SENATE

Thursday, October 19, 2000

The Senate met at 1.35 p.m.

PRAYERS

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

LEAVE OF ABSENCE

Mr. Vice-President: Hon. Members, I have granted leave of absence to Sen. Philip Marshall from sittings of the Senate for the period October 18 to October 20 and from today's sitting to Senators Nafeesa Mohammed and Mahadeo Jagmohan.

PAPERS LAID

1. Report of the Auditor General of the Republic of Trinidad and Tobago on the accounts and financial statements of the Programme of Institutional Strengthening of the Women's Affairs Division of the Ministry of Culture and Gender Affairs for the year ended December 31, 1997. [*The Minister of Public Administration (Sen. The Hon. Wade Mark)*]

2. Report of the Auditor General of the Republic of Trinidad and Tobago on the accounts and financial statements of the Environmental Protection and Rehabilitation Programme for the period of account January 01, 1998 to September 30, 1998 as required by Loan Contract No. 857/SF-TT between the Government of the Republic of Trinidad and Tobago and the Inter-American Development Bank. [*Sen. The Hon. W. Mark*]

EMPLOYMENT INJURY AND DISABILITY BENEFITS BILL

Bill to provide for the payment of benefits to employees who suffer disability or death by, or as a result of, injury or disease arising out, or due to the nature, of their employment, for the payment of benefits to the dependants of such employees and for other related matters, [*The Minister of Labour and Co-operatives*]; read the first time.

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

Question put and agreed to.

MISCELLANEOUS LAWS BILL

Order for second reading read.

The Minister of Public Utilities and Acting Attorney General and Minister of Legal Affairs (Hon. Ganga Singh): Mr. Vice-President, I beg to move,

> That a Bill to amend certain provisions of the Summary Courts Act, the Summary Offences Act, the Offences Against the Person Act and the Larceny Act to remove certain discriminatory religious references, be now read a second time.

Mr. Vice-President, this piece of legislation must be viewed in the context of the efforts made by this Government to promote a climate of unity and equality amongst the various racial, ethnic and religious groups which make up the society of Trinidad and Tobago. In recent years, we have all experienced, through the media, the devastating consequences, social as well as economic, associated with managing a multi-ethnic, multi-religious society. From Bosnia to Serbia, and more recently Fiji and the Middle East, the problem of managing diversity has been challenging governments worldwide. While the problem cannot be legislated away, legislation represents but one line of defence in the fight to save countries such as ours from the fate of a Bosnia, a Fiji or the Middle East.

Under sections 4 and 5 of the Constitution of Trinidad and Tobago, all religions in Trinidad and Tobago are guaranteed the right to freedom of conscience, religious beliefs and observances. Senators may recall that not long ago a number of legislative initiatives, such as the Orisa Marriage Act, have been taken to further cement these constitutional guarantees. Mr. Vice-President the Orisa Marriage Act represented a landmark in the history of this country and today, in a further move of unprecedented social importance, we have the pleasure of bringing before this Senate the Miscellaneous Laws Bill, 2000. The name of this Bill belies its social importance as this Bill seeks to reform certain provisions which remain on the statute books as a long-standing affront to the many religious groups which make up the present-day Trinidad and Tobago.

In looking at the history of this Bill, soon after this Government came into office in 1995 it was approached by the Hindu, Spiritual Baptist and Orisa faiths to amend the existing laws to remove from the statute books certain provisions which were perceived as being discriminatory to one or another of those religions. In many cases, the deficiencies that were brought to our attention related to protections previously afforded only to Christianity, and the criminalization of the

ordinary activities of other religions. In many cases, the provisions that we were being asked to rectify had existed on the statute books since the 1920s, a period in our history when we were all either seen merely as indentured servants or slaves, and our religious practices viewed as either heathen, infidels or something to be suppressed.

To understand the historical and social context in which commonplace religious activities such as singing and dancing could have risen to the level of criminal offences, we need only to look back at the legislative provisions imposed on the Shouter Baptists in 1917 and the description of the social environment which made such legislation necessary. Taken from the *Hansard* on the Shouter Prohibition Ordinance, the then Attorney General was quoted as saying, and I quote:

> "Apparently the Shouters have had a somewhat stormy history, from all I have been able to learn regarding them. They seem, if they did not arise there, to have flourished exceedingly in St. Vincent, and to have made themselves such an unmitigated nuisance that they had to be legislated out of existence. They then came to Trinidad and continual complaints have been received by the Government for some time past as to their practices. Apparently the neighbourhood in which a Shouters meeting takes place is made almost impossible for residential occupation. I understand that there is or was one meeting place in Belmont at which their meetings were conducted with such fervour that the shouting and the singing and the noise generally could he heard somewhere about the Transfer Station. It is not only the inconvenience caused by the noise which they make that has given rise to this legislation, but also the fact that from the information that has been received the practices which are indulged in are not such as should be tolerated in a well-conducted community."

Mr. Vice-President, in 1951 the Shouter Prohibition Ordinance was repealed. However, the provisions and the prejudices perpetuated by that Ordinance remained on the statute books in the form of the provisions we are today seeking to remove.

Post-republican Trinidad and Tobago has become a lot less tolerant of any initiative, legislative or otherwise, which seeks to undermine the constitutional guarantees of freedom of religion, belief and observances enshrined in the Constitution. This Bill is in every way a manifestation of the very open and frank discussions this Government has been having with the various religious groups in the society and the tolerance with which we now approach such issues as religion.

Mr. Vice-President, in looking at the Bill, you would recognize that it seeks to amend the Summary Courts Act, Chap 4:20; the Summary Offences Act, Chap 11:02; the Offences Against the Person Act, Chap. 11:08 and the Larceny Act, Chap. 11:12 to address certain provisions in the criminal law which the various religious groups have identified as being discriminatory and which interfere with the exercise of their constitutional right of religious freedom.

Clauses 1 and 2 of the Bill are self-explanatory. The substantive amendments are contained in the Schedule to the Bill and begin with the proposed amendment to section 102 of the Summary Courts Act. In section 102 of the Summary Courts Act we are seeking to accomplish two objectives: firstly to remove the references to church and chapel which, no doubt, will be recognized as buildings or places of worship in the Christian religion but which fail to take into account the buildings of other religious groups in the society. The term, "building set apart for religious worship", which is already in legislation and which will be unaffected by this amendment, is sufficiently wide to encompass all the religious buildings and places of worship we are today seeking to describe.

The second change brought about by the amendment to section 102 is to substitute for the terms, "clergyman" or "minister" and "church warden" or "church wardens" wherever they occur, the more inclusive term, "religious head or official". The term, "religious head or official", is intended to refer not just to the religious head but to other theological and lay officials who may be authorized to perform certain religious services, ceremonies or rights or who, as section 102 contemplates, may be assigned certain administrative roles.

Mr. Vice-President, the proposed amendments to the Summary Offences Act are intended firstly to remove the definition of obeah and the offence of the "practice of obeah" referred to and mentioned in sections 2, 43 and 44 of the Act. A much wider offence, that of "intimidation by fraudulent means" is substituted. The negative, social and cultural stereotypes surrounded by the use of the term, "obeah", and the practice of obeah in relation to the practices of certain religious

groups, such as the Spiritual Baptists and the Orisas, were the most compelling reasons for the removal of this offence. I would urge Senators to note, however, that the substance of the original offence, that of intimidation by the making of one or more types of fraudulent claims, whether for gain or profit, or to inflict damage or injury, will remain intact in spite of the change.

In section 43 of the Summary Offences Act, we have also taken the opportunity to remove the outdated and harsh penalties associated with the offences created by that section, namely "corporal punishment" and "solitary confinement of a female". The penalty of imprisonment is, however, retained. Sections 55 and 56 of the Summary Offences Act will be amended in order to remove from the statute books the offences of beating drums, blowing horns and other noisy instruments and dancing in a street, highway or other public place. As I sought to show when I examined the Shouter Prohibition Ordinance, these offences are not only outdated but are a common feature of many religious observances, ceremonies and customs in the present-day Trinidad and Tobago.

The new section 60A of the Summary Offences Act proposes to create an exception where the activities such as singing or dancing, or the playing of drums or other musical instruments described in sections 58, 59 or 60, are done or used as part of a religious observance, ceremony or custom in a place of worship. Without the amendment, the penalties which these activities would have attracted included fines, terms of imprisonment, forcible entry and forfeiture of the instruments being played. Mr. Vice-President, imagine for a moment a policeman forcing his way into a religious ceremony and seizing the religious instruments. In some religions, such an act may be regarded as nothing short of an act of religious sacrilege.

1.50 p.m

Mr. Vice-President, section 63 of the Summary Offences Act which, among other things, made it an offence to assemble and play or dance to any drum, "shac-shac" or other similar instrument between certain hours of the day, without a licence from the police, is also removed. That provision, like the others we spoke of before it, is outdated and has no relevance in a modern society where many of the religions have as part of their ceremonial practices and customs those

very activities. Furthermore, the administrative hardship this restriction placed on certain religions which routinely played drums and "shac-shac" in the practice of their religion did not go unnoticed.

In fact, in their call for the removal of the restrictions imposed by this section, Archbishop Amilius Murrain, President of the National Congress of Baptist Organizations in Trinidad and Tobago pointed to the fact that more often than not the members of his organization had to obtain permission from the Commissioner of Police before conducting any religious ceremony after 10.00 p.m.

Mr. Vice-President, in the other place, certain concerns were raised about the impact the removal of restrictions imposed by section 63 would likely have on noise pollution. I just wish to assure this honourable Senate that those concerns have been taken into account and will be addressed in the context of pending legislative reforms to deal with the issue of noise pollution.

Mr. Vice-President, certain parts of section 64 of the Summary Offences Act, which made it an offence to engage in activities similar to that already described, outside of the period of carnival, namely, the blowing of horns or the use of any noisy instruments have also been repealed, while section 96 of the Summary Offences Act will be amended to delete the terms "divine" and "minister" which carry certain particular Christian connotations. The term "minister" is replaced by the much wider term "religious head or official".

Section 96(A) of the Summary Offences Act will create a new statutory offence, that of "bringing another person's religion into disbelief, contempt or ridicule or vilifying another person's religion with the intention of provoking a breach of the peace." This provision is intended to codify and to replace the common-law offence of blasphemy which, under the common-law rule, relates only to Christianity. This provision will also extend the protection previously afforded only to Christianity, to the other religions.

Mr. Vice-President, Archbold, in his text *Criminal Practice and Pleading*, paragraph 3405, quoting from several cases, defines the common-law offence of blasphemy as follows:

> "…the use of language having a tendency to vilify the Christian religion or the Bible. Publications discussing with decency and gravity questions as to Christian doctrine or statements…and even questioning their truth are not punishable as blasphemy neither are honest beliefs in a doctrine or non-doctrine but if these beliefs become a scurrilous attack on doctrines

> held by the majority to be true and they are made in a popular public place this constitutes blasphemy. …If the decencies of controversy are observed even the fundamentals of religion may be attacked without the writer being guilty of blasphemy. The limits of these decencies are reached if the words used are likely to cause a breach of the peace."

Mr. Vice-President, this definition illustrates a further point which is that in order to constitute blasphemy and rise to the conduct punishable under the new statutory offence, no ordinary vilification or ridicule of a person's religion will suffice. Instead, the standard of conduct of the guilty person will have to rise to that of provoking a breach of the peace in order to be punishable under this statute.

The Bill also proposes to amend section 27 of the Offences Against the Person Act by removing the original section and substituting a new section which will replace the terms "clergyman" and "minister" with the term "religious head or official" and will delete other terms with a Christian bias. The word "church" will also be replaced by the words "place of worship", and "cremation", which gained statutory recognition as a lawful means of disposing of the dead, with the passage of the Cremation Act, chap. 31:51, will be recognized in this new section.

Finally, section 26 of the Larceny Act will be amended to remove the term "divine" from the description of a place of worship. The term "divine" connotes a bias towards the Christian religion and is not integral to the description.

Mr. Vice-President, the list of amendments taken in the House of Representatives accompanies this Bill. The majority of those amendments are intended to be typographical and other minor corrections in the Bill will be explained when we come to the committee stage. This piece of legislation while simple in its specific undertakings is potent in its overall impact and forms but just one more salvo in the attempt by this Government to ensure that every creed and religion can truly find an equal place in this country.

Mr. Vice-President, I beg to move.

Question proposed.

Sen. Joan Yuille-Wiliams: Mr. Vice-President, no one would disagree that we need at some point in time to remove certain things from our laws which have become outdated. Although, in most instances, or should I say, custom had it that people were not really prosecuted for them but it was necessary, therefore, to remove them. We do not disagree with the Government attempting to remove

some of these laws from our statute books. Although, just as when we dealt with the Equal Opportunity Bill, we found that some things were over-emphasized. When the Minister started his presentation he talked about the devastating consequences of managing multi-ethnic societies and referred to Bosnia and other parts of the world which, clearly, do not relate to us here. Nevertheless, in the light of that, I will continue.

The Minister talked about frank discussions with the various groups on these amendments. I must say that my limited research told me that various groups did send memoranda to the Ministry concerning the changes that they would like made. I must say, at this time that the amendments which were made were not circulated to those stakeholders and that seems to be a practice of the Government these days—whether it is the time that they do not have as we are into this Sixth Session and they are just rushing everything fast—and, therefore, the persons who are concerned with these amendments did not have the opportunity.

I did call one person last night—I think from either the Orisa or the Shouter Baptist religion—and that person said yes, they have submitted memoranda but they have heard nothing since. Therefore, the changes which were made might be convenient to the Government—they might do what they want to do—but, I think, even a courtesy to these organizations which had submitted documents, at least, the Government could have communicated with them. This seems to be the pattern.

Mr. Vice-President, just last week we had a Bill here, the College of Science, Technology and Applied Arts of Trinidad and Tobago. We hastened the COSTAATT Bill in one day to get it ready for the opening of this new organization. Last Tuesday, while I sat here, I got a piece of correspondence which was delivered to me and, probably, it was lying somewhere in the Parliament one day before. The correspondence indicated that the Public Service Association was saying that they did not have a chance to see this piece of legislation and Niherst, an integral part of the whole legislation, also said they did not get a chance to see the finished product. I do not know if I still have that bit of information around. I had it here and, I think, I probably passed it to my colleague on the last day. This is the general pattern of things that are happening.

I do not know why we are moving this fast—a Government that almost feels confident of winning the next election, opening the airport in its second term—I do not see why we have to rush through these things at this time. The Government is getting me a bit worried—like they are not as confident as they really say they are. Why are we all here going through these pieces of legislation and they are going to win again and all this kind of thing.

Mr. Vice-President, the Government has been in office for five years and when it first came in I remember it was the time when the Baptists were granted their holiday, and the Government is killing us with just bringing pieces of legislation and it does not even has the courtesy to call on the organizations who were a part of it. As I said before, whereas we feel that these should be removed from the statute books, the haste with which we are doing it here today makes one wonder. But let us just move on because we are here to do the people's business even though we are in a hurry.

2.00 p.m.

What I am going to do this evening is really look at one of the submissions that have been made to you and try to compare it with what has eventually happened. I wanted to, in the definition of "place of worship"—and this is my own consideration. I remember when we did the Equal Opportunity Bill, the whole definition of the "place of worship" came up, and I left that Bill with "place of worship" still to be defined.

We came away with a building, we also came to a tent. I think that is where we started. It had to have a cover, in terms of the definition. It was some enclosed place, because I was asking about open air areas and I did not get, from the equal opportunities legislation, that that would be considered a place of worship. Even within this Bill, I am still trying to find out the definition, really, for "place of worship".

Would you consider an open space, like on the beachside where there is a baptism or a prayer meeting, or something like that? Would that conform to a place of worship, and how would that interfere with the definition which we had from the Equal Opportunity Bill? I am just trying to compare both, because it is important for us to define "place of worship" if we are going to get so specific as to what could happen if it is only indoors, or as I said before, like a crusade or a tent. I think that came up in the last debate. I am sure the hon. Minister would be kind enough just to tell us what really is a place of worship, as defined here, and how it compares with what we had done in the last Bill.

Then we moved on to section 43, superstitious devices, assumption of a supernatural power or knowledge. One of the submissions that they had was that the entire sections 43 and 44, I think, should have been deleted. Articles used in obeah and witchcraft may be seized. In one of their submissions, I think that it was from the Orisa, they asked that that entire section should be deleted. What they had done here is that they had said in their notes building up to it, that they had substituted a wider offence, and I wonder what was the necessity for substituting another offence.

The Orisas had asked that the whole section on superstitious devices—the marginal note, assumption of supernatural power or knowledge, articles used in obeah and witchcraft may be seized—be deleted. This does not delete the section. This expands it, and I think they have put into it, fraudulent means. I think that is one of the amendments coming from the Lower House: fraudulent means.

I am wondering if that is not covered somewhere else in the common-law. I am not a lawyer myself, but I am wondering if that misdemeanour, as they wish to call it, is not covered somewhere else, and why did they not just delete the section? I am quite sure that somewhere else in the law, if things are done by fraudulent means or false means, there are penalties for that already. I could not see why that has been retained, although they asked that the entire section be deleted. What they did was delete just part of it, a few words, "by the practice of obeah or by any occult means or by any assumption of supernatural power or knowledge" and they substituted "by fraudulent means" and let the rest go.

If they are telling me that the intention of this in the early colonial days was part of a religious practice that the colonial powers wanted to stamp out, I do not see how coming today to change a few words and insert something else could give those who are against it the benefit to believe that they were truly intent on giving this, as they say, religious tolerance. They cannot strive to, by changing a few words, influence a whole behaviour pattern that someone else was trying to change. I think we need to look at that.

If they were superstitious devices and they are telling us here that as far as they are concerned, this was a religious practice which the colonial powers say they needed to stamp out, the Orisas have asked that they delete the entire section, and I do not see why it was necessary for them to just deal with a few words and change the whole shape of what was involved. To me, they are trying to put in a new law now, as far as I am concerned, which I feel, whatever is there, a new crime, as they would want to say that, I feel, is covered elsewhere. I am telling them that I am following some of the submissions which came to them and that is one submission, headlined "superstitious devices" to be deleted entirely, which they have not done.

Why I am saying that is because when I was consulting the person, the person said, "I have not seen the amendments although we have circulated this memorandum to the hon. Minister". I think it was to the Attorney General's office and, actually, that courtesy was not extended to them so they could make their comments before it came to us.

If we look at section 55, "peace preservation", I am going to read the original 55(1) which says:

> "The Minister may, by Order, prohibit during periods specified respectively in the Order any of following things in any street, highway, or public place:

I am going to read (a) to (d) because they have repealed subsections (b) and (c) and left (a) and (d). They say:

> "(a) the carrying of any lighted torch;
>
> (b) the beating of any drum, the blowing of any horn, or the use of any other noisy instruments;"

They have repealed that. It continues:

> (c) any dance or procession; and
>
> (d) any assemblage or collection of persons armed with sticks or other weapons of offence and numbering ten or more.
>
> Such Order may extend to the whole of Trinidad and Tobago or any part thereof."

In their submissions to the Minister, they had asked that he delete (a) to (d). He deleted (b) and (c); the beating of any drum, and so forth, and any dance or procession. What he left, which is critical to them, is the carrying of any lighted torch. That is an essential part of some religious practices, therefore, if they are saying that they are looking at religious tolerance and they understand the religions, one wonders and I would like to know why they would have retained that with the marginal note, "the power to prohibit certain acts". They have now retained that, therefore, it is an offence still for the carrying of any lighted torches.

I think that they would need to just educate me as to why subsection (a) was retained. Although they asked for (a), (b), (c) and (d)—and I would not question (d), "an assemblage or collection of persons armed with sticks or other weapons of offence and numbering ten or more"—I would question subsection (a), the prohibition of the carrying of any lighted torch. I am just asking about that one, because as far as I am concerned, that is a critical part in the religious practices of certain religions and, at least for the Orisas who sent theirs in. They had asked that all four be removed. I hope the hon. Minister would just look at that.

In section 56, he removed the words "dance practices" and in section 63 we repealed the whole idea of playing drums and dancing. Just now the Minister

made a comment which came from the Lower House. He said something about noise pollution. I do not know if this is the time to make this point. Probably it might be a little disjointed, but I can say it at this point that someone asked me to raise the whole question about where this fits in to this whole matter.

There is a mosque somewhere in Carapichaima where they had their call to order service five times a day, and I think the Environmental Management Authority (EMA) or some one of those authorities was deeming the noise "noise pollution" at that time. I am asking where does that fit in and how could it have happened that that five times a day call to order became noise pollution.

Just yesterday I heard of a church somewhere in Laventille, or somewhere around there, where the neighbour won an order against the church in terms of the level of noise. The church was given, I think, 60 days in which to tone down the noise, put in a particular type of screen and use cement to block all the holes. I feel there are ventilated blocks in that church. I want to know how those would fit into what we are doing here today, because I think they are quite relevant to what we are talking about. How would we now be judging noise pollution as it comes from religious organizations. What are the levels? I am not an expert on that, therefore, I would like the hon. Minister, whose job it is, to just tell me where these fit in.

In fact, last night I went to a service for someone who died. It was a Spiritual Baptist service and I said to myself that I was hearing the ringing of bells and seeing everything that was going on and it was well past midnight. We need to find out how all of these things fit into this. It is well and good that one could remove it from the statute books, but how it is interpreted outside here is also very important because even without it, sometimes things are quite open—what levels people have—and that is why I say "place of worship" is important to us. I would like him to, if he can, comment on the judgment yesterday, if he feels he should, where the church was asked to seal the building and keep the noise down so they would not disturb the neighbours.

In section 64, the playing of drums and dancing, I see the attempt has been made to remove this from the statute books outside of the time for carnival, but we are still looking at the whole business of the drums, because if one looks at section 68, the new section, the provisions of sections 58, 59 and 60 do not apply where the singing or dancing is done or the drums, the gongs, the tambours, the bangées, the chac-chacs or any other musical instruments are used as part of a religious observance, ceremony or custom in any place of worship.

My question, therefore, and it relates particularly to the drums, is if the same thing occurs and it was not part of the religious observance in the same situation, who identifies whether it is a religious service or not? Trinidadians are famous for beating drums at all times. We still would like to know what is the position with the whole beating of drums.

2.15 p.m.

That has affected not only religion—not only religious persons beat drums. We have drums as a cultural instrument. We beat the drums at all times. All cultural groups beat drums and I just wanted to fit in: Where would the beating of drums still fit in? We were particular to say that they do not apply if it were a religious service in a place of worship. I was going to ask what is the status of the beating of drums outside a place of worship or even within some place which you did not know what was actually happening at the time. There are still some things a little open and I think we need to look at some of those things. It is not quite clear to me what will happen.

When I looked at section 27 in clause 2, I go back to the Equal Opportunity (No. 2) Bill. We spent so much time on clause 7. If you look at page 3 of the amendments here—bringing into contempt another person's religion—I think that is why we spent all that time on it. We said we knew there was another place where that would have been taken up. I am asking myself: Is this the same as in that clause 7? New section 96A says:

> "Notwithstanding any other law to the contrary, any person who brings into contempt or disbelief or who attacks, ridicules or vilifies another person's religion in a manner that is likely to provoke a breach of the peace commits an offence and is liable on summary conviction to a fine of one thousand dollars."

We went on with that kind of thing. To me, it is very close to what we did in clause 7 of the Equal Opportunity (No. 2) Bill. I am also seeing that there is a fine attached to this and I ask myself, because I did not have time to go back to that Bill to see whether the fine here is similar to the fine in that Bill. That is when you want to put the same thing in several other places.

I think when we are amending legislation, we should be thinking about what we are doing. Those pieces of legislation are quite close to each other. I do not see why we are going to amend one here and we are not sure what was said in another piece of legislation concerning what I consider to be a similar offence.

That will be in the Offences Against the Person (Amdt.) Bill. I think we need, particularly, to look at those areas, Mr. Vice-President. Whereas I recognize that we have to remove some of these from the statute books. I am also concerned that we might, in so doing, interfere with certain cultural practices and, in the way the amendments have been put together, I am saying it is not quite clear. We need to have some kind of explanation and we need to have some clarification.

As I said before, I am asking you to comment on the beating of the drums. I still think that we need to look at "tassa", steel band drums and that kind of thing—dance procession when it takes place on the streets. Some of it is still an offence here. Those are some of the areas I have been asked to look at and I look forward to some kind of response from the hon. Minister.

May I just say that I do not see why it was necessary, in trying to explain what happens, to always talk about a bias towards the Christian religion or reference to what took place in the Christian religion. I do not think it was necessary to say that, although we understand what is happening here. We know that it was necessary so that we could incorporate all religions, therefore, the law should appeal to all, but I did not think it was absolutely necessary, at every point, to talk about the bias. Whoever did it at that time—and probably it worked for whoever did it—now we have reached the stage where we are trying to do it in such a way that we can have religious tolerance.

I still feel, though, Mr. Vice-President, that I am no authority on this and I would hope that when this is finally done, all the religions will get what they want out of it. I still feel we have a responsibility to have the religious groups have a look at what is here. You might think they are very minor changes. We recognize the effort that you are making to have it done but I think it is not only a courtesy; it is far more than that. If you are going to change things and if you have had requests for certain changes to be done, I think it is absolutely necessary that people have a chance to look at it.

We are all from different religious groups in here and although we try as much as possible to understand each other's religion, and we try as much as possible to support legislation that could bring about that religious tolerance, I still think that we need to allow the groups, especially—I know the Baptists are here and they are represented; I know the Orisa people had done work on it; we have Hindus and Muslims around. I still feel it is absolutely necessary. We are still here for a while and although it has come through the other place already and it is here with us, that does not mean that we cannot allow the other groups, those stakeholders, to do it.

In fact, we are now moving to a stage where the stakeholders—and we are talking about consultation; let us remember that the consultation before is one thing, but after we have prepared the legislation, it is absolutely necessary to see and to allow the stakeholders to see whether the legislation that we have prepared is in line with their recommendations and if it is not in line with their recommendations, we explain to them why certain things were not done.

Thank you Mr. Vice-President.

Sen. Diana Mahabir-Wyatt: Mr. Vice-President, I do not want to speak for long on this Bill. I agree with the fact that it has been passed. I commend the Government highly for being so civilized and finally getting it into place. I think it is something that we needed for a long time.

I have a query and I am wondering if the Minister can tell us from where it came, both in the amendment which has just been passed to us and in the Bill itself. There is a provision that removes the term "divine" from the description of the whole Bill. The Minister said that connotes a bias towards the Christian religion, but the Hindus talk about the Divine Lord Rama, the Divine Sita and so forth. They use the word "divine" all the time and so do the Muslims. Since it is Christian, Muslim and Hindu, what bias do people have against "divine"? I mean "divine", according to the dictionary that is present in this Chamber, means "Of God or a deity" and all religions have—I mean, whatever religion we are, we all believe in God. It said "A deity; godlike; of or associated with religion or worship." Why is "divine" all of a sudden Christian, when it refers to all religions as far as I know that have a god that they worship? I wonder if the Minister can tell us who was the advising body that decided that "divine" was only Christian.

Thank you, Mr. Vice-President.

Sen. Rev. Daniel Teelucksingh: Mr. Vice-President, on the matter of church/state relationships, I would like to congratulate the Government for its various efforts to listen sympathetically to the concerns of religious organizations in Trinidad and Tobago, especially those religious bodies which feel that, for many years, they have not been afforded "an equal place" here, to use a phrase from our National Anthem. Possibly, the most recent and best illustration was the willingness of Government to dialogue with religious groups concerning clause 7 of the Equal Opportunity legislation. I think that was certainly—some people have said it, but personally—a magnanimous effort by the Government to sit and have dialogue with the various religious organizations that feel aggrieved about certain things.

Of course, we remember the willingness of government to accommodate the Spiritual Baptists—accommodate in a good sense—to dialogue and to listen to their concerns. Also, the Orisas, and to give them the kind of national acceptance and recognition denied them since the colonial era. Government has to be complimented for that.

Mr. Vice-President, today, in this Bill before us, there is a further attempt by the state to update laws which belong to colonial times when Christianity was the state religion, either established by Spain or by religion. Government is to be complimented for its appreciation of the religious pluralism in our society and in its efforts—it may not be perfect in every way—to defend the rights and liberties of all religious groups.

We recognize the significance of religion in our society. I would like to make a comment, as I rise to support this Bill. Basically, I support the Bill and I have a feeling all of us will support the Bill, but I would like to say as a Member of this honourable Senate, that in the approval of legislation of this kind, we need to appeal because all of us belong to almost all the religious groups represented in Trinidad and Tobago.

Sen. Daly: Not all.

Sen. Rev. D. Teelucksingh: Not all; some. We belong to most of them—well, we are not too sure.

Sen. Daly: Do not go there. Do not speak for everybody.

Sen. Rev. D. Teelucksingh: Mr. Vice-President, in any case, I would like, as a Member of the Senate, to appeal to all religious organizations in Trinidad and Tobago, all of them—they are a part of our family, a part of our society and a part of our community whether or not they are represented in either of the Houses of Parliament—to serve as catalysts for social and political unity in Trinidad and Tobago.

I really believe that we need, as people who might be termed politicians, people who make laws for the whole of the society, not only for the religious organizations, but for all, that the religious organizations, every one of them—and I know Government has been trying to listen to them and in the bits and pieces of laws that we try to update, we try to recognize the rights of all—has a duty to assist in maintaining the unity of our society. In this regard, we applaud the efforts of the Inter-Religious Organization, but I still feel we have a long way to go.

Notwithstanding the vast theological and doctrinal differences which separate religious groups in our society today—and some of these differences, we know are irreconcilable—I would like to say my piece to remind all the religious groups of their duty to this society, to work together or to make contribution if even we do not want to work together, because we recognize that some groups would prefer not to be in the Inter-Religious Organization, but no matter what, religious groups owe the society this, to work for the establishment of true community. I feel very troubled and disturbed at the level of religious rivalry and competition in this society over many years.

2.30 p.m.

The hon. Minister has made mention of certain countries that have suffered because of social disruptions; I would not say possibly initiated by, but maybe initiated, in some instances, by religious groups. Many societies have been shattered through history, because of religious rivalry.

There has been a very close association between religion and politics—too close. I am very worried and very mindful. We have been very much aware of what is happening in other communities. I really feel that religious organizations in Trinidad and Tobago, all of them, including my own, ought to be very discrete about political involvement. We cannot afford to have our religious organizations in Trinidad and Tobago politically involved, as in other societies. We have to learn from other people.

In fact, taking into account the nature of tribal politics in Trinidad and Tobago and the kind of history of party politics, religious organizations may be well advised to desist from open support and open identification with political parties. This is a dream, but I really hope that we can achieve that: that religious organizations will carry on their duties and desist from this kind of identification with political parties in our country. I think this is very important for this season.

Ever so often I hear on religious programmes on radio, criticisms of governments and political parties, as though they support political parties. I personally believe that this is a dangerous trend, very dangerous indeed.

I want to close by asking the hon. Minister a question—we have some minor things that can be raised in committee stage—concerning the new amendment of section 96A of the Summary Offences Act, Chap. 11:02, on page three of the Bill. I quote:

> "Notwithstanding any other law to the contrary, any person who brings into contempt or disbelief or who attacks, ridicules or vilifies another person's religion in a manner that is likely to provoke…to a fine of one thousand dollars."

I want to ask a question—"Notwithstanding any other law to the contrary…" I am not a legal person—how does this compare with the famous clause 7 of the Equal Opportunity (No.1) Bill? I have a problem with that: "Notwithstanding any other law…" The most recent law is the amendment to clause 7 that we dealt with. What was that amendment to clause 7?

Sen. Daly: Nothing.

Sen. Rev. D. Teelucksingh: The amendment gives this concession that the place of worship is not a public place. What is happening there—this is my interpretation, this was my big problem with the concessions on clause 7 when the Bill was passed.

Sen. Daly: At 3.00 a.m.

Sen. Rev. D. Teelucksingh: Clause 7 is allowing—not putting it in these words—or permitting at a place of worship. I am looking at the amendment to section 96A before us. It permits us, any religion, to attack ridicule or vilify another person's religion.

Sen. Daly: They should just cancel it, that is all.

Sen. Rev. D. Teelucksingh: I just want a legal interpretation/clarification. I have a problem with this: "Notwithstanding any other law to the contrary…" There is a law to the contrary; a very important one. Only recently when we dealt with clause 7, I had a problem in those days with that compromise.

Personally I respect all religions in Trinidad and Tobago, but I feel that defeated the Equal Opportunity (No.1) Bill, especially clause 7. As far as religion is concerned, that was a bad compromise: to allow a person, at any place of worship—now I am using this new Bill—to bring into contempt, ridicule, or vilify another person's religion. This is fundamental and basic. This is the point I am making about the diversity in Trinidad and Tobago: the diversity in doctrine, belief, and the theological diversity that is here. This does not give any religion in Trinidad and Tobago—I respect all religions. We need to understand, as religious people that God is one; he is the Father of all. Although there are new methods of evangelism, and the propagation of one's faith, I personally believe that no religious body in Trinidad and Tobago has any right to attack, ridicule and vilify

another person's religion; whether it is in a private place or a public place. [*Desk thumping*] Private, meaning church or place of worship, a tent or sanctuary, however you call it.

I feel this is a dangerous compromise: to play the game with some of the religious groups. I know they have been having their way, but is this good for religion in our society? Is this good for us? They are going to play the game with governments; this is why I believe that the religious heads and religious organizations have no place in politics—no right whatsoever. The leaders of various organizations have no right, when they are commenting on social and political matters, to speak as they come with a theological perspective. This is a very dangerous, divisive force. We need to resist that.

Mr. Vice-President, what we need in our society among the religions—I most respectfully say this, I discovered this a long time—is a certain amount of humility as far as their own teaching is concerned. We have not learnt, in comparative religion in Trinidad and Tobago, that God is one, we have not learnt that as yet. The religious groups need to respect one another. We have to learn that. This is why I compliment the Government for making all kinds of efforts to keep them together, and to maintain the peace, because that is a dangerous power out there. A potentially dangerous force is a religious one. Every effort made by the Government within the last few years—previous governments included—to keep this very volatile force in check and under control is to be applauded.

I really hope that religious leaders and those who are responsible for evangelization, teaching religion, and propagating their faith in this land, would realize that it is more important that we emphasize the brotherhood and sisterhood of men, women, peoples, and the fatherhood of God; rather than the finer details of our own theological positions.

Mr. Vice-President, I would support this Bill, but with this little reservation and one or two smaller ones that we may raise at the committee stage.

I thank you, very much, Sir. [*Desk thumping*]

Sen. Rev. Barbara Gray-Burke: Mr. Vice-President, I stand to support this Bill fully. The reason for my support is that if there were no Summary Offences Bill, maybe I would not have been a Parliamentarian. Because of the oppression of my religion, I had to go to the extreme. We were harping and knocking at the doors, and no one was willing to hear our cry. For that reason, I went to the Prime Minister when he was Leader of the Opposition, and pleaded with him to have a say in this honourable House about my problems.

When I entered the Parliament, I had two missions and made two commitments to the Shouter Baptist Faith. The first one was to get a national holiday, for which I was given a mandate. The other was to get the Summary Offences prohibition removed from the statute books.

I would like to read a letter:

"The Council of Elders Spiritual Baptist Shouter Faith

#2 Saddle Road, Maraval

For the Attention of Eunice Mc Donald-Grant (Mrs.)

Senior Parliamentary Counsel

Re: Legislative Reform—Protection of Religious Freedom

29th April 1998."

This is to show how long I have been knocking.

2.40 p.m.

The letter stated:

"There is a very thin line between devout religious enthusiasm and bigotry and considering that we live in a secular society that is a signatory to the United Nations Declaration on Human Rights. The existence of Chapter 11 of the Summary Offences Act (an obvious social relic from the Middle Ages) concretises the religious prejudices of people in authority, particularly members of the coercive arm of the state.

> We the members of the Shouter Baptist Community who have in the past experienced religious persecution...the police confiscated at the Abacuso Orisha Shrine are used by the Shouter Baptist: Drums, clay goblets, Shepherd rods, flags…Therefore, please do not view my opposition to this particular chapter of the law as recalcitrant, it is mere caution, when your neighbour house is on fire one must wet their own."

I came to this honourable House and I also sent this particular document to the hon. Attorney General's office, harping on it.

This is why today will be a historical day in our lives. I do not know for any other group, but I know for the Shouter Baptists it will be, because when we know that these laws are still on the statute books—I was present last Friday in the other place when they were saying that nobody gets arrested, but the law was there conveniently.

I have an article from the *Trinidad Guardian* of Monday, February 15, 1993 where it says:

> "Arima man on obeah charge"

This happened on February 15, 1993. Imagine a Bill was repealed in 1951—from 1917 to 1951 is 34 years—and yet in 1993 a man was still arrested for breaking this law. In other words, the law is there, and any time they want to say that you have a cocoyea broom or you do anything, you have an anchor in your church, they can say that you are practising obeah. I will read the article, because I want this honourable Senate to remember this incident.

The article states:

> "Aaron Jones**,** above, on his way out of court yesterday after appearing on a charge of practising obeah with intent to intimidate persons.
>
> An Arima man yesterday appeared before Magistrate Mark Wellington charged with practising obeah with intent…"

He was 43 years old. He was put on $7,500 bail, and the accused was represented by attorney Robert Devenish. Mr. Vice-President, after you go through this era in the year 2000, and you are seeing a peephole, you must feel happy and satisfied, because there has been so much struggle and hardship in everything we did.

Do you know what this month represents? It has taken 83 years and 10 months for a repressive law like this to be removed from the statute books. Mr. Vice-President, do you know that last Friday—for the hon. Sen. Yuille-Williams' information—the head of the Orisha faith was present in this honourable Senate? There were many Shouter Baptists, and also, from the Orisa faith, there was one Elder Sam Badger. He came because Mrs. Eintou Springer was out of the country launching a book in Canada. He came in because we have two major groups, the Opa Orisa and Egbe Orisa, and he represented the Ekba Orisa. I heard Senator Yuille-Williams say that there was no consultation, but this gentleman was present for the debate last Friday.

Sen. Yuille-Williams: Just let me correct you please. I did not say that there was no consultation. I have something from the Ekba Orisha that they sent to me today. They sent me a memorandum. I said that when the amendments were prepared, they did not get a copy of the circulated amendments in order to influence what is happening here.

Sen. The Most Rev. B. Gray-Burke: But all heads control their groups, and he came with others. He even asked to thank the Prime Minister personally. He wrote a note and asked me to pass it—which I did—and he did go personally and tell the Prime Minister thanks for having this Bill passed in the Lower House.

I also want to let this honourable House know that the same clause that the hon. Sen. Yuille-Williams said that the Orisa and the Shouter Baptists asked to be removed permanently, the Opposition refused. I was here; they did not want that clause to be taken out, and at some stage the Attorney General had to juggle. I was passing notes to him telling him that this is what we wanted and so forth, and he had to juggle and compromise, because they did not want the clause removed.

Sen. Mark: The PNM?

Sen. The Most Rev. B. Gray-Burke: Yes, it was a terrible thing here last Friday; they did not want it. So all that came upstairs is what they had agreed to; they did not. I wrote a note to the hon. Attorney General telling him that we wanted the word "divine", and they opposed it.

Sen. Mark: The PNM?

Sen. The Most Rev. B. Gray-Burke: Yes, to the hon. Sen. Rev. Teelucksingh, I was here, because I made it my business to bring members of the faith and the Orisha to hear what was going on and the PNM opposed the use of the word "divine". So when the word "divine" was moved, it was not the Government who did that;, the Government was going with the word "divine". The Opposition had other reasons why they did not want the word "divine". I do not know who told them that the word "divine" was not going to suit all the religious groups. I was present.

Mr. Vice-President, "downstairs does have one opinion and upstairs does have another opinion". I do not know why they do not want us to be free citizens. At one stage on Friday I nearly cried in the Parliament. After Mrs. Robinson-Regis spoke I could have run out of this Parliament and bawled, [*Crosstalk*] because she was—. They do not want this law, but I thank God that it has been passed in whatever state it was.

We would try to do our best up here, and send it back if we want certain things instilled. We will send it back for them, and let them fight up with it, but we want the word "divine". We want to maintain the word "divine". We will be asking in the committee stage to have it included in the Bill, and they could do what they want with it downstairs.

Mr. Vice-President, this is a very important day for us. We are going into our 84th year celebration since we were freed, and now we will be completely free. We are free at last.

I thank you.

Sen. Prof. Kenneth Ramchand: Mr. Vice-President, I have a brief contribution with a number of specific points. First of all, I welcome this legislation which seeks, at long last, to remove from the books, laws generated by a colonial outlook in which cultural bias and cultural ignorance were structural. I am glad to see the removal of these colonially-biased regulations.

I want to welcome too the Minister's promise of legislation concerning noise pollution. In passing, I just want to tell him that I hope he would consider, please, that it has already begun, every day after school bamboo and carbide and other explosives are bursting. I think some kind of regulation has to be brought in place about the bursting of these devices. Almost throughout the year, every time there is some festival approaching, like Divali or Christmas, we are going to have this right through till Carnival. Last year it was brought to the attention of the Parliament and the country that many dogs fell ill; some went berserk, and people do not talk about the people who get stressed out and go almost berserk as well.

On the legislation itself, I would like to agree that Sen. Rev. Teelucksingh has pointed out what looks like a discrepancy, that 96A, certainly cancels out the concessions made in the Equal Opportunity (Amdt.) Bill. If the later legislation represents second thoughts by the Government, I am not sure this is the way to do it. If it is an accident, then something has to be done to clear up the discrepancy. On the other hand, if it is an accident, I think that the Government is being given an opportunity to have second thoughts.

I tend to go along with those who believe that this later piece of legislation is better than the earlier legislation, because the earlier legislation does permit people to abuse one another on the grounds of religion, whereas this one does not. At any rate, I do not want to be committed to any particular opinion on the subject. I just want to say that Sen. Rev. Teelucksingh has pointed out what looks like a discrepancy.

I am glad that the Government is responsive to religious organizations. I want to take the opportunity of this Bill, which amends the Summary Offences Act, to say that there can be no doubt that the religious community and the

religious organizations are important, but I think that what the artistic community has to offer a society—in terms of its understanding of itself, its cultural identity, its social formation, its political organization—is, at least, as valuable as what the religious organizations have to offer.

People read books. They go to art galleries, the calypso tents and the theatre, and they are influenced by what they see and hear, and what they see and hear passes into the sensibility, it may even pass into their conscious thoughts; it may even form their opinions and attitudes. Mr. Vice-President, just as the Government has gone into the law books to find those archaic laws that are prejudiced against the practice of religion and the influence of religion in a multi-religious society, so I believe it is necessary to go into the law books and examine those pieces of legislation that militate against cultural and artistic expression.

I would like to draw attention to the Summary Offences Act, section 46(f) and (g). The Minister has revised them in some places, but (f) and (g) state;

> "(f) Any person who exposes in any public place or in view thereof any defamatory or insulting writing or object;
>
> (g) any person who offers for sale or distribution or who exhibits to public view, any profane, indecent, or obscene book, paper, print, drawing, painting, or representation;"

Mr. Vice-President, I think certain criteria about what is obscene and profane have to be established. In most countries, people ask about artistic merit, and they ask about the function that the piece, the phrase, the action or the drawing, serves within the artistic whole.

2.55 p.m.

If it is found that the work, as a whole, is not obscene or profane or in any way inflammatory, then within the body of the work you can have something which functions towards an artistic function and, therefore, the law, as it stands, gives you *carte blanche* to arrest somebody for using a single swear word without a consideration of the part that that swear word may be playing within the artistic whole.

Mr. Vice-President, there are clauses in the Criminal Offences Act, 11:02 (5) which also need to be looked at in this light, but the greatest villain of the peace which I am drawing to the attention of the Acting Attorney General, is the Theatres and Dance Hall Act of 1934.

Mr. Vice-President, 70 years ago, this piece of legislation was put in the books: "An Act to regulate the use of Theatres, Dance Halls and other places of entertainment and to provide for the licensing thereof." When you go into the legislation, after the first piece of legislation there is subsidiary legislation, Theatres and Dance Hall Regulations made under section 8 and in section (5), it says:

"(a) no profane, indecent or obscene songs or ballads shall be sung or spoken;"

In a dance hall, theatre or calypso tent.

"(b) no stage play or song shall be presented or sung which is insulting to any individual or section of the community, whether referred to by name or otherwise;

(c) no acting or representation calculated to hold up to public ridicule or contempt any individual or section of the community shall be presented or performed;

(d) no lewd nor suggestive dancing shall be performed;

It is a good thing these rules are not enforced.

(e) all performers and dancers shall be decently attired;

(f) no violent, quarrelsome or disorderly…"

Mr. Vice-President, this piece of law was intended to control black people. That is what it was saying. That whether black people gather, sing and dance, it is disorder, madness, lewdness, barbarity, savagery and we have to control the natives. I can see why the people who framed that in 1934 framed it, but in the year 2000, to have this in our law books, it is a shame and disgrace, it is an insult to the community and not only that, it is a repression of the artistic community. It is repression of artistic and cultural expression. I do not want to go on and on, but to repeat my argument briefly, I welcome this legislation which seeks to remove colonial legislation from our statute books. I note that we are doing this because we recognize that these laws were framed out of cultural bias and ignorance.

I am therefore asking the Government to consider that certain laws relating to artistic and cultural expression are just as equally formed out of cultural bias and ignorance, and the artistic community—in order to make its contribution to an understanding of ourselves as a multicultural society, to understand ourselves as a society, and to have cultural confidence and a sense of personal identity—need to be released from this oppressive colonial legislation as represented in the Theatres and Dance Halls Act, in the Summary Offences Act, and Criminal Offences Act.

Thank you, Mr. Vice-President.

Sen. Martin Daly: Mr. Vice-President, as has been my wont lately, I see this as another piece of legislation which is worthy of our support but, equally, it is an occasion on which we must stimulate the wider debate into the issues underlying what we are doing today.

I feel that while it is entirely right that we should be liberating the practice of religion which is guaranteed under the Constitution from all unnecessary restraints, and certainly from those that were imposed against indigenous cultural trends is a welcome thing. What I do not understand is why we have not heard from the Government what is its programme to advance the course of secular freedom and so I would not like it to be thought that because we support this Bill, which is entirely laudable, that we remain unaware of the need to advance secular freedom. It is for that reason that I support entirely what has been said about Sen. Ramchand that if we are having a Miscellaneous Laws Bill—this, after all is not the Miscellaneous Religious Laws Bill—that is dealing with Summary Offences Act and other related criminal statutes, why on earth have we not taken advantage of the opportunity to advance freedom of expression, at any rate, secular freedom of expression?

I would simply say that the easiest way—and I am glad that the Minister of Culture and Gender Affairs is giving me all of her lovely attention as she always does. While we are on this subject, what on earth is there to prevent the Government if it does not want to repeal these provisions from doing precisely what Sen. Prof. Ramchand has proposed and precisely what I proposed in my amendment to the Equal Opportunity Bill which was considered in the dark and the dead of night and that is to say, make an exception for literary, scientific and artistic merit. Why can we not have an amendment that says that any of these offences, whether they arise out of the religious practice, or the practice of the arts, that none of these offences shall apply in cases where the act with which you are charged has redeeming, literary, artistic, scientific, and social merit.

This is not a formula that I have just thought up, it is a formula that has been adopted in many legislatures all over the developed world and here we have the contradiction that we are doing everything possible to extend freedom of worship and freedom of expression where religion is concerned and we are looking at the very statute that constrains artistic freedom, and we are not doing anything about it.

These expressions; redeeming, artistic merit and so forth which we have in the developed countries—we amended the banking law two days ago on the basis of what the US statute said. I am completely confused, because one minute we are following the United States of America and the United Kingdom statutes for one purpose, and another time we are completely ignoring them, when at the same time they are telling us things about global development. So one minute when it suits us, we copy the United States of America and the United Kingdom's statutes. Another minute when it does not suit us, we ignore them. One minute we are so global that we ought not even to speak against the measures that are brought here, but another time we are so insular, parochial, and dare I say the dreaded word colonial that we cannot look at what is happening with artistic and other freedoms of expression in other parts of the world. It is a complete dichotomy and, of course, one then begins to understand why Sen. Rev. Teelucksingh—and I am sure he would not escape unscathed within the religious community—is so brave to say that we must continue to maintain the separation of powers not only between the Executive and the Judiciary, but we have to put on the table the proper maintenance of the separation of church and state and there should be no blurring of the lines in the practice of religion and politics. There should be no blurring of the lines, not only because you mislead people in terms of where your support lies, but because we end up being totally discriminatory today. We are giving everything in favour of religious freedom, and zero in favour of secular freedom. It is totally discriminatory. So we are being parochial, insular, non-global, non-developed—

Sen. C. John: Colonial.

Sen. M. Daly: I am coming to colonial, through you, Mr. Vice-President, to my good friend. Of course, if I may digress—well I will come to that. I find this very strange, and what it tells me is that the underlying purpose of this legislation is not entirely laudatory, it is designed to serve a very narrow, political purpose and it is dressed up as something else, and I think that is very unfortunate. After all, the people who drafted this would have had to go through these various Acts section by section in order to find the offending pieces. Well, they were not briefed to do it, but it would have been very easy to say pick up the other pieces of repression and let us deal with them at the same time. That is why there is my little query about the policy underlying this.

Perhaps I should say through you, Mr. Vice-President, that having regard to some of the remarks I have heard, we may have to examine in another place whether the position of Deputy Prime Minister or Deputy Political Leader is not

itself a colonial concept, but that is another matter, and anyway, I do not want to hurt the feelings of someone I have known in the Senate even longer than I have known some of the other persons.

The other thing that bothers me is if it is so screamingly obvious to the laymen, we really need to look very carefully at whether the new clause 96(a) does not in fact cancel the concession. Rightly or wrongly, a certain concession was made to the religious organizations at the time of clause 7 and that was to except places of worship from the civil offence that was being created by clause 7, and it seems to me that this latest statute which says, notwithstanding any law to the contrary, you can commit this offence of vilification.

3.10 p.m.

It seems to me that this later statute which says, "Notwithstanding any law to the contrary, you can commit this offence of vilification." It seems to me that in some way it is negating the exception that was given in Clause 7. On the one hand, if you are brought before the Commission, or if someone tries to bring you before the Commission in the Equal Opportunity (No. 2) Bill, you can shelter under the religion by saying, "well, I said it in a tent which was being visited by God, so that makes it all right. At the same time, you could be charged under Clause 96A. I find that is equally confusing.

Of course, if that is something we have to examine, we cannot possibly examine these things with the care that we would like; because one minute I am on the telephone, metaphorically speaking, with Sen. Gillette's Bill, then the next minute I am in the death chamber with this next Bill that we have to do. Then all of a sudden I am in the Central Bank Auditorium, and it is really almost as confusing as jet lag with this crazy parliamentary agenda, but we have to live with it.

So what I am concerned about—*[Interruption]* Like me, you are going into retirement *[Laughter]* Well, may you heckle me. Of course, my retirement is entirely voluntary. I have displeased many people but I still choose my own retirement, through you, Mr. Vice-President. It is the last luxury of independence. You could be as upsetting as you like and not retire if you do not want to. All of that tells me that none of this has been carefully thought out. It is just hurry-scurry; it has not been carefully thought out. Any attempt we make to raise these points, really in the interest of good governance so that we do not have this new confusion creeping into the laws, is met with "well, we have to do it today, this, that and the other."

Mr. Vice-President, while I fully support the religious freedom that is being extended by this Bill, I do think it is a crying shame that we are being quite so discriminatory where more secular and very worthy pursuits are concerned.

Thank you, Mr. Vice-President.

Sen. Prof. Julian Kenny: Mr. Vice-President, I was rather taken with Sen. Teelucksingh's observation which prompted me to speak. I was also following on Sen. Ramchand's and Sen. Daly's observations about other aspects of our cultural life—I mean in the broadest sense, I do not mean just music, dance and things like that. I would like to preface my remarks by saying that I am grateful to all the religions of Trinidad and Tobago for making me a more tolerant person, because I am exposed to religion constantly and some offend me, but I have to remain quiet.

For example, I find that sometimes my right to move freely on a pavement on Long Circular Road is taken up by a religious group. Yes, it is a basic fundamental right I have as a citizen to walk along a pavement. As I say, religions make me very tolerant. Noise is noise, whether it is a religious noise or people having fun. It is part of the culture. Fortunately, as a person who cannot speak publicly against any religion, I cannot express views because my personal views might put me into some very, very serious trouble.

As a biologist, for example, I might, like some other biologists—who can do it in the United Kingdom—when they would speak on the subject of "Evolution", certain arguments must be put scientifically. I am not talking about what Sen. Prof. Ramchand was talking about, which is a perfectly valid literary/artistic expression, but as Sen. Daly pointed out, scientific expression. The laws of Trinidad and Tobago will prevent me from speaking in a public place frankly about my own views. So my rights as a citizen are severely curtailed by my own personal views on matters of this kind. As Sen. Daly was pointing out, you give to one part of society the right to obstruct me from my fundamental right to walk along a pavement, to enjoy my privacy. I am constantly assaulted by people who try to persuade me and it forces me into being very defensive and not using my right to tell people to—*[Laughter]* well, I cannot use expressions like that in this Honourable Senate. I cannot use it in public and I am assaulted on a regular basis.

Similarly, as I pointed out, and other people have this problem, if your misfortune is to be next to a tent, a place of worship, it is—I cannot use the language. So I am suggesting that while it is admirable doing this legislation, I take the point that why do we not have a proper house cleaning. And why do we

not start addressing really serious issues of those of us in society who are "other" and may not subscribe to any formal religion. There is a minority of people who are placed in this position because you are not one of this group or that group where one happens to have an independent mind, and you are placed in this position of being very, very defensive.

On more than one occasion I have had to flee my residence for reasons of this kind. Fortunately, I am able to go to another part of the country where I can get a night's sleep. Whether it is coming from people who are permitted to do it as part of their culture, or whether religion or they are just doing it for fun, there is absolutely nothing I can do as a citizen except to flee, and I am in a fortunate position to flee.

Recently, in spite of all the planning laws of this country, I have found myself under a certain amount of pressure, because at the other place to which I can flee, there is an unplanned, unapproved, physical development that is now three stories high. I have drawn this to the attention of the competent authorities in writing on the day that they started the foundation. Three letters have gone with photographs showing this thing. One property is built on a beach burn close to me where on a Sunday the marijuana wafts out of the place. With all the apparatus of the state; with all the planners who are planning for us; with all the letters that I can write as an individual citizen, I no longer have rights. My point is, we have to start looking at the secular interests in the society.

Thank you, Mr. Vice-President.

3.20 p.m.

The Minister of Public Utilities and Acting Attorney General and Minister of Legal Affairs (Hon. Ganga Singh): Mr. Vice-President, I wish to thank hon. Senators for their contributions—Sen. Joan Yuille-Williams, Sen. Diana Mahabir-Wyatt, Sen. Rev. Daniel Teelucksingh, Sen. Martin Daly, Sen. Prof. Kenneth Ramchand, Sen. Prof. Julian Kenny and my colleague, Sen. The Most Reverend Barbara Gray-Burke. I think it was Sen. Rev. Daniel Teelucksingh's contribution that really struck resonant chords within me because his sense of the universality of religions and the historical wrong that we have to put right, and the way he enunciated, brought to mind a book I was recently reading entitled *The Religions of Man* by Huston Smith. I want to read with your leave, Mr. Vice-President, a few excerpts from this book because it points to that kind of universality that is required in a multi-ethnic, multi-religious plural society as is Trinidad and Tobago. I quote from page 1:

"I write these opening lines on a day widely celebrated throughout Christendom as World-Wide Communion Sunday. The sermon in the service I attended this morning dwelt on Christianity as a world phenomenon. From mud huts in Africa to igloos in Labrador Christians are kneeling today to receive the elements of the Holy Eucharist. It was an impressive picture.

Still, as I listened with half my mind the other half wandered to the wider company of God-seekers. I thought of the Yemenite Jews as I watched them six months ago in their Synagogue in Jerusalem: dark-skinned men sitting shoeless and cross-legged on the floor, wrapped in the prayer-shawls their ancestors wore in the desert. They are there today, at least a quorum of ten, morning and evening, swaying backwards and forwards like camel-riders as they recite their Torah, following a form they inherit unconsciously from the centuries when their fathers were forbidden to ride the desert-horse and developed this pretense in compensation. Yalcin, the Muslim architect who guided me through the Blue Mosque in Istanbul, has completed his month's Ramadan fast that was beginning while we were together, but he too is praying today, five times as he prostrates himself toward Mecca. Swami Ramakrishna in his tiny house by the Ganges at the foot of the Himalayas will not speak today. He will continue the devotional silence which, with the exception of three days each year, he has kept for five years. By this hour U Nu is probably facing the delegations, crises and cabinet meetings that are the lot of a Prime Minister, but from four to six this morning, before the world broke upon him, he too was alone with the eternal in the privacy of the Buddhist shrine that adjoins his home in Rangoon. At that, Dai Jo and Lai San, Zen monks in Kyoto, were ahead of him an hour. They have been up since three this morning, and until eleven tonight will spend most of the day sitting cross-legged and immovable as they seek with intense absorption to plumb the Buddha-nature that lies at the centre of their being.

What a strange fellowship this is: the God-seekers of every clime, lifting their voices in the most diverse ways imaginable to the God of all men. How does it all sound to Him? Like bedlam? Or, in some mysterious way, does it blend into harmony? Does one faith carry the melody, the lead, or do the parts share in counterpoint and antiphony when not in solid chorus?

We cannot know. All we can do is try to listen, carefully and with full attention, to each voice in turn as it is raised to the divine."

Mr. Vice-President, it is in that quest for divinity, it is in that practice of their religions that we have to redress the historical wrongs that were exacted upon the Baptist community in this country. We are demonstrating here today that this history is not our destiny because, you see, history consists of mistakes that need not be repeated, and crimes that need not be tolerated again. One philosopher, I think it was Burke, said that history is mankind's painfully purchased experience, now available free or merely for the price of attention and reflection. It is indeed that sense of history, that sense of yearning, which we fulfil here today, and I am happy that hon. Senators seek to address their minds to those kinds of universal principles and that kind of tolerance which we desire in this country.

On that universal note, Mr. Vice-President, I now turn my attention to the contributions of hon. Senators. I think that hon. Senator Joan Yuille-Williams, the first speaker, indicated that she would like to get an indication of the definition of "place of worship". Both in the Equal Opportunity Bill and in this Bill, "place of worship" is not defined. It is very broad and generous in its definition so that therefore every church, every Synagogue, every tent, every area that customarily is somewhere that there is worship taking place, is a place of worship. There is a broad ambit of definition demonstrating the level of tolerance that is required.

With respect to the issue of the prohibition of torches, I can understand that there are, at times, processions proceeding with torches, but at times a torch can also be a Molotov cocktail, and that therefore there is the need for that kind of regulation of that environment. Whether a torch is used for purposes of religion or can be transformed into a Molotov cocktail is a contextual issue, and that therefore is left to the interpretation of the policeman at hand.

I think I am in agreement with Sen. Prof. Ramchand that there is need to extend that kind of freedom which we are providing to the Baptist community and to religions into the arena of the arts. I am certain that the time will come, but this Bill deals with the sacred and I really do not want to mix the sacred with the profane. You see, Mr. Vice-President, we are committed to freedom in this society and the extension of that freedom. Now, Sen. Martin Daly in his contribution also continued in that vein and I am certain that over the period of time that matter of artistic freedom will be dealt with, but this Bill has a specific purpose and we are proceeding in this direction.

I want to really commend Sen. Diana Mahabir-Wyatt for her very profound insight into the fact that places of worship are places of divine worship. I share that point of view and the divinity in worship is unquestioned, and we will deal with that at the committee stage. Mr. Vice-President, I think I want to end also, as I started, with a statement from Sen. Rev. Daniel Teelucksingh in which he said, and I quote, "God is one. He is the father of all". I want to extend that by reading from page 5 of this book, *The Religions Of Man*, which extends that principle which Sen. Rev. Teelucksingh encapsulates so well, that principle of universality. I quote from page 5:

> "Every religion is a blend of universal principles and local setting. The former, when lifted out and made clear, speak to man as man, whatever his time or place. The latter, a rich compound of myth and rite, can never make its way into the emotional life of an outsider and can reach his understanding only with the help of a poet or skilled anthropologist."
>
> Mr. Vice-President, I beg to move. [*Desk thumping*]
>
> *Question put and agreed to.*
>
> *Bill accordingly read a second time.*
>
> *Bill committed to a committee of the whole Senate.*
>
> *Senate in committee.*

Mr. Chairman: The Bill before us is the Miscellaneous Laws Bill, 2000. It comprises two clauses and a Schedule and we have one circulated amendment by the hon. Attorney General. [*Interruption*] I am being told by the Attorney General that, in fact, his circulated amendment is withdrawn. So, in fact, we are considering the Bill as it stands at present, just to draw to your attention the fact that there is a comprehensive list of amendments that were adopted when the Bill was passed in the House of Representatives on Friday 13.

Sen. Mahabir-Wyatt: Mr. Chairman, if we are going to read the list of amendments from the House as part of the Bill before us today, and take the supplemental one about divine in its order, which would be in the Schedule, I would just like to repeat the point that I made that I do not see why "divine" should not be there because there can be places of profane worship, presumably.

Mr. Singh: I am withdrawing the attempt to remove "divine".

Sen. Mahabir-Wyatt: Okay, thank you.

Mr. Chairman: Since his amendment is to delete "divine" and he is withdrawing his amendment, by extension that means "divine" stays.

Clauses 1 and 2 ordered to stand part of the Bill.

Schedule.

Question proposed, That the Schedule stand part of the Bill.

Sen. Yuille-Williams: Mr. Chairman, there are various parts of the Schedule that we would like to—[*Interruption*]

Mr. Chairman: Excuse me?

Sen. Yuille-Williams: I am talking about the Schedule, section 43. I will ask the Attorney General to tell me something about the superstitious devices and articles used in the practice of obeah and witchcraft which may be seized, that he has asked to have deleted—it came from the Lower House too—"by practice of obeah". He is going to delete just part of it and substitute "by any false means". Why are we putting in what I consider a new offence? I do not know if that is the word for it.

3.35 p.m.

Mr. Singh: How it read previously and it says:

> "Any person who, by the practice of obeah or by any occult means or by any assumption of supernatural power or knowledge, intimidates or attempts to intimidate any person…"

What we are saying here now is that any person who by any "fraudulent means" intimidates or attempts to intimidate, obtain or endeavours to obtain any chattel, money or valuable security.

Sen. Yuille-Williams: That whole section was labelled "Superstitious devices".

Mr. Singh: It is no longer labelled that way. It is labelled "By any fraudulent means" now.

Sen. Yuille-Williams: Yes, but this was proposed for this particular Act when it was looked at many years ago in the colonial times—superstitious devices and articles, using obeah and witchcraft was something different. What you have tried to do is to remove that and, to me, you are putting—I do not know—an offence. I am asking you as a lay person, whether or not what you are trying to put in is not covered somewhere else in the common law. I mean, it is surprising.

Mr. Singh: I am advised that it is not covered under the common law. In addition, what it does really, it covers the offence that can take place but it eliminates the whole issue "of obeah or by any occult means" so that therefore, it does not criminalize that. But if one seeks to obtain chattel or treasure or anything by any "fraudulent means" the law covers you.

Sen. Yuille-Williams: So are you telling me that the common law does not cover that or seek to obtain those things? It must cover that because that is what the law is all about. If I seek to obtain all those things by false pretences, certainly, I do not have to come to the summary offences at all. This was particularly "superstitious devices" and they have asked you to take that out. I do not see why you are trying to change this into something else. This whole thing was on "superstitious devices" and the article is using obeah. You are saying that you are—coming back to religious tolerance—removing all of this from here or whatever it is. I cannot understand why you are trying to put that in.

Mr. Singh: Hon. Senator, you see, "any person by any fraudulent means intimidates or attempts to intimidate", so it is a question here of intimidation.

Sen. Yuille-Williams: So what you are telling me is all the time intimidation was always through the superstition and you do not have intimidation without that?

Mr. Singh: No. No. I am not telling you that. What I am saying is, this is the mechanism, anybody by any fraudulent means intimidates or attempts to intimidate to acquire chattel, property or stolen treasure is covered under this Act, so it is necessary to crystallize that in the legislation.

Sen. Yuille-Williams: If that act was committed before but not under "superstitious devices" what would you have done if that intimidation was practised before even while this was on the statute books? Were you going to charge them under sections 43 and 44?

Mr. Singh: I am advised that there was previously no offence under intimidation.

Mr. Chairman: Are there any other comments on the Schedule?

Sen. Yuille-Williams: Yes. I was not happy to hear the acting Attorney General say that the police will decide whether a torch was, in fact, a torch or a Molotov cocktail. I was not really happy about that because I am talking here about torches, flambeaux or candles in a procession. I really do not think that you are telling me that it is left to a policeman to decide whether that torch is a

Molotov cocktail. Something seems to be quite wrong with that. If you are having a religious procession, I really did not see the need for that.

Mr. Singh: As I say, the discretion must be available to the police officer to determine. You cannot have a *carte blanche* where every torch is allowed without some measure of control or regulation. What we are saying is it is contextual where you have a religious procession proceeding that you can have torches and it is permissible. So, therefore, it is the rule of law and the police officer will have that kind of discretion.

Sen. Yuille-Williams: I am sure you are not convinced.

Mr. Singh: Hon. Senator, what do you want?

Sen. Yuille-Williams: I am just telling you that these flambeaus and torches are used in religious observances for a procession.

Mr. Singh: And I agree with that.

Sen. Yuille-Williams: And, therefore, you have allowed it to stay and they have asked you to delete it and now you are saying, yes. I do not know what you are saying.

Mr. Singh: No. It stays but it is subject to permission. It stays and it is not deleted. The torch stays but it is subject to permission.

Sen. Yuille-Williams: Yes, it stays, but you have to get permission to have a religious procession if you are using a flambeau.

Mr. Singh: No. If you are proceeding with a procession that can transform a torch into a Molotov cocktail the police will have to deal with that.

Sen. Kuei Tung: Senator, is this not tantamount to the same thing as a cutlass in law because cutlasses are used as utensils but, by the same token, if a man is brandishing a cutlass he can be locked up. I would imagine a cutlass is pretty much like a torch. It depends on the purpose and the Acting Attorney General has said that it is contextual, in the sense that you have to take the context in which it has been used.

I think the law is being flexible to be able to say that a torch can be used if it is being used for religious purposes. But if a torch is now converted to a Molotov cocktail, it cannot be used. It is against the law. I am not sure if we are not arguing semantics in this sense.

Mr. Singh: If you look at the whole provision the Minister may by order prohibit during periods specified respectively in the order any of the following

things in any straight highway. So that the Minister "may". It is not that it is a mandatory provision that all torches are banned. It has to deal with security issues.

Mr. Chairman: Any other comments on the Schedule?

Sen. Yuille-Williams: One other question and I am asking the Minister of Finance, Planning and Development, how does this legislation affect the beating of the steel drums or anything like that? I remember after the football game you came down the road with your steel drums and I remember that.

Sen. Kuei Tung: Actually it was not football, it was Independence Day.

Sen. Yuille-Williams: Or something like that. I just ask that question in that context.

Sen. Kuei Tung: I would have hoped that the law would continue to be as flexible as it has been and that it does not see us as beating drums in the old spiritual days, in the sense that it was banned.

Sen. Yuille Williams: But it was not flexible on that day.

Sen. Kuei Tung: Actually, the reason why the police had stopped us from beating the drums is because the police had insisted that every member of the steelband who was on a trailer had to be insured under the law. Now, the police did not use this law or any other law, but the question of the traffic regulations to say that every vehicle had to be insured under the law. Now that had been overlooked in the past by the police and, suddenly, they have decided to invoke it, which, got my own anger up because it had been overlooked in the past and, suddenly, they begin to invoke it. I am not saying that we were not breaking the law according to that traffic regulation but it certainly had been overlooked in the past in terms of steelbands being able to use roads in the past. I do not think that this law interferes with our practice of beating drums.

Sen. Yuille-Williams: Drums are drums.

Sen. Dr. Mc Kenzie: Mr. Chairman, I think we need to spell it out well, because in Tobago for the Heritage Festival, on the last day, we have the Emancipation March with our flambeaux and we do have to seek police permission for the procession with the flambeaux. So, I think, we have to make sure that we spell it out, that this still applies and we are not debarred from proceeding with our flambeaux. "Ah mean, I does be in de ting, too".

Mr. Singh: Hon. Senator that is the law and it continues that way. I think that both Sen. Yuille Williams and Sen. Kuei Tung raised the point about the necessity for dealing with the issue of artistic freedom which has to be dealt with altogether separately, which will point to matters that you have raised like what Minister Kuei Tung experienced and which was raised by Sen. Prof. Ramchand and Sen. Daly.

Sen. Yuille Williams: With respect to the noise levels coming from places of worship—whether it is Christian, Muslim or whatever—I do not know where in section 64 that is taken into account.

3.45 p.m.

Mr. Singh: You notice that I studiously steered away from the issue of the judgment and I do not want to interfere with the Judiciary in any way, but currently before the office of the Attorney General, they are dealing with the whole question of noise pollution and a draft legislation is being dealt with, so that will be another comprehensive area in which there is a problem in the society which we have to address, taking into consideration the various practices which occur in our society.

Sen. Prof. Ramchand: Mr. Chairman, I want to ask a question about section 96. The Minister did not address the comments made on section 96 and tell us whether, in fact, this contradicts the Equal Opportunity Bill.

Mr. Singh: My reading of section 96, and I want to read the whole provision, because I think that inadvertently, the key part may have been left out, it says:

> "Notwithstanding any other law to the contrary, any person who brings into contempt or disbelief or who attacks, ridicules or vilifies another person's religion in a manner that is likely to provoke a breach of the peace commits an offence and is liable on summary conviction to a fine of one thousand dollars."

It is, therefore, that threshold which has to be reached; the breach of peace threshold. My advice is that it does not, in anyway, take away from any other existing law, therefore one has to climb a certain level in order to reach that in terms of the vilification, the denigration or the ridicule.

Sen. Prof. Ramchand: Into the Equal Opportunity Bill, we are entitled to read "in a manner that is likely to provoke a breach of the peace" also?

Sen. Rev. Teelucksingh: There are limits here, as he is rightly saying, but in clause 7, there are no limits. One can go ahead and do it as long as one wants, intensively.

Sen Prof. Ramchand: Whether it provokes a breach of the peace or not, go ahead and do it.

Mr. Singh: We want to deal with the issue of blasphemy here.

Sen. Daly: Blasphemy outside a place of worship. Blasphemy inside a place of worship is okay under clause 7.

Mr. Singh: I am advised that this is for outside the realm of the place of worship.

Sen. Daly: Then you could blaspheme in a place of worship but not outside. That is real Alice in Wonderland. If you want to commit the sin of blasphemy, go in a church to do it. *[Laughter]*

Sen. Prof. Ramchand: Our view on this side is that there is a discrepancy.

Mr. Singh: I will undertake to get our people to look at that, but I think that if there is a problem and, as I indicate, in the fullness of time there appears to be, we will take a second look at it.

Mr. Chairman: Sen. Ramchand, are you through with your comment?

Sen. Prof. Ramchand: If the Minister has undertaken that he will discuss it with his other experts to see if there is a discrepancy and that if there is a discrepancy, the legislation will come back and something will be done about it, fine, but not in the fullness of time. I think it has to be very soon.

Question put and agreed to.

Schedule 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.

OFFENCES AGAINST THE PERSON (AMDT.) BILL

Order for second reading read.

The Minister of Public Utilities and Acting Attorney General and Minister of Legal Affairs (Hon. Ganga Singh): Mr. President, I beg to move,

> That a Bill to amend the Offences against the Person Act, Chap. 11:08 be now read a second time.

This Bill seeks to amend the law regarding homicide by rationalizing and categorizing murder into three distinct categories which will introduce a greater element of fairness into the present system by streamlining the prosecution process. This Bill has been described as a clear and unambiguous categorization of the crime of murder according to its severity so that simplicity, clarity and dispatch, that is expeditious and proper arrest, determining and sentencing can be facilitated.

Mr. Vice-President, the issue of capital punishment has always been an emotional issue in Trinidad and Tobago. The law, as it is, is somewhat archaic, for it outlines the penalty for the crime of murder as a sentence of death and, thereby, puts all murders in the same category. There are many mitigating factors, however, which should be taken into account, certainly at the charging stage, to distinguish between the more serious and premeditated murders which totally justify the mandatory imposition of the death penalty and killings which are technically classified as murder which, due to the mitigating factors involved, do not merit such a charge.

This Bill seeks to address this most obvious flaw in the legislation and to ensure that justice is served to all persons involved. Accordingly, the three categories of murder as defined are follows:

(a) Murder 1, or capital murder, which would include a certain specified instance of murder;

(b) Murder 2, or manslaughter, which would include certain specific categories of acts; and

(c) Murder 3, or unintentional homicide, that is nevertheless culpable.

Mr. Vice-President, the mandatory imposition of the death penalty would be retained for those acts falling in the category of Murder 1, thereby ensuring that those persons found guilty of committing the most heinous crimes would be punished as is warranted by the situation. This point will hopefully put to rest those fears felt by persons who perceive this legislation as one which is removing the death penalty as a form of punishment, this being a valid concern since the death penalty is perceived by many as an effective deterrent to serious crimes.

It can be said further that persons committing crimes which fall into this category will be dealt with, with far more efficiency and expediency, since the judicial system will not be clogged with an exorbitant number of “murder trials” which may be reduced to a lesser charge subsequent to the trial.

What will inevitably flow will allow capital murders, as defined under this 2000 Bill, to be dealt with or rather to take precedence over another crime if the situation so demands, leading to a far greater deterrent, since the criminal element, or rather, the potential criminal element in society, will see justice being dispensed swiftly and efficiently.

Mr. Vice-President, from the outset, therefore, Murder 1 or capital murder will be distinguishable from manslaughter and unintentional homicide. Clause 4 of the Bill specifies that a person who is convicted of Murder 1 shall suffer death, whilst 4 (b) outlines the circumstances under which a murder will fall under the umbrella of Murder 1.

The first category outlined would be the murder of a member of the security forces or the prison service, acting in the execution of his duties or, of a person assisting a member so acting; or a judicial or legal officer or a former judicial or legal officer, where the murder was intentionally carried out in retaliation for the performance of his official duties. This is stated to include the murder of any such member of the security forces, prison officer or judicial or legal officer, directly attributable to the nature of his occupation.

Mr. Vice-President, the murder of a witness in any pending or completed proceedings or of a juror, past or present, or immediate family of either, where the murder is directly attributable to such status, shall be a capital murder. Also falling under this category would be felony murders committed in the furtherance of a felony involving violence. Murders committed by the means of a destructive device, bomb, explosive or contract murders or murders that are especially heinous, atrocious or cruel, manifesting exceptional depravity or murders involving genocide, will all be punishable by death as capital murders.

It is very clear that all murders falling under any of the above categories totally justify the mandatory imposition of the death penalty. However, it is now necessary to distinguish from the Capital 1, those killings which would amount to murder. Three examples of these were quoted as clearly illustrating the point in question: Provocation—that is, evidence that the deceased acted in such a manner so as to arouse rage, resentment or fury in the accused, thereby causing him to commit murder—is capable of reducing an initial charge of murder to one of manslaughter.

Mr. Vice-President, provocation which will reduce murder to manslaughter must be of such a character as will, in the mind of an average reasonable man, stir resentment likely to cause violence, obscure the reason and lead to action from passion rather than judgment. This has been defined as acts resulting in a sudden and temporary loss of self-control, rendering him—

Sen. Mahabir-Wyatt: I wonder if, Mr. President, the Minister would be so kind as he is going through this particular part, to just tell me whether manslaughter has been abolished or not? I do not quite understand. Does this mean there is no more manslaughter?

Sen. Daly: While the Minister is on his feet, could I be told whether this Act has been modeled on any statute that we know about; the United States, New Zealand, anywhere?

Hon. G. Singh: I will provide you with that advice shortly and, Senator, manslaughter has not been eliminated.

4.00 p.m.

This has also been defined as acts resulting in a sudden and temporary loss of self-control, rendering him subject to passion as to make him for the moment not master of his own conduct. The reduction from murder to manslaughter under the present legislation, however, can only occur as a result of a jury verdict since the test for provocation is a statutory one.

The law as it is now is that the objective test for the determination of provocation is one determined by the jury. It has been stated, therefore, that because of this, even if the Director of Public Prosecutions detects evidence of provocation in a murder investigation, this normally cannot be taken into account in the charging stage, since the law specifically states that an important aspect of the provocation issue is to be determined by the jury.

Mr. Vice-President, this is not a bitter injustice to an accused who has to go through the rigours of a trial for murder without bail when there is a strong possibility that he might be convicted for manslaughter on the basis of provocation. There are innumerable instances where the police may have found that there would have been the question of a murder being done under provocation and the judge would direct the jury that these are matters which they can take into account and they can return a verdict of manslaughter. It is clear that our justice system would be more efficient when this tangled web of confusion is removed and the law is really ordered and fair.

Another example, provocation being the first, of murders which do not merit the death penalty, are the domestic violence killings. In these killings, there is quite often what is referred to as cumulative provocation and the criminal law now recognizes the existence of the battered wife syndrome. The case of Indrani Ramjattan showed the Court of Appeal of Trinidad and Tobago as recognizing the syndrome and treating such crimes accordingly.

These are the mitigating factors which should properly be taken into account at the charging stage. However, under the present law they cannot, and this creates what has been referred to as an artificially and an unreasonably stark choice between a charge of murder, which might appear draconian, but which is legally accurate, or a charge of manslaughter which is legally inappropriate but fully consonant with the broader justice of the case.

Mr. Vice-President, the final category is that of murders committed in self-defence, that is, the protection of one's person or property against some injury attempted by another. It is an excuse, of sorts, for the use of force in resisting an attack on the person. The accused must inflict no greater injury than he, in good faith and on reasonable grounds, believes to be necessary to protect himself or another. If this defence is made out, the accused escapes liability entirely, the injury or death being justified. The relevant principle is that the state, consistent with its burden of proof, must negative the issue of self-defence.

Therefore, in situations where there is a clear case of self-defence paying due regard to all circumstances involved, and a charge of murder is made, all the procedural rigours it entails may not fairly and justly represent what the justice of the situation requires. This Bill would therefore afford the state the option of charging the accused with Murder 2 or 3 in the circumstances of the provocation, whether it is the battered wife syndrome, domestic violence or where the killing is done in self-defence.

This shows, therefore, that the justice of a case may sometimes demand a charge of a lesser degree than murder. The present law stipulates that the charge in those circumstances should be murder and not manslaughter. This Bill provides for these contingencies and also a very effective safeguard in that the Director of Public Prosecutions has a sole discretion to determine these matters. According to clause 4F, the Director of Public Prosecutions, having regard to the circumstances in which the killing took place, can determine himself which category the offence falls under. Further to this, in any case when he considers the interest of justice so requires, he can apply to a judge to determine whether an indictment shall lie and, if so, for what category of the offence.

This Bill also provides for multiple murders under clause 4C which states that a person shall be sentenced to death, if before conviction of that murder he has been convicted in Trinidad and Tobago of another murder, whether or not done on a different occasion. This would afford protection to a society from repeat offenders and thereby remove the probability of them killing again. The Court of Appeal would be empowered to determine whether the death sentence is

warranted on the ground of the conviction being for multiple murders where it allows an appeal against one or more of the convictions or where it substitutes Murder 2 for the verdict of Murder 1.

Mr. Vice-President, under the proposed Bill, mitigating factors such as the existence of provocation and excessive force in some situations can be legitimately taken into account at the time of charging the person. The category of Murder 2 would include special circumstances, that is, cases which do not fall into any category but where, having regard to the nature and circumstances of the killing, the Director of Public Prosecutions can exercise his discretion to prosecute for Murder 2. The category of Murder 2 also includes killing by gross negligence, recklessness and mercy killing.

Mr. Vice-President, subject to this Bill, capital murder is not to be treated as a separate offence from Murder 2, but the indictment must charge capital murder as Murder 1. A jury may reduce any charge of Murder 1 to Murder 2, but on indictment for Murder 2, the jury cannot find Murder 1. This Bill would also amend section 2A of the Criminal Law Act, Chap. 10:04, so that where there is constructive malice in the killing of an individual, the offender is liable to be convicted of Murder 1.

The category of Murder 3 would encompass situations of provocation, negligence and causing death by reckless driving. The advantages of the Bill are as follows:

(1) It will introduce a greater element of fairness into the system;

(2) It will introduce consistency and uniformity at the charging stage; and

(3) It will help streamline some resources so that only what is really necessary would be invested on what is normally extensive and expensive murder trials.

There is also a circulated amendment to the Bill, which, in effect, is to implement the Hague Convention on the Civil Aspects of International Child Abduction. Trinidad and Tobago deposited its instruments on June 4, 2000. This Convention seeks to afford the protection to children who are under the age of 16 years and who have been habitually resident in the contracting state immediately before the breach of custody or access rights occurs. The Convention requires that the state set up a central authority to assist in securing a prompt return of abducted children.

It will be recalled that the Children's Authority Bill was passed and the Children's Authority was set up as the central authority. The amendment before us in respect of this Bill also seeks to give effect to the Convention. Under section 54 of the Offences Against the Person Act, it states:

> "Any person who unlawfully, either by force or fraud, leads or takes away, or decoys or entices away or detains, any child under the age the 10 years, with intent to deprive any parent or guardian, or other person having the lawful care or charge of the child, of the possession of the child…is liable to imprisonment for five years."

Mr. Vice-President, the Act further provides protection to girls and women up to the age of 18 years but only in specific circumstances. No protection is afforded to boys over the age of 10 years. However, to bring the Act in line with the Convention, it becomes necessary to raise the age of protection from 10 years to 16 years, thereby affording protection to both boys and girls up to the age of 16 years. A further amendment to the section would also remove the protection afforded to a father in respect of moving his child from any person having lawful custody or care of such child. These are the objectives that the amendments seek to achieve.

Mr. Vice-President, I beg to move.

Question proposed.

Sen. Martin Daly: Mr. Vice-President, may I begin with a prediction? If we pass this Bill today in this form, we will be abolishing the death penalty in Trinidad and Tobago. Now, that will please many of my colleagues, if I am right but, really, we are now completely backed into a corner by this legislative programme. Of course, if I am right, the Government which abolishes the death penalty by accident will pay no political price because, of course, these points will be raised long after we have had this election and probably the one after.

I am deadly serious and I am going to demonstrate why. I am going to say this repeatedly. We have been driven to the wall by this legislative programme. It is a very simple thing. It is not a lawyer's point. I would like Members to follow with me very carefully and I know the history of the death penalty because in the days when the government used to win cases, I was there.

I would invite Senators, first of all, to hear carefully that—now it may be that people want to abolish the death penalty, but I do not think we should do it by accident, particularly as I believe over 80 per cent of the country is still in favour

of it as I am, but I am not raising this point because I am in favour of it. I am raising this point because I think we have reached the absolute limit of legislation without any proper exchange of views, any proper time for mature consideration.

As far I as I am aware, I would ask Senators to follow this very carefully because I would like to be wrong. I would like to think that this was just another Bill; we just pass it quick and add it to the 80 Bills passed in a month and fine. But I do not think the population would be pleased if we did that. The law which, at the moment, authorizes the death penalty is section 4 of the Offences Against the Person Act. It simply says:

"Every person convicted of murder shall suffer death."

That one sentence is the law that currently authorizes the death penalty in Trinidad and Tobago. It used to read:

"Every person convicted as a felon of murder shall suffer death."

An amendment was done in 1979 to remove the words "as a felon".

Now, here are the two points that concern me. First of all, we are proposing—this is a means problem; it is a method problem—in effect, to restrict the death penalty for murder to certain stated categories, I think there are five. Let us just assume, for the purposes of argument, that there are five. This is really a method problem. We are proposing now to restrict the death penalty to five types of cases and the means by which we are proposing to do it—and if Senators would look at the first page of the Bill:

"Section 4 of the Act is repealed and the following new sections substituted:"

4.15 p.m.

I invite Members to look carefully at the word "repealed". What we are doing is we are removing the section that authorizes the death penalty in Trinidad and Tobago. We are removing it, we are repealing it—I nearly said killing it dead, but this is a serious issue. We are making this null and void. By repealing section 4, we are making the death penalty null and void. I doubt any of the Government's draftspeople would be able to dispute that.

Having removed that, the Government is then proposing to put something new in its place. My simple question is this: "Can the Government, having removed the death penalty, reintroduce it by a simple majority?" That is my question. I do not know if that risk that the Government wants to run is .001 per cent. Therefore, all that I am saying is we have to look at this very carefully.

I will tell you why this is so important. Here I have to rely on memory. I have not had an opportunity to get the material down from my office, because I am jumping from telecommunications to this that and the other. I do not have to worry about the Planning and Development of Land Bill because Sen. Prof. Spence and Sen. Prof. Kenny are taking care of that, as far as I am concerned. That is a simple proposition.

If the Government removes the death penalty, can it be reintroduced by a simple majority? The answer, clearly, has to be no. I will tell you why this is so important. I have to speak from memory because I do not have all the material with me. As far as I know, there were a series of constitutional challenges to the death penalty when this Government set about carrying out the death penalty after a long period of it not being used. I would not bore everyone with saying what all the challenges were. There were a variety of them.

I distinctly remember, I think it was, Briggs being the person who was subsequently hung after Chadee. I am certain that there is a judgment of the Privy Council. I am certain that in one of these death penalty cases of course, I have not had the time to get out the material—where, for the first time, it was squarely argued that the death penalty itself was unconstitutional. All the other previous challenges had been indirect challenges to the death penalty by different routes. I believe it was cruel and unusual punishment, because of circumstances surrounding the case, he had been kept in prison too long, and five years had passed.

In one of these cases there was a frontal challenge that the death penalty itself was unlawful. As far as I remember, the Privy Council ruled—I believe it was by a majority of 4:1—that the death penalty itself could not be unlawful in Trinidad and Tobago, because it was saved by the existing law clause. Let me explain what that is: Once the law was passed prior to the enactment of either the first or the second Constitution; whether or not it infringes the fundamental rights provisions of the Constitution, it is valid, it is saved, it is given immunity, because they say that existing laws, laws that are existing at the time of the passing of the Constitution, remain valid notwithstanding—"irregardless" as we say. I would really like the help of those who can see if I am following it through logically.

If the Government repeals the death—quite apart from the question about whether it can be reintroduced by a simple majority—the new death penalty law, which is what this is, will not have the protection or the immunity given by the saving of existing laws. In effect, the Government would be reversing—if I am right—one of the cases we won in the Privy Council. The Government would not

have the protection in the existing law clause. I really do not want to do this by accident, that is why I asked: "What model legislation have we followed?" I do not know what model legislation we have followed.

Certainly, it is all very well to say we have different categories of murder in the United States of America and so on. This is not how it was done in the United Kingdom, but in any case they did not have a difficulty. They did not have a written constitution with fundamental rights clauses, so they were free to do pretty much as they pleased. That is my first problem with this. I am predicting, I hope I am wrong, that we might, by accident, abolish the death penalty today. I certainly do not want to be a party to anything so fundamental, by accident. I think what I am saying is pretty logical; it is based on a certain amount of experience.

As a matter of fact, I remember it was in one of the cases that—I believe it was Briggs—Trinidad lawyers had not joined the team in London on that occasion, but, as usual we were up all night because of the time difference, we were in constant touch with Sir Godfrey LeKane and the people appearing for the state there. I remember when the Privy Council broke for lunch, which was early morning, 7.30 a.m. our time, there was a great big panic, we all assembled at the less salubrious chambers then occupied by the Attorney General, and the lawyers who were appearing for the state were asking us to trace the history of section 4, because a point like the one I am raising now was being raised, simply because we had removed the words "as a felon". The lawyers were trying to argue that we had interfered with death penalty laws. Because we had removed the words "as a felon" it was no longer saved by the existing law. I do not believe the point was pursued. I distinctly remember the panic, trying to find the history of this and faxing it to London during the Privy Council's lunch break. These are not figments of my imagination; these are things that actually happened where I was really present. I am very concerned about this.

My point is simply this: If we did not have this crazy legislative agenda, and we were working in a normal Parliament with sane people, I would have been able to write the Attorney General, I would not have brought this up in a forum like this, I would have had the time to do what I normally do. I nearly always circulate my amendments in advance, and I nearly always—if there is a fundamental point like this—write the Minister concerned and say: "I am worried about this, can you have your technical people clear it before?" This is a very fundamental issue that we are dealing with in this kind of hurry, hurry way. I am really concerned about it. Because, for some reason, this now has to be passed before November 27—let us hope I am wrong. I really hope I am wrong.

Mr. Vice-President: Sen. Daly, I wonder if I can offer you the benefit of a tea break? Maybe with the benefit of half of an hour with refreshments, we could continue. I propose suspending right about now. We will resume at 5.00 p.m.

4.25 p.m.: *Sitting suspended.*

5.05 p.m.: *Sitting resumed.*

Mr. Vice-President: We continue debate on the Offences Against the Person (Amdt.) (No. 2) Bill. I invite Sen. Daly to continue.

Sen. M. Daly: Mr. Vice-President, this is really the most stressful contribution I have ever had to make, because the consequences of this Bill are so far-reaching. I have repeatedly tried to tell this Government that if you interfere with one building brick in the Constitution, you really have no idea what the ramifications are; it is really very serious.

I had the benefit of a dialogue with the Minister during the break. I am aware—and did intend to deal with the fact that there are provisions in the Constitution that deal with what happens when you re-enact a law, but those do not satisfy me at all, and I will explain why.

The next difficulty we get to is that we are now making the charge of murder—let me put it a different way: we are now making the question of whether you will face the death penalty at all. We are now introducing a discretion prior to the charge being brought. That seems to be where the difficulty lies, because every person who gets the benefit of a discretion to be charged with a lesser count of murder—and the range of the discretion is quite terrifying listening to the Minister's presentation—would immediately say that he or she did not get the benefit of the equality of treatment provisions under the fundamental rights part of the Constitution. It seems to me that we are introducing a substantial derogation of the rights of accused persons by conferring upon the prosecuting authorities this discretion. That is why I do not think that the provisions of clause 6 will help the Government to save this Bill. It is a very, very far-reaching matter.

Quite frankly, Mr. Vice-President, I have thought about it during the break, and whether people think it is funny or not, the stress under which the working Members of the Senate are placed in matters like this is almost intolerable; we can only do our best. I am no longer going to beg the Government to stop and pause, as we are supposed to do in the Senate, when we pass serious laws. If they are determined to go on pell-mell, I am not going to beg. I said it in every way possible: please, let us observe the spirit of debate in the Senate, let us take a careful look at things. If they are determined to ram it down our throats, I cannot beg.

I have made about six speeches on the subject of how the Senate is supposed to treat with legislation. I have made about six contributions over the last two weeks on this subject, and it just gets more and more serious. So I am just going to say what my other problems with this Bill are; I think they are extremely serious.

Mr. Vice-President, may I make another prediction: whether I am right or wrong on the constitutional issue, every single person against whom the discretion is exercised, if they get charged with Murder 1, is going to file a constitutional motion and an application for judicial review, to review the decision that charged them. So we are now going to have not only a multiplicity of litigation after conviction, but also a multiplicity of litigation before conviction. There is no way that people are going to accept when the discretion is exercised against them.

If you take one of the examples that was given: yes, we have now recognized Battered Wife Syndrome, so that is now, so to speak, a defence. I do not want to be too technical about it. How on earth, until the case is properly examined by lawyers on both sides, are you going to know whether the claim of Battered Wife Syndrome is true? So the time when you come to exercise your discretion, whether to relieve the person of a charge of Murder 1, you are only going to have one or one and a half sides of the story. You are not going to know everything about the case. Then, of course, you are going to be relying, almost exclusively, on the information in the possession of the police whether to make that charge. So it is going to be a very one-sided decision. You are going to be exercising your discretion on a very one-sided basis.

I am not at all satisfied that that is the way we have to deal with this. I really think that if we are going to do this, apart from doing it in keeping with the constitutional provision, we simply have to say that there is an offence of murder, that these are the capital murders, and everything else is not murder. Calling it Murder 1, 2, 3 and 4 is just confusing the issue. It is either murder or manslaughter, and leave it at that. Why do we have to introduce all these new categories and all this confusion?

Many people who practise in criminal law and banking law, as I do, we are really "licking our chops" in anticipation of the work that is to come out of all this legislation. That is another way that I could look at it: pass as many bad laws as possible, and I would have fun “licking it up”; and I certainly will not be giving free advice as I am doing every week.

I have a conceptual problem. Apart from a constitutional problem, I have a conceptual problem with the idea that anybody bringing the prosecution can fairly have such a wide range of discretion. In any event, apart from speeding up things, every time they exercise their discretion we are challenged. There would be a challenge.

Then I would invite Senators to look—I mean, this one is really frightening—at the bottom of page 3. Now, categorizing capital murders have been done before. Sen. Prof. Kenny and I are sharing a book at the moment called *Capital Punishment and British Politics* written by James Christoph, and it gives you the whole circumstances leading up to what happened in England in 1957 when they passed the Homicide Act, which created the separate offence of capital murder. We were looking at the categories to see how they compared with this and so forth.

We have now put in a category:

> "murder that is especially heinous, atrocious or cruel manifesting exceptional depravity;"

Now, that is so wide and so elastic, how are you possibly going to make a decision based on this? Everyone might agree that a Westmoorings murder fits here, but how are you possibly going to decide prior to bringing a charge on this? This clearly has to be deleted; it is far too uncertain. It leaves far too much room for subjective evaluation of the people making the decision to prosecute.

Then on top of that, you have this provision in relation to the discretion. That is not workable; that is a totally subjective thing. Then we have 4D on page 6, which muddles up murder and manslaughter as far as I am concerned. I am not a criminal lawyer, I am a constitutional lawyer. Then I see in 4F that it states:

"…the Director of Public Prosecutions may—

> (a) having regard to the nature of the circumstances in which the killing took place, himself determine in which category the offence falls;"

But he only has the police information when he is making that determination, so how is he going to make that determination?

What I see is a whole new growth industry in constitutional motions and judicial reviews, because if the Director of Public Prosecutions decides this against me without the benefit of hearing what my potential defence is, I would say that he decided it without given me a chance to be heard. You deprive me of my liberty—because you do not get bail for a capital offence—based on what the police tell you.

So you have an obligation, just like the Privy Council's rule that the Mercy Committee has an obligation to hear what the prisoner has to say. You have an obligation to hear what I have to say, and examine my potential defence before you exercise this discretion. Then what? Does he conduct some sort of mini-trial to decide where the truth lies? Then there is another provision where he could go to a judge to tell him which indictment to use. So then what is the judge going to do, have a mini-trial in advance of the trial? And we are being asked to say that this is going to make cases go through the system quickly?

This is a whole new growth industry, producing a whole new set of pre-trial litigation. In those Boodram cases, in which I represented the state 100 per cent successfully, we fought very hard in the first Boodram case to get the courts to decide that whatever you wanted to raise before the trial you had to raise it before the trial judge. So we could not rush off to the constitutional court, then run back to the criminal court, then rush off to the constitutional court again.

This Bill is going to make it possible now to have pre-trial examinations of the evidence by some judge other than the trial judge, so everything we fought for in the first Boodram case—well, a lot of what we fought for—is going to be given away. So the end result is that we are going to have litigation before the trial, then we will have the trial, and then we will have litigation after the trial. I do not think this is the way to go about it.

I would just say that this is a very complicated subject. If we make any mistakes the courts would be only too happy to say—it is not very easy to persuade them to uphold capital punishment. The courts would be only too happy to say that as a result of this Act, capital punishment is no longer lawful.

If I had to do this, I would like to say how I would go about it. When the Privy Council decided Pratt and Morgan, and basically said that you had five years to complete the business of a trial, unlike some other Caricom countries, Chief Justices Bernard and De La Bastide set about making sure that we met the Pratt and Morgan deadline. We did not whinge, quarrel and complain. We said, "Those are the conditions under which we have to work, we will do it," and to our eternal credit, the country was able to meet the Pratt and Morgan deadline; to the point that the Privy Council actually complimented us for doing it. Other Caricom countries are still whining and wailing that they cannot possibly make the five-year deadline.

If I had to introduce a discretionary element in murder cases, in order to take care of mitigating circumstances, I would do it through the operation of the Mercy Committee. I would embrace the recent judgment of the Privy Council and get a

really strong mercy committee with people who have the time and temperament to do it, and let the question of relief from the sentence of death be determined there; particularly now that the Privy Council says that the Mercy Committee has to hear both sides of the story.

That is the stage at which you decide whether to exercise mercy, because in many of these cases like self-defence and Battered Wife Syndrome, you would not get a verdict of murder anyway, so it will never reach the Privy Council. If, as there are, some cases where persons are unjustly accused and they have no bail, the answer is that you have to make sure that the trials come up quickly enough. We have made tremendous progress with that. There is no need to introduce this in the guise that you are going to make people spend less time in jail on a murder charge.

Mr. Vice-President, I am really stressed out about this. From whatever angle you examine this Bill, we are taking a very, very fundamental step with very little dialogue, and I am quite concerned about it. Even if I am wrong about the constitutional propriety of this, I have tried to say, as briefly as possible, what the practical difficulties are going to be in doing this. So now you are not only never going to be able to hang anybody, it is going to be almost impossible ever to get anybody before a jury on a charge of Murder 1, because of all this footwork that is going to go on before the trial.

I really think we are making a serious mistake. All of us, including myself, have been asking to divide murder into categories. I think there is room for a lot of debate about how we do this and what the modalities should be. I am not sure that we should simply have a bill—I do not care how long it has been in circulation. I do not know about anybody else, but I cannot.

As an Independent Senator, I no longer bring my red folder to the Senate. This is the week's work in the Senate. [*Senator shows folder*] How can we possibly go through all this material? Not all of us speak on everything; we divide the labour unofficially, but this is this week's work in the Senate put into a separate folder. We cannot do all this in a short space of time. If you are passing bills that do not have these dire long-term consequences, that is a different matter.

5.20 p.m.

Yesterday we got a Bill of 74 pages concerning employment conditions at 2.00 p.m., and then we were besieged with telephone calls about it. Well, we know why that is. It is another one that has to go through before elections to satisfy certain constituencies, but we will cross that bridge when we come to it.

Then we were told we had to debate a Bill of 74 pages which was delivered at 2.00 p.m yesterday together with a Bill of 35 pages which I agree we had a long time ago, but we cannot look at all the bills. This is what we got yesterday. *[Raises a pile of papers]* The Leader of Government Business will move that these Bills be debated together.

Now, if we had taken this seriously—because this is what we got at 2.00 p.m. yesterday—we would have had to do 110 pages of homework between 2.00 p.m. yesterday and 1.30 p.m. today and that is absolutely ridiculous. Quite frankly, if the Government is confident about returning, what is the problem? Rest these things down, do them in the next term and you will have the benefit of the new Independent Senators to help you. What is the problem with that? How could we read 110 pages between 2.00 p.m yesterday and 1.30 p.m today and make any sense of it?

A few persons gratuitously sent me comments through the fax and all of that is what is filling up inside of here and I have to read this stuff. Serious commentators who sent me material on this, and Sen. Mahabir-Wyatt has two folders like this of comments on 110 pages of legislation which we found out at 2.00 p.m yesterday—or we were threatened at 2.00 p.m yesterday—with having to do at 1.30 p.m today.

Mr. Vice-President, I am only mentioning it to say that there has to be a limit for how much longer we are going to pass laws under these conditions. If the Parliament has to cease on November 27, 2000 so be it, let it cease. Let us pick out the things that have been around. The Telecommunications Bill has been around passing back and forth since February, maybe that deserves a place in the queue to the exclusion of the two labour Bills which have just appeared, but we cannot do them all.

In relation to this Bill, I have very serious concerns, I have no idea if I am right. I have not been able to complete my research and I think it is important that we go back to the normal rules of the Senate where a Bill is brought, if serious points are raised, we have an opportunity to discuss them, either reach some kind of consensus, or know at the end of the day what choices we are making. This is just too *vaille-que-vaille* for my taste and, in this case, we could be making a very serious mistake.

Mr. Vice-President, through the facilities which you provided me during the tea break, I had to write down on a napkin the information which I received by telephone. I got some more material and I was reminded about some more material that in another one of these Privy Council cases they tested the death

penalty against the Bill of Rights of 1680-something and said unless you have a very clear and concise law, you cannot have capital punishment. It is in violation of the Bill of Rights of 16-whatever, and our law was adjudicated—the section to which I refer is section 4, together with section 57 of the Criminal Procedure Act—which actually specifies hanging was held to be sufficiently clear to pass the test of a law that was clear enough to be good, notwithstanding the Bill of Rights of 1680-whatever along with the assistance of the saving clause.

Is some court going to be able to say that a provision that gives the charging authorities a discretion based on whether something is heinous, depraved or whatever? Take a simple thing, I am sure if somebody committed a brutal murder of a male homosexual, 50 per cent of the police might be male chauvinists or homophobes and say: "Well, he look for that", and they will have to determine. Suppose they cut the man into little bits and rearrange his parts, the police might say: "Well, he look for that." because they are homophobic. Is that the basis on which you are going to exercise this discretion? These are very real problems.

Mr. Vice-President, as I say, my position is that I have spent close to the last six weeks trying my best to discharge—all of us, not me alone, Sen. Prof. Kenny worked on a Bill with 228 clauses. Some weeks he came here six days out of seven working in committee, and I am not going to beg the Government to pass good laws anymore. We will just have to, as the famous saying goes: "let the chips fall where they may." But this one is serious and I am making it absolutely plain that I cannot be responsible for some accidental change which has some potentially far-reaching consequences.

I end by re-emphasizing that even if I am wrong on the constitutional point, there are these very serious flaws in this legislation which could lead us into a lot of difficulties.

Thank you, Mr. Vice-President.

ARRANGEMENT OF BUSINESS

The Minister of Public Administration (Sen. The Hon. Wade Mark): Mr. Vice-President, after consultation with the acting Attorney General, and having regard to some of the points we have heard during the course of the debate so far, I seek leave of the Senate to have this Bill deferred to the next sitting of the Senate.

I would also like to reserve my right to speak on this matter at the appropriate time.

Agreed to.

PLANNING AND DEVELOPMENT OF LAND BILL

Order for second reading read.

The Minister of Housing and Settlements (Hon. John Humphrey): Mr. Vice-President, I beg to move,

> That a Bill relating to the planning and development of land be now read a second time.

Mr. Vice-President, since last I was in this honourable Senate debating this very Bill, a tremendous amount of tangible work has been done. Cabinet appointed an interim National Physical Planning Commission which has acted like the *de facto*—not the *de jure*—commission, and has laid a tremendous amount of groundwork. They had achieved the conceptual planning for the whole country and I have the conceptual development plans for the entire country in four volumes.

The first volume is a national report which includes the entire exercise that was undertaken in doing the physical planning. We started with an exercise of a vision and the experts looked at the physical characteristics of Trinidad and Tobago, identified those characteristics that needed to be preserved for all time so that all future generations would enjoy the bounty that the Almighty has given us with tremendous generosity. This little country of ours—I think everyone would have to admit—is really blessed by the Creator.

So we did that and it was not difficult because there are features of our country—let us deal with Trinidad—that quite obviously all of us value and would want to preserve for all time. For example, the Northern Range of mountains not only gives us shelter from the Caribbean hurricanes, it gives us the condensation that is required for rainfall; it gives us a magnificent natural area for the enjoyment of ourselves and should be preserved and very carefully developed so that we do not destroy it.

If you look at the northern coast of Trinidad there are exquisite features. There are beautiful rivers, beaches and rugged landscape. Again, we need to preserve it. If you look at the north-eastern peninsula and you go down the East Coast, again you see physical features that must be preserved. There are areas where the turtles for thousands of years have been coming to lay their eggs and Trinidad is a host to several varieties of turtles, and as long as these things are preserved, those varieties will be preserved.

In the Nariva area—and we will all remember the work done by Miss Molly Gaskin to protect that area from the growing trespassers who were converting it to rice, and although we value rice production, most of us realize that that area was too valuable to convert from its natural state into any kind of production. In fact, I am advised that it is a unique ecosystem even though we are a continental island, an island off South America which has vast natural areas. The little Nariva Swamp of Trinidad is unique so that must be preserved.

There is a central range of mountains, not quite mountains, they are hills which serve a very important function too which have historically forest reserves that have been established. If you go to the other side of Trinidad, the Gulf of Paria, you have the Caroni Swamp which I prefer to call the Caroni Mangrove Gardens. Any Member of the Senate who has had an opportunity to visit the Bird Sanctuary will appreciate what I am saying. It is very exquisitely beautiful and they are quite large so that the prevailing winds that cool the capital city are oxygenated by the mangrove so it is very valuable. If you go further south you have the wetlands of Oropouche area. Again, not many people have actually seen those, but those of us who have seen them realize how magnificent they are.

Mr. Vice-President, the first exercise was engaged in identifying those natural features, so that the physical planning that followed was based on the preservation of those and other natural features. We produced these volumes: volume 2 is local area concept lands; Chaguaramas, Port of Spain and the urban corridor that is what we call the East/West Corridor; volume 3, is Sangre Grande, Mayaro, Guayaguayare, Point Fortin; volume 4, Tobago, Penal, Siparia, Fyzabad, Princes Town and Chaguanas. These are plans in concept. You cannot develop any of these areas on conceptual plans, you have to go to the next stage into development planning so that you can identify projects that can be executed in relation to the plan.

We did Couva at that stage so we have, in fact, a Couva Development Plan with two volumes, and the reason we had to do that, they came very urgent with all the natural gas that was being found. There was more and more demand for industrial sites for gas-based industries, and since Couva has the Point Lisas Industrial Estate, it was more economical for Trinidad and Tobago to site those industries where the gas lines had already been installed and where a court had been developed. We are thinking, however, of the possibility of more industrial estates and some investors who have expressed interest, if those things gel, we are

going to see Trinidad and Tobago host to a mega steel industry and host also to an aluminum smelter with the downstream activities from producing raw aluminum. These things will give the future of Trinidad and Tobago tremendous amount of economic activity and a tremendous number of jobs.

5.35 p.m.

We looked at the country as a whole, both Tobago and Trinidad, and and we found that what was needed was to open up the areas that are not presently productive and settled. If you fly over Trinidad at a certain height you will see the settlement pattern is in the form of a "T"; from Arima going to the western peninsula, then along the Solomon Hochoy Highway; Chaguanas, Couva, up to San Fernando. Most of our population lives within that space. But we are settled in a way that there is not sufficient land to be able to do production either through commercial, industrial, or agricultural activity. It is a dense area of settlement.

In fact, all of us would know that there is something wrong when you try to come into Port of Spain in the morning and get out of Port of Spain in the evening. Something is wrong with that pattern of settlement. So we decided on a strategy that we called a growth-pole strategy—but you could call it by other names and it means the same thing. It could be called a nucleated community strategy. That strategy identified 13 areas of the country that need special planning consideration, so that those areas would support the requirements of the settlement communities around them. There are several areas in the East/West Corridor. Of course, it is the capital city of Port of Spain, which has to be treated as a planning entity.

If you go East you would reach San Juan; again, a very busy hub. If you go further East it is Curepe; and further East is Tunapuna, then Arouca and then Arima. So the planners singled out all of these areas in the East/West Corridor. Of course, Chaguanas is an extremely important area that is growing by leaps and bounds, Couva and the towns in South and East Trinidad. The town of Mayaro in the East is a very important hub of activity; and Mayaro is getting more and more popular as a resort destination. You, therefore, have to put in the town of Mayaro the services that would be required to support those communities. You have got Fyzabad, Siparia, Princes Town, Penal and La Brea.

What the planners did was to devise a road network that would make it convenient for those who wish to settle in all of those towns of the country that

have a growth potential. But a decision was taken not to go backward in standards but to go forward and leap as far as we could into the future, to design the main highway system as expressways with modern interchanges. So that there would not be traffic lights holding up the movement of traffic. All of these form part of the conceptual planning.

Mr. Vice-President, what I am doing this afternoon is unique in the Parliament. In fact, I am going to ask your leave to actually create a precedent. All of this documentation has been put into two CD-Roms and I have brought 30 of each. If you give me the leave, Mr. Vice-President, I will arrange to distribute two to each Senator so you can go into your computers and you do not need to carry this big bundle home with you. *[Desk thumping]*

Mr. Vice-President: I am prepared to give the widest definition of a document that I can and to grant leave to the hon. Minister to circulate in the form of a CD-Rom the five volumes of his documents. *[Desk thumping]* So you have my leave.

Hon. J. Humphrey: Thank you very much, Mr. Vice-President. In fact, in that box to the South of the chamber are the CD-ROMs, so if the messengers could possibly sort them. If you unpack each of the small boxes you will see that there are two distinct CD-ROMs, one with a blue and one with a green. So each Senator should get a blue and a green.

I had said in the beginning of my contribution that we had, in fact, been here before. In fact, the first time I came to the Senate a Select Committee of Senators was established, and spent a lot of time and effort and consulted with our planners and our experts and grappled with the legislation as it was then, which, by the way, had been passed in the House. We rushed it through hoping to save it, but it lapsed. But that work of the Senate was saved, and the second time it was referred to a Joint Select Committee. So the Senate grappled with it, did very useful work and then a Joint Select Committee took over.

There were two meetings and again, we made no progress. With all the input, especially of the Independent Senators at the time, we have amended the Act. There are further amendments to be introduced, which really focussed on the ecology because the original format did not include a definition of ecology and ecological balance, and we felt that it was important in the age of high technology, that we find ways to protect the ecological balance. Therefore, we

had to define the term "ecology" and "ecological balance" and make provision to ensure that the very, very delicate balance of the natural scheme of things would be preserved with human development working side by side with nature. So that is an amendment that is going to be moved.

During the tea adjournment I had an opportunity to discuss with some of the Independent Senators and the hon. Leader of the Opposition in the Senate, and it was agreed that rather than go through a lengthy debate on the Bill that is before us that an informal committee of Senators could be established and possibly given a deadline. Sen. Daly has been complaining that the agenda is so heavy that he has been under more stress during the last week than in his entire practice as a lawyer. If we could agree on that, we could give the Senate a reasonable time so that the Committee could go through the Bill and the Committee could call upon those who have made the major inputs, especially the members of the International Physical Planning Commission, to answer any query that might arise. So that has been proposed and the Leader of Government Business has agreed. Mr. Vice-President, can I move that the Senate resolve itself into informal committee. If Senators could indicate the sort of time that would be needed. *[Discussion]*

Mr. Vice-President, the Leader of Government Business has suggested 10 days, would that be adequate?

Sen. Prof. Spence: The week after next, which would be 10 to 14 days.

Hon. J. Humphrey: Mr. Vice-President, I move that we suspend the debate for this occasion and refer to an informal Committee—I am not too sure how the Committee will be appointed—for reporting to the Senate in 10 days.

5.45 p.m.

Mr. Vice-President: Let me try to help. I do not think we have the structure or the mandate in our Standing Orders to have informal committees. I think what needs to be done is that we simply should defer the debate for a two-week period, and then the informal structuring of a committee will take place. Its terms of reference will be identified, its work will be done, and then it will be brought back at the next appointed sitting of the Senate. Simply, what I am hearing here, which I am going to put to you, is that we, in fact, defer the debate that we have already started on this Bill to a date to be fixed.

Question put and agreed to.

Debate deferred.

TELECOMMUNICATIONS BILL

Order for second reading read.

The Minister in the Ministry of the Prime Minister (Sen. The Hon. Lindsay Gillette): [*Desk thumping*] Mr. Vice-President, I beg to move,

> That a Bill for the regulation of telecommunications in Trinidad and Tobago, be now read a second time.

Mr. Vice-President, it truly gives me a great sense of pride to stand here this afternoon before this honourable Senate to present this ground-breaking piece of telecommunications legislation which, in effect, would end the monopoly of TSTT and would open the way for competition. It may be coincidental that just today the OECS countries, which really is a combination of Dominica, Grenada, St. Kitts and Nevis, St. Vincent, the Grenadines and St. Lucia, signed an agreement which will completely open competition by November 15, despite appeals from Cable and Wireless that it be phased in over time rather than through an immediate shock approach. That is really from the *Trinidad Guardian* of Thursday, October 19.

Mr. Vice-President, some of my friends on the Independent side actually showed some concern for me in piloting this Bill as they felt it may find itself embroiled in controversy, detracting from the core objectives and principles of the Bill. Nevertheless, after much consideration I felt duty bound to pilot this Bill, especially after spending so much time in creating the policies that I think would assist in modernizing this country's vision of a knowledge-based society. As a matter of fact, I sometimes ask myself the question, "Who would you rather fix your pipe, a carpenter or a plumber?" By that same analysis, my experience into telecommunications goes back well over 18 years. I actually might be considered a pioneer in the industry or even an entrepreneur throughout the region.

I realize that the creation of wealth through technology, or what I call monetizing technology, would be the way for a developing country to develop, or even export services and compete against the most modern markets of the world. Convergence has occurred. Media businesses, IT, telecommunications and even knowledge industries are all converging. We now have the distinction of platform, content and carrier-based businesses because of convergence, and this seems to be the battle where economies of the world will eventually be judged.

Quickly, "platform" means the computer side of the business; "carrier-based businesses" means ISPs like service providers, and "content-based businesses" really means the information that the carrier-based businesses eventually use. The business of the 21st Century and who leads has become far more complex than before, and liberalization of telecommunications is a must if we are even to be considered. My interest is purely one, Mr. Vice-President, of levelling the playing field and encouraging investments in this area to what I think would eventually become the flagship of this country's wealth. This Bill will benefit all.

Mr. Vice-President, this Bill seeks to harness the technological revolution that is taking place in the global telecommunications industry and enable Trinidad and Tobago to harvest the substantial benefits of this emerging sector. It will create and promote new, additional and increased investment in this sector and, consequently, exponential economic growth for Trinidad and Tobago. In fact, a brand new and exciting world of technology and telecommunications advancements is growing internationally, regionally and also here at home. The Bill is premised on the basis that technological innovation and consumer demands are driving the convergence of various communications and media businesses. The Bill establishes a fair and neutral regulatory authority designed to level the marketplace for all providers of telecommunications services. At the same time, this innovative Bill acknowledges the rights of Cable and Wireless and the important role TSTT must continue to play, as the Government is the majority shareholder in this partnership with Cable and Wireless.

This Bill replaces the present statutory and regulatory framework. The old Bill to which I refer was, in fact, drafted long before the invention of many of the modern technologies that this new Telecommunications Bill seeks to regulate. Mr. Vice-President, there are detractors who seek to forestall the growth of this industry in Trinidad and Tobago. This Bill will protect our economy from some of these detractors who actively seek to stymie this process for their own needs. It will dispel the concerns of other critics, such persons who erroneously believe that this Bill will benefit just one or two investors. To others, of course, who are wary of change, we wish to leave them secure in the knowledge that this Bill only affects a legal *status quo* that the economy has clearly outgrown. Ultimately, this Bill answers the questions and concerns of all, because the new legislation opens up competition for any investor, be they a new entrant in the market or one established in the industry to compete in an open and fairly regulated telecommunications industry.

Mr. Vice-President, for over 10 years successive governments have considered these issues and today's Bill represents the culmination of years of intense study, local, regional and international consultation and, finally, the application of global best practices to Trinidad and Tobago. The drafting and presentation of this Bill has been guided by established philosophical principle and strategic policy choices that are consistent with telecommunications legislation regionally and internationally, and also in consultation with the International Telecommunications Union (ITU).

Like many other countries around the world, existing laws applicable to communications businesses were drafted over half a century ago. However, since the early 1980s, countries have been updating and overhauling their laws to take account of developments in technology, the inevitability and desirability of competition and consumer demands. This process is essentially completed in Canada, the United States and the United Kingdom, elsewhere in Europe as well as in Japan, much of Latin America and Australia. Many developing countries as well have also recognized the benefits of a modernized legal framework for telecommunications as a way of improving service to consumers and attracting businesses.

This Government's vision and clear objective is for Trinidad and Tobago to become the leading centre for information technology and knowledge-based industries throughout the Caribbean area. We have the advantage of an educated workforce with both professional and entrepreneurial skills. We can and should become the Caribbean's leader in e-commerce, Internet-based businesses, multimedia development and new media, content-based technologies. All these businesses and services, however, require new, affordable, efficient and low-cost telecommunications services to reach customers both locally and abroad.

Mr. Vice-President, one of the fundamental policies driving our reform process is the introduction of competition in the telecommunications sector. Competition will bring improved telecommunications systems and lower cost services to all customers, the people who matter most, the citizens of Trinidad and Tobago. Providers will be compelled to offer lower prices and improved services, thus citizens will increasingly be able to choose among service providers based on quality, service and price. Most importantly, the Bill will facilitate the implementation of pro-competitive policies.

Today, as we all know, our overseas services are currently priced well above international norms. These current high calling tariffs do not serve the best interest of our population and artificially depress the number of calls we would

make to friends and relatives, and to potential business partners outside the country. High prices can be an impediment to innovation and the development in this country of new regional and global telecommunications-based industries. Mr. Vice-President, if we are able to realize lower cost while achieving improvements in telecommunications services, we expect to see an increase in Internet usage which will more broadly stimulate the widespread use of computers and help to build our human capital for a knowledge-based society.

Furthermore, experience worldwide in places such as Singapore, Hong Kong, Malaysia and South Korea teaches us that businesses are locating where they find an efficient, high-quality and low-cost telecommunications infrastructure. Our policies will ensure that the businesspersons and investors will designate Trinidad and Tobago as their first investment choice in the region. In turn, these new businesses that will be attracted by our country's growing reputation in the telecommunications sector will also be in the marketplace to hire people. So, Mr. Vice-President, this will be a major benefit of the liberalization of the telecom sector, creating employment opportunities for our people and our citizens.

Finally, Mr. Vice-President, telecommunications broadcasting and information-based services are converging worldwide. Our existing laws were drafted long before these developments. The merger of different communications services and infrastructure has required that we carefully examine our legal framework and approach this sector with a comprehensive and futuristic vision as well as a new set of policy objectives. Achieving these objectives of attracting and nurturing competitive telecommunications services and infrastructure that are efficient, low-cost, up-to-date and innovative depends on the implementation, of course, of a suitable legal and regulatory framework. A key element of such a framework is that it be open and transparent and that there be an impartial, specialized, regulatory authority for the telecommunications sector. At the same time, our laws must enshrine the bedrock principle of fair play in the promotion of widespread and high-quality telecommunications services throughout the country. With these objectives in mind, it became absolutely necessary to draft new telecommunications legislation.

Mr. Vice-President, the question may be asked, why are we introducing this Bill at this time? As I have suggested, a new, comprehensive legislative approach to the telecommunications sector is long overdue in this country—long overdue. We are mindful of developments globally where national telecommunications sectors have long been in the state of liberalization. Few developed countries tolerate monopolies in the provision of telecom services. Increasingly, telecom

legislation is being overhauled to accommodate new technology, such as the Internet. All in all, we in Trinidad and Tobago should not be left behind, and we are being left behind right now.

Some of the direct benefits that have been created worldwide are benefits such as economic growth, lower prices to consumers, new businesses, better services, greater consumer choices and new jobs. Of course, to realize those benefits, however, we need to establish a legislative framework in which competition can thrive. The general agreement on trade and services of the World Trade Organization (WTO) committed all signatories, including Trinidad and Tobago, to set up competitive principles for all telecom services, other than so-called basic telecommunications services.

In the early days, basic telecommunications services were just really voice, telegraphy and now telecommunications services encompass convergence, which also includes wired, wireless services, Internet-based services, IT-based services and technology—things like that. Then in February 1997 Trinidad and Tobago made further commitments to the World Trade Organization with respect to nearly all telecom services, facilitating openness and transparency in our regulatory processes and taking steps to monitor and prevent anti-competitive conduct by dominant service providers. In short, the Telecommunications Bill, 2000 is also needed at this time in order to implement our country's international obligations.

Mr. Vice-President, I have already made reference to the badly antiquated state of our current legal instruments, which makes adoption of a modern telecommunications legislative framework an imperative at this time—an imperative. For all providers other than TSTT, the only statutory instrument is the holdover from colonial times, the Wireless Telegraphy Act of 1936. Needless to say, that legislation, which has not been updated, fails to take account of developments in the sector in the last 60 years. As an example, since 1936 the Act under which we were regulated only regulated voice services—since 1936, I think—of the host of other technologies that we have right now, one example being the Internet.

6.00 p.m.

Mr. Vice-President, as a result, the ability to regulate certain services, such as wireline-based content services is very uncertain. Moreover, there is no solid basis or clear set of principles on which telecommunications services, other than those provided by the Telecommunication Services of Trinidad and Tobago (TSTT), might be authorized or even regulated.

The somewhat more comprehensive law that regulates TSTT is the Trinidad and Tobago Telephone Act of 1968, which is also decades old and that was really drafted for what we know now as TSTT—it was then call TELCO—to operate as a wired-base voice telephony service in 1968. That law was drafted to authorize the Trinidad and Tobago Telephone Company Limited, of course, to provide domestic services, which is voice telephony. It fails to take account of more recent developments, moreover, on its own terms, it would not apply to new providers of telecommunications services.

In 1991, the domestic operations of the Trinidad and Tobago Telephone Company were integrated with the external operations of Textel into what became Telecommunication Services of Trinidad and Tobago (TSTT).

On December 20, 1989, the government and Cable and Wireless entered into a shareholders' agreement into which Cable and Wireless acquired a 49 per cent stake in TSTT. That shareholders' agreement also has certain provisions that are relevant to TSTT's participation in the telecommunications sector.

After the execution of the shareholders' agreement, the government prepared the Telecommunications Authority Act 1991. A great deal of work went into preparing that Act, which was assented to on November 18, 1991. That 1991 Act, however, was inadequate for the rapidly developing telecommunications sector. Essentially that Act, if proclaimed, would have established a new authority and would have repealed the 1936 Wireless Telegraphy Ordinance. It would not however have established a framework for the introduction of competition.

Mr. Vice-President, throughout the 1990's it became increasingly apparent that our existing telecommunications laws were simply inadequate to achieve the important national objectives I have just described. Proclamation of the 1991 Act, therefore, would have served no useful purpose.

It was only in June 1997, under this Administration, that Cabinet established a working group, chaired by Central Bank Governor, Mr. Winston Dookeran, to prepare a draft national policy on telecommunications. The working group had a far-reaching membership of academics, officers of the Government and a broad range of representatives of affected sectors such as new providers of service, labour, business users and, of course, TSTT.

It was, indeed, my personal privilege to serve as part of this group as a representative of the Association of Broadcasting, Radio Communications, Information Technology and Telecommunications. This working group reviewed a wide range of policy documents on telecommunications. It consulted with

principal stakeholders and with the Caribbean Telecommunications Union (CTU). It examined the international environment and compared the telecommunications situation in Trinidad and Tobago with that existing elsewhere. Its principal conclusions are worth mentioning:

(1) Trinidad and Tobago cannot be isolated from global developments, such as the evolution of technology, prices and industry structures.

(2) The need for an updated policy in the sector is urgent.

(3) Amendment to the 1991 Act is necessary.

(4) A new regulatory body must be created as soon as possible.

(5) The Government should adopt a set of policies, including those relating to competition policy, universal service, licensing and interconnection among service providers.

The report of the working group forms the basis of this Bill before you here today.

It should be noted also, Mr. Vice-President, that since January of this year, we have been engaged in intensive consultations with Cable and Wireless on our overall policy and legislative approach, as well as on specific provisions. We thought it was important to involve Cable and Wireless in this process for two reasons. First, Cable and Wireless is our partner in TSTT, the incumbent provider and most important player in the sector at present.

Second, the company has valuable and substantial experience in legislative and regulatory reform of national telecommunications sectors worldwide including the Caribbean, where it has taken on the role of both incumbent and aggressive new entrant. Cable and Wireless has provided detailed comments, on issues both general and specific and has sent an expert team to meet with our drafting group on several occasions over the last several months.

It is important to mention that we have also held extensive discussions with TSTT, who have been very helpful in providing comments and suggestions on the Bill. These have also been taken into account, to the extent possible, bearing in mind that Government must take a national holistic approach to the sector and TSTT is duty-bound to protect itself in a competitive arena.

Mr. Vice-President, before turning to specific provisions of the Bill, let me describe certain fundamental policy principles that we took into account in crafting this legislation. There were two overriding principles, which guided us in

drafting the Bill. Firstly, given the convergence among media and communications, the Bill would have to take into account the entire communications sector. Accordingly, the Bill applies to all types of communications services. It applies to content services, whether they are delivered by traditional over-the-air-terrestrial broadcasting stations, cable television systems, wireline telephone services, the Internet, or even satellite based services.

It also applies to all types of telecommunications services, including public telephone and other public services, whether delivered by conventional wireline means, over the Internet or, using the radio spectrum. Shortly, I will turn to these different types of services, and how the Bill applies to them.

Secondly, Mr. Vice-President, the Bill provides a neutral framework in which future policy developments of the Government can be implemented. In other words, certain fundamental policies, such as whether, when, and to what extent there will be competition for TSTT's public telephone services, remain for the Government to decide in the first instance. Such policies are not prescribed in the Bill, nor are they left to the regulator. Instead, the Bill establishes conditions that are applicable to the granting of concessions and licences and sets out provisions that would be contained in them. The Bill contains policies for establishing and maintaining a level playing field among incumbents and new providers and for ensuring that all the regulatory processes will be fair and open.

Mr. Vice-President, the Bill relies on a series of critical definitions that distinguishes different types of services. In this respect, the Bill is no different from telecommunications legislation in virtually all other jurisdictions. The structure of the Bill can be quickly discerned from the Explanatory Note and the list of contents. Accordingly, I will only summarize the structure here.

Part I deals primarily with definitions because precision in regulating, or refraining from regulation, in the telecommunications sector is of great importance. There are many definitions, some of which are technical in nature. In all definitions the drafters were guided by the International Telecommunications Union.

Part II establishes the Trinidad and Tobago Telecommunications Authority, including its composition and functions.

Part III addresses concessions, which are the documents by which certain types of providers will be authorised by the Minister, on the advice of the Authority to provide telecommunications services. The concessions are among the principal regulatory instruments for authorizing and controlling the behaviour of providers. So Part III describes the contents of concessions in great detail.

Part IV deals with the issue of licences for use of the spectrum by radio communication services, as well as with spectrum management and numbering issues.

Part V addresses technical standards for the sector.

Part VI deals with testing and inspection.

Part VII deals with the financial provisions applicable to the operation of the Authority, including the fees applicable to concessionaires and licence holders.

Part VIII deals with the staffing of the Authority.

Part IX sets out a comprehensive set of offences for violations of the Act, regulations, concessions and licences.

Part X contains provisions relating to sanctioning interference, authorizing the Authority to issue regulations, using procedures that observe the rules of natural justice and due process of law; maintaining the confidentiality of information and setting forth the process for appealing decisions of the Minister or the Authority. This part also contains important repeal and transitional provisions.

6.10 p.m.

Mr. Vice-President, perhaps the centrepiece of the Bill is the establishment of a specialized and fair regulatory institution. Part II, which establishes and empowers the Authority, is consistent with the broader principles of the Bill that I have just described.

The Authority will be managed by a board which will have the Chairman, Deputy Chairman, five to seven additional members and the Authority’s Executive Director. Given the specialized nature of the Authority's activity, the Bill establishes qualification criteria for board members. To ensure continuity among the membership, their terms are staggered and last for three years.

The President of the Republic appoints the board members other than the Executive Director. The recommendations of the Authority must be made on the basis of fair and objective criteria, and they must be beyond reproach. Existing and new players alike will want to be certain that decisions are made free from undue or inappropriate influence or political suasion.

For this reason, the Bill provides that board members can be terminated only in certain circumstances. In addition, board members must declare when they have an interest in any enterprise within the jurisdiction of the Authority. This requirement extends to significant shareholdings in excess of five per cent, or a partnership or employment relationship to such an enterprise of the board member and any of his relatives as defined in the Bill.

Violations of the Bill by a board member and acceptance of bribes are subject to stiff penalties because they are offences against the integrity of the Authority and the credibility of its regulatory processes. It is expected that the day-to-day operations of the Authority will be the responsibility of the Executive Director, its Chief Executive Officer, who shall be appointed for a five-year term. The Bill also contains provisions regarding the meetings, procedures and quorum requirements of the board.

Mr. Vice-President, among the most important clauses of the Bill is clause 18 which sets out, in detail, the various functions of the Authority. This clause is intended to empower the Authority to carry out the tasks described elsewhere in the Bill, among the most important of which is being able to classify and determine the appropriate regulatory requirements for new services. This provision of the Bill also demarcates carefully, the lines of authority within the Authority and the Minister.

The Authority, on one hand, advises the Minister on the granting of concessions and licences, policies governing the telecommunications industry and technical standards, while on the other hand, it is responsible for implementing those policies through the classification of telecommunications services, the issuance of regulations and monitoring the sector generally between the Authority and the Minister.

The demarcation is further enforced in clause 19, which provides that the Authority shall act in accordance with any special or general directions of the Government given to it by the Minister. The Authority must follow such directions, but otherwise is free to make recommendations as it sees fit, subject, of course, to the rule of law, the other provisions of the Bill and the ability of a person to seek to have reviewed decisions of the Minister or the Authority.

Mr. Vice-President, the Authority must have assets to enable it to carry out its functions. The schedule to the Bill vests those assets in the Authority, and the Auditor General is empowered to cause an audit to be made of the inventory of those assets.

Part VII of the Bill sets out detailed financial provisions. Among the most important of these, from the standpoint of providers of service, is that the Authority may charge fees for concessions and licences; such fees, with the exception of fees to be paid in connection with the acquisition of Spectrum, must be commensurate with the cost of operating the Authority and administering the concessions or licences.

Other provisions of the Bill describe the funds of the Authority, the preparation of an expenditure budget, subject to ministerial approval, and the maintenance of proper books of accounts and the preparation of an annual audit.

Mr. Vice-President, Part VIII addresses staffing of the Authority and related matters. It authorizes the Authority to employ staff, including by means of secondment and transfer, if required. Finally, due to the specialized and technical nature of its many and varied responsibilities, the Authority is empowered to employ persons to carry out specific tasks.

I would now like to turn to a detailed discussion of the main provisions of the Bill.

PROCEDURAL MOTION

The Minister of Public Administration (Sen. The Hon. Wade Mark): Mr. Vice-President, in accordance with Standing Order 9(8), I beg to move that the Senate continue to sit until the conclusion of Sen. Lindsay Gillette's contribution.

Question put and agreed to.

TELECOMMUNICATIONS BILL

Sen. The Hon. L. Gillette: In our drafting, we were guided by the maxim that no legislative or regulatory intervention should be prescribed by the Bill unless clearly necessary or otherwise justified.

Certain types of telecommunication services are sufficiently important to the country that persons providing them must do so only by first obtaining a concession. The two most important services in this respect are public telecommunications services and broadcasting services. No one can provide such services or operate a public telecoms network without first obtaining a concession from the Authority.

Part III of the Bill describes the different types of concessions that may be granted, including the various conditions that must be included in each type of concession. The Authority recommends concessions for approval of the Minister. This process contemplates an appropriate balancing of expertise and policy interest. Although the Authority is a specialized body and has the power to recommend the grant of concession, in the first instance, the exercise of that power rests with the Minister.

In making these recommendations, the processes by which applications for concessions are granted, or denied, will be applied without discrimination to all similarly situated applicants. Concessions will be granted for a term fixed by the Authority and then set out in the concession itself. To ensure procedural regularity and fairness, any decision to deny an application for a concession must be justified in writing. Although the importance of public telecom services and broadcasting services warrants requiring applicants to obtain a concession, for other kinds of services such as private telecommunications, closed user group and value added services, there is no justification to impose a concession requirement as a barrier to entry, or other regulatory requirements.

Businesses should be free to set up these types of businesses subject to the other applicable requirements of the Bill. Nevertheless, because it is important that the Authority keep track of new businesses and developments in the sector, the Bill provides that providers or intended providers of such services shall, in addition to the public telecommunications and broadcasting services, notify the Authority of the operation or planned operation, as the case may be.

Concessions may be terminated, suspended or amended by the Authority, again with the approval of the Minister. From a concessionaire's point of view, of course, such action can have a significant adverse effect on its business and operations. For this reason, the circumstances in which the Authority is permitted to take such action are strictly limited. In addition, the Bill contemplates a procedure by which the Authority would notify the concessionaire, specifying the reasons for the action. This is at clause 30(4)

Concessionaires also have an interest in knowing when and for how long a concession will be reviewed. The Bill provides that the Authority, again subject to the approval of the Minister, may renew the concession for another term equal in length to the original term where the concessionaire has operated within the terms of the concession and has not contravened the Bill or the regulations.

In this way, the concessionaire's legitimate expectation of having the concession renewed is recognized. At the same time, for subsequent renewal terms which may be decades after the date of the original grant, circumstances may have changed. For that reason, the Bill provides that renewals beyond the first renewal term will be subject to negotiation between a concessionaire and the Minister.

Mr. Vice-President, this following section is very important—types of concessions—as it governs not only the rights of service providers, but of their users, our citizens of Trinidad and Tobago. The Bill describes in detail, different types of concessions for different types of services and operations. All concessions for the operation of a public telecommunications network or the provision of telecommunications or broadcasting services, will contain standard provisions relating to fees, terms of concession, penalties, amendments, reports and assignment and transfer of control. These concessions will set out provisions relating to the performance of the concessionaire, as well as the processes by which the concessionaire will handle complaints of customers and other service providers.

The concession also will provide that the concessionaire consent to submit disputes with customers and other providers to the Authority, at clause 22. All concessions will prohibit anti-competitive pricing or other behaviour. In this way, the Authority will be able to investigate and take appropriate action, should a concessionaire act in a way that harms competition.

Finally, concessions may contain such other conditions as provided by regulations or which the Authority deems appropriate. Concessions for broadcasting services, in addition to the provisions I have just described, will also include conditions obligating the concessionaire to adhere to the broadcasting code which is required to be promulgated within a year of the establishment of the Authority.

The Bill then sets out a detailed set of requirements for concessions for public telecommunications networks and services. These requirements would be applicable to companies such as TSTT, as well as providers of other cellular or data services that are offered generally to the public. It is necessary for detailed provisions on certain technical subjects to be included in the concession, given its importance as a regulatory tool.

The holder of a concession for a public telecommunications network or service must submit plans to the Authority regarding the development of the network, service quality and other matters. Given the significant public responsibilities of such providers, they are also obligated to provide services on a fair and reasonable basis, and without unreasonable discrimination. Included in this obligation is the requirement that the concessionaire refrain from prohibiting the resale of its services, where resale is permitted by the Authority.

Mr. Vice-President, this Bill considers openness as an essential element in ensuring meaningful choice by users among service providers. For this reason, the concessionaire must publish the conditions by which his network or services can be used. The terms of its user agreements must be filed with the Authority.

The concessionaire also must keep books and accounts in such manner as the Authority shall determine. In this way, the Authority would be able to determine whether the concessionaire is engaging in unlawful cross-subsidies of one service by another. Again, in the old days when there were monopolies, what happened is that cross-subsidies were allowed. For example, the build-out service in Port of Spain might be more economical as compared to building-out services in a place like Biche where there was only one household. What would happen is that in order to fulfill the universal obligations, which is the right to have a telephone according to the International Telecommunications Union, what governments allowed was cross-subsidizers to fund those operations.

Of course now, with the advent of new technologies, like Internet-based applications, the whole profile of telecommunications has changed. For example, public telephone networks can now get additional revenue from Internet usage, as well as commercial usage and private usage. In a sense, what one is trying to do is de-bundle all the services in the incumbent right now so there is fair competition, and it is true right across the board. One is really going out on a cost-based service.

I will now describe other required provisions of the concession which relates to the concessionaire's relationship with its customers and its obligations to contribute to the funding of universal service when I address those subjects. Of course, in the old days, universal service really applied to supplying voice telephone to all people in a country. Universal service can now actually encompass things like Internet, where it is becoming a must in schools and with people throughout the country.

Concessionaires also have various statutory rights to install or maintain facilities in streets or public grounds and carry out road works in connection with installation and maintenance. These rights to carry out road works are subject to detailed procedures, including the submission of plans and notification to the Authority.

The concessionaire is responsible for repair and restoration of the site where the road works were affected, and where it is necessary, the concessionaire must obtain the consent of persons owning trees, prior to cutting down, pruning or trimming them.

Mr. Vice-President, the obligations of interconnect is a crucial area of the Bill. Interconnect is, if there is a network and there is another provider of a service and that provider of the service wants to reach other users in the other network, that is the interconnect agreement. One must charge the other for service.

Of course, interconnect also occurs with wired services, as well as wireless services. They must be able to interconnect the networks and services with the networks and services of other providers, incumbents and new entrants alike, otherwise, of course, subscribers of such new services will only be able to communicate with other subscribers of the same service which, clearly, would stymie or thwart competition.

6.25 p.m.

Accordingly, in every jurisdiction worldwide where governments seek to promote viable competition, the principles and methodologies for the interconnection of networks are elaborated in some detail. How it really works out is, it says if you have 10 providers of service, what you really do not want to reinvent is an entire network again, so you use the local network to carry traffic. A provider may come and say, "I would pay you five cents or 10 cents to use your network for every call made." Another provider might say, "I would charge 10, 11, 12 or 13 cents."

First of all, the authority ensures that the incumbent does not charge something above the cost of the providers and, secondly, whoever strikes a deal, that is the price, then you compete fairly on who has the best service and technology. Price is irrelevant then.

History teaches us that incumbents and dominant providers will prolong the timetable for affording interconnection and will only do so at higher prices. Conversely, new entrants want interconnection immediately and at the lowest possible price. For this reason, virtually all telecommunication laws and

regulations worldwide, like our own Bill, contain provisions that address both the substance of interconnection arrangements and the procedures for resolving disputes between enterprises that seek and are required to offer up interconnection.

The Bill requires that the concessions for public telecommunications networks and services contain conditions that reflect detailed provisions on interconnection.

Although the authority will establish basic standards and guidelines for interconnection, the Bill proceeds on a premise that it is better for the two entities involved to agree on the negotiated interconnection agreement, than for the authority to be required to intervene in any way.

The substantive provisions of interconnection are—and this is where it is really spelt out—first, the offerer of interconnection must make interconnection available through a published interconnection offer.

Second, if a provider seeking interconnection wants to interconnect at points other than as set out in the offer or at other prices, it is free to negotiate those arrangements.

Third, and most fundamental, interconnection arrangements may not be discriminatory. In other words, the offer made to one provider with respect to the technical quality and rates of interconnection must be extended to any other party seeking interconnection. It is all at the same price. That is to be for voice service, data services and video services, once you use a person's networks.

From a procedural standpoint, the Bill requires that the parties seeking and offering interconnection, negotiate and endeavour to conclude an interconnection agreement. Such an agreement must be submitted to the authority to ensure that it complies with the authority's guidelines so that in light of the non-discrimination requirement, it can be made available to others. In addition, the authority may adopt procedures for resolving disputes where the parties fail to reach an agreement.

The parties will be bound to adhere to any decision of the authority or such other body to which the authority might delegate its responsibility regarding the terms of an interconnection arrangement and dispute resolution.

Mr. Vice-President, the dominant provider of the public telecommunications service also has other interconnection related obligations that are intended to facilitate consumer choice and competition.

First, it must to the extent that it is technically feasible, permit number portability. In this way, consumers can keep the same telephone number when they change providers, meaning if you have a choice of providers and you have a number, 66666, and you want another provider to offer services, you should be able to switch between services and use the same number.

Second, they must provide dialling parity to other concessionaires. What this really means is that if, for example, you are using the incumbent's telephone network now and you have seven digits to dial, what you do not want to happen is that if you have to go to another service provider, you have to dial 20 digits. That is unfair.

Sen. Mahabir-Wyatt: Mr. Vice-President, through you, I wonder if the hon. Minister can tell us that this means we will start getting wireless telephone communication, broadband widths of Internet communication, so that we do not need all these wires as well.

Sen. The Hon. L. Gillette: Again, what happened in the old days is that you had telephone networks built out in order to fulfil a universal service obligation, which is, telephones in every house but, at times, it became very expensive to bill out these networks, despite the cost of subsidization from international call traffic or even in highly dense areas.

What has happened with technology is what you call the last mile, which is called the LMDS technology. What happens now is that you can actually bill out a wireless network from a wired service and provide services universally at probably one-third the cost. That is what should eventually happen. That will fulfil the universal service obligation. What is actually happening now is that the wireless networks of the world is overtaking the wired networks of the world and what is also happening is that the wired networks of the world, in terms of demand as well as in terms of the number of users on wireless networks, are beginning to exceed the wired networks for simple reasons, because the wireless networks have broader capacity.

Remember something, when the wired networks were first put down, 20 or 30 years ago, there was that thin little piece of wire, called the co-ax cable and it could only accommodate so much bandwidth, as you referred to it. With the advent of new technologies as wireless services, the bandwidth is equivalent to this amount, like a WASA pipe. [*Laughter*] What has happened now is that the wireless technologies have broader bandwidth now than the wired services and are cheaper.

Sen. Dr. Mc Kenzie: We have banned that word in here.

Sen. Daly: It is an unparliamentary word.

Sen. The Hon. L. Gillette: That is wired and wireless.

Third, they must permit concessionaires to have equal access to critical but costly elements of providing any public telecommunications service. These include, of course, access to telephone numbers, operator services, directory assistance and directory listing. If you have directory assistance on one network, you must be able to access it free of charge.

Of course, when you look at the cost base of a network, when you pick up a telephone and you say hello, how much does it cost you for that call? If, for example, you get a busy tone, how much does it truly cost you for that call? There are huge mathematical formulas that determine the actual cost base of the call and what we are trying to move to, is a cost base analysis and only then, can we truly then sell our services at competitive prices and also allow proper interconnection. Do you understand what I am saying?

Finally, and perhaps most importantly, these concessionaires will have to unbundle their network elements. That is where they are unbundling.

Sen. Prof. Ramchand: Mr. Vice-President, before the hon. Minister winds up, I just wondered, for information: Does the legislation envisage a time in the near future when wired services will be phased out?

Sen. The Hon. L. Gillette: No. It does not. It really depends on the incumbent. It depends on the people, technology and how fast we will embrace it. Wired services, as far as I am concerned, will probably stay there for another 10 or 12 years. What is also happening is that compression techniques and software are actually increasing the bandwidth of wired services but not as fast as wireless services, so the wireless services will eventually take in. Time will tell.

You also have the efficiency. In wireless services, you have to put up what I call little cell sites. Of course, what you are trying to do now is put up the least number of cell sites because every cell site is expensive. That is where the technologies are all going right now so, really and truly, what you have is a hybrid in many countries of wired and wireless services with wireless services taking over.

For example, in countries like China, it would really be economically disastrous if you were to put down a wired service so what you do is put down wireless services throughout the country. You get the bandwidth and with bandwidth, you can also supply voice services. You can have SMS services, which is short messaging services, like pager services; you can have data services; you can have video services; you can have video conferencing services; all, of course, on wireless networks. That is where it is all going now.

Finally and perhaps most importantly—

Sen. Shabazz: Finally again?

Sen. The Hon. L. Gillette: Sorry?

Sen. Shabazz: Finally again?

Sen. The Hon. L. Gillette:—these concessions will have to unbundle their network elements and permit competitors to purchase these elements on a cost oriented basis as prescribed by the authority, cost basis to determine the cost of true services.

As an example, the incumbent supplier provides three levels of services—voice services, data services and voice data services. If, for example, a provider wants to rent services from this incumbent operator and use his or her local network and the cost of providing that service is $20 and the incumbent charges him or her $30; he or she cannot operate. What has to happen is that the incumbent, anybody, has to debundle the service. Once he or she debundles it, then you can know the true cost. Whatever you charge yourself, then you can charge the other guy. That is what you refer to as the unbundling concept. In this way, a new entrant will be able to purchase service from an incumbent or other network operator only on those line switches or other functions that it determines it requires to provide its service.

I should explain that telecommunications laws and regulations worldwide usually treat the incumbent provider differently from new entrants or small companies. The incumbent provider is usually treated as the dominant provider in the sector, given its market power due to its entrenched position as opposed to the new entrants or smaller companies with no market power at all. This principle, which is called asymmetric regulation, is viewed as essential to jump-starting competition and ensuring that there is a true level playing field.

The Bill empowers the authority to determine whether an operator or provider is "dominant" in a particular market or for a particular service base on criteria rooted in international best practices. These criteria apply to specific services such as public telephone service or broadcasting services and not necessarily to all of the operations or services of the provider.

In the short term, TSTT is likely to be regarded as dominant in many of the services that it provides but, over time, when many other providers are in the market, the authority could conclude that TSTT has lost its status as a dominant player and it would be subject, perhaps, to less stringent conditions. Indeed, the Bill specifically provides for a procedure by which a concessionaire can seek to be classified as non-dominant.

Mr. Vice-President, how various kinds of telecommunications services are priced is, of course, a central issue. Consistent with the philosophy I have described above, the Bill embraces and specifically adopts the fundamental principle that the marketplace, not the Government or the authority, should control prices, except where price control is required. There are, however, circumstances where the regulation of prices is appropriate and the Bill addresses those situations.

Price regulation regimes can be established by the Minister on the recommendation of the authority and subject to the negative resolution of the Parliament only as provided in the Bill. Where, for example, there is one, or a dominant provider of service, the marketplace will not operate to constrain prices.

In addition, where there are cross-subsidies which are not approved, the authority may wish to impose price regulation, to ensure that the concessionaire is not pricing, in a predatory fashion, to drive out its competition.

Finally, where the authority detects other sorts of anti-competitive pricing behaviour or acts of unfair competition, price control mechanisms may be used to limit such behaviour. For all public telecommunications services, the authority may establish pricing rules. These include such widely accepted principle that prices shall be just and reasonable and shall not permit unjust discrimination or unreasonable preference towards any person.

In other words, the concessionaire can neither advantage itself, its affiliates nor any person, as compared to other similarly situated persons. The Bill also describes two particular options for a price regulation scheme. First, it is expected that a "price cap" approach, which is now widely recognized as

international best practice, will be adopted by the authority for public telecommunications services for which there is competition. What happens is that you establish your price at that, the market comes in, they drive the prices down based on service and competition and that is you get prices eventually to fall in telecommunications.

Secondly, in the unusual and unforeseen circumstance where the concessionaire has the exclusive right to provide telecommunications services, the authority shall establish a method that relies on rate-of-return. This is the approach by which TSTT is currently regulated under the 1968 Act and the shareholders agreement. Many of the monopolies of the world were rate-of-return regulation.

As we move to a more competitive environment, however, the authority is likely to replace this rate-of-return approach methodology for TSTT with a price cap regime. Concessionaires of public telecommunications services, of course, will be obligated to publish their prices and the authority has the power to determine when and how they shall do so.

From the standpoint of the people of Trinidad and Tobago and the Government, there is no issue more critical than the expansion of affordable and efficient telecommunications services around the country. Although great strides have been made over the last 20 years, for example, our national teledensity now is 20 per cent. You measure teledensity by the number of telephones per 100 in a country. We are at 20 per cent. In the more developed countries, teledensities are in excess of 40 and 50 per cent and, actually, where you see teledensities in excess of 40 and 50 per cent, you see tremendous Internet usage and you see, sometimes, in excess of 10 or 15 per cent of people subscribing for Internet usage. We have to develop our networks to improve our teledensity.

Today, TSTT is the provider of public telecommunications services and is responsible for network expansion solely. Furthermore, the 1968 Act requires that you install a public coin telephone in every community where it maintains a telephone line. Of course, that is a universal service obligation. Undoubtedly, there are some parts of the country and some populations for which the price of telecommunications services are less than TSTT's cost of providing the service. Whether by cost subsidies or other means, however, TSTT has been able to expand our network gradually, over time, not as fast as we would like it, but they have been able to expand it.

6.40 p.m.

Once competition is introduced, it may not be economically or legally possible for TSTT to use cross-subsidies again, that may go. Nor would it be fair or appropriate for TSTT to be solely responsible for carrying out this universal service obligation. Instead, Government believes that the authority must put in place a mechanism by which providers must contribute to the funding of so-called universal service. As I said before universal service can also be voice telephony as well as Internet services. With respect to which service should be considered; a universal service, the Bill provides that, at a minimum, that term should include the public telephone service. As technology evolves and the needs of the population change, other services could be added.

With respect to the provision of universal service, the authority can, through a review of its concessionaires' development plans, work with the concessionaire with respect to its network build-out commitments. In this way, which concessionaire should be responsible for which areas may be determined.

As to the funding mechanism, the Bill contemplates that concessionaires will contribute to such funding. In addition, other providers of telecommunications services and users may be asked to contribute as well.

Various funding methodologies have been used around the world. These include levies or taxes, or access charges paid by other providers for interconnection to the incumbent's network.

The Bill contemplates that the authority, with the approval of the Minister, will prescribe the approach that is most appropriate for Trinidad and Tobago.

Mr. Vice-President, for competition to develop, concessionaires must have access to the facilities of other concessionaires. An incumbent, such as TSTT, has conduits, ducts, towers and other facilities that may be ideally or uniquely suited for the provision of services.

Similarly, a broadcast enterprise, or a provider of cellular telephone service, may own a tower location that is the only one available to serve a community. If a concessionaire denies access to these facilities, then it has the effective ability to thwart competition.

Clause 26(2) of the Bill provides that it is a condition of every concession for a broadcast service or for a public telecommunications network that the concessionaire provide access to facilities on a nondiscriminatory and equitable basis. Of course, there may be circumstances where access should or must be denied, such as for reasons relating to technical capacity, safety, and security. The Bill provides that the concessionaire may do so in such situations.

A related provision is that concessionaires of public telecommunications networks shall permit Government to place certain equipment on their poles for essential governmental purposes, such as fire alarm and police services. Although concessionaires are not able to charge the Government for this rental, Government is responsible for paying all damages to the property of the concessionaires. This provision had applied solely to TSTT, under the 1968 Act, but has now been carried forward in this Bill to apply on an even-handed basis to all operators of public telecommunications services.

In the absence of such an obligation, an incumbent provider could bundle, and offer up, to new entrants an expensive package of both wanted and unwanted services. To avoid this result, it is widely recognized, and the Bill reflects this, that network unbundling is essential to the efficient development of competition. You have to unbundle your network to determine your true cost.

Mr. Vice-President: Minister, your monopoly on speaking time is going to expire in three minutes.

Sen. The Hon. L. Gillette: Everything?

Mr. Vice-President: Yes.

Sen. The Hon. L. Gillette: I will have to give you a CD-ROM. In the spectrum licensing, Mr. Vice-President, the radio frequency spectrum is one of the valuable national resources of Trinidad and Tobago. When I have 30 more seconds please let me know.

Part IV of the Bill contains a series of interrelated provisions relating, of course, to the licensing and management of the spectrum. The Bill is designed to operate a public telecommunications service to be the concession. With a concession it may not be necessary to get a radio frequency licence. In the second part of the Bill, if one needs to get a radio frequency licence, one would have

For example, Royal Bank may need a radio frequency licence to operate a network, but may not require a concession, because they may want to use it internally. As a result, they would still have to apply to get their radio frequency licence. On the other hand, a company like TSTT which has a cellular network requires a concession to operate the cellular network, because it is a public telephone service, but they also need the frequency spectrum to operate the public telephone networks. In that particular instance, they require a concession as well as a licence for the frequency spectrum.

The most important parts of the Bill are: the universal service obligation, the licensing for radio frequency spectrums, the unbundling of the services, which one must unbundle in order to provide fair communications, and the interconnection guidelines from one operator to the other, in order to make it fair and level for all providers wanting to operate a telephone service in the country.

This is important, it also recognizes that many of the networks out there—for example the banks use a whole ATM network—which would now be classified as closed user groups. The banks no longer have to apply to TSTT and pay to operate those closed networks, because now it is a closed user group and the banks are just using it as a facility to operate a telecommunications network in a private environment. They are not selling a service for that; that is what is called a closed user group. That is where we have gone into a new concept of closed used groups.

Mr. Vice-President, there is so much to say, however, we have waited far too long to bring the benefits of the modern telecommunications age to Trinidad and Tobago. Of course, we can afford to wait no longer. This Bill is the first critical step towards consumer choice, lower prices, new technologies and services, and economic growth. I urge its full consideration and passage.

Mr. Vice-President, we have come too far to turn back now. I beg to move.

ADJOURNMENT

The Minister of Public Administration (Sen. The Hon. Wade Mark): Mr. Vice-President, because of the importance of this piece of legislation, and its technical and complex nature, we are seeking to establish, another informal committee to look at this piece of legislation.

Although it is not a standard procedure, I just want to, for the purpose of informing colleagues, list the Members of this informal committee that would meet over the next couple days so that when we come back to debate this matter it would be well aired. The members are as follows:

(i) Sen. Prof. K. Ramchand;

(ii) Sen. P. Marshall or Sen. Mahabir-Wyatt;

(iii) Sen. The Hon. L. Gillette; (Convenor)

(iv) Sen. D. Montano; and

(v) Sen. The Hon. W. Mark

With respect to the Planning and Development of Land (No.1) Bill, the members are as follows:

(i) Sen. Prof. J. Spence;

(ii) Sen. Prof. J. Kenny;

(iii) Sen. Nafeesa Mohammed;

(iv) Sen. J. John (Convenor); and

(v) Sen. S. John

This is an informal arrangement. I just want to inform my colleagues of the persons who will be sitting on that committee.

Mr. Vice-President, we are seeking to continue our sitting next Tuesday at 1.30 p.m. We intend to proceed with a Bill to amend the Constitution of the Republic of Trinidad and Tobago, as well as a Bill to amend the Integrity in Public Life Act. Those are the two Bills we would like to deal with along with, if we have time, a Bill to regulate the licensing and operations of private security agencies, the employment of security officers and matters incidental thereto.

Mr. Vice-President, I beg to move that the Senate do now adjourn to Tuesday, 24 October, 2000 at 1.30 p.m.

Question put and agreed to.

Adjourned at 6.50 p.m.