

Leave of Absence

Tuesday, May 09, 2006

SENATE

Tuesday, May 09, 2006

The Senate met at 1.30 p.m.

PRAYERS

[MADAM PRESIDENT *in the Chair*]

LEAVE OF ABSENCE

Madam President: Hon. Senators, I have granted leave of absence from today's sitting of the Senate to Sen. The Hon. Knowlson Gift who is out of the country.

SENATOR'S APPOINTMENT

Madam 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: MS. ROSE JANNEIRE

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

NOW, THEREFORE, I, 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, ROSE JANNEIRE, to be temporarily a member of the Senate, with effect from 9th May, 2006 and continuing during the absence from Trinidad and Tobago of the said Senator Knowlson Gift.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 8th day of May, 2006.”

Oath of Allegiance

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OATH OF ALLEGIANCE

Sen. Rose Janneire took and subscribed the Oath of Allegiance as required by law.

**JOINT SELECT COMMITTEE
(APPOINTMENT OF)**

Madam President: Hon. Senators, I have received the following correspondence from the Hon. Barendra Sinanan, Speaker of the House of Representatives:

“May 05, 2006.

Sen. The Hon. Dr. Linda Baboolal
President of the Senate
Office of the President of the Senate
Parliament
The Red House
Abercromby Street
PORT OF SPAIN
Honourable Madam President,

Appointment of a Joint Select Committee

At a Sitting of the House of Representatives held on Friday May 05, 2006, the following Resolutions were approved:

1. ‘RESOLVED that a Bill entitled ‘The Bankruptcy and Insolvency Bill, 2006’ be committed to a Joint Select Committee for consideration and report; and

That this Committee be mandated:

- to publish these bills for public comments; and
- to consider such public comments and report back to the Parliament no later than August 31st, 2006.’

2. RESOLVED that the following five (5) Members of the House of Representatives be appointed to serve with an equal number from

the Senate on the Joint Select Committee established to consider and report on the Bankruptcy and Insolvency Bill, 2006:

Mr. Kenneth Valley

Mrs. Camille Robinson-Regis

Mr. John Rahael

Dr. Roodal Moonilal

Mr. Gerald Yetming'

I shall be grateful if the decisions of the House of Representatives are brought to the attention of the Senate.

Yours respectfully,

Hon. Barendra Sinanan. MP

Speaker of the House"

The Minister of Public Administration and Information and Minister of Energy and Energy Industries (Sen. The Hon. Dr. Lenny Saith): Madam President, I beg to move that motions to give effect to matters referred to in the correspondence of the hon. President be dealt with later in the proceedings under Item No. 14 of the Order Paper.

PAPERS LAID

1. Report of the Auditor General of the Republic of Trinidad and Tobago on the financial statements of the Trinidad and Tobago Civil Aviation Authority for the year ended September 30, 2003. [*The Minister in the Ministry of Finance (Sen. The Hon. Conrad Enill)*]
2. Annual audited financial statements of the Estate Management and Business Development Company Limited for the year ended September 30, 2004. [*Sen. The Hon. C. Enill*]
3. Annual audited financial statements of the Estate Management and Business Development Company Limited for the year ended September 30, 2005. [*Sen. The Hon. C. Enill*]
4. Administrative Report of the San Juan/Laventille Regional Corporation for the period 1st October, 2004 to 30th September, 2005. [*The Minister of Local Government (Sen. The Hon. Rennie Dumas)*]

**PUBLIC ACCOUNTS (ENTERPRISES) COMMITTEE
(First Report)
(Presentation)**

Sen. Wade Mark: Madam President, I beg to lay on the Table, the First Report of the Public Accounts (Enterprises) Committee, First, Second and Third Sessions of the Eighth Parliament on energy and energy based industries, in accordance with the provisions of Standing Order 51(2).

May I take this opportunity to indicate to you that I intend to approach the Leader of Government Business to support a motion which I intend to table to debate this report at the earliest possible opportunity.

**JOINT SELECT COMMITTEE
(APPOINTMENT OF)**

The Minister of Public Administration and Information and Minister of Energy and Energy Industries (Sen. The Hon. Dr. Lenny Saith): Madam President, in accordance with Standing Order 25, I seek your leave and that of hon. Senators to dispense with notice with respect to a motion which I propose to move and to which I referred earlier in the sitting.

Question put and agreed to.

Sen. The Hon. Dr. L. Saith: Madam President, I beg to move that the Senate agree with the following resolution passed in the House of Representatives on Friday, May 05, 2006.

Be it resolved that a Bill entitled the Bankruptcy and Insolvency Bill, 2006 be committed to a joint select committee for consideration and report and that this committee be mandated to publish these Bills for public comments and to consider such public comments and report back to the Parliament no later than August 31, 2006.

Question put and agreed to.

Sen. The Hon. Dr. L. Saith: Madam President,

Be it resolved that the following five Senators be appointed to serve with the five Members appointed by the House of Representatives, on the joint select committee established to consider and report on a Bill entitled the Bankruptcy and Insolvency Bill, 2006: Sen. Danny Montano; Sen Christine Kangaloo; Sen. John Jeremie; Sen. Wade Mark and Sen. Mary King.

Bill referred to a joint select committee of the Senate appointed by the President as follows: Sen. Danny Montano, Sen. Christine Kangaloo, Sen. John Jeremie, Sen. Wade Mark and Sen. Mary King.

WRITTEN ANSWERS TO QUESTIONS

Sen. Wade Mark: Madam President, I just want to engage your attention to the fact that questions have been on the Order Paper for written responses for almost eight months. I have been in the Senate for the last 15 years and it is unprecedented. I have never experienced this long delay. I would like you to urge once again, the Leader of Government Business to take steps to have these written responses submitted to Parliament.

Madam President: Senator, I have been in contact with the Leader of Government Business and he assures me, that he is trying his best to get the various ministries to submit the answers to the questions.

VALIDATION OF THE FIFTH REPORT OF THE ELECTIONS AND BOUNDARIES COMMISSION (LOCAL GOVERNMENT) BILL

Order for second reading read.

The Minister of Local Government (Sen. The Hon. Rennie Dumas): Madam President, I beg to move,

That a Bill to validate the Fifth Report of the Elections and Boundaries Commission under the Elections and Boundaries Commission (Local Government) Act, Chap. 25:50 for the purpose of local government elections, be now read a second time.

The intent of this Bill is to validate the late submission of the Fifth Report of the Elections and Boundaries Commission under the Elections and Boundaries Commission (Local Government) Act, Chap. 25:50, for the purpose of local government elections, by deeming the said Report to have been submitted to the Minister in accordance with section 4(2)(b) of the Elections and Boundaries Commission (Local Government) Act.

Whereas under section 71 of the Constitution of the Republic of Trinidad and Tobago there is established an Elections and Boundaries Commission;

And whereas provision is made under the Elections and Boundaries Commission (Local Government) Act, Chap. 25:50, section 4, as follows:

“The Commission shall define and review the boundaries of the electoral districts into which an electoral area is, or is to be, divided and shall submit

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to the Minister reports either—

- (a) showing the constituencies into which it recommends that an electoral area should be divided in order to give effect to the Rules set out in the Second Schedule; or
- (b) stating that, in the opinion of the Commission, no alteration is required to the existing number or boundaries of electoral districts in order to give effect to the said Rules.”

And whereas the time period set for submission of the commission’s report is identified under section 4(2)(b) which states:

“Reports under subsection (1) shall be submitted by the Commission—

...not less than two nor more than three years from the date of the submission of its last report.”

And whereas the Fourth Report of the commission was submitted on July 08, 2002;

And whereas the Fifth Report of the commission was submitted to the Minister on July 08, 2005, more than three years from the date of submission of the commission’s last report, validation is required.

The Government having agreed that the submission is out of time and the Fifth Report of the commission should be validated for the purposes of the forthcoming local government elections and considering that it is expedient to do so, we are asking that the hon. Senators agree that we validate the said report by way of this Bill.

Question proposed.

Sen. Wade Mark: Madam President, the Bill before us, as the hon. Minister stated, seeks to validate the late submission of the Fifth Report of the Elections and Boundaries Commission under the Elections and Boundaries (Local Government) Act, Chap 25:50 for the purpose of local government elections by deeming the said report to have been submitted to the Minister, in accordance with section 4(2)(b) of the Elections and Boundaries Commission (Local Government) Act.

If you go to XVII of the Report you will see where and what date this report would have been submitted to Sen. The Hon. Rennie Dumas. This report provides details of the EBC’s submission to the hon. Minister. If you examine the report carefully, you will see that this report was submitted to the hon. Minister on July

08, 2005. I find it somewhat disrespectful and totally contemptuous of this hon. Minister to come to this Parliament, spend about 20 seconds in submitting a report and he is now seeking our support without any justification or explanation. The hon. Minister believes that this Senate is purely a rubber stamp and he can demonstrate arrogance and insensitivity to this Senate. I resent that! The Minister ought to give us a proper explanation.

Madam President: Will you give way to the Minister?

Sen. W. Mark: Yes, I will. He is my friend.

Sen. Dumas: Madam President, the Minister takes no responsibility for this report. This is an elections and boundaries report. They were out of time and we are asking you to validate the actions of the Elections and Boundaries Commission and not the Government. Let us be clear.

Sen. W. Mark: Madam President, that can be submitted to a school child, not to the Senate. The Minister, as you read in the report, was the recipient of this submission by the Elections and Boundaries Commission on July 08. We know that you are a conduit but you received the report on July 08. What is today's date? Today is the 9th May, almost 11 months later.

I am disappointed in my friend today. He had a report in his possession since July 08, 2005. You cannot deal with kidnappings in the country, but you kidnapped that report. [*Laughter*]

Hon. Senator: Nice one.

Sen. W. Mark: You kidnapped this report and kept it under your wings for 11 months and you come here and submit in a sheer 20 seconds, something that to my mind, you ought to have taken a little more time to explain. Why was this report kept in his possession for the last 11 months? You cannot tell me that the EBC had this report for the last eight to 10 months. It was in the possession of the hon. Minister of Local Government and by extension the Cabinet of the Republic of Trinidad and Tobago. That is what we call abuse of power. It is a breach of the procedures.

You will know that as soon as a minister receives a report his obligation within the shortest possible time frame is to lay that report in the Parliament. He went to his Cabinet first. To come to Parliament and insult us in less than 20 seconds on a matter as grave as this one, I am saying that reeks of arrogance, insensitivity, total contempt and disrespect for this Parliament. No rationale has been proffered by my hon. colleague. No valid reason has been given by my

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colleague to gain our support for validating this particular report. Madam President, do you know why the PNM can behave that way? Because they believe that they have the majority and they can treat this Senate with total contempt! I have never seen my friend—he is a very tall guy—so short. His presentation was very short today. Tall “fella” from Tobago, very short on his presentation today. For what reason? I can only assume that he believes that the PNM is almost invincible and they can treat their colleagues, the Parliament and the people by extension with total disrespect.

This demonstrates to you and us the need for constitutional reform in the country. We do not believe that the Elections and Boundaries Commission should submit any report to the Prime Minister or the Minister of Local Government. If this is an independent commission, those reports should come directly to you and the Speaker and be tabled in the Parliament. This hon. Minister is my good friend but I am totally disappointed in him today. What plausible explanation has been provided? Nil! Nothing has been given to us. This is tantamount to a dereliction of duty on the part of the Minister. You see their attitude. They are flying high. They are having a great time, but the higher you fly, the harder you fall. I keep telling this Attorney General in particular, our turn will come.

Sen. Jeremie: Is that a threat?

Sen. W. Mark: You could take it how you want to take it. Our turn will come. What goes around comes around. I say no more on this.

The hon. Minister of Local Government has to tell this Senate why it took 11 months to bring this report to this Chamber. Is it incompetence on his part? Is it recklessness on the part of the PNM regime? Why was that report tabled so late?

2.00 p.m.

It is the view of the United National Congress that this PNM regime deliberately and calculatedly sought and may have succeeded, in stealing a march on the United National Congress and all opposition parties that are going to be contesting the next local government elections which, as you know, Madam President, are due in July. We understand, however, that they are planning to hold it in September. What we also understand is that this kidnapping—this is the only way I can describe this report that has come so late to this honourable Chamber. The Cabinet of Trinidad and Tobago, led by the hon. Minister of Local Government, kidnapped this report! When they kidnapped this report, Madam President, do you know what it has led to? It has given this PNM regime an unfair advantage in the organization of the various electoral districts, particularly the new ones that have been created.

Madam President, if you would have read the report, you would see that we have gone from 126 electoral districts. The Elections and Boundaries Commission (EBC)—I will say more about the EBC in a short while—has increased the number of electoral districts from 126 to 131.

Sen. Dr. Saith: More licks.

Sen. W. Mark: More licks? For whom? I am sure it is not for us. You know, you all are on high horses—

Madam President: Sen. Mark, please speak to me.

Sen. W. Mark: Madam President, I am speaking to you, but I want to speak through you to them. They feel they are invincible, you know! They feel that they are the greatest thing after sliced bread! Let them continue to languish in their ignorance and believe that the masses of people will continue to support them. It is only a matter of time; take what I tell you. Your supporters will overthrow you! The UNC will just help tilt the boat over a little further.

Madam President, if you go to XVIII of this Report, you will notice where the seats have been located in terms of the number going from 126 to 131. The Couva/Tabaquite/Talparo electoral area has been increased from 12 electoral districts to 13. This EBC, which has now become a PNM party group—Madam President, I want to tell you something; we have fears that Trinidad and Tobago will not have free and fair elections under this current composition of the EBC. We have our doubts about its credibility.

Madam President, the Penal/Debe electoral districts have increased from eight electoral districts to nine. Sangre Grande, the place that the hon. Minister was in the last local government election giving away ham, jam and all kinds of things, I understand—I know you do not know the town good because you are from Tobago but, as I have said, I understand that you were in Sangre Grande and these days you are in Nariva.

Madam President: Sen. Mark!

Sen. W. Mark: I understand that he wants to contest the elections there too!

Sen. Dumas: You are afraid or what?

Sen. W. Mark: He left Tobago to come here to contest elections! You want me to go to Tobago to contest elections or what?

Madam President: Sen. Mark, please focus on the Bill.

Sen. W. Mark: Madam President, I am focusing. The EBC increased the electoral districts in Sangre Grande from seven to eight; that is an area familiar to my hon. colleague. I know that Tableland is familiar to another sister in this Parliament. She is eyeing Princes Town/Tableland but she will lose her deposit in that area. I think she will go home after that.

Sen. Dr. Saith: What are you worried about?

Sen. W. Mark: No, I am not worried about anything; I am just reminding her that she should stick to her profession. Madam President, I call no names. *[Interruption]* At this time we will do that. I now go to the Siparia area which they have increased from eight to nine electoral districts. In Tunapuna it has gone from 13 to 14 electoral districts.

One could well imagine a government as ruthless, as vicious, as insensitive and as arrogant as this one, had knowledge of this Report 11 months before the Opposition, the United National Congress—*[Interruption]* It was never laid! This came a couple weeks ago in this Senate, but you had it before, Sen. Dr. Saith, and you as the strategist of the PNM along with—What is the “fella’s” name from MORI Polls who you brought from Europe here recently to test the waters?

Madam President, they smart you know, they thought by jailing Panday they could call elections, but MORI told them not to do it because they would lose so they sent him back to Europe. They want to call elections; they feel they would win but they are afraid! You all are afraid to call elections—Mr. Manning! They jailed Panday; they feel they could win; call the elections! MORI told them no, Madam President, that all of them would lose their seats. Well, you know we like you, Madam President, so when we come back we will take you back. *[Laughter]* But all of them will be gone! All of them will be gone! You will be here! We are supporting you for the presidency; nobody else! *[Laughter]* So, Madam President, the time is coming, it is just a matter of time, do not worry!

What is very clear is that this activity in which we are engaged today is manifestly unfair, it is anti-democratic and it goes against all the traditions and conventions of our democratic way of life. The question that has to be asked; and the Elections and Boundaries Commission, through Dr. Masson, has to tell this nation whether there was any collusion between the PNM and the Elections and Boundaries Commission in allowing this report to remain in the laps, in the hands and under the control of the PNM for 11 months! The EBC must tell the country!

Madam President, if we had an independent Elections and Boundaries Commission and if we had an arrangement where the report would come directly to you, no Minister could have held that report for that length of time! None! It is like the Auditor General, Dr. Saith, when she completes her work she sends her report directly to Madam President; she sends her work directly to the Speaker. Why is it, for instance, in a matter that will determine whether we will have civil war; whether we would have peace in this country; whether we would have democracy or autocracy—Madam President, it determines the whole future of our nation.

The Elections and Boundaries Commission Report would determine whether we have stability or instability. That report was kidnapped by the PNM and has given them an unfair advantage. Madam President, do you think it is by accident that the PNM is doing what they are doing in different electoral districts? It is because they had advance knowledge of this report and we did not. But I am not worried. We merely ask, and we call on the Elections and Boundaries Commission to make a public statement on whether there was any collusion between the PNM and this particular commission in releasing this report and to say why it has come so late to the Parliament. The Minister has stated very categorically that he is not responsible. The Minister said: “I am not responsible; it is the Elections and Boundaries Commission.” So let the EBC come on public record and tell this country whether there was any kind of collusion between parties in this context.

This development that we have experienced is certain to undermine and compromise the fairness of the upcoming local government elections. The PNM has taken in front before in front takes it. They have used their power to do what they have done. This is why when we go to the electoral boundaries, which I will detail for you in a short while, and my other colleagues will also deal with them later—Madam President, were you in New Zealand with us?

Madam President: No.

Sen. W. Mark: You were not, very unfortunate. I think the hon. Hazel Manning, if I recall, was there with us and Sen. Mary King. I had an opportunity to go to the Electoral Commission with my colleagues because we wanted to see the kind of democracy. It was a mixed member proportional system where you have first past the post and proportional representation (PR). We discovered that there are two commissions in New Zealand; one called the Electoral Commission that registers parties, and there is another commission called the Representation Commission which is made up of the land surveyors; the chief statistician—it is

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made up of the government and the opposition. No boundaries can be withdrawn or redrawn without consultation with the people's representatives. In New Zealand no representation commission, in the form of the EBC, can take a unilateral decision to draw over boundaries without the intervention of the people's representatives!

Madam President, here it is we are debating a report and these faceless people—

Sen. Dumas: We are not debating the report, we are debating the validation to receive the report—

Sen. W. Mark: So, what do you think; we come to just validate?

Sen. Dumas: Yes.

Sen. W. Mark: So why did you bring this report?

Sen. Dumas: The Order is coming next week.

Sen. W. Mark: The Order is coming here?

Sen. Dumas: Yes.

Sen. W. Mark: I would be surprised. Do you think you could mamaguy me, “Stretch”; I am around long you know? Madam President, I think you should talk to “Stretch” and let him be quiet.

Hon. Senator: Senator the Honourable.

Sen. W. Mark: Senator the Honourable.

Sen. Dumas: Madam President, the Order, which is the debate on the report, I want to assure the Senator and this honourable Senate, will be brought here for debate as to acceptance of the Order. Before we can even get to that discussion, however, we have to accept this report; to bring the report onto the Table; which is the EBC speaking to us about accepting the report. The goodly Senator is irrelevant.

Sen. W. Mark: No, I think you are out of place. The only person who can say that to me is Madam President. Nobody else could say that here. *[Interruption]* No, no, you do not give her basket, please. Madam President, you know, and I know that we do not anticipate debates and what my honourable colleague is doing is anticipating. There is no Order before this honourable Senate. For the hon. Minister to tell us that we must confine our debate to validation, when there is no Order before this Parliament is misleading the Parliament; he is anticipating!

There are rules and standards within our Standing Orders that say you do not anticipate any debate.

Madam President, what we are seeing here are some challenges and some opportunities at the same time. We are being called upon to validate a report in which you have several new electoral districts being created. The report is not isolated from those electoral districts that are contained therein. It is a fact that what we are debating is a report and this Bill is aimed at validating the Fifth Report of the Elections and Boundaries Commission, which simply means that when the Order comes—

Madam President: Sen. Mark, could you give me a minute please? I think what the Bill says is that it is to validate the late submission of the Fifth Report. I am letting you speak but if we consider this Bill then you are being irrelevant. What we are doing here is validating the late submission of the Fifth Report. We are not actually debating the Fifth Report. I have now heard from the Minister, which I have verified with the Leader of Government Business, that the Order is going to be laid next week. So that really speaking, Senator, you are being irrelevant, but I am letting you speak.

Sen. W. Mark: Madam President, we have the report before us; we cannot deal with the late validation of the report without looking at its content. How can we separate the content of this report from its late submission? I think, Madam President, Dr. Saith is misleading you! Do not take basket from Dr. Saith!

Sen. Dr. Saith: Madam President, please, I understand the mood that the Senator is in and the circumstances under which he is operating—stress—*[Laughter]* but it is clear what we are doing. A report came late from the EBC, we have now to validate the fact that it came late and that it becomes a report which the Parliament can now debate. The process is having validated the late submission; we will have to bring an order to debate the Report. What we are debating is whether we should validate a late submission, and it is simple. But cut him some slack; he is hurting.

Sen. W. Mark: I want to respond to Sen. Dr. Saith and to tell you how he, along with the hon. Minister, is misleading this Senate. Madam President, you are aware that when the Elections and Boundaries Commission submitted its report on the new boundaries for general elections in this country and they recommended 41 seats, that report never came to this Senate!

Hon. Senator: It is true; it never came.

Sen. W. Mark: So do not come and tell the President that this Order that you are talking about will be brought here! Madam President, only the House of Representatives, under the Constitution, has the power and authority!

Sen. Dumas: Madam President, the Senate has no jurisdiction over the management or the electoral process for the Lower House. In terms of the rest of the country, including the local government election, the Senate has jurisdiction there so therefore we must bring it here. On the other matter, you would have the ridiculous situation of the Senators telling the Members of the House of Representatives what their boundaries should be, and that is out of order and that is why that cannot come here. There are two different reports for two different levels of elections and I know that the goodly Senator is better prepared than that.

Sen. W. Mark: Madam President, I have been in this business very long and I am not going to allow, either Dr. Saith or my good friend from Tobago to bamboozle me. I have a mandate to speak on a bill—*[Interruption]* Three hundred thousand persons, that is where I get the mandate from. *[Crosstalk]* I was making the point earlier that whilst we seek to validate this Report we must query the need for us, in the future, to consider penalties. What are the penalties? Are there sanctions? What sanctions are there that we can impose on the Minister? What sanctions are there that we can impose on the Elections and Boundaries Commission? Why is this report late? The hon. Minister has given us no explanation. I was simply attempting to engage you on the process that obtains in New Zealand where you have, as I was explaining, the Representation Commission. That Representation Commission ensures that there is proper representation of the people's political organizations; whether it is the PNM or the UNC or you have smaller parties that might have one or two seats, there is, in fact, a procedure to ensure that when these things are being done the people's representatives are involved and we are not seeing this.

Madam President, if we follow the logic of what my friend has said: When are we going to be debating the Order to deal with the boundaries and how they have configured them? Would the EBC come here? Would we be able to have the right to bring the EBC before this Parliament? No, we do not have that right at the moment. Decisions are taken by the Elections and Boundaries Commission to do all sort of things to the boundaries of this country and we, at the level of the Parliament, are not aware.

We went to a recent meeting with the EBC on another matter and the logic of their explanation for the redrawing of boundaries in this country is amazing. How can we debate a Bill to validate this matter when in truth and in fact there are some nagging problems involving the Elections and Boundaries Commission that we would need to bring to your attention and to the attention of this honourable Senate? We are not just talking about the validation of the report that is late; we are talking also about local government. This is a local government report. When we talk about local government, the Minister is well aware, as the person in charge of local government, that we have to link these changes; link this late report to what is taking place at the level of local government in this country. *[Interruption]* No, you might say so; let Madam President tell me.

Madam President, unless you can give us the guarantee—and it will go on public record—that the Order the hon. Minister referred to will be brought to this honourable Senate and, therefore, you give the Parliament the guarantee and the undertaking that we can confine our contributions only to the validation question, but there will come an Order, very shortly, which will give us the flexibility to deal with, for instance, how the boundaries are drawn; what rationale was used; why one particular electoral district has “X” polling divisions and a next electoral district has “Y” polling divisions. These are some of the things we would like to debate and discuss at this level.

Sen. Dumas: Madam President, that Order is already drafted; it is the Presidential Order, and it will be brought here. The expectation is that it will be debated in the Lower House on Friday or thereabouts and immediately that that is cleared it will be brought to the Senate. That is the position of the Government. That Order outlines all issues that have been raised by the goodly Senator, as the EBC explains it. I want to make it quite clear that, as the goodly Senator said, this is a conduit function for the Government and that is what we are providing here.

Sen. W. Mark: Madam President, we believe that there should be some kind of arrangement whereby we are informed by the Elections and Boundaries Commission, and we are also informed by the hon. Minister of Local Government that what is taking place in this Parliament will not repeat itself. In other words, the law is very clear that you have to submit these reports within a particular time frame and we have not received from the Minister to date, as we are discussing and deliberating on this matter, what were the reasons that the EBC offered the Minister. What were the reasons, Madam President? Are we to assume that in the not too distant future we are going to be subjected to a similar situation where the EBC is outside of the timeline? What is the reason for it? Is it a question of staff

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shortage? Why did the EBC submit its report so late that it took the Minister 11 months after that date to bring this report to Parliament? I do not know and no one has offered you or the Parliament any valid reasons for this unnecessary delay?

Madam President, I know that the EBC has been struggling for resources. I do not know if there is a resource constraint. I do not know if they have insufficient manpower to carry out a lot of critical responsibilities. If we were told by the hon. Minister that these were the reasons this report is so late, we could work together in order to assist the Elections and Boundaries Commission, in the future, to provide that institution, which is independent under our Constitution, with the relevant, necessary and appropriate resources, both financial, material, human and if not technical resources.

But, Madam President, our colleague wants to speak whilst I am speaking, when he had one hour to explain his position. He took 20 minutes because he felt that this Parliament was a rubber stamp but now he wants to interrupt my smooth flow all the time in an effort to explain something that he ought to have explained during his presentation. We are not convinced that there is any valid reason for this contempt because the Minister has not provided us with any reasons to justify this situation.

It is our view that this ought not to have occurred. The Government deliberately and wilfully withheld this report. I am informed that it was deliberately, wilfully and calculatedly withheld from the Parliament for 11 months so that you could put your house in order, so that you could have an unfair advantage over the electoral process when the local government election is called some time in September. That is what you did!

Madam President: Senator—

Sen. W. Mark: Madam President, it is unfair! This is a democracy! This is not PNM country! This is Trinidad and Tobago; it belongs to all the citizens!

2.30 p.m.

Why a Government must kidnap a report and keep it for 11 months and take maximum advantage of the situation, and then they would come to validate? Eleven months after, hon. Minister? Madam President, that is unfair. It is unfair, and then you come to try to see if you could curb my contribution by telling me about order. Madam President, you know I have the greatest respect for you. *[Interruption]*—always, I bow to you. You are taller than me.

Sen. Dumas: Madam President, in my enthusiasm to make sure that the Senator was given full assurance that the debate would occur, I may have made a mistake and inadvertently may have misdirected a statement, because I want to make it quite clear as to what the obligations are.

According to the law the requirement is for the Order to be debated in the House of Representatives. I want to clarify that lest we be accused of some nefarious thing. It is quite clear that according to the information we have here, the Minister shall lay before the House of Representatives for its approval the draft of an Order by the President for giving effect. That Order is now before the House of Representatives and that is the obligation of the State. I think, in my enthusiasm, I may have indicated that the Order would be brought here. That is not the requirement of the law and I need to clarify and straighten that out.

Madam President: Minister, maybe, if you had said all that in your presentation, we would have avoided some of the problems that we are having here today, and some of the misunderstandings we are having. [*Desk thumping*] And all the interjections that are necessary. As I said, maybe a lot of this would have been avoided but—since now we have an understanding of what the procedure is.

Sen. Dumas: No, no.

Sen. Mark: Sen. Dumas, cool it.

Sen. Dumas: The requirements must be yours to know.

Sen. W. Mark: Madam President, in light of my colleague's submission—and I want to tell you, confession is always good for the soul. I am happy that you are honest, decent and you are able to, in a dignified way, indicate to this honourable Parliament that you made a mistake. I did that before so you are just following in my footsteps. No problem with that.

Madam President, in light of my colleague's admission where there is a strong possibility that that Order would never come to this House, how can we validate a report without debating the contents of the report?

Madam President, a lot of my time was kidnapped this afternoon by this hon. Minister. Every time I sought to bring to your attention and this honourable Parliament's attention some of our concerns about the boundaries, I was interrupted frequently to tell me I am out of order. Here I am with about another 20 minutes to go or less, and I have not even begun to sink my teeth into my contribution. There are so many areas I have to mention on this report so that I hope that you would allow me some peace during the next 20 minutes of my time.

Sen. Montano: Madam President, on a point of order. The Senator is having difficulty understanding what his function is here this afternoon. He just said for the umpteenth time that he wants an opportunity to debate the report and the issue is that he is off the subject; he is irrelevant.

Madam President: Please, Senators, I am the one who will ask him. Minister what is the point of order?

Sen. Montano: The Bill before us deals only with the late submission. The contents of the report form no part of the debate.

Madam President: So you are saying that he is irrelevant?

Sen. Montano: And he is repeating things saying that he wants an opportunity to debate the report and that is not the issue in front of us. The issue only is the late submission.

Madam President: This is a difficult situation here. I have to agree with the Minister and I said it to you earlier on Senator, that you are being irrelevant as far as this Bill is concerned. If we read it carefully we would see that we are not debating the report. I understand your concern that you may not have an opportunity to debate the report but under this Bill, we are not debating the report. We are validating the late submission of the Fifth Report and really it is something that should have just taken a few minutes.

I have allowed you up to a point but you like me so much—

Sen. W. Mark: And, I truly do.

Madam President: I have allowed you up to this point but I really have to make a decision here; now I cannot allow us to be irrelevant. We need to do what we are here to do, and that is to validate.

Sen. W. Mark: And I really do.

Madam President: At this point, the hon. Senator's speaking time has expired.

Motion made, That the hon. Senator's speaking time be extended by 15 minutes. [*Sen. Dr. T. Gopeesingh*]

Question put and agreed to.

Sen. W. Mark: Madam President, I know the PNM wants to go home very early, Madam President, I want to refer you to page 4 of the Bill and read the last stanza. It says:

“*And whereas* it is expedient that the submission out of time of the said Fifth Report of the Commission be validated...”

For what, Madam President?

“for the purposes of the forthcoming Local Government Elections.”

How can I be irrelevant when the report is saying—this is a resolution before this Parliament? It is not just about validating. It is about validating for the purposes of the forthcoming local government election and every Member of this Parliament has a right to debate this entire report. I cannot see how anybody could confine me simply to a validation when the resolution is saying that of this report—

Sen. Montano: Madam President, on a point of order. He is debating your ruling and that is clearly out of order.

Madam President: I know.

Sen. W. Mark: Madam President, I am not debating, I am just pointing out to the hon. Madam President the nature of the resolution. Madam President, if you look at the resolution it tells us that it is: “for the purposes of the forthcoming Local Government Elections”. How can I confine myself not to the forthcoming local government election, and in doing so, not make reference to the boundaries? There is no way that anyone can debate this report without looking at this report.

Madam President: Senator, we can go on all day on this matter. The fact is if we go by the Explanatory Note of this Bill, then we are not debating the report.

I have made a ruling and I can be very firm. I could say I want no more debate but I am giving you an opportunity to agree with what we are saying, and I do not want to be dogmatic.

Sen. W. Mark: But Madam President, the Explanatory Note is just that. It gives you an explanation but the actual content of the Bill is what we have to deal with. The content of the Bill is contained from pages 3 to 5 and I am saying that a resolution before this honourable Senate deals with validating for the purposes of the forthcoming local government election. How can I not be allowed to debate this report?

Sen. Montano: Madam President, on a point of order; several points of order. The Senator is debating your ruling and he is trying to do what the law does not provide for us in this House. That report is debated in the other place, it is not debated here and he is trying to go through a back door that does not exist.

Madam President: Senator, please, I think at this point you need to finish whatever contribution and spend the few minutes winding up without going to the Bill.

Sen. W. Mark: Madam President, I am going to bow to your ruling but this a very strange development. You are listening to the Government side and you are not giving the Opposition—your role, if I may say, is to protect us, not to support them.

Madam President: Senator, will you sit please? I am going by what is here in front of me. I am interpreting this according to what I read here. I am not being guided by what is being said there or by what is being said by you. I am being guided by what is in front of me and, therefore, I expect you to follow my ruling.

Sen. W. Mark: Madam President, I believe that the Government is attempting to muzzle the Opposition from speaking on this Bill. [*Desk thumping*] This is a very important Bill where they have sought to thief the election before the election is held and we are exposing the Government and the Government is trying to muzzle us. Madam President, we have a right to speak in this Parliament and we have a right to debate this report, and I find it very strange that in speaking on a Bill like this, we are being told that we cannot deal with this. So what is the role of the Opposition?

Madam President: Senator, sit down. You have a point of order.

Sen. Dumas: Yes, Madam President. Madam President, I take most abuse but when you lay improper motives on the Government of Trinidad and Tobago in respect of an election, I think I have to suggest to the Senator that he should withdraw that accusation. [*Crosstalk*] You are laying improper motives on the Government.

Sen. W. Mark: Withdraw what?

Madam President: Senator, Minister, I would not make any ruling on that.

Sen. Dr. Gopeesingh: Madam President.

Madam President: Yes.

Sen. Dr. Gopeesingh: I stand not to contest your ruling whatsoever but to help guide the process.

Madam President: I thank you.

Sen. Dr. Gopeesingh: But to help guide the process. The Explanatory Note says:

“The Bill seeks to validate the late submission of the Fifth Report of the Elections and Boundaries Commission...”

So if we are validating a report—the late submission of what? It is the late submission of a report? So if we are validating a report we have to debate the report, Madam President.

Madam President, Collins Concise Dictionary says validate means to confirm or corroborate, to give legal force or official confirmation. How can this side give legal force or official confirmation to something that we have not analyzed and we have not discussed? That is it. How can we give a confirmation or a corroboration to something that is not being allowed to be debated? We cannot do that.

Sen. Montano: Madam President, on a point of order. Again, the hon. Senator is debating your ruling. [*Crosstalk*]

Sen. Dr. Gopeesingh: I said I am guiding her.

Madam President: I am allowing some leeway because I need to get everyone to understand what we are doing here and without anyone feeling that they are not being given the opportunity to speak. I am trying to listen to both sides but I have made a ruling and that is what we are going to stick to; that we are not debating the report, we are debating this Bill.

Sen. W. Mark: Madam President, I would like to, with respect, suggest that we suspend this sitting and let us have some discussion behind closed doors. I do not want this debate to deteriorate. I am losing my patience here. I am not happy with what is taking place in this Parliament today, and I do not want to take action today, but I am saying let us go behind the doors and let us discuss this matter. Why did you bring that report here? Madam President, may I suggest that you suspend for five minutes and let us have a discussion on this.

[*Madam President, pounds the gavel here*]

Madam President: Minister!

Sen. Dr. Saith: Madam President, this is a classic case of much ado about nothing. We have a report from the EBC which came late. We need to validate the fact that it came out of time. We do not need to validate the report. That is not default. In fact, if this report had been submitted in time it would not have been here at all.

Sen. W. Mark: That is why we have to debate it.

Sen. Dr. Saith. [*Crosstalk*] It is here because it is late and the Senate is being asked to validate the fact that it came late.

Sen. Dr. Gopeesingh: So what is late?

Sen. Dr. Saith: The submission.

Sen. Dr. Gopeesingh: Submission of what?

Sen. Dr. Saith: The report.

Sen. Dr. Gopeesingh: So we cannot debate the report then? So you are late—submission of something X, what is the X?

Madam President: Senators, I do not understand why you all are having such difficulty to understand. I understand what is being said. Sen. Dr. Gopeesingh, I am surprised that you do not understand. Senators, to end the argument, I have made a ruling. I have given you an opportunity to still discuss that ruling but I do not think we could go any further on discussing that ruling. We have a Bill before us which says we are validating the late submission. It does not say we are validating the Fifth Report of the Elections and Boundaries Commission. That word, “submission” puts a different meaning altogether on it.

Sen. W. Mark: Madam President, I ask that we suspend this sitting. I have been here; we have had reports like this and we have debated the report and I am saying what you are saying is inconsistent with our rulings. It is inconsistent with what we have done in the past and I ask and I appeal to you to suspend the sitting for about ten minutes and let the Leader of Government Business meet with you, the Independent Senator and myself, and let us try to arrive at a consensus on this matter.

Madam President, if we did not have a role to play in this report it would have never come here. If a report is to be approved by this honourable Senate, every Senator must have a right—[*Crosstalk*] Madam President, it is to validate the report, the late submission of the report.

Sen. Dr. Saith: Before I sit, let me read the law. It says it sets the time line for the report being submitted. This was submitted outside the time line so it has to be validated, the late submission. It says:

“As soon as may be after the Commission has submitted a report under subsection (1)(a), the Minister shall lay before the House of Representatives for its approval the draft of an order by the President for giving effect,

whether with or without modification, to the recommendations contained in the report, and that draft may make provision for any matters which appear to the Minister to be incidental or consequential...”

Where the draft made under this section gives effect to any such recommendations..., the Minister shall lay the draft before the House of Representatives together with... the reasons... (for so doing).

These reports are laid in the House of Representatives and if this report had been submitted in time, it would have gone straight there; it would not have been here. It came outside the time and what is being attempted here is to validate the fact that it is a report, although it has come outside of the time, which can be considered for submission to the House of Representatives. That is what we are doing and I am sure the hon. Senator knows that when the report goes to the Lower House both sides of the Opposition will have ample opportunity to debate this. So nobody is depriving the Opposition of an opportunity to make their contribution on the report.

Sen. W. Mark: I have a Bill before me. It is entitled: The House of Representatives Bill.

Madam President: Sen. Prof. Deosaran, you are on a point of order?

Sen. Prof. Deosaran: Madam President, yes. I do regret this occasion is causing you so much discomfort. I think it is unnecessary, but I do not want us to miss on this occasion, two very important points.

Who would admonish the Elections and Boundaries Commission for putting us in this position? Are there any consequences to flow? Would the Parliament take any steps? Would the Government for that matter, notwithstanding the reputed independence of the Commission? Secondly, when I peruse the particular Bill, it seems to me that there is only one day difference which even aggravates the situation.

Lastly, I hope the apparent delay on the Minister’s side, the act of apparent delinquency, is not repeated on other occasions. Thank you, Madam President.

Sen. W. Mark: Madam President, the Bill before us is headed “House of Representatives” and we are the Senate. So, if we are debating a Bill just to validate as you said, and you have pointed out, and I disagree, but I bow to your submission and ruling, why is it we have a Bill before us entitled “The House of Representatives” and we are the Senate? Madam President, it seems to me that the Government has to go back to the drawing board, to the table, and bring a

EBC Validation Bill
[SEN. MARK]

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proper Bill before the Parliament which is the Senate, and let us debate it because all of us have been given a Bill headed “The House of Representatives”. So Madam President, I would like the Government to suspend this debate, go back to the drawing table, bring a proper Bill and we can engage hereafter. We cannot validate a House of Representatives Bill.

Madam President: Hon. Senators, I have checked with the Clerk as far as the heading is concerned and she said because it came from the House of Representatives to the Senate that is why it is headed “House of Representatives”. There is nothing wrong with this.

Hon. Senator, I am sorry to tell you but your time is up. [*Desk thumping*]

Sen. W. Mark: Madam President, I know that my colleagues would like to get me out of the way like they did with Mr. Panday, but it will be very hard. Madam President, I would like to say I am very disappointed in this particular arrangement here today. We will participate reluctantly until we determine otherwise if this thing continues as it is going, but we feel that we are being unjustly dealt a blow by this Government which is designed to muzzle the Opposition and we resent that, we object to it and you have at least seen my time being eaten away by the Government. I have allowed them to intervene, but I believe we are going down the wrong road on this particular measure.

Sen. Dana Seetahal, S.C: Thank you. Madam President, I just thought I would read the section under which this Bill is premised and clause 2 says that, the report was submitted in accordance with section 4(2)(b) and it is because of that section that we need to validate this Bill. At section 4(2)(b) of the Elections and Boundaries Commission (Local Government) Act, it says:

“Reports under subsection (1) shall be submitted by the Commission—”

And this is in the case of any subsequent report meaning after their first report, which is in this case, afterwards

“not less than two nor more than three years from the date of submission of its last report.”

So it seems that what this Bill is saying is that they were over three years in submitting the Report so they want to validate it to bring it into conformity with the Act, just to say that what we did was in conformity with the Act.

I understand what the discussion has been about so far and clearly if it were that the Report was really late, then it would seem to me that would be all it is about. But my problem is in understanding as to why the Government feels that

the report is late at all. If one looks at the date of the last report, it is July 08, 2002 and that is cited in the preamble to the Bill before. That is in the third paragraph, Madam President.

“And whereas the Fourth Report... was submitted on the 8th July, 2002:”

And this report that we have as an Appendix to this Bill—for information purposes, I guess—is dated July 08, 2005 and people would say that is one day but under the Interpretation Act, Computation of Time, it says:

“25 (1) Where in a written law a period of time is expressed to be reckoned from a particular day or a particular event, that day or the day of event shall not be included in the period.”

So the last day was July 08, 2002. And you do not include that date, so therefore the report was submitted within three years which means, therefore, this Bill is purposeless, which means there is no reason for it. [*Desk thumping*] You do not validate something which does not need validating and this is my point; that is the reason I would not vote for it, because it is purporting to validate an event which is already valid. So it would seem to me that this Senate, if we voted for this Bill, would be contravening the law and I think if it is, and the Government side wants to have their own legal interpretation, they should look at the Interpretation Act, Chap. 3:01, section 25(1). It is a normal everyday thing, and I am sure Sen. Kangaloo would bear me out on this, that in legal practice you do not count the day from the time of computation. So July 08, 2002, to July 08, 2005 is three years. That is what I needed to say. It is exactly three years, and it is therefore in conformity with section 4(2)(a) and (b) of the relevant Act.

I do not know on what advice this was brought but I presume it was on some kind of advice, but the legislation clearly says not less than two nor more than three years. So if you submit a report three years exactly, that is not more than three years. So it is, in fact, that the report is submitted in time. And that is my point.

Just as an addendum, this same Act continues that the report thereafter which is submitted to the Minister shall be laid by the Minister, and Sen. Dr. Saith read it, before the House of Representatives as soon as possible. I do not want to preempt. So it would seem to me that it was not done as soon as possible but it is still not in breach of the Act. What should have happened is that this report should have found its way to the House with the Order giving effect to it and then it would have become effective. Because, bear in mind, it is a report after all, in accordance with 4(3), (4) and (5) because the House will then vote on approval for the report.

Madam President, as important as we like to think we are—the Senate—we unfortunately do not have a say in approving this report but, I think the confusion stemmed from the fact that this Bill came before us to validate what many saw as a report, but it was really to validate the lateness of bringing the report before Parliament in whichever House. As I have said, that Bill is really redundant and that is my submission.

Madam President: Hon. Members, I think, following the submission of Sen. Seetahal, S.C., I would definitely like to suspend for 10 minutes. I would like to see the three Leaders and the Minister.

2.57 p.m.: *Sitting suspended.*

3.15 p.m.: *Sitting resumed.*

The Attorney General (Sen. The Hon. John Jeremie): I apologize for not being in the Chamber a while ago when my colleague, Sen. Seetahal S.C., made her contribution. The Bill is before us precisely because it was submitted on a day when, in the view of the Government, it was out of time. We recognize that the Interpretation Act provides for an extension of time by 24 hours in section 25(1), but the written law that we are concerned with, in our view, does not specify a date. It speaks to a period of time, that is, three years. We considered the more relevant subsection to be subsection (7)(d), which speaks to written laws with a reference, without qualification to a year “shall be construed as a reference to a period of 12 months”.

Now the Bill is before us precisely because elections are a serious matter. Had the report been submitted 24 hours after this event, there would have been no question. Twenty-four hours would have made the issue abundantly clear. It is not, in our view, clear. It is ambiguous. Elections are a serious business so that *ex abundante cautela*, as the lawyers say, out of an abundance of caution, we are here to validate the submission of the report and we think the Bill is necessary.

Madam President: Senators, it appears that we still have to validate the report. I listened to the hon. Attorney General in our discussions and we took into consideration what was said by Sen. Seetahal S.C., but out of an abundance of caution we still have to validate the late submission of the report.

Senators, I remind you that we are not debating the report.

Sen. Dr. Tim Gopeesingh: Madam President, after such lengthy discussions on the rationale for the debate here in the Senate this afternoon, the Senate obviously has come to the conclusion that we have to debate the late submission of the report.

This is the first opportunity for us to debate anything related to a report from the Elections and Boundaries Commission (EBC) and I think it is a fitting time for the Opposition to pay tribute to one of the most distinguished gentlemen who served the EBC, Mr. Oswald Wilson, who passed away recently.

On behalf of the Opposition, we extend our deepest sympathy to the family of Mr. Oswald Wilson on his passing recently. He stood as a tower of strength in the midst of adversity, being pounded by the then Opposition, the present administration. They wanted to have him removed and asked for a commission of enquiry into the functioning of the EBC. He stood tall and strong and maintained the independence of the EBC.

This report of the EBC, under the Municipal Corporations Act, 1990 and the Elections and Boundaries Commission (Local Government) Act, Chap. 25:50 is being submitted, as Sen. Mark said, 10 to 11 months later than the time it was given by the EBC. We ask the question: What are the reasons for the late submission? We are being asked to corroborate, give legal force or official confirmation to something that has been submitted late. We have to ask the reasons. Are we validating something that was decidedly a late submission in terms of a decision to submit it late?

The EBC completed this report on July 08, 2005 and the Minister had it. The Constitution of Trinidad and Tobago indicates what he has to do. It says here in section 72, on page 63 of the Constitution:

- “(2) Reports under subsection (1) shall be submitted by the Commission—
- (b) ...not less than two nor more than five years from the date of the submission of its last report.
- (3) As soon as may be after the Commission has submitted a report under subsection (1)(a), the Minister designated by the Prime Minister for this purpose (in this section called ‘the Minister’) shall lay before the House of Representatives for its approval the draft of an Order by the President for giving effect...”

So Madam President, why did the hon. Minister take 10 to 11 months to submit a report? He has to give an explanation to Senators. Senators are being asked to validate a late submission.

Madam President: I did not want to correct you Senator, but it is the late submission by the EBC, not the late submission by the Minister. You can ask your question, but I want you to be clear on that.

Sen. Dr. T. Gopeesingh: It is a double-barrelled sword—both of them. We are being asked to validate a later submission by the EBC, which is questionable under the Interpretation Act, but now the Minister is making a late submission 10 to 11 months later. Even though it irks Senators on the other side when we say that it is 10 to 11 months, we have to ask the questions of the hon. Minister. Was it a decision of the administration to do it and they held him back and what were the reasons for holding him back? Is it incompetence? Is it mismanagement or is it a deliberate ploy to frustrate the other political party?

When one political party has a report and analyzes the report and the other political party does not see the report, it is against the Constitution. The Constitution really wants to ensure that there is equity in all that is done in Trinidad and Tobago.

The Minister had the audacity to say this afternoon that he just wanted to lay a late submission and he made no comments. Madam President, I have analyzed this report—you are not allowing us to debate it—but there are so many flaws and so many things have gone wrong since then that he could have had a draft order presented to the Lower House after analysis of this report, showing that there are a number of things that have gone wrong with this report since then.

It is not unbecoming for us to say that we are not being allowed to debate it here and that the House of Representatives debated it. The Minister laid it in the Lower House and two Members of the Opposition debated the issue. It is here in *Hansard*, so it is unfair for us because the same Bill is being laid here in the Senate. It was laid in the Lower House for late submission and a debate was allowed, but we are not being allowed to debate it. We want to ask—

Sen. Dumas: Madam President, by way of explanation, in the Lower House, an error was made in that a request was made that the Motion and the Bill for validation be done at the same time. That was done in error. I know that we should not be referring to the proceedings down there, but since the Senator raised it, I want to suggest to him that maybe he is not fully seized of the information and there may be good reasons for the practice of not raising reference to those discussions.

Madam President: You should not be going to the Lower House.

Sen. Dr. T. Gopeesingh: We have it here in the *Hansard* that the Speaker allowed the Members to speak freely.

Madam President: But you just got an explanation.

Sen. Dr. T. Gopeesingh: The point here is that it is grossly unfair for an administration to have a report that comes from the EBC, whether it is in a reasonable time, the correct time or out of the time. Something is fundamentally wrong for him to keep it deliberately for 10 or 11 months and then try to bring it to the Lower House for discussion and validation. I will tell you why.

You have a situation where this report, which was prepared on July 08, 2005 by the EBC, was laid. It comes nine months later. Is it that the Minister had decided that he wants to keep things away from the other political party while they do their analysis of everything in the report to see where they fit in the scheme of things as far elections are concerned?

Madam President, we got a copy of some information from the EBC dated March 06, 2006. This report in 2005 shows that there were 13,086 polling divisions with 895,409 electors, but as at March 06, 2006, long before we were asked to validate the late submission of this report, things have changed considerably. Are we validating a report that is no longer relevant?

Madam President: Senator, do not try to go to the report!

Sen. Dr. T. Gopeesingh: I am drawing a direct relation on the whole question of the late submission to why it is irrelevant now. Are we being asked to validate something that is totally irrelevant? This report is irrelevant now—totally irrelevant. The EBC had 13,086 polling divisions, as at March 06, 2006, it is 14,063 polling divisions. The EBC had 895,409 electors, as at March 06, 2006, 954,000 electors.

So, Madam President, it is conceivable that a government would have a report dated July 08 with a certain number of electors and polling divisions based on the EBC and now in May, things have changed radically and we are being asked to validate something that is way out of time.

Madam President: No, not to validate.

Sen. Dr. T. Gopeesingh: But we are validating something that is no longer relevant, which is way out of time. This report is outdated. It is archaic and according to the EBC figures now, this report is of no sense. This Government seems to want to subvert the course of justice; they want to subvert the democracy; they want to subvert the Constitution; take everything in its hands and deal with it as it wants. The Minister had the ability to present a draft order downstairs. There are many things that are not correct and you would not allow us to debate it, therefore I am being prevented from saying some of the things.

Madam President: Senator, you are not being prevented. Sit down, please! The report is not before us and, as I understand it, we do not even debate that report in the Senate. You are not being prevented; it is just not ever done in the Senate. Please do not use the wrong word.

Sen. Dr. T. Gopeesingh: If we should not be debating it here, it should not have been brought here in the first place. It shows the incompetence of this administration in terms of the whole legislative agenda. They bring bills, they know the bills are not going to be accepted, but they bring something that should not have been here in the first place. That is the type of performance we get from an administration that does not know whether it is going A or B—totally confused. This is just one example of the total mismanagement and incompetence of this administration. If at the higher level of the State in Parliament, they can make blundering faux pas like that, you can imagine what is happening in other areas as we see from time to time.

Madam President: Are we now debating the Government?

Sen. Dr. T. Gopeesingh: No, no, but the Government through the Minister is asking us to validate a late submission.

Madam President, maybe it is a deliberate ploy on the part of this administration to make the EBC look bad. You will remember there was a report of a commission of enquiry into the function of the EBC on Friday, May 31, 2002, when this was laid. Is this another case where, if they feel they would lose the coming election—they definitely will—they probably want to make the EBC look bad? We have very high regard for the chairman of the EBC, Dr. Masson, but we do not have high regard for other commissioners on the EBC. You all have appointed party hacks on the EBC and you all know who they are.

Madam President: Please speak to me! I am not “you all”.

Sen. Dr. T. Gopeesingh: They know what they have done. On one hand, when they feel that they can frustrate the EBC and make it look bad; when they had Raoul John moved out, they moved Raoul John and they brought—

Madam President: Who is “they”?

Sen. Dr. T. Gopeesingh: The PNM. He brings it to the point where the whole appointment of the members of the EBC and the chairman—that whole question of the appointment is almost similar to the appointment of the Police Service Commission in the police reform bills.

Here is another independent commission—the Elections and Boundaries Commission. We had difficulty with the Police Service Commission and finally we decided that the members of that commission should be appointed after the persons to be appointed have been passed through the Parliament. This is another commission where commissioners are appointed based on party affiliation and there is direct example in this present situation that there are people on that commission.

We are asking that this whole question of the need for constitutional change in the appointment of commissioners on the EBC be considered. We have highest regard for the chairman at the moment, but we cannot say so for some other members on the commission. I will not go into details of it. They know who they are. Under the Constitution, that needs change. You cannot have an important issue like the EBC report and election to be held only being debated by one of the Houses of Parliament, the Lower House.

Madam President: That is the elected House.

Sen. Dr. T. Gopeesingh: That is the elected House, sure, but the law is that we have a bicameral system and it ought to be respected. Not because it is law, it is correct. The Constitution can be changed so that the debate takes place in the Senate as well. There are independent-thinking minds in the Senate who can bring some objectivity into the debate. We may be biased in our thinking because we are opposing the Government, but what about the respect for the Independent Senators, who may have objective thinking on the whole process? It calls for some degree of change.

Even the laws of Trinidad and Tobago, the Representation of the People Act, one of the recommendations of a commission of enquiry is that this law be updated because it is not in keeping with what is happening now with elections and boundaries. This Act was formulated in 2000 and this commission of enquiry has shown that this needs to be changed as well. There are so many issues as far as these elections are concerned and as far as this report, that it is incumbent that the Constitution be changed to allow discussions and debate in the Senate.

Secondly, the laws of Trinidad and Tobago, the Representation of the People Act, need to be modified and updated. Some of the recommendations from this commission of enquiry into the functioning of the EBC ought to be analyzed and done again and there are so many other areas.

The last important point is that the Minister had the ability to present a draft order in the Lower House to make amendments and changes that were absolutely necessary.

So, Madam President, it is undoubtedly a very difficult thing for me. I was Elections Officer of the party for three general elections and one local government election. Those are the elections that we tied in 1995, 17:17:2; in 2000 we won 19:17; in 2001, it was 18:18 when the governance was taken away from us surreptitiously. It pains me to see the grievous things within this report; a whole avalanche of discrepancies, uncertainties and things that are fundamentally wrong in the conduct of an election and they cannot be discussed, but I will pass this information to my colleagues in the House who will obviously have to raise it there.

It involves many aspects of this question of election; the question of the time it is called and when it is held—five weeks—and the gamut of things to be done during this five-week period. There is a schedule of events that must take place. For instance, during the last election of October 07, 2002, polling day, there were only five weeks to deal with a whole list of events. It is incumbent upon us as legislators to look at the Constitution now and to determine whether five weeks is an appropriate time from the announcement of an election to polling day. There are too many things to be done and many difficulties that are encountered in the whole process of having an election within a five-week period.

Madam President, there are so many other areas in this report, which we are not going to debate—

Madam President: Come back to the Bill!

Sen. Dr. T. Gopeesingh:—but the important thing in this is that we have been given a raw hand in being presented with a Bill or an Elections and Boundaries Commission report months after the other side had gotten it and they used it to their advantage and continue to use it to their advantage.

Madam President: You are repeating yourself!

Sen. Dr. T. Gopeesingh: The point has to be re-emphasized, Madam President. It is not a matter of repetition. There is reason for repetition. When I teach medical students, I repeat to them certain things because I want them to learn. [*Interruption*] You all have to learn. The question is that you have deliberately done it; you have your reason for it; it is unfair to us and it is unfair to the people of Trinidad and Tobago; it is unfair to the 305,000 persons who voted for us in 2000.

Madam President, you have ruled. We have to accept your ruling and comply with it, but the points had to be made. I close my contribution now.

Sen. Dr. Eastlyn Mc Kenzie: Madam President, thank you very much. I think we are in a bit of indecision as to whether the submission of the report is late or not. Having listened to all the arguments, I think it is important that we decide in our minds whether the submission of the report is late. I have read, I have heard, I have seen and I am not convinced that the report is late.

I think it is important to say this because if we say the report is late, it means that we are laying blame on the EBC. Strangely enough, in what was given to me, I have the draft order that is to be debated in the Lower House and I have all the signatures of the Members, the chairman, Oswald Wilson, deceased now, and knowing the kind of person that he was, I do not believe he would have signed a report that was late, submitted it late and not put an excuse or reason for it being late. That is the kind of person I know Mr. Oswald Wilson to have been. If he felt that the report was late, he would have been the person to confess to the late submission of the report due to whatever reason.

I do not feel the report is late because of what I have read in the rules and laws and so on and because of the confidence I have in the integrity and honesty of the then chairman. If we accept that it is late, we are blaming the EBC for not doing its work on time. I would suggest to the EBC that they not submit their report so close to the final date; that they try to give a week's advance submission so that there would be absolutely no doubt in anybody's mind about a day, a half day; whether it is a.m. or p.m., midnight or whatever. We would be very sure that the report is on time because we would have been given a few days' notice.

Thank you, Madam President. That is my submission.

Sen. Prof. Kenneth Ramchand: Madam President, I, too, am of the opinion that the report is not late, but I really do not know if we have been conducting the people's business this afternoon.

Before I go into the difference between "three years" and "more than three years," and before focusing on the Government's determination to proceed and to make assurance doubly sure because it is an election matter, I want to put a question to you about a hypothetical situation.

If the Cabinet of Trinidad and Tobago were to give approval to an international company with a dubious environmental record to establish a smelter plant in the middle of prime agricultural land and in the face of an agricultural community in Tobago, what do you think would be the reaction of the Tobago House of Assembly? This is what they would say, Madam President.

Sen. Dumas: Madam President—

Sen. Prof. K. Ramchand: Let me finish my sentence, “nah”, I am coming to it.

Madam President: Senator, I am allowing you a little leeway.

Sen. Prof. K. Ramchand: Thank you, Madam President.

Madam President: Do not go too far!

Sen. Prof. K. Ramchand: No. This is what they would say. They would say: You cannot do that without the approval of the THA and without taking the views of all the people of Tobago, including the immediately affected communities.

3.45 p.m.

Madam President, such a reaction would have been the most dramatic illustration possible, of the virtues of decentralization and the value of local government. I am very relevant. I am talking about local government.

I am amazed that we have in the THA an established and well-developed model for local government and the Government, through the Minister, who is intimate with Tobago, has not shown any wish to capitalize on the THA and as the Minister of Local Government, to speculate on the nature of local government in his presentation. I am sure you would have given him the leeway.

Madam President: As you are having now. Please, come back to this.

Sen. Prof. K. Ramchand: I have more irrelevances.

Madam President: And I cannot allow it.

Sen. Prof. K. Ramchand: I think I have made the points I wanted to make about local government and the aluminium smelter. I thank you very much.

Madam President: Anybody else here or there? Minister.

The Minister of Local Government (Sen. The Hon. Rennie Dumas): Madam President, I would like to take the opportunity to thank Senators for their contributions. The question that we face, in terms of the Bill, lies strictly in clause 2, which speaks to the purpose being to validate the report. It is deemed to have been submitted to the Minister in accordance with section 4(2)(b) of the Elections and Boundaries Commission.

The opportunity might have been taken to discuss a number of issues, but in the case of the issue of the date of the election, I think everybody knew the election date. The period is three years; and, therefore, when Senators suggest that

we are seeking an unfair advantage, that could not be true because we are well within the three years and if the UNC chose to break up their party and not be in a position to face the election with some fortitude and possibility, then that is a matter for the UNC.

Secondly, I can understand the enthusiasm with which some Senators would have approached the debate today, because enthusiasm for disruption of the Government's programme may very well be the mechanism to ensure that those Senators remain holding their seats in avoidance of the return of ex-Senator Robin Montano. I can understand their enthusiasm; whether it was the Leader of the Opposition Business or otherwise. The enthusiasm is understood in that context.

The reality is that the report came in on a certain date, the one before that came on another date and the judgment was that for the protection of good governance of the country, we are required to bring and afford the Senate the highest honour to agree and treat with the matter. In that context, I do not think that we are in a position to deal with the creditability of the Elections and Boundaries Commission and the creditability of the elections and how the UNC contrives to lose the elections and move out of governance. Those are not the matters that concern us.

Sen. Dr. Kernahan: Is only UNC here or what?

Sen. The Hon. R. Dumas: I am saying what was said. Your Senator raised it.

Sen. Dr. Gopeesingh: Be relevant!

Sen. The Hon. R. Dumas: All we are trying to suggest is that for the record, the Government had no hand in making sure the UNC is not ready for elections, that they can offer nothing on the table to the people for their governance.

Sen. Dr. Gopeesingh: Call the elections, we ready!

Sen. The Hon. R. Dumas: There is no question of this double-barrelled sword that we are hearing about. [*Laughter*] That was said by Sen. Dr. Gopeesingh. I understand the confusion and he has exhibited it. The only thing that is wrong—I am hearing about these unfair practices—is what is wrong with the UNC. That is the only thing that is wrong.

Madam President: Senator, please come back.

Sen. Dr. Kernahan: He has an obsession with the UNC.

Sen. The Hon. R. Dumas: I want to finish the last thing. The report is out of time. The analysis is with us and we are asking for the support of the Senate in validating the actions of the Elections and Boundaries Commission. I thank you.

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

Senate in committee.

Clause 1 ordered to stand part of the Bill.

Clause 2.

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

Sen. Dr. Gopeesingh: Madam Chairman, I propose the words: "submit to the Minister", are not in accordance with section 4(2)(b). It is deemed to have been submitted to the Minister.

Sen. Dumas: We have already taken the vote.

Madam Chairman: We did not finish the vote. Do I have any argument on this?

Question put and agreed to.

Clause 2 ordered to stand part of the Bill.

Preamble approved.

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

Senate resumed.

Bill reported, without amendment, read the third time and passed.

ARRANGEMENT OF BUSINESS

The Minister of Public Administration and Information (Sen. The Hon. Dr. Lenny Saith): We are going on to the next Bill.

FINANCIAL INSTITUTIONS (AMDT.) BILL

Order for second reading read.

The Minister in the Ministry of Finance (Sen. The Hon. Conrad Enill): Madam President, I beg to move,

That a Bill to amend the Financial Institutions Act, 1993 be now read a second time.

Madam President, the Financial Institutions (Amdt.) Bill, 2006 represents the first phase in the overall review of the Financial Institutions Act, 1993, which forms a part of the agenda that is contained in the policy document the *White Paper on the Reform of the Financial System of Trinidad and Tobago*, approved by this Government in June 2004.

The reform recognizes where we are in our stage of development and articulates a series of second generation reforms focusing on improved regulations and better institutions. In fact, this represents a promise most recently made by the Hon. Prime Minister in his 2005/2006 Budget Presentation.

While we had intended to have the Phase One amendments presented to Parliament at the end of 2005, for early introduction in 2006, we considered it prudent to solicit further industry feedback as part of the reform process.

This Bill is being presented to address urgent and critical matters necessary to strengthen the supervisory regime in Trinidad and Tobago and align our financial legislation with other Caribbean jurisdictions, where our institutions operate, and with international best practice.

Our vision, Madam President, is for Trinidad and Tobago to be the Pan-Caribbean Financial Centre. This Bill, along with the other amendments to be addressed in the Second Phase of the review of the Financial Institutions Act, will move us closer to realizing this aspiration.

We are addressing these matters at this point in time because of the emergence of certain trends in the market which are tending towards consolidation and the aggressive posture of investors in Trinidad and Tobago and the region warranting more immediate regulatory protection.

To say that the financial services industry in Trinidad and Tobago is transforming at a rapid pace, is a conservative observation. It is widely appreciated that globalization of commerce and the emergence of new and liberal structures are proving to be tremendously challenging, not only for financial institutions but also for the supervisory authorities. As far back as 2004, we recognized these issues as seen in the *White Paper on the Reform of the Financial System of Trinidad and Tobago*. The White Paper highlighted some of the ways in which the sector is responding to the changing landscape, with many players being drawn to the vehicle of conglomeration. Major banks and insurance companies are building full-service financial groups and financial institutions are engaging in increased merger and acquisition activity around the world.

Madam President, the evolution of the regulatory framework must mirror the pace of these developments so as to enable governments, and indeed supervisory authorities, not only to manage the exposure to systemic risk, resulting from these new structures, but also to create an environment of financial soundness and stability, to enhance global investor confidence and participation.

The Financial Institutions Act has remained fundamentally unchanged since its enactment in 1993, although some consequential amendments were made as part of the Insurance (Amdt.) Act, 2004, which transferred the responsibility for the supervision of insurance companies and private pension plans to the Central Bank. The responsibility was previously with the Ministry of Finance.

Given the dynamic nature of the financial system of Trinidad and Tobago and the constant changes occurring in the international arena, a review of the Financial Institutions Act, 1993 was imperative, if we wished to keep the legislative framework relevant and robust. In light of the scale of the exercise—it is a very extensive exercise—our approach is to introduce early critical amendments to the Financial Institutions Act, which we propose to you today, while at the same time, progressing with a comprehensive review of the substantive Act, to bring it in line with international best practices. That is currently ongoing and continues to engage our attention. This Bill represents only those early critical amendments. Other substantive amendments would be presented to the House in due course, since they warrant further discussion, consultation and research, which are currently being undertaken.

These amendments seek, among other things, to:

- clarify and extend the scope of the Central Bank's responsibilities with respect to the payment system, electronic money, money remitters and exempt institutions;
- more effectively protect licensees from group risk by requiring separation of the financial and non-financial activities of a group, through the use of financial holding companies;
- enable the Central Bank to conduct consolidated supervision, for example by broadening its powers to inspect subsidiaries and offshore operations of licensees;
- promote better corporate governance by requiring audit committees and annual reporting by directors and senior management, and prescribing additional responsibilities for directors and auditors;

- broaden the definition of exposure and provide for more effective control and reporting of large exposures; and
- enhance the Central Bank's ability to deal with unauthorized activities.

In reviewing the Financial Institutions Act, consideration was given not only to the provisions of the Act but also to the effect of other legislation, such as the Central Bank Act, the Companies Act, the Securities Industry Act, the Insurance Act and the Proceeds of Crime Act respectively. The legislation of other countries were examined, both in the interest of contributing to regional harmonization and in order to identify best practices.

The core principles for effective banking supervision were also an essential point of reference for evaluating the adequacy and appropriateness of both the existing framework and potential changes. The core principles constitute the minimum international standards for bank supervision, which were developed in 1997 by the Basel Committee on Banking Supervision, comprising Central Bank Governors of the Group of 10 countries.

This Bill was developed by taking into account the recommendations of the White Paper policy position; the experience of the Central Bank in conducting supervision under the existing Act; the findings of the IMF and the World Bank respectively, which assessed the adequacy of the regulatory framework as part of their Financial Sector Assessment Programme in early 2005. They conducted one of these for the Caribbean to ensure that we understood what our companies were in fact engaged in or exposed to as a result of their expansion; and, of course, the comments of the industry.

This Bill focuses on addressing three principal areas of weakness in the system relating to:

- the sharing of information with other financial regulators, both locally and in other jurisdictions for regulatory purposes;
- the regulation of mergers and acquisitions of material interest involving a licensee or the holding company of a licensee, generally, and those which impact market share from a public interest perspective, in particular; and
- the monitoring and regulation of controlling shareholders.

The current legislative regime is deficient in facilitating formal coordination and co-operation among local and international regulatory bodies, with respect to the sharing of relevant information.

In 2004, a formal information-sharing Memorandum of Understanding (MOU) was entered into by regional regulatory authorities. They all got together as organizations with a particular challenge, especially as it related to cross-border transactions and basically came up with an MOU that would identify how they would share information. Our Central Bank, however, is precluded from fully implementing the MOU, in the absence of explicit enabling provisions in the present legislation. The effect of this is best illustrated by an example. If, for example, a Jamaican financial institution wishes to establish a subsidiary in Trinidad and Tobago, the Jamaican regulatory body is constrained to refuse to share crucial information pertaining to the financial institution, because the Central Bank of Trinidad and Tobago, under the current Financial Institutions Act, is not explicitly authorized to reciprocate the sharing of regulatory information. That creates for us a big problem.

In the local context, the current legislative framework inhibits meaningful and timely exchange of information between the Central Bank and the Securities and Exchange Commission (SEC) and the Deposit Insurance Corporation respectively. All institutions basically are trying to do the same thing. Significantly, the parent legislation of the SEC allows it to share information, but the Commission is unable to extend this facility to the Central Bank, since the Central Bank and the Inspector have no authority to reciprocate or enter into information-sharing agreements.

This deficiency in the law, Madam President, leads, as you would well imagine, to duplication of effort and undermines the protection of the public and the financial system. It represents, in our view, a significant constraint on the Central Bank's ability to carry out its mandate to promote the soundness and stability of the financial system in Trinidad and Tobago.

Madam President, addressing this lacuna is urgent and critical, owing to the rapid expansion activities of domestic institutions into international markets and of foreign institutions into the local market. To treat with this sector dynamism, the regulatory authority must be empowered to access and share real time information within the parameters of confidentiality and regulatory purpose.

The Financial Institutions Act needs to be brought into compliance with international best practice, as laid out in the Basel Core Principles; this is the Group of 10 minimum standards, so that Trinidad and Tobago can join regional and international jurisdictions in information-sharing and effective cross-border supervision. Madam President, the details of this are featured among the recommendations contained in the *White Paper on the Reform of the Financial System of Trinidad and Tobago*. This Bill delivers on that recommendation.

Madam President, the Bill also seeks to do something else; it also seeks to address, from a regulatory perspective, the growing phenomena of mergers and acquisitions of a material interest; in this case, acquisitions of 10 per cent or more of the voting power at a general meeting of a licensee or the holding company of a licensee.

It is, in our opinion, no small deficiency that the current Financial Institutions Act is silent in this area. Although the Companies Act contains provisions pertaining to the effecting of amalgamations, it is procedure driven and does not take into account the nature of the respective institutions and the impact of mergers on the relevant industry from a concentration and competition policy perspective.

While mergers and acquisitions, we would all agree, can bring many benefits in the form of economies of scale and efficiency gains, they can pose a threat to the financial system, if they result in a concentration of economic power in the resulting new entity. Such concentration can imperil fair competition in the market, create new prudential risks and have negative systemic effects. Supervisory authorities can also face formidable challenges, treating with what is called the “too big to fail” syndrome. The issue of concentration becomes particularly acute if a merger or acquisition results in the new entity controlling a market share of 40 per cent or more. Regulatory bodies must be equipped to ensure that corporate affiliations and structures do not expose depositors and investors to undue risk or hinder effective supervision.

Most jurisdictions have sought to avoid excessive concentration of market power, through legislation or by specific regulations. Research has shown that in Jamaica and Barbados, ministerial approval is required for all mergers. In the Eastern Caribbean countries, the approval of the Minister, upon the recommendation of the Central Bank, is required. In Canada, on the other hand, the emphasis is on oversight of market share concentration, where the regulator challenges those applications for mergers, where the merger yields a market share in excess of 35 per cent. Closer to home, in Barbados, oversight of market share concentration was addressed in dealing with the recent merger, involving First Caribbean International Bank. In this case, the Central Bank of Barbados included conditions that they reserve the right to have the merged entity divest its loan portfolio, if its market share were to grow to a level where it exceeded 40 per cent.

It is important to point out that both Canada and Barbados have anti-trust or competition legislation on their statute books, which would reinforce the Government’s ability to address concentration issues in the financial sector.

Financial Institutions (Amdt.) Bill
[SEN. THE HON. C. ENILL]

Tuesday, May 09, 2006

Trinidad and Tobago has no similar provision at this time. The Government, therefore, with due regard to the interests of the industry and consumers and the public interest at large, has considered it prudent to treat with this issue in this current Bill.

The Bill purports to strengthen the current supervision regime by empowering the Central Bank, for the first time, to approve all mergers and acquisitions of material interest up to a percentage threshold of combined market share of 40 per cent. The 40 per cent threshold was considered to be most appropriate for the local environment, taking into account the recent Barbados experience, the contribution of financial services to the local economy and the threshold contained in the proposed Fair Trading Bill of 2006; the one which was put to a joint select committee earlier today.

Where the combined market share exceeds 40 per cent, the Central Bank will refer the merger or acquisition application with its recommendations to the Minister, since—*[Interruption]*

Sen. Mark: May I? Is the Fair Trading Bill before a joint select committee?

Sen. The Hon. C. Enill: Is that not the one we sent last week?

Sen. Dr. Gopeesingh: No, it is the one on bankruptcy.

Sen. The Hon. C. Enill: Sorry about that. It is the one that Minister Valley—you are correct. Thank you, through you, Madam President, Sen. Mark and Sen. Dr. Gopeesingh.

As I was saying, the threshold contained in the proposed Fair Trading Bill is what we have used; the 40 per cent. Where the combined market share exceeds 40 per cent, the Central Bank will refer the merger or acquisition application with its recommendations to the Minister, since at this stage it is considered more an issue of national importance, with wider public interest considerations. In addition to industry implications, there are public policy issues, particularly in a small society such as ours and in a service industry where accessing foreign competitive service providers is not a simple matter.

Madam President, the Fair Trading Bill introduced by this Government sought to address the broad issue of fair competition, however, it is necessary again to point out that banks and non-financial institutions were excluded from that Bill. We are dealing with these institutions in this Bill.

The other matter of importance is the much needed strengthening of the prudential supervision of controlling shareholders. The Financial Institutions Act deals with the criteria for the granting of a permit to a person as a controlling shareholder of a licensee by the Central Bank. Under this Act, a controlling shareholder is defined to mean “a person who, either alone or with an affiliate or relative or connected person, is entitled to exercise or control 25 per cent or more of the voting power at any general meeting of the licensed institution, or of another company of which the licensee is a subsidiary”.

The Bill seeks to treat with the controlling shareholder in a number of ways. In the first place, the Bill seeks to lower the minimum voting power in the definition of a controlling shareholder from 25 per cent, which it is now, to 20 per cent. This is in keeping with international accounting treatment and best practice which regards 20 per cent voting power as representing significant influence and, therefore, it requires a different accounting treatment. We are trying to ensure that the 20 per cent is consistent.

The Bill also seeks to buttress the “fit and proper” criteria under the Financial Institutions Act with specific reference to a controlling shareholder, in keeping with the Basel Core Principles. At present, the “fit and proper” criteria apply across the board to directors, controllers, managers and controlling shareholders. Madam President, the Bill proposes to enable the Central Bank to assess, for the first time, more specific matters relating to a controlling shareholder, such as his financial resources, business development plans, business record and experience and such other matters in the best interests of the financial services industry of Trinidad and Tobago. These numbers are getting large.

In keeping, of course, with the natural justice provisions afforded to directors, controllers and managers in the determination process for the “fit and proper” criteria, the Bill extends to controlling shareholders an equivalent opportunity to be heard and the right of appeal.

Finally, the Bill seeks to give the Central Bank the authority and discretion to impose terms and conditions on a controlling shareholder’s permit and require the controlling shareholder to provide the Central Bank with such relevant information as is necessary. This provision would enable the Central Bank to initiate more proactive measures for the continuous monitoring of controlling shareholders without having to rely solely on voluntary undertakings, again in the context of an increasingly dynamic landscape. What prevails now is voluntary compliance; you could or you could not.

Madam President, although the Bill contains a number of new provisions and minor amendments, it is not complex in nature. Briefly scanning the Bill, I wish to draw the attention of Members to the following main provisions:

- Provision for the sharing of information is contained in clause 6, which effectively creates an exception to the non-disclosure provisions under the Financial Institutions Act, the Central Bank Act and any other written law and allows for the sharing of information by the Central Bank, with local and foreign regulators of financial entities for purposes strictly related to regulation and with the Deposit Insurance Corporation for purposes related to its operations.
- Clause 8 introduces new provisions on the regulation of mergers and acquirers of a material interest. We regard that as being 10 per cent or more of the voting power, where it involves a licensee or the holding company of a licensee.
- Provisions to enhance the regulations of the controlling shareholder are set out in clauses 7 and 10 which effect the necessary amendments to the existing section 39 of the Financial Institutions Act with respect to the “fit and proper” criteria and permit conditions. We are seeking to amend that.
- Clause 7 also seeks to address a lacuna in the law which calls upon persons who are deemed to be no longer fit and proper, to take such steps to dispose of their shareholdings in excess of the threshold, as this was premised on the view that one could only be a controlling shareholder by virtue of direct shareholding and did not take into account the issue of actual control of voting power.
- Additionally, clause 7 of the Bill seeks to broaden the scope of section 39(6) of the Financial Institutions Act. The existing section 39(6) applies only to controlling shareholders who are deemed no longer to be fit and proper; and persons who, by inheritance, are entitled to become controlling shareholders, but are refused a permit.

Persons who are otherwise required to obtain a permit, for example, on the purchase of shares, but either fail to apply or are refused a permit, are not covered by the application of the existing section 39(6). Under the scheme of the existing Act, this category of persons is not afforded the opportunity of putting their house in order prior to being penalized. The amendment at clause 7(g)(ii) therefore seeks to address this defect by bringing all persons who are required to have a permit but do not have one, within the ambit of section 39(6).

- Clause 5 of the Bill effects an amendment to section 22(2)(j) of the Financial Institutions Act. The existing section prohibits a financial institution from directly or indirectly acquiring or holding, in aggregate, any part of the share capital of any commercial, agricultural or industrial undertaking, in excess of 100 per cent of the financial institution's capital base, or, in respect of any single acquisition, in excess of 25 per cent of the financial institution's paid-up share capital and statutory reserve fund.

Financial institutions were specifically excluded from the categories of undertakings to which the section applied, so that, in effect, there was no prohibition against a financial institution investing in excess of 100 per cent of its capital base to acquire another financial institution. The proposed amendment seeks to address this anomaly by deleting the exclusion of financial institutions from the operation of the section. This is in keeping with the Central Bank's prudential guidelines on investments.

Madam President, the remainder of the Bill treats with necessary consequential amendments and amendments that are more cosmetic in nature. Madam President, I wish to re-emphasize this Government's commitment to the review of the Financial Institutions Act, of which this Bill is the first and important step. The review of the Financial Institutions Act represents the implementation of fundamental recommendations of the *White Paper on the Reform of the Financial System of Trinidad and Tobago* and signifies the continuation of the momentum started with the Insurance (Amdt.) Act, No. 15 of 2004.

This Government is committed to its vision of Trinidad and Tobago as the Pan-Caribbean Financial Centre and will continue to work towards this objective. Key to this national ambition is the development of a well-regulated, well-supervised and responsive sector. By treating with the critical and urgent issues relating to information-sharing, mergers and controlling shareholders, we can proceed to the next phase with a view to achieving a high degree of comfort and confidence among depositors and investors, both locally and on the international front.

With those few words, Madam President—[*Interruption*]

Sen. Mark: I want to know if my colleague could provide us with some kind of practical example within this Republic where we have had dangers that may have triggered the Government's interest in bringing such a piece of legislation? Is there something that has happened that may have driven the Government to making these changes in this particular manner at this particular time? Would you like to share with us?

Sen. The Hon. C. Enill: We have embarked on an exercise with the International Monetary Fund and the World Bank to look at these issues and it is in that review that we found a situation in which there was nothing in the law, currently, that allowed the Central Bank to intervene in circumstances where, for example, two or three of our current institutions decided to get together and control 60, 70 or 80 per cent of the total market. We saw that and we felt that it was absolutely necessary to deal with that quickly, because based on all the issues that are taking place, based on what we see happening and based on companies going regionally and internationally to try and compete, there is a danger that we face in our financial system. What we are simply seeking to do now is to ensure that the Central Bank has the authority, when these things are happening, we know about them.

The other thing that we are seeing is a reverse issue where foreign companies are now coming in and we stand the risk of losing some of the control that we have because there is no mechanism within the system for them to account to anybody. Those were the events that we saw on the landscape that have caused us to put this in place.

Sen. Dr. Gopeesingh: Just one clarification. The Minister could clarify the issue of the new Financial Institutions Supervisor and his role versus the Central Bank Governor, in terms of the question of mergers, acquisitions and shareholdings. Perhaps, it might be necessary for you to do that for us.

Sen. The Hon. C. Enill: Sure. The Governor of the Central Bank and the Central Bank is the agency. The Inspector of Financial Institutions is simply the person in charge of that unit within the Central Bank. It is governed by the laws of the Central Bank.

With those few explanations, I beg to move.

Question proposed.

Madam President: Having said that, we will take the break for tea and when we return we shall proceed with the debate. Senate is now suspended for tea and we would return at 5.01 p.m.

4.31 p.m.: *Sitting suspended.*

5.01 p.m.: *Sitting resumed.*

Madam President: Where is everybody? I know I am not early, it is 5.01 p.m. Please sit. This is bad.

Sen. Seepersad-Bachan: Madam President, while we are waiting, I was appealing to the Leader of Government Business.

Madam President: For what?

Sen. Seepersad-Bachan: To adjourn. We are not prepared.

Madam President: She is not taking you on. It is 5.01 p.m. my dear, by that clock. That makes us eight. We are still short. Nine. Our new Senator is late. You cannot be late when you are on the track you know. I am being very patient. I am waiting. Your side is supposed to speak and all your Members should be here.

Sen. Mark: I am sorry that I detained the President.

Madam President: I nearly adjourned.

Sen. Mark: Sorry about that.

Madam President: It is you to speak or whoever is speaking on your side. The matter has been proposed.

Sen. Seepersad-Bachan: Madam President, I am making an appeal to the Leader of Government Business. Several of us have approached her to ask her to allow us some more time, please.

Madam President: It is entirely up to the Government's side. If they do not want to do it, then we have to go.

Sen. Seepersad-Bachan: Please, Madam President.

Madam President: I can only ask her to consider.

Sen. Seepersad-Bachan: We have two Motions on the Adjournment.

Sen. Mark: I would like, on behalf of the Opposition, to make an intervention to ask the Acting Leader of Government Business to consider our submission. We would have liked to proceed this afternoon but we are asking kindly that she take into consideration our submission and that we can adjourn at this time. There are two Motions on the Adjournment. We can take those Motions and we will be fully prepared and ready to proceed with the particular debate next Tuesday. I would like to appeal to her.

Madam President: What I was going to suggest, if the Leader does not want to take the adjournment and you are not ready, maybe we can have at least one speaker on the Independent Bench or something like that and then we can move on.

Sen. Dr. Mc Kenzie: Madam President, to be very honest with you, our strength, when it comes to financial matters, is Sen. Mary King. She has been out of the country and only came back last night and got the Bill last night and has not been able—

Madam President: She is not prepared either.

Sen. Dr. Mc Kenzie: Really and truly, I always ask her personally, when we have financial bills to lead off for us. You have to understand, flying in from Ireland; so cold she has to take a little time to thaw out and then to get ready.

Apart from that, to be very honest, most of us thought, very wrongly, that the previous Bill would have allowed for a long debate. That is it. It is not that people did not know. We are not blaming the Government because the Leader of Government Business, last week when we adjourned, did say that if we were finished with the Local Government Bill we would have gone on to this Financial Institutions (Amdt.) Bill and if possible, the Tourism (Amdt.) Bill. I am surrendering—I do not know why the Deputy Leader of Government Business/Acting Prime Minister does not look at us—and saying to you Madam, with all your maternal instinct and understanding and with the Minister of Finance coming to say ease up the lady.

It is a serious Bill; it is not a simple Bill and we would like to ensure that when we make a contribution to the Bill we do it with all the seriousness and detailed analysis that the Bill deserves. I am sure the hon. Minister in the Ministry of Finance does not want any wishy-washy thing because I could get up and bluff through his whole thing and not say anything. He is not someone who would tolerate that type of thing. I ask that we defer the debate on the Bill. We understand what he is saying. We would get copies of the *Hansard* and we would be able to analyze it. I am sure that those of us who are weak like myself would get some tuition from those who are stronger and who understand more. We would be able to chat with other people. I am very honest when I say sometimes that I do not understand everything when it comes to these technical, accounting and financial terms. I would support Sen. Carolyn Seepersad-Bachan and Sen. Wade Mark and ask that we go on to our Motions on the Adjournment. We do not mind making up extra time next week. I would walk with extra clothes and stay on if it so demands. Madam President, I—[*Interruption*]

Madam President: You beg to move?

Sen. Dr. Mc Kenzie: I put my plea.

Madam President: Madam, it is really in your court.

Sen. Yuille-Williams): It is very difficult. Next week we have to conclude the Fair Trading Bill. The Minister began to sum up. We have to go into committee stage. We have not had an easy passage and would take some time. The following week is Private Members' Day, unless we make some kind of—

Madam President: Could we not take this Bill after we have finished the Fair Trading Bill next week?

Sen. Yuille-Williams: It would go after but apparently it would take some time. The week after is Private Members' Day. Could we go ahead on that if we have not concluded?

Madam President: May 30 is a holiday.

Sen. Yuille-Williams: Yes, it is tight. Probably if we give up—*[Interruption]* We are not coming any other day except Tuesday. We would give up Private Members' Day to facilitate the end of it. We have this to do and the Fair Trading Bill to complete. That would take a little while in the committee stage, I know. We still have this and the committee.

Sen. Prof. Deosaran is coming. If you could agree to that then—We do not wish to come on any other day, as long as you can agree to that. You can speak to Sen. Prof. Deosaran for one minute.

Madam President: Sen. Prof. Deosaran, we need your agreement on something here. It has been proposed that we adjourn now, because nobody is really prepared to speak on the Bill at the moment; neither the Opposition nor even your side, unless you are prepared to speak on the present Bill. Under the circumstances, the Leader of Government Business is saying that we have very little time for the rest of the month. Next week we are doing the Fair Trading Bill. That has to be completed and may take a little time, because it is a long Bill and we are not too sure if we would be able to complete this Bill next week, which means it may have to go to the following week, which is Private Members' Day. The week after is a holiday. What they are asking is, are you prepared to give up your Private Members' Day for the following month, so that this could be completed.

Sen. Mark: Before Sen. Prof. Deosaran responds, I would like to suggest that we are prepared to go until midnight next week, to complete both matters. I have a difficulty, quite frankly, with giving up Private Members' Day completely, unless the Government is agreeable that we would get it back in the month of

June. I do not think that we should give up Private Members' Day completely. Maybe we can agree with the Government that we would get it back in the first week of June, so that we can proceed. I do not know if the Minister is agreeable to that one, otherwise we are prepared to debate both Bills next Tuesday.

Madam President: As I see it Senators, let us try to be also reasonable, if nobody is prepared, then I do not see how we can have a debate. Senators on this side, on either Bench—I do not know if anybody on the Independent Bench is prepared to speak today, if you are I would allow you to continue and then we can adjourn after that. My understanding is that nobody here is prepared and Sen. King, who is your lead-off person, is not prepared, so Madam—

Sen. Prof. Deosaran: You asked me a question. Postpone until early June; is that what you are saying?

Madam President: I did not say.

Sen. Prof. Deosaran: The first or second week in June, what is the proposal?

Madam President: He is asking whether he would get another day in June.

Sen. Prof. Ramchand: We would have two Private Members' Day in June? That is what we want.

Sen. King: We have to give up one.

Sen. Yuille-Williams: We have a legislative agenda and I am willing to concede if you are not ready today. I ask if you would give up the Private Members' Day so that we can complete. We have a holiday again. We would have the day in June as normal but to put in a second day would really keep us back. The Tourism (Amdt.) Bill is already down on that agenda. I am willing, this afternoon, to adjourn at this time to next week where you work on it, if you are willing to give up your Private Members' Day and we have a holiday and then go ahead as normal. We have done it in this Senate several times before. Sen. Dr. McKenzie knows that too.

Sen. Prof. Deosaran: I am trying to find out precisely what is the conclusion. I am not telling you yes or no.

Sen. Yuille-Williams: That was one of the suggestions.

Sen. Prof. Deosaran: That is all I want to know, what is the suggestion. We must understand that this Motion is no longer mine. This is a Motion of the whole Senate, but I understand the spirit in which the request is made. I want to make sure because I was reading something about the origin and importance of Private Members' Day in May's *Parliamentary Practice*. It is not a lagniappe or a

marginal issue; it is a fundamental part of the legislative process and it is an embracing part of the democracy, especially for those who are outside of government. I want to suggest that perhaps, if you are telling me that we just give up the day and go on to June in the normal way—is that the proposal? I do not know what other Senators would want to say, but I suppose if anybody else has a view I would say yes. I understand the Government's agenda. I do not think I would want to be stubborn unnecessarily. [*Desk thumping*]

I must tell you that the Motion is about crime and I thought that was high up on the Government's agenda as well, but we would come to that at another time.

Sen. Kangaloo: It is not us!

Madam President: It is the other side that asked.

Sen. Yuille-Williams: The request did not come from here. We were prepared to go on, but the request came from both Benches due to the fact that they were not prepared and that is how it happened.

Madam President: You missed that.

Sen. Prof. Deosaran: The answer is yes, Madam President.

Madam President: It seems as though that is agreed to, Madam.

ADJOURNMENT

The Minister of Community Development, Culture and Gender Affairs (Sen. The Hon. Joan Yuille-Williams): Madam President, I move that this Senate do now adjourn to Tuesday, May 16, 2006 at 1.30 p.m. We wish to continue the debate on the Fair Trading Bill, and then we want to follow this with the Bill that was moved here this afternoon. Thank you.

5.15 p.m.

Madam President: Hon. Senators, leave has been granted for two matters to be raised on the Motion for the Adjournment; one is by Sen. Sadiq Baksh and the other is by Sen. Wade Mark. Who is ready to go?

Sen. Mark: Madam President, I have spoken with the Minister of National Security, and he told me that he is not ready to proceed today with that particular Motion, so we shall take it next week.

Madam President: Is your Minister ready to go?

**Never Dirty Basketball Court and Multipurpose Sporting Facility
(Status of)**

Sen. Sadiq Baksh: Madam President, the matter for the Motion on the Adjournment is the status of the Never Dirty Basketball Court and Multipurpose Sporting Facility, in terms of its electrification.

As a background, this project was completed over four years ago—wired and inspected—and just awaiting a simple connection. It was drawn to my attention by the community of Never Dirty that since they look forward to playing on this basketball court and multipurpose facility—what really highlighted the problem was they were involved in a competition within the area and they had a night game. They got a temporary connection for this facility from an adjoining neighbour, and they were threatened with legal action. The laws do not permit any facility to take electricity from a neighbour or anyone else. They were just being creative in terms of providing some self-help in getting the facility lighted.

This is a community that serves over 5,000 residents and over 800 young persons between the ages of eight and 25. They utilize this facility almost on a non-stop basis, 24/7. Madam President, because of the lack of electrification, the facility has not been able to fulfil its needs within the community so as to allow the citizens in the area to utilize the facility.

Madam President, they also drew my attention to the adjoining community centre which was completed a long time ago. This is a good facility, but it is not yet open for public use. In passing, they have asked me to mention this since the Minister would be present, and I would not have to bring another Motion for the Adjournment.

This is a facility that is needed and it is going to assist the community in terms of keeping young persons away from other activities. Madam President, you know that the devil is going to find work for idle hands, and this is their way of getting young persons within that area to really participate, in a meaningful way, especially now with sport being on the agenda nationally and internationally, and with Trinidad and Tobago qualifying for the World Cup in Germany, there is a heightened interest in sporting activities of all kinds.

Madam President, it is important to note that since bringing the last Motion on the Water and Sewerage Authority (WASA) and this Motion, I have had a flood of requests from citizens across the land, in terms of small projects that could make a big difference to a community. These citizens are just not getting any attention

because they are not protesting. People have written letters, but for some reason they did not get any action.

In meeting with them, I have discouraged them from protesting. I told them that I would bring the matter to the attention of the administration. I feel certain that the Minister of Sport and Youth Affairs, on this occasion, is going to act and ensure that the Never Dirty Basketball Court and Multipurpose Facility would be lighted in the shortest possible time.

I thank you. [*Desk thumping*]

The Minister of Local Government (Sen. The Hon. Rennie Dumas): Madam President, with respect to the matter raised by Sen. Sadiq Baksh on the Motion for the Adjournment relating to the status of electrification at the basketball court at Never Dirty, Morvant, the Municipal Corporations Act gives corporations the responsibility for the maintenance and control of public pastures and recreation grounds, subject to the Recreation Grounds and Pastures Act.

Further, the Ministry of Sport and Youth Affairs has a number of programmes for ensuring that recreational facilities across the country are maintained and improved. I am sure that Senators would agree that adequate provisions have been made for the development of facilities. For example, there have been provisions for development and upgrading of recreation grounds, parks and spaces, sporting facilities and the upgrading of corporation grounds.

Madam President, the Never Dirty Basketball Court is under the jurisdiction of the San Juan/Laventille Regional Corporation, and it is maintained by that corporation. Discussions with officials at the San Juan/Laventille Regional Corporation have revealed that the corporation has not programmed the electrification works in its PSIP or any of its recurrent programmes for this fiscal year.

In discussions with the people from that area, a proposal for improvement work on this facility has been received. I do not know if Sen. Baksh was peeping at the work programme of the corporation and the ministry, but by collaboration with the Ministry of Sport and Youth Affairs, the Ministry of Local Government and the San Juan/Laventille Regional Corporation, a visit is scheduled for tomorrow at that facility when we tour with the San Juan/Laventille Regional Corporation. [*Desk thumping*]

Multi-Purpose Sporting Facility
[SEN. THE HON. R. DUMAS]

Tuesday, May 06, 2006

I want to give the Senator and the Senate the assurance that all arrangements would be made to make sure that the facility is up to par and useful for the citizens. I also want to assure the Senator that in the case of the availability, usability and sustainability of the recreational facilities, the needs of that community would be met.

Madam President, thank you. [*Desk thumping*]

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 5.23 p.m.