SENATE

Tuesday, February 08, 2000

The Senate met at 1.30 p.m.

PRAYERS

[MR. PRESIDENT *in the Chair*]

LEAVE OF ABSENCE

Mr. President: Hon. Senators, leave of absence has been granted to Sen. The Hon. Brian Kuei Tung during the period February 07—11, 2000, and Sen. Phillip Marshall from today's sitting.

SENATORS' APPOINTMENT

Mr. President: Hon. Senators**,** I have received the following correspondence from His Excellency the President of the Republic of Trinidad and Tobago:

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

\s\ Arthur N. R. Robinson
President.

TO: MR. DAVE COWIE

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

NOW, THEREFORE, I, ARTHUR N. R. ROBINSON, President as aforesaid, acting in accordance with the advice of the Prime Minister, in exercise of the power vested in me by section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, DAVE COWIE, to be temporarily a member of the Senate, with effect from 8th February, 2000 and continuing during the absence from Trinidad and Tobago of the said Senator Brian Kuei Tung.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 4th day of February, 2000."

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

\s\ Arthur N. R. Robinson
President.

TO: MR. KENNETH AYOUNG-CHEE

WHEREAS Senator Philip A.F. Marshall is incapable of performing his functions as a Senator by reason of his absence from Trinidad and Tobago:

NOW, THEREFORE, I, ARTHUR N. R. ROBINSON, President as aforesaid, in exercise of the power vested in me by section 40(2)(c) and section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, KENNETH AYOUNG-CHEEE, to be temporarily a member of the Senate, with effect from 8th February, 2000 and continuing during the absence from Trinidad and Tobago of the said Senator Philip A.F. Marshall.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 4th day of February, 2000."

VACANT SEATS

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

\s\ Arthur N. R. Robinson
President.

TO: SENATOR NATHANIEL MOORE

WHEREAS by the provisions of paragraph (e) of subsection (2) of section 43 of the Constitution of the Republic of Trinidad and Tobago, the President, acting in accordance with the advice of the Prime Minister, is empowered to declare the seat of a Senator to be vacant:

NOW, THEREFORE, I, ARTHUR N. R. ROBINSON, President as aforesaid, acting in accordance with the advice of the Prime Minister, in exercise of the power vested in me by the said paragraph (e) of subsection (2) of section 43 of the Constitution, do hereby declare the seat of you, Senator Nathaniel Moore, to be vacant.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 3rd day of February, 2000."

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

\s\ Arthur N. R. Robinson
President.

TO: SENATOR AGNES WILLIAMS

WHEREAS by the provisions of paragraph (e) of subsection (2) of section 43 of the Constitution of the Republic of Trinidad and Tobago, the President, acting in accordance with the advice of the Prime Minister, is empowered to declare the seat of a Senator to be vacant:

NOW, THEREFORE, I, ARTHUR N. R. ROBINSON, President as aforesaid, acting in accordance with the advice of the Prime Minister, in exercise of the power vested in me by the said paragraph (e) of subsection (2) of section 43 of the Constitution, do hereby declare the seat of you, Senator Agnes Williams, to be vacant.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 3rd day of February, 2000."

SENATORS' APPOINTMENT

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

APPOINTMENT OF A SENATOR

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

\s\ Arthur N. R. Robinson
President.

TO: MR WINSTON JOHN

In exercise of the power vested in me by paragraph (a) of subsection (2) of section 40 of the Constitution of the Republic of Trinidad and Tobago, I, ARTHUR N. R. ROBINSON, President as aforesaid, acting in accordance with the advice of the Prime Minister, do hereby appoint you, WINSTON JOHN, a Senator.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 3rd day of February, 2000."

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

APPOINTMENT OF A SENATOR

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

\s\ Arthur N. R. Robinson
President.

TO: MISS JEARLEAN JOHN

In exercise of the power vested in me by paragraph (a) of subsection (2) of section 40 of the Constitution of the Republic of Trinidad and Tobago, I, ARTHUR N. R. ROBINSON, President as aforesaid, acting in accordance with the advice of the Prime Minister, do hereby appoint you, JEARLEAN JOHN, a Senator.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 3rd day of February, 2000."

STANDING ORDERS COMMITTEE
(Replacement of Member)

Mr. President: Hon. Senators, as you know, we have a Sessional Standing Committee and Senator Nathaniel Moore was a Member of that committee, Sen. Selwyn John has replaced the former Senator Nathaniel Moore on the Standing Orders Committee.

MR. PAUL HARRISON
(DEATH)

Mr. President: Hon. Senators, I wish to record the passing of a former Member of the House of Representatives on February 04, 2000. Mr. Paul Harrison, a well-known trade unionist, served in the House of Representatives during the period 1976—1981. He was interred on February 07, 2000. The Clerk of the Senate has been instructed to send an appropriate letter of condolence to the bereaved family. Hon. Senators, wishing to pay tribute may do so now.

1.40 p.m.

The Minister of Public Administration (Sen. The Hon. Wade Mark): Mr. President, on behalf of the Government Benches here in the Senate, we would like to join in expressing our own grief and mourn the loss of Paul Harrison who, as you said, was a Member of the House of Representatives for the period 1976—1981.

Paul Harrison was also a foundation member of the National Trade Union Centre (NATUC) as well as a past executive member of the now defunct Council of Progressive Trade Unions. More importantly, Paul Harrison was a patriot, a fine worker and he laboured very hard and long for the British West Indian Airways Company (BWIA). In fact, he worked there for some 36 years. Even when he was diagnosed as having chronic renal problems some years ago, he continued in a very spirited way to defend, advance and promote the interests and welfare of his members at BWIA and working people generally, in Trinidad and Tobago.

I would say that the revival of BWIA largely, to some extent, owes its fortunes to the mature and responsible approach of Paul Harrison who led, as the President General, the Aviation Communications and Allied Workers' Union for a number of years. Mr. President, I think that, for instance, the trade union movement has lost a good leader, a responsible and mature person in Paul Harrison.

We on this side would like to extend to the bereaved family of Paul Harrison our profoundest condolences on this occasion and we would hope that the trade union movement would find some kind of appropriate arrangement to remember the rich contribution of this soldier of the trade union movement who has gone beyond. We pray for him and may his soul rest in peace.

Sen. Nafeesa Mohammed: Mr. President, I rise on behalf of the Opposition People's National Movement to pay tribute and to extend our deepest condolences to the family of the late Paul Harrison.

My colleague, the Leader of Government Business, Sen. The Hon. Wade Mark, spoke at length about his contribution in terms of the trade union movement. I can recall the days when, apart from being actively involved with the trade union movement, Mr. Harrison himself was a foundation member of what was then known as the United Labour Front Party (ULF) and in fact he served as the Member of Parliament for the very famous constituency of Caroni East during the period 1976—1981.

I am informed that over the years of his struggles in the trade union movement, particularly with respect to the union involved in British West Indian Airways, that he was a person who had a tremendous respect for authority and he stood for law and order. He was also known to be a devoted family man and we certainly would like to extend our deepest condolences to his wife and four children. As it is often said, it is from God we came and to God is our eventual return.

Thank you.

Sen. Prof. John Spence: Mr. President, on behalf of the Independent Senators, I would like to express our condolences to the family of Mr. Paul Harrison. Clearly, he was an outstanding trade union leader and in these days of globalization, mega companies and the future of trade unionism being, perhaps, a lot in doubt, I think that it is very sad to think that someone who could still have been making a contribution to that great movement, has passed on. We extend our sympathy to his family.

Thank you.

Mr. President: Hon. Senators, as a mark of respect, I ask all to stand in a minute's silence, please.

The Senate stood.

OATH OF ALLEGIANCE

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

Jearlean John, Winston John, Dave Cowie, Kenneth Ayoung-Chee.

VOTE OF THANKS

Mr. President: Before calling on the Minister of Public Administration, may I take this opportunity to thank the two out-going Senators, Sen. Agnes Williams and Sen. Nathaniel Moore, for their services to the Senate and to welcome the new Senators who have just been sworn in. [*Desk thumping*]

PAPERS LAID

1. Financial Statements of the Trinidad and Tobago Pageant Company Limited for three hundred and ninety-eight days ended October 31, 1999. [*The Minister of Public Administration (Sen. The Hon. Wade Mark)*]

2. The Mutual Assistance (Agreement between Trinidad and Tobago and Canada) Order, 2000. [*Hon. W. Mark*]

3. The Mutual Assistance (Agreement between Trinidad and Tobago and the United States of America) Order, 2000. [*Hon. W. Mark*]

3. The Mutual Assistance (Agreement between Trinidad and Tobago and the United Kingdom) Order, 2000. [*Hon. W. Mark*]

4. The Extradition (United States of America) Order, 2000. [*Hon. W. Mark*]

ORAL ANSWERS TO QUESTIONS

Pageant Company
(Expenditure)

6. Sen. Muhummad Shabazz asked the Minister of Trade & Industry and Consumer Affairs:

Could the hon. Minister state the amount of money the Pageant Company or Miss Universe Incorporation paid to the Copyright Organisation or Trinidad and Tobago for the Miss Universe competition and all other related events staged by them in Trinidad in May, 1999.

1.55 p.m.

The Minister of Trade & Industry and Consumer Affairs (Hon. Mervyn Assam): Mr. President, the Trinidad and Tobago Pageant Company Limited paid $258,435 to the Copyright Organization of Trinidad and Tobago for the 1999 Miss Universe Pageant and all other related events. It should also be noted that

the sum of $987,966.04 was also paid to local performers who participated in the pageant.

TIDCO Investments
(World Beat/Millennium Expo)

7. Sen. Muhummad Shabazz asked the Minister of Trade & Industry and Consumer Affairs:

(i) Could the hon. Minister state how much money TIDCO spent on or invested in:

(a) World Beat Festival

(b) Millennium Expo;

(ii) Could the hon. Minister also state whether the two events realized profits? If the answer is in the affirmative, could the Minister state how much profit each event realized. If the answer is in the negative, could the Minister state the loss incurred.

The Minister of Trade & Industry and Consumer Affairs (Hon. Mervyn Assam): Mr. President, the final figure showed that TIDCO invested the sum of $11,113,217.76 in the World Beat Festival and international and local sponsorship accounted for $595,000.

With respect to part (b), the Millennium Expo, TIDCO was not involved in that and made no financial contribution to this project. It however, gave its blessings to the Expo as the promoter undertook to showcase the products that are manufactured in Trinidad and Tobago to a large group of potential international buyers.

The World Beat Music Festival was conceptualized to accomplish two purposes, the first was to provide a fillip for institutional development and capacity building in the entertainment industry in the areas of production; artiste management; negotiations; engineering; events management and so forth. These were well realized with the production of one of the most professionally executed entertainment events in Trinidad and Tobago.

The second area was an investment to create an event which would buttress the tourism calendar during what is traditionally a low period for visitor arrivals, not unlike the New Orleans Jazz Festival and the St. Lucia Jazz Festival both of which had significant teething problems, but which now contribute significantly

to the economies of those two locations. The St. Lucia Jazz Festival makes a contribution of EC $30 million per year after less than ten years in existence.

The World Beat Festival has today generated revenues of $724,374.53, the investment has already started to bear other returns. The Tourism Industrial Development Company (TIDCO) has entered into an agreement in principle with an international cable network of more than 60,000,000 viewers for the purpose of the rights to broadcast some 13 shows that will be produced from the footage of the 1999 show to be broadcast repeatedly on their network. The shows would be 12 one-hour specials and one "Best of World Beat Festival". Apart from paying for the exclusive rights to rebroadcast, they will pay residuals for every time one of the shows is broadcast.

Accordingly, TIDCO is still engaged in finalizing a record deal for compilation of the 1999 performances. There is one full offer on the table and another that is in the advanced stages of negotiations for which there is an agreement in principle. These two would bear fruit over the next 6—12 months and continuing thereafter. When these deals are realized, it would make the World Beat Festival a profitable project.

Another aspect to the production of World Beat Festival, is that we now have in hand a saleable product for which bidding has started for the rights to the year 2000 shows. As an indication, TIDCO has a proposal for sponsorship of 600 international television advertising spots, and the year 2000 project is expected to be completely self-financing.

Sen. Shabazz: Mr. President, before we go to supplemental, could the hon. Minister state how much profit each event realized? If the answer is in the negative, could the Minister state the loss incurred please?

Hon. M. Assam: Mr. President, I thought I had answered the question. Apparently the hon. Senator was not listening. I said that it cost $11-plus million. We received sponsorship for just under $600,000, the revenues were $724,374.00 so clearly, from these figures there was a deficit. I went on to indicate that this was an investment and it has begun to pay off and I read to you all the various subsequent events that would be taking place that would liquidate the $11 million investment over time. I thought this was very clear to the hon. Senator.

Sen. Shabazz: Mr. President, I still have not been told how much the hon. Minister lost, that is what I asked. That is what I would like to know.

Hon. M. Assam: The hon. Minister did not lose anything. *[Laughter]* I am intact, very much so. I have lost nothing.

Sen. Shabazz: Mr. President, the last part to my question still has not been answered. Help me please. It is not answered at all.

Mr. President: Hon. Minister, may I read (ii) of the question for you please.

"(ii) Could the hon. Minister also state whether the two events realized profits. If the answer is in the affirmative, could the Minister state how much profit each event realized. If the answer is in the negative, could the Minister state the loss incurred."

Hon. M. Assam: Mr. President, I said that this was an investment of $11 million in which the sponsorship accounted for just under $600,000 and the revenues were $724,000. So if you add $724,000 to $600,000, you will get about $1.32 million, and $1.32 million from $11.1 million is just under $9.9 million in a deficit. It is simple arithmetic. I would have thought the hon. Senator would have realized that. I went on to say this was an investment.

Even in the private sector, Mr. President, where you invest in a company, sometimes three years go by before you begin to realize a profit. In entertainment, and in any other field it is the same thing. We invested in this in the hope that down the road we would recover not only the $11 million investment, but that we would add substantially to this investment by the returns that would be realized from all the various shows and syndicates that we have been involved in and the cutting of records from all these shows. That is what I said.

Sen. Mohammed: A supplemental question to the hon. Minister. The Minister indicated that this money was an investment and that we are expected to reap some rewards for this investment in the future. I would like the Minister, given his business background, to give us some idea or projection in terms of dollars and cents as to what these anticipated revenues will be in the not too distant future.

Hon. M. Assam: Mr. President, I am unable to give any indication what the revenues will be. I gave specific examples of the projects in which we are engaging in order to bring about significant returns which will offset the investment of the $11 million, but I am unable to give any projections. I am not in the business of projecting revenues for any business activity in Government, that is not my business. I am a policy formulator, that is all.

Sen. Daly: Could the Minister indicate whether the decision to invest this $11 million was taken by TIDCO on its own, or with the approval of a ministry of Government.

Hon. M. Assam: The Tourism Industrial Development Company (TIDCO) has a board and it has the authority to utilize funds for certain purposes which are allocated in its annual budget and, therefore, the board can take that decision without reference to the ministry. Once the budget came to the ministry, was approved by the ministry, went to the Ministry of Finance and was approved, went to Cabinet and was approved by Cabinet, came to Parliament and was approved by Parliament, then TIDCO has the authority to disburse funds and invest in the various areas for which it has a budget.

Sen. Daly: Is the Minister telling us that there was a line item in TIDCO's budget which specified an investment of $11 million in this festival?

Hon. M. Assam: No. There is a block vote—not a line item—for which they can determine in their discretion where they would want to invest in order to promote the culture, the entertainment industry, the arts, tourism, industrial development, market access, trade exhibitions and so forth for the country.

Sen. Daly: Does the Minister accept that in effect what he is saying is that TIDCO made this decision in its own discretion?

Hon. M. Assam: That is precisely what I said.

Sen. Shabazz: Mr. President, having heard the Minister align this to the St. Lucia Festival and all the other festivals, I ask the Minister if this is going to be an annual project, every two years, or are they going to wait until they realize a profit or know they have lost before they stage another world beat festival.

Hon. M. Assam: I am unable to answer that question, Mr. President.

Sen. Prof. Spence: I wonder if the hon. Minister could tell us what the financial Head was where that block was located so that we may look for it in the estimates.

Hon. M. Assam: If the Senator wants me to answer that, he could put it in writing. I am not a financial consultant, or an accountant, or a financial controller for TIDCO. I am a Minister, and if the Senator wishes to ask questions regarding figures and details of figures: where they come from, which votes they belong to, he can ask it. I will seek the information from TIDCO, or if it resides in the Ministry of Trade & Industry, I will bring it to the Senate, but I do not carry these things in my head because I am not a financial controller.

Sen. Mohammed: Mr. President, this is a further supplemental question to the hon. Minister. As the Minister, who in fact has been chairman of the Joint Select Committee with respect to Integrity in Public Life legislation, I am a bit confused about his role and responsibility as a Minister. I would like to know whether TIDCO falls under his jurisdiction as the Minister of Trade & Industry and Consumer Affairs, and if so, if it is a case that TIDCO is accountable to him, and ultimately to the Parliament?

2.10 p.m.

Hon. M. Assam: Even though this question is not part of the original question I will attempt to answer it, because it is really very irrelevant to this question that the Senator asked. I do not know what integrity in public life has to do with this. If you want to know about my integrity, I can tell you. As I have said to you before, like Calpurnia, above suspicion and beyond reproach, if that is what you want to know. That is my integrity, not only in ministerial life, in every incarnation that I have ever had—Calpurnia spotless, clean. That is what you want to know; that is my integrity. If you want to know about whether I am responsible for TIDCO, I am responsible for TIDCO, insofar as the activities of TIDCO relate to the Ministry of Trade & Industry and Consumer Affairs. There is another aspect of TIDCO which is tourism, which relates to the Minister of Tourism and TIDCO reports to the Minister of Tourism in that area.

Tidco Investments (Companies)

8. Sen. Muhummad Shabazz asked the Minister of Trade & Industry and Consumer Affairs:

(i) Could the hon. Minister state how much money was spent or invested in 1999 by TIDCO in:

(a) local projects and companies?

(b) foreign projects and companies?

(ii) Could the Minister also state the names of the companies and the types of projects?

The Minister of Trade & Industry and Consumer Affairs (Hon. Mervyn Assam): Mr. President, the Ministry of Trade & Industry and Consumer Affairs did not spend or invest in any local or foreign projects or companies in 1999. However, there are a number of agencies that report to the Ministry, and come under its purview. So that the following agencies which fall under the purview of

the Ministry of Trade & Industry and Consumer Affairs, spent or invested funds in 1999 as follows, and I am even giving you information before 1999.

In 1998 TIDCO invested $46,303,530 in Vanguard Hotel Limited, which is the Tobago Hilton. No further funds were spent or invested in this project in 1999. Vanguard Hotel Limited has three shareholders namely: TIDCO, 47.42 per cent; Tobago Plantations Limited, 30.10 per cent; and Hilton International, 22.48 per cent. The Tobago Hilton is part of an integrated resort development, that is, hotel, golf course, villas and townhouses and a marina. The Tobago Hilton will have 200 rooms and is expected to come on stream by March 30, 2000.

In 1999 TIDCO invested $687,500 in purchasing 55 per cent of the shareholding of the Trinidad and Tobago Trade Facilitation Company. The Trinidad and Tobago Manufacturers Association invested 25 per cent and the Royal Bank of Trinidad and Tobago, 20 per cent; approximately $2,775,000 was paid by TIDCO.

The Trinidad and Tobago Trade Facilitation Company Limited was created as an innovative mechanism to share the cost of export market development with the stakeholders in the export sector. The activities of the Trinidad and Tobago Trade Facilitation Company Limited are focussed on Panama, as it was the view of the private sector that in the short term this market had the largest growth potential for manufactured goods from Trinidad and Tobago. The promotion of exports is a particularly expensive activity. The nature of the international competition is such that governments, through their export promotion organizations such as TIDCO, establish commercial offices in many countries abroad. The costs of these offices are borne exclusively by Government and government staff runs the offices. TIDCO decided to take another route, of having the private sector invest directly in the establishment of our overseas operations through equity and the provision of technical and operational advice. The membership of the Board of Directors consists of TIDCO, the Trinidad and Tobago Manufacturers Association and the Royal Bank. The Trinidad and Tobago Manufacturers Association and the Royal Bank have also provided human resources for a management committee which guides the marketing and management of the company.

TIDCO has been approached by at least two other countries for information on this template with a view to them reproducing it in a cost-effective, attractive manner for export promotion. The model marries the development work of a government institution with the insight of the private sector.

In 1999 the Trinidad and Tobago Pageant Company Limited, a subsidiary of TIDCO, hosted the Miss Universe Pageant. This project was financed from ticket sales, sponsorship and government subventions. The audited accounts of the Pageant Company were laid in the House of Representatives on Friday, February 4, 2000.

The National Flour Mills awarded contracts locally in the sum of $1,226,206.40 for the upgrading of its Edible Oil Complex and its Rice Mill in 1999.

The Trinidad and Tobago Bureau of Standards spent $3,512,205 on extensive upgrading of a building it purchased in 1998. Modern facilities including an auditorium were established for two divisions that is, training and implementation.

The Betting Levy Board incurred expenditure in 1999 in the sum of US $485,000 which represents payment on account for a Spectrum Totalisator System purchased in June 1997, as part of a project for the establishment of the National Tote System.

Mr. President, thank you.

Sen. Mahabir-Wyatt: Mr. President, I wonder if the hon. Minister would be so kind as to de-confuse my mind on a matter. The Minister mentioned the Pageant Company in the course of his response to question No. 8. We have today received the financial statements of the Pageant Company Limited, which has been laid on the Table. I hope this is an appropriate place to ask this question, because in the notes to the financial statements, under Note No. 5, I see that the Pageant Company owes TIDCO approximately $54 million dollars which is forwarded by a note saying:

> "It is not expected that the Company will be required to pay its debt to the Parent in the future. Until such time, as the Parent formally forgives the debt, it is disclosed as an amount due to Parent.
>
> In addition, the Parent has undertaken to meet the debts and obligations of the Company as they fall due."

Then it goes on to No. 6.

Now, I noticed in the other document we received today, *Estimates of Recurrent Expenditure for 1999/2000*, the amount budgeted for TIDCO is only $25 million.

Sen. Daly: Posse!

Sen. Mahabir-Wyatt: I just cannot make the arithmetic. The money that was invested under pursuance to question No. 8 that is before us, some $24 million has been written off, but only $25 million was the original budget. I wonder if the hon. Minister could de-confuse my mind. I am suffering from cerebral obfuscation as a result of his peregrination, if he would not mind to be so kind as to explicate. *[Laughter]*

Hon. M. Assam: I like the language of the distinguished Senator, so that she has a command of the English language, but could you in a very brief way ask the question, because you made a speech and your speech confused me. Whereas you want to be de-confused, your speech confused me. So if you can put the question very briefly to me, I will try to answer it.

Sen. Mahabir-Wyatt: I was just trying to match the eloquence of the hon. Minisiter. *[Laughter]* The question No. 8, which has been asked is:

"Could the hon. Minister state how much money was spent or invested in 1999 by TIDCO in:

(a) local projects and companies:"

Mr. President, according to documents before us today, some $54 million was invested in the Pageant Company—which is what the Minister calls invested, but the financial statements refer to it as a debt. Since only $25 million is the total budget of TIDCO, where did TIDCO get the $54 million to invest in this long-term investment which you say is going to bring us such downstream benefits?

2.20 p.m.

Hon. M. Assam: The $54 million in deficit was as a result of a loan that was given to TIDCO to inject into the Pageant Company and this loan would be—[*Interruption*]

Sen. Mahabir-Wyatt: By whom?

Hon. M. Assam: This loan would be completely liquidated by the Government and there is a provision in the estimates for liquidating that loan, not under TIDCO but I think it is under the Ministry of Trade and Industry. It was borrowed from a commercial bank for which the Minister of Finance gave a letter of comfort so that the $54 million—because the Government had undertaken to finance the pageant to the tune of US $13 million and we came under budget—US $13 million is about TT $83 million—of $70.2 million. So that deficit is going to

be liquidated by the Government because the Government had indicated in 1999 that it would do so.

It will be no burden on TIDCO, although when the accounts were finalized, they indicated that the money was owing to TIDCO. In effect, TIDCO borrowed it from a commercial bank and the Government would liquidate that loan or probably has done so already, but certainly the Government will liquidate it.

Sen. Mohammed: Mr. President, a supplemental question to the hon. Minister. Am I to take it, hon. Minister, that this debt of $54 million will ultimately be the responsibility of the taxpayers of this country who will have to bear the burden of this repayment of the loan?

Hon. M. Assam: Yes, it will come from tax revenue.

Sen. Mohammed: With interest?

Sen. Daly: Am I to understand from the answers given by the Minister that TIDCO promoted two events this year and "buss" to the tune of $64 million?

Hon. M. Assam: Well, I know the Senator has a capacity for using emotive language and for flair as if he is in a courtroom, but nevertheless, if Parliament is the highest court, so be it; but if you want to say "bust", you are free to say so. I say that TIDCO engaged in two investment activities in 1999 and at this point in time we have not had a full return of those two investment activities. [*Laughter*]

As I alluded earlier, Mr. President, even private sector businesses invest in a project and sometimes it takes two, three, four, five years for that investor to start realizing a return on the investment because the payback time on many investments is not in the first or second or third year. Sometimes it takes several years for a payback on an investment. Government is no different. There are no financial wizards or magicians in the public service as there are none also in the private sector. Therefore, these two investments, which are only a few months old, Mr. President—because the Miss Universe Pageant took place in May and the other one took place I believe towards the end of the year—are just very new investments.

As I indicated in my statement in the other place, already we are beginning to see an enormous number of benefits coming on stream, one of which is already here. There is a $154 million investment that will create substantial employment and will have synergies in other industries in the country, to name one. Another one is a technology industry that will be coming here very soon. Another one is tourism. There is going to be a resort investment taking place. So Senators here

can get the statement that I read to the other place. However, as I read here, I say there are many benefits that will accrue over time from this $11 million investment which the Senator is saying is a bust. But if you say it is bust, it is okay. I am sure when he opened up his law chambers many years ago he bust in the first several months or years too.

Sen. Prof. Spence: Mr. President, I wonder if the hon. Minister is aware that the provision in the estimates for 1999/2000 for the Miss Universe Pageant is not $54 or $60 million but $32 million. So there is a shortfall. I thought he should be aware of that. The question is, is he aware?

Mr. President: Are you waiting on a response, Senator?

Sen. Prof. Spence: My question is, is the hon. Minister aware that the provision in the estimates is $32 million which is short of the amount he stated was indebted?

Hon. M. Assam: Mr. President, I have said to the hon. Sen. Mahabir-Wyatt that provision has been made to liquidate the outstanding amount which was realized at the end of the pageant in May of 1999. If there is a $32 million figure in one place there must be some figure in another place to liquidate the $54 million because adequate provision was made for the liquidation of the debt.

NIPDEC Cold Storage Facilities (Tobago)

The following question stood on the Order Paper:

10. A. Is the hon. Minister of Agriculture, Land and Marine Resources aware that the NIPDEC cold storage facilities in Tobago have closed down due to a lack of approximately two million dollars ($2m) needed for the refurbishment of the facilities?

B. Is the hon. Minister also aware that due to the closure, the flying fish industry in Tobago is virtually at a standstill leaving hundreds of Tobago fishermen, fish processors, other workers and their dependants severely disadvantaged?

If the answers to A and B are in the affirmative, will the hon. Minister inform this House:

(a) If any measures are proposed by his Ministry to effect the necessary refurbishment to the NIPDEC cold storage facilities to alleviate the unemployment problem created in the fishing industry;

(b) How soon remedial action will be taken? [*Sen. C. Alfred*]

Mr. President: Hon. Members, question time has long passed so I shall ask that question No. 10 be placed on the Order Paper for the next sitting.

Question time having lapsed, question 10 was deferred for one week.

LAW REFORM (MISCELLANEOUS AMENDMENTS) BILL

Bill to amend various Acts [*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.

JOINT SELECT COMMITTEE (APPOINTMENT OF)

The Minister of Public Administration (Sen. The Hon Wade Mark): Mr. President, in accordance with Standing Order 25 I seek your leave and that of the honourable Senate to dispense with notice with respect to a motion which I propose to move and to which I referred in an earlier sitting.

Question put and agreed to.

Hon. W. Mark: Mr. President, I beg to move, that the Senate agree with the following resolution passed in the House of Representatives on Friday, January 14, 2000.

> BE IT RESOLVED that a Joint Select Committee be appointed to consider and report within three months on the Bills entitled, An Act to Establish a Children's Authority of Trinidad and Tobago to act as the guardian of the children of Trinidad and Tobago; An Act to make provision for the monitoring, licencing and regulating of community residences, foster homes and nurseries in Trinidad and Tobago; An Act to amend certain laws affecting children; An Act to make provision for the regulation of procedures governing the adoption of children and to give effect to the International Convention on the Rights of the Child, 1990; and An Act to amend the Children's Act, Chap. 46:01.

Question put and agreed to.

Hon. W. Mark: Mr. President, Be It Resolved that the following six members be appointed to serve with six members appointed by the House of

Representatives on the Joint Select Committee established to consider and report on the following Bills: an Act to establish the Children's Authority of Trinidad and Tobago to act as a guardian of the children of Trinidad and Tobago; An Act to make provision for the monitoring, licensing and regulating of community residences, foster homes and nurseries in Trinidad and Tobago; An Act to amend certain laws affecting children; An Act to make provision for the regulation of procedures governing the adoption of children and to give effect to the International Convention on the Rights of the Child, 1990; and An Act to amend the Children's Act, Chap. 46:01.

Mr. President, the members are:

Dr. Daphne Phillips

The Rt. Rev. Barbara Gray-Burke

Mrs. Vimala Tota-Maharaj

Mrs. Joan Yuille-Williams

Mrs. Diana Mahabir-Wyatt

Dr. Eric St. Cyr.

Question put and agreed to.

ARRANGEMENT OF BUSINESS

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

Agreed to.

TRINIDAD AND TOBAGO ASSOCIATION FOR THE HEARING-IMPAIRED (INC'N) BILL

Order for second reading read.

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

That a Bill to repeal and replace the Trinidad and Tobago Association in Aid of the Deaf (Incorporation of Trustees) Act, be now read a second time.

Question proposed.

Question put and agreed to.

Bill accordingly read a second time.

Bill referred to a special select committee of the Senate chosen by the President as follows:

Mr. Philip Hamel-Smith	-	Chairman
Mr. Selwyn John	-	Member
Mr. Muhummad Shabazz	-	Member
Dr. Eastlyn Mc Kenzie	-	Member

DISTRIBUTION OF ESTATES (NO. 2) BILL

Order for second reading read.

The Attorney General and Minister of Legal Affairs (Hon. Ramesh Lawrence Maharaj): Mr. President, I beg to move,

That a Bill to amend the law relating to the distribution of the estate of deceased persons be now read a second time.

Mr. President, the purpose of this Bill is to seek to reform the laws relating to inheritance rights and to redress some of the injustices which occur under the existing laws. The existing law in Trinidad and Tobago relating to succession to property is now contained in two enactments. They are the 1914 Administration of Estates Ordinance and the 1939 Wills and Probate Ordinance.

2.35 p.m.

Mr. President, in 1981 a Succession Act was passed, but that Act belonged to a package of legislation, most of which has remained unproclaimed. Mr. President, these two ordinances are largely based upon laws imported from England and modelled upon 19th Century legislation which has since been repealed in that country. It is therefore not surprising that the distribution scheme—developed during that period in respect of the distribution of property, on the death of persons, either when persons leave a will or when they do not leave a will—has become very archaic and, really, do not meet the needs of our modern and changing society.

I think I would be correct in saying that the provisions of the law, which are contained in these two ordinances, were designed to serve a society in which wealth was simply transferred from one male generation to another male generation, where divorce was rare, where illegitimacy was hidden; and cohabitation outside of marriage was viewed as not deserving protection of the law.

Mr. President, these laws, therefore, need to be looked at in the light of the changing, social conditions. If I may say if one looks at the Administration of

Estates Ordinance which, as I said, was passed in 1914, what that ordinance dealt with when it dealt with the question of distribution of estates—that is to say when someone died intestate—under section 24 of that ordinance, it states clearly, I quote:

"The widow or surviving husband of an intestate person dying after the commencement of this Ordinance shall be beneficially entitled as follows:

(a) If there is no lawful issue of the deceased, to the whole estate of the deceased;

(b) If there is lawful issue of the deceased, to one-third thereof.

In section 3 of the Act, it has a very convoluted description of the next of kin which has made it very difficult for the Administrator General to determine who is the next of kin. Be that as it may, this is an example of how the law has been very restrictive, in that this law, as it would be seen, does not recognize, for example, a person who has been living as a common-law wife for 15 or 20 years, on death, to have any rights to intestacy.

Mr. President, these laws, which are existing now, do not reflect the social changes which have taken place in this country during the last few decades and they have not been significantly amended. They have produced results which are arbitrary and unjust.

Part 3, for example, of the Wills and Probate Ordinance, which deals with family provisions, was repealed and replaced in 1972 by the Matrimonial Proceedings and Property Act. Even with that amendment, the law continues to make very limited provision in respect of family or dependant relief in circumstances, for example, where a testator fails to make adequate provision in his will for persons who are financially reliant upon him during his lifetime. If I may explain that, Mr. President, under the Wills and Probate Ordinance, if someone dies and the person leaves a will and the person does not make provision for persons who are dependant, and it is thought that an application can be made to the court for the court to order some sort of relief, one merely has to look at section 90 of that Ordinance to see how limited that section is.

Section 90 (1) states:

"Where, after the commencement of this Ordinance, a person dies…leaving—

(a) a wife, or husband,

(b) a daughter who has not been married, or who is by reason of some mental or physical disability, incapable of maintaining herself,

(c) an infant son, or

(d) a son who is by reason of some mental or physical disability incapable of maintaining himself,

and leaving a will, then if the Court on application by or on behalf of any such wife, husband, daughter or son as aforesaid…is of opinion that the will does not make reasonable provision for the maintenance of that dependant, the Court may order that such reasonable provision as the Court thinks fit..."

It shows that under the existing law it is very restricted, it has to be a wife or a husband who can apply, a daughter who has not been married and an infant son, bearing in mind that the Status of Children Act has removed a distinction between an illegitimate child and a legitimate child. But one sees that even under section 90, for example, a common-law wife or one who has been under the Act that we have now—a cohabitational relationship—would not be entitled.

The existing laws, Mr. President—whether someone leaves a will or someone dies without leaving a will—are inadequate to provide for families or dependants of persons when they die and for whom these persons have been making some sort of provision whilst the person was alive.

Under the Administration of Estates Ordinance, the father of a child born out of wedlock, continues to be entitled to his deceased child's estate to the exclusion of the mother. Neither the Administration of Estates Ordinance nor the Wills and Probate Ordinance addresses the matter of a common-law wife's cohabitant's right to inherit upon intestacy, or to be able to make an application to the courts for relief. Both situations are often distressing, as single mothers in this country are often forced to bear the complete burden of bringing up their children, and are then disinherited in favour of the father, should the child die intestate or without spouse or issue.

Similarly, a common-law spouse may only receive a beneficial interest in property to which she and her common-law spouse would have worked for, if she can prove that at the time of the acquisition of the property there was a common intention that she would acquire a beneficial interest.

In sum, the law has failed to ensure adequate provision and equal treatment to a certain category of persons; both where a valid will is in existence or where

there has been an intestacy. One knows that an intestacy is where a person dies without leaving a will.

The result has been that grave hardship and serious injustices have been imposed on those persons who are dependants of a deceased testator at the time of his death and for whom no financial provision is made in a will, and for those wives, including common-law husbands, who enter and remain in long-standing common-law or cohabiting relationships and who are not entitled to apply for relief under the Wills and Probate Ordinance as dependant. They are not entitled to inherit any part of the deceased partner's estate.

2.45 p.m.

Mr. President, whilst the principal objective of the law of wills is to ensure that a person, a testator, has the freedom to dispose of his estate as he likes, the view has been taken years ago—more and more, in several countries it has been realized that such an absolute freedom may at times lead to situations which are intolerable since a testator may leave his spouse, children and other dependants not provided for. The Parliament and the law intervened and this led to the introduction of specific family provisions into the law of succession, which now enable the courts to rectify injustices caused by wills left by testators.

Such provisions began to appear as far back as 1908 in New Zealand and were implemented as early as 1938 in the United Kingdom when that country enacted its Inheritance Family Provisions Act. Under that Act, the provisions of which I read a short while ago from the Wills and Probate Ordinance of our country, it provided that the court would have a discretion in limited cases, notwithstanding the contents of a will, to make some sort of provision for dependants, as mentioned in the Act; for persons who were not made reasonable provisions for by the testator. This was a mechanism which the parliaments decided to use to override the effect of a deceased person's testamentary intentions in order to provide justice to people whom it was felt should have been provided for.

This mechanism is now found in legislation in nearly all jurisdictions and is simply an attempt to address the concern that some testators make their wills and fail to acknowledge responsibilities when organizing the distribution of their estates.

Even when no will is made, the Administration of Estates Ordinance and the rules of intestacy fail to make provision for someone to whom the testator would have owed such a responsibility—for example, a common-law spouse. Whilst there are family provisions in the Wills and Probates Ordinance, they are

extremely limited, as I said, and are not as wide or generous as they ought to be. Whilst other jurisdictions have continued to enlarge the classes of individuals who may apply for relief, the class of statutory dependants in Trinidad and Tobago continues to be limited to the immediate family members, such as a husband, a wife, an unmarried daughter, a son or daughter under the age of 18, a disabled child or a former spouse who has not remarried.

The United Kingdom, the majority of the Australian jurisdictions and even in Guyana, entitle a common-law spouse to apply for a reasonable provision out of the estate of the deceased. In Western Australia and in New South Wales, that right is also conferred on grandchildren and any other young person who was being wholly or substantially maintained or supported by a deceased person at the time of his death.

In Trinidad and Tobago, under Part VIII of the Succession Act which was passed in 1981 but which never became law—it was not proclaimed—in Part VIII there was an attempt to redress the situation and there was an extension of the classes of persons who could have applied, and I specifically refer to section 95 of that Act which states as follows:

"(1) Where after the commencement of this Act a person dies domiciled in the State or dies outside the State leaving any estate in the State and is survived by any of the following persons—

(a) the spouse of the deceased;

(b) the former spouse of the deceased who has not remarried;

(c) a child of the deceased;

(d) any person (not being a child of the deceased) who, in the case of any marriage to which the deceased was at any time a party, was treated by the deceased as a child of the family…"

So, you had an extension of a child of the family and then there was also:

(e) any person (not being a person included in the foregoing paragraphs of this subsection) who immediately before the death of the deceased was being maintained, either wholly or partly, by the deceased;"

So you had someone who was a dependant, whether it was a child.

Sen. Mahabir-Wyatt: Mr. President, I wonder if the hon. Attorney General would just reassure me: Does that cover the Australia provision of a grandchild who was being brought up by the grandparent?

Hon. R. L. Maharaj: The 1981 Act would cover it. It was significant to see also in the Succession Act of 1981, where "spouse" was defined to include:

"(a) a single woman who has been living together with a single man as his wife for a period of not less than five years immediately preceding the date of his death;

(b) a single man who has been living together with a single woman as her husband for a period not less than five years immediately preceding the date of her death;"

So, in the 1981 Act, the Parliament of Trinidad and Tobago recognized that this should be the law, and it also recognized that a common-law wife or husband should have the right to apply to the court and be entitled to get relief, although I should say it was a very restricted definition. It would have meant that if, for example, there was a woman living with a man for 20 years but, for some reason, she was not divorced, then she would not have fallen under this description and we have tried to remedy that in this Bill.

So, in cases of intestacy, that is, where a person dies without having left a valid will, and as I said, the rules of intestacy do not now ensure adequate provision, either for a surviving spouse or a cohabiting partner, and this produces unjust results. The statutory one-third rule now left to a spouse is often insufficient to ensure that a surviving spouse will be able to retain the matrimonial home.

Under the existing law on intestacy, the wife is entitled to one-third—let me find the provision to read it, at section 24:

"The widow or surviving husband of an intestate person dying after the commencement of this Ordinance shall be beneficially entitled as follows:—

(a) If there is no lawful issue of the deceased…"

—so if there are no children—

"…to the whole estate of the deceased;

(b) If there is lawful issue of the deceased, to one-third thereof."

So that if there are lawful issues and taking into consideration what we have in the Status of Children Act, the wife will only get one-third and the other two-thirds will have to be distributed. That statutory one-third has been felt to be a bit unfair.

A common-law spouse or cohabitant who may have lived with a deceased person for 10 or 20 years does not have an automatic entitlement to inherit a share

of his estate if he dies without a will. In those circumstances, such a person will be denied a share in the estate of a deceased person whilst the brothers and sisters, or the estranged wife of the deceased, would inherit what a common-law spouse would have worked for her entire life. This is a grave imbalance and it is our view that it needs to be addressed as quickly as possible. If the rights of dependants and cohabiting persons are to be effectively addressed, both in the instances of intestacy and testacy, then the various pieces of legislation relating to the law of succession ought to be amended. This is the object of this Bill.

Before proceeding to the amendments contained in the Bill, it is to be noted that in 1981, the Parliament of the day saw the need to address some of these deficiencies, not only in the area of inheritance rights, but also the reforms needed to the entire body of land law which, at that time, was largely based on laws imported from the United Kingdom. The result was the enactment of a whole law reform package comprising of six major pieces of legislation.

Mr. President, I think it is well known by now that those pieces of legislation dealing with the land laws, there was a study done and if my memory serves me correctly, there was a Wisconsin report study done and it was found that most of those laws were not relevant to Trinidad and Tobago at this time. Based on that study, reforms of those laws were conducted and that is how we have before the Parliament some of the reforms of the land laws which are on the Senate's Order Paper.

Mr. President, it is not possible to have the entire 1981 Succession Act proclaimed because the laws were so drafted that they entwined with other provisions of the land law and the succession laws, so that Act remains unproclaimed, but there is Part VIII which, with some amendments, can effectively give some protection in the areas which I have mentioned. So, it is intended by this Act to amend some of the provisions of Part VIII of the Succession Act and, also on the coming into force of this Act, to proclaim Part VIII of that Act. It is possible to proclaim Part VIII of that Act without proclaiming the whole Act to stand on its own because of the amendment we did recently to the Statutes Act which permitted proclamation of part of an Act.

So, although the Succession Act cannot now be proclaimed in its entirety, Part VIII of the Act which addresses the issue of family and dependant relief and which comprises sections 94 to 116, achieves to a limited extent the reforms which are now necessary. Part VIII makes an essential change to the traditional restricted approach on family provisions and significantly widens the categories of persons who may apply to the courts for relief on the grounds that the disposition of the

estate of the deceased effected by his will, or the law relating to intestacy on the combination of both the law and the will, is not such as to make reasonable financial provision for the applicant.

Under this Part, the category of persons who may apply for relief has been significantly extended to include a common-law or *de facto* spouse, a child who has been treated as a child of the family and any other person who was being maintained by the deceased immediately before his death—a very wide category, indeed. Furthermore, these new provisions move away from the grant of maintenance only to surviving spouse and empowers the court to award financial provisions which would be fair and reasonable in all the circumstances of the case for a spouse to receive.

Under Part VIII, therefore, the court is also given the wide jurisdiction to make a variety of orders. So, it does not only extend the categories of persons, but it is given a wider jurisdiction in making orders including making orders for periodical payments out of the deceased person's net estate, lump sum payments and orders for the transfer settlement or acquisition of property. Furthermore, where an applicant is in need of immediate assistance, the provision is made for interim orders to be made by the courts.

As these provisions have already been passed by the Parliament, it is the view of the Government that it is now feasible in the interest of justice to have Part VIII proclaimed and brought into force. Mr. President, the mere proclamation of Part VIII would not, by itself, accomplish the changes which are necessary to address the many injustices which now prevail and, in order to effect those essential reforms, both Part VIII and the Administration of Estates Ordinance ought to be amended and so would be the Wills Act.

3.00 p.m.

The Distribution of Estates (No. 2) Bill 1999 which is before us, therefore, seeks to amend both Part VIII of the 1981 Succession Act and the Administration of Estates Ordinance so as to provide relief to dependants and cohabitants who are not adequately provided for in a will, and who are presently excluded from claiming an interest in a deceased person's estate where no will has been made.

Firstly, these amendments would permit the court to entertain the application of a surviving cohabitant for financial relief, and enable the court to make an order directing that provisions be made out of the estate of the deceased partner for the benefit of the applicant regardless of the fact that either or both of them were also parties to a legal marriage.

Secondly, the grant to a surviving cohabitant, subject to the rights of a spouse and children, the right to inherit the whole or a distributive share in the estate of a deceased partner where he fails or refuses to make a will and dies intestate.

Thirdly, in order for more adequate provisions to be made for surviving spouse or cohabitant, the rules would now allow for an increased proportion upon intestacy.

Mr. President, it has long been recognized that Part VIII ought to be amended, as the definition of a spouse applicable to Part VIII is very narrow and needs to be redefined. The definition of spouse under Part I of the 1981 Act, recognizes only a limited class of cohabitants as eligible persons to seek relief under its family provisions, namely, those satisfying the definition of spouse, under the Act, namely: "a single man or woman who has been living together with a single person of the opposite sex for a period of not less than five years immediately preceding the date of the death of the deceased."

Therefore, a common-law relationship, to qualify under the Act, must have endured for five years, and regardless of the duration, if one party is already a legal spouse, he or she would not be entitled to apply for reasonable provision to be made out of the estate of the deceased.

Additionally, Part VIII cannot stand by itself as there are a number of definitions contained in Part I of the Act which need to be incorporated into Part VIII if it is to stand independent of the remaining sections of the Succession Act.

Part I of the proposed Bill, therefore, amends Part VIII of the Succession Act by including a number of definitions for the purpose of giving meaning to this part. In doing so, it moves away from the very narrow definition of spouse and introduces the new definition of cohabitant to encompass all persons—whether single or not—who have been living together in a *bona fide* domestic relationship. The Bill, therefore, amends section 95 by inserting in subsection (1), a new subparagraph "(aa)" to include "a cohabitant", as a class of persons who may be able to make an application to the courts for financial relief. It is to be noted that the definition of "cohabitant" is now on par with that which obtains under our recently enacted Cohabitational Relationships Act.

In reviewing Part VIII a number of mistaken cross-referencing of sections were identified and the opportunity has been taken to correct these errors. With these amendments Part VIII, upon proclamation, would be able to stand by itself as applicable law, independent of the remaining unproclaimed sections of the Succession Act.

Part II of the Distribution of Estates Bill proposes to amend the Administration of Estates Ordinance, so as to clarify the rules of intestacy and to allow a cohabitant to inherit a beneficial interest in the deceased person's estate upon intestacy.

Moreover, the opportunity has also been taken to simplify the definition of "kin" and "next of kin", as the current definition is convoluted and to also change the old one-third/two-thirds distribution rule, which has in the past, reaped severe hardship on a surviving spouse. If one looks at what "next of kin" means, under the Administration of Estates Ordinance, one would see that the definition is really not properly defined. It is in that context that we have taken the opportunity to make it clear as to what is meant.

Mr. President, it has long been advanced that in a society such as ours, the rules of intestacy should be certain, clear and simple, so that it is easy to understand and operate. Moreover, it is now widely accepted that cohabiting couples should be able to inherit, automatically, where there is an intestacy, and our laws should be designed to facilitate this right. Although the recognition of cohabitants for the purpose of intestacy laws is a recent development, several Canadian provinces and Australian territories have gone thus far and now allow cohabitants to inherit upon the intestacy of the deceased spouse.

Mr. President, this Bill seeks to amend the ordinance so as to change the old one-third/two-thirds distribution rule, which now imposes a severe hardship on a surviving spouse. Section 24 of the ordinance provides that where there is lawful issue, the surviving spouse is beneficially entitled to one-third of the deceased's estate.

It is usually the case that a surviving spouse would be of advanced age, would have contributed tremendously to the estate and household of the deceased, and upon being widowed would be in need of significant support. It is now proposed under clause 3(c), that a surviving spouse or cohabitant be entitled to one-half of the share of the intestate's estate, irrespective of the number of issues left by the deceased.

Mr. President, several jurisdictions have recognized the need to provide more generous provisions for a spouse as a one-third share is often insufficient to ensure that the surviving spouse is able to remain in the matrimonial home and care for the infant children.

In Canada, the Succession Acts of Manitoba and Ontario provide for the remaining spouse to receive the entire estate. In other jurisdictions like Hong

Kong and South Africa, a spouse shares equally with the intestate's children. Queensland also provides an enhanced share to a surviving spouse, not in terms of a fraction but their rules allow a spouse to inherit the matrimonial home, household matters and the family's motor vehicle.

3.10 p.m.

In the absence of a matrimonial home, the spouse would inherit the first $100,000 of the estate. In the United Kingdom, the surviving spouse receives a statutory legacy of £75,000 and the remainder is held for the issue. I am giving these illustrations to help us understand that the law has not remained static or stagnant.

Mr. President, the reality of the situation is that an elderly spouse would usually be out of the work force and would need an increased share of the estate for his or her support in old age. The children, for the most part, would be self-supporting adults and, in the circumstances, the needs of the surviving elderly spouse wouldl be greater than the needs of the independent adult children. Where there is a young spouse who must raise the surviving infant children, her needs will also be greater. Where two-thirds of the estate remains for the benefit of the children, the money available for the support during their young years would be substantially reduced.

Another argument justifying an increased spousal share is the fact that today most families are dual-income families and both spouses will have contributed to the accumulation of assets. Children, for the most part, would not have so contributed and, therefore, it would seem that in order to redress the situation so that the spouse would have money to either see about the young child, or to be able to see about herself in old age, it is more just to increase her proportion. These amendments would create a clear and orderly scheme of distribution and would give certainty to the disposition of property.

I will now take Senators to the Bill, Mr. President. I have explained Part I. In Part II, the Administration of Estates Ordinance is amended and one would see that there is a specific definition of kin:

"'kin' means, in relation to a deceased person, the issue of the deceased, his father or mother, his grandparents and great-grandparents;

'next of kin' means, in relation to a deceased person—

(a) the brothers and sisters of the deceased;

(b) the issue of the grandparents of the deceased;

(c) the brothers and sisters of a parent of the deceased;

(d) the issue of any brothers or sisters of the deceased,

and the kindred of the half blood shall rank immediately after those of the whole blood of the same degree of kinship to the estate;';"

We have put it in a certain way. Under the existing law there is not that certainty.

Under clause 3(c) one sees that sections 23, 24, 25 and 26 are repealed to be replaced by the following sections:

"23. An estate or interest to which a deceased person was entitled on his death in respect of which he dies intestate shall, after all payment of debts, duties and expenses be distributed or held on trust amongst the same persons being kin or next of kin in accordance with sections 24, 25, 26 and 26A.

24. (1) Where an intestate dies leaving a surviving spouse but no issue, his estate shall be distributed to or held in trust for the surviving spouse absolutely.

(2) Where an intestate dies leaving issue, but no spouse, his estate shall be distributed per stirpes among the issue.

(3) Where an intestate dies leaving a spouse and one child, the surviving spouse shall take one-half of the estate absolutely and the other half shall be distributed to or held in trust for the child.

(4) Where the intestate dies leaving a spouse and more than one child, the surviving spouse shall take one-half the estate absolutely and the remaining one-half shall be distributed to or held in trust for the children.

25. (1) Notwithstanding section 24, where an intestate dies leaving no surviving spouse, but dies leaving a surviving cohabitant, the cohabitant shall be treated for the purposes of this Ordinance as if he or she were a surviving spouse of the intestate.

(2) Notwithstanding section 24, if an intestate dies leaving a spouse and a cohabitant, and the intestate and his spouse were at the time of his death living separate and apart from one another, the whole or such part of the estate as the case may be, as would go to the spouse under section 24 shall be

distributed to the surviving spouse and cohabitant in equal shares.

26. Where an intestate leaves no spouse, no cohabitant or no issue, the estate goes to the parents of the intestate in equal shares or the survivor of them.

26A. Where the intestate leaves no spouse, no issue, no cohabitant and no parent, then his estate shall be distributed or held in trust for his next of kin living at the time of his death in the following order and manner:

(a) The brothers and sisters of the whole blood in equal shares;

(b) where there are no brothers or sisters of the whole blood, to the brothers and sisters of the half blood in equal shares;

(c) where there are no brothers and sisters of the whole or half blood to the grandparents of the intestate in equal shares;

(d) where there are no grandparents to the issue of the brothers and sisters of the whole blood;

(e) where there is no issue of the brothers and sisters of the whole blood to the issue of the brothers and sisters of the half blood; and

(f) where there is no issue of the brothers and sisters of the half blood to the uncles and aunts of the intestate, being brothers and sisters of the whole blood and then of the half blood of a parent of the intestate.

26B. Descendants and relatives of the intestate, conceived before his death but born afterwards, inherit as if they had been born in his lifetime.

26C. In default of any person taking an absolute interest under the foregoing provisions, the estate of the intestate belongs to the State as *bona vacantia*.';"

Mr. President, what this Bill does, therefore, is, it tries to bring into effect the intent of the Parliament in the Succession Act, Part VIII; it amends the existing laws; it amends the Succession Act, the Wills and Probate Ordinance and the existing laws in order to make it possible for a wider category of persons to apply to the court for relief where a testator does not leave any reasonable provision for their maintenance. In respect of intestacy, it gives rights to a common-law spouse as defined under the Cohabitation Act, which we have passed in this Parliament, to benefit. It also increases the wanted share to a half share in respect of a surviving spouse and specifies with certainty the categories of persons who would benefit on intestacy.

Mr. President, it may be said that this Succession Act of 1981 and Part VIII of the Act have taken too long to come into force, but it has been the subject of all the other legislation and in order to bring it into force one had to also bring it in line with other amendments to the other laws relating to succession. It is in this context it is felt that this law, if passed by this honourable Senate and the Parliament, would, in effect, be able to redress some of the injustices which continue to occur.

Mr. President, I should mention that there are amendments circulated which would, in effect, make it clear that the law would only apply to a person dying on or after the commencement of the date of the Act. I would read them to you.

> "With respect to a person dying on or after the date of the commencement of this Act, Part VIII of the Succession Act, the Administration of Estates Ordinance and the Wills and Probate Ordinance shall have effect subject to the amendments set out in sections 2, 3, and 4."

So, in effect, it applies to a person dying on or after the date of the commencement of the Act. It also does a consequential amendment to Part III of the Wills and Probate Ordinance contained in the Schedule.

Mr. President, I have great pleasure in begging to move the second reading of this Bill.

Question proposed.

Sen. Nafeesa Mohammed: Mr. President, before I start my contribution on this very significant piece of legislation, I would like to take this opportunity to say a special word of welcome to this very august Chamber, to the two new UNC Government Senators who were sworn in this afternoon. [*Desk thumping*]

I have listened to the hon. Attorney General as he presented this Bill and I would like to take the opportunity to commend him for the very comprehensive presentation he made a short while ago, insofar as this piece of legislation is concerned. To a large extent, we welcome and, indeed, we support many of the provisions in this particular Bill. But beneath all that has been said and what is, in fact, contained in the Bill, there is a danger lurking in it, about which I hope after my contribution the hon. Attorney General would keep an open mind with a view to seeing if we can remedy or rectify the very gaping loophole that is existing in this particular Bill. It is something I am sure we would be able to remedy with a bit of co-operation, because, at the end of the day, we would all like to see our succession laws updated and modernized.

As the Attorney General indicated, in terms of the purpose of this Bill, it is seeking to amend but has not been proclaimed for the many reasons that the hon. Attorney General indicated. Various administrations have passed through in this country and are still grappling with the problems that are associated with the whole package of legislation that was enacted in 1981. Certainly, if at the end of day we are able to get is a 1914 piece of legislation—and the Wills and Probate Ordinance, which I think was 1932 or thereabouts: two pieces of legislation which we inherited from the British, seeing that for many years we were governed by the British and inherited the British legal system. In this Bill, an attempt is being made to widen the categories of persons who can apply for financial provision and, more particularly, to recognize the fact that in our society we have what is known as "cohabitational relationships" and also to recognize the fact that in many instances there are genuine cases of injustices that are, in fact, existing in our society, which we need to do something about. The Bill is also seeking to give rights to cohabitants in cases where persons die without leaving a will, that is, in cases of intestacy.

Mr. President, we have absolutely no difficulties in terms of acknowledging and recognizing that our laws, particularly our succession laws are, indeed, archaic and are in need of reform. So that in terms of the quest to reform these laws, we are in support of the principle of reforming these laws.

With respect to the recognition that we find being given to cohabitational relationships, I think that we all acknowledge in this Chamber that, given our historical antecedents, the fact that during the colonial days when slavery existed

in our country, that in our society the African slaves who were brought into our country, for many years were deprived of the opportunity to formalize their unions or marriages, because the laws prevented them from marrying as they saw fit.

3.25 p.m.

When the indentured immigrants who came from Asia brought many of their customs, and in terms of their lifestyle, for many years their marriages were not legally recognized until perhaps in 1945, when the Hindu Marriage Act was enacted and in 1935 or thereabouts, when the Muslim Marriage Act was in fact enacted.

We have had these situations that we commonly refer to as Bamboo-type marriages that exist in our society where there are thousands of persons who are alive in Trinidad and Tobago today who are for all intents and purposes married couples, but it is just that legal recognition was not given so that the offspring of these relationships—very often you may see in a birth certificate somebody is deemed to be illegitimate. Within the Muslim community, we are familiar with the Muslim type marriages known as "nica marriages" and it was Justice Sharma—who is today a Court of Appeal Judge—in a landmark case made a judgment delivered in 1982 in the case of Ramratie Harrinarine and Rasheed Aziz and Kadar Aziz.

In his judgment which was a sort of judicial recognition of the realities of what exist in our society, he made a certain statement which I would like to read. We have made mention of this judgment in this Chamber already, but for the record in this debate, I would like to once again put it on record where on page 21 of this judgment in High Court Action No. 1992 of 1982, Justice Sharma said:

> "In my judgment, we must look at our own society, in order to determine whether a common intention can be so inferred. In our society, the common law marriage has been institutionalised and even Parliament has recognised its importance and existence. See Act (15 of 1981). Surely a mistress in England is not to be put on the same footing as a common law wife in this jurisdiction. In England, when a man has a mistress he invariably has his lawful wife. He is a married man. In this jurisdiction when there is a common law marriage there is little or no difference in substance between it and a lawful marriage. In most cases even a form of ceremony is gone through. There is no social stigma attached in this society to such a marriage and not a small amount of our upright and leading citizens are products of such an institution. It is accepted

as normal, and in the majority of cases these unions have faithfully adhered to the definition of marriage in Hyde v, Hyde (1866 LR. 1 P&M 130) namely, 'a voluntary union for life of one man and one woman to the exclusion of all others'."

I remember not too long ago when we had the very interesting debate on the Cohabitational Relationships Bill, I had indicated then that I was in a dilemma in terms of the changes in the law that were being made and other matters which I want to state at the outset. I do not propose to look at this issue of the cohabitational relationships from a moralistic point of view, but certainly, in being realistic about the situation, there are certain things we need to keep in mind and to ensure that what we do here today is done in the proper way, and get it right to ensure that the end object and purpose that we are seeking to accomplish will be accomplished at the end of the day, and we do not create further problems than we already have in our society.

I remember, too, during the Cohabitational Relationships Bill debate, that the hon. Attorney General did in fact indicate that at some point subsequently he would be bringing a Bill which I assume is this one, the Distribution of Estates Bill, to remedy the situation which exists in terms of our succession laws and the injustices that are existing. In that debate, he did in fact refer to a Green Paper that had been prepared with respect to *Cohabitational Relationships: Towards A Reform Of The Law* dated July, 1996 and I assume it was prepared by the Law Commission. I would quote from certain parts of this Green Paper on the issue of cohabitational relationships because it is a very touchy and contentious issue, and we recognize that throughout the world, it is a fact of life that people cohabit outside of marriage and it has reached so far that some writers are even wondering if the institution of marriage is of any significance.

Personally, I do not subscribe to that view, but that is another issue. In terms of the realities of the situation as it exists in Trinidad and Tobago and elsewhere, it is a fact that more and more legal systems are making an effort to recognize the changes—I cannot even say changes because this seems to be existing from time immemorial—but attempts are being made to deal with the situation as it exists. In this document on page 8 under the heading Issues and Policies it says:

"5.1 Granted that the law should recognize cohabitation outside of marriage as a special relationship from which legal consequences should flow, there are specific issues to be addressed in order to determine the policy which should inform the new legislation. The matters for consideration include:—

- the legal status which should attach to cohabitational relationships;
- the test to be applied—whether it be one of dependency or common intention;
- defining a specific qualifying period for the duration of the relationship after which the courts would be in a position to entertain a claim;
- the granting of maintenance and inheritance rights to cohabitants;
- providing for cohabitation and separation agreements."

The document goes on:

> "**5.2** In no jurisdiction in the world has cohabitational relationships been given full legal equivalence with marriage. Countries like Australia and New Zealand give partial equation only, by granting to cohabitants some of the rights and obligations which would normally attach to marriage, whilst others, grant rights only on proof of dependence or expectation and not merely because a relationship exists."

This is my concern and fear about this Bill in its present form. It is something that we can easily rectify, but this is the danger that is lurking here because it is a case—and I would develop this point later on—where perhaps at the end of the day this Bill is likely to be creating, not just equal rights to a legal spouse, but perhaps be conferring even greater rights to a cohabitee than a legal spouse has, and it is a recipe for direct conflict and confusion between a legal spouse and a cohabitee—something we would like to avoid. I will develop that point later on.

The paper continues:

> **"5.3** In New South Wales the law has been amended in certain specific areas in order to avoid injustice and hardship and in Queensland and certain Canadian provinces maintenance rights and obligations have been attached to these relationships."
>
> "**5.4** In formulating its policy Trinidad and Tobago should endeavour to follow the principles as laid down by the New South Wales Law Reform Commission in its 1983 Outline Report on De Facto Relationships. At pages 5 and 6 of the Report the Commission had this to say:
>
> - The Policy of the law is not, and should not be actively to discourage de facto relationships, whether by withholding benefits,

or imposing penalties. In a pluralist society people may choose to live together,

This is the instructive part.

- The basis for the intervention of the law in conferring rights or imposing obligations on de facto partners should be the minimization of injustice or the removal of anomalies;"

So that insofar as this Bill is purporting to remove injustices, we certainly will have no quarrel with that, but we want to ensure that in so doing, further injustices are not created down the road.

It goes on:

- It should not be assumed that the rights and obligations of de facto partners should be the same as those of married couples;
- Conflicting claims may be made by a person's legal spouse and by his or her de facto partner. In such cases the legitimate expectations of a spouse should be protected against claims of a party to a short term relationship;
- Where there are children—their welfare should be the primary concern;
- The requirement that a relationship should have continued for a specific period will be appropriate in some cases, but not in others."

Mr. President, as I indicated before, insofar as this Bill would seek to remove injustices, we have no quarrel with that, but in terms of the equalizing of the status or rights, or what have you with legal partners, that is the problem I see in this particular Bill. It is a very contentious issue and all we need to do is a balancing act and, from the legislation that already exists we will see where there are provisions that can, in fact, minimize some of the injustices about which we are talking.

Mr. President, the main clause in this Bill that is of concern to us, or at least to me, from my interpretation of the Bill, is in the definition section. In Part 1 of this Bill it seeks to amend the Succession Act, and we have heard a lot of the Succession Act of 1981. In clause 2 of the Bill there is an attempt to widen the category of persons who can apply. In the definition of the word "cohabitant" or "cohabiting partner", it says:

"'cohabitant' or 'cohabiting partner' means—

(a) in relation to a man, a woman who has been living with or who has lived together with a man in a *bona fide* domestic relationship for a period of not less than five years immediately preceding the date of his death;

(b) in relation to a woman, a man who has been living with or has lived together with a woman in a *bona fide* domestic relationship for a period of not less than five years immediately preceding the date of her death;"

Mr. President, the problem with this definition is its vagueness. It is very vague. What is meant by "*bona fide* domestic relationship" What do you mean by *bona fide?* This *bona fide* domestic relationship can very well turn out to be *mala fide* in our society and we will see how that can happen.

If one looks at the Succession Act of 1981, I am wondering why—in this Bill, which seeks to enact Part VIII of the Succession Act—has the Government seen it fit to move out, or change the definition that was in fact spelt out in the Succession Act of 1981 because there is a big difference with the two definitions, and I disagree with the hon. Attorney General when he talks about the definition in the Succession Act being—I think he said—too restricted.

If I may read from the Succession Act No. 27 of 1981. In section 2 of this Act it says:

"(3) For the purposes of this Act, reference to a "spouse" includes;

(a) a single woman who has been living together with a single man as his wife for a period of not less than five years immediately preceding the date of his death;

(b) a single man who has been living together with a single woman as her husband for a period of not less than five years immediately preceding the date of her death;

For these purposes a reference to a single woman, or a single man includes a reference to a widow or widower or to a woman or man who is divorced, but only one such relationship as referred to in paragraph (a) or (b) shall be taken into account for the purposes of this Act".

So this Act makes it very clear, that a spouse will include a single woman or a single man who was been living together for a period of not less than five years.

This is the difference in terms of what exists in the 1981 Act, and the problem with this new definition of what is "a cohabitee".

3.40 p.m.

When you look at the Succession Act, it goes on to provide in the various parts, particularly, in Part VIII of this Act, it seeks to provide for family provision, and this is where since 1981, the rights of cohabitees were recognized in our country in a very significant way, in the sense that, in Part VIII, when references are made to "a spouse" there, it includes the type of relationship that we are talking about, "the cohabitee" by this reference to a single man and a single woman. *[Interruption]*

Mr. President, the point I am trying to make is that, in terms of the 1981 Succession Act, the definition of "a spouse" is clear. It specifies a "single man" or a "single woman" and then the Act goes on to provide for what is called "reasonable financial provision" to be made in circumstances which are elaborately set out in the Act. If you look at section 95 of the Act, it deals with "applications for financial provision" and it states the categories of persons who may apply. It goes on to define what "reasonable financial provision" means.

Mr. President, of great importance is the fact that, in section 97, the Act actually stipulates the matters to be taken into account when determining what "reasonable financial provision" should mean. It sets out a number of factors to be taken into account. Now, the problem that arises here, is the fact that, in this particular Bill, what the Government is actually creating is a situation of double entitlement. It is a case of double entitlement because here is a case where a cohabitant is being recognized for purposes and you are amending the Succession Act and you are saying, who is a cohabitant—somebody who is just living "in a bona fide domestic relationship…" and that is it, *punto final.* According to the other sections of Part VIII of the Succession Act, they are entitled to apply for "financial provision".

Mr. President, this Bill goes further in Part II of the Act, and says that this Bill is also amending, the Administration of Estates Ordinance. It says who is a cohabitant again, insofar as the Administration of Estates Ordinance is concerned, and that refers to situations where a person dies without a will and it is a case of intestacy. A cohabitant, therefore, now has—according to this Bill:

> "a person of the opposite sex who, while not married to the intestate, continuously cohabited in a *bona fide* domestic relationship with the intestate

for a period of not less than five years immediately preceding the death of the intestate;"

Under this part of the Bill "a cohabitant" is going to have an automatic right to apply as well, to share in the estate of someone.

Mr. President, the problem there is, the fact that this is a clear-cut recipe for conflict and confusion where you may have "a cohabitee", competing at the same time with a lawful spouse in a situation, because nowhere in this Bill does it prevent that kind of situation. A cohabitee is so broadly defined here, as anybody "in a *bona fide* domestic relationship". So a man may have been married for 30 years to a woman, and has been cohabiting for the last five years with somebody else and he dies, it means now that his cohabitee of five years, will now have the right to apply automatically to share in his estate, whilst the lawful spouse is going to have the same right as well.

So, nowhere in this Bill are there guidelines and, furthermore, it is a case where that cohabitee not only has the right automatically to apply on intestacy—meaning when he has no Will—but she also has the right to "reasonable financial provision" and that is where the double entitlement comes in. It is a most ludicrous situation because it is a direct attack on the institution of marriage. *[Desk thumping]* While some may say, that is no longer an important concept and it is a dying institution, marriage goes to the core of family life and, especially nowadays in our society, when we look around and see what is happening in our country, we need to get back to basics and improve our family situations.

Now, if that cohabitee is a single person with another single person, there are no problems, but what the Government is basically doing is giving more rights—with all due respect—to persons who may recently have joined a union with somebody else and be an addition to the family. I do not want to be too graphic about it, but it is something that is likely to create a lot of chaos and confusion. If we look around in our neighboring Caribbean territories, you will see that nowhere else, in no other jurisdiction, have they gone so far to give this kind of double entitlement, and I make specific reference to the situation as it exists in Jamaica.

Mr. President, in the law in Jamaica, for example, there is an Inheritance (Provision for Family and Dependants) Act 1993, and section 4(2)(e) of that Act—if I may just read the particular provision of the Jamaican Act. I am getting this definition from a book. I would like to take this opportunity to pay special

tribute to the author of this book that I have in my hand. It is entitled: *NON-CONTENTIOUS PROBATE PRACTICE in the ENGLISH-SPEAKING CARIBBEAN* and the Author is, Karen Nunes-Tesheira, an Attorney at Law, who has been a lecturer at the Hugh Wooding Law School for a number of years. Notwithstanding what some may say about locally trained lawyers and locally assembled lawyers, this is one of our own local—it is a pity the hon. Attorney General is not here—Trinidadian daughters, who has passed through the Hugh Wooding Law School and who has reached so far as to compile a book to deal with non-contentious probate matters as it relates to Trinidad and Tobago. The author has made a tremendous effort in this book to make comparisons with other jurisdictions in the Caribbean. This is why the Hugh Wooding Law School is so important as an institution to us because it is a regional body. *[Desk thumping]*. When we pass through that regional institution we are able—as we do whatever the courses may be—to get a comparative analysis of the laws in our neighbouring Caribbean jurisdictions.

3.50 p.m.

We know that as a region in the Caribbean we share a similar historical background and we are able to interact with our own Caribbean neighbours, Mr. President, at the Hugh Wooding Law School. Today when I read reports about attempts to remove the Hugh Wooding Law School from that regional body, it was a source of concern to some of us. In this particular book there is reference to the Jamaican provision at page 358, section 4(2)(e) of the Inheritance (Provision for Family and Dependants) Act, 1993. It says:

"…a person who:

(a) where the deceased was a single man, was a single woman who was living with the deceased as his wife for a period of not less than five years immediately preceding the date of the deceased's death; or

(b) where the deceased was a single woman, was a single man who was living with the deceased as her husband for a period of not less than five years immediately preceding the date of the deceased's death, qualifies as a person who may apply to the court for reasonable financial provision out of the deceased's net estate…"

So that in Jamaica, just as in Trinidad, they refer to a single man and a single woman as we have in the 1981 Succession Act.

Mr. President, if you look at Guyana, their law is somewhat different. I think their provisions with respect to this issue relate more so to intestacy, in the case

where someone dies without a will. At page 467, note 7 of this book, the definition that is used in Guyana, section 2(6)(a) of the Family and Dependants Provision Act 22 of 1990 says:

> "(i) a wife shall include a reference to a single woman living together with a single man in a common law union for seven years immediately preceding the date of his death;
>
> (ii) a husband shall include a reference to a single man living together with a single woman in a common law union for seven years immediately preceding the date of her death;
>
> Further, according to s. 2(6)(b), the term "single man single woman" includes a widow or widower or a man or a woman who is divorced."

That is the situation as it relates to Guyana.

Mr. President, I have the Barbados Succession Act here, Chap. 249. The Barbados provision is actually very similar to our provision that we have in the 1981 Act. It says:

> "(3) For the purposes of this Act, reference to a 'spouse' includes—
>
> (a) a single woman who was living together with a single man as his wife for a period of not less than seven years immediately preceding the date of his death;
>
> (b) a single man who was living together with a single woman as her husband for a period of not less than seven years…
>
> (4) For the purposes of subsection (3), a reference to a single woman or a single man includes a reference to a widow or widower or to a woman or man who is divorced."

Now, Mr. President, in all these references I have made, the point is that the common law spouse's right is limited, particularly in, I think it is Jamaica and Barbados, and indeed as in the 1981 Succession Act, to cases of financial provisions. If you are a spouse, as defined according to these Acts, you have a right to apply for reasonable financial provision upon the death of an individual, and more so it is based on some criteria or guideline. It is based on a relationship of dependancy and that is what you read when you look at the definitions that are provided in these other Acts, that there is some criteria or guideline for determining who will qualify.

However, as I indicated, the effect of this Bill with the current definition is going to lead straight to a case of double entitlement. Apart from dealing with financial provisions, it is now giving one that automatic right to apply as well upon an intestacy. We need to ensure that at the end of the day we can do a balancing act because we know that there are thousands of persons who are suffering or who have suffered.

I have had many clients come to me, Mr. President. One lady, for 30-something years she was not lawfully married to the gentleman with whom she lived, but when he died she could not even get, I think it was the NIS payments, because she was not recognized as a lawful spouse. Another person, who is a lawful spouse, her husband was maintaining her and her children in a home which they owned. However, in the last few years prior to his death he was cohabiting with somebody else. Now the lawful spouse has to be in direct conflict with the somebody else with whom he was cohabiting just prior to his death.

There is likely also to be confusion because, under this Bill, we see that this recent cohabitee is now entitled to apply, along with the lawful wife, for an equal share in the estate of the deceased. In the example I gave of that man who died, if all that he owned and which constituted his estate, was a house in which his wife and four children are living, then are you saying that the recent cohabitee of three or four or five years, or whatever it is, now has the right to share equally with the lawful spouse and children in that one property? Mr. President, clearly that could not be the intent in terms of reforming the laws. It is clearly a recipe for confusion and we have to remedy the situation. My suggestion, in terms of dealing with the problem, is simply to revert to the definition of a spouse as is provided for in the 1981 Succession Act because in all the other jurisdictions we see where that is, in fact, the definition that is used. In that way you would have a safeguard, whilst at the same time dealing with some of the injustices that exist.

There are other problems that need to be addressed, for example, in the case of parents and so forth, as a category of persons who could have applied. In fact, Mr. President, one of the provisions that I must say is welcome in this Bill is in the new definition of "next of kin". We know for years there was this uncertainty or confusion when one looked at the definition of "next of kin" in the Wills and Probate Ordinance and the Administration of Estates Ordinance. It was very difficult. It was a very convoluted type of attempt at defining who is a next of kin but now, in this Bill, an attempt is being made, I think it is in clause 3 of the Bill. There is a new definition of "next of kin" and certainly we welcome that.

I think it was the hon. Attorney General who said that a woman may have been living with a man for 20 years and she may not have been divorced previously from another relationship and if that man dies she gets nothing. I disagree with that statement by the hon. Attorney General because, if you stick to the definition of the 1981 Act and you look at the provisions that he is seeking to enact now under Part VIII of the Succession Act, you will see that this person has the right to apply for reasonable financial provision. It is not as though that person would be left out in the cold. The person will have the right to apply and, more than that, the legislation actually spells out the matters to be taken into account so that, in effect, if you stick to that definition you will, in fact, be able to establish or determine what is a *bona fide* domestic relationship because it is defined in section 97 of the Act.

It is a kind of, if I may use the word, discretion. However, in terms of the provisions of Part VIII of that Act, if you look at the criteria and the guidelines that have been set out there, you would see that, in a situation where a person dies leaving a will, those provisions are ones that will not easily be enforced. It is a situation where—we have heard the hon. Attorney General talk about the principle of testamentary freedom where a testator should have the right to make whatever dispositions he may deem fit in terms of making a will and saying for whom he wants to leave what. That principle, according to the Succession Act of 1981 and all the other pieces of legislation we have looked at, is not an unfettered right now.

Through legislation we are saying that there has been intervention and that right to make whatever dispositions you want is now being circumscribed. So that, there are now certain categories of persons who previously would have been left out who can now come in and apply and say, "Hey, I am being left out in the cold. I am going to suffer an injustice here and I need redress". Under Part VIII of the Succession Act it tells you how to go about seeking this redress. It tells you the type of court orders that can be made. It tells you what the meaning of "reasonable financial provisions" is in section 95.

In all of it there is a certain qualification that comes out of it and that is, you must establish that relationship of dependency. So that, there are, I do not want to use the word "restrictions" but certainly there are guidelines. Apart from the court orders, there are other types of matters that will be taken into account. A person—and it may well be a cohabitee or a spouse as defined under the Succession Act—has the right to apply to the court and the court will look at such things as:

> "the financial resources and financial needs which the applicant has or is likely to have in the foreseeable future."

The court will look at:

> "the financial resources and financial needs which any other applicant for an order under section 96 has or is likely to have in the foreseeable future."

The court will look at:

> "the financial resources and financial needs which any beneficiary of the estate of the deceased has or is likely to have in the foreseeable future."

It will look at:

> "(d) any obligations and responsibilities which the deceased had towards any applicant for an order under section 96 or towards any beneficiary of the estate of the deceased;
>
> (e) the size and nature of the net estate of the deceased;
>
> (f) any physical or mental disability of any applicant for an order under section 96 or any beneficiary of the estate of the deceased;
>
> (g) any other matter, including the conduct of the applicant or any other person, which in the circumstances of the case the court may consider relevant."

Mr. President, there are cases that have been decided in the courts already and they tell you that—this is a kind of judicial discretion to be exercised and it is there. It is spelt out. It is a circumscribed kind of jurisdiction to be exercised. There is an article that is published in the *International and Comparative Law Quarterly*, Volume 45, July 1996 written by the very same author of this book, Karen Tesheira. This journal is published internationally. "Trinidad and Tobago, a Case for Reform in the Law of Succession". In this article it refers— [*Interruption*]

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

Motion made, That the hon. Senator's speaking time be extended by 15 minutes. [*Sen. D. Montano*]

Question put and agreed to.

Sen. N. Mohammed: Thank you very much, Mr. President, and I thank my colleague. In this article it refers to some of the problems that exist at present and the need for us to reform the law and, in fact, the call that has been made here is to enact that Succession Act, particularly Part VIII of the Act. In so doing we ask

you to please stick to the definition that is provided for in that Succession Act so that we will avoid the collision that we anticipate. This is because, looking at this Bill, in terms of the very broad and loose definition of who a cohabitant is, it simply says a person who has been in a *bona fide* domestic relationship with the intestate. It is too vague, it is too broad and, in fact, it is a direct attack or it has the potential to lead to a major collision and competition between a lawful spouse and what one may want to describe as an "outside woman".

Is this what this UNC Government wants to promote in our society? This is the kind of lifestyle and behaviour that they wish to promote in our country when crime is so rampant and the Minister of National Security is being called upon to put a police force in the Beetham Estate! We need to get to the core of the problems, Mr. President. We have to look for a holistic approach and this is one suggestion I am making. Instead of compounding the problems we should try to do whatever we can do to get it right.

4.05 p.m.

We are not saying that we should not recognize the problems and the injustices that exist; there are very many legitimate and *bona fide* cases. But as the Green Paper itself says, nowhere in the world have you had the situation where the rights of cohabitees are being equated to that of legal spouses, because in effect the Government is saying that the institution of marriage means nothing in society. That could never be! It could never be! That highlights the immorality of this UNC administration. It is no wonder that they have sought to change the definitions in this Bill. Every time the Government brings a Bill in this Parliament, there is always something lurking. We talk about the sting in the scorpion's tail; this is exactly what I am talking about.

I know the hon. Attorney General is a married man with children and he will respect the institution of marriage, but what we are saying is that this Bill—in fact, Mr. President, I would go further to say that this Bill, in its present form, is contrary to public policy. It is immoral as it stands. I do not like the word "immoral" but at the same time, that is what it boils down to, because the Government is setting up a situation where a legal spouse's right will now be diminished or marginalized or he will now have to compete in a different kind of scenario. That is clearly undesirable. Otherwise we should resort to living like animals in the animal kingdom. There has to be some value, some kind of standard, and some kind of system. Family life and marriage, we know, lie at the heart of it.

If the Government wants to do something about crime, hon. Minister of National Security, apart from the many new vehicles that would be provided, let us try and get into our communities and work with them to ensure that we have better family life. Even amongst our cohabitees, because there are many cohabitees who actually live as husband and wife, there are *bona fide* legitimate cohabitees. I am not saying that they are not, but remember the definition that I am advocating: that it be confined to a single man with a single woman. That is the difference, a very big difference! Otherwise all those who may have their "outside" relationships, quite apart from their lawful spouses—what is the Government saying? That now, if the person dies one has the right to apply for reasonable financial provision plus, automatically one is now entitled on intestacy, to apply for half share in the deceased estate, whilst the lawful spouse is going to have the same right? I cannot believe that our Attorney General would want to go down in history as being the person to have created such legislation.

Mr. President, notwithstanding all the red herrings the Government may wish to throw in the way, the reality is that it is so typical of this Government, in terms of its consistent pattern of promoting, I have to say, immorality in public affairs. That is its *modus operandi*, with all due respect. I did not intend that this debate would be a political debate, but family life is an important part of it. I know I said at the outset, I did not want to go into issues of morality and what have you.

The fact of the matter is, Mr. President, there are certain things that are right and certain things that are wrong. All I am saying is that as we seek to remove the injustices that we recognize exist out there, let us try to do it in the correct way. All that we need to do is a little balancing act. My suggestion is that we simply change the definition of cohabitant, as is provided for in this Bill, and revert to what is in the Succession Act of 1981.

Mr. President, it is very straightforward. If we look at our neighbouring territories we would see that that is how it is, otherwise it is a recipe for chaos and confusion. I really want to make it clear that it is not as though we are denigrating, minimizing or reducing the problems that exist insofar as cohabitees exist in the country. We recognize and we acknowledge that there are genuine problems existing, but all we are saying is let us try to minimize the conflict by doing it right, by getting it right.

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

Sen. Diana Mahabir-Wyatt: Mr. President, I would like to begin by thanking the Attorney General for bringing this piece of legislation before Parliament.

When we were, as Sen. Nafeesa Mohammed pointed out, debating the Cohabitation Bill we were aware that there were serious problems in carrying out that Bill and even before that, we had been harassing the hon. Attorney General about proclamation of the Succession Act because we were very much aware of the hardship which many, many women and children in this country have undergone as a result of it not being proclaimed. He did give his word at the time and said that he would bring it before this honourable Senate and I would like to thank him for keeping his word. I think it is very important that we mark the spot when promises like that are kept.

I accept, with a great deal of respect, what the hon. Head of the Opposition in the Senate has said about her concerns about the position of marriage, the sanctity of marriage and the importance of that in relation to society. I would like to just bring her back a couple of feet, if I may, into a situation which very often exists at the present time. When Sen. Mohammed was talking about the Succession Act as it appeared in 1981—I think when the last mention was made—she read out a definition which said; when somebody was intestate—I do not have it in front of me—the estate would be left to spouse, unmarried daughter, or daughter who was dependant, who was mentally or physically challenged, or son who was mentally or physically challenged. In those days, they did not assume that unmarried daughters would be independent, actually, and they did not think that married daughters should inherit part of the estate—*[Interruption]* I know, okay. That was in the old Act. That has changed since. Times have changed. As the Attorney General pointed out, mores change: we now think of women as being adults and capable of supporting themselves and as also deserving of equal status before the law when it comes to succession.

Senator Mohammed has made a very impassioned plea about the situation where someone was lawfully married for 30 years and at the end of the 30 years, moves off to live with somebody for five years who would then inherit equally with the first spouse under this Act that is before us. She wants to go back to the definition where the people have to be single to be cohabitant and to be recognized as genuine cohabitants.

4.15 p.m.

I would like to put before Sen. Mohammed a situation which happens quite often in my experience, where a man and woman have been married for four or five years and the marriage turns bad and he becomes a batterer and she becomes a victim. That may go on for various lengths of time; sometimes it goes along for 5 or 10 years. When she finally has the courage or strength to break away from

that relationship and go out on her own, very, very often he would not give her a divorce. In other words, she remains a legally married woman, coming out of an extremely bad relationship which may have only lasted for three, four or five years.

At the end of that period, if she then goes subsequently into another relationship with another man, and this is a very common experience in Trinidad, she cannot get a divorce from the first man because that is his last bit of control over her, so he would not give it to her. [*Interruption*] But if he dies during the period of the five years she has been living with somebody else, going back to the single provision, that would put her at a severe disadvantage.

In other instances, we find cases where a man—I was dealing with one just yesterday—was married for a period of time, I think it was about five years, left that marriage, never got a divorce and has been cohabiting with another woman for something like 28½ years, with whom he had several children. In that instance, I do not even think he was married for five years in the first instance, I think it was something like four years because they had one child who is now grown up. With the second marriage he had about 7 children, but he never bothered to get a divorce. This woman who had been living with him for 28 years, who had worked to bring up his first child as well as their children together, and has in every way been a genuine wife to him, would lose if we went back to that old definition. I do not think it is as simple a matter as saying that you have to be single to be a cohabitant. I think it is something that when you get to what are the *bona fides* you have got to look at each case separately. The court has got to be able to look at questions like dependency and what are the actual facts of the case.

I do not want to get rigid or inflexible about this. Somebody made a comment a bit earlier about changing social mores and, of course, we are changing the social mores, sometimes so fast that it gets frightening. But I think that when it comes to social legislation, particularly, we have got to keep re-examining the legislation that we have in relation to the mores that we have got.

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

It must be on a case-by-case basis and we must leave this up to the courts and let the courts decide, because they are not stupid and they have had much experience in this kind of thing and in matrimonial matters so they will be able to determine what is the justice of this case.

So I would support this Bill as it is, but I ask the Attorney General, because of this point of circumstances differing, no two cases are the same, and to serve the

justice of what is a *bona fide* relationship, in clause 25(2), if he would consider making an amendment to that clause which says that where you have a living spouse and a living cohabitant of more than five years as the Act provides that when it comes to somebody who is intestate—and I really hope that this debate would be publicized enough so that nobody in this country would ever die intestate and that we could somehow get through to our people from school age on that you should always have a Will. From the time you first own a bicycle you should have a Will. If you have debts you should have a Will. You can lodge a will, I gather, with a trust company or bank without having to get exorbitant legal fees and, surely, we could provide legal aid for them.

As I was saying, in clause 25(2) if we could say that the spouse and cohabitant should inherit, not in equal shares but in proportion to the length of the marriage and the cohabitational relationship respectively, which, of course, would take into account—when you are talking about the inestate the children are already dealt with earlier and the offspring to that relationship are taken care of earlier—but if we could have a proportional distribution in accordance with the length of time in the relationship, I think it would take care of Sen. Mohammed's point. It would certainly take care of some of the worries that I have, and would also be consistent with the position of the Government.

I really do not think that we are fighting a battle here; we are all genuinely trying to find an answer to a very delicate and difficult problem that has been with us for a long time, and which I hope, with the passage of this Bill, will no longer be with us. It has been a long time that we have been waiting for this. I would ask the Attorney General in his summing up to give me a wide outside estimate of the rest of the Succession Act. I know that it is tied up with all kinds of other land laws and so forth, but is that legislation going to be coming before us in this year? I know we have three bits coming before us right now, but is it tied up with those or is it in relation to others? That is just to give us an idea as to whether or not that Act is ever going to be proclaimed with the other amendments or whether the whole thing has to be amended.

Thank you.

Sen. Muhummad Shabazz: Mr. Vice-President, in this Bill the important issue should really be taking care of the children in a relationship, whether it is a married or cohabitational relationship. It is important that the children be looked at because a number of the problems we have or that may come up, will be, at times, not so much because the wives or husbands will have to go through some problems, but the children will have problems and we need to look at that. Maybe

we could argue, as we said, that there might be a moral issue where children are outside of a marriage. We need to look at that and understand that some people may argue that it should not be, but when it is that way, the children must be given consideration.

Before I go deep into the Bill—and I would be very short on this one—we have looked at the question of what is a spouse. A spouse should either be male or female, but for some reason the Bill keeps talking about "him", "he" and "his" and I think we need to look at that. It should be clearer in the Bill that it could be either party. It may not be that a female has left her husband, has property and so forth and dies, but we need to look at it, particularly in these times. I think the Attorney General should do something about correcting that.

I would like to operate in a real situation; real in the sense that in Trinidad for some reason we have a number of situations where many people really have two families or two homes. Two families in the sense that you have a married wife and you have another person to whom you are not married but you have lived with for over a long period. One of reasons I place emphasis on the children is because in the event of this person's death with no Will, where you have a wife and a spouse, there should be something in place to take care of the children. As a matter of fact, I believe that over 80 per cent should be divided among the children. If we look at it from that angle we would be doing something much better than trying to work it out in the way that it is being worked out at this point.

If you are going to give the cohabitants certain rights there are certain other things at which the Attorney General should look. We see in the United States where they talk about palimony. What about situations like that coming up? Why has the Attorney General not taken things like that into consideration? You should not even have to wait until the person dies. What about a person who lived with somebody for 20 years and had children?

Forget whether that person was married, it could have been a person who was not married. That person lived with someone for 20 years and if you are going to give the person rights as a cohabitant so that when the other person dies he or she would get money or property, why not if somebody had been married for 20 years, had six children and was ready to leave, is a situation not worked out? It should be put into law that this person should be entitled to something. I think we need to look at that very clearly.

There is another situation. I think the Attorney General should look at the question of religious groups. I am saying that we have Muslims in Trinidad. If you are going to give somebody who has a relationship that may not be, indeed, based on goodwill, who left his wife and went to live with somebody else, and you give this person the right to get property if the person dies, what happens in the situation where you have a religious organization which accepts that a man can have more than one wife, where they live in harmony; two or three wives living in harmony and agreeing to the relationship, but when a death occurs there is nothing happening for this person? I am saying that outside of the moral issue, we should look at that. We should be taking note of that and trying to balance the society in a way that would be proper. I think that if the Attorney General is serious and not only studying the politics of the thing, he should look at a situation like that.

Mr. Vice-President, in truth and in fact, we have certain situations—and I am one of the first to admit that I grew up in a situation like that—where my father had two sets of children. He eventually got married to my mother, but I would like to think that in a situation like that, if something had happened to him, my brothers and sisters and myself would have been taken care of. The moral issue is one that must be looked at, but we still have to understand the thing from a real point of view. The children should really be taken care of.

Sometimes we talk about divorce or if the person is separated, yes, they should look for a divorce. We understand that to get a divorce may be so complicated or costly that many people do not want to go into a situation like that. They may prefer to hold on until death or something has happened so that the situation could probably work itself out.

I would just like to finally close off by saying that what this Bill should, indeed, do is look at the children in a completely different light, so that we could take care of them in a much better way than this Bill proposes to do.

Thank you.

Sen. Rev. Barbara Gray-Burke: Mr. Vice-President, I am happy to join this debate on the Distribution of Estates (No. 2) Bill. The Bill seeks to amend the Succession Act 1981, the Administration of Estates Ordinance, Chap. 8, No. 1 and the Wills and Probate Ordinance Chapter 8, No. 2. This is a two-fold thing. I would take it in parts.

Firstly, the Succession Act permits certain categories of persons to apply to the High Court to make appropriate financial settlement from an estate of a

deceased person, whereas insufficient provision was made by the deceased under his Will.

Secondly, the proposed amendment to Part VIII would increase the category of persons who can apply to the High Court for redress to include cohabitants. There are women who have lived 20 and 30 years with men in cohabitational relationships and sometimes have 9 or 10 children in this relationship. In days gone by, these children used to be called bastards and all manner of defamatory remarks would be levelled at these infants.

4.30 p.m.

Mr. Vice-President, even when mothers of these children attempted to have them registered in our law books, the words "illegitimate child" used to be written down in a little column when that certificate is presented to the parents. In some cases, these men are separated from their wives and a lady would become involved in a love affair. She would now begin to cook, wash his clothes, clean his house and then proceed to bear him a child or two.

This man got into a vehicular accident and died, his lawful wife would walk in and say, "the boss reach", and begin to make burial arrangements, she demands the body of the man and this poor woman got to pack up and leave. My area of Laventille is noted for that. Pack up! Take your bundle and leave! This woman, with sorrow in her heart, has contributed, even the home where they live, she has assisted in erecting that home, because when she met that man he was living in a little rented apartment. Let us think about it, Mr. Vice-President, not that I am giving my blessing to any cohabitational relationship but it is a common practice in our society. It is a fact that it is part of this current social ill.

Part II of the amendment deals with the Administration of Estates Ordinance. In this category of persons, they would be able to claim a beneficial interest in the estate of the deceased intestate. Judges and lawyers would have no problem with the interpretation of "next of kin", which simplifies the definition for the purposes of clarity. Section 3 of the Ordinance is repealed and a new clause 24 has been introduced when an intestate dies, leaving one or more children. The spouse or cohabitant will take one-half of the estate—I am pleased with that part—because the woman was cleaning the man and cooking for him, so I am proud for that position. "Leaving one or more children, the spouse or cohabitant would take one-half of the estate." The present position was that the spouse would take one-third. So this Government is really helping single women of this nation. In my humble view, 40 per cent of the homes are headed by single women. This is my

percentage here. The Attorney General has come to protect these abused women who inherited these ungrateful men. Some of these men wickedly and spitefully do not divorce their so-called wives and honour these women for reasons better known to themselves. Ask them why, Mr. Vice-President. When counselling these men on the subject of marriage, they say: "No man ever married my mother so why should I marry or honour any woman?" This is what some of these ungrateful men, who intend to abuse these women, would say.

I support this Bill, especially the part of cohabitant or cohabiting partner, because as long as a man or a woman lives for five years in a cohabitational relationship and one dies, the law provides for any one of the gender to claim. The word "gender" is what interests me, but I, as a religious leader, will continue to insist that young people must get married.

I want to say thanks for giving me this opportunity to speak because there is too much inequality in our society. This is what this progressive Government is seeking to resolve. The UNC is making attempts to change all this inequality. I must say thanks to our Attorney General who is looking out for the poor suffering women, who suffered for years under this outdated law. Mr. Vice-President, as usual—not knocking anyone—the Opposition is opposed to everything: they are opposed to the execution of notorious drug criminals in our society; they are against the Occupational Health and Safety Bill for workers; they are against legislation to arrest and address corruption. Mr. Vice-President, every time I sit I am hearing the word: "corruption, corruption, corruption," in our society but when you want to address it, one cannot get the support! They are against school buses for children. Mr. Vice-President, I think that the Opposition is really against themselves! I think so!

Hon. Senator: No.

Sen. B. Gray-Burke: How no? Corruption! Corruption! Corruption! We cannot finish hear about it! We want to bring legislation to deal with it but they do not want it. The Opposition is saying that something like time is inching away—and if it is inching away for the PNM or whatever, it is only a matter of time before—I do not know if the society or the people—because this Bill is going to make history, and I do not know what is going on.

Mr. Vice-President, I want to praise the Attorney General, again, the Prime Minister and this UNC Government for bringing this Bill to help poor people in this society. This is a good time. This is a good Bill for the poor. I want to totally and uncompromisingly support this Bill, regardless to how anyone may feel.

Mr. Vice-President, there is a lady by the name of Pennelope Beckles who was a Senator, I have always been rushing matters like these to her. Right now, there is another matter like this on my doorstep, and this is why I am so thankful for this Bill.

I thank you, Mr. Vice-President.

Mr. Vice-President: Hon. Senators, I think at this time we would take our tea break. We can resume at 5.15 p.m.

4.36 p.m.: *Sitting suspended*:

5.18 p.m.: *Sitting resumed***.**

[Mr. President in the Chair]

Sen. Dr. Eastlyn Mc Kenzie: Mr. President, I begin by joining those who have warmly welcomed and congratulated the two new Senators and wish them the best in the type of experience we have had so far in this very important place. I welcome them warmly and congratulate them on their appointments.

Mr. President, like some of the speakers before me, I congratulate the hon. Attorney General for trying to minimize some forms of injustices experienced by many people in different types of relationships, be they in marriage, or out of marriage. What I would hope to see is that our Ministry of Information would think it a necessity to go on a series of public education programmes advising and informing citizens about their rights, privileges and the rules that would govern the types of relationships they enter.

Mr. President, it is my experience that many people do not know their rights, or what the law says, and as a consequence they suffer in ignorance. I hope that the Minister of Information would think that bills that come before the Senate where people's lives are impacted on by the rules and regulations governing them— that people would be educated publicly. A type of public education that does not deal only with what his division does, but that he would also think it the responsibility of the Ministry of Information to educate people generally about all issues affecting their lives. So when this Bill is passed, there will be a session where he will organize the public education. It does not have to be officials from his ministry, but the people with the expertise within the public service, and probably within the Ministry of Legal Affairs to get on radio, or television, and publicly educate the people.

Mr. President, there are so many types of cases that this Bill tries to impact upon that the Bill could never cover. There are some cases where you could find about 10 types of situations that will not fit into what this Bill covers.

I would like to hint a few things. When the Registrar General's Department set up a branch in Tobago some years ago, as an officer responsible for education extension, I took the officer in charge of the division—it was new and they were handling some of the matters that the hon. Attorney General would deal with in his other Bills to come. I took that gentleman to every village in Tobago, the village council, community groups and so forth inviting them to public sessions, and among the things with which he dealt was one dealing with wills and rights and so forth. There is a cultural type of disadvantage—if you could term it that—when it comes to people making wills. There is the feeling that the minute you make a will, you are signing your death warrant, so there is a reluctance of the people.

I know for the people in Tobago—and Sen. Mahabir-Wyatt was saying that everybody should make a will—but you cannot get away from the feeling in Tobago, the moment you make a will, you are saying you are going to die. This officer had to dispel that and tell them all about wills, why wills are made, and you can make a will every day, it is the last one that counts. I am saying this is the kind of public education which should emerge from this Bill and it should come out of the Ministry of Information. Drive away the fear. I am saying, for example, that people do not know that even if a will is made, and you feel that you have been unjustly treated by the contents of the will, you can contest the will. People do not know that, so I am saying there is the need for public education.

Mr. President, there are instances, and I would give a few hints of legal spouses who behave as vultures. There was an instance where a man is married and is separated from his wife for 20 years, he lives with somebody for 7 years, he dies and the wife comes in, seizes the body and everything. She does not even know how he got what he had and *vice versa*. There have been instances where there are people who feel that their wives should not inherit because they have no children. We are married for 30 years, we have no children, why must I leave what I work for, for her, because they always assume they would die first and the wife will get everything and give to her family. We can legislate for that.

What I am saying, Mr. President, is that I do not think we can legislate for every injustice that we would find, and regardless of how we do not trust our courts and our legal system, we have to give way in certain instances. I do not think we should make this a blanket, automatic thing because once there is a dispute, and somebody dies, automatically the contents of this Bill will come into play. I think there should be some sort of merit, whether it is a case by case merit or something. Some things are straightforward, but there are other cases that are

not as straightforward where I think we need to put some kind of *proviso* in the Bill that wherever the case is not a straightforward and clear-cut one, these matters should be dealt with on a case-by-case basis.

Mr. President, we have had instances where people in a relationship try to satisfy the situation by saying: "Okay, we are married, but I am going to make my will and leave life interest for you." So you live in the house until you die and I am still the dictator although I am gone, because I am saying to my partner, both of us have built this structure, I die, I leave you to live in it, if I die before you, you live in it until you die, but I am the one who dictates what happens to it after. How do we manage a situation like that?

I am saying that in certain instances, the case is clear-cut, in other instances it is not, and we cannot make every type of relationship an automatic thing that must fit in or be squeezed into the type of clauses in this Bill. I am suggesting that wherever the cases are straight and clear-cut, fine, but in many of the instances you will never find an example in this Bill. You will have to go specifically on a case-by-case basis because there are some very rare types of situations.

Mr. President, I have looked at it and in clause 25(2) what happens if the spouse is living in a cohabitational relationship? I have known of instances where both persons are married and they separate, the man lives with a woman, and the woman lives with a man. Both persons are living in a cohabitational relationship and the man with whom the woman lives is also married to somebody else. I know it. The man dies, the woman leaves her home with her cohabitational relationship husband at home, says: "Wait until I come back, I going and settle a business." She goes and claims the body, puts the woman out of the house, goes back and lives home and rents out the spot. Which law in the world could govern that type of relationship? This is what I am talking about, Mr. President. Probably you in Trinidad have this clear-cut thing that is here, but we in Tobago have some mix up, tangle up web that you cannot unravel, only the courts will have to unravel.

Mr. President, what I am saying is that we should have the Bill in such a state where clear-cut cases can be dealt with automatically, but wherever you have a maze, a tangled web, you should be able to say such matters could be settled by a court.

Thank you, Mr. President.

5.30 p.m.

Sen. Prof. Kenneth Ramchand: Mr. President, I am going to be very brief. I want to begin by welcoming the intention of the Bill, but like many of the speakers before me, I do have some problems with 25(2), or perhaps, with any attempt to legislate in such a cut and dried way, that judicial intervention or consideration of the individual case is eliminated.

Mr. President, I wanted to welcome the new Members from Tobago, and I tried to think of a few jokes to let them know that we do make jokes here, and we are not always as solemn as we have been all afternoon, so this is the nearest I can come to a joke. If we accept cohabitation in some instances as being spousal, so that the person with whom you cohabit has the same rights as a spouse, it would follow, that if there is a man who has a married wife and who is cohabiting, the law should charge him with bigamy, unless the law wants to say that each of these women constitutes half a wife. That was the joke. *[Laughter]*

Mr. President, the problems I have with 25(2) can be seen if we look at a few examples. Take a case of a man who is married to a woman for 35 years. She has worked and lived with him all that time and then at the end of year 35, he leaves the house and goes to live with another woman—obviously a younger woman—and he lives with her for 5 years, and then naturally dies, because it is a younger woman. *[Laughter]* I really feel that the woman who spent the 35 years with him, sharing so many things with him, working with him to build whatever fortune he has, she probably deserves, on the face of it, a lot more than 50 per cent of what has been left. Now, it may well be that she was a miserable woman and he endured it for 35 years and when he could not take it any more he "outed off". If there is a piece of legislation on this kind of situation, it has to be opened for us to go into the case to find out, but to say automatically 50—50, seems to me to be much too cut-and-dried and not sensitive enough to the particular case.

Secondly, what happens a lot—and this piece of legislation says that if an intestate—and what an ugly word, it sounds so rude. Could there be another word for "intestate"? If an intestate dies leaving a spouse and a cohabitant and the intestate and his spouse were at the time of his death living separate and apart from one another. What happens if the intestate has his married home and his cohabitant home and he is shuttling between them? Who gets what? Are we going to say that the cohabitant is just a mistress; she is not a *bona fide*? It seems to me, a situation where there is not much *bona fide* anyway. They are playing fast and loose with *bona fide*. If the practical situation is that this man is living

with two women, one in a church marriage and the other in a common-law marriage, I really feel that the thing should share up between the two wives. That is one matter.

Thirdly, if a man has a wife and he is unhappy with her, he leaves her and wants a divorce, and she is not giving him a divorce and her idea is "I am not giving you any divorce because if I give you a divorce, I am surrendering your rights, I am waiting until you die so I can get." If it is a calculated refusal to give the divorce, the law would need to consider the history and see whether such a person merits what the law wants to give her.

Mr. President, the fourth example is, supposing there is a man who has a fiancé or a girl friend, and he takes her away with him to England or wherever. He is studying law or maybe studying for his Ph.D., or doing medicine, and this poor woman with whom he is living for all these years, he tells her: "When I graduate we will marry." She endures with him for over 10 years while he is working for the degree. He gets the degree and goes off and he marries somebody else who is more suitable to his new standard, being a Ph.D., or M.D. This woman was never married to him but she gave 10 years of her life supporting, sustaining and helping him with his work. What does she get?

Mr. President, we are dealing with a very complicated human situation here, where the injustice that is being done can be done not necessarily to the wife and the other woman, but sometimes it is being done by both of them to the man. I feel that we should have a kind of legislation that will allow the individual cases to be considered. One of the suggestions that the shares be in proportion to the length of the marriage and cohabitation relationship respectively, that goes some way towards giving us some flexibility, but I still feel that there are many other cases that need to be looked at and have not been covered.

So, I close by saying that I welcome the Bill and I have problems with 25(2). I have tried to give examples of the kinds of problems I have, and I hope that the Attorney General will address this in his winding up. *[Desk thumping]*

The Attorney General and Minister of Legal Affairs (Hon. Ramesh Lawrence Maharaj): Mr. President, I must thank hon. Senators for their contributions. I think that I would have to respond to the Leader of the Opposition in the Senate, Sen. Nafeesa Mohammed. It is very unfortunate that she used a Bill like this to make politics out of it. The Senator talked about immorality and not respecting the sanctity of marriage when Sen. Nafessa Mohammed knows that this Bill is not about that at all. It is probably very unfortunate that we decide to

make politics out of everything at times. Mr. President, the Senator's contribution had a fundamental flaw, and I am very surprised, as a lawyer, she does not appreciate that there can be no question of anybody having double benefit because you cannot claim on intestacy and claim on testacy.

In other words, when a person leaves a will, you cannot have an intestacy claim. When a person leaves a will, the provision for the cohabitant to apply would apply to say that no adequate provision was made for that cohabitant and the law is that when a person makes a will, the law recognizes that that is the intention of the testator, and it is only in very exceptional cases, the law has intervened to supplement what the court thinks a testator must do.

Mr. President, the only exception is, in these instances, whereas I said, in New Zealand, the United Kingdom and Commonwealth countries, they have made these provisions for inheritance, family provision, for the persons who are dependent in the limited way, under our laws, to have applied for the courts to consider whether reasonable provision was made for them. It is because that category has proven over the years to be inadequate that now we are going to include in that category "a cohabitant", who is described under the Bill which we have passed. So the person as the cohabitant, applying under where the person has left a will cannot also apply under intestacy. This Bill does not apply to a person where a will has been left.

5.40 p.m.

In other words, the provisions of this Bill would not apply where a testator leaves a will, insofar as a reasonable provision is concerned. If the person does not leave a will then the law, as in the Administration of Estates Ordinance, has decided to come up with certain matters which the law and the Parliament of the day considered are the rules which should be followed. In the limited way it has been shown that those rules have not been doing justice. Therefore, in 1981 and now we are thinking of amending those rules so that, in a case where the person does not leave a will and therefore intestacy arises, the cohabitant will benefit. So it is not a case of the person being able to claim under testacy and also being able to claim under intestacy. This double thing does not apply at all.

The other point that has been raised by the Opposition is the definition of a common law spouse, a cohabitational relationship, as protected under the 1981 Act. I do not think that we could have a law like this and have the Cohabitational Act which has been passed by the Parliament and have two different standards. It cannot work. It is unjust and it will be inconsistent. So for the Opposition to say

that because we are having that change that also demonstrates a lack of appreciation for the sanctity of marriage is really "ole talk", it is "robber talk".

Mr. President, I know that we have had many discussions on the Green Paper before but a Green Paper is a discussion document. It is not a policy document. The Green Paper that the Opposition quoted from, this Bill does not put a common law spouse on the same footing as a legal spouse. The Bil, in one of the sections, says that if there is no spouse, no issue, no legal spouse, well then the cohabitant will be able to benefit and, therefore, if there are no other issues and there is the cohabitant and the spouse, it can be divided equally. I think the Green Paper recognized that in a matter like this, countries have looked at it in different ways and at different times.

Now, we have to understand, Mr. President—I do not propose to complete my contribution today because I think in fairness to the Senate I would like to look at this clause again to see what can be done to it but I think I owe a duty to explain this a little more at this time. Clause 25(2) says:

> "Notwithstanding section 24, if an intestate dies leaving a spouse and a cohabitant, and the intestate and the spouse were at the time of his death living separate…"

So this section applies where the spouse and the intestate were living separately at the time of his death.

We have to understand that it only applies to a cohabitant who has been living for at least five years with the person. So that, there will be a situation where a spouse who is separated from the partner, even though the divorce is not complete, would have been able, under the Matrimonial Proceedings and Property Act, to file an application for property settlement. So that in most of these cases where the wife and the husband have been separated, they would have had their property settlement sorted out one way or the other.

So where the intestate and the spouse are living separately, therefore, in most of those cases, if not all, you would have the property settlement sorted out. In any case, if the property settlements are not sorted out, it does not mean to say that the existing property law with relation to matrimonial proceedings property, if the wife is entitled to a share in that property under that Act, it will be subject to what she would be entitled to under that Act.

Under the existing law, that is the Matrimonial Proceedings law, if a wife has made a contribution to the home, on the apportionment of the property the court is

entitled to make an order as to whatever share it considers just and equitable in favour of the wife. So that it is only what is remaining, really, if it falls under that, that is the property—and it may be that we should expressly state in the Bill some of these "subjects to", in order to make it quite clear what we are talking about. So that the impression which one can get if one reads it and does not look at it very carefully, is not that in every case the spouse and the common-law wife are going to be able to share half and half. It would be in very exceptional cases but it will be in cases in which you would want to ensure that the rights of the spouse are not in any way prejudiced. So I take that point.

Mr. President, I would say that some of the other matters I would complete on the next occasion. I would look at the contributions and give some response to them. I would like to thank hon. Senators for their contributions in this matter. Passing this Bill does not mean that this Parliament does not recognize the sanctity of marriage. As a matter of fact, the Parliament of Trinidad and Tobago recognizes the sanctity of marriage but yet it made provision under the Status of Children Act for children who are born as a result of marriages which are not lawful, if I could use that expression. So the Parliament has recognized before that although you recognize the sanctity of marriage you have to be able to accept certain things which happen in our society.

The 1981 Parliament was a Parliament of the PNM administration. In 1981 it passed the Succession Act and by passing this law it did not say that because a common-law wife can make a claim it does not recognize the sanctity of marriage. We recognize the sanctity of marriage. What this law is trying to do is remove some of the gross injustices which are done because we have been following a law from 1914 in Trinidad and Tobago when life has changed, society has changed, relationships of people have changed and it is recognized that people, by having these associations and cohabitational relationships, in effect produce children and children's lives are affected and the cohabitants' lives are affected when people die.

It may be that what Sen. Dr. Mc Kenzie has said is something that we should take up seriously and that is to try—and I think Sen. Mahabir-Wyatt has also said it—to enlighten and educate people on the importance of making a will. We should let them know that by making a will it does not mean that they cannot change that will. Even if they are on their sick beds they are entitled to say, "I revoke all my former wills and testamentary dispositions and I give and devise and bequeath X, X, X, X, X", and that is your will and that is the last word that you have said.

So in making a will we do not have intestacy arising, as Sen. Nafeesa Mohammed thinks. The Bill does not so state. The will, in effect, overrides that. The only thing that will happen there is, if you make a will and you have been living with somebody for some time, over five years, and you have children but you make a will and you give everything that you have to Miss A who had nothing to do with you or who probably, one day in the hospital, comes and treats you very well and you give everything to her, the court will say, "No, this is unjust", because on an application they can then give it to the persons who are entitled equitably to it. That is what this Bill is about, Mr. President.

So that, Mr. President, if the Senate would agree, I would like their indulgence to look at clause 25 again and I will continue my contribution on another occasion but not next week, the following week. Thank you very much. [*Desk thumping*]

ADJOURNMENT

The Minister of Public Administration (Sen. The Hon. Wade Mark): Mr. President as we have returned to normalcy here, I want to serve notice on my colleagues that from next Tuesday we shall return to a 10.30 a.m. sitting. We have a number of outstanding Bills. I had some protestation from the other side in terms of not at least consulting with them behind the Chair and they defeated us when we wanted to adjourn some time ago, so I want not to have a second defeat. I therefore want to give them advance notice in terms of what we are going to be discussing next week Tuesday, February 15.

Mr. President, we are going to deal with Bill No. 20 as the first Bill, An Act to amend the Regional Health Authority Act, 1994. When we would have completed that Bill we are going to deal with Bill No. 14, which is An Act to amend the Police Complaints Authority Act No. 17 of 1993, and then we will proceed to Bill No. 16, An Act to amend the National Lotteries Act, Chap. 21:04. We will complete those three Bills on Tuesday and then I will alert you on Tuesday night as to when we are going to deal with the rest, and we will go from there.

I beg to move that this Senate do now adjourn to Tuesday, February 15, 2000 at 10.30 a.m.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 5.52 p.m.