SENATE

Tuesday, October 02, 2001

The Senate met at 1.30 p.m.

PRAYERS

[MR. PRESIDENT *in the Chair*]

LEAVE OF ABSENCE

Mr. President: Hon. Senators, leave of absence from sittings of this Senate has been approved to the following Senators: Sen. Michael Als, Sen. Lindsay Gillette and Sen. Joan Yuille-Williams.

I have been advised that Sen. Prof. Julian Kenny will not be here today and I have also granted him leave of absence.

SENATOR'S APPOINTMENT

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

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

/s/ Arthur NR Robinson

President.

TO: DR. GEORGE DHANNY

WHEREAS Senator Lindsay Gillette is incapable of performing his functions as a Senator by reason of illness:

NOW, THEREFORE, I, ARTHUR N.R. ROBINSON, President as aforesaid, acting in accordance with the advice of the Prime Minister, in exercise of the power vested in me by section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, GEORGE DHANNY, to be temporarily a member of the Senate, with effect from 2nd October, 2001 and continuing during the period of illness of the said Senator Lindsay Gillette.

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 1st day of October, 2001."

CONDOLENCES
(MRS. AGATHA ELLEN GILLETTE)

Mr. President: Hon. Senators, I wish to record the Senate's sympathy and condolences to the Minister of Energy and Energy Industries, Sen. Lindsay Gillette, and members of his family on the passing of his mother, Mrs. Agatha Ellen Gillette, who was interred yesterday.

While many of us may not have had the pleasure of knowing Mrs. Gillette, we are aware of the very significant contribution she would have made to the commercial life of this country, through the business activities of her husband, John, and sons, Lindsay, Peter and Ian.

We pray with the Gillette family for the repose of her soul in the full knowledge and belief that she will rest in eternal peace.

OATH OF ALLEGIANCE

Sen. Dr. George Dhanny took and subscribed the Oath of Allegiance as required by law.

PAPER LAID

The Financial Obligations Regulations, 2001. [*The Minister of Finance* (*Sen. The Hon. Gerald Yetming)*]

ORAL ANSWERS TO QUESTIONS

The following questions stood on the Order Paper in the name of Sen. Prof. Julian Kenny:

University of the West Indies
(Full-time Staff)

10. (a) Could the hon. Minister of Human Development, Youth and Culture inform the Senate of Government's general policy regarding full-time staff of the University of the West Indies being involved in private consulting and other business activities, with particular reference to the time the university permits full-time staff members to be involved in such activities and the terms of such concessions?

(b) Could the hon. Minister inform the Senate of the numbers of full-time staff members of the Faculties of Agriculture and Natural Sciences, Engineering and Medical Sciences who have been given

(c) approval to engage in business activities and private consulting during the year 2000 and contributions made by full-time staff in that year to the consultancy funds of the university and of the three named faculties.

Leaded and Unleaded Gasolene

11. (a) Could the hon. Minister of Energy and Energy Industries inform the Senate of the respective total domestic sales of leaded and unleaded gasolene by volume in the year 2000 and of the actual quantities by weight of lead additives used in the gasolene sold domestically during that year?

(b) Could the hon. Minister state Government's target date for the total elimination of the use of leaded gasolene in Trinidad and Tobago?

Halcrow Group Limited

12. (a) Could the hon. Minister of Integrated Planning and Development inform the Senate of the broad terms of the contract between the Ministry of Integrated Planning and Development and the United Kingdom firm of Halcrow Group Limited and the local group Halcrow Fox of 133 Sixth Street, Barataria, in particular the terms of reference, duration of contract, numbers of expatriate staff involved and total cost of the contract?

(b) Could the hon. Minister inform the Senate of the tendering procedures employed in selecting Halcrow?

(c) Could the hon. Minister inform the Senate of the connections of Halcrow Group Limited and Halcrow Fox, if any, with the local firms PCA Limited, Development Planning Associates, Development Planning Associates (2000) Limited and Interplan Group Limited, all of 133 Sixth Street, Barataria and whether any of these firms made inputs to the National Conceptual Development Plan?

Could the hon. Minister also inform the Senate of the status of the National Conceptual Development Plan submitted to the Senate under the corporate names of Halcrow Group Limited, UDeCOTT and PCA Limited.

Sen. Dr. Eastlyn McKenzie: Mr. President, due to the illness of Sen. Prof. Kenny, I ask that the replies to these questions be deferred for one week.

Questions, by leave, deferred.

ARRANGEMENT OF BUSINESS

The Minister of Finance (Sen. The Hon. Gerald Yetming): Mr. President, I seek leave of the Senate to deal with Motions Nos. 1 and 2 together and then to proceed to Bills Second Reading.

Agreed to.

INTERRELATED MOTIONS

The Minister of Finance (Sen. The Hon. Gerald Yetming): In moving Motion No. 1, I seek the leave of this Senate to debate, along with Motion No. 1, Motion No. 2 on the Order Paper, which relates to the same matter.

Question put and agreed to.

EXCISE DUTY (ALCOHOLIC BEVERAGES) ORDER

The Minister of Finance (Sen. The Hon. Gerald Yetming): Mr. President, I beg to move,

Whereas it is provided by subsection (2) of section 13 of the Excise (General Provisions) Chap. 78:50 that the Minister may by Order impose any new excise duty or increase duty and from the date of publication of the Order in the *Gazette* and until the expiry thereof the duties specified in the Order shall be payable in lieu of the duties payable thereto:

And Whereas it is provided by the said subsection that every Order issued under that subsection shall, after four days and within twenty-one days from the date of its first publication, be submitted to the Senate and House of Representatives and the Senate and House of Representatives may by Resolution confirm, amend or revoke such Order, and upon publication of the Resolution of the Senate and House of Representatives in the *Gazette* the Resolution shall have effect and the Order shall then expire:

And Whereas the Excise Duty (Alcoholic Beverages) Order, 2001 was made under subsection (2) of section 13 of the Excise (General Provisions) Act and first published in the *Gazette* on the 14th day of September, 2001:

And Whereas it is expedient to confirm the said Order:

Be it Resolved:

That the Excise Duty (Alcoholic Beverages) Order, 2001 be confirmed.

Mr. President, with respect to Motion No. 1, it is proposed that the excise duty on locally-produced alcoholic beverages be decreased by 15 per cent of the existing rate of excise duty. The Excise Duty (Alcoholic Beverages) Order, 2001 was made by the Minister of Finance pursuant to section 13(2) of the Excise (General Provisions) Act, Chap. 78:50. By that section, the Minister of Finance is empowered to impose any new excise duty or increase any excise duty by way of an Order.

The Order, which is the subject of this Motion, imposes an increased excise duty on locally-produced alcoholic beverages. The Order, which is before this honourable Senate was published in the *Gazette* on September 14, 2001 and was approved by Parliament on Friday, September 27, 2001.

Alcohol use is widespread. Its consumption carries a high cost for our society and certain risk for the individual user. Alcohol use has been linked to liver damage, heart and respiratory failure and certain types of cancers. Moreover, driving under the influence substantially impairs a person's motor skills, resulting in increased deaths from automobile and recreational accidents.

Moderation of alcohol consumption is a crucial component of any population health strategy. The increase of taxes on alcohol beverages is intended to promote such moderation on alcohol consumption. It is in our interest, as a society, to reduce alcohol use amongst our people, especially our young people.

With respect to the other Motion, it is proposed that the excise duty on locally-produced tobacco products, specifically cigarettes, smoking tobacco and cigars, be increased by 15 per cent of the existing rate. The Order by the Minister of Finance, pursuant to section 13(2) of the Excise (General Provisions Act, Chap. 78:50, by virtue of that section, the Minister of Finance is empowered to impose any new excise duty or increase any excise duty by way of an order.

The Order, which is before this honourable House was published in the *Gazette* on September 14, 2001 and was approved by Parliament on September 27, 2001.

There is widespread medical research pointing to a link between an increased cancer risk and active smoking and exposure to second-hand smoke. This Order strengthens Government's commitment to reducing tobacco use throughout Trinidad and Tobago. Towards this end, it is expected that the increase of the excise duty on locally-produced tobacco will act as a further disincentive to persons who use tobacco products.

Mr. President, as you know, these Orders arose out of the budget statement which was made to this Senate just last week and are consistent with some of the provisions which were made in that budget statement.

Question proposed.

1.45 p.m.

Sen. Danny Montano: Mr. President, the Motions before us are revenue-raising devices of measures that were enunciated in the recent budget brought by the hon. Minister of Finance. While I did not deal, specifically, with these measures in my contribution to the debate on the budget, I guess I have a second bite of the cherry.

Mr. President, these measures cannot be looked at in isolation. They have to be looked at in the context of the national economy as a whole. They have to be looked at in terms of the social and economic objectives of the budget. When you look at that, you realize that the measures—not only these but all the other measures—in the budget failed to meet the test of any social or economic policy.

The Minister has, for the first time, enunciated his reasons for increasing the excise duties on alcohol and cigarettes. What he says is that he wants to reduce the consumption of alcohol and cigarettes because it is unhealthy to drink and smoke. Mr. President, allow me to suggest that is not the way to reform, either public opinion or public habits. This Government is very well versed in the methods of disseminating information, some would even refer to it as propaganda, I would simply refer to it as advertising. I would have much rather seen money being spent, rather than being raised, in a serious campaign of advertising in public schools, on television and radio, stating clearly the dangers of smoking and drinking under different circumstances.

Mr. President, we not only have a duty to the citizens of this country who do smoke and drink but also to the children who are not yet of the age to be smokers or drinkers. They are the ones we should be focusing our policies towards. We should be trying to advise, warn and educate them, so that when they reach the age of maturity they would consciously decide not to smoke or not to drink to excess, in the same way as I hope they would decide not to take drugs, narcotics.

Mr. President, not enough is being done in this regard. Simply not enough is being done and to do it by way of the taxation measure loses sight of the social objective. That is not the way to go about it and certainly, in terms of the amount of money that we are talking about and based on what I can see in the numbers

here, we are talking about an increase of revenue of approximately $50 million. Mr. President, $50 million is $50 million; it can buy a lot of things but if we could stop just a little bit of the corruption here, we could save that in a heartbeat. It fails to meet any serious economic objective, and I have already indicated it fails to meet any social objective.

When you look at the budget as a whole, Mr. President, there have been many opportunities that have been completely missed. Coming into the budget, the financial system was very liquid and is still very liquid. We have liquidity building up in the system. Now there are many reasons for that. On the one hand it is a good thing and on the other it is not such a good thing and there are dangers in leaving that situation unattended. What is very clear is that there is an absence, a vision, on the part of the Government as to how wealth should be distributed in this country and how the opportunities to access wealth should be created.

One of the things that I had been saying for some time—and it is not the first time that I have said so in this Chamber—is that Government boasts about the extent of foreign investment in the country; they have boasted loud for the last six years about the level of foreign investment in the country and yet none of the plants that are foreign owned are being financed locally. Not only that, there are no provisions for any nationals to have any kind of an equity option in any of these industries. In other words, we are letting the foreigners come here, do their own financing and strip out all the profit with tax holidays.

Mr. President, that is not entirely a bad thing and, certainly, that is the way the system had to start but it cannot keep on going in that way. This is one of the things that I have said. I have had discussions with senior economists who have all agreed with me. The time has long since passed when we should have been saying certain things to these foreign investors that would accrue to the benefit of our country in terms of the financing alternatives and options. I will give you an example. I had a discussion with the CEO of one of these foreign companies. I said: "How is your investment here financed?" He said: "We floated bonds in New York." Fine, that is what I expected he would say. I said: "Well, how do you pay them back?" He said: "We pay them back by the creation of a sinking fund, the bond will have a maturity in 12—15 years' time and we are setting up the sinking fund in order to pay back the bonds when they reach maturity." I said: "Well, where are your sinking funds invested?" He said: "United States Treasury Bills."

Mr. President, understand this, those sinking funds can be set aside and are, in fact, set aside because those funds are, in fact, the tax free profits of the operations from Trinidad and Tobago. They are taking the profits that they have derived here outside. Mr. President, it is a free market, we are in a global economy and they can take it anywhere they wish but the fact of the matter is that no pressure has been brought on them to say, in the first instance: Why you do not look at the potential of, at least, borrowing a part of the funds needed from local sources and placing part of your sinking funds in Trinidad and Tobago? It gives all of us—either through the banks or other vehicles that I could think off—an opportunity to participate in development of our own economy, rather than leaving all to the foreign investors.

Mr. President, that is a huge gap that has not been filled and nobody is even thinking about it at this point. The hon. Minister of Finance has announced a number of new plants that should be coming into the country over the next two or three years, but he said nothing about how they are going to be financed, how they are going to be paid back, the kind of tax holidays that they would be getting and, even less, about whether or not citizens here would be given the opportunity to pick up a small part of the equity. I can assure you, Mr. President, that because of the small size of our economy, the level of equity that we could invest in would naturally be a very small percentage of the capital they are talking about. While it might be small as a percentage to the investor, it is significant to Trinidad and Tobago.

Mr. President, we do not have that kind of opportunity. There is just a complete vacuum on the other side as to how we should be dealing with our national assets. It is reflected right here in these measures. They just fail any kind of test, and meet no objectives. Mr. President, $50 million in a budget of $17 billion is not going to do very much. If it is he said, we are going to raise the money and we are going to take all the excess and use it only in terms of advertising and education as to the dangers of smoking and drinking, I would be the first one to stand and say: "Hurray!" I would say: "Yes!" I would support that without any qualms at all. Mr. President, we have not heard that. All we have been told is that the taxation measure is a measure that is supposed to inhibit the appetite for alcohol and cigarettes.

Mr. President, that is not going to happen. That is passé thinking. No psychologist in the world would agree with the Minister of Finance. It just does not work that way! That is that type of thinking that might have prevailed in the 1940s and 1950s but it does not meet the reality of the new century. It simply

does not meet that reality and that is the difficulty! If the Minister would stand and say: "I agree with Sen. Montano, we are going to take the $50 million and put it into, annually, an advertising campaign geared not only at the population who indulge in drinking and smoking but especially at the children", I would say you have my vote. I may be on this side of the Chamber but I would vote in favour of it without any hesitation. I challenge him to do that! I challenge him to say take all of the $50 million and aim it directly at campaigns against smoking and drinking, put up posters in all the schools and educate the children, I would say no problem, but not like this.

2.00 p.m.

Mr. President, this is passé thinking. [*Desk thumping*] If it is—and it certainly looks like, you know, the old type of revenue-raising measures where you are trying to balance your books—you know, you drop your tax rates by 1 per cent and you give away about $118 million so you have to find it some other way so you raise the taxes on cigarettes and alcohol—Mr. President, that just does not cut it. There could be other ways and the easiest way is to stop the corruption; and not only to stop it but to go back and investigate the wrongdoings and to get some of that money back. What I fail to understand is how, in the face of all these serious allegations and the pieces of evidence that we have seen, Senators on that side just sit back and do nothing. [*Desk thumping*]

You know, Mr. President, recent events have shown us that there is a morality worldwide that seems to be falling on deaf ears on the Senators on that side and what is happening—[*Interruption*]

Mr. President: Quiet please.

Sen. D. Montano: If you learned that from this side, then you have not learned anything at all, because we have long since passed that. [*Desk thumping*] Mr. President, President George Bush, speaking recently about the terrorist attacks on New York and Washington, said, "We are going after the terrorists; and not only are we going after the terrorists but we are going after those who harbour the terrorists", and all of NATO has joined with the United States. In fact, more than half of the world has joined that sentiment.

The point is, it is clear that it is not only the perpetrators of the crimes who are guilty, it is the people who are in close association and are protecting them by doing nothing about it. [*Desk thumping*] They are equally guilty; and, Mr. President, I indict today every Member of the Government who remains in government who remains sitting in his/her chair doing nothing about it. [*Desk*

thumping] Three members of their Government have resigned over the issue of corruption.

Mr. President: Where are we going, Senator, on this Motion?

Sen. D. Montano: Mr. President, as I started off by saying, the point is that we are talking about revenue and what I am saying is that I want the money that has been lost to come back because that is the people's money.

Mr. President: I think the point has been made.

Sen. D. Montano: Well, not quite, Mr. President.

Mr. President: No, I think it has.

Sen. D. Montano: Well, Mr. President, I am disappointed that you would say that.

Mr. President: Senator, if you are in disagreement with the ruling of the Chair, the Standing Orders provide for a means of raising that objection. It is certainly not the way you have done it and I would not excuse something like that taking place again.

Sen. D. Montano: Mr. President, I apologize if I have offended you or the Standing Orders; and it is certainly not my intention to do so. It is, however, Mr. President, my duty to deal with the issues of the day and the issues in front of us. Revenue matters are serious issues. They touch every citizen of the country. They touch rich and poor alike, and when a government decides to tax the people and to take money out of their pockets, they must be held accountable for what they do with it.

It is not good enough to come with mere platitudes saying, "Well, we are setting up teams to investigate this, that and the other", and "The social objectives are that we want to cut down on the drinking and driving and smoking and so on." Mr. President, that is not good enough. We are talking about the people's money here, not mine, and the Senators on that side and the Minister of Finance have not provided a proper accounting for what he is doing with the people's money. [*Desk thumping*]

Where are the taxes going? How are the taxes being spent? Mr. President, that is the other side of the equation and cannot be left out. For every debit there is a credit and for every credit there must be a debit. So the simple question is, if you are going to tax the people on the one hand, where are you going to spend it and how are you going to spend it? If you have already spent it, lost it, or stolen

it, we need to know. What have you done with it? The persons who you know have done wrong, must be held to account. Now, as Senators here, we are not directly accountable to the people. We are responsible to them but we are not directly accountable, but that does not excuse anybody from associating with persons they should not.

You know, Mr. President, I was brought up with a very simple rule. Show me your friends and I will tell you who you are. To use a metaphor, if you are in a band of thieves you cannot stand up and say, "I am not a thief." The explanations must be made, the investigations must take place and I demand that the Government tell the people what they are going to do with the $50 million that they are raising with these measures and how they intend doing that. [*Interruption*] It is my business. I am one of the people and I am asking. I have never heard such nonsense in my life! I am one of the people and I cannot ask, Mr. President? That is my right to ask, until and unless, of course, they say on that side I have no such right. Thank heavens I still have a right, Mr. President. [*Desk thumping*] I have a finger, and I have one vote, only one, and I will use it. I will use that.

Anyway, Mr. President, I have taken up most of your time, too much of your time, and I would implore the hon. Minister of Finance to consider what I have said and that is, by all means, if he wants to tax the citizens of the country to raise $50 million—even if it were to be $100 million in addition to what he raised last year—and to use it wisely for the benefit of the people and the children as an antismoking and antidrinking campaign, I would support the measures. However, as it is, it falls way, way short of what should be taking place. I thank you. [*Desk thumping*]

Sen. Martin Daly: [*Desk thumping*] Mr. President, this is a very solemn day in the Senate because this is the first time that we have to consider a proposal by the Government that is now, for all intents and purposes, a minority Government. Moreover, the provisions in the law that make it possible for us to debate a matter that is essentially one of money and taxes is itself unusual. Generally, the Senate has no vote and is not required to approve money bills and money measures because it is recognized, for sound, historical reasons, that only the directly elected representatives of the people can do so; but the fact is that under section 13 of the excise law, these duties cannot become law unless they are approved by both Houses of Parliament. So that in itself is a little quirky.

Now, it may be inappropriate for me, Mr. President, by reason of business commitments—professional commitments—to comment on the merits of these

measures, but what I want to do is to put the debate, in which I will not take part on the merits, in a certain context and invite all of my colleagues on all the Benches not to dismiss this as a money bill and, therefore, that we have no encouragement to debate it. First of all, the law permits it and, secondly, this is now a very difficult time for all those who do not owe any party political allegiance. It is a very difficult time because we now have a minority Government.

I say that, Mr. President, because, on the last occasion very recently when we were debating money matters, I expressed my concern about vulgar personal attacks by persons involved in the political process and my fear that that might induce ill-considered action by sections of the population who sheepishly follow their political leaders. I chose to express my point of view in somewhat imaginative and colourful language. I have been heartened since by the many expressions that have come to me that I was giving good advice, primarily to the Prime Minister but also to the Leader of the Opposition, to desist from those vulgar, personal attacks.

Today, as we have our first meeting of Parliament with the advent of a minority Government, I have a new fear, Mr. President, and it is that fear that encourages me to invite Senators not to treat this simply as a money matter and to pay it scant attention. I am concerned that we may be on the verge of wheeling and dealing with the Constitution. I am quite clear that, in the absence of a no-confidence vote in the House of Representatives, we can perfectly, lawfully have a minority government. I am very clear about that. I am very clear that all roads in political upheaval lead to a vote of no confidence.

I am very clear, Mr. President, that a vote of no confidence cannot be replaced by a letter, by the filing of a writ, by the filing of constitutional motion or by the filing of a judicial review application. It may be that by filing legal proceedings a court may be persuaded to interfere with the normal progression towards an election, but that is a matter for the court. It is not a matter for us and it is not a matter for any other constitutional organs. I am making this point because a minority government, on my reading of the Constitution, could continue for a very long time. It is entirely a practical matter.

Therefore, I do not want any of us to lose sight of the fact that a minority government can continue for a long time and, therefore, the performance of our parliamentary duties would come under even more intense scrutiny because our support will now be more critical to the progress of government business. It is sometimes critical, even where you have a majority government, because much

major legislation requires a special majority. So even in normal times our examination of matters is important, but I just want to make the point that examination of matters becomes even more important because I have no idea how long we will have a minority government.

I simply want to say that I feel distressed that everybody is "bussin' their brains" about whether we can have a transfer of power by letter, by the filing of a writ or by—well, I would not speak graphically today, Mr. President. I content myself by saying by letter or by the filing of legal proceedings. I am very distressed that anybody could think we could have a transfer of power by that means and I certainly would simply say that I hope that wiser counsel will prevail among those who are seeking to induce such a situation.

There is a very simple remedy if we want a transfer of power. File your motion of no confidence, which is expressly provided for under section 77 of the Constitution, and I have no doubt, from all that I have read and heard, that the desired result will be obtained without us crossing any lines that we ought not to cross. The head of state has his crease, the Parliament has its crease—indeed, the Parliament's crease is subdivided into the crease of the Senate and the crease of the House of Representatives—and the courts have their crease; and I would be very distressed and I am very distressed, Mr. President, when I see manoeuvres that are clearly calculated to induce persons in the categories which I have described to step out of their crease. This is a very, very difficult time for the country.

Of course, all political upheaval can have positive results and, therefore, it is in that context that we have to examine any legislation even more critically, including money matters. Indeed, Mr. President, it is perhaps very appropriate that we should have had—and it has been very gracious—a firm but gracious exchange between the Chair and a speaking member to reinforce two things; first of all, that we do not need to be unpleasant, however forceful we are, and I do not think that anyone could take better example of graciousness than from the Chair. It is important to be gracious, however firmly we feel about things, and it is important to play by the rules and not seek to pervert them for short-term gain.

There must be no perversion of the rules to seek short-term gains. If you are a student of any discipline, whether it is public law or anything else, there is a right route to achieve a result and there is a perverse route and I firmly believe that, in public matters, the perverse route, even if it achieves a short-term objective, long-term it is bad for the country. Indeed, I think it is said of some illnesses that the medicine is sometimes worse than the disease and I think we have to be very careful in that context.

I think, Mr. President, as is known—something else that I think is important, and I refer to something by a commentator in one of today's newspapers. It is that we have to bear in mind that disputes can be resolved by mediation and agreement. I said, on the last occasion when I spoke, that if there was a war, or anything like a war, it would be necessary for the Government and the Opposition, or whoever else held the labours of power, to get together to decide what we were going to do for the country in those extraordinary situations. At least one practising politician has perverted what I had to say to suggest that I would suggest that we should have some kind of coalition government. I never said that. I simply said that we must follow the example of the civilized world and, when we have an extreme situation, we must put all our heads together and decide how to resolve it.

2.20. p.m.

Then I was drawn, Mr. President, to an article in today's *Express* by Denis Solomon on page 11, in which he discussed various permutations of a minority government. He reminded us of something that took place in the Dominican Republic in 1994. It is very relevant to the Senate, because one of the successful actors in the situation in the Dominican Republic in 1994, one of our unsung heroes—and I will refer to him shortly—sits on the Independent Bench. This is what Denis Solomon says:

> "In that country's presidential elections, there were massive irregularities, confirmed by all the international observer bodies. The parties made a 'Pact for Democracy', under which the constitution was amended to reform the electoral commission, and new elections were held two years later instead of four.
>
> In our case, there could be an agreement, presumably brokered by the President, for one of the two parties, or a 'technocratic' administration made up of members of both, to serve, say, another year of the present mandate, after which an election would be held. The EBC would use the time to get the electoral lists in order."

I am not supporting this. I make no comments about the EBC and the electoral list; I do not know enough about it. I merely cite this to show that at times of public anxiety, it is possible for sensible people to get warring factions together to work out what is best for the country. May I repeat it; this is in an unusual circumstance.

I am not suggesting doing away with the adversarial system, as another practising politician or, indeed, one of my colleagues in the Senate also suggested, but this is a time of great anxiety. Our advice has been taken and the language has been somewhat temperate. I hope it lasts, but it is important that we look at the alternatives in a minority government situation, when I believe that the easiest way to resolve this situation is by a motion of no confidence.

I should say, Mr. President, that in all of the alarums that are taking place, one of the persons who was instrumental in implementing the pact for democracy—I hope he does not mind me mentioning it—was my colleague Sen. Christopher Thomas. I do not think because he is of such modest speech—and I say unlike myself—that people are aware of his tremendous accomplishments as an international diplomat. He was involved in the implementation of the Pact for Democracy in 1994. I certainly do not have his consent to offer him as any kind of advisor or mediator in this situation, but I think it is important to know that this example cited by the commentator is not removed from Trinidad at all; we had someone who participated in it.

Indeed, Sen. Thomas reminded me, in the course of a quite different conversation, that something similar happened in Grenada after the Coard/Bishop incident, which we certainly want to avoid here. I have a little experience in practising in Grenada and a little experience in doing business in Suriname, two countries where they have had unlawful constitution upheaval. The thing that struck me—and it is only cursory experience—is that a country never seems to recover once the rules are broken. It is a very serious matter; once the rules are broken, the country never recovers. It puts brother against brother, neighbour against neighbour and cousin against cousin.

When you engage in warfare, the person with whom you are having warfare does not have all of his family tree written on his forehead, and after you commit some act that you regret, you then find out that the person you have attacked has family with whom you are close and so on.

Mr. President, I am simply saying that we must examine this legislation even more carefully than usual, because of the circumstances that are prevailing. I wish I could enter a debate on the merits because, being a sinner myself, I have very strong views on the use of alcohol in conjunction with motor vehicles. I may say that it is an issue which every single government we have ever had has ducked partly because, really, at least subliminally, our culture approves of heavy drinking.

In my club days, the older barmen used to tell us who held the record for being able to hold the most drinks and still be good. I am sure anyone here who belongs to a club would know that the barmen speak adoringly, "Boy, Mr. Smith." I see certain colleagues who are probably familiar with what I am talking about. I will not be tempted; I will not be induced by the smiles coming diagonally from my left, to give any examples. But they would be well familiar with what I am talking about.

We, actually, have in this country unofficial recognition of good barflies which, of course, is completely inconsistent with driving a motor car. Of course, I violently disagree with Sen. Montano's generalization; one can have friends who sometimes err and, perhaps, throw caution to the wind and not necessarily be similarly inclined.

I could remember one occasion at a club whose real estate was divided by a pavilion—I would say no more—you were able to park your car on either side of the pavilion. I remember on one occasion, a very venerable gentleman, much older than myself, after a particularly long day, where we had the heady mixture of all fours and alcohol, was unable to remember where he parked his car and actually got as far as making a report to the police —I nearly said which police station, which would identify the club—that his car had been stolen, because he was so tight that he could not remember where he had left it. He was clearly not in any position to drive home, which is precisely what he would have done if he had been able to find his car. So I certainly would have liked to enter into the merit of this. I do not think that it is appropriate for me to do so, for the reasons I have said.

Certainly, if the Government's objective is to reduce the antisocial effects of alcohol and cigarettes, it has to do a lot more than simply taxing them, because all that would happen is that rich people will be able to kill people by motor car and poor people will not be able to indulge in similar manslaughter.

Mr. President, I think the context in which we are meeting today is far more important, and I will simply like to exhort my colleagues to not dismiss this as a money bill and examine it very carefully. I repeat my plea for peaceful language and conduct and I make a new plea that we do not break the rules. If somebody thinks that they now have the upper hand politically, then I repeat, I refer them to section 77 of the Constitution. Let us not have any wheeling and dealing. Let us not have any closed-door meetings from which the population is excluded.

We cannot make important decisions in this country without involving the entire electorate. I am very clear about that. Thank you, Mr. President.

Sen. Rev. Daniel Teelucksingh: Mr. President, like my colleague, Sen. Daly, I join many in this community who are very concerned about what I would call a crisis in government this afternoon. There is a crisis in government; a crisis in governance in our country. I am one of those who will associate with Sen. Daly and all the others who express concern at this time. However significant the matters on the Order Paper might be, they are all interrelated.

This afternoon this is a traumatized country. This is a young democracy of which we are a part, Sir. We have been going through varying experiences, new ones, and this is a new one. I see this as possibly a part of the birth pangs of something new. We are witnessing an evolution that I hope will produce for us the kind of political formula that we need for Trinidad and Tobago.

You have heard me say, every so often, Sir, that I believe that what we call the Westminster system, the system that governs us, should have been revamped a long time ago. [*Desk thumping*] This is not Westminster; it might be Westminster for England, but it is inappropriate for Trinidad and Tobago. The sooner we appoint a commission to look at a revision of the Constitution of Trinidad and Tobago, it will be good for us. We need a new Constitution commission to see us through all the difficult experiences we have had since, possibly, 1976.

Mr. President, you have heard me say over and over, how dangerous it is for us to abuse power and not to be careful about this power that really belongs to the people and not to leaders. Leaders are custodians. I said this some months ago. We need to have in Trinidad and Tobago servant politicians. Many years ago one of the Greek philosophers talked about the "philosopher king". I want to warn about the danger in our society of creating and maintaining the politician king. We do not need the politician king in a small society like ours. Maybe it has no place in a democracy. What we need is not ruling politicians, we need servants of the people.

What we are discovering and what we have discovered is that there is so much hubris and pride that has polluted local politics. I just want to close this introductory comment by saying: I personally believe, and there are many more in this country who also believe, that the present scenario exposes the anachronism of the maximum leader and also the democratic strength—no matter how small it is—which challenges that concept of the maximum leader.

I want to get to the Provisional Collection of Taxes Order, 2001 before us and raise the question of the rationale underlying the taxes order, pertaining to the increase of excise duty on alcohol and cigarettes. We are to understand that the

objective is not merely to increase government revenue and I have heard this in the budget debate and also today. I compliment the hon. Minister of Finance for reminding us that the increase in taxes on alcohol and cigarettes is not to increase government revenue. He made that clear.

In fact, he said in the budget speech:

> "…to restrict the availability of these products and to make it more difficult for persons under the age of 18 to purchase alcohol and cigarettes."

The human factor was more important than the revenue factor. I congratulate the hon. Minister for including this as part of the rationale, the objective in increasing the taxes on these two commodities.

The intention is to raise the age limit from 16 to 18 years for persons to whom these items may be sold. Furthermore, he added, Sir, that licences can be revoked in business places, and also fines can be imposed for those who are in breach of the appropriate laws. I want to remind the hon. Minister that this kind of thinking places responsibility solely at the door of the business operations and establishments, those who are responsible for trading in liquor.

Why is the law directed only at the proprietors? Nothing is said about responsibility for young people keeping the law. Maybe I might be wrong, but I really did not interpret the provisions in this way. I feel that the law is saying, "We're going to get after the proprietors; we have fines to impose on them and also we can revoke their licences." Nothing is said about the responsibility of young people keeping the law. I submit that it must also be an offence, not only for those who sell the liquor, it must also be an offence for a young person under the age of 18 to be found with a beer in his or her hand. That is missing from the law.

They should not be found with a beer in their hands or be smoking cigarettes. That the fines and penalties for proprietors must also be applicable to our young people, whether at school, parties or on the street. It is a common thing—young people walk with their drinks as usual; little boys with their cigarettes. Are we going to try to trace the parlour or shop that sells and prosecute them? Whether at school, parties, on the streets, in motor vehicles or in every public place, the young person himself or herself is to be held accountable and the police must be free to lay charges on all of these whom you try to protect. The police should be able to lay charges wherever and whenever these people are found with these prohibited items and they are under the age of 18.

I just want to add something more: the question of gambling tables, because in the Provisional Collection of Taxes Order, 2001—I know it does not come on the Order Paper—it is in this compendium of taxes. In fact, the first page refers to that, with all the tables and the increase by 100 per cent of these various tables. I know that the Minister in the budget debate really could not respond to all of us and the many, many issues, but this is on the first page of the taxes order.

I have recognized that he is saying that these gambling clubs, the private clubs, are being run as full-blown casinos. I want to ask the hon. Minister and maybe the Government: When were casinos legalized in Trinidad and Tobago? If they have not been legalized, we need an enquiry into all those that are in breach of the law. For many persons, gambling is not merely entertainment, but an unquenchable vice, and to others it is a source of income with more disastrous side effects than profits.

I noticed that the estimated revenue for 2002 from various games of the National Lotteries Board is $875.9 million—gambling is a real money-spinner. That is a lot of money circulating in the board, almost $1 billion. I have not seen it and maybe I will ask the hon. Minister, not today, but I wonder, from the private clubs, all those that have gambling tables, what is the revenue from that, added to this amount of money raised by the National Lotteries Board and what is done from the profits of gambling. I remember many years ago, one government decided that it was going to put aside a sizeable amount of this profit for the development of sport. What is being done today? I want to make a suggestion.

There are several young people who graduate with various skills, particularly from the senior comprehensive schools, and many of them need a start with soft loans or grants for purchasing small machinery and tools to begin their own trades and to set up small businesses. I feel that this is a much better alternative, to help them set up their own small businesses, than making a living by gambling. I ask the hon. Minister to consider utilizing some of the profits from the gambling sector to create sustainable jobs for the same young people who we want to protect and give a good start in being self-sufficient.

Mr. President, not to take away from the seriousness of the Provisional Collection of Taxes Order, which I support, let me end with a drink of political satire concerning smoking, drinking and, I add, gambling because it is on the first page of the Order. It is not going to be easy for the nation so disappointed and disillusioned and yet to decide how to deal with those who are politically intoxicated with power, hate and bitterness exceeding 46 per cent proof volume, see clause 6, or those who are choking with political smoker’s cough or how do

we impose fines for breach of trust, whether for renewal or revocation of political licences? [*Laughter*] That is not easy. Or do we double the taxes upon those who operate political blackjack, stud poker or baccarat gambling tables with their illusive profits but deadly misery. Mr. Minister, impose your taxes.

Thank you, Mr. President.

2.40 p.m.

Sen. Prof. Ramesh Deosaran : Mr. President, I would like to join the debate and begin by reference to some of the points made by at least two of the preceding speakers. I wish to agree with Sen. Montano in the narrow sense that I do not think raising taxes will have a significant effect in diminishing the use of alcohol, or especially cigarette smoking by these adolescents who seem to be the major target group. That is really no fault of the Government. It has been established that by raising the price, especially in the amounts in the present context, will not have the required effect. So it is true to some extent if that were the intention—of course, that was not the only intention—it is indeed passé but it is still good that the Government should convey such a signal in that particular arena of alcohol and cigarette consumption.

The Government cannot stand idly by anymore and allow the consumption to parade itself as it is, but we must be aware of the inherent limitations in using taxation for matters that are relevant to moral consideration, or to use what is widely called, or to apply what is widely called demon taxation against perceived vices. I think it takes us into a large area of debate as to the purpose of taxation to control human behaviour even aberrant human behaviour which would include the vices as we know them. They are not vices to everybody: Cigarette smoking, alcohol, even prostitution has its respective consumers and taxation is limited.

It is passé as well to call upon the authority, the Government, to use mass advertising campaigns as if that will provide the solution. That too, I am afraid and I submit with respect, is also passé especially commercial advertising. You hire an advertising agency that creates billboards, slogans, moral messages, prescriptions. Do not do this, do not take drugs. Those things have failed miserably. In fact, there is direct relationship between the amount of advertising in terms of drug abuse and the consumption of illegal substances. So you do not need proof, it is just that the free market system is such that it propels on its own steam, even on its own failure by the powerful grip it has on the imagination of those who control the public purse. I therefore advise the Government if it wants to choose advertising, to desist from using mass advertising as is usually done in matters of this kind: cigarette consumption and alcohol overuse.

I say overuse because this is going to take us into very fragile ground but, even the Qur'an—I read all the holy books because I am a libertarian like my friend, I am enslaved by none, but I am favourable to all—tells you that moderation in all things, which means or implies, as you would say in our own vernacular: A little drink now and again will not necessarily hurt. Some people take it as medicine. In fact, if I may depart with your permission, I think when I told you last week that I was not well, you suggested a certain prescription which I will not go into great detail, for fear of embarrassing your very stately demeanour and your sobriety at all times, of course. [*Laughter*]

You may not want to apply this moderation in all things to teenagers because we know, the question as my colleague Sen. Rev. Teelucksingh is alluding to is how people get socialized into bad habits. I have a suggestion to make in terms of how this issue can be approached through the educational system and using the money, or the taxes collected for that particular purpose. You can have improvement. In fact, I would suggest to the Minister very seriously—I know he is busy with a million and one things to see about, but I always throw these advices out so that some other ministry would pick it up and as far as the issue is appropriate to their own jurisdiction, they would certainly seize upon activating the idea. So towards the end, I would submit a proposal that I think could help diminish the use of cigarettes and alcohol by teenagers especially.

What we can do now as I was saying, we can get an idea as to how the consumption is among teenagers in the country before the taxation is implemented. So when we make another count about a year after, we will be in a good position to know if the taxation has worked in terms of the stated objective. It is a simple pretest and posttest data collection approach and it would add, perhaps legitimacy to the budget approach taken by the Minister if the intention is to reduce usage. Because you will never know if you do not take the data before the legislation and the tax collection begins to be imposed on these particular items. So if you want to justify it in the next budget speech particularly, do the data collection in the pretest stage independently.

Mr. President, I wish to reaffirm what I said earlier on, that these mass advertising campaigns against drugs and cigarette smoking have not worked in any part of the country, if only they compete against other forms of mass advertising. Over the weekend somebody drew my attention to the long legs of a very beautiful woman in an advertisement. There were legs, legs and legs so I was looking to see what was being advertised only to find out it was a wristwatch being advertised and these imageries are really used to accompany cigarette and

alcohol advertisements. I know WITCO took a decision recently, but be that as it may, the competition for adolescent consumerism is very great when put against what we want to do in terms of mass advertisement to control use of the substances. There is no match; it will not work for that other reason.

People take advertisement of such kind as a joke these days. I think one of the other effective mechanisms to achieve a luring of the vices, as it were, among teenagers in the particular case of alcohol and cigarette consumption is by example.

When you have a Minister, a "saga boy" politician these days with a cigar in his mouth posing all over the place, in the midst of what is obvious heavy alcohol consumption and you are telling the youngsters on the other side that they must not do it, you really have a two-faced system operating and that is very dangerous for teenagers in terms of how they grow up, because example is of course, the greatest teacher, not so much advertisement. In fact, example is the most powerful teacher.

That is the kind of society in which we live, I am not saying we should have Taliban mentality, where we want to clamp down on everything that gives pleasure. I do not think we have any particular rage against the pleasures of consumerism, the things that we do modestly that bring us pleasure, but there must be limits and we must understand as adults that what we project is what the children learn. Especially as I have said, we have some "saga boy" politicians who believe in posing in different ways, which brings us to Sen. Daly's point that we live in a society where to drink heavily is macho.

We have contests for drinking in some bars across the country—who can put down six beers—and they do not allow the beers to be removed; they leave them there as a symbol of their remarkable consumption capabilities. Who can put down two bottles of White Star or what is the other name?

Sen. Dr. Moonilal: I do not know.

Sen. Prof. R. Deosaran: I did not ask you anything—all the different brands. It is not an irrelevant point, because these habits are in the context in which they are practised and the context of this country is high alcohol consumption, and being proud of it, and this is the community in which a lot of these youngsters grow up.

So when you raise the age from 16 years to 18 years, what does the shopkeeper care? He is part of the system too and I do not know if, with all good

intentions, the Government will appear too oppressive to implement what my colleague Sen. Rev. Teelucksingh says: to apply heavy penalties to the teenagers who break the law as well. We are trying to keep them away from the judicial system and I do not know if that step would be the most desirable one in this instance.

Moral crusades really whip up hysteria in a society, when you start speaking about things like prostitution, drinking and the other vices which human beings are sometimes guilty of, but they do not lead to solutions. They whip up a lot of enthusiasm and strong moral sentiments, but I do not think that is going to solve much for the teenagers as we know them. In fact, I was very interested when Sen. Montano referred to some senior economists from whom he got his advice.

I am very wary of economists of senior or junior types these days because they have missed the boat. They have relied so much on quantitative analyses without speaking about the intermediary human factors including moral sentiments or what we are now calling psychological capital, the question of civic attitudes, the question of delayed gratification. How to be patient as a teenager, to sacrifice, work hard for a longer objective and a better goal in the long term.

This quickie society. Everything could be metaphorically speaking put up as a one-night-stand; everybody wants things tomorrow, the next day, there is no patience and that has a lot to do with indulgences of this kind. Everybody wants everything quick, whether it is a political post, Prime Minister's office, or whatever it is—they do not want to work hard and wait.

Societies that have thrived, the strongly industrialized countries have been very notable for this particular feature; delayed gratification, the capacity, and it emotes from the protestant ethic where patience, thrift, and a sense of sacrifice contributed to economic development. That is the point I made two weeks ago in this Chamber. It is not just dollars and cents; you have to see society these days as money is necessary, but certainly not sufficient. Of equal importance in planning a budget in terms of its objectives and the use of the money should be: Would it increase the country's social capital, psychological capital and level of civility? It is no longer an income and expenditure formula because it is the fallout of those senior economists of long ago; the Barsottis, the Rampersads, Eldon Warner. I mean no disrespect. It is just that they themselves, like Nobel Prize winner Amartya Sen, are now realizing that economics has lost its focus by being drowned in its own quantitative obsessions, and he is now speaking about the role of ethics in economic planning out of the experience he has had by studying

famine in Bangladesh and the role of information, not only in democratizing a society, but in strengthening its economic fundamentals.

This is where we are because we have not looked at the school system in terms of the fallout. If you do not have proper counselling and human resource considerations and you expand physically, shift system, and hope that the children, their parents, and the fragility of these youths will pick up afterward, we have lost that war. So economists really have failed this country unfortunately and we need new economic thinking such as we have heard here sometimes. A new economic perspective that is not purely economic but is driven by wider parameters than what you call economic fundamentals: Intellectual capital, social capital and psychological capital. So we are inheriting what we have sown years gone by.

We have masses of drug users all over the country, every village you go to—those of us who have travelled across this country—you will see on the bridges, in the bars, on the pavements, dozens of young people liming, which is good, but consuming some other substances under the subject of discussion here this afternoon. Not only are they liming, but liming on working days and school days.

We did some research on that which I would allude to at another time. So it is on working days and on school days. In fact, one of the researchers with me referred to them as these "hardback men", meaning that they are strong and able and they have no jobs. It is a long story, it is a wide story but I think I have said enough to sensitize the Minister that the measures of raising taxes will not suffice. It sent a good message, a responsible message, but we need to do other things and I would suggest that one of the things we can do is take what I would call the demon taxes—taxes on vices—and put them to the use of dealing with crime prevention, strengthening communities, and let there be a direct link which will speak for itself. Use these taxes directly for poverty alleviation. To put it in a nutshell, you will therefore tell the community, as you are responsible for your vices, you should be responsible for your reconstruction and virtue. So you are sending a message of a direct relationship between vices as practised and virtues that should be possessed.

I do not like the mass advertising campaigns as I have said before. It really makes the advertising agencies rich without having the desired effects. I would suggest that the money be passed on to the Ministry of Education and they have close-up, face-to-face consultation with the teenagers in the schools, get their parents involved in these groups. Have several groups work out a system. In fact, if you need help with respect—I am not saying you will really need the help, but

we can certainly provide some assistance in that respect, focus groups, but let the message come face-to-face in its flesh and blood fullness rather than on a billboard and through the television and radio, most of which the users really do not have time to see. They are busy smoking and drinking.

3.00 p.m.

So the best place you can capture them, as a start, is in the schools; in face-to-face encounters. Then you can move into the communities and use the money for properly trained counsellors, people who can enhance their spirituality. Use the role of the priests, the civic leaders in the communities. Use the school management boards as instruments for inter-connectiveness; use a mediation centre, but let us start to use all those agents that are well funded by the Government to achieve some of the objectives that can really be attained if the proper coordinated approach is taken. Thank you.

Sen. Prof. Kenneth Ramchand: Mr. President, I have a brief contribution. I would just like to carry over some of the time to the next budget debate, time that I do not use.

I have some anxieties like other speakers about the crisis in the country but I do not feel any panic or indignation. The present symptoms are ugly but I have to observe that the root of the crisis lies in a system of government which turns democratic rule into rule by a winning party; then into rule by a cabinet, then into rule by one person who heads the cabinet; a system by which my little vote, once every five years, leads to a democratically achieved dictatorship.

I hope that we would take the benefit out of the present crisis and do something about this system that clearly is inappropriate and which causes great harm to governments of this country.

I want to comment on the increased duty on alcohol and tobacco which applies to everyone and on the determination to protect young people from indulgence in these harmful substances, until we presume they are of reasonable age to make sensible choices. That is a massive presumption, given our education system and given our socialization process. The legislation only begins to scratch the surface of the problem.

The question is a very large question. How do you put limits on people's freedom to choose, without imposing prohibition, which in any case would be unworkable? How do you put limits on the freedom to choose without making laws that are easier on some than on others? As other speakers have noticed, the

rich can continue to drink and drive, given the present level of taxation. How do you put limits on undesirable behaviours without finding yourself sliding into the fervour and zeal of a moral crusade and all the kinds of "McCarthyisms" that that can lead to? How can law hope to gain approval for its attempts to control undesirable behaviours that are not in themselves criminal or civil offences? How can the law get into that area?

Mr. President, I agree that this is not just a money bill but insofar as it is a money bill, I think that alcoholic beverages that are produced in Trinidad and Tobago should not be subjected to increased taxation. I would like the Minister of Finance to tell the HiLo Food Stores managers that a bottle of Chilean wine that sold at $59.98, pre-budget, should not be increased by 30 per cent. It is only the duty that has gone up by 30 per cent. If you make a sweep by the supermarkets you would see that this is what is being done in many of them. I have checked out the Chilean wine because that is the only one that I can afford.

Mr. President, if this is social legislation, I welcome it. But I do not think that social legislation has to eschew the use of taxation. Taxation is one way of reducing consumption. I believe that if it is our intention to reduce drinking to moderate levels, one of the solutions would be to impose taxes, but these taxes need to be adjusted upwards. They need to be higher to make sure that the rich are not able to continue to drink while the poor are deprived entirely.

I have a problem with depriving people entirely. Mr. President, can you think of celebrating the birth of your first grandchild without a cigar? Can you think of having your daughter's wedding without champagne or sparkling wine? Can you think of a pleasant cocktail gathering without a glass of sherry? These things are harmful. Alcohol is harmful. Tobacco is harmful but I think moderation is the key. So how can we bring legislation that would reduce the consumption to moderate levels? We cannot.

We have to supplement the legislation with the kinds of programmes that my colleague, Sen. Prof. Deosaran, was talking about. Campaigns in the schools where, of course, I know if you go and tell children do not drink, they are going to drink. If you tell them alcohol is harmful, they would want to find out why and how it is harmful. So you have to find ways of filtering in these attitudes to alcohol and tobacco and you may well have to be teaching a lesson of the balanced life and moderation which should be the umbrella within which many of the excesses in our behaviours can be controlled. So the education system cannot be a specific campaign aimed at these two items. It has to be a campaign aimed at encouraging our children to think about their whole lives and about a number of

things that can do harm to them if the proportions are wrong and so on. Then you hope that the education would have the effect later on in their lives; if they drink, that they do not drink in excess. It is a very difficult problem.

There is this special kind of education in the schools, in the communities: counselling. But I think, as I have said year after year in discussing budgets, we really have to, as adults, set examples through changing the lifestyle. If there are people in the society who drink and smoke in public places, and every time there is a fete they have to get drunk, you can tell children until you are blue in the face that they must not do it—they would do it. The example is set.

3.10 p.m.

We have to find a way of changing the lifestyle. When we change the lifestyle we might have an impact on the behaviour of children, not only in relation to tobacco and alcohol but in other aspects of their lifestyles.

Mr. President, these are very specific problems—you may have specific approaches to them—but the corruption lies in the total style of this place. You cannot just patch this hole here without addressing the larger problem of what is going wrong in the whole society. This is a major educational problem—and a problem about values and lifestyle—and of course, there are things that need to be done very specifically. Almost every country has no-smoking zones. We should pass legislation to prevent smoking in certain places. We should pass laws about whether you can have a bottle of rum in your car when you are driving. If you have a bottle of rum in your car, maybe you should have a piece of paper which says that this was purchased for consumption at home and the bottle must be unopened? We also have to control advertising. Everybody knows that they could be advertising cigarettes and alcohol at the same time, or even horses, but you can see beer. A man may be coming home to his wife after work but it is really an advertisement for rum.

I really do not know why there is no legislation to control the advertising of tobacco, and very strict legislation too. Maybe the media houses cannot afford to lose the revenue and maybe, on the question of taxing alcohol and tobacco, the Government will not want to stifle alcohol and tobacco because they need the revenue. I really think the country has to decide whether it is willing to lose the revenue. If the country decides, yes, in the interest of the well-being of society, that we are willing to lose the revenue, then there will have to be a taxation regime and a set of educational measures that will cut the consumption of alcohol and tobacco down to moderate levels. Very often the legislation we propose is not

preceded by sufficient control of the facts and scientific evidence. I think in these matters of alcohol, tobacco and marijuana all governments need to make scientific studies about the harmfulness of these substances as a preliminary to devising appropriate legislation. Recently the government of Jamaica set up an official government committee to enquire into, to study and report on. This committee was made up of scientists, social scientists and people involved in religion and education. They broke it down to the ritual, social and medical uses of marijuana. They had very strict headings and a very strict mandate to do the research and find out what people were saying, thinking, writing and what have they proved.

I believe, Mr. President, that we need—with respect to alcohol, tobacco and marijuana—to set up three different committees made up of scientists, laymen and so forth, to find out all the harm these three drugs can do and what arguments there may be for their use in whatever circumstances. A committee has to be set up to pursue the information as objectively and comprehensively as possible, and these reports should be made available to the population for discussion before we sit down to devise appropriate legislation.

Mr. President, I want to close by saying that I welcome the signs in the legislation before us that the Government is interested in social legislation, particularly with respect to the common drugs that are available to young people and others. I sincerely hope that this is the beginning and that it would not be long before we do set up the appropriate committees to investigate each of these drugs, circulate the information and then frame legislation on which there would be consensus because the whole country has the facts and the whole country has had an input.

Thank you, Mr. President.

The Minister of Finance (Sen. The Hon. Gerald Yetming): Mr. President, this increase in excise duty on alcohol and cigarettes was one of the more difficult decisions we had to make in putting this budget together. As Sen. Montano pointed out, we raised I think just approximately $50 million from imposing the increases we have before the Senate this afternoon. At one point I thought—particularly in view of the fact that the Government had boasted for the past five years that it had never had to increase any tax in any budget that was presented before—I really had to consider long and hard whether I wanted to be the Minister of Finance in this UNC Government that was the first to impose a new tax.

Mr. President, $50 million was really no money at all because it was simple to have not decreased the individual income tax by 1 per cent and I would have

balanced anyway. I could have not decreased the corporation tax by 1 per cent and I would have balanced anyway without having to impose this tax.

I think the point was made that there are sufficient studies to suggest that alcohol and cigarettes are both harmful to health—we are not dealing with marijuana; the studies on marijuana would be a different issue. What we attempted to do, notwithstanding the difficulty in making this decision, was to proceed with the increase in tax. First of all, 15 per cent on the locally manufactured alcohol and cigarettes really did not impact significantly on the price but it was a signal. It came together with the measures that we introduced relative to minors. We upped the age to 18 years for minors buying cigarettes; we imposed new penalties on establishments that will sell to minors; we are enforcing the signage and so on.

Sen. Rev. Teelucksingh is correct that we made no provision for the binders to be arrested, penalized or whatever if they are caught. I have seen 10-year-olds smoking cigarettes in the street. If I take that point from Sen. Rev. Teelucksingh, what are we going to do with this 10-year-old? That is not to say that I do not take the point that maybe something should be done. I also take the point that the measures announced in the budget are not comprehensive. In fact, we also considered the question of the size of the warning on cigarette packs. I thought long and hard about putting it on the whole face of the pack.

I could assure you that we would certainly consider these measures as we progress along this path. The fact of the matter is that this was not really a revenue generating measure.

3.20 p.m.

When we presented the budget, it attempted to do a host of things. The budget sought to identify new economic areas for the development of Trinidad and Tobago, which if we did not do, we would have business as usual and grow at the regular rate of growth. We attempted to rationalize our taxation system. You would recall that I mentioned the Cabinet appointed team to look at the gas and oil taxation which would be reviewed for the first time in 10 years. I made mention of the fact that we intend to review the VAT which was introduced about eight or 10 years ago. I did signal that the intention of that review is to consider the extent to which we could not reduce the rate of tax. It was intended to point the direction on education because we wanted to make a link between education and job creation through the five new drivers.

More importantly, we recognized that until such time as we could deal with education, jobs and the issue of poverty, we have a responsibility to deal with the

less fortunate in the society. We made considerable attempts to address those areas. Quite frankly, at the end of the day, that is where part of the money from this—what one Member of the Opposition in another place called the piddling tax. I did announce that part of the money we would be getting from the alcohol tax would go to the cancer society and a certain sum of money would go to cancer treatment. To some extent, there is some direction of the money that we would earn from this tax to specific areas.

I take the point from Sen. Prof. Deosaran and Sen. Prof. Ramchand that maybe, there needs to be greater linkage between the amount we collect in those areas and what we can do with it to address those issues.

I want to deal with one matter that was raised by Sen. Montano. He made the point that maybe, if we could curb the corruption, then we may not need to increase taxes. I know that corruption is an issue that is very prominent today. I want to raise it in the context of the administration that came into office on December 11, 2000. I recognize the fact that a lot took place before. There have been calls for action on some of the matters that originated before December 11. I only want to make the point that it was rather unfair of Sen. Montano to paint every one of us on this side as a bunch of bandits.

I repeat that I believe that all the issues I am aware of that came before this Government since December 11, we have addressed as seriously as we can. In the case of the North West Regional Health Authority, when the matter came to our attention, the Auditor General was called in immediately. After the Auditor General's Report came out, we engaged a firm of consultants to do the additional work that was required. The report came in and four people were fired. More would be done following that report and more is needed to be done because the report did suggest that further investigations might be required.

In any case, the report which came from further work that was done by the consultants we engaged, went to the police, the Director of Public Prosecutions (DPP) and the Integrity Commission. I met the chairman of the Integrity Commission at his request and he has investigative powers. In the case of every other matter that came to our attention, we engaged consultants to do some further work. Some reports are pending. In the case of Petrotrin, that report was sent to the police and the DPP. I am not sure what else we can do with the other matters which have come to our attention since then. I also announced certain measures which we were putting in place to prevent things from happening in the future. As far as I am concerned, we have done as much as we could do in the circumstances to deal with the issue. For as long as I am in this position, I would attempt to

ensure that the public's money is spent how it ought be spent.

Question put and agreed to.

Resolved:

That the Excise Duty (Alcoholic Beverages) Order 2001, be confirmed.

EXCISE DUTY (TOBACCO PRODUCTS) ORDER

The Minister of Finance (Sen. The Hon. Gerald Yetming): Mr. President, I beg to move the following Motion standing in my name:

Whereas it is provided by subsection (2) of section 13 of the Excise (General Provisions) Chap. 78:50 that the Minister may by Order impose any new excise duty or increase duty and from the date of publication of the Order in the *Gazette* and until the expiry thereof the duties specified in the Order shall be payable in lieu of the duties payable thereto:

And Whereas it is provided by the said subsection that every Order issued under that subsection shall, after four days and within twenty-one days from the date of its first publication, be submitted to the Senate and House of Representatives and the Senate and House of Representatives may by Resolution confirm, amend or revoke such Order, and upon publication of the Resolution of the Senate and the House of Representatives in the *Gazette* the Resolution shall have effect and the Order shall then expire:

And Whereas the Excise Duty (Tobacco Products) Order, 2001 was made under subsection (2) of section 13 of the Excise (General Provisions) Act, and first published in the *Gazette* on the 14th day of September, 2001

And whereas it is expedient to confirm the said Order*:*

Be it resolved:

That the Excise Duty (Tobacco Products) Order, 2001 be confirmed.

Question proposed.

Question put and agreed to.

Resolved:

That the Excise Duty (Tobacco Products) Order, 2001 be confirmed.

INDICTABLE OFFENCES
(PRELIMINARY ENQUIRY) (AMDT.) BILL

[Second Day]

Order read for resuming adjourned debate on question [18th September, 2001]**.**

That the Bill be now read a second time.

Question again proposed.

Sen. The Hon. G. Lucky: Mr. President, might I begin by reiterating the position that I took two weeks ago, that I was very grateful for the contributions made by the Senators in this particular debate, namely, Sen. Morean, Sen. Kangaloo, Sen. Daly, Sen. Prof. Deosaran and Sen. Rev. Teelucksingh. After the contributions made by these hon. Senators, I felt it necessary to look again at the legislation and to deal with each and every one of the points which were raised. In instances where there was consensus, we could get the necessary amendments. On issues where we did not have consensus, but explanations were asked, today, we would be able to furnish the Senate with those explanations.

I wish to indicate from the outset, that even though my Government may be facing challenges, we intend to overcome them. The important point we wish to emphasize is that the work in the ministries continues and, the work in this particular Ministry has continued over the weekend into this afternoon. It means that many of us are mindful of the oath of office we have taken; our duty to the public and to always remember that the interest of the people whom we serve—that is the citizens of Trinidad and Tobago—would always reign supreme.

On Friday, I was speaking with Sen. Dr. McKenzie. I have her permission to indicate that she requested of me, not to do what many attorneys are often accused of doing and fall into the trap of doing that is, to presume that everyone is a lawyer, so that when we speak, sometimes we use legal jargon or refer to legal proceedings and, we take for granted, because it is part of our everyday practice, that others in the public and even those who sit in this honourable Senate understand exactly what we say. Just as I begin my response, I would spend a few minutes indicating in the plainest and simplest way that I can, what this legislation is really about. Everyone could understand what the repercussions are and why the legislation is so important and why we need the support, facing at all times the consequences and the truth of the legislation that we are not going all the way. Later in my response, I think that that has turned out to be more of a blessing in disguise.

We all know the term "magistrates' court". I am sure that many of us are familiar with what happens there and the types of proceedings in a magistrates' court. In Trinidad and Tobago, before 1994, if an offence is committed and that is one which is deemed to be an indictable offence and it has to be tried before a judge and jury in the High Court, the matter does not automatically reach to the High Court. There is a process after investigation, charge and arrest of a person. The matter is heard in the magistrates' court in a proceeding that is called the preliminary enquiry.

3.35 p.m.

What the prosecution does, is it brings witnesses and all the witnesses give their oral testimony which is written down. So as each witness goes into the box the evidence is written in most instances, unfortunately, in longhand and after the evidence is taken down, it is read over to the witness and the witness will then say yes, what I have heard read over to me is what I have said, the witness signs it and that now becomes a deposition and at the end of that proceeding all the depositions are put together and based on the Preliminary Enquiry Act, there are certain procedures the magistrate has to follow and at the end of day, if there is a committal the papers are then put together; the depositions as they are then called, are sent to the office of the Director of Public Prosecutions (DPP) and then the DPP does what is called drafting the indictment. He files that indictment and then the matter, having been filed, is listed onto the High Court list and the matter is heard.

What I have just described may seem very simple, but it is very time-consuming because you are talking about a witness having to speak at a particular speed—not the speed I present at because I present at a very fast speed, but speaking very slowly because a clerk has to write everything that is being said.

It was recognized in other jurisdictions that—in a preliminary enquiry I am sure that many hon. Senators have heard that when these matters are being referred to in the media, it is said that the accused was not called upon to plead. That is because in a preliminary enquiry it is not about whether a person is innocent or guilty. The magistrate is not sitting there to determine innocence or guilt. The magistrate is just there to ensure that the prosecution has what is called a prima facie case, meaning that this is not just an ad-hoc charge, that there is sufficient evidence for the accused when he goes to that higher place, the High Court, to be called upon where he will then plead and all the evidence would be heard. That is it put very simply. But because it is so time consuming and because in many instances the preliminary enquiry procedure I have just described is

really a formality, because in the greater percentage of cases the evidence is heard and there is a committal.

There was a system devised abroad called the paper committal system whereby the prosecution, instead of bringing the witnesses to court, and sometimes the matter is adjourned and witnesses go back and then they go abroad—sometimes the matter is called 40 times—what they did was said, okay, the prosecution would now have the opportunity to put in writing or in a statement what the witness would be coming to say. It would be filed and it would be served on the other side so that the defence, instead of going into the courtroom and hearing the witness from a witness box, is actually reading what the witness is saying and bearing in mind if there are certain conditionalities which, as stated in the legislation, are met, then it means that the documents which are called statements at that point would be tendered into evidence by the prosecution, they would then be called depositions and they would have the effect as though the person who has given that statement had actually come in the box and given the evidence and it was deemed to be a means of saving time.

The system worked well in the United Kingdom because the United Kingdom went the whole way in that they said we are going to remove the right to cross-examination. The prosecution would be entitled to give their bundle of documents, which they must file and serve on the other side. The other side will be entitled, not to cross-esamine, but they can make something called a no-case submission. They can say to the magistrate, "We have read this bundle of documents which is meant to be the evidence, but we do not think a case has been made out." The magistrate would hear the various arguments and at that point he can say, he is still going to commit this accused person and it goes to the relevant court in England.

In Dominica, for example, they did not go as far as the United Kingdom. In Dominica their equivalent legislation deals only with a situation where an accused person is represented, no no-case submission is made and in those situations, if there is no objection by the attorney for the accused or the accused himself, the magistrate does not even have to read what is in the bundle of documents. The documents are tendered into evidence, they are deemed to be the witness statements called depositions and the magistrate just says, "it is okay, I commit" and then you deal with the situation at the High Court level. That is what Dominica has done.

We have always said in this Senate, Mr. President, that we must not just blindly follow jurisdictions. We have to look at precedents from other

jurisdictions. Because I am not one of those who says, you must always be re-inventing the wheel. I am also not on the other extreme of the spectrum saying that you must necessarily take what other people have. I am saying you look at what others have, in some cases you will find legislation does not exist to deal with what you want to deal with, and you have to create your own, then you become a forerunner and a model for others.

In this case in Trinidad and Tobago, we thought that we would take a hybrid situation. We would not be as restricted as Dominica which is very limited in its approach to paper committals which is paper committals in the instance I have described, and we would not go the full gamut as the United Kingdom which is, give it to us, no cross-examination, you tender your documents, file them and we commit and then we deal with it at the higher level.

We decided to go the hybrid way which is to deal with the situation represented in the legislation where there is the Dominica type of approach, and in the United Kingdom where the magistrate would not have looked at the particular content of the statements. There are certain instances that the Bill speaks of where the magistrate can exercise that power to commit without looking at the content of the statements, and then there is a second system which is, in fact, what would be section 23B in which the magistrate will have to look at the content of the statements and will have to make a determination as to whether in fact, a case has been made out.

The paper committal system is a system that is meant to speed up certain procedures. It is in no way removing the traditional way a preliminary enquiry can be carried out. It is really meant, as it is now, to act as an alternative system provided that certain conditionalities are satisfied, and I hope that puts it into the context in which this particular Bill is being laid and has been debated in this honourable Senate.

What was done after the contribtions two weeks ago, every Senator who made a contribution—I want to assure every Senator that his or her points were listed based on sections. I wish to thank the legal officer in the Ministry, Miss Hosein, who did it by way of Senator's contributions and also by way of sections. Then the DPP of the country and Mr. Harripaul who drafted the legislation, Miss Hosein and myself sat and went through each point that was raised. We revisited the legislation, as I indicated earlier—and I say it only for the benefit of Senators Morean and Kangaloo; they would know they always get worthy mention in my contributions—to go through it and see where points were raised, that if we could

not agree to the changes, you would be given an explanation as to why the legislation is as it is.

What was, I think, a very good experience was that by putting ourselves through this for the third time—because I do not want anyone in this honourable Senate to think that it was the first time we were doing it; in fact, this was the third time we were visiting it—we unearth some new things that had not been debated and some new points that we had to address. I think that is what a healthy debate is all about, going over, checking and the now clichéd phrase which is mine, and which I intend to copyright, which is getting it right, and I hope by the time we come down to the committee stage that we have gotten it right.

Let me just hasten to add that I am not going to be suffering from the Pollyanna complex or the eager beaver complex or the complex where you are just eternally optimistic, or so naive that one does not recognize that when it comes to implementation there will be—at least I can foresee there are going to be some problems. The challenge is going to be that we can get together and see how we are going to face these particular challenges to ensure that it can work.

I, too, agree with Sen. Daly when he said that when we are faced with a crisis, challenge or a problem that affects all of us, we must join forces to see how we can resolve it. In fact, it is also going to call for attorneys in our country to adhere rigorously to the code of ethics which binds all of us. I am sure that the attorneys in this honourable Senate do not have to be reminded about the code and the legislation that binds the expectations of us because I do not think we are in breach of it. It is going to call for attorneys to help us to get this legislation implemented in the way that it is meant to be. It is not about merely representing a client and being able to "ramajay" in the Magistrates' Court. It is really to see how adhering to the rules that binds us as attorneys, we would be able to ensure that interest and justice is served at all times.

Mr. President, I am now getting down to the specific points that were raised. In fact, Miss Hosein was able to put together 18 points. Some of them I can deal with quickly, others might just take a little longer but I am asking for hon. Senators to grant me the indulgence to give the explanation so that when we come to the committee stage it really is not just us nodding and saying yes, because we may be frustrated and we do not understand what we are saying. I am not saying Senators do that, but I want to ensure that when we say yes to something, we are understanding exactly what we are saying yes to because at the end the day, as Senators, we have to take the single responsibility of having passed this legislation, and we must always be very proud of what we have passed.

Mr. President, in that regard, I go immediately to what is, in fact, clause 16C(1) of the Bill. Sen. Morean made the point that she felt that with the wording as it stood, something appeared to be missing. In that regard, through you, Mr. President, I will just indicate to Sen. Morean that we, in fact, looked at the model if there was one, dealing with this particular section to determine if we had used our own language and, therefore, we had gone wrong somewhere or if, in fact, we had imported this from elsewhere. This is, in fact, the wording that is used in the equivalent section in the United Kingdom model. When I looked at other sections in lelgislation which we call deeming provisions, this is the type of wording. In fact, this is the exact wording that is used.

> "Notwithstanding sections 16 and 18, in a preliminary enquiry a written statement by any person shall, if the conditions mentioned in subsections (3) are satisfied, be admissible as evidence to the like extent as oral evidence to the like effect by that person."

It is really equivalent to a deeming provision saying that whatever is in that statement, once it is admitted as evidence, it will become a deposition, it will be deemed to be evidence to the like extent and to the like effect as though it were oral evidence. So whatever oral evidence would attribute in terms of legal admissibility and the ability to cross-examine, whatever oral evidence attracts in its status as oral evidence, statements admitted via this procedure of paper committal, it would attract a similar status. So that the wording was not re-done. I have just given the explanation where it has come from and why it has not been re-done because that is, in fact, standard wording in equivalent criminal legislation in other jurisdictions.

The second point raised by Sen. Morean dealt with clause 16C(2) in which the hon. Senator pointed out that in paragraph (a) instead of the word, "written", it should be committed to "writing" in paragraph (c) where it states:

"(c) a statement made by a witness himself;"

should be in the witness's own handwriting. Certain suggestions were made by the hon. Senator that prompted the question: Why did we need a subsection dealing with categories of statements that would come within the purview of the paper committal. Why did we restrict ourselves by stating in paragraphs (a), (b) and (c) of that subsection (2), why did we do it, because the hon. Senator's point is well taken.

In drafting it we seem to have somehow gone wrong and encouraged a level of ambiguity that one could foresee would lead to problems. Again, the question

was asked: Where did we get this particular subsection from? Is it that it came from elsewhere? Did we create it? What was discovered was, in fact, this was a suggestion that had been made, that we should categorize those statements that would come within the purview of statements that could be admitted into evidence. No other jurisdiction had done it and upon further reflection and research, the reason was quite obvious why it had not been done. That when you seek to do what we were doing in subsection (2), by categorizing the type of statements you would attract ambiguity. This was an example where, as I have said in other debates, a degree of specificity is something that should be stayed away from rather than be expounded in the legislation.

The points raised by Sen. Morean were well taken but the solution is not to go with the wording as suggested because it still created ambiguity, but to delete that subsection completely. So there is no longer going to be categories of statements. The conditionalities will remain but not the categories. In other words, we would not be saying a statement made to and written by the police or a statement made by a witness himself.

Then, reference was made by Sen. Morean to what appeared to her to be an apparent conflict between the provisions in the same section 16C but with subsection (4), (1) and what is in subsection (3). The point raised by the hon. Senator was why would you need in subsection (3) to list conditionalities that included the statement to be admitted having to be "sworn before a Clerk of the Peace or Justice of the Peace" and then you are talking about the same thing in subsection (4).

The point is when we are dealing with paper committals, the statements that are to be tendered as evidence really go through two stages. The first stage is the stage when the witness actually gives the statement and the statement is recorded and there are certain conditionalities that must be adhered to and that is what you find in subsection (3) of section 16C. In other words, that it must be signed by the person who purports to make it, the Clerk of Peace or the Justice of the Peace must sign it. It is listed in subsection (3). What subsection (4) sought to do was to go further and say, that in addition to the five conditionalities in subsection (3)— in subsection (4), it deals with specific statements, those that are statements recorded by persons who cannot read or persons who cannot write or persons who are children, because they are under the age of 18 and there are certain further conditionalities that are placed. Subsection (4) is not in conflict with subsection (3), it is merely an adjunct and a necessary one, one might say, because you are dealing with specific kinds of statements. And then a very interesting point I might say, was raised by Sen. Kangaloo who pointed out to us in subsection 4(a):

"if the statement is made by a person under eighteen years of age…"

that would be a child—

"…it shall state his age and that an adult of his choice was present with him when it was made;"

Or, that such a statement would have to fulfil the criteria or conditionalities in subsection (3).

Mr. President, Sen. Kangaloo pointed out that to her, this appeared to be a conflict because under the Administration of Justice Act, which was passed sometime in 1996, the status of a child's evidence—this is oral testimony, because we are not referring to paper committals at this stage but, the law as it stands now, and it is section 19 of the Children Act that a child who is giving evidence a child would be considered under the age of 14, but a child under the age of 14 who gives evidence must give unsworn evidence. That is the law. So any person under the age of 14 gives unsworn evidence. But the law also goes on to say that before the taking of the evidence, which is in the Magistrates' Court, the writing of that evidence, or in the High Court the recording of the evidence by whatever means is used in the High Court, the presiding officer must enquire of the child certain information to determine if the child possesses the knowledge to give evidence.

3.50 p.m.

As the four of us sat on Friday, we asked ourselves why we even changed that law. We will now have to revisit the Children Act. Sen. Kangaloo has only given us more work. Before we got to the paper committal, we all rocked back and asked why we changed it. We said to ourselves that that is something we will have to address because, for a child under 14, we would have to determine whether that child has the capacity to give evidence, without going into what was the old position, which is the magistrate having to determine whether the child appreciated the need to speak the truth and, if he was so satisfied, then the evidence taken under oath.

We had changed it and, upon checking the *Hansard* for those debates and for the rationale, we realized—and I am just giving an indication here—we were going to have to revisit it to see whether we needed to change it. However, we deal with the law as it stands.

In answer to the point raised by Sen. Kangaloo, we cannot change this provision because subsection (4) says that a person who is under the age of 18—I am putting it in the context of the child who is under 14—will have to give

evidence, in writing, and meet the five conditionalities. Before the child's statement can be tendered into evidence, in order to comply with the law as it stands now, the magistrate will have to conduct an enquiry. If he does not and still receives the written statement into evidence, it means that he is contrary to section 19 of the Children Act. I, therefore, apologize for the late circulation of the further amendments by the Government. They should have come in just before the Senate started.

I want to make a quick reference to how we sought to solve the problem. I hope my colleagues will agree, when we come to committee stage, that that is the way to solve it. We will now include, under clause 3, a new subsection (2) that says:

> "(2) Where a child is a witness in a preliminary enquiry, the Magistrate shall first comply with section 19 of the Children Act and then this section shall be applied to any written statement by such a witness."

So, there is the immediate situation where the paper committal will not be a paper committal anymore, because once a witness is under 14, such a witness will have to give oral testimony to the extent that the magistrate can comply with the requirement in subsection 19(2) of the Children Act, by asking those questions that go towards determining whether the child possesses the knowledge to give the statement.

That is the way we sought to solve the problem. I asked Sen. Kangaloo and other Senators whether that solves the problem. However, removing the subsection will do nothing, because the statements must still comply with the five conditionalities in subsection (3). At the end of the day, it will not be in conflict.

The point was raised with respect to subsection 16C(6), which states:

> "So much of any statement as is admitted in evidence by virtue of this section shall, unless the Magistrate commits the accused for trial by virtue of section 23A(1) or the Magistrate otherwise directs, be read aloud at the hearing, and where the Magistrate so directs an account shall be given orally of so much of any statement as is not read aloud."

We spoke about the procedure whereby the magistrate would not be concerned with the content of the statements admitted. Basically, this is saying that if the magistrate goes by virtue of section 23A(1), he would not have to read the statement admitted aloud. That is a case where the bundle would have been admitted into evidence; the defence would have had no objection; the criteria for

section 23A(1) would have been met, so the magistrate just goes on to commit.

The section is really meant to cater because the concern raised by Sen. Kangaloo was that she was uncomfortable with the phrase "an account shall be given orally", which seems unclear. Again, we went into the Halsbury's to get the rationale for the passage of this section, in England, in another jurisdiction. We could not get an explanation, so we tried to do the next best thing, that is, put it in its practical sense. Why would this have to be done?

The reason is that, in certain instances, there will be statements where there is no contentious issue raised between the parties, that is, prosecution and defence. For example, there is the situation where it is not in contention as to who has died in a murder trial. What is necessary is that someone must come and identify the body. In such a situation, one can envision the magistrate invoking this because it is a discretionary subsection. In this subsection, the magistrate can exercise discretion. He can say: "This is the statement of John Brown and John Brown is saying in this statement that he went to the Forensic Science Centre, that he was shown the body and that he recognized it to be that of his father." That is what is meant by an account, as opposed to having to read it word for word.

Always remember that the checks and balances to the exercise of this discretion is that the defence has word for word what has been admitted in evidence by the prosecution. If, for example, the defence says, "No, we do not want an account: we want you to read it through", for whatever reason, one would wonder why they would want it read when they have it right in front of them and the court has exactly what they have. Of course, the magistrate can then say, "I'll read it." This is really meant to give the magistrate that discretion instead of reading word for word statements where you do not have any sort of objection to what is there. There are instances in criminal trials when the parties agree.

Yes, we agree that a person was murdered. Yes, we agree that John Brown was the person who was murdered. Yes, we agree on the date that John Brown was murdered and we agree when John Brown's body was found, but we do not agree that it was the accused that did it. That is the contentious issue. That is the way that section is meant to operate.

Yet another point raised by the hon. Sen. Kangaloo was that, based on section 16C(9), the Senator was concerned that we were being somewhat unfair to the accused person. Her question was why, in that subsection, we were saying that when written statements were tendered in evidence by the prosecution and they

were accepted by and on behalf of the accused, the accused would not be entitled to object to the preliminary enquiry in accordance with 23A(1) or 23(B).

The reason is that the very frustrating event we are trying to cure now—and I have experienced this last year—is the situation where, very regularly, with the present legislation, you spend days on end learning to type these statements yourself. You conform with what is in the legislation and you give it to the defence, who agreed beforehand that they would go by way of paper committal. So you prepare yourself and even tell witnesses they can go out of the jurisdiction because you have gotten assurance by the defence counsel that they would not be calling the witness. Paper committal is the way we are going. You hand over all the documents, in good faith.

I am not saying all defence counsels do this because I really do not want to see a headline saying that Gillian Lucky said that defence counsel are not ethical. I am not saying that. I am just saying that I have experienced some who, upon receiving the bundle, having read everything, then say, "You know what, we want to go the old way", which is the way of the preliminary enquiry.

I just want to remind hon. Senators that there are prosecutors—and I can tell you that; I was one of those prosecutors—who adhered fast to this rule of disclosure, whether it is by way of paper committal or by way of the old time preliminary enquiry. Prosecutors are under a duty to disclose certain documents. One Senator told me two weeks ago that it almost came across as though we were saying we are showing them the documents but they have to bind themselves that they are going by way of paper committal. That is not how it operates. Even if they go the old time way, they are still, in certain instances, under the rules of disclosure, having to hand over documents.

You are saying that you are agreeing to go by way of paper committals, but you still have your rights to cross-examine and whatever rights you want with regard to no-case submission. However, having agreed that we are going by way of paper committal, after all those resources, after prosecutors spend time at home typing statements for the witnesses instead of watching television and bonding with family; all this is just wasted because you are then told that you have to go the old way. That is one of the defects we are going to cure.

The point made by Sen. Kangaloo was that in the same way an accused had a right to change his plea, he should be allowed to change the procedure. In a preliminary enquiry, an accused is never called upon to plead. I am just making the point that we must be fair. In one of the points made by Sen. Kangaloo—

which I intend to come to later—she talked about the fairness of the prosecution witness because she felt that the accused was getting an unfair advantage. I want to indicate again that it is not being unfair to the accused person because he is still entitled to all the rights that he would have been entitled in terms of cross-examination and making no-case submissions.

The next point raised by Sen. Kangaloo was with respect to section 16D(1). The first point was the concern with respect to filing.

4.05 p.m.

Mr. President, might I say that point is well taken. One of the solutions to the problem is to say that, yes, to get rid of the bureaucracy and not to overburden the Magistrates' Courts, which are already overburdened, we should remove it. If we were to remove it, Mr. President, and I ask Sen. Kangaloo and other Senators to think about this problem: How would you protect the integrity of the documents? Envisage the situation, Mr. President, where the prosecution would have—let us just say this document and if we did not have a system of filing—and I never practise much in the civil arena, I have always been a criminal attorney; criminal attorney not meaning I am a criminal but prosecuting criminals, rather. One has to be very careful, I prosecuted criminals and I always wanted to ensure that persons who were guilty of committing offences went to jail.

Mr. President, even when you say you prosecuted criminals, people would say: "Oh, so even if they were innocent, you wanted them in jail." I have also said nothing would have disturbed me more than knowing that I prosecuted an innocent person and that person was convicted. I always wanted to make sure that justice was done at the end of the day and I would have really rather seen a guilty person walk than know that I had, through some negligence convicted an innocent person and that person had to serve a sentence that he or she did not deserve.

Mr. President, I would like to ask very quickly: How would we protect the integrity? Envisage a situation where the prosecution has a document—if we did not have the system of filing—it would mean that I could give the accused the document, the defence would rely on this document that he or she has received as being the statement of a witness, but what if—and I am not saying our prosecutor would do this—in error, let us say, a different statement by that witness had been given to the court, how would you determine that the statement you had as defence counsel was the same statement that the court would be relying on? Even if you were to say: "Well, that is solved, the court has to read the statement anyway", how would you be sure that the way the statement is written, with

whatever corrections would have had to be made or how it was endorsed, it was the same statement?

Imagine now, when you go to the high court and it is discovered, you might have prosecutors who have left the honourable service of being a prosecutor to go into the more honourable service of being a politician, having their name being called and they cannot go to court and defend themselves. This happened, in fact, in the Thackoor Boodram case, where it was being said when documents could not be found, the prosecutor in that case—a very young Senator, myself—it was being suggested by a certain attorney who can, that maybe the prosecutor could tell us where it is. Then, of course, the former prosecutor was thinking: "Oh this might be a time when I would be summoned to go into the witness box, and how would I feel?" Mr. President, I am just saying you try to prevent this type of situation.

What it means is, Mr. President, we need a system of filing. It is there to protect the integrity of the documents so that when the prosecution files the document, filed copies would be served on the defence. The defence attorneys would therefore know that what they have got is what the court has. Some of these documents, what is contained and how it is drafted, believe it or not, would form the subject matter of intense cross-examination. I always remember the question being put to the witnesses when statements have been handed to the defence was: "You wrote this or did the police pre-prepare it for you?" I always had to say that there is no word like "pre-prepared" it is "fabricated". And there would be a number of hours spent as to whether the police prepared statements or not. So you want to protect the integrity of the document.

I agree with Sen. Kangaloo, Mr. President, that this will now be a challenge for us to face in the Magistrates' Courts. This would mean that each of our 14 Magistrates' Courts are going to have some system of receiving documents, stamping them, filing them and reproducing them. I am saying that we cannot let what would be a challenge and a system where we would have to fine tune it, be the reason we remove a section that is fundamental to the operation of the particular piece of legislation. Whether we like it or not, maybe this would be the impetus for certain things in the Magistrates' Courts where we find that the service in terms of the ability to store and so forth, that we deal with those problems. I am sure that my Government is going to be able to deal with it, but we have to make it part of our legislation. We cannot remove things simply because we think it would be too hard to do. This Government has shown even if it is hard to do we are going to get the job done.

The next point raised was with respect to section 16D(2). That was a point by Sen. Morean in which she pointed out that in section 16D(2) it says:

> "…it shall be marked by the Magistrate as a court exhibit and kept together with all the other written statements and any depositions."

Sen. Morean was making the point, why are the words: "and any depositions" there? Why is it necessary because we already made provisions in section 23C for written statements to be admitted into evidence and deemed to be depositions? Mr. President, the reason we have to leave that wording is that, remember we have indicated that even though this is a Bill that deals with a paper committal procedure, there will be instances where persons will have to give oral testimony, in situations, for example, where a witness will be cross-examined. So that a witness' statement would not be the statement envisaged in terms of the wording in the Paper Committal Act but it will be a deposition. So you have to say it will be kept together with other written statements, those are statements that would be deemed to be depositions by way of this procedure of paper committal and any depositions would mean any—[Interruption] Well, I am hearing the word, "other" and I am saying at the committee stage if you say: "any other depositions" that would even make it more clear, that the written statements we are talking about are those that have been admitted in accordance with the Paper Committal Act. I take your point as I hear it. I know Mr. President does not like us shouting one to the other. The idea is not mine, I have heard it and we would, in fact, agree to put: "and any other depositions".

The next point raised was the point by Sen. Kangaloo dealing with the unfair advantage that the accused would have by way of section 17B(2), and that was where the accused person decides to give a written statement. Sen Kangaloo was making the point that she felt if we are making it that prosecution witnesses have to adhere to conditionalities before their statements can be tendered by the prosecution and received as evidence, then why are we being so generous to an accused person, who would just have to give a written statement and nothing more. Again, the reason for that, Mr. President, is if you were to mandate that an accused person had to meet those conditionalities then you would be converting his statement to a confession statement, and that would be deemed to be unconstitutional. You cannot mandate an accused person to give a statement in accordance with what would be deemed a cautionary statement, that is a statement in evidence. An accused person in a preliminary enquiry can just say words: "I am not going in the box, I just want to say I am innocent." Even that would have to be recorded. You cannot put the onus on an accused person to have to adhere to

what is the equivalent of statements under oath, because he is not mandated to even say anything. So it is not an unfair advantage, it is a right that he is entitled to and we cannot change it. When I say cannot change it, I mean the policy is that we do not want to change it, because already we are saying that this is a hybrid situation of paper committal. It is not where we have gone the whole gamut of removing right of cross-examination and right of the accused to be heard, as I pointed out the United Kingdom had gone.

Sen. Prof. Deosaran in his contribution, Mr. President, referred us to section 23A(2) in which he made the point that he felt that this section could be manipulated because it deals with the accused person—that is the route to be used in section 23A(1)—whereby the magistrate will not read the content of the statements but they will be accepted, deemed to be depositions and there will be a committal. Sen. Prof. Deosaran was concerned that in the provisions of subsection (2) which indicates when the magistrate will not be able to use that route one of those conditionalities, where the route cannot be used, is that the accused or one of the accused is not represented by any attorney-at-law. Sen. Prof. Deosaran was concerned that when you say: "not represented" it could mean that the situation and the section could be manipulated. At one point the accused could be represented but on a particular day he would not be represented, and therefore you would frustrate the use of section 23A(1).

The answer to that, Mr. President, is when one embarks on a preliminary enquiry, whether it would be by way of paper committal or the traditional route of preliminary enquiry, the magistrate would have to place on record whether the accused person is represented or not. If that ever changes it would mean that it would have to be recorded. It is not something that is likely changed when one is represented, and an attorney cannot just get up and say: "Well, I just do not want to represent the person anymore." It is not something practised in the Magistrates' Courts on an ad hoc basis. Mr. President, whereas I see the theoretical value of your point, in terms of practice, there is not going to be that level of manipulation that one could envisage.

With respect to section 23A(4) Sen. Kangaloo made the point that she was concerned with the use of the words:

> "that the magistrate, where the accused person or any of its witnesses decides—"

If you would just bear with me, Mr. President. The point being made is that in 23A(4) what would happen, Sen Kangaloo was saying she would have preferred

if instead of leaving it open to the magistrate to come up with his own formulation of the words, what should be done is that there should be a written formulation of those words. What I want to indicate to Sen. Kangaloo is that we did, in fact, take the point and looked at what the sections were that the magistrate would have to conform with and those sections would be sections 16 and 17 and I think 23, if I am not mistaken, in the parent Act. The point is, those words are now going to be deleted. In the proposed section 23A(4) we are going to delete the words:

> "…with appropriate modification with the language of the sections in relation to the relevant circumstances."

That offending phraseology used is going to be removed because the sections the magistrate has to refer to are already sections where the terminology to be used is already mandated: the notice of alibi, the right of the accused to call witnesses and the right of the accused to give evidence. I think that is going to solve Sen. Kangaloo's problem. We delete that part of the particular subsection.

Sen. Kangaloo raised the point about why in section 20E provision was being—

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

Motion made, That the hon. Senator's speaking time be extended by 15 minutes. *[Hon. G. Yetming]*

Question put and agreed to.

Sen. The Hon. G. Lucky: Thank you, Mr. President, and to all hon. Senators. The point being raised in section 23E by Sen. Kangaloo, was that why was provision being made for a situation where a false written statement was tendered in evidence, when, in fact, there was other legislation that existed that would have already dealt with such a breach? So, immediately I went to the Perjury Act of Trinidad and Tobago where one would find such an offending circumstance. But upon looking at the relevant sections which are sections 4 and 8 of the Perjury Act, section 4 actually deals with the type of situation that one envisages in section 23E. Section 4 of the Perjury Act states:

> "Any person who, lawfully sworn as a witness or as an interpreter in a judicial proceeding…"

I am not going to read the rest of it but I am sure that Sen. Kangaloo would take the point that that section cannot apply because it is talking about a person who was sworn as a witness and this is not a person sworn as a witness. Section 4

envisages the traditional way evidence is taken which is to go in the box and take an oath.

We also looked at section 8, which says:

"Any person who knowingly and wilfully makes (otherwise than on oath) a statement false in a material particular, and the statement is made:

(a) In a statutory declaration."

At first I thought that section 8(a) of the Perjury Act would cover it but no, a written statement that is in conformity with this Bill would not be considered a statutory declaration, nor does it satisfy any of the other circumstances that are described in section 8 of the Perjury Act. So put very simply there is no law that deals with it, but we do thank the Senator for again making us go back to the laws that exist to see whether, in fact, we did have something and ensure that there was conformity. Sen. Kangaloo can take solace in the fact that for section 4 of the Perjury Act which is akin to what is in 23E, the penalty is, in fact, upon conviction, imprisonment for seven years.

4.20 p.m.

So what is good is that in clause 23E there is that level of consistency in sentence, so to speak. Far too often, Mr. President, there are complaints that, in one piece of legislation, there is a particular sentence and, in another piece of legislation where one could say the offence is almost the same, there is great disparity. However, we do not suffer from that particular defect in this piece of legislation.

Another point raised by Sen. Prof. Deosaran, and also by Sen. Daly, was, are we really gaining anything by passing this legislation? This is because we have not removed the right of cross-examination and if we remove it, that is what really makes the paper committal system work. I had alluded, earlier in my response, Mr. President, to the fact that I felt it was a blessing in disguise that we were not going all the way. This is because I thought on Friday evening that, if we went all the way and we made the system as it is in the United Kingdom, with the removal of the right to cross-examine, and all the other levels of bureaucracy that perhaps this Bill will attract—first of all, you are talking about the resources of the police being significantly depleted because you are talking about having to type all the statements and so forth, so envisage that problem; and then when it goes to the DPP's office for the prosecutors—they are going to be getting so many files that they will have to deal with.

Only this morning the Director of Public Prosecutions described the situation in the DPP's office where, in San Fernando, two legal officers each have to divide 125 cases between them. So that, on a given day, a prosecutor in San Fernando is doing a route starting at the Point Fortin Magistrates' Court, then perhaps going to the La Brea court and then coming perhaps to the San Fernando court in one day. All I said to the Director of Public Prosecutions is that some things have not changed.

I remember my days when I had to do it but my route was to go to the Sangre Grande court for 9 o'clock; reach to the Arima court for 11 o'clock, get to Tunapuna for 2 o'clock and then go before Magistrate Kenny Persad—now deceased, but Magistrate Persad as he then was—for 4 o'clock. He had indicated that in Port of Spain he was going to extend the time, so we sometimes sat till 6 o'clock. One, at the end of the day, could imagine how a prosecutor felt because the terms and conditions were certainly not things to keep us going. It is only that dedication to public service that kept me there and that still keeps many of the prosecutors there; but that is a live problem that we would face.

Now, the committal by way of paper committal, if it is done very quickly in the Magistrates' Court, how are we dealing with it now in the High Court, Mr. President, because you only have nine High Courts? So I think it is perhaps good that we start it in this way, see how it works, fix whatever problems might be raised and then go, perhaps later down the road, the full gamut where we go by way of paper committal. [*Interruption*]

Sen. Prof. Deosaran: Thank you very much. When the Minister made the presentation of this Bill the first time, she quoted three occasions on which the paper committal, as expected, went through and I wanted some further explanation as to the exact reasons within those three instances. Mr. President, what I would like to suggest briefly to the Minister is if she can now put some process in place so that when this new Act, as it were, is in process, she can look closely at the reasons for which it may or may not succeed as intended, so, when she comes back with an amendment, she would have had an experience from which we can benefit.

Sen. The Hon. G. Lucky: Mr. President, if I might just quickly indicate—because I know now time would be against me—to the hon. Senator, I did indicate that there were three paper committals that were successful but there were problems with those particular paper committals. In fact, it was in a matter that I was prosecuting, the Thackoor Boodram matter, where we were going by way of paper committal and, after seven days of preparing the statements, Mr. President, we recognized the problems. I was actually a prosecutor at the time and

I had highlighted to the DPP—who is the DPP now—what the problems were when this legislation was drafted.

We have gone through it again and, yes, we have picked up that there would be certain problems, but there are mechanisms that are going to be put into place. So I just want to give the hon. Senator that assurance that we are aware of the problems and the solutions are going to be put into place. In those particular instances, though, there was not the problem that we faced, for example, with exhibits. What do you do when you have a statement but there are exhibits? The law as it stands does not tell you how you would deal with the exhibit. Do you just attach it, or, how does it become part of the evidence?

However, I will just move on to the last point, which I think was a point raised by Sen. Kangaloo, and it was this. The point was made with respect to section 39 and an amendment that would go to section 39, which is to include, amongst other things, one of the conditionalities where a statement of a witness could be read—his deposition could be read—as evidence. The words, in the Bill as it stands, are, "for any other reason", and Sen. Kangaloo said that that should be defined.

That point, Mr. President, I would like to indicate to Sen. Kangaloo, is well taken, and it is far too wide. It is going to open the floodgates and we feel that, whatever the reason, the justification for it, if I might say, was that a witness might have been terrified, but, if a witness is terrified, that is already considered in paragraph (a) of section 39. That is, for some reason the witness is being kept out of the way by the prosecutor or the State or by the accused person. Therefore, we are in agreement that the words, "for any other reason" will definitely open floodgates and lead to situations that we would not be able to control and there is no need for them. Therefore, that too is being deleted and it is reflected, Mr. President, in the amendments by the State.

As I conclude, Mr. President, let me thank all the Senators for the concerns that were raised in their contributions; and for those who called me to raise some points, I hope that I have been able, in my time, to address the issues. I know, Mr. President, that it is very important that we get the legislation right. We are aware of the problems and we again invite all the attorneys who would be involved in the implementation to assist us so that we can really do what this paper committal Bill is meant to do, which is to help alleviate some of the problems that are faced in the Magistrates' Courts. However, we are always mindful that there are live problems, not just in the Magistrates' Court but within the police service, the terms and conditions of prosecutors, and these things will be addressed by my Government. In the circumstances, Mr. President, I beg to move.

Question put and agreed to.

Bill accordingly read a second time.

Mr. President: Hon. Senators, even though it is teatime, I am sure Senators will agree that we should complete this Bill before proceeding to tea, so the Senate shall go into committee.

Bill committed to a committee of the whole Senate.

Senate in committee.

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

Clause 3.

Question proposed, That clause 3 stand part of the Bill.

Mr. Chairman: There is a proposed amendment by the Minister.

Sen. Lucky: Mr. Chairman, I beg to move that clause 3 be amended as follows:

1. In the proposed section 16C delete subsection (2) and substitute the following new subsection—

"(2) Where a child is a witness in a preliminary enquiry, the Magistrate shall first comply with section 19 of the Children Act Chap. 46.01 and then this section shall be applied to any written statement by such a witness."

2. In the proposed section 16C, in subsections (1), (3)(a) and (c) and 4(a) delete the word "person" and substitute the word "witness".

As indicated, Sen. Morean has raised the point with respect to the present subsection (2) and we are saying that that ought to be deleted. That went into the degree of specificity with respect to the categories of statements.

The second amendment is with respect to the proposed section 16C in subsections (1), (3)(a) and (c) and (4)(a). The point was also taken—it was raised by Sen. Morean—with respect to, instead of using the word "person" we should use the word "witness" for that level of consistency in the legislation.

Question put and agreed to.

Clause 3, as amended, ordered to stand part of the Bill.

Clause 4 ordered to stand part of the Bill.

Clause 5.

Question proposed, That clause 5 stand part of the Bill.

Mr. Chairman: There is a proposed amendment by the hon. Minister.

Sen. Lucky: Mr. Chairman, I beg to move that clause 5 be amended as follows:

1. In the proposed section 23A(4) delete the words "with appropriate modification of the language of the sections in relation to the relevant circumstances".

2. In the proposed section 23B(1) after the words "any statement" insert the words "that is in compliance with section 16C".

3. In the proposed section 23B(1)—

   (a) delete the word "or" at the end of paragraph (a);

   (b) delete the comma after paragraph (b) and substitute the words "; or" and

   (c) insert after paragraph (b) the following new paragraph—

   "(c) that the accused or his attorney-at-law wishes to cross-examine any of the witnesses for the prosecution,".

Again, Mr. Chairman, this was the point raised with respect to the use of the phraseology, "with appropriate modification of the language of the sections in relation to the relevant circumstances", and we do in fact agree that in the proposed subsection (4), when reference is made to the magistrate having to comply with sections 16A, 17A and section 23(2), there is already language that is dictated in the parent Act, so that there really is no need for those words that come after the particular numbering of section 23(2), therefore the amendment is that we delete those words.

Mr. Chairman: Any further contribution?

Sen. Lucky: Mr. Chairman, I am sorry. Might I indicate that that particular clause, I have just dealt with one aspect because although it is a clause with—there are three amendments to the particular clause. I just dealt with the first one. I do not know if, Mr. Chairman, you would want me to deal with the clause as a whole?

Mr. Chairman: Yes, yes, the whole clause.

Sen. Lucky: Okay, Mr. Chairman, if I might then be allowed to continue in the proposed section 23B(1), the words coming after the proposed subsection (1) where it says, "shall permit the prosecutor to tender to the court any statement"—it is on page 13 of the Bill—that we go on to say, "any statement"—we are going to insert the words "that is in compliance with section 16C". For the purposes of clarity and in an abundance of caution, we are saying then it is a deposition. So it is not just any statement, it is a statement that is in accordance with the conditionalities that we referred to. There is a new proposal.

Mr. Chairman, if I might just indicate, because I do not think I have indicated the reason for this, presently in the Bill there are two routes by which one can use a paper committal. Clause 23A(1) is the situation where the magistrate will not look at the content of the statements and 23B(1) gives two conditionalities—that the accused has no attorney-at-law acting for him or that the attorney-at-law for the accused has indicated that there is insufficient evidence for a no-case submission. However, one glaring deficiency in the Bill was that there was not the inclusion of the usual circumstance, which is that the accused or his attorney-at-law wishes to cross-examine the witnesses for the prosecution, because an attorney or an accused can indicate that they do not intend to make a no-case submission but they want their right to cross-examine.

What we realized is that the Bill did not cater for such a situation, so that is why the amendment says to insert after paragraph (b), that is in 23B(1), a new paragraph that will read, "that the accused or his attorney-at-law wishes to cross-examine any of the witnesses for the prosecution". Without that, we would have a problem because, as I indicated before, any accused person or an attorney who wants to just cross-examine could not go by way of paper committal as the Bill now stands.

Mr. Chairman: Any contributions?

Question put and agreed to.

Clause 5, as amended, ordered to stand part of the Bill.

Clauses 6 to 9 ordered to stand part of the Bill.

Clause 10.

Question proposed, That clause 10 stand part of the Bill.

Mr. Chairman: There is a proposed amendment by the Minister.

Sen. Lucky: Mr. Chairman, I beg to move that clause 10 be amended by deleting it. I just want to indicate that the amendment is just to delete clause 10.

Mr. Chairman: Any contribution on that?

Question put and agreed to.

Clause 10 deleted.

Question proposed, That clause 11 be renumbered as 10.

Question put and agreed to.

Clauses 11, renumbered as clause 10, ordered to stand part of the Bill.

Question proposed, That clause 12 be renumbered as 11.

Question put and agreed to.

Clause 12, renumbered as clause 11, ordered to stand part of the Bill.

Sen. Lucky: Mr. Chairman, could I just crave your indulgence please? It refers to one of the suggestions that Sen. Morean had made with respect to using the word "other" with respect to depositions. I know that we have already approved it—that would be clause 4. That was not an amendment that was coming from us, and I am sure that Sen. Morean—[*Interruption*] clause 3—she was in deep discussion at the time so that I was not able to tip her at that time. So I just wanted to know if I could alert her because I thought, Mr. Chairman, it was a good point.

Sen. Morean: Actually, we did realize that it had passed, but I think it should be corrected.

Mr. Chairman: Just identify what part for me, please?

Sen. Lucky: Yes, it would be 16D(2). The last words read, "and any depositions." The amendment would be, "and any other depositions.", if we could insert the word "other". That would be page 10, Mr. Chairman. It is section 16D subclause (2). [*Crosstalk*]

Mr. Chairman: And omit "and any"—[*Interruption*]

Sen. Lucky: We want to insert the word "other", so it would read, "and any other depositions."

Clause 3 recommitted.

Question again proposed, That clause 3 stand part of the Bill.

Mr. Chairman: Hon. Senators, I seek your permission to reopen and revisit clause 3 with a proposed amendment that 16D(2) be amended at the last line by insertion of the word "other" before the word "depositions".

Question put and agreed to.

Clause 3, as amended, ordered to stand part of the Bill.

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 Finance (Sen. The Hon. Gerald Yetming): Mr. President, I beg to move that this Senate do now adjourn to Tuesday, October 09, 2001 at 1.30 p.m.

At that time, I propose we debate Motions 3, 7, 8 and 9 of today's Order Paper.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 4.39 p.m.