

*Leave of Absence**Tuesday, July 31, 2001***SENATE***Tuesday, July 31, 2001*

The Senate met at 10.30 a.m.

**PRAYERS**[MR. VICE-PRESIDENT *in the Chair*]**LEAVE OF ABSENCE**

**Mr. Vice-President:** Hon. Senators, I have granted leave to Sen. Michael Als from sittings of the Senate during the period July 29 to August 04, 2001. I have also granted leave to Sen. Rev. Daniel Teelucksingh during the period July 29 to August 04, 2001, as well as to Sen. Stanley J. Ryan during the period July 31 to August 10, 2001. I have also granted leave of absence to Sen. Rennie Dumas for the period July 30 to August 12, 2001.

**SENATORS' APPOINTMENT**

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

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency GANACE RAMDIAL, Acting  
President and Commander-in-Chief of the  
Republic of Trinidad and Tobago.

/s/ Ganace Ramdial  
Acting President.

TO: DR. ANNA MAHASE

WHEREAS Senator Stanley J. Ryan is incapable of performing his functions as a Senator by reason of his absence from Trinidad and Tobago:

NOW, THEREFORE, I, GANACE RAMDIAL, Acting President as aforesaid, acting in accordance with the advice of the Prime Minister, in exercise of the power vested in me by section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, ANNA MAHASE, to be temporarily a member of the Senate, with effect from 31st July, 2001 and continuing during the absence from Trinidad and Tobago of the said Senator Stanley J. Ryan.

Given under my Hand and the Seal of the  
President of the Republic of Trinidad and  
Tobago at the Office of the President, St.  
Ann's, this 26th day of July, 2001.”

*Senators' Appointment*  
[MR. VICE-PRESIDENT]

*Tuesday, July 31, 2001*

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency GANACE RAMDIAL, Acting  
President and Commander-in-Chief of the  
Republic of Trinidad and Tobago.

/s/ Ganace Ramdial  
Acting President

TO: DR. GEORGE DHANNY

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

NOW, THEREFORE, I, GANACE RAMDIAL, Acting President as aforesaid, acting in accordance with the advice of the Prime Minister, in exercise of the power vested in me by section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, GEORGE DHANNY, to be temporarily a member of the Senate, with effect from the 31st July, 2001 and continuing during the absence from Trinidad and Tobago of the said Senator Michael Als.

Given under my Hand and the Seal of the  
President of the Republic of Trinidad and  
Tobago at the Office of the President, St.  
Ann's, this 26th day of July, 2001.”

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency GANACE RAMDIAL, Acting  
President and Commander-in-Chief of the  
Republic of Trinidad and Tobago.

/s/ Ganace Ramdial  
Acting President

TO: MR. DEREK IRVIN OUTRIDGE

WHEREAS Senator Reverend Daniel Teelucksingh is incapable of performing his duties as a Senator by reason of his absence from Trinidad and Tobago:

NOW, THEREFORE, I, GANACE RAMDIAL, Acting President as aforesaid, in exercise of the power vested in me by section 40(2)(c) and section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, DEREK IRVIN OUTRIDGE, to be temporarily a member of the Senate, with immediate effect and continuing during the absence from Trinidad and Tobago of the said Senator Reverend Daniel Teelucksingh.

*Senators' Appointment*

*Tuesday, July 31, 2001*

Given under my Hand and the Seal of the  
President of the Republic of Trinidad and  
Tobago at the Office of the President, St.  
Ann's, this 30th day of July, 2001."

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

Appointment of a Temporary Senator

By His Excellency GANACE RAMDIAL Acting  
President and Commander-in-Chief of the  
Republic of Trinidad and Tobago.

/s/ Ganace Ramdial  
Acting President.

TO: MR. HOWARD CHIN LEE

WHEREAS Senator Danny Montano is incapable of performing his duties  
as a Senator by reason of his absence from Trinidad and Tobago:

NOW, THEREFORE, I, GANACE RAMDIAL, Acting President as aforesaid, acting  
in accordance with the advice of the Leader of the Opposition, in exercise of the  
power vested in me by section 44 of the Constitution of the Republic of Trinidad  
and Tobago, do hereby appoint you, HOWARD CHIN LEE, to be temporarily a  
member of the Senate, with effect from 31 July, 2001 and continuing during the  
absence from Trinidad and Tobago of the said Senator Danny Montano.

Given under my Hand and the Seal of the  
President of the Republic of Trinidad and  
Tobago at the Office of the President, St.  
Ann's, this 27th day of July, 2001."

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency GANACE RAMDIAL, Acting  
President and Commander-in-Chief of the  
Republic of Trinidad and Tobago.

/s/ Ganace Ramdial  
Acting President.

TO: MR. ASHTON BECKLES

WHEREAS Senator Rennie Dumas is incapable of performing his duties as  
a Senator by reason of illness:

*Senators' Appointment*  
[MR. VICE-PRESIDENT]

*Tuesday, July 31, 2001*

NOW, THEREFORE, I GANACE RAMDIAL, Acting President as aforesaid, acting in accordance with the advice of the Leader of the Opposition, in exercise of the power vested in me by section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, ASHTON BECKLES, to be temporarily a member of the Senate, with immediate effect and continuing during the period of illness of the said Senator Rennie Dumas.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 31st day of July, 2001."

#### OATH OF ALLEGIANCE

*The following Senators took and subscribed the Oath of Allegiance as required by law: Dr. Anna Mahase, Dr. George Dhanny, Mr. Derek Irvin Outridge, Mr. Howard Chin Lee and Mr. Aston Beckles*

#### PAPERS LAID

1. The Enterprise Development Policy and Strategic Plan for Trinidad and Tobago for 2001—2005. [*The Minister of Energy and Energy Industries (Sen. The Hon. Lindsay Gillette)*]
2. The Environmental Management Authority Annual Report, 2000. [*Hon. L. Gillette*]

**10.45 a.m.**

#### PETROTRIN (UNSUBSTANTIATED ACCUSATIONS)

**The Minister of Energy and Energy Industries (Sen. The Hon. Lindsay Gillette):** Mr. Vice-President, so much seems to be surrounding this issue with Petrotrin, that I was going to make a statement definitively last Friday in Parliament, but because of circumstances I was unable to do so. Hence, I felt it duty bound to make a statement today to my fellow colleagues, as well as to the public at large.

I wish to make it unambiguously and unequivocally clear, as the Minister of Energy and Energy Industries, that I am particularly concerned with some of the current public issues, which have arisen in the energy sector. My concerns are two-fold. Firstly, I must state that, as a member of the Government sworn to integrity and transparency in public affairs, I will spare no effort in investigating allegations of impropriety. At the same time, I am equally concerned about the

effects of prejudging issues as they relate to the smearing of characters that may arise from totally unsubstantiated accusations without evidence. I assure Members of this Senate and the general public that the allegations will be thoroughly investigated as they pertain to the issues raised.

Let us look again at this Government's track record in its fight against corruption. There is legislation that is unique to this part of this world—the Freedom of Information Act, Integrity in Public Life Act, the Constitution (Amdt.) Act and the Equal Opportunity Act. Further, the hon. Prime Minister has mandated the Attorney General to reintroduce in Parliament a bill to amend the Prevention of Corruption Act in order to establish an anti-corruption commission.

On July 17, 2001 the hon. Prime Minister spoke to the South Trinidad Chamber of Commerce, and I quote the hon. Prime Minister:

“We have as you know put legislation in place to create a culture of transparency and accountability, the Freedom of Information Act, the Integrity in Public Life Act, the Constitution Amendment Act 2000. This regime of legislation gives unprecedented powers to the police, the DPP, the Courts, the Media and Members of Parliament and the General Public to investigate, prosecute and punish persons guilty of economic crimes and betrayal of Public Office.

Some critics insist that all of this is not enough. Such persons will totally ignore the fundamental obligation of due process, which the constitution guarantees to every citizen, be the citizen saint or sinner.

Ever conscious of this I refuse to engage in any witch-hunt. At the same time, I will sweep no evidence of corruption under the carpet.”

It is in this regard that I wish to inform this honourable Senate of the actions that I, as Minister of Energy and Energy Industries, have taken in respect of the following.

With respect to Integrated Security Systems Limited, I am in receipt of a draft—and I repeat a draft—and signed report, which I received from the Chairman of Petrotrin, dated April 12, 2001. I subsequently received from the Chairman of Petrotrin annexes labelled A - T and U - B1 dated July 9, 2001. The Chairman of Petrotrin then forwarded to my office further documents dated July 13, 2001 and July 16, 2001.

As a responsible Minister, I am of the view that these reports contain disturbing allegations about activities within the state energy sector and, of course, I have a sworn obligation and duty to the Government and to the people of the country to address these concerns.

*Petrotrin (Unsubstantiated Accusations)*  
[SEN. THE HON. L. GILLETTE]

*Tuesday, July 31, 2001*

The draft reports that I have received from the Chairman of Petrotrin are inconclusive—and I repeat inconclusive. However, they do contain allegations without supporting evidence, bearing in mind the lessons we have learned from the *Scott Drug Report*.

Mr. Vice-President, with your leave, can I refresh the memory of Members of this honourable Senate? It was around this very time that there was a publication of the *Scott Drug Report* in which wild and spurious allegations of drug trafficking and money laundering were published in newspapers throughout the region. Today, we are faced with a similar onslaught from every Tom, Dick and Harry, each with questionable agendas and who are daily convicting individuals in the public domain, without the due process of law.

To prevent history from repeating itself, I have since instructed the chairman of Petrotrin to summon Integrated Security Systems Limited, who compiled the reports that I received from the chairman of Petrotrin to come to Trinidad and Tobago to authenticate/validate and answer further questions on the ongoing investigations—and I say ongoing investigations—into the affairs of Petrotrin. They are due to arrive in Trinidad on Thursday.

With respect to the Southwest Soldado Field, on assuming office as Minister of Energy and Energy Industries, I immediately became aware of concerns regarding the tendering process for the award of contract for the Southwest Soldado Field. In view of the concerns raised, I sought legal advice on the matter. As a result, on June 5, 2001 Petrotrin instructed Trinmar to issue invitations to bid for the Southwest Soldado Field. It was not awarded to FW Oil.

On June 6, 2001, invitations to bid were sent to companies and forwarded to the respective newspapers. Between June 8 and June 14, 2001, the invitation to tender was published in the daily newspapers. I have also instructed PricewaterhouseCoopers Limited to conduct an overall management and financial review of Petrotrin's operations including, but not limited to the Southwest Soldado Project, the Sundowner Award and the Refinery Upgrade Project. They are also to work very closely with Integrated Security Systems Limited on these matters. Mr. Vice-President, I repeat that PricewaterhouseCoopers Limited's mandate will include ensuring that there was procurement transparency and financial accountability in the conduct of the affairs of Petrotrin.

With respect to the refinery upgrade, I draw to the attention of this honourable Senate that the refinery upgrade project began under the PNM administration and continued to 1996. This upgrade included invitations to bid for several packages,

most of which were awarded under the previous administration—roughly around 12 packages. The IDB loan contract for this project was signed on June 25, 1991 and December 30, 1992. However, the conduct of this project will also be part of the overall management and financial review of Petrotrin and ISS.

With regard to concerns raised on the Sundowner Award I have instructed PriceWaterHouseCoopers, as part of their overall mandate, to investigate, report and make recommendations on this award.

I now advise this honourable Senate that I have also made a recommendation to the Cabinet to reconstruct the Petrotrin board. I intend to mandate that the new board take all steps to actively assist PricewaterhouseCoopers in the procurement, transparency and financial accountability exercise that is being conducted into the affairs of Petrotrin.

I state that these allegations do not belong before the Public Accounts (Enterprises) Committee, which is delegated by Parliament to examine only the audited financial accounts of state enterprises. The appropriate parliamentary committee before which to bring this motion is the Parliament Committee to Investigate Government Ministries and State Enterprises, Act 29 of 1999.

Once again, those on the other side refuse to use the very tool that this administration has given them to investigate allegations of impropriety on behalf of the citizens of the Republic of Trinidad and Tobago.

Mr. Vice-President, the reality is that if we are seriously to handle any allegations of wrongdoing, then we must do everything in our power to ensure that those found guilty of impropriety and wrongdoing be brought to justice. To do this, we must first seek to find evidence of wrongdoing, and I repeat—evidence of wrongdoing—that must be supported with facts and documented evidence. We must seek to prosecute where there is evidence of a crime. We must move swiftly so that the innocent are truly protected and are not dragged unnecessarily through the mud. We must take whatever measures are required to ensure that the necessary checks and balances are in place and strengthened to stop any abuse of power and trust.

Finally, Mr. Vice-President, we must continue to educate our people so that they may understand that the price of freedom is eternal vigilance. The power to expose and transparency of operation are enshrined as never before in the body of laws passed by this Government.

My duty and responsibility, Mr. Vice-President, is to ensure that there is integrity and accountability in a company that plays a major role in the hydrocarbon industry and has a total asset base of millions of dollars.

*Petrotrin (Unsubstantiated Assusations)*  
[SEN. THE HON. L. GILLETTE]

*Tuesday, July 31, 2001*

I assure this honourable Senate that nothing will deter me from continuing these investigations—nothing at all. I intend to bring these matters to a satisfactory conclusion at the earliest possible time.

I thank you, Mr. Vice-President.

#### ARRANGEMENT OF BUSINESS

**The Minister of Energy and Energy Industries (Sen. The Hon. Lindsay Gillette):** Mr. Vice-President, I seek leave of the Senate to deal with Government Business, Bills Second Reading, at this stage of the proceeding.

*Agreed to.*

#### PLANNING AND DEVELOPMENT OF LAND BILL

[Sixth Day]

*The committee of the whole Senate resumed its deliberations on the Bill.*

[Chairman: Mr. W. Mark]

**Mr. Chairman:** Senators, just to refresh your memories on the Planning and Development of Land Bill, 2001. This Bill has nine parts, 107 clauses and four schedules. We have, so far, completed 30 of those clauses.

I hope that Members of the Senate have received the circulated amendments of the hon. Minister. Do Senators have those amendments?

*Assent indicated.*

**11.00 a.m.**

*Clause 31.*

*Question proposed,* That clause 31 stand part of the Bill.

**Mr. Chairman:** We have a couple of amendments to clause 31. Sen. Prof. Ramchand, I think you have an amendment to clause 31 and the Government also has one.

**Sen. Prof. Ramchand:** Mr. Chairman, it is just to put the words “shall be subject” rather than “may be unconditional”. I did not like to see something, which says:

“...permission would be granted unconditionally”

I thought it should be:



“...subject to conditions and limitations as may be specified.”

I cannot conceive of an unconditional permission. The words:

“...and shall be subject to such conditions as may be specified.”

Do allow for one where there are very few conditions.

**Mr. Chairman:** Hon. Minister, would you like to comment on what Sen. Prof. Ramchand has said?

**Sen. Lucky:** Mr. Chairman, before we deal with Sen. Prof. Ramchand’s proposed amendment, the Government has suggested a proposed amendment to 31(1). I wonder if we could deal with that first and then we can go on to the proposed amendment by the hon. Senator.

**Mr. Chairman:** Okay.

**Sen. Lucky:** Mr. Chairman, what the Government has proposed in its amendment to 31(1)(b), was actually just to—if I might use the phrase—fine-tune that paragraph (b). It really was just a matter of restating it but including the words “or regulation”. The amendment reads as follows:

- (b) by the Commission or a planning authority, upon an application for such permission made to the Commission or the planning authority in accordance with the order or regulation, where such permission is not granted by any order or regulation; or

In other words, after the words “planning authority order or regulation, where such permission is not granted by any order or regulation;” we had to incorporate the concept of regulation in that paragraph (b).

**Mr. Chairman:** Are there any comments to clause 31(1)(b)?

*Question, on amendment, put and agreed to.*

**Mr. Chairman:** Sen. Prof. Ramchand has an amendment to clause 31(2).

**Sen. Prof. Ramchand:** I was just arguing that if you said:

“...shall be subject to such conditions and limitations as may be specified.”

You would also have the option to grant it unconditionally.

**Mr. Chairman:** Sen. Prof. Ramchand, the proposed amendment to 31(2) by the Government reads as follows:

In the second line, delete the words “unconditional or.”

As a result, would you like to withdraw your amendment to clause 31(2)?

**Sen. Prof. Ramchand:** I withdraw my amendment to clause 31(2).

*Amendment withdrawn.*

**Sen. Prof. Ramchand:** Mr. Chairman, while we are on clause 31, I did not circulate an amendment on this point but I just want to give notice that what the clause grants in (b) to the Commission is taken away in (c), so that power does not devolve at all, everything still remains in the hands of the Minister. Clause 31(a) says “the Minister”; (b) says “the Commission”; but (c) overrides (b); I would like to know whether this was intended.

**Sen. Lucky:** Sen. Prof. Ramchand, paragraph (c) only has that reference to the Minister in certain exceptional circumstances and that would be the provision of clause 48. Those provisions in clause 48 dealt with the limited circumstances when we indicated that the Minister would be acting more in accordance with an executive decision—the Cabinet—rather than in his capacity as the Minister in the relevant ministry. That is why that paragraph (c) was put in. It was not meant to divest or to take away. If you leave that open, how would you deal with that power granted to him in clause 48? So that was the only reason we had to put in paragraph (c).

**Sen. Prof. Ramchand:** Thank you.

**Sen. Morean:** Mr. Chairman, may I, as a follow-up—in the event we agree to delete clause 48, then this clause would be deleted. There are proposals for such amendments.

**Sen. Lucky:** Okay, in the event that we agree, but at this juncture I could say that we are not going to be—our position on this side is that we still need clause 48. So certainly if we come to it then we would have to address any relevant clauses that are affected.

**Sen. Morean:** Very well.

*Question put and agreed to.*

*Clause 31, as amended, ordered to stand part of the Bill.*

*Clause 32.*

*Question proposed, That clause 32 stand part of the Bill.*

**Mr. Chairman:** I think that Sen. Prof. Ramchand has an amendment.

**Sen. Prof. Ramchand:** I just noticed that there was an omission of reference to a certificate of environmental clearance. I am simply asking that the omission be rectified and the existing (c) be called (d) and the omission to be put in as a new (c):

“...be accompanied by a certificate of environmental clearance granted under the Environmental Management Act”.

Surely that is just an omission—accidental.

**Sen. Lucky:** Sen. Prof. Ramchand, if you were to include that paragraph (c) as in your proposed amendment, then what you would be doing is mandating that the certificate of the environmental clearance—that is granted by the EMA—accompany the application. Under the EM Act there are only certain instances in which you would need the certificate. Therefore, if you put it as part of this you would be putting an onus that would not exist in all circumstances.

**Sen. Prof. Ramchand:** Could I add, “where necessary” then?

**Sen. Lucky:** Sen. Prof. Ramchand, there would be no need to put in this clause because the EMA is binding in law and there would be an onus put on someone who needs to have that certificate. So if you were to put it here, you would just be unnecessarily redundant. You see you have to abide by what exists.

**Sen. Prof. Ramchand:** I would let it go but I think if it were redundant it would be a happy redundancy.

**Sen. Lucky:** But I want you to be comfortable when you let go something.

**Sen. Prof. Ramchand:** Yes.

**Sen. Lucky:** And what I am saying is that the EMA would already bind you so that there is no need here. In other words, you cannot get through the loop—if you know what I mean. So are you happier now with the letting go?

**Sen. Prof. Ramchand:** Yes.

**Sen. Lucky:** Then I feel happy, too.

**Mr. Chairman:** Do you withdraw your amendment, Sen. Prof. Ramchand?

**Sen. Prof. Ramchand:** Yes, I withdraw it, Mr. Chairman.

*Amendment withdrawn.*

*Question put and agreed to.*

*Clause 32, as amended, ordered to stand part of the Bill.*

*Clauses 33 and 34 ordered to stand part of the Bill.*

*Clause 35.*

*Question proposed, That clause 35 stand part of the Bill.*

**Mr. Chairman:** There are a number of amendments: Sen. Mary King, Sen. Prof. Kenneth Ramchand, Sen. Prof. Julian Kenny, Sen. Martin Daly and the Government. We have five amendments.

Sen. Prof. Ramchand would you like to start?

**Sen. Prof. Ramchand:** With respect to clause 35(1), I simply wanted the words “take into account” to be replaced by “comply with”.

**Mr. Chairman:** Maybe the hon. Minister could deal with his amendment and we would see to what extent it coincides with yours.

**Mr. Humphrey:** The National Physical Development Plan is not cast in concrete; any macro plan has to be a little flexible. If you say, “to comply with”, you are actually insisting that whatever is in that plan must be adhered to. That is a guide for development, it is not, in fact, a detailed development plan. The National Physical Development Plan is a macro plan. You would comply with a detailed plan to ensure that whatever development occurs is properly done, but when you have a plan that is used as a guide for development it should be flexible. So that is why it is taken into account—it guides you; or you are to be guided by it—if you prefer—but that is the principle.

**Mr. Chairman:** Mr. Minister, do you want to deal with (f) as you are already on the floor?

**Mr. Humphrey:** Let us deal with Sen. King’s amendment.

**Sen. King:** I think we take the point of the hon. Minister in that—take into account the National Physical Development Plan, perhaps in that case that may stand, but following that, from (b) to (h), we would also like them to uphold—not take into account, but to comply with or uphold. In clause (b) to (g) actually.

**Sen. Prof. Ramchand:** I think I was premature with regard to withdrawing my amendment. I think Sen. Mary King’s contribution reminds me that when I put in “comply with” instead of “take into account” I was only referring to (a). So whereas I am satisfied with the Minister’s explanation that the National Physical Development Plan is a guide and we can say there “take into account”, some of the other items between (b) and (g) might require the word “comply”.

**Mr. Humphrey:** Mr. Chairman, the same applies—until you are actually imposing on the development process a construction plan in the details that are required to enable that process, all plans are a guide to development.

**11.15 a.m.**

**Mr. Chairman:** Sen. Mary King has an amendment to clause 35(1). Have you seen it?

**Sen. King:** Mr. Chairman, I beg to move that clause 35(1) be amended by deleting the words “take into account” and replacing with the word “uphold”.

**Mr. Humphrey:** I do not know how you would uphold a national physical development plan.

**Sen. King:** We are past that, Mr. Minister. We are on (b) to (g). We have accepted your (a) but we are on (b) to (g). So where you have “applicable approved development plan” we are saying that “the Commission must uphold”.

**Mr. Humphrey:** No, but it is exactly the same argument.

**Sen. King:** To us it is not.

**Mr. Humphrey:** If you are going to build a bridge, for example, on the National Physical Development Plan you would indicate that a bridge is going there. The bridge is going to cross a river, for example, but it is only when you have to build it that you need all the bar bending schedules, the size of steel, the mix of concrete, the dimensions of the beams and that sort of thing. So that is the point at which the plan is not really flexible. A plan is a guide for development. This kind of plan is a guide for development and it cannot be cast in concrete.

**Sen. King:** So, Mr. Minister, are you saying an approved development plan is a guide to development?

**Mr. Humphrey:** Yes, yes.

**Sen. King:** I do not follow that logic. An approved development plan or a special plan could not be a guide.

**Mr. Humphrey:** It is a guide to development. It informs the things that you do but it does not tie you in detail because it is not done in detail.

**Sen. Gillette:** For example, supposing you want to do a development, and you get permission to do 20 townhouses, instead of the 30 that you might have applied for, they will instruct you that you have approval for 20 townhouses and you must have so many specifications—do this, do that. At that point in time you are not probably going to go to an architect or even—not the architect. You would probably go to an architect, but not a specialist like a quantity surveyor to

determine things like bar bending schedules or the amount of concrete. You would not do it at that point in time.

**Sen. Outridge:** Mr. Chairman, I find it kind of confusing that a development plan, being a national physical development plan which was approved by Parliament, which is supposed to be carrying some sort of statutory weight, can be used as just a guide. I would think that the further development plans, from which the amendments that the Government had previously proposed in clause 23—those local plans would be the ones that would modify and would produce the flexibility to the national physical development plan. Those subnational plans would be the ones that would actually develop and determine the actual physical attributes as to what developments are going to take place. So I cannot understand why we cannot comply with a national physical development plan.

**Sen. Daly:** Mr. Chairman, I do not want to muddy my waters with my more modest amendment relating to the EMA, but I do not quite understand what is being said. Are we on clause 35?

**Mr. Chairman:** Yes, yes, yes; 35(1).

**Sen. Daly:** 35(1) relates back to an application for planning approval. Am I wrong? It relates back to an application for planning approval. So why should the people who have the power to grant or refuse planning approval be entitled to bypass any of the things listed in this section? It just does not make any sense. I mean, the whole purpose of 35 is to relate the things that are there to a grant of planning approval. So after you have a national physical development plan and the EMA has given or refused a certificate, this planning body can simply say, “Well, we ignoring that? That does not make any sense.”

So if somebody applies to put stables in the Red House—I nearly said Augean stables—but if somebody applied to put stables in the Red House and the National Physical Development Plan showed that the Red House was the equivalent of a listed building and ought not to be interfered with, how dare the planners grant approval to put stables in the Red House? It does not make any sense. If this has been declared a historic zone in the national physical plan, how could the planning authorities say, “Well, doh mind dat, yuh could put stables there”? It does not make sense. It is giving them a discretion that is way too wide.

**Mr. Humphrey:** It is giving a discretion.

**Sen. Daly:** That is way too wide.

**Mr. Humphrey:** That is the intention.

**Sen. Daly:** But how can they?

**Mr. Humphrey:** Because you have assembled the nation's experts to deliberate on these matters.

**Sen. Daly:** But they "cyar" override the EMA or the National Physical Development Plan.

**Mr. Humphrey:** No. They cannot ignore the laws that exist, quite obviously.

**Sen. Daly:** No, no, it has got nothing to do with the laws.

**Mr. Humphrey:** But a national physical development plan is not a plan that is executed in any great detail. It is a general view of the country.

**Sen. Daly:** That is right.

**Mr. Humphrey:** It includes socio-economic considerations.

**Sen. Daly:** That is right.

**Mr. Humphrey:** It includes physical planning considerations.

**Sen. Daly:** That is right.

**Mr. Humphrey:** Now, let me give you an example. If you have a small-scale drawing of the country with a road network indicated with lines—some solid lines, some dash lines, some thin, some thick—indicating the type of road that is indicated—you cannot construct the road on that basis but you know generally where the road is going to be. Now, when you go to do the social surveys and you see how that road will affect properties, you must have a degree of flexibility because, if you change the directions slightly, you might be able to save very valuable development. The other thing is, you might find soil conditions that are not compatible with the construction and you might want to redirect the road to soil conditions that are compatible. You have to leave a discretion to the experts.

**Sen. Daly:** But it is a question of, how wide is their discretion? They cannot, for example—well, let us take my example. If the EMA has refused an environmental certificate for an area, they cannot go behind that and say, "We are overriding that." How can they?

**Mr. Humphrey:** No, but where are we, in fact, suggesting that they can do that?

**Sen. Daly:** Because you are limiting them to take into account—so if, for example, the EMA has refused a certificate for something for a particular area, you

are giving them the ability to say, “Well, never mind that the EMA has refused a clearance certificate.” I mean, this would be the biggest runaway horse of all because they could override absolutely every single piece of work that has been done under this planning Bill, whether it is disaster mitigation plan, whether it is policy statement. I mean, look at (d). They can override a statement of policy published in accordance with clause 27 laid before Parliament. They could override something laid in Parliament. I mean, I cannot accept that. You would not only have runaway horses you would have runaway tsars. They are so big that they only have to take these things into account.

So you go to the trouble of having a national physical development plan, you have an approved development plan, you have special interest areas, as something laid before Parliament—a disaster mitigation plan, environmental clearance certificate—and they could just say, “We not—well, we have taken it into account but we think differently.” I mean, that is an amazing power to give any body.

**Mr. Humphrey:** But you know, even an environmental clearance is, general or not, absolutely specific.

**Sen. Daly:** But they must not be allowed—[*Interruption*]

**Mr. Humphrey:** Let me give you an example.

**Sen. Daly:** Minister, may I just follow that? But they must not be allowed to override.

**Sen. Humphrey:** You mean the Commission?

**Sen. Daly:** If it has to be amended for some reason, then you must have a procedure for amending. We cannot give them all this power to override all these different things.

**Mr. Humphrey:** Let me give you an example. In developing the port of San Diego in California, there was a wetland.

**Sen. Daly:** “Dey dus lock up people for corruption dere, eh.” [*Laughter*]

**Mr. Humphrey:** There was a wetland that was actually used for part of the port development and re-established in another location.

**Sen. Daly:** So?

**Mr. Humphrey:** Well it just gives you the idea. Now, if you had an environmental certificate saying you cannot develop in that area, it is being defined as an area that must be naturally preserved, then you could not have done that.



**Sen. Daly:** My point precisely.

**Mr. Humphrey:** But the developers had a prescription and it was successfully done.

**Sen. Daly:** My point precisely. I could not think of a better example. So if we have decided that a particular wetland ought not to be interfered with, these people cannot override that. They must go back to the Authority that said those wetlands were valuable—[*Interruption*]

**Mr. Humphrey:** Absolutely.

**Sen. Daly:**—and persuade that Authority to change its mind, but this does not—[*Interruption*]

**Mr. Humphrey:** That, in fact, is the intention.

**Sen. Daly:** Well, this does not say that. It “doh” express that. “Dat doh express that.”

**Mr. Humphrey:** Because key people from the Environmental Management Authority are in the Commission—members of the Commission.

**Sen. Daly:** Well, that is beside the point. They have votes and so on. I am very happy—[*Interruption*]

**Mr. Humphrey:** All development is executed by people, so you have to have a degree of flexibility to enable those people to apply their expertise—[*Interruption*]

**Sen. Daly:** Flexibility, “I doh want dat” unless they—the wetlands is a perfect example. If the competent authority has decided that those particular wetlands are important, these tsars “cyar” override that. They must go back to the people who said that the wetlands are important and persuade them to change their mind.

**Mr. Humphrey:** But nothing here nullifies the—[*Interruption*]

**Sen. Daly:** That is a perfect example of what we are talking about.

**Sen. Outridge:** Mr. Chairman, the same National Physical Planning Commission is the one that has prepared the National Physical Development Plan. If it so desires to change this, which has been approved by Parliament and so forth, then clause 18(4) allows it to come back and review that every five years and I see no reason why, in between five years, it should be allowed to just change it willy-nilly.

**Sen. Daly:** But we have a live example now, excuse me, where a developer, whose connections we are investigating, has described the land adjacent to the beach in the six miles of Cocal as a strip of sand, and we advertised to the whole world that that is one of the most beautiful drives in the whole of Trinidad. So he could go with his connections and persuade the planning authority, “Man dah is jus’ a strip ah sand, man. Uproot all de coconut trees. Doh mind dat the EMA said that it is a sensitive area or whatever.”

So we have a real live example, a drive that I make three times a month, “I see ah fella say is a strip ah sand, some foreign tess to besides, and we investigating his connections, eh”, but that is a perfectly good example. So let us take your California example and let us assume that the EMA says that that strip of sand is sacred ground, these “fellas” cannot change it. “We strong on that. We strong on that.”

**Sen. Prof. Kenny:** Mr. Chairman, I am going to add to what Sen. Daly is saying about this particular example. Under the National Physical Development Plan of Trinidad and Tobago approved by the Parliament of this county, that particular area has already been designated and it is not designated for resorts and marinas and things, it is designated for agriculture and some coastal protection—wind belt protection. Just to add to this, the information we have is that an application for planning approval was made for an environmental clearance certificate. The developers admit it was made over the telephone when the law requires them to do this with a particular form, form A, and pay the fee and so on. So already we have somebody who is in breach. Work has already started and we are already in breach of the plan approved by this Parliament.

**Sen. Daly:** On top of that, they have already dug a moat six miles long and I do not know what the drainage consequences of that are. I pass there three times a month. I will be passing there this evening, and they have already dug a moat. They have not only put up signs, “Private property. Keep off”, which is fine, they have already dug a moat six miles long with the objective, of course, of stopping people driving their cars onto the strip of sand. That is precisely what we want to avoid. I do not want any planner who has connections with anybody saying it is all right to dig up the strip of sand, and it has happened already. So if we have a—[*Interruption*]

**Mr. Humphrey:** I personally have not been to the area. What I do know is, when an application was submitted to the Town and Country Planning Division, it was not submitted to me as Minister.

**Sen. Daly:** “But how dey dig it up already?”

**Mr. Humphrey:** It was referred to the Environmental Management Authority.

**Sen. Daly:** They dug it up already. They have already dug a moat and I do not know what the drainage consequences of that are, but my point is—*[Interruption]*

**Mr. Humphrey:** You mean they have dug a drain to prevent cars from leaving the road to drive on land?

**Sen. Daly:** That is how it appears.

**Mr. Humphrey:** Is that what you are saying?

**Sen. Daly:** That is how it appears, so that “nobody could drive on there to park up wid dey girl or take a swim.” My point is that if—taking your wetlands example, let us substitute for wetlands that strip of sand—and some competent authority has declared that strip of sand sacred, these planners cannot override that. They must go back to the competent Authority and persuade them that this plan that has been submitted to them is so sensitive that it will take care of the strip of sand. That is exactly what we want to avoid. The problem is, you know, Minister—*[Interruption]*

**Mr. Humphrey:** In the case of the area that you are discussing, would it not, in fact, have been more practical for the State to acquire that for the—*[Interruption]*

**Sen. Daly:** Well, “I doh know about dat. It depend if is de pardners ah de State. I not on that.” All I am saying is, if that strip of sand at the moment has been declared sacred—I am using the word in the loose sense—then these planners cannot override that. That is my point.

**Mr. Humphrey:** But I have no argument with that. In fact, that is exactly the intention, to preserve the things that are sacred to our generation and future generations.

**Sen. Daly:** Hence we are saying “comply with”.

**Mr. Humphrey:** All right, what we have discussed is, some of these things it would be all right to take into account, and others more specifically should be stated “comply with”. So let us go through them—*[Interruption]*

**Sen. Prof. Ramchand:** If I have to comply with a guide, I am not really—I have a certain flexibility in the compliance. So “comply with” would work in relation to the guide and “comply with” would work in relation to the specific

*Planning and Development of Land Bill*  
[SEN. PROF. RAMCHAND]

*Tuesday, July 31, 2001*

directive as well. So I do not think we need to split up the thing into two lists and say—[*Interruption*]

**Mr. Humphrey:** I agree. That is true.

**Sen. Prof. Ramchand:** Yes, so “comply with”—[*Interruption*]

**Mr. Humphrey:** So which ones—[*Interruption*]

**Sen. Lucky:** We are craving your indulgence for one minute.

**Mr. Chairman:** Okay.

**Sen. Prof. Ramchand:** Mr. Chairman, my—[*Interruption*]

**Mr. Chairman:** You have withdrawn already, “eh”?

**Sen. Prof. Ramchand:** No, I have—[*Interruption*]

**Mr. Chairman:** No, no, no, you have withdrawn. You will need to seek leave of the Senate. I have granted you permission to withdraw.

**Sen. Prof. Ramchand:** Okay, I am seeking leave of the Senate.

**Mr. Chairman:** The only amendment that is before the House is Sen. Mary King’s.

**Sen. King:** “Uphold”—I had “uphold”.

**Mr. Chairman:** Yes, we have not come to yours yet.

**Sen. Prof. Ramchand:** Well, we would have to take Sen. Mary King’s “uphold”.

**Mr. Chairman:** Yes, we will take it, because we cannot be doing this going to and fro. We must have order.

**Sen. Prof. Ramchand:** We will go with “uphold”.

**Sen. King:** “Uphold”.

**Mr. Chairman:** So let us hear what the Government has to say on Sen. King’s amendment.

**Sen. King:** “Uphold” is strong—[*Interruption*]

**Sen. Prof. Ramchand:** Same mold with “comply with”. I think the Government side, if they wish to put “comply” they could put “comply” instead of “uphold”.

**Sen. Lucky:** Mr. Chairman, when I first looked at Sen. Daly's proposal, I agreed with it because I feel that if the EMA—because in Sen. Daly's proposal which was, in fact, to substitute a paragraph (f), it would have meant that there would have been a compliance. In other words, you could not deviate from what the EMA had said and I agreed with that, because certainly, if the EMA has given their direction or they have said what can or cannot be done, then there is no other thing that should change from that or depart from it. However, having heard the explanation and interpretation of the word “comply” and checked with the drafters the explanation given by Sen. Prof. Ramchand, I feel that the word “comply” ought to be used because I do agree that “take into account” just puts it at the stage of “giving consideration to” and you could set it aside.

However, “comply”—I have been just trying to toy with whether one can comply with policy, and I think Sen. Prof. Ramchand just made the point—and I agree with it—that you comply with a policy and, if a policy changes, well, you will comply with that policy. It is like rules in a home. You comply with those rules but rules may change, and I think that we should use the words “comply with” because they do not in any way detract from the level of flexibility, in instances where it should be allowed, from operating.

**Sen. Daly:** Well, it would have to be redrafted, of course, consequentially. It would have to be “comply with the grant or refusal of a certificate” because it would not make grammatical sense—[*Interruption*]

**Sen. Lucky:** We would have to take out the word “where” there. So it would be, “any planning authority”, and I am just going to (f)—“any planning authority shall comply” and (f) would have to start with “with”.

**Sen. Daly:** Well it would not be sufficient to say “comply with a certificate” because if a certificate has been refused, we want them to be bound by the refusal too. So the draftspeople would have to redraft (f). It would have to be “comply with the grant or refusal of a certificate”, because another thing is, a certificate might be granted on conditions. So they would have to comply with the grant or refusal of a certificate by the EMA. That will have to be consequentially redrafted.

**Sen. Prof. Ramchand:** Minister, my amendment to (f) did not envisage anybody who has been refused the certificate making an application; that, having been refused the certificate, you would not be applying. An application would not be before the Commission and therefore I had proposed for (f) “comply with the terms, conditions and mitigation measures in a certificate of environmental clearance issued under the Environmental Management Act.” That is the

amendment I had proposed, taking for granted that, if you have been refused, the application would not be before the Commission.

**Sen. Lucky:** Senator, could you repeat what you have said, because it sounds very good? We just want to hear it again so we can write it.

**Sen. Prof. Ramchand:** Okay. What it says is:

“the terms, conditions and mitigation measures in a certificate of environmental clearance issued under the Environmental Management Act...”

**Sen. Daly:** Can I say very respectfully, you can very conveniently add my own—tack my own onto that, which is, “may not make any decision inconsistent with the refusal of a certificate of environmental clearance.”

**Sen. Prof. Ramchand:** Yes.

**Sen. Daly:** Because when these connected people come, “dey gon” say, “Well, you only have to comply wid a grant. Yuh doh have to observe a refusal.” “Dey smart too bad yuh know, and dey give us all dey plans in the papers for Cocal already. We ain’t even have a physical planning commission and dey tell us how dey goin’ to lick up Cocal already in the papers. Dey gih we de whole t’ing already.”

They gave us the whole thing already. My beloved piece of land they are calling a strip of sand. [*Laughter*]

**11.35 a.m.**

**Sen. Lucky:** We are just going through to see which other paragraphs we would have to change in terms of complying with that introduction now in the paragraph, “shall comply with” and (c) was one of those we would have to change.

In terms of (f), yes, we would agree to open with Sen. Prof. Ramchand’s and then continue with Sen. Daly’s, so we have agreed to that. It will be open partnership, but I am also asking the Senators to address their minds to (c), which started with whether the application pertains to an area of special interest; (c) would also have to change. So, “shall comply with”, and I am asking Senators to consider this wording for (c), “any plans and policies relating to an area of special interest”.

**Mr. Chairman:** Sen. King, regarding your amendment to 35(1), the Government is proposing “shall comply with”.

**Sen. King:** Mr. Chairman, I withdraw my amendment.

*Amendment withdrawn.*

**Sen. Lucky:** Sen. Prof. Ramchand, Mr. Chairman is asking us to formulate the words for subclause (f).

**Mr. Chairman:** Could you write it down? Do you want to speak?

**Sen. Prof. Ramchand:** It is:

“the terms, conditions and mitigation measures in a certificate of environmental clearance issued under the Environmental Management Act....”

Now you get the second part of the duet.

**Sen. Daly:** It continues:

“...and may not make any decision inconsistent with the refusal of a certificate of environmental clearance.”

Minister, could I ask a troublesome question? Is there anything in place at the moment to prevent the so-called interim National Physical Planning Commission rushing ahead and granting approvals before this Act is law?

**Mr. Humphrey:** The interim National Physical Planning Commission does not grant any approval.

**Sen. Daly:** You know under the Telecommunications Act we had a problem with that. By the time they had passed the Act, they let a set of multimedia licences—I am just telling you as a man of conscience. Thank you.

**Mr. Humphrey:** Only when this Act is proclaimed does the Town and Country Planning Act disappear.

**Sen. Daly:** I know, but suppose they rush ahead now and let go approval?

**Mr. Humphrey:** Well, I am going away for three weeks. I do not know if in my absence—[*Laughter*]

**Sen. Dr. McKenzie:** You see. This is the same point I was saying.

**Mr. Humphrey:** At least, I hope I am going away for three weeks.

**Mr. Chairman:** Under 35(1), we are deleting the words, “shall take into account” and replacing them with, “comply with”. We go on to clause 35(1)(c); we have, “any plans and policies relating to an area of any special interest”. That replaces new (c).

Then, we go to (f) where we have a new (f). And what I have here in terms of the new (f) is, “the terms, conditions and mitigation measures in a certificate of environmental clearance issued under the Environmental Management Act, and

may not make any decisions inconsistent with the refusal of a certificate of environmental clearance.” That replaces it. That is the new (f).

**Mr. Chairman:** Sen. Outridge, do you want to pursue your amendment?

**Sen. Outridge:** Any objections made by persons residing in the vicinity?

**Mr. Chairman:** Yes.

**Sen. Outridge:** I would like that to stand, because where you are making an application for planning permission, I feel that people who are in the vicinity—neighbours—they ought to be made aware of the application for planning permission that is likely to affect them or their company.

**Sen. Morean:** I think it may have to be reworded, but as it stands, we cannot put it in like that.

**Mr. Chairman:** As it stands, it cannot go into the Act.

**Sen. Outridge:** Comply with objections.

**Sen. Morean:** Not comply with objections.

**Mr. Chairman:** Do you want to reconsider that position?

**Sen. Outridge:** Mr. Chairman, I can tell you that this is very close to me because I live in Trincity where a particular developer—

**Mr. Chairman:** The Government will respond to you Senator.

**Sen. Lucky:** A concern I have also, that I am now looking at, might also be able to address what Sen. Outridge is saying. I do not agree that the proposed amendment of Sen. Outridge should stay as it is, because I have a problem with how you could comply with objections made by people residing in the vicinity. I am also concerned with our present subclause (h) where we have that you will comply with any other material consideration.

A material consideration may, in fact, be an objection and sometimes we may have objections which are not in sync. So what I think ought to be done and I just want to suggest to Senators, is that we remove (h), which has any other material consideration as being something with which you could comply, because that is too wide. Maybe we can word it—the drafters are here—“and shall take into account any other material consideration” which will include a concern that Sen. Outridge has. It would be objections made by persons residing in a vicinity.



**Sen. Outridge:** Mr. Chairman, the Senator is presuming that the people who are living in the vicinity are aware of the planning permission application. Now, the word “vicinity” is founded in precedents that have been upheld in English law in respect of neighbours who have found that applications were made for planning permission and the planning authority failed to advise them that someone had made a planning application for developing the property next to them, and the planning authority had granted approval without even consulting them.

I feel that it is important that if someone makes a planning application to develop property, that people who are residing in the vicinity or who are in the vicinity, ought to be made aware that your neighbour has made an application for planning permission. Do you have any objections?

**Sen. Lucky:** Senator, I have asked for somebody to just direct me, but I know that there are provisions in the Bill for public consultation, and there is also deeper into the Bill, specific provision for persons who will be affected by any planning that will be done, that they can make representation. That is deeper into the Bill, so what you envisage as a person who will be in the vicinity will not exist.

What I am concerned about, I am not saying that your subclause does not raise a material consideration, but to use it when you have introducing the subsection “to comply with”, you cannot have compliance with objections by persons residing in the vicinity. I am saying I agree with you, it ought to be taken into account, but you cannot give it the status of compliance. That is my only concern.

**Sen. Outridge:** When I say “objection”, I mean that the application that the person has made may infringe on the rights of the person who has to enjoy his property next door. It may cause nuisance, or it may affect his right of having light and view and so forth, and these things need to be taken into account. You cannot just willy-nilly grant planning applications to people without—

**Sen. Lucky:** I only interrupt you because you have used the exact phraseology I have said; “take into account”. So I am suggesting to the drafters that after (g), we say, “and shall take into account any material consideration” and if you want, and the Minister agrees, we could put “including” and what you put. But you cannot use your proposed amendment to come after “shall comply with”. It will have to be—and you used the very words. I think we are on the same side with this, Senator.

**Sen. Morean:** I think we can marry the two, because I agree with what the Senator and the Minister are saying, how we can correct it in this way. Use the

Minister's suggestion for (h), and in subclause (2), we can include Sen. Outridge's amendment as one of the subclauses, so that will take care of it.

**Sen. Lucky:** I think the suggestion by Sen. Morean is a good one.

**Sen. Dr. McKenzie:** Mr. Chairman, I think (2)(e), the same clause, spells out that sort of social benefit cost to the community, and so forth.

**Sen. Outridge:** I agree with Sen. Morean's suggestion.

**Sen. Lucky:** If I might say, through you Mr. Chairman, it would read:

“and shall take into account any other material consideration.”

So there will be no (h).

**Sen. Morean:** That is good.

**Sen. Lucky:** And then Sen. Morean, in accordance with what Sen. Outridge is asking for, that is subclause (2), there would be a new subclause called (g), and (g) would have “any objections made by persons residing in the vicinity;”

**Sen. Outridge:** Yes.

**Sen. Lucky:** That should cover everything. We thank hon. Senators.

**Mr. Chairman:** We are proposing that we are going to delete (h) and continue, “and shall take into account any other material consideration.” And then we will agree to incorporate, under a new (g), which will take into account, for instance, “any objections made by persons residing in the vicinity;”

**11.55 a.m.**

**Mr. Chairman:** I think the Senator was saying “by members of the community”.

**Sen. Lucky:** It should be anybody. Why do we limit it? It could be anybody.

**Mr. Chairman:** By “members of the community” as opposed to “residing in the vicinity”. [*Crosstalk*]

**Sen. Outridge:** I do not think you want to make it as wide as community.

**Sen. Lucky:** Is there any objection to making it wider? I think that would even be better. [*Crosstalk*]

**Sen. Outridge:** All right.

**Mr. Chairman:** Any objections made by members of the community. Sen. Outridge, do you have any problem with this one: “Any objections made by members of the community”? Do you have a problem with that?

**Sen. Outridge:** I have no problem with that.

**Mr. Chairman:** Okay, we would proceed. Clause 35, as amended, as extensively discussed—[*Laughter*—and agreed upon—I have already indicated to you part one and then we went to Sen. Outridge. I just want to repeat for the record “and shall take into account any other material consideration”, and in subclause (2) we add a (g) and we incorporate the following “any objections made by members of the community”. Is that okay?

**Sen. Outridge:** That is okay.

*Question put and agreed to.*

*Clause 35, as amended, ordered to stand part of the Bill.*

*Clause 36.*

*Question proposed, That clause 36 stand part of the Bill.*

**Mr. Chairman:** We have a number of amendments before us.

**Sen. Lucky:** Mr. Chairman, before we go to the amendments—

**Mr. Chairman:** Before we go to the amendments, maybe we could ask the Minister, because he is proposing completely deleting clause 36 and renumbering accordingly.

**Mr. Humphrey:** Delete the whole of clause 36.

**Mr. Chairman:** Would all the Senators withdraw their amendments?

**Sen. Prof. Ramchand:** I want to say something. I am happy to see clause 36 go, but I am not happy to see that heading “Consideration of Environmental Effects” removed from the Bill. So what I am proposing is that since the Minister has said that the memorandum of understanding between the Interim National Physical Planning Commission and the Environmental Management Authority is valid, I would like to retain clause 36 and put in a new (1) and (2), which incorporates the essence of the agreement between the Interim National Physical Planning Commission and the EMA. [*Crosstalk*] I am not quoting from the memorandum of understanding.

**Mr. Chairman:** Do you want to pursue that Sen. Prof. Ramchand or do you want to withdraw it and we go along? Would you like to pursue your amendment?

**Sen. Prof. Ramchand:** Yes. All I am saying is to insert a new (1) and (2), and the new (1) would say, "Where the National Physical Planning Commission or Minister grants approval in principle for proposed activity provisionally, such provisional approval shall be subject to the condition that no permit, licence or other documentary authorization shall subsequently be granted by the National Physical Planning Commission or the Minister for undertaking that activity unless a certificate of environmental clearance has been issued."

**Sen. Lucky:** Sen. Ramchand, through you, Mr. Chairman, the wording is nice, but there are two reasons why I would just respectfully ask you to reconsider whether we need it. Now that we have changed the relevant clause and we have taken into account compliance, it means that we are bound by the EMA. You have to consider these things.

**Sen. Prof. Ramchand:** Okay, Mr. Chairman, I withdraw.

**Mr. Chairman:** Okay, Sir. The question is that clause 36 now stand part of the Bill. [*Interruption*]

**Hon. Senators:** We have deleted it.

**Mr. Chairman:** Yes, we have deleted it completely. Okay, the deletion now stands.

*Question put and agreed to.*

*Clause 36 deleted.*

**Mr. Chairman:** Sen. King are you still pursuing your amendment? Prof. Kenny are you still pursuing your matter? [*Crosstalk*] Sen. King if you go back to your proposed amendment to clause 36, do you want to withdraw the entire thing?

**Sen. King:** I think the Minister has deleted the whole clause, so it is irrelevant, so I withdraw my amendment. [*Crosstalk*]

**Mr. Chairman:** We will renumber accordingly. [*Crosstalk*] We will leave it as it is.

**Mr. Humphrey:** We have split clause 37 into two clauses; the first part of clause 37 will become clause 36.

**Mr. Chairman:** No, we will handle that after Mr. Minister, let us not handle that right now. We just want to go on to clause 37. We will renumber accordingly, so let us not split things now. We go to clause 37.

*Clause 37.*

*Question proposed,* That clause 37 stand part of the Bill.

**Mr. Chairman:** There are some amendments proposed by Sen. Prof. Ramchand and Sen. Prof. Kenny.

**Sen. Prof. Kenny:** Mr. Chairman, I find it incomprehensible that you can grant permission to develop land unconditionally. I do not think it is necessary. I think that every grant of approval must have, at least, a minimum condition, that is, they comply with the details of the plan.

**Sen. Prof. Ramchand:** Mr. Chairman, I have exactly the same argument.

**Mr. Chairman:** Well, the Minister will respond.

**Sen. Outridge:** Mr. Chairman, I think that one can grant an application unconditionally, provided that that application is consistent with the laws, the existing standards and regulations, so I think if one could expand right after “unconditionally” to say “where the application is consistent with the existing planning standards and regulations” that would suffice.

**Sen. Daly:** Having regard to the amendment to clause 35, where we now have mandatory compliance on the part of the planning authorities, I am suggesting that clause 37 has to begin by saying: “Subject to this Act the Commission or Planning Authority...” That is a necessary, I am suggesting, consequential amendment, “subject to this Act”. For whatever it is worth, if you put a full stop after “grant permission to develop land”, it would be subject to the Act, so it clearly cannot any longer be unconditional. So, “subject to this Act they may grant permission to develop land”. I do not want to get into the argument about unconditionally, but I think we need the words “subject to this Act”. Then, perhaps, if we put that, it may follow that you can remove the word “unconditionally”. [*Crosstalk*]

**Sen. Lucky:** Through you, Mr. Chairman, instead of saying “Subject to this Act”, which is Sen. Daly's proposal, we could say, “subject to section 35”, which would be the particular section, instead of subject to the entire Act. I would agree with you that it makes no difference, because the Act will be binding anyway. The reason we had suggested that we go with stating section 35 is that this is a

*Planning and Development of Land Bill*  
[SEN. THE HON. G. LUCKY]

*Tuesday, July 31, 2001*

section, no doubt, that would have to work in accordance with. Section 35 takes priority because that is the section you are mandated by.

**Sen. Daly:** As long as it says “Subject to section...”

**Sen. Lucky:** But it would read “Subject to section 35, the Commission or Planning Authority may”, and then there would be deletion of all those words after “taking into account all material considerations”, because that was already dealt with in clause 35. Then you would go into “grant permission to develop land unconditionally.”

Mr. Chairman, just something I wanted to say to Prof. Kenny, I know he is not here, but to other Senators who may be concerned as to how you can grant land unconditionally, not only is this wording taken from the Town and Country Planning Act—and I do not think because it is there we have to necessarily import it here—but that considers, actually, change of use; when you are changing the use of your land. There may be instances where you really do not put conditions, and that is why it is called standard language. It may not sound English in terms of the grammar, or even legally proper, but it is accepted in terms of the whole concept of planning. That is where it comes from. Actually, it is section 11(1) of the Town and Country Planning Act. I do not think that it causes any problems. I do not know if Senators would agree now if we were to use this wording.

**Sen. Daly:** It certainly cannot violate clause 35. You cannot grant it unconditionally by ignoring clause 35 once you accept “subject to clause 35”.  
[*Crosstalk*]

**Mr. Humphrey:** Clause 37(1) becomes clause 36 and clause 37(2) becomes clause 37, so we have to change the wording to make it stand alone. You are not going to have a subsection (1) anymore. We have to change the language.

**Mr. Chairman:** Give us the language; we are interested in the language.  
[*Crosstalk*] What is the wording? [*Crosstalk*]

**Mr. Humphrey:** Where we have 37, we substitute 36 and it would read: “Subject to section 35 the Commission or Planning Authority may”—[*Crosstalk*]

**Mr. Chairman:** Hon. Senators, just for your own edification and clarification, we have renumbered, and clause 37 is now clause 36. It reads: “Subject to section 35, the Commission”—do you have that?

**Hon. Senators:** Yes.

**Mr. Chairman:** Prof. Kenny, Sen. Daly, are you following me? Then we go on to a new section; clause 37(2) becomes clause 37—are you following me on that?

**Sen. Daly:** Yes.

**Mr. Chairman:** Then it reads as follows: “A determination pursuant to section 36 shall be in writing and shall, where 36(b) or (c) applies be accompanied by” and then you go on to (a), (b) and so on. Is that okay? Is that clear?

**Hon. Senators:** Yes.

*Question put and agreed to.*

*Clauses 36 and 37, as renumbered and as amended, ordered to stand part of the Bill.*

**12.15 p.m.**

**Mr. Humphrey:** Mr. Chairman, I have been advised that we need a marginal note for clause 37. “Decisions to be in writing”.

**Mr. Chairman:** Could we return to that? Just take a note of it. We do not put questions to marginal notes, we would come back and deal with it.

**Mr. Humphrey:** With clause 38 we now have a consequential change.

**Mr. Chairman:** What is the marginal note you would like us to put?

**Sen. Lucky:** “Decisions to be in writing”.

**Mr. Humphrey:** “Determinations to be in writing”.

Mr. Chairman, in clause 38 we need to take out 37(1) and replace it with clause 36. We take out 37(1) and put 36, because the reference is to 36(1)(b).

**Mr. Chairman:** Where are you?

**Mr. Humphrey:** At clause 38.

**Mr. Chairman:** We have clauses 36 and 37 and a renumbered 38.

**Mr. Humphrey:** No, we need to change the reference in clause 38 to 37(1) because it is clause 36(1)(b) to which we are referring.

**Mr. Chairman:** In other words, you are talking about without restricting the generality of clause 37(1)?

**Mr. Humphrey:** No, clause 36(1)(b).

**Mr. Chairman:** Yes, you are correct.

**Sen. Prof. Ramchand:** Mr. Chairman, for the sake of propriety I think I should say that I am withdrawing my amendment to original numbering 37(b). I have one that I am withdrawing, but that amendment had been proposed long before the Government had made so many—

**Mr. Chairman:** Leave granted. Let us proceed.

*Clause 38.*

*Question proposed,* That clause 38 stand part of the Bill.

**Mr. Humphrey:** Mr. Chairman, we have to change clause 37(1) and put 36(b).

**Mr. Chairman:** So instead of clause 37(1), we put clause 36(b). What is being proposed here is that it has now been renumbered. We have 37(1)(b), and it will now be clause 36(b).

Sen. Prof. Ramchand, I think you have an amendment for clause 38?

**Sen. Prof. Ramchand:** Yes. Some misgivings have been expressed about if I have an estate in Icacos and I am applying to do something in Matelot whether:

“(a) regulating the development or use of any land under the control of the applicant (whether or not it is land to which the application relates)...”

Concern was expressed about that, and I am proposing, “any adjacent land”. Maybe, you would have a right to say: “a piece of land near to the land you are developing”. So for clause 38(1)(a) I propose the following:

“(a) regulating the development or use of any adjacent land under the control of the applicant...”

**Sen. Lucky:** Through you, Mr. Chairman, Sen. Prof. Ramchand, when the concern was raised as to the words that are in brackets “(whether or not it is land to which the application relates)”, I had actually made reference to the Town and Country Planning Act section 11(2)(a) which also imports the same language and the explanation given is that you do not want to make the land necessarily adjacent because when permission is being granted, it may be granted with respect to a present use. The analogy I had used—I think I was answering Sen. Dr. McKenzie—was that you are operating from a piece of land and you have a gas station, but your dream was always to set up a bigger and better gas station



down the road on a bigger parcel of land that you have. Permission may be granted for you to develop the land in accordance with operating that new gas station, but on condition that when it is fully operational that you would stop the use of the gas station you operate presently on the piece of land that you have, and that is not a case of adjacent land. So that is why you have to leave it wide and that, in fact, is the explanation given and why the words are put in those brackets in the way they are and why you do not use the word “adjacent” even in the place that you suggested which is right after the word “any”.

**Sen. Prof. Ramchand:** What you say makes sense, but there is still a problem of two very distant pieces of land, but the law as it is here, would affect as I said, if I am applying for a piece in Matelot, but I have a piece in Icacos, you are controlling what I do in Icacos.

**Sen. Lucky:** Yes, but if somebody wants to control what you are doing with a piece of land that in your example seems so remotely far away, there would have to be good reason for doing it.

In the Senator’s suggestion, he is saying one piece of land is in one part of Trinidad and the other—I am saying you would have to have some reason for doing that. It is not an arbitrary use and case law has given an interpretation for that. So there cannot be an arbitration fetter that is put on your land.

**Sen. Prof. Kenny:** Mr. Chairman, let us take an example of you own a property in Port of Spain and being a law-abiding citizen you apply to modify the property. This is a residence and you happen to have a piece of agricultural land in Tobago.

**Sen. Lucky:** Through you, Mr. Chairman, that would not arise. Any control of your land in Tobago, is not going to arise because that is going to be an arbitrary fetter—

**Sen. Daly:** They are arbitrary. If you apply to enclose a gallery, they ask you to submit a drainage plan, and I can show you a building two blocks away where they impose the parking ratio and two months after the completion certificate they enclosed all the parking space. They are completely arbitrary.

**Sen. Lucky:** We hope all of that will be resolved.

**Sen. Daly:** It is two blocks away.

**Sen. Lucky:** If I might just also—through you again, Mr. Chairman—I am going through the case law that actually dealt with instances when matters were brought that involved the use of this similar section, the case law has determined

that the conditions that are imposed cannot be arbitrary. In other words, there are guidelines and it is in case law.

**Sen. Daly:** If they are, then you have to go to the Privy Council.

**Sen. Lucky:** Yes, you would have to.

**Sen. Daly:** The case law is in England or wherever where a lot of things that happen here do not happen abroad.

**Mr. Humphrey:** [*Inaudible*—because the word “any” is broad and I agree it could be interpreted that you are restricting use of this land and at the same time you are restricting the use of other land that may be in Tobago and not in Trinidad.

**Sen. Daly:** Yes. Thank you, Minister.

**Mr. Humphrey:** What can we put there? “regulating the development or use of ‘relevant’ land under the control”, “‘related’ land under the control”?

**Sen. Morean:** Instead of the word “any”, we could put the word “such”. That would be the particular land with which you are dealing.

**Sen. Daly:** Surely what you are concerned about there is that the other land has to be related to the development. I think you gave the example of the two gas stations in the same road. What about any related land?

**Mr. Humphrey:** Any related land?

**Sen. Daly:** Yes, so at least it is—I am sorry to keep using the example of gas stations, it is not the best.

**Sen. Lucky:** Whatever it may be Sen. Daly, and other Senators who are concerned, what these sections also seek to do is the last four or five lines of that particular paragraph that is meant to give some sort of guideline as to how it would be used. In other words, “to the extent that the Commission or the planning authority deems expedient for the purposes of or in connection with the development authorised by the permission;”

That in itself by the court is deemed to be the start of the plank from which you work within the parameters of the control of other parcels of land that the applicant may own.

**Sen. Daly:** But for our little Republic, could you not just put in “related land”? Just for our Republic?

**Sen. Morean:** Or even the word “adjacent” seems correct.

**Sen. Daly:** Or the word “adjacent”.

**Hon. Senator:** Or “related land”.

**Mr. Humphrey:** If you put “related land” you take out the section in brackets.

**Sen. Outridge:** What about the word “associated”, “associated land”? Land that is associated with the application?

**Mr. Humphrey:** It is being suggested that if you include “related” describing the land that we continue with “(whether or not it is land to which the application relates)”. To me, that is superfluous.

**Sen. Daly:** [*Inaudible*]—unrelated so that they could squeeze you. After Exchange Control, Town and Country Planning is the most arbitrary authority we ever had in this place. Nobody could beat Exchange Control. One man gets \$400 to go away and another man gets \$4,000. Here one man has to have 10 parking spaces and another, no parking space. Drive around town and you will see.

**Sen. Morean:** Mr. Chairman, what is the Government’s objection to the use of the word “adjacent”?

**Mr. Humphrey:** Adjacent or related?

**Sen. Morean:** What is the objection?

**Mr. Humphrey:** I think the word “related” covers it. That is the meaning. I have 10 acres and I apply to develop one acre which would impact on the other nine and the authorities must look at the impact it would have on the other nine.

**Sen. Daly:** I respectfully agree Minister, that if you put “related” it makes the words in brackets superfluous.

**Sen. Morean:** That is what I am looking at. How does that read with the words in brackets? What is the objection to the word “adjacent”?

I have a suggestion Mr. Chairman, if you want to use the word “related”, remove the words in brackets.

**Sen. Prof. Ramchand:** Mr. Chairman, I withdraw my suggestion of “adjacent” and support “related” and deletion of the brackets.

*Amendment withdrawn.*

**Mr. Chairman:** May I suggest that we defer this matter?

**Sen. Morean:** We have spent so much time on it already, and it is a very small amendment.

**Mr. Chairman:** Can we defer it?

**Sen. Morean:** For after lunch?

**Mr. Chairman:** Do we agree that we defer clause 38 for after lunch?

*Clause 38 deferred.*

*Clause 39 ordered to stand part of the Bill.*

*Clause 40.*

*Question proposed, That clause 40 stand part of the Bill.*

**Mr. Humphrey:** Mr. Chairman, I beg to move that clause 40(2) be amended as follows:

In the first line, delete the word "all".

*Question put and agreed to.*

*Clause 40, as amended, ordered to stand part of the Bill.*

*Clauses 41 to 47 ordered to stand part of the Bill.*

**Mr. Chairman:** This is an appropriate time to break for lunch. The sitting is now suspended until 1.35 p.m.

**12.33 p.m.:** *Sitting suspended.*

**1.35 p.m.:** *Sitting resumed.*

*Clause 48.*

*Question proposed, That clause 48 stand part of the Bill.*

**Mr. Chairman:** There are a number of amendments to clause 48. Sen. Prof. Ramchand, Sen. Prof. Kenny, Sen. Martin Daly and Sen. King. Also, the Minister.

Hon. Minister, would you like to deal with your amendments first and maybe we could deal with a number of other amendments.

A. At the end of subclause (1)(a), add:

‘giving rise to substantial regional or national controversy’.

B. Delete subclause (1)(b) and renumber paragraphs (c) to (e) appropriately.

C. Immediately after, subclause (7), add the following new subclause:

“(8) Nothing in subsection (7) shall be construed as preventing any person from applying to the High Court for judicial review of a decision made by the Minister under this section.”

**Sen. Lucky:** The proposal of the Government is as follows: Presently in clause 48(1), there are five paragraphs. The Government is proposing that what is presently (a) and (b) actually be merged so that it will read:

- (a) involves issues of more than local importance giving rise to substantial regional or national controversy;...

And then renumber; what would be (c), (d) and (e), would then be (b), (c) and (d). Then in subclause (7), because there had been concern that the decision of the Minister would be final, there was concern that it seemed as though the buck stops with the Minister, to assure everyone who was concerned that that was not the case, to include a subclause which would be now subclause 8:

“Nothing in subsection (7) shall be construed as preventing any person from applying to the High Court for judicial review of a decision made by the Minister under this section.”

That was the proposal of the Government.

**Mr. Chairman:** Sen. Mary King, you have an amendment here.

**Sen. King:** I had an amendment, which emanated from the fact that I did not think there was guidance for the Minister in that paragraph: ...“the Minister may give directions requiring the application referred to him...”

I wonder if we should not include a phrase “for further discussion with stakeholders” which would guide the Minister.

**Sen. Morean:** Mr. Chairman, it seems to me from the general tenor of the Bill, that that power resides in the Minister in any event. It is not necessary to have this clause 48 to give this additional or extra power to the Minister when the Minister already has the overall supervision of the Bill. I am yet to be convinced that this clause is necessary at all, and this particular subclause (1) could lead to manipulation and intrigue. The very thing that you want to avoid because, a commission is set up with all the authority necessary to consider any of these eventualities and to give advice on it or, to make recommendations that the Minister may or may not accept since he has the final say. I believe this clause

really is totally unnecessary in light of all the powers that have been conveyed on the Minister in relation to carrying out the purposes of this Bill.

**Sen. Prof. Kenny:** This was my view as well, in that we have amended clause 7 so that the Minister may give specific or general directions on matters of policy. To me clause 48 is inconsistent with clause 7 in that on one side we are saying the Minister may, and then here we are saying if we go through those things involving issues of more than local importance, it raises significant architectural urban design issues. This makes an assumption that the Minister responsible has some competence in the field of architecture and urban design. We are not writing this law for the present Minister who we know has expertise in this area. This administration or another administration might have a minister with a background that is entirely different.

I question whether (b) is necessary, and then we turn to (c) “may conflict with national policy;” The Minister already has to tell them what the policy is and if they depart from this the Minister will call them in and say this is the national policy. Or, it may involve the interest of a foreign Government.

My original amendment to clause 7 suggested that we include policy as well as obligations on the part of treaties and so forth. I thought that it was not really necessary to have clause 48 at all. My amendment proposes deletion of the entire clause.

**Mr. Chairman:** Hon. Minister, what do you think of the suggestion that most of the proposed amendments be deleted? What is the position of Government?

**Mr. Humphrey:** Mr. Chairman, the Minister under our Constitution is the Cabinet. The Cabinet under the Constitution has the Executive authority to manage the affairs of the country. You cannot just strip the powers of a minister in legislation of that sort. In fact, the process by which matters come to Parliament for consideration is through the Cabinet. If we take this out you are actually interfering with the role of the Executive in running the country’s affairs.

**Sen. Prof. Kenny:** My argument is that the Executive is part of the State that determines the policy, that the public service and parastatal bodies execute policies on behalf of the State or the political directorate.

**Mr. Humphrey:** Under the national Constitution the Executive does not only determine policy. The Executive runs the affairs of the country. The Parliament makes the laws. The courts and the Judiciary enforce the laws. The Executive actually runs the country.

**Sen. Prof. Kenny:** It runs it through the public service and other bodies.

**Mr. Humphrey:** The Executive abides by the laws, as all other entities must. You have got the three-pillar system of our democracy and you are trying to remove one pillar.

**Sen. Prof. Kenny:** With respect to the Minister, I am not suggesting removing one pillar. If one deletes that, the Minister still has the power under clause 7.

**Sen. Morean:** And clause 4.

**Sen. Outridge:** Mr. Chairman, the Minister already has for the administration of this Bill powers over the planning commission and planning authorities in clauses 4 and 7. If we want to delete it, as long as we say something to the effect that the Minister shall give effect to this Act in accordance with the provisions, and delete clause 48, this would leave the Minister to administer the planning policies and to take whatever executive decisions Cabinet has given him in giving effect to the decisions he would take under this Bill. There is no need for clause 48.

**Mr. Humphrey:** These spell out the powers that are specifically reserved to the Minister.

**Sen. Prof. Ramchand:** Then what is left for the planning commission?

**Sen. Lucky:** Mr. Chairman, through you, I do not understand the statement “what is left for the planning commission?” These are only specific instances involving issues of more than local importance giving rise to substantial regional and national controversy; instances in which nations are in conflict, instances in which there is interest of a foreign government, instances in which you have treaty obligations. That is not going to delete a substantial chunk of anything that the planning commission is going to have to deal with.

I thought that one of the concerns raised with respect to this entire section was that the Minister was having what seemed to be an overriding power. If you were to read subclause (5), that makes all those sections that we have amended accordingly clauses 33—38 and clause 41, the Minister becomes subject to those very considerations. For example, in clause 35 where we put—shall take into account, shall comply with—the Minister will also be bound by those things.

I remember one of the objections was whether, in fact, the Minister’s decision was final and there is the Government proposal to put that subclause (8).

What is at least the justification necessary to put this clause is that there are instances in which the Minister, acting in his capacity as the Executive, has to

make certain determinations and that is being taken out of the purview of the Commission. But the Commission remains. The greater percentage of applications would still be going through the Commission.

**Sen. Morean:** So what you are saying then is certain applications can be dealt with by the Minister to the exclusion of the Commission. It is not that it would go to the commission first and then the Minister would have a final say. You are saying that the Minister will deal directly with such applications. This is what I am fearing because there can be manipulation, there can be all the things that we fear with such a provision. I am not saying this Minister here may be guilty of such, because we are not legislating for this Minister. We are legislating for the next government and so on.

**Sen. Lucky:** Senator, I take your point that we are not making the legislation for this Minister and so forth. That is something that is repeated and we all know that. Many of the concerns are already dealt with in the very clause 48. For example, if one were to look at clause 48(6):

“Before determining any application referred to him...the Minister shall afford—

- (a) the applicant; and
- (b) the Commission or any planning authority, if either of them so desire,

an opportunity to...be heard...”

In other words, it is not as draconian as it is coming across. The Minister is given a certain mandate within which he has to operate, and a mandate within which he has to hear. Even if one looks at what is stated in (a) to (e) and, I am saying the Government, it is really paragraphs (a) to (d). There are very limited circumstances and even with those limited circumstances it is not carte blanche power that is given to the Minister to just circumvent anything or act on his own. He is acting as a member of the Executive and he still has to operate within the provisions of this Bill and those bodies would still be heard.

**1.50 p.m.**

**Sen. Morean:** I have difficulty with (c), because in (4) the Minister already directs the policy. He drives the policy. Why should we have here “make conflict with national policy” when, if the Minister drives policy, he dictates the policy? The commission, if such an application comes before it, will be acting in



accordance with what the Minister dictates as being the policy to be followed. Why is this necessary?

**Mr. Humphrey:** We are notifying the public that when the plans impact on these conditions, they come to the Minister.

**Sen. Dr. McKenzie:** Mr. Chairman, when I made my contribution, this was a clause that bothered me and I will tell you why. When you look at 48(1), it says, "Where application is made for permission...the application involves issues of more local importance." The application does not go to the Minister. The application would have gone to either a local authority or the planning commission. They should be the ones to say that this has implications for foreign policy. This conflicts with national policy as we know it. They should determine which applications need to be sent to the Minister. This is my interpretation of it. As it is here, it does not give that impression.

If you go away with it, you would get the impression that the Minister, from the outset could say, "Give me this application, this one and this one and we will deal with those particularly." I am saying that the Minister will only intervene where something is referred to him because it goes outside the ambit of the National Physical Planning Commission. This one might involve foreign policy, treaties, this or that, therefore the commission or the local authority should say that, according to the criteria set by the Minister for policy and foreign this and that, these applications fall outside our jurisdiction and we will refer them to the hon. Minister. This is the way I see it.

**Sen. Prof. Ramchand:** Mr. Chairman, what Sen. Dr. McKenzie is saying is eminently sensible. I support it.

**Mr. Humphrey:** It could be both ways. The procedure could be through the commission or any planning authority or by notifying the public. The member of the public who is aware of the condition may go directly to the Minister. It makes no difference because the Minister will not act arbitrarily. He will have a team of advisors.

**Sen. Dr. McKenzie:** I am listening to everything you are saying, but the way it is phrased here it does not give that impression. It gives the impression that the Minister could even select some of the applications without the commission saying that this is out of our ambit. This is my point.

**Mr. Humphrey:** How would he do that? Go around to each agency and look at all the applications?

**Sen. Dr. McKenzie:** No, no. I did not say that.

**Sen. Daly:** His “partner” will come and tell him, “Boy, I just put in an application. Take it over.”

**Sen. Prof. Ramchand:** Since the competence of the National Physical Planning Commission is not in question and they are trusted to vet the applications, then we have to set up conditions under which the commission would be advised to forward to the Minister certain applications that reflect on policy. They would be told that is what they have to do.

**Mr. Humphrey:** It would not make any difference because you are still citing the powers that are reserved to the Minister. That is all you are doing here. You are recycling the powers reserved for the Minister.

**Sen. Prof. Ramchand:** When we come to the technical committee, the people whom we select to vet these applications have gone through these applications, have checked them out on technical grounds and are now saying, “You see this, the final decision in this affects policy, therefore it must go to the Minister.”

**Mr. Humphrey:** In other words, give them the discretion to determine it?

**Sen. Prof. Ramchand:** Yes.

**Mr. Humphrey:** And the executive is stripped of constitutional authority because some “partner” will come and corruptly influence the Minister, according to Sen. Daly.

**Sen. Prof. Ramchand:** That is a joke.

**Sen. Daly:** You are thinking of Mr. Brock.

**Sen. Prof. Ramchand:** It is not a discretion you are giving them. You are telling them.

**Mr. Humphrey:** The applications that come to this Minister are the ones that are pigeon-holed by the planning authorities and sometimes lost forever and then, in despair, the developer refers the matter to me and I refer it to the advisory panel.

**Sen. Prof. Ramchand:** Hopefully things will change with the new National Physical Planning Commission. They would not be pigeon-holing things.

**Mr. Humphrey:** Hopefully they will change.

**Sen. Prof. Ramchand:** You are not giving them the discretion not to send, you are telling them there are certain circumstances—

**Mr. Humphrey:** If you strip the Minister of his power, then the developer has no one to turn to.

**Sen. Prof. Ramchand:** You are not stripping the Minister. We are telling the commission that there are certain circumstances in which they forward these applications to the Minister for final decision because these are policy matters. You are telling them they have to forward it. We have to be clear about the circumstances in which they must forward to the Minister.

**Mr. Humphrey:** I am very reluctant to strip the executive of its powers. Members of the Senate have not gone out there and faced the electorate. Members of the House are a little different. We go out there and face the electorate. We fight against political opponents and some win and some lose. If the ones who win are in the majority, they form the government. Once they form the government, they are given a constitutional term with limitations, like every other citizen or group of citizens. The law is the limit of what we can and cannot do, and, quite rightly, we have a public service that is a part of the process. That is also in the Constitution of the country. In the Constitution, Ministers and Cabinet have certain defined powers and in terms of physical development, that is related to planning the development of the country. You cannot strip the Cabinet of its powers. The Cabinet has to reserve power. It seems to me that you are trying to remove those powers drafted in this Bill that are perfectly constitutional and, in my way of thinking, perfectly correct.

**Sen. Lucky:** Sen. Dr. McKenzie raised a concern as to the process that would be used. That is answered with respect to subclause (2). Subclause (2) shows that when the Minister makes a determination with respect to the class of application to come before him—the clause says, “A direction given pursuant to subsection (1) may...”. Subclause (2)(a) talks about being given to the commission or to a particular planning authority generally. Sen. Dr. McKenzie, what would happen is that the direction would be given. When they get applications dealing with either (a), (b), (c), (d) or (e), they are sent to me. It goes on to say:

“and

- (b) relate either to a particular application or to any or all applications of a class specified in the direction.”

Sen. Dr. McKenzie, let me put your mind at ease in terms of the procedure. You were concerned whether I had you correctly in terms of the procedure? Was it that he would go through everything and this is how it would be done?

I envisage that, for example, as it is put here in subclause (2), that either the commission or the planning authorities would say that all applications dealing with (?) come under the ambit of (a) to (d) and everybody would know. It is in subclause (2). I do not know if that answers your concern, Senator.

**Sen. Dr. McKenzie:** That is exactly what I am saying. Even my very notes, Mr. Chairman, say that, from the very outset, the commission should know which applications should be referred to the Minister. You do not give the impression [*Inaudible*] give me that. The commission knows. This is one which involves national policy, etc. I think Sen. Lucky has the point that I have made and I continue to make.

**Sen. Prof. Kenny:** This is really a question to Sen. Lucky. I like the idea of looking at examples. As written here, would the paving of the Savannah, which is contrary to all procedures and contrary to law, have been prevented by the framing of this particular clause in this legislation?

**Mr. Humphrey:** The legislation which would prevent something like that is the Environmental Management Act. That is a law that would prevent something like that.

**Sen. Prof. Ramchand:** Clause 48(2)(b) is going in the direction that we would like to see spelt out.

**Sen. Lucky:** It is spelt out. Let us look at it logically. That is why I took Sen. Dr. McKenzie's point; that is why I have checked it to make sure there is a procedure within the clause. A minister will not go through every single application. He will not do that sifting process. That process has to come from the planning commission when an application comes before them and they would make a certain determination whether it comes under a certain ambit, and send it forth to him. I agreed with her point and I wanted to make sure that was spelt out. I think it is clearly spelt out here. It says it is not going to deal with one application. It is dealing with a policy.

**Sen. Prof. Ramchand:** Is it implicit and explicit that all applications must go either to the local authority or the National Physical Planning Commission? It cannot go directly to the Minister.

**Sen. Lucky:** It cannot go directly to the Minister. It is only in certain instances and these are spelt out.

**Sen. Prof. Ramchand:** We have to make sure.

**Sen. Thomas:** Can we consider, in light of what we have heard, that an amendment with the effect that, “in accordance with the provisions of Part III, the commission shall refer to the Minister all applications which involve...”, and you follow the procedures of (a), (b), (c), (d)?

**Mr. Chairman:** Will you repeat that, Sen. Thomas?

**Sen. Thomas:** I am saying that since subclause (3) talks about the Minister being responsible for framing comprehensive policies and for the general supervision and maintainance—

**Mr. Chairman:** Are you referring to clause 3?

**Sen. Thomas:** No, I am referring to Part III.

**Mr. Chairman:** What clause?

**Sen. Thomas:** All right, clause 3. In accordance with that, you are cross-referencing 48, you will say, “in accordance with that, the commission will refer to the Minister all applications involving”—and you list what you have here—so that the Minister does have the prerogative to see these things before a decision is taken, and to make decisions.

**Sen. Lucky:** Mr. Chairman, in following Sen. Thomas' suggestion, I now ask him, through you, if this would work. I am suggesting a change. Would this work? Where we start 48(1)—and I am deleting the relevant words:

“Any application for permission to develop land, or for the approval of any matter by the commission or any planning authority under a development order or regulation shall be referred, which—”

and then you use what we have in (a) to (e) with the necessary amendments. You are saying, “Any plan which will need this permission, coming under the ambit, shall be referred by the Commission to the Minister.”

This then means that in subclause (2) we would delete paragraph (a) and do the necessary adjustment and have paragraph (b). Paragraph (b) is the one that addresses what Sen. Dr. McKenzie talked about. It is exactly what you said, but the draft is giving us expertise.

**2.05 p.m.**

**Sen. Morean:** When you say, “it shall be referred by the”—it comes to the commission, the commission cannot handle that, it has to pass that on to the Minister. What is the reason for the commission not being able to handle it?

**Sen. Lucky:** We are saying that it came under the ambit of what is in (a) to (e). In these limited instances, we want the Minister to be the person.

**Sen. Morean:** So you are taking away power from the commission to handle certain types of applications?

**Sen. Lucky:** Yes, we are restricting their power, but even though it is restricted, we are making sure that the Minister is still mandated to operate within the Act.

**Sen. Morean:** I have no problem with you saying that but—

**Sen. Lucky:** Also Senator, even though we are restricting—the reason I am being very cautious to say it, is that the commission could still make representation to the Minister. Even though they have relinquished it and passed it over to him—because in their view it comes within the ambit of what are paragraphs (a) to (e), by subclause (6)—the commission is still in a position to go to the Minister.

**Sen. Morean:** There is where I have a problem with this whole provision. If in clause 4(2):

“...the Minister shall be responsible for framing comprehensive policies and for the general supervision and implementation of such policies...”

That power already resides in the Minister, if there is a case where it may be necessary for him to intervene. So, again, I am asking, why is this clause necessary? The reason I fear this clause 48 is that it could lead to abuse, manipulation and all sorts of things. I feel it is unnecessary to have this provision.

**Sen. Lucky:** If you are saying, on the one hand, that there is no need for it because it is already catered for in terms of the power of the Minister, then I do not understand how you are going on—

**Sen. Morean:** No, you see the difference here is that you are taking away that power from the commission to deal with these applications up front. It is not a case where the commission itself looks at the application and says: Well look here, maybe I should get an input on this in relation to certain policy matters from the Minister. Why have you set up the commission?

**Sen. Lucky:** I think it is going too far to say, why set up the commission because these are very limited instances. In these limited instances, it is necessary to have the Minister have the necessary authority, but, again, he is still put in a position where he is bound by the provisions of the Act. That is the explanation.

I take the point that was raised by Sen. Dr. McKenzie and Sen Thomas. This is the revised proposed amendment of the Government; that in our opening to this clause we would talk about any application setting the procedure by which it would go to the Minister. I think that would, at least, alleviate that particular problem; but to remove it—our position is that we are not prepared to remove it.

**Mr. Humphrey:** It limits the role of the Minister.

**Sen. Morean:** No, it does not at all.

**Mr. Humphrey:** It does because—all right, let us say the Minister exercises his powers under clause 4 and instructs the commission and other planning authorities to submit all other plans to the Minister—as a matter of policy—what would happen? You would say, oh, the Minister is governed by the Act. You see, when you, in fact, specify what the Minister's role is, then the Minister's powers are limited by what is specified.

**Sen. Morean:** Yes, that is the point, his powers are limited by what is specified and that is why we do not want to specify things that would give him powers that could be subject to abuse and manipulation.

**Mr. Humphrey:** Unfortunately, all his powers are subject to abuse.

**Sen. Morean:** Yes, all powers may be subject to abuse, but you do not want to start giving powers that open themselves to abuse.

**Mr. Humphrey:** Mr. Chairman, an example was suggested to me. What if a second international airport is being considered for the country, should the commission consider that, or should the Executive consider that? Or, the establishment of a deep-water harbour in some part of the—

**Sen. Morean:** That would be the policy, Mr. Minister. Mr. Chairman, through you, I can answer that. That would be policy and the Minister will decide that. The commission will come in where it has to determine an application in respect of that matter where the policy has already dictated that—

**Mr. Humphrey:** Are you saying that this provision should be part of the declaration policy by the Minister to the commission?

**Sen. Morean:** No, I am saying that this provision should not be there at all.

**Mr. Humphrey:** Because the Minister—if you say, uses the power of clause 4—could take this exact provision and write it, as a matter of policy and, the commission would be bound by it.

**Sen. Morean:** Either I am not making myself clear—what I am saying here is that the Minister is the overall person responsible for the implementation of—

**Mr. Humphrey:** The Executive.

**Sen. Morean:** Fine. But it says here—clause 4 sets out what the Minister's powers are and clause 7 also sets out what the Minister's powers are, and the Minister has certain overriding powers. You have set up a commission and you have given that commission powers to deal with applications for permission to develop land and so on, and now you are taking away from that commission some of the powers that you have given it. Why is it necessary? I do not see that it is necessary.

**Mr. Humphrey:** Well, in clause 4(2) you are referring to Parts IV, V, VI and VII of the Act.

**Sen. Thomas:** Mr. Chairman, I do not know if we are getting out of this impasse but I must say that I do share some sympathy with what the Minister has said. The more I look at clause 48—I must say that I was one who spoke against the unbridled power of the Minister, but now that I have looked at it more carefully—it talks about national policy, interest of foreign governments, obligations of Trinidad and Tobago—I think this is more of an executive prerogative and function rather than the commission and therefore I certainly do think the Minister should have—the Minister meaning the Executive, because it is not the Minister who decides whether there is an international treaty that is being—it is the Cabinet, the Executive, and therefore I am supporting that.

**Sen. Daly:** Mr. Chairman, we have been going fairly well without votes and so on. My understanding of constitutional theory is the same as the Minister's, and apparently Sen. Thomas'. I do not think you can have the Minister impotent. I do not know what the Government's attitude is going to be. I have proposed something in relation to the various people who can apply for judicial review and it is relevant only for this reason.

What I do not like about this Bill—I accept that we have gone a long way because the safeguards of complying with and so on have been put in. I accept all that. My little misgiving is under subclause (6). Suppose the commission and the Minister actually feel the same way about the particular matter then you would not get a different point of view represented. I was wondering whether we do not need to have a third party or the third-party interest.

Suppose both the Minister and the commission agreed that they put an airport in Cocal, for example, then we want somebody to go and argue with the Minister



against such a decision. So I am wondering whether an additional safeguard might not be to permit the Minister affording an interested party the opportunity to make representations, whether we could not give some third party or interested party—

**Mr. Humphrey:** If the Minister decides to put an airport in Cocal, it is as a result of Parliament determining that, when it approves the development plan by an affirmative resolution.

**Mr. Chairman:** Members, I am getting the impression we should try to bring this to some resolution.

**Mr. Humphrey:** We had proposed that we add an (8), which, in fact, gives citizens the right of judicial review.

**Sen. Daly:** That is precisely my point. Unless you broaden the people who have the capacity to bring judicial review, they may be thrown out for lack of a locus.

**Mr. Humphrey:** That is a matter that was raised at lunchtime; whether a poor person without means—you would have that right but would you have the ability? That is a question I think we need to address.

**Sen. Morean:** The Judicial Review Act does make provision for a person who may not have—

**Hon. Senator:** Direct interest.

**Sen. Morean:** Not just direct interest but the wherewithal to bring such an application that can be brought through somebody else. So that is not a concern of ours here, because the Act would have covered that.

**Mr. Humphrey:** Therefore what we had proposed, in the addition of (8), would be sufficient.

**Sen. Lucky:** Mr. Chairman, the Government has been trying to do some amendments as we have been hearing suggestions and I just want to know if I can use this opportunity to just say, in effect, what the Government would now be proposing. We have taken what Sen. Dr. McKenzie and Sen. Thomas have said and we also have some. I would like to read it so that when hon. Senators are making their determination—whether they agree or disagree—they would have it, in essence. It means that clause 48(1) would now start:

“Any application for permission to develop land, or for approval of any matter by the Commission or any planning authority under a development order or regulation, and where application—”

*Planning and Development of Land Bill*  
[SEN. THE HON. G. LUCKY]

*Tuesday, July 31, 2001*

And then we go to what the Government was proposing in terms of merging (a) and (b), and it would read:

“(a) involves issues of more than local importance, giving rise to substantial, regional or national controversy.”

In other words, we are taking out:

“raises significant architectural or urban design.”

Subclauses (c), (d) and (e) remain the same. Then it says:

shall be referred by the Commission or planning authority...”

because you referred to that above—

“...to the Minister.”

That was in accordance with what Sen. Thomas and Sen. Dr. McKenzie said.

Then we go to subclause (2) which says:

In subclause (2), delete what is in paragraph (a). So paragraph (a) is deleted and instead subclause (2) would say:

“A referral of a plan to the Minister under subsection (1), may relate either to a particular application or to any or all applications of a class specified in the direction.”

So you are taking the words of paragraph (b).

Going to subclause (3)—because there was concern expressed—[*Interruption*] a referral, the wording changes to:

“A referral of a plan to the Minister...” [*Interruption*]

I am sorry, where there is the word “direction” it should be “referral”. Going to subclause (3) to ensure that there is that level of accountability, it would read:

“Notification of plans referred to the Minister under this section and the reasons for such referral shall be published in the *Gazette*.”

**Sen. Daly:** Suppose the commission does not refer it?

**2.20 p.m.**

**Mr. Humphrey:** I would think that the applicant would, because the applicant is interested in getting his project realized. So if the commission frustrates any

applicant—and I can tell you that this Minister gets applications in his postbox at home, which I then refer to the advisory panel, so I become a postman.

**Mr. Chairman:** Whilst we are waiting on the amendments in writing, do we have any views on what is being proposed by the Government? I am trying to get it in writing so I can put it on the record for your consideration, but I am saying, whilst I am awaiting it in writing, do you have any views, based on what the Minister has put forward, or are you in agreement?

**Sen. Dr. McKenzie:** Mr. Chairman, I am pretty clear on this. What I want to ask—and this is to the Minister—I want him to behave as if somebody has referred a plan to you—the commission has referred a plan to you or somebody referred an application to the commission and the commission did not answer them in six months and they say, “Look, I am going straight to the Minister”, and they bring the plan to you. What would you do? I mean, you just said you may refer it to the commission and say, “Hey, why have you kept these people’s plan so long?” Let us say they referred the plan to you and said, “Look, this is out of our jurisdiction.” What would you do with it?

**Mr. Humphrey:** What would the Minister do—[*Interruption*]

**Sen. Dr. McKenzie:** Yes, yes.

**Mr. Humphrey:**—with a plan—[*Interruption*]

**Sen. Dr. McKenzie:** I am saying—this is not for the purpose of the Bill. I am just getting your process in my brain.

**Mr. Humphrey:** Well, what this Minister would do is refer the plan to the commission.

**Sen. Dr. McKenzie:** No, what I am saying is, the commission already got it and referred it to you. They said, “Look, this is beyond us. Let me hand this plan to the Minister.”

**Mr. Humphrey:** Well, we would have consultations and take a decision.

**Sen. Dr. McKenzie:** Okay.

**Mr. Humphrey:** In fact, a lot of ministers would rely completely on a group of advisors. I do not because I want to see aerial photography and I want to see trends, I want to relate it to the land use that has been done conceptually, and things like that.

**Sen. Dr. McKenzie:** You had better write those things so that if you are not there somebody else “gon” follow that, who “doh” have—because you have a great—[*Interruption*]

**Mr. Humphrey:** No, but the commission would do that because the commission has the kind of expertise that enables it to do those things.

**Sen. Prof. Ramchand:** I think the Minister has made it clear that, if an application comes directly to him, he will refer it back to the commission, and that if it is forwarded to him by the commission, well, it is forwarded for him to deal with.

**Mr. Humphrey:** Well, yes, but to deal with through consultation with your panel of experts.

**Sen. Prof. Ramchand:** Yes, yes. So I think I am satisfied with that.

**Mr. Humphrey:** I can tell you that this Minister always makes an input, because one of the conditions I have laid down—we have very recent aerial photography for the whole country. So if an application comes in, I call for the photography of that area and I see what the trend is and if, in fact, it is a trend for establishing a village where previously it was agricultural land, by the development that has occurred, we limit the expansion of the village to a certain extent, still preserving the major lands for agriculture, and that is the sort of decision that is taken, and the commission would do that.

**Sen. Prof. Ramchand:** I hope your successor, if any, will follow your example.

**Mr. Humphrey:** No, the commission—we would expect the commission to do that because, quite frankly, if a minister does not have the expertise in a particular area, he will rely completely on his experts and all he will do really is sign. In fact, one minister of a previous regime, relative of a member of the Opposition, remarked that since he became a minister he had two six-month holidays a year. All he did was sign paper.

**Sen. Prof. Ramchand:** I am assured. I am reassured. One little thing about clause 48(6)(b), “if either of them so desire”, should it be mandatory or should it be “if either of them so desire”?

**Mr. Humphrey:** Well you are leaving a discretion to the commission or planning authority.

**Sen. Prof. Ramchand:** As long as the applicant and the commission know that they have the right to call for a hearing. [*Crosstalk*]

**Mr. Chairman:** Okay, Senators, I just want to read the proposed—  
[*Interruption*]

**Mr. Humphrey:** Are you proposing you remove the discretion of the commission or planning authority and make it mandatory?

**Sen. Prof. Ramchand:** I am just saying that it looks to me as if, at the moment, if the applicant or the—the applicant or the commission may call for the hearing, right, but, if they do not do it, there will be no hearing. So it is really up to whether they know their rights. Whereas, if we remove “if either of them so desire”, it would become part of the procedure that the Minister shall have this hearing. I would prefer to remove, “if either of them so desire”, and make it part of the procedure that the applicant and the commission or any planning authority shall have the opportunity to appear and be heard.

**Mr. Humphrey:** I like that, you know. I like to know that we make it mandatory on the applicant and—[*Interruption*]

**Mr. Chairman:** Okay, Senators, I have some amendments from the Government side. Just let me read them for you. In terms of clause 48 there is an amendment to clause 48(1). The entire clause 48(1) with the various subclauses reads as follows:

“Any application for permission to develop land, or for approval of any matter by the Commission or any planning authority under a development order or regulation, and where the application—

- (a) involves issues of more than local importance, giving rise to substantial regional or national controversy;
- (b) conflicts with national planning policy;
- (c) involves the interest of a foreign government; or
- (d) affects the obligations of Trinidad and Tobago under any treaty or international convention

shall be referred by the Commission or planning authority to the Minister.”

You have 48(2).

**Sen. King:** Mr. Chairman, could we include the words after “the Minister”, “for further discussion with all the stakeholders”? Because the Minister is still there with no guidance. He could—[*Interruption*]

**Mr. Chairman:** Well apparently the Government is not in favour of this, from what I am hearing.

**Sen. Morean:** Before you go any further—[*Interruption*]

**Mr. Chairman:** Yes, ma'am.

**Sen. Morean:** In the first part of clause 48 after “regulation”, you say “any application made”, et cetera, “and the application”. I think that “and the application” should be replaced by the word “which”.

**Mr. Chairman:** “...under a development order or regulation”?

**Sen. Lucky:** Sen. Morean, the reason—I mean, one of the suggestions is really to put “which under a development which” but then there was confusion as to whether the “which” might apply to the regulation or development order, so that was for clarity to put “and the application”, because you started with “any application” and therefore at the end when you came down you wanted to know that what comes in the following paragraph refers to your application. For the avoidance of doubt, that is why it was repeated.

**Mr. Chairman:** Okay, can I proceed?

**Sen. Prof. Ramchand:** Just a minor quibble—should it be “conflicts” or “may conflict”? Because you have “involves”, “raises”, “affects”, “involves”. It “may raise”. I think “conflicts”—[*Interruption*]

**Sen. Daly:** You are talking about national policy. What is national policy?

**Mr. Chairman:** “conflicts”.

**Sen. Prof. Ramchand:** I just want to know, why “may conflict” when all the others have the present tense, you see? “Conflicts”, involves—[*Interruption*]

**Mr. Chairman:** Okay, “conflicts”, right.

**Sen. Daly:** What is the national policy? What is it referring to there? Is it national policy in planning, education—what?

**Mr. Humphrey:** Planning.

**Sen. Daly:** National planning policy. Is that not reflected in the physical plan?

**Mr. Humphrey:** To some extent, yes.

**Sen. Daly:** You see, I am just a little concerned. I am a little concerned about what that means, “with national policy”? We have national policy on a variety—there is no—I mean, there is no national policy that is separate from any subject. What is national policy? We do not have any one national policy on anything.

We have a variety of national policies on different things. What is the national—what do the draftspeople have in mind there? What national policy?

**Mr. Humphrey:** We could include the word “planning” between “national policy”.

**Sen. Daly:** Where does that reside outside of the physical plan?

**Mr. Humphrey:** It would reside outside of the physical plan. If, for example, the Cabinet decides that it needs a change in plan, it would have to go through the whole process of coming back to Parliament, so achieve that change—*[Interruption]*

**Sen. Daly:** So we should at least put “planning policy”?

**Mr. Humphrey:** “Planning policy”.

**Mr. Chairman:** So we say “national planning policy”? Okay, clause 48(2):

“A referral of a plan to the Minister under subsection (1) may relate either to a particular application or to any or all applications of a class specified in the referral.”

Okay. That is the—and the final amendment, clause 48(3), you have:

“Notification of plans referred to the Minister under this section and the reasons for such referral shall be published in the Gazette.”

Is that okay? Senators, these are the new amendments to clause 48 and we—*[Interruption]*

**Sen. Lucky:** Mr. Chairman, Sen. Yuille-Williams suggested we put in the words “and where the application”, that is in 48(1).

**Mr. Chairman:** 48(1)?

**Sen. Lucky:** It would be just before you go to the paragraphs, so you have “development order or regulation and where the application”, if only to get Sen. Yuille-Williams’ smile.

**Mr. Chairman:** “...and where the application involves”, right? What about these amendments that you have here? Are you going to withdraw these amendments?

**Sen. Lucky:** We shall have to put in subclause (8).

**Mr. Chairman:** So you are withdrawing (a) and (b)?

**Sen. Lucky:** No, (a) is consistent. We have included that.

**Mr. Chairman:** Okay, that has been included already?

**Sen. Lucky:** Yes, we have.

**Mr. Chairman:** And what about (b)?

**Sen. Lucky:** Well (b) followed from (b) because that dealt with the renumbering, and (c) is to insert a new subclause and we are saying that is important because persons were concerned about the power of the Minister in terms of him having the final decision, so we have just put in what we were saying in any event you were entitled to, but it is spelt out in subclause (8).

**Mr. Chairman:** Okay, Senators, clause 48—[*Interruption*]

**Sen. Prof. Ramchand:** Has the Minister decided about whether you will delete “if either of them so desire”? I am not fighting him—whatever he decides.

**Mr. Chairman:** I did not hear him say anything about deleting it. Could we proceed, Senators?

**Sen. Prof. Ramchand:** Is the Minister going to answer?

**Mr. Chairman:** Minister, would you like to respond in terms of subclause (6)(b)? [*Crosstalk*]

**Sen. Lucky:** I think those words could be deleted, but I also want to bring to Senators’ attention, we would have to delete also subclause (4). That is the one dealing with “any application in respect of which a direction”, and remember we got rid of “directions” and so on. So subclause (4) would be deleted too, Mr. Chairman and, “if either of them so desire”, that can be removed, then we just renumber after (4). So (5) is now (4), (6) is (5), (7) is (6) and our subclause (8) would be subclause (7). So we remain with the same number of subclauses.

**Mr. Chairman:** Okay, Senators, you have heard the various new amendments to clause 48, along with those that have been circulated to you and in the Minister’s amendment. Would you like me to go through the whole thing again, 48(1)? Do you want me to go through 48(1), (2)—[*Interruption*]

**Sen. Morean:** Not (1) but after (1), because I did not hear those.

**Mr. Chairman:** Okay, so you want me to go to (2)? Okay, so clause 48(2) reads:

“A referral of a plan to the Minister under subsection (1), may relate either to a particular application or to any or all applications of a class specified in the referral.”



That is 48(2). Under 48(3) you have:

“Notification of plans referred to the Minister under this section and the reasons for such referral shall be published in the Gazette.”

Of course, the Government is deleting subclause (4), and (5) becomes (4) and, then they are also removing, under (6), “if either of them so desire”. That is being removed, deleted. So Senators, can I put the question? You are satisfied? [*Crosstalk*] The amendments as circulated by the Minister will be incorporated in clause 48.

*Question put and agreed to.*

*Clause 48, as amended, ordered to stand part of the Bill.*

**Sen. Yuille-Williams:** Mr. Chairman—[*Interruption*]

**Mr. Chairman:** Yes, ma’am.

**Sen. Yuille-Williams:**—before you go on, could I just ask the Minister whether or not the legal aid that covers persons are these seeking judicial review—whether this would be covered by this. Can persons seeking judicial review in this apply for legal aid? Does it cover this at all? I know we had some restricted legal aid for particular categories, but I wondered whether people here are covered by legal aid.

**Sen. Lucky:** Not that I am aware of, Senator.

**Sen. Yuille-Williams:** So we have to look at that at some point, because—[*Interruption*]

**Sen. Lucky:** Yes, we have to work on that. One of the ways to do that is to go to the Legal Aid Act and deal with it.

**Sen. Yuille-Williams:** You mean and amend the Legal Aid Act?

**Sen. Lucky:** Yes.

**Sen. Yuille-Williams:** Because we really would want them to have the opportunity to do that.

**Sen. Lucky:** Perhaps. I am afraid I am not sure whether that went through and legal aid—[*Interruption*]

**Sen. Yuille-Williams:** Well somebody had said it did not, that is why I was wondering, and therefore I think—[*Interruption*]

**Sen. Lucky:** What I could assure you is, I would look at the Legal Aid Act.

**Sen. Yuille-Williams:** And if not—[*Interruption*]

**Sen. Lucky:** And if not, then that is something we would have to do and, as we are looking at the Legal Aid Act, certainly address the necessary amendment there.

**Sen. Yuille-Williams:** To cover these persons.

**Mr. Chairman:** Senators, there are no amendments to clauses 49 and 50 so we want to adopt that. [*Crosstalk*]

*Clauses 49 and 50 ordered to stand part of the Bill.*

**2.40 p.m.**

*Clause 51.*

*Question proposed,* That clause 51 stand part of the Bill.

**Sen. Lucky:** Mr. Chairman, I propose the following amendment to clause 51(8), to delete the words “E.C.” and insert instead, “Land Tribunal”. And wherever else in the Bill there is “E.C.”, replace it with “Land Tribunal”.

The reason for that is that Sen. Daly's proposed amendment dealt with clause 19, where the point was being made that the body that would have dealt with appeals would have been the E.C., and we took the point that that was, in fact, the wrong body to deal with it. It would have been better for the Land Tribunal to deal with it. But I just hasten to add, and I said in my contribution, that we are aware that the Land Tribunal Act has not been proclaimed and, of course, that would have to be sped up now, because there is certain infrastructure in that Bill that would have to be set up. But that was the reason for our proposed amendment.

*Question put and agreed to.*

*Clause 51, as amended, ordered to stand part of the Bill.*

*Clause 52 ordered to stand part of the Bill.*

*Clause 53.*

*Question proposed,* That clause 53 stand part of the Bill.

**Sen. Lucky:** Mr. Chairman, there is a proposed amendment. The reason for that amendment was that the Government felt it was fair that if there was anyone on the Commission being given the authority to take any steps required by such notice or order, they were allowed to enter on the land, but that entry on the land should have been after obtaining a warrant issued by a magistrate, and we felt that that would give some comfort, and even though there were no proposed

amendments from the other side or the Independent Benches dealing with it, we felt that was fair. That is our proposed amendment.

*Question put and agreed to.*

*Clause 53 ordered to stand part of the Bill.*

**Sen. Morean:** I just realized, Mr. Chairman, that you skipped my amendment to clause 51.

*Clause 51 recommitted.*

*Question again proposed, That clause 51 stand part of the Bill.*

**Sen. Morean:** Mr. Chairman, in subsection (3) we had already defined the persons upon whom a compliance notice should be served, so that in order to avoid confusion by introducing employee and agent of an employer, we should deal with the persons on whom the notice has been served. So that my proposed amendment is to delete the words “employee or agent of an employer, principal or owner” and insert the words, “on any person as set out in 51(3)(d)”.

**Sen. Lucky:** Sen. Morean, I take your point with respect to the amendment, and I think even in paragraph (d) where they say “any agent or contractor of any person referred to in paragraphs (a) to (d)”, certainly that should be paragraphs (a) to (c), because it is within a paragraph. But when you look at 51(1)(5) where you talk about the removal of the words that you are suggesting, I am wondering whether you would consider that we could, therefore, widen the ambit in paragraph (d).

So, in other words, we have “any agent or contractor of any person referred to in paragraphs (a) to (c)”, but where we have “any agent or agent of any employer, principal or owner”, we will actually be taking those words from what is now subclause (5).

**Sen. Morean:** The only reason I would have a difficulty with that is that what you really would be saying here is that service on an employee of a person can be deemed to be good service, and that should never be good service.

**Sen. Lucky:** So, you have a problem with the deeming of the service, then?

**Sen. Morean:** Yes. So I thought to avoid that, since you have already given the power to serve certain persons, so we do not refer specifically to employee and deeming that good service, we refer to the persons on whom you have served in accordance with the subsections, and deem that to be good service on the owner.

**Sen. Lucky:** Our concern is, if for example, the owner of the property is abroad and you cannot locate them, how would you be able to give them good service?

**Sen. Morean:** They have an agent there.

**Sen. Lucky:** No. They do not have an agent.

**Sen. Morean:** You have to find some substituted means, but you cannot just say this person is an employee.

**Sen. Lucky:** Senator, so in paragraph (d) we would refer to in paragraphs (a) to (c), and when we come to subclause (5), as you have it, we would be putting "or any person set out in 51(3)(d)". So where compliance notice is served on any person as set out in 51(3)(d), the notice shall be deemed to be served on the owner.

**Sen. Morean:** Because the owner is the person you are really getting at.

**Sen. Lucky:** Okay.

**Sen. Morean:** Mr. Chairman, we have not reached there yet, but for the purpose of being connective and remembering, since it is fresh in our minds, 57(6) is the same thing. So the amendment proposed would be of the same nature.

*Question put and agreed to.*

*Clause 51, as amended, ordered to stand part of the Bill.*

*Clauses 54 to 56 ordered to stand part of the Bill.*

*Clause 57.*

*Question proposed, That clause 57 stand part of the Bill.*

**Sen. Morean:** Mr. Chairman, I propose that clause 57 be amended in accordance with the amendment to clause 51(3)(d).

*Question put and agreed to.*

*Clause 57, as amended, ordered to stand part of the Bill.*

*Clauses 58 to 61 ordered to stand part of the Bill.*

*Clause 62.*

*Question proposed, That clause 62 stand part of the Bill.*

**Sen. Lucky:** Mr. Chairman, clause 62 started with “Upon the commencement of the regulations...”. We wanted to replace that with the words, “With effect from the date of publication of the regulations...”.

**Sen. Morean:** Just as a matter of interest, I would like to ask the Minister whether we do, in fact, have a building code at present.

**Mr. Chairman:** We have building codes that are drafted by the interim commission. Small buildings and more sophisticated type buildings. It is the interim commission that has been doing that work.

**3.00 p.m.**

**Mr. Humphrey:** For example, the Society of Engineers has long established a proposed code which we have examined and modified with concurrence of the engineers and accepted in draft. So that is work that is going on and we will have comprehensive codes.

**Sen. Yuille-Williams:** Mr. Chairman, I want to know whether or not we intend to make any amendments at all with the Municipal Corporations Act especially in the area of public health, since they are now becoming planning commissions. To me it is obscure in the Municipal Corporations Act, especially with the powers of having them as full planning authorities.

**Mr. Chairman:** Okay.

**Sen. Yuille-Williams:** I am just asking.

**Sen. Lucky:** What will happen is that one of the clauses I think in this very Bill—the power of the municipal corporations to deal with that will cease to exist. Do you know the long clause that says “cease to exist” from the time this begins to operate? [*Interruption*] Clause 75; so I am not sure we would need to amend the Act.

*Question put and agreed to.*

*Clause 62, as amended, ordered to stand part of the Bill.*

*Clauses 63 to 68 ordered to stand part of the Bill.*

*Clause 69.*

*Question proposed, That clause 69 stand part of the Bill.*

**Mr. Humphrey:** Mr. Chairman, I beg to move that clause 69 be amended as follows:

69(5) In the fourth line, delete the words “and by force if necessary”.

**Mr. Chairman:** There are two amendments by Sen. Thomas and the Minister.

**Sen. Thomas:** Mr. Chairman, my amendment is the Government's amendment so I will withdraw it.

**Mr. Chairman:** So you have withdrawn your amendment, Sir?

**Sen. Thomas:** Yes.

*Amendment withdrawn. [Crosstalk]*

*Question put and agreed to.*

*Clause 69, as amended, ordered to stand part of the Bill.*

*Clauses 70 to 74 ordered to stand part of the Bill.*

*Clause 75.*

*Question proposed, That clause 75 stand part of the Bill.*

**Mr. Humphrey:** Mr. Chairman, I beg to move that clause 75 be amended as follows:

75(3) Delete the sub-clause and substitute the following:

“(3) The Minister shall notify the date (hereinafter referred to as the ‘appointed day’) of the establishment of the Committee—

- (a) in one daily newspaper; and
- (b) by notice published in the *Gazette*.”

75(4) In the first line, delete “On publication of the notice referred to in subsection (3)” and substitute “With effect from the appointed day”.

- 75(5)
- A. In the first line of the sub-clause, for “subsection (3)”, substitute “subsection (4)”;
  - B. Delete paragraph (b);
  - C. Re-number paragraphs (e) to (f) appropriately;
  - D. Delete all material following old paragraph (f).

**Mr. Chairman:** There are a number of amendments and we can take the Minister's own first. *[Crosstalk]* We are dealing with clause 75. You have Sen. Prof. Kenny's, Sen. Daly's, Sen. Prof. Ramchand's and Sen. King's.

**Sen. Daly:** Is that my 75(4), Sir?

**Mr. Chairman:** Yes. Sen. Daly, would you like to start, in terms of your amendment? [*Crosstalk*]

**Sen. Daly:** Clause 75(4) I need to ask one question about mine, Sir. I had asked for 75(4) and 75(5) to be deleted. Most of my problems have been taken care of by the Government's proposal under 75(3) and (4), but in 75(5) where they set out the things that would cease, I take it in the light of the amendments we have made to 75(b), we are not going to cease anything relating to the Environmental Management Authority again. Has that been withdrawn? [*Interruption*] I beg your pardon, so 75(5)(b) has been deleted?

**Sen. Lucky:** Yes.

**Sen. Daly:** Can I make it easy? I withdraw my 75(4) and (5).

*Amendment withdrawn.*

**Mr. Chairman:** Minister Humphrey, would you like to explain your amendment, because a number of the amendments being proposed have been covered, so if you could explain yours, they would withdraw theirs.

Sen. Prof. Ramchand, having regard to the Government's amendments, would you like to withdraw your amendment?

**Sen. Prof. Ramchand:** Clause 75(b), yes.

**Mr. Chairman:** Okay, Sen. Prof. Ramchand has withdrawn. What about Sen. Prof. Deosaran?

**Sen. Prof. Deosaran:** Mr. Chairman, I have an amendment on clause 75(2), if you are ready for that one.

**Mr. Chairman:** Yes.

**Sen. Prof. Deosaran:** Well, Sir, it is not an earth-shaking proposal, I just wanted to encourage the Government to accept the presence of the police commissioner for several good reasons. First of all I think the presence would fit well into the overall policy of the Government to use community policing as a preventive device for the crime situation as we know it. It has been established in other countries through something called "Crime Prevention Through Physical Design". It has been tested in the Netherlands and other countries where, because of the presence of the commissioner or the police in assessing the safety criteria for new human habitat, as it were, a new residential development, the police can give some advice as to the terrain or whether there is a frequency of accidents or

certain crimes because of the social geography and even the physical geography of the place.

His presence, of course, Mr. Chairman, and the Minister—I hope he would understand this—would not be required as totally as the Highways Division and so on, but given the evidence of what the police presence for new developments can contribute and the emphasis through the Government's policy of community policing which means, if I understand the policy well enough, integrating the presence of the police in other agencies as far as possible so as to integrate the crime prevention methods and so on. I do not want to belabour the point, but if I could encourage the Minister to set the example now of integrating community policing in an institutionally integrated way, it would certainly help promote the overall policy of the Government itself.

**Mr. Chairman:** Sen. Prof. Kenny, would you like to do your part and then the Minister will respond to all?

**Sen. Prof. Kenny:** Mr. Chairman, in the light of the proposals from the Government, particularly in clause 75(5), I would withdraw my proposed amendments.

*Amendment withdrawn.*

**Mr. Chairman:** Thank you. All right. [*Interruption*] Yes, we will like to hear your amendment to clause 75(4) so the Minister could respond.

**Sen. Prof. Ramchand:** Unless I understand it wrong, my interpretation of clause 75(4) is that upon publication of the notice, the Development Control Committee will administer the Environmental Management Act. Or maybe the deletion of 75(b) would answer my misgiving. [*Interruption*] Is that it? If 75(5)(b) is deleted—

**Mr. Chairman:** Do you want to withdraw your amendment? That would satisfy your concern.

**Sen. Prof. Ramchand:** Yes, as long as I understand that the Minister is assuring me that that is a proper understanding.

**Mr. Chairman:** I am granting you leave to withdraw, Sir.

*Amendment withdrawn.*

**Sen. Lucky:** With respect to the Government's proposals, it really was a case of just fine-tuning in certain instances in terms of publication and in terms of us deleting the relevant subclauses, but the proposed amendment from Sen. Prof.



Deosaran I think is one that we would include and can include. We would have no problem with incorporating it, because it really does not come under— [Interruption] I looked at (h) again, but I do not think it really comes under (h); we want it to be explicit. [Crosstalk] We are agreeing with your proposed amendment.

**Mr. Chairman:** Okay, the Government has accepted—Sen. Prof. Deosaran.

**Sen. Lucky:** We will include it as a specific provision.

**Mr. Chairman:** Sen. King, you have an amendment, Ma'am?

**Sen. King:** In view of the Government's amendment, I will withdraw.

*Amendment withdrawn.*

**Mr. Chairman:** Okay.

**Sen. Prof. Ramchand:** I wonder if it is a misprint at the end of clause 75?

**Sen. Lucky:** You are correct, Sen. Prof. Ramchand. I think you pointed it out to us in your proposed amendment. There should be a full stop after the word “designation” coming in paragraph (f) and everything else is removed. Delete all the material—it is in our proposed amendment.

*Question put and agreed to.*

*Clause 75, as amended, ordered to stand part of the Bill.*

*Clauses 76 to 82 ordered to stand part of the Bill.*

*Clause 83.*

*Question proposed, That clause 83 stand part of the Bill.*

**Mr. Chairman:** The Government has an amendment.

**Mr. Humphrey:** Mr. Chairman, I beg to move that clause 83 be amended as follows:

83(3) In the fourth and fifth lines, for “the list of listed professionals”, substitute “the list referred to in section 80”.

**Sen. Lucky:** That amendment really dealt with taking out the words “the list of listed professionals” and inserting instead “the list referred to in section 80”. That is what should have been there.

**Mr. Chairman:** Is that okay?

*Clause 83, as amended, ordered to stand part of the Bill.*

*Clauses 84 to 89 ordered to stand part of the Bill.*

*Clause 90.*

*Question proposed, That clause 90 stand part of the Bill.*

**Mr. Chairman:** There is an amendment by Sen. Daly.

**Sen. Daly:** Mr. Chairman, I beg to move that clause 90 be amended as follows:

Insert new subclause (7) as follows and renumber appropriately:

- “7) In determining whether an appeal is in the public interest the Court may take into account any relevant factor including—
- (a) the need to exclude the mere busybody;
  - (b) the importance of vindicating the rule of law;
  - (c) the importance of the issue raised;
  - (d) the genuine interest of the applicant in the matter;
  - (e) the expertise of the applicant and the applicant’s ability to adequately present the case; and
  - (f) the nature of the decision of the Minister appealed against.”

Insert new subclause (8) as follows and renumber appropriately:

- “(8) where an appeal is filed under section 90(6) the Court may not make an award of cost against an unsuccessful appellant except where the appeal is held to be frivolous or vexatious.”

I do not know what is the Government's attitude to this, but the short point is that in the appeals to the land tribunal, the appellants are limited to the persons specified in subclauses (3), (4) and (5). I am suggesting that persons, by analogy to the judicial review legislation, the categories of appellants be widened to include someone who may not have a direct interest but with leave of the court may be pursuing a public interest. That is the burden of my amendments to clause 90. In other words, in the same way that judicial review has been open to groups like Citizens for Conservation, COPE and all these various people, we ought to open all these particular appeals to persons who have a care for the physical

environment but who may not have a direct interest in the subject matter of the planning approval.

**Sen. Lucky:** Through you, Mr. Chairman, Sen. Daly, when I looked at your amendment I thought that, in fact, what you had stated—I looked at the Judicial Review Act and I found that those are the categories of persons, because I thought your proposed amendment was not necessary, but I have understood your explanation and I think it would be necessary. I thought it was not necessary because it would have already been captured, but I understand what you are saying and, therefore, we have no objection to it.

**Sen. Daly:** Thank you, because we said any person specified, that is the problem.

**Sen. Lucky:** Yes. It immediately reminded me of what is in the Judicial Review Act so—

**Sen. Daly:** I copied it from there.

**Sen. Lucky:** Yes, I understand.

**Sen. Daly:** Thank you. [*Crosstalk*]

**Mr. Chairman:** Which one? Clause 90, are you accepting everything?

**Sen. Lucky:** That would be clause 90, to insert the new subclause (7).

**Mr. Chairman:** The whole one?

**Sen. Lucky:** Yes, we are agreeing—it would be (6) and (7) also. What I am saying is that Sen. Daly also had some amendments to clause 90, for example clause 90 line 2, line 4 and so on.

**Sen. Daly:** That is all copied from the Judicial Review Act. It is the guidelines for the court to determine the basis on which they will admit the person with the indirect interest; (6) and (7) are both copied directly from the Judicial Review Act.

**Sen. Lucky:** No, I am talking about clause 90 line two—I am agreeing with you with your recommendations for (6) and (7). What I am saying is that what you had wanted—clause 90 line 2—in other words, I am trying to find out whether, in fact, we would be accepting your entire proposal for clause 90. I agree with (6) and (7)—[*Crosstalk*]

**Sen. Daly:** Yes, because the Minister may determine something—under the hotly disputed clause that we had earlier, the Minister may determine something, although you said that is subject to judicial review.

**Sen. Lucky:** Okay.

**Sen. Daly:** May I say what I had in mind at the time? At the time I had in mind that everything would be subject to an appeal to the land tribunal. The way it is structured now we will have some going to the land tribunal and some going by way of judicial review, but I am not fussing about that. I had just conceived of this to mean that you had to include the Minister's decision, but if that is going by way of judicial review then I am not pursuing. It is a long way of saying I am not pursuing. [*Crosstalk*]

Well, yes, you still have to need (6)—I need 90 line 2, but I am not pursuing 90 line 4. I am just pointing out to my colleagues that this means that decisions of the Minister under clause 48 are not subject to appeal to the land tribunal; they are only subject to judicial review. I do not have a problem with that, but I would just like my colleagues to know what it is. I would withdraw 90 line 4, but I would like to have 90 line 2, 90(6), 90(7) and 90(8), if I may trespass on your good nature. [*Crosstalk*]

**Mr. Chairman:** Any other comments or any other views on that matter?

*Question put and agreed to.*

*Clause 90, as amended, ordered to stand part of the Bill.*

**3.20 p.m.**

*Clause 91 ordered to stand part of the Bill.*

*Clause 92.*

*Question proposed, That clause 92 stand part of the Bill.*

**Sen. Yuille-Williams:** In clause 92(6) it seems that it was an informal hearing and I wanted to know if it is informal, why is the appellant not entitled to challenge any portion? Clause 92(6) says in part:

“...an appellant is not entitled to challenge any portion of the order...”

This is an informal hearing and I am wondering why you cannot challenge the order.

**Sen. Lucky:** I am trying to find where you are.

**Mr. Chairman:** Page 126, clause 92(6).

**Sen. Yuille-Williams:** If it is an informal hearing, why is the appellant not able to challenge it? Explain clause 92(6) for me.

**Sen. Lucky:** What you are supposed to do, this is meant that you have to state your ground beforehand so the other side is not taken by surprise. In other words, you are going to have to indicate in your notice of appeal the ground that you are relying on for this appeal. On grounds of appeal, the other side must be told.

*Question put and agreed to.*

*Clause 92 ordered to stand part of the Bill.*

*Clause 93.*

*Question proposed, That clause 93 stand part of the Bill.*

**Sen. Lucky:** This is for clause 93(2)(b) and clause 93(2)(d) and in the first line, immediately after the word “requirements” insert the word “stated”. So these were not any fundamental changes.

**Mr. Humphrey:** Mr. Chairman, I beg to move that clause 93 be amended as follows:

93(2)(b) In the first line, delete “On publication of the notice referred to in subsection (3)” and substitute the words “With effect from the appointed day”.

93(2)(d) In the first line, immediately after “requirements” insert “stated”.

**Mr. Chairman:** Senators have you seen these amendments? Are there any objections, comments, views?

*Question put and agreed to.*

*Clause 93, as amended, ordered to stand part of the Bill.*

*Clauses 94 and 95 ordered to stand part of the Bill.*

*Clause 96.*

*Question proposed, That clause 96 stand part of the Bill.*

**Sen. Thomas:** Mr. Chairman, I simply wanted to say that in view of the sensitivity of the question, 24 hours is too short and I suggest 48 hours.

**Sen. Lucky:** Sen. Thomas, I agree with you that 24 hours does not really give one an opportunity to put their house in order literally. Instead of 72 hours, can we agree to compromise and go to 48 hours? That is two days.

**Sen. Thomas:** That is fine.

**Mr. Humphrey:** Mr. Chairman, I beg to move that clause 96 be amended as follows:

- 96(2) A person authorised under this section to enter upon any land shall before so entering produce evidence of his authority, if required, and shall not demand admission to any land that is occupied unless forty-eight hours notice of the intended entry has been given to the occupier.

*Question put and agreed to.*

*Clause 96, as amended, ordered to stand part of the Bill.*

**Sen. Yuille-Williams:** This was the section that I had a concern about. I know you have passed there, but is it not there we were looking at for this constitutional infringement in terms of this clause 96, and that is one of the areas we have looked at that would make us require a special majority? Giving the public officer powers to enter property, is that not a constitutional infringement?

**Sen. Lucky:** Senator, I know you said that this is one of the clauses that you are concerned about for the special majority.

**Sen. Yuille-Williams:** Yes.

**Sen. Lucky:** Well this exists now. This is the power that actually exists now, so we are not derogating from any powers that presently exist. I am just trying to answer your special majority concern, because that is our argument why there is no need for special majority under section 6 of the Constitution. That is our position.

**Sen. Yuille-Williams:** I do not agree.

*Clause 97.*

*Question proposed, That clause 97 stand part of the Bill.*

**Sen. Thomas:** Mr. Chairman, the Government's amendment is the same as mine, so I withdraw my amendment.

*Amendment withdrawn.*

**Mr. Humphrey:** Mr. Chairman, I beg to move that clause 97 be amended as follows:

- 97(3) At the end of the fourth line, for "four" substitute "seven".

*Question put and agreed to.*

*Clause 97, as amended, ordered to stand part of the Bill.*

*Clause 98 ordered to stand part of the Bill.*

*Clause 99.*

*Question proposed, That clause 99 stand part of the Bill.*

**Mr. Humphrey:** Mr. Chairman, I beg to move that clause 99 be amended as follows:

99(1) In the third line, immediately after the word “time” insert “subject to subsection (2)”.

*Question put and agreed to.*

*Clause 99, as amended, ordered to stand part of the Bill.*

*Clause 100 ordered to stand part of the Bill.*

*Clause 101.*

*Question proposed, That clause 101 stand part of the Bill.*

**Mr. Chairman:** There are amendments from Sen. Prof. Ramchand, Sen. King, Sen. Prof. Kenny and Sen. Outridge.

**Sen. Prof. Ramchand:** Mr. Chairman, I withdraw my amendment, because I intend to support Sen. King’s.

*Amendment withdrawn.*

**Mr. Chairman:** Just press the microphone so we can hear.

**Sen. Outridge:** [*Inaudible*]...for the development control committee and the personnel who make up this committee come from different organizations and I believe that somewhere in this Bill we should make provision for drawing up regulations in respect of how they should proceed and what behaviour they should adopt. For example, some of these people may have to bind their agencies in respect of their decisions and they may have to suspend the procedures of the decision-making of the authority in order to do that under the one-stop shop which is this developmental control committee. That was the reason for making this amendment, to add that proviso.

I was making the point that even where you have a representative of that committee and they do not appear on another day and someone else comes, they can stall or even prevent the facility or the committee from continuing by virtue of

objecting to what their previous representative had agreed to, or may as well not attend at all and, therefore, the whole committee just cannot continue to act and that would defeat the whole purpose of having this provision in the Bill.

**Sen. King:** Mr. Chairman, I have a proposed amendment as follows:

101(1) The Minister after open discussion with major stakeholders, the public and the Commission may make regulations...

**Sen. Lucky:** Mr. Chairman, through you, we are accepting Sen. Prof. Kenny's proposed amendment which is to remove clause 101(1)(k) and (l). I am looking at the proposed amendments of the Government and I notice that that seems to have been our proposed amendment, it just went straight to the Schedule, but in that section, we were taking out (k) and (l).

**Sen. Prof. Kenny:** Thank you.

**Sen. Lucky:** In fact, in the committee stage earlier, Senators would remember we were supposed to insert an (n) dealing with prescribing the time for the approval.

I am sorry to interrupt, Mr. Chairman, I just wanted to remind Senators we are taking Sen. Prof. Kenny's amendment.

**Mr. Chairman:** We have Sen. Outridge's and Sen. King's.

**Sen. Lucky:** Through you, Mr. Chairman. Sen. Outridge, would you agree with this wording based on your proposed amendment?

“For prescribing procedures for the development control committee”?

**Sen. Outridge:** It says the same thing that I wanted.

**Sen. Lucky:** Yes, but we just want to put it in a particular kind of language and we want to know if that is okay with you.

**Sen. Outridge:** I have no problem with that.

*Question, on amendment, [Sen. D. Outridge] put and agreed to.*

**Mr. Chairman:** We now have Sen. King's.

**Sen. Lucky:** While Sen. King's proposal is being considered by the Minister, the Government is proposing—well Sen. Outridge's would be a new (n)—an (o) which would be:

- (o) for prescribing the time for the determination of applications for the development of land.



That came from an earlier clause where we had said we would put in the regulations so that the Minister would not have plans just in abeyance.

I remember Sen. Prof. Ramchand had asked us to put in a time frame of 90 days and there was some concern that perhaps it should be 120 days. I want to suggest to Senators the reason we did not want to put in a number of days in the regulations and I really do not want to. You want to put a number of days for protection, but our concern was if you put a number of days, it may be actually tying us down to something and we are really going to try to improve the entire system. That is why we were trying to leave it general because the Minister would be mandated to come with these regulations and if, of course, time periods were not being kept, there would always be—they can come back to Parliament by way of a motion, because it would be subject to negative resolution. Resolutions are not things that are cast in stone. So we were thinking of leaving it very open and it would read:

“(o) for prescribing the time for the determination of applications for the development of land.”

The Minister is also making the point that some of the applications are going to be simple, some would be more complex, but always remember with regulations, it does not deprive persons who are dissatisfied from taking any necessary action. Action meaning to say that this is not working, so this is what Government was proposing. I see that that proposed amendment was something that came out of last week's discussions.

**Sen. Dr. McKenzie:** Mr. Chairman, I like the idea, that is why I say with “timely” we do not have to specify a time as much as we could specify a period, like not later than nine months after, or something like that.

**Sen. Lucky:** We were still thinking of even to put “not to exceed” because then people may want to go to the limits, but we will monitor it and if it is not working, then we can always come back here.

**Mr. Chairman:** Can you read that for me?

**Sen. Lucky:** The Government then will be proposing an:

“(o) for prescribing the time for the determination of applications for the development of land.”

What is now (n) in the Bill, would be (p).

**Mr. Chairman:** We want to get Sen. King's proposal now.

*Planning and Development of Land Bill*  
[MR. CHAIRMAN]

*Tuesday, July 31, 2001*

While the Government is looking at Sen. King's proposal, I want to indicate the amendments that are being proposed.

To Sen. Outridge's we have an amendment to it by the Government which reads: "for prescribing procedures for the development control committee".

**Sen. Outridge:** I agree with that.

**Mr. Chairman:** The Government is adding a new paragraph (o) which reads:

- (o) for prescribing the time for the determination of applications for the development of land.

That is a new clause that is being proposed.

**Sen. Lucky:** Sen. King, would you agree with the following:

101(1) The Minister may after public consultation make regulations...

So we will insert after the word "may" "after public consultation."

**Sen. King:** Certainly, that is a very acceptable amendment.

**Mr. Chairman:** Sen. King, are you happy with that?

**Sen. King:** Certainly, Mr. Chairman.

*Question put and agreed to.*

*Clause 101, as amended, ordered to stand part of the Bill.*

**3.40 p.m.**

*Clause 102*

*Question proposed, That clause 102 stand part of the Bill.*

**Mr. Chairman:** Sen. Thomas, you have an amendment to clause 102.

**Sen. Thomas:** Mr. Chairman, my amendment is pretty self-explanatory particularly in light of what is taking place today. I believe that clause 102(2) is unbalanced in the sense it only refers to one aspect of bribery. We are now aware and certainly accept that there could be bribery from both sides, the giver as well as the receiver. My suggestion is to balance that particular subclause by an amendment.

Thank you, Sir.

**Sen. Lucky:** Sen. Thomas, I am looking at your proposed amendment, which would be the addition of a new subclause. Presently, under the Prevention of

Corruption Act this type of situation is already catered for. There are now amendments that would even strengthen it, and would have already envisaged this type of activity. I do not know if that gives you any comfort with respect to what you are suggesting?

**Sen. Thomas:** Where is this recorded?

**Sen. Lucky:** It would come under the Prevention of Corruption Act. I do not know the exact section of it. But it does deal with persons who are acting in the capacity as public officers and they take bribes. That is the Act under which you would charge them.

**Sen. Thomas:** It would be interesting to know whether the present proposal by the Government is already recorded as Sen. Lucky has said in whatever document she says.

**Sen. Lucky:** I do not have the amendments that are presently in the House, unfortunately, but I know it does cater for this.

**Sen. King:** Mr. Chairman, does that imply that we do not need clause 102(2) in this Bill?

**Sen. Lucky:** You mean subclause (2) as it stands.

**Sen. King:** Yes.

**Sen. Lucky:** Subclause (2) is meant for any person but the Prevention of Corruption Act as it stands and what the Government seeks to do is when you are given a particular office which is what is envisaged in what Sen. Thomas is proposing because he is saying "any officer or other person acting under authority". That is just not any person who has a function. It is even worse when such a person is involved in this kind of activity. That is how subclause (2) is different to the proposed subclause (3). In the Prevention of Corruption Act as it stands, there is already provision for this kind of activity as proposed by Sen. Thomas. I am just going on to say that the proposed amendments to that Act which is already in operation, will be more stringent than what is being proposed here. I am saying I do not have it with me. It is presently in the House. I have checked with our Chief Parliamentary Counsel who is aware and is familiar with it, and she made this point to me.

**Sen. Thomas:** Mr. Chairman, does that mean the amendment referred to by Sen. Lucky has been passed or is it pending?

**Mr. Chairman:** We are not hearing you clearly Senator.

**Sen. Thomas:** I am asking whether the amendment mentioned by Sen. Lucky has been passed or is it pending?

**Sen. Lucky:** Mr. Chairman, through you, it is pending. It has not been passed.

**Mr. Chairman:** You are talking about the Act.

**Sen. Lucky:** We have the Prevention of Corruption Act. That is law. It caters for this type of situation. I am saying the amendments to that Act that are pending in the House which increase the penalties, for example, and seek to give the Act enforcement even make it more comprehensive. What you have in your proposal already exists in terms of bringing somebody who engages in this kind of activity. I am saying that person is already dealt with, and it is going to be even worse for such a person if those amendments are passed. Unfortunately, I do not have it before me.

**Sen. Outridge:** Mr. Chairman, subclause (2) here presumes that there is only one party offering but can two parties not get together and we have offer and acceptance in some way to prevent the influence of the planning authorities? Maybe we should amend that to say "any person who, by offer and acceptance". There can be two parties getting together, two neighbours.

**Mr. Chairman:** Sen. Thomas are you withdrawing your particular amendment?

**Sen. Thomas:** Mr. Chairman, I was listening for reactions. There is one from Sen. Outridge that is an amendment.

**Sen. Prof. Deosaran:** Mr. Chairman, I fully appreciate what the Minister is saying in terms of what is pending and its more far-reaching consequences. What Sen. Thomas is trying to emphasize though, is a collateral condition where the emphasis should also be put upon the receiver, as much as it is now put here on the provider or the giver. In that context and I would be humbly corrected, I know you do not want to have the same offence duplicated in two separate pieces of legislation especially if the punishment differs. But I also know there is precedent in the Larceny Act, for example, as compared to the Summary Offences Act but we do not necessarily have to get into those kinds of complexities.

What I would like to submit and I would tell you plainly, it is a matter for emphasis and giving direction as to the procedures that this Bill seeks to provide. If it is under subclause (2), pertaining to the offering by a person I would still like to submit, if it could be done, that a close provision be followed to include the receiver of such bribe because the bribe, as we know it, is in a context. If you are

creating fear in the mind of the giver it would have good psychological effect by enjoining the receiver at the same time in the legislation. That is, if it would not bring us into unnecessary complications.

**Sen. Lucky:** If we were to include the words “or accepts” after the word “offer” Sen. Thomas. I am just looking at the Prevention of Corruption Act and what you were envisaging is, in fact, in section 3(1) and (2) and they deal with receivers also. It is worded with “any other person who corruptly solicits or receives”.

**Sen. Thomas:** What does it say?

**Sen. Lucky:** Section 3(1) says:

“Every person who, by himself or by or in conjunction with any other person, corruptly solicits or receives, or agrees to receive, for himself or for any other person, any gift, loan, fee, reward, or advantage whatsoever, as an inducement to, or reward for, or otherwise on account of, an agent doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed, in which the State or a public body is concerned, is guilty of an offence.”

There is a subsection (2) but I do not want to read the whole Act, and there are penalties. I know in your proposed amendment you have also increased the penalties in terms of what is contained in the Bill. The point I was making to you is we had an Act that dealt with it.

**Sen. Thomas:** Mr. Chairman, if the Act as just read by Sen. Lucky covers both the receiver as well as the person who gives, is there need as Sen. King has pointed out for clause 2 as it stands here since the entire matter is covered under the Prevention of Corruption Act?

**Sen. Lucky:** The Government is willing to put “any person who offers” and we put in “or accepts” and go with Sen. Thomas’s “increased penalties, a fine of one hundred thousands dollars” and instead of two years, five years.

**Sen. King:** Mr. Chairman, can I ask if those fines would be consistent with the Prevention of Corruption Act?

**Sen. Lucky:** I do not know what the proposed amendments are. Are you referring to what is in the House now?

**Sen. King:** I would like to think that we are making laws that should be consistent.

**Sen. Lucky:** I do not have the proposed amendment with me. Those are in the House.

**Sen. King:** Could we get it?

**Sen. Lucky:** It has not been passed?

**Sen. King:** But at least you have the idea.

**Sen. Lucky:** What would happen in such an instance is depending on what happens in the Senate, that is in the House. Certainly the relevant Minister or junior Minister would indicate to the relevant senior Minister what happened in the Senate and, therefore, that is something the Government would consider now.

**Sen. Thomas:** Mr. Chairman, may I ask, therefore, would it be possible to maintain the consistency in terms of penalties that we simply end by saying “in accordance with the Act” that Sen. Lucky is referring to?

**Mr. Chairman:** We cannot anticipate laws. We would have to debate them first.

**Sen. Prof. Ramchand:** Can the Minister give the assurance that it would be borne in mind?

**Mr. Chairman:** She could give that, but one cannot anticipate in our amendments here what is to come.

**Sen. Lucky:** Mr. Chairman, we are increasing it here, and whatever has to be done elsewhere would be done, but for the purposes of this Act and the integrity of this Bill, we would agree to the proposed amendment.

**Mr. Chairman:** Any other comment? Let me just read the proposed amendment as suggested by the Government to Sen. Thomas’ amendment, but as further amended by the Government.

“Any person who offers or accepts any gratuity, bribe, promise, or other inducement in the due performance of his duty, is guilty of an indictable offence and is liable to a fine of one hundred thousand dollars or to imprisonment for five years or both.”

*Question put and agreed to.*

*Clause 102, as amended, ordered to stand part of the Bill.*

**3.55 p.m.**

*Clause 103.*

*Question proposed, That clause 103 stand part of the Bill.*

**Sen. Lucky:** Sen. Thomas, what is contained here, I am told, in terms of evidence is presently not the Town and Country Planning Act. We are trying to find it. You asked the question why we have it and whether it was in any existing legislation.

Under the Rules of Evidence, for example section 19(2) of the Evidence Act, in order, when there is a criminal prosecution, to avoid having to bring persons whose reports, for example, forensic reports, pathologist reports and medical certificates—The person who has signed under the Evidence Act, there are certain categories of persons whose certificates you can tender as evidence without proof of signature. In other words the document is deemed to have been signed by the person whose signature appears. We are trying to do a similar thing. If every time the prosecution had to tender a document they would have to bring the person who signed the particular document, and that could be quite difficult. It does not change any law fundamentally. This is something that is done and, for the purposes of these notices, needs to be done.

I have prosecuted three Town and Country Planning Division matters and the law, I am sure, is the same because the enforcement notices are signed documents and would normally have to be tendered by the author of that particular document. We have never had to bring the authors of those documents because of the provision in the relevant legislation.

I have asked them to find it for me, but this does not depart from anything that is done. It is not out of the ordinary. I do not know if that answers your concern.

**Sen. Thomas:** Mr. Chairman, it partly does. I wonder whether we can bring it in line with what we call “the evidence” and say “in accordance with”.

**Sen. Lucky:** The Evidence Act has stated categories of persons. It states, under section 19(2), which persons’ certificates would actually be allowed—forensic reports, those of armourers and so forth. If you said that in this Act, it would not be allowable. The Evidence Act refers to this.

**Sen. Thomas:** I stand subject to the views of the Senate. I am very flexible in light of the explanation. If others are comfortable with this, then I am. I will not pursue my amendment.

**Sen. Lucky:** That is why at the end of it—and I was just making sure that it exists—in clause 103 we see, “subject to any evidence to the contrary”.

Let us just say that you were putting in an Enforcement Order and the prosecution was saying that this person was served with a valid enforcement

*Planning and Development of Land Bill*  
[SEN. THE HON. G. LUCKY]

*Tuesday, July 31, 2001*

order. Nothing prevents the defence from saying that is not a valid enforcement order and that it was supposed to be signed by John Brown and that is not John Brown's signature. There is still challenge. This is just for the purposes of accepting into evidence. It is not unfair to the other side. If you do not have this, every time you want to put in a relevant document, you would have to ensure that the person who signed came because that is a rule of evidence by which we are bound. So many of these matters will be based on documentary evidence that may not even be challenged. The prosecution would be frustrated and hamstrung because they would not be able to get those documents into evidence.

**Sen. Thomas:** Mr. Chairman, in light of explanations, I will not pursue my amendment.

*Amendment withdrawn.*

*Question put and agreed to.*

*Clause 103 ordered to stand part of the Bill.*

*Clauses 104 to 107 ordered to stand part of the Bill.*

**Mr. Chairman:** We have to go back to earlier clauses—5, 23 and 38. Those clauses were postponed.

*Clause 5 reintroduced.*

**Mr. Chairman:** I am sure that all Senators have the circulated amendments of the Minister—clauses 5 and 23.

**Sen. Lucky:** On the last occasion when we sat in committee, the point was made, I think by Sen. Prof. Kenny, that we should remove from the schedule and put into the body of the Act those who would comprise the commission. I reiterate the position that that was one style. We are going to go with that style. I was asked what we had been doing in the more recent legislation. We wanted to be consistent. Perhaps the most recent was the Civil Aviation Bill. You had raised the point then and we pointed out that this was a preferred style. You will sometimes find that bills coming here will be different, but that is the preferred style of the Government. We are going with putting it in the substantive part of the Act.

I may also mention that Sen. Yuille-Williams has circulated her amendment and it was agreed last time by the Minister that we would include a person with qualification in marine science. That is not reflected in the Government's proposal, but we are agreeing to it. It would actually be 14 other members.



What is stated in the Government's proposed amendment that has, "The Commission shall consist of the following members...13 other members..." will now read 14. We will be including Sen. Yuille-Williams' proposal—a person qualified in marine science. That will flow straight from (xii).

**Sen. Prof. Ramchand:** [*Inaudible*] we should have someone representing fisheries and forestry. Is that covered?

**Sen. Lucky:** Could that come under agricultural development interests? One of the concerns we have is that from the time you start including everybody you might as well just hold public consultation and have no commission. [*Interruption*] You would have committees and they would be specialized committees where these persons with their expertise would come in. In no way am I just putting them by the wayside. Even as this commission stands, I tell you with these ex officio members, the 14 members, it is a big commission. We have tried to be as all encompassing as we can.

**Sen. Prof. Kenny:** Mr. Chairman, in light of the Government's concession, I withdraw my proposed amendment. I point out a couple things—minor editorial things. I do not know whether it applies in the law, but when you use numbers, the normal convention is that from one to nine is spelt out and from 10 up, you use numbers. You have reversed it here in that you talked about 14 members and you spell out fourteen. When you say, "Attorney-at-Law, 5 years", you put 5. I suggest that we clean it up. It is a minor editorial thing.

The other thing is that in 4(h), it should be "the Chief Executive Officer, the Tourism and Industrial Development Company". I think that was one of my suggestions earlier that the Government has accepted. My amendment is withdrawn.

*Amendment withdrawn.*

**Mr. Chairman:** Does Sen. Joan Yuille-Williams have an amendment?

**Sen. Yuille-Williams:** The Minister has already said that she is accepting it.

**Sen. Morean:** Mine is the one that has not been accepted. [*Inaudible*] an unpopular one though it may be.

**Mr. Chairman:** You are so right. You anticipate well. It is an unpopular [*Inaudible*]

**Sen. Morean:** It is a proposed amendment nevertheless. I have difficulty with these commissions that can be termed Cabinet-appointed commissions with

respect to transparency, independence and that sort of thing. This is why I am suggesting that the appointment should really be a Presidential appointment. That is an appointment in consultation with the Prime Minister and the Leader of the Opposition. In that way we can avoid some of the allegations of lack of transparency and independence.

**Mr. Chairman:** Do you have an amendment Sen. Outridge?

**Sen. Outridge:** I was merely questioning the need for a corporate body. I mentioned that once we have an established commission, there is no need to incorporate it. It is established under the Act. There are several other bodies that the Government has that are implementing agencies, for example, MTS and NIPDEC. I am merely trying to find out why the National Physical Planning Commission must be a corporate body.

**Mr. Chairman:** Sen. Morean, would you like to pursue that matter? It does not appear that—

**Sen. Morean:** Yes, I would like to pursue it.

**Mr. Chairman:** What about you, Sen. Outridge? Would you like to pursue that matter or do you want to withdraw?

**Sen. Outridge:** Yes, Sir. I had specifically referred, in my contribution, to advice given by a senior government planning advisor when he prepared a report back in the 1980s. He said there was no need for the planning commission to be a body corporate.

**4.10 p.m.**

He mentioned that executive commissions—whereas they have a useful role to play in the management of large service operations—would hardly be appropriate for the planning system in which there is the political component in virtually every decision. It would be incompatible with the declared government policy to decentralize control, as much as is practicable, to local authorities and to have an executive commission.

I am saying that if Government wants to devolve planning, as they are doing under this particular Bill, and they want to implement Government policies, then forming a corporate body would be contrary to this whole Bill.

**Mr. Chairman:** Okay, we have your views. What is the Government's position on this? The Government is not willing to change. Well, I am going to put the question on the two amendments.

**Sen. Morean:** Mr. Chairman, before you go to that there are a number of amendments that I proposed—

**Mr. Chairman:** To what clause?

**Sen. Morean:** To the same clause 5 and I do not think these would be unpopular because I have raised this over and over again.

**Sen. Chairman:** Okay, because I would now like to tie up these two amendments with what you are proposing.

**Sen. Morean:** Okay.

**Sen. Dr. McKenzie:** Mr. Chairman, we are still on clause 5 and I want to ask the hon. Minister about the opinions of the people who will be on this commission, who do not represent a special interest group, for example, the representative from the Tobago House of Assembly. How do they get their ideas into the whole process of the planning commission?

**Mr. Chairman:** You are on clause 5 itself, you know, but we are dealing with Sen. Outridge—he is on clause 5(2).

**Sen. Dr. McKenzie:** Yes, well this is what I was—

**Mr. Chairman:** But you are on clause 5?

**Sen. Dr. McKenzie:** This is what I was saying, I am on clause 5 because I do not want you to close off—it is not an amendment; it is just an explanation.

**Mr. Chairman:** We are not closing off; I will come back to you.

**Sen. Dr. McKenzie:** Okay.

**Mr. Chairman:** Senators, I would like to deal with these two small points and then we will come back to Sen. Dr. McKenzie's concern as well as other matters.

The question is—and I would like Senators to be very clear—there is an amendment in the name of Sen. Outridge: to delete clause 5(2) completely.” We have to put the question—since he is not withdrawing and the Government is not giving in—and we have to deal with those matters before us.

**Sen. Morean:** Mr. Chairman, just before we vote on this amendment, what was the Minister's response to Sen. Outridge's proposed amendment, with respect to the question asked as to whether the commission should be a corporate body? As he has said, if you have set up a commission as a legal entity there may be no

necessity to say that it shall be a corporate body. What was the reason for deviating from the norm?

**Mr. Chairman:** Sen. Lucky, do you want to deal with that? Could you just give us a response as to why you rejected Sen. Outridge's proposal for a corporate body? If you look at his amendment—

**Sen. Prof. Deosaran:** Mr. Chairman, while the Minister is pondering would you allow me to make an intervention on the point?

**Mr. Chairman:** Go ahead.

**Sen. Prof. Deosaran:** I think while the issue would swing on whether an executive commission and a corporate body could work or not, I suggest that, from my point of view, the critical criterion would be—and this is where I would like the Minister, either one of them to advise—whether that body would be able to sue and be sued? If it is not, I would prefer that it be a corporate body so that it can be sued—especially be sued. That would determine my response to that issue.

**Mr. Humphrey:** That is the reason the provision is made.

**Sen. Prof. Deosaran:** Well if it is the case that in the corporate body sense the public would have the right to sue—I am not saying that should be a rule, it should be the exception—I think it is a protection for the community and I would support the corporate body principle.

**Sen. Prof. Kenny:** Mr. Chairman, just to continue, very briefly, I would like to add that in the Environmental Management Act, the comparable section says:

“There is hereby established a body corporate to be known as its own.”

So I am not sure I understand the issue being raised.

**Sen. Outridge:** Mr. Chairman, are we saying that if under clause 5(1) and the current clause 5(3), in the absence of clause 5(2), that a National Physical Planning Commission and the public at large have no redress? Are we saying that under this current Bill—without clause 5(2) and just having clauses 5(1) and 5(3) and the rest of the amendments that we have made under this Bill, in terms of appeals and judicial review and so forth—the public at large has absolutely no redress? That is what I am trying to understand if it all hinges on suing or being sued.

**Sen. Lucky:** Through you, Mr. Chairman, Sen. Outridge, if you were to take out clause 5(2) then it would mean that if you want any redress you would go

against individuals who comprise the commission. What clause 5(2) is doing by giving that corporate status—it is the corporation that you have, the commission.

**Sen. Outridge:** Are you saying that the individuals are appointed by the President?

**Sen. Lucky:** I do not understand your question. How do you mean the individuals? You would go against the commission.

**Sen. Outridge:** That is what I am talking about. You are saying that the individuals who comprise the commission would be personally liable?

**Sen. Lucky:** If you did not have clause 5(2). To me that was your question and that is why commissions and the EMA—I think it was read by Sen. Prof. Kenny—are given corporate status; the difference between a partnership and a company.

**Sen. Outridge:** Mr. Chairman, if that is the crux of the matter then I would have no problem in ensuring that the commission is set up as a corporate body so that it can sue and be sued. However, I remember under the Civil Aviation's Bill that was discussed in this Senate, we had specific provisions in that Bill that guided the setting up of the corporate body and guided how they would act; whether they would be under Central Tenders Board Regulations and so forth, but under this, we have set up a corporate body and we have stopped there. There are no other checks and balances.

**Mr. Chairman:** Okay, are you withdrawing your amendment, Sir?

**Sen. Outridge:** I have no problem with the corporate body, provided we have some checks and balances placed in the Bill.

**Sen. Lucky:** Sen. Outridge, have you looked at the Schedule that states how the commission would operate?

**Sen. Outridge:** That is in the First Schedule?

**Sen. Lucky:** In the First Schedule. The only reason that we moved the clauses that you are dealing with—perhaps you are a bit hamstrung because you were not here at the last stage—was that it was a matter of style. You would remember in the Civil Aviation Bill there were some concerns that we were creating problems in the body and then going on, but if you were to look at the First Schedule, I think, there are guidelines as to how the commission would operate.

*Planning and Development of Land Bill*  
[SEN. THE HON. G. LUCKY]

*Tuesday, July 31, 2001*

Because the Civil Aviation—as much as you used the issue with the Central Tenders Board, that was as a result of the power that was given to the Civil Aviation Authority whereby, I think, they could purchase aircraft or something like that where they had to go through tender. So it is a little different when you go that specific route. There are guidelines in that Schedule.

**Mr. Chairman:** I think, for instance, we have exhausted this part of the proceedings. Sen. Outridge, are you still maintaining your position that you want this deleted? Do you want to withdraw or should it go to a vote?

**Sen. Prof. Ramchand:** Mr. Chairman, I do not know if there is provision anywhere else in the Bill for conflict of interest.

**Mr. Chairman:** Hon. Senator, that is a new development, let me deal with this one right now.

**Sen. Prof. Ramchand:** Oh, sorry, I thought—

**Mr. Chairman:** Are you prepared to withdraw, Sen. Outridge?

**Sen. Outridge:** Mr. Chairman, bearing in mind the explanation that Sen. Lucky has given, and bearing in mind what is contained in the First Schedule, I have no problem with withdrawing the amendment.

*Amendment withdrawn.*

**Mr. Chairman:** Shall we go on now to Sen. Morean's amendment to 5(3) in which she is proposing—everyone has the proposed amendment as circulated?

Delete and replace with

“The Commission shall consist of the following members appointed by the President in consultation with the Prime Minister and the Leader of the Opposition:

(a), etc. as in the supplemental list of amendments by the Minister...(4). Also in the supplemental list renumber 5A. (1) to (4) “(8)(a) to (d)”; renumber 5B to 5D “(8), (9), (10), (11)”.

*Question, on amendment, put.*

*The committee divided:* Ayes    6        Noes    23

AYES

Yuille-Williams, Mrs. J.

Morean, Ms. G.  
Kangaloo, Ms. C.  
London, J.  
Chin Lee, H.  
Beckles, A.  
NOES  
Gillette, Hon. L.  
Yetming, Hon. G.  
John, Hon. J.  
Lucky, Hon. G.  
Phillips, Dr. The Hon. D.  
Moonilal, Dr. The Hon. R.  
Augustus, Hon. R.  
Jones-Kernahan, Dr. The Hon. J.  
Gopeesingh, Dr. T.  
Lasse, Dr. V.  
Ahmed, Mrs. R.  
Lambert, J.  
Cabrera, V.  
Dhanny, Dr. G.  
Mahase, Dr. A.  
McKenzie, Dr. E.  
Kenny, Prof. J.  
Ramchand, Prof. K.  
Deosaran, Prof. R.  
King, Mrs. M.  
Quamina, Dr. D.

Thomas, C.

Outridge, D.

*Amendment negatived.*

**Mr. Chairman:** Hon. Senators, the amendment to clause 5, as circulated by the Minister reads as follows:

Delete subclause (3) and insert the following immediately after subclause (2)—

“(3) The Commission shall consist of the following members appointed by the President—

- (a) a Chairman;
- (b) thirteen other members drawn from designated disciplines, groups or bodies as follows:
  - (i) one representing non-governmental, not-for-profit organizations concerned with protection of the natural environment;
  - (ii) one representing non-governmental, not-for-profit, community-based organizations;
  - (iii) two representing the construction or land development industry and of the two, one shall represent the interests of building or general contractors and the other design-related professional disciplines;
  - (iv) one nominated by the Trinidad and Tobago Society of Planners;
  - (v) one representing land-related or design-related professional disciplines other than physical planning;
  - (vi) one representing finance related professional disciplines;
  - (vii) one representing the professional discipline of socioeconomic planning;
  - (viii) one representing agricultural development interests;
  - (ix) one representing industrial development interests;
  - (x) one representing the Board of Directors of Environmental Management Authority;



- (xi) one representing small business, the informal sector and small property owners; and
  - (xii) an attorney-at-law of not less than 5 years standing.
- (4) The following persons shall be *ex officio* members of the Commission:
- (a) The Commissioner of State Lands under the State Lands Act;
  - (b) one person representing the Tobago House of Assembly;
  - (c) the Director of the Planning Commission;
  - (d) the Chief Technical Officer, Ministry responsible for Works;
  - (e) a representative of the Ministry responsible for Local Government;
  - (f) the Director of Economic Research and Planning of the Ministry responsible for Housing and Settlements;
  - (g) the Chief Executive Officer of the Environmental Management Authority; and
  - (h) the Chief Executive Officer of the Tourism and Industrial Company.
- (5) The President shall appoint a member of the Commission not being an *ex officio* member to be Vice-Chairman.
- (6) Before any person is appointed to the Commission as a member representing building and general contractors, or any professional or other special interest group, persons appearing to be representative of the interests or the institutions concerned shall be consulted.
- (7) Subject to the provisions of this Act, a member of the Commission shall be appointed for a term not exceeding three years and shall be eligible for re-appointment.

*Question put and agreed to.*

*Clause 5, as amended, ordered to stand part of the Bill.*

**Sen. Prof. Ramchand:** I would like to get the reassurance that when people are appointed to the commission, they, at that point should say, I am sorry I cannot accept because I have an interest in so and so. I want them to give the assurance that if, at the time of accepting they do not have an interest, if later on they get an interest, they should report that and resign.

**Sen. Lucky:** Through you, Mr. Chairman, Sen. Prof. Ramchand, can I tell you that the Integrity Act has already catered for that situation? The persons on this commission would be under that Integrity Act and that Act is very explicit on issues such as conflict of interest. Your fears can be set aside.

**Sen. Prof. Ramchand:** Thank you.

**4.25 p.m.**

**Sen. Prof. Kenny:** Mr. Chairman, before we leave this, I am reassured, but the thing is that people have broad interests and activities, and I wonder whether you can really legislate for this sort of thing. Now, I will give you an example of the sort of problem that arises. Prior to joining the Senate I was actively involved in environmental consulting work and I considered it a conflict of interest to be talking on the environment here and going out there and serving clients. So there is a problem when one is dealing with general areas.

Now, the provision is that in this thing, I think in the Schedule, in all the legislation, when you have a conflict of interest and you are serving on a commission, you declare it and you leave the meeting. This is fine, this works; but my concern—and I think Sen. Prof. Ramchand's concern—is that people who have these broad interests in a particular subject may find that in principle they are in conflict. For example, if I were not in the Senate and I were asked to be on a commission and I was very much involved in environmental work, planning work and so on, I would find it impossible on purely ethical grounds to accept or, if I wished to accept because it was more lucrative that way, I would then have to sever all connections with clients. That is what I think Sen. Prof. Ramchand is talking about.

**Sen. Dr. McKenzie:** I had asked you a question, Mr. Chairman, and you deferred my answer.

**Mr. Chairman:** Yes, you go ahead.

**Sen. Dr. McKenzie:** So my question was, the members of the commission—and I am specifically referring to the one representing the THA which has an Act; in other words there is a law governing the THA and its jurisdiction, et cetera, and its responsibilities under Schedule 5—if for any reason sitting on the commission that authority comes into conflict with the broad policy—well I do not want to say policy, because they should not go against policy—but there is some sort of contradiction in what the commission may want—this is only one voice out of so many—and what the THA feels should happen in Tobago, how do we resolve it?

Do we have a method of resolving the conflict? That is what I want to find out from the hon. Minister, whether it will go the very way that we prescribed in clause whatever, whatever, whatever, that you call the people together and you have this consultative process going on and so on. I mean, it is not something for—I do not mean it is in the law, whether you are going to put it in the regulations or so.

**Sen. Outridge:** Mr. Chairman, we have clause 9 of the Bill that deals with conflict of interest.

**Sen. Dr. McKenzie:** [*Crosstalk*] I am not saying that—what I am saying is that here you have actually, in a way, two laws, a law governing the THA and a law governing this Bill, and here you may have a conflict of interest where the THA may say, “Okay, under the law of the THA, Act 40 of 1996, you have given me this authority. Your process from the planning commission, et cetera, contradicts my role or my perception, whatever—I am just making—how do we resolve it?”

**Mr. Humphrey:** Surely, if that were to happen, the commission is not doing its work as prescribed under the Act because planning can only be developed after consulting with the public and in the case of Tobago’s plans that are being developed, it is through consultation with the people of Tobago in recognition of the existence of the THA.

**Sen. Dr. McKenzie:** Yes, because I do know that in clause 6 you made this abundantly clear. I think it is in clause 6 that you would take—sorry, clause 6(1)(g). I know that you said that—the Assembly’s Act would be considered.

**Mr. Humphrey:** Then remember, the House of Representatives includes two representatives from Tobago and the Senate includes Tobago representatives as well.

**Sen. Dr. McKenzie:** I understand all of this but what I am saying, Mr. Chairman, could we then—will it be possible, then, that in your regulations, when it comes specifically to the THA, because of the fact that it is a law, if you understand me, a law-enacted body, that something could be spelled out that the interests or whatever, the ideas, the opinions, the whatever of the THA, would be considered?

**Sen. Outridge:** Mr. Chairman, we are talking about veto powers being put into the regulations.

**Mr. Chairman:** What?

**Sen. Outridge:** The power of veto for the THA representative being put into the regulations.

**Sen. Dr. McKenzie:** Something; even if it is in the regulations. I am not saying—you know, it is not in the laws, but something.

**Mr. Humphrey:** I do not think there is reason to be afraid of a conflict arising that cannot be resolved. In fact, the Act makes provision for the commission to devolve its authority to local government and the THA—[*Interruption*]

**Sen. Dr. McKenzie:** I know this.

**Mr. Humphrey:**—and that has to be done within a year. Now, the problem with doing that is the resources possessed by these various agencies—[*Interruption*]

**Sen. Dr. McKenzie:** “Yeah, and de money.”

**Mr. Humphrey:** In fact, right now there are three people from Tobago from the THA being trained in the art of physical planning. The scholarship programme has in fact included three Tobagonians to achieve that very objective. So we are not waiting for the passage of this. I honestly do not foresee such a problem.

**Sen. Dr. McKenzie:** As I told you, it was not an amendment.

**Sen. Yuille-Williams:** Mr. Chairman, as the hon. Minister is on that, and I am trying to, in the absence of Sen. Dumas who raised a similar—something to you last week when he asked you, “How do the Tobago plans get involved in the national physical plan”, because he was even speaking to me and he said when they do a budget, for example, it is sent to the Minister of Finance and that is incorporated into the national budget, that type of thing, and he really wanted to know what process. I think it was more the process that he was concerned about. How does it move from there to the—and I think it was not spelled out.

**Mr. Humphrey:** Remember, we have, in fact, gone through several phases of planning. We have reached a conceptual phase. We have reached that conceptual phase for Tobago through consultation with the people of Tobago via the THA. We have done that already, so that procedure will continue. You have an extremely good working relationship between the interim commission and the THA, and the Minister and the THA as well.

**Sen. Yuille-Williams:** Well, it is not legislated really with this Minister; you know what I am saying, “eh”, the Minister and the—[*Interruption*]

**Mr. Humphrey:** No, the problem was not the legislation, the problem was that the THA did not have the expertise it needed. So we, in fact, sponsored it for the THA out of my ministry as it was, Housing and Settlements. We brought all the experts who are involved with us in doing the physical planning, we took them to Tobago, we introduced them to the chairman and members of the THA and we handed them over to assist in the whole process of public consultation. That is how it was done and it will continue to be done that way.

**Sen. Yuille-Williams:** At the end when they have had their plans, what happens? When the THA prepares its plan, what is the next stage?

**Mr. Humphrey:** Well, you have now the development planning stage to do so that you can actually implement development and, of course, the THA needs the expertise. As long as they do not have it, we will assist because, let us face it, Trinidad and Tobago are one.

**Sen. Gillette:** Mr. Chairman, may I just suggest something, you know, it seems like a debate is continuing, a long debate, I do not know. I am suggesting that we complete and then we can leave after, but I do not know if you want to continue the debate and then we could break for tea and come back? What would you prefer? All we really have is clause—*[Interruption]* Complete it? All right, okay, no problem, because we have clauses 23 and 38 and that is it really, after. Okay, no problem.

**Mr. Chairman:** Okay, Sen. Morean, your amendment to 5A, the one with the renumbering that you mentioned.

**Sen. Morean:** Yes, we had gone with a certain type of numbering of the paragraphs, 4, 5, 6; and I was simply saying we should continue with that sort of numbering. It is really of not such great significance.

**Mr. Humphrey:** Consistency in the numbering?

**Mr. Chairman:** What I had done, I had put the question on clause 5, but Sen. Morean has an amendment so I have to reopen clause 5 with the leave of the Senate in order to facilitate that particular clause. Do I have your leave to reopen? *[Crosstalk]* No, because it was an oversight on my part. It was not something she imposed on me. *[Interruption]* On my side—so I am seeking your leave to reopen so a democracy could rule.

**Sen. Morean:** Before you go there, Mr. Chairman, to make life easy for everyone, I will just withdraw it.

**Sen. Dr. Moonilal:** Thank you very much.

**Mr. Chairman:** You cool?

**Sen. Morean:** Cool.

**Mr. Chairman:** You want to withdraw?

**Sen. Morean:** Yes.

**Mr. Chairman:** Okay.

*Amendment withdrawn.*

**Mr. Chairman:** Let us go on to clause 23 now. I think that is the next clause that we have to deal with.

**Sen. Prof. Ramchand:** Mr. Chairman, there is a [*Inaudible*]

**Mr. Chairman:** On what? On 5?

**Sen. Prof. Ramchand:** About conflicts of interest.

**Mr. Chairman:** Yes, but that falls under what particular clause? Or is it a general matter?

**Sen. Prof. Ramchand:** It is a general matter.

**Mr. Chairman:** Well, let us deal with that under “other business”. We cannot deal with that now because we have some other pressing matters to deal with. We just cannot be moving all over the place.

**Sen. Prof. Ramchand:** But this is a very pressing matter, “eh”.

**Mr. Chairman:** I would like to suggest, I have been very flexible, if anyone has an amendment, put it in writing. I have been very flexible but I cannot continue that way. [*Desk thumping*] So if you want to deal with—any matter dealing with conflict and so on, let me have it so I could look at it and read it to the general—[*Interruption*]

**Sen. Prof. Ramchand:** All right, I will do that.

**Mr. Chairman:** But I cannot have a conversation between you and me.

**Sen. Prof. Ramchand:** Thank you, then, Mr. Chairman.

**Mr. Humphrey:** Mr. Chairman, the professionals who are members of the commission already have the codes of ethics of their professional bodies. Now, I have no problem with the commission itself considering a code of ethics and we

could make provision to enable that. Where do we make that provision so the commission can establish its own code of ethics? In the regulations? In which Schedule? [*Crosstalk*] You see, one of the problems we have as a small country is that you cannot attract the level of expertise that you need in the various fields that readily, and remember too, remuneration is not always so attractive for people to serve in these public institutions.

That is one of the problems, so you will get sometimes a little conflict of interest, but the overriding interest of the society I think will always prevail. I know you want to avoid corruption. I agree with that, but remember, the avoidance of corruption requires the improvement of human individuals. So there can be provision for self-improvement and self-examination. I see no problem with that whatsoever.

**Mr. Chairman:** Okay. So at least you got the undertaking from the Minister that that would be looked at in the Schedule, if possible—conflict of interest I am talking about. Now we go on to clause 23.

*Clause 23 reintroduced.*

**Mr. Humphrey:** Mr. Chairman, I beg to move that clause 23 be amended as follows:

Delete and substitute the following—

- |   |        |   |
|---|--------|---|
| Designation<br>of land<br>subject to<br>any<br>compulsory<br>purchase | 23.(1) | Where, in the opinion of the Minister, the objectives of development plan require that any land be subject to compulsory acquisition, the Minister may instruct the Commission to prepare a local area action plan (hereinafter referred to as “the local plan”) for the specific area to be designated as subject to such compulsory acquisition and describing— |
|   |        | (a) the intended objectives;  |
|   |        | (b) the uses to which the designated land would be put;   |
|   |        | (c) the programmes or means to be used after the acquisition of the designated land has taken place in order to achieve the proposed uses; and  |
|   |        | (d) the reasons why compulsory acquisition is necessary to achieve the intended objectives and the proposed uses.   |

- (2) The local plan shall contain such details relating to construction and other development initiatives so as to permit immediate implementation of such plan.
- (3) Before submitting a local plan to Parliament under section 24(11), the Minister shall—
  - (a) publish a notice indicating that the land is proposed to be designated as being subject to compulsory acquisition for objectives of the development plan, and setting out the information mentioned in subsections (1)(a) to (d) in the *Gazette* and in two daily newspapers, and in such other manner as may be calculated to bring the local plan to the attention of persons likely to be affected by it; and
  - (b) give written notice of the proposed designation to the owners and any known mortgagee or other encumbrancers of such land.
- (4) Any authority or other person desiring to make comments, representations or objections in relation to the proposed compulsory acquisition shall do so within two months of the publication referred to in subsection (3)(a) or of the giving of notice referred to in subsection (3)(b), whichever is the latter.
- (5) After considering any comments, representations or objections pursuant to subsection (4), the Minister may agree to the local plan submitted to him, and the Commission may thereafter, pursuant to section 24, certify that the local plan conforms to the National Physical Development Plan and that, in its preparation, the requirements of this Act have been satisfied.
- (6) Where under this section, land is designated in an operative development plan as subject to compulsory acquisition, the land may be compulsorily acquired in accordance with the provisions of the Land Acquisition Act, as land being needed for public purposes within one year of the date of publication of the Notice of approval of the Plan by Parliament under section 24(13).



- (7) Where land is designated for acquisition under this section, interest at the rate of 1% per month will accrue from the date of publication of the Notice referred to in subsection (6) until payment is made, and payment shall be made not later than 2 years thereafter.
- (8) Nothing in this section prevents—
- (a) acquisition by agreement of any land designated as subject to compulsory acquisition, including—
- (i) by agreement to exchange land designated as subject to compulsory acquisition for land provided by the State with appropriate payment in cash by way of adjustment for achieving equality in value; or
- (ii) by agreement to transfer land designated as subject to compulsory acquisition to Urban Development Corporation of Trinidad and Tobago or any local development corporation in consideration of the issue of equity stock in such a corporation.
- (b) compulsory acquisition by the State or any authority, under powers contained in any other Act whether or not land is designated for compulsory acquisition under this Act.

That is a big one. If you are hungry now, by the time we get through this one, you would be starving, but this is an exciting one.

**Mr. Chairman:** Is there any objection, given what has been circulated by the Minister? Sen. Prof. Kenny, are you happy with clause 23?

**Sen. Prof. Kenny:** Are we dealing with clause 23?

**Mr. Chairman:** Yes, we are now dealing with clause 23.

**Sen. Prof. Kenny:** Yes, I am quite happy with it now and I withdraw my proposed amendment. [*Desk thumping*]

*Amendment withdrawn.*

**Sen. Prof. Kenny:** Mr. Chairman, I wonder whether you will allow me the opportunity to say that this is a really truly outstanding attempt or adjustment to meet the concerns of the wider community. It really is. [*Desk thumping*] Given the range of options, no citizen can really object to this. [*Desk thumping*] We know that under the principle of eminent domain the Government can do virtually anything, but Minister, we must congratulate you for [*Inaudible*] [*Desk thumping*]

**Mr. Humphrey:** Congratulate us and yourself because you inspired it.

**Mr. Chairman:** Okay, thanks very much and so on, Sen. Prof. Kenny. Sen. Outridge, you have an amendment?

**Sen. Outridge:** Mr. Chairman, I beg to move that clause 23 be amended by deleting subclauses 23(1) and (2) and inserting a new subclause as follows:

Where land is designated under Section 6(1)(b) in a development plan made under Part IV as subject to compulsory acquisition by the Minister, the land may be acquired by the Minister compulsorily in accordance with the provisions of the Land Acquisition Act as being land needed for public purposes within the meaning of that Act.

I wonder what effect does a local area plan have in respect of informing the national community in respect of public acquisition of land? I know that the amendment seeks to bring forward the acquisition by virtually creating a local area plan and therefore, after you have the local area plan created, which the Minister will direct the commission to do, and it is accepted, then you can make an application for compulsory acquisition on the basis that it is now for public purposes, and I was wondering what effect the local plan will have, nationally.

**Mr. Chairman:** What I am saying is that having regard to the circulated amendment by the Minister, are you prepared to withdraw yours?

**Sen. Outridge:** Well, I have one other aspect to look at under—I was really looking for a clarification in respect of the local plan. To what extent is it going to be published on a national scale?

**Mr. Chairman:** The local plan?

**Sen. Outridge:** The local plan, because it refers to the Minister instructing the commission.

**Mr. Chairman:** Okay, the Minister will probably deal with that shortly.

**Sen. Morean:** Mr. Chairman, with respect to my proposed amendment to clause 23(5), I withdraw that.

With respect to the one to subclause (6), that is in line five, I propose that, after the word, "Act", we delete the words, "as land being needed for public purposes", as being superfluous since what you are importing is the provision that is contained in the Land Acquisition Act and you have already said, "acquired in accordance with the provisions of the Land Acquisition Act". So you need not put in those words because those words are already contained in the particular clause that would relate to this in the Land Acquisition Act. So I think those words should be deleted.

**Mr. Chairman:** Okay, so you have withdrawn both sets, right?

**Sen. Morean:** No, I have not withdrawn that. I have withdrawn the first one and this is the one I have explained.

**Mr. Chairman:** Okay, leave granted.

*Amendment withdrawn.*

**Sen. Lucky:** First of all, through you, Mr. Chairman, Sen. Outridge, with respect to the local plan, if you were to look at what is proposed in subclause (5):

"After considering any comments, representations or objections pursuant to subsection (4), the Minister may agree to the local plan submitted to him, and the Commission may thereafter, pursuant to section 24..."

Now, when you go to section 24 of the Bill as it is now, that sets out a procedure which I think will give you what you are concerned about, which is the public consultation. Does that answer you?

**Sen. Outridge:** Thank you very much, Sen. Lucky.

**Sen. Lucky:** It is not a problem. I am just trying to deal with this thing with speed.

**Sen. Outridge:** I just have one other question in respect of the clause and that is subclause (7) which says:

"Where land is designated for acquisition under this section, interest at the rate of 1% per month..."

Is that simple interest or compound interest?

**4.45 p.m.**

**Sen. Lucky:** Simple interest.

**Sen. Outridge:** Well then, Sen. Lucky, you would know of amendments to the Supreme Court of Judicature Act. The primary purpose of that Act deals with statutory interest to compensate a judgment credited being 12 per cent per annum; 1 per cent per month under simple interest is 10.2 per cent. It would be less than 12 per cent per annum.

**Sen. Lucky:** Yes, but that is a different circumstance.

**Sen. Outridge:** But a person who is deprived of his property and is awaiting compensation, it is just as well they had gone to court and gotten 12 per cent per annum.

**Sen. Lucky:** I think 1 per cent is fair, bearing in mind all the other options we have given him. I do not mean to dampen any Senators, but I just want to take you through something which I am sure you have seen. I am just trying to do it very rapidly. I thank Sen. Prof. Kenny for pointing out—certainly the reason for this change was because of Sen. Prof. Kenny and, of course, Minister Humphrey, but clause 23 still has a deficiency that we are trying to cure. That deficiency dealt with a situation where in two instances my concern is: What happens if the Government does not go on to acquire? In other words, there was still a problem with it and, that is: What happens if what is supposed to happen, does not happen?

So, for example, Sen. Outridge to take you back to subclause (7)—I am not concerned about the 1 per cent, I think that is fair. I was concerned with what happens if the Government does not pay you after the two years, or what happens, as in subclause (6), for example, if the Government says it is going to acquire, but it does not. So without having to belabour you further, and I want to be fair to Sen. Daly, Mr. Chairman, if you will allow me—Sen. Daly is not here, but he and I were in discussions yesterday and today and he had proposed that after subclause (7) after the word “thereafter”, we include “and in default of such payment the proposed acquisition shall immediately become null and void”.

I thought that that was fair, but last night when I was thinking about it, the acquisition would become null and void, fine, but that still does not go on to say what would happen to the owner and at whose option it would be. So I thought a solution would have been to take what Sen. Daly says. It would then read: “and payment shall be made not later than two years after and in default of such payment the proposed acquisition shall immediately become null and void at the option of the owner”. So that the owner will be making that determination, because it is his land that for two years he could not do anything and without prejudice to any of the available legal recourse by him.

I think, through you, Mr. Chairman, Sen. Prof. Kenny you have something written by Sen. Daly which is in conformity with that.

**Sen. Prof. Kenny:** There is a slight change there. Sen. Daly asked me whether I could read this into the record, but it says: “and in default of such payment the proposed acquisition may be rescinded”. I think what he wants to do is to keep it open at the option of the owner. In other words, you are looking after the owner without prejudice to his legal rights. That is the final Daly version.

**Sen. Lucky:** Which is in conformity with what I have read, but there is still another problem. I think Sen. Daly would have picked this up; it is a pity that he is not here. You cannot rescind an acquisition. The word “rescind” is wrong, and he mentioned that to me. If you rescind the acquisition, that is the problem you would have. When you go through an acquisition remember that the land would be designated; the Government would go on to acquire it and it would come to Parliament at some point.

So we were toying even with the word “rescinded” not being the correct word; so there is a solution. I am just trying to put it in context and not misrepresent anything people have shared; it is to go to subclause (6). I am not going to read the whole subclause. In subclause (6)—that is the one where under this clause land is designated. After the phrase “section 24(13)”, we go on to say, “and where the land is not acquired within the time specified herein, the designation of such land for compulsory acquisition shall cease to have force and effect without prejudice to any payments of interest that have already accrued to the owner under subsection (7)”. I think that cures the particular concern we have and puts it into a correct legal terminology.

Then another point was raised and pointed out to me by the Minister of Finance. Minister Yetming pointed out that if you look at subclause (8) paragraph (b) that starts “compulsory acquisition by the State or any authority, under the powers contained in any other Act”, what comes after the word “Act” “whether or not land is designated for compulsory acquisition under this Act” seems to have been taking away what you have given, because what you can do is to circumvent this Act and go under the Land Acquisition Act.

Therefore, to cure that defect, which is a very valid point he has made, take out the words, “whether or not land is designated for compulsory acquisition under this Act”. So, Mr. Chairman, we want to delete those words. I am asking Senators to consider what we are proposing to include in subclause (6). Sen. Prof. Kenny, I assure you, it does not take away in any way from what Sen. Daly and I

*Planning and Development of Land Bill*  
[SEN. THE HON. G. LUCKY]

*Tuesday, July 31, 2001*

had been discussing; it actually puts it into context. That was the problem with using the word “rescinded”, and even the words “null and void”.

What we must remember is that because we have made it mandatory for the Government to make payment within two years, any owner who does not get his payment within two years would be entitled to go to the court and sue the Government. I am asking Senators to consider that.

**Sen. Morean:** When you look at section 3 of the Land Acquisition Act which you have imported there, it already contains those words, and to my mind this is superfluous and not necessary, as land being needed for public purposes.

**Sen. Lucky:** I know, but we were just really trying to repeat it. We had imported it from the Town and Country Planning Act 31(1). We actually used the exact terminology, because we had had a lot of debate on special majority, so I felt it was important to come back and replace it.

**Sen. Morean:** But you are referring specifically to the Land Acquisition Act.

**Sen. Lucky:** Which is done in the Town and Country Planning Act also; it says “in accordance with the Land Acquisition Act being land needed for public purposes”.

**Sen. Morean:** Yes, I recall that it is here.

**Sen. Lucky:** That is why we said let us just leave it, because some bright lawyer might come about and say some other intention and mischief rule is now competing with the contextual rule and the literal rule. We do not want all those problems.

**Sen. Morean:** Well this cannot be anything else. As long as you put that section here, that is what it is.

**Sen. Lucky:** I know you were my landlord and tenant tutor, but this is one time I would ask you to give way.

**Sen. Morean:** It is really a matter of nicety, since it does not affect the substance.

**Sen. Lucky:** The point being made is that the land, the reason you need it, and even in the Town and Country Planning Act, is that it may not be used for public purposes.

**Sen. Morean:** If you are coming under the Land Acquisition Act—

**Sen. Lucky:** As land being needed, and that is why we have taken it straight from the Town and Country Planning Act.

**Sen. Morean:** It has to be for that purpose.

**Sen. Lucky:** I think it is important. We would like to leave it the way it is.

**Sen. Morean:** All right, in (7), I have a little problem there. The 1 per cent per month would accrue on what?

**Sen. Lucky:** On the payment, the price.

**Sen. Morean:** Let us read it and see what it is saying:

“Where land is designated for acquisition under this section, interest at the rate of 1% per month would accrue from the date of publication...”

That interest is accruing on what? Should we not say what it is accruing on?

**Sen. Lucky:** The reason we did not go into any details in it is that you are taking this land in accordance with the Land Acquisition Act. This Act is very comprehensive in terms of what value is and what payment is and where interest accrues and so on. So because you would be using the structure of the Land Acquisition Act, the problem here was the timing; you could take my land today and never pay. So by putting in this subclause you have just said 1 per cent per month, but the Land Acquisition Act is already comprehensive in terms of 1 per cent on what and so forth, to answer your question.

**Sen. Morean:** So you have to go to the Act to know what you are paying that 1 per cent on? That is why I was going to put “on the value thereof”. I was going to insert that.

**Sen. Lucky:** I would be honest, there is so much resort to be had under this acquisition Act, one might as well—you would have to go to it anyway.

**Sen. Morean:** It is a little more work.

**Sen. Lucky:** We prefer to leave it here. We will give the House that work.

**Sen. Morean:** We are leaving it open.

**Mr. Humphrey:** Let me just share something with hon. Senators. The key to the success of accomplishing a fair procedure for acquisition is, in fact, how the Minister of Finance operates. This Minister of Finance has given the assurance that he, in fact, wants to settle acquisition matters. There are many outstanding ones and he is very conscious of the need to settle them and, in fact, to meet prompt payments for compensation. So he has approved this.

In fact, a person who has a piece of land that is not generating a return, that is now subject to having that land acquired and the land is not acquired, is actually better off under this provision because he would generate that 1 per cent per month interest and then at the end of the process if it is not acquired he has got the compensation of that income that has been generated. Many people may well push themselves to accomplish that.

**Sen. Morean:** I have no difficulty with the concept of the interest; it is just that I wanted to be clear on what the interest is being paid, since it did not state. It is left open, so that we can assume that what you mean there is the value of the land as determined by—

**Mr. Humphrey:** The Commissioner of Valuations was the one relied upon by the Government, but this Government also accepts private valuations.

**Mr. Chairman:** I just want to bring our attention to the amendment that has been proposed by the Government. If you look at the amendments circulated by the Minister, under 23(6), after section 24(13) you have:

“and where the land is not acquired within the time specified herein the designation of such land for compulsory acquisition shall cease to have force and effect without prejudice to any payments of interest that have already accrued to the owner under subsection (7).”

This is the amendment that is being proposed to what has been circulated already.

Sen. Morean are you going to withdraw your matter, the one about deleting the words?

**Sen. Morean:** Yes.

*Amendment withdrawn.*

**Mr. Chairman:** Sen. Outridge are you withdrawing?

**Sen. Outridge:** I have withdrawn.

*Amendment withdrawn.*

**Mr. Chairman:** Okay, so the question really is that the amendment, as circulated by the Minister, to clause 23 be accepted. [*Interruption*] [*Crosstalk*]

**Sen. Lucky:** You have to delete “whether or not land is designated for compulsory acquisition”; (8)(b), second-to-last page. We are deleting the last four lines from “whether or not”—



**Sen. Gillette:** After “Act” full stop.

**Sen. Lucky:** “Whether or not land is designated”, that comes out.

**Mr. Chairman:** Okay, Senators have you followed that as well? Under (8)(b) we are deleting the words “whether or not land is designated for compulsory acquisition under this Act”.

*Question put and agreed to.*

*Clause 23, as amended, ordered to stand part of the Bill.*

**Mr. Chairman:** There is a new clause, clause 5? [*Crosstalk*] Okay, we go to clause 38 and then clause 5?

*Clause 38 reintroduced.*

**Sen. Lucky:** Mr. Chairman, we had asked for it to be deferred. This is the clause that dealt with whether we should take out the words in brackets and all of that. The position of the Government is that we cannot take out the words in brackets and we have given the explanation. [*Crosstalk*] So we cannot accept the proposed amendment. [*Crosstalk*]

**Mr. Chairman:** Sen. Daly is not here so that his matter has fallen. Sen. Prof. Ramchand you will not be pursuing that matter because the Government said that it would not be shifting its position?

**Prof. Ramchand:** On what?

**Mr. Chairman:** On clause 38. [*Crosstalk*]

**Sen. Lucky:** Are we not on clause 38?

**Mr. Chairman:** You are leaving it as is, right?

**Sen. Lucky:** The Government seeks to leave it as is.

**Sen. Prof. Ramchand:** As is?

**Sen. Lucky:** In the first line—the only thing the Government sought to change was “without restricting the generality of section”, it cannot be clause 37(1)(b) now, it is 36(b).

**Sen. Prof. Ramchand:** But in 38(1)(h), the word “continuous” means unceasing; every second, every minute.

**Sen. Lucky:** So you want the word “continual”?

**Sen. Prof. Ramchand:** Yes.

**Sen. Lucky:** And we will graciously grant you that.

**Sen. Prof. Ramchand:** And after the word “monitoring”, insert “and periodic inspections”.

**Sen. Lucky:** The Chairman wants to know where we are at; it seems you and I are pages ahead.

**Sen. Prof. Ramchand:** Clause 38(1)(h).

**Sen. Lucky:** So clause 38(1)(h) would read “requiring continual”? Is that the correct word Senator?

**Sen. Prof. Ramchand:** “Continual”.

**Sen. Lucky:** “Continuous” becomes “continual”; and what else Senator?

**Sen. Prof. Ramchand:** After the word “monitoring”, “and periodic inspections”.

**Sen. Lucky:** So “requiring continual environmental monitoring”.

**Sen. Prof. Ramchand:** “and periodic inspections”.

**Sen. Lucky:** I think monitoring will involve periodic inspections.

**Sen. Gillette:** Monitoring covers it.

**Sen. Lucky:** Yes, because there may be some places that you cannot inspect but you would still monitor.

**Sen. Gillette:** That is redundant.

**Sen. Prof. Ramchand:** Monitor could be reduced to, “how yuh going”. inspection means, “get ready ah coming to check out”.

**Sen. Lucky:** No, I think monitoring would deal with it. I think Sen. Prof. Kenny agrees with us.

**Mr. Chairman:** So Sen. Prof. Ramchand, you have withdrawn this amendment?

**Sen. Prof. Ramchand:** Yes.

*Amendment withdrawn.*

**Mr. Chairman:** So we put “continual”.

**Sen. Lucky:** Sen. Prof. Ramchand, through you, Mr. Chairman, for (L) you had a proposed amendment and we were going to go with it; then one of the

concerns was, when you put that in, it was so specific we felt that there were other things that maybe we were not thinking about, that you would also want to include. We felt that we wanted to leave it wide.

**Sen. Prof. Ramchand:** No, I am not removing anything; I am just specifying something very important.

**Sen. Lucky:** Sen. Prof. Ramchand, we are agreeing with you, but if you look at (L)(ii):

“land that is subject to flooding or, in the opinion of the Commission or planning authority, is unstable or otherwise constitutes an environmental hazard...”

We felt that would encompass situations like what you wanted specific, and we also felt that there may be other things that were as specific.

**Sen. Prof. Ramchand:** Well except that we know that in Trinidad today, in various parts of the island, this is a very serious problem: sea level rise and the coast—important enough to be listed.

**Sen. Lucky:** We felt that it would still be encompassed under “unstable or otherwise constitutes an environmental hazard”, and leave it wide enough so that we could include other things. I understand your point and there will be constant monitoring.

**Sen. King:** Continual.

**Sen. Prof. Ramchand:** Continuous?

**Sen. Lucky:** Continual monitoring.

**Sen. Gillette:** Continual.

**Sen. Lucky:** On a sustained basis.

**Mr. Chairman:** Okay, we have clause 38 with a slight amendment. We have: “Without restricting the generality of section 36(b)”, right, and then under (h), instead of the word “continuous” we put “requiring continual environmental monitoring”. [*Crosstalk*]

**5.05 p.m.**

**Sen. Lucky:** Sen. Prof. Ramchand, we are going to include it. Does that make you happy?

**Sen. Prof. Ramchand:** Thank you.

**Sen. Lucky:** Mr. Chairman, it is Sen. Prof. Ramchand's proposed amendment with the coastal waters in his proposal.

We have put it in, and the Senator is smiling.

**Sen. Prof. Ramchand:** If you go to Icacos and so on—

**Sen. Lucky:** I go to those places Senator. When I am not doing bills I go there.

**Mr. Chairman:** Senators, could we have some peace? I know that you are exhausted, but could we have some peace?

*Question, on amendment, [Sen. Prof. K. Ramchand] put and agreed to.*

*Question put and agreed to.*

*Clause 38, as amended, ordered to stand part of the Bill.*

**Mr. Chairman:** We have some new clauses, 5A, 5B, 5C and 5D, in the recently circulated one that you sent.

**Sen. Lucky:** We do not.

**Mr. Chairman:** Yes, I am telling you it is here, it is here.

**Sen. Lucky:** We went through those already.

**Mr. Chairman:** You could not have gone through that because it is a new clause. Those are new clauses.

**Mr. Humphrey:** It is part of the Schedule.

**Mr. Chairman:** When you say it is part of the Schedule, what do you mean? Do you mean 5A? Clause 5A is not a new clause, how does it become part of the Schedule? [*Crosstalk*]

Senators, you have before you new clause 5A. (1), (2), (3), (4). Then you have clause 5B, 5C, and 5D. Have you looked at them? Do you have any comments? Have you discussed it?

**Sen. Lucky:** Senators, this is just a matter of taking it from the Schedule, so there is nothing new.

*New Clause 5A.*

**Sen. Lucky:** Mr. Chairman, I beg to move that a new clause 5A be added to the Bill as follows:

- Alternate and temporary members
- 5A.(1) The President may appoint, in respect of each member of the Commission, an alternate member who shall be qualified for appointment in the same manner as the member to whom he is alternate and a person so appointed as an alternate, while acting in the absence of the member, shall be deemed to be a member of the Commission and shall enjoy all the powers, rights and privileges and be subject to the duties of the member to whom he is alternate.
- (2) In the event of absence or inability to act or both, the Chairman and Vice-Chairman, or another member and his alternate, the President may appoint any person to act in the place of the Chairman, Vice-Chairman or other member as long as such absence or inability continues.
- (3) Whenever the Commission has under consideration a local area plan or scheme wholly or partly within the area of a Local Authority, the Commission shall notify such Authority of the date of the meeting at which such scheme will be considered by the Commission and thereupon, the Local Authority shall have the right to delegate two of their members to attend that meeting for the purpose of considering such scheme and, to that extent, such delegates shall be members of the Commission with the right of deliberating and voting in the same manner as any other member but such delegates shall not count to form a quorum.
- (4) The Commission may co-opt one or more persons to attend any particular meeting of the Commission to assist or advice the Commission, but no such co-opted person shall have any right to vote.

*New clause 5A read the first time.*

*Question proposed, That the new clause be read a second time.*

*Question put and agreed to.*

*Question proposed, That the new clause be added to the Bill.*

*Question put and agreed to.*

*New clause 5A added to the Bill.*

*New Clause 5B.*

**Sen. Lucky:** Mr. Chairman, I beg to move that a new clause 5B be added to the Bill as follows:

Termination of membership	5B.	Any member of the Commission other than a person in the service of the Government of Trinidad and Tobago may at any time resign his office by instrument in writing addressed to the secretary of the Commission who shall forthwith forward the same to the Minister and, from the date of the receipt by the secretary of such instrument, such member shall cease to be a member of the Commission and the vacancy caused by such resignation or by the death of a member shall be filled by the President by the appointment of another person.
---------------------------------	-----	---

*New clause 5B read the first time.*

*Question proposed, That the new clause be read a second time.*

*Question put and agreed to.*

*Question proposed, That the new clause be added to the Bill.*

*Question put and agreed to.*

*New clause 5B added to the Bill.*

*New clause 5C*

**Sen. Lucky:** Mr. Chairman, I beg to move that a new clause clause 5C be added to the Bill as follows:

Notification in the Gazette	5C	The appointment, removal or resignation of any member of the Commission shall be notified in the <i>Gazette</i> .
-----------------------------------	----	---

*New clause 5C read the first time.*

*Question proposed, That the new clause be read a second time.*

*Question put and agreed to.*

*Question proposed, That the new clause be added to the Bill.*

*Question put and agreed to.*

*New clause 5C added to the Bill.*

*New clause 5D.*

**Sen. Lucky:** Mr. Chairman, I beg to move that a new clause 5D be added to the Bill as follows:

Procedure of 5D The procedure of the Commission shall be in  
Commission accordance with the First Schedule.

*New clause 5D read the first time.*

*Question proposed, That the new clause be read a second time.*

*Question put and agreed to.*

*Question proposed, That the new clause be added to the Bill.*

*Question put and agreed to.*

*New clause 5D added to the Bill.*

**Mr. Chairman:** Is there an amendment to the Schedule? Sen. Prof. Ramchand is that what you sent here?

**Sen. Prof. Ramchand:** Yes, to clause 9.

**Mr. Chairman:** To the First Schedule?

**Sen. Prof. Ramchand:** No, to clause 9.

**Mr. Chairman:** We are doing the First Schedule now.

**Sen. Prof. Ramchand:** Well, we will deal with the Schedule and then we will deal with that.

**Mr. Chairman:** No, we would have to seek the leave of the Senate, I cannot be opening—

**Mr. Humphrey:** We are going to do, in the Schedule, provision for the commission to establish a code of ethics and for that to be subject to negative resolution. It is to set an example in fact, of public behaviour, and this is a good place to start, so we agree to do that.

**Sen. Prof. Ramchand:** I wanted to be sure about certain specifics in the code of ethics.

**Mr. Humphrey:** Well, conflict of interest is there already, but the code of ethics will be included in the Schedule.

**Mr. Chairman:** Senators, before we go to the Schedule, we have two late amendments that have come from Sen. Prof. Ramchand, new clauses, I think, and once we go to the Schedules, this falls out the window, we cannot come back to it. So I will need to get the leave of the Senate to entertain it at this time. In other words, it has now arrived, nobody knows about it. What I am wondering, Professor, could you not for instance, hold that?

**Sen. Prof. Ramchand:** Mr. Chairman—

**Mr. Chairman:** Before you speak, we need the leave of the Senate. Do I have the leave of the Senate to reopen clause 9?

*Leave granted.*

*Clause 9 recommitted.*

*Question again proposed,* That clause 9 stand part of the Bill.

**Sen. Prof. Ramchand:** Mr. Chairman, you have the only copy there, but what I was trying to make sure was that nobody should accept appointment to the Commission if he belongs to some consultancy or some registered company involved in land development and land planning. The existing clause 9(1) says:

“It is the duty of a member of the Commission who is in any way (whether directly or indirectly) interested in a contract...to declare the nature of his interest at the first meeting of the Commission at which it is practicable for him to do so.”

In other words, you can be a member and have those interests, and then they say in clause 9(2):

“A disclosure under subsection (1)—”*[Interruption]*

I am reading the clause and I am seeing it here, you cannot tell me no.

**Mr. Chairman:** Senators, let us have peace.

**Sen. Prof. Ramchand:** Clause 9(2) says:

“A disclosure under subsection (1) shall be recorded in the Minutes of the Commission or Committee and, after the disclosure, unless the Commission otherwise directs the member of the Commission making the disclosure shall not be present or take part in deliberations when the matter is being discussed by the Commission or Committee.”



Do you think just leaving the room is going to solve the problem—the fact that he is not present at the discussion? They have telephones, they have all kinds of round robin they could do. So I am saying that clause 9 is weak.

**Mr. Chairman:** I want to get the Government's response.

**Mr. Humphrey:** Mr. Chairman, you have to operate on the basis of trust. If you do not operate on the basis of trust and then act in event of breach of trust, then I do not think we will be able to get the best of our people in giving service in any area of social activity. To me, you have to accept that the people who are going to be nominated or selected to represent the various disciplines that have been spelt out are trustworthy people. Until they breach that trust, the code of ethics would take care of that.

**Sen. Prof. Ramchand:** Let me finish my submission and let the Senate hear what I am proposing, and if I am assured that the code of ethics would cover those concerns, then I would be happy to withdraw.

The proposed amendment is that you delete clause 9(1) and put in a new 9(1) which says:

New clause 9(1)

No citizen should be appointed as a member of the Commission if he or she has any connections direct or indirect with any planning consultancies or registered companies involved in land development.

That is my first substitution, the second one, clause 9(2) reads as follows:

“It is the duty of a member of the Commission who is in any way, whether directly or indirectly interested in a contract, proposed contract, or development proposal under consideration by the Commission to declare his interest and resign forthwith from the Commission.”

**Mr. Humphrey:** That would limit the selection of experts for the commission. If you want to attract the country's leading minds, you either offer them salaries that they cannot resist, in which case they become exclusively tied to the commission's work, or you have to accept that people are going to do more than one thing.

In fact, to me it is desirable to have the kind of experience that honourable men and women would gain through working in development. It is very desirable to have that practical experience.

**Mr. Chairman:** Senators, we have a proposed amendment where Sen. Prof. Ramchand is proposing a new clause 9(1) he has read out to you. He has also proposed another new subclause and read it out for you.

*Question on amendment put and negatived.*

*Question put and agreed to.*

*Clause 9 ordered to stand part of the Bill.*

**Mr. Chairman:** I want to make it clear that I have been very flexible. I will not be entertaining in the future any amendments like this. [*Desk thumping*]

Minister, the First Schedule.

**Mr. Humphrey:** I am going to have to ask for this to be read for me. This writing is as bad as a doctor's prescription.

*First Schedule.*

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

**Sen. Lucky:** We are looking at an amendment to the Schedule which should be 6(9), page 145 which says:

“Subject to the provisions of this Schedule, the Commission shall have power to regulate its own proceedings.”

We are adding after the words “own proceedings”, “and shall within six months of the coming into force of this Act, prepare a code of ethics for its members which shall be subject to negative resolution of Parliament.”

**Mr. Chairman:** Where is this going?

**Sen. Lucky:** This is coming in 6(9) of the First Schedule right after the words “own proceedings”.

**Mr. Chairman:** There are a number of amendments to the First Schedule.

**Sen. Outridge:** Mr. Chairman, on the Third Schedule—

**Mr. Chairman:** We have not reached that yet, we are on the First Schedule. Continue, Sen. Lucky.

**Sen. Lucky:** Mr. Chairman, we have done that already, because in taking part of the Schedule and putting it in the substantive Act, A to D were dealt with.

**Mr. Chairman:** So those things are redundant?

**Sen. Lucky:** Yes, they were all dealt with already.

**Mr. Chairman:** So you withdraw them?

**Sen. Lucky:** We withdraw them; all are already in.

**Mr. Chairman:** Senators, you have the circulated amendments by the Minister; all have been withdrawn and leave is granted for withdrawal.

I want to read the amendment.

“6(9) Subject to the provisions of this Schedule, the Commission shall have power to regulate its own proceedings and shall within six months of the coming into force of this Act, prepare a code of ethics for its members which shall be subject to negative resolution of Parliament.”

*Question put and agreed to.*

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

*Second, Third and Fourth Schedules ordered to stand part of the Bill.*

*Preamble.*

*Question proposed, That the Preamble stand part of the Bill.*

**Mr. Chairman:** Sen. Prof. Kenny had proposed an amendment to the preamble.

**Sen. Prof. Kenny:** Mr. Chairman, it is not an amendment to the Preamble, it is proposing a preamble. The preamble would have two parts in it; one, I have suggested that a Bill of this kind needs a long title. I have been looking at the other legislation, like the Environmental Management Act—there is a preamble which sets out in an abstract way what the purpose of the Bill is, and then you refer to this particular Act by the short title. I think this is—I am not pressing it—probably style, form and so forth.

The second part of the preamble is something that is of concern. I would like to take us back a bit to the long history of this Bill. A Joint Select Committee of Parliament met and requested in writing an opinion from the executive branch of Government, that is, the Solicitor General, on whether this required a special majority.

**5.25 p.m.**

I have argued before that this required a special majority. This opinion was sought and I am informed that the Solicitor General's office did give an opinion. I am also told that the executive branch of Government sought an opinion

outside—and external to the executive branch. These opinions are physical things that are there somewhere.

Mr. Chairman, about six weeks ago as a Member of the Senate, I wrote on my Senate letter head to the Solicitor General asking for an opinion. I have not had an acknowledgement of my correspondence. I think this is all very unfortunate. A Parliament is a separate body—I know that many people are members of the Executive and Members of Parliament but when both Houses ask for a written opinion, and we know an opinion is given, I think that we ought to be treated with civility. It is grossly insulting to us.

Mr. Chairman, I might point out that if you take the Environmental Management Act in the year 2000, it was reenacted, revalidated and passed with a special majority. The circumstances for passing that were that there was an amendment to the EMA Act which was being proposed for passage by a simple majority. I would not go into the discussion—but at one stage the hon. Attorney General who was speaking on this matter—not the Minister of the Environment—and the Leader of the Opposition Business in the Senate had an exchange and it was agreed that the EMA Act would be passed with a special majority and it was, in fact, done. In the case of this Bill, Sen. Yuille-Williams has said that the Opposition would support passing this Bill with a special majority.

Mr. Chairman, the final point I would like to make is that we have been given an opinion by Sen. Lucky and I have read the saving clause which is section 6 of the Constitution. I am still a bit concerned because this Bill when we pass it is not going to be simply a replacement of the Town and Country Planning Act. There are some radical changes in it. My view is, that is one opinion that we have heard. The hon. Minister in his winding up was of the opinion that no legislation required a special majority. You can pass anything and you always have recourse to the court because of the Constitution.

**Mr. Humphrey:** One has to safeguard the fundamental rights enshrined in the Constitution and rely on clause (2) of the Constitution that makes the Constitution supreme law.

**Sen. Prof. Kenny:** I thank you, hon. Minister. My reason for suggesting this is that we have spent many days which go back to previous sessions of Parliament, and we have come up with a piece of legislation that is a major advance and I think it is workable. I have also sought opinions outside. I have spoken with an eminent retired member of the High Court, I have spoken with my personal attorney who is an extremely experienced person who is much in demand internationally for planning law and this sort of thing. I have spoken to

another expert on constitutional law and I am left in this rather strange environment in which there appears to be uncertainty. If there is any uncertainty I think that we should, as Sen. Prof. Deosaran suggested before on other matters, when we pass something with a special majority it says that we have looked at this thing. It is a sort of red flag that we have thought this thing out carefully and at the end of it we are going to pass it with a special majority. When we pass it with a special majority, we eliminate foolish challenges to what Parliament has done.

Suppose, for example, this Bill is passed with a simple majority and it is proclaimed and becomes law and suppose somebody feels aggrieved under the Constitution, under sections 4 and 5 they might bring a constitutional motion. Can we as a Parliament in advance, say how a High Court would rule? This is my concern. If the High Court looks at a constitutional motion and says this is *ultra vires* the Constitution, null and void; that is the end of it. The law is struck down and we would have to come back to the Parliament to re-enact and revalidate as happened in other laws, like the Maxi-Taxi Bill, which was struck down. I am not making a big issue of it. My amendment is on the table, that is, that we pass it with “whereases” and we get the support of everyone here and pass it with a special majority.

**Sen. Lucky:** Mr. Chairman, through you, thanks very much for your position on whether a special majority is needed or not. This is something that we have looked at. You have brought many points and I want to deal with them very succinctly. The first point you made was with respect to the select committee and the request that was made for an opinion. You had asked me about it.

I am not privy to any foreign opinion. If I did have one full disclosure I would have given it to you. I do not have it. I was not even aware that you wrote the Solicitor General within recent time. You would know that when you write, for example, offices such as the Intellectual Property Department you get immediate reply. If I had known perhaps I could have looked at it and in fairness to that department, the Solicitor General is presently on leave. I know there is an Acting Solicitor General. If I had known I would have fast-tracked it. I am not saying that is the correct way. I am saying it is something I would have done. I apologize for any discourtesy.

With respect to the special majority which you mentioned on more than one occasion about the EMA, I just want to indicate why that was done very quickly. In the EM Act a special majority was needed because a superior court of record was being created. Ever since a case called *Hinds vs the Queen*, it was stated that

there should be judges who would sit on this tribunal and have the equivalent status and tenure and enjoy benefits as a judge of the High Court. That was not being done in the EMA. In other words, because that was not being done by the persons who would sit on that commission it was in clear breach of what *Hinds vs the Queen* had said. Therefore, there was a need for a special majority.

The point of the Government has always been in this case that although there may be fundamental changes—one is not denying fundamental changes—you go to section 6 of the Constitution. This is one time when resort is not being had to section 4 at any great rate, it is section 6. Consequently, all the clauses that Senators raised in their various contributions, each clause was taken and the comparative clause found in the Town and Country Planning Act or the comparative concept was found in the Town and Country Planning Act. And if there was no comparative concept then there was the insertion of something that would have made it either on par with the law that existed or something that would not require the special majority in terms of it was not taking away any constitutional rights.

What I can tell you is that I have sought various opinions and I know lawyers will always disagree. I am satisfied at this juncture that having received various opinions, I do not doubt what you say, but I am not privy to them, I am of the view that we do not need the special majority for the reason that I have indicated.

**Sen. Prof. Ramchand:** I would think this is one of the most important Bills that has come before the Parliament. It is a Bill about the development of the whole country. Leaving aside all the legal technicalities, it would be a very proud thing for us to be able to say—and it was a Bill that got participation from members of the public, from NGO's. This was a Bill that was really debated by the whole country, and the degree of alertness in the country at large now, is still very remarkable. It would look good in the records and it would be a credit to the Parliament if this Bill could be passed by a special majority.

**Sen. Lucky:** Sen. Prof. Ramchand, I do not want to take it further. Even though something may look good, it does not necessarily mean it is legally correct. We would not want your grandchildren or my grandchildren and all of our grandchildren down the road, when they come to debate that they would say when they were passing the Planning and Development of Land Bill, they took a special majority and there must have been a reason for it and somehow they are not going to remember your commendable reason and, therefore, we do not want to contaminate what we consider to be the law.

**Sen. Prof. Ramchand:** In the same way that you say our opinions about whether it was legally correct, there would be opinions—what I am proposing is

not legally incorrect. In my opinion it is very correct and more correct than simple majority.

**Sen. Lucky:** It is not a matter of a legal point. When I say you are legally incorrect I do not mean the point you are taking. Remember this becomes precedent and there are persons who would want to understand why it was done and wrong reasons may be given for that special majority.

**Sen. Prof. Ramchand:** I would not give that as a reason.

**Sen. Lucky:** Without compromising our legal position, I am saying we believe this does not need a special majority.

We are thankful for all those who have contributed and the fact that we have gotten an all-inclusive approach and we appreciate that very much.

**Sen. Dr. McKenzie:** Mr. Chairman, I want to find out what are the pros and cons of special majority and simple majority. I do not understand. What is the difference between if there is a special majority. Is it that the judge could knock out the case, somebody could carry you to court? I do not know and this is what I find, that we like to come round, go round, come round, go round. Tell me straight if there is a special majority this is the advantage or this is the disadvantage. If you have a simple majority, this is the advantage, this is the disadvantage. I want to hear that please.

Thank you very much, Sir.

**Sen. Lucky:** Mr. Chairman, through you, after such a stirring plea, there are certain Bills that come before either House and because provisions in those Bills may, in some way, affect our fundamental rights and freedoms as we call them, it calls for a special majority. Our Constitution says you cannot pass laws if they abrogate many of the stated rights. The Constitution recognizes that sometimes you would want to pass legislation that would do so. To put it simply, if you want to do that make sure you get a special majority. A simple majority is, you are not in any way abrogating or fettering any rights that exist in our Constitution. The reason that it becomes such a “fuss” in the Senate is because you may be getting all the support from Senators, you do not want that to be the reason that you go for a special majority. So, even though everybody in the Senate today may agree with the Bill—you say let us go special majority. Then what you begin doing is contaminating that level of distinction that is created for us. Then when you go to the House they may ask, why did you go this particular way? If a Bill needed a simple majority you may actually be causing a particular House—depending on

where it was first introduced—to go for a majority that is not needed. That is the only real distinction that exists and that is why sometimes such a concern is raised by us on the Government side. We are not trying to mislead anybody. We are just trying to make sure that we go with the special majority in the right instances.

**Sen. Dr. McKenzie:** We are saying now that this Bill is not to infringe any constitutional right therefore—

**Sen. Lucky:** We are saying under our Constitution there is section 6 that says you can pass Bills. If a Bill is passed that does not change any existing law that may be in contradiction to rights, go ahead, because you are really not changing fundamentally the law and we recognize that this does concern constitutional rights but is not any different from what is existing in the Town and Country Planning Act, or any other law that exists. That is why in compulsory acquisition we said in accordance with the Land Acquisition Act because that already exists.

**Sen. Prof. Kenny:** At the same time section 13 of the Constitution says that we as parliamentarians may not pass anything which is inconsistent with the rights in sections 4 and 5—inconsistent with those rights.

**Sen. Lucky:** That is in furtherance in sections 4 and 6, and then 13, which gives the power to pass the law.

**Sen. Prof. Kenny:** Then we get to the issue of this interpretation of the High Court of enjoyment of property because this thing is, in fact, inconsistent with the right that I have, as a citizen, to enjoy my property. This will permit the planners to tell me if I want to build my house of tapia, and they tell me “no.” That is a basic right that I have. Houses used to be built of tapia.

**Mr. Humphrey:** I think that the planners are going to give you standards for tapia house construction.

**5.40 p.m.**

**Sen. Prof. Ramchand:** Mr. Chairman, it seems to me there is a real stalemate here. On the Government side, they are saying they do not need it. I am saying we need it. I agree with Sen. Prof. Kenny that my rights under 4 and 5 are being infringed. It is a draw and it is in the situation of a stalemate that I am inducing the other argument that we have worked on this.

**Mr. Chairman:** The question is really that the preamble as proposed by Sen. Prof. Kenny be approved. Those who agree, say aye.

*[Ayes, protests and lots of laughter]*



**Mr. Chairman:** I have been very flexible all afternoon. Do not come and track me down.

**Sen. Prof. Ramchand:** Mr. Chairman, will you read the entire preamble?

**Mr. Chairman:** I have been very flexible this evening. For purposes of persons who have not been concentrating, there is a proposal by Sen. Prof. Julian Kenny to introduce a preamble in the Bill.

**Sen. Dr. McKenzie:** Mr. Chairman, there is also another preamble proposed by Sen. Rennie Dumas.

**Mr. Chairman:** The person is not here. When the person is not here that falls down.

Sen. Prof. Kenny is in favour of that preamble. The Government is not in favour of the preamble. In order for us to move forward, I have to put the question that the preamble as proposed by Sen. Prof. Kenny be approved.

*Question put.*

*The Committee divided:* Ayes 12 Noes 15

AYES

Yuille-Williams, Mrs. J.

Morean, Ms. G.

Kangaloo, Ms. C.

London, J.

Chin Lee, H.

Beckles, A.

McKenzie, Dr. E.

Kenny, Prof. J.

King, Mrs. M.

Quamina, Dr. D.

Thomas, C. R.

Outridge, D. I.

NOES

Gillette, Hon. L.

Yetming, Hon. G.

John, Hon. J.

Lucky, Hon. G.

Phillips, Dr. The Hon. D.

Moonilal, Dr. The Hon. R.

Augustus, Hon. R.

Jones-Kernahan, Dr. J.

Gopeesingh, Dr. T.

Lasse, Dr. V.

Ahmed, Mrs. R.

Lambert, J.

Cabrera, V.

Dhanny, Dr. G.

Mahase, Dr. A.

*Prof. K. Ramchand and Prof. R. Deosaran abstained.*

*Question negatived.*

**Mr. Chairman:** Senators, the final matter with which we have to deal is the long title. As you know, it does not form part of the Bill and therefore we have no question to put. We just seek opinion.

**Sen. Prof. Kenny:** I have just drafted a long title. I think it is really stretching it asking me, a lowly biologist, to draft legal language. I understand from my readings about drafting and legislation—this applies particularly in the United States, but also in our legislation—that the long title sets out what the bill is all about and then there is the short title which is referred to.

I am quite prepared to have the draftspeople do a proper long title, but I think mine covers what the Bill is all about. It establishes the commission and sets up this and that. It is entirely up to the—

**Mr. Chairman:** What is the view of the Government? [*Consults*]  
Apparently the Government is of the view that it does not need a long title.

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

*Senate resumed.*

*Bill reported, with amendment, read the third time and passed.*

#### ADJOURNMENT

**The Minister of Energy and Energy Industries (Sen. The Hon. Lindsay Gillette):** Mr. Chairman, I beg to move that this Senate do now adjourn to a date to be announced.

**Mr. Vice-President:** Before adjourning this honourable Senate, I take this opportunity to extend to each Senator and his family a happy, peaceful and enjoyable Emancipation 2001.

*Question put and agreed to.*

*Senate adjourned accordingly.*

*Adjourned 5.48 p.m.*