted a couple of amendments, but after starting that, I thought, “I really cannot go on with this. I really cannot fix this just like that. I would like to, but I really cannot.” One of them was to fix the definition of “hotel”. The other thing that I was trying to fix—and I will show you what is the problem—is the definition of a “marina”. It says:

“‘marina’ means an establishment providing a minimum of ten slips...”

Now, Mr. President, the word “slip” is slang or expression for the word “slipway”. There is no such thing as a slip, it is a slipway. That is what it really means. Under that definition, there is no marina in the Caribbean or anywhere that has 10 slipways. None; absolutely none. What they really meant is a berth. That is the correct word. Now, let me just tell you what is the problem with 10 berths.

Many marinas do not necessarily have fingers coming out so that there are identifiable berths for boats. Many of them just have a large jetty; the boats come and turn into what is called a Mediterranean-style mooring. Now, the problem is there are big boats and there are small boats. On any given length of jetty, depending on the size of the boats, maybe only three will fit. If they are small, 15 would fit.

Sen. Daly: If it is a rice boat? [*Laughter*]

Sen. D. Montano: It depends on the size of the boat. So, it is impossible to tell anybody how many berths they should really have.

The other thing is that it went on to talk about:

“...and a disposal unit or sewerage treatment unit...”

I find it extraordinary that any marina anywhere in the Caribbean is actually going to have a sewerage treatment unit. I think what they are going to have is a facility so that they can extract the sewerage from the boats and, perhaps, dispose of it somewhere else; some kind of collection device. But, I cannot see it as reasonable that they can actually treat the sewerage. That seems to me to be an extraordinary investment for a very minor product. I cannot see that as being useful.

The other thing it goes on to talk about is:

“...concrete pads for maintenance activities...”

Why does it have to be concrete? The truth of the matter is, it does not have to be concrete, once you get the boat out of the water. You can fix it on grass; you can fix it on pitch; you can fix it on gravel; you can fix it anywhere; you can fix it on sand. It does not have to be concrete, so why are they specifying concrete pads. Then, it went on to talk about:

“...recycling facilities for oil, glass and batteries;”

Can we reasonably expect a marina to go into the recycling of glass, the recycling of batteries and the recycling of oil? I think, what they are really trying to get at here is, receptacles for the collection of these things for recycling. I am sure that was what was intended and not really the actual recycling.

I am just giving an example as to how that cannot work. Let me give you an example of what I suggested “marina” could and should be. Again, it falls a bit short of what it could be. I was going to suggest that:

“‘marina’ means an establishment which provides berthing facilities and slip or travel lift, crane or hoist facilities for the out haul of vessels...”

That is really what they are trying to get at when they talk about slips, because there are different methods; not everybody has the same system.

“...disposal or treatment units for the removal or treatment of waste from vessels; yard facilities for storage or maintenance of vessels...”

Because, Mr. President, many of these marinas actually may not get too involved in the maintenance of the vessels, but actually a place to simply store them, but that is part of the marina activities as well.

“...and receptacles for the collection of oil, glass and batteries for recycling;”

That was what I was going to suggest and I would be quite happy to suggest it at the committee stage if this thing gets that far. I would humbly suggest that we go to a Select Committee and get this thing fixed properly.

When you have a look, for instance, at what this thing is really supposed to involve, one of the questions that was put to me, as regards both clauses 3 and 36 was whether, in fact, the gains or profits that were going to be eligible under clause 36, would include the gains or profits from real estate operations of an integrated resort development.

For instance, one of these resorts, building villas, condominiums and so forth, obviously intends to sell them and the Act makes provision for that, but it is silent as to whether or not the profit on the sale of those units is really going to form part of this whole business, or whether those profits will also be tax exempt during the tax exemption period. We just do not know.

The other thing that we do not know either is this. The transfer tax on the sale of the unit to the investor is a tax on the vendor. Now, normally a tax on a

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company like that is not part of its operating expenses. So, if you sell a unit, let us say for a million dollars, and the cost of building it is \$800,000; you would have a profit of \$200,000 but the vendor has to pay tax at a particular percentage—I do not know what it is here, 2 or 3 per cent—12 per cent. I assume that the tax is on the selling price. So, he pays \$120,000. The value is going to be an appraised value. Let us assume that the appraised value is the same as the selling price of \$1 million, so he pays \$120,000. Does that mean now that his gain for purposes of his accounts is only \$800,000? Or, does he have to eat the \$120,000 as a tax? I really do not know, but it is something that ought to be clarified here.

Clause 3 is the clause that actually confers the exemptions and sets out on what basis it is going to be done. I have significant difficulty with this clause and I will tell you why, Mr. President. Clause 3(a) says that you will be given:

“(a) a full or partial exemption...”

I do not know what is a partial tax exemption.

“...not exceeding five years in respect of gains or profits from the operation of a tourism project whose capital expenditure is less than TT \$120 million; or

(b) a full or partial tax exemption not exceeding seven years...a tourism project whose capital expenditure is TT \$120 million or more.”

But, clause 3(4) says that:

“...the Minister may, having regard to the financial risk...”

extend the exemption if it is less than \$120 million to seven years.

Now, that is so subjective. I have a lot of difficulty with this and I will tell you why. The fact of the matter is that the smaller projects tend to be less efficient than the larger ones and, therefore, tend to employ more persons per dollar of capital invested. So that the ongoing contribution to the local economy is actually greater on a per capita basis than the larger projects. We also have the situation where the smaller project, in terms of financial risk and I happen to know this from personal experience, where the project is fairly small but he has mortgaged his house, his mother's house, his mother-in-law's house, he has sold his car. He has mortgaged everything that is available to do the project.

Now, it may be small; it may be only \$600,000 or \$700,000. That is the extent of his investment, plus the loan that he could raise from the bank, of say \$1.5 million, so his total investment is \$2 million. But, who has more risk? This guy who has everything under the sun on the line, or the big investor—like Angostura,

with the greatest of respect to my friends here—who, quite frankly, if the project fails, it is not going to break them. Who has more risk?

I do not see that this really makes any sense. There is no real reason to differentiate between the size of the project and the size of the tax exemptions. In fact, the person who needs it the most is the small guy, but it is quite clear that the thinking of this administration is quite the reverse and it should not be so.

5.40 p.m.

While we are very happy to attract foreign investment in these mega projects, we need to stimulate indigenous investment, no matter how small. When they start to talk about guest houses having a minimum of eight bedrooms and the bedroom must have a bathroom attached to it, the fact of the matter is that they are going to isolate a whole host of businesses outside there that, in fact, may have their bathrooms on a share basis. I know one just like that in Tobago where the bathroom is shared with the room next door. It is going to completely cut out a lot of people. Why do that?

This thing needs to be gone through very carefully, and what needs to happen is that we need to have a committee which should talk directly with people in the industry to get their views on this piece of legislation and find out what their problems are directly and fix them. I do not think that the Government does not want it right. I am sure the Government wants it right, but it is not right. I do not think it is the Government's fault as such, but it is not right.

Mr. President, in terms of clause 35, the loss being carried forward in the original piece of legislation, the Hotel Development Act—I think it was clause 35 which clearly indicated that the intention of the loss carry-over provision was that any losses incurred during the tax exemption period could be held and isolated and then applied to the period after the tax exemption.

The way that the current legislation is going to work, I do not really know what the intention is, but the way I read it—I could be wrong—is that what they are saying is that during the tax exemption period, the losses must be applied first to the income or the profits in the later years during the tax exemption period. So, in fact, by the end of the tax exemption period, one could have a situation where one has already exhausted all of the tax losses. That is how it seems to work, but the problem is that when one goes to section 16 of the Income Tax Act, it talks about the application of the losses against chargeable income.

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The legal issue here is this. If one has a tax exemption, does one have chargeable income? Mr. President, I am telling you, the Inland Revenue is going to interpret that the way I just explained, and the businessmen are going to interpret it that they do not have any chargeable income and it is going to be held over. So, right away, every hotelier who tries to operate this is going to be in conflict with the Inland Revenue. I can tell you from the start. But it was quite clear in the original piece of legislation. Now it has become very muddied, and is certainly less than clear. It is just a question of trying to make sure that we understand what we are trying to achieve.

Section 36 of the original Act also specifically dealt with dividends under the tax-free period—the dividends which were being paid out of the tax-free profits. We have not dealt with that here at all. Dividends here are tax-free, but the issue has not been addressed, and I think it should be addressed.

Mr. President, I have just given a little example of some of the real problems that exist, and I will give another one. I happened to have a client some years ago who had two hotels in Barbados, and what they started doing was time-share the units. What they did was register a company in the Isle of Man and they were selling timeshares—two weeks for 20 years for US \$5,000—but the company selling the timeshares was the company in the Isle of Man. They sold those rooms how many times over as a result of the timesharing, and all of the profits—because the contracts were written—were being done through the Isle of Man. Nothing actually passed through Barbados. Nothing was registered anywhere in Barbados.

When one bought a timeshare and visited, one paid a nominal premium of \$20 or \$25 per day, and that is all that one paid. So, ostensibly, the hotel could show that it was losing money and, of course, applying the losses of those rooms against their legitimate hotel rooms. The huge profits are being enjoyed in the Isle of Man, which is a tax-free haven, and the company is floated on the New York Stock Exchange showing huge profits and investing all over the West Indies. Mr. President, we have not even begun to address that.

There is also another situation which exists in Trinidad and Tobago. They put down a hotel and start to sell package tours, but they fix the rate of the package so that while they sell a tour for US \$100 per day to the Germans or the Swedes, all they are actually reporting in Trinidad and Tobago is TT \$100 per day. That amount keeps them in a loss position ostensibly, but in fact, all of their profits are being paid for outside of the country, so even outside of the tax exemption period, they pay no tax in Trinidad and Tobago. The question really is, bearing in mind

how difficult that situation is to police, what are we going to do for the guys who are here who are not selling package tours? Are we going to treat them the same way, or are we going to try to level the playing field? This is not addressing those issues at all.

Mr. President, there is one very significant final issue I would like to raise. In the original Bill that we got, there was a clause 44. There is a clause 44 in the new Bill, but not the same one. This clause 44 made allowances, because a lot of businesses, a lot of marinas, especially in Chaguaramas, have been put down in anticipation of this piece of legislation and they are now finished, operating and actually paying taxes. Quite clearly, they did it in anticipation of this legislation. They had discussions with TIDCO and so forth. The projects are finished.

Under the legislation we have in front of us, they will not qualify, because it is not new. It is existing. So, under the original clause 44 it was retroactive. They could, in fact, make an application and they would be eligible, but for some reason, it was removed. I do not know why. It does not really make any sense, so we need to look at that.

With those few words, I have not been an exhaustive case. I have merely tried to bring out what I felt were the more significant issues to show why the Bill really should not be passed in this form. It needs to be reconsidered, redrafted and they have our assurances that we will work with the Minister with the greatest goodwill in an effort to get this thing off the ground and running as quickly as possible. With those few words, I thank you. [*Desk thumping*]

Sen. Philip Marshall: Mr. President, I rise to support the overall economic objectives of this Bill, but certainly, not the detailed form in which it has been drafted. I am not a mariner like the Senator who has just shared with us his contribution, so I will not be talking about slips or berths, or what berth rates apply.

In all seriousness, this whole issue of tourism is important, based on some overall figures, just looking at the need for us as a nation to have a shared vision of tourism. As the hon. Minister, in his presentation in piloting this Bill pointed out, the anticipated growth rate in the tourism sector and in areas of the world where this is important—we are talking about increases annually, gross domestic product of 18.15 per cent, increase in wages and salaries of over 8 per cent, annual increases in employment of about 5 per cent.

From my discussions with hotel operators and owners in Trinidad and Tobago, I believe every hotel guest, in fact, supports about three and a half to four

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jobs. This is not only in terms of people who work in the hotel, but people who have to provide the ancillary services or agricultural or other service and support products. There is no question of the importance of tourism, ecotourism or appropriate tourism to assist with the development of our overall skill sets and to assist with the whole issue of providing jobs and economic development for our people.

Mr. President, I know some people have a different view of whether tourism is a good thing for our country or not, so my contribution would talk just simply in some economic terms. I read in the paper that the airfares to Tobago were recently reduced in respect of resident non-nationals who were not entitled to the subsidized rate. I am just sharing with you the feeling on this and the emotion from their perspective.

Most of these resident non-nationals employed in the Point Lisas area felt that they paid very high income taxes, contributed to the rental of apartments and provided a lot of other jobs. In one case, one family was so upset about having to pay this additional airfare rate that when their families from abroad came down over a Christmas holiday, 10 or 15 people, they went to the island of St. Vincent—although they preferred to go to Tobago—and spent something like \$30,000 for those few days. I am making the point because very often, when we look at just simply the economics or straight facts and figures, we may think that it may encourage a certain type of behaviour or result in a certain type of bottom line but, in fact, the connection between incentives and behaviour is not just simply a monetary issue.

I certainly would like to support the hon. Senator who has just finished his contribution. I think it is very important that we sit back, refer this to a committee and review this Bill in a very holistic sense. I would really support that, Mr. President.

I am not going to delay my contribution or delay you in making this contribution, but I will just talk about the fact that in addition to the fiscal incentives, there are a number of issues as we approach this whole issue of the development of tourism and the development of incentives.

Mr. President, it is very often said that the only person who makes money in a hotel is the third owner. We have had case histories of local investors, who are just as important as foreign investors and really lose because of the fact that they have not had the volume of occupancy and they have not had the equity. Therefore, while building a reputation, they have gone through low revenues over

a two or three-year cycle and have virtually gone bankrupt. It is only the third time around when that hotel is sold that the person buying the real estate underlying the hotel the third time around is the one who got it at such a knock-down price that he can meet the economic demands of servicing loans.

It is obvious that one of the challenges facing us in Trinidad and Tobago is that we need a depth of tourism and a volume of tourism that supports not only the facility itself, but the accompanying restaurants and the supporting services. Here are some of the key issues facing us and the tourist industry. We still need to have a consensus and a vision of what we mean by tourism. This is both at the governmental level and the national level. [*Desk thumping*]

5.55 p.m.

We really need to develop that consensus. The whole issue of the destination—a tourist comes to a destination because one of the things he wants is to feel welcome and secure. I do know that Trinidad and Tobago has an enviable reputation, in this regard, at our carnival time. When one looks at the fact that the spirits that are abiding—I am not recommending that, I see the Reverend Senator looking at me very harshly—we really have a fantastic reputation in terms of people who are hurt, *et cetera*, given the situation.

As an underpinning, throughout the year, we have to make sure that tourists feel welcome, they are not attacked. It hurts our image when, unfortunately, we have a situation that one or two foolhardy people destroy the whole reputation of Trinidad and Tobago, like I think, in the case of a BBC camera crew who visited the forest in Tobago and were attacked when they left their car and went on one of the trails. This really hurts us, especially when we attack members of the media who have come to promote our tourist destination.

One of the other challenges too, we have 2,600 hotel rooms. My understanding is that a harsh reality would say approximately 800 of those rooms are really up to international standard. Again, this speaks of helping hoteliers as much as is plausible and possible to bring our stock up to mark.

There is always the challenge too—I am sure Members from Tobago would say this—that our environment is not sufficiently protected. The challenges on Buccoo Reef, *et cetera*. In talking to Sen. Prof. Kenny, I feel that one of the key things that an investor is faced with, he has money or he is funding money, he has to be given a quick decision. Do not make the decision-making discretionary, make it transparent. Let the rules be known up-front. I do appreciate—please, I do not want to be taken wrong in this comment—we are Trinidad and Tobago. I do

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not know why we must have a situation where in one case it may be the Tourism and Industrial Development Company (TIDCO) and in the other case the Tobago House of Assembly (THA). Why should it be that there is a different body making a decision because they are in a different part of the world? Maybe the community of Maraval or Blanchisseuse should decide if the tourism development is on the north coast.

What we must ensure is that the areas that we agree upon, from in front, are suitable for tourism locations; that they are in fact so suitable from the aspect of environmental impact and other assessments, that we map out, as it were, potential areas where we may be prepared to support a tourism development project of the magnitude laid out here; that, having been known in advance, when an investor comes to propose the project, we know in advance what we are going to accept it or not. Not that we begin to decide then and there about the bureaucratic process of what they should be engaged in.

There are other islands in the Eastern Caribbean offering longer tax holidays, lower discounts and quicker decision-making to attract the investor. We are facing a competitive investment climate from that perspective. If we have a holistic view on this whole tourism, I think what it could also mean to BWIA, our national airline, and to the other hoteliers—the whole issue of airlift to Trinidad and Tobago, airlines need to know that they have a certain volume to commit themselves to routes with the regularity needed.

Definitely, we need public/private sector support so that the whole marketing of a tourism destination is done at the required level. When one looks at the budget that we have just gone through, the amount of money that we spent on marketing for tourism is really very small in relation to Barbados, the Bahamas, *et cetera*. It would take a very long time.

Mr. President, with these few words, I have reflected and decided not to go through the myriad of changes and clarifications that are going to be needed and removal of the discretionary issues. I would like to support the previous recommendation that this Bill, because of its importance, be the subject of a select committee. That select committee should be mandated with alacrity to complete this Bill and bring it back to these Houses as soon as possible and maybe even beginning to go back to the foundation of the Hotel Development Act.

Mr. President, that is my contribution, thank you.

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ADJOURNMENT

The Minister of Public Administration (Sen. The Hon. Wade Mark): Mr. President, before moving to adjourn this honourable Senate, may I remind fellow Senators that next Tuesday is Private Members' Day and we commence at 1.30 p.m. On Wednesday we come back at 1.30 p.m. to continue our debate on the Tourism Development (No. 2) Bill as well as the Environmental Management Authority (Amdt.) (No. 2) Bill.

Mr. President, I beg to move that this Senate do now adjourn to Tuesday, November 23, 1999 at 1.30 p.m.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 6.04 p.m.