

*Leave of Absence*

*Tuesday, September 18, 2007*

**SENATE**

*Tuesday, September 18, 2007*

The Senate met at 1.30 p.m.

**PRAYERS**

[Mr. VICE-PRESIDENT *in the Chair*]

**LEAVE OF ABSENCE**

**Mr. Vice-President:** Hon. Senators, I have granted leave of absence to Sen. The Hon. Arnold Piggott and Sen. Angela Cropper who are out of the country and to Sen. Mary King who is ill.

**SENATORS' APPOINTMENT**

**Mr. Vice-President:** Hon. Senators, I have received the following correspondence from His Excellency the President, Professor George Maxwell Richards, T.C., C.M.T., Ph.D.:

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

/s/ G. Richards  
President.

TO: MR. OVERAND PADMORE

WHEREAS Senator Arnold Piggott 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, OVERAND PADMORE, to be temporarily a member of the Senate, with immediate effect and continuing during the absence from Trinidad and Tobago of the said Senator Arnold Piggott.

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 18<sup>th</sup> day of September, 2007.”

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

*Tuesday, September 18, 2007*

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

/s/ G. Richards  
President.

TO: PROFESSOR DAVID PICOU

WHEREAS Senator Angela Cropper is incapable of performing her duties as a Senator by reason of her 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 40(2)(c) and section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, DAVID PICOU, to be temporarily a member of the Senate, with effect from 17<sup>th</sup> September, 2007 and continuing during the absence from Trinidad and Tobago of the said Senator Angela Cropper.

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 14<sup>th</sup> day of  
September, 2007.”

**OATH OF ALLEGIANCE**

*Senators Overand Padmore and Prof. David Picou took and subscribed the Oath of Allegiance as required by law.*

**PAPERS LAID**

1. Report of the Auditor General of the Republic of Trinidad and Tobago on the financial statements of the San Fernando City Corporation for the year ended September 30, 2001. [*The Minister in the Ministry of Finance (Sen. The Hon. Conrad Enill)*]
2. Report of the Auditor General of the Republic of Trinidad and Tobago on the financial statements of the San Fernando City Corporation for the year ended September 30, 2002. [*Sen. The Hon. C. Enill*]

## ORAL ANSWERS TO QUESTIONS

**Customs House****(Details of)**

**76. Sen. Wade Mark** asked the hon. Minister of Finance:

With respect to the construction of the new Customs House in Port of Spain, could the hon. Minister inform the Senate:

- (i) what was the original estimated cost;
- (ii) how much money has been expended to date;
- (iii) what is the new estimated total cost;
- (iv) what was the original scheduled completion date; and
- (v) what is the new scheduled completion date?

**The Minister in the Ministry of Finance (Sen. The Hon. Conrad Enill):**  
Thank you, Mr. Vice-President. The answer to this question has not yet been approved by the Parliamentary Questions Committee and I therefore would seek to have this completed so that it can be answered on the next occasion that we meet.

*Question, by leave, deferred.*

**T&TEC Light Poles****(Details of)**

**77. Sen. Wade Mark** asked the hon. Minister of Public Utilities and the Environment:

With respect to the new galvanize type of light poles being used by the Trinidad and Tobago Electricity Commission (T&TEC), could the hon. Minister inform the Senate:

- (i) whether these poles are being imported and if so by whom;
- (ii) whether the contract to purchase these poles was subject to:
  - (a) public competitive tendering or
  - (b) sole selective tendering;
- (iii) if the answer to (ii) is (a), could the Minister provide the relevant information outlining in detail the procedure involved in the public tendering process; and
- (iv) if the answer to (ii) is (b), could the Minister explain the rationale for such an arrangement?

**The Minister of Public Utilities and the Environment (Hon. Penelope Beckles):** Thank you very much, Mr. Vice-President. In relation to the question:

- (i) The poles, which the Trinidad and Tobago Electricity Commission has been utilizing in the implementation of the National Street Lighting Programme, are made of steel. However, the finished product has a galvanized appearance, because the poles are galvanized using a hot-dipped galvanizing process. The poles are imported from Valmont Industries Limited of the United States of America; the company which was awarded the contract to supply the poles.
- (ii) The process for the award of the contract for the purchase of the steel poles involved public competitive tendering.
- (iii) The public tendering process for the selection of a supplier for the steel poles for the National Street Lighting programme is as follows:

The advertisement for tender to supply the steel poles for the National Street Lighting Programme was placed in the *Trinidad Guardian* and the *Newsday* newspapers on August 15 and 16, 2005 respectively; on September 16, 2005 the tender was closed.

There was a public opening on the same day at T&TEC warehouse, Kings Village, California; 10 bids were received and these were evaluated on the basis of the following criteria: financial, 25 per cent; technical, 40 per cent; warranty, 5 per cent; references 5 per cent; quality of tender, 5 per cent; delivery, 20 per cent.

It was determined that the contract would be awarded to the lowest bidder who met the bid specifications. After the evaluation process, the bid of SDV Trade Investments (West Indies) Limited, Barbados was the successful bidder. Before the contract was awarded to the said SDV Trade Investment (West Indies) Limited they indicated that they were unable to deliver the poles within the T&TEC stipulated time frame, because of technical difficulties at the factory. The contract was then awarded to Valmont Industries Limited, which was the next lowest bidder that met the specifications. In the light of this response, therefore to (iii) above, the other part of the question is not necessary.

**Sen. Mark:** Could the hon. Minister indicate to us whether she is in a position to outline the ten bidders, outside of the two names that she has mentioned.

**Hon. P. Beckles:** Based on how the question was worded I did not include that today in this answer, but I can provide it.

**Sen. Dr. Gopeesingh:** Mr. Vice-President, I wonder if the hon. Minister would be kind enough to give us an answer to if there is a local agent for Valmont—the company that was given the bid—or is it direct?

**Hon. P. Beckles:** I cannot answer that today, but I can certainly also provide that together with the other information Sen. Mark requested.

**Trinidad and Tobago Electricity Commission (T&TEC)  
(Details of Importation)**

**79. Sen. Wade Mark** asked the hon. Minister of Public Utilities and the Environment:

With respect to the new street lights/lamps being installed by the Trinidad and Tobago Electricity Commission (T&TEC), could the Minister inform the Senate:

- (i) if these lights/lamps are being imported and if so by whom;
- (ii) whether the contract to purchase these lights/lamps was subjected to (a) public competitive tendering or (b) sole selective tendering;
- (iii) if the answer to (ii) is (a), could the Minister provide the details of the procedure involved; and
- (iv) if the answer to (ii) is (b), could the Minister explain the rationale for such an arrangement?

**The Minister of Public Utilities and the Environment (Hon. Penelope Beckles):** Thank you very much, Mr. Vice-President.

- (i) The new street lights/lamps being used by the Trinidad and Tobago Electricity Commission in the implementation of the National Street Lighting programme are imported directly from the manufacturer You Bris Lighting Company of Basingstoke, England.
- (ii) The process for the award of the contracts for the purchase of the new street lights/lamps involved public competitive tendering.
- (iii) The public tendering procedure for the selection of the supply for the new street lighting lights/lamps, for the National Street Lighting programme was as follows:

The advertisement for tender to supply the new street lights/lamps for the National Street Lighting programme was placed in the *Trinidad Guardian* for one day and the *Newsday* newspapers for two days,

commencing on May 10, 2005. On June 03, there was a public opening of the tenders at T&TEC warehouse at Kings Village, California; 18 bids were received and these were evaluated on the basis of the following criteria: Financial, 25 per cent; technical 40 per cent; warranty, 5 per cent; references, 5 per cent; quality of tender, 5 per cent; delivery, 20 per cent. It was determined that the contract would be awarded to the lowest bidder who met the bid specifications.

After the evaluation process, You Bris Lighting Company of Basingstoke, England was the successful bidder and the contract was awarded to that company.

And of course, in the light of that response, (iii) is not necessary. Similarly, I suppose, in relation to the other 17, assuming; I do not have it today, but—

**Sen. Mark:** Thank you very much, Mr. Vice-President. Could the hon. Minister tell us whether the company that was successful in supplying the street lamps has an agent or agents in Trinidad and Tobago?

**Hon. P. Beckles:** Similar to my previous answer to Sen. Dr. Gopeesingh, I cannot answer that today, but I can certainly provide that information.

**Trinidad and Tobago Electricity Commission (T&TEC)**  
**(Details of Contractors)**

**80. Sen. Wade Mark** asked the hon. Minister of Public Utilities and the Environment:

With respect to the installation of new street lights on behalf of Trinidad and Tobago Electricity Commission (T&TEC), over the last five years, could the Minister provide the Senate with:

- (i) a list of names of the contractors; and
- (ii) detailed breakdown of the payment/fees received by each contractor.

**The Minister of Public Utilities and the Environment (Hon. Penelope Beckles):** Thank you, Mr. Vice-President. I kindly ask your leave for a two-week deferral for questions 80 and 81, for which I have not yet obtained approval.

*Question, by leave, deferred.*

The following question stood on the Order Paper in the name of Sen. Dr. Tim Gopeesingh:

**Water and Sewerage Authority (WASA)  
(Details of)**

- 81.** With respect to the operations of the Water and Sewerage Authority (WASA), could the hon. Minister of Public Utilities and the Environment advise the Senate:
- (i) What percentage of the population receive water in their homes on a twenty-four hour basis?
  - (ii) What new water production or water distribution programme has WASA undertaken during the period 2002 to 2006?
  - (iii) The number of new employees hired by WASA during the period 2002 to 2006? and
  - (iv) The total cost to WASA for these new employees?

*Question, by leave, deferred.*

**Dualling of the Churchill Roosevelt Highway**

- 94. Sen. Dr. Glenn Ramadhar-Singh** asked the hon. Minister of Works and Transport:

With respect to the dualling of the Churchill Roosevelt Highway from O'Meara to Wallerfield, could the Minister state:

- a. the names of the main contractor(s) on the project;
- b. the original cost of the project and the original completion date; and
- c. whether there has been any cost overruns on the project and, if so, by how much?

**The Minister of Works and Transport (Hon. Colm Imbert):** Thank you, Mr. Vice-President. In reply to the question:

- (a) The main contractor on the project to dual the Churchill Roosevelt Highway from O'Meara to Wallerfield is Universal Projects Limited.
- (b) The project is comprised of two phases, that is Phase I, from O'Meara Road to the Pillars and Phase II from the Pillars to Antigua Road in Wallerfield. The total original cost of the two phases of the project is \$141,793,330, VAT inclusive. The original completion date for Phase I was August 09, 2006 and the original completion date for Phase II was May 31, 2006.

It should be noted that the contract for Phase II, from the Pillars to Antigua Road, Wallerfield has been terminated, because of the non-performance of the contractor, Universal Projects Limited. And the contract for Phase I, from O'Meara Road to the Pillars will be terminated in the very near future, again, because of the non-performance of the contractor. The Ministry is putting new arrangements in place to complete both phases of this project using the Programme for Upgrading Road Efficiency (PURE). It is expected that both phases can be completed using PURE within the next six to nine months.

(c) To date, no cost overruns have been reported on the project.

**Sen. Mark:** I want to ask the hon. Minister if he can identify the names of the main contractors on the project as was asked. I did not hear the names, could you repeat them for us?

**Hon. C. Imbert:** Thank you, Mr. Vice-President, obviously Sen. Mark was not listening. The main contractor on the project is Universal Projects Limited.

**Sen. Dr. Gopeesingh:** Could the hon. Minister indicate whether Universal Projects Limited was the company that was terminated and which is the other company that has been terminated if it is possible? You said that the contract from the Pillars to O'Meara or O'Meara to the Pillars was terminated because of non-performance and from the Pillars to somewhere else was terminated because of non-performance. Could you give us the names of the contracting firms?

**Hon. C. Imbert:** Mr. Vice-President, through you, clearly Sen. Dr. Gopeesingh was sleeping also. The project has two phases; this is what I told Sen. Dr. Glenn Ramadhar-Singh. Phase I, from O'Meara Road to the Pillars and Phase II, from the Pillars to Antigua Road in Wallerfield. The only contractor on the project is Universal Projects Limited. I do not know if that has now crystallized itself in your mind. Are you happy now? [*Crosstalk*]

**Sen. Mark:** Mr. Vice-President, I am seeking your guidance. I have several questions for written answers directed to the Minister of Community Development, Culture and Gender Affairs. We were promised that every effort would be made to address these written responses, Sir. To date, nothing has come. I do not know if you can appeal again, as we come nearer and nearer to the dissolution of Parliament, for the Minister to account to this Parliament.

As I am on my legs, on last week's Order Paper, there was a Motion entitled "BE IT RESOLVED that 'The Immigration (Amendment) (No. 3) Regulations, 2007' be negated." It was on the Tuesday and Thursday Order Papers, but I looked at today's Order Paper, and I think it was an oversight; it has disappeared. May I have some explanation for it?



**Mr. Vice-President:** Sen. Mark, in terms of the questions for written answers, I would like to join with the President in appealing to the Leader of Government Business to ensure that these answers are coming forward.

In terms of the omission of the motion you spoke about, I will check with the Clerk and report to you a little later in the sitting.

#### WRITTEN ANSWER TO QUESTION

**90. Sen. Dr. Tim Gopeesingh** asked the hon. Minister of Labour, Small and Micro Enterprise Development:

- A. Could the Minister provide the Senate with a list of all individuals and companies that have received loans for small businesses and micro enterprises for the period January 2002 to December 2006?
- B. Could the Minister also inform the Senate:
  - (i) what was the cost of each of these loans to the individual/company for each of the years 2002 to 2006;
  - (ii) the amount repaid on each of these loans; and
  - (iii) the names of the companies in default and by which amount?

*Vide end of sitting for written answer.*

#### ARRANGEMENT OF BUSINESS

**The Minister of Public Administration and Information and Minister of Energy and Energy Industries (Sen. The Hon. Dr. Lenny Saith):** Mr. Vice-President, I seek leave of the Senate to deal, as I indicated on the last sitting, with Bill No. 1 under Government Business, followed by Bills Nos. 1 and 2 under Private Business and then Motions 1 and 2 under Committee Business.

*Question put and agreed to.*

#### BANKRUPTCY AND INSOLVENCY (NO. 2) BILL

*Order for second reading read.*

**The Attorney General (Sen. The Hon. John Jeremie SC):** Thank you, Mr. Vice-President. I beg to move,

That a Bill to revise the law relating to bankruptcy to make provision for corporate and individual insolvency; to provide for the rehabilitation of the insolvent debtor and to create the office of Supervisor of Insolvency, be now read a second time.

Mr. Vice-President, Senators would recall that at a sitting held on Friday, May 05, 2006—as long ago as that—in the other place and at a similar sitting of the Senate on Tuesday, May 09, 2006, the Bankruptcy and Insolvency Bill of 2006 was referred to a Joint Select Committee of Parliament for consideration and report.

Mr. Vice-President, the Members of that Joint Select Committee were: Mrs. Camille Robinson-Regis; Mr. John Rahael; Dr. Roodal Moonilal; Mr. Gerald Yetming; Mr. Danny Montano; Ms. Christine Kangaloo; Mr. Wade Mark; Mrs. Mary King; Mr. Kenneth Valley and myself.

At the first meeting of the committee, Mr. Valley was elected Chairman. In an effort to complete its mandate, the committee agreed that the input of the Chief Parliamentary Counsel and senior representatives from the Law Reform Commission were essential in assisting the committee in its deliberations and to provide background information on the Bill. This mandate was undertaken and the Bill was published first in the *Express* newspaper on Sunday, June 11, 2006. In addition, approximately 200 individuals, business groups and organizations were written to requesting their comments on the Bill. The Bill was subject to a very widespread consultation. Moreover, the Bill was made available to the public at the following: district revenue offices in Trinidad and Tobago; Office of the Parliament; Government Printery and the Parliament website.

Mr. Vice-President, the committee agreed that the submissions received from the public would be reviewed by the technocrats for consideration of their relevance. However, the committee was unable to complete its deliberations before the end of the 2005/2006 session and a saving report had to be laid in the House of Representatives on Monday, September 15, 2006, and in the Senate on Tuesday, September 05, 2006, recommending that the Bill be reintroduced in the upcoming 2006/2007 session and be referred to a new committee to continue its deliberations.

Mr. Vice-President, at sittings of the House of Representatives and the Senate held on Friday, November 03 and Tuesday, November 07, 2006, respectively, the Bankruptcy and Insolvency (No. 2) Bill, 2006, was introduced and committed to a Joint Select Committee for consideration and report.

In this instance, Mr. Colm Imbert replaced Mr. John Rahael as a Member of the committee, other than that the committee remained the same. The committee undertook examinations of written submissions received and invited stakeholders to an in camera meeting to elaborate and clarify issues raised. Some of the stakeholders included the following: Lex Caribbean Limited; Fitzwilliams Stone

Furness-Smith & Morgan, attorneys-at-law; the Law Association of Trinidad and Tobago; the Bankers Association of Trinidad and Tobago; Ernst & Young Trinidad and Tobago Limited; Trinidad and Tobago Chamber of Industry and Commerce; Joseph Caddle and Associates Limited; ACCA Caribbean Office and the Institute of Internal Auditors, Trinidad and Tobago Chapter.

**2.00 p.m.**

An in camera meeting was also undertaken with the trade union movement to solicit their views on the Bill. The committee also held public consultations throughout Trinidad and Tobago. In this instance, individuals, business groups and organizations were approached to submit their comments, and the deadline for receipt of same was extended to Friday, August 10, 2007; an earlier deadline having been set at the end of July and passed without receipt of any comments.

The committee held public meetings in Port of Spain, Arima, Chaguanas and Tobago with varying success. The public meetings in Port of Spain were the best attended. In Arima the attendance was poor; in Chaguanas, almost non-existent; in Tobago almost non-existent.

Having completed its mandate, a draft report of the committee's work was prepared and circulated to Members. Having received the approval of the majority of Members, the final report, which incorporates an amended Bill, was laid in the House of Representatives and in the Senate on Wednesday, August 29 and Monday, September 03, 2007, respectively. The Bill was subsequently passed in the other place.

Now that I have given some background to the work of the Joint Select Committee (JSC), I propose to deal with the Bill itself. Permit me at the outset to elaborate briefly on the importance of insolvency legislation in general to the economic life of a nation, and to mention for the benefit of my colleagues the broad policy objective which the Government is seeking to implement in this area of the law.

I neglected to mention that although the report which comes before us is a majority report, in the other place the Bill was supported expressly by Dr. Moonilal on behalf of the Opposition. He was a Member of the committee. The Opposition did play a vital role in coming to meetings and getting persons to come out, to the extent that we had persons coming out.

There can be no doubt that a review of our bankruptcy legislation is long overdue. The existing Act dates back to 1916 and it no longer reflects the social and economic realities of our day. Our current law is weighted heavily in favour

of the creditor, with no emphasis on the rehabilitation of the debtor. For this reason it is seldom used; it is almost never used and is now practically obsolete. So it is on the books just to inform, but if you ask around Port of Spain and San Fernando the attorneys and accountants, "How often do you use the Bankruptcy Act of 1916?" universally they would say never; they would not say sometimes or hardly ever. That is an unfortunate state of affairs.

Insolvency statutes have an important role to play in a country's economy as they govern commercial relationships. They offer security for both investors and lenders which in turn affects the availability of credit. In the commercial sphere, the certainty and reliability of the insolvency system plays a crucial role in attracting both domestic and foreign investment as well as promoting entrepreneurship and innovation.

As we all know, the confidence of creditors and lenders in the legal system influences, to a great extent, their willingness to extend credit, so that the prevailing insolvency law would play a major role in making investment decisions. To the extent that the law is not used, then it is not a convenient tool to those who wish to make investment decisions. They have to look at other things, not our legislative infrastructure. The Bankruptcy and Insolvency Bill, therefore, is important framework legislation as it affects how business is financed and conducted.

If I can just pause for a second to recognize the pioneering work done by the former administration in reforming the Companies Act in 1995; that too was in dire need of reform. It had not been touched before 1985, since 1921, and had become practically obsolete. So the former administration did some work and that Act was passed. It was one of the few things that came out of that period in the wilderness.

Mr. Vice-President, the Bankruptcy and Insolvency Act was supposed to partner that Act, but having spent their effort in the Companies Act, perhaps it was too much to expect that they would continue and reform the Bankruptcy Act. It was always contemplated that both would go together. It was done in Barbados; so that our Act reflects the Barbados Bankruptcy Act, as does their Companies Act reflect our Companies Act. What you failed to do was to pass a Bankruptcy and Insolvency Act to accompany the Companies Act.

In a market economy, some businesses will succeed—that is a fact of life—while others will fail. Organized society has recognized the need to provide some system of rules and procedures for regulating the phenomenon of insolvency. In

the classic sense, insolvency is a state of affairs under which a debtor is incapable of meeting all his liabilities, and those liabilities, both existing and future, exceed the value of his assets.

Causes for this situation can range from internal factors such as poor management, to external factors such as increasing competition, changes in tariff structures or changes in the flow of trade. Anything can affect a business's fortunes. The overriding purpose of insolvency law is to fix rules and prescribe procedures which will ensure that creditors are paid and that debtors are treated with some measure of decency and fairness in an effort to minimize their loss and to enable them, where possible, to be reintegrated fully into the economic life of the community with the least possible delay.

The aim of the legislation which is before us, therefore, is to provide a fair and orderly process for dealing with the financial affairs of an insolvent individual or company. This is what the Bill seeks to achieve. It is about creating trust and confidence in a system which should be considered neither pro debtor nor pro creditor. It is not about debt forgiveness or debt relief, nor is it about the protection of employment or the fostering of corporate discipline. It is simply about balancing the competing interests which arise in a debtor/creditor relationship.

The philosophy behind the legislation is based on the concept of rehabilitation. This represents a significant departure from what existed in the past. It is a move away from the colonial past when the failure of a business was seen to be a disgrace and debtors were subject to public humiliation, and in Dickens' time, imprisonment for not paying off the debt. We no longer view the phenomenon of credit with jaundiced eyes. In the modern world credit is the lifeblood of industry, the means by which profit and productivity can be leveraged from otherwise scarce capital.

The proposed law is aimed at meeting both the needs of debtors and creditors and also providing remedies which allow a company or business to remain viable as long as possible with the hope of reducing the loss of employment and other attendant hardships which accompany bankruptcy.

Mr. Vice-President, current economy theory is far different from how it was in the days when the 1916 Act was drafted. Current theory maintains that in a credit based economy not every player who fails in a business venture should be immediately removed from the market and punished. Debtors with the potential or prospect of survival should be given every chance to either reorganize their

business or dispose of their assets and begin again. It is in this vein that the Bill seeks to provide under Part V a powerful new remedy which is intended to facilitate the recovery of companies.

One would observe that there are very extensive procedures for the making of a proposal so as to afford a debtor company time to reorganize its financial affairs and to remain a going concern under the management of the debtor himself. This new remedy is an alternative to liquidation, which was the only remedy available in the old law. In the old law if you found yourself in distress, that was the end of you as a company. You had to be liquidated; whatever assets you had were sold off typically by a few of the professionals in the industry. It came home to us in the course of our public consultations that the industry was hegemonic in nature, so that you had very few persons who practised as liquidators and receivers. They would go into your business, although they know nothing about it, but would realize the assets and that would be the end of the business.

The new remedy is an alternative to liquidation and allows the debtor to enter into an arrangement with his creditors with a view to maximizing his returns. The flexibility of the new remedy will allow for adaptation to rapidly changing conditions in the commercial sector and minimize loss for both debtors and creditors. Insolvency law may also seek to offer statutory protection to certain small creditors with the aim of fostering stability in that particular sector of the economy. This is one of the things we stressed in our public consultations.

Mr. Vice-President, one of the objectives of the Bill, therefore, is to offer protection to certain key sectors to enhance the financial capacity of small business. Priorities are established under clause 127 which allows certain unsecured creditors, such as employees and young persons under the age of 30 to be paid before other creditors. There are always provisions which will allow the unpaid supplier of goods to reclaim those goods once they can be identified. This protection has also been afforded to the agricultural and fishing sectors which are important yet small industries in our economy.

In addition, a large number of individuals who experience financial failure tend to lack the necessary management skills. In the new legislation we have made counselling available and we have also made it a prerequisite to gaining a discharge. So you need to get financial counselling if you want to be a player in the industry after having fallen flat once.

So not only have we shifted the philosophy away from punishing debtors who overstretch, we have also created a safety net, as it were, so that you allow counselling for persons who have fallen flat; you allow them to get up and move on simultaneously with getting a discharge.

**Sen. Mark:** What clause is that, AG?

**Sen. The Hon. J. Jeremie SC:** It is around clause 127; but Sen. Mark you were at the public meetings.

**Sen. Mark:** I was just asking, so you could remind me.

**Sen. The Hon. J. Jeremie SC:** In an attempt to bring the legislation in line with more contemporary practices, mediation is also introduced as a method of dealing with conflicts which may arise between creditors and trustees. Provision is also made for the automatic discharge of a first time bankrupt after nine months. That provision is intended to facilitate the debtor's recovery and to hasten his re-entry into the business environment.

Members would be aware that there are laws which now prevent an undischarged bankrupt from holding public office. It is, therefore, in the interest of the debtor to seek an early discharge; for this reason, the general thrust of the legislation is to enable the fast tracking of that entire process. Government administrative services will also change significantly. In Part XI it is provided for a modern simplified delivery of insolvency services, and there is created the administrative machinery necessary to ensure the effective and timely administration of the bankrupt's estate. This new regulatory regime is intended to ensure competence and impartiality on the part of office holders who must now be suitably qualified, experienced and trustworthy.

I must mention that during our consultations, various stakeholders, in Chaguanas in particular, expressed serious concerns about the qualifications and conduct of trustees. So the opportunity was taken to point them to the relevant provision under this Part XI of the Bill which provides for the appointment of a Supervisor of Insolvency who will be a government official responsible for the licensing and monitoring of trustees and who will be expected to exercise general oversight with respect to the interest of both debtors and creditors. Although the duties and responsibilities of trustees are spread throughout the Bill, it would be observed that clauses 109 to 221 list them comprehensively, in particular their reporting relationship to the court, the creditors and to the Supervisor of Insolvency; all in the interest of transparency and accountability.

Mr. Vice-President, those are the major highlights of the Bill. I have already pointed to the fact that in our effort to ascertain the views of all sectors of our society, the committee held a full morning of discussion with representatives of the trade union movement. They were able to draw the committee's attention to the fact that employees usually do not have an opportunity to have their views heard whenever a company is being folded up. They suggested that some provision be made in the legislation that will allow representative bodies to act on behalf of employees in an effort to bring their concerns to the table. The committee agreed to take this recommendation on board, and clause 176 was born entirely out of those discussions.

The committee also agreed that the law should not be enacted without giving consideration to societal concerns. Insolvency can impact the lives of whole communities. For instance, where a number of persons are employed by a single business or provide goods and services to that business, these persons would be seriously affected if that business was to go into bankruptcy. So apart from receiving written submissions from the business and banking community, the committee also embarked on a series of public consultations, which Sen. Mark insisted upon. We went to all of them, but unfortunately due to certain circumstances, some of the meetings did not come off with the attendance one would have hoped for.

Mr. Vice-President, I can safely say that the committee successfully completed its mandate as it was able to receive the views of both small and large businesses, lawyers, financial institutions, the credit industry, the labour movement and the ordinary citizen. The extent to which the Bill has been the product of continuous communication between the Front Bench Opposition and the Government was reflected in the fact that in the other place it was supported by the Opposition.

Mr. Vice-President, with those few words, I beg to move.

*Question proposed.*

**Sen. Wade Mark:** Mr. Vice-President, as a Member of this Joint Select Committee and an active participant in its proceedings, I rise to record and register some of our observations and lingering concerns as it relates to this piece of legislation, which as I will explain later on in the proceedings, is not simple by any means.

It has a lot of implications for individuals, investors, corporations and/or companies. It also has implications for the economy and its competitiveness.



Mr. Vice-President, in a market driven, capitalist based economy, one of the major responsibilities of any government is the provision of a stable environment that facilitates and encourages the development of businesses in that country. Put simply, the responsibility of governments is to make it easier to do business, thereby fostering development. Business development under this framework that we operate under, stimulates sustainable employment, exposes citizens to new technologies and processes.

As I pointed out to you and this honourable Parliament on the last occasion, I made reference to a World Bank publication entitled "Doing Business in 2007", in which some 175 countries and economies were surveyed by the World Bank as it related to doing business. There were several indicators used in order to measure the efficiencies in those economies: starting a business, dealing with licences, employing workers, registering properties, obtaining credit, protecting investors, paying taxes, trading across borders, enforcing contracts and, most importantly, closing a business.

This is the point I would like to get to now. In this particular publication, it was demonstrated that it was very difficult to close or resolve bankruptcies in the Republic of Trinidad and Tobago. In fact, out of the 175 countries surveyed by the World Bank, we ranked No. 151 out of 175 countries dealing with the issue of resolving bankruptcies.

As the hon. Attorney General indicated to you a short while ago, this piece of legislation that we are debating today, once passed, will, in fact, replace and repeal the 1916 bankruptcy legislation. So it tells us how backward we are as a nation, even though we boast and try to advance a kind of stable environment and the need for us to encourage business.

A small country like St. Lucia was ranked No. 39 out of 175 countries. Antigua/Barbuda was ranked No. 54, while Jamaica, surprisingly, was ranked No. 23 out of 175 countries, when it came to resolving bankruptcies. So this piece of legislation is really very, very late, because the bones of many of our workers and the kind of suffering that tens of thousands of workers have had to endure because of the absence of modern reformed legislation to deal with matters as we are addressing today; clearly it is unforgivable. I will deal with that as I proceed.

I join the Attorney General, which is a rare development, in indicating the significance of the legislation that we are dealing with today. It is legislation that will affect the economy of Trinidad and Tobago. It is legislation that will affect individuals; the individual consumer, the investor, the corporations and our

companies. It will influence the deployment of resources to productive use. As the hon. AG indicated, rehabilitation, reorganization and restructuring of our enterprises would become critical in this particular era, given the passage of this legislation.

It will also address the issue of costs and the availability of credit. Bankruptcy legislation in any civilization has to be rooted in fundamental principles. Fairness, predictability, transparency and efficiency; these are some of the principles that must really guide and drive bankruptcy and insolvency legislation in any civilization. Therefore, one of the areas I will address is the issue of education and training.

Mr. Vice-President, this legislation affects every citizen in the Republic of Trinidad and Tobago. Because of the lack of maybe understanding or maybe it had to do with the technical nature of the legislation, but we did not have riots or persons stumbling and falling over each other to come into these meetings that were held in different parts of the country. Maybe they are not sufficiently aware of the legislative influence and the consequences of this particular legislation. It is very, very serious.

Under clause 5(1) you will see where a creditor will have the power to file a petition in court for receiving an order against that debtor, where that person owes a creditor not less than \$10,000; it was \$4,000 before.

Small business operators, individuals who might borrow money, persons who are linked up and tied up with Courts or Standards Distributors, as an example, hire purchase schemes; if you owe these individuals or organizations \$10,000 and/or above, then a mechanism can be triggered to declare you bankrupt, but there is a process involved. How many citizens in this country would be aware of this particular provision and the consequences of it? This is why I believe that education, training and building public awareness of the implication of the legislation is very critical.

There should be established a special unit, maybe in the Attorney General's Department or some other department, that would be devoted exclusively to this question of public education and building public awareness. It will be a sad day for this legislation to be effected and ordinary people who are going to be affected are not aware of it; small business operators who are going to be affected by this legislation are not aware of it, and end up in jail because there are fines in here. This is not a simple matter or their just tapping you on the back; there are consequences involved. Therefore, Mr. Vice-President, I raise this particular point to emphasize the importance of the legislation that is before us today.

The Attorney General referred to clause 127 which deals with the scheme of distribution. You will see in that clause on page 133 of the report under (d) that workers will be entitled to some relief in the event of bankruptcy or receivership. In the old order before this amendment, they were not given any priority in the scheme of distribution. They were hewers of wood and drawers of water. At least today, even though it is totally inadequate, and I will say more about that as I proceed, there is an agreement. There is also an inclusion to ensure, rather than giving them a sum of money, given the changing nature of the economy and the erosion of one's purchasing power because of the inflation in this land, and seeing that when you prescribe and legislate today it will be for a long time to come, we agreed that there should be a formula agreed upon at the appropriate time. So rather than say \$3,000 or \$6,000, it could be \$10,000. That will be agreed upon by the parties, including the Minister with responsibility for this legislation in question.

This is where we part ways. As a Member I drew to the committee's attention that we needed to have special provisions to protect the rights of workers. In the Canadian jurisdiction there is something that is known as the Wage Earner Protection Programme, which is an Act that has been passed by that particular Parliament. Do you know what it does? In the event of bankruptcies the workers do not suffer. [*Desk thumping*]

The workers in Canada do not have to wait until a trustee comes in and begins to look at the assets and liabilities. Having looked at the assets and liabilities of the affected company, they will start to prioritize as to who will get what. It will come out of the assets and liabilities of the company, at the end of the day. In Canada the Wage Earner Protection Programme is funded by the Federal Government of Canada.

They fund it because workers' needs cannot be deferred indefinitely. The Government of Trinidad and Tobago has to look at funding this particular arrangement to ensure that the workers, not only get priority in terms of the scheme of distribution, but they must be guaranteed this priority. The only way to guarantee this priority is to have the Government fund a programme that will ensure that workers do not suffer unnecessarily when a company goes bankrupt in Trinidad and Tobago. That is an area that we have grave concern about.

If the government does not do it; I want to put on the record that an incoming UNC Alliance administration will make that into law in Trinidad and Tobago, where workers will be given priority, and it will be funded by the State. [*Interruption*]

**Mr. Vice-President:** Hon. Members, the speaking time of the hon. Senator has expired. [*Crosstalk*]

**Sen. W. Mark:** "I now start." I have been speaking for just about 20 minutes.

**Mr. Vice-President:** I am sorry.

**Sen. W. Mark:** "I going good; I want to know how my partner, Mr. Vice-President, get up." Anyway, I know what is happening. I see it sometimes when I look at you. [*Laughter*]

This is an area I really want to indicate that the Government should look at. It must fund a programme to ensure that when there is a bankruptcy, a receivership or there is liquidation of the organization, that the workers are given protection, and they must get their income, wages or salaries, whether it is severance, pension or earned vacation leave. They must get that money promptly and must not have to wait for six, 10 or 12 months or two or five years. That is not in this Bill; so you see a deficiency immediately in the legislation we have before us.

In the European Union, as an example, you have regulations that deal with the transfer of undertakings. For instance, in our country you have companies that close down here today and next week they open over there with a different name. They might even employ some of the workers, but the workers have no rights. They do not even have the situation where, even in the case of trade unions, there is a challenge in terms of successorship in many of these organizations, because of how they dance and try to be unscrupulous in denying workers their rights and denying trade unions their rights to represent those workers in question.

These are issues that we need to address. The Wage Earner Protection Act that I referred to is a piece of legislation that has to be created and formulated, maybe separate from what we have here today. We are dealing here with a principle to ensure that the workers are, in fact, protected.

In the case of the European Union, you have an EU directive effective from July 01, 2002, where it is stated that any transfer of an undertaking, business or part of an undertaking or business to another employer as a result of a legal transfer or merger, the rights and obligations of the transferor organization arising from a contract of employment or employment relationship are transferred to the transferee. This is what is stated in this regulation.

We do not have that in Trinidad and Tobago in the way they have it clearly outlined in the European Union under the directive. I suggest this as a second deficiency in the legislation as it relates to workers in our country. We have to protect the interest of the working class in this legislation. That is another area I wish to bring to your attention.

Another area that we believe the Government ought to have considered is ensuring that there is a list of exemptions when you are coming to bring proceedings for bankruptcy against an individual. We call on the Government to look at the issue of homes. You can deprive an individual and his family of their home. Under this legislation in its current manifestation, a person who is declared bankrupt and they institute legal proceedings against that person, can lose his home or his vehicle. In several jurisdictions, particularly in Canada, there are provisions to exempt those persons from having their homes and their vehicles seized.

So we are dealing with legislation in 2007, which does not at the moment incorporate what I am talking about; but we are in 2007.

**Sen. Dumas:** But you were on the Joint Select Committee! [*Interruption*]

**Sen. W. Mark:** I advanced all these things, but they were not considered or they were rejected. [*Crosstalk*] No; I have the right to speak; do not disturb me. [*Laughter*] That is one freedom I will die for. I know that he is the candidate for Tobago East; he has removed Eudine Job-Davis.

One of the other areas I mentioned for the consideration of the committee, and I also mentioned it to my colleagues in the Senate as well, was about the registered education savings plans. We believe that ought to be exempted in the event of bankruptcy proceedings, because you are saving moneys for your child's education and you just run into difficulty.

Do you know what? These things are going to be seized by whoever is going to be responsible at the end of the day if you cannot resolve the issue. Mr. Vice-President, you have to understand that you are working towards viability, reorganization and restructuring, but in the event that you are unable to reach there, these are some of the things that can take place. I appeal to the Government to look at these matters.

Unremitted pension plan contributions is another area that I have asked them to look at. There is something called cross-border insolvency. The UN Commission on International Trade Law has a model law on cross-border insolvency. This model law attempts to promote international cooperation in trans-border insolvency in three major ways; one, by authorizing the courts to coordinate and cooperate with each other; two, by restructuring the scope of local bankruptcy proceedings when foreign proceedings commence, and finally by granting local relief to representatives of foreign proceedings.

I was seeking as a member of the committee to enhance this particular piece of legislation by asking my colleagues to adopt this model law, which would have encouraged consistent administration of international insolvencies and provide an effective mechanism to deal with globalization of economic activity and the increase in insolvencies with international dimensions.

This particular United Nations model law was recently adopted by the US Government. For some strange reason, the committee felt that maybe at that time it was not prudent to adopt such model UN legislation on cross-border insolvency.

I raise these matters to let you know that we made several efforts to enhance the legislation, so that we could bring about greater protection for all, whether it is individuals, corporations or investors. We also mentioned the need for us to deal with the professional conduct of the trustees. I think the Attorney General made mention of that.

There is the need for us to have a prescribed code of ethics for these persons who are going to be playing a very important role, apart from the area of financial counselling that was mentioned earlier.

So these are areas that we have looked at and sought to have the Government support. Unfortunately we have not been able to get the Government to support these measures in the interest of strengthening the legislation that is before us.

Mr. Vice-President, these are matters that are going to end up in the court ultimately, if we cannot resolve them at a certain level as the legislation has outlined. The question that we must ask is whether the judges in our High Courts are adequately trained to deal with modern, reformed bankruptcy and insolvency laws, whether they are up to the task; whether they are anticipating the coming into being of bankruptcy and insolvency legislation.

Therefore, the retraining of our judges is very important in this exercise. They have grown accustomed to just implementing the laws in terms of making sure that no one violates it. They interpret the law. The question I will like to ask the Attorney General when he is winding up is: How many commercial court judges are there in Trinidad and Tobago? How many judges do we have on the Bench in our country that are skilled, equipped, capable and well trained in commercial law?

**Sen. Jeremie SC:** Allowing me to speak cuts down the things I have to speak about at the end. We do not have a specialist commercial law Bench, so that our judges are generalists, but there are a couple, an increasing number. I would say at

the present time maybe two in the Court of Appeal and one in the High Court, but that is more than there was a few years ago.

**Sen. W. Mark:** Mr. Vice-President, the key point I am making is that the challenge is in the transition from the old to the new. That is the challenge that we face, and whether our judges are trained or ready to address this particular question. This matter is going to affect your economy. It is going to impact on the economy of Trinidad and Tobago.

Maybe one of the things that we could have done, Attorney General, was to seek the comments of the judges on the draft legislation on bankruptcy; maybe it was an oversight on our part. They may have wanted to advance their ideas, their views; maybe we could have sent the legislation to the Acting Chief Justice and he could have gotten a team of people to look at it. They might have been able to suggest rich ideas and proposals and good recommendations; but we never took up that particular point in terms of getting the draft to them.

**Sen. Jeremie SC:** We did consult the Law Association of Trinidad and Tobago. Unless you are setting up a court, like the Family Court, it is not usual to consult the Judiciary itself. There is a separation of powers. We are Legislature; they are Judiciary. It is not usual to consult the Judiciary on matters that we deliberate on.

**Sen. W. Mark:** I want to tell the Attorney General, and I cast no aspersions, judges and justice ministry officials are usually the last to recognize the need for reform. Therefore, when you are reforming legislation of this nature, I believe that even though it has not been the practice, we always break new ground whenever we are on this path of change. This is far-reaching legislation. This is not a simple piece of legislation that we are passing here today. This is legislation that would affect hundreds of thousands of citizens in this country.

I will, therefore, suggest to the hon. Attorney General, when you confer with the Chief Justice we should ensure that judges are sent on organized conferences and seminars to deal with this question of new bankruptcy legislation. It is also useful to send them as observers to countries where modern bankruptcy and insolvency legislation is at work, so they will learn and appreciate how they must handle this particular new piece of legislation before us. I raise this, not in any negative way, but to encourage the Government to recognize that this piece of legislation is not as simple as some of us will want the society to believe. It is very far reaching in nature.

Mr. Vice-President, we want to ensure that the ordinary man and woman who will be affected by this legislation are properly made aware of this measure. If you go to 176(1), I think the Attorney General also made reference to this, for the first time in the legislation a trade union or:

“an association representing the interests of employees may request that the Supervisor investigate any acts by a trustee or debtor which adversely affects the rights of employees.

(2) Where upon conducting an investigation under subsection (1), the Supervisor is satisfied that the rights or interests of employees are affected he may intervene under this Part.”

**3.00 p.m.**

Mr. Vice-President, this was not in the original Bill that came before the Parliament but because of discussions with the trade union movement on this particular matter, we were able to arrive at some consensus. So even though you are not represented as a union in a particular industry or company and the rights of workers are affected, then you can intervene and this is a very important development in the legislation.

I wanted to also deal with clause 180 subclause (3) and I would imagine the Attorney General would possibly bring regulations to deal with the licensing of trustees because we need a code of conduct, a code of ethics for these individuals who are going to be responsible for playing such a critical role in determining the way forward for an organization or individual. So as clause 180 subclause (3) says:

“A person is not qualified to act as trustee unless authorized to do so by virtue of membership of a professional body prescribed by the Minister and is permitted to act as trustee by the rules of that body.”

Again, you are trying to safeguard quacks and invalids coming forward as trustees from nowhere and having their own biases and putting you into bankruptcy or receivership. So it is important, and I think it was a good recognition of the joint select committee to ensure that you have standards.

Remember I made the point that one of the critical principles underlying or should be the bedrock of bankruptcy legislation is fairness. I spoke about efficiency, and transparency which are essential principles that would be required to ensure that people do not go into these exercises with any baggage or biases as the case may be. You have to be even-handed because the objective is not to shut



down an organization, it is to make it viable; restructure its operations, readjust its arrangements because at the end of the day you want viable enterprises because that is the key in a captive economy if you are talking about employment for the citizenry.

I also want to indicate that the legislation we are debating today is almost outdated. Canada has just revised, reviewed and reformed its Bankruptcy and Insolvency legislation. So what we are dealing with today is already outdated, they have gone a step ahead of us and as I said, homes, vehicles, and savings plans are exempt from seizure by the trustees or by a court but we do not have these things exempted here. I pleaded to have them exempted, but I am a lone voice, and I have to deal with the Attorney General.

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

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

*Question put and agreed to.*

**Mr. Vice-President:** Sen. Mark, before you go on, I would like to apologize to you. The Attorney General, having begun at 1.55 p.m. was to finish at 2.40 p.m., that is 45 minutes and I ascribed the same 45 minutes to you. I am sorry.

**Sen. W. Mark:** No problem, Sir. Mr. Vice-President, I would like to re-emphasize the importance of public education on this piece of legislation. I do not know how much more I can appeal to the Government even before this Act is proclaimed and effected, we should really go on a nationwide campaign to educate the consumers, the small businessman, the medium size business operator, and the large enterprises as well of this country even though they may be more familiarized with these particular provisions. But the small man who has a parlour or a shop and who does not even have an accountant to keep his books properly, some cannot even read or write. It is amazing in our workforce today, and I am yet to get anyone to tell me the contrary.

The statistics are showing as at the end of 2005, that close to 49 per cent of the workers in the labour force only possess a primary school education. I am telling you what the literature is showing at the end of 2004/2005: 11 per cent of the workers in the labour force had a full secondary certification, there were 32 per cent without full certification, and 6 and 7 per cent with tertiary education. I do not know what the up-to-date statistics on this matter are.

I raise this point to emphasize that the man on the block, the man who has a parlour and is going to be affected by this legislation is not aware because it was manifested when we went to these consultations; whether it was in Tobago, Central Trinidad, Arima or San Fernando, the crowd was not there, the people just did not come out. Maybe when you talk about bankruptcy and insolvency to ordinary people they feel it does not affect them and it is for big business people. If we did not change the \$4,000 threshold to \$10,000 many people would have been caught in that net because the initial sum for triggering bankruptcy proceedings against someone was \$4,000 and it has now gone to \$10,000. Do you know how many persons would have been affected by that? Now that it has gone to \$10,000, have we been able to really educate and build a certain amount of awareness among people?

If you owe somebody \$10,000 and cannot pay, the person has a right to initiate and trigger bankruptcy proceedings against you. People need to know these things. There is a provision in the legislation that says when they begin proceedings against you as an example—let me see if I can find the particular provision. There is a provision in the legislation that once proceedings have commenced you cannot move anything and if you move anything, your property valued more than \$200, you could face jail. If proceedings are brought against you and you go to clean up your act and you take something out, and they find out that thing you are taking out is valued \$200, you will be handcuffed. That is jail. You cannot do that.

I am asking how many ordinary people in this country are aware that you can face jail if you remove property that has been under the court's jurisdiction valued \$200? You can be in serious trouble with the law. I do not have the exact provision before me, but I know it is in the legislation.

If you go to clause 159 on page 153 of the report, clause 159(1)(d) of the legislation says:

“The Court may by warrant cause a bankrupt to be arrested and detained, and any books, papers and property in his possession to be seized, and the books, papers, electronic documents and property to be safely kept as directed until such time as the Court may order under the following circumstances:

“(d) where the bankrupt removes any property in his possession above the value of two hundred dollars without leave of the Court or the trustee;...”

So an ordinary person who is not conscious of this provision removing \$200 in value terms can face arrest and detention.

Mr. Vice-President, I am advancing that the challenge is the transition from the old to the new and the population is not properly educated on this one. The culture we have—if something happens to an ordinary vendor or shopkeeper and bankruptcy proceedings are filed against him in Trinidad and Tobago—is, “I can go inside my house because it is my house and I could remove a fridge, and that fridge is valued at \$1,000,” you can be arrested and put in jail.

We have to educate the people and engage in a public awareness campaign because remember, the Attorney General said that the legislation this is replacing is dated 1916. Many of us were not born, none of us were here. How are we going to ensure that innocent, defenceless people who are unconscious about the draconian provisions in the legislation—this is draconian because you can go to jail, you can be arrested and lose your freedom.

So I raise these points not to tell the Attorney General we are not in support in principle of the legislation, but to advise him that there are several deficiencies in the current legislation and if you want it to work in the interest of the national economy and in the interest of competitiveness in this land, you have to educate the people. You must embark on a public campaign and the hon. Dr. Lenny Saith is in charge of CNMG, the Information Division which is now a private entity. I believe that rather than putting Jarrette Narine on Sunday at 7.30 p.m. to tell me about agriculture which has been a failure, you should teach me about bankruptcy proceedings because you are wasting my time. Do not use Government’s resources to promote your personal campaign.

I call on Sen. The Hon. Dr. Saith to take this particular message seriously and let us shape and fashion a campaign of public awareness programmes to build people's consciousness so they can understand that this is not simple legislation, it is far reaching, technical, and complex legislation and if ordinary people do not understand it they can end up in jail easily under this piece of legislation, and I cannot reemphasize this point over and over.

Mr. Vice-President, I know that the day the price of oil drops, or the price of gas collapses—you lived it through. Do you remember a company called Caribbean Airlines, owned by a “fella” called Mr. Samaroo? He committed almost murder in this country.

**Hon. Senator:** Air Caribbean.

**Sen. W. Mark:** Air Caribbean, not Caribbean Airlines, well that is another story. Caribbean Airlines is Davies who gone and put his partner, Saunders. He was getting half a million dollars a month and he gone and is now the Strategic Advisor to the Board.

So is it Air Caribbean, Mr. Vice-President? Maybe I am wrong, but I know the gentleman who owned that airline was Mr. Samaroo and workers today have been left in the rain, they got no severance, no pension, no benefits because of the fact that they could have maneuvered.

**Sen. Dumas:** That was under your watch.

**Sen. W. Mark:** Mr. Vice-President, from 1983 right up to 1990, tens of thousands of workers and their families suffered because of companies going into receivership. Some of them deliberately, intentionally and maliciously conspired to put themselves and got their partner to organize and say receivership and shipped all the money outside. And the person who worked there for 30 or 34 years went home without a cent.

Swan Hunter in Chaguaramas went into receivership and left hundreds of workers on the breadline. Neal & Massy, a big financier of the PNM today, closed their factory somewhere in Tumpuna—the car assembly plant—and sent hundreds of workers on the breadline—and that has happened to so many companies—and they received nothing. Hewers of wood and drawers of water! The beast of burden, they carried burdens and nobody was there to help them unload those burdens.

I want to close by saying to the Government, whilst we were part of the committee, I did not sign the report, but I want to tell the Attorney General and you, Mr. Vice-President, it is legislation that has come too late and still is weak in many areas; it is outdated in many respects, but you are making a start and all I say to the Attorney General is that he has a responsibility to educate the people, make them aware of the provisions of this legislation, particularly the draconian provisions. I think if we educate the people and campaign for public awareness, it can work and I say let us have periodic review of it. Every three or four years, let us revamp it because the world is not waiting on us, it is speeding along the highway of globalization and, therefore, we need to revise and review.

Thank you, Mr. Vice-President.

**Sen. Dr. Eastlyn Mc Kenzie:** Mr. Vice-President, I will be very brief, and I want to start by congratulating the joint select committee. As you know, the Members came to Tobago and I must say thanks to the parliamentary staff who invited many organizations and individuals to the meeting and to send in comments, et cetera.

As you heard from the Attorney General, there were not many people attending the meeting, I think just one or two persons. The parliamentary staff

was not satisfied that many people did not come and they left it there, but they tried to find out why people did not turn out.

I volunteered to call and chat with a few persons who I knew were invited and asked them why they did not come to the meeting. Some of them said they thought the draft was okay, some thought it was for big business rather than for the little people. In fact, some of the lawyers said they did not think it was necessary to come out after I chatted with them.

So I know that the Members of the committee went all out and they had been doing the work for a long time and the parliamentary staff did a lot of communication in trying to get comments from people.

Mr. Vice-President, I want to comment on one or two things Sen. Mark said. From my experience, I know when people go to the stores like Standards, Courts and American Stores and take items on hire purchase, they know the agreement that if you do not pay they would repossess, or if you pay a certain percentage it cannot be repossessed. They know of that.

From what I read in the new rules you would not just be imprisoned, or charged or be handcuffed if you remove something from the house that cost \$200 or so. The court has to see what the problem is, why it was done and then an order would be given whether you should be brought to justice, or be imprisoned or what have you.

Mr. Vice-President, we know of people who, when they know that they did not pay and you are going to come at them, they move the things out. I know of people who have actually transferred assets from their names to other people's names just to get away from honouring a debt they have. So when you go to repossess or take action for whatever they owe you, they have absolutely nothing in their names and so we have to look at it from both sides.

I also know of organizations—and Sen. Mark talked about Air Caribbean—I also know about credit unions that went into receivership and actually gave people just a fraction of their shares from what they had originally put in. I think, as Sen. Mark said, the start is a good one, we need to review and update and I am satisfied that the committee worked very hard.

I am sorry that Sen. King who was very enthusiastic about the work, and who put much effort into it by way of consultation, chatting, reviewing, and looking at other laws of the same nature in other countries, I am sorry she is not well, but I know she would have been very vocal in what she would have had to say. I hope that she gets better very soon.

I say to the Attorney General and the team, thanks for the work done and thank you very much for remembering to come to Tobago and seeking their comments, and personally I will support the measure.

Thank you.

**Sen. Dr. Tim Gopeesingh:** Mr. Vice-President and Senators, I do not want to detain you this afternoon for very long because the team that worked on this Bankruptcy and Insolvency Bill did a lot of work and it ought to be sincerely congratulated and commended for the work done.

It was good that the hon. Attorney General made the statement that this Bill goes hand in hand with the Companies Act and it was good that he indicated that the UNC government in 1995 brought the Companies Act which was needed, the last Companies Act being in 1921.

He indicated that this Act would go hand in hand with the Companies Act, and we are happy that the Minister who piloted this Bill in the other place, Minister Valley, acceded that it should be sent to a joint select committee, and it was based on the work and points that were made that the Minister indicated that it would go to a joint select committee and for public consultation.

It is unfortunate that the population did not come to these public consultations. I do not know whether the advertisements and public announcements should have been made the same way the crime consultation took place which received a lot of public support.

Mr. Vice-President, this piece of legislation seems to be affecting the rights of citizens to enjoyment of property because when people go to banks for money owing, they purchase homes and a number of things and they enjoy their property which they have a right to do. I would have thought that this Bill really affects the constitutional right to a certain extent.

If one looks at Part 1 of the Constitution it says:

- “4. It is hereby recognized and declared that in Trinidad and Tobago there have existed and shall continue to exist,...fundamental rights and freedoms, namely—
- (a) the right of the individual to life, liberty, security of the person and enjoyment of property and the right not to be deprived thereof...”

**3.30 p.m.**

If somebody has worked hard in his life; went to the bank as a creditor; was paying a mortgage for 10 or 15 years and for some reason finds it difficult to continue the payment in the way that the bank wants it, it would be difficult for that person to enjoy the property because the bank may move swiftly and sell it. I want you to clear this. I believe that it needed a special majority.

**Sen. Jeremie SC:** I interrupt on that one point. The legislation has been enacted in Barbados. It is based on a Caricom draft model. We specifically excluded what Sen. Mark wanted us to deal with, that is the matrimonial home out of deference to the right of property. It goes two ways. The bank has a property interest in the hotel that you pointed out. They would have a mortgage. In Sen. Mark's case they would have a mortgage on the matrimonial home. If you exempt the home you would affect the property right. It does not affect any property rights.

**Sen. Dr. T. Gopeesingh:** If I am to get it clear, have you exempted matrimonial homes?

**Sen. Jeremie SC:** No.

**Sen. Dr. T. Gopeesingh:** You have not. Is that not a property right of the person owning the home? The bank would have a lien. Where do we stand?

**Sen. Jeremie SC:** If you exempt, by definition, you cut off the creditor's right; so you cut off the bank's right. That is what we did not want to do because the bank would not have a lien. A lien is a non-possessory security interest. In our system it is a mortgage. The bank would have a mortgage and we could not be that radical. I am not saying that down the road as Sen. Mark said, if we set up a committee to look at this every three or five years, we may not wish to look at that. It is too radical for us at this stage.

**Sen. Dr. T. Gopeesingh:** The point I was going to make on that besides the fact that I thought that it needed a constitutional majority—you see what is sweeping through the Caribbean at the moment. I take my hat off to the new Prime Minister of Jamaica, Bruce Golding who said that he is going to ensure that there is constitutional change. Where the citizens' rights are concerned he will get the support of the Opposition party and ensure that no laws are passed without the support of the Opposition party.

In that context I thought that I would make the point with this Government. They need to consider that whole aspect of the constitutional change so that important pieces of legislation which need the support of the Opposition are in

keeping with what the Prime Minister of Jamaica is trying to do to keep an even keel in the administration of his government, to ensure that the opposition and the government work together. I know that the joint select committee is one means of doing so, but it goes a little more in terms of needing the Opposition's support for certain pieces of legislation.

There are some issues that we will like to be cleared. Sen. Mark might not have touched them. He was a member of the committee and so was Dr. Roodal Moonilal, MP for Oropouche. One part of the legislation has getting judgments within 90 days. I cannot remember the section but I remember reading it. If that is so, at the moment, the administration of justice because of the weak infrastructure and the plethora of cases before the judicial system, I do not believe that it will be as easy to get a judgment on a creditor/debtor issue on insolvency. I will like that to be looked at to see if we will come up with something that is more relevant to the judicial system's operations at the moment.

The other point is about when a trustee and a receiver are appointed. I had the experience with trustees and receivers when I was a member of St. Clair Medical Centre in the 1986/87. In 1990, St. Clair Medical Centre was going under receivership. The trustee came in and not knowing how a medical institution was run, he began to operate St. Clair Medical Centre and it went further downhill. Fifteen or 20 doctors lost their money and it was sold to the bank at a meagre price of \$6.5 million. The people who bought it from the bank got a steal of a deal because the property was worth about \$15 million in those days. That is what forced me to do an MBA because I wanted to know about management. Doctors are relatively foolish in terms of management capabilities. We are dunces as far as that is concerned. This is what drove me to understand what happened there and why we ran afoul with the management capabilities.

There is the question of managers staying on. Could the hon. Attorney General give us some information in terms of when a trustee or receiver is appointed by the supervisor, whether the incumbent manager stays on or he has to go? What provisions are made as far as that manager is concerned? Will that manager—who runs the institution and may be running it down in the first place because of bad management techniques—stay and give the trustee some advice? We are not clear on that. Does the manager go or stay as far as working with the receiver or trustee?

When a stay is granted by the court on the relationship between the creditor and debtor—one has to apply to the court for a stay. We go back to the inefficiencies of the system as far as the time constraint. By the time you get the



stay much of the assets of that company might be gone. If it is going to be 90 days, some of the assets would be lost during that period of time. If it is taking a longer period of time more of the assets would be lost while waiting for that stay on the company by the creditor. By the time you get the stay the assets would have been gone and probably disappeared. The fairness and equity that was necessary in that sort of relationship, the assets would have been frittered away. That will not solve the problem of this Bill.

In this Bill the secured creditors have the highest priority in payment. Who are the secured creditors? We need to look at the distribution of creditors; who are given priority and who are not. We know that secured creditors are people who have registered mortgages and judgments. In terms of the distribution of secured creditors we need to have some explanation when the hon. Attorney General is winding up.

I am making that point in the context of what Sen. Mark indicated with a number of companies. You will remember that there was a company called International Trust which was run by Mr. Gillman Hussain in the late 1970s. This institution had \$116 million in those days. People had put their gratuities, savings and pension in that company. When it went into liquidation hundreds of people were hurt badly. All their pension, savings and gratuities went and they had no recourse. They remained very poor subsequent to that. Some people lost hundreds of thousands of dollars and some people lost millions of dollars. Do you know how painful it is for people who saved all their lives, and because a company is doing well—they take their chances and invest in this company; then it goes into liquidation and goes bust? Who are the creditors to benefit when they try to liquidate the company and pay some of the creditors? Who are the people who go last? The people who have put their savings, gratuities and pension are last on the list. They suffer as a result.

That happened to Trade Confirmers. I think that you will know Trade Confirmers with Ram Kirpalani who was a magnate in Trinidad in the business sector for a long while. Long ago, people believed that Mr. Kirpalani was a financial genius. Because of his empire he was building, they put much money and invested in the Kirpalani group and they lost millions. Those are two examples in the private sector. Today, people are still alive and feeling the pain of having lost all the money that they had acquired and saved over a period of time.

This Bill is welcome in that aspect and to protect the debtors as against the creditors. We need to find a way of knowing who are secured creditors and who are not. The ordinary man is last on the list.

Sen. Mark alluded to the question of laws relating to the workers. In this Bill, glibly, as the Attorney General mentioned, clause 176 does not give too much support to the worker. It says:

“Employee association to represent interest of employees”

This is the only part that deals with employees.

“Any trade union, body or association representing the interests of employees may request that the Supervisor investigate any acts by a trustee or debtor which adversely affects the rights of employees.

Where upon conducting an investigation under subsection (1), the Supervisor is satisfied that the rights or interests of employees are affected he may intervene under this Part.”

The Bill does not go into any depths in securing the rights of workers.

I want to quote some information I found when I was reading in preparation for this debate. Sen. Mark quoted a part of this. We must have read the same article. In 2005, the Canadian model looked at how they restructured the insolvency and bankruptcy laws. They paid very close attention to workers. At the moment this is very superficial.

The distribution is in securing creditor priority but with respect to workers, we are not sure where that falls in line and whether they are getting any priority with their wages, pension and collective agreements.

I want to quote from an article dated June 03 2005, on the Canadian provisions:

“The Minister of Industry, and the...Minister of Labour...announced that the Government of Canada has introduced a comprehensive insolvency reform package in Parliament to modernize the Bankruptcy and Insolvency Act and the Companies’ Creditors Arrangement Act...as well as to create the legislative framework for the Wage Earner Protection Programme.”

They went further ahead than what clause 176 states. We can pass that information to you for further consideration. You will not be there most likely and we will probably have to enact the legislation.

**Sen. Dr. Saith:** Keep it.

**Sen. Dr. T. Gopeesingh:** We will keep it and when we come across there we would use it. We have to bring something similar to the wage earner protection programme because at the moment the workers are not protected.

Canada's insolvency system better responds to the needs of the businesses, consumers, investors and workers. Their reform was about protecting those adversely affected by bankruptcy and facilitating restructuring as an alternative to bankruptcy to save jobs and keep businesses viable. Under their thinking they had two issues, to keep business viable and save jobs. They said that good insolvency law was critical to a fair and efficient marketplace. That is the point I wanted to make on the issue of workers' rights and privileges in terms of this Bill.

When a judge grants a stay, is it automatic once the trustee, the receiver or the supervisor comes in? Is it a stay for a limited period? In 2001, the World Bank had indicated that the work at the global level developing principles and guidelines for effective insolvency and creditor rights system, suggested that there should be preferably, an automatic stay on assets for at least some initial period. In the World Bank study *Looking Worldwide*, they said that there should be an automatic stay on assets even if it is for a limited period to prevent a run on the assets of a floundering company. The hon. Attorney General needs to guide us in this Bill to show us where this issue is dealt with, so that we would know that this stay is automatic for a limited period. Are we going the way of an automatic stay; no automatic stay or a limited period? We need to have answers on that.

We are happy that a number of organizations met to discuss this and the hon. Attorney General indicated that—I note FitzWilliam Stone; Law Association; Ernst & Young. This report has the names of the companies. We understand that the Bankers Association had submitted a number of recommendations, over 60 and I am not sure how many of those were taken into consideration. Sen. Mark made mention that they should have been called back. I know that your legal and drafting team would have done much work on this. It is always good when you have consultations with people. Before the final Bill you should indicate to them what you have taken into consideration and what you left out because of certain reasons.

The Canadian model on workers showed that they brought on the Wage Earner Protection Program Act. This brought significant improvement in the protection of employees and provided workers with guaranteed payment of wages. We know that in this country we have had the experience where companies go bankrupt as I have mentioned. The workers were lost; they had no wages, pension rights and their collective agreements went to nothing. We are happy that you consulted the labour movement, but it is important for us to re-

emphasize the point that this needs to be strengthened tremendously. We will probably look after that when we go into government. By virtue of that, about 97 per cent of all unpaid wages are covered by the Canadian government. It provides wage protection up to Can. \$3,000 per worker.

Pension protection and workers retirement income need to be preserved. I gave examples of private sector people, but what about state enterprises? Recently, we had BWIA and we understand that there were 2,000 BWIA employees. How many people are employed with BWIA and the answer was approximately 1,200. What happened to the other 800 workers who have not been employed with BWIA? We have seen articles on the newspaper. I saw an article by a senior stewardess where she indicated that her pension which was promised some time ago during the restructuring or liquidation of BWIA and bringing it into Caribbean Airlines—we know that is a fiasco.

There is no reason for this Government to spend \$1.5 billion on restructuring BWIA and making it Caribbean Airlines just for the change of something to a bird. That was unpardonable. You cannot spend that amount of money to liquidate and restructure BWIA; people are out of employment to change the name in principle. You bring foreigners to work for half million dollars a month. That one went and now he is an advisor. The 800 people who are affected and are not employed are waiting for their pension and gratuities. Almost a year later they have not received it. Perhaps, the Minister of Public Administration and Information will tell us.

Another area I want to mention on that is the NBN group. We asked the question of the Minister of Public Administration and Information and somebody answered, the former TTT. They said that there were hundreds of workers in TTT. The sum of \$183 million was spent on liquidating TTT and bringing out the CNMG group. In one year, last year, they lost \$83 million. What has happened to the 400 plus workers who were retrenched from that area, by virtue of the liquidation of the TTT group to the CNMG group? These things are very dear to us. Why should people suffer? What is the rationale for the liquidation of two relatively viable enterprises and spending \$1.5 billion on one and \$200 million on the other? It is to no avail and people are suffering. I thought that I should make this point to ensure that it is said. You must not forget Caroni (1975) Limited. [*Interruption*] I know. You do not want to hear that but I will not be long again, I will end shortly. There are 10,000 workers whose pension and gratuities have not been paid. They got a small amount in VSEP. They liquidated Caroni (1975) Limited; 10,000 workers went on the breadline and 100,000 people in Central Trinidad were affected as a result of that.

We believe that the supervisor in this Bill should not have the power to dissolve any collective agreements between companies and workers. That should be given due respect and priority against secured creditors. Collective agreements must run hand in hand with secured creditors because it affects the life and well-being of the workers. *[Interruption]* I cannot remember the clause, but I think that it is close to clause 127. The Canadian system allows notification to workers. This clause does not put anybody on notice. Telling the trade unions that this is happening does not give any support for that area. Workers rights must not come after the right of secured creditors.

Sen. Mark spoke to some extent about the efficiency of the judicial system. I am not sure if this Bill has regulations.

**Hon. Senator:** Not yet.

**Sen. Dr. T. Gopeesingh:** Are these regulations going to come under affirmative resolution? *[Interruption]* They will come. It is always a good thing to have these regulations brought so we can have a look at them. Unfortunately, this does not happen with much of the legislation.

Some of the trustees and receivers are very highhanded and they do their business. We know that the trustees come under a particular Act and you have Ernst & Young, PricewaterhouseCoopers and some of these multinational accounting management firms. The supervisor of this insolvency legislation must have impeccable ability, character and integrity. For a while now, we have been asking to bring the Financial Institutions Act under one major financial institution—the hon. Minister of Finance has been promising it. We are getting piecemeal legislation on finance and we have not had one major financial Bill to look after all the pieces of legislation in the financial system.

**4.00 p.m.**

So the qualifications of the supervisor and his integrity and character must never be questioned. Competence, as well as integrity and character, is important. We do not trust the system. We know that there are supervisors of insurance companies and credit units and that a number of them are floundering and people may lose money by the millions again, just like with Trade Confirmers and International Trust. We are not sure the Supervisor of Financial Institutions is working expeditiously.

Recently, there was this insurance company in the middle of nowhere. You or I might have had an insurance contract with it and might have found ourselves without a contract, having to pay new money to get a new contract for our vehicle and our home.

I gave the example of a receiver moving high-handedly, not understanding the business he had been put in and, instead of the business doing better, it did worse very quickly. We have mentioned these things: receivers, trustees, supervisors, but these are three important areas that would make a difference in terms of equity and fairness, so that there would be, not perceived equity and fairness, but the real thing between the creditors and debtors.

We notice that the Bill excludes banks, insurance companies and financial institutions. We have a number of international banks coming into Trinidad and Tobago and people are investing in them. Suppose one of them goes bust, we have deposit insurance for people, but \$50,000 is what people will get. There are people who put millions of dollars in these companies to earn dividends. If these companies go bust, this Bill does not take care of that. You will tell us that this comes under the Financial Institutions Act.

In 1989, when I was a young guy, I lost money with Workers Bank. I went bust by about \$300,000 because I bought shares in that bank and it crashed. It went into another bank called Trinidad Cooperative Bank. We saw local banks crashing. This insolvency Bill does not take care of banks going bust and people losing money. We are not sure whether the Financial Institutions Act really takes care of people who will be losing money. One hundred thousand dollars is pittance under the debtors' insurance. People would lose a lot of money when banks go bust.

Recently there was almost a run on one of the banks and people became really frightened. What happened with the Clico Group recently with Mr. Monteil and the question of \$100 million? Suppose a run was put on CLICO, do you know how many people would lose money? I thought it important to bring that point. You have brought that under the Financial Institutions Act.

Mr. Vice-President, this needs to be said in terms of banks taking advantage of the ordinary consumer. They are high-handed and oppressive. They have high-priced loans, terms and conditions. They are the creditors. There are companies that are the debtors. They can at any time call in a debtor and say he is not fulfilling his agreement. In fine print somewhere, they have the ability to call in the debtor within one month. A company that is working very hard trying to make ends meet and to earn a dividend for its shareholders would find itself at the mercy of banks.

Have you been for a loan recently? The banks charge a one and a half per cent finder's fee. I feel strongly about this. [*Interruption*] It is part of this; the debtors and creditors insolvency Bill. Companies will become insolvent as a

result of pressures from the banks. When they make \$900 million profit in one year, RBTT and Republic making \$600 million and FCB, \$300 million and \$400 million and Scotiabank making a whole heap as well; between them they are making over \$3 billion in profits; at the expense of whom?

At one and a half per cent finder's fee, for a person borrowing \$10,000, it is \$150; \$100,000 is \$1,500; \$1 million is \$15,000; \$3 million is \$45,000. Businesses that borrow \$5 million to start up will have to pay \$75,000 just in finder's fee. Why do they have to do that? *[Interruption]* Stop that. Get your Supervisor of Financial Institutions to go to the banks and tell them that is not within the law. That is an oppressive condition in the banking sector. If money is supposed to come out at a certain time, say on the 31<sup>st</sup> of the month, and your account does not have that money they charge you a late fee. Everything is a fee.

Coming back to the question of debtors; companies that are under the behest of the bank. I know a company in south, a transport company—I have forgotten the name of the guy—the value of his assets was more than \$40 million. He was liquidated for about \$5 million. When I speak about supervisors, trustees and receivers, it seems to be a team working together. The banks appoint people, sell the property for next to nothing, retrieve its money, but the people lose millions of dollars.

The Attorney General is not an entrepreneur. He is an academic and a politician. *[Interruption]* Do not get worried, I might go on longer. *[Interruption]* You have heard it because you sat on the committee. Mr. Vice-President, he sat on the committee so he knows about it, but we are asking questions. I have a right to know. We have a right to ask questions. *[Interruption]* He is a member of the joint select committee and until the report is given in Parliament, he cannot speak to us about it. You want to set up Sen. Mark.

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

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

*Question put and agreed to.*

**Sen. Dr. T. Gopeesingh:** Thank you very much, Mr. Vice-President. I know Sen. The Hon. Montano, acting as Minister of Foreign Affairs, has an important event this evening, but I am sure Sen. Dr. Saith would excuse him.

On the question of the Financial Institutions Act, the Ministers in the Ministry of Finance, Sen. The Hon. Christine Sahadeo and Sen. The Hon. Conrad Enill

need to do a lot of work to make sure that the Supervisor of Insurance, the banking sector and the financial institutions remove some of these things that oppress the population.

I have come to the end of some of the issues which I wanted to clarify. [*Desk thumping*] I think the hon. Attorney General has some answers to give us, although Sen. Wade Mark and Dr. Roodal Moonilal were on the committee. Certain things need to be clarified and we hope that they take our advice into consideration. We know that they will not be there when the time comes for the legislation to be changed, so we wish them a happy time out and may they sit on this side for the next five years while we have improved legislation to protect workers under this Bill.

**The Minister of Labour, Small and Micro Enterprise Development and Acting Minister of Foreign Affairs (Sen. The Hon. Danny Montano):** Thank you very much, Mr. Vice-President. Just a few minutes; I am sure I will finish before tea break. I am not going to waste everybody's time for one hour. It does not take long to deal with matters raised on the Opposition Bench.

Sen. Dr. Gopeesingh talked about International Trust and some of the spectacular failures of the quasi-financial institutions we had back in the late 1980s. The fact is that the Government made an attempt to respond to that situation. If you would recall, the Government instituted the Deposit Insurance Corporation and that scheme was a direct step to deal with that. That is how it is done in the developed countries and here. We are not doing anything especially different.

The Senator talked about the realization value of assets held by receivers. I know a little about this. Remarks were made by Sen. Mark as well as Sen. Dr. Gopeesingh about assets that are flogged off by receivers at less than their value. Mr. Vice-President, when receivers sell assets, there is a strict level of accountability both under the previous law and the existing law, in the Companies Act as well as the proposed legislation.

The receivers are required to put everything up to the public; it is not done by private arrangement. The receiver pretty well has to take the best offer. He does not always because it depends on how the money is to be paid and over what period. However, for the most part, it is always the highest and best offer, therefore, the price that is fetched represents the market value of the assets. The fact that the asset may have been worth \$15 million at one time does not mean it is worth \$15 million at the time it is sold. For a number of reasons, there could be



an impairment in the value. If there is a recession and there is no one to buy it, you sell it for what you can. That is what happens when you go into recession. For assets that were previously valued way in excess of the amount that it ultimately settles for, there is the apparent loss. There is an impairment in the value of the asset because of the conditions in the marketplace. It is not as a result of anything that the banks or the receivers are necessarily doing.

Sen. Dr. Gopeesingh spoke also about the excessive charges by financial institutions. I also have to pay them, but one thing with which I am satisfied is that under this Government, now as well as in previous incarnations, we set a regime of competition. There is open competition in the marketplace now. We have banks coming in from as far away as India and if they want to compete with the local banks and not charge the finder's fees or commitment fees—they are going to charge a lower rate of interest—then the other banks will have to follow suit. Competition is the only way to regulate situations like that.

This Government has put in someone to make certain that the financial affairs of banks are regulated, but not in the specific things that they do—whether they charge a commitment fee or a finder's fee. That is something for the banks to do amongst themselves; it is a question of competition.

I want to deal with one issue that Sen. Mark dealt with and let the Attorney General deal with the rest of it. He spoke about clause 5, saying that a debtor owing not less than \$10,000 can be put into bankruptcy and that is the threshold of the whole thing. What he did not say—let me read it:

“...one or more creditors may file in Court a petition for a receiving order against a debtor where it is alleged in the petition that:

- (a) the debt owing to the...creditor is not less than four thousand dollars; and
- (b) ...has committed an act of bankruptcy within six months immediately preceding the filing of the petition.”

That is the important thing. It is not saying that Standards or Courts would be putting one of their debtors into bankruptcy for the sale of a fridge. It is saying that a small creditor, who is owed as little as \$10,000 could take on giants like Neal & Massy and Ansa McAL. That is what it really means. For Courts or Standards to put a debtor who owes \$10,000 into bankruptcy does not make financial sense. The cost of bankruptcy is too expensive.

The moment you put a receiver in, he will charge between \$3,000 and \$5,000 a day. You cannot incur that kind of cost for a debt of \$10,000. That does not make sense. Do not forget that you have to get the permission of the court. Subclause 5(11) says:

“Where the court is not satisfied with the proof of the facts alleged in the petition...or is satisfied by the evidence of the debtor that he is able to pay his debts, or for other sufficient cause no order ought to be made, it shall dismiss the petition.”

In other words, the court is the final arbitrator to whether there is a bankruptcy. It is by no means automatic. Under the circumstances, I think it would be hard pressed for a judge in our system to take a small creditor, who owes \$10,000 or \$12,000 on a fridge, to court; have him go into bankruptcy for a debt of that nature, and incur the cost of the bankruptcy proceedings against all his other expenses. That does not make sense. Bear in mind that there are 10 acts of bankruptcy of which he must have committed one, before the act is filed. It does not mean what Sen. Mark said. It is the other way around, that is, a small creditor, the David, can take on Goliath because he can take on anybody. Once the debt to him is \$10,000 or more, he can file a petition for bankruptcy of the person that owes him the money.

I wanted to clear that up because that is a big issue that is not a threat in this legislation.

Mr. Vice-President, I thank you.

**Sen. Seetahal SC:** Mr. Vice-President, the Minister sat down, but I was trying to find out whether the declaration of insolvent persons, which is where the person has a claim amounting to not less than \$4,000, which means over \$4,000, can work the other way.

**Sen. Montano:** You are right in that the big person can take the small person to court, but it would not make any sense because the cost is too great. There are other remedies in the common law, as the Senator well knows, that makes it far more efficient to get the money back. In the case of Courts or whoever, it is far more efficient to repossess the fridge than to go through the process of bankruptcy. That does not make sense; it is too expensive. By the time the creditor gets his money back, it has all gone in fees. That is why this is not a threat to small debtors.

**The Attorney General (Sen. The Hon. John Jeremie SC):** Mr. Vice-President, there are just a couple points that were raised by Sen. Mark and Sen. Dr. Gopeesingh, which we can deal with quickly before the tea break.

Sen. Mark raised the point of the Wage Earner Protection Program Act in Canada. We subscribe to the philosophy of the Act, but it is a separate enactment. It cannot be done at the same time we are doing this Bill. *[Interruption]* I thought you were saying that it is a condition precedent to your support for this. I am happy that is not so. We are beginning a journey which is long overdue. We are repealing a 1960 Act.

In respect of education and public awareness, that is not a matter that we can legislate on, but it is necessary and will be done insofar as the Executive is able to do it. You raised the related point of the Judiciary and their training. They have a Judicial Education Institute and it is something they can pick up. There is separation of powers and I will undertake to communicate to them and to point out that the legislation is now here. They should have predicted it because it has been with us for practically two years. Just in case they have not noticed that we are doing it, I will communicate with them and ask them to look at it.

Sen. Dr. Gopeesingh raised a couple points. The major point he raised dealt with his own experience and it was a valuable point because in the literature today there is a lot of discussion about whether you leave a debtor who has failed in possession. This did not happen in his case. His hospital had failed but obviously he knew the business, so he was divorced of possession and someone else came in and sold his business at minimal value. There is a lot of discussion going on in the literature now. The tendency now is to leave the debtor in possession.

**Sen. Dr. Gopeesingh:** And the management team.

**Sen. The Hon. J. Jeremie SC:** Yes. That is what the new legislation seeks to do by decriminalizing insolvency and making the legislation more in tune with modern realities, which is that credit is good. It is not something we discourage and punish people for when things go wrong. Credit risk could be anything from currency fluctuations to things which happen in other parts of the world—external factors.

With respect to the stay granted by the court in clauses 55 and 57, it is an automatic stay for a limited period of time. I will not spend any more time on that. With respect to creditors and the difficulty of postponing credit to other persons, the real difficulty there is a constitutional question. We are not tampering as yet with fundamental property rights. There is a definition of “secured creditor” in the Bill, which relates to persons who hold mortgages, pledges, charges, liens on or against the property of the debtor. Those are organizations like Courts and Republic Bank, which hold mortgages on homes. We cannot as yet get to the

point in this legislation—the Canadians have haltingly got to that point, but it is not yet time, in our view, for us to interfere with the fundamental property rights of Mr. Courts and Mr. Republic Bank. The time might come in future. There is talk about administrations changing. Philosophies change and the time might come when an administration might feel comfortable enough to interfere with entrenched property rights—rights protected by the Constitution. That will require a more lengthy debate and greater stakeholder participation in my view. *[Interruption]*

I could not find a reference to 90 days; you did not give me a specific reference. The code of ethics is to be prescribed under clause 185. The Canadian scheme, although it is operational, has not been fully funded, so that—yes the Canadians are in front of us, but not so much further. They have not fully funded the scheme.

Mr. Vice-President, those were the main comments which were raised. I heard no voices raised in opposition to the Bill. It was approved in the other place with the unanimous support of all present. It is the product of two years of hard work and extended consultation and I recommend it to the Senate.

With those few words, I beg to move.

**Mr. Vice-President:** Hon. Senators, we shall take the tea break now and return at 5.00 p.m. The Senate is now suspended for tea.

**4.30 p.m.:** *Sitting suspended.*

**5.01 p.m.:** *Sitting resumed.*

[MADAM PRESIDENT *in the Chair*]

**Madam President:** The last I heard, you had finished speaking. Let me find the spot.

*Question put and agreed to.*

*Bill accordingly read a second time.*

*Bill committed to a committee of the whole Senate.*

*Senate in committee.*

**Madam Chairman:** Senators, because there are 271 clauses, I would like to suggest we take it in Parts. As we go along, if there is any particular clause in that Part that you have something to discuss, you would point it out to us, please.

*Clauses 1 to 126 ordered to stand part of the Bill.*

*Clause 127.*

*Question proposed, That clause 127 stand part of the Bill.*

**Sen. Mark:** Go to clause 127 for me, Madam Chairman, under the heading “Scheme of Distribution”. I want to advise the Attorney General that under clause 127(1)(d), it will be almost business as usual, given the past experiences of employees when companies go into receivership or are in a state of bankruptcy, meaning that it is the proceeds realized from the property that they would have to wait on. There is no definite time frame for this to happen. This is why we have urged the Attorney General to try to establish some fund, so that when there is a situation of bankruptcy, the proceeds that the people would be entitled to, whether it is severance or an earned vacation leave, they would be able to enjoy promptly, rather than how it is here. It could go two months, six months or one year.

**Sen. Jeremie SC:** Sen. Mark, this is an improvement on the current law. I take the point. I undertook during my winding-up to bring the law as quickly as possible.

**Sen. Mark:** That is the law that we mentioned, as the Journaux Protection Act.

**Madam Chairman:** Senators, we would go back.

*Question put and agreed to.*

*Clause 127 ordered to stand part of the Bill.*

*Clauses 128 to 158 ordered to stand part of the Bill.*

*Clause 159.*

*Question proposed, That clause 159 stand part of the Bill.*

**Sen. Mark:** I want to ask the Attorney General, under clause 159(1)(d), probably I was not here for the last meeting of the committee, would you want to revisit this \$200, or is that stuck in concrete?

**Sen. Jeremie SC:** No. It is a very low amount, but it is the amount which is used throughout the law, now. To bring it into consistency, it is even in the old Bankruptcy Act, section 24(1)(c). It really would not be prudent to change it here, without looking to change it in the Companies Act and so on and so forth.

**Sen. Mark:** Is it \$200 in the Companies Act?

**Sen. Jeremie SC:** A nominal amount.

**Sen. Mark:** The other area I wanted to raise is that we are prepared to give a commitment, at it relates to a special majority. I really believe that I would like the Attorney General to look at the question of a list of exemptions, when it comes to the issue of bankruptcy proceedings. I was very strong and am very strong on this matter still, that at least there should be a basic minimum that we should not go under, such as a person's home.

**Sen. Jeremie SC:** Sen. Mark, you are speaking into the record that you are prepared to give an undertaking with respect to a constitutional majority on the matrimonial home. That is something that we have not assumed. We cannot assume it because we, obviously, would not assume it without you saying so. It is something we will look at. We will look at experiences in other jurisdictions. We cannot develop that policy on the hoof today, but it is something that we will look at seriously and come back if necessary, but you gave an undertaking.

**Sen. Mark:** I have no problem with that. I really honestly believe that unless this is upgraded and enhanced, many innocent people can lose a lot, in terms of their properties. I believe it is necessary to guarantee people a minimum of their homes or a vehicle; that kind of thing. I talked about an education saving plan. I mentioned the question of a student who may have borrowed moneys but, because of the parents experiencing hard times, after five years as in the Canadian experience, it is wiped out. These are just aspects that we would need to consider when we come next three years to revise, embellish and enhance the law.

*Question put and agreed to.*

*Clause 159 ordered to stand part of the Bill.*

*Clauses 160 to 237 ordered to stand part of the Bill.*

*Clauses 238 to 246.*

*Question proposed, That clauses 238 to 246 stand part of the Bill.*

**Sen. Mark:** Madam Chairman, again, I would like the Attorney General to explain to me the rationale for not adopting the United Nations' International Law Commission on model legislation dealing with trans-border insolvencies. I understand from the literature that it is one of the best pieces of model legislation that exists and even the United States of America and the European Union have adopted that particular model legislation dealing with trans-border insolvencies. I

am wondering why we are resisting, as a signatory of the United Nations. As a member of that family, if you have such an important model legislation or law, why not try to fit it into the bankruptcy law of Trinidad and Tobago? I want to get some clarification.

**Sen. Jeremie SC:** That is precisely what is envisaged here and what has been done. As a matter of fact, the note that I have before me from the law reform technocrats is that similar principles are found in the United Nations model legislation, to those which are reflected in Part XI of the Bill. I know the UNSTRAN model. If you could point to something that we have left out, I would be in your debt, because as far as I am concerned, what we—*[Interruption]*

**Sen. Mark:** Are you saying that all the key elements of that model are contained here?

**Sen. Jeremie SC:** Yes, essentially they provide for reciprocity in cross-border insolvencies. The practical problem came about with the Bank of Credit International, which had branches all over the world and they were doing wrong things in every single branch.

**Sen. Mark:** I remember that. All right, I have not checked it in detail, but I was concerned whether that was considered in this particular part of the legislation.

**Sen. Jeremie SC:** Yes. Our legislation is modelled closely on the Barbadian model which, in turn—the Caribbean model is really looking to Canada. And all of us have adopted UNSTRAN as a standard.

*Question put and agreed to.*

*Clauses 238 to 246 ordered to stand part of the Bill.*

*Clauses 247 to 250 ordered to the stand part of the Bill.*

*Clause 251.*

*Question proposed, That clause 251 stand part of the Bill.*

**Sen. Dr. Gopeesingh:** Clause 251(1)(c) deals with offences by trustee and others:

“having been appointed a trustee, with intent to defraud, fails to observe or to comply with any of the provisions of this Act, or fails duly to do, observe or perform an act or duty that he may be ordered to do, observe or perform by the Court pursuant to this Act;”

Clause 216 shows that the trustee is not under any obligation to carry on the business of the bankrupt. How does this relate? Compare clause 216 to 251. Give it some consideration.

**Sen. Jeremie SC:** Trustee is not under any obligation to, but when he gets dirty—Apart from the code of ethics, this is criminal conduct, where he makes an arrangement under any circumstances with the bankrupt. What you are looking at is the old situation, some of which were pointed out this afternoon. I did not want to mention names, but some of those will go down in history in Trinidad and Tobago, where you have arrangements between banks and persons to—I want to be as generic as possible—shut out workers. That was done in conscious awareness of what the law was. If that happens again, the penalties are there in the law.

**Sen. Dr. Gopeesingh:** But we have here that the trustees are not under any obligation to carry on the business of the bankrupt.

**Sen. Jeremie SC:** You cannot place an obligation on him, but the overall process is guided by the Supervisor of Insurance. It might be the receiver. It might be the trustees in an oversight role. There are a number of complicated reporting relationships, bank, trustee, receiver, liquidator or Supervisor of Insolvency and also licensing. He is the one who manages the entire process. We propose that the trustee will be licensed. That should take care of some of the difficulty and abuse.

*Question put and agreed to.*

*Clause 251 ordered to stand part of the Bill.*

*Clauses 252 to 267 ordered to stand part of the Bill.*

*Clause 268.*

*Question proposed, That clause 268 stand part of the Bill.*

**Sen. Mark:** Attorney General, are regulations absolutely essential to give effect to the various provisions of this legislation or can this law, without the relevant regulations, be operationalized?

**Sen. Jeremie SC:** The formula used here is one which we use when regulations are not a condition precedent to your operationalizing the Act, but because, in this case, so many things are required to be done as a practical matter, not as a legal matter, we would really want to have the regulations first before we move forward with the Act.

**Sen. Mark:** To follow up on that matter, what time frame have you set or envisaged for the regulations to be drawn up and tabled in Parliament?



**Sen. Jeremie SC:** We are not starting from scratch. The Canadians have legislation and it is a question of tailoring the legislation to fit our needs. Barbados, which passed the parent statute approximately six years ago, only recently, as I understand it, brought regulations to carry out the Act. I would hope three months.

**Sen. Dr. Gopeesingh:** In terms of rules. It is stated in clause 263:

“For the purpose of carrying into effect the objects of this Act, Rules of Court may be made under the Supreme Court of Judicature Act and such Rules may provide for—”

Are those rules made?

**Sen. Jeremie SC:** The practice is that after the legislation is passed, the Chief Justice who is the President of the Rules Committee would be made aware that an Act has been passed, which might call for the making of rules, with respect to administrative arrangements. That would be done and he would then decide whether specific Rules of Court are in fact to be made. Remember, there are civil rules and sometimes—*[Interruption]*

**Sen. Dr. Gopeesingh:** Procedural rules.

**Sen. Jeremie SC:** Even if, for example, under the Elections Rules, no rules have been made with respect to election petitions, but the general Rules of Court have been deemed to apply to those rules. That is a separate category.

**Sen. Dr. Gopeesingh:** But for this, you believe that the Chief Justice will, with his team, have to make some administrative rules for governing this Act?

**Sen. Jeremie SC:** I would be a member of that team. I would bring it to the attention of the Chief Justice. We would sit, perhaps, have a look at it and decide whether rules are necessary.

**Sen. Dr. Gopeesingh:** We may have two—

**Sen. Jeremie SC:** You may have two sets of rules.

**Sen. Dr. Gopeesingh:** We may have two areas impeding the proclamation of this Act, one is the—

**Sen. Jeremie SC:** Not impeding the proclamation of the Act. But, as in so many other things, the regulations in this case—this is a voluminous Act. When you passed the Companies Act, you did not pass rules in 1995. Passing the Act was a feat. It had not been done for 74 years. This is the first step. I am going to charge the Law Reform Commission with the duty to ensure that rules are done in a timely fashion, so we can reap the benefits of the Act.

*Bankruptcy and Insolvency (No. 2) Bill*  
[SEN. THE HON. J. JEREMIE SC]

*Tuesday, September 18, 2007*

With respect to the Judiciary, I will liaise with them to see whether Rules of Court are necessary. Sometimes they can decide—they have general rules—that the general rules are sufficient.

**Sen. Mark:** Does the Government have a timetable to rule out this legislation once it is passed, assented to and proclaimed? Is there a time line you would like—[*Interruption*]

**Sen. Jeremie SC:** Three months. That would also give us time with the public education exercise that you spoke about.

*Question put and agreed to.*

*Clause 268 ordered to stand part of the Bill.*

*Clauses 269 to 271 ordered to stand part of the Bill.*

*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.*

**NATIONAL CARNIVAL BANDS ASSOCIATION  
OF TRINIDAD AND TOBAGO (INC'N) BILL**

**The Minister of Community Development, Culture and Gender Affairs (Sen. The Hon. Joan Yuille-Williams):** Thank you, Madam President. Madam President, I beg to move,

That a Bill to incorporate the National Carnival Bands Association of Trinidad and Tobago and for matters incidental thereto, be now read a second time.

The Standing Orders allow me 60 minutes to speak on this Bill, but this organization is so well-known to Senators, I am sure that I do not need 57 of those minutes.

This year, the organization is celebrating 20 years of its existence. However, let me briefly walk the Senate through the parliamentary life of this Bill in particular. At a meeting of the House of Representatives on November 25, 2006, the Minister of Trade and Industry and Minister in the Ministry of Finance, Hon. Kenneth Valley presented a petition on behalf of the promoters, the National Carnival Bands Association, seeking permission to proceed with the introduction of the Bill as a private Bill.

The Bill was introduced and first read at a sitting of the Lower House on Friday, April 21, 2006. On Friday April 28, the Bill was read a second time and sent to a special select committee. The committee was unable to complete the report during the Fourth Session and it was reintroduced in the Lower House during the Fifth Session on September 15, 2006.

The committee, during its deliberations, consulted with several organizations and individuals. In particular, it received and sought advice in obtaining expert advice and assistance from the Chief Parliamentary Counsel, the Solicitor General, Registrar General and the National Carnival Commission. The committee also obtained and examined the National Carnival Bands Association's Constitution, financial records, minutes of the meetings and list of members.

**Sen. Mark:** Could you list the members of the committee?

**Sen. The Hon. J. Yuille-Williams:** The Special Select Committee of the House of Representatives comprised: Mrs. Eudine Job-Davis, Chairman; Mr. Fitzgerald Hinds, member; Mr. Edward Hart, member; Mr. Ganga Singh, member and Dr. Adesh Nanan, member.

The Bill was eventually passed in the Lower House on July 20, 2007. Instead of going into the details of the Bill, which is available to all Senators, I choose now to give a brief account of the management of Carnival as it relates to the National Carnival Bands Association. It is worth knowing that the year 2007 marks 50 years of the involvement of the Government of Trinidad and Tobago in the management of Carnival.

In 1957, the management of Carnival was undertaken by a government-appointed body called the Carnival Development Committee. I am sure we would all remember the CDC. One year later, 1958, a group of concerned bandleaders, including George Bailey, Harold Saldeenah, Carniff Bompate, Ormond Hackshaw, Irwin McWilliams, Stephen Lee Heung, Neville Aming, "Cito" Velasquez and Mack Baptiste, to name a few, decided to come together to form an association, which they called the Carnival Bandleaders Association and installed bandleader George Bailey as its first chairman.

The Carnival Bandleaders Association (CBA) put forward proposals and recommendations for improved conditions, facilities and prize money for Carnival "mas" bands. However, there was a lack of interest and recognition during the ensuing years. The Carnival Bandleaders Association became dormant and almost inactive.

*NCBA (Inc'n) Bill*  
[SEN. THE HON. J. YUILLE-WILLIAMS]

*Tuesday, September 18, 2007*

In November 1987, 20 years ago, the Carnival Bandleaders Association was resuscitated at a bandleaders meeting at Edmund Hart's Mas' Camp in Woodbrook and the National Carnival Bands Association was born.

The rationale for the change of name from the Carnival Bandleaders Association to the National Carnival Bandleaders Association was that the membership of the National Carnival Bandleaders Association would be open, not only to bandleaders but also to designers, craftsmen, costume builders, wire benders, kings, queens, masqueraders and other persons involved in the carnival industry.

On the cusp of the 1990s, the prevailing CDC was replaced by the National Carnival Commission (NCC), by Act No. 9 of 1991, enacted by the Parliament of Trinidad and Tobago. The NCC was managed by a board that included one nominee from the organization most representative of Carnival bands. The Chairperson of the NCBA was the first commissioner nominated by the NCBA to sit on the board of the NCC to represent Carnival bands.

In 1997, the Government of the day took a decision that each Carnival body or organization should be responsible for its own area of Carnival, for example, Pan Trinbago for pan, TUCO for calypso and NCBA for "mas".

From 1998 to 2000, the NCBA administered the affairs of the masquerade aspect of Carnival, with varying degrees of success.

In 2001, the NCBA undertook a total revision of its constitution, as a result of which significant amendments were made. Instead of merely NCBA, "of Trinidad and Tobago" was added to the name for it to be now known as the National Carnival Bands Association of Trinidad and Tobago. The designations of chairman and vice-chairman were changed to president and vice-president, respectively. Three additional officers were also included in the executive, namely a junior Carnival representative, kings representative and queens representative, bringing the total executive to 12 members. In addition, bona fide bandleaders were allowed to name two additional representatives to the National Carnival Bandleaders Association of Trinidad and Tobago.

In seeking the support of the Senate, I wish to commend to the Senate, the mission statement of the NCBA of Trinidad and Tobago. The mission statement sums up the commitment of the organization to the furtherance of our Carnival arts and our culture industries for sustainable, national development. I quote:

“To maintain an organization, to ensure the constant development of members, while collaborating with our stakeholders and international bodies in showcasing and promoting Carnival as an industry for the benefit of all.”

Madam President, I beg to move.

*Question proposed.*

**Sen. Dr. Tim Gopeesingh:** Madam President, we would not delay the Senate on this issue. We want to get some understanding a little more. I was trying to follow the minister in her presentation and was making some notes. The minister said that the National Carnival Commission was established in 1991, by an Act of Parliament. Then, in 1997, government decided that the Carnival must be broken up and individual organizations participate and manage their own affairs, namely Pan Trinbago, TUCO and NCBA. Those are the three major organizations of the NCC. With respect to the composition of the board of the National Carnival Commission, could the minister give us some elucidation on how they are represented on the NCC, in terms of each one being a member of the NCC? If these three are represented, how many are represented in the NCC and what is the composition of the NCC, if it is possible?

Secondly, you said that the NCBA is now broadened. In 1957 it started as the Carnival Bandleaders Association and now in 2007 we are moving it to the National Carnival Bands Association. You are having various representations to include various types of artistes such as wire benders and a number of people within the Carnival industry. We want to get some clarification. You said that it incorporated a junior Carnival representative, and a king and queen of Carnival representative. We understand that there are 12 people on the NCBA. That is the second area we want to get some clarification on.

The third most important area is for years—all of us love Carnival. I personally have been playing Carnival since 1973 when I came down as a medical student. The only time I never played mas' was when I was out of the country. I enjoy carnival. But questions have been asked on the financing and management of the finances. A lot of speculation and talk always emanate from year to year. We all love it and support the industry to the fullest. It is one of the best. It is a very important culture and it is the predominant culture for leisure activity and bringing tourism in Trinidad and Tobago. We know that Government puts out a handy sum of money to support the industry and in turn hopes that the money that it would gain by tourism is by far more advantageous than the money you put out as a government or administration towards Carnival.

*NCBA (Inc'n) Bill*  
[SEN. DR. GOPEESINGH]

*Tuesday, September 18, 2007*

There seems to be the question of accountability by these various organizations such as Pan Trinbago, TUCO and the NCBA. The country is left wanting to determine or get some degree of audited accounts. From year to year you hear that we do not have audits in some of these and people feel that we are just spending money and not getting proper accounting of the money that is being spent by the State towards these various organizations. You hear quarrel upon quarrel every year that TUCO, NCBA or Pan Trinbago said that they have lost money. We know that there are gate receipts as well from these functions every year in Carnival. For instance, the calypso shows will have significant money coming in. I think it is important, since you are the Minister who is piloting this Bill. I know you are very close to the whole area of Carnival for a long time by your love for the thing; you are the Minister of Community Development, Culture and Gender Affairs.

I think the country would need from you, hon. Minister, through you, Madam President, some degree of confidence that would be placed in the population that we can get from these various organizations an audited account of expenditure from year to year. If there are, I do not think we are aware of it. If there are, it would be nice for us to get some information as far as which one of these organizations have audited figures to show us and what years have they been audited?

The other issue on Carnival is—the first one is the composition of the NCC and the representation from the various organizations. Secondly, the composition of the NCBA and who are on the NCBA. The third issue is the question of auditing of money given to these various organizations over the years.

Another point is, in 2007, with the demolition of the Grand Stand, there had to be an alternative type of arrangement made for the parade of bands across the streets and around the Queen's Park Savannah. I do not know whether that is a temporary issue or whether that is permanent. I think this is the right time to raise this question, so that the people will now get an idea of what will happen next year. This is September already. You need to tell us what is happening for next year, in terms of where the parade of bands would be. We know that the National Carnival Centre is being constructed but that would not be completed by February. Is the parade of bands around the Queen's Park Savannah a temporary issue, or is there an alternative type of arrangement that would be made for the parade of bands?

The Dimanche Gras used to take place in the Queen's Park Savannah. We do not know where this will take place and who will make the arrangements for it. That would affect the issue of Carnival. Remember it was moved to Skinner Park, San Fernando in 2007. I know the semi-finals takes place in Skinner Park, San Fernando. I do not know where the final is being held.

I think we should allow ourselves and the nation as a whole, the opportunity— Since the Minister is piloting this Bill to enact the legislation for the formation of the NCBA, she should give us some information on these areas for which I have asked. We look forward to hearing some answers from the hon. Minister. Thank you.

**Madam President:** Anybody there wants to? Go ahead.

**Sen. Wade Mark:** Madam President, thank you very much. I would like to make a brief intervention. We are all in support of Carnival. We are all in support of the culture and we would all like to see the organizations that are involved, particularly the Carnival bandleaders who are responsible for all the beauty that we see on Carnival Monday and Tuesday on the streets of our country—We would like to give them as much support as we can.

But I would like the hon. Minister of Community Development, Culture and Gender Affairs to explain to this honourable Senate, why are we being asked to support a measure that, when we examine this report, it appears, it is riddled with controversy? There is conflict dug in this arrangement. I have just obtained a copy of this report.

I want, with your leave to deal with this report, *Report of the Special Select Committee of the House of Representatives on a Bill entitled "An Act to incorporate the National Carnival Bands Association of Trinidad and Tobago and for matters incidental thereto."* That is the basis of the report that we have before us. This report concluded—I want to quote:

“2.1.1.1 After careful and thorough examination of the clauses and Preamble of the Bill, the committee is satisfied that the facts and allegations presented in the Bill are true and correct.

2.1.1.2 Your committee therefore wishes to report that it has completed its deliberations and has found sufficient evidence in support of this organization to be incorporated by an Act of Parliament.”

Which is what the hon. Minister has presented.

NCBA (Inc'n) Bill  
[SEN. MARK]]

Tuesday, September 18, 2007

“2.1.1.3 Your committee took the liberty of preparing a Bill inclusive of...” several amendments, which are incorporated into the Bill. They are located at Appendix II. Listen to the recommendations, which is a contradiction to the conclusion:

“2.1.2.1 The Committee therefore recommends that:

- (i) that the Bill be passed in the House of Representatives subject to the amendments at APPENDIX I and the recommendations...”

I want you to listen very carefully, hon. Minister and Attorney General.

“The Committee therefore recommends that:

- (i) that the Bill be passed in the House of Representatives subject to the amendments at APPENDIX I and the recommendations listed hereunder;”

Hear what the recommendations are:

- “(ii) the National Carnival Commission of Trinidad and Tobago Act, No. 9 of 1991 be amended to include:
  - (a) a definition of the term ‘Band’;
  - (b) a definition of the term ‘Bandleader’;
  - (c) the NCDF be placed on the board of the NCC, to ensure equal representation until the existing conflict is resolved;”

That is the first recommendation that they advanced for approval of the legislation. I have been here. “I eh see no NCC law coming for amendment”. That is the first thing. [Interruption] Yes, whether it is the House of Representatives committee reporting to the House, we are being asked as legislators to support a Bill. I am not arguing that, Sen. Dr. Saith. They passed it. I am not a robot. Not because they passed it, I will pass it.

Hear what the second recommendation is:

- “(iii) a mediator be appointed to resolve this existing conflict between the NCBA and the NCDF;”

A mediator before this Bill is passed. It goes on:

- “(iv) the annual accounts of the NCBA be audited by the Auditor General’s Department for 3 years and subsequently by a recognized external auditor;”



I have not heard the hon. Minister indicate to us that all these things have been satisfied.

- “(v) the preparation of annual accounts of the NCBA conform to existing accounting principles and practices in keeping with international accounting standards;”

In the body of the report, the same committee was not happy with the accounts and how they were kept.

- “(vi) the responsibility for organizing Tobago’s Carnival remain under the purview of the Tobago House of Assembly...”

Fine.

- “(vii) the expenses for the National Carnival Commission must not be included in the accounts...”

Fine.

- “(viii) that the incorporation of the NCBA be granted...”

The incorporation, by this Parliament, of the NCBA—

- “after the above recommendations...”

(iii), A mediator; (iv) is the thing about the recommendation of the Auditor General and (v) is the preparation of the annual accounts of the NCBA conform to existing accounting principles and practices.

Finally, it states that the incorporation of this body be granted after the above which I have mentioned:

- “have been demonstrably implemented at the expiration of the current financial year of the Association; and

- (ix) that as entities with responsibility for expenditure of public funds, the NCBA as well as TUCO and Pan Trinbago be included under the institutions that submit their annual accounts to the Parliament of Trinidad and Tobago.”

I raised these things, not to put a spoke or damper on the proceedings. I wanted to find out if the hon. Minister had read this report before moving that we support a matter like that, when a committee of the Parliament, although it is a Special Select Committee of the Parliament, advised that certain recommendations be implemented before this body is incorporated by an Act of Parliament. How can

*NCBA (Inc'n) Bill*  
[SEN. MARK]

*Tuesday, September 18, 2007*

we come here this afternoon and seek to impose this new Act of Parliament incorporating the NCBA without the implementation of these recommendations? I do not understand how we can do that. I did not read this before. But, I just got the report and I went through it quickly. I might have been guilty of violating the will of the Parliament. The Parliament is telling us that before we could accept the incorporation of this body, this is how we have to proceed. Therefore, I really honestly believe that the hon. Minister, with the best of intentions in the world—I know that you mean well, hon. Minister—I believe that we cannot be taken for a ride this afternoon, even the hour might be late. We have to deal with the reality.

May I quote again from page 5 of this report?

“At its first meeting for 2006/2007 Session which was held on Friday November 10, 2006 the Committee invited...”

I am sorry he is not here.

“Bro. Noble Khan, the Association’s Accountant to appear before it. At this meeting the Committee addressed concerns raised with respect to the NCBA’s Audited Financial Statements for the period April 30, 2001 to April 30, 2006.”

A number of colleagues were present.

“Subsequent to examination of the Accountant, the Committee was not satisfied and invited the Chairman of the NCC to submit information pertaining to areas of concern with respect to NCBA’s electricity, telephone and other copyright expenses in writing to the Secretary of the Committee.”

**Madam President:** Senator, on a point of order.

**Sen. Dr. Saith:** Madam President, I would really like your guidance. That is a report of a committee of the Lower House, made to Members of that House, who took that report and made a decision. I wonder if it is proper for us to be debating that report, the way we are debating it.

**Madam President:** Let me—[*Interruption*]

**Sen. W. Mark:** How can I debate a Bill before me, whether it is a select committee report on that Bill?

**Sen. Dr. Saith:** It is not a joint select committee.

**Sen. W. Mark:** It does not matter. You want me to buy cat in bag? How can I do that? [*Continuous interruption and crosstalk*]

**Madam President:** I was seeking guidance from the Clerk. What she has said is that since that report was before a committee of the Lower House—Was it debated in the Lower House? [*Assent indicated*]

It was debated. This is what the Clerk is saying. We do not really know what happened with that Bill in the Lower House. We know it was passed. Therefore, it is really not before us. We are not in a position to debate it. Since it was passed in the Lower House and it is a report of the Lower House, they have done whatever was necessary. Maybe all that you are saying was dealt with. We do not know. The fact is that we should not be debating it. We should be dealing with the Bill that is before us, all right. Let us do that, please. Are you continuing?

**Sen. W. Mark:** If that is the case, then I move that we have a select committee. Because if it is that I cannot refer to the report of the other place, to guide me on a Bill that you are seeking to get my support and the Opposition's support, then let us have a select committee, because we have queries with that Bill. We cannot support the Bill in its present form.

If certain recommendations were made elsewhere, it was brought to my attention and I am bringing it to your attention, and Senators are saying to ignore those recommendations, where are we going with that? [*Interruption*] It could be 30 years old, it does not matter to me.

Hear what the Bill says. I will deal with the Bill. I have already put on the record our position on a report that has come before me.

The hon. Minister has indicated that over the years, membership was widened to accommodate designers, craftsmen, costume builders and other persons involved in Carnival activity and that the name of the organization changed to reflect the National Carnival Bands Association.

#### **6.00 p.m.**

To change rather, to the National Carnival Bands Association to reflect and this apparently took place in 2001. The name of the organization was changed to the National Carnival Bands Association of Trinidad and Tobago and it continues to promote its members.

Now, in clause 5 we see in furtherance of its aims and objectives, this is a band that is seeking protection of the Parliament; this is a band or an organization that would be able to and has been getting money, lots of money, from the people of this country and the whole question about accountability becomes very pertinent.

*NCBA (Inc'n) Bill*  
[SEN. MARK]

*Tuesday, September 18, 2007*

I would like the Minister to tell us whether—this new Carnival Bands Association—she is satisfied that the Auditor General has audited the books of this organization over the last three years, for the period 2001 to 2004. And whether the hon. Minister, is satisfied—she said she is promoting it. The hon. Minister is promoting a Bill and the hon. Minister must be able to tell us, because here it is, under clause 5(e) of the Bill, it says that the aims and objectives of the association shall have power to enter into agreements and contracts through officers of the association.

So I want to know if the hon. Minister could explain to us what this actually means. How are we going with this Bill to resolve the conflict between two bodies? Will this Bill resolve the situation or is it going to be separate as usual? Is the Minister going to ensure that the two bodies are represented on the National Carnival Commission? [*Crosstalk*]

Madam President, if you go to clause 9(2) of the Bill, it says:

“The election, powers and procedures of the members of the Executive Committee shall be prescribed in the Constitution and Rules of the Association.”

Can I have a copy of the constitution of this association? I am being asked to support a measure; I would like a copy of the constitution and the rules of this association. I am sure that the hon. Minister would have a copy of it.

It is very difficult for us—[*Interruption*] No, she would speak after—to support this measure in its current form. We would like answers and I hope the hon. Minister could give us the answers to the concerns of this piece of legislation that is before us; let us know. We do not promote disunity. We love unity. We are for national unity. We are for the unity of the two Carnival bands associations. [*Desk thumping*] We want the two Carnival associations to get together so we could have a real Carnival in the year 2008. We do not want a Carnival in 2008 when you have one—and you know what? The Parliament is being brought into this foray, this confusion. Why are we using the Parliament to promote conflict in the society?

The Parliament should be the mediator. The Parliament should be resolving the problem. The Parliament should be bringing resolution to the conflict involving these two bodies; not taking sides. We do not want to take sides. We want to help resolve the problems of the people. I think we should be appointed official mediators. [*Crosstalk*] [*Laughter*]

So, Madam President, this matter we want to get clarification from the hon. Minister. She must be able to tell us what is going on; whether she is satisfied as the hon. Minister of Community Development, Culture and Gender Affairs, that the requirements are being met and she has come to this Parliament with clean hands and an open heart to tell us, listen, I am satisfied; everything we said we were going to do, we have done and therefore we would listen to her. We would await her statements on the matter and I hope she would be able to convince us to give the necessary support to this very important matter, but we want to have unity between the two bodies and we want for instance, an all-inclusive fete in 2008. We want to have all-inclusive Carnival fete involving these two bodies, so we could have a tremendously successful Carnival in the year 2008.

Madam President, I thank you very much.

**The Minister of Community Development, Culture and Gender Affairs (Sen. The Hon. Joan Yuille-Williams):** Thank you, Madam President. I do not know if Sen. Wade Mark wants us to take him seriously this evening at all; I am sure he does not, because, listen, this is a body formed 20 years ago. In fact, as far as I was concerned, I got here and I recognized that they were not incorporated and I wondered why they were not incorporated; that is the first thing. It is very sustainable that they changed from Carnival Bands Association to National Carnival Bands Association of Trinidad and Tobago; very, very sustainable. They have been here 20 years now and to tell us that you would deny incorporating a body, which was here 20 years ago, I would be very surprised about it.

Secondly, all the things that you are asking of this body, with incorporation the Parliament would be able to rule on all those things. All the things that you want; all the statements of the auditing; all of that would come with incorporation. But I want to tell you something again, prior to 1997, the money that was dispensed to them was worked through the NCC, the NCC spent money on behalf of all these bodies to control the Carnival. So none of them ever got the largess. Your government in 1997 found that they were competent enough, honest enough, well organized enough, but even without incorporation—*[Interruption]* Wait, do not ask any other question.

You supported and I suppose that you would not have done it unless you felt that you were doing the right thing and the bodies were competent enough to handle their own affairs, and that you would get the audited statements from them, that you approved the constitution. When I came back in 1997, each one of the organizations was given the money from the NCC to spend. I do not think you did it because you did not want to be bothered or you did not want to have

*NCBA (Inc'n) Bill*

*Tuesday, September 18, 2007*

[SEN. THE HON. J. YUILLE-WILLIAMS]

headache. I felt that you gave it to them because—*[Interruption]* There was no NCDF at the time—you felt that the bodies were capable and confident of running their own affairs. And to say what you are saying tonight tells me that you made a mistake then—*[Interruption]* well then stop saying what you are saying. Because if you did not say that then you could not be criticizing that you cannot see this, you cannot see that; you cannot see the other and all those questions.

If all those questions are there, could it be a result of your actions? This is governance and therefore when I returned to Parliament and I saw the arrangement, we continued the arrangement; we put systems in place and in fact, for this report you would see that the body had to put forward the audited statement and we did it through the NCC and the audits had to go to the Auditor General under the cover of the NCC; incorporation would make this even better for both organizations.

So, I am a bit surprised to hear the Opposition talking in those terms about this organization. I was surprised to hear that they are talking about how much money we gave to them and they cannot spend it. You did that, we continued and we maintained it. You know what we did since I got there? We have put these organizations through programmes, management, we got consultants in; we have done institutional strengthening with organizations, because we are now spending taxpayers money and we were as concerned as you are and we are continuing to work with the organization.

They are celebrating 20 years this year and we say congratulations to them. *[Desk thumping]* And you asked who were the officers; let me just tell you. The officers are, the President, Mr. Owen Hinds; Vice-President, Mr. Felix Celestine; Secretary, Mr. Wrenwick Browne—you could talk about these people as if you find that they are not honest enough—Assistant Secretary, Ms. Cheryl Clarke Williams-Alleyne; Treasurer, Ms. Anra Bobb; Assistant Treasurer, Ms. Pamela Gordon; the king representative, Mr. Geraldo Vieira; the queen representative, Ms. Patricia Bailey; the junior representative, Ms. Roslyn Gabriel; the Public Relations Officer, Mr. David Cameron; the Operations Manager, Mr. David Lopez and the Committee member, Mr. Mervyn Henry.

I supposed at the end, at this point in time, if you do not support the Bill, we would still incorporate them. That is the NCBA, and each of the special interest groups—you are quite aware of it—has one representative on the NCC. Pan Trinbago has one, TUCO has one, NCBA has one. *[Interruption]* That is six, go there—

Well, I do not want to talk anything more about the accounts. I suppose even that Committee did look at the accounts and all of that. I do not even want to go to the recommendations of that Committee; I do not want to speak on it; it is not before us. We are asking you to incorporate an organization which is 20 years old, which are representatives of the Carnival Bands Associations.

In terms of the NCDF, that is another matter, I do not think it is for us here. The NCDF is working on its own; trying to get representations for another band. It seems like just as you have more than one organization representing a body, a trade union, similarly in this case, there are others who want to go. At the time when this body came to the NCC this was the only body representing bandleaders.

I was surprised to hear that Sen. Dr. Tim Gopeesingh is not aware of what is happening; I think I stood in this Parliament so many times and I said, in 2008, we would carry the same patterns as in 2007, because as you see the Grand Stand has been demolished. Yes, the parade is going to be on the streets again. And I also came to this Parliament and read out from a report, which we did after we had a consultation in which the majority of the bandleaders had asked that the "mas'" remain on the street and we always talk about "mas'" on the move. We did that already and it would be the same thing again. [*Interruption*]

After two years, I do not know. Right now, the NCDF is an organization, which is not—and they had applied to the Ministry for funding, because they wanted to hold a Carnival consultation. And anybody who wants to hold anything like that and we agree, they can hold it; they have a consultant and probably coming out of that something may happen; I am not saying. We do not know what will happen; we are not biased to any group, this is a democracy and a group wants to have a consultation on the future of Carnival and therefore we support it, as the case may be.

**Sen. Dr. Saith:** They keep asking what you would do.

**Sen. The Hon. J. Yuille-Williams:** Oh, yes, that is true, you know. I am just reminded, every time they ask us what we will do next and you always say you are coming to sit here; I do not know why you do not tell me what you would do next, instead of continually asking what we will do next.

**Sen. Dr. Saith:** They have no confidence in themselves.

**Sen. The Hon. J. Yuille-Williams:** I do not know if there is anything else that we needed to respond to, except to ask and I am really here in support of this Bill; this organization 20 years old. It should have been incorporated from the

*NCBA (Inc'n) Bill*  
[SEN. THE HON. J. YUILLE-WILLIAMS]

*Tuesday, September 18, 2007*

time it began; 20 years later I am asking Members of this Senate to give me the fullest support. I am sorry that my colleague, Sen. Bro. Noble Khan, who is the accountant at the organization is not here to hear the reports in terms of the spending and whether the finance has been audited or not, but unfortunately he is not here.

Madam President, I beg to move.

*Question put and agreed to.*

*Bill accordingly read a second time.*

*Bill committed to a committee of the whole Senate.*

*Senate in committee.*

*Clauses 1 to 11 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.*

**Madam President:** Before we go on to the other Bill, we have a procedural motion.

#### PROCEDURAL MOTION

**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 the sitting of the Senate continue until the completion of the items that I listed when we started, two Motions and one more presentation under Private Members: Freedom House, then Sen. Prof. Deosaran's report and then Equal Opportunity.

*Question put and agreed to.*

**Sen. Mark:** Madam President, may I? I raised it about 2.00 p.m. today, you were not here; there is a Motion to negate some immigration rules that were tabled here. It has been on the Order Paper consistent with the Constitution and the laws. It appeared on the Order Paper on Tuesday last week; it appeared on Thursday, however, on today's Order Paper, it has disappeared. I have asked the Vice-President to enquire in this matter; to let us know why this particular Motion has been removed from the Order Paper, because under the law, the Government



must debate it or if they do not the regulations would stand as is; the status quo will not change. I have just asked; I have gotten no answer. So I am asking you again, if you can guide me, as to why the Motion was removed from the Order Paper; since 2.00 p.m. I have asked this; I have gotten no answer.

**Madam President:** My understanding is that the 40-day period for that sort of matter has passed.

**Sen. Mark:** Madam President, let me just explain something to you. I filed the matter well within the 40-day period. If the Government, for some reason, refused to debate it, that is the Government's business. I filed the matter within—in fact it was the 22nd day I filed it and the 40-day period had not passed. It came on the Order Paper, the Government had the power to give it priority; have it debated.

**Sen. Jeremie SC:** Ma'am, as I understand the convention, because the 40-day period is a matter of convention; it is not fixed in our Standing Orders. If the 40-day period expires—this is for negative resolution—and it has not been annulled within that 40-day period, it becomes law, subsidiary legislation. They can test it; they love the courts; they love paying money—well I have been a benevolent Attorney General; I have not gone behind them for cost, but this time I will, because this is a trite point; it is a first—

**Sen. Mark:** Madam President, this is a very serious matter; this is a very, very serious matter. I filed a Motion within the stipulated 40-day period, which was the 22nd day leading to the 40th day. This Motion was on the Order Paper, you accepted it. The Leader of Government Business, as convention would have it, would give that priority because he knows that the law is very clear, that once it is filed within the 40-day period it must be debated. You can just tell me—

**Madam President:** Please, Sen. Mark, as far as I recall it was on the Order Paper last week—

**Sen. Mark:** Twice.

**Madam President:** Twice—I have to be guided by the Clerk because I am not aware of what happened here and she has advised that it was taken off the Order Paper because that 40-day period is now expired, spent or whatever the word is, and I have to be guided by that unfortunately.

**Sen. Mark:** Madam President, how can the 40-day period expire when, for instance, I filed the Motion within the 40-day period? That is not my fault; it is the fault of the Government that the matter was not debated. This is the first time

*Procedural Motion*  
[SEN. MARK]

*Tuesday, September 18, 2007*

in the history of this Parliament one would have filed on a matter within the stipulated time frame and the Government, for some strange reason, refused to debate the matter although it was filed within 40 days and then come and tell me 40 days gone. So we are making a mockery of this Parliament?

**Madam President:** Sen. Mark, you had your say.

**Sen. Dr. Saith:** Madam President, we have a lot of work still to do; we have another sitting of the Senate. In the meantime, I will discuss with the Clerk of the Senate what can be done, if anything.

**Madam President:** Let us move on, please, to the next matter. Sen. Ali, I think, is going to do this one.

#### FREEDOM HOUSE (INC'N) BILL

**Sen. Basharat Ali:** Thank you, Madam President. I beg to move,

That a Bill for the incorporation of Freedom House and for matters incidental thereto, be now read a second time.

The aims and objectives of the incorporation of Freedom House are listed—  
[*Crosstalk*]

**Madam President:** I cannot hear what the Senator is saying.

**Sen. B. Ali:**—in clause 4 of the Bill and clause 4(a) makes it quite clear that this is in fact a religious organization and that is supported by clause 4(b) and (c). But the establishment or the character of Freedom House extends beyond the purely religious. If we look at a couple of the other objectives, and in that respect, objective 4(d), which includes a statement to establish, maintain and operate charitable institutions such as homes for the aged, orphanages and similar institutions. Clause 4(f), is to establish, maintain and operate schools and other educational institutions.

Madam President, Freedom House therefore has a wider base than the religious and it has been committed to making interventions on social and cultural issues in order to enhance the life and well-being of the community.

Freedom House, from documentation provided by them, has been responsible for at least 27 community transformation projects in Trinidad and Tobago between the years 1999 and 2007. I would like to mention just a few of these briefly and I will read, as necessary, from their document.

The first one is weekend retreats and this is what it said:

“Life changing weekend retreats for men, women & youth to confront the ills that plague our society including rape, abortion, violence, drugs, prejudice, etc. Many of the problems people face today have their roots in unresolved issues of their past and present. These retreats have been extremely effective in diffusing and bringing closure to potentially explosive conditions and continue to give participants a new lease on life.”

**6.30 p.m.**

Madam President, a second project was parenting workshops:

"Several hours were spent every week training parents in the art of skillful parenting. Many parents, children and homes were impacted by these workshops."

A third item was visits to senior citizens homes by representatives of the organization. The fourth item out of this list of 27 was women's interest groups. This was an interesting one:

"There is a synergy that takes place when women get together to support each other, pray for one another and confront pressing needs in a tangible way. The women...all agree that they are far more prepared to face life's challenges. They also know that help is available through the new friendships that were developed as they bonded together."

Then there is a list of the interest groups; listed among them is: Where is my daddy? which deals with father issues; How to find the love of your life; What HR Managers look for; Love must be tough; Social Etiquette for Children; Good Grief, which is help for those in mourning, and Beautifully and wonderfully made, in connection with self-esteem. These were interest groups. Workshops were conducted in several homes in the community.

In addition to that, there are personal financial planning projects and honouring fathers. I think this is one worth reading:

"We have a new initiative where we focus honouring the fathers in our midst. Men, women and youth benefited from the restoration of the image of father and wounds caused by absentee or abusive fathers were healed in the process. Men embraced purpose and direction for their lives and rejected negative stereotyping and committed to fulfilling their roles in their homes and communities."

*Freedom House (Inc'n) Bill*  
[SEN. ALI]

*Tuesday, September 18, 2007*

Madam President, a Special Select Committee of the other House was appointed to consider and report on the draft Bill. On July 13, 2007, the committee's report was adopted by the House and the Bill was passed. I urge the Senate to endorse this Bill.

I beg to move.

*Question proposed.*

**Sen. Dr. Tim Gopeesingh:** Madam President, this Bill seems to be a unifying force and spirit and we have no hesitation in supporting this Bill. We support it. [*Desk thumping*]

**Sen. Basharat Ali:** Madam President, I beg to move.

*Question put and agreed to.*

*Bill accordingly read a second time.*

*Bill committed to a committee of the whole Senate.*

*Senate in committee.*

**Madam Chairman:** Sen. Ali, you are comfortable to go through with the Bill clause by clause?

**Sen. B. Ali:** Yes.

*Clauses 1 to 10 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.*

**JOINT SELECT COMMITTEE REPORT**  
**Municipal Corporations and Service Commissions**  
**(San Fernando City Corporation)**  
**(Adoption)**

*Order read for resuming adjourned debate on question* [September 13, 2007]

*Be it Resolved* that the Senate adopt the Fourth Report of the Joint Select Committee of Parliament appointed to enquire into and report to Parliament on Municipal Corporations and Service Commissions with the exception of the Judicial and Legal Service Commission on the San Fernando City Corporation. [*Sen. Prof. R. Deosaran*]

*Question again proposed.*

**Madam President:** The following Members spoke: Sen. Prof. Deosaran. Sen. Mark had begun his response and had spoken for 12 minutes.

**Sen. W. Mark:** Madam President, I will not be long tonight, because I do not want to keep back the Parliament this evening.

**Sen. Jeremie SC:** [*Inaudible*]

[*Crosstalk*]

**Sen. W. Mark:** What did you say, Sir? "I done tell you what you are, you know; yuh want meh repeat it to the public?" [*Crosstalk*]

**Madam President:** Senator!

**Sen. W. Mark:** He is the worst Attorney General we have ever had here!

**Madam President:** Senator, please! That might be your personal opinion; keep it to yourself. Please speak on the Bill. [*Crosstalk*]

**Sen. W. Mark:** Madam President, I will like to call on the hon. Dr. Saith to have some discussions with my good friend, the Minister of Local Government, to ensure that the fate meted out to the First Report that was sent to him which, under the Constitution there was an obligation on his part to respond to—he has not yet, to date, responded to it. I know he will not want me to come to Tobago East and talk about the lawlessness of his tenure. I imagine he would want to take action before I come to Tobago.

I will like the hon. Leader of Government Business to ensure that the recommendations advanced are taken on board. As you know, these committees are not designed to necessarily assault the Government. These committees are designed to help strengthen the delivery of goods and services to the citizens of this Republic. These Joint Select Committees are designed to do precisely that.

I was a member of this committee. These committees meet with organizations, departments and agencies of government corporations and they advance concerns. If you turn to page 22 you would see the various recommendations that were advanced by this committee, based on very deliberate discussions and suggestions that arose therefrom.

We will realize that what is being suggested to the hon. Minister of Local Government and the Government in general, in this instance, are ways and means of improving the delivery of services, and ways and means of avoiding the duplication of resources. Whenever we duplicate resources, citizens suffer. You only have to look at what happens on a daily basis in San Fernando, and

particularly the San Fernando General Hospital. Our mothers, grandfathers and young children are suffering; even our mothers who are pregnant cannot get a bed to lie on. That arises because of the duplication of resources.

Look at some of these recommendations. I started to look at some of them. I did indicate to the Parliament that there is need for the Government to look at recommendation No. 6 which speaks to the issue of a more efficient system of communication and coordination between CEPEP, the Unemployment Relief Programme (URP) and the corporation in San Fernando, to avoid wastage of resources and to avoid legal action by residents of that particular city corporation, the burgesses, taking action against both the corporation and the CEPEP employees. These are very serious matters. I think it is incumbent upon all of us, and particularly the Government of Trinidad and Tobago, and, in this instance, the hon. Minister of Local Government, to take these recommendations very seriously.

I believe that the Minister in the Ministry of Finance, the hon. Conrad Enill, who has the task of locating and allocating resources on an annual basis, would like to avoid the kind of wastage of resources that is currently taking place as a result of what we have before us.

The other area I will like to address is recommendation No. 8. If you look at that recommendation you would realize that there is a problem in the city corporation of San Fernando, where it is seeking to increase its jurisdiction and statutory powers to stop and/or correct the spread of illegal structures in the city of San Fernando.

Would you believe that this Government that is supposed to uphold the Constitution, and the Attorney General, who is the guardian of the Constitution, sit idly by and allow lawlessness to reign supreme in this country? The San Fernando City Corporation is begging.

**Sen. Jeremie SC:** Stop calling my name!

**Sen. W. Mark:** Begging the Attorney General.

**Sen. Jeremie SC:** Who?

**Sen. W. Mark:** The corporation—to intervene to prevent your Government from building illegal structures in the City of San Fernando. That is what they are asking you to do. So I want the Attorney General to take this report very seriously, because this, to my mind, requires some investigation and action.

**Sen. Jeremie SC:** Please, sit down now.

**Sen. W. Mark:** No, you cannot tell me that. You are totally out of place. Madam President, will you guide my honourable friend? I "tell" you already, I am going to do law in the interim; between now and the election. *[Laughter]* I have to come back and replace him shortly, so it is a quick crash course he has to give me.

Madam President, that is another area of concern that I will like to recommend to the hon. Attorney General. *[Crosstalk]* You will see in recommendation seven that the Building Inspector, Public Health Inspector and the Medical Officer need to be more vigilant in executing their health and safety responsibilities and submit regular reports for the corporation's consideration and public knowledge.

I want to also look and recommend; this is for the Minister of Local Government to ensure that the employment procedures of the corporation, with respect to the daily rated employees, are regularized and made more transparent to eliminate the possibility of nepotism and corruption. Attorney General, nepotism and corruption are "taking place" in the city corporation of San Fernando. This is what is being said here. I know that the hon. Minister of Local Government, in this instance, will have to address this matter with the persons who are in charge of employing persons. *[Crosstalk]*

**Sen. Dr. Saith:** The Chief Executive Officer (CEO).

**Sen. W. Mark:** That is true; your friend. I know now that she is no longer your friend.

**Sen. Jeremie SC:** She is your friend now!

**Sen. W. Mark:** I think that she is a good friend. She said, "The last time I checked the Constitution, I think I have the right to associate with whomever I please." *[Laughter]* I like that one; that reminds me of Martin Luther King Jr. He said, "The last time I checked, I had the right to protest." *[Laughter]*

I will like the hon. Attorney General to look at recommendation three in order to ensure that this question of corruption and nepotism is dealt with.

I do not want to take up too much time with this. But this is a matter for when we are in the San Fernando West, and particularly in the San Fernando East, constituency, during the election. We have to bring these matters to the burgesses' attention on what the Prime Minister has done on this matter. This is an area that we want to also deal with and we will like to bring to your attention.

Recommendation No. 4, we need a more structured, transparent, efficient system to be put in place to respond to the complaints from the public, and further, that time lines be set for such responses to be provided. Sen. Dr. Saith,

after six years the public service has not delivered in the way that it ought to have delivered. The whole question about the responses to the consumer, to the customers and treating people with care, courtesy and love; where is that? Where is the love, Attorney General, in the budget? We want the love in the workplaces. We want the love in the city corporation, so when members of the public go there they can be treated with care, courtesy, love and kindness.

Again, that is a matter for the Minister of Public Administration and Information. I know that the hon. Minister would have liked to do better, but I know he is an engineer by profession and I know it is very difficult for him to handle public administration. I can understand why public administration has been standing still and going nowhere for the last six years. [*Crosstalk*] [*Laughter*] Total failure!

I will go on to recommendation No. 5; I will deal with Sen. Dr. Saith on the campaign trail, not today.

**Sen. Jeremie SC:** Mr. Panday fired you and disbanded your Ministry.

**Sen. W. Mark:** I know that Mr. Manning has taken a decision only to go with six plus one, seven. You are not one of them. [*Laughter*] "You gone back to the university for sure. Why yuh think yuh pack up and yuh get yuh professorship?" [*Laughter*] "Yuh think the AG easy?" [*Laughter*]

Madam President, let us go to recommendation No. 5; this is a serious one. I am going to wind up now, because I do not want to take too long. This is a matter that the Minister of National Security should be concerned with. The corporation municipal police need to be strengthened. They should be incorporated. They should increase their establishment and the tools with which they work. They need more vehicles, Attorney General.

**Sen. Jeremie SC:** How I come to be in that?

**Sen. W. Mark:** I know that you took over the Ministry of National Security. What has happened to the Anticorruption Squad? [*Crosstalk*] I think this is a matter in the interest of public safety and security that the Government of this country should take on board very seriously. It is my view that we need to decentralize resources; we need to redeploy resources from the central administrative centre to the outlying areas of our country, particularly in the corporations and the city corporations.

You could imagine if we had at the various points in the corporations, the cities and the boroughs, a strong municipal force? Do you know how that would



have assisted the police service in this country? We would have been able to do that I agree, but we first need a strong Minister to deal with that matter. [Crosstalk] That is why we are coming; do not worry; we are getting there.

If you have a strong municipal police service, you do not have to broker peace with criminals to keep law and order in Gonzales and other places. As I am on that, I want the Minister of Community Development, Culture and Gender Affairs, the hon. Sen. Yuille-Williams, to tell us whether her Ministry was responsible for giving a contract valued at \$2.5 million to a known criminal who was recently executed by police, I understand. I do not think it was the police; let me withdraw that. I want to say what the priest said, "It did not happen with ordinary gangsters; it came from higher up." [Interruption]

**Madam President:** The Minister wants to reply to that allegation.

**Sen. Yuille-Williams:** Madam President, I do not know what the hon. Senator is speaking about; clearly I do not know anything about that contract given to some recent criminal. Again, it is one of his outpourings of things of which we know nothing. [Crosstalk]

**Sen. W. Mark:** Do you want me to quote it for you?

**Madam President:** Come back to the Bill, please.

**Sen. W. Mark:** If we have a strong municipal police force, you do not need criminals or known gang leaders to provide safety for our citizens, whether in the city or the borough. I read in the *Express* yesterday that the gentleman was given a \$2.5 million contract to build some community centre in Port of Spain. Where did it come from? It did not drop from the sky; it came from the Government of Trinidad and Tobago; so it pays to be criminal minded in this country. Decent citizens cannot even get a bed to sleep on in the hospital. Women have to make babies on the cold concrete floor, because they cannot get a bed to sleep on; but criminals can get contracts from the Government of this country.

**Madam President:** Senator! The Minister has denied knowledge of what you are speaking. [Crosstalk]

**Sen. W. Mark:** I am not connecting it to her, but to the Government.

**Madam President:** You are quoting something from a newspaper and the minister has said that she has no knowledge of it. Let us leave it there for the moment, please. [Crosstalk] Do not repeat it!

**Sen. W. Mark:** I am not ranting at her.

**Sen. Yuille-Williams:** Did you read that he was building a community centre?

**Sen. W. Mark:** Some centre you are building. Are you building it?

**Sen. Yuille-Williams:** You said that he was building a community centre. I gave no contract to anybody. He did not read in the newspaper that the gentleman was building a community centre.

**Sen. W. Mark:** Do you know what he was building?

**Madam President:** Senator, come back to the Bill; you were going so well.

**Sen. W. Mark:** I am winding down; but it hurts me because I am a taxpayer in this country. Do not use my money in that kind of cavalier fashion.

**Madam President:** Senator!

**Sen. Dr. Saith:** On a point of order, if the Senator wants to quote from a newspaper, he has to bring the newspaper, give us the information and quote it accurately. More than that, we are debating a report of a committee; nowhere in that report does it talk about this matter. How come we are on it?

**Madam President:** Senator, you are being irrelevant, so please come back to the Bill. You were going so well all the time. Why are you spoiling it now? Come back to the Bill before us.

**Sen. W. Mark:** Just in case you wanted me to quote, it was in the *Trinidad Express* editorial of September 18, 2005, dealing with the gang land style killing of one of the country's most notorious ex-crime bosses. It talks about a \$2.5 million contract given to this gentleman to construct some building on Charlotte Street.

**Hon. Senators:** Some building?

**Sen. W. Mark:** I want to know if you have a death squad in the police service; you must answer that. Is there a death squad in the police service?

**Madam President:** Senator, please!

**Sen. W. Mark:** I want to wind up my contribution. I believe that there is more in the mortar than the pestle, involving the execution of Fresh, the gentleman from Laventille. [*Crosstalk*] Let me continue.

**Sen. Jeremie SC:** Look within!

**Sen. W. Mark:** You must know something about what is going on, because you are a member of the National Security Council. I have much more to say on the campaign trail about you.

**Hon. Senators:** Go and say it! [*Crosstalk*]

**Sen. W. Mark:** Let me conclude on this matter. I think it is an excellent report by the hon. Chairman. I compliment him; a dedicated person. He has worked diligently. He has worked well. He has worked long. He has worked hard. He has been an exemplar in terms of his dedication and commitment to national service; that is a patriot of our country.

I thank all the members of this committee as well. [*Crosstalk*] Tell this gentleman called Sen. Overand Padmore, that he is a guest of the Parliament. He is not here often.

**Sen. Jeremie SC:** He is a Member.

**Sen. W. Mark:** Tell him to have respect for persons like myself who have been here very long. [*Crosstalk*] He is a guest.

**Sen. Padmore:** On a point of order, Madam President, can you clarify my status in this honourable Senate? [*Desk thumping*]

**Madam President:** I will be only too pleased to do that. You have been sworn in as a Senator of this Senate. [*Desk thumping*]

**Sen. Padmore:** Thank you, Madam President. [*Desk thumping*]

**Sen. W. Mark:** I have so many articles about Sen. Padmore criticizing the hon. Prime Minister; today he comes here and defends the Prime Minister.

**Sen. Padmore:** You are talking about democracy!

**Sen. W. Mark:** I do not want to do like Sen. Abdul-Hamid who talked about persons being dead and old. I think that was disrespectful to the elderly, like Sen. Padmore. I take strong objection to him referring to people as old and dead. [*Crosstalk*] This is a matter that I support. I commend this matter to my colleagues. I call on my hon. colleague, Dr. Saith, to advise my friend from Tobago East to do the honourable thing and submit his response within the 60 days. I want to point out, Sen. Manning, you are the first person, along with the Attorney General, who when you got the report you obeyed the Constitution of Trinidad and Tobago. [*Laughter*]

I must say it, because I want my colleague and honourable friend, Sen. Dumas, to follow in the footsteps of the hon. Attorney General and the Minister of Education to simply obey the Constitution. You cannot go up as a candidate for Tobago East and be lawless and unconstitutional.

Madam President, thank you. [*Interruption*] [*Crosstalk*]

**Sen. Dr. Tim Gopeesingh:** Madam President, this is not going to be long.

**Sen. Jeremie SC:** You said that the last time.

**Sen. Dr. T. Gopeesingh:** Sen. Prof. Deosaran did a lot of work on this and there were a lot of recommendations that came out of this report. [*Crosstalk*] We need answers. Under the responses in terms of the amount of funding given to the San Fernando Corporation, the corporation requested \$150 million for recurrent expenditure, but was allocated 50 per cent. It requested \$18 million for development programme expenditure and received 20 per cent.

This is the same Government, the same administration which has been speaking about decentralization of administration, looking after the quality of life and well-being of citizens of Trinidad and Tobago. The hon. Prime Minister said that the work for the people, improving their quality of life and well-being, would be decentralized and moved to the regional corporations. They say that, but we know for a fact that one, they postponed the Local Government Election when it was due; two, they removed their chairmen of corporations and mayors, whoever they wanted to remove, which was deliberate; three, they postponed it for another year. Persons who were supposed to be appointed to local government for three years are now sitting for five years. Some of them are not doing their work; some are not doing their work. It is unconstitutional; it really hits against the grain of the Constitution. [*Interruption*]

**Sen. Dumas:** Madam President, on a point of order. We already had that debate here. We are revisiting an old debate.

**Madam President:** Senator, the matter has been debated; please, come back to the Bill. This is what we have before us. [*Crosstalk*]

**Sen. Dr. T. Gopeesingh:** Madam President, I am speaking about the report in terms of how much money was given to the corporations. You have a corporation and you are the Minister involved in local government. Out of a \$43 billion budget, local government is getting one point something billion dollars, which is one twentieth or less than 5 per cent; the Unemployment Relief Programme (URP) is getting one point something billion dollars and CEPEP is getting one point something billion dollars, and you talk about decentralization.

There is no coordination between the URP, CEPEP and local government; people are falling over each other. No one knows who is supposed to be working where and what they are supposed to be doing; that needs to be spoken about. Why not give the \$3 billion to the Local Government and let their people and the regional corporations run their business.

Why did you have to give URP \$1 billion; CEPEP \$1 billion and local government one point something billion dollars? You are talking about decentralization and you are stifling the people for the funds? How can the San Fernando Corporation run on 50 per cent of their budget for recurrent expenditure and capital development get 20 per cent? What are they going to do with 20 per cent of the money they asked for?

Do you know what is important? Madam President, 72 per cent of the total allocation is used for wages, salaries and terminal benefits. How is that going to improve the conditions of life and the well-being of citizens of the San Fernando Regional Corporation? This is untenable. The Minister of Local Government and this administration have a lot to answer for in terms of what they say and what they do. What they are saying is totally different to what they are doing.

The Prime Minister speaks everyday about decentralization and that work is going to go on with the regional and borough corporations and not putting his money where his mouth is. How could you be talking about decentralization and you are starving the corporations for funds, when a citizen in South Trinidad, Tabaquite and so on is getting 30 cents value per year in terms of the money allocated to regional corporations? That was the first point I wanted to make, because we feel very strongly about it.

You postponed Local Government Election once, twice and you are starving the people of the money; you are not giving them the money. How can you sit as the Minister of Local Government and people are begging for money and you are not giving them and not fighting for them? Do you know what they say at the end of it? The money was allocated for it, but they did not use it. The allocation comes down to the end. By the time the money is allocated the year has passed and, therefore, they could not spend it.

How is the corporation dealing with the problem of replacing workers on sick leave or vacation leave? Is there an issue of a low remuneration package? They said that low remuneration packages is an urgent matter, because it relates to staff motivation and attracting or retaining suitably qualified persons, particularly for the position of City Medical Officer of Health. The San Fernando City

Corporation does not have a City Medical Officer of Health. There are thousands and thousands of people in San Fernando and they do not have one City Medical Officer of Health.

How can you run a borough corporation without a medical officer of health? Do you know what is even worse? You have about 1,000 food outlets in San Fernando and you have four health inspectors; and we are talking about non-communicable diseases. The Prime Minister is leading a thing about chronic non-communicable diseases with the Caricom Ministers. They have been talking about it for the last 10 years. In 1997 I attended a PAHO meeting in Barbados where they talked about chronic non-communicable diseases; 10 years later the same Heads of Government throughout the Caribbean are talking about the same things; year after year and doing absolutely nothing about it.

Here is one little example that they can do something in just a little city, by appointing a City Medical Officer of Health and having food inspectors. They cannot even provide food inspectors in a place. This is why persons get poisoning, diarrhea and all these things from year to year and day to day.

**Sen. Dr. Saith:** How many were there when you were in power?

**Sen. Dr. T. Gopeesingh:** There have been complaints by the public that there are no toilet facilities in banks. We raised this point already; what is the corporation doing? They are allowing construction sites to go up; they are allowing buildings and business to go up and the public have no toilet facilities when they go into public institutions. How could you sit as the hon. Minister of Local Government who particularly is supposed to be regulating the local bodies, masterminding and working with them to ensure that the people of Trinidad and Tobago enjoy a better lifestyle, and some lady goes into a bank, she wants to use the washroom and there is none?

**Sen. Dr. Saith:** On a point of order. Perhaps, I misunderstand. These are reports of committees of the Senate. This is a report that was placed here. [*Crosstalk*] You have made the point that the Minister has 60 days in which to respond to the report. What are we doing?

**Sen. Mark:** We are debating it fully!

**Sen. Dr. Saith:** You are not debating the report. You are regurgitating what is there and putting your own spin on it.

**Sen. Mark:** You cannot tell us what to do; only the hon. President can do that.

**Madam President:** All right. Members, I do not know why you all are getting so heated. I want to advise. Sen. Dr. Gopeesingh would know better, that when he gets like that he can run the risk of non-communicable diseases taking place and taking hold. Senator, be guided; just refer, you do not need to read that whole report. We have all read it; we have it here; we will read it. Make a point, ask a question and let the Minister respond, please.

**Sen. Dr. T. Gopeesingh:** There is not much more to say again.

There is one other area. They seem to be very impatient. Why are you so impatient this evening? If you want to go, you want to do four bills—

**Madam President:** Senator, there you go again.

**Sen. Dr. T. Gopeesingh:** He wants to do four things in one afternoon and yet—*[Interruption]*

**Sen. Dr. Saith:** Madam President, again, the aspersion is that we are hurry and we want to do this. We may just not want to hear trivia repeated over and over; that is all. *[Desk thumping]*

**Madam President:** Senator, really; that is not necessary to say. I think we all would like to go home if we could. I think you would too; so, please, let us stop casting aspersions like that across the floor.

**Sen. Dr. T. Gopeesingh:** All of us want to leave at the appropriate time. I do not agree with the hon. Minister of Public Administration and Information. I am not regurgitating anything from this document. I am trying to find out what is going to happen; we have to put the statements across to the Minister.

**Madam President:** Ask the question.

**Sen. Dr. T. Gopeesingh:** There is a dichotomy as far as the responsibility for the municipal police officers is concerned. They come under the Statutory Authorities Service Commission and the normal police come under the Police Service Commission. There is a marked problem between their responsibilities. Who are they responsible to? It seems as though the municipal police officers are responsible to the Statutory Authorities Service Commission and the Police Service Commission is the one that has the responsibility of promotion, transfer and on. Where do they fall? That is something they have to clear up.

The last point I want to make is about the question of looking after buildings that are under construction. How many violations will the corporation be effectively able to deal with in one area? Throughout Trinidad and Tobago you

see buildings going up, breaking the code of conduct in terms of construction, one property bounding with another, the window of one property close to the window of another, and you are supposed to have a covenant dealing with that. You should allow 10 feet between one building and another.

Corporations do not have the human resource capacity and capability to look after the whole question of violations occurring in boroughs. We see it in Port of Spain and San Fernando. There is the whole question of so many houses being built on small pieces of land without permission; the whole question of voter padding. I will not go into the voter padding issue this evening.

**Madam President:** Thank you very much.

**Sen. Dr. T. Gopeesingh:** I just want to draw the attention of the Minister on this part of the report on the question of violations, which was brought in by Sen. Prof. Deosaran; how many violations will the corporation be able to effectively deal with in one area? How many will eventually go through the court system. The hon. Minister has to ask what is happening. Some are captured and others go unnoticed—that is something that has to be put into the *Hansard*, because of unawareness of some of the building activities taking place and inadequate staff to deal with all the districts.

The corporation is being starved of the human resource capability to deal with violations of all these things happening in terms of construction of buildings and whatever else is going on in the borough. The hon. Minister has to give some response to this when he is responding to this documentation. How many violations does the corporation detect during the year? Do you know what the answer is? The corporation detects about one violation per year—per day; 365—sorry, I mistook that. I thought it was one per year. I correct myself; if it is one per day, it is about 365 per year. If they are doing that, that is a good job. I take that statement back. The question of violations existing through the corporation has to be answered to some extent.

I do not see the big hullabaloo about them saying I was wasting their time. We had to draw this to the attention of the hon. Minister. There are many other things I needed to say, but in the interest of time and to ensure that this report is adopted, I will say very little more. We await the response from the hon. Minister who has a major responsibility as far as local government is concerned and city corporations. People are not being allowed to do the work they are supposed to be doing.

Thank you, Madam President.



**The Minister of Local Government (Sen. The Hon. Rennie Dumas):** Madam President, I think what we have just seen is a demonstration of error, if I may be so bold. We are all making a serious error. I want to take the opportunity, having been just "lambasted", to just put a few things on the record.

In the first case, this Government started its tenure by pointing out that the local government system was totally flawed. We went on to bring a comprehensive programme of reform to this House. We delivered the same argument for reform to the next House. We went out to the country with it and we treated with matter after matter, deficiency after deficiency.

It is unfortunate that in the face of that flow of activity in which we have brought in professionals to advise us, we have had communications and meetings, et cetera, to look at reform as a whole, we had first one report and now we have another. In a real sense, the body of information, the body of opinions that are coming forward, I suggest they fit squarely and fully into the White Paper that was presented to this House and the country. I do not want to be rude.

The committee met, and I am quite clear that it was a piece of valuable service rendered to the corporations and the national community. It is by no means deliberate that the 60-day deadline was not met. I said it in private and I can say it in public; the question has been that the first report was a report on the Tunapuna/Piarco Regional Corporation. The evidence was there for all to see that the corporation was in disarray. There was conflict between the Chairman and the Chief Executive Officer to which the very report responded and attempted to put some things in train. Critical is that most of the responses had to come out of the same corporation. So you are asking the corporation to comment on its own disarray, using the structures within the corporation.

I plead guilty that the response to that report is not yet here, but I assure you that it is on its way and will be delivered as soon as it is available. [*Desk thumping*] I think it will be done very soon. I assure the Chairman that within two weeks he surely will have that report.

In this case, again it is simple; I can respond to this here. There is an issue of organization. If I may be so bold to suggest that there is one deficiency in the work of the committee. If Members of the Senate were part of that committee and they sat and spoke to everybody else except the one person in the Legislature who has experience and knowledge of what was happening here, who has a responsibility both for policy and administration, then one wonders whether some of the things that are coming out of these discussions were properly conceived. I am not speaking to the recommendations; I am talking about what we had to say.

We are simultaneously being blamed for restricting and holding down the corporation and, at the same time, we are being told that we should control the corporation; the two things do not go together. We are quite clear that this Government's push is towards decentralization; towards reform of the corporations and the local government system. Some questions came up.

As a Minister for a number of years, luckily—I think I am quite young and I hope too many years do not pass, [*Laughter*] if I have ever received 20 per cent of my requests to the Minister of Finance, I would be quite happy going home. I want to assure you that none of us, no ministry gets 20 per cent of its request from the Treasury. So if the corporation got 20 per cent of its requests, it is batting far better than every single ministry here. [*Interruption*] I did not disturb the Member.

Further to that, the resources given increased three times over what we inherited when we got here. The corporations now have more funding than they have ever had, and there is evidence. In fact, today I received three requests for ways in which we could spend unspent balances from previous years. Not all of them were under the area of functions of the corporations; that is correct.

Year after year funding is provided, allocations are made, releases are made and then they are not used for the purposes for which they were given. I am being admonished by the goodly Senator that I should instruct the corporation, that is the language, as to what should be their priority. I want to suggest that we do not do it that way. Tomorrow morning we have a meeting of all the corporations coming together. Policy directions and suggestions will be given. I can assure you that the issue of public bathrooms, et cetera, will emerge.

If the Senator would examine it, he might find that we did, in fact, have new bathrooms started in San Fernando. I think I reported that in the budget.

**Sen. Dr. Gopeesingh:** I cannot remember.

**Sen. The Hon. R. Dumas:** I have serious doubts that goodly Sen. Dr. Gopeesingh can count. I am sure now that he cannot read. When he said that CEPEP has \$1 billion in the budget and URP has \$1 billion in the budget, nothing could be further from the truth. [*Crosstalk*] They are not allocated that money. [*Crosstalk*] You have all the budget documents; go read them.

He talks about the CEPEP and URP as the whipping boys until they want these people to vote for them and they suddenly love and will protect them and will die for them. "Ah fed up ah dat." [*Desk thumping*] The normal whipping boys arise again: "CEPEP and URP, beat them up, beat them up, beat them up", until you want them to vote for you.

Let us read page 37 No. xxxiii. It says:

"A Memorandum of Understanding (MOU) with respect to works undertaken or being done in the city of San Fernando and the Corporation's position in San Fernando was issued. The work must be properly done and within a certain context. The same goes for URP. The Minister of Local Government recently hinted that a Committee comprised of officials from CEPEP, URP and the corporations would be established."

Not a hint; it is an active proposal, an active establishment of committees in each corporation in which the management of that collaborative coordinated programme by these three agencies will be carried out, where we will be able to identify what each is responsible for, what activities they are supposed to participate in and, therefore, account for the funding. That issue of wastage is not real; it is a figment of the imagination of the Senator.

I want to suggest that maybe in the light of that last statement by the very committee reporting what was said to them by the corporation, we may need to look again at recommendation six. Yes, an efficient system must be put in place, but if it is done already I do not know if it would find itself into the recommendations.

I really do not want to go through the recommendations, but I want to suggest two things; one is the question of staff vacancies, et cetera. I have sat in this Parliament and heard speaker after speaker say, "We shall not put." I remember Sen. Mark holding us up here for a whole evening arguing against the possibility that the wording could be interpreted that a minister would be able to appoint staff, under staff and contract. He was quite clear on that.

The law, our concept of our Constitution, does not allow the Minister to intervene in staffing. Again, I assure the House that this Minister has intervened in terms of the employment processes and practices for daily rated workers in the corporation. In fact, we have done that; the issue is here is a recommendation. Again there is this issue of nepotism and corruption. I am not going to doubt that any system devised by any human being will not suffer from human failings, but certainly we can strengthen the system and look at that.

As to the complaints from the public, we are clear. I remember providing the funding to the San Fernando Corporation to ensure that we give them a bigger space downstairs for a complaints division, giving them staffing, et cetera, to treat with this very matter of the way in which the community articulates with local government.

In fact, I can go further and suggest to you that right now the PMCD is looking at the whole issue of customer service relationship between the staff at the various corporations and head office, local government, with the public. Of course, that includes the provision of information kiosk and all that sort of thing.

The issue of the municipal police force, we could not agree more, but again we are three steps ahead of the idea. The Cabinet has appointed a committee to examine the ways in which the municipal police force can be strengthened, the ways in which the training of these persons can be managed and the articulation of the general police service can be put in place.

I assure you, Sen. Mark, that the intent is to so structure the recruitment, training and management that the confusion between statutory authorities and whether the municipal corporation police officers can govern, manage and discipline them—whether that will arise. That is a matter for an interministerial committee established by the Cabinet to look at.

In the case of the building inspectors, health and safety, et cetera, again, we have moved to set up a system. We are seeking to have the authority to gazette these contracted positions, because most of these positions are going to come in on contract, so as to be able to treat with the issue of inspection.

There is also another issue that we have to deal with. Where national policy is concerned in terms of housing, infrastructure development, building of recreational and other public places, one has to ask whether the corporation should really have the facility to stop Government policy and activities in terms of its creation of public space to facilitate public activity.

**7.30 p.m.**

If there is a question of building whether it is housing, market, stadia, whatever, the question arises. We have to ask ourselves: What happens if an officer, a corporation, or a mayor is intent on stumping Government's policy? Even in the face of agreement by the corporation concerned, an officer in the system seeks to stump Government's policy, what is the way around that? All these things would be taken up in the reform. Further, the question of statutory powers, et cetera, those are matters for law and will be treated with.

Madam President, certainly the Minister cannot be held responsible for the attendance of elected officers and senior managers. Somehow, we are taking away individual responsibility and we have to treat with that. I am going to stop here,

Madam President, and I am going to make the promise that the response to the recommendation in this case, and whatever is outstanding from local government will come very soon.

Thank you.

**Sen. Prof. Ramesh Deosaran:** Madam President, never in my wildest dreams did I expect this very modest, sincere report from the Members of the committee could cause such volatile enlightenment. I am very happy, and I think it is pertinent given the remarks made.

I have always seen these joint select committees as an experiment, or work in progress for democratizing our Parliament and I have tried to tread myself, as Chairman, very carefully to ensure that the promise it holds be not prematurely jeopardized. I believe a lot rests on the goodwill of the Government to make it work. That is the structure of the committee system in terms of the Government having a majority, and rightfully so, given the Westminster system.

It was indeed quite refreshing to hear the Minister respond to some extent, but it does confirm what I just said, it is an experiment and some aspects of it—we were not experts yet—we are treading on some grey areas, unknown territory and I am speaking again for myself and I am putting it on record which I should not, but I think it could be corrected or perhaps reinterpreted as we move along. I have always been careful not to subvert the Government's policy responsibility even within the committee system.

I think it is pertinent to put on the record how these reports come to the House. To put it briefly: A draft is prepared and being Chairman, as all other chairpersons, I take responsibility in the leadership of that draft report. It is then circulated to the Members with a deadline advising them to submit their comments or objections within a certain prescribed time and the report is reshaped and another meeting called to get consensus. After that consensus, if there are no strong objections, the final draft is then circulated amongst all the Members, and if there are no objections or comments, it becomes the final report which we then bring to the Parliament. So it is democratic in that sense.

We have had some very inviting experiences. In one particular case, a draft report was approved but there were strong requests for amendments and I as Chairman used whatever discretion I had to make sure that that allowance was made because I think it was legitimate in the circumstances. It did help to strengthen the report, but more particularly, it helped to gather the consensus that is so important in a mission of this kind, bringing it to Parliament.

So that gives you a little background of the kind of work that has to go into it, and it is an expression of faith in the system to bring a report. I myself have never seen it, neither do I think it should be used as an instrument to attack the Government unless the structure of Parliament changes, and I think the composition of the committee system helps to ensure that this is not so because of the Government's majority.

The Minister has really played a very commendable role this evening—as he knows in my view—a little belatedly, but I think it also raises another issue which the Government could seriously consider. There are several anomalies in the structure of the select committees and one was revealed here, that the Minister has 60 days to respond and he promised to bring that response according to Standing Order 71(b).

So having said what he has as part of the debate as a Minister, he would again have to bring a report within 60 days which puts him in an awkward position, but he has to respond I believe, in the way the debate proceeded. He will also know for the record that I did share the Report from the Piarco Regional Corporation with him informally asking for his comments and, of course, referring him to the Standing Order with the 60-day limit.

I do not think his delay in presenting the report has anything to do with his lack of ability. I think he is quite capable. I believe what has crossed his mind if I can be so bold as to read his mind, is that he has this White Paper from the ministry which gives a rather comprehensive overview of the problems and gaps in local government and the way forward that Government's policy would seek to reach, so he is wondering why he should come with a micro report.

That is the question I believe we have to answer—the Government: What role does the Executive have and what role does the Parliament have? This joint select committee was executing the role of Parliament. I had to follow what the Parliament said, what the Constitution expects the committee to do, and what the Standing Orders in terms of procedures ask us to do. He is speaking from a point of view of the Executive. So we have to see whether we can create some harmony and not have things as redundant or causing any undue embarrassment even if it may seem repetitious. We have to carry out our mandate both in terms of the Standing Orders and the Constitution as a joint select committee, notwithstanding what the White Paper from the Executive says. They are related, but they are not exactly coincidental. That is what I mean when I say this is an experiment.

I hope the experiment really does not fail because it would do whichever government is in office a great good to have the different agencies account to the Parliament rather than the Government having to be faced with any kind of

confrontational way. That can be avoided by having the committee system properly regulated I think, and we have another report coming out soon, so we will follow the same procedure.

I would like to make three remarks which were given in this debate, but before I forget, I want to thank the Members of this committee and make an adjoining remark regarding the difficulties some of them have in attending these meetings. I am well aware that some committee Members have ministerial portfolio and it is quite difficult for them to attend these meetings given their ministerial functions and their other required duties as Ministers, being in Cabinet and so forth.

That is another anomaly I think should be seriously looked at if we are going to proceed with this select committee system. In fact, for my own part, I do not see how the work of a Minister, given their different responsibilities could be measured in terms of how often they meet their constituents and so forth. I think it is an unfair expectation to have a Minister account for how many times he meets his constituents, 10,000—12,000 in some cases and still be a good Minister. I do not think the two measures are comfortable, neither are they fair to particular Ministers, and I do not have to run a poll to understand that.

Another example of the anomalies and the issues we have to clear up—both the Opposition and the Government—especially after the election. In fact, I believe since we are on that theme that each political party contesting this election should declare itself as to where it stands with this joint select committee system and how far they wish to move with it. I think it is too important, and its strategic value is extremely important for it to be sacrificed on the altar of sheer political expediency.

I believe this Fourth Report of the Joint Select Committee which was appointed to consider and report to Parliament on Municipal Corporations and Service Commissions with the exception of the Judicial and Legal Service Commission; this one is the San Fernando City Corporation and we brought it forward because as I said, it would help us look after the second capital of this country which is now at the centre of the energy sector and the rising serious demands on the services and it is just a reminder to get the Government to lend its assistance to get the corporation responding to those demands.

I do not need to belabour the point except to once again reaffirm my faith in it and thank the Members of the committee whose names—on this occasion, I do not know how many times we would be meeting again before this session ends—are:

*Joint Select Committee Report*  
[SEN. PROF. DEOSARAN]

*Tuesday, September 18, 2007*

Mr. Hedwige Bereaux	Vice-Chairman
Mr. Nizam Baksh	Member
Mrs. Eudine Job-Davis	Member
Mr. Rawle Titus	Member
Dr. Tim Gopeesingh	Member
Mr. Franklin Khan	Member
Mr. Mustapha Abdul-Hamid	Member
Ms. Christine Kangaloo	Member
Mr. Chandresh Sharma	Member
Mr. Wade Mark	Member
Mr. Anthony Roberts	Member
Mrs. Jacqueline Stoute	Secretary
Ms. Louella Joseph	Graduate Research Assistant

I wish to express my gratitude, of course, some of them more than others really helped, but I wish to express my appreciation to all of them for making this a rather successful committee system.

Thank you.

*Question put and agreed to.*

*Report adopted.*

#### ADJOURNMENT

**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 the Senate be now adjourned to Tuesday, September 25, at 1.30 p.m.

As you are aware, the life of this Parliament comes to an end the second week of October and one is seeking to do as much Government Business as required. Although it is Private Members' Day, I seek the leave of the Senate on Tuesday to deal with Government Business.

Madam President, I propose to do the Finance Bill to give effect to some of the budget measures which are to be debated in the Lower House later this week and it will be circulated to be debated here on Tuesday.



*Adjournment*

*Tuesday, September 18, 2007*

There are amendments to the Medical Board (Amdt.) Bill so we would need to do that. There are still a number of reports to be adopted and I will have discussion with the Clerk of the Senate and as long as we do not violate any rules, then I would have no objection to also place on the Order Paper the motion from Sen. Mark, but I will have to discuss it with him, and I see no reason why it should not.

So we have a lot of work and, therefore, we would meet on Tuesday, and hopefully we would be able to complete everything, if not, we would obviously have to meet on Wednesday. I am pleading with Senators now, to let us try to clear the work because once we complete the list that I have here, we will adjourn to a date to be fixed. For the moment, Madam President, it is next week Tuesday at 1.30 p.m.

**Sen. Mark:** Before you adjourn, Madam President, may I enquire of Sen. Dr. Saith please?

Sen. Dr. Saith, through you, Madam President, next week Tuesday is Private Members' Day, if Sen. Dr. Saith has a lot of emergency Government Business to conduct, and reports to adopt, and he proposes to the Opposition to give up our day—I have a motion to introduce on Tuesday—but we shall return on Wednesday or Thursday just to deal with that particular matter, I have no problem. I will concede but I think it is very difficult for us to concede that Private Members' Day is now Government day.

Therefore I would like Sen. Dr. Saith to tell us before he leaves this evening if he is prepared to negotiate Tuesday because of the urgency he has just outlined, and give us another day to deal exclusively with Private Members' Business as a last round, because as he rightly said, we do not have many more days ahead of us. We only have one Private Members' Day again before the Parliament is consumed completely, so let us negotiate and I have no difficulty, Sen. Dr. Saith, in giving Tuesday if you can give me Wednesday or Thursday, so at least we can deliberate on the Private Members' Motion.

**Sen. The Hon. Dr. L. Saith:** Madam President, I am always willing to talk to the hon. Leader of the Opposition. I do not want the media present, but I am sure we can discuss it. When we go through and see what we have to do, he himself may come to a different conclusion. So sure, we will have discussion, but on Tuesday I would like to do what I said we want to do.

*Question put and agreed to.*

*Senate adjourned accordingly.*

*Adjourned at 7.47 p.m.*

**WRITTEN ANSWER TO QUESTION****Small Businesses and Micro Enterprises  
(List of Individuals/Companies)**

**90. Sen. Dr. Tim Gopeesingh** asked the hon. Minister of Labour, Small and Micro Enterprise Development:

- A. Could the Minister provide the Senate with a list of all individuals and companies that have received loans for small businesses and micro enterprises for the period January 2002 to December 2006?
- B. Could the Minister also inform the Senate:
  - (i) what was the cost of each of these loans to the individual/company for each of the years 2002 to 2006;
  - (ii) the amount repaid on each of these loans; and
  - (iii) the names of the companies in default and by which amount?

**The Minister of Labour, Small and Micro Enterprise Development (Sen. The Hon. Danny Montano):** The Freedom of Information Act was passed with the object of, among others, creating a general right of access to information in documentary form in the possession of public authorities, limited only by exceptions and exemptions necessary for the private and business affairs of persons in respect of whom information is collected and held by public authorities.

Pursuant to the policy of privacy adhered to by financial institutions, the National Entrepreneurship Development Company Limited (NEDCO) was granted an exemption in accordance with 5(1)(c) and evidenced in Legal Notice No. 21 dated February 20, 2003. The exemption order exempts NEDCO from the provisions of the Freedom of Information Act and indicates that there is a recognition that the information kept by NEDCO is not public information to which access should be granted.

It should be noted that in the context of this question, the only lending agency that reports to the Minister of Labour, Small and Micro Enterprise Development is NEDCO.