

Leave of Absence

Tuesday, November 17, 2009

SENATE

Tuesday, November 17, 2009

The Senate met at 1.30 p.m.

PRAYERS

[MR. PRESIDENT *in the Chair*]

LEAVE OF ABSENCE

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

SENATOR'S APPOINTMENT

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

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

/s/ G. Richards
President.

TO: MS. ANWARIE RAMKISSOON

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

NOW, THEREFORE, I, GEORGE MAXWELL RICHARDS, President as aforesaid, acting in accordance with the advice of the Prime Minister, in exercise of the power vested in me by section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, ANWARIE RAMKISSOON, to be temporarily a member of the Senate, with effect from 17th November, 2009 and continuing during the absence from Trinidad and Tobago of the said Senator Arnold Piggott.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 16th day of November, 2009.”

Oath of Allegiance

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OATH OF ALLEGIANCE

Sen. Anwarie Ramkissoon took and subscribed the Oath of Allegiance as required by law.

PAPER LAID

Administrative report and accounts of the Ministry of Labour and Small and Micro Enterprise Development for fiscal year 2007/2008. [*The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill)*]

ORAL ANSWERS TO QUESTIONS

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

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

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

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

The Minister of State in the Ministry of Planning, Housing and the Environment (Sen. The Hon. Tina Gronlund-Nunez): Thank you, Mr. President. Unfortunately, this question is not ready at this time. I would like to ask for an extension of about two weeks.

Sen. Mark: Mr. President, I would like to bring to your attention a newspaper report dated Tuesday, November 10, 2009, in which the very answer that has been postponed for the last seven months, consistently, by the hon. Minister of Planning, Housing and the Environment was made public by the hon. Prime Minister when he officially opened the National Centre for the Performing Arts last Monday evening.

I bring this matter to your attention because we have been told by the hon. Minister, repeatedly for seven months, that the answer to this question was not ready. Here it is, the hon. Prime Minister was able to tell the nation the actual cost, not only of the north performing centre, but as well the south. I view this as a grave contempt for this honourable Senate and a grave contempt towards the President of the Senate at the same time.

I am just rising to ask you to guide this honourable Senate as it concerns questions that you have approved and we are waiting for a response from the Government side and they keep postponing and postponing that response only to have that information made public by a Minister of Government, in this instance the hon. Prime Minister.

Therefore, I ask of you to give us some guidance on this matter so that in future we would be guided accordingly by your guidance, Sir.

Mr. President: Hon. Senators, I am inclined to agree with Sen. Mark on this matter. I have no doubt that the hon. Prime Minister was doing merely his job as the Prime Minister in the opening of the Academy for the Performing Arts to provide whatever information he had available to him at that time.

This question has been on the Order Paper since May of this year and I consider it a gross disrespect to the Senate to have it adjourned and adjourned only to find that the information is in fact available. I do not know, and there is certainly nothing wrong—let me make it very clear—in my opinion with the Prime Minister doing his job and providing information to the people. However, it is highly improper that the same information is not properly made available to this honourable Chamber and I am asking the Minister in the Ministry to consult with her principal and to bring a proper explanation or an answer to the question at the next sitting.

Sen. The Hon. T. Gronlund-Nunez: Mr. President, if you would allow me? I have noted your comments, also the comments of Sen. Wade Mark. They are so noted. However, it must be recognized, this is a four-part single question which requires much detail and this ministry would work at its endeavour best to bring forth a reply within the next two weeks. Thank you.

Mr. President: Minister, you would either bring the answer or bring an explanation, or somebody will have to account to this Chamber.

Question, by leave, deferred.

**Enquiry into Landate
(Findings from)**

188. Sen. Michael Annisette asked the hon. Minister of Health:

Would the Minister please inform this honourable Senate of its findings from its own enquiry into the Landate matter?

The Minister of Health (Sen. The Hon. Jerry Narace): Mr. President, we are still in the process of providing the information to take it to the process, so we ask for a deferral of two weeks please.

Question, by leave, deferred.

**Enquiry into the Scarborough Hospital and Landate
(Findings of)**

189. Sen. Michael Annisette asked the hon. Attorney General:

Would the Attorney General please inform:

- (i) The findings of the Commission of Enquiry into the Scarborough Hospital; and
- (ii) The findings of its own investigation into the matter which included Landate?

The Attorney General (Sen. The Hon. John Jeremie SC): Mr. President, the answer to this question is not yet ready. In the circumstances, I ask for a two-week deferral in the first instance.

Question, by leave, deferred.

TOBACCO CONTROL BILL

[Third 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: Those who spoke on Tuesday, October 20, 2009 were: Sen. The Hon. Jerry Narace who moved the Motion, 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; and Tuesday, November 10, 2009, Sen. C. Baptiste-Mc Knight who completed her contribution, Sen. W. Mark, Sen. Prof. R. Deosaran, Sen. L. Oudit, Sen. S. Ramkhelawan, Sen. M. F. Rahman and Sen. A. Nicholson-Alfred.

Senators wishing to make a contribution may do so.

Sen. Dr. Jennifer Kernahan: Mr. President, thank you for the opportunity to contribute to the Bill before us, the Tobacco Control Bill, 2009.

We on this side have a serious problem. What is our problem? Our problem is that purportedly laudable objectives in Bills brought before this Senate are always tainted by some unjustified aggression against the constitutional rights of the people of this country. [*Desk thumping*]

Sen. Rahman: Well said.

Sen. Dr. J. Kernahan: All right-thinking people, all intelligent people, we all have and we all share a deep and genuine concern with respect to the negative effects of tobacco smoke on the health of the population and we understand that it is a serious problem, but we also recognize that it is not an easy problem to solve. It is not an easy issue to rectify. There is no quick fix to this problem because it is one of long-standing.

I would like to quote an article by Preetha Elizabeth Chaly, “Tobacco control in India”. It is a review article and this is what this author had to say about this problem:

“Humans have used tobacco for 1000 years. Tobacco in its various forms has provided powerful and immediate satisfaction to its users. These gratifications are pharmacological, psychological, emotional and social in nature. Once introduced, its use seldom has been eliminated even by legal or religious prescription. The use of tobacco kills millions of people and ruins the health of millions more. Clearly, preventing the use of tobacco in various forms as well as treating nicotine addiction is the major concerns of dentists and physicians.”

1.45 p.m.

So, Mr. President, this author, this expert, has recognized the issues, that this is a habit of long-standing over a thousand years, and that you cannot just legislate it away in one fell swoop.

The author recognized as we do, that it kills millions of people. But what did she advance as the major issues to be dealt with in tackling this point? She says the major issues are preventing the use of tobacco in the first place, and treating nicotine addiction. These are the two major issues that she pinpointed as possible solutions to the problems of tobacco smoke.

Mr. President, this is the reality, and another reality that we have to face in looking at this Bill this afternoon, is the fact that the manufacture, the sale and the use of tobacco is not an illegal activity in this society. So when we look at any

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measures, and the measures taken in this Bill that deals with the prevention of the use of tobacco, we have to respect the reality that it is not a criminal offence to manufacture, sell, or use tobacco, and until that reality changes, then the whole perspective of this Bill has to change.

You cannot bring legislation which seeks to criminalize this activity in which a great proportion of our population indulges. You cannot criminalize effectively so many members of the population, for indulging in an activity for which the manufacture and sale and use, is not a criminal offence. So the problem we have is that we have no issue with the basic sentiment, the need to protect public health and so on, but you cannot do it using draconian, cold turkey legislation that is punitive, that is wide-ranging and it seeks to make criminals of so many members of the population.

Mr. President, the reality is that this Bill in the form in which it is before us, will not do what it purports to do, which is to safeguard the population. It will not do that because many of the clauses—as so many of the Senators have said in previous debates—are clearly unenforceable. But what it will do is ensure that many people of this country will land in jail, and what it will do is to extract millions of dollars from the pockets of the people who could least afford it—a lot of poor people are going to be caught in that net—and it will extract millions of dollars to be put in the coffers of the Government. I think this is one of the major issues that we see in this Bill. This Bill seems to go well beyond the stated objectives, and some clauses are clearly an unwarranted infringement of the constitutional right to property, and the right not to be deprived thereof, except by due process.

Mr. President, the Minister cites as the rationale for this Bill, the fact that we are signatories to the WHO Framework Convention on Tobacco Control, and he defends the clauses in this Bill on those grounds. But the very framework that the Minister speaks to as justification for the Bill before us, Article 3 and Article 6, made mention of certain issues that national legislatures have to take into account in implementing this framework convention. In Article 4(3) of the Framework Convention, it says here:

"International cooperation, particularly transfer of technology, knowledge and financial assistance and provision of related expertise, to establish and implement effective tobacco control programmes, taking into consideration local culture, as well as social, economic, political and legal factors, is an important part of the Convention."

So the Convention recognizes that in order to implement agreements under this convention, you have to take into consideration, local culture, social, economic and political and legal factors, and I do not think that the Minister has taken these factors into consideration in bringing this very draconian piece of legislation before us.

It also says in Article 4(7):

"The participation of civil society is essential in achieving the objective of the Convention and its protocols."

Mr. President, it seems to us that the Government has put the cart before the horse. The Minister is seeking to push this Bill through, in the absence of the very recommendations of the framework that you must take into consideration, local issues, legal issues, economic and social issues in our society. The fact that you have to take into consideration widespread views of civil society and not just one aspect of civil society, but a wide framework and a wide view of different aspects of civil society with respect to this Bill. I do not think the Minister has done that, because I have spoke to many people of different organizations, civil society organizations, and a lot of them have the same problems that we have with respect to the draconian nature of this legislation.

The objectives of the Bill as outlined by the Minister are:

- i. to prevent tobacco use by children;
- ii. to regulate tobacco use by individuals;
- iii. to enhance public awareness of the hazards of the use of tobacco and ensure that individuals are protected, are provided with information to make them more fully informed of using tobacco;
- iv. to protect individuals from exposure to tobacco smoke;
- v. to prohibit and restrict promotional practices;
- vi. smuggling of tobacco; and
- vii provide for the regulation of tobacco products to mitigate against the harmful effect of tobacco.

Mr. President, I would like to examine these purported objectives in relation to the clauses in the Bill.

The first objective of the rationale of this Bill is to prevent tobacco use by children. The Minister in his presentation spoke a lot about the need to protect children, and he cited that as the major *raison d'être* of this Bill. He cited a 2008

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study undertaken by the National Alcohol and Drug Abuse Prevention Programme in the Ministry of Social Development, in collaboration with the Inter-American Drug Abuse Control Commission at our nation's secondary schools. Some of the findings of this study was that: a quarter of all students are reported to having tried cigarettes; that the mean age of first cigarette smoke is 11.9 years; not many students feel that smoking cigarettes sometime was harmful; and a fourth findings was that curiosity was the main reason for using cigarettes in 34.1 per cent of the cases. They were influenced by friends at a level of 14.1 per cent of the cases.

The very results of this study should have indicated to the Minister the way forward. Clearly, the problem here is that young children do not have the knowledge; do not have information on the harmful effects of tobacco, even smoking occasionally; and they did not have any information with respect to the highly addictive nature of tobacco. That is why they felt that smoking occasionally was not harmful.

Mr. President, this should have told the Minister that the way to go in terms of protecting young people from tobacco smoke was a consistent and very innovative, very creative campaign, even from the level of primary schools, young children, inculcating them with the principles and so on that govern this whole issue, that tobacco smoke, the toxic effects and so on, and the effects on their health and the effects on the neighbours and other people in the society. And indeed not only to balance your right to smoke, but you balance it with the right of other people to be free from smoke. These are some of the issues that have to be raised in a consistent, very strong, very educated campaign on smoking, if you are to prevent children from smoking.

In this Bill, we see one major clause that deals with the issue of protecting children, and it is clause 13 which says:

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

This is one of the major clauses that I have seen in this Bill that deals with the issue of protecting children. But this clause before us, first of all, it is not clear because on reading this, I am not sure whether you cannot hire a child if you sell tobacco products, or if it is that you can hire the child but you have to forbid the child from selling tobacco products. So I think the wording of this clause is very ambiguous, and we are not exactly sure what the clause means.

The other issue with this, is that even if children under 18 are part of an establishment that sells cigarettes and so on, if those children are not constantly in the schools, in the programmes and so on, they are not part and are not educated

with respect to the harmful dangers and so on, of smoking tobacco and so on. I do not see that at this point at 16, 17 and 18, if you are working in an establishment and you are not allowed to sell cigarettes, this has any great impact on whether you smoke or not. Because the findings the Minister brought to the Parliament, is that the mean age of starting to smoke among our young people is 11.9 years. So long before you would have been eligible to work in any establishment that may have cigarettes, young people who are at risk would have started to smoke, and they would have started to smoke because their friends are smoking, they are influenced by their friends because they simply do not know it is harmful to them and they just want to be part of the crowd.

So this particular clause, one of the major clauses that deal in many ways directly with children, would have absolutely no impact or very little impact on preventing children from smoking. The Minister himself, in his study showed that long before the age of 17 or 16 when they might be eligible to work, young children who are susceptible would have started to smoke, and they needed the information on a consistent basis and on a very creative level, to bring home to them the realities of smoking.

Mr. President, another clause, clause 12, is related to the regulation of tobacco use by individuals, and clause 12(1) says:

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

And clause 12(2) says:

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

Mr. President, I want to make the point that clause 12(1) which says that no person shall smoke or hold a lighted cigarette in any enclosed public place, and when you look at the definition of enclosed, which is the roof and one wall in the Schedule, this clause immediately criminalizes all the vendors on the streets of our country. Because most vendors set up against a wall or some structure, and then they would put a roof over the structure and they set up shop there. That is their livelihood; that is where they make their money that they live by; send their children to school; and support their families and so on. So we are saying there, that within such a structure, the owner of such a structure immediately is criminalized if he smokes in an enclosed public place, given the definition of

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enclosed. The persons who come to buy from him are in contravention of the Act and are liable to be penalized, and the owner even if he is not smoking, if his customers are smoking within an enclosed public space, is liable because it says here in clause 12(3):

"Where a person contravenes subsection (1), the manager, owner or lessee of the place where the contravention occurred who authorized or acquiesced in the act or who knew or, using due diligence, ought to have known that the commission constituted a contravention, that manager, owner or lessee is deemed to have committed the offence and shall also be held personally liable."

2.00 p.m.

So you are sitting there selling your little cigarettes, sweets, nuts and whatever, at the side of the road, clothes and all manner of things people sell in this country, to make do, to get by, to feed their families. If a customer comes into that enclosed space, as defined by the law, and is smoking, you are deemed to be personally liable for that contravention, and personally liable to the tune of, as clause 12(4) says, on summary conviction to a fine of \$10,000 and imprisonment for six months. This is how harsh and unfair this legislation could be.

Mr. President, clause 14 says:

"No person shall sell any tobacco product in such a way that a customer may handle the product without the assistance of a sales clerk or other employee or agent of the seller prior to purchase."

This means that small business places which now have, as part of their turnover, that particular tobacco product, are going to be affected. Most of these items are to-go items, they are usually very close to the cashier or the person taking the money, so persons would no longer be able to just walk in—you cannot have it on display—they cannot take it without the assistance of a sales clerk. As a small business person, you are going to have to lock this away. Every time anybody comes for a pack of cigarettes, you are going to have to get the key, open it, and come back and so on.

Mr. President, this is not going to stop the purchase of cigarettes, because we have identified tobacco as a highly addictive product. These laws and regulations on the books are not going to cure anybody's addiction overnight. People are going to continue to smoke and they are going to continue to buy tobacco products. But what is going to happen is that it is going to make the purchase of

tobacco sales more onerous, especially for small businessmen, and it is going to make it more expensive. It is going to affect their businesses negatively, especially the smaller enterprises.

It is going to cause a lot of dislocation in terms of how small businesses do business, but it is not going to stop anybody from smoking, because smoking is a highly addictive action. People are going to continue to buy their cigarettes, regardless of the inconvenience.

Mr. President, another objective of the Bill is to enhance public awareness of the hazards of tobacco use and ensure that individuals are provided with the information to make a more fully informed decision about using tobacco. Under this objective we have clause 5 and clause 6. Clause 5 deals with the establishment by the Minister of a unit within the Ministry which shall be responsible for several things:

"(a) developing and implementing, in collaboration with civil society, a national strategy approach to tobacco control;"—which I believe the Minister has left for last, rather than doing it first.

In clause 5(b) it talks about:

- “(b) undertaking impact assessment of national policies and programmes aimed at controlling consumption and production of cigarettes...
- (c) designing and disseminating messages for inclusion on tobacco packages;
- (d) reporting on Trinidad and Tobago's progress to the World Health Organization...”—and so on.

Another important part of this public awareness is:

“(e) monitoring activities nationally to ensure compliance with and enforcement of this unit.”

There are a number of questions that we have with respect to this unit. In clause 6, it goes on to talk about the unit establishing evidence-based programmes to inform the public on the dangers and it should make educational and situation material available to the municipal corporations, health care workers, schools and media. It should develop evidence-based educational programmes, establish and carry out evidence-based tobacco use cessation programmes, including diagnosis, counselling, treatment services and, as appropriate, access to nicotine replacement therapies.

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Mr. President, this unit has some very far ranging powers. It is charged with diagnosis of nicotine addiction. They are charged with treatment services and access to nicotine replacement therapy, among the educational issues that they would deal with.

Some questions come to mind, given the wide remit of this unit and given that in clause 8 you have that this unit could request authorized officers to carry out inspections and investigations, and then these authorized officers have another whole wide, very powerful range of actions they could take. It is incumbent on us to question the issue of this unit. We want to know how this unit is structured. Given the wide ranging powers of this unit and given its relationship, apparently, with authorizing agents, which would be police and customs officers, we want to know how is this unit structured, what are the qualifications for somebody to be part of this unit, who do they report to and what is the training involved in terms of the persons who are going to be on this unit and the persons who they say are going to provide monitoring facilities as part of their activities in 5(e). It says that the unit will be responsible for monitoring activities nationally and to ensure compliance and enforcement of this Act.

Who are the persons and what is their training and what is the training they would provide to make sure that these monitoring activities take place? What are these monitoring activities? These are very serious issues and we want to know, because on the very wide powers this unit has, what is happening here, who are these people and what are their qualifications and how are they going to carry out their duties.

I believe part of the problem is the fact that we do not have any regulations before us; we do not have any idea of how this Bill is going to function with respect to a major agency which is supposed to carry out the major fundamental purport of the Bill, which is to inform public opinion, to educate persons, to ensure that cessation programmes are in place. We have no idea of how this unit is going to be composed, how it is going to function, who it reports to and so on. They have to do diagnoses; that to me implies medical personnel. We have no idea if any medical personnel are on this unit.

The other question is that we have no idea of how this unit is going to liaise with, let us say, the Regional Health Authorities or the public health authorities that are already in place. We already have a structure in place. Are they going to work along with the Regional Health Authorities in these diagnosis programmes, cessation programmes, counselling and treatment services, or are they a law unto themselves with their own personnel, doctors and social workers, who are going

to be involved in this activity. This is a huge spread of activity. How does this unit liaise with other already established medical institutions in this country? We have no idea. This is another layer of bureaucracy that we are establishing here. Are they going to be working in conjunction with the established medical units in different parts of the country?

These are very serious questions we have about this unit. We believe that this Parliament needs to get answers to these questions.

Clause 7 is where the plot really thickens. It says that:

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

Then in clause 8 it says:

"Subject to subsection (2), authorized officers shall have the power to..."—do a number of things—

- "(a) examine, open, and test any equipment, tools, materials, packages or anything the authorized officer reasonably believes is used or is capable of being used for the manufacture, including packaging and labelling, storage, distribution, advertising or promotion of tobacco products;
- (b) examine any manufacturing operation or process carried out on the premises;
- (c) examine and make copies of or from any books, documents, notes, files..."—

they could go into people's files, examine and make copies, interview persons, take samples of tobacco products and get information about tobacco products.

So the plot thickens. We say here that this unit may request authorized officers to do these inspections that I have mentioned. The question is: What locus standi does the unit have with respect to the police and customs? Are we saying that this unit has the authority to call in police officers and instruct them to do these inspections? This is a serious thing, because I did not know that police officers and customs officers are subject to instructions from a unit, purportedly created now out of thin air; we do not know who they are, in the Ministry of Health.

Another question Sen. Mark asked was: Apart from the police and customs, are members of the unit considered authorized officers? This is very unclear in the Bill before us. We are not sure if they are actually part of the so-called authorized officers.

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Mr. President, the other aspect of this is where we have a serious problem with the infringement of constitutional rights of the citizens of this country. This questionable unit of unknown persons, who apparently could give instructions to the police and customs, would have these authorized officers having the power to go into people's private property, examine, open and test any equipment, but I am not seeing probable cause. I am not seeing a warrant or probable cause. This is on the say-so of a group of civilians in the Ministry of Health; they have not shown any probable cause here.

What is interesting is clause 8(b) where it says:

"examine any manufacturing operation or process carried out on the premises;"

This is a whole different ball game, because you have manufacturing processes and procedures that are highly prized industry trade secrets. Nobody allows you to walk into their enterprise and just view their process and how they make any particular product. Industrial espionage deals with people sneaking into others' places of business and trying to find those things out. This is a capitalist society; you have competition and trade secrets, and these things are highly regarded as being trade secrets which are highly protected.

We have a Bill before us which says that this unit could call in the police and customs officers, without probable cause, as far as we are concerned here, and could go in and look at people's processes and manufacturing operations. Is that even legal? People are going to stand by idly and let anybody come into their premises and go look at their process?

Even if you have this unit going in to look—customs and police we are talking about here—going into these places of manufacture to look at processes and operations, what are they going to make of these huge pieces of machinery and huge operations and different departments, if they do not have the technical training to understand what is happening? So you just go in and walk about, look at the machinery and find they are looking nice and important? How is the technical expertise going to be involved in this? I am not sure that the police and customs have that kind of technical expertise to understand what is happening in a manufacturing setting.

2.15 p.m.

Or is it now they are going to have to carry technical expertise with them into people's private property without probable cause to examine, open and test equipment, materials and examine processes and manufacturing operations? This

sounds like madness to me, it sounds like a total infringement of the constitutional rights under our Constitution, sections 4 and 5, and we are totally opposed to this approach.

Mr. President, in clause 8(1)(c) we have that these authorized officers have the right to take samples of tobacco products or components of products and packaging from any business where they are found to have them tested.

We do not have the Regulations before us, we do not know what constitutes a sample; we do not know if it is a box, 10 boxes, one cigarette or one pack of cigarettes. We have no idea what constitutes a sample because samples are usually gauged on the size of the overall product, and since we have no idea of what the size of the overall product would be in a manufacturing enterprise at any one time, I am not sure how this unit of authorized officers is going to determine what really constitutes a sample because that is a scientific thing.

A sample is a scientific use of a term that would be specific in a particular environment. We do not know what this sample would constitute and we are concerned that if you take away 50 boxes of somebody's product based on your understanding of what is a sample and you are going to hold it for, I do not know how long and in that period you deprive the person of the use of their product, that is totally *ultra vires* to the Constitution of this country and it is totally unacceptable to us on this side.

Mr. President, clause 8(2) of this Bill seeks to give the impression that the police or the investigating officers can enter any public place or means of public transportation to conduct inspections or investigations at any time during business or operating hours and at any other reasonable time. So it gives this aura of reasonable approach that you must enter during business hours or at a reasonable time. But then the sting is in the tail because it says again "or necessary time".

So after giving us all these flowery assurances that these authorized officers would conduct their inspections during business hours or operating hours or any reasonable time it says: "or necessary time". Necessary to whom, and for what? When this necessary time is stuck in here it nullifies everything the clause was saying before. We find it is very disingenuous and against the rights of the people of this country to their property and to the privacy of their businesses.

Mr. President, clause 8(2)(c) we have another curious insertion in this legislation that is totally arbitrary. It says that the authorizing officers can:

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"seize and detain from any business or order the storage without removal or alteration of any tobacco product or other item the authorized officer reasonably believes does not comply with this Act."

So what is this "reasonable belief" that this authorizing officer, who is not a technical person, who is a police or customs person and we are talking here about processes and manufacturing operations that apparently, as far as we understand, they would not have the technical expertise to judge. But at the end of the day, not having understood anything in that whole manufacturing enterprise, seize your products under a reasonable belief that it does not comply with the Act.

How are we to understand this? In the first place, we do not know that these officers have the technical expertise to understand any infringement of the Act during the manufacturing process. So how can they have any reasonable belief that the product does not comply with the Act. This is a fairy tale, it makes no sense and it is against the democratic rights of the people of this country to property and the right not to be deprived thereof without due process.

Mr. President, clause 14 says:

"No person shall sell any tobacco product in such a way that a consumer may handle the product without..."

Sorry, I did clause 14 already. So, those were some of the major issues under the protection of persons in the use of tobacco, and those were some of our objections based on the clauses which we felt dealt with those issues.

Mr. President, another objective is to prohibit and restrain promotional practices. Under this objective we have clause 15 which says:

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

Apart from, in one fell swoop taking away the livelihood of wayside vendors of tobacco products which, under the very convention says you have to put in mitigation measures and so forth if you are going to offset the livelihood of the tobacco vendors, or workers in the industry. In spite of the fact that this Bill says nothing about that part of the convention and that as there are no mitigating effects as far as we know, it is going to negatively impact on the small people. We find this ludicrous.

There is a prohibition against public displays of tobacco products but it "shall not apply to individuals incidentally or accidentally displaying products during carrying or use." I have seen in big fetes that young people and vendors who want to make some sales during these big events where there are thousands of people around, they have taken to carrying their products: sweets, tobacco, whatever in huge plastic cases strapped on to them and they walk through the crowd and try to drum up sales in that way.

What is going to happen here? The little lady at the side of the road with the tray is not going to be able to display her product and is liable to a fine and imprisonment if she does. But if she is innovative and is able to do like the younger, stronger people do; they put these plastic bags on them and walk through the crowd, then they are immune from prosecution because it says:

"...shall not apply to individuals incidentally or accidentally displaying tobacco products during carrying or use."

So if you are walking through the crowd with your plastic, see-through sack full of cigarettes, then you are incidentally displaying this product and you are not liable in terms of contravention of the law. This is ridiculous because it sets up a scenario that is unfair with respect to one group of sellers as opposed to the others and this will have to be dealt with, because clearly it is not enforceable.

Clause 16(1) says:

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

(2) The Minister may by Order prohibit any other means of sale where the age of the purchaser of a tobacco product cannot be verified in person."

Mr. President, these clauses are clearly unenforceable. There is no way that these clauses can be enforced in terms of checking to see if people are getting these products through the mail or the Internet and there is no way that the Order that prohibits "the age of the purchaser of a tobacco product cannot be verified in person" there is no way this can be enforced.

Do you know that the Internet now is practically a market on its own where people buy and sell things and there is no question of age on the Internet in terms of your requirement to buy or sell and, therefore, very young children who are au courant with the Internet can buy products on the Internet? This is one of the problems that we have; many of the illegal activities that criminals use the

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Internet for cannot be easily pinpointed or persons prosecuted because it is such a faceless market and there is no way to determine the age of purchaser or seller, so this is totally unenforceable and it makes no sense.

That is why Internet pornography is so prevalent all over the world, it is a faceless business and persons are not easily detected. There is some technology that they are using to try to detect criminals on the Internet. Are we now going to set up persons from the unit to deal with Internet sales and to monitor the Internet to ensure that under age children are not purchasing products on the Internet? Is this going to happen? If this is going to happen, then tell us so we would understand the basis for this particular clause.

Mr. President, this Government must be sensitive to the repercussions of the Bill before us, and in clause 6 of Article 6 of the Convention they had said so. They said the importance of technological and financial assistance and the economic transition of economic growers and workers whose livelihood are seriously affected as a consequence of tobacco controlled programmes in developing countries parties as well as parties with economies in transition should be recognized and addressed in the context of nationally developed strategies for sustainable development.

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. W. Mark*]

Question put and agreed to.

Sen. Dr. J. Kernahan: So, Mr. President, we are very sure that this is unenforceable. The Minister has to tell us how he is going to enforce this Internet clause and where he is going to get the technology to do so. Maybe as in Article 6 under section (6) he is going to get the financial assistance as the convention says and the technical assistance to deal with the issues of developing strategies for a sustainable development.

We do not want to have something on the books that purports to protect children and the population and 90 per cent of the clauses are not enforceable, impossible to enforce and you do not concentrate on the major issues which we have said before; the education and prevention in the realm of very young children and treatment of addicts which is a serious issue that you have to deal with.

Mr. President, clause 10 of this Bill deals with licences and it says:

"10(1) No person shall manufacture, import, export or distribute tobacco products at wholesale without first having been issued a licence.

(2) Notwithstanding subsection (1), persons engaged in the business of manufacturing, importing, exporting or distributing tobacco products at wholesale prior to the coming into force of this Act shall have a transitional period of nine months to apply for a licence from the date this Act comes into force."

So just as we do not have any idea of what a sample means, we have no idea what wholesale means in terms of this Bill. We do not have the Regulation before us and we have no idea what they mean by wholesale. We know there are many people—for instance Cuban cigars are highly priced—who bring in Cuban cigars in boxes which they sell to their friends and family and to persons who enjoy these products.

Sen. Browne: They are worse than the cigarettes.

2.30 p.m.

Sen. Dr. J. Kernahan: That is not the point. The point is not whether it is worse or bad, but you have to bring a Bill here that makes sense, that is enforceable, that people understand what the issues are. And, therefore, if you have a licensing issue here that says that you cannot import or distribute tobacco products at wholesale, then you have to tell me whether wholesale implies one box, two boxes, 10 boxes, a million boxes. We do not know from the legislation. We have nothing else before us and, therefore when this Bill goes out, people who are accustomed to doing this and so on, will be in a quandary because they do not know now if they are in contravention or in breach of the Act if they bring in five boxes; if they bring in 10; if they bring in 20; what is the situation.

Therefore, this Bill has to be very much more precise in terms of the definitions of what they are talking about. You do not just throw things in a Bill and nobody knows what you are talking about and then you are going to criminalize people and say: "Well, you know, wholesale really means five boxes and you have six boxes and therefore you are in contravention of this Act." These are some of the issues that are very elementary. The Minister has had this Bill; he sent it to a joint select committee; it came back and these issues are not resolved.

The other issue under provisions for regulation of tobacco products is clause 11 which says:

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

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

- (a) import and export;
- (b) business sales, marketing and distribution;
- (c) new products or brands;
- (d) constituents, additives, and of toxic constituents and additives in smoke...
- (e) product packaging and labelling.."

And so on.

First of all, I am not sure that some of the information here is really relevant to what the Bill purports to do, to protect persons against tobacco smoke. For instance, import and export, and so on, I am not sure what that has to do with the actual pharmacological content of the cigarette, or whatever. I am not sure that this is something that people will really want to be giving out on a regular basis, their sales figures; their imports and exports and so on. I am not sure that this is something you want to have in the public domain and the Bill says so, that all this information—clause 11(5) says:

"Information from reports required under this Act shall be public information."

I am not sure that business sales, marketing and distribution form part of the public information for any business enterprise in this country. I am not sure about that at all. I do not know if people are comfortable; manufacturers, distributors or salespersons are comfortable with sending off very blindly every quarter, all this information about your business to this unknown unit in the Ministry of Health. We do not know what confidentiality obtains there; we do not know where this information is ending up; we do not know who has access to this information. Clearly, this is a breach of our constitutional rights to privacy and so on. This is clear.

So this has nothing to do with protecting the public. This has nothing to do with getting less smoke in the public domain—second-hand smoke. This has to do with very clearly breaching the constitutional rights of citizens of this country.

Because I do not know how import and export sales and business sales and marketing and distribution—all that information—is relevant to anything that you purported to try to do in this Bill. I stand to be corrected but I do not see it.

Clause 36 of this Bill is one of the issues that startle us a lot. It is draconian; it is vague and there is no relationship between the penalty and offence. It says here in clause 36(1):

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

Now, this is where this Bill gets very interesting, because it tells us here, that we have a whole lot of penalties here that are very harsh, very draconian and these penalties can be invoked for non-compliance with this Act or regulations, and we are being asked to pass this Bill here this afternoon without knowing what the regulations are. So we are flying blind; we “buying cat in bag”, as they say, because we do not know what the regulations will say and we do not know how these penalties are going to be invoked with respect to the regulations.

Some of the penalties that may be invoked on regulations that we have no idea what they include are:

- “(a) suspension, revocation or limitation of licences;
- (b) removal by an authorized officer of an offending person from the premises or public conveyance, and confiscation and forfeiture of any tobacco products in violation of the provisions of this Act;”

You are talking about confiscating people's property by these so-called authorized officers who are not technical persons, who are apparently being instructed by this unit that nobody knows of whom it comprises, and so on; what qualifications they have; and no issue of probable cause. There is no probable cause here and you are talking about confiscation of people's property and that could never be right.

You have another draconian penalty here:

- “(c) confiscation and forfeiture of—
 - (i) any item that contains a tobacco advertising and promotion prohibited under this Act;”

We want to find out exactly how far are you prepared to go with respect to confiscation of advertising and promotion of tobacco products prohibited under this Act. Because we have movies; we have the film industry; we have access to foreign films; we have access to local films, and so on and in many films, you

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have the leading figures promoting smoking. In fact, in New Zealand, they did studies and they found that a lot of the influence on young persons' smoking came from their heroes and idols in the film industry. So are you going to ban films that portray cigarette smoking and so on? Because this is what you are saying here, any publication in terms of tobacco advertising and promotion.

So you have to ban films; you have to sift through all the films now; all the DVDs; the sidewalk DVDs and so on. You have to sift through all those things for promotion of tobacco advertising and promotion? That is what you are saying that you are going to have to do? I wish this Government luck.

The reality is—the stark reality is that the problems of addiction [*Interruption*] The reality is that the stark problems of addiction are not going to be satisfactorily solved by means of criminalizing the addict, which is what this Bill effectively does. It is not going to be solved by making half the population criminals because they inadvertently display a lighted cigarette in public. That is nonsense. What you have to do is to deal with the issue that the study conveyed, the issue of educational material and getting at young children before they even think about smoking, and give them the information because, clearly, the studies show that they do not have that information.

It is a reality that smoking is an addiction that cannot be cured by fines and incarceration. So while you are concerned, purportedly, about the health of the population, and so on, what you are effectively doing is using heavy fines, extracting moneys from addicts who are hooked on this particular drug and they need help. They need medical attention; they need the patches; they need the cessation programmes and so on. But apart from doing that, you are using the opportunity to extract wealth from them. I do not believe that is something that is by-the-way because of something that the Minister said in his presentation. This is what the Minister said:

"In short, tobacco is extremely expensive to the health care system. Fortunately, simultaneously enacting Tobacco Control legislation to reduce smoking rates and reworking tobacco taxation measures as the Government has done in this fiscal year, can effectively manage the financial burden imposed by the smoking habit."

So the Minister said it very clearly, that he is going to extract money from addicts and people who are addicted to tobacco smoke, to assist in the whole question of providing health care. Therefore, it seems to us that the real intent and objective behind this Bill, is, to quote the Minister, "manage the financial

burden." This is what they want to do, manage the financial burden; extract more money from the population; criminalize persons; extract millions of dollars in order to fill the coffers of this Government. I have not said that; it is the Minister who said that. The Minister said the purpose and intent of this Bill is to manage the financial burden. This is exactly what it means in plain, simple English.

So we have a serious problem with this Bill, increased layers of bureaucracy. We do not know how the unit will fit into the established medical care and the medical system and the Regional Health Authorities. We have a serious problem with respect to the lack of draft regulations, because serious and heavy penalties and fines are to be imposed in this Bill, based on the regulations and we are passing this, flying blind. We do not know what the regulations are and we have a serious objection to that. We are not here to rubber-stamp anything by the Minister of Health; we are here to protect the interest of the people of this country and, therefore, we need to know what the regulations are before we can even consider this Bill before us.

If we do not see the regulations, we will have to initiate action which will force this Government to bring the regulations to this Parliament so that we can properly understand the interest of the people of this country and defend the interest of the people in this country and the Constitution of this country.

I thank you very much. [*Desk thumping*]

Sen. Basharat Ali: Thank you, Mr. President. I join this debate here—I was present for the first day and I was absent for the second day, so I am glad for the opportunity, in fact, because my notes are still relevant to what we are doing today.

I had some reservations about the true purpose of the Bill before us. I had that reservation from the very beginning and I believe—I do not like to say that I have any ulterior motive to what the Government and the hon. Minister is trying to do, but let me say also that I am a converted ex-smoker. I went from 1980 to now; 29 years as of this month. [*Desk thumping*] I went from two packs to zero; cold turkey. So I understand what tobacco is and the effect, the pleasures and the pain. That is what caused me to stop, the pain of smoking.

I am going back to try and find out why these two Tobacco Bills have come to us and I refer to the Explanatory Note. I will not state the long title of this Bill; I think you did, Mr. President, and I have listed on my document the eight objectives in the long title. But when you go to the Explanatory Note, I think that

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gives a clearer indication of what this Bill is all about. Let me read from the Explanatory Note to this Bill. I know it is not part of the Bill but it says what is the intent:

"The purpose of the Tobacco Control Bill 2009 (the Bill) is to implement the requirements contained in the World Health Organization Framework Convention on Tobacco Control which Trinidad and Tobago signed on 27th August, 2003 and ratified on 19th August, 2004 and which entered into force on 27th February, 2005."

I have this suspicion that all that we are doing here is to fulfil the requirements, although I believe that the framework, as far as I can read, gives a lot of latitude to anybody who has either ratified or acceded or accepted the framework convention. In fact, the big party in this, the United States has not even ratified it. They have signed it but they have not ratified it.

So my feeling is that we are doing—and this is our second attempt at doing it; I go back to one year ago—in fact, one day less one year ago—on November 18, 2008 when the first Tobacco Control Bill was presented by the Minister.

2.45 p.m.

Let me quote what he said on that occasion. This is why I have a suspicion about the importance of the framework convention versus what is required to keep the health and welfare of our people. I read from *Hansard*:

"Mr. Vice-President, I would like to take this opportunity to thank and congratulate the drafting team and all those who contributed to this Bill, including the Ministry of Health representatives, the Office of the Chief Parliamentary Counsel, the National Tobacco Control Committee and indeed the LRC.

It is with a great sense of pride and humility that I inform this honourable Senate that I have just been notified by the Ministry of Health's representative who is, as we speak, at the WHO Framework Convention on Tobacco Control in Durban, South Africa, that WHO has reviewed our Tobacco Control Bill, has found it to be truly reflective of the FCTC, has praised it as a globally top ranked piece of legislation and is now actually recommending it as model legislation to be used in other countries. [*Desk thumping*]"

The *Hansard* says "[*Desk thumping*]" I presume it is on that side the desk was being thumped. This Bill of 2008 was thrashed by all of us here. My friend here says it was a disaster. It was thrashed at that time in November and it was withdrawn. Let us face it. It was withdrawn because they knew it would not pass muster.

We have one year later this Bill before us and I think that we are still having many problems. It has been watered down but whether or not it is still draconian remains the question. I believe that the next framework convention will be in one year's time from November 15—20, 2010, in Uruguay. I am sure that the hon. Minister will like to be able to go to that convention and say how well Trinidad and Tobago has done in terms of promoting the work of the convention. As I said, convention does not tell you what to do. There is a big preamble and all the recognition, et cetera, but now you can look at the guidelines. The guidelines always start by saying subject to your constitution, et cetera, these are the things to look at.

We choose a way of having to deprive citizens of their rights under our Constitution in order to promote the tobacco control. This is why I am saying that in one year's time November 15—20, the hon. Minister will have a document, hopefully and he can go to the framework convention in Uruguay. I am not saying that that is the motive behind why we are doing this. I do know that it has taken precedence over a lot of other matters. With prorogation due in one month's time or less, I suppose, I do not know whether it would get through then or not again lapse. The hon. Minister would like to say something to me.

Sen. Narace: Thank you for being so gracious as to allow me to bring some assistance to this argument. I have never attended any of those meetings. I do not plan to attend it next year and that is not the basis for this document.

Sen. B. Ali: Thank you for reassuring us, hon. Minister. Seeing that last year you were so intent in having model legislation from Trinidad and Tobago, I do not know what you are going to say now when we pass the Tobacco Bill which would become an Act. That would be another story. I do not know what you are going to tell the framework convention having said that this was model legislation from Trinidad and Tobago. My colleague says "muddle" but I did not say so.

I will continue then to look at what we have before us. I have some comments. Since I was not here last week I took the opportunity of preparing some amendments which I would like to place before the Senate whenever the occasion arises. They are not comprehensive but they reflect some of my views on some of the matters which are before us. I will go through some of the clauses and refer to what I may want in my amendment which I may propose.

The first amendments I have are to the Preamble. I know that is usually done at the end of the exercise, but I put the honourable Senate on notice that I am proposing some amendments which are reflected in the Preamble. I have two or

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three amendments to the Preamble which we would do in due course. My colleague, Sen. Dana Seetahal SC raised the subject on the last occasion of the definition of "priority population". I do not understand after all this, what this definition is doing here.

This definition "priority population" means any population group that is or traditionally has been excluded from tobacco control planning, balances, decision making or the benefits of tobacco control programmes or interventions.

I do not see any category of people in Trinidad and Tobago who fits into this category of priority population. The framework convention does give much emphasis to the indigenous people. The framework convention says:

“Deeply concerned about the high levels of smoking and other forms of tobacco consumption by indigenous people.”

That may be one of the reasons the framework convention addresses the subject of tobacco control. It is recognized in the United States and Canada, for example, that there is a so-called priority population. My colleague here referred to it briefly when we first discussed this Bill and mentioned the matter which I had raised then. That was: Who are priority populations? We went back to Californian law in a document called Communities of Excellence, Module III related to tobacco control.

The first point was alarmingly high rates of smoking occur among several of California's demographic group including African Americans, American Indians and Alaska natives, some Asian and Pacific islanders subgroups, Hispanic/Latino men and the lesbian/gay/bisexual and transgender community.

It goes on to say what percentage of the population of California comes under this. The list in this document is:

Population	Percentage
African Americans	6.4
American Indians and Alaska natives	1
Asian and Pacific islanders	11.1
Hispanics/Latino	32.4
Lesbian/gay/bisexual and transsexual gender community	2.7

If you add those it comes to more than 50 per cent of the population of California. The minority in fact is the majority. This is what has prompted them to go for this. We do not have a similar situation. We have a very small indigenous population that is in Arima. I know that they have their rituals. Last year when Lydians did Hiawatha in opera, the Carib/Arawak Indians from Arima did a little performance before the actual Hiawatha opera was done. I do not think that we have that category.

As a result, I am proposing that we delete reference to that definition in the Preamble which had been diluted in our interpretation clause 6(c). One clause where it shows up I will look at it when we come to it. I do not think that it makes any sense to any of us. How it got in this Bill, I do not know. I do not want to ask the hon. Minister how it got in there. He should ask his drafting people how it got there. My colleague here says they copied it. I do not know.

I was talking about indigenous people, but they are specially treated in countries like Canada and the United States. In Canada, they are almost treated as a religious people. They have laws that cater for all the native Indians who presumably, are the indigenous people. The same happens for the United States. For example, in America people who live on the reserve are free to smoke, sell cigarettes and buy cigarettes without tax and everything else. This framework convention cannot address that. We are putting laws which make everything very, very difficult for everybody else. That is why I am saying that we need to delete any reference to priority population because we do not have any. If they are a minority population as the blacks and Hispanics are in America, we would not wish to be associated with that in our country.

In looking at this Bill, I looked at some of the other places where they have tobacco control and they take into account their humanity. They are humane in their dealing. In Canada and the UK there are exceptions with respect to no smoking in enclosed workplaces.

Sen. Jeremie SC: Excuse me, Senator. When you speak of Canada, to which particular legislation are you referring? There is a piece of legislation to which I will refer dated 21 October 2009. I wanted to know if that is the one to which you are referring so that we could be *ad idem*.

Sen. B. Ali: I am not that up to date. I am not a lawyer. I know that they have federal law and provincial law in Canada. Which one it is, I do not know. They do make provisions. I am talking about the United Kingdom too. There are provisions for older persons in homes. We have not given any special

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consideration to people. Old people who are in homes and even prisons are allowed to smoke cigarettes. We need to look at that carefully. Take for example, old people who are in homes, are you going to deprive them in their last years of having a cigarette? What are you trying to do? Save their lives?

3.00 p.m.

My colleague says you might be hurrying up the process. I do not think that will. Those are the things—I have not seen it anywhere in the Bill; any provision for these kinds of people. I do not know for prisoners. If someone is on Death Row, are you going to tell him he should not smoke a cigarette? He knows that he is going to be executed sometime or the other. You are not trying to save his life.

My colleague here says that “medicinal marijuana” as they call it, is allowed in the United States and places like that. We used to have it. We used to have ganja smoking in Trinidad. I remember when I was a little boy, my grandfather would send me to the little Chinese shop to buy ganja, which he would put in his chillum and smoke. That was nothing. I do not know how he did it. I was a little boy then. I was very small, but he would still send me to the Chinese shop around the corner to buy the stuff. He was never imprisoned. He died a happy old man and I hope to do the same thing; to die a happy old man.

Going further into the Bill, I will not touch on everything, I think a lot was said about other matters. I want to look at clause 5, which is a very important one, where the Minister establishes a unit within the Ministry, which has all the responsibilities as listed in Part II under “Administrative”. I am aware that within organizational structures in ministries there is something called “a Unit”, but it is not established by law in most cases. Here it is established by law and nobody says what it is. It is a unit and it has responsibilities and nobody says what it is. Up till when I first read about it, the only entity called “The Unit” was a television show on CBS in the United States. That has come to us just as we are doing this Bill. On Thursday, November 12, there was something called “The Unit” in a full page in the *Trinidad Guardian*. The Unit is an action drama that follows a covert team of Special Forces operatives as they risk their lives in undercover missions around the globe, while their families maintain the home and protecting their husbands’ secrets. That is the only unit. This is a series that ran for four years. I followed a lot of them on television and now it has come to—I am not going to give—the *Trinidad Guardian*, so you should know which station is running it. That is why I have asked the question: What is this unit? In the absence of any information on it, I chose to just recognize it under clause 5. What is written, call that clause 5(1) and introduce a clause 5(2) which would have (a) and (b):

- (a) The Unit shall be headed by a Director appointed by the Minister who shall be responsible to the Permanent Secretary of the Ministry; and
- (b) The Unit shall be provided with adequate staff with requisite qualifications and experience for the discharge of its functions.

At least that gives you an indication as to what the structure is going to be and how the responsibilities are. Everybody was assuming that the Minister would be responsible for the unit and the unit will be reporting to him. It is just like he being the only one who can sign licences for tobacco, et cetera. If that is so, the hon. Minister, who is a busy man and will always be a busy man, is doing a lot of micromanagement. I am just putting this in, to recognize that we need to have something with respect to staff. After all, there are budgetary requirements for a unit like this. That is one of my proposals for an amendment.

With respect to clause 6(2)(b), I have already said to delete the matter of priority population. Clause 6(2)(b) says:

“develop evidence-based educational programmes and materials appropriate to the population at large and to priority populations;”

In my document, which I am giving out, I am simply saying delete “and to priority populations”.

I seem to have a comment on clause 12(2), which I would like to go through. I thought the debate was finished and we were going to committee stage today, so I am well unprepared. Under clause 12(2), this one has been addressed by many persons here, and that relates to no smoking areas and the question of smoking within certain prescribed areas like schools and whatnot.

“(2) Notwithstanding subsection (1)”—which is about smoking in enclosed spaces, et cetera—“no person shall smoke within fifteen metres of any place that caters primarily to children, such as schools, children’s playgrounds and amusement parks.”

I have been looking at this and the first day this Bill was debated here, I had gone from my home to here and stopped or slowed down at three schools. The first one was La Seiva Government School. Just looking across the road, you can see a house abutting on the school. There is no way that could be anywhere near 15 metres. Going down further, I went, on the same side of the road, to Blackman’s Private School. It was originally a big residence and once again there are residences abutting on either side of the road and at the back.

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Finally, I had to stop at the traffic light at Long Circular Road, Boissiere Village RC School. If you go there, it is the same problem, on three sides almost, that school is surrounded by residences. That whole section there is not applicable. It could not be. I am proposing that in fact we delete it, because no one can impose that on people. I am sure I am going to get a lot of support on that one. I listened to my colleague while I was in bed last week. I know she spoke of it, and my friend Sen. Ramkhelawan. Let us not put things into law which we know cannot be implemented. What are you going to break down, the school or the person's house? You have to decide that; one out of the two. Both are there legally, presumably. These are old residences. I present that as one item to be deleted. One can see how it will go.

I think my friend, Sen. Subhas Ramkehlawan was talking about the guy who was not thinking and walked past a school and got stopped, because he is within 15 metres. A lot of Members on the other side did not know how much is 15 metres. I believe the metrology specialist, the hon. Minister in the Ministry of Finance, knows very well how long 15 meters is. He would look at his phone book. It is about 48 feet for those who do not know. It is 49.7 feet; 15 times 3.29 will give you that. I did speak about that before. That, I am suggesting, should be deleted.

Clause 19(2)(b) is the next one. Looking at clause 19(2)(b), this is the one that says:

“Notwithstanding subsection (1), a person may advertise a tobacco product by information advertising or brand-preference advertising by way of—

- (a) a publication that is provided by mail...
- (b) a publication that has an adult readership of not less than eighty-five per cent; and”

How are we going to determine what adult population has over 85 per cent? Is this published circulation as they do in the United States? What is it going to be, *Playboy*, *Playgirl*, *Penthouse*, *Cosmopolitan* and *Oprah*? Those are the magazines that some adults read. How do you know that the readership is 85 per cent adult? If you can say how you are doing it, then fine, I do not have any problem with it. You cannot say not less than 85 per cent, unless you quote where you are getting the authority or the data for that.

Going on, I went back to clause 11(2)(d) on the question of these quarterly reports which the suppliers or manufacturers and importers are supposed to present every quarter. That itself is onerous. When we look at (2)(d):

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

- (a) import and export;
- (b) business sales, marketing and distribution;
- (c) new products or brands;
- (d) constituents, additives, and of toxic constituents and additives in smoke, expressed in their individual concentrations...”

I am not sure what that means. That must be a typo. Maybe “of” should not be there.

“and as a ratio to nicotine;”

This has flabbergasted me, really, especially as in the Preamble we are talking about cancer. There is no mention about tar. That is what you should be looking at; the tar content. That is what causes cancer. If you go to nicotine, which is an additive substance, I thought we were trying to reduce illnesses such as lung cancer, which is in the Preamble to the Bill. That is something that needs to be looked at. I just identified clause 11(2)(d). It is unclear, it is onerous and does not address the tar content. Anybody who is interested in tobacco smoking will know that tobacco tar content is one of the —that is why some of them publish low tar, et cetera, because they know that is a problem. We are not allowed to have a package which says “low tar” or “low nicotine”.

3.15 p.m.

So, once again, this is matter the hon. Minister needs to clarify. I have a chemical background, but the amount of additives that you are going to have there, I do not know where you are going to put them, and I do not know whether you will have all that information. To do it every quarter, I think, the tobacco company will be spending more time preparing reports for the hon. Minister than trying to sell their products. Maybe that is the intent. *[Laughter]* I have spoken about clause 19(2)(b) about the 85 per cent readership, but I had to go back there somehow or the other.

Clause 25 says:

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

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Mr. President, I wonder whether we know how many things we are talking about there. A little 10-pack of cigarettes will need an addendum to it.

If you look at those things that come with tablets like prescription, et cetera—they are trying to get so much into them—I am sure the chief medical officer who I see there—not so much for the health of the person, but for protection against side effects, et cetera, but the print is getting smaller and smaller. When an old person like me starts looking at it, I cannot even read it. They said it would be prescribed by regulations and, I think, regulations should make life simple and not more complicated for the people, because when they start using it, they do not bother about the regulations. They would not be reading what is on the package anyway.

Mr. President, I go now to clause 30 and it says:

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

Mr. President, whether we like it or not, we are not closing down Witco, they who produce tobacco. If they want to export their product to another country they have do special runs for them. There are many Trinidadians who live in Canada, for example, and if they want to deal over the counter, they must have the instructions also in French. So, what are you going to have then? They cannot sell it in Canada without the labelling in French. So, that is a restraint on trade, as far as I am concerned. The word “exclusively” should not be there.

Mr. President, the same thing with cigars. Cigars come from Cuba or the Netherlands or wherever it is—from Cuba, I do not know what we are going to get, but that is a special one. If you want them in English, I think more often than not you are going to find it in two languages, maybe English and Spanish, but there is a limitation to the amount that you can put on a package. You cannot expect the people to have all these constituents, et cetera on a label. So, we have to be practical. They are in business and so far the tobacco business has been a profitable one in Trinidad and Tobago. I know the last time the figures were quoted as to how much money Witco was making. It was said by the other side, but they did not know how much tax was collected from tobacco. *[Interruption]* These are matters which come to me. So in my view, that question of exclusivity should not be there.

I think I have listened and there are many other matters which came out like the question of how do you handle the little person who sells one cigarette. How do you advertise your products? When I say “advertise” I mean, in a grocery, for

example, you have to tell the people what brands there are and what is the cost. I think that seems to be prohibited in all of this.

My friend, the hon. Minister, is well aware of what supermarkets do. So, the person comes up to the counter and he did not see anything related to it, he would have to ask how much for du Maurier 10s or 20s, Benson and Hedges or Chesterfield or whatever it is, because they did not see any information on it until they get to the counter. Basically, it is like an item that is under the counter. Mr. President, I know when condoms were under the counter, but today you go to any pharmacy and the condoms are displayed. So, that is liberalization. [*The Minister of Health stands*] Give me a chance, I am near finishing now. You are going to have your say in your good time. As I say, I do agree with a lot of what has been involved here.

Finally, one from a point of view of procedure, that is in clause 38, I agree with all those who say that the regulations should be subject to affirmative resolution, if they want us to vote—if they want me to vote for this Bill. I am of the view that whenever you ask for a two-thirds majority, you should not be putting out regulations like that which require a negative resolution, because it gets lost. I know we are here. It happened to me with respect to quarry. I never knew that there was a quarry regulation which was published and made law. I did not realize that until my neighbour, Prof. Kenny, wrote about it and by which time it was too late. The 42 days had already gone. This is why I am saying that when we come to these kinds of regulations, I feel, quite strongly, that they should be by affirmative resolution of the Parliament.

Mr. President, I have gone through my list which I hope will be presented when the Bill reaches the committee stage. It is with the Clerk of the Senate at the moment. As a reformed ex-smoker, I see both sides, and I think people have their rights.

I have to say one thing though and that is we have double standards. Let us look at alcohol. Yesterday, November 16 was the anniversary, four years from Bahrain, and they showed clips of the celebration, and every clip that they showed had people with bottles in their hands—whether it is a Stag or glasses and everything else. I am pretty sure all were alcoholic drinks, because they were all coming out of the bars whether they were in Maraval or in St. James. We tolerate that all and we come so hard against tobacco advertising as being very sexy. What is more sexy than a beer advertisement or a Cognac advertisement or a Johnnie Walker advertisement?

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Last night, I was listening—I am not sure how it came in—to Lord Kitchener’s song, “Drink ah Rum and ah Ponche ah Creamer”, that is what they were singing on the television, and it did end by saying, “Don't drink and drive.” Who listened to that part of it?

Mr. President, I thank the Senate for giving me the opportunity to speak. Thank you. [*Desk thumping*]

Sen. June Melville: Mr. President, thank you for giving me the opportunity to contribute to this debate on the Tobacco Control Bill, 2009. Please allow me to applaud our hard working Minister of Health, Sen. The Hon. Jerry Narace for his passion and, indeed, his determination toward a healthy Trinidad and Tobago. I know it is a very difficult task.

Mr. President, last Friday, I was at the Signal Hill Secondary Comprehensive School, and on passing one of the classrooms, I overheard a discussion going on, and that discussion was about this very Bill. So I enquired from the teacher if I could join, and I just sat and listened attentively. It was really truly amazing to listen to the young people talking about this Bill. Of course, you had those who were for and those who were against. One female student was very vocal. She was very loud with her points and she said that this Bill would save lives. [*Desk thumping*] It would save the lives of young people.

That brings me to the point, during the last session, when hon. Sen. Wade Mark mentioned that if the legislation saves a life, one life, he believes it is a noble Bill. I honestly believe that this Tobacco Control Bill, 2009 is, indeed, noble. There may be some concerns here and there, but it is, indeed, noble.

My contribution this afternoon would be based on the young persons; how they start smoking; related problems and the importance of primary health education. So that we would have young persons who would grow up smoke-free and they would live healthy lives.

Mr. President, we know that a lot of young persons are influenced by their peers; they want to fit in. Sometimes an act such as smoking a cigarette is fashionable. In our environment here in Trinidad and Tobago where we have such low unemployment—even during training programmes, the youths are able to access a little stipend so they have a little money and they can afford to buy cigarettes.

What the Minister of Health, Sen. The Hon. Jerry Narace, is aiming to do is to prevent as many of our young persons from developing a filthy habit and to help them to lead healthy lifestyles so that in the future, who knows, our future

Minister of Health, down the road, would not have to worry about allocating moneys to persons suffering from smoking-related diseases. So, I think it is very important, at this stage, to give young people the information to help them to be smoke-free and to see that in the long run we would have a healthier Trinidad and Tobago.

Mr. President, nicotine that is found in cigarette is a poison. Apparently in some cigarettes you have cyanide. Cyanide is also a poison. Once you start to smoke it is difficult to stop.

3.30 p.m.

I remember—I will go back a little, a few years back to 1970. There I was standing at a bus stop, it was foggy, it was cold and to my amazement, young persons my age group, 14 and 15, were smoking. If they did not have the money they would ask for a threepenny bit to buy a “ciggys” or a “fag”. In those days I thought that smoking was a way of keeping you warm, because how could those young persons be smoking like that? I really thought so. But what was amazing was the stains on their fingers, and these were 14- and 15-year-olds. Stains on their fingers and this is as a result of smoking. But later on when I went into nursing I treated or nursed so many patients with so many smoking related illnesses.

What we are trying to do here and now is to prevent this. We are trying to help our people to be as healthy as possible. As I said before, once you start smoking it is difficult to stop. Even as a young person it is difficult to stop. It is difficult to break what would develop into a very highly addictive situation. You know what happens, Mr. President? As the young person smokes over a period of time the body’s defences are being poisoned. So what you end up with is major illnesses over the long term such as heart disease, stroke, emphysema and bronchitis.

We know at this point in time here in Trinidad and Tobago and around the world we have our concerns with swine flu and asthma, so many young persons, who, as a result of smoking or even passive smoking develop asthma. You know what, “each time a person lights up a cigarette that single cigarette”—and I am quoting from the Internet here—“takes about 5 to 20 minutes off that person's life.”

So what we are trying to do is to save lives. To let young persons live longer and healthier lives. Let me just outline a few of the problems that teen smokers experience: Bad skin, spotty skin, they are pale looking; they are unhealthy and have bad breath. We know smokers' breath. Bad breath! Smokers tend to have a condition called halitosis or persistent—

Sen. Rahman: That is bad breath.

Sen. J. Melville: Yes, I know, persistent bad breath, that is what it is.

Sen. Rahman: So you repeat it twice.

Sen. J. Melville: Yes, persistent bad breath. You had bad smelling clothes and hair. Just imagine, you know, ladies, you walk in the room where there have been smokers, and of course, after having put on your nice perfume and so on you leave with your clothing smelling of cigarette smoke, your hair—and you know how expensive our hairdos are these days. *[Laughter]* You know what, it is very difficult at times to get rid of that smell even though you try and you send it to the laundry and so on, more expense again.

Young persons who smoke will reduce their athletic performance. They cannot perform as well as you would expect, they cannot compete with the non-smokers. They simply cannot compete with their non-smoking peers. There is also a greater risk of injury and a slower healing time as well, so more sports injury—of course, as I mentioned before, increased risk of illnesses. Those persons would have more colds, more flu, bronchitis, pneumonia and the like, and it takes longer to heal and longer to get well.

One of the concerns that I have with regard to smoking is that once the young person starts smoking, even during pregnancy, it is difficult to get that person to stop. As far as they are concerned a “ciggy”, a “fag” or a cigarette is not going to harm their baby because it is not harming them. We know that when you inhale a cigarette the nicotine, the cyanide is carried through the blood stream and it goes directly to your baby. Let me just read a few of the complications that may result as a result of smoking during pregnancy: Of course, lower amount of oxygen to the growing baby, it increases the heart rate—you have tachycardia—it increases chances of miscarriages and stillbirth, increased risk of the baby being born prematurely and low birth weight—I have seen quite a number of those babies as a senior midwife—increased risk of the baby developing respiratory or lung problems, increased problems for both mother and the baby.

So what we are trying to do, again, is to prevent our newborn babies from having these problems. We are trying to save money as well, because when we have such babies in incubators it is extra work, extra money, extra stress for both mother and baby and indeed, for the health care system.

What I am saying is this: we must encourage in our education system what I call, “Primary health care or primary health education” at a very young age. I am saying that pre-schools should no longer be a place where children simply play. It should be a place to learn the essentials of life.

It is well recognized that early learning, of course, is fundamental in determining long-term health. So what we are saying is this, in the primary school environment, let us start our young persons with relevant health education, tell them about the risk—even at that age—of smoking. We could use different ways of telling them this, visual aids, the television, role play, games and active participation. By providing that education at this young age we would find that fewer of our young persons would start smoking. But what is important here is that there must be parental involvement and the persons providing the necessary health education must be suitably qualified to do so, and of course, suitably informed, and from the primary school we go on to the secondary schools. It is at this stage where we know the peer pressure is highest and we continue here with our health education topics against smoking. Not just smoking you know, all the other diseases, whether it is healthy eating habits, physical exercise and so on, but smoking should be a part of this primary and secondary school education system.

The teachers and the persons who would be responsible for this programme could use many different ways of teaching. Teaching is no longer about talk and chalk. It is no longer the boring teacher just standing there and talking to the students. We have the television, and I mentioned the different visual aids and role play. We could even invite persons who have been smokers to come in and speak—just like Sen. Ali said he was a former smoker—to our children. What I am saying is this, if our education system were to adopt a serious health education programme against smoking, I believe that young persons would be influenced in a very positive way. You know what, in certain countries—I have some information here from Liverpool in the United Kingdom—and this is from the Internet—and what it says here is that in Liverpool there are programmes on smoking prevention; programmes where teenagers, young adults and of course older adults are able to access information, even at weekends. They are able to access information on how to prevent smoking, how to stop smoking and to prevent smoking related illnesses.

Two years ago at Crowne Plaza, Heads of Government from various Caribbean countries had a meeting and they emphasized the importance of chronic non-communicable diseases, and of course, anti-smoking legislation was a part of that discussion. This anti-smoking legislation or concerns about smoking is not just in Trinidad and Tobago you know. We have Barbados. The Government there is intent on banning smoking in public. We have other Caribbean countries that are also intent on banning smoking. What our Minister of Health is doing—this is something that we should really applaud. I know there may be some

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concerns and as a good Minister, I am sure he would address some of those concerns, because that is what he is about. What we have to be mindful of is the fact that smoking kills, smoking is expensive to our health care system and smoking is dangerous for our young people. *[Interruption]*

I know diabetes kills, but smoking kills. We are dealing with smoking right now, so let us stick with smoking.

3.45 p.m.

So, I am asking our Senators on the opposite side, to just stop and think about this for a while. Stop and think about it, and give this Bill the support. After the Minister assists you with various amendments here and there, give the support. I remember Sen. Dr. Gopaul-McNicol said that she will support the Bill because it is protecting people in the society from second-hand smoke, and I am hoping that this is genuine. She also mentioned a few of the psychological effects, and she said, "The best strategies are early prevention and education", which I have mentioned briefly.

Again, Sen. Mark's remark is the one I really want to hold him to, when he said it is a noble Bill. It is indeed noble, and I am hoping that at the end of this evening, that the hon. Senators would do justice to the people of Trinidad and Tobago, that they would support this very noble Bill, and in the long run, or let us say 20 years from now, a lot of our young people will say a hearty thank you to the Members of this very Senate.

I thank you, Mr. President. *[Desk thumping]*

Sen. Gail Merhair: Mr. President, I thank you for the opportunity to contribute on the Tobacco Control Bill, 2009. Although we had this Bill before us, this is my first opportunity to contribute to this Bill.

I think first to begin with, the Minister needs to be congratulated for his passion, fortitude and intent, of bringing this Bill before the Senate. I do not think that anyone so far as I have spoken to, both inside this honourable Chamber and outside, would not deny the fact that the tobacco legislation is needed. But when it comes to the content of the Bill, I also have a problem with a couple clauses. I should say that coming out of the private sector and looking at the practical nature of the Bill, I would address my concerns from that viewpoint. Before I begin, however, I would like to congratulate my hon. colleague, Sen. June Melville for her discourse on education, how important education is. Because I think after all, what is needed more than ever to pull this Bill forward is more education, than

legislation. Perhaps, hon. Minister, you can have Sen. June Melville sit on some of your communications to be sent out, because I think she has a full grasp of what is needed in terms of what we need to tell our young people in terms of education, and not really legislation.

Now, the first thing that I would like to do, in response to some of the comments that I have heard here in this honourable place, is that it would seem that a lot of contributions that were made by individuals, deemed the West Indian Tobacco Company in a very negative light. I think that hearing some of the comments, I would like to put something on the record if you would allow me and I quote from a Social Report 2004/2005 done by the West Indian Tobacco Company. I think that we should know that:

"In 2001, the British American Tobacco and the BAT Group, including West Indian Tobacco, signed a global Marketing Agreement known as the International Marketing Standards (IMS). The IMS established a common approach among all signatories, to marketing that seeks to ensure that the promotion and distribution of tobacco products is:

- (a) directed at adult smokers; and
- (b) consistent with the principle of informed adult choice."

The IMS implementation goes on to state that:

"...the West Indian Tobacco ceased all advertising on TV, radio and in the print media, increased the size of Health Warnings beyond that required by law and withdrew brands sponsorship from sport.

In 2004, the West Indian Tobacco added a new dimension by transferring its corporate sponsorship of sport and handing over"—that was a 40-year old sponsorship—"the WITCO Sports Foundation, to a new sponsor."

I want to maintain that the West Indian Tobacco Company has always imposed self-imposed regulations. It is not like the arrangement that happened in the United States. There is no conflict between the cigarette companies and the Government of Trinidad and Tobago. That does not exist. I seem to get from a lot of speakers that there seems to be a conflict, and I did not get that from this report. I would go on to say that the West Indian Tobacco Company has in fact contributed to the sport foundations: cricket, power boat racing, rifle shooting. They have also established the first electronic score board at the Queen's Park Oval, and my favourite of course, I confer with my hon. colleague, Sen. Baptiste-Mc Knight, in that, the ten-time Panorama Championships, bearing the name

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WITCO Despers have been recorded, spanning 1966 to 2000. So I think all in all, WITCO has in fact contributed as a private enterprise, as a corporate company. I think that was important to be said.

Moving on to the Bill, my first problem that I see is that, after the report was presented to the joint select committee appointed to consider and report on a Bill, the Tobacco Bill, 2008, that on point 35, one, Mr. Dugan Singh for D and J Budgetmart in (ii), asked for clarification of a wholesaler in the Bill and to detail the minimum transaction which would define a wholesaler. The notes on the other side said that they agreed that the wholesaler now defined as a means, "a person who sells in large quantities to be retailed by others". The definition of a wholesaler was in fact left out of the definition of the present Bill that I hold in my hand before me.

The next point is that I looked at the definition of a child and the definition of a child means "an individual under the age of 18 years old". Now, in the broader definition in this country, a child can give consent to have sex at the age of 16. But this Bill says that under age 18 you cannot smoke. So is it the intention of the Government, in terms of the inconsistency I am seeing, to say that it is okay to give consensual sex, but it is not okay to smoke a cigarette? I would very much like the hon. Minister in his winding-up to clarify that, because that seems to be a problem that I have. Either we change it to 16, or we move the consenting age up to 18 years old. That will in fact pose a problem when we are trying legislate.

Now in terms of clause 5(c), "designing and disseminating messages for inclusion on tobacco packages", the Ministry of Health—Minister, I am trying to help you here. Through you, Mr. President, I do not think it is necessary, considering that you have such a good and resourceful communication team, I think your Health Ministry can handle clauses 5(c), 6(1), 6(2) of the Bill and I do not see the need for having a new unit having the same responsibilities. I think your very competent staff from the Ministry of Health can handle that, and in the essence of trying to save taxpayers' money, I do not think we need to have two sets of people doing the same thing. In clause 5(b), I would like to suggest that the Service Commission appoint the compliance officer.

In terms of clause 8—now, I think a lot of my colleagues have spoken on clause 8(3), but I would like to let the Minister know that I think that this clause is very dangerous and if you seize tobacco goods, this legislation does not give a time frame for the investigation to be concluded, neither does it give any time frame on which the goods that have been seized are going to be returned. So if you are a business person and you have had your goods seized, it must be done

within a particular time frame, and at least you should know when the investigation is going to be concluded. You cannot hold people's property when you seize it indefinitely, and then we are going to go into all areas of people missing their stuff and so on. That is another issue that I am quite sure was articulated by the Members here.

Clause 10(2) does not give any instructions to appeal, and I think if you are refused a licence, you must in fact have some provision for appeal purposes. You just cannot say, you cannot get a licence. It must have some time frame in which you can appeal. So I think there needs to be guidelines stimulated in terms of the appeal.

I also have a problem with clause 10(3) in the fact that the Minister shall serve as the licensing authority under this Act. Perhaps, I might suggest a tobacco control compliance officer and I think that will be more in line with what it is in terms of being favouritism or being branded as you know—I know, hon. Minister, you have a lot on your plate, so I am also looking after your best interest as well.

In terms of clause 11(1), reports every three months, I think this is cumbersome and most countries that have this legislation do so annually, and I do not think that you want to burden the Ministry with unwanted paperwork and unwanted files.

I am also opposed to clause 11(5) where the information is going to be made public. I think disclosing marketing information and marketing expenditure and strategies that are going to be revealed, I think that is a no-no. I think when you are dealing with business and you are in the private sector, and you come from the private sector, you have an appreciation of understanding why you have to protect certain things in your business. I do not think that should be revealed. The report should not be made public at all, and I think it should be for the benefit of your compliance officer.

Now in terms of clause 12(2), Prohibitions, I would like to quote from an opinion by the Senior Counsel, Russell Martineau, in which he talks about the problem with 12(2) and I would read it, Mr. President, if you allow me. I quote:

"The problem with these provisions is that it is excessive in that it is not limited to 'public' places and could apply to places not accessible to the general public such as private houses. The clause should not include private places and should provide at least for the identification of public places which provide services primarily to children as there are many outdoor places that do not cater primarily for children. The innocent passerby will not know.

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Moreover, the illustration of playgrounds referred to in the clause does not fit properly under the expression 'any place that caters primarily for children'. The dictionary of the English Language, International Edition (1980) defines, 'playground' as 'A ground used for playing games; Space set aside for recreation'. The constitutionality of clause 12(2) is therefore at risk.

Quite apart from the constitutional issues, the attempt to provide for an exception by this clause unnecessarily complicates the clause."

Now, Mr. President, I have a problem with clause 12(3), and I would link it to clause 12(2), where clause 12(3) goes on to state that:

"Where a person contravenes subsection (1) the manager, owner or lessee of the place where the contravention occurred who authorized or acquiesced in the act or who knew or, using due diligence, ought to have known that the commission constituted a contravention, that manager, owner or lessee is deemed to have committed the offence and shall also be held personally liable."

4.00 p.m.

Mr. President, the way I read this clause—let me draw a practical example of where I am located. For some of you who do not know where my office is, it is located next to a Montessori school. I am also situated in front of the El Socorro Taxi Stand. From time to time, those taxi drivers who would like to shade from the sunlight, stand in my car park. They smoke cigarettes, and the school is right next door. Does it mean that if I do not report them to the police or I do not go out and tell them to stop smoking, that I am going to be held accountable for their actions, because they are standing in my car park to shade? Am I responsible?

You see the pint size of me, so you could well imagine me going outside in the car park to tell some of these taxi drivers—I have a problem with them parking in front my gateway and that in itself is a whole trouble sometimes. You are looking for some sort of conflict there.

Let me draw another reference. I will draw the hon. Minister of National Security, Sen. Joseph's, attention in this. Last week, after we debated this Bill, a van stopped in front of my gateway. You know that clause in the regulations that says no parking in front of a driveway? I do not know how to reiterate that more to the public, because people always park in front of the driveway. Apparently that is not a regulation people adhere to sometimes. So a vehicle was parked there, a van, and I called the substation across the road from me. Again, for those of you

who know where my office is, it is walking distance away; you could watch across the road and probably hail the police out. I called the substation for assistance and the police officer told me that they did not have the resources to send somebody to move the vehicles from my driveway. So if I see somebody smoking and I happen to call the police, because I feel I am not in a position to go and tell this person, "Please do not smoke in my yard; it is against the law; there is a Montessori school right next door; it is 15 metres." What is going to be my predicament when the police do not come? Who is going to record that I called the police? *[Interruption]*

I have to call an authorizing officer. So if I call an authorizing officer, how am I going to know who this authorizing officer is? How can I reach this authorizing officer? Are you going to have an authorization officer hotline? Minister, I understand your intention; it is well intentioned, I can assure you, but it causes a problem when we try to legislate the practicality of the thing.

It makes no sense that you have legislation and it cannot be enforced. It makes no sense, when you look at the practicality of the thing, that it is just not going anywhere.

I can only make reference to San Juan. I do not know how many of you know the triangle where there are popular chutney shows and so on. There is an Aranguet school right across the road from the triangle. I went to the University of the West Indies the other day, and there is a social members' club right across the road from the university. I am looking at what constitutes a private club. What do we do in terms of a school? What do we do with existing places? Are we going to tell these people that they need to close down?

Another point I would link to this as well, hon. Minister, is that I always tend, from time to time, because I think it is a worthy cause, to support school fetes around carnival time. I am sure a lot of you all do. Does it mean that for all these all inclusive fetes that all these schools hold, they would have to put "No Smoking" on their tickets? Does it mean that if somebody is being denied the right to smoke, he or she would not go to the fete and the school would lose revenue? All these are things that came to my mind in reading the legislation. Hon. Minister, I am articulating my views.

In terms of clause 15:

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

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I found this out only recently; sometimes I think that I am little bit not into what is happening. Do you know that when people have those shoes thrown over T&TEC lines it signifies something, they are advertising something? For those of you who do not know, apparently it is advertising a drug block. So is it okay that these people are allowed to advertise, and you have a legitimate company that is paying taxes not being allowed to advertise? Minister, we need to get rid of those shoes on those lines, because they are advertising as well. You need to go and remove them.

Here you have a ban on displays. I am looking at commercial free speech here. I think that the Government really needs to think over this point, because when you look at it, you yourself would be losing revenue. When you have a ban on display, first to begin with, it is unconstitutional, because it is telling me that I do not have the right to choose; I do not have the right to choose what I would like to smoke. It totally breaches the manufacturer's right to intellectual property.

This ban would only facilitate trade going under the counter. Let us face it, you are not going to stop people who smoke from smoking overnight. You have to understand the history of smoking in Trinidad and Tobago. We were a former British colony—we have CHOGM next week—tobacco and sugar were two primary things that we planted, and this came back. The historical idea of smoking is there; it is in people's psyche; it is embedded in our culture. I understand that we need to protect our children, but Minister, again, education is more important than legislation.

When this goes under the counter, what is going to happen? People would not have a choice; they would not know which brand to ask for. Contraband cigarettes are going to come and they are going to be sold in packages. It is going to come into the country and you would not even know. You are going to lose taxes, as is happening in Canada. They are losing \$2.5 million a year because of contraband. It comes into the country unknowing to you and you cannot control that. We have seen in reports that WITCO, for the past five years, has contributed \$225 million in taxes. So we need to understand, weigh the cost and have an appreciation of what is happening.

Research has also shown that prohibition of displays is not the only solution for youth smoking. If the cigarettes are not stored properly, then it is going to have contamination and people could, in fact, get sicker than they are. I think that this legislation should be done in such a way where you ask the cigarette company to put or enforce certain literature to present itself. I did, in fact, go to a supermarket over the weekend and I saw where the West Indian Tobacco

Company had a little poster saying that they do not sell cigarettes to persons under 18 years. We need to look at the display ban. It is going to restrict competition against the competing brands.

People would not be able to distinguish one product from another. People are not going to be able to see the product. I think the environment of pushing it under the counter would lead to something that you are not going to want, that is, that environment would lead to a low priced cigarette, because you are pushing it under the counter. So nobody would know what it is packaged in. Your messages are not going to be known, because if you control the cigarette environment, then you could control the packaging, you could tell them what to put on the packages. But when it comes in bags and people just go and buy it, you cannot control that. It is not going to be controlled.

Clause 16(1):

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

I do not know how this could possibly be enforceable, because when you go on the Internet and use your credit card to buy something, it is delivered, through the relevant courier service, directly to your doorstep. Are you now going to put in legislation where the courier companies have to open your packages to make sure what is in it is not cigarettes? I do not know. This is just not practical.

In terms of clause 18, I am against the imprisonment part of the Bill. I think that is a little too harsh and it is not justifiable in terms of other acts that have been committed.

In terms of clause 20(1), it says:

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

I think this is too large. The objective of the Bill is to promote a healthier lifestyle, not to restrict the legitimate trade of tobacco. Also remember that as business people and manufacturers, people have the right to give trade discounts to their wholesalers. I do not think the Government should get involved in any arrangement that is between the wholesaler and the manufacturer. That is their right. You monitor it from the consumers, because you are, in fact, trying to

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protect the customers and not the business to business relationship. I think that is going a little too far. There is absolutely no reason why the Government should prohibit the incentives of promotion and free supply of tobacco products. It prohibits the relationship between the manufacturer and the wholesaler/retailer.

I end with a few recommendations. I recommend that we remove the ban on the point of sale display. We see a practical definition of the wholesaler and we provide a practical approach to licensing. I am particularly concerned with appeals. I would like to see the removal of imprisonment as a penalty. I understand full well what the intention of the Government is. I understand what the intention is of the Minister, but let us be careful that in passing this legislation we do not set a precedent, that we further continue to bring legislation that might infringe on people's right to choose.

We are still a democracy and people need to be given that right to choose. When we start bringing legislation that goes into people's right to choose, then we are looking at setting a precedent for other pieces of legislation that could very well infringe on that right.

I think education is the key in this legislation. I would have liked to see more emphasis on education towards the young people and the persons who are given incentives to smoke by peer groups, by their organization, by their friends, by their family.

I would have liked to see more things coming in to allow people to stop smoking. Even if they do smoke that they stop at some point in time after a number of years. But I strongly suggest that whatever we put in legislation does not infringe on the rights of individuals of Trinidad and Tobago and the rights of people and businesses to earn a living and contribute to the economy and the development of Trinidad and Tobago.

Mr. President, I thank you.

4.15 p.m.

The Attorney General (Sen. The Hon. John Jeremie SC): Mr. President, thank you for the opportunity to contribute to this important debate before this House this afternoon.

Now I am sad, I do not think that I was here for the first day of the debate so I joined the debate late but, of course, there is *Hansard* and I have had the opportunity to look at the *Hansard* and particularly to that of my friend Sen. Mark which I will return to in due course.

But what I would like to begin by pointing out this afternoon is that unlike the past couple weeks—because some link was attempted to be made between the legislation which is before the House this afternoon and the one which we have passed in the past couple weeks all of which required a special majority.

Mr. President, the analogy is not accurate; [*Interruption*] the pattern is not accurate. The analogy, the pattern—whatever my friend on the front bench prefers to use—is not accurate and I will tell you why. There is this afternoon, no compulsion on the Government to bring this legislation before this Senate. In the case of the Financial Obligation Regulations, the Financial Intelligence Unit Bill, and in the case of the Proceeds of Crime Act we were under compulsion to bring the legislation before the House and that compulsion stemmed from the IMF, the World Bank and their satellite institution, the Financial Action Task Force and the Criminal Financial Action Task Force.

In a real sense the legislation which is before the Senate this afternoon seeks to strike a very difficult balance, but it is one which is necessary in the interest of the people of Trinidad and Tobago and to the credit of the Minister of Health because this legislation has been bandied around for some time. I recall quite clearly when the framework was adopted in 2005, the then Minister of Health speaking of it and doing nothing. What you have to understand, and with due regard to the contribution which the learned Sen. Gail Merhair just concluded, there are powerful interests at work in relation to the tobacco industry. [*Desk thumping*] I call it the tobacco complex because it is as powerful as the complex which drives the war machines in certain parts of this—

Mr. President, I do not say that lightly. A few years ago I taught at the University of the West Indies and I followed the career patterns of my students, one of whom ended up—I would not describe the institution in detail—in a tobacco company in Trinidad and Tobago. Her sole purpose, her primary purpose given—this was a directive given to her by her superiors—was to monitor and track what was going on in terms of domestic legislative activity. She knew at the time I was the Attorney General and she wanted to know what was going on with respect to anti-tobacco legislation and that was a directive given to her by her superiors.

She could have done a number of things; she is a lawyer, she is quite capable of giving legal advice on employment matters and the myriad of day-to-day problems which will affront an institution, but one of her primary functions was to track the danger which this type of legislation would bring to her business and that is important. For years before this legislation would come to this House, there

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have been interest groups on the outside which have been preparing to oppose what we are doing here today. I make that point; I do not include the integrity of any Senator. I made the point to say that this is difficult legislation which must come, by definition in a hostile environment because there are powerful interests in it.

Sen. Rahman: A great amount of implications are cast upon—

Sen. Narace: What section, what Standing Order number?

Sen. Rahman: I strongly feel that implications have been cast on all the Members that we are somewhat connected to the tobacco industry and I resent it.

Mr. President: I have heard nothing of the kind.

Sen. The Hon. J. Jeremie SC: Thank you for your protection, Mr. President, as a matter of fact, I thought I would clear up the point to say this is contentious legislation which is precisely the point that Sen. Prof. Deosaran made, and no one raised then the point of order in respect to what he was saying, but I leave that for another day.

Mr. President, the legislation before us goes in genesis with the WHO Framework Convention on tobacco control which is the world's first Public Health Treaty. In International Law, treaties govern relations between states. They treat with matters like law of the seas, the exploitation of natural resources and the issue which is in vogue these days is climate change. So in international law, treaties really deal with state-to-state relations, the question which would necessarily arise is: Why is there a day for Public Health Treaty which is an important question.

The answer is because we, as a world recognized in 2005 that tobacco use was contributing to a public health emergency. In fact, the Convention in its preamble describes itself as responding to precisely that fact, a public health emergency. It describes itself as a coordinated response to combating a tobacco epidemic, that is why you have a Treaty which would normally be dealing with matters of state-to-state relations going into a matter involving public health and the rights of individual citizens within states. It is a well-recognized document that international law does not confer rights on individuals and does not seek to deal with individuals; it seeks to control state-to-state relations.

Mr. President, the language of the convention—and this goes back to the point which I made earlier that we are here not under duress but because of an initiative brought by the distinguished Minister of Health.

Sen. Rahman: [*Inaudible*]

Sen. The Hon. J. Jeremie SC: Mr. President, I will ignore that comment. The point is that we are not here under duress, no one is twisting our arms, and this is a welcome initiative of the Minister of Health. If you look at the language of the framework convention it says recalling resolutions, WHO 4970 determine to protect the present or future generations from tobacco consumption and exposure to tobacco smoke noting with profound concern the explanation of smoking and other forms of tobacco use worldwide, acknowledging the appreciation of the report of the chair convinced emphasizing, adopts ...decides, further decides, resolves but there is no compulsion, no blacklist.

As a matter fact, Mr. President—

[*Sen. Oudit rises*]

When I finish the point, I will sit and give way and I remind you that you did not reciprocate when I attempted to intervene when you were speaking, that is all. But I will sit; just give me time to finish my point.

Sen. Oudit: Before we finish for tea so it will be fresh.

Sen. The Hon. J. Jeremie SC: Why are you putting a burden on me before we finish for tea? It concludes that the director general is making a request in terms of 1, 2, 3, 4 and 5 that there is no compulsion whatever; this is a domestic matter driven by the Minister of Health and properly so. I give way to my friend, Sen. Oudit.

Sen. Oudit: Thank you. I would just like to read to you the Explanatory Note of the Bill and it is very clear you are stating that there is no compulsion on the part of the Ministry of Health. The Bill is very clear and it says it is:

“...to implement the requirements contained in the World Health Organization Framework Convention on Tobacco Control which Trinidad and Tobago signed on 27th August, 2003 and ratified on 19th August, 2004 and entered into force on 27th February 2005.”

So I think it is not so accurate to say that because it is clearly stated here why this Bill was introduced.

Sen. The Hon. J. Jeremie SC: Mr. President, I use compulsion in the normal sense of the word. There is no big stick behind us, there is no blacklist, whatever the preamble to the Bill states in terms of the requirements of the WHO Framework whether they—with the Ministry of Health and their draftsmen and say you use the wrong word it should not be a requirement it should be a

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recommendation. That is not my concern. There is no compulsion under international law for us to be here this afternoon; we are here on the initiative of the Minister of Health and driven entirely by domestic concerns. Yes, we wish to bring ourselves into conformity with international best practice, but there is no compulsion.

Mr. President, I will pause at this moment to return after tea.

Mr. President: We will take the tea break at this time. The sitting is suspended until 5.00 p.m.

4.28 p.m.: *Sitting suspended.*

5.00 p.m.: *Sitting resumed.*

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

Sen. The Hon. J. Jeremie SC: Mr. Vice-President, before we broke I was attempting to make the point that the framework convention was not mandatory in terms. I think that I had done that by looking at the language and pointing out the difference between the exercise on which we are embarked this afternoon and the exercise which we have been embarked on over the past couple weeks in relation to the FATF mandates.

That provides the context that what we are about this afternoon is not compulsory, neither is it government by “vaps” as I have heard from one of the Senators—it is an unfortunate remark—neither are we embarked on a road of good intentions which leads to hell or to purgatory. That is not the course that the Government has set itself. What the Government is struggling with and what the Minister of Health must be commended on is an initiative which is designed to arrest a very real and present danger in the public health system of Trinidad and Tobago.

Difficult choices is what Government is all about and what we are embarked on this afternoon is exactly that. Are we going to allow the status quo to remain? By that I mean, are we going to allow the present conditions which have existed from time immemorial—Sen. Mark was quite gleeful when he showed me that Tobago was once “Tobaco”. That was the name of the country 300 or 400 years ago when science was not what it is today. Today we know that when we smoke, not only are the smokers themselves affected, but those who suffer the effects of the second-hand smoke are also affected.

Lest we forget—and I was making this point before we broke and, unfortunately, I was interrupted by Sen. Rahman on a "point of order" that I was imputing improper motives by simply putting the cards on the table and those cards are that the stakes are high and that there is an enemy that the Government is faced with, a very powerful enemy which is determined to achieve its objective and I dare say, by colourable means.

I will explain that. In the United States you might recall that some time ago there was a documentary run by CBS, *60 Minutes*. It was called *The Insider*, and in the course of a series of interviews a gentleman who was key to the tobacco complex, as I call it, gave out insights as to how the tobacco industry actually knew that their product was dangerous and set out on a course of action over a period of years to conceal that fact from the population at large. Not only did they do that, but they also set out on a deliberate course to encourage young people to be the recruits to replace the older folks who were dying off as a consequence of the diseases caused by smoking and to which my friend, the Minister of Health, would obviously refer in the course of his winding up.

There are provisions in the Bill which speak indirectly to some of the practices of these organizations. You might recall that there was a book written called *Barbarians at the Gate* and that book detailed the attempt to merge RJR Reynolds with Nabisco Foods. The thinking at the time was that the tobacco company was attempting to go into areas not generally known to be dangerous to soften their image and to, perhaps, gain some sort of benefit in terms of the very dangerous products that they were selling. So for them it was a matter of survival.

Now my remit is not to articulate a comprehensive defence of the Bill in terms of the underlying policy considerations—I will leave that to my friend, the distinguished Minister of Health. My remit is to explore the vagaries of the Bill in terms of the Constitution and in so doing what I will do is refer to the comments of the contributions of the Independent Bench, particularly, because some very serious concerns were raised by the Independent Senators which I think can all be addressed.

As is my practice, what I have done is to turn to *Hansard* and I started with Sen. Prof. Deosaran. Sen. Prof. Deosaran started off by saying that:

"This legislation is, to me, inevitably imperfect..."

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That is what he said. I want you to mark those words. He said:

"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 (else)."

Now, something struck me about what Sen. Prof. Deosaran said and I would like to put on the record that I agree with what Sen. Prof. Deosaran said. You see, there is a document produced by PAHO which describes itself as: *Developing Legislation for Tobacco Control, Template and Guidelines*. Now, in this document—and I am sure that Sen. Prof. Deosaran did not see this, but his comments triggered something in my recollection and I went back to the notes which I had prepared. On page 8 of the document under the heading: "Legislation as an Evolving Process", hear what the authors of the PAHO study say:

"The flexible regulatory structure of the template speaks to the need to view the development of tobacco legislation as an evolving process. For those countries that are unable to implement all of the proposals simultaneously, a flexible legislative structure allows for incremental progressive regulation."

Now, what Sen. Prof. Deosaran was saying, without knowing it, was that what we are embarked on this afternoon is sanctioned by PAHO. As a matter of fact, it is recognized that this type of legislation is not legislation which you bring and which you leave on the books. In several countries in the world—in Canada you have had legislation, I think in—I do not want to be brought on a privileges motion, but sometime in the late '90s. You have had another attempt in the early part of 2000; I think it was 2002, and you have had an update as late as October 21, 2009, just about three weeks ago.

So this type of legislation—the point that I am making is that it must necessarily be imperfect. All legislation is imperfect. And it is a work in progress and I am proud to admit that the Government is embarked on what is intended to be an evolving exercise. That is part of the PAHO guidelines; PAHO says so, and that is what we are embarked on.

That is where we agree. But Sen. Prof. Deosaran—and I know he would not claim to be a lawyer—says that the legislation attacks section 4 of the Constitution and he speaks in particular to 4(a), that is the enjoyment of property except by due process. And he goes on to say that that is why we need a three-fifths majority. A paragraph after that he says, "it also attacks section 4(c), which is the right of the individual to respect for his private and family life." It does neither.

There are two cases, decisions of the Privy Council on appeal from the Court of Appeal from Bermuda in which the Privy Council in *Grape Bay Limited v the Attorney General* discusses what the infringement of the property rights means and, in particular, distinguishes the enjoyment of property from liberty, which is not in itself a protected right as an ancillary right to property.

At page 11 of the judgment the Privy Council says—and it deals with a promise which was made to McDonald's, an international firm, to do some development in Bermuda and it deals with certain other things like passing off and trademark infringements. In essence, what the board says:

"It is this liberty which the Act has removed..."

There was an Act which struck at liberty.

"but such a liberty shared with the rest of the population of Bermuda is not private property."

The right to smoke is not in any way a right to property. The cigarette is not property; it is not a deprivation of property. We are depriving individuals of the freedom, the liberty which they would otherwise have, of being able to smoke. But that is not an infringement of a fundamental right.

He also spoke, I said, of the respect for private and family life, and that too is not a—it is a protected right but it is not the type of right which we are engaged in here this afternoon.

5.15 p.m.

In another Privy Council case, *Dr. Timothy Whitefield v The General Medical Council*, dealt with an absolute or total ban on alcohol. The question was whether it was unreasonable or oppressive. It is a public law concept and not a constitutional construct but by analogy you can apply the reasoning to the constitutional provisions. The Privy Council held in circumstances where Dr. Whitefield had been the subject of an absolute and total ban on the use of alcohol. At paragraph 23, the Board said:

"The committee had the necessary expertise to reach an informed conclusion on the need for all the conditions imposed and the likely effect of these conditions on Dr. Whitefield because it cannot be said that the absolute and total ban on alcohol was either unreasonable or oppressive."

What we are looking at is not the breach of a fundamental right in terms of the restrictions which we propose this afternoon, with respect to the use of tobacco and tobacco products. By way of amplification, there is a Trinidad case decided at

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first instance of which my friends opposite might be aware. This is the case of *Chaitan and Peters v the Attorney General of Trinidad and Tobago*. In that case it was argued that the right to stand in an election was a fundamental right guaranteed under the Constitution. I make the point that it is not every liberty that we enjoy is a protected right. The court in that case, and this is Justice Archie as he then was, said that the right to stand for election, fundamental though it is to a democratic society, based on the principle of elected representative government, is not one of the fundamental rights guaranteed under the Constitution.

I use that point by way of illustration to make the general point that it is not every liberty which we enjoy is a fundamental right. I give way to my friend Sen. Prof. Deosaran.

Sen. Prof. Deosaran: I agree with the argument that you are presenting from the court's judgment. I still have a residual doubt and perhaps, others might share this too in clause 8. You are speaking about smoking and the Constitution. Clause 8 speaks about officers have the power to enter premises and so on. Will that not have implication for property rights and would therefore have some implication for the Constitution?

Sen. The Hon. J. Jermie SC: That is not the constitutional objection to the Bill. The real constitutional objection came, I think, in the contribution of Sen. Seetahal SC. I will go through the contribution and if time permits I would come back to that.

Sen. Seetahal SC made a number of points. The first point she raised was in relation to clause 8(1) to which you just referred. That deals with the power. I quote from her:

“...given the power under 8(1) to examine, open packages and so on. But more significantly, those inspectors who are customs and police officers, who would have the power to enter premises and may enter any ‘public place, workplace or means of public transportation to conduct inspections or investigations...at any...reasonable time or necessary time,’”

They may do that. That is what the learned Senator is saying.

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

The issue of authorized officers being able to obtain a warrant is a non issue here. There is a clear distinction between the powers of public health inspectors, customs officers and police officers. It cannot reasonably be argued. Both have

powers to do precisely this. Those are safe laws under the Constitution. The customs law which I was looking at recently is a 1938 enactment. The police law is also a safe law. It is pre-1976. It cannot be argued that the powers which the police possess under those enactments are ultra vires the Constitution. The particular powers of police officers and customs officers are set out in the Bill.

Sen. Seetahal SC raised a point later on in her contribution when she spoke of the Minister's singular responsibility for issuing licences. She said: "I could see the administrative nightmare." Although that is not a constitutional point and I said that I will restrict myself to the constitutional point, I believe that the Minister of Health will move an amendment to take care of giving responsibility for delegating that responsibility. That would take care of her concern with respect to that matter.

She also raised a point in relation to the penalties in the Bill and the disparity of the penalties for various—

She raised another point on clause 12(1) of the Bill which deals with the definition of "enclosed". She said that:

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

She goes on to say:

"The purpose, in my respectful view, would have been to protect those persons who are inside, who would be probably suffocating if too many persons smoke inside that building, and they cannot breathe."

That point goes to one of the core objectives of the Bill. It is repeated in the WHO legislative precedence and the framework convention.

Sen. Dr. Nanan: Would you give way?

Sen. The Hon. J. Jeremie SC: I give way to my friend and colleague, Sen. Dr. Adesh Nanan.

Sen. Dr. Nanan: Thank you Attorney General. I am listening very attentively to what you are talking about in terms of constitutionality. I did not get from you the sections being breached with respect to 4 and 5. I did not get what part of 4 and 5 this particular Bill makes reference to.

Sen. The Hon. J. Jeremie SC: I am coming to it. I am saying that certain arguments which were raised are not valid. The property argument and the

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privacy argument are not valid in terms of a breach of 4 and 5. I am coming to it. If you give me the time—I have some time; I do not rush you, so do not rush me.

Clause 12 is what I am on. The argument by Sen. Seetahal SC in respect of that clause is that it is too invasive. It is key to achieving the objectives of the Bill insofar as the prohibition with respect to second-hand smoke. I am sure that my colleague and friend, the Minister of Health will speak to that.

Clause 12 of the Bill—I had cause to do some homework—is no different from the provision in Scotland. Clause 12(3) is no different from the position which obtains under the present criminal law in respect of the use of premises which might, unknown to the true owner, be employed in nefarious activity. Under the general criminal law that concept is known as strict liability and vicarious liability, where you fix the owner of property with responsibility for all that goes on in the property. There is a case of St. Margaret's Trust which is referred to at page 150 of the Standard Criminal Law text on Smith and Hogan.

If I come to her main point that the legislation is not reasonably justifiable for a society that has respect for the rights of others, what she seeks to tie that point to is not clear. She says that:

“...you have an important piece of legislation like this and no one can gainsay that it is an important thing to protect children, to ensure that persons' health is not affected in closed places. But when you go to another extreme, then I have no doubt that a duly constituted court would say that this legislation is not reasonably justifiable in a society that has respect for the rights of others. [*Desk thumping*] It is disproportionate and too extreme and that part is what I have objection to.”

In clause 13 the qualification has to bite on some infringement which does not identify precisely what the infringement is. She simply says that the legislation is too draconian. The Canadian cases are particularly helpful because their constitution is similar to ours and subjects this type of legislation to a test of what is reasonably justifiable in a society that has a proper respect for the rights and freedoms of the individuals.

On that score, I want us to look at the equivalent clause that Sen. Seetahal SC was complaining of, clause 19. That clause is word for word contained in section 20(2) of the Canadian Act. What the courts says of that section in the case of *JTI* is that—Sen. Drayton had referred to the fact that this type of legislation had been invalidated in Canada. That is true, but it is not the whole story. It had been invalidated in Canada, but it has now been affirmed. The recent law is contained

in the case of JTI which reverses the RJR Nabisco case. In that case the court said essentially that the RJR case was not properly argued. The court in the JTI case says that theoretically they are speaking of the bans on advertising. This is the legislation with respect to Sen. Dr. Nanan.

5.30 p.m.

It is with respect to advertising and public displays that the Act can potentially be unconstitutional, because it is recognized that advertising is an incidental right to the right of freedom of expression. Now, that was the *raison d'être* for the decision of the court in *RJR v the Attorney General of Canada*, which I said is an old case, 1995. It is true that in that case, the court did strike down the first attempt at legislation in Canada.

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

Motion made, That the hon. Senator's speaking time be extended by 15 minutes. [*Hon. Dr. L. Saith*]

Question put and agreed to.

Sen. The Hon. J. Jeremie SC: Mr. Vice-President, the court in RJR adapted the decision of the court in *R v Oakes* to determine the constitutionality of the anti-tobacco legislation.

[MR. PRESIDENT *in the Chair*]

The test in *Oakes* requires two things, first that the law must serve an important purpose and second that the means it uses to attain this purpose must be proportionate.

In RJR, Parliament established the first arm of the *Oakes* test; that is the objective of protecting the health of Canadians. It showed that the objective of protecting the health of Canadians was sufficiently important to restrict a chart to right. However, the Attorney General fell short on the second arm of the test and the court held that the legislator must establish, on a balance of probabilities, that a rational connection exists between a full prohibition on advertising and the objective of reducing tobacco consumption.

In the subsequent case of *JTI v Canada*, the Tobacco Act withstood scrutiny as the Canadian Parliament had taken into account the guideline set out by the court in RJR, as to what prohibitions would withstand charters scrutiny. Their Tobacco Act, as ours, prohibited lifestyle advertising and allowed information on brand-

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preference advertising. In RJR, the court admitted that theoretically advertising could be banned. However, the Attorney General had failed to adduce sufficient evidence. This is why I say that the RJR case is not good law and should not be regarded as good law. To say that it struck down the Canadian Act is to tell one part of the story. It is being overtaken.

The court in the JTI case said that the Attorney General had failed to adduce sufficient evidence to illustrate that on a balance of probabilities, a total or even partial advertising ban was rationally connected to the legislative goals. In JTI, the court was satisfied by the scientific and socio-economic evidence adduced—this is an Appeal Court—at first instance and reproduced them at paragraphs 12 to 17 of the judgment of the Supreme Court of Canada. Some of the evidence before the court included the fact that 45,000 Canadians die from tobacco related illnesses every year. By that measure, the court said they will take judicial notice of the fact that smoking is the leading public health problem in Canada.

It went on to say—this is consistent with our legislation—that most smokers begin as teenagers between the ages of 13 and 16. Tobacco advertising serves to recruit new smokers, especially adolescents. It is completely unrealistic to claim that tobacco advertising does not target people under 19 years of age. Recent tobacco advertising has three objectives: reaching out to young people; reassuring smokers to discourage quitting; and reaching out to women.

They looked at the taxation argument, because I have heard that argument advanced by some inside this Chamber. They said that tobacco businesses continue to be profitable, despite the fact that cigarettes are heavily taxed. This is the critical part of the judgment.

The court says that significant deference must be given to the legislature and by extension the government, in bringing forward a measure which seeks to control, to regulate or treat with this complex social problem.

What it says, I quote:

"...a certain measure of deference may be appropriate, where the problem Parliament is tackling is a complex social problem. There may be many ways to approach a particular problem, and no certainty as to which will be the most effective. It may, in the calm of the courtroom, be possible to imagine a solution that impairs the right at stake less than the solution Parliament has adopted. But one must also ask whether the alternative would be reasonably effective when weighed against the means chosen by Parliament."

That is to say the courts would not substitute themselves for the Parliament and the government.

"To complicate matters, a particular legislative regime may have a number of goals, and impairing a right minimally in the furtherance of one particular goal may inhibit achieving another goal. Crafting legislative solutions to complex problems is necessarily a complex task. It is a task that requires weighing and balancing. For this reason, this Court has held that on complex social issues, the minimal impairment requirement is met if Parliament has chosen one of several reasonable alternatives."

Mr. President, I dare say that at the very minimum, the legislation before us is reasonable. [*Interruption*]

Sen. Mark: I do not agree.

Sen. The Hon. J. Jeremie SC: It is at very minimum one of various reasonable responses to the problems which confronts—you can shout out across the floor that you do not agree with it, but there is evidence that it is reasonable. The evidence that it is reasonable is contained in the legislation of the PAHO model, the United Kingdom legislation, the Tobacco Advertising and Promotion Act of 2002 and the Canadian legislation of—[*Interruption*]

Sen. Mark: Those are civilized countries. We are not civilized.

Sen. The Hon. J. Jeremie SC: I cannot respond to a comment like that; those are civilized countries. The fact that this legislation is one of these models—in some cases borrows extensively word-for-word from certain sections. Clause 19 in ours is section 22 of the Act of October 21, 2009. That answers decisively the question whether or not this legislation is one—I am not saying it is the—of the reasonable responses to the question which confronts us. [*Interruption*]

Sen. Dr. Nanan: On that same point, there is the position of constitutionality. We do not want the legislation to be struck down in the court of law on the basis of if there is a less intrusive approach to be used. That was the point I made in my contribution. Is this legislation too strong and have you considered another approach?

Sen. The Hon. J. Jeremie SC: Sen. Dr. Nanan, perhaps you were not reading what I just said. [*Interruption*] You were not. You could not have been reading what I just said, because what I just said is the most recent dicta from the Supreme Court of Canada rejecting the RJR case says that you give deference to the Parliament. It says that there might be a number of approaches, some of

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which, in the calm of a courtroom, you might say would be less intrusive than others, but this is a complex problem and it is drafting legislation. Finding legislative solutions to it is complex. It is a task that requires weighing and balancing. For this reason this court has held that on complex, social issues, the minimal impairment requirement is met if Parliament has chosen one of several reasonable alternatives. The test is not whether Parliament has chosen the least intrusive method.

We can have an argument this afternoon as to whether or not this legislation is the least intrusive. What I am saying is that argument is now moot. It is irrelevant for us to have that argument, because it does not represent the test. The test is that a measure of deference is given to the Parliament and the Government. We are entitled, as long as we have a legitimate objective and as long as our means are not disproportionate in terms of the attainment of the legislative objectives, then the court will not strike the legislation down.

Mr. President, the main issue of constitutionality in the legislation deals with the advertising ban, which is contained in clause 11 of the Bill. If you look at section 22 of the Canadian Act, you will find one which is similar to that. There is sponsorship ban in clause 12, which has a parallel Canadian provision in clause 24, which speaks to sponsorship promotion; a ban on sale/display of non-tobacco products associated with tobacco, that is clause 13 of the Bill; the trademark usage ban and the generic packaging ban. All of those are the subject of legislative precedence throughout the world, because it is part of the framework convention. It is part of the PAHO model and it is part of the legislative precedence that I have referred to.

With those few words, I hope that I have cleared up the constitutional issues raised in the course of the debate and I leave the substantive policy issues to my friend and distinguished colleague, the Minister of Health.

The Minister of Health (Sen. The Hon. Jerry Narace): Thank you very much, Mr. President. I thank all Senators who contributed to this debate. I have listened to all the Senators' contributions very carefully. In fact, based on their comments, in a spirit of compromise, we made amendments to this Bill. They are being circulated and I would speak to them later.

Secondly, I want to take this opportunity to remind this honourable Senate that this Bill provides a framework necessary to address the harm caused by tobacco, both for our citizens today and future generations.

This Bill seeks to protect more citizens, but more specially, babies and children. It seeks to regulate and prevent tobacco use; enhance public awareness of the hazards; protect individuals from exposure from tobacco smoke; prohibit and restrict tobacco promotional practices; prevent smuggling of tobacco; and provide for other related matters. This is by far one of the most important pieces of legislation we can ever pass in this country to improve the general health status of our people.

5.45 p.m.

Mr. President, this is public policy at the cutting edge. Even though the UNC's official position, as I learnt on the television when the vice-chairman of that party spoke, is that they will support the Bill, this is what we heard from Senators in this honourable Senate.

Sen. Dr. Nanan said that the Bill was unconstitutional; Sen. Mark suggested that he would support the Bill, but with amendments; Sen. Oudit said that it should be recalled; and Sen. Dr. Gopaul-McNicol said that it should go to a select committee. Mr. President, you could imagine, I waited with bated breath to hear what Sen. Dr. Kernahan had to say, well, up to now, I am not sure.

Mr. President, there were different positions for nearly every Senator from the UNC, a political organization that says that it wants to be the alternative government. Well, you have failed Trinidad and Tobago. Given the importance of this Bill for the health of our nation, and the positive effects that this piece of legislation would have on the lives of our citizens, particularly our children, I ask the question: Is this the attitude of Senators who care about our children? I speak specifically to the Opposition Senators, because I do understand the statements made by the Independent Senators. I do understand. Is this the attitude about people who care about our country? I heard Sen. Mark saying a short while ago that this is not a civilized society.

Mr. President, flippant comments: Let me just say that during Sen. Mark's contribution, he spoke about Tobago being called "Tobaco". Tobago is now called "green and serene". Sen. Nicholson-Alfred would tell you about that. They do not call Tobago "Tobaco" anymore. Tobago is No. 1, a very good tourist destination.

Mr. President, let we quote the hon. Senator. He said:

"We have a good time when we go and fete. We drink a Carib; we take a smoke..."

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I have the *Hansard* here. Let me find the *Hansard*, I want to quote the Senator properly. He said:

“We have a good time. 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...that...mean?”

Mr. President, what is the message here? What is the message to the youth of our nation? Is it that you cannot have a good time if you do not smoke and that smoking is a pre-requisite if you are to enjoy yourself at a fete? Is this responsible behaviour from the august Chamber? Having the right to smoke is one thing however, promoting it as a leisure activity through this Senate is clearly unacceptable. [*Desk thumping*]

Let me get Sen. Rahman from the *Hansard*. This is what Sen. Rahman had to say in his contribution. Let me quote him. He said his son asked him: “Pappy, can I smoke?” And he replied:

“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.”

That is what Sen. Rahman had to say. Mr. President, where is Sen. Dr. Gopaul McNicol? She held her mouth like this. [*Hand over mouth*] Someone phoned me and told me he almost fell off his chair. They could not believe, the representative of the party that proposes to be the alternative government of Trinidad and Tobago will be speaking like that. People were appalled.

Mr. President, let me just say this. I know that Sen. Rahman is probably a compassionate and responsible father, but he did not demonstrate it. I think he wants to be, but the statement begs all kinds of questions. His statement has shocked a number of persons who have come to me. That is not the message that we want to convey to our children.

Sen. Mark: On a point of order?

Sen. The Hon. J. Narace: What point?

Sen. Mark: Take your seat!

Hon. Senators: Whoooo!

Sen. Mark: I am on a point of order. Mr. President, Standing Order 35(5) speaks to improper motives to Senators by other Senators. Sen. Rahman is a Senator, and for a Senator to rise here and talk about him not being a proper

father, I think it is totally out of order and, to my mind, it violates section 35(5) of our Standing Orders. I seek your ruling on this matter, Sir.

Mr. President: Well, two things: First of all, I would ask you to leave it to me to decide who should stand and who should sit. I am not so sure the Minister is in violation of 35(5), but his language is, perhaps, a little intemperate, and Minister, this is the Senate. While I fully appreciate that you are debating what Senators have said, you should try to avoid any direct comments on the characters of Senators in the Chamber.

Sen. The Hon. J. Narace: Mr. President, thank you. I always understand you cannot take anything that Sen. Mark says, but be that as it may, I would quote what I said. I said that Sen. Rahman, I am sure is a responsible father or wants to be, and that the statement begs all kinds of questions. So, I am sure I was within—but I would be guided by you.

This is not really the message that the hon. Senator wanted to convey to our children. He does not want to tell them that it is okay to smoke and that they should give in to peer pressure. We all know that good parenting is to teach children not to give in to peer pressure; to teach children right from wrong; and to teach children to be confident enough to influence their own friends to make the right choice.

Some Senators also raised questions as to why do we not ban tobacco use altogether and make it an illegal substance. All we have done is to move in tandem with international best practice. We are part of an international community. We are signatories to international treaties and we are guided by their guidelines.

We have noticed that there was a lot of commentary in the media supporting this Bill. Let me just read what the *Newsday* had to say in an editorial dated November 13, 2009, and I quote:

“We must again urge Senators not to descend into flippancy...

We note that the Bill bans toys or candy cigarettes which have long been suspected abroad as being a lure to get children interested in smoking.

Meanwhile we remind Senators of the deleterious effects of tobacco which has been proven beyond doubt to increase a user’s chance of getting heart attack, stroke, diabetes and cancer among other illnesses.

Cigarette-related diseases are amongst the biggest killers in the world today and a leading cause of premature death, which is preventable. It is said the United States has 500,000 deaths...

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We also note that for all the talk in the Senate about constitutional rights and freedoms, cigarettes are addictive and therefore nullify one's right to choose.”

This is an editorial in the *Newsday*.

Mr. President, I feel compelled to share with you the contents of a letter I received from a citizen whose identity I was asked not to reveal, of course, by the person, since the letter was private and confidential.

Sen. Mark: You cannot read it.

Sen. The Hon. J. Narace: Mr. President, I really want to give you the message—

Sen. Mark: On a point of order. [*Both Senators on their feet*] Mr. President, on a point of order.

Mr. President: Go ahead.

Sen. Mark: Mr. President, the hon. Minister is about to read into the record of this Parliament a letter that is unsigned and confidential. I would like your ruling on this matter. If you have a letter that you are going to read into the *Hansard*, at least, you ought to tell us the source of that letter. We do not know if it is a ghost who would have written that letter for the Minister. We want the name of the person. I ask the President to guide this honourable Senate on this matter.

Mr. President: Well, I know it has been done before and I am not sure—perhaps to be on the safe side, Minister, it would be best to disclose it insofar as you have it in front of you. Had you just referred to a document that somebody had dropped in your letter box, it might have been different. If you have it in front of you, perhaps, you could tell us what it is.

Sen. The Hon. J. Narace: Mr. President, I never intended to read the letter. I said I really want to give you the message of the letter. What I am giving here is the message. The lady has a number of children. At her workplace he boss smokes. She suffers from a chronic respiratory disease. Many times after two to three hours of work, she cannot breathe. What is worse is that sometimes because she has no babysitter she brings her child to work, and even though she is grateful and her boss is kind enough to allow that, her child also suffers from a respiratory disease, and when they go home they suffer; they have to get medication, et cetera. The lady needs her job. It is not unusual when she goes into a maxi-taxi someone is also smoking. There is more to it, but I will stop there.

Sen. Mark: Mr. President, he is reading. He is not quoting.

Mr. President: I think not, Sen. Mark. I think what he is doing is giving us the benefit of editorial accuracy. Many things are said here without evidence. So, I would allow him to continue.

Sen. The Hon. J. Narace: Mr. President, thank you. I was moved by that letter. She could be my mother, she could be your mother, my sister or your sister. That child could be my child or your child. This letter constitutes a compelling cause to pass this Bill. I am sure that this is happening in many places in Trinidad and Tobago.

Sen. Mark: Propaganda!

Sen. The Hon. J. Narace: Mr. President, many of our fellow citizens suffer like this every day. I had a friend called Mohammed, and he came one day to see me in my office. When Mohammed came into my office, I could not believe the state of Mohammed. He said that he had heart disease, this, that and all kinds of problems, and when I looked in his pocket, I saw a pack of du Maurier cigarettes. I said to him: "And you are still smoking?" His words to me were: "Ah cyar left it out." He died four months later. Mr. President, cigarettes are addictive.

Mr. President, we are duty bound to protect these citizens; all other citizens like him and, indeed, protect future generations. Maybe at this point I should declare that a Philip Morris official came to see me at the ministry, together with the chief medical officer and the permanent secretary and so on. I just want to declare it for the benefit of the Senate. Of course, I advised him of our policies and that ends there. Sen. Mark, I understand your noise.

Public policy is working in tandem with other preventative measures and it is actually more important than clinical solutions. We cannot ignore the plea of this woman who cannot breathe at her house; who cannot breathe in the taxi or who cannot breathe at work. We have an obligation not to fail her. If we do nothing else, we should, at the very least, protect the citizens' right to breathe. If we acknowledge our called duty to care for the people of this country, we must behave in a responsible manner. Let me illustrate what responsible governments around the world have done in this respect.

Mr. President, of the 196 independent nations, about 194 of them are classified by the IMF. I would like to show the honourable Senate that there is a clear correlation between a country's state of development and tobacco control. Of the 194 world economies, 33 are classified by the IMF as advanced economies. They have a per capita as somewhere between US \$20,000—US \$80,000. To date, all 33 have passed tobacco control legislation of one type or other.

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Mr. President, let me just show you a map—and those countries include countries like Australia, Canada, Denmark, Hong Kong, the United States, New Zealand, the United Kingdom and a number of countries. If you look at a map you would see the smoke-free areas and you would see the areas that are not smoke-free. [*Interruption*]

There is no developed country that has failed to implement measures to regulate tobacco. These countries are clear in their understanding of the harmful effects of tobacco and the public health challenge which it poses. Their road to development has taught them that in a society where the rights and freedoms of individuals are respected, freedom from exposure to tobacco smoke, cohesive advertising and promotion and receipt of information relating to harmful or misleading product characteristics are equally important, because these human rights are considered fundamental.

These countries have taken the necessary legislative steps to protect their citizens. Further, all these countries have enforced bans on advertising. All of them! One hundred per cent have laws governing the packaging and labelling of tobacco products requiring the use of health warnings. All have enforced bans on smoking in public places. Seventy six per cent have enforced full bans on smoking in public places including restaurants and bars. The remaining seven countries have partial bans. With respect to tobacco company sponsorship, 61 per cent have to date implemented prohibitions. That is the behaviour of developed countries.

Mr. President, these numbers are increasing every day as the full effects of tobacco harm become clearer and clearer to the international community. These are highly developed nations with high income levels and rates of literacy. On the converse, let us look at the situation in other parts of the world. The remaining 161 developing countries, again IMF classification, have an average per capita income of US \$11,000. Of these, smoking in public places is banned in only 64 countries which represent 40 per cent of developing countries. Further, effective legislation for packing and labelling is enforceable in just 68 of the 161 countries, representing a percentage of just over 42 per cent as opposed to 100 per cent in developed countries.

Mr. President, the tobacco industry is the only industry in the world whose products if used as directed will kill their customers. Not only will their products kill their customers, they will also kill anyone else who is exposed to their

second-hand smoke. It is poisonous and highly addictive by design. In order to keep their business sustainable, they need to target new customers and essentially, children. I think the Attorney General made this point very well.

In fact, evidence tells us that 90 per cent of the persons begin smoking before 20 years of age, thus the probability of initiation after the adolescent age is very low. That is why the sale of a single cigarette is so important for the sustainability of tobacco companies. They need to have your children start smoking at an early age so they can ensure their future sales. The global use tobacco survey shows that 11 per cent of adolescents 13 to 15 years old are current smokers and that 20 per cent of those had started smoking before the age of 10.

The convenience of the one cigarette sale is ideal for children to be encouraged to smoke, because they do not have to worry about getting a pack which they would then have to take home, their parents will know they are smoking, the money affords them one cigarette and so on. But these cigarettes are not individually wrapped, so therefore, when they buy the cigarettes there is not even a warning sign to let them know this one cigarette that they are being hooked on—and poor people as well would tell them, look, you are reminded not to smoke this cigarette. So, measures for packaging and labelling are also an integral part of the treaty. That is why packaging and labelling is so important in this Treaty. I might not remind you that we are signatories to a treaty on that.

The smoking prevalence in the developing countries is high and growing. The developing world currently accounts for a little over half of all smoking related deaths worldwide. If the current situation remains unchanged, it is estimated that these countries will be responsible for more than 80 per cent of the smoking attributable mortality within the next 20 years. Not only will Trinidad and Tobago do its part in that process of change, but moreover, we will do our duty towards our own citizens.

Mr. President, they spoke about education—

Sen. Dr. Nanan: A point of order, Standing Order 34(b).

Mr. President: What is your objection exactly for this?

Sen. Dr. Nanan: No, Standing Order 34(b) is if the Minister would give way, I wanted further clarification in his speech.

Mr. President: He is what!

Sen. Dr. Nanan: No, Standing Order 34(b) for interruptions, Mr. President, is if the Minister would give way for some clarification—

Sen. The Hon. J. Narace: The answer is no. [*Laughter*]

Mr. President, health education and cessation programmes—someone, I think it was Sen. Merhair, spoke about education and I think Sen. Dr. Kerhanan spoke about “nobody supporting these Bills”.

Just to give you a MORI poll conducted in July to August, 87 per cent of persons strongly agreed that all enclosed places including public places should be smoke-free; 65 per cent of smokers themselves agreed; 92 per cent of the older population 55 and over agreed that there should be no smoking in enclosed workplaces.

Sen. Mark: When was that done?

Sen. The Hon. J. Narace: In July to August 2005.

Sen. Mark: 2005?

Sen. The Hon. J. Narace: All the future polls reflect similar figures.

Mr. President, we recognized that tobacco dependence is powered by a logical and social process and that tobacco products are engineered and marketed for maximum appeal. Given this, we are fully cognizant of the fact that clinical and non-clinical approaches, that is behavioural therapy and pharmacotherapy may be required to achieve cessation from tobacco. Behavioural therapy can range in complexity from simple advice offered by a physician or other health care workers to much more extensive programmes offered by counsellors or specialized smoking cessation clinics.

All of our health care workers are able to offer brief interventions to encourage and support cessation from tobacco. In fact, simple advice from a physician has been shown to increase abstinence rates significantly by about 30 per cent. Just a doctor saying you have to stop smoking. In addition to this however, we have developed a policy outlining a full public health approach to cessation—

Sen. Dr. Nanan: Mr. President, Standing Order 32(6), it says a Senator shall not read his speech.

Sen. The Hon. J. Narace: It is just copious notes, Mr. President. [*Laughter*]

We have accepted proposals from an international NGO with a proven track record to provide cessation counselling and training to our health care professionals. We are about to implement cessation clinics at our public health institutions using the services of a local public health expert who is highly trained in this area.

We continue to provide as part of our health promotion and education initiatives behaviour change, communication, material—and let me just say and Sen. Merhair asked that question, we have sent to every house in Trinidad and Tobago; delivered it to your house and that is just one mechanism that we used.

Sen. Mark: I did not get any.

Sen. The Hon. J. Narace: Well, maybe you do not have a permanent address. [*Laughter*]

We have been sending to about 225,000 households in Trinidad and Tobago on how to quit smoking and an anti-smoking campaign is currently running on all the national media. The Chemistry Food and Drug Division has also approved pharmacological options to treat nicotine dependence and these are available locally. In fact, the ministry has long recognized that public policy directs health promotion and education activities which are critical to the reduction of CNCDS. [*Interruption*]

The risk factors for CNCDS include tobacco use, the abuse of alcohol, lack of physical activity and unhealthy diet and obesity. So, we wanted to talk this evening through this Chamber and through you, Mr. President, to tell the national community about some of our behaviour change in the population. We have adopted an integrated approach that includes prevention, health promotion, improved access to health services at schools, workplace and community intervention.

The reason I am going through all of these is because you hear people saying, do not go with the law, put the education, do this—I can tell you the Minister of Education spoke about a number of interventions that they made in school programmes and up to today we have not been able to get that success rate.

Sen. Baptiste-Mc Knight: And this is going to do it?

Sen. The Hon. J. Narace: The international prescription currently available to us is this piece of legislation.

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Mr. President, with the support of the Caribbean Food and Nutrition Institute we are evaluating school meal options in Trinidad right now so that we can look to that area as well, which is another area of CNCD control. Over the next fiscal year we will continue our programme of health promotion education in schools, communities, workplaces and all dealing with promotion of healthy lifestyles for children.

I am spending a great deal of time to explain the prevention measures that the Ministry of Health is pursuing so that we can ensure that our citizens live longer, happier and age better. We have included healthy community caravans and we have been going to under-served communities so that we can test people, screen them, give them materials, but all of this would not be sufficient if we do not have the legislation that is required. We are partnering with NGOs not just to encourage but to ramp up these activities.

Permit me now to answer some questions raised. Sen. Dr. Nanan spoke to members' club, we disagree. He spoke about the major changes that have been made about the well fines; I will speak to that later. Let me just tell Sen. Dr. Nanan, as a dentist, I am truly surprised at your position on this Bill. I do not think you said much more than that.

Sen. Dr. Nanan: Mr. President, he is imputing improper motives.

Mr. President: I do not think there was an improper motive, but again he is referring to, perhaps your character which is something you want to avoid doing.

Sen. The Hon. J. Narace: Mr. President, I am speaking to the national community and they are looking at all of this. This is a very serious Bill. I am trying to take it seriously and if you wish to be flippant—

Hon. Senator: What! [*Crosstalk*]

Sen. The Hon. J. Narace: Mr. President, I will continue. The major changes that have been made are, as I said, the fines.

Sen. Seetahal SC made some very important points, there is some degree of the inconsistency regarding the fines, as such, amendments have been circulated to address this issue. Another issue from Sen. Seetahal SC, I believe, was about public health inspectors will now have the powers of police officers. The answer to that is no. The powers of all authorized officers are spelled out at clause 8(1) of the Bill. However, the particular powers of police officers and customs officers are spelled out in 8(2).

Sen. Dr. Nanan also made reference to clause 22, ascertains that there is no rationale connection between this clause and the objectives of the Bill.

Clause 22 provides:

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

6.15 p.m.

We believe, Mr. President, that there is a direct connection of this clause to the aims of the Bill. Brand stretching is a marketing strategy in which a firm markets a product with a well-developed image and uses the name brand in a different product category. This is used to increase leverage. In other words, it increases the awareness of the brand name and profitability and so on. So, that was that.

Mr. President, evidence from two publications: R. J. Reynolds France Communications Strategy Plan 1992 to 1996, and Worldwide Brands Strategic Plan 1993 to 1997, outlined how two companies intended to circumvent tobacco advertising restrictions by promoting non-tobacco products bearing the Camel and Winston brand names. Mindful of this, this clause can be more than relevant with the objectives of the Bill. Returning to the issues specific to the Tobacco Bill, Sen. Dr. Nanan also raised the issue of the definition of "workplace", which we addressed and it was actually also raised by Sen. Drayton.

Sen. Drayton moved four amendments. We have accepted all four in the case of clause 4 and clause 12. More specifically, with regard to Sen. Drayton's concern with the definition of "workplace" at clause 4 of the Bill, an amendment has been circulated. We have accepted Sen. Drayton's amendment and request to qualify the definition of "workplace", specifically, we amended the definition of "workplace" so that private residences or private vehicles which are used for the purposes of manufacture, distribution or trade, fall within that definition.

Sen. Drayton: That is just part of it. I am sure that my words if we checked the *Hansard*, it says manufacturer, distribution and trade of the product.

Sen. The Hon. J. Narace: As I said, Sen. Drayton, we modified it somewhat. [Laughter] Additionally, Sen. Drayton circulated an amendment to clause 9 to delete the words "unless they are requested to produce identification". We agreed with that proposal and that would be in the amendments.

Sen. Drayton: I suppose we will discuss it in committee stage, but I said delete all words after "identity", not after "requested", and your amendment deals with words after "when requested".

Sen. The Hon. J. Narace: You are correct. We will deal with it at the committee stage. Sen. Drayton also proposed to insert two subclauses under clause 12 to read:

- No person shall smoke or hold a lighted tobacco product in a vehicle, including private vehicles when a child is present; and
- No person shall smoke or hold a lighted tobacco product in an area where a private child care business or private tutoring business is conducted."

We have accepted those amendments as well.

Mr. President, we have made wide ranging concessions to try to pass this Tobacco Bill. Sen. Drayton also proposed to insert the words "after obtaining a warrant" in clause 8(2), and that too, at the end of the statement, to which we have also agreed. The hon. Senator also proposed to amend clause 4, line 7, to delete all the words after the word "vehicle". This has also been addressed in our amendment of the definition of "workplace". Sen. Drayton expressed concern over the term, "priority population". We agree that this term was unnecessary, and the relevant amendment has been circulated. So Sen. Drayton also did not see the need to include in the Bill provisions for the establishment of a new unit.

Mr. President—I was impressed—when we were at the stage of the select committee, Sen. Seetahal SC proposed that we should have a special unit to treat with this. We accepted that at the select committee and we agreed that you should have a dedicated unit. Sen. Seetahal SC also proposed to change the definition in clause 4. We cannot make a concession at that point, the definition must remain.

After the Framework Convention Tobacco Control was developed, the WHO continued to use experts, research and scientific evidence to develop guidelines for countries, to assist them in implementing the Convention. The guidelines on protection from exposure to tobacco smoke were subsequently developed by the WHO, and adopted by the parties to the FCTC, including Trinidad and Tobago, in July 2007. The definition used in this Bill is identical to that recommended by the WHO in the aforementioned guidelines.

Mr. President, the intention is indeed to cover up places described by the hon. Sen. Seetahal SC, such as restaurants, bars with external verandahs or partial covering.

Mr. President: We have a procedural motion.

PROCEDURAL MOTION

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Mr. President, in accordance with Standing Order 9(8), I beg to move that the Senate continue to sit until the conclusion of this matter.

Question put and agreed to.

TOBACCO CONTROL BILL

Sen. The Hon. J. Narace: Mr. President, let me take a moment to share some important information about the dangers of second-hand smoke. I find that this is necessary in order for all hon. Senators to fully appreciate the measures that are required to deal with this public health challenge. There is a misconception that the danger from second-hand smoke comes only from direct inhalation, and therefore, the environment will become safe if there are ventilation systems, or if the area is partially enclosed. That is not so.

Not only does this constitute a fallacy, but sadly, oftentimes it is a ploy; a deliberate strategy undertaken by the tobacco industry to subtly undermine tobacco control efforts. While ventilation systems can clear some of the smoke from the air, these systems do not remove all or enough of the toxic chemicals in second-hand smoke to effectively protect the public. Furthermore, smoke from designated smoking areas effortlessly drifts to other areas, through walls, doorways, plumbing and electrical systems, air conditioning ducts, outdoor patios and balconies, thus compromising the safety of the non-smoking area. The dangerous chemicals remain in the air and settle on surfaces in the room, like walls, drapes, carpets, furniture and clothes.

Mr. President, this reminds me of that letter that I got, because this is exactly what happens. Therefore, we definitely want to cover the places mentioned by Sen. Seetahal SC, guided by evidence showing that the harmful carcinogens from tobacco smoke are concentrated in these places. Unfortunately, smoking sections, improved ventilation or partial enclosures would not offer protection from the risk of second-hand smoke. So at this point, let me remind this honourable Senate that the places described by Sen. Seetahal SC are also the workplaces for hundreds of workers, and we need to protect those workers as well.

Sen. Seetahal SC raised a question in regard to disparity of the penalty for various offences under the Bill. I believe Sen. Prof. Deosaran also expressed a similar concern. We take their point and we have amended clause 37, accordingly. The Senator was also concerned over the language in clause 30. A similar concern was also shared by Sen. Mark, and this is to do with the language being exclusively in English. We are deleting the word "exclusively".

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The question was whether a person smoking at his or her own home would be prosecuted if the house happened to be within the 15-metre radius? The answer is no. A relevant amendment has been circulated. Let me remind Senators that the Liquor Licences Act has a similar law. It is 400 metres, but it is a similar type law.

Sen. Seetahal SC: [*Inaudible*]

Sen. The Hon. J. Narace: Yes, for the sale of liquor. Sen. Seetahal SC is also of the view that the use of the phrase "incidentally or accidentally displaying tobacco products during, carrying or use" at clause 15, was insufficient to protect a person who, for example chose to sit on a bench in the Queen's Park Savannah and smoke in the public. We do not agree. We are of the view that a person who sits in public and smokes is adequately protected by that provision.

Sen. Seetahal SC also raised the issue of regulations. As we said, negative resolution of Parliament gives you the right to debate it. It is not fundamentally different. Another concern raised by Sen. Seetahal SC related to clause 34 of the Bill, and the use of the term "laboratory analyst therein", in this regard, we concur and the relevant amendment has been circulated. So just for the clarification, there are presently analysts employed at the Chemistry Food and Drugs Division of the Ministry of Health, who will test any tobacco product or component which is the subject of proceedings under the Bill.

Mr. President, in reference to clause 10(3), Sen. Seetahal SC felt that having the Minister as a licensing authority, will result in an administrative nightmare.

Sen. Prof. Deosaran: Through you, Mr. President, and thank you very much for giving way. As we are coming close to the voting and whatever weight my own vote will carry, I would like to ask one or two minor questions for your response. Before I do so, I would like to express my appreciation to the distinguished Attorney General for bringing some relief to my constitutional anxieties. Thank you very much.

Mr. Minister, thank you for giving way, but could you give us some sound convincing assurance about the regulations since they are so seemingly integral to this legislation? I notice that you have split clause 12(3) into two, but you still leave hanging the word "acquiesce", and I think that puts the owner or the seller in, to me, undue liability. I do not know if you could comment on the justification for that. You have removed clause 31(2) which reflects the generosity that you are bringing to the concessions, and I think perhaps I am impressed with that. It is

related to my vote, eventually, possibly, but you have 32(2) still hanging there. I do not know, Mr. Minister, if you can give, through you, Mr. President, some attention to this as you proceed in looking at the different clauses

Thank you very much for giving way, Minister.

Sen. The Hon. J. Narace: Mr. President, I am going to answer Sen. Prof. Deosaran and assure him that [*Inaudible*] Sen. Prof. Deosaran would you vote for the Bill?

Sen. Prof. Deosaran: I did not hear what he said. Sorry, Minister.

Sen. The Hon. J. Narace: I have agreed, would you vote for the Bill?

Sen. Prof. Deosaran: Well, as soon as you finish, I will make up my mind. [*Laughter*]

Sen. The Hon. J. Narace: Thank you, Sen. Prof. Deosaran. Mr. President, through you, I want to assure Sen. Prof. Deosaran that we have looked at that part. I know you are concerned about it, and I know other Members are concerned. In fact, it should be in the amendment.

Mr. President, we spoke about the analyst, we are talking about the Minister as the licensing authority. We have noted this concern and while we are of the view that the Minister should remain the licensing authority, we have made an amendment to clause 5, to give the unit the responsibility for considering and evaluating applications for a licence under the Act.

Sen. Baptiste-Mc Knight—on the issue of who will be subject to the licence process, manufacturers, importers, exporters and distributors at wholesale are also mandated to hold a licence. This is clearly reflected in clause 10, only retailers are exempt from licensing. I think Sen. Baptiste-Mc Knight raised the issue, who will be responsible for processing applicants under the Bill? The unit which will be established in the Ministry of Health will undertake that role. Let me just say, Mr. President, we have had an implementation committee working all this time towards this Bill, and therefore, that committee is au courant with a number of the issues, and that is why we will move them to the unit to ensure that we do all the things that Senators were asking about.

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. [*Hon. C. Enill*]

Question put and agreed to.

Sen. The Hon. J. Narace: I thank the hon. Senators for being so gracious. Mr. President, in regard to the reporting protocol for authorized officers, this will follow the normal scheme of things, that is: customs officers, Comptroller of Customs, police officers, the Commissioner of Police and public health inspectors. The police will report to the Commissioner of Police, the public health officers will report to CMO of the Ministry of Health.

As far as the details of the licencing process are concerned, this will be sufficiently addressed in our regulations and it is described in our draft regulations. It was also proposed that the reports be submitted biannually or annually. We concurred there is a replacement there on that in terms of our amendments.

Another argument put forward was that banning the display of tobacco products is an extreme measure. We disagree. The display of tobacco products is a very powerful form of advertising. Tobacco companies are well known internationally for taking advantage of what is arguably, the most important advertising media.

6.30 p.m.

Mr. President, the way to get people to smoke is through advertising. All the studies show that. In Canada, 40 per cent of the consumers report that it is present in in-store advertising. In-store advertising is a very powerful form of advertising and cigarettes are among the top three.

Sen. Mark questioned whether public transportation terminals were included; and the answer is yes. Sen. Mark also raised a concern over whether the Minister could appoint persons other than public health inspectors, police and customs officers; the answer is no. Then Sen. Mark suggested that this Bill was in contradiction of Article—well, that is not so.

The regulations pertaining to this Bill will be brought before it is proclaimed.

We spoke about single cigarettes; Sen. Prof. Deosaran, I think we spoke to that. I just want to say that the point has been made that the industry has to recruit children and that is where single cigarettes really is a major tool for that industry. It is important for us to package that, so when those children are targeted they would not have that problem. As Sen. Prof. Deosaran rightly mentioned, the gun manufacturers have played an important role in the influx of illegal arms around the world, but this is also the case with cigarettes. In fact, the tobacco industry pleaded guilty to violating section 240(1) of the Federal Excise Act, for smuggling.

Sen. Oudit raised a few points, but they were not very important. [*Laughter*]

Sen. Rahman raised some points, ditto—in fact, we covered them.

The Tobacco Control Bill seeks to provide an effective regulatory framework for tobacco control. According to a new report by the prestigious Institute of Medicine in the US, which was sponsored by the US Centers for Disease Control and Prevention, and released in October 2009, eliminating smoking in workplaces, restaurants, bars and other public places is, indeed, an effective way to reduce the health risk posed by cigarette smoke on the cardiovascular system.

Dr. Eric Peterson of the Duke Clinical Research Institute, one of the committee members of the IOM Report, stated that—in fact, our study found that consistently across the 11 best studies in literature which looked at laws being put in place in various communities and the countrywide analysis, in the year following initiation of these laws, one could see a measurable reduction in the heart attack rates. So one year after they implemented this, there was a measurable reduction. Of course, it goes to show the studies in Colorado, Indiana and Ohio—overall there were consistently observed reductions in the risk of heart attacks, ranging from 6 per cent to 47 per cent, from the benefits after one year of implementing the ban. All the biological plausible evidence for the reduced rate of acute heart attack is there.

We can no longer close our eyes to the devastating health effects of tobacco use and exposure to tobacco. The sustainability of our health care delivery system is very much dependent on us doing proper public policy arrangements, the way we allocate resources. So with all the tobacco related diseases placing a serious burden on our system currently, we need this kind of public policy.

In closing, Mr. President, I wish to inform this honourable Senate that last week I received a petition by members of civil society and the private sector, indicating their support for the national control tobacco efforts in this Bill. The Cancer Society; the Medical Association; the Registered Nurses Association; the FPA; Rebirth House; the Child Guidance Clinic; the NPA; the Coalition for Tobacco Free; ALTA; ASJA; the Sanatan Dharma; the Muslim League; the Commission for UNESCO; DOMA; the Catholic Commission; the Seventh Day Adventists; the Just Because Foundation, and a number of other organizations petitioned the Ministry of Health saying, "Pass this legislation." The petition calls on us to ensure that this Bill is passed.

Every 6.5 seconds, someone dies from tobacco use. It is responsible for the death of one in 10 adults worldwide and 50 per cent of all those who use it in

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Trinidad and Tobago. More deaths are caused each year by tobacco, than by tuberculosis, AIDS and malaria combined.

Annually, tobacco use causes 5.4 million deaths worldwide; 30 per cent of all males and 15 per cent of all female medical deaths in Trinidad and Tobago; 30 per cent of cancer related deaths; over 600,000 deaths from smoking related cardiovascular diseases, 52.9 per cent of the medical deaths in men and 49.4 per cent of women in Trinidad and Tobago. Tobacco has also been shown to be associated with insulin resistance and other things.

This Bill is about the duty of care; mine, yours and ours to the citizens of this country. It is just one more way in which we could build a First World and caring society. With this particular legislation, we are given the opportunity to care for all our fellow citizens, young and old, children and adults. Most importantly, this is the legislation that protects the unborn child who is at risk of low birth weight, respiratory disease and learning difficulties. If we fail to pass this Bill today, we would have failed those unborn children.

This is the time to reflect on our mandate. This is the time to think of the child in Toco, Debe, Carenage or Castara; the teenagers at our schools; the adult suffering from CNCD diseases. This is the time to think of the woman who wrote to me, who made a plea for us to help her breathe. This is the time for Trinidad and Tobago to not only think about the future of our society and the protection of our people, but it is also to take our rightful place internationally.

Mr. President, we would have failed if we did not support this Bill today. The Government has done its duty and I am confident that hon. Senators would do theirs.

Thank you.

Question put.

Sen. Mark: Mr. President, in accordance with the provisions of Standing Order 50(2), I now propose that the Minister's Motion that the Bill be now read a second time, be amended to leave out the word "now" and at the end of the question the words "upon this day six months when the draft regulations would be circulated for debate".

Question, on amended motion, proposed.

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The Senate divided: Ayes 12 Noes 15

AYES

Mark, W.

Nanan, Dr. A.

Kernahan, Dr. J.

Rahman, M. F.

Oudit, Mrs. L.

Gopaul-McNicol, Dr. S.

Deosaran, Prof. R.

Seetahal SC, Miss D.

Ali, B.

Annisette, M.

Baptiste-Mc Knight, Mrs. C.

Merhair, Miss G.

NOES

Enill, Hon. C.

Saith, Hon. Dr. L.

Jeremie SC, Hon. J.

Browne, Hon. M. [*Interruption*]

Manning, Hon. H.

Narace, Hon. J.

Dick-Forde, Hon. Dr. E.

Gronlund-Nunez, Hon. T.

George, W.

Hadeed, G.

Rogers, L.

Lezama, Miss L.

Melville, Miss J.

Ramkissoon, Miss A.

Joseph, Hon. M. [*Laughter*] [*Crosstalk*]

Sen. S. Ramkhelawan abstained.

Question, on amended motion, negatived.

Question agreed to.

Bill accordingly read a second time.

6.45 p.m.

Bill committed to a committee of the whole Senate.

Senate in committee.

Mr. Chairman: Hon. Senators, just before we proceed, I want to make sure I have all the amendments. I have amendments by the Minister of Health, Sen. Wade Mark, Sen. Ali, Sen. Baptiste-Mc Knight, and I have four different lists of amendments from Sen. Drayton.

Sen. Drayton, I have four lists of amendments, are they all to be considered?

Sen. Drayton: Yes, Mr. Chairman.

Mr. Chairman: Hon. Senators, I am going to suspend the committee stage for five minutes.

6.49 p.m.: *Sitting suspended.*

7.10 p.m.: *Sitting resumed.*

Clause 1 ordered to stand part of the Bill.

Clause 2.

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

Sen. Rahman: Sir, did the Minister not say something to the effect that some Regulations would have to come into effect?

Sen. Jeremie SC: Could we go on please?

Question put and agreed to.

Clause 2 ordered to stand part of the Bill.

Clause 3.

Question proposed, That clause 3 stand part of the Bill.

Sen. Prof. Deosaran: Mr. Chairman, the Attorney General has argued that this Bill does not violate sections 4 and 5, but here it says it is inconsistent. Could you point to the provisions where it is inconsistent?

Sen. Jeremie SC: Section 4(1), freedom of thought and expression.

Sen. Prof. Deosaran: There is no 4(1).

Sen. Jeremie SC: Of the Constitution, I am sorry.

Sen. Mark: Is that the only one?

Sen. Jeremie SC: I am looking through my notes to make sure that is the only one.

Sen. Prof. Deosaran: That is enough for me, Sir.

Sen. Jeremie SC: If you want the specific clauses of the Bill, they will be clause 11 and clause 12. I am sorry; it is 4(i).

Question put and agreed to.

Clause 3 ordered to stand part of the Bill.

Clause 4.

Question proposed, That clause 4 stand part of the Bill.

Sen. Drayton: Mr. Chairman, under clause 4 I have sent an amendment for the definition of the word “enclosed”.

Mr. Chairman: Just hold that for a minute, let me deal with the Minister's amendments first and then I will deal with them.

- (a) Delete the definition “priority population.”
- (b) In the definition of bulk packaging delete the words “10 units of” and substitute the words “200 grammes”.

Sen. Baptiste-Mc Knight: Mr. Chairman, I am wondering what the purpose behind the bulk packaging is. Is it to deal with illegal cigarettes and cigars? What if somebody has 9,900 cigarettes and 9,900 cigars, they cannot be held as having illegal—

Sen. Narace: It is part of the tracking system.

Sen. Baptiste-Mc Knight: It is part of the tracking system? That does not make sense.

Sen. Browne: To identify where it came from.

Sen. Baptiste-Mc Knight: This is describing what bulk packaging means and in the Bill at clause 8(2)(b) it says where “the authorized officer reasonably believes bulk packaging...conveyed”. That has nothing to do with bar codes. It is a quantity of tobacco products that is going to be considered illicit and if you are serious 10,000—

Sen. Ali: Mr. Chairman, is that related to loose tobacco for pipes or for stuffing all cigarettes?

Sen. Narace: Clause 28 will assist.

Sen. Baptiste-Mc Knight: If you have 10,000 cigarettes, once they have all the bar codes and numbers, you cannot do anything about it, because I imagine a wholesaler would be transporting more than that anyhow.

Sen. Narace: It is a packaging size; that is how you track it.

Sen. Baptiste-Mc Knight: How you track what?

Sen. Narace: Bulk packages.

Sen. Baptiste-Mc Knight: Through you, Mr. Chairman, if you are talking about trying to cut down on illicit trade, if somebody pulls up on the beach in Caroni and offloads 8,000 cigarettes it is less than 10,000 so it is not bulk.

Sen. Narace: Can you explain exactly the point you are trying to get clarified?

Sen. Baptiste-Mc Knight: In order to qualify for bulk it has to be at least 10,000 cigarettes or 10,000 cigars. The point I am trying to make is, if you are trying to cut down on illicit trading, 10,000 is too much, but it is your law so if you want, I would go for 20,000 and we could move on.

Sen. Narace: You realize we are counting individual cigarettes so it is just an idea of separating bulk from number and allowing for the tracking as well.

Sen. Browne: With respect, I suspect that the 10,000 is a sort of minimum order configuration they would use for bulk packaging and the reason for bar coding is that there is an international tracking mechanism for all cigarettes which are produced by companies. So that at any stage of the game, once it is in a bulk package you can identify the country of origin, who produced it, what its contents are and so on because it is logged internationally on a database.

7.20 p.m.

I cannot remember the name of the company but it is part of the international trade conventions that are now adopted by many countries with regard to the trading and packaging. So I suspect that the size is a sort of minimum order quantity size that is a standard in the industry. I think that is the reason for 10,000.

Sen. Baptiste-Mc Knight: It sounds good, but press on.

Mr. Chairman: Are we in agreement with the amendment at B?

In the definition of workplace delete the words "as workplaces" in the last line and substitute the words "for the purpose of manufacture, distribution or trade."

Sen. Drayton: Mr. Chairman, I do have a problem with this. As I had indicated, if it is for the purpose of manufacture, distribution or trade of the product, this involves once you are including private residences in a general sense, you are speaking now to the tailor, the little tailor operating at home who manufactures his suit in the community; you are speaking about the seamstress; you are speaking about the person in their kitchen making their jams and jellies, because they are selling it, which means it is trade, and it is very difficult for me to accept that such persons could be criminalized if they smoke a cigarette in their homes. The reality is, this is tradition; this is our culture. I am not saying it is right, but I am saying I cannot accept the criminalization of anyone in their homes for smoking a cigarette.

Sen. Narace: Sen. Drayton, through you, Mr. Chairman, our position on workplace was once there is trade, manufacture—where workers, employees, we remove the private residence where it was just a domestic worker, but once there were a number of people working there, we felt a need to protect those workers. What is it that you were suggesting?

Sen. Drayton: My issue is that in the context of Trinidad and Tobago—I cannot speak to Canada; I cannot speak to Europe—virtually every other household in certain communities will be engaged in their jams and jellies. It may be one worker or two workers and I cannot accept the invasion of a home for what is a legal product. I believe that this particular definition should stop at "vehicles". It should not include private residences, period. If it is a situation where there are lots of people working there, then certainly it is not a private residence, but in the context of our society and our culture, every other home, particularly in certain communities—

Sen. Narace: If we wanted to say, exclude sole traders, will that work?

Sen. Oudit: Mr. Minister, could I make a suggestion?

Sen. Narace: Could we get—

Sen. Oudit: No, no, it is in light of that. If you have to include, "but does not include private residences or private vehicles except if they are so used for commercial purposes".

Sen. Drayton: It is still commercial. They are selling jams and the seamstress is making a dress.

Sen. Narace: If we said that, "excluding sole traders" will that help? If we said a sole trader, then you would not have employees at risk. Part of the whole intention in the policy of this legislation is to protect workers.

Sen. Ramkhelawan: A sole trader could have employees, you know. It does not mean one single person working in a workplace.

Sen. Narace: That is true. That is also correct.

Sen. Jeremie SC: Mr. Chairman, through you. I understand the point that there might be in communities throughout Trinidad and Tobago, establishments, mainly, well I imagine it will be sole proprietors, sole traders who are carrying out a trade and who are really doing no harm to others, but the guidelines from the WHO on this concept of workplace, tell us that:

“‘Workplace’ ought to be defined broadly as any place used by people during their employment or work. This should include not only work done for compensation but also voluntary work if it is of the type for which compensation might normally be paid. In addition, workplaces include not only those places at which work is performed, but also all attached or associated places commonly used by the workers in the course of their employment, including, for example, corridors, lifts, stairwells, lobbies, joint facilities, cafeterias, toilets, lounges, lunch rooms, out-buildings such as sheds and huts. Vehicles used in the course of work are also workplaces and should be specifically identified as such. Careful consideration should be given to workplaces that are also individuals' homes or dwelling places, for example, prisons, mental health institutions or nursing homes. These places also constitute workplaces for others who should be protected from exposure to tobacco smoke.”

I just read that; it is the guidelines given—

Sen. Drayton: The sole trader, I do not think quite covers it, but where it is a private residence used as a dwelling place. It is a home.

Sen. Oudit: What about a housekeeper who is working in a private home?

Sen. Narace: We already agreed they were not covered. We agreed on that. It was their private residence. We agreed on that.

Sen. Oudit: No. It is a private residence where it is being used as a workplace. That is the person's workplace. I am a housekeeper.

Sen. Narace: We already agreed on that.

Sen. Drayton: But you see, you might agree on it, but—

Sen. Narace: When I say, we agreed, we wanted to include the domestic or the housekeeper and the consensus was that we ought not to treat private residences like that. So now we say, okay, so we have left that. Now we go on to, “except where there was manufacture or trade or if it was a business place”, so to speak. You have now raised the point culturally that someone who is a tailor and a one-man show and so on, and that is why I said if maybe we can say "a sole trader with not more than two or three employees" if that would cover—What would you recommend?

Sen. Drayton: What I am recommending here is that once it is a residence, a home, that is a dwelling place, then I do not believe that it should be included in the definition of workplace.

Sen. Narace: We were saying, "except where the residence is a place of commerce." That is an exception, you know.

Sen. Drayton: All right. Well then how do you define the word commerce?

Sen. Narace: If they are engaged in manufacture, trade or—

Sen. Drayton: But, you see, once you go there, once you define the term "commerce" as such, then the seamstress or the tailor can be defined as commerce and I really believe that since you have indicated that sections 4 and 5 of the Constitution are impaired only from the corporate citizen point of view in terms of their advertising, if you look at the Constitution, what you are saying there, impairs the right to privacy in the home.

Sen. Narace: So what is the final recommendation?

Sen. Drayton: Well, I believe my recommendation is that the definition should stop at "vehicles" and I believe that once it stops at "vehicles" if a place is manufacturing a whole pile of goods for sale and distribution, then it is a business

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and there are other ways in which a business is defined in Trinidad and Tobago. It is defined as a business by TSTT, by the utilities, where they charge commercial rates. So that once you are talking about a private dwelling place, in the many other laws or under institutions, public institutions that are under Act of Parliament or otherwise, such as the utilities, such as WASA, et cetera, you will not charge a commercial rate, so the home is not defined as commerce.

Sen. Enill: Sen. Drayton, the recommendation that you are making there stops at "vehicles". Is it?

Sen. Drayton: It says here, in other words it would read:

"but does not include private residences or private vehicles".

Sen. Enill: Were you on the same page with me? Page 10.

Sen. Drayton: Page 10.

Sen. Enill: It says:

“‘workplace’ means any place used by persons during their employment or work and includes vehicles...”

Sen. Drayton: —"vehicles, common areas and any other area which is generally used during the course of employment or work, but does not include private residences or private vehicles." That is it.

Sen. Enill: That makes sense.

Mr. Chairman: Senators, are we all agreed that in the definition of "workplace" after the word "vehicles" the rest of the line would be deleted?

Question put and agreed to.

Sen. Mark: Mr. Chairman, I have an amendment which reads as follows:

- A. Immediately after the definition of "authorized officer" insert the following new definition: "Board" means the Tobacco Control Board of Trinidad and Tobago established by section 5.

This particular definition is linked to clause 5 so there is an inextricable link between what I am proposing for "A" and what is to come. The reason for it, whenever we are dealing with the rights and freedoms of the citizenry of this country and given the abuse of this Government over the last seven years in terms of power and office, we believe that in the interest of maintaining the rights and freedoms of the people, we would like to propose, with the Minister's approval

and the Attorney General's approval, that we have an independent board rather than have a unit within the ministry as a department. Now this unit that they are going to establish is going to have a lot of power and this unit falls under the purview of the Minister. We are saying that since this thing requires a three-fifths majority, it is going to infringe on the rights of people. We are asking the Government to consider the establishment of a control board that would be "independent" as compared to what is being proposed here. A unit is a department of the ministry and we believe that is not acceptable in the context of our environment and our culture. I want to tell you, Attorney General, the Botswana experience is what I am talking about here and also model legislation.

Sen. Jeremie SC: It is not because it requires a three-fifths majority that it infringes on the rights of individuals; it is because of the reasons that I gave my friend, Sen. Prof. Deosaran that it infringes on those rights, and only because of those reasons. We do not think that that is a sufficient basis on which we should proceed to change the legislation so radically as to establish a board and that is our policy position, that it best be accommodated, I understand, by a unit in the Ministry of Health.

Sen. Mark: Well, Mr. Chairman, we have a fundamental difference with the Government on this one. We believe that in an effort to ensure that there is integrity in the process, we do not want this unit which is almost a faceless and nameless unit in the legislation now to be in the heart of the Ministry of Health and we insist that this should be an independent board. That is our position on the matter.

7.35 p.m.

Mr. Chairman: Do we have any other comments on this?

Sen. Prof. Deosaran: If you use public servants for this exercise, would that be a compromise rather than having these people hired on contract or outside the public service? I do not know if Sen. Mark would concede as a compromise. You are using public servants for the unit or does it imply that you are going to use public servants?

Sen. Enill: As a unit within the ministry, the accounting officer is the Permanent Secretary. It is not the Minister. Therefore, all the contracts and issues are with the Permanent Secretary and that is covered by the Exchequer and Audit Act and all the parliamentary issues. It would seem to me that on the basis of what is contemplated, that is a better approach than a board, because an independent

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board as Sen. Mark is suggesting, we have seen instances where the independence can work against the people that we are trying to protect. In those circumstances, the ability to deal with it is very long and people suffer in the interim.

In our opinion this is the best way to put into effect two things. One is the system that allows for parliamentary control because it is going to be part of the ministry and therefore, it would be subject to all the parliamentary approvals that we have at this point in time.

While allowing the Minister to have policy directive, it basically fits into the structure that exists currently. From a policy perspective, it would seem to me that this takes into account the concerns that have been raised.

Sen. Prof. Deosaran: You are speaking about functions. I am speaking about the status of the persons hired. Will they be public servants or not?

Sen. Enill: Sen. Prof. Deosaran, you know this better than I. You can create the positions and try to get them filled, but if you want to do that, four years down the road you would still be looking because we have the current experiences in situations we are looking for as customs and Inland Revenue. The process is not going to give the results for which you are looking. This is seeking to give a process that gets people there, but at the same time to maintain it within a system that you have some control.

Sen. Mark: Mr. Chairman, we have a fundamental difference with the Government on this matter. We are not in the business of undermining an independent institution called the Public Service Commission. Until we repeal the Constitution or amend it, the Public Service Commission remains an independent body. We on this side maintain that there is need for us to have some insulation or buffer between the politician and the workers in this question. We are suggesting the independent board.

Sen. Ali: On that issue, I had proposed a basic organization for the unit, but I am prepared to yield to Sen. Mark. I withdraw my comments about the unit as put down there. I agree with Sen. Mark's system of a controlled board so that the definition of unit would disappear. I think it is not unique.

Sen. Enill: Let me understand what is contemplated. Once you select the board, it is the Minister who must appoint the directors. Are you suggesting that that is a superior solution to one in which the person is part of the public service administration, with accountability to the Permanent Secretary? I want to understand what you are saying to me.

Sen. Mark: If you look at the amendment I have, you would see under 5(2), the President of the Republic, not the Cabinet, in consultation with the Leader of the Opposition and the Prime Minister shall appoint the members of the board.

Sen. Enill: Unfortunately that is not our policy position on this particular matter.

Sen. Mark: Are you rejecting it?

Sen. Enill: Yes.

Sen. Mark: Your policy position is cast in stone?

Sen. Enill: No. Our policy position is based on a principle that says that the Executive has responsibilities and within those responsibilities you must have checks and balances. In this regard, the question of accountability rests with the Minister. The Minister is the one who has to come to Parliament to account.

In our view, the system by which you do that more effectively is the one suggested.

Sen. Mark: We have to look at the practical reality here. The reality is that there is no accountability in Trinidad and Tobago. You know that. Saying that the Minister is accountable, that is "ol' talk".

Mr. Chairman: This is not a third time. It is going to get very, very late if we say everything three and four times.

Question on amendment [Sen. W. Mark] put.

The Committee divided: Ayes 8 Noes 21

AYES

Mark, W.

Nanan, Dr. A.

Kernahan, Dr. J.

Rahman, M. F.

Oudit, Mrs. L.

Gopaul-McNicol, Dr. S.

Deosaran, Prof. R.

Ali, B.

NOES

Enill, C.

Saith, Dr. L.

Jeremie SC, J.

Browne, M.

Joseph, M.

Manning, H.

Narace, J.

Dick-Forde, Dr. E.

Gronlund-Nunez, Mrs. T.

George, W.

Hadeed, G.

Rogers, L.

Lezama, Miss L.

Melville, Miss J.

Ramkissoon, Miss. A.

Annisette, M.

Ramkhelawan, S.

Baptiste-Mc Knight, Mrs. C

Nicholson-Alfred, Mrs. A.

Drayton, Mrs. H.

Merhair, Miss G.

Amendment negatived.

Mr. Chairman: The second amendment is by Sen. Wade Mark.

Sen. Mark: Mr. Chairman, I beg to move that clause 4 be amended by deleting the definition of "enclosed".

When we look at the definition of this particular provision or word, I suggest that in terms of persons being liable to be criminalized, I assume that under the Second Schedule, when we talk about public transportation terminals, I ask whether a bus stop could be considered as an enclosed area. If somebody is caught smoking a cigarette at a bus stop, given the definition of "enclosed" whether that could be interpreted in the context of this word enclosed. That is where I was concerned.

It says that it means any space covered by a roof. That is what you have in terms of a bus stop. Any space surrounded by one or more walls or sides. That is what you have at a bus stop. I want to get clarification. When you talk about enclosed and we look at it from the point of view of the transport terminals, whether it would mean a bus stop which is a terminal area essentially and would that be incorporated here?

Sen. Enill: I do not think that there are the cultural sensitivities here that existed before. We were guided by the guidelines and protection from exposure to tobacco smoke. That helped us in terms of the definition of indoor or enclosed. It reverts to Article 8 of the framework convention which requires protection from tobacco smoke in indoor workplaces and public places.

The guidelines say that because there are potential pitfalls in defining indoor areas, the experiences of various countries in defining this term should be specifically examined. The definition should be as inclusive and clear as possible and care should be taken in the definition to avoid creating lists that may be interpreted as excluding potentially relevant indoor areas.

This is important. It is recommended that indoor or enclosed areas be defined to include any space covered by a roof or enclosed by one or more walls or sides, regardless of the type of material used for the roof, walls or size and regardless of whether the structure is permanent or temporary. It is a matter we have adopted as policy.

Sen. Mark: We just cannot adopt. We are making laws. We are lawmakers. We cannot take an example from Europe or WHO. We must relate it to our hard experience. Could you give us some examples of an enclosed area so that the ordinary people who are looking now at this programme would understand what you mean by enclosed.

Sen. Prof. Deosaran: I agree with an enclosed space with walls or sides and a roof. What is contradictory especially since what the AG just read that clarity is needed, I think that the word "enclosed " and having one wall is contradictory. If you take out one you might make it more appropriate.

Sen. Narace: The one wall had to do with I think verandahs and so on. You could have out in the open of the business place, put all the cigarettes there and the people inside the enclosed place through the ventilation, it would be the same thing. That is the reason. It is to prevent that verandah type thing.

Sen. Dr. Nanan: If you are on the beach and smoking under the umbrella, would that be covered?

Sen. Narace: That is not a wall.

Sen. Drayton: I understand what the Attorney General was saying with respect to the definition within the convention framework, but does this definition refer specifically to public places?

7.50 p.m.

Sen. Drayton: For instance, if you are in a cabana on the beach, which is one of those umbrellas, is that included under the definition of a verandah of a home?

Sen. Narace: A verandah of a home is not included and an umbrella does not have a wall, so it is not included.

Sen. Drayton: Does it refer to public institutions or public and private?

Sen. Narace: As we said, the umbrella does not have a wall; it does not cover a house and it is really meant for verandahs and that sort of thing. According to the legal people, that will not be.

Sen. Drayton: When you say it does not include a verandah, I am not too sure what you mean by that.

Sen. Narace: For example, one of those places on Ariapita Avenue, where you have like a verandah outside and there is internal dining, really some of them could have one wall. Technically you can go out to the verandah and smoke out there if you did not put the wall and the roof. The wall and the roof speak to that kind of place. It does not speak to an umbrella. It does not speak to public places like that.

Your other question was in your home. In your home, that is not included.

Sen. Drayton: It does not include private residences?

Sen. Drayton: No, it does not include private residences.

Sen. Prof. Deosaran: Mr. Chairman, you have not dealt with my point, before we jump in on the other point. I would like to have my point settled as to whether “enclosed” is compatible with having one wall. If you could clear up

that—I would like to see, yes you need enclosed places, but to me to have one—I cannot understand the presence of one wall or one or more walls. If you say at least three walls or something so, it might be more palatable. There is something I am missing.

Sen. Narace: A verandah could be just a structure.

Sen. Prof. Deosaran: That is the roof, I am talking about the wall.

Sen. Narace: With two—

Sen. Prof. Deosaran: I am speaking about the wall.

Sen. Narace: A verandah could be an open place with one wall.

Sen. Oudit: If there is one wall, then it could not be enclosed.

Sen. Prof. Deosaran: That is the point.

Sen. Oudit: It defies the definition of “enclosed”.

Sen. Prof. Deosaran: It is a simple point. I do not see it as a big point. The spirit of the clause is all right. Physically to have an enclosed space with one wall, I do not see that configuration at all.

Sen. Narace: What if we make it one wall and a roof?

Sen. Prof. Deosaran: That is all right.

Sen. Drayton: I have suggested a definition. The definition of the word “enclosed” is if it is completely or substantially enclosed, meaning more than 50 per cent or 60 per cent enclosed. I do not see how you should have an enclosure—say a building is enclosed with one wall or two walls.

Sen. Narace: Enclosed in relation to a space means any space covered by a roof and, instead of or, any space surrounded by one or more walls. Is that all right?

Sen. Drayton: That is not enclosed, by any means. That is an open space.

Sen. Narace: How do you define 50 per cent?

Sen. Drayton: I would define a place that is enclosed if it is completely or substantially enclosed, which means that it is more than 50 per cent or 60 per cent enclosed, it has a roof and it has walls.

Sen. Narace: I am checking with the policy people to make sure. The thing is that there is a definition in the guidelines that we use. You are now saying that we change it to 50 per cent.

Sen. Drayton: Yes, the convention is a guideline and the convention did say specifically to give legal effect, with all due respect, to local constitutions, culture, traditions and things like that. I do not think that we should take all the clauses wholesale from the convention and try to implement them. I do not think that is appropriate. I do not see how the definition of the word “enclosed” could be an enclosure with one wall.

Sen. Narace: Okay, Senator, we will accept it. We are accepting the definition of the word “enclosed”:

Delete all words after the word “roof” and insert the following words:

“completely or substantially enclosed, with the term substantially enclosed” meaning more than 50 per cent closed to the outside air.

Mr. Chairman: Hold on one second, let us deal with one thing at a time here. We have Sen. Mark’s amendment in front of us. Are we accepting that? We are not accepting that?

Substitute for the definition of “public place” the following definition:—

“‘Public Place’ means any place, fixed or mobile, including any workplace, to which members of the general public or segments of the general public ordinarily have access by express or implied invitation. An enclosed public place is a partially or fully completed building or structure.”

Sen. Mark: Mr. Chairman, again if you look at the definition on page 9, “public place” is very wide. When you look at the Second Schedule, you look at (j), it says:

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

It is very wide and very board. What we are trying do is to give some specifics to this whole definition of “public place”. I would like the Government to consider this definition and delete what they have in their definition. It is too wide and too broad.

Question on amendment [Sen. W. Mark], put and negatived.

Mr. Chairman: Insert immediately after the definition of “Regulations” the following definition:

“‘Separately ventilated smoking room’ means a room in an enclosed public place, including workplace that:

- (i) is enclosed with four (4) walls, floor to ceiling partitions, and a door;
- (ii) has an airflow system that is exhausted directly to the outside; and
- (iii) has negative air pressure in comparison with the remainder of the building.”

Sen. Mark: Here it is the Government is seeking to outlaw smoking, as far as I am concerned and they are not making any provision in the legislation for designated smoking areas. I believe that is contrary to established international standards. I have looked at the literature and there is provision for a designated smoking area at workplaces and public places. If someone wishes to go and smoke, they can go in that particular area. Right now, in the legislation, there is no provision. I am asking the Government to consider, if they want this thing to really work properly, give people an opportunity, if they want to exercise choice to go and smoke in an enclosed area; a designated area. That is why I have proposed this definition.

Sen. Narace: Mr. Chairman, I dealt with that issue in my winding up and we made it clear what that did was the ventilation allowed all the toxins to exchange and it was a way of tricking people into still smelling the cigarettes. Really, it is not the international best practice at this time and it is certainly inconsistent with the guidelines that we are following. Therefore, we want to reject that position.

Sen. Baptiste-McKnight: I am wondering how the hon. Minister’s explanation jives with the fact that most international airports have designated smoking areas.

Sen. Narace: They are moving away from that practice.

Sen. Mark: They are moving away? How do you know that? Where?

Sen. Narace: Our information from the FCTC and our officers sitting here are constantly being updated on the newest positions.

Sen. Mark: You are giving us a jerry now.

Question, on amendment, [Sen. W. Mark], put and negatived.

Mr. Chairman: Sen. Ali, in clause 4, has a proposal to delete the definition of “priority population”.

Sen. Ali: Yes, I think that is also on the Ministry’s list, so that is okay.

Mr. Chairman: And in the definition of “tobacco product”, substitute “is” for—

Sen. Ali: That is a grammatical correction.

Mr. Chairman: That is a typo. Sen. Baptiste-McKnight, are you satisfied with what we have there?

Sen. Baptiste-McKnight: I am suggesting that there needs to be a definition for “convention”, which is mentioned in clause 5, because there are many conventions to which Trinidad and Tobago is party. There is a need to identify which convention. The definition would be this clause 4.

Mr. Chairman: What is the definition?

Sen. Jeremie SC: We will put in a definition for it, Mr. Chairman. It is the World Health Organization Convention on Tobacco Control. I am not sure, usually there is a number. It is of 2003, I am told.

Mr. Chairman: Senator, are you satisfied with that?

Sen. Baptiste-McKnight: Yes, Mr. Chairman.

Mr. Chairman: We would include a new definition for the Convention, the World Health Organization Convention on Tobacco Control of 2003. What about for the word “distributor”?

Sen. Baptiste-McKnight: In the definition of “seller” there is mention of distributor and wholesaler at various places throughout the Bill. There is no means of identifying who is a distributor from who is a wholesaler.

Sen. Jeremie SC: Sorry, I do not have the amendment in front of me, but I know that we spoke to distributor. That is an ordinary English word. The principle of statutory construction is that you could use the ordinary English meaning. What is the other term? “Wholesaler” would be the same principle. “Ministry” could have different meanings in different context, so, perhaps, we can say “Ministry” means the Ministry of Health.

Mr. Chairman: “Ministry” would mean the Ministry—

Sen. Jeremie SC:—with responsibility for health.

8.05 p.m.

Mr. Chairman: Senator, are you okay with that? “The Ministry” means “the Ministry with the responsibility for Health” and “distributor” has the ordinary dictionary meaning.

Sen. Drayton: When we go back to clauses 4 and 5, I think this really goes too far with respect to the rights of the manufacturer. What we are saying here is that the manufacturer, Witco, cannot use its symbol, its sign, its logo, its trademark, its pattern, its emblem or its design.

Mr. Chairman: Senator, where are you?

Sen. Drayton: The definition of “graphic”. Well, we were going to do clause 4, which reads as follows:

1. In the definition of the word “enclosed”, delete all words after the word “roof” and insert the following words, “completely or substantially enclosed, with the term substantially enclosed meaning more than fifty per cent closed to the outside air.”

Question, on amendment, put and agreed to.

Mr. Chairman: It continues:

2. In the definition of the word “graphic” delete the words “recognizable colours or patterns of colours”.

Question, on amendment, put and agreed to.

Mr. Chairman: Sen. Drayton, you had an amendment to the word “workplace”, but I think we have dealt with that.

Sen. Drayton: Yes.

Mr. Chairman: Withdraw that? We have already done that.

Sen. Drayton: Yes.

Sen. Jeremie SC: Mr. Chairman, did you pick up the typo in “graphic”?

Sen. Oudit: Mr. President, I would like to have the words—in the interpretation. It is no where there, and this Bill speaks directly to that. In my contribution, I gave a definition from the World Health Organization and it is not included in the legislation.

Sen. Jeremie SC: Can you point to a provision in the Bill where it is used if you want us to define it?

Sen. Oudit: It is in the Bill here. Mr. Chairman, I am not sure where it is here, but on page 5 of the Bill, it talks about preventing an individual from exposure to tobacco smoke. That is the intention of the Bill. It is on page 5.

Mr. Chairman: If the word is not used in the Bill, then we cannot have a definition of it. It would serve no purpose.

Question put and agreed to.

Clause 4, as amended, ordered to stand part of the Bill.

Clause 5.

Question proposed, That clause 5 stand part of the Bill.

Mr. Chairman: We have an amendment from the Minister of Health which reads as follows:

- A. In paragraph (d) delete the words “; and” and replace with the word “;”
- B. In paragraph (e) delete the word “.” and replace with the words “; and”
- C. Insert after paragraph (e) the following:
 - “(f) considering and evaluating applications for licences on behalf of the Minister.”

Sen. Mark: So, the Minister establishes a unit and then the unit evaluates licences that he has to approve. It is himself to himself; Caesar unto Caesar.

Mr. Chairman: We have a proposed amendment by Sen. Mark.

Sen. Mark: Mr. Chairman, again, because of this incestuous relationship, I insist that a board be established, and this is how the board is to be structured. It is self-explanatory.

Mr. Chairman: Considering the articulated position of the Government, I would just put the entire clause. Clause 5 is amended as circulated by Sen. Mark and it reads as follows:

- “(1) There is established a body to be known as the Tobacco Control Board of Trinidad and Tobago, hereinafter referred to as ‘The Board’.
- (2) The Board shall comprise five (5) Members, including the Chairman, appointed by the President after consultation with the Prime Minister and the Leader of the Opposition.
- (3) The Members of the Board shall hold office for a period of three (3) years and are eligible for re-appointment for one (1) further term.
- (4) The Members of the Board shall be persons of eminent standing and good repute in society and with experience or qualifications in Public Health, Law and Social Sciences.
- (5) A person shall not be appointed to the Board who:—

- (a) Is engaged in the Tobacco Industry as an owner, shareholder, partner, grower, importer, distributor, retailer or otherwise directly or indirectly;
- (b) Has a financial or proprietary interest in an organization engaged in the manufacture, importation or distribution of tobacco products;
- (6) The Funds of the Board shall be a charge on the Consolidated Fund.
- (7) The accounts of the Board shall be audited by the Auditor General.
- (8) The Board shall be responsible for—”

Question, on amendment, [Sen. Wade Mark], put and negatived.

Mr. Chairman: Sen. Ali's amendment reads as follows:

Re-number as “5(1)”.

Add 5(2) as follows:

- “(a) The Unit shall be headed by a Director appointed by the Minister and who shall be responsible to the Permanent Secretary of the Ministry;
- (b) The Unit shall be provided with adequate staff with the requisite qualifications and experience for the discharge of its functions.”

Sen. Mark: Mr. Chairman, can I just amend the amendment? I would just like to add after “functions” the words “appointed by the Public Service Commission” to Sen. Ali's amendment.

Mr. Chairman: Sen. Ali, are you in accordance with that? Sen. Mark is proposing to amend your amendment by including the words “appointed by the Public Service Commission” after the word “functions”.

Sen. Ali: That is an option. I have put that there so that recognition is taken of the function of the unit, because we have the unit right through.

Mr. Chairman: We have a further amendment to that amendment which is—

Sen. Jeremie SC: We reject.

Mr. Chairman: Is that the position?

Sen. Ali: I am sorry. What is the further amendment to that?

Mr. Chairman: Your amendment at “(b)” after the word “functions”, Sen. Mark is suggesting to add the words “appointed by the Public Service Commission”.

Sen. Ali: Mr. Chairman, I appreciate what Sen. Mark is saying, but I would prefer to leave that for the regulations. When the regulations come out you can then put flesh to the bones.

Mr. Chairman: The amendment as proposed by Sen. Ali is accepted.

Question, on amendment, [Sen. B. Ali], put and agreed to.

Question put and agreed to.

Clause 5, as amended, ordered to stand part of the Bill.

Clause 6.

Question proposed, That clause 6 stand part of the Bill.

Mr. Chairman: The amendment proposed by the Minister of Health in 6(2)(b) reads as follows:

Delete the words “and to priority populations”.

In paragraph (c) delete the words “and carry out”.

Sen. Oudit: Mr. Chairman, one quick matter. I am referring to when we did the definition of “bulk packaging” and you changed “10 units” to “200 grams”. On the Third Schedule, it is referring to 10 or more units per package. I think in keeping with the changes, you may want to look at that. I just went back to the definition.

Mr. Chairman: We have passed that. No, we have gone past that.

Sen. Mark's proposal reads as follows:

A Substitute for the word “unit” the word “Secretariat” wherever it occurs in this clause.

This follows from his proposal with respect to the Board.

Sen. Mark: Having regard to the fact that you have rejected it already, I will support it, Sir. I support my proposal. Mr. Chairman, can you kindly put the question for us.

Question, on amendment, [Sen. Wade Mark], put and negatived.

Mr. Chairman: Sen. Baptiste-Mc Knight has a proposed amendment at 6(1)(e) to add the words “alternative income earning opportunities for small retailers”.

Sen. Baptiste-Mc Knight: Mr. Chairman, that could read for displaced persons. This comes out of the convention that says you have to retrain people who are displaced by the regulation whether they are tobacco workers or whatever.

Sen. Narace: Sen. Baptiste-Mc Knight, we accept it.

Question, on amendment, put and agreed to.

8.20 p.m.

Mr. Chairman: At 6(2) to add “(d) the unit shall train authorized officers”. Any difficulty ?

Sen. Narace: Was that in 6(2)?

Mr. Chairman: Clause 6(2) to add a (d) “the unit shall train authorized officers.”

Sen. Narace: Yes, that is fine.

Question, on amendment, put and agreed to.

Mr. Chairman: Sen. Ali, 6(2)—

Sen. Enill: We dealt with that.

Mr. Chairman: Okay, we dealt with that. We will do amendments to 6(5), Sen. Drayton and come back to the Minister of Health.

Question put and agreed to.

Clause 6, as amended, ordered to stand part of the Bill.

Clause 7.

Question proposed, That clause 7 stand part of the Bill.

Mr. Chairman: Sen. Mark had a proposal to substitute the word “unit” for the word “Secretariat”. [*Laughter*]

Question, on amendment, put and negatived.

Question put and agreed to.

Clause 7 ordered to stand part of the Bill.

Clause 8.

Question proposed, That clause 8 stand part of the Bill.

Mr. Chairman: We have an amendment from the Minister of Health at 8(2):

Insert after the word “power”, the words “after obtaining the consent of the owner, manager or lessee or after obtaining a warrant,”.

Question put and agreed to.

Mr. Chairman: At 8(3):

Delete the words “of the seizure and detention” and substitute the words “in respect of the tobacco products or items to be seized and detained”.

Question put and agreed to.

Mr. Chairman: Sen. Mark, at clause 8 has, again, a series of amendments. These are different?

Sen. Mark: Yes. Attorney General, you had looked at these amendments?

Sen. Jeremie SC: No.

Sen. Mark: It is not no—you just look at it properly—

Mr. Chairman: Well, let me put them one at a time. At (a), in subclause (1) paragraph (a):

- (i) insert the word “and” between the word “examine” and the word “open” occurring in line 1;
- (ii) delete the words “and test” occurring in line 1.

Any difficulties with that?

Sen. Narace: We want to reject that, Mr. Chairman.

Sen. Mark: Editorial, he has no problem with that, it is editorial. No policy shift. [*Laughter*]

Sen. Jeremie SC: No.

Mr. Chairman: No.

Sen. Narace: We reject it.

Question, on amendment, put and negatived.

Mr. Chairman: At: B. Add the following paragraph (f):

“(f) cause to be tested any equipment, tools, materials, packages or anything he reasonably believes is used or is capable of being used for the manufacture, including packaging and labelling, storage, distribution, advertising or promotion of tobacco products”.

Question, on amendment, put and negatived.

Mr. Chairman: At: “C. In sub-clause (2):

- (i) delete the words “who are either Custom Officers or Police Officers” occurring in lines 1 and 2 thereof;
- (ii) add the following paragraph (d):

“(d) no authorized officer shall abuse his authority or his position for personal or financial gain.”

Sen. Mark: Again, we want to ensure that these authorized officers—we know what takes place in the country and to avoid for instance people being victimized, people being unfairly attacked or targeted, we believe that these trained officers must not abuse their authority or their position for any personal or financial gain and I think that ought to be in the legislation. There are too many instances of, sometimes officers abusing their position for personal and financial gains at the expense of the people. I think that should be incorporated in the legislation.

Sen. Prof. Deosaran: Mr. Chairman, the point is well taken but I think the Attorney General would know that this provision already exists in legislation for public officers. If you want to reaffirm it here it is quite all right.

Sen. Jeremie SC: There is no harm in it and apart from Sen. Mark's inaccurate reference to (d) we would put it in as—what is it, (i)? [*Discussion*] We will find an appropriate place to put it in. It is not in the correct place, but we take the point.

Sen. Mark: I understand the point that the Attorney General is making, Sir.

Mr. Chairman: What about subclause (2)(i) “delete the words ‘who are either Custom Officers or Police Officers’ occurring in lines 1 and 2”.

Sen. Mark: Yes, only authorized officers “who are either Custom Officers or Police Officers” shall have the power. Now, what we are saying is, we have in the definition section of “authorized officers”, custom officers, police officers and

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public health inspectors, but somehow in this section reference is only made to police officers or custom officers. So, to be consistent, I am deleting that section and to be consistent you have police officers, custom officers and public health inspectors. That is what I am saying here essentially.

Sen. Jeremie SC: No, those are more coercive powers and you want to give them to authorized officers but who are customs officers or police officers, so we do not want the public health inspector doing these things.

Sen. Mark: Okay, if you say so.

Mr. Chairman: So, the proposed amendment at (i) is rejected and at (ii) it is accepted?

Sen. Narace: Yes.

Mr. Chairman: But you would find an appropriate place for it?

Sen. Mark: Mr. Chairman, (D)?

Mr. Chairman: You want to put it in as 8(6). Okay.

Sen. Mark: Mr. Chairman, in terms of (D)?

Mr. Chairman: Yes. "In sub-clause (3) delete the full stop (.) and add the following words:

"and shall provide a detailed receipt for the items seized."

Sen. Mark: Mr. Chairman, it is our view that when you seize citizens' businesses or anybody's material, given the fact that we are violating sections 4 and 5 of the Constitution, we would like to suggest that when you take the items away from the citizens or the business place, you leave with the business owner a receipt so that there will be evidence that you have removed these items, and therefore, whenever you have to return it or they have to claim it there would be evidence—and that is international best practice.

You just cannot take people's equipment and go without giving them some kind of evidence; give them a receipt that you have taken this and then when you have to return it, you have to return it, and that is consistent with international best practice, Attorney General.

Sen. Jeremie SC: Mr. Chairman, I think a receipt is something that you give when you pay for something. But the general point is taken, but it is provided for in 8(3):

“In acting under subsection (2)(c), the authorized officer shall provide the person in possession of the tobacco products or other items with a written notice of the...”

Mr. Chairman: Those words were taken out.

Sen. Jeremie SC: Sorry, in respect of the tobacco products and items to be seized and detained on the grounds for same.

Sen. Mark: When you say written notice of seizure, what is that?

Sen. Jeremie SC: Well, it is not a receipt but it will be an inventory of what has actually been taken.

Sen. Narace: Confirmation.

Sen. Mark: Written notice—

Sen. Hadeed: It tells you what items have been seized—

Sen. Mark: No, when you are coming to seize my material, right, you say, listen, written notice, I am coming to seize your material, x, y and z; when you seize my material based on that written notice, do I have any evidence that you have seized my material? I am saying that you are taking my material. Yes, you give me notice that you are coming to take my material, but now that you have taken it I want some evidence so that when I am coming back for my material I have evidence. [*Crosstalk*] This is serious; you cannot come and take my material just so.

Sen. Prof. Deosaran: Mr. Chairman, if I may, I think the point by Sen. Mark should be well taken, but what the Attorney General is saying is that written notice seems to satisfy that condition, except that I would say the word “notice” could be more specific in terms of a record. I think what Sen. Mark is aiming at is a record.

Sen. Rahman: Notice of record.

Sen. Prof. Deosaran: Yes, something like that. [*Crosstalk*] Yes, it is a record that Sen. Mark really wants.

Sen. Jeremie SC: It is a written notice—[*Crosstalk*]

Sen. Oudit: Mr. Chairman, clause 5 of that same clause went on to talk about these seized and detained tobacco products will be kept as evidence in legal proceedings, and we had an Evidence (Amdt.) Bill here recently where there was so much information on items that are stored.

I think what Sen. Mark is simply asking is to have some sort of record of inventory of what was taken so that eventually even evidence for legal proceedings will match up and you would not have a case thrown out because somehow the record of inventory is different from the evidence. It ought to be one and the same, and I think this is trying to cover when you have legal proceedings. A man does not come and say, listen, you took 40,000 cases from me and only 10 is evidence in a legal proceeding. It is simply a question of inventory.

Sen. Jeremie SC: He has no power to seize anything that is not in the notice.

Sen. Oudit: No, your notice is like simply indicating that I am coming to look at your place, I am coming with the intention of, and it gives me the right to seize or detain—that is a notice which is almost like a warrant.

Sen. Jeremie SC: In acting under subsection (2)(c), so before he can act under section (2)(c), the authorized officer shall first provide the person in possession of the tobacco products or other items with written notice which would contain the particulars.

Sen. Rahman: Yes, but when they go on the premises and they find other things that they want to pick up, how is that—[*Crosstalk*]

Sen. Merhair: So, this is an inventory, an inventory is different. [*Crosstalk*]

Sen. Rahman: Attorney General, may I say something. In a prior Bill, Sen. Seetahal SC said that it is normal practice for the police always to give a receipt for what they seized, now in this case it is officers and not only police, so there is a requirement in the police regulations to cover that, but there is none here. There has to be a receipt given to the person from whom you are taking the goods.

8.35 p.m.

Sen. Jeremie SC: I think we are saying that the written notice would be what is seized. But if you wish, we can find a form of words to—

Sen. Enill: These are police officers and customs officers. This is what they do on a daily basis. In the normal course of their activities, they do this all the time. So what are we suggesting?

Sen. Mark: This is a different arrangement.

Sen. Enill: It is illegal is not it? —which is what we are dealing with.

Sen. Mark: What I am saying is best practice demands—

No. All I was thinking about is, where do you get that for effectiveness? Do you put it here or is there another place that makes more sense. In other words, is it in the police or customs activity?

Mr. Chairman: The amendment will read as follows:

"At the same point, and a record of such items seized and detained, shall be provided to that person."

Question, on amendment, put and agreed to.

Sen. Mark: I just want to get some clarification. Mr. Chairman, under 8(2)(c) of the third line, what do we mean by "or other items"? Because this could be very broad, and if you are going in to a business place and you are going to seize tobacco products because that is what this Bill is about, I think that we should be specific. When we say "or other items", other tobacco items"? Be specific. We are dealing with the law here and I find it is very broad. And it says the authorized officer, if he reasonably believes that this "other item" does not comply with this Act, he is going to seize the item. But we do not know what "other items" is and I am saying we want to be consistent because these people are not trained.

Mr. Chairman: Well, I think it is only going to be the items that the Act deals with and it would be advertising materials, signs, and that sort of thing. It could be packaging as well, and display cases and stuff as well as the tobacco products. Other items not included in the Act would simply not be included in that.

Sen. Jeremie SC: That is the answer, the ejusdem generis rule. It is tobacco products, so it will govern it and other such items.

Mr. Chairman: We have another proposed amendment at (e), to add the following subclause 6; well it would be (7) because we would have added another one already.

"Where, as a result of legal proceedings, it is determined that any seized and detained tobacco product or other item does not meet the legal requirements, such tobacco product or other item shall be destroyed."

Sen. Mark: I would like to—*[Interruption]* Are you rejecting that? Okay.

Mr. Chairman: It is not accepted.

Sen. Mark: Is that not something that is normal, that if you seize things, you destroy them? I mean to say, I thought that is a normal practice. I do not know why you want to reject that. That is a normal practice. What the Government does when you have these materials, not destroy them?

Sen. Jeremie SC: If they are of use in proceedings, they cannot be destroyed, Sen. Mark.

Sen. Mark: No, but I am talking outside of that. I am just asking.

Sen. Jeremie SC: Well, your amendment wants us to destroy evidence.

Sen. Mark: "Where as a result...determine that any...does not meet the legal requirements..." It does not meet the legal requirement, so I am not saying to destroy. Or we could put some amendment. But the principle is that whatever you are not using, destroy it. I am not saying to destroy the evidence. I am not saying that. But the principle is what I am trying to focus on. If you feel that is not going to be useful in the exercise, there is no problem. I am trying to strengthen the legislation as much as possible.

Sen. Jeremie SC: I think this will weaken it because it will defeat the objective.

Sen. Mark: I am guided by the hon. Attorney General.

Mr. Chairman: I will put the question.

Sen. Mark: No, I am guided, Mr. Chairman. I am guided by that and I withdraw that.

Mr. Chairman: Withdrawal? Okay.

Amendment withdrawn.

Question put and agreed to.

Clause 8, as amended, ordered to stand part of the Bill.

Mr. Chairman: Hon. Senators, I am advised dinner is ready in the tea room. Would you like to break for dinner or do you want to continue?

Sen. Jeremie SC: No, we are going straight through until we finish, 2 o'clock in the morning.

Mr. Chairman: Very well.

Sen. Mark: It matters not. I had a good rest.

Mr. Chairman: Hon. Senators, I have put the question and I would have to withdraw that. We have amendments to clause 8. I beg your pardon.

[Amendment proposed by Sen. Baptiste-Mc Knight]

8(1)(a): Delete "reasonably believes" and replace with "has reasonable grounds to believe".

Sen. Baptiste-Mc Knight: Mr. Chairman, my thinking here is that the authorized officer must be able to identify some reason why he is going after this, other than just reasonably believing. In addition, I would like to suggest that in (1)(a), we include "examine, open and cause to be tested", rather than test because I am not sure that these would have the technical capacity to test equipment. They would have to take it to the lab.

Sen. Jeremie SC: Our preference would be to leave this one as it is. Suspicion is subjective. We do not want to dilute it to that, if he suspects. If he has reasonable grounds, is I think a higher threshold than if he reasonably believes.

Sen. Baptiste-Mc Knight: What kind of threshold are you interested in?

Sen. Jeremie SC: I think the preference for us would be if somebody reasonably believes something, it is an objective standard. It is not subjective.

Sen. Baptiste-Mc Knight: No, it is a subjective standard, not objective.

Sen. Jeremie SC: No, reasonably believes is subjective.

Sen. Baptiste-Mc Knight: Yes.

Sen. Jeremie SC: Reasonable.

Sen. Baptiste-Mc Knight: That is subjective. My reasoning is not yours because you understand law.

Sen. Jeremie SC: No, it will be governed by the reasonableness, the requirement of reasonableness.

Sen. Baptiste-Mc Knight: This is the point. Reasonable depends on your capacity, your experience. What would be reasonable to you in terms of legal situation would not be reasonable to me because I do not understand the intricacies of a lot of them and would certainly not be reasonable to—I would not expect the customs officers and police officers to apply the same level of reasoning that you would.

Sen. Narace: Let us discuss it one more time. You are satisfied that reasonable grounds—

Sen. Jeremie SC: There is a policy reason for us having the formulation the way it is. It is not the suspicion standard which is lower, and which is subjective. It is the reasonable belief standard which is a sort of midway position between the purely objective and the purely subjective, and we have found this to be useful in cases where informants provide information and it is difficult for the officer who is actually—

I know of instances in which information has been provided by informants, and the officer will find it difficult to maintain that he had reasonable grounds for (a) or (b) or (c), but he would have a reasonable belief based on— There is a very recent example that comes to mind. He would have a reasonable belief which will protect him and which will trigger his action. So that this is not something we are putting by guess. We seek to strike a balance between the purely subjective and the purely objective. It is a middle ground, but ultimately, we are in Senate hands. The Government is aware that the legislation requires a special majority and we need co-operation.

Sen. Baptiste-Mc Knight: I am easy with that, Mr. Chairman. What about cause to be tested, rather than putting the onus on the authorizing officer to test? Testing equipment is a technical thing.

Mr. Chairman: Let me put one thing at a time.

Sen. Baptiste-Mc Knight: Okay.

Mr. Chairman: The proposed amendment at clause 8(1)(a).

Question, on amendment, proposed.

Sen. Baptiste-Mc Knight: Withdrawn.

Mr. Chairman: Withdrawn?

Amendment withdrawn.

Mr. Chairman: Thank you. At 8(1)(a) you want to add the words "cause to be tested".

Sen. Jeremie SC: Accepted.

Mr. Chairman: Accepted? Okay.

After the word "and" delete the word "test" and insert the words "cause to be tested".

Question, on amendment [Sen. Baptiste-Mc Knight], put and agreed to.

Mr. Chairman: At clause 8(1)(d) delete "believes" and replace with "has reasonable grounds to believe."

Sen. Baptiste-Mc Knight: Mr. Chairman, I withdraw that, but I need to ask, why previous six days? What is the magic about six days that would maintain? I do not know.

Mr. Chairman: Where are we—six days?

Sen. Narace: Where are we, Sen. Baptiste-Mc Knight?

8.50 p.m.

Sen. Baptiste-Mc Knight: We are at 8(2)(a).

Mr. Chairman: Will you wait for me to actually put the amendment at 8(2)(a). We have an amendment at 8(2)(a):

Delete the words "reasonable or".

Are you withdrawing that again?

Sen. Baptiste-Mc Knight: No, Mr. Chairman, because I cannot see what would be reasonable that is not necessary. You already have the words "business or operating hours and any other necessary time." I do not see what else would be reasonable.

Mr. Chairman: You are suggesting that the words are superfluous?

Sen. Baptiste-Mc Knight: Yes.

Sen. Narace: We accept.

Question, on amendment, [Sen. Baptiste-Mc Knight] put and agreed to.

Mr. Chairman: You had another amendment in (2)(a)?

Sen. Baptiste-Mc Knight: No, I am looking for an explanation on the six-day provision. *[Interruption]*

Sen. Narace: It is a policy position that we took from other legislation and the Ministry of Health did instruct the Attorney General. *[Interruption]*

Mr. Chairman: We have an amendment at clause 8(2)(b) to delete the words "of them" at the end. "to take samples of them".

Sen. Baptiste-Mc Knight: It is superfluous.

Question, on amendment, [Sen. Baptiste-Mc Knight] put and agreed to. [Laughter] [Crosstalk]

Mr. Chairman: We have a proposed amendment at clause 8(2)(c):

Delete "reasonably believes" and replace with "has reasonable grounds to believe".

Sen. Ramkhelawan: Withdrawn.

Mr. Chairman: Withdrawn? Very well.

Amendment withdrawn.

Sen. Baptiste-Mc Knight: At clause 8(3):

Delete the word "first".

Mr. Chairman, this gives the impression that on arrival at the place, the officer has to provide the person with this written notice, before he or she even knows what they are going to take. If you delete "first" all it means is that the officer shall provide the person with whatever is necessary. You do not have a chronology of how it has to be done.

Sen. Narace: Just one second. *[Interruption]*

Sen. Mark: Mr. Chairman, I am trying to understand myself why Sen. Baptiste-Mc Knight would like this word to be removed, because I am trying to appreciate the sequence of things, that if you are coming into my place, you ought to first do certain things, rather than just come in. I do not understand why we want the word "first" removed.

Sen. Baptiste-Mc Knight: My problem is that when you come in, you do your inspection, it is on the basis of this inspection you would decide whether things are to be seized or not. So you cannot give a written notice, before you know what is going to be seized.

If you delete "first", what difference does it make to the impact of the provision?

Sen. Prof. Deosaran: I think, Mr. Chairman, especially since we have put the word "record" it means the sequence would require "first" to be removed. It contradicts the insertion of the word "record". I do not see any harm at all in removing it. *[Interruption]* *[Crosstalk]*

Sen. Narace: We will accept the removal of "first" and the Attorney General would come back with—*[Interruption]*

Sen. Jeremie SC: Chair, we take the point, because if you look above they would already have either consent or a warrant. So under (3) what we propose is the following form of words:

“In acting under subsection (2)(c), the authorized officer shall provide the person in possession of the tobacco products or other items with a written record in respect of the tobacco products or items seized and detained on the grounds for same.”

Mr. Chairman: Senators, the amended subclause (3) will read as follows:

"In acting under subclause (2)(c), the authorized officer shall provide the person in possession of the tobacco products or other items with a written record in respect of such tobacco products or other items seized and detained on the grounds for same.”

Question, on amendment, put and agreed to.

Sen. Narace: We can delete the word "first" now.

Mr. Chairman: Senator, did you follow what happened?

We have an amendment at 8(4):

Delete “within ten working days” to “requirements” and replace with “within 30 days of seizure”.

Sen. Baptiste-Mc Knight: Mr. Chairman, I think it is cruel and unusual to seize somebody's product that has a shelf life, which we all know tobacco has, and be allowed to keep it for any length of time. Knowing our procedures, they will have to be processed in the order of which they have been received, et cetera, et cetera. By the time this product is returned, it has no useful shelf life to the person and there is no provision for compensation for that product.

So it is either a provision for compensation in the event that it meets the requirements or there must be a well defined period of time which would allow the product to go back into use.

9.05 p.m.

Sen. Narace: Could we compromise and use 21?

Sen. Baptiste-Mc Knight: Twenty-one working days from seizure? I would go for that.

Sen. Jeremie SC: As I understand it, the requirement is taking us out of the court—I do not have the amendment in front of me. If we were to go within 30 working days of seizure, you would be placing on the Executive a responsibility to impose on the court or on a judging body.

Sen. Rahman: This is after laboratory testing. It is not a court determination whether the chemistry is right.

Sen. Ramkhelawan: If the product is seized, the way this clause is worded suggests that you could take an inordinate amount of time—a year, two years, whatever—to test and it is only if you found that the legal requirements have been met, it is only at that point in time you have 10 days to return.

What would happen, as Sen. Baptiste-Mc Knight would have said, is that your product would be of no use if it is for such an extended period. If you seize, the onus would be on the Executive to ensure that testing takes place within a particular period of time and if it is found to meet the legal limit, returned in a merchandisable state.

Sen. Dr. Nanan: With respect to this clause, what are the legal requirements related to? Is it testing or the trial?

Sen. Mark: When you talk about legal requirements, what are we talking about here?

Sen. Jeremie SC: It is really the testing of the tobacco products.

Sen. Mark: Well, Sen. Baptiste-Mc Knight is right, that we need to have those things returned.

Sen. Jeremie SC: Would a reasonable period of time work, or do you want a fixed time?

Sen. Mark: We want a fixed time; a reasonable period could be exploited and we do not want to be exploited.

Sen. Ramkhelawan: Is there any requirement if the product is found to meet legal requirements; is there anything to be done but to return it?

Sen. Jeremie SC: You must return the product.

Sen. Ramkhelawan: If you take somebody's property, you must be able to return it within a specified time and not let it run forever.

Sen. Narace: We accept it.

Question put and agreed to.

Mr. Chairman: Sen. Drayton had a proposal at clause 8(2)(a):

Insert in the last line after the word “time” “does not include private residences”.

Sen. Drayton: That will be withdrawn because of the new definition of “workplace”.

Amendment withdrawn.

Question put and agreed to.

Clause 8, as amended, ordered to stand part of the Bill.

Clause 9.

Question proposed, That clause 9 stand part of the Bill.

Mr. Chairman: We have a proposed amendment from the Minister.

Delete all the words after the words “when requested”.

Sen. Drayton: Mr. Chairman, it should be:

Delete all words after the word “identity”.

Sen. Narace: Accepted.

Question, on amendment, put and agreed to.

Mr. Chairman: We have a proposed amendment from Sen. Mark.

Delete subclause (1) and substitute the following:

In exercising the functions under this Act, authorized officers shall present a warrant signed by a magistrate and shall present proof of identity.

Sen. Mark: Mr. Chairman, consistent with what was agreed earlier on, I think it is important because of the violation of people's rights; we cannot take it for granted that police officers or customs officers can just barge into somebody's business place because of traditional powers.

We are saying if you have to do that, you should secure a warrant and not only that, to protect the innocent from abuse, you have to present some proof of one's identity.

Question on amendment, [Sen. Wade Mark], put and negatived.

Sen. Jeremie SC: Can I just say we have made an amendment to take care of consent warrant so that the only thing that differs here is that you are saying a warrant signed by a magistrate, and a warrant has to be signed by a magistrate or a judge.

Sen. Mark: Can we not insert that provision here?

Sen. Jeremie SC: It is above at (2), as we have amended it.

Question put and agreed to.

Clause 9, as amended, ordered to stand part of the Bill.

Clause 10.

Question proposed, That clause 10 form part of the Bill.

Mr. Chairman: We have a suggested amendment from Sen. Mark.

Sen. Mark: Mr. Chairman, because of the fact that the Minister is going to be the licensing authority which we reject completely, but defeated on that front, we are saying that when a citizen or an organization's application for a licence has been rejected, the authority must agree to notify that person in writing, must give reasons for such denial and that person must have a right to appeal the Minister's decision which could be appealed at another level.

We want some democracy to work here and the Bill is silent in terms of an appeal mechanism, all it talks about is a judicial review and I am saying if the Minister rejects an application, he must give written reasons for doing so. The person must have a right of appeal before they go through a judicial process, rather than being given no reason. That is autocratic behaviour and conduct.

Question on amendment, [Sen. W. Mark], put and negatived.

Mr. Chairman: There is an amendment by Sen. Baptiste-Mc Knight.

Delete the words "to apply after nine months" and replace with "to obtain".

Sen. Baptiste-Mc Knight: Mr. Chairman, it seems to me that this Bill as drafted will take forever to come into force. If a period is required to take nine months to decide to apply for a licence and there is no indication of what the criteria are for the application, no time frame for the consideration of this licence, when will this Bill ever come into force?

I think a period of nine months for the applications to be submitted and ruled upon is adequate, it is a lot, but I will settle for it.

Sen. Narace: We accept.

Question, on amendment, [Sen. C. Baptiste-Mc Knight], put and agreed to.

Sen. Baptiste-Mc Knight: Mr. Chairman, clause 10(10) is saying that everyone except retailers would have to abide by this, but clause 10(9) says no person shall sell or purchase a product except from somebody who is licensed.

These retailers are selling products but they do not have to be bound by clause 10(9) which I do not think is the purpose of this. Further, clause 10(9) says that distributors and wholesalers need to be licensed but clause 10(1) says a person who distributes products at wholesale. Is that meant to cover distributors and wholesalers?

Sen. Narace: Senator, you will appreciate that we said except retailers to make sure we do not have to deal with every single vendor. It would be very onerous to license all of them.

Sen. Baptiste-Mc Knight: I am not saying they need to be licensed but I am saying clause 10(10) is unnecessary given all that there is in clauses 10(1) to 10(9).

Sen. Narace: You realize that clause 10(1) requires a licence?

Sen. Baptiste-Mc Knight: Does clause 10(1) require both the distributor and the wholesaler to be licensed?

Sen. Narace: You are right, we accept.

Sen. Baptiste-Mc Knight: What are you accepting?

Sen. Narace: We accept your amendment.

Sen. Baptiste-Mc Knight: That we delete clause 10(10)?

Sen. Narace: Yes.

Question, on amendment, [Sen. Baptiste-Mc Knight], put and agreed to.

9.20 p.m.

Mr. Chairman: Sen. Drayton has an amendment at 10(5).

Insert after the word “duplicate” the words “, and applicants can continue wholesale business operations until notice is received by the applicant, that the application is approved or denied.”

Sen. Drayton: What I mean by this, Mr. Chairman, is that the distributor and a wholesaler—if we go back to clause 10(2)—are already in operation and they are now reapplying; their licence has expired so they are now reapplying. If they do not receive word on the status of the application, what then is the status of their

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operations? I would imagine that they should be allowed to continue operations until they have received word, either word that the licence is approved or denied. But it cannot be left open.

Sen. Jeremie SC: Okay. I am being advised by the Ministry of Health that, first of all, the Bill would come into effect on proclamation. So it is not going to be law until they have all their mechanisms and their regulations in place. On the coming into force of the Act, they are going to give nine months to persons to obtain a licence, and at the end of that period the assumption would be that all persons who are qualified to obtain a licence would have been licensed. So that their position is that there are sufficient checks and balances in that process.

Sen. Drayton: I really do not quite understand, because how often does one have to apply for a licence? Just the first time, or is it annually or every two years or every three years?

Sen. Narace: Three years.

Sen. Drayton: So it is every three years they apply for licence, so that at the end of three years I would imagine they would be applying, say, maybe three, four, six months before it expires? But if at the end of that period they have not heard from the Ministry of Health for whatever reasons, administrative reasons, what happens?

Sen. Narace: Senator, you could apply nine months before; you could apply 10 months before. So you could apply well in advance.

Sen. Drayton: I understand that, but I am saying that there ought to be some situation of accountability on the part of the granter of this licence. If there is some administrative—

Sen. Narace: One of the reasons we made the concession to move to three years was to give you sufficient time so that you could apply properly; you could come forward and, therefore, you would not have that very situation you spoke about. Remember we had it annually or something like that, or biannually.

Sen. Drayton: You see, I am not dealing with the applicant, I am dealing with the granter of the licence, which is the Ministry of Health. So that what you are saying, one has to assume that the Ministry of Health—a person applies within that nine-month period well before the end of the three-year term, so you are saying one has to assume that by the time they apply, the three-year term would not have expired but the ministry would have responded.

Sen. Narace: Correct. In fact, administratively, we can deal with this. We can alert people long before their expiry and facilitate the process. If you are interested, you could probably come 10 months before, which is more than your nine months, and it gives you a 10-month lead period so that at the end of three years you would have your new licence, which is what we think will happen.

Sen. Drayton: So basically what you are saying is that the business operator must assume that the ministry will be efficient in processing the application.

Sen. Narace: More than that, we would try to provide that support and that information and administratively try to get people compliant.

Sen. Dr. Nanan: If after nine months which is the transition period and that expires and the application is inside with the Minister, what happens in that period there?

Sen. Narace: After nine months?

Sen. Dr. Nanan: Yes.

Sen. Jeremie SC: It is after proclamation, so that there is a longer time.

Sen. Mark: After it is proclaimed—I want to know what happens after you proclaim it.

Sen. Jeremie SC: The position with the ministry is, their procedures, their regulations would be in place.

Sen. Mark: That is the problem. The regulations would define these things but we have no regulations before us, so you are guessing.

Sen. Jeremie SC: No, I am not guessing, Sen. Mark. I am doing as we do all the time, we are passing legislation with regulations to come.

Sen. Dr. Nanan: I am just asking what would happen between that nine-month transition period and the granting of the licence, that little window.

Sen. Mark: The person will have to continue to operate. The business will continue to function during that transitional period of nine months. What happens to the business during that little nine-month period? That is what I am asking.

Sen. Narace: First of all, let us understand what we are dealing with. Are we dealing with before the proclamation or are we dealing with an ongoing basis?

Sen. Mark: After.

Sen. Drayton: It is an ongoing basis I am dealing with.

Sen. Narace: So on an ongoing basis someone could theoretically apply one year before and, therefore, they can receive their licence long in advance. The onus will be on the applicant.

Sen. Merhair: Mr. Chairman, this raises another question and perhaps Sen. Mark's point earlier on about appeal—because I understand Sen. Drayton's point. What you are saying Minister Narace is, if somebody could apply for their licence a year before, what happens if they have products in stock which they have bought in advance and when they apply a year before, you do not grant them the licence, then that obviously means that they have no provision for appeal and they are stuck with products in hand. So it begs the question of a matter of continuity in terms of the business.

Sen. Jeremie SC: No. The appeal point must not be confused with recourse to the courts, you know. You have access to the courts by way of judicial review. So if the ministry is being delinquent, if it is taking too much time, if it is being unreasonable, all those are grounds on which you can review the decision or the failure to act of the ministry. Nothing in this Bill ousts the jurisdiction of the court.

Sen. Mark: But AG, what happens to the business because of, let us say, the lethargy of the ministry, for whatever reason? The nine months is over and we need to get our licence to start the three-year period, but the ministry is taking an inordinately long time to issue that licence. You are saying that the businessman must go to the court on grounds of so, so, so. So what is going to happen to his business during that period? Is it going to be shut down because of the incompetence of the ministry? What I am saying is, this is a serious matter. You are talking about people who are employed; they are working. You cannot treat people like that. You are denying people property. That is foolishness; that is nonsense!

Sen. Jeremie SC: The point I think is, the difficulty which I appreciate the Minister would have is that if a manufacturer, for example, is tardy in terms of making his own application, can we put a time line which imposes some sort of responsibility on the Minister to make an application within a prescribed time and to have a licence issued within a prescribed time or not, of the submission of his application.

Sen. Drayton: Yes, I think that is fair. I think that whether you apply nine months or a year or two years before the three years have expired, it should be incumbent upon the ministry to respond within a certain time frame. But basically

what I am saying, there must be continuity of operations until the business operator has received word on the status of that application.

Sen. Mark: Yes. They must continue to function.

Sen. Narace: We are discussing the matter and we are coming up with a form of words.

[Pause]

9.35 p.m.

Sen. Narace: We will flag this whilst they come up with a form of words and we will move on.

Mr. Chairman: We will come back to clause 10.

Question put and agreed to.

Clause 10 deferred.

Clause 11.

Question proposed, That clause 11 stand part of the Bill.

Sen. Narace: Mr. Chairman, I beg to move that clause 11 be amended by deleting the word "quarterly" and substituting the word "annual".

Sen. Mark: What is the relevance of the quarterly versus the annually? I have some amendments.

Mr. Chairman: Let us look at this one first.

Sen. Ali: I agree with annual because my notes said it was onerous.

Sen. Merhair: Was it supposed to be "an annual"?

Mr. Chairman: Yes.

Sen. Ali: Clause 11(1). I have comments on 11(2).

Mr. Chairman: It appears that there would be an amendment to (2). It would be annual reports.

Sen. Ali: Yes I agree to that. On 11(2) I am totally confused by 11(2)(d) which refers to constituents and additives. I do not know what is "and of toxic constituents and additives in smoke expressed in their individual concentrations and as a ratio to nicotine".

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First of all, additives do not include tobacco and water. Those are excluded from additives. The first definition we have is that:

“‘additive’ means any substance, chemical, compound, or component, other than tobacco or water, that is introduced into a tobacco product during processing, manufacturing, or packaging, including, as applicable, those contained in the paper, filter, portion pouch, or similar part of the tobacco product, its package or accessories;”

That is the definition of additives. It is not tobacco. Tobacco is excluded as an additive. It is the paper, filter and everything else.

Constituents are also defined. There are two definitions for constituents. They are:

- “(a) smoked tobacco products, the chemicals, including the particles, vapours and gases found in the smoke; and
- (b) smokeless tobacco products, the chemicals found in the product itself;”

If you are smoking the vapours and gases, constituents— When this goes on in clause 11(2)(d), I do not know what they mean by “toxic constituents and additives in smoke, expressed in their individual concentrations and as a ratio to nicotine”. I do not understand that.

As I said in my comments, I did not see any reference to tar which is what causes lung cancer. That befuddles me. I have a chemistry background, but I could not figure out what that meant and the ratio to nicotine.

Mr. Chairman: Senator, do you have an amendment?

Sen. Ali: I do not have an amendment because I do not understand what they are trying to do here. This ratio to nicotine, I do not understand why nicotine and why not tar? Nicotine is an addictive substance. Tar is the substance that causes you to die.

Sen. Narace: We know very well that all the constituents and additives that they put in the cigarette are designed to make it addictive and all kinds of things.

Sen. Ali: I cannot assume that they are designed to make it addictive. I do not accept that. I have a chemistry background and I read what the note says. The definition does not say anything about that.

Sen. Narace: That was the reason for the analyst so we would know what the cigarette contains. If we find in the cigarette certain toxic constituents or things that they use to make it addictive, we would be able to treat with it.

Sen. Ali: I suggest that all you require is a complete analysis. You have to decide what is toxic and what is not toxic. It is not for them to tell you that. If you want nicotine content, ask for that. If you want tar content, ask for that. That is why they say you cannot have low tar and ultra low tar in the cigarette because they say that that is advertising to make the product less harmful.

Sen. Jeremie SC: I am not a technocrat, but if you look at (2), as amended it says:

“Annual reports shall include information prescribed by Regulations, including but not limited to information on—

(d) constituents, additives, and of toxic constituents and additives in smoke, expressed in their individual concentrations and as a ratio to nicotine;...

of all tobacco products.”

9.50 p.m.

Sen. Ali: I cannot see it, because I do not understand it. I really do not understand it. That is why I say that it is unclear.

Sen. Dr. Nanan: If you read the definition of “constituents” and you read this, you will see that there is duplication in the definition.

Sen. Narace: “Constituents” will not include toxic constituents.

Sen. Dr. Nanan: Of course, it will. Read the definition. In terms of chemicals including particles, vapour and gases found in smoke, that will include the toxic constituents.

Sen. Narace: The advice of the policymakers and the framework convention is that this is the form of words used.

Sen. Mark: We are not robots. This is a Parliament. We make laws; we do not take instructions from anybody.

Sen. Dr. Nanan: But this is based on—

Sen. Mark: No, no, we are not doing that.

Sen. Dr. Nanan: If you read it, it does not make sense. If the constituent is the product that you release when you smoke, that will include everything; toxic constituents also.

Sen. Mark: Mr. Chairman, this is why we are dealing with businesses here and we are talking about regulations that are not before us, but they are going to impact on this particular section of the legislation. That is why we are very concerned.

Tobacco Control Bill
[SEN. MARK]

Tuesday, November 17, 2009

Maybe if you allow me, at this time, to raise—business sales, marketing and distribution. If I am a businessman, why must I make that available to the ministry and politicians? I do not know if they would leak that information to my competitors. I find this is too much confidential information that I am being asked to give you. For what? It is an invasion of property and privacy.

When I asked for the EITI, they told me that they are not supporting it at all because it is on confidentiality. Now you have confidential information on my marketing strategy going to your ministry on a yearly basis. That does not make sense.

Sen. Dr. Nanan: On a product far less dangerous, alcohol, there is trafficking and drug books to keep. This is to prevent illicit trade.

Sen. Mark: “Nah, nah, nah.”

Sen. Oudit: Mr. Chairman, could we—

Mr. Chairman: We have no amendment other than to change the word “quarterly” to “report”.

Sen. Oudit: Would you allow me? Why are we putting manufacturer and importer in the same category and requesting the same information from two totally separate groups of individuals? For example, I propose if you want all the details in the constituents and additives, et cetera, that is certainly going to be applicable to a manufacturer. Whereas the importer, if someone is importing alcohol or water or anything like that—do you have that requirement that needs to give all the details of additives and constituents? I think it is highly irregular.

Sen. Dr. Nanan: The importer will import cigarettes and the manufacturer will manufacture cigarettes. Either way, cigarettes that are available to the citizens of Trinidad and Tobago must be subject to the same scrutiny and this is the reason for it.

Sen. Oudit: The person who is importing is not responsible for the information on constituents and additives or ratio of nicotine, et cetera. He is simply importing to resell. He is not in the process of manufacturing.

Sen. Baptiste-Mc Knight: Can I ask as a follow up to this, would non-national manufacturers be required to be licensed?

Sen. Narace: Any product that is going to be on our market, sold through a distributor, wholesaler or manufacturer would be subject to this.

Sen. Baptiste-Mc Knight: Very well, this was my understanding. If importer X is importing three brands of foreign cigarettes, he can only buy from each manufacturer if the person is licensed, which means that manufacturer has to provide whatever information may eventually be determined under clause 11(2). Why should the importer have to provide that information too?

Sen. Dr. Nanan: The importer is the one who would be purchasing from the foreign manufacturer.

Sen. Baptiste-Mc Knight: But he is not making the cigarette. He does not know whatever is in it. The manufacturer from whom he is buying has to provide this information to you on an annual basis. Why should the importer have to do it as well?

Sen. Narace: Usually the manufacturer would provide that information to the importer.

Sen. Oudit: This legislation is enforcing an importer as well to supply reports on an annual basis, and the report will have to include, but not limited to the following information. It does not specify just a manufacturer. It will have to come from both.

Sen. Narace: Yes.

Sen. Oudit: The onus is on the manufacturer. It ought to be in the same way. Certainly you will want information, but it cannot be the same information. For example, what if there are secret ingredients, as in Angostura Bitters, and we are importing? How does a manufacturer divulge information that is confidential to an importer in the filling out of his report?

Sen. Narace: If we look at the underlying philosophy for the legislation, it is to ensure that the products that are served on our markets meet a certain standard and they do not have all kinds of poisonous and other kinds of addictive ingredients by design. Therefore, the onus will be on the importer to get that information from the manufacturer. All manufacturers, at any rate, based on the FCTC—this is common legislation and international best practice. It is not unusual. For example, in the case of a food product, the Food and Drugs Division has to go through and check it and make sure it is safe for human consumption. A number of products will face that requirement.

Sen. Oudit: A package would have to go through all of this?

Sen. Narace: Something that is addictive and contains poison, you would imagine, would require the same thing.

Sen. Baptiste-Mc Knight: Could I enquire when our national laboratories will be in a position to analyze the constituents, et cetera, of (d)?

Sen. Narace: At the Food and Drugs Division, we have it right now.

Sen. Baptiste-Mc Knight: They have it right now?

Sen. Narace: Yes.

Sen. Baptiste-Mc Knight: They can do it all?

Sen. Narace: Yes.

Sen. Baptiste-Mc Knight: Lovely; I am impressed.

Mr. Chairman: Sen. Mark has suggested that clause 11(2) be deleted.

Sen. Mark: Mr. Chairman, I have advanced the reasons for it. I believe that this is an invasion of privacy and there is no justification for it.

Question, on amendment [Sen. Mark], put and negatived.

Sen. Mark: I want a division on this one, because this is a very important one.

Sen. Merhair: Perhaps, we can come to a compromise with clause 11. Is there any reason, perhaps the Minister could let me know, that the information above is going to be made public?

Sen. Narace: No.

Sen. Merhair: It is stated that information will be made public information. Why would manufacturers and exporters want their marketing, sales information, new products, brand and business sales in the public domain? Instead of deleting, we can perhaps delete clause 11(5).

Sen. Narace: We can look at an amendment to protect confidentiality of the information.

Sen. Merhair: Thank you.

Sen. Baptiste-Mc Knight: What would that amendment sound like?

Mr. Chairman: Do you want to call the division?

Sen. Mark: Mr. Chairman, we are going out and coming in and we have to hold on. Maybe we can take a break for 15 minutes and let people take a little bite and come back. We cannot be doing business in this kind of way. When we have a vote to take, we have to look for numbers. That does not make sense. Could I respectfully suggest that we pause for 15 minutes, take a little five, take a bite and let everybody come back inside?

Sen. Jeremie SC: Before we do that, there was a clause that you had asked us to find an appropriate form of wording for. We have done that.

Clause 11 deferred.

Clause 10 reintroduced.

Mr. Chairman: That was clause 10(6).

Sen. Jeremie SC: We want to put it at clause 10(9), insert it after clause 10(8):

“Where a person applies for the grant of a licence after the expiry of the transitional period referred to in subsection (2), the applicant may continue to manufacture, import, export or distribute tobacco products at wholesale until notice is received by the applicant that the application is approved or denied, as the case may be.”

Mr. Chairman: The proposed change to clause 10 was—Sen. Drayton, instead of your amendment we would have the following words:

“Where a person applies for the grant of a licence after the expiry of the transitional period referred to in subsection (2), the applicant may continue to manufacture, import, export or distribute tobacco products at wholesale until notice is received by the applicant that the application is approved or denied, as the case may be.”

Question put and agreed to.

Clause 10, as amended, ordered to stand part of the Bill.

Mr. Chairman: Is it the wish of Senators that we suspend for a few minutes?

Sen. Mark: Fifteen minutes, Sir.

Mr. Chairman: Yes? Very well, we will suspend for 15 minutes.

10.05 p.m.: *Committee suspended.*

10.30 p.m.: *Committee resumed.*

Clause 11 reintroduced.

Mr. Chairman: There is an amendment to clause 11(2)(b). We are putting it to a division.

Sen. Oudit: And remove the words “and import”.

Mr. Chairman: We did that already.

Sen. Oudit: We were looking at the latter part of what is required in 11(2)(d).

Mr. Chairman: We have put that question already, let us put this one.

Sen. Oudit: Okay.

Mr. Chairman: This is Sen. Mark's amendment which says:

In Subclause (2) delete paragraph (b) and re-number accordingly.

Sen. Jeremie SC: Mr. Chairman, do you want us to vote on it now?

Mr. Chairman: Correct.

Question, on amendment, put.

The Committee divided: Ayes 10 Noes 16

AYES

Mark, W.

Nanan, Dr. A.

Kernahan, Dr. J.

Rahman, M. F.

Oudit, Mrs. L.

Baptiste-Mc Knight, Mrs. C.

Nicholosn-Alfred, Mrs. A.

Drayton, Mrs. H.

Merhair, Miss G.

Gopaul-McNicol, Dr. S.

NOES

Jeremie SC, J.

Narace, J.

Enill, C.

Saith, Dr. L.

Browne, M.

Joseph, M.
 Manning, Mrs. H.
 Dick-Forde, Dr. E.
 Groulund-Nunez, Mrs. T.
 George, W.
 Hadeed, G.
 Rogers, L.
 Lezama, Miss L.
 Melville, Miss J.
 Ramkissoon, Miss A.
 Ramkhelawan, S

The following Senators abstained: Prof. R. Deosaran, B. Ali, M. Annisette.

Amendment negatived.

Sen. Baptiste-Mc Knight: The Minister had promised to get a form of words that would allow for confidential treatment in clause 11(2)(b).

Mr. Chairman: The drafters are working on something.

Question put and agreed to.

Clause 11 deferred.

Clause 12.

Question proposed, That clause 12 stand part of the Bill.

Mr. Chairman: We have an amendment from the Minister which reads:

- A. Insert after subclause (2), the following subclauses:
- “(3) No person shall smoke or hold a lighted tobacco product in an area where a private child care business or private tutoring business is conducted.
 - (4) No person shall smoke or hold a lighted tobacco product in a vehicle, including private vehicles, when a child is present.”

Sen. Dr. Nanan: Mr. Chairman, I have a question with respect to that amendment. My question is that this private tutoring business is supposed to encapsulate a child, but it could also be an adult or a teenager, if that is the intention.

Mr. Chairman: You are saying that the private tutoring business does not specifically relate to children, and it does not.

Sen. Baptiste-Mc Knight: Mr. Chairman, what arrangements are being put in place to identify every institution that qualifies under clause 12(2) and (3)? Who is going to be responsible for the signage?

Sen. Oudit: Mr. Chairman, we did the definition of “workplace”, and this falls under that definition. If it is a private childcare business or a private tutoring business, is there a need to add a specific clause to identify it? This is a business which falls under the category of “workplace”.

Sen. Narace: Sen. Baptiste-Mc Knight, I think you were at clause 12(2) and (3). If we brought it down to five metres—providing that your residence is not five metres—now, five metres is almost on the pavement—would that be acceptable, where incidentally or accidentally it will not cause you to be prosecuted?

Sen. Baptiste-Mc Knight: Mr. Chairman, my point is that if it is one metre, there has to be some signage, because everybody does not know where every school is. Even though you might be able to see in the distance a school logo and name, when you talk about schools that cater to children, all these private nurseries are involved.

Sen. Narace: So, the schools would be required to put the signage?

Sen. Baptiste-Mc Knight: Every building that qualifies under this Bill needs to have signage permanently.

Sen. Dr. Nanan: The former Minister of Education said that it is normal for them to put up school zone; no smoking.

Sen. Baptiste-Mc Knight: Yes, in the government schools, but what about all these little private daycares and so on?

Sen. Dr. Nanan: Would you want to put in—

Sen. Baptiste-Mc Knight: As it is, they are all included here—any place where children are covered by this.

Sen. Narace: Certainly, the Ministry of Health will have to give an undertaking that it would liaise with the Minister of Education to ensure that the appropriate measures are taken so that these schools, not government schools, would have signage.

Sen. Baptiste-Mc Knight: And all the amusement parks?

Sen. Narace: Yes.

Sen. Baptiste-Mc Knight: Well, it is down to five metres now.

Sen. Narace: I would have preferred to keep the 15 metres, but I am amenable to discussion.

Sen. Ramkhelawan: Mr. Chairman, through you, the amendment that the hon. Minister is making is going to make the legislation much more complicated. In the Bill in clause 12(2), you still insist on the 15-metre rule. Even if we change it to five metres, there is still the measurement issue where you are and so on.

Sen. Basharat Ali has suggested an amendment which is to simply take out clause 12(2). I think that is something that would certainly uncomplicate it—you cannot smoke within a compound, and you do not have to go through all kinds of measurement rigours, whether it be 15 or whatsoever, and it is outside of the compound.

When you go to clause 12(3) it says:

“...ought to have known that the commission constituted a contravention...”

It starts to get very complicated.

Sen. Narace: Senator, we accept that.

Sen.. Ramkhelawan: So, we will delete clause 12(2) and renumber.

10.45 p.m.

Sen. Narace: We accept. We are going to delete 12(2).

Sen. Ramkhelawan: Right and we renumber.

Sen. Narace: Then we will have to renumber of course, (3) will become (2)?

Mr. Chairman: What about the two new clauses or subclauses (3) and (4), that is the question in front of us.

Sen. Drayton: You should withdraw that. I think while I have an issue with any sort of invasion of privacy, I think we need—where it is practical to protect children, we need to do so. Is it included as a business place?

Hon. Senator: Yes.

Sen. Drayton: Yes, but what about the private vehicle?

Sen. Oudit: Remember we stopped after private vehicle, so we included the private vehicles as well.

Sen. Drayton: No, but that was dealing specifically with—

Sen. Narace: What?

Sen. Oudit: No, in her amendment which is to insert new (3)?

Sen. Narace: Oh, you have a new (3)?

Sen. Drayton: No, I am dealing with the Minister of Health—(3) and (4).

Mr. Chairman: A new 12(3) and 12(4).

Sen. Ramkhelawan: Mr. Chairman, we have withdrawn all the other suggested amendments and deleted 12(2).

Sen. Narace: And then withdraw all the other amendments?

Sen. Ramkhelawan: Yes, we withdraw all of the other amendments.

Sen. Narace: Okay.

Sen. Ramkhelawan: And we delete 12(2).

Sen. Narace: Okay, Chairman.

Sen. Ramkhelawan: Yes, let us go with that.

Mr. Chairman: The question is that clause 12(2) be deleted?

Question put and agreed to.

Mr. Chairman: Go back to the question—there is a new subclause (3) and a subclause (4) from the Minister of Health.

Sen. Narace: You want to leave—

Sen. Ramkhelawan: And we are deleting 12(2). Sen. Drayton was proposing subclause (4).

Sen. Narace: No, I will withdraw.

Mr. Chairman: You are withdrawing yours?

Sen. Narace: Yes.

Mr. Chairman: We have some amendments from—wait a minute, clause 12 is finished. Yes, at (B) renumber subclauses—

Sen. Oudit: We have subclause (2).

Mr. Chairman: One second. At C.:

In subclause (5) as renumbered, delete the words “or who knew or, using due diligence, ought to have known that the commission constituted a contravention”.

Sen. Narace: Whose amendment?

Mr. Chairman: From the Minister at 12C.

Question put and agreed to.

Mr. Chairman: At D.:

“Insert after subclause (6) as renumbered, the following subclause:

“(7) It shall be defense to an offence under subsection (2), if the person charged establishes that he resides within...”

Sen. Mark: We withdraw that.

Mr. Chairman: You are withdrawing that.

Amendment withdrawn.

Mr. Chairman: Okay. We have from Sen. Mark—

Sen. Mark: A very simple one, if you look at it, Minister.

Sen. Jeremie SC: No, it is all right.

Sen. Mark: No, I am saying it strengthens your legislation. Whereas you were talking about smoke, I said “sell, promote or advertise”.

Mr. Chairman: But subclause (2) has been agreed to be deleted.

Sen. Mark: Okay.

Mr. Chairman: Sen. Drayton, your subclause will have to be withdrawn.

Sen. Drayton: Same as for (3) and (4).

Mr. Chairman: In fact, you got two then.

Sen. Drayton: Yes.

Mr. Chairman: Sen. Drayton, you had three amendments to 12(2)(a) and (b), all of that is withdrawn?

Sen. Drayton: In view of the fact that 12(2) has been deleted, I think that takes care.

Mr. Chairman: Okay.

Amendment withdrawn.

Sen. Oudit: Mr. Chairman, with respect to the clause 2 that was just deleted, the suggestion by Sen. Mark, where you insert the words "sell, promote or advertise"—

Mr. Chairman: Listen, that has been voted on already.

Sen. Oudit: No, Mr. Chairman, if you could hear me out please.

Mr. Chairman: No, it is getting late—

Sen. Oudit: But that is very important.

Mr. Chairman: It is deleted.

Sen. Oudit: It is here you are stopping someone from smoking—

Mr. Chairman: It is deleted.

Sen. Oudit: No, I am saying it could be included in section 1.

Mr. Chairman: Senator, subsection (2) has been deleted.

Question put and agreed to.

Clause 12, as amended, ordered to stand part of the Bill.

Clause 13.

Question proposed, That clause 13 stand part of the Bill.

Sen. Baptiste-Mc Knight: No, Mr. Chairman, there is an amendment to clause 13.

Mr. Chairman: From whom? Yes, yes. The amendment as proposed is:

1. add a new 13(1):

“No person shall sell any tobacco product under the age of 18 years.”

Sen. Narace: Senator, what about hire any person under the age of 18.

Sen. Baptiste-Mc Knight: No, that remains as—or you could leave that as one and put another as two. It does not matter.

Sen. Narace: Yes, okay.

Mr. Chairman: Yes.

Question put and agreed to.

Clause 13, as amended, ordered to stand part of the Bill.

Clause 14 ordered to stand part of the Bill.

Clause 15.

Question proposed, That clause 15 stand part of the Bill.

Mr. Chairman: We have an amendment by Sen. Mark; he suggested that clause 15 be deleted.

Sen. Mark: Mr. Chairman, I find this to be very excessive and I believe that there is no justification for what is being proposed.

Question, on amendment, [Sen. W. Mark], put and negatived.

Mr. Chairman: There is another amendment from Sen. Drayton:

Insert before the words “No person” the words “except for the cigarette dispenser provided by the manufacturer”.

Sen. Drayton: That is not necessary anymore.

Mr. Chairman: So, withdrawn.

Sen. Merhair: If you are deleting clause 15, there is no need.

Sen. Drayton: Yes.

Question put.

Sen. Merhair: What are you doing with clause 15?

Sen. Drayton: I thought you said clause 15 was deleted?

Mr. Chairman: No.

Sen. Drayton: No, well then my amendment would stand. I thought I heard you say clause 15 was deleted.

Mr. Chairman: No.

Sen. Drayton: Sorry about that. Then my amendment I would like it to stand with the exception of the cigarette dispenser provided by the manufacturer, in that I believe that—and this is the whole part of this, he would sell contraband

products that the manufacturer is producing, a legitimate product, it is a licensed product and it needs to be protected within a dispenser, and of course, under the regulations one can deal with the specifics with respect to the dispenser, the size and whether any information should be contained in it. But I think it should be a dispenser where the person who has made a decision to purchase the product can see that this is a legitimate product being taken from a dispenser. I believe that should be included in this clause, but under the regulations we can deal with the specifics with respect to the dispenser, the size and things like that.

Sen. Narace: Mr. Chairman, to Sen. Drayton, what I wanted to tell you is that, could we have them look at it and come up with a form of words that seeks to arrive at the position you want to arrive, we will flag it and we would agree that in the regulations there will be some referral to the regulations and let us see how best we can do it.

We do agree that it would be contradictory to the point of sale communication and point of sale advertising that we will be trying—it is a critical element of this policy. But I understand your point re the dispenser is to ensure that people are getting proper products and so on. So, we will try to come up with something that can probably satisfy both.

Sen. Drayton: Probably for this Bill?

Sen. Narace: Yes.

Sen. Drayton: Okay, the regulation is something separate and apart. Okay, I will wait for that. So we are coming back to clause 15?

Sen. Narace: Yes, not clause 15, your amendment to clause 15.

Sen. Drayton: The amendment to clause 15, okay, yes.

Mr. Chairman: We will come back to clause 15 then.

Clause 15 deferred.

Clause 16.

Question proposed, That clause 16 stand part of the Bill.

Sen. Baptiste-Mc Knight: Mr. Chairman, a point of clarification. How does the Minister propose to enforce the mail and Internet sales? Does this prevent a manufacturer from communicating with overseas clients by mail and Internet?

Sen. Narace: It must come through the customs at the end of the day, so we will use the customs in order to monitor.

Sen. Baptiste-Mc Knight: Monitor mail, the actual product.

Sen. Narace: Even if you buy through the Internet the delivery process would include customs and delivery and all of that.

Sen. Baptiste-Mc Knight: Yes, this says:

“No person shall sell any tobacco product through mail or Internet.”

I understand you are talking about—for domestic consumption, so you have to put here “may sell for domestic consumption.” Otherwise it is a blanket provision that denies a manufacturer the right to correspond with his overseas clients.

Sen. Narace: What is your suggestion?

Sen. Baptiste-Mc Knight: “No person shall sell for domestic consumption any tobacco product.”

Sen. Hadeed: For a sale to proceed, the goods have to be received. If you buy goods through the Internet, they have to be exported to you and it has to come through customs.

Sen. Baptiste-Mc Knight: Then it is for domestic consumption, because you are consuming it in Trinidad when it reaches here. If it reaches here.

Sen. Narace: Well, could we say domestic consumption and distribution.

Sen. Baptiste-Mc Knight: Yes. All I am interested in is making sure that this does not prevent a manufacturer from doing his business on the Internet and by mail with his foreign clients, which it does now. [*Crosstalk*]

11.00 p.m.

Sen. Rahman: How do we know [*Inaudible*] international customers [*Inaudible*] our business?

Sen. Narace: First of all, let me just make a point here. If we change the words “no person shall purchase any tobacco product”—I think it really should be “purchase”; “any tobacco products through any self-service means, including the mail, the Internet or automatic vending machines...”

Sen. Baptiste-Mc Knight: In light of the amendment that you are working on for 15—

Sen. Narace: No, those dispensers are not for self-service.

Sen. Baptiste-Mc Knight: It will not be self-service. Okay, then “purchase” is fine. Instead of “sell”, put “purchase”.

Mr. Chairman: In clause 16(1) change the word "sell" to "purchase".

Sen. Jeremie SC: Mr. Chairman, we have a form of words—

Mr. Chairman: Just a moment. We are still on clause 16. I have an amendment from Sen. Mark to delete subclause (2).

Sen. Mark: Mr. Chairman, this particular clause seems a bit impractical, and the Minister is operating in a whimsical and arbitrary manner in this regard. I am just asking the question, if somebody comes to an outlet for a pack of cigarettes or whatever, and that person looks to the vendor—the person who is selling—like he is 20 years of age, but the person is really 14 years, or 15 years, or 16 years, who is to verify this?

Are we going to have some ID card to pull out before this person is sold cigarettes? The Minister could make an order prohibiting, any other means of sales where the—how are you going to determine this? This is a kind of impracticality, Mr. Chairman. That is why I am suggesting it be removed. How are you going to verify this information in terms of a person? I am suggesting that when something is impractical, we should remove it because that is not going to be enforceable unless they are going to ensure that people walk with an ID, or a passport. That is how you are going to enforce this.

Sen. Narace: Mr. Chairman, before the Attorney General speaks on it, I just want to underscore the point that there has been a loud call for us to protect children, and this really seeks to do just that. Because as technology evolves and things evolve, we have some form that we may wish to protect children. That is the only reason the clause is in there.

Sen. Oudit: But how are you going to verify it? So if it is verified by national ID or whatever, what is verified in person, you have to verify through a means, through ID or driver's permit, whatever.

Sen. Dr. Gopaul-McNicol: We could ask that.

Sen. Narace: It is not a problem.

Sen. Oudit: It makes more sense with it. Throughout the world it is being done like that.

Sen. Narace: I think we want to keep this. It really protects children. We really want to keep this and we will amend "in person". We want to replace "in person" with "at the point of sale". Is that okay?

Sen. Oudit: That is the point. Verify it so that somebody could come up to you and say, "Oh, yeah, dat is meh neighbour down de road". Is that how we are going to verify it? I am suggesting here that if you are going to verify it, use a national ID card which is the given form of ID that is standard.

Sen. Dr. Gopaul-McNicol: Around the world that is done. People are asked for their ID card.

Sen. Prof. Deosaran: Mr. Chairman, if you would allow me. Are we not raising this question a bit late because clause 13 also sets a standard for any child? How would you know the age of the child, even in clause 13, and in addition to the amendment that we just accepted? But I take the point we ought to do everything in our power to protect the children. So what we might have to do, Minister, is to invent some means whereby there can be identification provided by the child. We have to invent something. Either a high school ID or something, but I believe the onus should be on the child to produce some verification. The onus should be on that child. [*Crosstalk*]

Mr. Chairman: That is not what they are talking about here, you know.

Sen. Prof. Deosaran: You are talking about clause 16?

Mr. Chairman: What they are talking about is a mechanism of selling, which would be automated so that at the point of sale, there is no means that—

Sen. Prof. Deosaran: You mean through the machine?

Mr. Chairman:—there is nobody. Now what they are talking about is some means they have not foreseen. But somebody will come up with a way to do it in such a way.

Sen. Prof. Deosaran: That is even a more complicated problem.

Mr. Chairman: That is what they are saying.

Sen. Narace: But you were asked to do everything you could to protect children and that clause seeks to do exactly that.

Sen. Rahman: Do we all understand what that clause is really saying? It is by other means other than the person—

Sen. Narace: Yes, yes. So we are shot.

Question proposed.

Sen. Narace: Aye.

Mr. Chairman: Sen. Narace, do you want to delete subclause (2)?

Sen. Narace: No.

Mr. Chairman: Well then the amendment is to delete subclause (2).

Sen. Narace: [*Inaudible*]

Mr. Chairman: Yes, the amendment is to delete subclause (2).

Sen. Mark: You must be getting tired, Sen. Narace.

Mr. Chairman: Do you want the words "at the point of sale"?

Sen. Narace: Yes. What I voted "aye" it was to remove "in person" and replace it with "at the point of sale".

Mr. Chairman: Okay. I still have an amendment that I have to put.

Sen. Baptiste-Mc Knight: There is no person here.

Mr. Chairman: The question is that subclause (2) be deleted.

Question, on amendment, put and negatived.

Mr. Chairman: The question is that clause (2) be amended, by deleting the words "in person" and substituting the words "at the point of sale".

Question, on amendment, put and agreed to.

Question put and agreed to.

Clause 16, as amended, ordered to stand part of the Bill.

Clause 17.

Question proposed, That clause 17 stand part of the Bill.

Sen. Drayton: Mr. Chairman, I have an amendment there. Under clause 17(e), it is either delete or be subject to an affirmative action by Parliament. I feel if a Bill is going to impair sections 4 and 5 of the Constitution, we ought to have an idea what the regulations are. If we cannot, then the regulations must be subjected to affirmative.

Sen. Jeremie SC: Can I just say that we pass legislation like this all the time. Recently, we passed the Proceeds of Crime Bill, the Financial Intelligence Unit Bill, and all of which provide for the making of regulations. They were all passed by the requisite majority and the regulations are subject to negative resolution.

Sen. Drayton: Well, you see the difference is that this is a legal product.

Sen. Mark: We are changing that now, Attorney General. We are not abiding by law. That is finished. [*Laughter*] That is a done. This is a done arrangement. We are now saying you must have an affirmative resolution.

Mr. Chairman: The proposed amendment is to delete subclause (2) in clause 17.

Sen. Narace: The regulations would have to be approved, and therefore, at the point of regulations, we could make sure that what we have in the regulations will satisfy the requirements of hon. Senators. So we could keep that.

Sen. Drayton: How are you going to keep that? By bringing it back to Parliament?

Sen. Narace: The regulations must come back here.

Sen. Drayton: For subject to affirmative action.

Sen. Narace: Yes.

Sen. Drayton: Okay.

Question, on amendment, put.

Sen. Drayton: Withdrawn.

Amendment withdrawn.

Mr. Chairman: Withdraw? Okay.

Question put and agreed to.

Clause 17 ordered to stand part of the Bill.

Clause 18.

Question proposed, That clause 18 stand part of the Bill.

Sen. Rahman: Mr. Chairman, on this matter, we should put in sweets, or snacks, or toys designed for children. There is a particular brand of candy, I do not know if you heard of it, Rondoletti that people buy at Christmas time. It looks like a cigarette. It looks like a long cigar. Do you not want to have that?

Sen. Jeremie SC: No.

Sen. Rahman: You are rejecting that. All right.

Mr. Chairman: Sen. Drayton, you have in clause 18 delete "penalty of imprisonment", where is that?

Sen. Baptiste-Mc Knight: Mr. Chairman, wherever it says so many "dollars and imprisonment", does it actually mean "and/or", or should it be "or"? Because the joint committee had changed all of these to "or", but I notice they have come back as "and".

Sen. Jeremie SC: In the Interpretation Act "and" is better, it means both.

Sen. Baptiste-Mc Knight: It means both?

Sen. Jeremie SC: Yes, it means either "and" or "or".

Mr. Chairman: Sen. Drayton, you will have to help me with your proposed amendments to clause 18.

Sen. Drayton: Well, the only proposed amendment I have to clause 18 is to eliminate the penalty of imprisonment. I really find that is very harsh with respect to these offences. [*Crosstalk*]

11.15 p.m.

Mr. Chairman: So it is the word "imprisonment" in 18(2)(a) that you want to remove?

Sen. Drayton: Yes:

"A person who contravenes subsection (1)(b)..."

If you contravene (1)(b) the Bill, as it stands, is saying imprisonment.

Mr. Chairman: In 18(2)(a) and (b) it says:

"...and to imprisonment for six months;"

That is what you want to delete?

Sen. Narace: If the person cannot pay the fine, what happens?

Sen. Mark: Community service. You do not want to jail people for smoking a cigarette; let them go and do some community service. I support Sen. Drayton; do not criminalize this. [*Interruption*]

Sen. Narace: I am advised by CPC that it must be one or the other. What we could do is change "and" to "or".

Sen. Drayton: This would apply to—[*Crosstalk*]

Sen. Jeremie SC: The Interpretation Act in section 68(3) says:

"Where in any written law more than one penalty linked by the word "and" is prescribed for an offence, this shall be construed to mean the penalties may be imposed alternatively or cumulatively."

In the alternative or cumulative. "and" means both; 'and" means "or", so it is always better to use "and" in legislation, because it could mean either "and" or it could mean "or".

Sen. Mark: No, no, no; Mr. Chairman, I just want to say that we have to think through this thing carefully. Are we really committed?

Sen. Narace: Are you going to vote for the Bill?

Sen. Mark: "You doh ask me what I doing; listen to what I have to say."

Mr. Chairman: No, no; I am not going to accept that kind of language. It is getting very late; I appreciate that.

Sen. Mark: Sorry about that; I withdraw.

Mr. Chairman, the point I am making is that we are attempting to criminalize someone who might be engaged in smoking a cigarette or selling it. What we are simply saying is that the Government must be serious about what we are doing here.

We are suggesting that you could fine a person and if the person cannot pay we are suggesting that you have some community service that the person could engage in. But to go and say that person must serve a six months or a year in jail, for what, selling a cigarette? That does not make sense, Minister.

Sen. Narace: Mr. Chairman, the Bill does not provide for community service and I am advised by the Attorney General that "and" means "and/or" and, therefore, in the circumstances we disagree with Sen. Mark's policy. Could we put it to a vote?

Hon. Senator: Take off from the word "and".

Mr. Chairman: Let me just put some questions here. Sen. Drayton, are you withdrawing your amendment or should I put the question?

Sen. Drayton: Well, it has been clarified.

Mr. Chairman: So you are withdrawing your amendment?

Amendment withdrawn.

Mr. Chairman: Sen. Mark, do you have an amendment to suggest here?

Sen. Mark: No, I have none. I was supporting Sen. Drayton.

Question put and agreed to.

Clause 18 ordered to stand part of the Bill.

Clause 19.

Question proposed, That clause 19 stand part of the Bill.

Mr. Chairman: There is an amendment by Sen. Mark.

Sen. Mark: Consistent with the Minister's position on children, because that has been his line for the whole evening to gain sympathy for his legislation, I want to join him at this time.

C. In subclause (3) delete the words "lifestyle advertising or"

D. In subclause (4) delete the definition of "lifestyle advertising".

I am suggesting that our amendment is very clear; that when we talk about sponsorship in line 3, we have:

"in such a manner that could be construed on reasonable grounds to be appealing to children."

I am sure the hon. Minister of Health would want to support this.

Sen. Narace: I am advised by the technicians that this is not in keeping with our policy position.

Sen. Mark: "It look like every time de Opposition put something, your people say it is not in keeping with policy."

Sen. Narace: Are you going to vote for the Bill?

Sen. Ali: Mr. Chairman, I did have an amendment here, but it is not for me to decide how you could determine the 85 per cent maximum readership.

Mr. Chairman: I will take yours in a minute.

The proposal by Sen. Mark is:

A In subclause (1) add the following words after the word "sponsorship" in the line three:

"in such a manner that could be construed on reasonable grounds to be appealing to children."

Question, on amendment, [Sen. W. Mark], put and negatived.

Mr. Chairman: Part B of Sen. Mark's amendment reads:

B. In subclause (2)

- (i) delete paragraph (b)
- (ii) renumber paragraph (c) as paragraph (b)
- (iv) add a new paragraph (c) as follows:

“notwithstanding paragraph (b) a person shall not sell, promote or advertise tobacco products in hotels, guest houses or entertainment areas where children may be permitted by law.”

Sen. Mark: Again, it is to protect the children. Attorney General, we are seeking to protect the children. [*Interruption*]

Sen. Narace: Chairman, I am advised that this section was taken from the Canadian legislation after we had an opinion on the constitutionality issues from the AG's Office. If we try to change anything in this clause, we are likely to run into constitutionality issues; therefore, I am advised by my technicians that we should not interfere with this.

Sen. Mark: When you say constitutional issues, are you talking about a two-thirds majority?

Sen. Narace: Mr. Chairman, you may put the question.

Sen. Mark: I do not understand that, Mr. Chairman. I have put forward an amendment; the Minister is saying something about constitutional questions. What are we talking about, a two-thirds majority? When you say constitutional issues, what are you talking about?

Sen. Narace: It is a three-fifths majority.

Sen. Mark: Well, this is three-fifths here.

Sen. Narace: Chairman, that is our policy.

Mr. Chairman: I will put the question.

Question, on amendment, [Sen. W. Mark] put and negatived.

Mr. Chairman: Sen. Mark's amendment at C reads:

"In subclause (3) delete the words "lifestyle advertising or..."

Question, on amendment, [Sen. W. Mark] put and negatived.

Mr. Chairman: Sen. Mark's amendment in D:

In subclause (4) delete the definition of "lifestyle advertising".

Question, on amendment, [Sen. W. Mark] put and negatived.

Sen. Mark: Very good, I like that. When I start with noes—

Sen. Baptiste-Mc Knight: Mr. Chairman, with respect to 19(4), does this cover old films, like Casa Blanca and these things, classics, where they have a lot of smoking; even Brokeback Mountain? [*Crosstalk*] [*Laughter*]

Sen. Narace: This is restricted to advertisements; it will not include things like Casa Blanca.

Sen. Baptiste-Mc Knight: I thought that would have been like lifestyle.

Sen. Narace: No, it is where it is advertised.

Sen. Baptiste-Mc Knight: I am glad to hear that.

Mr. Chairman: We have a proposed amendment at clause 19(b) from Sen. Ali. I am not sure exactly what the amendment is.

Sen. Ali: If you are saying 85 per cent readership, you should say how you determine that. My colleague is asking how the Canadians interpret that.

Sen. Narace: Studies.

Sen. Baptiste-Mc Knight: Do the Canadian do studies of our magazines?

Sen. Narace: The Ministry of Health would do it; the very unit that we are talking about, all that would be part of their mandate.

Sen. Ali: There should be what circulation the magazine has and where you could find it. I do not know; that is not my area. Just do not say it is 85 per cent adult readership. The television persons do surveys and they say who does the surveys for them.

Sen. Narace: Senator, you know that we cannot spell everything out in legislation.

Sen. Ali: I want to know what you mean.

Sen. Ramkhelawan: —“a publication that has adult readership of not less than eighty-five per cent as determined by a recognized survey.”

Sen. Narace: Suppose the unit did it?

Sen. Mark: We have no confidence in the unit.

Sen. Ramkhelawan: The basis on which you would determine it is at the heart of the question. You could put “a recognized survey” or “as determined by an appropriate survey”—just an indicator. I am not sure that you might be able to enforce some of these things in any event.

Sen. Narace: Sen. Ramkhelawan, could you give us those words again?

Sen. Ramkhelawan: “not less than eighty-five per cent as determined by a recognized survey;”

Sen. Narace: We could accept that.

Sen. Rahman: May I make a suggestion: "a publication that is intended for adult readership;"—end of story. You are marketing it for the adults and if the children get it by other means than they should have, that is not the fault of the advertisers; “publications that are intended for adult readership and marketed for adult leadership”. Why do you not do it that way?

Mr. Chairman: Sen. Ramkhelawan, could you please repeat your proposal?

Sen. Ramkhelawan: Chair, in (b) after "not less than eighty-five per cent", just add "as determined by a recognized survey".

Sen. Dr. Gopaul-McNicol: Could we put "as determined by a nationally recognized survey"? Could we include the word "national"? Do you have an issue with that?

Sen. Narace: No, no, no.

Sen. Rahman: Before the advertising or after the advertising?

Mr. Chairman: The question is that clause 19(2)(b) be amended by including after the word "per cent" the words:

"as determined by a recognized survey".

Question, on amendment, [Sen. Ramkhelawan] put and agreed to.

Question put and agreed to.

Clause 19, as amended, ordered to stand part of the Bill.

11.30 p.m.

Clause 20.

Question proposed, That clause 20 stand part of the Bill.

Mr. Chairman: We have an amendment from Sen. Mark:

Delete subclause (2).

Sen. Mark: Mr. Chairman, I do not believe that the Government is serious about this clause and, therefore, I am suggesting that it be removed.

Sen. Narace: We accept Sen. Mark's amendment.

Question, on amendment, [Sen. W. Mark], put and agreed to.

Question put and agreed to.

Clause 20, as amended, ordered to stand part of the Bill.

Clause 21.

Question proposed, That clause 21 stand part of the Bill.

Sen. Baptiste-Mc Knight: No, Mr. Chairman, I have a problem. I would like to substitute the word “product” for the word “entity” so that it is the brand and not the corporate body. Replace the word “entity” by “brand” or “product”.

Sen. Narace: Remember in our policy formulation we agreed with the convention that was the way they sought to give credibility for the product by promoting the entity and this is a very important part.

Sen. Baptiste-Mc Knight: Mr. Chairman, I refer you to the tobacco sponsorship definition on page 10 where it talks about unlikely effect of promoting a tobacco product or tobacco use. It is very specific.

Sen. Narace: If you say brand or entity—

Sen. Baptiste-Mc Knight: No, brand or product, not entity. I do not want the corporate sponsor to be involved here.

Sen. Narace: Sen. Baptiste-Mc Knight, that is a serious intention of the Bill.

Sen. Baptiste-Mc Knight: It is. “I tell yuh I worried about Despers, I like to hear meh sweet pan.” Who is going to pick up that sponsorship?

Sen. Narace: They could sponsor them.

Sen. Baptiste-Mc Knight: They would not be able to sponsor them if the word “entity” is there. You can sponsor them; just take no credit for it.

Sen. Oudit: So you are encouraging sponsorship?

Sen. Narace: Sen. Baptiste-Mc Knight, this is a very critical part of the Bill.

Sen. Oudit: This is two-faced.

Sen. Baptiste-Mc Knight: Mr. Chairman, I do not believe in cutting off my nose to spite my face, even though the end product is that it will still be ugly. I do not want that. It does not make sense, that they could still sponsor them but not use their name.

Sen. Narace: I am advised that this is a very difficult one, it will defeat the whole purpose of this Bill.

Sen. Baptiste-Mc Knight: Are you going on record as saying that under clause 21 as it now stands Witco can continue to sponsor Despers?

Sen. Narace: Yes.

Sen. Baptiste-Mc Knight: That is enough for me.

Sen. Narace: Thank you very much.

Question put and agreed to.

Clause 21 ordered to stand part of the Bill.

Clause 22.

Question proposed, That clause 22 stand part of the Bill.

Mr. Chairman: There is an amendment by Sen. Mark to delete clause 22.

Question, on amendment, [Sen. W. Mark] put and negatived.

Question put and agreed to.

Clause 22 ordered to stand part of the Bill.

Clause 23.

Question proposed, That clause 23 stand part of the Bill.

Mr. Chairman: We have an amendment from the Minister in clause 23(1):

Delete the words “or export”.

Sen. Jeremie SC: We are taking out the words “or export” and we have to put after the word “supply” the words “or import” of tobacco product.

Sen. Oudit: So you are saying that you can export but you cannot sell? No person shall sell or offer for sale, but you are taking out the word “export”, so how are you going to export it in the first place if you did not sell it? What is the point of taking out the word “export”?

Sen. Narace: We are not really concerned about what happens in another country in a real sense, so if he exports he must meet their requirements in their country; that is the reason for it.

Mr. Chairman: Clause 23(1) is amended as follows:

The word “or” inserted after the word “supply” and the words “or export” after the word “import” be deleted.

Question put and agreed to.

Clause 23, as amended, ordered to stand part of the Bill.

Clause 24.

Question proposed, That clause 24 stand part of the Bill.

Mr. Chairman: There is an amendment by the Minister as follows:

Delete the words “or individual wrappers in the case of cigars”.

Question put and agreed to.

Clause 24, as amended, ordered to stand part of the Bill.

Clause 25.

Question proposed, That clause 25 stand part of the Bill.

Mr. Chairman: There is an amendment by the Minister as follows:

Delete the words “or wrapper in the case of cigars”.

Question, on amendment, put and agreed to.

Mr. Chairman: There is a proposed amendment by Sen. Mark:

At 25(1) insert the words “manufactured in Trinidad and Tobago” between the words “products” and “shall” occurring in line 1 thereof.

Question, on amendment, [Sen. W. Mark] put and negatived.

Sen. Ali: In clause 25(1), once again we come to the information “constituents and additives specified” on packages. If you take a 10-pack cigarette, there is very limited amount of information you can put on that. I checked one today and the information on it was the amount of tar and nicotine. I do not know whether this is too wide a definition although it says: “as prescribed by Regulations”, it is not all the constituents and additives; and additives do not refer to tobacco.

Sen. Narace: When we get to the Regulations we will deal with that.

Sen. Ali: My suggestion for that would be affirmative resolution.

Sen. Narace: I agree with that.

Mr. Chairman: Sen. Mark also proposed in clause 25(2)(a):

Substitute the word “fifty” for the words “one hundred” occurring in lines 1 and 2 and in (b) substitute the words “one hundred” for the words “five hundred” occurring in line two.

Question, on amendment, [Sen. W. Mark] put and negatived.

Mr. Chairman: Sen. Drayton, your amendments dealing with imprisonment, or the monetary penalty, you have a proposal to delete those issues in clauses 25, 31, 32 and 34. Do you now withdraw that having had the explanation, or would you want it revisited?

Sen. Drayton: I would still have an issue with clause 31.

Mr. Chairman: So consider it up to clause 25?

Sen. Drayton: Well, if it is false and misleading, that is fraud, so I have no problem with that.

Question put and agreed to.

Clause 25, as amended, ordered to stand part of the Bill.

Clauses 26 and 27 ordered to stand part of the Bill.

11.45 p.m.

Clause 28.

Question proposed, That clause 28 stand part of the Bill.

Sen. Baptiste-Mc Knight: Mr. Chairman, I am wondering, clause 28(1) stipulates the information, the tracking, tracing, tax status labelling information. Now this tax status is for imported goods, because I am not aware that locally manufactured and our goods for export have any tax status information on it.

Sen. Jeremie SC: Say again?

Sen. Baptiste-Mc Knight: The tax status for exporters from Trinidad, manufacturers and exporters, what tax status would they have to put on their packet labelling?

Sen. Jeremie SC: Sen. Browne, deal with that for me. My understanding is that you cannot have a tax imposed here in respect of an export.

Sen. Browne: What is the specific question, sorry? What was the question with regard to clause 28? Sen. Baptiste-Mc Knight, clause 28(3), the third sentence, what was the question?

Sen. Baptiste-Mc Knight: How does the tax status requirement apply to our local manufacturers and exporters?

Sen. Browne: Again, it would go back—it may not necessarily be for the local manufacturer; it may have to do with the international nature of the trade.

Sen. Baptiste-Mc Knight: Absolutely. So that what is needed here is "tax status as applicable".

Sen. Browne: As applicable.

Sen. Baptiste-Mc Knight: Yes. Because if we do not need it, you cannot be telling them they must have it and then telling the authorizing officers that if the things do not comply, you seize it.

Sen. Narace: We can accept "as applicable".

Sen. Baptiste-Mc Knight: Very well. Thank you.

Sen. Oudit: It is there already in the legislation. Or we can accept that is, "as applicable shall ensure that bulk packaging..."

Sen. Narace: Okay. Thank you.

Question put and agreed to.

Clause 28 ordered to stand part of the Bill.

Clause 29.

Question proposed, That clause 29 stand part of the Bill.

Mr. Chairman: We have an amendment from Sen. Mark. In (1) delete the words "using the best available technology" occurring at the end thereof.

Question, on amendment,[Sen. W. Mark], put and negatived.

Question put and agreed to.

Clause 29 ordered to stand part of the Bill.

Clause 30.

Question proposed, That clause 30 stand part of the Bill.

Mr. Chairman: We have an amendment from the Minister to delete the word "exclusively" which is the same as Sen. Mark and Sen. Ali has the same amendments.

Question put and agreed to.

Clause 30, as amended, ordered to stand part of the Bill.

Clause 31.

Question proposed, That clause 31 stand part of the Bill.

Mr. Chairman: We have some amendments from the Minister and Sen. Mark. The Minister's amendments are:

- A. In subclause (1)—
 - (a) delete the words “, with the exception of cigars...”

Sen. Narace: Let us hear Sen. Ramkhelawan.

Sen. Ramkhelawan: If I may, I think the problem that has been articulated by many Senators is this clause 31(2) is draconian and that it should be removed altogether, given the culture of this country and the nature of our vendors on the streets, parlours and so on.

Mr. Chairman: That is to delete subclause (2).

Sen. Ramkhelawan: To delete subclause (2)—

Mr. Chairman: Well, if you give me a moment we will get there because the Minister has that proposal. So if you could just allow me to go through it, I will get there.

Sen. Ramkhelawan: Sorry.

Mr. Chairman: The amendment reads:

- A. In subclause (1)—
 - (a) delete the words “, with the exception of cigars which”; and
 - (b) delete all the words after the words "labelled as required".
- B. Delete subclause (2) and renumber subclause (3) as subclause (2), accordingly.
- C. Delete the marginal note and substitute the following: “Labelling of individual units.”

Question, on amendment, put and agreed to.

Mr. Chairman: Sen. Mark has to delete subclause (2). Anything else?

Sen. Drayton: Mr. Chairman, "a person who contravenes this section commits an offence and is liable on summary conviction..." So you have taken out (2)—I still have a problem with the penalty for clause 31(1) of imprisonment for the sale of a single cigarette. What you are saying here you are prepared to imprison a small vendor who sold an individual a cigarette that is not wrapped.

Sen. Narace: Remember we agreed it was really and/or.

Sen. Drayton: But I still feel just to have the option of imprisoning a small vendor—

Sen. Narace: No, but if they did not pay the fine, what is the other option?

Sen. Drayton: I am not too sure it is one to fine or imprisonment. You have an option of—and they have to apply for a licence, do they? You have an option of—

Sen. Narace: No, they are not licensed.

Sen. Drayton: Okay, but you have an option of maybe not permitting them to sell the product again. Because normally these vendors are not only selling cigarettes; they are selling a number of things. So that, you know, a penalty could be a warning and then an order where they cannot sell cigarettes at all. But I cannot agree to imprisonment or a fine of \$10,000 for a small vendor for selling a cigarette.

Sen. Narace: What would you suggest?

Sen. Drayton: Well as I said, either a warning and they cannot sell it again, but I cannot allow you to imprison them.

Sen. Jeremie SC: Chair, the penalty which we have here is a maximum penalty, so that you are putting this matter in the hands of a magistrate. It is on summary conviction, so they have to be convicted first by a magistrate and the magistrate has a discretion. So that it really is not our place to tell the magistrate what to do.

Sen. Drayton: Well, I think it is unconscionable to make a vendor a criminal for selling a single cigarette.

Sen. Jeremie SC: If it is unlawful, you have a penalty. The maximum fine is \$12,000. Under the Interpretation Act the magistrate could decide that that would be \$10. It is a discretion which is given to the magistrate. It is a maximum fine.

Sen. Drayton: But there has to be an alternative.

Sen. Ramkhelawan: It is within the discretion of the Senate in Parliament to decide not to make this thing unlawful and then put it in the hands of the magistrate to determine that a person who sold a single cigarette now becomes a criminal. The second point is, through you, Mr. Chairman, I do not think that it is a practical matter for us to put the onus on the roadside vendor to some form of wrapping that really does not make sense. Practically what happens, if you ever walk the street, AG, they take out from the pack and they put it in a little bottle and they take out from the bottle and hand it to you on most occasions and I cannot support criminalizing this.

Sen. Jeremie SC: Sen. Ramkhelawan, I walk the street before you walk the street, so I know about the bottles.

Sen. Ramkhelawan: So you know about the bottles and you want to criminalize these people?

Sen. Jeremie SC: We are trying to impose a regime here. If we are saying that something is wrong, there must be a penalty for it.

Sen. Ramkhelawan: But they are selling a legal product.

Sen. Jeremie SC: The penalties are fairly insignificant penalties.

Sen. Ramkhelawan: No, Sir. Ten thousand dollars to a vendor on the side of the road?

Sen. Jeremie SC: If you want us to negotiate on that, we can negotiate on that. If you want us to make it \$1,000, I imagine that the Minister would not have a problem with that.

Sen. Drayton: But if you say a fine of, \$500, \$1,000 and that is it, but we do not have to make them a criminal. I think this is unconscionable.

Sen. Enill: But, Chair, you know, we really have to decide whether we are fish or fowl. What we are seeking to do here is to create a situation in which if it is against the law, then those who break the law need to understand that they are doing something that does not make sense. I keep hearing us talk about the individual who we are trying to criminalize and I ask myself in the context of the bigger picture, what are we trying to do? You take marijuana, for example, a stick of marijuana is illegal. The fact of the matter is, as long as we are saying that this matter must now be a matter which we consider to be inappropriate and we want to do something with it, we have to decide that it is nothing that we will tolerate and in those circumstances there must be a penalty for dealing with this.

We also have this particular problem in the police service where somebody breaks the law in the morning and he tells the officer: "Listen, you know, I was really running late" and so on, and what we find happening is that as a consequence of that, everybody is sorry. At the end of the day all of us suffer as a result of the attitude towards this thing. Basically we have to agree, because it has been confirmed that it is the small things that get us into trouble.

I simply make that point to give those who are discussing it some time to reflect. I hear you, but we have to decide how we are going to deal with this particular matter and those who are involved in this particular activity need to find something that we do not consider to be of this nature.

Sen. Drayton: Can it not be a matter of part of the regulations? I do not think it is conscionable to have—

Sen. Enill: What would be the steps? I am assuming that I hear you say in the first instance you do not want to go there, but at some point in time you would have to get there if this thing has to have the impact that we are looking for. What would you like to see in the first instance?

12.00 midnight

Sen. Ramkhelawan: The short answer is not to make it unlawful. If you want to go to the level of cigars that is fine, but to criminalize the sale of a single cigarette, that is something that is unsupportable. You raised an example about a single stick of marijuana. Marijuana is an illegal substance. Cigarette is not.

Sen. Narace: We are dealing with a single cigarette without a label, if they sell a single cigarette with the label and the child or school child to whom they should not be selling in the first place, but to whom they do sell.

Sen. Ramkhelawan: That is unlawful. You charge for that. We have already put that in the legislation but it is unlawful to sell to a child.

Sen. Narace: We intended originally not to allow single sales because single sales do not only target children, but also poor people who would take income that should normally be used for other things in the household. Because they could buy one—one cigarette—they do not make an effort to quit. Because it is so easily available it feeds the habit. The compromise was that we would agree for them to sell one cigarette. We are now saying that we want them to label it so that every time you smoke that cigarette, you would be reminded that it is dangerous to your health. If you are in contravention of that, then you should have some penalty.

I am not opposed, with the Attorney General's permission, to finding a mechanism where we could find a fine as recommended by you and use the regulations to see if we can come to a conclusion.

Sen. Drayton: One could either address it in the regulations, or if you have to go to such a severe penalty. Any jail time is severe so it has to be probably on the third situation you are caught doing this. It cannot be sending this little vendor to jail. Jail time should not be an option for that. Can you not deal with it under the regulations?

Sen. Enill: What is the recommendation?

Sen. Drayton: Deal with it under the regulations where they have one, two, three warnings and the third time you put a fine.

Sen. Ali: Is this not the case of a willing seller and a willing buyer? You are penalizing and criminalizing the seller and the buyer is going free. The person who sells one cigarette is a criminal, but the one who buys it, smokes it and enjoys it is free. You have no charge against him. Is that fair?

Sen. Ramkhelawan: My suggestion is to take it out with regard to that single cigarette. The argument that is being made about the poor person buying one cigarette, at the end of the day he would pay more than if he bought an entire pack. The point is that knowing all the facts, that is his choice. My amendment is to take it out from 31(1) and remove clause 31(2).

Sen. Narace: Sen. Drayton, will you agree to a fine on the first occasion, a fine on the second occasion and on the third occasion a fine or imprisonment?

Sen. Drayton: You are still criminalizing. This is why I prefer to treat that fine under the regulations. You see this thing about children buying one cigarette. To start with, children do not earn the money with which they buy cigarettes. They either steal the cigarette or the money to buy it. If they cannot buy a single cigarette they would steal the money to buy a pack. Instead of stealing \$1 they would steal \$20. It does not make sense. I feel that it should form part of the regulations.

Sen. Mark: I agree. We should withdraw that clause. Sen. Ramkhelawan, I support you on that matter fully.

Sen. Narace: Senator, we will agree to put "fine" in the regulations.

Sen. Drayton: I could live with that.

Sen. Ramkhelawan: If you are making any amendments know that I would vote against them. I am not in favour of criminalizing any vendor for one cigarette.

Sen. Narace: In passing this legislation you do not. When you pass the regulations, based on how it is passed there, then you would do that.

Sen. Ramkhelawan: I am saying that I am not in favour. I think that I have repeated myself. The Chair will pull me up. I am not in favour of criminalizing the sale of a single cigarette. It could be anywhere. It could be in the Bill, it could be in the regulations, anywhere. Get me clear.

Sen. Narace: For purposes of this document, it would not be included in this document and it would be dealt with in the regulations. Is that acceptable?

Sen. Baptiste-Mc Knight: Mr. Chairman, can I intervene at this point? Our problem is to avoid the sale of cigarettes to children. We have it here in clause 13 that the sale of cigarettes to children is prohibited. Now, that means that if you sell one cigarette to a child, the brunt of the law falls on you. That is enough.

Sen. Narace: We wanted a very critical part of this legislation in terms of the policy formulation, for us to ensure that every time any individual takes a cigarette—normally, if you have a pack of cigarettes, the pack should have written on it certain messages that we discussed and that should be a deterrent. If you are buying single cigarettes you would not see the pack as such and that is why we call for the packaging and labelling. We have agreed to that in clause 31(1). The criminalizing is where the difficulty is. Therefore, if we agree to defer that to the regulations, that is a matter that need not detain us at this point in time and we can move forward.

Sen. Baptiste-Mc Knight: We would still have a problem. Do you know why? Smoking a cigarette is not a literary exercise. Nobody reads a pack of cigarettes to see what is on it. Who now bears the onus of having to write this thesis on each cigarette in order not to sell it to a child?

Sen. Narace: Remember we are part of a convention. We share information. We have empirical works that we share. We know what works. For example, it was agreed that wherever this legislation was instituted, one year later they saw between a 6 and 47 per cent drop in acute heart attack. We have empirical work. That is all we can use. I am trying to compromise. We need this legislation and we need it badly. I understand your point on criminalizing it. I am prepared to take out (3) and say that we would deal with it in the regulations.

Sen. Drayton: I refer here to the Attorney General. It means that that person would not have a criminal record. That is what I am getting at.

Sen. Narace: We will deal with all that in the regulations. We note your point. Sen. Ramkhelawan, could we agree that we would take it out from here and say it would be dealt with in the regulations?

Sen. Ramkhelawan: Take it out from here but you know what my vote is on the regulations which would come by affirmative resolution.

Sen. Narace: No problem. I hear you.

Mr. Chairman: Sub clauses 31(2) and (3) be deleted and replaced with a subclause (2) which would read "the Minister may make Regulations to provide for a contravention of this section."

Question put and agreed to.

Clause 31, as amended, ordered to stand part of the Bill.

Clause 32.

Question proposed, That clause 32 stand part of the Bill.

Sen. Mark: Mr. Chairman, I beg to move that clause 32 be amended by deleting subclause (2). I withdraw that.

Amendment withdrawn.

Question put and agreed to.

Clause 32 ordered to stand part of the Bill.

Clause 33.

Question proposed, That clause 33 stand part of the Bill.

Sen. Baptiste-Mc Knight: Mr. Chairman, I beg to move that clause 33 be amended by deleting the words "or display for sale".

Clause 15 already prohibits any kind of display. I do not see the need to have it here again.

Question put and agreed to.

Clause 33, as amended, ordered to stand part of the Bill.

Clause 34.

Question proposed, That clause 34 stand part of the Bill.

Mr. Chairman: We have amendments from the Minister, Sen. Mark and Sen. Baptiste-Mc Knight.

Sen. Narace: Mr. Chairman, I beg to move that clause 34 be amended by deleting the words "an action" and substituting the words "any legal action".

Question, on amendment, put and agreed to.

12.15 a.m.

Mr. Chairman: B. In paragraph (a)—

- (a) Delete the words "a laboratory" and substitute the word "an"; and
- (b) Delete the word "certification" and substitute the words "certificate of analysis".

Question, on amendment, put and agreed to.

Mr. Chairman: We have an amendment from Sen. Mark.

- A. In paragraph (a) substitute for the word "analyst" occurring in line 2, the word "technician";

Sen. Mark: No, I would like to withdraw that, Sir.

Amendment withdrawn.

Mr. Chairman: B. In paragraph (b) substitute for the word "Ministry" occurring in line 2, for the word "Board".

Sen. Mark: I would maintain my position on that.

Question, on amendment, [Sen. W. Mark], put and negatived.

Mr. Chairman: Sen. Baptiste-Mc Knight has an amendment to clause 34(e):

Delete the words "or seller".

Sen. Baptiste-Mc Knight: Mr. Chairman, there is no requirement for the seller to get a licence and, therefore, I cannot see how there is a need for the seller to be identified on the label.

Sen. Mark: Where are we?

Mr. Chairman: We are at clause 34(e). The proposal is to delete the words "or seller"

Sen. Narace: Sen. Baptiste-Mc Knight, "seller" just encapsulates all those other functionaries of a distributor; a jobber; agent; a van salesman; and a sub-agent. Those kinds of people are all sellers. That is just a catch-all for those.

Sen. Baptiste-Mc Knight: That is not making sense to me. It says:

“the person identified on the label...as the manufacturer, importer, exporter, distributor or seller...”

There is no provision anywhere else in this Bill for the seller to be licensed. “Seller” includes distributor, wholesaler and retailer. Once you include “seller” here, you are including the retailer. And the retailer does not have to be—

Sen. Narace: Seller other than the retailer?

Sen. Baptiste-Mc Knight: Well, if you are going to do that, you can take out manufacturer, exporter, importer and distributor and just say “seller other than retailer”, because all of those are sellers.

Sen. Narace: It does not really hurt anybody; it is a catch-all.

Sen. Baptiste-Mc Knight: But it catches the retailer who it does not want to catch. It excludes the retailer in clause 10(10), which did not make sense.

Sen. Narace: Let me give the definition of “seller.”

“‘seller’ means any person who supplies any tobacco product for a fee or other consideration, and includes any manufacturer, distributor, wholesaler, importer, exporter and retailer;”

Sen. Baptiste-Mc Knight: “and retailer”. Here you have repeated the manufacturer, importer, exporter and distributor. It is only the wholesaler you have left out. Then you duplicate it by having “seller”

Sen. Narace: If we replace “seller” with “wholesaler”, is that okay?

Sen. Baptiste-Mc Knight: Beautiful.

Sen. Mark: In that regard, what was said earlier, in terms of the definition of “seller”, would we have to delete “retailer” and just put a full stop after “exporter”, so that you do not have a contradiction taking place? You have a definition in the interpretation section.

Mr. Chairman: The word “seller” is being removed.

Sen. Mark: Yes, but in the interpretation section, there is a word called “seller” and it is defined, which includes “retailer”. What we are going to do is to remove the word “seller” and put “wholesaler”.

Mr. Chairman: Correct.

Sen. Baptiste-Mc Knight: No.

Mr. Chairman: Clause 34(b) is amended by deleting the word “seller” and replacing it with the word “wholesaler”.

Question, on amendment, [Sen. C. Baptiste-Mc Knight] put and agreed to.

Question put and agreed to.

Clause 34, as amended, ordered to stand part of the Bill.

Clause 35 ordered to stand part of the Bill.

Clause 36.

Question proposed, That clause 36 stand part of the Bill.

Sen. Baptiste-Mc Knight: Mr. Chairman, clause 36(c)(v):

“all tobacco products...”

except those for export, because the exported cigarettes do not have to conform precisely to this Bill.

Sen. Narace: In the Bill, I am advised, we do not require anything of them for export manufacturing. That is for the receiving country to treat with.

Sen. Baptiste-Mc Knight: That is why I am suggesting that you specify export products here, because all of these are products that can be seized by the officers and dealt with, if they do not conform to the legislation. Those probably were not conformed. This deals with confiscation.

Sen. Narace: We accept it.

Mr. Chairman: What words do you want to include and where?

Sen. Baptiste-Mc Knight: All tobacco products, except those for export... The legal people should have words. I do not draft.

Sen. Narace: We will come up with a form of words.

Sen. Jeremie SC: There appears to be an inconsistency between what we are seeking to do in clause 36(c)(v) and clause 28(1), which imposes a duty in respect of:

“Tobacco product manufacturers, exporters and importers as applicable, shall ensure that bulk packaging contains the tracking, tracing and tax status labelling information required by this section.”

Sen. Baptiste-Mc Knight: In clause 28(1), you have “as applicable”, which means that for purposes of this, exporters who do not have to comply with the tax status and, perhaps, in some labelling information, would be excluded. “As applicable” makes a difference.

Sen. Narace: It is a similar point to the transshipment. It is a way for us to keep the surveillance and that is the only reason why it can create a loophole.

Sen. Baptiste-Mc Knight: Mr. Chairman, if you are saying that confiscation and forfeiture can be visited upon all tobacco products or components that fail to conform with the product requirement under this Act, export product conforms to the requirement of its market of destination.

Sen. Narace: If we can get them to come up with a form of word that says—

Sen. Baptiste-Mc Knight: No, at 12.27 a.m.? You have four lawyers sitting there. Help me! You have a Senior Counsel and four lawyers.

[Pause]

Clause 36 deferred.

12.30 a.m.

Clause 37.

Question proposed, That clause 37 stand part of the Bill.

Mr. Chairman: We have some amendments from the Minister which read as follows:

A. In paragraph (a)—

- (a) in subparagraph (i), delete the words “one hundred thousand” and substitute the words “fifty thousand;”
- (b) in subparagraph (ii), delete the words “two hundred thousand” and substitute the words “one hundred thousand;” and
- (c) in subparagraph (iii), delete the words “three hundred thousand” and substitute the words “one hundred thousand”.

Question, on amendment, put and agreed to.

Mr. Chairman: Clause 37(1) is amended as follows:

- B. In paragraph (b) delete the words “five hundred thousand” and substitute the words “two hundred thousand”.

Question, on amendment, put and agreed to.

Mr. Chairman: Clause 37(2)(b) is amended as follows:

Delete the words “five hundred thousand” and substitute the words “two hundred thousand”.

Sen. Mark: Mr. Chairman, before you go to clause 38, I just want to remind you and the Senate that there must be consistency in the legislation. I just want you to refer to clause 25, just for the purposes of consistency. I think we would have to follow the same line that we just followed and where we have “one hundred thousand” we reduce it to “fifty thousand” and where we have “five hundred thousand” reduce it to “two hundred thousand”.

Sen. Narace: We have passed that.

Sen. Mark: It is not a question of it being passed. There must be consistency in your legislation. You cannot have one thing here and one thing up there. That is craziness! You must go back.

Mr. Chairman: There is no question before us.

Question put and agreed to.

Clause 37, as amended, ordered to stand part of the Bill.

Clause 38.

Question proposed, That clause 38 stand part of the Bill.

Mr. Chairman: There is a proposed amendment in clause 38(1) which reads as follows:

Substitute the word “negative” occurring in line 2 with the word “affirmative” and in 38(2) insert the words “subject to an affirmative resolution of Parliament” between the word “order” and the word “amend” occurring in line 1.

Sen. Mark: We want a division on that.

Sen. Enill: Mr. Chairman, what is the rationale for wanting a positive resolution? As I understand the process, we would pass the law and put the legislation in place, and then those who have to implement it—the technicians and the operators—go out and create the rules by which that will occur, and then we have a period of time to decide whether we would wish to have a full debate on it. Basically, the negative resolution allows us to do that. If it is we are talking positive resolution, basically there is going to be a debate similar to what we have considered, and it is mandatory. Even if all of us agreed with everything in the regulations and we wanted to change absolutely nothing, if it is positive resolution, it must come here and we must go through it. I just want to understand, what is the rationale.

Sen. Mark: Essentially, the rationale is this: Where we have three-fifths and sections 4 and 5 of the Constitution are being violated in terms of the rights of the people—I would like to point out to you, hon. Minister, that many provisions—I would say more than about 20 provisions in this piece of legislation if not less—refer to the regulations. So, every time you meet a provision you would say “as prescribed by the regulations”. So, we are really agreeing to regulations which are not before us and we are being asked to vote on this. This is like buying cat in bag or shooting in the dark.

We are saying that in the interest of democracy—I am not saying that the Minister is going to be negative in what he is going to do, but what we have to deal with is the future. What we are saying is that in these circumstances, we would like to see those regulations to ensure that we cross all the t's and dot all the i's so that the Minister and his technicians would not slip into those regulations any regulation that is going to further infringe on the rights and freedoms of the people, because this is a three-fifths majority. That is why we are saying we want to see those draft regulations. I have seen regulations from Canada, and they are very draconian, and they went to the Parliament before. Those are regulations.

Sen. Prof. Deosaran: Mr. Chairman, I am not totally gung-ho about the affirmative resolution, but I think there are good reasons to have it inserted. There are three reasons—I am referring to clause 38. If you look at the First Schedule, you will see the Minister having the power to really tax—it is a tax—the application for licence fees. I believe in this circumstance, taxation should really be the work of Parliament more than the Minister's.

Secondly, the Second Schedule has serious implications for people's space and the use of these facilities, and this could unnecessarily bring certain hardships if it is badly or, perhaps, even unwittingly handled.

Thirdly, I think the more important point is that this has been one of the most controversial pieces of legislation that has faced this Parliament in recent times, mainly because of the sensitivity; it is complex and it is also novel and, I believe, we should give Parliament a second look at it but, more precisely, the Government itself would want to see how it works or what are the other implications which we have not covered at this instant time. We need time. We need a breathing space to bring it back for more sober reflection based on certain evidence that might be uncovered as time goes by. I believe it is more sensible to have affirmative resolution in these circumstances.

Sen. Narace: It makes sense; we agree.

Question put and agreed to.

Clause 38, as amended, ordered to stand part of the Bill.

Clause 11 reintroduced.

Sen. Jeremie SC: Mr. Chairman, we have been asked to find a form of words to keep the information confidential, and this is it. Delete clause 11(5) and replace it with the following:

“No person shall disclose any information contained in the Report unless required by the provisions of this Act or any other written law or by Order of the Court.”

New subclause (6) reads as follows:

“A person who contravenes subsection (5) is liable on summary conviction to a fine of five thousand dollars and imprisonment for three years.”

Question put and agreed to.

Clause 11, as amended, ordered to stand part of the Bill.

12.45 a.m.

Clause 15 reintroduced.

Sen. Jeremie SC: Clause 15(2):

“This section shall not apply to cigarette dispensers provided by the manufacturer, so, however, that such devices shall not be used for the purposes of advertisement or promotion of tobacco products and shall meet the requirements prescribed by regulations.”

Sen. Dr. Nanan: Attorney General, on that wording, how can the cigarette dispenser not be an advertisement?

Sen. Jeremie SC: Say again?

Mr. Chairman: Just one moment, “and meet the requirements of the regulations”? Attorney General, “and shall meet the requirements of the regulations”?

Sen. Jeremie SC: Prescribed by regulations.

Mr. Chairman: Okay. You want to ask a question?

Sen. Dr. Nanan: The cigarette dispenser that is being made reference to, how would that be advertising?

Sen. Narace: There will be no advertising.

Sen. Dr. Nanan: It would just be a cigarette dispenser?

Sen. Narace: It is just to make sure—[*Inaudible*]*—*but no advertising.

Mr. Chairman: The question is that clause 15 be amended by inserting a new subclause (2):

“This section shall not apply to cigarette dispensers provided by the manufacturer, so, however, that such devices shall not be used for the purpose of advertisement or the promotion of tobacco products and shall meet the requirements prescribed by regulations.”

Question put and agreed to.

Clause 15, as amended, ordered to stand part of the Bill.

Clause 36 reintroduced.

Mr. Chairman: Sen. Baptiste-Mc Knight.

Sen. Narace: She has agreed to accept it.

Sen. Baptiste-Mc Knight: As with the amendment. We have an agreement with the amendment.

Mr. Chairman: So, we have an amendment?

Sen. Narace: No, I said that if we could accept it now and if we find that you are correct, we would come back and look at it.

Sen. Baptiste-Mc Knight: Go ahead.

Question put and agreed to.

Clause 36 ordered to stand part of the Bill.

New clause 6.

Mr. Chairman: Sen. Mark had suggested a new clause 6 dealing with his proposed board and secretariat.

Question, on new clause 6, put and negatived.

Sen. Mark: You know everybody get up for Wade Mark.

New clause 39.

Mr. Chairman: There is a proposed amendment for a new clause 39, new database on compliance.

Sen. Mark: Yes, well, Mr. Chairman, I am hoping that the hon.—

Sen. Narace: No, no!

Sen. Mark: Mr. Chairman, I know that people are tired and I am tired myself, but—[*Crosstalk*] Mr. Chairman, you put it to the floor?

Mr. Chairman: I have to read the clause. The new proposed clause is:

“The board shall establish a database on the tobacco industry which would identify all companies and levels of compliance with this Act indicating measures being taken by such companies to improve compliance and inform on programmes such companies may access to assist with compliance.”

Question proposed, That new clause 39 be read the first time.

Question negatived.

Sen. Mark: “All yuh know wha all yuh vote against”?

Sen. Narace: No.

Sen. Mark: Okay.

New clause 40.

Mr. Chairman: There is an amendment for a new clause 40.

Clerk: New clause 40, “new transitional enforcement”.

Mr. Chairman: Clause 40(1):

“There shall be a 12-month period of soft enforcement from the date of the proclamation of the Act where penalties would not be enforced but where warnings would be issued to non-compliant or offending businesses and individuals.”

Subclause (2):

“There shall be a 12-month education campaign by the board specifically designed for businesses to understand their responsibilities under the Act and to assist such businesses in the transition period.”

Subclause (3):

“A period of rigorous enforcement will commence after the 12-month soft enforcement period.”

Question proposed, That new clause 40 be read the first time.

Question negatived.

Sen. Mark: Mr. Chairman, I just wanted again to bring to your attention and the attention of the Attorney General the inconsistency in the legislation and I also want to let you know, Mr. Chairman, that earlier on, if you go to clause 31 you had a section when you deleted, I think, (2) and (3), you replaced it with something about regulations by the Minister. I just want to let you know that again it is superfluous because when we go to 38 we have the regulations again and I would like to suggest, under 38(1) “generally for carrying out the purposes of this Act inclusive of the provision of sanctions for breaching of the regulations.”

Because what we have is almost like a duplication of what we are talking about in terms of 31(2), the new (1) that we had agreed to and which is dealing with the Minister making regulations and then we have 38 with the Minister making regulations. So I am saying that is really a duplication of what we have there in the legislation.

Sen. Narace: We reject that.

First Schedule ordered to stand part of the Bill.

Second Schedule.

Question proposed, That the Second Schedule stand part of the Bill.

Sen. Mark: Mr. Chairman, you would realize I have two areas of concern here. First of all, this question about clubs and the whole issue of private members' clubs, we feel that is a definite violation of the Constitution and it is a violation in terms of section 4, in terms of enjoyment of property. Therefore, we are saying when we talk about clubs it must not include private members' clubs.

Secondly, (j) this thing has this broad catch-all “any other facilities that are accessible to the public”, that is a catch-all expression and we are saying that should be deleted. Those are the amendments.

Question, on amendment, [Sen. W. Mark] put.

Sen. Mark: We want a division on that one, Sir, because we would let the private club people know that you all did that. We would let them know.

The committee divided: Ayes 9 Noes 20.

AYES

Mark, W.

Nanan, Dr. A.

Kernahan, Dr. J.
Rahman, M. F.
Oudit, Miss L.
Gopaul-McNicol, Dr. S.
Ali, B.
Baptiste-Mc Knight, Mrs. C.
Merhair, Miss G.
NOES
Enill, C.
Jeremie SC, J.
Saith, Dr. L.
Browne, Hon. M.
Joseph, M.
Manning, H.
Narace, J.
Dick-Forde, Dr. E.
Gronlund-Nunez, T.
George, W.
Hadeed, G.
Rogers, L.
Lezama, Miss L.
Melville, Miss J.
Ramkissoon, Miss A.
Deosaran, Prof. R.
Annisette, M.
Ramkhelawan, S.
Nicholson-Alfred, Mrs. A.
Drayton, Mrs. H.
Amendment negatived.

Question agreed to.

Second schedule ordered to stand part of the Bill.

Third Schedule.

Question proposed, That the Third Schedule stand part of the Bill.

Sen. Rahman: There is an amendment.

Mr. Chairman: There is an amendment from the Minister to delete the Third Schedule.

Question put and agreed to.

Third Schedule deleted.

Preamble.

Question proposed, That the Preamble be approved.

Sen. Ali: Mr. Chairman, I have a couple of amendments. The second paragraph, line 2 insert the word “persons” for “non-smokers”, I am proposing that you just say “health wise to persons exposed to the smoke causing serious diseases.” It is not non-smokers only, but all persons. So I am proposing that word there:

“And whereas smoke from tobacco products is a serious health threat to persons exposed to the smoke causing serious diseases in adults and children.”

That is one of my proposals for—just that word. Take out “non-smokers” and put “persons”.

1.00 a.m.

Mr. Chairman: Let me put the amendment of Sen. Ali:

In paragraph 2, line 2, substitute "persons" for "non-smokers".

In paragraph 5, line 5, delete the words "taking to priority populations."

Sen. Ali: Taking into account the needs of, and effects of these measures on priority population. That is the whole sentence or phrase to be deleted, so it would end there—*[Inaudible]*

Mr. Chairman: In line 2, paragraph 2, substitute the word "persons" for "non-smokers". And in paragraph 5, line 5, delete the words "taking into account specifically the needs of and effects of these measures on priority population". That is to be deleted. Okay?

Amendment proposed by [Sen. Baptiste-Mc Knight].

Delete paragraph 1 and replace it with "Whereas the use of tobacco products is responsible for numerous debilitating and fatal diseases".

Yes? Paragraph 1 and substitute it with:

"Whereas the use of tobacco products is responsible for numerous debilitating and fatal diseases."

Sen. Jeremie SC: Why say change the [*Inaudible*]

Sen. Baptiste-Mc Knight: Because there is absolutely no need in a piece of local legislation to get involved in what happens in the rest of the world. What we are interested in is that it is a problem for us in terms of the debilitating and fatal diseases that it causes. End of story.

Sen. Narace: Well, except for the fact we have some international obligations as well.

Sen. Baptiste-Mc Knight: Yes, but we have no international obligations to install in our legislation what the international situation is. This is meant to deal with a local situation.

Sen. Narace: Okay, I will accept it. Accepted!

Mr. Chairman: Accepted?

The Preamble, as amended, approved.

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

Senate resumed.

Bill reported, with amendment.

Question put, That the Bill be now read the third time.

The Senate divided: Ayes 22 Noes 0

AYES

Enill, Hon. C.

Saith, Hon. Dr. L.

Jeremie SC, Hon. J.

Browne, Hon. M.

Joseph, Hon. M.
Manning, Hon. H.
Narace, Hon. J.
Dick-Forde, Hon. Dr. E.
Gronlund-Nunez, Hon. T.
Hadeed, G.
George, W.
Rogers, L.
Lezama, Miss L.
Melville, Miss J.
Ramkissoon, Miss A.
Deosaran, Prof. R.
Annisette, M.
Ramkhelawan, S.
Baptiste-Mc Knight, Mrs. C.
Nicholson-Alfred, Mrs. A.
Drayton, Mrs. H.
Merhair, Miss G.

The following Senators abstained: W. Mark, Dr. A. Nanan, Dr. J. Kernahan, M. F. Rahman, Mrs. I. Oudit, Dr. S. Gopaul-McNicol and B. Ali.

Question agreed to.

Bill accordingly read the third time and passed.

ADJOURNMENT

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill):

Thank you, Mr. President. I beg to move that the Senate do now adjourn to Tuesday, December 01, 2009. The reason for that is, as you are aware, the business sessions of CHOGM begin next week Tuesday and those who are involved should be given an option to participate, but let me say something else.

Adjournment
[SEN. THE HON. C. ENILL]

Tuesday, November 17, 2009

The timetable is as follows: on Tuesday, December 01, 2008, I propose to honour Private Members' Day and we will deal with the matter relative to the European—[*Interruption*]

Sen. Mark: The last Motion on the Order Paper by Sen. Dr. Jennifer Kernahan.

Sen. The Hon. C. Enill: Yes, the last Motion on the Order Paper. I also propose on Tuesday, December 08, 2009, to have the Bill, an Act to provide protection to investors from unfair, improper and fraudulent practices. It is also my intention within the period to complete the debate on the Integrity in Public Life Act, as well as a Bill to amend the Supreme Court of Judicature Act. So I propose somehow or the other, before we go off on December 14, which is I think the day I will want to suggest is our last day, we complete these items. It may very well be that we would have to sit more than once during the period. I am just advising Senators that it is my intention to get these out of the way, and therefore, we should be prepared to debate them during that period.

Mr. President: Hon. Senators, before I put the question, allow me just to suggest to one or two of my colleagues, I do not think I have a quorum for my Standing Orders Committee meeting tomorrow. So we will have to do that on some other day.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 1.12 a.m.