

Leave of Absence

Tuesday, March 09, 2010

SENATE

Tuesday, March 09, 2010

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. Hazel Manning, who is out of the country and to Sen. Annette Nicholson-Alfred, who is ill.

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

NOW, THEREFORE, I, 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 9th March, 2010 and continuing during the absence from Trinidad and Tobago of the said Senator Hazel Ann Marie Manning.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 5th day of March, 2010.”

Senators' Appointment
[MR. PRESIDENT]

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“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: MRS. PARVATEE ANMOLSINGH-MAHABIR

WHEREAS Senator Annette Alfred is incapable of performing her duties as a Senator by reason of illness:

NOW, THEREFORE, I, GEORGE MAXWELL RICHARDS, President as aforesaid, in exercise of the power vested in me by section 40(2)(c) and section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, PARVATEE ANMOLSINGH-MAHABIR, to be temporarily a member of the Senate, with immediate effect and continuing during the period of illness of the said Senator Annette Alfred.

Given under my Hand and the Seal of the
President of the Republic of Trinidad
and Tobago at the Office of the
President, St. Ann's, this 9th day of
March, 2010.”

OATH OF ALLEGIANCE

Senators Foster Cummings and Parvatee Anmolsingh-Mahabir took and subscribed the Oath of Allegiance as required by law.

SESSIONAL SELECT COMMITTEES

Mr. President: Hon. Senators, with respect to the Sessional Select Committees of the Senate for the Third Session of the Ninth Parliament, I wish to advise that in accordance with Standing Order 64(2), I have made the following appointments:

House Committee: Dr. Surujrattan Rambachan, in lieu of Dr. Jennifer Jones-Kernahan;

Committee of Privileges: Dr. Surujrattan Rambachan, in lieu of Dr. Adesh Nanan; and

Statutory Instruments Committee: Mrs. Lyndira Oudit, in lieu of Mr. Mohammed Faisal Rahman.

ORAL ANSWERS TO QUESTIONS
Crude Oil and Natural Gas
(Details of Pricing)

21. Sen. Prof. Ramesh Deosaran on behalf of Sen. Basharat Ali asked the hon. Minister of Finance:

Could the Minister advise the Senate on the following:

- (a) In accordance with section 13(3) of the Heritage and Stabilisation Fund Act, what is the eleven-year moving average price for crude oil and natural gas used for estimating petroleum revenues in the financial year October 2009 to September 2010; and
- (b) What is the estimated production and petroleum revenues for crude oil and natural gas as the aggregate of supplemental petroleum tax, petroleum profits tax and royalties for the financial year October 2009 to September 2010?

The Minister of Trade and Industry and Minister in the Ministry of Finance (Sen. The Hon. Mariano Browne): Mr. President, I regret to advise that I am not in a position to answer this question today. This question is ready, but not yet approved. We expect to be in a position to answer it next week.

Question, by leave, deferred.

Revenues for Oil and Natural Gas
(Details of)

22. Sen. Prof. Ramesh Deosaran on behalf of Sen. Basharat Ali asked the hon. Minister of Finance:

Could the Minister advise the Senate on the following:

- (a) What was the estimated production and petroleum revenues for oil and natural gas for the quarter October to December, 2009;
- (b) With respect to (a), what was the actual production and petroleum revenues collected for that period;
- (c) With reference to (b) whether the actual revenues exceed the estimates for that period by more than 10 per cent; and
- (d) Whether the excess revenue has been or will be transferred to the Heritage and Stabilisation Fund (HSF)?

The Minister of Trade and Industry and Minister in the Ministry of Finance (Sen. The Hon. Mariano Browne): Mr. President, the answer to part (a) is as follows: The estimated production levels for crude oil and natural gas for the quarter October to December 2009, were 8.85 million barrels of crude oil and 368.1 billion cubic feet of natural gas. Estimated petroleum revenues for the same period were TT \$3.02 billion.

With respect to part (b) of the question, based on the information available, actual production levels for the quarter October to December 2009, were 8.6 million barrels of crude oil and 360 million cubic feet of natural gas. Actual petroleum revenues collected were \$3 billion. The product numbers are confirmed when companies finalize their accounts.

With respect to part (c), the actual revenue did not exceed the estimated revenue for the period October to December 2009.

With respect to part (d), as a consequence of the foregoing, there is no excess revenue to be deposited to the Heritage and Stabilisation Fund for the first quarter of the financial year 2009/2010.

I wish to indicate that the petroleum revenues as defined in the Heritage and Stabilisation Fund legislation is not simply determined on the basis of production and prices. Before the tax liabilities of companies are determined, operating expenses and capital allowances are deducted. Whilst the overall plans of the companies are taken into consideration when the revenue estimates are being prepared, there can be incongruence between the timing assumed for activities and the actual time in which the companies may execute them.

There is one additional factor which can influence actual revenue. The October/December period is also the final quarter of the tax year for companies and it is not unusual for companies to make adjustment to the revenue paid, consistent with its estimated tax commitments for the entire year.

Thank you, Mr. President.

**Licensing Division
(Arrangement to Computerize Records)**

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

Could the Minister inform this Senate:

- A. Whether the Government of Trinidad and Tobago has entered into a government-to-government arrangement with the Canadian Province of Nova Scotia to computerize the records of the Licensing Division?

- B. (i) If the answer to (A) is in the affirmative, would the Minister state the cost of such arrangement to the Government; and
- (ii) When would this exercise be completed?
- C. What steps have been taken to secure the integrity of the records of the Licensing Division during this exercise?

The Minister of Works and Transport (Hon. Colm Imbert): Mr. President, unfortunately this answer is not ready. I signed off on it this morning, so I would ask for a deferral of two weeks and I am reasonably confident I would be able to answer it in two weeks' time.

Question, by leave, deferred.

Illegal Immigrants (Uncontrolled Influx)

31. Sen. Wade Mark asked the hon. Minister of National Security:

Could the Minister inform this Senate:

- A. What steps are being taken by his Ministry to address the question of the uncontrolled influx of illegal immigrants into Trinidad and Tobago from countries within the Caribbean region and African States; and
- B. The number of immigrants arrested, detained and/or deported and the countries of origin during the last five years?

The Minister of National Security (Sen. The Hon. Martin Joseph): Mr. President, in response to (A), while the records at the Immigration Division indicate a growing trend in the number of illegal immigrants detained in the country, the Ministry of National Security does not view the present situation as an uncontrollable influx. In fact, the Ministry of National Security, having noted this trend, has implemented several initiatives aimed at reducing incidents of illegal migration in the country. Among the key initiatives is the restructuring and strengthening of the Immigration Division's Investigation Unit, provision of enhanced training programmes for immigration officers and strengthening the country's border management system. Currently, the investigations unit is comprised of nine officers, three of whom are immigration officers and six police officers from the Criminal Investigations Department (CID).

At present, there is no dedicated investigations unit in Tobago and the Immigration Officer III in charge of passports and permanent residents spearheads all investigations relating to illegal immigrants. However, it is proposed with the

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new recruitment drive by the division, that the investigation arm of the Immigration Division be substantially increased. The proposal includes the establishment of an enforcement unit, which will comprise an investigations unit, an intelligence unit, a documents lab and the recently established detention centre. The investigations unit will comprise a staff of 47 officers: one Immigration Officer IV; three Immigration Officers III; 40 Immigration Officers II; and three Immigration Officers I. The office in Tobago will also have a dedicated investigations unit. These proposals are currently being pursued, but are dependent on the availability of suitable human resource to fill the positions.

In addition, the training of immigration officers has been strengthened in order to better equip officers to deal with illegal immigrants. Additional training to which officers have been exposed includes general legal principles, statutory interpretation and application, constitutional provisions and the admission of evidence, which includes statutory declarations, affidavits, taking of statements and judges' rule as to how to treat with evidence. Other areas of training include procedures for arrest, laying charges, preparation of cases for court, procedures for special enquiry and the judicial review process.

On March 06, 2010, immigration officers began participation in a practical training programme on court and process procedures at the Hugh Wooding Law School and at the Police Training Academy. This is in an effort to ensure that immigration officers are more efficient at applying the provisions of the law and are more aligned with international standards of law enforcement and the judicial and legal process.

Apart from strengthening the investigative capacity of the Immigration Division, the Ministry of National Security has taken steps to tighten its border control management, by strengthening the Maritime fleet of the coast guard. Recently, the Trinidad and Tobago Coast Guard acquired six fast patrol craft. It is also expected to take delivery of the first of their offshore patrol vessels by the end of July this year.

1.45 p.m.

In the interim, two vessels were acquired by the coast guard to bolster its fleet while the OPVs are under construction. The acquisition of these vessels will substantially enhance the capability of the coast guard to better patrol our coastal waters, and thus restrict the entry of illegal immigrants into the country.

The number of illegal immigrants arrested and detained for being in the country illegally over the last five years and their countries of origin are as follows: Angola, 1; Antigua, 2; Albania, 1; Barbados, 3; Benin, 1; Belgium, 1; Bermuda, 1; Brazil, 4; British Virgin Islands, 1; Canada, 3; Cameroon, 4; China, 189; Colombia, 742; Cuba, 2; Denmark, 1; Dominica, 7; Dominican Republic, 109; Ecuador, 1; Ethiopia, 2; France, 1; Germany, 2; Gambia, 3; Ghana, 50; Grenada, 26; Guyana, 1211; Guatemala, 1; Haiti, 7; India, 18; Indonesia, 2; Iran, 4; Ivory Coast, 3; Jamaica, 116; Liberia, 2; Malaysia, 1; Mali, 1; Mexico, 2; New Guinea, 1; Nigeria, 57; Pakistan, 2; Peru, 3; Philippines, 24; Poland, 1; Puerto Rico, 1; Romania, 2; Senegal, 4; Sierra Leone, 1; St. Kitts, 1; St. Lucia, 7; Sri Lanka, 12; Somalia, 2; South Africa, 1; St. Vincent, 36; Switzerland, 2; Syria, 8; Suriname, 49; Ukraine, 1; Uruguay, 1; United States of America, 13; United Kingdom, 9; Venezuela, 176; Vietnam, 52 and Zimbabwe, 1.

Of the total of 2,992 arrested and detained, 2,742 were deported while the remaining 250 were awaiting deportation to their respective countries as at December 31, 2009.

I thank you.

Sen. Oudit: Mr. President, through you, I would just like clarification from the answer given by the Minister. The Minister said the border management system currently has nine officers and six police officers. He later indicated that the border management system has been increased by six fast patrol craft and two coast guard vessels. Are you are saying that there are eight vessels for 15 officers in total? Did I read you wrongly?

Sen. The Hon. M. Joseph: You certainly heard me wrong. I said currently the Investigation Unit of the Immigration Division comprises nine officers.

Sen. Dr. Rambachan: Mr. President, thank you. Mr. Minister, in relation to part A. of the question, could you indicate whether you have taken any steps to examine security firms, especially in Central Trinidad, that have a number of foreigners working amongst their workers?

Sen. The Hon. M. Joseph: That is clearly another question, and if it is posed in the manner that it should be, I would certainly answer it.

Sen. Mark: May I ask the hon. Minister, given the various initiatives outlined in his statement, could he tell us what impact or effect this is having on the influx of illegal immigrants to date?

Sen. The Hon. M. Joseph: Mr. President, again, that is clearly another question and if it is posed, I would be in a position to so answer.

Reconstruction of Agricultural Access Roads

32. Sen. Wade Mark asked the hon. Minister of Agriculture, Land and Marine Resources:

With respect to the reconstruction of agricultural access roads, could the Minister indicate to the Senate:

- (a) the number of agricultural access roads reconstructed for the years 2008 and 2009; and
- (b) the number of agricultural access roads programmed for reconstruction in 2010?

The Minister of Agriculture, Land and Marine Resources (Sen. The Hon. Arnold Piggott): Mr. President, the answer to this question should be ready within two weeks. It is well progressed, and we should have an answer ready in two weeks' time.

Question, by leave, deferred.

Local Government Reform Exercise (Details of)

36. Sen. Wade Mark asked the hon. Minister of Local Government:

Could the Minister advise this Senate of the current status of the Government's local government reform exercise?

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Mr. President, I am in a position to answer this question. The Ministry of Local Government has been assiduously pursuing the implementation of the Local Government Reform Programme.

In keeping with Government's commitment to local government election being held later this year, the Local Government Bill, 2010, is currently being considered by Cabinet and will be laid in Parliament for debate and passage very soon.

Other critical elements of the Local Government Programme such as the revised local government boundaries; the reformed organizational structure for the Ministry of Local Government and Municipal Corporations are currently being finalized for Cabinet's consideration.

Finally, the Ministry of Local Government, through the project management board and an inter-ministerial team, is currently engaged in dialogue with the

recognized majority trade unions within the local government system on transition issues, especially those related to human resource development and industrial relations.

Sen. Mark: Mr. President, could the hon. Minister indicate whether it is the intention of the Government to have this local government legislation referred to a joint select committee of the Parliament when it is tabled later on as he has indicated? He said it will come, so I am just asking him to tell us whether it will be referred when it does arrive here, because it was here before, Sir.

Sen. The Hon. C. Enill: Mr. President, Sen. Mark knows that I am in no position to answer that question at this point in time. The way this normally occurs is when the legislation is, in fact, tabled, if there are issues that require us to go back, we will so do. So, I am not in a position, at this time, to determine what that outcome will be and, therefore I am not in a position to say.

Sen. Mark: Mr. President, may I ask the hon. Minister again, given the current status of the Government's local government reform exercise, whether he is aware that there is some kind of decision being effected shortly by the Government to have about 15,000 workers retrenched?

Mr. President: Senator, you know better than anybody that a supplemental question is to elucidate.

Sen. Oudit: In light of what the Minister said, they are dealing with recognized trade unions dealing with issues of the 15,000 citizens of this country. Are we saying here that we are not dealing with the citizens, but rather we are dealing with these matters through recognized trade unions?

Sen. The Hon. C. Enill: Mr. President, as far as I am aware, that is the only mechanism that is available for dealing with a large number of individuals who belong to trade unions.

**Cipriani Labour College
(Restructuring of)**

37. Sen. Wade Mark asked the hon. Minister of Science, Technology and Tertiary Education:

- A. Could the Minister state whether it is Government's intention to restructure the management of the Cipriani Labour College; and
- B. If the answer to (A) is in the affirmative would the Minister please advise this Senate of the Government's plan for such restructuring?

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Mr. President, I am also in a position to answer this question. The Government of Trinidad and Tobago has agreed that the Cipriani College of Labour and Cooperative Studies can benefit from the synergies resulting from an articulation of its management structures, processes and systems with that of the University of Trinidad and Tobago.

The Government of Trinidad and Tobago has requested that the leadership of the Cipriani College of Labour and Cooperative Studies and the leadership of the University of Trinidad and Tobago explore the possibilities and advise on the optimal solution and a viable pathway for achieving same.

Machine-Readable Passports (Details of)

38. Sen. Wade Mark asked the hon. Minister of National Security:

- (a) what is the current waiting period of appointment for persons wishing to apply for machine-readable passports; and
- (b) the deadline by which all citizens of the Republic of Trinidad and Tobago will be required to be in possession of machine readable passports, particularly when travelling to the USA?

The Minister of National Security (Sen. The Hon. Martin Joseph): Mr. President, thank you very much. Hon. Senators are advised that there are currently six offices at which interviews for machine-readable passports are conducted: Port of Spain, San Fernando, Chaguanas, Point Fortin, Sangre Grande and Tobago. The waiting period for appointments at these offices vary based on the capacity of the respective offices and the volume of requests for appointments received.

At present, the waiting period for persons seeking appointment dates range initially, from one to two years. However, these dates are usually adjusted upward as cancellations occur. The extent of these movements is therefore determined by the pattern of cancellations. Since March 13, 2009, there have been 101,853 persons whose appointment dates could have moved forward. Of that number, 95,556 opted to have them brought up. Those appointment dates which were not moved forward represented persons who declined to do so, such as those who are returning from abroad to renew their passports and who found it difficult to change their scheduled travel dates. There were also some persons who the appointed service provider, DirecOne, could not contact for varying reasons.

Additionally, there is, at present, an approximate 30 per cent no show by applicants with appointments at passport offices daily. In order to close this gap, the Immigration Division has requested that DirecOne increase the number of appointments granted per day by 15 per cent. This initiative should also result in a decreased waiting period.

Mr. President, the Immigration Division has been making tremendous inroads in the processing of machine-readable passports. The processing time has been reduced from 54 days to 21 days and is moving towards a 10-day time frame. This will further reduce the waiting period currently experienced.

With respect to the deadline for the issuance of machine-readable passports, Senators are advised that the International Civil Aviation Organization (ICAO), of which Trinidad and Tobago is a member, has set November 24, 2015 as the deadline date for citizens of member States to begin issuing machine-readable passports for the purpose of international travel. The ICAO requires that all contracting states begin issuing machine-readable passports no later than April 01, 2010. The Trinidad and Tobago Immigration Division began issuing machine-readable passports on January 27, 2007.

Moreover, it is important to note that until the ICAO's deadline date of November 24, 2015, citizens of Trinidad and Tobago can continue to travel to international destinations, including the United States of America, using valid non-machine-readable passports.

I thank you.

2.00 p.m.

Sen. Mark: I do not know if the hon. Minister is in a position to indicate or to tell us, what percentage of the population, at this moment, is in receipt of machine-readable passports, and if we would be able to meet the deadline of November 24, 2015, thereabout or before?

Sen. The Hon. M. Joseph: In response to the supplemental, at the latest there were about 60 per cent of the population with machine-readable passports and we anticipate that we certainly will ensure that every citizen who requires a machine-readable passport will be in possession of one before the deadline date.

Sen. Mark: May I also ask the hon. Minister if he can bring us up to speed, based on what you have said, on the number of passports still there, waiting to be collected, has as the number decreased—I think it was about 10,000 or thereabout—could you tell us what is the position?

Sen. The Hon. M. Joseph: The latest figure indicated that there were some 30,000 passports that were waiting to be collected. This was about two weeks ago. I do not have what the latest figure is, and it just says something about our citizens, but there are about 30,000 just waiting to be picked up.

Sen. Mark: One final question to the hon. Minister. Could you again tell us what steps your ministry and the Immigration Department, have been effecting to ensure that those passports reach their clientele?

Sen. The Hon. M. Joseph: Reminder, Mr. President, and we are going to be putting out a public notice sometime, again urging people to pick up their passports. What is amazing, it is not just the passport that is to be collected, it is all the supporting documents, birth certificates, et cetera. So it is posing, not just a security, but there is also a storage problem. We wish we could have done some other kinds of creative things like put their names in the newspapers and stuff, but unfortunately we cannot.

Green Fund (Details of)

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

Could the Minister inform the Senate of the number, names and costs of projects and/or programmes funded through the Green Fund from its inception up to December 31, 2009?

The Minister of Planning, Housing and the Environment (Sen. The Hon. Dr. Emily Dick-Forde): Thank you, Mr. President. No projects were funded through the Green Fund from its inception up to December 31, 2009. However, two activities were certified for funding by the Minister of Planning, Housing and the Environment on December 21, 2009. Details of the activities are as follows: The name of the organization, Fondes Amandes Community Reforestation Project, St. Ann's; the activity, Sustainable Community Forest Initiative, amount approved from the Green Fund, \$1,914,806. The second organization; the Greenlight Network, Maraval; the activity, Plastikeep; amount approved from the Green Fund, \$852,281; giving us a total of \$2,767,087. The first tranche of funds was credited to the bank account of recipients on February 08, 2010.

Sen. Mark: Mr. President, through you, could the hon. Minister indicate to this honourable Senate, what criteria were used by your ministry to grant these particular contributions to those two organizations that you have identified? What

was the process? Did people just apply to you or was it advertised that they could access through some media release, as the case may be? Could you help us?

Sen. The Hon. Dr. E. Dick-Forde: The Green Fund, as we all know, would have been established sometime, I think, in 1999 and over the period, between that time to 2008, this Government would have gone through a very detailed and elaborate process of establishing regulations for the disbursement of funds from this Green Fund. When I assumed as the Minister of Planning, Housing and the Environment, we had yet to establish to operationalize the Green Fund Execution Unit, which was part of the whole process for processing any applications to the Green Fund.

That unit was set up in September 2008, I recall, and since then we would have established another important aspect to the disbursement of funds from the Green Fund which is the Green Fund Advisory Committee. Because the regulations called for an executing unit, an advisory committee to advise the Minister who would then certify and then send to the Minister of Finance who would then make the disbursement.

So the process is as long as that, and any further details Sen. Mark wants, he would need then to file a separate question, if he wants even more details. But there is a set of regulations and they are clearly outlined. The Green Fund Unit was established—all of the information about the Green Fund has been put in the media and they go out very regularly to inform and assist communities to make their applications.

Sen. Mark: Mr. President, could I ask the hon. Minister one final question? Could the Minister indicate now that those two organizations have approached the Green Fund Advisory Committee for assistance, can we take it from what you have said, that it is now open to any organization that is involved in, let us say, greening up the environment or having a green environment, to put it that way? Would those organizations be now able to approach your ministry in order to access funding to do their environmental work as those two other organizations that accessed earlier?

Sen. The Hon. Dr. E. Dick-Forde: The Green Fund Executing Unit, as I said, was set up in September 2008 or thereabout. I do not have the exact date in my head. From that date applications have been coming in. I cannot tell you the exact number in my head, I do not recall, but from the last report it could be 20-plus or more. There have been problems with people actually qualifying so we

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are working on that, but people have been and continue to apply to the Green Fund. What we would probably have to do is get even more information out, if Sen. Mark, of all persons is not aware of the fact that it is open to the public.

Sen. Oudit: Mr. President, through you, could the Minister tell us what is the value of the Green Fund at present?

Sen. The Hon. Dr. E. Dick-Forde: At last count it was about \$1.9-plus billion.

Sen. Oudit: Billion?

Sen. The Hon. Dr. E. Dick-Forde: Yes.

**JOINT SELECT COMMITTEES
(Appointment)**

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Mr. President, I beg to move the following Motion:

Be it resolved that the Senate agree to the following appointments on the Joint Select Committee on the Securities Bill 2010: Mr. Mervyn Assam, in lieu of Dr. Sharon-Ann Gopaul-McNicol. On the Joint Select Committee appointed to enquire and report on Government Ministries Part I and all statutory authorities and state enterprises falling under these ministries: Dr. Surujrattan Rambachan, in lieu of Dr. Adesh Nanani. On the Joint Select Committee appointed to enquire and report on Government Ministries Part II and all statutory authorities and state enterprises falling under these ministries: Mrs. Lyndira Oudit and Ms. Verna St Rose Greaves, in lieu of Dr. Jennifer Kernahan and Mr. Mohammed Faisal Rahman. And on the Joint Select Committee appointed to enquire and report on Municipal Corporations and Service Commissions with the exception of the Judicial and Legal Service Commission: Mr. Mervyn Assam in lieu of Dr. Adesh Nanani.

Question proposed.

Question put and agreed to.

Resolved:

That the Senate agree to the following appointments on the Joint Select Committee on the Securities Bill 2010: Mr. Mervyn Assam, in lieu of Dr. Sharon-Ann Gopaul-McNicol. On the Joint Select Committee appointed to enquire and report on Government Ministries Part I and all statutory authorities and state enterprises falling under these ministries: Dr. Surujrattan

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Rambachan, in lieu of Dr. Adesh Nanan. On the Joint Select Committee appointed to enquire and report on Government Ministries Part II and all statutory authorities and state enterprises falling under these ministries: Mrs. Lyndira Oudit and Ms. Verna St Rose Greaves, in lieu of Dr. Jennifer Kernahan and Mr. Mohammed Faisal Rahman. And on the Joint Select Committee appointed to enquire and report on Municipal Corporations and Service Commissions with the exception of the Judicial and Legal Service Commission: Mr. Mervyn Assam in lieu of Dr. Adesh Nanan.

CIVIL AVIATION (AMDT.) BILL

Order for second reading read.

The Minister of Works and Transport (Hon. Colm Imbert): Thank you, Mr. President. I would ask hon. Senators to excuse me. I seem to have a bit of a sore throat, so I would try my best under the circumstances.

The Bill before the Senate is a simple Bill with five clauses. I do intend to circulate some amendments at the committee stage, but they would be circulated, I hope, for the benefit of hon. Senators, very shortly. I will move these amendments at the committee stage, but I am hoping they would be circulated now.

The purpose of the Bill and the amendments before the Senate is effectively twofold. The first substantive clause is clause 3, which reads as follows:

“Section 71 of the Act”—and that is the Civil Aviation Act—“is amended by inserting the words ‘radio licence fees’ after the words ‘corporation tax,’”

When the Civil Aviation Authority was created in 2001, the authority replaced what was then the Civil Aviation Division of the Ministry of Works and Transport. It was part of a process of reform. This was done by the former UNC government and the intention was to convert the Civil Aviation Division of the Ministry of Works and Transport to a new and independent authority with the aim of affording the new authority the flexibility it required to keep pace with the ever evolving landscape of civil aviation.

It was also necessary to regain the status of Category 1 at the Piarco International Airport. Some of you may recall that Trinidad and Tobago was downgraded to a Category 2 status, sometime in the 1990s and in order to recover or regain the Category 1 status of Piarco International Airport, part of the necessary reform was the establishment of this Civil Aviation Authority. The transformation from a mainstream division of a ministry into an authority took several years and it was completed in 2003.

Civil Aviation (Amdt.) Bill
[HON. C. IMBERT]

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2.15 p.m.

So if hon. Senators look at the history of this matter, you would see three pieces of legislation. In the year 2000, the Trinidad and Tobago Civil Aviation Authority Act was enacted, and then the following year, in the year 2001, the Civil Aviation Act, No. 11 of 2001 was enacted, and section 72 of that Act—by the way, you would not find it in your red volume if you are looking there. It is not there. I was looking for it myself, and I was told sections that replace legislation are for some reason not published in the red volumes. So you have to actually go into the records of the Parliament and you would see that section 72 of the Civil Aviation Authority Act, 2001, repealed the Civil Aviation Authority Act, 2000. So you had the first piece of legislation in 2000 creating the Trinidad and Tobago Civil Aviation Authority, that was repealed in 2001 and replaced by the Civil Aviation Authority through the Civil Aviation Act, 2001.

In 2003—and those were both done by the former UNC government—the incoming PNM government, as I said, completed the transformation by making a number of necessary changes to the law to make it more efficient. However, at the time, if you look very closely at section 71 of the Act, you would see that the authority is exempt from payment of a number of taxes, duties, charges and so on. In fact, if I could read it for you, section 71 of the current legislation reads as follows:

"The Authority is hereby exempt from all taxes...including value added tax, corporation tax...customs and excise duties."

It was felt at the time that that would capture most of the charges that would have been imposed on the new Civil Aviation Authority, but what was left out from that clause was the exemption from the payment of radio licence fees. At the present time, the authority pays approximately \$3 million per year in radio licence fees and there is a reason for this. The authority is responsible for air navigation services in an area of 750,000 square miles and that stretches halfway across the Atlantic Ocean as high as Antigua, and it is known as the Piarco Flight Information Region. In order to manage air navigation in an area of that size, the authority has operated a wide range of navigation and telecommunications equipment, and equipment such as the instrument landing system for Piarco and Crown Point Airports operate using radio waves and the authority also has satellite links with all the countries in South America that operate air navigation services for the transmission of data such as flight plans and radar information.

If I can give an example of what a flight plan is. A pilot will file a plan with an airport when he departs and when he lands, and that flight plan will indicate the intended destination, the altitude that the aircraft would be flying at the directions, the duration of the flight, et cetera. This information is communicated to Piarco using satellite links among other forms of communication. The authority will also receive radar data from Guadeloupe, Martinique, and other areas. But the authority is now required to pay radio licence fees for all of its telecommunication and all of the equipment that it operates, and the fees are based on bandwidth. For those of you who know about telecommunication, these satellite links use a very wide band and this has resulted in a cost of \$3 million annually, in the payment of radio licence fees.

Now, when this authority was set up, efforts were made to make it consistent with the requirements of the international body known as the International Civil Aviation Organization, and it was agreed that all countries should exempt their authorities from the payment of radio licence fees, as well as duties and taxes. It must have been an oversight at the time. So since it is one pocket to the other pocket, it is felt that it is best to exempt the authority and release it from this burden. So that is the first substantive amendment which is contained in clause 3, amending section 71 to include radio licence fees as a fee or charge that the authority will be exempt from.

The next amendment is an amendment to give the Minister the power to amend the schedules in the Act. If you look at the schedules in the Act, you would see that the schedules cover a number of things, but some of the things they cover are—for example in the Fourth Schedule—protected installations, and this would give the longitude and the latitude of various installations and a lot of technical data. From time to time, it will be necessary to amend the schedules, and it was felt it is really not convenient if you want to change the latitude or longitude of installation or some other technical term. It is really a waste of parliamentary time in my view, to have to come to Parliament and debate this by affirmative resolution and take it through all its stages in both Houses of Parliament.

In fact, those of you who have been here for some time would have seen very comprehensive regulations laid almost on a six monthly basis. I mean this thick [*Minister displayed thickness*] Air Navigation Regulations and so on, and if we had to debate these things, you could imagine. It is a requirement of the international protocol that the Civil Aviation Authority, if it wants to maintain its status, and particularly, the status of Piarco Category 1, that is constantly updating all of its regulations and all of its information on a six monthly basis. So that is

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the reason we are putting this amendment that "the Minister may, by Order, amend the Schedules".

We have deleted in clause 5, paragraph 2(2) from the First Schedule. Now again, I am not sure of the reason for this clause. I am really not sure why it was put in when this law was passed, but I shall read it for you.

"2(2) No Member of the Board, other than the Director General, shall hold office for more than two consecutive terms."

So what this effectively did, it limited the term of office of members of the board of the Civil Aviation Authority to six years. I think each term is not exceeding three years, and that is not found in any legislation in Trinidad and Tobago that I am aware of. You put term limits on a board that is essentially performing a technical function. I have heard a lot of arguments that politicians should have term limits. *[Interruption]* I said I have heard arguments, not that I agree not—*[Interruption]* What is that? Independent Senators should have term limits? "It is not me say that. Is he say that." *[Minister pointed at Sen. the Hon. Jeremie SC]* I am a guest here. But I have heard talks about it with respect to political figures, but I really cannot see the relevance with respect to persons who—Mr. President, I would have to ask you for protection. The Attorney General is harassing me. He said Wade Mark should have a term limit. But anyway all jokes aside.

Sen. Browne: Almost did.

Hon. C. Imbert: The fact is that in a small society like Trinidad and Tobago, there is really no rationale for limiting the service of citizens who agree to serve on a board such as the Civil Aviation Authority Board to six years. I have asked the current board to give me an account of their stewardship and this is what they told me.

The board was appointed in February 2004, and it was mandated to accomplish a number of goals including the achievement or restoration to Trinidad and Tobago of FAA's Category 1 status in the shortest possible time; the modernization of air navigation systems, self-sufficiency in the Civil Aviation Authority Financial Operations; and to provide and sustain a work environment that facilitates optimum performance of the employees.

Now, one of the things that I am aware that the board went at immediately after it was appointed, was to do whatever was necessary to regain Category 1 status, and after a lot of hard work—and I had some involvement, I was appointed Minister in May 2005. So I was coming in at the tail end of it. It was my predecessor, Mr. Khan, who really initiated this process. But I came in at the tail end and in August 2005, the United States Federal Aviation Administration announced that the

Trinidad and Tobago Aviation Safety System met the highest international safety standards, and the country's safety rating was raised to Category 1. So within a year and a half approximately of being appointed, the board was able to restore Trinidad and Tobago to Category 1 status with the FAA, and that was in my view, a tremendous achievement in that short space of time.

The board has also worked diligently on upgrading air navigation equipment. For example, they have replaced virtually all of the navigational aids in Trinidad and Tobago with modern state-of-the-art equipment including high frequency single sideband communication system, an aeronautical fixed telecommunication network, a non-directional beacon, distance measuring equipment, a Doppler very high frequency omni-directional range, and a Piarco instrument landing system and so on and so on; that is in Trinidad. And Tobago they have also installed a non-directional beacon, distance measuring equipment, a glide slope and so on.

The authority has also published internationally, satellite GPS approach charts for Piarco and Crown Point International Airports. In terms of communication, they have purchased an ultramodern—do not ask me what this is—CNS ATM system, including a primary and secondary radar system for use at its new area control centre which is under construction. Some of you who have gone up to Piarco, if you look you will see the new tower that is nearing completion at Piarco. This is a very tall tower which will replace the existing tower, and it is state-of-the-art.

The new area control system was used during the Commonwealth Heads Meeting and the authority is continuing to install the ATM equipment and so on, and it is also currently sharing radar data with the French Antilles, Barbados and Antigua. In fact, data from the French Antilles has been available at Piarco since April 2009, data from Barbados is expected to come in within the next couple of months, and Antigua from the end of this month, and they are also pursuing arrangements to obtain radar information from Puerto Rico and St. Croix.

The authority is regional in its scope, so it has assisted Barbados. It has provided equipment to Barbados for its en route services. It has linkages with a number of international bodies: ICAO, FKA Transport Canada, Civil Aviation Authority of Singapore, et cetera. It has also almost completed the construction of a new administrative office which is expected to be completed in the next couple of months, as well as this new control centre that I spoke about, and the control tower. There are also plans for Crown Point. New radar equipment will be installed at Crown Point within the next couple of months which will greatly enhance their capability. A new training centre for civil aviation is under

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construction and will be completed by June of this year. That is the estimated date, and when completed, the authority will be able to offer broad base aviation training up to tertiary level in civil aviation at this facility.

2.30 p.m.

It is currently an approved FAA external testing centre and has been registered with the Accreditation Council of Trinidad and Tobago. It is going through the procedures with City University of London to offer Masters Degree programmes in air safety management, aircraft maintenance management and air transport management. It is also engaged in inspection of aircraft, that is one of its primary functions, and it commenced certification of Caribbean Airlines in 2006, as that airline was going to replace BWIA, and completed the certification in 2006. It also has assisted Caribbean Airlines in obtaining licences and permits to operate in the United States, within Caricom and Canada, among many other things.

It is in the final stages of certifying Briko Air Services as an aviation training organization, to provide fixed wing commercial pilot training and, most importantly, the CAA has, more or less, become financially self-sufficient. That is the reason for the amendment. I do not know if it has been circulated. I will explain.

The amendment seeks to add a clause which would give the authority the power to form a company, essentially, and also another clause to validate the actions of the authority in the formation of a company. I will give you some background on that.

In 1950, the International Civil Aviation Organization appointed Trinidad and Tobago as the custodian of the air space that I described, identified as the Piarco Flight Information Region. Prior to 2004, between 1950 and 2004, IACL, a private company owned by the airlines operating in the Caribbean, was granted a contract by the Government to set the charges and to collect fees due for navigational services. Apparently the initial contract was for a period of three years, way back in 1958, and I am told, that although at the expiration of the original contract in 1961 no new contract was awarded, IACL continued to operate and continued to collect fees from airlines and disbursed them at its discretion, without reference to the Government.

In 2003, the authority commenced negotiation with this company regarding the continuation of its responsibility to set the rates and collect fees from airlines traversing the Piarco flight information region.

At a meeting in 2004, IACL was asked to provide its financial statements for the preceding five years for scrutiny by the Civil Aviation Authority, they refused. They said that IACL was a private company and was not obliged to disclose its finances to anyone, other than its directors.

Understand what this company was doing: Aircraft would be flying through the Piarco flight information region, an area halfway across the Atlantic and from Trinidad all the way up to Antigua, and fees were charged for these overflight or en route services. This private company was collecting fees and doing whatever it wanted with this money. But the air navigation services were being provided by this Government, so that the navigation equipment was provided, installed and operated by the Trinidad and Tobago Government, but this private company was collecting fees for the services.

The negotiation did not go well, because IACL was refusing to open up its books and, obviously, it was necessary to find out how much money they were collecting so you could go forward with a new agreement. The bottom line was that IACL pulled out. They indicated that they were no longer interested in continuing their relationship with the Government. As a result of this, the Civil Aviation Authority assumed full responsibility for the Piarco flight information region and, with the approval of Cabinet, formed a Special Purpose Company called Caribbean Air Navigation Advisory Services, CANAS for short, to perform the services that were being performed by this private company, such as negotiating rates for aircraft transiting Piarco.

I want to stress again, the operation of the Piarco FIR is the responsibility of the Government and not any company.

The authority continued along this way. In April 2005, it commenced negotiations with the International Air Transport Association (IATA), that represents the airlines, for new rates for aircraft transiting the flight information region.

The negotiations continued and it was agreed that the fees would be set based on the guidelines in the ICAO manual. Simply put, fees should be fixed on a cost recovery basis. So eventually, in September 2005, IATA, the International Air Transport Association, and the TTCAA, the authority, agreed to a new system for charges for aircraft transiting the Piarco flight information region.

Essentially, this has allowed the Civil Aviation Authority to generate sufficient revenue to operate, maintain and upgrade air navigation throughout the Eastern Caribbean. As I indicated, over the last several years, the authority has

been able to do quite a bit in terms of upgrading equipment; I read out the things it was able to do. All of that has been done by the Civil Aviation Authority as a result of the operation of this company.

Regrettably, however, it appears that the formation of the company was ultra vires the legislation, and that is why it was necessary to come here and give the authority the power to form such a company and also validate its action.

I need to give some history, because I am almost at the end of my presentation. If you go into the previous legislation and take a look at what was there, the 2000 legislation, you would see in section 6 the following words:

- “6.(1) The Authority has the power to do all things necessary and convenient to be done for, or in connection with, the performance of its functions specified in section 5.
- (2) Without limiting the generality of subsection (1), the Authority may—
 - (a) with the approval of the Minister, take up and subscribe for or otherwise acquire shares in any company or form or participate in the formation of a company provided that such subscription or acquisition is not in relation to a company regulated by the Authority under this Act;
 - (b) with the approval of the Minister, enter into a partnership or an arrangement for the sharing of profits;”

That was in Act No. 33 of 2000 passed in this Parliament.

Strangely, when the 2001 Bill was being presented, which was intended to repeal and replace the 2000 Act, that section was deleted. I have gone into the records and it seems that at the time, when the matter came to the Senate, some Independent Senators queried the reason for that clause. I do not think proper explanations were given. I have looked at the *Hansard*. It was Prof. Ramchand and, I think, Sen. Outridge as well who queried it, and looking at the records, I do not think the person who piloted the legislation was able to satisfactorily answer the questions. Who was it? I think it was Sadiq Baksh. There was no resistance given and they just deleted the section.

It appears that, acting under a misapprehension or misunderstanding, the board proceeded, with Cabinet approval, to form this company to collect these fees from airlines and use it to run the authority and install and upgrade equipment in Trinidad and Tobago and the Caribbean, for the last five years, but it has been deemed to be ultra vires the Act.

If you look at the amendment which is going to be moved, we are putting back, more or less, the same words that were in the 2000 Act, almost word for word, and we are asking the Parliament to validate the actions taken by the Civil Aviation Authority in the formation of this company.

Mr. President, with those few words I beg to move.

Question proposed.

Sen. Dr. Surujrattan Rambachan: Mr. President, let me begin by thanking the Political Leader of my party, hon. Kamla Persad-Bissessar, for reposing her confidence in me and my team to present the alternative position and to debate vigorously what comes before this honourable Senate. Let me also thank you, Mr. President, for the warm welcome that you gave to us when we were sworn in last week.

I wish to assure this honourable Senate and the national community that we are not here to oppose for opposition sake. We understand very much the role we have to play in nation building; we understand that we are here to promote the interest, welfare and well-being of the citizens of this country, but we are also well aware of our obligation and responsibility to ensure that the rights of citizens are not trampled upon, and that where legislation is brought before this Parliament that attempts to do that, we will stand vigorously and debate such legislation and make sure citizens' rights are protected, and the interest of this country and democracy are served as well.

I just heard from the hon. Minister that for approximately five years, a company called CANAS was operating illegally in this country. This speaks about the quality of governance and the quality of attention which the Government has been paying to important details, where, by the Minister's own admission, millions of dollars may have been collected and disbursed, but may not have come under the scrutiny of the Parliament, as it should have.

In fact, I was trying to find out when last the Civil Aviation Authority presented accounts to the Parliament. In the Parliament library I discovered that the last time this Parliament received a report from the Auditor General of the Republic of Trinidad and Tobago with respect to the Civil Aviation Authority, was for the year September 30, 2003, and this was only received by the Senate on May 09, 2006, which showed that the accounts of this authority are, at least, three years behind in this instance. One wonders whether, in fact, any accounts have been presented to the Auditor General or whether the Auditor General is ready with accounts for the period up to, at least, the end of 2008.

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Therefore, it is when such disrespect is shown to this Parliament by authorities like the Civil Aviation Authority and the responsible line Minister, that we have to be very careful what kinds of powers we give to the Minister, especially where the Minister is asking, for example, to have the power to amend the Schedules by order and where he is asking for an indefinite extension of two terms for members of the board of the particular Civil Aviation Authority.

In that regard, the proposed amendments appear, at first glance, to be very simple, and some may even consider them innocuous, as the Minister has sought to do here this afternoon. That is, unless you begin to go back in history and look at the pattern of behaviour and examine what the Minister is asking, against the background of how the PNM does business and how this current Government does its business.

In particular, I must make reference to the implications for good governance—which seem to be part of the daily diet of the language of the Government—for transparency, and, above all, for the rights of citizens through their representatives in Parliament and through this Senate, to exercise oversight.

2.45 p.m.

Mr. President, you will see that in asking, for example, for an extension of life of the members of the board for a period beyond two terms as the Act now specifies, there are inherent dangers in acceding to this request.

If this Government was one that could be trusted, it would have been easy to agree to some of what they have been asking, but we are seeing situations in this country unravelling and revealing themselves over the last couple of weeks and particularly in the last week which speak about the credibility and trustworthiness of this Government whose credibility has been diminishing.

How can you give power to a Minister to amend the schedule by order when he comes here and does not apologize but states that we made a mistake, we overlooked this and for five years a company called CANAS operated, which was incorporated in 2005 in which the very members of the board of CANAS are also members of the Board of the Civil Aviation Authority? This in itself has its inherent dangers.

In the report for 2008/2009 of the Trinidad and Tobago Civil Aviation Authority it states in a paragraph on the last page, almost hidden:

"Caribbean Air Navigation and Advisory Services (CANAS) is a fully owned subsidiary, was registered in January 2005 and became operational on February 1st, 2005."

It goes on to say:

"The responsibility of CANAS is to set the rate for en route charges in the Piarco flight information region, collect the revenue by billing the users directly or through IATA and reimburse all the providers of services and equipment in the provision of en route services."

This company has been collecting and disbursing money, but it is ultra vires the Act. The funds realized through CANAS are therefore to be used throughout the Eastern Caribbean including the French Antilles.

Mr. President, we have seen how this Government treats with power—I am tempted to say how it abuses power—whether it is a \$2 million flag that should have cost no less than a quarter million dollars; or a blimp that did not work; or Eye in the Sky that lost its eyes; or spending \$115 million to bring a cruise ship or two cruise ships for the Summit of the Americas and CHOGM; why surgeries cannot go on in hospitals for a lack of basic surgical supplies as reported recently and people cannot get water. Has this Government been using power in the interest of the people? And you come today to ask us to extend indefinitely the life of a board and give you more power.

Mr. President, recently the Government had to face a bill of \$35 million because it was lackadaisical in attending to matters with respect to a company in the highway development project. We read recently of nearly \$100 million being spent on this Red House and now we hear the Government may not go on with this project. How is money being spent in this country? Now you come and tell me that CANAS for five years has been collecting and disbursing revenue without having the authority to do so.

Mr. President, had this Government invested in priorities of the people and not expensive billion dollar summits, we would have had money to build schools, an area hospital in Chaguanas, fix Magistrates' Courts and fund some of the NGOs that need the funding to do some of the social programmes that the Government has proven incapable of doing. Today you come to ask us for an indefinite extension to the life of the board of the CAA. This is a most dangerous request, especially when you combine that with the fact that the Minister is asking to have the schedules amended by order.

Mr. President, it is one thing to give power in law to the Ministers and the Government, but sometimes they use the very law and the powers given to them to work against you. So one has to be very careful. In another hat that I wore as Mayor of the Borough of Chaguanas, in the Local Government Act, the

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corporations are allowed to use unutilized funds in order to support causes of elderly people and children. Although we had funds there, the Minister refused to allow us to use the funds.

The situation in this country tells me that I would find it very difficult to agree to the extension of the request that is being asked here. This is about governance and we have this debacle and spectacle before our own eyes and the international community about the situation at UDeCott—a glaring example of untrustworthiness and diminishing credibility of the Government.

Mr. President, allow me to refer to a *Newsday* article of Friday, March 05, 2010 written by columnist Andre Bagoos where he said:

"In Parliament on October 22, Manning dismissed allegations of family ties against Hart which had been lodged in the Uff Inquiry by Mrs. Hart's ex-husband Carl Khan. Khan had deposed, in three sworn statutory declarations, that Mrs. Hart was the sister of Lee Hup Ming and Ng Chin Poh..."

Sen. Rogers: Mr. President, on a point of order, Standing Order No. 35(1), relevance.

Mr. President: Senator, it is not usually the practice for a Senator in his maiden speech to be interrupted and I did not wish to do so, but you have been stretching the bounds of relevance. I understand the point you are trying to make, I will ask you to make it short and return to the point you are trying to make.

Sen. Dr. S. Rambachan: Thank you, Mr. President, I will be so guided. But you will agree with me, Sir, that this is a situation where we are talking about governance in the country and the Government has come here to ask us to grant them an almost indefinite extension and we have seen where power has been abused in a certain situation which has just come into the public glare. We have seen where, in fact, attempts were made to stop the report of the Commission of Enquiry from being presented.

Mr. President, if the Minister has a "tabanca" for power, we are not going to allow him to satisfy that "tabanca" at our expense. We are obligated, we are duty-bound to say no to extending the life of public sector boards like—

Mr. President: Senator, again, with all due respect, to refer to the Minister as having a "tabanca". Really, we do not need to say those things about a Member of Parliament. Again, I do apologize for interrupting you, you are doing fine but, you know—

Sen. Dr. S. Rambachan: Thank you, Mr. President, I apologize and I withdraw that statement. But the interest of the public must be protected against power maniacs.

And we are not only prepared to say two terms must stay, but as a UNC government, we are prepared to pioneer and support constitutional change which says that no Prime Minister in this country must be given more than two terms as Prime Minister; we are prepared to go so far in the interest of this country.

Mr. President, the Minister said that he was not aware of any other Act in which members of the board other than the managing director should hold office for more than two consecutive terms. Act No. 24 2005 assented to on September 13, 2009 to establish the Trinidad and Tobago Housing Development Corporation says:

"(2) No member of the Board, other than the Managing Director, shall hold office for more than two consecutive terms."

So why do you want to change this one and you are saying you are not aware of that one?

Mr. President, there is a danger in my view, in leaving boards forever, in that given human frailty, boards and members of boards can often cover their wrongdoing and if we as a society, if we as lawmakers value transparency in governance, value integrity, have some level of ethical consciousness, then we must not support this request.

The ethical consciousness of the Government seems to be in its infancy, negating the will of this population to trust it with more power. Where is the ethical conscience of the Government that allows it to spend for example, \$74 million to support a losing CNMG TV station while 250,000 citizens live below the poverty line in this country? You are asking for more power for the boards by way of extension of its life and as well the ability to amend the schedules by order to do what? Fulfil your political ambitions?

Will you give more power, Mr. President, to a Government whose Prime Minister has admitted that there is corruption in his Government when he cited the case of the Housing Development Corporation last week? Will you give more power to a Government which has been presiding over millions of dollars of cost overruns and now where members of that board continue to hold office and do not want to adhere to the principle of collective responsibility?

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Mr. President, this is the same Government that now comes to the Parliament and asks to extend the life of the board of the authority beyond two terms. I ask the question, why? The Minister referred to the company CANAS. I am told—I am subject to correction—it is a cash rich company that receives approximately \$15 million every month. In 2008, the total income of the CAA according to its annual report was \$156,185,867 of which management fees received from CANAS amounted to \$115,200,000.

Mr. President, that is a lot of money that could be used for a lot of things and from my understanding it is a cash rich company that we were just told operated for five years ultra vires, spent money and continues to do so and we have an amendment that has come before us a couple minutes ago in which we are being asked to validate this company after all of this. Further, we have been asked in one of the amendments which says:

“Notwithstanding any rule of law—

- (a) the incorporation of the Caribbean Air Navigation and Advisory Services Limited by the Authority;
- (b) all decisions and actions of Caribbean Air Navigation and Advisory Services Limited; and
- (c) all actions of the Board or any member thereof done pursuant to the Act between the period 4 February, 2005 and the date of commencement of this Act,

are deemed to have been lawfully and validly done and no legal proceedings or other action of any kind shall be entertained in respect of or in consequence of the actions.”

This Senate is being asked to do that. We do not know, we have not been privy as to what went on, what kinds of decisions were taken, what kinds of things were done.

3.00 p.m.

Mr. President, it will interest the Senate to know, according to a cash flow projection of CANAS for the period February 2010 to September 2010, that CANAS is controlling \$466,525,423 in investment; they are spending that kind of money—half a billion dollars being spent by CANAS ultra vires—and they are coming to ask us to validate this.

Has CANAS done anything that will cause writs to be brought against it, similar to what we are reading about with Petrotrin in terms of a \$12 billion writ that has been filed in the United States? You are asking us to validate that in this Senate today. That cannot be.

I would like the Minister to tell this honourable Chamber what CANAS does with its funds. *[Interruption]* We want to hear again. We want to know whether it was permitted to do so under its terms of incorporation. Now that we know that CANAS is invalid and ultra vires, has it been allowed to do a lot of things? Tell us about it; give us a complete accounting.

I just said that they control \$466,525,423 in terms of projects that are going on. I want to know if that is true. Is that really happening? Why is a company that you said was purportedly set up to collect revenue now paying out money for development projects, which should be the responsibility of the CAA? Even if you say CANAS is a wholly-owned subsidiary, if you say CANAS is not doing it, is it because you want to avoid oversight of some kind? Is it that you do not want to come to Parliament for approval? What are you doing that is preventing all of this? I am told that CAA has not borrowed any money for its development work. That is because CANAS is cash rich. We have a right to know as a country how the revenues are being used.

This Government can one day come to this Parliament and use its majority to do certain things, like it has done in the past, like making certain companies exempt from the Freedom of Information Act, so that we will be denied any opportunity to know what has happened. You have asked me to validate something of the past and then go to the population and explain that? The population would not want me or any Senator on my side to do that kind of validation.

I talked about the accounts of CAA and I said that the last accounts I found in the library are for September 30, 2003. Is it possible, I am just thinking—

Hon. Imbert: I thank the Senator for giving way. During the debate, you made a statement about the accounts, the Director General has sent me documents to demonstrate that the Civil Aviation Authority has submitted its annual report and financial statement to the Auditor General—I have the letter; I can send you copies—for the years September 30, 2007; September 30, 2008 and September 30, 2009. They are completely up-to-date in terms of their accounting to the Auditor General.

Sen. Dr. S. Rambachan: Thank you, Mr. Minister. It would be interesting to know when that was done. Why is it not before the Parliament as yet?

As I was saying, is it possible, given what the Government has done here with CANAS—I cannot understand a government for five years forgetting it did not incorporate a company! I cannot imagine that!

Is it possible that one day we would hear that CANAS has also invested in a private jet since it is required to do business throughout the Caribbean? Would we hear also that the jet has down time and would be used by Government Ministers and the Prime Minister to jet around the world? Is the ghost of the bombardier still with us? Why does the Minister want the two terms to be extended indefinitely? Why does he want the schedules amended by order?

Although they say they are cash rich, in addition to that money that is collected through CANAS, the Government gave a subvention to the CAA in 2008 of \$38,274,840. In 2009, they got a subvention of \$38,125,000; and in 2010, the estimates reveal a subvention of \$47,700,000. It is here in your estimates.

If they are so cash rich, why depend on Government's subventions? What are the arguments the Minister is making for the extension? Do you want to reply through the President, Mr. Minister?

Hon. Imbert: I thank the Senator for giving way. He is very generous. We are not asking for an extension of anything. All the law says is that people cannot hold office for more than two terms. The term of office has expired. Nobody wants to extend their term. We want to appoint a new board and have the capability to appoint all or some of the existing members or none.

Sen. Dr. S. Rambachan: If I understand the Bill and what you are asking for in this Bill, you are asking, in clause 5, to amend the First Schedule by removing the restriction relating to tenure of office. Why should two terms exist?

You said some things I want to talk about. You may argue—maybe I missed it—that it is a specialized area and it is difficult to get people to fill those positions. You may argue that there is a shortage of qualified people in this country. I would argue: Where are they going and why are they not staying in this country? You may argue that people are afraid of integrity laws and they are not coming forward to serve. Is that why we are not getting an integrity commission in place? Maybe we are deliberately stifling the idea of an integrity commission. Or does the Minister and the Government want to have politically like-minded

people who will carry out their instructions without question? Is this an attempt at a kind of political patronage where party hacks will be appointed despite their inability to perform in the role? Is this a way to reward, in perpetuity, political favours? Why can you not find people?

The First Schedule of the Bill gives an idea of the kind of people required. It says here:

“The President shall appoint the members of the Board...as follows:

- (a) six suitably qualified persons with proven experience in the fields of civil aviation, law, financial management, economics or human resource management;
- (b) a nominee of the Tobago House of Assembly;
- (c) a nominee of the Environmental Management Authority; and
- (d) the Director General.”

You are telling me that in this country you cannot get good lawyers to serve. You cannot get people experienced in financial management to serve and you want to set up an International Financial Centre and now you are saying you cannot get people. You cannot get people qualified in economics and in human resource management. By saying that, you are putting a slap in the face of some of the best training institutions in the country including the Lok Jack School of Business and the University of the West Indies. What are you saying? Are you saying that these institutions all these years are not producing people who can serve the country in this way?

Mr. President, what is happening? Is it a different reason? Is it that everyone is now abandoning the sinking ship of the PNM and waiting to board a new luxury liner and not staining themselves by going on to that sinking ship? What is happening to our tertiary trained people?

The Organization for Economic Cooperation and Development, in a report, way back in 2005 had begun to send a signal in which they said that over 75 per cent of university graduates from Trinidad and Tobago are studying and living abroad contributing to a brain drain that threatens the country's long-term development. Why are our young people running from Trinidad and Tobago; people we have trained here; people we have spent millions of dollars to train; why are they leaving the country? Because they are unhappy with the way this country is being run and they do not want to stay in this country.

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The *CIA Fact Book* also shows that there is a net migration rate out of Trinidad and Tobago overall of 7.28 persons per thousand compared to .31 persons per thousand in Barbados. Our people are leaving us. This is not good for us.

If in the future we are going to compete in a knowledge-driven world and we are losing our knowledgeable people, then our ability to remain competitive in the global world will be seriously threatened. We cannot afford that. If the Government even argues that the future is the future of the young and the educated and they are spending these billions of dollars in educating people—which is a good thing—why are people still running away from these shores? Why are our young doctors leaving? Why do we have this exodus?

The fact that you have to extend the life of this board seems to suggest you are not finding alternative talent. Is it that you do not want to find alternative talent? Is it that you want to use CANAS funds as you wish and you feel that you now have a supportive board? The members of the board should say whether they asked for the extension or whether it is coming from the Government.

There is another danger when we seek to have boards remain for a very long time, even in private sector organizations. The danger is groupthink. Groupthink often results in defective decision making. What is groupthink?

According to a definition by one of the experts, Irving Janis:

“It is a mode of thinking that people engage in when they are deeply involved in a cohesive in-group; when the members’ strivings for unanimity override their motivation to realistically appraise alternative courses of action.”

We must guard, in this small society of ours, against groupthink because there are some results that are dangerous for societies like ours, especially at the level of government where public funds are involved.

Among groupthink, you have incomplete survey of alternatives; you have an incomplete survey of objectives; you have a failure to examine risks of preferred choice; you have a failure to reevaluate previously rejected alternatives; you have poor information search. Why? Because of its cohesive in-group behaviour. You have selection bias in collecting information and you have a failure to work out contingency plans.

I say here to all my colleagues that the collective wisdom and courage of this Senate is an important balance in stopping a runaway government from using its majority to inflict laws that are inconsistent with the rights and freedoms of

citizens and which would not protect the public purse. This Senate has a responsibility to act to ensure that the power sought by Ministers, and which powers can be abused, that decisions involving major expenditure and changes in the law that empower Ministers are always subject to parliamentary and by extension public scrutiny.

When you examine the length of time it takes to bring state organizations before parliamentary committees, then the wrongdoings are long gone and the remedies are meaningless. Let us make prevention better than cure.

This Government has a reputation for even breaking the law and trying to correct it otherwise. How can we explain that the Prime Minister of this country removed his number plates and placed a silver version of the country's insignia? Why are they asking us to forego \$3 million in the case of the Civil Aviation Authority? If you say it was the nationally accepted thing, then fine.

3.15 p.m.

Suddenly \$3 million has become unimportant, no money, no problem and small money. How about big money? In the same way you are coming here to ask us to give up \$3 million, how about big money? Would you be prepared to come before this Parliament and allow the intelligent Senators of this Parliament, everyone here in whom the public reposes a very great deal of confidence, to debate what is going on with Caribbean Airlines and Air Jamaica? Would you do that? Would the Government allow the Parliament to debate such a move?

Nobody gives up anything for nothing; nobody. It has to be costing us something, with respect to the Air Jamaica/Caribbean Airlines negotiations. I know only one man who probably benefited from an airline deal and that was a guy called Acker, with respect to BWIA. I do not think the Prime Minister of Jamaica, his people and the Jamaican Government are going to treat us like we treated Acker. Then, we have to ask a question: Has frugality with the objective of savings and investing in socially-desirable areas ever been a real concern of the PNM Government? This is a Government that willy-nilly invests overnight.

Mr. President, you will be surprised to know the kind of things and how this Government invests money. You should read a report done on the HDC last year. It shows what is happening.

At the Piarco Airport, hundreds of millions of dollars were spent over the last 18 months. You are asking us to make a \$3 million decision. Are you willing to also come with the big financial ticket items here before the Parliament and have

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them debated? We must know those details and we must seek to know those details. This is a Government that has come to ask us to validate that matter and to do other things.

Section 15 of the parent Act of the Civil Aviation Authority states:

“(1) On the coming into force of this Act, the Board shall prepare for the approval of the Minister, a three-year corporate plan...in respect of the programmes or goals of the Authority.

(2) The Plan shall include details of the following:

- (a) the Authority’s operational environment;
- (b) the strategies of the Authority;
- (c) performance measures of the Authority;
- (d) review of performance against previous Plans;
- (e) analysis of risk factors likely to affect aviation safety in the aviation industry; and
- (f) human resource strategies and industrial relations strategies.”

In that regard, how has the CAA been treating its own employees? Why it is, if you are so good, like the Minister said and you are so ideal and such a good example, you have to keep an injunction in place for two years now against people who are working in the authority? Why are you doing that? Why are you governing, by using an injunction against these people? What kind of industrial relations practice is that? What kind of human resource environment are you setting up? You are talking about air traffic controllers whose work involves the savings of lives, when you set up a situation of industrial conflict and when you frustrate people like that, are you threatening the safety of people in the air?

Mr. President, I ask the question: Why is that happening? Why is it that matters involving the air traffic controllers have not been solved? As I look at this debate and I think about it, I really wonder why the Minister really wants this extension. I really have to keep asking that. Why does he want this extension? What is so important to him? He has not really, in my view, answered why he wants this extension. I am still at a loss to understand his motivation as to why he has done this.

We are talking about the Civil Aviation Authority and what have you. Permit me to express our condolences to the family of the Trinidadian Gregory McAlpin, Director of Flight Safety in the Caribbean Aviation Authority, who lost his life in

Haiti and to say thank God that our own Ramesh Lutchmedial, Director of Civil Aviation, came back safely to our shores, into the arms of his family and all of us.

I have to ask a question and it is an important question—our people go on assignments all over the world—what kind of protection is given to them by way of insurance, should they lose their lives in a situation like Haiti? In our country, every morning policemen and policewomen leave their families and they come out to protect and serve our lives. You will be shocked at the pittance that they get for that. I think that it is time that, as a country and a government, we do something to ensure if we want people to contribute, by way of their lives, to the defence of this country, we must do better in securing their families with much more than they seem to get now.

Speaking of disasters, God forbid and I hope it never happens, if an earthquake was to damage our single airport here in Trinidad and Tobago and we were to face a situation like Haiti, where it took as long for aircraft to come in. I would have thought that by now, the relevant Minister would have given consideration to looking at Camden in Central Trinidad and make sure that we have an alternative place where we can at least land cargo aircraft like the situation that happened in Haiti or Chile or, what have you.

With these few words, I want to thank you for giving me the opportunity to contribute this afternoon to this Bill and to say what an enjoyable experience it is being back here in the Senate for a second time.

Thank you, Mr. President.

Mr. President: Hon. Senators, I would like to ask you to join with me to congratulate the new Member on his maiden speech.

Sen. Dana Seetahal SC: Thank you very much, Mr. President. The Bill as circulated in this Senate comprises five clauses, of which three are really not in the original. On the face of it, one would say the original Bill is almost trivial. However, the amendments that have been circulated by the hon. Minister of Works and Transport come to us, if I may say so, through you, Mr. President, like a thief in the night. It is almost as if we are in the process of debating by ambush. How could we reasonably be expected to have studied the implications of these three clauses now put forward by the Minister, to make any useful contribution? I would come back to that.

What still is the original Bill, deals with the inclusion of radio licences after “co-operations” in section 71. It deals with the power to be given to the Minister

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to amend the schedules and it deals with amending the schedule to delete paragraph 2(2) in the First Schedule.

In general, however, because of the provisions of the original or parent Act, there is not much disturbance of the purpose of the law, or the essential law. For example, section 11 of the Civil Aviation Act, the parent Act, speaks to a board appointed by the President. Section 11 speaks to the board conducting its proceedings in accordance with the schedule. It speaks to the appointment of suitably qualified persons and it speaks to the appointment of a Director General.

The schedules really only deal with matters such as the conduct of proceedings by the board, the modus of appointment of the board, the offices in the public service affected and the real and personal property to be vested, apart from the protected installations. Therefore, giving the Minister power to amend the Schedule does not substantially change the law. Similarly, in my view, giving or deleting the provision which demands that persons other than the director, serve no more than two consecutive terms, does not really change the essence of the law. I have no objection, in principle, to any of those—original—proposed amendments. I think they really, probably clean up, for the purposes of the Aviation Board, the legislation, to allow the Minister easily to make amendments to facilitate the process and procedure of the appointment as you go along.

When we talk about three new sections that are to be included, they are a new section 7, a new section 9 and a section 79, I have serious problems with those. I would say at the outset, that I do not support the amendments proposed here in the Senate, which are now circulated. I do not support them, firstly because we have not, any of us on this side, had any time to study the implications of those clauses. We know little about CANAS. I do not know. My colleagues in the Opposition Bench may have had time to run off to the *Hansard* and look up the meaning or type it in Google and find out a little bit. I know very little. While the Minister has made certain statements as to how it operated and whether or not there was an intended amendment to the Act in 2001, to exclude certain clauses, I do not know any of that. I do not know from my own knowledge why there was this exclusion as the Minister says and if in fact it was so. I have no doubt, if he gets up in the Parliament and says so, I am to assume that is true, but what really motivated the previous Minister of Works and Transport, two Ministers ago, in agreeing to not include those sections that are now proposed?

The first new amendment that I take real exception to is this, it is proposed to include in section 7, which deals with the specific powers of the authority, the powers of the authority as listed in section 7 and they deal with matters pertaining

to civil aviation, as one would expect, because it is a Civil Aviation Act. But, here is what it is proposed to include, it is an amendment circulated. It has not reared its head in the original Bill, so we do not have an Explanatory Note, but the Minister touched on it and all the amendments. Here is the proposed amendment, that we will now include:

“with the approval of the Minister”—the authority may—“take up and subscribe or otherwise acquire shares in any company or firm, or participate in the formation of a company provided that such subscription or acquisition is not in relation to a company regulated by the Authority under this Act;”

The problem with that amendment is that it allows the authority to subscribe and acquire shares in any company, other than one regulated by this authority, which is very few. What limits are there on the authority, if it chooses to do? What business does the authority have of subscribing, let us say, in shares in a public company or a private company for that matter? In other words, this (d) does not restrict the business of the authority to civil aviation matters or matters connected. The authority can engage in all kinds of businesses. It can get into real estate, for example. It can get into the entertainment industry. It can do a lot of things and I do not know that there can be any reasonable intention for the authority to do that. If it does, it is outside the ambit of this Civil Aviation Act, because that Act is intended to make provision for the establishment of the authority and for the regulation of civil aviation activities, as well as the implementation of certain international conventions, presumably connected to civil aviation. That is in the long title to the Act.

3.30 p.m.

So, we are talking now about giving the authority the power to subscribe or acquire shares in any company or firm, once it is not connected or regulated by the authority and this means most companies in Trinidad and Tobago. It is ludicrous, in my view, to give this power to the Civil Aviation Authority.

If it is intended to give them power to engage in business or form companies or subscribe to companies connected to civil aviation, why not say so? If it is intended to give them wider powers, then say what, but limit the power of the authority to subscribe and acquire shares in companies otherwise they would be going outside of their mandate.

The other power that the Minister is now seeking to give the authority is the power to enter into partnership arrangements or an arrangement for the sharing of profits. Again, there is no limit to the power of the authority. The authority can,

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therefore, engage in any kind of partnership arrangement, and one cannot read into—Mr. President, “any” means “any”. You cannot read into it any kind of limit unless it says so.

If one looks at the other powers at 7(a), it talks about engaging in any activity that promotes and develops civil aviation. If one looks at 7(b), it talks about entering into contracts for the supply of goods, et cetera, that are necessary to discharge the functions under this Act and so on, but when you are talking about these new proposals there are no limits.

Hon. Imbert: I thank the Senator for giving way. The amendments before the Senate, as I said, are more or less identical to what was contained in the Trinidad and Tobago Civil Aviation Act, 2000, which was passed in both the House of Representatives and the Senate. In fact, it was assented to in the Senate in May, 2000. So what we sought to do is merely to reproduce what was there before. I am listening to what you are saying, and I would have absolutely no difficulty in circumscribing the operation of this clause to make it relevant to civil aviation. Perhaps that is something we can look at during the course of the debate. I would also discuss with the Leader in the Senate, in terms of how we conclude this debate and to see if we can accommodate the concerns that you have raised.

Sen. D. Seetahal SC: Thank you very much. I appreciate what the Minister said, and I hope that in the interest of good governance in general—I do not mean within the Government only—that we can do this soon.

If I may just continue, in relation to 9(1) where it is proposed by the Minister in his new proposed amendments, that section 9(1) be amended to include the words “or any other person” after “Authority” in the second place. What this would mean is, what we are now about to say, if we agree, that the authority may from time to time either generally or particularly delegate to the Director General or an employee of the authority, or any other person any of its functions. Is this desirable? The authority could delegate therefore, to me, any of its powers. That is what it means and that is the plain language of the legislation. There is nothing saying any qualified person or suitably qualified person or anything of that kind. It is very wide, and if it was not in the original legislation it means there is a reason it was excluded.

Hon. Imbert: I had asked the draftsman about this and the word "person" is used in the corporate sense. That is the intention. This is really to deal with this problem CANAS, the company. So, again, I would be very open to any proposal as to how we can tighten this up.

Sen. D. Seetahal SC: Well, I appreciate that, but "any other person" in normal language means both a corporate body and an individual. So if it is intended to mean a corporate body, then it should say so.

The third amendment which was referred to by Sen. Dr. Rambachan had to do with the validation provisions. Essentially, this is to validate the proposals, actions and decisions of CANAS of which I know nothing and I dare say my colleagues on this side might know very little. [*Desk thumping*] I would have a serious difficulty in validating any actions of a company of which I know little or nothing of like in this case. I think that we need that information before we can agree—at least, I speak for myself, but I heard some murmurs of approval—to validate anything.

Mr. President, my particular concern is in relation to the proposed 73 which is to insert a new clause 7. It is proposed to create a new section 73 in the Act to validate CANAS and it states:

“Notwithstanding any rule of law—

(b) all decisions and actions of the Caribbean Air Navigation and Advisory Services Limited...”

Now that is very wide. If I were the board or the CEO of CANAS, and I fired an employee and it is a case of unfair dismissal, for example, sexual harassment and all of these things, then it would mean that my decision to do and any action that I did would be validated by this. Of course, one can say that, perhaps, that was not the intention and so on and go to court, but on the face of it you are validating everything. Suppose they breach contracts for services.

Now 73(c) is less wide and it says:

"all actions of the Board or any member thereof done pursuant to the Act..."

But I would think that it meant pursuant to the powers, legitimately given to the board under this Act.

Mr. President, what I am saying is the validation provisions or the intended validation provisions under the Minister's proposal are too wide. These are matters that we cannot agree to unless we know more about CANAS. The Minister's presentation would have been constrained, in my view, by the fact that this is a proposed amendment, and it was not part of his brief in the original Motion.

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Mr. President, so those would be my comments. In short, insofar as the original Bill is concerned, I have very little problem; insofar as all of the new amendments which bring entirely new matters before this Parliament, I think it is ambush. It may have been well intentioned, but it is ambush nevertheless. It is worse than trial by ambush, because it affects permanent legislation and it gives permanent rights to parties, persons and bodies. It cannot be allowed. [Interruption] Well, of course, retroactively, as my colleague has reminded me. That is the whole point. You are asked to validate actions about a body that you know nothing of. Therefore, I think it would not be fair; it would not be in the interest of good legislation and good governance for us to seek to debate this further in real terms today. Those would be my comments.

Thank you very much. [Desk thumping]

Sen. Mervyn Assam: Mr. President, thank you for giving me the opportunity to speak on this Bill to amend the Civil Aviation Act, Chap. 49:03. Mr. President, when I received the Bill and I looked at it, it seems as if it was intended to bring about some very simple amendments, reading it on the surface, and then I got the parent Act and looked at it more carefully and I noticed that there were some serious deviations from the parent Act in what the amendments intended to achieve.

Even more startling are the more recent amendments that were brought to the House this afternoon by the hon. Minister. I hope I am not infringing any Standing Orders, but the same thing happened last week in my first visit to the Senate, where a number of amendments came and it was very difficult even for Mr. President, himself, during the committee stage, to understand some of the things that were written in these amendments, because they were rather untidy and very badly presented, in my respectful view.

Similarly, today, as Sen. Seetahal SC said, we were exposed to a situation of ambush when the Minister brought some very far-reaching amendments, in addition to the amendments that were previously circulated.

Mr. President, I have been around in this country both in the private sector and the public sector for many years, and there has been a growing tendency in this country in both the public and private sectors— I remember a few years ago, the Trinidad and Tobago Chamber of Industry and Commerce had a seminar in respect of good governance. They were attempting to persuade and impress upon members of the business community how they should conduct their businesses in an ethical way, and that good governance was very important. Increasingly, as the

country becomes much more complicated in terms of its various institutions and how they are managed, good governance becomes even more relevant and increasingly important.

There is a tendency, perhaps not only in Trinidad and Tobago, but even worldwide, for a greater intrusion of executive authority into all matters of state and even private sector affairs. In fact, many years ago, I read a book when I was at university called *Prime Ministerial Dictatorship*. It has now become "executive dictatorship". More and more, as you get legislation in the parliaments of the world and in the Trinidad and Tobago Parliament, you see the Executive is attempting to insert itself more and more, and take over more and more the functions of institutions, of individuals and so forth. I think this increasing intrusion of authoritarianism on the part of the Executive into the Legislature, Judiciary, into the private sector and into the private lives of people is something that needs to be checked.

Therefore, I believe that our governance model or models in this society are becoming quite flawed and very dangerous to the social interest and the harmony and peace of Trinidad and Tobago and could very well stifle initiative and all that is good in the common weal.

Now, for example, just look at—although Sen. Seetahal SC did not see any harm in the original set of amendments, but there are only certain posts or offices in this world that have lifetime tenure or a tenure that is not in any way regulated or circumscribed.

3.45 p.m.

The Pope, Emperors and Monarchs, these are about the only ones that I know, or those who pronounce themselves to be lifelong dictators or presidents, in the case of Duvalier, Marcos in the Philippines, Franco in Spain, and so on. But other than that, in democratic societies the tendency, the norm, is to have a certain amount of check and balance on the tenure of office. That is why we have elections every five years or so. Most constitutions have that so that people would have an opportunity to pronounce on who they would like to govern them. This is why even Prime Ministers, as you are aware, shuffle their Cabinet from time to time. You have been in the Cabinet and have been shuffled around like myself. *[Interruption]*

Prime Ministers do it, simply because—most of the principles that Sen. Dr. Rambachan enunciated so well—you must not become too comfortable in your job. You must not lose your perspective. You must be able to think outside of the

box. If you become too comfortable, you tend to lose a certain amount of objectivity and so forth, and I am not even going to go down the road of the possibility of corruption, because corruption may not only necessarily involve the taking of money, it could be corruption with the thought processes if you become so comfortable and entrenched in your position.

So I do not believe it is a good principle to have indefinite tenure in any position, and I suspect that even two terms might be a lot, but I would be prepared to allow two terms for directors of any company. Notwithstanding whatever arguments you want to put forward, whether it is on the basis of people are scarce, talent is scarce, people do not want to serve, et cetera, I think in a population that has so much talent, any government should be able to find people who are willing and equipped to serve on their various boards in different capacities. So I am not prepared to support the change of the two terms.

Similarly, I believe that Ministers should be able to account for their actions. No Minister should be given the power, in my view, to amend laws, schedules and regulations without coming back to Parliament, for whether it is affirmative or negative resolution. I think that is a very important democratic principle that would be enshrined in law, because we do not know what a Minister can do. Suppose he has a spiritual leader, who tells him to do x, y and z, and he goes willy-nilly and changes laws, regulations and schedules that are not in the interest of good governance and the people of Trinidad and Tobago, but you do not know so you cannot challenge these changes. You cannot challenge anything that the Minister does. It must be brought to the Parliament in full view of the people of this country. I do not agree that the Minister should be invested with that kind of power to willy-nilly, on his own, be able to change schedules.

Now, let us come to the more substantive areas of the new suggested amendments. Why do we need to have authorities have subsidiary companies or firms formed under them? Why do we need that? If you have established a Civil Aviation Authority, why not invest that Authority with all the powers and whatever is necessary for it to conduct its business in accordance with the terms of reference contained in the legislation? Why do we need to have them establish subsidiary companies, firms or organizations to go off on their own and do whatever they want to do without the proper checks and balances, accountability and eventually, to be audited by the Auditor General? Is CANAS being audited by the Auditor General?

Hon. Imbert: Would you give way?

Sen. M. Assam: Of course, I have no difficulty in giving way.

Hon. Imbert: Thank you, Sen. Assam. I am a bit surprised at your question because the power to form subsidiary companies was a feature of the 2000 legislation, which you approved and passed in the House as a Member of the other place when you were a Minister in the UNC government. That was the policy of the UNC government in 2000. So I suggest that you elucidate, tell us why the UNC put that provision in the 2000 Bill?

Sen. M. Assam: I am surprised, Mr. President, that the Minister would tell me what I did 10 years ago. If on mature reflection after 10 years I felt that I have done something that is incorrect—[*Interruption*] I did not ask why at all, I am saying I do not see the reason why organizations should be allowed to form subsidiary companies to go and engage in all kinds of activities—

Sen. Jeremie SC: Today is today; tomorrow is tomorrow; and yesterday was yesterday.

Sen. M. Assam: It is not a question of tomorrow is tomorrow, the law is changing all the time. The Attorney General should know that! Tomorrow is tomorrow; the law is a dynamic thing, it changes all the time, and upon mature reflection—even the Privy Council has changed its mind. You went to the Privy Council and had them change their mind with Mia Mottley and the Attorney General of Jamaica, so what are you talking about today is today and tomorrow is tomorrow. [*Interruption*] I do not know, keep quiet “nah” man. You seem to forget what you have done. [*Interruption*]

Mr. President, I am speaking to you. [*Crosstalk and laughter*] Upon mature reflection one can always review one's position, and if 10 years ago I took a certain position and today I feel that position is not a correct position in the interest of good of governance, in the interest of good democratic tradition, in the interest of the common weal, in the interest of accountability and transparency, I have the right to change my mind. [*Desk thumping*] I am not too big to say that I made a mistake. [*Interruption*] I am prepared to exhibit some humility in this regard, but I feel it should not happen because—

Hon. Imbert: Nobody asked him that.

Sen. M. Assam:—even informed and learned people in this Senate said they knew nothing about CANAS, we had to go and do a lot of research to come up with information on CANAS. CANAS was some kind of a secret organization.

Now, I am not imputing improper motives. Do not get me wrong, but it was a secret organization unknown to all of us until we were able to get the research

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done and find out the enormous amount of activity that CANAS is involved with, and there is no direct accountability, because where are the audited accounts of CANAS over the last five years? Where are they?

Even if you say that they form part of the accounts of the authority, we should be able to get accounts in order to disaggregate what CANAS is doing and what the Civil Aviation Authority is doing. So, do not come today and say, you did it and—

Hon. Imbert: Just say why you did it. You made a mistake.

Sen. M. Assam: I have admitted that it was an error. I am not like you, you see. I admit when I make mistakes, because I am not God, you see. I am only man.

Mr. President, I disagree with any formation of subsidiary companies when it comes to statutory boards, or authorities, or what have you. But you know what makes me worry even more, that very flippantly a Minister could come to a Parliament and say, let us validate everything that has gone before for the last five years, as if validating something that has been—to use his words—*ultra vires*, illegal, improper for five years, can be just washed away by inserting a clause in a piece of legislation. And we, who are responsible for making laws, amending laws in this Parliament and responsible to the people of this country must go out and tell them, we have just validated a company that was operating illegally for five years, and we do not even know what they have done during the last five years, except for some numbers which we collected, but we are not even too sure whether these numbers are correct because they have not been audited figures.

No responsible Parliament, no responsible parliamentarian could allow this piece of legislation to be entertained without proper explanation, without all of the information that is necessary so that a proper assessment can be made to see whether, as Members of a Parliament our consciences would be clear and free when we do this kind of validation. We cannot do it like that.

What I have found increasingly, is that we are taking people for granted. We come here and we believe that Senators here, whether it is the Independent Bench or the Opposition Bench, would just accept an amendment like this, passed in a rather surreptitious fashion, as if we would not scrutinize the legislation, as if we do not read what comes to our desk or in our envelopes. [*Interruption*] To me, that kind of attitude of taking people for granted is a very dangerous thing. Because if you could take your parliamentarians for granted, it means to say that you are going to take the entire population for granted. We live in a much more

enlightened society now and people are going to be asking you questions. If I go outside there and people say, “Mervyn Assam, you passed a piece of legislation today or you voted for a piece of legislation today, what do you know about this legislation? What do you know about CANAS? What do you know CANAS has been doing for the last five years?” What would I tell them?

So, it is my view that the Minister should withdraw this piece of legislation. Go back to the drawing board. [*Desk thumping*] Bring more information, bring more detailed analysis, let us have all the facts and figures and let us also know—because I remember a certain High Court judge who was appointed as a one man enquiry to find out why a certain Commission of Enquiry was not gazetted. We need to know—and I am not saying there should be a commission of enquiry—why, under his watch, for five years, he allowed and permitted a company to operate illegally in this country. [*Desk thumping*] We need to know that. And unless he gives us a proper explanation, I would not be satisfied, I do not think my colleagues would be satisfied, and I do not think the intelligent Independent Bench would be satisfied until we get such explanations. We cannot!

This is total and complete negligence and irresponsibility on the part of the Minister—

Hon. Imbert: Not me.

Sen. M. Assam:—or whoever was in charge, under whose watch it happened. Total irresponsibility, to have a company operating illegally and ultra vires for five years, and you come boldly to the Parliament this afternoon, you slip in surreptitiously an amendment, thinking that it would not be observed and expect us to pass this piece of legislation after this little innocuous Bill, which you had about three clauses with two sentences each, and you think you would have gotten away with it.

Hon. Imbert: Would the Senator give way?

Sen. M. Assam: Of course.

Hon. Imbert: I thank the Senator for giving way. This matter first came to the attention of the Government based on a letter written by the Auditor General to the Chairman of the Board of Directors of the Trinidad and Tobago Civil Aviation Authority on January 06, 2010. The Auditor General was looking at the accounts of the Civil Aviation Authority, which as I earlier indicated, had been submitted on time every year since it has been formed, and the Auditor General sent an

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opinion to the Chairman of the Civil Aviation Authority, indicating that whereas the Act did not expressly prohibit the Authority from forming a subsidiary company, the view was that it should have been made a specific provision. And that is a letter from the Auditor General dated January 06, 2010.

4.00 p.m.

So it is only when the Auditor General in going through the accounts of the Civil Aviation Authority came upon this issue, sought an opinion and submitted it to the Chairman, that it came to the attention to the Ministry of Works and Transport just a month or two ago, and we have acted with extreme dispatch to bring it to this Parliament. [*Desk thumping*]

Sen. M. Assam: Thank you, Mr. Minister. Is it possible to have a copy of that document?

Hon. Imbert: Sure, man.

Sen. M. Assam: We will appreciate that. But you are giving us the information so piecemeal, it almost reminds me of a dentist trying to extract teeth without anesthetic, where it is so painful. Every piece of information we have to extract in such a painful fashion. [*Laughter*] Why did you not come clean? In your presentation, you had enough time—is it 60 minutes—to tell us all of the background, all of the explanation, everything. What is the role of the board in establishing a company? Without the knowledge of the Minister, without a legal opinion, the Auditor General only found this out after five years. Is the Auditor General in any way culpable? I do not know. Why is the Auditor General only discovering this after five years? How come the Minister did not know? How could the board establish a subsidiary company? Do they not have a legal person on their board, or any outside legal firm advising them of the impropriety, of the illegality, of the ultra vires nature of their operations? This is a serious matter.

Hon. Imbert: I thank the Senator for giving way. I thought I made it clear that in February 2005 or thereabout—and just out of interest, that is before my time—the then Minister submitted a note to Cabinet, seeking Cabinet's approval for the authority to establish a subsidiary company. At the time, obviously, the view was that there was no prohibition with respect to authority—[*Interruption*]

Sen. Seetahal SC: Why?

Hon. Imbert: That was the view at the time in 2005, that there was no prohibition with respect to the formation of this company, and now five years later, the Auditor General has concluded that there is.

Sen. M. Assam: I want to know if that is a legal opinion? Is that an opinion from the Solicitor General? Is that an opinion from the Attorney General's office? I do not know. The Cabinet is not supposed to advise itself. Only a fool advises himself. I would have thought that the Attorney General is the legal advisor to the Cabinet, and you would have gotten advice from the Attorney General who probably would consult with the Solicitor General, et cetera, et cetera. All of these are lame excuses.

If you notice, Mr. President, the board of CANAS is the same board of the authority. It is the same board from our research. So if it is the same board, why do you need a subsidiary to conduct the business of CANAS, when it is the same board conducting the business of the authority and CANAS? Why? Is there some reason? Is there some reason why you need to establish a subsidiary with the identical members of the board of the authority serving as members of the board of CANAS? What is the reason? This is important. CANAS is undertaking projects of millions of dollars, who is authorizing that? The board? Is the board informing the Minister, through the corporate plan that they are supposed to hand to the Minister from time to time, and to get his approval? He must approve the plan in 60 days, and if he does not approve it, they go ahead; and if there is any variation of the plan, they are supposed to inform him in 30 days; and if he does not reply, they go ahead. Was all this procedure followed in this regard? The Minister must tell you. He cannot just come here, sit and ask questions and interrupt our contributions every five, 10, 15 minutes and be cute about it.

Hon. Imbert: Thanks for giving way.

Sen. M. Assam: Yes, I give way because I believe in civility. Not all of us believe in civility. But I believe in civility, I give way. I give way. But, Mr. President, all of these questions need to be answered before we can either say yea or nay to this Bill; to these sets of amendments. But the Minister has not come clean, he has not been comprehensive. I even see Sen. Dr. Saith shaking his head in agreement with me— *[Laughter]* and he does not have St. Vitus Dance; he is shaking in agreement. You have not come clean, you have not come comprehensive, you did not explain your position, you were shoddy, you were short and you were also, in my opinion, taking us for granted.

Mr. President: Senator, if I may? You are seasoned in Parliament, and therefore, I take the liberty of interrupting you. The general practice in the Senate, is that we refer to Senators by their title, and in this particular case, we have the Acting Prime Minister in the person of Sen. Dr. Saith, and therefore, he should be referred to as either the Minister in the Office of the Prime Minister which is his

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substantive office, or the Acting Prime Minister, not by name. Other Senators without portfolio are referred to by their names—Senator and their name. That is the custom and it is a courtesy that I would ask—and I only take this opportunity now at the beginning to let everybody know what the usual practice is here. So I do apologize.

Sen. M. Assam: No, it is okay. I thank you, Mr. President, for outlining the protocol to me. I am always willing to learn. At whatever age I reach in life, I am still on the learning curve. So thank you for the intervention and for teaching me the protocol.

So what I was saying, Mr. President, he was short and shoddy and he took us for granted, and he attempted every time somebody spoke to raise his voice and give us a little piece more and a little piece more. That is not good enough. The Minister must come back to us with a comprehensive report on CANAS, on the authority, the reasons why he wants to have an indefinite tenure for the board, and the reasons why he wants to amend the schedules without reference to Parliament in neither an affirmative or negative resolution, and to tell us also why we must use the Parliament to validate whatever CANAS has done in the past, including perhaps matters of tort. Is that a correct expression? Matters of tort. We do not know, and I am saying I am not in any way suggesting that anything wrong took place, but we have to protect ourselves, and we cannot just give a blanket approval, a blank cheque, to the Minister and to the Government, to exculpate anything wrong or right that has taken place during the five years of CANAS's existence.

So, Mr. President, I hope the Minister will take notes and come back on another occasion and give us what we request.

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

Sen. Prof. Ramesh Deosaran: Mr. President, I want to take the opportunity at the early stage of my contribution, to extend very warm congratulations to the Senators who now form the Opposition Bench in the Senate. I would like to extend a very warm welcome to all of you. As far as I know, your service in public affairs of this country, each of you has been quite exemplary, and related to that, I think the level of debate in this Senate has been raised by the contributions so far [*Desk thumping*] by the two Opposition Senators, and of course, ably supported by my distinguished colleague, Sen. Seetahal SC. So the future looks good. In this respect, I know you have always been keen in having the Senate as a producer of enlightened debate, and I think this afternoon with a few glitches here

and there, I think we have done quite well. But I do not think I will be on any luxury liner as others have suggested. But the debate has been quite exhilarating, and it is for that reason in the spirit of the debate, I rise to make a contribution on four points.

There is a book that I read when I was at the University of Toronto. It was entitled, *Who Governs* by Robert Dahl and it raised the question about the limits of the Executive in a democratic society and the limits that should circumscribe ministerial powers, while at the same time, not prohibiting duly elected representatives of the people from governing and managing a country. That issue has always haunted this particular Senate time and time again. I am making brief reference to this issue because it does have to do with several issues in the legislation, especially the one trying to deal with a “one term” restriction.

The theory of governance and government has it that the Executive must govern the country through the Constitution, and the Executive does so through the Ministers that are appointed to form the Cabinet. Therefore, the Ministers are entitled to exercise that Executive power by making certain appointments. They are quite correct in making those appointments, especially for institutions of state which have to engage in public administration of the country for two reasons: The question of resource capability, and also the question of public accountability. That is, the Executive is held accountable because it is the Executive who appoints these persons, whether on state boards or whatever agency under the Executive jurisdiction. So the theory encourages Ministers to make appointments, it supports the principle.

But, Mr. President, what has been happening in this country for some time now, is the extent of distrust over Ministers, and the manner in which they have engaged their Executive powers. The bottom line is that the evidence that we have had before us, time and time again, and the mishaps and the missteps we have had in Ministers making such appointments, the evidence we have had and linked to the dilemma we now face in the First Schedule of this particular Act, all those things have to do with the evidence suggesting that there is an overload of political patronage in the institutions of state. That too presents a dilemma. Because if you want to appoint people to the authority under question, you would want to ensure yourself, that not only you know these persons, preferably, but you are convinced of their capability to conduct the service which the Act requires. That is the good part of it. But the evidence suggests that the criteria used for such appointments repeatedly over the years have been too narrow. The criteria have reflected too much of political partisanship, too much, and that has subverted the principle of governance to which I earlier referred.

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I remember my colleague, Sen. Seetahal SC made that point a few years ago, about appointing, to use her words, "party hacks" to this position. The severe consequence is such that these people feel that they will be protected by the Minister. They feel now, having been so appointed, the Government will protect them, so they relax in their performance, and more than that, having come through the political passageway as it were, without sometimes regard to competence, integrity and public service, they cover up whatever corruption exists in the agency, and they implicitly seek to protect the Government. So the CANAS issue is important in that light.

4.15 p.m.

While Sen. Assam did raise some detailed points, the question lingering in our minds is: Who is going to be held accountable now with the mess of this CANAS issue? You can tell us that we need to validate the legislation, but something went amiss, either inside the authority, CANAS, or somewhere in the Government. We would like to hear—what the country would like to hear, for such a misstep—who would be held accountable. We are hearing nothing about that. We are only hearing that the Auditor General made reference to something which generated an enquiry. Perhaps there is nobody held accountable, for the reasons I just enunciated: The manner in which they have been appointed.

That is what bothers this country, to the point where, regretfully, a growing number of our population just does not trust ministers; that is bad for this country. That is the issue here; the "one term" issue is a matter of trust, because when I give my views, I will tell you where the anomalies exist. About two sittings ago, I had cause to refer to the Constitution and the oath that ministers take: impartiality, executing their duty without fear or favour and so on, but we are not really seeing that in this country.

There are some ministers you just cannot trust. They tell us one thing today and something else tomorrow, in full public glare. Sometimes when they tell you to stand up, you must run. May I say that this has not been happening yesterday, but that, in a nutshell, is the issue. If you refer to the first Schedule, let us take the question of the extension in paragraph 2:

"A member of the Board, other than the Director-General, shall hold office for such a term not exceeding three years..."

To me that is an anomaly in principle, because in many other similar institutions and appointments there is no such restriction, to be fair to the distinguished Minister of Works and Transport. It is an anomaly, but the reason Sen. Dr.

Rambachan and Sen. Assam, these distinguished Senators, are troubled is because of the issue of trust. The issue of trust against a government is such that Peter pays for Paul.

I have also said that there are some Ministers who are going to cause this Government to lose the election and there are other Ministers who would cause them to maintain their position. It is as if nobody cares in the Cabinet. There is nobody brought up or corrected to improve their service to the public. So the question of the extension, to me, I find two terms, three years, too restrictive. I see no problem in removing that restriction.

I am on to the point of trying to get the Cabinet and the Government to recognize the question of distrust. There are two pillars of good government, however you want to put it in legal jargon. Good government depends on trust by the population and on the credibility of the government that governs the population. Those two issues are in jeopardy today and that is why the debate has taken the particular direction it has taken. It is evidence based, as Sen. Assam pointed out. He opened a can of worms, as it were, in terms of information divulgence; give us the information. That is what is worrying this country.

Trust and credibility, for those looking towards the next election, I am telling you, will be critical electoral issues. When you reach that stage, I would say to all those concerned, walk carefully or try to reconstruct your agenda, because you are not looking good.

I wish I did not have to say these things, because governing a country, with all the agencies that fall under this particular Ministry and other ministries, is a very difficult thing to do.

I am also disappointed in the extent of distrust that some Ministers attract and bring upon themselves. Sen. Dr. Rambachan is right, the Ministers are not as responsive as they could be, because, perhaps, they feel safe in the office, the glamour of office and so forth.

I do not see any problem on the issue itself, about giving the Minister the power to go beyond a three-year term, except I am just taking the opportunity to sound a note of encouragement for the Government to improve its presentation to the public, especially on the issue of trust and credibility.

The other issue is section 71. It says:

"The Authority is hereby exempt from all taxes..."

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But it went on to detail by saying "including". We know what "including" means. Including always means these, but there might be others. That is my understanding of the English phrase used in this particular context:

"including value added tax and corporation tax, levies including the Green Fund Levy and Customs and Excise Duties."

So if you are exempting all these taxes, I therefore do not see anything with exempting the radio licence too. I have heard no persuasive argument, except to say that you would lose revenue, which really is beside the point.

The legislation already provides exemption from all taxes, so in my view, this is just a tidying up exercise and some might say it is not even necessary, because it covers all taxes; but, of course, it is important to err on the side of caution.

Sen. Seetahal SC raised a point on section 9, the new amendment. The same problem exists in the substantive legislation in section 9, but let us look at the new amendments where it is amended; "or any other person" is now included in that section. We had that discourse, I would say, when the Minister of Health brought a piece of legislation for the ambulance Bill, where some officers are entitled to enter your premises or any other person. That general term "any other person" is quite bothersome, not only to the layperson, but in terms of enactment.

When you say "any other person", certainly you cannot really mean any other person. If there is a corporate interpretation to it, we should make it clearer. What does "any other person" mean, any other official or any other suitably qualified person? I will not support the amendment in its present form, having gone through this in previous pieces of legislation, unless you put "any other suitably qualified person".

The other issue is the question in the Bill where it says:

"Clause 4 seeks to amend the Act by inserting a new section after section 71 to allow the Minister with responsibility for civil aviation to amend the Schedules by Order."

When I read the substantive Act, the Civil Aviation Act, it has a spread of powers as much as and more than any other similar piece of legislation, more than the Water and Sewerage Authority (WASA), the Telecommunications Authority and the Port Authority. The powers in this Act given to the authority are extensive and, therefore, any regulations or any schedules tending to enact the substantive provisions, one must look at them very, very carefully.

In the Minister's response, his closing up, perhaps he could convince me otherwise, but I do not like the allowance. It looks too permissive; it looks too unrestrained to just say give him power to amend the schedule by order.

Sometimes we forget; with all the integrity this current Minister has, we always have to look beyond tomorrow. There might be another Minister who may not have the restraint and discretion that this current one has, and that is how we have to look at legislation. [*Interruption*]

Hon. Imbert: This does not give the Minister the power to make regulations; it is simply to amend the schedules. It is not as all embracing as you believe.

Sen. Prof. R. Deosaran: My error; I said schedule, but I included order, even the schedule. If you read the schedule as present and the same point would apply, so my concerns still exist.

This brings me back to my first point about CANAS, the Caribbean Air Navigation and Advisory Services. The authority has such a wide spread of power, why could it not see, in greater detail, the problems facing the establishment of this agency? It was an abdication of responsibility that put the Government in problems. Therefore, a government must be more vigilant and try to ensure, in greater amounts, that you put persons with the right competence, first of all, in the correct positions and not put the cart before the horse by choosing persons who you know, your partners, who your drinking partners might be, who your friend might be or, in some way or other, in such tenuous proximity to you; choose competence. Let us run this country with competence and then you could earn the title of good governance.

We have not seen that for some time; it is becoming worse and worse, but I hope there could be a stop to it, so we could all be proud of the government that we eventually elect.

Thank you, Mr. President.

Mr. President: We will suspend the sitting for the tea break and we will resume at 5 o'clock.

4.30 p.m.: *Sitting suspended.*

5.00 p.m.: *Sitting resumed.*

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

Mr. Vice-President: Sen. Wade Mark.

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

Sen. Browne: Mark that man.

Hon. Senator: The Gladiator.

Sen. W. Mark: Mr. Vice-President, may I, before I deal with the measure before us, welcome my colleagues formally on the Front Bench. I also want to take the opportunity to put on record my own appreciation to my colleagues, who have left us, but we are all part of one family, one team and we wish them the best.

I also want to put on record my appreciation to the President for his kind words of expressions at the last sitting and, of course, the Attorney General and my colleagues on the other side of this aisle who expressed their appreciation, I am sure, for my presence here once again. I want to thank everyone for at least recording and I also want to put on record my appreciation to the Leader of the Opposition, the hon. Kamla Persad-Bissessar for—[*Interruption*] Yes, it would be remiss of me if I did not put on record my appreciation to the hon. Leader of the Opposition for allowing me to continue to serve in this august Chamber.

Mr. Vice-President, this particular measure that is before us today, which is dealing with civil aviation, is a Bill that seeks to amend the Civil Aviation Act to exempt the Trinidad and Tobago Civil Aviation Authority from radio licence fees and to allow the Minister to amend the schedules by order. Of course, the Minister has introduced some additional amendments which are very sweeping and far-reaching and I would hope the hon. Attorney General would advise the hon. Minister that this matter should be either sent to a select committee or, as my hon. colleague, Sen. Mervyn Assam said, we should withdraw it if we do not want to go that route.

These amendments are very far-reaching and I believe that the Government needs to pay attention to the concerns being expressed by Members of the Opposition. One of the issues I would like to address here today is that of accountability and this question of accountability is very important when it comes to public funds and taxpayers' dollars and we have an authority that is guided by an Act and I want to refer you, Mr. Vice-President, to section 21(1), (2) and (6) of the Civil Aviation Act.

Section 21(1) states:

"The Authority shall keep proper books of accounts and records in accordance with GAAP, of all moneys received and expended and shall record the matters in respect of which such sums were received and expended.

- (2) Within three months after the end of each financial year, the Authority shall cause to be prepared in respect of that year—
 - (a) a report setting out the activities of the Authority; and
 - (b) financial statements prepared in accordance with GAAP and any other statement as required by the Minister with responsibility for Finance."

We have heard from the hon. Minister of Works and Transport that the Auditor General discovered sometime in February of 2010 a situation involving the subsidiary or the subsidiary company of the Civil Aviation Authority to be unlawful and illegal. What is significant, he also indicated that all of the accounts of the CAA were submitted on time, but it is passing strange that all these accounts would have been submitted on time yet, according to the reports that we have, the last financial audited statement was in the year September 30, 2003.

Mr. Vice-President, we would have to write to the Auditor General to find out what went wrong because the Auditor General is a very prestigious office holder in this country and once you have your accounts properly submitted to the Auditor General, I see no reason for those accounts to take so long to be audited and sent to the President and the Speaker respectively to have them tabled in the Parliament.

Hon. Imbert: I thank the Senator for giving way. All that is well and good, but the fact of the matter is that the Civil Aviation Authority did send all its accounts 2005—2009 on time to the Auditor General. I know you want to know why, but it is a matter of public record. It came up in a meeting recently that there is a serious backlog of work to be done in the Office of the Auditor General. You know that there are a lot of things there awaiting attention, Senator; I would not want to put any sinister interpretation on this. They sent the accounts; they are there in the queue and will be done in due course.

Sen. W. Mark: Mr. Vice-President, as I said, you see the reason I am raising this, it has to do with the matter that is currently before this honourable Senate and that is to deal with the extension of the term of office of the board of

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directors for a period beyond what is outlined in the legislation. It is very difficult for us to agree to give that kind of extension or continuation when the authority has fallen short in many respects.

Now, Mr. Vice-President, maybe the time has come, and I want to advise the hon. Minister of Works and Transport to invoke section 21(6) which says:

"Nothing in this section precludes the Auditor General or an auditor engaged by the Board or the Minister of Finance from performing a management or comprehensive audit of the activities of the Authority."

I am saying because of what has happened, there is a certain kind of—I do not know if it is tardiness, I do not know if it is just laziness, but something is happening that is responsible for the kind of slackness that we are now seeing in the measures before us today.

I would like the hon. Minister to give us a breakdown of the various projects that this authority has been engaged in through this phantom-like organization called CANAS. I would also like to ask the hon. Minister of Works and Transport why the authority has not allowed the Auditor General—even though the company has been operating illegally and unlawfully through that company CANAS—to audit their books.

We understand there is some outside accounting firm that does the auditing, some Chanka Seeterram, I understand.

Hon. Imbert: You seem to know more than me, but I did ask the question and I was advised that the books are available for the Auditor General at any time. I do not think there is any issue; the Auditor General could audit it at any time.

Sen. W. Mark: From my information—I would like you to investigate it—the Civil Aviation Authority waged a battle and engaged in legal opinions from the Solicitor General as to who shall have the power to audit their books. *[Interruption]* I am saying I have information but I would like you to investigate it; you are the Minister. I am saying in the law the Auditor General is responsible for auditing the financial accounts of this authority and if this authority goes ahead and establishes a private company, one would assume logically that the Auditor General ought to continue to audit the accounts of this private company.

5.15 p.m.

From 2005, since the establishment of this company, we understand that the Auditor General has been literally debarred from auditing those books. I suggest

that the Minister investigate this matter. I ask him to take note. In other words, she was not facilitated.

Hon. Imbert: When was this?

Sen. W Mark: From 2005, since the establishment of this company to the present time, the Auditor General has not been allowed to audit those accounts. *[Interruption]* I do not know if she was prevented; she was not allowed. I would like the hon. Minister to investigate that matter.

There is a company called the China Building Group, which got a contract to the value of \$190 million from Caribbean Air Navigation and Advisory Services Limited (CANAS). There is a statement—*[Interruption]* I am not giving way. Mr. Vice-President, he will just eat my time. Take notes.

I would like you, as hon. Minister, to investigate the activities of this China Building Group. I do not know if it is the name of the company; all I know is that information reaching us is that they have been given a contract valued at TT \$190 million by CANAS.

We have something called Caribbean Air Navigation and Advisory Services Limited (CANAS) Projected Cash Flow from February 2010 to September 2010 and in this there is this China Building Group. This is where my colleague, Sen. Dr. Rambachan, indicated that the total value of projects being undertaken by CANAS is \$466.5 million. It is a projected cash flow statement. *[Interruption]* Investigate it.

It is the same thing you told the country. You do not know Calder Hart. Who is this man? You knoweth not the man, when you hug up the man all over the country. Now you are coming to ask me what that is. You investigate it. That is why you are so glum today. Everybody is facing jail except the Attorney General. All of you in the Cabinet facilitated that corruption involving UDeCott. The only man who will escape “scotch free” is the Attorney General. He will bring everybody to book, including downstairs as well. I am saying to the hon. Minister that we need to investigate that matter.

The reason I said there is need for the Auditor General to perform a comprehensive audit of the activities of this authority is for the following reason: Mr. Vice-President, I would like the Minister to tell this honourable Senate whether he is aware of the appointment of an agent to collect air navigation charges on behalf of CANAS and the Civil Aviation Authority of Trinidad and Tobago. I have a letter in my possession which I will pass to the Attorney General and the police. I want the police to be involved in this. It reads:

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“Under the authority of the Director General of Civil Aviation...of the Trinidad and Tobago Civil Aviation Authority...and Caribbean Air Navigation and Advisory Services Limited (CANAS), be advised of the following:

All non-IATA aircraft owners or operators are hereby advised that effective January 15th, 2009, Air Transit Clearing House Limited—”

I never heard about that company in my life. Attorney General, hear this one: from January 15, 2009, a company by the name of Air Transit Clearing House Limited has been authorized by the Trinidad and Tobago Civil Aviation Authority and CANAS to collect all air navigation charges originating from the Piarco flight information region from non-IATA aircraft owners or operators who are not already receiving invoices from CANAS.

They went on to say that this Air Transit Clearing House Limited:

“has been authorized to take all necessary measures to identify, locate, invoice and collect such air navigation charges from non-IATA aircraft owners or operators.

The details of the Air Transit Clearing House Limited are as follows:

Air Transit Clearing House Limited

83 Rivulet Road, Point Lisas

Trinidad...”

We are not only talking about CANAS, but about another private company called Air Transit Clearing House Limited. We would like to know the owners of this company.

When I looked at where Air Transit Clearing House Limited is located, No. 83 Rivulet Road, Point Lisas, Trinidad, and I go to the list of directors of this company, I see a name called Unanan Persad, in trust for and on behalf of the Trinidad and Tobago Civil Aviation Authority. Do you know where his address is? No. 83 Rivulet Road, Point Lisas, Couva.

Where did this company get the authority to collect money? *[Interruption]* This is what I am telling you. CANAS is supposed to be collecting moneys on behalf of the Civil Aviation Authority, so now they are outsourcing and they are illegal and unlawful; they are not valid. You go a step further and grant to a company headed by your director called Unanan Persad and he has a private company called Air Transit Clearing House Limited. And you are coming here today to ask us to validate that? How can we?

This is a criminal activity that is taking place here. Here you are dealing with taxpayers' money because, as you know, Mr. Vice-President, the air space that is under the control of the Civil Aviation Authority of Trinidad and Tobago amounts to 750,000 square miles. From Antigua right down to Jamaica, coming down to Trinidad, any aircraft that flies in that air space must make radio connection and pay a fee. That is how they are able to collect all this money. And you are telling me that a private company headed by a director where he is living—this is the man's home; I understand he lives at this address. What is a private company collecting moneys on behalf of the people of this country doing in the home of a director? Is something not suspicious about that?

The first thing that happens is that the Civil Aviation Authority illegally, unlawfully, wilfully and maliciously established a company, conscious of the fact that they have no authority to establish that company, and the Cabinet, of which the hon. Minister of Works and Transport is a Member, approved that decision. He was participating in an illegality with all his Cabinet colleagues and he comes here today telling us to support this measure when he, as a Cabinet member, took part in an unlawful activity. We want answers. I hope that the Minister can give us answers this afternoon. This is a matter for the police.

Tell us how much money has been collected by this private company between the period January 15, 2009 and the present time, on behalf of CAA and where is the money. The name of the company, which is located at the home address of one of the directors called Unanan Persad is called Air Transit Clearing House Limited. You must tell this Parliament how much moneys have been collected by this private outfit on behalf of the people of Trinidad and Tobago and where is the money. Is this money laundering taking place? This could be a form of money laundering and I would like the Attorney General, the police and the DPP to investigate this matter.

This is a serious matter. It only came to my attention this afternoon and I said I must raise the matter because it is very serious. I thought we were dealing with one company called CANAS and then I saw another company just mushroomed in 2009. What is going on with the Civil Aviation Authority? The Minister is being misled. He came to this Parliament today under the false premise that all is well at the Civil Aviation Authority. I am telling the hon. Minister that all is not well and I cast no aspersions on anyone. We are here to protect the interest of the taxpayers of this country and would not allow persons, whoever they might be, to hoodwink the population.

5.30 p.m.

We would like to know whether you are aware, as a Minister, of how these projects were tendered; all the projects that they are involved in. Let me name a few projects that this agency has been involved in. CANAS; there is a project valued at \$116.8 million; Select Equipment, CNS/ATM, \$116.8 million; LNSIT control tower contract, valued at \$27.5 million; IKO Pool/A/C reding mode, \$14.5 million. It goes on and on, in terms of buildings and there is outfitting at the cost of \$25 million. All these things; you got these contracts. How were they tendered? Hon. Minister, is that the reason they are trying to get you to extend the life of the board, because “cocoa in de sun and if yuh bring new players inside, yuh go expose people?” Maybe, I do not know what it is. As a Minister, you could get innocently caught up. There are projects that we need to investigate. We are not just going to agree to simply give the hon. Minister and his Government a blank cheque, simply to go about their business as if nothing has taken place in the country. “No man,” things have happened and we need to take action in that regard.

The area that we would like the hon. Minister to pay attention to, first of all, is that question of a comprehensive audit. I think we need a comprehensive audit on this matter. It is our view as well that there are several projects. As I deal with projects, I understand you spoke about self-financing. My information is that the Civil Aviation Authority, this rich cash cow, was supposed to have weaned itself away from the Treasury from the beginning of 2009. Yet still, we are told that the Treasury gave to the Civil Aviation Authority, in 2010, close to \$14 million in allocation. That same authority has projects amounting to over \$465 million and they do not depend on the Treasury for a cent. Why is the Government still funding this authority, when they are already collecting \$15 million a month in fees? Yet still, they are coming to the Government for subvention. Why? [*Interruption*] You will give me that when you are winding up.

Hon. Imbert: “Then why yuh asking?”

Sen. W. Mark: Again, I would like also for the hon. Minister to tell us: Why are you seeking to take power unto yourself to, by order, amend schedules without the approval of the Parliament? You might be a reasonable Minister, as someone said.

Hon. Imbert: Are you saying so?

Sen. W. Mark: No, I am saying that you might be. I did not say so. The question has to be asked: Why are you seeking to take unto yourself or arrogate unto yourself a power to just amend schedules as you see fit? Look at the schedules that the Minister would like to amend, the First Schedule deals with the

appointment of the board. The Minister is being given the power, according to this piece of legislation, to amend this schedule, so he can, tomorrow morning if you give him this power, like a lodge or secret society, take a decision to actually remove the qualifications necessary to be a member of the board. He could do that. Welcome back, Mr. President. I missed you.

[MR. PRESIDENT *in the Chair*]

Do you know what happened? Here it is, in the First Schedule we are being asked under the legislation, to give the Minister the power to amend the schedule by order and it will not be brought to the attention of the Parliament. I am advancing to this honourable Senate, that you could have a situation where the qualifications to be member of the board could be whimsically changed or altered by the Minister and we would not know. We are saying that this is wrong. We cannot facilitate and we should not facilitate this kind of power. As my hon. colleague said, we intend to propose an amendment. The amendment is that you can amend those schedules, but subject to an affirmative resolution of the Parliament; an affirmative resolution of the Parliament, otherwise you will not be able to get any support for this measure, not from me, from the Parliament.

Look at the Second Schedule, that is the conduct of proceedings by the board. Could you imagine the hon. Minister is given the power to determine how many persons or members should form a quorum? In the Second Schedule, it states in clause (3) that the quorum of the board shall be five members. If the Minister is given this power to amend the schedule concerning the conduct of proceedings by the board—[*Interruption*]

Hon. Imbert: I thank the Senator for giving way. Currently, in order to change the schedules, the Minister can table an amendment and have those amendments debated in both Houses of Parliament. Currently, the Minister can do that. So, if you say the Minister should give himself the power to change the schedules by affirmative resolution, that is the same thing; that is no change. That suggestion that we do that, does not in any way improve the legislation. I just want to make that point.

Sen. W. Mark: Therefore, what we can do, hon. Minister, is leave the status quo. In other words, do not alter the schedules. That amendment that you have proposed, I suggest that you just withdraw it and delete it, so we maintain the status quo. Leave it. I believe, because—as my colleague said there is already a precedent set in the HDC, which came after this legislation in 2003. You already

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have a precedent that was set by, first of all the UNC and then later on by you, because you could have amended it then. That is already in the legislation and we see no need to fix it or to change it.

The Third Schedule deals with the offices in the public service on the establishment of the Civil Aviation Authority and it outlines all the offices in the public service. Mr. President, the Government seems to have almost a violent opposition to the public service and everything is being done by this Government to undermine, dismantle and almost toss out of the window the public service, as we know it in this country. We would like to ask the question: Why should we give the Minister of Works and Transport, or any Minister, the power to amend the Third Schedule dealing with the offices in the public service on the establishment of this CCA? Why must you have that power? The Parliament must be able to oversee what you are doing. If you decide one day to alter these offices, what role, input or intervention would we have in guiding you, not to go along this particular path? We would not have any say, Mr. President, if this legislation is passed in its current form.

This brings me to the issue of the struggle of the workers at the Civil Aviation Authority. I do not know if the Minister is aware that a job evaluation exercise was conducted since 2003 and completed in 2005 and agreed upon in 2006/2007 and is yet to be effected. Is the Minister aware of that? In other words, there was a collective agreement between the PSA and the Civil Aviation Authority, to conduct a job evaluation exercise, because the rationale that the Government advanced at the time—

I am dealing with IR and human—we are dealing with the board. They want to have the board extend its period. Let me tell you the functions of the board, so you will understand where I am coming from. Under the Act, that is section 15 of the Act, the board has the power to approve a three-year corporate plan. This plan should include details of the following, one of which is human resource strategies and industrial relations strategies. That is in the legislation. All I am saying is that I would like to ask the hon. Minister if he is aware of this job evaluation exercise that was agreed upon and why has the Government taken so long to implement and effect that job evaluation exercise. Do you know what that has caused? It has caused a lot of tension between the workers, particularly the air traffic controllers and the management and board of the authority. Therefore, my information is that a memorandum of agreement was duly entered into as an award of the Industrial Court of Trinidad and Tobago on June 23, 2009, No: NA11 of 2009.

We are going on to the schedules again. We have conduct of proceedings by the board; personnel; all real and personal property to be vested; and protected installations. All these are schedules attached to the Civil Aviation Authority Act. We are saying that these schedules should not be allowed to be changed in any kind of manner, by the Minister in question. It is our view that it should be brought back to this honourable Parliament and it must be debated, so that we at the level of the Parliament will have a say in what the Government is doing with the question of these schedules.

5.45 p.m.

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

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

Question put and agreed to.

Sen. W. Mark: Mr. President, thank you very much. I would like to ask the hon. Minister: What kind of monitoring mechanism exists at the Ministry to ensure that the activities of that organization and the authority are above board? Do you have a monitoring unit mechanism within your ministry to deal with that? I would like you to give me a response when you are winding up. What kind of mechanism is in place?

Mr. President, we believe that the disbursement of moneys seems to be going on too easily within that organization. The board of directors has been there for two consecutive terms, so why would they want to have this altered? What is the reason? I do not understand.

I want to agree with my colleague that we have sufficient persons in our country to replace the current board of directors of that authority. Therefore, we call on the Minister not to go the route of extending the life of this current board. The impression we are getting is that the Minister is seeking to reappoint the same persons, who are the current directors of the board, through this measure, and not only the authority, but CANAS as well, and we believe that is wrong. We do not support that kind of extension or renewal in this regard. There are sufficient people in this country to take over this board and who can perform well.

We know that in terms of qualifications, persons must be trained in civil aviation, law, financial management, economics and human resource management, and we have people in the country who have those skills. So, we do not support the measure that is being proposed by the hon. Minister.

The other area that I would like to raise very briefly—

Sen. Prof. Deosaran: Sen. Mark, could I just ask a question?

Sen. W. Mark: Yes.

Sen. Prof. Deosaran: What stops the Minister from reappointing the same people?

Hon. Senators: Nothing.

Sen. W. Mark: That is what I am saying. He could reappoint them. Mr. President, through you, could the hon. Minister of Works and Transport also tell us, when he is winding up, whether the term of the board has expired?

Hon. Imbert: I said so.

Sen. W. Mark: How long?

Hon. Imbert: February 04, 2010.

Sen. W. Mark: Now, if that is not negligence—Mr. President, the Minister is behaving in the typical hon. Minister of Works and Transport style. Typical! He treats the Parliament with utter contempt. The hon. Minister brings a matter here and he is asking the honourable Senate—as Sen. Dana Seetahal SC said, we only saw these amendments late this afternoon when we came to the Parliament. What the Minister is seeking to get from us is approval to deal with the decisions of a company that we do not know anything about. We have no accounts of this company before us, and the decisions taken by that company are not before us. We do not have the minutes; we do not have the decisions. They have taken action—like the one I just read—and have given a private company, owned by a director of the Civil Aviation Authority—we have the address here.

Hon. Imbert: Let me see it.

Sen. W. Mark: Mr. President, I always find my colleague to be very amusing. He is always on some line that this could be fabricated; it does not have to be true and so on. Well, if it is not true, prove me wrong. I am saying that I have correspondence to that effect. You may be able to disprove it, but all I am saying is that you cannot disprove that there is a company called CANAS. It is there. I do not believe that you could dispute that there is a company called Air Transit Clearing House Limited.

In fact, today in this Parliament, you have the director general. You should go to him now and ask him if he knows of this company called Air Transit Clearing House Limited! Let him tell you! This is under the authority of the Director General of the Civil Aviation Authority of Trinidad and Tobago and Caribbean

Air Navigation and Advisory Services Limited. You should be advised that this came from the office of the director general. I am saying that you must get evidence to support it.

The hon. Minister comes today with an amendment in this honourable Senate, asking us to give him support to deal with all decisions and actions of the Caribbean Air Navigation and Advisory Services Limited—“all actions of the board or any Member thereof done pursuant”.

Mr. President, do you know what is the catch? Hear what is the catch! We are being asked this afternoon to approve all actions of the board or any member thereof done pursuant to this Act, between the period February 04, 2010 and the date of the commencement of this Act. This Act came into being in 2001, and you are going back to February 04, 2010. So, do you know what this means? Air Transit Clearing House Limited, owned by a director called Unanan Persad, at the address of a director—you are telling us in this Parliament that we must give you coverage for this! How can we give you coverage for this and validate this Act, and we are hearing about this company purely by accident this afternoon?

Somebody came to the Parliament this afternoon and said to bring this to the attention of the Parliament. I was not aware of it. I am hearing about this company for the first time, and the Minister is telling us that we must validate the formation of this company. Since 2009 this company has been in existence at the private address of a director. The name of the director is one Unanan Persad. Mr. President, the address of this director is in the registry. We have it here with us! How can we support a measure like this? You are trying to mamaguy or you are trying to trick—well, I would not say trick—but you are trying to mislead us. You are taking this Parliament for granted! You want this Parliament to engage in illegality and unlawful behaviour. We cannot be part of that.

You must either withdraw this measure, as we have said, or send this to a select committee, so that we can bring these stakeholders before us and get this matter cleared up. You have to bring information on the account of CANAS. The first responsibility that you have in order to allow us to support you on this matter is to bring the accounts of CANAS, which are audited by a company called Chanka Seeteram. We understand that is the accounting firm that does the auditing for this company called CANAS. We want to get the accounts of that company for the last five years. We also want to get the accounts of this company called Air Transit Clearing House Limited.

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Mr. President, we do not know where the money is going. Somebody is collecting money, purportedly, on behalf of the people of Trinidad and Tobago, at a private address. How can you be collecting on behalf of the people at the private address of a person? Mr. President, this is not going to the Civil Aviation Authority in Piarco, but this is going to the home address of one of their directors called Unanan Persad. And you are telling us that we must support this measure! No, we cannot take part in that. All we are saying is that the Minister has a duty and a responsibility to bring the facts before us, if we are to make an informed decision. We cannot be getting information like how we got it today. The Minister came with an amendment and slipped it through as if it is innocent, but it is far-reaching and sweeping, and there are implications. We do not want to be party to any measure or support any measure that is illegal or unlawful.

So, I call on the hon. Minister of Works and Transport to withdraw this Bill temporarily and bring all the evidence on this matter before us and let us examine the facts. We may need to help him, and we would like to help him on this matter, but we cannot help the Minister if we are not apprised of the facts. So bring the facts to our attention and we will give you the necessary support. That is all we are saying.

As we said, this is a measure that is very serious in terms of what it is attempting to do. It came as very innocuous measures, and then when he came with the big one—that is like when we used to look at *Sanford and Sons* and he got the “big one”, that was the heart attack. Do you understand? When we look, we see the big one coming behind here.

I know that the hon. Minister did indicate to us that he had a little sore throat and he could not really speak in his normal style, but when we saw clause 6, and the new addition, we almost got the “big one”. We could not believe that the Minister of Works and Transport would come and slip in a measure like this and try to get us to support it. We cannot support that.

We are all here as lawmakers to help you. We want to improve the legislation before us, but we cannot buy cat in bag. We are not giving you a blank cheque this afternoon. We are saying to come with the information, and let us read and understand and then we can make a judgment. Do not come and tie our hands behind our backs and give us limited information, and expect us as lawmakers to make an informed judgment and say that we are going along with this, that or the other.

Mr. President, that is the position of our colleagues on this side. We are willing to help him, but he must help us and he must really withdraw this measure at this time, or have this matter be referred to a select committee so that we can really go to the bottom of it.

In closing, I call for a forensic investigation into the operations of this organization called the Civil Aviation Authority and that must include the subsidiaries. The two subsidiaries that we are calling on the Government to investigate are CANAS and the Air Transit Clearing House Limited. We need an audit investigation into these operations.

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

6.00 p.m.

Mr. President: Hon. Senators, we have had about five or six speakers so far and everyone has repeated what everybody else has said. I am just going to warn further speakers to be very careful about how you go down because the time is starting to run against us now and I am going to start to use the Standing Orders with respect to repetition. Sen. Prof. Deosaran and Sen. Seetahal SC really are the only ones who went off on their own, but everybody else is repeating the same arguments. We just had a lesson on how to repeat it, and repeat, and repeat it. [*Laughter*] So, I do not think we need to hear those arguments again.

Sen. Subhas Ramkhelawan: Thank you, Mr. President, for the opportunity to speak on this Bill, which as it started out, I think the word “innocuous” has been used at least 10 times so in order not to incur I would not repeat the word “innocuous” anymore. [*Laughter*]

But, before we get into the meat of this matter and making my contribution on this particular Bill, I did not have the opportunity on the last occasion to extend my own welcome to the new Senators on the Opposition Bench, and I want to do so today. I want to welcome some old faces to the new Senate term, and especially, I want to add my welcome to Sen. Mark, who I am sure would have had some very tense moments [*Laughter*] leading up to his reappointment. I want to specifically congratulate the Leader of the Opposition Bench, because for some time now Sen. Mark has been alone in his having a teacher on the other side in the person of Sen. The Hon. Martin Joseph. I can say that I now have a former teacher in Sen. Dr. Suruj Rambachan who taught me some 30 years ago at the University of the West Indies. I hope he would do as well in the Senate as he did at the university.

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Mr. President, the Bill sought to do three things: to waive the radio licence fee—something to the order of \$3 million; to authorize the Minister to amend the Schedule by Order; and to allow the Board of the Authority to hold office for more than two consecutive terms. I did not have any great difficulty in supporting the Bill as it was originally couched and put to us in the Senate. Where the difficulties arise, would be in the amendments, and the challenges that they would present in terms of ensuring the passage of this particular piece of legislation.

The hon. Minister advised that in supporting the amendments, that a note went to Cabinet in 2005, I believe it was, to establish this company CANAS, and that some five years later, in January 2010, it came to the attention of the Government that something was amiss, in that the authority was not duly authorized to set up this company called CANAS. That is where we are at this point in time.

The arguments have already been raised as to the question of accountability of the Minister in not having identified this particular matter before. But I do not think the Minister is so much to blame. I think that the Board of the Authority was particularly negligent, because in the setting up of a company, usually, and in the entering into contracts by companies, there is the undertaking or the representation that the company has been properly established and is able and capable to enter into contracts. I would stand corrected by my colleague Sen. Dana Seetahal SC if that is not the case.

So, the board continued to be negligent, whether it is wilful or otherwise for a period of five years, since the formation of the company. When I say the board, I mean the board of the authority; I am not speaking to the board of the company. The hon. Minister was clearly above board in the original part of the presentation but found himself trying, to coin a term, below the radar screen, when he attempted to bring amendments and the amendments, from what we have heard, from the information or the suggestions within the Senate, these suggest that there is more in the mortar than the pestle.

If that is the case, it is important, it is necessary and it is incumbent upon the hon. Minister to go back and ensure that he does his homework and can address all of these issues, because I am sure that is not what he meant when he brought these amendments to the Senate, and I give way to the hon. Minister, because he wants to make some comment.

Hon. Imbert: I thank the Senator for giving way. I must tell you that immediately upon the contribution of Sen. Seetahal SC, I decided that what I would do is listen to everybody and not conclude the debate today, and ask hon.

Senators to take a look at the amendments, make whatever suggestions that are necessary in order to clean them up. Also, I need some time to look into the matters that have been raised. It is not my intention to try to complete this matter today. I just wanted to let you know that so you do not belabour on any misapprehension.

With respect to the amendments circulated today. This matter was debated in the Lower House about a month or more ago, and it is between the timing of the debate in the Lower House and today that it was brought to our attention that there was this issue with respect to the query about the bona fides of the company—because there are two schools of thought, “eh”, there are. There is a view that section 6 of the Act does give the authority wide powers, and those powers would include the setting up of a company; and there is another view that no, that needs to be expressly stated in the law.

I form the view that, look, there is no point in having a debate as to which opinion is correct. It is far better to bring it to the Parliament and correct whatever ambiguity may exist in the law. But I fully recognize that it was circulated at the last minute, that is beyond doubt, it was circulated today, and as I said, as soon as Sen. Seetahal SC spoke, I made the decision that I would simply listen to what everybody had to say and then we would suspend and come back at another point in time.

Sen. S. Ramkhelawan: Through you, Mr. President, thank you very much for that clarification, because it would certainly shorten my contribution to the specific areas of concern.

The amendment as suggested in the insertion of clause 6 as section 73 raises a number of questions, and under 73(c), what the amendment is seeking to do is to validate, not the specific action which may have been overlooked, the specific action of the formation of the company, which I would be prepared to support, but what it is seeking to do is to validate all actions of the board of the authority, which is a much wider ambit and which is, to me, far too catch-all to solve a particular problem. What we are doing is giving a full dispensation, in a sense, a full pardon, if you will, for all sins that may have been committed, but it is only one sin that you ought to be addressing, and it is the sin of the illegal formation of the company.

Hon. Imbert: Will you give way again?

Sen. S. Ramkhelawan: Not yet. So the point is that the hon. Minister asked to listen to what suggested amendments, and the suggestion is, in order for this to be

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supportable, it should now be the extent of the validation to be very limited. It should be limited only to the extent of the illegal formation of the company.

But suppose there were illegal actions taken by the company, they should not be—we should not, as a Senate, validate illegal actions outside of the formation. What this amendment suggests, that all actions are deemed to be lawful and validly done and no legal proceedings and no actions of any kind shall be entertained in respect of, or in consequence of these actions. So, I say again that the validation is far too broad and far too wide for it to be reasonable in nature and which can be reasonably supported, and that needs to be adjusted.

Now, the second thing under 73(c) again, is the time frame. Because what it is saying is that all actions of the board of the authority, or any member thereof pursuant to the Act—now between, and it is written in a sort of convoluted way—the period 4th February 2010, which would have been the date of the dissolution of the board and the date of commencement of this Act.

Now there is something strange about the wording, but that is a matter for the drafters. But the substance is that this amendment seeks to pardon the board of the authority for all actions taken from the commencement of the Act, which is 2001; which is not concurrent with the formation of the company. So this is rather strange, and clearly not acceptable. Not only was the board negligent, but I think the board took a bad business decision, which is, if the collection of fees and revenues were divisionalized under the authority, then the income would have been shorn of corporation and other taxes. Why does a board, a reasonable and capable board do something like this?

I await the explanation of the hon. Minister. Because if your revenues and your net income were, as has been touted about in the Parliament—\$115 million, that \$115 million in income would have had no tax if divisionalized under the authority. So, it raises more questions than answers from me as to why this was done in this particular way. Clearly this amendment has to be adjusted and narrowed. That is the point that I wish to make on this matter.

Again, we are being asked to—as it has been described before—validate and put legislation in a “cat in bag” way. We do not know what these actions were in the formation of the company over the past five years. We do not know! Therefore, we cannot, as a reasonable Member of the Senate, cannot support an amendment which, I am clearly not aware of.

I therefore endorse the suggestion that, if the hon. Minister as he has said, is going to set aside for the time being the continuation of this particular debate, fine. If the hon. Minister does that, what would make sense in the interim, is to

produce the audited accounts of the company, so that those who have to vote in the Senate on the matter would have a better appreciation of what would have happened since the formation of the company. If we have that appreciation, then it would minimize or even vitiate the extent of doubt that exists on the part of hon. Senators in the Senate.

6.15 p.m.

Hon. Imbert: I thank the Senator for giving way. I do not want to ascribe to the Senator's phisic powers, but your proposal that all we need to do is to deal with the incorporation of the company, is something that was addressing my mind before you got up. So I am tending towards that point of view that the real issue is the formation of the company, and all we perhaps need to do is to validate the incorporation and let the company stand on its own and wherever the chips fall, et cetera. I am just letting you know that I myself was going in that direction. I just want to make a point—and this is what the legal draftsman has come up with—I do agree when you look at it very closely now, it is very wide and we do need to narrow it and tighten it up a little bit.

Sen. S. Ramkhelawan: So you see, Mr. President, it is said that great minds think alike and fools seldom differ. I do not want to think that my hon. colleague on the other side could ever be deemed in the latter category. So I now elevate myself to the former category.

There was one other question simply to reinforce the point, that maybe some of the actions taken that we are seeking to validate here by simple majority, may have infringed on the Constitution and could have required a special majority if it infringed on the particular sections, I think sections 13 and so on. My more learned colleagues will tell me.

Sen. Seetahal SC: Sections 4 and 5.

Sen. S. Ramkhelawan: Sections 4 and 5, sorry. So again, this is simply to reinforce the point about the drafting and what we need to do to correct it.

So in concluding, Mr. President, I reinforce the point that we cannot give *carte blanche* validation, and that if we are giving indemnities, they must be specific indemnities and the time frame of those indemnities must be very, very clear from the commencement of the formation of the company, or the actions taken to include the formation of the company.

So with these thoughts and with the undertakings of the hon. Minister, I thank the Senate. [*Desk thumping*]

Sen. Linus Rogers: Mr. President, I thank you very much for giving me the opportunity to join this debate. A lot has been said and what I would do, I will try not to repeat. There was something the Opposition side said and was repeated over and over again, that I would just like to put into perspective, which is, that one of the intent of the Bill was to extend the life of the board. What I would like to state after reading through the Bill, is that what the particular clause looked to do was to basically allow for any member of the board to be allowed to be appointed for another term. It was not the board, but a member of the board. So that one can take one or a number of past members, and reappoint them for more than two terms and not any intent to ask the Senate to approve the reappointment of the entire board.

Mr. President: We have a procedural motion.

PROCEDURAL MOTION

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

Question put and agreed to.

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Sen. L. Rogers: And in a like manner, Mr. President, Sen. Prof. Deosaran brought up the issue on that same topic, on whether or not there was an issue of trust. I want to submit to him that it might be more an issue of "groupthink", rather than trust, in that Members opposite, having copied off the same template, they are repeating the template over and over again, rather than really raising an issue of trust, and that is probably why we heard it repeated over and over and over again by Sen. Dr. Rambachan, Sen. Mark and Sen. Assam all simply repeating the same thing.

In the contribution, the question was asked, what really are the activities? If I may take a little liberty and go back a bit, it was mentioned by the Minister in his presentation, that going back some years ago, the Civil Aviation Authority took over from a company IACL. They had responsibility for, and it was mentioned before, the Piarco Flight Information Region. Sen. Mark mentioned it was some 750 square miles.

Sen. Mark: Thousand.

Sen. L. Rogers: Seven hundred and fifty thousand square miles, but the real issue is what is really being provided for the region and for the people of Trinidad and Tobago. They are providing for us a number of services. These services

include flight information for aircraft transiting the region at altitudes of 6,000 and above, voice and data communication, air to ground communication, radar services and beacon information, such that aircraft can have a compass and get a point as to where they are, and for these services they pay what the Minister mentioned was the en route fee.

Now, to provide these services require equipment, and while we may not speak of it, and we jump over it lightly, there are some 13 or more countries being served which include Guadeloupe, Martinique, Antigua, St. Lucia, Barbados, and the others, and this require the need for equipment to be located in all of these countries in order to provide these services to transiting aircraft. Previously, these services were provided by IACL, now they are provided by Civil Aviation Authority. Again, in the same breath—as IACL, when they had the responsibility for providing these services, collected the fees from the various airlines and thus when that responsibility was moved from IACL over to Civil Aviation Authority, that Authority now has the responsibility to do the same collection.

On another point, the Minister took time, and I heard him bring it to this Senate's attention that the issue of CANAS was not one where he viewed it as an illegal act. What he said, and if I could recall what he said clearly, was that up until the Auditor General brought an issue to the ministry's attention that they had a concern with CANAS and the Auditor General's Office got an opinion to support their position. It was then that the ministry, out of an abundance of caution, was bringing this Bill to close any possible loophole so that there can be no doubt as to CANAS's legality, rather than leave it as questionable. So that while I heard Senators saying that it was an illegal act in the formation of CANAS, and I stand subject to correction, it was said that there might be a gap. Rather than leaving it alone, bring it to the fore and address it. In doing that, if you do that, then what you are doing is to make sure that there is no doubt that what has been done is legal; it was to remove all doubt. [*Interruption*] So out of an abundance of caution, it was not—I did not hear the Minister say in any form or fashion, that what was done was illegal. What this Bill seeks to do was to make sure that there are no legal gaps

Hon. Senator: He said it was not provided.

Sen. L. Rogers: It was an opinion and as such, steps were being taken to make sure that if any legal gaps existed, those gaps were closed. So all the discussions about illegality and all of that, I have a difficulty in accepting those arguments from the point of view of what was presented in this Senate today. I

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need for all of us to recognize that what we are addressing was the possibility of a potential legal gap, and as such, I used the words "out of an abundance of caution".

Now, in part of the discussion this evening, the issue came up with respect to collection of fees. My understanding and from the little information I am aware of, is that typically, IATA is an organization that collects funds from members and distributes those funds to other members who have to do collections. So you make the whole mechanism of collection a much easier matter. However, you have a gap there also. What happens to organizations that are not within IATA? How do you collect funds from them? From my knowledge and understanding, what you do is you go out and find organizations that will do the collection for you. My understanding is that this is no different from what Civil Aviation has done. If I were to use my own organization, TSTT, what we do is that we collect from our customers and for those customers that we have difficulty collecting from, we send these to a collection agency, to collect.

Sen. Dr. Rambachan: You did that for Beyonce?

Sen. L. Rogers: Staying on the topic, Mr. President, and speaking directly to you, it is no different in this case. You collect through IATA for those organizations that are IATA members, and you have someone collect for you because you need people who are specialized in collections, who have the expertise and the resources to do that type of activity and bring it in for you rather than an organization expand outside its core area where they do not have the expertise.

Mr. President, I heard a call for accounts and information on the various organizations. I have a difficulty if we are calling for the accounts of private organizations to be laid in this Parliament, as we would do with public organizations. If I heard it carefully, the Senator indicated that the company in his understanding, was a subsidiary of the Civil Aviation. From the information that I am aware of, this is not the case, but rather it is a private organization.

Sen. Dr. Rambachan: CANAS is a private one?

Sen. L. Rogers: So, Mr. President, while I will support a call for accounts of public organizations, I have a great difficulty when we get into private organizations and call for them to provide information in a similar manner as we do for public organizations.

Sen. Ramkhelawan: Thank you for giving way. Mr. President, while on paper this might be a private limited company, the point is that it is a fully-owned subsidiary of a public authority. So I think that my learned friend, Sen. Rogers, ought to clarify that.

Hon. Imbert: Not that one.

Sen. Dr. Rambachan: The other one is feeding off.

Sen. L. Rogers: Senator, what I am saying clearly, I am not speaking of CANAS, I am speaking about the other organization that was mentioned which was Air Transit Clearing House Limited. That was the organization I was speaking of. I was not speaking of CANAS. All the information available to me does not support what you are saying.

6.30 p.m.

In my intervention, I wanted to make two corrections and to basically remind us all that CANAS has moved from one collection scheme to another. In addition, given that there is a legal opinion which points to a possible legal gap, what we are debating this afternoon is taking a precautionary measure to make sure that if, in fact, a legal gap exists, it is closed.

I thank you.

Sen. Helen Drayton: Mr. President, the amendments brought to us in this Civil Aviation (Amdt.) Bill, seems to be pretty simple at face value. I want to take an opportunity to read one paragraph which is from the Convention on International Civil Aviation which we are a party to. Civil aviation has been shaped by major developments in the civil aviation industry, which have occurred since 1990. These phenomenal changes include:

“...progress, with the universal proliferation of the use of computers and electronic data interchange systems; massive increases in illegal migration which have become worldwide immigration and national security problems, with civil aviation the transport mode of choice, and passport fraud a frequent tactic; and ongoing political and social upheaval, which has given rise to increased use of terrorism, in which lawful interference with civil aviation is still a powerful technique for pursuing an objective.”

It is in this context we must view some of these changes, which appear to be very simple, but the reality is our local Civil Aviation Authority has serious responsibilities for international civil aviation.

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What is clear is that any changes to the laws that give effect to the International Convention, however minor these might appear, must be seen in the context of the special nature of the civil aviation industry. This is why I will not treat too lightly with the proposed amendment, in having a fairly open ended clause, with respect to the term of office. I just heard the option to extend maybe with respect to one or two board members for more than two terms. It also brings me to the powers that these amendments give to the Minister and, by extension, Cabinet, to change the schedules and, by extension, the appointment of the board. Again, on the face of it, this appears to be a very simple matter and not of substantial or material change.

In the opening statement of the Minister, mention was made of the fact that the Civil Aviation Division was removed from the Ministry. It was removed from under the direct authority of the Minister, although I recognize that the very laws and schedules do give the Minister certain powers, with respect to advice and proposals coming from the Civil Aviation Authority; of course, it was also removed from that political environment, to give it a certain measure of autonomy and control.

That should be kept in mind when we seek to consider an amendment that, in effect, brings the Civil Aviation Authority back under the powers of the Minister, the control of the Minister, who, by extension, having the authority or the mandate to change the schedule would now also have the power to appoint the chairman and members of the board.

With respect to the changing of the term of office for board members, it was stated that a three-year term and a maximum of two terms is something unique in the aviation industry; perhaps that is for very good reason. The Minister also said that given the nature of the industry, systems and procedures were constantly under review and the regulation and schedules must be changed to ensure that they were relevant to the particular times that we were living in and also compliant with the international standards, as well as for maintaining the accreditation status. It goes, therefore, without saying, that similarly there must be constant review of the skills, competencies and qualifications, both at the level of governance and the level of operations to ensure that those are relevant to an industry that is evolving and under constant change.

There is a lot of merit in saying that in this particular industry, service for a certain period, a maximum period, is, in fact, a good and a very healthy thing, because it is an industry that requires an ongoing infusion of skills and competencies; more so, given the fact that it is reliant upon information technology which, in itself, is undergoing very rapid changes.

I also do not subscribe to the view that laws should be changed because there is some difficulty in finding resources. One of the scourges in this country is a lack of succession, a lack of planning strategies. This lack of succession, this lack of infusion of new blood, particularly at the level of governance, gives rise to institutional inertia; it gives rise to corruption, it gives rise to inefficiency and it gives rise to a lack of accountability. I do not fully buy the argument with respect to the delay in the annual report. This is an authority that has the mandate, it has sufficient authority and there is absolutely no reason. I cannot buy the argument that it is somewhere with the Auditor General. When were these reports submitted? I think that is very important. [*Interruption*]

Hon. Imbert: They were, in fact, submitted in the years in which they were due. From the letter it is clear to me. On December 27, 2007, the Director General of the Civil Aviation Authority wrote the Auditor General and submitted the annual report and financial statements for the year ended September 30, 2007, and this goes all the way back. Similarly, December 23, 2008, again, the Director General submitted the annual report and financial statements for the year ending September 30, 2008; similarly in 2009, December 22, the authority submitted their annual report and financial statements for the year ending September 30. So within less than three months of the end of their accounting year, the authority complied and submitted their report and statements to the Auditor General in each year. That is what I said.

Sen. H. Drayton: Thank you for that clarification. That does not put aside the fact that from a financial management point of view, annual reports that are outstanding more than two years—and I take what you said—become totally irrelevant; there is very little that one can do or take action on thereafter. I appreciate and certainly I would commend the Authority for being timely in submitting the reports to the Auditor General.

I listened to the explanation that was given by Sen. Rogers with respect to the company that was operating, we use the term, illegally; where the explanation was given, in other words, a view was expressed, there was no clarity with respect to whether the company was operating, ultra vires or not. The reality is, I do not think that we should be going through the motions of drafting and bringing legislation to make a law where we are not certain of the facts. I am very glad that the Minister has undertaken to review the amendments proposed in light of all that was said here today. So there is sufficient opportunity to review that matter and determine whether it is fact or fiction.

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If it is fact, it is testimony that the board of the Civil Aviation Authority should be sticking to its core business—it already has very serious national and international responsibilities—and not engage in all sorts of matters which are not stipulated, which are not defined, and lose perspective of what is its core mandate. It is, indeed, testimony to the fact that maybe this is a board that should not be serving more than its two terms.

I thank you, Mr. President.

Sen. Lyndira Oudit: Mr. President, I have listened to fantastic contributions in the Senate today. I believe that we have seriously seen a lifting of debates, especially from this side. [*Laughter*] I do not know if that is the reason that side was so quiet. [*Crosstalk*] Everybody spoke about how quiet you all were and I do not know if it was because of the level that came from on this side.

Hon. Imbert: You are here? [*Laughter*]

Sen. L. Oudit: I believe that this legislation has less to do with making the civil aviation industry more viable, more efficient, more productive and capable, than it has to do with an ulterior agenda. We have heard from several of the speakers here about companies and other companies and associated companies, but I would like to draw from the Civil Aviation Act, section 7, which indicates that:

"...the Authority may—

- (a) engage in any activity that promotes and develops civil aviation, either alone or in conjunction with other civil aviation authorities, international agencies or organisations;"

Further, section 18 of the Act, Part IV under finance, which identifies the establishment and use of the Trinidad and Tobago Civil Aviation Authority Fund, and identifies the acquisition of property.

I would like to indicate, from the onset, that my understanding of the agenda of this legislation is really to make way for what is happening right now in the Caricom region between Air Jamaica and Caribbean Airlines.

6.45 p.m.

This minimal piece of legislation that was given to us is really deceptive. It has a singular purpose which is to distract us and therein lies the further deceptiveness of what came here as a list of amendments and the dangers really lay in this particular list of amendments that were added surreptitiously among the documents laid today at 1.30 p.m.

Mr. President, what is the intention of this amendment Bill? The Minister in his presentation indicated—and I agree with him—that it is a waste of Parliament time to debate regulations and schedules. I agree, but I do not believe for a minute, Mr. Minister, that we are actually here to debate schedules and regulations. What is interesting is—like I said—this is dangerous legislation here.

In my mind, my opinion, I am not a lawyer, an accountant, economist, neither am I an expert in civil aviation matters, but I would like to refer you to the *Trinidad Guardian* of February 12, 2010 and there is a picture of the Prime Minister of Jamaica, Mr. Bruce Golding and it says:

"...the Prime Minister"—referring to Mr. Golding—"has reported that negotiations for the purchase of Air Jamaica by T&T's Caribbean Airlines are well advanced... 'The Government does not intend, because it will not be able, to provide any financial, support to Air Jamaica beyond this financial year which ends in March...'—2010.

This is according to Mr. Bruce Golding.

In the same article, according to an extensive analysis that was done on Air Jamaica's operations by US based airline investigator Indigo Partners and Caribbean Airlines it states:

"It ... 'point to the unlikelihood that Air Jamaica, given the size of its current and political and potential operations, can be profitable as a stand-alone airline.' 'Its overheads, even after rationalization, are too great and its most optimistic projected revenues too small to assure'—an even minimal—"profit'..."

Mr. President, if the Jamaican Prime Minister had indicated this since February 12, 2010 then why would this Government proceed? And you know how it is proceeding? You have surprise visits—

Hon. Imbert: Mr. President, on a point of order. Standing Order No. 35(1). This Bill has absolutely nothing to do with Air Jamaica, nor does the Civil Aviation Authority of Trinidad and Tobago have anything to do with Air Jamaica.

Sen. L. Oudit: Mr. President, I refer to the Act stating and I have indicated that in my understanding of it, I have—

Mr. President: Regardless of what the Act says, does, or anything else, what we have in front of us is an amendment to the Act and it does not have that clause in it and does not have anything to do with Air Jamaica. So the Minister is quite right.

Sen. L. Oudit: Mr. President, with all due respect—

Sen. Jeremie SC: Are you challenging the President?

Sen. L. Oudit: No, I said with all due respect, you surreptitiously slipped in amendments include, and I would like to indicate here that it says:

"Section 7 of the Act is amended—

for or otherwise acquire shares in any company or firm or participate in the formation of a company provided that such subscription or acquisition is not in relation to a company regulated by the Authority under this Act;"

It further says in subsection (e):

"enter into partnership arrangements or an arrangement for the sharing of profits;"

Mr. President, this is in the amendments given here. *[Interruption]* If it is any company, why not Air Jamaica? Why are we fixing here? This is your amendment.

Mr. President: The amendment does not deal with Air Jamaica, it does not deal with Caribbean Airlines and, therefore, that really is outside of this scope. You are also, I think, contravening the spirit of the Standing Orders when you referred to having these amendments surreptitiously slipped in. Nothing of the kind occurred, they were circulated in the normal manner and I think that is improper for you to impute that kind of intent to the Minister involved. Perhaps, it may have been late, but it was done quite properly.

Sen. Narace: Just apologize and move on.

Sen. L. Oudit: Mr. President, I am guided by your wisdom and experience. I am guided that we all make mistakes from time to time. I recognize that.

Mr. President, it would seem that for some reason we can speak about other companies and agencies. We can speak about agencies out of Rivulet Road, but for some reason, the Minister—through you, Sir—would not like to have the public informed about what is happening with Caribbean Airlines which is regulated by the Civil Aviation Authority, and so it is unfortunate in my mind that my contribution today really and truly was going to look at how this Act—and this amendment—is going to allow for the acquisition of Air Jamaica by April of 2010.

Hon. Imbert: Mr. President, Standing Order No. 35(1).

Sen. L. Oudit: Mr. President, as I am on my legs, I would like to wind up my contribution today simply to let the Minister assure the population that this has absolutely nothing to do with the acquisition of Air Jamaica and the surprise visits by the Prime Minister of Jamaica. I would also like him to know that the people of the Caricom region are watching very closely what is happening through the Civil Aviation Authority and the acquisition thereafter by Caribbean Airlines which is governed by this Civil Aviation Bill and the Civil Aviation Act. It is looking because the Jamaican people are fighting against that sell-out of Air Jamaica and the Trinidad people are literally going to fight you, Mr. Minister, on the acquisition of Air Jamaica.

I thank you.

The Minister of Works and Transport (Hon. Colm Imbert): Mr. President, as I said, I do not intend to complete this debate today.

With respect to the contribution of the last speaker, Sen. Oudit, all I would say is that this Parliament is a place for serious people, making serious points about serious matters.

The Civil Aviation Authority does not regulate the commercial operations of Caribbean Airlines, it looks at airworthiness, the qualifications of its pilots, it looks at its routes; everything to do with navigation and aviation in the context of airlines. It does not regulate the commercial operations of Caribbean Airlines and certainly would have nothing to do or say about the acquisition by Caribbean Airlines of Air Jamaica.

Although Sen. Oudit was—in my respectful opinion, and you will correct me if I am wrong—wholly irrelevant, I wish to state categorically in this place, as I have stated in the other place twice and it has been reported prominently in the electronic and print media twice; most recently, just a week ago, that neither the Government of Trinidad and Tobago nor Caribbean Airlines intends to acquire Air Jamaica. I do not know how many times I have to say this, Mr. President, but that intervention about Air Jamaica in my view was wholly irrelevant to the matter at hand.

As I said, I believe the Parliament and this Senate is a place for serious people making serious points. I have taken the points made by Sen. Drayton and Sen. Ramkhelawan very seriously and especially the points made by Sen. Seetahal SC and Sen. Prof. Deosaran.

Sen. Dr. Rambachan: Would you give way?

Hon. C. Imbert: No, because when I wanted you to give way you refused. Perhaps I will give way in a little while, but the fact is—[*Interruption*]

Mr. President, I am glad I did not give way because Sen. Dr. Rambachan was attempting to derail this debate into a debate about Air Jamaica. He is mumbling across the floor at me. Not in this debate, we will have a debate about that some other time, not today.

As I said, Sen. Prof. Deosaran made some very serious points; Sen. Seetahal SC is the one who got me thinking; Sen. Ramkhelawan made some very important, valuable suggestions and Sen. Drayton also made some serious points worthy of serious consideration. I cannot say the same for Sen. Dr. Rambachan, Sen. Mark and Sen. Oudit, who, as far as I am concerned, are not serious at all.

As I indicated when Sen. Ramkhelawan was speaking, my mind was going in that direction. We would, of course, have to seek advice from the Attorney General to see whether we can—

Mr. President: Minister, I know that you are a guest in the Senate, but I would ask you not to describe Senators as not being serious. Perhaps you can describe what they say as not being serious, but I do not think you should use any term in any way that disturbs the reputation and integrity of Senators in this Chamber.

Hon. C. Imbert: I thank you most sincerely for that correction, Mr. President, and may I now clarify that their contributions were not serious. [*Desk thumping*] They were in fact facetious, vexatious, irrelevant, trivial, and repetitious.

Let me come back to Sen. Ramkhelawan—[*Interruption*] You could keep talking about that; you can file a motion, I will come and answer it, as I have already done in the other place. The Member for Caroni East filed a Motion on that matter and I responded in the other place. So if you want to file a Motion, I will answer it, but let us get back to the matter at hand.

Sen. Ramkhelawan has suggested that we can deal with the problem that has arisen by merely limiting the application of the amendments to the incorporation of the company. That makes eminent common sense to me, but the Attorney General would have to advise as to whether that will resolve the issue we are trying to deal with. As I said, it makes a lot of sense to me and seems to be a solution which would get away from asking this honourable Senate to validate the decisions and actions of a company. And quite correctly, hon. Senators opposite

on the top bench have made the serious point that one should not be asked to validate the actions of a company when you really do not know what they are. So quite rightly, that proposal that Sen. Ramkhelawan made makes, as I said, perfect common sense.

7.00 p.m.

With respect to the point made by Sen. Seetahal SC, the words "or any other person" certainly appear to be too wide and we need to take a look at that and I would appreciate any assistance Sen. Seetahal SC can render in that regard. I will also ask the Attorney General to assist in the tightening up of that clause, so that we make it crystal clear that we are talking about the delegation of functions or powers specifically to companies that are relevant or that facilitate the performance of the functions of the authority.

Let me emphasize the history of this. The creation of Caribbean Air Navigation and Advisory Services Limited (CANASL) started off with a Cabinet Note and decision in early 2005. In fact, the Note was dated December 2004 and in that Note the then Minister of Works and Transport sought the approval of Cabinet for the transfer of air navigation functions performed by that company called Inter-Caribbean Aeronautical Communications Limited (IACL) to the Trinidad and Tobago Civil Aviation Authority. Cabinet agreed that the Trinidad and Tobago Civil Aviation Authority should take all requisite steps to take over the functions related to the provision of navigation services currently performed by IACL and the authority should initiate immediately the revision of en route rates within the Piarco Flight Information Region (FIR) to bring them in line with the prevailing market rates for similar services.

That is the genesis of this company. The then Minister, in view of the fact that IACL had been charging and collecting fees and disbursing them as it saw fit and not accounting to the Government, quite correctly proposed to Cabinet and Cabinet agreed that the Civil Aviation Authority should take over the functions of IACL. That was the first Cabinet decision.

Shortly after, the Cabinet approved the formation of the company. When I look at the Note, it is not a complex Note; it was simply seeking the approval of the Cabinet to form the Caribbean Air Navigation Services Limited. The reason given for forming the company was that the Piarco Flight Information Region was comprised of a number of different territories. As I said, it starts in Trinidad and Tobago and goes all the way up to Antigua.

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The Piarco Flight Information Region comprises Antigua and Barbuda, Barbados, Dominica, Grenada, Guadeloupe, Martinique, Montserrat, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines and Trinidad and Tobago. That is the Piarco Flight Information Region.

What the then Minister proposed in the formation of this company, in order to ensure transparency, accountability and efficiency and to avoid the comingling of funds from the flight information region with those of the Civil Aviation Authority, was that the Civil Aviation Authority set up a special purpose company to provide air navigation services within the Piarco Flight Information Region and, in so doing, include such functions previously performed by IACL.

The concept prior to 2005 was that the fees charged to airlines for en route services through the Piarco FIR were collected by this private company IACL as it saw fit and spent as it saw fit. They did not remit anything of significance to the Government of Trinidad and Tobago. They did that for 50 years. The company was established in 1958 and from 1958 all the way up to 2005, this company collected fees from airlines and disbursed them as it saw fit.

The Government of Trinidad and Tobago, which had been given the responsibility to manage the air navigation services in this region, had to provide equipment. We had an anomalous situation where the Trinidad and Tobago taxpayer was paying for the installation of air navigation equipment to provide air navigation services, but a private company was collecting fees from the airlines and disbursing them as it saw fit. This did not in any way compensate for the cost of the installation and operation of all this equipment.

The view was at the time that it was necessary for either IACL to start remitting a proper quantum of funds to the Government or for the Government to take it over. Essentially, when IACL was confronted and asked to show its books—quite similar to what is being asked today—it refused and pulled out, rather than having to expose its books to the Government.

Based on that, the then Minister approached Cabinet and asked for approval for the Civil Aviation Authority to set up this company to charge fees and use the money to build the control tower, put in radar and those things. That is what the money is being used for.

However, since this was a fund never available to the Civil Aviation Authority before—remember, they had no access to this money—when you reconstruct what occurred in 2005, you see the Government at the time agreed that there should be no comingling of funds collected from the airlines. This was a new

income stream; it did not exist before in terms of the Civil Aviation Authority. They decided to set up a special purpose company, whose mandate would be to charge the correct rates, much more than was being charged before, and to preserve the funds for the acquisition of equipment and the provision of services. That is why there was a decision to set up this separate company.

At the time, the view was that section 6 of the Civil Aviation Act, No. 11 of 2001, which reads as follows:

“The Authority has the power to do all things necessary and convenient for, or in connection with, the performance of its functions specified in section 5.”

If you look at section 5, it is quite long:

“The functions of the Authority are—

- (a) to maintain a standard of safety and efficiency in the civil aviation system”—which obviously would be the provision of navigation services—
- “(b) to regulate...
 - (i) civil aviation operations in Trinidad and Tobago;
 - (ii) the operation of Trinidad and Tobago aircraft...
 - (iii) the operation of maintenance organizations...
- (c) to license aerodromes...
- (d) to provide technical advice...
- (e) to issue, renew...and amend licences...
- (f) to provide an adequate system”—this is important—“of air traffic services in the Piarco Flight Information Region...”

That is section 5(f):

- “(f) ...such other air space as may be the subject of a treaty or an agreement between Trinidad and Tobago and any other State...;
- (g) to carry out an investigation of an aircraft accident...
- (h) the development of civil aviation...
- (i) to advise the Minister on matters related to civil aviation;”

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In pursuance of function 5(f), to provide an adequate system of air traffic services in the Piarco Flight Information Region and apply section 6 that the authority has the power to do all things necessary and convenient for and in connection with the performance of its function specified in section 5, the authority sought the approval to establish this company to fulfil this function in 5(f).

At the time, there was no opinion that there was anything ultra vires or untoward about that. Cabinet approved the establishment of the company. It is in the submission of its accounts to the Auditor General, who is now auditing the Civil Aviation Authority, noticing the formation of this company, sought to discover the authority for the formation of the company, going backwards now saw that it would have been pursuant to a board decision.

Sen. Seetahal SC: Would that be in terms of collecting fees as well? The company would really have been collecting payments. In every other legislation, where a body has the power to do those fees, you will see it is conveyed specifically by legislation.

Hon. C. Imbert: I am not disputing that at all; but the Civil Aviation Authority in section 6 of the Act is given the power to do all things necessary and convenient.

You say that you have seen in other legislation that it is stated; but if you go to section 7 that:

“Without limiting the generality of section 6, the Authority may:

(c) charge fees for the use of any facility or service provided by the Authority.”

So, in the combined application 7(c), 5(f) and the Cabinet decision, the authority established this company and it was of the view, having approval from Cabinet, having the wide application of clause 6, the combined effect of 5(f) and 7(c), that there was no problem with any of this. The Auditor General, when the Civil Aviation Authority dutifully submitted its accounts on time—they were supposed to do it within three months of the fiscal year—less than three months. They dutifully submitted their accounts—their annual report and their financial statements.

The Auditor General, now auditing, saw, inside the Civil Aviation Authority’s accounts, reference to the Caribbean Air Navigation Services Company. In seeing that, the Auditor General went backward and said: Where is the authority?

Firstly, one would see Cabinet authority, so that aspect was settled. The Auditor General then went further and solicited an opinion from the Attorney General's office; not from the Attorney General himself. The way these things are done, sometimes the Attorney General would see every single opinion issued by his office and sometimes not. The Auditor General sought an opinion from the Attorney General's office and I am advised that it came either from the Deputy or the Acting Solicitor General and when you read the opinion it is a bit thin. It does not go into great detail. The opinion says that it is arguable that section 6 does not give the authority the power to establish the company. While the Companies Act allows the authority to set it up, it is arguable that the parent statute does not give it the power.

That opinion then was sent to the Civil Aviation Authority in January of this year and they contacted the Ministry saying they have an opinion from the Auditor General who obtained it from the Solicitor General's office.

7.15 p.m.

The advice received after looking at it was, rather than have a debate as to whether the advice that the authority relied upon in 2005 was correct, or whether this opinion that is coming from some person in the Solicitor General's office is correct, since it was an arguable case, the better thing to do was to come to the Parliament and settle and give the Civil Aviation Authority the express power to form a company.

Having said all of that, I certainly agree that we need to be careful, in terms of the generality of this thing. We need look at it very carefully and see whether we are not giving too much leeway to the authority or whether we are not seeking to validate things that we really should not and that the authority will need to answer to another authority. That is why I like the suggestion coming from Sen. Ramkhelawan that, perhaps, the solution is simply to legitimize the formation of the company and then the company will have to subject itself to scrutiny by all the various authorities that are set up to do audits and things like that.

That is why, at this juncture, I would like to suspend this aspect of my winding up, so I can go away and I can seek advice. I would appreciate, as I have said, any information or suggestions from Senators opposite, as to how we can fine tune these amendments. Certainly, I would look into all of the matters raised by Members opposite, including Members on the Lower Bench. I would look into all these matters; some of them—

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[HON. C. IMBERT]

Tuesday, March 09, 2010

Sen. Mark in his usual—you would have to tell me if I am transgressing—hyperbolic style or rather passionate style—“how yuh like dat?”—really went a little bit to the extreme. Even listening to his own words, I did deduce from what Sen. Mark was saying was that this company—I cannot remember the name of it, I wrote it down and I have already asked my people to look into the matter for me—Air Transit Clearing House, is not a subsidiary of CANAS, as far as I know. It is a private company. My informal enquiries, they are informal and preliminary—you are quite right, the Director General was here. I went and asked him—is that this is more or less a debt collection agency and what it does is that there are airlines that are not part of IATA that would not come in through—their fees would not come in—the IATA system, but they are using the air space, so there must be a way to collect from these airlines that are not part of the formal IATA system. I am told—and this is all subject to—*[Interruption]* hold on, Sen. Mark, cool down—the company was engaged in accordance with the tender procedures of the Civil Aviation Authority. That is what I am told; that everything is above board, tenders were invited and this company was judged to be the most competent company to provide these debt collections. I am just telling you what I was told. Sen. Mark, calm down.

Sen. Browne: He did not take his tablets today.

Hon. C. Imbert: I am told that tenders were invited. The company was adjudged to be the most competent company to provide these debt collection services and that—this is what I am told, I will clarify—the person you are alleging is a director of Civil Aviation Authority and who you allege is also director of this company, that they are not the same person. That is what I am told. I am further told that the gentleman whose name you have called, declared an interest in this matter and did not participate in the decision making, but all of that can be established. This is what I was told informally in the two minutes there talking to the Director General.

Be that as it may, I certainly was listening to everything that was being said and certainly all of these matters will be looked into and certainly all of the suggestions made by hon. Senators will be given careful consideration, so that when we come back—I cannot tell you at this time whether it would be in one week, or two weeks, it all depends on the resources, the advice from the Attorney General, et cetera. But it is either in one week or two weeks, depending on the schedule of the Senate and the wish of the Leader or the Senator is when we will return. But certainly you would have at least one week, preferably two weeks to

look at all of this and see what needs to be done to these amendments, to provide checks and balances that I am certain beneath all the hyperbole, even the Members on the Front Bench would like all of us to adhere to.

I am not finished with my contribution, Mr. President. I suggest you adjourn me in the middle of my contribution. Go ahead, adjourn me.

ADJOURNMENT

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Mr. President, I beg to move that the Senate do now adjourn to Tuesday, March 16, 2010, at 1.30 p.m., where it is my intention to debate the Act to amend the Prisons Act, Chap. 13:01, and time permitting or otherwise, the Act to restructure the pension arrangement at the Petroleum Company of Trinidad and Tobago.

I am suggesting that we prepare to debate both, because there are some timing issues that I would want to treat with for these particular employees.

Sen. Mark: Could you indicate to us when we would be dealing with the Trinidad and Tobago Revenue Authority? Would it be the following week?

Sen. The Hon. C. Enill: At this point in time, that legislation is not even on the Order Paper. As soon as it gets there I will schedule it.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 7.22 p.m.