

Leave of Absence

Tuesday, April 11, 2000

SENATE

Tuesday, April 11, 2000

The Senate met at 1.30 p.m.

PRAYERS

[MR. PRESIDENT *in the Chair*]

LEAVE OF ABSENCE

Mr. President: Hon. Members, leave of absence has been granted to the following Members: Sen. Nafeesa Mohammed, from today's date and continuing; Sen. Danny Montano, from today's sitting and Sen. Joan Yuille-Williams from today's sitting.

PRISON SERVICE (AMDT.) BILL

Bill to amend the Prison Service Act to introduce a different retirement age for prison officers and to provide for the enhancement of superannuation and for related matters, brought from the House of Representatives [*The Minister of National Security*]; 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.

PAPER LAID

Annual Report of the Central Bank of Trinidad and Tobago for the year ended September 30, 1999. [*The Minister of Public Administration (Sen. The Hon. Wade Mark)*]

TRINIDAD AND TOBAGO CIVIL AVIATION AUTHORITY BILL

Bill to establish the Trinidad and Tobago Civil Aviation Authority and for other related purposes, [*The Minister of Works and Transport*]; 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.

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", instead of "Motions".

Agreed to.

INTELLECTUAL PROPERTY (MISCELLANEOUS AMENDMENTS) 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 Geographical Indications Act, 1996, the Patents Act, 1996, the Protection Against Unfair Competition Act, 1996, the Layout-Designs (Topographies) of Integrated Circuits Act, 1996, the Protection of New Plant Varieties Act, 1997 and the Copyright Act, 1997, be read a second time.

Mr. President, Members of this honourable Senate would recall that these Acts formed part of the intellectual property reform which occurred in Trinidad and Tobago a few years ago. What has happened is, it has become necessary to look at some of the provisions in these Acts in light of the fact that on examination some of these clauses needed re-examination.

When these pieces of legislation were introduced, it was mentioned that they were new kinds of legislation, that countries were enacting them and they would have to be looked at from time to time, in any event, to see where they could be improved and where there should be changes.

If I deal with clause 2 of the Bill. Clause 2 seeks to amend the Geographical Indications Act, 1996. A geographical indication is used to identify a particular commodity that has some quality or characteristic because of where it is produced.

On the continent of Europe, the best known geographical indications are those used for wines, like champagnes; or spirits, like scotch. These producers use raw materials, like grapes or grain grown in particular soil conditions in a particular climate and sometimes using water from a particular natural source or from a particular geographical location. Whiskey, for example, produced outside Scotland cannot be called Scotch whiskey. Geographical location might simply develop a competitive advantage through the use of coffee, Blue Mountain Coffee from Jamaica. Closer to home, sauces produced by residents from the Paramin area may need protection as a geographical indication under this Act.

Of course, we have our own spirits. If rum produced from sugar-cane grown on the Caroni plains has a unique quality that can be shown to result from some feature of the geographical location in which it is produced, then the rum which is known as Caroni rum could be protected as a geographical indication under this Act.

In providing this new form of intellectual property right, it was, of course, necessary to preserve the rights of those nationals or others domiciled here who might have already been using a geographical indication of another country for some particular good or service.

The Geographical Indications Act sought to do this through section 19(1). As the section is currently worded, Mr. President, it might be interpreted to provide the required exemption, not only to those intended, that is nationals of Trinidad and Tobago and others domiciled here, but also to nationals from the country of the geographical indication. It further seems to suggest that we are giving, in our law, nationals of another country the right to use their geographical indication in their own country. Trinidad and Tobago is not yet a super power and, therefore, we should not do that.

In the Bill before us, then, clause 2 amends the section by inserting the words “in Trinidad and Tobago” and “of Trinidad and Tobago” appropriately, to clarify that this is the intent of the section. For example, if you have been calling “soft drink”, “champagne”, for at least 10 years preceding April 15, 1994, or in good faith preceding that date, then there is no infringement for continuing doing that. That is basically what this amendment seeks to do, in order to clarify the position.

The next piece of legislation which this Bill attempts to amend is section 46 of the Patents Act. A patent provides the right for the right holder to exclude others from using the patented invention without permission from the right holder. In most situations, someone wanting to use the patented invention through the negotiation of commercial terms, can obtain their permission in the form of a licence from the right holder. In rare circumstances, however, it can be extremely difficult to conclude an appropriate licence agreement.

Sections 46 and 48 of the Patents Act identify the rare situations that allow for the use of a patented invention without the permission of the right holder. Section 48 provides for the use of a patented invention for the services of the state in the public interest or in a national emergency on the authority of the Minister responsible for intellectual property. Thus, if for example, there was a sudden epidemic and a suitable patented drug could be more effectively supplied through manufacture by an existing facility here in Trinidad and Tobago, the Minister could so authorize the production of the drug.

Section 48(7)(a) indicates the conditions that must exist to the Minister's satisfaction before he grants his or her authorization. In effect, it ensures that the right holder has reasonable opportunity to provide a licence on reasonable

commercial terms and conditions before the Minister exercises his power in that respect.

By section 46, if the right conditions have been fulfilled, someone may apply to the court and the court may grant permission for the use of the patented invention. This grant of permission without the knowledge or agreement of the right holder is called a compulsory licence. To continue the example used earlier, if there is no national emergency, but a pharmaceutical patented in Trinidad and Tobago could satisfy a particular market in Trinidad and Tobago, and if in this situation the right holder is not supplying that drug or not supplying it on reasonable terms, then a local company might feel justified in applying to the court for a compulsory licence to supply the drug in Trinidad and Tobago. Experience in other countries has shown that the possibility of compulsory licensing also provides great encouragement to right holders to reach reasonable licensing arrangements with those who request them.

In allowing the grant of a compulsory licence, however, care is again taken that the right holder is not unfairly disadvantaged. Section 46 of the Patents Act, therefore, places several limitations on the beneficiary of the compulsory licence. Equally, it is considered only just for the beneficiary to be required to pay reasonable commercial remuneration to the right holder for the use of his invention.

Clause 3 of this Bill, therefore, amends section 46(5) of the Patents Act to take into account, with regard to the remuneration to be paid to the right holder, the economic value of the licence. The need to consider the economic value of the licence in determining the remuneration to the right holder is, in fact, already expressed, both in sections 47 and 48 of the Act. So, this first amendment to the Patents Act, proposed in clause 3 of the Bill, clarifies what might otherwise result in confusion between sections 46 and 47 with respect to compulsory licensing.

Similarly, the amendment proposed through the replacement of section 46(6) of the Patents Act, adjusts the section to conform with section 48(7)(a) by allowing the right holder reasonable time to come to reasonable commercial terms for the use of the patented information.

1.45 p.m.

Mr. President, the final amendment to the Patents Act proposed by clause 3 of the Bill concerns the grant of a compulsory licence in the field of semi-conductor technology. That technology has to do with integrated circuits, computer chips *et cetera*. It is proposed to amend section 46(7) to allow compulsory licensing for

the purpose of public non-commercial use and to remedy anti-competitive acts by the right holder. Public non-commercial use might extend to early hurricane warning systems, for example, certainly a right that should be reserved.

As for anti-competitive acts, Mr. President, like bonding technologies for sale, a compulsory licence would surely be an appropriate component of the remedy.

If I may say, Mr. President, the rationale of the patented legislation and these provisions and the reforms which are happening over the world is an important rationale which is that if one is the right holder, one has patent, one should not be able to use that patent as a monopoly, one should be able to make it available, on reasonable terms and conditions. Therefore they have evolved and they have put in place machinery in which the court can intervene if one is not making that invention available to the public or for international benefit.

Mr. President, clause 4 of the Bill: “The Protection Against Unfair Competition Act”, proposes an amendment to that Act. First of all it is proposed to change the term used in section 9 of the Act from “trade secret” to “secret information”. A trade secret can be defined as any business or technical information for which reasonable steps have been taken to keep secrets and which would have value to competitors were it known by them. The common concept of a trade secret would be the formula for Angostura Bitters, or Coca Cola, but includes customer, supplier and prices, for example.

Secret information is any information that is kept secret, and because it includes information that may not have value to a competitor, is therefore a broader term than trade secret. Secret information might include, for example, employee personal records.

Mr. President, the intention of the Act is to allow protection against acts of unfair competition. Although employee address may not have any trade value to a company, it could still be used unfairly by a competitor to send false information. In such circumstances, it is only right that the holders of this type of information should have the right to take action against someone who acquires information without their consent.

Clause 4 also amends section 4(2) of the Act to allow any natural or legal person damage by an act of unfair competition, to take action under the Act. There are two examples of where this should be allowed. If a well-known trademark, like Angostura, is used by someone other than its true owner, for products that are entirely different to the ones on which the mark is used by the owner of the mark, such as using the name Angostura as canned soup, the

manufacturer of the canned soup is not normally in competition with the owner of the mark. The use of the mark might gain the manufacturer an unfair advantage over his competitors and Angostura's trade mark rights would be diluted. In such circumstances, the owner of the Angostura mark should also have the right to take action against the manufacturer for unfairly weakening the competitive position of Angostura.

The second example, Mr. President, is where a non-governmental organization represents a group of people who are likely to be damaged by an act of unfair competition. This Act—the way it was drafted—seems to exclude that, and the unfair competition might arise, for example, in respect of matters affecting the environment. Therefore, what this amendment would do is, it would give to non-governmental organizations the ability to take action on behalf of the group.

Clause 4 also produces a new subsection (5) in section 9 of the Act which clarifies the prohibition against the unfair commercial use of secret tests or other data, and provides for a minimum period during which protection may be obtained. Should the secret or test data find its way into the public domain without the authorization of the owner, the new clause seeks to prevent a third party—in no way involved in the unauthorized release of the data—from taking advantage of the situation and using the data to accelerate its own application for approval.

Mr. President, I know that this Bill is very technical, that is why I took the liberty of trying to explain it as best I could. I want to make one confession to hon. Members in the Senate, that I am no expert in intellectual property law, but I found some time to get some explanations of this Bill and I am trying my very best to explain some very technical matters which I have tried to digest. That is why I have used, for myself, some examples so that I could try to understand it. I decided that I would give the examples to Senators so that they would be able to try to follow what is happening.

Clause 5 of the Bill is the next amendment. It makes two, sort of, cosmetic changes. The first error is clearly typographical. The section should read “or his licensee” instead of “of his licensee”. The second alteration substitutes the word “authorization” where the words “non-voluntary licence” have been used. What has happened here is that the word “authorization” has been used in the Bill. Authorization is supposed to be the equivalent, in concept, to non-voluntary licence.

I will tell you what really happened here. The draftsman was using a model and the model had the words “non-voluntary licence” and what happened is some of the clauses had “non-voluntary licence” and some of the clauses had “authorization or authorized”. What is being done here is purely to make it uniform.

In clause 6: The Protection of New Plant Varieties Act, there are two cross-referencing errors; section 3(e) and section 19(4).

Clause 7 corrects cross-referencing. It also provides, as originally intended, the neighbouring rights with a limitation corresponding to that contained in section 9(2)(e) of the Act with respect to copyright.

If one is worried to know what is a neighbouring right, it has nothing to do with one’s neighbour’s right or rights to trespass. In intellectual property law, it does not mean that. What it means, Mr. President, is that copyright is given to the original creator, but the neighbouring right is given to somebody who produces a work, using the original. For example, if there is a record producer who has taken a lot of songs, although the copyright is in an individual who has created those songs, he will put the songs together and, therefore, they refer to that person, with respect to the collection, as having a neighbouring right. So there is the copyright; the original creator, and if the person puts all the songs together, he will have a neighbouring right in intellectual property law.

Mr. President, the amendments try to give effect to the intention of the Parliament when it passed these pieces of legislation, some of these matters were overlooked. Having said that and having tried to explain these measures, I wish to give hon. Members the assurance that if they raise any matter I would be able to respond, because I have, in the Parliament today, a representative of the Intellectual Property Office.

May I take this opportunity of saying that, under these pieces of legislation, an intellectual property office in the ministry was created under the previous minister, who is now the Minister of Education and that office has gained international recognition. Trinidad and Tobago has become very famous for the reforms which occurred in intellectual property law in Trinidad and Tobago and for the administrative actions which were taken in the ministry in respect of intellectual property rights protection.

We are very fortunate to have in that office, persons who are recognized internationally: the controller, Mrs. Zeena Kadir. Mrs. Zeena Kadir is someone who is well recognized. We also have the deputy controller, Ms. Joseph who is

Intellectual Property (Miscellaneous Amdts.) Bill
[HON. R. L. MAHARAJ]

Tuesday, April 11, 2000

also well recognized and Mr. Spence who is also at the Intellectual Property Office. I do not know if he is any—*[Interruption]*

Sen. Mark: That is his son.

Hon. R. L. Maharaj: He is the son of the distinguished Sen. Prof. Spence. That gentleman is sitting in the Speaker's gallery. They are all well recognized, internationally, for their work.

Mr. President, may I say of my contribution today—I could not have made it without his assistance.

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

1.55 p.m.

Question proposed.

Sen. Cynthia Alfred: Mr. President, one would recognize that I, myself, am not a legal person, by any means, but I shall, like the hon. Attorney General, tread carefully and slowly so that what I have to say, I hope, will make sense to whoever is listening.

When these Bills were discussed at some other time, the Minister herself, that is the former Minister of Legal Affairs, admitted that they were of a complex and complicated nature. When I look at the number of submissions by the various speakers, one can only give credit to all those persons who spoke on the various complexities of the various Bills; so a lot of discussion was, indeed, generated.

This Bill is called the Intellectual Property (Miscellaneous Amendments) Bill, 2000. One recognizes that the protection of intellectual property is very important. One only has to go back a bit, to about a week ago, when in the United States of America Bill Gates, the computer giant, lost a case that was brought against his company. The committee that was put in place to protect intellectual property was of the impression that he had seized unfair advantage and that he was making a lot of money out of these unfair advantages. Of course, Bill Gates and some of his executive said that that was not so and we know that this case is ongoing.

As a matter of fact, I think it started way back in 1994 and whereas the committee is saying that Bill Gates went beyond what he should do as somebody who has come up with the software, Bill Gates and his representatives are saying that competition was open and, therefore, they took advantage of whatever there was. So it is an ongoing saga and I think it will be very interesting to see what the outcome will be, because I think they have already put in for a review of this

situation and he feels that his company will win. I know that he has reached the stage where he has said that this has gone on so long that they have stopped worrying about the outcome, because he maintains that what he did was fair and above board. This only emphasizes the importance of the protection of intellectual property.

Mr. President, we will recall very recently, right here in Trinidad and Tobago, where one particular artiste descended on some pirates in respect of her songs that were being sold and she decided to make a move to protect her property. One cannot be in disagreement with persons who, having come up with certain ideas, are very unhappy when other persons just sit and wait and when the ideas have come to completion and fruition, take their property and decide to sell them at exorbitant costs.

I am doing a survey of some lands that I have in Tobago and I was asked to get a copy of a topographical survey from the surveyors who intend to do the surveying. The surveyor told me, categorically, that he could not do that because if he did, it would be the copy of something that he did for a client and that, of course, is confidential property. So, I did not disagree because I recognized that this falls under the same category as protection of intellectual property. If that surveyor were to give me a copy of what he did for someone else, it stands to reason that if that got out, that person could sue the surveyor for releasing his private property to someone else.

In respect of the amendments, I am glad that someone took the opportunity to look at the original Bills, because I notice that in clause 2 of the Bill under discussion, that is section 19 of the Geographical Indications Act 1996, when we look at the amendments, we recognize that the words "Trinidad and Tobago" were left out entirely, and that is very interesting. Because the Bills were so large and complex, one is really gratified that these amendments have been put in place. We have no problems with the amendments, and what is good is that someone did, indeed, go through and recognize that these amendments needed to be made.

Finally, I noticed that the Minister who piloted the Bill in 1996 said that an intellectual property office was going to be set up and the Minister of Information was going to have that responsibility. I have here a document. From the Ministry of Legal Affairs, Intellectual Property Office: it is a 1997 Annual Report. From this document I certainly got the impression that the office was set up. But what interests me most is the table of activities for 1998 that is at Appendix 7. There are specific goals: activities, completion and estimated budget.

I note here areas like heightened public awareness of copyright issues; co-host a week of public awareness activities, and that should have been in January 1998; ensure that Trinidad and Tobago's needs are adequately addressed in the WIPO 1999 budget; and participation in relevant committees of experts and so forth. All I want to ask is: to what extent have these goals been achieved? To what extent have the objectives of these particular areas been achieved? I expect that when, maybe, the hon. Attorney General is replying he might be able to say to what extent they have, indeed, achieved these objectives. If, indeed, they were put into operation, then Trinidad and Tobago should certainly be in a very good position. So we would need to know whether, in fact, any of these activities were put in place.

Before I sit, Mr. President, while the hon. Attorney General was speaking, just before he called the name "Angostura Bitters", I made a note because I wondered myself. It is public knowledge that the secret of Angostura Bitters has been closely guarded for years. I made a note to ask the question, but I think the hon. Attorney General was able to answer it. I made a note to find out what happens in a case like that, where that secret has been closely guarded after so many years. But I think the question has been adequately answered.

To conclude, we on this side are in agreement with the amendments, and we hope that with these amendments the objectives will have been achieved.

I thank you.

Sen. Muhummad Shabazz: Mr. President, I rise to speak on this Bill because, again, it has been established by the hon. Minister that copyright is, indeed, a very difficult thing to talk about, not only in Trinidad and Tobago, but probably worldwide. As a matter of fact, when we look around there are very few people from whom you could get some type of advice about what copyright is all about and what it should be.

What I stand here to say though, is that in passing this Bill, I really want to make an appeal to the Attorney General, to let him know that since this Government has been in power, moreso, copyright has become an issue which you are going to deal with, and you keep talking about what you are going to do about copyrighting in this country, and really, to date, you seem not to be advancing. I do not know if it is because of the complications or the lack of machinery that is needed to have copyright effectively taken care of in this country.

We have problems, as far as we know, with the police. The police are telling us now that if a man has a CD with 20 tunes and he is copyrighting or taping it over, they have to charge for each tune individually. You are hearing the police talking about going to the courts. In the courts, the magistrate or the people who are supposed to take up the case are not even willing to do that.

As a matter of fact, the scene that we are seeing presently is that people: musicians, calypsonians and people involved in copyrighting having to take their own action, because the section of the police service that is supposed to be in the Bill we are supposed to have, seems not to have been formed to deal effectively with copyright. I want to let the Minister know that that, indeed, is a very serious situation and, in passing the Bill that is mainly where our concern lies.

We just had the big event that is carnival. The type of problems we have with copyrighting—I do not know, but maybe we have to come together as a body to ensure that it happens, but we seem to be just hearing a certain kind of talk that will probably make the thing look good, but you are not getting the effective action that is necessary to solve the copyrighting position in Trinidad and Tobago.

2.10 p.m.

Let me just go back to the carnival. There are numerous amounts of illegal things that happen in carnival as far as copyrighting is concerned and there seems to be no control whatsoever. Cameras come into the country, people are videotaping carnival shows. I am certain you must have heard at some show, the announcer saying whoever is videotaping would lose his camera. What kind of licence and fees are to be paid? There was a situation here where *bona fide* persons who are involved in promoting the Trinidad carnival could not get a copyright or a licence to do photography in Trinidad and Tobago, and other persons were getting it just like that. These are the situations with which we have to deal.

Mr. President, recently there was an article in the newspapers of some rap singer who came to Trinidad and asked the NCBA, or whoever it is, who charged a fee of \$6000. They make a tape and when they go away the tape does nothing for Trinidad and Tobago. People on the tape are now saying they are supposed to be paid money. The question of what you are supposed to be paid, and how you are supposed to be paid are things we need to address and we need to address them. I will like to see the Bill that is passed become more people-friendly in the sense that it will do more for the people who are directly involved in copyrighting and are living as a result of copyright. That is what we would like to see. We would

like to see the calypsonians, the musicians, all these people getting some sort of rights for their music and that it is being done in an effective way.

We cannot object to a Bill being passed, but we want to object to the implementation, and the way in which it is done. We want to talk about what is happening on the radio stations as far as copyrighting is concerned. When the Minister passed the Bill, we heard at another place that we will look towards asking our radio stations to play a certain amount of music so that the local artistes will be able to live, and less money would go to foreign artistes than the local artistes. We are not hearing anything about that. As a matter of fact, people are now believing that their tunes are being pirated from the radio stations because you are seeing it in the newspapers, and not only that, you are hearing that it seems to be pirated from even radio stations owned and controlled by the Government.

We had a question that came up just as this Government came into office where it was alleged that in a foreign Embassy one of the persons who was responsible there was using the local music and the local tapes, I am not accusing them, but these are the things that we need to look at if we are really talking copyright in a serious way. We cannot be just talking patent, and do this, all those things are important but where it is hitting us the most, we seem not to be doing anything about that. The police cannot do anything, the courts are not willing to do anything, it is frustrating and people are getting more and more stress as we go along talking copyright. We are passing Bills and nothing seems to be happening. We have been talking all the time about this Copyright Bill. It is good to hear the Attorney General admitting that he does not know much about it, so he might not be able to tell us what is to be done. I think we need to look at that in a very serious way.

What is happening all over the world with the steelband music? You are hearing about people now producing the pan and claiming it as theirs. We too allow people to come and do research and go out with much information. Sometimes they come to do work for the very Government that is in office. We are asking that this be looked at and we will not only be given lip-service, but they will be dealt with in a very serious way to ensure that the people who really need to live off this copyright and patenting situation, we could find ways and means to ensure that we could set up a system so that they will not suffer the kind of problems they are suffering at this time.

Thank you.

The Attorney General and Minister of Legal Affairs (Hon. Ramesh Lawrence Maharaj): Mr. President, in matters like these I do not like it to be party political, but when a contribution like that is made by the hon. Senator, one sees the boldfacedness in some of these comments.

Mr. President, he having made these statements, it is my duty to put on record the inefficiency of the last administration in dealing with these matters. When one looks at the reforms which have taken place, one sees that the last administration did not do anything to reform the laws. You could not do anything about intellectual property in Trinidad and Tobago to effectively protect intellectual property rights if the government did not put a legal framework in place first. One talks about administration after a legal framework is in place.

Mr. President, for intellectual property rights, you had the Paris Convention of 1967; the Berne Convention of 1972; the Rome Convention of 1961; the Treaty on Intellectual Property in respect of integrated circuits in 1989; the Central Agreement on Tariff and Trade in 1994 and the WTO Disputes Settlement Understanding of 1994; you then had the World Intellectual Property Organization and World Trade Organization in 1995 and in trade-related aspects of intellectual property rights, the TRIPS Agreement, in 1994. All these matters occurred before the last administration took office in the 1960s and before this administration took office. It occurred during the last administration's tenure in office and it was this administration that decided that the time had come to put the laws in place to protect intellectual property rights.

What was happening, was that property, just like a creator, he or she created something, whether it was a song, a poem or whatever, and the property rights, the ability and the right that the person had in that creation was being nakedly violated and the last administration did nothing because the existing laws could not have dealt with the situation.

As a matter of fact, there was a bilateral agreement entered into between the Government and the United States of America for the last administration to take steps to introduce legislation and to create intellectual property office and laws and so forth, and it did nothing about it. When this administration took office, and as he said, the previous Minister responsible for intellectual property—now the hon. Minister of Education—piloted these Bills and she came to the Parliament and said that the Government was taking this action recognizing that it was a monumental task, it was not going to be cast in stone and we may have to return to Parliament for review from time to time.

She also admitted that it was not going to be easy to implement because one has to set up the administrative mechanism in respect to these new pieces of legislation to implement them. The Senator's colleague, Sen. Alfred—it seems as though they are not on speaking terms—read from an intellectual property report of Trinidad and Tobago and showed the objectives of the intellectual property office and it showed what developments had occurred. For him to say that nothing is being done about copyright, is simply not true, and for him to give the impression that this Government is not doing anything and not concerned, is not true. Therefore, it is my duty to tell him, and this honourable Senate, that it is this administration which has put this legal framework in place and also the administrative aspect.

I will answer some of the concerns he has raised. As a matter of fact, it is recognized that there are some problems in administration and implementation and all governments in the world with this kind of legislation, and even without it, are having problems, but the important thing is that this Government is taking incremental action to deal with the problem.

Mr. President, if he was paying attention to what is happening in Trinidad and Tobago, he would know that there is a Copyright Organization of Trinidad and Tobago, he would know that some of the successes it has had have been published. Even some of the calypsonians who are attached to it have stated the improvement in the enjoyment and protection of copyright. So to come here and not recognize the inroad which has been made—

Sen. Shabazz: Mr. President, I want to tell the Attorney General that as I have explained, I saw the difficulties. I was one of the persons on the original committee that fought for the Copyright Organization of Trinidad and Tobago to be an organization. I just want him to know that. I really would like to see the thing happen properly. If my government were in office, I would appeal in the same way for them to deal with the situation now to make it proper. I find you are seeing some shadows that are not really there.

Hon. R. L. Maharaj: The hon. Senator is the kind of person who likes to criticize and when the answers come he cannot take them, but yet he says if his government was in office, he would have done the same thing. I ask him: where was his voice in 1991, 1992, 1993 and 1994? His voice was not heard, and he is so interested in it and has seen so many changes that have occurred over the last three or four years, but he would not admit that something that was dear to his heart, something is happening about it. Therefore, I ask him when he gets up in the morning and looks at himself in the mirror, he must come and talk the truth

and that is: that this Government has made radical changes and improvement with respect to copyright enforcement.

I concede that there is much to be done and it also involves a more extensive public awareness programme so that people would understand what intellectual property rights mean and how they can enforce their rights. There can be no doubt about that. Also there is more to be done with respect to enforcement, because at the present time, you do not have enforcement in which many of the laws can be contravened and there are not totally effective enforcement mechanisms. These two problems are being experienced by the United States of America, the United Kingdom and other countries. In an effort to try to solve some of these problems upon assuming the portfolio, we tried to do additional matters which would assist in this respect and the ministry had two anti-piracy summits in Trinidad and Tobago over the last six months, and at those meetings, we had the stakeholders coming up with a plan and I informed the Senate of some of the things that had been done over the last six to nine months in order to address and redress some of those problems.

Mr. President, a Copyright Prosecution Support Unit has been identified in the Department of Public Prosecutions to liaise with the police service, in that in the police service there is an *ad hoc* unit to advise and assist the police in the preparation of materials required for the successful prosecution of offenders under intellectual property laws and the Copyright Act. The Copyright Act itself has been examined at these two summits and it has been found that some of the sections need to be revised in order for prosecutions to be more effective and to streamline the process for prosecution, because the point the Senator has raised, is a point which is of concern and that is: the prosecution is very cumbersome. This law existed under the old copyright law, so it is something which we have looked at and the Chief Parliamentary Counsel Department and the office of the Director of Public Prosecutions have been asked to come up with amendments to deal with those problems.

2.25 p.m.

Mr. President, additional training has also been arranged for the police and the customs services and the establishment of a specialized intellectual property enforcement unit in the Intellectual Property Office itself, to assist the police in its work for the enforcement of copyright laws.

A few months ago, an anti-piracy campaign had been successfully launched by the music industry itself on the Brian Lara Promenade. It was televised; it was

on the radio; and the Crime Suppression Hotline has been added to copyright infringement, to the list of cause that they can refer to the appropriate people for investigation and action. So there is a hotline and the music industry itself has launched this campaign, and there is going to be a further implementation of it. This campaign will be supported by a public legal education programme that is expected to visit community by community and to be able to even go into the schools to inform people of the nature of intellectual property and copyright laws. There is a co-ordinating unit which has been set up to monitor these activities.

There have also been preliminary discussions on a mutual legal assistance agreement with the United States of America, for the enforcement of intellectual property rights in respect of property rights which are being adversely affected in the United States of America, and there have been discussions that it also affects people in Trinidad and Tobago. Just as there is a mutual legal assistance in criminal matters we are trying to have a mutual legal assistance in copyright and intellectual property matters.

Internationally, the Government has been considering accession to two new treaties in the areas of copyright. There have been improvements, but I want to be quite frank—as it is my duty to be—not that I said I do not know about this field; I know about this field, but nobody would be able—in the space of a few years—to master this field. This is a very technical topic and it would take people years in order to master this field.

Mr. President, Intellectual Property Rights are very, very important. For example, what has happened really is that it may be that one day somebody would contend that the right to property, which is enshrined in the Constitution as a Constitutional right, includes intellectual property rights. Therefore, one has to understand that just as how a man has a motor car and it is his property; a man has a piece of land and it is his property; a woman has a house and it is her property; if one creates a song; if one writes a poem, that intellectual used in the preparation of producing that, has been recognized as intellectual property, and property must be protected. If property is being stolen, or if property is being disposed of unlawfully, it is the duty of the state to try to protect it.

Mr. President, I am grateful to the Opposition for its support. I want to tell Sen. Alfred that I have checked with Mr. Malcolm Spence, who is the Chief Technical Officer in the Intellectual Property Office, and he has assured me that most of the objectives in the document that Sen. Alfred has read from, have been achieved, and, in particular, the automation process is almost complete. The Intellectual Property Office, as you know, is housed at the Huggins Building.

There is an expert staff and the automation process is going on, so that most of the objectives have been achieved.

Mr. President, I beg to move.

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

Senate in committee.

Clauses 1 to 7 ordered to stand part of the Bill.

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

Senate resumed.

Bill reported, without amendment, read the third time and passed.

2.35 p.m.

LAW REFORM (MISCELLANEOUS AMENDMENTS) 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 various Acts be now read a second time.

Mr. President, this Bill is a very short Bill but it is, again, a little technical because it involves law revision and the Law Commission and it would be important for me to explain exactly what we are doing here. This Bill is cited as the Law Reform (Miscellaneous Amendments) Bill, 2000. What it seeks to do first is to amend the Law Revision Act of Trinidad and Tobago to provide for the establishment of a Law Revision Commission as a separate entity from the Law Commission because the Law Revision Commission should deal exclusively with the revision and updating of laws, as opposed to the Law Commission which deals with the reform of the laws. So, therefore, there are two things, law reform and law revision. They are two different matters in law.

Secondly, the Bill proposes to amend the Law Commission Act to enable the Law Commission to consult with persons other than lawyers. Not only can the Law Commission consult, it would also have that consultation institutionalized to assist it in its duties to reform the laws. The Law Commission would even be able

to appoint committees consisting of non-lawyers to assist it in providing advice and information in respect of law reform.

In respect of the second amendment, there have been complaints over the years that, in the formulation of laws, and in its duties, the Law Commission should be given the power to consult. It should not merely be normal consultation, there should also be an institution from which lay people would assist it in the formulation of laws.

Mr. President, at the present time the Law Revision Commission forms part of the Law Commission. So you have the Law Commission consisting of law reform duties and also law revision duties and, in that regard, the management and administration of law revision falls under the chairman of the Law Commission. The holder of that office is also responsible for the administration in respect of law reform and also law revision. When this Government assumed office, it was recognized that, apart from the laws having to be reformed—and as Members would know there have been aggressive programmes in respect of law reform—there also had to be law revision. As I said, they are two independent and distinct functions but they are complementary of each other in some way.

Mr. President, essentially, law reform is concerned with reforming and modernizing the laws to accommodate changes which take place within the society. So that if there is a law, let us say, dealing with larceny and the society has changed and one has to look at that law, one will want to change the substantive law. So law reform is concerned with making changes in the law to bring it into conformity with the reality of the present circumstances.

On the other hand, Mr. President, law revision is concerned with updating the existing laws by incorporating amendments that are made from time to time in the law. So that the process will involve the inclusion of the amendments that had been made to existing laws and, therefore, if you have to read the laws you would not have to go from this amendment to that amendment to that amendment. For example, with the amendments to these Acts that were just passed, such as the Intellectual Property laws, what we just did is law reform. We reformed the law.

However, if these Acts remain like that, anybody looking at the law would have to look at all the amendments, then take them and put them together and try to read them within the sections. So what has happened is, it has become very cumbersome to be able to read the law without effective law revision. With all these amendments from time to time, unless they are put together there would be no continuity and it would not be easily accessible to the lawyers, the judges and to the public.

You would have seen some time ago these black books containing laws of Trinidad and Tobago. So from time to time the laws would be revised in order to put them together. Those black books containing the laws of Trinidad and Tobago came about as a result of revision because you had all the Acts which applied—let us say the Offences Against the Person Act—you had all the amendments taken and they were put into the same law so it reads continuously.

The Law Revision Act, Mr. President, was passed in 1979. That Act established a Law Revision Commission comprising of two or more members to undertake the revision of laws of Trinidad and Tobago and to prepare, publish and maintain a revised edition of the written laws of Trinidad and Tobago. This Act also mandated the Law Revision Commission to revise the laws as soon as practicable after the first revision date to the intent that the revised laws shall contain all the written laws in operation in Trinidad and Tobago or at any subsequent revision date.

Mr. President, in consequence of this Act, the laws of Trinidad and Tobago were revised and were published in 1980, the revision date being 1979. The laws so revised appeared in 18 volumes as the 1980 revised edition of the laws of Trinidad and Tobago. So that they were revised in 1980 and they appeared in 1980 as the revised edition of the laws. Thereafter, the maintenance, that is the updating of the revised edition of the laws, was effected by the publication of two supplements, namely, the first and second supplements to the laws. The two supplements were prepared by the staff of the Law Commission.

So here we had law revision being done by the staff of the Law Commission, which acted as the alter ego of the Law Revision Commission, that is, the staff of the Law Commission prepared the supplements and the Law Revision Commission merely made the Order bringing these supplements into force. So there was a Law Revision Commission but there was no staff, there was no infrastructure set up for the Law Revision Commission to work and we had the Law Commission, which is concerned with law reform, trying to do the work of law revision.

Mr. President, since the publication of the second supplement in 1985, nearly 15 years ago, the laws of Trinidad and Tobago have not been updated in accordance with the Law Revision Act. That is to say, although there were laws containing several amendments passed since 1985, they have not been put in a continuous form so that if anyone wanted to read any Act they could just read it and say, “This is what the law as amended reads”. They have to look from year to year to find out whether there were any amendments. What has happened, for

whatever reason, is that the necessary infrastructure was not put in place to give the Law Revision Commission an appropriate staff or the appropriate expertise to deal with its statutory duties.

So, Mr. President, over the past 15 years with the passing of new Acts, and they having to be revised, it became quite clear to us that something had to be done in order to make the Law Revision Commission more effective. What this Bill really does is give statutory effect to that change, that is to say, to have the Law Revision Commission set up with the chairman and other legal officers and, as the Bill says, to prepare a report which will therefore mean there will be a separate staff.

I should mention, however, that, as a result of not being able to do this over the years, we could not create an electronic database to have the laws available on CD-ROM, because the laws were not revised. The intention of the Government is to have the laws effectively revised from time to time and to have them also put on an electronic database in order to make a CD-ROM format available so that we will have the machinery for updating. We cannot put them on an electronic database now because they are not together.

Therefore, with the resources we have at the Ministry, we have started to put the laws together in the hope that we will be able to get them revised, perhaps within the next year or year and a half, and then we will be able to put them on an electronic database thereby making them also available on CD-ROM, *et cetera*. So that, instead of walking around with these big books the time will probably come when Members of Parliament will have computers on their desks, they will have everything at their fingertips and see the information on the screen.

The other matter, Mr. President, is that the amendment to the Law Commission Act, if one looks at section 4, one sees:

“In performing any of its functions...the Commission may from time to time—

- (a) consult any person who has specialised knowledge in any branch of the law or technical expertise in any particular field;
- (b) appoint committees to provide advice and information and to consider and report on any matter referred to them.

- (2) In appointing persons as members of the committee a commission...the Commission shall not restrict consideration to members of the legal profession.”

They will then be paid remuneration, *et cetera*. This may seem a simple amendment but I think it is of great importance.

Mr. President, somehow or the other lawyers seem to think that law reform is really a matter for them and, in some cases, politicians sometimes believe that law reform matters are matters over which they have total control and of which they should have total control. The fact is that in any society there has been this argument that there should be no law and that there are too many laws. However, in any society that is based on the rule of law, if one wants to effect change and if one wants to improve and there is need for legislative change, it cannot be changed by presidential decree or by ministerial edict, it has to be changed by law.

So, therefore, any society that is committed to the rule of law must have the law to change whatever is needed to be changed or to better the circumstances. In order to get law you must have a policy, but if the policy is only devised by politicians and by lawyers, it may not be the policy that is in the public interest. That is why, in some of the legislation that has come forward, governments from time to time try, as best as they can, to involve the population in these particular laws, to get their views in order to try to see whether their views would favour change in the laws.

2.50 p.m.

Mr. President, the Law Commission is a statutory body charged with looking at the laws from time to time, and saying whether these laws should be changed or reformed, and as the Law Commission is presently constituted, it consists of only lawyers—a group of persons consisting of only lawyers. Now, they have done a very good job and they continue to do a good job, but it seems as though with the changes which are happening in the world, the Law Commission as an institution is a bit outdated. It should have to assist it in its function a counsel; a grouping of persons consisting—not necessarily of lawyers—of persons other than lawyers who would be able to advise it as to what matters should be included in reforms and in respect of matters which the Law Commission is thinking about or is doing, what recommendations it can make.

At the present time, the Law Commission tries to consult with the population, but it does not have the institutional infrastructure and machinery to do that. What

this Bill does in that respect, is to make it part of the legal framework of the Law Commission, and law reform in Trinidad and Tobago that non-lawyers would have a say in initiating change of laws and would have a say in the reform of laws. That is what this change does.

Sen. Mahabir-Wyatt: Mr. President, before the Attorney General sits down, I wonder if he could just spend a little more time enlightening us as to the difference between the functions of reforming and modernizing laws; and the functions of revising and updating the laws. My understanding from what the Attorney General said is that the existing Law Commission has the responsibility for reforming and modernizing the laws, but the function of updating and revising is not being done at the present time by the Law Commission and needs a separate body. I am not quite sure I understand what is the distinction.

Hon. R L. Maharaj: Law revision—when I said it consists of revising and updating the laws, that exercise means that—let us say that there was a Copyright Act passed, and that Act was passed in 1996, and in 1997, Parliament agreed to amendments to several sections of that Act. So there were amendments in 1997. In 1998, Parliament agreed again to certain amendments and there are more in 1999 and 2000. The Law Revision Commission exercise would involve the person going through each law and its amendments.

Mr. President, let us say, for example, clause 6 of—I am just using an example—the first Bill which became the Act says, that an action relating to a breach in Trinidad and Tobago was in one of the sections, and then in the next amendment, you amended that section to include former words. What the exercise would do is that the law revision person would be able to go through each clause, which has been amended and would be able to put in the words which were amended. So that when you are reading the clause 6, in the year 2000, you would not have to get all the amendments to read it—*[Interruption]*—so all of it would be the new clause 6 in the revised laws.

So that when the black book was done—the Laws of Trinidad and Tobago; the book that one used that is behind there—when they had to do that exercise—as I said, take the Offences Against the Person Act, that was passed in 1861, but over the years you would have had several amendments. So that if somebody had to look at the Offences Against the Person Act, they had to get the Offences Against the Person Act in the brown book and all these amendments, and then they had to go and say—well what was put in *et cetera*. So you could just imagine the person in the ministry having to prepare something having to do that; the judge and the magistrate has to do that; the lawyer has to do that and everybody

who has to use the laws has to do that. So that 1980 exercise was to revise and update the laws to make it read as a continuous clause or section.

Sen. Mahabir-Wyatt: Is that the function of the Law Revision Commission?

Hon. R. L. Maharaj: That is the function of the Law Revision Commission. So there was a Law Revision Commission, but the Law Revision Commission was put under the Law Commission administratively. It did not have a staff or anybody working for it and it used the Law Commission staff. So, therefore, law revision took a back seat and there was nobody—well there was a person seeing about it at the Law Commission, but that person also had Law Commission duties. If I may say so, that has accounted for the fact that we have not effectively updated our laws. So if you want to look, for example, after 1985, for an Act and there are several amendments, one has to look at this Act and find the amendments and spend the time to do that. So it creates a lot of problems, delays, frustrations and the law is not accessible.

Now, the name Law Commission is probably a bit misleading, but it is Law Commission. The duty of the Law Commission under the Act is to see only about law reform. Under the Act it could do that on its own motion to consider what laws in Trinidad and Tobago should be reformed. Then it can send that to the appropriate Minister and the Minister would have a duty to take it to the Cabinet and to be able for the Cabinet to decide. So it can do it on its own motion.

Mr. President, for example, if the Law Commission considers that the Praedial Larceny Law in Trinidad and Tobago has to be overhauled, the Law Commission can decide that it will do a study of that law. It can consult the population; it can do a study of it and then it can prepare a paper and its recommendation and send it to the Attorney General as the Minister responsible. The Attorney General would have to study that and his duty would be to take it to Cabinet for them to decide whether these laws should be changed.

So the Law Commission sees about reforming the laws; modernizing the laws. Apart from acting on its motion, under the Law Commission Act, the Attorney General or Cabinet can direct the Law Commission to do a particular reform; to study a particular reform; and to come back to it. So on one hand, there is law revision which takes existing laws which have been passed, putting them together to read continuously and to make them easily accessible.

Mr. President, the Law Commission, which sees about law reform takes the existing law, sees what is wrong with it and recommends reform and Parliament is

involved in reforming that law. In law revision, Parliament is not involved in the process, because it is taking existing law and trying to put it together.

Mr. President, I hope that I have done a reasonably good job and I am glad the Hon. Sen.—sorry.

Sen. Alfred: Mr. President, I take it that the Law Commission falls under the Attorney General's Office.

Hon. R. L. Maharaj: Yes.

Sen. Alfred: Thank you.

Hon. R. L. Maharaj: Mr. President, yes. In answer to the Hon. Senator, the Law Commission falls under the Attorney General's Office and the Law Revision Commission which was being done, also falls under the Attorney General's Office. So you had two commissions, but in one case you had a sort of paper commission. You had it there but you did not have the structure to support it and, therefore, the Law Revision Commission was really trespassing—if I may use that expression—on the Law Commission.

Sen. Brig. Theodore: Encroaching.

Hon. R. L. Maharaj: Encroaching might be a better word. Thank you very much Minister of National Security. Everybody seems to becoming lawyer oriented in this Chamber—encroaching. So this would give the Law Revision Commission a sort of structure to have its specialized staff. For example, when this Bill is passed—I am saying when because I do not see any serious objection can be raised to it, but I hope I am anticipating correctly—you would see that the Law Revision Commission people would obviously get staff who are experienced in this field. It may seem to be a simple task, but law revisers are people who are specially trained because one has to make sure you there are no errors *et cetera*, so they are specially trained.

3.00 p.m.

As a matter of fact, when I became the Minister and I had a discussion with a company in the United Kingdom which was very experienced in this, the kind of money that it quoted in order to do law revision, I found it prohibitive for a small country to pay that kind of money.

What we could do in Trinidad and Tobago is, if we put in an appropriate unit, we can then develop the expertise. In Trinidad and Tobago, we can then have that expertise as law revisers who would be able to assist our Caricom countries in similar exercises.

I think it is my duty to mention to this honourable Chamber that there is a gentleman at the Law Commission who has been doing revision. That is, Mr. Bhagowtee—he is in the Chamber, Mr. Deo Bhagowtee. What has happened is, he has been in demand by international agencies because his expertise is recognized. There is an instance here of a gentleman who went into the Law Commission and was involved in law reform. He undertook to try to do some of the law revision and, because of his industry and because he likes it, he has been able to become, in some way, a specialist in it and his expertise has been recognized by international agencies, including the United Nations, which has even made a request for him to leave the Government in order to take up an appointment with them.

I am telling you that so that you would see it is such a specialized field. Therefore, if you want to have people in the employ of the state, you would have to be able to create these institutions in order for that expertise to be developed.

Mr. President, I beg to move,

Question proposed

Sen. Diana Mahabir-Wyatt: Mr. President, having cleared up that point which confused me a bit, there is one point I would like to make in relation to this Bill, that is, I would like to say how relieved I am, finally, to see coming into legislation, provisions which ensure that when laws change, there would be consultation with those who are affected by the laws, other than the Judiciary and the legal profession. It should be part of the democratic process that those who are governed, have some say in the rules and procedures by which they are governed, but it very rarely happens.

When this Government first came into power and, indeed, I must say in various political manifestos of the past, political parties have recognized the importance of the civic society in governance in terms of a country, but we have been very slow in this country to actually put this recognition of the importance of the civic society in governance into practice.

The amendment to the Law Commission Act by the addition of new clause 5 says that the Commission may:

“(a) consult any person who has specialized knowledge in any branch of the law or technical expertise in any particular field;”

can be set up to advise them—

(b) ...to provide advice and information...”

This is one of the first times when this machinery—to my knowledge, it

is the only time and the Attorney General can correct me if I am wrong—has been set up in Trinidad and Tobago.

I would just like to point out that, in fact, the procedure was followed in the past before the Domestic Violence Act was passed when we had a committee that lasted for two years, that sat and met, which was composed of legal practitioners, non-governmental organizations, social workers, medical social workers, community police officers and various other people who worked in the field. With the upcoming changes to the children legislation, the Bills to effect laws relating to children, the Children's Community Residence, Foster Homes Bill, *et cetera*, I think that it is very important that this procedure be followed as well, because I think that the people who are affected by legislation should have a voice in how the legislation has been framed.

Unfortunately, the old division between the civil service and civilian society, or lawyers and civilian society has lasted too long and, very often, lawyers have not the slightest idea what the realities of lay people's lives are. When you only have legal people on these committees and commissions, what happens is that legal people do not want to draft legislation in such a way that even normally educated citizens who are not lawyers can, at least, understand it and use it.

I think that would go a long way in correcting that problem and I congratulate the Attorney General for it, specifically this particular move in relation to recognizing the importance of civic society in governance of a country.

Thank you.

Sen. Cynthia Alfred: Mr. President, when I looked at the Bill, it appeared so simple, I was wondering if there was something hidden in it. That is why I asked the question about under whose aegis the Law Commission falls. Because with all this talk about interference of the Judiciary, I would hate to think that I would have given approval to something that might not have been as simple as it appeared.

The first thing is, it says, "An Act to amend various Acts", and I was wondering whether this was not too loose a term. I was wondering why it could not be more specific. In the same way we had, "An Act to amend the Geographical Indications Act" and so forth, whether we could not make it more specific. Because when I saw "An Act to amend various Acts", before I read it, I asked myself: What could this Bill be? So, I would think, perhaps, it would be a good idea to make this a little more specific. We do come on to the specifics when we turn the page over, but looking at it as it is here on the front page, I think, perhaps, that could be looked at.

Mr. President, I understand the differences between the Law Commission and the Law Revision Commission and I think it is a very good idea to separate the functions if, indeed, and I suspect it will, it makes for better management of the two systems. The question of bringing lay people into the Law Commission, bringing them in the sense whether it is to bring them in physically, or to solicit their input—whichever—I think that idea is a good one because, indeed, when laws are made for people, the people should have some say in the laws because in a democracy, it is government of the people, for the people and by the people, and I think the population would feel much happier if it were involved, in some measure, in the drafting of laws. After all, the laws concern them.

I ask the question: Was there any consultation with lawyers in respect of this piece of legislation, especially in view of the fact that the Law Commission is made up of lawyers alone? I was wondering, because of the separation whether, in fact, there was any consultation with lawyers to get their input?

Mr. President, the explanation given that the Law Revision Commission would, indeed, be seeing to revision of laws, revising the law, we do not have a problem with that. Indeed, both with the Law Commission and the Law Revision Commission, if the separation takes place, as I said before, if the separation makes for better management and for the laws to reach down to the people—all the laws really affect the people of the country—and once that is established, this procedure, we believe, should establish that the Law Commission would have its work to do in the sense of bringing in lay people and the Law Revision Commission would be able to concentrate on the areas that were mentioned by the Attorney General, that is, revising the laws, or having the laws revised and putting them together in a manner that is much more easily readable and accessible.

Mr. President, on that basis, we in the Opposition do not really have a problem with the amendment. Thank you.

Sen. Dr. Eastlyn Mc Kenzie: Mr. President, these legal matters sometimes confuse me. I would like to state my confusion and I know that the hon. Attorney General would have me very clear at the end.

My impression is, we have a Law Commission which was mandated to do one exercise specifically but has to do two jobs—one of reform, one of revision. One action is given a second place when compared to action in another area. Now, we are trying to set things right, to have probably under a Law Commission, a Law Revision Commission and a Law Reform Commission. I do not know whether I am right up to there.

Both commissions would have their administrative staff because I see where the chairman has to give an annual report on the reform side and, likewise, on the revision side. What I do not understand, what I am not clear about is: What happens to the present Law Commission? What happens to that staff? What happens to—

Mr. Maharaj: If I may assist the hon. Senator at the same time. The Law Commission staff remains with the Law Commission. The Law Commission consists of a chairman and other members. The chairman is the person who is the sort of, administrator, of the Law Commission. So, the Law Commission meets as a body, but it has a staff. That staff remains with the Law Commission.

With the Law Revision Commission, since it can have its staff, it will have to get additional staff. The expertise would be different to what is in Law Commission because in Law Commission, you need people who can research, you need lawyers who can be able to see—for example, if you are going to do reform in a particular area, they would be able to get the law from the different parts of the world, put it together, get the different legislation and there are researchers.

In law revision, it is people with a different kind of expertise, because you have to be able to look at the existing laws and have the skill to be able to put it together and not only put it together, you then have to have the annotations and the marginal notes so, therefore, you must have some idea of drafting and everything else, too. So that they are two different skills.

What happened, as you said, there were the same persons trying to do two different things. What happened is that at least one gentleman was able to do both—obviously he likes law revision—but it is two different kinds of expertise.

3.15 p.m.

Sen. Dr. E. Mc Kenzie: Therefore, then, Sir, would these two new sections be independent of the Law Commission that you have now, or would they have to report there, or is that agency going to co-ordinate the work, what will happen?

Mr. Maharaj: The Law Commission would be a separate entity, with its separate staff. For example, there is the Chief Solicitor's Office as a separate department. So the Law Commission would be a separate department with its head, and the Law Revision Commission would be a separate department with its head and its staff. Obviously, since both commissions deal with matters affecting the administration of justice—it deals with the reform and revisions of laws—they

would obviously co-ordinate with each other. They would obviously find ways in which they can work together, but they would be two separate departments operating to achieve a whole, having the permanent secretary as the person at the head.

Sen. Dr. E. Mc Kenzie: I think that final sentence is what has cleared the matter for me.

My second point, Mr. President, is to agree very much with Sen. Mahabir-Wyatt on the inclusion of non-legal minds in the revision and reforming of the laws, because we know that many times the laws really affect people, not in their legal lives as much as in their social and cultural lives. Without input from them, at times, we are not so sure that the laws we pass really impact upon the problem as these people see it. I think that the inclusion of these people into the committees that the commission can consult with, makes it sort of accessible. It also says to the people out there: “Even if nobody calls you on a committee, you can feel authorized—if I may use that word—to send in a recommendation or a suggestion or to impose yourself on these people and make them listen to you because you probably have the expertise or the people with the kind of experiences to help to frame the laws in a better way.” I want to commend the Attorney General on that.

Thank you, Mr. President.

Sen. Rev. Daniel Teelucksingh: Mr. President, just a few observations and concerns. First of all, I support this piece of legislation. I want to read clause 3(c):

“The Law Revision Commission shall submit an annual report of its activities to the Minister who shall cause the report to be laid in Parliament.”

I notice that this provision is repeated in clause 4(7). It has to be very important. In clauses 3(c) and 4(7) there is almost the same wording.

Mr. President, during the time I have been privileged to serve in this honourable place, I find that the relationship between the framers of the law and the Parliament that gives approval to be less than satisfactory. Only to lay a report in the Parliament? There has to be more than that. Those who frame and those who are called upon to approve; something is missing in between. I do not think that this is sufficient; only to have the laying of a report in the Parliament.

I think we need to examine, again, the role of the Parliament in the law-making process. Too often, Sir, parliamentarians complain about insufficient time to study Bills. Sometimes government would have a deadline to complete and to pass these Bills.

Most recently, Mr. President, you remember the Census Order 2000 that almost ended in a disaster. One of the reasons why there was a compromise on the Census Order 2000 Motion was because there was a deadline. We all complained that we had very little time to study that piece of legislation and accompanying documents.

Mr. President, there should, really be a closer collaboration between those who formulate laws and those who revise and update the laws and those of us who are called upon in the Parliament to accept or reject legislation; possibly originating from the Law Commission. How often, too, Mr. President, we parliamentarians complain of the awkwardness of dealing with piecemeal legislation.

I am glad that part of the objective of this amendment before us is to have the Law Revision Commission Department, possibly, look at laws for a period of time; maybe a year or so—all the laws that will be dealt with. That is very important.

Very often—I think we just dealt with one: the intellectual property laws that have been given to us in small doses. We have always complained about piecemeal legislation, it is really difficult to see some of these laws and major concerns in their totality.

I know that we have, from time to time, raised this question as to the role of the parliamentary select committees. I wonder—and I have seen the need for this—if laws in, possibly, the first or early stages of drafting are shared with the Parliament and there is some measure of debate and discussion, maybe at committee level, I believe that we are going to achieve much more in our debates. Instead of different committees; whether it is the Law Commission, now it would be the Law Revision Commission Department and so forth. Different committees everywhere do their thing in the formulation of these laws. When they come here, sometimes we see them for the first time and we have seven days to deal with very important laws, when people elsewhere spend a long time, maybe months and months, doing the drafting and the finishing touches on pieces of legislation, and we are expected to do the most important thing and that is approve or reject. I wonder if somewhere along the line, Sir, we could not have these laws in the early stages of drafting submitted to the Parliament for some kind of study at committee stage.

I will tell you something that I have discovered. Both the Opposition and the Government know this full well, that there are times when in a full-blown debate,

we almost shoot down some bit of legislation. There is a stand-off among the three Benches. It is only when these pieces of legislation are referred to Joint Select Committees and Select Committees that you have the necessary compromise. Changes are made. I will tell you something, Sir: you know, that saves a lot of time. You see these acrimonious feelings that come out in debating very important pieces of legislation, maybe if that is possibly vented in the smaller committees they will not get in at this level. One is almost guaranteed the passage of a piece of legislation if it is sifted through and filtered through the select committee. I have seen that and I know it is true and it is something that we have to look at again.

I want to support my colleagues who looked at very important provisions and the concern of the hon. Attorney General to involve the population, as he said, I am quoting him, and to make sure that we pay attention to public interests in the formulation of law. I agree with my colleagues, not enough is done for public education. When laws are introduced, updated, revised or amended not enough is done. We need greater involvement, Sir, of the public, when laws are made or updated.

Now and then I see—I wonder who sees it anyhow—the little piece in the media: “an invitation for public comment” on certain pieces of legislation proposed. I think we need to follow that up. The Government Information Unit can be an instrument to teach the public on proposed legislation or amendment of our laws.

3.25 p.m.

Mr. President, a very, very important clause in this Bill, in fact, is in the Explanatory Note, I am going to read it again:

“Essentially, the function of the Law Commission is to reform and modernize the law to accommodate the changes which take place within society.

I find this objective to be so significant, because more than ever today, we need to be true to this laudable objective of the Law Commission, to modernize the law, *vis-à-vis*, societal changes and the demands of the day. We need to modernize those laws; to behave, then, as a truly independent and responsible nation. A most appropriate example for this afternoon can be taken from the crisis in the health sector as voiced by the nurses, where there is a virtual abandonment of hospital services.

Mr. President, notwithstanding the deterioration of the health sector, as I see in a placard by one of the nurses, “for the past 20 years”, do we have laws in

Trinidad and Tobago to address in a civilized manner such a crisis in an essential service as public health? That is my problem: I am very worried about it. How have we developed really and what have been our achievements? The laws of 1937, an era of wildcat strikes and widespread labour crises—I do not think they are relevant for labour relations today. The question is, have we moved forward in our laws? Without compromising human rights, freedoms and privileges, we need more relevant laws to govern industrial relations.

I am using this as an example to show that this concern, the function of the commission, is so very important to modernize the law, to accommodate the changes which take place within our society. Is this a 1937 society? This is a question I would ask. We need relevant laws to govern industrial relations today, and I have a feeling that they must be different from the 1930s. I am greatly disturbed at the escalation, Sir, of dissatisfaction in labour and the weapon that is used in withholding labour, the strike method. What answer do we have when it comes to the laws of Trinidad and Tobago for a modern people? We ought to modernize the law. It is something we need all the time. I am worried; especially concerning those who withhold labour and use that as a weapon in which the wider public suffers and where there is economic and societal destabilization. If there is a season of industrial unrest, then we need more intelligent means of dispute resolution.

I want to add something about these laws: make our laws modern, make our laws relevant and appropriate for our own time. Mr. President, and hon. Attorney General, do we have laws in Trinidad and Tobago pertinent to the use of the nation's economic resources for the year 2000? Dividing the national pie is so very important! What laws are there, Sir? Recently, we were looking with great expectation at the profits that may come to this nation because of the LNG agreements. How far would they trickle down? What laws are there to govern this society? Can we give everybody 25 per cent or 50 per cent?

What about those in the labouring class who are not in the regular public service or represented by worker unions? Can we afford to give 25 or 50 per cent increases to the unskilled, maybe the pensioners, Sir? What are the laws to help those below the poverty line? When will we formulate laws to inculcate in this country a style of communal living in which all sectors of our society will share in the nation's limited economic resources?

I spent some time on this particular objective of the Law Revision Commission. This is not only the objective: it is one that deserves national attention; to look at all these laws in those black books referred to by the hon.

Attorney General. To reform those laws, to modernize them, to make them appropriate for living today; that is what we need. We have the laws and we have been looking at them. I am very happy to be associated with this programme. I hope that as a Parliament and a nation, together we can look at all the laws governing life in the national community, that we would really make them modern, appropriate and relevant for our own times, in order that our people would be made, happy and comfortable.

I thank you, Sir.

Sen. Dr. Eric St. Cyr: Mr. President, I want to speak to two points. The first is: I have some difficulty with clause 3 which says, effectively, that the Law Revision Commission shall comprise:

- (a) a Chairman;
- (b) the Chairman, the Law Commission; and
- (c) such other legal officers as the Chairman may appoint.”

I have a difficulty that the appointing of the members of the Law Revision Commission would be in the hands of the Chairman of the Law Revision Commission. I wonder whether the hon. Attorney General would discuss that point, please.

My second difficulty is that—[*Interruption*]

Mr. Maharaj: Mr. President, I am very happy for this. I would like if the hon. Senator would also give me his views. If he does not believe that it should be the Chairman, who should it be?

Sen. Dr. E. St. Cyr: Why not the hon. Attorney General? Possibly, the Cabinet should appoint the whole commission rather than simply putting the Chairman in place and the Chairman then appoints the other members. But it is for consideration.

My other point, Sir, is that I think we could tidy this up and go a little further, because, as it stands, I think it is a little confusing. What I see is that in place of the Law Commission we now have two commissions: a law reform commission and a law revision commission. I think we should then call them by those two names. In other words, we should amend the name of the Law Commission to Law Reform Commission and give the specific functions there and add a second commission, the Law Revision Commission and, perhaps, have a method for getting the two to interface.

Mr. President, I would not be debating this, I am simply making these two brief suggestions.

Thank you.

The Attorney General and Minister of Legal Affairs (Hon. Ramesh Lawrence Maharaj): Mr. President, may I thank hon. Senators for their contributions. In respect of the last contribution by the hon. Sen. Dr. St. Cyr, I want to give him the assurance that at the committee stage I would consult and see what we can do with respect to those two matters. If I may say so, there would be two commissions: the Law Commission and the Law Revision Commission and in order to identify it better, the consideration as to the name being changed to the Law Reform Commission, I will discuss that.

In relation to the appointment of the Law Revision Commission, I will look again at how the Law Commission is appointed and see how we can accommodate what you have said.

Mr. President, in respect of the contribution made by the hon. Sen. Alfred, I think that the point she made about various Acts, speaking for myself, is a very good point, and at the committee stage I will look at it in order to make it more specific.

I think that I have dealt with what Sen. McKenzie said during her contribution. If there are any further explanations, I will give them at the committee stage.

I agree with what Sen. Teelucksingh said that the whole process of the law must, from time to time, be looked at. The question is that the concerns he has raised, however, have to do with the whole question of the structure of governance as enshrined in the Constitution. As we all know, we have the Executive and the Legislative. We have inherited the system from Britain that is known as the Westminster System. The Executive determines policy; obviously, it will determine policy in the way that it would consider it should determine it, because if it does not act properly it would then be accountable to the electorate to be removed at election time. When the policy is determined and it has to come in legislation, the Parliament can determine how it wants to deal with it.

I agree, it may be that the country should look again at how Parliament operates. May I say, for the record, that the Parliament does have the power, in respect of any bill which comes, to appoint a Special Select Committee to look at it and even to appoint a Joint Select Committee. As a matter of fact, under the

existing Standing Orders, even the Senate can appoint a committee. Standing Order 69. (1) states:

“A Select Committee other than a Sessional Select Committee shall be known as a Special Select Committee. It shall be appointed by order of the Senate which shall specify the terms of reference of the Committee and shall consist of such Senators and as many Senators as may be directed by order of the Senate and, in the absence of such direction, shall consist of such Senators as may be chosen by the President.”

So under the existing Standing Orders, the Parliament, either Chamber, can appoint special select committees to look at any bill.

Sen. Rev. Teelucksingh: The point I was making—and do you see some wisdom in it—is that in the earlier stages there can some submission of a draft to us.

Hon. R. L. Maharaj: I will come to that; I will come to that. You would not find any government in the world, in respect of all legislation, where a draft goes to the Parliament first. You would not find it; unless you have a system as probably in the United States of America where most of the legislation goes to a select committee—I forgot the name—of the Parliament. But an Executive must have the discretion, otherwise you can have a situation where the Executive would not have the ability to get through its legislation in time, because you can have parliamentary committees holding back major pieces of legislation.

So you have a situation where a balance must be struck, and that is why any government which wants to be able to get the support of the population and the Parliament, would, in respect of major pieces of legislation which have policy, find ways and means of consulting the population and even, in some cases, having the bills scrutinized by a special select committee or joint select committee of Parliament. For example, let us say if the Senate wants at any time to say that we understand that Government is considering its policy with respect to X, Y or Z, if we have a draft, would the Government agree to submit that bill to Members of the Senate? One does not need a motion for that.

Nothing prevents the Members of the Senate moving a motion for this Bill to be considered by the Senate and for the Government to consider its views, and one does not even need a motion for that.

3.40 p.m.

The point I am trying to make is that there is existing machinery in which the Senate and the House of Representatives can use the Standing Orders in any

matter. For example, an Opposition Member in the House of Representatives can use the Standing Orders to highlight that it needs to consider any bill, and I suppose that the Senate can do it also.

I am saying this because one has to recognize that it is very important for the Parliament to consider these matters. That is why this administration has been talking about reforms of the parliamentary system and, therefore, if you have a parliamentary system which has functioned as it has over the years, you have the institutions, but you do not have them implemented, and even the Bill which was passed recently with respect to the Committees of Parliament, in order to implement that, there is an exercise where all the players are looking at it to have it implemented and have the Standing Orders passed. So that the reforms we have initiated would assist more and more in getting more participation by Members of Parliament, not only in the legislative process, and even in the decision-making process, but also to get machinery in which every piece of legislation goes to Parliament as a pre-legislative exercise. It would then mean that parliamentarians would have to be full-time because you cannot have a Senate sitting once a week and be able to do that exercise, and you cannot have a House of Representatives sitting once a week most of the time to be able to do that exercise. So in order to have that exercise done, if the people want it, one would have to consider whether parliamentarians should be full-time and that means Government Senators, Independent Senators, Opposition Senators. Members of the House of Representatives should also be full-time because, take for example, the kinds of legislation which have been passed under this administration. One sees that this would indicate what was the state of the law and how it lagged behind, and one would therefore anticipate that if those pieces of legislation had to go before both Parliaments in its pre-legislative stages, one could anticipate how much time it would have taken and wonder if the policy of the Government could have been carried out in a certain time-frame.

Mr. President, one has to recognize that when a government gets into office, it gets there with a certain mandate, that it promised to do x, y, z. It promised to pass laws, it promised to do this and do that, and if the government has a legislative agenda, it has to try its best, subject to all the consultation process and democratic principles, to get through its legislative agenda. For example, if the law of rape may have to be amended and let us say you have a system where it is held up in a parliamentary committee for two or three years in a pre-legislative process and the government leaves office without doing that, a government would not be able to tell the population that it had a parliamentary committee looking at

that, because they think they put you there to do a job and you must be able to do it.

So in balancing the exercise of democratic principles, one has to understand that there is a situation in which the policy is to a great extent given to be determined by the government but any government, if it wants to be re-elected, would not want to take measures in which it would disregard sections of the population or Parliament in the exercise of consultation.

Mr. President, I would say that the Government recognizes the importance of what the distinguished Senator has said: that there must be avenues for pre-legislative consultation with the Parliament, but we recognize the difficulties under the present system of having that discussion in respect of every matter and in respect of matters in which the Government has found it necessary to have that exercise. We have utilized, not only consultation with the general community which would include the parliamentarians, but we have also utilized the process of the Joint Select Committees and the Special Select Committees.

I am happy that Sen. Rev. Teelucksingh has made his contribution because it is an answer to the contention that we do not need more laws. The Senator was saying that we need laws to do this, we need laws to do that, so I am very happy that he has given support to the principle that if we need to have change in the society, committed to the rule of law, we cannot do it without necessary law reforms. There are within the system avenues in which the society can determine whether a government is actually taking care of each section of the society, and that is a political question.

For example, under the present system when a government gets into office, and every year passes its budget, there is the budget debate, the democratic process whereby the Opposition and institutions can go to the country and say this government is not concerned about “class a”, “class b”—whatever class in the society; the rich class, the middle class, the poor man, and there is a process where even after the budget is passed the Senate can file motions, can bring pressure upon a government to show that it is not doing its job. So there is some machinery that we have in order to make the government account for whatever it is doing. I cannot see at the present time—and maybe the Senator would agree with this—the reality of passing a law to say that one section of the society should get 25 per cent and another section 40 per cent, and all poor people must get 50 per cent and all rich people must get 50 per cent. With the greatest respect to him, I see difficulties in that because these are really political questions which depend upon policy consideration. Having said that, any government which is in office,

has been in office, or will be in office and administers a policy in which sections of the society are nakedly alienated and do not show concern about that section, would have to face political reality and that is how the system works. We are seeing the system working now. As a matter of fact, we are seeing the system with polls and polls and speeches and all kinds of things. The system works.

If, for example, a government is not performing, the people who are going to decide that are those who cast their votes on election day, and the people of the society have an opportunity to say whether the government has performed or not performed. If it is discriminating against one class or another, the people have the power by that thumb to remove any government or to keep a government. So the democratic process in Trinidad and Tobago works: we have seen that it operated in the past and I am sure it will operate again. All I can say is that this Government has done more than any other administration to promote consultation with the population in respect of not only legislation, but in respect of ensuring that state-held information is given to the population.

Mr. President, one merely has to look. I do not think anybody can get up in this Parliament and seriously say that this Government has not taken steps to promote openness and transparency in government, because when you look at the legislative reforms, which Sen. Rev. Teelucksingh has been talking about, you need law for change and when you look at the legislation that have been passed, you look at the parliamentary reforms, and all the other laws which has been passed, you see that this is the only administration which has been able to do that. *[Desk thumping]* There can be no doubt about that, and no matter how you look at it, whether you look at it through the eyes of the PNM, an Independent Senator, the NAR, the UNC, through the eyes of AIM—however, you look at it, you will aim at one thing, and that is to say that the Government not only had a political commitment, but it translated that commitment by action. *[Desk thumping]*

Sen. Daly: Mr. President, I ask the Attorney General in the light of the comment he made about transparency whether he would consider that the paving of the savannah was an exception to that commitment.

Hon. R. L. Maharaj: Mr. President, as the hon. Senator knows, in politics there have always been differences of opinion. *[Laughter]* If for some reason or the other it is felt that anyone has broken the law and if the politicians and the Minister did not act, there is the Constitution; and the laws of Trinidad and Tobago even provide for a private individual if the police do not take action. If the police or the court refuse to take action, for example, if a private individual believes that the law has been contravened and there are facts to show a

contravention of the law and somebody has committed a criminal offence, whether it is a summary offence, or an indictable offence, that person can swear to a complaint if it is a summary offence and can go to the magistrate with a statement if it is an indictable offence and demand that there be prosecution. And the law is that if the Clerk of the Peace refuses as far as the summary complaint, the person can go for judicial review and get a mandamus to command the Clerk of the Peace to issue that information, and if the High Court is approached and does not give him that, the law is that he can go to the Court of Appeal, and if the Court of Appeal does not give him, he can go to the judicial committee of the Privy Council and based on what is happening now, years ago, you could even go to human rights bodies. So in answer to Sen. Daly, I do not want to get into the facts of the paving of the savannah, and I do not think he wants me to get to that. I think he wants me to restate—because I am sure he knows this—for the benefit of the Honourable Senate what are the principles involved.

Sen. Prof. Spence: On a slightly different point with respect to laws. Some of us are concerned by the fact that Parliament spends a lot of time in enacting laws which are assented to, but not proclaimed. Do you consider that there should be in our Constitution, perhaps a provision that a law, having been passed by Parliament, must be proclaimed within a certain time?

Hon. R. L. Maharaj: Mr. President, it is true that many laws have been passed and not been proclaimed, and I can put on record that we take the position that it is wrong, because when Parliament passes a law, it means that the people and the Government have expressed a desire to have the law effected. The way the system works—and it is a system which we have found—if you want to set up the machinery to implement the law, you cannot set it up unless you pass the law, and when you pass the law, it takes a long time to set up the machinery. I am not talking about any specific matter, I am talking generally.

Mr. President, it may be that the way that happens ought to be looked at again. As to whether there should be a special time frame or not, I cannot give an answer at this stage, but if it is you are looking at passing and implementing laws, you must look at the whole question of implementation.

3.55 p.m.

In answer to the honourable Senator, as an Attorney General, I can tell what I have done in order to try to ensure that these laws are not lost. I have a system in which my ministry does a report on a regular basis—as regular as it can do—in order to inform Cabinet, from time to time, what are the laws which have been

passed; what are the laws that need proclaiming; and for some monitoring to be done as to when the laws would be proclaimed.

It may be that, apart from that administrative mechanism, there should be something put in place in which it should be done within a reasonable time. I do not want to create a legal argument, but Mr. President, all that I can say is that it would seem to me that it would be an arguable point, that if a law is passed, and it is not proclaimed within a reasonable time, it may be arguable as to whether that can be reviewed by the courts. The Interpretation Act clearly says, “that where no time is specified, things must be done within a reasonable time.” And it would seem to me that if the Parliament passes a law and it is not done within a reasonable time, that is arguable.

Having said that, however, there can be situations where, because of policy matters, you cannot implement the law. For example, some of the 1981 pieces of legislation were difficult after the Government of the day took a long time to implement them. It would have been difficult to implement legislation which turned out to be totally outdated in respect of what was happening at the particular time. So I do not think there can be an easy answer by the flick of a coin. I think that one would have to find a way, in setting the appropriate administrative mechanism, to ensure that they are really enacted within a reasonable time.

Mr. President, in conclusion, having answered all the questions, I noticed that Sen. Daly was following the debate, obviously, on his way to the Parliament, because he seemed to be very up-to-date on what was happening here. I am not surprised, Mr. President, because Sen. Daly is a very good advocate. He seems to even anticipate what arguments can be put forward on another side of the matter, and, therefore, the country knows from the law report, how good an advocate he is. I have no doubt why he was able to put that very piercing question to the Attorney General this afternoon. *[Laughter]*

I think Sen. Rev. Teelucksingh’s main part of his contribution had dealt with these matters. May I say that, really and truly, the way in which, under our system, substantially the Government accounts, is for the Government to be able to execute its policies—when I say the Government I mean any Government—in a humane manner. It must do so recognizing that if it does not do well, the people would be the ultimate choice. I am sure Sen. Rev. Teelucksingh would agree with me that if he had to choose now, he would probably see that the Government of the day would get the okay in having another term in office. I am sure he would agree, that having regard to what he said, that the administration has done more than any Government has done.

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

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

Senate in committee.

Clause 1 ordered to stand part of the Bill.

Clause 2.

Question proposed, That clause 2 stand part of the Bill.

Mr. Maharaj: Mr. Chairman, the point which has been mentioned in clause 2 of the Bill which is part of the Schedule—clause 3 (a). I was looking at the point that Sen. Dr. St. Cyr made, where “such other legal officers as the Chairman may appoint.

“For the purposes of this Act there is established a Law Revision Commission comprising—

- (a) A Chairman;
- (b) the Chairman, the Law Commission; and
- (c) such other legal officers as the Chairman may appoint.”

What he is asking for, I am trying to see if I can accommodate him—I am looking at the Law Commission Act. *[Discussion]* I am told that it refers to the Schedule.

Clause 2 says,

“The enactments specified in the first column of the Schedule are amended in the manner specified in the second column of that Schedule.”

So it is in that context I thought—

Mr. Chairman: Yes, it might be useful to move to the Schedule. We will defer clause 2 until a later stage of the proceedings. Is that agreed?

Assent indicated.

Clause 2 deferred.

The Schedule ordered to stand part of the Bill.

Mr. Maharaj: Mr. Chairman, Sen. Dr. Eric St. Cyr raised the point that the Members of the Law Revision Commission are being appointed by the chairman,

and wanted us to consider whether it should be the Minister or Cabinet. I should just point out that the chairman is appointed by the President. So the Chairman of the Commission is really appointed by the President, which is the Cabinet.

4.05 p.m.

The members of the commission, apart from the *ex officio* member, under the present arrangement, are appointed by the chairman. I think what Dr. St. Cyr wanted is to have the chairman and the members of the commission appointed by the President. I do not have a problem with that and my technical people do not have a problem with it so I am prepared to accept the amendment. I am told that in the Law Commission that is the position, it is appointed by the President, which is the Cabinet. Probably we should be uniform and I will move the necessary amendment now.

Sen. Dr. Mc Kenzie: Mr. Chairman, do we have a specific number of these legal officers, “such other legal officers”?

Mr. Maharaj: Well, the way it was done, since law revision is not like law reform, we did not feel that—because you may have a commission of five and it may very well work with five at a given time, but it may not be useful to have five. You may need to have three because law revision does not concern reform of the laws. So it is in that way that we left it open, depending, so that the Minister at the time would determine whether Cabinet could consider now having two, three or four as the case may be. In any event, the *ex officio* would be:

“...the Chairman, the Law Commission; and

(b) such other legal officers...”

and we can put:

“such other legal officers as the President may appoint.”

Sen. Dr. Mc Kenzie: Yes.

Mr. Maharaj: So, Mr. Chairman, can I ask in the proposed clause 3(c) that we delete the word, “Chairman”, and substitute the word, “President”. Mr. Chairman, I am indebted to Sen. Dr. St. Cyr for seeing that point because what he has said is in conformity with what has been happening in the other. I think the other point that Sen. Dr. St. Cyr made has to do with making clear that it is a Law Reform Commission instead of Law Commission because it seems to be very

confusing. So, Mr. Chairman, under the heading, “Law Commission Act, Chap. 3:04”, insert under the word, “Section”—[*Interruption*]

Mr. Chairman: Where are we?

Mr. Maharaj: At page 7 of the printed Bill, under the heading, “The Law Commission Act, Chap. 3:04”, insert under the word, “Section”, the following:

“(1) delete the word, “Commission”, and substitute the word, “Reform”.

This would therefore mean, if I may, that the title of the Act would be the Law Reform Act. So it would read:

“This Act may be cited as the Law Reform Act.”

So you delete the word, “Commission”, and substitute the word, “Reform”. It follows that under that (1), Mr. Chairman, you put the figures (2) and (3). Delete the words, “Law Commission”, wherever they occur and substitute the words, “Law Reform Commission”. Mr. Chairman, I am glad that Dr. St. Cyr seems to be getting the qualities of a draftsperson. After this and the Schedule we will then go to the Long Title. (1) delete the word commission and substitute the word reform; (2) and (3) delete the words Law Commission wherever they occur and substitute the words Law Reform Commission.

Question put and agreed to.

Schedule, as amended, ordered to stand part of the Bill.

Clause 2 reintroduced.

Mr. Maharaj: There is no amendment to that, Mr. Chairman, because we—
[*Interruption*]

Mr. Chairman:—made the amendments here?

Mr. Maharaj: Yes.

Clause 2 ordered to stand part of the Bill.

Long Title.

Question proposed, That the long title stand part of the Bill.

Mr. Maharaj: I beg to move that the long title be amended by deleting the words, “various Acts”, as suggested by Sen. Alfred.

Mr. Chairman: And substituting what?

Mr. Maharaj: And substitute the words, “the Law Revision Act and the Law Commission Act”.

Sen. Alfred: Should you not put the Law Commission first? Seeing that the Law Commission is the parent one, so to speak, should we not have that one first and then the Revision afterwards.

Mr. Maharaj: The Law Revision is 3:03 and then the Law Commission is 3:04.

Sen. Alfred: Oh, thanks.

Question put and agreed to.

Long title, as amended, ordered to stand part of the Bill.

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

Senate resumed.

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

Mr. President: Having regard to the time, we can suspend for tea at this stage and resume at 5.00 o'clock.

4.22 p.m.: *Sitting suspended.*

5.05 p.m.: *Sitting resumed*

DANGEROUS DOGS (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 provide for regulating the keeping of dangerous dogs which present a serious danger to the public; to make further provision for ensuring that such dogs are kept under proper control; and for connected purposes, be now read a second time.

Mr. President, this Bill before us has a history, in that, in 1998—in 1997 really—because of the spate of injuries which were caused by dangerous dogs, the Law Commission, on the direction of the Government decided to look at this whole question of dangerous dogs. The Law Commission had to grapple with a problem which was not only a local problem, but one which was international, in that several countries had to deal with this problem. Countries found that it was necessary to reform their laws in order to deal with the problem.

Some of the countries decided that their laws should be reformed to have a total ban on breeding and importation of the dangerous dogs and they categorized

which were dangerous dogs, and that the not too dangerous dogs, one would regulate it so as to put restrictions and obligations on owners as to how they should be kept on the premises, and to even introduce insurance to cover damage done by dogs, whether it was injury or death.

On the other hand, other countries had to deal with it in another way. They thought that the best way of dealing with it was not to ban the breeding, or not to prohibit the importation of these dogs, but to introduce measures which would make it mandatory for more responsible ownership and to punish the owners of the dogs if they did not adhere to the law.

Mr. President, with that in mind, the Law Commission, in putting forward to the Government a Bill, decided that it was going to put a Bill for public comment. The Bill which was put for public comment was a Bill called: "The Dangerous Dogs Bill of 1998". That Bill needed a specified majority to be passed, because the Bill had banned the importation; ban the breeding; and to existing dogs—dangerous dogs had to be neutered and you had a legal framework in which the dogs which were not specified, but were still sort of dangerous—because the dangerousness of dogs are in degrees. There are some such like the pit bull terrier; the fila brasileiro and the japanese tosa that are supposed to be the three most dangerous dogs. So that you would be able to ban those and ban the breeding and regulate the other dogs and neuter—the ones that are dangerous, so that you would not have more in the breed.

Mr. President, the Government decided that it was going to introduce this Bill. There was consultation with the Law Commission—and I am sorry Sen. Rev. Teelucksingh is not here—but there was extensive consultation and the majority of the views of the consultation were to the effect that you should not ban completely, but regulate.

What the Government did, is that what was happening, the Government decided to go with a Bill to completely ban, but to introduce it in the Parliament on the basis that we will be telling the country that this is the Bill that the Government is putting forward—but it was not cast in stone—and that it will still be opened for consultation, and for the public to express its views.

5.10 p.m.

What happened with this Dangerous Dogs Bill was that there were publications in the newspapers—I have one from which I can quote—and the Bill was circulated throughout the country at all post offices and wardens' offices and

Dangerous Dogs (Amdt.) (No. 2) Bill
[HON. R. L. MAHARAJ]

Tuesday, April 11, 2000

comments were received by the Law Association and, based on the comments which were received, the Government had to consider those comments. What happened was that the Government considered them and decided that in light of what was told to it, it should amend the Bill.

Therefore, the Bill which is before us is not the Bill which was originally introduced in 1998. The Bill before us is a Bill which introduces, not a ban on importation, not a ban on breeding, but a regulatory framework in which the owners would be required to do certain things in respect of their property. They must have certain safeguards in having the dogs muzzled, in respect of a badge and there would be heavy fines in respect of any breaches. There would, in effect, also be insurance to cover any injury.

Now, Mr. President, in presenting this Bill, I recognize that there can be strong feelings one way or the other, because this is one issue which, when we look at the comments which have come forward, one sees that there can be a lot of emotion either way of the line. This is not going to be an easy measure because I recognize there would be persons who would be making contributions—and I think people should feel very free to express whatever feelings they have on this Bill because it is a very important issue, and it is not unusual to have strong views in a matter like this.

It is my duty to tell you that there is a history to this. In other words, it was studied. It came initially with a total ban. There was public consultation and, before the total ban, there was consultation. They acted on a majority but the Law Commission decided it would recommend that there should be a total ban. The Government accepted that and when the consultations occurred again, the feeling was that there should not be a total ban and the Government decided that it was going with the policy, initially, of regulation and to review the policy, to see how it worked, then if it became necessary, whether after six months or a year to have a total ban, the Government would consider that.

I should say, in the other place when the Bill was debated, I did give an undertaking that if this Bill were passed and it was found that it needed to be reviewed, even after six months, that the Government would be prepared to come back and decide whether this regulation could work or not.

Mr. President, having said that, I do not think it can be disputed that some of these dogs are very dangerous. As a matter of fact, I think some people have referred to these dogs with the label of being “devil dogs”; some have said they are “super killing machines”; some have said that it is true that the pit bull was

“specifically bred to kill other dogs” and “its jaws can exert a pressure of 1,800 pounds per square inch”. But, I would ask Senators to observe also that it is not every object that is dangerous that is banned. For example, a motor vehicle can be a very dangerous object. A motor vehicle can cause death.

Sen. Shabazz: Not at all!

Hon. R. L. Maharaj: It cannot cause death?

Sen. Shabazz: The man who is driving it can cause death.

Hon. R. L. Maharaj: The man who is driving it causes death. Well, the man who is driving it, if the vehicle caused death, can be prosecuted. That can be the whole principle of deterrence.

I am only saying this in order for us to try to put on the balance, both sides of the argument, so that we can decide whether you have a situation in which there was a measure which did not come overnight; there was consultation; whether the more prudent course would not be to try the regulatory framework; see how it operates and if it becomes necessary, then consider a total ban.

I am told that according to the Bill, “dangerous dog”—I am indebted to my colleague—is a dog of a type listed in the Schedule. The Schedule describes the dog as:

- “1. Pitbull Terrier or any dog bred from the Pitbull terrier and having the dominant characteristics of that dog;
2. Fila Brasileiro or any dog bred from the Fila Brasileiro and having the dominant characteristics of that dog;
3. Japanese Tosa or any dog bred from the Japanese Tosa and having the dominant characteristics of that dog.”

I am informed from the information that I have had in preparation for this matter that these dogs have been in Trinidad and Tobago for some time. It is not that you are now getting permission to import these dogs. These dogs have been in existence in Trinidad and Tobago for some time. So that the dogs have been bred; they have reproduced and you have these dogs in Trinidad and Tobago. It is not as if by this Bill, you are going to be able to bring them in for the first time.

There is a situation in which people in Trinidad and Tobago have been enjoying this right to property over a period of time, enjoying the right to own a dog of this kind and, as you know, the right to property is guaranteed in the

Constitution and property does not only include land, house or building; it includes dogs and animals.

What does this Bill do? The Bill, as I said, has a regulatory framework. If you look at clause 3, it is the definition section. I dealt with the question of a “dangerous dog” and it defines certain matters which will become very important for this law. You would see where there will be certain consequences for a dangerous dog in a public place.

“‘public place’ means any street, road or other place...to which the public have or are permitted to have access whether for payment or otherwise and includes the common parts of premises containing two or more separate dwellings;”

So that there would be certain consequences for the owner of the dangerous dog which goes into a public place, as you would see.

Under clause 4, it says:

“(1) No person shall own a dangerous dog...”

which is referred to in the Schedule—

“...unless that person applies for and obtains an annual licence from the local authority in the area in which he resides.

(2) The local authority shall maintain a register of licences...

(4) A local authority shall not issue a licence...unless...”

the applicant has done the prescribed form verifying the premises on which the dog would be kept:

“...have been inspected and approved in accordance with section 5;”

So, you must have an inspection of the premises by the local authority. You must also have a policy of insurance issued in accordance with clause 8 of the Bill. Unless these conditions have been fulfilled, the local authority may not issue the licence.

Under clause 4(10) of the Bill, there will be a metal badge which will be given to be affixed to the dog and the person must ensure that that badge is worn at all times [*Interruption*] because the owner will be responsible. The owner has to have the licence. I should mention here that in the other place this was amended, so a new subclause was substituted to provide for a metal label or other badge which is

to be worn by a dangerous dog to bear a registration number. Additionally, the registration number would be branded on the inner ear of the dog.

It is a way of identification. The owner will have to ensure that he pays the licence and he gets this badge.

Hon. Senator: Who is branding the dog?

Hon. R. L. Maharaj: The local authority. There will be mechanisms for that.

Clause 5 of the Bill empowers an officer of a local authority to inspect premises on which a dangerous dog is kept for the purpose of ensuring compliance with the requirements for the security of the premises.

Clause 6 of the Bill creates the offence of keeping an unlicensed dangerous dog and imposes a fine which is mentioned.

Clause 7 is aimed at promoting the ideal of the duties of the owner—ideal ownership—and seeks to make it unlawful for a minor to own a dangerous dog, since it is felt that a minor is incapable of shouldering such a serious responsibility.

Then, on the question of insurance, there is a requirement for the owner of the dog to take out an insurance policy. This amount was initially larger, but now the insurance is \$250,000.

Sen. Dr. Mc Kenzie: Per dog or per owner? Suppose I have two dogs.

Sen. Prof. Kenny: Or eight.

Hon. R. L. Maharaj: That is a good point. I am told the way it operates is, \$250,000 for each claim. But that is something, if you want, we could discuss further, but the concept is that there is public liability insurance.

Clause 9 of the Bill places the onus on the owner of a dangerous dog to inform the local authority if the policy in respect of a particular dog has lapsed. Probably, clause 9 would show that it has to be in relation to a particular dog, because it says:

“Where a policy of insurance required under section 8 is no longer in force, the owner of the dangerous dog in respect of which the policy is issued shall promptly inform the local authority.”

I skipped clause 8(4), but there is also an obligation for the insurance to cover the medical expenses reasonably incurred as a result of injuries.

Clause 10 deals with the question of if there is to be a civil action in respect of any liability which arises from the contravention of this Bill, injury to a dog or death following, in the case you can have both the defendant and the insurance company joined as a party. Therefore, the whole matter could be determined at one and the same time and you do not have separate cases against the owners and then against the insurance company.

5.25 p.m.

Clause 11 requires the owner of a dangerous dog to keep that dog under proper control at times. This clause provides that where a dog is dangerously out of control in such a manner that there are grounds for reasonable apprehension that it will injure any person, whether or not it actually does so, an offence is committed.

Mr. President, clause 12 introduces the requirement of adequate fencing by the owner. This clause places an obligation on a person who owns a dangerous dog to ensure that the premises on which the dog is kept are secured by a fence or wall of a suitable height, and that the wall or fence is so constructed and maintained so as to prevent the escape of the dog.

It is well known that if this is not done, innocent passersby have been injured in the past and could be injured. Therefore, it will make it a requirement that, to get a licence, the premises be adequately fenced with the necessary fence, in order to be a safeguard to prevent attacks.

Clause 14 of the Bill requires the owner of a dangerous dog or persons who keep a dangerous dog on their premises to display in a prominent place on those premises a notice indicating the presence of a dangerous dog. The object of this is to warn members of the public.

Clause 15 not only places an obligation on owners of the dogs to have those dogs muzzled and securely held on a lead when those dogs are in public places but, additionally, prohibits a person who is less than 18 years of age and who is not capable of controlling that dog from being in charge of it in that public place. Mr. President, this provision seeks to ensure that the public is protected from dangerous dogs, which, may be left in the control of persons who are unable to handle them.

Clause 16 of the Bill creates the offence of inciting a dangerous dog to attack a person. It should be viewed as nothing less than a criminal offence where a person deliberately encourages a dog to attack another person. Sub-clause (2) of the Bill, however, makes an exception where the person who is attacked is on the

premises with the intention of committing a criminal offence. This clause seeks to protect the right of a person to ensure that his property is protected. It also recognizes, Mr. President, that in the normal course of training of dogs under controlled circumstances, the clause will not apply.

The Bill anticipates that from time to time persons may seek to introduce in the country new breeds of dangerous dogs not mentioned in the Schedule. Clause 17 of the Bill gives the Minister that discretion, subject to an affirmative resolution of the Parliament.

Clause 18 gives the court the power to destroy a dangerous dog where the owner of that dog has been convicted of an offence in which the dog was involved.

Clause 19 seeks to strengthen the provisions relating to the requirement for the muzzling of dogs in public places, by empowering a constable or an officer of a local authority to enter premises and seize any dog which is not muzzled and kept on a lead in a public place.

Clause 20 aims at protecting from liability, a veterinary surgeon in his professional capacity. There was an amendment in the other place that the veterinary surgeon can be liable in certain circumstances. Clause 20 of the Bill is amended to make a veterinary surgeon liable for any damage caused by a dangerous dog in his charge.

Clause 21 provides for a person to pursue a civil action for an offence committed under the Act and excludes from the application of the Act the common-law principle of *sienta*. I know lawyers would understand that but I have to explain that.

Mr. President, as you would know as a lawyer, if someone is bitten by a dog, under the existing law, and the person who is bitten sues the owner of the dog, in order for liability to be attached, the person would have to prove that that dog had bitten somebody before and that *sienta*, in other words the owner knew that this dog was liable to bite somebody. Therefore, we are getting rid of this principle: the principle of *sienta*.

Clause 22 repeals—*[Interruption]* No. Mr. President, my colleague said that was a Spanish principle. *[Laughter]* As we all know the English law evolved from the Roman law and we have a lot of expressions but it may be that it is flavoured with some Spanish.

Clause 23 gives the Minister the power to make regulations to carry into effect the provisions of the Act.

Mr. President, I did not read the clauses, clause by clause. This Bill has been in the Senate for some time. I presented the Bill saying that the Bill does try to redress some of the wrongs which have been done to citizens by dogs which can act very savagely. It is recognized that these are dangerous animals, but the Government recognizes that the right to property is an important right, and that there is a substantial portion of the population who are of the belief that the Parliament should first try to regulate, instead of taking away the right to property. The Government believes that notwithstanding the fact that it initially thought that there should be a total ban, it should defer to the views of the majority of the persons who sent in their recommendations and who expressed their views that we should give it a trial for regulation before considering a total ban.

Mr. President, I beg to move.

Question proposed.

Sen. Prof. John Spence: Mr. President, first of all, I would like to thank the Attorney General for bringing a Bill of this sort to the Parliament. I think it is extremely important that the matter of dangerous dogs be addressed urgently. In fact, I am pretty certain that since this Bill was first laid in Parliament some time ago, there have been additional attacks and more people have been injured; in spite of the fact that owners must have known that there was this concern, not only by the authorities but by the community at large.

The Attorney General has pointed out that the Government originally had the concept that dangerous dogs should not just be controlled but be banned completely. I must say I have a great deal of sympathy for that original view, as will be indicated by an amendment that I propose to move.

The question of consultation is always a difficult one, Mr. President, because those persons who are owners of dangerous dogs will clearly be the ones who are most vocal and most likely to come forward and give the opinion that these dogs should not be banned. It is very difficult to go by consultation. Really, I suppose the only thing one can really get an opinion from is either from some sort of survey—not a referendum because that will involve too many people—but at least a sample survey may be carried out to see what the general opinion was.

I believe that in cases like this, governments have to show some leadership role. [*Desk thumping*] I certainly think this is one case in which there is not such an overwhelming drive for the lack of banning that Government needs to respond to whatever representations that might have been made during the consultation process. While I agree with the provisions that are being made for controlling dogs in this Bill, I am strongly of the view that they should be dealt with in a more aggressive manner than the current Bill indicates.

My amendment, Mr. President, takes us back to the original Bill. I have inserted two new clauses which are simply taken from the original Bill. I would like to make one further amendment to the amendment that I have made. It has been pointed out to me by Sen. Prof. Kenny that it is possible, under existing technologies, to introduce, not only semen but also embryos. Where it says in the new clause 5(1):

“No person shall import into Trinidad and Tobago a dog, or the semen of a dog...”

It should say: “or the semen or embryo of a dog of the type specified in the Schedule.” One should include embryos as well, because frozen embryos can be used to propagate the species.

5.35 p.m.

Mr. President, one or two points about the Bill itself; the provision for the registration number to be branded on the inner ear, clearly, that is an error, because the inner ear has a specific meaning in anatomy. It certainly does not mean this part of the ear. [*Senator points to outer flap of ear*] That certainly has to be changed, because the inner ear is what it says, it is inside and not the flap on the outside. Sen. Prof. Kenny, no doubt, would give us the correct term. [*Interruption*] It is the pinna; so it should be on the pinna and not on the inner ear. That is just an error that certainly needs to be corrected, because, as it stands, it means nothing at all.

I wonder if the Attorney General could give us some idea of what an insurance premium would cost for a \$250,000 policy or, perhaps, our hon. Minister of Finance, Planning and Development. This may indicate whether we are, in fact, discriminating in this. I think it has to be done, but one wants to be sure what one is doing. Perhaps, by this we are saying that only people of means would be able to keep dangerous dogs. Quite frankly, I think if that is what we are going to say, then we really should ban them completely, rather than say that

Dangerous Dogs (Amdt.) (No. 2) Bill
[SEN. PROF. SPENCE]

Tuesday, April 11, 2000

certain people in the population who can afford to pay these high premiums, are the ones who can keep them. I am sure that is what it is going to amount to.

Not only is there an annual fee, but there is also this much more critical provision for payment of premium. Given the cost of hospitalization these days, especially the pressure on the public hospitals, which may mean private hospitalization; is \$250,000 realistic? I suppose it could pay the funeral expenses if the person dies, because that is just \$5,000 or \$10,000. But if a person is really injured and has to be hospitalized, within a very short space of time, the amount could run up to more than \$250,000. So I think one has to be aware of that as well.

With respect to clause 15(4), which I think covers control of the dog, I think it is a little ambiguous, because it is not clear to me whether the person, if he or she is over 18 years, must also be one who is also capable of controlling that dog. Is that what it means? So you must be over 18 years, but you must also be capable of controlling the dog. If that is so then, perhaps, the wording might be a little less ambiguous, because it seems to tie the age to the ability to control the dog. I certainly think if one has a provision like this, age may be of less significance. Certainly, there are many 16-year-olds who can control a dangerous dog more than an 80-year-old can, for example. Perhaps, one needs an upper age as well, or a very frail person. I would not say a frail lady, because I know these days we must not discriminate against the sexes.

Mr. President, just an amusing aside which I think came from one of my colleagues with respect to clause 19. It is in the clause which deals with the seizing of a dog by a constable. One has a mental picture of this poor constable trying to seize a dangerous pit bull which is attacking somebody. [*Inaudible*] I think one really has a bit of a problem there.

So, Mr. President, I think this is very serious Bill. It is an extremely important one. I think it has to be pursued, but I am not convinced that it is going to be possible to control the animals by this means. Certainly, one has a precedent in many countries in which the route has been to ban this type of dog. There are so many species of dogs or varieties of dogs that can be kept as pets and some very good guard dogs that can be controlled and trained properly more readily than these three specified types. I cannot see the need, really, for allowing them; I cannot see what arguments, and, certainly the Attorney General has given no arguments that these particular ones should be allowed, other than that of the right to property.

Well, in many instances we remove the right to property when we think it is in the public good. We do it by a special majority; let us do it in this case. Certainly, I cannot see the Opposition opposing just for the sake of opposing, because they can thwart a bill because the Government does not have an overall majority; opposing a Bill of this type which would seek, for the public good, to remove a danger to the public.

Thank you.

Sen. Muhummad Shabazz: Mr. President, it is really interesting to hear the comments of the last speaker that he cannot see the Opposition opposing only for opposing sake. It is a comment, but I do not think that this Opposition is like that. *[Interruption]* I do not think that we oppose only for opposing sake. *[Interruption]* I think it is the duty of the Opposition, at all times, to present a position as we see it or to present another position so that we can look at it from a different angle. *[Desk thumping]* This Opposition is not one that only opposes as the other Opposition used to do; the one prior to this one.

Mr. President, this whole issue about dangerous dogs is interesting. When I was growing up the only people who had dangerous dogs were policemen, and the dogs were dangerous but they were well trained. They were told to sit. As a matter of fact, we used to admire the policeman and his dog. Sit, stand, crawl; and they used to do all these things.

Today we have a different kind of dangerous dog. I do not know why it has come about. I do not know why it is so.

Sen. Cuffy Dowlat: Because of the PNM!

Sen. M. Shabazz: It has come about mainly because of the crime situation in the country. Everybody wants a dog that will bite, kill and destroy people. Maybe they are correct, maybe they are not. I know that the Attorney General said, "You can say whatever your feelings are on this Bill." But when we on this side say what our feelings are, he takes strong objections all the time—*[Interruption]*—most of the time; especially me, Mr. President, I want to say that clearly, because I know that he would put my name in the *Hansard* by attacking me or saying something about my government and what we did. But I think I must say my feelings.

People might have dogs and I am not really against that, because in this very place there may be people who have guards around them day in/day out and they do not have the need for dogs. They have the guards around them so that if

Dangerous Dogs (Amdt.) (No. 2) Bill
[SEN. SHABAZZ]

Tuesday, April 11, 2000

anybody does them anything or comes around, as a matter of fact, nobody might be doing them anything. I would like to say this on this end too: I would like to be the type of politician who does not have dangerous dogs to guard or protect me, because I have no fear, because one day I would have to go back into public life. I do not want too many police around me to protect me, unless that is the protocol of my office. [*Desk thumping*] [*Laughter*] None of that. People who may not be able to carry guns, carry guards to protect them. They may feel legitimately that they should have these bad bad dogs to protect them.

I do not see why somebody, really, from on this end, should want a dog that will turn on their mother and bite her up when she goes to feed it. I do not see why anybody would want a dog that would jump over a fence, run down a little child and eat up that little child and kill it. A dog, to me, should be a pet which protects his environment or yard without being overly vicious, so I do not see why anybody would want another type of dog, but the system has reached to that.

As a matter of fact, I talk with a certain amount of pain, because long ago when they were training dogs they used to dress up people with hair like mine to make the dogs attack them. [*Laughter*] I used to see that. I saw that over and over again, that the dog training was geared to a certain type of person who they believed were thieves and criminals, so that the dogs would always see that. The first killing which brought about the killing of these dogs, was of a Rasta man. That was when the issue became very serious.

What made it even worse—the Attorney General would not like to hear me say this—but the dog was owned by one of his party financiers. [*Interruption*] “Oh gosh, lemme say wha I have to say nah.” As a result of that—[*Interruption*—the dog that killed the man, and I am saying it clearly, was owned by somebody close to that party. It was a financier of the party whose name was—it started with “S”, I do not want to go too much there.

Sen. Tota-Maharaj: So we have party dogs now.

Sen. M. Shabazz: It was very close. That was one of the responses that brought them about—[*Interruption*]

Hon. Senators: Say it!

Sen. M. Shabazz: “Ah go say it just now.” It was the very response that brought them to think about bringing this legislation. I do not care what anybody else in the Senate says—or maybe I care—but coming from this end, I am saying that they run to bring this Bill—and I am not saying that it is a bad Bill—in order

to make it look as though they were doing something to solve this problem. Their feelings were because it was somebody close to them whose dog had gotten away and killed someone.

Sen. Tota-Maharaj: That is a low shot.

Sen. M. Shabazz: Today, I will like to call the person's name, and I will tell you that they know who it is. [*Interruption*]

Mr. President: I caution you not to call names.

Sen. M. Shabazz: Okay, I will not say it, Mr. President.

Sen. Tota-Maharaj: So you are listening then.

Sen. M. Shabazz: But I would like to go so much further and say that, to date, I do not think that person's family has been compensated, and that is the sad thing about it. [*Interruption*] I do not think that person's family has yet been compensated. There was a whole lot of talk about helping and, for all you know, that person may again come up with big money this year, in an election year, to help them out and still not pay for that person who was killed as a result of that dog running out of a yard, attacking and killing somebody. Do you see how sad it is, Mr. President?

You know that they do not want to hear me talk that way; they will heckle, but I am saying it because I want them to see the reality of the situation and to understand it; that this is why it is important. We are supporting the Bill. I do not want them to feel that I am saying these things because we are not supporting the Bill. [*Desk thumping*] We are supporting it, but we must put the case forward, as it should be. We must. We are supporting it.

We feel that there should be insurance for dangerous dogs. As a matter of fact, we feel that there should be no dangerous dogs as bad as that; this is my feeling. There should be no dangerous dogs, and I think we on this side feel that. If you are going to have dangerous dogs, we commend the principle where you are going to have them in places where they would be secured enough not to get away and attack people. If they are going to attack people let it be in such a way that there must be some means that these people could be paid very quickly.

When one of their friends' dogs kills a person and a breadwinner is taken away from the family, the whole family goes under pressure and suffers. There is no way to get money to this person. As a matter of fact, in a Bill like this, we would like to see, and it would be nice, if when a dangerous dog kills somebody

Dangerous Dogs (Amdt.) (No. 2) Bill
[SEN. SHABAZZ]

Tuesday, April 11, 2000

and we know that there is insurance, at least, a minimum of \$25,000 or \$30,000 should be advanced to the family until the court matter is dealt with. That would be nice; so that you will know that family may not have to suffer. As a matter of fact, the family may have to get a lawyer and the lawyer may take that \$30,000; if it is a lawyer like some of the lawyers that I know and some of the lawyers who are very good, hardworking and whatever. [*Laughter*] I am not looking anywhere. It is possible. There should be some fee put forward to pay these people.

I saw in the Bill where it says that for a dangerous dog there should be \$250,000 insurance, but, in death, how does insurance—well, I guess the court will decide the amount that is to be paid.

If it is to be above \$250,000 maybe the owner will have to find a way, so that amount may be fair, but when somebody dies, or a child or a person is killed, and these dogs kill people, \$250,000 which looks like a fair amount may not be, and we may probably need to look at what is really a fair figure for a dog killing somebody.

5.50 p.m.

Two hundred and fifty thousand dollars may be no money when one has a 17-year-old son who might be now going to study and gets killed by a dog; or a breadwinner in a family who is paying a mortgage and taking care of a family with children ages 7—9. Would \$250,000 be a fair and reasonable amount? It may not be.

When I look at the Bill it talks about an owner not complying and has his dog on a leash. A policeman or somebody from the authority may be able to seize that dog. I do not know if they are going to train a group of policemen now, or people in authority to pick up these dogs, because if a bad dog is on a leash and one of these killer dogs is on a leash, I do not know which policeman is going to hold it. If a killer dog is biting up a man, how is the policeman going to hold it?

Mr. President, that is the reality now. When a dog is biting up a man, or three killer dogs attacking a man, the police could go in and shoot it. Maybe there should be some provision in this Bill for that, because in this Bill it is saying to seize the dog. A man could say: Look, the Bill only gives you the authority to seize “meh” dogs and “yuh” kill them. When you feel that you suing him for \$250,000, he is suing the Government for \$5 million, and he might get more for his dog than you will get for your child. We need to look at that. We need to put into the Bill that there must be some situations.

There is another section where it says that a vet will destroy the dog. If I have a killer dog in my yard, and I do not want to give it up, which vet coming in my yard to stick my dog? You have to kill it. The drafters of the Bill—I do not know under whose instruction—want to be so nice and decent that they are probably saying do not kill the dog, but you have to kill the dog, and they understand why. In the amendments to the Bill it says no person shall import into Trinidad and Tobago a dog, or the semen of a dog of the type specified in the Schedule. So right away you could see that the intent is to do away with these dogs. When I say do away—

Mr. President: I think what you have read is a proposed amendment by Sen. Prof. Spence.

Sen. M. Shabazz: Well, I think that is the way we ought to go. We ought to find a situation that you cannot bring more dogs like that into the country. We ought to find a situation even though we are talking about people's rights and property, and even though the Attorney General would not like to hear me say that. When I hear him talk about people's rights and so forth, I remember David Rudder's songs: "Lyrics to make a politician clinch" and "A woman belly turn into jelly". I "does" cringe when I hear him talk about rights: human rights, dog rights, and all these rights, but that is a personal thing and he could attack when he gets up.

Mr. Maharaj: Do not worry.

Sen. M. Shabazz: I am not worried, I am just telling you. The point is that maybe we ought to go that way. We ought to find a way where these dangerous dogs—I see it is recommended that they be neutered, maybe that is the way to go. So eventually, this breed of dog would probably move off the scene over the next 10 or 15 years and we will no longer have that type of bad dog.

Even if you are going with those dogs, what probably might have been good, is that the Government—rather than set up people to seize the dog—should set up people who they could train, give these dogs a different kind of training that they could still be proper guard dogs. You pay and bring the dog to the training school to be trained in a particular way, and not just trained to kill or destroy. I believe that these dogs are really trained to kill, that is why in truth and in fact they are killers. I want to believe that, because I have seen children "grow up" pit bulls and those that I have seen are not as vicious as those that get the killer training. So it may be that the dogs are killer dogs or they are satanic, I do not want to say it

Dangerous Dogs (Amdt.) (No. 2) Bill
[SEN. SHABAZZ]

Tuesday, April 11, 2000

like that, but I believe if they get the proper training, we may have a different kind of dog. I think the Bill will take that into consideration.

When you go to parties, those are the dogs that are by the gate, they are going to be muzzled now, which we understand. It is said you are giving a constable and somebody with the local authority the right to have and to train these dogs. All these security firms with these dogs—are you going to precept them and put constables in those places so that they will be able to carry about these dogs? Or are you saying that these people must now get rid of their dogs? What is the position with these dogs as regards the security firms and police in this country which have many of these dogs? I would like the Attorney General to answer that.

Mr. President, there was something the Attorney General talked about: *sienta*; and I wanted to know what was the meaning. He explained it well and I think it is a good clause to the Bill because you should not have to show a history that the dog has bitten somebody before, so now that it bites or kills somebody, it makes a better claim. The fact that this was brought in, I say it is commendable. That is how it should be because in this situation, where the dog is concerned, we must look at it seriously. Who will make the assessment? The court may, but before the court, or if you do not have to go to court, who will make the assessment?

I do not think I have much more to cover in the Bill, but in clause 11(4) where it says:

“If the owner or, if different, the person for the time being in charge of a dangerous dog allows it to enter a place which is not a public place, but where it is not permitted to be and while it is there—

- (a) it injures any person; or
- (b) there are grounds for reasonable apprehension that it will do so...”

I find that clause—although I am against the dogs—either needs to be tighter or something like that. But to say that it was reasonably expected that the dog would do something when the dog is controlled by someone who has it on a leash and all that, because the dog will not be in a place like that. I think we need to look at that clause because it is a clause that can bring about something on somebody that may not be fair and just.

Clause 13 says:

“Where a dangerous dog escapes from any premises, the owner of that dog shall be liable for any injury or damage caused by that dog.”

That is fine, but if the dog escapes from the place and did not cause injury to anybody and we could prove that, the owner must also be liable. There must be some way you can take the owner to court.

Clause 15(1):

“A person who owns or who for the time being is in charge of a dangerous dog shall not—

(b) abandon or allow that dog to stray in a public place.

(2) This section shall not apply where a constable is in charge of a dangerous dog during the course of duty.”

Again, we talk about constable and if you are going to deal with this dog situation, you must look at the security firms. We must know the number of dogs they have and how we are going to deal with that. The fines are good, and I think this Bill, in truth and in fact, would work to restrict people.

Clause 16(3) says:

“This section shall not apply to the training of dogs by a constable.”

Again, I recommend all security officers operating in a firm that already has these dogs and has gotten permission to have them.

Clause 18(2):

“Where a Court makes an order under subsection (1)(a) in respect of a dangerous dog owned by a person other than the offender, the owner may appeal against the order.”

“(3) A dog shall not be destroyed...”

“18(1)Where a person is convicted of an offence...

(a) order the destruction of the dog in respect of which the offence was committed;”

In the ordering of that destruction of the dog, again, there must be a level of killing that dog even though you are not on a violent scene, because it may be the only way you will be able to get rid of the dog.

The final thing about the branding of the dog. I do not even like to hear the word branding. And you are going to brand the dog in the ear. I do not know why—

Mr. Maharaj: Mr. President, may I say that the branding amendment—if I may use that expression—was introduced by the Opposition.

Sen. M. Shabazz: I know you would come there at some point, but I am saying if you bring the Bill, even if we had introduced the branding, and you did not like it, you would not have put it in your Bill. You would have said, just a collar or on the collar with a dog tag marked with the number. You put branding there because you like it. There is a history that if what we do is not good, they say they are not following it and they follow what we do and do all kinds of things. When they do it, they say it is because we do it, and if it is good they take it and if it is not good, they do not do it and so forth. I do not want to get into that political talk with the hon. Attorney General. He feels whatever he does there are people who will support him regardless. We are seeing that, so he feels anything he does is cool.

Mr. President: Get on with the Bill, please.

Sen. M. Shabazz: Mr. President, at this point I will close off. We like the Bill and will give it the support that is necessary, but I would like the hon. Attorney General to give consideration to the points brought forward.

Sen. Martin Daly: Mr. President, I am totally against the keeping of dangerous dogs, partly I suppose because my dogs have been victims and I should declare that at the outset, but that has given me a certain experience in the matter. I will say what the problem is, as I see it, from my practical experience.

First of all, and I am sure the scientists among us will deal with this, because I am going to be asking the Attorney General to draft and introduce three amendments which I have not drafted because I was misled about the parliamentary business we were doing today. This Bill raises an acute problem of politics, that is to say we have had a series of brutal murders of people mostly by pit bulls.

6.05 p.m.

It is difficult to see, therefore, against that background, why the Government should lack the testicular fortitude to tell the owners of these dogs, we are very sorry. The track record is there. This is not something we are anticipating; this is not something that a foreign consultant might tell us might happen. There is a track record. And your love of a particular breed of dog has to give way to what is happening before our eyes. And since this Bill was first introduced we have had

several more attacks. I sometimes think that Governments do not watch the television, because they believe some of what is said.

Only the other night we had an incident where a man with a young family—I think he had his dog killed and the rest of the family was terrorized. I am going to explain, from my own experience, the domino effect of this. The first thing is that it is a question of politics, and there are times when, for the sake of a few votes, the Government must not sacrifice something it believes in. If the Government believed that the proper way to deal with this was to ban the breeds then they should have had the guts to do it, regardless of a few votes.

Obviously, as Sen. Prof. Spence pointed out, the vociferous minority of owners would make plenty noise in order to frighten away the Government, but that must not deter you, because we have a recent history in this country. I do not support a ban, first of all, because we are not a country that is law-enforcement efficient. So I do not support a ban. That is why I have problems with all this licensing—and I will come to that.

First of all, I do not support a ban because the Government would simply drive it underground and the ban would not work. We are not efficient at law enforcement, and, indeed, we are not straightforward about law enforcement, so I do not support a ban for those two reasons. Also, I do not want to give any Government, including this one, the precedent for banning anything: whether it is banning a newspaper or banning a dog. I do not want to give any Government in this country a precedent for banning anything that is already here. It would have been different if we were dealing with importation for the first time. So I am against the ban.

This Bill is not going to work, and because it is late I will say it in one sentence. The present Minister of Finance, who is a man of great commonsense and worldly experience—he does not deal in \$40 words and all his business—admitted to us, one of the reasons they gave up motor vehicle licensing was because they could not enforce it. That is why we gave it up! We cannot enforce licensing of motor vehicles, which are large objects on which you are required to have a sticker, but we are going to try to enforce licensing by branding in the ear, the old dog licence on the collar. We are going to try to enforce that. You cannot enforce motor vehicle licensing on a large object on which there must be a brightly coloured sticker, which you use in broad daylight and you normally have out in a public place, but we are going to introduce a licensing system for dogs in peoples' private yards. That is rubbish! It is just plain rubbish! And all that

happened was the Government lost its nerve when confronted with the outcry by these selfish owners.

It is not going to work. And we know it is not going to work because our licensing systems, historically, have not worked. I am against the ban for the three reasons which I have said. So I want to suggest three amendments to show the people who have the—of course, I support Sen. Prof. Spence's amendment as well, because I would like to see the problem phased out over the long term. But not everybody is going to have their dog neutered anyway. We are still going to have an enforcement problem, but I support his suggestion.

I want to suggest three amendments—I have not drafted them because, as I said, I was misled about the parliamentary agenda today—and I would come to what the three amendments are. They are all designed for these selfish owners to understand that we are serious about the problem. They are laughing at this. In any case I do not know with our history, the carriage of insurance and insurance premiums as the Minister of Finance knows, is based on history. And with the kind of track record we have in Trinidad and Tobago, in relation to this problem, I do not know if we are going to get anybody to carry the insurance at all. Or, the premiums are going to be so highly rated as they used to be, for example, in relation to fires in downtown Port of Spain. You would not be able either to get the insurance at all, or the premium would be astronomical; beyond the reach of any person who is a conscientious law-abiding citizen. So nothing in here is going to solve the problem. I do not see it by way of criticism of the Government; I understand that they were a bit nervous about all the barking dog owners, or whatever they are.

I talk about our level of civilization all the time, and to hear people talking about when a dog bites somebody we must do this, that and the other. We must not accept this. It is not a mark of a civilized society, that the man I saw on the television the other night, could be put at risk of having not only his dog, but his children, murdered by someone else's dog. I am going to give real life examples of things that I witnessed, not things that I heard. I really get around; I see a lot of things; I do not use hearsay. Actually, it is four amendments I want to suggest. The first amendment is that these dogs should not be allowed in a public place at all! At all! I see people on the beach all of the time who have dogs on leads, not only breeds that are designated dangerous dogs, but adults who cannot restrain their dog if it wants to fight, or if it smells or tastes blood.

I hear Sen. Shabazz talking about training—I am sure the scientist is going to weigh in about the genetic predisposition of the dog, and what happens to its

instinct when it tastes or smells blood. I will give a practical example. The first amendment I would like is that these dogs are not allowed to be in a public place at all, because there are many adults who cannot control these animals if they scent, or taste blood, or they want to fight. If you know anything about dogs—I mean when their instincts—and I am sure the scientists would deal with it. Even if you keep dogs as I do—I used to breed until the pit bulls attacked my dogs, which I would explain. Any scientist would tell you that when the instinct of an animal is engaged, it loses all reason. Have you ever tried to restrain a male dog from going after a bitch in heat? It is impossible! And the same dog that normally obeys your simplest command simply cannot be restrained. *[Interruption]* Some people as well. So much so that when these dogs taste or smell blood, the limited ability they have to deal, benevolently, with the people who keep them is completely lost. Let us be realistic.

Let me now relate some examples. First of all, let me repeat. I have seen people on the beach unable to control dogs on a leash, particularly, when they see another dog. So the idea that you can safely bring them out in a public place held on a lead, even if the person is a young adult, is stupidity! It is stupid! It cannot happen! They cannot control the dog. Particularly, dogs that are squat and strong—they do not have the strength. First of all, the dog has strength and, secondly, the dog has, what I call, the strength of the insane—you know the strength the vagrant has when he holds you—when his instincts kick in, and he does not want to be controlled. Clause 15 (a) has to be amended. They must not be in a public place at all.

Secondly, I would like to see a specific authorization to the police, to be able to shoot these dogs, not to go and hold it when he sees it. I want a specific direction to the police that where they have received a report of damage or injury caused by a dog and they find the dog on the loose, they can shoot it. You must have those two conditions!

Many policemen shoot the dogs, anyway, but some of them are concerned—and one of the real-life examples I will give you—about what is their liability or the liability of the state if they do it. So they need the guidance and we need to lay down the conditions. The first condition—particularly if the dogs are not allowed to be in a public place—is that if they are found in a public place and they have had a report of injury or damage; or, if the owner of the dog cannot be reasonably found—which is another possibility—before they do any damage, they are entitled to shoot them. I will give my real-life examples.

Dangerous Dogs (Amdt.) (No. 2) Bill
[SEN. DALY]

Tuesday, April 11, 2000

I want a specific authorization to the police to shoot these dogs in certain controlled conditions. I do not want these dogs to be allowed in a public place under any condition! I want us to have a specific offence—not these “mickey mouse” fines of causing death by the mishandling of a pit bull. That would have to be drafted in a certain way.

6.15 p.m.

Members will recall that only very recently, in relation to motor manslaughter, because it is so difficult to establish manslaughter in a motor vehicle case, we passed an amendment to lower the standard so that we could more easily convict persons who cause death by dangerous driving. It ought to be very simple to get that amendment, copy it and adapt it, in order to have a specific offence with a fine of a minimum of 10 years in jail if you cause the death of someone by the mishandling—you cannot use the word, “mishandling”. Your people will have to deal with it. I have not attempted to draft it because I did not know we were going to finish this today, but we need to have that specific offence. So let us have none of this airy-fairy stuff about if it comes off the lead and if it escapes and all of that. You have to let people know you are serious.

I am going to appeal to your imaginations very shortly by real-life examples. Would you like to see your son or daughter—they do not just kill you like a bullet, “whattap”, you know. Your flesh is ripped off. Sen. Kenny, I am sure, is going to explain how it happens. I am going to give some examples. Would you like to see your son’s or daughter’s flesh torn off because somebody forgot the gate open, then that person tells you sorry or they tell you that the dog is normally good with children? Is that what you want for us? So I want to see that as a specific offence.

Mr. President: Sen. Daly, would you give way for a procedural motion, please?

PROCEDURAL MOTION

The Minister of Public Administration (Sen. The Hon. Wade Mark): Mr. President, according to Standing Order 9(8), I beg to move that the Senate continue to sit until the conclusion of the matter now before the Senate, or at an earlier hour than the Senate may approve.

Question put and agreed to.

DANGEROUS DOGS (NO. 2) BILL

Sen. M. Daly: *[Interruption]* Well, the Attorney General and his team are going to realize that. If you know the Attorney General as well as I, you will know that he does not like this Bill because it does not go far enough, and you could see it in his body language. I am trying to show him a way in which he can bring a Bill that really penalizes owners, yet does not get him back into the political controversy of banning anything, not least of all because, knowing him as well as I do, I do not want to give him the power to ban anything.

Now, let me give three practical real-life examples. I am going to edit these examples, though I should not. I should expose the owners. I want to keep it as neutral as possible. I have seen a pit bull bite a smaller dog through a chain-link fence, take a square of flesh about this size—and for the Palantypists I suppose we could say that is about four inches by three inches—from the top of the victim dog's head. I have then seen, immediately after that, the same pit bull leap a chain-link fence five to six feet high in pursuit of the same victim dog, no doubt spurred on by the taste of blood.

In the course of the same incident I had then seen a teenaged female member of the house instinctively run to protect the victim dog and thereby expose herself to being savaged by the dog that has already tasted blood. I have seen that, Mr. President. It is not something I have heard, it is something I have seen. All right, that is example number one. So I want you to understand that while we are pussyfooting around because most of the victims have been other dogs, yes, we have had human victims, but usually, by the time the pit bulls have got at the dog victim, the police come or God intervenes or something miraculous happens and the children are not hurt. I have seen this, Mr. President.

A second thing that I have seen is a pit bull escape—now I have to identify the area—in the vicinity of St. Anthony's College at around 2.10 to 2.15 in the afternoon, shortly before the pupils were due to come out of school. I have seen that pit bull, while on the loose, attack another dog through a chain-link fence. The police were then called and happily they came very quickly. I believe one of the reasons they were stimulated into coming quickly was because they were specifically advised of the presence of the school.

A more courteous and helpful policeman could not have come on the scene, and he then debated what he should do next. I am happy to say that what he did was he drove around the neighbourhood with some kind of loud hailing device asking the people who were the owners of the dog to come to get it. Miraculously,

that worked and the dog was retrieved by the owner who said, “Well, the gardener leave the gate open, eh”. This is Trinidad. We are not in London. Miraculously, the dog was retrieved before the school came out.

Now, if you had a child in St. Anthony’s College, when the schoolchildren came out of school they would have to pass where this dog was roaming. Hundreds of children walk in that street where this dog was roaming. If you are unlucky enough that it was your child who had happened to come out of the school right after the pit bull tasted the blood and he attacked and ripped all the flesh off your child, just imagine what might happen. Well, I see Sen. Gillette, the acting Prime Minister, turning pale—almost as pale as when they told him he was going to act as Prime Minister—because he is a family man and he understands what I am saying. He is envisioning one of his bright young—I think his children are athletes in swimming or something, and he can envision one of his sons coming out of St. Anthony’s College and getting ripped from limb to limb.

So we have a solution of banning these dogs outright from public places. We have a solution by authorizing the police, in certain guarded circumstances, to shoot these animals, and we have a solution by creating a specific offence of causing death or injury by the mishandling of a pit bull. I would like to see all of those amendments. I had not attempted to draft them because I did not know we were finishing this today. I have given you two real-life examples. How can you possibly entertain any argument that this is analogous to a motor car killing people? How can you possibly entertain that?

Unless a driver jumps the median, which is now the fashion, a motor car is not out of control in the way in which a pit bull is out of control. The motor car does not run away from its garage without its owner. It is not out of control in that sense. That is the first thing. Secondly, the randomness with which this death could occur is not like a motor car and, most of all, a motor car cannot kill you in your own house, which a pit bull can do by entering your gate or jumping your fence. I mean, sure, sometimes “WASA trucks and thing does bounce down people wall” and end up in their bedrooms, but by and large that is a freak. So what is this analogy to the motor car?

The motor car is basically subject to the environment. It is basically an instrument of social progress, which we have on the roads, subject to certain regulatory conditions, because it is a valuable thing. It is something we need to have—motorized transport. Why on earth do we need to have these things? “Ah”, say the pit bull owners, “Well, you know, it have plenty crime and the Government cannot protect us from the crime so we need to have the pit bulls to

do it". Well, my answer is, send as many memoranda to the Government about crime and the history of crime as they do about their precious dogs, get involved in crime prevention, get involved in a neighbourhood watch, and do not give me this facile argument that they are entitled to have a killing machine which, quite unprovoked by the victim, could end up killing you in your own yard.

Consider the example I gave you of the teenage daughter going to rescue her pet which has had a four by three, and, I mean, just to add in, one-and-a-half-inch thick piece of flesh exposing the skull and her instinct now is to run and protect her dog. It is just luck why the dog "ain't kill her". So what is all this rubbish about rights to own dogs and protection against crime and all of this? I am trying to make life very easy for the Government. I am trying to show them a way in which they can make this legislation meaningful and in which people can be punished for their negligence without us having to go back into this sterile debate about banning.

I think it is very important that this Bill have an element of realistic punishment that does not depend on some regulatory authority or some licensing system that is not going to work. It is not going to work. I think therefore, Mr. President, we have to do some work on this Bill to make it realistic. I am sorry if the examples have been somewhat gory. I could give a few more but I contented myself with three—dogs that cannot be controlled by a lead under any circumstances once their instincts are savagely aroused; the random nature in which these dogs escape and the random nature in which they can kill. They are great jumpers, some dog breeders tell me, and I am sure the scientists are going to deal with it. They can jump in a levitation fashion similar to a helicopter taking off. How do you think they get over a six-foot fence?

So, Mr. President, if we are serious we are not going to play around with dog licences and branding in the—well the eardrum as it stands, at the moment. We are not going to pussyfoot with that. If someone wants to run the risk of owning one of these dogs, that person has to run the risk that the police will shoot it under specified conditions, and that person also has to run the risk that he or she could "make a jail". Small recompense to the person whose child is savaged, but at least—we are talking about balance, let us put some balance into this.

I feel very, very strongly about this, not because I have practical experience but because it amazes me that people could be so selfish as to seek to retain these dogs without any personal risk. There is no element of personal risk in here if you break this law. There are a few little pussyfooting fines and maybe certain conditions under which the police can seize the dog. So dog owners have to face

Dangerous Dogs (Amdt.) (No. 2) Bill
[SEN. DALY]

Tuesday, April 11, 2000

the same degree of risk, at least if we are putting balance in this, that the potential victim faces. I am particularly concerned, in the practical example I gave, about people who own these dogs in proximity to children.

What is this, a snuff movie, so that when someone walks out of St. Anthony's College, a dog will kill that person? Is it a snuff movie you are making? So let us get real, Mr. President. I would ask the Government to consider the three amendments that I am proposing. Thank you.

Sen. Prof. Kenneth Ramchand: Mr. President, I too would like to thank the Attorney General for bringing a very urgent matter to the House and the Leader of Government Business for wishing to complete it today because I think we have to make some decisions about dangerous dogs. I am glad, too, that the Attorney General spoke without too much conviction or passion and I am glad that he has indicated, or implied at least, that this thing is not cast in stone and that it is open to amendments.

Mr. President, like Sen. Daly I wish to dispute the story of the origins of this Bill. This Bill began as a result of reports that pit bulls were killing people, including their owners, and killing other pit bulls and terrorizing the population. This legislation did not come about because, as the Attorney General said softly, there was a spate of injuries. It is a periphrasis, Mr. President, for something quite horrifying that was happening, and there was a kind of urgency in the public about this. I agree with Sen. Prof. Spence that some consultations do not at all give one the voice of the people. Some people metres are not always representative.

6.30 p.m.

Mr. President, I am fascinated [*Interruption*] by the Dangerous Dogs Bill and by dangerous dogs, both the males and the females of the species. There are many kinds of dogs: big, small, bold, sly, docile, vicious, outdoor dogs, lap dogs, puppies, huskies, chihuahuas, Great Danes, poodles, greyhound, pothound, collies, curs, mastiff, terriers, pug, chow, whippet, bird dog, sheep dog, coach dog, setters, boxers, retrievers, jet black belgian shepherds, snow white Scottish terriers and dalmations with touches of the tar. [*Laughter*]

There are as many different kinds and shapes and colours of dogs as people, and dogs and people do the same thing. They snarl, they bark, they whimper, they whine, they howl, they growl, they lick, they slaver and they wag their tails—just like people. [*Laughter*] So I am very interested in dogs; these offspring, sons and children of bitches. A dog they say, is a man's best friend. There are many

similarities—[*Interruption*] a woman’s best friend too—between dogs and human beings, and sometimes you have doggie behaviour in human beings—like everybody wants to be the top dog—except Sen. Gillette—and the top dog says, when I talk, let no dog bark. [*Laughter*] If you play with some dogs you get bitten by the fleas, so next time you see that textbook thing, lay off it.

There are people who talk about letting loose the dogs of war coming election time. Sometimes your wife has you in the doghouse. You go in the study to read and you find that your books are dog-eared. The Government wants to “muzzle” you. Adams plays a dogged innings. So in principle, I would like to do something about the dangerous dogs of the doggie and the non-doggie type, and, therefore, I cannot help thinking, as I think of the real dogs, of the other kinds of doggie behaviour in our society. There thus is a subtext to what I am saying. In commenting on the Dangerous Dogs Bills, I cannot help but be aware of the subtext of threats, intimidation, being muzzled and of being barked at, in our society.

Mr. President, I am returning more specifically to this piece of legislation. I have never heard, let alone I have never seen a fila brasileiro—I figure that must be some sort of Brazilian footballer, or a japanese tosa must be Japanese version of an Indian dhasa. I have never heard of fila brasileiro and I do not know japanese tosa, and if there are any in this country, I doubt that there are more than two or three of each. So when there is a schedule here speaking about dangerous dogs, we are being given a generalized blur, instead of a statement about the thing that is worrying people in this country—the pit bulls! Why do we have legislation about dangerous dogs in general, and why invent a spurious schedule with two kinds of dogs that some people never heard of and nobody has ever seen, when it is pit bulls that we are dealing with.

Mr. President, I am convinced—and I know that there is enough evidence—about the dangerousness of pit bulls. They have killed enough people in our society to make us decide to take action relating specifically to them. Of course, the action we take could apply to any other dangerous dogs, and that is another thing in the legislation. How do you define a dangerous dog? How do you get on the schedule? I think the legislation recognizes that you cannot define dangerous dogs by type of dog. It recognizes that any dog can be dangerous because it allows you in 17(1) to take action against any other dangerous dog. So you cannot define “dangerous dog” and so the legislation is very cumbersome and will have to be vague in its application, because somebody could always say, well, only these three are on the schedule of dangerous dogs.

Dangerous Dogs (Amdt.) (No. 2) Bill
[SEN. DALY]

Tuesday, April 11, 2000

Mr. President, at any rate, the legislation speaks—I feel very permissively—if I can remember the phrase of “dangerously out of control”. So there are dangerous dogs and then there are dogs “dangerously out of control”. I feel that phrase, referring to the behaviour of dogs in public places is a loophole. The dog is either out of control or it is not out of control. Once it is out of control it is “dangerously out of control”. So I feel that is a piece of slackness in the legislation if the Government is going to persist that dangerous dogs like pit bulls are going to be allowed in public places, it should remove the adjective in “dangerously out of control” and just say “out of control”.

I want to say right now, that I am of the opinion that these dogs should be banned. I am not against banning some things. I would ban cocaine. I would either ban cocaine or let it be free. I do not mind saying that I would like pit bulls to be banned absolutely. If they cannot be banned absolutely, I would fall back on the suggestions of Sen. Prof. Spence and Sen. Daly that, first of all, they cannot be allowed in public places. They should be banned absolutely from public places and that, as Sen. Daly has pointed out, will clear up a lot of the problems that you would have about administering this licensing procedure and the tattooing of the dogs’ ears. You are going to register a dog in a certain zone. Are you going to zone dogs? When you get your licence, are you supposed to stay only in the area for which you get the licence and the dogs with a passbook?

Mr. President, there are all kinds of absurdities in this licensing regulation. There are all kinds of absurdities in the proposals for control. The law is telling a police officer that if he can show that he is really a police officer he can go into a place where he suspects there are pit bulls and where the place is not secured. Do you think the officer is going there? Sen. Prof. Spence has pointed out further that the law tells a policeman that he seize a pit bull, if he feels it is a dangerous thing. Seize it? Seize it! Mr. President, I would prefer to go along with Sen. Daly and tell him to shoot it!

If we were to ban pit bulls from public places, we would obviate the necessity to hire a lot of people; a lot of clerks we would avoid the waste of a lot of paper and time on an ineffectual exercise. I am glad that Sen. Daly has reminded us that we cannot even license cars properly. How then are we going to license dogs? That is the first thing. Ban them in public places; ban the imports and, of course, you have to ban the breeding or any kind of reproduction.

Mr. President, when slavery was being abolished those who wanted to continue having slaves made a concession and agreed to ban the trade. That is like banning the importation, but you cannot just ban the importation. When the

importation of slaves was banned, the proprietors turned to encouraging slaves to get married and to breeding slaves in the island. So you cannot just ban the importation, you will have to ban the breeding and reproduction of any kind. I am in favour of a ban in public places; a ban on importation; a ban on breeding of any kind; and we must be very specific about punishment—as Sen. Daly suggests—strictly punishing regulations to ensure that owners keep their dogs in their own yards. If they want to eat other dogs, let them eat your dogs; if they want to eat people, let them eat your children or you. Keep them in your yard. If we hear that your dog has killed your child, you are going to be charged with infanticide.
[Desk thumping]

6.40 p.m.

Mr. President, that is the essence of what I want to say. I know that time is short. I have three or four more pages, but I would not go on with them. I am just saying that I feel pitbulls should be banned absolutely. If they cannot be banned absolutely, I go along with the combined suggestions of Sen. Prof. Spence and Sen. Daly. I believe that the right to life and the right to personal safety are greater than the right of a few spoilt, rich and privileged people to hold property in the form of dogs.

Thank you, Mr. President.

Sen. Prof. Julian Kenny: Mr. President, if the Government had come to us stating that the long-term objective is the removal of the pit bull breed and any other dangerous breed from Trinidad and Tobago and that we would have some sort of interim legislation to regulate the problem, I would have no difficulty in supporting the legislation, but I am afraid that I cannot and will not support this legislation, even with the amendments proposed.

Again, it so often happens when the Attorney General is here, I get the opportunity to speak a bit about biology, and I would like to give a brief account of some aspects of the biology of dogs, because dogs have evolved with the human species since the last Ice Age. We are talking about 15,000 years, and during that 15,000 years, the human cultures have evolved breeds of dogs to provide a range of functions, not merely as pets. There were hunting dogs; there were dogs bred as coach dogs; husbanding animals; guard dogs; and the particular one with which we are dealing, the main one is the pit bull. I will come back to the pit bull in a minute.

One of the interesting aspects of the biology of dogs is that the social unit is a comparatively small one. Hunting in dogs and their behaviour in a pack are reflex

Dangerous Dogs (Amdt.) (No. 2) Bill
[SEN. PROF. KENNY]

Tuesday, April 11, 2000

things. One pit bull making an attack, or one dangerous dog making an attack, is a fairly severe thing, but when you have two or three of the same thing, they get this frenzy, and this is what frequently results in a human being, being mauled to death when there are all sorts of people around. The pack gets onto the one individual—as happened in Cascade, and tore the man apart. They tore him apart in the presence of all sorts of other people, including Unemployment Relief Programme workers who were trying to kill the dog. It was this pack effect. I gather that many people who keep pit bulls, keep more than one.

We are dealing with a problem and, essentially, what we are saying is that we will try to regulate it. We are prepared to accept that somebody is going to be killed. We are accepting that. This is why I cannot and will not support this Bill.

I must thank the Attorney General for his presentation, especially his reference to the Constitution. It is true that our Constitution guarantees us the right to property. In fact, it is not the right to property; it is the right to enjoyment of property and there is a profound difference. The example to which Sen. Daly referred was that of a family living in their property and being attacked in their property. Their lives are placed at risk, right inside their property. So, they have, not only under the Constitution, the right to enjoyment of life, but also to the enjoyment of their property.

Now, can any legislation make absolutely certain that constitutional right is not brought into jeopardy? This is not my main concern with it. It is all very fine getting insurance to cover public liability. But, what happens in the case of death? I think Sen. Shabazz referred to that. Is a human life worth \$250,000? What is even worse is if an individual, a citizen of this country, in their own property that they are guaranteed the right to enjoyment of, is maimed in such a way that they become physically disabled for life. Can you imagine a 17-year old maimed? It is possible because these dogs—I will come back to the pit bull in a minute—can do incredibly severe damage. They can kill, as has been reported and has been shown on television in more than one case.

Here we are saying, “Listen, we are going to regulate it. We can control it and in the event that you are killed, some day insurance will pay \$250,000.” In the event that you or your child is permanently disabled for the next 50 years, your child will be faced—they can crush your spine and you cannot walk. What is \$250,000? I mean, are our values wrong, or are our values right?

My concern about this legislation is that it does not address the core issue. Are we, as a civilized society, prepared to say that a certain part of the society that

may have been quite vocal in making responses to the draft legislation, that those people have a right to enjoy their property and that the ordinary citizen will be put at risk? Because this legislation is not absolutely safe. You cannot legislate absolute control. The question is: Are we saying, as a nation, that a group of people—the Attorney General did not tell us how many people actually responded. It would have been interesting to know how many Members of the Government side, of the Opposition, of the Independent Bench, or of the other place, actually own dogs.

Mr. President, I am a great dog lover. I have had dogs all my life. In fact, I recently lost a shepherd which was with us for 15 years and five months. This dog was well-trained, well-behaved, always on a lead when we were in a public place—on a beach—and it gave us great pleasure. This was not a guard dog. The dog was sensitive to anyone coming to the gate but was absolutely contained all the time—a beautiful creature. I would like to continue to have the right to own a dog—I probably would not—but, in the case of pit bulls, we are dealing not with a pedigree dog; we are dealing with a mixture of breeds.

Now, historically, as Sen. Prof. Ramchand mentioned, a whole string of breeds of dogs, were all bred for particular purposes. The terriers are bred as hunting dogs, not chasing game on the hoof; the terriers were evolved and bred to go into burrows to tear the fox apart—the fox terriers. There were terriers that were bred to go into badger holes, a different kind of animal, and there were other terriers raised for other purposes.

Now, the bull-terriers were a breed that was developed, partly as watchdogs, partly as pets also, but they were also bred as fighting dogs. They were actually a breed that was developed for bear baiting. Bear baiting was an English custom of having a pit; taking these animals in; having a tethered bear and having the dogs go at it until it tore the bear apart. This, apparently, to people, was great sport.

Now, the bull-terriers breed is actually a mixture of things and the pit part of them was from the bear pit. There are many bull-terriers. There is a Staffordshire bull-terrier that can make beautiful pictures, but if you see these animals, all muscle; big jaws and, as the Attorney General said quite clearly, these things have a powerful bite. They can cut right through a human arm. They can crunch the bone, the big carnassial teeth on the side. It goes crunch and it goes right through. They were bred for a particular purpose and, as I say, they are mixed now.

The pit bull is not a pedigreed animal. It is a mixture of bull-terriers and other things and when you look at the so-called Trinidad and Tobago pit bull, they come in a range of colours. You can find a white bull-terrier with these goldish

Dangerous Dogs (Amdt.) (No. 2) Bill
[SEN. PROF. KENNY]

Tuesday, April 11, 2000

eyes—absolutely fearsome. You have the striped one; you have the spotted one. They all have this massive build; thick shoulders; designed as a fighting dog to go in there, bite at a bear to tear it apart.

Sen. Daly: To crush bones.

Sen. Prof. J. Kenny: This is what we are saying that some people feel they want to have something like this. We agree, fine, but people have to recognize the constitutional rights of the rest of the citizens. To me, far more important than the right to property—I am correcting the hon. Attorney General—the right to enjoyment of property, is the right to enjoyment of life. I think that is far more important.

Mr. President, the Constitution also guarantees us the right to freedom of movement and when you are walking in a public place, a beach, or for that matter, a road, and two or three, a pack of pit bull-terriers charge out, what is your right to freedom of movement? You are terrified, even as Sen. Daly has mentioned, within your own home. That is the example he cited. So, there has to be a balance and I think the broader welfare of the citizens is far more important than the few.

How many bull-terriers are there in Trinidad and Tobago? How many people actually own these animals? I do not know and I do not know whether the Government knows. I realize that while one has to attempt to solve the problem and while I appreciate all the difficulties and so forth, I, too, sensed the body language of the hon. Attorney General because even when he was dealing with intellectual property which he admitted was not really his area, he brought a certain passion to it. [*Interruption*] I am convinced. [*Laughter*]

But the pit bull-terrier thing, the Attorney General came across as having to do what the Government thought was the best compromise in the situation.

Sen. Daly: Just like with the paving. [*Laughter*]

Sen. Prof. J. Kenny: So, Mr. President we have enough problems in this country. I was just thinking that a pit bull is, in a sense, an exotic animal. The ordinary pot hound, the ordinary dog, the spaniels and others, are pets. There are pot hounds that you see at Maracas Bay and so forth. They are not going to attack you, but this particular thing is an unpredictable animal and it becomes even more unpredictable when it moves in a pack and becomes even more unpredictable when it gets out of its own territory, that is, it gets on to a public road.

Now, honestly—

6.55 p.m.

Mr. President: Sen. Prof. Ramchand is on his feet.

Sen. Prof. Ramchand: Before the Senator closes down, I wonder if he could instruct me—I would like to know this. If somebody is in control of a pit bull, is holding the lead and the pit bull is on the other end and, let us say, this person was as strong as a post, and he was able to hold on to the lead, would the pit bull be able to burst the lead then?

Sen. Prof. J. Kenny: In answer to the hon. Senator, I would say that it is possible; it all depends on the quality of the lead. Is the Licensing Authority going to specify leads? One can buy a lead for \$15 dollars. It has a little cast fitting at the end with a nylon strap and the bull terriers just have to snap and it is gone. The nylon strap may be in tact. Are we going to ask the Bureau of Standards to establish a standard for dog leashed?—*[Interruption]*

Mr. President, there is a related point I wish to make, and this is that we have enough of these problems with what I call exotic animals; things that really do not belong to us. It has been mentioned before that, at one stage somebody was exhibiting king cobra in Trinidad. I have no idea how an animal like that was allowed into the country. Somebody must have been given a permit. In fact, there are people who are actually keeping animals of this kind: king cobra. A bite of a king cobra—it is a nerve poison—and it is frequently fatal, and I doubt that we have cobra anti-venom in Trinidad for treatment. We allow all sorts of things in.

Our society is a very crowded society. The population density is getting up to over 700 per square mile, and much of this is concentrated in urban areas. We are taking an animal that is inherently a dangerous animal; an animal that can cause death or permanent disability, and we are trying to find a solution to allow, what I view as, a small section of the population to enjoy the right to own something like this.

Mr. President, I really find it very difficult to support legislation of this kind. I had hoped that if we recognized the problem and we accept, long-term, we want to eliminate the breed from Trinidad and let the people know that, in the interim, they would be allowed to continue to keep their animals, provided they are maintained in a certain way. We should use Sen. Prof. Spence's suggestion to prevent the import of animals, or their sperm or their embryos. Then I think we would be going in the right direction, but just to say that, perhaps, in six months' time we would come back, I cannot accept it.

Dangerous Dogs (Amdt.) (No. 2) Bill
[SEN. PROF. KENNY]

Tuesday, April 11, 2000

Finally, I would like to make an observation about the dogs; it is not only the pit bulls. I think Sen. Daly referred to the phenomenon of a bitch in heat. Bull terriers, of all kinds, adapted to digging underground to get at the fox or badger or whatever is being hunted. I do not know that one can actually fence in a bull terrier, unless there is a concrete footing on the fence. I am not sure of it. I have actually seen what my dog or other dogs will do.

Sen. Prof. Ramchand is also a responsible dog lover. He talks about his shepherd getting up a six-foot gate. With these animals when this urge takes them, what you are headed for is animals trying to get in, by whatever means, over or under the fence, or animals trying to get out. It is their biology. That is the way the species functions. It is the basic genes of it.

I think what we are doing is the wrong path and I really do not wish to support this legislation. [*Desk thumping*]

Sen. Philip Marshall: Mr. President, I did not, really, initially intend to contribute to this debate, but I reflected on the statements of the hon. Attorney General when he was talking about law reform and law revision. I do not know where this would fall.

Mr. President, the challenge that any government faces is really having to deal with the issues and varying interests of so many stakeholders. I suppose that this challenge with the dangerous dogs is very much akin in the United States to the right to bear arms. I think that, as part of the legislative process, we should really measure the cost of our own legislative agenda. We have sat here today discussing this Dangerous Dogs (Amdt.) (No.2) Bill and I would like to put some things in perspective, about whether this legislation could ever be implemented.

I would like—if you would give me some licence, that is a bit of a pun—to refer to Chap. 16:01 of our Firearms Act, and I will draw the comparison. With respect to the possession of an unlicensed firearm, section 6(1) states:

“Subject to section 7, a person may purchase, acquire or have in his possession a firearm or ammunition only if he holds a Firearm User’s Licence with respect to such firearm or ammunition.”

I then go down to a few paragraphs. Section 6(3) states:

“Any person who contravenes any of the provisions of this section is liable in the case of—

(a) an offence under subsection (1)—“

which is what I just read

“(1) on summary conviction to a fine of four thousand dollars and to imprisonment for two years;”

So if one has in his or her possession an unlicensed firearm—on summary conviction to a fine of four thousand dollars and to imprisonment for two years.

I would like to refer you to some of the fines in this Dangerous Dogs (Amdt.) (No.2) Bill. Page 10, clause 9(1): Cancellation or lapse of policy. I quote:

“Where a policy of insurance required under section 8 is no longer in force, the owner of the dangerous dog in respect of which the policy is issued shall promptly inform the local authority.”

Clause 9(3) states:

“The owner of a dangerous dog who fails to comply with subsection (1) commits an offence and is liable on summary conviction to a fine of fifty thousand dollars and to imprisonment for one year.”

So, I own a dangerous dog, I go on holiday, for some reason the insurance company may decide to go bankrupt, my policy lapses, I have committed an offence for which I have subjected myself to a fine of fifty thousand dollars and to imprisonment for one year. I carry an unlicensed firearm; I am subject to a fine of four thousand dollars and imprisonment for two years.

Mr. President, what is really underlying and what is a bit challenging about this situation is the Government, for whatever reason with stakeholders, knows it has had to bring legislation that it would not enforce. No magistrate in this country is going to send somebody to prison for one year and fine him or her fifty thousand dollars because of some lapse in the custody of a Dangerous Dog Bill. This will never be implemented and we know it! We know it, Mr. President. Why waste the time of this country? We know it! There are so many issues to be dealt with and we know that this will never be implemented. How can we balance somebody carrying an unlicensed firearm for four thousand dollars and if one imports explosives illegally in the country, it is down to two thousand dollars.

I know that death by a dangerous dog is horrific, but where is the balance? We, and the Government and any government today, have to decide. Power to them. You will never keep everybody happy. If the objective is to protect citizens from a dangerous dog, ban the dogs. Ban the dogs! [*Desk thumping*] Do not waste the time of this Parliament in putting through legislation which morally cannot be

enforced. Nobody has the right to have in his possession some asset that could take away the life of somebody else. No one! Reconcile the situation with the firearms.

I thought, based on this, that what one would have in such a case therefore—we should have on the Order Paper if one is in possession of an unlicensed firearm one would go to jail for 20 years.

7.05 p.m.

Mr. President, I know that it is difficult, but I would say that an unlicensed firearm is just as dangerous as a dangerous dog. [*Interruption*] The person who has an unlicensed firearm has that for that reason, I would assume, of some bad intent. It is quite possible that a dangerous dog, if properly secured, may, in fact, not cause any damage. But that is not the purpose of my argument. What I am basically saying, is that this legislation will never be enforced. Sen. Daly talked about licensing vehicles, transfers of dogs and guns—I mean, let us forget it. Let us concentrate on the business of the nation. Let us ban the dogs, because I think that it is the most effective way to do it.

What about the situation of equity among your citizens? Are you going to have a Bill where people who can afford it can have the dogs, but people who like those dogs but cannot afford it, therefore, cannot have the dogs? Might you not have a situation where somebody's dog, because he cannot afford it, is destroyed, but somebody else who can afford it, the dog is not destroyed. We cannot continue like this. We have to examine legislation and have to realize that people's behaviour is shaped by one thing: the certainty of consequence management.

It does not matter whether the fine is \$100,000 or \$2,000, if somebody knows that a fine is going to be imposed for \$2,000 they would follow the law. Because the fine is \$100,000, just like what I have said, they will say, "No way this law is going to be enforced." So it will not change behaviour. In fact, what you might find, paradoxically, is that the lower the fine, because it is enforceable, it may change behaviour, and the higher the fine, because it is so ridiculous, it cannot be imposed.

I end by saying, let us review this; let us review the nature of all types of legislation. I am not saying here whether I am an abolitionist or retentionist, but is it not paradoxical that when human beings get murdered in the most horrible manner you have humanitarian groups arguing against capital punishment, but if someone gets mauled by a dog there is no hue and cry. Where is the balance? I do

not know; I have no answer. Let us try to be as effective as possible in our future legislation and make sure that whatever we put in place in this Parliament is going to be assented to, enforced and people's behaviour is changed as a result of our legislation and efforts here.

Thank you.

Sen. Mahadeo Jagmohan: Mr. President, and hon. Senators of this Senate, I remained listening very carefully to the hon. Attorney General and the standard and enthusiasm with which he presents his bills were lacking in this presentation, and that sent a thunderous message.

At first, after listening to Sen. Daly, I formed the impression that the Government would pull this Bill back and use the two amendments circulated and the suggestions of Sen. Daly and do some work on the Bill and bring it back. Perhaps, then we would have gone along with that as well. But after listening very carefully again to the other three distinguished Senators, perhaps, we do not intend to support this Bill at all, regardless of what might have happened in the Lower House. [*Interruption*]

Mr. President, the position is that the whole question of dangerous dogs is a difficult one. There are non-pedigreed dogs—if that expression is permissible—that do not fit the three categories on this Schedule on the last page in the Bill. Those dogs are quite dangerous at times but they are not capable of doing the damage that these other dogs do.

Mr. President, some will agree I know, perhaps; I do not know what the others will say. Just like the way certain types of drugs are brought into this country and however they come we do not know, some of these dangerous dogs have come by the same route to this country. Many people will not like to hear or believe this, but affluence is the cause of the presence of so many dangerous dogs. People who do not know what to do with their money have to find a way to spend it, so they can spend any amount of money in procuring these animals, taking care of them and supporting them. Something could be done about that.

The public opinion in this country is still strongly against any dog that is dangerous, whether it is those categorized or their common dogs, and the public opinion is what we must respect. We who are here in this Senate must give consideration to what the public is thinking about any matter. If you ask anyone in this country, especially lay people: is there the need for dangerous dogs? They would tell you no. Dangerous dogs have not caused the suppression of crime or caused crime to be less, at all. I am not blaming the crime on anybody for the

Dangerous Dogs (Amdt.) (No. 2) Bill
[SEN. MARSHALL]

Tuesday, April 11, 2000

purpose of this debate, but we all have to be extremely careful about this piece of legislation.

I wish to look at page 4. If we all look at clause 18, it would empower the court on the conviction of an owner for a designated offence to order the destruction of the dangerous dog involved and to disqualify the owner from having custody of dogs. Is that not an erosion of people's right, the custody of dogs? I suppose they mean dangerous dogs. But suppose this owner wants to procure a common dog or a dog that is not dangerous, this clause could militate against him or her, and we must be careful about that. Then we are empowering the Minister—I suppose that means the Minister of Local Government—to designate as dangerous, other types of dogs. How will that be done? Dogs of the same species, some are tame, humble, meek and loving to their owners and the children in the house and other dogs of the same kind are extremely dangerous and cannot be trusted.

Mr. President, I am looking at the Bill in a particular way. On page 12, clause 12(1) it says something about the description of a kind of fence or wall, but no way does this say how to judge a strong wall or a high enough wall so that the dogs cannot either break open or escape. It is frightening to hear the learned Senators who described the strength and ability of these dogs to do damages. Will anyone be authorized to inspect these fences and to test their durability and strength to see if they can resist the strength of the dangerous dogs? This is the reason I thought that we would have had some kind of indication from the Leader of Government Business, this afternoon, that the Bill is being pulled back.
[*Interruption*]

Mr. President, I shall not be long. This Government or any government should not find itself piloting legislation or putting legislation in the statutes that contain some kind of penalty or action where you would be moving in a legal way to destroy animals, whether they are good, bad or indifferent. As my colleague said, get rid of them totally, and not in the long run, perhaps, immediately.

We are not confused, at all, about this Bill. We are clear on what it is saying and asking for, but these sums that are mentioned in the Bill in terms of fines, charges and all that—my colleague, Sen. Shabazz, and the other Senators alluded to it—are not the answer. If you take the last 50 years of the last century and do some research or some consultation, you would find that more human beings were killed by bulls than by dogs, but the supreme master has a way of doing things. We had the advent of wheel tractors so people do not keep many bulls any more; you hardly see bull carts anymore, the wheel tractors are doing the job. If it is felt

that the dangerous dogs are helping somebody, if you examine very carefully, it is not really helping anybody at all. Those people with dangerous dogs still get their places broken and entered into and half their valuables stolen.

The hon. Minister of Finance, either two years ago or whenever it was, came with a measure that has suspended the licensing of vehicles—*[Interruption]*—eliminated, all right, I adopt the word—eliminated the licensing of vehicles, but you now come about the licensing of dogs?

7.20 p.m.

As a little boy growing up, I know when the policemen came around on their bicycles and they saw a dog in a yard and asked for the owner and if the dog was licensed, it was easy to disown the dog, or chase it off. This measure looks so jokey.

Mr. Maharaj: Are you going to support the Bill?

Sen. M. Jagmohan: I am duty-bound, whether it is the Attorney General or another Minister, or one of my colleagues if they are hinting something, perhaps I should lend an ear, but there are times when I do not hear at all. *[Desk thumping]*

Mr. President, I wish to state at this time, it seems as though on the Government Benches there is some wrangling and dissatisfaction and there is no co-ordination and they are not moving as a cohesive whole. *[Desk thumping]* The Sara Poll notwithstanding.

However, I wish to end. I have respect for people's time and I do not waste premium time in any area.

Mr. Maharaj: What about the trade union man?

Sen. M. Jagmohan: Mr. President, the guru of trade unionism in Trinidad and Tobago sits on the Government Bench, consult him. I certainly do not mean the Leader of Government Business.

Mr. President, we are strongly urging the Government as they have done in other instances, to take into account the contribution of my friend, Sen. Shabazz and the contributions of the distinguished Independent Senators and bring this Bill back in another form.

Thank you.

Sen. Dr. Eric St. Cyr: Mr. President, I will be very brief. I very much preferred the first draft of the Bill which was circulated and was fully prepared to

Dangerous Dogs (Amdt.) (No. 2) Bill
[SEN. DR. ST. CYR]

Tuesday, April 11, 2000

support the action which took the bull by the horns as it were, and dealt with this problem of pitbulls killing people whether in Cascade, or Diego Martin, or innocent old men walking on the streets in the deep South and that was my baseline position.

This Bill before us is not going to work and I want to give one example. Looking at clause 9(1) which states:

“Where a policy of insurance required under section 8 is no longer in force...”

The owner of the dangerous dog is subject under clause 9(3) “...to a fine of fifty thousand dollars and to imprisonment for one year.”

The man has now gone to prison, but subclause 9(4) is telling us that within 1 month he must get this rectified. I do not see how.

Mr. President: Under the House of Representatives amendment, there is a new subclause (4).

Sen. Dr. E. St. Cyr: Thank you very much, Mr. President. The comment I was making though, is that it is clear that this was a compromise measure, and there are inconsistencies in the Bill. If I were to support the direction that Sen. Daly took to put some teeth in the Bill that will force owners of dangerous dogs to take full responsibility for their dogs, there are at least three places in which I would add a little phrase “and the dog put to sleep.” In other words, if under clauses 6 and 8 and again clause 9(3), if we want to force the owner to take preventative action, one way to do it, would be to know if he violated the Act, he would lose his dog, but basically, I do not think we should risk innocent lives while giving persons the right to own these dangerous dogs. My baseline position is that I would not support this Bill in its present form.

Sen. Prof. Ramchand: Mr. President, is the Senator saying—in addition to what he is saying about innocent lives—that an innocent dog should be punished for the crime of its owner?

Sen. Dr. E. St. Cyr: I am tempted to reply, Sir, but my position is that I was going to make it not possible for there to be any innocent owners of dangerous dogs by going the way of banning.

The Attorney General and Minister of Legal Affairs (Hon. Ramesh Lawrence Maharaj): Mr. President, I have to be very careful what body language I send as I make this contribution seeing that I have to watch my body, especially against dangerous dogs.

Mr. President, I am not talking about those dogs. When I heard what my good friend, Sen. Shabazz, said: When he gets into an official position and he has people around him, he would want to make sure that he has his dogs. I think he was talking about political dogs. *[Laughter]* I do not know whether he was talking about political rottweilers. My advice to him is that when it comes to political dogs, he must know that he cannot anticipate, he would be in an official position. It depends on two things; one, the people vote him in government and two, that he gets an official position and he must not depend—

Sen. Shabazz: Like Kuei Tung.

Hon. R. L. Maharaj: Anyhow, Mr. President, I think this debate has been very healthy in the sense that there have been very important contributions made and, as I said, this measure is not an easy one to formulate in that governments have great difficulties formulating them and even when they are formulated, they are liable to be flavoured one way or the other, depending on what points have come out.

I think we would not be doing justice to the situation if, in light of the fact all the contributions which were made raised important points which can have effect on the enjoyment of the lives and the property of people if we do not consider them very carefully.

As I said, I think it is the New Zealand model which has gone the regulatory framework and there are other models like the English model which has gone the total ban, and here we have contributions which can be used to see whether we can construct our own model having regard to our particular circumstance. On the one hand, you want to ensure that you do not send a signal that you treat the right of property which people have been enjoying for sometime in a way in which you can just take it away immediately; but on the other hand, you want to be able to show that you are concerned as a Parliament with the rights of the general members of our society to ensure that people's rights outside are protected, so we want to strike a balance.

Sen. Daly and other Senators have made contributions and I think that some of the points which have been made, I do not see a difficulty in trying to flavour the Bill in a way in which we can possibly have unanimous support of it and I think the Government has shown in this measure, that its policy is no

Dangerous Dogs (Amdt.) (No. 2) Bill
[SEN. DR. ST. CYR]

Tuesday, April 11, 2000

t cast in stone. It has shown it is prepared to accept any suggestions from time to time.

I want to make it quite clear that I cannot give any undertaking, because as you know, this is a matter which has to be discussed, but I think I speak on behalf of everyone here when I say that there are measures in which we have to give serious consideration and we, as a Government, would attempt to give you a Bill for which we can have unanimous support.

Mr. President, if you will permit me, not to complete my contribution and the hon. Leader of the Senate would agree to put this for next week Tuesday I am sure we will be able to have further consideration on the matter.

Thank you.

Assent indicated.

ADJOURNMENT

The Minister of Public Administration (Sen. The Hon. Wade Mark): Mr. President, before adjourning this Senate, may I inform my colleagues of the matters we intend to deal with along with what the Attorney General has just spoken about, that is the Dangerous Dogs Bill.

We shall be addressing the following bills: a bill to amend the Defence Act, Chap. 14:01; a bill to amend the Trinidad and Tobago National Steel Orchestra Act, 1999; the Prison Service (Amdt.) Bill; the Plant Protection (Amdt.) Bill and the Trinidad and Tobago Civil Aviation Authority Bill, and of course, we are going to continue the Dangerous Dogs Bill during the evening period. I want Colleagues to know that this Bill will be addressed.

Mr. President, I beg to move that the Senate do now adjourn to Tuesday, April 18, 2000 at 10.30 a.m.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 7.33 p.m.