SENATE

Tuesday, September 19, 2000

The Senate met at 1.30 p.m.

PRAYERS

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

LEAVE OF ABSENCE

Mr. Vice-President: Hon. Senators, I wish to inform hon. Members of the Senate that the President is out of the country on government business for the period September 18—October 5, 2000.

Leave of absence is granted to Sen. The Hon. Brian Kuei Tung and Sen. The hon. Carlos John from sittings of this Senate with effect from September 19 and continuing.

Leave of absence has also been granted to Sen. Prof. John Spence for the period September 19—October 8, 2000; to Sen. Diana Mahabir-Wyatt for the period September 15—September 23; and to Sen. Philip Marshall for this sitting of the Senate.

SENATORS' APPOINTMENT

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

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

\s\ Arthur N. R. Robinson
President.

TO: MR. KENNETH AYOUNG-CHEE

WHEREAS Senator Diana Mahabir-Wyatt is incapable of performing her functions as a Senator by reason of her absence from Trinidad and Tobago:

NOW, THEREFORE, I, ARTHUR N. R. ROBINSON, President as aforesaid, in exercise of the power vested in me by section 40(2)(c) and section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you,

KENNETH AYOUNG-CHEE, to be temporarily a member of the Senate, with effect from 19th September, 2000 and continuing during the absence from Trinidad and Tobago of the said Senator Diana Mahabir Wyatt.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 18th day of September, 2000."

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

\s\ Arthur N. R. Robinson
President.

TO: MR. VINCENT CABRERA

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

NOW, THEREFORE, I, ARTHUR N. R. ROBINSON, President as aforesaid, acting in accordance with the advice of the Prime Minister, in exercise of the power vested in me by section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, VINCENT CABRERA, to be temporarily a member of the Senate, with effect from 19th September, 2000 and continuing during the absence from Trinidad and Tobago of the said Senator Brian Kuei Tung.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 18th day of September, 2000."

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

\s\ Arthur N. R. Robinson
President.

TO: MRS. LAILA SULTAN-KHAN VALERE

WHEREAS Senator Professor John Spence is incapable of performing his functions as a Senator by reason of his absence from Trinidad and Tobago:

NOW, THEREFORE, I, ARTHUR N. R. ROBINSON, President as aforesaid, in exercise of the power vested in me by section 40 (2) (c) and section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, LAILA SULTAN-KHAN VALERE, to be temporarily a member of the Senate, with effect from 19th September, 2000 and continuing during the absence from Trinidad and Tobago of the said Senator Professor John Spence.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 18th day of September, 2000."

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

\s\ Arthur N. R. Robinson
President.

TO: DR. GEORGE DHANNY

WHEREAS Senator Carlos John is incapable of performing his functions as a Senator by reason of his absence from Trinidad and Tobago:

NOW, THEREFORE, I, ARTHUR N. R. ROBINSON, President as aforesaid, acting in accordance with the advice of the Prime Minister, in exercise of the power vested in me by section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, GEORGE DHANNY, to be temporarily a member of the Senate, with effect from 19thSeptember, 2000 and continuing during the absence from Trinidad and Tobago of the said Senator Carlos John.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 18th day of September, 2000."

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

\s\ Arthur N. R. Robinson
President.

TO: MR. DAVE COWIE

WHEREAS Senator Ganace Ramdial is incapable of performing his functions as a Senator by reason of his absence from Trinidad and Tobago:

NOW, THEREFORE, I, ARTHUR N. R. ROBINSON, President as aforesaid, acting in accordance with the advice of the Prime Minister, in exercise of the power vested in me by section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, DAVE COWIE, to be temporarily a member of the Senate, with effect from 19th September, 2000 and continuing during the absence from Trinidad and Tobago of the said Senator Ganace Ramdial.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 18th day of September, 2000."

OATH OF ALLEGIANCE

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

Kenneth Ayoung-Chee, Vincent Cabrera, Laila Sultan-Khan Valere, George Dhanny.

ARRANGEMENT OF BUSINESS

Mr. Vice-President: Hon. Senators, before moving off this item on the Order Paper, I seek your leave to return to this item at a later stage of the proceedings. As indicated in the announcements, Mr. Dave Cowie was appointed by the Office of the Prime Minister to act in the absence of Sen. Ganace Ramdial. He is not with us as yet, so I would want to return to the item of "Oath of Allegiance of a New Senator" at a later stage of the proceedings. I trust I have your concurrence. I am much obliged.

Agreed to.

PAPERS LAID

1. The submission of Conventions and Recommendations to the Competent Authority in accordance with Article 19 of the Constitution of the International Labour Organisation. [*The Minister of Public Administration (Sen. The Hon. Wade Mark*)]

2. The decision of the Government to ratify the Amendment to the Constitution of the ILO which was adopted by the International Labour Conference at the 85th Session in 1997. *(Sen. The Hon. W. Mark*)

3. Instruments adopted by the International Labour Conference of the International Labour Organisation at the 86th, 87th, and 88th Sessions:

   (a) Recommendation No. 189 on General Conditions to Stimulate Job Creation in Small and Medium-Sized Enterprises;

   (b) Convention No. 182 on the Prohibition and Elimination of the Worst Forms of Child Labour;

   (c) Convention No. 190 on the Prohibition and Elimination of the Worst Forms of Child Labour;

   (d) Convention No. 183 on the Revision of the Maternity Protection Convention (Revised) 1952; and

   (e) Convention No. 191 on the Revision of the Maternity Protection Convention (Revised) 1952. *(Sen. The Hon. W. Mark*)

4. Report of the Republic of Trinidad and Tobago US $250 Million 9.75% Notes due 2020. *[The Minister of Public Administration (Sen. The Hon. W. Mark*)]

5. Report of the Republic of Trinidad and Tobago 30 Year Japanese Yen Equivalent of US $100 Million Private Placement – Final Terms and Conditions. *(Sen. The Hon. W. Mark)]*

JOINT SELECT COMMITTEE REPORT
Presentation

The Minister of Culture and Gender Affairs (Sen. The Hon. Dr. Daphne Phillips): Mr. Vice-President, I beg to lay on the Table the report of the Joint Select Committee of Parliament appointed to consider and report on the Children's Authority Bill, 1999, The Children (Amendment) Bill, 1999, The Adoption of Children Bill, 1999, The Miscellaneous Provisions (Children) Bill, 1999 and The Children's Community Residences, Foster Homes and Nurseries Bill, 1999.

SPECIAL REPORT (PUBLIC ACCOUNTS COMMITTEE)
Presentation

Sen. Joan Yuille-Williams: Mr. Vice-President, I beg to lay on the Table the Special Report of the Public Accounts Committee on the Report by the Auditor General as requisitioned under Section 9(5) of the Exchequer and Audit Act, Chapter 69:01 on the Investment of twelve million, six hundred thousand dollars by the Tobago House of Assembly during 1998.

ORAL ANSWERS TO QUESTIONS

The Minister of Public Administration (Sen. The Hon. Wade Mark): Mr. President, I beg to move that the answer to question No. 18 be deferred for a period of one week. The Minister of Housing and Settlements was here today, but he has asked that it be deferred for one week. I have already raised that with Sen. Dr. Mc Kenzie.

The following question stood on the Order Paper in the name of Sen. Dr. Eastlyn Mc Kenzie:

Lands Acquired—Tobago
(Payment)

18. A. Could the hon. Minister of Housing and Settlements state whether all privately owned lands acquired, used or entered upon in Tobago by the State for development projects have been paid for?

B. If the answer is in the negative, will the Minister state in detail;

(i) those parcels of lands not paid for;

(ii) their acreage, location and boundaries, date used or acquired, owner/s and purpose for which the lands were acquired/used;

(iii) the reasons for the delay in effecting payment?

Question, by leave, deferred.

Tobago Ferry
(Lease/Purchase of)

19. **Sen. Eudine Job** asked the Minister of Works and Transport:

(a) Is the hon. Minister aware that the level of service provided by the MF Panorama remains inadequate and that the situation would be exacerbated when the MF Panorama goes on dry dock?

(b) If the answer to (a) is in the affirmative, would the hon. Minister inform the House of the status of negotiations for lease or purchase of a ferry to replace the MF Panorama which is due for dry dock later this year?

(c) Would the hon. Minister inform the House whether government proposes to purchase or lease a ferry to be used on the inter-island route after the MF Panorama return from dry docks?

The Minister of Works and Transport (Sen. The Hon. Sadiq Baksh): Mr. Vice-President, yes, I am aware that the level of service has been inadequate, moreso with the recent problems encountered due to the malfunctioning of the vessel's starboard controllable pitch propeller system. Towards this end, this problem has been rectified and the MV Panorama is now back to its normal travel time of five and a half hours.

1.45 p.m.

Additionally, I wish to state that the Government, through a short-term charter, will acquire a suitable ferry to operate the inter-island route during the dry docking of the Panorama.

Negotiations are proceeding and it is expected that a vessel to replace the MV Panorama during the dry docking exercise will arrive in Trinidad and Tobago by the end of October 2000 to commence operation. It is the intention of the Government to purchase another ferry to work along with the MV Panorama after its return from the dry docking exercise.

Sen. Job: Given the urgency of the situation, we would like to know how far the negotiations for the ferry have gone and what type of ferry. A suitable ferry is just not enough, we want to know the type, the size and everything else about the vessel. Is that available, Sir?

Sen. The Hon. S. Baksh: Mr. Vice-President, the Port Authority of Trinidad and Tobago needs to ensure transparency in the invitation to have a replacement vessel and as such, we would try to have it in the shortest possible time. In terms of the negotiations, it is based on a public invitation and that will dictate its own time schedule, but we do recognize the urgency and as such, we are doing everything possible at the Port Authority of Trinidad and Tobago to have a replacement by October and the purchase of another vessel.

Mr. Vice-President: The supplemental question included specifications on the new ferry, did it?

Sen. Job: Yes, thank you, Sir.

Sen. The Hon. S. Baksh: Mr. President, obviously the specification is a technical matter and as such, another question will satisfy and I will ensure that we provide that.

Scarborough Esplanade

20. **Senator Eudine Job** asked the Minister of Tobago Affairs and Minister in the Ministry of Finance, Planning and Development:

Is the hon. Minister aware that the prolonged delay in completing the Scarborough Esplanade is causing severe distress to motorists, pedestrians, other residents and business establishments in Tobago?

If the answer to (a) is in the affirmative, would the hon. Minister please inform the Senate:

(i) of the date of completion for the Scarborough Esplanade;

(ii) the expenditure to date on the Scarborough Esplanade?

The Minister of Tobago Affairs and Minister in the Ministry of Finance, Planning and Development (Dr. The Hon. Morgan Job): Mr. Vice-President, my response to question 20 is that the question was indeed received in the Senate on August 15, 2000 and received in the Ministry of Tobago Affairs on August 18, 2000. It was placed on the Order Paper for oral answer on September 6, 2000.

The Chief Administrator of the Tobago House of Assembly, by memorandum dated August 22, 2000 was asked to provide the relevant information to enable the delivery of an answer. Discussions with the Chief Administrator in the Tobago House of Assembly on August 30, 2000 resulted in agreement that the answer to question No. 20 be deferred from September 6 to facilitate the provision of a reply from the Tobago House of Assembly. This agreement was confirmed in writing by a memorandum dated September 1, 2000. Further discussions were held on the matter with the Chief Administrator of the Tobago House of Assembly on September 8, 2000 when question No. 20 was deferred for answer on September 11, 2000. Because of the debate in the Senate on the Appropriation Bill 2000 during the period September 11 to September 14, the question did not come up for oral answer.

To date, the Tobago House of Assembly has not provided the information to allow for an answer to question No. 20. This is the information I can offer the august Senate at this time.

Sen. Job: Through you, Mr. Vice-President, is the Minister aware that the prolonged delay is causing distress to pedestrians, motorists and business people along Milford Road? The other question is: Is the Minister aware of any specific construction design for the Esplanade?

Dr. The Hon. M. Job: The Minister is always aware of the distress of the people living in Tobago and those who visit there, not only on the matter of the Esplanade but on sundry other matters. But we do have a constitutional arrangement, and legal obligations and I cannot go into the office of the Chief

Administrator or the Chief Secretary and get information from where I officially stand. So I have to follow what you would call due process in other estates and hope that those processes would facilitate good governance, and that is the reason I explained why I have nothing to say.

Sen. Shabazz: Mr. Vice-President, I ask the hon. Minister why every time a question on Tobago comes up he cannot answer?

Mr. Vice-President: It will not be necessary to answer that question.

ARRANGEMENT OF BUSINESS

The Minister of Public Administration (Sen. The Hon. Wade Mark): Mr. Vice-President, I seek the leave of the Senate to deal with Bills second reading at this stage of the proceedings.

Agreed to.

PETROLEUM (AMDT.) BILL

Order for second reading read.

The Minister of Energy and Energy Industries (Sen. The Hon. Finbar Gangar): Mr. Vice-President, I beg to move,

That a Bill to amend the Petroleum Act Chap. 62:01 be now read a second time.

Mr. Vice-President, and hon. Senators, I have the distinct honour and privilege to introduce the Petroleum (Amdt.) Bill 2000. The Petroleum Act Chap. 62:01 gives the Minister of Energy and Energy Industries wide jurisdiction to regulate and supervise the petroleum industry. As you are well aware, the energy sector is quite dynamic and from time to time situations arise that are not specifically addressed in the law and which will require amendments to the law to be adequately regulated.

The current Bill before the Senate is intended to address such an issue. The need for this Bill was made very apparent to all of us in this country when two years ago, a contractor involved in the exploration activities of the East coast of Trinidad and Tobago absconded, leaving millions of dollars owing to creditors throughout Trinidad and Tobago.

Mr. Vice-President, there are instances where foreign contractors are required to perform certain petroleum-related activities in Trinidad and Tobago for limited periods. In some cases, no form of protection is afforded to local contractors with whom these foreign contractors do business and as a consequence, local creditors

to these contractors can be seriously compromised in the event of financial failures and/or improprieties on the part of the said contractors.

The amendments to the legislation contained in the Bill will introduce a system for the licensing of both resident and non-resident contractors and a guarantee of financial responsibility from non-residents for the benefit of their local creditors. This is consistent with internationally accepted practices and business norms.

Mr. Vice-President, I will now present the main tenet of the Petroleum (Amdt.) Bill. The amendment pertains to section 29 of the Petroleum Act, Chap. 62:01. This will be amended by inserting a new paragraph (na) after paragraph (n) as follows:

> "…for regulating the conditions to be observed by contractors and agents of licensees."

The Bill is designed to make provision for the President to make regulations under the Act with respect to contractors, agents and licensees. To achieve this, regulations will be made under the Act for the assent and signature of the President to establish procedures to be observed when contractors are required to conduct certain activities in the industry.

This Bill would allow regulations to be made which will allow for the licensing of contractors, subcontractors and agencies. It will also make provision for the institution of a performance bond which allows the Government to draw down on the performance bonds in case contractors, both local and non-resident abscond or do not fulfill their obligation to the local contractors.

Mr. Vice-President, I am of the opinion that viewing this particular amendment in isolation would not make much sense to the hon. Senators, and with the approval of the Chief Parliamentary Counsel, I would undertake before we end the second reading of this Bill to circulate the regulations with the draft regulations so that Senators will be able to ascertain for themselves what exactly we are trying to achieve here. At some appropriate time in the proceedings today, with the approval of the Leader of Government Business and hon. Senators, I propose to recommend that we adjourn the debate to allow Senators to properly study the pertinent regulations which will be circulated shortly, and then we may be able to resume debate on this Bill at the next sitting of the Senate. It is not fair to allow Senators to debate a one-line Bill without giving them the background for it. It may appear simple, but it has very far-reaching implications for the way we do business in Trinidad and Tobago.

In concluding, I wish to ask at the appropriate time for the unanimous support of this Bill. As I said at the onset, Senators will recall a recent incident in the energy sector in which local creditors made complaints that this legislation will address. I refer to an issue which arose concerning substantial sums of money owed to local creditors who had supplied goods and services to a subcontractor and the contractors unanimously agreed to terminate the subcontractor's agreement for breach of contract based on low production rates on the performance of an agreed seismic programme.

Upon termination of the contract, the contractor failed to meet his obligations to a number of local creditors who experienced great difficulty in recovering moneys owed by a subcontractor who left the country like a thief in the night with no assets in Trinidad and Tobago and appeared to be insolvent.

2.00 p.m.

The proposed enactment of this Bill is to avert recurrences of this and similar situations. The Bill makes provision for the licensing of subcontractors who work for licensed contractors under the Petroleum Act, Chap. 62:01. The proposed legislation is designed to regulate certain activities of licensees' agents and contractors who work for licensees or contractors. The manner of regulation of such subcontractors, activities will be that provided for in the law. The awarding of a license to a subcontractor is pursuant to Regulations 3(2) of the Petroleum Act, Chap. 62:01.

Mr. President, I feel assured that at the appropriate time the support of this honourable Senate will be forthcoming, since both sides agreed that our energy sector must be developed for the benefit of our citizens and this, no doubt, includes our corporate citizens as well.

Mr. President, I beg to move.

Question proposed.

Sen. Danny Montano: Mr. President, to be honest with you I am very surprised to be standing. I thought that the Minister would have given us some time to look at the Regulations but he did not do that. Quite frankly, I can talk about petroleum as a matter of information. So I would like to reserve the right to read the regulations and to understand it.

Mr. Vice-President: Hon. Senators, before we further consider this Bill that is before us here, I would like to revert to the item on the Order Paper that we deferred, and I would like to invite you to stand whilst we swear in Sen. Cowie.

OATH OF ALLEGIANCE

Sen. D. Cowie took and subscribed the Oath of Allegiance as required by law.

PETROLEUM (AMDT.) BILL

The Minister of Public Administration (Sen. The Hon. Wade Mark) Mr. President, we were hoping that the Petroleum (Amdt.) Regulations would have been in the hands of Senators before, a short while ago, so that we could have done justice to the Amendment that is before this honourable Senate. But in light of the fact that these Regulations have now arrived, we would like to propose, with your leave, that we defer debate on this particular matter to the next sitting of the Senate.

The Attorney General was expected, in fact, at 2.30 p.m. because we were expecting this debate to go a little longer than 2.30 p.m. So what we would like to suggest, Mr. President, with your leave, is that we can suspend the sitting until 2.30 p.m. I would get in touch with the Attorney General asking him to come faster than the 2.30 p.m. that he was expected. We can then defer this particular amendment to the Petroleum Act to the next sitting of the Senate which is the following Tuesday. This is how I would like to propose that we proceed at this time.

Mr. Vice-President: The question before us is that we adjourn the debate on the Amendment to the Petroleum Act, Chap. 62:01. I have already proposed the question for debate, and I recognized Sen. Montano. However, I would rule that Sen. Montano's contribution would continue on the subsequent occasion. So the question we want to consider here is that the debate on the Bill entitled, An Act to amend the Petroleum Act, Chap 62:01 be adjourned to the next sitting of the Senate.

Question put and agreed to.

Mr. Vice-President: I propose suspending this sitting until 2.30 p.m., when we will resume to consider the third Bill on the Order Paper: "An Act to provide for an application to the High Court of the Supreme Court of Judicature for relief by way of judicial review and for related matter" and Bill No. 4—"An Act to provide for the consolidation of the confiscation of the proceeds of drug trafficking and to provide for the confiscation of the proceeds of other crime and the criminalising of money laundering".

The Senate now stands suspended until 2.30 p.m.

2.08 p.m.: *Sitting suspended.*

2.30 p.m.: *Senate resumed.*

JUDICIAL REVIEW BILL

Order for second reading read.

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

That a Bill to provide for an application to the High Court of the Supreme Court of Judicature for relief by way of judicial review and for related matters be now read a second time.

Mr. Vice-President, the Bill before us deals with judicial review matters but, as some of us know, the remedy of judicial review has been in existence for some years now and it was effected through the rules of the Supreme Court. Before the new remedy of judicial review in 1977 was created, under the old law it was recognized that it was very difficult and cumbersome to have judicial review of administrative action. Without going into much of the history, in 1977 in the United Kingdom the rules of the Supreme Court were passed in order to provide for the remedy of judicial review on the basis that it is today. We had similar rules in Trinidad and Tobago effected and, Mr. Vice-President, what happened is that there was judicial review being had in the courts.

What has happened is that there was some concern in the United Kingdom as to whether the reform for the remedy of judicial review could have been done by the Rules of Court, and it was thought that it should be done by primary legislation. In 1981, the Supreme Court Act was amended in England to provide for legislative sanction of the measures for judicial review. What we are doing in this Bill, Mr. Vice-President, is purely putting in substantive law form what happens in Trinidad and Tobago in respect of judicial review, but there are some very important additions which can be considered very revolutionary in the administration of justice. I think the way I should deal with this matter first is probably to indicate really what is the basis for having judicial review of administrative action. Before I do that I should probably give some idea of what judicial review is about so that we can put the Bill in perspective.

Mr. Vice-President, the machinery of judicial review operates in two stages: first there is an application for leave and, if leave is granted by the court, then the substantive application is heard. The judicial review, Mr. Vice-President, is heard, not by way of appeal on the merits but, in effect, an investigation into the procedure which has been employed by the tribunal, the inferior court or the public authority in reaching its decision. The function of the court in judicial

review is not to substitute its own decision in place of the decision of the authority in respect of which the judicial review is filed or in respect of the impugned action.

The function of the court is to look at the procedure and to see that the authority acted with fairness within the limits of its jurisdiction. The court must examine to see whether the inferior court, tribunal, or other public authority exercising public functions, acted without jurisdiction, or whether it acted in excess of jurisdiction, or whether there was an error on the face of the record, whether there was a failure to comply with the rules of natural justice or, where the decision arrived at was such that no comparable authority, properly directing itself on the relevant law and acting reasonably, could have reached its decision.

So basically, Mr. Vice-President, where the citizen or a person in Trinidad and Tobago believes that a public authority, in making a decision, has acted unfairly, has acted illegally or has acted without jurisdiction, the person can apply to the court for leave to apply for judicial review. The court would examine the matter to see whether the authority acted in accordance with the law or whether it acted illegally. If it acted illegally then its action would be *ultra vires*. The court would examine to see whether it acted in accordance with the principles of natural justice, that is to say whether it was fairly done. The court would examine to see if adverse orders were being made, the party was given an opportunity to be heard, either in writing or orally, depending on the circumstances, and whether the decision was reasonable.

What has happened in recent times is that the courts have been very liberal, especially in the United Kingdom, in respect of judicial review matters, in investigating decisions, whether they are reasonable or not. It used to be the law that, when a public authority gives a decision, the court would be very reluctant to determine whether that decision was reasonable because it was saying that was a matter for the public authority. But judicial review has been developed to the extent that the court acts very liberally in these matters.

There is a wide range of remedies in judicial review. There is something which lawyers refer to as *certiorari*, which is an order to correct the record, that if there is an error on the record—it is an ancient form and an ancient word or an ancient description of what used to be a writ—*certiorari* is used to correct the record. *Mandamus* is to direct the authority or tribunal to do its duty and a prohibition to prohibit it from acting in a particular way if it is exceeding its jurisdiction or acting illegally. Then, in addition to that in judicial review the court can make a declaration and the court can grant an injunction.

Mr. Vice-President, what is the rationale for having judicial review of administrative action? Just, honest, open and accountable government must include a machinery for actions of government and public bodies to be scrutinized by the courts, at the instance of citizens, to ensure that decisions taken and administrative practices which are followed comply with the law and comply with the best administrative practices to ensure that they are fairly made, reasonably done and they act within the law. Judicial review must not be confused with constitutional motions. There are two main areas of public law now, judicial review and constitutional motions, and constitutional motions are under the Constitution where anyone can apply to the High Court for redress if one's constitutional rights, rights guaranteed in sections 4 and 5 of the Constitution, are infringed, and the court can grant redress.

In judicial review, it is an additional weapon in favour of the citizen to go against the state or state authorities if the action is unlawful or if the procedures are not in accordance with fairness. In judicial review, one does not have to establish a breach of a constitutional right. In other words, in judicial review, if the authority acted not in accordance with a statute which has set up the authority, or in the sense that if the authority has done something which it is not authorized to do, or if the decision is unfair, even though it does not amount to a breach of the fundamental right, and if the decision is considered so unreasonable that no reasonable person or authority properly directed can arrive at that decision—for example, if the authority made a perverse decision—then the court can review those matters as judicial review, and that is quite apart from a constitutional motion.

What happens sometimes, Mr. Vice-President—and I am saying this for the benefit of persons who are non-lawyers—is that there will be a wrong in which an individual would file both a judicial review and a constitutional motion, and the court can hear both applications together and give redress accordingly. The branch of law in which there is judicial review occurring, to scrutinize and to challenge the actions of government in administration, is known as administrative law. Administrative law provides a firm basis for the guidance of ministers of government and public servants as to how they should discharge their duties. In other words, in the administrative law as laid down, there are certain standards and guidelines laid down by the courts, therefore ministers and public servants would know that they obviously cannot act contrary to or they ought to know that they cannot act contrary to the law.

The Bill before us—and before I go to what I consider to be very revolutionary changes, all to the benefit of the citizen, to the litigant, before I go

to those measures—basically therefore puts in written form, in substantive law form, the practice that we have in Trinidad and Tobago or the law which is applied in respect of judicial review. That is why if one looks at the Bill, one would see in clause 5:

> "An application for judicial review of a decision of an inferior court, tribunal, public body, public authority or a person acting in the exercise of a public duty or function in accordance with any law shall be made to the Court in accordance with this Act and in such manner as may be prescribed by the rules."

So therefore if, for example, there is a licensing committee and the committee has adjudicated upon a matter in respect of a person who has applied for a licence, and the licensing committee does not act fairly, it would mean that the person can apply to the court for judicial review of that action. The court, if it grants leave, would investigate the matter and if it finds that the licensing authority acted unfairly, it can quash that decision and it can even—there is some dispute as to whether now they could grant damages, but under this law they would be able to grant damages.

Mr. Vice-President, then we see that:

> "The court may, on an application for judicial review, grant relief in accordance with this Act—
>
> (a) to a person or group of persons whose interests are adversely affected by a decision; or
>
> (b) to a person or group of persons if the Court is satisfied that the application is justifiable in the public interest in the circumstances of the case."

Mr. Vice-President, I will come back to (b) because (b) would be important in respect of the change that I said we are making in the law, something known as public interest litigation. Public interest litigation would permit groups of persons or individuals who, even though they are not directly adversely affected by the wrong, if the person who is affected or the sections of the community that are affected are poor, they are unable as described in the legislation to be able—or poor and unable, and the matter involves a public wrong, the court would have a discretion to allow that group of persons, whether it is a non-governmental group or any group, to apply for judicial review in respect of the action.

2.45 p.m.

Mr. Vice-President, the grounds upon which the court may grant relief to a person who files an application for judicial review includes the following

grounds—I do not need to read all these grounds but they are in effect and basically include contrary to law, excess of jurisdiction *et cetera.*

Mr. Vice-President at subclause 4:

> "An applicant is not limited to the grounds set out in the application for judicial review but if the applicant wishes to rely on any other ground not so set out, the Court may, on such terms as it thinks fits, direct that the application be amended to specify such other ground."

Mr. Vice-President, one would see from the amendment, which was done in the other place that after subclause 4 the following new subclauses are entered:

> "…a person is entitled, when making an application for judicial review under subsection 2(b) or (6), to make the application, in any written or recorded form or manner and by any means."

Mr. Vice-President, I will read the whole section first and then I will explain it.

> "Where a person or group of persons aggrieved or injured by reason of any ground referred to in paragraph (a) to (p) of subsection (3), is unable to file an application for judicial review under this Act on account of poverty, disability, or socially or economically disadvantaged position, any other person or group of persons acting bona fide can move the Court under this section for relief under this Act."

Mr. Vice-President, what we are saying here is that public interest litigation has been recognized in the *Human Development Report of 2000* as a very important tool for the promotion of rights and freedom in society—and if I a may read from page 37 of the *Human Development Report of the United Nations* for the year 2000. It talks about freedom from injustice and then it says the judicial system in many countries has done much to protect human rights and freedoms. In India public interest litigation cases in education and environment have been important milestones in securing people's economic and social rights.

Mr. Vice-President, a little later, I will give the benefit to hon. Senators of a recent book written by Lord Bingham who, I think, is the present Chief Justice of the United Kingdom. He is a Senior Law Lord but I am not too sure. I am subject to correction. I think he is the present Chief Justice but I am subject to correction—but be that as it may, he has written a book and in that book he talked about public interest litigation and I will read some of the things that he has said about it.

What this Bill does really—let me see if I can explain. There is something in law known as *locus standi* and *locus standi* describes a situation where the person has the standing to file the case. What happens in the law of judicial review, for example, under the traditional law it should be somebody who is personally adversely affected by that decision. What is happening with respect to public interest litigation is the doctrine of *locus standi* as it is in traditional form is being extended. It is an ancient truism that rights without remedies are useless. In most of our legal systems in the Commonwealth there is a situation like this. If "A's" rights are affected but he does not choose to enforce them, "B" has no right to move the court on "A's" behalf. The courts would not entertain "B's" suit or petition on the ground that "B" is not an aggrieved person and lacks *locus standi* to maintain the action or petition.

Mr. Vice-President, a strict application of this rule in the case of persons who owing to the handicap of poverty, illiteracy and social and economic disabilities are unable at times to secure access to courts for the enforcement of what are their rights. It would, in effect, mean a denial of their right and of effective access to justice. Mr. Vice-President, effective access to justice can be seen, in my respectful view, as the most basic human right of a system which purports to guarantee rights which must be given to ensure that persons have access to justice and there must be equal protection of the law.

One of the ways in which this is achieved is to provide for the doctrine of *locus standi* to be extended. If I may say, this public interest litigation concept—although it was introduced in India by the mere interpretation of the constitution by the courts—has been followed in several parts of the world. As a matter of fact, in South Africa, that has been introduced in legislation by an act called: The Promotion of Administrative Justice Act, 2000. It has been introduced in some form in Barbados, Australia and Canada. So it is not a concept limited to India, it is a concept which has been found to provide a means whereby, the courts would have an opportunity of determining matters even though the persons who are adversely affected do not bring them.

Mr. Vice-President, the doctrine of *locus standi* in the countries which I have referred to, has been emancipated to some extent or has been liberalized or I may say, there has been a revolution in respect of that doctrine. The Supreme Court of India has ruled that where a person or a determinate class of persons, who by reason of poverty or social and economic disabilities are unable to approach the court for relief, any member of the public acting *bona fide* and not for oblique considerations can maintain an action seeking judicial redress for the legal wrong or injury caused to such person or class of person.

Mr. Vice-President, a major concern which impelled this development of the law, was the realization that if the doors of the court are closed to a person who, though not affected personally is acting *bona fide* and has drawn the court's attention to breaches of law and violations of rights of persons or classes of persons, governmental agencies and statutory bodies and authorities would be let free to violate the law with impunity. Such a situation, in my respectful submission would be subversive of the rule of law. People, the lowly and the lost whose rights are infringed, but are denied easy and effective access to justice may then turn to the streets. They may then turn to take the law in their own hands. It is therefore essential that the rule of law wean people away from the lawless street and win them for the court of law.

Mr. Vice-President, rigid adherence to the traditional rule of *locus standi* would be detrimental to the public interest because restrictive rules about standing are, in general, inimical to a healthy system of administrative law. If a plaintiff with a good case is turned away, merely because he is not sufficiently affected personally, that means that some government agency is left free to violate the law and that is contrary to the public interest. The evolution of the rule of *locus standi* in the field of public law has greatly fostered the development of public interest litigation so that you can have easier access to justice and more equal protection of the law.

2.55 p.m.

Mr. Vice-President, public interest litigation must be distinguished from social action litigation. Public interest litigation is a form of social action litigation but, in law, there is a category known as public interest litigation and a category of action known as social action litigation. Let me explain the difference.

Mr. Vice-President, in social action litigation, the case or the proceeding is for the enforcement of the specific rights of a determinate class or group of people who are primarily injured by the impugned action, so they are injured by the action. The injury suffered by members of this class is direct and redress is sought on their behalf because they are unable to approach the court on account of indigent, social or economic disabilities. So you have people who are directly affected and you may have that action being financed by people who are affected and you have, what you call probably, a class action.

In public interest litigation, the collective rights of the public are affected and there may be no direct specific injury to any individual member of the public as such. The redress sought in public interest litigation is in respect of injury to the public in general, for example, the discharge of effluents into a river which may

harm all who are deprived of clean water, or emission of noxious gas which may cause injury to a large number of people who inhale it.

In the area of environmental law, for example, you may have persons who are not directly affected by what is happening with the discharge into the river, but that non-governmental organization, because that is a public wrong, although it is not directly affected, can go to the court and say that wrong should be corrected.

Mr. Vice-President, I want to read from a case in India so that Members can get an idea of how this thing works. In the case of Barenda and the State of Ariana, the court ruled that the right to life with human dignity encompasses within its ambit, the protection and preservation of the environment, ecological balance free from pollution of air and water, sanitation without which life cannot be enjoyed and held that hygienic environment is an integral facet of right to a healthy life.

In its effort to prevent environmental degradation, the court ordered certain tanneries, which were discharging trade effluents into the River Ganga, to stop running unless the trade effluents were subjected to a pre-treatment process by setting up primary treatment plants as approved by the state board. The court was conscious that closure of tanneries may have brought unemployment and loss of revenue but firmly ruled that life, health and ecology have greater importance to the people. The court has issued stringent directions for prompt installation of corrective mechanisms like effluent treatment plants in case of industrial units, which emitted fumes said to damage the magnificent Taj Mahal.

Mr. Vice-President, the Supreme Court of India has recognized that public interest litigation, particularly for the enforcement of rights of the downtrodden sections of society, is essential and that in protecting those rights, it is necessary to depart from the adversarial procedure to involve a new procedure and to forge new tools, devise new methods and adopt new strategies.

Mr. Vice-President, I found this to be one of the most interesting topics with which I have had to deal since I became Attorney General. It is a topic which I love. What happens here is there is a situation where people are injured then there are other people who are not directly injured, but who see a public wrong being done, they can go to the court and get redress for people who cannot help themselves. There is a situation where, when you go to the court, you see that the court would dispense with the traditional method of evidence and, as happened in India and now is followed in other countries, there were situations where, when they went to the court, they did not go with petitions or with writs, they went with

letters from people who were affected—mere letters to the court. The court called in the parties and appointed a tribunal/a committee to investigate the facts, came back with a report and then invited everybody to look at the report and to come back and adduce whatever evidence they wanted in disagreement to it and then the court made its decision.

Because of public interest litigation in the countries which have instituted it, there are more poor people's rights being redressed than ever before and there are more public wrongs being redressed. What it does is, it puts government under scrutiny. It compels government to act because then there can be court orders in which ministers and public officials can be held to be in contempt of court if those orders are not obeyed. The way the law has developed, ministers of government are not immune from being held in contempt of court for disobedience to orders in judicial review matters.

This measure is not to protect government and not to protect companies, this measure is to ensure that government, companies and everyone act in accordance with law and it is to provide access to justice for people who normally would not see the doors of the court or the doors of justice.

In this Bill and the amendments, we have, in effect, enshrined those principles in the amendments. When we said in the amendment to clause 5 which was done in the other place:

> "…to make the application in any written or recorded form or manner or by any means"

What we are saying is that the court will have a discretion that even if it gets a letter, even if it gets—in the old days there was a telegram—a fax, an email or any form, that the court can act. Not that the court would act arbitrarily, the court will be seized of the matter and the court, in its judicial conscience, would be able to take steps in order to determine whether an order should be made by having investigations done.

What has happened, too, you will see in the amendment under new clause 5A, it says:

> "(1) Where an application is filed under section 5(5) or (7), the Court may suspend the hearing of the matter for such time as it considers just, and appoint a person or such number of persons possessing such training or qualifications as the Court considers just and as the circumstances warrant, to investigate the facts of the complaint or matter and to submit a report on its finding to the Court within such time as is specified by the Court.

(2) Such report shall be made available to the parties to the action who shall be entitled to be heard in respect of the report and make whatever application to the Court in respect of the report they consider just."

So, nobody's rights are being infringed because here it is that the court in its own discretion is appointing this committee—it could be anybody it considers—to get a report and then parties will have an opportunity of disputing the report. The court would then give its judgment and if the court gives a judgment in favour of the poor man, you could have the company appealing to the Court of Appeal, to the Privy Council and these days, you could go to a lot of human rights bodies also.

I do not think anybody could be against these measures. As a matter of fact, I would say that in the other place, we got unanimous support in passing these measures. May I say that these measures were not thought of lightly. As a matter of fact, the Law Commission did a study, produced a working paper on public interest litigation; the paper was published and circulated; there were comments received and this has been the result of those measures. May I say that the working paper also recommended that not only in judicial review, should there be public interest litigation but we should also have judicial review as far as constitutional motions are concerned and the Government is in the process of drafting that other measure in order to permit public interest litigation in constitutional motions.

I have found some very lovely passages in this book *the business of JUDGING*. It has many interesting chapters, even some dealing with the discretion of the judge and judicial independence which we would not deal with here today, but there are some very interesting learning and comments about the Supreme Court of India. As I said, it was written by Tom Bingham, Senior Law Lord, in the chapter "Speech on the Jubilee of the Supreme Court of India". If I may be permitted to read from some parts of this speech, it says at the start of that speech:

"Over the last 50 years, the Supreme Court of India has established itself as one of the indisputably great courts of the world. No other court in the free world exercises jurisdiction over more than a small fraction of the nearly one billion men, women, and children who form the population of India."

Then, he goes on, apart from commenting on other matters, to talk about the innovation with respect to public interest litigation. At page 123 of this book, he said:

"By these and other decisions the Supreme Court made sure that it was a guardian of the constitution, and of the values and principles embodied in it…

> All this, even if standing alone, would be memorable enough. But even more striking to a British observer—perhaps to almost any non-Indian observer—is the Court's active acceptance of responsibility for the pursuit of objects well outside the bounds of conventional litigation.
>
> The basis of this activity, as explained by former Chief Justice Bhagwati, with whom it is, as I understand, particularly associated, is very clear:
>
> The weaker sections of Indian humanity have been deprived of justice for long years: They have had no access to justice on account of their poverty, ignorance and illiteracy. They are not aware of the rights and benefits conferred upon them by the constitution and the law. On account of their socially and economically disadvantaged position they lack the capacity to assert their rights, and they do not have the material resources with which to enforce their social and economic entitlements and combat exploitation and injustice."

3.10 p.m.

It is this principle which was used in Canada and Australia. Although it was recognized that in India, there may be more poverty and more situations where people may be illiterate, in all societies there are people who are poor, who do not know of their rights and do not know what to do when their rights were infringed.

"The constitutional imperative of equal protection of the law could not, it seems, be left to take care of itself:

> The concern shown [by the law] to the poor and the disadvantaged is much greater than that shown to the rich and well-to-do because the latter can, on account of their dominant social and economic position and large material resources, resist aggression on their rights where the poor and the deprived just do not have the capacity or the will to resist and fight.

To achieve the aim of enabling the poor and the disadvantaged to enjoy their legal and constitutional rights, two things were needful. The first was to be generous in recognising the right of persons other than the immediate victim to sue, in other words to apply relatively relaxed rules of standing."

This is the English Law Lord speaking. He is saying, that is what the court had to do.

> "In England the test has been one of 'sufficient interest' and this, not too strictly interpreted, has been found satisfactory, although in the Human Rights Act 1998, to the regret of many, it is required that the applicant be a victim of

> the conduct complained of. It is easy to understand why, in the Indian context, a different philosophy has prevailed, encouraging any member of the public to invite the adjudication of the courts on matters of interest to the wider public. While the Court has declared its unwillingness to act at the instance of pseudo public-spirited citizens who indulge in wild and reckless allegations besmirching the character of others.
>
> At the core of the concern consistently shown by Indian courts for fostering public interest litigation in the conditions of contemporary life in the subcontinent, is candid recognition that, in the absence of innovative mechanisms of this nature, substantive rights central to human dignity cannot but assume an illusory character in the eyes of large sections the population."

Lord Bingham continues:

> "The second thing needful was to eschew a technical approach to the formalities of commencing litigation. If the poor and disadvantaged, particularly those living in remote rural areas, had been obliged to comply with the ordinary formalities attendant upon the issue of legal process, they would plainly have lacked the means and the professional assistance necessary to do so. This, as I understand, is the rationale of the rule which permits anyone alleging violation of a fundamental constitutional right to invoke the assistance of the Court simply by writing a letter to a judge. This epistolary jurisdiction has, to my knowledge, no counterpart anywhere in the world, and no doubt the effect is greatly to increase the burden on the judges called upon to decide the public interest issues thus informally raised. I cannot, however, imagine a more radical and imaginative response to an obvious social problem; and the right of any citizen to invoke the insistence, directly, of a judge of the Supreme Court seems to me to be a democratic right of the utmost value.
>
> The regulation of railway transport, the giving of directions to a State Government when legislation should be brought into force, the management of a children's home, the contents of a film about communal violence at the time of partition, the pollution of the Ganges and the classification of a jungle as a reserve forest have all engaged the attention of the Supreme Court,…"

and public interest litigation. I cannot help but see happiness in the face of Sen. Prof. Kenny. Lord Bingham continues:

> "If the court was to rule responsibly on detailed administrative questions, it plainly had to have access to reliable and objective information. This too

> was a challenge which the court accepted, and it led to another radical departure from what would, in the past, have been regarded as normal practice. Of the fact-finding processes which resulted, Professor Peiris has written:
>
> > It is with regard to creation and refinement of these fact-finding processes, unconventional and yet eminently suited to the purpose in hand, that Indian courts can probably be said to have made their most imaginative contribution to the strategy of social action litigation. Without doubt the strengths—and pitfalls—of this dimension of their work posses a significance which far transcends the particular setting of societal conditions in the subcontinent."

The Professor gives examples:

> "the appointment of committees of experts to report on the ecological and environmental effect of quarrying and mining in the Missouri Hills in one case, the radiation levels of milk and dairy products in another, the appointment of a commission to visit lands on which depressed communities were being encouraged to settle, the appointment of Commissioners (and later a director of the Indian Institution of Technology) to investigate a complaint made, allegedly by bonded labourers working in quarries…"

I could go on and on.

Mr. Vice-President, I do not know how much I can say how happy I am about this piece of law: it is one of the pieces of legislation that I have enjoyed working on.

In order to give Senators an idea of what this judicial review is: it is not saying that this is the only means of accountability. There are two passages in a recent edition of the book*: Principles of Judicial Review* by *De Smith, Woolf & Jowells* 1999 Edition. On page four it is stated:

> "Judicial review should therefore be seen in the context of the general administrative system, where different mechanisms are employed to hold public bodies accountable in different ways. Political accountability, for example, is sought through regular elections, or the convention of ministerial responsibility; the ombudsmen aim to control 'maladministration'; complaints by individuals against public bodies may be determined by means of an appeal tribunal or inquiry, or by means of internal review; Members of Parliament attend to the grievances of their constituents, and accountability in matters of financial probity and efficiency is sought by means of the National Audit Office, the Comptroller and Auditor General, the Public Accounts Committee

and the Audit Commission. Regulatory agencies control the activity of the privatised utilities.

Institutions such as courts allow individuals to challenge a decision already made. This form of retrospective 'check' is just one technique of controlling discretion. Although decisions of courts may have an impact on future administrative practice, there are additional ways to control the exercise of discretion in advance, by techniques that seek to enhance the openness of and access to official bodies, in order to encourage their responsiveness and accountability to the interests they serve."

Yesterday in the church service, for the opening of the law term, Father Harvey's words which would stick in the minds of people would be: "We must remember that we do not hold office for ourselves, we hold office for the benefit of humanity, and whatever we do, we must serve humanity". Judicial review reforms that we are putting here are reforms which would strengthen the legal machinery to ensure that public officials are made accountable. By public officials, I mean Ministers, and public officials are made more accountable and, there will be a wider net of persons who would be able to either approach the court or have the issues which affect them and the public to be determined by the courts, and the courts would be able to look at these matters and see whether justice is being done or not.

Mr. Vice-President, I would not go through all the clauses of the Bill. I think Senators would have read it. They have dealt with, basically, what the principles of judicial review have been. What these measures also do is, they find a way in which it is recognized that there can be no enjoyment of civil and political rights without, to a great extent, enjoyment of economic, social and cultural rights.

3.20 p.m.

Therefore, one can see that if, for example, the environment is being damaged, how would you classify that? Would you classify that as a breach of a civil and political right, or a breach of an economic and social right? How would you classify that? It may be that it could be classified under all sections. It seems to me that as the law develops, as the dimension of law is broadened to face the challenges of the new century, the courts and lawyers would have to be more enterprising and innovative in finding ways and means in which justice can be done to people, and rely less and less on formalities, technicalities and obstructions which prevent justice being delivered.

Mr. Vice-President, I think all of us would recognize what we are facing with the new information age, the law will take a different dimension, in any event. You are going to have major changes of the law, it comes as a result of the information age. Even criminal law and public law would have to change; forms and procedures would have to change, and these changes cannot come overnight, they would evolve in some cases. There are times in the lives of men when a decision in leadership has to be given, and in this area of public law there comes a time when in Trinidad and Tobago we must take the lead in saying that we have a passion which must be satisfied to ensure that there should be equal protection of the law.

If there is a measure which can be introduced to ensure that you do not only provide equal protection of the law, but provide greater accountability to the courts of public officials, ministers of government, public authorities and state agencies, then as parliamentarians we must feel very privileged, very honoured and very blessed that we are part and parcel of passing such a law.

Mr. Vice-President, I beg to move.

Question proposed.

Sen. Nafeesa Mohammed: Mr. Vice-President, I must say after listening to the hon. Attorney General in his presentation this afternoon, I am a bit amused to hear him waxing so philosophically as he quoted from the various books and made various references and so forth to court decisions as they relate to this particular piece of legislation.

Listening to him, especially in his closing remarks, I must say that it sounded to me, and I am sure to many others on this side, as though the hon. Attorney General is simply paving the way for that time in the not-too-distant future when he will be returning to private practice, and will be resuming his role in the society as Mr. Human Rights lawyer, because clearly the Bill that is before us is a welcome piece of legislation. I say welcome because from reading the Bill it seeks to accomplish two main objectives: one is to codify the laws as they exist today and, indeed, the rules and procedures as they already exist in relation to judicial review matters. The other aspect of this Bill is the introduction of this concept of public interest litigation.

We on this side will certainly support any measure that would redound to the benefit of the citizens of the country and, particularly, if this measure will assist persons in our society who are unable, under normal circumstances, to seek redress in the courts, we certainly would welcome any attempt to improve this situation in that regard.

Listening to the hon. Attorney General as he quoted from some of the books, he made extensive reference to the jurisprudence and the comments from judges and from cases and so forth, particularly from India. It reminded me very much of a particular case that the hon. Attorney General was involved in some years ago when he filed a constitutional motion against the state involving the vendors of Port of Spain, where he sought a court order to say that the vendors had a right to vend on the streets of Port of Spain, even though they were acting contrary to the bye-laws and rules as they related to the Port of Spain City Corporation.

Now, as he sits in the capacity of Attorney General of a country I wonder what his position is now on those principles that he, at that time was seeking to extend. I think the name of the case was Ricardo Welch *vs* the Port of Spain City Corporation. I distinctly remember the hon. Attorney General losing that case; it reached the Court of Appeal and he lost it. In that case he referred to a case from India, the "**Tellis Case**", where he was arguing that the vendors, based on the social circumstances that existed in India, had a constitutional right. They had a right to earn a livelihood.

Listening to him here this afternoon quoting again from the jurisprudence that emanates from India, I have no doubt that in terms of the principles that he was referring to, that as the law exists today there are, in fact, limitations in our laws, and some of it would be irrelevant at this point in time. Mr. Vice-President, with respect to the attempt by this Bill to codify the rules, regulations and laws as they relate to judicial review action, I think it is in Order 53 of the Rules of the Supreme Court that the procedures are elaborately set out as they relate to applications for judicial review.

The hon. Attorney General presented this Bill as though this was something revolutionary, and the reality is that there is nothing new really, except that it was codifying, as I said, what was already in the law in terms of Order 53 and, of course, whatever decided cases that we have in the country. Insofar as it seeks to codify these principles we can say, okay, it is good, it is welcome, because I am assuming it would simplify the process and make it easier to follow the procedures.

When the hon. Attorney General talked about the court being able to deal with matters especially for the poor, downtrodden and what have you, I was a bit concerned. I was wondering, in making these applications, because I think it is in clause 5 of the Bill where it introduces this concept of public interest litigation. There is an amendment, I think, to clause 5 where a new subclause is introduced

that will cater for a person who on account of poverty, disability, socially or economically disadvantaged position or any other person or group of persons acting bona fide and so forth, can move the court under this section.

I could not help but wonder if this provision now will cater for a situation that we witnessed in this country not too long ago. It is a pity the new Minister of Works and Transport or the senior Minister of Works and Transport, the hon. Sen. Carlos John is not here. He had, in fact, violated all the laws, rules and regulations that we are aware of; Sen. Prof. Kenny has from time to time referred to the breaches of the law that took place when the hon. Senator proceeded to illegally pave the savannah. When he did so I distinctly remember there was a particular citizen of our country who was injured because of the protest action he was taking as a result of those illegal actions of an officer of the state, who is today rewarded with the post for that illegal action. He is rewarded today with the post of a Cabinet Minister, and if I may go further to say he seems to be a very senior Cabinet Minister at that too.

I am wondering if this legislation will now enable citizens, for example, like Mr. Eden Shand who had stood up for the protection of the law and for the rule of law on that fateful day when they were protesting against the paving of the savannah. It was such a sad and unfortunate experience to look at the news to see a citizen of our country being covered with dirt or gravel because of the protest action that was taking place, and then for the gentleman to be ridiculed because he was standing up for the rule of law in our country. Mr. Vice-President, such an individual was chastised, whilst the person who was responsible for the illegal actions has been rewarded with the plum position of a senior Cabinet Minister. What this amounts to is outright hypocrisy on the part of this Government.

Mr. Vice-President, by the hon. Attorney General bringing this legislation in the Parliament today, I would like to put on record that we on this side welcome it and, in fact, we are eager to see this Bill implemented as law, and I hope it will be implemented even before the elections that are due in our country so that citizens can obtain redress for the many illegal, immoral, unjust and inequitable actions that are taking place in our country, because the savannah is not all.

What about the airport project? The hon. Attorney General would know what I am talking about, because we have heard about the situation, where after the Deyalsingh Report was laid in this Parliament and it was stated in the report about the evidence of corruption and impropriety and so forth in the awarding of those contracts at the airport, that a particular opinion of the Attorney General was, in fact, prepared, and it was disregarded. Lo and behold, we have heard in this

Parliament, we have seen documents and it is now in the public domain about the improper manner in which contracts have been and are being awarded with respect to the airport, where today over $1.3 billion is involved in that airport project, and poor people in this country continue to suffer.

I would like to know from the hon. Attorney General that while the squandermania is taking place at the Piarco Airport project, what steps this Government is taking to compensate the many farmers from Aranguez who suffered losses with their crops from last year with the floods? They have been boasting about their agricultural policies and what they are doing to boost agriculture in this country, and boasting about the setting up of a disaster relief fund to help farmers who suffer from disasters.

Since last year the flood took place and so many farmers in Aranguez were affected by the heavy rains. To this day, have they received their compensation? And they are coming back this year to do as if that was some big, big agricultural boost that they were introducing with the budget. That is the hypocrisy that is taking place, and it is rather unfortunate to have to sit here and hear no less a person than the hon. Attorney General quoting so extensively about poor people and injustice and doing things to promote accountability and to have good governance.

I have no doubt or, at least, I would like to think that the hon. Attorney General personally as an individual, feels strongly about these matters, but what I would like to ask him is that, if he feels so strongly then, perhaps, what he needs to do is look right around him when he sits at Cabinet meetings to see what action he can take against his own ministerial colleagues in the public injustice, for the many injustices and illegal actions that are taking place in this society. [*Desk thumping*] We do not have to go too far, the hon. Senator, the new— [*Interruption*]

Sen. Shabazz: 102!

Sen. Mark: Mr. Vice-President, on a point of order, I think under section 35(5) no Senator shall impute improper motives to any Member of either House, and she has made a broad and sweeping statement here and she should withdraw that statement.

Sen. N. Mohammed: And I can back it up!

Sen. Mark: Back it up, well, go to police!

Sen. N. Mohammed: I have complained to the Minister of National Security.

Sen. Mark: Well do not come here and make a sweeping allegation like that! That is improper, man!

Sen. N. Mohammed: Mr. Vice-President, with all due respect—

Sen. Mark: No,w man, I have a point of order, you "cyar" stand up here—

3.35 p.m.

Mr. Vice-President: What is the Standing Order you referred to Sen. Mark?

Sen. Mark: I am saying section 35(5) of the Standing Orders says:

"No Senator shall impute improper motives to any Member of either Chamber."

She is imputing improper motives.

Sen. N. Mohammed: These are facts.

Sen. Mark: These are facts? Well bring the police.

Mr. Vice-President: Sen. Mohammed, I will not allow you to continue imputing improper motives. It is clear to me that the line you have taken in the debate so far, has, in fact, continually made references to motives of the Members of Government and I invite you to make references to these projects to which you are referring, but not on the basis of improper motives.

Sen. N. Mohammed: Thank you, Mr. Vice-President, but may I be permitted to refer to factual cases of illegal actions? This is not improper motive here. There are events that have taken place and they involve Ministers of Government. Would I be allowed to make references to some of these?

Mr. Vice-President: I will determine how far I will allow you to go as you proceed.

Sen. N. Mohammed: Thank you very much, Mr. Vice-President. *[Desk thumping]*

Mr. Vice-President, a while ago I made reference to the illegal paving of the savannah. This is not an improper motive here, this is a fact. An event that occurred in our country when a person who today sits in the Cabinet of Trinidad and Tobago, who has sworn to uphold the law of our country, and was holding a particular position acted contrary to the laws of our land and proceeded to pave the savannah. The hon. Senator to whom I am referring is the hon. Minister of Works and Transport, our new senatorial colleague, Sen. Carlos John. This is a statement of fact; it is not an improper motive.

As another example, we have spoken about the airport contract and the illegal awarding of the contract, and the hon. Attorney General, as he has been so philosophical this afternoon, I am sure that he will not in his winding up rebut the fact that subsequent to the *Deyalsingh Report* on the airport project that he did in fact submit some opinion with respect to the awarding of that airport contract. That is a statement of fact, and contrary to his opinion, persons in charge of other agencies of the state—in fact, Mr. Vice-President, I may have to go so far to say that the Cabinet of the day permitted the awarding of the airport contract in a manner that has been questionable in our country. The hon. Minister of Works and Transport Sadiq Baksh is here and these are statements of fact. From 1998, NIPDEC took over the contract between the Airports Authority and Birk Hillman.

Sen. Mark: What is the relevance of that?

Mr. Vice-President: Senator, we are not here to investigate the award of any specific contract. I will allow you to refer to contracts as they relate to the legislation we are reviewing, but we are not going into each individual matter to investigate those contractual relationships in any way.

Sen. N. Mohammed: Thank you, Mr. Vice-President, but I was simply making the analogy because we are talking about a new procedure that will permit citizens of this country to seek redress from the courts of our land. Where there are instances of injustice existing in our country, and the awarding of these contracts is a classic case of injustice being inflicted on the people of Trinidad and Tobago and we would like the hon. Attorney General—if he is serious about this particular piece of legislation—as the protector of the people's interest in this country to take some decisive action with respect to the activities that are taking place.

Mr. Vice-President, a more direct example is contract package 13 where the contract was awarded to Calmaquip in the sum of $183 million under very questionable circumstances and I wish the hon. Attorney General can rebut these allegations. *[Interruption]* He is talking about accountability. Rebut or deny that these things are happening.

Last week we heard about it and it is on the record already, but we know that things are happening in a manner that leaves much to be desired and it is the poor people of our country who are suffering. *[Desk thumping]* Imagine we saw the evidence that is why we are saying we are anxious for this Bill to become law. Mr. Vice-President, do you know what would be very interesting? What would be interesting is that whenever election is called, and the People’s National

Movement gets back into office, we may very well have to hire the hon. Ramesh Lawrence Maharaj to prosecute some of these cases for us, and I am sure he would have a field day. In fact, I think this is why he is bringing these pieces of legislation, that is why he is bringing these Bills to the Parliament, because he would be guaranteed of a workload as a lawyer in this country for the rest of his life. It is really very interesting.

Sen. Shabazz: Proper motive. *[Desk thumping]*

Sen. N. Mohammed: We are very anxious to see this Bill become law because we welcome it. We want the citizens of our country to have the right to be able to keep Government on its toes and especially, where in our country today we are witnessing such a reckless subversion of institutions, reckless spending and breaking of the law. It is so unfortunate that the hon. Attorney General had to speak about the rule of law because we have seen so many instances where the law has been subverted.

Mr. Vice-President, to an extent I have to say I even feel sorry for the hon. Attorney General because yesterday I was at the Hall of Justice when the law term opened and—

Mr. Vice-President: Sen. Mohammed, can we proceed with the debate on the Bill and avoid all these diversions that seem to be taking hold of the debate.

Sen. N. Mohammed: Mr. Vice-President, I am simply referring to matters that are affecting the poor people in our country who need some form of redress for the injustices that are being inflicted by the Government that is in power today, and officials of the state.

When we are talking about judicial review and codifying the procedures for judicial review, one of the realities we may have to look at, or the consequences of this particular Bill is a matter I would like to raise with the Attorney General. It is perhaps the likelihood of a floodgate of litigation. I do not know if the hon. Attorney General has considered it, but certainly, in these times when the administration of justice is so much in focus in our country, we have been hearing complaints from the Judiciary about the problems they are experiencing. When only yesterday at the opening of the law term, the Chief Justice of our country made extensive references to the frustration that they continue to experience with the Executive, we have to raise the concern about the administration of justice.

I was taken aback yesterday at the revelation that the conflict between the Judiciary and the Attorney General continues up to today. I thought the matter had been abated to an extent, but it has been confirmed and we are talking here about

the administration of justice, because for this Bill to be effectively implemented, we have to ensure that the wheels of justice are moving properly in this country. *[Desk thumping]* If the Chief Justice in our country continues to have a problem with the Attorney General, then "crapaud smoke our pipe" in Trinidad and Tobago. The Bill cannot work.

Mr. Vice-President, so we have to get rid of the Attorney General if that is the case because that is where the problem seems to be lying. In order for the courts to function effectively, and for the Judiciary to get the necessary tools and whatever they require to have that judicial system operating effectively, we need an Attorney General who would be a facilitator for the Judiciary, not an interferer with the Judiciary, and that is what we have in our country and that is dangerous. The role of the hon. Attorney General is under question in this country today because he certainly seems to be over stepping his bounds and interfering with the independence of our Judiciary. That is an injustice to our society, Mr. Vice-President.

Mr. Vice-President, I hear that the hon. Sen. Mark is anticipating the findings of the Commission of Enquiry's Report by Justice Mackay. *[Interruption]* We will wait and whatever the outcome of that report, we will be guided by it. The reality is that we recognize that there are problems in the administration of justice and what is needed is co-operation and consensus to deal effectively with the problem. We do not need these constant conflicts, high-handedness and this bulldozing approach towards dealing with these problems.

Mr. Vice-President: Sen. Mohammed, I would invite you to refer to Standing Order 35(8). We are not here to examine the administration of justice, nor as the order says, the conduct of persons engaged in the administration of justice. So let us try to stay away from that. The order at which we are looking particularly invites us to avoid that, and I do not see that the Bill, notwithstanding the fact that it deals with Judicial Review, requires us to get as involved in that as you seem to be taking the debate.

Sen. N. Mohammed: Thank you very much, Mr. Vice-President, and let me assure you that I will in no way wish to encroach, interfere or breach the Standing Orders as it relates to the Judiciary. If anything, my colleague, the hon. Sen. Mark was the person who brought some details into focus and I was simply responding to it.

Mr. Vice-President, as we talk about the enactment of a Bill that seeks to codify the laws as they relate to judicial review procedures in our country, I heard

the hon. Attorney General making references to access to justice. Throughout his contribution he was talking about access to justice as the rationale for this particular piece of legislation and this is the whole point about the smooth operations of the justice system in our country, because we know there are real problems which the people of our country confront when they have to bring a court action or so.

I remember not too long ago, the hon. Attorney General brought a Bill seeking to amend the laws relating to the Legal Aid Authority and I am quite curious to know to what extent is the Government providing the necessary funding for the Legal Aid Authority to operate effectively. We would like to get a status report because if you are talking about access to justice, this is a critical part of it. Even in the Bill before us it is seeking to provide for those persons on account of poverty, disability, socially or economically disadvantaged position and so, to now have a right to approach the court to seek redress for decisions that are made which are contrary to their interest and so forth. We must wonder about these things because it affects the access to justice.

I heard the hon. Attorney General refer to some jurisprudence emanating from India and he made mention of some environmental issues or cases that were decided upon and I am glad to know that, under this particular piece of legislation, citizens of this country would have the right to seek redress for infringements as they relate to environmental matters. I am sure Sen. Prof. Kenny would be delighted by this particular provision, but we have to ask the question about the Environmental Management Authority and the status of the Environmental Management Commission and look at the possible link between the operations of the Environmental Management Commission and these procedures as they exist in this particular Bill. We know that not too long ago, the present Minister of the Environment brought a Bill to the Parliament seeking to amend the Environmental Management Act which was enacted when the PNM was in office in 1995 and in that proposed amendment, the intent was supposed to be to enable the setting up of the Environmental Management Commission. Members of Government sat in this Parliament and said the reason the commission could not be set up was because they needed a special majority to make the Environmental Management Authority Act of 1995 valid.

Mr. Vice-President, contrary to what the Government goes around telling the people of this country, we on this side are not an obstructionist Opposition, we give the necessary support and provided the majority support that was needed in order to rectify that situation.

3.50 p.m.

And there were amendments that we all give our support to. We gave that special majority to the Environmental Management Authority Act of 1995, with the expectation that the Environmental Management Commission will be set up. And we have to ask the question: What is the status of this Environmental Management Commission?

Clearly, the Government seems to be dragging its feet on the establishment of this Commission because we know that many of their mega projects that they are boasting about are, in fact, projects that are in breach of the environmental management rules and laws of this country. So that when the Hon. Attorney General talks about upholding the rule of law and bringing this legislation to facilitate citizens to get redress, when the laws are broken by Ministers or public officials or what have you, we really have to wonder about how serious they are, because, clearly, by their actions there are so many instances where they have been found to be in breach of the laws.

Mr. Vice-President, there is a burning situation in our country right now. It is the subversion of the Municipal Corporations Act of 1991 that is taking place in this country today. And I make specific reference to what the current Minister of Local Government is doing as it relates to the San Juan/Laventille Regional Corporation, where the Minister has by-passed the regional corporation and proceeded—*[Interruption]*

Mr. Vice-President: Hon. Senator, I want to ask you, again, to keep your mind focussed on the Bill before us. Over and over again, you are straying from the Bill. I have allowed as much latitude I am prepared to allow but I am not going to continue allowing just a field day to go any and everywhere with the debate.

Sen. N. Mohammed: Mr. Vice-President, with all due respect, I am making a reference to an instance of a breach of the law that is taking place in our country. And I am not, in any way, challenging your ruling, Mr. Vice-President, but I, certainly, would like to get some guidance as to whether I can conclude the point I am making in terms of the Municipal Corporations Act of 1992.

Mr. Vice-President: I am certainly not going to allow you to continue with something that has no direct relevance to the Bill before us.

Sen. N. Mohammed: Thank you very much, Mr. Vice-President. Mr. Vice-President, one of the measures that the hon. Attorney General talked about with respect to the Bill that we are debating here this afternoon, is that in his opening

remarks he sought to make a distinction between constitutional motions and judicial review actions. And I believe in this Bill, one of the intents or objectives is to clarify or, indeed, codify the law as it relates to the award of damages in judicial review actions. Let me say that this particular provision is a provision that we would consider to be a welcomed one. Because for some time now, when judicial review actions are pending in the court, there is always this element of uncertainty in dealing with these matters and as to whether damages should be awarded in these kinds of actions.

I had seen actual cases where the nature of the application that came before the court amounted to almost a hybrid situation between a judicial review action and a constitutional motion-type action. I am sure the hon. Attorney General would appreciate the type of action that I am talking about. So that the particular Bill here, as I indicated before, we, on this side, welcome it and we are very anxious to see this legislation enacted and come into operation, and we are hoping that it will come into operation some time before the general election, so that we can start our actions. Even if it does not come in time for the election, we wish to assure the Members of the UNC Government, that if even the people of our country are not allowed the opportunity to seek redress through the courts, they would have that golden opportunity law and the other types of actions that enable judicial review actions to be brought through the courts, they would have that golden opportunity on that very eventful and fateful day whenever the next general election is called. Because it is said, "that the voice of the people is the voice of God." And certainly it is only a matter of time before the citizens of our country obtain real redress from the illegal and improper actions of this UNC administration.

Thank you very much, Mr. Vice-President.

Sen. Dr. Eric St. Cyr: Mr. Vice-President, this properly is a matter where lawyers should speak, so I should really hold my peace. But as a layman I was struck by the Hon. Attorney General's argument that the Judiciary would review action of the Executive in the cases of public interest which suggest to me, Sir, that there must be a certain relationship between one and the other. It is certainly not that the Executive is in a position of superiority over the Judiciary. If anything, perhaps the Judiciary is in a position of superiority over the Executive or, perhaps, at the very least, they should be on par.

There is a fundamental difficulty—I know we speak quite a lot about the principle of the separation of powers, but there are many grey areas. I understand, quite clearly, the point about the responsibility of the Judiciary accounting for

public funds used. In my view, that cannot be to the Executive; because the Executive, in turn, must account to the Parliament for funds used.

The point I am making, Sir, is that the plea we have heard here for judicial review to hold at bay any abuse of Executive power does suggest strongly to me that we must have a very strong Judiciary which is absolutely independent of the Executive. I dare say that we should all stand firm to ensure that the position of the Judiciary in the society is not eroded.

4.00 p.m.

I want to make another layman's comment, which I could tag on to clause 7, on the matter of costs. My understanding is that if a matter where costs would arise is taken to the court pertaining to the public interest, in the law here we see that only the cost of the first applicant who really did not have a primary interest in the matter would be waived. I wonder whether we should not go further and, in the public interest, deal more sensibly with the matter of costs. I do know that one can find cases of abuse where people would frivolously and repeatedly approach the court and we want to discourage that. However, in my view, perhaps what we should do is to say that the courts will not normally award costs in cases of judicial review in the public interest and leave the discretion on all matters of the award of costs to the courts.

My third and final layman's incursion into this elevated area of intellectual activity, Sir, is to say that I am concerned, and have always been, about the freedom of information. I know that we have dealt with that in legislation recently, but here is my problem. The business of the legislature is conducted in public and is reported and so forth. Also, the business of the court is conducted in public, reported and so forth. The one area that is not conducted in public is the business of the Executive, and I feel that the only way we could deal with that problem is to require that all information going into Cabinet decisions be made available to the public.

We would not dare to say that the Cabinet deliberations should be in public—those can probably remain in camera—but the decisions of the Cabinet, which now are made public, should remain so. In that way we would have an opportunity to weigh the information basis on which decisions were made with the decisions actually made. In a case of judicial review of executive action, I am wondering whether ministers should not be accountable for decisions and to explain the basis of decisions. In that regard, Mr. Vice-President, I want to say here that I have been rather puzzled by a very recent bit of information which I just cannot get my hand on firmly.

I understand that there is a certain type of door called a bifold door in a certain document but a minister told us here last week that there is no such door. My puzzle is; how can one get that information for sure? [*Desk thumping*] I am not here dealing with what was estimated and what was tendered—I am not on the point about the figures. [*Laughter*] I am just on a matter of simple information that, here is a very elementary issue where the Executive has the information and we are told categorically that there is no such thing as a bifold door. From suggestions and documents elsewhere, though, one is led to believe that there might be one. Is this the sort of thing that brings the role of the Executive in a free and open society into question? Mr. Vice-President, as I have said, these are layman's points of view and I thank you for the hearing. [*Desk thumping*]

Sen. Martin Daly: Mr. Vice-President, I would just like to say a few words on the considerable improvements that this Bill will bring to the process of judicial review, and to congratulate the Government for bringing this Bill forward. I would not indulge in a lot of lofty quotations. I would simply say that I think everyone, layman or not, understands what judicial review is; namely, that if the Executive arm of the Government acts unfairly, illegally or in a perverse way, one can go to the court and complain about it. I think it is important to remind everyone that the court cannot substitute its own judgment for that of the Executive. In other words, the court does not enter into the merits of the decision the Government has made, it simply examines that decision to make sure it was arrived at lawfully, fairly and that it is not perverse; and that is the extent of judicial review.

There are, however, two very, very important improvements on which I congratulate the Government and the Attorney General for bringing forward. First of all—well, I think it has gone beyond uncertainty now—it is fairly well established that, through an oversight, when the Rules of the Supreme Court were amended, we did not amend the Judicature Act to make it possible for a court to award damages when someone succeeded in a judicial review case. One of the things that this Act does is put that beyond doubt; and that is a very important improvement in the law. The other big leap forward that we are taking is the question of public interest litigation.

Like the Attorney General, I saw Sen. Prof. Kenny's eyes sparkling and I must confess to having inside information. He may or may not disclose to Senators the plan which we had to take the savannah matter to court, on a *pro bono* basis, which ultimately could not proceed because we could not find any plaintiff who, under the existing law, had a sufficiently substantial connection with the savannah not to be thrown out of court. We had read about many cases where Green Peace,

the international environmental organization, had had sufficient standing to challenge certain things in the courts. We could not find a Green Peace type organization; otherwise we had everything prepared. We had all the preliminary work done to seek at least a declaration of the court that the paving of the savannah was illegal. We had planned this very carefully but ultimately we were not satisfied that we could find a plaintiff who had sufficient interest, and no doubt Sen. Prof. Kenny will talk about this a bit more.

That is one example of the considerable improvement this law is making. It has nothing to do with the merits of whether the savannah should be paved, but a substantial number of people in the country were horrified that the portion of the savannah was paved in the way in which it was, and we wished to demonstrate this by a ruling of the court. Ultimately we felt unable to do so because the Rules exist so tightly about having a substantial connection with the project. I am speaking very broadly. I do not want to bore anyone with Latin tags, but it suddenly struck me, Mr. Vice-President, that there is another very, very contemporary example of why this law is such an improvement.

I am aware of the Rulings and guidelines that were given earlier, but I must say, when I was digging in my rubbish on Sunday morning looking for a rabbit's ear—and everyone knows what a rabbit's ear is. It is a rather antiquated form of technology that one connects to a television. When I was digging in my rubbish on Sunday for a rabbit's ear in order to overcome the fascistic act—and I say it is an act of fascism where an indigenous television station could be struck off the air by a cable operator, the legality of whose operation I am not at all sure about—I thought, how nice it would have been if I could have gone to a judge that morning to have him sanctify my use of the rabbit's ear.

Happily, I found a rabbit's ear. It was in very, very poor condition, but I am now receiving the signal of which I have been deprived. However, I would have instantly sought a declaration of the court that it was an act of fascism for a private cable operator to take a national station off the air, and to do so in circumstances where that was the only means by which we could get a commentary that was not heavily biased in favour of another country, and to deprive us of a commentary that provided 15 minutes in the morning and 15 minutes in the night of Caribbean corner where we could focus on our athletes. So I really welcome this Bill.

In fact, Mr. Vice-President, following the tradition of the United States where I think they give Bills names—there is the Brady Bill, the this Bill, the that Bill and the Taft Hartly Act—I would quite unofficially—because I have no official

powers to do it—call this the Cleary Bill in honour of the gentleman who has savaged a great deal of our freedom of choice and, I would go so far as to say, free expression under the Constitution. I would unhesitatingly call this the Cleary Bill.

May I also say that I could also congratulate the Government because, notwithstanding some pronouncements of high officials of the Government, I was happy to see that the Director of Telecommunications was attempting to use moral suasion. Not simply because something may be covered by a contract or something might be lawful in private law does it mean that the Government does not have moral suasion. The Government has moral suasion and there are very few operators, foreign or local, lawful or not, who can usually resist the moral suasion of the Government.

One event that comes to mind—I think the Attorney General was in Grenada at the time—was when the government used moral suasion to get the banks to open on the Sunday following the failed *coup d'état*. The banks did not want to open and they used moral suasion to get the banks to open on a Sunday. That is an example of the use of moral suasion where the bankers were not willing to do it and the Government was able to show them that it was in the public interest to do it and they did it; and I dare say that I am happy. I wish the Director of Telecommunications—I always thought that he did not seem to have a very active portfolio, other than apparently sending for tapes from radio stations, which could not occupy much of his day. I should think all the tapes he sent for he would have in his possession by 10.00 o'clock and he presumably has a staff who could listen to these tapes to see if they have offended in any way.

So I was happy to see that the Director of Telecommunications was fulfilling, no doubt on instructions from his masters, a very important Government function of exercising moral suasion. I believe the moral suasion should have worked by 4.00 o'clock this afternoon. Our parliamentary staff are considerably resourceful, so I am putting them on notice that at the tea break I will be looking for a rabbit's ear so that Members can see whether the moral suasion of the Government worked, as far as these very, very, very important [*Desk thumping*] free speech, free expression and all kinds of freedom issues are concerned. But you have been very tolerant on this subject, Mr. Vice-President, no doubt because you have had a similar predicament with a rabbit's ear and I thank you for your tolerance on the subject.

Now, there are just two technical matters that I would like to raise. First of all, I would have liked to see some provision making a general rule about limitation in

judicial review. I think this is a good opportunity to have a general provision for a universal limitation period for judicial review, instead of having to be concerned about whether—I mean, I have not researched it, but there are differing limitation periods in different Acts. It might have been a useful general provision to have.

4.15 p.m.

Mr. Vice-President, I think that my colleague Sen. Dr. St. Cyr has raised an important point about costs and we may need to consider in the case of public interest litigation, whether there ought not to be a rule similar as obtains, for example, in the Industrial Court that the court would not award costs against an unsuccessful party in public interest litigation, save in exceptional circumstances. Clearly, if you had some of our more vexatious citizens whom we encounter in the corridors here and we sometimes hear outside when we are in here, we might not want them going to the courts every day. So it would be important for the court to have a discretion to award costs, but it might be useful in public interest litigation to consider such a provision.

Mr. Vice-President, I will control myself and not be led into the temptation of the philosophical question raised by my colleague, Sen. Dr. St. Cyr. I, simply like to say—since these days I am promoting peace rather than war—it was very refreshing to hear the Attorney General say on more than one occasion that judicial review was a form of accountability. That was very refreshing. No doubt because he has been consistently misreported, it was very refreshing to hear him say so in such an unequivocal fashion.

Mr. Vice-President, I would point out however that this is another occasion on which—and Sen. Dr. St. Cyr has touched on it and I say it now without reference to any particular matter—we see how important it is that the various building blocks of our constitution sit level and do not suffer any structural damage, because this Bill unequivocally makes the courts the guardian of the public interest. The Judiciary, the Executive and, indeed, the Legislature will quite often legitimately differ in their perspective on what is the public interest and, therefore, it is very important if this legislation is to work, that the various building blocks of the constitution sit well, and are not damaged in the course of any turbulence, otherwise it simply would not work. They are interdependent and each of these gears of the constitution has to shift in the way in which we understand these things. That is why it is very important to avoid turbulence in our constitutional arrangements as far as possible.

Indeed, not only does the Executive submit to the court's view of the public interest as is made plain, for example, by clause 7 of the Bill, but our old friend,

the Rules Committee appears at clause 25. This Bill cannot work without rules being promulgated by the Rules Committee to make it work, and the Rules Committee comprises *inter alia* a judge of the Court of Appeal, a judge of the High Court; and the Attorney General. So there again we have a perfect example of the interdependence and why it is so important for each of the building blocks—I repeat it because I think it is important—of the constitution to sit level and not suffer any structural damage.

It is very important for these various constitution institutions to respect each other's space and not be drawn into any unnecessary—can I put it like that—controversy of turbulence, otherwise the country simply cannot function. That is the problem. I make no judgement about any turbulence past or present. I merely point out that this Bill is the prime example of the interdependence of the various functionaries under the constitution. This is a very important improvement in the legislation and I would not like in any way to derogate from its importance or dilute my congratulations to the Government for bringing it by going further into these matters which would take them off a philosophical plane.

Mr. Vice-President, I do not know if we will be able—I see my good friend Sen. Gillette is approaching which is very appropriate—my target for the implementation of this legislation is not prior to the elections but prior to Ato Boldon's heat.

Mr. Vice-President, thank you very much. *[Desk thumping]*

Sen. Prof. Julian Kenny: Mr. Vice-President, I, too, congratulate the Government on this legislation. Frankly, I was rather startled—and my one regret with this legislation is that we did not have it 25 years ago, when many of the problems that we now face could have been addressed. I am particularly taken with this new concept of the public interest and this idea that an individual may bring an action, although, the individual is not directly affected.

Mr. Vice-President, as Sen. Daly pointed out, when the savannah paving took place we had a young lawyer who researched the whole matter, and it was pointed out the obvious conclusion that the paving of the savannah was contrary to the Savannah Ordinance; contrary to the Town and Country Planning Act; and contrary to State Lands Act. I have in fact mentioned it in this Senate. In fact, I have raised questions and I was rather taken aback with the answers that the Chairman of the National Carnival Commission did not think approval was necessary.

Mr. Vice-President, we found the situation extremely peculiar because it is difficult to understand how a chairman of a board could take action like this without approval of funds and without going to the Tenders Board. The question to us was: Was there a directive? Now, I am not suggesting that there may have been a directive, a Cabinet decision, or that had Cabinet made a decision on this I think that Sen. Dr. St. Cyr's point was apt that when things are decided at Cabinet level, at least, the nation ought to know that it is a Cabinet decision rather than an administrative arrangement between somebody and the Government and a chairman. So our case fell down or collapsed because in the existing case law we could not find any plaintiff who could demonstrate that somehow the plaintiff had been affected. I am prepared to have anyone explain or show to me that there was not a breach of law in the paving of the savannah.

Mr. Vice-President, one point I would like to raise here relates to the Environmental Management Act. Now, under section 62 of the Act, the authority may make what are called environmental requirements and under section 69 of the Act, it permits a private citizen to bring an action before the Environmental Commission relating to any environmental requirement, which has been issued by the Environmental Management Authority. In the case of the polluters—the people who dump lead and things like this—I could bring an action against them through the Environmental Commission.

Mr. Vice-President, my question relates to organizations which are owned by the state: in particular, Petrotrin and Caroni 1975 Limited which are both extremely heavy polluters, both of the water courses and the air. I wonder if the people at Brechin Castle are affected. They phone me and complain about the problem of soot during crop time and so on.

4.25 p.m.

I wonder whether this public interest law would permit me as a citizen to bring an action against the state, because this is not a privately owned corporation. Already, we have a certain amount of administrative framework for dealing with problems of pollution of the environment. Let us face reality. The big polluters are Petrotrin and Caroni (1975) Limited and the pollution from Caroni (1975) Limited is not limited to the Caroni River; it is all down in the south and so forth. It is a question that I wondered might be addressed by the hon. Attorney General.

Mr. Vice-President, there is another point I would like to raise, again, in the public interest. That is the question of the failure to enforce simple law, like traffic laws. The hon. Attorney General talked about India, the poor people of

India and environmental pollution—air, water and so forth. We have a serious problem in this country. The authority for enforcing simple archaic vehicle emission law is the Traffic Branch of the police, national security. Today I got blasted by a cloud of black smoke from one of the Cherokee Jeeps when I went walking for my paper. He turned a corner and blasted me with soot. [*Laughter*]

Everyone knows of the problems. You hear people call in to the radio and they write letters about it. What does one do about something that has an effect? Vehicle emissions will kill a number of people slowly. It is an established fact in science. How does one, in the interest of the public, ensure that those who have a responsibility to enforce simple law, in fact, do their job? You see people standing around the Savannah just below White Hall—two policemen and one policewoman with their little charge books—and all the vehicles are running up and dodging in and out. That is dangerous enough, but one in three vehicles is belching out black smoke. How does one address that sort of thing in the interest of the public?

Mr. Vice-President, I am not going to take too long. There is something that Sen. Dr. St. Cyr raised on the subject of decisions and I made a little note in red. It is my impression that a decision was taken by Cabinet to appoint a developer for a port at Toco. It is an impression. There was a preferred developer and steps were taken last May to serve notice of acquisition of 15 hectares of private property. People who have lived there for much of their lives and I assure you, Mr. Vice-President, I have spoken to the people and many of those old folks are very distressed of the uncertainty. Their land is to be taken, it is said, for a port.

Now, I have seen the proposals for the port and the proposals are for a private commercial port and, in this Senate, I have asked questions about the proprietary of acquiring private land for private purpose, building a port that is privately funded which the Government will get in 18 years' time—we do not know in what state. It is going to take land away from people. Under section 4 of the Constitution, they have rights to enjoyment of property and it is going to be taken from one set of private citizens to give to another set of private citizens. Now, that, to me, would be a case for the interest of the public being served. It is the sort of thing that I would feel somebody at Toco, or I might join them, would seek judicial review. [*Interruption*] Essentially what I am saying. I have just been passed a note that the people of Toco, in fact, because they are disadvantaged economically and so forth, could seek judicial review to protect their rights to ownership of property in the circumstances.

My basic question here was: this is a Cabinet decision, I understand. I may be wrong. But, there is a preferred developer. The state has commenced land acquisition procedures and the people are really quite distressed. I know there is some suspension of the development of the port. I do not know what happens if elections come and you might find after this, the port may continue because people have apparently spent a lot of money on it, buying up land and otherwise. It is a question then that I think is very pertinent, the one that Sen. Dr. St. Cyr raised. He is quite right. We do not need to know the deliberations, but when major decisions are taken by Cabinet, somehow the public, we the citizens, really ought to know Cabinet has decided so and so.

That, of course, allows us to look at what the Cabinet has decided and, if necessary, in the interest of the public, challenge it in court. I think that is what the hon. Attorney General was aiming at.

Mr. Vice-President, there are others where I have seen the results of Cabinet decisions and I would challenge them. I am not going to challenge it again except to say that sometimes Cabinet may appoint a board and I do not think that the Cabinet has been properly advised on the law, so that people may find themselves on a board for which, strictly speaking, according to the law, they do not qualify.

The final point I would like to make is that we had a serious problem with the Environmental Management Act of 1995, now 2000, and the Environmental Commission. It is still a puzzle as to why there is no commission. Again, this law, the Environmental Management Act has been in force for five years. There is a building rented to accommodate the commission. There is budgetary provision for the second year. Now, a citizen or citizens may interpret this in different ways. It could be it is not high on priority, or it could be that somebody has been incompetent along the line, or it could be sinister. We do not know. Again, failure to fully implement the law of the land is, to me, a subject of public interest and, if necessary, in need of review.

Thank you, Mr. Vice-President.

Sen. Prof. Kenneth Ramchand: Mr. Vice-President, I welcome this piece of legislation and thank the Attorney General for his committed presentation of it. The concept of public interest litigation is a new one to many people, people who have worked and who are working in public interest issues, but who have been frustrated by a sense of existing barriers to action. I find that this piece of legislation is a rejuvenating and an energizing one.

The legislation also makes a clear statement that the Executive and the Government are accountable to people and can be called to account by any citizen who takes a matter to the courts. Mr. Vice-President, this is the only serious provision I have seen that allows citizens to concentrate on issues, rather than on parties or on race, and to concentrate on issues throughout the five-year life of a government and to practice control over their government, not once every five years, but throughout the term of office of a government. To me, it is a major piece of legislation in the restoration of the democracy which has been whittled away from us ever since Independence.

Mr. Vice-President, this piece of legislation is potentially the single piece of legislation most capable of allowing us to carry out our responsibilities and to claim and defend our rights under the Constitution. It is the single piece of legislation that gives us most muscle to champion the cause of neglected communities and voiceless people. It is the single piece of legislation that enables us to come forward in full force, not just as a demonstration with a letter with 2,000 signatures, but as plaintiffs seeking to preserve, protect and rehabilitate our much abused and exploited landscape and environment.

I welcome this piece of legislation wholeheartedly and I hope that we can make it live up to its potential. I think it is now the responsibility of the press to let the country know that this legislation exists and that rights are now available to the citizens for them to go to court on these matters.

Sen. Mark: For the first time.

Sen. Prof. K. Ramchand: Indeed. Congratulations.

Sen. Mark: For the first time.

Sen. Prof. K. Ramchand: I cannot be more rhetorical than that, you know. You want more. Oh God!

Mr. Vice-President, I have two observations of a semi-technical nature. The legislation will come to nothing if practical provision is not made by the disbursement of public funds to supply more judges, more courts, other staff and equipment and by a further simplifying of procedures to ensure the speedy operation of justice. There is no point making the provision because I am telling you, I am going to tell “fellas” from Cedros, La Brea, Toco and Icacos, to go to court. We need plenty courts, plenty judges and we need a simplified procedure so that ordinary citizens can carry out their responsibilities.

I hope, therefore, that the co-operation that is being called for between the Judiciary and the Executive will be forthcoming and that such difficulties as may

lie in the way of such co-operation may soon be resolved in the interest of justice, which is the interest of the nation.

While the Attorney General was speaking and describing this public interest legislation, I kept saying to myself, "That is what the Ombudsman should have been able to do."

4.40 p.m.

Mr. Vice-President, this legislation may have a bearing upon, or may need to be related to, the functions of the Ombudsman. I do not have any suggestions about how it could be done, but I feel that some form of rationalization needs to be considered, as between the functions of the Ombudsman and the implications of this legislation.

I do not want to go into too many details. I leave these matters for now. I want to applaud the first step. I will tell you why. These last few months, I have been playing two tunes in my head, one of them is: "Cry the Beloved Country", and the other is the title of a short story by Vidya Naipaul: "Tell Me Who to Kill." I think this piece of legislation is capable of modifying that despair and cooling down that rage.

The Attorney General has provided very direct and enabling answers to a better question: "Tell me who to tell?" I now know who to tell. Mr. Vice-President, I wish to congratulate the Attorney General and the Government. Thank you. *[Desk thumping]*

Sen. Rev. Daniel Teelucksingh: Mr. Vice-President, just a brief comment on this most important and significant piece of legislation, especially that aspect dealing with the public interest and giving the assurance to the public, especially the underprivileged and the poorer people in the society, giving to them the assurance that, as far as justice is concerned, they will be heard.

I believe that we have existing mechanisms within our system, but we have had problems. The previous speaker made mention of the Ombudsman. These have been like sleeping watchdogs. We have the Ombudsman, the Auditor General, I said in the past, the Public Accounts Committee, the Public Accounts (Enterprises) Committee, and the Police Complaints Authority. We have within our system these mechanisms. Somehow or the other, they do not seem to serve us well. This is one of the problems. Where have we failed with the implementation of our laws? This is an excellent piece of legislation. We applaud the Government for this Bill before us today. The question is: will it be another

chapter in our law books, and how effective will this be? How is it we have heard nothing about the savannah issue—as if we are helpless? We have the laws but nobody had the strength, power and the guts, maybe, to resurrect and implement them.

I have heard about the "Friends of the Sea" talking about pollution as though we have no laws to regulate the use of sea. I identify with the concerns of Sen. Prof. Kenny, about our own helplessness with the major polluters: they destroy our marine environment as though we cannot do anything. In the Point Lisas and Mayaro areas, where we have the industries, we have a problem. It is not that we do not have laws. We need to look at it again. How do you implement these laws?

Maybe I could ask the hon. Attorney General about the new Bill: the Integrity in Public Life Bill, 1999. We have seen this Bill. It is a beautiful piece of legislation: making provisions for the checks and prevention of corruption of persons in public life, for the promotion of integrity of public officials and institutions, and all those who perform governmental functions. What is the status of the revised Integrity Bill, the one dealing with public life?

Mr. Vice-President, I want to identify with the concern of Sen. Dr. St. Cyr about executive decisions. Within recent times, all of us, members of the public and those of us in Parliament, have been extremely concerned about the need for information. There are so many unanswered questions within the last two or three years, particularly, when it comes to public spending. We are concerned about executive decisions, unanswered questions, and a kind of silence from the Government.

Mr. Vice-President, I too would like to join with all, to recognize the contribution over the last five years of the hon. Attorney General. I want to compliment him for his stewardship, for the updating of certain aspects of our laws within the last five years, and the introduction of new laws too.

At this point, I want to identify with so many of the speakers particularly, on our Bench, who made reference to what I will call the two important estates of the realm: the Executive and the Judiciary. I was very concerned about this picture which appeared in the *Trinidad Guardian* of Tuesday 19, September 2000. This is a very important photograph. What do the Chinese say about a photograph? A picture is worth more than a thousand words. I wonder if it is the mischief of the press to use the word "war"? The war goes on, somebody is tired. Somehow or the other, Mr. Vice-President, I am concerned about this: it tells me something. Is it a war? It ought not to be a war. This is what many speakers, not only this Bench, all of us are concerned about. Is this a war? It could not be, between the

two major estates of the realm: the Executive and the Judiciary. Many of us have been saying in order that this piece of legislation could be meaningful—and all the laws and, maybe, society—that these persons who represent two very important estates of the realm need to work together, otherwise there will be chaos. That is very important. There will be problems if the Executive and the Judiciary do not work together. They must work together. We must make it work. *[Desk thumping]*

I feel very happy though, and very pleased to hear the Attorney General say elsewhere, on several occasions, that there is no conflict between the Executive and the Judiciary. *[Interruption]* I believe that. I want to say this is a very mischievous photograph. *[Laughter]* I want to be comforted that way, but what about the impression? What are the vibrations of this? We have been touching on this in most disguised ways.

Mr. Vice-President, it is extremely important, as we talk about law, as we formulate law and an historic piece of legislation today. As we do this, we tell ourselves that we need to get the machinery elsewhere working in tandem. Most importantly, is to have an interpretation of a photograph like this: a seriousness in office and at the same time, co-operation and understanding for the national good.

I thank you, very much Sir, as I support the legislation. *[Desk thumping]*

Sen. Dr. Mc Kenzie: Mr. Vice-President, I just want to ask a question, because every time I listen to these laws *et cetera*, I get very despondent. I wonder whether the Attorney General could say whether there will be a time frame within which, when you bring these matters for judicial review, whether some action will be taken or, whether, after a certain time, your complaint, if I may call it that, would lapse? You would have the legal terms for it. I think you call it statute bound after six months. That is what I want you to answer for me. *[Interruption]* Sen. Daly answered it? Okay thanks.

4.50 p.m.

The Attorney General and Minister of Legal Affairs (Hon. Ramesh Lawrence Maharaj): Mr. Vice-President, I think this afternoon hon. Senators have made very important contributions to this matter, and I think I would be failing in my duty if I do not deal with some apprehensions about what may be perceived as between the Executive and the Judiciary.

I think there can be no doubt at all that no democracy can function without a competent, efficient and independent Judiciary, and I think it cannot also be

undermined or forgotten. It is pivotal that the Judiciary must be independent in the exercise of its judicial function; there can be no doubt about that. If we do not have those principles then a democracy cannot work. I think we also see in Trinidad and Tobago a very healthy sign, and sometimes people perceive it as war and as conflict, but I think our society can be very proud of the fact that you can have differences of opinions, but it does not mean that the ship of state does not go on.

I do not think this country will want a Chief Justice who is gullible, sycophantic or subservient, and I do not think that this country would want an Attorney General who is gullible, subservient or sycophantic. [*Laughter*] If a Chief Justice is gullible, subservient and sycophantic, then you cannot have an independent Judiciary. If an Attorney General is gullible, subservient and sycophantic, you cannot have a proper officer protecting the public interests of Trinidad and Tobago.

What has happened is that there have been differences of views, those views have been expressed, some people may say very forcefully, on both sides; some people may say not as forcefully on both sides. The fact of the matter is that the views have been expressed. What does a government do? A government appoints a Commission of Enquiry and all these matters which have been discussed, their differences, distinguished people would have looked at it and pronounced a view on it. One of the matters which have been complained of is that there are certain financial and administrative rules which do not apply for judges in giving decisions; and do not apply for moneys to be given to pay for salaries of judges, but they are financial rules which apply for the disbursement of funds.

This was not started under this administration, there was always a minister responsible to the Parliament for the administration of justice, and that minister used to be, at all times, the Attorney General. If there is a financial and administrative rule given by Cabinet over the years and amended from time to time, that in the disbursement of funds the Cabinet Note has to go through the Attorney General and it goes to Cabinet, if that is wrong, if that undermines the independence of the Judiciary, and that is found to be so, then we will remove it.

The fact of the matter is, that you have on one side of the coin the important principle of the independence of the Judiciary, but on the other side of the coin you have the important principle, just as important, because the reason Parliament has been created is for the expenditure of public funds. You must have people accountable to the Parliament as to how the moneys are being spent. If you have officers who you put in a section, who have a special role, and these officers, not

members of the Judiciary, but staff of the Judiciary who can spend public moneys, but no minister is accountable to it, who can make appointments but it is not necessary to have any appointing process, which is the policy of a government, if that violates the independence of the Judiciary by having accountability, then let us remove it.

The fact of the matter is there are certain financial and administrative rules which this Government met, which have been utilized since Independence. If the Commission of Enquiry recommends whatever they want to recommend in respect of these matters, the Government has appointed it, and that would be the guide, obviously, for future action.

I do not think any government could have done any other thing in the situation, because on the one hand you have the view being expressed by the head of the Judiciary that Cabinet Notes must not go to the Attorney General, because that is violative of the independence of the Judiciary. The records are clear in this Parliament, it is in black and white, it is circulated, that under the People's National Movement administration that happened, under the National Alliance for Reconstruction administration that happened, and there were instances where the Attorney General made amendments to the note.

Mr. Vice-President, I think it is my duty to mention these points, because in fairness to the Judiciary and the Chief Justice, I do not think that the Chief Justice has made any allegation that any Government minister interfered with any decision in a court, or any public official attempted to interfere with a judge in the discharge of his judicial function. The issue is whether in these administrative and financial regulations—how they exist and how they are practised—there is a violation of the independence of the Judiciary.

I would like to put on record that those of us who can read this book and who can read what happens in the Caribbean—the procedure that we have in Trinidad and Tobago, followed in Caricom countries, South Africa and England, and it is not violative of the independence of the Judiciary. But I want to say, notwithstanding the differences of views, that the Government is committed to the principle that in respect of judicial independence there can be no compromise. Any government which directly or indirectly erodes or threatens the independence of the Judiciary, is not fit to be in government and, therefore, we have asked for a commission of enquiry to make a finding.

Mr. Vice-President, there has been talk here about corruption. I do not know what else an Attorney General must do. The allegation of corruption is easy to make and sometimes very difficult to prove. Corruption is defined in law,

basically: if a person is given something as an incentive, as a bribe, he collects. There have been allegations made here of corruption and allegations made elsewhere. It is not only now that allegations of corruption have been made against public officials. If corruption exists in public life democracy also cannot flourish. If corruption exists among ministers then they have lost their power and moral authority to be ministers; there can be no dispute about that.

These allegations have been made not only now, but also against previous governments, but what did this Government do? It recognized that you cannot have these allegations being made without investigation, and we passed laws in order to have additional measures. Under the laws of Trinidad and Tobago the matter can be reported to the police, the police can make investigation. The matter can be reported to the Director of Public Prosecutions. If the police do not take action, an individual can go to the court and, in effect, get an order to command that a discretion be exercised; so there is legal machinery available.

What we did is that we passed freedom of information legislation, which is going to be implemented; we have passed parliamentary committees legislation, which is, in effect, in the process of being implemented. We did all that in order to make the Government more open and transparent. The integrity legislation is here, a select committee has reported, and the draftsperson has drafted the amendments to give effect to what the select committee has reported and the Cabinet has agreed to that; that would come here shortly. What again must a government do?

As a matter of fact, Mr. Vice-President, during the budget debate in the other place when these allegations were made, I immediately had discussions with the acting Minister of National Security, because there were certain facts that came out which, to me, appeared on the face of it to merit immediate investigation. I immediately contacted the acting Minister of National Security, I asked him to get Deputy Commissioner Mr. John Grant, who is head of the Crime Division, we had a meeting here and I advised that there should be a squad set up to deal with corruption, an anti-corruption squad. I arranged for all the matters that had been talked about to pass to this squad and any Member of Parliament who has any matters, to pass to this squad. I even offered and I am in the process of trying to make available to this squad an internationally renowned forensic expert on corruption who would assist the police in trying to find out whether corruption exists in Trinidad and Tobago.

If there is evidence, so be it, face the prosecution, because I want to say: the Attorney General of Trinidad and Tobago does not have the powers as an

Attorney General of the United States of America, in which the Attorney General can investigate, appoint an independent counsel to investigate. He does not have those powers.

The office of Attorney General is created out of the British tradition in which he is, basically, the advisor to the Government and, basically, has certain quasi-judicial functions in respect of protecting the public interest. Under the Constitution he is the minister responsible for legal affairs and guards the public interest, so he does not have any investigative powers. I wish to give the assurance that whatever powers I have I would use it as best I can in order to ensure that if there are allegations of corruption they are investigated and the matters come to light, and those who are guilty, if they are guilty, will face the consequences of the law, and that includes if the Attorney General is guilty. I take the position that when you go into public life and you decide to become a minister, you must be very, very clean, and I want to say that it is a great sacrifice to be a minister, but it is a great honour and a privilege to serve the country. [*Desk thumping*]

The talk was made that there could be a floodgate of litigation in this matter. Yes, I think there would be more litigation, but I do not think that is a reason we should not have measures for people to be able to get Executive action scrutinized by the court. I want so say that, yes, it may be that we need more judges, it may be that we need more courts, but more judges cost money and more courts cost money, and a government has an obligation to assess information to determine whether the number of judges are sufficient for the country and the population that you have, and the multiplicity of actions which can be filed.

I have done a preliminary study, and Trinidad and Tobago has the most judges per capita, per population than any other country in the world, and even in respect of India it has the most judges. But in order to make a clinical assessment of the situation it is necessary for a government and the people to have information as to the number of cases which are pending, how many cases are determined on the average every month, in the High Court, the Court of Appeal, the Magistrates' Court, what is the backlog like, in order to determine what is the problem.

You just cannot have more judges automatically, because the taxpayers have to pay for it, and, therefore a government would be irresponsible without getting all the material information in order to make that decision. One speaker said that the judicial arm is not accountable to Executive. I agree with that, but the judicial arm is accountable in administrative matters to the Parliament, through the Executive. When you have a situation involving the administration of justice in

the country and it is raised in the Parliament, who has to answer it? Not the hon. Chief Justice or the Court Executive Administrator, but the Attorney General.

When it is raised in the Parliament about the kind of magistrates and judges who are being appointed, who has to answer it? The Government has to answer it; so you have a minister accountable to the Parliament for the administration of justice. When there is a problem in the courts, when there is a backlog, when in Arima there is no water in the court, no air-conditioning and people cannot go to court, who has to answer for it?

5.05 p.m

It is not like in England, where the Lord Chancellor goes to Parliament and answers. The Government has to answer through a Minister.

Mr. Vice-President, yes, I agree if you are having additional laws you have to have the proper court system, you have to have competent judges, and efficient members of the Judiciary. We have recognized this and that is why the Government is on record—and history would absolve us—as saying that you cannot have a true democracy unless you have an independent and competent Judiciary, and you cannot have a competent Judiciary unless you have criteria for the appointment of judges, unless you have more openness and transparency in the appointment of judicial officers and unless there are complaints mechanisms against judges, and unless you have a code of ethics.

The international Commission of Jurists recently said that in order to build confidence of the Judiciary, there must be complaints mechanisms and declaration of interests of judges in respect of matters they may have. A public register for them to register their interests in companies and so forth. So yes, public interest litigation also would mean that all arms of the state must take steps in order to become more accountable to the people.

Mr. Vice-President, some issues have been raised today—the airport matter. If for some reason we have this legislation and the Opposition or some non-governmental group, or any individual is dissatisfied with how the Government has treated with this issue, the public interest litigation provides another tool for the Government to be able to be scrutinized in the court. If there is dissatisfaction in the Toco matter, that can now be scrutinized in the court because the court would be able to pronounce upon it and that is why you have to have a competent Judiciary to deal with these matters. If the Judiciary is not competent and capable and cannot deal with these matters, then the rights of the people can become illusory and the Judiciary can become a useless utility for the enforcement of rights.

Mr. Vice-President, any Government that wants to deal with the problem of justice and access to justice and law must deal with the issues, and when I say deal with the issues, have reform so that you can have a modernized legal system, a modernized Parliament, and a modernized Judiciary.

It is this Government that took steps to do that. This Government agreed in Cabinet to have a Court Administration Department to assist the Chief Justice in the administration of justice. This Government took steps. No other Government in the history of Trinidad and Tobago has spent so much money in the refurbishment and construction of Magistrates' Courts in five years. No other government. *[Desk thumping]* This Government has taken steps in order to provide a system of CAT Reporting in the court, provided a human resource division, all these modern innovative steps. This Government has supported the law reporting which the hon. Chief Justice talked about yesterday. This Government has done it. This Government has provided the most resources for the Judiciary that any Government has provided.

Mr. Vice-President, I do not think if the facts are printed and analyzed there can be any fear that the Government of Trinidad and Tobago, as presently constituted, would not provide resources for the Judiciary to do its duty. This Government recognizes that just as there is freedom of expression by the head of the Judiciary, there is freedom of expression by the Government, and this Government believes in a healthy democracy that if there are exchanges of views, it does not mean to say that high officials cannot co-operate in order to make the system work. As a matter of fact, no country can function effectively and efficiently unless there is a commitment by all heads of the arms of state and all sections of state in order to have the ship of state sail smoothly.

Mr. Vice-President, I thank hon. Senators for their contribution. I wish to give the assurance that whatever points they have made in respect of technical matters, can be dealt with it at committee stage. I have given instructions for the technical person to look at it so we can deal with it at committee stage, but in respect of this Bill, I think that whatever arguments they may have about floodgates and the need for resources and management of resources, this Bill would ensure that any Government which occupies office in this country would have to know that they cannot only be scrutinized by Parliament through parliamentary committees. It does not only have a Freedom of Information Act and it does not only have ordinary laws of judicial review, but it has public interest litigation in which members of a society—even if they are not directly affected by the wrongs being committed by a government, or omissions being committed by a government—

can face the consequences in the courts. I can foresee and—I do not want to say it at this stage—how strong this will make the population in ensuring that they have improved representation from government.

Mr. Vice-President, the hon. Sen. Mohammed has talked about legal practice. Those thoughts are not in my mind, but when I look around—I know Sen. Daly is a very busy lawyer—I see some of the matters in which the members of the legal profession and some of the junior members of the legal profession can take up on behalf of people against government in order to build confidence in the law, to create precedence and to ensure that there is a modern administrative legal system of law in Trinidad and Tobago.

Thank you, Vice-President.

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

Senate in Committee.

Mr. Vice-President: We have in front of us the Bill which constitutes 26 clauses divided into three parts. I want to draw to your attention that the Bill presently before us includes the amended sections that were passed in the House of Representatives on Friday, July 21 2000 and that is what we have in front of us.

Clauses 1 to 6 ordered to stand part of the Bill.

Clause 7.

Question proposed, That clause 7 stand part of the Bill.

Mr. Maharaj: Mr. Chairman, in relation to the point which has been made by Sen. Daly, Sen. Prof. Kenny, Sen. Dr. Mc Kenzie and Sen. Prof. Ramchand on the question of costs, I have taken that on board and drafted an amendment to insert a new subclause to clause 7, subclause (8) which I will read very slowly.

(8) "Where an application is filed under section 5 subsection (6) the court may not make an award of costs against an unsuccessful applicant except where the applicant is deemed to be a mere busybody, or the application is deemed to be frivolous and vexatious."

Although that has been drafted, I am concerned about the term "busybody". I wonder if I could leave out the word "busybody" and say "the application is deemed to be frivolous and vexatious."

"Except where the application is deemed to be a frivolous or vexatious application."

Sen. Daly: I would say found, or held.

Mr. Maharaj: Held is a better word. "except where the application is held to be frivolous and vexatious."

Sen. Prof. Ramchand: For my clarification, if the person applied for leave is it an expensive procedure, are there costs involved in that? I thought if he got leave to do it, then we would have discounted the frivolous and vexatious ones.

Mr. Maharaj: Not necessarily, because it is a process in which the court just sees that it is arguable.

Sen. Prof. Ramchand: Then I will take the magistrate to court for allowing me to go forward and cause me to pay costs.

Sen. Prof. Kenny: The judge.

Sen. Prof. Ramchand: The judge.

Mr. Maharaj: As a matter of fact Legal Aid has been extended to cover these kinds of cases so that even people would be able to get legal aid, and obviously the Government would also have to consider in relation to these matters a more generous package for legal aid in the future.

Sen. Prof. Ramchand: I just thought that seeking leave would have screened out the frivolous and vexatious.

Mr. Maharaj: It does, because on examination a judge would not go into all what appears to him to be a case to argue**.** That is a good point, it goes *ex parte*. It goes in the absence of the other party.

5.20 p.m.

Mr. Chairman: Okay, we have an amendment to Clause 7, a new subclause 8. Maybe, I could just ask the Attorney General to give it one more read.

Mr. Maharaj:

"7 Insert after subclause (7), the following new subclause—

(8) Where an application is filed under section (5), sub-section (6), the Court may not make an award of costs against an unsuccessful applicant, except where the application is held to be frivolous and vexatious."

Question put and agreed to.

Clause 7, as amended, ordered to stand part of the Bill.

Clauses 8 to 10 ordered to stand part of the Bill.

Clause 11.

Question proposed, That clause 11 stand part of the Bill.

Mr. Maharaj: Mr. Chairman, in respect of Clause 11, the suggestion has been made that consideration should be given for a period of limitation. Clause 11 reads:

> "An application for judicial review shall be made promptly and in any event within three months from the date when grounds for the application first arose unless the Court considers that there is good reason for extending the period within which the application shall be made."

Sen. Daly and Sen. Mc Kenzie talked about a period of limitation. I do not know whether they would want me to—

Sen. Daly: That is the English provision.

Mr. Maharaj: Thank you very much.

Mr. Chairman: Sen. Mc Kenzie are you comfortable with this?

Sen. Dr. Mc Kenzie: Yes.

Question put and agreed to.

Clause 11 ordered to stand part of the Bill.

Clauses 12 to 17 ordered to stand part of the Bill.

Sen. Dr. St. Cyr: Mr. Chairman, I compared Clause 12 with Clause 8(3) and wondered why we reversed the order of those three terms and gave us "or mandamus". Is there any special significance to the change around of the order of those terms?

Mr. Maharaj: Oh, I see what you mean. We had "mandamus, prohibition or certiorari", and whether you—

Sen. Dr. St. Cyr: Is there any significance?

Mr. Maharaj: No.

Sen. Dr. St. Cyr: Does it matter?

Mr. Maharaj: It does not matter. If you want, for uniformity, I could change it, but it does not have any significance. I think I would agree with Sen. Dr. St. Cyr.

Mr. Chairman, could we put it as orders of "mandamus, prohibition or certiorari", instead of "certiorari." So we would delete "certiorari" and put "mandamus"; and we would leave "prohibition", delete "mandamus" and put "certiorari."

Mr. Chairman: Okay, the proposed amendment to Clause 12 is to reverse the reference between "mandamus" and "certiorari" and they must come in that order:

"12 Delete the words 'certiorari, prohibition or mandamus,' appearing in line 8 and substitute the words 'mandamus, prohibition or certiorari;'."

Is everybody comfortable with that?

Question put and agreed to.

Clause 12, as amended, ordered to stand part of the Bill.

Clause 7 recommitted.

Question again proposed, That clause 7 stand part of the Bill.

Mr. Maharaj: Mr. Chairman, I wonder whether, with your leave, we can revisit Clause 7, where we dealt with "frivolous and vexatious". I had been thinking about it and I got a note from Sen. Mc Kenzie. I wonder whether it should not be "frivolous or vexatious" instead of "frivolous and vexatious." Can I ask for "and" to be deleted and put "or" instead.

Mr. Chairman: We are looking at Clause 7 once again with your leave. The last three words of the amendment read "frivolous and vexatious." I would like to have that amended to read "frivolous or vexatious." The word "or" in place of "and".

Question again put and agreed to.

Clause 7, as amended, again, ordered to stand part of the Bill.

Clauses 13 to 26 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 amendment; read the third time and passed.

ADJOURNMENT

The Minister of Public Administration (Sen. The Hon. Wade Mark): Mr. Vice-President, before moving to adjourn this honourable Senate, I just want to inform my Senatorial colleagues that we are coming very close to the prorogation of the Parliament and there are a number of matters that we have to conclude, and I am serving notice that we will, in fact, be convening next Tuesday, September 26, 2000 at 10.00 a.m. and we may go very late. So I would like people to be prepared for that long journey. If all does not go well, we should be able to come back here on Thursday 28, 2000 at 1.30 p.m. So I am serving notice to all my fellow Senators that if we are able to successfully conclude—I am going to identify the Bills—on Tuesday from 10 a.m. until, we would avoid coming back on Thursday from 1.30 p.m. until**.**

Mr. President, what we would like to advise here is the Bills that we are going to deal with at the next sitting, so that everyone could be prepared. We are dealing with Bill No. 4, on today's Order Paper, as No. 1. That is the Proceeds of Crime Bill.

The second Bill we want to deal with is the Sentencing Commission Bill, which is a very important piece of legislation that we want to get through. We are going to deal with "An Act to amend the Petroleum Act" which was deferred today. That would be dealt with next week. We are going to deal with Socially Displaced Persons next week, as well. We are also going to deal with the Equal Opportunity Commission Bill. Mr. President, those are the five Bills that I have identified and there are two Motions on the Order Paper which we want to proceed with as well, during the course of Tuesday's sitting: Land Acquisition and the Education Regulations.

Mr. Vice-President, I am saying to my fellow Senators if we are able to, at least, condense our contribution, we may not have to come back on Thursday, but if we are very lengthy we are going to be back here on Thursday.

I beg to move that this honourable Senate do now adjourn to Tuesday, September 26, 2000 at 10.00 a.m.

Question put and agreed

Senate adjourned accordingly.

Adjourned at 5.32 p.m.