SENATE

Tuesday, December 15, 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. Dr. Emily Gaynor Dick-Forde and Sen. Dr. Sharon-ann Gopaul-McNicol who are out of the country.

SENATORS' APPOINTMENT

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

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

/s/ G. Richards
President.

TO: MR. FOSTER CUMMINGS

WHEREAS Senator Dr. Emily Gaynor Dick-Forde is incapable of performing her duties as a Senator by reason of her absence from Trinidad and Tobago:

NOW, THEREFORE, I, GEORGE MAXWELL RICHARDS, President as aforesaid, acting in accordance with the advice of the Prime Minister, in exercise of the power vested in me by section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, FOSTER CUMMINGS, to be temporarily a member of the Senate, with effect from 15th December, 2009 and continuing during the absence from Trinidad and Tobago of the said Senator Dr. Emily Gaynor Dick-Forde.

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 10th day of December, 2009."

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

/s/ G. Richards
President.

TO: MR. RAPHAEL CUMBERBATCH

WHEREAS Senator Dr. Sharon-ann Gopaul-McNicol is incapable of performing her duties as a Senator by reason of her absence from Trinidad and Tobago:

NOW, THEREFORE, I, GEORGE MAXWELL RICHARDS, President as aforesaid, acting in accordance with the advice of the Leader of the Opposition, in exercise of the power vested in me by section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, RAPHAEL CUMBERBATCH, to be temporarily a member of the Senate, with immediate effect and continuing during the absence from Trinidad and Tobago of the said Senator Dr. Sharon-ann Gopaul-McNicol.

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 14th day of December, 2009."

OATH OF ALLEGIANCE

Senators Raphael Cumberbatch and Foster Cummings took and subscribed the Oath of Allegiance as required by law.

RULING ON THE PRIVILEGE MOTION
GRANT OF FINANCIAL ASSISTANCE/SCHOLARSHIPS
(NON-PROVISION OF INFORMATION)

Mr. President: Hon. Senators, you will recall that at the last sitting of the Senate on Tuesday, December 08, 2009, Sen. Wade Mark raised a matter of privilege on which I promised to rule today. In his Motion Sen. Mark has alleged that the Senate was deliberately misled by the Minister of Community Development, Culture and Gender Affairs, the hon. Marlene Mc Donald on July 01, 2008.

Sen. Mark has complained that during the last Session of Parliament he asked the following questions:

"(a) Could the Minister inform the Senate whether her Ministry has provided financial assistance or awarded scholarships to persons desirous of pursuing studies at universities in Trinidad and Tobago, the Caribbean region and/or internationally?

(b) If the answer is in the affirmative, will the Minister provide the Senate with the following information:

(i) A list of names of persons who have benefited from such assistance for the period 2002 to December 2007;

(ii) The amount of financial assistance provided to each person; and

(iii) The names of the institutions involved."

At a sitting of the Senate held on Tuesday, July 01, 2008, the hon. Minister of Community Development, Culture and Gender Affairs in replying to the questions said in part:

"In accordance with the provisions of section 4 of the Freedom of Information Act, the names of persons who have benefited from such financial assistance from the State for the pursuit of studies locally, regionally and/or internationally for the period 2002—2007 and the financial assistance provided to each person are regarded as personal information within the meaning of the Act.

By section 30 of that Act therefore, personal information relating to an individual's education, which is submitted may include his educational records or his current educational status, and the financial transaction within the Ministry of Community Development, Culture and Gender Affairs, a public authority in which an individual has been involved to enable his or her pursuit of studies are exempt from disclosure. As a consequence, regrettably, the Minister is unable to provide the information requested in respect of part (b)(i) and (ii)."

The Minister therefore informed the Senate that the reason she was unable to answer part (b)(i) and (ii) of the question was because of the provisions in the Freedom of Information Act.

Sen. Mark complains that on Friday December, 04 2009, the Minister in a statement addressing the recent publication of the very information originally sought by Sen. Mark said:

> "…The Government's initial reluctance to provide the names was intended to prevent precisely such an occurrence. In our earlier decision we sought to protect the privacy of citizens who approached the Government for assistance."

Sen. Mark claims, in effect, that the two statements present two completely different reasons for not providing the information and accordingly the Minister deliberately misled the Senate in July 2008.

I have carefully considered the verbatim notes of both statements.

In July 2008, the hon. Minister in her answer stated that provisions of the Freedom of Information Act restricted the type of personal information sought. On December 04, 2009, the Minister said:

> "…in our earlier decision we sought to protect the privacy of citizens…"

It is this later statement that Sen. Mark effectively claims is an ad hoc policy of privacy and not driven by the Act.

I have also looked at section 30(1) of the Freedom of Information Act which provides that:

> "A document is an exempt document if its disclosure under this Act would involve unreasonable disclosure of personal information of any individual…"

As well, section 4 of the Act defines "personal information" as information which includes:

> "Information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to the financial transactions in which the individual has been involved."

Clearly, the Act contemplates the non-disclosure of certain private information of persons. The Freedom of Information Act, as indeed all legislation, is a manifestation of the policies of the government of the day. It follows, therefore, that the policy of non-disclosure of private information as inferred by Sen. Mark is the very policy contemplated by the Act.

It is also clear that, although the Minister in her statement to the House on December 04 did not specifically refer to the Freedom of Information Act, she nevertheless articulated the policy contained in section 30.

It is important to note that whether or not the information sought by Sen. Mark in his question is purposely protected by the Act has not been adjudicated on by any court. The release of the information was not made as a result of a court ruling.

Accordingly, it cannot be said that the Minister's statement, that the information sought was protected by the Act, is untrue or misleading in itself.

It is my view that the December 04 statement is an extension of the reason for non-disclosure as given in July 2008 and flows as a logical consequence of the intent of the relevant provisions of the Act itself.

I rule therefore, that there is no prima facie case to be made.

PAPERS LAID

1. Errata re the Report of the Auditor General of the Republic of Trinidad and Tobago on the non-receipt from Certain Entities as at October 30, 2009 of financial statements for the financial year 2008 and prior financial years/periods. [*The Minister of Trade and Industry and Minister in the Ministry of Finance (Sen. The Hon. Mariano Browne)*]

2. Report of the Auditor General of Trinidad and Tobago and the financial statements of the Deposit Insurance Corporation for the year ended September 30, 2008. [*Sen. The Hon. M. Browne*]

3. Audited financial statements of Caribbean New Media Group Limited for the year ended December 31, 2008. [*Sen. The Hon. M. Browne*]

4. Report of the Eastern Regional Health Authority on its operations for the period October 01, 2008 to September 30, 2009. [*The Minister of Health (Sen. The Hon. Jerry Narace)*]

5. Prison (Amendment) Rules, 2009. [*The Minister of National Security (Sen. The Hon. Martin Joseph)*]

SELECT COMMITTEE REPORTS

Committee of Privileges (Presentation)

Mr. Vice-President: Mr. President, I have the honour to lay on the Table the following report as listed on the Supplemental Order Paper, in my name:

The First Report of the Committee of Privileges of the Senate for the 2009 Session.

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

The Second Report of the Committee of Privileges of the Senate for the 2009 Session.

1.45 p.m.

ORAL ANSWERS TO QUESTIONS

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

145. Sen. Wade Mark on behalf of Sen. Dr. Sharon-ann Gopaul-McNicol asked the hon. Minister of Social Development:

With respect to the hosting of the Fifth Summit of the Americas and the removal of homeless persons off the street, could the Minister inform the Senate of:

(i) The number of homeless persons removed from the street;

(ii) The cost of removing these homeless persons off the street; and

(iii) The number of homeless persons who have since returned to the streets at the conclusion of the Summit on April 19, 2009?

The Minister of Social Development (Hon. Dr. Amery Browne): Thank you, Mr. President. In 2008, the Ministries of Social Development, Health, Local Government, National Security, Public Administration and the Ministry of the Attorney General held discussions on the matter of improving and increasing available services for socially displaced persons. There was subsequent Cabinet approval of a multi-sectoral integrated effort over the short-, medium- to long-term to enhance the removal, relocation and rehabilitation of street dwellers. This strategy calls for a continuum of care, services and facilities for socially displaced persons and builds upon the ongoing work of the Social Displacement Unit, NGOs, such as the St. Vincent de Paul Society and a range of other agencies that have been providing services to street dwellers in past years.

The strategy's implementation began in early 2009 and its implementation continues to this day and it is expected to continue over a period of years. Therefore any question that seeks to limit the strategy to the Fifth Summit of the Americas is based on a completely erroneous premise.

The short-term phase involved, inter alia, the initiation of removal and relocation of street dwellers commencing with Port of Spain and with a focus which included those who are mentally ill. The initiation of this phase required the convening of an Inter-Ministerial Steering Committee that includes the Ministries of Social Development, Health, National Security, Local Government, Public Administration and Planning, Housing and the Environment. This committee was convened and continues to meet on a monthly basis to ensure the continued implementation of the relevant programmes.

The implementation of the initial phase also required the Ministry of Social Development to undertake refurbishment work at the Centre for Socially Displaced Persons (CSDP) in East Port of Spain to make it more accommodating and to expand the range of services provided at that institution. This has already been achieved. The CSDP has already been established at a cost of $750,000. This expenditure has resulted in more humane and comfortable accommodation and in the provision of social services that respond more directly to the needs of the clients. It included the repainting of the facility's interior and exterior; the improvement of the restroom and plumbing infrastructure; the replacement of beds and fittings and the restructuring of available space for the recreation and socializing of clients. There are now 200 former street dwellers who are accommodated at this particular facility and the recurrent expenditure is $1,590,000 per annum.

Another major achievement in the initial phase has been the construction of a new care and empowerment centre for socially displaced persons, the New Horizons Centre in Piparo. This is unprecedented in this part of the world and is designed to provide comprehensive skills building and transformation to former street dwellers. The programming factored into this centre includes agricultural training, sewing, handicraft, literacy, self-esteem development, HIV/AIDS counselling, relationship and anger management, recreational therapy, assistance with family reintegration and preparation for independent living.

There are now 30 former street dwellers that comprise the pilot batch of clients at this centre and they are making steady progress toward productive re-engagement with society and their families. The provision of these programmes contributes to providing the clients with sufficient activity within the centre so as to diminish the lure of the streets. Seventy more clients will be accommodated at this facility in the coming year.

Another achievement of the initial phase was the establishment by the Ministry of Health of two prefabricated units at the St. Ann's Psychiatric Hospital

for the treatment and care of street dwellers who are mentally ill. Twenty-four clients are currently accommodated in these units and others have been placed in other wards in St. Ann's once stabilized.

Members are asked to note that there are now food kitchens freely accessible to displaced persons in the urban areas of the country and that the street dwellers' day facility in Port of Spain, the Oasis Drop-in Centre, has been upgraded and also now benefits from an increased subvention from the Government of Trinidad and Tobago. This centre currently provides free clean clothing, showers and library facilities for street dwellers.

With respect to elderly street dwellers, there is a unique programme by the Ministry of Social Development to place elderly street dwellers at select senior citizens' homes on a voluntary basis. Overall, 59 seniors have currently been accommodated via this approach and annual expenditure of $457,152 is expected on this ongoing effort. An additional 17 elderly persons who were street dwellers are also accommodated at the special-purpose NGO Hernandez Place, in Arima, which is funded by the Ministry of Social Development. Hernandez Place receives support from the Government in the sum of $159,099 per annum.

The ongoing implementation of the strategy would include the construction of additional shelter facilities in both North and South Trinidad; the implementation of a "move along" approach by police officers to make the streets less attractive for dwelling and to encourage clients to voluntarily access the facilities that are being put in place; the expansion of rehabilitation facilities for clients, including those who are mentally ill; the expansion of efforts to other districts; the mobilization of additional social work interventions to encourage more clients to transition through the complete continuum of care; and the sustaining and resourcing of all these efforts over the long term.

It would be noted that the provision of services to socially displaced persons is an ongoing activity that has been performed by the Social Displacement Unit that has been established since 1999 and a range of other services over the last several years. I have just provided the cost of a number of ongoing initiatives.

The Ministry of Social Development has been informed that as of April 19, 2009, four persons left the St. Ann's Hospital and one person left the New Horizon Centre, while another two were reintegrated with their families. The Social Displacement Unit continues to conduct assessments of street dwellers and to encourage persons on the streets to access the rehabilitation services that are now provided. The Inter-Ministerial Steering Committee continues to be

cognizant of the fact that many street dwellers indicate a preference to remain on the streets, but is convinced that over the next two years a significant difference will be made via the full implementation of this region's first comprehensive national strategy to respond to the issue of street dwelling.

Sen. Mark: Would the Minister indicate to us, prior to the Fifth Summit, when was the last period the Government embarked on the removal of vagrants on our streets? He did say that it was an ongoing exercise.

Hon. Dr. A. Browne: As I have taken great pains to outline, the provision of services to socially displaced persons has been ongoing. It has continued over the years, including during prior administrations. The national strategy was an effort and ongoing attempt to increase the volume and quality of services provided to these individuals.

Sen. Oudit: Hon. Minister, you indicated that in 2008 you held a meeting and the decision was to take this to Cabinet. Could you indicate the month?

You indicated that the Hernandez House receives approximately $159,000 per year. How many persons are being housed at the Hernandez House?

Hon. Dr. A. Browne: Mr. President, I do not have the month in which the initial discussions occurred by the various Ministries—the Ministries of Social Development, Health, National Security, Local Government, Public Administration and Planning, Housing and the Environment. It did occur in the year 2008.

With regard to expenditure on the NGO, Hernandez Place, I have already provided the answer with regard to the persons at Hernandez Place. I can indicate that the subvention is $159,099 per annum and that 17 former street dwellers are now accommodated at that particular NGO.

Disabled Persons
(Details of Funds Allocated)

146. Sen. Wade Mark on behalf of Sen. Dr. Sharon-ann Gopaul-McNicol asked the hon. Minister of Social Development:

> Could the Minister provide the Senate with the details of funds allocated to each category of disabled persons for fiscal years 2006/2007; 2007/2008 and 2008/2009?

The Minister of Social Development (Hon. Dr. Amery Browne): Mr. President, in 2005, the Government of Trinidad and Tobago approved the national policy on persons with disabilities, which articulates a holistic framework for

achieving the goals of social inclusion and equality of opportunity for all citizens with disabilities. The policy is aligned to the United Nations Convention on the Rights of Persons with Disabilities and its measures support those recommended in the programme of action for the decade of the Americas for the rights and dignity of persons with disabilities.

The Government of Trinidad and Tobago is committed to promoting the well-being and an enabling environment for persons with disabilities. In 2008, the Government of Trinidad and Tobago became a signatory to the United Nations Convention on the Rights of Persons with Disabilities. The convention seeks to protect the rights and dignity of affected persons.

The Ministry of Social Development continues to provide support for persons with disabilities through the promotion of policy guidelines that seek to empower persons with disabilities to lead normal and productive lives.

The Ministry of Social Development does not at present have a system that categorizes funding based on types of disabilities but provides financial assistance to a wide range of persons with various disabilities through the Disability Assistance Grant and the Special Child Grant.

The Disability Assistance Grant provides financial assistance to citizens and legal residents of Trinidad and Tobago who are between 18 and 64 years of age and have been medically certified as being permanently disabled and cannot be gainfully employed.

The disbursement of funds has increased from 2006 to 2009 under the Disability Assistance Grant by 78 per cent and the number of beneficiaries has increased by 22.9 per cent during the same period as follows:

Fiscal year	Total Amount Disbursed	Beneficiaries
2006/2007	$182,876,204	16,659
2007/2008	$247,700,780	18,527
2008/2009	$323,371,645	20,487

In relation to the Special Child Grant which provides assistance to parents who are unable to meet the financial cost of the needs of a special or disabled child, the amount of money disbursed for the period 2006 to 2009 has increased by 157 per cent as follows:

Fiscal Year	Total Amount Disbursed
2006/2007	$ 949,465
2007/2008	$1,258,880
2008/2009	$2,440,640

This grant can be accessed for children under the age of 18 and is given for a one-year period, followed by a review.

2.00 p.m.

In 2008, there was an increase in the quantum of the Special Child Grant from $300 per month to $800 per month. It should be noted that, in addition to the Disability Assistance Grant and the Special Child Grant, the Ministry of Social Development also provides funding support, via subventions to non-governmental organizations serving persons with disabilities.

In fiscal 2009, $16,341,898 was distributed as subventions to a number of organizations as follows:

- The Cheshire Foundation Home, $50,000;
- Goodwill Industries, $450,000;
- The National Centre for Persons with Disabilities, $799,360;
- Trinidad and Tobago Association for the Hearing Impaired, $5.7 million;
- Trinidad and Tobago Blind Welfare Association, $9,087,000;
- The International Organization for Health Care and Human Development, $115,000; and
- The Trinidad and Tobago Chapter of Disabled People International, $133,200.

I thank you.

Sen. Dr. Nanan: The Minister made reference to some figures and I think we need some clarification, because in his reply, the Minister mentioned a figure of $240 million, with respect to the Disability Grant, benefiting 18,000 individuals and an increase of $323 million to benefit 20,000 individuals; a difference of 2,000 individuals and a difference of just over $83 million. I do not know if the Minister can justify this difference of 2,000 individuals getting over $83 million.

Dr. A. Browne: Thank you, Mr. President. The clarification is very simple, Senator, your calculation might be based on an assumption that the grant support provided by the Government remains the same per individual. The reality is that the quantum of these grants has been increasing over the years and that accounts for the increase as represented and the Government will continue to provide holistic support to individuals who are vulnerable in this country.

I thank you.

Sen. Dr. Nanan: I understand your statement there, Mr. Minister, with respect to the allocation, but on an average we are seeing over $43,000 per individual, if you go across the average of $83 million and 2,000 individuals. So, in terms of $43,000 as the lowest level, is that applicable to these individuals?

Dr. A. Browne: Mr. President, I think we are straying towards an additional question, in terms of the Disability Assistance Grant. What was attempted in this response was to answer the question as best as possible, recognizing that the categories that were requested by the hon. Senator are not available under the current system of accounting.

International Organization for Migration (Benefits of Funding and Training)

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

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

The Minister of Foreign Affairs (Hon. Paula Gopee-Scoon): The International Organization for Migration was created in 1951, and over time has transited from a logistics agency to the leading inter-governmental organization in the field of migration, collaborating closely with governmental, non-governmental and other inter-governmental partners. Headquartered in Geneva, Switzerland, the organization, as of December 2009, has a membership of 127 member states, with a further 17 states enjoying observer status.

Trinidad and Tobago has benefited from the services of the IOM through trading provided to officials of both governmental and non-governmental agencies in the areas of document examination and intelligence profiling; fraudulent document examination; project management; human trafficking; counter-trafficking of persons and smuggling of migrants; investigative interviewing and evidence-gathering; customer relations and international migration law.

As a consequence of becoming a member of the IOM in June 2009, the Government of Trinidad and Tobago benefits from funding and training provided by the IOM through access to international trainers, including training for capital-based counsellors officers and staff at overseas missions; access to best practices in migration management and assistance with implementation of a national migration management programme; assistance with the establishment of a voluntary returns programme for detained migrants; assistance with countering human trafficking; migration data-collection and related research activities; and also assistance with the establishment of a data-sharing mechanism on migration to ensure greater appreciation for migration trends in the region.

Sen. Oudit: In light of what I see as an attempt at the answer, anyone, I believe, would have been able to get from the Internet the information that you have just provided, Madam Minister, no disrespect.

I have two questions to start off. You indicated that training was given, or is available to the Government via document examinations; fraudulence in project managing; trafficking and counter-trafficking, I think. The question asked specifically how do you propose to benefit from and not what is available. How do you propose to access and use? If it is that such facilities have already been accessed, could you indicate to the Senate when, what time frame and how long is the training?

Secondly, you said there is access to international assistance with countering human trafficking. I do not know if I can go into the second question. For this particular question, you have indicated in your response—could you indicate what we are really asking of the IOM, in relation to countering human trafficking and what is the current situation with human trafficking, as it pertains to this question in Trinidad and Tobago?

Hon. P. Gopee-Scoon: The question with respect to human trafficking, that does not form the basis of this question which has been proposed. The further details which the Senator is now asking form the basis for another question, which she may feel free to propose.

Sen. Oudit: With all due respect, I have just written what you have indicated. I was taking notes and you indicated that the programme is for assistance with countering human trafficking. That is in your contribution. I am just asking you to indicate what exactly is the situation of human trafficking, as it relates to accessing the training of funding available through the IOM?

Hon. P. Gopee-Scoon: Any further details will form the basis for another question.

International Organization for Migration
(Details of Resources)

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

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

The Minister of Foreign Affairs (Hon. Paula Gopee-Scoon): The International Organization for Migration (IOM) was created in 1951, and over time has transited from a logistics agency to the leading inter-governmental organization in the field of migration, collaborating closely with governmental, non-governmental and other inter-governmental partners. Headquartered in Geneva, Switzerland, the organization, as of December 2009, has a membership of 127 member states, with a further 17 states enjoying observer status.

The Government of the Republic of Trinidad and Tobago believes that the assistance offered by the IOM would help to avoid the issue of human trafficking in its embryonic stages and prevent it from becoming part of the criminal landscape of Trinidad and Tobago. At the same time, the plan would help to build public awareness of and so minimize the misconceptions about the nature of the crime of human trafficking.

The transnational organized crime of trafficking in persons requires a multi-pronged approach and efforts to counter this category of crime require local, regional and international co-operation. In this regard, the Ministry of National Security will be required to play the lead role in preventing, detecting and prosecuting human trafficking should it arise in Trinidad and Tobago, with the assistance of the IOM.

Various government agencies play a supporting role in these efforts, including the Ministry of the Attorney General, under whose portfolio includes the Civil Child Abduction Authority, which was established by the International Child Abduction Act of 2008. It includes also the Ministry of Community Development, Culture and Gender Affairs; the Ministry of Social Development; the Ministry of Labour, Small and Micro Enterprise Development; and the Ministry of Foreign Affairs.

With regard to the detection and the gathering of evidence and collating of data and human trafficking in Trinidad and Tobago, measures are currently in

place to detect, gather evidence and collate data on human trafficking, including offender and victim profiling, document examination and investigative interviewing.

As to the question of countering human trafficking in Trinidad and Tobago, in July 2009, Cabinet approved a proposal from the IOM officer for a nine-month plan to counter an emergence of human trafficking in Trinidad and Tobago. The plan seeks to address the issue of trafficking in persons from two bases, that of prevention of protection, which is victim-centered and that of prosecution, which is crime-focused.

The two fundamental objectives of the plan are: assisting victims of trafficking through prevention and protection efforts and criminalizing of human trafficking through prosecution efforts. The plan calls for the establishment of a multi-agency task force to develop and oversee a medium to long-term plan of action. The task force will consist of various ministries, non-governmental organizations, faith-based organizations and the IOM and will be responsible for implementing and systemizing a referral process to identify and assist victims, establishing a hot line to field calls pertaining to human trafficking and conducting of nationwide information campaign, using IOM-supplied material.

With regard to legislative requirements, while the crime of trafficking can be addressed under provisions in other local legislation, plans are also in place to enact specific legislation, based on the regional model proposed by the IOM entitled *Caribbean Counter-Trafficking Model Legislation and Explanatory Guidelines: A Booklet*. Utilizing this document as a starting point, the Ministry of National Security has been working alongside the IOM to enact national legislation to criminalize trafficking in persons.

Sen. Oudit: Hon. Minister, you indicated that the Ministry is presently in a programme to build public awareness to counter misconceptions of human trafficking, could you indicate briefly, possibly, what are some of the misconceptions that currently exist in this country, so that we will know exactly how your programme will deal with the misconceptions?

The second question—you indicated a multi-agency task force including ministries, NGOs, faith-based agencies, et cetera; and the IOM—could you indicate when this is going to be established, or if it has been established already, because it does not say. You have indicated "will". Can you indicate what the time frame for the establishment of this task force is?

My third question is: have you already established a hot line and when do you plan to?

Hon. P. Gopee-Scoon: Mr. President, I am sure you will agree that this is a three-pronged question on which the Senator has asked me to give details. Of course, I cannot give you all of that now, so the Senator would have to pose it in writing and then I would be able to provide further details.

Sen. Oudit: Could I ask one question at a time then, because I am allowed three questions?

Mr. President: I do not think that it is the number of questions, I think it is the content. I think the Minister is saying that she does not have, at her fingertips, the response to those supplemental questions and therefore, we move on.

Sen. Annisette is not here to ask question No.188. We have one minute.

National Academy for the Performing Arts
(Details of)

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

With regard to the Academy of Performing Arts, could the Minister state:

(i) Whether the building is energy efficient;

(ii) If the answer is in the affirmative, could the Minister identify the energy saving measures involved; and

(iii) If the answer is in the negative, could the Minister give a reason or reasons why the building is not energy efficient?

The Minister of State in the Ministry of Planning, Housing and the Environment (Sen. The Hon. Tina Gronlund-Nunez): Mr. President, this answer at this point in time is being prepared. We have received technical information, but we need further input. I must state for the record that the officers of the Ministry are working assiduously on this question and I am advised that we may need a little more time before we can come to the Senate with an answer.

Question, by leave, deferred.

2.15 p.m.

Environmental Management Authority (Vehicles Powered by CNG)

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

Could the Minister indicate the number of Environmental Management Authority vehicles that are powered by CNG?

The Minister of State in the Ministry of Planning, Housing and the Environment (Sen. The Hon. Tina Groulund-Nunez): Mr. President, this is with regard to CNG vehicles, and this answer is also being collated at the present time and it would be ready soon.

Question, by leave, deferred.

SECURITIES BILL

[Second Day]

Order read for resuming adjourned debate on question [December 08, 2009]:

That the Bill be now read a second time.

Question again proposed.

Mr. President: The following is the list of those who spoke: Sen. The Hon. Mariano Browne who moved the Motion; Sen. Wade Mark; Sen. Subhas Ramkhelawan; and Sen. Ved Seereeram. Are there any other speakers?

Sen. Helen Drayton: Mr. President, thank you. Now, this is a very important Bill. It is long overdue. The central purpose is governance of a strategic sector, and while I would like to see this legislation in place as soon as possible, I do believe that we must not sacrifice quality at all. It has been seven years in the making, and the best way we can pay respect to all the good work that has been done is to take the time to get it right.

Now, I would deal with a few matters, certainly in the context of the stated objectives of the Bill. I would not dwell on matters which were already mentioned. I would circulate a few amendments, and I have simply deleted others which are already the subject of amendments from my colleagues.

The basic purpose of this Bill is the protection of investors from unfair, improper or fraudulent practices; to foster fair and efficient capital markets; to build confidence and reduce systemic risk amongst others. Let me, therefore,

emphasize that with these objectives, there should be absolutely no compromise on the integrity of this legislation; no compromise with respect to transparency, specifically with respect to information that potential investors would need to have in order to make proper decisions; and no compromise with respect to performance standards for the regulator, the Securities and Exchange Commission itself. It is within these three areas that I have a few very serious concerns.

Mr. President, I would not want to reintroduce the subject of Clico, but the Clico debacle just like others before it, the ITL, these events hold very important lessons among which is the performance standard that must be set for regulators, particularly in the context of the legislation. It was mentioned last week and I, too, continue to have a serious problem with a catch-all phrase shielding regulators and other senior persons in authority under the guise of acts "done in good faith" without any other qualification with respect to competence and performance. I will come back to that.

I also believe that critical information that should be in the public domain to allow investors to make important decisions—what they would do with their money in the very best possible way—must not be kept from the investor, because it is believed in somebody's discretion that a roof will fall in. So, basically, what I am saying is that this legislation must be sufficiently strong so that bad behaviour is immediately dealt with.

Under clause 11(1)(c), beneficial interest—I know this has been mentioned before, but I think it is sufficiently important to mention it again—persons nominated to serve as commissioners, CEO and other key technical positions should be required to provide information upfront; that is before they are actually appointed, on any beneficial interest. Those persons who are currently employed with the commission, the law should basically state that beneficial interest over 1 per cent should be dispensed with.

One of the basic goals of this legislation is confidence in the capital markets. It is also to mitigate systemic risk and, therefore, if we increase the potential for conflict of interest, or the perception of conflict of interest then, of course, we will not be doing the industry any justice in terms of confidence. So, the 5 per cent ceiling that was mentioned is far too high. Mr. President, 5 per cent in one or two instances will represent anything like $200 million, and that is absolutely ridiculous in terms of a standard for commissioners. That is a huge conflict of risk.

In fact, there is a good case for commissioners, CEOs and other technical persons not to have any interest whatsoever. If we take the position of auditors, an auditor cannot have beneficial interest in a company in which they are auditing. If we want to speak to the rights of an individual, then the very Bill already impairs the rights under sections 4 and 5 of the Constitution. I see no reason any group of

employees who voluntarily make a decision to serve should be allowed to pose a situation where there is a risk of conflict. As I said, the Bill is about mitigating risk; it is transparency and accountability.

With respect to clause 12, the termination of commissioners and other employees, when I looked at the conditions under which a commissioner may be terminated, to give a few examples: guilty of misconduct and bankruptcy, this proposed legislation is saying that there will be discretion as to whether such a person who engages in such conduct can be removed or not. So, I do not believe that the word should be "may" at all, but "shall" be removed. If you are of unsound mind and if you are guilty of misconduct, it is not a question of a discretion, you shall be removed. I also believe that if any commissioner or senior officer is under investigation for any matter, that person should be suspended until the conclusion of the investigation.

With respect to "fit and proper", the current Bill deals with persons whose appointment may be terminated, as I have just said, based on certain criteria. However, similar to the Financial Institutions Act, 2008, I believe that this Bill should also lay out conditions for appointment—the criteria for appointment to those positions. An example is a person who was steward of a company and the licence of this company was revoked, or the company was put in receivership, such a person should not be sitting on the board of the SEC.

Now, I know that this is mentioned in the Financial Institutions Act, and I think it is also in the Companies Act, but similar to the FIA and the Central Bank Act, I see no reason for this important institution which is the regulator of the capital markets industry, that such a criterion is not included in this Act. I know that these standards are challenging, but given the financial crisis, it is absolutely necessary that we take care to bring on board the experiences of the recent past.

With respect to clause 13, in my introduction, I mentioned the clause that deals with protection of the commissioners. I believe that we have to raise the bar with respect to the accountability of regulators. They should be held responsible for negligence and a lack of duty and care in their performance. The protection in this Bill as well as in other legislation that I have seen—I have circulated an amendment—is not adequate. I believe that we should be inserting the words "and without negligence" after the words "good faith". So this clause will read:

> "No action will be instituted against a commissioner for an act done in good faith and without negligence or without a duty of care that should reasonably be expected."

I think that this goes to the heart of competence. You could be acting in good faith, but that does not mean to say that you do the things you do because you have the knowledge, the experience or basically the actual work ethic, and then you have a lot of inefficiencies and poor management practices.

The other area that I feel very strongly about is the board of the stock exchange. Here we have proposed legislation designed to mitigate systemic risk and build confidence in the capital markets, but where securities are freely traded, the core of the industry is, in fact, the stock exchange, but the proposed legislation does not treat with this core and critical arm of the industry in Trinidad and Tobago in the 21st Century. The board of the stock exchange is made up of whom? They are the stock brokers and issuers, the people who are described as key market players in this Bill. I know that this is so because, historically, it is a self-regulatory body. I believe that consistent with the objective of this Bill which is to mitigate systemic risk, the board of the stock exchange must be demutualized. These very stock brokers who sit on the board of the stock exchange may also be employees of the issuers, because the stock broking company is a subsidiary of the issuer.

So, I think we should keep in mind that this is a very small market with players that account for a substantial piece of our GDP. The market is also vulnerable to very uncomplimentary nuances and also to manipulation. I want to submit that it is important that a specific clause be included in this Bill to the effect that within a year of commencement of the Act, the board of the stock exchange shall not comprise persons who conduct transactions in securities on a securities exchange, including the stock exchange, and would include the broker-dealer and other persons engaged in the business of effecting transactions in securities for the account of others or willing to buy and sell securities at prices specified by him.

So, you have directors of a core arm of the capital market; they are sitting on the board; they are also market players; and they are also there on behalf of the very issuers to seek a certain price for securities, for the stocks and shares.

2.30 p.m.

I believe that this should be included in Part III of the Bill, which deals with the stock exchange, and it should not be left to a by-law. Even though it is a self-regulatory body, both the SEC and the stock exchange know very well that this has

to be done. I think it is a pity; it is also tragic, to some extent, that you have a Bill that was seven years in the making; they are fully well aware that this has to be done and it has taken some time. I believe this legislation should now mandate that it must be done.

Definition of the term "investment advisor"—I commend the fact that this legislation will be one step closer to the goal of licensing, but, again, the Bill having been in the process seven years in the making, it would have been so much better if the Ministry of Finance and the SEC had arrived at the juncture where in 2010 these institutions could have said to investors, "Remember, if someone is advising you about investment, if someone is advising you how to invest your money, they must be a licensed individual; show me your licence." This would have been more meaningful than to have legislation that includes words such as "an investment advisor is a person who is holding themselves out". A doctor or surgeon cannot come to you and say, "I am holding myself out as a surgeon", nor would this happen in the legal fraternity. But here you are dealing with billions of dollars and we are using terminology in law which, in fact, in our local parlance would be smart man language.

Licensing certainly means far more than registration. Licensing embraces the fact that there would be a level of education, knowledge and experience and probably even a period of internship. When we consider that the underlying causes of the world economic calamity was a trade in derivatives, trade in instruments which the traders themselves did not understand and the investors did not understand. This is why I say it is unfortunate that having taken so much time with this legislation, we did not address the very critical area of ensuring that market players are licensed operators.

Definition of the term "relative", this was already mentioned and I know it is the subject of an amendment, but I feel it must be expanded consistent with the Cohabitational Relationships Act as well as the FIA of 2008 to include common law spouse and children of such a relationship. I have thus circulated an amendment accordingly.

Clause 22 is not in conformance with good governance. It has been mentioned, and it needs to be stressed that the chairman or the general manager must be two separate positions. I have also sent an amendment to delete that clause.

Clause 53, basis for declining an applicant for registration—this is very open ended. I know we are now going to set a framework in terms of fit and proper. It must be defined in the context of the market player, otherwise we are leaving the applicants open to the whims and fancies of the securities exchange.

Clause 54, compliance committee—here again the clause seems to be discretionary. We are saying that the commission may require some market actors to implement, establish a compliance committee, because the word "may" leaves it to their discretion. We are dealing with an industry that is one and a half times the size of the gross domestic product (GDP), that might be a normal yardstick, and I believe that all market players ought to have a compliance or some risk management committee established. Therefore, it should not be discretionary. It must be done. I have circulated an amendment accordingly.

Clause 58, private reprimand—well, I have a very serious problem with this one. I am in disagreement with this clause that says if a player is not acting in the public's interest, the commission has discretion in giving a private reprimand. This goes to the heart of what happened with Clico and what happened with the Hindu Credit Union. In the final analysis, it is not legislation. In the final analysis, it is the investor who is a check on bad behaviour. If the rank and file population in Trinidad and Tobago knew that you had an institution that was not meeting statutory requirements, breaking the law, that was undercapitalized and, therefore, they were placing their money at serious risk—if the average shareholders in Hindu Credit Union understood what was happening, then they would have been making an informed decision with respect to their hard earned money.

Therefore, there should be nothing as a private reprimand for actions on the part of a market player that is against the public interest. The investor has a right to have such information; let the investor decide whether it wants to invest in that institution. Thereby, after 10 years the taxpayer would not be asked to bail out that institution. I am very strong on this one and I believe it must go from the legislation. There has to be zero tolerance for bad behaviour.

Further, in terms of a standard for the commission itself, if it is mandated under law to put such information in the public domain and the SEC is now breaking the law, then there must be consequences for the commissioner. It is another basis to terminate without question.

Clause 75 definition of limited offering—I have a little confusion here and clarification is needed. The definition says that upon completion of the distribution, the number of security holders of the issuer will not be greater than 35 persons exclusive of directors, officers and employees of former directors, officers and employees of the issuer and its affiliates. Surely this is a big loophole; there is a huge loophole, unless the definition actually means that a limited offer means up to 35 investors. If you are saying it is 35 investors, plus all the employees and directors of the institution and their affiliates, in terms of the

conglomerates that are listed on the stock exchange—you could be talking about 8,000 individuals. And 8,000 by no means is a limited offering; but apart from that, in this law you are entrenching exclusion of the wider public.

Further, it is a limited offering, but you have not stated whether there should be a period of time in which they are debarred from selling, because we know what happens. The marketplace knows what happens with such so-called limited offering. So this needs to be clarified. Is it 35 plus all those individuals, which means it is not limited at all?

Clause 75(2)(f) attempts to go further to define "accredited investor" as an individual who has net financial assets of no less than $1 million or such higher amount as may be prescribed. So the basic question here is: How is the issuer or market actor, acting on behalf of the issuer, to have any information on a person's total financial assets? I understand what is happening here, because in the SIA of 1995 the determination of a sophisticated purchaser was whether the person invested not more than $100,000 in an issue. So I have a feeling the language is not meant to be financial assets. What is meant is speaking to a minimum investment, not financial assets. If this is so, then the section needs to be amended. Throughout that particular section, the language of financial assets is used. I think what is really meant here is the actual financial asset that you are now investing. I ask the hon. Minister to look at that matter.

Clause 76(2), asset-backed security, which is a main contributor to the global financial crisis—also needs clarification. The Bill specifically addresses the case of asset-backed securities under 76(2) and states that:

> "No person shall trade in an asset-backed security where such trade would be a distribution except under an exemption provided for in section 82."

But, clause 82 says that section 76 does not apply to a distribution. If this is the case, and probably I am interpreting the whole section wrongly, which means that some clarity is needed, then I think that the clause should be amended to include the word "not". In other words, to clarify, 76 should state that:

> "No person shall trade in an asset-backed security where such trade would not be a distribution except under exemption provided in section 82."

I am unclear, so it needs some work on this.

The other thing I wanted to ask here is, given the nature of this instrument, why would a prospectus not be necessary? This is a high risk investment. I am not clear on what is happening here.

Clause 85, reasonable time, again, we go to standards for the commission. The commission must be given a specific time frame for issuing a receipt. "Reasonable time" is not a standard; therefore, I have sent an amendment where within a month the SEC must give a response to the applicant.

Clause 136, extraordinary event—I do not know what is meant by an "extraordinary event". One of the things about the FIA legislation is that it was specific and it sought to clarify and give definitions to all the critical terms used in the Bill. This Bill is deficient, to some extent, in that regard.

Clause 150, publication of by-laws—I suggest that publication should be in, at least, two daily newspapers, give the profile of our newspapers.

Clause 58(1) empowers the commission to appoint a person to make investigation, as it considers expedient, to find out when any person has contravened, is contravening or is about to contravene the law. Two questions here, and these are with respect to this investigator. I have to assume—and it should not be left to assumption—that the fit and proper guidelines that are being established would apply to the investigator. Also, would all standards as defined for a connected person or an insider apply to this investigator, in other words, all the standards that apply to the commissioners and senior persons? That is not spelt out; it is not clear, the criteria, and what sort of profile this person would have.

For instance, if you appointed an investigator to look into a matter pertaining to an issuer and, indeed, this investor has 5 per cent beneficial interest, which could be $200 million. You are really not talking about confidence or mitigating systemic risk. So this Bill, by necessity, must give some sort of framework with regard to who this person would be.

Clause 59, fees for examination—this empowers the commission to charge a market actor or reported issuer a fee for examination and to determine if such a fee in the circumstances, where there is information about a breach. I did not think that there was a precedent for this in the context of the FIA; why are you charging a fee up front? Should the registration or licence fee not annually cover things like this? But, in the event you want to charge a fee, there is something not quite fair here, because if somebody for competitive reasons, or whatever it is, reported a market actor and he is being investigated, and, in fact, the market actor was quite innocent of wrongdoing, why are they paying a fee?

2.45 p.m.

As a matter of fact, the fee should be applied to whoever brought such information. So there is something quite unfair about this particular clause.

Clause 110, Market Practices—I would like to get clarification here as well. This requires a broker-dealer to keep in a financial institution one or more trust accounts to pay "all amounts, less any commission and other proper charges, that are received from or on account of any person…".

My understanding is that broker-dealers currently use sweep accounts and day-to-day repos with their counter parties. When you look at clause 100, it seeks to allow the SEC to prescribe rules for custody and lending by broker-dealers, so I am not too sure whether clause 110 is saying that the broker-dealers can still borrow and lend as I think they currently do. My colleague can probably help me with this one.

Mr. President, I think I have drawn attention to several issues; I have circulated amendments which are not exhaustive. There are several serious issues we still need to work on; I think it is far too important to try to rush through it. I have to endorse the fact that it needs to go to a special select committee.

Thank you, Mr. President.

Sen. Mohammed Faisal Rahman: Thank you very much, Sir. This Bill before us today, as Sen. Drayton has said, is really far too important for us to rush through and many of us here in the Senate are not financial experts as our brother Sen. Ramkhelawan is, and this is a Bill with 164 clauses and over 180 pages. I had done some work on it and—

Mr. President: I am sorry to interrupt you; I just remembered something. On the last occasion Sen. Ramkhelawan, very early into his contribution, I had interrupted him and asked him to declare his interest.

I would just like hon. Senators to know, that based on a subsequent conversation I had with the hon. Senator, he indicated that he was about to do so, and was just warming up to the point. I think that the Senator was perhaps marginally embarrassed by my comment and I therefore humbly apologize.

Senator, no embarrassment was intended and I thank you for your integrity of the fact that you would have done so on your own. So I do apologize and thank you very much.

Senator, please continue.

Sen. M. F Rahman: Well, I am very relieved by your reason for interrupting me, Sir, and I trust it would be the only interruption for the rest of my contribution.

Actually, I have no declaration to make. I am not one of those persons who have been fortunate in his lifetime to amass any amount of wealth to say he would invest in serious projects. Besides which, my common sense has always warned me against entrusting my money to others. I believe if I can buy and sell and make something for myself, I have control of my money.

I have never trusted mutual funds, investments, bonds and stocks and these things. To me, these are areas where you are venturing into shark-infested waters. There is a saying: Do not invest more than you can afford to lose. And I could not afford to lose anything, so I preferred to not invest. I have stuck to my guns; eat little, live long, invest in my own money, bought and sold and contented myself with that. But it has not stopped me from maintaining a very keen interest in the stock markets and the vicissitudes of investments through the years.

Everybody knows about the Great Depression, and everybody who was recently born has learnt about the collapse of the global economy in the last year or so, and we are all beginning to wonder whether any structure can be built to contain the avarice that attends this sort of enterprise.

One of my favourite themes in my contribution is the flawed nature of man, man's desire for more and his greed and what fuels these disasters is always ambition. In my scripture, it is said that if a man is given a whole valley of gold, he still desires another valley of gold and this, of course, is divine, so it has to be true. This is patently true because we find that the Milkins and the Madoffs and the Stanfords keep on recurring.

I am thinking, Sir, that with the best intention, even though it took all those number of years to draft—and this is unfortunate. It took all these years to draft and then give us next to no time to study and comment on it. That is very unfair; seven years to prepare, and two days to pass. That is kind of ridiculous.

And we are not comprised of legal minds and financial wizards, and I want to beware of the financial wizards as you may well understand because the wizardry is more in making wealth disappear than in creating wealth at the end of the day.

So I want to say at the outset that I strongly ask that the Government either withdraw the Bill or send it to a special select committee and I would be very happy to put my comments to that exercise to make sure that the tightening of the

legislation which we are seeking to accomplish with this Bill would in fact be accomplished, and that we do not at the end of the day build a kennel to contain the beast that has escape hatches.

Even in little Trinidad and Tobago, we have had instances of serious irregularities. The CEMEX matter which Sen. Seereeram mentioned the last day is a serious one and I do not know if the recommendations of the SEC recently published last year have been taken into account with regard to the safeguards in terms of the new Bill. If the Bill was being drafted for seven years, I do not know in the last few months they have made any further adjustments or amendments and we would have to look at that if we are going to select a special select committee.

In addition to which we have an ongoing—I want to phrase this very carefully—exercise in human resource shuffling that causes some of us great concern. Here we have the Government seeking to bring a Securities Bill to protect the community and investors, and at the same time appointing people to that SEC who are well known for their political allegiance.

In these matters of securities and investments and so forth, people must be spotlessly clean, free of taint. There can be no question of anybody being friends with anybody, and I believe what we have been treated to in recent times, the removal of one Chairman and replacing with someone else causes some concern.

In the middle of trying to lock the door we are seeing what can only be termed shenanigans. It has been stated regarding Bernie Madoff that even while he is being prosecuted there are people right now planning to repeat his performance and to find ways to issue fraudulent investment schemes to ensnare the unwitting public. And we have had in Trinidad and Tobago—well, it has been a successfully concluded matter but this is a case with regard to Berger Paints Limited; we have had serious shenanigans again, fiddling and activities that are totally disapproved by the spirit of the law that even existed then and very interestingly a Message to Market participants by the SEC:

> "The SEC wishes to remind all market participants that it is their responsibility to understand and comply with the requirements of the law. The SEC is committed to ensuring transparency and fairness in the securities market and will take vigorous action against those who do not comply with the law."

This is a very serious matter. People pretend to not know the law and go about their mischief floating bonds and doing things because the CEMEX matter was one of insider trading, they go about these things pretending as though the law does

not exist and the Securities Bill we are seeking to examine is going about the legislation in precisely a similar manner.

No matter how many laws you make you can rest assured there are people scheming to get around them. It is an imperative in my view that laws be framed to give the SEC preemptive power to go in just as the Inland Revenue and the VAT Department can examine books, the SEC must be given preemptive power to go in and examine books, and not only that, every form of investment that is offered to the public—because the public is largely unsuspecting. There is a famous saying that: "If it appears too good to be true, it probably isn't." And that is a maxim that the public is not aware of. "Buyer beware." The public goes out and buys what it wants to buy and then gets stuck.

These things where people invest their life savings and all of their pension money and lump sums and end up having it doing the disappearing act in the full glare of the SEC sitting in its offices is a matter we have to find a way around to prevent in advance these things from occurring. It is full time that the Government stand up to its responsibility to guarantee security to investors in instances of organizations over which the SEC and Government organizations are supposed to oversee.

The dereliction of the overseeing of Government departments has resulted in tremendous losses to the public to the extent that the Minister of Finance can present as a plausible excuse in the minds of some that because Hindu Credit Union (HCU) people were being difficult, the Government's hands were virtually tied and not to mention the Clico issue.

3.00 p.m.

Everybody knew for years that the Clico corporation was undersubscribed in its deposits and securities. The Securities and Exchange Commission and all the governing bodies have to take their responsibilities seriously and be made liable. The Government must be made liable when the SEC fails to secure the interest of the people. Just as you have deposit insurance in the banks up to a limit, there ought to be some sort of insurance so that people who invest their money, you might even say gullible people. Gullible because poor people, when I say "poor" unlettered and unlearnt people do not have the expertise to examine offerings. They hear that you put a dollar somewhere and you are getting back $1.20 in a year's time; in two years' time you are getting $1.40 instead of $1.20.

This Bill with this body of proposed law has so many clauses—I want to ask your indulgence. I have many clauses that I can go through one by one and raise issues but I want to be permitted to speak in a general sense. This is very

important. I am building a case to present to the Government that would justify in their minds our request, including the request of the Independent Senators which has already been articulated, to examine this matter further and not rush this legislation. There is a saying, act in haste and repent at leisure. We do not want to act in haste. We want to be very secure and sure about what we are doing with this piece of legislation.

The pre-emptive nature of the SEC power is something which I strongly recommend and the Securities and Exchange Commission must be so independent that they can become obnoxious if they want. We are dealing with people's life savings. It is extremely important that teeth be given to the Securities and Exchange Commission not simply as a prosecuting organization to investigate and punish people who have committed crimes, but an organization whereby people are prevented from committing crimes and the wealth of the people whom we are trying to protect and preserve is protected and preserved.

We cannot be like the old police force where you wait for a crime to be committed before you can enter the situation. We have to be pre-emptive and in advance, go into the society and deal with the issues that are there. I think that some of the model stations are doing that now. This is a sort of direction which I strongly recommend. We need to have a situation where you can actually anticipate the criminality that is going to take place and defuse it before it develops in such a way that you neutralize the wickedness that is going to flow.

I have quoted two or three instances of the Madoffs and these people. I want to make another point because this Securities Bill is intended to, as you said already, protect the investors. I believe that the issue, ultimately, is to provide a nice investment environment so that our international financial activities and centre can function in a meaningful way on a global level.

The point that I am going to make here now is extremely important. We have a situation here right now where if we did not have foreign exchange, resources and the credit rating to the extent that we have, we could not be interested in an international financial centre. Probably, we would not be concerned about securities. The reality is that one of the things that we have to consider very carefully is what are we doing to preserve the wealth of the nation. I am not going to talk here about squandermania. I am talking about something entirely different.

I am talking about sovereign wealth. There is a man by the name of George Soros who runs an organization called The Quantum Fund. I have the extract here and I give you the date. Some years ago his organization moved into England and

took certain financial measures that caused them to gain billions of dollars equivalent in pounds out of the British Treasury. I may be stating this very clumsily because I am not a financial expert. Basically what happened is that he was a marauding pirate in his organization. He was very well established and legal. There was nothing illegal about what he did. The net result was that the British pound had to be devalued very seriously and eventually, he called off the dogs but after he had made a huge empire for himself.

We cannot afford that sort of marauding in our sovereign wealth fund. This Securities Bill, while it is purporting to look after the welfare of the individual citizen, it does not pay any regard to sovereign wealth or take any measures to ensure against the plundering of sovereign wealth. This is the area which I want to draw, without going into more detail on the matter, to the attention of the Government so that the Government would become aware of some of the contextual background into which it must place such a security.

There is no point in looking after your neighbour's dog when your house is being plundered. Dog is a bad example. There is no point in looking after your neighbour's children when your family is being destroyed. In other words, we have to find a way to protect our sovereign wealth to ensure that we maintain the eminent financial status and standing that this country enjoys because of its natural resources. That deals with The Quantum Fund.

I want to say something else that is very important. I have mentioned it in the past but it is relevant to the issue today. In addition to what I have just mentioned about protecting our sovereign wealth, we have an ongoing situation, our Heritage and Stabilization Fund which constitutes our sovereign wealth is placed in international investments in currency. Every currency in the world today and more so, the American dollar to which we are tied, is losing value against the commodity that is called gold. This is a commodity that I have spoken about so many times here. Over the last few months since I mentioned this matter, gold has gone from that date, approximately $800 an ounce to $1,200. Now it has dropped to $1,120 or $1,130. I am talking about US dollars. The reality is that in December 1999, gold was US $300 an ounce. In December 2009, 10 years later, it has crossed the US $1,200 an ounce mark. As I said it is back down to $1,120.

It fluctuates but the constant movement is upward. In 2008, I spoke about it and at that time it was approximately $800 an ounce. There is a 50 per cent increase in the price of gold which means a 50 per cent decrease in the net worth of our sovereign fund wherever it is being held. I tell the Government that India sells dollars for 200 tonnes of gold and lifts bullions to an all time high. The

nations of the world are moving away from currencies and going to gold. Even Russia that wanted to sell gold decided to raise capital within itself selling to its Central Bank its gold to preserve the price of the gold in the country. I am recommending that gold must be looked at by the Government and the Minister of Finance in order to preserve the sovereign wealth that we want to guard very jealously.

It is not only that gold is going up. We are tied to the US dollar and with the US dollar being abandoned now by many of the nations of the world moving to Euros—and large nations are deciding to accept payment in Euros rather than US dollars—we are on a sinking ship. I am making some serious points which I have repeated in the past. We have to look at moving away from keeping our international investments in dollars and go to a commodity that is durable, lasting and always increasing in value. I recommend the very popular commodity of gold.

In addition to the reality of the loss of confidence in the US dollar—I pulled this from the web as well. It is entitled Requiem for the Dollar by James Grant. I do not want to read this whole article. Basically, the US dollar is on the way out. Our continuing to keep our money tied to the US dollar for the simplistic reason that payment of our commodity is denominated in US dollars is an infantile way, if I may be permitted to use that harsh word, of presenting and viewing the situation. You can quote US dollars but you keep your sovereign wealth in other than US dollars. There is no reason we cannot go that route because nations of the world are going in that direction.

I want to mention one other point. We are heading towards this beautiful securities market which we want to refine to global status. We did not pattern our project after Dubai. Thank God. But we took many of Dubai's financial manipulations and money policies. We have many lessons to learn from Dubai because Dubai has taken a great amount of its sovereign wealth and invested it in real estate, hoping for investors to come, as much as we hope to and we are building on a parallel basis, our little new skyline. This is also one of the great hazards that we are running because now we are looking at a situation in the world, that if things continue to develop as madly as they have been going in certain areas, this entire Securities Bill would become meaningless. You would not find the pot at the end of the rainbow with mutual funds and bonds.

One thing I want to recommend with regard to the Securities Bill as well is that the Securities and Exchange Commission should have presented to it, every issue of bonds for approval in the greatest detail. It is not merely to give approval

but examine and approve or disapprove. One of the provisions of the Bill is that any company that is operating internationally with a good status overseas can come into this jurisdiction and operate with a licence from the SEC. Lehman Bros did not take a long time to collapse after almost 100 years of existence.

3.15 p.m.

A bond issuer and a broker working with this company can have a magnificent record and collapse can come overnight. We need to have security deposits made by operating organizations and companies that are coming to establish their businesses here within our financial dominion. This is extremely important. If we do not do that, we run the risk of a new generation of Madoffs and Stanfords wreaking havoc.

When a foreigner comes here, he is regarded with a great amount of consideration and respect and anybody coming with a nice suit and a proposal to make a lot of money with your hard-earned money, you have to be very careful.

This Bill has to be gone through with a fine-tooth comb in order to pass muster. The Bill says:

> "An Act to provide protection to investors from unfair, improper or fraudulent practices;"

Immediately, the Bill falls down. It is really providing a recourse for investors who have lost their money through chicanery and false promises. We should provide protection for investors, so that there is a foresight, not an oversight of what is going on or taking place. There should be a preview or foresight of what is about to take place in the market. The Securities and Exchange Commission must examine in the minutest detail what is being proposed and offered by every potential broker, whether it is 100 or 1,000. It is not fair to say "buyer beware". You can say that when you are buying a fridge or stove, and even that is a lot of money.

You have your life savings and you have been convinced of a great opportunity. For the benefit of those listening, this is something I have seen and read about many times. A man comes and says he has a good deal going; he wants $1,000 and guarantees that by the day after next he would give you $200 on your $1,000. That is about 200 per cent on a per diem basis. He is your good friend. He is what is known as a confidence trickster. He has to be a friend of yours. You have known him so long; you take a chance and lend him the money. The day after next, he brings you the $1,000, the $200 and a lagniappe of $100. He said

that he did so well, he can afford to give you that. You have bought the bait. The next time or maybe the third time, he will borrow, not $1,000 or $2,000, but the $20,000 you were hoping to send your child to school with. People should know when something appears too good to be true, it probably is not. It is fraud.

Madoff used to stave off people begging to invest with him; telling them he could not handle them then because he had too many investments; he would call them when he had an opening. When he called them asking how much they wanted to invest—$50 million; no, I am really looking for a $75 million man. People used to get the $75 million and invest with him. He used to pay them back over a period of time by raising new money and calling that dividend and paying the people before.

This is what is called a Ponzi Scheme. We are using these terms and many poor people do not understand how it works. People build your confidence and they use the Ponzi Scheme where they use the money from the new deposits to keep the other people happy, so that everybody along the chain is happy and everybody stands in line to bring their money. You wonder if people have a conscience; do they believe in God and the hereafter; have they no feeling for people. Sad to say, there are people who believe that they have a right to your money by fraud. History is replete with instances like this; where people line up to get fleeced.

There are boiler room "fellas" on telephones; ten of them in a bank calling people about this or that offer. Do you know what has been happening over the last few years? Every now and then I receive an email letter from some place in the world telling me that someone wants to move money out of the country and that they have found me to be a reputable and honourable man and they want me to undertake to open a bank account to put their money in Trinidad. I know a certain well qualified doctor—I do not know if he committed suicide, but he is dead—who fell for the scheme and kept on sending advance payments so that he could qualify to get the $10 million he was promised.

It is a horrendous thing. How will we have a Securities and Exchange Commission? We have to have public education. The Securities Exchange Commission should have public education. What is the point in trying to protect people if you are not going to protect the wealth they have scrimped to acquire?

There are dimensions to securities and investments that I do not believe the Bill addresses. It is not as comprehensive as it ought to be. I believe that the Government, if it is serious about protecting people, has to start by protecting our

sovereign wealth, our investment environment and by making sure that we provide for people some sort of fallback insurance scheme so that people are not deprived completely of their savings. People commit suicide and fall into depression when these things happen to them. We do not want to contribute to depression.

There are many clauses. I do not have the stomach to go through this clause by clause. There are 30 or 40 different items here; all of them important. However, we will solve the problem if we send it to a special select committee and go through it with the care it deserves. Give us a few months together with the seven years you took.

In conclusion, I would like to say that my recommendation is to send it to a special select committee and I hope that all the things I spoke about today will be addressed by that committee, so that we do not have a playing field for Madoffs, Stanfords and similar people being cultivated here at our expense.

Sen. Prof. Ramesh Deosaran: Mr. President, this Bill, for the ordinary person who wishes to stabilize his financial possessions, carries very great importance. There is a song: Have you ever been lonely? If I turn that song around: Have you ever lost money in the stock market? If you have ever had that experience, whether equity, bonds or shared investments, as happened in the 1980s, you begin to understand the passion with which some people are commenting on this Bill and their requisition for more studied consideration of it.

I myself feel in a bit of a "monkey pants" because, apart from the voluminous nature of the Bill, which we can manage; we are parliamentarians and perhaps we should answer to the call when legislation like this is presented. It is much more than that. It is not that, in my case, I object to the Bill. The Bill is something whose time has come. It is a Bill, if it were not discovered, it would be invented. It is so important to fill in the cracks that now operate in the securities industry.

Given the length of time that the Government has taken to bring this, we feel pressured to subscribe to some deadline over which we have no influence. Mr. President—you have always referred to this House as the honourable Senate—I think just as we moved motions of privilege against people who allegedly break the rules in order to maintain the dignity of this House, the dignity of this House is sometimes broken unwittingly by having these Bills rushed upon us one after the other.

When we make such a comment—at least in my case—it is not to be disrespectful to the Executive or the particular Minister. It is just that the contents of the Bill are so important to the ordinary person that if the intention of the Bill

as stated is to provide protection to investors from all unfair, improper or fraudulent practices and so on, then we have to be extremely careful that what we put in the document as legislation is carefully thought out and suitable to the major objective of the Bill.

My distinguished colleague, Sen. Ramkhelawan, made the point that the public is relatively ignorant of the process of investment and the consequences and implications of it in the securities industry. We must not, therefore, take advantage of that apparent ignorance. We must be responsible enough to act on their behalf with sober judgment, diligence and patience. I do not see those qualities in the present exercise.

My first appeal is that we need a little more time to have the Bill meet its stated objective. With all the fancy talk and sophisticated expression with respect to what investment is and the role of the Securities and Exchange Commission, the overriding factor in this legislation—and we should not lose sight of that fact—is that we should not diminish the importance of the underlying factor, which is gaining public confidence in the securities industry.

It is like the dollar. The dollar is worthless if it has no confidence to back it up; just like stocks and bonds, when confidence disappears. The way we are going about this exercise, to me, is not to attract, but to diminish public confidence out of seemingly political expediency. That is not right in a matter as fundamental to the public interest as this particular Bill.

I, therefore, support the appeals by some of my distinguished colleagues who have spoken before to defer this Bill a while and introduce more sobriety and consideration into this document so that I can escape from my "monkey pants", the puzzle in which I find myself.

3.30 p.m.

It is a little more than that. The Minister quite properly introduced the Bill very concisely and I must say, quite intelligently. But, I find the parameters within which he produced the discourse are a bit too narrow. For example, when I examined the objectives and the functions of the current Act, sections 5 and 6, and I compare the proposed objectives, functions and powers in this intended legislation, clauses 5 and 6, I see very minimal differences, except perhaps some extensions and a changing in the wording, especially the one on insider trading, which is quite a welcome addition.

For example, with respect to the functions in the current legislation, you had five and in this one you have nine. There is some expansion, as I have said, in terms of the powers, which are quite important, because as I have said recently it is the question of powers given to the Securities and Exchange Commission that will help serve the public interest.

This proposed Bill expanded the powers of the Commission from nine to 14. I think, when I examine them, they seem quite appropriate. There is some value in the Bill. It is not that we want to reject the Bill for whatever reason, it is that the rest of the provisions in the back, which are quite extensive; over 160 sections some of them have a, b, c, d, e, f and so on, because of the details afterwards. It is like the sting in the scorpion's tail. These are the areas in which we have to take some time to consider, because it has to do with the implementation of the powers and the efficacy of enforcement. That is where the higher consideration should be given in these details. These are the areas in which the public interest will be served as the Bill expects.

Mr. President, I know you do not like repetition. I know you do not like things that are very boring, so I would try to avoid repeating what has been said before and put on the table exactly what we are talking about. We are talking about five areas of darkness, as it were. We are not dealing here with what you call the real economy, the price of gas or natural resource, or a piece of furniture somebody makes, that you can touch, feel and value through aesthetic reasons or through reasons for necessity; furnishing your home. This is a different level of the economy. It is called, perhaps, the virtual economy, because what you see today is not what you will get tomorrow. In fact, it could disappear. Why? The five areas of darkness. I would enumerate in a short while.

You are bringing legislation to deal with a moving target. You are bringing laws to deal with something that lacks concreteness, because of these areas of darkness. You are groping in the dark, through speculation. If you do not have speculation; that intriguing psychological commodity, where you guess what is going to happen to this or that company in the next five years because they added new directors, they introduced a new product or they just ran an experiment and discovered a new drug and you speculate. Stocks change, the drug may not work as you think it might have worked and you lose money.

The other area of darkness is this uncertainty that has to be randomly distributed if the market forces have to work properly; randomly distributed, uncertainty. If the market has a large amount of certainty it is no longer a market for investment. It is different from the real economy, because there you can

predict that what you put in is what you would likely get out. You need uncertainty and you need speculation to have an investment market. You begin to see the kind of business that we are getting into through legislation.

Before I introduce the other three areas of darkness: How much regulation can you bring into such an industry, where speculation and uncertainty are necessary evils, as it were? To what extent can you concretize and narrow the parameters for operation, as well put by my colleague Sen. Ramkhelawan? You need investment, but you also need security. It is like the crisis we find ourselves in today with crime. You need security to restrict freedom of movement, to search and enter people's homes and block them at the airport for all kinds of inspections. But on the other hand, we want to remain a democratic society with transparency and freedom of movement. This Bill is a similar example.

The third area of darkness is rumour. Many a time, the con artists—sometimes they are not even con artists as Sen. Rahman mentioned, they are enlightened businessmen who know how to play the market by planting a rumour here and a rumour there, especially if they are directors of the media, as well as directors in the business. That is why the issue of conflict of interest is so critical, but we will come to that later.

There is the planting of rumours to fool the public and to misguide the public, where the media is used and abused. The media is always looking for tomorrow's story, because yesterday's news is no longer of any value. They have to stretch and overreach themselves to get something new, something fresh and something interesting. What is more interesting than the speculation about a business will either suffer a fate of this kind or a great success of that kind? That is not the point if it were true. The point is the manipulation of the media, in order to satisfy investment interests.

That is why the issue of cross-directorate becomes so important. How many prominent businessmen who are involved in the investment security industry or who are actually involved in trading shares here and there are also directors of certain sectors of the media? I have some evidence that I could illustrate, but I will not go in that dark corner, where one or two businessmen got very prosperous overnight by using the media to spread the rumour and also of cross-directorate buying and selling to themselves, as have been pointed out. Do you know the irony of it all? These men are honoured in our society, but leave it there.

You have risks. That is another area of darkness. How can you legislate for risks? You can prepare the groundwork to let people know where they are entering, because the Securities and Exchange Commission cannot tell you which stocks to buy or the value of a stock. It must be left floating with random expectations. How can we legislate for risks that are so vital to the security industry? The very soul of the security industry rests on taking a risk. That is why the Hindu Credit Union issue is so controversial, because the question is asked and has to be asked: "Did you not know what you were getting into? Did you believe that once you put your money, the only opportunity is for it to increase in value? Do you not know a risk has two sides to it like a razor blade?" Those are the questions that have to be answered when the appeal is made for taxpayers' money to subsidize the calamity.

Again, Sen. Ramkhelawan is right. I would have gone further than him and asked the Securities and Exchange Commission: "What have you done over these years to educate the public about the issues that fall under their jurisdiction? What has been the effect of your education programme?" My colleague is asking me: Do they have an education programme? Yes, they have one and that makes it even more aggravating. In one little paragraph, they say that it has been successful. We see no convincing figures. We see no persuasive data. Like many other institutions in this country, fed by taxpayers' money they do not achieve their objectives, to the extent to which the government expects them to achieve the objective. I ask the question: Are you going to leave the public of Trinidad and Tobago ignorant about the stock market implications and the process of investment? For how long? If you do not have an enlightened public to know the implications of investment, you would have many more Hindu Credit Union fiascos because they feel, through the advertisements and sometimes through morbid misrepresentations, that all there is to putting the money in a credit union or the stock market for that matter is to gain more. The last few years have taught us a very bitter memorable lesson. It does not work so. There is risk in investment.

I would wish the new set of commissioners of the Securities and Exchange Commission to revitalize its education programme and extend itself by not only calling a conference in the Central Bank. Sometimes I believe people believe Port of Spain is Trinidad and Tobago. You have to decentralize your activities and get the ordinary person from Cedros, Caparo, Toco, Chaguanas or all over the country, because they are investors too. I believe that a programme like that will help build public confidence in the system that you are trying to enhance.

The last one is greed. Greed is the energizer. Greed is the machine and there is no point bad talking greed, because greed is what drives the market. Greed, not in the vulgar sense, but in the sense of you want to make more. You will know, investment companies that make more for their clients are rated as very successful companies. It is not just greed in the vulgar sense, it is technical investments after studied analysis and chart trend analysis. These are things that the ordinary investor should know. Your point is well taken, Senator, but I would like to see a more aggressive, penetrative public education programme on these matters. Because if we ourselves want more time to study the Bill, you can imagine how much more difficulty our ordinary investor would have in understanding some of the implications.

Sometimes the Government operates against its own interest. You have something like this, a very laudable extension; you should share this investigation with the public in such a penetrating—let the word spread to the east. Go to the west. Go to the north and the south, not only for elections, but with a document like this.

3.45 p.m.

I am quite sure the PRO of the party would take my advice. You see, there is something called civil society and civic engagement, and sometimes I think you lose brilliant opportunities. In fact, I should not advise you too much, because I suspect there will be a general election in a very short while. [*Crosstalk*]

Sen. Mark: The Ryan polls!

Sen. Prof. R. Deosaran: Now, when I referred to the Minister's presentation, which I said was quite concise and intelligent, I would have liked him to tell us what really went wrong with the existing Act. As I said, when I examined the objectives and the powers given to the Securities and Exchange Commission, I think they have enough powers to bring respect and health to the securities industry.

Again, I have heard several times from Sen. Mark, more dramatically, and Sen. Ramkhelawan with his experience, that the Securities and Exchange Commission has failed miserably. I used the word "miserably" deliberately, because the matters under their jurisdiction are very serious for the well-being of people who expect not merely only to gain money, but to see that the process by which their moneys are invested are quite legitimate, proper and transparent.

There are some instances that Sen. Mark cited, and I would not repeat them, but they are in the public knowledge. When these things are in the public domain—knowledge about misrepresentation and conflict of interest—and an

agency like this commission is not fulfilling its duty properly, the public loses confidence in the system. So, when you have in the Preamble that the intention of the Bill is to serve the public interest, fairness and transparency and so on, the public do not believe you because you have lost credibility, not the Government in itself, but through the agencies that fall within the ambit of the Executive. We did not hear anything of what went wrong.

I have said many times in this House that when you bring a Bill with such extensive amendments to the point where you are bringing a new Bill to replace an old one, I think there is an obligation to tell us why. I did not see anything why it did not work. You can say why not to blame others, but show whether there were systemic problems or structural issues, because you have entered it into the legislative arena. We have heard little or nothing about such policy accountability. So, again, I think we need some more time.

This issue is also important across the world, because it falls into the realm of white-collar crime. As I peruse the international news media, I see in the *Miami Herald* dated December 13, 2009 on its front page "Wall St. reforms clear the House"—extensive reforms to the security industry. Mr. President, with your permission, let me quote one paragraph:

> "The sprawling legislation would give the government new powers to break up companies that threaten the economy..."

Do you know those monopolies do not follow the antitrust legislation and so on?

> "...create a new agency to oversee consumer banking transactions and shine a light into shadow financial markets that have escaped the oversight of regulators."

One of the problems in the United States of America is not only the devaluing of the dollar, but the accusation and the evidence that their Securities and Exchange Commission has also slept on the job. There is much evidence coming out in that regard. You see, the Congress in the United States of America is far different from the Parliament of this country. The Congress has very penetrative investigative powers to call those who are in office like the Securities and Exchange Commission to account.

Let me go further into that. Not only was legislation passed, but listen to a story on the same front page:

> "A federal judge in western New York has sentenced an investment fund manager to six years in prison for helping run a $33 million Ponzi scheme that cheated more than two dozen investors."

And the story goes on and on.

In *The Economist* dated November 07, 2009, just last month—this is all over the world—in Bangkok, an Indian born banker, his name is Rakesh Saxena, kept running all over the place until they caught up with him, because he defrauded people who put their confidence in him as an investor. A bank collapsed in the process in Bangkok. What he did as part of his confidence trick was to spread a rumour that a certain institution would collapse. That is why I used the word "rumour" as one of the areas of darkness, but it is more than that.

In Indonesia, the police have been asked to investigate members of their Securities and Exchange Commission. [*Crosstalk*] The whole story is here—investigating for allegations of corruption—members of the Securities and Exchange Commission taking bribes; sharing information. The provisions in our intended legislation seek to correct that. That is why I am saying we welcome the legislation, but given the ideas that have been coming out, it is wise for the Government to listen.

Again, the Minister quoted Mary Shapiro, the new chairperson of the United States Securities and Exchange Commission. That commission is now mounting an investigation into fraudulent investments committed by certain officers in the government in the City of Miami. The SEC has gone into that city and asked for the books, and they are examining the books as of now. The headline says: "SEC orders Miami to turn over its books". This is in the *Miami Herald* dated December 13, 2009. It is all over the world. Of course, this is an interesting story where banks are giving bonuses to executives in these investment companies and this is ironic. This is one of the most ironic, distressing features of the securities industry and the banking industry. That is why we have to use the word greed.

Some banks that are facing imminent failures, the government has taken taxpayers' money and helped to bail them out, and yet they are giving themselves bonuses of $20 million and $30 million for a year out of that money. Now, Sen. Rahman asked the question, do some people have a conscience? Sometimes I believe in business that there is very little of it. I also know that in business there is a lot of this by the number of entrepreneurs, we know—I do not want to confuse the picture that all is lost. Thank God for those who have been upright; demonstrated integrity and here in this country have helped to build this economy.

In this same newspaper it says:

> "A federal judge in Manhattan set an April 26 trial for Arthur Nadel...hedge fund manager who went on a two-week, cross-country trip before turning himself in early this year to face securities mail and wire fraud charges."

So, the securities industry, because of the vulnerabilities I have pointed out, need not only a shake-up, but some refurbishment and some vigilant oversight.

Now, we could have saved ourselves a lot of trouble in this Parliament. I believe, with due respect, through some measure of delinquency, this Parliament has not looked after its business in the appropriate manner. Mr. President, it seems to me that this honourable Senate has disrespected the Standing Orders, and some correction should be enforced

Standing Order 72(1)—this is where this Bill should have come to save time and to attract a deeper measure of consideration with the appropriate expertise being obtained—states:

> "At the commencement of each Parliament, the Senate (with the concurrence of the House of Representatives) shall appoint..."

Now, if I ask any good lawyer here what "shall" means in such a context—[*Interruption*]

> "...the following Joint Parliamentary Committees:"

There are seven of them. I would not go through all. I would just call No. 1. I see the distinguished Attorney General looking at me as if he is going to take some actions right away or Cabinet might receive a note next week in this important matter. No. 1 is a joint parliamentary committee on banking, finance and estimates. So, if you had something like this in motion and if the Parliament had done its duty, obedient to the Standing Orders that govern its procedures; its functions and operations, this thing would have been before an appropriate committee, and we would not have the seeming quarrel, and I would not be in the monkey pants that I now find myself in, having to help the Government on one hand, but straddled by the implication and complication of the Bill in the public interest. Please, help us! Do your duty.

When would you establish a joint select committee so that Sen. Mark would not be quarrelling all the time about wanting a joint select committee and my friend Sen. Ramkhelawan? You would have saved us time and stress and you would have proven to the country that your Government is faithful to the rules that govern the Parliament. We do not have any such joint parliamentary committee on banking, finance and estimates as required by the Standing Orders,

and yet we talk about the Standing Orders must be followed. Once you make a breach, you are before the privileges committee and so on. [*Desk thumping*] So, I find all these things really do not achieve what you are setting out to do.

We have developed a programme at the University of Trinidad and Tobago in criminology. One of the front-running courses is one on white-collar crime dealing with these issues. The breaches in the securities industry have to do with a package of white-collar crimes, lies, innuendoes, dishonesty and corruption. You see, it is very tempting to be corrupt, because of these grey areas of operations.

You need a space for the investors to operate and the issuer to operate, because you need innovation and you need the random distribution of uncertainty. As I said, it is not a science. Investment is not a science. It does not matter how many graphs and charts that you use, if it were a science, all investment companies would go "bust" because it would become very predictable. It is the uncertainty energized by greed that drives an industry like this. That is the point you are trying to make.

4.00 p.m.

So since there is a big space that people must be left to operate within, you have to pull back and ask the question: How much regulation can you impose when you need a space to operate with innovation and to take the risk in a way that could bring dividends, because when you win here, other people lose in the stock market? That is the game.

I bring back the question of the Hindu Credit Union. Their investors should have known what the game was all about. For any other investment company—and I think for the public benefit, for the few of them listening to me—study the situation before you put your few dollars in. So when you go bust—because when you get plenty money you do not run to the Government for help; maybe I am wrong. I do not know if I am right. Why is it when you lose money, it is then you want help? We have a problem here. I mean no disrespect. I still have feelings for those who have lost money, but I believe you should ensure, in the next rounds, that the Securities and Exchange Commission and its parallel partners, Central Bank with its Financial Literacy Programme, engage the public in a more penetrating education programme.

To come to some of the clauses; I have thought about it and I totally agree that the appointment of these commissioners really should be kept as far away as possible from any active politician's hand. Why I agonize over it is because we

elect a government and an executive to run the country, but the issue in this country, as in many others on the question of investment, is confidence and trust.

In this country precisely, I would like to see the commissioners appointed by the President in his own discretion and after consultation with the Prime Minister and the Opposition, but finally in his own discretion. [*Desk thumping*] I say that to help the Government really, because people have become very uneasy about state institutions; they are very skeptical. I would like to see you going into an election with some ammunition in your hands, to tell them, "Yes, we are trying to do the right thing"; one being to change the rules, the intended legislation to allow the President, in his own discretion, after due consultation to select these commissioners according to section 10.

We cannot force the Government. You see, if the Parliament were much more separate from the Executive, if the Parliament had more muscle in its own independence, so as to partner, not compete or obstruct the Executive, then we could have made such demands and, perhaps, put a veto on the legislation, because the representation to come into Parliament would have been different, would have been elected. That is why you really need constitutional reform, even stretching into matters like these, because under the present constitutional structure, you can only beg and plead for the Government to do what we think is right, and it is up to them. It should not be so. Reason should prevail over might. Right to parliamentary intervention should supersede the power of the majority sometimes. That would be the essence of democracy, the extent to which reason prevails over a sheer majority.

That is why when we talk about constitutional reform, I am almost fed up of hearing about an executive President, an executive President; that is one element in a larger picture of necessity. In matters like these, with the security industry, it also has to do with constitutional reform, to derive accountability and the independence required of persons like the commissioners. So that was the independence issue.

The other issue is the conflict of interest issue in clauses 11 and 14. This is one of the most difficult issues to legislate upon, because you do not want to make a rule for every move somebody makes in an office. You do not want to make a rule for every decision he or she makes; that is not progress. No matter what you do, you jump high, you jump low, you bring a million clauses, something must be left to personal integrity. Some things must be left to personal integrity, professional uprightness and, perhaps, most of all, self-respect, meaning you

would do the right thing even when nobody is watching. And for the religious, you would do the right thing because you know one person up there is watching you, at least.

It brings us back to the question of independence of the commissioners. They must have little, perhaps no connection, with any political party. [*Desk thumping*] These commissioners, especially the chairperson or the chairman, real or apparent, must have no connection with any political party. If you continue on that route, your objective for the Bill, I say with respect, will not be achieved because you will diminish the extent of public confidence that you want in this matter.

All the stockbrokers and investors should rise up in protest if that ever happens, to put people with political connections as commissioners. They should protest, because it would not be a political protest, it would be a professional point that needs to be made.

As I said, you cannot legislate for integrity; you depend on the person. One way to get that kind of professional integrity is to get some assurance that the person is not connected to any partisan politics, and that is my point.

My other point is the enforcement issue; part of it is in clauses 138 and 139. Mr. President, you see this thing about having a commission as important as this one and then when something happens, or you feel something is going to happen, you appoint a person to investigate, that is too ad hoc, too transient, too whimsical, for the matters at hand. What the Government or the ministers ought to do is to tell the country and the Parliament that you are going to have a sufficient cadre, a group with expertise there, embedded in that office, perpetually, permanently.

This thing about picking up a lawyer from there or Mr. Lindquist from Canada, it costs money, apart from the fact that it takes too long at times. When you have somebody embedded closely to the commission, they would have gained experience; they would understand the nuances in the legislation; they would have looked at the trends historically and contemporaneously. They would have a higher intelligence, other than expertise. Please, I would want, when the matter does go—and I hope it does go to a select committee—these are the implications that we would need some time to thresh out, rather than putting them

in an amendment. I do not think it would satisfy the purpose, mainly to have it in a formal setting of amendments and arguing over the counter. I think in a closed select committee meeting reason should prevail, and this is one issue that should be taken up very, very seriously. Staff it properly with the appropriate expertise. [*Interruption*]

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. D. Seetahal SC*]

Question put and agreed to.

Sen. Prof. R. Deosaran: Mr. President, I am coming to closure.

No matter how many laws you put in this package, over 160 clauses, what would count in the details is the enforcement of the legislation. So when you have a structure, all this talk about powers and objectives, and when the time comes to enforce the rules, you have to pick up somebody from there, pick up somebody from there. It may be your partner possibly or somebody whose credentials may not be well established in this area of business, but the commission is free to do so. No, no, no; we want something more than that. We would like something more than that, with respect; that is, a fuller cadre of staff with forensic expertise, well trained, independent and passionate about the job.

You have some lawyers, some public prosecutors who are passionate about finding and sentencing criminals? Those are the kinds you want to run an establishment like this. Not the laziness we have had with the current Securities and Exchange Commission; apparent laziness, as said by my colleague, Sen. Ramkhelawan, and more so by Sen. Mark. So this is not an original point; this is a repeated point.

The independence and expertise I speak about, with permanent employment, will help the enforcement issue as stated in clauses 158 and 159.

We ought to look at the role of the media in spreading rumours that would affect the marketplace. I do not know how we would deal with that one. I do not want to provoke the Media Association or the journalists, but you can damage the system unwittingly if you allow persons to abuse your pages or your broadcast by planting rumours and having undue speculation spread across the country. You know, the media is a very ironical thing; we have to look at it. They print

something today and tomorrow somebody comes and says that it is not true, and they print that too, and so it keeps rolling along every day. So you do not know in the end which new story to believe.

Today you would see that Ryan is wrong, tomorrow you would see somebody says Ryan is right, and with the equivalent headlines. So you have to understand the psychology of the media, especially in a matter like this, where you have to sit back now and make sure that in this business rumours do not do undue damage. Of course, we want freedom of the press, but in this case some care especially with the cross directorate issue that I mentioned.

This Bill seeks to sanitize the system, to inject some integrity, transparency and accountability; all welcome. Sen. Mark spoke about PNM financiers several times. I think that is an issue. We have to do something to build confidence in the financial sector, about having a framework for election financing. You know that we have passed a Motion in this Senate. I believe it is, let me repeat with respect, an insult to the Senate that this matter has been duly passed and is now resting in the Lower House unattended, suspended. That does not speak about integrity; it speaks to me, as far as I am concerned, about an abuse of power. If there is something in the Standing Orders to bring such persons involved in such undue delay, I think that Standing Order should be invoked. It is very unfortunate. It does not speak well for the Government that boasts of transparency and integrity in public affairs.

It is not that you want to accuse persons of corrupt practices in election financing or that the SEC is not doing its job in monitoring that part of our activity; all the Motion asks for is to set up a framework; however you want that framework, however amount of money you want an individual or business to contribute, whatever parameters you want to set. Why do we not get the business of this Parliament moving, rather than playing such Mickey Mouse games with important matters?

4.15 p.m.

I have found clause 17(4) disturbing for matters of integrity and of safeguarding the reputation of the Securities and Exchange Commission, the securities industry and also attracting public confidence in the securities industry.

What is the issue? I find the Minister is too embedded in this business that he or she can call for a copy of a report in a matter like this with such alacrity. No, no, that is not checks and balance. That is not the non-partisanship we want in such a sensitive matter. No.

The question is, how do we solve that problem where you want the Executive to have some oversight? In fact, I do not think the Executive has any oversight in this matter at all. This matter should have parliamentary oversight through the parliamentary committee that is included in the Standing Orders. [*Desk thumping*]

It is the best compromise you can make. As I said, you are playing with five areas of darkness, risk, rumour, uncertainty and greed; it is a speculation; it is a compromise. I am not saying it is a perfect solution; because of the phenomena with which you are dealing, you must leave space, but you also do not want the space that is left open for investment and innovation to be abused. So I think the Executive should stay far away. The President appoints, oversights accountability and then a parliamentary committee, and then it goes to the Executive for amendment, additional regulation or whatever needs to be corrected as a policy maker, but the architecture is counterproductive and it is out of character with something like this.

I do not want to cite what happens in the European Union or the United States of America or England. Their politicians are far removed from something like this and even when they come in, it is after a certain process; they come in to heal, not to initiate. So I think the Minister is too far embedded.

The last thing I want to refer to is this headline—as soon as I returned from abroad, this was on my desk. The *Daily Express* of Friday, December 11, 2009, page 4. The Governor of the Central Bank and the Inspector of Financial Institutions. Before I cite the story, the question has been asked: What have they been doing in the last five to seven years with the matters that arose with CL Financial? We had debated that issue already and there is much dissatisfaction about the oversight powers and their capability of preventing. I think Sen. Rahman spoke of prevention.

Those people are put there with these powers to prevent, not only to scrape up as financial scavengers after the damage has been done. They are put there because they have certain expertise, certain presumed levels of intelligence, staff to gather facts and figures and more than that, they knew about the imminent danger. So to cut a long story short, we have not learnt from the 1980 experience when one financial house after the other collapsed after promises of high interest rates. Many people benefited from that because they took the money and opened new companies and got into land development and grew rich and the finance companies dried up and the government of the day saved the day with them, but we have not learnt anything. I hope you learn something from CL Financial. I have my doubts but I remain optimistic.

The Governor of the Central Bank is saying, and I quote:

"Central Bank Governor Ewart Williams said yesterday that legal action could be taken against CL Financial by early next year if evidence of malfeasance is uncovered."

Do you know the public believes there is evidence already? In the public's mind, those are the people who vote, who invest, in their mind the corruption took place already, but the Central Bank Governor is waiting until Lindquist gives his report. So we wait with bated breath to see what that oversight agency will do and how quickly the Lindquist report will be produced so as to build public confidence in the system and to let the objectives of the Bill protect investors from unfair, improper and fraudulent practices, to foster fair and efficient capital markets and build confidence in the capital markets in Trinidad and Tobago and reduce systemic risks.

If I had more time, I would have spoken about what systemic risks mean or should mean: to cooperate with other jurisdictions that the transnational connection in the development of fair and efficient capital markets and for other related matters. If you want to achieve that objective, I think some of the comments I made might be useful to consider in a select committee.

Once again, I think the Minister has made quite a fine presentation; quite intelligible, concise, helpful, but I think he has narrowed the parameters a bit too much for our purpose.

Thank you very much, Mr. President.

Sen. Raphael Cumberbatch: Mr. President, Members of this Senate, I have listened to Sen. Prof. Deosaran and on a previous occasion I heard the contribution of Sen. Ramkhelawan and my colleague, Sen. Wade Mark. I am sure that the hon. Minister is convinced that there is need for much more work to be done on this Securities Bill. [*Desk thumping*]

It appears that there may be concerns that the Bill may be lost if it is referred to a select committee. Unfortunately, I can find no regulations in our Standing Orders, our Constitution or indeed Erskine May that will support that contention. I sincerely hope that he would accede to the requests of hon. Members and have this Bill so referred.

What bothers me most is that this Bill appears to have been in the making for some seven years and now we are required to pass this legislation which deals with regulating the securities and exchange industry and I wondered why has

there not been a similar urgency in regulating the construction industry in this country. I seem to recall that a White Paper on that matter was laid in the House sometime ago and there has been no further attempt in proceeding in this matter.

I am not a financial expert, I claim no such expertise but I have looked through the Bill and there are some matters I would like to point out and ask the hon. Minister if he could respond or consider making appropriate changes.

The first thing I want to go to rather than start at the beginning, I want to start at clause 10 which says:

"The Commission shall consist of—

(a) A Chairman…"

I recently read in the local media that a chairman of the Securities and Exchange Commission has been recently appointed and I looked through the Bill for transitional arrangements, because this Bill enables the appointments to be made by the President in a certain manner. I certainly support Sen. Prof. Deosaran that the President should act in his own discretion after consulting the Leader of the Opposition and the Prime Minister. But I wondered at the status of the existing newly appointed chairman who is a very high profile member connected to the ruling party. Is this chairman and the existing Securities and Exchange Commission going to be a shoo-in for this new body that we are creating here? I do not know, it does not say.

So I would ask the Minister to tell us what is going to be the status of the existing chairman and commissioners. The only transitional arrangements speak to the by-laws of the existing Securities Industry Act as being in force, but nothing on the Commission, its chairman and members.

That having been said, there are some small matters; I looked at the interpretation section and I saw a definition of expert. An "expert" means a lawyer, engineer, accountant, valuator or any other person whose profession or reputation gives authority to a statement made by him.

Is it that an expert can have a reputation although without professional qualifications particularly where in clause 81 of the Bill that expert is going to be required to sign off on—

"A prospectus that includes a report, opinion, valuation or statement purporting to be made by an expert shall not be receipted by the Commission unless—

(a) that expert has given, "—et cetera.

Is it that he needs only to have a reputation, or must he be a professional expert? That needs to be clarified.

I know this is an extremely difficult Bill to speak on for lay persons like myself. The point was raised earlier concerning the functions of the Commission at clause 6 and the involvement of the Minister in the administration of the affairs of the Securities and Exchange Commission.

"6. The functions of the Commission are to—

(a) advise the Minister on all matters relating to the securities industry and marketplace;"

The Minister is tied in to that; he is also tied in to other aspects like clause 21(2):

"As soon as practicable after the making of any rule or amendment under subsection (1), the Commission shall forward a copy to the Minister and where the Minister objects, the Commission shall revoke or further amend the rule in accordance with the directions of the Minister."

It strikes at the heart of what Sen. Prof. Deosaran was speaking about; this hands-on management of an important body like this by the Cabinet because, make no mistake, that Minister means the Cabinet and we need to look at that. That is too much involvement of the Minister. I would not want to go over what Sen. Prof. Deosaran has already said.

This Commission appears to be finding itself as an advisory body to the Cabinet. I think we should be very careful in how we proceed if we are to go in that manner.

Mr. President, we move on to clause 7(1):

"(a) formulate principles for the guidance of the securities industry and capital markets;"

The securities industry and capital markets are old industries in the developed world. There are certain well-established international guidelines and principles which exist and I wondered whether this Commission is going to bring into being anything significantly different to what is acceptable in the international arena.

I say that because Trinidad and Tobago has been mooted as being on the verge of implementing an international financial centre which I suspect a number of major players will find themselves coming here. So in the formulation of those principles, we must be careful that we accord with all international standards and guidelines in this matter.

The question of by-laws came up in clause 7(1)(j) "prepare and recommend by-laws to the Minister;".

Mr. President: It is 4.30 p.m., we will take the tea break and return at 5 o'clock. This sitting is now suspended until 5.00 p.m.

4.30 p.m.: *Sitting suspended*.

5.00 p.m.: *Sitting resumed.*

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Mr. President, almost every Speaker has asked for two things. One is that consideration be given for this Bill to go to a select committee. On the basis of the work programme that is proposed, we believe that we would want to achieve that. Bearing in mind that we have three weeks, two weeks, I am proposing that the Bill go to a select committee and that the committee do its work and try to get the Bill passed before we prorogue in January.

In those circumstances, I beg to move.

INTEGRITY IN PUBLIC LIFE (AMDT.) BILL

[THIRD DAY]

Order read for resuming adjourned debate on question [May, 12, 2009]:

That the Bill be now read a second time.

Question again proposed.

Mr. President: Those who spoke on Tuesday May 12, 2009—

ARRANGEMENT OF BUSINESS

Mr. President: Hon. Senators, we have had some issues here as to exactly what we are going to do, whether we will suspend or conclude the debate. It appears that we are going to conclude the debate. Therefore, we would allow Sen. Cumberbatch to complete his contribution, then the Minister would wind up. When the Minister is winding up he would present a motion for it to go to a select committee of the Senate. After that we would move on to the other Bill. I crave your indulgence. We have been trying to determine exactly what we are going to do.

Agreed to.

SECURITIES BILL

Sen. R. Cumberbatch: Mr. President, I am guided by the wisdom of the Chair. I will resume from where I left off on the question of by-laws that the commission has the power to prepare and recommend by-laws. That making of by-laws is in clause 149 of the Bill. Clause 149(4) states:

> "By-laws made under this Act shall be subject to negative resolution of Parliament."

You know that we would want to propose that they be subject to affirmative resolution of Parliament. I am sure that the Minister of Finance could have anticipated that.

The other matter I want to raise is clause 7(4) which states:

> "Where the Commission takes any enforcement action against a financial institution or an employee of a financial institution…the Commission shall forthwith notify the Inspector of Banks..."

I wonder why only the Inspector of Banks and why not all regulatory agencies and the Financial Intelligence Unit?

We are talking about people making big money, investing it and maybe trying to hide it. It may well be that the Financial Intelligence Unit should be brought into this and that section should not only be the Inspector of Banks but also all financial regulatory agencies.

I will move on. As I indicated at the outset, I had some serious reservations about the manner in which the commission is going to be appointed by the President. That was raised previously. I am sure that the Members on this Bench would support an amendment that will have the appointment by the President in his deliberate judgment after consultation with the hon. Prime Minister and the Leader of the Opposition. As I moved through the Bill I looked at clause 12(4)(a), (b), (c), (d) and (e). Those are the provisions for the removal of members of the commission. I do not see corresponding provisions for persons being appointed to the commission. Subclause (4) says:

> "(c) is guilty of misconduct in relation to his duties…
>
> (d) is sentenced to imprisonment or is convicted of an offence involving fraud and dishonesty;
>
> (e) is declared bankrupt in accordance with the law of Trinidad and Tobago…"

I suggest that these provisions be put in the section so that they can debar persons who fall in these three categories from being appointed commissioners, in the first place.

One of the problems that I have with this Bill, as a layman, is the section that deals with penalties. There is a variety of offences and penalties.

In clause 4(1), there is a penalty of $500,000 or 12 months.

Clause 61(1), $1 million, one year imprisonment.

Clause 73(1), $1 million, no jail time.

Clause 73(2), $500,000, two years.

Clause 105, $2 million, two years imprisonment.

Clause 141, $500,000, six months.

It seems that somewhere along there, there are some inconsistencies with these penalties.

I compared that with the debate of the Integrity In Public Life (Amdt.) Bill which started in May. I suspect that it may come up in a short while. There is a provision for a penalty of $500,000 or five years. We heard about Madoff, the Ponzi Scheme, Allan Stanford and other leading financial persons who have found themselves running afoul of US law. These people are making life in jail. The amount of money involved in this kind of racketeering, you cannot deal with one year and two years. That is for the Tobacco Bill.

The penalties in this Bill must reflect the seriousness with which the Government is making this into law. If we are serious we must put serious penalties. I agree that some persons may have connections and are good friends with people who may be involved in malfeasance, but that is no reason to let them off the hook this lightly. A year in jail is nine months. When you say a year, you are talking about nine months. Millions of dollars are involved here.

I ask the Government at the appropriate stage in the select committee to have a look at these penalties again and see if they could bring them more in line within this Bill and other legislation where there are equally serious offences involving integrity issues.

Moving along, "the annual report of the commission shall be laid in Parliament". There should be a provision in accordance with what Sen. Prof. Deosaran mentioned earlier, that these reports be referred to a joint parliamentary committee on banking, finance and what is the other item. We must have it here.

It must not just come to Parliament and lie on the Table and wait for a Member of the Opposition to move a Private Member's Motion to have it debated and probably, never succeed. It must be referred to a joint parliamentary committee so that an appropriate study of the report, recommendation and oversight can be done.

Sen. Prof. Deosaran quite rightly said that if that joint parliamentary committee was working we may not have found ourselves in the dire straits, for want of a better expression, that we have recently found ourselves in with the Clico impasse.

5.15 p.m.

I have a note on clause 105. That is another one of those. The language is instructive and gives a clue of what I was referring to about consistency and penalties. Listen to the language:

> "(1) A person who contravenes section 103 or 104 commits an offence and is liable on conviction on indictment to a minimum fine equal to the profit made or loss avoided by him and a maximum fine equal to the greater of triple the profit made or the loss avoided by him and two million dollars and to imprisonment for two years."

Such a serious offence has been committed that you are going to seize the profits, but he is only making two years in jail—18 months. People make 18 months in jail for far less than that. Why are these people being let off the hook? We know what section of our community is involved in that kind of activity. It is the big bankers, financiers and brokers; not the ordinary people in the street. When it comes to these people, we are seeing six months, one year and two years.

Let us get serious with these people. They are playing with the future of the nation. When they do their evil deeds, our entire economy is in jeopardy. Two years for that! I think not. What did Madoff get? Over 100 years in jail.

That reminds me, Mr. Attorney General, maybe it is an appropriate time to raise this question of consecutive and concurrent sentencing. We must look at the laws that speak to consecutive and concurrent sentencing. When you do the crime, you do the time. When you do three crimes, you do it three times over. Concurrent sentencing does nothing for anybody. You come out on bail and you

do 10 times worse than that and say that with concurrent sentencing, you will get off with three years. I ask the Attorney General to look at that aspect of it. Maybe in a future debate, he will bring something to remove that bar that allows the magistrates and judges to impose concurrent sentencing. That is archaic.

Sen. Seetahal SC: Concurrent sentencing is when all the offences arise out of the same transaction. When they arise out of different transactions, they will usually follow, meaning consecutive. It is not really that unfair if you look at the entire thing.

Sen. R. Cumberbatch: I will be guided by Senior Counsel, but I still have certain doubts about the sentencing parameters that I see and I read in the newspapers. I will look very closely to see if they adhere to the advice of Senior Counsel on this matter.

Misrepresentation, clause 73:

"(1) Subject to subsection (2), a reporting issuer who—

(a) contravenes this Part; or

(b) makes a misrepresentation in any document required to be filed with the Commission or delivered to security holders under this Part,

commits an offence and is liable on conviction on indictment to a fine of one million dollars."

No jail time. We are building a big jail in Central. I want to see some people go in there. We will have some people go there just now. I am sure about that.

Mr. President, I have already raised the issue of the by-laws and the question of affirmative resolution. I have spoken about those matters and, in summary, the Leader of Government Business has indicated a certain position he intends to follow, for which he has the support of Senators on this side. I would like the Government to consider in its agenda bringing to this Senate legislation dealing with the regulation of our construction industry.

Please, Mr. Minister, any Minister in whose garden it falls, we need legislation to regulate our construction industry. That affects the people in the country. This Bill protects those who have money to invest, but there are thousands of people for whom this has no meaning unless the Securities and Exchange Commission fails in its duty and then we face the fallout from it.

This is what happened in the construction industry. The failure to regulate brought this country into an embarrassing position. I will not belabour the point. Sen. Ramkhelawan, for whom I have the greatest respect, Sen. Prof. Deosaran,

Sen. Mark, have all made their contributions and I subscribe fully to what they said. I support it and ask the Government please to listen. We are not the party of no. They are the ones who keep saying no to our suggestions.

Thank you very much, Mr. President, and hon. Members for bearing with me.

The Minister of Trade and Industry and Minister in the Ministry of Finance (Sen. The Hon. Mariano Browne): Thank you, Mr. President. In view of all the comments made and the intimation of the Leader of Government Business, I do not intend to stay very long. Suffice to say that there are a number of areas which can be improved in the Bill and certainly would benefit from the work of the committee.

On that basis, without my replying to any of the comments that went before, I beg to move.

Question put and agreed to.

Bill accordingly read a second time.

Sen. The Hon. M. Browne: I beg to move that the Bill to provide protection to investors from unfair improper or fraudulent practices; foster fair and efficient capital markets and confidence in the capital markets in Trinidad and Tobago and to reduce systemic risk; to cooperate with other jurisdictions in the development of fair and efficient capital markets, and for other related matters, be referred to a special select committee of the Senate and that this committee be empowered to discuss the general merits of the Bill along with its details and be mandated to report back to the Senate in 20 days time or by January 04, 2010.

I beg also to move that the following Senators be appointed to serve on the committee: Mr. Conrad Enill, Chairman; Mr. Wade Mark; Mr. John Jeremie SC; Mr. Subhas Ramkhelawan; and Mr. Mariano Browne.

Question put and agreed to.

INTEGRITY IN PUBLIC LIFE (AMDT.) BILL

[Third Day]

Order read for resuming adjourned debate on question [May, 12 2009]:

That the Bill be now read a second time.

Question again proposed.

Mr. President: Hon. Senators, the following is a list of those who spoke on May 12, 2009: Sen. The Hon. Brigid Annisette-George, mover of the Motion;

Sen. Wade Mark; Sen. Ramesh Deosaran; Sen. The Hon. Mariano Browne; Sen. Dr. Sharon-ann Gopaul-McNicol; Sen. Basharat Ali; Sen. Dr. Adesh Nanan.

The following is a list of those who spoke on Tuesday, May 19, 2009: Sen. Dana Seetahal SC, Sen. Lyndira Oudit, Sen. M. F. Rahman, Sen. Wesley George and Sen. Corinne Baptiste-Mc Knight.

Those wishing to speak now may do so.

Sen. Helen Drayton: Thank you, Mr. President. I would, hopefully, be as brief as possible. First, the fact that there exists anti-corruption legislation, integrity in public life legislation and the Integrity Commission is a positive step. It represents movement in the right direction with respect to governance.

I will articulate my views on this Bill in the context of the 2000 legislation because I cannot do it outside of that framework. At first glance, I wanted to dismiss it as a Bill that is irrelevant to the concerns and flaws that exist in the parent legislation. I was surprised that the opportunity was not taken to address what I consider a serious concern mentioned by the Government; that is the negative impact of the type of filing that is so invasive, bureaucratic and cumbersome and which has a negative impact on finding good resources to serve in public life.

Here you have a Bill that is supposed to strengthen the whole matter of governance in public life and it has a negative effect because the people with the skills, expertise and experience required are reluctant to serve because of the nature of the filing.

5.30 p.m.

Given all that has happened over the past few months, including the judgment against the Integrity Commission, I thought it would have been prudent to have taken the opportunity to address certain other critical matters. I have six concerns and they are:

- the recommendation for sworn statements from complainants—I think that this is certainly not a valid amendment to the legislation;
- the documented evidence or the requirement for document evidence and the serious implications for confidentiality—I would try to develop that a bit more;
- the extension of the period for filing to one year—I really cannot see the need for this; and
- my perennial complaint about the "no liability", with respect to positions of governance such as the Integrity Commission.

With respect to section 33(1)(a) and (b), I do not understand the purpose of the amendment. Is it the intention to restrict the commission to investigate matters arising from declarations, and if so, why bother to have an Integrity Commission at all? That does not seem to make sense. When you go back to the legislation, the objectives of which is the prevention of corruption of persons in public life, by providing for public disclosure, to regulate conduct of persons exercising public functions, to preserve and promote integrity of public officials and institutions and for matters incidental thereto, the first question one has to ask: Can the Commission fulfil that objective at all? Quite frankly, since its focus seems to be on the administration of assets and income declarations, that is a function that is totally out of sync with preventing corruption. When you consider that integrity is values-based—in another earlier discussion it was said by Sen. Prof. Deosaran, so that it is values-based—this has to be kept in mind when asking for documentary evidence from complainants. Whilst there is widespread belief that there is corruption, there is absolutely no information in the public domain to suggest that after nearly a decade of operations, the Integrity Commission has had any sort of impact on real or perceived corruption in Trinidad and Tobago.

To start with, key persons are totally outside the scope of the commission, and persons who have no influence whatsoever, with respect to tendering and public contracts, are within the ambit. I would try to elaborate on that point a bit more, because I certainly want to see a couple more amendments brought in there. The first question is: Does the Integrity Commission have a clue where to look for corruption or anything about alleged corruption? Large-scale corruption is a marriage between private business and public officials and in most instances it cannot occur without the payers of the piper. Who pays the piper calls the tune. That is why I think it is so ironic; that institutions both local and international and other bodies that set themselves up as so-called watchdogs, never seem to target the role of the private sector that is contracted by the Government to supply goods and services. That is why I too would have to commend and endorse the call of the United Nations, that it is time bodies such as Transparency International that seem to salivate like the dog Pavlo—when Trinidad and Tobago has another rating somewhere high on a perceived corruption index, but when it comes to doing anything meaningful in the context of really focusing on where corruption originates, nothing ever happens.

In speaking about persons who are outside the ambit, one of the major areas of corruption—it is not only here, it is all over the world; it is the whole collusion—in bid rigging during the procurement process. This is where confidential and privileged information will be leaked to persons who are seeking to get contracts.

Persons who are involved in that type of unethical behaviour are outside of the scope of this legislation. When you put in the Bill, something like "documentary evidence", there is no documentary evidence for things like that. It is only persons who, by observing telephone calls, are observing behaviour, seeing documents and copies being made, would have a clue, and therefore, having the interest of the country at heart, would bring it to the attention of some body. You have, in all these enterprises and quasi-government institutions, tenders committees. These are the persons who are evaluating tenders and these are the persons who are making recommendations. They are outside the scope of the Integrity Commission.

A CEO who is not a board member is outside of the scope of the Integrity Commission. If I may, with your permission, Mr. President, I think that the President of the Senate and also the Speaker of the House, but probably more so the President of the Senate, has a definite conflict of interest where the Integrity Commission is concerned. That has certainly come to light in recent times where, with the failed appointment of a set of commissioners, the President of the Senate would act for the President and that very person now has to appoint commissioners or would be placed in such a situation. The President of the Republic is outside of the ambit. One is not saying that those positions are outside of the law, understand this. What I am saying is that there is a conflict of interest.

You have people involved in tenders committee, who are not within the ambit and you have persons who are not involved in the award of contracts and things like that, falling under the ambit of the committee. I would want to suggest that while we are dealing with this Bill, serious consideration be given to an amendment, whereby Parliament is mandating that members of a tenders committee and CEOs who are not members of the board be brought into the fold and we delete the position of Speaker and President. I would love to talk about Independent Senators, but being one myself, that in itself will not be appropriate, so I would not.

With respect to the privacy of persons declaring information, it is probably okay in large metropolitan countries where you have populations of 250 million to 300 million, a system whereby your declaration is open and there is a wide range or body of resources from among whom you could call to serve in institutions. But, for the purposes of Trinidad and Tobago, I think we ought to look very seriously at another mechanism and there is precedence out there. Because one has to ask: What is the net good? Is the integrity in public life legislation in its current shape and form appropriate for us? What is the net good when you weigh

the advantages over the disadvantages? You have an institution that is not attuned and not aligned to investigating corruption. It cannot even detect it. You have a situation where people who want to serve are demotivated and they wish to serve, because it is a small society and all your documents are made public.

Further, the requirement to make public any aspect of the financial information submitted to the commission is also in conflict with another aspect of the Constitution, which is section 139. While it states in section 139(a) that Parliament may make provisions for the procedures of the Commission, it also states that:

> "(d) the maintenance of secrecy in respect of all information received by the Commission in the course of its duties with respect to the assets, liabilities and income of any member of Parliament and any other person;"

That privacy remains sacrosanct. This is not what we do. There is information lodged with the Integrity Commission that any member of the media, anyone at all, can put their hands on. You have a small society, you are looking for resources and you have a very invasive and very weak system and a system where your confidentiality is not protected. I think that goes too far.

With respect to the aspect of this Bill which deals with whistleblowing, I just want to deal with that briefly. I have heard the term when the previous speakers some time ago, made reference to the fact that whistleblowing and doing so anonymously is a critical element in revealing corruption, but there are very fundamental differences between the concepts of complaints to an Integrity Commission and a whistleblowing system under the protection of legislation. The integrity legislation is not whistleblowing legislation. If it was, then it will be a simple task. Legislation to promote integrity in public life should not be about promoting the leaking of information and making complaints anonymously. One of the basic tenets of integrity is natural justice, accountability, fairness, morality and ethical conduct. Therefore, the entire system, under integrity legislation, must essentially speak to that; not the sleaze of leaking information. That is why it ended up in trouble in the first place. When you look at other models, say in the Commonwealth countries, it would indicate that their equivalent to our Integrity Commission is not the first recipient of most of the communication. The whistleblowing legislation is in place in the public service. In not all instances it is anonymous, because there are times in court when the whistleblower would have to give evidence and that is why you have legislation. It is not an anonymous thing at all.

With those basic comments, what we need is a robust system to promote integrity in public life and to mitigate corruption. We need an up-to-date code for persons in public life. We need up-to-date anti-corruption legislation, and we need progressive risk management policies. In short, what I am saying is that sworn statements are not necessary. The extension of filing within a year, I cannot see the need for it. If the Integrity Commission can only pursue investigations based on the declarant's information, then we should really take this opportunity, rather than appoint new commissioners, to simply just crash the remainder of the system, because it really does not make sense whatsoever.

As I have said, I have called for an amendment and that the opportunity should be taken to bring within the ambit of the Integrity Commission, all members in all public companies who sit on tenders committees and a serious matter of a conflict that will arise at the highest level with the President of the Senate and the Speaker of the House.

With that I thank you, Mr. President.

5.45 p.m.

Sen. Raphael Cumberbatch: Mr. President, I am a little disturbed again this afternoon as to this Integrity in Public Life (Amdt.) Bill. The problem we have been having with the Integrity Commission recently, to me, seems to be an issue of constitution reform rather that this piecemeal approach. It may well be that we should be dealing with constitution reform—the introduction of the much touted presidential system; the separation of the presidential office from the Parliament; and the Executive aspect of it. Of course, all of that would be tied in to the manner of the appointment of our President.

I am sure the Senators on this Bench agree that in any constitution reform in any presidential system, the manner of appointment of our President should be on the basis of a one-man, one-vote system. So, let us get that out of the way. We do not want any Electoral College picking any President. We want a one-man, one-vote presidential system that can manage some of these weighty matters. [*Desk thumping*] There is no question about that in my mind.

To get down to the matter before us—[*Crosstalk*] I do not know. I am not aware that January 24 speaks to the appointment of anyone in this Senate or in the other House for that matter. [*Laughter*] With respect to the Bill itself, I looked at clause 6, and there is a provision there that is now empowering the Integrity Commission to grant an extension of 12 months instead of six months. I wonder why it is necessary to give the Integrity Commission this power. The average man

in the street has to file his income tax return, and to him that is an integrity matter. If he does not file his tax return by a certain date, he has penalties to pay. Nobody is giving the man in the street an extension of six months, least of all a year, to file his income tax return. I do not see why they should want to give anyone in public life any greater benefit than that of the man in the street. I do not know. They should be able to have their business in such a way that they can stick within the guidelines.

Moving a little lower down, we have clause 10 amending section 21 of the Act, and that speaks of introducing a concept and it says:

> "…after five years from the date when the person in respect of whose declaration or financial affairs the alleged offence was committed, ceased to be a person in public life."

This is limiting investigation of complaints. [*Interruption*] You are in public life, and any time we catch you, you lock up! I do not want limitation on that at all. Why should there be a limitation?

Sen. Seetahal SC: It is a summary offence.

Sen. R. Cumberbatch: Well then maybe we should make it an indictable offence. You see, Senior Counsel has the right answer. She always has the right answer. [*Laughter*] The Senior Counsel advises that it is a summary offence so, perhaps, we should make it an indictable offence. This is integrity that we are talking about. This has something to do with the Bill we just referred to a select committee in a roundabout way. We are not going to go there, but the select committee will deal with that. I have a problem with that provision of limiting it to five years. It was not in the original provision and I do not think that it should be in this amending Bill.

There is a very small matter under clause 11(4) which says:

> "For the purposes of this section, the amount of a gift comprising property, other than money, shall be deemed to be an amount equal to the value of the property."

I understand what this provision is intended to achieve, but I would have liked to see the word "value" instead of "amount". So it should read:

> For the purposes of this section, the value of a gift comprising property, other than money, shall be deemed to be an amount equal to the value of the property.

Let us go with "value" instead of "amount". I do not know if in this case it is a term of art. [*Interruption*] I was merely suggesting that we should use the "…value of a gift…" When you are doing law for people who have to follow the law, it is necessary that it be written in simple language so everyone can understand. The standard of language I would use would be the value of a gift comprising property, other than money, shall be deemed to be an amount equal to the value of the property.

I move on now to section 34(1), and it comes up in clause 12, where it introduces a new Part V that contains 32(1), et cetera. I go straight down to 34(1), and this bothers me. The provision says:

> "The Commission may, on receipt of a complaint and after examining same, reject the complaint if the Commission is of the opinion that the complaint—
>
> (a) is frivolous or vexatious;
>
> (b) was not made in good faith…
>
> (d) is not supported by evidence of probative value; or…"

Why is the complainant being put in this position where he must produce evidence which he may know exists, but which he may not have in his possession? I think this is far too restrictive, particularly in subclause (d).

In respect of 34(1)(b), the language "was not made in good faith", I want to ask the Attorney General, through you, Mr. President—now it is extremely difficult to define "good faith". I think that point was raised in another matter earlier this afternoon—to look at clause 15 that introduces the new 42A. The language used there is:

> "…he, acting in good faith and on the basis of a reasonable belief…"

It may well be wherever "good faith" is being used in this Bill that language is being put in. It is very difficult; it is kind of oblique. Mr. President, "good faith" is not objective enough, it is very subjective.

Mr. President, "frivolous or vexatious" is a bit too restrictive for the complainant. It is going to dissuade many people, and the difference is that this provision deals generally with complaints. The provision I just spoke to speaks of an employee of the State, and I wonder why there is the difference in the language of "good faith and on the basis of a reasonable belief…". There is not that same language in 34(1), so you have that matter to look at.

In clause 12(5)(b) it says:

"…commits an offence and is liable on summary conviction to a fine of five hundred thousand dollars and to imprisonment for five years."

I would have liked to see language that would have a nexus between the offence and the value of profit or otherwise moneys received or moneys concealed in this penalty that is put here. The misleading of the commission could be concealing very large sums of money. Attorney General, are you seeing what I am looking at?

Sen. Jeremie SC: I am not with you.

Sen. R. Cumberbatch: I am looking at section 34A(1)(5). Now, you can mislead the commission in a number of ways. You can conceal ill-gotten gains; you can conceal profits or bribes or whatever you have to conceal and this will really not be a sufficient penalty. Remember we are speaking generally about penalties. I do not know if it is a case of a summary offence being limited to a certain amount of time in prison as in the case of another matter I raised. I would rather like to see a provision that ties in, not only the fine and penalty, but something that deals with the benefits that accrue from misleading the commission, because you may be concealing something. There should be a confiscation provision here to take away what you are concealing. You say draconian! If we are serious, we have to be serious. We are serious about many things.

This is the fourth occasion that I have come to this honourable Senate, and I sense that the Government is trying to come to terms with crime, criminality, deviance, corruption and so on. I sense that is the mood of the Government, and I would compliment the Government for doing that, but do not let these people off. The people who are involved in this are big people, not the little person out on the road. [*Interruption*] You see, some offences take longer than five years to be discovered, and that was one of the problems I had with the earlier provision. When it is discovered, I do not want to hear that five years have passed and we cannot look at it again. I do not want that at all. That is not good.

In section 34B it deals with good faith again, and I advise that the language "reasonable belief" be imported into that.

Clause 13 says:

"The records of the Commission and any information revealed by a witness or by the production of documents, shall not be disclosed other than to such extent as may be necessary…"

What gives rise to that provision? I really do not quite understand what gives rise to that provision. Maybe when the Attorney General is winding up— [*Interruption*]

Sen. Jeremie SC: Which clause are you on?

Sen. R. Cumberbatch: Clause 13, the provision that is being introduced. It says:

> "Section 35 of the Act is amended by repealing subsection (1) and substituting the following subsection:"

What was the genesis of this particular amendment? I do not know. Is it that the provision in the original Act was not working, or did something happen that caused the Government to feel constrained to bring this new provision? It says:

> "Section 35 of the Act is amended by repealing subsection (1) and substituting the following subsection:"

Is there any persuasive reason that operated in the Government's mind in bringing this provision? As I said, Mr. President, this Integrity in Public Life Act, our experience in Trinidad and Tobago with this legislation, which is Act No. 4 of 1976, was introduced.

6.00 p.m.

It remained on the statutes for a very long time, before the enabling legislation was brought. The functioning of the Integrity Commission has left a lot to be desired, in much the same way as the previous measure we debated, the functioning of the Securities and Exchange Commission, has left a lot to be desired. Now we are trying to strengthen the Integrity Commission legislation. It is a good thing.

It may well be that this amendment Bill should require a special majority. I would have to hear arguments from counsel on that, since I myself am not an attorney, but I am open to hearing arguments of that nature. My sense is that this is so fundamental and so important a part of our constitutional apparatus, that we may want to take a more bipartisan approach to this kind of matter. Indeed, bipartisanship is the way we should be going in legislation of this import, but we shall see what we shall see in the fullness of time.

Mr. President, nothing short of constitutional reform will bring any relief to this country in respect of matters of this nature. There is too incestuous a relationship between the Parliament and the Executive; very incestuous

relationship. There is too much of an over dominance, a predominance of the Executive in the Parliament. That is one of the reasons that have been put forward for suggestions for constitutional reform, with which I agree. I have no problem with it. My only problem with the suggestion that has been made to take out the Executive arm of the State from the Parliament, is the manner in which the President is going to be appointed.

Someone suggested January 24 would have something to do with it. I doubt it very much. Those problems will remain with us long after January 24 when other persons' problems would have been resolved.

I thank you, Mr. President. I thank hon. Senators for allowing me to make a very brief intervention in this matter. It may well be that I may not be with you all next week. [*Laughter*] I wish you all a very merry Christmas and a bright and prosperous New Year.

Sen. Dr. Jennifer Kernahan: Thank you, Mr. President, for the opportunity to contribute to the Bill before us, the Integrity in Public Life (Amdt.) Bill, 2009.

The issue of governance is resolved when the people of any country delegate power to public office holders to make laws and to exercise this power which the laws give them the authority to do. The people delegate this power to public authorities to spend public moneys. But this is not an unconditional handover of power. This handover of power to public authorities by the people is made on the condition that they weld this power based on certain principles.

What are the recognized principles in democratic countries that observe the norms of democratic governance? The recognized principles are openness, accountability, objectivity, leadership, integrity, honesty and selflessness. This is internationally recognized as the seven basic principles of governance and public life.

We are here to debate amendment to the Integrity in Public Life Act; of course, integrity is one of the basic principles in public life.

It is interesting to examine the amendments to this Act in the context of a quip by Groucho Marx. He was an artist, a philosopher in his own right, who is reputed to have said:

"I have principles. If you do not like them, I have others."

When we translate this philosophy to our situation here this afternoon, and we debate these nakedly subversive amendments to the Integrity Act of 2000, brought by this administration, we can say that the UNC has principles and you of the PNM

do not like them, so you have others. This is the story of the amendment today of the Integrity in Public Life Act this afternoon, the other unsavory principles displayed in the basic tenets of the amendments.

Mr. President, these amendments that are before us underscore also the basic hypocrisy of a Government which is signatory to three legally binding conventions against corruption, which is the 1996 Inter-American Convention Against Corruption; the 1997 OECD Convention on combatting bribery of foreign public officials in international business transtactions and the 1999 Council of Europe's Criminal Law Convention, which covers bribery of domestic and foreign public officials, private sector officials, judges and members of public assemblies.

Our position on this Bill this evening is that the essence of the legislation before us is that it would allow public officials to escape justice. We are saying that this is a backward step and it goes against the trend internationally of dealing more severely with bribery and corruption of public officials and also officials in the private enterprise.

Mr. President, one of the principles that we subscribe to on this side is that no one is above the law. Other Senators have made the point in previous contributions that given the innate weakness of the human condition, we need rebust integrity legislation. We also need a strong political will to implement that legislation.

Therefore, when we look at what is before us this afternoon, we understand that we judge this administration on the principles they violate, although they purport to support these principles. We judge them on what they actually do and what they have done with the legislation.

In order to look at that, I have been looking at what this legislation before us allows and what it disallows, so that would give us a very clear idea of the violation of the seven principles of public life that run right through the amendments to this Bill.

In clause 8 of this Bill, it says that:

> "…the Act is amended by inserting after subsection (3), the following subsections:
>
> ‘(4) The Commission may not make a request under subsection (1) or a requirement under subsection (2) where the sum involved is less than ten thousand dollars."

More importantly, in subsection (5) it says:

> "Where a declarant has filed the declaration required by this Act and—
>
> (a) the Commission has not requested from the declarant any information or explanation in accordance with subsection (1); or
>
> (b) the Commission has not made any request under subsection (2) and, a certificate of compliance has not been forwarded to him within 18 months after the day on which the declaration was filed, the declaration shall be deemed to have been fully made."

This amendment is saying that if a person has filed a declaration with the Integrity Commission and after 18 months the commission has not requested any information or or has not asked for any further explanation, that without actually receiving a certificate of compliance, the declaration would have been deemed to be fully made.

This is actually cutting the heart out of the intent of the certificate of compliance. A certificate of compliance is a serious document, because it says to you that your information has been received, that your documentation is actually with the Integrity Commission and that you have complied with the law.

In this amendment to the legislation, the law says that not having received any certificate of compliance you are deemed to have complied with the law. This leaves the door open to inequality of treatment, because somebody who has not filed and who has not heard from the Integrity Commission, has not received any certificate of compliance or any request for further information, after 18 months they are deemed to have complied. This is clearly illegal; it is wrong, because you are going to have a whole lot of people slipping through the net after 18 months, having been deemed to have complied. It leaves the door open to croneyism and a lot of corruption in the system, which the Integrity in Public Life Act is purported to prevent.

We are asking: What is the purpose of this amendment? This amendment clearly violates several of the seven principles of public life, which include accountability, openness and objectivity. All these principles are clearly violated with the introduction of this amendment, because there is no transparency here, there is no clarity here, there is no objectivity here, there is no equality here, when somebody could be deemed to have complied after 18 months, not having received a certificate of compliance.

A lot of wrongdoers and corrupt persons would clearly slip through this particular net and we will be unable to bring these people to justice because the law says that they would have complied, although they would not have.

This is one of the issues allowed by this Bill and clearly it is against the heart of the Bill, the essence of the Bill, the intent of the Bill.

When I look at clause 32(1) and we look at what is removed from the original Act, it removes the anonymity of the complainant. The whole tenet of this Bill rejects the principle of the protection of whistleblowers and it encourages the exposure of persons who would come forward with information that could lead to prosecution of wrongdoers.

In the jurisdiction of Australia, a Commonwealth country, this issue of anonymity is emphasized in the document, "Parliament of Australia, Department of Parliamentary Services, Information, analysis and advice for the Parliament, 14 February, 2005". It says here that the one key concern is that whistleblowers are subjected to reprisals and that it is important to provide protection. It says:

> "However, the following shields have been identified as providing the most effective protection for whistleblowers:
>
> - Anonymity;
> - immunity from legal action; and
> - protection against reprisals"

6.15 p.m.

They went on to argue that:

- "providing disclosure regimes which operate on the basis of anonymously provided information;
- excluding the identity of the whistleblowers as a subject of investigation and so forth."

Mr. President, section 32(1) says:

> "A member of the public who wishes to make a complaint that a person in public life or any person exercising a public function—
>
> (a) is in contravention of this Act;
>
> shall submit the complaint in writing to the Commission, duly sworn as a statutory declaration in the form specified…"

Section 33 says:

"33. (2) The Commission shall—

(a) notify a person against whom allegations of breach of this Act or allegations of an offence under the Prevention of Corruption Act have been made, of the fact of such allegations;

(b) notify a person against whom a complaint has been made that he is the subject of a complaint; and

(c) submit to the person referred to in paragraphs (a) and (b), details of the complaint or allegations together with copies of any supporting documents specified in section 32(2)."

So, Mr. President, these two sections do two things; they put the burden of evidence on the complainant, and several Senators have voiced their objections to this. Sen. Cumberbatch made the point and so did Sen. Seetahal SC that you cannot put the burden of providing evidence on the complainant if you are serious about integrity legislation because people who are involved in corrupt activities do not leave evidence lying around.

You have an integrity commission to do the investigation, find the evidence and based on information they might receive, do further investigations and find the proper evidence that will bring the full extent of the malfeasance to light.

Mr. President, if you are going to introduce these sections into the legislation that you are going to have lawyers or persons who want to give information go through all of these steps of statutory declarations and so forth and on top of that, you are going to allow all this information to go to the subject of the complaint, what you are going to do in effect is allow the alleged offender to have information that will help him to circumvent the whole process. Then he will know exactly what the evidence is against him even before he goes to court or faces any formal tribunal, exactly what the evidence is against him and will be able to take certain steps to protect himself and others who might be involved.

So these clauses in the Bill are counterproductive in terms of the lack of protection of the complainant, the lack of the exposure of evidence prematurely that the complainant might have been in possession of and the fact that you have to furnish all particulars and extensive particulars of the alleged breach, or act of corruption supported by documentary evidence and sworn statements. This is against any internationally accepted norm in terms of the way people deal with integrity in public life issues and we feel this weakens the Act.

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 winding up by the Attorney General.

Question put and agreed to.

INTEGRITY IN PUBLIC LIFE (AMDT.) BILL

Sen. Dr. J. Kernahan: Thank you, Mr. President. These sentiments are also expressed by other persons in our society and I would quote from an article in the *Trinidad & Tobago Express* on Thursday, May 07, 2009 and the headline is "Integrity amendment to intimidate whistle-blowers" It is written by Michael J. Williams and it says:

> "The amendment Sect 32(2)(b) will burden and intimidate complainants, by requiring them to 'swear to a statutory declaration…under threat of fine or imprisonment'…and 'to provide documentary evidence and sworn statements.'
>
> The Integrity Commission has the resources and powers to investigate allegations, and to compel banks to provide information and documentary evidence; but the amendment will require the complainant who has neither the resources nor the powers to investigate to bring the documented proof."

This is exactly the point I was making, that it weakens the legislation when you put the burden of proof on the complainant to provide documentary evidence and sworn statements and so forth.

The writer goes on to say:

> "Were I or anyone to make an allegation against a minister, the Integrity Commission need only to determine whether it is fact or fallacy. The sole purpose of identifying the complainant will be to permit retaliation."

This is a serious argument against this piece of legislation because it clearly permits retaliation against persons who complain against corruption in public life. It says:

> "Government's intent is solely to make the Integrity Commission more unworkable and to protect wrongdoers in public office."

He went on to say other things, but this is the point I was making and it is so clearly enunciated here by Mr. Michael Williams.

Mr. President, this sentiment was also expressed by Transparency International and they said pretty much the same thing. They criticized the provision in an article in the *Newsday* by Corey Connelly. That provision would mean that a complainant would be subject to undue pressure.

Mr. President, what does this Bill remove? When you look at clause 33, it removes the power of the Integrity Commission to act in the public's interest and all the issues that I raised in what this Bill allows the Integrity Commission to do and what it removes from the ambit and the authority of the Integrity Commission, all these issues serve only to weaken the Act and strengthen the ability of corrupt public officials to continue along the path of stealing from the public purse.

Mr. President, section 33(1) says:

"(a) …where it is necessary, on its own initiative, upon examination of a declaration furnished pursuant to section 11; or

(b) shall, upon the complaint of any member of the public made in accordance with section 32,

consider and examine any alleged breach of the Act or any allegations of an offence under the Prevention of Corruption Act."

The interpretation of this is that the Commission now has to depend on the declaration. The initiative of the Commission is taken away in terms of acting on its own and has to depend on a declaration furnished pursuant to section 11 which means that somebody has to bring information to the Commission. We are saying that this is an important weakness that is introduced into the Integrity in Public Life Act and it should be removed because the power of the Integrity Commission to act on its own volition and initiate action against any person in public life should remain.

Mr. President, section 33(2)(a), (b) and (c) continue along the vein of going against the principle of protecting persons who make complaints to the Commission and these subsections make provision for informing the purported offender of all the documentary evidence and the persons who have given evidence against him and so forth.

Section 34(1) is another section which is highly suspect because it allows the Commission to reject a complaint without investigation and we find that highly curious because we want to know on what basis, and what are the assumptions that are going to be made for the Commission to reject a complaint without investigation. It says in 34A. (1):

"Where, in the exercise of its functions under section 33, the Commission is satisfied that the complaint merits investigation, the Commission—

(a) shall within fourteen days authorize an investigating officer…"

Mr. President, as far as we are concerned, it is the function of the Commission to investigate and it is unintelligible that you can have a clause that says that the Commission would have to satisfy itself that the complaint merits investigation. How do you understand as a Commission you get a complaint, how can you come to a conclusion about a complaint unless it is investigated, or the facts are investigated and found to be true or false? How can a Commission just look at a document and decide that it does not merit investigation? It seems a very strange method of proceeding and to make that law that a quorum—and in this case a quorum can be about three persons—can just look at a complaint and decide that it does not merit investigation. On what basis and how do you determine that? So we are very much concerned with this particular clause because we feel it defies the principles of the seven principles of public life in terms of transparency, openness, objectivity and so forth. On what basis are you going to reject a complaint?

Then it goes on in section 34(6) to say that the Commission can terminate an investigation.

"34(6) Where during the course of an investigation, the Commission is satisfied that there are insufficient grounds for continuing the investigation or that the complaint is frivolous, vexatious or not made in good faith, it may terminate the investigation."

6.30 p.m.

That is very subjective. It gives the commission an out clause. The only logical way to proceed with an investigation is to carry it out to its logical conclusion. You go through the facts; do your investigations; interview the people you have to interview; look at the documents and at the end of a proper investigation, then you would have grounds for determining the veracity or lack thereof. You would make a conclusion based on that.

Giving the commission these powers to look at a complaint and decide that it does not merit investigation or to terminate abruptly an investigation, is an out clause. That is unnecessary. It weakens the legislation. It does not bring anything to strengthen and ensure robust investigation and pursuance of persons in public life who are corrupt.

Section 34C is another clause that is worrying to us. It states:

"All complaints submitted to the Commission prior to the coming into force of the Integrity in Public Life (Amendment) Act, 2009, in respect of which an investigation has not commenced, shall be resubmitted by the complainant in accordance with section 32."

We want to know the reason for this clause. It is counterproductive. If you are serious about pursuing people who are corrupt; are stealing from the public purse and involved in corrupt activity, why are you making it easy for them to escape by putting this clause, that matters before the Integrity Commission which have not been started would be rejected automatically. This can only be to the benefit of corrupt persons. It does not strengthen the Act. It does not make it harder for wrongdoers to continue with their actions. It makes it easier. We want to know the purpose of this particular clause.

Section 42A that is amended, clause 15 of this Bill says:

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

(a) good faith or on the basis of a reasonable belief, has—

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

It goes on to make other statements relative to that.

We are saying that this clause is disingenuous at best and hypocritical at worst. The Bill has removed protection of the whistleblower and provides for revealing the identity even before the start of the investigation. It exposes him to reprisal by the person against whom he has complained. Now in clause 15 of the Bill you are saying that in the case of the State or a public authority, a person should not be suspended, dismissed or demoted and so on.

How do we reconcile these two things? If you are going to expose a whistleblower, somebody who has made a complaint even before the investigation has started to the person against whom he has complained, by his name and everything he has said and the documentary evidence he has, how do you purport to protect him after that? This particular clause makes no sense because it would be unenforceable. Therefore, it has no place in the actual clause where you expose the whistleblower in this Bill before us, if you are serious about protecting persons from dismissal, harassment or denial of benefits and so on.

There is no way an employee can prove a link between any harassment or unfair treatment and what he has exposed to the commission of his boss or any other official. Clearly, the need for protection of persons is there. You need not to expose the identity of persons prematurely to the alleged perpetrators because this would lead to harassment and persecution.

These are some of the issues that are very worrying to us, in addition to the fact that the original Bill was passed by a three-fifths majority in Parliament. We are seeing where amendments to this Bill are being brought before the Senate and we are being told that it would be passed by a simple majority. We believe that this would be an illegal act. Any amendment should be passed by a three-fifths majority.

The importance of the Integrity in Public Life Act is seen now by all members and areas of the society. We have seen the horrendous developments in public life with respect to the spending of public money as revealed by the Uff Commission. We feel that this Government, if anything, should come to the Senate to strengthen anti-corruption legislation and not weaken it. We feel that this is a self-serving move by this Government, a government that has had a history of subscribing to the principle of self-preservation at all costs. This is the basis for the weakening of anti-corruption legislation whereby wrongdoers would escape the several loopholes that have been created in the Integrity in Public Life Act by these amendments before us.

The loopholes have to do with exposing information and the whistleblowers prematurely; intimidation of persons who would like to come forward and expose corruption. This is not the road to 2020. This is a backward step. We object strongly. As a government you have to walk the talk not just talk about transparency. As far as we are concerned, this Bill before us violates all seven principles of public life that this Government purports to espouse and uphold.

Bill A. Niskanen, a noted writer has said that elected politicians and appointed bureaucrats are motivated by self-interest, utility maximizers, motivated by such factors as salary, perquisites of the office, public education, power, patronage and the ease of managing the bureaucracy.

Apparently, this is the principle upon which this Government operates, self-interest, motivated by salary, perquisites and so on. The principles of public life as openness, transparency, leadership, objectivity and so on, clearly, do not shine through or are not manifested in this Bill before us. We see other principles which Sen. Mark spoke about as self-interested utility maximizers.

Any member of our national community looking at the amendments to this Bill would agree with this argument. We agree with a noted jurist who said:

> The moral or ethical environment is the surrounding climate of ideas about how to live. It determines what we find acceptable or unacceptable, admirable or contemptible.

This moral and ethical environment in which we live today tells us that many issues and developments that have come into the public domain by commission of enquiry, indicate that the moral and ethical environment is unacceptable. We find that the amendments to the Bill before us are not admirable but contemptible. Therefore, we rejected totally, the amendments to the Integrity in Public Life Act. We reject the underpinnings of the morality and ethics that are displayed in the amendments to the Integrity in Public Life Act. We are saying, categorically, that these amendments must be passed by a three-fifths majority, if the Government is serious about its purported regard for law and order and putting the national interest above that of its party and members of this society who have an interest in weakening integrity in public life legislation. If you dare, try to pass this with a three-fifths majority, you would see what the moral and ethical environment in this country is about.

Thank you.

The Attorney General (Sen. The Hon. John Jeremie SC): Mr. President, relatively speaking, the Bill before us is a short one. It comprises 17 clauses and a schedule but it has excited a great deal of debate in the Senate. Over the period May 12 to May 19, no fewer than all the Opposition Senators and I believe most on the Independent Bench would have contributed to the debate. The Government has heard many of the compelling arguments made, especially by my friends on the Independent Bench.

I propose on the next occasion to move some amendments to the legislation. [*Interruption*] I am not withdrawing the Bill. There is protection in the Bill. Why would they want me to withdraw the Bill? The Government repeats its commitment to transparent governance and the highest standard of integrity in public life. We repeat our commitment to the principle that those who hold the public purse must adhere to the highest principles of integrity.

I intend to speak on the next occasion to the constitutional issue, that is the three-fifths requirement which I heard this afternoon and I have seen in *Hansard*. I was not here when this Bill was first introduced. I intend to speak to the constitutional issue; the contributions of my colleagues on the Independent Bench

and the very relevant contribution by Sen. Cumberbatch on the Opposition Bench. I followed his contribution very closely and there were some very compelling arguments which were made.

With those words, I am not concluding my winding up this afternoon. I would like to pause to continue on the next occasion.

Thank you.

6.45 p.m.

ADJOURNMENT

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Before moving the Motion for the Adjournment, we had indicated, by notice, that we would meet on December 21, 2009, to discuss the Property Tax Bill and the Valuation of Land (Amdt.) Bill. I propose that we do not meet on that day for a number of reasons, especially after consultation with the Opposition and some members of the Independent Bench. I propose that we meet on December 29, 2009.

This is the only occasion we will have before the Christmas season and, therefore, I take this opportunity, on behalf of all of us on this side, to say that we are extremely pleased with the work we have done so far. It has been challenging, but we live in a very challenging time. We have not been perfect, but that is one of the realities of living.

We wish, therefore, on this occasion, to all family and friends and those you hold dear, a very safe, happy, holy, prosperous season; for us to reflect during this period on what is possible; to deal with all that is good; and to extend to those who are not as fortunate as we are the hand of friendship and caring and a commitment to help them with a better quality of life.

We say these things very seriously because, notwithstanding our external demeanour, that is why we are here. Again, on behalf of our team, the Government and all of us, I wish my colleagues a very happy, holy and prosperous season.

With those few words, I beg to move that the Senate do now adjourn to Tuesday, December 29, 2009 at 10.00 a.m. On that occasion, we would deal with the Property Tax Bill and the Valuation of Land (Amdt.) Bill.

I wish to indicate that these are required to be passed by December 31, 2009 and I hope that I get the support of my colleagues in doing that. This is the season for asking; therefore I do so now in the hope that we would be able to conclude these matters.

Christmas Greetings

Sen. Wade Mark: Mr. President, I know this is also the season of giving and I would hope that the Attorney General, in this season of goodwill and peace to all men, would find it absolutely necessary to withdraw this obnoxious piece of legislation so that we can all join with him and this honourable Senate in extending to him and his family a very warm and joyous season.

Mr. President, I join my colleagues and the Leader of Government Business in extending to you and your family warmest Christmas greetings.

I extend to all the hard-working members of staff of this Parliament; our officers who are providing 24-hour protection—the new Parliament Police Unit—and all colleagues on the Independent and Opposition Benches and the other Bench—which will not be for long; we are going to hold elections shortly; I challenge them to do it, but I know they are not going to do it. I wish them and their respective families warmest Season's Greetings. I hope that the rays of the sun, which will rise every morning, will continue to penetrate in a positive way all corners of darkness.

On behalf of my colleagues, I extend to you and your family the best of the season and the best of the year 2010. I know that we will be back here on December 29, 2009. It has been a good season; we have had our challenges, but I believe that in 2010, although we will talk about that later, I hope that the Government will focus on critical social legislation to help the working people and the poor in our land, especially as we approach this season of goodwill.

On behalf of the Opposition Bench, I join my hon. colleagues in wishing all of us and our families the best for the season and a joyous, holy and happy Christmas.

Sen. Prof. Ramesh Deosaran: Mr. President, dear colleagues, one of the things Christmas does for us is to help remind us of our common humanity and to celebrate the gifts the Almighty has bestowed upon us.

Last week, when I went abroad, I saw a news item where several hospitals in North America, given the imminent winter season, were opening depression units. This was primarily for the elderly for whom the rate of death usually increased during the Christmas season; many, through feelings of depression, even though there were so many around them celebrating the joyousness and gifts of Christmas. It means, therefore, that happiness is relative to what is happening to those around us. This is a very dramatic example concerning the elderly.

In this country, if this is a reminder to us, it would redouble our efforts and enhance our spirits to appreciate the things we have in this country. We do have many of the good things in life, some of which we have worked for and some of which we have not really worked for. All the same, we enjoy them and should appreciate those things which are bestowed upon us.

We have had a pretty robust session this year and Sen. Mark himself has been an active participant in the robustness. It was a season of give and take and we have had some sterling performances by some Ministers opposite to Sen. Mark and his colleagues. I wish that on January 24, 2009, that the best man or woman may win.

On behalf of my colleagues, a very hard working and conscientious group, I extend to you, Sir, and your family, first of all, for the diligence and vigilance you have exercised over us; some more than others, but deservingly so; and my colleagues on the Government Benches. We all know the challenges you have; the constructive arguments we bring forward. I really believe that; not out of spite, but out of a passion for the country we all love.

I have always said that the Opposition Bench is perpetually and constitutionally at a disadvantage, but they have several times tried to rise above those disadvantages and contributed to the welfare of the country and so do my colleagues on the Independent Bench.

All in all, I wish everybody and the rest of the country a Merry Christmas and a Happy New Year.

Mr. President: Hon. Senators, on behalf of my family and me, I wish each and every one of you the very best for the Christmas season. I extend greetings to the staff of the Parliament and the security forces.

We have had a long and very interesting year and I have to say that there are a number of things that I have learned about this country. As we approach the Christmas season, I leave you with this thought. We are extremely lucky to live in a country like Trinidad and Tobago. A few weeks ago, we hosted the leaders of some 53 countries of the world and there was an exhibition at the National Academy of the Performing Arts (NAPA).

Hon. Senators, I do not mind saying to you publicly that there were several times during that display that tears came to my eyes. It made me so happy and proud to be a citizen of Trinidad and Tobago.

Even though we approach the Christian holidays, we are lucky that we have other religions in our society that have a tremendous influence over the country as great as the Christian religion does. One of the happy things that we enjoy in this country is that, for the most part, they all teach the same values of humanity. We must look around, not very far away, at those countries that are divided, even within their own religions, by warfare, murder and mayhem. We are fortunate in this little country, notwithstanding the difficulties we encounter as a developing nation, that we all belong to a religious grouping that preaches moderation, faith, openness, honesty, trust and the very best of humanity. We can say that of all the religions in this country. We should be proud to be a part of that.

For those of us who are Christians, as we approach the Christmas season, we must remember that there are those for whom the country holds no particular religious significance. Still, as the Christian celebrates Eid and Divali, the values are respected. Therefore, we must extend our greetings of love to all citizens; not only the Christians, but also the Muslims and Hindus; the Jews as well—there are some who are here—and whatever other religion to which people belong.

It has been a long and dangerous year. There have been those of us who have lost members of our family to whom we have been close. There are those of us who have gained new members of our family in one way or the other—children, grandchildren or whatever. We must remember all of these things, these souls lost and the new souls that come among us and, as we contemplate our duties over the next year, we must bear in mind the responsibilities that we have to the generation behind us.

As we approach the Christmas season, hon. Senators, I ask you to pray for God's forgiveness; pray for your country; pray for your families; pray for your friends and for the rest of the persons in the country whom you do not know. Pray for those who have little; pray for those with a great deal.

With those words, hon. Senators, the question is that this Senate do now adjourn to Tuesday, December 29, 2009.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 7.01 p.m.