

SENATE*Tuesday, May 11, 2004*

The Senate met at 1.30 p.m.

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

Mr. Vice-President: Hon Senators, I have granted leave of absence to Sen. The Hon. Danny Montano for the period May 04, 2004 to May 23, 2004. I have also granted leave of absence to Sen. The Hon. Joan Yuille-Williams and Sen. The Hon. Knowlson Gift from today's sitting of the Senate.

SENATORS' APPOINTMENT

Mr. Vice-President: Hon. Senators, I have received the following correspondence from Her Excellency, Acting President Dr. Linda Savitri Baboolal:

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By Her Excellency DR. LINDA SAVITRI BABOOLAL,
Acting President and Commander-in-Chief of the
Republic of Trinidad and Tobago.

/s/ Linda Baboolal
Acting President.

TO: MRS. JOAN HACKSHAW-MARSLIN

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

NOW, THEREFORE, I, LINDA SAVITRI BABOOLAL, Acting President as aforesaid, acting in accordance with the advice of the Prime Minister, in exercise of the power vested in me by section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, JOAN HACKSHAW-MARSLIN, to be temporarily a member of the Senate, with effect from 11th May, 2004 and continuing during the absence from Trinidad and Tobago of the said Senator Danny Montano.

Given under my Hand and the Seal of the
President of the Republic of Trinidad and
Tobago at the Office of the President, St.
Ann's, this 10th day of May, 2004.”

Senators' Appointment
[MR. VICE-PRESIDENT]

Tuesday, May 11, 2004

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By Her Excellency Dr. LINDA SAVITRI BABOOLAL,
Acting President and Commander-in-Chief of the
Republic of Trinidad and Tobago.

/s/ Linda Baboolal
Acting President.

TO: MS. BONNIE-LOU DE SILVA

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

NOW, THEREFORE, I, LINDA SAVITRI BABOOLAL, Acting President as aforesaid, acting in accordance with the advice of the Prime Minister, in exercise of the power vested in me by section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, BONNIE-LOU DE SILVA, to be temporarily a member of the Senate, with effect from 11th May, 2004 and continuing during the absence from Trinidad and Tobago of the said Senator Knowlson Gift.

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 11th day
of May, 2004.”

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By Her Excellency Dr. LINDA SAVITRI BABOOLAL,
Acting President and Commander-in-Chief of the
Republic of Trinidad and Tobago.

/s/ Linda Baboolal
Acting President.

TO: MR. PAUL LEACOCK

WHEREAS Senator Joan Yuille-Williams is incapable of performing her duties as a Senator by reason of illness:

NOW, THEREFORE, I, LINDA SAVITRI BABOOLAL, Acting President as aforesaid, acting in accordance with the advice of the Prime Minister, in exercise of the power vested in me by section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, PAUL LEACOCK, to be temporarily a member of the Senate, with immediate effect and continuing during the period of illness of the said Senator Joan Yuille-Williams.

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 11th day of May, 2004."

OATH OF ALLEGIANCE

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

Joan Hackshaw-Marslin, Bonnie-Lou de Silva, Paul Leacock.

PAPER LAID

Seventh annual report of the Police Complaints Authority of Trinidad and Tobago for the period May 01, 2002 to September 30, 2003. [*The Minister of National Security (Sen. The Hon. Martin Joseph)*]

DRUG INTERVENTION INCIDENT

The Minister of Energy and Energy Industries (Hon. Eric Williams): Mr. Vice-President, I rise to make a statement to this honourable. Senate.

Yesterday, May, 10, 2004 two persons appeared in a Port of Spain court charged with offences related to alleged drug trafficking, in an incident involving the operations of the Ministry of Foreign Affairs.

The matter is before the court and obviously sub judice. I am, therefore, confining my statement to noting the facts that are in the public domain, and advising this honourable Senate of the unfortunate circumstances in this regard.

Last week, intelligence officers with the cooperation of officers from the Ministry of Foreign Affairs, intercepted a package of cocaine that arrived at the Trinidad and Tobago Consulate in New York.

Similarly, a package intended for dispatch to Toronto and another for London, were seized at Piarco and at Port of Spain respectively. All of these packages were being smuggled through the use of the diplomatic pouch, which is not subject to the scrutiny of the Customs Department and other authorities at the receiving end.

The Government views this incident as an extremely serious matter striking at the very heart of our national security and with the potential, if undetected, to do grave injury to the country's reputation at a time when we are poised for significant economic strides. [*Interruption*]

Sen. R. Montano: The Government should resign.

Hon. E. Williams: Whilst the official police investigation proceeded, the Government took the following steps:

- ❖ The Foreign Ministry in Port of Spain immediately summoned a number of employees posted at the three Trinidad and Tobago Missions abroad back to Trinidad to assist in the enquires being conducted.
- ❖ Contact was made with the highest level representatives at the Port of Spain Diplomatic Missions of the United States, Canada and the United Kingdom advising them of these developments. They were also assured of our stern efforts to protect the integrity of the diplomatic pouch facility, and of our unstinting commitment to the responsibility of global security.

Mr. Vice-President, I wish to assure you and hon. Senators of this Senate, as well as the general public of Trinidad and Tobago, that this Government will not shirk in its undertaking to fight the battle against those who attempt to undermine the lawful systems of our country and undermine relations with others.

As a consequence of these events, immediate steps have been taken to avoid a recurrence, with the imposition of more stringent procedures and supervision not only of the dispatch of the bags, but also the preparation and documentation thereof. The appropriate authorities are in the process of re-vetting all personnel connected therewith. [*Interruption*]

Sen. R. Montano: The Government should resign.

Mr. Vice-President: Sen. Montano, would you please allow the Minister to finish his statement?

Sen. R. Montano: Could we ask questions?

Mr. Vice-President: This is not for debate.

Hon. Senator: Read the Standing Orders.

Hon. E. Williams: This Government would spare no effort to support the work of our law enforcement agencies—the vigilant men and women of our services, from military to police, from customs to immigration—all of whom we once again take the opportunity to commend today.

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

Sen. R. Montano: You told us absolutely nothing. [*Interruption*]

ACCREDITATION COUNCIL BILL

[Second Day]

Order read for resuming adjourned debate on question [May, 04, 2004]:

That the Bill be now read a second time.

Question again proposed.

Mr. Vice-President: Those who have already spoken on the Bill are: The Hon. Minister of Science, Technology and Tertiary Education, Hon. Colm Imbert, Sen. Roy Augustus, Sen. Prof. Kenneth Ramchand, Sen. Prof. Ramesh Deosaran, Sen. Dr. Eastlyn McKenzie, Sen. Carolyn Seepersad-Bachan, Sen. Mary King, Sen. Dana Seetahal, Sen. Wade Mark and Sen. Bro. Noble Khan. The hon. Minister was about to make his response. Mr. Minister, please.

Hon. C. Imbert: Mr. Vice-President, thank you. When we were last dealing with this issue, we broke off at about midnight, and based on a proposal from one of the Independent Senators, I decided to take a very close look at all the suggestions that were made by Senators, and to incorporate all the relevant proposals into the legislation.

I wish to thank all the Senators who contributed to this debate, particularly the Opposition Senators, who quite uncharacteristically were full of support and praise for the general intent of the legislation. I wish to thank Sen. Montano, Sen. Mark, Sen. Seepersad-Bachan, Sen. Augustus, Sen. Baksh, Sen. Dr. Kernahan and all the Independent Senators who supported the legislation.

If I could turn to the comments made by the various Senators of this Senate, Sen. Augustus raised a very important issue. I was very pleased to hear his point of view, because it is a point of view that I share, and that is in formulating our policy for the development of this tertiary education sector, we need to take proper account of the personal circumstances of persons who may wish to go on to higher education, and to properly recognize the limitations that persons from poor, underprivileged backgrounds may have, in terms of accessing higher education. This is a view that I share, and I am very happy that the Senator raised the matter.

Mr. Vice-President, this is what has driven the development of the Government Assistance for Tuition Expenses (GATE) programme as an improvement on the Dollar for Dollar programme with the introduction of a means test, so that all persons, regardless of income or background, would automatically qualify for the 50 per cent tuition waiver which is what the Dollar for Dollar programme is about.

There is a second category of persons who could get up to 100 per cent waiver of tuition, based on an examination of their income, means and ability to pay tuition fees and so forth. We see this as a serious measure to deal with social mobility, equity and so forth. I was particularly pleased that Sen. Augustus raised this matter, and I am happy to see that the Opposition is in sync with this concept.

Sen. Augustus also said that the council should assist tertiary education institutions that may not have met the requirement to help them deal with their weaknesses, so that they could reach the standard for registration and accreditation. In fact, this is contemplated in the legislation.

Sen. Prof. Ramchand raised a number of issues. He spoke about entry requirements. Now, in the Ministry, we are also developing a seamless system of education. As I said, I am not particularly fond of clichés, and this word “seamless” is a cliché to me. What it means is that persons would accumulate credits over their lifetime—as they progress through the primary, secondary, post-secondary/tertiary education and so forth. If they are in the technical/vocational stream, or the academic stream, the credits would be assessed and quantified, and they would be counted towards various stages of development. So a person could move from the technical/vocational stream into the academic stream—move up, move across, or move vertically and horizontally. This system of education would then become seamless and there would be no barriers to entry. This is one of the projects that we are working on right now in the Ministry of Science, Technology and Tertiary Education.

Of course, the biggest challenge would be the development of standards to determine how to assess credits, and how many points should be given for a particular course of instruction. We would have to look at contact hours, curriculum and so forth. This is definitely a major objective of the Ministry of Science, Technology and Tertiary Education, to develop this completely integrated, seamless system of matriculation, where people would be able to move from one programme to another, as they move throughout the system. This would deal with the group of persons that Sen. Prof. Ramchand spoke about, and that is those persons who may not have completed their secondary education. They could reenter and acquire the credits that they may not have at this time, which would allow them to move into various courses of post-secondary and tertiary education without having to return to secondary school.

Sen. Prof. Ramchand also asked about the standards. In the first instance, we would have to use international standards. This is why Sen. Seepersad-Bachan’s point is relevant. We would have to link up with international quality assurance

bodies and, in the first instance, we would have to use their standards as a guide as we develop our own standards to determine how we accredit; how we assess; how we register institutions and programmes and how we accredit programmes and so forth.

The question of a polytechnic came up. I am happy to tell you that would be incorporated into a consolidated list of amendments that Senators would get. These amendments are now being printed. Senators should get it in a few minutes. What I have sought to do is to take in the amendments that I had intended to move at the committee stage, and also the amendments circulated by Sen. King. We have also incorporated several suggestions. We got some handwritten proposals from Sen. Seetahal, which would also be incorporated. Senators would have a consolidated list of amendments in a short while. We have attempted to incorporate all the relevant proposals made by Senators on the other side.

Mr. Vice-President, because the topic was tertiary education, the debate tended to go into areas that did not deal specifically with accreditation, but I would be happy to deal with them. One of the issues that Sen. Prof. Ramchand spoke about was the need for a technological university. Many countries have recognized the need to have universities that are more oriented towards science and technology. In other words, they are not liberal arts colleges. They may have schools within them that are liberal arts in orientation, but the focus of these universities should be technological. Malaysia is doing it and Singapore has already done it. This is what the University of Trinidad and Tobago is all about. Its primary focus is technology, and it would have the other colleges associated with it—the liberal arts and the school of journalism and so forth. We looked carefully at the function of the council, and we have incorporated several of the proposals made by Sen. King.

Another point made was the composition of the council, and Sen. Prof. Deosaran made that point. He asked why we cannot have a fixed number rather than saying, “not less than ten and not more than 13”, but this is typical in legislation and it allows flexibility. For example, if there is resignation of a member, the council may become defunct because of the nature of the legislation, so there is need to have a minimum number and a maximum number. What I have done was adjusted the composition, so that within the various categories, you would see that I am now saying, “two or three or one or two”. In some of the categories you would see that, and one would be able to determine what the minimum composition and maximum composition would be in terms of its structure. I hope that deals with that issue and it would allay any concerns that

Senators may have regarding the minimum composition and which 10 to pick, because it is going to be very clear now.

Sen. Prof. Deosaran spoke at length about the University of the West Indies (UWI). I wish to tell him that I raised some of the issues that he had raised in this debate, with respect to the administration at UWI. I also had some concerns when I looked at the significant increase in enrolment at UWI over the last two or three years. There is no doubt that UWI is bursting at its seams, in terms of the physical infrastructure; in terms of parking—something as mundane as parking; in terms of its library facilities and so forth. I have been told that the goal is to go to 16,000 students. At the present time, there are 10,000 students and it was 8,000 students not too long ago. So they have gone from 8,000 to 10,000 students in quite a short period of time.

Sen. Prof. Deosaran: I am sorry to disturb your tempo, but this is a very critical issue for the comfort of students, and the quality of university education. While the Minister is on his feet, could he tell us whether the expansion was discussed with the Government and, if so, with the Government's approval? In the latest scenario, with the introduction of evening classes, thereby aggravating the point that you are making: Was that policy by the university discussed with the Government, in terms of the resources and Government's policy?

Hon. C. Imbert: Sen. Prof. Deosaran, well, you are touching on some very interesting points. What I could say is that the matter is being discussed. I have told the administration of UWI that they would need to have a development plan. The Government needs to see how the university intends to go from the current 10,000 students to the planned 16,000 students, and the effects, in terms of the facilities, infrastructure, programme, staff, et cetera.

I cannot say what had happened in the past. I must say that there was a certain surprise when you spoke, and I called them. I told them that we needed to talk about these things, because sooner or later they would have to come to the Government for funding. That is the first thing that I was looking at. While it is admirable that the university is seeking to expand at such a tremendous rate, because this is in line with Government's requirement to double our participation rate in tertiary education, but this cannot be done in a free-for-all sort of way.

Initially, they were surprised that we would actually raise those issues with them, but now that is out of the way. The principal told me that he would give me the plan within the next month or so, and then we would be able to sit with him and discuss the matter to see whether it is feasible, realistic, the implications with

respect to expenditure and whether the campus could accommodate all of this. Certainly, you cannot just make every square inch at UWI into a building, because there would be no green space and so forth. All of these matters must be discussed and they would be discussed between the Government and the University of the West Indies within the next month. Perhaps, they may need to think of other areas in the country where they could establish colleges, and that would be departments of the University of the West Indies. I am really grateful to Sen. Prof. Deosaran for raising this matter and it has already borne fruit.

In terms of GATE, and to what extent the Government should subsidize tertiary education, this is something that has attracted the attention of governments all over the world—to what extent should the Government pay for higher education; who should be subsidized; what group in the society should be subsidized—whether it should be across the board, or whether there should be means testing, and whether there should be free university education.

If you go on the Internet you would see thousands of research papers that have been written on this matter on every country in the world. Sen. Prof. Deosaran, as I said, I would send this document to you. I did encounter a very recent document which made the point that if subsidies are reduced, it would affect the skill-mix of the graduates, because from the time you start to reduce the subsidy and increase the fees, it would affect the profile of a typical student. What they have found is that you would be tending towards a middle class operation, which one certainly would not want to do. When subsidies are reduced, the profile of the students would be affected, and it would have an effect on the skill-mix of the graduates, and it would eventually have profound effects on the development of the country. The view was that one should increase the subsidy, and do research to see what effect the increasing of the subsidy would have, because it certainly would not be a negative effect. It would certainly be a positive effect in the short term.

Sen. Prof. Deosaran: Once again, I apologize to the Minister, but since he is in this very congenial mood—the point we were making would follow from Sen. Augustus's point about subsidization at taxpayers' expense, but what obligation would you impose upon these graduating students to serve the taxpayers and the country from which the money would be drawn? That issue is still in abeyance. Whether it is middle class, upper class or lower class, the question of migration and the whole exodus—to use a more dramatic term—is a very troublesome issue at the expense of the taxpayers.

Hon. C. Imbert: One of the features of GATE is that persons who receive the tuition subsidy or waiver would have to do a period of national service, but we are

not restricting it only to the public sector, because we recognize that we may wish to place graduates in private industries. We have been very liberal in the definition of “national service”. We are developing it at this present time, but recipients of GATE would have to do national service.

I have found that to be ridiculous—persons who have been educated at the taxpayers’ expense just leave the country, or go and do something that is not productive and so forth. So that is a feature of GATE. Certainly, persons who would be getting the 100 per cent tuition waiver would be required to do a period of national service. I hope that deals with that issue. That is one of the new features of GATE.

GATE has several new features. It is now applying the concept of tuition subsidy to private institutions, whereas the Dollar for Dollar programme was just 50 per cent, and it was for only public institutions. GATE builds on that and now makes it applicable to private institutions and it is up to 100 per cent for poor students, and these students would also be required to do national service at the completion of the programme. So those are the fundamental differences, and we do believe that it is a significant improvement on the original concept.

Sen. Dr. McKenzie spoke about fraudulent schools, and we need to deal with the question of fraud throughout Trinidad and Tobago. Senators would see in the amendments that would be circulated very soon, that we are now going to impose a fine. We have decided to make the penalty financial, and we are not going further than that at this point in time. Tertiary level institutions that have been found to be discreditable and so forth, and which have been permitted to be on the register, if they continue to carry on their business and market themselves as universities offering degrees and so forth, they would be subjected to a fine of \$20,000, and a daily fine as well for any period that they continue to operate illegally after they have been served with the requisite notice. I took a note of the points made and I think the points are very valid.

With regard to the issue of the age limit for the participation rate, that is just simply a model, but certainly we want to look at the participation rate for persons over 24—35, 45 and so forth. While I use the age group 17—24 to give you examples of how we are in comparison to other countries, we are looking at the whole spectrum up to age 80. There is no age limit with respect to our programmes. GATE has no age limit. Once a person is qualified, and if the person has been accepted by an institution to do a particular programme—a recognized programme and an accredited programme—we would give the tuition subsidy to that person, regardless of their age. We think that this new concept of life-long learning has to be emphasized in Trinidad and Tobago.

In the past, people felt that when you went to a secondary school and you dropped out that was it; or if you went on to do a diploma or a first degree course that was it, but the world has changed. If we are to be competitive—particularly with the coming on stream of the CSME where a first degree is not very much—we need to encourage postgraduate studies and that is another focus that we would be looking at in the very near future.

We also took into account the fact that we need to publish these institutions. Sen. Dr. McKenzie, your proposal has been accepted and we would publish the list of discredited institutions. We are going to publish them in the *Gazette* and also in the daily newspapers. You would see that in the list of amendments.

In terms of the time period of two years as a transitional period, there is much work to be done. The Accreditation Council has to establish itself and it has to make regulations and it has to hire staff. It would take some time. I think one year would be unreasonable. We would review that matter over a period of time. The Accreditation Council has much serious work to do to become operational, and we felt that a year would be too short a time.

I must compliment Sen. Seepersad-Bachan on her contribution. It was very well researched and it was very useful in terms of giving us some ideas on how we should move forward with the Accreditation Council. All I can say is that the issues raised by Sen. Seepersad-Bachan were very pertinent and relevant.

With respect to the question of a four-year degree, that is something that has come up with respect to the UWI Engineering degree programme. Sen. Seepersad-Bachan may not know, but I learnt of this only a couple of weeks ago. The UWI Engineering degree is facing the possibility that it may not be accepted for chartered engineering status in Europe. In fact, because of the formation of the European Union, European countries are demanding that we move to a four-year engineering degree programme, because that is the practice in Europe. This is something that the Government would be looking at seriously because there are financial implications in extending the Engineering Bachelor's Degree Programme to four years. From all the information that I have, we would have to do it. Persons who have completed the three-year programme may not be eligible for chartered engineering status in European institutes, which is really the world's body.

The American Society of Engineers and so forth is not chartered. They do not award chartered status, but it is the European bodies that award chartered engineering status. In the United States of America, there is the Professional Engineering Examination, that is done after you have graduated from a university,

but in Europe, once your degree programme has been accepted you could get your chartered engineering status after you do a period of years of internship in the work place. We would have to talk to the Faculty of Engineering about this matter.

Sen. King spoke about the difference between registration and accreditation and there is a difference. In order for private institutions to register, they must meet the minimum requirements. The first requirement is that they must exist. I had a rather curious experience about two weeks ago where a university had approached the Prime Minister seeking to establish itself in Trinidad and Tobago. When we checked with the British Consul, this university did not exist on its list of known universities in the United Kingdom. So there is a lot of this kind of thing going around.

With respect to registration, the first thing that institutions have to establish is that they are real institutions—they have buildings; they have labs; they have faculties, they have staff; they have a curriculum and they are following some kind of recognized programme—their degrees are recognized and so forth. They would also have to meet the minimum requirements for registration. They would then go through the rigorous process of accreditation on a programme-by-programme basis. So, that is the difference between the registration and accreditation as intended by this legislation.

I think Sen. King asked if this legislation is consistent with Vision 2020. Well, it is most definitely consistent because the system is a free-for-all at this point in time, and in order to achieve developed country status we must establish standards—certainly standards in higher education. In addition, this is a stepping-stone towards the whole thrust of increasing participation in tertiary education.

Sen. Seetahal gave us some proposals with respect to the Appeal Committee, and if you turn to the amendments that are now being circulated you would see that the Appeals Committee would be appointed by the President.

Sen. Seetahal: Mr. Vice-President, yesterday there was a decision of the High Court in which a piece of legislation was struck down. My understanding is that the constitution of the Appeals Tribunal in that Act was said to be unconstitutional, because it took away the functioning of appeals from the regular courts. Having regard to the fact that we have included this Appeals Committee, is that something that you would give consideration to?

2.15 p.m.

Hon. C. Imbert: Sen. Seetahal, I have not read the judgment, but the impression I got was that piece of legislation interfered directly with the powers of

the High Court. This is not our intention. Persons will still have a right to recourse to the court after the appeals process. I got the impression—I have not read the judgment—that what the judge was saying is that that went into the domain of the High Court and tried to supersede the powers and function of the High Court. That is not our intention and the way this is drafted, I do not foresee any such possibilities.

Sen. Mark made some very useful suggestions in-between his usual entertaining commentary. We have taken account of what he said and the Minister no longer will be approving the appointment of the secretary and staff of the council. That should not have been there in the first place. We are taking it out and all the Minister is doing now is approving salaries in excess of \$10,000 a month. So that any salaries below \$10,000 a month, and staff at that level, the council will handle itself, but any person with a salary above \$10,000, the Minister will have to approve the terms and conditions.

Let me explain. Ministers do not do this in isolation. There is an interministerial committee, public sector negotiation committee, and one would expect that this council would make its submission to the Minister on the terms and conditions of its president, director or whatever. The Minister then submits this to the interministerial committee which is chaired by the Minister in the Ministry of Finance who will then look at the range of salaries across the country and would give guidelines back to the Minister to give back to the institution. So it is not a case of a Minister just at large doing his own thing. He is subject to the interministerial committee.

The question of online degrees was raised as well. We are looking at that. It is an emerging field. In fact, a lot of the expansion at UWI is in the field of distance education or has come about through the use of the technology of distance education, and I expect them to keep moving. In fact, so many universities all over the world are looking at this as a way of getting working adults in this whole quest for lifelong learning, they are looking at the approach of online learning, distance learning, and so forth, to give working adults an opportunity to improve themselves after hours.

When they get home, they go on the Internet, and one would be surprised. Some of the most prestigious universities in the world are now moving in this direction and offering highly reputable courses. I signed up for one myself just to experience it. I was surprised at the rate at which this sector, distance learning, is developing all over the world.

Sen. Bro. Khan, I must compliment you on all the issues that you raised. You raised the concept of lifelong learning, and this is something, as I said, with this seamless system of education that we are trying to fashion and develop, one would have a process whereby persons throughout their life can accumulate credits and move on. Even if they have not completed secondary school, they could complete the required credits, or whatever it is, go into postsecondary, go into tertiary, move on to what I am told is called quaternary, which is postgraduate education.

We are very cognizant of the concept of lifelong learning and the whole concept of investment in education as well. I do believe at this stage of our development we need to invest very heavily in all education. We already have free primary, free secondary, and I do believe we should try to make tertiary education as affordable as possible, and for those who cannot afford it, it should be virtually free, in my opinion.

Sen. Bro. Khan: Thank you, Minister, but I do recall that at one stage, with the exception of paying some small fees, tertiary education was subsidized by the State too, and while I am on my feet, if you could clear up a point for me. I see in one of your amendments that will be moved later on that the persons who will be comprising the Appeals Committee will be appointed by the President. I seem also to feel that very often when we hear “appointed by the President” it refers to the Cabinet per se, but I am thinking in terms of the President in his own right, as he has, under the Constitution of some post, to really give it that veneer, as I said before, of independence.

Hon. C. Imbert: We looked at that. This means Cabinet. This is the meaning of the words. If you wanted to mean “President”, I am told, you will add the words “in consultation with”. This means Cabinet, so it is not a Minister at large outside there doing his own thing. We did not want to go to that point yet. What I would say is let us see how it works.

There is an appeals tribunal in Town and Country Planning, for example, which is appointed by the Cabinet as well. It has worked through several administrations: NAR, PNM and the UNC. There are many such appeals committees which are appointed by the Cabinet. I stepped it up from the Minister to the Cabinet, so I hope that will find favour at this point in time.

I think I have covered all the issues raised by all of the Senators. I wish to thank everybody, as I said, for all the very valuable points made and I would like to briefly now go through some of the proposed amendments.

Sen. Seepersad-Bachan: Mr. Vice-President, I thank the Minister for giving way, but there was just one other issue that was raised, and I do not know if you addressed it. I am not seeing it in the amendments, but it was with respect to the reporting to Parliament of the Auditor General accounts.

Hon. C. Imbert: Yes, we will get to that. That is on page v at the bottom. You will see that the council has to submit an annual report and that the Minister will lay this report in Parliament. If you go on to the next page you will see that. So just let me go through. I did try to incorporate all the proposals made by Senators because I really appreciated your input; even Sen. Mark's input. I hope he could take a little "picong".

Anyway, we have added polytechnic because it is a real term and, in fact, many polytechnics have grown to become universities. So we have added that into the definition section. We have reformatted the existing clause that deals with the composition of the council to, as I said, use a formulation that, for example, if you go to existing clause 4 where previously we had 4(1)(a) there were three persons nominated by tertiary institutions, it is now two or three. So one would clearly see what the composition would be.

I have changed this wording that spoke about the association of tertiary institutions, because this may become a situation where this association no longer exists or no longer represents tertiary institutions, so what we have changed the wording to be:

"...the association most representative of tertiary education institutions in Trinidad and Tobago;"

So as these things evolve—

Sen. Prof. Ramchand: One of the things I was asking is whether the University of the West Indies could be named specifically as a place from which, at least, one member would come.

Hon. C. Imbert: I did not want to limit the council in that way at this time, because I would then put in the University of Trinidad and Tobago (UTT) as well, and so on, and I just felt leave it at tertiary institutions. I would hardly see any Government, any Cabinet not including persons from all the universities in Trinidad and Tobago: UTT and UWI.

Then, in clause 8, I am grateful to Sen. Prof. Ramchand for pointing out some of the discrepancies in the functions of the council, and to avoid confusion we now call it postsecondary and tertiary, so no confusion about what is tertiary and what

Accreditation Council Bill
[HON. C. IMBERT]

Tuesday, May 11, 2004

is postsecondary. We put the two together, so that would occur right through. We have postsecondary and tertiary.

We also took account of many of the suggestions made by Sen. King. One will see that on page ii. One would see we have taken on board much of the language that Sen. King had suggested to tighten up the functions, therefore, we are talking about, for example, to accredit the programmes and awards of postsecondary and tertiary institutions; to advise on the recognition of foreign programmes, and so forth.

Again, Sen. Seepersad-Bachan had spoken about working together with the region, so that on page iii one would see we have included the words “joint accreditation exercises”. Again, in clause 9, we have amended it to require the council to coordinate with other competent authorities and one would see that specifically, we spoke about competent authorities, and this has to do with, in particular, the law degree where I am advised that there are treaties in the Caribbean that deal with the recognition of law degrees among the various bar associations. This deals with that.

The appeals process, we have changed that to take account of some of the issues raised. If one goes to v, one would see I have taken out the Minister's approval of the secretary, and so forth, and put in the fact that once the salary is over \$120,000 per year, or \$10,000 per month, they have to come back to the Minister. Then I have put in a provision that the Minister may change this from time to time in recognition of inflation.

We have amended clause 22 to require the council to submit a report to the Minister and the Minister to submit this report to Parliament. The final set of amendments deals with penalties and prohibitions that prohibit institutions from carrying on the business of tertiary education and advertising themselves as universities, if they are not properly allowed to do so, and deals with the publication in the *Gazette*, and so forth, of institutions that have been struck off the register and now introduces a penalty of \$20,000; a fine for institutions which are in breach of this part of the legislation.

So, those are the amendments and, again, I wish to thank everyone for their contribution. Mr. Vice-President, I beg to move.

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

Senate in committee.

Clause 1 ordered to stand part of the Bill.

Clause 2.

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

Mr. Imbert: Mr. Chairman, I beg to move that clause 2 be amended as circulated:

In the definition of “technical college” or “technical institute” delete the word “or” and substitute a comma; and

Immediately after the word “technical college” insert the words “or polytechnic”.

Sen. Ali: Mr. Chairman, the definition of “cause”, that should be “skills and aptitudes”, not attitudes.

Question put and agreed to.

Clause 2, as amended, ordered to stand part of the Bill.

Clause 3 ordered to stand part of the Bill.

Clause 4.

Question proposed, That clause 4 stand part of the Bill.

Mr. Imbert: Mr. Chairman, I beg to move that clause 4 be amended as circulated:

In subclause (1)—

A. Delete paragraph (a) and substitute the following—

“(a) two or three persons nominated by tertiary institutions or institutions involved in technical or vocational education or training, including a nominee of the association most representative of tertiary education institutions in Trinidad and Tobago;”

B. In paragraphs (c) and (e) insert immediately before the word “two” the words “one or”.

Sen. Mark: Mr. Chairman, we had initially suggested, in an effort to maintain some independence, given the sensitive nature of this particular subject, we would have liked the Minister to take on board the whole issue of the President after consultation with the Leader of the Opposition and the Prime Minister.

Because of the sensitivity of the matter, and I really want to suggest that that is an area that we have a very deep concern on at the moment, I would like the Minister to look at that, because this is a very important institution, and it is not only for the period when the PNM would be there. Other governments will come, and what we want to do is maintain a certain level of integrity and trust, and we feel that for instance, if we put it in the hands of the Cabinet, some of the people who are going to be appointed to this accreditation committee, because of the nature of our society—the incestuous nature of the society—we feel that, for instance, we may have some difficulty. We would like the Minister to consider that particular aspect of our concern.

The other area I would like to raise is that we had indicated that there should be two representatives from the labour movement. Mr. Chairman, we live in a world today where there is stakeholder participation, and if we want to deepen the democratic process, the same role that the employer has to play in terms of employing these people, and if we want to find him there, we need to ensure that the labour representatives, in a period of globalization and competition, we need collaboration, cooperation and harmony.

I do not feel that it is a wise move to leave out representatives of the labour movement here, because they have a contribution to make. Because of the fact that there are organizations like TTUTA, they could be nominated by the labour movement, because they represent workers at the level of the education system; the vocational, technical, secondary and primary.

It does not mean if we say “the organization most representative of labour” that we would get somebody from the Seamen and Waterfront Workers Trade Union (SWWTU) sitting on that particular committee. We may find the labour movement would select TTUTA as a representative from that organization to sit on the accreditation committee. So, I thought that whilst the Minister attempted to deal with some of our concern, it is not reflected in his amendment, and I would like him to consider those two areas.

Mr. Imbert: Firstly, dealing with the issue of the President, we reflected on this very carefully, at length. This came up in the Lower House as well, and I have looked across the world and this is a government function, wherever I found it, in the states of the United States, in the European countries, in the Far East, the function of registration and accreditation of institutions is a government function. I also do believe it is a government function, so that while I respect your view, I do believe this is the business of the Government.

With respect to the trade union representation, I have no difficulty in adding a representative of the trade union. No problem at all. As I mentioned to the Senator, the reason for the representatives of the employers is that this deals with the concept of these people going to work, so that the employers would want to have some input into the type of education. I have no objection to adding a representative of the trade union movement.

Sen. Mark: Mr. Chairman, if I may follow up on this, in a modern society like ours where we are seeking to become more modernized, I would imagine that the Minister would incorporate the Opposition as part of the governance process and, therefore, I would want to advance to the Minister that when you are looking at Government, you look at Government in the broadest sense of the term and not narrow it to a small “g”, but a big “G”.

It is in that context I am saying that you have the Opposition, you have the Government, and therefore, if you want this system to work properly, you cannot leave out the Opposition, because if you leave them out you end up in trouble. I am simply saying that it is important for independence, for confidence, for integrity and for trust that we need to ensure that at least we have consultation.

At the end of the day, the President might—there might be agreement, there might be disagreement, but at the end of the day we will have some intervention from the Opposition and from the Prime Minister as to who the personalities should be on this critical Accreditation Committee. It is a new move that we are on, and I think we should start on the right path or on the right leg. This is why I want to indicate to my colleague, the Minister, that he should look at government in a broader context and not in a narrow context. In that manner, I would like him to again give some thought and some consideration to our proposal on this side.

Sen. Prof. Ramchand: I know it has gone past. I hope it is not too late. I am not happy using the phrase “baccalaureate” and “postbaccalaureate”. It sounds like a kind of saltfish. Could we not just say “undergraduate” and “graduate” in the definitions?

Mr. Imbert: I understand, but it is a term of art, and I would not want to tamper with well-established words. I understand what you are saying, but the Attorney General is advising me that this is the Latin.

Sen. Prof. Ramchand: It is very pretentious.

Sen. R. Montano: Are we not dealing in that definition with foreign degrees, and so forth?

Mr. Imbert: It is the whole concept of a Bachelor's degree, a Master's degree.

Sen. R. Montano: I agree with you, it is a term of art, but what I am trying to say, in this regard we are dealing with foreign degrees; we are dealing with everybody coming in.

Mr. Imbert: I see what you mean. So you are supporting the use of the word then?

Sen. R. Montano: Yes.

Mr. Imbert: Okay. I understand your point, but I would not want to trouble it. With reference to the point that Sen. Mark raised, if one buys into that argument, one would have to extend that argument to all public institutions. So that would mean that if one accepts your argument, then the Water and Sewerage Authority, the National Housing Authority, and so forth, would all have to be appointed by the President, because you see, why would one make the distinction of some of them and not others?

Sen. Mark: The only reason I am saying this is that accreditation is a very sensitive area, and I am making the point that WASA and T&TEC cannot be equated with an accreditation board.

Mr. Imbert: What about the Environmental Management Authority? Should that be appointed by the President?

Sen. Mark: I do not want to get—I am just saying—

Mr. Imbert: You understand what I am saying.

Sen. Mark: You see, you are just stretching it.

Mr. Imbert: You understand what I am saying? Where do you draw the line saying that the ones on this side should be appointed by the President, and the ones on this side should be appointed by the Government?

Sen. R. Montano: If I could assist, I think what my colleague is feeling—and I take your point about the Government and looking at other countries, but the reality of our situation is that we are a small country. The reality of our situation also is that we want this accreditation board to look as independent as possible. We do not want problems downstream, whether it is a PNM or a UNC Government that is in power. We do not want an opportunity whereby politicians of one side or the other use the appointment of the accreditation board for political purposes. “Oh well, they are only doing this because.” So, the proposal is a proposal meant to head off.

Let me say that what we are looking to do is trying to—your point is well taken, Minister, but we are saying that having regard to the realities of the political

situation in the country today, and for the foreseeable future, it might be better, especially with something like this which is meant to be nonpartisan in nature—it might be better for all concerned if it were seen completely to be nonpartisan. That is the beginning and end of the argument.

Mr. Imbert: I will just ask Senators to bear with me. I understand the argument and I am sure it is an argument that will develop as we go along, as we develop our society. Just bear with me on this one.

Sen. Jeremie: If I might, at present, I think the judges at the Industrial Court, which is a superior court of record, are appointed by the President—*[Interruption]* As are the judges with respect to the Environmental—*[Interruption]*

Sen. R. Montano: That is a terrible example. Because for the record, I am of the view that those judges should not be appointed by the Cabinet in that regard.

Sen. Jeremie: Can I finish! The Environmental Management Commission; they too. The Members of the Tax Appeal Board. And then, the Telecommunications Act, which was passed by you in 2001.

Sen. R. Montano: Let me just say this. The Members of the Tax Appeal Board, I know they are appointed by the Cabinet, but in my view—

Sen. Jeremie: The President.

Sen. R. Montano: Yes, but the members of the Industrial Court, they are Cabinet appointments. I am personally—

Sen. Jeremie: The President makes the appointment.

Sen. R. Montano: On the advice of the Cabinet. They are effectively appointed by the Prime Minister. I am speaking now as a practitioner. You have many problems with accusations being made that appointments in the Industrial Court are, from whatever regime you are talking about, whether it is this one, the next one or the last one, their appointments are politically motivated. That cannot be in the best interest of the dispensation of industrial justice. It cannot be. You only have to look at it to see that it is not a good idea, so those are bad examples.

You see, I think the thing is that you are putting people in a quasi-judicial appointment here, and the argument that we are advancing is simply, let us try and keep things as neutral as possible. That is the argument. If you say no, you have the votes, but that is our argument.

Sen. Seetahal: In respect of this board, as it were—the council—it is similar to a board, whether it is a pharmacy board, a medical board; those kinds of councils.

In my mind they are administrative, and this is administrative, as distinct from the Industrial Court or the Tax Appeal Board which I, too, have concerns about. Even the EMA, but this is a council and then one could take this matter out of the council and go to the High Court if there is an issue.

So one can go for judicial review, for many of these things, whereas the Tax Appeal Board is an appeal tribunal, and so too is the Industrial Court, which is a judicial body. Those are judicial bodies compared to the Mediation Board, which is appointment by the President. I think that would be the better kind of analogy, and that is a quasi, more administrative body to my mind, Sen. Montano, as this is Accreditation Council.

Sen. Jeremie: I agree entirely with the comments of Sen. Seetahal, but I used the examples of those judicial bodies to show the extreme position. You have the President making the appointments there.

Sen. Mark: Mr. Chairman, if I could make one final intervention? I recall when we were on the other side, I recall my friend, who is the current Minister, seeking to have the net expanded under the integrity laws of the country, and we fully facilitated that arrangement. Of course, today they are now saying they want it to be narrowed once again.

What I am saying is—my colleague said the Government would have the final say because it is a simple majority, but we maintain that because of the political nature of our arrangement, and there are some characters on this stage who have gone down on record as making some very injudicious statements, one would not like to see these kinds of elements emerging on an accreditation committee. The moment we have a Cabinet which could appoint these people, there is always that possibility, and there is where the contamination and the pollution could get very worrying.

The PNM might be in office today, but they will be out tomorrow, and then I will hear my honourable friend saying something else. All I am saying is that we are establishing an accreditation council not for the next two years, Sir, maybe not for the next 100 years. Maybe the next 50 years, and therefore, we want to ensure that it is beyond, as far as is practically possible, pollution, contamination and we call it, political manipulation, and this is why we make this appeal, but if the Minister insists, we will not be able to support this particular aspect of the amendment.

Mr. Imbert: Thank you very much. I am going to propose now a change with respect to clause 4(1)(e). Instead of “two persons nominated by organizations most

representative of employers”, following the principle of equity so eloquently enunciated by Sen. Mark, I wish to change this to:

“one person nominated by the organization most representative of employers and one person nominated by the organization most representative of trade unions.”

Are you good with that?

Sen. Mark: Yes.

Mr. Imbert: See? We accommodate you.

Sen. Prof. Deosaran: Just one fine point. I do not want to detain you, but in cases where you have two major trade union bodies?

Mr. Imbert: It is quite a challenge at this point.

Sen. Prof. Deosaran: I just wanted to know.

Question put and agreed to.

Clause 4, as amended, ordered to stand part of the Bill.

Clauses 5 and 6 ordered to stand part of the Bill.

Clause 7.

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

Mr. Imbert: Mr. Chairman, there is a minor amendment here. I beg to move that clause 7 be amended as circulated:

Delete the word “and” in the first place where it occurs and substitute the word “or”.

Question put and agreed to.

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

Clause 8.

Question proposed, That clause 8 stand part of the Bill.

Mr. Imbert: Mr. Chairman, I propose the following amendment to clause 8 as circulated:

In subclause (1) delete the words “national” and “education” and substitute the words “local” and “post secondary and tertiary education” respectively.

In subclause (2)—

A. Delete paragraphs (a), (b), (d), (e) and (j) and substitute in the appropriate alphabetical sequence the following paragraphs—

- “(a) to maintain a list of accredited post secondary and tertiary institutions operating in Trinidad and Tobago;
- (b) to maintain a list of accredited programmes and awards offered in Trinidad and Tobago;
- (c) to accredit post secondary and tertiary institutions;
- (d) to accredit the programmes and awards of post secondary and tertiary institutions operating in Trinidad and Tobago;
- (e) to recognize accredited programmes and awards of foreign institutions operating in Trinidad and Tobago;
- (f) to advise on the recognition of foreign programmes and awards and the recognition of post secondary and tertiary institutions;
- (g) to seek to raise the quality of post secondary and tertiary education delivered in Trinidad and Tobago to the standards set by the Council;”

B. In paragraph (h) insert immediately after the word “relationships” the words “including joint accreditation exercises”.

C. In paragraph (i) delete the words “tertiary” and “college” and substitute the words “tertiary college”, “tertiary institute” and polytechnic”.

D. In paragraph (r) insert immediately after the word “the” in line one the word “standards” and a comma.

In subclause (3) delete the words “must be registered” and substitute the words “shall register”.

Sen. R. Montano: Mr. Chairman, could the Minister explain, please, what he means? Why are we deleting the words “national” and “education?” I can understand “education” being substituted with postsecondary and tertiary education, but why are we changing the word “national” to “local”?

Mr. Imbert: We are replacing it with the word “local”.

Sen. R. Montano: Why?

Mr. Imbert: The draftsman was of the view that this would be consistent—

Sen. R. Montano: Speaking for myself, that is not making sense. Maybe I am missing something here.

Mr. Imbert: This is consistent with the term used in different parts of the Bill. We used the word “local” to refer to what happens in Trinidad and Tobago or what is associated with Trinidad and Tobago. The word “local” has been used before. We are just being consistent. It means the same thing.

Sen. R. Montano: There is national and there is international.

Sen. Prof. Ramchand: That is why he said local and foreign.

Mr. Imbert: As a linguist, I accept that.

Sen. R. Montano: Are we using the word “foreign” in the Act?

Hon. Senators: Yes.

Mr. Imbert: What we have sought to do is take on board many of the proposals made by Senators during the debate in terms of typing up the definitions. It is just really cleaning up the definitions. This refers to the functions of the council.

Sen. R. Montano: You are putting a comma after the word “standards”? Is that what you are doing in paragraph (r)? I have gone (a), (b), (c), (d), (e), (f), (g) and then I have gone B, C, D. In paragraph (r) you are inserting, so the paragraph is to read then, “to establish the standards, requirements and regulations.” Is that what I understand you are doing?

Mr. Imbert: Yes.

Sen. R. Montano: I do not have a problem. I just want to make sure.

Sen. Dr. McKenzie: Mr. Chairman, I am having a little problem with the renumbering of 8(2)(a). If we delete (a), (b), (d), (e), (g), the one that would have been left would be (c).

Mr. Imbert: No, I have another. We have to renumber the paragraphs (a) to (g) accordingly. The person from the Law Commission will deal with that.

Sen. Dr. McKenzie: What I want to know is whether what was the former (c) would not be left out.

Mr. Imbert: No. So, Mr. Chairman, in addition to what has been circulated, I also wish that paragraphs (a) to (j) be renumbered accordingly and appropriately.

Sen. R. Montano: I think we have to renumber not (a) to (j), because you are keeping, for example, (c); paragraph (c) is being kept in, so paragraph (c) would become really paragraph (h). No. Subclause (a) is deleted, subclause (b) is deleted, subclause (c) is not deleted. Then if (c) becomes (a), then this numbering here is wrong.

Mr. Imbert: That is what I said. It will be renumbered appropriately by the Law Commission when they do the final text of the legislation. I am advised that is how it is normally done. Even if we make small typos here, they will fix it.

Question put and agreed to.

Clause 8, as amended, ordered to stand part of the Bill.

Clause 9.

Question proposed, That clause 9 stand part of the Bill.

Mr. Imbert: Mr. Chairman, I beg to move that clause 9 be amended as circulated:

In subclause (2)—

- A. In paragraph (c) delete the full stop and substitute a semicolon; and
- B. Insert immediately after paragraph (c) the following new paragraph—

“(d) to enter into or coordinate appropriate arrangements with such other competent authorities, public or private, responsible for the accreditation of institutions or the recognition of accredited programmes and awards.”

As I indicated, this is to allow arrangements with competent authorities such as the regional law associations. This is what this is all about, because there are treaties, I understand, with respect to the recognition of law degrees. You know lawyers always get special law qualifications—I am so sorry. I am being corrected here, that lawyers always get special treatment. I said that. [*Laughter*]

Sen. Seetahal: In paragraph C, before you go on, do you also mean to delete the word “and” there? So you have to delete it in B. This is in clause 9 we are speaking about. I believe that would be deleted in B. I do not see it there.

Mr. Imbert: Yes, you are correct. That is to come out.

Sen. Seetahal: So the amendment would read:

In paragraph B, delete the word “and”.

Mr. Imbert: It is a typo, we will sort it out.

Question put and agreed to.

Clause 9, as amended, ordered to stand part of the Bill.

Clause 10.

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

Mr. Imbert: Mr. Chairman, I propose the following amendment to clause 10 as circulated:

In subclause (2) delete the word “the” in the second place where it occurs.

Sen. R. Montano: This amendment does not make sense, because subclause (2) reads:

“The Council shall provide the Minister with such facilities as would enable him to verify the information...”

You want to say “would enable him to verify information”?

Sen. Seetahal: This is not the second place, this is the third place, because it starts with a “the”. Why can you not just say “in the second line”?

Mr. Imbert: Or “before the word ‘information’”.

Sen. R. Montano: I do not really understand clause 10(1). What exactly are you trying to achieve with clause 10(1)?

“The Minister may, after consultation with the Chairman of the Council, give to the Council, in writing, such directions of a general nature as appear to the Minister to be necessary in the public interest.”

Mr. Imbert: That is policy. That is why it is written that way. In other words, it is not the normal specific instructions. That is why it is worded in that way.

Sen. R. Montano: Could we not say then, “such policy directions”? Would that not be better?

Sen. Seetahal: Is there not a norm? Like in the Legal Aid Act there is something.

Mr. Imbert: Actually, there is no real norm for this. There are two forms. One is specific and general, the other is broad policy directives.

Sen. Seetahal: I am talking about the broad one. I have seen it in many other bits of legislation where you have a board of something or council such as in Legal

Aid. I think that is what Sen. Montano is talking about. If you want to have the court go and interpret this, then start from scratch.

Mr. Imbert: Do you have a form of words?

Sen. Seetahal: Not with me. I am sure the drafters should be familiar with it.

Sen. R. Montano: This is precisely what I was talking about. I do not have words either, but I would think subject to the draftsmen, of course, that if we put in writing, “such policy directions”.

Mr. Imbert: And we take out of a general nature. We will go with that. “Such policy directions as appear to the Minister.”

Sen. Seetahal: Maybe the drafters could deal with it and we will come back to it. Instead of us putting something and it might not be appropriate.

Clause 10 deferred.

Clause 11.

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

Mr. Imbert: Mr. Chairman, I beg to move that clause 11 be amended as circulated:

- A. Renumber clause 11 as clause 11(1).
- B. Delete the marginal note and substitute as the new marginal note the word “Appeals.”
- C. Insert the following new subclauses—
 - “(2) In any other case a person directly affected by a decision of the Council may appeal the decision to the Appeals Committee on the following grounds—
 - (a) that the Council failed to comply with the procedures laid down in this Act or any regulations or rules made under this Act and that the failure amounted to a significant breach of such procedures;
 - (b) that the decision of the Council is based on information that is substantially incorrect or is of insufficient weight to support the decision; or
 - (c) that the decision of the Council is arbitrary or unreasonable, or inconsistent with or unsupported by the policies of the Council.

- (3) For the purposes of this section there is hereby established an Appeals Committee which shall be comprised of three persons appointed by the President.
- (4) Hearings before the Appeals Committee shall be conducted in such manner and in accordance with such rules as may be prescribed.
- (5) The decision of the Appeals Committee shall be final.
- (6) The Appeals Committee with the approval of the Minister may make rules prescribing the matters required by this section to be prescribed.

Sen. R. Montano: Clause 11 really does not make sense.

“The decision of the Council shall be final in any dispute regarding assessments...”

And then clause 11(2) says:

“In any other case a person directly affected by a decision of the Council may appeal...”

What other case are you talking about? What you really mean in 11(2) is a person directly, taking out the words “any other case.” Is that not what you mean?

Mr. Imbert: Well, if you read it, you will see it refers to particular types of assessments.

Sen. R. Montano: No, no. You are missing my point. If you were to delete the words “in any other case” you would still have what you want. “A person directly affected by a decision of the Council may appeal the decision on the following grounds: A, B, C, and so forth.” But if you have the words “in any other case”, it is referring to 11(1), and 11(1) says:

“The decision of the Council shall be final in any dispute regarding assessments conducted by any other body.”

Mr. Imbert: This deals with specific assessments. It is assessments by somebody else.

Sen. Seetahal: So the council's assessment of another body would be final, but with respect to theirs?

Mr. Imbert: But with its own assessment, there is an appeals process.

Sen. R. Montano: That is not very clear. I understand what you are saying, but quite honestly, that is not very clear, and if we do not make it clear, we will be

subjected to having the courts interpret it for us and they can put their own spin on it. I would suggest, therefore, that if we are talking about assessments, decisions by the council, then we should say so in subclause (2), and we should say words to the effect that in the case of assessments by the council, a person directly affected by the decision may appeal, because when you say “in any other case” there is the possibility of confusion, and we should try and avoid that confusion.

Sen. Seetahal: I would have thought that in the first case, 11(1), if I may say, in reference to what Sen. Montano is saying, the decision of the council, these are all decisions, but in respect of the decision regarding an assessment conducted by another body, that is other than the council. So the council has a sort of supervising jurisdiction over other bodies, and it says so clearly, whether foreign or local, on the accreditation or recognition. So you have the University of London accrediting somebody and the council is looking to see whether they agree with that assessment, and that decision is final, but with respect to everything else in any other case, meaning all other decisions of the council. Unless you want to say in 11(1), “subject to subsection (2)”, or something like that.

Sen. R. Montano: Yes, that would be happier, because I am looking to avoid—

Sen. Seetahal: Maybe we could put that in 11(1), “subject to subsection (2).”

Mr. Imbert: All right. I have no problem with putting “subject to subsection (2)” in 11(1). So 11(1) would read:

“Subject to subsection (2), the decision of the Council shall be final.”

Sen. Seetahal: Yes.

Sen. Mark: Mr. Chairman, again, we are somewhat uncomfortable with Caesar going to Caesar. We have Caesar appointing all the members of the Accreditation Board and we also have Caesar appointing the members of the appeals committee.

We find this very disconcerting, and it is a pelau kind of situation, and certainly, this thing is going to be tested in court quite regularly, because you see, once people perceive that this thing is an incestuous partisan arrangement, how can you have the Cabinet appointing persons to the accreditation committee? And when I feel aggrieved as a citizen of this country, I have to meet the same heavy hand of the State? I am not getting any justice there.

It is a route now to take me straight to the High Court for judicial review, because you see, justice must be seen to be done and not only be done. I am saying

this is a route for chaos, confusion and litigation. That is what it is going to lead to, and I do not know what is the motive.

The Government may have a motive for doing this. There may be a hidden agenda why they want to have everything being done under the auspices of the Cabinet of Trinidad and Tobago. I think this is wrong. We would not be able to support that. Mr. Chairman, this is why we said in principle, one of the ways of trying to alleviate this kind of suspicion is to have the President appoint after consultation. Now they have gone with the President, which is the Cabinet, and they have to stick with the President again. Initially, the Minister wanted to do his own thing.

3.15 p.m.

I think this is a very clumsy arrangement here and it is going to lead to a lot of litigation in this nation, particularly given the hot nature of the politics and how people see things in this light.

Mr. Imbert: The intent of this amendment—the Appeals Committee is administrative in nature; it does not have the power of a court. In order to give the Appeals Committee the power of a court, we would be making fundamental legislation here.

Sen. R. Montano: It has got a quasi-judicial function.

Mr. Imbert: It is administrative review.

Sen. R. Montano: But it still has a quasi-judicial function.

Mr. Imbert: That is not the intent. The intention of this amendment is to keep things out of the court. So if a person is aggrieved by a decision of the council they go to another body which reviews the processes, the administrative approach to dealing with a request for registration or accreditation. The person always has the right of recourse to the court. We are trying to keep most of these matters out of the court by giving the person another body he or she can go to, and this is typical. If you take the CXC examination, for example, if you are aggrieved with the mark you got, you go back to the very CXC to do an administrative review and the persons involved in the decision are not allowed to participate in the process. This is why this is a second body, a different group of people who would review the manner in which the council approached the request for registration.

Sen. Mark, in my opinion, this is quite the opposite of what you said. This is to give people a second opportunity to make their case before an administrative body

and then, if that does not solve the problem, they go to the courts. We are trying to avoid recourse to the courts.

Sen. Seetahal: If they did not have this, then every time you want to challenge the council you would have to go to court, and that would be a tremendous expense, so you make the challenge here, and despite saying that the decision is final, that has been held to be nothing, because once it is illegal, unreasonable or irrational you can go to the court anyway.

Sen. R. Montano: Just help me a little; I have kind of lost it. There is an appeals committee?

Mr. Imbert: Yes.

Sen. R. Montano: Where is that?

Mr. Imbert: In the amendment, but it is administrative.

Sen. Mark: Mr. Chairman, may I indicate what I am concerned about to the Minister? What criterion would the Cabinet use to select the persons? It is rather broad and open. When you are dealing with legislation of this nature—

Mr. Imbert: Do you want to qualify them?

Sen. Mark: I do not know if the guidelines will be coming in the regulations. It is a bit clumsy.

Mr. Imbert: Sen. Mark, I understand you and we can certainly, in the regulations, qualify the persons who would be on this Appeals Committee; they must have experience or qualifications in tertiary education, things like that; it would not be an arbitrary thing. I hope you understand that the intent of this is to keep people out of the court, not to send them.

Sen. R. Montano: I understand that. Can the President appoint anybody he likes?

Mr. Imbert: No, this is the Cabinet. If you look at legislation on the books already, if you look at the National Insurance Board, for example, this is the pattern. It is the same format used. The National Insurance Board is appointed by the Minister and the tribunal is appointed by the Cabinet.

Sen. Bro. Khan: Mr. Chairman, I fully appreciate the question of having a second review, so to speak. Part of our history is that when it comes to appeals or reviews, the question of objectivity is always in question. You may recall that in my contribution I made mention of this. I would like to reinforce the point again

about objectivity. I do recall many years ago reviewing this question. The persons we are putting is one thing, but who puts the persons is the next thing. This point has been taken care of within the framework of our Constitution, within the laws that are on our books, so to speak.

To that extent I had suggested in my contribution that the President, “in his own right”—those are the words I had used in my contribution to bring the point that though we know, per se, that when we speak in the law of the President, as it is here, it is through the Cabinet. The Minister in trying to meet that bridge had said that he removed the point from the hands of the Minister and put it in the hands of the President. One would think that with a minister, from a practical point of view, that would have gone to the Cabinet too. But as it is here, we are practically putting it into the hands of the Cabinet, as such.

My suggestion was that we should take it to a next step, to bring objectivity into place and the perception that, very often, our people have that when we go to these types of tribunals, appeal courts or appeal committees, as is mentioned here, that objectivity is lost, in that you are going from Caesar to Caesar, but a Caesar who was appointed by a bigger Caesar, so we are playing in plenty Cs so to speak.

To some extent, to get away from that sort of thing, and even to reinforce what was established before in our Constitution and other laws, if this point could have been taken and definitely brought to bear that the President, in his own right, and after consultation with A, B or C, appoint those persons. It is against that background that I had placed my suggestions. We are in another area, but I think this is a nice place to talk about it. I seek to amplify along those lines.

Mr. Imbert: Bear in mind that this is administrative review.

Sen. Bro. Khan: Whatever it be.

Mr. Imbert: This is not a court or tribunal.

Sen. Bro. Khan: But you are using the word “appeal”. From the time you bring in an appeal for an administrative or whatever purpose, it is here that someone is aggrieved or not satisfied with whatever is taking place at this level, and it is being dealt with at another level. Whatever the frame or the parameters we are dealing with, at the next level, the question of objectivity is one that is sacred and we should definitely pay attention to.

Sen. R. Montano: What Sen. Bro. Khan is saying makes a lot of sense. We must remember something: Here we are talking about accreditation. Somebody is going to come down with a degree from somewhere or he has done something, and

Accreditation Council Bill
[SEN. R. MONTANO]

Tuesday, May 11, 2004

it is going to be his future, his livelihood, his profession involved; now all of a sudden he starts getting a hard time. It is not inconceivable that this person may think that he is getting a hard time because of his political bias, leanings or what have you; especially having regard to the fact that the Accreditation Board is effectively appointed by the government of the day.

Remember we are not talking about this Government now; we are talking about any government of the day. The person is turned down by the board, and you know that whether it is true or false, the fact of the matter is that the board is going to give a reason that is going to sound reasonable until, of course, it is tested. The last thing that person is going to want to do is to have to go through himself to herself.

Let us assume, for the sake of argument, that, in fact, the board has been biased against the particular individual. Let us assume also, for the sake of argument, that we in this Senate let this thing go through so that the Government effectively appoints the Appeals Committee. Do you honestly believe that an appeals committee appointed by a government of party A, B, C, or D is going to rule against the council appointed by the same party in a particular matter that is high profile, highly contentious and everything else? The answer is going to be no. In fact, the guy is going to get blown away, and the perception is going to be there.

Let us avoid that perception, and let us put it so that the Appeals Committee, at least, is appointed independently of the government of the day. Do not think about it as being this Government, your Government. Think about it as being whichever government. Would you be happy if it was our government? Answer: probably not; and that is the truth. When you are making laws, you are not making laws to suit you today; you are making laws to suit the country. The argument that Sen. Bro. Khan has proposed is a good one.

Sen. Dr. Saith: You are accrediting the institution from which this man came. The Accreditation Council, as Sen. Seepersad-Bachan has indicated, would form part of a network of accrediting bodies and has to live up to those standards. I do not understand why the feeling is that some people who have this responsibility would suddenly not carry it out, because if they do not they would not have the ability to do this work and be accepted internationally. You are dealing with international institutions.

Sen. R. Montano: Okay. Let us assume that everything you said is correct, then why are we worried about this, why is there an appeals committee?

Sen. Dr. Saith: Because an institution may apply for accreditation, it has not been accepted and may wish to have a review.

Sen. R. Montano: Look at what we are saying:

“In any other case a person directly affected by a decision of the Council...”

We are not talking about an institution directly affected; we are talking about a person directly affected by the decision of the council.

Sen. Seetahal: A person is a council.

Sen. Prof. Ramchand: They may make a judgment about an institution.

Sen. R. Montano: I understand that. [*Crosstalk*] I happen to agree with this clause. In other words, Mr. X comes down with a degree from Y university and the council, for whatever reason, refuses to recognize Y university, but Mr. X feels that this is being done because of his political leanings, whatever they might be. [*Interruption*] Do not laugh; it can happen.

Mr. Imbert: Could I just interject here. The purpose of the council is to accredit institutions; it is not the case of a person as Sen. Prof. Ramchand pointed out. The institution will have to apply for accreditation, not the man or woman with the degree. The institution has to register and apply for accreditation.

The other point I wish to make is that in the Ministry of Planning and Development, the Minister has an appeals committee which, quite often, goes against the decisions of the planners in the Town and Country Planning Division. Quite often these are completely different persons and they quite often take a contrary view. In the example I gave about NIB, the tribunal there is appointed by the same Cabinet. It quite often goes against the decision of the National Insurance Board. If it was in the realm of a court, I could follow the arguments, but this is administrative, so there is a lot of precedence for it.

Sen. Prof. Ramchand: I really find it hard to live in a world where a committee of experts, looking at the accreditation of a university, is going to practise bias against an individual, and if there is an appeal it would be because somebody thinks they made a mistake, they did not have enough information.

Mr. Imbert: Precisely; it is just an administrative review.

Question put and agreed to.

Clause 11, as amended, ordered to stand part of the Bill.

Clauses 12 and 13 ordered to stand part of the Bill.

Clause 14.

Question proposed, That clause 14 stand part of the Bill.

Mr. Imbert: Mr. Chairman, I beg to move that clause 14 be amended as follows:

- A. In sub clauses (1) and (2), delete the words “with the approval of the Minister”
- B. In sub clause (2) immediately after the word “determine” insert a comma and the words “except that salaries in excess of one hundred and twenty thousand dollars per annum shall be subject to the approval of the Minister”
- C. Insert immediately after sub clause (2) the following new sub clause—
“(3) The Minister may by Order alter the limit stated in subsection (2).”

This amendment is in keeping with suggestions made by Sen. Mark.

We are deleting the requirement for the Minister to approve the secretary, staff and so on, and introducing the concept that salaries in excess of \$120,000 per annum or \$10,000 per month should be approved by the Minister, and we are allowing the Minister to vary the amount as necessary.

Sen. R. Montano: Just explain something to me: Subclause (3):

“(3) The Minister may by Order alter the limit stated in subsection (2).”

Mr. Imbert: Yes, we recognized that maybe 10 years from now \$10,000 a month might not be a big salary, so we thought that we should give the Minister the flexibility, in due course, to change the limit.

Sen. R. Montano: But the way we are changing it, the Minister could very easily alter the limit from \$120,000 down to \$60,000.

Mr. Imbert: That is not the intention.

Sen. R. Montano: I know that is not the intention.

Mr. Imbert: I do not see that happening. If you wish me to say increase instead of alter, no problem.

Sen. R. Montano: Yes, I would prefer that:

“...may by order increase the limit stated in subsection (2).”

Mr. Imbert: So we will change the word “alter” to the word “increase”.

Sen. Mark: Mr. Chairman, I have a difficulty with “The Minister” and not a ministerial team under the Salaries Review Commission setting terms and conditions, particularly as it relates to salaries. I can understand the limitation; in other words, beyond \$120,000 a year you need the Minister’s approval. But to go further and say that “The Minister may by Order alter the limit stated”.

Mr. Imbert: I just changed the word “alter” to “increase”.

Sen. Mark: Increase from \$120,000 to—

Mr. Imbert: It will go up, not go down.

Sen. Mark: I know; that is the difficulty I have.

Mr. Imbert: But before that the Minister was approving everything, now what I have done, in keeping with your request, is that the Minister has removed himself from the process of approving the salaries of a certain category of staff, and if I increase the amount, I will be removing myself from more categories of staff, not less; so I am following your suggestion, Sen. Mark. [*Laughter*]

Question put and agreed to.

Clause 14, as amended, ordered to stand part of the Bill.

Clause 15.

Question proposed, That clause 15 stand part of the Bill.

Sen. R. Montano: Mr. Chairman, 15(3) states;

“Except where the Council decides otherwise, a period of transfer on secondment shall not in any case exceed five years.”

Could you just confirm to me that I am right in my mind when I say that the council can keep the person who has been transferred for longer than five years? Am I correct in that assumption? Am I correct in the way I read it?

Mr. Imbert: Yes, it cannot be more than five years.

Sen. R. Montano: No; “Except where the Council decides otherwise,” so in other words, a period of transfer on secondment can, in fact, be more than five years if the council so decides. Am I correct?

Mr. Imbert: Yes, but they would also have to get the agreement of the other parties involved.

Sen. R. Montano: I believe that I am correct, you know, but I am just making sure that I am correct. I can see a situation whereby you have somebody on secondment, he is very good and everybody wants him to stay. He, of course, wants to stay because he does not want to lose all his privileges. In this clause, he can stay, provided that the council decides that he can?

Mr. Imbert: Yes.

Sen. R. Montano: That is what I was asking.

Sen. Seetahal: Can we delete the words, “in any case” in subsection (3), because that adds to confusion and it helps nothing. There is no reason for putting it in. So it will read:

“Except where the Council decides otherwise, a period of transfer on secondment shall not exceed five years.”

Mr. Imbert: No problem; out.

Sen. R. Montano: That actually is a lot clearer now.

Question put and agreed to.

Clause 15, as amended, ordered to stand part of the Bill.

Sen. Prof. Ramchand: Mr. Chairman, can we do clauses 16 to 21?

Sen. R. Montano: Let us read them first. [*Laughter*]

Clause 16.

Question proposed, That clause 16 stand part of the Bill.

Sen. R. Montano: Would you just explain something to me in clause 16. Obviously, 16(a) is clear. In subsection (b) which states:

“special grants or other funds as may from time to time be provided by the Government or any other entity or agency...for the financing of special projects and activities;”

What exactly are you talking about here? Just so I understand it. Are you saying that the Government, in addition to what is being appropriated by Parliament, can give them additional moneys?

Mr. Imbert: Well, the council would have its own allocation; it would be a line item in the estimates of expenditure, but another ministry, for example, may wish to use part of its allocation to make a grant to the council to perform a

particular function for it. Then you have the international agencies: the United Nations Development Programme (UNDP), UNESCO and so on, may wish to endow the council with a grant.

Sen. R. Montano: In subclause (c), what moneys would the council be receiving in connection with the performance of its functions?

Mr. Imbert: It may charge fees for registration or accreditation.

Question put and agreed to.

Clause 16 ordered to stand part of the Bill.

Clause 17 ordered to stand part of the Bill.

Clause 18.

Question proposed, That clause 18 stand part of the Bill.

Sen. R. Montano: Clause 18 states:

“The Council may accumulate reserves and such reserves and all other funds of the Council not immediately required to be spent...”

I do not quite understand. Every year Parliament is going to appropriate X amount of dollars to the council. In addition to that the council is going to get other moneys. Does the council not account for its moneys anywhere?

Mr. Imbert: Yes, in one of the amendments the council has to lay a report in Parliament and in this particular clause any unspent balances that may exist will become the funds of the council, so in making the appropriation for the next year the Government would, obviously, take a look at whatever funds they may have had from the previous year. It is standard.

Sen. Seetahal: They could invest it to buy a building or something for the council.

Sen. R. Montano: Clause 18 also states:

“...may be invested, from time to time, in such securities as the Council may deem fit.”

I do not know what happens in legislation, but sometimes when you are doing a will and you are giving the trustee of the will authority to invest funds, when you say they may invest in such securities, from time to time, as the trustee may think fit, you also put in the words “without liability for loss”. A potential problem could arise, in that, the council could invest in, let us say, the stock market and could

Accreditation Council Bill
[SEN. R. MONTANO]

Tuesday, May 11, 2004

invest in a blue chip stock such as Neal and Massy, Ansa McAL, Republic Bank or RBTT, any blue chip company, but something happens and for whatever reasons the stocks go down.

They have invested an awful lot of cash, let us say, using a hypothetical figure, \$100,000. They have put all their money in X bank stock only to find that tomorrow morning the stock is now worth \$80,000. Are they liable?

Mr. Imbert: Well, you are giving them the responsibility for the funds, but if you want to add, as a check and balance, “with the approval of the Minister, I will have no problem with that.

Sen. R. Montano: I would like some sort of check and balance.

Sen. King: “The investment as authorized by the Minister of Finance”.

Sen. Mark: I think the Minister of Finance should be a check. I want to put it in the hands of the Minister of Finance. [*Crosstalk*]

Sen. R. Montano: It is public money. I would like some sort of check and balance. Do you agree with me?

Mr. Imbert: We will accept the words, “with the approval of the Minister with responsibility for finance”, but just understand this is specific to investment in securities; it only deals with that.

Sen. R. Montano: No, no, no. They might decide that they want to buy some land or something.

Mr. Imbert: They can.

Sen. R. Montano: But what I want is “with the approval of any investment that they make”, it ought to be with the approval of the Minister of Finance. Again, what happens if they are going to buy some land in wherever?

Mr. Imbert: You do not want to fetter them unnecessarily; that goes back to this whole point about the Minister approving the entire staff establishment and so on.

Sen. R. Montano: All right. I understand.

Mr. Imbert: The point you made about the stock exchange is very valid and that is why the Minister of Finance should come in there. I think that should be it; after that it becomes cumbersome.

Sen. R. Montano: Okay.

Question put and agreed to.

Clause 18, as amended, ordered to stand part of the Bill.

Clause 19 ordered to stand part of the Bill.

Clause 20.

Question proposed, That clause 20 stand part of the Bill.

Sen. Seetahal: In clause 20 Minister, and I think I had raised it already, you indicated that “the Council” means council and not its members, but I do not know if that is clear: “The Council shall be exempt”.

Mr. Imbert: The council in this case is the body, not the people.

Sen. Seetahal: I know that, but will they know that?

Mr. Imbert: Well, if they are in breach, I can assure you that the officers in the Inland Revenue Division will be very vigilant. I am sure you may have experienced some.

Sen. Seetahal: No, I am totally above board.

Mr. Imbert: They very jealously guard our tax revenues, I can assure you. If there is no legislative authority for the granting of exemption for motor vehicle tax, they would not give it.

Sen. Seetahal: They would know from this, but is it clear that the “Council” is one body?

Mr. Imbert: We will make that clear to them.

Question put and agreed to.

Clause 20 ordered to stand part of the Bill.

Clause 21.

Question proposed, That clause 21 stand part of the Bill.

Sen. R. Montano: I would like to discuss this a bit. Clause 21 states:

“The Council may by resolution make rules for the proper control of the systems of accounting of the Council...”

To my layman’s mind I could make accounting rules and force the Auditor General to follow my rules.

Mr. Imbert: This is where the policy directives from the Minister would come in. They would be made to comply with international standards. For example, that would be a policy directive they would get, that the accounts must be prepared in accordance with international standards, so that takes care of that.

Sen. Seetahal: This relates to internal rules, does it not? They are really to speed up the whole thing.

Mr. Imbert: That is their own internal procedures, but when they come to actually publish the accounts they would have to do it in accordance with standard practice and they will be so instructed to do.

Sen. R. Montano: Could we look at clause 22 and, if necessary, come back to 21? The only thing is just in case there is anything in clause 22. I am buying your argument about clause 21. [*Crosstalk*]

Question put and agreed to.

Clause 21 ordered to stand part of the Bill.

Clause 22.

Question proposed, That clause 22 stand part of the Bill.

Mr. Imbert: Mr. Chairman, I beg to move that clause 22 be amended as follows:

Renumber as sub clause (1) and insert immediately thereafter the following new sub clauses—

- “(2) The Council shall, within six months of the end of each financial year, submit to the Minister an annual report dealing with the activities of the Council and containing such financial statements and such other information relating to the operations and policies of the Authority as the Minister may require.
- (3) The Minister shall cause a copy of the audited accounts prepared in accordance with subsection (1) and a copy of the annual report submitted under subsection (2) to be laid before Parliament within three months of receipt by him.”

These amendments deal with the question of a report being submitted to the Minister and laid in Parliament.

Sen. Mark: I suggest to the hon. Minister that as it relates to 22(3), I think three months is a very long period of time, having had the report in your

possession; I think it should be 28 days. It should be laid within a 28-day period, because if you receive the report today, you can be given a couple days to ponder on it, but three months is a rather long time to have received that report and have it in your Cabinet. I think that within 28 days of receipt of that report it should be tabled in the Parliament. I respectfully suggest that we amend the three months to 28 days.

Sen. Prof. Deosaran: Mr. Chairman, when the report is sent to you, as Minister, is it procedural that you send it to the Cabinet first?

Mr. Imbert: A Cabinet note has to be prepared and then the Minister will have to recommend to the Cabinet that the report be laid in Parliament. These things take some time, so this is why we said three months; we are being realistic. You will know that in the past a lot of these provisions were honoured in the breach, and I put in the three months because I think that a minister could adhere to this without too much difficulty. I think 28 days is cutting it a bit close.

Sen. Mark: Sen. Dr. Saith would tell you that we are in an information age; speed is critical if you are talking about development; time is very critical. As a Parliament I do not think that we should be going backwards. In 1994 the government passed the Regional Health Authorities Act, and it proposed, at that time, 28 days. I would hope, with your intervention, with the superhighway that you are seeking to establish, we can speed down that particular path. That is why I am suggesting rather than putting three months—even if we say a month, I will give you an extra two weeks.

Mr. Imbert: This is why I used the word “within” three months, so you have up to three months. I am just trying to be realistic. What is the point of putting 28 days when the record shows that is a difficult time line? Remember this is a new provision we are putting in; we are accommodating a request of the Opposition Members of the Senate that a report be laid in the Parliament. There was no such requirement before. Sen. Mark, be a little charitable, please.

Sen. Mark: When we come in we will put in the 28 days. Seeing that you are incompetent and incapable, we will manage better. We understand your limitations. [*Crosstalk*]

Question put and agreed to.

Clause 22, as amended, ordered to stand part of the Bill.

Clause 23.

Question proposed, That clause 23 stand part of the Bill.

Accreditation Council Bill
[SEN. R. MONTANO]

Tuesday, May 11, 2004

Sen. R. Montano: I understand what you are trying to do in 23(2), but this language is as clumsy as anything. It is extremely clumsy.

Mr. Imbert: But you understand it.

Sen. R. Montano: I understand what you are trying to do, but the problem is that you are opening up a serious can of worms. This particular drafting is not good. In fact, 23(2) is not making a lot of sense:

“Where a member of the Council is exempt from liability by reason only of subsection (1),”

What does subsection (1) say? It states:

“...no proceedings shall be instituted personally against a member of the Council in respect of any act done *bona fide* in pursuance of the execution of the functions of that member under this Act.”

Why do you need 23(2)?

Mr. Imbert: This is quite standard. If members of the council act in good faith, they are not personally liable, but errors are made. The council, itself, will become liable, but not the person. We are exempting the people on the council once they operate in good faith, but they can still make mistakes.

Sen. R. Montano: I understand that is what you are trying to do, but I am not satisfied that this is what you are doing.

Mr. Imbert: This is standard drafting.

Sen. R. Montano: No, if this is standard drafting then the standard is extremely low.

Sen. Seetahal: Could I just help with clause 23(1)? Why do we have “subject to subsection (2)”? It is not really subject to subsection (2). What you are say is that no proceedings shall be instituted in respect of *bona fide*. Subsection (2) is saying where they are exempt, so it relates to subsection (1), but subsection (1) does not relate to subsection (2). Do you see what I am saying? This makes no sense, “subject to subsection (2)”. If you delete those words and then read the clause, it makes more sense. Subsection (2) says:

“Where a member of the Council is exempt from liability by reason only of subsection (1),”

So subsection (2) refers you back to subsection (1). You do not need a double referral, because clause 23(1) is not subject to subsection (2).

Mr. Imbert: Actually, Sen. Seetahal, the part that sends you back is the last part of that subsection (2), but I accept that we can delete the words, “subject to subsection ”.

Sen. Seetahal: Subsection (2) sends you to subsection (1), but subsection (1) does not have to send you to subsection (2). Do your drafters agree?

Mr. Imbert: Yes, I agree that we can take out the words, “subject to subsection (2)” and just start with the words “no proceedings”.

Sen. R. Montano: Let us look at it again: “Where a member of the Council is exempt”, the council is liable?

Mr. Imbert: The council must be liable for mistakes. If someone has acted in good faith, but they made a genuine error, then the council must be liable.

Sen. Seetahal: So it is not personal liability— Somebody has to be liable. Who would we sue?

Mr. Imbert: Yes. Otherwise, what is the point?

Sen. R. Montano: This is bad drafting. In subsection (2) it states:

“...so however, that if in any case the council is not liable for any act of a member then subsection (1) shall not have the effect of exempting the member as stated.”

By using the words “so however” if the Council is not liable, then the member is personally liable? That is what you are doing. You might as well delete the whole clause.

Sen. Seetahal: What are you saying, Minister? In subsection (1) the person acting bona fide is not liable personally, then you are saying in subsection (2) where the member is exempt the council is liable; so for, however, if the council is not liable the member will not be exempt. Is that not a double kind of thing? Obviously—can we not just stop at the fourth line? Is that what you are saying, Sen. R. Montano?

Sen. R. Montano: Yes. Then you have a position where the council is liable if the member is bona fide, then you have a position where the council is not liable, if the member is not bona fide. Maybe you should put that in subsection (3):

“Where a member is not acting bona fide the Council is not liable.”

Mr. Imbert: That is really the intent.

Accreditation Council Bill
[SEN. R. MONTANO]

Tuesday, May 11, 2004

Sen. Seetahal: So what you mean is where a member is exempt from liability, the Council is liable to the extent that the council will be liable if the member or agent is acting bona fide. Is that what you want to say?

Mr. Imbert: I will get the drafts person to deal with it, but the point you made is correct, that you are looking at someone not acting in good faith. [*Crosstalk*]

Sen. R. Montano: But that is clear. Let us take it one step at a time.

“...no proceedings shall be instituted personally against a member of the Council in respect of any act done *bona fide*...”

So you know that if you are a member of the council and you act bona fide, you are exempt from liability. The second point: Somebody has done something, but he has acted bona fide, so the council is liable.

Sen. Seetahal: Is exempt only by reason of subsection (1). Do you need to say the third point?

Sen. R. Montano: You do not need to say the third point.

Mr. Imbert: We are trying to exempt the council in the third one.

Sen. Seetahal: But you have in the second one, “by reason only of subsection (1)”, meaning that he was acting bona fide. You are saying that the member is not liable if he is acting bona fide. If he is exempt because he is acting bona fide, to that extent only the council is liable or in those circumstances only. So if he is acting mala fides, the council is not liable.

Mr. Imbert: Yes. [*Crosstalk*]

Sen. R. Montano: You do not need to put it in as a third point; it is clear. Follow me: You do not need the third point. If you are acting bona fide you are exempt; secondly, if you are acting mala fides the inference is clear: you do not get the exemption. You do not need to put it in. My worry about putting it in is that you can now create all kinds of other confusion. I agree with Sen. Seetahal. Subsection 23(1) should read:

“...no proceedings shall be instituted personally;

(2) Where a member of the Council...”

Down to the fourth line:

“...a servant or agent of the Council,”

Mr. Imbert: Mr. Chairman, I have some proposals. In subsection 23(1) delete the words, “subject to subsection (2),” and in subsection (2) delete all the words after “Council” when it appears in the fourth line.

Sen. R. Montano: Let us look at it quickly. I am certain that it is right.

Mr. Imbert: It is right. [*Laughter*]

Sen. Seetahal: So which means if it is mala fides you can institute it. Under subsection (2):

“Where a member of the Council is exempt from liability by reason only of subsection (1),”

It means he is exempt only—then the Council stands liability. If therefore he is mala fides the Council would not be liable.

Sen. R. Montano: It is right now. You must forgive me, I just wanted to make sure.

Question put and agreed to.

Clause 23, as amended, ordered to stand part of the Bill.

Clause 24.

Question proposed, That clause 24 stands part of the Bill.

Mr. Imbert: Mr. Chairman, I beg to move that clause 24 be amended as follows:

Delete and substitute as follows—

“24. There shall be kept in the Ministry in such manner as may be prescribed separate registers of all post secondary and tertiary institutions registered or accredited in Trinidad and Tobago and of all accredited programmes and awards.”

Sen. King: Can we have an additional word put in that amendment, so that we link the institution with its accredited programmes and on the second to last line we add, “and of all their accredited programmes”, so we have a clean link with institution/programme?

Sen. R. Montano: That makes sense. I presume that is what you are talking about, the word “their”.

Mr. Imbert: The list is of all programmes, so it is clear.

Accreditation Council Bill
[SEN. R. MONTANO]

Tuesday, May 11, 2004

Sen. King: But you can have all the institutions on one list and on another list you can have all the accredited programmes.

Mr. Imbert: I understand that, but that is a matter that will go into the regulations. The regulations will give the form of the list. When the regulations come they would give an example of how the list is to be formatted.

Sen. King: That is not automatic.

Mr. Imbert: The regulations will come. You can put it there, but the regulations are going to come anyhow, which will give you the way the list will be published.

Sen. King: It does not logically follow.

Mr. Imbert: When the regulations come, they will contain provisions on the way the list is going to be assembled; that is what I am telling you. It will be prescribed by regulations.

Sen. R. Montano: Can you have an accredited programme that does not come from a registered institution?

Mr. Imbert: No.

Sen. R. Montano: So Sen. King's proposal makes sense.

Sen. Seetahal: You can have several institutions with the same programme, so you can have all the institutions registered in one and all the programmes, so rather than having "their" programmes—because it would mean that each institution would have the same programmes and another institution would have to register the same programmes. If we change it to "their" that is what it would mean, that each institution, will have to register with its programmes when it is registered. My understanding is that you have a list of institutions and the accredited programmes.

Sen. King: They change all the time.

Sen. Prof. Ramchand: When you list the accredited programmes you say such and such a programme at such and such university.

Sen. R. Montano: That is Sen. King's point and I agree with her.

Mr. Imbert: Do we need to deal with it at this stage, because I will be bringing the regulations? If we put "their" in you are forcing it to be done in a particular way.

Sen. King: That is what we want.

Mr. Imbert: You are sure you want to do that?

Sen. King: Yes. [*Crosstalk*]

Mr. Imbert: Sen. King, can you elaborate why you want it done in this way?

Sen. King: It would allow clarity for people going online to find out, “Where is my programme that I want to do, which institution is registered to do it, what are the awards being given for that particular programme and which institution would give particular awards?” It is just a matter of clarity and efficiency.

Mr. Imbert: All right. We are forcing it. We as a group are forcing the institution into doing it in a particular way.

Sen. King: That is right.

Sen. Seetahal: One more correction. In clause 24 as proposed you should have a capital R for register. The word register with a capital R is defined in the definition section, and the common R has a different meaning.

Mr. Imbert: Mr. Chairman, can we insert the word “their” between all” and “accredited” and use a capital R for register where it appears in the third line?

Sen. Prof. Ramchand: Is it possible that an institution is not registered, but one of its programmes is accredited?

Mr. Imbert: No, it must be registered first.

Mr. Chairman: Hon Senators, clause 24, is amended, by putting in capital R in line three for the word “registers” and the word “their” between “all” and “accredited” in line five.

Question put and agreed to.

Clause 24, as amended, ordered to stand part of the Bill.

4.15 p.m.

Clause 25.

Question proposed, That clause 25 stand part of the Bill.

Sen. R. Montano: Who is an unauthorized person or body?

Mr. Imbert: The council will establish the rules for the publication of its information. I cannot tell you now.

Sen. R. Montano: Help me here. Should there not be a definition to tell us who is an unauthorized person? We are creating a liability on the people for

\$10,000 per incident. The Minister is obviously an authorized person. What happens if another minister asks for information or a Member of Parliament and they give it to them? Should there not be something in the legislation? If you are going to define “authorized persons” in the rules, should there not be something in this clause or the definition clause referring to this?

Mr. Imbert: There are two authorities in this legislation, the minister and the council. It would be authorized either by the council or the minister in accordance with the rules. There is also the Freedom of Information Act. At this time this institution is not exempt from that.

Sen. R. Montano: I am asking for information. Is John Smith an unauthorized person?

Mr. Imbert: If the Freedom of Information Act requires the council to produce the information they have to. That would not fall under this clause. That would fall under that legislation.

Sen. Seetahal: I agree with what you are saying. If it is under the Freedom of Information Act there would be no unauthorized disclosure or unauthorized person. After listening to Sen. Montano, it is loose to make a criminal offence of somebody revealing information to any unauthorized person.

If somebody calls an employee of the council and says, “Could you tell me what I need to make an application?” Could you say in the widest sense that is not information connected with the functioning of the council? The person on the phone could be a Tom, Dick or Harry who could be an unauthorized person. Who is an unauthorized person? In the technical strict sense of the offence that would be a strict liability offence. The employee can be caught. His boss can ask, “Who is that you are talking to?” He says, “I do not know. A member of the public called in.” Suppose he has a bone to pick with him he could then raise this. You want to have confidentiality but I do not think at any cost.

Sen. R. Montano: There should be some tightening of the language to make it clear who is an unauthorized person. If you say “as defined in the rules and regulations”, I would buy that. There would be a definition and everybody would know what you are talking about.

Sen. Prof. Ramchand: Was it the functions or proceedings of the council?

Sen. Seetahal: Such as in the Mediation Act of Trinidad and Tobago.

Mr. Imbert: If you want to say “as prescribed”, no problem.

Sen. Dr. McKenzie: My problem is that if somebody wants to set up a school without wanting to do the research, he could tap into the council and get the information and curriculum of another school just like that. It is important that there be rules to regulate that.

Mr. Imbert: We can prescribe them in regulations.

Mr. Chairman, I beg to move that subclause 25(1)(a) be amended by adding the words,

“in accordance with the regulations” after the word “body”.

Once you say that this has no effect until the regulations are law, you cannot be prosecuted until the regulations are made law.

Sen. R. Montano: I was trying to make it certain.

Question put and agreed to.

Clause 25, as amended, ordered to stand part of the Bill.

Clause 26.

Question proposed, That clause 26 stand part of the Bill.

Mr. Imbert: Mr. Chairman, I beg to move that clause 26 be amended as follows:

A. Delete subclause (1) and substitute the following—

“(1) No institution shall carry on the business of post secondary or tertiary education or use any of the words ‘university’, ‘college’, ‘tertiary college’, ‘tertiary institute’, ‘polytechnic’, ‘community college’, ‘technical college’ or ‘technical university’ in its name unless registered under this Act and any regulations or rules made under this Act.

(2) A registered institution shall not

- (a) alter its accredited programmes without prior approval of the Council; or
- (b) misrepresent to the public the recognition gained by it for its programmes or awards.”

B. Renumber subclauses (2) and (3) as (3) and (4) respectively.

C. In subclause (3) as renumbered delete the words “subsection (1)” and substitute the words “subsections (1) and (2)”.

- D. In subclause (4) as renumbered, insert immediately after the word “Register” the words “and cause that information to be published in the *Gazette* and in at least two daily newspapers circulating in Trinidad and Tobago on at least two consecutive occasions.”
- C. Insert after subclause (4) as renumbered the following new subclause—
- “(5) An institution which fails to comply with subsection (1) or (2) is guilty of an offence and in addition to any other penalty imposed by this section is liable on summary conviction to a fine of twenty thousand dollars and to a further fine of five hundred dollars for each day that such offence is continued after written notice of the offence has been given by the Council.”

Sen. R. Montano: I do not have a problem with subclause 26(1). There are language institutions here teaching English. Quite a little industry is developing and it is quite serious. It is something to be encouraged. Would they be able to apply for this?

Mr. Imbert: Once their programmes are post secondary or tertiary they would fall within the ambit of this. There would be an analysis of their programmes. Once they are post secondary or tertiary. If it is conversational Spanish at secondary level it would not fall under that.

Sen. R. Montano: On one hand I agree completely with the obvious policy, but on the other hand I am looking at the fact that it was not until the fall in the value of the boliva that we began getting these Venezuelans here. There are many young people who are spending around \$2,500 to \$3,000 a month. That is what they are bringing into the country. When you multiply that by the number of students it is quite a little business coming in with the landladies.

Mr. Imbert: If they apply for registration and accreditation the schools would get a stamp of approval which would encourage the growth of those schools.

Sen. R. Montano: This is what I want to encourage.

Mr. Imbert: The Venezuelans would know there is an accredited school here to international standard.

Sen. Dr. McKenzie: Why do we not have technical institute? You have technical college.

Mr. Imbert: Fine. I agree.

Mr. Chairman, add the words “technical institute” after “technical college”.

Question put and agreed to.

Clause 26, as amended, ordered to stand part of the Bill.

Clause 27 ordered to stand part of the Bill.

Clause 28.

Question proposed, That clause 28 stand part of the Bill.

Sen. Prof. Ramchand: You had relented on leaving the two years. Even though they have not been registered and evaluated they would be considered as lawfully performing their functions. If I know of a place within these two years that is defrauding students, what can be done about it?

Mr. Imbert: There is something to deal with misrepresentation.

Sen. Mark: I do not know if the Minister would like to consider the review after three months. It should be tailored in Parliament.

Mr. Imbert: No problem. We would add the words “shall be laid in Parliament within three months of receipt”.

Question put and agreed to.

Clause 28, as amended, ordered to stand part of the Bill.

Clause 29 ordered to stand part of the Bill.

Recommitted clause 2.

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

Mr. Imbert: In clause 2, the definition section, change the word “attitude” to “aptitude”.

Question put and agreed to.

Clause 2, as amended, again ordered to stand part of the Bill.

Schedule ordered to stand part of the Bill.

Recommitted clause 10.

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

Mr. Imbert: Put the word “policy” between the words “such and direction” and delete the words “of a general nature”.

Question put and agreed to.

Clause 10, as amended, again 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 amendments, read the third time and passed.

Mr. Vice-President: We shall now take the tea break and return at 5.25 p.m.

4.35 p.m.: *Sitting suspended.*

5.25 p.m.: *Sitting resumed.*

TELECOMMUNICATIONS (AMDT.) BILL

Order for second reading read.

The Minister of Public Administration and Information (Sen. The Hon. Dr. Lenny Saith): Mr. Vice-President, I beg to move,

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

The reasons behind Government's proposed amendments to the Telecommunications Act are four fold. The first reason is to correct certain drafting anomalies in sections 1, 2, 6, 18, 41(3) and 41(4). Secondly, we wish to create a piece of legislation that is technologically neutral and able to remain relevant in the face of generally fast-paced development of technology in this sector. Thirdly, it is to bring clarity to certain provisions that could be considered ambiguous, in particular, sections 2, 13, 16, 17, 18(3), 18(5), and 33 are relevant. Fourthly, to create a sustainable framework for competition in the sector in which the incumbent operator and new entrants would have a fair opportunity for competing and surviving in this newly liberalized environment, in particular, sections 24, 25, 26, 29, 31, 41, 50, 65, 73 and 78.

It is intended that once these amendments are passed the Government would move swiftly to proclaim the Act which would allow for the full liberalization of the telecommunications sector in this country. We on this side have always been in support of this objective which we see as the essential element in the modernization of our society. We supported the Bill in its original form and we continue to support the intent behind the Bill. We are implementing our national information communication technology plan to fully develop our information and communication technology capability in the country. A fully liberalized telecom sector is key to that plan being implemented and successful.

This plan would enable us to develop the information industry to create a knowledge-based society in the country; to provide a quantum leap in e-commerce; to have the fullest utilization of our education system and to make technology and communications accessible to all communities of the nation. We seek to establish electronic government in the country. None of this is possible unless we have good communications in the country at a price that is affordable and would assist in the development of the sector. These amendments are also in keeping with the requirements of the International Telecommunications Union and our obligation to the World Trade Organization in respect of legislative reform.

I will now go through the proposed amendments one by one. The first amendment deals with section 1(2) of the Act. Under the current provision, when the Act was partially proclaimed only sections 2, 4, 5, 6 and 9 took effect. We now need to proclaim sections 77, 81, 82, 83, 84 and 85. This amendment would enable us to do that.

Clause 2 deals with the point I raised about making the Act technologically neutral. That is, to amend definitions so that they are not tied with a particular technology that exists now, but conscious of the rapid development in this area, to put our definitions in a form that would cover what is there now and what it is likely to be in the future. Where the Act talks about a particular technology we propose terms which deal with what we are trying to do rather than how we are doing it. I would give you an example. As the public telephone service is now defined, it relates to the traditional system of a public telephone system which is landline and to the systems provided by TSTT. We want to change this definition to interactive voice communication. We would not be regulating the present landline system, but any system which deals with transmitting voice. If it is wireless tomorrow or VoIP the day after, this definition would cover it. In terms of the definition of telecommunications service and equipment universal service, this has been the philosophy behind changing the definition.

Section 6 of the Act deals with the way the board is constituted and the role of the executive director. It seems to suggest that for the board to be properly constituted the executive director must be a member of the board, but in section 8 the executive director is not seen as a board member, but a person appointed by the board to manage the affairs of the Authority and taking direction from the board.

In these amendments we have sought to make it quite clear that the executive director is appointed by the board to manage the affairs of the board. He would sit on the board in that capacity and would not be a member of the board. The problem that exists now is if the board is to be comprised of the members of the board and the executive director, and the board has not appointed an executive

director, how would you get an executive director on the board so the board would be fully constituted? That was obviously an error in the way it was set up. These amendments deal with that problem.

In section 13, the quorum of the board is now set at four. I think good corporate practice as well as common sense tells you that you need to have an odd number with respect to a quorum. We are seeking to ensure that in any decision taken by the board there would be a clear majority. We are amending the quorum of the board to be half the number on the board plus one. If there are 12 members on the board, that would be six plus one equals seven. If ten members turn out, in such a case the chairman would have the original and casting vote. We have removed the possibility of a hung board. I say no more. We know what problems hung boards or Parliament could generate.

Section 17 protects board members from personal liability. We believe that subsection (2) throws some doubt on that matter and to remove any ambiguity we are amending it to make it quite clear that members of the board would be protected against personal liability.

In section 18 we are seeking to make it quite clear that the Authority would also be responsible for quality standards in the sector. It is implied there but we are making it quite clear. One of the avenues available to a regulatory Authority to ensure that the role as regulator is followed, is to set quality standards. We are doing it under the Regulated Industries Commission (RIC). WASA and T&TEC talk about what level of service must be provided; the time lag people must get when they make a complaint and all the questions of the quality of services being provided. The Authority will set those standards for all players in the industry to follow.

Section 18(5) talks about the Authority acting in an objective and non-discriminatory manner. We are strengthening that section to read objective, transparent and non-discriminatory manner. It is reinforcing the obligation of the board to be totally transparent in its dealings.

Section 21 begins to deal with the environment that we hope to create, where we are moving from a virtual monopoly to a competitive environment. We have gone through those aspects of the Act to ensure that whatever is there does not perpetuate anti competitive practices, but really makes it competitive.

Under section 24, public telecommunication service providers either existing or who would come on board are required to refrain from terminating the services of a user or any other provider without approval of the Authority. We believe that

was not the intention. It was that you could not terminate the services of a provider because that would allow you to control the competition. It was not intended that the individual user who has a commercial arrangement with the provider should not be terminated until the Authority acted. This would be subject to the normal commercial arrangement. If there were a reason someone felt aggrieved there would be the Complaints Council, as you would see later in the Bill, to deal with that. If you leave it that way it means that if 10,000 persons decide that they have a dispute, the Authority would have to adjudicate. We are restricting a provider who may be using another company system to provide services. If there is a dispute it must go to the Authority because the person who provides the service can deny the other person use of it.

As I indicated, the Authority would set up quality of service standards and a consumer complaints bureau would be set up in the Authority for those users of a particular service who have problems.

Section 24(2) as it is now drafted places the requirement for the provision of certain technical information solely on the dominant service provider. If we open the sector and more players come in, at some time the dominance of that provider would go. We cannot have a situation where although there might be other players who are dominant in the sector, they do not have to provide information. Only the dominant provider at the start has to provide it. We widen that to say any provider would be required to provide this information. Similarly in subsection 25(3), we are saying that as the industry develops whatever information is required from one provider can be requested from all other providers.

We have looked at the problem of interconnection as people come on. When a new cellular provider comes on at some point he has to interconnect with the existing TSTT line. We tried to give some flexibility to the Authority in developing different mechanisms on how to manage and cost these interconnections to ensure that the provider does not use his monopoly to prevent or raise his rates that would make people coming in uncompetitive.

As a result of all those changes in sections 21, 24 and all the other sections which deal with dominance, we can remove the question of dominance. We are deleting subsections 25(4) and (5) which talk about dominance because we have removed the need to define dominance.

The way section 26 is now worded, if there is a dispute between two providers both parties must want the assistance of the Authority before the Authority can intervene. We believe that could lead to either side taking advantage. With the

amendment, if one party has a problem the Authority can now intervene. If the argument is going between TSTT and a new provider about the charge for interconnection, both parties would have had to come to the Authority. If one party reaches the point where he or she cannot agree the Authority could intervene. No party can use this clause to continually frustrate the arrangements which we are seeking to achieve.

The amendment to subsection 29(2) deals with the jurisdiction of the Authority to establish pricing mechanisms and to control cross subsidies in respect of any public telecommunication provider. This is important because if you have an established provider and you do not deal with the question of whether they can take profit from one operation and subsidize another where there is competition, you would be placing the new entrants at a disadvantage. They may be prepared to provide that service at a low cost because as a total entity they are making profits elsewhere. The person who is coming in is only providing service there. He has no mechanism of cross subsidizing. We need to give the Authority the ability to check how services are being priced.

With regard to subsection 29(3), the Act says that the Authority shall regulate prices for public telecommunication services and international incoming and outgoing tariffs. In reality, the Authority does not have oversight over international tariffs because that is negotiated between who is here and the international body. Leaving it in would create an expectation that cannot be satisfied. We have taken it out and we would only include prices over which the Authority can assume regulatory control.

Subsection 29(6) talks about competition as a precondition to regulating prices. The Authority would only regulate prices when there is competition. Although competition is desirable, it is possible not to have competition because no other provider is willing to enter that market at a given time. If the Authority does not have the power to set prices in such an arrangement, there would be a loophole where a provider can charge anything. In theory there can be competition, but in reality there is none because no one is coming in and the person is free to charge what he wants. We seek to amend the Act to say that is not a desirable position; that loophole should be closed and the Authority should have the right to set prices. In addition, the Authority should have the right to say how low you can price in a particular area to avoid a provider with the resources now from pricing his services so low that he drives out competition. The Authority must have the power to look at the rates being charged to ensure that it would not be so low to drive out competition. The amendment to section 29(6) covers that situation.

Sections 31 to 39—When the Act was passed it basically said that TSTT, their first licence would be granted a concession for a maximum of four years with a

guarantee for four more years. By extension, if somebody is coming in that person would have to get the same four years. We know that is too short a period for someone making an investment. We are trying to say that the new concession would be granted to TSTT because their old concession disappeared for four years and the renewal period would remove the limitation of four years. Somebody coming in would get four years plus a longer period. You can renew licences for a period that is long enough to encourage people to invest because they have a long enough period to recoup their investment.

Sen. Seetahal: I am not sure that I understand the date. I am reading the Explanatory Note and I see the 2005 part.

Sen. The Hon. Dr. L. Saith: When the Act was passed in 2001, four years would take you to 2005. We are already in 2004. If you extend it to 2005, you would give one year with a renewal for one year. We are saying remove that limitation.

Sections 33 and 34 deal with notifying the Authority if you want to dig up a road. The way it was worded seemed to suggest that the Authority has control of this and that was not the intention. Control remains with the agency that has responsibility for whatever facility you are using. The idea at the time was that if a provider said that he needed to run some lines down the Western Main Road, he should notify the Authority so they could tell the other provider that they are allowing the first provider to run down the Western Main Road and if you are interested, please take advantage of this so when you go to the Highways Division you can all do it at once. It was never meant to usurp the function of the Highways Division. We are making it clear that the notice and the fact that you have to come to the Authority do not remove the responsibility from you of getting the permission of the agency that has power over the facility.

Section 34 deals with the interchange utility installation owner and we have substituted that with the word "Authority" so that there is no confusion with Telecom Authority. We use the same term right through.

5.55 p.m.

Section 41 talks about spectrum management. We are proposing an amendment to say that the Authority would develop a national spectrum plan for approval of the Minister to manage and regulate the use of spectrum. Spectrum is a valuable resource. It is a resource that the country has and, therefore, there has to be a plan developed and approved for its use, which would guide the Authority in giving licences and in managing the telecommunications sector. Similarly, in section

41(3) and (4) the term is being amended to make sure that when one talks about “Spectrum Plan”, one is talking about “The National Spectrum Plan”. These amendments are in clauses where there can be ambiguity and so we are trying to make it clear what we are talking about.

Section 50 talks about the power of the Authority to scrutinize the activities of the providers licensed under this Act. The way the current provision is written the inspector has the authority to test any equipment being used, but it restricts the examiner from examining what that equipment is being used for. And as we move more and more into the new technologies, it is important that you not only monitor the fact they are meeting their licence requirements in terms of the equipment, but also the use to which it is being put. We have sought to expand section 50 to introduce the word “traffic”. It is not only test equipment or article” but to test traffic being put across the equipment that is in the providers’ control.

Section 65. The way it is worded says persons who “knowingly” commit whatever offence proposed in section 65. It is quite clear what the concerns are.

“5. A person who knowingly—

(a) fails to comply with...the Act.

(b) commits a material breach...

of the licence.

(c) operates a station or uses equipment...

(d) obstructs or interferes with ...transmission...”

In other words, it is quite specific what these offences are and we felt to leave in the word “knowingly” merely left it open to some judgment. It is either you know what you are doing or you do not. So we are removing the word “knowingly” to make it quite clear that the loophole is not there to be taken advantage of.

In section 73, in the case of an emergency, it says the Executive Director can communicate directly with the Minister of National Security and the Minister of Telecommunications. We are saying that this leaves out the board. At the same time that he or she is communicating with the Ministers, the Executive Director, should, at that time, also communicate with the board because there may be a situation where there is dialogue and communication going on between the Executive Director and the Ministers without the board being informed. So that merely seeks to close that gap, as we see it.

Under regulations in section 28 we want to ensure that the Authority has the power to set quality of standards and regulations, and we have included in section 78 where the Minister may make regulations, we have added “quality of service standards” to the list that is now there.

Mr. Vice-President, in light of the recent discussions about call centres and the VoIP service fees, I thought I would just touch on this subject a bit, although it may not be particular to the amendments being proposed.

VoIP is really a generic name for transporting voice traffic using the Internet. When it is done there, there is some debate as to whether it is in competition with other public telecommunication operators such as TSTT, which is using landlines. The way we have worded this, if you are, in fact, transmitting voice as distinct from transmitting data, it falls under the definition of a public provision of telephone service. The Act is going to apply to persons who are providing such services for voice transmission. Not email, not website, not buying over the Internet, but voice service and they would be required to obtain a licence to operate under the regulations. Over the last few years this has become more and more important to regulators and my information is the UK implemented such a framework in 2003 using the concept that we have used of a neutral technology definition. In Canada, it is the same. In the USA, the Federal Communication Commission (FCC) has now issued a notice of proposed rule to cover regulations because it is seen as a growing sector.

Turkey, Panama and Hungary have introduced regulations to treat with VoIP and to treat it as no different from voice telephone. India, Singapore and Peru already have regulations. Our amendments would make it such that if it were being used for voice they would have to get a licence and be regulated. It does not mean that they would not get a licence, but it does mean that it would be regulated.

So that once the Act is proclaimed the Telecommunications Authority will be required to put out the regulations which will govern the operations of VoIP, and under those regulations, would have to issue a licence to such a provider.

As far as the Internet service providers are concerned, so long as they are not transmitting voice they would not be required to have a licence. A licence would only be applicable if they are transmitting voice. Are we seeking to regulate Internet services? The answer is only where it deals with voice transmission

Other services would not be regulated. Content—not regulated in this Act. It is merely where you are now able to use a technology to compete with a voice system that they need to be regulated.

Sen. Prof. Deosaran: I need to ask a question. And it might, perhaps, arise in the debate. Are you making a distinction between a voice transmission and a written transmission through a similar medium, and for what reason, so as to add a cost to the voice?

Sen. The Hon. Dr. L. Saith: The voice competes with other providers. [Interruption] There may be others. I go back to tell you that because it is growing, other countries have recognized the need and I will go through it again, Mr. Vice-President: the UK, Canada, the US, Panama, Hungary, Turkey, India, Singapore, Peru. I just wanted to make that point.

The intention of the Bill and its amendments remain the same. To create an environment to open up the sector, to create competition; to prevent anticompetitive policies especially in the field as I mentioned, cross subsidization; making services available to suppliers on a timely basis. The whole intent is to build on what was done in 2002, to make sure that we can open up the sector. I trust, therefore, that if we agree that is a desirable situation that we will support the amendment. Thank you, Mr. Vice-President.

I beg to move.

Question proposed.

Sen. Carolyn Seepersad-Bachan: Thank you, Mr. Vice-President. I am pleased to make a contribution here this afternoon on this very important Bill, to amend the Telecommunications Act of 2001.

Mr. Vice-President, as far back as I can imagine, it was well established that the convergence of technologies, telecommunications, computers and broadcast information would create new divisions in the economic and social development and circumstances of countries around the globe. In a recent release by Mr. Selby Wilson from the Caribbean Association of National Telecommunication Organizations, he mentioned that telecom and computer as an entertainment business is growing at a rate twice as high as the total economic growth worldwide. It was imperative then and it still is, that as technology advances at this rapid rate that we ensure that this information revolution does not create further inequity between developed and developing countries, what we know as the digital divide. So from as far back as 1986, I think, the first time that I participated in the telecommunications sector, there was also this concern about the digital divide and narrowing the digital divide.

Mr. Vice-President, I stand here having seen three Bills come before this House, the Telecommunications Bill in 1991 which was passed in both Houses,

not proclaimed, then the 2001 Bill which was passed with parts of it not being proclaimed and today, the 2004 Bill.

It is amazing to note that as far back as 1986 or 1987 as we spoke about telecommunications and narrowing this digital divide and taking advantage of the telecommunications sector, that so many other countries that were behind us are now way ahead of us. It is always amazing that every time a PNM administration comes into office for some reason we take a retrograde step in terms of telecommunication. [*Desk thumping*] In 1991 the Act was passed but not proclaimed. It was suggested in that Act transparency, objectivity, openness, fairness and all the famous terms we love to hear about in the telecommunication sector. That Act was also based on a vision and a policy for this country in terms of developing what we call that knowledge-based sector, because as far back as that time was envisaged the need for a knowledge-based society. From 1991—1995 nothing happened and then in 1997 I had the opportunity to participate in a Cabinet appointed committee. Because of the long time that had elapsed, from 1991—1997, Cabinet decided to take a real look to determine if the Act was still relevant or if new provisions were required to keep up with this fast-paced changing industry. As a result, after the policy committee met and reported to the Cabinet, the legislation of 2001 was developed and passed in the Parliament in 2001.

At that time, the 2001 Act was designed to cater for an appropriate transitional period and implementation plan. The Bill was passed in two stages. The first stage enabling the establishment of the Telecommunications Authority to allow for the establishment of the administrative machinery, location of the Authority's offices and selection of training for its staff. The second stage remained part of the Bill and would take effect on dates to be fixed by the President on proclamation, depending on the success of negotiations with the incumbent for interconnection and the first right of refusal. Secondly, the establishment of the necessary systems, processes and procedures to allow for the invitation and selection of licensees and concessionaires.

I stand here a bit disappointed in what I see before us in this Bill, and I want to say from the outset that the Opposition will not be supporting this Bill. We see this as a Bill designed to protect the incumbent, a Bill designed not to promote competitiveness in the society; a Bill designed not to promote the knowledge-based society. This should have been seen as enabling legislation; quite on the contrary.

The primary objectives of this Bill appear to be to consolidate TSTT's position in the market place thus presenting all new providers with a difficult task to

Telecommunications (Amdt.) Bill
[SEN. SEEPERSAD-BACHAN]

Tuesday, May 11, 2004

competition; regulating and licensing providers of the Internet—new government policy. In so doing the freedom to utilize this technology in a competitive and free way will no longer exist. Wherever this has been tried in other countries it has failed. TSTT is a dominant provider and as such special regulatory provisions must be made to ease the transfer from a single dominant provider to a competitive environment and the creation of a level playing field.

Whereas several amendments seem to try to bring back into the centre the dominant provider and whereas we agree that in the past Bill it was asymmetric, it was asymmetric for a reason and that is because you must recognize the advantage of the incumbent and there must be a tilted scale. When competition takes off and as the sector develops, there is nothing wrong with the authority and the legislative framework being amended to adjust that scale. I say this because Sen. Mark raised an important issue in response to Sen. Dr. Saith when he spoke about voice over IP and so forth. We must remember at what stage of development we are right now. We cannot compare ourselves, this country, Trinidad and Tobago, with several other countries. If the Act had been passed in 1991 and if we had promoted competition then, definitely we could be doing what these other countries are doing and that is the point we must remember. We must take things in their context and put them in our context for our benefit and that is what we must understand.
[Desk thumping]

I did not want to dwell too much on the value-added services but since the Minister brought it up I would like to because it appears to me that we are again taking everything out of context.

Many years ago, in 1997, when we started looking at the policy issues, we looked at several pieces of legislation: Singapore, Malaysia, and the works including the Federal Communication Commission, et cetera. I remember in that document which was submitted to Cabinet there were about two or three diagrams which depicted the hierarchical structure of this particular industry and we copied one from 1998. It was descended on TINA-C architecture and the other was based on the architecture of Singapore when it was now opening its market. We did that for a reason because when you open a market, especially when one is talking about telecommunication, one can divide it into layers. At the very low layer is what we call those core services, the career services, the local access meaning how you get from the home user into the network. So what I am referring to there at the very lowest level would be TSTT with the basic career service, the public switch national network or what we call POTS, the plain old telephone system. Above that we will get the network and transport layer and as we move up at that level you will find

you have a backbone of network comprising cables and ducts, but you start adding the switches onto this network layer. Then we get to the services layer and this is where they actually take the fix line services and the mobile services and services are added onto it. You could say like value added service, and at the very top level are the resellers. Why I say this—and this is very important to how you regulate the legislative framework that you put in place. The Singapore legislation was based on this particular structure.

What happens there is that as you move up the hierarchy you recognize that there is a lower requirement for capital? The capital cost goes down. So at the lowest level your capital cost would be at its highest because there is a lot of infrastructure in cable plant, switching and so forth and as you move up, there is least cost for capital but more intellectual capital. Recognizing this, you realize that in countries like Trinidad and Tobago and Singapore and some of the other countries, you do not require too many competitors within the lowest level because you need that critical volume, the critical mass. So therefore you have to regulate in order to ensure that as competitors come in you are not losing capital by duplicating infrastructure, but you are ensuring that the competitor who comes in at the lowest level, for example, if it is an ATT, that they are complementary to the TSTT. So that is where the issue of interconnection comes in. This is why there was a need for the legislative and the regulatory frameworks to govern this sector, this very low layer in terms of connection, negotiations, interconnection cost, pricing and the unbundling.

The other reason why you have the other layers is because you wanted to unbundle that. Determine your switching elements, what are your transmissions, where are your transmissions capacities and so forth, and on top of that what services you add on to allow for the resellers at the highest level. As a result of that many players can participate and this is where the innovation would come in because you would have as many locals. Or you may even have somebody who may want to come in with some great idea—intellectual capital, but no capital to invest. As a result of that you want them to come yes, bring their intellectual capital, because the explosion at those levels is what we require to drive this knowledge-based society. That is what we want to drive the creation of excellence in our society. That is what we need to develop education, all this distance learning that we are talking about. We cannot deal with these issues in a vacuum.

Mr. Vice-President, based on that, there was no need for regulating the very high levels but instead, leave the market forces to regulate the sector.

PROCEDURAL MOTION

The Minister of Public Administration and Information (Sen. The Hon. Dr. Lenny Saith): Mr. Vice-President, I beg to move that this Senate continue sitting until the conclusion of the debate on this Bill.

Question put and agreed to.

TELECOMMUNICATIONS (AMDT.) BILL

Sen. C. Seepersad-Bachan: Mr. Vice-President, it is important for me to also make the point because for some reason when you are trying to open a sector, the insecurity of the incumbent appears. I just wanted to draw very quickly from a World Trade Organization (WTO) document which spoke to the issues of liberalization and whereas it promoted the regulation of basic telecommunication services and that is what I mentioned, the lowest level. And it speaks to the adherence of the regulatory certainty that investors seek, because for investors to invest even at the very level, there must be some certainty on the part of the investor which is informed by the regulatory regime that we have and your willingness to invite competition. That informs the investor through the legislative framework that it is implemented, as one would recognize the high cost and the risk of capital.

Mr. Vice President, when it came to the value-added services and I just want to quote, and that is the absence of Regulation at the Value-added services level:

“On the other hand, new entrants and the services that ride over these basic networks, when afforded reasonable access...have demonstrated remarkable competitive resiliency and little need for economic regulation. For example, the general non-regulatory approach to the Internet and other value-added services in most countries has been a boon to their responsiveness and growth, thereby freeing operators from unnecessarily burdensome requirements in providing these services. This points to the value of drawing as clear as possible a distinction between basic and value-added services, and focusing regulatory constraints on the former.”

I wanted to make that point, and the other point I want to make with value-added services is that there was another report which was an analysis of Latin American countries and when one looked at the analysis—it looked at about 26 countries, developing countries that is—and once there was the opening up of the sector there was increased participation of private capital which we know would happen once you open up the sector, given the number of entrants that were coming in with cellular, et cetera.

One of the things that we always fear is the TSTT phobia that there would be loss of revenue and loss of employment. In all developing countries where there has been a proper legislative and regulatory framework conducive to competition at that very level, employment may have been reduced by the incumbent monopoly provider. What happens is that the staff you get rid of in an effort to improve efficiency, but the number of jobs created by the market itself way out-folds, sometimes tenfold compared to the number of jobs lost by the incumbent.

It has also been found and we have seen it right here in the Caribbean—Yesterday I read an article, I think it was dated January 2004, the *Times*, the Digicel. If one looks at what has happened in Jamaica and even in one of the other Caribbean islands, one would see where Digicel has been able to force prices down and force efficiencies into the incumbent and as a result of that you will also find the private companies now leading the pace and wherever there were weaknesses by the incumbent they would be taken advantage of by the new entrants. It has boosted the network as well, the competitor pricing. And a case, in example is Argentina and Chile.

If one looks at what had happened with Chile when they opened up and compared it with Argentina, which still allowed—and this over-regulated system they had in Argentina, which protected the incumbent. A call to the United States is seven times cheaper in Chile than it is in Argentina and Argentina is next door to Chile. These are the things that we have to bear in mind. The other thing is that when one looks at the revenue base for all the incumbents, their revenue base has increased so much because of the amount of network, the traffic flow through these networks. We fail to understand that by allowing for the explosion of all these value-added services and letting that take off is the same network that we will be using and, therefore, the revenue base for the incumbent or dominant player will grow. This issue that we are always so scared, because when I sat on that committee, which comprised of several members across the board, and one of the members was the then secretary general of the Communication Workers Union, Mr. Townsend whose first concern was how many jobs were we going to lose, how many people would have to be sent home. The point had to be made over and over even if they were being absorbed into the industry and their packages were even being much more enhanced than what they had before. I make that point because it is important for us to understand that is where we need to push the legislation; that is the focus of the legislation at the end of the day.

The other issue the Minister spoke on was the whole issue of voice over IP and I heard him when he said the UK and so forth. Actually the ICC has not yet passed

the voice over IP regulations. They have sent it to their IP users group, the IPUG to make regulations but from all intents and purposes it appears that the federal regulators are not in favour of the voice over IP. The people who are pushing this regulation are the state regulators and that is because, by having voice over IP compete with the regional operating companies, the local companies are losing revenue into the state regulatory funds because they will take a percentage out of the profits of the operating company within that state and put it towards the regulatory fund; something like the universal fund that was being proposed in the 2001 Bill. It is not quite yet—and it appears that there is quite a big lobby not to regulate voice over IP. Yes, the Canadian regulatory has just passed it. It was probably a month ago because up to about two months ago they were still discussing the issue and they decided that they would. But there is a big distinction that we must understand between Trinidad and Tobago and other countries. That is, we must understand where we are in the technology spectrum because we keep talking about wanting to be technology neutral but you need to be very careful because when we speak about VoIP we must remember two things—and I want to quote from a voice over IP document.

Mr. Vice-President, there is the convergence of voice and data networking right now and whereas the old public network, the PSTN was a complex weave of all these different technologies that was evolving since 1876, the PSTN is on a verge of a whole new revolution today and some countries have adopted different styles of networking. There were several drawbacks of that network, what we call plain old telephone network or the PSTN. Let me just say PSTN was an upgrade to the plain old telephone network with circuit and advance switching. What has happened today is that we have gone towards what we call packet telephony and that is different, and I make that distinction. When we refer in Trinidad and Tobago to VoIP, we are referring to voice over Internet services which is based on using the services of a public switch transmission network. It is based over the PSTN. Therefore, yes, he is using an Internet link but the Internet link; the traffic itself is being carried over a PSTN.

What has happened with public packet telephone network because of the integration, it is now recognized that globally the percentage of voice traffic compared with data and video, voice today is a very small percentage and what we were doing over the past decades, we were actually trying to pass data and video over a voice network circuit switch. Capacity and optimum use of capacity was a problem; cost was a problem. If the percentage of your network flow is data and video, why are we running this over a network? So there is a paradigm shift and

instead of looking at circuit switch and so forth, we are looking at what we call packet switch networks designed for data communication and what would happen is that voice would run over those networks. There is this integration of what we call data, video and voice in these networks. As a result of that, and it is not because I want to go into a telecommunication course here, the development of these networks and the implementation of these networks globally, we have started seeing the separation of different parts of the network. So regulators today are going to have a tremendous challenge.

Why I make this point is that we want our legislative and regulatory frameworks to move in that direction. We want to give incentives for our incumbent or whoever else may come in, if they so desire, to complement the service, to move in that direction because what happened in the past was that the PSTN was designed on a network comprising of equipment which was vendor specific and therefore any applications that had to be written for the equipment in that network had to be written by those vendors only.

With this new system we are talking about in public telephony and where you are looking at a database network, you are opening it up and with the new standards that have emerged there are different parts of the network that you can give out to others. For example, in the new system—I know one of your technical advisors here today, is one who has worked in the TSTT business before and a colleague of mine, but what has happened in the past in the old network, be it the international calling or the international networks or the local network, you had what we call controlled signalling. You had the passage of voice. Today they have actually broken that into three areas and you have controlled signalling taking out one part of the network and you have your packet information, another part and the application services forming a different part. So you can almost visualize it in almost three different aspects of this network.

The importance of that is that you can give that out to people to manage. Even if you bring in competition the competitor may agree with TSTT and say listen I will handle this part, the other one would say I would handle this part of it and this is how the efficiencies come in. More important is that this has allowed for what you call the independent software vendors (ISVs) to emerge, before where we had a lot of propriety systems. In this new system we have what we call (ISVs), open systems meaning the cost of development of application services will be so low and this is why you can run voice over IP network and it can be so cheap because you now have a range of software vendors available to you to develop application services. In addition, according to the ITU, with this new network, the application interfacers would gain momentum and as a result of that we would see a myriad of

application services coming out and these public API which will be key enablers of network convergence promoting redevelopment of more value-added services spanning multiple domains be it voice, data, wireless, et cetera. It will also provide a secure interface network resource contributing to the opening up of public networks and this is where we want to go.

I thought that I should put that in context because it is very important for us to understand where we are in terms of the technology. We must now understand why these countries have taken the step to go ahead and regulate, because, when they are dealing with voice over IP it is actually a data packet network, a public data-telephony network with voice running over it, which is different to what we are doing.

Mr. Vice-President, the last part of what we call the local loop, the copper loop which needed to be opened up, the bottleneck in this whole scheme of things, the keep back, that has evolved with DSL, but one still needs to understand that with DSL which is supposed to be relatively cheap technology why TSTT still charges \$400 for a domestic user to get a DSL connection to allow for Internet usage and for simultaneous voice on Internet.

Mr. Vice- President, if there were more competitors in that area, and we can, somebody now can come and open up local loop services. So therefore we cannot only get DSL, we can have mobile GSM and as a result of that give you the broad band, the capacity you need in the local group and bring down the cost at the same time, all the things that we need to hear about. We talked about being able to get access in rural areas and probably this is where we would be able to look at the whole issue of universal service. I wanted to make that point because in these countries as well, DSL had entered into the local loop whether it is ADSL or asymmetric (which means I have a smaller band to upload my files as most of us just request data but there is larger band load associated for the download of files. There is also high speed data, the high speed digital subscriber loop which companies will use, the integrated digital, the VDSL which the companies, universities, visitors, et cetera would be able to use.

I notice that the Minister mentioned the whole issue of universal service and I want to just make this point because the definition of universal service was changed. In a country like ours, what we are talking about—and I said when we started the work in 1997, it was clear, at least this is my humble view that espoused in the legislation there must be some vision, If you are putting a legislative framework for the telecommunication industry then there must be some vision

housed inside the legislation. It speaks to policy issues and this is why the legislation must be informed by the policy, so it was very clear what the vision was and what the policy issues were and one of them was universal service, getting access, expanding for rural access, et cetera. Again I refer to this comment by Selby Wilson. My error earlier; the Caribbean Association of National Telecommunication Organizations (CANTO). He said:

“We have to redefine Universal Service to include access to the World Wide Web, email and data communications as part of the right to communicate.”

That has also been the case from ever since. We know that universal service was a moving target and today—yes, it was because we needed telephone services for everyone. Yesterday it was for telephone service for everybody, today it is for a computer in everybody’s home. I do not know what tomorrow would be, probably for video and data and Internet access for distance learning. It would be everything. Because of that moving target, this is why we were very clear on how we define the universal service. I say this because I noticed that the Bill seeks to try to give universal service some sort of definition and it has been for many years every regulatory agency trying to stay away from that definition of universal device because of the technology issues, and instead what the 1991 Bill attempted to do was to give you parts of the universal service, the criteria that would inform the universal service and it was for that reason.

When I looked at this document, I thought, how appropriate because it spoke to exactly what we were saying. Even in this document it says in the United States, and recognizing that the definition of universal service continues to evolve, they included a provision in the 1996 Telecommunications Act to reflect this. The provision directs the Federal Communication Commission (FCC), to issue an initial definition to the services that will be financially supported by the federal universal support mechanism like the universal fund that was proposed in the 2001 Act, and to revisit this definition periodically in the future taking into account the public’s interest and the current state of telecommunication. It may very well mean that we may want to look at universal definition and wireless access to everyone. That may become a universal service definition. This is why we were careful not to make it too elaborate but to stay very close and to keep the criteria on whatever we were looking for in the universal service in the legislation itself and not in the definition. I will pick it up more at the committee stage.

Let me just go quickly to the amendments. We have dealt with the voice over IP and the value-added services part of it, where in the first definition the public telephone service was amended to include, as the Minister said, issues such as the

voice over IP. I have dealt with that. The second one on telecommunication, probably the Minister may be able to explain but I was a bit confused in reading it. You are replacing radio terrestrial or submarine cables with the word “wireless”. Am I correct? I do not understand why because radio terrestrial and submarines, those are fixed wires; those are what we call wired services, fixed line services and wireless is different. I do not know if the Minister wanted to add wireless to it and not necessarily replace it. The universal service as I mentioned before, the value added service. We would deal with section 4 at the committee stage. We also have to recognize that we have to look at what may be the definition for universal service given by the ITU and I think that was one of the definitions that we used. I am not sure if it is the same definition as used in the Act but we used the International Telecommunication Union (ITU) definition for universal service to be consistent.

Mr. Vice-President, I bring to the attention of the Senate section 13 which deals with the board. Section 18—the Minister said that it was slightly confusing and if we go back to section 18, the functions of the Authority, he was saying (f) and (d)—so you took out one and left the other. I do not understand why you left that one. I thought that (f) should have been left because for the Minister to get involved in telecommunication standards, et cetera, I find that a bit much and I would imagine the Authority should take responsibility for technical standards. They would have had their trained staff to determine the technical standards for the network and hence the establishment of technical standards. So I am of the view, establishing the national telecommunication industry standards and technical standards should be a function of the Authority, that is clause (d). I think there is a little misunderstanding here. The reason you had both (d) and (f) is that when you have decided on the technical standards and you have established it, it is merely a way of advising the Minister of the technical standards. You do a pre-audit review, a periodic reporting saying these are the technical standards that have been implemented. We have upgraded because of quality of service, et cetera or new benchmarks that have been indicated to us and hence we are advising you of such.

Section 24 of the Act—the termination of user services and I want to say the Minister went into depths about why he removed the user and only looked at providers because he did not want the provision of provider services that are anti-competitive measures, but we have to remember that because you have an incumbent rival, a monopoly provider, that you cannot get away from looking at user issues. Every day how many times do we hear the complaints of users and how many times their Internet services are terminated? Sometimes one is cut off because of a dispute billing and there is no recourse action on the part of the user. I

know you are saying there is a complaints council but I am not sure the complaints council would have the sort of authority to force a reconnection and even if it were a complaints council, it still would require 10,000 complaints coming in to the council. It does not stop 10,000 complaints coming into the council. If the complaints are going to be part of the Authority or under the supervision which it should be, because the Authority should be able to understand the issues. Staff at the authority would be knowledgeable on the issues of the incumbent and it is very relevant.

Mr. Vice-President, all over the world, the regulatory agencies, for example, the state regulatory agencies in the US, all have to deal with those issues on a day-to-day basis. I remember talking to one or two of the regulators in one of the states and they were telling me that they deal with that every day. Somebody gets terminated, the service is cut off and they have to find out why; they have to insist that they are reconnected until they investigate. I think it is time now that the customers in this country get a bit of the action. [*Desk thumping*] TSTT has taken too much advantage of the customers of this country and they have abused their monopoly, so it is time that we put that in place and we would see less of that abuse if we know, but the minute you remove this requirement from this clause that abuse of power is going to continue.

Section 25. I think this is the section that is dealing with the whole issue of costing. The whole interconnection issue and indirect interconnection, et cetera. What has happened here is that—this is with the issue of equal access and cost-efficient rates. What I wanted to find out under this aggregation—this is the unbundling section—from the Minister in this particular section: Is it through the regulations we are going to see the systems and the procedures for determining the cost? Recognizing that in the first instance interconnection with the incumbent must be done via some negotiation, there would be a negotiation process and, of course, the Authority steps in when the negotiating process breaks down but what happens in terms of the cost? I am going to put everything in here, whether we are talking about—the RIC just did an analysis of TSTT and gave a ruling and I have a serious problem when people like the RIC say, “Listen, you are using the rate-base method”.

For years now we are talking about progressive methods that have been available for evaluating efficient cost pricing and so many of them have come up. I am sure many of the people who worked for the previous utility commission attended these conferences. That is the National Association of Regulators and Utility Commissions. At that time I am sure they would have come across several

Telecommunications (Amdt.) Bill
[SEN. SEEPERSAD-BACHAN]

Tuesday, May 11, 2004

of the regulatory methods such as the whole issue of what we call the performance base systems, the price cap systems, combinations thereof so when the RIC tells TSTT listen, we rule so and so, everybody in the country feels great, we are getting TSTT to reduce rates but they are basing this on a rate-base method which is determining capital cost, is encouraging TSTT to probably—rate base systems have encouraged incumbent providers to invest in inefficient technology. That has always been the case and this is why there was a move from rate-base methods to what we call the performance-base pricing method, the PBR, so that there can be a system where what you are looking for is not about how much money you invested in infrastructure, but how efficient is your service and that is what we are striving for, efficiency. It would have been a good idea if the RIC had started this already with TSTT and the other utilities because by this time they would have gotten TSTT in a state of readiness to face the competition that should be coming in. I say this because I am sure that many of them have gone on these courses and have been trained in these mechanisms, in these various cost-pricing methods available.

I want to find out when the Authority decides—and I know they are going to have to sit, discuss and investigate when they determine the type of pricing methods, price cap whatever—are we going to see these in the regulations? What system, what processes? In terms of the interconnection as well, how are you going to facilitate the interconnection process and I know some of this would have to be done via negotiations, but are we going to see regulations in this area? I am open to comments on that.

In terms of section 26 they are minor. Section 29. I know the issue of the pricing—I was not too clear on that. I thought they were saying they were just publishing the rules and principles and so on. I think what was required was for people to understand what the prices were for the international operations. I know that it is something that would be done between operators and it cannot be something that would be subject to regulations because it would be between various parties of different countries and these would be negotiated through their governments as well.

Again, the whole issue of the cross subsidies.

Mr. Vice-President: Hon. Senators, the speaking time of the hon. Senator has expired..

Motion made, That the hon. Senator's speaking time be extended by 15 minutes. [*Sen. W. Mark*]

Question put and agreed to.

6.55 p.m.

Sen. C. Seepersad-Bachan: Thank you, Mr. Vice-President, and I thank my colleagues.

I was on section 29, which deals with subsidies and the unbundling of the sector. What I would like to hear more of, because it is mentioned here in clause 29—cross subsidies may be for a good reason—we are saying we want to know what that cost is. When we are looking at the price regulation, we have to look first at a proper unbundling of the services and that has never happened. It is time now that we talk about unbundling of the services.

This debate has gone on forever. TSTT, I know, has been very much against unbundling, but I think now is the time because we keep hearing about the unfair treatment to Internet Service Providers (ISP) and the discriminatory practices that go on. They give themselves better capacity for their own ISP services. They give themselves better pricing for their own ISP services, so now is the time to see about the unbundling before we can see about price regulation.

We need to unbundle the incumbent at this time. We need to see the various revenue streams and the different markets to which they have access so that we will understand the cross subsidies. Mr. Vice-President, in the other section, when they talked about regulating, which is the one with which I have a slight problem:

“The Authority shall regulate prices for public telecommunication services.”

This is the first time I am hearing about floor pricing in telecommunication services. I have heard about floor pricing in other areas. Floor pricing works when you want to get a minimum revenue, but I am amazed to see floor pricing in this piece of legislation. I am of the firm conviction that if we allow floor pricing in this particular case, we will actually be stamping out the competitor.

Mr. Vice-President, you must remember the Authority will have all powers to deal with predatory pricing. They will be monitoring the incumbent. They will be reviewing and analyzing the accounts of the incumbent. If you have unbundled the sector, then definitely you will be able to determine if there is predatory pricing because you will be doing it for all the dominant providers. By putting in the floor price, we are not going to see that competitive drive down of prices. Yes, we need a price cap, but I do not understand the need to deal with that. I feel that the floor price will remove the ability of the providers to compete effectively, especially if we have weight balancing being redone.

I am sure the weight balancing issue is coming because TSTT has already indicated that they are going to rebalance. Nothing is wrong with that. TSTT is free

to go ahead and start rebalancing. We need to understand the true cost of international and local calls. Yes, everybody who participates contributes to the universal fund, which will subsidize the local service because that was always the intention. Let us know what the subsidy is. To be continuously hiding behind this all the time, we do not know what it is and it is never quantified. We keep hearing how they subsidize this local service, this universal service, which is why they have to keep the international rates up, but when they keep the international rates up, they continue to keep out competition.

When I say competition, I mean competition in the other sectors of the economy—the small manufacturer who needs cheap international services. That same little voice over IP calling centre, we do not know how many small businessmen use that centre because their competitors in some other country are using a cheap service like that. We must understand these issues, and if there is a need to subsidize the universal service, then let us quantify what that is.

In terms of section 41, I just briefly glimpsed some of the debates in 2001 and I recognized how much the then Opposition was so against the Minister having so many powers vested in him. Sen. Mark would recall that the then government, the UNC government, was very accommodating and made several changes to the legislation based on recommendations from the Opposition Bench and the Independent Bench. They changed several clauses that removed that kind of power that was vested in the Minister and placed it in the Authority. It allowed for more accountability and transparency on the part of the Minister and the Authority. I find it strange that so many of these clauses go back to vest this power in the Minister, and simple issues.

I come now to this National Spectrum Plan. We must be mindful, when we are dealing with sections like this—section 41, I think it is—the allocation of these frequencies in terms of the National Spectrum Plan:

“The Authority shall develop a National Spectrum Plan for the approval of the Minister in order to manage and regulate the use of the spectrum.”

I cannot understand why a minister would get involved in developing the National Spectrum Plan. I feel this is the responsibility of the Authority and it must be some wider group. The National Spectrum Plan is a resource just as much as our energy resources. We have heard of stories, for example, in the US, where this has been auctioned and millions and billions of dollars have been generated. So vesting this power in the Minister is something of which we have to be very careful.

Secondly, I would have imagined that one of the things that should happen here is that this should be part of the legislation for approval by the Parliament

through affirmative resolution. I would imagine that the National Spectrum Plan should be part of the regulation—the process, its election, et cetera.

I also want to make the point that in coming up with this plan, I want the Minister, just from what I have seen in countries that have used this auctioning method—some of the developing countries—yes, they generate a lot of money up front, but the high cost to the competitors is transformed into high tariff cost to the consumers and as a result it does not give the kind of incentive to the competitor to reduce his cost. A competitor may be dealing with an infrastructure in which the cost has already been amortized and where he could drop the cost. We have to be careful we do not push prices up when we look at this sort of spectrum plan.

The other issue is in section 31. In the explanatory note the Minister says that the amendments in section 1(2) remove this limitation and allow the concessionaire to renegotiate the concession with the Minister without the existing prejudice. Thus, where section 31(1) states that:

“the Minister shall, on the recommendation of the Authority, renew the concession for a period equivalent to the period for which the first concession was granted...”

the proposed amendment will state that

“...the Minister shall, on the recommendation of the Authority, renew that ...”

Why would you want to renegotiate with the Minister? That is what I do not understand. Am I reading this correctly? What is the meaning of that when you said “renegotiate a new concession with the Minister without existing prejudice”?

It is done again in section 39 in the explanatory note:

“...renegotiate a new licence with the Minister without the existing prejudice”.

I am saying you bring the Minister into a process of renegotiating for the renewal. It is subject to the influences of the political directorate and it does not lend for a transparent and open process. I know my time is running out.

Sen. Dr. Saith: What section?

Sen. C. Seepersad-Bachan: Sections 31 and 39. We can pick it up at committee stage.

Many times throughout the Bill, Mr. Vice-President, in terms of the granting of the concessions and the licence, we noted that in most cases of successful bidders we do not see the process and, again, if we want to be open and transparent, the process of selection must be open and transparent. That should also be subject to public scrutiny, not just who was selected, what were the results or decisions of the

Minister or the authority. What should also be subject to public scrutiny are the criteria used in the selection. The selection process itself should have been subject to that sort of public scrutiny.

Mr. Vice-President, I also wanted to bring to the attention of the Senate the whole issue of the regulation. I make this point because the last conference that I attended—you are going to say that the UNC said in their time 1997 to 2001, establish a telecommunication authority, but we have to look at timing and timing is very important. At the time when that was proposed from 1991 to now, it was felt that the telecommunication industry would take off. Because we need all the modern regulatory systems, which were taking place in the telecommunications industry, you start there. Since then the other industries have taken off. There is electricity, water and gas and the same concepts that apply in terms of regulatory issues to gas, water and electricity also apply to telecommunications.

At the very last conference I attended, the National Association for Regulators and Utilities, it was recommended that in order to reduce the cost of regulation for a developing country—I am not talking about the US or the UK—and even those countries, the cost of regulation has become a burden on the state and the providers of those services. What has been found out is that developing countries should not take the route of trying to develop independent regulatory bodies.

When you train staff to do performance-based costing, or rate of return; or if you train them to look at unbundling—unbundling exists in the electricity industry; it exists also in the water and telecommunication industries. So one of the things at the time in 1997 when we were proposing the Telecommunications Authority, the idea of the Regulated Industries Commission (RIC) was not now in its conception; it was in its embryonic stages.

I am not saying do not use the Authority, but I am suggesting that the Government look down the road at merging because the time will come that they will develop all the expertise, train all the people, but they would want to use them back into the water and electricity industries. The electricity industry has been unbundled to some extent. You have a generation; you have transmission and you may be looking at distribution. I have a document which talks about the drawbacks of all the regulatory bodies. One of these things that he talked about is the whole issue of developing countries that are short on resources and where cost is an issue they do not look at implementing all the sophisticated regulatory bodies all duplicating in function, overlapping without looking at optimizing the resources they have.

The last point I wanted to raise with the Minister is the whole issue of—

Sen. Dr. Saith: Mr. Vice-President, I just want to make sure that you raised section 31 and 39 and suggested that somehow we have changed the relationship of the Minister. There is no change. What is in the original Act remains. I just wanted to make that clear.

Sen. C. Seepersad-Bachan: That is why I went back to the explanatory note. When I looked at the Bill itself, I was not seeing it, but I am seeing these words and they are in quotes.

The last issue I want to raise is the whole issue of an ICT policy and legislative framework. If we are to be sure that we do not kill and that we find a way to use the services and promote this knowledge-based industry that we are talking about; of becoming export oriented; of becoming competitive for Trinidad and Tobago to gain its competitive edge, we need an ICT policy and legislative framework. This is why I stand here a bit disappointed because I thought today we would have been seeing an ICT policy with a legislative framework. I just saw the plan, but I was looking at a legislative and regulatory framework to promote the sector. I say this because of countries like India, Bangladesh and I can quote several of them here today.

I had the opportunity this morning of looking at the Net and it was amazing to see some of the countries that are—

Mr. Vice-President: Senator, you have one minute.

Sen. C. Seepersad-Bachan: Thank you, Mr. Vice-President.

To tie up the end of the Bill, to cater for this enterprise, the export of our knowledge services, et cetera, we were looking at an ICT policy and legislative framework. That was one of the recommendations that also came out in 1997—that we develop the ICT policy to pull the telecommunications sector forward. These will be the users. It is the incentives that you provide; the importance for rural development; the importance of women in ICT—a lot of work was done already in that area—and as a result of that, it would have helped. This was the enabling legislation, which took forever and keeps taking forever. I say this because without telecommunication—in those days we could say without telecommunication we could not study to pass our exam. Today, I am saying that without telecommunication, is like asking a SEA student to write an examination without a pencil.

We cannot talk about the development of this country and moving forward and taking our place among other developing countries—I am not talking about developed countries—without an ICT policy and legislative framework.

I thank you.

Sen. Mary King: Thank you, Mr. Vice-President. I was fortunate some years ago, 2001 to be exact, to have contributed to the debate on the 2001 Act, which is now before us for amendment. One of the major issues at that time was the independence of the Authority and I see that this is again beginning to raise its head in 2004.

Three years is indeed a long time, given the rate at which the technology is developing, hence you will forgive me, I hope, if on looking at the myriad definitions put before us, I am tempted to suggest that the Bill be redrafted to reflect the newer ideas on telecommunications or as some would call it today, communications.

In the definitions before us, particularly Part I section 2 of the Act, telecom service becomes one that offers communication in real time—a concept repeated in the definition of a public telephone service. I have given that some thought and I thought, supposing—and I am only supposing—I called someone on my cellphone or even my home fixed line, then with the same call, I left a voice mail, delivered not in real time, but some time later, was I using a real time public telephone service, a real time communication service or an added value service? Or was it the former two and I was switched automatically to the latter when the “callee” was not available?

If instead I were to use my cellphone to send a text message, that was also delivered some hours later, is this a telecom service or an added value service? On reflection and given today’s telecommunications and technology, I think all of these are one service.

Mr. Vice-President, the new networks are intelligent and they now offer a host of other services besides real time transport. This idea of “realtimeness” has led to the ridiculous claim—and some have actually called it an absurd claim—by the voice over IP telephone providers that they are not offering a telephone service, since their signals are sent by computers and they claim that the network is not real time.

The switches in the Internet network, unlike the traditional TELCO system, today stores and forwards signals, but both technologies have got to ensure that the voice signal goes from end to end under 150 milliseconds, otherwise the conversation becomes unintelligible.

Voice over IP is a telephone service, as is the use of a cellphone and in common parlance, if it walks like a duck and it quacks like a duck, it is a duck. But the newer ideas in telecom avoid these older and overlapping definitions by now

classifying the system into three basic elements and that is why I reflected on perhaps redrafting the whole Bill. These three basic elements are: the source—that which provides the content to the system; the transport network—that which moves the information about; and the sink—that which retrieves the information from the network as required. We are not talking here about kitchen sink.

These are integrated using access points. Hence any communication involves the interaction among these three actors and corresponding access points. Modern providers like TSTT are moving toward the provision of a high band width network that in recognition of the different demands of sources and sinks can send information in real time, like voice and video; others, as and when convenient, like voice mail and text; and computer data; all according to priorities of the messages.

The network is moving towards allowing the users to almost set their own quality of service by the priority of the information put on to the network. Mr. Vice-President, this is where we are heading fast and this is the environment that has to be regulated. Yet, I know it would be asking too much to go back and redesign the Act. Maybe we can clean it up, starting today, as we go along, but we certainly have to get where we ought to be in a not too long time frame.

One of the fundamental facets of the regulatory environment, accepted the world over, is the independence of the regulator, in our case known as the Telecommunications Authority. The World Trade Organization Telecom Service Reference Paper, to which Trinidad and Tobago is a signatory, also calls for this independence. I will just quote a little paragraph from that reference paper:

“The regulatory body is separate from, not accountable to any supplier of basic services. The decision of and the procedures used by regulators shall be impartial with respect to all the market participants.”

Besides establishing the regulatory framework and its accompanying rules that govern interconnection, universal service, et cetera, the regulator, our Telecoms Authority is a crucial factor in the liberalization of the telecommunications sector. Our Authority should be separate and distinct from any provider and hence my first requirement would be that it be independent of the Government since there is a direct relationship between the Government and the dominant provider.

The concept of independence is expanding so as to create regulatory institutions that are efficient and the emerging meaning of independence also includes independence from operators, policy makers and other interested parties. In particular, the International Telecommunication Union (ITU), which is the world body that facilitates telecoms, defines independence with respect to the regulator,

as the separation of regulatory and operational functions, neutrality, insulation from external pressure and not subservient to the Ministry. There are three distinct aspects of an independent authority and they have laid it out very clearly— independence from providers in the telecom sector, other interested parties and political actors like Ministers being involved in the day-to-day matters or operations. Though the World Trade Organization Reference Paper is not specific on the format of the regulator, the test for an acceptable model is whether and to what extent it can respond to the objectives of liberalization of trade in the telecommunications sector.

Mr. Vice-President, those three elements of independence are totally essential if our Telecoms Authority is to become efficient. In a sentence, the role of the Ministry is to set policy and that of the Authority is to manage the sector. For example, in section 36, the Minister is involved in some day-to-day operations. I have circulated some suggested amendments to this section. Also, in sections 39 and 41 as they stand, approvals regarding spectrum allocations reside with the Minister. Suspending or revoking a licence resides with the Minister, but the approval of the National Spectrum Plan by the Minister as cited by the Bill to amend the Act, is really probably decorative since basic allocations of various frequencies are done internationally at the ITU level, leaving little discretion in whether he or she approves of the plan or not. That is not something that we need to be so concerned about.

Further, there are many requests for allocation of spectrum, which are not linked to concessions. Here we are looking at SCADA, Maritime Very High Frequency (VHF), BWIA and other aircraft, et cetera, for which there are already agreed ITU allocations. These are operational procedures and these should be the responsibility of the Authority. However, one must agree that in the awards of concessions, such as the licence to operate a cellular service or the licence to operate a radio station, the general approval should remain with the Minister.

Also spectrum is a scarce resource and how it is to be paid for by the licensee is a policy decision by the Minister or by the Government. These I see as certainly ministerial responsibilities and I trust the Minister will share his thoughts with us on how he intends to deal with the matter of payment in the upcoming request for proposals for cellular systems and in particular with regard to the existing provider.

TSTT has already had spectrum allocated to it and this resource is a valuable resource and it must be dealt with accordingly. We cannot have new entrants come in and pay for a resource whilst the dominant provider remains as not paying for the resource.

Mr. Vice-President, this Senate is being asked to amend section 18(1)(d) to give the Minister the right to approve the standards—both industry standards and technical standards—as advised by the Authority. Here again, setting standards is an operational exercise and in no way can be conceived as a policy item.

Any policy aspect of standards surely must be limited to Government's intention that users should know what to expect when they sign contracts with the providers; when they purchase service. That, yes, is policy. This policy as part of the philosophy of independence is a remit of the Minister, whilst the development and implementation standards are the domain of the Authority. I have also recommended an amendment to section 18(d) referring to this aspect of the Bill before us. These proposed amendments to section 18 are in sync with section 45(2), which already gives the right to the Authority to identify, adopt or establish preferred technical standards. We cannot in the Act have one conflicting with the other.

Let me now turn to universal service, which is a topic that is specially mentioned in the World Trade Organization Reference Paper. In general, universal service is a broad aspiration of public policy that seeks to ensure, first of all mass availability, accessibility and affordability of the telecom services. This concept is dynamic, obviously, and evolves with technological developments. There are many ways to implement this, ranging from an agreement in the licensing condition to the creation of the Universal Service Fund, which is used in many ways in many countries. That is the creation of an account funded by the operators in the industry.

One concern I have is that each of these approaches can be anti-competitive, hence it is important that whatever is done is done in a transparent manner, be non-discriminatory, be competitively neutral and not be more burdensome than necessary.

I raise this here since one of the reasons for some subsectors not wanting to be regulated, such as the voice over IP and other types of service providers who claim that they are added value service providers. For example, they claim this because they do not want to be regulated; they do not want to be subject to the provision of a universal service charge. Clearly, this would be anti-competitive. If one supplier of telephone service has to pay it and another provider, for example voice over IP, does not have to pay it.

One of my main concerns in this particular issue is whether the contribution to this Universal Service Fund is going to be a tax on the user of the telecom services

or is it going to be a tax on the profits of the service providers? In other words, will the providers who contribute to the fund be allowed to pass it on as an expense to the consumers?

In section 28(3) the Authority is given the responsibility to determine how Universal Service should be funded. In my mind, I do not think that the role of an authority is to determine how to tax the citizens or providers in the industry in this country. That has always been the job of the Government. I do not think it is the role of an authority to decide how to tax.

Section 28(5) asks the Authority to submit recommendations for approval to the Minister who shall approve or disapprove within 60 days. If the period expires and the Minister has not indicated in writing within 60 days, it shall be deemed to have been approved. This, I think, is a very unconventional way to set a tax. Taxation policy is an operational responsibility of the Government and requires parliamentary approval. I recommend that section 28(5) be deleted from the existing proposals before us.

Section 29(2)(v) as it stands in the present Act allows the provider of any telecom service and the service that he provides on an exclusive basis to utilize a maximum rate of return on its investment. I think in modern-day utility economics, there is no place for rate of return on investment. In fact, it has been shown to be a most inefficient method of setting the rates for a monopoly.

The approach does not encourage technological advancement by the concessionaire in providing a more economic, efficient service. It is ineffective, in fact, in forcing optimum allocation of resources. The ideas of price cap minus X were developed precisely to force monopolies to become increasingly more efficient and the X factor being the element that can be used very efficiently to move forward competitive pricing. This therefore, I think, is an anachronism in this Act and I am suggesting that section 29(2)(v) be removed.

On a very small point, but an important point, is section 35, which states that a concessionaire has to get the permission of the owner of a tree that interferes with his facility before cutting it, this section is silent on what happens if the owner refuses to answer, so I have also recommended an amendment there to cover that scenario.

The Minister has recommended in section 7(8)(i) that:

“The Minister on the recommendation of the Authority shall make such arrangements, subject to negative resolution of Parliament to implement regulations.”

The amendment suggested wishes to include regulations that prescribe quality of service standards, and as I mentioned earlier, the problem with that is quality of service standards is now becoming a contractual obligation between a particular consumer and a provider, so much so that the new networks are allowing this service parameter to be dynamically set by source information, that is by the user. I prefer to see, not the standards set as it were in stone, but that a range of varying standards are available at the corresponding economic costs. Hence I would leave it out of the Act and possibly put it into the options in the various licences to the particular concessionaires.

To go back a little to section 50, the amendment before us seeks to allow the testing of traffic on any providers's place by an inspector. Here the term "traffic" is not defined in section 2 and is therefore open to misinterpretation and possibly very wide misinterpretation. If the traffic inspector is able actually to read and interpret private information, then this is akin to present-day tapping of telephones, for which I assume a special majority would be needed to have the Bill passed in Parliament. If instead "traffic" means the digital load on a piece of equipment in bits per second, then it has to be precisely defined for the reasons I just stated. So, I would like the Minister to clarify what he means by "traffic" in the context of the comment, whether we will amend section 2 to include it in the definitions for clarity.

I would like to consider some general matters, as it is a very important field and a very important Bill. When one looks at the service areas for which we ask for exceptions in the World Trade Organization commitment document, we see that monopolistic international telecom services, for a period up to 2010. This coincides with the heads of agreement between the Government and Cable & Wireless in the TSTT Shareholder Agreement. Is it that there would be no competition in the international arena until 2010 and if this is the case, then it would be important to make sure that international prices to the general users and to other providers will be competitive. We must note that the amendment of section 29(3) will remove from the Authority the power to regulate prices in the international arena.

I understand the preamble statement to this Bill; the statement that says that price is already subject to the vagaries of the international market, hence control by the Authority in this area is impossible since international rates it says are negotiated between the operators. Mr. Vice-President, I beg to differ on this particular point.

These new renegotiated rates are akin to the old time accounting rates between the international providers and therefore but a small part of the expenses of the international provider and these could be declared as a given. What I am concerned about, Mr. Vice-

President, is the collection rate and that is the price the consumer actually pays, which, from time immemorial has not been cost based. The Authority has to have jurisdiction over the collection rates; that is the price paid by the users and I recommend that, at this stage, when we do not have any particular clarification on it, that we also withdraw this particular amendment to section 29(3).

I would just like to mention a few more philosophical concepts. One is that the Authority is not here to introduce competition in the markets as a principle. The Authority is going to try to get the providers to charge competitive prices. If there is sufficient competition, in which no provider can affect price, then this will ensure competitive pricing, but in this sector, we will never get the nuts vendor, roti shop type of competition in the facilities networks market. Never! The best we can hope for is a contestable market in which large firms will certainly exist hence price regulation will be important, but there is no need and absolutely no economic justification to try to prevent TSTT, say, from benefiting from economies of scale, nor economies of scope so long as it does not engage in uncompetitive pricing.

The call to split up TSTT to face competition and so bring about competitive pricing is absurd. Proper accounting principles and practices, yes, must be enforced so that price regulation can become more efficient. Our World Trade Organization/GATT agreement binds us to allowing foreign investment into the industry. This is not the objective of the Authority, it is a given and it has already been agreed by the Government of the country.

If we look at TSTT today, it is a monopoly with very light or possibly no regulations, hence the company has or possibly is engaged in uncompetitive practices. Its alleged subsidization of its Internet Service Provision (ISP) by free access to its network is a case in point. Its pricing of unbundled services, it is claimed, is also uncompetitive. However true these charges may be, it is clear that the industry has to be regulated to force cost-based pricing. The fact that there are competitors is absolutely no guarantee that prices will be competitive.

At this point, I would just like to allude to something that was mentioned by the speaker before me who could not understand a floor price. If you do not have a floor price, you can have in the new industry, new entrants into the industry engaging in predatory pricing that could push all those who are in the industry out of the industry and therefore we have to protect all the providers within the sector.

7.40 p.m.

Sen. Seepersad-Bachan: Just to clarify the point I was making. The Authority will have the opportunity, through its own analyses and systems to be able to

determine predatory pricing, without the need to establish a floor price. That is the point I was making.

Sen. M. King: Passing this Bill is one step in creating the Authority.

Many developing countries find it very difficult to get their authorities off the ground, because of the lack of resources and the absence of the well-trained staff, which are necessary, to put the institution into effective operation.

I am hoping that, in concert with the establishment of the Authority, we will ensure a major training effort is put in place to help the telecommunications professionals to cope with the new regulatory demands and the new economic issues arising therefrom.

Mr. Vice-President, I look forward to discussing the amendments at the committee stage. I thank you.

Sen. Brother Noble Khan: Thank you, Mr. Vice-President, for allowing me these few moments for this intervention. I must confess, when this matter came before us in the past and what I have heard so far, a feeling of sadness came over me. Particularly, when you think in terms of an historical process over a period of time.

We have heard comments about the RIC and, the creation of a new organizational structure to deal with something that is on the forefront of the world. We are talking about technology and advancement at a fast pace. This reminds me of myself way back in 1961, if my memory serves me correct, when I first came in contact with the computer system and a mechanism that was being put in place to deal with atomic waste. We have seen great progress in the area of the computer. In those days, they were massive things with tubes compared to what we have now. This is under the umbrella of technology. As far as atomic waste is concerned, it was highly radioactive and its lifespan was very long. How was that dealt with? Of course, regulations came into being to deal with these contingencies.

As we move fast forward in this process, I remember in 1973, I came into contact with four persons. They were very brilliant Caribbean people. They were mathematicians who were chartered in the area of computers or physicists, or matters such as these. I wonder where they are now? Trinidad and Tobago, the Caribbean and even the world have moved forward over a period of time. Here we are.

We heard the Minister's presentation. I must say it was a very beautiful presentation. I am sure all of us would agree with that. There are some ways in the

direction which he has showed us. A sadness emerged out of a feeling of scepticism over a period of time. As a nation, over a period of time, we think in terms of WASA; TSTT, which is part of this; T&TEC; NHA and those other agencies which happen to fall, or may fall under a regulatory framework for purposes of management. Surely, we remember the Public Utilities Commission and these agencies. What comes to my mind—if we were to go by way of practice of what emerged from the experiences which we have had—is that we are going into something very similar. As far as my limited understanding of it is, not much has changed within ourselves in the way of meeting these challenges. We are putting the same structures in place. Obviously, we will be drawing from the same pool of people to man these things.

If we were to look at the examples: NHA and WASA, what is the situation with respect to water regulatory agencies? Of course, the world is moving towards what has been referred to as liberalization or globalization. Questions will arise. What are these new techniques or systems that are being put in place which we so slavishly follow? What are the benefits? Who benefits? These are big questions.

When we think in terms of the experiences, and what I have said before, it seems to me that the majority of our people, especially those at the end of the economic structure, seem to be running a backward race. One wonders if this is where we will be going with this initiative that is before us.

Obviously, as a people seeking to forge a path forward, we must take chances. Where is conceptualisation? Where are the new initiatives and flashes of brightness? I have not seen that so far, even from what has been expressed by our experiences and us. This is the reason I speak of the question of sadness.

We think in terms of regulations, as against areas which we have had in the past. This is a feature—I am not casting any aspersions on anyone but, obviously—that seems to be systematic. A feature that exists wherever it may be. We put control in people's hands. There is an area dealing with quotas and the issuing of licences and permits. This is the element of a big sea conch. I am not speaking of cancer, which so many of us are subject to in this modern time. I am speaking of something that has been in existence for quite some time. If you go outside you would hear about corruption.

Recently, I heard of what has taken place with respect to our police service. By all means, I have confidence in the police service. There may be rouges. The police themselves said when they entered the service, they did not come in corrupt. It is a question of where did this emerge. This seems to be permeating our society. There

is the question of a feature of human behaviour. This example, which is before us, may exist in other areas. This is why I have great concern. We have to come to grips with things that are too big for us to deal with, even if we are equipped for it. Obviously, we could find some form of comfort or coming within ourselves, maybe at another time or day, at the end of our exhaustion.

With respect to going forward, one would think that one of the major aims is to make things better for ourselves, particularly for the people we are supposed to represent. It seems to me that the traditional formula—Sen. King touched on it in a more eloquent way. She made mention of the price mechanism and competition. Without going too deep in that—I am totally inadequate to deal with this at a very sophisticated level—the taste of the pudding is in the eating. What do we pay for when we go for it? This is the important factor. One gets the impression, that if the price mechanism were allowed to go, things would be cheaper for us. There appears to be, at the moment, some element of this taking place, insofar as the telephone system is concerned. That is an ongoing debate. Obviously, this legislation would seek to address that. One wonders, the extent to which—tinkering with the conceptual model, even as we will be bringing elements of control—that benefit would reach us. I speak on behalf of the whole nation, particularly those at the poor level. One would also think that maybe one of these organizations occupies a very monopolistic position at the moment. From my humble opinion, when you look at some of the reports from the press, there seems to be super profits in their operations. It would seem to me that to reinforce that by giving concessions and being in a position and not meeting the challenge of coming to a point—this is how I understand it—some gapping have taken place. We seem to be making up for that.

Anyone who is in the area of making money—that is the underlying mechanism in whatever we are doing. Some of these models are very relevant. Over that period of time, we may be seeking to give them continuous benefits. They have already made movements forward. Even as we seem to be running backward, they are moving forward. They are in a position where they might be better enhanced. Whatever we may give to them would obviously be lagniappes. These are the people with massive international connections who are making super profits. I will not support that. I am telling you this on a point of principle. They are accustomed to making profits and going forward. I did support it the last time. This is one of the reasons I did not support the TTPost Bill some time ago. It is a matter of taking more and putting it on more. I have put it in a very crude way, but I am sure we could understand what is going through my mind. I will share it with you. This is a very important aspect, my stand, on this matter that is before us.

Telecommunications (Amdt.) Bill
[SEN. BRO. KHAN]

Tuesday, May 11, 2004

I think the question of technology and how we go about certain things have been dealt with by the past speakers. I try to understand. This area, obviously will not have been, even if I were capable, allowed to go over my time. These are some of the thoughts that have come to my mind as we are dealing with the matter before us. I share these thoughts and hope that—at the moment it might still be ambiguous—they would bring to bear one of the salient points of my stand on this matter, which is the question of advancing in an area where they already have more.

Thank you, Mr. Vice-President. I hope, as we go along, something better will emerge from what is before us.

Mr. Vice-President: Hon. Senators, I think it is time we take the dinner break and return at 8.30 p.m., at which time we will continue the debate. The Senate is suspended for 35 minutes.

7.55 p.m.: *Sitting suspended.*

8.30 p.m.: *Sitting resumed.*

Sen. Prof. Kenneth Ramchand: Mr. Vice-President, I want to begin, quite uselessly, by repeating a position I took when the Telecommunications Bill was debated in 2001. At that time I argued that it was essentially a business Bill, leaving out the majority of our citizens, except insofar as they were being targeted as consumers. I also felt that the Bill was devoid of any outline of policy or any blueprints that would bring out the millennium that was being so enthusiastically proclaimed. I felt too that the Bill was too narrow a response to the telecommunications revolution of our time.

When I looked at these amendments, I felt the need to go back to these points. I saw no attempt to redraft, reconfigure or embody, even by way of amendment, some sense of the profundity of the telecommunications revolution. It is true. Telecommunications all over the world has become a lucrative business. When you look at our Bill, all the clauses are concerned with concessions, licences and other aspects of the business.

Reading through the Bill, and thinking about the place in which I live, and not being an economist, I decided just to look at the parties involved in this business. I have my own categories. The main parties in the telecommunications business are: category one, the owners of the land, air, sea and other spaces where telecommunications facilities may be installed or signals transmitted. This piece of property includes the spectrum. The owners of this property are the people of

Trinidad and Tobago and the resource is one of the most valuable of the resources that still belong to us. The owners of the resources are in category one. I do not see anything in the amendment that seems to recognize that. The second category is the operators or sub-operators. The third category is the providers of telecommunications services. The fourth category is big business users of telecommunications services. The fifth category is small business users. There is a division of OFTEL, which is dedicated to the interest of this category. Category six deals with domestic or private users. Category seven deals with members of the public who do not have telecommunications facilities at home.

Most of the clauses of the Bill are devoted to categories two, three, four and five and so too are the amendments concerned only with those categories. The people who are most neglected by the Bill, and the amendments are the ordinary citizens of Trinidad and Tobago, who are being left on the less salubrious side of the divide.

I wish that some kind of amendment had been made, to show that universal service is a priority. Although it is a moving target, it is a priority. I wish an addition had been made to the Bill to cover that.

Although the Bill is a business Bill, and there were criticisms of it several years ago, it did not offer anything positive, no kind of plans. Again, the amendments are disappointing. There are still no plans to provide physical facilities; encourage local scholarship and research; stimulate local innovation; produce our own software; establish a high-powered training regime to produce a cadre capable of effecting a communications coup that we have been promised. If you do not do that now, what kind of coup can you effect? Where are the plans? If it is argued that the Bill is only a legislative framework and cannot be expected to include this kind of information, then surely it is owed to the Parliament that in introducing or winding up, an overview will be given to show that there are definite plans to encourage—

Sen. Dr. Saith: I thank the hon. Senator for giving way. I wondered if the Senator got a copy of the National ICT Plan which was laid in this Senate? It covers all the subjects he has raised, including training, education and the availability of plans. Should I send you another copy?

Sen. Prof. K. Ramchand: I did not get a copy, but even if I had I would still say that we ought to have been given an overview of it. I thank you for providing the information. I am glad that such a document exists.

Sen. Dr. Saith: I will arrange for a copy to be sent to you.

Sen. Prof. K. Ramchand: Thank you.

Sen. Dr. Saith: It would be in written form and on a diskette.

Sen. King: Email it to him.

Sen. Prof. K. Ramchand: You can email it. I am also lamenting that the Bill is too narrow a response to this brave new world that brought about the communications revolution. What has been happening in the last 20 years, has brought about and continues to bring about changes in the way we see, the way we feel, learn, remember and think. Our sensibilities have been changed. These changes are as profound as the changes that were brought about by the invention of writing and the invention of the printing press. These ought to be recognized as a source of many challenges, that any legislation on telecommunications must face.

The very restlessness in the modern sensibility that led to the information technology revolution, has turned around and used the first sparks of that revolution to propel this modern and modernizing sensibility further into uncharted space.

Young people are changing and rapidly family life and private life have been profoundly affected by this revolution. All of us are susceptible to invasions. A Telecommunications Bill must take account of the perils of all of this and show that we are alert to it and the ways in which we can try to protect our citizens, even while taking advantage of what is available.

Telecommunications is now virtually co-terminus with life. Some might fear that telecommunications is taking over from life. Virtual realities seem to exert a lot more power on people than what we use to think of as actual realities. Never before have our cultural products been so open to piracy. Our music, religious practices and festivals can all be ringbanged away or silently sucked up and made accessible elsewhere, beyond our control. Telecommunications has spawned a new, frightening individualism. People are locked into themselves. It has encouraged a predatory or parasitic approach to information. It threatens invasion and loss of privacy. It loosens the notion in community. It pushes with the debunking of nationalism and patriotism. It turns governments into pawns and partners of a ubiquitous, international capitalism. That is the kind of thing that is happening in our world. These were some of the thoughts I had in 2001 and thoughts I have to repeat because I see no sign in the amendment that these dangers—which are even more obvious now than they were then—are being taken account of.

I am merely supporting Sen. King's contention, that we ought to have taken the opportunity to redraft the Bill. I will try to deal with it as it is. I want to begin with four innocent questions. Act No. 40, 1991, which was assented to on November 18, 1991, was our first Telecommunications Act. The Preamble states that the Act is inconsistent with sections 4 and 5 of the Constitution. It implied that the Act was necessary and expedient and, therefore, requires support of not less than three-fifths of the Members of each House. That is how we felt in 1991. Why did we not feel so in the Bills of 2000 and 2001? Why is it that we no longer feel that sections 4 and 5 are being infringed? If we felt so in 1991, and we were correct, then it would apply to 2001. Has anything been removed from the Act of 1991, which now makes it unnecessary to think in terms of a three-fifths majority? I feel we should think hard about the question and consider whether the present Bill needs to be passed with a three-fifths majority.

With respect to the setting up of the authority, section 4 of Act No. 40, 1991 states: a chairman and eight members appointed by the President, after consultation with the Prime Minister and the Leader of the Opposition. What has happened since 1991 that we do not feel it necessary to have this Authority as an independent authority, free of political control, free of intervention and appointed by the President? Indeed, one of the issues in the 2001 Bill and one of the issues my colleague, Sen. King has pointed out is the independence of the Authority.

The office of telecommunications, in the United Kingdom is specifically protected from interference by providers or by government. It is a non-ministerial government department like the office of fair trading. It is independent of ministerial control. I think the doctrine that the regulator should be free of control or interference; either by providers or by the government, is a worthwhile doctrine. I would have liked the Government to consider that.

The next question I want to ask is, how is it—although the Act was passed in 2001—we took so long to establish the Authority? How is it that in three years, nobody has been rushing to apply for licences? I wonder whether the promised influx has been discouraged and will continue to be discouraged by the fact that a provider, Cable & Wireless owns 49 per cent and the Government of Trinidad and Tobago owns 51 per cent. We have a combination of a provider and a government setting up the regulating authority. Anybody who wants to come here will consider that. What do you expect? If a provider and a government are setting up an authority to be regulated, who are they going to regulate in favour of? We are outsiders. I think we will find that if we set up an authority that is not an

independent authority, clearly independent of providers and government, the economic boom that is expected will not take place.

The last question that I wanted to begin with takes up some amendments that were proposed in the 2001 Bill, by a former Independent Senator. He proposed that the name should be changed to the Telecommunications and Broadcasting Authority Bill. He proposed a new clause dealing with the functions. One of the functions should be to regulate broadcasting services, consistent with the existing constitutional rights and freedoms contained in sections 4 and 5 of the Constitution. What the Senator was pointing to is that all over the Bill, there are references to broadcasting and radio broadcasting and the Authority is given control over all the radio broadcasting. It is an important part of the Bill that broadcasting be in it. There is a great danger in this too. The Senator saw, and I agree with him, that to have an authority appointed by the Cabinet—after all it is a political body—in total control of radio broadcasting in the country could pose a very serious threat to freedom of speech. Why was that submission swept aside at the time and not even thought about when the amendments were being done?

There are two parts: let us change the name to reflect what it is really doing. The other, which is my persistent theme, I want the Authority to be independent. Mr. Vice-President, those are the four questions I had to ask.

I want to make some brief comments on the proposed amendments. The definition of “public telephone service” has been changed. I do not think that this is just a clarification. This is a definite change. It is clear that the Government wishes to include VoIP among the things to be regulated. Here, I am treading on grounds I am not absolutely sure about. I am at the mercy of informants. I am told and common sense tells me that VoIP is embedded in many other services: distance education, telemedicine, many self-serve applications, banking, other contract related services, e-commerce, even a calypsonian trying to sell his songs, or a pan man his CD. Streaming audio is very much a part of the way of life of people who are buying and selling things. If VoIP comes under regulation, would this in any way affect that? I do not know. I really have to ask the question and wonder whether one should. They are going to make it more expensive for sure. If they come under regulations, they would have to pay licences and certain taxes. Am I sure? Does it make it more expensive if it is being regulated? The Minister would give some clarification on that, when he is winding up.

To many people, it looks as if this change in the definition is an *ad hominem* or *ad componem* thing. It is an attempt to get at the calling centres. Whether or not,

the VoIP argument is taken, the argument I am taking is this: those calling centres are providing a service for ordinary people at a price that TSTT has signally failed to provide. Therefore, I am on the side of the calling centres, until TSTT can pull up their socks. I am on the side of the calling centres because they are making a kind of contribution to universal service, that TSTT certainly has not been doing. They are offering us—I use them too. I prefer to use the calling centre than to make an international call from my own house. It is one-third cheaper.

I am not too happy about that change, although I can live with it, if it is not going to make VoIP more expensive and if it is not going to deprive us of so many of those services in which VoIP is embedded. But, I do have to oppose for the time being, on the grounds that it seems to me to be aimed at the calling centres. Until something better comes along, I wish the calling centres to survive.

The changed definition of “value added service”, and the effect of the amendment there is to make Internet service providers subject to regulations. Again, I am not versed enough to pronounce on the technical side of it, whether ISPs ought to fall under that. We have to ask whether regulating them is going to slow down or speed up the thing we say we want to encourage. If we want to encourage ISPs, the use of computers in households, schools, hospitals and these kinds of services, does it help to regulate them? I do not know. My impression is that since the Government policy is to encourage the universal spread of this kind of thing, regulating should only be entered upon if we are sure that we are not putting in a disincentive.

Sen. Dr. Saith: What is there in the definition that would lead you to the conclusion that the Internet service providers are going to be regulated? I did say in my presentation that it is not so. Am I missing something on your interpretation or is it that someone told you that?

Sen. Prof. K. Ramchand: Maybe I am missing something. As I said, in all humility I do not understand these things properly. It looks to me as if ISPs will be regulated.

Sen. Dr. Saith: The answer is no.

Sen. Prof. K. Ramchand: This did not come to me just like that. I have had a number of phone calls from people in the business who said to me: “Look, they are regulating us. Could you ask questions?” I am asking the questions. I am glad to get the clarification that ISPs are not about to be subject to regulation.

The next item in the amendments that interests me is section 50, which talks about inspections. They are talking about inspecting traffic. My layman's

Telecommunications (Amdt.) Bill
[SEN. PROF. RAMCHAND]

Tuesday, May 11, 2004

interpretation of this “traffic” is that it means that civil servants will now become official hackers. They would be able to enter the stream, monitor, decode and hack into private systems. To me, it is very dangerous to make something like this legal. You are legalizing the invasion of people’s personal privacies and people’s confidential business. I do not like it at all. I feel that for this to pass, it must be passed with a three-fifths majority. I am certain that my rights under the Constitution will be infringed by this.

The last item I want to pick up on is more an old time communist-type plea about universal service. I agree that the Bill says that universal service is a moving target and our notion of what it is changes from year to year, as the system develops far away from the day when universal service meant a telephone booth in Matelot and one in Bonasse Village. That is not good enough. Universal service is one of the most important elements in the Bill for the people of Trinidad and Tobago. If we are going to create a telecommunications nation and if, as the Government keeps saying, it wants a computer in every school, a computer in every home and are giving teachers and civil servants interest-free loans to buy computers, that is a policy which has to be tied to the notion of universal service.

In 1985—things have changed so fast—it must have seemed a very good thing. By the end of the century everyone should have a telephone. That is not what universal access means today.

When the post office was being divested, many of us suggested that the post offices should be the locus for some kind of extension of the meaning of universal service. Universal service implies and involves entry into the whole telecommunications spectrum. It involves us in thinking: Should those schools be used as a kind of base for Internet service? Should our community centres be used? Should our post offices be used? Much thinking has to be done.

The Minister, in presenting the Bill in 2001, said that as technology evolves, the needs of the population and what is due to the population would be greater. We cannot say we will deal with setting up these providers and operators and ask them to pay money towards it. Although that is necessary, it should be part of our legislative programme; that we are going to give Internet service to every community, making use of the public buildings. It should be something very positive. We have to expand our notion of universal service and make definite plans.

9.00 p.m.

The Caribbean Association of National Telecommunication Organizations says that universal service is attained when telecommunications services are available

in every household. If this Bill is a work in progress, I feel we should put on the agenda some serious thoughts about what is universal service, and why it is important for the community.

In the United States of America, the Treadwell Communications Commission has paid special attention to universal service, and has set out many guidelines to the kind of issues one would raise. I am not saying that I want to copy these guidelines, but I am just saying that many countries in the world have recognized the need of what telecommunications services should be universal and how the discussion should be framed. Is universal service just about connecting people with phones and connecting people with people? What could be done to identify the communities and individuals that are most at risk? The public may need consumer education.

One of the perspectives in the American system—they say that they have six golden perspectives and the sixth perspective is: Access to advanced telecommunications services for schools, health care facilities and libraries.

Mr. Vice-President, I have looked at those changed definitions, and I have taken the opportunity to make some comments on the ways in which I feel this Bill could be fleshed out, or the way in which the Government could do more and, certainly, in the area that concerns me most which is universal service.

I close by going back to the greatest concern of all, and that is the Government would not get the economic boom that it is expecting if the authority that regulates is seen and known to be appointed by a Cabinet which has close links with a provider, which is the Government of the country. The two owners are Cable & Wireless, 49 per cent, and the Government, 51 per cent. How could the Government expect people to believe in the neutrality or the independence of the Authority if the Government or the Cabinet appoints that committee? The Government is not going to get the economic windfall that is expected and all the other things—turning this place into another Bangladesh—about making us a great centre for software and so forth would not come to pass. You cannot create a telecommunication age in this country, and you cannot make us the centre of anything if the Authority is not absolutely independent of providers and the Government.

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

Sen. Francis Pau: Mr. Vice-President, it gives me great pleasure to rise in support of the Bill to amend the Telecommunications Act, 2001. I would like to particularly thank Sen. The Hon. Dr. Lenny Saith for allowing me the opportunity to do so.

Before I begin, however, through you, Mr. Vice-President, I would like to thank you and hon. Senators for their warm and cordial welcome afforded to me, and indeed the other three Senators who took their seats in the Senate on Tuesday, May 04, 2004.

I have listened with great interest to the contributions of Senators on the opposite side and, indeed, on this side. I think that in treating with the Bill that is before us, it would be useful for hon. Senators to refer to both the preamble and the objects of the parent Act, which is Act No. 4 of 2001, which was assented to on July 05, 2001.

If I may be permitted, I would like to quote the two relevant sections of Act No. 4 of 2001. The preamble states:

“Whereas the Government believes that in order to promote the country as the regional centre for the new information economy, it is necessary to establish a comprehensive and modern legal framework for an open telecommunications sector by permitting new providers of telecommunications services to enter the market and compete fairly;

And whereas it is appropriate that an Authority be established with transparent regulatory processes to guide the sector’s transformation from virtual monopoly, in which Telecommunications Services of Trinidad and Tobago is the principal provider of telecommunications services, to a competitive environment, to monitor and regulate the sector so transformed and in particular, to prevent anti-competitive practices;

And whereas in order to achieve these stated goals, it is necessary to repeal the existing outdated legislation and enact new legislation, as hereunder proposed;

And whereas the existing legislation in the related field of broadcasting is also outdated;”

This was the situation in 2001 when the Government of the day quite laudably sought to establish in its objects of this Act conditions under section 3 of the Act, which I think would be useful to quote:

- “(a) an open market for telecommunications services, including conditions for fair competition, at the national and international levels;
- (b) the facilitation of the orderly development of a telecommunications system that serves to safeguard, enrich and strengthen the national, social, cultural and economic well-being of the society;

- (c) promoting and protecting the interests of the public by:
 - (i) promoting access to telecommunications services;
 - (ii) ensuring that services are provided to persons able to meet the financial and technical obligations in relation to those services;
 - (iii) providing for the protection of customers;
 - (iv) promoting the interests of consumers, purchasers and other users in respect of the quality and variety of telecommunications services and equipment supplied;
- (d) promoting universal access to telecommunications services for all persons in Trinidad and Tobago, to the extent that is reasonably practicable to provide such access;
- (e) facilitating the achievement of the objects referred to in paragraphs (a) and (b) in a manner consistent with Trinidad and Tobago's international commitments in relation to the liberalization of telecommunications;
- (f) promoting the telecommunications industry in Trinidad and Tobago by encouraging investment in, and the use of, infrastructure to provide telecommunications services; and
- (g) to regulate broadcasting services consistently with the existing constitutional rights and freedoms contained in sections 4 and 5 of the Constitution."

Mr. Vice-President, it is very unfortunate that this Act, for technical and historical reasons, well known to Members of this Senate, was not assented to and proclaimed in its entirety as only Parts I, II, VII, VIII and X with the exception of sections 77, 81, 82, 83, 84 and 85 took effect on the date of assent, and the remaining parts were to take effect on dates to be fixed by the President by proclamation.

Now with the passage of time, three years may appear to be very long but, in fact, it is a very short period in terms of the topic at hand. When one considers the rate at which telecommunications and related technologies are developing, three years is no time at all. We may virtually have to replace our very computers at home once every three years, if we want to keep up-to-date with technology. It is in this context that the Government has found it necessary to propose the Telecommunications (Amdt.) Bill 2004, and to bring clarity to the provisions considered ambiguous, and to encourage investment by creating and sustaining a

framework for fair competition, and to ensure the availability of quality services at affordable prices in keeping with the requirements of the International Telecommunications Union, the World Trade Organization and in respect of legislative reform in the Information and Communication Technology (ICT) industry.

Under the proposed legislation there have been several revisions of definitions. In this regard, I would like to underscore that the very word “telecommunications” is an old and historical word used in the industry, and which really comes under the larger umbrella of ICT, that is Information and Communication Technology.

This distinction is very important to understand as worldwide technologies relating to broadcasting, computers and telecommunications are converging in leaps and bounds. It is therefore very necessary that the Government of the day should pursue a policy that is facilitative of the environment, within a legislative framework that is enabling and technology neutral in order to keep abreast with the developing technologies, the needs of its citizens and its obligations and commitments under international treaties.

I am very aware of the private sector interests and their concerns which are expressed from time to time, and most recently the views expressed on the Internet with respect to the Telecommunications (Amdt.) Bill, 2004 by the Association of Independent Internet Service Providers, and more recently in the *Trinidad Guardian*, allegedly ascribed to the former Director of the Telecommunications Division. I would not repeat their views that were expressed in order to give them further credence, but suffice it to say that I was quite surprised at some of their proposed recommendations and arguments.

I would, however, like to touch on three areas, which appear to be causing some concern, and they are: regulation, the definition of “Public Telephone Service” and the National Spectrum Plan.

In terms of regulation, when one looks at section 78 of Act No. 4 of 2001, it clearly sets out the Minister’s duty to make regulations on the recommendation of the Authority and subject to a negative resolution of Parliament. These include regulations prescribing:

- “(a) application procedures in relation to concessions and licenses;
- (b) fees payable to the Authority for or in relation to applications, concessions, licenses or the provision of services provided by the Authority to any person;

- (c) procedures for the management of the spectrum;
- (d) approvals and certification of terminal equipment;
- (e) price regulation;
- (f) interconnection;
- (g) universal service;
- (h) numbering;
- (i) procedures for investigating and resolving complaints by users with regard to public telecommunications services; and
- (j) procedures for investigation of alleged breaches of any term or condition of a concession or licence or alleged violations of any provision of this Act or regulations made pursuant thereto.”

One need not fear regulations as measures that would fetter or encumber the growth and development of the industry. On the contrary, it is most important to have an Act that would establish the broad legal framework expressed in technology neutral terms. It is the regulations that would enable the Act to keep abreast with the fast developing and merging world of telecommunications and information and communication technology, as well as our obligations relevant to international treaties both at the international and at the regional level.

For those of you who are promoting the concept of deregulation, I would like to respectfully suggest that this is a misnomer when used in the context of the deregulation of the sector as in the United States of America and Europe. Essentially, deregulation was to prevent the dominant provider such as AT&T, and indeed TSTT in this country from dominating the marketplace. These service providers, however, continued to be regulated by the FCC in the United States and OFTEL in the United Kingdom, in accordance with established policy and guidelines.

The definition of “Public Telephone Service” seems to be giving Senators some concerns. The issue of excluding the Internet and indeed VoIP from the regulatory framework could have grave national security repercussions. ISPs are excluded and, indeed excluded from regulation as we have just heard, but VoIP is a separate issue. As my learned friend, Sen. Robin Montano is wont to remind us, that if we wish to solve a problem we should always go back to basics. [*Desk thumping*] The fact of the matter is that we are dealing with real time interactive voice communication, which should be independent of its mode of transport.

To argue that there should be a differentiation between the traditional definition of a telephone service and VoIP which is a digital data service is avoiding the fundamental issue that the question refers to an interactive real time voice communication. It may interest hon. Senators to know that with the merging technologies the distinction is very blurred. No one a few years ago, could have imagined that data, voice and video could be transmitted in real time over the Internet.

The traditional telephone service used to be based on an analogue signal being transported over a copper wire. It has been like that for centuries, since Graham Bell's days. Now the same communication is seamlessly converted from an analogue signal to a digital signal and transported in packets whether by traditional wire, fibre optics or wireless networks and reassembled into an analogue signal, often using a hybrid of the modes of transport. If we maintained the traditional definition of telephony, we could well find ourselves having very little to regulate as the trend of using the Internet for such services develops geometrically.

The impact on national security could be a very serious one. The United States has been tardy in establishing a regulatory framework for such services over the Internet which puts such communications outside the purview of the law, and thus seriously fetters the Government on matters of national security to monitor and gather information and intelligence transported by unregulated Internet services. It is no wonder that this is fast becoming the preferred mode of communication by criminal and subversive elements of society especially when one considers that such communications could be encrypted.

Finally, the National Spectrum Plan: While it is true that the broad guidelines with respect to the utilization of the spectrum are set by the International Telecommunications Union and at the regional level by CITELE through the Organisation of American States (OAS), it is imperative that at the national level we regulate and manage the use of the spectrum and indeed our geo-stationary and non geo-stationary orbital slots in keeping with Government's policy and guidelines.

Could you imagine the absolute chaos that would exist in an unregulated environment where service providers could use any frequency, location, power, mode of transmission, numbering systems, method of calibration and standards? And indeed without having any commitment to contributing to the universal service as a means of providing telecommunications services through Trinidad and Tobago. I respectfully suggest that this is not the way forward.

I would like to emphasize that although the spectrum is an intangible resource, it is a very important resource to this country. It is of immense importance and value and should be treated as a very important resource, which impacts in a major way on the safety and security of the nation and its economic and national development.

Countries such as the United States of America, the United Kingdom and other European countries have had auctions on frequencies of spectrum, especially in the 900, 1800 and 1900 gigahertz ranges and these auctions have been for billions of dollars, just as we have when we are exploring blocks in the oil and gas sector. I understand that Jamaica is the only country in the region to have auctioned off part of its spectrum and this was for a sum of approximately US \$50,000.

Mr. Vice-President, in conclusion, I would like to invite Senators of this honourable Senate to examine closely the provisions of the parent Act, No. 4 of 2001 and the proposed Bill to amend the Telecommunications Act of 2001. The Explanatory Note is very useful in explaining the rationale of the amendments. The public is crying out for the creation of a framework of fair competition. Minor adjustments could be dealt with at the committee stage.

I am confident that the Government would put in place the expertise, training and resources required to carry out the obligations and the provisions of this Bill. This would allow Trinidad and Tobago to take a giant step forward in the information and communications technology sector which is critical to this Government's vision for the nation, enabling Trinidad and Tobago to compete in the fierce and global marketplace. This would mean greater information flow; quicker and better decision-making; more efficient services to the public; greater development of the country's human resources and the health and protection of the nation. It would indeed establish Trinidad and Tobago as a leader in the area of information and communications technology.

In closing, I would like to thank you for your attention and to state that your support of this Bill to amend the Telecommunications Act 2001 could be a shining example of this honourable Senate, putting aside vested interest and partisan politics to collaborate in a very positive manner for the successful passage of this Bill. The basis of collaboration has already been established when one considers the genesis of the original Act, No. 4 of 2001, which was passed by Members on the other side when they were in government. I look forward with great pleasure to the early passage of this Bill and to the speedy promulgation of its regulations.

Telecommunications (Amdt.) Bill
[SEN. PAU]

Tuesday, May 11, 2004

Mr. Vice-President and hon. Senators of the Senate, I thank you. [*Desk thumping*]

Mr. Vice-President: Before I permit Sen. Prof. Deosaran to make his contribution, I would like to record my congratulations to Sen. Francis Pau for his first contribution to the Senate, our compliments. [*Desk thumping*]

Sen. Prof. Ramesh Deosaran: Mr. Vice-President, in my contribution, I would be guided by my esteemed colleague who told us on the last occasion that you do not always have to appear brilliant if others have said what you wanted to say. [*Desk thumping*] So I would follow suit because the contributions made by my colleagues, Sen. Carolyn Seepersad-Bachan and Sen. Mary King have touched on the megabytes and gigahertz—almost till it hurts. [*Laughter*] Sen. Bro. Noble Khan, in his typically humanistic style, added to the flavouring. And, certainly, the Minister in his own very clear and deliberate manner, even while going through the very politically controversial areas, stood his ground and gave us what he was obliged to do, and that is information and the Government's position on what is a very sensitive but critical issue for this country.

Of course, I must extend congratulations to Sen. Francis Pau on his maiden speech. Let me assure him—if they did not say so, perhaps, I could say on their behalf—that the exhortations that he telegraphed to this side about supporting the Bill, I believe, they might be very well appreciated.

Mr. Vice-President, the night is still young, as the hon. Leader of the Opposition would say. And we look with great curiosity if not apprehension. We would put that view to some tests in a few minutes. [*Laughter*]

To the new Senators, I did not have the opportunity to welcome them and in the exemplary tradition of parliamentary protocol, I would like to extend welcome to Sen. Bonnie-Lou de Silva and Sen. Paul Leacock. [*Desk thumping*]

Mr. Vice-President, I notice a new technique developing and it is called “the weapon of mass digestion”. We are fed well at around 8 o'clock or 9 o'clock and after such a meal most people would like to stretch out and watch television, or do something more amorous than that, but here we are debating a Bill that has this country at the crossroads of its development. [*Laughter*]

I think this Bill is inflicted by what I would call schizophrenia. This means that there seems to be two minds running through the Bill. In the same breath, let me say that it is not the Minister's fault or the Government's fault and I would explain why. One gets the feeling as if it is a “moko jumbie” dance—one foot forward and you move back two feet. I think it lies in the intrinsic nature of this issue.

For example, take the issue of copyright. There are some elements in copyright—the that it is being pushed and galvanized—that it seems to be contrary to the expectations of freeing up the Internet and what the free flow of information requires. It is those contradictory forces—perhaps, you should find a legislative synthesis—that are facing the Minister and the Government. How do you reconcile such forces in terms of public policies?

There are market forces mandated through treaties around globalization, but at the same time there is need for some measure of price control, some regulation. The issue is not whether to have regulation or not. I think the issue has to do with what kind and what degree of regulation is appropriate for the circumstances in which we find ourselves. That is the issue.

In fact, I remember that issue was alluded to several times when Act No.4 of 2001 was debated. A number of those issues came to the fore. That is another reason why I would not speak extensively. I contributed to that debate and to several of the amendments, which the then Minister, Mr. Ralph Maraj, accepted graciously. In fact, I wonder if he had anything to do with these amendments, because they would produce a very curious state of affairs, since the 2001 Act was subjected to his own artistic architecture.

I have a document here dated March 22, 1989, with the headline: “A document poses a threat to democracy”. That was a quotation taken from Mr. Ralph Maraj when he was speaking on the question of information and censorship. So I believe that it was in that spirit that we had the 2001 Act. A number of Senators here like Sen. King, some Senators on the Opposition Benches, and my distinguished colleague, Sen. Dr. Eastlyn McKenzie, spent long hours here. It was a signal occasion in the sense that we were so impressed by the accommodating attitude of the then minister, in terms of accepting the amendments that helped to strengthen the Bill and to put it on a more modernized footing. So it is for those reasons I think the Minister would have a very difficult job on his hands. In a few minutes I would elaborate.

There is an anomaly. I do not know how this would be solved, but we really do not have fair competition if you have a case where the Government owns 51 per cent as a dominant provider, and yet having to involve itself in making rules and regulations, at the ministerial level or in such instances of appointment of boards and so on.

As to whether there is enough integrity in the Government and the Cabinet to act fairly and squarely, well, that is where the difficulty would come in. You would

have to prove that and as in some legislation, you would have to prove your innocence, and it is a difficult terrain. We have been drawn in this at this stage because of the circumstances that I mentioned.

In terms of framing public policy, my respectful advice to the Government is to try to build the credibility of its role in this particular measure. The Government could do so in several ways. I would outline one or two ways.

Mr. Vice-President, if I have to take a risk, for example, in having a ceiling and a floor rate at this stage of the economy—given the nature of this exercise like opening up the markets and so forth—I would take that risk on the side of the consumer for the purposes of economic justice and economic progress. [*Desk thumping*]

Whilst you are looking at the balance in terms of new providers coming in, and the extent to which they would have to provide capital resources and so forth, on the other hand, the pressures that this country has been receiving from Telecommunications Services of Trinidad and Tobago (TSTT) are abysmal; they are phenomenal. [*Desk thumping*] Not a citizen could tell you—in spite of the Public Opinion Poll, which was conducted, which is another story—as far as the use of telephones in this country—and I am not even going back to the days of TELCO, but as a monopoly—TSTT has showed us such disregard in terms of servicing and pricing. I do not think any self-respecting government should turn a blind eye to the pressures faced by consumers in this country. That is what I meant by this being an opportunity for economic justice to bring back the ground loss by the consumer.

These amendments could be used to wake up the country and to inspire them that there is a new frontier ahead; let them be attracted to the Bill; and let the Bill become a magnet to the new enterprise created by our wireless technologies and so forth. Does the Bill do that? Does the Bill in its configuration—and with respect to some specific clauses—look as if it is subjected to heavy business pressures and lobbying? If that is the message, I think the Government would have a very difficult time along the way, even if the Bill is passed. There would be political consequences along the way in terms of implementing the provisions, especially when pricing comes in.

Presently, there is heavy lobbying. People have been calling some of us and we have been disturbed during different hours of the night. I cannot speak for the other Senators, but I am an Independent Senator, and I keep telling them that—I would not stress the word “Senator” but, as far as I can, I stress the first word more than

the second word. We are under pressure and that pressure would mount and it would be confronting the Government more often than they would expect.

In terms of freeing up the system, we should look at what is happening in St. Lucia, Grenada and those other small islands. When Cable and Wireless threatened the small islands to pull out and the bluff was called, I knew they had to come back and negotiate with governments for a fairer pricing arrangement.

Mr. Vice-President, I am not getting into the politics of it because if you get too much into that, I believe that we would lose sight of the usefulness and the intention of the Bill, which is really a Bill to benefit all of us since all of us use telephones; all of us would be using the Internet; and all of us would be waiting for the proper competition to come to us. There cannot be one price for the Opposition and another price for the Government. In that regard, I think Sen. Pau's exhortations are welcomed. I suppose you know the story much more than I do. In our system of parliamentary democracy there is always someone looking around the corner, and this is called an alternative government.

Mr. Vice-President, this base rate issue worries me. Now I would not say that there should not be a base rate because that would be ludicrous, since there is a business involved, but all I want to say very gently and respectfully is that there must be regulation. It is wise to have a base rate for the reasons that the Minister rightly enunciated. So where does that leave us? It leaves us with the integrity of the Telecommunications Authority.

What was the Minister's ICT plan when he recently laid it in Parliament? The Minister said that this National ICT Plan was designed to ensure that no citizen of this country would be left behind, as it takes this country forward in a century where information and telecommunications technology would play a very important part in our nation's development. One could not get a better language than that. The Minister said it so quietly in his inimitable style that the power of its meaning was increased on that occasion. That was a very meaningful sentence. He said that all would benefit from this blueprint for our self-sustaining knowledge-based society. Well, I need not go further, except to say that if the Minister wants all to benefit, and the conclusion in his document to be manifest, he has to open all doors for full access as possible. Sen. Carolyn Seepersad-Bachan and Sen. Mary King made that point.

I do not need to argue the case for the consumer. We are all consumers here. I have little respect for TSTT for its many misdemeanours ranging in degrees with respect to the consumer. I notice that there is a Consumer Complaints Bureau to be

set up by the Authority. I did not see it in the Bill. I do not know if I missed something, but if it is not in the Bill, I hope that this matter would be given swift priority.

The Consumer Complaints Bureau should be properly staffed and decentralized across the country. If there is a problem in Toco, a person has to pay passage and take a taxi—and these days you do not know if you would reach to Port of Spain alive, so you are taking your life in your hands—to go to some TSTT office in Port of Spain, and it is lunchtime and there is no substitute cashier—only to find a million persons in a line with one cashier. These are some of the distresses—if you want to provide the details—which consumers have in this country. I would expect this Consumer Complaints Bureau to be activated as swiftly as possible.

Incidentally, since we are on the question of integrity, the integrity of this Authority would reflect in one way or another on the Government. Who would the Government put on this Authority? I am conceding that there must be regulations and there must be the retention and the application of discretions, especially since the exercise is relatively new. No one should be pinned down to the Authority in terms of rates and the decisions that they are empowered to make for that necessary flexibility.

With respect to the question of integrity—including political integrity—I would suggest that the Cabinet and the Minister take great pains to put persons on the Authority who are free from any blemish or any potential for either corrupt practices knowingly or unknowingly. Of course, I need not say anything more on that matter.

There is an argument and I think it is an argument to consider—if not in the near future, in the long distance—especially given the Government's role in TSTT, which is something that the Government inherited. It is not something that the Government created, but it is something that they would have to deal with. Could we not de-link the Internet services from the rest of TSTT's operations and perhaps open up the market to ensure a better system of fair competition? This is relevant to the call centres.

Mr. Vice-President, you should not be surprised to know that if you conduct a poll in this country with respect to the support for the call centres as they are, as against having the Regulated Industries Commission coming down on them, about 90 per cent of the population would give its support to leave the call centres alone.
[Desk thumping]

That view has been somewhat verified by what TV6 does on its TV meter poll—I think it was 89 per cent if I remember correctly. That view was not so much out of consideration for the economic, or the financial implications which the Minister has pointed out; I am sure that the Minister would refer to it again. The Minister did read a helpful document towards the end of his presentation, but that high proportion, conceivably so, has arisen because of the pressures that consumers are feeling from TSTT.

9.45 p.m.

If TSTT were giving a better deal and a more reputable quality of service to consumers, there might have been a better balance. That is what I mean. Anybody as sensitive as the Attorney General, or the Minister in the Ministry of Finance or, better yet, the Minister of Education—[*Laughter*—if they can read between those lines and see the political implications of that simple view, in terms of where the public confidence rests, or where public confidence does not rest, the members of the Government, if they have ears to hear and eyes to see, will accordingly hear and see. That is the message. I need again to say no more.

In fact, the Regulated Industries Commission (RIC) was out of place, in my view. They put the Government in a sort of awkward position. I am a little embarrassed to know they were two of my colleagues. [*Laughter*]

Sen. Dr. Saith: It is an independent body.

Sen. Prof. R. Deosaran: Well, I am saying that the same way with the Telecommunications Authority, you have to know who you are putting. You could not run away from the fact that you have put them there. People might want to ask why you put them there now. I think you should be wiser than you were before that intervention by the RIC. You should be wiser. Some of them are economists. I do not want to get into that, but it has disturbed the public peace and it has been seen as a vulgar act of economic injustice upon the poor people of this country. [*Desk thumping*] The way those call centres were handled.

Sen. Dr. McKenzie: Language meh boy!

Sen. Seetahal: Repeat it.

Sen. Prof. R. Deosaran: I cannot. That is virgin territory. Only once you could say that. [*Laughter*] The RIC is out of place. It is either they do not know the legislation under which they are governed or they have not brought themselves up with the \$2 million they have per year to hire advisors. They should be doubly penalized, especially when such people know, Mr. Vice-President, that one could

get such calls as cheap as, or even cheaper, in other countries. That is as a result of the Internet and the free flow of information. They cannot do anything here in terms of prices or regulations, far from what other countries are doing. People know and they will judge the Government accordingly, and the point is brought out by the Minister himself that they are independent.

In the politics, in the political arena—and I am sure Sen. Mark will know this. He has a keen ear and eye for these issues. When they smell blood, the public does not think about who put the board there and whether the board is independent. They are coming for the Minister's throat. They are coming for the members of the Cabinet's throats as well and, possibly, for the Government at election time.

I am not giving free advice to my friends here on the Opposition Benches, but all these issues, if they are brought forward properly, such as how I have been bringing them here, I tell you the Government will be in a tailspin, because they will be touching a sensitive nerve when it comes to everyday use. It is like the price of bread. If the price of bread goes up two cents, it is just two cents, but it is the symbolic nature of that bread. So, politics is governed by symbolism and perception. Rightly or wrongly, that is a fact of life.

It brings me now to clause 50, and it is a troublesome issue, because this Bill is brought in at a time when people are craving telecommunications access—their families, they want to sit and talk for hours at ease and they want to have the technology available to them. This is a time as well, Mr. Vice-President, when the fear of terrorism and political subversion thrive. Those fears are just as alive as the appetite for communication by private dwellers or private persons.

Here again exemplifies what I meant earlier by the Bill is inflicted by fits of schizophrenia. How much control should they put to have the country guarded against potential subversion, use of the Internet, which we all know is being subverted for different purposes and, at the same time, how to give the public and many of us here in the society, freer access as unregulated as possible? It is not an easy job, and if I had to do it, I know on which side I would have to fall. Take whatever criticisms afterwards, but I have to make decisions, and Ministers have to make decisions.

Some of us on this side have the luxury of perhaps taking a rather intellectual view of things sometimes. Those things are helpful, but in the end, we have to make a decision, most of which carry political circumstances one way or another, like taxation. It now comes to traffic. My colleague, Sen. King, referred to it. We had a long debate on this on the first occasion in the 2001 Bill, and somebody

passed a clipping to me compliments the *Newsday*, Tuesday, March 20, 2001, and one of the Independent Senators, the headline, according to him, was:

“The Telecom Bill needs a special majority.”

And the story went on and on.

I will not tell you the name of that Senator, but I was here at that time in 1991 when that Bill was brought. The argument the Senator made was if they needed a special majority for the 1991 legislation, how come they do not need one for this 2001 legislation? I think then a response came, a very interesting response, that if the parent Act—and, of course, I am subject to the distinguished Attorney General's view, I am venturing out here now, but it will help put us at ease or a further unease, depending on what is said subsequent to my contribution.

You could correct me. I am willing to be corrected on this one, but it is a burning issue, as you would have heard this evening. It was said that if the parent Act is passed by a special majority, amendments to that Act subsequently may not necessarily need a special majority. Well I stand corrected, because if it is, yes, if it is no, perhaps we could take that position, but you see, we need the control.

They have issues. They have to know who is sending drugs to the different embassies. In fact, I was surprised when the Minister of National Security, my good friend, he has a serious job on his hands, but when the public hears that we did not have the telecommunication facility to detect where that call came from—

Sen. Joseph: I never said so.

Sen. Prof. R. Deosaran: If it was reported—[*Interruption*] I withdraw that. I leave that alone. I put it another way. We should have the capacity in our telecommunication equipment to trace that call expeditiously and make an arrest the next day. That is putting it another way. Now, how could you do that? The public wants you to do that, but at the same time, there is a reluctance to have the kind of technical monitoring that goes with that.

Sen. Mark: They have a \$64 million piece of equipment spying on the Opposition. They are spying on the Opposition. [*Laughter*] My cellular phone is being tapped.

Sen. Prof. R. Deosaran: So, here again the debate remains crippled by what I call fits of schizophrenia and the “moko jumbie” dance I spoke about. I sympathize with the Minister because I know he and his technical staff would have gone through this and they have to take a side, and whichever side they take, tell us and they will go with political consequences, favourable or unfavourable. That is the system under which we operate.

Coming to the end, though, there is a question of a quorum. Very interesting passage here. I admire the language in terms of justifying, on page 4, at the bottom of it, I guess, clause 13. It says in the second sentence, under clause 13 on page 4:

“Good corporate practice requires that resolutions be carried by a majority of board members.”

Before that it says:

“This section currently provides that four members constitute a quorum.”

So they amend the section to read that the quorum for any board meeting will be half the number of Members plus one.

He is putting the emphasis on a quorum to ensure good corporate governance. My submission is that good corporate governance should not begin with the quorum; it should begin by an expectation that all members of that board attend, and if they do not attend a certain number of meetings consecutively, something should be done. The saviour here is not a quorum; a quorum is a consolation prize.

Good corporate responsibility would be as full a membership and attendance as possible, having been appointed with one's instruments to serve such a noble, critical, very important mission. I think a quorum, if it has to be an issue, should be now and again, and I do not see these sanctions appearing. We have had a previous legislation on the Accreditation Bill, and I let it pass, because if the Minister does not want it to be moved, to be serious about attendance at meetings, in this day and age when non-attendance at a meeting could cause so much disruption, the waste of time and the disruption of all the administrative infrastructure that goes in setting up such meeting, well the Government, perhaps, is falling back in its responsibility.

Sen. R. Montano: Like the joint select committees.

Sen. Prof. R. Deosaran: Well, I promised to be brief. That is a very serious matter. I think the Leader of Government Business should take that matter not only with its specific reference here, but he should use his stature and his moral suasion to get people who are appointed to these authorities and boards, and especially those appointed to committees of Parliament, to serve as they are expected to serve.

I do not see anybody tolerating a situation of absenteeism, whether it be in schools, by teachers, Members of Parliament or doctors—when the RHA Bill comes up here we have to talk about that—absenting themselves from serving the people they are expected to serve.

In fact, when somebody is appointed by Parliament—Senate or Lower House—or to a committee, there is almost a statutory expectation, which, if not fulfilled, could be called a dereliction of duty. Check the May's parliamentary procedure. So it is a serious matter to be considered, not only with respect to this Bill, but generally.

Sen. Dr. Saith: Senator, I hate to interrupt you, but I know the attendance of people is very dear to your heart. The Act does in fact provide in section 8 for the President to terminate the appointment of a board member if he is absent, except on leave granted by the board, for three consecutive meetings. Perhaps you may wish to consider that for your committee. [*Laughter*]

Sen. Prof. R. Deosaran: Well, we need that kind of power extended to the other areas I have spoken about. It is a good beginning and I wish to thank the Minister very much for his helpful intervention.

My last point is on the question of the National Spectrum Plan. I will not get into the question of megahertz and gigahertz. I think that was dealt with quite well by Sen. Seepersad-Bachan and my colleague, Sen. Mary King, and we had a very helpful discussion, but the issue I want to touch upon, and emanating from the contributions made especially on this side, I believe by almost all speakers—even Sen. Bro. Khan. Well that is the point I want to make. To tell you how important this point is, even though it is politically volatile, he ventured over the line on this one.

The question raised is why should the Minister have any kind of control, or subject to his approval, and so forth, under section 41, with this National Spectrum Plan? We have come once again, time and time again, Mr. Vice-President, to this issue of how much trust should one have in a Minister. I am making this point in the context of the type of parliamentary democratic system in which we live.

It is expected by the principles of representative government, that a Minister is put there with a certain amount of trust to serve all, and along with that expectation there is an oath of office taken both as a Cabinet Minister when sworn in, and also in some cases, at the Lower House or the Upper House, and I remain very intrigued time and time again.

Everybody expresses such utter distrust of a Minister carrying out some executive control over a board. Even when the UNC was in power, or the NAR, and I happened to be here on both occasions for some time, the Opposition always—in that case, the PNM Opposition—expressed some distrust over the integrity of a Minister. It looks as if we are degenerating, and I use the word “degenerating”

Telecommunications (Amdt.) Bill
[SEN. PROF. DEOSARAN]

Tuesday, May 11, 2004

incrementally along that road, as if they want to strip the Minister naked of all powers.

We have the other side. Who is to blame for that diminished public confidence? And, as well, political confidence in Ministers? I do not think I need to answer that. Some Ministers have behaved very badly. Some have remained under dark clouds of suspicion of one kind or another. Then we come to the point now where Peter is quite often called upon to pay for Paul, metaphorically speaking, of course.

We have to make a beginning now. We have to re-establish the principles of representative government, the role of a Cabinet, and the role of a Minister. The way we can do that is not by fresh legislation or suppressing the views and the feelings of distrust. Ministers now should refresh their mandate by displaying the highest levels of integrity, fair-mindedness and, at all times, affording equal opportunity to all, once they have taken that oath and they occupy the position as a Minister of government.

Too often we hear suspicions, some justified, some not justified, of Ministers being partisan, biased and that does not do that principle any justice, so there is some plausibility in the suspicion, but I make this point because it came up in the previous Bill, the Accreditation Bill, and it will continue to come up, and it cast dark aspersions on the particular Minister at the time, whereas what is being expressed there is a cultural phenomenon of widespread distrust in the people we elect to govern us. I want to know how far down the road we will go by putting more and more nominated elements, or more nominations and diminishing the expected Executive control, but as I say, we have looked for it.

Mr. Vice-President: Hon. Members, the speaking time of the Senator has expired.

Motion made, That the hon. Senator's speaking time be extended by 15 minutes. [*Sen. Dr. E. McKenzie*]

Question put and agreed to.

Sen. Prof. R. Deosaran: I wish to ask for the Senate's forgiveness, I really did not expect, as I said initially. I thought I was taking Sen. Dr. McKenzie's advice, but I stray and I am very sorry for that, but the last point is a very vital one, because it will form the mission and effectiveness of this particular legislation. Well, the night is still young, of course, but Sen. Mark might be coming to testify to that. I want to thank the Senate for listening to me, and I hope my respectful views and advice could be of help to make this Bill and accomplish the objectives it set out.

Sen. Wade Mark: Thank you very much, Mr. Vice-President. Let me first of all congratulate my colleague, Sen. Francis Pau, on his maiden contribution, and also to indicate to him that we have taken note of what I would like to describe as romantic sentiments, particularly in this season of political heat. I have taken note of it. I also want to welcome Sen. Paul Leacock as well to the Senate.

Mr. Vice-President, this particular matter before us, when it was debated, I must tell you, I was occupying the Chair in which you are currently sitting. I was eager to get involved in that debate at the time.

Sen. Joseph: So they demote him!

Sen. W. Mark: All that is part of life. Life is about swings—ups and downs. Mr. Vice-President, nevertheless, I would like to say from the very onset that after some two and a half years in office, the present administration has brought a Bill to amend the Telecommunications Act, and from our assessment of this Bill, it seeks to dismantle key provisions in the Telecommunications Act, 2001, which is the parent Act.

This Bill has come here without any meaningful consultation. I think the Minister may have had pappyshow consultation but not meaningful consultation, as was testified this afternoon when he made some remarks about meeting with the call centre operators. After some two and a half years in office, no regulations to effect the provisions in the legislation, yet he speaks about swift implementation of legislation. Wishful thinking on the part of an incompetent Minister.

Mr. Vice-President maybe the hon. Minister has too many responsibilities and he needs to shed, because you know, after two and a half years in office, four deadlines, I understand, have passed—or maybe three, I do not know; he could probably remind me—where he made commitments to the country that cellular licences, through requests for proposals, RFPs, would have been effected. Nothing has taken place under the hon. Minister's office.

An Executive Director of the Telecom Authority is yet to be appointed. He is still consulting on that issue. That is the Minister of Public Administration and Information who came here today and said swift passage, fooling the country. We passed the Occupational Safety and Health Bill since January 11, 2004 and up to now it has not been proclaimed. And they say they care. About whom? Not workers, Mr. Vice-President. As I said, the hon. Minister is hoping that this Bill would be quickly and swiftly effected.

The only licence I know they have been able to grant is one to Citadel, their “pardner”, Louis Lee Sing. In 24 hours they passed it in Cabinet to save the jobs of

Telecommunications (Amdt.) Bill
[SEN. MARK]

Tuesday, May 11, 2004

40 workers in the private sector. Not 9,000 workers in Caroni (1975) Limited! No. Forty workers at Citadel. Cabinet, in 24 hours, gave them a licence.

Mr. Vice-President, we are convinced beyond any shadow of a doubt that this is backward, retrograde legislation, and is aimed like a dagger at the heart of scores of Internet service providers, and I want to dispute in a very serious way the innocence displayed by the hon. Minister when he asked Sen. Prof. Kenneth Ramchand whether he is confused as to ISP and how ISP would be affected, as if he does not know that it is in the legislation. I will demonstrate that. It is the same attempt he made in another place to say the VoIP would not have been affected. That is the call centres, and it is in the legislation. I do not know if he has not studied it, or it was a deliberate and studious attempt to mislead.

Mr. Vice-President, the dagger of this piece of legislation is not only aimed at the Internet service providers, and the close to 100 call centre operators. No! The dagger pierces even deeper into the hearts of hundreds of thousands of consumers in this country. I will tell you why as I proceed. Universal service is no longer what it is or what it was under the parent Act.

Mr. Vice-President, this is a shame, it is a disgrace, it is a scandal. Do you know why? Cable & Wireless, in collusion with TSTT, has hatched a plot, and this Government that is supposed to be representing the population of this country has fallen into a trap. They have brought legislation to this Parliament which will not benefit the ordinary people of this country. It will not benefit the consumers. It will benefit Cable & Wireless.

We have now become puppets. This Government is a puppet in seeking to promote the interest, even unconsciously, of a transnational corporation at the expense of our citizens in this country. They do not care how many call centres they close down. They do not care that hundreds of workers can be displaced. It is a question about dollars and cents.

Mr. Vice-President, do you know that the same VoIP that they speak to is being effected by TSTT? Do you know, Mr. Vice-President, there is a company called Net2Phone Global Services, and there is a collaboration between them and TSTT? Do you know if I go to TSTT in Port of Spain and use a pay phone within their surroundings or environment, I can call a member of my family in America and pay a dollar a minute? So they have the technology. But if I stay home, Mr. Vice-President, I pay \$5 per minute to call my family in the United States. This is the criminal behaviour of Cable & Wireless, and this Government comes to this Parliament with legislation to dupe us? To mislead us? To fool whom? They cannot fool us.

Mr. Vice-President, I want to say that this is a massive conspiracy hatched by TSTT and Cable & Wireless, and the Government has become a willing tool of Cable & Wireless, seeking to disenfranchise hundreds of thousands of citizens, for what, I do not know. What they hope to gain from it, I do not know. What I do know, Mr. Vice-President, is you and I, and the ordinary consumers in this country, are in for trouble if this Bill becomes law. I will tell you why it cannot become law, because the Government has court clothes. Every week they are in court. Every week.

I give them one assurance. If this legislation is passed in this Parliament without the requisite majority, they will be in court clothes again. They cannot take away the rights of people just so. Who are they? They cannot do that. I will demonstrate why. We have rights. We are not going to let Cable & Wireless run our Parliament. They could run their show. They could pappyshow them; not us.

Mr. Vice-President, this is a very serious matter that is before this honourable Chamber. Many people have spoken on this matter, but I want to say that the United National Congress was proud to have been the party in government at the time to introduce revolutionary legislation through the Telecommunications Act. The PNM, normally in deep slumber, as they always are, intellectually fossilized, as I call them all the time; brain dead and dense. They do not know where to go. They cannot offer any kind of direction in the country. Even a former chairman of Plipdeco, the former husband of Hon. Diane Seukeran, headlined in *Sunday Guardian*:

“Little to show for time in office.”

Little to show. He wrote:

“I am not sure how many people realize it, but we are almost at the midterm point for the present Government, and sad to say, there is little to show of a concrete nature for their time in office. Lots of speeches and plans, but little else.”

Their supporter and columnist, Selwyn Ryan, described them as the “do nothing Government”. Just PR. That is all they are about. But the time is coming. The time is coming when the people will test them. Mr. Vice-President, the proof of the pudding, as you from Tobago know, lies in the eating.

It does not matter. Time is always available to us. We are very patient. The time will come when we will perform. That is what they cannot deal with. The UNC has legitimacy and credibility in technology, in telecom. We can talk about

Telecommunications (Amdt.) Bill
[SEN. MARK]

Tuesday, May 11, 2004

telecom. We can talk about technology. Not them. They cannot talk about that. If I give the statistics on what we met when we came here in 1995, and what we left, I mean, it is amazing. I will share these things with you as I proceed.

Telecom is a very important industry. It is a growth industry. We have many opportunities in that particular sector of our society. We need progressive legislation. I heard Sen. The Hon. Dr. Saith, my good friend, speak to the issue of liberalization. He talked about competition, about a knowledge-based economy. Words, words! That is all they are about. Words! Nothing being translated into action or reality. Old talk. Vision 2020. A hoax to mamaguy the population. Two and a half years in office. Next year public servants will be revolting against them. Do they know that? That is how it goes. After two and a half years, they go into the third year, and after the third year, they gone through!

We feel, Mr. Vice-President, that this Bill before us infringes on property rights. I cannot have a call centre or I cannot be an ISP person or organization operating for years in this society—10, 12 years—and I have pioneered, established an industry, a small indigenous industry in this country. I have employed thousands of people, or hundreds of people, and then this Government, this “jack boots” Government, this brutal Government comes overnight and says to me, “Listen, you know what happened? I am altering your status quo.” And how do they alter the status quo? Just go to the definition section of the Bill and one will see, for instance, how they are altering the status quo of these people.

Mr. Vice-President, if you go to the parent Act and you look at what public telephone service meant, how we defined it, and how it has now been defined in this piece of legislation, I fail to understand how regulation is not being understood. On page two of the explanatory note, it is clear that the Government intends to control and regulate the delivery of all public voice services, irrespective of the means used to provide the service, for example, VoIP, but yet, my hon. friend could not answer that question in another place. He did not read the Bill. It is there in the explanatory note.

This Government is about “jack boots” politics. They want to control everything. This is not a fascist state. This is a democratic state. They want to control the Internet, and the Internet service providers are in trouble. I will tell you why.

Mr. Vice-President, look at the definition on page three of “value added service.” Look at the definition in the parent Act and look at the definition on page three of the current amendment before us, because it is a dagger at the heart of the ISPs and at the call centres, because Cable & Wireless is losing money. Because

every time I go to a call centre and I make a call, Sen. The Hon. Dr. Saith, through the Vice-President, I pay a dollar to talk to my family abroad. If I do it at home, I pay Cable & Wireless and TSTT \$5 per minute.

If, for instance, one is getting access to cheaper rates, what does one expect Cable & Wireless to do? They use the Government to come to this Parliament in order to bring legislation for us to further entrench the monopolization of the telecommunication sector by TSTT which is owned jointly by TSTT, the State, Government and Cable & Wireless. We must be born April 01, 2004 jointly and collectively to support this rubbish that they have brought to this Parliament.

Mr. Vice-President, I am inclined to call upon the hon. Minister of Public Administration and Information to simply take this Bill back to his drafting room. It is not worth the paper. I know the Government is harden and the only language they understand is brute force through demonstrations or the courts, or both. If they continue to govern how they are governing, you see what happened last Friday? More of that will come. Let them continue. It will be worse this time.

People have limited patience. It is very interesting. I want them to take note of it.

Sen. Joseph: I too.

Sen. W. Mark: Yes. You should. Both of you. No problem, I am accustomed. I can join the great souls of the 21st Century. I think one was here recently.

Mr. Vice-President, I draw to your attention this particular clause here on value added service, and I want to read it for my colleagues here. It says in the explanatory note:

“The existing definition creates ambiguity with respect to the classification of ‘Internet service providers’.”

You see at whom they are going? They say it provides confusion. Ambiguity, they call it. Mr. Vice-President, are you following?

“Government's policy requires the regulation of ISPs (Internet service providers) as public data telecommunication service providers.”

And they say the revised definition, which is below, is in accordance with this policy of regulation. This is what they have done. They have altered the definition in the original parent Act in order to regulate the Internet service providers. So, all the Internet service providers that are not involved in using telecommunication services, like TSTT, they are now going to fall under the ambit of the

Telecommunications (Amdt.) Bill
[SEN. MARK]

Tuesday, May 11, 2004

Telecommunications Authority of Trinidad and Tobago and, by extension, the heavy hand of the Government which controls TSTT and Cable & Wireless.

We will never have competition and liberalization in this nation unless we do something about Cable & Wireless and TSTT. If this Government does not want to do anything about Cable & Wireless, do not come here and fool the population, through this Parliament, by saying they are going to liberalize when they are consolidating and strangulating small business.

I listened to an ambassador. He said he is the ambassador to the Summit for the Americas, and he is President George Bush's PR; I think his permanent representative at the OAS. He was making the point last night at a lecture that in the Caribbean and in the Americas, Western hemisphere, it takes 73 days to start a business. The longest. It does not happen in Africa. It does not happen in Asia. But in the Western hemisphere, including the Caribbean, it takes 73 days on average to start a business. Not to talk about the amount of money you have to put out to start a business.

So, here it is young entrepreneurs, black, white, green, yellow, Chinese, pink; and Sen. Pau, even you. Not you personally, but you know. They got into business, Mr. Vice-President. They provided a service that TSTT did not want to provide. They put out investment. They put out capital. They put out time and energy. They built their business, although under pressure from TSTT. They have not been regulated in the past, and there are reasons for it.

They come today because Cable & Wireless believes that these small businessmen in Trinidad and Tobago are doing relatively well, and these call centre operators are doing relatively well, and they are saying to this Government that comes here like a willing stooge of the Cable & Wireless monopoly to tell us in this Parliament how we must go about ensuring that Cable & Wireless remains a power house in Trinidad and Tobago. How can we support this legislation? We cannot.

Mr. Vice-President, I put the pressure on Cable & Wireless because I do not believe that this Government could be so treacherous. I do not believe that this Government is treacherous to the cause of the people of Trinidad and Tobago. I do not believe that. I do not believe that this Government would be in collusion with Cable & Wireless to destroy hundreds of jobs and get rid of hundreds of small businesses in Trinidad and Tobago. I do not believe that this Government could be involved in that kind of treachery. I shudder to think that that is what is taking place.

Mr. Vice-President, I want to draw to your attention, universal service. If you look at “universal service” on page five of the parent Act, you saw what it meant. You saw what was the aim, the ideal, the intention to provide telecommunication services throughout Trinidad and Tobago, and in accordance with the criteria stipulated in section 28. That is clear in terms of section 28.

It tells us exactly what they are seeking to do. This is already in section 28, what the Government is seeking to parachute into the definition. I ask Sen. The Hon. Dr. Saith to tell us why, for instance, include these sections into the definition. What is the significance of it? What is going to be the basis? In other words, if you say, Mr. Vice-President, that universal service means the provision of telecommunication services throughout Trinidad and Tobago, taking into account the needs of the public, affordability of the service and advances in technology, what are you trying to tell the population? What are you telegraphing to the population? That they can only access universal service in Point Fortin, in Cedros, in Tableland, or in some far off or far-flung area, if they can afford? If Cable & Wireless believes that it is profitable to extend its reach to these far-flung areas of our country? Affordability? It takes into account the needs of the public. But the affordability, what is that? Money? Whether you could pay? I thought, for instance, the Government's responsibility is to subsidize wherever is necessary in order to open up this economy? So why incorporate this?

If they are bringing in service providers and the Government has a facilitating role to play, we should be nudging these people to go into the rural communities of our country and establish landlines to set up systems where people could have access to communication. I do not know why they want to put a provision where there are qualifications, so when a provider comes into the country, they will say “Listen, I do not have to really provide universal service, because universal service really means people must be able to afford to pay.” That is one aspect of it, and then they would have to assess the needs of the public. Maybe a survey will do it.

Then they say advances in technology. All right, I could understand advances in technology because that is important, but I do not understand, for instance, why the Government sought to introduce this measure here. I smell something funny, and I am hoping that I do not smell a rat. I hope the hon. Minister of Public Administration and Information can provide this Senate with some clarification on these qualifications. It was not in the original Act. Why have you parachuted it in this Act? Why? There has to be a reason. I have my suspicions as to why that has been introduced here.

Mr. Vice-President, may I take you to another section of the legislation to show you, for instance, how Cable & Wireless seems to have our Minister of Public

Administration and Information—hon. Minister, through you, Mr. Vice-President, sometimes it is done unconsciously. I was a Minister. I know how these people work. They could manipulate. They bring big paper for you that you do not understand, because you are not into the business of that, and they convince you to commit suicide and you come here and do it.

We have to rescue and save you. That is what I am trying to do today. I am trying to rescue you because somehow I do not believe that the Minister would be part of a conspiracy to get rid of small business. I do not believe he is in support of that. It cannot be.

Sen. Dr. Saith: It has to be the technical staff.

Sen. W. Mark: I am not dealing with any technical staff. When we come to this Parliament, I am pointing my guns and ammunition straight at you because you are accountable at the end of the day for anything that happens in your office. No technical staff is misleading me.

I advise my dear colleague and friend, do not become a prisoner or a puppet of your technical staff. Never. You must lead. That is why you are there. People have appointed you to lead, not to follow. I am shocked that the hon. Minister could bring this kind of legislation to Parliament and seek to justify it.

Mr. Vice-President, hear what they did to the hon. Minister again. They have him swinging from a tree. They say to him in clause 18(1)(d) of the parent Act:

“Subject to the provisions of this Act, the functions of the Authority are...”

And they mentioned, to establish, under (d), the National Telecommunications Industry standards and technical standards. The Authority is supposed to do that.

You know what they want to do? They feel they can manipulate the Minister, so they take it out of the Telecommunications Authority and they say “Listen, let us put it in the hands of the Minister.” You know what is the new change? The change is that they are going to advise the Minister on national telecom industry standards and technical standards and implement such standards upon the approval of the Minister. The Minister never used to approve before. The Minister is now approving. Why is that? Why the change? What is the rationale for the change?

Mr. Vice-President, the Act has not been proclaimed. It has not been put into effect. The Minister has not functioned. We have not seen him in action. We cannot review his performance. There is no evaluation that we have been able to bring forward to see how this Act is working, yet still, the Minister, without testing this Act, he agrees to change its provisions without testing the actual provision.

I am asking what is the rationale? Give us the rationale. Give us a reason why they are going in that direction or why they are allowing themselves to be taken in that direction. I think the Minister again has been hoodwinked, fooled and pushed around by TSTT and Cable & Wireless. Would you believe, this monopoly beast called TSTT that has no respect for this population—you see National Flour Mills, I am a person who supports the state sector. I believe, in many instances, in state-led development. But I cannot condone, and I cannot support state monopolies that rip off and rape the population! I will never support it. National Flour Mills is one of them. Raping and ripping the country apart! Then there is this beast they call TSTT which we need to fully unmask.

This is the *Newsday*, Tuesday, April 13, 2004, page 14, big advertisement by the Regulated Industries Commission. TSTT plus Cable & Wireless are milking this population of 1.3 million people and a customer base of 200,000 to 300,000 people daily, monthly, yearly. TSTT and Cable & Wireless had \$500 million in profits after tax. This is the monopoly provider we have in this country.

Mr. Vice-President, under the Telephone Act, 1999—no. Under Act No. 22 of 1990, the rate of return that TSTT and Cable & Wireless are supposed to enjoy is 15 per cent. They have been making and reaping 25 and 30 per cent. The Minister responsible for telecommunication for two and a half years has done nothing about that matter. They are making over and above the 15 per cent rate of return on investments and ripping off and raping the population of this country! So much so that the RIC, if they have the power, I do not know, is calling on TSTT to give us back some of our money, because they have been stealing from our pockets. They told them exactly how to go about it. I would like to know what the Minister of Public Administration and Information is doing to ensure that TSTT is brought into line.

Do you know what he does? Instead of seeking to protect the consumers who are being ripped off by TSTT, the Minister brings to this Parliament an amendment to create a complaints bureau. I mean to say, how can the Minister? This is a power that is now within the ambit of the Telecommunications Authority.

If I am querying a Bill and they charge me \$2,000, I pay them \$1,000 and query the next \$1,000. I do not pay the next \$1,000 until they clear me up. The Minister is now saying pay your \$2,000 and then query, and this Minister looks after the interest of the poor and the working class of this country? I will expose the Minister of Public Administration and Information and the PNM for this criminal act committed against poor people of this country.

10.45 p.m.

Mr. Vice-President, the parent Act gives you and me the right to query and hold back payment, but Sen. The Hon. Dr. Saith comes here with an amendment which says, "Pay the \$2,000 and then query," in other words, in industrial relations, comply and then complain; that is what he has proposed to us. I find this is incredible; it is a national scandal. It is shocking how this hon. Minister could allow himself to be used, abused and manipulated by Cable & Wireless. I advise my hon. colleague to withdraw this Bill and go back to the drawing board. I think they have misled you and I am here like the shepherd to guide you. I think you are lost, and you need guidance.

Just in case the hon. Minister does not read widely, I refer him to the *Business Guardian* of Thursday, April 15, 2004:

"ISPs joining forces to fight TSTT"

They are making claims in this article through this gentleman from WOW.Net, a chap by the name of Lyndon Clarke. Mr. Vice-President, hear the opening salvo:

"Independent internet service providers are resisting attempts at regulation contained in...Telecom Act."

And the Minister came here today like a virgin; he pleaded innocence and said, "I do not know what you are talking about, Sen. Prof. Ramchand; are we reading the same Bill?" Well Sen. Prof. Ramchand did not do the research I did, so he could mamaguy Ramchand, but he cannot mamaguy me, because I did the research. Nobody called me on "no" phone, I visit people; I do not wait for phone calls; I go to people's homes and find out what is taking place.

This is a reality. I want Sen. The Hon. Dr. Saith to read it. I have an extensive piece as well by Winston Ragbir, somebody whom they would be well aware of because I am aware of the chap:

"Amendments unfair"

Whether you like or do not like Winston is immaterial. He has a point of view; either you take it on board or it is court clothes for you. I know that you will not be paying, because if you were, you would be bankrupt. You are using taxpayers' money, through the Attorney General's Office in order to go to court. "Yuh coming with de RHA that way", court clothes again. This is the first Government in Trinidad and Tobago that has been placed in court by the people of this country on so many occasions within a five-year period, and every time they take them to court, discrimination, advantage, "yuh" bias; that is your record. Do you want to live with that? "Yuh doh have no shame?" Oh God man!

Mr. Vice-President, they cannot keep a record like that. Every time any citizen takes the Government to court, discrimination, discrimination, discrimination is the judgment. I ask my colleague to look at clause 26 of this Bill. Again, the Minister has been manipulated and used; he has been sent here like a robot to convince us of the impossible. Would you believe that? In the original Act we can go jointly and grieve to the Telecom Authority, if there is a problem. Do you know what the Minister has proposed? The Telecommunications Service of Trinidad and Tobago (TSTT), big monopoly provider, could take WOW.Net or any call centre operator, that would be licensed shortly, according to Sen. The Hon. Dr. Saith, and if TSTT is of the view that these small operators are eating into its profits, it will take them from Caesar on to Caesar. The Authority is a political body appointed by the PNM Cabinet. *[Interruption]*

I know that you had no consultation with WOW; WOW not happy. Pau, I do not know if you are a part of WOW, *[Laughter]* but certainly I do not believe that WOW was consulted.

Mr. Vice-President: Hon. Members, the speaking time of the hon. Senator has expired.

Motion made, That the hon. Senator's speaking time be extended by 15 minutes. *[Sen. S. Baksh]*

Question put and agreed to.

Sen. W. Mark: Thank you, Mr. Vice-President. *[Laughter]* I know that my friends will always accommodate me, even reluctantly. I just have a few areas to cover. I think I could do it within my time frame.

I appeal to the hon. Minister to take the opportunity to have meaningful consultation with the stakeholders, because sometimes simple amendments can have profound, deep, far-reaching implications and consequences. I do not think that Sen. The Hon. Dr. Saith, knowing that he is a businessman himself, would want to be part of an ugly history. On behalf of the Opposition UNC, the alternative government of Trinidad and Tobago, I respectfully suggest to the hon. Minister of Public Administration and Information to withdraw this Bill, take it back to his people, have large scale consultation with all the stakeholders, including the Opposition and the Independent Benches and let us really work something out, in the interest of the people of Trinidad and Tobago. Not in the interest of Cable & Wireless; not in the interest of a transnational corporation; we cannot support that. How could we support that? I call on my hon. colleague to address that question.

Telecommunications (Amdt.) Bill
[SEN. MARK]

Tuesday, May 11, 2004

I now go to another provision of the Bill, section 73 of the Explanatory Note. The more I read this Bill, the more I laugh. I do not believe that this Government is serious; it cannot be. Sen. The Hon. Dr. Saith has been used by Cable & Wireless. [Interruption] Section 73—I am using the Explanatory Note, because it is very comprehensive for me. I want to take you to the parent Act. You want to know if this Government is in space or on land. The Minister talked about e-government, but we might get c-government shortly, because the way cocaine is passing through the Ministry of Foreign Affairs, we might have cocaine-government if we are not careful. [Desk thumping] We are going from e-government to c-government, cocaine government. [Laughter]

Let us look at section 73(1), look at the scenario, it is very interesting. I found that even in the original Act there were too many people that the Executive Director had to consult in the event of an emergency. The Bill states:

“Where the Executive Director has reasonable grounds for believing that any person is operating a telecommunications network or providing a telecommunications or radio communication service that is dangerous to the security of the State...”

Look what happened last Friday in town: the whole of Port of Spain shut down, because some terrorist—I do not agree with the Minister of National Security who talked about the trade union movement. I thought that was so inept of him, to actually accuse the labour movement of being behind the bomb scare in town. I thought it was very awkward and backward of him to do that.

I am sorry he is not here; I would tell him that to his face; as my former teacher I am disappointed. [Interruption] But I will come back to you Joe; I only have 12 more minutes. [Laughter] I will talk to him at the end of my contribution.

The Bill reads:

“Where the Executive Director has reasonable grounds for believing that any person is operating a telecommunications network or providing a telecommunications or radio communication service that is dangerous to the security of the State, that disrupts the telecommunications network, that causes harmful interference...”

The Executive Director.

“he shall immediately notify the Minister of National Security and the Minister of Public Administration and Information.”

One would have said, “Well, look, let the Executive Director contact the Minister of National Security, because this is a national security matter.” Okay, we could say that he must go to the Minister too, because the Minister wants to be involved. Mr. Vice-President, do you know that these conspirators at TSTT, along with Cable & Wireless, want to be involved too, because they are going to form the Telecom Board, the PNM is going to appoint them. *[Interruption]* Stretch, you now come, cool it. *[Laughter]*

I just want to advise my hon. colleague and friend, Dr. Saith, that I find this provision to be bureaucratic; I find it to be cumbersome; I find it time consuming. I do not think that you should be informing “no” board. And if you have to call them: “shall immediately notify”—Do you know why these board members do not want to come under the integrity laws of the country? They have a good time; so they all over the place: Barbados, Miami, New York and Moscow; they are flying all over the place, plenty money, utilizing taxpayers’ money. So how would the Executive Director be able to contact these people? He cannot. Dr. Saith, with due respect, I want you to withdraw the entire Bill. *[Laughter]*

With the few minutes I have available, I want to read an article. I do not know if Dr. Saith read this one, it is in the *Guardian*, again. I find the *Business Guardian* to be quite a useful piece. I must say that I read it quite regularly. I read the *Guardian* as well. They are a little balanced, not like the *Newsday*, which I think is Howard’s. Do you have shares in that?

Sen. Chin Lee: Not me.

Sen. W. Mark: Everybody backing out now. *[Laughter]* “Doh” worry boy, when the time comes I will not forget you. It is only a matter of time before we get there and you come here.

This is an article written by a chap called Noel Kalicharan and it is entitled”

“Deceptive practices by TSTT”

It really makes interesting reading; I would really recommend it. He said:

“The telephone industry is so lucrative that TSTT could keep its customers reasonably satisfied and still make a healthy profit. I will wager that when the threat of demonopolisation of the industry becomes real, TSTT would make frantic efforts to keeps its customers. By then it will be too late.”

I read a story recently by the Chairman, a chap called Christian Mouttet, who was boasting that the only area which newcomers—*[Interruption]* well, whoever he replaced, I am happy for him in his present portfolio.

Telecommunications (Amdt.) Bill
[SEN. MARK]

Tuesday, May 11, 2004

Another article reads:

“Telecom rates stifling competition”

I feel ashamed as a Trini. Do you know that in Barbados and Jamaica the rates are lower? TSTT is a State monopoly; it is making \$500 million a year and we have to pay six times the cost. [*Interruption*]

Sen. Dumas: I want to know if there is any compelling reason why during the period of the UNC it was not sold off.

Sen. W. Mark: No; we were going to demonopolize it by opening up the market, but you were in collusion with the President then and you kicked us out of office to effect it.

Sen. Dumas: You fired me, right.

Sen. W. Mark: Look, let me address the Chair; you seem to want to disturb me, I am not going to fall for that.

Mr. Vice-President, I want to just tell my friends and hon. colleagues that Mr. Ragbir is a former Director of Telecommunications; he is a man with vast experience and knowledge. [*Interruption*] You could libel him, but he makes a good point:

“However, the proposed amendment removes the rights of consumers to query a charge on his bill and not have to pay the amount in question...”

The key point I want to raise is that Ragbir said that the amendments now before Parliament came before a committee in 2001, of which he was part, and the committee rejected all those recommendations or proposed amendments.

I do not have the documents before me, Dr. Saith. You are the man in charge, you have access to the information. You can verify if what he said is true or false.

Sen. Dr. Saith: I read it.

Sen. W. Mark: The important thing is that we find the amendments you have brought here to be quite offensive; we find them to be very retrograde; we find them to be very backward; we find them to be very anti-people, anti-consumer and anti-Trinidad and Tobago. It is pro Cable & Wireless; it is anti-the call centre operators; it is anti-WOW, Pau. It is anti-ISP, that is the Internet service providers. I do not believe that Sen. The Hon. Dr. Saith, in all good conscience, expects this Opposition, which is so sharp and keen in removing this regime [*Laughter*] and getting on with the business of prosperity and growth in this economy which the PNM has stifled, stymied and brought to a halt, to support these measures; he cannot.

Mr. Vice-President, in closing, I do not think Sen. The Hon. Dr. Saith has gone to court so far, but I want him to prepare his court clothes, because he, the hon. Minister, will be taken to court if this Bill is passed without the requisite majority that is required when you are seizing and adjusting people's property. If I have been operating a business like a call centre operator for a number of years, and you come to put a licensing arrangement to regulate my property, you cannot regulate my property or seek to put me out of business or take away my property, as you are seeking to do now, without the requisite majority in this legislation. If it was an ordinary amendment I would have understood it; it is not an ordinary amendment. The Government had better get the requisite majority here, or the Attorney General and you will be taken to court by the people of Trinidad and Tobago.

I thank you.

Sen. Robin Montano: Mr. Vice-President, as Sen. Pau reminded us earlier this evening, I always say, if you want to understand a problem go back to basics. This particular problem that we are dealing with tonight had its origins back in or about 1989, when the then National Alliance for Reconstruction government under the Minister of Enterprise, Ken Gordon, merged the Telephone Company of Trinidad and Tobago (Telco) with Textel; Telco was the local company providing a telephone service inside Trinidad and Tobago and Textel provided all external communications. Textel was a very, very successful, profitable company; Telco was very unprofitable.

I was in the Senate in the PNM Opposition in those days and we argued that there was no reason to form TSTT and to sell out to Cable & Wireless; that the money Cable & Wireless was going to pour into TSTT was chicken feed compared to the amount of money that the merged enterprise would make, and that Telco was unprofitable because it did not have the foreign calls, but a revamped, revised Telco, which incorporated Textel, was going to make a lot of money. So said, so done and it was ignored by us. We pointed out, at that time, that one of the things one had to look at was that effectively giving Cable & Wireless control over our internal as well as external communications was going to be detrimental to the people of Trinidad and Tobago. So said, so done.

Since those days in the approximately 15 years since Telco and Textel were merged and we had the new entity called TSTT, you have had a monster developed that has made millions for Cable & Wireless at the expense of the ordinary consumer in Trinidad and Tobago. You have seen a monopoly through successive regimes to this one, to date, fight like mad to make sure that its monopoly position continued, and any threat to that monopoly, as we have heard tonight with the call service centres, must be dealt with and crushed, one way or the other.

Telecommunications (Amdt.) Bill
[SEN. R. MONTANO]

Tuesday, May 11, 2004

I have said this many times before: the whole purpose of government is to make life better for the governed. This Bill, unfortunately, makes life better for Cable & Wireless, but it does not make life better for the ordinary citizens of Trinidad and Tobago. Why are we now looking to have regulation of voice over Internet providers? It may very well be that the time will come when you would want to have regulation of them, but that time should come when the monopoly of Cable & Wireless is broken.

Do you know, Mr. Vice-President, that the Caribbean, including Trinidad and Tobago, is the most profitable business region for Cable & Wireless in the world? They make more money in the Caribbean out of us stupid Caribbean people. Look in England, they laugh at us. When we go up to England they say, "Come here, ol' chap," and pat us on the back, "Ha, ha, ha," and they laugh all the way to the bank; stupidity personified. As one of the Independents said earlier, I think it was Sen. Prof. Deosaran, that when the smaller islands stood up to Cable & Wireless, they threatened them and they backed down. For the life of me, I cannot understand why successive regimes, beginning with the NAR, to date, have been so afraid of telling Cable & Wireless, "Come off the roof; bring your prices down now".

When we look at cable television and see the prices cellular users pay in the United States, for example, unlimited calling time coast to coast. You can stay in New York and speak to your friend in Los Angeles, a distance greater than from here to Miami, and you can talk for virtually free, you are just paying the monthly rental for your cell; unlimited time. The article that my colleague, Sen. Mark, referred to by Noel Kalicharan was from the *Guardian* of Saturday, May 08, 2004. Listen to what he said:

"Yet another grouse is TSTT's deceptive 'day-night' rates. Why deceptive? In every country that I know of, you pay a higher rate for week-day calls from 8 am to 5 pm and a lower rate for evening, night, weekends and public holidays. What does TSTT do? It charges you the same high rate as long as the call is from 8 am to 5 pm regardless of whether it's Saturday, Sunday or a public holiday."

Why? Nobody said anything.

I listened to the Minister's presentation this afternoon with dismay, because as I have said before I have had cause to say it not once, not twice but what feels now like a million times, when a bill is presented, what one hopes to hear is government policy; what one hopes to hear from the Minister is not a review that one can get by reading the Explanatory Note of the Bill. I can read. I believe that all my other

colleagues on this side can also read. If they have a problem on the other side then we know that there are adult literacy classes, but we can all read this. [Interruption] [Laughter]

Sen. Mark: Robin, “doh let dat man divert yuh, nuh man”.

Sen. R. Montano: I do not mind criticism, even when for the sake of emphasis sometimes it departs from reality. I do not mind being teased, even when the teasing misses so wide, it is like a guy aiming for the moon and he shoots Mars, which is what my friend, Sen. Dumas, often does.

I do not need somebody to, basically, paraphrase the Explanatory Note for me. When he is presenting a bill I need the Minister to say, “This is our policy; this is Government policy, this is what we are going to do; this is why we are doing it.” I would have expected tonight to hear from the Minister, “Look, we know that Cable & Wireless is ripping us off and we intend to do something about it.”

In the *Business Guardian* of May 06, 2004, there is an article:

“The RIC responds”

I would have liked to hear from the Minister on this. In the article the RIC said:

“If the International call centres do not adhere to the law, the RIC would have no option but to commence the legal process.

Clause 66 of the RIC Act No. 26 of 1998 clearly states that ‘A person who contravenes or fails to comply...is liable...to a fine of \$300,000 and in the case of a continuing offence, to a further fine of \$60,000 for each day that the offence continues.’”

If we pass this Bill the RIC will get the teeth to do to the call centres what it has been unable to do so far. That has to be wrong. You have only got to look at it to see that it is wrong. We are being ripped off by a British company. It has to be wrong.

I would have thought that this Parliament had enough of colonialism. We have had the British from 1798 until 1961; I would have thought that we could tell them, at least, now in 2004, “We have had enough of you; cut it out,” but we continue to allow them to milk us; colonialism by another name. It cannot be right. We need to take control. We need to have TSTT brought into line. We need Cable & Wireless to be brought into line.

You get it from the entire citizenry. Look at this letter on page 12 of the *Express* of Tuesday, April 20, 2004 from one Mersha Stewart of Chaguanas:

“TSTT’s Internet service one for the pits

Imagine surfing the Net and you suddenly realize that everything has just stopped. On investigation you realize that your connection was aborted.

I think this is totally unacceptable when we have to pay monthly for this service, a service that is also extremely slow. The time it takes for a page to open, you can sometimes boil water and prepare a cup of tea (no exaggeration). This greatly cuts into your total amount of hours. This time, if added together, could very well account for half of the hours used monthly.”

Compare that with what the Americans get; you see it advertised every day on cable television, “Get instant access”, and you see the people with the Internet access going up right away, immediately, yet we get this slow, slow access.

Look at this letter in the *Business Guardian* of Thursday, May 06, 2004 from a chap called Edmund Nigel Gall writing from London. He is comparing the telecommunication services available in Trinidad and Tobago and in the UK and the level of disparity between both. He writes:

“TSTT killing T&T slowly

As a business or individual consumer in the UK:

- I can apply for a new phone and receive service within a week.
- I can obtain Internet links of up to 2mbps without blowing my SME budget.”

That would be small and medium enterprise budget.

- “I can receive extremely quick treatment of my reports on any service problems I have.

In T&T

- It can take months before obtaining a new phone.
- Internet costs are very high for anything over 128kbps for an SME and over 56kpbs is out of the reach of the home user.
- It took over six months for TSTT to transfer my mother’s active connection from one apartment in a two-unit building in San Fernando to the other apartment in the same building.

This resulted in my brother being unable to access Internet services for that time from home, and TSTT wouldn’t even give a rebate on that loss of Internet service.”

Why are we strengthening Cable & Wireless' hands? It does not make sense. It is not good enough to come to us and say, "Well, you know, we are going to do this and it is our policy to do this, that and the other." Good grief!

I know that the question of the call centres have been beaten to death, but I go back to it. Nobody has said anything. I did not see the Government making any big fuss about it or telling the Regulated Industries Commission (RIC), "No, no, no, we are not going to do that." I believe that the call centre providers have gone to court and there is now a judicial review application going on. I do not know for a fact. Am I correct?

Sen. Mark: Yes, you are correct.

Sen. R. Montano: The purpose of government is to make life better for the governed; there is no other purpose. This is not making life better for us and that is where it begins and ends. I could feel better if I heard the Government tomorrow morning tell Cable & Wireless, "Rates are coming down." Why does it cost less for a friend in New York, Toronto or Miami to call me in Trinidad, even when you convert the US or Canadian dollars into Trinidad and Tobago dollars, than it costs me to call him? Why is my cell phone bill so high? As Noel Kalicharan points out here, they practise deceptive practices.

Frankly, until I read this article I thought I was being charged for the seconds I used. When I read this article I looked at my bill and realized that if I go to 61 seconds, I am, in fact, charged for two minutes on my cell phone. So the trick is if you have a stopwatch, look at your watch, look at your cell phone and make sure that once you cross over one minute, you can at least talk for another 59 seconds. If you cross two minutes, you can talk for another 59 seconds. Why are you going to talk for two minutes and three seconds and give TSTT all that money? It does amount to a lot of money. Why?

Sen. Mark: Fraud!

Sen. R. Montano: Of course it is fraud. Now you want to take the voice over Internet providers? Why are you going to do this? You may say, "We are just going to regulate it and make it licensed." Yes, really? Pull the other one, it has bells on it. You are going to put regulations and make them pay for a licence. What is going to happen? Guess who is going to pay? Joe Public, because every single cost is going to end squarely back on the consumer. Why?

I cannot remember who it was who made the point, I think it was my colleague, Sen. Seepersad-Bachan, that deregulation has shown itself around the

Telecommunications (Amdt.) Bill
[SEN. R. MONTANO]

Tuesday, May 11, 2004

world, in fact, to create more employment. It might hurt TSTT; it might hurt Cable & Wireless' income, but it is going to help the country, as a whole; we can go forward. But why do we want to make a British company, Cable & Wireless richer? They are so rich, I would venture to suggest, I do not know, but I am guessing, that their budget is probably much larger than that of Trinidad and Tobago. I am sure they earn more than TT \$20 billion a year. Here we are, stupid little Caribbean fools that we are, helping the British.

I am not against the British, but why are we helping them? What are they doing for us? Punishing our people. Why? The thing that requires little explanation is usually right; the thing that requires a lot of explanation is usually wrong, fact. You would find, in order to answer these simple questions, a whole bunch of convoluted reasoning, much like Sen. Pau's very amusing contribution; convoluted reasoning that had us over here in stitches. Just follow the straight lines and you will get it right.

At this juncture, I would say to the Government, "Look, we understand that you need to do certain things; we understand that it is necessary to get something passed; if you really want to do that, maybe you can put this Bill into a special select committee and let us look at it, and let us see if we can help you." Our objective is not to hamper you, but this, as it stands, no citizen of this country could really look at this Bill and say, "Yes, I am proud to support it." Nobody can do that. Sen. Prof. Deosaran said that it is a schizophrenic Bill, a "moko jumbie" type Bill that does not achieve what it wants to achieve.

If you want to sit with us quietly and privately, I am quite prepared to sit with you and help you, but even in committee it is virtually impossible to fix this. Therefore, I add my voice to Sen. Mark's, that this Bill does require a special majority, be warned. You did not get it downstairs. I do not know whether you will get it up here. This Bill in its present form will not be supported by the Opposition.

Thank you.

The Minister of Public Administration and Information (Sen. The Hon. Dr. Lenny Saith): Mr. Vice-President, I begin my reply by merely indicating to hon. Senators that this is a very complex issue, as we have seen from the debate. There have been contributions both at the technical and political levels that require us to give some thought to issues raised and to present the cogent arguments that we believe are necessary for people to understand why some things were done and to, hopefully, get a better understanding of both sides.

In the circumstances, Mr. Vice-President, I wish only at this stage to indicate that I would continue my closing remarks at the next sitting of the Senate, and move, at that time, into the committee stage of the Bill where, I believe, with the help and input of others, we can, in fact, come out with a Bill that is satisfactory to all sides.

ADJOURNMENT

The Minister of Public Administration and Information (Sen. The Hon. Dr. Lenny Saith): Mr. Vice-President, I beg to move that the Senate be now adjourned to Tuesday 18, May at 1.30 p.m.

Mr. Vice-President: Hon. Senators, there are three matters to be raised on the Motion for the adjournment. I am advised that we are going to take Sen. Mark's matter.

Galene Bonadie (Death of)

Sen. Wade Mark: Mr. Vice-President, on Friday, April 02, 2004 at approximately 5.20 p.m., Galene Bonadie, a card carrying member of the UNC, an unarmed and defenceless woman, was shot at point-blank range by a police officer. Whether this was political murder by a secret death squad or sheer police brutality, is not at all certain at this time. What we do know is that Galene Bonadie, a mother of four beautiful children, is dead. The police officer who publicly executed that young woman is still at large; maybe preparing to slaughter another Galene Bonadie in this country.

What are the facts on this matter? I refer to page 3 of the *Express* dated Saturday, April 03, 2004. The following report was presented by one Darryl Heeralal:

“Residents of Morvant were agitated last night following the police killing of Galene Bonadie, 41, the mother of two children of Morvant ‘don’ Sean ‘Bill’ Francis.

Bonadie was shot at point blank range with an Israeli-made Galil assault rifle while she was walking along Caledonia Extension, Vegas, Morvant.

Eyewitnesses related how Bonadie was killed: Four police officers, dressed in black battle gear and driving an E-999 marked police vehicle pulled over a man and were beating him.

Bonadie, who was on her way to work around 5.20 p.m., was walking with a group of people who rebuked the police with, ‘Why allyuh beating the man for?’

Galene Bonadie (Death of)
[SEN. MARK]

Tuesday, May 11, 2004

Eyewitnesses said a police officer cocked his weapon and shot Bonadie, splitting her head in two. Several pieces of skull and brain splattered the people nearby and more pieces of her skull lay strewn on the roadway last night.

Eyewitnesses said that after shooting off the woman's head, the police officers dragged her a couple of feet and threw her into the back of a police vehicle and drove away."

My record tells me that Galene Bonadie was the seventh innocent person to have fallen by the bullets of police officers in this country.

Mr. Vice-President, while we in the UNC recognize that the police have a very challenging job to perform and we recognize that there are good policemen willing to do a good job in the police service as they seek to protect and serve the population, there are some criminal elements in the police service.

The Minister of National Security must tell us if there is an officially sanctioned death squad in the police service of Trinidad and Tobago going about executing citizens in this country. We would like to know if that squad exists in this country. Whilst we speak about Galene Bonadie's passing, unfortunately and tragically, to demonstrate the kind of behaviour taking place in the police service involving some rogue cops who believe they have the power to execute people in this country, which we will never support, we will always condemn and take action, even if we have to demonstrate in this country to deal with this matter. We will not allow our citizens to be murdered in this country as this young lady has lost her life.

To date, as we speak, nothing has been done to bring the culprit to justice. We want the Minister of National Security to tell us what steps are being taken by the police to ensure that the criminal elements responsible for the execution of this young lady are brought to justice and to trial.

I bring to your attention another matter that is related to the question of the police. It is not just a question of executing innocent citizens. I was shocked when I read in the *Guardian* of May 07, 2004, just a couple days ago, a headline entitled:

"Junior cop alleges colleagues knew of..."

Again, some elements of the police are taking it upon themselves to perform acts of harassment, intimidation and terrorism against the citizens of this country. I want to share with you what I call State-sponsored terrorism with the help of certain criminal forces within the police service.

I quote from a story written by Wendy Campbell in the *Trinidad Guardian*, and the Attorney General has a responsibility to investigate this matter and to take action. It says:

“Eight to ten policemen knew about an alleged plot to plant missiles and cocaine into a water tank at the home of the former San Fernando West UNC MP Sadiq Baksh.

This was the claim on Wednesday by a junior policeman who has been under the watchful eyes of his seniors.”

He said that in the presence of the media.

“He alleged that the cops conspired with officials...”

I want you to note this: The policemen in question—

“...conspired with officials of a political party to set up Baksh, because the San Fernando West seat was a marginal one.”

Which political party, Mr. Vice-President? We know the elements involved. Some are now working in the Ministry of Foreign Affairs, and we know their names, and some are in the Office of the Prime Minister. We call on the Attorney General to take action before we do, in terms of the court. We know the names of the people who were involved in this despicable act against the former Minister, Sadiq Baksh, at the time. We want to know if they are also involved in the cocaine trade ripping through the Ministry of Foreign Affairs at this time.

Mr. Vice-President: Are you talking on the Motion?

Sen. W. Mark: Yes, Sir; it all deals with the police.

I raise these issues because I read the Police Complaints Authority report on the whole question of the police and the amount of complaints that have been made. I would like the hon. Minister to tell this honourable Senate what steps have been taken to ensure that justice is done. What has the police done to ensure that, at least, for the police officers who were involved, something will be done to bring them to justice? Where has the investigation reached? This is unacceptable.

I call on the Minister to take action, to tell us what is taking place, because people are becoming restless in this country. This Government is in a state of semi-collapse. I am indicating to this Government, through the Minister of National Security, that it cannot continue to take advantage of poor people. This murder rate that is taking place in this country involving innocent citizens must stop. I call on the Minister of National Security to tell us what steps his Ministry, along with the

Galene Bonadie (Death of)
[SEN. MARK]

Tuesday, May 11, 2004

Commissioner of Police, are taking to ensure that this kind of brutality and public execution of citizens are brought to an end.

I thank you.

The Minister of National Security (Sen. The Hon. Martin Joseph): Mr. Vice-President, as Sen. Mark said, on April 02, 2004, a party of police officers attached to the Morvant Police Station was investigating a report in Second Caledonia, Morvant, in an area better known as Vegas. During the course of their investigations, Miss Galene Bonadie was fatally shot. In incidents of this type it is the responsibility of the Commissioner of Police to immediately appoint a police officer to conduct the investigations to unearth the salient facts.

If there is *prima facie* evidence of wrongdoing on the part of the police, the Director of Public Prosecutions is consulted for his direction. Where a *prima facie* case does not exist, the police investigator would recommend to the Director of Public Prosecutions that an early coroner's inquest should be lodged so as to elicit as much evidence as possible from witnesses.

With respect to the death of Miss Bonadie, this honourable Senate is advised that following her death the Commissioner of Police immediately initiated an investigation into the circumstances surrounding the fatal shooting. However, the investigative process was hampered due to the fact that the civilian witnesses to the incident chose to submit their statements to the police through an attorney, rather than directly to the police investigator, as normally applies, which resulted in an unavoidable delay on the part of the police in completing their investigations.

The current status of the investigations into the circumstances surrounding the death of Miss Bonadie is that the police investigations were completed on Friday, April 29, 2004. The file was forwarded to the Director of Public Prosecutions on April 30, 2004, and the police is now awaiting a directive from the Director of Public Prosecutions. It is therefore not accurate to say that the Minister of National Security has failed to take action on the unfortunate death of Miss Bonadie, since the police have taken the required action, to date, and stand ready to cooperate with the Director of Public Prosecutions.

I thank you.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 11.44 p.m.