

**THE
PARLIAMENTARY DEBATES**

OFFICIAL REPORT

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SENATE

Tuesday, November 10, 2009

The Senate met at 1.30 p.m.

PRAYERS

[MR. PRESIDENT *in the Chair*]

VISITORS

Mr. President: Hon. Senators, I am very pleased to advise you that we have three visitors with us this afternoon. We have Miss Nina Grewal who is an MP from Canada; Mr. Clive Mullings, an MP from Jamaica and Mr. Robert Benoit who is the Deputy Principal Clerk of the House of Commons from Canada. They are here to help us with the workshop that we are having tomorrow on Joint Select Committees. I hope that as many Senators who have the time would attend.

BREAKDOWN OF AIRCONDITIONING

Mr. President: I also have the unpleasant duty to tell you that our air conditioning has tripped off again. Apparently, it is an electrical problem. The relevant repairs have been sent for. We are advised that they are on the way. Apparently, we have no air condition. We would have to do the best that we can for as long as we can.

PAPERS LAID

1. Audited financial statements of Education Facilities Company Limited for the financial year ended September 30, 2008. [*The Minister of Trade and Industry and Minister in the Ministry of Finance (Sen. The Hon. Mariano Browne)*]
2. Annual audited financial statements of Petroleum Company of Trinidad and Tobago Limited for the year ended September 30, 2008. [*(Sen. The Hon. M. Browne)*]

ORAL ANSWERS TO QUESTIONS

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Mr. President, with respect to questions Nos. 145 and 146 posed by Sen. Dr. Sharon-ann Gopaul-McNicol, I am afraid that the answers to those are not yet available. In fact, they have not yet been received. Therefore, I expect that they should—I am sorry, I do not know the answer to this because the question asked for 2006—2007, 2007—2008 and 2008—2009. It appears as though there would be some difficulty. Let me suggest that we put this question back in another three weeks.

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?

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 Sport and Youth Affairs (Hon. Gary Hunt): Mr. President, in Trinidad and Tobago there exist many recreation grounds with different combinations of facilities, consistent with what was asked. The Government has proposed the development of 14 regional recreational facilities throughout Trinidad and Tobago whose specifications far exceed what was asked in this question.

The 14 regional recreational facilities will have amenities for the playing of six sporting disciplines such as cricket, football, rugby, hockey, netball and basketball. These proposed regional facilities will consist of children's play park; synthetic walking and jogging track; change room and toilet facilities; management and maintenance offices and facilities; broadcast quality lighting; full CCTV monitoring; artificial grass surface; turf grass cricket surface; automatic sprinkler system and water storage; multipurpose courts; seating for 2,000 patrons; car park and ticket booth.

The proposed locations of these regional sporting facilities are as follows:

Dass Trace, Cunupia

Alescon Comet, Chaguanas

Battoo Avenue, Marabella

West Pleasantville, Marabella

Soogrim Park, San Fernando

Preysal, Couva

Irwin Park, Siparia

Quarry Road, Siparia

Coronation Park, Point Fortin

Mahaica Oval, Point Fortin

Toco Recreation Ground

Ojah Road, Sangre Grande

Eddie Hart, Tacarigua

Pascal Road, Maraval

Of the 14 proposed regional grounds, the following 10 regional recreation grounds are in the foregoing areas:

- Dass Trace, Cunupia, Borough of Chaguanas
- Alescon Comet, Chaguanas, Borough of Chaguanas
- Battoo Avenue, Marabella, City of San Fernando
- West Pleasantville, Marabella, City of San Fernando
- Soogrim Park, San Fernando, City of San Fernando
- Preysal, Couva, Region of Couva/Tabaquite/Talparo
- Irwin Park, Siparia, Region of Siparia
- Quarry Road, Siparia, Region of Siparia
- Coronation Park, Point Fortin, Borough of Point Fortin
- Mahaica Oval, Point Fortin, Borough of Point Fortin

The factors considered to determine rural/urban full service recreational facilities include land availability; population size and density; demand use; sectoral analysis; stakeholder views and the policy for classification of public recreational and sport facilities.

The following is the classification system of public recreational facilities.

International sport facilities: These state-owned sport facilities are mainly multipurpose training complexes that are of international standards and are equipped with state-of-the-art training gym equipment to accommodate a multiplicity of olympic sporting disciplines. These facilities will cater for the hosting of large scale international competitions and would include residential areas for high performance training.

National sport facilities: These facilities will accommodate a minimum of three sporting disciplines, as well as a multiplicity of functions/events; have a seating capacity of a maximum of 25,000 persons and include facilities such as the five multipurpose stadia.

Regional sport facilities: Fenced grass areas 10 acres and over to allow the playing of three sporting disciplines. These sporting facilities will include cricket and football fields; a synthetic walking and jogging track; multipurpose hard courts; children's play park and spectator facilities which would include accommodation of a maximum of 2,000 patrons inclusive of covered seating with office areas; basic amenities; car parks and ticket booth.

Sub Regional sport facilities: Grassed areas over seven acres but less than 10 acres to allow for the playing of three sporting disciplines. Spectator facilities that could accommodate between 1,000 and 1,500 patrons with change room facilities for two teams; administrative offices; storage areas; security fencing; flood lighting; a multipurpose hard court; children's play area and car park.

Community recreational facilities: Community A, fenced grassed areas in excess of 5.7 acres but less than 10 acres located within communities which could accommodate the playing of two sporting disciplines complete with spectator facilities; public amenities for 200 patrons.

Community B, open grass areas under 5.7 acres located within communities inclusive of schools which could accommodate general recreational activities. Each facility would be furnished with public amenities with a room for the storage of maintenance equipment and where necessary, the provision of spectator facility.

Play park: Large open grassed play areas designated for family recreation which includes special play areas for children containing swings, slides, climbers, crawl tubes, benches, tables, see-saws, and parallel bars with proper fencing and adequate concession facilities.

Sen. Oudit: Mr. President, I have two supplemental questions. The first is, you said that these are proposed. What is the time frame? The second is that many of those areas that you have listed are where parks exist already. My question is in light of the growth of many rural communities into suburban and all of these, is there any proposal to build new facilities in areas where they are not existing presently?

Hon. G. Hunt: Mr. President, I am unable to give a time line at this point. If the Senator poses the question in the appropriate manner, I would answer accordingly.

With regard to parks existing in the areas, what we have said is that they would be brought up to regional standards where I indicated children's play parks and all the various amenities will be contained. Those do not exist currently in the locations that we have identified.

Sen. Oudit: I understood that, Sir. In the areas that you have outlined there is some element of a park already existing which would cater in some measure to the needs of the communities. You are saying that these would be upgraded and would include all the things that you have identified. That is admirable and excellent. However, my question is: Are you proposing any new facilities where none currently exists?

Hon. G. Hunt: Mr. President, there are no new facilities proposed. Currently there exist 458 recreational facilities spread throughout Trinidad and Tobago. To propose new facilities, there is a process that one would have to follow such as land acquisition, et cetera. At this point we are proposing no new ones as 458 recreational facilities exist throughout the country.

Domestic Violence

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

With respect to the issue of domestic violence in Trinidad and Tobago, could the Minister indicate to the Senate:

- (i) the number of cases which have been reported to the police within the last five years;
- (ii) the number of persons who have died as a result of abuse suffered through domestic violence; and
- (iii) the steps taken by the Government in the last two years to combat this scourge?

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Mr. President, on the last occasion I had indicated that this question was approved but the Minister was unable to be here. I am afraid that that situation continues. However, I am in a position to answer the question.

With respect to the issue of domestic violence in Trinidad and Tobago, data supplied by the Trinidad and Tobago Police Service revealed the following:

The number of cases reported to the police within the last five years are as follows:

Year	No of Cases
2004	962
2005	1,291
2006	1,250
2007	1,356
2008	1,556

The number of persons who have died as a result of abuse suffered through domestic violence within the corresponding period, the information is as follows:

Year	No. of Persons
2004	9
2005	26

2006	32
2007	17
2008	36

With respect to part (iii) of the question, the steps taken by the Government in the last two years to combat the scourge of domestic violence include the following:

- (1) Establishment of a multidisciplinary committee. A multidisciplinary committee was established in April 2008 under the aegis of the Office of the Attorney General to monitor the implementation of several recommendations which emerged during the preparation of a domestic violence investigative and procedural manual for the police service. This committee comprises representatives of the Office of the Attorney General, the Ministry of Community Development, Culture and Gender Affairs, the Ministry of Health, the Ministry of Social Development, the Judiciary and the Trinidad and Tobago Police Service.

1.45 p.m.

The committee which is chaired by a former judge of the Court of Appeal, Madam Justice Jean Permanand, has been supporting various agencies in the implementation of their work plan to reduce the incidence of domestic violence. Additionally, the committee has collaborated with the Ottawa Police Department to expose three of its members to training in dealing with the issues of domestic violence. The opportunity also provided those members with an insight into the operations of the Ottawa Police's treatment of domestic violence reports.

- (2) Domestic Violence Investigative and Procedural Manual. The Trinidad and Tobago Police Service has received copies of the manual and has commenced the training of its officers. To date, training in relation to the manual has been conducted with the recruits at the Police Academy and at the North East Divisional Unit. A comprehensive training plan is being developed by the police service to ensure that officers at all levels are exposed to the material.
- (3) Grants and subventions to non-governmental organizations. The Government has continued to provide grants and subventions to non-governmental organizations working in the area of violence prevention.
- (4) Provision of counselling and other services. The Government has continued to provide counselling and other services to victims or survivors and perpetrators of domestic violence through the National Family Services and Probation Department of the Ministry of Social Development.

- (5) Services at the Family Court. The specialized services offered at the Family Court allow for domestic violence matters to be treated in a much more sensitive and humane manner for victims.
- (6) Initiatives for the Gender Affairs Division. In recognition of the fact that gender-based violence is deeply rooted in the issues of power and control, the Ministry of Community Development, Culture and Gender Affairs, through the Gender Affairs Division, has implemented or continued the following initiatives:
 - (a) The establishment of a specialized drop-in centre for men and boys at the Arima Resource Centre. This centre offers males in the society an option to meet with a male counsellor to discuss challenges or problems which, as individuals, they may be experiencing. The centre also offers special programmes for young men under the age of 30 and uses creative methodologies in sharing information which can assist them in making informed and intelligent choices about their lives.
 - (b) The continuation of other drop-in centres throughout Trinidad and the hosting of community-based public education programmes on the issues of domestic violence. Schools, religious organizations, community-based organizations, public and private sector agencies have benefited from exposure to those programmes.
 - (c) The continuation of the operations of the National Domestic Violence Hotline, 800-SAVE. Within the last two years, these services have been completely upgraded through the installation of a modern telecommunication system and a fully-computerized database system. The staff complement has also been strengthened. This service continues to be the lifeline for at least 20,000 calls from women and men, boys and girls, who are in need of support in their times of distress.
 - (d) Ongoing gender sensitization training targeting specific groups. Recognizing the need to educate security and other military personnel on the impact of gender socialization and its relation to gender-based violence, the Gender Affairs Division has conducted a series of workshops with personnel from the Trinidad and Tobago Defence Force. This training will be extended to the police service later in 2009.

- (e) Continuation of the Defining Masculine Excellence Programme. This programme, which over the past two years was continued in both the classroom and radio formats, has significantly impacted the lives of men and boys throughout Trinidad and Tobago. The programme, which includes modules on a wide range of social skills including men and their life partners, has been quite successful in improving familial relations and, based on its success, is now being used as a prototype in the development of a regional programme. Personnel from all areas of national security, including the Trinidad and Tobago Defence Force as well as inmates of the Youth Training Centre, have also been exposed to this programme.

The Government of the Republic of Trinidad and Tobago has consistently worked at reducing the levels of violence, including the incidence of domestic violence. This has required investments, not only in the provision of services to treat with victims and perpetrators, but also investing in programmes and development of policies which are aimed at long-term behaviour change and the improvement of life both in the private and public sphere.

The Government remains committed to the eradication of violence of any kind and will continue to provide the resources necessary to treat with the problem. All citizens, however, must be a part of this process as what is practised in the home translates into behaviours reflected in the wider community.

Mr. President, questions No. 184 and 185 follow a similar treatment to 145 and 146. They are not yet received. I am not aware of the reason for that, but I suggest, as I did on the last occasion, a three-week deferral, so that I will try to deal with this matter.

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.

TOBACCO CONTROL BILL

[Second Day]

Order read for resuming adjourned debate on question [October 20, 2009]:

That the Bill be now read a second time.

Question again proposed.

Mr. President: Following is a list of those who spoke: Sen. Dr. A. Nanan, Sen. H. Drayton, Sen. Dr. S. Gopaul-McNicol, Sen. D. Seetahal SC, Sen. The Hon. Hazel Manning, and Sen. C. Baptiste-Mc Knight, who spoke for seven minutes and has 38 minutes of normal speaking time left.

Sen. C. Baptiste-Mc Knight: I thank you, Mr. President. Continuing on from where I left off, I believe I was on clause 4, definitions. I would like to point to the fact that there is need to refine the definition of "bulk packaging"; and as has been mentioned before "public place".

I notice that in the definition of "seller" it includes distributor and wholesaler and throughout this Bill these two entities seem to appear without any definition of what exactly identifies the distributor from a wholesaler.

I would like to go on to Part II of the Bill. This really is the crux of the Bill because enforcement is really the name of the game. I am not aware that there is requirement for legislation for the establishment of the unit in any ministry, but I assume that the reason this is here is to satisfy the requirement of the framework convention and to identify the area within the Government that would be responsible for monitoring this whole exercise.

I wonder, given the fact that we are five years into our involvement with this framework agreement, whether the unit has already been established. If not, we need a time frame, not necessarily in the Bill, but to be told. It will be very important, at least for me, to be satisfied that the Bill is enforceable; to know when these things will be coming on stream.

I would like to know to whom the authorized officers who are a part of this unit are responsible. The authorized officers have some very distinctive and difficult assignments, but I see absolutely nothing in the Bill that tells me to whom they are responsible and, even more important, who is responsible for the training of these officers. These officers are at clause 8 to examine, open and test any equipment, tools, materials, packages, et cetera.

Now a police officer, a customs officer, by their definition, would hardly be expected to be knowledgeable about equipment, tools and materials involved in the manufacture and packaging of cigarettes. So somewhere in this Bill, someone has to be given the authority and the task of training these people before they are let loose on an unsuspecting public.

Further, I am a bit unhappy about the appearance of "reasonably believes" throughout clause 8. I see a big difference between an officer having reasonable grounds for believing that something is amiss and an officer reasonably believing that something is amiss, especially when there is no provision for the training of all these officers, so that their reason would be guided by some authority.

I want to look at clause 8(2) where it says that "premises may be entered and certain actions taken if materials are thought or deemed to have been present during the previous six days".

2.00 p.m.

I wonder why six days. What is the magic of six days? Then clause 8(2)(b) talks about the officer reasonably believing that bulk packaging of tobacco products were contained or conveyed in this place during the past six days. Now, here I want to refer to the definition of "bulk packaging", and "bulk packaging" talks about 10,000 cigarettes. If cigarettes come in packages of 20 with 10 to a carton, this is a reasonable bulk, but I am not sure this applies if this is meant to deal with smuggled goods, illicit tobacco. If someone is caught with 9,000 cigarettes, this does not apply, and not only that, the "bulk packaging" says that you must have 10,000 cigars as well. I think that one needs to have another look at that.

Clause 8(3) just does not make sense. It says that an officer must first provide the person in possession of these products with a written notice of seizure. Now, unless you arrive on the premises with a written notice of seizure, you are not going to be able to activate this provision. This is not right.

Then we go on to clause 8(4) where it says that if goods are seized and they are found to comply, they must be returned within 10 working days from the date it is determined that they have met the legal requirements. Now, unless there is

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some provision for compensating the victim, this is absolutely too unfair, because tobacco products have a shelf life. So, when it takes a year to process this, and you give the person back these products, it means that this is money wasted because they can do nothing with it. So, I find this unacceptable.

Clause 9 requires the officers to present proof of identity when requested to do so. Mr. President, in the world that we live in now, “when required to do so” may be too late. I feel that on arrival at the premises, these officers must be required to identify themselves so that the persons with whom they are dealing know immediately that this is an official who is authorized to be there to deal in this manner.

Clause 10 gives me serious cause for worry. It deals with licensing procedure and transitional measure. There is nothing that smacks of a transitional measure or a transitional period in the 10 subclauses that I can see. Further, this application that goes to the Minister: Who processes the application? I do not think that the Minister is going to be processing the application himself. Now, is there a role here for the unit that is not prescribed? If so, I feel that we need to include here some idea of the procedure to be followed for an application and the criteria that would be applied to these applications.

Further, I note at clause 10(6) that a registration number of the tobacco product is required. I ask the question: At present, are tobacco products being given registration numbers? If not, where is this registration number to be obtained, when and by whom? This needs to be included in the Bill.

When we go down to clause 10(9) there is a distinction between the distributor and the wholesaler of the tobacco product, but there is no requirement for the distributor and the wholesaler to be licensed. Clause 10(1) says that it is the person who distributes tobacco products at wholesale. Is one to understand that means distributor and wholesaler? It has to be clearer.

Clause 10(10) confuses me totally: “This section applies to all sellers of tobacco products save and except retailers.” Now, if retailers are not required to ensure that the tobacco products that they buy and sell meet these requirements, then there is absolutely no need for this Bill.

In clause 11, when I look at the quality of information that is required in this report, I wonder whether the time frame for the provision of these reports should not be annual or, at best, biannual. It is punitive and harassment to expect a manufacturer to provide all of this information, including the additives in the smoke, which I understand number some 4,000 plus, every quarter. They will

exist only to write reports. I think that businesses, marketing and distribution are not the kind of information we should rightly have in the public domain. There needs to be some differentiation made between the information that it is going to be in the public domain and what the Minister wants and can keep confidential.

I want to move on quickly to Part III which deals with prohibitions. Now, I have to admit that even though this is the crux of the Bill, and I can agree with quite a bit of it, there is a lot of it that is pure entertainment.

I was particularly touched by the concern displayed by both speakers on the Government side for the welfare of the children—the need to save the children from the scourge of tobacco—and do you know what? This Bill omits what was agreed to in the joint select committee; that is the prohibition on the sale of tobacco products to children. Now, I feel this is an oversight. I do not want anybody on that side to stand and tell me to look at clause 13, because clause 13 says:

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

So the children cannot sell them, but they can buy them. No, no. I think this needs to be looked at.

Clause 14 prohibits self-service displays. Is that not sufficient? Why do we need clause 15? Now, do you know what bothers me about clause 15? The hon. Minister of Health was at pains to remind us about the health effects and the financial effects of these chronic non-communicable diseases like diabetes and hypertension.

I am wondering whether when he comes to deal with saving us from ourselves and diabetes, whether he is going to put this same provision in the law that flour, sugar, flour products, hydrogenated oils, little chocolates, and we are not going to mention the KFCs and so forth, none of these things will be able to be on public display. So, Hi-Lo, Jumbo Foods and others have to go back to the days of the little Chinese shop where you stay at the counter and ask for a pound of flour and a box of pasta. Is that really necessary? Do we have to deny the smoker the right to at least be able to see in the little cage above whoever is going to sell it to him, what is his choice of suicide? No. We have to at least allow people this. This is the thin edge of the wedge. If you pass this in this Bill, then it means delis are going to go out of business, because all the baked goods would have to be under cover.

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Now, let us move on to clause 16, self-service including the mail and Internet. Now, throughout this Bill, I note that the framers have not seemed to understand that there are two sides to this argument. There are the manufacturers and the exporters, and there is the tobacco for domestic consumption. Now, I can live with clause 16(1) for domestic consumption, even though I will ask: How is the Minister going to enforce a ban on mail and Internet sales? I do not think that is his business or that he has the technology for it. It is the Minister who has to do this, no. Does this mean that our tobacco manufacturer cannot correspond with his export clients by mail or Internet? Arrant nonsense! It goes on: “any other means the Minister may prohibit”. Well, I think he is probably already into the creative people for 2020 so that he would find new means.

I would like to go now to clause 19, the prohibition against tobacco advertising. It says:

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

Notwithstanding that, persons may address a publication by mail—now, this is the same Minister who said that no mail selling of tobacco—to an adult smoker who is identified by name. Mr. President, I do not think that the framers of this Bill recognize that the only way that this can be enforced is if every smoker who would like to have correspondence on brands of cigarette that he or she will not be able to see anywhere prior to buying is if they are required to register.

2.15 p.m.

When they stop smoking they will have to find a means of becoming delisted in order not to receive or not to have the tobacco manufacturers send them information. Does this make sense? No. And then it is compounded, they may advertise in a publication which has an adult readership of not less than 85 per cent. Now, who or what will comprise the other 15 per cent? For starters they would have to be able to read. Is this protection of the illiterates? Perhaps not, but I would like the Minister—oh, he is not here—to consider the fact that the TTARP magazine which is for retired people is recommended reading for children for the very reason that: One, it is always well written in standard English which is a dying language in this country; it contains very informative, well-presented material, but the readership is, I am sure, 85 per cent adult. So, they can advertise in TTARP and then the children have access to it. Come on!

“Signs in a place where young people are not permitted by law.” I can think of some very creative places where these advertisements can be. But tell me, what places in this country are prescribed by law to deny children access?

However, I will move on to clause 21. I have a very serious problem with clause 21 because sponsorship is defined somewhere and I wonder why one did not stick to that definition; a definition which would target the product's sponsorship as opposed to the sponsorship of the entity.

Let me tell you what my problem is. I am a declared fan of Desperadoes Steel Band. Desperadoes Steel Band, not only provides the country with good music and good publicity, but it serves a very serious and necessary community service. Now, that band is sponsored by Witco. They used to be "gay" at one time but now they are only Witco. [Laughter] Now, this here is meant to make them sad, because to the best of my knowledge, Desperadoes has never been identified with any of the many products of Witco. Yet, according to this, they would now be denied their sponsorship. Now in these days of recession the last thing that I am going to sit here and be a partner to is ensuring the demise of that band, but if we can use the definition of sponsorship—[Peruses Bill] "Eh hmm"—on page 10 we would be able to get around this, because the entity, that is the corporate sponsor should be able without pushing any particular brand to sponsor.

I would like to go on to Part IV where it talks about packaging and labelling. I want to draw to the attention of this Senate the fact that this portion of the Bill goes much further than is required by the framework convention. I believe the framework convention—it is Article 11(1)(b)(4). Here again no distinction is made between export product and product for domestic consumption.

I do not think that this Bill should be covering export product. Export product has to meet the requirements of the particular export market, not our market. So clause 23(1) should exclude export.

Clause 23(2), where it says that: "No seller shall acquire tobacco products"—I just want to refer you to clause 10(10) where there is a little incompatibility there.

I move on to clause 24(3): "No person may sell or supply any product, device, or other item that is intended to be used, or that can be used to cover, obscure, mask", et cetera. This says to me that all stationers and hardwares have to stop selling masking tape because it can be used in this way. Is this what is intended? I rather doubt it.

Clause 25(1) says that: "...a list of constituents and additives specified, and in a manner as prescribed by Regulations". Now, who currently in the Ministry of Health has the capacity to specify these additives and to prescribe additives? I do not know if it is going to be the unit, but at any rate it is cause for concern.

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Clause 28(1) requires exporters to be in compliance with this Act. This ought not to be as I have said before.

Then we come to clause 28(2), where information is required in a visible manner. Now, apart from the fact that a unique manufacturer serial number is required, there is no indication of how it will be acquired. Further, a licence number of the wholesaler needs to be on the product when clause 10 does not require the wholesaler to be licensed.

For all of this to be in a visible manner on the packaging, I think that it is either each packet of cigarettes will have to be sold with a scroll or there is no way that all of that information can be visible on a given packet. In addition to that, the one specification in clause 11(1)(b)(4) of the convention, that the information on the package takes up at least 30 per cent of the packaging is absent from this. Now I am aware that our manufacturer currently subscribes to this. But if it is not part of the Act then there is no requirement for this to continue, so it is either we want to be in compliance with the framework or we are doing our own thing.

Clause 31 is a bit confusing, because clause 31(1) exempts cigars and then clause 31(2) says:

“No person shall sell single cigarettes or other smoked tobacco products.”

which of course would be cigars. Is this really necessary in the light of all that we have had before?

Then onto the miscellaneous where it says again in clause 33: “No person shall...display for sale”. I think I have made my views on the display for sale pretty clear.

Clause 34(b) requires a document to be certified by the ministry, but this is not part of the functions of the unit. So we need to know which ministry this refers to. At (d) where there is a requirement for a lot and batch number required under this Act, this is the first mention of this. Where and from whom are these lot and batch numbers obtained?

Then (e) says:

“the person identified on the label or packaging of any tobacco product as the manufacturer, importer, exporter, distributor or seller...”

Now, there is no requirement anywhere in this Bill for the distributor and the seller to be licensed and therefore identified on the label.

Then when we get to clause 36(c)(v) it says: “all tobacco products”, which according to this Bill will also refer to export products, would be liable to seizure by the authorized officers.

Mr. President, I have tried to hurry through because I understand that various other people will have other areas that I have not caught on this, but I think the most important part of this whole exercise is that we arrive at a Bill which is enforceable, which does not criminalize smokers and which does not meet the same fate as the breathalyzer. Why do I say that? Because there is a prohibition on smoking within 15 metres of a school, playground, et cetera.

2.30 p.m.

Nowhere in this Bill is there any mention of who is responsible for putting up the signage. Because I do not think you can expect people to walk with a tape measure to say where is 15 metres from a school.

Think of people who live on Belmont Circular Road, between Archer Street and the corner just past Providence High School, that whole Street on one side are schools; on the other side residences, and no residence there is 15 metres from a school.

So it means that somebody coming out of their house to answer the door with a cigarette in his or her hand is contravening this law. A youngster with a bad habit passing with a cigarette, is picked up, he gets a conviction and that stays on his record for life. Is this what we want? Because what we are doing is criminalizing cigarette smoking.

I am not saying smoke in schools. No. What I am saying is that we have got to recognize that the person who chooses to kill himself or herself with cigarettes has rights. If we say do not pollute the air in restaurants, we could allow the restaurateur to decide that he can have a sealed off, ventilated area where his clients can smoke where no contamination would meet those who do not smoke.

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

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

Question put and agreed to.

Sen. C. Baptiste-Mc Knight: I thank my colleagues for the time, but I doubt I shall need all of it.

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I was saying in private clubs for example, I do not think it is right in a private club, where only people who choose to be there go, people should not be allowed to smoke if they feel so inclined. But, there are other things that worry me about this; nowhere are we given the time frames for implementation of this legislation. What period of time is going to be allowed between acquisition of a licence and readiness? Nobody is going to start retooling their business until a licence to comply is acquired because it says that the licence can be refused and you have no recourse, because the right to another hearing, the right of appeal has been removed from this legislation. Why? I do not know. Manufacturers have to be given an opportunity to retool.

If the current Bill anticipates that it is going to take nine months for the ministry to be receiving applications because people have nine months within which to decide to apply, be they manufacturer, importer, et cetera, how long is it going to take to process this application? We do not know who is going to be in charge of processing it. It means that that portion of this Bill, like the Breathalyzer Act, has no date for enforcement. When are the signs going to be up telling you what is 15 metres from every nursery, every private school, et cetera? I do not think they are quite ready for this. How long is it going to take to train these authorized officers? They have to be trained to recognize what equipment can be used for making cigarettes. What is the effect of this Bill on people who grow tobacco? There is no mention of them anywhere in the Bill.

The people who grow tobacco will no doubt be drying and transporting it. Do they fall under the purview of the authorized officers? I do not know. I feel that this legislation as it stands is aimed solely at minimizing smoking, because it is the only part of the legislation that can be enforced at the moment. If that is what the Government wants to do, come clean and do it, but do not hide it in a Bill that cannot be enforced, that is totally unclear.

I would prefer that people did not smoke because it adds to the general pollution, but I object to being told that my air will be clear when you deny people what they think is their pleasure to have a cigar or cigarette, in some cases, even in their own homes. I would hope that substantial amendment is done to this legislation to make it fair to all our citizens; the non-smokers as well as the smokers.

I am even inclined to suggest to the Minister that one of the messages on the cigarette and cigar should be quite clearly: "This could kill you". to get the message home, but do not criminalize them and the measures that you want to take, make sure they are just and fair.

Thank you, Mr. President.

Sen. Wade Mark: Thank you very much, Mr. President.

Mr. President, it has been said that freedoms and rights of citizens are never taken away in one fell swoop but, are taken away very incrementally and gradually and by small degrees, inch by inch, metre by metre, and when you catch yourself you are in jail, you are in prison, your rights have been kidnapped by an administration that seems bent on introducing draconian after draconian legislation without any serious rational analysis of its implications for our freedoms and rights as citizens. [*Desk thumping*]

Mr. President, may I remind you and this honourable Senate that in the last four to six weeks, we have passed close to four pieces of legislation that require a special constitutional majority, meaning it takes away or infringes the rights of the citizens that are enshrined and entrenched under sections 4 and 5 of our Constitution.

What we are seeing today is another manifestation of incremental encroachment on our rights and freedoms under the purported expression in the Tobacco Control Bill. So tobacco is being used as another justification in order to kidnap, hijack, and arrest the rights and freedoms of our citizenry. This is draconian legislation, it is dangerous, it is irrational and we will have to make sweeping amendments and changes if it is to receive the support of the Opposition United National Congress. [*Desk thumping*]

Mr. President, may I also indicate that if any legislation can save a life, we believe it is something that is noble; we have no problem with legislation that is designed to save lives. But I raised the point sometime ago that we have to be very careful in importing wholesale from other jurisdictions like we did just a few weeks ago lock, stock and barrel, hook, line and sinker the legislation of other jurisdictions and ignoring the cultural evolution of our nation.

Mr. President, may I remind you that beautiful Tobago, when the Amerindians occupied it back in the 14th Century was known as "Tobaco", T-o-b-a-c-o, that was the original name for Tobago. The Amerindians called it "Tobaco" and the reason for it was that their whole economy was based on tobacco.

I want to let you know as well that in the 14th Century—I want to refer you to the Father of the Nation and the hon. late Dr. Eric Williams when he presented to the people *The History of the People of Trinidad and Tobago*. So this book tells me—and I want to refer the honourable Senate to Chapters 1 to 3.

Sen. Narace: What page?

Sen. W. Mark: Chapters 1 to 3 and I want them to understand that in Dr. Eric Williams' book he spoke to the issue of the Amerindians in Tobago. [Interruption] No, their economy during the period when they existed before the Europeans, the Dutch, the Spanish, the French invaded Tobago, they grew tobacco. It was the lifeline of their economy.

Mr. President, may I also remind my hon. colleagues that tobacco was used as a currency in Tobago when it was "Tobaco" and I am not saying that I am for or against tobacco, I am saying we must deal with the reality and when we are shaping and fashioning legislation, we must be conscious of our cultural evolution as a nation.

Mr. President, in the 16th Century, tobacco was a major export commodity for the economy of Trinidad and Tobago.

Sen. Browne: Irrelevant.

Sen. W. Mark: So I want to indicate that when we come to this question of tobacco, you have to look at it not only in the current context, but at its historical evolution and, therefore, we have to be careful that we do not just transplant from another jurisdiction. We cannot import wholesale, that is the point I am making, and transplant to our society the experience of other jurisdictions.

2.45 p.m.

So we are saying this is not unnecessarily negative legislation, because the Government is trying to save lives; it is trying to dissuade people from smoking. Who could argue against that?

Hon. Senators: You. [Laughter]

Sen. W. Mark: The question is that the goals and the objectives—again we understand what the Government is trying to do in this legislation but what I have an objection to, and we have an objection to, is what the hon. Sen. Corinne Baptiste-Mc Knight indicated a short while ago, that the Government is seeking to criminalize the smoking of tobacco in Trinidad and Tobago.

We are saying that the first phase that the Government should embark upon is mass education and public awareness. [Desk thumping] That should come long before legislation. You have to engage people, because you have a mindset, you cannot legislate for behavioral changes; you cannot legislate for that.

Sen. Narace: Sen. Mark—

Sen. W. Mark: No. You take my point. Mr. President, I am addressing you and I am saying that we have to ensure that whatever we are doing that we ensure that this draconian approach that is being adopted here is, in fact, looked at.

I would like to know—we cannot even catch criminals in this country. For every 1,000 murders in this country, if we convict one murderer, we convict plenty. But you are talking about actually going to look after whom? The people who are taking a little smoke? You are going to set up, what, an anti-smoking police squad to go and check every home, every gulley, every alley, to see if they are violating the law? Is that practical? It does not appear so to me.

I think that, for instance, the Government is attempting to mamaguy the population and I will tell you why. If this Government were serious about this piece of legislation as when it brought in the budget statement, as you recall, measures to stop poor people from taking a little drink—when this Government, as Sen. Corinne Bapiste-Mc Knight said, under the pressure of this regime people have to take a little smoke to ease the tension. Too much pressure the PNM putting on poor people! And then you tell poor people they cannot take a smoke and when they want to take a little drink, they have to pay more. Is that a Government that cares? Do you think this legislation will impact upon the rich? It is the poor man, the ordinary people.

Listen to this one on page 7, clause 2. Let me read:

"This Act shall come into effect on such date as is fixed by the President by Proclamation."

Do you know what that means? It means that this Government is engaged in a charade today. Do you know why it is engaged in a charade today? Because the draft regulations to start with are not before us today and I will point out to you how many sections of this Bill refer to draft regulations.

You are attempting to trample upon the rights and freedoms of the citizenry of this country. You have brought no regulations to accompany this Bill and you are telling us, "Buy cat in bag, shoot in the dark and leave it up to us; we will bring the regulations later on." Clause 2 is telling this Parliament and telling you, Mr. President, for this Bill to become law, the Government must first pass the regulations and so advise through the Attorney General's office, the President of the Republic to give assent to this Bill for it to become law. So all this exercise that we are engaged in for the last couple days and today is out of tomfoolery. Maybe the Minister of Health has given a commitment to the WHO or whoever is lobbying the Minister to bring this legislation and he says, "Listen, we will get it passed; put it on the shelf for about two months and then the regulations will come afterwards." That is why I keep saying, we have to ensure that draft regulations—

Sen. Narace: On a point of order, Standing Order 32; he is imputing improper motives. Mr. President, if I could be allowed. He has suggested that I gave a commitment to some partner in WHO or some kind of thing when, in fact, Trinidad and Tobago is a signatory to a treaty, an obligation to which we are committed and legally bound. Therefore, he is imputing improper motives to the Minister.

Mr. President: I do not think that he is attributing improper motives. He may not be entirely accurate in his statements, but I do not think he is implying anything that is improper. Senator, just make sure that what you say is accurate. Please continue.

Sen. W. Mark: Thank you very much, Mr. President. All I am asking the hon. Minister to do, through you, Sir, is to bring the draft regulations or the regulations. You cannot allow a Parliament to debate a piece of legislation in which several provisions of this legislation refer to the regulations. But do you know what? We do not have a copy of the draft regulations. How can you ask this honourable Senate to agree to legislation without regulations?

I am suggesting that the Minister may wish to withdraw this Bill for at least six months; give him enough time to bring his regulations to the honourable Senate and when those regulations are brought here, we can then look at this matter properly. But to come and tell us we must support legislation without regulations in which the fundamental rights and freedoms of the people are being impacted upon, is something that is very, very difficult.

I also want to make it very clear, do not bring legislation here that is going to impact on the rights and freedoms of the people and tell this honourable Senate that you are going to pass regulations with a negative resolution. You cannot do that. You are dealing with people's fundamental rights and freedoms. You are asking us to give up our rights and freedoms, to the enjoyment of life, liberty and our property and you are telling me that you will make your regulations in a back room, and just put it down on the table and if I want to bring a motion, I bring a motion? No, no. We are saying to the hon. Minister of Health that you must amend this particular section of the legislation and instead of having a negative resolution we are calling on the Minister to have an affirmative resolution to the legislation. That is what we are saying.

May I also engage you on page 28, which is the Second Schedule? Immediately I want to get some clarification. We are saying no smoking areas include public transportation terminals. Do you know what I want to find out from the hon. Minister? In the definition section, the word "enclosed" means, and I read on page 8:

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

Could the hon. Minister or the Attorney General when they are speaking, tell this Parliament whether public transportation terminals include a bus stop. Do you know what is a bus stop? It is a shed with two sides to prevent people from being exposed to the elements. So you are telling me that if a citizen of this country, an ordinary working-class man is in a bus stop and he is taking a little smoke after a hard day's work to de-stress himself—because that is how some people find comfort and we have to respect that. We know it is dangerous and harmful to their health, but they get comfort in doing it. Do you know what is the fine here? The fine is \$100,000 and one year in jail.

Could you imagine somebody who is taking a little smoke by a bus stop, if he is caught by the anti-smoking police squad, he will be called upon to pay \$100,000 and serve one year in jail. As Sen. Corrine Baptiste-McKnight said, I do not believe that is the intent of the legislation. It cannot be that you are trying to criminalize this particular offence. Why are you trying to criminalize this? I am saying you should not criminalize it. And you are in trouble because we will not support this legislation in its current form because you are infringing on the rights of the citizens and we are here to defend that and to ensure that you do not do that, as the Government.

I found it strange myself, in the legislation, when you say that no smoking in workplace and you define what a workplace means—that is on page 10—I want to ask the hon. Minister, where in the legislation is there a provision for designated smoking rooms at workplaces? You tell people do not smoke otherwise you will charge them and jail them, but do you know what you did not do in this legislation? You have not included one provision that talks about a designated smoking room for those workers and those citizens who would like to take a smoke. Why? Why?

I am saying the Government is trying to imprison the population. This is legislation that is designed to ban smoking. This is not to partial ban; this appears to me to be a total ban on smoking in Trinidad and Tobago. It is draconian; it is

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dangerous; it is irrational and there is no reasonable justification in a society that has respect for the rule of law and the rights and freedoms of the citizens of this land—no reasonable justification. Therefore, we are saying to the hon. Minister, through you, Sir, that there is need for him to go back to the drawing board with this piece of legislation.

When we go to Part II of the Bill, we are seeing, again, it is a practice I am seeing developing with this Government. It says:

"The Minister shall establish a Unit within the Ministry which shall be responsible for..."

Whatever. When they say a unit, what is the name of this unit? It is just a unit. It does not say if it is an anti-smoking unit, a tobacco-control unit. We do not know? We do not know the composition of that unit; who will make up this unit. The persons who will make up this unit are not identified. The qualifications are not given. So are we to take it to mean that in the regulations that are hidden from us today, the Minister will identify who will comprise the unit; what qualifications they will have? We do not know.

You cannot bring this kind of vague legislation to a Parliament and expect to get support. So we are saying that the Minister—and we will make amendments. We want the composition; we want the name of the unit, and if they do not want to give it a name, we will give it a name for them. We want to know the qualifications of those persons who will make up this unit that the Minister speaks to in this matter. I believe that because of the abuse of power by this hungry administration, it is dangerous to put a unit of this kind under a Minister, especially under this Government. We do not trust this Government. We believe like Botswana, we should have an independent tobacco control board that is going to be in charge, made up of professionals with the necessary qualifications.

3.00 p.m.

In that regard we are going to propose amendments where we are saying that a special unit or a board will comprise the people who will make up and be responsible for the functions that are defined in clause 5. We do not want a unit under the control of the Minister of Health. We want an independent board. This legislation gives to a politician too much power. Power corrupts and absolute power corrupts absolutely. We are not in favour. I serve notice on the Minister of

Health that you are going to get comprehensive amendments from this side to strengthen this Bill and make it more acceptable to the population. We are not going to accept this legislation in its current form. We will vote for it when you accept our amendments.

Sen. Narace: You are supporting the Bill.

Sen. W. Mark: With our amendments. We go on to clause 7 on page 12. It says:

"The Unit may request authorized officers to carry out inspections and investigations."

We have a definition in the definition section that talks about authorized officers. Who are authorized officers in the legislation? Police officers, customs officers and public health inspectors. Outside of a public health inspector, a police officer and a customs officer, are there going to be any other authorized officers? I do not believe that the Minister is serious. I believe that there are going to be other persons who would be trained to be authorized officers. But, do you know what? The Minister wants to reserve that power so he can employ who he wants and undermine the Public Service Commission and continue the privatization of the public service of Trinidad and Tobago. We are going to make amendments to ensure that public officers are employed in this area. The Government is trying to privatize the public service on a systematic basis and bringing legislation after legislation in order to accomplish that objective. Therefore, we serve notice on this Government that when we talk about authorized officers, they must be public officers and appointed by the Public Service Commission because they would have more power.

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

This casualization of the public service that this Government is bent on achieving, we cannot support. You cannot have a contracted public service. "Whey yuh bringing we back?" To slavery? That is what slavery was about. Contract labour. [*Interruption*] We want free labour but they want to handcuff us here. We are not going to allow public officers to be sacrificed by an uncaring government. We want to give the public officers the assurance that a UNC government that will be installed very shortly when they call elections would not privatize the public service. That is not our objective. We will not privatize it. [*Interruption*] Ask Ken Lalla. He was there.

Sen. Dr. Saith: Who started it?

Sen. W. Mark: You. We are saying that clause 8 of the Bill is very vague and clause 7 is even more vague in terms of contract officers. Authorized officers must be from the public service. We are not going to give any power to the Minister of Health to employ people in the public service. There is no mention of it. We will put an amendment to ensure that it is mentioned.

When we go to clause 8 of the legislation we see where the authorized officers have sweeping powers to enter, examine and make copies, to interview people, to take samples. Clause 8 (1)(a) says that they could "examine, open, and test any equipment". Who will test it? The Minister? Why is it not in the legislation or are you going to put it in the regulations? Bring the regulations.

It is illegal and unconstitutional to invade a man's private property and premises without a warrant. There is no clause in the Bill that says if an authorized officer is coming to your premises he has to present a warrant to you before he enters. What do we have? A Gestapo squad? "What yuh have is a Tonton Macoute like in Haiti?" What do you have? A Gairy hit squad? You are giving authorized officers the power to enter your business and your business is sacrosanct. It is something that is entrenched in the Constitution, that nobody could enter your business without due process of the law. If we are going to give these people that power we want to safeguard the rights of innocent citizens. I tell this Government that if they pass this law without our support this Bill would be struck down by the courts of Trinidad and Tobago, even though it is passed with a constitutional majority, because it is not reasonably justifiable in a country that has respect for people's fundamental rights and freedoms. [*Desk thumping*]

We are very, very concerned. Go to page 13, clause 8(2). It talks about "only authorized officers who are either customs officers or police officers". In the definition it says that authorized officers are police officers, customs officers and public health inspectors. In clause 8(2) only customs officers and police officers are identified. Why have we left out the public health inspectors and other authorized officers? I do not know. That is an area we believe should be addressed and we would put that as an amendment.

If we go on to clause 8(2)(c), the authorized officer can:

"seize and detain from any business or order the storage without removal..."

It is inadequate to invade and seize people's property and then simply tell them, I give you a written notice of the seizure, detention and grounds. That is inadequate. We believe that a receipt for every item seized by the authorized officer must be given to you. You want a receipt as in British Columbia. Put that

as an amendment. We are also putting an amendment as (d) in 8(2). It reads: "No authorized officer shall abuse his authority or use his position for financial or personal gain." We are having that inside here too. That is an amendment. You know that in this country people might have their private agenda, come to your place and for financial and personal reasons, they harass you and abuse their power. We want to have in the legislation a provision that prohibits that kind of abuse.

There are several areas and I have now started. In clause 9 we are saying warrant needed to enter any place. We do not want proof of identity. You must present to the citizen a warrant to enter their premises. You cannot come into my private property just so. No, no, no, no. That is under the Public Order Act that you wanted to pass in 1970 and the masses of people rebelled against you.

I am not dealing with the current Minister. He might be a very decent chap, decent Minister rather. I am dealing with somebody after him. Hear what clause 10(3) says:

"The Minister shall serve as the licensing authority under this Act."

Imagine that! You are putting a politician, not an independent board to issue licences. If the Minister does not like you as an importer of cigarettes and you are a UNC, he might not give you a licence. Do you know what is even more sad? There is no mechanism for appeal in the legislation. This Minister is a reincarnation of God. He can do no wrong. This Minister is setting up the unit and then he is also issuing licences.

[MR. PRESIDENT *in the Chair*]

That is too much power. Where are the checks and balances? We do not have the separation of power principle in operation in Trinidad and Tobago. That is why the Government could abuse its power. It brings its budget and passes its budget. Do you think that it cares about the Opposition? We could talk from now until doomsday it does not make a difference. Under clause 10(3):

"The Minister shall serve as a licensing authority under this Act."

No criterion is given for issuing licences. What criteria is the Minister going to apply? We have a classic case of the Telecommunications Board of Trinidad and Tobago denying a very legitimate organization the Maha Sabha, a radio licence. They had to go to the Privy Council for the Privy Council to tell this Government and order the Attorney General to grant a licence to the Maha Sabha. It was a licence again. Given to whom? The Minister through the Telecommunications

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Board—no I am wrong. It is not the Minister. It is the Telecommunications Board that granted or did not grant the licence. They had to order the Telecommunications Board to give the licence to the Maha Sabha. That is an abuse of power by the Telecommunications Board under the policy direction of a minister. Why must we give to this Minister the power to grant licences? We cannot do that. That is why we are going to put proposals for amending this legislation to have established an independent tobacco control board and not the Minister to be in charge of any board.

Clause 10(2) says that they are going to have a “transitional period” as it is called and within nine months you have to apply for a licence. Who is going to give the licence after nine months? The Minister, and that is the Cabinet. They will determine if you will import or export or manufacture cigarettes or tobacco products in Trinidad and Tobago. We see no criteria for the Minister.

Clause 10(6)(d) states:

"The application shall contain the following particulars:
any other particulars as prescribed by Regulations."

Do you understand what we are getting into? We are being asked to pass legislation dealing with the granting of licences and in this application for it, we are being told in subclause 10(6)(d):

"any other particulars as prescribed by Regulations."

3.15 p.m.

We ask the question: Where are the regulations? Bring the draft regulations to the Parliament. You do not want us to buy cat in bag; not at all. I do not think the Minister would want this Opposition or the Parliament to pass legislation in that whimsical and arbitrary fashion. I do not believe that.

“(8) Where an application for a licence is denied, the applicant shall cease...selling tobacco...”

There is no provision for an appeal mechanism when that person is denied a licence to import. I will tell you where it is. It is in our amendments.

When you deny a citizen a licence, the Government has an obligation to inform the person, the organization or the company in clear terms of the reason for the refusal. We are going to put that in the legislation. You cannot tell someone like the Maha Sabha, no licence for you and no reason is given; the Cabinet says so. Well, the Privy Council told the Cabinet it cannot operate like that. You have to give reasons. [*Interruption*]

Smoking is a right. I never knew—if I am wrong, let me know—up to today when I came into the Parliament, cigarette and tobacco smoking were legal. I do not know, for instance, who gave the PNM the right to snatch away people's rights. There is something called freedom of expression. *[Interruption]*

Marijuana is for the Dutch. Holland has a little arrangement where, if you want it for medicinal purposes, you can go. We are not saying to legalize marijuana. I want to make it clear that we are not saying that. We are saying that the Government, if it wishes to make tobacco smoking illegal, put it in the legislation; say that you must stop smoking in Trinidad and Tobago.

Clause 11 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.”

Again, reference is made to regulations, but there are no regulations before us. How can we support legislation that will infringe on the rights and freedoms of the people of this country and there are no regulations before us? I ask the Government to withdraw the Bill for six months and craft and draft the regulations, bring them back and let us continue the debate.

Sen. Narace: You just said you were supporting the Bill.

Sen. W. Mark: Yes, but I am supporting it properly. I am not a “Speedy Gonzales”, you know. I am not for or against; I am just giving the objective reality. The speed with which the Government has brought this Bill, trying to get us to support it, and all the statistics quoted by the hon. Minister in justification of the Bill, I wish we had the same alacrity in doing things to deal with other matters that are pressing. If we can get the same speed in appointing the members of the Integrity Commission, we would love that. *[Interruption]*

I am not saying you can do it. I am just making a regular statement. I understand there are several ILO Conventions and recommendations that the Tripartite Committee 144 recommended to the Minister of Labour and Small and Micro Enterprise Development to be ratified to protect workers' rights, including Chinese labourers, and up to now; no haste. What we have here is a NATO government—no action; talk only.

I go to clause 11(3). It says:

“Reports shall be made on the basis of products prepared and tested in accordance with the method prescribed in Regulations.”

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I went to the website and came up with a series of regulations just dealing with one aspect alone—Canada's Tobacco Reporting Regulations. If you see how detailed this is—reporting alone. You are asking us to support legislation on reporting and testing and you are saying that those things will be prescribed in regulations. Where are the regulations? I want the Minister to refer to a model piece of legislation on the Tobacco Control Bill.

It goes on in Part III of the Bill to talk about—I agree with Sen. Baptiste-McKnight that it has to be an oversight that the Government left out banning people from selling cigarettes to children. I have an amendment to that effect. I have helped the Government by framing and drafting an appropriate amendment to deal with that aspect of it.

Clause 12(2) says:

“...no person shall smoke within fifteen metres of any place that caters primarily to children, such as schools...”

If you are caught near a school, clause 37(2) of the Bill captures what will happen to you. There is a fine of \$100,000 and to imprisonment for three months; \$200,000 and imprisonment for six months for the second offence; and \$300,000 and imprisonment for nine months for the third offence. This is impractical legislation.

The Government may have to amend the entire Municipal Corporations Act to give this effect. You and I know that many homes have been built in this country and schools are erected near to these homes, less than 15 metres. I am a Carenage man and I can tell you that on School Street in Carenage, where I attended the primary school, the houses are near the school, less than 15 metres. So how can you put into legislation that if someone is smoking in their homes, and it is no fault of theirs in terms of the 15 metres, that you are going to arrest and charge them. It does not make sense.

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

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

Question put and agreed to.

Mr. President: Senator, before you go on, try to avoid being repetitive in terms of what you said earlier in your contribution as well as what others have said. It is worthwhile to mention it to say that you support it, but there is no point in going on and on.

Sen. W. Mark: Thank you very much, colleagues. We will make amendments to clause 13 of the Bill. We will make amendments to clause 15. We find this particular provision excessive and arbitrary and we believe that this is not in keeping with our democratic framework.

In terms of clause 18, we want to ensure that there are amendments and we will circulate that as well. There are other sections of the Bill and I want to deal with section 20. It says that:

“(1) 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...”

This is unclear to us and we need clarification on this one. We also would like to get clarification on “lifestyle advertising”. We do not know how anyone could objectively assess this provision. It appears to be backdoor censorship.

No retailer or wholesaler would be able under 20(2) to give a person a pack or a box of cigarettes as a gift. That is now illegal and has been outlawed by this regime.

We need some explanation on clause 22(1). Here it is not clear to us.

When we go to Part IV of the Bill, Packaging and Labelling, clauses 23, 24(1), reference is made to regulations, but there are no regulations before this honourable Parliament. I draw it to your attention again.

We are saying that in clause 25 it is being said that:

“All tobacco products...contain...a list of constituents and additives specified...in a manner prescribed by Regulations.”

Again, no regulations. I do not know how practical this is. We find some of the proposals in terms of the fine as well as the period of jail, extremely strong and draconian.

I see in clause 31(2) of the Bill that the Government is saying:

“No person shall sell single cigarettes or other smoked tobacco products, or sell any smoked tobacco product other than as part of a complete and intact package...”

In other words, we are being told there will be no single cigarettes being sold. I find it contradictory. The Government is trying to get people away from smoking cigarettes and telling people on the other hand to buy a whole pack. If someone

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goes to a parlour to buy two cigarettes because he wants to wean himself off it, the legislation is saying that it is unlawful and illegal to sell a single cigarette. That is now prohibited under the law.

The Bill proposes to sell that individual a pack of cigarettes. You are now encouraging smoking. Does that make sense? That is impractical. I believe that the Government has just borrowed these provisions lock, stock and barrel out of legislation, without understanding our environment. Is this for real? I do not believe so.

3.30 p.m.

Mr. President, we are saying that the Government has a duty—the poor people in this country would buy one cigarette or two cigarettes, because the PNM still has them on \$9 minimum wage. They cannot afford to buy a pack. The poor people in the country and the ordinary people who have to go to the parlour to buy a cigarette, the Government is now saying to them they cannot buy a single cigarette.

Mr. President, when I talked to people about this legislation and what this Government is planning, they were shocked. They do not know that this Bill is before the Parliament. They are banning poor people for smoking one single cigarette. Mr. President, could you imagine if they catch a poor man smoking one cigarette, it is \$12,000 or three months in jail. How could that be fair? That is draconian legislation against poor people. You are discriminating against ordinary people and you are laying the basis for the importation of contraband cigarette in the country. The contraband trade will expand and you will encourage smuggling.

I want to tell the hon. Minister, if he does not know, he can go to any shop, parlour or grocery in Belmont and he will see Chinese cigarette. I see somewhere in the legislation that the pack must be in English. Hon. Minister, I want you to go to any supermarket in Belmont and you will see Chinese cigarette. You cannot read it, but it is cheap, \$6 a pack. You know, in China, you work for the ordinary people. So, the Chinese who have come here to labour in slave camps, have to bring down cigarettes to make sure that they are okay. So, they are selling cigarettes.

Mr. President: Sen. Mark—

Sen. W. Mark: I withdraw. Excuse me, Sir. I apologize to you, Sir. I want to advise the Minister that there are cigarettes on sale in Trinidad and Tobago with no English, no exclusive English. It is the same Chinese who were addressing you

at the—okay. I just want to advise the hon. Minister that these are matters that he needs to look at and to take on board. We cannot support this Bill in its current form. We believe that this Government is bringing legislation that has not been properly thought out in a very serious way. We believe that the Parliament is legislating sanction without the regulations before us. This is unacceptable. It is undemocratic and it is oppressive, and we cannot support it in its current form. We are engaged in rushed legislation which is dangerous.

In clause 38(1), we serve notice on the Minister that we are going to delete “negative” and replace it with the word “affirmative”, because of the danger of this legislation on the rights and the freedoms of the people—“the Minister may by Order amend the Schedule”—because of the danger this thing poses. We are making an amendment to that, which would read “subject to an affirmative resolution of the Parliament”. We are not taking any chances with the Minister of Health or this Government just changing orders without coming to the Parliament. We must have checks and balances in this matter.

Mr. President, if you go to the Second Schedule of the Bill under “No Smoking Areas” (d) says “clubs”. What does that mean? Does that include private members’ clubs? I do not know. I think we need clarification, because if you are saying clubs are no smoking areas, and I am a member of a private members’ club, are you not invading my privacy? Are you not invading the right of me to own property? Is that not something grave? I would like these matters to be clearly stipulated. You cannot invade private property, and this is what they are saying the authorized officers can do. Clubs are used in the widest context. It cannot be right!

If you go to (j) of the Second Schedule it says:

“any other facilities that are accessible to the public.”

Mr. President, what does that mean? That means any place. Do you want to imprison the population?

Sen. Narace: I want to imprison you.

Sen. W. Mark: Is that your intention? Or, you want to imprison me. Oh, I know, long time, but you will have to pay a heavy price.

Mr. President, we are saying this is too wide, too broad and this is too sweeping. It goes on to talk about workplaces and so on. It says:

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Carnival, the festival of Trinidad and Tobago! If you rent out the national stadium for a fete, what are you telling people? They cannot smoke! Are you saying that for Carnival if you rent out a public facility—are you telling the people of Trinidad and Tobago who “wine and jam” like you and I and have a good time around Carnival time—[*Laughter*]

Mr. President, we enjoy Carnival in this country. We have a good time when we go and fete. We drink a Carib, we take a smoke and we have a good time. Are you telling me that you are going to ban smoking in a public place? What does “publicly owned facilities rented out for events” mean? This is impractical legislation; this is rushed legislation; and this is dangerous legislation. We cannot support this in its current form. We would like to support the Government, but we are worried. We are very worried about this.

As far as we are concerned, I want to remind the hon. Minister that this Bill, in its current form, is in violation of article 8 of the World Health Organization Framework Convention on Tobacco Smoking. That convention says, for example, where there are provisions in this legislation, it is in this convention in article 8. It talks about ensuring that there are separate smoking rules and places for separate ventilation. That is article 8 of the legislation. We are going to ensure that the legislation has in it, designated smoking room and separate ventilation. That is what we are going to propose.

Mr. Speaker, we have said our part and we are prepared to give the Government the necessary support, because we believe that legislation that is designed to save life is noble and laudable, but there are serious concerns, serious deficiencies and serious flaws and we will be making the necessary amendments, at the appropriate time, so that we can strengthen the legislation to ensure that we have wonderful legislation at the end of the process.

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

Sen. Prof. Ramesh Deosaran: This legislation is, to me, inevitably imperfect, because of the problem it is trying to deal with. In fact, when I look at the legislation, it can be in no other form than a work in progress, and that admission must come from the Government side instead of trying to claim anything otherwise.

In fact, I would go so far as to say that as far as enforceability is concerned, this Bill will not meet the 75 per cent mark but, at the same time, apart from the treaty, the Government has a duty before it in terms of public health. So, part of

the Bill is symbolic in terms of the problem they are trying to deal with, not only in the context of the World Health Organization arrangement, the framework, but in terms of strong public opinion with regard to public health and also world opinion.

There is no public or even public institution where you go into a country—in addition to places like hotels, trains and other such facilities—and you do not see severe restrictions against smoking. The reasons are several which I would get into at a later time. I have just returned from travelling abroad, and in the hotel it tells you quite plainly that if you smoke in some rooms, you are liable to pay a fine of \$250. My heart went out to them. In that same hotel, when I went out in the cold—it is very cold in Philadelphia—I saw 12, 15 and sometimes 20 persons outside in the cold shivering, but they have to go outside and smoke, which reflects the problem of addiction, not just smoking for pleasure. The problem has passed that benchmark of smoking for pleasure. For some people, there is nothing as pleasurable, restful and almost spiritual, to combine a brandy with a cigar slowly embellished.

So, what we are seeking to trample upon, as it were, is taking away something to which so many persons have grown accustomed, especially in the privacy of their own homes. The Bill is, therefore, an attack for yet another time—and that is what is getting me a little perturbed. There is another piece of legislation which attacks section 4 of the Constitution. If you would bear with me, just to put it on record and in the context of which I will speak very briefly, it attacks section 4(a), that is the enjoyment of property except by due process; and the due process is the three-fifths majority which the legislation seeks.

So, some people might feel that you are right, but they will still feel that your encroachment is a bit overbearing, given the clauses about business, export and some of the matters that my colleague, Sen. Corrine Baptiste-Mc Knight, raised.

It also attacks section 4(c), the right of the individual to respect for his private and family life. The Bill is, therefore, in a clash and it must go on the record, because I believe the Government has a duty to perform, and we are going to speak on whether it has gone too far or not, but the principle is, it has to respond to a serious public health matter, apart from the WHO requirement.

In the travel to which I just referred, in another part of the world, Europe, there are clinics called suicide clinics, that is, people go to Zurich in order to have their lives terminated under medical supervision. It is lawful to terminate your life under such conditions, because people feel that it is their right to have themselves willingly executed legally.

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In Oregon and I believe in Washington, that right also exists. The question arises to what extent should individuals—the rights in section 4 pertain to individuals not to groups as much as individuals—have a right to smoke even if it kills him or her? The other issue is, does it bring harm to other people? That is what the legislation tries to deal with. That is a very big and important issue.

Two or three centuries ago—there is a small book to which I had referred previously, it is entitled *On Liberty*, but it really should have been entitled “on individual liberty”.

3.45 p.m.

The author John Stuart Mill made a persuasive case for the right of individuals, especially in the privacy of their homes and the enjoyment of private property to watch pornography, to smoke, to walk about naked as long as it brought no harm upon others no matter how repulsive it might be to other people. They have no right, as he argued, to interfere with what people do in the privacy of their homes. That was two or three centuries ago. Even when people used to smoke marijuana brazenly, there were no such restrictions.

Let me summarize my initial point, that is, the Government does have a responsibility as the Minister is exercising to deal with this problem of smoking, the manufacturing, the selling of cigarettes as part of its public duty. But I will tell you something, it will not really work as you think it ought to work. Just a few examples, the use of marijuana in this country is here, there and everywhere. It is being sold near schools, near bars, you pass in the street sometimes in Port of Spain, I would not call which area in Port of Spain, but you get the smell of marijuana being smoked profusely; in bars and at street corners. But there are laws against marijuana. There are penalties against marijuana. In some countries they have given up; St. Vincent has given up.

I met a lady from St. Vincent, who is a maid, a couple of weeks ago. She was speaking about going to St. Vincent and she was speaking about her son. Poor lady, obviously you would think her son shares a similar circumstance, but she says her son has a big two-storey house, so she was casually asked by one of the persons in the same company, how did he manage to build that house? Very indifferently, casually she said, “well you know he does plant marijuana”. [Laughter] It is an open business in St. Vincent. That is one of the fears I have about joining countries so arbitrarily, but that is another issue.

In Jamaica they have also given up; the place which produces a lot of trafficking, “posses” and so on.

I am not telling you do not bring the legislation. I am trying to point out to you, especially the way the legislation is framed you will really create a lively black market underground economy. It is not your fault. You are dealing with an aspect of human behaviour where somebody is addicted or they feel there is—a thirst as you would say—a hunger for cigarettes. This Bill does not have the force or the reach to curb such appetites and we would have to live with it, but I want to put my case on the record early so when the time comes for your benchmarking and the work of your unit—and I will come to the work of the unit in a short while, how it can be helped—you will see why cigarette smoking will be still a prominent pastime.

There is a fear of young people smoking. I remember, and the Minister of Local Government can correct me, when she was Minister of Education, I think she brought an amendment to some piece of children legislation where the age 18 was set where you could not sell to children of that age or below that age, alcohol and I believe also cigarettes. So when my senatorial colleague was asking about the definition of children, I think there is another piece of legislation which I would encourage the Government to look at and it would satisfy the concern raised with respect to this piece of legislation in the context of what the former Minister of Education brought here for amendment some sessions ago.

But the story does not end there. Just say you want to keep away young people from smoking, educational messages and those slogans—it would be just like drugs. The amount of signs I see on bumpers, televisions and hearing it on radio “Say no to drugs”, well you might as well change the “no” to “yes” because the use of drugs is escalating, has escalated and will escalate in spite of all those so-called educational programmes. What you can do to help is do not just put it in a slogan, in a banner, or in a jingle on the radio; you really have to do some serious in-depth study as to why people knowing full well something is dangerous to their health, why they still persist in that behaviour? That is what you have to do now. Do not just take those slogans and brochures from abroad and share them out willy-nilly, you will reach nowhere as others have reached before you by using the same methodology.

I am saying so because of studies I know about where they have tested young people persisting in smoking, even though they know, it has been shown to them that smoking is dangerous to their health by using a model called—to use the psychological term—cognitive dissonance. But you have to be more scientific

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about this exercise. If you do not, the Bill will pass, your slogans might emerge, your unit will exercise its obligation, but the rate of smoking in the way that you want to prevent it will persist. But it is more than that.

In the study that was done, and I am sure that the former Minister of Education will recall this, because I remember she had brought these figures to the national community, but I do not believe everybody took it on as seriously as they should have in those days. Because it seems to me that something has to be done in the country, a climate of opinion has to evolve. There has to be a collective state of readiness for certain things to catch on and for people to get convinced that now is the time to act upon such and such a thing. Now is the time for me to recall, because I know about the research, whilst 40 per cent of our secondary school students admit in the last three months or so that they have smoked, sometimes once, twice, three times; a lot of smoking in schools, a matter of concern—but when they are at home within the same period about 50 per cent of them, a higher proportion than in school admitted to smoking at home on a rather regular basis, and the Minister did present those results which I wish to reaffirm and to encourage the Government and the different agencies, not merely the Ministry of Health, but you have to have a collaborative effort in your education programmes and I do not see that collaborative effort coming out in the functions of the unit, but you should be encouraged to do so.

The fact that they have been smoking so much more at home also implies that the parents do smoke heavily, so you have a generational transmission which is what the legislation is trying to bring.

So in section 12(2) it talks about being 15 metres from any school, where the point at which nobody should smoke or hold a lighted cigarette. These are difficult provisions to enforce. We have seen this with alcohol and if you go through the country—I do not want to call places—but if you drive through the country a number of rum shops you will see near schools, even there is legislation telling you it should not be built within so and so distance and so on. Rum shop like peas and the implication is this which the ministry would have and the Government would have to face. Maybe that is why I am looking at the role of the Minister in granting licences.

It seems to me the system of having magistrates and so on, grant licences, that system has broken down. If you look at the evidence and the proliferation of rum shops and bars opened all over the country without provision for parking space and public comfort, these licences are granted so easily. I am not too sure whether

the Minister can handle this more efficiently and fairly, because it will also appear to me on the basis of the evidence there is a lot of bribery and corruption taking place in terms of granting these licences. Because you could not really follow the law properly and have all of these rum shops and bars open so prolifically all over the country including very close to schools. It could not happen, other than bribery and something under the counter.

The Minister it seems is on the warpath. This is big stick legislation intent on really sending a message harshly and in order to break the extent of smoking in the country and the harm that it brings to other people. Big stick legislation! But I realize now he is not averse to using the big stick even in firing people in the Ministry of Health and so on. So it is big stick time all around. But I hope you will bring some amendments here before us as a spirit of compromise and in response to some of the concerns raised. So apart from using the big stick you could also have a soft heart to concede and to try and seek some consensus within the Senate to get this Bill moving forward.

In fact, you speak a lot about the supply side, manufacturing and so on, but like guns, I have always said that the easiest way to stop illegal use of guns is to start at the manufacturers' point. That is, where do you ship your guns to? Do you have proper labelling to trace guns and why do you have to manufacture so many guns, especially when there is no war? It is a time of peace. But the manufacturing side for economic reasons, and to support the military industrial complex you keep exporting guns all over the world. It is like cigarettes.

Your big manufacturers not only produce but they are supported by politicians in the big countries because these manufacturers of cigarettes contribute to election financing which you do not want to have in this country. You do not want to have controls over election financing and God alone knows why. But part of the production side of cigarettes is linked to election financing especially in the United States where big companies like Reynolds and so on, even though the Supreme Court has taken certain action, the Congress still has some sympathy, and I believe it is largely for the reason that is given.

You have shown yourself to be resistant from such influences by bringing what I would call this big stick legislation and a great deal of people, doctors especially, would support the legislation. They will not do like some of us have done to look at the fine print and the extent to which the stick is a bit too big. In some parts it really looks as if it is a bit too big. But let me come back to my substantive point. You are criminalizing smoking in certain circumstances to help

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prevent it, but on the other hand in the case of marijuana it is already illegal, it is already criminalized, but it is a mood all around the world to have it decriminalized. What is the reason? The laws against smoking marijuana cannot be effectively and pervasively enforced.

So you have a two-way street. You are criminalizing something which I would admit would be difficult to enforce the laws and you have a situation where marijuana is already legal, and even from the several university studies and several governments around the world are now looking to see whether and how they can decriminalize the use of marijuana to the point where in some states in the United States the concession is they are going to use it for certain medicinal purposes.

4.00 p.m.

So just now you might have to use cigarette smoking for medicinal purposes because people will feel so stressed out. To withdraw from an addiction is no overnight matter, people who are accustomed to smoking all these years, I believe you will have problems. Our lavatories, toilets and such private places will be filled with the smoke of cigarettes; people will be hiding, dodging, squeezing into all corners to have their little smoke unless the education programme works, even if the supply is diminished.

What addiction does is distort the law of supply and demand, because even if the supply grows smaller, the demand will not only increase proportionally, but the product will become much more expensive, and given its scarcity, it will create an underground economy.

I really do not want to discourage the legislation because generally it has a good intention.

Sen. Narace: Thank you very kindly Senator, for giving way. Mr. President, through you, there is now incontrovertible evidence that second-hand smoke kills. It is a fact, scientifically proven. Even if one is smoking marijuana in the confines of their homes, they are not killing babies, they are not killing children, they are not killing you. The key thing we have to understand here is that this legislation seeks to stop people from smoking in public spaces. There are some other things that we are signatories to, but that is the key thing, and might I suggest that at the right time we are going to move some amendments to this legislation.

Thank you.

Sen. Prof. R. Deosaran: I agree with you, but I was putting it in terms of addiction because if they have the addiction they will smoke in their private homes and they will also go on to smoke in the public places because of the

addiction and I was trying to broaden parameters to show that addiction is really addiction; it is difficult to resist smoking even in public places. So the point I was making is that you have to try to cure the addiction as well, whether they smoke at home or what place.

The function of the unit: I think it is a good idea in clauses 5 and 6, but again you need a certain kind of expertise, a certain kind of infrastructure. I remember when this Government came into office, the Ministry of Social Development made a big statement about an evaluation and monitoring section which will be the key driving force in benchmarking, but nothing.

So in large measure, this document is inevitably a statement of theory so far. I would suggest that in supporting the function of the unit—and I wish the Minister and his technocrats could consider this—it will help the unit if you have a piece of legislation, if you have not had it so far, Mr. Minister, and I know you have a spirit of compromise. If you can put in something making it mandatory for doctors to submit to the ministry reports of every case in which smoking is connected to the illness, not only in a general sense, but whether it is a disease of the lungs, the throat or whatever. I would not call the medical terms.

Sen. Narace: We have that.

Sen. Prof. R. Deosaran: You have that. Do you have it here?

Sen. Narace: No.

Sen. Prof. R. Deosaran: I am merely affirming that you can tighten it up and link it to the work of the unit, because if you are speaking about having evidence based programmes, you will have to get the evidence, and there is no better place to get it than from the horse's mouth, that is the doctors themselves, other than doing surveys and have people report themselves. So I would think that could be very helpful.

There was something that Sen. Mark mentioned and in the spirit of debate, I want to refer to that and I wish he would be here to listen to what I am saying because—sorry, I did not know you were leaving.

Sen. Mark spoke about sentencing and I find it extremely peculiar, maybe the Attorney General may help us, because as I have said before in law there is a different language. We have three languages in this country; English, Spanish and the law has its own third language. When you compare clause 12(4) to what you see—I am just giving an example—the matter concerns other sections—to explain what is an apparent discrepancy and perhaps an implicit injustice.

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Clause 12(4) compared to clause 25 in terms of punishment and then clause 37. What is the issue as I see it subject to the Minister, the Attorney General's explanation? Here it is in subclause (4) you have a person who contravenes the law. If somebody smokes in his or her premises, now I really believe that is a far reach, but that person will be held liable because he too would be deemed to have committed the offence. I understand some of the concerns expressed here, but on summary conviction, you have a fine of \$10,000 and six months in jail.

Clause 25 to me is a similar offence which says that on summary conviction, you will be fined \$100,000. That is 10 times more than what clause 12 provides for and the imprisonment is still six months. There has to be something going on here of which I am not aware, because you have the same six months jail as an alternative, or an accompanied punishment, but you have it in one clause 4 \$10,000 and in another provision, you have it for \$100,000. I think there should be some proportionality in this at the summary conviction; I am not speaking about the indictment, that would make it more complicated.

When you go to clause 37 you see again—and you are not killing or raping people, you are just exposing your package, selling more than one or less than a pack of cigarette. Clause 37 states that on summary conviction you will be charged a fine of \$100,000 or three months. So you have the money varying from \$10,000 to \$100,000 but the jail just fluctuates arbitrarily, vastly out of proportion with the money you are charging.

I do not know if you can bring some harmony in your sentencing approach; make it tidier so that the persons who have to abide by these laws would see them as reasonable and not have the jail term jumping from one point to another in a very seemingly arbitrary fashion. It goes on throughout the legislation and it gives me another opportunity to press upon the Government; what is it doing with the Sentencing Commission Act which was properly passed in Parliament in 2000? What is all the apparent laziness about? This looks highly uneven to me, never mind its apparent irregularity.

So, in closing, Mr. President, I do not think the Government has any other alternative than to bring forward the legislation at this time. I am looking forward to when the amendments are presented and debated that there will be greater support for it. I also want to appeal to the Minister to open his mind and accommodate some of the concerns and I would wish if those concerns are reflected in the amendments will help the passage of the Bill.

I do not think the Bill will be perfect, because any time you are dealing with alcohol, cigarette smoking, or anything that is linked to addiction and long-standing habits in terms of human behaviour, no piece of legislation will be perfect because human behaviour is so versatile, committed so clandestinely, within a complex, wide array of motivation. So the "big stick" legislation is a good step, but I will urge you with respect to accommodate some of the concerns and have them reflected in your amendments.

Thank you, Mr. President.

Sen. Lyndira Oudit: Mr. President, in 2003 the World Health Organization Framework submitted guidelines in which the original Bill of the parent Act for this sought to address, and we have come around almost full circle and one would have thought that coming back full circle we could get it right, possibly, a second time.

The intention of the Bill, the need for the Bill, the purpose of the Bill is critical. No one can question that. Unfortunately, it is a sad piece of legislation that no one in their right mind could support, and there are several serious flaws with the legislation, not only as it refers to tobacco use or even where you can use it or some of the constitutional issues; there are serious flaws.

Before I go into the clause analysis, I would like to refer to a point to which the Minister of Local Government referred in her contribution of which I have a copy. In it, the Minister, possibly inadvertently made the statement that this piece of legislation supports the World Health Organization's call for 100 per cent smoke-free environments, and I would like to say at the outset that this is totally inaccurate.

This Bill is very clear, it in no way seeks to address a 100 per cent smoke-free environment. That piece of legislation certainly will have to come, but we have to be very careful that we do not proclaim intentions of Bills when they are not true. We really have to be careful that we do not proclaim a Bill for what it is not.

In fact, I would like to say in looking at the hon. Minister of Planning, Housing and the Environment in her contribution she says:

"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 we would be able to preserve the fundamental rights of individuals to breathe clean air."

Sen. Dr. Dick-Forde: The Minister of Housing, Planning and Development, you said?

Sen. L Oudit: Oh, sorry, the Minister of Local Government. This is taken from the *Hansard* and I found it was really unfortunate that this particular legislation was proclaimed to be the be-all and end-all in terms of solutions and I hope that it is not, and that the serious piece of legislation that deals with thoroughly examining the role of tobacco and its by-products, which are not all bad—

4.15 p.m.

This Bill in no way seeks to deal with the problem of addiction and the problems that are so critical when we look at some of the issues on our medical fraternities and some of the other speakers spoke about addiction at length; I am not going in there. But this Bill really does not seek to address any issues like that.

One other Minister, I believe it was the Minister of Health in his presentation on the last day, identified several years of profits that Witco proclaimed in their profit margin, in their sheets and in their accounting, and what I found was almost upsetting was the fact that Witco's profits seem to be driving this legislation—the need to identify. So we have to be very careful and I urge the Minister of Health, in addressing profits by Witco, to not appear as if this is adversarial legislation where he is pinpointing or nitpicking on one particular company and bringing legislation almost in an effort to shut it down. So we have to be very careful. It was rather unfortunate that this company in particular was highlighted and singled out when the legislation was presented by the Minister of Health. We have to be very careful. Witco is, in fact, a duly registered company of Trinidad and Tobago.

The first line of this Preamble talks about:

"An Act to prevent tobacco use by children..."

I was really, really happy when I saw that; I really looked forward to this legislation that was going to protect our children, so I was woefully disappointed when it came to children. In fact, out of 38 clauses in this particular Bill, there are only four references with the word "school" or "children"; only four clauses that deal with children out of 38, and yet the first line talks about "to prevent tobacco use by children".

Clause 6(2) of this Bill says—it is referring to the unit making available education materials to schools. It does not even give a time frame. It does not say, within 12 months, 24 months, 48 months, within 10 years. Is this the 2020 vision? Is this going to take place in 2020? What is the time frame? So we have a unit to be established to provide materials to schools but there is no timeframe. I think that has to be included.

Clause 12(2) refers to smoking within 15 metres of a school or a park which caters to children. Of course the point was raised, it does not refer to anyone selling cigarette or tobacco products within 15 metres of the very school, or any of the institutions outlined in the Second Schedule. It does not refer to the selling, only in the smoking within 15 metres and that has to be clarified. Clause 17, in fact, does refer to prohibitions in certain places, but it really does not refer to the selling of tobacco.

Clause 13 refers to the prohibition of the use of children to sell tobacco products. The Bill seeks to stop persons from using children to sell tobacco products and that is good. Unfortunately, it does not stop someone from using children to advertise or promote any tobacco products, and that has to also be addressed, because then we come to unscrupulous businesses which use children in some way to advertise or promote and that has to be seriously a matter of concern.

Clause 19 refers to tobacco advertising where children are not permitted access by law, but it does not speak of guest houses or hotels, for example, with bars where children are permitted by law. Those, in fact, are the only four clauses in this entire document that referred to children, so it was very, very weak when it came to the protection of children, especially if it is just those four clauses.

So I urge the Minister to give some teeth to this piece of legislation so that our children are protected from unscrupulous and greedy business or advertising companies that would use them in the advertising and promotion of tobacco products.

Sen. Narace: And you would support it?

Sen. L. Oudit: Of course. In the interpretation of "terms", I would like to suggest that we include three new words. I would like to suggest that the word "advertising" be clearly spelt out. Advertising covers direct advertising, using print and electronic media, including Internet and online, but it also includes indirect advertising. How do we get indirect advertising? When we do live broadcasts, especially of major sporting events or major activities, cultural activities, we have to include indirect advertising because we have thousands of seconds of advertising that take place when we have we have live broadcasts, and we know all the brands. It is not only related to tobacco; it is also related to alcohol. These are the types of advertising that must be included.

In addition, a lot of talk came from the mover of the Motion about second-hand smoke, and I looked for the definition of second-hand smoke and it is nowhere in the Bill. So I thought to myself, well, we will have to include it, and

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so the word second-hand smoke has to be included in the interpretation. And according to the World Health Organization, and I quote here:

"Second-hand tobacco smoke is also called environmental tobacco smoke..."

And according to the World Health Organization, it says:

"This is smoke emitted from the burning end of a cigarette or from other tobacco products usually in combination with smoke exhaled by the smoker."

Now we may choose to accept this particular definition or not, and so the legislation by itself is thoroughly lacking by a simple definition of what we mean by second-hand smoke. A definition of second-hand smoke must be cognizant of the fact that second-hand smoke ought not to be just smoke. There has to be a definition. Currently we have, what is called smokeless tobacco. Tobacco smoke cannot be seen; in some cases it can. We have to include in the legislation the words, "which cannot be seen, smelled, sensed or measured".

The Minister made reference to the fact that there is no safe level of exposure to second-hand smoke. Second-hand smoke, according to World Health Organization, contains thousands of known chemicals, of which 250 of these are considered carcinogenic or toxic. So we cannot put out legislation there that a company would use as a loophole to say, well, you cannot see it so therefore it is not covered in the legislation. There is tobacco and there are tobacco products that do not give off any visible smoke so we do have smokeless tobacco. So we have to cover that in our definition.

We should also, as a third point, include the word "sponsorship". There is, what you call, tobacco sponsorship in this interpretation but I feel it is inadequate. I feel the Minister has to go back to the previous Bill, the 2008 piece of legislation, which has a much more detailed definition of the word "tobacco sponsorship" and we have to include it, because as it stands, this definition is referring only to promotion.

Clause 19 refers to elements of advertising but it does not cover the use of advertising if you use, for example, the brand name but not the picture, or vice versa, you may very well show the picture and not show the brand name. So it does not cover. This is another roundabout way—in fact, this Bill, I would like to suggest to the Minister, should specifically mention the prohibition of a brand name, product or company logo and actual products in the interpretation so as to avoid giving loopholes to those persons who seriously look for loopholes.

When we looked at the contributions so far of the hon. Minister of Local Government, I would like to refer to something that she said. She said our global youth tobacco survey pointed that 84 per cent of our children between the ages of 13 and 15 in Trinidad and Tobago were exposed to cigarette advertisements on billboards. She also went on to talk about 40 per cent of the children started smoking, et cetera, between that same age. I would like to ask the question: If it is that these are school-age children, one, where is our monitoring in the schools? Where is the monitoring of smoking in schools? The reason I am asking is that I know for a fact that the guidance unit is woefully inadequate. It is inefficient; it is understaffed; it is unprepared to deal with cases that come before it. So if you want to start treating it when a person or a child at school starts to smoke, you cannot wait for them to become addicted to it; you have to treat with the problem when it starts and that has to start at the school.

So I urge the Minister, through you, that we seriously look at combining the efforts of the ministry with that of the Ministry of Education, in particular the guidance unit, so that we are better able to cope with those persons who are found to be early smokers or they start smoking from a particular age, both primary and secondary schools. I believe, sincerely, that that is one of the critical ways that we will stop, what you call smoking by peer pressure, because you want to belong to a group. So a lot of young people start smoking because their friends might be doing it, or they want to become part of the little group that seems to be the in-crowd, so they start smoking.

Many of them, if it is nipped in the bud, will not continue to smoke. I am telling you from the experiences as a teacher. Many of them will cut it out if they understand truly—

Sen. Browne: So you never smoked?

Sen. L. Oudit: No.

Sen. Browne: Neither me.

Sen. L. Oudit: I do not believe you. But it is something that we really have to address and I feel this is something that we seriously need to address in terms of nipping the problem of early smoking by young children. And even in the Minister's report here it talks about one-fifth of the children in Trinidad and Tobago, according to the Minister, having started before they were 10 years old. So really and truly, what are we saying?

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Somebody made reference—I believe it was Sen. Prof. Deosaran—that if a child of 10 is smoking, then you cannot deal with legislation; you have to go to the homes. Where are our medical doctors? When we have children who have hypertension or lung problems or pulmonary problems as a result of smoking and they go to the hospitals, do we have the system in place or has it been functioning where those reports come to you or come to social services, welfare? Do we have a connection? Further to that, how many consulting groups that deal with children were consulted before this Bill came back? This is something here—I like to use the words "spinning top in mud" because we cannot keep doing this. In 2008 this Bill came; it went to a joint select committee. From what I understand the joint select committee was thorough and yet—

Sen. Narace: That is why we should not have been debating the Bill anymore.

Sen. L. Oudit: Well, I agree. You should have done the right thing this time. But this Bill is not a good piece of legislation. It requires too much work. So I would like to close off; I know we have to go for tea, but I would like to deal with the other things when I get back after the tea break. Is that okay? [*Laughter*]—before going on to a new point.

Mr. President: Thank you for reminding me. Well, it is 4.29. Hon. Senators, we would suspend for the tea break. The sitting is suspended until 5.00 p.m.

4.29 p.m.: *Sitting suspended.*

5.00 p.m.: *Sitting resumed.*

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

Sen. L. Oudit: Mr. Vice-President, there is a childhood fantasy movie called Peter Pan and in it Peter Pan has no shadow. This legislation is the opposite. This is shadow legislation. It has no meat. We have brought legislation that seeks to address several concerns by international agencies, but it is lacking. It is a skeleton. I refer to clause 21 which for me was such an interesting clause for two things. One is because of its brevity, it was so short, one sentence and also because of its imprecise wording. If you look at clause 21 you would see it says:

"This Act prohibits tobacco sponsorships and tobacco advertising and promotion, where the name of a sponsoring entity is publicized."

Any reasonable individual would ask: Is it permissible where the name is not publicized? Are we saying that this Act does not prohibit tobacco sponsorship advertising and promotion if the name is not publicized? The reason this was so

particularly interesting for me is when I referred to the intention of this piece of legislation. The intention was to satisfy a number of recommendations by the World Health Organization. In particular, I refer to page 8 of the Guidelines World Health Organization Framework Convention on Tobacco Control. Section 4 dealt with this particular aspect. Permit me to quote. It says:

“Payments, gifts and services, monetary or in-kind, and research funding offered by the tobacco industry to government institutions, officials or employees can create conflicts of interest...(They) are created even if a promise of favourable consideration is not given in exchange, as the potential exists for personal interest to influence official responsibilities as recognized by the international code of conduct for public officials adopted by the United Nations General Assembly...”

When we marry that particular guideline of the World Health Organization with this inadequate piece of legislation, we come to what I feel is the crux of this entire legislation. This legislation is about tokenism. This is the token piece of wording. Clause 21 sums up the level of tokenism in this piece of legislation. This legislation is brought in the Senate today because of a requirement by the World Health Organization. It is a symbolic gesture shown to the World Health Organization to which we are affiliated so that they as an agency would say that the Government of Trinidad and Tobago is seemingly doing something about tobacco and its uses.

This does not deal with it. Clause 21 shows very clearly that the PNM administration was unwilling to sacrifice the particular issue of corporate sponsorship, as it relates to election financing and campaign contributions. Clause 21 creates such a gigantic loophole by its inadequacy, that it leaves the door open to massive forms of political contributions.

I refer to clauses 4.10 and 4.11 on page 9 of the guidelines. I urge the Minister to take note. It says:

“Parties should not allow any official or employee of government or of any semi/quasi-governmental body to accept payments, gifts or services, monetary or in-kind, from the tobacco industry.

Taking into account national law and constitutional principles, Parties”—referring to governments—“should have effective measures to prohibit contributions from the tobacco industry or any entity working to further its interest to political parties, candidates or campaigns, or to require full disclosure of such contributions.”

What we have here is, I cannot think of another word but tokenism. As far as we know and it was mentioned by another Senator in today's debate, campaign and election financing are closely interlinked and tied with many of the industries under the tobacco umbrella. It is not only in sports that we have sponsorship. I imagine that if the Minister had gone to task on what the World Health Organization wanted, when they gave the guidelines as it referred to campaign financing, and brought legislation to that suit, he would have opened himself to a massive revolt. This is so simply because when it comes to sponsorship, we have gambling and betting agencies that are one of the largest sponsors. When we look at all these events, they are in the public domain. NLCB and Angostura are companies that do massive sponsoring and they could not have dealt with the issue of sponsorship by tobacco companies.

Clause 21 is so sadly lacking in this piece of legislation. The guidelines that ought to have [*Interruption*] I will wait until you are finished then I would continue. Mr. Vice-President, it is disturbing when we have Members on the Government Benches who seek to discuss in loud voices when people are making their contributions. I feel in the Senate we need to have some measure of courtesy, please. It is not given from the other side. That has to be dealt with.

Mr. Vice-President: I think your remark is out of sorts. If you address the Chair in your contribution you probably would not have that problem.

Sen. L. Oudit: Mr. Vice-President, with all due respect, I was addressing you but I was disturbed and distracted by Members on the other side. I agree but I was addressing you, Sir.

The guidelines are very clear. The international guidelines are not choppy, disjointed and half-baked. If you were using the guidelines, why is this legislation so choppy and disjointed? One clause deals with advertising and one clause deals with selling. It is different. So you could sell but you cannot smoke; you could smoke but you cannot sell within 15 metres. It does not flow. Therefore, it creates confusion in the minds of those people who are reading it.

I suspect that for this piece of legislation, it might have been the hope that it would fly through again because it came back a second time and we would have said that we saw it already. It is not a question of the timing. It is a question of what you accept. This is unacceptable. We have to put our heads together and come up—Let us put legislation that deals with the issues and do not proclaim legislation that seeks to achieve something when it is very clear in the wording, presentation and contents that it would not do so.

My suggestion at this point is that you expand tremendously clause 21 which deals with sponsorship. It must include as the World Health Organization identifies, payments, gifts or services monetary or in kind, to political parties, candidates, campaign, et cetera, as well as full disclosure of such contributions. That is part of the recommendation by the World Health Organization. I believe that it ought to come in after clause 21.

Part V of this Bill refers to compliance. According to this piece of legislation, compliance is reaction. It is a reactive piece of document. It is not proactive in telling us how the Government will ensure enforcement of this legislation. What measures are going to be put in place? Part V deals with how you punish someone who violates the laws. It does not tell you how you are going to enforce the legislation.

I refer to the World Health Organization. It is very clear. They gave advice and identified several guidelines. The first thing that they said, which is not included in this, is that you ought to have a database on the tobacco industry. In this database you have to indicate all the companies that are compliant and those that are not. It must also indicate all companies that are working towards compliance and those that have completed certain required compliant procedures. That is not included in the Bill.

The second recommendation refers to staff regulations and code of conduct. I suggest that when you come to the fundamental rights of people, we have what is called whistle blower legislation. The code of conduct and staff regulations identified by the World Health Organization speak to the ability of persons and not only employees, in the public domain who may wish to make a report. If you wish to report a company in your community that may be in violation of the Act, you ought to be free to do so.

5.15 p.m.

Clause 35 of this Bill refers to the protection of employees against their employer, but it does not deal with the general public who may wish to bring a report or some similar matter, so we need to expand clause 35, not only for employees.

The World Health Organization also identifies the need for international collaboration. It has set an international secretariat specifically to assist countries to deal with the ways in which they are going to bring legislation, as well as to enforce compliance. This legislation does not speak to the international link or networking from our unit. In fact, my interpretation of the unit to be established in clauses 5, 6 and 7 is that it covers the local jurisdiction.

Mr. Vice-President: Hon. Senators, it is becoming a bit difficult to hear what the Senator is saying with the amount of talk coming from the Benches. Please keep it down.

Sen. L. Oudit: Thank you very much, Sir. As it is, clauses 5, 6, and 7, which establish this unit through the ministry, do not give specific direction to the unit to liaise with, to network with or to access the international secretariat set up specifically to deal with countries working towards world health compliance.

It brings me to the question of active enforcement. I looked at clause 5 of the legislation. It deals with compliance, but it does not indicate when active enforcement will begin. That referred as well to the trainers involved and to the inspectors who would be duly authorized to conduct inspections. Are the inspectors going to be sufficiently trained to demonstrate the expertise and resolve when dealing with businesses in violation of the Act? A number of these inspectors may have to go into the very communities to which they belong to tell someone they are in violation. Are we ready to deal with that? When we are dealing with large businesses or corporations which are in violation, are our inspectors suitably trained to deal with that level of interrogation?

Clause 8 refers to the power of authorized persons, but there has to be the inclusion of the coordination of the inspection process and the compensation even of such personnel because many will not be within normal working hours. Compliance and enforcement have to include the education of the businesses so affected by this legislation. You cannot tell someone today to operate this way and tomorrow they are in violation of an Act. There has to be a period of adjustment. Will it be a period of soft enforcement, when, rather than penalties and sanctions, there are verbal warnings? Will there be a period of soft enforcement where we will not exact punishment to businesses in the process of making their businesses compliant? In addition to this approach, whichever approach, I strongly urge that the Minister look at a process of soft enforcement to start off, which would have to go hand-in-hand with a massive education drive geared toward businesses which need to understand what they require and what is required of them, their affiliates and their international links. They must understand their responsibilities as they pertain to the legislation. Of course, after the soft enforcement, you would indicate, through public notice, et cetera, when rigorous enforcement would start.

Mr. Vice-President, we are no longer a one-man, one-nation type of environment. Technology has made us visible. This Government, however, seems to be unaware that the legislation is already out there and that the international

agencies are looking at it and assessing the strength of the Ministry, the Government and country to live up to standards that international agencies have placed. We have fallen short, so we have sold ourselves short. This administration has sold Trinidad and Tobago short with this legislation because it does not make Trinidad and Tobago look favourable. This legislation is needed, but not in its current form.

This Bill should have been an easy Bill to support. Unfortunately, we have shoddy workmanship, tokenism, disjointed and highly inadequate legislation. This Bill does not even satisfy the seven basic principles of the World Health Organization Framework, simply to be effective in providing protection from exposure. It does not provide a simple, clear and enforceable set of documentation. It does not work toward good planning or adequate resources to ensure successful enforcement or implementation of the legislation. It did not include civil society in preparing the legislation and it does not show where active participation with civil groups will continue on an ongoing basis to enforce and implement the legislation. There is nothing really in the monitoring and evaluation of the legislation according to the World Health Organization.

This legislation must be recalled. This legislation is too shoddy to go forward in the form in which it is. So I will really urge the Government to get this right. Let us deal with this in a different manner. Let us deal with it at the committee stage or recall it totally.

Sen. Subhas Ramkhelawan: Mr. Vice-President, I thank you for giving me this opportunity to speak on the Tobacco Control Bill. My colleagues have spoken at length about a number of clauses in the Bill that may require adjustment, so I would not want to repeat many of them. However, I would want to focus on four or five clauses in the Bill which I consider, at best, repugnant.

Let me start by saying that the road to hell is paved with good and noble intentions and my colleague, the hon. Minister of Health, has pursued a path of nobility and goodness, but it will lead us down the road to purgatory.

We are faced with balancing and controlling tobacco and, if we become overbalanced, we end up in a situation where we criminalize tobacco. I do not have a problem criminalizing tobacco. Ban the whole thing. When you ban it, then you can do whatever you want; but when you stop at the level of controlling, you must not overreach and put the ordinary citizen, "tanty", in distress. We have spoken about all aspects of the Bill, but when we bring the Bill to the lowest common denominator, to the ordinary citizen out there who is literally in the street, you are causing great damage and distress to them. We cannot have that.

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As I said, if you want to ban tobacco, ban it because the hon. Minister has spoken quite eloquently about the \$8 billion spent on health for the past two budgets. I have no disagreement with that, but he should also ban obesity because in that \$8 billion, they are spending money for diabetes and high blood pressure and everything else.

The hon. Minister should ban alcohol. He must ban alcohol because that is causing so many deaths on our roads and the Government seems to be blindsided to it. [*Desk thumping*] Ban it and let us go to the stage of prohibition. We will drink our grog anyhow and when you ban cigarettes, they will smoke anyhow. Let us stop short of criminalizing it.

I make this point to get to the core of the matter and that is, balance. I am prepared to support my hon. colleague as I expect every Senator will be, in seeking ways and means to diminish the use of tobacco, but by legal means. As long as you retain this as a legal substance, you cannot criminalize the people who participate in it. That is why the core of my argument is that there are certain clauses that are offensive and repugnant.

Before I go to the clauses, just imagine a lady on any street corner or “tanty” in any parlour in this country—and they proliferate from the streets of Port of Spain to the villages in Cedros—in the heat of commerce, someone comes to buy one cigarette. If “tanty” refuses, he will go to the next parlour or the next street corner. He may not have enough money to buy a pack. The point is that he has already made a decision to smoke a cigarette. So whether he buys it here or there does not matter. The person selling in the parlour is not engaging in any coercion; is not cajoling anybody to buy that cigarette. That decision has already been made. Yet if “tanty” sells that one cigarette, she is now a criminal if convicted. She is now a person, because of selling one cigarette to one party, a legal substance, who becomes a criminal.

I cannot support that, Mr. Vice-President. I do not think any reasonable Senator will support that. I want to convey to my honourable colleagues to take that out or the Bill will not be passed in this Senate.

5.30 p.m.

Imagine this gentleman—I say it in a generic sense, it could be a lady—buying this one cigarette and enjoying it. I do not think there is any other reason that somebody would buy this cigarette, apart from the fact that he or she may be enjoying the cigarette. Whatever the psychosomatic benefits—feel good, some sort of addiction or partial addiction, whatever it is—the point is that this person is enjoying the cigarette.

Having left the parlour and criminalized “tanty” for her selling one cigarette to him, he walks out the road. Well, of course, this gentleman and probably more than 50 per cent of our citizens, if you told them: Could you tell me what is the distance of 15 metres? I want to guarantee you, being a former sector specialist in the Metrication Board of Trinidad and Tobago, that at least 60 per cent of the people would not know what is that distance. It could be 90 per cent, or maybe 90 per cent in this honourable Senate would not know.

I am not sure if my colleague, the Minister in the Office of the Prime Minister, would know. Having been accustomed for such a long time to the imperial measures to convert to the metric system is a difficult thing. Maybe the Minister in the Ministry of Finance would know. I am not sure. The point is, my friend is walking down the road and walking across the street from a school. Mr. Vice-President, the roads in this country are narrow, most of them. When you get to the country area, or even when you drive in the streets of the City, the roads are narrow. None of them are more than 15 metres, unless you get to a highway. So, unless he is walking on the other side of a highway, and he walks down the road with a cigarette in his hand, he becomes a criminal almost unknowingly.

You know, ignorance is not a defence of the law. Now, I cannot support that. I cannot support somebody having a legal substance walking down the road becoming criminalized. If that person were driving, as we tend to do very much in this country—when you look about, you would see a man with his glass wound down and his cigarette right on the side of the door and he is driving very slowly by a school. He is stopped by a police officer and he says: “So, I am driving within 80 kilometres per hour.” The officer then says: “No, that is not what I am charging you for—which would have been \$200—I am charging you \$10,000 or \$12,000 because of the fact that you were driving within the speed limit and you have a cigarette in your hand just passing by a school. It is pure madness. I do not intend to support any legislation that criminalizes a person for using a legal substance. [*Desk thumping*]

So, now we have two persons in trouble with the law; the person who sold one cigarette trying to earn a decent day's living and the person who smokes that cigarette walking down that road from a school, because the road was too narrow. That is the problem. The road was too narrow. It was less than 15 metres. [*Interruption*] Mr. Vice-President, 15 metres is not 15 feet. [*Interruption*] No, Sir. He just checked it on his Blackberry and he is trying to tell us that he knows. I would ask him how much is 49 feet if that is the case, and he would not be able to assess that distance either.

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So, it seems to me that this gentleman and this “tanty” are in greater danger than a person smoking “ganja” in this country, because he is going about with a legal substance. The fellow who is smoking “ganja” might just hide a little. I am sure that while the rule book says that the charge merits a penalty of \$25,000 or five years maximum, as the case may be, that is hardly the case in our courts of law. These are my main reasons for not being in a position to support this draft legislation in the form that it is in.

I think that Government would be well placed to work on curtailing the demand side by education of the public, and that education of the public takes quite some time. What my colleague, the hon. Minister is trying to do, is cut down the pressures on the health system by trying to truncate the period over which he can get some level of control and I support him 100 per cent in seeking to truncate the period to get control. I do not support him when he is trying to truncate the period to criminalize persons in this country.

Let us go to some of the clauses that are offences. Clause 8(4) speaks to the whole question of the confiscation of tobacco material by persons so authorized. Now, Sen. Mark and Sen. Prof. Deosaran spoke about property rights in terms of section 4 of the Constitution—the enjoyment of property and the right not to be deprived thereof except by due process of law. I think that as far as this aspect is concerned, I would support, but there must be an onus on the person seizing to return that property within a specified and defined period of time.

So, if you seize and detain tobacco products, then you must have the mechanisms in place to ensure that within 10, 15 or 20 days you would have been able to complete your investigation, and if there is nothing untoward, that is; if the material would have met the legal requirements as determined in clause 8(4), then it should be returned within a period of 30 days. This clause does not establish a time frame. So, an authorized officer could seize this and hold it for one year, two years, three years or four years without the person who has been deprived of property having proper recourse, according to this law.

Only when you have determined—if you wait a year or two years and then have the material tested—the alleged tobacco product is illegal and the product meets the legal requirement, it is only at that point in time that you have 10 days in which to return it. That is not acceptable at all, not when you are dealing with persons rights and property. So, therefore, if it is to be supported, there must be a specific period of time from the date of seizure for testing and returning.

My second point, which I have alluded to already, is in clause 12(2) which I would like to call now, having seen it several times in the last aborted Bill in 2008 and, again, in this Bill, hopefully not to be aborted in 2009 —it says:

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

Well, after much trying and striving, my hon. colleague, the Minister in the Ministry of Finance, has finally been able to calculate exactly how many feet are in 15 metres. Do you know what is astounding about that? For him to be able to translate that into a distance, he has to translate metres into feet. So, if you told him 15 metres, he probably would not be able to figure it out. He first has to translate it into feet.

The point is, I consider the Minister to be a man of reasonable or even more than reasonable intellect and comprehension and, therefore, there may be others who may not be able to do the mathematics as quickly, and just because they cannot do the mathematics as quickly, they become criminals. I am not going to support that. I cannot speak for everybody else, but I can say with a fair degree of certainty, nobody in this Chamber wants to criminalize somebody for using a legal substance.

I want to turn to clause 19(2)(b). My colleagues have already spoken about this whole question of readership of not less than 85 per cent in some advertising or in some magazine or in some publication, supposedly for adults.

[MR. PRESIDENT *in the Chair*]

Who is measuring whether 85 per cent or 84.95 per cent or 83 per cent would be adult? Who is measuring that? Is it the tobacco police, which we do not have as yet? I am sure that the hon. Minister of National Security as challenged as he is to provide services for some real crimes and real criminals, would set aside a tobacco police unit, properly staffed to make into criminals people who are ordinary and decent citizens. I am sure he will do that. [*Interruption*] That is my third point. I do not believe that we have the capacity, the depth and the capability to do this thing very well on an ongoing basis. I have a problem with that and I would look to amendments as we go along.

One that really troubles me is clause 31(1). I call it “the single cigarette rule or clause”. There is no way that any reasonable Senator would want to vote to criminalize somebody seeking to earn a decent day’s living just for—

Mr. President: Senator, I do not think that you should presume what a reasonable Senator would or should do. That really is to prejudice what these hon. Senators may do that you may not agree with. I think your choice of language in that is inappropriate and, therefore, you should try to structure that sentence quite differently.

5.45 p.m.

Sen. S Ramkhelawan: As usual, Mr. President, I am guided by your judiciousness and your wise counsel.

So, I do not think that any reasonable man, whether in this Senate or outside, would feel comfortable that this honourable Senate would pass a piece of legislation that would criminalize someone, “tanty” or otherwise, for seeking to pursue an honest day's living with suddenly falling and becoming a criminal and falling to the path of criminal activity, or really by not even knowing that this piece of legislation exists. Because you pass it and there is nothing to advertise, to publicize and to educate our ordinary citizens and otherwise that this has happened. There is no pre-work on it.

Sen. Seetahal SC: Ignorance is no defence of the law.

Sen. S. Ramkhelawan: I have said that already, ignorance is no defence of the law and I thank my learned colleague Sen. Dana Seetahal SC, for reminding me of that.

Finally, in a piece of legislation which I consider somewhat controversial, I find that so much of the onus is left to regulation rather than the substantive content in the Act itself that I am minded in accordance with clause 38(1) to suggest that this piece of legislation, the regulations thereto should be by way of affirmative resolution and not by negative resolution [*Desk thumping*] because of the nature of this piece of legislation.

Not that I have any disregard or distrust for the noble intentions and good intentions of the hon. Minister of Health. But as we know Ministers change and we do not want to leave it in the hands of those whom we might not have the same level of comfort with.

So in summary I am not prepared to criminalize “tanty” for selling one cigarette. I am not prepared to criminalize the gentleman who bought that one cigarette and was walking across the road from the school and just did not have it in his heart to extinguish that cigarette as he was walking, nor to the driver who bought that cigarette and was driving by blissfully ignorant that it was now against the law to drive past a school with a lighted cigarette.

I am unconvinced that the enforcement authorities would be able to precisely define this whole question of readership in a magazine or publication to a limit of 85 per cent adult readership. I would feel more comfortable if the legislation was structured in the context of affirmative resolution for those resolutions that apply to this piece of legislation rather than as is currently contained in clause 38(1), negative resolution.

I hope that these matters would be taken into consideration and let us have some sort of work towards adjustment that is reasonable and acceptable, and within that context at that point in time I am sure that I would be convinced to support the Bill, but up until that point in time I have some grave reservations.

I thank you, Mr. President.

Sen. Mohammed Faisal Rahman: Since the hon. Minister has not indicated that he is going to withdraw the Bill or send it to a joint select committee, it is necessary for me to make a contribution which I had hoped to be spared.

This Bill forces me to feel very sympathetic to the hon. Minister of Health. I recognize his desire to do good for the country and I recognize the fact that cigarette smoking is not a good thing for us in general. I do not smoke and I do not recommend that people smoke. I do not say that I have never smoked, but the fact is excessive smoking is dangerous to our health. But the undertaking which the hon. Minister has embarked upon has tremendous obstacles in its path.

People do not simply smoke because they like to burn their money and young people in particular have no taste or addiction for cigarettes and despite the lack of addiction and taste for it they gravitate towards cigarettes. Now there is a reason for that. One of the things that I would have wished that the health authorities here and abroad might have done is to research the vast millions of people who do not smoke and find the reasons why they do not smoke and see whether those reasons can be inculcated into the children and the people who already smoke.

We know that there are millions of people who have tried to give up the habit, who take measures to give up the habit and several have succeeded along the way. Sometimes it is because of serious illness, sometimes it is because of a strong determination that I am going to cut this habit out despite whatever level or degree of addiction that may have been established, so the matter of the will of the individual can in fact be exercised, but the question is, how do we inspire the will in the individual to come out to make this decision. Many questions arise about this issue of tobacco—well it is not prohibition yet, but it is well on the way to prohibition.

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There are so many indicators along the way that this is going to be, eventually, a failed effort insofar as the degree to which success is aspired. One has to wonder whether the draconian penalties which in some cases have doubled and tripled depending on whether it is tried as a summary offence or an indictable offence, although it is the same offence, and I cannot understand up to now why an indictable offence should increase a penalty for the very same offence in law. If you have done something wrong, why should you pay a higher penalty because of the court in which you stand? But the question I was addressing here is—I am beginning to wonder whether the draconian fines that have been introduced in this piece of legislation are intended as a revenue measure?

When we see—I must say this in conscience—that the Government is now in need of money to pay for things like flag poles, one has to wonder is this a measure to raise money. That is not meant to be facetious, it is meant to put into perspective the gross penalties that have been suggested in this Bill where people who are doing things that are innocent, as the last Senator who spoke mentioned, are being criminalized for habits that are in fact still legal. The first thing I want to suggest to the Government is this: if you want to bring some sort of control to tobacco consumption—and this does not negate what I am going to say otherwise—why not consider making it a controlled substance saleable only to addicts who are certified by prescriptions and saleable only through drug stores?

Right now we have an impossible task. We are facilitating, notwithstanding the measures that are being contemplated, they still facilitate the purchasing of cigarettes by minors and by all sorts of people and there are many contradictions in the Bill that has been presented to us, which I hope to go into, to show that we have been really presented with a piece of legislation that is really—I would not say not thought out, because I have to realize that this Bill in its prior form came before this Senate a year ago. I cannot ascribe to the Minister or the Government a lack of concern. It has to be in their busyness, or whatever, they have simply neglected to look at the matter in a holistic way to understand all of the ramifications of the step that they are trying to embark upon.

Mr. President, some of the anomalies that are in a piece of legislation only passed this year—and I made reference to this in another contribution earlier—we have actually made provisions of cigarettes mandatory to prisoners of war. Now, this legislation does not address, notwithstanding anything to the contrary, it simply disregards the fact that we have on the books now where people must be provided with cigarettes in certain circumstances. Now, if ever there was an anomaly, that has to be one, but besides which—and I am talking about the Geneva Convention there—this Bill has to deal with things that are almost insurmountable.

I learnt a few years ago when I read a certain book concerning receptors in the brain—I forget the name of the book—that each of us is born with, not only the attributes we have, like the five senses and so on, but we have remarkably—and this was only discovered about 10 or 15 years ago—what is called receptors in our brain and if these receptors were not there we would not hunger for or become addicted to or desire substances that we have been prepared for—I want to say prepared for or made predisposed towards utilizing. So, the reality is that a person who becomes a drug addict, or a cigarette addict, or an alcohol addict has receptors in his brain that actually await the introduction of these substances in the body to receive it and say “ah ha” this is what I have been looking for.

When you are trying to discourage a substance, a person—fortunately for some of us our receptors are not wired for receiving those particular substances and this is very important to understand—is simply not designed to receive those particular substances and some of us are, so to say, damned, decreed or destined to fall prey to certain things. As a matter of fact, even our genetic coding, you can almost tell a person's life; if you can read the DNA properly you can tell the actual course of his life, what is going to happen to him.

So, the Government is embarking upon something here, which, by the success of marijuana, by the success of cocaine, by the success of hard drugs, we know that you cannot conquer these desires and addictions by increasing prices or by legislation. You are simply by making a law, placing upon yourself the burden of having to enforce that law, and having to enforce an unenforceable law. You are actually, in fact, creating for yourself a problem that is insolvable and presenting a larger problem to yourself and your community. Because, Sir, when we find that we can break the law with impunity, we tend to break more laws, greater laws, we lose regard for the law, we learn to disrespect the law more, so that one habit of breaking the law leads us to the habit of breaking more laws. So that is another one of the problems the Government faces.

6.00 p.m.

In addition to that, as I mentioned in an earlier contribution, there is the matter of the pleasure principle. Whatever gives a man pleasure, he likes to do and goes towards doing; if we are given two tasks and one is more pleasurable than the other, we do the more pleasurable task.

It is an established fact that people who smoke get pleasure out of it. People get pleasure out of drinking but they suffer hangovers and yet they go back to the pleasure of drinking. This is remarkable. In the case of tobacco, you only get the

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consequence after several years and this is several years of excessive use and it has been stated again and again that if a person who is a habitual smoker gives up his habit, he can actually add years to his life expectancy because the body can repair itself. It is not a very just or fair thing to simply expect everyone to give up their habits cold turkey when one might even regard cigarettes in the life of young people as a rite of passage.

Young men go towards smoking as a challenge, as a sign of machismo and under peer pressure. It happens and in doing so they get their little stature and stripes. You expect that consciousness of a law that young people do not pay attention to in any regard—they break the laws of their parents in their house under their faces and noses. Why are they going to be concerned with whether they download a copyrighted song, or whether they sneak a cigarette on the side? They are not going to be concerned. You inure them to illegality, you accustom them to breaking the law and you deny them the little aberration which is a stepping stone to their maturity.

It is a fact that people do in their youth what they regret in their old age, not even in their old age, in their mature years. So this is the whole purpose of seeking to rehabilitate prisoners. We are spending money to rehabilitate criminals because they can be rehabilitated. You do not jail a person for a year and charge them \$100,000 and \$300,000 for selling or smoking a cigarette, or having a cigarette in his hand at a dance hall, and the manager has to go to jail and pay the \$100,000 as well. This is a—and I am sorry to be using this kind of language—ridiculous Bill. It is one that has no—well somebody spoke about balance; it is an unbalanced Bill. I do not know what kind of mind conceived it, but it has emerged as an unbalanced Bill.

Mr. President, that is not all. On the one hand, you have the glamour of smoking, the machismo of smoking, and the forbidden fruit. What is more enticing than the forbidden fruit in the eyes of the young? More mature people may say no, I will not do this but who will tell a child who is offered something that he cannot do in his home, he goes to a party or a function and one of his friends invites him behind the garage to come and see what is going on and he is offered a cigarette. I am recounting my experience that I had when I was seven.

I went to a wedding and my older friends enticed me into this little shack at the side of the house and that is where I was knocked out with the first puff of cigarette I ever took in my life. Not me, but it did not last forever because at age 14 I was back with it, but after some years I gave it up and it can be given up. The fact of the matter is that it is not such a corrupting thing that once you are in you

are in forever. Heroin, cocaine are very serious business and do not tell me that tobacco is a gateway drug; it is a temporary romance for many, and it is a substance that does not scar you forever.

Now, interestingly, what is it in the cigarette smoking that causes the big trouble? It is not the nicotine, as far as I understand the nicotine is addictive, but it is the tar content that dirties the lungs and gives you all these terrible illnesses. But you see in presenting the data, the Minister of Health has quoted some figures where it is shown. This is data that he has extracted legitimately and I am not going to say that he is wrong to present it. While some data say that tobacco is the biggest killer in the world, there are other data that say otherwise, and one has to be very suspicious that simply because a person happens to be a cigarette smoker, if he gets cancer of one sort or the other he is prescribed to be a tobacco smoking person and it is classified as tobacco cancer.

The reality is that people who do not smoke also get cancer because there is a genetic propensity and a DNA pathway that determines that such a person will in fact get such and such a disease at a particular time. Maybe the tobacco may accelerate it if it is excessive, but what has happened to moderation and to the role models who are supposed to look after our growing children and teach them the way they should grow up and what they should stay away from?

This Bill is attempting to attain a goal of impossible attainment. Who can deny that a cigarette gives relaxing feelings to the person who uses it? There are social smokers, we have 200,000-plus persons in the country who smoke, but do you think we have 200,000-plus addicts? People smoke for social reasons, but I read in my researches that smoking and drinking, as much as Trinidadians like to do that, that is complicating it for you because the alcohol combined with the cigarette is what makes the nicotine, the cigarette smoking, or the tar, or whatever it is more dangerous and more likely to injure your health.

You should not do it together. It is ill-advised to do both together. "Yuh take yuh smoke and yuh relax yuhself, and if you must drink, you drink separately." But do not try to do both together, it is like driving with both hands off the wheel, you are looking for trouble. I thought I would share that.

Mr. President, on the other side of the spectrum, you have the kids, the adults and everybody who is using the cigarettes in different ways. Now peer pressure is a very interesting thing. If four or five of us are together and one person pulls out a cigarette and everybody say: "Nah, doh do dat nah." No matter how much you want to smoke, you are going to put it away and our community has to observe

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that sort of peer pressure even in terms of other criminals or otherwise criminals—I should not say criminal because it is not, this is a legal thing. But here we have on the other side of the coin this entire population, part of it smoking, and we are addressing this and trying to find dozens of ways to change the entrenched lifestyle and we have not had a single thing addressed to put penalties upon the tobacco company.

I do not understand. You are saying do not advertise but they could not care less because if none of the tobacco companies advertise they can sell equal amounts and they have a captive market so it does not matter to them. Talk about increasing their taxes, or making them do compulsory contributions to health plans and so forth to cater for the people who become ill from their product along the way and make them have to pay and not have the tremendous amount of profits they have at a cost to Government, of the health services, and the lives of the people.

I say again when I pulled up all the different causes of death; four different sources give me four different sequences for the cause of death. It depends upon the interest group that is presenting the information. The anti-tobacco people, everything is tobacco; but the other people who are concerned with different aspects of health will tell you what it is that causes death.

Now, the point is made: Is it that because tobacco is blamed for all these deaths, morbidity and sufferings that we will cease to allow freedom of choice and impose such a draconian measure to virtually make it illegal? Then we will have to make so many other things illegal including owning a vehicle, emissions of carbon monoxide and the Senator spoke of obesity.

Obesity causes 100,000 deaths per year in the United States of America and we have heard recently about the number of foods and foodstuff that actually promote illnesses that are responsible for a large amount of our mortality rate. So one of the contradictory things I find with the Government—I have to say Government and not merely the Ministry of Health here—is that on the one hand we are having a declaration that the Government is very concerned about the health of the people and want to make the air clean and to make us give up these toxic things that we are inhaling, and on the other hand, despite the complete, almost 100 per cent opposition to the aluminium smelter plants they are allowing plants to be set up in the country that are producing stuff that is so bad for the health of the people that the companies themselves are undertaking to run continuous tests on the people to make sure that they do not die too quickly, or that they do not suffer too obviously.

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

They already know what is going to happen by their plants being there, so we are saying we want to save our people from tobacco smoke and second-hand tobacco smoke and yet we are establishing not only one aluminium smelter but two. I find there is a contradiction there; the policy of the Government is inconsistent. Leave tobacco alone if that is the position. Do not come twofaced and say we want to stop you from killing yourself, but we will kill you with the aluminium dust. That is not reasonable.

It is our right to object to the aluminium dust and pollution and it is our right to smoke if we want to. We have to choose how we want to go. We have not to be imposed upon us how the Government feels that we should enjoy or endanger our lives.

Mr. Vice-President, there are so many activities; motor cycling, bungee jumping, deep sea diving, being in the water—and boats running over you now. At what point are we going to stop legislating and allow the people to live in peace and deal with the consequences of our stupidity and our actions? Because once bitten, twice shy and whoever gets hurt in one direction, he is not going back there and he will spread the gospel about that one: "Hey don't do that". But to legislate people away, as this Bill seeks to do, from cigarette use and it is—I do not want to say dishonest—confusing because as everybody has mentioned, it is a legal substance, but it is illegal to— It is confusing, Sir, and I would really want the Minister of Health to withdraw this Bill you know.

If we are going to go through amendments tonight we are not going to leave here before five hours in the committee stage because there are too many amendments to be dealt with in this matter to set this piece of legislation right. It is not going to be possible and I have not really started to deal—well I have touched on some of the clauses already, but not specifically to tell you how many contradictions there are.

I have never seen—and the Government is aware of it because it was signatory to the World Health Organization Convention on Tobacco—a single Government advertisement that tells the people smoking is bad or showing a single advertisement that demonstrates that smoking is bad and particularly directed to the young.

To show the approach of the Government—and I am not going to characterize it, I will let whoever wants to draw his/her own conclusion draw it. The Government proposes the property tax and within three days of its criticism, I see

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an advertisement on the television repeatedly about this couple discussing the property tax and the gentleman is explaining to the lady why it is a good thing for her to understand the property tax.

6.15 p.m.

Why do we not have similar Government propaganda against tobacco and telling the people? Do not leave it up to the tobacco companies to put lifestyle ads. Do not leave it up to the people who are trying to make a livelihood.

I kept on starting and stopping on this point. The point is, on one side you have all these people and on the other side you have the people who are out—not the tanty round the corner selling one by one; I am talking about the big companies that import cigarettes and make fantastic profits on their distribution, that also make fantastic profits from the local tobacco manufacturer. You must not leave it to them.

The Government has to be proactive and set out a—good Lord, if the Government had undertaken a programme such as this and had discouraged people from smoking for the last five or seven years since they entered into the convention with the WHO agreement, there would have been no need. But, you see, Sir, the Government does not always remember what it says; it often contradicts itself. Even in his presentation, the Minister of Health says very clearly—and I can quote it—at one point that increasing taxation does not stop the sales of tobacco; they are actually continuing, and at a later point he comes around and presents that increasing is one of the devices and it is expected that it would reduce the sales. But the reality is that the experience shows that increase in prices does not stop the increased sales of tobacco.

On the one hand the Government says, "Look here, man, these people should be stopped from smoking because they are poor people and their disposable income is shrunk and reduced because now they can afford less when they buy their cigarettes", and in the same token they are going to increase the taxes and make the same poor people who are addicted to the cigarette at this time, spend more money and further reduce their disposable income. So, on the one hand you are saying that you want to provide the people with more disposable income by trying to stop them, and on the other hand, you know you cannot stop them because it is an addiction and you are increasing the taxation so that they will have less income to use.

The interesting thing is this, that whenever a tax is put on—hear this, Sir—the manufacturing company marks up its profit based upon its total cost which includes the total cost of the taxation. If it cost him \$1 to produce something and

he puts out 15 cents for tax, it is \$1.15 and he puts on his 50 per cent or 30 per cent or 100 per cent margin on the total. So every time the Government increases the taxation it gives the manufacturer justification for an enhanced profit and increases the bottom line cost—the final cost to the consumer down the line, no matter how poor he is.

So that the whole concept of taxation is geared towards penalizing the ultimate consumer and the same poor man, of whom we have almost 200,000 in the country today who are living on under US \$1 or US \$2 per day. These are facts that we are having thrown at us all the time. The situation is that the plight of the people is getting worse and worse and the Government is not finding the solutions. One is really forced to want to think that the excessive penalties are really a revenue-raising device. When you have \$6,000 to get a licence, when before you had to pay nothing, you are increasing the cost to the consumer again and it has to be a revenue measure. Six thousand dollars for a licence and it does not last forever. When before with free enterprise you are allowed to enter into whatever business you want; you have a registered business, now you have to pay \$6,000 and in one case for the manufacturer, \$12,000. That is a drop in the bucket for the manufacturer, but it is a lot of money for the Government revenue. So what is this? A revenue raising measure. That is the only way I can see it.

It is not meant to discourage; it is meant to give greater allure to an expensive product that young people will say, "I right dey." And do you know what? They will try to buy the more expensive brands—

PROCEDURAL MOTION

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Mr. Vice-President, I beg to move that the Senate continue to sit until the conclusion of this speaker; 20 minutes of the other speaker and a matter by Sen. Mark on the adoption of the Public Accounts Committee's report.

Question put and agreed to.

TOBACCO CONTROL BILL

Sen. M. F. Rahman: Thank you, Sir. This is a very interesting situation to find oneself.

Sen. Narace: No repetition.

Sen. M. F. Rahman: I am trying my best and you said that too many times. The Government could have its advertising aimed also at moderation. Moderation in all things is a very, very important maxim. You know, even if you are doing the

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wrong things moderately, you always have a chance to redeem yourself and to come back over on the better side. So I would say that the Government should, having regard to the things that I mentioned already, seek to actively do advertising of the sort which it is doing with the property tax and negate the allure of tobacco.

You know, Sir, putting photographs on the television screen between children's programmes, with people's lungs and showing terrible illnesses and so on, you know, it is a very—when manufacturers, wholesalers and business people want to sell their stuff, they put their ads in children's programmes so the children can see the ads and tell their parents. This is a very interesting device. And do not think that you have to gear it only to adults, because what is very interesting—you know, it is very interesting whenever you are going on the highway and you pass an accident, everybody slows, and they slow down for a little while, but after a while, it goes out of their heart and they start to move again.

My recommendation is that some of the very nasty things that take place with people as a result of the abuse of undesirable substances, including tobacco, should be promoted on the television in such a way that people would say, "Oh my God, is that really what is happening to my lungs?" Encourage people to go and take their medicals to see the ill effects of tobacco that they have been over-using.

You know, I have not heard a word from the Government or the Ministry in this Bill about the free distribution of nicotine patches. You want to encourage the people to give up cigarettes and you do not give them an alternative. I have relatives who have gone off cigarettes by using nicotine patches and it is a very useful thing. I mean, you give out condoms all over the place. So many agencies are giving out condoms and we are living with the HIV and we are trying to bring it under control, what is wrong with giving out—we already have CDAP—nicotine patches for those people who have the habit and would like to give it up and cannot? This is a very interesting thing to consider. I would like to recommend to the Minister that he considers this.

I will tell you, Sir, that I have had to deal with young people who—sometimes I bring my personal experiences in my life into the Senate but it illustrates something. I recognize peer pressure and I have three sons; the first two never asked my permission on this matter but my last boy who has a lot more closeness to me, when he was 14, came to me and asked me "Pappy, can I smoke?" That is a very, very serious question for a father to be faced with by his son, but I had to consider, if I told him no he is going to smoke anyhow; there is no question about

that. He has paid me the courtesy. So how do I deal with this? If I tell him no, he is bound to smoke because peer pressure is there. So I told him, "Listen, I am going to let you smoke but on certain conditions. Number one, no more than two a day; number two, never in the house; number three, only when there is pressure from your friends." I gave him certain rules and he stuck by those rules. Eventually, having become an adult, fully qualified, no other drugs—that was no gateway drug—he has been able to remove himself from the habit and proceed with his life and he is free of any addictions by God's grace.

Now, there is a way to handle these things. You do not bring a law that you know is going to be broken. Why would you implement a law that you know is going to be broken? You are only establishing rebellion; you are only establishing having to police a situation that you cannot, in normal course, succeed in policing. I would tell you, the rest of my family was totally aghast when I said that, but when I told them why, they understood and it has worked. In hindsight it has worked and thank God it has worked altogether.

You know, Sir, it is a very strange thing. A few years aback I read a medical book and I learnt that the most dangerous thing for the human body is oxygen which is our life sustaining gas. We cannot live without oxygen, but do you know what causes free radicals to appear in the body? By oxygen molecules combining with molecules of our body and causing what is called free radicals and actually acting as attacking agents against our body. That is why we have to use a lot of carefully selected foodstuffs: grains, vegetables, fruits, nuts and these things; stay away from the things that increase the free radicals in your body. These are the things that counteract the effect of the free radicals.

Now, how are we going to legislate against—we are not talking about legislating against carbon monoxide. How are you going to legislate against oxygen when you go in the hospital and it is oxygen they have to give you? But the reality is that you have to learn to live with the circumstances that you are faced with and do not tell the smoker who has been smoking for 10 and 15 years, "Go cold turkey; you cannot smoke anymore; you are going to be paying \$100,000 or \$500,000 on that if you go indictable." You might get very, very high-placed members of the community having to go to jail for the cigarettes.

It is a serious matter, Sir. This is one of the most convoluted and dangerous pieces of legislation, and I am not even looking at the aspect of the freedom of choice that other Senators have stressed. I am not repeating, you see; I am not

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repeating how they have proclaimed that this is an erosion of the freedoms that are enshrined in our Constitution, which by itself is a very significant matter and should receive close attention.

You know, it is a very funny thing that the PNM has come a long way.

Sen. Browne: Even if you say so.

Sen. M.F. Rahman: No, no. I will tell you how it has come a long way. You know, its founding father was a chain smoker. Yes! You know, Sir, he must be turning—well, he is not in a grave; poor fella, his ashes are scattered all over the place. But I will tell you something. Wherever he is, he must be wondering: "What happen to these stupid people? That is what I used to use to get away from the confusion they used to cause in the party." You understand? That is the solace. That was Dr. William's solace—chain smoker. And now they want to stop smoking for the people of the country who are driven to smoke and alcohol by the vice of their own mismanagement.

[MR. PRESIDENT *in the Chair*]

Tobacco is an emotion—I am not going to even go through all the little points. I think you get the message. Are you going to withdraw it or you are going to modify it or what?

Sen. Narace: I am bringing the oxygen Bill. [*Laughter*]

Sen. M. F. Rahman: All right. Sir, the matter of the increase in contraband is a very real possibility. You stop the free flow of legally accessible goods, you increase the underflow of contraband goods; very simple matter; no rocket science; very simple matter.

6.30 p.m.

This is a very interesting thing. One of the clauses in this Bill prohibits information from being on the cigarette cartons and packages that would identify low tar from heavy tar and mild from regular. If you want people to wean themselves off cigarettes you are actually telling them—you cannot get this information. The Government is regarding this as an incentive to buy, when it is an intelligent choice option that is being given to the consumer.

If I want to smoke and I want to take a low tar because I want to be sociable, I do not drink and gamble and I am in a crowd with my friends, the least I could do is take a cigarette with them. It is not forbidden in my faith by the way, although some of our people try to make it so. So let me choose the low tar. Why do you

want to tell me that I must not know what is the low tar and which filter is better? That clause actually seeks to make that prohibited from being on the package and is very shortsighted. It is just like the one where selling cigarettes one by one to the person who is trying to give it up is working backwards. You are defeating the purpose of the intention of your Bill.

This Bill does not address this. We have people now coming through the airport buying duty free cigarettes and selling it at cost price to their friends for whom they bought it. This Bill does not prohibit duty free cigarette sales anymore. You will be allowed to bring duty free cigarettes, distribute them among your friends or sell them at the cost. How come they did not criminalize that? I do not understand that. Such a person will not have a licence. The answer to that is to stop cigarettes from being available duty free for travellers. Pay the price and the duty. Use it and do not give it to anybody free because you would be charged and pay half a million dollars if you try to sell it. As a matter of fact, people should be alerted to that. Not only would you be bringing in substances illegally, but also trying to enter into a trade where you are not allowed a licence.

I have a further suggestion to make to the Government. When the British government wanted to stop the slave trade, they offered the plantation owners compensation for the loss of their slaves and economic loss that they were going to suffer. Why can we not seek to buy out cigarette companies or subsidize them so that they do not sell as much and make their product as attractive? We have to find ways whereby we will slow down the torrent of cigarette usage in the country without trying to put a halt to it in one fell swoop.

This is interesting. Sportsmen—I understand that they do not always observe the rules. Sportsmen are not allowed to use certain substances. Apart from the ones that show up in their bloodstream, only a foolish sportsman is a smoker or drinker when he is playing his matches. Sport is something that the Government has been trying to promote and encourage, but it sometimes comes up with very shortsighted policies. Notably among them is the recent reluctance to give any encouragement to the successful team to show that we have a commitment to sport and we would recognize excellence. You people out there who are smoking cigarettes, give it up, go into sports, get similar incentives and rewards. The Government does not see things holistically; it deals with individual facets of things which do not always synchronize among themselves.

I have already suggested that we look at the things that cause people to not smoke, but we also have to plug—

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

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

Question put and agreed to.

Sen. M. F. Rahman: Thanks very much. I have been repeatedly advised by my good friends on the other side that when I am making sense they would allow me to speak. [*Laughter*] I must be making eminent sense. One of the clauses in this Bill says that children are not allowed to sell cigarettes. Many of us have made points regarding the purchasing and these sorts of things. About two or three years ago, the labour laws were adjusted in this country to permit the supermarkets to employ children under 18 during holiday time. Since the people will not be allowed to do what the supermarkets will want them to do, the purpose of that law to facilitate young people and grant them vacation employment is going to be defeated. The Government has to find a way to get around that.

Sen. Narace: They should not be selling alcohol and cigarettes. Oxygen, yes.

Sen. M. F. Rahman: Some of them cash and the cigarette packs are over their heads. They do not have the bottles of rum right there. This was told to me by a supermarket operator. [*Interruption*] Point taken. Thank you very much, Sir.

There is the question of the labelling of cigarettes in English only. What has inspired this silly idea? How can we tell French exporters of cigarettes to Trinidad that they must put all their labellings for the little quantity that we buy only in English? You are putting a hardship on the local distributor. Do we not have international trade being promoted in the country with the WTO and other institutions that are seeking to remove trade barriers? Here we are putting a block on trade. If cigarette remains a legal substance—I can understand for any cigarette manufacturer in Trinidad it should be only in English. Even so, when they are going to ship it to Venezuela, Martinique or wherever, why exclusively and only English?

It must have the salient points in English but other languages could be there. I cannot understand. We expect all the Chinese labourers who have come here to buy cigarettes in English and not know. Ninety per cent of them cannot even speak English far more to read. Why are we seeking to make life so difficult for others? [*Interruption*] I want to wrap up. Do you not want me to wrap up? I know that you want to make a point. Just before I sit I would give you a chance to talk.

They have not given any thought to tobacco growers in Trinidad and Tobago. Somebody alluded to this. I am going to make the point. The Government should contemplate formulating a policy to offer to those agriculturists alternative crops and guarantees of purchase. That is a solid revenue stream for those people. They should be given the opportunity to make use of the land, if not sell the land to the Government for building purposes or whatever. You have to pay regard to the people who have been making their livelihood for years with this guaranteed crop in growing tobacco.

We spoke about second-hand smoke. We get the idea that second-hand smoke leaves me here and sneaks its way over to the other gentleman over there. I do not think that that is what happens. We are talking about second hand smoke in closed areas. We are making a big issue of second-hand smoke as if in public areas where there is always draft—you know something, one of the healthiest places to walk around in the morning is the savannah. If you walk there in the afternoon when all the cars are passing you would be poisoning your lungs because you would get more carbon monoxide than anything else. We are trying to regulate against cigarettes in too many little detailed ways as if cigarettes have become a fetish and an obsession. I know the WHO has things to which you have signed up, but we could go about it in a more intelligent way that does not look as if we are simply doing things by famous “vaps”.

This is a very interesting thing. Do you know what is the big tradition in the countries in the Western world? When the first child is born, what does a young father pass around to his friends? Cigars. Somewhere in this Bill, you do that in the open you would get hauled away to the jail and an indictable charge, conviction of \$500,000 because "yuh baby born". We have to think about what we are doing. These things look comical when they are pulled out like that.

A Bill prepared in haste cannot be permitted to go forward. The Government and particularly, in this circumstance, the Minister of Health must come to terms with the unpopularity and unacceptability of this Bill which has been brought before us. Let it be withdrawn, please. I have touched on most of the clauses. I would not go through any more at this point. What I may have wanted to mention would have been mentioned by somebody else.

In conclusion, I recommend that the Minister withdraw the Bill and take it back to his colleagues. People who have been speaking so strongly against the Bill, without a JSC invite some of us to sit with you to talk about the Bill. Pay attention to what is being said here today. There is more that we can find that can be constructive in reformulating the Bill. I grant you that. Cigarette smoking or

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tobacco use is an undesirable thing to propagate. It must be withdrawn intelligently from general usage. It must not be done in a way to disrupt people and criminalize what has been an innocent form of pastime for as long as all of us have been alive.

Thank you.

Mr. President: Minister, I call on Sen. Nicholson-Alfred.

Sen. Annette Nicholson-Alfred: Mr. President, I will be brief so there would be time. At this point, I am wondering where I go from here. I am not a smoker. I have never smoked. From the information received on doing my research, I do not promise to smoke. I know though, how disgusting it is to have smoke around you while trying to have some peace and quiet. I am here to discuss the Government's proposals with respect to the Bill. Therefore, I would leave what I know about myself out of the discourse.

I am not here to say whether people should or should not smoke. The Bill is a good initiative. It has been proven that tobacco and tobacco related products are the leading contributors to heart disease, lung disease, cancer, asthmatic conditions and you name it. They have been repeated here from time to time. We also know that secondary smoke causes as much harm to people in the environment.

It is quite commendable that the Bill seeks to prevent the use of tobacco by children and also to protect individuals from exposure to tobacco smoke.

6.45 p.m.

However, Mr. President, the provisions of the Bill at times appear to be too drastic and extreme. While the Bill allows for the marketing of tobacco and tobacco products, the prohibitions appear to place a ban on tobacco and tobacco-related products. In my humble old-fashioned style, I would like to state some concerns and make one or two recommendations.

There is a feeling out there that this Bill tends to encourage the invasion of people's privacy and the denial of their rights. If a person wants to smoke, that person is free to smoke. I do not think that laws should be put in place to prevent people from smoking. Many of the clauses actually direct you that it is wrong to smoke. Let the individual decide for himself or herself.

That customs officers and police officers could search without a warrant is asking for trouble. I heard it said before and, being around people who would complain about what the police would do—let me say before I go there that I

believe in the police and support them strongly, but when people accuse them of planting drugs, et cetera, we need to be concerned. It is not fair for someone to be pulled in without any protection, therefore, let the search warrant accompany the officer's presence.

In Trinidad and Tobago, as was stated by Sen. Rahman and one or two others, there is still the farming of tobacco. There are a number of people whose livelihood depend on tobacco. If we place a ban on the use of tobacco, these farmers will be left without their regular livelihood. Has the Government thought of putting alternatives in place so that people could continue to provide for their families?

There is also the case of the sudden cessation of the use of tobacco. This leaves the users in a state of withdrawal. Many times in this very Senate we have been promised a number of things by the Government, in this case, they have promised to put things in place for the benefit of those trying to stop smoking. I wonder how many years it will take before the rules, regulations and plans, whatever you have, will be put in place for those people who would like to stop smoking. Will you leave them stranded and leave them worse off? The Government will have to understand that promises regarding sudden cessation must be kept.

Clause 15 deals with the prohibition of displays. How will the product be retailed? Will it be hidden under an enclosed counter? How will the adult consumer, who has a fundamental right to choose to smoke, know that the product is for sale at a particular place? We are not to support the taking away of the fundamental rights of our people.

In looking at the Bill, I recognize that a number of the clauses have not been studied in detail—this has been enunciated here by a number of people; they were rushed, hence the beating or licking that the clauses are getting from us today. The planners did not take time to think it out. It is disappointing because this Bill came here before. It should have been near perfect at this time, where we would have been willing to support without too much fuss.

I suggest that the Government should give consideration to advertising tobacco products with the necessary warning. When you look at TV in other places, you would see—I seek to quote, but I am not sure I am correct:

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“The Minister of Health warns that the use of tobacco is dangerous to one's health.”

If we accompany the advertising of tobacco with that line, people will be aware of that. When you look at the TV on certain drugs, they give you 100 reasons why you should not use them, so you would never. We should try to put a rule like that.

The regulations, subject to rule 38, should make provision for necessary signs to be placed in businesses that “tobacco products”—it must be quite clear—“will not be sold to persons under the age of 18”. There should be a specific provision in the Bill. I do not think I saw a specific provision in the Bill that prohibits the sale of tobacco and tobacco-related products to children; something that should read:

“No person shall sell any tobacco product to a child.”

It must be quite firm and clearly placed so that it is always present.

Someone drew an example. When we have all these big sports, like football, those are the advertisements we should take pride in making. The Government should let people know the harm of smoking. Everybody is watching. The youngsters, especially, should see the harm and danger in something like tobacco. You do not leave it there; they must understand that it is wrong and at times they must know why.

You are good at making advertisements. A very nice one came out about property tax. We can do one on tobacco too, especially where our young people and our children are concerned.

This Bill can be a success if the prohibitions are less drastic and the legislation introduced gradually. You do not suddenly take it away from me and think I can manage. When you take away the bottle or the pacifier from the kid, tantrums. You need to take your time and draft it in softly and slowly rather than rush or force it.

The Government, by now, is aware that there are numerous amendments to be made—if not withdrawal of this Bill—if the Bill is to obtain safe passage in this honourable Senate.

PROCEDURAL MOTION

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Mr. President, I beg to move that the debate on this Bill be suspended until the next sitting of the Senate.

Question put and agreed to.

**PUBLIC ACCOUNTS (ENTERPRISES) COMMITTEE REPORT
(Adoption)**

Sen. Wade Mark: Mr. President, I beg to move the following Motion standing in my name:

Be it resolved that the Senate adopt the First Report of the Public Accounts (Enterprises) Committee for the 2007/2008 Session of the Ninth Parliament.

I would like sincerely to put on record my congratulations to all my colleagues who are members of this committee, some of whom are with us in this honourable Senate. We have been able to complete our first report for the period and I would like to make special mention of some of our members in the Senate: Sen. George Hadeed, Sen. Linus Rogers, Sen. Wesley George, Sen. Annette Nicholson-Alfred and, of course, there are those who are not here with us. They are members of the other place.

We have been able to examine, during the period under review, three state enterprises, namely: Lake Asphalt of Trinidad and Tobago (1978) Limited, Export Centres Company Limited and the Trinidad and Tobago Electricity Commission. I can tell you that during this period, on a percentage basis, we were able to host and hold successfully 91 per cent of our meetings and just about 9 per cent was aborted.

We have put forward in this report several recommendations for the consideration of these organizations aimed at strengthening and improving their overall operations from a financial point of view so that at the end of the process, once these recommendations are put into effect, we expect these companies to strengthen their operations and not repeat the same errors we identified in the 2007/2008 report.

I take the opportunity to table this report for adoption by the Senate and look forward to making available a report for the 2008/2009 period some time before the end of this year or by the first quarter of 2010.

With these few words, I thank the Leader of Government Business, Sen. The Hon. Conrad Enill, for giving me the opportunity, as we have agreed, to have this matter formally adopted today. We look forward to tabling another report.

Question proposed.

7.00 p.m.

Sen. Wade Mark: Mr. President, as I said, I am very happy to have submitted and presented this report on behalf of the Public Accounts (Enterprises) Committee and just to indicate, again, that I look forward to doing my duty on behalf of the Committee in the not too distant future.

I beg to move.

Question put and agreed to.

Report adopted.

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, November 17, 2009 at 1.30 p.m. when the debate on the matter before us will continue and, time permitting, we have Bill No. 2, an “Act to provide protection to investors from unfair, improper or fraudulent practices; foster fair and efficient capital markets and confidence in the capital markets in Trinidad and Tobago and to reduce systemic risk; to co-operate with other jurisdictions in the development of fair and efficient capital markets, and for other related matters”. It is also our intention, time permitting, we will also try to advance this particular Bill in some way.

Remembrance Day

Mr. President: Hon. Senators, before I put the question, I would just like to remind you that in approximately 11 hours from now will mark the 91st anniversary of the cessation of the First World War on November 11, 1918. Tomorrow is Remembrance Day, and while we have done something nationally in the park, I just wanted to remind you that we must, as Members of Parliament, be mindful of the history of not only of the world, but of our country as well. You should remember the battles of war.

The first one was the Battle of Lys, as the Germans invaded Belgium, the battle of Marne, Vimy Ridge, Messines Ridge, Ypress, Cambrai, Verdun and the Somme. Just to give a little idea of what it is we are trying to remember, the Battle of Verdun started in February of 1916, after the war started in August in 1914. The Germans wanted to take the town of Verdun which was holding out on the German Line. Verdun was an ancient city that had ancient forts and walls and it was relatively easy to defend from the French perspective.

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General Enrich von Falkenhayn said famously, in February of 1916, he would take Verdun and he would, I quote: “bleed the French white”. The French and the General Joffre stood their ground for a while and then famously Marshall Pertain was assigned to Verdun in June of that year.

Pertain, you might remember, is the French General who betrayed France during the Second World War and established Messines Ridge. However, he took the challenge to defend Verdun against the Germans and he said famously “Ils ne passeront pas”, they shall not pass, and they did not pass. The battle ended in November of that year but, not before the British had to launch an offensive on the Somme on July 01 to relieve the pressure on the French in Verdun.

In the three days leading up to the battle of the Somme, which started around July 01, the British launched 1.7 million shells on the German lives on the Somme of which approximately 30 per cent did not explode. Up to today, French farmers are still digging up unexploded shells in that area.

The first day of the Somme marked a day that is infamous in the conduct of human warfare. Never before or since, in the history of human conflict, has there been so many casualties in one day. The British lost 57,000 men in one day. That battle also ended in November of that year. By the end of November, as in the Battle of Verdun, the Germans had lost approximately 434,000 men in casualties and the French about 540,000. At the Somme, the British had lost just over 600,000 men between July and November, and the Germans approximately 550,000 casualties.

By May of 1917, the French Army mutinied and said that they would not go on the offensive any longer and that the full brunt of the war fell on the British and their colonies.

By the end of the war, there were 16 million dead persons, civilians included. The British lost 885,000, the French, 1.4 million, the Russians, 1.8 million, Austria of Hungary, 1.1 million—these are dead people, not just casualties, these are dead soldiers, and the Ottoman Empire, 770,000. The total number of soldiers killed in that war was 9.7 million.

Within 19 years that war started again. The Second World War is largely seen, as just a continuation of the First World War. Before I go there, to tell you the losses of the second war—I would be very brief on that one—allow me to say proudly but, sadly, that Trinidad and Tobago played its part in the First War as we did in the Second War. There is a plaque on my left on the alcove over there that list the names of 164 Trinidadians who lost their lives in the first war. I have

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another list that adds up to 178. I do not know which one is correct, but if you look at the list, you would see names that you recognize and, if you think back, you would realize that they are people that you would know—you know the families who lost soldiers in that war. Nobody was untouched.

The second war erupted of course, as you know, in 1939, and it was even worse than the first one. It is estimated that the total number of persons who died, as a result of the second war, is somewhere between 62 and 78 million. That is what we are trying to remember. And unless we remember and unless we can remember wisely, the mistakes of others in the so-called developed world, we are doomed to repeat the same mistakes. If you look at the history of the First World War, you would realize that there was no reason at all to start that war. There was absolutely no good reason at all.

One of the interesting things that you should know also is that you would know how the treaties had been arranged between the Germans and the Austro-Hungarian Empire, Celebia, Russia, France, Belgium and the United Kingdom. It is interesting to note that of all of the treaties that dragged those countries into the greatest war that mankind had ever known, not one of the treaties had been sanctioned by the Parliament. The declarations of war were ultimately sanctioned by the Parliament, but the treaties were not.

I would hope, hon. Senators, as we continue to do our work here, that we would look at one another to see the similarities between us and not the differences, and that whatever we might say in this Chamber, we might say it with honesty and goodwill for the sake of the country and not for personal gain, because we can remember what it leads to and what it has led to.

So, I would ask you to contemplate and to remember wisely, the mistakes of others, and to vow in your own hearts to never allow the same mistakes to be made here.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 7.10 p.m.