

*Leave of Absence**Tuesday, May 12, 2009***SENATE***Tuesday, May 12, 2009*

The Senate met at 10.00 a.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. Hazel Manning, Sen. The Hon. Arnold Piggott and Sen. Dana Seetahal SC who are out of the country.

SENATORS' APPOINTMENT

Mr. Vice-President: Hon. Senators, I have received the following correspondence from the Acting President, Danny Montano, LLB., BComm., C.A.

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency DANNY MONTANO, LLB., BComm.,
C.A., Acting President and Commander-in-Chief
of the Republic of Trinidad and Tobago.

/s/ Danny Montano
Acting President.

TO: MR. FOSTER CUMMINGS

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, DANNY MONTANO, Acting President as aforesaid, acting in accordance with the advice of the Prime Minister, in exercise of the power vested in me by section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, FOSTER CUMMINGS, to be temporarily a member of the Senate, with effect from 12th May, 2009 and continuing during the absence from Trinidad and Tobago of 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 9th day of
May, 2009.”

Senators' Appointment
[MR. VICE-PRESIDENT]

Tuesday, May 12, 2009

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency DANNY MONTANO, LLB., BComm.,
C.A., Acting President and Commander-in-Chief of
the Republic of Trinidad and Tobago.

/s/ Danny Montano
Acting President.

TO: MS. ANWARIE RAMKISSOON

WHEREAS Senator Hazel Ann Marie Manning is incapable of performing her duties as a Senator by reason of her absence from Trinidad and Tobago:

NOW, THEREFORE, I, DANNY MONTANO, Acting President as aforesaid, acting in accordance with the advice of the Prime Minister, in exercise of the power vested in me by section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, ANWARIE RAMKISSOON, to be temporarily a member of the Senate, with effect from 12th May, 2009 and continuing during the absence from Trinidad and Tobago of the said Senator Hazel Ann Marie Manning.

Given under my Hand and the Seal of the President
of the Republic of Trinidad and Tobago at the
Office of the President, St. Ann's, this 11th day of
May, 2009.”

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency DANNY MONTANO, LLB., BComm.,
C.A., Acting President and Commander-in-Chief
of the Republic of Trinidad and Tobago.

/s/ Danny Montano
Acting President.

TO: MR. BRIAN WOOD

WHEREAS Senator Dana Seetahal is incapable of performing her duties as a Senator by reason of her absence from Trinidad and Tobago:

NOW, THEREFORE, I, DANNY MONTANO, Acting President as aforesaid, in exercise of the power vested in me by section 40(2)(c) of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, BRIAN WOOD, to be temporarily a member of the Senate, with effect from 11th May, 2009 and continuing during the period of absence from Trinidad and Tobago of the said Senator Dana Seetahal.

Senators' Appointment

Tuesday, May 12, 2009

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 8th day of May, 2009."

OATH OF ALLEGIANCE

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

Foster Cummings, Anwarie Ramkissoon, Brian Wood.

PAPERS LAID

1. Annual audited financial statements of the Rural Development Company of Trinidad and Tobago Limited for the year ended September 30, 2008. [*The Minister of Trade and Industry and Minister in the Ministry of Finance (Sen. The Hon. Mariano Browne)*]
2. Annual audited financial statements of Caroni (1975) Limited for the eight years ending June 30, 2000 to June 30, 2007. [*Sen. The Hon. M. Browne*]
3. Report of the Auditor General of the Republic of Trinidad and Tobago on the financial statements of the Sangre Grande Regional Corporation for the year ended September 30, 2000. [*Sen. The Hon. M. Browne*]
4. Report of the Auditor General of the Republic of Trinidad and Tobago on the financial statements of the Sangre Grande Regional Corporation for the year ended September 30, 2001. [*Sen. The Hon. M. Browne*]

**EMERGENCY AMBULANCE SERVICES AND
EMERGENCY MEDICAL PERSONNEL BILL**

**Special Select Committee Report
(Presentation)**

The Minister of Health (Sen. The Hon. Jerry Narace): Mr. Vice-President, thank you. I have the honour to lay on the Table the following report as listed on the Order Paper in the name of the Minister of Health:

The Report of the Special Select Committee of the Senate appointed to consider and report on a Bill entitled the Emergency Ambulance Services and Emergency Medical Personnel Bill, 2009.

ORAL ANSWERS TO QUESTIONS

**Brian Lara Cricketing Academy
(Details of)**

5. **Sen. Wade Mark** asked the hon. Minister of Sport and Youth Affairs:

Could the Minister inform this Senate of:

- (a) the current status of the Brian Lara Cricketing Academy in Tarouba;
- (b) the total sum expended on the project as at December 31, 2008;
- (c) the estimated sum required for the completion of the project; and
- (d) the completion date of the project?

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Mr. Vice-President, there are a number of questions on the Order Paper for which the Government does not, at this point in time, have any answers, and I am going to take you through them one by one. With respect to question No. 5, that question was, in fact, received by the Parliamentary Questions Committee and it was submitted for an amendment. I am advised that it should be available next week.

Question, by leave, deferred.

**Dr. Rupert Griffith and Dr. Vincent Lasse
(Status of Debt Incurred in Judgment)**

13. **Sen. Wade Mark** asked the hon. Attorney General:

With respect to the judgment in the matter involving the challenge by the Prime Minister, hon. Patrick Manning of the Crossing of the Floor Act relating to Dr. Rupert Griffith and Dr. Vincent Lasse, could the Minister inform this Senate of the status of the debt incurred by him?

The Attorney General (Sen. The Hon. Bridgid Annisette-George): Mr. Vice-President, this question has not received approval. I am endeavouring to have it before the Parliamentary Questions Committee next week, so it should be available the following week.

Question, by leave deferred.

**Upgrade of Old Piarco Airport
(Cost of)**

16. **Sen. Wade Mark** asked the hon. Minister of Works and Transport:

With respect to the proposed refurbishment and upgrade of the old Piarco Airport facility, could the Minister state:

- (a) the estimated cost of the proposed refurbishment and upgrade of the facility?
- (b) the names of the companies contracted to undertake the works and the values of the contracts?

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Mr. Vice-President, question No. 16 follows the same route as question No. 5. It was deferred after having been submitted for an amendment. This question should be ready by next week.

Question, by leave, deferred.

CL Financial Bailout (Status of)

27. Sen. Lyndira Oudit asked the hon. Minister of Finance:

In light of the CL Financial bailout, could the Minister indicate to the Senate:

- (i) Whether there are plans to increase the coverage of deposit insurance to ensure that citizens' deposits are adequately secured?
- (ii) Whether there are any procedures/regulations in place or proposed, to increase the capacity of Deposit Insurance Corporation to deal with any failing, weakened or troubled financial institution in Trinidad and Tobago, in order to balance the risk to investors and depositors funds?

The Minister of Trade and Industry and Minister in the Ministry of Finance (Sen. The Hon. Mariano Browne): Mr. Vice-President, since the establishment of the Deposit Insurance Corporation (DIC) in 1986, the coverage limit has undergone one change in deposit insurance coverage limit from TT \$50,000 to TT \$75,000 in October 2007.

The DIC met and invited comments from members of the Bankers Association of Trinidad and Tobago on April 05, 2007 which are commercial banks and senior officers of the eight non-affiliated non-banks on June 04, 2007. Generally, all members were in support of an increase in the coverage limit, but were not in favour of an increase in premium. The rationale for the \$75,000 was based on a coverage limit that the Fund could have afforded it without exposing it to solvency issues and without requiring increased premiums from the members.

Notwithstanding the foregoing and given the recent developments associated with the fallout from the global financial crisis and its consequent impact on savers, deposit insurers around the world responded by increasing their deposit insurance coverage limit with a view to maintaining consumer confidence and

boosting stability in the financial services sector. The corporation is fully aware of these developments and is currently engaged in a new study to examine the feasibility of increasing the deposit insurance coverage limit, particularly in view of the 2007 increase. In fact, it should be noted that the deposit insurance coverage limit is constantly under review by the corporation.

Mr. Vice-President, as part of its annual, ongoing corporate planning exercise, the corporation has always incorporated initiatives in a proactive manner to add to the financial stability within the financial services sector where practicable. One such area that has received the corporation's attention has been the possible expansion of its scope to consider providing insurance to credit union members and protection to policyholders of insurance companies.

The DIC, through its membership in the International Association of Deposit Insurers (IADI), is continuously engaged in the pursuit of best practices. There are examples of deposit insurers that offer protection to not only depositors, but also investors as well, one of which includes the Financial Services Compensation Scheme in the United Kingdom. The corporation would continue to leverage its relations with its IADI colleagues to enhance its contribution to financial stability.

It should be noted that the corporation's actions to continuously review and increase the deposit insurance coverage limit over time and, where practicable, to investigate opportunities to expand its scope of coverage are consistent with the policy reform statements contained in the White Paper dated June 2004 entitled "Reform of the Financial System of Trinidad and Tobago".

Mr. Vice-President, thank you.

Sen. Oudit: With respect to the first part of the question, your concern with premiums, is it possible that you may have considered the range of premium options so that insurance coverage could be increased at the benefit of the investor or the depositor rather than increasing the premiums? You have not increased the insurance, and you do not want to burden the investor with premiums. Could you not offer a range of premiums?

10.15 a.m.

Sen. The Hon. M. Browne: That has the elements of another question but in the short order, the DIC is in fact a self-funded operation, it is funded by premiums. One of the difficulties and if you look at it elsewhere in the world, particularly in North America from which we copied—in North America the Deposit Insurance Scheme is passed on to depositors. In fact, they pay the deposit insurance; it is not done like this in this particular market. The scheme at the

moment is funded by way of premium contributions paid by the banks and non-banks, the entities in themselves, and in this particular instance the increase in the coverage was considered possible without any increase in premiums. If we were to consider to increase the premium coverage or to increase the deposit insurance coverage further then it would require funding and that funding has to be paid by one of two parties: the banks or the investors and that is where we are. The situation is under review and will be reviewed again in due course.

Sen. Mark: Mr. Vice-President, may I ask the hon. Minister whether there is a time frame involved as it concerns the DIC consideration re its next report in respect of increasing the coverage for depositors in the country? Is there a time frame? He spoke about a second report that they are considering again.

Sen. The Hon. M. Browne: Mr. Vice-President, this situation as I said in my answer is considered annually and it will be considered again in light of the prevailing circumstances and a judgment call will be made when the next report is due.

Spanish Nationals Residing in Trinidad and Tobago (Eligibility to Vote)

28. Sen. Lyndira Oudit asked the hon. Minister of Foreign Affairs:

Could the Minister inform the Senate of the current number of Spanish nationals residing in Trinidad and Tobago who are presently eligible to vote in any election to be held in this country in 2009 or 2010?

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Thank you, Mr. Vice-President. Question No. 28 follows the same as questions Nos. 5, 13 and 16; that was deferred by the Parliamentary Questions Committee for an amendment but I suspect that it will be available next week.

Question, by leave, deferred.

Cocoa Cultivators/Farmers (Status of)

30. Sen. Lyndira Oudit asked the hon. Minister of Agriculture, Land and Marine Resources:

Could the Minister inform this Senate of:

- (i) the number of cocoa cultivators/farmers at present in this country;
- (ii) the size of land under cocoa cultivation of each farmer; and
- (iii) the number of years each cultivator/farmer has been involved in cocoa cultivation?

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Mr. Vice-President, in the absence of the Minister I wish that the question be deferred until his presence.

Question, by leave, deferred.

**Trinidad and Tobago Amateur Boxing Association
(Monetary Assistance)**

31. Sen. Lyndira Oudit asked the hon. Minister of Sport and Youth Affairs:

Could the Minister indicate to the Senate the amount of monetary assistance which was provided individually to female boxers Wendy Alleyne, Ria Ramnarine and the late Jizelle Salandy, either directly or indirectly, through the Trinidad and Tobago Amateur Boxing Association for the period 2003—2008?

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Mr. Vice-President, in discussing this question with the Minister he indicated that he would make his best efforts to have it ready by next week.

Question, by leave, deferred.

**Nation's Judges
(System of Monitoring)**

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

Could the Attorney General outline to the Senate the system of monitoring that is in place in respect of assessing and evaluating the performance of the nation's judges?

The Attorney General (Sen. The Hon. Bridgid Annisette-George): Mr. Vice-President, the information for this question has just been received from the Judiciary and it should be ready in the next two weeks.

Question, by leave, deferred.

**UDeCott
(Public Funds)**

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

Could the Minister inform the Senate:

- (a) whether public funds are being used by the Executive Chairman of UDeCott to engage lawyers directly for himself in the ongoing Commission of Enquiry into UDeCott and the construction sector;

- (b) if the answer to (a) above is in the affirmative, could the Minister provide the Senate with a detailed breakdown of the costs involved for the provision of these legal services?

The Minister of Trade and Industry and Minister in the Ministry of Finance (Sen. The Hon. Mariano Browne): Mr. Vice-President, UDeCott does not receive subventions from the Government to pay for the cost of its operations. It does not receive subventions! It conducts its business on a commercial basis and funds its operations from its own revenues. UDeCott provides services for which it earns fees. Services include project management and property development, and all of the company's expenses, including the cost of legal representation, are paid from the company's resources and not from public funds.

In light of the answer to part (a) of this question, the answer to part (b) is not applicable.

Sen. Mark: Could the hon. Minister indicate whether public resources or funds do not constitute funds of the State by UDeCott, and therefore in meeting commitments to attorneys-at-law, will the Minister not agree that the public is in fact funding the executive chairman's legal fees?

Sen. The Hon. M. Browne: Mr. Vice-President, I think Sen. Mark is asking me for a legal definition and I think I was very clear. UDeCott does not receive subventions from the Government of Trinidad and Tobago. Its revenue comes from its operations and its fees that it earns in the conduct of its business. As such, it does not receive public funds in the definition of a direct public subvention. It receives its money from revenues that it earns in the conduct of its business and on that basis it pays for its expenses out of the revenues that it earns. I do not think I could be any clearer than that, Sir.

Sen. Rahman: I am a little puzzled here, Sir. Am I to understand that the defence of the Executive Chairman of UDeCott is a defence of UDeCott? In other words, is UDeCott's money being spent to defend the private problems of the chairman?

Sen. The Hon. M. Browne: I am sure that the Senator is familiar with the concept of vicarious liability and that there is no person—I think—that is currently before the commission operating in his own right, but in his right as an employee of UDeCott. The Memorandum and Articles of Association of UDeCott do provide cover for when directors and employees act in good faith that they be defended by the company. Thank you.

**Aluminium and Steel Plants
(Any Modification to Government's Plans)**

41. Sen. Mohammed Faisal Rahman asked the hon. Minister of Finance:

Could the Minister state whether there has been any modification to Government's plans to invest in aluminium and steel plants in the light of worsening global economic and financial structures?

The Minister of Trade and Industry and Minister in the Ministry of Finance (Sen. The Hon. Mariano Browne): Mr. Vice-President, I could answer this question with a very short monosyllabic response and that would solve, I think, the format of the question which is asked here. However, I would give a more elaborate response next week, unless the Senator would like me to answer it now.

Question, by leave, deferred.

**Emergency Unemployment Grant
(Consideration of)**

42. Sen. Mohammed Faisal Rahman asked the hon. Minister of Finance:

Could the Minister state whether the Government will be considering the establishment of an Emergency Unemployment Grant as a stopgap social benefit measure to facilitate workers who have lost their jobs as a result of the global financial crisis?

The Minister of Trade and Industry and Minister in the Ministry of Finance (Sen. The Hon. Mariano Browne): Mr. Vice-President, the Government is not at this time considering the establishment of an Emergency Unemployment Grant. The Government has in place a number of social programmes to alleviate financial hardship experienced by our citizens. These programmes are not limited to persons who have lost their jobs but assist in a much wider range of adverse circumstances, and also extend to opportunities to improve one's financial situation. These programmes include:

- i) General assistance grants which are made after a needs assessment is conducted by social workers of the Ministry of Social Development;
- ii) Targeted Conditional Cash Transfer Programme (TCCTP), a short-term food assistance and developmental initiative aimed at assisting the most needy persons and families. Recipients are given a debit card with which they can purchase basic food items. In addition, participants must agree to join one of the Government's skills-training programmes, thus

promoting the acquisition of new skills and providing new opportunities for employment and self-reliance;

- (iii) Micro-Enterprise Initiatives to promote sustainable livelihoods among the underprivileged. These include the Micro-Enterprise Loan Facility (MEL) and the Micro Enterprise Training and Development Grant (MEG) which seeks to create sustainable livelihoods amongst the unemployed and the disadvantaged. In addition, under the Poverty Reduction Programme, Regional Social and Human Development Councils (RSHDCs) recommend financing for projects that meet the social needs of the most vulnerable regions in Trinidad and Tobago. At the end of fiscal 2008, more than 288 projects were approved in a number of areas including agriculture, education, food and nutrition, health, and information technology;
- (iv) The Unemployment Relief Programme (URP). As its name implies, the Unemployment Relief Programme is designed to provide short-term employment to unemployed persons of Trinidad and Tobago who are older than 25 years of age to enhance the entrepreneurial skills of individuals and community groups, and to assist in the delivery of small-scale projects in various communities.

Unemployed persons are provided work on a rotational basis every two to three weeks for which they are paid a stipend to assist them financially. This programme covers 12,500 persons at any point in time, male and female. It is estimated that approximately 50,000 persons per year benefit from this programme.

Mr. Vice-President, notwithstanding the foregoing and in recognition of the impact that a global/national financial crisis can have upon the society, the Ministry of Social Development is willing to collaborate with all the relevant agencies and stakeholders to improve ways and means of targeting the most vulnerable persons and consider possible measures to buffer negative effects. These include:

- 1) Youth empowerment;
- 2) Fostering a culture of financial prudence within the wider society;
- 3) Encouraging more micro-entrepreneurship in communities to enable self-sufficiency and sustainability; and
- 4) The development of new programmes to address new and emerging needs.

Thank you, Mr. Vice-President.

Sen. Rahman: Is the Minister saying that executives and people who have been employed for several years and have suddenly lost their jobs should start lining up for URP employment or will it suddenly become eligible for all of the different facilities that are being outlined?

Sen. The Hon. M. Browne: I suspect that is a supplemental of some sort. [Laughter] All our programmes are open to Trinidadians and Tobagonians and it is in that context that the programme exists. The programme does not target those who come from one section of the society as those who come from the other section of the society and, if anything at all, the programmes are targeted to help those who are underprivileged and who are without access. I do not think I could answer that in any better way. Thank you.

Sen. Rahman: Would the Minister kindly consider establishing some sort of—

Mr. Vice-President: Senator, is that a question?

Sen. Rahman: [Inaudible]

Mr. Vice-President: Are you asking a supplemental question?

Sen. Rahman: I am seeking—[Inaudible]

Mr. Vice-President: You are making a proposal then. [Inaudible] Well, could you phrase it in the form of a supplemental question!

Sen. Rahman: Yes, I shall. Would the Minister advise if having responded in the way he has and as a result to my other questions, whether the Government would now consider that there is a need for establishing such a relief programme?

Sen. The Hon. M. Browne: I think that is the first question asked in a different way and I think I have already answered that question, Mr. Vice-President. Thank you.

Unemployment Benefit (Establishment of)

43. Sen. Mohammed Faisal Rahman asked the hon. Minister of Finance:

Would the Government consider establishing a regular unemployment benefit for workers willing to work but unable to find jobs?

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Thank you, Mr. Vice-President. This question was in fact recommended but it is not available. It would be available next week.

Question, by leave, deferred.

**Rental of Cruise Ships
(Details of)**

47. Sen. Mohammed Faisal Rahman asked the hon. Minister of Finance:

Could the Minister provide the Senate with a detailed account of the cost of renting the two cruise ships to be used as floating hotels for the forthcoming Summit of the Americas?

The Minister of Trade and Industry and Minister in the Ministry of Finance (Sen. The Hon. Mariano Browne): Mr. Vice-President, this answer is not yet ready in its final form. We do have a formal answer but we are not prepared to give it today. I would be in a position to answer this next week. Thank you.

Question, by leave, deferred.

**Office of the Prime Minister
(Cutbacks in Entertainment Allowance)**

48. Sen. Mohammed Faisal Rahman asked the hon. Minister of Finance:

Could the Minister state whether there has been any cutbacks in the budgeted entertainment allowance of the Office of the Prime Minister for fiscal year 2009?

The Minister of Trade and Industry and Minister in the Ministry of Finance (Sen. The Hon. Mariano Browne): Mr. Vice-President, the budgeted amount under the expenditure vote for the Office of the Prime Minister for official entertainment has been reduced by \$2,442,000.

**International Financial Centre
(Revised Plans of)**

49. Sen. Mohammed Faisal Rahman asked the hon. Minister of Finance:

Having regard to the Dubai Model's current experience of contraction, could the Minister state whether the Government has revised its plans for the International Financial Centre?

The Minister of Trade and Industry and Minister in the Ministry of Finance (Sen. The Hon. Mariano Browne): If I did not get any exercise this morning I am certainly getting today. [*Laughter*]

The Government of Trinidad and Tobago has recognized that the Dubai IFC has been adversely impacted by the current international financial crisis. Notwithstanding this, our plans to establish the Trinidad and Tobago International

Financial Centre (TTIFC) remain on track. We will, however, factor the global economic downturn, the volatility in international financial markets and their potential impacts on the TTIFC into our plans.

The consultants for this exercise, PricewaterhouseCoopers has submitted a final report with recommendations on the tax, legal and regulatory framework for the TTIFC. This report is currently under review by the Ministry of Finance. Before the tax, legal and regulatory framework is finalized, the Government will undertake the following steps, having regard to changes in the global financial environment:

- i) The feasibility study risk assessment of the TTIFC will be reviewed;
- ii) Additional research will be undertaken to validate the proposed business lines and to assess current demand for the TTIFC; and
- iii) The marketing plan will be amended to reflect the findings of the feasibility study, risk assessment and demand analysis for the TTIFC.

Upon completion of these analyses, the process will continue with:

- 1) Finalizing the tax, legal and regulatory framework for the TTIFC;
- 2) Drafting the TTIFC laws and regulations.

In order to advance execution of this initiative, a company has been established to manage the TTIFC and provide strategic direction to drive the implementation process.

It is this Government's view that once we have successfully completed the due diligence just alluded to, we will proceed with our plans to establish the TTIFC and position Trinidad and Tobago to maximize the opportunities that will be available in the new financial landscape that will undoubtedly emerge with the upturn of the international economy.

10.30 a.m.

Sen. Oudit: Hon. Senator, could you indicate to the Senate the name of the company and those persons who are involved in this company that will take this transformation forward?

Sen. The Hon. M. Browne: By this I mean, you are interested in the management company?

Sen. Oudit: Yes.

Sen. The Hon. M. Browne: It has been established, it has not been peopled as yet.

**Foreign Debt
(Details of)**

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

Could the Minister state:-

- (a) the existing total foreign debt as at March 31, 2009;
- (b) the annual debt service commitment thereon; and
- (c) what percentage of the existing total foreign debt has been contracted at variable interest rates?

The Minister of Trade and Industry and the Minister in the Ministry of Finance (Sen. The Hon. Mariano Browne): Mr. Vice-President, the answer to this question is not ready. It is not in its final form and I ask for a deferment of two weeks.

Question, by leave, deferred.

**National Gas Company/BPTT
(Estimate Expected Royalty)**

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

Could the Minister provide the Senate with an estimate of the total royalty expected over the life of the current National Gas Company/BPTT twenty years gas contract?

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Mr. Vice-President, the answer to this question will not be available for three weeks.

Question, by leave, deferred.

**Ministry of Energy and Energy Industries
(Status of Employees)**

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

Could the Minister indicate how many high ranking officers of his Ministry have resigned, retired or just left the job, and what efforts are being made to have them replaced?

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Mr. Vice-President, same Minister, same Ministry, same answer, three weeks.

Question, by leave, deferred.

**Municipal Corporations Act
(Government's Intention to Amend)**

87. Sen. Gail Merhair asked the hon. Minister of Local Government:

Could the Minister state whether it is the intention of the Government to amend the Municipal Corporations Act in order to extend the life of the current term of regional corporations when their term expires?

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Mr. Vice-President, the Minister is not now present and I would wish to defer this until she returns.

Question, by leave, deferred.

**Agricultural Leases
(Details of)**

88. Sen. Gail Merhair asked the hon. Minister of Agriculture, Land and Marine Resources:

Could the Minister inform the Senate how many standard agricultural leases have been granted to farmers on state lands during the period January 01, 2007 to March 31, 2009?

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Mr. Vice-President, similar logic, the Minister is not here.

Question, by leave, deferred.

**National Gender Policy
(Implementation of)**

89. Sen. Gail Merhair asked the hon. Minister of Community Development, Culture and Gender Affairs:

With respect to the National Gender Policy, could the Minister inform this Senate of the timeline for implementation?

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Different logic, Mr. Vice-President. The Minister is not here because the answer is not now ready and I would seek a two-week deferral on this one.

Question, by leave, deferred.

**National Test Results
(Details of)**

91. Sen. Dr. Adesh Nanan asked the hon. Minister of Education:

- A. Would the Minister indicate to the Senate whether all primary schools in Trinidad and Tobago have received the June 2008 National Test results?
- B. If the answer to (A) is in the negative, could the Minister inform the Senate of the reason(s) for the delay?

The Minister of Education (Hon. Esther Le Gendre): Mr. Vice-President, the response to question 91 is not available at this time. I ask for a deferral of at least two weeks.

Question, by leave, deferred.

**Heads and Deans
(Appointment of)**

92. Sen. Dr. Adesh Nanan asked the hon. Minister of Education:

- A. Would the Minister indicate to the Senate whether all heads and deans have been appointed to all secondary schools?
- B. If the answer to (A) is in the negative, would the Minister inform the Senate of the reason(s) for the delay?

The Minister of Education (Hon. Esther Le Gendre): Mr. Vice-President, it should be noted at the outset that the filling of the positions of heads and deans of secondary schools is a matter for the Teaching Service Commission.

With respect to Part A, Cabinet in September 2004, created 661 positions of heads of department and 575 positions of deans in secondary schools. The positions filled to date are:

- Heads of Department—475 or 71 per cent of the total; and
- Deans—458 or 80 per cent of the total.

With respect to Part B of the question, it should be noted that appointments are made continuously and are impacted by factors such as the large volume of positions to be filled and the capacity to address these in conjunction with routine appointments. During the same period, there were 475 temporary and 151 permanent appointments of teachers, 16 appointments of principals at the secondary level and 27 appointments of vice-principals also at the secondary level.

In a number of schools, a number of suitable candidates were not found due to a dearth of candidates in the area of visual and performing arts and technology education from which groups, the heads and deans will be selected. In an effort to reduce the timeline for making these appointments, the Ministry of Education and the Teaching Service Commission have sought to facilitate the approval of administrative support arrangements through the temporary expansion of the human resources of the Teaching Service Commission and augmentation in number, composition and frequency, the convening of Teaching Service Commission appointed selection boards. They have also sought to expand their availability of interview centres.

The interviews process is ongoing at the Teaching Service Commission and appointment letters for an additional 39 heads of department are imminent. The Teaching Service Commission has also indicated that all interviews are expected to be completed by May 30, 2009. Thereafter interviews will be conducted on an as needed basis.

Thank you.

Sen. Dr. Nanan: If the Minister has the information, could the Minister give us an indication of how many secondary schools are without heads and deans at this point in time?

Hon. Le Gendre: I do not have a breakdown of the schools. What I gave was, one could assume that 80 per cent of all positions that are required to be filled, are filled at this time.

Primary School Curriculum (Last Review)

93. Sen. Dr. Adesh Nanan asked the hon. Minister of Education:

Would the Minister indicate to the Senate when was the last review of the primary school curriculum?

The Minister of Education (Hon. Esther Le Gendre): Mr. Vice-President, the primary school curriculum simply defined, is the course of work that is followed by students who attend primary school. In Trinidad and Tobago, the school curriculum is shaped by the educational policy of the Government and the Ministry of Education, community and country needs, as well as the needs of children being taught, international research and best practices.

The curriculum is embodied in the classroom. The subjects taught range from English Language, Creative Arts, Music, Physical Education, Religious Instruction, Agriculture Science, Health and Family life, Spanish, to morals and values education.

The subjects of the present curriculum have been reviewed between 1994 and 2005 and the curriculum has been appropriately modified, taking into account changes in the environment from student needs national goals. The reviews were as follows:

- Music was reviewed in the year 1994, as was Art and Craft;
- Mathematics was reviewed in 1999, as was Language Arts, Physical Education, Social Studies and Spanish;
- Science was reviewed in 2004/2005.

Hon. Senators are asked to note that the curriculum at the primary level will be reviewed during the current Seamless Education Programme which aims to review and improve the education system with special emphasis at the primary level. This programme is being implemented with the assistance of an IDB loan. Under this programme, seven subjects will be reviewed. These are Mathematics, Language Arts, Visual and Performing Arts, Spanish, Physical Education, Social Studies, Science. Health and Family Life Education was introduced in 2007 in all primary schools and is currently being reviewed as to its impact with the view to using this feedback for more effective implementation.

Thank you.

Sen. Dr. Nanan: You said that the science curriculum was reviewed in 2004/2005, but we are now in 2009 and the science curriculum is outdated, and you said that there is an IDB loan that will be driving the process. Could you give us that time frame for the science curriculum to be reviewed?

Hon. E. Le Gendre: I indicated that there is an IDB loan. That loan was signed in April of this year, so that we are currently in implementation phase. I expect that the entire programme will last some two and a half to three years, that is because they had several components under the Seamless Education Project. Does that answer your question?

Sen. Dr. Nanan: In view of the fact that you have given us an idea of the time frame, like 1994 you had a curriculum review, in 1995 and ongoing, would the Minister indicate whether the primary school curriculum is changing because of a change of government?

Hon. E. Le Gendre: Again, that looks very much like a supplemental question. However, it should be noted as I said earlier on, a curriculum is developed based on national need and is influenced by government policy. Although to answer your question directly, what is driving the adjustments to the

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present curriculum as we always say is, it is environment, the changing need of society, the changing ability of the student. You have raised in a previous forum the fact that children appeared to be overloaded. I think the capacity of children has changed certainly from our time. You are all familiar with children who appeared to be wise beyond their years when compared to children in our own time.

So to answer the question again, no, it is not being changed as a result of a change in government. What is impacting this particular change however, is the Government's policy of creating a seamless education system from ECCE right through to lifelong learning and that requires particular study, research and what we are doing at this time is implementing such a programme to see how our curriculum can be made more relevant to our needs, of course, within the context of Vision 2020.

Thank you.

Sen. Dr. Nanan: I have one more and it is related with respect to this particular question and that is, will the national test be part of the curriculum review?

Hon. E. Le Gendre: The national test is an assessment tool. It is not part of the curriculum. As I said, the curriculum is what is taught in schools. The national test is one means to test the effectiveness of what is being taught so that if there are any gaps, the teaching service can put in place mechanisms to address those gaps, so the two are quite separate and I thank you for that being your last supplemental.

EVIDENCE (AMDT.) BILL

Bill to amend the Evidence Act, Chap. 7:02 [*The Attorney General*]; read the first time.

EVIDENCE (AMDT.) (NO. 2) BILL.

Bill to amend the Evidence Act, Chap. 7:02 [*The Attorney General*]; read the first time.

INTEGRITY IN PUBLIC LIFE (AMDT.) BILL

Order for second reading read.

The Attorney General (Sen. The Hon. Bridgid Annisette-George): Mr. Vice-President, I beg to move,

That a Bill to amend the Integrity in Public Life Act, Chap. 22:01, be now read a second time.

Mr. Vice-President, this is a Bill to amend the Integrity in Public Life Act, Chap. 22:01. Hon. Senators would recall that this is the third occasion that an amendment is being proposed to this legislation. The first such occasion was an amendment by repeal of the 1987 Act and its replacement by the Integrity in Public Life Act, 2000 on October 27, 2000 and that was Act No. 83 of 2000. And thereafter on November 02, 2000, there was an amendment to Act 83 of 2000 and this was by Act 88 of 2000, which was most significant for widening the categories to include Senators, judges, magistrates, members of boards of all state enterprises and statutory bodies, Permanent Secretaries and Chief Technical Officers.

The intent in main of these amendments before the honourable Senate, is to clarify certain provisions of the legislation to avoid ambiguity in the interpretation and application of the Act, particularly in Part V of the Act which deals with complaints and investigations.

Mr. Vice-President, I beg your leave to permit me an opportunity to briefly go through a historical account.

10.45 a.m.

Chapter 10 of the Republican Constitution provided in section 138 for an Integrity Commission which was charged with the duty of:

- “(a) receiving, from time to time, declarations in writing of the assets, liabilities and income of members of the House of Representatives, Ministers of Government, Parliamentary Secretaries, Permanent Secretaries and Chief Technical Officers; and
- (b) the supervision of all matters connected therewith as may be prescribed;”

Section 139 of the said Constitution further provided that:

“...Parliament may make provision for—

- (a) the procedure in accordance with which the Commission is to perform its functions; and
- (e) generally to give effect to the provisions of section 138.”

In order to fulfil the mandate of section 139 of the Constitution, Cabinet by Minute No. 3269 dated November 24, 1977 agreed to the selection of an investigative team to visit Canada, the United States of America, the United Kingdom and such other countries as Cabinet might approve to review the working of the integrity commissions in those countries and to make such recommendations as it deemed so fit for the setting up of an integrity commission in the Republic of Trinidad and Tobago.

That investigative team submitted its report in January 1979 containing its recommendations which were premised on the rationale that the Act should be implemented to safeguard the country from the ills associated with a lack of integrity and more positively to emphasize the necessity for the proposal of uprightness, soundness and honesty in government and non-government affairs.

To assist the Integrity Commission in its efforts to regulate conflict of interest, the investigative team recommended that appropriate laws, or basic provisions be enacted prescribing the function, duties, terms and conditions of service of the Members of the Integrity Commission and set out guidelines in order to do the following:

- (a) to remove improper influence from governmental operations and actions for the proper pursuit of democratic government and safeguarding of the public trust;
- (b) to prevent the public office from being used for promotion of gain other than remuneration provided by law;
- (c) to provide for disclosures of economic interest and family connections;
- (d) to establish appropriate ethical standards with respect to the conduct of elected officials and senior employees in situations where such conflict exists; and
- (e) to help create public confidence in the integrity of government.

The team also recommended that the Integrity Commission be given powers to regulate its own procedure and further recommended that steps be taken to ensure the Integrity Commission shall not be subject to the direction or control of any other persons or authority in the exercise of its function.

Among other recommendations was the drawing up of an appropriate code of ethics for the guidance of Members of Parliament, Ministers of Government, Government officials, senior members of the public service and senior employees in all government agencies.

It is enlightening to recall that there was some public engagement by way of memoranda submitted to the investigative team. It may have been a very modern-day approach then, but only 30 memoranda were received of which one was not completed. This consultative process was aimed at ascertaining the categories of persons who should be required to make declarations to the Commission. In the category of Members of Statutory Authorities, such as the National Housing

Authority, the predecessor of the now Housing Development Corporation (HDC); WASA and Port Authority, only nine of the respondents answered in the affirmative that members of these boards should be subject to filing declarations.

Of the category of all Directors of government-owned companies, eight answered in the affirmative; in the category all Government-appointed Directors of companies having government participation, only one respondent answered in the affirmative and this could be found at paragraph 13 on pages 5 and 6 of the report.

Mr. Vice-President, the report continues and I quote:

“Others stressed the point that if persons listed under Members of such statutory authorities, all Government-appointed Directors of companies having Government participation were required to declare their assets it would be extremely difficult for Government to obtain suitable persons from the private sector to serve on Statutory Authorities and Boards of Companies either owned by Government or having Government connections or participation.

People with expertise therefore who value their privacy and have to declare their assets, et cetera, will be unwilling to accept positions in the public service.”

Eventually in 1987, the first Integrity in Public Life Act was proclaimed and it provided for the establishment of the Integrity Commission for the purpose of receiving declarations as to the financial affairs of persons in public life and for matters incidental thereto.

In August 1994, the Senate of the Republic of Trinidad and Tobago resolved that it was timely that a review of the 1987 integrity legislation be undertaken with a view to strengthening the current legislation and empowering the Integrity Commission to exercise greater control and oversight with respect to the activities of persons performing governmental functions.

A working team was constituted with its terms of reference to review the existing legislation and to prepare a Green Paper for presentation for public comment and consultation. The result was that there were three Draft Bills; the Integrity in Public Life Bill, and two Constitution (Amdt.) Bills which were forwarded to a special select committee and amendments thereto led to the current 2000 legislation which was an Act to provide for the establishment of the Integrity Commission to make provisions for the prevention of corruption of persons in public life by providing for public disclosure to regulate the conduct of persons exercising public functions, to preserve and promote the integrity of public officials and institutions and for matters incidental thereto.

Integrity in Public Life (Amdt.) Bill
[SEN. THE HON. B. ANNISETTE-GEORGE]

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The 2000 Bill did not originally include Senators, judges, magistrates, chairmen, members of state enterprises and statutory authorities but was amended by Act No. 88 of 2000 to include those categories. Such is the historical background and policy behind the integrity legislation in Trinidad and Tobago.

Our experience has however shown that the current Act, as crafted, has had the effect of driving away suitably qualified citizens from offering themselves for public service on boards in the public sector. Experience has borne out the results of that limited public engagement process done over three decades ago by the investigative team of 1977 which, at the expense of being repetitious cautioned that “people with expertise therefore who value their privacy and have to declare their assets will be unwilling to accept positions in the public service.”

Mr. Vice-President, in a statement delivered by me in the other place in January 2008 I indicated the following:

“...arising from the Government's experience in making appointments to the boards, it appears that many a suitable and well-qualified citizen has shied away from accepting the call to public service on account of the continuous reporting requirements of the Act and the invasive investigative powers of the Integrity Commission as it relates to them, their spouses and dependent children. The Government, however, has to balance this reality with its international obligations under the several international treaties to which it is a signatory.”

Mr. Vice-President, it is innate for people and those of us in Trinidad and Tobago to respond when statements are made almost automatically and I quote: “yuh lie”, when statements are not supported by facts. So I have walked with my supporting facts and I refer to an article published in the *Sunday Express* of January 08, 2006 under the caption “Scrap Integrity Legislation now”. In that article, Dr. Terrence Farrell justified his call on the basis that the legislation was: “Not just wrong, it was fatally flawed.”

His arguments can be summarized under two headings: “An Unwarranted Presumption” that once a person is in public life he/she is likely to be or could be or would be corrupt. And he concludes by saying everything else in the Act flows from this presumption which is unfair and unreasonable and which determines his reason for declining an invitation to sit as a member of a board of a state company.

Dr. Farrell further made the point in that article, one which we on this side accept which is:

“The vast majority of parliamentarians, judges and state enterprise directors are honest individuals.”

The second area he pointed out was under the heading of “Declarations of Assets” and he found that they were long and comprehensive; down to each bank account one has, the content of one’s safety boxes and even accounts of one’s spouse’s jewellery. I quote from his article again:

“The legislation contemplates that the ‘person in public life’ must be in a position to explain to the Integrity Commission, if called upon so to do, changes in his/her assets from one year to the next. The legislation does not state that such explanation is required only in the event that some wrongdoing is suspected or revealed in the public institution of which you are a part.”

He further hypothesizes:

“...an ‘Integrity Commission’ in the wrong hands... (could) become an agency of harassment and victimization...”

Those and similar views are echoed all too often throughout this country when invitations to serve on state boards are rejected by citizens who are suitably qualified, honest, of high integrity and good repute.

Dr. Farrell again was forced to put pen to paper in the *Sunday Express* February 15, 2009 under the caption: “Revisiting integrity in public life” and he indicated that since his 2006 article many persons—and I would assume that these are persons known to him because it is implicit in his article when you read it—who accepted invitations to sit on state boards have since resigned, fed up with the harassment by the staff of the Commission in seeking to implement a round-headed piece of legislation.

The Government cannot turn a deaf ear to such concerns, and while still committed to the imperative of an effective integrity commission as a bastion of good governance and effective Government, the Government has sought by the amendments proposed to streamline the process of making complaints.

In my said statement in the other place in January 2008, I indicated that the Government further intends to closely scrutinize the procedure for making of complaints to the Integrity Commission and the consequential procedure for investigation.

I now deal with provisions of the Bill clause by clause. Clause one is the short title of the Bill. The result of clause 2 is that references in the Bill to the Act would be references to the Integrity in Public Life Act, Chap. 22:01.

Clause 3 seeks to amend section 5(1)(e) of the Act and it is purely editorial which deals with the power of the Commission to investigate complaints regarding alleged breaches of the Act and alleged commission of any offences under the Prevention of Corruption Act.

11.00 a.m.

The Act currently provides for the removal of a commissioner by His Excellency the President, acting in his discretion where that member is unable to discharge the functions of his office, whether arising from infirmity of mind or body or for misbehavior.

Clause 4 of this Bill, by way of elucidation, amends section 8(2) of the Act by empowering His Excellency the President, instead to terminate the appointment of a member of the commission where that member:

- “(a) is found to be of unsound mind and is incapable of carrying out his duties;
- (b) becomes bankrupt or compounds with his creditors;
- (c) is convicted of any offence which brings his office into disrepute;
- (d) is guilty of misconduct in relation to his duties;
- (e) misbehaves in office;
- (g) fails to carry out any of the duties or functions conferred on him under this Act; or
- (h) is incapable, for whatever reason, of performing his duties under the Act.”

Clause 5 amends section 9(6) of the Act to substitute the words “public officer” for the words “officer in public service”. This subsection is also editorial and provides consistency with the definition section, that is to say, section 2 in which the words “public officer” is defined.

Clause 6 amends section 11 of the Act to achieve two results:

- (a) firstly by the introduction of subsection (1A) after the existing section 11(1). A person will not be required to include in his declaration, income, assets or liabilities which do not exceed in value \$10,000. A person is prior to this proposed amendment, required to submit in his declaration all his income, assets and liability down to one cent.

(b) Secondly, by the amendment to section 11(2) the commission is empowered to extend the time for furnishing of a declaration for a further period not exceeding 12 months. Prior to this proposed amendment, the period is six months. This provision maintains the requirement to submit annual declarations within a prescribed time frame but balances what some critics refer to as the mere criminalization of failure to file with the provision of a slightly extended time frame for compliance for good cause.

By virtue of section 12(2) of the Act, the commission is empowered to require additional particulars from a person in public life. The amendment proposed by clause 7 is as a consequence of the amendment proposed to include in section 11(1A).

Additional particulars which the commission is empowered to request will be applied to assets, income or liabilities which are valued at \$10,000 or more. Under section 13(1) of the Act, the commission is required to examine every declaration that is filed and ensure that it complies with the requirements of the Act and may request from a person in public life any information or explanation relevant to a declaration made by him which would assist in its examination.

Two amendments are proposed at clause 8: the inclusion of a new subsection to section 13, that is subsection (4). This is also consequent on the amendment effected by clause 6(a). It precludes the commission from requesting from a person in public life, information or explanations where the sum involved is less than \$10,000. Additionally, there is proposed an inclusion of a new subsection (5). Under section 13(3) of the existing Act, upon being satisfied that a declaration has been fully made after the examination provided by section 13(1), the commission is mandated to forward to a person in public life a certificate of compliance. So that until such time as a person is in receipt of that certificate of compliance, even in circumstances where no request for particulars or additional information is made, he remains then in a state of lurking doubt whether he has satisfied the commission. In an effort to bring certainty and closure in a timely manner and also to ensure that the commission deals efficiently with persons' declarations, the new subsection (5) provides that in circumstances set out in subsection (5)(a) and subsection (5)(b), if these circumstances have not occurred and a person in public life has not, after 18 months of the date of filing his declaration, received a certificate of compliance, his declaration is deemed to have been fully made.

Section 18 of the Act provides for the publication in the *Gazette* of a statement that a person in public life has made full disclosure in his declaration where a tribunal has been established upon the advice of the commission to enquire into

and verify the contents of a person's declaration or statement filed with the commission. The Government is of the view that the *Gazette* is not in wide public circulation and that in circumstances where persons are exonerated a wide circulation of such is justified.

Clause 9 of the Bill amends section 18 to widen the circulation of the required statement by prescribing that it be published also in at least one daily newspaper in circulation in Trinidad and Tobago.

Clause 10 of the Bill replaces section 21(5) of the Act which provides that no prosecution of an offence under this Act other than an offence under section 20(3) may be instituted without the written consent of the Director of Public Prosecutions. Clause 10 seeks to amend this provision by also preventing the prosecution of an offence under this Act other than an offence under section 20(5) after the period of five years from the date on which the person in respect of whose declaration or financial affairs, the alleged offence was committed, ceased to be a person in public life.

Clause 11 repeals section 27 of the Act. Under section 27, a person to whom Part IV applies, shall not accept a fee, gift or personal benefit except compensation authorized by law that is connected directly or indirectly with the performance of his or her duties of office. Subsection (2) stated that subsection (1) does not apply to a gift or personal benefit that is received as an incident of protocol or social obligations that normally accompany the responsibilities of office.

Subsection (3) provided that where a gift or personal benefit referred to in subsection (2) exceeded \$2,000 in value or where the total value received, directly or indirectly from one source in any 12-month period, exceeded \$2,000, a person in public life shall file with his declaration a statement indicating the nature of the fee, gift or benefit, its source and the circumstances under which it was given or accepted.

Clause 11 substitutes a new section 27 which is substantially the same as the existing section 27, except that it increases from \$2,000 to \$5,000 the limit of the value of a gift or personal benefit that is received as an incident of protocol or social obligation that normally accompanies the responsibilities of office which is not subject to the requirement of a statement indicating the nature of the gift or the benefit, its source and the circumstances under which it was given or accepted. It also provides a new subsection (4) which prescribes a formula for ascertaining the value of a non-monetary gift. The rationale for the increase of the flooring for the gifts from \$2,000 to \$5,000 is to take into account the real value of money over time.

Clause 12 repeals Part V and substitutes a new Part, thus revamping the provisions relating to the commission's powers of investigation. The intent of these amendments is to streamline the procedure for complaints and adopt the best practice for handling complaints as exemplified by other jurisdictions.

The sections dealing with complaints and investigations in the 2000 legislation are sections 32, 33 and 34. However, the legislation is considered to be insufficient in many ways as it relates to the procedure of lodging complaints at present. All the legislation requires is for a complaint to be in writing and allows for vague and spurious allegation to be made as there is no requirement for particulars or specifics.

Additionally, the current legislation has been used to permit investigations of anonymous complaints despite the requirements for writing. I affirm this Government's commitment is to public scrutiny and to the participation of members of the public in identifying and reporting allegations of breach under the remit of the commission. The Government is also intent in ensuring that the process is not abused by mischievous persons whose sole interest is to embarrass public officials.

The commission has, in the past, interpreted section 33(1)(b) of the Act as mandating it to enquire into any complaint made by a member of the public regardless of the source of its origin. But this has caused pain, harassment, suffering and anxiety where such incidents have occurred to persons in public life who are falsely and unjustifiably accused and such occurrences additionally have resulted in a waste of the commission's time and resources.

Thus proposed section 32 now empowers a member of the public to make a complaint against a person in public life but this complaint must be sworn in a statutory declaration in a form specified in Schedule 2. Furthermore, the proposed subsection (2) now specifies the particulars that must be included in a complaint. The proposed subsection (3) allows the complainant to submit a complaint to the commission by registered post to the Registrar or to such other persons as the commission may designate.

Sen. Dr. Nanan: I see you are talking about subsection and we are dealing with a Bill. I do not know if you are dealing with a subclause or a subsection.

Sen. The Hon. B. Annisette-George: Thank you, Mr. Vice-President. Through you, I am dealing here—when I say “proposed”, it is really “subclause” and I am referring to the Bill.

So that the proposed subsection (3) allows the complainant to submit a complaint to the commission by registered post to the Registrar or to such other person as the commission may designate.

I want to assure this honourable House and citizens of Trinidad and Tobago, that the Government did not invent this procedure which is being proposed. We have been informed by research. We have looked at several jurisdictions and observed their best practices as enshrined in their equivalent legislation. We have looked at provision in legislation from our Caricom member countries, Canada, the United States of America, Australia and some of the African nations and our proposed complaints procedure is primarily informed by the provisions of the St. Lucia Integrity in Public Life Act and that of the Mississippi Ethics Commission.

11.15 a.m.

The proposed section 33 authorizes the commission to consider and examine any alleged breach of the Act or any alleged offence under the Prevention of Corruption Act. The power in respect of the Prevention of Corruption Act is not new. In acting on its initiative, the commission can only consider and examine an alleged breach where it is necessary after examination of a declaration furnished, pursuant to section 11. The commission can only on its initiative act where there is an alleged breach manifest on the face of one's declaration. The commission may also act as aforesaid upon receipt of a complaint of a member of the public made in accordance with the proposed section 32.

The new subsection (2) imposes an obligation for the commission to notify persons against whom allegations have been made of the fact of such allegations; also a person against whom a complaint has been made is to be informed that he is the subject of a complaint and further, the person is now required to be furnished with the details of the complaint or the allegations, together with copies of any supporting documentation. This is to ensure that the person in public life is accurately informed of the allegation made against him.

The proposed section 34 provides for circumstances under which a complaint may be rejected by the commission. The following are the circumstances under which a complaint may be rejected by the commission: The complaint:

- "(a) is frivolous or vexatious;
- (b) was not made in good faith;
- (c) is devoid of sufficient grounds for an investigation;
- (d) is not supported by evidence of probative value; or

- (e) does not pertain to a matter the Commission is empowered to deal with under this Act.”

The new subsection (2) stipulates that where the commission has rejected a complaint, the commission shall inform the complainant in writing of its decision within 14 days of the date on which the decision was made and provide the complainant with the reasons for its decision.

Section 34 of the current Act provides for special powers of investigation. Under the current scheme, once the commission begins an enquiry as it has determined, it is mandated to do under section 33, it is empowered under section 34(2)(b) to demand of third parties, information or documentation relating to the affairs of persons in public life. Additionally, managers of banks and financial institutions are required in those circumstances to act inconsistent with their fiduciary duty to their customers and provide information regarding those accounts belonging to their customers. Failure or refusal to do so is an offence carrying a fine of \$250,000 and imprisonment for five years.

The proposed section 34A provides adequate safeguards in what can be described as circumstances of arbitrariness.

The proposed subsection (1) stipulates the action to be taken by the commission where it is satisfied that the complaint merits investigation. One of the required courses of action is to authorize an investigating officer to conduct an enquiry into any alleged breach or any allegation of an offence.

The proposed section 34A requires that this be done within 14 days. The new subsection (2) stipulates the action to be taken by the commission pursuant to an investigation, such as requiring the provision of written statements and other relevant information by third parties. Additionally, bank managers and managers of financial institutions are required to furnish information or certified copies of accounts or statements of accounts at the bank or financial institution of any person being investigated.

The difference here is that this is not mandatory. In a case of refusal, under the new proposed subsection (3), what will occur is that an application would have to be made by the commission to the High Court for an order requiring the person to comply with the request. It is only upon failure to comply with the order of a court, would penalties be attracted.

Subsection (3) of the proposed section 34A is designed to thwart possible constitutional challenges to a reenactment of the existing provision in a simple majority Bill.

The provisions which penalise the making of a false complaint or the giving of false statements or misleading information have been relocated from section 32 in the old Act and is now consolidated in the proposed new subsection 34A.

Under section 34(5) of the Act and the proposed section 34A, the commission can make a written report to the Director of Public Prosecutions, where after the conduct of investigations the commission is satisfied that there are reasonable grounds for suspecting that an offence has been committed. However, a new provision is added. Subsection (6) of the proposed section 34A provides the commission may terminate an investigation if it is satisfied that there are insufficient grounds for continuing the investigation or that upon beginning the investigation it is then satisfied that the complaint is frivolous, vexatious or not made in good faith.

At every stage there is a provision to allow the commission to terminate a complaint or an investigation, if it becomes aware that there is no substance or merit in proceeding. All this is with the intent of ensuring unwarranted damage to the reputation of persons in public life.

The proposed section 34B is a new provision which provides a defence to a person who made a complaint or gave a statement or provided information that is liable to sanction under the Act. The defence being that the complaint that was made or the statement given or the information that was provided was made in good faith.

The proposed section 34C makes provision for complaints which have not been investigated prior to the coming into force of the Integrity in Public Life (Amdt.) Act, 2009. Such complaints are to be resubmitted by the complainants within six months of the coming into force of the Act, in accordance with the new section 32, that is the requirement for a statutory declaration and for the particulars and provision of documentary evidence.

Clause 13 repeals section 35(1) of the Act. That provides that any member of the commission and any person in the service of the commission who discloses or attempts to disclose to any person, other than a person to whom he is authorised under the Act, any information or evidence received by the commission under this part, is guilty of an offence and is liable on summary conviction to a fine of \$250,000 and imprisonment for five years.

Clause 13 substitutes a new subsection that includes permission for disclosure under subsection 32(2) and 34A(7) which are now proposed.

Section 32(2) provides that the Commission shall:

- (a) notify a person against whom allegations of breach of this Act, or allegations of an offence under the Prevention of Corruption Act have been made, of the fact of such allegation;
- (b) notify a person against whom a complaint has been made that he is the subject of a complaint; and
- (c) submit to the person referred to in paragraphs (a) and (b), details of the complaint or allegation together with copies of any supporting documentation and as specified in section 32(2).

Section 34A (7) provides that:

“Where after the conduct of an investigation, the Commission is satisfied that there are reasonable grounds for suspecting that an offence has been committed, it shall make a written report to the Director of Public Prosecutions who may take such action as he or she thinks fit.”

Section 39 of the Act states:

“No Member of the Commission shall be liable to any action or suit for any matter or thing done by him under the Act.”

Clause 14 amends section 39 of the Act, so that members of the commission will no longer be exempt for liability for anything done under the Act, but will only be so exempt for anything done in good faith. It was felt that recent events require that there should be a sterling reminder expressed in the law to the commission that the exoneration from liability only acts when acts are done in good faith.

Clause 15 introduces a new section, 42A which provides protection for whistle-blowers.

As you are aware, Trinidad and Tobago is signatory to the Inter American Convention Against Corruption. The objectives of the convention are to develop mechanisms to prevent, detect, punish and eradicate corruption among other things. Trinidad and Tobago is also signatory to the United Nations Convention Against Corruption. Both conventions were ratified by this country on April 15, 1998 and May 31, 2006, respectively. The inclusion of the provision to protect whistle-blowers is in furtherance of our obligations under both conventions. This new section will protect employees of the State, public or private bodies from unjust repercussions owing to their actions performed in good faith under the Act.

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Clause 16 inserts a new section 45 which is a transitional provision which will allow for anything that has been commenced by or under the authority of the commission under the Integrity in Public Life Act, 2000 to be carried on or contemplated by or under the authority of the commission.

Clause 17 inserts a new Schedule 2 which is the statutory declaration which is required to be sworn to by a complainant under the proposed section 32(1).

I assure this honourable Senate that in moving these amendments today, the Government remains committed to the promotion of the highest ethical standards in public life and adheres to the seven essentials identified for beating corruption. These were identified by a one-time permanent secretary in the Office of the Prime Minister of Singapore, in a lecture entitled Integrity With Empowerment.

I wish to highlight some of these essentials as political will and commitment; provision of strong laws that reflect the values of the community with effective powers of investigation and rules of evidence that assist the proper prosecution of those charged with corrupt offences; the existence of a clear strategy that eliminates from systems of administration, the opportunities for corruption and prevention of corruption which must necessarily involve an educational component.

11.30 a.m.

Mr. Vice-President, the Government of Trinidad and Tobago ascribes to the principles of integrity, honesty and transparency in public life. This is endorsed in its operational plan for Vision 2020; that is for the period 2007—2015, which outlines as one of the pillars of vision, that of promoting effective government.

The Government declares that it must lead by example and function in accordance with the highest standard of ethical behaviour and further that it must continue to seek to uphold in all its affairs, the principles of accountability, honesty, integrity, objectivity, openness, selflessness and leadership. A stronger, effective and empowered Integrity Commission is only one of the mechanisms towards achieving this laudable goal.

We are of the view that the changes that are proposed by the amendments to the investigative powers of the Integrity Commission in no way take away from this goal.

I thank you.

Question proposed.

Sen. Wade Mark: Mr. Vice-President, this is indeed a very sad day in the history of this Parliament. The PNM Government, in its various incarnations, has never been and will never be interested in legislation addressing matters of integrity, honesty, ethical standards and values.

As far as my knowledge of this particular organization goes, from 1956 to the present time, it has been in power for 42 or 43 years and has never introduced any legislation dealing with integrity matters. The first opportunity the Government has gotten to do so, it has brought legislation to weaken, undermine and subvert the public good.

This Bill, in its current form, represents the frontal assault on the country's Constitution, its democratic values and its commitment to rooting out corruption, illicit enrichment and, of course, the promotion of good governance, in respect of the principles of corporate governance, transparency accountability and openness in governmental affairs.

This is one of most dangerous, far-reaching and sweeping anti-integrity and pro-corruption pieces of legislation this Senate has ever debated. It is now clear for all to see that the Government and its agents have conspired to destroy the Integrity Commission and the values of honesty, ethical standards and decency in public life. This is anti-integrity legislation at its worst. [*Interruption*] At its best. [*Laughter*]

Hon. Senator: Freudian slip.

Sen. W. Mark: This legislation in its current form is completely opposed to good governance; something that we recently engaged in when we held the Summit of the Americas in Trinidad and Tobago.

I would demonstrate, in my contribution the unconstitutionality of this legislation. I would demonstrate how it is discriminatory from a class perspective. I would demonstrate how it has violated international law and our international obligations under international treaties. I would also show how this legislation will promote criminal activities in this country, as it relates to whistle-blowers and members of the public. I would also show that this Bill is riddled with deceit and deception. The ordinary eye needs to discern deeply the deceit and the deception in this piece of legislation.

The hon. Attorney General did not provide this Parliament with any statistical evidence to support these amendments, apart from talking about Canada, Australia, Africa and St. Lucia. It is clear that this piece of legislation is designed to intimidate, muzzle and virtually cut off the thongs—[*Interruption and laughter*]

Sen. Rahman: Thongs, expose them.

Sen. W. Mark:—the tongues of people in Trinidad and Tobago.

Let me go to the Constitution of the Republic of Trinidad and Tobago. I want to go to Chapter 10, section 138 of the Constitution, in which it is stated in 138(2) that:

“The Commission shall”—not may—“be charged with the duty of—

- (d) the monitoring and investigating of conduct, practices and procedures which are dishonest or corrupt.”

This is enshrined in the republican Constitution. I would demonstrate that in a statement made by the hon. Attorney General, when she sought to get the Opposition’s support for the legislation, when the statement was made, the hon. Attorney General was conscious that this Bill before us required a constitutional majority.

I go further, the hon. Attorney General and the Government is seeking to undermine section 138(2)(d), which is what I would demonstrate in this Bill. They are seeking to take away the investigative powers of the Integrity Commission and make it into a body just to receive declaration and not on its own to pursue allegations of corruption in this country. I refer you to section 54 of the republican Constitution. If you look at section 54(3) it says:

“In so far as it alters—”

If you go to 54(3)(b) you are given various sections. One of the sections that is quoted here is section 138. If the Government wishes to alter in anyway, section 138 of the republican Constitution, it goes on to say:

“a Bill for an Act under this section shall not be passed by Parliament unless it is supported at the final vote thereon—

- (i) in the House of Representatives, by the votes of not less than three-fourths of all the members...”

That is 32 votes. It continues:

“(ii) in the Senate, by the votes of not less than two-thirds...”

That is about 20-something votes. How can the Government alter the Integrity Commission, which is enshrined in our Constitution, and take away in the process its powers to monitor and investigate? I would show in section 5, where they have completely repealed it. How can they do so and come here and tell this Parliament that all it requires is a simple majority? It does not require a simple

majority. It requires a constitutional special majority, because this is enshrined in the Constitution. If you are going to alter this legislation in any form, you need a special constitutional majority.

I go further to tell this Government—and they must know, it that any right—that it is a principle conferred on the citizens by an Act of Parliament, requiring a special majority as the 2000 legislation required for passage, should only be removed by a similar special majority. You cannot come and give people the right to make complaints to the Integrity Commission—that right was passed with a special majority. You have come here to take away that right to complain, as was outlined in the 2000 legislation—[*Interruption*]

Sen. Annisette-George: Sen. Mark.

Sen. W. Mark: Just now. No, let me continue my flow. Do not interrupt me now, take note. [*Interruption*] All right, just now. I am simply saying that the Government is seeking to take away a right that is enshrined in the 2000 legislation and in doing so, I am suggesting to the Government if you are going to take away that right, you must do it with a special majority. I would give way to the hon. Attorney General.

Sen. Annisette-George: Thank you, Sen. Mark, I was just enquiring whether the right you were referring to was a right in the Constitution, but you cleared it up by saying that it was a right in the 2000 Act. I would deal with that in a while.

Sen. W. Mark: Any action which is sanctioned by a special majority of Parliament is a right and can only be removed by a similar majority. You cannot take away the rights of people just like that. That is a principle.

11.45 a.m.

The Integrity in Public Life Act, 2000 was passed by a special majority; the No. 88 amendment was passed by a special majority. You have come here to make far-reaching changes to the 2000 legislation, which will make the Integrity Commission worthless, useless and with no political teeth to carry out its function and responsibility. You have come to try to hoodwink the population and the Parliament by saying all it requires is a simple majority. How can you do that? It is unconstitutional, unlawful and illegal. You are trying a trick on this Parliament and on the people of this country, but we are here to expose you and to make sure that you do not get away with that. [*Desk thumping*] Do not come here and try that.

Mr. Vice-President, where is the evidential material, documentary proof or data that the Integrity Commission has been bombarded by serious vexatious, frivolous and trivial complaints by members of the public? Where is the empirical

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evidence, the statistical proof and the data so that we on this side and the people of this country can understand that there is a basis for the action on the part of the Government? This is the self-serving action which I am going to demonstrate later on in my contribution.

This anti-integrity legislation, if allowed to be passed, will serve only to facilitate and promote open theft and embezzlement of public funds along with open grand and political corruption without let or hindrance in this nation. That is what the Government is seeking to do here.

Mr. Vice-President, I refer to the United Nations Convention against Corruption which this Government ratified, but never brought into law as it was obliged to do. This convention talks about whistle-blowers, and how we must go about giving protection to whistle-blowers, not this one paragraph issue. I have done my research. Even in the United States of America, there is a comprehensive piece of legislation that deals with whistle-blowers, not a one paragraph that the Government is seeking to introduce here.

So, when one looks at this United Nations Anti-Corruption Convention, the Government is in violation of it by introducing this Bill. When one looks at the Inter-American Convention against Corruption—Article 3 deals with preventative measures—you would realize that they are saying that the Government ought to introduce measures to protect public servants and private citizens who, in good faith, report acts of corruption, including protection of the identities. It is not to give sworn statements, your name, address and telephone number. You are looking to murder people in this country! You are looking to kill people in this country! That is what the Government is doing. The Government is trying to criminalize the State! That is what the Government is trying to do here. How can the Government bring such nefarious legislation to this Parliament and expect us to simply support it?

I have the Integrity Commission reports from 2004—2007. When I checked the number of complaints that they have received, it is less than 25. I do not know if these complaints were recycled, because they have not been stated clearly. So, when you look at the 2004 report, you are going to see where they are complimenting and saying that they are going to continue to deal with complaints from the public. Similarly, in 2007 I saw that eight complaints were made. Where are these spurious complaints that the Attorney General speaks to? Where are these spurious complaints that the hon. Attorney General made reference to?

Mr. Vice-President, in 2006 there were nine complaints. So, there were a total of 17 complaints. When you go to the 2004/2005 report, they did not identify the numbers. So, where is the statistical evidence to support this? On whose volition

did the Government proceed to introduce these amendments? It certainly was not from the Integrity Commission. I have looked through these reports and there is no statement from the Integrity Commission calling on this Government to bring this kind of dangerous legislation to Parliament.

In whose interest has the Government brought legislation to this Parliament to destroy integrity in public life legislation in this country? They must tell us! Do not come and tell us about Africa! I have something from the *Independent* newspaper in England where the headline is: "Paris Judge to examine African Leaders' finances." There are three ministers of energy who are now attending a conference in Trinidad; one from Kabul, Congo Brazzaville and Equatorial Guinea. All their leaders are now under investigation by a judge in Paris, because their presidents have been involved in public embezzlement of public funds.

I have a final report on Trinidad and Tobago by the OAS which deals with the implementation of the Inter-American Convention Against Corruption. I will make it available to Members of Parliament to show how this Government is in violation of the OAS. Their recommendations show where the Government was told to do what it is doing. On page 22 they are talking about systems for protecting public servants and private citizens. It went on to say that the Government needs to adopt a comprehensive legal and regulatory framework—not a paragraph—to provide protection for public servants and private citizens.

It went on to say that the Government must protect persons who report acts of corruption subject to investigation in administrative and judicial proceedings. They must take measures to protect not only the physical integrity of whistle-blowers and their families, but also to provide protection in the workplace. They must introduce mechanisms for reporting, such as anonymous reporting. They are talking about anonymous reporting or protection of identity. You are now exposing people and telling them to swear to an affidavit. The OAS is saying in the Anti-Corruption Convention that we signed, and we have now brought into legislative format, that you must not identify people. If people can be anonymous, make them anonymous. So, even the recommendations of the OAS are being violated and breached by this Government, whose only intention is to protect their friends and families from public scrutiny and public exposure in terms of the Integrity Commission. [*Desk thumping*] So, I will table this report and I will make it available to all Members of Parliament. This is the report from the Inter-American Convention Against Corruption, the experts report on Trinidad and Tobago, and this was adopted in 2007. You are contradicting everything they have said in this report.

I would like to travel very briefly through these measures in the proposed legislation and to show you and this honourable Senate how this Government has no interest whatsoever in integrity and no interest to fight against corruption in Trinidad and Tobago.

Mr. Vice-President, if you go to clause 6 of this Bill, why is the Government seeking to allow persons who have declared their assets not to account if it exceeds \$10,000? Why is this? That is unacceptable! We cannot support this measure. It goes on to say that if you want an extension to submit your integrity declaration that it is now six months. It should be three months, but it is six months in the legislation, and the Government wants to extend it to 12 months. Why? There is no justification for that. In the Integrity Commission's report they did not call on the Parliament to amend the law and increase it from six months to 12 months. We do not support that. It is unacceptable.

When you go to clause 8 of the Bill, you are telling someone that your declaration is required by the Act, and if a certificate of compliance has not been forwarded to you within 18 months of the date on which the declaration was filed, the declaration shall be deemed to have been fully made. Who gave the Government the authority to put this into the legislation? Who advised the Government to make this kind of recommendation and have it included in the legislation?

When we go to clause 10, this particular provision is aimed at protecting friends and families of the PNM. This is really laying the basis for the establishment of a police state. It is laying the establishment and laying the basis for the undermining of the norms of good governance. That is what clause 10 is attempting to do here. Imagine a person who has been in public life leaves after five years, because of the difficulty in unearthing corruption—that person who has retired—the man or the public official—is a known thief, they are saying that after five years that person must not be pursued by the law. Why must that be? If you “thief” or stole from the public purse, if we have to pursue you 10 years from now, we are going to do it. Why do you want to have a period of five years? No, we cannot support this.

Mr. Vice-President, clause 11 of this Bill deals with gifts. They like gifts. They are getting plenty gifts from more than one source. So, they are now asking us in this clause to give them the authority to increase the value of the gifts or personal benefits from \$2,000 to \$5,000, and no explanation was offered for that move. We are to go from \$2,000 to \$5,000. Do you know what is significant in this amendment? The Act speaks to fee, gift or personal benefit. Do you know

that in their clause 27 they have left out “fee”? Why was “fee” left out? It is now down to gift or personal benefit. Remember, you are getting personal benefit or a gift from one source, but it must not now exceed \$5,000. In our legislation it is \$2,000.

So, could you imagine, in any one year, one Minister or a public official or someone exercising a public function receives from one source \$5,000, but another Minister, in that same year receives from 20 sources, the equivalent of \$5,000?

12.00 noon

So, one Minister gone home with \$100,000 worth of personal belongings, gift and benefits and you are saying to us, we must increase it from \$2,000 to \$5,000. Are you now legalizing fees? Can someone charge fees for some actual work they have done and on that basis they are now excluded from the legislation? We cannot support this.

The most dangerous part of this legislation is Part V. I do not know if the PNM has cocoa in the sun and they are expecting rain to fall, and this is why they have brought this. They have repealed the entire Part V of the legislation of the Integrity in Public Life Act. This is a very dangerous provision. They are telling you, ordinary citizens in this country; they are telling Independent Senators like Prof. Julian Kenny who was a former Independent Senator; they are telling any religious body like the Maha Sabha and they are telling anyone like Ken Fitzwilliams Andrews, if you want to file a complaint against any public official you now have to go and swear to a Justice of the Peace or a Commissioner of Affidavit.

So before you could send your complaint to the Integrity Commission, a Justice of the Peace or a Commissioner of Affidavit is already getting all your particulars, all the evidence; you have to put everything in writing. So, if that Justice of the Peace knows that the Minister is X Minister, all he has to do is say, "Listen, Wade Mark has just come and swear to an affidavit, I will make a copy available to you." Before I can even reach the commission the Minister or the public official has possession of all my statements and that Minister or public official could hire a hit man and next thing I am no more. And you are telling me this is progressive legislation! How can this be progressive legislation? Where in the world do you have this kind of arrangement where somebody has to swear to an affidavit to complain? No, Mr. Vice-President, that is unacceptable.

If we did not have a Commission of Enquiry into UDeCott, you think we would have known that Calder Hart telephone number from which he sent that fax when he was CH Development—Calder Hart Development—gave him \$368 million for a contract and when he was caught he said, “is Sunway”, but it went

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from his home. Do you know how they got proof that it was from his home? The Commission of Enquiry had to order the telephone company to give proof. So, you are asking an ordinary individual to give evidence, to give documentary proof and to give particulars; that is to murder and that is to shut down anyone from complaining to the Integrity Commission. That is what it is about! [Desk *thumping*]

Even the Prime Minister, when the bombings were taking place in Port of Spain, he talked about some "Mr. Big" and when you said, Mr. Prime Minister, why you do not arrest Mr. Big, he said, "there is a difference between information and evidence". [Laughter] He could not get evidence to arrest Mr. Big—he had information—but he is telling the ordinary man in this country, if you have a complaint against any Minister or any public official, get the evidence, get the particulars. [Desk *thumping*]

Why a different standard for them and another standard for the ordinary people? If I call 555 now—TIPS—I say, "Look, behind my home, arms and ammunitions are planted", my name is protected. I do not have to give my name. The police will come there in two minutes to look for arms and ammunitions. If I go to the police station now and I say my wife or my children are being threatened, the police will take information down and all I give them is information, they now have to develop the evidence to arrest the person. Why the double standards? Is this class discrimination? Are you declaring class warfare? So, there is one law for the ordinary people but for the elite that you are trying to establish and protect there is another law. That cannot be right! You are trying to establish a fascist political dictatorship in the country and you are protecting a minority. How can we support this? We cannot! It is totally unacceptable! Where would this person get or obtain documentary evidence? Where? People may have information but not evidence. Information may not fit into the evidence.

The Government has undermined the Freedom of Information Act by removing companies from the Act so as to prevent people from securing information. [Desk *thumping*] So, how am I going to get information on any company if you have removed them? There is something called the Official Secrets Act, where I swear not to disclose information. You want me to break the law to give information? I cannot do that. I cannot provide evidence.

Sen. Browne: There is no Official Secrets Act here. Where did you get that legislation from? That does not exist here!

Sen. W. Mark: Okay.

Sen. Browne: It does not exist.

Sen. W. Mark: The Freedom of Information Act, okay. He says the Official Secrets Act does not exist here.

I want to tell the Attorney General that information is not the same as evidence and in those circumstances no complaint could ever be investigated or fulfil the requirements of what you are trying to accomplish. Therefore, this legislation is undermining and destroying the Integrity Commission. It is designed to destroy the Integrity Commission. It is designed to gut the Integrity Commission. It is almost gutted—this measure—and therefore the Attorney General went to town to talk about Terrence Farrell. He is one man!

Sen. Rahman: That is right.

Sen. W. Mark: He is a minority. If he does not want to serve on a board, so be it! [*Interruption*] Why must you bring to this Parliament two articles that he wrote and say, “Look this is justification and we must take account of these views”. That is a minority group in this country and if you all do not want to serve, do not serve, look for ordinary people, train them and let them go on the Integrity Commission.

Hon. Senator: "Yeh" man, that is right. [*Desk thumping*]

Sen. W. Mark: You want to bring "big shots" and they have cocoa in the sun, they are expecting rain and are saying they do not want to serve, and coming to talk foolish arguments to justify their position. I do not support those arguments! I debunk them!

Mr. Vice-President, we looked at this legislation carefully. We looked at, for instance, how they are trying to intimidate people. Here is what they are telling you—tell me which ordinary person will come forward—that you cannot make an allegation or a complaint as you have done in the past. Hear the trick, hear the deceit and hear the deception. I want you to look at section 33(1) of this Act of the amendment before us and I would like you to understand what is involved in this particular section of the Bill that is now before us.

If you go to Part V of the legislation and you go to section 33(1) of the current legislation it reads:

“The Commission—

- (a) may, where it is necessary, on its own initiative,...or
- (b) shall, upon the complaint of any member of the public...

consider and examine any alleged breach of the Act or any allegations of...”—
corruption or dishonest conduct.

Do you know what the Government has done? The Government has removed this provision and replaced it. Let me tell you what they have said in the new section 33, hear the trick, hear the superfluous nature, look at the deceit and the deception in the legislation. It says—you ever see convoluted language? You ever see language to confuse people but when you dissect it and strip it, its essentials remain. Hear what it says:

“The Commission—

(a) may, where it is necessary...”

They bring in initiative so that it does not appear that they are violating the Integrity in Public Life Act and the Constitution:

“...on its own initiative, upon examination of a declaration furnished pursuant to section 11;”

Where is section 11? Let me tell you what section 11 of the Integrity in Public Life Act talks about. Financial disclosure, where I have to submit my declaration. So, the only initiative that the commission can pursue is an initiative based on financial disclosure that I would make, and somebody—I do not know where they will get the information from because all I put into the records of the Integrity Commission is registrable interest. So they have to have people in the Integrity Commission to get my declaration, because how are they going to file a complaint to the Integrity Commission for them to pursue something on their own initiative.

This is an attempt to hoodwink the population. This is superfluous language, because do you know what is the end result, Mr. Vice-President? The end result is that the Government and the Attorney General has removed completely the power of the commission to act on its own initiative to consider and enquire into any alleged breaches of the Act or any allegations of corruption or dishonest conduct. This is what the Government has done! They have removed this section from the Act completely, but in an effort to fool us they use the words "on its own initiative" to fool the country. That is why I said and I just want to repeat, go to section 138(2) of the Constitution, it says:

“The Commission shall be charged with the duty of—

(d) the monitoring and investigating of conduct, practices and procedures which are dishonest or corrupt.”

If you are removing this power of the commission to investigate allegations of dishonesty and corruption and confining them to just investigating declarations that I would submit and no ordinary person will ever see to complain about, what

the Government is doing is amending section 54 of the Constitution and section 54 of the Constitution says, you need two-thirds majority in this Senate and go back to the House of Representatives and get three-fourths majority.

Do not come here and try those tricks on us! We have studied this legislation carefully and we have seen what you are up to and the Government is engaging in trickery in order to fool us in this Parliament. So, this measure is illegal, it is unconstitutional, it is unlawful and it must be withdrawn from the Parliament today or come with the special constitutional majority to have it passed. [*Desk thumping*]

Mr. Vice-President, we have no problem, we know the Integrity Commission is riddled with problems and challenges. We know that! We find the Integrity Commission is too secret. Everything is secrecy. We know that and that is an area that we feel we need to address.

12.15 p.m.

Mr. Vice-President, we also know that in terms of the Integrity Commission, the whole issue of transparency is critical. There is an absence of transparency. You do not know when you file a complaint, who you filed it to. You go through the report, they do not tell you how many people filed complaints, what the complaints are about and how long it will take for the complaints to be addressed.

The whole question—Mr. Basdeo Panday, the hon. Leader of the Opposition was the only person out of 360 persons who did not declare their entire forms to the Integrity Commission, who was singled out for prosecution and harassment. [*Desk thumping*] Hundreds of people have gone free; hundreds of people who did not declare have gone free. You did not refer them to the DPP, but you referred Mr. Panday to the DPP. So when we check this thing carefully, transparency is very important. We believe that the law as it currently stands is being underutilized by the people. There should be many more complaints because there is so much corruption in the PNM. There should be more complaints coming to the Integrity Commission and we feel this law is being undermined or underutilized. Therefore, we do not understand why the Government is seeking to undermine the Integrity Commission.

We want to find out whether the legislation before us is to be used as a political tool or weapon to destroy political opponents. Is that the intention of this amendment? I agree with the Attorney General. When someone is vindicated or exonerated, let the Integrity Commission publish the vindication of that individual in three newspapers, not one. Put it in three newspapers. Give them resources.

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. A. Nanan*]

Question put and agreed to.

Sen. W. Mark: Thank you very much, Mr. Vice-President. Take the case of Dr. Rowley, where the Integrity Commission was used as a political hatchet to bury the man.

Sen. Dr. Kernahan: To kill him.

Sen. W. Mark: To kill him and what has happened? On February 03, 2009, Judge Rajnauth-Lee said she could not accept the Integrity Commission's explanation as to why it wrote the Prime Minister. They had the power to control their own affairs. They, through Gordon Deane wrote the Prime Minister on October 19, 2004, to ascertain whether an enquiry was to be held and if so, what were the names of the people he would recommend to man the enquiry and their terms of reference. What did the Prime Minister do about that? He knows it was an unlawful action on the part of the Integrity Commission. But they wanted to kill Rowley, so they just let it go. The Integrity Commission was reckless. They believed that the Prime Minister was their "dulahin" and they had to ask him what to do and what not to do.

Mr. Vice-President, I want to bring something to your attention as well. Discrimination matters go out to the Integrity Commission involving the Maha Sabha. The hon. former Independent Senator Julian Kenny wrote them since 2006, to date as we speak, no response. That is something we have to address. Why take so long? Because in that matter, Hedwige Bereaux, then the Minister, gave a licence to Citadel in favour and in front of the Maha Sabha that was waiting for five years, and the Cabinet was found guilty by the Privy Council. Who was the Chairman of the Cabinet at that time? The same Chairman today. Who was the then Minister, Hedwige Bereaux? Who is the current Minister, I think Kennedy Swaratsingh. At the time of the last election, Sen. Dr. Lenny Saith. The delay in appointing members of the commission must not be used to undermine this whole process.

Right now, the Integrity Commission should be devoid of any political influence. It is our information that there are two senior Cabinet Ministers in the ruling party—I only want to call them Mr. X and Mr. Y. for this time; I have their names—Mr. X and Mr. Y.

Sen. Dr. Saith: Call them now.

Sen. W. Mark: For the time being, I would call them Mr. X and Mr. Y. They are on the verge of facing criminal charges under the Integrity in Public Life Act, and I wonder, Mr. Vice-President—*[Interruption]*

Sen. Annisette-George: Mr. Vice-President, on a point of order.

Mr. Vice-President: Sen. Mark!

Sen. Annisette-George: Mr. Vice-President, I want to refer to Standing Order 35(4) and 35(5).

Sen. W. Mark: If she wants the information, I have it.

Sen. Dr. Saith: Well, give me it.

Mr. W. Mark: I never called anybody's name.

Mr. Vice-President: Yes, but you said a Minster.

Sen. W. Mark: I said senior Members, not necessarily Ministers.

Mr. Vice-President: Well, senior Members of what?

Hon. Members: Of Cabinet.

Sen. W. Mark: Of the Government.

Mr. Vice-President: No, no. *[Interruption]*

Sen. W. Mark: So, it cannot be senior Members of the Government? I did not say Knowlson.

Sen. Annisette-George: You said a senior Member of the Cabinet.

Sen. W. Mark: All right, Mr. Vice-President, if you want, Mr. X and Mr. Y. That is okay?

Mr. Vice-President: Yes. Fine!

Sen. W. Mark: Mr. X and Mr. Y.

Sen. Browne: Who are Mr. X and Mr. Y? What are they?

Sen. W. Mark: You cannot query me. You can query me when you are at Butterfields as an employee. You cannot query me here.

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

Sen. W. Mark: Mr. Vice-President!

Sen. Lezama: On a point of order. On a point of order, please, Mr. Vice-President. Standing Order 35(6) which says:

"Ministers shall be referred to by the title of their appointments..."

and a Senator Member of the Cabinet would be a Minister. So, I am asking that we go back to the Attorney General's point of order, which speaks to Standing Order 35(4) or (5).

Mr. Vice-President: Senator, I have already ruled on that. He cannot use that.

Sen. W. Mark: Mr. Vice-President, may I continue? After a protracted and laborious investigation as to whether the code of conduct under the Integrity in Public Life Act was violated by both Mr. X and Mr. Y, where it awarded a radio licence to its financier and supporter, Louis Lee Sing, Citadel Limited and discriminated against the Maha Sabha whose application was approved and waiting for five years, the information is that no matter how long the investigation on the Maha Sabha and Prof. Julian Kenny took—they kept complaining about the delay in this matter—finally, the Integrity Commission has indicated—not me—that the investigation has been completed and Mr. X and Mr. Y are prime suspects for criminal charges in the Government. All that is left to be done is for the IC to sit and refer the matter to—

Mr. Vice-President: Senator! Senator! Senator, I made the ruling that you cannot use the term Mr. X and Mr. Y of the Government.

Sen. W. Mark: I did not say government.

Mr. Vice-President: Yes, you did.

Sen. W. Mark: Okay. Mr. X and Mr. Y.

Mr. Vice-President: Right.

Sen. W. Mark: Mr. X and Mr. Y, okay? So Mr. X and Mr. Y are facing—they are prime suspects and all that is required is for the IC to refer the matter to the DPP, so that criminal charges could be laid. I wonder if that is the reason why Justice Zainool Hosein, who is a former retired judge was disappointed recently, and another one who is a hatchet man for Calder Hart was put in his place. Is it because of this pending development involving person X and person Y? That is why this Government is walking on eggshells and is attempting through these amendments to stifle complaints to the Integrity Commission. That is why they are doing it.

I want to tell the Attorney General, it is not vagrants who are submitting complaints, but distinguished citizens like former Independent Sen. Julian Kenny, religious bodies like the Maha Sabha. Do you know Fitzwilliams, the "fella" who used to work at UTT?

Sen. Dr. Saith: Andrews.

Sen. W. Mark: Yes, Andrews. [*Interruption*] Yes, right now. Jennifer Baptiste wrote the Integrity Commission about the former Minister of Health, Mr. Rahael, about the CDAP programme and the SuperPharm, what has happened to that matter? The illegal rally held in Woodford Square, that was sent. What has happened? Jerry Narace and Trinre, that has been sent. What has happened? These are matters that we are concerned about, and therefore, you cannot come here and tell us that these people, who are doing this thing, are doing it in a spurious way and it has no basis.

Mr. Vice-President, for those who may be interested and wish to verify what I have just said in more detail about the imminent criminal prosecution of Mr. X and Mr. Y, I would like to let them know that the information came from the Integrity Commission. It was an affidavit signed by one Mr. Martin Farrell on January 29, 2009. I will make this available to all Independent Senators, all Members of this Bench and the media. You will find it on your own. This here talks about Mr. X and Mr. Y. The evidence is here.

Sen. Dr. Saith: [*Inaudible*]

Sen. W. Mark: Not to you. You are a waste of time when we are circulating this. Sorry about that. Sorry. Let me withdraw that. I withdraw that, Sir. He is not a waste of time.

So, Mr. Vice-President, this is a matter of grave concern to us and under no circumstances can the United National Congress and our colleague here sitting on behalf of the COP, my good friend, we cannot support this measure. [*Laughter*] [*Interruption*] We cannot support this measure. We cannot support any measure that is designed to water down integrity legislation in Trinidad and Tobago.

I am very disappointed in the Attorney General of this country. I cannot understand how the Attorney General can sit here and pilot a measure—it was a hard sell. I could see the difficulty in her presentation. I could see it choking emotionally, to find words to justify the unjustifiable. It is indefensible, inexcusable [*Desk thumping*] for the Attorney General to come here and bring this kind of legislation and expect us to support it. I sympathize with her. I want to tell her something. The Attorney General seems to be carried away these days with

misinformation. She said that we supported the President of the Senate, and therefore, we are part of the problem. I want to tell her that the record will show we never supported—

Sen. Annisette-George: Mr. Vice-President, point of order.

Sen. W. Mark: Is it a point of order?

Sen. Annisette-George: Mr. Vice-President, two things.

Mr. Vice-President: Point of order?

Sen. Annisette-George: A point of order. First, with respect to Standing Order 35(4), the point with respect to the Attorney General sort of misquoting things. Secondly—[*Interruption*]

Sen. W. Mark: I did not say misquote. I said it in the wrong way. You factored it wrong.

Sen. Annisette-George:—if the Senator is quoting me, he should quote me correctly.

12.30 p.m.

Sen. W. Mark: I did not say you misquote, I said you say things wrongly.

Sen. Annisette-George: Therefore, Mr. Vice-President, I am referring to Standing Order No. 35(4) and secondly, if the Senator is quoting me he should quote me correctly.

Sen. W. Mark: Mr. Vice-President, I read somewhere.

Hon. Members: Nooo, nooo.

Mr. Vice-President: No, no, no.

Sen. W. Mark: So you cannot say you read somewhere?

Mr. Vice-President: You did not say it, so withdraw it.

Sen. W. Mark: Let me rephrase it then. Somewhere I read that the Attorney General accused the UNC of supporting the President of the Senate, the hon. Danny Montano when he became President.

I am putting on record today that the UNC never supported the President, Danny Montano. We never supported it. It was Sen. Prof. Deosaran, or one of the Independent Senators who seconded the Motion which was moved by you. We never supported it, so you were wrong on that count. I am saying you were wrong.

Mr. Vice-President, I am about to wind up and I just want to tell you that the Government has tried a trick on us today. The amendment here today is unconstitutional, illegal, unlawful, and it flies in the face of modern legislation.

Do not tell me about Africa and those countries, they are backward states. You are telling me that we must introduce measures like they have in St. Lucia. We are advanced and we must use the 2000 legislation to move forward and we reject completely the amendments as proposed by the Attorney General and the Government and they will find no support whatsoever on this side as it relates to those amendments.

Thank you very much, Mr. Vice-President.

Mr. Vice-President: Hon. Senators, it is now 12.31 p.m., we will take the lunch break now and resume at 1.31 p.m. This Senate is now suspended.

12.31 p.m.: *Sitting suspended.*

1.31 p.m.: *Sitting resumed.*

Sen. Prof. Ramesh Deosaran: Mr. Vice-President, any reasonable person can see that the situation to which this Bill seeks to respond poses a very serious, complex dilemma for the Government. The amendment seems to stand between a rock and a hard place. We want to protect innocent persons from frivolous, malicious or spiteful complaints while striving to prevent and prosecute corruption.

Before I proceed, let me respond quite briefly to some remarks made by the Attorney General and also my good friend and colleague, Sen. Mark. The Attorney General said that we are streamlining the legislation. I have my doubts about that; I think we are making it more complex even though it is trying to give advantage to the accused persons. Certainly you are creating another hurdle for the complainant and I do not think that really fits into the streamlining I would expect, but it has in both cases some usefulness. I think the word “streamlining” is not quite appropriate, and I say so with respect.

The Attorney General also said that the Government cannot turn a blind eye to harassment of public officials, but I will also ask the Government not to turn a blind eye to public confidence in the integrity legislation and the capacity of that legislation to deal with corruption.

It is not that the Government is not committed to fighting corruption as the Attorney General claims, but I think what is worrying the country—and some of us, if not all—is the method used to achieve that objective. So if I could be of some help, I will try to get this legislation where it is expected to be.

Sen. Mark raised a very fundamental question which this Parliament ought to deal with finally, or the Government itself. Several occasions have arisen where an Act was passed initially by a special majority and subsequently an amendment comes and the Government—not only this one, the previous one—I was here on another occasion with the Telecommunications Authority, I believe. When the amendment to that Act came up, the argument was whether this amendment also required that special majority as was originally done.

This comes up time and time again. I would suggest that in the present circumstances in the Attorney General's response that some attention be paid to that and not make it a politically, vitriolic issue. It is a fundamental principle in laws because the implications are serious.

As has been established, not passing the amendment for the Bill for example, the Equal Opportunity Act, it goes to court and taxpayers' money and much time are wasted making the original Act ineffectual. So let us err, if we have to, on the side of caution on this occasion. Whatever the consequences, the principle must be paramount over the politics of the day. Sen. Mark spoke of “Mr. X” and “Mr. Y”, I have “Mr. Z” but I would not speak of “Mr. Z”.

Mr. Vice-President, in dealing with white-collar and corporate crime, criminology as a discipline presses for contexts and practicality, but perhaps more fundamentally, the discipline searches for the ideological bias within the legislation and its procedures.

I therefore wish to provide some context in which this amendment is being lodged. Far too often, we have laws which are so archaic in the 1920s and 1940s like the Jury Act and the Prisons Act, almost 100 years old. On the other hand we have laws which are made sometimes, I will say, *vaille que vaille* in the haste of the moment that remain disconnected to the problem and situation to which it seeks to respond. In both cases what you end up having is ineffective legislation; mere showmanship and more form than substance.

I therefore wish to help by putting some context into this particular matter today. This society is plagued by rumours, gossip, *mauvais langue*, and “macociousness”, usually targeted against politicians, professionals or other persons in public life, often out of envy and spite, and I hasten to say this has now become an outstanding feature of our political culture. If you cannot get them in the front, try something in the back against them.

In fact, some people make a living out of this and I think there is an issue here. So as the competition for power heats up, corruption charges real and imagined will increase. That is a reality and that is part of the context. The Prime

Minister said he got six such complaints passing through the Integrity Commission, but what seems to tip the bucket, is a complaint made against Mr. Imbert; you touched the Jack Spaniard nest, it would appear.

So indeed complaints must be put in this context and so must the legislation used for protection against abuse. I have come up with my modest experience in public affairs with an issue which I call the fowl “tief” question. It is most prominent and it happens when a reporter asks you, for example, metaphorically speaking: “Prof. Deosaran, are you a fowl “tief?” And if you answer no; the headline is: “Prof. Deosaran denies he is a fowl “tief” and the press runs with that. In a sense, strictly speaking, it might be accurate, but it is taken out of context and it besmirches my character and other people’s. I have seen it almost on a daily basis.

At the same time, I hasten to add that there is another reality into which this legislation seeks to lodge itself. As the late Attorney General, Selwyn Richardson and several other Attorneys General have said in this Senate and in the other place—this country is rife, riddled with corruption. Every commission of enquiry in the last 20 years confirms this.

The movement into the proposed Revenue Authority is partly justified by Government on the basis of alleged corruption in the Customs and Excise Department. So how can we as a Parliament reconcile these two seemingly opposing realities? There is a third reality, perhaps the most troubling of all. While laws come in abundance in this country our courts, the wheels of justice take many years to turn. In fact, there is an old Chinese proverb: “If by chance a piece of paper blows into the court, it will take 10 oxen to pull it out.” In this country it most likely will take 20; it goes on for years and years.

So we have to contextualize the legislation that we are framing into the world of reality, that is what I mean by context. In fact, we have corruption cases here even at their preliminary stage going on for years and years. Is that a system of justice? Is it what the integrity legislation and the amendment expect after we have finished quarrelling over the full stop and where to dot the i’s and the t’s? In fact, I do so with great respect, it is not a reflection on the lawyer; it is a reflection on the law itself.

I want to give you a well-written book used in England in the teaching of the Sociology of Jurisprudence. I will just mention the title of the book to convey the message because too often we rely on the law to solve this problem and that problem whereby a shift in perspective, some public administration reform, or putting somebody with integrity in a particular position will very likely heal the breach.

Integrity in Public Life (Amdt.) Bill
[SEN. PROF. DEOSARAN]

Tuesday, May 12, 2009

The book is entitled *Law, the Science of Inefficiency*. That is why in many cases, being a lawyer is such a lucrative profession. The matter does not end today, as a surgeon's task will, or as a carpenter, or plumber, it goes on, and on, and on. In fact, there is another book here which suggests how you can get around having these expensive trials and lawyers, it is called *Fed Up With the Legal System—What is wrong and how to fix it*.

What I am therefore saying is that one has to sit back and see whether the problem we are dealing with has alternative routes for the same objective. In fact, there is a provision in the amendment which says after five years no prosecution can be initiated. A good device to improve our court efficiency might be to put a law somewhere that if a matter or amendment from this Bill is before the courts for five or more years, it should be dispensed with. Why do we not take that route to try to provoke the court and its apparatus into a more efficient completion rate?

In such things, a sensible, practical balance must be struck and we seem to forget it must be supported by public opinion. What is public opinion today on this particular amendment? What assessment can we make from what we read and hear from people who talk? That is an element no Parliament can ignore in making legislation. Another example of context.

Much of public policy is usually resolved with the lesser evil. We cannot say, we have not said, and we will never say in making public policy that one option is quite perfect and the other is quite imperfect. You always have to make a balance; cost-benefit analysis, risk assessment, and in this case you also have to make a choice which I think I will call the lesser evil.

Like the economy: you put plenty money in the economy you tend to lead to inflation, pull out the money, you tend to have less trading, less investments and so you have to find a balance which the Central Bank, I imagine, is striving to find.

So, Mr. Vice-President, let us get real and not just pursue this legislation as if it has no particular context for its implementation and expected success. I have a feeling from what has gone in matters of this kind and the kind of laws we have framed, that it still remains the best safeguard to prevent and expose corruption; that safeguard remains the court of public opinion through a vigilant and free press.

1.45 p.m.

I think in the final analysis that seems to be the best effective bulwark against corruption. I might say even the weeklies, because the laws and the courts here seem to be found wanting.

The Bill before us makes it harder to complain but as you make it harder to complain, you make it easier for corruption to pass. [*Desk thumping*] That is the relationship. But as it makes it easier to complain, you make it easier for malice, spite and mischief, but you also make it harder for corruption to pass. Which is the lesser evil? On which side of the scale in terms of public policy formulation should this Parliament, on behalf of the people of this country, fall?

I would recall when the substantive legislation was passed, the Act, it was a midnight affair. You can say it was “midnight mass”; not in the religious sense; in the celebratory sense. Because those of us will remember at that late hour in the night, it was rushed through the Parliament. How can you rush through such an important piece of legislation, not only at that hour, but against tired faces and weakened minds? This is what happened.

So it came, as a colleague was hinting to me recently, like an auction; like a bidding war. One side said: “Put in judges”; another side said: “No, put in all members of foundations.” “No, put in judges, put in magistrates too.” And so the list went on and on, forgetting that this matter has to face implementation and some practical resolution. So what you have today is an Integrity Act that has a net as wide as you can see and that is a matter that we should attend to. But I will tell you what route we can use.

To me, there are three major choices. We either pass this amendment as it is, or you amend this particular amendment Bill to strengthen the procedures and to give wider discretion to the Integrity Commission, or you scrap the entire Integrity Act itself and start all over again. Because I will warn, with respect, when you finish with this amendment, you will have to come to deal with the judges and that anomaly that is created in the public mind and in the face of the legislation with its appropriate Schedule. You will also have to come back to deal with the wide net that you have. So why are you choosing to come with one inch when what you really need is a yard to deal with the particular issues? Sorry, a metre. Why are you coming with a millimetre—not a nine millimetre—when what you need is a metre?

So I ask myself—as Jack Warner would say: “I ask myself”—what is the major thrust behind this amendment? It is that the Act, especially Part V, section 33(2), will be strengthened by making it harder for complaints and by reducing the discretion of the Integrity Commission. I do not agree, with respect, with the Attorney General who says they want to empower the Integrity Commission. That is not what the legislation says and I will, perhaps, seek to establish that contradiction in a short while.

Of course, through the Bill, you are giving the accused person a wider amount of natural justice in Part V, especially section 33(2), by providing notification, information and details of the allegation after it has been vetted and made properly through statute, and also with respect to the Prevention of Corruption Act. So that is good. The Bill does have a few good features. But at the same time life is made much more difficult for complainants.

In the proposed amendments, section 32, page 9, it says he has to submit a sworn written declaration in a specified official form. That is the single most controversial feature in the legislation. Everything else, in my respectful view, falls at the side. But paramount in the public mind and paramount in terms of the change made in the amendment, sits this particular issue: He has to submit a sworn, written declaration in a specified form. Of course, for a false complaint he can be fined \$500,000 and be in jail for five years. But at this point again, I ask myself: Why put such a tight squeeze in this Bill on those who wish to make a complaint, especially if the complainant sees it in the public interest?

You know the OAS is pushing a principle through its treaty that all public servants are obligated by statute—not by wish or personal desire, but by statute—to report any incidence or observation of corruption in their office. So the question of access for people who wish to make a complaint, properly and justifiable, is an important one.

To me, the Bill seems excessive in that regard. It looks like bullying. It is like a bullying Bill, on the face of it. A Bill could be bullying but if there is justification. It bullies. It looks like tantrum legislation. Somebody got up one morning; got vexed and decided to put pen to paper and rush it through to fix them up. That is how it comes across and it should not really come across so. It looks like intimidation, especially in the absence of other arguments put forward, statistically or otherwise.

The public concern over the Integrity Act stems largely from the Integrity Commission, in my view, not doing its job as it should or not being allowed to do so. So it boils down, not only a matter for statute and legal reform, but also public administration modification and putting the right people in the right place, which so far has not been done, if we are to witness recent events, not necessarily present events.

The current Act gives the Integrity Commission a range of strategic powers which could be used effectively to help dampen false complaints—and you see this in sections 33, 34 and 38 in the present Act. You might say, well, these things happen after the complaint is made and you are more interested in the procedures for making the complaint. I take that point and will attend to it in the last analysis of my contribution.

But in terms of the strength of the Integrity Commission, these people have a lot of powers. I believe they do not know how to use them wisely, patiently and in the public interest without committing some of the faults that they have repeatedly committed. You have several, what I call prophylactic provisions to protect the rights of people. I see the Minister of Health smiling at the word, prophylactic. He understands from his health domain what that means. It is a prevention device.

Such provisions exist in the current Act. Section 5(2)(b) and (c) where the commission has the power to authorize investigation, summon witnesses, call for papers, utilize any public officer in the Government. So you cannot say you are short-staffed necessarily. You cannot say “I do not have a lawyer”. You have, under the law, the privilege and power to command any officer in the public service to assist you in verification, investigation and resolution before you send this to the office of the Director of Public Prosecutions. Section 15 even on its own, the Integrity Commission can examine all declarations and demand more information, as it is doing now, and set up tribunals for all things required. Sections 33 and 34 also give the Integrity Commission wide powers.

So what is really lacking? Is it the way the complaint is being made that troubles people? But, you see, in dealing with that, it is my view that the medicine will kill the patient. The medicine is too strong. I am hoping that in her closing address on the Government side, she will convince me otherwise. This attempt seeks to suppress the powers of the Integrity Commission. How is that? I refer then to what I would call the “douen” clause—d-o-u-e-n. You know, a fellow going forward but his feet are backwards? That is how this particular clause, to which I would refer in a moment, looks. In fact, it is the hopscotch clause and I have to deal with it so figuratively because, here it is in the proposed amendment, the Part V section is being amended and the proposal says—it has been said but I wish to repeat it because it sits at the core of our deliberation and it is the lever on which the whole debate should turn. At section 33(1) it states:

“The Commission -

(a) may,...”

It is an important word:

“where it is necessary,...”

Another condition. You know “may” is conditional. Then you have “if it is necessary”, another condition:

“on its own initiative...”

Another condition:

“upon examination of a declaration furnished...”

That is where the “douen” example comes in. You are going forward briskly and then suddenly, you have to turn back and look for a declaration under statute. So it numbs the powers of the Integrity Commission to act on its own initiative. This has serious implications, because if you could tidy up that part with wider discretion, giving them the initiative as men and women of integrity, you will not need all this cumbersome legislative adventure.

Sen. Browne: What is the reality?

Sen. Prof. R. Deosaran: I am coming to that. Hold on. Well, you did not tell me what the reality is.

Sen. Browne: You are seeing it every day.

Sen. Prof. R. Deosaran: I do not see reality so. I have to study it and I have to measure it in metres or millimetres and so on.

So having made the shift, where did the shift come from? In the original Act, section 33—this is what is here now. What I just told you is where we are jumping into:

“The Commission—

- (a) may,...on its own initiative,...
- (b) shall, upon the complaint of any member of the public...

consider and examine any alleged breach of the Act...”

And so on. So my suggestion here is not so much to criticize as a lapse but to provide a solution for those who wish to hear. Rather than having what you have in the proposed amendment, my view is to give the Integrity Commission further, wider discretion, and rather than having “shall upon the complaint”, put again, “may”, so the commission will then assess on a prima facie level, whether this complaint is worth anything at all, in addition to what other discretion it has in other parts. Because the word, “shall”—and the Attorney General is quite correct—puts a certain compulsion, a certain element of necessity.

I would say if “shall” could be changed to “may” and following, in my respectful view, to give the commission wider discretion, because you are, of course, putting men and women of integrity who would not be persuaded by party affiliation, economic interest or any such thing; I think they should be allowed to exercise that discretion properly. That will serve as a screening device in the first

instance. Because that is what you want. And it will not create this fear in the public mind; this intimidation by having a statutory declaration, where the person who is making the complaint begins to feel like a victim under the statute.

So this is the hopscotch clause in the proposed amendment I would wish the Government to reconsider, because it comes like a stab in the back of the Integrity Act. What is needed, in my view—and I have taken this from expert draughtsmen, seeking advice—what is needed in legislation is really parsimony; the less loopholes; reliability and practicality; three essential elements, as far as I understand it, in good legislation.

These three elements could be satisfied, in my view, because I will tell you, if we do not have such people of integrity in this country, we are in real, serious trouble. One way out is to widen the discretion of the Integrity Commission and appoint persons of high integrity, courage—courage is what is needed in people put in such positions, that they would not be battered and harassed by the media; they will resist all forms of temptation because of this outstanding quality of courage and independence. Because if you cannot find such people in whom to put such discretion and trust in terms of governance and looking after integrity in the public interest, then we really do not have a country or a society at all. And this, after almost 50 years of independence?

Laws and more laws will not necessarily do it. It may be necessary, but experience has shown and the evidence will continue to show, it is not sufficient. You have shifted the balance too far against persons who wish to make a complaint, especially since the Integrity Act already has checks against false complaints. The existing Act has deterrent potential, except that the Integrity Commission did not use this effectively or well enough. The Integrity Act should serve more as a deterrent than a punitive instrument. Again, as an example I say, change that word “shall” to “may” in section 33(1)(b) in the existing Act to provide more empowerment and a large gap—a need—will be filled.

2.00 p.m.

In such circumstances, early screening and discretion applied by persons of integrity is a superior procedure, than having another cumbersome package of laws and crowded courts to serve that same purpose. I am not making this observation lightly. As I said initially, before the distinguished Attorney General was here, I know the dilemma. I know how it is between a rock and a hard place.

I will not like to see the outcome of what we are doing once again, becoming ineffective. Many of us have lived through these experiences. Even if one or two cases of false complaints pass through, there are provisions for penalties, but it

would be a small price to pay for earning public confidence in the overall integrity legislation. Right now, to be frank and honest with you, public confidence is shaken by what is happening in this legislation.

I am not only speaking about Mr. Reginald Dumas, my friend, Mr. Julian Kenny or even Terrence Farrell who asked to pull back the whole legislation or even Martin Daly. I am seeking a balance. Look at what happened recently. When the rumour of missing children in containers spread across the country, that was like wildfire. That is why I say that this is a country of rumours, *mauvais langue* and “macociousness”. “We faster than the Internet when it comes to gossip and bad talking people.” Some of us here have suffered from that.

Listen to what happened when the Government sought to make an intervention. I think that that rumour, unfounded as it might be, did great damage to the public. When the Government sought to make some kind of intervention, revising the media law or whatever laws would be pertinent, the Media Association said no, they were going too far and what is a mistake, because there is a greater good of a free press. Mr. Terrence Farrell wrote a full page article telling the Government “back off”. That is a small price to pay for having a free press. We might begin to see the analogy. If a few false complaints come through, maybe it is a small price as happens in democracies, to pay for serving the larger picture of accessibility with some screening, of course, by wider discretion given to the Integrity Commission.

We must not move too hastily to punish the many for the sins of the few. That is the basis for my pleading, this afternoon. Let us look at the media. In fact, what we see in the media, sometimes it is joke compared to the kind of complaints that go to the Integrity Commission, even if in its unfounded state. The media put the big headlines, big accusation but they use reliable sources. They say reliable sources say so and so and splash it. Of course, I know some journalists who are very responsible and I trust what they say. There are journalists whom I know who have the integrity for me to trust what they say, even if they use no name but reliable sources. The question of trust in the Integrity Commission is paramount and should be sustained by wise selection.

We already have a heavy stockpile of laws for money laundering, crime proceeds, prevention of corruption and we still have not learnt our lesson. It seems as if the more laws we have, the more corruption grows; the more crime grows. The more laws you have, is the more you are inventing crime because you have more laws to break. That is why I say, “the rule of parsimony,” practically; practicality must enter. We should also display some integrity here too. There is an issue that is on my mind and I would deal with it in some proper way.

“Smart man” politics is killing us even in Parliament. It will take integrity to have the Lower House send the names of the Joint Select Committee as required in the Motion passed recently in the Senate on election campaign financing. We passed the Motion here and it went to the Lower House. The names have to be finalized in the Lower House to be sent back here, so we can proceed with the people's business. If that does not return here, I would make my view heard in several ways because it would be a breach of integrity to have the Senate spend its time passing a motion with due debate and you have it down there, apparently, being choked without sending it back here. [*Desk thumping*] You want to talk about integrity in public office! We will see.

That is why I say that the best court is the court of public opinion. That is where the resolution will reside. The Attorney General said it is a small country, a small pool of talent. Where there is talent, interest and goodwill you should fertilize and nurture it. Do not choke it and stifle it even if you have the majority. The Government already has its hands in almost every institution in this country because of the way the Constitution is framed and all the special purposes companies. The implication is that professionals are finding it more and more difficult to have expressions of independence and fair analysis of events because they are always tied to some institution, where some minister or agency has direct administrative control. That is the context in which I am speaking.

It is something we have to look at if we want to take the public interest with heart. What we need is not so much more laws, but a greater amount of transparency and scrutiny. That is why I will submit to bring the Integrity Commission and even the Judicial and Legal Service Commission before our Joint Select Committees in private and find out where they need help and what can be done. Let us ask for explanations so we would create a higher level of efficiency in both institutions and the need for transparency and scrutiny. It is not making more and more laws, when the laws are serving to hide people in what they do. It does not matter how many laws you have, whatever regime is in office, as long as you stuff our public agencies with political patronage and worse yet, without regard to competence, that would continue to be the breeding ground for corruption because Peter will always likely protect Paul.

Just as there are honest politicians and public officers, so too there are honest citizens who should be allowed to make complaints without having fear for their safety or having to face such statutory obstacles in the first instance. This fear for personal safety, the Government and more precisely, the distinguished Attorney General and the Minister of National Security should take very seriously. Any ordinary person reading the statutory declaration required in Schedule 2 will shake in his pants or skirts or boots.

Integrity in Public Life (Amdt.) Bill
[SEN. PROF. DEOSARAN]

Tuesday, May 12, 2009

This Bill does not reflect the expectations of the Constitution as stated in section 138. It does not reflect the spirit of that expectation. You say clause 15 of the Bill provides protection against harassment and victimization. That comes at the end. It is a very peculiar framing. I do not know if it is a grammatical issue or a matter of policy. You have in the amendment, clause 15:

“An employee of the State, a public authority or any other body shall not be dismissed, suspended, demoted, disciplined, harassed, denied a benefit or otherwise negatively affected because—he acted in good faith and on the basis of a reasonable belief, has—notified the Commission, he has done a stated something, he has refused to do something.”

In subsection (b) he cannot be victimized if his employer believes that he will do something. I do not understand how the clause will have that he will do something, when the above provision says he has already done it. Perhaps, my simple mind may not catch the sophistication of the contradiction. I will like some clarification if only for drafting purposes.

Given the high stakes involved in this matter complaining against corrupt officials—usually this will not be about \$10 or \$100, it would be millions of dollars—and considering even the Witness Protection Programme cannot give the protection it promises, the fears which a person has in making a complain so publicly and within statute is not only justified, but he is also treated as if he is about to commit a crime.

2.15 p.m.

Only two Saturdays ago, I had the distinguished privilege of sitting with the hon. Attorney General at a conference on crime and justice. The police publicly said that it now cost only \$5,000 to hire a hit man. It is not just the legislation itself in its correctness or full legality, it is, as I have said earlier on, the context in which the requirements and obligations are made. If this country were a safer and more secure place, people would be prepared to come out more openly.

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. B. Ali*]

Question put and agreed to.

Sen. Prof. R. Deosaran: Thank you, Mr. Vice-President and thanks to my colleagues. Even if there are false complaints—I know that worries the Government. If I were the Prime Minister and these kinds of complaints went before

the Integrity Commission, I would be very annoyed. Even if I were Mr. Imbert, I would be very annoyed, but I would have to go beyond my personal feelings and see whether the existing provisions, even with a small amendment here and there or without this amendment, could continue to serve the public interest.

With respect to those people who make such accusations against the Prime Minister, we now have to get a corrective device. The Integrity Commission should have a provision to do something about them; not make it prohibited, but have it as a consequence for what they have done wrongly, because the existing Act does have safeguards. It does require in section 32(1) that the complaint be put in writing. It would not necessarily be an anonymous complaint. The Integrity Commission already has the discretion, if not in statute, to require something in writing. Screening is important. They also have a fine in the existing legislation. It is not that the Government has put something new such as a \$500,000 fine or 10 years for false or misleading complaints; it is already there.

There is a host of other verification powers in the existing Act. If there is a fear of putting an accused person at a disadvantage, section 38 gives the right to reply before the Integrity Commission makes its conclusion.

Section 41 in the present Act also gives the Integrity Commission the powers to regulate its own procedure, shape up its own mode of enquiry and set standards for enquiry. With all these powers, I ask myself once again, like Jack Warner: Why is the Integrity Commission not more effective, more parsimonious and more just in the execution of its responsibilities? I am beginning to doubt that even if this amendment is passed, if we do not have men and women of upright character, courage, independence of thought and the required competence—integrity is good, but competence is also equally good in such a function—I do not think this amendment would be of great help.

Finally, I want to put on the table an issue which is an embarrassment to the Constitution. It is a shame in the face of the Integrity Act. It is also an embarrassment to the judges. The Integrity Act has in its Schedule, a list of persons who are supposed to file: judges and magistrates appointed by the Judicial and Legal Service Commission. They did not file for a long, long time. The matter went to the court and a judge ruled that they are not expected to file. I could not understand that because in my simple mind a judge should not be a judge in his own cause. This is Trinidad and Tobago and maybe we invoke the doctrine of necessity because “who else go judge?” It is more than that, if the judge said so, and if these judges and magistrates are not filing declarations, is

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that not an embarrassment to the legislative process and a breach of integrity in some way, especially since we have no amendment to heal the breach? I would have thought, in the amendment coming here—that is why I say we should retract this Bill and bring a fuller Bill to deal with that breach and the one relating to the wideness of the net and other such mechanics and breaches.

It is more than that. Somebody would have to enlighten me. I would say like Jack Warner again: “I have to ask myself: How did the magistrates appear in this exemption?” In the Constitution that grants exemptions to judges, I see nothing said about exempting magistrates. I do not know how a magistrate jumped into the exemption realm. Perhaps, I could be corrected. We need some attention to that particular situation.

Suppose somebody wants to complain against a judge, the Act says that he is entitled to complain about people in the Schedule. Could he or she? If somebody wants to complain against a magistrate, could he or could she? What we are doing is subverting the rule of law in full public glare. That is why you ask: Why is the public losing confidence in our system of judges? I am not saying whether my view is that judges should be in the net. I am not saying whether magistrates should be in the net or not, but I am saying what the law prescribes.

I would like to hear what the Law Association has to say about this. I would like to hear what Mr. Martin Daly, either in his personal capacity or as President of the Law Association, has to say about this serious gap.

I want to suggest, finally, that the Government review itself. Have a fresh amount of consultation with the Law Association, professional bodies and even with the judges and magistrates. Consult people like William Lucie-Smith or even Terrence Farrell, whose name has been called by the hon. Attorney General. Consult Reginald Dumas, Julian Kenny, Kenneth Lalla and professional groups. Consult! Not because they differ with you, you would not consult. It is good to consult with them and make a rebuttal. That is how civil democratic societies work.

I suggest you scrap this Bill, overhaul the entire Integrity Act, make your consultation and come back with most of the requirements that are necessary. If you continue to chip with this piecemeal approach, you would be wasting the time of Parliament and you would not be achieving your objectives. I believe what the hon. Attorney General said, the Government is intent on wiping out corruption. You must have the proper instruments and the procedures to do so.

Thank you very much, Mr. Vice-President.

The Minister of Trade and Industry and Minister in the Ministry of Finance (Sen. The Hon. Mariano Browne): Mr. Vice-President, I rise to add my voice and my thoughts to this debate. I am very grateful to the hon. Senator for making a number of points, even if I do not necessarily agree with them. This honourable Senate is for us to arrive on the basis of a reasonable and rational conclusion, on the basis of debate, discussion and organization.

One could perhaps start with the principle that the PNM established itself as a party organization on the basis of morality in public affairs and on morality in public life. This is not to say that mistakes have not been made along the way. We are all human, in case anybody on the other side should forget and I have a reason to remind them. This started off as a party and it continued as a party in government that has made itself known for its position, in terms of supporting and promoting the interest of Trinidad and Tobago and advancing the business of politics and the country as a whole. Its position on morality in public affairs came and was outstanding on the back of disorganizations and disorganized parties, which were represented by individuals who saw after themselves.

We have strong historical antecedents to stand before you here today and to talk about integrity in public life and to make the amendments, which are included in this Bill. Party government in Trinidad and Tobago was started and defined by the PNM. [*Interruption*]

Sen. Mark: “De tiefing too!”

Sen. The Hon. M. Browne: We can say that without fear of contradiction. Sen. Mark, should I have to remind you about the provisions of the Standing Order?

Sen. Mark: No.

Sen. The Hon. M. Browne: Well, you better withdraw that then.

Sen. Mark: No, you!

Sen. The Hon. M. Browne: You withdraw it! I am waiting for the opportunity for you to do so.

Sen. Mark: “Ah waiting fuh yuh.”

Sen. The Hon. M. Browne: But you cannot do that. [*Interruption*]

Mr. Vice-President: Sen. Mark, please withdraw those statements. You just told him that he has no integrity.

Sen. Mark: “Yeah, yeah” he has integrity. He has integrity, Sir. [*Continuous interruption and crosstalk*]

Mr. Vice-President: Sen. Mark, we have a long day today.

Sen. Mark: “Yuh” better believe it. It would be a long one.

Mr. Vice-President: Let us conduct the Senate as honourable people inside here.

Sen. The Hon. M. Browne: Thank you. We can point to the republican Constitution and the fact that it calls for an Integrity Commission as set out in sections 138 and 139 as evidence of the PNM’s commitment to good governance. Let us start with that. Everything else follows from that Constitution. Everything else follows from sections 138 and 139 and that is what the PNM introduced. To stand here today and to say that we have never supported any integrity legislation is patently false, Sen. Mark. You did say that.

Let us go to Sunday January 02, 2005. This is Dr. Hamid Ghany.

“In October 2000, the position adopted by the PNM on the Integrity in Public Life Bill and the amendment of the Constitution was uncompromising and forced the then UNC government to make amendments to the proposed legislation.”

Uncompromising. He is not supporting the party, is he? This is supposed to be an independent, upright academic. [*Interruption*]

Sen. Mark: He is an opportunist.

Sen. The Hon. M. Browne: Those are his words. He is an opportunist now? The republican Constitution is one of the defining moments of the PNM. The republican Constitution that sets out the Integrity Commission is one of our defining moments. Let us start on that basis.

As for the constitutionality of the amendments, I think that was the point you were making; that we were taking away rights. From whom and what rights are we taking away? There is a reason for it requiring the changes as required by section 54:

- “(i) in the House of Representatives, by the votes of not less than three-fourths of all the members of the House; and
- (ii) in the Senate, by the votes of not less than two-thirds of all the members of the Senate.”

That is when you are amending fundamental rights. There are no amendments to anybody’s rights in this amendment; there are none. So, to say so, because we are amending the Act—we are amending no rights that are enshrined in the

Constitution; none. The original Act needed that three-fourths majority because it amended a person's right to privacy.

I have heard a number of comments here today essentially that, not only free speech and freedom of the press are under attack but we should err on the side of caution. That is what was said and Senators have been saying that throughout the course of today.

2.30 p.m.

I am going to give an example of my own case, in response to the Senator's comments. [*Crosstalk*] I have to thank the *Newsday*, because in a moment of wisdom and brilliance, and in one of its defining and more rational commentaries in an editorial, October 2008, it said that "Sen. Mark is more often wrong than right", and the Senator is more often off the mark. [*Interruption*] I am going to deal with that point since you want to put it in the public domain.

Sen. Mark: I am exposing you.

Sen. The Hon. M. Browne: I would also like to thank Sen. Prof. Deosaran for the points that he made, that this is a quarrelsome society; that we rush to judgment and we often know the truth even when we do not know it. It is based on hearsay. "I heard somebody say so and this or that happened."

Sen. Mark: Give us an example.

Sen. The Hon. M. Browne: I am going to give you a good example of it, and I am going to use you as the example. Sen. Prof. Deosaran said that we are in the horns of a dilemma. If the society is "macocious", fractious, quarrelsome and rush to judgment, what do you do in such circumstances where rumour, *mauvais langue* and the same example Sen. Prof. Deosaran gave with regard to how headlines are often abused? What do you do in those circumstances? What is the practical regime that one would put into position? How can the establishment of a form, as an amendment, intimidate or threaten anybody?

Anytime you go to court you have to fill out a form. An affidavit is required to be in a particular form. Everything about law requires a specific form to be put into position. What is new about that? Our legislation is built upon it. Any form of public complaint or any form of public application requires it to be specified on a particular and specified form, and if it does not fit the form, it is invalid. That is a fundamental reality. It is a fundamental aspect of our law. There is nothing wrong with instituting such a requirement in this particular instance. There is nothing wrong with it. It is nothing new. This is standard and normative.

Sen. Mark: For you, but not for us!

Sen. The Hon. M. Browne: Let us deal with the issue of freedom of the press, and the fact that we should air anonymous complaints. First of all, how do you discipline an anonymous complainant? You shall investigate an anonymous complaint? When you have investigated the complaint, and it is proven to be wrong, what is the redress after the person's name has been put in the mud? In my own case—since you alluded to it, let us deal with it.

Sen. Mark: Give us the evidence.

Sen. The Hon. M. Browne: An article was published in November 2007, alleging that a fraud had been committed on a bank in Barbados and my name was put with it. The reporter who wrote that article called me on the Friday before, indicating that she wished to speak to me. She identified herself and pointed out to me that she understood that I was going to be a public figure and she required certain information from me. I provided Camini Maharaj with the evidence of the plaintiff as well as my own rebuttal. What was published in the newspaper was the plaintiff's position. It had nothing to do with the evidence or the rebuttal. All that was published was one thing and one side only—a small paragraph. If there were about 50 words there were plenty.

As a result of that, I sought legal advice. In accordance with pre-action protocol letters, I wrote the *Express* and the *Express* never responded or replied. The cost of suing them was approximately \$400,000 to get redress. That was just to initiate the action. This is a situation in which the evidence was clear and the contending parties had already agreed not to proceed with the suit. In those circumstances, the very *Express* never responded as they were supposed to and never demonstrated courtesy and replied to the other side. That is the example of a free press. In the meantime, what was my position? I am out of pocket, and I have to take the public opprobrium and I have to come to the Parliament and listen to the Sen. Mark. [*Desk thumping*]

Every once in a while the Senator wants to get up and figure that he could slap me and throw something in my face on the basis of that falsehood, and I have to live with that. [*Interruption*] So, you cannot frighten me with that. When I get the release, you will be the first one I will bring it to. [*Interruption*] So, when we come to the question of a free press—it is better to err on the side of caution—I often wonder when I hear it, because most people who say that did not have to pay for it.

Sen. Mark: So, you do not want a free press?

Sen. The Hon. M. Browne: I did not say I do not want a free press. I wanted a responsible one. Let us invert the analogy. In the same way that we should have a free press and, perhaps, we should live by a few mistakes as the price of freedom, by definition, I guess if we have a few errors with regard to the death penalty that is going to be all right too. That is just to refer to the analogy. I guess that would be acceptable. Well, it is the obverse argument and it follows. I heard the Senator use the argument of fascism before but, again, on the basis of the evidence, you do not come good.

There is evidence also of a “smart man” politics. I think that was the term that Sen. Prof. Ramesh Deosaran used, and we have a good example of that. I think Sen. Mark talked about discrimination and he made reference to a particular action in court with regard to Citadel and the Maha Sabha, and somehow he managed to associate it with the issue of the Integrity Commission, not that they are related. In fact, they are not, not by a long stretch of imagination.

The Senator also talked about Julian Kenny, and it is interesting that Julian Kenny in the *Express* dated April 28, 2009 had this to say about “Muddying the integrity pool”. It says:

“Integrity. What does the word mean? In its broadest sense it means to be in a state of wholeness as opposed to being fragmented. The word is derived from a Latin word meaning entire or untouched. From integer there are various derivatives...integral, integrate, integrative and of course disintegrate and disintegration. In human affairs the word integrity is accepted to mean essentially an uncompromising adherence to a code of moral or other human values, such as absolute sincerity, honesty and candour.”

These are words that we can all live in accordance with, in particular, Sen. Mark; when Sen. Mark is coming to this Parliament and presenting evidence, and saying evidence that was following from or assented to by the Integrity Commission. Is that what the Senator said? He said that they are going to act on the basis of the evidence that came from the Integrity Commission. This has absolutely nothing to do with the Integrity Commission. I have a copy of that document now.
[*Interruption*]

I would have thought that if you are making a contribution on the Integrity Bill that we could, at least, follow the definition of Julian Kenny—“absolute sincerity, honesty and candour”. So, if you are presenting or preparing or waving a document which you said came from the Integrity Commission, it ought to have at least come from them. Instead, what we have here is a document quoted from the High Court of Justice not the Integrity Commission.

Sen. Mark: By whom?

Mr. Vice-President: Sen. Mark, this is the second time I am warning you about your outburst. I like to listen to the Senators in silence. Senator, continue.

Sen. The Hon. M. Browne: When we are talking about integrity, at least the Senator could try and demonstrate some integrity. The document that the Senator referred to did not come from the Integrity Commission. Whatever it may deal with,—Mr. X or Mr. Y, and it does not deal with Mr. X or Mr. Y—it may be an affidavit but, certainly, not an affidavit for action in that regard. The Senator could at least have a little more integrity. [*Desk thumping*] In the words of Sen. Prof. Ramesh Deosaran, that is “smart man” politics.

In similar terms, when we are dealing with section 27, the suggestion that the amendment is meant to delete or otherwise remove the word “fee” and, in so doing, allow office holders to obtain fees. Did I not hear the Senator correctly when he said that? Did you not say to look at the amendment, because it says in section 27(1), which is the new section that is coming into position—section 27(1) says:

“A person to whom this Part applies shall not accept a fee...”

He said 27(2) does not apply to a gift and we left out the word “fee”.

Sen. Annisette-George: Yes, he said that.

Sen. The Hon. M. Browne: I just took the precaution of reading what section 27 said in the 2000 Act just in case there was any difference, but do you know something? The sections are identical. [*Desk thumping*]

What the new section 27 does is that it adds a new section 27(4). In all other ways, the section is identical. Under the Act of 2000, if it did not allow anybody to accept a fee, then the amendment does not allow them to accept a fee now. There is no difference between them. Absolutely, none! But the Senator is an honourable man, if I am to borrow the words of Mark Anthony. Another mark! At least, he was on the mark. [*Laughter*] You cannot accept fees. The Act is very clear. It says:

“A person to whom this Part applies shall not accept a fee, gift, or personal benefit, except compensation authorized by law, that is connected directly or indirectly with the performance of his or her duties of office.”

Let us go to the original section, just in case you are under any misapprehensions. It says:

“A person to whom this Part applies shall not accept a fee, gift or personal benefit, except compensation authorized by law, that is connected directly or indirectly with the performance of his or her duties.”

Is that the same thing? It is exactly the same thing. There is no change.

Section 27(2) reads as follows:

“Subsection (1) does not apply to a gift or personal benefit that is received as an incident of the protocol or social obligations that normally accompany the responsibilities of office.”

2.45 p.m.

So that the comments made by Sen. Mark are not only off the mark, wide of the mark, do not hit the mark, of no mark at all, they just are not there. [*Laughter*] It is just not there. [*Interruption*] And so far, Sen. Mark, when we deal with your contribution, you showed a penchant for the fallacious and the salacious. We need to deal with facts in this Senate.

Hon. Senator: That is right.

Sen. The Hon. M. Browne: We need to deal with facts. [*Desk thumping*] That is what integrity is about.

Sen. Mark: You cannot talk about integrity.

Sen. The Hon. M. Browne: Again, you are threatening me in a fashion in which you cannot sustain, Sen. Mark. [*Laughter*] Just to remind you, the rules for Senators not speaking [*Laughter*] just in case you do not remember.

Mr. Vice-President, if you could just allow me to read the rules: [*Interruption*]

- “(a) shall enter or leave this House with decorum;
- (b) shall maintain silence while another Senator is speaking, and shall not interrupt, except in accordance with these Standing Orders; and
- (c) shall otherwise conduct himself in a fit and proper manner.”

Hon. Senator: Integrity. [*Laughter and desk thumping*]

Sen. Mark: Mariano—

Sen. The Hon. M. Browne: I am on my feet, Sir. I am on my feet. Not only did Sen. Mark miss the point, Sen. Mark went on by definition to accuse our Justices of the Peace of being unable to uphold the law. [*Interruption*] They are unable to uphold the law, because if anybody were to swear to any document to a

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Justice of the Peace, they would run immediately to the politician concerned and give him this information. By so doing, immediately they would breach all the tenets of good faith, of honesty and decency and the basis of their appointments.

We could not rely on Justices of Peace in this country as an integral part of justice or the administration of justice on the basis of what Sen. Mark has said. Might I remind, Sen. Mark, for those Justices of the Peace who are listening now, that several of them lost their lives last year in upholding those very ideals, [*Desk thumping*] and let me refer to it again; sincerity, honesty and candour. Sen. Mark, I recommend these qualities to you.

Sen. Mark: And you too—[*Inaudible*]

Sen. The Hon. M. Browne: So when we are talking about moving forward and I am reminded of the horns of the dilemma raised by Sen. Prof. Deosaran—in fact, I can see, almost, Sen. Prof. Deosaran struggling with the concept of a leviathan. I can imagine Rousseau/Hobbes/ or Locke in front of me as we speak, that in many ways, what Sen. Prof. Deosaran is asking for is a leviathan. Unfortunately, a leviathan exists only in the literature. That is the reality. [*Interruption*]

The reality is that we are men and women who sometimes make mistakes. That is the reality! Everyone, at some stages of the game has made some mistake in their lives, but at the same token, we do require commissioners to exercise discretion, judgment and competence, we require them to do so. At the same token, whilst Chapter 10, 138, 139 do require us to adhere to the principles of good governance, to the principles of integrity, the requirement and what this Bill seeks to recognize is that we do not have a leviathan and we need to—as to use the very same words that Sen. Prof. Deosaran said—be practical. We need to make some basic decisions which allow us to move forward and we need to give our commissioners the capacity to be able to deal with the things that they can deal with.

The reality is that we have an administrative process which requires us to make declarations. When you do not make a declaration it is not that anybody wants to persecute, you as Sen. Mark would have us believe. If you did not make the right declaration and it is found out, then you have to deal with its consequences in law—and I am not calling any names with that. I am not—and that is the way it is supposed to be. It does not mean that you are harassing anybody. You are following the dictates of the law. That is what is required.

In these circumstances, there is a valuable methodology to do so. You require a positive declaration and you have a register of registrable interest. The interest does not detail, how, how much or what the details of your assets are. They are

outlined in broad terms, sufficient terms that allow a disinterested third party, if there was a mistake in fact, an error or information was suppressed, it allows people sufficient opportunity to make comments heard. That is why the Act also recognizes the ability or the requirement that third parties make complaints, but those complaints be justified.

Hon. Senator: Exactly.

Sen. The Hon. M. Browne: And nobody is saying that you cannot make an error. You can make an error. In fact, we understand that, but at the same token there must be a reasonable base for moving forward, otherwise we enfranchise the maliciousness, the “*mauvais langue*” and the “*macociousness*”, and we need to be able to deal with that. And that is a reality. And that is the practical reality that this amendment seeks to start.

Sen. Mark: Yes, PNM should go. You all cannot take the jamming, go.

Sen. The Hon. M. Browne: The argument that we should scrap the whole Bill, we should move forward, we should not do anything until after we have had the consultations will cost us in time another five years. The reality is that human beings progress on the basis of incremental progress and changes that are made.

Sen. Mark: If you all cannot take the jamming, go!

Sen. The Hon. M. Browne: Having regard to those circumstances, I simply want to add my voice of support to the amendment Bill and I commend it to this honourable Senate.

Thank you.

Sen. Dr. Sharon-Ann Gopaul-McNicol: Mr. Vice-President, as I embark upon delivery of my maiden speech today, I have to take this opportunity to express my pride in joining my parliamentary colleagues in this very important debate of such national interest.

My very presence here as an Opposition Senator belonging, not to the official Opposition party, has in recent times presented some intrigue. To this end, permit me to express my appreciation to the official Opposition UNC for appointing a Member of another party to hold a seat as an Opposition Senator in the Parliament of Trinidad and Tobago. [*Desk thumping*]

To get straight to the matter at hand, the Integrity in Public Life Act, the 2000 law, is the law today to which the Government is attempting to bring amendments. The Government through this proposed Bill is attempting to undertake measures that would bring about significant amendments to the existing

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legislation and significant changes to the currently observed practice with respect to making complaints to the Integrity Commission, and with respect to filing integrity forms, et cetera.

This proposed amendment to the Integrity in Public Life Act of 2000 has resulted in many people asking why at this time the Government of Trinidad and Tobago has brought this integrity legislation to the Senate? Notwithstanding this question, I welcome this legislation since it is critically important in our country's development that we examine this matter of integrity in public life.

With all that we are seeing here in this country at this time, in this defining moment in our country's development, there is a dire need to address the unscrupulousness of those with unfettered access to influence and power. Countless persons in public life, both of the past and even of the present have brought disrepute to their honourable positions and there were no consequences to them personally.

Of course, there are many serious matters that are occurring in our beloved homeland that are affecting integrity in public life. There is the matter of the financial crisis that we face in our economy, the issue of political parties experiencing internal conflict, the serious situation that we are facing as we recognize that the social ills have now spread from the urban to the rural areas, the grave reality that poverty and crime have now reached astronomical proportions.

All of these events have certainly reinforced for us in this honourable Senate that if one is really interested in protecting the interest of the public, then there must be transparency and integrity in public life. It is clear that those who choose public life must promote with moral and ethical clarity the exercise of their duties in the interest of the people of Trinidad and Tobago.

As you know, the Integrity in Public Life Act, Chap. 22:01 is two-pronged in nature. Firstly, it addresses the declaration of assets, income and liability and secondly, it prescribes the code of conduct which is really, in summary, intended to regulate the behaviour and conduct of persons who are carrying out public duties. I will be addressing both of them in my contribution to this debate today. To facilitate the understanding of my contribution, I would like to state clearly how I plan to proceed. Firstly, I would highlight in a general sense the matter of Integrity in Public Life. Then I would address some specific aspects of this amendment Bill that could be problematic in its proposed form, and finally, I would offer some recommendations to this honourable Senate with respect to how to ensure integrity in public life.

Let me get straight to the matter of Integrity in Public Life Act. What does the word integrity mean to us in this Senate, but more importantly to the average person in this society? When we talk about integrity we are talking about honesty, truthfulness, reliability, uprightness and decency. Integrity dictates everything we do. It cannot be bought nor could it be sold. Integrity determines the character of an individual or of an organization. It reflects the loftiest of standards and principles and is driven by what is right and just. Integrity requires one to be daring, to have stamina, to be trustworthy and to be resourceful. Integrity is the basis of one's conviction. A person with integrity commands respect, trust, loyalty and is a beacon of light for all in an organization. It is not only what one says they believe in but what one does, one's deeds that reflect integrity in public life.

Why do we have the Integrity in Public Life Act? Clearly it is and I quote:

“To make provisions for the prevention of corruption of persons in public life, and to regulate the conduct of persons exercising public functions.”

In furtherance of this purpose, any amendments made to the existing Act should facilitate its purpose and not frustrate it. [*Desk thumping*]

Mr. Vice-President, integrity in public life is linked directly to transparency in public life. When we look at all the indices that are available from the Transparency International Corruption Perception Index, as far as the perception of corruption and transparency or lack thereof, we see that we were ranked 31 out of 180 countries about eight years ago. However, in recent times, the latest score has shown that we have fallen to rank 72. Why is that? We have to examine why are we perceived by the Transparency International Corruption Unit as a country that is becoming more corrupt than a country that is eradicating corruption.

Mr. Vice-President, while we are talking today about amendments to the Integrity in Public Life Act in the hope of controlling corruption in the State and those in public life, there is no question that the matter of integrity has suffered a mortal blow in the last week. The fiasco surrounding the appointment and subsequent resignation of the members of the Integrity Commission has been well documented at many levels, all of which have resulted in the utter bewilderment of a beleaguered citizenry.

This is so unfortunate because if a member of the public has to make a complaint against a person in public life, he or she has to do so to the commission, and at present, there are no commissioners. What an awkward situation for us to find ourselves in at this troubling time in our country. This situation highlights the need for swift movement in the appointment of commissioners to give the public the comfort that all has not fallen down and that the rule of law is in effect.

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The current situation in Trinidad and Tobago is that there are no substantive office holders in very key institutions. For instance, we have an acting Commissioner of Police, an acting Director of Public Prosecutions, an acting Solicitor General and of course, no integrity commissioners. This is indicative of a serious violation of our ethics and law. With respect to the specific aspects of the amendment that the Government is proposing—the amendment Bill—there are several sections and clauses that I have noted with concern. Obviously, the clause that is most troubling and could undermine the integrity legislation is the repeal and replacement of Part V of the Act which deals with the process for making complaints.

3.00 p.m.

Mr. Vice-President, regarding the matter of complaints, this Bill is seeking to revoke the entire procedure for filing a complaint. Why is there a need to do this at this time, I ask? Did the Integrity Commission complain that they are understaffed and do not have the resources to do their work? Did the Integrity Commission ask the Government to amend this Act to alleviate them from undue pressure that they are under?

Even if we were to look at the number of complaints from the public, it is only in 2006 that the Integrity Commission received for the first time nine complaints. In 2007, there were eight complaints. So there is no evidence of an overwhelming number of complaints from the public. So the rationale for wanting to amend this clause cannot be that the Integrity Commission is overburdened with complaints.

If there was a report by the Integrity Commission about the complaint procedure, I could somehow see the rationale for this amendment, but this is not the case. Recent reports from the Integrity Commission do not reveal there is a problem with the complaint procedure either. So why is there an attempt to amend this section of the amendment Bill?

I also noted that there is an attempt to provide justification to amend the law because of the matter of people making frivolous and trivial complaints and that the present complaint procedure gives the public the right to engage in malicious complaints to the Integrity Commission, causing harm to persons falsely accused, resulting in the waste of the Commission's resources and time. This is the main justification given for seeking to change the complaint section of the Act. But I must ask this question, thus far, of the complaints received, how many people have made frivolous and malicious complaints? As far as I was told, there are not many, but I remain guided by the Attorney General on the statistical evidence of these malicious complaints. Besides, there is already existing in section 32, a

check and balance system to ensure penalties of \$500,000 and up to five years in prison for reporting frivolous and vexatious matters to the Commission. Therefore, I believe that we should maintain the existing section 32 and not amend this section of the Act.

Mr. Vice-President, clause 6(b) is also a concern since the Government is asking us to support the amendment of section 11(2), which allows the Commission to increase the time that extensions can be granted for furnishing a declaration from six to 12 months. I do not see the rationale for this amendment, because we all know that more time does not mean that people who do not intend to file their declarations in the first place, will do so with the extended time. In fact, the evidence shows the contrary since for years on end people fail to file their declarations and in so doing, have breached the law. The real issue here is one of non-compliance as opposed to needing more time. So the focus should be on putting provisions in place to encourage and ensure compliance as opposed to giving extended time.

Let us look at how non-compliance is handled by the Integrity Commission. Between 2000 and 2007, the reports of persons who did not comply resulted in no action taken by the commission, so in effect, the commission by its non-action condoned the violation of the law. At this juncture, we should not be amending the time, but mandating that the commission takes legal action against these individuals under the Act. [*Desk thumping*]

Mr. Vice-President, we have to hold people in public life responsible when they violate the law. So we should not be amending the law to give more time, but to put penalties in place for non-compliance in filing their declarations on time. What we should be talking about is amending the Act by putting sanctions in place.

There is another concern about the complaints section. The matter of complaints submitted to the Commission, prior to the coming into effect of this amended Act 2009, assuming of course, it is passed. This is with respect to the investigations that have not commenced, the Government is proposing that such complaints should be resubmitted and will be rejected if it is not done within six months. This means that all those complaints that have already been submitted have to be resubmitted in order to comply with this new statutory declaration, and if they are not, they are simply erased as if they were never submitted. I cannot in the interest of the citizens of Trinidad and Tobago agree to that. [*Desk thumping*] There should be a grandfather clause so that those complaints that have already been filed, would proceed under the terms of the current Act.

Let us look at the other issue that was put forward to justify this amendment, the matter of protection for people who make allegations about misconduct in public life. While I am on this section, I would also like to examine the issue of the protection of employees. Remember promises were made by this Government to the Inter-American Convention against Corruption. Remember we also stated in clause 15, which is the new section 42(A) and I quote:

"An employee of the State, a public authority or any other body shall not be dismissed, suspended, demoted, disciplined, harassed, denied a benefit or otherwise negatively affected because—

(a) he, acting in good faith and on the basis of a reasonable belief, has—

(i) notified the commission that his employer or any other person has contravened or is about to contravene this Act;"

Now, is the Government saying here that employees are protected considering this new section 42A or are they saying that they will fall under section 32 that was just discussed a moment ago? In other words, will such persons face the same penalties if they make a false declaration by misleading the commission? How does this new section 42A deal with this matter? I see a conflict here.

Now let us look at the Prevention of Corruption (Amdt.) Bill. Remember, this honourable House debated the Prevention of Corruption (Amdt.) Bill, 2000. In that Bill, the Members of the House dealt with the issues that concern whistle-blowing, which is the law that protects persons who raise a red flag on matters of integrity in public life.

The establishment of a permanent Anti-corruption Commission was formed with additional power to investigate allegations of corruption under the Act. This all relates to the new section 42A regarding the complaint procedure as it provides protection for whistle-blowers, their families, their identity and their location. Let us not forget that the matter of whistle-blowers is crucial to any anti-corruption law because it protects informers, which will encourage persons to come forward and provide information.

This Prevention of Corruption (Amdt.) Bill, 2000 provides protection for whistle-blowers. Yet, what the Government is proposing today is not helping whistle-blowers. How in this new legislation is the Government ensuring the Inter-American Commission's recommendation, that the identity of whistle-blowers be protected? How is that happening in this new amendment Bill which the Government is now asking us to support? How can persons who bring forth complaints be provided with adequate protection of their jobs and of their lives, given these proposed amendments? This is still unclear.

Mr. Vice-President, we have to protect whistle-blowers and their family and we have to provide protection for persons who make complaints in the workplace. Confidentiality and anonymous reporting, and protection of persons' identities who make complaints, must be put in place forthwith. Quite frankly, the proposed complaint procedure is not encouraging and it does not ensure safety of whistle-blowers or employees in the job place. As such, it cannot be supported. I will recommend maintaining the present system with the appropriate checks and balances that we currently have.

With respect to the proposal to repeal 33(a) in the legislation which says that:

"The commission—

- (a) may, where it is necessary, on its own initiative... consider and examine any alleged breach of the Act under the Prevention of the Corruption Act."

I have to wonder why do they want to restrict the Commission to that declaration. Why do they want to restrict the Commission's powers of investigation by making their examination dependent on a declaration by a complainant? This is a big difference from the present Act. As far as I see, the Commission's hand will be tied if they do not get a declaration from the complainant even if they have sufficient other information that may warrant an investigation.

So for example, in the present format, if the Commission encounters in the newspaper a matter, they could investigate it. But this will not be the case with the proposed change. This proposed change under this new amendment weakens the Integrity legislation by preventing the Integrity Commission to act on its own initiative. So in effect, it appears that the commission has power, but in reality it does not. [*Desk thumping*] This proposed amendment is restricting the commission and I cannot support this restriction that they are now placing on the commission.

Another concern is the change to Part V, section 32, which proposes that a member of the public who wishes to make a complaint to the Integrity Commission has to do so by a statutory declaration as opposed to what they are able to do now, which is to put it in writing to the commission. This matter is of concern since a person who alleges, must provide according to the Government, the probative evidence. Now, most people do not even understand what is probative evidence. It is really putting people through an extra legal process to bring a complaint.

Now, are these same standards being proposed to those in public life, being accorded to the average citizen who goes to the police station to make a complaint against the average citizen for rape and robbery, et cetera? Are they required to

prove it and sign a statutory declaration? So why is there any special privilege being accorded to those in public life? Yet when a person alleges there is misconduct of a person in public life, we are asking these very persons who alleged such, to prove it. What they are proposing is psychologically onerous and intended to intimidate the average citizen from making complaints, since they are placing a tremendous burden on them and this will deter persons from making complaints, and indirectly this is undermining the Act. How could one expect an average citizen to come up with evidence, when our very own Prime Minister himself, with all of the supportive services available to him, could not do so?

Clearly, even the Prime Minister could not convert the information into evidence and the Government is asking the average citizen to do that. In other parts of the world, there are institutions and lobbying groups that investigate complaints and matters on behalf of citizens. Unfortunately, this is not the case in Trinidad and Tobago. Besides, do we really think anyone will be willing to risk his or her life by giving such a sworn statement in the current environment in Trinidad and Tobago, given what it is? So this request for documentary evidence is in effect a limiting factor regarding what will come to the commission itself to facilitate its own investigation.

I cannot support this amendment in the way the proposed changes are framed. How can one get probative evidence as is being proposed by this amendment? It is well understood that people often have information, but not always do they have evidence because it takes a lot more resources to unearth to get to the evidence. For example, one can suspect that a person is engaging in human trafficking or prostitution of young people if they are witnessing young people going in and coming out of a person's home, but they may not have the probative evidence this particular person is partaking in human trafficking.

The idea is this, people would not always have the evidence, but it is the ground intelligence that could lead to an investigation that would unearth the probative evidence. But the members of the public are now being told that they must get the evidence, otherwise, there will be no investigation. Why are they placing this extra burden on the public? This is the shifting of the pendulum to the very public that the Act is intended to protect. What is of most concern about this section is that under the present law a member of the public could submit a letter to the Commission providing information about a suspected violation.

Now, with this new amendment, this is not the case because the complainant has to submit a duly sworn affidavit for a third party, like a Justice of the Peace or a Commissioner of Affidavit which would have a chilling effect on the average

person in this society. The average person will interpret this Act as, "if I make a complaint my life could be in danger". The average person will stay away because they feel they would be harmed, harassed or persecuted.

Mr. Vice-President, we should be encouraging people to complain when they encounter a lack of integrity in public life, but instead, this amended Bill will prevent people from complaining. The reality is, when considering our current cultural climate, a person could very well be killed—that is a reality—before the information reaches the Integrity Commission. There is always that possibility. We unfortunately do not adhere and respect confidentiality in this country.

3.15 p.m.

The leakage of such critical information to others is not far-fetched. Many witnesses and even a Justice of the Peace have been killed in this country given the current climate. We all can recall with such sadness that Justice Best was killed recently. Besides, the Acting Commissioner of Police has been seeking the public's support stating that the police alone cannot control crime because they need the support of the public. Imagine, the big police service needing assistance from the public and rightly so, and now these amendments would suggest that the Integrity Commission should carry out this functions without the same type of support coming from the public.

I recommend that we shift the burden and place it on the Integrity Commission which means that person will be the virtual complainant and the Integrity Commission be the complainant and only then I think it would be worthy to examine the Bill again. [*Desk thumping*]

Mr. Vice-President, on matters of the Judiciary and whether judges and magistrates should be included, quite frankly I was amazed that this Government can even propose that judges and magistrates should not be constitutionally included and that the legislation to remove them is forthcoming. I hope this does not occur because no one is above the law, and I personally wish to see the inclusion of judges, magistrates, statutory authorities, senators and so forth.

In fact, it must be remembered that to ensure high standards of accountability and transparency, the Inter-American Commission includes judges in the integrity legislation, so I do not think anything is inappropriate in principle, of course, by including judges in the law.

Another concern about this amended Bill is the time limit for initiating and investigation. Clause 12 of the Bill which seeks to amend section 34(1) of the Act by introducing a new section 34A(1)(a) which seeks to impose a 14-day deadline

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on the Commission for initiating an enquiry into the alleged offence. Given the workload of the Commission and the kind of delivery that is expected, this time limit should be extended from 14 to a minimum of 30 days—at least I will like us to consider that.

I would like to make some recommendations for the improvement of this amended Bill that could move this country forward to ensure integrity in public life. They include, but are not limited to:

1. A solid witness protection programme which will ensure the safety of complainants and their families.
2. Opening discussions on the way forward and how to create a new political culture and a new political ideology that will finally bring about our psychological independence which would address the issues of Integrity in Public Life.

The goals will be, of course, to establish:

1. The principles of good governance, which include but are not limited to honesty and integrity in public office, democracy, transparency, accountability, freedom of speech, freedom from victimization;
2. to establish strong communities to bring about the eradication of poverty and social ills in the society; to provide support to families to raise awareness of human trafficking as it impacts on members of our society; to lobby for the development of laws to protect children who are abused; and to promote true appreciation of ethnic, cultural and religious differences.

All of these would enhance integrity in public life.

In addition, I would like to see an establishment of the scientist/practitioner/policy makers model of governing. This is important because it marries the science with practice, so it give respect to our university scholars and professors working closely with Government decision makers and practitioners in the communities who will all continuously assess through research and practice our social and ethical development as a nation. Again, all of this will enforce integrity in public life.

I would like to see the establishment of an active promotion and protection of the interest of groups that have historically been and who are still subject to discrimination, such as the elderly, individuals with disabilities and homosexuals in our society. Again, all of this will have a direct bearing on integrity in public life.

I would also like to see an establishment of a free but responsible media that will assist in the transformation of our nation. To accomplish all this, we must engage in transformational politics so that there will not be immediate reprisals when people speak out, that there will not be any secrecy and cover up in political parties and Government, and that there will be the politics of racial unity as opposed to that of racial divide and that there will be every effort to remove the maximum leader from our political landscape. All of this will enhance integrity in public life.

Again, we will need to engage in the transformation of our governmental ministries as we explore the principles of good governance. This should have been done over 40 years ago when we became independent. All of these systems should have changed from their colonial structures to embrace new models relevant to a young developing country. We did not. All of this has to take place.

I hope in future discussions in this honourable Senate that I will get the opportunity to discuss this in great detail going through ministry by ministry how these changes would have happened because currently with the existing practice this is how integrity in public life has been compromised.

At the community level, we should certainly instill in our young people a sense of responsibility. And, of course, there have been calls by others—more recently, the political leader of the COP—that persons who are to be appointed to the Integrity Commission and other high public offices, should be subjected to open public hearings and scrutiny by the people.

I find this rather interesting because it must be emphasized that in modern democracies that is happening already. In the United States, for instance, Supreme Court judges have to go through this process before they are appointed; this would allow the ordinary person to provide information, even blow the whistle on prospective public officials who are seeking office.

Of course, as we attempt to uphold integrity in public life, we have to set a high standard right here in this honourable House because whether we choose to or not, we are role models to our young people and the citizens of this country as a whole. So I would certainly want to see a greater sense of dialogue and conduct of our behaviour in the House in keeping with good role models as we ought to be.

Mr. Vice-President, in general, this Bill the Government has brought before us is not appropriate. The series of amendments have the effect of frustrating the purpose of the Act which is really to protect the State and the public. I do not see these proposed amendments benefiting the people and I think the system would become more cumbersome and untenable and as such, I cannot support it.

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I would like to take this opportunity to thank you, Mr. Vice-President, for giving me the opportunity to engage in this debate.

Thank you.

Mr. Vice-President: Before we proceed, I congratulate the Senator on her maiden speech.

Sen. Basharat Ali: Thank you, Mr. Vice-President. I would like to make a shorter contribution to the Integrity in Public Life (Amdt.) Bill.

Mr. Vice-President, just a week ago, on Monday, this Bill was passed in the other House with one amendment, and I think most of the media have said with amendments, but as far as I can see, it is one little amendment and I will refer to that. That was on Monday 04, and it was laid in the Senate on the following day, Tuesday.

I am sorry to say that the Government used its majority—arbitrarily my colleague says—to have this matter debated today. [*Interruption*]

Sen. Mark: We were entitled to 15 days.

Sen. B. Ali: Well, whatever it is, this is what happened. There was a vote on it. Let me for the record say the vote was 14/8 and my colleague, Sen. Prof. R. Deosaran and myself voted no with the six Members of the Opposition and our reason was that we would not have had enough time to give due consideration for this very heavy Bill.

Sen. Enill: Mr. Vice-President, I really want to deal with this issue. Is the Senator saying that the provision of the Standing Order which we agreed to is something we should not comply? Because I am getting the distinct impression that simply because the vote did not go his way, he has an objection to it and I take strong objection to that.

The Government came to the House and used the Standing Order as we do on every occasion on the basis of our agenda. That is our right.

Sen. Prof. Deosaran: I think you are right, and I will accede to that, but what we were appealing for was some courtesy behind the President's Chair, as it were, to let us know what your intention was so we could have perhaps given you the benefit of our advice, and that being missed, we thought you used the rules a little too heavily on that matter although you are right.

Sen. Enill: Mr. Vice-President, the Hansard will indicate that in recognition of that, we on this side offered an apology in that respect and it worries me when in those circumstances the impression is being created that we have done something in a particular way.

Sen. B. Ali: Mr. Vice-President, I will continue but I do not necessarily agree with the Leader of Government Business because I was looking at that debate on Monday evening in the other place and the only reason it ended as quickly as it did was because some of the Opposition speakers were not there and the debate was wrapped up.

Mr. Vice-President: Senator, I think you made your point and let us move on. I do not think you want to debate that point now, we are debating the Integrity Bill.

Sen. B. Ali: Thank you, Mr. Vice-President, but all I wanted to say is that it was quite possible if that debate had gone the way it should, it would not have been laid in this House on Tuesday. That is all I am saying, and so, an item which we did not have on our Order Paper turned up for us to debate.

Mr. Vice-President, you all must understand that this Independent Bench in particular has no assistance. We do not even have a Research Assistant in the Parliament who can help us in this matter. When I have to do anything I do it on my own, so if I have allocated my time in one way, then I have to reorganize it.

That is why I wanted to say that so far since I have been a Senator I have always met my deadline of May 31 in submission of my return, but this year if I do not or I cannot, it will be because of the fact that within this last week I have been working on the Bill and it is not an easy Bill even for a legal person. That is all I am trying to say. To me, it was almost unfair that it was thrust upon us, so when I do not complete my Integrity Commission return for May 31, which happens to be a Sunday and June 01 happens to be my birthday so if I do not submit it by then, then I will blame the Government.

Mr. Vice-President, having said that, I did find it most interesting that this Bill which is very complicated came here with almost perfect production. I was going to congratulate the drafting department, the CPC and company, because the only amendment I saw—and I hope I am right—was one removal of one little subsection because it was a tidying up, that matter was covered already in another part relating to the question of the consecutive absences without permission by a Commission member meant that he had to vacate his seat.

3.30 p.m.

That amendment was already there; it was never removed. That was the only amendment to the Bill. They removed that (e), I think it was. I know what it is, but it was covered already. So I was very surprised that not a single other amendment was here and I wondered, did this Bill not go to committee? If it

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went to committee, you mean that it was so perfect that not even one little amendment by the Opposition was tabled or by any side? I do not know. We had just one amendment and the Bill we have here, really, before us was an old Bill which was meant to come to the Senate in the first instance, because if you look at the final page of this it says: “Passed in the Senate this day” and “Passed in the House of Representatives this day”.

So this document that we had was, in fact, the only document available. Evidently, it should have come to this Senate before it went to the other place. So we have just that little amendment and I question whether I am not supposed to question what happens there, but in the committee stage there were no amendments? It was most surprising. If there were, they did not come to us and we would not have taken it into account, apart from that one little one. I know you know which one it is you had in the amendment.

So I would like to know what happened in committee. Is there anything that happened in committee that we should know about? Was it just plain sailing through committee? Or is it that the Opposition did not take part at the committee stage; in which case you just went through? [*Interruption*] That is how we do it sometimes, I understand.

Mr. Vice-President, I am not digressing on this one here, but I want to say that I have been a person in public life well before any integrity legislation came into effect. From 1974 to 1983 I was a member of the board of the Trinidad and Tobago Industrial Development Corporation, which was a statutory corporation entrusted with the whole development of this nation in terms of marketing and all that goes with it. That was a very important part of the structure, the Industrial Development Corporation in charge of or responsible for promoting industrial estates; promoting industries as a whole, giving concessions. So there was an area where one could easily have been involved in all kinds of things at high level and low level.

I served in pretty much all the committees on that. I served on the appraisal committee where the concessions were examined. Applications were made for all the manufacturing projects, et cetera, and it did take quite a lot of time, because being a technical person—I had to say that I was appointed to the Industrial Development Corporation under statute because I was an engineer. The statute required an engineer to be appointed and that is how I was appointed. I was approached by the then deputy chairman and asked and I accepted. I had only been in the government service a few months, in fact, when all of this happened.

My second spell as a person in public office would have been from 1975 to 1987; that is 12 years, as a director of the National Gas Company of Trinidad and Tobago. August 1975 was when that organization was born and I was made a director from that day and remained on that board until March 1987. Do you know why I was no longer a director? Politics. NAR government came into power and they asked that all members of state enterprises; all directors must resign. There it is; we all resigned. I said I was willing to serve again and they sent me a nice “thank you” letter and that was it.

That is how things operated then. Everybody knows what the National Gas Company is, but they do not know that in that period, 1975, from its birth to those early years, the directors of that company were the ones who did a lot of the executive functions, and I have to say that part of me still remains in that organization. Why I am saying all of this, you will hear about it because there is the whole question of how clean and clear all these companies were.

Finally, I also served under the NAR government because I was in another project; I was a director of the National Project Development Services Limited. That is a little subsidiary of the National Energy Corporation where I was then acting CEO, and they were responsible for high density housing—that subsidiary.

When the NAR government came into power they said, well, our NHA will handle it and then they looked at it and said: “No, we cannot handle it”, and they asked us to do it. I was there as the acting CEO and in charge of that project. It was rebuilding those estates. I am sure the Minister in the Office of the Prime Minister knows about it: Powder Magazine I and II; Embacadere in San Fernando. More than that, it was a small group of people who did the work. Included among those was a certain young engineer called Prakash Saith. I was his protector against some of the board members of the NAR. The Minister was someone by the name of Pam Nicholson, the Housing Minister, and I had a good relationship.

So this is where I learnt a lot about what government was about; what parties were about and what all the matters relating to membership through organizations as political organizations, meant. So that is the background I have. I went very naïve. I did not know that there were a lot of appointments made by virtue of what party you belong to. I really did not know that, because I came from Shell in 1973 and in 1974 I was already among people who, I have to say that they always appeared to be clean and clear. But there was a little philosophy, certainly in the IDC, that it was not so wrong to take 10 per cent of the little jobs, in the award of industrial estates, for example; plots of land there. That was what we were dealing in, in industrial estates; in the small business sector; in the big projects; application for duty free concession and for tax holiday. That is what we dealt with.

The IDC, in fact, was the first one that dealt with the Fiscal Incentives Act which is still in force. The latest company that I know that received a big concession under that is Essar Steel. Essar Steel has had all the concessions given to them: duty free importation of all equipment; tax-free dividend transfers and a tax holiday of 10 years. Hon. Minister, do not shake your head. Go and look at the Government notices. That is what Essar (Caribbean) Steel Limited was given: 10 years, because they were a highly capital intensive industry. I know that because I operated within that while I was in the IDC; the Fiscal Incentives Act, 1979.

What I am trying to say is that there were always positions where public officers were exposed to temptation and were pressured sometimes, and pressured by all kinds of people. So this is why I have said all of this now. After that I had a little break as a person in public life until I came in June 2003 as a temporary Senator on a number of occasions—

Sen. Enill: What about AIC?

Sen. B. Ali: AIC is a private company. I was going to say that in that interim period I did not sit down and vegetate. I forgot to mention that I, in fact, retired before the age of 60 and I think that was the first time I knew of VSEP. I took a VSEP. As an acting CEO I made myself redundant in my substantive job of a director, engineering and research and I had a good case for that. I had been there acting CEO for two and a half years and nobody was in this position. Therefore, I applied for that position to be made vacant. My then chairman, Mr. Dodridge Alleyne—his board was saying: “That is a bright fella.” He said: “I always told you guys that he was a bright fella”. So I got \$100,000 tax free by that VSEP.

So as I say, in the interim I was not twiddling my thumbs; I went to do some work on my own company. I did some consultancy work too in some sectors, and I returned here in mid-2003 in a number of temporary appointments and then as a substantive Independent Senator in 2004 to present. I hope that I have made my contribution, in fact, during that period and all of this is an introduction to say that I have had a continuing concern on the issue of transparency, accountability and value for money and my record in debates so indicate.

3.45 p.m.

These are essentials from the point of view of integrity in any person and organization. There is not a time when I do not say something on this matter once I get the opportunity to do so. Almost every budget speech I did. I chose one budget contribution which I made in 2007. Allow me to read part of this because it is related to corruption and what I said then and continue to say. This was on

Monday, 16th October, 2006. I was speaking on the question of public sector procurement regime which was laid one year earlier in September 2005. I said this:

“Mr. Vice-President, I intended to make a statement about myself and my personal experience in the energy sector in the first boom. I have to contract it because my time is up. I found that apart from what we had then, I see a parallel in this period. Apart from the inflation of costs...there was a lot of interference then, but not by the people you expected to lobby.”

Let me pause here to explain. People from outside who would come to visit you in your office—I was doing methanol and urea projects; people would come to sit with you to see whether they can get favours in treatment for contracts. It made me very unhappy.

“There was collusion between contractors, but you could not do anything about it because you could not go back.”

That means that having got to that stage you could not go back to rebid, otherwise you would have been losing all that time. If you were doing projects like that which had a certain time line, if you did not complete in time you would have been in breach of marketing contract. You had to keep quiet and get it done.

“I urge that we get this system”— that was the procurement system—“in place as soon as possible...if you ask me whether there was corruption at that time I would say, undoubtedly. Some even said that I was corrupt, but I have to say that I left early, I came out with clean hands and I remain to this day, poor and civil.”

That is what I said on October 16, 2006. My final comment was:

“...I join with Transparency Trinidad Institute in asking...that we have this legislation enacted and proclaimed at the earliest opportunity.”

That was legislation we were talking about then. It was not integrity legislation. It was legislation to put in effect a White Paper on the public procurement processes. Today, we still have not done anything on this procurement regime. We keep hearing all kinds of things after the delaying of this. What has happened? There are problems. They say that state enterprises were not represented when the White Paper was released. That is nonsense. Who appointed this committee to do the White Paper? It was a well established committee. That White Paper of 2005 was accepted by everybody. You get

postponement because of that and hear about other matters. They said that the Regulator who was at the centre of that programme had too much power and so it went on. Even up to now we are still not there.

I keep saying that by the time we get procurement regimes in place we would have nothing to procure. This is a fact. Right now we do not have much to procure. I could tell you that. My hope is that a commission like the Uff Commission will throw some light on this history of government's tardiness in taking any action on the matter of legislation for procurement by state enterprises.

In that connection I am saddened by what I saw in today's newspaper that UDeCott filed an injunction for the stay of the commission of enquiry.

Mr. Vice-President: You have been speaking for about 25 minutes. So far I have not heard anything about the Bill. Could you please reach it as soon as possible?

Sen. B. Ali: Mr. Vice-President, this is what I am saying before I get to it. I am putting it into context. I know what I am going to say after that. I am saddened that we are spending good money to allow UDeCott to file an injunction to stay the commission of enquiry. That commission of enquiry was undertaken because this Bench and that Bench said that we did not want a joint select committee; we wanted a commission of enquiry. I am sure that the hon. Attorney General remembers when that matter went to the other place. I am sure she is one who made a long contribution on joint select committees, only at the end of which the Prime Minister got up and said that they would have a commission of enquiry. That is a fact. It is not that the PNM Government agreed to have this commission of enquiry. It was the pressure that was brought about. They wanted a joint select committee to handle this and we said no. This was not favourable.

When this comes around and a reputable group of people like this commission speaks, I am concerned.

Sen. Annisette-George: Thank you, Mr. Vice-President and hon. Senator. This is to correct something you said with respect to the application that is before the court. There has been no injunction filed to stop the commission of enquiry. An application has been made with respect to a ruling of the commission. That relates to whether the statements by attorneys in the commission are covered by privilege. An application for judicial review was filed yesterday. Leave was obtained yesterday. It was adjourned to today because the attorneys for the State have made the point that they do not want this application to delay the hearing. Hearing continued this morning on the substantive issue of the judicial review and it has been adjourned to tomorrow. There has been no injunction filed.

Sen. B. Ali: Thank you, Madam Attorney General, for what you have said. I was quoting from the *Newsday*. I have not read anything else. Maybe they do not understand it. They said that they were granted an ex parte injunction.

Sen. Annisette-George: This is precisely the point when we talk about these freedoms. You may have read something in the press, I have not read the article, but if what you are quoting is in fact what you have read, all I have done is correct it. I know that maybe, when we were growing up the newspaper was something that we read to learn and be educated. I made the point and I believe it was here, about presently and at present.

Sen. B. Ali: Thank you, Madam Attorney General. I picked it up this morning. It is the only thing that I have read. I was there yesterday while I was relaxing a bit. For whatever it is, this is Mr. Badoo. He is not loved by certain Members. I know that yesterday the commission of enquiry stopped rather suddenly. I was there. I was relaxing after chewing over all these matters that we have for today and suddenly they stopped about 3 o'clock. I knew that something was happening. I am hoping that this is not a big keep-back. When they bring all the big guns on UDeCott's side from Mr. Goddard and Mr. Solomon—I think your name is mentioned too. "Isn't it?"

Sen. Annisette-George: I am not a big gun.

Sen. B. Ali: I did not read the whole thing.

Sen. Annisette-George: You are reading the wrong newspaper.

Sen. B. Ali: I read all three newspapers. In each day I read three newspapers. Once upon a time they used to say that this was PNM newspaper. They used to say that our friend Howard Chin Lee had big shares in it. You see the loyalty changes. I do not associate any newspapers with any party. I read them all and try to digest what I get out of it.

Sen. Annisette-George: Senator 29 was a PNM.

Sen. B. Ali: I hope that they will allow this commission of enquiry to do its part and address the issue I am talking about. I am concerned about all these matters relating to corruption. I am happy that while we talk about all the positive economic indicators, the corruption index—[*Interruption*] Give me a chance otherwise we will be wondering whether you were speaking or I.

I understand that the corruption perception index has gone from 43 in the ranking with 4.6 in 2003 to 3.6 in 2008 when we were ranked 72. Evidently, we seem to be going down and down. In 2006 and 2007 the ranking was higher,

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meaning worse. The perception of corruption is based on the fact that the system is not transparent. That is why nobody believes. I am sure that when the 2009 index comes it would be up in that area. The hon. Attorney General was talking about all these countries, including African countries. Look at their position in this index. St. Lucia is high and Barbados is good in ranking in the first 10 or 20 years. Many of these little African countries, where do you see them? All are at the bottom of the index. I have them here. Do you want me to read them out?

Let me get to the Bill. [*Laughter*] I will get to the Bill having given the background of why I am so skeptical. I have worked in the civil service as an officer at a national energy corporation which was supposed to be the holding company for the energy sector but it became the subsidiary to the National Gas Company. That is a different matter. All these things I know. When I say that I know there is corruption, if someone gets me really annoyed I would say where it is. If anybody challenges me I would say where the corruption was in that first period.

Unfortunately, I had to be party and sit there and just get sick to know that this was happening in my country. I am telling you as it is. There are ministers who got into trouble because of it. I will not call their names. Nobody can deny it. The day someone denies it and comes to me and tells me that I am lying, I would tell them which project had corruption. That is all related to this. At that time nobody had to fill out forms. From ministers right down, they did not have to fill out these returns.

Safety and this matter are two matters I spend my life trying to ensure that they are correct. Safety, because I have seen people die in the work environment and this matter of corruption because I have seen it happen. Somebody from one of the state companies said that I was corrupt before I left the business. One of these days I will say who that person is and the pretence that that person has undertaken to say that her name is there. She is always in anti-corruption and everything else. That is another matter. One of these days I will say it when I write my memoirs. I will be 76 years.

Mr. Vice-President: Get to the Bill.

Sen. B. Ali: Yes, I am getting to the Bill. That is associated with the Bill, integrity in public life. Nobody puts a rein on anybody. Why everybody tells me that I am being reined in? Because I have strong conviction on this matter. I will say outright that it would appear to me that the Bill before us will do little to promote the objective of the Act as it stands. It would be a very serious deterrent to prospective complainants and will serve to put the person of interest in a position which effectively stifles investigation.

4.00 p.m.

I would not go into it in any detail, everybody has talked about it. I have two other matters, which I want to raise in case the Bill goes to a committee. They relate to clause 4, which relates to section 8(2)(a). I was questioning whether a member's appointment can be revoked if he is found to be of unsound mind. How do you find a person to be of unsound mind? Are you going grab him and send him to a psychiatrist? I am asking. I do not know. I am not a lawyer. It does not say of unsound mind, it says "found to be of unsound mind." How does the Commission or office say he is found to be of unsound mind? I am not saying anything. I am asking whether he will be forced to undergo a psychiatric analysis to determine whether he is of sound mind or not. I did not use the word "unsound", it is you who put it there. You did not say if he is of unsound mind, but if he is "found to be of unsound mind". All I am seeking is an explanation of what being of unsound mind means. If you can explain it to me in due course, I will be happy.

The second one which troubles me is clause 6(a) and (b). The first amendment relates to not having to report any \$10,000 for income, assets and liabilities. Looking through—I walked with my blank form which has no numbers—I am wondering how this works. Is that \$10,000 one line item, a series of line items or is it accumulative? Income is from property. There is interest income and dividend income. If, for example, one were to make a deposit and they say, okay the insurance is now \$75,000, and they take about 10 of those, that would be 10 multiplied by 75, which is a \$750,000 investment. The interest on each of those would not be \$10,000. Is it that you do not have to declare them? That is why I am asking. I am not saying so. This is where I saw something. Maybe the drafting needs to be tightened.

If the Bill is passed and assented to before May 31, that is what I would have to follow. Do you realize that? If it is passed today, May 12, 2009, we have until May 31, 2009 to submit this form. It will kick in and all these numbers—you would be exempted from reporting anything less than \$10,000. Tell me how it is, otherwise I see a problem there. It would be similar. I am sure the Minister in the Office of the Prime Minister would be aware of contract splitting. It would be like that. You take a series of contracts with one big contract—you know that you cannot do it that way—and split it up into bits. You know what your limit is, so that you do not have to go through the whole process and give the contract otherwise. I am alerting you to the fact that the clause needs serious consideration and should be corrected if necessary.

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As regards the Schedule for the submission of the return, it is now May 31. That is the date by statute. You can get up to six months extension. This Bill is proposing an amendment of 12 months. Let me show you what can be a problem there. Let us take 2008, where the returns are to be submitted by May 31, 2009. You are not going to be ready. I would not be ready. I would not ask for six months. Someone might say that you allowed six months extension. The new revised date for that is November 30, 2009. That is okay. If you go to 12 months, what happens? The latest revised date is May 31, 2010. That is the day on which you have to submit—I know the accountants look from one year to another for continuity. I certainly do, when I am doing my return from one year to the other. If by that date I have not submitted a return to the Integrity Commission, what am I going to do? You have, on the same day, two returns due. I think that is not correct. I do not see the rationale for doing it. You are only making complications. A person may have two returns. I think that will confuse the Commission.

Please, if the Bill has to go through, have a look at it. It does not make sense to me. The super accountant there and super Mariano—excuse me for speaking about the two super Ministers there—this one and that one there, say whether this is good accounting practice or not to have this happening.

When I get to Part V, I get into really serious trouble. This is where I take serious issue, because you are saying that there is a concept of complaints other than in writing to start with. Do we not use Crime Stoppers: 800 TIPS? Is that not endorsed by the Commissioner of Police and the Minister of National Security? Suddenly you cannot give an anonymous verbal tip to anybody in the Integrity Commission. Is it because in the other place there are small fries and in the other place big fish? I am saying it as it is. You are protecting the big fish and the small fry can still go through the process and they get tips.

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. Prof. R. Deosaran*]

Question put and agreed to.

Sen. B. Ali: Thank you very much to my colleagues and to you, notwithstanding all the stoppages you have charged me with, with respect to irrelevance, almost.

It is now making that a restrictive basis for any kind of reporting. Sometimes I wonder, when we look at the Prevention of Corruption Act, whether the small fish

like the policeman or people in the licensing department can be caught and charged in the normal process, whereas the big fish, once again, has to go through this process. I am talking about the Prevention of Corruption Act, which refers to people in public office. There is the question of the complainant having to swear to this statutory declaration. I believe it has been said by a number of people that it is a most intimidating process for anybody.

Imagine some person having a genuine complaint to make and thinks that something is happening and the first thing he sees is that he has to do a statutory declaration, which threatens that it is an offence for any person who files a false complaint with all the details of what is going to happen. Just reading that for the layman is frightening. You are discouraging people from making complaints. I think that is very, very unfortunate. Similarly, when the person makes the complaint, he has to provide documentary evidence and sworn statements. What is happening here? It is like going to a police station or worse than that. Once again, nobody will want to do that.

The final part is if you find anything wrong you then have to send all these documents to the person of interest in this case. That is the worst part of it. This person will then feel that he—notwithstanding all that is stated there about protection—would be threatened in his job, physically or even face the gun.

The final thing I found really odd is how you treat existing complaints. Once this Act kicks in, all those are withdrawn and you would have to file according to this procedure. If you do not do it within six months, the complaint disappears. He may have had it there for almost one year. He now has to go through the whole process and do all of this. He will have to think hard to do that. I think most of them would fade away.

This is a brief thing. I am looking at the resubmission and the rejection. I do not want to go into it, because my colleagues have said it very well. I think we have to congratulate Sen. Mark. He made one of his best contributions in the Senate. My colleague here, as usual in such matters, excels. I would not like to continue into all those little amendments. Those are the ones which I told them have not been, so I have brought them up.

Where do we go from here? We have two positions. My colleague, Sen. Prof. Deosaran, says to scrap the Bill. The question of a special majority came in, apart from that. Scrap the Bill is what my colleague said.

Hon. Senator: That is one alternative.

Sen. B. Ali: The other alternative is what Sen. Mark said. From the beginning I was saying that I am not going to support this Bill, even with the amendment, because the concept is what happens. I am not going to support this Bill. If my colleague whom I depend on in such matters to a large extent says scrap it, I will vote for it to be scrapped. Certainly, I do not intend to vote at the end of the day, whatever amendments are made in today's debate.

Thank you very much, Mr. Vice-President.

4.15 p.m

Sen. Dr. Adesh Nanan: Mr. Vice-President, I rise to make a contribution to the Integrity in Public Life (Amdt.) Bill, 2009. In the Attorney General's presentation, she gave us a chronological sequence in terms of this piece of legislation, and in so doing the Minister of Trade and Industry and Minister in the Ministry of Finance harped on the Republican Constitution. If you look at the chronological sequence given by the Attorney General, you are going to see that from 1956 to 1976—20 years of PNM's rule—nothing happened with respect to integrity. [*Desk thumping*]

When it was introduced in the Republican Constitution, the PNM had a chance to redeem themselves, and it took the NAR to bring the Prevention of Corruption Act. They did not do anything. [*Desk thumping*] So, for the Minister of Trade and Industry and Minister in the Ministry of Finance to beat his chest here this afternoon—

Sen. Browne: Yes, Sir.

Sen. Dr. A. Nanan:—about the Republican Constitution and that is the pillar, is totally unsatisfactory. When the PNM had the opportunity to make a difference in terms of integrity, nothing was done, and the sequence continued. From 1991—1995, nothing happened with respect to any amendments to the Act to make it useable.

I am surprised that the Attorney General—it probably slipped me—did not mention that it was the UNC that brought this particular legislation into being. [*Interruption*] I am sure that if that was the position—[*Interruption*]—with respect to Mr. Basdeo Panday, you would not have come here with an amendment like this today. I will show in my contribution what is happening.

It was the UNC administration that respected integrity, and that is why this particular piece of legislation came into being in 2000. Again, when the PNM came into Government, the forms were already accompanying the Act, and all

they had to do was to bring the forms to Parliament. Again, you had to be kicking and screaming to get those forms in Parliament for that particular piece of legislation to be utilized. It is no surprise that we have an amendment before the Senate today that is taking away the power of the Integrity Commission. That is the mantra of the PNM. We have seen this from 1956 to present.

What is surprising is that the Minister of Trade and Industry and Minister in the Ministry of Finance, in replying to Sen. Mark—with respect to the affidavit—painted the picture that Sen. Mark was wrong, but that is quite untrue. Sen. Mark was on the mark here this afternoon. [*Desk thumping and laughter*] This is totally unacceptable. [*Laughter*] I am going to demonstrate this afternoon why Sen. Mark's contribution was exactly on the mark.

The Minister of Trade and Industry and Minister in the Ministry of Finance made reference to it in the debate. I am not going to repeat what he said, but I will show in a chronological sequence of events what happened. It is quite clear that it is an affidavit. There was discussion taking place. The country needs to know that there was a prima facie case, and that is why the Integrity Commission intervened. The legal advice, with respect to the Maha Sabha licence, was to go ahead with the investigation. That is why discrimination was part of the Senator's contribution. It is because of that situation, and based on the legal advice from the commission, they sought legal advice that they should proceed. That was no small investigation. This is a major investigation that is taking place. This is no small matter. The commission went so far as to have a forensic accounting firm, Intellisys Corporation, which is based in Canada, and the agent was Mr. Sandy Boucher. Correspondence was taking place between Martin Farrell, the registrar and he was the liaison between the claimants, Mr. X and Mr. Y, the persons who are involved. The lawyers are also involved. This is no small matter that is before the Integrity Commission. This is a major investigation that is ongoing. We have to ask serious questions with respect to this investigation.

Mr. Vice-President: This matter is before the court.

Sen. Mark: No. These are public documents. An affidavit is a public document.

Mr. Vice-President: It does not matter. The matter is before the court. [*Interruption*]

Sen. Mark: You did not stop him. You have allowed the Attorney General to influence you.

Mr. Vice-President: This matter is before the court and, as such, no reference should be made to it.

Sen. Mark: You are influencing the decision of the Vice-President. That is corruption.

Sen. Dr. A. Nanan: Mr. Vice-President, I know you want to muzzle me this afternoon, but it is very difficult to muzzle me when the facts are quite clear. I can show hypothetically in terms of an investigation, and I do not have to refer to an affidavit.

Mr. Vice-President: Senator, your statement that I am trying to muzzle you, could you please withdraw it?

Sen. Dr. A. Nanan: May I refer to the Attorney General, and say that the Attorney General is trying to muzzle me?

Sen. Mark: You went to the Vice-President to influence him.

Sen. Dr. A. Nanan: It appears that the Attorney General was trying to muzzle me.

Sen. Mark: You must never listen to—

Mr. Vice-President: Senator, I am giving you a third warning.

Sen. Mark: That is no problem.

Mr. Vice-President: I have made a ruling on this matter and I have asked you to withdraw the statement that the Vice-President of the Senate is trying to muzzle you.

Sen. Dr. A. Nanan: I withdraw that statement, because *Hansard* will show if I said it or not. It must be on record that this particular matter is under investigation by the Integrity Commission.

Sen. Mark: Why are you afraid? Why did you go to the Vice-President to mamaguy him?

Sen. Dr. A. Nanan: I do not know why this particular situation was not brought into the forefront. Whether it is an affidavit or the function of the Integrity Commission, do you know what is surprising? When this particular piece of legislation was introduced in the Parliament there were no commissioners. It is ironical that it is being introduced in the Senate and there are no commissioners. We have to ask the question: Was the intention of the Government to stall this process? Was this a plan from the beginning?

[*Sen. Annisette-George on her feet*]

Sen. Mark: He asked a question, so what are you going to say?

Sen. Dr. A. Nanan: I did not say anything about the President.

Sen. Annisette-George: I did not say that you said anything about the President.

Sen. Dr. A. Nanan: What is the Standing Order?

Sen. Annisette-George: Mr. Vice-President, Standing Order 35(5).

Sen. Mark: He asked a question. What are you so jittery about? [*Laughter*]

Sen. Dr. A. Nanan: You know, I do not understand, but I am going to continue. I will continue, because I do not want to lose my six minutes before the tea break since I want to get the point across. Was it that kind of situation developing and it was getting to the point where the Government was being threatened? Were certain persons in the Government being threatened and they had to go to the Attorney General and say, "Please, help us. Get somebody to draft legislation to help us", and that is what they came up with? They did not realize that when they were drafting this Bill in haste that a section in the Constitution—

Sen. Annisette-George: Mr. Vice-President, I am referring to Standing Order 35(5) which says that no Senator shall impute improper motives to any Member of either Chamber.

Mr. Vice-President: Senator, I do agree that you are bordering on improper motives, so you could rephrase your statement.

Sen. Mark: All the Attorney General could do is raise Standing Orders. The Senator has no other role in this Parliament except to raise Standing Orders. Waste of time! They should fire you!

Sen. Dr. A. Nanan: There seems to be a diabolical plan that is unfolding before the eyes of the public, and it is unfolding day by day. [*Desk thumping*] It does not matter what the Government says this afternoon, but it is going to be revealed. It is going to show clearly that the Government is under threat. The Government might even fall under this particular situation. [*Desk thumping*] That is why the Minister of Trade and Industry and Minister in the Ministry of Finance is so nervous. The Minister in the Office of the Prime Minister is nervous. The Attorney General is totally—

Sen. Mark: Jittery!

Sen. Dr. A. Nanan: I do not want to use that word. The Attorney General is totally afraid. I am so shocked to see the Attorney General, who is normally cool

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and calm, being so terrified by me. [*Desk thumping*] I am just the messenger. [*Interruption*] This is surprising. What is really surprising to me is that if the Attorney General—I do not want to impute improper motives—did write her speech, as she said, I would have thought that the Attorney General would have known the difference between a clause and a section when dealing with this particular Bill. That is why I made the point that I do not think that the Attorney General wrote her speech; I think somebody else wrote it for her.

Mr. Vice-President, I will continue with the diabolical plan, because it is very important. The poor President has been cornered because it is the—[*Interruption*]

Mr. Vice-President: Standing Order 35(7). I am warning all Senators that they should study that Standing Order when they are making their contributions.

Sen. Mark: Sen. Mariano Browne, study that.

Sen. Dr. A. Nanan: I will continue after the tea break, but I just want to make the point that this diabolical plan has been revealed. I would say that certain Members and certain high officials in this society are under threat. They are under threat and the Government is under threat. They are tottering at their heels. I am afraid that they would be toppled by this particular situation and it is a high possibility that can happen. If this particular piece of legislation is rejected this afternoon something else is going to have to be brought in to save the particular persons involved, and we will have to rush through another piece of legislation to see what can be done.

The point I was making when I was interrupted is that with respect to this particular situation, when somebody went begging and pleading for help, they did not realize that particular section in the Constitution called for a two-thirds majority. They said that they were going to bring this measure and pass it with a simple majority, but Sen. Mark revealed today that you need that constitutional majority for this particular piece of legislation.

Mr. Vice-President: Senators, it is now 4.30 p.m. and we will take the tea break and resume at 5 o'clock, where I hope the conduct of Senators in the afternoon session will be much better.

4.30 p.m.: *Sitting suspended.*

5.00 p.m. *Sitting resumed.*

Sen. Dr. A. Nanan: Thank you, Mr. Vice-President. I just want to make a few observations on the final report for the mechanism to follow up on the implementation of the Inter-American Convention Against Corruption. I want to make reference to the systems for protecting public servants and private citizens

who in good faith report acts of corruption—that is Article III(8) of the convention—and the Republic of Trinidad and Tobago does not have in place measures intended to establish, maintain and strengthen systems for protecting public servants and private citizens who in good faith report acts of corruption.

In light of the comments made, the committee suggests that the Republic of Trinidad and Tobago considers the following recommendation: Adopt a comprehensive legal and regulatory framework—and I want to stress comprehensive—that provides protection for public servants and private citizens who in good faith report acts of corruption, including protection of their identities in accordance with the Constitution and its basic principles of its domestic legal system.

In meeting this recommendation, the Republic of Trinidad and Tobago could take into account the following measures:

- a) protection for persons who report acts of corruption subject to investigation in administrative or judicial proceedings;
- b) measures to protect not only the physical integrity of whistle-blowers—as we have heard a lot of—and their families but also to provide protection in the workplace especially when the person is a public official and the acts of corruption involve his superior or co-workers; and
- c) mechanisms for reporting such as anonymous reporting or protection of identity reporting that guarantee the personal security and the confidentiality of the identity of public servants and private citizens who in good faith report acts of corruption.

In some cases we are dealing with millions of dollars and in other cases we are dealing with billions of dollars and we have heard in this debate of \$5,000 for a hit man to be hired. So, we have to be extremely careful in our society. The perception of corruption is a very important indicator. If you compare from 1995 to 2001 and from 2001 to present you would see that because of the efforts made by the United National Congress administration that we were on the way up in terms of cleaning up our act. What is interesting, as I open in terms of chronological sequence is not that there were not reports before the PNM administration at the time from 1956 to 1976 and beyond; there were several reports. We had the Tesoro scandal, we had the Caroni Racing Complex, the Lock Joint, we had the Mount Hope situation, the Hall of Justice, there are myriad examples. *[Interruption]* Of course, Project Pride, we had all of those things in the history and we had reports that were produced but the Government never acted on these reports.

The PNM administration at the time swept everything under the carpet as they continue to do. That is why when the convention was signed by the UNC in 1998 it sent a signal, and I think that actual signing of the convention sent a signal to the rest of the OAS to be precise that we are concerned about corruption and we are taking steps to deal with corruption. That is why in the corruption index, we were located in that position. But now if you look at the trend from then, we have a situation where there has been no amendment to the legislation from 2001. The index continues to decline because the forms were never brought to Parliament, so if anybody is looking—an observer—would say that that country is not concerned about corruption, so we kept falling and it is only when the Opposition forced the Government to bring the forms before the Parliament then there was a certain movement upwards in terms of the index. But again, because of the stagnation period we see where we are falling again and if we compare ourselves to even Barbados our neighbour and we compare Barbados, you would see Barbados way ahead of Trinidad and Tobago in terms of where it is located in that particular index.

So, that is one area in terms of that perception of corruption and it is important. We have seen in that particular matter with the Maha Sabha licence the complaint was made in 2006 and 2009 that investigation is still ongoing and certain questions must be raised in terms of the time of that investigation, that period whereby if you compare it with the other Basdeo Panday situation, he was charged in a few weeks. So, you have one law for Mr. B. Panday and one law for high Government officials, which should never be and we are dealing with integrity. So, questions must be asked in that particular situation when we are dealing with the convention.

In fact, in terms of the legislation that was before the Parliament from 1995 to 2001, if you looked at the legislation coming to the Parliament you would see a trend in terms of the various pieces of legislation dealing with corruption from all different angles. All different angles they were being tackled with respect to corruption at different levels. We have a situation now when we look at the commission of enquiry—do you know what is very interesting, Mr. Vice-President? We had a Commission of Enquiry into the Biche High School and that particular Commission of Enquiry into the Biche High School, the findings, up to today that particular school has not been opened, the school is still standing and millions of dollars were spent in that Commission of Enquiry and the person who was heading that Commission of Enquiry is now heading another—

Sen. Mark: Yes, the Children's Authority.

Sen. Dr. A. Nanan: The Children’s Authority. So, in terms of integrity we have to ask several questions, and what is interesting is that when I was looking through the Mississippi Ethics Committee, the selection is really based on integrity and moral values and questions are going to be raised. What is interesting is that with this particular situation with the Commissioners we must congratulate the public, because hypothetically, it could have been a *fait accompli* with respect to the Commissioners, but it was because pressure was brought against these particular chosen ones, that is why we had that situation with so many resignations. I am not saying that I—there were several groups that made comments and pressure was brought to the forefront to deal with that particular matter and these Commissioners, and you had massive resignations. So, what we are saying is thanks to the vigilance of the public—

Sen. Annisette-George: Would you give way? Through you, Mr. Vice-President, is the Senator saying that the public pressure actually drove the Commissioners out of office? Is that what you are saying?

Sen. Dr. A. Nanan: Mr. Vice-President, I am not saying they were driven out of office. We do not know that if there was not this public outcry from all different areas with all different strata of the society that the Commissioners might have remained. We do not know. At least the vigilance of the public was evident in this particular matter. That is the point I am making. I am not saying that caused them to resign, but that is why we have moved to a certain level where what was tolerated in the past under the PNM administration will not be tolerated in this particular era. [*Desk thumping*]

Sen. Annisette-George: Under this present administration.

Sen. Dr. A. Nanan: Under this PNM administration, because I am sure what happened in the past under the last PNM administration and what is happening now is a mirror image. It is just two different time zones, because we are seeing a commission of enquiry that has—according to the Attorney General—not been stopped, but alarm bells were raised when these headlines hit the newspapers this morning. You know headlines is what sells, so the person who is reading the newspaper this morning would say—everybody you meet on the street would say, “boy, they stop the commission”.

People's psyche is so oriented now that whatever that first headline is, that is the impact. Whatever comes after, because people are really getting in tune with this particular—but that is not the point; the point is not the brainwashing of the public with respect to headlines. The point is the lack of confidence in the PNM administration to govern. [*Interruption*] That is the point. The public has lost

confidence in the PNM administration in terms of governance at all levels. Whenever we hear a statement made by the Minister with respect to the economy we have no confidence. *[Interruption]* We have no confidence on that statement. We hear from time to time—and we are not questioning the integrity of the individual in terms of statements made, but when we look at the scenario in terms of the events that are unfolding when Ministers make statements and say, we are fine, we are doing well, it is a blip, everything will be over in a flash. *[Interruption]* Please do not give that kind of—

Sen. Mark: Look at the Economic Intelligence Unit Report.

Sen. Dr. A. Nanan:—image. Do you know what is surprising? What is surprising in this entire situation with global economic recession is that China is growing. Why is China growing? China was able to save and we had the opportunity to do so but we never did. I am not blaming the Minister of Trade and Industry with respect to that particular situation. He is new in terms of this particular administration, but if you look at the historic events, we could have saved much more and we would not be in a position where if tomorrow our price of oil goes down again—because we see it \$48 one day, \$53, \$58 and then back to \$50. I am not a preacher doom and gloom. I would be very happy if oil could go back over \$70 a barrel because I recognized—*[Inaudible]*

Yes, because in terms of infrastructure the PNM administration—I do not know what has happened in terms of the billions that have been given to the Government by the Parliament in terms of parliamentary appropriation, but in terms of the infrastructure, what we are seeing is that it has not been growing as it should have been in terms of our oil boom. In that context, with respect to that particular situation, confidence and governance, it comes back to integrity. It all comes back to this particular situation of integrity and when the man on the street is asking you and you do this spot interview, a number of persons are saying—in fact, some of them even called for the Prime Minister to resign, because they have lost confidence in the high ranking officials of the Government.

They have lost that confidence because of the situation that we are in now. Do you know something, Mr. Vice-President? In terms of integrity, if we were isolated from the rest of the world it would be a situation where we would believe everything that the Government is telling us.

Hon. Senator: That is true.

Sen. Dr. A. Nanan: But when you look at the economic indicators and you are able to switch on to CNN, BBC and keep following what is happening, imagine you are talking about integrity and you have 500,000 people in the United States

losing their jobs every month. They are cutting: 500,000 people are going to lose their jobs and they are looking now in terms of every month to reduce 500,000. That is the kind of figures we are seeing coming from the United States.

5.15 p.m.

So when a Minister of Finance in terms of integrity, stands up and says that would not affect us and people are being sent home— In fact, in terms of integrity and the situation with respect to a company that is now going to cut jobs across the board, those large conglomerates that have franchises in various parts of the world, when they are cutting, they cut across the board, so we must be affected. So it is that particular situation which governs a high-ranking official who is speaking or the Government as a whole should level with the population. Level with the population, they will accept it. There is no need to have this masquerade and smokescreen that we are doing well, that we are going to have more exploration, then suddenly, Essar Steel pulls out. The next thing you know, the aluminium smelter—*[Interruption]*

Sen. George: Mr. Vice-President, on a point of order. Standing Order 35(1) says, "Relevance". I recognize he is trying to make the connection between whatever else is going on in the world, to some relevance of something else that is happening here. Mr. Vice-President, he is not making any reference to anything that is going on here. What we are here to talk about is the amendments that are before us and he has been speaking for sometime without any reference to this document that is before us.

Mr. Vice-President: I will give the Senator a little more time before he makes some connection with the Bill. *[Desk thumping]*

Sen. Dr. A. Nanan: Thank you, Mr. Vice-President. The key word in the Bill is integrity. It can be linked, it can be defined, but it will always go back to the situation of confidence and that is what I am showing with respect to this particular linkage. But if the Member wants me to go back to the local situation, I will do so. Because it is important when we are dealing with the particular piece of legislation, we have to show in terms of its history and also who is piloting the legislation. I do not mean you, Attorney General. I mean the Government as a whole and that is why I made the point of confidence with respect to the Government.

There are certain clauses and subclauses in this particular Bill that jump out at you when you look in terms of the amendments and that particular situation is clause 6.

Section 11 of the Act is amended by deleting the word "six" and substituting the word "twelve". It goes back to the point that I was making with respect to the time frame for the Integrity Commission and the time they are giving. The point was made and I want to emphasize that point. Sen. Dr. Gopaul-Mc Nicol made the point with respect to the time frame from six to 12, and if you give more time and they are not complied before, will they comply over that period. It has to be linked with a time frame and also legislation was called for in terms of not only gazetting, but also with respect to dealing with persons who have not filed.

Do you know what is interesting, Mr. Vice-President? In filing your declaration of assets, whether it is form A or form B, it gives one an opportunity to assess his profit and his accounts. In fact if you are filing for yourself, not if you have an accountant doing it for you, but if you are actually filing your declaration forms according to the Act—and of course, we have programmes that will give you information in terms of how to fill out these forms—you are very, very afraid. You are very afraid in terms of if you put something there, you have to always question whether this is supposed to be here or—[*Interruption*]

Sen. Annisette-George: You are talking—[*Inaudible*]

Sen. Dr. A. Nanan: What is that?

Sen. Annisette-George: [*Inaudible*]

Sen. Dr. A. Nanan: No, no, I am talking about the forms—you have to ask yourself certain questions, am I putting this in the right position? Am I going to be liable here?

Mr. Vice-President, you will think that you have filled out this form completely and suddenly you get a letter from the Integrity Commission by registered mail at your home, and from the time you see that letter you are afraid. Because once you open that, there is some requirement they need and within 14 days you have to give a reply. In fact, you cannot call with a reply, you have to have it in writing and you have to respond within that time frame. I am not supporting the "twelve" with respect to the "six". I am just showing you in terms of legislation for integrity, how important it is to get it right. I agree that some public officials would be terrified with respect to this particular situation and filling out these forms, but you really have nothing to hide. You are in public life. You were told that if you get into public life, you will have to fill out these declaration forms. And if you are filling out these declaration forms, you may have difficulty in terms of how you interpret a company under this particular form, where are you going to place it.

So it is no excuse for any high-ranking official to not fill out this form. That is no excuse for any high-ranking official not to fill out this form. And what is surprising is that the Integrity Commission has not brought to book the outstanding numbers that have not complied. Hundreds. We are not talking about one or two, the reports will show hundreds have not complied. How would this amendment before the Chamber today—and you are extending the time actually—deal with these people who are not complying? None! I am not saying to hold a big stick over—

In fact, some of these people might only be on a board for one day. They might only function for one day and they have to fill out a form. But they have been told that in advance and it has to be done. It is compliance and it had to do with integrity. So, with respect to this amendment, we cannot support this amendment with respect to extending the time frame. The other one that brings to mind early is the one dealing with the situation and I made reference to that in terms of the statutory declaration. Sen. Mark did not make any statement against the JPs, that the Minister of Trade and Industry made a big hoo-ha about and said that he attacked all the Justices of the Peace.

Hon. Member: Hoo-ha-ha!

Sen. Dr. A. Nanan: Whatever. [*Laughter*] The point is, he did not make that statement to have the wrath of the Justices of the Peace on him. [*Interruption*]

Sen. Browne: [*Inaudible*]

Sen. Dr. A. Nanan: No. In fact, Minister of Trade and Industry, it does not have to be the Justice of the Peace. The actual Clerk in that office who is typing up the particular statutory declaration can pass the information on. So you cannot make an assumption that what Sen. Mark said means that the Justice of the Peace is corrupt.

Sen. Browne: I will get *Hansard* for you.

Sen. Dr. A. Nanan: In terms of the accusation there, I just wanted to put that to rest, that particular area with respect to the Justice of the Peace. But going back to the statutory declaration and the report, the report talked about whistle-blowers—Mr. Vice-President, this Government in terms of their history of Witness Protection Programmes leaves a lot to be desired and if you look at the evidence, you have from time to time getting reports of how lackadaisical the programme is by the present administration—and in other jurisdictions people welcome whistle-blowers. In fact, a whole movie was made on a whistle-blower that had an impact to bring down an entire chemical plant and a chemical company.

Integrity in Public Life (Amdt.) Bill
[SEN. DR. NANAN]

Tuesday, May 12, 2009

So in terms of that situation of statutory declaration, we are against that. We are against that because we are closing or shutting out an avenue where the public can play a major role. I thought they would have welcomed something like that because it would be a watchdog over the public purse and in times of recession, we would need to look at all the areas of expenditure. I am surprised that the Attorney General would utilize the African countries in her contribution. St. Lucia you may be able to utilize, but in terms of the African countries and the history in African countries, I do not think that was appropriate for a defence.

Section 27 that was repealed, which is clause 11 also had some repercussions in terms of whether Sen. Mark said he was removed or there was a fee, the point is not that. This particular clause 11 gives an increase in terms of value, and we are saying and the explanation was put forward in terms of—

Clause 11(3) reads:

"Where a gift or personal benefit referred to in subsection (2) exceeds five thousand dollars in value or where the total value received directly or indirectly from one source..."

I think that is the main part here, from the one source, because you can have many sources and it could add up, but I am not making any amendments, I am just making an observation.

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.

5.30 p.m.

Sen. Dr. A. Nanan: Mr. Vice-President, you know when I read this amendment, I thought of Blackberries and Ipods, or Rolex watches in terms of gifts. So we have to be extremely careful in putting these provisions and giving these figures because \$1 is too much.

Mr. Vice-President, in Thailand, in terms of integrity, confidence and public confidence the culture is no corruption. I do not know how far they go in actually stamping out corruption, but the culture is that they do not take from what is the public's own; it is against their psyche to do that. Probably, we may have to go to different levels in terms of not utilizing Government's public funds to foster

personal gain, and probably it has to be instilled in terms of patriotism, because every dollar that has been moved away from a particular project causes a ripple effect, a negative for the entire country.

Mr. Vice-President, that is why when I was dealing with the Ambulance Bill and the report, it is in that context in terms of putting the health of the nation first that I did not put forward a minority report in moving forward. I think the Government should look at moving forward and not taking two steps backward in bringing forward legislation that will take us backward.

So shutting out whistle-blowers is one way, increasing the value is another, and of course, the situation with the format of restructuring that if there is a complaint before the Integrity Commission, it has to be reformatted and I am sure that is a negative, people would not want to go that way.

Do you know what is interesting, Mr. Vice-President, it was a statutory right that was removed when there was no Integrity Commission. It is a right of the public to complain, but to whom? That right has been taken away by the present administration. I just want to put that in before I move on to the other area in terms of the format.

We have to ask certain questions now of this particular section on Power of Investigation and in clause 33(2):

“The Commission shall—

- (a) notify a person against whom allegations of breach of this Act or allegations of an offence under the Prevention of Corruption Act have been made, of the fact of such allegations;
- (b) notify a person against whom a complaint has been made that he is the subject of a complaint;”

There is no time frame, in terms of how much time the Commission will take to notify the person.

What is also interesting, the person is the subject of the complaint and I guess by notifying him, the person will also be aware of the person who is making the complaint. So if you extrapolate on that particular clause and provision, again we have the person’s life may be in jeopardy, who is making the complaint with this provision.

We have in clause 34, “(a) is frivolous or vexatious;”

I do not know if hypothetically commissioners of a new Integrity Commission have been appointed will take one look at that situation with respect to the Maha

Sabha licence of 2006 and say that complaint is frivolous or vexatious. So let us say hypothetically that the people who are appointed to the Integrity Commission are for the Government, then they can decide that the matter that was before the Commission which had gone from 2006—2009 under serious investigation is now frivolous or vexatious.

I have to ask the Attorney General for clarification on that because how will they decide that a matter is frivolous or vexatious? What will be the benchmark for that criterion? Who will decide that? Will it be the Commissioners, or will they seek legal advice? We have to know in terms of matters before the Commission.

Suppose there are other matters we have not been aware of that they have been investigating—this one came to light because of that particular situation—and they decide all these matters are now frivolous and vexatious and they are in favour of the Government, so those matters are frivolous or vexatious and then decide that another matter dealing with the Opposition is not frivolous or vexatious and they will investigate and bring the full brunt of the law against these particular individuals.

Sen. Enill: Or vice versa.

Sen. Dr. A. Nanan: We need to know what benchmark. [*Interruption*] That was a hypothetical situation. You need to have evidence of probative value; that is another area that we need clarification also. In terms of the Evidence Act and what has to be brought forward to actually pursue the matter. I was making reference earlier to the Freedom of Information Act and its utilization. But the question is, can the information coming from the Freedom of Information Act be used as evidence? Can it be evidence of probative value?

For example, if I ask for information coming with respect to the Ambulance Authority that will be established and I get the information and I found out that something is taking place—but not really me—some other person, and they went as far as signing the statutory declaration, will this particular information coming from a ministry be evidence of probative value?

We need to know how the Integrity Commission will go forward in dealing with these complaints and how they will proceed. Who will they investigate? We have seen in the past the selection of complaints, there must be a standard or a benchmark, and in terms of benchmark legislation, Attorney General, you have lowered the bar if you are utilizing the St. Lucia model.

It must state in terms of that particular situation of investigation and also how long will this investigative period be. There must be a time frame; you cannot carry an investigation for years. Once you are under investigation, you must not get a certificate of compliance but what happens if five years pass and you are still under investigation, Attorney General, will your matter still be investigated after five years, or will it be thrown out? That is another matter that has to be considered in terms of time frames for investigations and the statute of limitation you are now putting in, in respect of five years.

The other matter is section 34A(1)(a), special powers of investigation. The investigating officer:

“(a) shall within fourteen days authorize...”

Where will the investigative officer come from, the Commission? What will be the powers of the investigating officer? You have:

“within fourteen days authorize an investigating officer to conduct an inquiry into any alleged breach or any alleged offence;”

What will be the nature of the enquiry? Because you are now going to have a situation where you will have to tell the person whom the complaint is made against and there will have to be lawyers involved. [*Interruption*] That is what happened with respect to the Maha Sabha situation. So you have lawyers involved and I want to know with respect to the enquiry. Are you saying there will be no change in the format that was taking place before in terms of investigative powers?

Sen. Annisette-George:—[*Inaudible*]

Sen. Dr. A. Nanan: But you have special powers of investigation, what is the difference between this and—so there are no special powers. I just wanted to find that out because in terms of the enquiry, when you reach that point—

Mr. Vice-President: See if you can wind up there.

Sen. Dr. A. Nanan: But I have a whole set of clauses. [*Laughter*] I will stay there and try to get some information quickly. That particular situation with respect to the enquiry and investigative powers, we need to know with respect to the officer, when will the matter be referred? Because it will be referred to the Integrity Commission, what will be the time frame between the Integrity Commission acting on this particular report?

I thank you, Mr. Vice-President.

Adjournment

Tuesday, May 12, 2009

ADJOURNMENT

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Mr. Vice-President, I beg to move that this Senate do now adjourn to Tuesday, May 19 at 1.30 p.m., when we will continue the debate on this particular Bill.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 5.45 p.m.