

Leave of Absence

Tuesday, October 20, 2009

SENATE

Tuesday, October 20, 2009

The Senate met at 1.30 p.m.

PRAYERS

[MR. PRESIDENT *in the Chair*]

LEAVE OF ABSENCE

Mr. President: Hon. Senators, I have granted leave of absence to Sen. Wade Mark, who is out of the country.

SENATOR'S APPOINTMENT

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

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

/s/ G. Richards
President.

TO: MR. RAPHAEL CUMBERBATCH

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

NOW, THEREFORE, I, GEORGE MAXWELL RICHARDS, President as aforesaid, acting in accordance with the advice of the Leader of the Opposition, 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, RAPHAEL CUMBERBATCH, to be temporarily a member of the Senate, with immediate effect and continuing during the absence from Trinidad and Tobago of the said Senator Wade Mark.

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 20th day of October, 2009.”

Oath of Allegiance

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OATH OF ALLEGIANCE

Senator Raphael Cumberbatch took and subscribed the Oath of Allegiance as required by law.

PAPERS LAID

1. Annual audited financial statements of the National Infrastructure Development Company Limited for the financial year ended September 30, 2007. [*The Minister of Trade and Industry and Minister in the Ministry of Finance (Sen. The Hon. Mariano Browne)*]
2. Annual report of the Ministry of Public Administration for the fiscal year 2007—2008. [*The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill)*]
3. Thirty-first annual report of the Ombudsman for the period January 01, 2008 to December 31, 2008. [*Vice-President (Sen. George Hadeed)*]

**LOCAL GOVERNMENT BILL
Joint Select Committee Report
(Presentation)**

The Minister of Health (Sen. The Hon. Jerry Narace): Mr. President, I have the honour to lay on the Table, The Interim Report of the Joint Select Committee on the Local Government Bill, 2009.

ORAL ANSWERS TO QUESTIONS

**National Academies of Performing Arts
(Details of)**

40. Sen. Wade Mark asked the hon. Minister of Planning, Housing and the Environment:

With respect to the construction of the National Academies of Performing Arts in Port-of-Spain and San Fernando, could the Minister provide the Senate with:

- (a) a detailed status report on the construction of the National Academies of Performing Arts;
- (b) the original estimated cost of construction of the National Academies;
- (c) the initial projected completion dates for both Academies;
- (d) the current estimated cost and new projected cost of the construction of the Academies; and

(e) the new projected completion dates for the National Academies.

The Minister of Planning, Housing and the Environment (Sen. The Hon. Dr. Emily Dick-Forde): Mr. President, this question is one that we asked for three weeks. The response was prepared and sent through the sub-committee of Cabinet, but it has not been approved by Cabinet and I have to ask for two weeks, because I have been told that there were some other issues that need to be rectified. Thank you.

Question, by leave deferred.

Macquarrie Beach Upgrade (Status of)

105. Sen. Dr. Adesh Nanan asked the hon. Minister of Planning, Housing and the Environment:

- A. Would the Minister indicate to the Senate any cost overruns on the Macquarrie Beach upgrade?
- B. Would the Minister also state if there was planning approval for the said beach upgrade?

The Minister of Planning, Housing and the Environment (Sen. The Hon. Dr. Emily Dick-Forde): Mr. President, in response to part A, there were no cost overruns on the Macquarrie Beach upgrade. Additional works were required to the original project as a result of the collapse of a slope adjacent to the sea wall being extended. These additional works and related costs were as follows:

- (1) extension of the sea wall in a southerly direction for 30 metres, due to the collapse of the abutting slope, at a cost of \$1,210,200 plus VAT; and
- (2) construction of a buttress on 15 metres of the existing sea wall at a cost of \$192,500 plus VAT.

In response to part B, planning approval has been obtained from the Town and Country Planning Division for the upgrade works.

Association of Caribbean States (Benefits for this Country)

126. Sen. Gail Merhair asked the hon. Minister of Foreign Affairs:

With respect to the Association of Caribbean States (ACS), could the Minister advise the Senate of:

- (i) The benefits this country derives from its membership in the Association; and
- (ii) The benefits derived by this country by hosting the Secretariat of the ACS?

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): According to the information available to me, Mr. President, the answer to that question will be available on the next occasion. It was recommended to Cabinet, so, it should be available on the next occasion.

Question, by leave, deferred.

Columbus Communications Trinidad Limited

137. Sen. Gail Merhair asked the hon. Minister of Information:

Could the Minister indicate to the Senate whether it is the Government's intention to take steps to protect customers from the unsatisfactory service provided by Columbus Communications Trinidad Limited?

The Minister of Information (Hon. Neil Parsanlal): Thank very much, Mr. President and I want, from the outset, to note that this question would have been properly posed to the Minister of Public Administration under whom the Telecommunications Authority falls, but I will still answer the question.

The Telecommunications Act, 2001 provided the measures and steps to be taken to protect consumers from unsatisfactory service. This responsibility lies in the performance by the Telecommunications Authority of Trinidad and Tobago of its functions as a regulator of the telecommunications and broadcasting sectors. The authority has, to date, carried out several initiatives towards ensuring a higher quality of service to the public, including the mandating of quality of service standards on providers and the prompt and efficient handling of complaints by consumers. It will, in the near future, be engaging in further activity, including increased monitoring, enforcement of quality of service obligations and the implementation of a new consumer rights policy, which will further enhance the protections afforded to consumers of telecommunications and broadcasting services in Trinidad and Tobago. I thank you.

Sen. Merhair: Through you, Mr. President, could the hon. Minister indicate when the new consumer rights policy will be implemented or would it be laid in Parliament?

Hon. N. Parsanlal: Unfortunately, Senator, I do not have that answer with me at this time.

The following questions stood on the Order Paper in the name of Sen. Dr. Sharon-ann Gopaul-McNicol:

**Fifth Summit of the Americas
(Removal of Homeless Persons for)**

145. With respect to the hosting of the 5th Summit of the Americas and the removal of homeless persons off the street, could the hon. Minister of Social Development inform the Senate of:

- (i) The number of homeless persons removed from the street;
- (ii) The cost of removing these homeless persons off the street; and
- (iii) The number of homeless persons who have since returned to the streets at the conclusion of the Summit on April 19, 2009?

**Disabled Persons
(Details of Funds Allocated)**

146. Could the hon. Minister of Social Development provide the Senate with the details of funds allocated to each category of disabled persons for fiscal years 2006—2007; 2007—2008 and 2008—2009?

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Mr. President, with respect to questions 145 and 146 for this Minister, the answers to these have not yet been received. I also have no information on when they will be available. That being the case, then let me we request a two-week deferral.

Questions, by leave, deferred.

**Recreational Facilities
(Details of)**

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

Could the Minister indicate to the Senate:

- (i) The number and geographical locations of full service recreational facilities, that is, facilities containing jogging/field track, covered bleachers, washrooms, children's park, full lighting and secured perimeters which are either operational or proposed in Trinidad and Tobago since 2006;

- (ii) The number and location of such recreational facilities that currently exist in Central and South Trinidad;
- (iii) The rationale used to determine rural/urban need of full service recreational facilities in Trinidad and Tobago since 2006.

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Mr. President, question No. 152 is also not now available and I am asking for a two-week deferral. Let me understand what has occurred here. The answer to this question has not yet been received.

Question, by leave, deferred.

Contractual Obligations Under GATE (Details of)

181. Sen. Gail Merhair asked the hon. Minister of Science, Technology and Tertiary Education:

Could the Minister inform the Senate what measures are in place to ensure that the students live up to their contractual obligations under GATE?

The Minister of Science, Technology and Tertiary Education (Hon. Christine Kangaloo): Thank you very much Mr. President. The Government Assistance for Tuition Expenses (GATE) Programme, which commenced in September 2004, provides financial assistance for citizens of Trinidad and Tobago who are pursuing approved programmes at local and regional public tertiary level institutions (TLIs) as well as approved private TLIs.

To access GATE funding on registration, students must complete a GATE application form. On said form, there is provision for the student agreement. The agreement must be signed by the student or his parent or guardian. The agreement provides as follows:

- (i) In consideration of the Government agreeing to finance the tuition fee of the student for the aforementioned programme of study, the student agrees to submit to the discipline, supervision and control of the institution; apply himself diligently to his studies throughout his entire programme, with a view to obtaining the specified qualifications and thus maintaining minimum performance standards; authorize the relevant institution of study to release to the Ministry of Science, Technology and Tertiary Education information relating to his progress during the tenure of the funding; and comply with any professional standards applicable to his programme.

- (ii) To obtain the approval of the Ministry in writing, in the event that the student abandons his programme, applies himself to any studies and/or programme of study, except that for which the funding has been approved or proceeds on a leave of absence from his programme of study.
- (iii) In the event that he withdraws, is suspended or is granted an approved leave of absence from the programme or institution, that he will inform the Ministry in writing within one week in order to access further funding under the GATE programme.
- (iv) To inform the Ministry if he intends to terminate or suspend the programme of study at the institution. All financial assistance by the Government will cease until such time as the student will obtain the approval of the Ministry to continue the GATE funding from the Ministry.
- (v) To inform the Ministry forthwith upon the successful completion of his programme and to accept employment within the Republic of Trinidad and Tobago in either the public or private sector for the undermentioned prescribed period.

The student also agrees to inform the Ministry of the details of his employment and his period of service shall be related to the cost of the funding and shall be determined as I will now indicate:

- cost of service award up to \$50,000, period of obligatory service, one year;
 - over \$50,000 and up to \$100,000, two years;
 - over \$100,000 and up to \$150,000, three years;
 - over \$150,000 and up to \$200,000, four years; and
 - over \$200,000, five years.
- (vi) All moneys expended on his programme shall be a loan from the Government to the student and shall be repaid to the Government with interest, providing that if the student serves the Republic of Trinidad and Tobago for the prescribed period as I have indicated, or if the student is released from the obligation to serve the Republic of Trinidad and Tobago, the repayment of such loan shall be waived.

1.45 p.m.

- (vii) In the event that the student abandons his course or fails to obtain the qualification, where such failure is due to the student not applying himself diligently to his studies, or fails to accept employment in the public service or the private sector in the Republic of Trinidad and Tobago, after the conclusion or termination of the said programme for the specified period of time, the student binds himself and agrees that he shall be liable immediately to refund to the Government the total amount of the loan made to him.
- (viii) Any breach of this agreement or withdrawal from the programme by failure on his part to attain the required performance standards, as established in respect of the specified programme, will deny the student further eligibility for funding by the Government unless approved by the Ministry.
- (ix) If the student serves the Republic of Trinidad and Tobago for only a part of the specified period, he shall be required to refund the Government only such proportion of the total sum loaned, together with interest due therein, as the unexpired period of service bears to the total period that I referred to earlier. Such sum shall be a debt by the student and shall be recoverable by the Government.
- (x) The terms of this agreement constitute the complete contract between the Government and the student and no oral statement or promises will be recognized. This agreement may not be amended or any of its provisions waived, except in writing, signed by the parties to this agreement. The agreement is a legally binding instrument when signed by the student, and the signatures to the agreement indicate that the student has read, understood and agrees to the policies.

To further strengthen its monitoring and administrative policies, the Ministry introduced a GATE clearance policy in January 2008 for all students who are attending private institutions. To access further funding under the GATE Programme, each student must provide grade slips or a transcript showing results from all their previous exam sittings.

Students who previously accessed GATE and are now moving on to a new programme, must attach proof that they have completed the previously GATE funded programme. Only students who have received GATE clearance will be eligible to apply for GATE funding. To date, the Ministry has been reimbursed the

sum of \$2,571,472.67 from students who have not completed programmes that were GATE funded.

Students who have been declined GATE due to non-completion of a previous programme, will be responsible for paying the first year's tuition of their new programme. Such students will be eligible for GATE funding for the remaining duration of the programme. Additionally, students can repay for the discontinued programme and be eligible for funding for the new programme.

Mr. President, it was recognized that all institutions had to pay a critical role in ensuring that students adhere to their contractual obligations under the GATE Programme. To this end, the Ministry of Science, Technology and Tertiary Education has also signed agreements with private institutions with a view to enforcing established standards that would address issues of quality, tuition fees, financial accountability, transparency, equity and compliance with Government's guidelines and policy for tertiary education.

Through this agreement, the Ministry of Science, Technology and Tertiary Education is able to monitor the progress of the student. Some of the conditions to which the institutions are required to adhere include:

- To submit quarterly reconciled statements detailing the number of students that have started each programme;
- Current status of these students and information on GATE claims made for each student;
- To inform the Ministry of all students who have been registered for an approved programme and have withdrawn from the said programme of study or the institution, of his own volition or by the request of the institutions within two weeks of the withdrawal;
- To inform the Ministry of all students who have registered for an approved programme and are on approved leave, suspension or otherwise;
- To ensure that all students enrolled for approved programmes have matriculated;
- To keep records of students' registration information and academic performance, GATE claims and reimbursement for a period of six years;
- To refund the Ministry, via certified cheque, 80 per cent of any moneys paid on behalf of a student who has withdrawn within six weeks of the commencement date of the approved programme;

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- To refund the Ministry, via certified cheque, 80 per cent of any moneys paid on behalf of a student who has joined classes after the commencement date of the approved programme and has attended less than four classes of the said programme; and
- To repay the Ministry, via certified cheque, 100 per cent of any and all moneys paid by the Ministry on behalf of a student who has never attended classes.

Mr. President, there is an Audit Unit within the Funding and Grants Administration Division of the Ministry, with responsibility for conducting audits at the institutions and ensuring compliance with the terms of the agreement. The auditing of institutions commenced in 2007. Thirty of the 32 private institutions have been audited.

At the end of September 2009, the sum of \$11,144,716.03 had been reimbursed to the Ministry. These reimbursements represent, to a large extent, repayment to the Government by the institutions for students who have withdrawn or abandoned programmes.

Principals of institutions have been advised that it is their responsibility to inform students of their obligations under the GATE programme during the registration process. Additionally, principals have been requested to provide the Ministry with graduation statistics, inclusive of name of student, address, contact information and the programmes pursued.

I thank you, Mr. President.

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Mr. President, we have not received questions 184 and 185. I would undertake to follow through to see what the status of these two questions is, but at this point in time I do not have the answer. I request a deferral of two weeks.

The following questions stood on the Order Paper in the name of Sen. Lyndira Oudit:

**International Organization for Migration
(Benefits of Funding and Training)**

184. Could the hon. Minister of Foreign Affairs indicate to the Senate, how the Ministry of Foreign Affairs proposes to benefit from the funding and training to be made available to this country through the International Organization for Migration (IOM), as a consequence of becoming a member in June, 2009?

**International Organization for Migration
(Details of Resources)**

185. With respect to membership in the International Organization for Migration (IOM), could the hon. Minister of Foreign Affairs indicate to the Senate the measures presently in place to detect, gather evidence, collate data on and to counter human trafficking in Trinidad and Tobago?

Questions, by leave, deferred.

Sen. Oudit: [*Inaudible*]

Sen. The Hon. C. Enill: 135? Whoever it is directed to, we will undertake to have it. [*Interruption*]

WRITTEN ANSWER TO QUESTION

The following question was asked by Sen. Wade Mark:

**Rapid Rail Project
(Details of Technical Study)**

175. Could the Minister of Works and Transport provide the Senate with:

- (i) details of the technical study that recommended the Rapid Rail Project;
- (ii) the precise cost of the study; and
- (iii) the names of the authors of the report?

Vide end of sitting for written reply.

TOBACCO CONTROL BILL

Order for second reading read.

The Minister of Health (Sen. The Hon. Jerry Narace): Mr. President, I beg to move,

That a Bill to prevent tobacco use by children; regulate tobacco use by individuals; enhance public awareness of the hazards of tobacco use and ensure that individuals are provided with information to make more fully informed decisions about using tobacco; protect individuals from exposure to tobacco smoke; prohibit and restrict promotional practices; prevent smuggling of tobacco; provide for regulation of tobacco products to mitigate against the harmful effects of tobacco; and provide for other related matters, be now read a second time.

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We are here today to address one of the most serious public health threats in our country, tobacco use. The tobacco epidemic, as it is referred to by the World Health Organization, has penetrated Trinidad and Tobago and now constitutes not only a public health problem, but also a societal problem in our country.

According to statistics provided by the Pan American Health Organization in 2005, Trinidad and Tobago accounted for 21 per cent of the region's smokers, the highest in the Caribbean. Furthermore, this amount is steadily rising.

It is a well-known fact that smoking kills. The WHO identifies tobacco as the major contributor to causes of death in the world. In fact, it estimates that in the 20th Century, the tobacco epidemic killed 100 million persons worldwide, while during the 21st Century, it could kill one billion people if urgent action is not taken.

Chronic noncommunicable diseases such as diseases of the heart and lungs, stroke, diabetes and hypertension are accepted as being linked to tobacco use, which has the effect of ultimately resulting in premature death. Moreover, it is now indisputable among international researches that there is no safe level of exposure to second-hand smoke. Global health authorities such as the WHO, the US Surgeon General and the United Kingdom Scientific Committee on Tobacco and Health concur that second-hand smoke exposure contributes to a range of diseases. Diseases caused by second hand smoke include coronary artery disease; lung cancer; middle ear disease; respiratory disease and also contributes to low birth weight.

Our people in Trinidad and Tobago are also victims of this modern day killer. Research presented by the world renowned epidemiologist, Sir George Alleyne, indicates that the mortality and morbidity rates in Trinidad and Tobago, as a result of smoking, are more than significant.

In 2002, the cigarette habit was directly responsible for approximately 30 per cent of all male and 15 per cent of all female medical deaths. These diseases were fully preventable. The Tobacco Control Bill 2009 provides an effective legal framework upon which to base our strategic plans to address the harm caused by tobacco products, both for our citizens today and the generation to come.

The Bill before you seeks to prevent tobacco use by children; regulate tobacco used by individuals; enhance public awareness of the hazards of tobacco use and ensure that individuals are provided with information to make more fully informed decisions about using tobacco; protect individuals from exposure to tobacco smoke; prohibit and restrict tobacco promotional practices; prevent the smuggling of tobacco and provide for other related matters.

This is by far one of the most important pieces of legislation we could ever pass in this House to improve the general health status of our country. Permit me to share with you what tobacco control could do for people's lives and exactly how tobacco control could help achieve our Vision 2020 for health:

"a nation empowered to live long, healthy, happy lives."

Tobacco use is a high risk habit, as it kills approximately 50 per cent of all those who use it. More deaths are caused each year by tobacco than by tuberculosis, AIDS and malaria combined. Furthermore, the full range of diseases associated with smoking are not usually understood by both smokers and non-smokers, therefore, legislation stipulating public education is a critical step in managing this problem.

In Trinidad and Tobago, smoking is, indeed, an epidemic, as it is directly related with the region's biggest killer, chronic non-communicable diseases (CNCDS). Mr. President, CNCDS include cancers, heart diseases, stroke and diabetes. However, between 1997 and 2005 heart disease was the foremost cause of death in both males and females in our nation; also, research shows that cardiovascular disease as a result of smoking contributes to approximately 52.9 per cent of the medical death rates in men and 49.4 per cent in women in Trinidad and Tobago, indicating that a reduction in the smoking rate in this country could prevent many deaths.

2.00 p.m.

Mr. President, the studies we have available in terms of tobacco use prevalence in the population provide us with some disturbing data. The St. James Cardiovascular Survey, which was a 10-year community survey that sought to identify predictive risk factors for cardiovascular events, showed that current smokers comprised 39.4 per cent of men of African descent; 46.1 per cent of men of East Indian descent; 39.9 per cent of men of mixed descent and 36.7 per cent of men of European descent.

Sen. Seetahal SC: Just for my understanding and probably the others, with respect to some of the figures, I heard you mention St. James Cardiovascular Survey, I would just like to know the basis on which you make those statements so that we can have them for our use.

Sen. The Hon. J. Narace: It is the St. James Cardiovascular Survey. It is a 10-year community survey, and I am going to try to get it for you.

Heavy Smoking, that is over 20 cigarettes per day, was present in 17.1 per cent of men of African descent; 23.9 per cent of men of East Indian descent and

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17.2 per cent and 26.3 per for the other two groups respectively. Current women smokers comprised less than 10 per cent and heavy smokers comprised less than 2 per cent except in European women.

A second study, the Pattern of Substance Abuse among Secondary School Students, which was conducted in 1988 surveyed 1,603 secondary school students aged 14—18 years, and assessed their drug alcohol and tobacco use. Mr. President, 34.8 per cent admitted to having used tobacco at some time and 10.5 per cent had used it in the last month preceding the survey. Most of the group had tried their first cigarette between 14—16 years of age.

The third study was, in fact, a component of a National Health Needs Assessment Survey conducted in 1995. Part of this study examined tobacco use among persons 15 years and older. The results showed a smoking percentage figure of 29.8 per cent among males and 5.1 per cent among females nationally. The respective figures for past smokers; that is, those who would have quit, were 11.5 per cent and 3.5 per cent respectively.

The lowest percentage was recorded in Tobago; 18.9 per cent male and 2.2 per cent female for current smokers and 10.9 per cent male and 1.5 per cent female for past smokers. The highest percentage was found in the 35—44 age group, 43.2 per cent; and the lowest in the 15—24 age group, 13.4 per cent. Female smoking was consistent with this pattern. Overall, most current smokers were found in the 35—44 age group and most quitters were in the 65-plus age group.

In spite of these statistics, the sale of cigarettes has been on the increase, notwithstanding the fact that increases in taxes were imposed intermittently. On average, cigarette production increased 22 per cent per annum between 1995—1999. Manufacture and distribution of tobacco products are conducted mainly by one company which occupies a monopoly position within the industry.

Tobacco control legislation can help protect families from the destructive nature of disease and death, preserve the workforce and ensure the smooth functioning of the economy in recessionary times, supporting the 2001 proclamation of the Nassau Declaration: “The health of the nation is the wealth of the Nation.” Furthermore, according to the World Bank's 1993 World Development Report, Investing in Health, tobacco control policies are considered cost-effective and worthy of inclusion in a minimal package of health care.

Mr. President, the World Health Organization (WHO) states that tobacco use and poverty are inextricably linked. Many studies have shown that in the poorest households in some low-income countries, as much as 10 per cent of total

household expenditure is spent on tobacco. This means that these families have less money to spend on basic items such as food, education and health care. In addition to its direct health effects, tobacco leads to malnutrition, increased health care cost and premature death. Indeed, it is felt that tobacco's role in exacerbating poverty has been largely ignored by researchers.

Further, treating preventable non-communicable diseases is a drain on a country's monetary resources. Studies in the region attest to that conclusion. For instance, the University of the West Indies Faculty of Medical Sciences, Mona Campus, researched the true cost of smoking related health care in the island of Barbados in which the prevalence of smoking is minimal—9 per cent of the region's smokers versus Trinidad and Tobago's 21 per cent.

In Barbados, despite a low prevalence of smoking, tobacco caused a substantial public health burden. Hospital care cost for patients who smoked was 1.86 times higher than for non-smokers and five times more than the government's per capita health allocation. In short, tobacco is extremely expensive to the health care system. Fortunately, simultaneously enacting tobacco control legislation to reduce smoking rates and reworking tobacco taxation measures as the Government has done in this fiscal year can effectively manage the financial burden imposed by the smoking habit.

Mr. President, according to WHO's *Tobacco Free Initiative Handbook, 2004*, increasing the price of tobacco through higher taxes is one of the most effective ways to decrease consumption and encourage tobacco users to quit. A 70 per cent increase in the price of tobacco could prevent up to a quarter of all smoking-related deaths worldwide. However, we are aware that this measure alone will not work. WHO also recognizes that effective legislation, executive and administrative measures, must be taken at the appropriate governmental level to protect all citizens from exposure to tobacco smoke. Therefore, it is evident that the enactment of the Bill before us is of paramount importance.

Further, as we examine the financial benefits of tobacco control, we increasingly recognize that excess funds spared by a reduction in medical care and increased government revenue can be reinvested into the local economy to improve the entire society's welfare.

At the individual level, benefits can be felt almost immediately, as money originally invested into the tobacco product can be spent on improving one's personal well-being and the well-being of their families, in the form of food, education, alternate forms of entertainment or even just saving in recessionary times.

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Mr. President, tobacco control saves yet another valuable resource in the modern man's life: Time. Chronic non-communicable diseases place a heavy burden on the resources of the health care system. Curbing the tobacco habit is one of the most immediate ways to manage CNCDS and that problem which is so prevalent in the Caribbean, whereby significantly slashing the mortality and morbidity rates. The West Indian Medical Journal notes that smokers require significant time and attention in the form of emergency admissions and follow-up treatment at health facilities. Tackling the tobacco problem will, therefore, ease the strain on the health care system.

Mr. President, enclosed smoke-free spaces are urgently needed to protect employed persons from the detrimental effects of second-hand smoke, especially those employed in the hotel and restaurant sector.

Fortunately, international experience has demonstrated that tobacco control measures work. An examination of the impact of Ireland's smoke-free law on bar workers in Dublin, found improvements in measured pulmonary function and significant reductions in self-reported irritant symptoms, and before New York bars and restaurants went smoke free, 88 per cent of hospitality workers reported experiencing sensory symptoms, that is, red or irritated eyes, sore or scratchy throat, runny nose, sneezing or nose irritation. After the law took effect, complaints dropped by 57 per cent. Managing smoking in enclosed spaces protects the health and well-being of both non-smoking patrons and tourism industry workers. As a result, staff work more efficiently and can promote a cleaner, happier image to guests, a crucial aspect of the tourism package.

Tobacco is a gateway drug. It teaches children about addiction from a very early age and has been linked to an increase in delinquent behaviour. According to former US Surgeon General Jocelyn Elders:

“What is notable about tobacco use is that it consistently occurs early in the sequence of problem behaviours. When a young person starts to smoke or use tobacco, it is a signal, an alarm that he or she may get involved in other risky behaviours. This is one of the few early warning signs we have in public health. If we can prevent tobacco use in the first place, we might have a big impact on preventing or delaying a host of other destructive behaviours among our young people.”

In the United States of America, the National Institute on Drug Abuse found that 12-17-year-olds who smoke cigarettes are 14 times more likely to abuse alcohol, 100 times more likely to smoke marijuana and 32 times more likely to use cocaine than their non-smoking peers.

Mr. President, I want to repeat that. In the United States of America, the National Institute on Drug Abuse found that 12-17-year-olds who smoke cigarettes are 14 times more likely to abuse alcohol, 100 times more likely to smoke marijuana and 32 times more likely to use cocaine than their non-smoking peers. Mr. President, passing this Bill today is an imperative; it is something we must do. [*Desk thumping*]

Mr. President, let us look at what is happening in our schools. According to a 2008 study undertaken by the National Alcohol and Drug Abuse Prevention Programme (NADAPP) Secretariat, Ministry of Social Development, in collaboration with the Inter-American Drug Abuse Control Commission (CICAD) at national secondary schools in Trinidad and Tobago:

- Lifetime prevalence of cigarette use was 28.7 per cent. More than one-quarter of all students reported having tried cigarettes. The annual prevalence was 11.4 per cent and the current use prevalence was 5.6 per cent—about one in every 18 students is currently smoking.
- The mean age of first cigarette use overall was 11.9 years and the median age 12 years.
- Not many students felt that smoking cigarettes sometimes was very harmful.
- Perceived harm of frequent smoking was very different; 82.7 per cent felt that this was very harmful and only 1.6 per cent felt it was not harmful.
- Current use prevalence was 7.2 per cent for males and 4.2 per cent for females. The one-year incidence among males and females was notably different—9.2 per cent males versus 6.3 per cent females—however, the one month incidence was not all that different; 3.1 per cent males versus 2 per cent females.
- The most favourite location where cigarettes are most often smoked was surprisingly “at home”.
- Most students overall indicated that cigarettes were first used at home, 29.7 per cent; this was followed by at a party, 11.4 per cent; on the block, 10.4 per cent or at some other location, 6.6 per cent. About 6 per cent indicated that cigarettes were first used at school and a smaller proportion indicated at festivals, 2.9 per cent.
- Curiosity was the main reason given by students for using cigarettes, 34.1 per cent. The next notable high proportions related to being influenced by

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friends, 14.1 per cent; other reasons, 9.3 per cent and to cope with problems, 7.8 per cent. Cigarettes were most often obtained from friends overall, 34.1 per cent; and the shop and street vendors accounted for 38 per cent of the sources and 6.6 per cent were obtained from parents, brothers or sisters.

These statistics are not only alarming, they are also truly heartbreaking. We need to do everything in our power to protect the children of our nation from a killer whom we can easily fight. Tobacco use can be controlled and this is what we are here to do. [*Desk thumping*]

In summary, tobacco control can save lives through reducing the risk factors of CNCDS; can save our children from this and possibly other addictions; can save money as it creates financial benefits for the household and the State; and can save time and resources by easing the workload on the health care system.

In fact, we now have scientific evidence from around the world of the benefits tobacco control legislation brings about, once enacted. In the United States of America, during the period January 2000—June 2007, 13 Kentucky communities implemented smoke-free legislation. In 2008, a study conducted by Rayens, Burkhardt and Zhang indicated that the emergency department visits for asthma declined by 22 per cent, comparing the pre-law period to the post-law period. The rate of decline was 24 per cent in adults of 20 years of age and older, whereas the decrease among children and adolescents was 18 per cent.

2.15 p.m.

In Finland, Mr. President, tobacco control legislation was passed as early as 1976 and an amendment was enacted in 1995. In 2004 researchers of the National Public Health Institute examined the impact of the 1976 legislation and its amendment and concluded that the legislation indeed reduced smoking behavior trends across successive birth cohorts. This clearly suggests that tobacco control legislation has a significant impact on decreasing smoking initiation in youth. This clearly suggests that tobacco control legislation has a significant impact on decreasing smoking initiation in youth.

Additionally, in New Zealand, indoor workplaces were required to be smoke free from December 10, 2004, following the passage of a Smoke-free Environments (Amdt.) Act 12 months earlier. A 12-month smoke-free workplaces report in 2005 shows that smoke-free hospitality venues have not suffered any loss in profits and do not appear to have affected employment or overseas visitor numbers.

Patronage of the bars and cafés by non-smokers has increased noticeably between 2003 and 2005, suggesting that non-smokers have been attracted to these venues by the smoke-free environment. In addition, banning smoking in indoor workplaces appears to have prompted an increased number of people to consider quitting smoking. The legislation has strong public support, and compliance is high.

This report, provides further evidence that there is strong public support for smoke-free bars and restaurants, with 67 per cent now supporting a complete ban on smoking in bars and pubs compared to only 38 per cent in 2001, and 80 per cent supporting a complete ban in restaurants. Further, the amount of tobacco and cigarettes sold by supermarkets has continued to decline since the enactment of the legislation. Once we enact this legislation, we can look forward to local studies showing the benefits of tobacco control in our country and a positive impact on the health of our people.

Mr. President, I trust that it is now clear that this honourable Senate must act quickly to provide an effective regulatory framework for tobacco control. Current legislation related to smoking is minimal and not consistently enforced. Further, there is no legislation to control advertising and promotion. Also, there is no sustained public education or effective lobby to control tobacco use or advertising.

In the context of such lax regulatory mechanisms, the local tobacco manufacturing company has a free hand in advertising and promotion and has succeeded in building a very impressive corporate image as a company that supports athletic, cultural and educational activities in the country.

Mr. President, in 1997 the Ministry of Health supported a tobacco-free lifestyle by instituting measures to curb tobacco use, including a policy that mandated a smoke-free work environment. As such, all buildings, hospitals and vehicles belonging to the Ministry of Health and the RHAs were declared smoke free. Additionally, in April of 2005, Cabinet approved a policy for the establishment of a smoke-free environment in all buildings and vehicles owned by any ministry, department or state agency.

This policy was again supported by tailored educational interventions whereby employees were exposed to information on the health risks associated with smoking. Consequently, we have had full support of this policy, and, as such, all public buildings and vehicles are now smoke free. Despite these actions, we are minded that it is still necessary to implement on an ongoing basis, measures that will educate the population and ultimately lead to a decrease in demand for tobacco products.

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In June 2003, the Government of Trinidad and Tobago adopted the WHO Framework Convention on Tobacco Control. This was later ratified in 2004. The objective of this convention is to protect present and future generations from the devastating health, social, environmental and economic consequences of tobacco consumption and exposure to tobacco smoke by providing a framework for tobacco control. Its aims also to provide measures which are to be implemented by the parties at the national, regional and international levels in order to reduce the prevalence of tobacco use and exposure to tobacco smoke.

To achieve the objectives of the convention, parties are expected to be guided by the following principles:

- every person must be informed of the health consequences, addictive nature and threat posed by tobacco consumption and exposure to tobacco smoke;
- effective legislation, executive and administrative measures must be taken at the appropriate governmental level to protect all persons from exposure to tobacco smoke; and
- every person must have the right to be free from exposure to tobacco smoke.

Mr. President, it was recognized that strong political commitment is necessary to develop and support, at the national, regional and international levels comprehensive measures and coordinated responses to:

- protect all persons from exposure to tobacco smoke;
- prevent initiation of smoking;
- promote the participation of individuals and communities in the development, implementation and evaluation of tobacco programmes that are socially and culturally appropriate to their needs and perspectives;
- address gender specific risks when developing tobacco control strategies; and
- promote and support cessation and decrease the consumption of tobacco products in any form.

Please permit me to inform this honourable Senate that the Ministry of Health is already actively working towards initiating smoking cessation programmes in Trinidad and Tobago. A smoking cessation committee has been established in the ministry and is pursuing the establishment of a smoking cessation service. A

proposal is currently being reviewed. Not only will we prevent future generations from starting to smoke, but we will also help current smokers to quit this unhealthy habit through specifically designed cessation programmes and through public health education programmes, which will motivate them to quit.

Before I proceed with the clause by clause explanation of the Bill, I wish to remind this honourable Senate that an exhaustive consultative process has already been followed for the issues contained in this Bill.

Senators will recall that approximately one year ago a similar Bill was presented to this honourable Senate. During the debate on that Bill, a number of requests were made for the Bill to be referred to a Special Select Committee of Parliament. The requests were indeed entertained and the Bill was referred to a special select committee, which considered all stakeholders concerns, as well as concerns raised by the Senators. The Bill was subsequently amended accordingly and the special select committee produced a report.

Parliament prorogued, and that Bill lapsed and was resubmitted to the LRC. The revised Bill was then considered by the LRC together with the stakeholder concerns and was amended accordingly. The Bill before you speaks to all those issues and constitutes a comprehensive document, which reflects changes proposed by a number of different parties.

Please permit me, to now proceed and take this honourable Senate through the Bill clause by clause.

Clause 4 sets out the proposed meaning of a number of words and phrases that are used repeatedly in this Bill. To this end, the following words have the following corresponding definitions:

‘enclosed’ in relation to a space, means any space covered by a roof or any space surrounded by one or more walls or sides, regardless of the type of material used and regardless of whether the structure is permanent or temporary;

‘public place’ means any place accessible to the general public or place of collective use, regardless of ownership or right of access;

‘smoking’ means inhaling, exhaling or handling an ignited or heated tobacco product or a tobacco product producing emissions by any means;

‘tobacco advertising and promotion’ means any form of commercial communication, recommendation or action with the aim, effect or likely effect of promoting a tobacco product or tobacco use either directly or indirectly;

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‘workplace’ means any place used by persons during their employment or work and includes vehicles, common areas, and any other area which is generally used during the course of employment or work, but does not include private residences or private vehicles except where such residences or vehicles are used as workplace.

That is a commercial workplace.

I wish to put this honourable Senate on notice that I intend to move an amendment to this definition of workplace by deleting the two last words of that definition and replacing them with the words “for commercial purposes”. Thus, the sentence would read “...where such residences or vehicles are also used for commercial purposes”.

I wish to apologize for this error in the Bill and explain that this amendment is to ensure that the definition of the workplace does not, as has been requested, capture domestic workers, as our policy is not to make private residences subject to this Bill, other than when such residences are used for commercial purposes.

Clause 5 sets out the responsibilities of the Ministry of Health. Consequently, the Ministry of Health is mandated to establish a dedicated unit which will be responsible for, inter alia, developing and implementing in collaboration with national stakeholders a national strategic approach to tobacco control and monitoring activities nationally to ensure compliance with and enforcement of the Act.

Clause 6 empowers the unit to carry out evidence-based programmes to inform the public of, inter alia:

- “(a) the dangers and addictiveness of tobacco use and the dangers of exposure to tobacco smoke;
- (b) the benefits of and strategies to quit smoking; and
- (c) the tobacco industry and on the health, economic and environmental effects of tobacco production and manufacturing...”

Clause 7 provides that the unit may request authorized officers to carry out inspections and investigations. To this end, clause 8(1) provides that authorized officers shall have the power to:

- “(a) examine, open, and test any equipment, tools, materials, packages or anything the authorized officer reasonably believes is used or is capable of being used for the manufacture, including packaging and labelling, storage, distribution, advertising or promotion of tobacco products;

- (b) examine any manufacturing operation or process carried out on the premises;
- (c) examine and make copies of or from any books, documents, notes, files, including electronic files, or other records that the authorized officer reasonably believes might contain information relevant to determining compliance with this Act;
- (d) interview any person the authorized officer believes may have information relevant to making a compliance determination; and
- (e) take samples of tobacco products or components of products, and their packaging, from any business where they are found, to have them tested.”

However, it is material to note that at clause 8(2):

“Only authorized officers who are either customs officers or police officers shall have the power to—

- (a) enter the premises of any business place where tobacco is manufactured, sold, transported, received, distributed, supplied, or otherwise found or is likely to be found, or to have been present during the previous six days, but for the purposes of enforcing this Act, authorized officers may enter any public place, workplace or means of public transportation to conduct inspection or investigations at any time during business or operating hours or at any other reasonable or necessary time;
- (b) stop, search, and detain any aircraft, ship, vehicle or other means of transport or storage in which the authorized officer reasonably believes bulk packaging of tobacco products are or were contained or conveyed, and examine, open, and take samples of them; and
- (c) seize and detain from any business or order the storage without removal or alteration of any tobacco product or other item the authorized officer reasonably believes does not comply with this Act.”

Clause 10 provides that no person shall manufacture, import, export or sell tobacco products at wholesale without first having a licence. However, it is to be noted that at clause 10(2), such persons shall have a grace period of up to nine months from the date this Act comes into force to apply for a licence.

Clause 10(4) provides that the application fees for a licence under this Act, are set out in the First Schedule and shall be paid to the Comptroller of Accounts or any other revenue office and the receipt shall be submitted with the application.

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Clause 10(7) provides that once a licence is granted, it remains valid for a period of three years.

Clause 10(8) provides that where an application for a licence is denied, the applicant shall cease manufacturing, importing, exporting or selling tobacco products immediately upon notification of same.

Mr. President, the FCTC recognizes that there is a clear relationship between exposure to secondhand smoke and disease. Smoke-free environments have been proven to help smokers quit, and prevent smoking initiation especially among our youth.

2.30 p.m.

Consequently, clause 12(1) provides that it shall be an offence for any person to smoke or hold a lighted tobacco product in any enclosed workplace, or public conveyance including, but not limited to any place listed in the Second Schedule namely:

- public transportation terminals;
- workplaces;
- retail establishments including bars, restaurants, shopping malls;
- clubs;
- cinemas;
- concert halls;
- sports facilities;
- pool and bingo halls;
- publicly owned facilities rented out for events; and
- any other facilities that are accessible to the public.

In addition, clause 12(2) provides that:

"...no person shall smoke within fifteen metres of any place that caters primarily to children, such as schools, children's playgrounds and amusement parks."

Further, clause 12(3) provides that:

"Where a person contravenes subsection (1), the manager, owner or lessee of the place where the contravention occurred who authorized or acquiesced in

the act or who knew or, using due diligence, ought to have known that the commission constituted a contravention, that manager, owner or lessee is deemed to have committed the offence and shall also be held personally liable."

Finally, clause 12(4) provides that:

"A person who contravenes this section, commits an offence and is liable, on summary conviction, to a fine of ten thousand dollars and to imprisonment for six months."

Mr. President, smoking was banned in all workplaces, including bars and restaurants in New York in March 2003. Since that time, there have been no adverse economic consequences arising from this measure. According to data provided by PAHO, employment in bars and restaurants was the highest in the ensuing years, restaurant and bar receipts went up by 8 per cent, and compliance with the law is nearly 100 per cent.

About five years ago, Uruguay was a country in which tobacco control policies were rare and ineffective. However, on March 01, 2006, it became the first country in the Americas to become 100 per cent smoke-free in public places. The Uruguay government claims that its most significant achievement in its tobacco control efforts was the promulgation of a decree in September of 2005, which banned smoking in all enclosed facilities designated for public use, as well as in all work environment. The decree came after the success of a 2004 decree which banned smoking in all health facilities and public offices. It is to be noted, that nothing in this Bill shall require an owner, occupier or employer to designate separately ventilated rooms for smoking.

Mr. President, economists have suggested that protection of children is the most compelling economic reason for higher taxes. In an article by Warner et al entitled "Criteria for determining an optimal cigarette tax", the economists' perspective advanced that governments can choose to protect children for several reasons. Firstly, childhood is when routine addiction is likely to begin. Secondly, children are not yet sovereign adults making informed choices, so that the argument for not intervening does not apply to them as strongly as to adults. Thirdly, there is evidence that the tobacco industry targets children with glamorous advertising and promotion.

Mr. President, if we did not act on behalf of those children, we will be failing in our duty.

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Consequently, it is incumbent on us to try and educate children, restrict advertising and promotion targeted to children, and to restrict their access to tobacco products. As such, clause 13 provides that:

“No person who sells tobacco products shall hire or use any child to sell any tobacco product.”

In addition, clause 16 provides that:

“No person shall sell any tobacco product through any self-service means, including mail, the Internet or automatic vending machines.”

Clause 17 prohibits the sale of tobacco products in:

- facilities where health care services are provided;
- sports, athletic or recreational facilities;
- government buildings;
- educational facilities; and
- any other place prescribed by the Minister by Regulations.

Further, clause 18 provides that:

"No person shall—

(a) import or manufacture; or

(b) sell, display for sale, distribute or supply,

any sweets, snacks, toys or other non-tobacco items or objects in the form of tobacco products, or which imitate tobacco products."

Tobacco advertising, promotion and sponsorship increases tobacco initiation and overall consumption. Promotion creates a "friendly familiarity" for tobacco that makes it seem normal and acceptable. Tobacco use decreases faster in countries where there are comprehensive restrictions on advertising, promotion and sponsorship. Nevertheless, a number of countries have successfully passed partial limitations on tobacco advertising.

Consequently, clause 19(1) provides that:

"No person shall initiate, produce, publish, engage or participate in any tobacco advertising, promotion or sponsorship."

Clause 19(2) allows for limited advertising. This includes advertising through a publication that has an adult readership of not less than 85 per cent, and a

publication that is provided by mail and addressed to an adult smoker who is identified by name. It also allows for the placing of signs in a place where young persons are not permitted by law.

At clause 19(4)—

"'brand preference advertising' means advertising that promotes a tobacco product by means of its brand characteristics;

'information advertising' means advertising that provides factual information to the consumer about—

(a) a product and its characteristics;

(b) or the availability or price of a product or brand of product;

'lifestyle advertising' means advertising that associates a product with, or evokes an emotion about, or image of, a way of life such as one that includes glamour, recreation, excitement, vitality, risk or daring."

Mr. President, clause 20 provides that:

"No person shall offer or provide any direct or indirect consideration for the purchase or use of a tobacco product, including a bonus, premium, cash rebate or right to participate in a game, lottery or contest, but nothing in this section shall prohibit the giving of any normal trade discount or normal trade rebate, or providing compensation for monitoring compliance with this Act."

Clause 21 provides that:

"...tobacco sponsorships and tobacco advertising and promotion, where the name of a sponsoring entity is publicized..."—are prohibited.

As such, tobacco companies are permitted to sponsor events, but they cannot take any overt credit for such sponsorship.

Clause 22 seeks to prohibit other forms of promotion and brand stretching. Consequently, clause 22(1) provides that:

"No person shall sell, display for sale, supply, advertise any non-tobacco product or service that contains either on the product, or in any advertisement of the product, a depiction of a tobacco product except where the person held the intellectual property rights to that product prior to the commencement of this Act."

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In this regard, clause 22(2) provides that:

"For the purposes of this section, a non-tobacco product shall include a building, facility, premises, or business that is not a building, facility or business that manufactures tobacco products exclusively."

Mr. President, smokers are similar to other consumers, in that they face problems in learning about the price and quality of their prospective purchases. However, they are unlike most other consumers in that their purchased goods are addictive and have serious health consequences. Smokers who are unaware of the addictive properties and the health consequences of tobacco are not buying the products they think they are buying. In essence, each purchase of a tobacco product involves two components: the goods to be consumed in the present, and the flow of future consequences from that consumption. It is our responsibility to make that evident to all consumers.

Hon. Members, poorly informed consumers do not place enough weight on the flow of future consequences. As a result, they make purchases of tobacco products that they later regret or would judge not to be in their best interest if they had more information.

Many governments have played active roles in disseminating information about the health consequences of tobacco use. Information policies range from the publication of official reports, to a requirement for warning labels on packages and advertisements, to school health education and mass media campaigns.

Mr. President, publication of official reports by the Royal College of Physicians in Britain in 1962 and by the US Surgeon General in 1964, are milestones in tobacco control in high-income countries. It marked the beginning of serious efforts to impose consumer information about smoking and health. Following these official reports, many countries required warning labels on tobacco product packaging and advertising. The US has been requiring warning labels on all cigarette packages since January, 1966. In 1972, all print advertisements were required to contain one of four rotating messages. As early as 1991, 77 countries imposed health warnings on tobacco product packages. Today, a large number of countries require strong warnings, and a few such as Norway, Brazil and Uruguay include pictures to enhance the likely effectiveness of warning labels.

Consequently, clause 24 provides that:

"All tobacco products shall contain, permanently affixed on their packages or individual wrappers in the case of cigars, messages that will be prescribed by Regulations."

These messages shall be attributed to the relevant authority. Evidence from Brazil indicates that 54 per cent of smokers had changed their opinion on the health consequences of smoking as a result of warning messages placed on cigarette packages. In Canada, 44 per cent of smokers said the warnings had increased their motivation to quit.

Mr. President, it is an offence for any person to sell or supply any product or device that is intended to be used, or can be used, to cover, obscure, mask, alter, or otherwise detract from the prescribed messages on tobacco product packages, and this prohibition includes design of the product package in such a way that parts of the package itself or accessories can cover or obscure the messages.

Clause 25(1) mandates that all tobacco products must contain a list of the constituents and additives in a manner as may be prescribed.

Clause 26(1) speaks to the tobacco product package or label shall not contain any information that is false, misleading, erroneous.

Clause 26(2) provides that no tobacco product package shall make any claim stating, suggesting or implying that its use or exposure to its smoke is not hazardous or is less hazardous than any other tobacco products. This includes words like light, ultra light, mild, low tar, slim, et cetera.

Mr. President, in order to prevent smuggling, tobacco manufactures, exporters and importers must ensure that their bulk packages contain the tracking and tracing, and tax status labelling information required by clause 28.

To this end, as provided in clause 28(2), the following information shall be permanently affixed under the cellophane or other wrapping on all sides of each tobacco product package, including each carton. So you have the name and licence number of the manufacturer; unique manufacturer serial number; name of the country in which it was manufactured; the name of the country in which the products were intended for sale; and any additional information as may be required.

Clause 29(1) mandates tobacco manufacturers to design their product, packaging and labelling in such a way as to make them tamper-proof.

Clause 31(1) provides that smoked tobacco products with the exception of cigars, may be sold as individual units, so long as they are contained in a package which meets the minimum quantity requirement of at least 10 units.

Further, clause 32(1) provides that smokeless tobacco products shall be contained in a package of at least 20 grams.

Clause 36(1) provides that:

"In any action for non-compliance with this Act or Regulations, the following penalties may be imposed:

- (a) suspension, revocation or limitation of licences;
- (b) removal by an authorized officer of an offending person from the premises or public conveyance, and confiscation and forfeiture of any tobacco products in violation of the provisions of this Act; and
- (c) confiscation and forfeiture of—
 - (i) any item that contains a tobacco advertising and promotion prohibited under this Act;
 - (ii) any tobacco product packaged or labelled in a manner that does not conform with this Act;
 - (iii) all tobacco products owned by or under the control of the person found to have committed a violation of sections 10, 13 to 17, 20 and 31 to 33;
 - (iv) equipment, machinery, raw materials, components, packaging and labelling materials, and any other items used to manufacture tobacco products;
 - (v) all tobacco products or components that fail to conform with the product requirements under this Act;
 - (vi) all tobacco products for which all applicable taxes and duties have not been paid or that otherwise have not legally entered the jurisdiction; and
 - (vii) all non-tobacco products that fail to conform with section 18."

Mr. President, part of the implementation and enforcement process involves ongoing oversight through monitoring, surveillance, reporting and inspections. Oversight is essential not only for strong enforcement, but also for the country's ability to improve the legislation over time. Meaningful enforcement is essential, as it demonstrates the Government's commitment to the law and to Tobacco control. We expect that these measures will attract broad public support and the public will be invited to report violations.

In fact, in August 2005, the MORI survey conducted for Trinidad and Tobago, found that 72 per cent of persons strongly agreed that all enclosed workplaces, including public places, should be smoke free. Sixty-five per cent of smokers—

smokers themselves—strongly agreed with this proposition, while just 23 per cent of smokers tended to disagree.

2.45 p.m.

Moreover, the components of this regulation that seeks to regulate the tobacco companies will always require vigilant enforcement. Mr. President, in the long-term, the most successful tobacco control laws are not enforced by police officers or other government agents, but by the society itself. We expect that as the public becomes aware of the importance of these laws and support for them increases, formal enforcement becomes less necessary.

The ultimate goal of this legislation is to reshape public attitudes and norms. As this shift takes place, the pressure of society's expectations will become the strongest force of compliance.

This Bill is also strongly supported by the medical community and many NGOs and interest groups in Trinidad and Tobago. In fact, the Ministry of Health has received numerous letters of support for this legislation.

Hon. Senators, permit me to quote from a letter which supports the Tobacco Bill and endorses the provisions therein as being fully compliant with all the stipulations outlined by the FCTC. This letter was sent by Prof. P. R. Murti, Professor of Oral Pathology and Director at University of the West Indies and he said:

"Tobacco use in any form is harmful to health—including oral health. The most serious oral health consequences of its use are mouth cancer. The attributable risk for tobacco for oral cancer is 90%; its continued use following the treatment for oral cancer also leads to higher recurrence rates. Tobacco use also causes adult periodontal diseases and congenital defects such as cleft lip and palate in children. Tobacco suppresses the immune system's response to oral infection, compromises healing following oral, surgical and accidental wounding."

In closing, Mr. President, I wish to briefly refer to the example of Brazil which has established itself as a global leader in tobacco control. Brazil's legislation is noteworthy for its strength, comprehensiveness and integration of measures at the national state and municipal levels. Strikingly, Brazil has achieved these results even though tobacco plays an important role in its economy.

Brazil is the world's largest tobacco leaf exporter, the fourth and largest tobacco producer and the eighth largest cigarette exporter. In 2000, Brazilians consumed 853 cigarettes per capita. Souza Cruz and Philip Morris control much of the tobacco market.

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Brazil's laws cover the full spectrum of tobacco control. They ban the sale of cigarettes to minors (those under the age of 18), the distribution of free samples and the sale of tobacco in health centres and schools. They eliminate smoking in most public places, as well as in airplanes and public transportation. They ban television and radio advertising of tobacco products; point of sale advertisements are restricted and tobacco packages must include health warnings.

Manufacturers must report on their production and sales and on product consumption. Stringent new regulations require large colour images and warnings on cigarette packs and prohibit deceptive descriptive terms such as "light" and "mild".

Brazil bans most tobacco sponsorships with the exception of international sporting events. Sale of tobacco products on the Internet is prohibited as is the manufacture of candy cigarettes.

In 2002, Brazil began providing free support for smoking-cessation services. Cigarette taxes accounted for more than 5 per cent of the nation's revenue in 2001. Health authorities have also considered litigation against the tobacco industry.

Mr. President, this Bill is yet another measure towards achieving the Vision 2020 goal to empower our population to live long, healthy, happy and productive lives. The enactment of this legislation will be the first important legislative step taken by this country to prevent hundreds of thousands of lives from disease, disability and premature death as a result of the direct and indirect effects of tobacco.

Mr. President, our children will look at every Senator today and we will determine the quality of health of those children in the future providing safe, clean and healthy air which is free from toxic second-hand smoke as a necessity. For too long has this society been subjected to the inhumane conditions inflicted upon them through enclosed smoke-filled areas and the tobacco industry's misleading and erroneous advertising and promotional strategies.

It is the integral duty of those in Government to adhere to both our national Constitution and the international World Health treaties which outline that providing the best health possible is indeed a very basic and fundamental human right. As our national Constitution clearly states, the Government is obligated to use its resources to maintain the common good. In this case, the common good refers to the best possible health for one and all.

The tobacco control legislation clearly and directly promotes the health of our nation, particularly our children and it is indeed long overdue.

Mr. President, I beg to move.

Question proposed.

Mr. President: Hon. Senators, I would just like to advise you that Sen. Seetahal SC, has invited some of her students from the Hugh Wooding Law School to attend this afternoon's sitting. They are sitting behind me on the left. We can all welcome them to the Senate. [*Desk thumping*]

Before we begin this debate, I would just like to caution Senators that on the last occasion that we met, there was a tremendous amount of repetition of arguments made by speakers speaking before as well as individual speakers repeating their own arguments over and over again, extending the debate longer than it ought to be.

Therefore, I am putting Senators on notice that that is contrary to the Standing Orders and, therefore, I will expect you to make original arguments. If you wish to state that you agree with a previous argument, then you will be given the flexibility to do that, but not to make the whole argument over again.

I allowed a great deal of flexibility on the last occasion, but I shall not do so on this occasion. So please confine your arguments to original arguments and to the Bill before us.

Sen. Dr. Adesh Nanan (*Tabaquite*): Thank you, Mr. President. I rise to make a contribution on the Tobacco Control Bill 2009.

Mr. President, the question is whether the legislative objective is sufficiently important to justify limiting of fundamental rights. The measures designed to meet this legislative objective are rationally connected to it and the means used to impair the right of freedom is necessary to accomplish the objective.

Mr. President, if we look at the preamble of this Bill—and the Minister in his presentation made reference to 1997 and the United National Congress approach to having smoking banned in public places—makes reference to the World Health Organization Framework Convention on Tobacco Control which the Minister said was ratified in 2004. The question has to be asked with respect to this particular piece of legislation and we applaud the legislation's objective, which is decreasing tobacco consumption.

Mr. President, while we applaud the objective we have to ensure that this piece of legislation will not be struck down in a court of law. There are certain clauses in this Bill, in particular, clauses 11, 12, 13 and 25, which are either unconstitutional or doubtful constitutionally, as I will show in my contribution with reference to these clauses in this Bill.

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I would start with clause 11(1) which says:

“Every manufacturer and importer of tobacco products shall submit to the Minister on a quarterly basis reports containing the information required under this Act and Regulations.

(2) Quarterly reports shall include information prescribed by Regulations, including but not limited to information on—

(a) import and export;

(b) business sales, marketing and distribution;”

The point is, if there is no value to either the regulators or the consumers, this particular clause according to the Constitution has failed the rationality test because there is no causal connection between the objective which I mentioned earlier about decreasing tobacco consumption and such reporting requirements.

The other clause which is 12(1) states:

“No person shall smoke or hold a lighted tobacco product in any enclosed public place, enclosed workplace, or public conveyance including but not limited to any place listed in the Second Schedule.”

Now, it passed the objective test, which is the restriction is not absolute. However, if you look at the particular clause, it is also passing the connection test, but with respect to the proportionality test it has failed because it includes members' clubs and it cannot be reasonably justifiable for persons not to be allowed to smoke in private.

Sen. Narace: Which clause is that?

Sen. Dr. A. Nanan: Clause 12(1), and it talks about the Second Schedule which talks about clubs on the whole that are no smoking areas.

“12(2) Notwithstanding subsection (1), no person shall smoke within fifteen metres of any place that caters primarily to children, such as schools, children's playgrounds and amusement parks.”

This particular subsection should either be amended or deleted because what is happening here is that in my opening discussion where I talked about excessive measures arbitrarily or excessively invade the enjoyment of the guaranteed right according to the standards of society for the rights and freedoms of the individual.

And if we go to section 13(1) of the Constitution to which this section applies—and this particular Bill requires a three-fifths majority—may expressly declare that it shall have effect even though inconsistent with sections 4 and 5.

3.00 p.m.

Now that is the particular objective:

"...if any such Act does so declare, it shall have effect accordingly unless the Act is shown not to be reasonably justifiable in a society that has a proper respect for the rights and freedoms of the individual."

And this particular clause is excessive, because what we are seeing here, it could apply to places not accessible to the general public such as private houses.

Sen. Narace: What clause?

Sen. Dr. A. Nanan: Clause 12(2).

"Notwithstanding subsection (1), no person shall smoke within fifteen metres of any place that caters primarily to children, such as schools, children's playgrounds and amusement parks."

The Minister in this particular clause may need to identify public places which provide services primarily to children, because many outdoor public places do not cater primarily for children and if you look at the definition for playground, you will see that the definition includes a place for playing games. So it is not merely for children alone. And, of course, the particular distance of any place that caters primarily to children, you could have, as I said before, private houses in the vicinity.

Clause 15 makes reference to:

"No person shall display tobacco products in such a way that they are visible to the public, but the prohibition against public displays of tobacco products shall not apply to individuals incidentally or accidentally displaying tobacco products during carrying or use."

Now this is putting a complete ban and there is no justification for this complete ban, because we have not been told by the Minister with respect to other measures that have been utilized as a partial ban, rather than have a complete ban. Again, this is disproportionate and clause 15 is unconstitutional or of doubtful constitutionality.

Clause 22:

"No person shall sell, display for sale, supply, or advertise any non-tobacco product or service that contains either on the product, or in any advertisement

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of the product, a depiction of a tobacco product except where the person held intellectual property rights to that product prior to the commencement of this Act."

Well, firstly, that product in this particular paragraph, that is clause 22(1) what does it make reference to? Is it the non-tobacco product or is it non-tobacco or tobacco? Again, there is no causal connection, because the objective of decreasing tobacco consumption with respect to decreasing tobacco consumption and the—so it is failing, what we call the rational connection test again; this particular clause 22. So that clause is either unconstitutional or of doubtful constitutionality. I have the reference, Minister, if you want, in terms of that famous case in Canada with respect to the McDonald case that I am sure will be part of this debate; that is RJR McDonald.

Clause 25:

"All tobacco products shall contain, permanently affixed on their packages, or wrapper, in the case of cigars, a list of the constituents and additives specified, and in a manner as prescribed by Regulations."

Just for information, that was also struck down in that particular McDonald case.

I will now deal with some other areas of the Bill as I have already dealt with those clauses with respect to doubtful constitutionality or unconstitutional. It is in the definition aspect and that particular definition of the priority population. It appears in clause 6(2)(b). The definition is vague with respect to what it is really targeting or who are the target groups. If you compare what was there before and what you have now, we still have that particular priority population to address and it is vague and there needs to be some clarification with that particular definition.

The other matter deals with the Minister—

Sen. Narace: What is the clause?

Sen. Dr. A. Nanan: Priority population is in the definition, but it appears on page 12 of the Bill and that is clause 6(2)(b):

"develop evidence-based educational programmes and materials appropriate to the population at large and to priority populations..."

Sen. Narace: What is the point?

Sen. Dr. A. Nanan: In the definition section it does not say who these people are. And if you look at the definition that was there before in terms of the expansion—

The other area is in terms of the licence granted by the Minister.

Sen. Narace: Do you want to elaborate on that point a little more?

Sen. Dr. A. Nanan: The same one with the priority population?

Sen. Narace: Is it that you want priority population defined?

Sen. Dr. A. Nanan: Yes, because what is happening, it does not say who these people are—traditionally left out. Who are these people? Of what nationality are we speaking? We heard of a survey—in fact, Mr. Minister, you gave us so much information in such a short space of time, it is very difficult to actually analyze your figures. Probably that was the reason you gave it in such a rapid pace.

Sen. Narace: If you take your time you will get through it. [*Laughter*]

Sen. Dr. A. Nanan: So we could not actually ask for your source.

Sen. Narace: I can provide them. I can provide any one.

Sen. Dr. A. Nanan: The other area I wanted to deal with was the matter of the licence and the granting of the licence. Because there is no appeal process in this particular piece of legislation if there is a refusal to grant a licence. They have to go for judicial review. So I do not know if that was left out—

Sen. Narace: No appeal process.

Sen. Dr. A. Nanan: If they apply for a licence, because you have to grant the licence—[*Interruption*] I am hearing it being said that you have all the power.

The other issue is, if you did not grant that licence and you have a nine-month period, what will happen to the person with respect to that particular nine-month period? What needs to be done in that particular area is you need to specify in this legislation, whether the person will be allowed to operate during that nine-month period to grant that licence.

The other area with respect to licence is the matter dealing with the unit, because the unit seems to be very, very vague. I do not know if this unit is similar to the unit in the Ministry of National Security, but that one seems to be very vague:

"The Minister shall establish a Unit within the Ministry..."

I do not know if it is the same Tobacco Cessation Committee that the Minister talked about. But this unit needs to be defined. We have the responsibility but we do not have the composition of any such unit. And the unit has very powerful responsibilities, in fact, and actually deals with the priority population of unknown origin.

Sen. Seetahal SC: It does?

Sen. Dr. A. Nanan: Well, it has that:

“The Unit shall—

(b) develop evidence-based educational programmes...to the population at large and to priority populations...”

So, apparently, the unit is aware of the priority population, or will be aware.

The other area is with respect to the—I made reference to the logo and I pointed out that there was no real connection between putting the logo on, say a cigarette lighter in terms of that particular situation where you are using a non-tobacco product to put your logo on. That was in terms of no connection, really, for decrease in tobacco consumption or increase in tobacco usage in terms of that particular provision.

Clause 10 talks about the licensing procedure and transition period. That particular clause 10 is very, very interesting. As I said before, while a decision is pending with respect to, let us say for example, the West Indian Tobacco Company because they have a monopoly, will they be allowed to continue business? I think it has to be expressly stated in the legislation. Of course, with respect to judicial review, the decision will have to be a stay of—

Sen. Seetahal SC: You will have to ask for a stay.

Sen. Dr. A. Nanan: Yes, you will have to ask for a stay in the interim.

Mr. President: Senator, I would just ask you to caution yourself about how you turn your back on the Chair.

Sen. Dr. A. Nanan: Mr. President, I would not complain of a pinched nerve, but as you brought it up, it has to go on the record that that is a fact; that if you have a pinch in this particular position, if you keep switching your neck back and forth from the President to the Minister, you could have that problem developing with your brachial nerve plexus.

Mr. President: You are to talk only to me. [*Laughter*]

Sen. Dr. A. Nanan: But I still have to make reference to my Bill. But it is important that you do not suppress the brachial nerve plexus, Mr. President.

I want to deal now with the licensing procedure and transition period, and what is happening there is the cost of the applications set out in the First Schedule is unreasonable especially since the Bill makes no provision for a refund of the fees and/or appeal of a refusal by the Minister.

The recommendation is, the cost set out in the First Schedule should be the cost of the licences if granted. There should be no cost or a reasonable administrative cost for the application processing. There is no provision for the renewal of a licence at the end of its three-year life span. The recommendation should be that provision must be made for renewal of licences.

3.15 p.m.

Now clause 6(8) requires immediate cessation of business if the licence is repealed. I am sure that the Minister would correct me if I am wrong. Sorry, it is clause 10(8). If the Minister agrees, the business must cease immediately. That is impractical because there are people who are solely manufacturers. There are exporters of tobacco products and who would have to address issues such as termination of workers and the Minister would have to address that issue. I do not want to impute improper motives, so I would not make any comment on that particular area.

Sen. Narace: What is your recommendation?

Sen. Dr. A. Nanan: The applicant must be allowed to plead with the Minister in special circumstances in order to cease its operations and the Minister should grant a reasonable time frame to do so. Further, the Minister should assist the applicant to cope with the inevitable consequences of failure to obtain the licence.

There is another area with which I want to deal, which is the section on fines and penalties. This relates to clauses 12, 18, 25, 31, 32, 36, 37(1) and (2). The fines and penalties are excessive when examined against prohibitive drugs if it is the intention of the Bill to regulate the use of tobacco by individuals; it is not to make its use illegal. That is important. The use of tobacco is not illegal. Nicotine is a legal drug and the definition of regulate in the *New Oxford American Dictionary* is “to control or supervise something by means of rules and regulations”.

The Minister may disagree. The imposition of imprisonment as a penalty for any non-compliance with this Bill is disproportionate to the objective of the Bill and unjustifiable if the use of tobacco remains legal.

Some of the recommendations: the fines should be reduced so as to raise awareness and not to punish. Tobacco is legal. Fines should be fixed and not discretionary. The penalty of imprisonment should be removed altogether. Provision should be made for acceptable defences through non-compliance with the Act. Provision must be made to state what a person can expect to receive if they have been accused of non-compliance with the Act.

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The Minister made reference to the officers in this particular Bill and we have to consider the powers that are being granted. Are they excessive? The question has to be asked in terms of these officers being authorized to go on to the premises and seize. It reminds me of the Customs Act, where customs officers now have the power, if they have reasonable cause, to confiscate goods without a warrant. We have to be careful when we give these powers to these officers. That is an area to be looked at.

The Minister made reference to a lot of information concerning the use of tobacco and the dangers to the public with respect to health. If you look at the situation with respect to nicotine—I made a note here in respect of household income—the Minister was putting a case forward that we would have more household income if we cut out tobacco use. My point is—and the Minister said it—that nicotine is addictive. If there is a situation where you cannot come off nicotine, because in every cigarette there is 8 to 20 milligrammes of nicotine and the body picks up 1 milligramme of nicotine and it crosses the blood/brain barrier and gives that euphoric effect within 10 to 15 minutes of smoking a cigarette.

If you look at the situation in the brain, there are pleasurable feelings. In fact, nicotine increases your memory capacity and that is why you keep wanting to smoke. It releases endorphins, which have some painkiller properties, so here is a situation where another high develops called a runner's high. All these different mechanisms give that continual use of nicotine and the person who is smoking so many cigarettes daily keeps that level of nicotine in the system.

Some people have a genetic defect where there is a problem with an enzyme in the liver. That is why some people smoke more to get the same effect. My point, when I drew the analysis here, is that if you cannot come off—I am making reference to the increase in taxes—the nicotine addiction, you have to continue to consume your cigarettes to maintain the levels. If you increase the taxes, then you decrease the household income. I just wanted to make the point in response to the Minister making reference to household income increasing.

To the end of his presentation, the Minister also made reference to the cleft palate and oral health. No one is disputing the fact that nicotine lowers the immune response system that is why we have a proliferation of diseases of the mouth. The fact is that we are aware of all these different problems that smoking cigarettes causes, but if you have legislation that is being rushed—what I find strange is that the Minister gave the analysis in terms of the chronological sequence of events with respect to a select committee dealing with this Bill. Amendments were made and many were not picked up in this Bill.

I find it strange when the Minister said that the Bill went back to the Legislative Review Committee, which took all the consultations into consideration and came up with this legislation. I find it surprising that we have all these problems. Mr. Minister, we are not attacking the Bill; we are saying that because of the problems with the Constitution and reasonable justification, this may not stand in court. If we are putting forward a piece of legislation to have the effect of decreasing tobacco consumption, whether in Brazil or Uruguay and the various countries to which he made reference, and this particular convention, we would want to see that legislation foolproof when it is passed in this Senate and becomes law.

Mr. President, the Bill also makes reference in the schedule—I want to go quickly to the schedule because it gives an idea of the most smoking areas—to public transportation terminals, workplaces, retail establishments, including bars, restaurants and shopping malls, clubs, cinemas, concert halls, sports facilities, pool and bingo halls, publicly owned facilities rented out for events, any other facilities accessible to the public. It is in this schedule that I made reference to clubs because I thought private members' clubs were being excluded. When I looked through the Bill, private members' clubs were not excluded.

We are putting forward that clause 25, because of the situation, makes no rational connection between the objective of the Bill to decrease tobacco consumption and is, therefore, unconstitutional and should be removed. I do not think the Minister will agree with that recommendation.

With respect to clause 19, prohibition against tobacco advertising, the Bill cannot do both. It can do one or the other. If an Act is prohibitive, then there is nothing to restrict. The prohibition of advertising is draconian, excessive and disproportionate to the objective of reducing the use of tobacco. The recommendation being put forward is that advertising should be restricted to specified means, not prohibited. No advertising should be aimed at persons under 18 years or depict any person of that age or feature celebrities. All advertising should carry health warnings. No advertising should be within a particular distance from a school.

Mr. President, tobacco usage causes lung disease. There is an extricable link between tobacco usage and lung disease. If you look at the target group in terms of our population and lung disease, the older population, because of the situation with tobacco affecting the lungs and that lung disease problem, will now be a target for the A(H1N1) virus. If you decrease, as the Minister said, the number of smokers, you still have this level of persons in the society with chronic obstructive pulmonary disease. So we are saying, in terms of that target group, that is not the priority population. It may be the priority population when you are dealing with the A(H1N1) virus.

3.30 p.m.

Why did the Minister not look, when he was dealing with this particular situation, at the particular area of the population that had the chronic lung problem, in terms of giving that aspect of the population the Tamiflu? I know the Minister is willing to respond to that particular suggestion. I need to inform the Minister with respect to this particular area of the population with lung problems. They are at high risk, with respect to the H1N1 virus.

The reason I am showing the reference to this situation is because these are going to be smokers. Many of these people who would have the chronic lung disease will be smokers. If they are smokers and you have the ability to give them the Tamiflu, why did the Minister not give the Tamiflu to private practitioners? What is the reason the Minister did not give the Tamiflu to the private practitioners?

Mr. President, I made reference, with respect to the matters of the smokers. The Bill deals with tobacco. If the Bill is dealing with tobacco—the Minister made reference to the reduction of tobacco usage and we still have those people who are smoking out there with chronic lung problems. They will be the target for the H1N1 virus. If you want to respond Minister, I will give way.

Sen. Narace: If I get up, it is for Standing Order 36(1).

Sen. Dr. A. Nanan: I wanted to make the link, because it is important in this debate, since we are dealing with that particular issue.

I need to look at some of the definitions—

“‘authorized officer’ means a police officer, customs officer or public health inspector;”

The question has to be asked: Will the public health inspector now have the power of a police officer or a customs officer under this particular piece of legislation?

With respect to the definition of “‘enclosed”:

“‘enclosed’ in relation to a space, means any space covered by a roof or any space surrounded by one or more walls or sides, regardless of the type of material used and regardless of whether the structure is permanent or temporary;”

I think we need some clarification on that particular definition.

“‘graphis’ means any symbol, sign, logo, mark, trademark, pattern, emblem, design, crèche, recognizable colours or patterns of colours, or any indicia of tobacco products or seller identification;”

That is a large amount of information there. I hope that particular definition really targets what the Minister is trying to point out. That particular definition probably needs to be revisited.

Again, I would not go into “priority population” again.

I heard the Minister, in terms of the amendment of the definition of “workplace”.

“‘workplace’ means any place used by persons during their employment or work and includes vehicles, common areas, and any other area which is generally used during the course of employment or work, but does not include private residences or private vehicles except where such residences or vehicles are also used as workplaces.”

We still have to ask the question: If somebody is employed in a household and the person is in an environment of smoke, with respect to this particular environment, what will be the scenario? I am sure the Minister will explain that, in terms of a worker in a household where the owners are smoking in the area. That is the definition of “workplace”.

As I close, I would leave all the other areas of this particular piece of legislation for my colleagues to deal with. I wanted to point out that it is our view that clauses 11, 12, 15, 22 and 25 are unconstitutional or of doubtful constitutionality. I thank you.

Sen. Helen Drayton: Thank you, Mr. President. Let me start by saying that I certainly endorse all that the Minister has said with respect to—[*Desk thumping*] let me finish, I think you ought to wait until I waltz around your legislation—tobacco and health. I certainly endorse that. With that, I certainly will not repeat all that you have said when you cited the statistics for various countries. I would dwell a bit on what you did not say, before I go into my contribution.

With respect to all the countries that you mentioned, not one of those countries sought, in their legislation, to impair the privacy and constitutional rights of individuals. Where that was attempted, in the case of Canada, with respect to the corporate citizen, the legislation was overturned by the High Court.

What you did not say as well, is that none of these countries attempted the wholesale implementation of draconian legislation. What they did was to incrementally, progressively implement legislation. Before they implemented legislation, they had very aggressive educational programmes, counselling programmes for youth, outreach programmes and rehabilitation centres, so that it was a well-coordinated and strategic approach to tobacco control.

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What you did not say as well, is that a number of those countries, having implemented the legislation, implemented what is called multiple regression analysis to determine what are the factors or the variables that are having a positive impact on smoking. Among these you have education. Of course, there are variables such as price, advertising, promotion, sponsorships, *et cetera*. Where there are positive trends, the most profound and viable instrument has in fact been education and counselling.

What you did not say also, and this is very important, because of our very small society that is already characterized by a lot of crime, is the aggressive and robust emergence of contraband cigarettes as a result of legislation over the past five years, but primarily also sin tax; tax on cigarettes. I will address all these later on. Suffice it to say that I would get on to one or two things in the legislation itself.

I want to emphasize that I am for tobacco control. I need to emphasize that. I am for tobacco control, insofar as it protects the non-smoker, insofar as it protects the children who cannot make decisions for themselves and insofar as it has an effect on the smoker who consumes a large percentage of the health dollar, which is my tax and your tax. I am for tobacco control that is sensible, reasonable and workable.

Several amendments were made, with respect to penalties. I think that was a step in the right direction. I certainly commend the Government for that, but I still have a few concerns and the major concern still goes to the heart of the right to privacy in the home. I have heard what you said, with respect to the modification of “workplace”, where you would delete the last three words and instead, include “for commercial purposes”. It means that you have to put in a definition for “commercial purposes”. If by commercial purposes you mean you are speaking specifically where homes are used for the manufacture, distribution and sale of tobacco, I have no problem with that, because that goes to the heart/core of the objectives of the legislation. But, if it is just outright commercial, I would have a problem with that, because with the emergence of the Internet many homes today—we all use our homes in part for business purposes, not that the home is a business place—are used for business purposes.

I would want a specific definition for “commercial”, more so because clause 8(2) states:

“...authorized officers who are either customs officers or police officers shall have the power to—

(a) enter the premises...”

among which are workplaces,

“to conduct inspections or investigations at any time during business or operating hours or at any other reasonable...time;”

Once the private residence is included in that, I would have serious problems with any customs officer or police officer entering the home to search and investigate for what remains a legal product. I think that needs to be put in another context and that is the perception of the increasing—I want to be careful here, because I support law enforcement and the police—perception of indiscretion with the display of threatening ammunition. You have seen that.

Just two weeks ago 50 or 60 men sitting in grass, light weight and unarmed and there were police with what you call submachine guns to arrest or do what.

When we are bringing legislation, which impairs the Constitution in this way, for situations which are serious but not illegal, I think we have every right to be concerned. More so, one has to wonder—last week you had the Proceeds of Crime Bill and the FIU, which was very invasive, in terms of business. The Minister of National Security has made mention of other packages of legislation to come. We know there is the Evidence (Amdt.) Bill to come, all of which impair sections 4 and 5 of the Constitution, including all the other legislation that have gone before. One has to ask a question; it begs a question: How relevant are sections 4 and 5 of the Constitution today? Is it any longer relevant, if every piece of legislation is infringing sections in which your basic human rights are enshrined? We need to ask ourselves: Are sections 4 and 5 relevant any longer?

3.45 p.m.

So, do we need another Bill this time that is going to be invasive in terms of your home? I say no, we do not need that. We want tobacco control, but we do not want the invasion of privacy. I am circulating an amendment with respect to the definition of “workplace”. I would like to see in clause 8(2) specific words included—the clause which addresses the investigation by police officers and customs officers—which state that this excludes private residences.

What I will agree to—because I think we want to protect children—is that where private vehicles are concerned—I think a clause should be inserted which prohibits motor vehicles including private vehicles—that you prohibit smoking when a child is present. I can live with that. I can also live with a situation where there are many homes in Trinidad that operate day care nurseries, kindergartens and where teachers give private lessons—they would not be deemed educational establishments

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in the context of this legislation, and because we are dealing with children who are not making decisions for themselves and who have no choice in the matter—I can agree that a prohibition should be included with respect to private day care nurseries, kindergartens and private tutoring. I think that is reasonable.

Now, with respect to clause 9, I really do not know what was intended there. I did not know whether to laugh or cry at this one. I do not mean to be facetious, but when you put in legislation that customs officers and police officers can approach a person for investigation, and they do not have to show identity unless you ask them, we cannot be serious about this. I have sent an amendment around where the part which states that “unless they are requested to produce identification” is to be deleted. That is no law.

I would ask one other question and that is with respect to a new unit to be established in the Ministry of Health. Now, if we are serious about cigarettes and nicotine as a toxic drug, I just wonder why there is need to include a new unit, when you have cited all these countries that have done wonderful things—that they had the sense—at least, some of them—to put it in their food and drug division. That sends a profound message in education that this is a drug. So, that is something to note.

I want to speak about the sobering realities of contraband. That has emerged aggressively over the past five or six years, and it leads me to ask: To what extent has the Government really considered this matter? When you consider that we have poured a lot of financial, human and technical resources in the Ministry of National Security, and we cannot control marijuana, we cannot control cocaine and we cannot control guns, I want to ask the Minister of Health, through you, Mr. President, how are we controlling cigarettes? So, we got to be serious with what we are doing and not send contradictory messages. Given the high incidence of gangs here, this needs to be thought through again. It must be noted that the emergence of contraband tobacco is not only as a result of tobacco control legislation, it is also as a result, as I have said before, of the sin tax.

In the context of Canada, that has been the main engine of growth where contraband tobacco has been flooding its borders through the same routes used by the mafia in the old days of the prohibition of alcohol. Who is doing it? It is the gangs. It has provided a new source of revenue to finance crime. So that when you take a product like cigarettes and you make it illegal, you are putting weapons in the hands of criminal gangs. I am not saying for one minute do not control tobacco. I am saying that the Government needs to sit and think through this matter very carefully and, worse, you are sending conflicting messages.

If you are saying that this legislation and all these wonderful things you are doing are supposed to work, why are you projecting increased revenues? You should be projecting a decline in the sales of tobacco. [*Interruption*] You have increased the tax as a fiscal measure. I am not saying not to do that, but what happens then and, particularly, in a society such as Trinidad, as you increase the price of cigarettes, you are bringing it closer to the price of illicit drugs. You are now expanding the potential for substitution.

Sen. Narace: Mr. President, only to say that you are making the case that the long-term sustainable answer does not lie in taxation. You have made the point about the gangs and the illicit drugs and so forth so, therefore, it is this kind of regulation that will not make it necessary. So, you have to continue increasing taxes if you want to solve the problem, as it were.

Sen. H. Drayton: I am not too sure the message has been assimilated. I would not say that you do not get it. Where price is concerned—and the illicit drugs have shown that—it is not a factor with addicts. If price was a factor then there will be no market for cocaine and marijuana. Now, there will be some impact with price on what you would call the casual, social smoker or person using alcohol—the person who would be more inclined to be watching their budget and who is not yet addicted. Where youths are concerned, they are not earning the money that they are using to buy cigarettes and drugs. They steal it or they exchange it for gifts whether it is for a CD, DVD or the “bling”. So, understand that price is not a factor where your priority group, where the youths are concerned. What is the factor there is education.

So that while you need legislation to protect the non-smoker and to protect children, you can only do this in a proper way with viable education, counselling and rehabilitation programmes. The Government has not been very good when it comes to rehabilitation programmes. In fact, you have not been good at all.

What I want to suggest is that you further amend clause 4 with respect to “workplace”; amend clause 8(2) of that legislation where police officers and customs officers cannot enter the privacy of your home; define “commercial” to mean specifically “the manufacture, distribution and sale of tobacco”; and make it mandatory in the legislation—to start with, there must be a search warrant—

Sen. Narace: I want to thank the Senator for being so gracious. If there was a home where they were doing a bit of factory-type work—people sewing shirts and skirts and so on—let us say there are about 40—50 persons in a private home, would that be considered commercial?

Sen. H. Drayton: Well, that is a business in its own right. It is obviously that a trade is being carried on there, but one has to make sure that there is a distinction between the business and what is the private home. Usually you have the private home and there is a business just as how you would have a hairdresser or whatever. So, this is why I am saying that it needs to be defined. By virtue of the fact that you asked that question, “commercial” needs to be defined in such a way that the private residency is protected and it cannot be violated. There is no need to do that.

I would also ask for the amendment with respect to, as I said, the warrant and the IDs. With respect to a few definitions it says that:

“‘additive’ means any substance, chemical, compound, or component, other than tobacco or water...”

We should consider an amendment here to say “except tobacco leaf” because you have defined the tobacco product in the context of tobacco leaf. So, it should be “except tobacco leaf and other natural substances” otherwise you leave it open to other substances.

I would not repeat what Sen. Dr. Adesh Nanan raised with respect to “priority population”, but I am a bit confused as well. It says:

“‘priority population’ means any population group that is, or traditionally has been, excluded from tobacco control planning...”

I am not too sure what that means. That could be discussed afterwards.

There is another amendment that I would like to see and that goes to the heart of the contraband trade. If you are saying that tobacco is legal and it can be sold legally, and that WITCO is a legal corporate citizen, then you are opening the licensed product to abuse by pushing it under the counter. Now, since the tobacco product remains a legal product, it should be encased in the manufacturer's dispenser. I am not talking about advertising. I am talking about a legitimate and a proper information dispenser. It means that their control can be exercised through monitoring by the very company with respect to the product that is being sold. So the product that is coming from under the counter should be treated with suspicion by people who would buy tobacco anyway.

What you should bear in mind is that the dispenser is at the point of sale. The very fact that the person had gone to an outlet that person had already made a decision, so it is not influencing the decision. When you push it under the counter, you are now opening the potential for contraband, and not only that, but the fact is, the consumer is going to buy it anyway. We know that legislation in itself is

not going to have any effect on the person who is addicted or the person who chooses to smoke anyway. It is not that I am advocating that. What you are doing is that they cannot see what is being sold.

The manufacturer, in terms of monitoring the trade because it is legal, is open to abuse. So, I feel that this legislation must be amended to allow the product to be in specific dispensers—the parameters which can be agreed upon between the Ministry of Health and the company. I am not talking about advertising. But as I said, the decision was already made by the person, so you want to protect the person and you want to prevent the contraband trade.

4.00 p.m.

Sen. Dr. Dick-Forde: Sen. Drayton, thank you. I just need to understand the abuse point better because you are saying we are driving it under the counter. I know there is that provision to remove it from the public view but if you could explain the abuse point a little clearer?

Sen. H. Drayton: The fact that you are pushing the product under the counter it means that a person going to buy the product cannot see the range of products that are there. Remember the products sold by the manufacturer here, assuming that they abide by all your regulations with respect to packaging, et cetera, is a licensed product and it remains a legal product.

If that product is seen and could be inspected regularly and the customer could see that it is taken from a legitimate manufacturers' dispenser, then you are mitigating risks of contraband being sold from under the counter. So this is what I am saying. The dispenser will not in any way encourage the sale because the decision has already been made to go to the point of purchase. So, I would like to see some amendment and I would look at it in the meanwhile with respect to the use of dispensers.

I think, basically, those are the major points that I have and I would hope that the legislation can be so amended so that it is not invasive of private property and that it is even further strengthened to protect children. That the basic right of the manufacturer to display the product you have licensed in a way that mitigates against tampering and allows for proper monitoring. I think those amendments are necessary, at least for my approval.

Thank you, Mr. President.

Sen. Dr. Sharon-ann Gopaul-McNicol: Thank you, Mr. President, for giving me the opportunity to participate in the Tobacco Control Bill of 2009. There is no doubt that the hon. Minister presented a solid argument in favour of—

Sen. Browne: Amen.

Sen. Dr. S. Gopaul-McNicol: [*Laughs*]—the eradication of tobacco smoking in our society given the negative impact of tobacco with respect to second-hand smoking and so forth and I certainly concur with the Minister. Thank you Minister. I certainly also concur that we need to protect individuals in our society from second-hand smoking and mount a public awareness campaign of the hazards with respect to consumers using tobacco and so forth.

I want to be clear in my contribution today. I want to completely endorse any reasonable efforts being made to protect children and adults from the involuntary consumption of tobacco. I also want to endorse legislation to make it difficult for children to obtain tobacco, and likewise, I want to endorse all legislation that will make it more difficult for media advertising and promotion of tobacco products.

However, before going through several of the clauses that I have concerns with, it must be made clear that whether we are dealing with smokeless tobacco such as chewing tobacco or cigarettes, the fact remains that we are dealing with a dangerous drug that is addictive as my colleague said earlier on in his contribution. So, I would like to briefly mention the psychological effects of this addiction that ought to be taken seriously and should be a concern in the consideration of this Bill.

It is against this background of the addictive properties of tobacco that some people will go as far as to put the flame in their mouth at times to get the full effect of nicotine. That is how seriously addictive nicotine is. This may sound rather strange to some of us, but the reality is, people find creative ways to get nicotine in their system because the main thing is the addiction. So with that in mind, if you are going to ban tobacco, you must deal with the people who are addicted to tobacco and the addictive properties of it. You must take into consideration that people go through withdrawal symptoms that can be very difficult and so we just have to be careful when we are talking about banning tobacco suddenly like this.

So, in fact, some quarter million people in Trinidad and Tobago you would find having difficulty quitting cold turkey in that sense, and I hope that we will not go through some abrupt withdrawal of nicotine from persons but set in place programmes to do so.

It is against this that I would like us to look at clauses 5 and 6 of the Bill which are very critical. There is no question that we need counselling programmes to

address the addictive properties of nicotine, so I was pleased to see clauses 5 and 6 which speak of assessment, diagnosis and intervention strategies. I think those strategies are critically important, and I was pleased to see that there is going to be a unit within the ministry—or somewhere in the government service, if not within the ministry, but the Bill referred to within the ministry—that will look at how we go about providing counselling services and undertaking the impact of assessment of national policies and controlling consumption through these interventions.

Again, I have to emphasize something that I have said many times in this honourable Senate. If our assessment procedure is wrong, our diagnosis will be wrong, our intervention strategies will be wrong and, by extension, the prognosis for controlling tobacco will be defeated. We have to be clear that our assessment must be correct. In fact, there has been my work for the past 15 years, along with Dr. Eleanor Armour-Thomas, Dr. Carter-Obayuwana, Dr. Delroy Loudon and I, we wrote about assessment and culture and personality assessment and culture in particular. In assessment and culture you have to look at whatever assessment tools you are using to determine the problem that you are saying exists in the society. So in clauses 5 and 6 of the Tobacco Control Bill we must be clear that the evidence-based programmes to inform the public of the dangers and so on, that the strategies to quit smoking must be relevant to the Trinidad and Tobago culture.

This I can explain in detail at another time if necessary because it will take me quite a while to go through every single stage that will help you. But I have no problem sitting at some point, Minister, with your team and providing the step-by-step recognition of how the assessment could be wrong and how it will affect our whole outcome, otherwise the result to bring about the cessation of tobacco usage could be compromised.

So, in clause 6 where it is stated about the evidence, educational programmes and materials, again, I must emphasize that we could have lots of great programmes in the schools. I recall some 23 years ago, submitting to the then Government a whole programme from kindergarten through sixth form in terms of tobacco control, in terms of alcohol and other drug addictions, and at the time the Government did not see it fit to follow through with such a recommendation and such programmes. But nevertheless, I certainly would like to say that there are programmes that are available for us to have these educational interventions relevant to the Trinidad and Tobago culture.

So clause 6(c) that speaks to establishing the evidence-based cessation programmes and so on, I commend you for that and I think that we must

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understand that for every single social disease there are appropriate assessment measures that can be used relevant to our culture.

Clause 6(2)(a) of the Bill speaks about educating the public through public education. Indeed, again, I was pleased to see this and I hope that we continue. In general, my concern about nicotine addiction is when young people graduate from dangerous nicotine addictive drugs like cocaine and heroin—so, when we are talking about banning tobacco we must take into consideration that people can lead very easily to cocaine and heroin, so we have to factor that in as part of our counselling strategies as was proposed in clause 6. I also hope that you take into consideration the many comments that have been made by psychologists in this country over the past couple of years to wean people from one kind of habit, whether it is drug, smoking or others.

The other issue I want to raise in the Bill is the issue of chronic diseases caused by tobacco consumption. Therefore, the Chronic Disease Assistance Programme (CDAP) is an important dimension to this entire Bill, because we are dealing with the use of tobacco which already has caused so many chronic pulmonary diseases and so forth—so the Chronic Disease Assistance Programme that supplies medication for particular areas, the Government need to take a serious look at the CDAP. We have had many complaints about this programme so far around the fact that patients cannot seem to get particular pharmacies to provide the relevant drugs and so on. So there is a need to look at the tardiness, as well, in the payments to pharmacists which delay the efficiency of the programme and create problems.

I think we need to re-examine the CDAP as we look at this entire Bill at this time. I would also like us to keep in mind with respect to the CDAP the dispensing aspect to deal with drugs because of the shortage of pharmacists and so forth.

Again, clauses 10 and 11 of the Bill speak to the sellers of tobacco, stating that every manufacturer and importer of tobacco products shall submit to the Minister on a quarterly basis. Then it went on to say, quarterly reports shall include information prescribed by regulations including but not limited to the information on import, exports, business sales, marketing and so forth. I just want to caution the Minister, if he took into consideration that, is there a conflict here with respect to the Ministry of Health overseeing this aspect of reporting to the ministry in terms of the products, the sales, the marketing and distribution? Is there a conflict? I am just asking that question, because I do not think we want to put ourselves in a situation to say that we are against the use of tobacco and yet, we, the same ministry is involved in the monitoring of it to the extent of reports. Maybe, you want a different body to do that.

Anyway, clause 12 regarding the smoke environment—I know that others spoke about this, so I think in essence we are saying that across the board there should be no smoking, again, so that we do not do such a knee-jerk reaction that can be detrimental to addictive persons or rather persons who are addictive to tobacco. Could we start—as was done in Canada, to designate areas in the initial stage as opposed to the cold turkey approach—by eventually designating areas for smoking in certain public places and then afterwards we can, in the next year or two, after much education? You see a lot of education is necessary. The previous speaker mentioned the importance of education in some of the countries that had success with this programme.

Clause 15 of the Bill speaks about the display of tobacco products, that no person shall display tobacco products that are visible to the public. Even though the Bill made reference to Internet advertising, vending machines and so on, we have to keep in mind that we have all kinds of sophisticated measures now on the Internet, be it Facebook and other types of Internet advertising. So we know how creative our youngsters can be in terms of getting access to Internet and information through the Internet that people have been providing worldwide, so we have to ensure that the Internet, hon. Minister, is properly policed, since it is in clause 16 of the Bill which definitely was a good idea to include the Internet aspect of it.

Another area we debated recently is the taxing of alcohol and tobacco, but it is known that increase in taxes and tobacco does not necessarily bring about the reduction in the sales of tobacco. So let us keep in mind the best strategy to bring about the reduction of sales on tobacco, the best strategy is by far prevention and good education programmes. I commend the ministry for its interest in doing just that.

In general we have to keep in mind that we live in a rather stressful society, be it traffic jams or just on a daily basis, people are looking at quick fixes in order to relieve the stress that they have to encounter and undergo every day. So we must look in our counselling programmes in clause 6 at what it takes to relieve stress in our society, and again, a programme can be put in place to address that.

4.15 p.m.

I want to be clear that in general I support this legislation, but I just want us to understand that we have to be careful that we do not violate the constitutional rights of persons, which could be quite problematic.

In my view, in spite of my commitment to supporting this particular Bill, I think we have gone a bit too far in some regard with respect to the penalties. Some of these penalties are a bit excessive. So much, that I myself, who never got

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into smoking and do not like drinking and so on, feel a bit nervous with these measures, that we could easily criminalize innocent persons.

Clause 12, subclauses (3) and (4) which state that:

"No one shall smoke or hold a lighted tobacco product in an enclosed public place" and so forth, or:

"Where a person contravenes subsection (1), the manager, owner or lessee of the place where the contravention occurred who authorized or acquiesced in the Act..."

and so forth, can be held responsible, and in effect can be subjected to a fine of \$10,000 and imprisonment for six months, I think this is very troubling and it is a very harsh measure. Minister, I know you cleared up the part with the workplace for commercial purposes and so on and I would not want to repeat what my colleague, the previous speaker said, but I think oftentimes where small homes are close, a neighbour may observe someone smoking and make a report, and in effect, the owner of the property may not have even been aware that this might have happened. So I want us to find a way to make sure that the home is preserved as Sen. Drayton said, "To what extent I have to ask, are we going to an affirmative action to prevent smoking?"

I have to wonder if businesses need to now hire security guards. Should we be thinking of those extreme measures in order to ensure that people are not smoking, or have a hose available to water down people who are smoking? I am not being facetious. I just think I am a bit worried that this Bill is calling for imprisonment of the owner of premises that fail to enforce a smoke-free environment, when in fact, that very owner could very much be against it. So we have to get very clear, how we are going to protect the average citizen.

Likewise, if the intent of the Bill is to criminalize smoking which it seems to suggest that in some ways, or rather to shut down the smoking companies, I think I have to ask, if this is a serious concern, maybe we need to redefine the stated objective of the Bill.

Other concerns I have are with clauses 7, 8 and 9, which speak about authorized officers. I would not go into all of the details, but I do feel quite worried with clause 8(1)(b), (c), (d) and (e), where an authorized person can carry out inspections and investigations without a warrant and all the other things that authorized persons—the latitude that authorized persons have. I can easily see this as a set-up; set-up meaning, any person who is angry with someone can set somebody up with this clause.

In fact, I feel so concerned, especially in light of the fact that one of our former MPs, both in the Lower and Upper Houses, Mr. Sadiq Baksh, was found to have cocaine at one point, and weapons and so on in his tank three months before the 2002 election back then, and up to now the culprits have not been found and arrested. I feel very concerned, and we have to find a way to protect the average person with respect to this aspect of the Bill.

Another aspect of the Bill is clause 4 that refers to the tobacco advertisements, and defined as commercial communication with the aim of promoting a tobacco product, and the company WITCO by its very name, the West Indian Tobacco Company Limited, runs the risk of infringing the law if this Bill is approved. Please know that I have no intention here, of defending or lobbying for the interest of any tobacco company, but I simply want us to be aware that some of these companies that we may be highlighting in a negative way today, have done a lot of goodwill work for NGOs and social development. In fact, I am certainly aware of the many goodwill social development work being done in the St. Joseph constituency, up in Champs Fleurs and so on, so I do not want for us to feel that it is all about something negative with respect to it. In fact, what we may need to do as we help people wean away from smoking, is recognize, not close our minds to the possibilities of the goodwill work that has been done by certain tobacco organizations.

Also, clause 13 which states that no person who sells tobacco shall hire or use any child to sell any tobacco product, I think this was great, Minister. I really like this idea. The only problem I have with this, is that there is an unfortunate aspect in our culture where parents send their children—You heard me?

Sen. Narace: Yes.

Sen. Dr. S. Gopaul-McNicol: Yes, it was. [*Laughter*] Clause 13 is a really good clause. But the only unfortunate cultural aspect of clause 13 is that parents send their children to the store, to the shop, to purchase things from a neighbour who owns the shop, and oftentimes the neighbours will give to the children these items. So in communities, we have to do a lot of education, that communities will know that this is highly inappropriate.

I also have concerns with clause 31(2) where a poor vender—we talked about the selling of single cigarettes and I wonder how we can wean people off, because we are paying a fine of \$12,000 if a person is found selling two single cigarettes let us just say, or six months in jail. I think this is so harsh and I think we have to be reasonable and fair if we are going to be good legislators, because it is about

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making the law and looking at if the punishment fits the crime. I am not quite sure that this is something that we—if it is fear we are trying to instil in people, well, we certainly will be successful in doing so.

Mr. President, 23 years ago, I told the Government to let us censor the media—I remember writing a long letter which I kept—because of the psychological and social impact of the North American media in our social development, and television plays a very important role, and yet we continue to endorse wholesale North American movies and so on. That does not mean that we do not have many positive aspects of the American culture, but clearly, smoking tobacco and drinking and so on, are very much practised and endorsed in the media. So as part of the interventions that you put forward in clause 6, you need to make reference to this. We have to understand this kind of vicarious learning that our children will see in the media where a youngster learns what he sees and hears and so on, and undoubtedly penetrates the consciousness of young people. So it is no surprise to me that young people use tobacco excessively, from age 11—smoking and drinking is part of it. It is almost like a stylistic uppity kind of working class phenomenon, so usually seen with our successful professionals and so on.

Clause 35, where no employer shall dismiss, or suspend, or demote, or discipline, or harass or otherwise disadvantage an employee, I thought this was really good, and I really would like to say even though clause 35 is fair in its position, we must take into consideration how to handle small communities where people work for their neighbours. In clause 35, an employee who goes and reports on someone who runs an establishment near to him, that person who owns the restaurant and so on, and is a person who provides for the community at large, may very well find this offensive. So I think we need in our education programmes, to help smaller communities to understand the value of what we are attempting to do.

In general, Mr. President, I would like to continue to hear a little bit more about interventions with respect to helping people to kick the habit. I think the Government has a healthy lifestyles promotion right now in general. I think this is good. So if we could incorporate all of this, not just about banning cigarettes, but a healthier lifestyle in general that we could promote, that will be good.

I would like to end my contribution by saying that I wish to support any action that is done in the best interest of the citizens of Trinidad and Tobago, and certainly, where our children are concerned. I would want to see this kind of Bill, not only passed, but that we really take seriously what we are proposing here in our society.

In general, I am concerned though, that we are moving from a position of no regulations at all where smoking is concerned, to extremely criminalizing almost every related activity to tobacco usage, be it smoking in one's home, or domestic worker as an employee who smokes and so on. So in general, this Bill in my view, while it is a good proposal at this point, changes still need to be made and I would like to see these proposed amendments that are suggested by the various Senators today, benefit all of the people. I think, maybe, we should send it back to the joint select committee—this is just my recommendation—to again, make sure that we fine tune every aspect of this Bill because it is such an important dimension, and from tobacco smoking can come the eradication of other drugs.

You see, this is important. We are starting with cigarettes, but really and truly from tobacco smoking, we will then progress to other drugs, alcohol and so on, where we could begin looking at eradicating through our education programmes and the value for healthy lifestyles and so on. So I think it is important that we go back to the joint select committee, both in the Lower House and in the Upper House, and look seriously at this Bill.

Mr. President, thank you so much for giving me the opportunity. [*Desk thumping*]

Mr. President: Senator, would you like to start or take the tea break?

Sen. Seetahal SC: I will just start for five minutes.

Mr. President: Very well.

Sen. Dana Seetahal SC: Mr. President, thank you very much. I will just deal with three areas. So the first area is what I will deal with before tea. That is, if we leave clause 8 as it is, in my respectful view, this could be a recipe for corruption and abuse, and that is the clause dealing with the inspectors, that inspectors given the power under 8(1) to examine, open packages and so on. But more significantly, those inspectors who are customs and police officers, who would have the power to enter premises and may enter any, I quote:

"...public place, workplace, or means of public transportation to conduct inspections or investigations...at any...reasonable time or necessary time."

So they may do that. They may also:

"Stop, search and detain any aircraft, ship, vehicle or other means of transportation, and they may seize and detain items which the authorized officer reasonably believes does not comply with the Act."

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Now, under this legislation, this may occur without a warrant. Under other pieces of legislation, a police officer under the Summary Courts Act for instance, needs to have a warrant issued by a magistrate to enter a person's home and to search.

Now, it is said that a home is your castle—not just a man's castle, but a woman's as well, and that is why there is an interpolation between the police officers and the citizen of a judicial officer, and the judicial officer is the one who provides the safeguard. Without that interpolation, you can have corruption of the scale that we have never had before. You have now allegations that people plant stuff on you. It can be said that persons plant to justify a search, which in this case could only be authorized if you believe that tobacco products are kept in certain places and so on.

So what is the difficulty with planting any one of these variety of items that we hear about? Because right now it is not unusual for it to be asserted that officers plant marijuana, not to mention cocaine, and there have been cases in which it has been proven that this has occurred. I am not saying it happens all the time or in the majority of cases, certainly in the minority, but when you give blanket authority to officers to enter, seize, detain with no protection, then you are leading down that road, and especially in this time where the economy is such that we fear people may not have the wherewithal, then an open hand at the end of this section could be what we will find in some of these officers.

So, that is my main concern in relation to that, and as well smuggling.

It is now 4.29 p.m., Mr. President, and I know the Minister wants to make an interjection. Perhaps I can give him my minute—well, it is 4.30 p.m., anyway.

Sen. Narace: Thank you. Just to ask you to make a recommendation with respect to clause 8.

Mr. President: Hon. Senators, it is now 4.30 p.m., so we will suspend the session for the tea break. This sitting is now suspended until 5 o'clock.

4.30 p.m.: *Sitting suspended.*

5.00 p.m.: *Sitting resumed.*

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

Sen. D. Seetahal SC: Mr. Vice-President, I was making the point that my first area of concern had to do with the general situation, looking at some general issues in the Bill which had to do with the powers of authorized offices.

Another issue, generalized in nature is of course, under clause 10(3), the Minister being the licensing authority under this Bill. I take that to mean the

Minister and his ministerial staff, because if the Minister is singularly responsible for issuing licences, I could see the administrative nightmare that would flow from this.

Given the fact that you have persons who are not the normal manufacturer or retailer, there are many other shops, groceries and so many persons, who would want licences when this Act comes into effect. I have to wonder whether or not there would be staffing arrangements for this.

Let us look at another department such as the Town and Country Planning Division. It is a division that is supposed to give licences for many things, for planning or for development, and the nightmare that goes on there currently, you may be aware of it if you have anything to do with buildings and property development, but I know from personal experience with clients that it could take years to get these licences. After four years of being in a place, there is no need for a licence again. Of course, the same situation does not occur here, but a person must cease business when his licence expires after three years.

The point was made that there was no provision for a renewal period. So if your application is in before the deadline date, what happens in that period? There is nothing. You are carrying on your business as usual, either manufacturing or retailing tobacco products, and then your licence expires; if, as has happened with other ministries which I have mentioned, you do not have the staff arrangements or it is just the red tape that is continuing to flow or not flow, then it could take months.

So can there be any assurance from the Minister—who is not currently here—that this will not happen? If there is not, then I think there must be included in the Bill a provision for the continuance of that licence, pending the renewal. That is vitally important, because so far in many, many, many agencies that you require licensing for in this country, inefficiency is the trademark, for whatever reason.

The point has already been made that the Minister is the unit. I was wondering, since there is nothing in this Bill about the structure of the unit—the unit has a lot of authority, and a lot of the powers are in compliance with the requirements under the World Health Organization (WHO) Convention, which we signed in 2003. This is what this Bill is supposed to be about; that is what the unit is supposed to do. One would have thought that there would be some kind of indication as to who is to comprise it, rather than just the words: "There shall be a unit". Perhaps the unit should have been the division with the licensing power; that would have made it much more sensible.

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Mr. Vice-President, I move to areas of concern in respect of the last Bill that the Minister mentioned. He said that he had dealt with it in this new Bill that was brought before us. The first issue is the question of whether or not this Bill deals with public awareness, which, in my view, is the main thrust of the convention that we signed, that you have public awareness of the dangers of tobacco and tobacco products. What has been proposed to deal with that is the unit; therefore, the success of the Minister and the Government, in keeping to the WHO Convention, depends on the success of this unit. This is why I think there needs to be some elaboration and clarity of this unit, if we are to say that we are complying with the WHO Convention by the establishment of this unit.

So there has been an attempt by the Minister to meet the concerns expressed in the Joint Select Committee, as to whether or not the Bill meets with that requirement. There has been an attempt to deal with the penalties because, as was pointed out under the last Bill, you had penalties, the maximum up to \$1 million, which was so out of sync with other penalties for dangerous drugs that some concessions had to be made. But while the maximum terms of imprisonment are low, in all the cases, you find that maximum penalties vary from \$10,000 for some offences, and others \$500,000. I really do not understand why this is so. My point is, there has been a reduction in the case of some maximum penalties from \$1 million to \$500,000, but there still remains in the Bill provisions which do not make, in my respectful view, logical sense. I will point that out; clauses 12 and 37.

If you have a copy of that Bill in front of you, you could see what I am speaking about. We are talking about clause 12 which deals with the general prohibition provision. It stipulates at 12(1):

"No person shall smoke or hold a lighted tobacco product in an enclosed public place, enclosed workplace, or public conveyance including but not limited to any place listed in the Second Schedule."

At 12(4) there is a provision for the penalty:

"A person who contravenes this section commits an offence and is liable, on summary conviction, to a fine of ten thousand dollars and to imprisonment for six months."

Not forgetting that one of the stated purposes of this Bill is to regulate tobacco use and to ensure, really, one of the means of protecting individuals from exposure, so you are dealing with protection through preventing smoking in enclosed public places. The penalty for breaching that is \$10,000 and imprisonment for six months.

Moving to clause 37, you see a statement dealing with 13, 14, 15 and 16:

"Any person who...commits an offence and is liable—

(a) on summary conviction, to a fine of—

(i) one hundred thousand dollars and to imprisonment for three months for the first offence;..."—and it goes on—

"(b) on conviction on indictment, to a fine of five hundred thousand dollars and to imprisonment for one year."

What are the offences for which you could incur the penalty? The offences are where you hire or use a child to sell tobacco; where you sell the tobacco product in a way that the consumer may handle the product without the assistance of a sales clerk or other employee. If you sell your product in a way that the consumer could handle it without assistance, which means you do not have it locked up, presumably in a cabinet or something—so he could look at it—then you are liable to that fine of \$500,000. Whereas if you smoke in an enclosed public place, which seems to be one of the main things about this Bill, then you are just liable to a fine of \$10,000 or six months.

I do not wish the Minister to say, "Okay, we will up that to \$500,000", because it makes no sense of all the proposals which we discussed in the Joint Select Committee, in which we talked about the inconsistencies between this and the narcotics legislation. In the narcotics legislation, the maximum penalty in respect of indictable offences is \$50,000; that is the maximum fine; of course, it carries imprisonment, which is another thing, but a lot of times magistrates prefer when you are dealing with that—if it is summary, the maximum penalty for marijuana is, I think, \$10,000; for cocaine it is \$25,000; but that is the fine.

Here we are dealing with companies. I agree that it is companies largely, but it is not restricted to companies; so if you have individuals who are selling toy cigarettes, then they could be liable to serious penalties. Whoever drafted the Bill, and whatever committee looked it over, needed to look at it with the question of consistency, to make some kind of logical sense out of those penalties.

While I commend the Minister and his team for attempting to address the concerns of us, and bearing in mind the drug legislation—and this is not considered an illegal drug, yet, we need to look at that importantly.

There was the concern that the period of licensing would be for six months, and given the inefficiencies I mentioned, it was recommended that be increased. I

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see it is now increased to three years, which shows an attempt by the Minister and his team to address the issues. Those are the issues, some of which were addressed in this Bill.

There was a reduction, as well, in the number of extraneous clauses that we had. In the new Bill I have some concerns. While I would have liked to pass them on to the Minister before, bearing in mind the number of Bills that came to us in quick succession, I did not get to read this until yesterday actually. There would be no way I would have been able to convey this.

My first concern is with the definition of "enclosed". Mr. Vice-President, at page 8 of the Bill is a definition. That definition is important since it relates to one of the prohibitions at 12(1), which I just read to you.

"'enclosed' in relation to a space, means any space covered by a roof or any space surrounded by one or more walls or sides, regardless of the type of material used and regardless of whether the structure is permanent or temporary;"

So if you create a tent in the middle of somewhere, like a field, and you have one wall, let us say you are having a play, presumably that would be it; but I am not even concerned about that so much. I am looking at businesses, people with bars and shops, whatever, and they create a veranda outside and it is not walled in, the purpose being that you do not disturb other patrons. So you come out of the main building and you go onto the veranda; there is cover from rain, because of the weather here, and the one wall is the wall of the building, permanent structure; you would be caught within this legislation. That is not enclosed. Should that be the purpose of this Bill?

The purpose, in my respectful view, would have been to protect those persons who are inside, who would be probably suffocating if too many persons smoke inside that building, and they cannot breathe. But you are coming outside to blow your smoke, presumably, out in the air out there, because there is this wall of the building, under this definition you would be caught. I do not think it is fair; that is not enclosed. It should not be caught under clause 12 as it is now; it is not an enclosed space.

If you wanted to say maybe three walls even, I could see that, maybe because there is no room for the smoke to dissipate in, but it should not be that way. This should not be one of the offences, in that, if you are smoking on a veranda, for example, of a restaurant with one wall only, that you should be caught.

The next issue I have is with the definition of "priority population". Mr. Vice-President, my colleague, Sen. Basharat Ali has showed me an extract in relation to the Californian legislation, section A:

"An Overview of Tobacco related disparities among California's priority population."

5.15 p.m.

I do not propose to read it, except to say that priority population in California and in other places relate to groups with alarmingly high rates of smoking so these groups, for whatever reason, and often people in the lower SES socio-economic status have an alarmingly higher rate than others.

What does our definition of priority population say? It is any population group that is/or traditionally has been excluded from tobacco control planning, decision-making or the benefits of tobacco control programmes or interventions.

Mr. Vice-President, are you aware of any tobacco control planning in this country prior to this? Of any decision making on tobacco control? Or any tobacco control programme interventions? So if you are talking about groups that are excluded traditionally from these, and we have no such tradition, then it makes nonsense of this definition. That is the first thing because that is what we have chosen to define priority population as.

Secondly and significantly, why should this definition be the priority population in this Bill? I would have thought that if you were aiming at a priority population, it would be those persons who are more vulnerable than others or who are using more tobacco than others. That would make sense, but as it is, I think this definition was copied from somewhere, or when I look at the old definition, part of something else was deleted and we were left with this and as it stands, it is a definition without a purpose. So that needs to be addressed.

In California, the priority population is defined by race and ethnicity and includes African Americans, American Indians, Alaska natives and the like, so you see who they are talking about. My point is, if you do not have any traditional tobacco control programmes, then you cannot have anybody traditionally excluded from this. That is in relation to two concerns in the definition section.

There is a third concern as to public place. I see that "public place" means any place accessible to the general public which is usually the definition. Public place is a place to which the public has access. This has been said over and over again. But I see added on here, "or place of collective use regardless of ownership or right of access".

Is that a redundant addition? A place of collective use, what does it mean and what does it include? If you are going to bother to have that, tell us what is not caught under the first part of that definition. Because you do not know where this legislation is going to go and how it can be misused. That is why you have to put checks for matters like that because legislation is not for a short time, it is not a sunset here.

Mr. Vice-President, I look in the meat of the Bill, clause 12(1), which I already addressed on the meaning of enclosed space but that offence occurs if you smoke within 15 metres of any place that caters primarily to children which would include schools and parks.

If you currently live within 15 metres, that would be about the width of this building. So if your house is within 15 metres of a school, does that mean that you cannot smoke there? If so, that is not fair to the occupier of the house. You have to deal with things like that because you are a private resident. Should you move because now you have chosen to bring legislation? Is that so? If so, would the Government provide me with accommodation if I wanted to smoke? Is it right? I bought my townhouse already, I am paying my mortgage and now I cannot deal with things. I know that may be a desirable thing in the interest of my health, but is it right? So you need to look at that again, the proposed law does not seem to take that into account.

Clause 12(3) has been referred to by one of my colleagues. It seeks to make a manager, owner or lessee of a place where a contravention occurs—and this is the contravention that I talked about that is so extreme, where in an enclosed place where you just hold a cigarette or smoking it and if it is done in a verandah and a manager, a lessee or an owner ought to have known, he is liable. But what is he liable for, Mr. Vice-President, or why?

The clause says not only:

“...the manager, owner or lessee of the place where the contravention occurred who authorized or acquiesced in the act or who knew or, using due diligence, ought to have known that the commission constituted a contravention, that manager, owner or lessee is deemed to have committed the offence and shall also be held personally liable.”

Does this mean where a person contravenes the section and the manager, owner or lessee of the place using due diligence ought to have known that the commission constituted a contravention? What are you saying? Is it that a person

will be liable if he ought to have known that whatever that person did would have been a contravention of the Act? It makes no sense because the principle is a person is presumed to know the law. So what you are saying here is—and I do not think that is the intention—that a person would be liable if he ought to have known that a person committed an offence that is against the law. This section needs clarity, as it is ambiguous and that is strict liability.

- “15. No person shall display tobacco products in such a way that they are visible to the public, but the prohibition against public displays of tobacco products shall not apply to individuals incidentally or accidentally displaying tobacco products during carrying or use.”

Now, what is a tobacco product?

“‘tobacco product’ means any product entirely or partly made from the leaf of the tobacco... which are manufactured to be used for smoking...”

Presumably this includes cigarettes. So this is what it means: No person shall display tobacco products in such a way that they are visible to the public. So if you smoke a cigarette in a public place but it is not enclosed, you go to the Queen’s Park Savannah, sit on one of those benches more than 15 metres away from Queen’s Royal College, so you are outside of that. You sit there, are you not displaying it to the public and therefore are you liable? What does this mean then? Therefore, where should you ever smoke?

What you are saying is—and you are not saying it very clearly—that you can smoke in no place other than your home and that is disingenuous. [*Desk thumping*] It is wrong, it is not clear, it is deceptive and I strongly object to it because I think it should be made very clear. If you want to say that, say it. Do not tell me “no person shall display tobacco products in such a way” because if I had my cigarette here, I am not displaying it, I am smoking the cigarette. And it does not mean you have to look, it means it is displayed because I am smoking it.

“...shall display tobacco products in such a way that they are visible to the public...”

To the public meaning that somebody is passing by.

Hon. Senator: “Don’t smoke.”

Sen. D. Seetahal SC: “No, it is not don’t smoke.” Then make it illegal; if you want to do it then make it illegal, like you have done with dangerous drugs. It is ridiculous to say that.

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Mr. Vice-President, I do not think that one should come to the Parliament without clean hands; equity says basically that you should come with clean hands, and clean hands mean if you are saying that this is what you want in the legislation, come to us, be straightforward instead of going through the Bill and not saying clearly what it is about. Have you said, Mr. Minister, that the purpose of this Bill is to restrict smoking only to private residences? If you have, then I stand corrected but I did not hear that.

Sen. Narace: Through you, Mr. Vice-President, what would be your suggestion in treating with that issue?

Sen. D. Seetahal SC: Thank you very much for that question, Mr. Minister, but I do not propose to answer that because I am not the proposer of the Bill. [*Desk thumping*] I do not believe that I should be here to redraft at length legislation proposed by the proposer, because when one looks at *Hansard* to interpret legislation, one looks to what the mover of the Bill says as the intent and purpose of the Bill. I am making the point that you have an important piece of legislation like this and no one can gainsay that it is an important thing to protect children, to ensure that persons' health is not affected in closed places. But when you go to another extreme, then I have no doubt that a duly constituted court would say that this legislation is not reasonably justifiable in a society that has respect for the rights of others. [*Desk thumping*] It is disproportionate and too extreme and that part is what I have objection to.

I do not know what the intention of the Government is, I do not know what its policy considerations are and I cannot deal with important matters like this. It is not just a drafting suggestion you know, it is a fundamental issue. So it means that according to that provision, once you are smoking outside of your own presumably closed premises— Because it means if you are in your yard and you have one of those fences that is not blocked up and somebody looks, you are in public display, you are liable.

It says:

“No person shall display tobacco products in such a way that they are visible to the public...”

So you are in your own yard, you do not want to smoke inside your house because you do not want to have the curtains smelling of it or whatever. So you go outside, sitting under your zabboca tree and somebody passes on that road and you are liable. The only protection is that you do it incidentally or accidentally, meaning what? It is not accidental display, incidental meaning exactly what? It is not clear exactly what it means. It is too extreme, it needs to be made clear.

I think that exception was put in there to take care of this eventuality but it is not, in my view. Because when I smoke my cigarette outside, it is not merely an incidental display. I am not advertising, but I have it there and I probably have the pack of cigarettes. So it means if you are going to do it, break it up and make the exception clearer.

Clause 22(1) is dealing with promotion. It says:

“No person shall sell, display for sale, supply, or advertise any non-tobacco product or service that contains either on the product, or in any advertisement of the product, a depiction of a tobacco product except where the person held the intellectual property rights...

22 (2) For the purposes of this section, a non-tobacco product shall include a building, facility, premises, or business that is not a building, facility or business that manufactures tobacco products exclusively.”

What does that mean? I would like to get some clarity on that because I am not sure what we are addressing. Is it addressing a building that has—I am not even sure—that manufactures the stuff or what? I am not sure.

5.30 p.m.

But I also want to make the point that currently people parade on the streets with jerseys with a herb or with a marijuana sign: "Property of" whatever. You know those T-shirts. If you all do not know, you had better look for it now. It depicts marijuana leaves and there is no law preventing this.

Sen. Cumberbatch: Jewellery.

Sen. D. Seetahal SC: Right. But I am dealing with the T-shirts now, because, to me, that is more offensive. Why has that not been addressed? It is one thing, you know, you want to go to Vision 2020 standards, so we are looking at what happens in other countries and we are aiming there, but all along the ladder is going up. We are not addressing these other things which deal with much, much more, in my respectful view, serious drugs.

[MR. PRESIDENT *in the Chair*]

Clause 34: This is an evidential provision in this legislation which talks about:

"In an action for non-compliance with this Act..."

I presume "action" which is normally reserved for civil matters, includes criminal trials here. I presume that, because I do not see any other actions in this legislation. So if it is meant for that, then one should say that.

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Through you, Mr. President, to the Minister, I do not want to criticize whoever he has drafted these things, but we have gone through this before and we have seen these kinds of issues and I do not know if there are not enough people who look at these Bills before, because I am sure that if this had gone to the Director of Public Prosecutions office, for instance, it might have been questioned as to what you mean by "action" there.

So if it is that it is a trial, or if it is on a charge or the hearing of an offence, something of that nature, that is another matter. The substance of my criticism, however, is this, that there is an intention, I think, to prove that we are dealing with tobacco by:

“an affidavit or certification under oath by a lab analyst who tested any tobacco product or component which is the subject of the proceedings,”—and this—”shall be admissible on its mere production as prima facie proof of the violation shown by the examination analysis of the tobacco product...”

Now, I do not know that we have persons called laboratory analysts in this country. I know we have scientific officers who are attached to the Forensic Science Centre. Is it the intention, then, to create posts? Is it the intention to set up some centre that would deal with these things specifically for testing tobacco? I do not think so. I think that it would be that you intend to get a scientific report and it is called a certificate of analysis from the FSC and this is what you intend to tender in evidence.

Tell me if I am wrong. But under the current law at section 19(2) of the Evidence Act, there is a provision which may be useful for consideration:

"In any criminal proceedings any document purporting to be a certificate or report under the hand of a Government expert on any matter or thing which has been submitted to him for examination, analysis or report is admissible as evidence of the facts stated in it without proof of the signature or appointment of the Government expert, unless the Court, acting *ex proprio motu* or at the request of a party to the proceeding requires the expert to be called as a witness..."

And then there is an identification of what you mean by expert and it includes: pathologists; chemists; armourer; examiner; scientific examiner (motor vehicle); the holder of any office suitably qualified where the President by notification in the *Gazette* says is one of these experts.

It seems to me that this complicated clause 34(a) here will serve no useful purpose and it will unnecessarily introduce elements when you have a provision

in the Evidence Act already for the tendering of a certificate of analysis, if that is the intention, because we will have issues.

I will tell you what will occur. You have to get an affidavit, then you would have to get separate affidavits every time you want to tender a report. You have to get persons certified as laboratory analysts, if we do not have that, then you have to produce that in court, whereas now you have these forms. The forms are already made up. You fill in the number; you fill in the different things and the expert puts in what he finds and those things are tendered as automatic evidence under this Act. So that is what I suggest to be done, unless, of course, as I said, the Minister intends to set up his own private analysts.

Clause 30, may I enquire, is there a reason for this?

"The labelling information on a tobacco product to be sold in Trinidad and Tobago shall be printed exclusively in English."

If it is that I am a manufacturer of a tobacco product and I obtain that licence to export and I am exporting to Venezuela, to Haiti, to wherever, I can only put the labels in English according to this? Why is that so? Is there some reason? Is there some benefit to Trinidad and Tobago? I would have thought "should be printed also in English", some other word, but why exclusively? It seems to be irrational.

I hear no response to that. I was waiting for the Minister to intervene.

My final point on the Bill itself is the regulations provision. There are provisions throughout the Bill for regulations and they are clauses 10, 11, 17, 22, 24 and 25 dealing with labelling, packaging, matters for sale, licensing, reports. All of these matters are to be dealt with in the regulations and the regulations are said to be subject to negative resolution of Parliament.

I believe that the regulations in this Bill which significantly change the law in our country and how we deal with tobacco and tobacco products are such that they should come before Parliament and I think that the regulations should be subject to affirmative resolution of Parliament. [*Desk thumping*] Because many of the provisions in those regulations themselves may be in contravention of our fundamental human rights under sections 4 and 5 of the Constitution and I think that is why they should come here before us. Those are the matters I have a primary concern about and at this point I think I will let somebody else continue in that vein.

Thank you very much. [*Desk thumping*]

The Minister of Local Government (Sen. The Hon. Hazel Manning): Thank you very much, Mr. President. It is my privilege to join in this debate today on the Tobacco Control Bill of 2009, the short title, and to join the Minister of Health, because this Government believes in tobacco control.

This morning I attended the funeral of a dear friend of mine, Miss Astra Da Costa, who died from Bronco Pneumonia which came about due to pulmonary fibrosis. As far as I know, she was no smoker. But could you imagine how it would have impacted on her having found herself in environments, whether it is the working place or recreation clubs, et cetera, where cigarette smoking would have aggravated her problem?

So I feel very privileged to be part of this debate today, to be able to introduce into this Parliament a Bill that is crucial for the health and well-being of the people of Trinidad and Tobago. Therefore I am, indeed, proud to be part of a government that is attempting to put in place high standards where health is concerned to be able to regulate and control the negative effects of smoking in our society.

In doing this, Trinidad and Tobago joins with many countries around the world to ensure that tobacco control is a major part of our development. We on this side sincerely believe that if we regulate tobacco and the tobacco industry, that we would reduce the negative impact of smoking and that we would be able to preserve the fundamental rights of individuals to breathe clean air.

I have been listening intently to the Members on the other side and I want to put on the table some of the research done by PAHO and WHO; the scientific evidence that they have been able to give to the world to establish that tobacco consumption and that exposure to tobacco smoke can cause death, disease and disability.

Smoking is the single largest preventable cause of diseases and premature death. That is what they are saying. The research has shown that, and research has shown that it is a prime factor for heart disease, stroke, chronic lung disease; it can cause cancer of the lungs, the mouth, the bladder, the cervix, the pancreas and the kidneys. It has been shown that at least a quarter of all the deaths and of heart disease come from cigarette smoking and three-quarter of the world's chronic bronchitis cases are related to cigarette smoking.

So when I hear the Member on the other side talk about the draconian measures that this legislation has, my question is: how far do we go? Is it that we must just have a slap on the wrist? That is the fundamental question. How far do we go to ensure that the health of our people is looked after?

I want to put on the table that the problem, to me and to this side of the House is the problem of youth smoking. This Government is deeply concerned about the escalation of youth smoking; deeply concerned that our children and especially our adolescents are getting more and more involved in the use of tobacco, and deeply concerned about the negative impact that would have on the future generations.

So is it just a slap on the wrist? Is that enough to protect our children? Because the research has also shown that unless we curb the current trends, some 30 to 40 per cent of our children—2.3 billion of the teenagers in the world—would become smokers in their early adult life and that we have to take action now.

What research has also shown is that global smoking among the youth in 2002 tells us that 50 per cent of those who were involved started at the age of 13 to 15. Research by the Centre for Disease Control in Atlanta, Georgia reported in 2008, an increase in this figure. It estimates a doubling of the world deaths from smoking from five million per year to approximately 10 million by the year 2010. They are even saying that these figures may be underestimated because they have not taken into consideration young girls who are now smoking. There is an increase in the number of young girls who are smoking.

It has also been noted that in countries where there is a long established culture in smoking, almost all smokers begin before they are 18 years of age and these countries as the traditional First World countries: the United States of America; Canada; Australia; Northern Europe, where there is an epidemic.

In Trinidad and Tobago we are concerned that our young people would find themselves in that serious problem. So our research in Trinidad and Tobago showed that 40 per cent of our children started smoking between the ages of 13 and 15 and 14 per cent of our children are current smokers; one-fifth of them having started before they were 10 years old.

5.45 p.m.

Again, the world survey done in 2007 has said to us that 80 per cent of our children, who are students in Forms 1 to 4, started smoking or tried cigarettes at the age of 13. Some of them attempted to stop smoking and that was difficult because, by the time they attempted, a lot of them were hooked on nicotine.

I therefore join members on this side of the Senate who have agreed to this tobacco control legislation because of its impact on our young people. A large number of our young people are becoming addicted. Many young smokers think

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they will find it easy to quit and they are finding it difficult to do that. Smokers as young as 12 years old have already made unsuccessful attempts to quit and have not been able to do that. About two-thirds of those investigated and surveyed have spoken about the fact that it has been difficult for them to stop smoking.

Those who have tried smoking have complained about withdrawal symptoms at that young age: headaches, anxiety, irritability, difficulty in concentrating and sleeping, actually having high blood pressure and a decrease in heart rate; factors that have affected their health and that have ensured that sometimes it is difficult for them to go to school. So, as a result, absence from school has been high.

So, our young population can become and sometimes is becoming less fit because the carbon monoxide that replaces the oxygen in their lungs takes a toll on their long-term health and makes it difficult for adolescents to enjoy life. Indeed, most of the research indicates that if a person starts smoking before the age of 15, there is a greater risk of that person developing lung cancer and heart and respiratory diseases in adulthood. These diseases become more prevalent as they become older.

I have gone through that to be able to say that there are reasons we have deliberately put in this legislation some of the things we have. The research has also shown that there are five stages that adolescents go through before becoming regular smokers and that these stages are all influenced by marketing and advertising, which Senators on the other side have, for one reason or the other, condemned.

There is stage 1 where many of our young people may not even be thinking about smoking, maybe because of their age or because they are busy being young people. But soon they move into stage 2 and in stage 2 they begin to dream about it, contemplate and model social behaviour. It is at this time that we become a little concerned because of the social, emotional and cognitive changes that are taking place as they develop. This social modelling of adults and peers can lead to the important factor that would encourage adolescents to contemplate smoking.

So, Mr. President, in this serious stage, advertising and promotion becomes a great challenge. It is worth mention at this point that our Global Youth Tobacco Survey, 2000 said that 84 per cent of children between the ages of 13 and 15, in Trinidad and Tobago, were exposed to cigarette advertisements on billboards. Has that been an influence on our young people?

I heard a Senator on the other side, Sen. Dr. Nanan, say that clauses 15, 22 and 25 are clauses that we may need to look at because he was not in full agreement with what they were saying, but we have, at this time, 80 per cent of our children exposed

to advertisements in newspapers, magazines and on billboards and the fact remains that they are impressionable enough to contemplate the use of tobacco.

Then there is stage 3 and, in this stage, our young people start to initiate smoking. They are easy to tempt and if other young people offer them cigarettes, they would quickly consume and become hooked on it. Again, referring to the Global Youth Tobacco Survey, 2000, 10 per cent of the students reported that they were at one time offered free cigarettes and began smoking. As much as 67 to 82 per cent of the females indicated that they had bought cigarettes at shops, the same shops in our legislation, and they were not refused sale because of their age, as young as they were.

This is a worrying factor that signifies the ease of access to which our young people are susceptible. Do we put legislation in place that is a slap on the wrist? Soon after our young people have free access to cigarettes, they become regular smokers and in becoming regular smokers, the problem of addiction to nicotine starts to tell on them.

The tobacco manufacturers are fully cognizant of the fact that there are three A's that they use in marketing strategies. They are availability, affordability and attractiveness. We are sure that when these strategies are put in place it becomes convenient for our young children to become hooked on nicotine.

This Government must continue to fight the dangers that will impact the healthy lifestyles of our young people. As a responsible Government, we see it as our obligation continually to highlight the dangers and to make access difficult for our very young population. If we do not, they move on to the final stage of maintenance. They are so hooked.

It was Sen. Dr. Nanan who described the fact that they would have to take more and more nicotine to practise a lifestyle they had become hooked on. Unfortunately, our young people can develop a lifelong dependence on cigarettes, starting out simply by being curious, being influenced by friends, getting hooked on it and having to cope with problems at school and medical problems because of their curiosity. These cigarettes, Mr. President, are often obtained from the shops and the street vendors, 38 per cent have said that, from friends, and a further 6 per cent from siblings.

This piece of legislation must address every stage that our young people would go through; every stage that would lead to that full addiction and maintenance. I would attempt to make provisions to protect our young people. The first one is the tax

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measure. I heard a Senator on the other side say that increasing taxes would not make a difference. I beg to differ from Sen. Drayton that taxing our tobacco products would make little difference. Research has shown that raising taxes constitute an effective and important means of reducing consumption by various segments of the population, in particular our young people, who may find it difficult to obtain the money.

This Government has recently increased the excise and import duties on tobacco products of a Common Market origin and extra-regional tobacco products by about 15 per cent. This was not a fiscal measure introduced by chance; this was a deliberate strategy to protect our citizens and our vulnerable young people.

Research by the Pan American Health Organization (PAHO) and the World Health Organization (WHO) has shown that price affects affordability. It has estimated that for every 10 per cent increase in the price of tobacco, there is an expected 8 per cent reduction in the consumption of tobacco and that the consumption reduction would be greater for young people who are more sensitive to price changes. So the protection of our children and, by extension our future generations, is a compelling economic reason for higher taxes.

There is a second provision of smoke-free environments because cigarette smoking is by far the most common form of tobacco use in Trinidad and Tobago. The annual per capita consumption of tobacco by adults in Trinidad and Tobago is 2,180 persons, which is very high for this part of the world and, disturbingly, Trinidad and Tobago has the fourth highest smoking prevalence among school children between the ages of 13 and 15. What is also very prevalent is exposure to second-hand smoke at home, which is reported to be over 40 per cent.

If we can reduce the demand for cigarettes, we believe that we can keep the environment more smoke free as we reduce smoking. So this Government has aligned the Tobacco Control Bill with all measures, identified by the international treaty, that are needed to reduce the demand for tobacco and tobacco-related products. In light of this, the issue of a smoke-free environment is a major pillar in reducing the level of exposure to second-hand smoke. A smoke-free environment protects non-smokers, it reduces death and disease caused by second-hand smoke exposure and it helps smokers to quit.

6.00 p.m.

One hundred per cent smoke-free places were found to reduce tobacco consumption among smokers by 29 per cent. Smoke-free environment prevents smoking initiation, it decreases the likelihood of initiation and it creates a social

norm that makes youth generally less likely to smoke. It is critical to note the international evidence in support of 100 per cent smoke-free places. For this reason, the Bill does not include provisions for the creation of smoking and non-smoking areas and thereby clause 12(1) makes it an offence for any person to smoke or to hold a cigarette, a lighted tobacco product, in any enclosed public place, any enclosed workplace or public conveyance, including but not limited to any place listed in the Second Schedule. That is clause 12(1).

The Second Schedule talks about public transportation terminals; workplaces; retail establishments including bars, restaurants and shopping malls; clubs and cinemas; concert halls; sports facilities; pool and bingo halls. It also includes publicly-owned facilities rented out for events or any other facilities that are accessible to the public.

The widespread smoking practice of smoking in buildings exposes non-smoking occupants to combustion by-products. We are convinced that this is what we need to do, because the research again has shown us—

I look at a report from California, done in 1997, where, based on second-hand smoke, between 9,000—18,000 cases were reported of developmental effects of low birthrate. Between 1,000—2,007 deaths took place for Sudden Infant Death Syndrome. Approximately 1.6 million patients visited hospitals with respiratory problems. Eight thousand to 26,000 cases were reported for asthma induced by smoking. Over 400,000—1 million children suffer asthma aggravation and bronchitis in infants less than 18 months. It also showed us that there were between 150,000—300,000 cases; 7,000—15,000 hospitalizations and somewhere between 136—212 deaths. Where lung cancer was concerned, there were over 3,000 deaths and where cardiovascular heart disease was concerned, 35,000—602,000 deaths.

This Bill reduces the negative effects of second-hand smoking. That is what we are out to do and that is why I was a little disappointed when Sen. Seetahal SC thought it was, maybe not her take to assist, to make a change or make some suggestions to what we had put on the table.

Sen. Seetahal SC: Can I correct that. I am sorry if the Minister might have misheard me. I said at that time I do not know what is the Government's policy in this regard and bearing that in mind I cannot make the suggestions.

I think the Minister should know that when it comes to committee stage I think I—I do not think anybody can doubt that I take an active part, but to come up with something with the immediacy that the Minister requested—I do not know the Government's policy. My understanding of legislation is that it should be determined by the policy of the party that proposes it.

Sen. The Hon. H. Manning: I am very glad to hear that Sen. Seetahal SC would become involved at the committee stage, because I am really going through here a sense of what our policy is and the reason why we have done what we have done in this legislation.

Because research has also shown that during pregnancy female smokers have a greater risk of miscarriage and other complications; more babies would die at birth. Babies of women who smoke are smaller at birth and, therefore, we need to be able to ensure that our health programme provides a better standard of living for our people.

There has been a negative correlation between the number of cigarettes smoked during pregnancy and the growth of the foetus. Provision is also made to reduce these negative effects.

Clause 12 provides that no person shall smoke within 15 metres of any place that caters primarily to children, such as schools, playgrounds and amusement parks.

Clause 12(4) provides that a person who contravenes this section commits an offence and is liable on summary conviction to a fine of \$10,000 and to imprisonment for six months. Again, the negative effects of second-hand smoking is high; really grey.

As I pointed out earlier, childhood is when routine addiction is likely to begin. Our aim is to stop that; to minimize the number of our children who would become involved in smoking and who would be converted, based on the impressionable advertisements and the glamorous advertisements and promotion, because our children are not yet sovereign adults capable of making full informed decisions.

The United Nations Convention on the Rights of the Child came up with some Conventions for our children. This came into being in September 1990. The interpretation of the Articles of the Convention demonstrates that tobacco is indeed a human rights issue. Again, as identified by the Member on the other side, as a party to this Convention, Trinidad and Tobago is mandated to ensure that our children enjoy all the rights guaranteed under the Convention. Specifically, with respect to marketing of tobacco products, the Convention tells us the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection before, as well as after birth. It is therefore incumbent upon us to educate children, to restrict advertising and to restrict promotion targeting them and to restrict children access to the tobacco product itself.

Clause 13 provides that:

“No person who sells tobacco products shall hire or use any child to sell any tobacco product.”

Clause 16 provides that:

“No person shall sell any tobacco product through any self-service means, including the mail, the Internet or automatic vending machines.”

Clause 17 prohibits the sale of tobacco products in facilities where health care services are provided, in sports and athletic or recreational facilities, in government buildings, in educational facilities or any other place prescribed by the Minister by regulation.

Clause 18 provides that:

“No person shall—

- (a) import, manufacture; or
- (b) sell, display, or distribute or supply,

any sweets or snacks or toys, or other non-tobacco items or objects in the form of tobacco products, or which initiate tobacco.”

We then have clause 19, which provides that:

“No person shall initiate, produce, publish, engage or participate in any tobacco advertising, promotion or sponsorship.”

Mr. President, we move on to tobacco health warnings and tobacco packages. Again, I heard the Members on the other side talk on the issue of the advertisements and health warnings on the packages. During the period 2002 to the present, this Government has taken several critical steps to improve the children's life conditions. We have done that, because we are concerned about the welfare of our children. We have increased or improved and expanded the education system, the early childhood care centres and provisions for our young children. We have provided free secondary books, school meals and legislation to formalize the Children's Authority. We have developed the Child Welfare League, under Act 27 of 2005. We have looked at the Children's Authority to promote the well-being of all our children and we have done all of that in keeping with improving the life conditions of our children in Trinidad and Tobago. The Tobacco Bill is yet another instrument that will be used to protect the rights, the health and welfare of our children.

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Clause 24 will require all tobacco products to contain permanently affixed on their packages, messages as specified in regulations. These messages will be health warning messages that will communicate the dangers of smoking. According to PAHO and WHO, health messages on tobacco packages perfectly target smokers and provide information that would help meet standards of informed consent. These messages will motivate smokers to try to quit and to greatly detract from the appeal of the package. There is compelling evidence that these warnings do work for adults and they do work for children.

Again, the World Health Organization showed that in 2002, the two dot studies on the effect showed that it did work. One study was conducted around 7,387 adults and the other among 299 youngsters. Nine per cent of the adult smokers who had seen the new warnings said that they smoked less and 16 per cent were motivated to quit. The effects from the warnings were even stronger on the adolescents 13—18 years old. Twenty-eight per cent of the youngsters said they smoked less because of the new health warnings and moreover, the results showed that a very few youngsters thought that the new warnings were cool.

Mr. President, every day, more than 1,000 children in the United States become new regular daily smokers and roughly one-third of them will die prematurely from smoking-related illnesses.

It was President Obama and the US Congress that delivered a truly historic victory for the American children and for health by enacting a new law granting the United States Food and Drug Administration the authority to regulate tobacco products. President Barack Obama assigned the legislation to law in June 2009, and the United States Senate voted 79 to 17 to approve this Bill known as the Family Smoking Prevention and Tobacco Control Act.

6.15 p.m.

Most important in that Bill was the ban on candy and fruit flavours in tobacco products. It was noted that 90 per cent of the people who smoked in the United States of America began at the age of 18 years or younger, and there was need to protect such early entrants. Mr. President, Trinidad and Tobago must follow likewise in protecting the children, the very fabric of our society.

The initiatives outlined in the Bill are critical, as the forecast for tobacco-related diseases remain very serious. It is projected that cancer and cardiovascular diseases which are the current leading causes of deaths in our country would increase by at least 6 per cent by the year 2030, if no action is taken.

The implications for health care expenditure that would be required to treat these diseases are tremendous. The tobacco manufacturer in this country has consistently reported profits after tax for the last 10 years. For the period 2004—2008, these profits have grown from \$98 million in 2004 to \$209 million by the year 2008. It moved from \$28 million in 1984; \$42.6 million in 1999, a 51 per cent increase; \$55 million in the year 2000; \$62 million in the year 2001; \$75 million in the year 2002—I heard a Senator on the other side saying that this particular company gives back money to the community. When I look at the statistics, I wonder if enough was given back.

Mr. President, in 2003 they made a profit of \$88 million; in 2004, \$98 million; in 2005, \$115.7 million; in 2006, \$143.7 million; in 2007, \$157 million; in 2008, \$209 million, an increase of 33 per cent over the last year. This is a move from \$98 million in 2004 to \$209 million in the year 2008, an increase of 113 per cent.

Sen. Dr. Nanan: I just want to point out to you that in the Supreme Court of Canada's ruling—I know you are talking about profits—had the motivation to profit as irrelevant to make sure whether the government had established that the law is reasonable and justifiable as an infringement of freedom of expression. I just wanted to point that out since you are referring to profits.

Sen. The Hon. H. Manning: You know, I do not understand what you said. I do not know if you want to repeat it.

Sen. Dr. Kernahan: I would deal with it.

Sen. The Hon. H. Manning: I am sure that on this side we are going to deal with it.

Sen. Rahman: You do not want to answer. [*Interruption*]

Sen. The Hon. H. Manning: The sales of WITCO from 2004—2008: in 2004 WITCO sold \$501 million; in 2005, \$559 million, an increase of 11 per cent; in 2006, \$630.6 million, an increase of 12 per cent over the previous year; and in 2007, \$710 million, an increase of 12 per cent over the previous year; and in 2008, \$796.3 million, an increase of 12.2 per cent.

Sen. Rahman: Hon. Minister, thank you for giving way. It would be very interesting to see the increases in duties and taxes that were levied during those years when the increase in sales was going on. Was there a reduction in taxes to increase the sales or an increase in taxes that defy the sales? [*Desk thumping*]

Sen. The Hon. H. Manning: I would ask the Senator to put it in writing and I would do the research, and then I would be able to answer him, because it was not really relevant to what I was doing here today.

Mr. President, this is testimony of the need to introduce more comprehensive measures to reduce the demand that we have incorporated in the Tobacco Control Bill, 2009. On behalf of the children in our midst and on behalf of the health and well-being of the people of this country, I would like to ask hon. Senators to approve and vote in favour of the Tobacco Control Bill, 2009. Thank you. [*Desk thumping*]

Sen. Corinne Baptiste-Mc Knight: Mr. President, I thank you for allowing me the opportunity to intervene in this debate. Now, the control of tobacco is something that I consider very appropriate, because we understand the health problems and the social problems, et cetera. I think it a bit disingenuous to arrive here under the guise of legislating health and wellness. Now, we know that we cannot legislate wellness. What this Bill does—this is without prejudice to the fact that I agree that it is in the public interest; it is in the interest of the youths; the children; the women and, perhaps, some of the men, to reduce exposure to smoke. But do we accomplish this by blatantly disenfranchising, almost, smokers?

This Bill seeks to punish people who enjoy smoking. Now, these people have their own punishment built in, because they have already told us that they have emphysema, heart attacks and all sorts of things. [*Interruption*] Let me tell you how they pay for it. I have some figures here. Between 2004—2007, WITCO paid \$225,940,000 in taxes that they reaped from the bad habits. Now, if the Government wants to deal seriously with reducing the burden of cigarettes, then put all of that tax into cancer research, heart research or some kind of health programme. [*Desk thumping*]

Much as I would love to accept this bit of legislation as it comes, I cannot, because draconian measures of this sort do not prove that we are ready to be First World. [*Desk thumping*] The fact that we can pass legislation that is harsher than any legislation in the First World does not prove that we are ready. What proves we are ready is the extent to which we can get our citizens to comply with the legislation. [*Desk thumping*]

Mr. President, let me go through with you some of the areas that would make it difficult for people to comply with this legislation as it stands, and this is without prejudice to what Sen. Seetahal SC, Sen. Drayton, Sen. Dr. Nanan and all those who have spoken before me have said, because they all made consummate sense. I would only deal with those aspects that they have not dealt with.

Let us start with the Preamble, in the first paragraph—

Sen. Narace: I just want to make the point—I think the Senator called four or five years where WITCO paid \$200 million in taxes—that in the last two years alone, the Government would have spent \$8 billion in the Ministry of Health.

Sen. Rahman: On cancer?

Sen. C. Baptiste-Mc Knight: Mr. President, the hon. Minister is behaving as though the \$8 billion was spent on tobacco-related illnesses. Most of it is spent on paying high-priced public relation officers and all kinds of other things. [*Desk thumping*] No, no.

Let me get back to the Bill. The first paragraph of the Preamble makes a statement that ought not to be in legislation for Trinidad and Tobago. This legislation has nothing to do with deaths from cancer and smoking in the world. I would suggest that we delete the reference to the health problems caused specifically in the rest of the world.

Let us move on to clause 4. There is need for a definition for “convention”. We assume here—we had this before—that this convention refers to the framework convention, but it does not say so.

Sen. Enill: You have two minutes before we adjourn.

Sen. C. Baptiste-Mc Knight: Mr. President, that is not a problem. I would gladly leave it all until the next time, so that I could then enjoy 55 minutes. Thank you.

ADJOURNMENT

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Mr. President, I beg to move that the Senate do now adjourn to Tuesday, October 27, 2009 at 1.30 p.m., where, by agreement, we would do the Bill entitled an Act to amend the Evidence Act, Chap. 7:02. You would recall that on the last occasion we were supposed to do it, but the Attorney General needed a little more time and we agreed. Sen. Mark indicated that he would agree for us to do this Bill on Private Members' Day and then we will do Private Members' Day the day after. So, that is what is contemplated in this regard.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 6.29 p.m.

WRITTEN ANSWER TO QUESTION

The following question was asked by Sen. Wade Mark:

**Rapid Rail Project
(Details of Technical Study)**

175. Could the Minister of Works and Transport provide the Senate with:

- (i) details of the technical study that recommended the Rapid Rail Project;
- (ii) the precise cost of the study; and
- (iii) the names of the authors of the report.

The following reply was circulated to Members of the Senate:

The Minister of Works and Transport (Hon. Colm Imbert):

- (i) The following studies support the establishment of a Rail Transit System in Trinidad:
 - (a) Rapid Rail Transit System for Trinidad – Concept Paper November, 2003 conducted by RITES Limited. (a Government of India Enterprise).
 - This paper was prepared as a goodwill gesture by the Ministry of External Affairs, Government of India through its High Commission in Trinidad and Tobago.
 - The Study was conducted from September 19, 2003 to October 1, 2003.
 - Transport demand has been estimated on the basis of data available in previous study reports and data collected from various organisations.
 - Traffic projections for the East-West Corridor (EDM/Cansult 1996 Study) indicate that peak hour peak direction person trips (phpdpt) are expected to increase from 21,000 to 28,000 from the year 1996 to 2015 along the eastern corridor.
 - Travel characteristics for the East-West Corridor (EDM Cansult) indicate that over 215,000 persons travelled into Port of Spain during an average day (6:00am to 6:00pm).
 - Mode-wise analysis of this traffic indicated that 50% of the inbound traffic is by private cars and 50% by public transport.

Percentage of private cars utilization during the peak period increased by 56%, which created acute congestion during this period.

- The Paper pointed out that experience has shown that road buses can optimally carry 10,000 persons per hour per direction (pphpd) and when traffic density on a corridor exceeds 10,000 phpdpt, the average speed of the buses decreases, journey time increases, air pollution goes up and commuters are put to increased levels of inconvenience.
- The Paper emphasized that when on a corridor, traffic density during peak hours crosses the 10,000 phpdpt provision of rail-based transport should be considered.
- The Paper recommended that considering the future requirements of the East-West and North-South Corridors the provision of Light rail Transit System, elevated and at-grade, is considered most suitable system for Trinidad.

(b) East West Corridor Expansion and Improvement Works—Traffic Impact Study Update—January, 2006.

- This Report is an update to an original Traffic Study conducted in 1997 by Cansult Limited. The study examined existing and future traffic conditions and the potential for improvements to transit service, transportation demand management and infrastructure improvements to the major roadways i.e. Churchill-Roosevelt Highway, Eastern Main Road and the Priority Bus Route up to 2015.
- The Report noted the following key transportation changes since 1997:
 - Current morning peak hour persons trips into Port of Spain along the East/West Corridor have increased from 20,000 in 1997 to over 30,000 currently (January 2006) an increase of 53%.
 - Modal split to transit which was 57% in 1997 has declined to the 40-45% range, a very major shift in travel within a ten year period.

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- Overall travel in the corridor has increased much faster than anticipated at 4.9% per year as compared to 1.03% per year forecast in 1997.
- Overall congestion and delays have increased in the East/West Corridor and in Port of Spain.
- The road systems in POS is approaching capacity and addition of further traffic or increasing the parking supply will lead to a sharp increase in congestion and could threaten the economical viability of the Capital.
- Peak hour congestion has resulted in a change in travel pattern with trips diverting from the peak hours to either earlier or later travel times. It is estimated that this diversion represents 36% of trips in the AM and 28% of trips in the PM.
- This study found, inter alia, that to accommodate travel in the East/West Corridor to 2015 while protecting POS from excessive traffic loading requires a more transit-oriented strategy aimed at returning to the modal split of 1997.
- This study recommended a higher order transit system such as light rail transit as one of its long term improvements for the period 2010-2015 and beyond.

(c) *Comprehensive National Transportation Study Draft Final Report, 2006.*

The Comprehensive National Transportation Study commenced in January 2005. The contract to undertake the study was awarded to the consultants, Parsons, Brinckerhoff, Quade and Douglas Inc. in association with Trintoplan Consultants Ltd. and Kissinger Campo Associates, Inc. This Study was expected to result in a Strategic National Transportation Plan geared towards providing the Government of Trinidad and Tobago with a decision-making tool for investments in transport infrastructure in the land, sea and air.

The Draft Final Report which was submitted in September, 2006 proposed the Rapid Rail Project as an alternative means of transportation for the citizens of Trinidad, especially during peak hours. To fully understand the purpose and need for this initiative,

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the Report stated that it is important to review a number of key trends documented in the Diagnostic Report. Among the trends noted were:

- ◆ The land use patterns emanating from Port of Spain are characterized by a concentration of dense residential and commercial land uses along the North/South Corridor between Port of Spain and San Fernando and along the East/West Corridor between Port of Spain and Sangre Grande.
- ◆ Port of Spain is the largest economic and development center and attracts commuters from a wide region. As efforts continue to redevelop the waterfront and relocate the Port of Port of Spain, it is likely that the current levels of traffic congestion along the North/South and East/West Corridors will continue to increase at an accelerating rate.
- ◆ The transportation network is not built on a structure of high capacity limited access facilities. This makes long distance commuting in the East/West Corridor and the North/South Corridor difficult and time consuming.
- ◆ In the East/West Corridor, the Priority Bus Route already offers substantial mobility to commuters wishing to use transit alternatives such as taxis and maxi taxis. This is a continuation of an historic reliance by the population on public transportation for commuting.
- ◆ The conditions summarized above clearly support the purpose and need for a rapid rail project.

(ii) The precise cost of these studies are :

1. Concept Paper – Rapid Rail Transit System for Trinidad – This was a proposal submitted by the Government of India in 2003 at no cost to the Government of Trinidad and Tobago.
2. East/West Corridor Expansion and Improvement Works-Traffic Impact Study Update – Can \$100,523 (Canada component) and TT \$436,564 (Trinidad component).
3. The Comprehensive National Transportation Study Draft Final Report was budgeted to cost TT \$26Mn. However, of this sum only \$10.6Mn was paid up to the time of submission of the Draft Final Report.

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(iii) The authors of these Reports are:

1. RITES Ltd (A Government of India Enterprise) of India.
2. CANSULT Limited, Ontario, Canada.
3. Parsons, Brinckerhoff, Quade and Douglas Inc., Miami, USA.