SENATE

Tuesday, January 31, 2006

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. Dr. Linda Savitri Baboolal who is incapable to performing her duties by reason of illness, Sen. The Hon. Conrad Enill who is out of the country with effect from 31st January, 2006 and continuing and Sen. Brother Noble Khan who is out of the country

SENATORS' APPOINTMENT

Mr. Vice-President: Hon. Senators, I have received the following correspondence from His Excellency the President, Prof. George Maxwell Richards:

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency Professor GEORGE MAXWELL RICHARDS, T.C., C.M.T., PhD, President and Commander-in-Chief of the Republic of Trinidad and Tobago.

/s/ G. Richards
President.

TO: MR. NILEUNG ROLAND HYPOLITE

WHEREAS Senator Dr. Linda Savitri Baboolal is incapable of performing her duties as a Senator by reason of illness:

NOW, THEREFORE, I, GEORGE MAXWELL RICHARDS, 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, NILEUNG ROLAND HYPOLITE, to be temporarily a member of the Senate, with immediate effect and continuing during the period of illness of the said Senator Dr. Linda Baboolal.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 31st day of January, 2006."

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency Professor GEORGE MAXWELL RICHARDS, T.C., C.M.T., PhD, President and Commander-in-Chief of the Republic of Trinidad and Tobago.

/s/ G. Richards
President.

TO: MRS. JOAN HACKSHAW-MARSLIN

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

NOW, THEREFORE, I, GEORGE MAXWELL RICHARDS, 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 31st January, 2006 and continuing during the absence from Trinidad and Tobago of the said Senator Conrad Enill.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 30th day of January, 2006."

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency Professor GEORGE MAXWELL RICHARDS, T.C., C.M.T., PhD, President and Commander-in-Chief of the Republic of Trinidad and Tobago.

/s/ G. Richards
President.

TO: DR. ROLPH BALGOBIN

WHEREAS Senator Brother Noble Khan is incapable of performing his duties as a Senator by reason of his absence from Trinidad and Tobago:

NOW, THEREFORE, I, GEORGE MAXWELL RICHARDS, President as aforesaid, in exercise of the power vested in me by section 40(2)(c) and section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, ROLPH BALGOBIN, to be temporarily a member of the Senate, with effect from 30th January, 2006 and continuing during the absence from Trinidad and Tobago of the said Senator Brother Noble Khan.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 27th day of January, 2006."

OATH OF ALLEGIANCE

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

Nileung Roland Hypolite, Joan Hackshaw-Marslin and Dr. Rolph Balgobin

PAPER LAID

Annual audited financial statements of Vehicle Maintenance Corporation of Trinidad and Tobago Limited for the year ending September 30, 2004. [*The Minister in the Ministry of Finance (Sen. The Hon. Christine Sahadeo)*]

ORAL ANSWERS TO QUESTIONS

Darul-Islam
(Amount of Money Paid)

15. Sen. Wade Mark asked the hon. Minister of Energy and Energy Industries:

Could the Minister state the amount of money paid by the Government or any state enterprise or state agency to the body known as Darul-Islam or any other entity associated with the Jamaat al Muslimeen?

The Minister of Public Administration and Information and Minister of Energy and Energy Industries (Sen. The Hon. Dr. Lenny Saith): Mr. Vice-President, neither the Ministry nor any state enterprise or state agency associated

with the Ministry has made any payment to anybody known as Darul-Islam or any entity associated with the Jamaat al Muslimeen.

Enforcement of Order
(Jamaat al Muslimeen)

17. Sen. Wade Mark asked the hon. Attorney General:

(a) Could the Attorney General state whether the Government intends to enforce the order for the payment of compensation of interest and costs made by Justice Joseph Tam to members of the Jamaat al Muslimeen during the insurrection of 1990?

(b) If the Government has such intention, could the hon. Attorney General state what steps have been taken to enforce the judgment of hon. Joseph Tam that the members of the Jamaat al Muslimeen pay compensation which today stands at over $40 million?

The Attorney General (Sen. The Hon. John Jeremie): Mr. Vice-President, I have agonized with a form of words in answer to this question which would be faithful to the traditions of the Senate and consistent with my responsibilities as Attorney General. I have been unable to find such a form of words, I regret to inform the Senate this afternoon that I am unable to answer this question this afternoon and I seek further deferral of it for a period of two weeks.

Sen. Mark: I do not understand the language and I do not understand what the Attorney General is attempting to advance. This question as you are aware has been on the Order Paper for a few months now, and we have given through you, a number of postponements and rescheduling of this particular question. Now the Attorney General does not indicate to you Sir, that he is not ready. He said the form that he would like to present, apparently he has some problem with the form. Mr. Vice-President, this is quite overbearing. The public interest demands that the Attorney General answers this question today. He has been given a lot of postponements and I do not think that it is tolerable for the Attorney General to simply come and indicate what he has just indicated to you and this honourable House and expect us to agree to a two-week deferment. I would like him to explain to you what is the difficulty in presenting the response to this particular question?

Mr. Vice-President: Mr. Attorney General, would you like to comment on this?

Sen. The Hon. J. Jeremie: Mr. Vice-President, I have said as much as I can say on it this afternoon and it is a difficult position to be in, but I ask the Senate to bear with me, I cannot answer the question this afternoon.

Sen. R. Montano: Mr. Vice-President, with the greatest of respect, there seems to be a flouting of the Senate, more or less a thumbing of the nose of the Senate. The question is, could the Attorney General state whether the Government intends to enforce the order for payment of compensation of interest and cost, made by Justice Joseph Tam to members of the Jamaat al Muslimeen during the insurrection of 1990? That is the first part of the question. Simple answer; black and white, yes or no. What is so difficult about a form of words? If the hon. Attorney General is requesting an adjournment or deferment of this question, what the Attorney General should do, is he should come and tell us why it is so difficult to give us a black and white answer.

Sen. Seepersad-Bachan: Yes or no.

Sen. R. Montano: Yes or no. You are going to enforce it, yes. Of course, the next question would be when, or no, we do not intend to enforce it, but then the question would be why? This is giving rise to very, very ugly suspicions in the mind of the public. I would tell you what the ugly suspicion is, that they do not intend to enforce it, that they intend to let the Jamaat off the hook. That is it.

Mr. Vice-President: Hon Members, I have listened to the response of the Attorney General and somehow like Sen. Mark, the language I do not think brought across exactly what should have been said here. From information that I have, the situation with the court matter involving the Government and the Jamaat is a very delicate one. It is also one that involves national security matters and as such, the Attorney General would prefer not to the answer the question at this time. [*Crosstalk*]

Sen. Mark: Mr. Vice-President, this is a matter that would not affect and I think if you need some legal advice on the matter, certainly and so on, you can refer to the authorities. But I fail to see the link between what is happening elsewhere and the response to this question that has been on the Order Paper for a few months. The President of the Senate accepted this question and we have been cooperating with the Attorney General in having this question postponed week after week, week after week. We cannot take any more. I think that for instance, it is unfair to the population; it is unfair to the Senate for the Attorney General to simply say, because of language he is under pressure. Mr. Vice-President, with the greatest of respect, you have made a statement; I would have liked that

statement to emanate from the lips of the hon. Attorney General, so that the record could show, that is the reason he cannot answer the question. I think the Attorney General could tell the country it is national security, let us hear why national security.

Sen. The Hon. J. Jeremie: I chose my words extremely carefully; there are compelling reasons of national security this afternoon which prevent me from answering this question. If you would like me to say that, I have said it, but I think it is irresponsible for us to go further and for us to even get to that point. It is not possible this evening for me to answer this question.

Sen. R. Montano: With the greatest of respect, national security is a beautiful umbrella that the Government can use to say we are not answering questions.

Sen. Dr. Saith: Mr. Vice-President, on a point of order.

Mr. Vice-President: Silence please. We cannot all do this.

Sen. Dr. Saith: This is question time; it is not for Members to be getting up and start to debate. Sen. Mark has asked a question, the Attorney General has responded, he has asked for further clarification. You have responded, the Attorney General has responded, the question now, the Attorney General has asked for two weeks and we should deal with that. We should not be debating the matter now.

Sen. R. Montano: No, the Senate does not work like that, Mr. Vice-President. With the greatest of respect, the Senate does not work like that and the practice has been when questions are asked to be deferred, when Ministers say they want a deferment, Senators are entitled to ask why and they are also entitled to say that they are not satisfied with the explanation the Government is giving. In this case, the hon. Attorney General has said: "Oh, national security" and I am choosing my words well. What is he saying because I do not understand this blanket term "national security." Is the Attorney General saying that the enforcement of this judgment would interfere with the national security of this country?

Sen. Dr. Saith: On a point of order. [*Crosstalk*]

Mr. Vice-President: Please, please.

Sen. Dr. Saith: On a point of order. Mr. Vice-President, I would draw your attention to Standing Order 18(4):

> "A Minister may decline to answer a question, if the publication of the answer would in his opinion be contrary to the public interest".

And we are there now. If anybody should be debating this matter it should be the hon. Sen. Mark, not Sen. R. Montano. He has not asked the question, it is not a supplementary question. [*Crosstalk*]

Mr. Vice-President: Please, final contribution on this.

Sen. Mark: Mr. Vice-President, I think that the Attorney General should level with the Parliament and the population. I read in the newspaper today where the Jamaat has threatened to topple the regime. Is it that particular threat that for instance, the Attorney General is concerned about and he feels that if this information is given today, it would heighten tension in the society? Mr. Vice-President, what I am saying is, let the Attorney General level with the Parliament and by extension—because I want to tell you when I read that statement in the *Express* this morning, I became concerned as well, that the Jamaat has threatened to topple the PNM because of some scene taking place with them. I am saying let the Attorney General tell the country if that is the issue and that is why he does not want to invoke this particular judgment. Let him level with the country because the population like you and me are concerned. So I would ask the Attorney General to tell the country what is the position.

Mr. Vice-President: I have listened to all the discussion and hon. Members I have to agree with the Attorney General, if he has national security concerns that he would not answer the question today; understand that there is nothing that forces him to do so today in the first place. Okay? Hon. Members, the question is that— [*Crosstalk*] Okay, the Attorney General has requested a deferral of two weeks on the question. What is the will of the House? [*Crosstalk*]

Sen. Mark: We have to take a division on this.

The Senate divided: Ayes 23 Noes 5

AYES

Saith, Hon. Dr. L.

Yuille-Williams, Hon. J.

Jeremie, Hon. J.

Joseph, Hon. M.

Montano, Hon. D.

Gift, Hon. K.

Manning, Hon. H.

Chin Lee, Hon. H.

Dumas, Hon. R.

Abdul-Hamid, Hon. M.

Kangaloo, Hon. C.

Sahadeo, Hon. C.

Ramroop, Hon. S.

Hackshaw-Marslin, Mrs. J.

Hypolite, N.

Mc Kenzie, Dr. E.

Ramchand, Prof. K.

Deosaran, Prof. R.

King, Mrs. K.

Anmolsingh-Mahabir, Mrs. P.

Ali, B.

James, F.

Balgobin, Dr. R.

NOES

Mark, W.

Baksh, S.

Kernahan, Dr. J.

Montano, R.

Seepersad-Bachan, Mrs. C.

Question agreed to.

Question, by leave, deferred.

Special Purpose State Companies
(Scrutiny of Contracts)

26. Sen. Wade Mark asked the hon. Minister of Finance:

(i) Could the Minister tell this Senate whether these special purpose state companies will be generally subject in their contracts to private law or public law?

(ii) If it is public law, could the Minister of Finance state who would exercise this scrutiny to ensure that strict procedures are adhered to?

(iii) Could the Minister also state exactly what procedures, for example, procurement and accounting standards as well as reporting and monitoring arrangements these entities would be subjected to?

The Minister in the Ministry of Finance (Sen. The Hon. Christine Sahadeo): Mr. Vice-President, the special purpose state enterprises are wholly owned state enterprises and would therefore be subject in their operations to public law.

Part (ii), the Minister of Finance in charge of investments, that is Corporation Sole would exercise scrutiny to ensure that strict procedures are adhered to.

Part (iii), the special purpose state enterprises would be subject to standard procurement procedures for state enterprises approved by the Ministry of Finance. The accounting, reporting and monitoring arrangements would also follow the standard procedures for state enterprises approved by the Ministry of Finance.

Special Purpose State Companies
(Scrutiny of Accounts by Parliament)

27. Sen. Wade Mark asked the hon. Minister of Finance:

Could the Minister of Finance state:

(a) Whether these special purpose state entities would be subject to financial scrutiny by the Public Accounts (Enterprises) Committee as well as any Joint Parliamentary Committee?

(b) What procedures would be adopted to ensure that these companies' Annual Financial Audited Reports are tabled in Parliament and consequently referred to the Public Accounts (Enterprises) Committee as well as any other Joint Parliamentary Committee?

The Minister in the Ministry of Finance (Sen. The Hon. Christine Sahadeo): Regarding part (a), special purpose state enterprises which are wholly owned by Government would be subject to financial scrutiny by the Public Accounts (Enterprises) Committee as well as the Joint Select Committee as stipulated in the Constitution, sections 66 and 119.

Part (b), all the companies have been established under the Companies Act and are therefore subject to the provisions of the Act. In accordance with the Companies Act, Chap 81:01 and the Constitution, section 119, the financial statements of all wholly and majority owned state enterprises are laid in Parliament once adopted at the annual meeting of the company.

Sen. Mark: Mr. Vice-President, I would like to ask the hon. Minister whether she is aware that state companies for a period of two, three, sometimes four years, have not been able to submit their annual audited accounts to the Parliament through the Minister and by extension, the various parliamentary committees are unable to conduct their work as mandated in the Constitution. I would like to know if she is aware of this and if she is aware, what steps are being taken by her ministry to ensure that these state enterprises like UDeCOTT, as an example, comply with the mandate that has just been outlined?

Sen. The Hon. C. Sahadeo: Mr. Vice-President, as you know, sometime ago the Ministry of Finance stipulated that we ask all state enterprises to lay their annual accounts four months after the year end and six-month accounts, two or three months after the six month period. We are working closely with all state enterprises to assist them and ensure that it gets done and we know here in certain instances, certain companies had a delay of outstanding accounts for some time. So in this regard as far as I am aware they are assiduously trying to bring this up to the current time.

Sen. Mark: Mr. Vice-President, may I ask through you what assurances can we be given by the hon. Minister that all those delinquent state enterprises that are behind schedule in submitting their annual financial audited accounts to the Parliament through the relevant Minister, what assurances can be given that the hon. Minister would take steps to ensure that those firms or companies that have these audited accounts outstanding, would in fact bring those accounts quickly to the attention of the Parliament so that the relevant parliamentary committees can do their work?

Mr. Vice-President: Do you have an answer?

Sen. The Hon. C. Sahadeo: Mr. Vice-President, I can easily respond that this situation has been so for years even while those on the other side were here, but I do not intend to respond like that. My response is really to say that every effort is being made to ensure that there is compliance with the Ministry of Finance records—[*Interruption*]

Sen. R. Montano: What does that mean in plain English? It means nothing.

Mr. Vice-President: Please Members.

2.00 p.m.

Information Channel 4/NCC (Details of Expenditure)

34. Sen. Wade Mark asked the hon. Minister of Public Administration and Information and the Minister of Energy and Energy Industries:

Could the Minister provide the Senate with the following:

(a) The total expenditure realized by the Government to keep the Information Channel 4/National Carnival Commission (NCC) Channel 4 on the air from January 15, 2005 to the present day?

(b) The total revenue generated or earned by the Information Channel 4/NCC Channel 4 from January 15, 2005 to the present time?

The Minister of Community Development, Culture and Gender Affairs (Sen. The Hon. Joan Yuille-Williams): Mr. Vice-President, the total expenditure was $7,048,000. In respect of Part (b), total revenue was $3,219,141.39.

Sen. Mark: Mr. Vice-President, could the hon. Minister indicate to this Parliament whether she is aware that this NCC Television Channel 4 is being utilized by the People's National Movement (PNM) to conduct its affairs without any cost to the particular television station? Furthermore, could she tell this Parliament whether the last broadcast of the PNM on this channel was carried live; if it was carried live, was it paid for and if it was paid for, could she indicate how much money the PNM paid to have this particular broadcast carried live?

Hon. Senators: That is a new question!

Sen. The Hon. J. Yuille-Williams: Mr. Vice-President, I would not be able to give the exact figure, but I know when the expenses came there was a figure for all the things we did for that activity. I can say that the PNM paid for that and I can give you the figure next week, but there is a figure included for the use of the channel. It was not free.

Sen. Seepersad-Bachan: The Minister said that she had about $7 million in expenditure and about $3 million in revenue. Could she indicate who would pick up the loss position, which is close to $4 million; would it be the National Lotteries Control Board (NLCB) or the taxpayers?

Sen. The Hon. J. Yuille-Williams: I am not sure about the NLCB with respect to Channel 4, so it is difficult to say. I can answer the rest of the question. I do not want to call it an interim station, but we had used this channel during the period when the other station was off the air, therefore, I do not think that at the beginning it was designed to make a profit. It was really to give an opportunity to broadcast a lot of the culture, as you see we have been doing. It stayed a little longer than we expected, therefore, we are not looking at profit and loss.

Sen. Seepersad-Bachan: So it was a loss?

Sen. The Hon. J. Yuille-Williams: I do not know if you could call it a loss; it was of gain to the community in what we have been able to show, because there was a lot of archival material that we were able to put forward, which the population was extremely happy to have. [*Desk thumping*] At the end of the day, that was a gain; without it a lot of the population would not have had that opportunity. We wish we could keep it a little longer, even at this rate, but, unfortunately, we cannot. [*Crosstalk*]

Sen. Mark: Mr. Vice-President, as you would recall the hon. Minister in the Ministry of Finance gave an undertaking to this Parliament that she would make available to the Parliament today information that was requested of her last week. She did indicate that she did not have the information at the time the question was raised, but she gave an undertaking to the Parliament that she would make it available to us today. For example, I had asked specifically for the name of the forensic or accounting firm that was hired by the Attorney General's department to conduct a forensic audit into the purchase of some crane that was purchased by Plipdeco. She did indicate that she would make that name available to us today. I want to find out if the hon. Minister has that name for us at this time.

Sen. Sahadeo: It was Messrs. Linquist and Company.

PHARMACY BOARD (AMDT.) BILL

Bill to amend the Pharmacy Board Act [*The Minister of Health*]; read the first time.

OCCUPATIONAL SAFETY AND HEALTH (AMDT.) BILL

Order for second reading read.

The Minister of Labour, Small and Micro Enterprise Development (Sen. The Hon. Danny Montano): Mr. Vice-President, I beg to move,

That a Bill to amend the Occupational Safety and Health Act, 2004, be now read a second time.

This Bill has had a bit of a checkered history. In fact, I can say that I am delighted to be here this afternoon, to have the opportunity to be part of this process. This Bill was passed unanimously in the other place last Monday afternoon. I am very pleased to have the opportunity to present it to hon. Senators this afternoon.

The landscape of occupational safety and health in our young nation can really date back to 1948 with the advent of the Factories Ordinance. This ordinance became obsolete by the mid 1960s and, certainly, by the mid 1970s, with the rate of industrialization and the level of foreign investment that was in the country.

The Factories Ordinance applied to factories and there is a fairly lengthy definition of what a factory is but, basically, it is factory in the general term as we understand a factory to be. It does not apply to a construction site. It does not apply to most of the activities that take place in the petrochemical sector. Bearing in mind that as early as the late 1950s, this administration began a concerted drive in the construction of housing and there was a tremendous boom in the construction sector, you had a Bill that was not designed to cover those circumstances. So as late as the 1950s, the Factories Ordinance, as it still exists, was already technically obsolete.

Since 1940, I dare say, there has been thousands of industrial accidents; some of them fatal, some of them not fatal. Therefore, it does not matter whether an accident or a fatality happened before the passage of the Occupational Safety and Health Act (OSHA) of 2004 or up to today or after the day it was passed in January of 2004. The fact of the matter is that every single accident, whether it resulted in a mere injury or a fatality, is to be regretted by the people of Trinidad and Tobago. It is the families that are left to cope with the challenges of the injury or loss that occurred that we must be cognizant of.

Therefore, I have spoken on this matter in other places and in other fora and that it why it is very clear in my mind and in the mind of this administration, that occupational safety and health legislation cannot be looked at in isolation of an

updated Workmen's Compensation Act. The issue of compensation is a most natural consequence of an injury or a death; therefore, in the unhappy circumstances that there is an injury or death, there must be something meaningful to take care of the injured person and/or his family. I will talk a little about that later on.

Mr. Vice-President, this legislation is about the living; it is about the future. I cannot, in all good conscience, recite the names of all those who have been injured and/or killed since 1948; that would not be fair. It would be an invasion of their privacy and who would come first? How do you rank who has lost or gained more? Suffice it to know that we on this side are very cognizant of the injuries that have occurred in the marketplace for many years, not just since 2004. We are determined to put things right to protect the lives of our citizens.

I am very pleased to see that even without the Occupational Safety and Health Act being enforced, we have seen a drop in the reported number of industrial accidents at the Ministry of Labour, Small and Micro Enterprise Development. In 2004, we had 443 accidents and in 2005 we had 206 accidents, so there has been a general trend to have fewer accidents; that is my understanding. Unhappily, we see that in 2000 there were five fatal accidents and in 2005 there were 18; that rate of fatality is unacceptable.

Mr. Vice-President, just to give you a bit of the exact history of what happened with this piece of legislation. As you know, the parent Act was passed in this Senate in January 2004 and since then, a lot of work has gone on. In that regard, I congratulate my predecessors, particularly, Minister Roberts who did a tremendous amount of work to bring me to this point. An advisory council was established shortly after the Act was passed and they did a tremendous amount of work. Basically, they did four things: They established and settled a national occupational safety and health policy; they established the organizational structure for the authority and the agency; they established codes of practice of the authority and the agency; and they determined the necessary support mechanisms for the system to work.

When I was appointed in May 2005, I was actually on vacation when I received a telephone call from the Prime Minister. I did not take up duty in this Ministry until June of that year when I came back. I found that there had been a considerable amount of work and there was correspondence between Minister Roberts and the Prime Minister. He had been involved in discussions with the Prime Minister as to the work that had been done and what was left to be done. What was left to be done was the legislative review of the Occupational Safety and Health Act and that, naturally, fell to me to do, and that is precisely what I have done.

I am very pleased and proud to be part of a team; this Government works as a team. It is not a question of, "I did this," or "You did that," or "You did not do that," it is that we do it as a team. The ball was passed to me, "Review the Occupational Safety and Health Act and come with amendments if you feel that there are any," and that is precisely what I did. In August of 2005, I spoke in the other place. I articulated exactly what I had planned; I would have my review of the Act completed by the end of September.

In fact, I had another opportunity in October to confirm that I had finished my review. I also said that I had hoped to be ready by the end of December 2005. In October, however, after my review of the Act, I realized by then the importance of the compensation element with respect to occupational safety and health. I felt strongly that the Compensation Bill should be brought in as part of the Occupational Safety and Health Act. It makes sense that one was the result of the other. I, therefore, felt that I should come with one larger bill to deal with the compensation issues.

At that point in October, I articulated again in another place, that bearing that in mind, I believed I could have both packages ready by the end of March or April 2005 and we would be here, at that point, to debate both of those aspects of the Bill. By the time I met with my stakeholders' group at the end of November and December, they felt very strongly that the two issues should be separated into two separate bills. I accepted that advice and because I was further advanced with my review of the occupational safety and health regime, rather than the compensation side of things, I was able to accelerate the time frame and bring the Bill and we are here at the end of January. In fact, Mr. Vice-President, I had articulated in December that I fully expected that I would be able to get here by the end of January with the Bill in its present form.

Mr. Vice-President, something else has been misunderstood. I want to say very clearly, that the genesis of this Bill was interesting, in the sense that I realized the Bill needed to be reviewed, so I called a meeting of the technocrats of the Ministry. Of course, they were the original architects. [*Interruption*]

Sen. Dr. Mc Kenzie: Senator, I think you mixed up the date when you said that you promised by March 2005. I think you meant March of 2006. I am following you very, very carefully.

Sen. The Hon. D. Montano: Thank you; I did mean March/April 2006. When I began my review of the Act, of course, I consulted with the technocrats in the Ministry of Labour, Small and Micro Enterprise Development; they were the

architects of the original Bill, so I asked, "What should I be looking for in this Bill? Their response was, "Well, it is fine as it is." At that point, I said to them, "I understand; this is your work; let me look at it through my eyes and then we would chat." That is exactly what I did. I found some architectural flaws with the Bill.

From the time I began to mention certain matters that I thought were significant flaws in the legislation, the advisors in the Ministry all concurred with everything I said; they did absolutely nothing, but gave their fullest support to assisting me in coming to this point. At no point was I left in the wilderness; they were extremely helpful; you have no idea of the amount of work and research that went into it. It was nothing less than a pleasure to work with the members of the team.

The Government is firm on the fact that there must be no compromise on safety and health issues. Safety and health are of paramount importance to the Government and the people of Trinidad and Tobago. Permit me to highlight the main elements of the Government's safety and health policy. It envisions a Trinidad and Tobago free of work-related fatalities, accidents, injuries and diseases; it outlines seven major objectives:

1. Development in Trinidad and Tobago of a modern framework for the operation of decent standards of safety and health and the protection of the working population from injury and disease.
2. Enactment of safety and health law that would ensure that all persons who are employees or who are exposed to situations arising out of or in connection with an industrial establishment, would enjoy adequate safety, health, protection and welfare amenities.
3. Enactment of law that is transparent and clearly identifies rights, obligations, responsibilities, duties, enforcement and compliance mechanisms.
4. Creation of mechanisms to ensure that the law on safety and health institution remains relevant to the changing world of work.
5. Development of a dynamic system of monitoring of the safety and health system to ensure that emphasis is placed on prevention.
6. Development of a system of law which promotes voluntary compliance, but is strong on enforcement to deter behaviours that are contrary to the promotion of a high standard of health, safety and welfare.

7. Development of a system of collaboration among major stakeholders, employers, unions, non-governmental organizations, in the creation of an action plan to ensure that the stakeholders believe and know that health and safety systems at work mean benefits to industry and the national economy. The law is, therefore, intended to support the development in Trinidad and Tobago of an enhanced safety and health culture.

A genuine safety and health culture in Trinidad and Tobago means community and industry-wide involvement in the marketing and promotion of safety and health ideals. It means exposure of our children in their schools to the requirement for safety and health, living and working. Moreover, when they enter the world of work, safety and health would be a way of life; thus, in every activity, safety and health would be uppermost in their minds. It means that employers and employees alike would contribute to the development of a safety and health template that would ensure adherence to the highest standards of safety and health practices. Consequently, Mr. Vice-President, the Safety and Health Policy emphasizes the following key themes: Prevention; priority setting; action planning; enforcement and compliance.

Cognizant of the policy, the technical staff and myself conducted a review of the Occupational Safety and Health Act, No. 1 of 2004. Our review identified some major architectural flaws. The first flaw would result in an inability to have effective compliance and enforcement of the legislation. The Act promoted a high degree of criminal penalties as the main focus of prevention, which is contrary to the policy of persuasion and voluntary compliance that underpins the Act. Furthermore, the policy saw the employee relations jurisdiction of the Industrial Court as being more conducive to the management of the compliance and enforcement regime that is required.

Therefore, the parent Act empowered the Industrial Court as the major court for compliance and enforcement. In reality, most offences fell under the jurisdiction of the Summary Courts and, thus, the Act failed to be true to the wider policy of decriminalizing industrial relations, as far as was possible to do so. This begs the question, "Why decriminalize safety and health?" It is now well established in safety and health law internationally that emphasis should not be on punishment, but on prevention. In practice, the application of stringent punishment is only in extreme circumstances. To explain this point, I would draw

hon. Senators' attention to paragraph 261 of the Robens' Report which influenced the United Kingdom's Health and Safety at Work Act of 1974. The paragraph reads:

> "The fact is—and we believe this to be widely recognized—that the traditional concepts of the criminal law are not readily applicable to the majority of infringements which arise under this type of legislation. Relatively few offences are clear-cut, few arise from reckless indifference to the possibility of causing injury, few can be laid without qualification at the door of a particular individual. The typical infringement or combination of infringements arises rather through carelessness, oversight, lack of knowledge or means, inadequate supervision or sheer inefficiency. In such circumstances the process of prosecution and punishment by the criminal courts is largely an irrelevancy. The real need is for a constructive means of ensuring that practical improvements are made and preventive measures adopted. Whatever the value of the threat of prosecution, the actual process of prosecution makes little direct contribution to this end. On the contrary, the laborious work of preparing prosecutions—and in the case of the factory inspectorate, of actually conducting them—consumes much valuable time which the inspectorates are naturally reluctant to devote to such little purpose..."

Mr. Vice-President, we are, therefore, proposing some amendments today that would contribute to the original policy of making the Industrial Court the court of jurisdiction for safety and health matters.

Over time, we can envisage that there will be incremental changes in the law and the jurisprudence associated with our concept of a safety and health offence. However, it may be useful for hon. Senators to note the current state of criminal offences which remain unchanged with the proposed amendments. It may be desirable in the future that some of these offences should be changed to safety and health offences for determination by the Industrial Court, because of their nature:

1. Section 10(2), an employee who wilfully and without reasonable excuse does anything which results in critical injury or death;
2. Section 11(2), a person who wilfully or recklessly interferes with or misuses any means or appliance convenience or other thing provided in the interest of safety;
3. Section 13(9), a person who sells or lets or hire, or as an agent or hirer causes or procures to be sold technology, machinery, plant or material not in conformity with the Act;

4. Section 25(2), sale of machinery driven by mechanical power contrary to the requirements of the Act;
5. Section 26(2) an occupier who operates an industrial establishment without the certification of the Fire Authority;
6. Section 26(10), failure to give notice of an alteration to a factory;
7. Section 26(16), wilful obstruction of a fire officer in the performance of his duty;
8. Section 46(4), failure to report an accident that causes death;
9. Section 47(2), interference with the scene of an accident where death occurs;
10. Section 48(6), failure of an employer to notify about an occupational disease;
11. Section 48(7), failure of a medical practitioner to report his opinion that an employee is suffering from an occupational disease;
12. Section 60(1), failure to give notice of the occupation of a factory as a factory after he begins to occupy it;
13. Section 61(4), a person who removes, damages or defaces any document required by the Act;
14. Section 72(4), obstruction of an inspector in the performance of his duty;
15. Section 73(5), unauthorized disclosure of the results of the analysis of samples taken in an investigation;
16. Section 76(2), victimization of an employee who assists an inspector;
17. Section 78(2), unauthorized disclosure of information obtained by an inspector during the course of his official duties;
18. Section 84(2), failure to effect a remedy ordered by the court;
19. Section 87, a parent who allows a young person to be employed in contravention of the Act;
20. Section 88, forgery of a certificate or the making of a false declaration in contravention of the Act.

Mr. Vice-President, as we speak of criminal offences, proceedings and penalties, may I look at the very significant criminal offence of health and safety that is occupying the minds of governments worldwide, that is, corporate manslaughter. It is generally accepted that corporate manslaughter refers to

where a person's death was caused by a management failure by a corporation. That failure constituted conduct falling below that which can be reasonably expected of a corporation in the circumstances. Courts in the Commonwealth have found it very difficult to convict corporations, their directors or employees in the course of employment.

For example, the P&O Ferries case in 1991 failed because the court could not identify the controlling mind, that is, the individual with the directing will and mind of the corporation. It is easier to pinpoint this controlling mind in small enterprises, but not so easy in large ones. This matter was the subject of an Attorney General UK reference to the United Kingdom Court of Appeal in 1999, to which the court of appeal replied in 2000. The AG UK asked the Court of Appeal to consider the following questions:

(1) Can a defendant be properly convicted of manslaughter by gross negligence in the absence of evidence as to that defendant's state of mind?

The Court of Appeal said, "Yes."

(2) Can a non-human defendant, i.e., a company, be convicted of the crime of manslaughter by gross negligence, in the absence of establishing the guilt of an identified human being for the same crime?

The Court of Appeal said, "No". The Government of Trinidad and Tobago does not propose to go in this direction at this time.

Permit me, Mr. Vice-President, to refer to some of the other specific flaws that our review in the Ministry identified. Section 15(a) provides that an employee has the right to refuse work where he has reason to believe that there is serious and imminent danger to himself or others. This provision as drafted may be construed to allow a worker, even if he is not affected directly, to take virtual strike action in support of others who may be affected. This provision was intended as a codification of the existing right to remove oneself from dangerous work under the common law.

What does not exist and never existed in the common law is for others who are not threatened by serious or imminent danger to stop work in sympathy with a worker who is, but this is exactly what the wording of the parent Act provided for and, inadvertently created. Section 15 under OSHA provided for the specific right to remove oneself from serious and imminent danger in the specific circumstances of safety and health law. This right is linked to an employer's duty to provide a safe and healthy environment at work.

Let me emphasize that this right to remove oneself from emergency or serious and imminent danger is also a fundamental principle of the International Labour Organization (ILO) endorsed standards in safety and health law. Following that principle, Caricom included it in its model safety and health legislation. Its inclusion in the Act was not intended to create a right to strike. This would have been contrary to the legal principle established in Collymore and the Attorney General, that there is no right to strike in Trinidad and Tobago.

Created here, under the Industrial Relations Act (IRA), is immunity from legal process only if one takes industrial action, including strike action, in accordance with the procedures established under the Act. The stoppage of work by a worker in danger is not an industrial action or strike under the IRA. A stoppage in sympathy by other workers not in danger would have been, but for the original wording of section 15, an illegal industrial action or strike.

The current Occupational Safety and Health Act or our proposed amendment to it does not interfere with the existing industrial relations law. What is being done is the provision of an orderly approach to the exercise of discretion to remove oneself from emergency, serious or imminent danger at work.

Section 26(2) requires the fire authority to certify the safety of industrial establishments in Trinidad and Tobago every 24 months. The Ministry concluded that this provision would be a burdensome task. The fire authority may have to inspect approximately 27,000 workplaces every 24 months, meaning, 60 workplaces a day. We also recognized that this provision would be better served if there was a link to a general duty to conduct a risk assessment; in other words, industrial establishments would need to include issues related to fire prevention as part of their annual risk assessment.

Section 43(4) provides that in every factory or industrial estate where there are more than 250 persons employed, there is a requirement to provide and maintain an ambulance. The provision, as it stands, does not take into consideration that the requirement of an ambulance is not necessarily a function of the size of the enterprise, but rather the associated risks of the operations of the enterprise. This Bill gives effect to the need to link the provision of emergency facilities, which could include an ambulance, to the associated risks.

Section 59 provides for the Chief Inspector's approval with respect to the undertaking of construction or alterations of factories with a further requirement that if there is a delay in the exercise of the function by the Chief Inspector, you only need to give reasons for the delay. The operation of this provision may

create bottlenecks for business development. Currently, the industrial safety inspectorate performs such functions upon the request of the Town and Country Planning Division; it is a routine voluntary activity with no time limit. The new responsibility under OSHA makes it a matter of law. It is now a mandatory activity which we believe would be beyond the capability of the agency.

Section 74 empowers an inspector to issue prohibition or improvement notices. These notices may arise upon the inspection of an industrial establishment by an inspector. This provision, although worthwhile, has the potential of closing or harming a business. Additionally, it may provide an opportunity for abuse or victimization by an inspector.

Section 37 makes provision for medical examination of persons as a precondition of permanent employment. The provision discriminates against such persons, since there is no requirement to medically examine those who are already employed, in spite of the existing provision with respect to health surveillance in the parent Act. Furthermore, we have determined that there is no duty on an employee not to be under the influence of an intoxicant while at work. Since there is no such duty under the parent Act, employees may operate machinery or perform work under the influence of an intoxicant and bring harm to themselves or others in the enterprise.

The 2004 Act created a safety and health offence, but nowhere in the Act is it defined or explained. As a result, there is the likelihood of confusion about offences and about which court would have jurisdiction over certain offences.

Mr. Vice-President, may I turn to some of the specific amendments of the Occupational Safety and Health (Amdt.) Bill, 2006. Hon. Senators are referred to clause 3 which, in addition to the deletion and insertion of certain words and a change of definition of "young person", makes provision for two new important definitions; one, "health surveillance", which means:

> "the periodic review, for the purpose of protecting health and preventing occupationally related disease, of the health of employees, so that any adverse variations in their health that may be related to working conditions are identified as early as possible."

This provision defines health surveillance and makes clear what was intended in the Act and the reasons for such a provision.

> "'Intoxicant' means any alcohol, medicament, narcotics and psychotropic substances;" [*Interruption*]

Sen. Seetahal: Could you just point out where in the Act, because I was looking to see where in the Act that was referred to; probably I missed it. If you have any examples, I could see the context. I did not go through the whole Act.

Sen. The Hon. D. Montano: The expression "health surveillance" is used in the original Act, but it was not explained as to what it was. At this point I cannot refer you to which section. I can do that, perhaps, when I am winding up.

A duty is placed on an employee not to be intoxicated in the course of employment and this provision ensures that the employee knows what an intoxicant means. Clause 5 amends section 8 by adding a new subsection under "occupier's duties", to provide for a time when the occupier shall prepare or revise his policy or emergency plan. It is now provided by the insertion of subclause (5) that an occupier shall ensure that the requirements under this section and under the Act are complied within three months of the employment of its 25th employee.

Clause 7 provides two new duties for employees in subsection 10(1):

"(e) To exercise the discretion under section 15 in a responsible manner;" Section 15, you would recall, deals with the right to refuse work. This new provision is an attempt to ensure that employees at work do not take frivolous or reckless action as they seek to exercise the discretion that they have been granted, that is, to stop work.

Additionally, in the new paragraph (f), an employee now has a duty:

> "to ensure that he is not under the influence of an intoxicant to the extent that he is in such a state as to endanger his own safety, health or welfare at work or that of any other person."

This gives effect to the duty not to be under an intoxicant during the course of employment referred to earlier. In this clause, we have also dealt with the anomaly that an employee can cause the death of another employee and be liable to a fine of $10,000. The new provision makes the worker liable in accordance with the Offences Against the Person Act. [*Interruption*]

Sen. Mark: I do not know if the hon. Minister could explain to the Parliament, where he referred to liability in accordance with the Offences Against the Person Act, could he be more specific to indicate the difference. He is abolishing the $10,000 fine and going to this particular Bill and I understand that it criminalized this particular offence, so I wanted him to clarify what is the fundamental change in this particular provision.

Sen. The Hon. D. Montano: If you would permit me, I would deal with that when I am winding up.

Clause 8 amends the Act to ensure that the risk assessment required under the Act is a duty and not a mere requirement. Now there is a duty placed on employers to conduct an annual risk assessment. Failure to do so is a safety and health offence. The employer shall be subject to the jurisdiction of the Industrial Court.

Clause 9 amends the Act in section 15; it removes the words "or others" because of the unintended consequence that would have resulted, as I articulated earlier.

Clause 10 amends section 16 of the Act by substituting the word "promptly" with "immediately." This in our view was necessary because the time frame associated with promptly may not be expedient enough for the situation. By utilizing the word "immediately," there is no doubt as to the expediency required.

Clause 11 amends section 18 by reducing the time frame with which an inspector must come to a decision from 72 hours to 24 hours. This reduction was necessary to avoid undue delay at the workplace caused by a worker who may have refused to work. In this time frame, the inspector must respond to a report made and give an initial assessment of the situation.

Clause 17 amends section 25(K)(1) by inserting the words "annual risk". The annual risk assessment was deemed as highly important as is the rationale for us proposing it as a general duty. The amendment is to make the assessments carried out by the employees consistent with that position. Clause 18 amends section 26 of the Act by deleting the words "every twenty-four months" and substituting a prescription to be made at a later date.

We discussed earlier how laborious a duty this would be on the fire authority and propose that we continue to assess the situation and prescribe the frequency of certification in subsequent regulations.

I referred earlier to section 37, medical examination as a precondition of employment. This section is now amended in clause 20 to make it a requirement that such medical examination is to determine fitness for work. In essence, every employee can now be examined as a matter of course in the workplace as part of the health surveillance requirements under the Act and also to determine that person's fitness for work.

Clause 22 amends the Act in section 43(4) to make the provision of an ambulance not a function of the size of the enterprise, but as a function of the risk determined under the employer's duty to perform risk assessment. The employer is not only providing an ambulance, per se, but emergency health facilities which could include an ambulance.

Clause 27 amends section 59 which deals with the requirement of an approval when a factory is being constructed to ensure that the inspector's duty to approve such construction is not counterproductive to business development. The inspector is now under a duty to grant or not grant an approval in 30 days. If he does not act in the prescribed time, the application is deemed to be approved. In the parent Act, as explained earlier, all the inspector was required to do was to give reasons for the delay and this delay would be unending, creating greater costs for entrepreneurs.

The Tobago House of Assembly (THA) was omitted as a member of the authority and, therefore, clause 28 amends section 65 to include the THA.

Clause 30 amends section 72 to protect the inspector from threats of violence or action which may result in serious bodily harm and to make provision to cast a duty on inspectors to execute their duties under the Act expeditiously and with due care.

Clause 31 now limits the possibility of an inspector's abuse of the power to order improvement or prohibition notices. The persons so affected can now lodge an objection at the Industrial Court. The objection would operate as a stop order until the Industrial Court determines the matter. Thus, the inspector is not able to take indiscrete, frivolous or arbitrary action. Furthermore, if someone without lawful authority removes, defaces or in any way tampers with a notice posted in relation to dangerous practices, he shall be subject to the jurisdiction of the court in accordance with the Supreme Court of Judicature Act.

Clause 33 amends section 83 to create a specific safety and health offence and grants jurisdiction to the Industrial Court in such offences. I believe that we have, through that amendment, created an enhanced and more manageable Safety and Health Act. The amendments have given effect to the Ministry's policy to decriminalize industrial relations and, in particular, safety and health offences to the extent that it is possible. You would also see that we have made consequential changes to the Act as determined by the new architecture for the compliance and enforcement of safety and health law in Trinidad and Tobago.

We also took into consideration the necessity for a special majority for the passage of the original Bill. It is our opinion that this Bill, unless these amendments themselves abrogated, abridged or infringed the rights and freedoms recognized and protected by sections 4 and 5 of the Constitution, there would be no necessity for a special majority. In examining what we are proposing in this Bill, it is our opinion that it requires a simple majority. I can assure hon. Senators that the safety and health landscape in Trinidad and Tobago will be better. Indeed, it is my humble view that as a result we have created an excellent model of safety and health legislation. Our next task would be the passing into law of new workmen's compensation law. My Ministry is now working on the elements of a draft Bill which would support this new safety and health legislation.

The issue of compensation is a natural consequence of occupational accident which results in injury or death and is an essential part of Government's policy of industrial safety and health. Accordingly, Mr. Vice-President, I commend the Occupational Safety and Health Bill to this honourable Senate.

Please allow me, in closing, to pay special thanks to the Chief Factory Inspector, Mr. Dev Roopnarine without whose help I would never have been able to get this far. [*Desk thumping*] Especially also, to the Chief Legal Counsel and his team, Mr. Lennox Marcelle, Lindy-Ann and Kerry-Ann. They too worked many long hours well into the night and on weekends to assist me in this effort. All the members of this team only ever showed the best will and intentions in helping me get to this point. I would like to thank them.

Mr. Vice-President, I beg to move.

Question proposed.

Sen. Wade Mark: Mr. Vice-President, this Bill represents a victory; unfortunately, not for the working class, but for the employers; the economic agents of capital and what I call the modern plantation owners. From the tone of the Minister's presentation, you can see the anti-worker, anti-trade union, anti-democratic—the tone is clearly anti-worker, anti-trade union. Hear the expressions: frivolous actions; vexatious activities; you get the impression that the Minister had a plan. I would go into that in a short while.

Nowhere from these amendments and from the amendments from the parent Bill that we had passed in January of 2004, could anyone agree with the statement of the hon. Minister that the present amendments have enhanced and made safety and health at the workplace more manageable. I will demonstrate what I mean as I proceed. It is another con job that has been pulled on the working people.

I want to bring to your attention some contradictions in the hon. Minister's presentation. He said that it was a team effort; that it was not any "I and I". Why did the Government agree to these amendments? The workers of the country threatened to take strike action if the regime did not implement OSHA. Of course, the regime panicked and that was the reaction. Let me quote for you from an article in the *Daily Express* dated Friday 20, January 2006. The headline is:

"Labour Minister not backing down over OSHA row"

I want to extract some parts for you, Mr. Vice-President:

> "Montano, who did not attend Cabinet yesterday, insisted that before he assumed the portfolio 'no work had been done on this Bill at all until I got there.'"

He is now saying that the former Minister Anthony Roberts did work, but in this article the Minister said.

"no work had been done on this Bill at all until I got there.'"

None; this is the man's language; none, nada, zero. [*Laughter*] He said, "I found nothing." This is the statement of the Minister; zero. So the big jefe, the new master of the working class, is the saviour, Jesus Christ himself. He comes and says, "Listen, I did it; I started it and I finished it within a space of three months." He said that he knew that he was doing a competent job, self-gratification, self-praise, doing a very competent job. The Prime Minister does not feel so.

> "I knew I was doing it quickly and I knew that I was responding to the needs of the workers in the country in a way that had not been done previously. My conscience was very clear and I was sleeping very comfortably at nights."

"Yuh" must sleep comfortable; when "yuh" bring these kinds of measures to strengthen the hands of the employers against ordinary workers in the country at the workplace, "yuh" bound to sleep nice, but the workers are not going to sleep nice though; you are. This is an anti-trade union, anti-worker regime and I would demonstrate as I go on.

The article continues:

> "…the unions continued to agitate in the new year, even threatening a national strike."

He said because of this threat 'the Government as a whole…begins to feel some pressure and the decision was made to accelerate.'"

I read this particular section of the Minister's statement to show you that the PNM did not do workers a favour. Workers had to protest. Workers had to demonstrate in San Fernando, Port of Spain, Princes Town, Couva, Marabella and Pointe-a-Pierre. They were protesting and it was going to culminate in a national strike; hence the reason the regime decided to "back-back" and bring some amendments.

It was not because of their love of workers. This regime has been in power since 1956, with the exception of 1986—1991 and 1995—2001. They never, during their reign, thought it necessary to introduce any legislation to deal with health and safety of workers; they never at all. I will show you when we introduced very up-to-date legislation to advance the cause of the workers and bring about a balance in this economy, in terms of capital and labour, the business elite and their agents within the Cabinet, at that time they were in opposition, they opposed every move we made in the Parliament. I will demonstrate as I proceed. So we do not see the Minister's statement of any compromise on health issues; that is a slogan.

3.00 p.m.

He is not serious. I think the Manning administration has once again done a con job on the workers. These amendments as I would demonstrate, substantially strengthen the power and the hands of the employers and it is a clear assault on the health and safety rights of the workers of Trinidad and Tobago.

The integrity of the Act has been fundamentally shaken by these amendments, and if you look at them and compare what was in the Act prior to their coming here, you will see how they have substantially weakened the power of the workers, and the trade union movement, by extension. I think the Government has done a hatchet job on the workers and has compromised their interest in the process.

Mr. Vice-President, these amendments have weakened the Act and placed more power in the hands of the employers. The intention is to remove the employer from the legal responsibility to have industrial sites that are safe and healthy.

I want to tell you what the UNC's position on this matter is. Our position has always been and still remains today for the regime to proclaim the legislation as is and then bring amendments later on. That is our position. These amendments are inappropriate but we do not intend to hold back the proclamation of the Act. We do not want anyone to accuse the UNC of not supporting even though it is a

limited step forward for the workers, a very limited step forward, and we shall, at the committee stage, propose a number of changes that we would like the Government to consider in an effort to strengthen the legislation.

I am not surprised that once again the PNM has betrayed the working people of this country. It has continued to undermine the democratic process in our country and just as workers are fighting for their health and safety, Members of Parliament are also in a struggle as they seek to fight for their safety which appears to be at risk at this time. And I am surprised that Sen. J. Yuille-Williams, the acting Prime Minister, and the PNM as it celebrates 50 years, have not to date denied very, very serious and grave charges that brought the safety of Members of Parliament into question.

It is amazing that the People's National Movement, the ruling party of this country has failed to deny that top officials of the PNM—that is what the newspapers said, and they have yet to deny—were involved in the planting of mortar and cocaine which threatened the health and safety of Sen. Sadiq Baksh and his family and Mr. Ganga Singh and his family, and I call on Sen. Dr. L. Saith, who is the acting Prime Minister of this country in the absence of the hon. Patrick Manning—

Sen. Dr. Saith: He is back.

Sen. W. Mark: He is back? Well you, Leader of Government Business and normally Ag. Prime Minister when he is out, need to make a categorical statement in this Parliament today. The Government needs to put on public record that it is either involved or not. It is either it intends to hold an enquiry into this matter or it does not, but it cannot allow serious charges to be levelled at its feet in its 50th year of existence and remain silent. I call on Sen. Dr. L. Saith and the Attorney General of this country to make a categorical statement today either denying or indicating, and whether it denies or not, we in the UNC have called for a commission of enquiry into that matter. [*Desk thumping*]

Mr. Vice-President, I am dealing with the safety of my person too, because I do not know when they are going to plant cocaine and mortar in my water tank because I might be the next victim after Sen. Sadiq Baksh.

Sen. Jeremie: Mr. Vice-President, on a point of order. Firstly, the Senator is being irrelevant to the debate which is at hand and secondly, the Government is under no obligation to respond to the ranting of just any and every person who might feel to make allegations. This is a police matter. Two statements have been made on the matter and we intend to allow the process to play itself out.

Sen. W. Mark: Mr. Vice-President, I am talking of the safety of a Member of Parliament. This is health and safety legislation in the workplace and I am in the workplace here; this is my workplace and I am saying that I am concerned.

Mr. Vice-President: Sen. Mark, I really appreciate the fact that you are concerned about the safety of the parliamentarians and certainly of myself, but when we talk about occupational safety, we talk about it in the workplace. What you are talking about has nothing to do with the workplace, and candidly, I think you should get back to the Bill and not rant and rave about—

Sen. W. Mark: Mr. Vice-President, you are—

Mr. Vice-President: The matter you are talking about is one under investigation. Let us leave it at that, please.

Sen. R. Montano: Mr. Vice-President, with the greatest of respect, a police matter under investigation is not *sub judice* and this so-called investigation has been taking place now for approximately four years. So when you tell us that this matter is under investigation and it sounds so great, what we hear is cover up. "They ain't doing nutten." So do not try to fool us.

Mr. Vice-President: Sen. Mark, could you get back to the Bill in question?

Sen. W. Mark: Mr. Vice-President, I think the Attorney General wants to make an additional statement.

Sen. Jeremie: If you will allow me.

Mr. Vice-President, the Government that I have the proud honour to serve is not engaged in the business of covering up anything.

Sen. R. Montano: That is not true. That is not true.

Sen. Jeremie: Mr. Vice-President, five years ago, the response which the country heard religiously with respect to matters of this sort was: "Take it to the police." Those were the statements which were heard. "Take it to the police." [*Interruption*]

Mr. Vice-President: Senators, please allow him to finish.

Sen. W. Mark: I will like to get back my time. Ten minutes gone already.

Mr. Vice-President: I have the time.

Sen. Jeremie: That was the response five years ago and these matters were given to a police officer who could not read, write, or spell. The Anti-Corruption

Investigation Bureau was starved of resources, so taking it to the police meant nothing happened. This Government stands for transparency and morality in public affairs. [*Desk thumping*] We shall do whatever is required to get at the bottom of every allegation. [*Crosstalk*]

Hon. Senator: Dansam Dhansook morality, Eric Williams morality.

Mr. Vice-President: Hon. Senators, I do not think that we should allow banter to take place in the debate. I have asked you to return to the Bill. Please do so.

Sen. W. Mark: I need 10 minutes for these interruptions. You will give me my 10 minutes.

Sen. R. Montano: Cover up!

Sen. W. Mark: Mr. Vice-President, today marks exactly two years since His Excellency the President gave his assent to this Occupational Safety and Health Bill which became an Act, but as you know, the Government of Trinidad and Tobago, the PNM, never proclaimed the law and as a result, we have a situation today where the PNM has presided over the deaths of some 18 workers in 2005, five perished in 2004. So in a period of two years, under this regime, because of its criminal negligence, we have had a situation where scores of workers and their families have had to suffer enormously.

We have heard the hon. Minister speaking of compensation and he wants to amend the Workmen's Compensation Act and he was doing a lot of work on it before someone told him to separate them. He has not indicated to us when he is going to bring the new draft bill on industrial injury and benefits to the Parliament. I do not know when it will come to us; the Minister would have to advise us on that matter later on.

It is clear that when we look at this particular piece of legislation we realize that as far as the Minister is concerned, it is about the living, who dead, dead; let the dead bury the dead as far as the Minister is concerned. Of course, he says in crocodile ways that the Government sympathizes with the family of those who have perished, but why did it take the Government all this time to proclaim the Act? Lives could have been saved; families could have been at least spared the trauma of losing their loved ones if the PNM had executed its responsibility. But we do not expect much of this regime; we believe that the PNM is not going to improve the working conditions of the people. I have looked at its legislation agenda for 2005/2006 and apart from the occupational safety and health matter on that agenda, not a single piece of progressive, working class or labour legislation has been put on the 2005/2006 agenda.

I want to give a little history, a background of OSHA between 1975 to 1995. OSHA legislation was drafted and redrafted under the ruling party at the time, the PNM. It never once advanced that legislation to reach the Parliament from 1975 to 1995, it was stuck in discussion and non-action by this regime. It was the NAR government that moved the legislation to Parliament but it lapsed because of the election which NAR, as you know, lost. The PNM was subsequently returned from 1991 to 1995 and it continued to twiddle its thumbs. It did nothing to advance the interest, welfare and well-being of the poor, oppressed, downtrodden and the working people, yet this Government boasts about being committed to the poor, especially the Africans in this country.

Mr. Vice-President, it was the United National Congress, a party of the working people, a party that is committed to the poor, the downtrodden and the oppressed in this land who looked at that Bill and had a comprehensive revision involving public discussions at the different levels including the tripartite level, and it was the UNC that brought the OSHA to the Parliament not on one occasion, not twice, but on three occasions.

On two occasions it was referred to a joint select committee because the PNM in opposition opposed it, and as you would know, in 2001, we brought the legislation for a third time; the PNM blocked it, refused to support the legislation and it failed. So the PNM defeated the legislation in 2001 because we did not have the special three-fifths majority.

Mr. Vice-President, the failure to proclaim the Act could only be perceived as a vendetta against workers in this country. The Act as we have before us will not advance the interest of the workers of this land.

Mr. Vice-President, I would like to ask you to look at some of the measures. I asked the hon. Minister but he stuck to his script and could not deviate because he does not understand the workers of this land, he is a businessman. Do you know in Austria there is a law in the constitution that says whichever government comes into office, the Ministry of Labour must go to a trade unionist? The Ministry of Labour must always be under the control and leadership of a trade union leader in Austria, as an example. Here, you put a businessman to run the Ministry of Labour, Small and Micro Enterprise Development who is anti-worker; his sentiments are pro-big business. What do you expect to get from these amendments? Do you expect any sympathy for workers in this country? None.

Hon. Senator: What Partap did?

Sen. W. Mark: Clearly, he was one of the most progressive Ministers of Labour.

Mr. Vice-President, if you go to section 10 of the original Act, because you must go to the original to follow this matter that we have here, the Minister is not satisfied with the various provisions under duty of every employee so he adds two more. He is intimidating the workers in new subsection (e). He says: "The workers must exercise the discretion under section 15 in a responsible manner;"

So what are you telling the workers? Why did you include this clause if not to intimidate workers? You are telling the workers they have to be more responsible. Were they irresponsible before? What is the evidence of irresponsibility on the part of workers? It is designed to intimidate workers, that is why he has parachuted this new provision. Then he comes with alcohol but everyone knows that is an offence. You cannot really be on the job drunk, but again he has put it in the Act.

Mr. Vice-President, I go now to section 10(2), where the hon. Minister says that he is deleting the fine of $10,000. He says he does not want to fine persons.

> "An employee who willfully and without reasonable cause does anything which results in the death or critical injury to another person at work, commits an offence in accordance with the Offences Against the Person Act."

I am looking at this Act and I am not seeing anything that is related to this provision and I ask myself the question: Did the Minister really study this matter properly? These are things dealing with homicide, threatening letters to murder, assault, rape, abduction, bigamy, child stealing, unnatural offences like buggery, and explosives. Where does the worker fit into this piece of legislation? This is a piece of legislation that criminalizes offences against the person. The same Minister who has just told us he wants to decriminalize industrial relations offences is the same Minister who has now introduced the Offences Against the Persons Act to criminalize the action of workers. That does not make sense to me, so we call on the Minister to delete that clause.

Mr. Vice-President, as we proceed, we see where the Minister under section 16 of the Act is making amendments in clauses 9 and 11 of the Bill before us saying that an employee may refuse to work or do a particular work where he has sufficient reason. So he has introduced a word in order to stymie the worker and the trade union. He is saying that you must show sufficient reason. It was not there before, why has he incorporated it this time?

There is a provision that says there is serious and imminent danger to himself or others. He deletes the word "others" and says only "himself". So if you are in a workplace, and danger is coming to you, you alone must run. It is coming to you, I am nearby, and I must stand still because the law says it is only you in danger. This is a criminal act on the part of the Minister; this is anti-worker. You are telling the worker to stay there unless you are in danger.

Mr. Vice-President, he does not work on the factory floor, he does not know what goes on there, so he is saying you alone must take action. He is undermining the collective struggle of the trade union movement and the collective will of the workers to take action, and he is dividing and separating the workers in the workplace by this provision. This is undermining the working class and the trade union movement in this country.

Section 16 says:

"(1) Upon refusing to work or do particular work the employee shall…"

The original words were:

"promptly report the circumstances…"

He is saying to remove the word "promptly" and put "immediately".

Slave master, plantation conception and philosophy. They believe that Trinidad and Tobago is still a modern plantation economy. They do not believe that the workers are a liberated group of people. They are still saying that we must be under the whip of the new agents of capital. This is a most reactionary group of amendments that we have before us today; it does nothing to enhance the safety and health of workers in the workplace. It gives more power to capital and the employers over the workers and their trade unions in the workplace. That is what the PNM is about, it was never for poor people. It used poor people to win the election and then whip them at the end of the process. This is an anti-people piece of legislation that we are debating today.

Mr. Vice-President, I want you to follow the anti-trade union and anti-worker provisions in the legislation. Section 25C has been removed and placed under section 13, I think that was just cosmetic in essence.

Let us go to section 26(2) and you will see where in clause 18, we are amending section 26(2).

"Every occupier shall ensure that his industrial establishment is certified every twenty-four months by the fire authority…"

Let us see in terms of clause 18, the Minister wants to delete the words "seek redress" under section 83, he wants to delete the word "seventy-two" and substitute the word "twenty-four". So in other words he is saying that the time frame is too limited so he wants to speed it up. The same Minister who just told us that bureaucracy and the absence of personnel—is saying that the same personnel—will be able to speed up this within a shorter time frame.

Mr. Vice-President, it goes on in section 39 of the original Act which is clause 21 in the Bill before us. We are saying in the original Act under 39(1):

> "…a sufficient supply of cool, wholesome, drinking water, except that no such point shall be situated within six metres (or twenty feet) of a washing place, water closet, urinal or other sources of contamination unless a shorter distance is approved in writing by the ."

As far as the Minister is concerned, health, sanitation, and hygiene do not matter. The employers told him and the PNM when they are talking about putting water they have to drink, put it 20 feet or metres away from the toilets so that sanitation and hygienic standards can be maintained, the Minister said to delete that. You could put your water right in the toilet as far as he is concerned. That is slavery the Minister is proposing here and we reject that particular provision completely. How can the Minister justify this?

When one goes to section 43(4), which is clause 22 in the Bill you will see where this anti-worker, pro-business Minister of Labour, Small and Micro Enterprise Development says no to ambulance. When workers get injured, that is too much money for the employers to put out. They must not have ambulances and he does not even put a provision, even though an industrial establishment with 250 or more, under 43(4), must have an ambulance available and first aid facilities. He deletes that, and puts in its place emergency health facilities. What does that mean? There is no definition.

3.30 p.m.

So an employer could have some scotch tape, Panadol in a little kit and that is it. This is the "CEPEPorization" of the workplace where the Government is not concerned about the safety and health of workers. How can you justify the removal of these provisions? At the same time, the Minister proceeds to reduce the power of the Chief Inspector. I have been in this Parliament for a few years; it is the worst I have ever seen in terms of provisions brought by a government that professes to be in support of poor and oppressed working people of our land. But when these provisions are passed, the masses of people in this country will judge

the PNM on the basis of measures like these. And you all want another term? Let big business vote for "all yuh" because small people are not voting for "all yuh next rounds", you know. Big business will vote for you all in the next election. You all have betrayed the working people of our country!

Listen to the classic; this is the classic. Go to section 59(1); that is clause 27 in your Bill. You know, I am reading this thing in amazement. I cannot understand how a government could even contemplate these amendments and bring them into this Parliament and say that these measures enhance the Occupational Safety and Health Act. Look at 59(1). I read:

> "No person shall undertake, without the prior approval of the Chief Inspector —:
>
> (a) the construction of any new factory or warehouse;
>
> (b) the reconstruction of any existing factory or warehouse or the extensive installation…"

et cetera. It goes on:

> "(2) A period of not more than six weeks…"

The Minister says six weeks is too long for the to approve and he puts 30 days and he says:

> "Not more than thirty days shall be allowed for the consideration of every application made under this section and where the's decision is not issued to the applicant during the period…"

The original Act said:

> "the shall submit his reasons for the delay, in writing, to the applicant."

This is a man who is trained, who is looking after the welfare of workers and employers at the workplace. Listen to what this pro-big business, anti-working class Minister of Labour, Small and Micro Enterprise Development has proposed. I am not blaming the technocrats in that Ministry at all. These measures were not formulated by the technocrats in the Ministry of Labour, Small and Micro Enterprise Development. These provisions were brought by the Minister and the Cabinet approved them. Do not blame the public servants for this. You must have forced public officers to agree to that. But that is your policy!

Listen to what the Minister says. Imagine the Minister is now proposing to delete this section that says:

"the shall submit his reasons for the delay, in writing, to the applicant."

First of all, he deletes six weeks and says 30 days, which is impossible. It cannot happen within 30 days; he knows that, but he wants to justify his policy. So he says if the application is not approved within that period:

"…such application shall be deemed approved for the purpose of this section."

So what—I almost said "the hell", but I cannot say that. What is going on here? You have a who is supposed to make sure that everything is done properly in accordance with standards; you reduce it from six weeks to 30 days. And do you know what they said after that, "Stretch"? I know you are a trade unionist; you cannot support this, you know. Do you know what he says? He says, "to hell"—well, not "to hell", Mr. Vice-President. I withdraw. He says, "Forget the . If after 30 days you do not hear from the Vice-President, who is the , you must take it to mean, go ahead and build your warehouse, your factory, regardless of all the consequences that can be brought to workers. Use cheap material; forget anybody because I, the PNM, say you have the power now." The PNM is really the agent of big business in this country! This is unheard of! How can we support such a backward amendment being proposed by the PNM? We cannot support this! This is an amazing development.

To show you how anti-worker this regime is, section 65(1) of the parent Act—nowhere in this legislation is there provision for representation of the trade union movement on, what is called the Occupational Safety and Health Authority. The Minister has the power to appoint nine members and nowhere is the trade union incorporated here. Where is NATUC; where is FITUN? But you have the employers here because this Government is a government that supports employers. I have nothing against employers; I am just saying you must give workers a fair deal. You cannot exploit workers mercilessly. You cannot make obscene profits and workers cannot send their children to school and do not have proper homes to live in. How can I support that? I cannot support exploitation of workers. This is what the Government is doing. They brought in their partner from the Tobago House of Assembly. I have no problem with that. The THA is part of the Government; it has its own assembly. But what about the trade union movement? Why is the trade union movement not represented on the authority? This is a hopeless regime, I can tell you; no interest in workers—none!

Go to section 71, which is clause 29 in the Bill before us. What does section 71 tell us? They deleted 71(1) and substituted a new paragraph (a):

"The Minister may –

(a) on the advice of the —

(ii) appoint a suitably qualified person as an inspector…"

We are dealing with the health and safety of workers. Before this amendment was parachuted by this Minister who is saying this is a nice piece of legislation for workers, listen to what was the provision:

"The Minister may—

(a) on the advice of the , designate a suitably qualified public officer as an inspector; and

(b) on the advice of the Chief Medical Officer—"

They have removed that. So the advice of the Chief Medical Officer is no longer needed. So you are going to appoint a suitably qualified person as an inspector. What does that mean? What is the qualification of this inspector? At least we knew from the original, it was on the advice of the Chief Medical Officer, so you know the fellow has some background. In this instance, it is jobs for the boys.

"The Minister may –

(a) on the advice…"

not "shall"; "may, on the advice of the ". So if the says appoint some PNM party group chairman, no problem; he does not have to be qualified.

In section 72(3), there is a provision which they have included there which, to my mind, is really cosmetic.

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. S. Baksh*]

Question put and agreed to.

Sen. W. Mark: Mr. Vice-President if you go to section 74(1) of the original Act, you would see, for instance, where again the Government is repealing subsection (5) of the Act and inserting two new subsections. It says at clause 31, new subsection (5):

"Where an objection is made pursuant to subsection (4) against a notice…"

It goes on to tell you what should be done—takes you to the court. Clause 31, new (a) states:

> "in the case of the improvement notice, the filing of the objection shall have the effect of suspending the operation of the notice until the hearing of the objection is finally disposed of or, if the objection is withdrawn, until the withdrawal of the objection;"

The , under the Act, had been given certain powers. What the Minister has done is watered down the powers of the . So the is a glorified . He has no power under the Act.

But I want to appeal to the working people and the trade union movement to have some patience. An election would be called shortly and the UNC will present itself to the people. We give them the assurance that every single one of these amendments that have been brought here would be subject to review, because these amendments do not enhance the rights of the working people in this country.

So, again, if you look at section 79 of the Act, it says you have to present your certificate, I would imagine, whenever you visit the court or a business place. As I said, I have looked through these amendments and I really cannot agree with these amendments. Of course, the Government says it requires a simple majority. We would not debate that. What we would like to advance is that the workers cannot be blamed for what has happened here. The workers were in a struggle to bring this Bill to Parliament so it could be implemented and proclaimed. The Government actually brought amendments that effectively have watered down the original Act.

I would like to call on the Minister of Labour, Small and Micro Enterprise Development to look at these measures very carefully. They do not really represent an enhancement of the safety and health environment of workers in this country. The scales of justice are not evenly balanced in this particular context. The scales of justice are in favour of the employer at the expense of the workers. That is what is represented here. Therefore, I said in the beginning that we do not intend at this time to place stumbling blocks in the way of the proclamation. The

workers have been fighting for this particular measure for some time and the PNM has grudgingly put crumbs on the table. They will take the crumbs for the time being. They will get the entire piece at the appropriate time. The question of safety is very critical and we do not think that the Government is really serious about this matter.

As we deal with safety, I would like—the Minister of National Security is not here—the Commissioner of Police, on the issue of safety of people in this country, to tell this country why he has discontinued investigations into the matter of the mortar, the arms and the cocaine. I would like the Commissioner of Police to indicate to us why he has done that. I read something very disturbing in the newspapers today and I think it is very important for us to get some clarification. I cast no aspersions on anyone; I respect everyone, but when I see things in the newspapers I need to get answers. I would like to know from the hon. Minister of Community Development, Culture and Gender Affairs, whether there is a chap called Dr. Stanley Plowden who works at that Ministry as a special advisor, and whether that particular gentleman is in receipt of some extremely high and sizeable emoluments. I have received information on this chap, in terms of this particular matter I am raising, I would like the hon. Minister to indicate to me whether that is a fact.

Sen. Yuille-Williams: On a point of order. You have a question and I think in fairness to Dr. Stanley Plowden, I do not think you should raise this matter in this forum at this time. I think there are other times that he can ask the question about Dr. Stanley Plowden. He is not here in this Parliament; he is not a Member of the Parliament.

Sen. R. Montano: Are you covering up again? Is there something with Plowden that you are covering up?

Sen. Yuille-Williams: What I am saying, the question could be asked and I would be happy to furnish the answer.

Mr. Vice-President: Sen. Mark, I have to go with the Minister here. I was trying to figure out how this ties up with the Occupational Safety and Health (Amdt.) Bill. I think it is totally irrelevant.

Sen. W. Mark: Well, you see, in Trinidad and Tobago these are matters that affect, at the end of the day, the very safety and health of people, because if people are receiving millions of dollars and we cannot get an account for it—the people of this country cannot get proper health facilities to live, because that money could have been utilized for health purposes.

Mr. Vice-President: Sen. Mark, you have actually gone on to say that what you have been hearing is true. Please desist. Return to your winding up, kindly.

Sen. W. Mark: Mr. Vice-President, I would like the hon. Minister to let us know if she is aware of a private slush fund in her ministry. I would like to know whether she is a joint signatory with one—

Sen. D. Montano: Mr. Vice-President, that has nothing to do with occupational safety and health. We are just wasting time here.

Sen. W. Mark: Mr. Vice-President, these are matters which are affecting the health and safety of the nation.

Mr. Vice-President: Sen. Mark, I think you have gone out of line. That has nothing to do with the Bill that we are discussing. If you have questions about that, I advise that you follow the necessary procedure and have them answered, but I do not think that it is relevant to what we are discussing here.

Sen. W. Mark: Mr. Vice-President, as I said, I have some questions and I wanted to get you to understand what people are saying and how these things are going to impact on their health and safety. As I told you, none of us appear to be safe under the PNM.

I would like, again, to call on the Prime Minister to launch an enquiry into a private bank account at the First Citizens Bank, the Independence Square branch, with over $2 million, and it is in the name of one Phillipa Richards, who was once the personal assistant to the Minister of Community Development, Culture and Gender Affairs.

Sen. Yuille-Williams: Mr. Vice-President, I do not think that—

Sen. W. Mark: I would like the Prime Minister to investigate this matter.

Sen. Yuille-Williams: Mr. Vice-President, I do not know why Sen. Mark insists on doing things like that, trying to lay blame against people who are not here to defend themselves, and all that kind of thing. You know, when things are said like that, they get into the system and people are blamed. I think it is unfair for people to do it. You would not like it. [*Crosstalk*]

Mr. Vice-President: Hon. Senators, I think the debate was going on quite well. I would like you to desist from straying from the point, and I think you have strayed a third time. Please avoid it.

Sen. D. Montano: Mr. Vice-President, on a point of order.

Sen. Seepersad-Bachan: What is your point of order? Give us your point of order.

Sen. D. Montano: Standing Order 18(4).

Mr. Vice-President, a Senator cannot come here, malign a member of the public who has no opportunity to respond in this forum without your doing something about it and ceasing to have it reported. We had a classic example of that in the other place when certain names were called and the Speaker ruled that it could not be published outside: That is typical and it is completely unparliamentary.

Mr. Vice-President: Sen. Mark, I have listened to what has been said and I really think that you should desist from calling any names, especially of people who cannot defend themselves at this level. Parliamentary privilege is one thing but the abuse of it is another. Please desist.

Sen. Seepersad-Bachan: Mr. Vice-President, when we asked what was the point of order—the Senators across there do not like to comply, but we must comply on this side—the Senator said 84. I would like you to take a look at what is Standing Order 84. Standing Order 84 has nothing to do with what he just spoke about and he is misleading the Senate. [*Crosstalk*]

Sen. W. Mark: It is an abuse, but it is PNM styling—mannequin! Mr. Vice-President, do not worry on that one. I have about 10 minutes—[*Crosstalk*]

Mr. Vice-President: Sen. Mark, first of all, I have already asked you to desist. Do not come here and call people's names just like that. In the case of what obtains for one side not seeming to obtain for the other, if a mistake was made—

Sen. Seepersad-Bachan: There was no mistake. [*Crosstalk*]

Sen. W. Mark: He got up on the wrong Standing Order. We will forgive him.

Mr. Vice-President: Okay, if you forgive him.

Sen. W. Mark: In winding up, I was just indicating to you that the hon. Minister Danny Montano is under pressure.

Mr. Vice-President: Sen. Mark—

Sen. W. Mark: We know that; crime and corruption.

Mr. Vice-President:—at the time when you were interrupted you had about four minutes.

Sen. W. Mark: Mr. Vice-President, remember I lost 10 minutes and you told me you were going to include them.

Anyway, the population calls on the Minister of Labour, Small and Micro Enterprise Development to bring to this Parliament within the shortest possible time the Industrial Injuries and Benefits Bill. That is something that you need to bring. The issue of contract labour is something that we need to address very seriously. We need to have legislation to deal with contract labour. Many of the workers who are victims of corporate slaughter in the workplace today and end up in coffins, are contract workers and they do not have the kind of rights that workers would have in a trade union environment. So we believe that the PNM should bring legislation to Parliament to protect workers who are at the mercy of these contractors who exploit them mercilessly. And there is a Basic Conditions of Work Bill that we left in the Ministry of Labour when we were removed by President Robinson in December 2001, and up to now—we have had three Ministers of Labour, and today the PNM is in almost its fifth year, because it is in power for six years—they stole one, you remember, with the 18/18, and then they went and stole the election with the Jamaat, so they have about six years to reign.

Would you believe that during that six-year period, the Basic Conditions of Work Bill which was left in the Ministry is yet to be brought here? So what kind of commitment does the PNM have to working people and ordinary people? We think none. So, as I said, we have grave reservations about the 40 amendments that have been placed here today. We think they are backward, reactionary, anti-worker, anti-trade union and anti-democratic. It is very hard for us to lend support to these amendments. We are going to propose changes at the committee stage to see if the Government could strengthen and at least provide the workers with a more enhanced Occupational Safety and Health Act.

That is our commitment and we would like the Government to consider those amendments at the appropriate time. All we ask of the Government is to ensure that the resources of the State are not pilfered and not stolen; that they allow the resources of the State to be channelled in the proper direction and not into private slush funds where the signatures of high-ranking government officials are appended to those cheques involving over $2.5 million. We think the Fraud Squad should be brought into the Ministry of Community Development, Culture and Gender Affairs to ensure that we have justice.

I have to raise these things here. Do you know why? If I do not raise them here, there would be revolt out there. So it is better we raise them here and let the Prime Minister take action; investigate that matter. The account is at the First

Citizens Bank, Independence Square. Mr. Vice-President, do not rise, I am about to take my seat. [*Laughter*]

I want to say that we cannot support this Bill in its present form. We do not intend to hold back the workers in their struggle for its proclamation. We shall, if we have to, reluctantly, but we would fight tooth and nail at the committee stage to ensure that certain amendments are put into the legislation to enhance the rights of the workers.

I want to thank you very much for allowing me to make my contribution. [*Desk thumping*]

Sen. Mary King: Mr. Vice-President, first of all, I would like to congratulate the Minister for having developed what he told us today, a national policy. [*Desk thumping*] The Minister has informed us he has developed with the committee a national policy on occupational safety and health and I would like the Minister to inform us when this policy might come to Parliament either for affirmative or negative resolution. I think it should be laid in the Parliament for information and possible discussion.

4.00 p.m.

Mr. Vice-President, two years ago when we debated this Bill, there were some issues of concern. One of the issues I had a concern with has been taken under the ambit of the new amendments. We have now actually defined what a young person is and we are now complying with the other Acts so they are all the same definition "sixteen and over", which is something that we needed to do, so that is also a good amendment. There are, however, some of the amendments with which I have concerns, Mr. Vice-President. For my contribution, I will stick to those particular areas of the Bill with which I am not too happy. From Sen. Mark's contribution I think there are some overlaps with which he is also not too happy.

In the definitions, Mr. Vice-President, I would like us to look at the amendment to the definition of approved standards to include the words: "and it includes an appropriate type as determined by the Authority." This would now give the Authority the power to introduce standards that may actually fall below the standards as established by the Trinidad and Tobago Bureau of Standards. I do not think this is something ideal; I think we should look at that, please. Also, within the context of the powers of the Authority: we have not given the Authority the powers to develop or approve standards. We have to be consistent with the powers that we are giving them and the powers that have to be included in the section dealing with the powers of the Authority; it is absent, Mr. Vice-President.

We have also, in sections 64 and 65, given the Minister the control over the Authority: "All approved standards must be set, declared, or adopted by one body." Mr. Vice-President, I do not think and others agree, that the Minister, the employer or others should be involved in the setting or changing of standards.

Staying with the section on definitions, Mr. Vice-President, I raised a concern two years ago on the issue and we have still not covered it under the Occupational Safety and Health Act, these temporary buildings, construction of tents and stands that we build every year at this time. We really need to look seriously at this because we have had collapsed stands, which took place exactly two years ago. We have not configured these into the Act and therefore there is no protection for patrons attending a function such as a large carnival fete. We cannot forget. So I would like to think that we would include a policy on these temporary buildings and include them within the ambit of the Act.

Mr. Vice-President, moving on to section 9, the amendment proposes to remove the words: "the Environmental Management Authority" and replace it with "Authority Responsible for Managing the Environment." This removes the responsibility from the Environmental Management Authority (EMA), which is really the agency responsible for environmental protection, and places it under some subjective authority. This is not an ideal situation because we are actually denying the public the protection of the Environmental Management Authority. [*Interruption*] Well, Minister, you will answer me at the appropriate time, thank you very much. From the reading of the amendments you have told us that where we see EMA, you are replacing the authority of the EMA onto some other authority and that would be a subjective agency, and under the power of the Minister.

If we continue and delete subsections (2), (3) and (4) from that same section 9, which has been recommended, then we are removing the clear provision of holding an occupier of an establishment responsible for the protection of safety and health. The only way that this could be accepted is if we ensure that this responsibility is included under the new section 13(A); that we will ensure that section 13(A), where we are talking about the annual risk, would cover all of the provisions that you are deleting under section 9(2), (3) and (4).

In clause 10, Mr. Vice-President, we are also weakening the position of a worker where we are saying: "The general duties of employees at work is amended by specifying that the worker must exercise the discretion to refuse to work under section 15 in a responsible manner." I think we have to spell out what exactly we

want the worker to do. "Responsible" to him may not be responsible to the employer; may not be responsible to the trade union; may not be responsible to the Minister and I think we have to be very specific in what we are expecting of a worker.

Also in section 15 where we are saying that he must give sufficient reason, that also could be very vague and makes it more onerous on the worker to exercise his right to refuse to work in particular circumstances.

If we look at section 37(1), we are including or asking for the inclusion of an amendment by inserting the words: "or is already employed" after the words "seeks employment". This means that worker who is seeking employment must have a medical, yes, but you are now including persons who are already employed. The employer can subject the workers to a medical examination. I want to know if this is not changing the terms of the person's conditions of employment and whether that is something legal. Are we infringing on workers' rights? We just had the case of the judges who took their case for interpretation because asking them to declare their assets was changing their conditions of work. I think we need to go back and examine whether we want this amendment or not because it may cause a lot of legal issues and perhaps we should leave it as it is. This also may give an employer an opportunity to target particular workers for things that are not related to health. I think we should be very careful as to what we are enforcing on our workers.

I also disagree with the amendment to section 39, which will ensure we are now to have absolutely no standards for where we would have the facility for clean drinking water. It was within 6 metres, and we are now deleting all of the section to deal with where exactly we should have those water coolers. I think that we should make sure that we have certain standards; that we are setting standards which are workable and which are reasonable. It could be in the toilet which, of course—[*Interruption*] you have not spelt it out and therefore we have to be specific about what we want the employer to do and the facilities we want the worker to have. Of course, they have to be within healthy environments.

With respect to section 48, I have concern about the removal of subsection (3) where you have said delete "(3)" and put "(4)". I would like to recommend that you leave (3) and you could also include (4). If you delete subsection (3) then you are preventing the Chief Inspector from conducting immediate inspection into reports where the employer suffers from a disease, which is a referral disease, under Schedule 1. I think we should leave (3) so that the does have that power to conduct his immediate inspections into reports of a diseased person.

Sen. Yuille-Williams: Could you give me one minute please, Senator?

Sen. M. King: Yes.

Sen. Yuille-Williams: Mr. Vice-President, this is very unusual but I want to crave the indulgence of the hon. Senator to say something. It is off what you are talking about but would you please give way?

Sen. M. King: Sure.

Sen. Yuille-Williams: My colleagues just told me that I have missed something that Sen. Mark said and I know the media and I know how things happen. I did not hear him say it so I could not have made an intervention, but if he did say that my name was on some account or anything like that or that I was a signatory to any account—I did not hear him say it but people said that it might have been said. If it had been said, let me get up firmly at this time and deny that because I really did not hear him say anything like that but, as I said before, others said they heard him say that my name was signatory to some account with somebody else. Clearly, Mr. Vice-President, if that was said, let me openly say that that is not so. I think I need to say it and I need that the person whose name was called here to be protected.

I thank you for the opportunity to say it because it would have gone on and the media would have gone with the wrong impression. I really did not hear Sen. Mark when he said something like that. I am sorry about that, Mr. Vice-President.

Sen. Dr. Mc Kenzie: Mr. Vice-President, may I? Sen. King, you are referring to 48(5) but mine says: "by deleting the word (3) and substituting (4)". I do not know what—

Sen. M. King: Yes, and I am saying that I do not think we would like to delete the word "(3)". We want that when an employer is advised that there is a disease problem that the inspector can also initiate his reports.

Sen. Dr. McKenzie: I misunderstood the amendment then because I thought we were looking at 48(5) and in (5) we have: "referred to in subsection (3)" and we were changing that to: "referred to in subsection (4)", that is what I corrected it to mean in my original Act, so it really has nothing to do with 48(3). Am I right?

Sen. D. Montano: Yes.

Sen. M. King: But I would leave it and also put "(4)" because we want the inspector to have the power where there is a disease reported upon, so that is why I am saying that we should leave it and include (4). I am suggesting subsections (3) and (4).

In section 59 where we have changed the responses from the inspector from six weeks to 30 days, and that if there is delay then they could proceed with their building or whatever they are going to be granting approvals for, would this not put a lot of pressure on the inspector to rush through the job and maybe not give it adequate attention? I recommend that six weeks remain rather than 30 days because it could be a position where he has more than one, or two or 10 approvals to be done at the same time and because of the lack of resources, maybe something untoward may happen, and he may rush into whatever we were asking approvals for. I am suggesting that we leave that to give him sufficient time, if not within the six weeks then they may proceed. I think 30 days is a bit short; remember we are in Trinidad and Tobago and we have not given all these authorities all the resources that they need to carry out their functions. We are not going into all the agencies that need resources today, I think we will have that debate as they come up.

In section 74 where an inspector is of the opinion that an establishment is in such a condition, which exposes workers to risk or injury, he can issue a prohibition notice or restrict the use of the premises. With the amendment that we have before us, we are allowing the risk or danger to continue whilst the investigation is going on. You are stating that the new section 74(5) allows for the suspension of the operation of the notice until the hearing of the objection is disposed of. I do not think this is a desirable situation. What is the point? Really if there is an issue, there is an issue of serious risk or bodily harm then we cannot suspend the notice whilst we investigate.

Sen. Seetahal: It is contrary.

Sen. M. King: Yes, it is contrary to the normal management of the problem. We cannot allow it to continue.

Mr. Vice-President, my final concern goes back to the powers of the Authority. I think if we want to give them the powers as stated in that first amendment that is suggested, to approve standards and so on, we have to be consistent, but I do not think we should allow them to do it. I think it should be by the relevant and the legal authority in Trinidad and Tobago to establish standards, which is the Trinidad and Tobago Bureau of Standards.

Thank you, Mr. Vice-President.

The Minister of Community Development, Culture and Gender Affairs (Sen. The Hon. Joan Yuille-Williams): Mr. Vice-President, I just want to make a few comments on this Bill. Although Sen. Mark said that we are not pro-labour, those on the field, my comments are mainly there for what this Bill said in terms of part of the ministry which represents gender, and to comment, very briefly, on what the gender policy is going to do to support some of the measures which the Bill contains.

Mr. Vice-President, although I did not know how long Sen. Mary King would have spoken, for that is why I interrupted her—sorry about that—I am sure you would allow one minute to respond to something that happened here this afternoon.

Mr. Vice-President, things are planned; nothing happens by chance in this place. Last night someone called me and told me that something is going to happen in the Parliament today; something is going to be raised. This morning, before I got here, a member of the media told me that they were calling around to say that everybody was coming because someone had something to say. Mr. Vice-President, you know that kind of packaging of things.

We sat here waiting to hear when and what was going to be said. It is really bad, as Members of the Senate, to know that people just try, one after the other, to see how they could get at persons. Unfortunately, you would talk about people who are not here to defend themselves, and you say things and it is very unfortunate in that light. Mr. Vice-President, I do not know what are the rulings in that light—

Sen. R. Montano: What are you talking about?

Sen. The Hon. J. Yuille-Williams: When people's names are called here and things are said and probably you could look at it to see whether or not that should be because it is unfair that persons just come here and say things—These things are programmed, they do not happen by chance. Mr. Vice-President, there is a lot of goodwill out there and somebody, even your best friend whom you talk to, would get on the phone and say: "Somebody just talked to me and here is what was said." Then the same media you talked to would say: "Here is what is going to be said." As I said, this is unfortunate.

Mr. Vice-President, I thought when one of my directors' name was called because he was in Community Safety and Enhancement, that was the relationship, it was just being malicious.

Sen. King, I am sorry for taking some of your time but I think we need to put the record straight and people would know what happened. [*Interruption*] Nobody knows but I am saying what happened.

Mr. Vice-President, I represent a ministry where there is a lot of goodwill; a lot of good work is being done—[*Desk thumping*]—and I would not allow anyone to tarnish the kind of work that we do; we will continue in spite of your best efforts to damage it! [*Desk thumping*] Therefore I sympathize with the workers out there when they talked about the Occupational Safety and Health (Amdt.) Bill. I am happy and I want to congratulate the Minister for bringing the Bill. [*Desk thumping*]

I know this Bill will have further amendments, as we move on, and I think that was part of the bargain, do the amendments, study it again and then move forward.

Mr. Vice-President, at the level of the Ministry, the Gender Affairs Division, where we have the gender policy, we have certain conditions in here, which will help to support—Let me go, very quickly, to some of the things which are being said in the Bill that we liked. There are things in the original Bill that we like and I would like to bring it back because one could see how closely it relates to gender policy and we want to look, particularly, at women. We are part of the working force and especially within the ministry we have this programme called Non-Traditional Skills where we have our women go into areas that were not traditionally for women and because they had certain difficulties in being accepted in the workplace—basic things—we needed to look very closely at the legislation, and OSHA was one that we looked at. I could tell you some of the other legislation we were looking at to see to what extent we could remove the discrimination as they enter the workplace.

Mr. Vice-President, if you would remember some nights ago if you had looked at *Gayelle*, I looked at it because there was a young person who called me and said: I would be on *Gayelle* tonight." Her problem was that she was taking a programme where she was going to be a judge and she had a young baby but she was not allowed to participate as normal because of this. She called and asked what help we could give. We called and told them that they were supposed to allow her to participate. [*Interruption*] I am saying that because if you look in section 9 of the Act you will see— [*Interruptio*n] all that I am talking about is in the Act. I am not going outside the Bill—where the employer is supposed to allow these persons to participate in the work that they are doing. It says:

"An employer after being notified by a female employee that she is pregnant and upon production of a medical certificate to the effect should adapt the working conditions of the female employee…"

[*Interruption*] I am looking at the original Bill. [*Interruption*] Part 2, General Duties, it is section 4(9).

Sen. R. Montano: Joan, you are filibustering!

Sen. The Hon. J. Yuille-Williams: Just allow the thing to go on! Your colleague just said we were not thinking about the worker. I am talking about the female worker; do you have a problem with that? [*Interruption*] Well, just listen because others are interested! I am saying this because we may want to see if other areas have not been looked at. It is important! [*Interruption*] I am sorry you cannot find it but I am looking at the original Bill. General Duties, Part 2, it might be 6. What I am getting at is the whole question of pregnancy and the women in the workplace. At the end of all of that what is coming out of this is that the new job sites, according to this legislation—

Sen. R. Montano: But we passed that Bill already! We are not talking about that anymore, it is the amendments we are on! [*Crosstalk*]

Sen. The Hon. J. Yuille-Williams: The new jobsites, according to this legislation, we need to establish areas within the job sites to accommodate these pregnant mothers and their daughters. I also want to go back—I am going to link it to the gender policy that we are doing now—[*Interruption*] I do not expect you to appreciate what has been said in the legislation; I do not! [*Crosstalk*]

[*Mr. Vice-President pounds the gavel*]

Sen. R. Montano: That has nothing to do with it!

Mr. Vice-President: Sen. R. Montano, I know you are interested in the relevance; so are we all, but I think that the Minister is making a point and she is using the Bill to do that. She is quite relevant and I think she should be allowed to continue.

Sen. Seepersad-Bachan: But it is not being amended!

Sen. R. Montano: But that is not being amended, Mr. Vice-President, that is the point. The Minister is talking about the original Bill! We have passed the original Bill! The Senator could have at least stood and been honest and say: "Look, I want to filibuster; I want to use the remaining time while the press is here so that for the next five minutes I will talk about anything that comes into my head." [*Crosstalk*]

Mr. Vice-President: Sen. Montano, allow the Minister to continue, please, we have a short time before tea.

Sen. The Hon. J. Yuille-Williams: I said at the beginning that I wanted to show the support that the gender policy was giving to the legislation that is here. I heard Sen. Mark say that we were not interested in labour and I am showing how this gender policy that we have here, which is a good time to talk about it, because it says what the draft gender policy says about the labour issues and I was trying to tie this into what is here to show how we are advancing what is happening. One of the reasons the Senator is not appreciating it, even though this was in the original Bill, it seems to me that there is a lot of work that—I am going to say it too—the Ministry of Community Development, Culture and Gender Affairs has to do with the OSHA as it is now to let people know exactly what is in here otherwise we will go nowhere because a lot of us do not understand the Bill. [*Desk thumping*] What is wrong? I am on the Bill. Whatever parts I am on, I am on the Bill and I am sure I am relevant!

Sen. R. Montano: You are on the Act, I do not know if you are on the Bill!

Sen. The Hon. J. Yuille-Williams: Yes, I just wanted to bring that particular area to show that if you look at the gender policy, the issues that are related to labour in the gender policy, it is asking us—and I have said it several times—that on these worksites we do not discriminate and we prepare for both male and female.

One of our corporate sponsors, bpTT has now adopted that policy and has instituted a type of worksite that we would want to use as an example of a progressive people. They are corporate sponsors but I wanted to congratulate them for moving in that direction. Even though this was not proclaimed and the national gender policy has not been out there, we have seen movement in a direction like that.

There is another area that the hon. Senator spoke about. He talked about facilities within the area, and that came under welfare. I remember him talking about where things were placed. I do not know if the hon. Minister had listened to it at the time. It was a little irregular in terms of the number, of where he spent some time looking at how many feet away and whatnot, but what is important for all of us within that is that the facilities that must now be placed there—that comes up even within the amendment—and where things are placed within the jobsite.

Mr. Vice-President, I wanted to point some of those things out because I think it is very relevant to us, especially the women and to those males who are going to run the jobsite, and those who are going to be visiting these jobsites. It is going to be something that you would have to educate them about because we can sit here as long as we want, we will not get there because there are some basic things within this that are stated in terms of what the factory should provide: changing rooms, separate facilities and all of that.

I also want to let this Senate know that there are certain bits of legislation that we see necessary to support what is happening here and we were looking at the National Insurance Act, Chap. 32:01. I think Sen. Mark should think about it, that there are bits of legislation that the ministry would also be bringing forward, these were selected: The social security legislation which we feel is very important to this. We are also looking at the revision of the Widows and Orphans Pension Act because as you know that did not have women in line with the legislation. A lot of women come to us and ask about the Widows and Orphans Pension, which was mainly for men over the years, and we are now looking at that. The Industrial Relations Act is another one that we have to look at and there is the big debate—and as I walked in here the National Union of Domestic Employees (NUDE) told me talk about it for us; would we ever have the domestic servants included in the—

Mr. Vice-President: Madam Minister, I shall have to ask you to continue right after the tea break. It is 4.30 and we are now going to suspend for tea.

4.30 p.m.: *Sitting suspended.*

5.00 p.m.: *Sitting resumed.*

Sen. The Hon. J. Yuille-Williams: Mr. Vice-President, if I had seen you before the tea break, I would have asked you to allow me to finish my last two sentences. But I would take this opportunity to complete what I was talking about in terms of the labour legislation which we are proposing and thinking about as we work with the gender policy. We are also looking at measures and provisions of the law pertaining to equal opportunities. We find some of them must be reviewed to remove any lingering traces or potential for gender discriminatory practices as it relates to male and female, and for those who are living with HIV and AIDS. I heard the Hon. Senator talk about the health of the person, and although it is not in this OSH Bill, the gender policy document is looking at the health of the individual especially persons who are living with HIV and AIDS.

We are also looking to see how best we could establish, and we are hoping to work with the Ministry of Labour and Small and Micro Enterprise Development. We are advocating the establishment of mechanisms for monitoring the implementation of the provisions of this Act. I do not know how many of you recognize the work that the Ministry does as it relates to labour issues. In fact, if one looks at the gender policy, the draft, it has been advocating the proclamation of the Occupational Safety and Health Act.

Finally, the division has a proactive role in ensuring that the minimum wages are adhered to in all spheres of formal and informal employment and all workers would have defined avenues for complaints.

The authority that is being established, there is a reference in the establishment of the authority to linking with NGOs that support gender affairs, and we thought that was a very progressive step.

One of the things we have even done as a Government in terms of that—they have also asked in that vision or policy—is to look at state boards to see that women are placed on these boards; and that is a part of what the gender policy is saying but, I can also tell you at this time that has always been a practice of the Government so far.

So in a nutshell, I want to let you know that in addition to the OSH (Amdt.) Bill, the gender affairs policy has a section on labour issues which supports the work of the Bill. We are going to be there with the public education programmes which I think are absolutely necessary if this Bill is to succeed. It is necessary both for the employers as well as the employees.

Mr. Vice-President, permit me one minute because I know this was raised by Sen. Mark. I jut got something from my Ministry. I really did not expect to get this. I thought they sent something for me to sign as they usually would send. But when I saw it—I do not know if this was being recorded or somebody up there called—goodwill people call all the time. I will tell Sen. Mark there is a lot of goodwill for certain people in this place so somebody must have called the Ministry and they sent me very quickly the terms and conditions. I do not have to wait for the question of employment on contract of Dr. Stanley Plowden: it is for two years, $16,000 per month, $2,000 per month transport allowance and 21 working days vacation leave. I could copy it and give it to you. This has been given to us by the Chief Personnel Officer (CPO). So there is nothing sinister in anything about him and he is the Director of Social Planning and Implementation. [*Desk thumping*] Thank you.

Mr. Vice-President, before I take my seat, permit me—my colleague on my right is not here but my colleague across the floor is there—and on behalf of my colleagues here, to congratulate Sen. Dana Seetahal on taking silk, Senior Counsel. I am sure the division is extremely pleased. They are all happy for you. [I*nterruption*] I do not want to discriminate but I said my colleague is not here at the moment, he is outside and I cannot congratulate him in his absence but I have a particular reason for congratulating a very fine lady.

We extend our sincerest congratulations to you, Sen. Dana Seetahal, on behalf on my colleagues here and on behalf of my ministry, expressly the Gender Affairs Division. We are very proud of you and we encourage you to go forward. And I am sure you would be an inspiration to a number of young lawyers. The person who first hinted it to me was a young lawyer who said, "Did you hear?" a young lawyer, a female lawyer and she was excited; and I say go for it. Congratulations, Senator. [*Desk thumping*]

Sen. Dana Seetahal: Thank you very much. Before I get into the Bill, may I say thank you very much to Sen. Joan Yuille-Williams, or at least Minister Williams and everyone else who supported those congratulations. I really appreciate it.

Mr. Vice-President, there are seven points and possibly seven and a half that I wish to make in relation to this Bill. The first one is really of no moment as such but, in terms of clause 3, where it is proposed to define "young person" to amend the definition Act to now define a young person as a child over the age of 16, may I indicate to the Minister that the normal definition of a young person is "a person of the age of 16 and under the age of 18". So it is a different thing to say "over the age of 16". These kinds of inconsistencies in definitions between legislation such as the Children Act could give rise to problems. What we have here is, "over the age of 16" which I think it should be, "of the age of 16".

The more significant concerns, in my view, that I wish to raise are those in clause 6 which deal with amendments to section 9 of the Act. For those of us who might not have the Act at hand, section 9 of the Act deals with a general duty of the occupier of industrial establishments to protect the safety and health of the public. So there is this duty established but subsections (2) and (3) deal with those directions to be given by the where this is not observed. All of these have been deleted now under the amendment, and as is also the provision making it an offence for an occupier to not comply with the directions, and I am not sure I understand why that is so.

If we are talking about an occupier having a duty to protect the general public in an industrial establishment, where is the enforcement power? There is no enforcement power. There would be none now with the proposed amendment. So I am concerned about this.

The second point I wish to make, and it was raised by Sen. Wade Mark: That in relation to offences under section 10—and section 10 deals with general duties of employees and what they should do—it is stated essentially that if an employee causes injury, he does certain acts that result in death or injury to another, he would be liable to a fine of $20,000. This is now abolished, and such an employee would be liable to be prosecuted in the normal way under the Offences Against the Person Act.

I think a question was raised: What kind of offence? And there is a variety of offences: It could be manslaughter, it could be causing grievous bodily harm, it could be wounding with intent and assault, occasional and actual bodily harm. The issue that emanates from that, in view of the fact that an employee doing certain things in a workplace is now liable to be prosecuted in the normal way, is it that we are saying treat him like everyone else and then there is no specific protection against such acts by an employee? Is that what we want? It seems that is the preferred way. But, I am not sure if really that is the way to go.

The only positive thing, in my view, is now there would not be a problem where there would be an inconsistency between legislation that he would have been previously liable to a fine only of $10,000, if you understand what I am saying. Before, under the current law, if an employee commits an offence that leads to death or serious injury under section 10, he was liable to a fine of $10,000. If you look at the words under section 10(2):

> "An employee who wilfully and without reasonable cause does anything which results in the death or critical injury...is liable to a fine of ten thousand dollars."

It would seem passing strange that somebody who causes a death would be liable to a fine. So I expect that the reason was that he would be able to face liability in the usual way for manslaughter where the penalty is life. I did not hear that from the Minister so I was not sure if that was the purpose of the amendment which would seem to be a reasonable thing. I would have thought however, in the Bill, there would be a specific protection for an employee who causes other minor injuries.

I am moving along—I note that my colleague, Sen. Ali is now here and I understand that certain expressions would want to be made but I think after I speak my bit, we might then indulge in that.

The third point I wish to make is in relation to the infamous section 15. Section 15 really gives an employee a right to refuse to work in certain circumstances, and the Bill now proposes to amend that. So he must exercise this discretion in a responsible manner which is an undefined way. What is a responsible manner? What might be responsible to me may not mean the same thing to Sen. Wade Mark, may not mean the same thing to Sen. Joan Yuille-Williams. So it seems to me that there is too much subjectivity in that proposed amendment to clause 7.

Secondly, when we talk about an employee now only having a right to stop working if he, himself, is threatened, it seems to go against the whole purpose in one way of the Act. If it is that you must look for personal threat to take action, then what is the point of the Act because that could have always happened? At common law if you felt personally threatened by your workplace you had a right to stop working. This is in the law as I understand it. What we have at least under section 15 is a provision that:

> "An employee may refuse to work or do particular work where he has reason to believe that—there is serious and imminent danger to himself or others or unusual circumstances have arisen which are hazardous or injurious to health or life;"

Mr. Vice-President, if an employee feels under the proposed amendment that there is serious and imminent danger to others he cannot do anything unless it falls "under unusual circumstances which are hazardous or injurious to health or life." This proposed amendment takes away from an employee the right to seek to protect his fellow employees. I know there has been contention about that.

I heard over the news persons talking about anyone employed can stop working merely because he thinks other people are threatened. The point is, it is not just because he thinks other persons are threatened. Under the Act it is if there is serious and imminent danger to himself or others which means if you think that one of those—let us say we are working in an industrial situation and we have seen that thing fell down and people have been crushed but if you think that is likely, not that you would be threatened but one of your colleagues who is doing that kind of job, you can do nothing really about it unless it falls under "an unusual circumstance that would have arisen". I think that proposed amendment is a serious deficiency that would be created in this legislation.

I do not know that when we amend it, those 18 deaths that we have been talking about, could have been saved with the passing of this legislation, whether those sort of deaths in the future could be saved because an employee or group of employees cannot stop working even if they think there is a serious and imminent threat to others.

Another point that is made under clause 16 is that if an employee refuses to work because of this serious and imminent threat, previously he would have had to promptly report that. Now he must do so immediately and the fact is if he does not do so immediately, he might be liable to suffer consequences. Sen. Mark alluded to this, and I am emphasizing; what has been done there, is to cut down a lot of what section 15 gave and it really restricts, in my view, in an unreasonable manner, the implementation of that section to have any great effect, even if there are problems, and the employee has refused to work.

Under the Act an inspector, from the time of the refusal to work, he has to investigate it and then he could have given a written decision within 72 hours. Now he must do that within 24 hours. Again, something that cuts down the exercise of this whole provision that was, in my view, to protect the employee. I do not think that is the way to go and I know much has been said about it and this is a compromise situation, but I do not know that it is a compromise that is beneficial in the long run to anybody. I do not know that if we are saying, let us take what we have and go with it and then we can work upon it, makes any sense. The Act is so whittled down in meaningful ways that can it really have any effect? I suppose maybe in the general provisions but the specific and valuable provisions are tremendously weakened.

The fourth point is the question of the toilets, urinal and other sources of contamination being 20 feet away from the drinking water. As Sen. Mary King emphasized, why is it that we have removed this protection and not even allowed the inspector to have a say in it? It means, as she said, that you can have your drinking water in the toilets. I know in the past sometimes if you are running a race long distance and you are looking for water, you go to a gas station, you have nothing to drink, you end up drinking in a sink in the toilet, but I do not know that is a preferred thing to do. I do not know that we want that in a working environment.

It is one thing to say that we cannot force banks to even have a toilet. But when we are talking about a Bill, we are trying to create a workplace that is amenable, that is safe and healthy. I would have thought then that the reasons—if you wanted to delete the 20 feet, fine, but what about within a distance approved by the ? Why not leave that? Should he not have a say in it?

The fifth point is where we are talking about that factory approved. Under the current Act a person applying to have a place approved as a factory must do so in accordance—and there is clause 59 and that application is processed by the and he must consider it within six weeks and if he does not do it within six weeks, he must give reasons. Now under the current proposals, he must do so within 30 days and if he fails to do it, automatically you can have your factory. Why? What is the benefit of this to anyone? It means again it is a benefit to potential employers and it is a serious risk to the employees because they can have any kind of factory. You can have a concrete structure that the new Hi-lo in St. Augustine looks like in my view but that is another personal thing. You could have a concrete structure, ugly like anything. We do not know what goes on inside and if there is no response in 30 days, if they are short-staffed, if everybody is going all over the place earning all this money we talk about that has led to the tremendous short-staffing in this country, then anyone could have a factory approved by dint of omission because of the not being able to do it within 30 days. That is a totally undesirable position.

I come to the last point, and this is the most serious in my view. Section 74 which deals with complaints—section 74, for those of us who do not have the original Act, deals with where there have been complaints and an Inspector is of the opinion that, for instance, machinery, equipment and so on cannot be used without risk or a process of work is done in a manner to cause injury. In other words, where you have complaints and you have equipment that can cause people's fingers to be cut out, or you have a workplace that is bad, or they can cause injury or some silo can fall and bury a worker, so he feels that these things can happen.

Under the Act he can send an improvement notice which is exactly what it says or a prohibition notice restricting the use of premises saying that these premises are unfit. What do we have now? We have that if the employer files an objection, he says "I object to what you have said there that I must improve or I must restrict the use of my premises"—even though it is dangerous to health, mind you, or, even though it can cause death or injuries. Once you object you can go on doing so. And that is a very dangerous provision because it suspends the operation of the notice. And I know what happens in law. People object just for so. People would object to delay something when they know that they are wrong, and I see that is going on right now in a couple of cases. You can have an objection and then, can you not have an objection, and can you not have an objection upon an objection, you can have an adjournment? People could do this thing. All of the rules of natural justice fall to the employer so you can object for a lot of time and you can earn a lot of money in bad conditions and then when you are good and

ready you can say, "okay, I will make the alterations now"; and this is something that is giving a right to employers to allow them to suspend any kind of notice. They can get away with anything in my view—not just the employer, I mean anyone who owns the building, the occupier, but it is the same point, the other side, the workers, the employees would suffer. The filing of an objection suspends their duty to do anything. No improvement, no alteration and, therefore, it makes this Act in material ways impotent for a long time. And as I said at the outset, I can see why people could accept a compromise position but I do not know it is beneficial. What are the serious benefits? That is the question I ask.

Finally, there is one thing, and this goes back to the original Act which is not in the amendments but since we are referring to provisions in the original Act I thought I could too. Under section 93 of the original Act, it says a "complaint for an offence". A complaint is a document which files the charge, shall be laid within six months of the date of the commission. Under 97(b) it says:

> "All proceedings under this Act shall be initiated no more than two years after the cause of action has arisen".

An ordinary person looking at that would think that there is an inconsistency and I do so, because it suggests, on the one hand, that the limitation period is six months which is the normal limitation period for summary offences. It does not say a complaint for an offense in the Magistrates' Court or anything like that, and even if it did, section 97(B) talks about all proceedings under this Act. One gives you two years limitation and the other gives you six months. This is very critical because currently there are matters before the court in relation to limitation period. They have argued different laws in different statutes. But here there is one Act and in one Act—in the provision there are five sections apart—there are contrasting conflicting provisions. If we are dealing with amendments I would think now is the time to face up to the fact that there is that conflict.

I do not know why we did not do it the last time but I can tell you the reason I know. I attempted to raise some changes and I was told, "Let us just pass the Act, you Back Benchers." The Minister then, did not know the difference between us, called us "Back Benchers". Why are you giving trouble and then people had to muzzle him and then we were told that we would pass it and changes would come in two or three months. That is one of the reasons I did not raise it then but it has been sitting there for two years, and that is a serious and obvious amendment and I think it is time that the Back Benchers' voices are heard and something be done about it.

Mr. Vice-President, thank you very much.

Sen. Basharat Ali: I am thankful for having this opportunity to make a contribution to the Occupational Safety and Health (Amdt.) Bill, 2006.

Mr. Vice-President, I would like to go to the background on this Act, of January 13, 2004 when the original Bill was debated in this Senate. At that time in the wrap-up of the hon. Minister Larry Achong's presentation, there were some points that were made and one Sen. Seetahal just referred to. He acknowledged that some changes may be necessary and he promised to bring those. He also said in the winding up: "we intend to proclaim the Bill in stages so we would not be unduly harsh on people" and further he said: "and we are saying there would be a period of one year before the Bill becomes fully operational."

Mr. Vice-President, as we know today, the 31st, is two years and a day since the Bill was assented to and became an Act, January 30, 2004. What has happened in those two years? We heard from the hon. Minister of how much work is being done. We know there was a change of Minister to start with shortly after the assent to this Bill. During his period of stewardship there were a number of occasions when we questioned what was happening to OSHA and, in my view, there was very little happening. I was surprised but I am not over surprised. The hon. Minister mentioned there was set up by his predecessor an advisory council and with the terms of references to establish a policy on national occupational safety and health.

As I said before in this Senate in response to Minister Roberts at the time, I thought policy is a prelude to enactment of legislation, and it does not come after the legislation is in place. And secondly, if I heard the Minister right, he said they were looking at the structure of the authority. What is there to look about the structure of the authority? It is all in the Act, how the Occupational Safety and Health Authority is to be comprised. I know there has been an addition of the Tobago House of Assembly but all the others are there, even the nine extra members, two from the business community, two from unions, and five from other organizations. That is all there already so I do not know what work was being done in the ministry in terms of organizational structure; and the same comment came about the structure of the agency.

5.30 p.m.

The agency, a very important part of OSHA, is also spelt out there—who are the principals in the agency, the executive director, the appointment of a chief inspector; and very important things were supposed to happen once those things were in place. So the non-proclamation means that so many things have not

happened. We have not had the authority, which has its terms of reference, its powers and duties well laid out. Nobody has tinkled with that in these amendments. The agency, which has its duties laid out, I have mentioned, has some very important roles.

For example, the Act as it stands now says that, within three months, the agency would have had to initiate protocols with all kinds of inspectors, so from the little pool of inspectors, the industrial safety officers that we have in the Ministry of Labour, Small and Micro Enterprise Development, we were going to have this large pool of inspectors—health inspectors, petroleum inspectors, electrical inspectors, toxic chemicals and pesticide inspectors. All of those things have not happened and it is really a shame that the Occupational Safety and Health Act has not been proclaimed.

I have been one of those asking for implementation by proclamation. Let us see how it is working and then we can have amendments. Even if this Bill is not passed here today, I would still say that we implement it, proclaim it and see how it will work, so that the structure that OSHA provides would have been put in place. But what we have not done for two years, we have got around to doing in two to three weeks. We have got to the stage where this dramatic turnaround is taking place, in a debate on the Bill before us, as a prelude to proclamation of the Act, we understand.

I am surprised, Mr. Vice-President, that there appears to be very little, if any, consultation with the unions that represent workers in the heavy industries; with the Oilfield Workers Trade Union (OWTU), which represents many areas in the petroleum sector, including marketing; the Steel Workers Union of Trinidad and Tobago (SWUTT), a powerful union, once again in heavy industry where there are lots of hazards; and the Communication Workers Union (CWU), representing the telephone company.

I do not know what the position is, whether the PSA is FITUN also, but it appears to me that they have not had the benefit of any representation in putting forward their views on what is before us. I may not be right, but that is what I heard up to yesterday, listening to Errol McLeod, President General of the OWTU, in a press conference. If that is not so, then I am prepared to say so. I am saying they really should have been consulted.

As far as I am concerned, it is the soft element of the union that the Prime Minister and Minister of Labour, Small and Micro Enterprise Development sat down with and came to agreement. Whom do Mr. Guiseppi and company represent? Mainly government workers.

I am really concerned that the people who know most about occupational safety, who really have workers in the most hazardous areas, have not been consulted. I know they have taken a position to proclaim now and amend later. I am in consonance with them. Proclaim now, get things in motion and amend as you see fit.

Sen. The Hon. Danny Montano has been reported in two Sunday newspapers, the *Sunday Guardian* and the *Sunday Newsday* as saying in the other place that the Occupational Safety and Health Act is for the living, not the dead. That may have been true two years ago, but, in the interim, we have had, I would say a dozen, but I have learned today from the hon. Minister himself that we have had 13 fatalities in 2005. If one of those could have been prevented by an earlier proclamation, then we would have achieved something—just one fatality reduced would have been something. I know the Minister has talked about sympathy for the families. We all have that sympathy. I know that some of those families are still hurting very much.

I will bring to your attention, Mr. Vice-President—I believe you were here at the time—that I brought two questions to the hon. Minister on two fatal incidents. I enumerate them here. The first incident was in February 2005, when a young man, a 20-year-old, Shivam Harrylal, died in an incident at Industrial Gases Limited, at Savonetta. The second one was in May 2005 at International Steel Group (ISG) plant in Point Lisas, where another worker, Dale Paul, I think he was 32 years old, also died. Both these incidents, Mr. Vice-President, were investigated by the inspectorate in the Ministry of Labour, Small and Micro Enterprise Development, and, in both cases, the conclusion was that there were no breaches of the Factories Ordinance, Chap. 30, No. 2. There were two fatalities and no breach of the law. Is that not reason enough to put in a law which may not be complete or may not be perfect? We know the 1948 Factories Ordinance really says nothing. We have been there with that all along. I say then: that is not acceptable.

People die, these reports come out and the companies are happy. They pay the funeral expenses and maybe the next of kin receives some workmen's compensation, which we all know is a paltry sum. I wish to advise the hon. Minister that I have not closed the case of the IGL incident. I shall be following up what I have written to him before by writing to seek further clarification before closing that matter.

I hope that the hon. Attorney General has followed up on the International Steel Group (ISG) case, where he had promised to discuss with the DPP an inquest into the death of Dale Paul. I would like to get an update on that. I spoke to the DPP in December and that is still outstanding. That second report could not even say how the person died. There was no reason given how he died. The death was inconclusive. That is why at that stage, even though I do not like inquests, I did not see any other way to go but to ask for an inquest so that we would get some satisfaction on that. These fatalities have been forgotten by and large, except by the victims' families and I know they are hurt.

Mr. Vice-President, sometimes rumours overtake facts. At a private function in December, I was accused of taking facts and distorting them in my public discussions. Anyone who knows me knows that when I speak, I speak on the basis of what I perceive as knowledge. I may be wrong, but I say: if I am wrong, correct me. Worse than that, a senior company executive whom I had never met before, at the same function, asked me whether I did not know that in one of the incidents I had brought up, that the boy had killed himself on the job. That is what that person told me. The boy killed himself on the job. It left me speechless. It gives some indication of how insensitive some of our own people, who have climbed the corporate ladder can be. I say no more at this stage. If I am challenged, I am willing and prepared to go public without the protection of parliamentary privilege. I feel so strongly about these matters.

Mr. Vice-President, I have said in public statements that the implementation of OSHA requires the political will of the Government and a more proactive approach by the unions. When the Government so desires, it can fast track implementation. Let me give an example—the Housing Development Corporation Act. Look at the time line on that.

June 06, 2005	Bill piloted by hon. Minister in the House of Representatives
July 01, 2005	Bill debated and passed
August 24, 2005	Presented to the Senate by the hon. Minister
August 25, 2005	Bill passed with amendments
September 9, 2005	House of Representatives considered and passed the amendments passed in the Senate
September 13, 2005	Bill assented to
October 01, 2005	Bill proclaimed

Mr. Vice-President, notwithstanding those gaps which may have been due to Parliament being adjourned, it took four months to go from second reading to proclamation. We know that proclamation did take place because it was advertised that there was a board of directors. At the time, I understood that there was still a CEO. Only yesterday I learned that there is a managing director. I still do not know if that managing director is a member of the board because originally that name was not there in the list. I am speaking here about Mr. Garcia. He was listed as the Chief Executive Officer.

I have one question when we look at the Housing Development Corporation (HDC). We have not seen the tendering rules, which are subject to negative resolution of this House. I ask: Is the HDC still subject to the Tenders Board's rules and regulations? I hope that somebody on that side can answer that question for me.

Mr. Vice-President, I have devoted quite a lot of my waking hours to a study of the proposed amendments in the Bill before us. I cannot say that I am really enthused because I have checked the typos. There are at least 12 and some other editorial changes and amendments of that nature. I do not agree with some of the definitions. I think that Sen. Mary King has enunciated quite well basically what is wrong with the amendments being proposed in that we have a Bureau of Standards that is responsible for the setting of standards and they are the ones that should do that. I know there are very competent people at the Bureau of Standards—the Executive Director himself and the person in charge of the standards testing are very experienced and competent people. We should not then push this task, which belongs to the Bureau of Standards, on to the authority.

5.45 p.m.

I remember I talked about that when we had the CROSQ Bill, because they are represented there. The Bureau of Standards is the representative of this country in the Caricom setting and the CROSQ. I do not think that that amendment is worthy of being put in at this stage.

I have some questions on this young person. I went to the Children (Amdt.) Act, 2001 and I do not know whether that is in force, but they spoke about a young person being a child between age 14 and 18. I understand why age 14 was listed. In industry, there are always apprentices. If age 16 becomes the lower limit of where one can be employed, it means that they will be excluded from OSHA. I am still not too clear. I would like some clarification as to whether it is age 14 or 16. I would like to see the people who are equivalent of apprentices

covered. More than that, the young person who leaves school and is running errands is considered as part of the workforce. That is why there are many rules attached to the employment of young persons in the industrial establishment within the Act; their hours of work, et cetera. That is one, in terms of the definitions.

I notice that the word "medicament" was there. I was a bit concerned about medicament being an intoxicant. I think it may give people the wrong impression. [*Interruption*] That might be alcohol. It may be that the intent is to cover certain kinds of medications, for example antihistamine which does not necessarily intoxicate you but will make you drowsy. All these things are available over the counter. You can go and buy cold medicine. There are drowsy and non-drowsy formulas. You are putting the onus now on the employee to decide whether he is intoxicated or not, by a medication because you do not go to the doctor for him to write out what it is. The box may say what it is. How many people read the instruction on the Tylenol Plus or Panadol Multisymptom boxes? I was a bit concerned. If that is the intent that you want to cover then you must clarify it, because medicament means medicine or substance taken for treatment. I think that definition needs to be clarified. Those are my comments on definition. I think both Senators Mary King and Dana Seetahal have touched on both of those issues.

In the substantive field, I strongly believe and I think I am supported by many people here that there has been a serious watering down of the rights of the employee. I say so advisedly, lest anybody says that I am a flip-flopper. I will go back to my contribution on January 2004, when I said that I would address briefly the rights of employees to refuse to work. I did say then that I did have some concerns. Although I agreed with it in principle, it is a right, if properly exercised, that employees should have. I said:

> "I had one reservation in that it is a clause or situation which could be abused. I should have liked to see some kind of deterrent for the worker/workers who abuse this."

This is what I said then, because I saw the possibility that it could be.

The proposer or pilot of this Bill is a man who has experience in industry and has been in the Industrial Court. Let me read what he said in his wind up, on that occasion of January 13. I quote:

> "I will start with the point made by Sen. Basharat Ali. This has to do with the employees' right to refuse to work. There is an identical provision in the Industrial Relations Act. From the inception of that Act or even its forerunner, the Industrial Stabilization Act, from 1965 to now, there have been just two instances where workers refuse to work because of unsafe working conditions. I do not think we ought to worry too much about that. The record shows that it has not been the subject of abuse."

This is what the hon. Minister, an experienced person and former judge of the Industrial Court said and I was convinced that I could vote—maybe I was being a neophyte in Parliament at that time, but I was convinced that I could vote for OSHA to ensure that we got the three-fifths majority, which was required then. OSHA, by the proposed amendments to sections 15 and 10, will have serious consequences on the rights of workers.

I believe that section 10 has been referred to by both Senators Dana Seetahal and Mary King, the addition of clause 10(e):

> "to exercise the discretion under section 15 in a reasonable manner;"

Sen. Dana Seetahal asked quite clearly: "What do you mean by 'in a reasonable Manner'"?

Then we go to section 15, where the amendments would have made it sound like:

> "An employee may refuse to work or do particular work where he has sufficient reason to believe that there is serious and imminent danger to himself or others, or unusual circumstances have arisen which are hazardous or injurious to health or life."

The words "or others" have been omitted. I think Sen. Dana Seetahal said that it is now one person who has to look after himself. The first duty under section 10 of the Act is to take reasonable care for the safety and health of himself and other persons who may be affected by his acts or omissions at work. He will be committing an offence under section 10, if he does not make a report which may affect his coworkers. In a practical situation at work, safety is a team effort. It is not one or another person. If you do not have that team effort you will not succeed. I urge that we re-look at that. I will not support this Bill if that is not amended.

The second thing that I have noted, and some others have already noted, is the watering down of the authority of inspectors and chief inspector. We have had a number of persons speak on the subject of the authority of the chief inspector, whereby he now has 30 days to approve a new factory or building, instead of six

weeks. If he defaults within 30 days, the person who applied can say: "Okay, I have approval." That is not right. That could never be right. That is something that I have taken strong exception to.

With respect to the inspectors, the same thing applies. I think that clause indicated that it now requires the inspector to act in consultation with the and certain timelines are given for him to put in a prohibition order, or whatever it is called. I am surprised that this is coming out from the staff of the Ministry of Labour, Small and Micro Enterprise Development, Health and Safety Division. Are they looking to erode their own authority, or is that what the hon. Minister wants? That is an easy question to answer.

There are, of course, some positive clauses which I appreciate. I looked at some of those: the question of giving time for the occupiers, three months to get themselves ready. I am in favour of a stronger penalty for employees who wilfully cause death or critical injury. To me, that is a crime. Subject to what Sen. Dana Seetahal said, she is our legal luminary on our Bench, I would support a change like that which has been put forward.

I have already said what my conscience is telling me, in terms of the amendments that I have proposed. There has been widespread support for the implementation of OSHA, as indicated by people's polls and views and there is not a silent majority we sometimes hear about. There is a vocal majority.

I note Sunday's *Newsday*, the *Catholic News* editorial. He spent his whole editorial on OSHA. I would like to read a paragraph from that document:

> "OSHA is significant because it takes the value of the worker to another level. Unemployment and wages are important issues, but they should never cause society to lose sight of the value of the worker as a person, as a life to be protected. The enactment of laws, by itself, will not solve problems. But laws can send important messages to citizens and can influence society in positive ways."

That was the Cath*olic News* editorial of Sunday's *Newsday* of this week.

Finally, I would like to end my contribution on a very positive note, which comes from the *Sunday Guardian* report on expansion of Phoenix Park Gas Processors' Limited. It is the chairman of that company, Mr. Keith Awong, who represents the majority shareholder in Phoenix Park Gas Processors' Limited, where NGC, through NGL Company Limited has a 52 per cent share. I quote:

"He said that PPGPL presents an annual US $50,000 'Gift to the Nation' which was directly tied to the company's safety record.

'In other words, if any employee causes the safety record to be broken, no gift is awarded in that year,' he said, but with the company operating for the past 13 years without lost time incident and for more than nine years, without recordable incident, the gift remains intact.

'We have the employees to thank for that,' said Awong, who is the chairman of the National Gas Company."

That is the contribution that workers can make; safety in the workplace. This is a commendable record, 13 years without a lost time incident and nine years without a recordable incident, which means no near misses.

Mr. Vice-President, I hope that we get somewhere and I once again appeal, let us proclaim OSHA as soon as possible, notwithstanding what we do here today. Thank you.

Sen. Prof. Kenneth Ramchand: Mr. Vice-President, first of all, I am happy that at long last this Bill is going to be implemented. I congratulate the Minister for bringing us to this point. I am happy to note also that some consultation took place with labour. I would have wished that all the organizations representing labour could have gotten together and considered the original Act clause by clause and conveyed to the Minister, before the amendments came to this House, their opinions on the original Act and their suggestions for amendments to make it more acceptable to workers. If they had done so, there are things they might have noticed that were not part of the discussion. One of these is in section 4 of the original Act, the definition of "industrial establishment".

"'Industrial establishment' means a factory, shop, office, place of work or other premises but does not include:

(a) premises occupied for residential purposes only;"

Fair enough. But this is one I am concerned about:

"(b) Other categories of establishment exempted by the Minister in accordance with this Act."

I have looked through the Bill to see if there is any guidance as to the categories of establishment that may be exempted by the Minister, in accordance with this Act. When I look at section 100, I do not see any reference to that. It states that the Minister may, by order, amend the Schedule 1 or that he may

vary any fines or term of imprisonment but there is nothing about varying the definition of industrial establishment. I wonder if thought would be given to putting down some sort of package. What kind of establishment may be exempted by the Minister in accordance with this Act? As it stands, I cannot make sense of this and I have no idea what the Minister should do. Neither does the Minister. I do not know what the usefulness of this is.

The Minister referred to the checkered history of the Bill, but he did not really go into the checkered history. What he proceeded to do was a job on the checkered history and he made it a smooth, flowing progression to the present apotheosis, in which he is well pleased. I would like to go over the checkered history, not to lay blame but, to ride my hobby horse a bit on certain questions about procedure.

The factual history is that the thing was passed in Parliament and assented to by the President two years ago. Ordinary citizens might well believe that this makes it law, but the checkered history is that two years after assent, and in spite of the urgent need for measures to be put into effect, the measures have not been put into effect. The question is why? How can a government get away with such wanton delay? They can get away with the delay, because the Constitution or the law permits them to. If you look at Part I of the original Bill: Section 2 states that the Act shall come into operation on such date as the President may appoint by proclamation.

Having assented to it, that is not it. There are some Bills where you do not have that commencement clause; where the fact of assent makes it law immediately. There are some cases where the commencement clause says three our four months' times after assent. A blank cheque is sometimes given; which says on such date as the President, meaning the Government, may appoint.

The Government has a space between assent and putting into effect. You have to ask why this space exists. This space definitely does not exist for the Government to take it back, or to say they have second thoughts. That space does not exist for the Cabinet to say: "We are not happy with the details of the Bill and we want to change it." There is a way of doing that. If you are not happy with it and you want to change it, proclaim it and then come with the amendments and debate them in the House. You cannot give as an excuse for the delay that you have second thoughts about it. That space does not exist for that. That space exists in case you are so incompetent when you bring the Bill, you do not yet have

draft regulations. You have a little space to make up the regulations. The space exists for if you did not think about the agency or authority you have to appoint; in the space, you quickly think about it and appoint your agency and authority. The space exists. If there are certain other items of infrastructure that need to be put in place, you put them in place. That is why the space exists. The space does not exist to say: "I am having second thoughts about the Bill." It is for Parliament to have second thoughts. Bring it to Parliament and let Parliament have second thoughts.

Mr. Vice-President, there is no excuse for the delay. As Sen. Basharat Ali said, how much time do you need to appoint an agency or authority? How much time does the Government need to devise the regulations? What infrastructure is the Government talking about that it takes two years?

We should seek to modify, amend or streamline our procedure to make sure we do not have this kind of thing going on, that when Bills come to Parliament and regulations are required, there would be draft regulations presented at the same time. If I discuss the legislation concerning school boards and a year later, the regulations concerning school boards come before us, it means I have to go over something that we did one year ago, I would have to strain to remember if the regulations are in conformity; whether they enhance the effectiveness of the Bill. That is a waste of time. I feel that the Ministry should make sure when these Bills come, there should be draft regulations so that when the thing is passed it would not take long to touch up the regulations.

I do not like the kind of commencement clause which is an open or blank cheque. The commencement clause, if there is to be one, should specify three or six months. It should be no longer than six months. I do not see why it should take more than six months to put the thing into effect. When you get the blank cheque there are inordinate delays. If there had not been inordinate delays, as Sen. Ali said, we might have saved one life and that would have been something.

Another procedural matter emerges if you look at the Part I of the original Act, which states that the Act shall have effect, even though inconsistent with sections 4 and 5 of the Constitution. The original Act was passed by a special majority. It is not clear to me, from the Bill before us, that the amendments are going to be treated in the same way. I would like to know from the Minister and Leader of Government Business, whether these amendments are to be passed by a special majority and if not, why not?

I have comments on one or two of the amendments. I approve of the measures to make the Industrial Court the court of jurisdiction, but there is another institution which Sen. Mary King has indicated, which the amendments seem to interfere with or eliminate. Clause 6(b) of the Bill states:

"The Act is amended in section 9—

(a) by deleting the word "(1)" at the commencement of the section;

(b) by deleting the words 'Environmental Management Authority'…"

If you were an obeah man, "deleting the words" means deleting the thing. It continues:

"wherever they occur and substituting the words 'Authority responsible for managing the environment'."

In terms of phrasing, what is the difference? I know a difference is intended. Are we going to get another authority responsible for managing the environment? Why are we having this thing? "Delete the words Environmental Management Authority". Is it having its teeth pulled? But it is still a very valuable agency whose function is to protect the environment, safety, health and well-being of people in the environment. I cannot be a party to a piece of legislation which displaces the Environmental Management Authority and puts instead some nebulous authority "responsible for managing the environment". If you want to get rid of the EMA, say you are getting rid of the EMA and you have another authority in mind; you are putting UDeCott or Mr. Rao in charge. Who are you putting in charge? The Government cannot kick out the EMA without telling us who it is going to put in charge. [*Interruption*] Mumble, you will get a chance to talk. There are questions being asked.

Sen. Dumas: "Yuh get hot"!

Sen. Prof. K. Ramchand: I listened to you.

I am still on the amendments to section 9. There is a dangerous erasure going on here. If you look at the Bill, we are told very succinctly that the Act is amended in section 9 by deleting subsections (2), (3) and (4). If you are a lazy fellow and you are lying in your hammock and the copy of the original Act is in your study, you might say that they cannot really be doing anything too drastic if they are throwing away so many things so casually and that maybe it was really unnecessary. If you look at subsections (2), (3) and (4), you will see that the deletion of section 9, as Sen. Dana Seetahal pointed out, not only removes an

offence but removes certain specific requirements. I want the Minister to remember. I am sure he knows it by heart. I want to point out to him that in section 9 it is stated that the can issue directions in writing to the occupier, specifying measures to be taken in an industrial establishment in the case of danger or injury to workers. Also, they have to advise the Environmental Management Authority or the authority responsible for managing the environment of the instructions given.

Section 3 states that directions may include a requirement to obtain and implement advice from competent specialists or expert consultants to implement measures and that an occupier who fails to comply with directions under subsection (2) commits an offence. The deletion is a major emasculation of the original Act; unless we can be shown differently. I am just putting it to the Minister that it looks to me as emasculation. I know he is a reasonable man. I would like to hear him say that it is not an emasculation.

Mr. Vice-President, there has been sufficient commentary on clause 7 of the Bill, which is amending section 10 of the original, where there is a new paragraph (e). In clause 7(1) we are now getting a new section (g). The Act is amended in section 10. There is a new (e) which says:

"to exercise the discretion under section 15 in a responsible manner; and"

Questions have been raised about the meaning of "responsible manner". Who will interpret "responsible manner"? It is vague, unspecific and is going to lead to contention. I repeat it because I feel that the repetition may encourage some amendment.

Clause 4 of the Bill—[*Interruption*]

PROCEDURAL MOTION

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

Question put and agreed to.

OCCUPATIONAL SAFETY AND HEALTH (AMDT.) BILL

Sen. Prof. K. Ramchand: Thank you. Clause 4 of the Bill offers to amend section 6. Section 6 comes in Part II, under general duties. We are asked to delete paragraph (g) and substitute a new paragraph. Paragraph (g) is just four lines.

The new paragraph is two lines. It seems like good concision being done here, but when you look at the original (g), it calls for compliance with sections 7, 12, 37, 46, 75 and 76. Section 7 is being cut out. It is not that it is being removed from the Bill. We are being told that you do not have to comply; you are not being obliged to comply. It is put in a vague never, never land. If you do not know about it you might push that head, but the original Bill tells you that you are in trouble. It is the responsibility of the employer to prepare a written statement of his general policy, with respect to the safety and health of persons, et cetera. That must be publicized, so that workers would know that is your policy. Now you are under no obligation to the fellows who may not read the thing. The original Bill declares very clearly for compliance with clauses 7 and 12, which prohibit certain charges being made upon the worker.

Clause 37 calls for medical examination and says the employers bear the cost.

Clause 46 deals with notification and investigation of accidents and diseases.

Clause 75 calls for the preservation of registers and records.

Clause 76 calls for the protection against victimization of employees. It is not that this is removed from the Bill but it is not being focused on. I feel that it needs to be focused on. The amendment removes the focus.

When we read the new clause, it states: "compliance with any other duty imposed on him by this Act." We have to sit and think. I wonder what some of those duties are. A vague general phrase has replaced certain specific instructions. I do not like it. The effect of that, again, is to make the Bill less worker-friendly.

Still on clause 6. If I may, as others have done before me, speak about the original—I think it is an omission in the Bill, that is why I thought it would need further consideration.

If you look at clause 6(f), it states:

> "The provision and maintenance of a working environment for employees that is safe, without risks to health and adequate as regards amenities and arrangements for their welfare at work."

That part of (f) "amenities and arrangements for their welfare at work" needs to be looked at a little more creatively. When you go through the Bill you do not see any arrangements to reduce stress at the workplace. Stress at the workplace is one of the major causes of accidents and bad health.

I would like the Bill to have looked at the second part of 6(f) more creatively and include measures designed to reduce stress in the workplace.

Secondly, in relation to the term "well-being or welfare", I feel that the Bill ought to give encouragement to a feeling among workers that they are part of a team; that they have common interests. Something should be there in the Bill to point to or suggest ways in which employees can come together and see themselves as a team. This may seem nebulous.

As soon as I get an opportunity, I am going to waste one whole hour talking about social capital and look for an excuse that the Bill ought to indicate that the Government understands the term "social capital". A Bill like this should include some measures towards helping to build social capital. The easier requirement is measures designed to reduce stress in the workplace.

Mr. Vice-President, I know it is late. There are other things to say but, to summarize, I am glad that the Bill has come here. I do agree with previous speakers that some of the amendments tend to limit the rights of the workers as compared with the original. I sincerely hope that if we pass this Bill; whether by a special or simple majority—we have to wait and see. I hope the Minister will explain what we are required to do—there will still be a possibility of reopening discussions after more extensive discussion with representatives of labour and experts in the psychology of the workplace and that we would also come back to this Bill with a creative understanding of social capital and of the need to reduce stress in the workplace. Thank you, Mr. Vice-President.

The Minister of Labour, Small and Micro Enterprise Development (Sen. The Hon. Danny Montano): Mr. Vice-President, I will try not to be too long, but I would like to deal with the responses as fully as I can.

Let me just assure the last speaker—First of all, let me thank all the speakers for their contributions. It is always worthwhile to speak in the Senate, because one finds that the contributions that one gets tend to be very balanced and informative and it is always worthwhile to hear the other points of view, whether you agree with them or not. It is always useful to hear them.

On the question of the constitutional majority, it is pretty well settled that even though the original Act was passed with a three-fifths majority, unless the amendments abrogate rights under sections 4 and 5 of the Constitution, then you do not need the constitutional majority. That is the position here. We are not interfering with anybody's rights under the Constitution in this Bill. Therefore, this Bill stands by itself and we do not need it. That is pretty well settled.

I want to deal with one of the issues that the last speaker mentioned, because it is fairly important. He spoke about the issue of consulting with the labour unions. Allow me to assure you that there was a significant amount of consultation. What happened was this. I would explain to you so that you can understand exactly what took place. When I presented the Bill I referred to what we called in the Ministry a stakeholders group and we invited representatives from every group that we can think of in the country. The first meeting we had, I do not recall the date, was close to the end of October when we had a working draft. It was at that point we thought we were ready to go to Cabinet, but we did not want to do that before we had thrown it out and said: "Listen, what do you think?" We went through all the policy issues. Unfortunately in that meeting, for some reason, representatives from NATUC did not appear. We do not know why. We waited for them. We actually waited close to half of an hour for them. They never turned up, so we continued with the meeting. We got no explanations as to why they did not attend.

We made some adjustments and corrections and we held another meeting, I think it was on December 03. Again, we invited everybody back. This time NATUC did come. In the first meeting, representatives from FITUN were there. In the second meeting, representatives from FITUN and NATUC were there. The representatives from NATUC were extremely obnoxious, really obnoxious and said that they had not been invited to the first meeting, despite the fact that I said: "To the best of my knowledge, you were invited and as far as I am aware every effort was made to invite you. There is no reason why we would not invite you. I do not know how it is that you can say that you were not invited. If you were not invited, I apologize to you sincerely for you not having received the invitation but thank you for coming to this one. At least we can continue with the work." They did not want to hear that. They continued to disrupt the meeting and got on about the issue. Eventually they walked out of the meeting. Everybody else stayed and we worked through the draft Bill line by line and clause by clause with everybody. That is what we did. At that point it was settled. We made many changes that were recommended by many different parties. We made lots of notes to what they wanted changed. We cleaned up many things. Within two weeks after doing all the tidying up they had asked for, we were then able to send it to Cabinet, because we were settled with it at that point.

What happened eventually was that at a different level, NATUC said that they had not been consulted, so the Prime Minister met with NATUC. I think there was a feeling that they had not been treated the same way. I think that is where a lot

of the confusion came from. It was always the intention to treat with everybody as fair as possible. In the end we did with NATUC exactly what we did with FITUN. It really was not any different. It was just unfortunate the way that it came out. Had they stayed in the meeting, we would not have had that second meeting with the Prime Minister. That is how it happened. There was nothing sinister about it at all.

Let me start with Sen. Mark who really did an excellent job. He filibustered for one hour. It was clear that he had not read the Bill before he stood on his legs and started to go through it clause by clause by reading it. He did a remarkable job, making it up as he went along This made his argument a little thin, without the substance that one would hope to get from a senior Opposition Member, at that. That is what one comes to expect from Sen. Mark.

He asked me for a date for the new Injury and Disability Benefits Bill. What I said earlier was that I was hoping to be at this point by March/April with that Bill. I need it to be later because this process has interfered with that one. I would still hope to be there by April. If I do not make it by April, it will come very shortly after that. It is the next thing on the agenda. The attorneys are working very hard on it. We are trying very hard for that deadline. Do not shoot me for being a couple of days overdue.

What did he talk about? In clause 9, there is the issue of the amendment to section 15 and the removal of the words "or others". I think he clearly did not understand what the issue was then. In fact, this has been misunderstood by a number of Senators, including Sen. Ali, who quoted Minister Achong on the issue. When we did the Bill in its original form in section 15, I do not think anybody understood how that section 15(1)(a) was actually going to work and nobody saw the effect of the words "or others" on it. In a sense, it gave—if worker A is being threatened, the entire plant has a right to stop working, which is in fact a strike. It could be a strike. This clearly was an avenue for industrial action and it was never intended to be that. What is in the original Act that we have not interfered with is that if worker A is doing something that threatens worker B, worker A can stop and if the thing is still threatening worker B, he can stop as well. We have not interfered with that. We have interfered with the apparent right to strike, that was inadvertently created in section 15. There has been some misunderstanding as to what that was all about. It was never intended. I had spoken about this in other areas on a number of occasions.

This section was supposed to come from the Caricom model legislation. I do have it with me. When you read that section and you read our section, you can see how it was not faithfully transposed and you can see how others are inserted. Clearly, it was not intended to create the consequence that it did. It was not intended to allow the entire plant to shut down because one worker happens to be threatened. It was intended only to codify an existing right. What we have tried to do with the amendments that we have in this Bill is to direct, as far as possible, the Industrial Court so that they can understand exactly what must happen. We are very well aware. From what Minister Achong said when he presented the Bill, that right to stop work when you are threatened is not a right that has been abused in the marketplace; it has not been. Therefore, there was nothing sinister about it that we should be unduly concerned about. That is perfectly true. That is what we have merely tried to represent in the law, having now tried to codify what exists in the common law. We have merely tried to, as faithfully as possible, codify what already exists without trying to change anything at all. The fact that we have a piece of legislation which is a code, we have to be faithful that the intention is of the common law. That is exactly what we have done.

With respect to the question of drinking water, in clause 21, the intention behind that, again, I think has been misunderstood. We recognize that when we proclaim the Act, the question of the location of drinking water is going to cause some disruption in a number of different instances. We did not want to do that in a willy-nilly manner and, therefore, codifying the drinking fountain must be X number of meters away from other facilities, did not necessarily take into account the architecture of factories or industrial establishments. Therefore, we felt that it would be better left to regulation and to inspection by the Chief Inspector, who could make an on-the-spot inspection and say: "We either agree or disagree with what you are doing here and the regulations must be defined slightly differently or maybe in the same way, but we would leave it to regulation, rather than to legislation." It just seems to make more sense. We felt that the legislation would be more workable if we did that.

In clause 22, again Sen. Mark talked about the removal of the ambulance. Clearly, he had not read the Bill. We have significantly strengthened the safety mechanisms provided for in the legislation, by changing "ambulance" to "emergency health facilities" because it is likely—What the architecture is now intending under the Bill as it is now, as we have changed it, is that a business must now undertake an annual risk assessment. As a result of the risk assessment, they will decide even if the establishment has 50 or 100 workers. There is no

limit on the size of the business. If, on the basis of the nature of the business, the risk assessment, which is done in conjunction with workers and representatives of the workers, it is felt that there must be more than just a little box with Band Aid and Iodine in it, then they can sit and say: "No, we actually need a room with a nurse and whatever else and we need an ambulance." That is where we have taken it. We can go way beyond the requirements of the Act. The Act, as it was originally done, said that you must have an ambulance if you have 250 workers. We did not really deal with the actual circumstances of the environment. Therefore, what we have done makes eminent better sense than the Act. The Act is significantly strengthened as a result of that.

He spoke about contract workers. It is a point that I have taken up. We dealt with the arrangements of contract workers, but just to assure you, contract workers are covered by OSHA. All workers are covered.

Sen. King spoke about the question of approved standards. This was a problem that we looked at when we looked at the Bill, because there are no approved standards. While we have a Bureau of Standards, we do not have any approved standards and it is a chicken and egg situation. We had to deal with that. We could not have a situation where everybody is in breach of the Act and there is no way to fix it. Bearing in mind that one of the points that was just made by Sen. Prof. Ramchand about the amendment to section 6(g), where we have removed 6(g) and said: "compliance with the Act"—this is where, in fact, we are strengthening the power of the inspectorate to be able to prosecute any breach, no matter where or how it occurs. We have not just isolated certain things. This is one of the issues that would be dealt with. If you do not have the right standard, as it stands now, it will be a breach of duty; whereas it would not have been, as it is not included in 6(g).

6.45 p.m

We have widened and strengthened it. We felt that if we did it this way—in fact, it could be done by regulation by the Authority and, of course, they must be guided by the Bureau of Standards. That is the only thing that makes sense. In the absence of a standard from the Bureau of Standards, they must put something in place and that was the reason for that.

The Senator asked if Carnival fetes were covered; yes. All of these activities are covered. If you look at the definition of "a factory" it includes that. It includes almost anything where a trade or business is going on for profit. It would be covered by the Act.

There has been considerable discussion by a number of Senators, including Sen. King, who first mentioned clause 6, where we were changing the "Environmental Management Authority" to the "Authority responsible for managing the environment". Yes, there are no plans to do away with the EMA, as far as I am aware or as far as the Ministry of Labour, Small and Micro Enterprise Development is concerned. We have no knowledge of that. It is in keeping with the policy that we have been using.

Senators may have noticed, in other pieces of legislation, we no longer use expressions such as: "as decided by the Ministry of Energy and Energy Industries" or "as decided by the Ministry of Labour, Small and Micro Enterprise Development". It is always "the Ministry responsible for those matters". Therefore, in keeping with that thinking, we simply felt that it would be more appropriate to use "Authority responsible for managing the environment". As far as we know, it is EMA at this point and there is no other authority. It is conceivable that some other administration may want to change it and put in some other type of agency, or some different set of powers, and call it something else. So in that case you do not have to go back and change all the subsidiary legislation which would be a cumbersome thing.

Sen. Prof. Ramchand: Mr. Vice-Presdient, as far as I am aware, that makes it easier for a succeeding government to use "any other agency" and just delete the EMA.

Sen. The Hon. D. Montano: No, it does not do that at all. They would still have to deal with that legislation on its own. That stands alone. They would still have to come to the Parliament to repeal that legislation. This does not do that at all.

Mr. Vice-President, Sen. King also raised a question with respect to clause 7(a)(e) which says: "to exercise the discretion under section 15 in a responsible manner". The first person who has to take the decision—the word "responsible" has a clear meaning in any dictionary—and that would be the Chief Inspector, because it would be the agency that would decide, in the first instance, to prosecute a worker for not exercising that right in a responsible manner. Then it would be decided by the court, at the end of the day, as to whether, in a particular instance, the worker was reasonable or unreasonable in the circumstances. It would not be the employer. There is no way that the employer can get in and victimize the worker. That would not happen here. It would be the Chief Inspector. So it is an arm's length situation. I do not really see a problem with that.

Mr. Vice-President, Sen. Mary King also talked about the amendment to section 37, which deals with the medical examination for persons already employed. We have not really changed anything there, because in section 25, the duty for health surveillance of all workers already existed. What the amendment does is to tidy it up and to explain what health surveillance is, and we have defined it. That was also a matter that Sen. Seetahal talked about in section 25. So we have defined what "health surveillance" is and then in section 37 we cleaned it up so that it is unambiguous as to what the powers of an employee would be.

I talked about the water business and in clause 24, as far as I am aware, that is just a typographical error.

In clause 27, with respect to the issue of the six weeks to 30 days for an inspector to respond, one of the things we did not want to create is another level of bureaucracy for persons who were trying to build something. The inspector always has the opportunity to inspect anything and to issue stop order or a prohibition notice or an improvement notice or whatever it is to prosecute an employer if he has an unsafe condition of work.

There are other agencies within the system that are going to look at the construction details and so forth. Persons must get approval if they are actually going to build a factory or change an existing one. There was just no logical reason to put in another set of approvals when the is not a contractor. He is not necessarily going to see from the plans, the kinds of things that he would want to see. He would need to go in and have a look and so forth. He can still do that. It does not diminish his powers in any way. We did not want to slow down the operation and the development of the economy.

In clause 31, the improvement notice and the objection notice issued by an inspector, again, there has been some discussion on this matter. I think this has been misunderstood. What we have done is when an inspector goes to an establishment he could issue—under the Act before we amended it—either an improvement or prohibition notice, and it would have effect immediately.

It was very clear to us that we need to have in excess of 70 health and safety inspectors. It is going to be a little difficult to manage the system. One of the things that we did not want to experience is where inspectors were failing to issue notices to companies in exchange for favours. Clearly, this was an avenue that was open for abuse and because of the magnitude of what we are dealing with here we did not want this to get away from us.

We looked around the world to see what was going on and I liked the Barbados legislation. What they had is what we have here. What they did was, in the first instance, for the notice to be effective it has to be signed off by the . You just cannot do it on your own, but it has to be signed off by, at least, the head of the agency. That made sense to me.

With respect to the improvement notice, since it is just an improvement notice, it is clearly not that critical. The employer could file an objection to the Industrial Court and that objection would have the effect of a stop order of the improvement notice, and he could make his case to the Industrial Court and say: "Look, the inspector is wrong because everything works well, and there is no need to improve anything at all." Of course, he has to make his case. The court could rule for or against him.

In the event of the prohibition notice, which is a notice to close a factory, the employer can object to an appeal at the Industrial Court, but it does not work automatically as a stop order. That is where the little confusion exists. It does not work as a stop order until the Industrial Court says, yes, it is going to put a stop order on it, and then the case would be heard. In other words, the Industrial Court would have to grant, what we would call in the Civil Court, an injunction on the stop order. So he does not get it automatically. He has to make a case.

Our understanding is that in other jurisdictions these things are not done frivolously. Of course, to take the inspectorate, as far as the Industrial Court is going to involve significant legal fees and so forth. Our information is that the system does work this way. Therefore, we felt that it would work this way and, at the same time, give us a level of assurance that there would be no corruption within the operation of the agency. I did not want to have that at all. I was very concerned about that.

Sen. Dana Seetahal talked about the issue of a "young person" and she is absolutely right. We overlooked that matter. It should not be "over the age of sixteen" but it should be "of the age of sixteen" and we recognize that.

Many of the points, Sen. Mary King had already raised them, and I do not want to repeat the issue again. With respect to the factory approval with respect to the six weeks to 30 days, we talked about that. Sen. King also raised that matter and I responded to it.

Sen. Dana Seetahal also raised another issue that we overlooked. She indicated that in section 93 of the original Act it gives you six months to file a complaint and section 97(B) gives you two years. Clearly, that is an inconsistency. We would try to correct that.

Well, I talked about the consultation issue, there is one thing I want to talk about with respect to that matter because Sen. Basharat Ali said that if the Act could save one life and so forth—you were absolutely right. One life or one finger or one toenail is too much, as far as I am concerned. One of the things we have to recognize is that when you see some of the photographs that I have received from industrial, factory and construction sites, and you see the lack of safety procedures, you would see what I was talking about when I presented the Bill. With the best legislation in the world, we are not going to be able to educate everybody up to international standards. That is going to be very problematic. It is going to take us years to be able to raise the safety practices up to international safety standards.

There are some representatives in the gallery from agencies that do a lot of training and so forth, and I am sure that they would be able to inculcate the culture of safety, as well as the knowledge of what should and should not be done. In fact, it is going to take years. This Bill is just laying the foundation framework for modern safety procedures. We hope that all citizens would do the best that they can to keep themselves safe.

Sen. Basharat Ali said that we had watered down the rights of an employee, but I do not think so at all. As a matter of fact, I think that we have strengthened the powers of the agency to be able to prosecute matters that would not have been effectively prosecuted by the police before. I believe what we have created is a workable framework within which the occupational safety and health environment could be managed. We have a very strong agency.

The Senator also indicated that he was not going to support the Bill with the section 15 amendment. I am sorry to hear that, because that is one of the things that the Government is very adamant on. The removal of the words "or others" does, in fact, give workers a virtual right to strike. This was never intended in the original Act and it is not intended now. I stated quite clearly that there is no right to strike in the country and this was a backdoor way. I do not know how it got there, but nobody intended it to be there. It was not difficult to persuade my colleagues in the ministry that it should come out. They understood what I was saying and they agreed with me. I would urge you, nonetheless, to lend your support.

Mr. Vice-President, I think that I have dealt with all of the issues that have been raised by Senators. I have not dealt with every single issue—

Sen. King: Thank you, Minister. I wonder if the Minister is aware of the question I asked as to whether the national policy on occupational safety and health would be coming to the Parliament?

Sen. The Hon. D. Montano: I took note of that. It is not a practice of any government to have policies debated in the Parliament. I am not quite sure how this would be done; whether it would simply be laid in the Parliament as a paper or exactly how we are going to do it. I would certainly seek the guidance of Cabinet and get back to you on that matter. At this point, I cannot make any kind of commitment on that.

Mr. Vice-President, again, let me thank my friends and colleagues in the ministry for all the help that they have given me. I would certainly like to thank Members on the other side for their contributions. With those words, I beg to move. [*Desk thumping*]

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

Senate in committee.

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

Clause 3.

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

Sen. Mark: Mr. Chairman, in the Minister's presentation he made mention of emergency health facilities. I was wondering if he ought not to define it in the Act, especially in the section which deals with definitions. When we talk about "emergency health facilities" what does it entail? We know when we talk about our ambulance what we mean, but when you talk about "emergency health facilities" how would the employer, as well as the workers, interpret those facilities from a definition point of view?

Sen. D. Montano: Mr. Chairman, these words have a very clear meaning in English, so I do not need to explain what the meaning is. In fact, what would be required under "emergency health facilities" would be determined by the risk assessment. So we do not need to explain what that is because the risk assessment is going to tell you what you need to put there, if there is anything at all.

Sen. Mark: The point I am making is that the risk assessment is going to be determined by the employer.

Sen. D. Montano: No. Not by himself. He does it with the workers.

Sen. Mark: With the workers?

Sen. D. Montano: Yes.

Sen. Mark: Would the trade unions be part of that exercise?

Sen. D. Montano: Well, yes, if there is a union in that business.

Sen. Mark: Do you think that it would be better to have it legislated?

Sen. D. Montano: It could not be possible because we could not legislate for every single business. What we would really need to know is what is needed in each different business and every business is different and, therefore, it is the risk assessment that would keep that up. Some businesses would require an ambulance; some would require an emergency room with a nurse; and some would require both. You do not know. It may be that two ambulances may be required. The assessment is going to show you exactly what is necessary.

Sen. Mark: Mr. Chairman, my only concern is that if you are talking about basic conditions of work, for instance, you have vacation leave, sick leave and maternity leave, basic floor conditions would come like a minimum, and given your circumstances, based on your assessment, you can improve on that. If you have a minimum floor, in terms of conditions re facilities, you can say: "Listen, no employer should fall under that level."

Sen. D. Montano: There is no way that we could functionally do that. That would cause tremendous disruption in the business, and we would be requiring them to do things that would not make any sense at all. What we have here makes eminent sense. The risk assessment would define precisely what is necessary. I think we should leave it like that.

Mr. Chairman, we want to make a small amendment in clause 3(d). With respect to the definition of a "young person", we would delete the word "over" and substitute the word "of" and, in continuum, delete the word "fourteen" and substitute it with the word "sixteen".

Question put and agreed to.

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

Clause 4.

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

Sen. Prof. Ramchand: I wonder if the Minister would consider looking at clause 4 of the Bill and marrying the original Act with the amendment. The reason I would like the marriage to take place is that the specifications in the original Act offer guidance to persons as to the kinds of things. That is why in the original Act it says "such other". They give you a few examples and then say "such other". So, if after the word "with" you could say "sections 7, 12, 37, 46, 75, 76 and Parts III and XI and any other duties imposed on him by this Act." Minister, we have nothing to lose and you would still have "any other duties", but the persons who are affected by the Bill would have had examples of the kinds of things.

Sen. D. Montano: Mr. Chairman, what I think we are going to do is simply revert to the original section. This was work in progress and there were things in the pipeline.

Sen. Prof. Ramchand: This section says "imposed by the regulations". Is "regulations" rather than "Act" okay? In other words, we can go back to the original Act

and say "imposed on him by this Act".

Sen. D. Montano: Yes, I agree.

Sen. Prof. Ramchand: Okay.

Sen. D. Montano: Mr. Chairman, the amendment would be to delete the words "regulations made under". The new subsection would read: "compliance with sections 7, 12, 37, 46, 75 and 76, Parts III and XI and such other duties as may be imposed on him by this Act." We are going to remove the words "regulations made under" and then that would come in as the new (g). That amended section would be the amendment.

Sen. King: Mr. Chairman, under section 4, "approved standard", we are amending that to include "an appropriate title as determined by the Authority". When I read the functions of the Authority, I do not see the powers of developing or creating standards. How can we mesh that?

Sen. D. Montano: I do not think the Authority is debarred from setting a standard where there is none.

Sen. King: Excuse me?

Sen. D. Montano: It is merely including an appropriate title. It is not necessarily setting standards. It is merely determining what is appropriate under the circumstances. It is not quite the same thing.

Sen. King: What does it mean then? Could you tell me what "and includes an appropriate type…" identified by the Authority means?

Sen. D. Montano: It means pretty much the same thing as an appropriate type identified by the Bureau of Standards, but the Bureau of Standards would actually set a standard. That is the minimum standard. We are using the word "appropriate type" deliberately where there is no standard and the authority would say well, this is an appropriate method of fire protection or an appropriate device or something like that, but not necessarily approving it as a standard. We wanted to get away from that.

Sen. King: So could you identify, under section 66, where you have given the authority to do that?

Sen. D. Montano: I do not think we need to do that.

Sen. King: Why?

Sen. D. Montano: That is in section 66(1)(d) which says "to perform such acts and functions in accordance with the law to enforce".

Sen. King: No, we are talking about research and training there. It is not talking about standards.

Sen. D. Montano: It is a general function.

Sen. King: I do not think it is a general function if we are changing "approved standard" in the definition and adding after "the Trinidad Bureau of Standards", the words "an appropriate type as determined by the Authority."

Sen. D. Montano: Senator, the alternative would be to go into the body of that section and take out the words "approved standard" and use "appropriate type". That was the argument we were trying to solve by attacking it from there. We believe that we have solved the dichotomy by doing it this way. It is either this way or in the section itself where the words "approved standard" are used we would have to take out those words and use "appropriate type" and we did not want to do that because that tends to dilute the operation of the Bill. We wanted to maintain the idea of an "approved standard" where the Bureau of Standards has a standard that would clearly take precedence over the authority.

Sen. Jeremie: May I just interject? Part of the functions of the authority under the Act listed in the sweep-up clause in (d) is to perform such acts and functions in accordance with the law to enforce the provisions of this Act.

Sen. King: That is giving them powers over.

Sen. Jeremie: One of the things that the authority is required to do under the Act, according to the redraft, would be to set approved standards which would be relevant in a flexible sense where the Standards Act does not contain specific provisions. We felt that this would add greater flexibility to the operations of the Act. We also felt that there was an overlapping between the functions of the authority and the rigorous standards set by the parent Act, in relation to the Standards Act. If you refer to the Standards Act and there were no standards set in the Standards Act, then you would be in a difficult situation. We have empowered the authority not to set the appropriate standards and we left it as broad as that.

Sen. King: Are we then going to amend section 66 to include a clause which gives the authority that power to develop appropriate standards which would be approved by the Trinidad Bureau of Standards?

Sen. Prof. Ramchand: If I may put the question another way. Supposing the authority devises a standard that it would like to operate as a standard, and the Bureau of Standards says this is not rigorous enough, we do not want it. What happens if the authority of the Authority's standard is challenged? Is the Authority superior to the Bureau of Standards?

Sen. D. Montano: Insofar as occupational health and safety and health standards are concerned, yes.

Sen. Prof. Ramchand: And that would be clear to potential litigants if this matter were to be argued in court?

Sen. D. Montano: Yes.

Sen. King: Then you have to give them the power under their functions.

Sen. D. Montano: We think that they do have the power.

Sen. King: Where?

Sen. D. Montano: In section 66(1)(d). That is what we have been advised here.

Sen. Prof. Ramchand: If nobody could challenge the authority of the Authority, then fine.

Sen. D. Montano: But the court can always do that.

Sen. King: I do not understand it.

Sen. D. Montano: Mr. Chairman, could we move on?

Sen. Mark: Are we being told that the authority would supersede the Bureau of Standards in terms of setting standards?

Sen. D. Montano: Yes.

Sen. Mark: This Authority does not have the capacity and technical competence. You only have persons who have been appointed by politicians and where are they going to derive the technical competency to deal with the standards that we are talking about? I am just asking because, at least, the Bureau of Standards has technical capacity, but in terms of the Authority, when one looks at the composition; where are they going to derive that technical competence?

Sen. D. Montano: Mr. Chairman, the Authority is the body that appoints members of the agency. There is no point in getting into a political debate at this point. The fact of the matter is that these persons are highly qualified. The original Act and the existing Bill envisages that the agency would do its work with a degree of competence, and they must have the responsibility that is envisaged.

Sen. Mark: Mr. Chairman, just for clarification. Under section 66(1) of the Act, the functions of the Authority are spelled out. Where in these functions is this responsibility of setting standards?

Sen. D. Montano: Mr. Chairman, I could only repeat that in section 66(1)(d), it gives them very broad powers.

Sen. Seepersad-Bachan: I do not think you want to use a catch-on phrase to set standards. That is the point.

Sen. D. Montano: We do not think that it is necessary.

Sen. Prof. Ramchand: If we go to section 7(1) it says: "The Authority may subject to subsection (2) develop, approve and issue standards and codes of practice whether prepared by it or not as in its opinion suitable…", could we insert "standards" there and also in (d) as well.

Sen. Seepersad-Bachan: Mr. Chairman, if I may, what this is doing is ensuring that the Authority would develop the capacity.

Sen. D. Montano: The function is properly spelled out in terms of setting standards. Mr. Chairman, we think that the Authority has the authority to determine what an appropriate title as a standard is.

Sen. King: Under this parent Act?

Sen. Jeremie: Well, the functions of the Authority are broadly set out, just as in the case of a limited liability company where you would try to give it as many powers as are conceivable at the initial stage. If you look at section 66(1)(a) it says:

> "to assist and encourage persons concerned with matters relevant to any of the general purposes of this Act to further those purposes;"

These are broad expressions.

Our submission is that section 66(1)(d) is broad enough to cover the duty which is now imposed by the authority. So that the authority has an obligation now to determine an appropriate type in relation to standards and that function would be covered by the broad terms in clause 66. That is our advice.

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.

Sen. Mark: I just want the Minister to explain whether the inclusion of the new paragraphs (e) and (f), particularly paragraph (e)—what is the real purpose of this new paragraph that speaks to the issue of responsibility? Based on our research, we have discerned a trend in the workplace where there is a tendency for workers to simply refuse to perform duties on the pretext of danger. Are you now saying that based on that statistical compilation of data, the Government is of the view that it needs to take a more responsible approach? I am just trying to understand it; I am trying to determine what is the purpose of this. It has to be that there is a lack of trust; there is some trend that is developing and you are concerned, and if you put in the word "responsible" which is very vague, it is a question of interpretation, as Sen. Seetahal said. How is this going to work in real terms?

Sen. D. Montano: Mr. Chairman, in the first instance, this is not an incremental issue. We are asking employees to act in a more responsible manner as the Senator said. We are asking employees to behave in a responsible manner. This is just an articulation of what already existed in the common law. We are not putting any burden on them that does not already exist. It is hardly improper to ask anyone in any environment to act in a responsible manner. The word

"responsible" has a very clear, simple meaning in the English language. Again, let me reiterate that it could hardly be objectionable to ask anybody to act in a responsible manner.

Sen. Mark: Mr. Chairman, I would not persist on that one. I would go now to clause 7(b). Why are we referring to the Offences Against the Person Act? Again, I am trying to get some clarification here. You said that we were moving away from criminalizing and it was a summary act in terms of the $10,000 fine. We have abolished the $10,000, but we were trying to decriminalize the process. That is what I understand from what you said. Why have we removed the $10,000 on the one hand and the summary and we now have the Offences Against the Person Act? What is the rationale for it?

Sen. D. Montano: Mr. Chairman, this really was part of the concordat that was reached with the unions. They felt very strongly that it should be done this way.

Sen. Mark: I do not want to get in the way of that concordat, if the labour leaders said that is what their preference is, I would go along with it.

Sen. Prof. Ramchand: Mr. Chairman, I just want to ask two things with respect to clause 6 and that is whether the Minister would consider allowing me to sleep better at night by inserting the words "the recognized" before "Authority", so it would read: "the recognized Authority responsible for managing…"

Sen. D. Montano: There could only be one authority with the responsibility and the recognition which is kind of vague. It does not really add anything. I think it would only obfuscate the issue. I take your point but, quite frankly, there is no other way. The responsibility is clear.

Sen. Prof. Ramchand: And would you consider reinstating subsections (2), (3) and (4)?

Sen. D. Montano: No.

Sen. Prof. Ramchand: The deletion really removes an offence.

Sen. D. Montano: Mr. Chairman, those clauses give the Chief Inspector the authority which is not in conflict with the authority of the EMA. Again, there should only be one authority dealing with those issues and that is the EMA. This was a duplication of authority in the same arena. We felt that this could be open to conflict with the EMA and it was the best thing to leave it to the EMA rather than set up a conflict. The agencies would talk with one another and there is nothing

wrong with the picking up the telephone and saying: "Listen, I have a problem, come down and deal with it." He should not be in a position to set one set of standards for which he has no real expertise in. The EMA is the rightful authority and it should be left alone. That was the rationale for removing those three sections. Let the EMA do what it is supposed to do.

Sen. Prof. Ramchand: I hope that in trying to avoid conflict, we do not create a situation of abeyance. How would the EMA know that it has to do it?

Sen. D. Montano: Well, the would simply inform them. He is not operating in a vacuum. These are pretty bright guys.

Sen. Prof. Ramchand: Well, I guess, I am an intellectual and I am accustomed to these abstract things.

Sen. D. Montano: I hear your concern, but I think that we have made it better by not creating any confusion.

Question put and agreed to.

Clause 6 ordered to stand part of the Bill.

Clauses 7 to 15 ordered to stand part of the Bill.

Clause 16.

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

Sen. D. Montano: Mr. Chairman, I beg to move that clause 16 be deleted.

Question put and agreed to.

Clause 16 deleted.

Clause 17 ordered to stand part of the Bill.

Clause 18.

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

Sen. Mark: Mr. Chairman, the culture of volunteerism has been developed over a number of decades so they do not have an IRA in Barbados because of their culture of volunteerism. In Trinidad and Tobago, we are a bit different. We had the ISA in 1965 and the IRA in 1972. Now, when you look at what is being proposed in clause 18, you would see where the employee shall take into consideration the results of the annual risk assessment carried out in pursuance to the relevant section in determining what is necessary to provide a means of escape in the case of fire.

Now, the previous clause had put this responsibility on the shoulders of the fire authority. I find it strange that we would want to leave this particular function like that. Do not forget what has happened in Port of Spain and San Fernando when we had major fires. The means of escape is, again, determined by the employer. I think, with the greatest of respect, if we are to deal with life and limb of workers, particularly where you do not have organized trade union presence, it is incumbent upon us to give that authority to the fire authority rather than leaving this thing as a discretionary function for the employer. I believe, in the future, this could be problematic.

Sen. D. Montano: We have not changed that. The only thing that has been changed is the question of the 24 months. You have to understand that it would be a criminal offence not to be certified by the fire authority. What we are doing here is placing an additional duty on the employer to do this risk assessment, and we feel that this would make it better. It does not change the status quo at all. It is placing an additional duty on the employer where previously there was none.

Sen. Mark: Mr. Chairman, if I may, we were told that we were going to delete "24 months" and substitute the words "in a manner prescribed under this Act". Could the Minister indicate to us what is "in the manner described"? Where are the regulations?

Sen. D. Montano: They would be determined by the authority on the recommendation of the agency.

Sen. Mark: So, do you have the authority to bring those regulations here?

Sen. D. Montano: Yes.

Sen. Mark: Should these regulations not accompany these amendments to ensure that when the Act is proclaimed there are regulations to the effect?

Sen. D. Montano: It is a chicken and egg situation. It is the Authority that has the responsibility to establish the regulations, but there is no Authority. So the Authority would do that.

Sen. Prof. Ramchand: I know we have passed clause 7 of the Bill, but if we could just quietly recognize—I think there is a typo where we should have said "in a responsible manner". We are not discussing it as such because I heard you say "in a responsible manner".

Sen. Ali: Mr. Chairman, in clause 16, I do not think that the word "it" should be omitted. It makes no sense.

Sen. D. Montano: It is the adjustment which is necessary.

Sen. Ali: These are the things that are necessary to be carried out—the lubrication, examination or adjustment. If you leave out "it" then it should be "which is necessary to be carried out".

Sen. D. Montano: We would leave it as it is.

7.45 p.m.

Question put and agreed to.

Clause 18 ordered to stand part of the Bill.

Clauses 19 and 20 ordered to stand part of the Bill.

Clauses 21 to 25.

Question proposed, That clauses 21 to 25 stand part of the Bill.

Sen. Mark: Mr. Chairman, in terms of clause 21, I would like to ask the Attorney General and the Minister to pay attention to 39(1) of the original Act and the proposed—

Mr. Chairman: Hold on please.

Sen. Mark: I am saying under clause 21, it refers to 39(1) of the original Act and it is proposed that the words as outlined from "except" be deleted right down to "Chief Inspector". Now the framers initially would have had a rationale for this particular proposal. It deals with hygiene, sanitation and health and safety and I think it is a bit drastic to delete a provision that seeks to protect the health and safety and sanitation of surroundings in the context of workers and I really feel this is a draconian proposal in the context of its deletion. I would like the hon. Minister to reconsider this provision in terms of deletion from where he has proposed to "Chief Inspector," where it ends and go with the original proposal in terms of section 39. I would like to suggest that to the hon. Minister and the Attorney General.

Sen. D. Montano: Mr. Chairman, as I articulated when I was doing my winding up, this was really a case of over regulation in a legislative form and this matter would be far better dealt with by regulation and that is what is really intended. So, Mr. Chairman, I understand what the Senator is saying, but I think the matter is best dealt with by regulation because it would add more flexibility. We are not trying to create a bureaucratic morass; we are trying to create something that would work, Senator.

Sen. Mark: Let me ask you a question here. Mr. Chairman, through you, did you have consensus with the concordat that you mentioned earlier?

Sen. D. Montano: Yes.

Sen. Mark: Did you find consensus?

Sen. D. Montano: Yes.

Sen. Mark: Did the trade union agree to this particular provision?

Sen. D. Montano: Yes.

Sen. Mark: But I am told by Mr. Michael Annisette that the trade union movement vigorously opposed this provision.

Sen. Jeremie: What, the urinals?

Sen. Mark: The amendment.

Sen. Jeremie: The urinals?

Sen. Mark: Yes. The Minister is saying regulations, regulations and regulations. We have none before us and as the Minister said, it is a catch-22 situation. You have to proclaim the Act and then the authority would go into full gear into dealing with the regulations and we are not too sure that these things would be considered. I think this is really offensive, quite frankly, but if the Minster says the unions have agreed and they have misled me on this matter, I would just have it recorded that the Minister indicated that the unions have agreed and I was misled on this matter.

Sen. D. Montano: Mr. Chairman, I would leave it as it is. This thing was unanimously supported in the other place and I was in the meeting with the unions and they were supportive. So in deference to my colleague, we are happy as it stands.

Sen. Mark: Mr. Chairman, once the trade unions and the Government have agreed and there is consensus as we are being told by the Minister, I would bow to the superior wisdom of the two parties involved here.

Sen. Dr. Mc Kenzie: I would think that what the Minister is saying is already contained in section 39 because the Chief Inspector also had the authority to say "move it."

Sen. King: Mr. Chairman, could I just clarify clause 25:"The Act is amended in section 57", do you mean 57(1)? There is no such word as "obtained" in 57(1); it is "obtain."

Sen. D. Montano: The Bill has a typographical error in clause 25, the "obtained", should be "obtain." The "ed" should be deleted.

Sen. King: And it is 57(1)?

Sen. D. Montano: It should be section 57(1) and the word "obtain", not" obtained".

Mr. Chairman: Hon. Members, the question is that clause 25 should be amended to read: The Act is amended in section 57(1), by deleting the word "shall" occurring before the word "obtain".

Sen. Mark: Mr. Chairman, we have a firm opposition to clause 21, so I do not want to vote against the entire 21 to 25. But certainly, we cannot support clause 21 in its present form, even if the trade unions decide to compromise, but as a party that is to be the government shortly, we are not prepared to support this. I would like to propose to you, if you could put it separate and then we could go from 22 to whatever and we would support the rest, with your leave, Mr. Chairman.

Question put and agreed to.

Clause 21 ordered to stand part of the Bill.

Clauses 22 to 25 ordered to stand part of the Bill.

Clauses 26 to 30.

Question proposed, That clauses 26 to 30 stand part of the Bill.

Sen. Mark: Mr. Chairman, under section 65(1), clause 28, I wanted to ask the hon. Minister, in his discussions—let us not go there—why have we left out in the establishment of this very important authority, the trade union movement? Why do we not have a provision under 65(1), where for instance, the authority shall consist of, let us say, maybe have a new (g)(h)(i) and provision says, "of two or three Members of the labour movement most representative of employees in Trinidad and Tobago"? I am asking why we could not have incorporated the trade union movement as being part of the Occupational Safety and Health Authority. It is not incorporated. We are seeing all kinds of representatives, including the Minister. The poor Minister has to appoint nine other members—

Sen. Dumas: [*Inaudible*]

Sen. Mark: Yes, but what I am saying, in other words the International Labour Organization (ILO) convention and protocol are very clear that the Government must deal with the trade union most representative of the majority of employees and in Trinidad and Tobago, the National Trade Union Centre is the trade union movement that is most representative of the majority of employees. I do not believe that we should be inconsistent with ILO established standards and conventions. All I am saying, rather than leave it up to the discretion of the Minister to choose "X" and "Y", there is already a precedent established and a standard established under the International Labour Organization. I am just asking the hon. Minister to look at that provision and see if it is possible to have them incorporated given ILO standards. That is all; it is a case I am making out to have the workers included in a more direct way.

Sen. Ali: Mr. Chairman, I would suggest, to satisfy Sen. Mark, that we have one from FITUN and one from NATUC, maybe he would be satisfied then, for the two union representatives of the workers to be appointed under the authority; one from NATUC and one from FITUN.

Mr. Chairman: Sen. Ali, one from NATUC and one from FITUN.

Sen. Mark: I understand what he is saying, Mr. Minister, but I am not on that road. I am simply saying that there be a provision whether it is FITUN or NATUC, but you make it broad and general. The organization that is most representative of the majority of workers, it could be FITUN, it could be NATUC, it could be whatever, but the Minister, based on information, analysis and statistics, would know which of the organizations would be most representative of labour and on that basis, you choose two people. Whether it is FITUN, NATUC or whatever, I am not interested. I am just dealing with the principle in making sure that there is labour representation at the level of the authority; that is all I am concerned about.

Sen. King: Mr. Chairman, I was just saying that is a good idea. You reduce the Minister's quota from nine to seven and have two workers as represented by the body of trade unions.

Sen. D. Montano: Mr. Chairman, I think that the position is this, that issue that Sen. Mark has raised, is adequately dealt with by section 65(2)(b) of the parent Act. That section was passed in the other place twice, once in this Senate and there is no reason why we should not accept it. Again, I do not propose to change the manner in which it is being done at this point.

Sen. Mark: Again, Mr. Chairman, may I try to convince the hon. Minister or persuade him. What is being said in 65(2)(b), is that you shall appoint two of them, after you consult such organizations representing employees as he considers appropriate. Let us assume, Mr. Chairman, and I would admit that the Minister consults with FITUN and FITUN is the minority organization. But the Minister considers FITUN as the majority organization. There is nothing governing his selection and all I was advancing, is there is already a standard established at the level of the ILO in dealing with these matters. So the Minister does not have to get himself caught up in trade union politics, he would simply know that there is a standard that has been established in the ILO to ensure that this thing is satisfied. So rather than him going to say, "Well look, I am going to choose from this one or that one" and getting caught up in the politics of the trade union movement, there is a standard established already; there is a convention established already and I am just guiding him rather than us reinvent the wheel, that is all I am advancing.

Sen. King: Mr. Chairman, if we look at 65(2)(b), I think perhaps that can solve the problem.

Sen. D. Montano: Mr. Chairman, let me assure the Senators on the other side that what is already in this Act—because it is not in the Bill—is almost the same thing, substantially identical to what exists in the Cipriani Labour College, as well as the IRA and the discretion of the Minister is identical. So I would suggest that we leave it as it is. It has worked in the past; it has received the consent of this Senate previously and the consent of the other House twice. I think that what we have is a workable model. It has stood the test of time.

Sen. Mark: Mr. Chairman, my final intervention in this matter is that the Trinidad and Tobago Government has been brought to the committee of experts on many occasions in the past, for having provisions in the IRA that were contrary to ILO well established standards and principles. So if the Minster wants to continue along that line, he can proceed. Let him go, so that more objections would be lodged in the future. So go ahead.

Sen. Prof. Ramchand: Mr. Chairman, in my contribution, I spoke about stress reduction and I did mention counselling at the workplace—and perhaps it would be asking for too much to change the legislation to include that now—but surely on the membership of the authority, we should have somebody with the professional qualifications to make an input in helping to create conditions that would lead to stress reduction and even offer the possibility of counselling.

Sen. D. Montano: The Minister would have that flexibility to do that when the time comes. The advice is good.

Sen. Dr. Mc Kenzie: Mr. Chairman, on the same question of the representative of the trade unions on the authority, strange enough, I did not look at it from a majority trade union point of view, I looked at it from the point of view of trends in risk, trends in accidents in the workplace to see where we have had, over the past five years, more accidents, injuries and fatalities in the workplace and probably we look at the representative unions representing the workers of those places and decide whether that would be the way to go, probably for a limited period and if the matter clears up, you look at somewhere else. So you have the flexibility and also you have a reason. I mean if you have the majority trade union over the last years as Sen. Ali had said no problems, no injuries, no time wasted, nothing, probably you might get them there to tell you why they have it rather than to be representative of the people. So I think you have a certain amount of flexibility in deciding which unions you are going to look for representatives from to put on the authority.

Sen. D. Montano: Thank you.

Sen. Prof. Ramchand: [*Inaudible*] let me come back to my point. I know the Minister is aware that we need a person such as I have described, but there may be another Minister without that awareness, and so, could we guide them by inserting the clause in the composition of the authority that we should have such a person?

Sen. D. Montano: I think we should leave it as is, leave the discretion of the Minister to deal with the circumstances at the time that might exist in the environment. Mr. Chairman, could we move on?

Sen. Mark: Mr. Chairman, before we move on. In clause 29(ii), could the Minister indicate what was the rationale for incorporating another—in the original Act 71:01, we had "the Minister on the advice of the Chief Inspector may designate a suitably qualified public officer as an Inspector", why have we added "a suitably qualified person as an Inspector"? What is the rationale for it? Do you anticipate some difficulty in appointing a public officer to that post or do you want the Chief Inspector to have flexibility in appointing?

Sen. D. Montano: Yes precisely, we want him to be able to select from outside of the public service, that is the only thing that makes any sense and that is exactly what we have done. So you have just widened the pool from where he can select.

Clauses 26-30 ordered to stand part of the Bill.

Clauses 31 to 35.

Question proposed, That clauses 31–35 stand part of the Bill.

Sen. D. Montano: Mr. Chairman, before you finish—

Sen. Dr. Mc Kenzie: Mr. Chairman, remember we talked about the six months and the two years contradiction. Okay.

Sen. D. Montano: Hold it. Mr. Chairman, continue with clauses 31 to 35. I would come to that in a second Senator.

Sen. Dr. Mc Kenzie: Okay.

Question put and agreed to.

Clauses 31 to 35 ordered to stand part of the Bill.

Sen. D. Montano: Mr. Chairman, we need to make an amendment to section 93 of the Act. It is not in the list of amendments, this was recommended by Sen. Seetahal. This was where a complaint for an offence under the Act shall be made within six months, and 97(B) said two years; you want to harmonize the two pieces?

Sen. Dr. Mc Kenzie: [*Inaudible*]

Sen. D. Montano: One is a complaint.

Sen. Mark: Mr. Chairman, we are not seeing a contradiction here. No, we are not seeing a contradiction, one is a complaint and one is a proceedings under the Act. There is no contradiction there, so we leave it as is.

Clauses 17 to 35, renumbered clauses 16 to 34, as amended, ordered to stand part of the Bill.

Sen. D. Montano: Mr. Vice-President, before I conclude here, just allow me to say because I inadvertently did not say this, but I would like to thank the staff of the Attorney General's Office, specifically, the Chief Parliamentary Counsel's (CPC) Office for the sterling work that they did in assisting us. While most of the original drafting came from the Ministry of Labour, it was done in close concert with the staff of the CPC's office who responded extremely quickly and really worked very hard to meet our demands. [*Desk thumping*] I would like to thank them as well.

Question put and agreed to, That the Bill, as amended, be reported to the Senate.

Senate resumed.

Bill reported, with amendment, read the third time and passed.

ADJOURNMENT

The Minister of Public Administration and Information and Minister of Energy and Energy Industries (Sen. The Hon. Dr. Lenny Saith): Mr. Vice-President, I beg to move that the Senate be now adjourned to Tuesday, February 07, 2006 at 1.30 p.m., at which time we would debate the Bill to give effect to the Co-operation Agreement between Caricom and Cuba.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 8.15 p.m.