

Senator's Appointment

Wednesday May 23, 2012

SENATE

Wednesday, May 23, 2012

The Senate met at 1.30 p.m.

PRAYERS

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

SENATOR'S APPOINTMENT

Madam Vice-President: Hon. Senators, I have received the following correspondence from His Excellency the Acting President, Timothy Hamel-Smith:

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency TIMOTHY HAMEL-SMITH,
Acting President and Commander-in-Chief
of the Republic of Trinidad and Tobago.

/s/ T. Hamel-Smith
Acting President.

TO: DR. LENNOX BERNARD

WHEREAS Senator Dr. James Armstrong is incapable of performing his duties as a Senator by reason of his absence from Trinidad and Tobago:

NOW, THEREFORE, I, TIMOTHY HAMEL-SMITH, Acting President as aforesaid, in exercise of the power vested in me by section 44(1)(a) and section 44(4)(c) of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, LENNOX BERNARD, to be temporarily a member of the Senate, with effect from 23rd May, 2012 and continuing during the absence from Trinidad and Tobago of the said Sen. Dr. James Armstrong.

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 23rd day of May, 2012.”

OATH OF ALLEGIANCE

Senator Lennox Bernard took and subscribed the Oath of Allegiance as required by law.

Adherence to Standing Order
[MADAM VICE-PRESIDENT]

Wednesday May 23, 2012

ADHERENCE TO STANDING ORDER AND SUBMISSION OF AMENDMENTS

Madam Vice-President: Hon. Senators, as we approach, what I hope to be, the conclusion of the Children Bill, today, I wish to reference comments made by the President of the Senate on the occasion that he last sat in the Chair. All Senators are urged to adhere to Standing Order 53, and to submit to the Clerk at the table all proposed amendments in writing. Senators are also asked to refer to *May's Parliamentary Practice* 23rd Edition pages 603 to 605.

It is not my intention during the committee stage of this Bill to entertain too many detailed, impromptu amendments from the floor. This Bill consists of 123 clauses, and in the interest of efficiency, and in the wise use of parliamentary time, the discussions on each clause should be kept as crisply and concisely as possible.

CHILDREN BILL, 2012
[Third Day]

Order read for resuming adjourned debate on question [May 15, 2012]:

That the Bill be now read a second time.

Question again proposed.

Madam Vice-President: Hon. Senators, the debate on the following Bill was in progress when the Senate adjourned on Tuesday, May 15, 2012, a Bill entitled “an Act relating to the protection of children and for matters related thereto”.

Those who spoke on Tuesday, May 15, 2012: Sen. The Hon. Verna St. Rose Greaves, Minister of Gender, Youth and Child Development, the mover of the Motion; Sen. Faris Al-Rawi; Sen. Corinne Baptiste-McKnight, and Sen. Lyndira Oudit. Friday May 18, those who spoke: Sen. Terrence Deyalsingh; Sen. Dr. Rolph Balgobin; Sen. The Hon. Brig. John Sandy; Sen. Penelope Beckles; Sen. The Hon. Kevin Ramnarine; Sen. Shamfa Cudjoe; Sen. Dr. James Armstrong; Sen. Prof. Harold Ramkissoon; Sen. The Hon. Embau Moheni; Sen. Sherrie Ali; Sen. Basharat Ali; Sen. Dr. Victor Wheeler; Albert Sydney; Sen. Elton Prescott SC.

Sen. Prescott SC, you spoke for 22 minutes, and therefore, you have 23 minutes of your original speaking time. You may continue.

Sen. E. Prescott, SC: Thank you very much, Madam Vice-President. I make a confession at the beginning that the things I am about to say are likely to appear to require amendment to the Bill, and I may have great difficulty in complying with the request that we put the amendments in writing, but I would endeavour to do so.

I had concluded, on the last occasion, with some references to the several marriage Acts that are law in this country, and I thought that I could just continue from there for a brief moment.

The point I was making at the time was that it appears to me that the Muslim Marriage Act, the Hindu Marriage Act, and Orisha Marriage Act need to be addressed again if they are to, at the very least, be consistent with what we are now proceeding to do; the Children Bill being a very laudable objective, in all of its provisions. So that I trust that we could bear in mind that the very liberal provisions in relation to children's marriages in those Acts, should be addressed and redefined to bring us into more modern times.

The universal conventions on children's rights acknowledge that children have a right to play, and some constitutions speak of a right to pursue happiness, and any thinking person would ask, how in the circumstances, this incongruity could exist, where children who marry at age 12, lose their convention right, so that somebody else could pursue his own happiness? And I put that as tactfully as I could, in the hope that somebody would take note, and address it in settling the terms of this piece of legislation.

Madam Vice-President, I have some areas of recommendation that I wish to make for the consideration of the hon. Minister, and the first of these is, I think that we should introduce what the media call, "whistle-blower legislation". By that I mean that a person who is aware of an offence against a child, should feel free to bring it to the attention of an authority figure, and not have to face litigation of any sort or to face the offender, whether or not this person is right in his conclusion that something wrong is occurring.

The reason for this is that in today's society the offender, if he or she becomes aware of someone having "carried news", if I may use that term, is likely to take violent steps, to remove the complaining person, and busybodied though that person may be, we should encourage the communication to the authorities of offences affecting children. Not only must the neighbour, if I may use the term, be encouraged, but so too should the parent or the older sibling within the household, and more importantly so should the child.

Against that background I should ask Senators to look with me at the following pieces of legislation which come close to providing for something similar. In the Sexual Offences Act, Chap.11:28, you would find the following provisions at section 31. It says:

“Any person who—

- (a) is the parent or guardian of a minor;
- (b) has the actual custody, charge or control of a minor,
- (c) has the temporary custody, care, charge or a control of minor for a special purpose, as ...”—for example—“an employer or teacher,...
- (d) is a medical practitioner, or a registered nurse or midwife, and has performed a medical examination in respect of a minor,

and who has reasonable grounds for believing that a sexual offence has been committed in respect of that minor, shall report the grounds for his belief to a police officer as soon as reasonably practicable.”

So this is along the lines that I am thinking, that there should be a burden on all of us to take steps, once we are aware or are reasonably satisfied that some offence, contrary to what is provided in the Children Bill, particularly the reference to cruelty, should be brought to the attention of an authority figure. The person doing so should not feel prejudiced, or worse, intimidated, by the fact that they may have to face up to court proceedings or exposure in any public light.

If you know the court system, such a person will be required to give evidence in the criminal trials, and will, therefore, have to face the offender, and that alone is a traumatic activity for the person who, otherwise, would have been minding his own business, but has sought to bring to the attention of the authorities, some act of cruelty towards a child.

In the Sexual Offences Act, therefore, you would find in section 31(B) the following provision:

“Without prejudice to any other written law, where the Court is satisfied that a minor is being prevented from giving evidence and where a statement is made in any written form or manner by a minor, or written in any form or manner by another person on behalf of the minor, and upon the dictation of the minor, that statement may be admissible in a trial as evidence of any fact of which direct oral evidence of the minor would be admissible.”

So that, the person having brought the matter to the attention of the police or whoever the authority figure may be, the Children’s Authority for example, we should take from this section the line of reasoning, that a statement made by that person or made by that child to that person, should be admissible in a trial as evidence of any fact which that child could have himself or herself given at the

trial. There will be no need for the child—and I am recommending—and the person who took the step of reporting the incident or the perceived incident, there should be no reason why such person has to face the accuser at all.

In the Sexual Offences Act it says that the court may admit statements made in the form of a statutory declaration; statements written by the minor; statements written by another person on behalf of the minor. And those, when taken before the court could be tendered in evidence and the minor treated as having been examined by the court. I do not think that is going too far for us to say that in each case—both in the case of the child who is offended and the person reporting the perceived incident—that they should, on no occasion have to be confronted in person by the accused person. We know that there is a possibility of video recordings of statements taken. We know that for a remote distance a person can give evidence; we have moved along that way, along the line, and we should now begin to think that the best way to ensure that offences of cruelty against children are going to be reported or brought to the attention of the authority, is to offer the whistle-blower—if I may call that person by the media term—is safe from a traumatic reiteration of the information in the presence of the offender.

I move to the next point: there is a provision in—I beg your pardon, before I do that let me just go back to the Bill, because in clauses 91 to 102, you would find that there is some reference to evidence and procedures. Clause 91 says:

“Where a court is satisfied by the evidence of a medical practitioner or any other person that the attendance of a child before a Court in respect of whom an offence under this Act...is alleged to have been committed would place the child at risk of harm, the Court may—

take in writing the deposition...

have recorded by audio-digital recording, video-digital recording or computer aided transcription, the evidence of the child.”

The question for the Minister is: what is the rationale behind introducing the evidence of a medical practitioner, the view that the child would be placed at risk of harm? The child would always be placed at risk of harm. That is the approach we should take: that it is a traumatic incident to the child; it is likely that the child is speaking the truth; attorneys have their way of determining whether or not, judges have their way of determining whether or not there is truth in it. The parties do not need to come together in the same place. The child is less likely to be intimidated and to fail to give evidence, if he or she is not required to do so in the presence of the accused person. So that the provisions in clauses 91 to 102, laudable as they are, I am recommending that they be revisited with a view to broadening the protection that it offers to a child when it comes to the giving of evidence of offences of cruelty.

Children Bill 2012
[SEN. PRESCOTT SC]

Wednesday May 23, 2012

May, I now turn to clause 105 in the Bill.

Sen. Ramolgan SC: Senator, I was wondering on that point if you might have any suggestions as to how the protection could be improved for the children giving evidence, in as much as you are on the point?

Sen. E. Prescott SC: In clauses 91 to 102?

Sen. Ramolgan SC: Yes.

Sen. E. Prescott SC: Yes, I was recommending that we—firstly, the child having made the complaint, or the neighbour, or the sibling in the household, that the evidence should be taken by an authority figure. For the moment I am saying the Children’s Authority, and recorded, whether by way of video—I forgot the language used in here—audiovisual or something modern, maybe I better find it and not appear to have failed to read it. I think you may recall my reading clause 91, audio-digital recording—Attorney General, I suppose you are familiar with these terms.

Sen. Ramolgan SC: Yes, Sir.

Sen. E. Prescott SC:—video-digital recording, or computer aided transcription. It is in here, but is it based on a proviso, a precondition, that a medical practitioner must certify that the child will be placed at risk of harm, and I am wondering—no, no, we do not need to do that.

Immediately the child has complained or a complaint has been made about an offence on the child, the child begins to be at risk of harm, and so we may use these electronic means to record the evidence and to treat that evidence as admissible at a trial without the child having to face the accuser in court, or the whistle-blower having to face the accuser. That is the best I can offer you at this time. I trust you would be able to follow the line that I am taking, but we should endeavour at all times to keep the child and the complaining individual away from the accused person, because you know what is happening today; the witnesses may lose their nerve or worse, may end up dead. You do not want a child coming to court to repeat the traumatic event in the presence of the person who is charged with the offence. I trust that provides some kind of guide to how I am thinking.

Sen. Ramolgan SC: You do not see a role for the doctor in that process? Or you see that that might be superfluous in the circumstances to—[*Inaudible*]

Sen. E. Prescott SC: Yes. From the moment a child has been reported to be at risk or the child has complained of himself or herself being at risk, we move into

a whole new jurisdiction altogether, and our best efforts are to keep the child away from that further traumatic event.

Thank you very much, Madam Vice-President, I was inviting Senators' attention to clause 105. It deals with restrictions on employment of a child under the age of 16, and it says:

“Subject to section 106, a child under the age of sixteen shall not be employed or work”—and I suppose one is making a distinction of being employed or being at work—“in any public or private undertaking or in any branch thereof other than an undertaking in which only members of the same family are employed...”

I am sure we will hear from the hon. Minister what is the thinking behind it. But I wondered why or rather could we ignore some of our norm or normative behaviours today, because there are many children who, whether for economic circumstances or otherwise, do find themselves, in particular vending vegetables or bits of artefacts that are produced at the home and it takes them through school. As a child—there are a lot of these personal references—I sold peas. I did not know that I was doing something wrong then, granted that in those days children were probably less at risk while they were on the streets. But it is the money that we used to buy the books and to buy the khaki pants [*Interruption*] and clause 105 seems to be saying that would not be allowed anymore. It should be addressed once again and made a little less restrictive on families who choose to dispose of their vegetables, or as I say, artefacts, by that means.

I am sure we all know that it inculcates in the child also a certain level of economic independence, and one really only needs to pay attention to where the child goes and to teach the child properly how to treat with people on the street. As I say that, there are examples that come readily to our minds: babysitting is not regarded as work, is it? I am sure it is, because people get paid for it. Is clause 106 speaking about the child under the age of 16 being a babysitter or—we used to have this in our time—doing “bob-a-job”? I do not know if you remember that? You go to the houses in your neighbourhood—

Sen. Dyer-Griffith: No.

Sen. E. Prescott SC: Sorry, Senator. [*Laughter*] For those under 40, the scouts—and I think the girl guides do that anyway—would go around once a year, and we looked forward to it, and they would offer to do a job in your house and a “bob” which was 24 cents—sorry, I should not be addressing you, pardon—[*Turns and faces Madam Vice-President*—] for those who are of lesser years, you would be paid a shilling.

Hon. Senator: A “bob” is a shilling.

Sen. E. Prescott SC: A “bob” it was called. So, “bob-a-job”; make a note of it, check it out, you would not find it in Google or any of those things. [*Laughter*] What you would probably find is the American thing, “girl scout cookies”, but I only give you that. Children do car washes and things out of fun but they know they are raising money, and usually money for a good cause. So, look at clause 105 again and see whether we want to place all those restrictions on it or whether we want to expand on it, so that children can continue to contribute to charitable causes or to their own family circumstances.

If the words “work” and “employed” are meant to be different or communicate different things, that needs to be made clear, because I am not certain that it is a reference to non-direct income or remunerative work. If it is one or the other then we need to address those and be sure that anybody reading the Act could understand what he or she is not permitted to do in relation to his child.

Thirdly, there has been a lot of talk here about the provisions of the Bill that deal with sexual activity. I could myself relish the thought of talking sex on national television, but I do not, so I would make only passing reference to those provisions. There is, however, this observation that I would like to make. In the Bill the word “person” appears to be a reference to anyone who is not under the age of 18, and, so, if you read those sections; Part VI, “Other sexual offences”, all of them speak of offences being committed by a person against a child.

However, clause 20(1) says:

“A person sixteen years of age or over but under twenty-one years of age is not liable under section 18 if”—

And then that deals with a three-year gap between the offender and the victim. There is need therefore for some greater thinking to go into this to determine whether we are speaking about adults as opposed to children. When we use the word “person” do we mean to exclude children from our contemplation? Because it would not take a great stretch of the imagination to appreciate that a child could incite another child to take part in sexual activity, and one wonders if it is meant that such a child would be an offender in the way that this Bill looks at these sexual deprivations and sexual activities.

If you look at 21(3) for example, you see it says:

“Where a person”—let us read the word ‘adult’—“commits an offence under subsection (1)”—causing or inciting a child to engage in an activity which is sexual—“and the activity caused or incited involved sexual penetration of a

child or sexual touching of a child with respect to the placing of any body part or of an object onto the penis, or bodily orifice of a child, that person is liable, on conviction on indictment, to imprisonment for life.”

And these activities are probably quite commonplace among people below the age of 18; way below the age of 18, because the world has gone so explorative, I think is the word, in our appreciation of sexual conduct—which reminds me that there is a definition in this Bill of sexual activity. It says:

“For the purposes of this Act”—it is at page 5, the definition clause 3—“penetration, touching or any other activity is sexual if—”And I go to paragraph (b)(ii)—“because of its nature it may be sexual and because of its circumstances or the purposes of any person in relation to it, or both, it is sexual.”

I am not going to apply my mind to this in any greater detail; it is not clear. It is not clear. When does the law regard an activity to be sexual, when they say, “if because of its nature it may be sexual?” I think sex starts in the mind, and I hope I am right.

Sen. Ramolgan SC: It continues elsewhere.

2.00 p.m.

Sen. E. Prescott SC: It continues elsewhere? Oh thank you. But I did say I do not wish to spend too much time on these matters. You may wish to look at clause 23 which deals with sexual activity for personal gratification:

“23.(1) Where a person engages in an activity and—

(a) the activity is sexual; and

(b) for the purposes of obtaining sexual gratification, the person engages in it—

(i) when a child is present”—[*Interruption*]

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

Motion made: That the hon. Senator’s speaking time be extended by 15 minutes.
[*Sen. B. Ali*]

Question put and agreed to.

Sen. E. Prescott SC: Thank you, thank you very much. [*Desk thumping*] In the circumstances I had better hasten. So I would depart from clause 23; it needs to be addressed again.

The very next point I wish to make has to do with the use of the word “responsibility”. Sen. Al-Rawi took the time to mention it. It is going to be too wide a use of the term responsibility to leave it as it stands now in clause 5.

There are special statutory concepts in family law, as you know, dealing with persons who have custody, persons who have charge of children, and to use a term such as responsibility might even include the babysitter, as I had referred to earlier on. Informal supervision of the kind that we have grown accustomed to, it is not encouraged, but if you are stepping out to the neighbouring shop to get a box of matches and you say to the neighbour, “Cast an eye on my child”, is that neighbour a person with responsibility over the child? We know that we only hear about it when the house burns down, but it happens. You live well in your community, you need to step away for a minute or two—it is usually a minute or two—and you say to the neighbour, “Cast an eye on my child or my children for me please,” and the neighbour agrees to do that. But what it means is, if the child comes out of the house or seeks to run across the road you might take a step. But you do not go over there and sit and watch the child. This Bill seems to hold that person responsible, because clause 3 says:

“‘Responsibility’ includes custody, charge, care and control;”

some of which are concepts known to the law. But casting an eye is one of those informal activities that most of us engage in from time to time. Making suitable arrangements is what clause 57 said, and I rush to clause 57 just to make the point. In clause 57(2)(e) you will find the following:

“In determining whether a parent failed to exercise reasonable care of or supervision over a child, the Court may consider any of the following factors:”

And among them is this one:

“(e) the child was not under the care or supervision of the parent or guardian when the child committed the offence, whether the parent or guardian made suitable arrangements for the supervision of the child;”

And until today—until this becomes law—“casting an eye” would appear to be suitable, informal arrangement for the supervision of a child, notwithstanding how we all feel when we hear of the tragic incidents that occur when people step away for a short while.

Madam Vice-President, in the Bill, pornography is identified and appears to be distinguished from child pornography. There is no, to my knowledge, known distinction between pornography and child pornography. I imagine that we would be told what is meant to be the distinction, but one of the things that troubled me

about it, is that it is not easy to determine if an artist's representation of a child's body will be regarded as either pornography or child pornography. I think Sen. Armstrong did make the observation about the need to protect artists in their free expression of their skill. It might be even regarded as constitutionally improper to prohibit such persons from doing their work. So I would recommend that we look again at what had been said by Sen. Dr. Armstrong. If you look at the Summary Offences Act and the Criminal Offences Act, you will see treatment of profane indecent or obscene works, obscene prints, et cetera, and that might give you a guide, Madam Minister, as to how that could be addressed.

I turn now to the provisions in the Bill for counselling. There, too, I recall a Senator—and it might have been Sen. Al-Rawi—observing that we make all these grand provisions—these are my terms—we make all these grand provisions for providing counselling, et cetera, and one needs to be satisfied that we do have the human resources and the physical resources to make them happen from day one. It is no point us passing this piece of legislation, bringing it into effect, and counselling, which is going to be a grand activity and probably make the difference between a child surviving into later years or not, and not be able to provide it.

I read in the newspaper yesterday of a child who passed away at the age of 12, I think; a victim of rape at age nine. You do not have to be an adult to appreciate what a tragedy that is for everybody. And if there was some counselling of the type contemplated here available, the child may have survived. I am unable to say whether medically there was any connection between the two things and I read only what the newspaper had to say, but the newspaper approached it in such a way that any reasonable adult reading it could feel a sense of loss, and would think that we had failed that particular child. So once again through you, Madam Vice-President, let us pay attention to how we approach the counselling; it is an excellent provision but it needs to be supported. There are foundations that need to be established very early.

Now I go to clause 56—I do not know how I am doing for time—it provides for the payment of fines and damages by parents and costs when the child goes astray. Let me read it. It says:

“56. (1) Where a child is charged and brought before a Court with an offence, the commission of which attracts a fine, damages or costs, and the Court is of the opinion that the case would be best met by the imposition of a fine, damages, or costs, whether with or without any other punishment”—might have been Sen. Dr. Wheeler—“the Court may, in any case where the offender is a child, order the parent or guardian of the child to pay the fine, damages, or costs awarded unless the Court is satisfied that-

- (a) the parent or guardian cannot be found; or
- (b) the parent or guardian has not contributed to the commission of the offence by neglecting to exercise due care of the child.”

That, too requires some further thought. It is a very laudable provision and I can only say that I trust parents will begin to see where we are moving in Trinidad and Tobago when we finally impose the burden on them for taking money out of their pockets to pay for the waywardness of their children. Wayward children are the result of poor parenting and I say that without reservation.

Penultimately, clause 57 speaks of failing to exercise reasonable care or supervision. It comes out of the same thinking as clause 56:

“...the Court may call upon the parent or guardian to show cause why he should not be required to pay a fine...”

And it would take into account whether that parent or guardian has exercised proper care or supervision over the child.

Clause 53 speaks of children—let me read it because I do not want to be misleading anyone. It is a very short provision:

“Where a child has been detained in a Police Station, the Commissioner of Police shall make arrangements for preventing, so far as practicable, the child from associating with an adult charged with or convicted of an offence.”

This particular provision goes against the grain of what I have been suggesting and that is why I am attacking it. It appears to me that a child, be it victim or offender, ought not to find itself in a police station. [*Desk thumping*]

The Children’s Authority or whichever other body has been established should be the first contact and it is this way I think the suggestions made by Sen. Al-Rawi about the children’s attorney being a department with the level of independence and constitutional backing that the Director of Public Prosecutions has, should be set up—a department of children’s attorneys. So that it begins there and the Commissioner of Police does not need to intervene, to interact with the child at all, and by the Commissioner of Police I mean every police officer who comes under his charge. So that is all I am prepared to say about clause 53.

I guess I am almost out of time. I have had the opportunity of reading Sen. Al-Rawi’s contributions on the compensation fund, the counselling and many of the other laudable provisions of the Bill and I support what he has said on those. I had made a private observation to someone about the use of the word “asylum” but it appears that it has since been “amended out” and I am pleased to see that.

Madam Vice-President, those are my observations on the Children Bill. I look forward to it being finalized. I wonder if we could indeed finalize it tonight as one had been told it is very possible. I will do my bit to be short in the committee stage. Thank you very much.

Sen. Helen Drayton: Thank you, Madam Vice-President. Now this has been a long, long debate and I realize that I am one of those persons who stand between the end of the debate and getting on with the committee to finalize this Bill. I will touch on a few clauses which I am sure others before me have already commented on and I will be brief in that regard. I am pleased that the Bill has been tabled. The objective is a laudable one. It is an improvement over the existing legislation. It interlocks with several pieces of legislation dealing with children, domestic violence, Children's Authority, marriage, and other family life matters, including the Hindu Marriage Act.

At this early stage in the contribution, I fully endorse what has been said by those before me. I add my voice to the rights of children. Children have a right to childhood and therefore marriage at the age of 12 is a matter that needs to be addressed.

There are necessary and very positive principles in this Bill. There are several issues, some of them I think, serious ones which hopefully would be addressed during the committee stage. The overall concern I have is the fact that there still seems to be obvious indecision as to when a child stops being a child and is in fact an adult. The Bill mentions 18 years, but there are one or two principles or provisions in the Bill that undermine that.

So let us look at one scenario. Now a 16 year old can be legally employed, but according to this Bill, a 16 year old is a child. It states that a parent or legal guardian of a child who is legally liable to maintain that child has such a responsibility, and it is a responsibility which does not cease by reason only that he has deserted or otherwise does not reside with the child. Now, many if not most, secondary school students graduate—probably all of them—between the ages of 16 and 18. Some of them go on to tertiary level education, most of them would be seeking employment. In the workplace they are treated like any other employee. They are treated as adults, they are paying NIS, they are paying taxes depending on their income. In some instances they are supporting their families, and in other instances they may have vacated the family's home.

2.15 p.m.

So the question is this: is it reasonable to criminalize a person who, for example, is 23 years of age and enters into a sexual relationship with a co-worker 17 years of age? Now this Bill criminalizes that person, because that person is deemed to be a child under law and the age gap is beyond the three to five years.

So the other question is this: how much control can a parent have over a working 17-year-old male or female who is paying their way in life and has vacated the home? I put that out there for discussion. I heard what Madam Vice-President said with respect to keeping the discussion during the committee stage very brief, but there are several issues here which I think would certainly warrant some further consideration.

There is a clause 5—and this was mentioned before—which deals with begging or receiving alms, and I think that also needs some clarification. I am assuming that a school would no longer have the authority, or can no longer ask students to sell tickets, whether they be bingo tickets or raffle tickets, among their peers or within their neighbourhoods for the purpose of the school. I have no problem with that, in principle, but I think it warrants some clarification, because I would hate to think that you would have school children who, doing what I think is excellent community work and they are having their cake sales, and they are looking to do their little raffles to raise funds, and according to this Bill if it becomes law, it is now a criminal act.

Clause 20 has already been aired at length, and any clause, to my mind, which makes reference to the sex of a person in a similar vein to clause 20, should be deleted. There is a reality to be faced, and that concerns homosexuality, but homosexuality is only one aspect of that situation. Another is that there are persons who comprise a bisexual gender, and they do exist in Trinidad and Tobago. It would appear that they are fewer in numbers than homosexuals. Their reproductive sexual anatomy does not fit definitions of either male or female. They are born with varying genetics which is a diversion from the typical XX female or XY male chromosomes or genes. These are well-known scientific and biological facts of life, and some of these conditions do not necessarily show up at birth and may not manifest themselves until puberty. So there is sexual ambiguity.

A person may look male and later on in life the dominant tendency is a female emotional and physical disposition. So that what this says in terms of medical, scientific, biological facts, is that the gender of a person and the sex of a person are not necessarily the same concepts. It is a real and natural situation to a lot of these people emotionally, psychologically, physiologically and mentally, and putting aside all that, we have a Constitution which recognizes basic human rights, and I think it is time to stop this illogical and inhumane discrimination of fellow citizens on the grounds of gender and sex. While I appreciate that there are people who hold entrenched views based on religious and biblical dogma as well as personal values, and while I respect all sincere views, I do not believe that the State should continue to discriminate against thousands of citizens and, as I said, that that discrimination is based on gender and sex.

I recommend to the Government that it demonstrate its seriousness about politics of the past, a different politics, and be brave and be strong and allow conscience votes on the repeal of the relevant Acts. That same sexuality, or sexual activity which is forbidden by law, which is buggery, is done by many heterosexual couples in married life—it really has no place in our law books.

I also advocate that the Government take the course of allowing the conscience vote on the death penalty. Further, put out Bills at least two/three months in advance; [*Desk thumping*] allow the public to have robust expressions and debate, including special panels in the media where citizens could call in and give their views. The religious bodies would have an opportunity to engage their flock in discussions, and we go a step further, if we are talking about real change; if we are talking about really entrenching a democratic way of life through healthy dialogue, discussion and consultation.

So we can go a step further, provided it is permissible under the Standing Orders. We can begin to make Parliament more meaningful to the public by allowing—and I am just giving an example here—a statement from the Inter-Religious Organization or other national civil arms of society, to be read into *Hansard* before a debate on such contentious, social issues. I hope that such a recommendation will be considered. Stop discriminating against our citizens and bring the Bill, and let the Bill to repeal Acts which discriminate based on gender and sex, be a conscience vote.

Now clause 23 with respect to persons engaging in sexual activity from where a child can observe—that is clause 23(b)(i)—basically says:

“Where a person engages in an activity and -

(a) the activity is sexual; and

(b) for the purpose of obtaining sexual gratification, the person engages in it -

(i) when a child is present or when a child is in a place from which the person can be observed;”

The intent is honourable. I do not think anybody could dispute that in principle, but there is a reality, and every now and then we turn on the television and we see it. There are families of five and six living in one-room shacks. So if the intent, by virtue of this Bill, is to criminalize these individuals, then, again, I hope in the committee stage we would examine what the options are.

Under clause 25, I note the term “sexual grooming” which I know is the term in the Sexual Offences Act, but I wondered why not simply say “communicated with a child for the propose of sex”? Sexual grooming is defined as gaining the trust of a child, but should it matter whether a person gained the trust of a child? Whether so or not, the person should still be liable to answer charges if he had any communication or any sort of relationship with the child for the purpose of sex. Is it that sexual grooming has to be proven? I do not know; I am not a lawyer; I just read it and it seems a bit limiting to me, and I would have thought that it is more a matter of the power a person exercises over a child. So that trust may not enter into the equation at all.

This brings me back to the child between 16 and 17 years old in the workplace and the term “sexual grooming”. Would such a term be relevant to describe a relationship between a 22-year-old and 17-year-old in the workplace?

Clause 30 says that a person in a position of trust is defined as 18 years of age and older, but the very Bill is saying that up to 18 years you are a child. So I would imagine it should be over 18 years—you are talking about over 18 years.

Clause 31, with respect to workers again, that follows. It infers that a child is sufficiently adult to be in the position of trust. So there are children looking after children, because many of our child minders and caregivers are between the ages of 16 and 18 years who, according to the very Bill, will not be criminalized. A sexual activity between children would not be criminalized depending on the age difference. So you have children in the workplace who are looking after children. So that a 17-year-old who is looking after, say, a 15-year-old, and engages in sexual activity with penetration, does the Bill decriminalize that person? I am not too sure; I am just asking the question. I would assume it does. But the person, according to the Bill, is in a position of trust.

Under clause 38 regarding children in possession of and using tobacco products and alcohol, it says:

“Where a constable reasonably believes a person to be a child

(iii) immediately notify the (Children’s) Authority, who shall contact the parents of the child forthwith on receiving the information.”

I am assuming “forthwith” means as soon as the constable can reasonably do that, because I could see at Carnival time, the Children’s Authority, which I assume is not running 24/7—well, if they are, they will be under a lot of calls. But the basic question I have to ask here, I would imagine that if a child is suspected, or a

constable sees someone with alcohol and tobacco, and the constable reasonably believes that that is a child, and the constable engages that child and, yes, the child is under 18 years of age—I would imagine that the first thing the constable should do, in getting where the child lives—the phone number—is to call the parents.

Why would the constable wait? Let us assume it happens on Friday of a long weekend or Thursday of a long weekend, why would the constable take the name and address—and the child might very well have given the wrong number, name and address—until Monday to call the Children’s Authority? Why would the police at that point in time, not call the parents; let the parent come down to the station; they take a record and then thereafter, the matter handed over to the Children’s Authority? I would suggest that we look at the sequence here.

In the very clause—I do not know if it is, what you call legalese; the legal language, but I think it needs clarification; that is under clause 38(2), it says:

“A person or child referred to in subsection (1) shall comply with the warning and request for information of the constable.”

I wondered if it meant “comply with the warning and request by the constable for information.” I am a little confused with the language.

2.30 p.m.

Now, Part VIII which deals with pornography, that one puzzles me. Clause 43 deals with penalty for child offenders. Now, I think there has to be a contradiction between this clause and clauses 18 and 19. Clauses 18 and 19 decriminalize sexual activity between children if they are two to three years older than the child penetrated.

What this law is telling me is that an 18-year-old and a 16-year-old engage in sex—they are children. The law decriminalizes that. I have no problem with that. But, you are telling me you will jail them up to 15 years for pornography. So they could engage in sexual activity but if now they are engaged in pornography you are going to jail them for 15 years. There is something here that is not right to me. Again, I am subject to correction. I understand the scope and evils involved in porn. I have to assume that I am interpreting the clause incorrectly. But, it says, specifically, a child can be jailed up to 15 years and, on the other hand, you decriminalize the sexual activity.

Under clause 44 the clause states that the court may order a person who is convicted of a pornography offence to pay the complainant adequate compensation which shall be a charge on the property of the person. Okay, now I am assuming that that charge may be on the parents because I doubt very much that the child

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would have property. But the question I want to ask because I am going back to the clause on the positions of trust. We all know such activities like pornography happens during school hours, in the school, may be even in the classroom—and laptops. So which is the position in trust here, and whose property would be charged? Because the parent cannot reasonably be held accountable; the child is in school, the parents probably do not even know they are looking at pornography on the computer in school because they do not permit it at home.

Sen. Baptiste Mc Knight: The Government laptop.

Sen. H. Drayton: So, I am just asking for clarification; who is in charge here in such a situation?

Now, I said there are several other issues. I have heard Sen. Prescott and I have read some *Hansard* reports; I do not want to delay, and I do not want to regurgitate what has been said. Madam Vice-President, the question must be asked now, if this Bill becomes law within a month, two, three months, to what extent is it implementable given the legal and operational status of the major custodian, which is the Children's Authority, and the lack of other support facilities? How can NGOs help?

We know that the critical structures to support this Bill are not in place now. And we know that it will take a long time before those structures can be fully in place. I want to suggest and recommend to the Government that all stops be pulled out to address that situation. For example, this Bill refers to children rescued from abuse being taken to safe places. There are not many. What exists are run by charity—a number of them. Let us just say you have a situation in the home where there is domestic violence—the mother's life, the children, they are at risk—the mother wants to leave and go into a safe house with the children. If there are boys in that family, ages upwards of 10, the safe houses are not likely to take them and place them with girl children. That is a reality out there.

A major responsibility of the Children's Authority is to ensure for the purposes of children's physical and mental well-being, that proper standards are maintained by children's homes and shelters, and there has to be effective monitoring. I would not go into detail but I think if anybody went up to the Boys Industrial School and had some good dialogue—off the cuff dialogue—with some of the places that exist for children then you would understand the extent of the work that we have to do.

I know that the Children's Authority is making some progress. We have been witnesses to the ugly violence and other tragedies that have befallen children over

the past two decades, and this apart from the worrisome situation of increasing numbers of children engaged in criminal activity.

Now this is not only a trend in Trinidad and Tobago. If you go onto the Internet whenever and you pick up North American papers or you google British newspapers you will see the extent of the problem and some of the gruesome acts being committed by children. For those of us who have worked for a long time in the social sector and worked with charitable organizations we know the extent of the problem. Laws are meant to be both preventative and punitive, existing laws, and this one could go a long way in preventing child abuse and stemming the tide of emerging crime among young criminals only if the systems and resources to support the laws are robustly implemented and monitored. Also, if the appropriate skills exist. And those skills do not exist in the quantity and, in some instances quality in the context of counsellors and social workers and other professionals within government departments and agencies. So the laws that exist and this law will be effectively sabotaged.

At this point in time, I feel it is safe to say that this Bill, if it becomes law is not implementable because the systems are not there to support it. It will be a step and that is good, that is laudable, but the systems are not there.

I just want to give another example of the environment in which children must learn. This was a letter by a teacher.

We are sick of working in schools which are over 50 years old and have never been upgraded; just a shed with blinds between classes. We are sick of having few teaching aids and resources, leaving pupils with few manipulative tools to work. Primary schools do not get funding from Government to the extent that they should. So we are sick of fund raising for photocopiers, sports days and graduations. We are sick of working in hot overcrowded schools. We are sick of begging for furniture. We are sick of being told to use technology in class but no provision is made for this. Schools and children, they have computers, but no Internet, no multimedia, no audiovisual room. We are sick of dealing with abusive parents who cannot discipline their offspring.

These are some of the circumstances of teachers who also are not equipped to deal with the psychological problems and the different learning styles of children.

I have said before— and I would say it again because I think it needs to be repeated—that for over the past 50 years successive Governments poured millions into social programmes. None saw it fit to establish safe houses for battered women and children; none saw the need for well-staffed children assessment centres; none thought it was necessary to provide safe spaces for children and youth apart from derelict poorly-run, poorly-lit youth prisons.

I want to say, it was heartening to read about the collaboration between the Ministry of Education, the Ministry of Gender, Youth and Child Development and the Inter-American Development Bank (IADB) with respect to the nationwide survey to get comprehensive information in order to establish the specialized centres. I commend the Government for that. Mind you, I do not know why it will take US\$3 million to do a survey. That US \$3 million will put down a couple of centres because you have all the paediatricians here and you have psychologists here. A lot of work has been done on that, but, nevertheless it is a step, it is a change and it is appreciated. It is a plan for five centres with integrated health and educational services. And this would enable children—you could identify or detect early developmental problems so that they could receive the necessary care and education.

I want to put to the Government six strategies which if developed and implemented well would have a profound effect on our children and the quality of life in our in nation in the future. These are:

- A fully operational Children’s Authority and family courts.
- Fully operational children assessment centres and professionally run and staffed collaborative learning centres.
- Professionally run safe places for children and youth at risk.
- Modernization of the primary and secondary school education curriculum.
- Parental education, upgrade of the school counsellor and social worker system; and
- An enlightened cooperative community governance infrastructure.

With these strategies, I think we would have encircled our children.

I think the Government is on the right track with the centres and must be fully encouraged to treat it with urgency. There is a reason, first: because we talked about the physical and emotional health of children, and second, the real battle against crime is the battle to reach children and to heal them before they enter the passages of crime.

As I said, the taxpayer has poured billions of dollars into social programmes over the years. And the more dollars that were poured into the social programmes and the more dollars that were poured into national security, crime went up in tandem. So it simply meant that we are doing right things on one end but there is a huge gap. The huge gap is that all the efforts have been directed at youth 15 years

and up; that there was poor targeting in terms of the MuST programme, the YTEPP programme, the CEPEP programme and many other programmes, excellent programmes that were put in place. They were poorly targeted, badly managed, badly monitored and regrettably highly politicized, so that the whole execution was flawed. We know that a combination of interventions is necessary if we have to sustain a reduction in crime, and this also has to include some intervention in the mind-bending domestic environment. There is abundant research to show that the parent education combined with the primary education and primary health care would go a long way in shutting down or closing out the doors that the children enter for crime.

I think it is worthy of repeating the children who are at risk. Their education and socialization take place in environments with a history of crime. Some are children brought up in the homes of criminals; some do not know mother or father; some do not have literacy skills; they have suffered sexual and other severe forms of mental and physical abuse, and some of that abuse includes the violent music and bloody visuals that they look at on the very computers that totally rewire their brain. Their emotional and mental development is impaired and these children are easily manipulated to join gangs.

So what we have realized, the gang members are taking out each other, but as soon as you take out one or you take out two, it is like a hydra, another head shoots up. The gang leader “gone”, another head shoots up. So something is missing in the equation. I think there is need for greater collaboration among community representatives, the parents, social workers, teachers, health officers and psychologists.

It is not a job for the police alone. The police really come at the tail end.

2.45 p.m.

It is why there is a need for halfway homes, assessment centres, rehabilitation centres and the state-of-the-arts schools, which should not be branded as schools for slow learners or dropouts, non-academics and terminology of the type that stigmatizes. So, if the Government is conscientious about dealing with children’s matters, it would take some of the \$600 million or the \$300 million that they plan to put in a Colour Me Orange Programme and invest it in the Children’s Authority and all the work that it has to do.

I conclude with the note that while we tend to mention all the things that are wrong, many of our children are doing well, many of them go on to be productive citizens. It is where our future leaders would come from, as well as they would

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come from the dysfunctional lot. Most of our teachers are committed and dedicated professionals, and most of our parents are doing a fine job with their children. So while we focus on improving this Bill, we need to keep our mind on a positive side, which is, rehabilitating children rather than criminalizing them. I fear that there is too much emphasis in this Bill with respect to criminalizing children.

Finally, there is need for serious public education on this Bill before it becomes law.

Madam Vice-President, I thank you. [*Desk thumping*]

Sen. Dr. Lennox Bernard: Thank you, Madam Vice-President. I am, again, deeply honoured to be here to discuss this extremely important landmark legislation as it relates to our children. In post-colonial West Africa there was a naming ceremony where a father would take a child up to a mound at the back of the hut, lift that child and say in a very loud voice, “After you, O God, there is none greater. I say the words again, After you, Oh God, there is none greater.” And then he would name the child. He would whisper the name of the child in the child’s ear, put some spittle as a mark of the child’s link with nature and then go down to the village and announce the name of the child. The fundamental words that I feel we should all remember is the fact that this man was giving such great credence to his child, that he saw or he thought, that the child approximated to his God. That is the way peoples all over the world saw or continue to see their children.

In fact, the Masai people whom we know are very warlike, very aggressive—they are still labelled that way—their favourite greeting or salutation to one another would be, “How are the children?” The message in “How are the children” is how are we sustaining our development? How are we going to make life better for the next generation? It is something we have to keep in mind even as we write this.

I may have been a little naive when I first felt something about this Bill. I felt it would have been the mother of all Bills, meaning that it would have superimposed itself on any other piece of legislation that had to deal with children; and that in this Bill I would see, not only child justice administration, but there would be more about the care and prevention of harm to children.

In other words, as Sen. Drayton said and many Senators before her, there is a need for a balance in what we do with Bills. That is, even though the jurisprudential mind must tell us that there must be that element of retributive

justice, some of us believe that the restorative feature is important. So, yes, we see the offences and the charges that will go with the necessary offences, but, in essence, we also want to see where we are taking this individual on to another phase that in fact may not lead to some form of incarceration. I, too, am worried that the Bill appears to be much more punitive than it ought to be, in looking at the child.

There are two things I have said since I came to the Senate on these little furloughs. The first one was that everything we do by way of legislation should be grounded in our social realities and in our philosophical underpinnings; that is who we are as a people and what we want from that as a people; and where are we going as a society. So a Bill should really be a type of ideational scaffolding upon which all the other things that we have to do would be anchored.

Secondly, I have been worried from day one that the legal mapping that should come with every Bill—and I think the Attorney General, the Senator, will remember me saying that—is so important that we can legally map the variety of Bills that in fact impose themselves on this existing Bill, almost as we do with the geographical mapping and the various layers. So you would see layer on layer, on layer just as Sen. Prescott SC was telling us, and I heard Sen. Al-Rawi, who will take most of the night trying to look at all the various [*Laughter*] elements related to the Bill.

Suffice it to say, the intention is honourable and commendation must be made to this warrior lady—I sometimes call her “Ambakaila Lady”—Sen. St. Rose Greaves [*Desk thumping*] for the indomitable courage, fortitude and strength over decades of working in the vineyard, and then seeing this opportunity to give life to it, she is literally putting the stamp of approval or a stamp of hope in this Bill.

What is our concept of childhood? Sen. Drayton raised an important point. It varies from biological aging to what the cultural nuances of a people would tell us. I walk the beach sometimes in Mayaro and I can find a fisherman who may be age 16, his spouse is age 35, she has three children and he in charge of his household, and according to the lady he is doing quite a fine job as father and as breadwinner—all of that. So even as we have to lay bare the biological aging, especially for our jurisprudential minds, we have to be aware that much is changing among the concept of family. That is why I am a little worried that at the start we do not have a definition of family. I know we try to stay away from it because it can be problematic—[*Interruption*]

Sen. Al-Rawi: It is in the Family Proceedings Act.

Sen. Dr. L. Bernard: It is in the Family Proceedings Act, but it should be somewhere in here, I believe, where we would know that it is not only nuclear, it is nuclear, it is single parent, it is extended, it is a sibling household. We heard of sibling households—children living in a house; mother or parents living in the United States; eldest brother taking care of the family, going to collect the change from Western Union and running a home. That is happening in our, glorious, Trinidad and Tobago and sometimes with a grandmother who may or may not oversee them.

Then we have a growing blended or reconstituted family, a family made up of divorcees who in fact bring to the relationship new and important differences, and sometimes areas of conflict. So that, somehow, a sense or definition as to who this family is that we are talking about in our current scenario of Trinidad and Tobago will be important to all of us.

2.55 p.m.

I like what Sen. Cudjoe did with us the last time I was here. We heard a youthful mind who literally gave anecdotes as to what the value frames of young people are at this time. Even though some of us wondered where she was taking us, in fact, she was taking us to a point where she discussed the wide range of value frames that should be inherent in what we are saying about this legislation. She talked about the “adultified child”, the “hurried child”, and we have added to that. This has been coming to us since the 1980s where, in fact, based on cosmetology and all the other things that we have done to our children, we have made them like unto ourselves, a smaller version of the adult, and thereby creating new and greater problems for us.

She spoke about the “peep culture”, she did not call it that, but she said everywhere, everybody is peeping, and this is so true. The “peep culture” is something that we have to look at seriously, and the social media has added to it in a way that the “peep culture” has reached a point where peeping is taking its toll on us in so many ways. For example, plagiarism is now a big thing in most of our institutions of higher learning because people are peeping into other people’s documents and literally lifting them up, lifting them out. So, it is not peep in the context of voyeurism alone, Madam Vice-President, it is peeping in terms of getting into all kinds of activities, and in some instances, as distraction.

We are into—Sen. Cudjoe, again, talked about it—the “thrill culture” where our children are now living, seeking a kind of non-real thrill, and are unable to apply it when the real thrill of life faces them. So that the “thrill culture” has

added another dimension, and therein lies the issues related to pornography, and therein lies, the issue related to some of the ways we see the harm that is done to others.

Sen. The Hon. Brig. Sandy may like this one. A mother was speaking to her child or saw the child coming into the room, and she was looking at the 9/11 replay after 10 years of people throwing themselves off the buildings, and almost with tears in her eyes, she is coming to her son and she is holding him and saying, “Son, look at what is happening here. People are literally throwing themselves out of buildings.” Without a second thought, that young man said, “Cool!” His response was “Cool!” Meaning, he, in his reality of playing his video games where blood, gore, people falling down dying and so on, was something that allowed for an added thrill; he could not commiserate with people losing life. All he saw was the element of thrill.

I tried that in one of the other islands, talking somewhere else, and they told me that it happened with a hurricane that swerved northward, and when the children were told, “God has saved us. We are free of the hurricane”, they all booed, because the intention was that the thrill factor of the hurricane would have added another dimension for them. Why am I saying all this? It is to let you know that any Bill that we design now must take into account the cultural realities of people like Sen. Cudjoe and all those others. She talked about the “boom boom culture” and what is taking place in our classrooms, and many of us know of them, especially on a Friday afternoon where you can have any form—some forms of sexual activities applied for a fee.

So, finally, to deal with my introduction, let us link that with the disvalue frames of young people. What are we seeing as non-valuable frames of young people? There is a rage—Sen. St. Rose Greaves said it and Sen. Abdulah said it in his bit—a seething rage that is taking hold of our young people. It is so bad that you even fear to stand on their feet or to “bounce them too hard” as they say. It is a frightening period and you can see it in their eyes, what I sometimes refer to as “marbles in their head”. Their eyes are cold; there is no emotion; nothing emotive.

As one former student who asked me for a lift and then showed me his sacred tool which was the pistol and said to me, “Sir, Sir, Sir”; calling me “Sir”; giving me the normal adulation that he felt for his teacher, but describing how he had put down “ah work”, and how he told the lady not to lift her shoulder to look up, and in so doing, he gave her a little something; he shot her. He is not distinguishing between an act of violence and a love for a teacher. Of course, at that point, I am ready to put him down, because how much more can you take in the context of his value frame where he cannot discern? That is what we are up against. Young people who would not mind dying for their cause and so on.

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This is why, as I get to the Bill, I see that we have had some gaps in some of the things that we are not looking at. We are not looking at honour crimes. There are young people now who are moving up the ranks in the gangs based on honour, based on what they would have done to prove to the leadership that they are better, that they have put down “ah work”, that, in fact, “I actually killed somebody” in order to move up the rank.

So, this is our people; these are our children. As Sen. Drayton said, yes, we do not glory in the fact that this is happening; we do glory in the fact that there is so much else happening that is great. In fact, I saw on my computer email of a young woman, Camille Alleyne, who is now an astro—who is now working with NASA—Trinidad-born young lady—and was chosen first out of 4,000 people, and now heads an entire department in that setting in NASA. So, we are not belabouring the point, but in essence, if we have to save these, we have to go about it in ways that we are sure that we know what is there.

I am a little sorry that we do not have a preamble to this Bill that allows us to, in fact, give credence to the power of the child; the rights of the child. Sen. St. Rose Greaves would be familiar, no doubt, with the Optional Protocol to the UN Convention that allows now for a complaints’ procedure for violations of children’s rights. This new treaty will enable children or their representatives to claim that their rights have been violated. Even if in the jurisdiction their rights have not been guaranteed, they can, in fact, appeal to this United Nation’s optional protocol. Maybe the hon. Minister would tell us, at some point, how does this tie into the Bill. I truly wish that there was a preamble, Madam Vice-President, to the Bill that allowed us in essence to talk about the views of children, and to ensure that their participation is guaranteed in all matters that affect them in all spheres of life.

I looked at the Tanzanian Children’s Act, seeing that many years ago, they gave us UGMA, and it was interesting to see that their section 11 reads as follows and I quote:

“A child shall have a right of opinion. No person shall deprive a child capable of forming views the right to express an opinion, to be listened to and to participate in decisions which affect his well-being.”

Notwithstanding the fact that all this is guaranteed by the fundamental rights of our Constitution, I think it is laudable that they chose to put this in as an Act in their Bill. And it continues:

“The Act contains the right to food, shelter, clothing, medical care including immunisation, education and guidance, liberty as well as”—Sen. Prescott’s point—“the right to play and leisure.”

In that regard, I feel that—I do not know if it is possible for us to embellish our document in that way—it would go a long way in suggesting that we recognize that children's rights should be put on the same footing with other human rights.

My second point has to deal with disability. It is the only Bill in a number of Bills that I looked at, that did not specifically make reference to the disabled child, sometimes referred to as the differently-abled child. There is nothing specific in the Bill for this group of people who are more likely, in Trinidad and Tobago, to live in households that rely on social assistance. We know, too well, that these individuals can be preyed upon much easier by sexual predators, and abused physically by inhumane adults; and I think, in my mind, should warrant harsher penalties.

These children, sometimes, experience extreme restriction of their liberty. I have seen autistic children being put in dark rooms because they, in fact, do not reflect that kind of purposeful living that others have, and they are literally put in cell-like arrangements. Sen. Drayton and others were quite correct when she said that even as we make the legislation today, even if we may put something in about the disabled, we have not been doing too well in that regard in terms of its social application of family services division.

I want to then raise the question of corporal punishment. Again, I was hoping, against all hope, that this Bill would put to rest for the final time, a piece of legislation that would expressly prohibit corporal punishment by law in the family, school and other institutions. We tend to talk about it, skirt around it, do all kinds of things with it, every now and then, talking about how it should come back; even some of the older generation saying that it did not harm them, without recognizing that corporal punishment propagates the culture of violence.

3.10 p.m.

It allows people to dwell within a milieu that suggests that power and might can come through hitting—depending on where it is coming from—the individual that can move from a simple use of a stick, to something later on that can in fact harm or maim the individual; never realizing that there are alternative forms of punishment that in fact are continuing to work well for individuals, verbal reprimand, withdrawal of privileges, making reparation, timeout and isolation, and something that I felt this Bill could have done by way of even looking at its own form of retributive justice, the whole question of a pastoral model which allowed for more verbal reasoning, more counselling and more positive reinforcement of the offenders in our Bill.

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So, I feel, in a real sense, we need to take on board, Madam Vice-President, and through you, hon. Minister, the whole question of corporal punishment and how it can in fact be legislated against in a way that we get rid of this aspect once and for all. It is the bane of many, many families.

In fact, I have preached for years. I have tried to show that there is a new form of discipline called cooperative discipline, that is, you can create a match between the discipline in the school and the home, that can make for effective behaviour changes in children. Linda Albert, since 1996, put that down in the literature for us. However, it loses its potency if what is done in school is not practised at home. So, if you can continue to beat the child at home and the teacher is looking for timeout, creating a serenity room, where music therapy is energizing the right side of the brain and all those other things that people are trying then, in essence, we will get nowhere. So, the message of cooperative discipline has been there for a long time. It is not being taken seriously and while we are saying that, others are moving forward and still using corporal punishment on our young people.

In fact, there is a strong correlation between corporal punishment and bullying that we see in the school rooms. That is, if you are big and have power over me and can hit me then, when I become big or if I am big in another setting, I too can show power over someone else. So, that is an area that I felt we lost an opportunity to be able to come to grips with that discussion.

Clauses 61 and 62 are very commendable. In visiting YTC and St. Michael's, stories are told that parents would bring young people with so-called uncontrollable behaviour, especially during our periods of seasonality. At Carnival time, the place becomes chock-full with individuals because the parents claim, at that time, they are unable to control the young people and in essence they are foisted upon the institution. The same can be true at Christmas time. I am told and also at periods during July/August. Bringing this to bear on the parents that they are responsible for the growth and development of their children, I think, is a commendable clause to this Bill.

Not in the Bill, but I feel something that one needs to mention briefly, is the fact that we need to strengthen the legal instruments related to the enforcement of child maintenance orders. We may need to catch these absentee fathers sometimes in ways that are a little different, in that some of them may have migrated and that in seeking to get away from the scenario, we can in turn seek to create bilateral cooperation, and other forms of cooperation, whereby we can get these absentee fathers to pay their maintenance dues for the upkeep of the child.

Generally, in trying to work on aspects related to the Bill, it is difficult to get data. Data-gathering and research information is something that plagues us. There is the need to disaggregate some of the data in ways that we can find out or discover what are our vulnerable groups, where are our troubled families and, back to the point of disabilities, how we can in fact do some serious work in injecting help for those individuals.

There are two other areas that I wanted to make reference to. I talked about the honour crimes, where children are initiated into gangs. Children are sometimes denounced as being possessed by evil spirits, so that they are literally and psychologically made to lose their sense of self-esteem by being told that they are lesser than children of Sisyphus; people who in fact would require all kinds of other help in order to break the bond of their disability.

In essence, the Bill speaks to the laws and they speak to the laws decisively, but as some of my colleagues said, there are areas that I think we have to look closer. The question of the family, as it relates to page 67, there is a very narrow view of the family, as I have said, which should have been somewhere at the start and then there is the whole question of the individual. Clause 105 states:

“Subject to section 106, a child under the age of sixteen years shall not be employed or work in any public or private undertaking, or in any branch thereof, other than an undertaking in which only members of the same family are employed; and any person who employs any such child, commits an offence.”

Obviously, as Sen. Prescott SC pointed, this does not take into account some of the concerns related to even our apprenticeship programmes in formal sectors, which would allow some young people to be apprenticed to a craftsman, a master tailor, or what have you, in a way that they in fact will be engaged in some form of work or other activity.

Finally, I want to join my colleagues in stating that a nation state, even in the face of all our multicultural attributes that will impact on it, must, at some point, decide what are some of the universal values that they will want to have entrenched in terms of the general good. In this case, I believe that the minimum age of marriage, of whatever kind, should be 18 years. I do not think that this universal principle should be allowed to be linked to any other multicultural need that in fact does not look at the general good as the main perspective in making our decision. I truly believe, in the case of marriage, that the minimum age of marriage, of whatever kind, should be 18 years.

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I will have some points to make during the other session. At this point, I wish to commend, again, the Minister and her team for having launched, or literally put out to us in a very forthright way, a piece of legislation that augurs well for the development of our society. Thank you very much.

Sen. Fitzgerald Hinds: Thank you Madam Vice-President, as I make a fairly brief contribution to this debate. I have asked myself what is the Government's policy, as it relates to this particular piece of legislation, and I have asked myself that for good reason.

In the other House, where this matter was debated, the Government had attempted, in that Bill that was presented to the Members of the other House, provisions that would have criminalized sexual activity between consenting children, and it took Members of the Opposition, in the other House to challenge that, and the Government, therefore, instituted a number of amendments removing that. And now, with some take on age disparities, it has reneged from that position and is no longer seeking to criminalize consensual sexual activity. It is for that reason and a few more that I ask myself: what really is the Government's philosophy on the matter? We cannot be sure.

Had it not been the intervention of the Opposition in the other House, we would have had a very, very different Bill before us here today. Even the Minister in her presentation of the Bill here, told us that there was a lot of debate and a number of amendments were accepted by the Government, and now, according to her—I am paraphrasing, I do not have a *Hansard* in front of me—we now have a better Bill.

So, what is the Government's policy? I have heard, within recent times, the Government make pronouncements on abortion, its intent, at least elements of the Government, to make that completely legal, and so on. I have heard the Government make pronouncements on the question of same-sex marriage. I have heard them pronounce on the liberalization of our laws in respect of homosexuality, and so on. And I know as a fact that the Minister who presented this Bill is “dead set” against anything resembling the death penalty and I bear in mind that she announced that publicly to the world. And the Government at the same time, before she entered it, was saying that they are set upon the death penalty and they allowed her to join the Cabinet. The whole is very much a kaleidoscope of thought and ideas coming from the Government, and you can never be sure. But, what is the Government's philosophy on this matter? Unclear, but we proceed.

This debate, in my humble view, has to do with human behaviour. It is as simple as that, human behaviour. I submit that humankind is—at the core, we are animals, a higher degree than the beasts of the field, but animals we are.

3.25 p.m.

We have the ability to choose, to think, to recall and to store experiences. We have an understanding of what a common shared morality in our family, in our community, in our country and in the world might be. In addition to that, we are highly social beings. There are other animals that are, but we are really at the top of the pile, very highly social beings and very, very much more organized than the other animals known to us all, but animals we are.

It is said that if you film human beings for a period of at least three weeks unbeknown to them in their domesticity and otherwise, you would see behaviours that will not be displayed by human beings in public. You will see elements of animalistic behaviour, the way they probably would eat other than at a dining table with a knife and fork, when they use their hands and so on; the way they attend to irritations on their bodies and so on.

In 1990, I was not in Trinidad, but I am told that this august House—well, it is on record—was assailed by insurgents. This very august Chamber which housed men and women who were well attired like we are today, and who presented themselves in the finest luxury cars parked alongside the Parliament on Abercromby and Knox Streets. When the Parliament came under attack and they were held under siege for six days, this very august Chamber degenerated into anything but that. Six days and with all the toothpaste, the hair products, powder, make-up, deodorants, skin creams, perfumes and the fancy suits, the House was transformed into something far removed. And I have always thought about that, and with the vomit, filth and the smell of death and the rotting bodies, the bullet marks and all of that, I have always thought about that as an example of how thin the facade of our socialization is, as compared to the animalistic reality of the human being.

We are bound by a social contract, we have agreed in this social contract to give up some of our rights, so that other people would enjoy theirs. We accept that there are some laws that will guide us in that social contract, otherwise as one philosopher said, life would be brutish, nasty and short.

For some, even in our democratic society, even inside of this social contract life has been brutish, nasty and short. As I said earlier, we have our understanding of the common shared morality, by which we are all guided and by which we live. In other societies, it is all different.

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In the United Kingdom, as you will know, homosexuality is not illegal; between two consenting male adults, it is not, neither is prostitution. Of course, soliciting someone by a prostitute is in itself an offence, but prostitution simpliciter, is not. Obscene language is not an offence in many countries, but it is in Trinidad and Tobago, even annoying language. A Minister of Government is now having a personal experience in this regard, before the court for annoying language and so on.

Our modes of dress are very different in Trinidad to an acceptable mode of dress to that which you will find in other countries. And I have never seen any streakers in Trinidad, but it is not uncommon, when you are looking at international sporting events to see the odd, crazy citizen of the world run across a field here and there.

I say all of that to demonstrate some differences and how the human being is at its core. I have mentioned in this Parliament, and I do so again today, a case reported in the *All England Law Reports*, known as *R v S*—they did not even name the parties, because of the horrific nature of the thing—where some gay and perverted, well, not that gays are perverted, but some gay persons some of whom were perverted, got involved—I have to clarify that, because the next thing you know, I am accused of things.

So that they got involved in some very strange behaviour in their sexual activity, Madam Vice-President, and it led them to doing some very awkward and nasty things, I mean really bad things, some horrible things, mutilating each other in the process. When the police intervened and charged a few of them for inflicting grievous bodily harm on each other, as they bit off this and cut off, and all sorts of nasty things—strange things, I am so sorry, not nasty, but strange things. When they did that they pleaded to the court that they had consented to actual bodily harm and grievous bodily harm. And as a matter of public policy the court found in that case, that you cannot consent to grievous bodily harm as a public policy position.

Sen. Al-Rawi: *Contra bonos mores.*

Sen. F. Hinds: Yes. So when I ask about the Government's policy, I do so for very good reason; and so the story went.

Madam Vice-President, as for our side, and I make no apologies, I am in the very mundane business of politics, and I make no apologies for that. I think politics could be conducted with dignity, with some class and with some well meaning for the citizens who we purport to serve.

Hon. Senator: What!

Sen. F. Hinds: Oh, yes.

Hon. Senator: “Yuh learning boy. Yuh learning.”

Sen. F. Hinds: And that we always practise on this side. We gave our support to these measures in the other House, and as I told you our intervention led to a complete diametrical position, to the positions the Government had approached the Lower House on. And we have been working, as the Minister recognized, on these measures for a very long time, several governments in turn, and here we are.

I suspect it took from 1999 and up to today, 2012, to have finally come to the Senate with this, it is partly because of the complexity of the matters before us, the sensitivities involved, and to a large extent, because in this we are breaking some new ground, and I will demonstrate why I said so in a short while.

There have been several contributions on these matters, several amendments, and the Minister did tell us—well, she has presented to us a better Bill. The legislation in my view, simply put, is designed to regulate our behaviour, some of the animalistic behaviour that I tried to describe a while ago, in some cases perverted behaviour, in some cases, corrupted behaviours. And that is very difficult indeed, because as we all recognize a lot of these kinds of activities, which we as a society abhor, or claim to abhor, happen behind closed doors, happen under the shroud of shame, sometimes the victims do not feel like coming out to tell the world, because other citizens could be very brutal to even victims. Secrecy is at the heart of a lot of it. Many times the victim is a defenceless and voiceless person, as the Minister so correctly described in her presentation: a child sometimes uneducated, sometimes lacking in self-esteem, unaware and certainly not as sensible, sometimes and as educated and as powerful in all respects, as the attacker or the predator.

A lot of the offences that we are dealing with here and the issues, also take place in electronic form given the modern application of technology, and that is very critical, because as you all know, Madam Vice-President, and hon. Senators, China is now locked into a major battle with Google. China is trying to protect its cultures, its mores and various things, and it considers Google to be a threat to that, to interfere with everything they know, and China is now locked into this battle on the Internet. We know of situations where some countries that were closed countries, so to speak, in the context of the western models, they have used satellites to project images into those countries. In 1990, for example, when the wall that separated East from West Germany was coming down, they were showing that in Cuba and parts of China against the wishes of those governments. I am only saying that to demonstrate how powerful these media can be and how they can be used in certain ways.

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Just to move on this point, I ask myself sometimes: how are we going to regulate the behaviours that I have just described; how do we really, seriously, want to regulate that? That is like putting a hand up against a tsunami. Who is going to approach the movie industry? We heard Sen. Dr. Bernard a while ago tell us about some of the filth. I was not here. I was abroad, but I understand, because everyone who has spoken since then has quoted Sen. Shamfa Cudjoe and I want to take this opportunity—obviously her contribution made a tremendous impact. [*Desk thumping*]

As a young person, because she would have brought to this debate the perspective of the young, and that shows you the wisdom on the part of our political leader to have selected young, bright Shamfa Cudjoe and to bring her to this Senate [*Desk thumping*] precisely for that reason, and more so from the sister island of Tobago, getting two for the price of one. See? If Sen. Baynes were here, I would have pointed out that it is one for the price of one, but I am not in a political mode this afternoon, so I will proceed.

Sen. Shamfa Cudjoe's contribution obviously impacted greatly on the Senate, because Sen. Dr. Bernard and everyone quoted Sen. Cudjoe. Who will approach the movie industry? Who is bold enough? They say that there are now two super powers in the world, the United States of America and Hollywood. Who will approach them—who could? Powerful as they are, influential and wealthy as they are—to tell them what Sen. Dr. Bernard told us today?

While we are here putting up our hands against a tsunami—not even an incoming tide you know, a tsunami—we know at the back of our minds the filth continues to come in, in large torrents, 35 feet high, as we spend time here trying to regulate the behaviours that I described.

Very often parents are not even remotely aware of what is inside of their children's possessions, with those phones and the iPads, and other gadgets, that carry these images and messages 24 hours a day and more. I learned in the course of my legal practice—I had to make a professional intervention about five years ago, an 11-year-old child, who in my view did not even understand the seriousness of the situation we were grappling with, she was in touch—this was five years ago in this Port of Spain, in this Trinidad and Tobago. She had conversations with a 31-year-old man by way of the Internet and had two appointments at the Long Circular Mall with him before her parents found out. Yes! In this country and that was about five years ago.

The thing is serious, the thing is real and, of course, when we did some background checks—I do not want to say too much about it. The matter is all finished, but you know there are sensitivities around it. They discovered that the

child had experience because she was abused at home by another child, a couple years older than she was, and the plot thickened. I do not want to go further, but the further we went, the more distressing it became in Trinidad and Tobago.

3.40 p.m.

Therefore, too early exposure—I think Sen. Dr. Bernard made reference to it—we used to describe it as the period of innocence. We used to have longer periods of innocence—all 10, 12 years, we still think “baby coming down chimney and Santa Claus bringing it” and all these things. Today, there is no space. We still believed in Santa Claus and all that.

I remember when I lost my milk teeth, you had to put it under the pillow and when you got up next morning you found a “little” 25 cents—you found a “bob”. I see Sen. Brig. Sandy laugh because he grew up in the same district and he understands “seppy”. He was a “bob-a-job” specialist, too, you know.

Sen. Brig. Sandy: Along with you.

Sen. F. Hinds: Along with me. So, Madam Vice-President, we experienced a lot more of that kind of freedom, I would call it.

When I was an adult and began having my own children, the records would show—they were about three years away from each other—three of them—and one day—I had been observing that they were getting locked into the television and mummy always had to be talking to them about getting the work done. One day I came home and I was told that the television had broken down, so that was my window of opportunity! I never repaired it and it remained in that lofty condition for eight years, because everybody had SEA coming up one behind the other and we had some work to do.

So for eight years—I am telling you without apology—when I went home every evening with my three newspapers, the *Express*, the *Guardian* and the *Newsday*, they greeted me by the door, because the human brain craves information and, apart from what little they got in school from their friends, they had to rely on the newspapers and they jostled and got their newspaper. They got into the habit of reading the newspapers and I am proud to tell you that I think their vocabulary today makes me rather happy and impressed, as a father. [*Desk thumping*]

They were obliged to read and when they encountered difficulty—my father used to put me through that. My father would sit me down. He was not a lettered man, you know. He went no further than third standard, but when you see he lay

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down on the bed on a Sunday evening and put his hand behind that head and I sat down on the stool next to him and he gave me an article to read—and the dictionary was there, you know—and I stumbled on a word, he would say: “Ask Mr. Webster”.

I had to go and ask Mr. Webster and for a child to find a word in the dictionary it was like a toothpick in the Queen’s Park Savannah. It was trouble, because you had to know your alphabet and so on. At any rate, I am not regretful or rueful of his conduct in that regard. He just simply wanted me to do better than he did and I pray that I did to his satisfaction.

Madam Vice-President, cellphones, I am coming. All of it. I know children now have them at very early stages. My children had a longer period of innocence. When they got to secondary school and security issues and so on became relevant, then I made them—I do not feel badly about that.

So, Madam Vice-President, the question is: who is bold enough then to talk to the artistes of this country, the singers and people who are laying out some of the nonsense, misdirecting our children? Nobody will take the courage to do it and this is why sometimes I agree with the statement that this is not an altogether serious land. I have noticed the battery of lawyers that are here today in support of these measures, supporting the Minister and the work that they have put out is tremendous on behalf of the Parliament and the people of Trinidad and Tobago. They have just come. Others have worked in large numbers before them. This thing started as far back as 1999. There was a tremendous amount of work.

We heard today that we are not even sure now, as we speak, that the resources, the institutions and the mechanics are in place to make these measures reality. Sen. Beckles told us that she visited a couple homes where our nation’s children are kept, away from their regular homes if that existed; that in respect of the St. Michael’s School for Boys, a dormitory there was destroyed by fire about 16 months ago. The number of children is on the increase and nothing has been done.

Trinidad and Tobago has a way—we did it with the DNA legislation, too, you know—of working up a lot of froth and steam, coming to Parliament, having a fanciful debate, passing the legislation and we all know in our hearts that we are not ready to carry it out as yet.

We did it with the Dangerous Dogs Bill, too. I was in the Parliament, in the other House, when we passed the Dangerous Dogs Bill under Attorney General, Ramesh Lawrence Maharaj. Some of you would have forgotten him. I only mentioned it to let you know how long ago that was and how far you have come from your moorings. But this is not politics, so I am not dealing with that.

At any rate, we have the habit, after all these lawyers work so long and hard and all this fanfare, we hype up the nation and we pass the Children's Authority Bill and we pass the Children Bill, we will find oftentimes that we cannot implement it, or we do not have sufficient social workers and counsellors and all the people who have to make the thing happen. If we do, they need a special kind of training for this regime.

Sen. Al-Rawi demonstrated 24 different pieces of legislation intersect with what we are trying to pass here today. It is very complex. I told you earlier that it is ground breaking and that is correct because these measures before us today, at least some elements of it, are making a radical shift from what now exists in the protection of children in Trinidad and Tobago. We are aiming now to put into full effect the Children's Authority, which will give greater powers to those who work in the Authority to take children away from their natural parents in circumstances as are justified under the Act. It is a major thing.

I know, when I lived and studied in England, that was the case and I want to put this country on notice, that having such an authority does not resolve your problems. A lot has to go into it. Training and all kinds of skill sets are necessary and, most of all, a kind of sobriety and sober approach and professionalism. Even in the United Kingdom, the law books are replete with cases where the Children's Authority there, take up children and it was proven after to be quite irregular, improper, unlawful and unjustified.

There are issues in England, though hopefully not in Trinidad and Tobago; let me repeat that, though, hopefully, not in Trinidad and Tobago, where there are race issues; where the indigenous elements of that country see the immigrant communities as problematic, especially the West Indian blacks, who they say play loud music and walk around in a certain way. They even think all are Jamaicans! There are a lot of stereotypes and the minute someone reports that music is playing loudly downstairs or some West Indian gives some child a clip behind the head and the child screams; some neighbour hears that and calls the Authority, the next thing "they take the child and gone" because they do not understand the culture of the West Indian people and very often it has been demonstrated that racial considerations influenced poor decisions.

That is not unknown to law. Even in the Bail Act of 1976 of England, they finally agreed after much research, that it institutionalized unfairness against the black community, which did not have land and property, in order to access bail. So the same Bail Act, for example, can work inequitably against certain persons, because of their situation. We have to guard against that when this comes into force in Trinidad and Tobago, too, and to be careful it does not happen.

Let me go quickly to show you another, in my view, radical shift that we are embarking on. I want to look at clause 57. Sen. Dr. Bernard alluded to it—not alluded; he did more than that, he dealt with it. Sen. Prescott SC, sorry, dealt with clause 57. Let me look at it and demonstrate to you, Madam Vice-President. The side note says:

“Power of the Court to call parent to show cause where a child is convicted”

Clause 55(1) reads:

“Where a child is convicted of an offence and the Court is of the view that the parent or guardian of the child has failed to exercise reasonable care of or supervision over the child to ensure that the child does not commit an offence, the Court may call upon the parent or guardian to show cause why he should not be required to pay a fine in addition to that which is to be paid by the child or for the child by order of the Court and if the parent or guardian fails to show good cause, the Court may order—

- (a) the parent or guardian to pay a fine to the Court;
- (b) the parent or guardian to attend counselling on such terms as the Court may order; and
- (c) with the consent of the parent or guardian, the parent or guardian to enter into a recognizance to take proper care of the child and to exercise proper supervision over the child.”

Now, Madam Vice-President, I have heard citizens on call-in programmes, in dealing with the upsurge in crime that afflicts us all in this society, ask that parents be held criminally responsible for the conduct of children. I have heard that! It is not new to us. We know, in our jurisprudence, that we ascribe, in terms of our criminal jurisprudence, personal responsibility. Hence, the reason why, when you have, as we now do, close to 160 murders for the year— notwithstanding the Government’s promise that they would have obliterated it all from May 2010; but that is another matter which we will come to later in another debate.

Notwithstanding that we are now close—last weekend I feared we may have had a state of emergency, because there were seven murders, and you know how they behave, once there are plenty murders. I thought we were getting another state of emergency. Fortunately for us we did not; maybe because the Prime Minister was in Barbados and maybe because the commissioner and his deputy were here.

Notwithstanding that, we do not hold the Minister of National Security personally liable. We may hold him to account in the Parliament, but no police sergeant or inspector is going to arrest the Minister of National Security because somebody gets killed in Diego Martin or in Caroni.

Our criminal jurisprudence speaks of personal responsibility, so this is a radical shift. Here it is, the court finds that the child committed some offence and because the court has information that the parent did not take reasonable care in restraining the child, the court has the power now, according to this, to call in the parent and show cause why he should not be made to pay a fine or some other sentence. That is a very, if you like, indirect way of ascribing, in my view, criminal liability to the parent and that is a major departure from the jurisprudence we now practise or know. A radical shift!

The Government did not get up in this debate and tell us this, you know. We had to read it carefully as I have just done. To demonstrate to you, Madam Vice-President, that the Government is now saying that a parent can be fined before a court because their child did something, whom did they discuss that with? Whom did they consult? Which referendum did they hold on that matter?

3.55 p.m.

So, Madam Vice-President, we are embarking on seriously new ground. In addition to that, we are satisfying our international obligations. Obviously, the United Nations Rights of the Child was at the back of the Government's mind, as we drafted these measures and so on.

This Bill talks about genital mutilation. So far, we have not heard of any such experience in Trinidad and Tobago, but I agree with the Minister entirely, that we live in a global village. It is the same thing I had argued when I moved and passed in the other House, in an earlier incarnation, the Anti-Terrorism Bill. Members of the UNC in Opposition were telling us, "We do not have that here", and I had to tell them in the debate—the *Hansard* will bear me out—that we live in a small world and terrorist Bin Laden and his friends are opportunists, and wherever they can find you, they will take you.

So, if President Obama came to Trinidad, and they could have launched an attack on him in Trinidad they would have done it. So Trinidad is not immune to the attack, or if they want to drop a plane out the sky and it was leaving Barbados or Trinidad it did not make a difference, they did not discriminate, and we passed the Bill.

I agree with the Minister, that while we have had no experience of genital mutilation known to us in Trinidad and Tobago, we have citizens from other parts of the world who live here, or take up residence here, or spend time with us here, and it is a reality we have to contend with, so I agree with that, and there is no reason why it should not be in the Bill. You see, we are eminently reasonable. We are not opposing for opposing sake. As a matter of fact, we do not oppose at all, we provide critical support. That is all we do.

Madam Vice-President, if I may just inject a small measure of conviviality, I asked my sister, Sen. Shamfa Cudjoe, because it occurred to me that we are protecting children from all kinds of things, but I have heard some babies with some strange names, and I notice this Bill does not have any provision to protect them from that. Children have strange names. [*Laughter*] You see, the Minister is shouting Fitzgerald. That is a dignified and well-known name and I like it. [*Desk thumping*] I know the meaning. “Fitz” means “son of”, and I am sure the Minister does not know the meaning of “Verna”.

Sen. St. Rose Greaves: Child of a spring.

Sen. F. Hinds: Child of a spring; child of a spring.

Sen. St. Rose Greaves: Fresh life.

Sen. F. Hinds: You see, she springs to her legs and you deserve it.

Sen. St. Rose Greaves: Thank you very much. [*Desk thumping*]

Sen. F. Hinds: Madam Vice-President, but you see even my name is Fitzgerald, my father’s name was Oscar, and “Fitz” means “son of” so I have an issue with that too, and my mother was Marjorie. So I do not know how they got the name Fitzgerald, but such is the way of the world. I was making the point that children have been given some strange names, and I asked my friend, Sen. Cudjoe, and the first strange name, you would not believe it.

Some drug taking family, I presume, they named their baby—and this is real—Urhines Kendall Icy Eight Special K, and they named the baby after the illicit drug petamine. It is called, “Your Royal Highness”. Do you understand, Madam Vice-President?

One mother, in 2005, responding to an Internet casino advertisement sold the right to name her baby to the casino, and the baby was named and is now known as “goldenpalace.comsilverman. It was born on May 19, 2005. That is no fun! There is one man, I think his name could be replicated somewhere in this place. I

am not looking in any particular direction, and his name is Joker Arroyo. [Laughter] Mr. Arroyo is a Senator in the Philippines, and his Joker is derived from his father's fondness of playing cards. His brother is named Jack, and the writer is wondering what would have happened if he had two sisters. Well they would have been named "Queen" and a brother called "King".

In the Philippines there are unusual names like "Bing, Bong, Ping, Ting". One child got the name Led Zeppelin. They even named that famous fellow, Mick Jagger. Well, one lady—this one is what blew my mind—Elisabeth Hallin and Lasse Diding wanted to protest the Naming Law of Sweden, which states that the court can disapprove of names "for some obvious reason as are not suitable as a first name." So they, in protest against that law—Madam Vice-President, this is too long for me to read—they named their child very quickly, "Brfxxccxxmnpccclllmmn...." and a whole lot of stuff ending up with some numbers. They did that in protest against a law in that country.

I really went here, Madam Vice-President, and I know with some measure of—you know, one fellow named his son "Praise God", so the boys' name is "Praise God" Babon. In Trinidad and so on, well, I do not think we have too much of that, and I saw no provision for that, but we have some strange things to deal with here.

Madam Vice-President, may I continue with the Bill? I want to take a quick glance at clause 4 of the Bill. [Cellphone rings]

Hon. Senator: Whose phone is that?

Sen. F. Hinds: It is not my phone, somebody else's. Under Part II "Prevention of Cruelty to Children"—I heard the matter addressed by Sen. Prescott, and I am aware, because I read his record in *Hansard*, Sen. Al-Rawi raised the question of the wording in clause 4(1) which states:

"Where a person has responsibility for a child and the person—"

And it continues with the offences. Sen. Al-Rawi was suggesting that was a little too narrow and, therefore, it does not reach out to all persons who could have responsibility. On the other hand, Sen. Prescott found that it was too wide. They have left me somewhere in-between.

I would really like to know: what does it mean and, if anything, what does it exclude? That is what I would like to know. If I could get answers to those two simple questions from the Minister in her winding up, that would help me in clarifying my thought as to whether Sen. Prescott is right' it being too wide and

Sen. Al-Rawi, who is correct, it being too narrow. What does it mean, and if it excludes anyone, which category of persons or so should it exclude? Well, I am sure the lawyers are taking copious notes at the back and they may have addressed that already when it was raised by the two Senators that I mentioned.

This Bill talks about wilfully assaults, ill-treats, neglects, abandons or exposes a child or causes or procures the child to be assaulted, ill-treated, neglected, abandoned or exposed in a manner likely to cause the child suffering and so on. I saw on YouTube, a couple days ago, a Malaysian woman, who was eventually charged by the police there and she was filmed—and it is now on YouTube—by an undercover cop; and I wondered why he took so long. I think she beat that child for about 15 minutes. She was beating that child constantly on its head. The child was crying and screaming, and the more the child screamed, the more she tried to beat the child into submission. I was shocked. She beat the child mercilessly with this pillow, and then she kicked at the child, tapped the child and she went on and on. I was wondering, well, who could be filming this.

They gave us a little insight later; it was an undercover police probably responding to a report of such persistent conduct and, eventually, she was charged, and she is now serving, I think, a three-year term or so in that country. But that was the worst that I have seen. And I thought something was really wrong with that woman. It really makes the point, even as you sentence people in these matters, counselling is very important, bringing me back to the question, are we possessed of the number of counsellors with the requisite training, with the requisite will and desire to deal with the counselling provisions that are written in here? In other words, will it be worth more than the paper it is written on?

Madam Vice-President, moving forward, in that same clause at 4(1)(b)(i) and (ii)—this is on page 7 of the Bill, my copy at any rate—let me just read it for it to make sense to the listener. It says:

“(1) Where a person has responsibility for a child and the person—

(a) wilfully assaults, ill-treats, neglects...

(b) is in bed...”

Hear these words, Madam Vice-President:

“(b) is in bed or in any other place of rest with an infant under the age of three years, and that infant dies as a result of suffocation whilst in bed or any other place of rest with that person, and it is proved that—

- (i) the suffocation was not caused by disease or the presence of any foreign body in the throat or air passages of the infant, or by any other medical cause; the person commits the offence of cruelty to a child.”

I want to say two things quickly *en passant*. We would have read in the newspaper that on Carnival Tuesday a young woman gave birth to a baby in the bathroom at a KFC, and you just have to imagine on any day, a KFC bathroom is a sight—well I am sorry to put it this way—[*Interruption*]

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

Motion made: That the hon. Senator’s speaking time be extended by 15 minutes. [Sen. S. Cudjoe]

Question put and agreed to.

Sen. F. Hinds: Madam Vice-President, I heard Sen. Helen Drayton speak about people with strange organs and so on, and while I could quarrel with my father for calling me “Fitzgerald” although his name was Oscar and mummy was Marjorie, my name is not “Ethel”, it is Ethelbert and I like it. [*Desk thumping*] He was good on that one.

Madam Vice-President, I was making the point that on any day, a KFC bathroom must be a challenge to be in comfortably. I hope they are not vexed with me, but on a Carnival day it must be worse, and this young lady gave birth to a baby in a KFC bathroom. Minister, you would have read about that, because these are matters that pain your heart. I am sure you would have paid some attention. Sadly, I would learn that the baby died subsequently. She was taken to Mount Hope or some hospital here and she was allowed to sleep with the baby, and the baby died, presumably—it may be sub judice. I do not want to say more—suffocation. She must have rolled over on the baby or something. I do not know. I do not want to say more, but that is a sad story by itself.

This legislation is no doubt aiming at that but listen to the wording. Once the person is in bed with the child, there is no mention in this provision of any physical contact by the adult and the baby. This is what frightened me about this provision. This says very simply, if the person is in bed or in any other place, because I could be on a king size bed; the baby in one corner and I quite here, you know, or a queen size if it is mummy, but I just have to be in bed, or the person just has to be in bed.

There is no mention in this of any physical contact of the two bodies. It just says is in bed or in any other place of rest with an infant, and place of rest sometimes means on the floor in this reality—people spread a sheet on the ground and they

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sleep when they have an overcrowded existence; a whole 10 by 10 room or so. I am in one corner and the baby somewhere else. That is our place of rest, and the child is under three years of age, and that infant dies as a result of suffocation. Let me tell you something, it could happen, but just because I was in the bed or in a place of rest, I am facing serious jail term, and I think there is a deficiency there that needs to be addressed unless it could be explained to me, the rationale and the meaning otherwise.

Subclause (2) talks about:

“A person who commits an offence under subsection (1) is liable—

(a) on summary conviction, to a fine of five thousand dollars and to imprisonment for six years...”

where the person did not take reasonable steps to ensure that the child was provided with the things it needed. That is very, very, dangerous.

4.10 p.m.

I may not be living with the child, but I have responsibility; I am sending money for the child’s mother; the child’s mother is using the money to do something else, and the child dies of malnutrition. The police come to me and want to hold me responsible. Provided that I had resources or if I did not have, I did not take reasonable steps to access State resources, I think this is very wide and very dangerous. I am urging the Government to take a quick look at that.

Madam Vice-President, this question of begging, I see raised here in clause 5 is very useful. I know a particular woman and her three or so children from the San Juan area. For the last 15 years she has been begging. I have given her help before. I have spoken to her a thousand times about stopping, and the children have grown watching mummy beg. I asked her in front of them, “What life are you leaving for these children?” She tells me she is looking for work, and the next time I see her she is working outside KFC in San Juan, again begging. What would you do with her, jail her, Minister? She needs help, not jail. She needs some training, she needs some counselling and we need to try and sort out that one and many others like it.

There is another provision here about exposing children to the risk of burning, at clause 6(1). I do not want to read it out, because it is all there. Sometimes you have household chemicals, like bleach and other things, around the house. We talk here about burning; manufacturers are now making lids and so on safe for children, so that they cannot easily open them to consume them. But from the provisions here, it appears as though the adult would take responsibility rather than the manufacturer. This to me is a radical shift too.

I am not saying that if you left gramoxone or some pesticide; I am talking about normal household detergents like your bleach, dish wash and so on. A child could consume that. What happens to the parent? How do you protect yourself against the risk of being accused of being unreasonable in protecting your child?

Sen. Ramlogan SC: Build a high shelf!

Sen. F. Hinds: The Attorney General is saying to build a high shelf, and that might—but no, children climb too, hon. Attorney General.

Sen. Ramlogan SC: “Doh buy a ladder.” [*Crosstalk*]

Sen. F. Hinds: I would not bother with that, I just have a few minutes again.

Sen. Karim: He is talking from experience.

Sen. F. Hinds: The whole regime with the firearms section in clauses 7 and 8, I entirely agree to and would vote for that every minute of the day, where persons who possess firearms should be held accountable. That is very, very critical and very important.

Madam Vice President, just moving on. This question in clause 11 of the abuse of children through prostitution, I see that if a person:

“allows a child to reside in or frequent a brothel...”

I looked in the dictionary this morning for the meaning of brothel, and it really says a business place where these activities, sex and so on, are bought and sold. But the reality is, sometimes these things happen not in business premises, but at home. These things happen in homes in this world. I do not know if it happens in Trinidad and Tobago, but it happens in the world. Since we are bringing the legislation here, we have to be concerned about that. As I said earlier, prostitution is not illegal in some countries, but it is illegal here.

What happens if the home is being used for the purpose? Then the word brothel does not apply if we say brothel, and the thing is carried on at the home. There is another offence if you allow a child, like your neighbour, to send the child regularly to that home where the neighbour may not even know that the activities of a brothel are taking place. But the neighbour or the person who sends a child regularly there, could also be found guilty and convicted. I think we should put in “knowingly”. I think this requires some kind of *mens rea*.

It says at 12(1):

“A person having responsibility for a child who causes or encourages seduction, prostitution or...”

The side note says:

“Causing or encouraging the seduction, prostitution or sexual penetration of a child”

So if you send the child there regularly, you too could come up for grabs. I think it should not be just who allows, as in clause 11 the person who allows, but “the person who knowingly allows”. I think this is a serious criminal offence, and I could send my child without knowledge, without *mens rea*. I think we should look quickly at that.

I am calling on the police now. I was told, again, in the course of my work as a lawyer—I encountered a situation right there in Woodbrook. A man has a serious steel gate. One young lady said that she was kidnapped and taken to that place. When she finally escaped after about two weeks—I came across this in my practice—she said there were two or three other girls being kept in there by this man. So when the police went, because the family reported it, they had great difficulty getting into that place. It was like a fortress; right here in Port of Spain, Trinidad, in Woodbrook.

In order to make this real, the police have to be very vigilant, very serious, very determined to make this thing work. But the trouble is—and I know I will get into some trouble for this—in this country we are not going to be always assured of that, especially with the new 21st Century Policing methods, but that is for another debate. I think that is unsustainable, but we will come to that in another debate.

Madam Vice-President, I rather suspect that time has run, and this Bill has so many provisions. I have noticed that the Government has taken on the amendments as recommended by my colleagues in the other place, and once the sex is consensual between the children then a different regime sets in, rather than criminalizing it, and I am quite happy about that. We could support that.

There was a documentary called, just to tell you quickly, *To Catch a Predator*. I just want to bring to the Minister’s attention the work you have on hand. I used to look at that programme with great amazement. There was even a Trinidadian “fella” who was caught. He went into the place naked, MrTrini.com. I do not see that programme again, but the police set up a very elaborate scheme. They had a house, they had young people, actors, pretending to be 12-year-olds, and they would call, put it up on the Internet and these predators would come by.

What is amazing about this, to show you how we are animal at the core and how even knowing—some of the fellas when they were arrested said that they saw the programme many times and they knew there was a programme called “*To Catch a Predator*”, but they still went and got caught as a predator. It is almost like an

instinctive thing; it is dangerous. This thing called the sex drive in human beings is dangerous. This is why AIDS spreads like it does. If AIDS were transmitted by virtue of eating meat, I would never get it because I am a vegetarian. Anybody could decide, “Me eh eating beef; I ain’t drinking that.” But when it comes to sex, the most basic drive for procreation in the human being, especially in conjunction with the perversions that we know mankind has sunk to—[*Interruption*]

Sen. Ramlogan SC: Human vice.

Sen. F. Hinds: All sorts of things. It is a dangerous thing. And these “fellas” are going, although they know that the entrapment is out there for them. It is very dangerous, and they find all kinds of devious means. So we may need *To Catch a Predator* here too, but it requires tremendous resources, tremendous will, a serious IT platform too, because they use the computer, the Internet, in order to lure them, you know, and it is a whole lot of work. You could foresee the police in Trinidad and Tobago doing that? [*Minister St. Rose Greaves nods*] You could foresee that? Well I wish the police service, of which I was a proud member, “very” well. I wish the Minister of National Security “very” well, but with all the murders taking place, they may be busy dealing with that and the demoralization that has set in with the 5 per cent, and all of that. Those are other matters which we will come to later.

Finally, Madam Vice-President, clause 30 says: “For the purposes of this Part a person is in a position of trust...”—and it outlines them. Let me not dwell on that one, I want to deal with something else. I want to warn the citizens of Trinidad and Tobago, especially the young brothers out there. Clause 36 of this Bill, which will become law once we pass it, says:

“36. A person who gives, or causes to be given to a child, a dangerous drug or a substance having an effect similar to that of a dangerous drug, except upon the order of a medical practitioner, commits an offence and is liable in addition to any other penalty prescribed by law—

(a) on summary conviction, to a fine of thirty thousand dollars and to imprisonment for five years;...”

And if you go to the High Court, it is a fine of \$50,000 and 10 years jail. You know, there are a lot of youngsters out there, 13-year-olds and 12-year-olds, who go to big “fellas” for a smoke of their spliff. You know that? I want to warn the adults, it always was, but under this law it will bring you five or 10 years. When youngsters come to you to ask for a smoke, turn them away. In fact, you should not be smoking at all.

It is just to let the people on the blocks—because all on the blocks across Trinidad and Tobago you have “limers and ting”. It is a reality.

Madam Vice-President: Senator, do you want to wrap up that last point or just this sentence?

Sen. F. Hinds: I will wrap on up on that, Madam Vice-President.

I am happy to have had the opportunity to make a brief contribution to this debate. Just to conclude, Madam Vice-President. Sen. Beckles is here; she began her debate by telling the Minister that we need really to look at the institutions, procedures and the skills to support this Bill. This Government spent \$60 million on a jail in Santa Rosa. I think they should take some of that money and spend it on improving the conditions at the St. Michael’s Boys’ Home and other such institutions, rather than confuse us with varying kaleidoscopic philosophies.

I thank you for the opportunity, and God bless.

Madam Vice-President: Hon. Senators, it is now 4.22. I propose that we take the tea break and resume at 5.00 p.m. after which time we will continue straight on, throughout the committee stage as well. This sitting is now suspended until 5.00 p.m.

4.22 p.m.: *Sitting suspended.*

5.00 p.m.: *Sitting resumed.*

The Attorney General (Sen. The Hon. Anand Ramlogan SC): Thank you very much, Madam Vice-President. As I rise to contribute in this historic debate, I do so with mixed emotions, with a sense of sadness that it has taken this long for us to deal with a subject that is probably so precious, close, and dear to our hearts, and one that has left in its wake a trail of abuse, death, and destruction, on perhaps the most innocent in our society.

I wish to start by complimenting the hon. Minister, Sen. Verna St. Rose Greaves for bringing this Bill [*Desk thumping*] because I recognize that it is a Herculean task, and one that would have been achieved as a result of much labour on the part of the key stakeholders, the technocrats, and the legal officers, and it makes me want to put my contribution in the context of being a father, and the joy one experiences upon the birth of a child.

In many cases when a child or baby is asleep, and we see them smiling, and the furrows on the forehead, it is said in local parlance, that they are having a conversation with angels, and that perhaps personifies the kind of innocence with

which we view children, a gift and a miracle from God, into our lives. It also, conversely, underscores the utter revulsions that one feels, and the trauma, distress, anxiety caused by some of the brutal acts that we see perpetrated against children. Those are the kinds of harsh and raw realities, the atrocities that have been committed, that have led and prompted this administration to bring this Bill.

Madam Vice-President, I have listened to a lot that has been said during the course of the debate. There has been a lot of discussion about the various clauses in this Bill, and we have received the benefit of the wisdom from the other place, and several amendments have been made.

I would like to perhaps focus on a couple of them, during the course of my contribution, but before I do so, I do not think it is necessary to provide a social or political justification for this Bill, it is self-evident, and one does not have to rehash the newspaper reports, and call the names of those children that we as a people, and as a society, have failed for far too long.

Sexual abuse, torture, and neglect of children, they have no place in a civilized, functioning democratic society such as ours, and this is a step in the right direction that would, hopefully, alleviate some of the pain, suffering, and torture that these children and their families have had to endure.

Abuse is said to be cyclical, and a child who suffers abuse and neglect has a predisposition, and a predilection, towards that kind of behaviour as they grow older. That is why when we see bullying in schools, abuse of children by children, we sometimes look at it in isolation, in a vacuum, and we look at it without realizing that it is a symptom, but we do not go behind it, and drill down deeper into our society, to analyze, and to get at what are the root causes.

It is for that reason the People's Partnership administration, under the guidance and distinguished leadership of the hon. Prime Minister, Kamla Persad-Bissessar, has appointed a committee chaired by Prof. Selwyn Ryan to analyze our socio-economic conditions, with a view to looking at the at-risk, young males in our society, to see what are the root causes, and what can be done.

I make that point against the backdrop of the point made by almost every single Senator on the Independent Bench, that we have spent an awful lot of money trying to target this vulnerable section in our society over the years, and with all of that money that we have spent, we have not yet seen the results.

In fact sometimes, when I was adding up the figures over the years, I wondered whether we should not just have taken this money that we were spending on all these programmes, and divided it by the number of persons that we were targeting, and

just given them as a grant, and said, “look, you are getting it conditional upon passing your technicians diploma”, whatever the case, and you monitor it, but it is pegged on some form of milestone achievement in their life. Because the amount of money that we have spent as a country, without getting concomitant results, it is pretty awesome. So, we have been in search for solutions for quite some time, but we have had many misadventures, and we are, today, paying the price for that.

Madam Vice-President, there are some touchy issues, and I accept that this is a Bill of a rather delicate constitution. We skate on very thin ice in many areas in this Bill. I listened to my colleagues, many of whom have spoken from the depth of their own personal life experience. When we hear about caregivers, babysitters in families, not being only adults, but children taking care of children, that is a reality; that is a reality.

We also have teachers being in a position of trust, we also have clergymen, pundits, priests, imams; there are many, the list goes on and on, but I think that is why the Bill sought to deal with the concept of responsibility in a contextual manner.

I heard many focus on the definition of responsibility, and in some cases pointed out that we also defined guardian and parent, and heavy weather was made of that.

Now, I think that the use of the word responsibility as being defined as including custody, charge, care, and control really, was to widen the net, to take into account those very social realities to which Senators have alluded, to recognize that apart from the legally appointed parent or guardian, anyone, the grandmother, the aunt, the big brother, whilst the mother is away doing domestic work, trying to earn some money to send back home, all of those spiralling myriad of possibilities and circumstances that may occur, we have sought to capture that, by having that provision which speaks to custody, charge, care, and control. It is about responsibility in our own social context.

I do not think, and I do not agree with the criticism—I think my learned friend, Sen. Al-Rawi, had mentioned it during the course of his contribution—that because we defined “guardian” in the definition section, and we defined “legal guardian”, that there is going to be any confusion. I think it is clearly a tiered approach, culminating in a contextual definition of responsibility in the widest possible sense. And what we are really attempting to do is, because the concept of a legal guardian is known to us in law, and because the concept of a guardian in the Family Court assumes a different legal character, where the court may recognize someone as being in a position, in *loco parentis*, or someone being in a position of a guardian, without being legally appointed the guardian.

You know in this country there are so many people who are guardians and parents, and have responsibility, but they never went to court to get any formal adoption order. Nine out of 10 parents who have migrated to go away and live, they leave the

children behind here, and they go in search of a better life, not only for themselves, but their children. So they leave them here with the mother, or the sister, or the husband, and they go over there, and the hope is what—this “green dream”; the “green dream for a green card, so that they will come back for the children—green card and green buck. And one day they would be able to come back for the children and file their papers. And they leave with such fervent hope in their bosom, as mothers, as parents, they go with such fervent hope and aspiration for a better life for their own children; little do they realize, alas, one year passes, two years pass, and before you know it, 10 years, and 15 years have gone, and the child has grown up without the love and protection that they themselves were fighting so hard to be in a position to provide, and that is the reality.

I speak from personal experience in that regard. My own mother, to be able to educate me, went to the United States of America, worked there as a domestic worker, took care of old people, cleaned homes, cleaned toilets, and did everything under the sun, but she sent that money back to me so that I would be able to get an education, and the intention was, that in going there, she would be able to do of all this, and send for the children. It never worked out.

I have sisters in that same situation, who went in search of a better life, started doing two jobs, sending back a little money, and hoping and praying that that green card would come through, so that they would be able to send for my nieces and nephews. That time has not come as yet! Twenty years have passed in some cases, and we have raised those children as a family, and the time has not come for them to come back. But the point that I am making is that we never went to court to formally get an appointment as a legal guardian, to get legal custody of those children, but you had *de facto* custody. You were in fact in a position of responsibility and trust in relation to those children, and that is why the definition of responsibility is one that is there in the Bill. [*Crosstalk*] It may very well be, yes, and Sen. Hinds queries whether or not there could be liability, and the answer is yes. [*Interruption*]

Sen. Hinds: Legal liability.

Sen. The Hon. A. Ramlogan SC:—there could be, the answer is, yes.

Now, a lot of time was spent on the effects of technological advances, and some of the points made during the debate about—I was abroad at the time, but I read with great amusement and interest the contribution of my learned friend, Sen. Shamfa Cudjoe, forgetting the fact that it brought amusement because I thought

that I may be viewed as a potential prospect because I walked with prams in the mall, and children in my hands, and I was hoping to run into my learned friend, so that she could cast a favourable eye in my direction. [*Laughter and crosstalk*] I used to.

But apart from that she made a very valid point, as a young Member of the Senate, about what is taking place on Facebook, on the Internet, the kind of videos that are being posted. I have had cause to send many a video posted on my Facebook wall to the Minister of Education about young children being engaged in lewd and explicit sexual activity and conduct.

I have had cause to send to the police service in the country videos that have been posted on my wall, involving mothers encouraging daughters to beat the child. Sen. Cudjoe is shaking her head, she knows. In one case, the mother actually beat the young school girl so badly, shoved her into a drain, and was taking up a brick to give to her daughter to mash it on her child's face.

Hon. Senator: What!

5.15 p.m.

And that video with cellphone is there and it is posted on my wall, as Attorney General. I forwarded it to the Commissioner of Police. You have to! You have to! Technology is a double-edged sword, with it comes an awesome social responsibility that we must now be aware of.

Long ago I remember when my elder sister was in the courting stage, I remember the "fella" would play football and when he meet me on the ground he would give me a "lil" piece of paper and say, "When you go home give yuh sister that and tell she is something important." [*Laughter*] Now, I remember my father would brace me by the door and say, "Wa you goin with tha piece a paper", I would say, "Nah, tha is just a lil something for homework" and so on, because the "fella" knew me from playing football. "I would slip she a lil piece a paper and three days later she would give me a piece a paper and say, give so and so that and tell him that is urgent." [*Interruption*] And there I was, you know, the go-between. [*Interruption*]

Of course, little did I know, my father "done check the scene out, he know what going on, and he allowing it because he done in the mix." The point I want to make is this, it dawned on me that today that part of our culture is no more, you know. "Tha fella could take up a cellphone and text your child and your daughter in she bedroom and that text whizzing past you in cyberspace. It going through

thin air and reaching the phone on the pillow, and he talking to her,” and before you know it—in years to come we may all realize we live in a generation where children have bigger thumbs, because they are exercising them plenty.” Whole day! But that is the kind of social change that technology has brought and that is the reality. [Interruption]

Now, this Bill cannot provide for every situation, and I mentioned that just to show how things have changed. I wonder with my little son, sometimes, whether or not penmanship will be around in five, 10 years’ time, or in the next generation. I remember getting real licks for penmanship in primary school. But my son tells me now, he says, “But I do have to write”, because he is on the laptop. All they want to do is to know how to actually sign their name, and even then—my daughter said he does not need to do that, he could do electronic signature. “So, we are going paperless, we are going wireless, all kind of less”, and we may not be able to keep up with it all in one go, but by virtue of the contributions here in this august Chamber, what we have done is to sensitize the population; we have sensitized the Parliament to the fact that we are alive to our responsibilities, to be on the lookout and to be alert to what is happening in society. [Desk thumping]

On the way back to Trinidad I was reading the *Daily Mail* from London and I was amazed to see this article, it is by John Woods and it is dated April 26, and the headline is “Jamie is 13 and hasn’t even kissed a girl. But he’s now on the Sex Offender Register after online porn warped his mind...” I want to read a bit from the article, with your leave, Madam Vice-President. It says:

“Jamie was ten years old when he saw his first pornographic sex scene. During a sleepover, a classmate offered to show him ‘some funny pictures’ on his laptop.

‘At first I found it a bit scary and a bit yucky.’ Jamie told me as he shifted uncomfortably on his chair during our therapy session.

‘I didn’t know it was possible for people to do those sort of things—and there were lots of nasty close-ups. But it gave me funny feelings and the pictures—began—to stick in my head.’

For the next three years, while his parents assumed he was—doing his school work—“Jamie visited porn websites for up to two hours”—to four hours—“a night.”

Now, put that into Trinidad and Tobago context where the parents—there is a generation gap—cannot use computer but the children could use computer, so when the children bring up two and three screens on the computer and they minimize one when they see their mother walking in, “that’s the porn they are minimizing and they bring

up back de lil one with addition and subtraction and maths and so on.” You are none the wiser. So, the ability of parents to police the children or to regulate their use of the Internet in Trinidad and Tobago is somewhat challenged and limited, and this is our reality. And, more so, in families at the lower end of the socio-economic ladder where the parents are working sometimes in the night or day, you cannot even be there to do it, but worse yet if you are there. You are working so hard to educate the child but part of that education is technological education and you are technologically challenged.

I continue: He says:

“The websites”—this is the young man talking, the victim—“led me to other websites and soon I was looking at even weirder stuff I could never have imagined—animals, children, stabbing and strangling.

‘I stopped leaving my room and seeing my friends because when I was away from the pornography, I was dying to get back to see what else I could find.’

And it was only when the police came knocking”—on the door—“one morning”—that this child’s life was secretly exposed—

“After identifying that someone in the house was accessing child porn,”—and bestiality—“they took Jamie’s laptop away for examination...only 13”—never—“kissed a girl, let alone had sex”—but was on—“the Sex Offender Register.”

Now, I make this point; in many families children are now living in their bedrooms and children are now living within a very small radius, and that small radius is from where they are sitting to where the computer is; “they living in the bedroom; they living in front the computer or laptop”, and that is their whole life. Their whole life is concentrically revolving around that device.

I make this point because when parents now, who, really do not want to make the effort or cannot find the time because of socio-economic circumstances or whatever the case, they cannot find the time to take the children out to the park, they cannot find the time to take them to play some football, but when you do, I want to alert those parents, those parents who give their children the kind of independence and autonomy to exist and live in the bedroom, refuse to go to social and family gatherings and functions, and when they do go they are walking with it: Nintendo ds, iPad, Nintendo 3ds, 3d. I mean, I quarrel all the time with my kids. “When we are in the vehicle I doh what them things around me”, because it is inhibiting and it is changing the face of human intercourse and human interaction. [*Desk thumping*]

“Very soon a young fella would not know how to chat up a young gal because he go only know how to bbm she, he cyar talk.”

Hon. Senator: “He cyar spell.”

Sen. The Hon. A. Ramlogan SC: “He cyar spell.” The spelling is a different issue, there is a new language that is emerging altogether. But if you read what they write you would not be able to understand it, that is the next thing. Even if you see what they are doing you would not understand it. The language is totally different. It is all abbreviated, “jerd, ral”. It is a lexicon of a completely different nature. They have their own vocabulary. [*Interruption*]

So, the compulsive use of the Internet is a problem, and the author of this article is actually a psychotherapist who is specifically treating young children in London at the Portman Clinic, and he says that the problem is growing. He regularly sees young children who have obsessive sexual viewing habits and now it is manifesting itself in the classroom because the children do not know how to react to it, because it is releasing interest in the children at an earlier age and it is arousing tendencies in the children at an earlier age and at a time when the body itself is not ready to comprehend, to analyze the signals that are being given off, and they cannot deal with it.

Now, in some places on the Internet you have extreme sites that depict depravity, all sorts of things: humiliation, bondage, sadomasochism, all sorts of things, and the author says that these sites, when exposed to young impressionable minds, can leave such an indelible impression, that the children are unable to have a normal sexual and romantic relationship as they grow older, because the definition of sexuality, the definition of sex and intercourse revolves around those images that are stuck in their mind. So, one boy in class, when a girl had a crush on him he said he wanted to grab her throat and punch her in the face.

Sen. Hinds: He wanted to crush her.

Sen. The Hon. A. Ramlogan SC: He wanted to crush her. Yes, he wanted to crush her in responding to the crush. So, what we are doing is raising a whole new guinea pig generation, and this Bill is a step in the right direction. It is not the panacea for all the ills, but it is a step in the right direction and it has given rise to a lot of debate and discussion that is long overdue in our society. [*Desk thumping*]

I pause to commend Senators for the contributions that have been made thus far. We have in this country about 350,000—400,000 young people under the age of 18. That is a significant number. That is almost one-third of our population, and that one-third of our population has been without the protection of this kind of legislation for far too long. That is why, Madam Vice-President, when we look at what is the area of focus and the priorities of this People’s Partnership administration, we see that gender and youth affairs has always been at the forefront of the vision of the hon. Prime Minister. Always! [*Desk thumping*]

And it is to that end that in December 2010, in seeking to partner with institutions that have the capacity and the expertise in these areas, the Government embarked on a series of public forums, appealing to the nation to break its silence on family violence and child abuse. One such forum, I believe, was held at the St. Dominic's Pastoral Centre in Diego Martin, the theme was "Addressing the Problem...Sharing Solutions."

The community came out, we engaged the community, they related their own experiences with respect to family violence, child abuse, and they proffered solutions, because solutions must come from the ground in this area. Other such consultations/meetings were held in Chaguanas, Toco, Point Fortin, and a task force has been appointed to address the issue. In May 2011, the hon. Minister of the People and Social Development, in conjunction with the Ministry of Gender, Youth and Child Development—further consultation was held at the Roxborough Secondary School in the auditorium, and we have further sessions planned.

It was the first of its kind in Tobago and the people in Tobago really participated and engaged with us, and they respected that process and we respected the fact they were coming and responding to the invitation of the Government to share with us their ideas, their thoughts, their feelings and their experiences.

Madam Vice-President, in my own capacity as Attorney General, when I met with the United States Attorney General, Mr. Holder, one of the first items for discussion that I put on the agenda was the issue of the rights of children, and I put that on the agenda because I thought that we do not have any reciprocal enforcement provisions in our laws with the United States of America, for when fathers or mothers abscond, and they go and just simply abandon children. I know in my own village in Ben Lomond where I grew up, if a rich man's son impregnates a poor girl, when the social pressure is applied to the girl to have an abortion, if she does not, you know what happens? They take a visa and they ship their son out and send him to the States.

That girl has that baby and it is the mother and grandmother now have to care for it, and the husband—the father of the child, sorry, he never, ever once looks back, and the father and mother who shipped him out "doh" even talk to the girl. They do not have any regard or respect, far less love for their own grandchild, for whatever reason: they did not approve of the girl, not the right social class in society, all kinds of crazy things. But I raised it with the Attorney General of the United States, that when they go there in the USA, the child-support agency is a big thing. They are very strong on child support.

5.30 p.m.

I asked AG Holder whether he could not join hands and partner with this Government, to ensure that those fathers and mothers who have abandoned their children, are getting good work, saving money over there and enjoying a new life, that we cannot enforce maintenance orders obtained here in the United States of America, so that the payment can come back for the benefit of the child. The children still have to live. [*Desk thumping*]

I also raised with him the real problem we face in the Family Law Court, about mothers or fathers looking to take the children and run away with them—on both sides. You completely uproot and dislocate the child, because your green card comes through—the child will disappear. It is child abduction, but it is by a parent. How does the law deal with that?

So, as a result of those discussions I had with Attorney General Holder from the United States of America, those discussions I am pleased to say were followed up by diplomatic meetings I had with the United States Embassy. As a result of which, on Friday, March 23, 2012—just this year—I met with Ambassador Susan Jacobs, who is a special advisor on international children's issues to the United States Government.

At that meeting, at the Hyatt, we furthered the discussion with respect to children's rights, and I pointed out that many children had dual nationality, because we allow for dual citizenship in Trinidad and Tobago. I pointed out the hurdles and the problems that we face, because our laws permit dual nationality so that there can be freedom of travel. In some cases, people travel just to have the child in the United States so that they would get a US passport and then, of course, they could travel back and forth. The child is split between two cultures, two societies, two systems, and the welfare and interest of the child that should remain paramount is nowhere in the mix.

At that meeting, our two countries shared goals and commitments to resolving these common issues and problems that affect the rights of the children, and we discussed the Hague Convention on the Civil Aspects of International Child Abduction. The United States ratified this Hague Abduction Convention in 1988, and Trinidad and Tobago became a party to the Abduction Convention on September 01, 2000. Both countries, however, being so geopolitically close, have never entered into a partnership which is necessary under the treaty, and that has deprived the parents and children of the full panoply of the remedies that are available under that Convention to resolve cases of suspected and actual abduction of children.

I want to give my commitment to this Chamber, Madam Vice-President, and to you, that ongoing bilateral collaboration between the United States Government and the Government of Trinidad and Tobago will continue to ensure that final steps are taken for Trinidad and Tobago to obtain full membership status in the Hague Convention on Civil Aspects of International Child Abduction. Ambassador Jacobs and I discussed the common interests and goals in reducing child abduction in both countries, increasing public awareness of legal avenues to return children to their rightful home and families, and promoting social justice for children throughout the region.

Madam Vice-President, this Bill seeks to protect the innocence of youth. We must protect them from all that would threaten to violate their innocence. The precepts and institutional arrangements set out in this Bill will form an important part of the foundation for accomplishing this goal. We believe our vision is that children should be given an opportunity to realize their true and full potential to excel in whatever their talent is. You know, it is not just academics. My mother used to say, “God make yuh five fingers on yuh hand and none eh equal”, and “None eh equal, because is ah reminder to you that not everybody is the same in life”. She used to say “not all she children is the same”. So every time she looked at her hand she would remember that; that gave her the peace, equanimity and composure to deal with the differences that she faced in her own family. Remember my family is big; it is 18 children. “So that is plenty fingers”.

Madam Vice-President, the history of this Bill would show that its lineage could be traced directly to the 1925 Children Ordinance. At that time, the definition of a child was a person under the age of 14, which was in itself out of sync with the United Nations Convention on the Rights of the Child, which we signed since 1990 and ratified in 1991, but the Convention defined a child as a person who is under the age of 18.

Now, since that time there were a number of piecemeal amendments to that law, culminating in Act No. 68 of 2000, which was not proclaimed. That piecemeal approach showed that we were approaching this question with a knee-jerk legislative reaction. It was a legislative knee-jerk reaction. Every time a problem erupted we would try to react rather than be proactive, and there was no comprehensive plan to actually take on board children’s rights and treat with one-third of the population—350,000—400,000 young citizens. There was a never a master plan to address their rights in the law, to update it since 1925, and we are in 2012.

So, I am very proud to be associated with this Bill and I am very proud to be part of the People’s Partnership administration that is finally bringing the Bill. It

is one thing to talk about something, it is a “next” thing to do it, and this Government will go on record as having done it. [*Desk thumping*]

Madam Vice-President, there are many touchy policy issues raised in this Bill. Now, in clause 4, the original draft had where a person has the responsibility, and that person really was someone over the age of 16. The valid point made was that, look, you will have persons who are under 16 being in charge of children and you should take into account for that. We have listened to that, so we have made a change.

I believe Sen. Hinds made a point on clause 4 with respect to suffocation of the child and he pointed out that as the clause presently stands, if the person who has the responsibility is in bed or any place of rest with the infant, under the age of three, and that infant dies as a result of suffocation, and if it is proved that that was not caused by any disease or presence or so on that the person was under the influence of drugs and so on—the point he made was that, look, there is no nexus, there is no causal link; causation is lacking.

When this matter came up before the Legislative Review Committee, I did raise a similar concern, and I did point out that there is in fact a recognized phenomenon of sudden infant death syndrome. Sudden Infant Death Syndrome is in fact a statistical phenomenon all over the world. It is a statistically recognized area in the law of medicine and sometimes babies and children under the age of three die and they do not understand why. It is called sudden infant death.

I share Sen. Hinds’ concern about the absence of some causation in this particular clause. I share his concern. I had raised it before and I am happy that he has raised it during the course of this debate. I think at the committee stage I want to signal the Government’s intention to perhaps take a look at that, because someone who may be intoxicated, someone who may have had a spliff or someone who may have celebrated at a birthday party, the fact that a child below the age of three goes to bed fine but does not wake up the next morning, may not necessarily mean that this person is the cause of that.

Sen. Beckles: [*Inaudible*]

Sen. The Hon. A. Ramlogan SC: Sorry? Yes. The permutations are endless as to how and why, but having regard to the seriousness of the penalties in this Bill, I think that a causal link should in fact be considered for that particular clause. I agree with Sen. Hinds for the first time since I have been in this Senate, after two years. [*Laughter and desk thumping*]

Then we go, of course—there was a lot said about the begging provision. That begging provision has been with us since 1925 and the issue is—I mean, on the one hand, yes, you say you are criminalizing poor families and children who are on the streets begging. On the other hand, it has been with us since 1925 and I have not heard of a child being arrested and charged with the offence of begging. So there has been a certain amount of pragmatism and a practical approach to some of these provisions, likewise for buggery as well I suppose. We have viewed some of these things in a particular way.

There are many laws that have not really been enforced in Trinidad and Tobago, and one wonders, well, if it is not going to be enforced why have it, I suppose. The flipside to it is this: if you decriminalize begging by children, what happen, as obtains in India and other parts of the world, the parents will now get the incentive knowing that the innocent face of the child is the best incentive for a person to dip their hands into their pocket or purse. They will now perhaps abuse and exploit the children's youth and innocence by putting them to beg and that creates a problem of a different kind.

So I think that on this particular one, there are pros and cons on both sides, but I understand the legitimacy of the argument raised by those who have contributed, and Sen. Drayton, in particular, as to why this should not be there. One point I do wish to make, Sen. Drayton, is the point about raffles and all of the official things. It is in fact provided for. It is in clause 5(1) (b), which says:

“...without the written approval of the Authority...”

So once they want to run a raffle or raise funds for a sports day or a little bar-b-que or whatever, that is permissible. It is in the law.

The abuse of children through prostitution—I think the point was made as to a brothel not being defined, and in the law I think it is wise to have these things defined. It is already defined in the Sexual Offences Act and I want to recommend during the committee stage that we borrow and transplant that definition of brothel into this Bill, Madam Vice-President, so we can be clear about it.

Of course, we have signalled our intention by way of the list circulated to favourably consider the amendment to clause 13 at the appropriate time, having regard to the extraterritorial nature of this particular kind of offence and, the fact that it is a global crime, there are universally accepted standards and notions of what the rights of children should be and, therefore, we are in agreement with that suggestion. We have circulated an amendment to that effect.

Clause 20 which deals with experimental and innocent sexual activity with your peers and so on, I think that is a good provision. It is a provision that is necessary for many reasons. Sexual curiosity is aroused at a very early age and stage in life. You become aware of yourself as a sexual being at different stages. I remember when I was doing O level literature and I read Michael Anthony's *Green Days by the River*, I would read those three pages with the kissing scene over and over and over. I prayed for that question to come in the literature exam, but it never came. *[Interruption]*

Sen. Bharath: But you did. *[Laughter]*

Sen. The Hon. A. Ramlogan SC: No comment. No comment. And my colleague here shared his own personal experience in that regard with us. *[Interruption]*

Sen. Beckles: You believe if they had allowed you to read—*[Inaudible]*

Sen. The Hon. A. Ramlogan SC: Absolutely! Absolutely!

5.45 p.m.

Now, Madam Vice-President, there is, in fact, a recommendation, I think, which was circulated—in clause 22—to deal with children being engaged in sexual activity with animals and so on. It is from 25 years to life. I suppose we can debate that at the committee stage if we want, but the point has been made by one person to me that, you know, sexual curiosity is something that you cannot really trap it or define it, and you cannot really legislate for it, and the point was made that we have to be careful about it. I mean, sometimes young children, out of curiosity; they are very close to their pets—dogs, as the case may be—and one may not know, and one cannot envisage, or put it out of the box and throw it out of the window completely.

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

Motion made: That the hon. Senator's speaking time be extended by 15 minutes. *[Sen. The Hon. E. George]*

Question put and agreed to.

Sen. The Hon. A. Ramlogan SC: *[Desk thumping]* Madam Vice-President, if we look at clause 33, I believe the point was made with respect to the constable, we have “shall immediately notify”, and I think the point was made that perhaps it should be “as soon as practicable”—it could happen on a Friday—whether or not

we should make it a little more flexible, and I think that it is something we can again look at, at the committee stage, and take into account the suggestions made thus far.

I believe clauses 35 and 36, Sen. Dr. Balgobin, in his usual forthright manner, made the point that he felt that the fines and the penalties were too low, and this has to do with exposing children to dangerous drugs and giving them dangerous drugs. At the moment it is five years for exposing a child to a dangerous drug. Giving a child a dangerous drug is 10 years, and using the child to deliver or sell drugs is 20 years. Now, the thing about it is that five years sounds a bit low, but you have to take it against the backdrop that exposure to the drug may come in the context of their own peers. So if you make it too heavy a penalty, then what you may do is end up putting away that young man who is sharing a spliff with somebody for the first time, as the case may be. He may be put away for a pretty long time.

So whilst we want to have the law provide an effective deterrent, I do not think, for myself, that five years is not an effective deterrent at the first level. What we have done is to show that where you use the child as part of a criminal enterprise, as part and parcel of the trafficking and to deliver and transport the drugs and so on, that is where you are getting the 20 years and the huge fine, but insofar as the experimental aspect goes, and bearing in mind it can occur in various or different circumstances, we go from five to 10 to 20. I think that tiered approach is one that is good. I have no problems with it, but I understand Sen. Dr. Balgobin's concern in that regard.

We have taken on board in clause 40, the need to expand the exceptions. I believe Senators made the point that it did not protect legal officers, a teacher or a counsellor who may have to show it, and I read from that article, the "Sexual Psychotherapist", who would obviously need to use some of the images in the course of counselling and in the course of treating whatever disorder or mental problem occurs. So that is a worthwhile amendment and we are happy to give it favourable consideration at the committee stage.

I think Sen. Prescott had raised the point about whistle-blower protection. He said, you know, well perhaps we need to cater for the fact that you need to have people who could report these things and we need to give them protection, and one of the methods he suggested was having the videoconferencing technology utilized to have the person give the evidence which will be admissible via videoconferencing. I think that protecting the child from the rigours of the courtroom and the coldness of the courtroom experience, I agree with that totally.

As to whether or not you can give and afford similar protection to the whistleblower, there is a question mark over that. In law, it is a fundamental part of due process that you have a right to confront.

A confrontation, as part of the adversarial system of the litigation, must occur, and an adult person living next door, or even in your own family, as to whether or not we give that similar protection to that person without defence counsel or without the accused person having the right to have that confrontation, I am not too sure that that will saddle with the constitutional rights for the accused person in a way that does not run afoul.

But more importantly, having regard to the fact that these things can easily give rise to persons who may see opportunities to use it to have an axe to grind and execute personal vendettas—I mean, all it takes is a man to say, “Well, look that fella doing X to his daughter or child”, and the police show up by your house. We live in a society where the headline on page 17 that says, “Man freed of rape” is never read, but the one on the front page that says, “Man charged for rape” is never forgotten. The damage is done.

So that I think, on that score, whilst I am content to protect the child from the rigours and the coldness of that experience—and I think that is right—insofar as a whistle-blower goes, whilst I understand the point, and I think I see the legitimacy of it, I am not too sure we could afford that similar protection to the whistle-blower.

Madam Vice-President, this law I indicated, has been in the making for some time and I am very proud to say that as Attorney General, when this Bill was in the process of being drafted in collaboration with Sen. Verna St. Rose Greaves and her predecessor, Hon. Glenn Ramdharsingh, and the teams from both Ministries, it was on more than three occasions I asked them to go back, and they went back, and each time we widened the pool of persons.

The persons who would have been consulted would include persons whom I wish to place on record my gratitude for their contribution, and they include: Master Morris-Alleyne from the Caribbean Court of Justice; Stephanie Daly, Senior Counsel, who has had a long and distinguished track record as a member of the private Bar and an advocate of children’s rights; Eileen Bruce, Project Coordinator, National Plan of Action for Children; Claire Blandin, Chief Probation Officer; Shanta Maharaj, Senior Probation Officer; Joseph Ragoonanan, Student Support Services; Kathy Gonsalves, a family practitioner; Justice Annestine Sealy, Chairperson of the Board of the Children’s Authority; Dr.

Children Bill 2012

Wednesday May 23, 2012

[SEN. THE HON. A. RAMLOGAN SC]

Ramcharan, Child Psychologist; Dr. David Bratt, family practitioner; Dr. Jacqueline Sharpe, Psychologist; Dr. Boxhill, Psychologist; Seeta Beharry, Regional Coordinator, National Family Services. [*Desk thumping*]

We also had, of course, our usual battery of very competent attorneys from the Chief Parliamentary Counsel's department, and what I sought to do was then to throw the Bill out to family law practitioners outside of that. So we had persons like Davy Ramnarine—we had a whole lot of persons who looked at this Bill, twisted it, turned it, dissected it and they provided their services free of charge, I want to add, and at the end of that process, this is what we came up with.

A lot of the issues that have been raised during the course of the debate, in fact, came up during the course of those deliberations and discussions we had when we were thrashing out the Bill. Some of them we discounted. Some of them fall within the domain of policy; others do not. I know one of the more touchy issues raised, of course, was the fact that in the Romeo clause 20, we did not, in fact, treat with same sex experimentation between children, and I think, unanimously, on the Independent Bench this issue has been raised. It is a matter, of course, as a society, we will have to address and we will have to confront, but I think the hon. Minister is engaging in the widespread consultation process that is necessary, because it is a very complex issue in our society, having regard to the position of the State, the church, the family groups, the NGOs, the judicial arm of the State and many others.

The time is ripe for that discussion to take place in our society and I have no doubt that as a responsible and mature, functioning, democratic society, Trinidad and Tobago will respond to that, as well as other issues. In doing the research for this debate it was pointed out to me that when we trace the etymological origin of the word "sodomy", and you go back to the writings of St. Thomas Aquinas, that originally, in conventional Christianity it covered any non-procreative sex. It certainly covered oral sex. And there has been a refinement of the meaning of sodomy as we went along the road. But if you trace it back—I think Sen. Al-Rawi had mentioned the use of etymology in the course of his contribution—the refinement to suit the convenience of a society as the society developed and evolved, is something that, obviously, will be taken into account in these public consultations and debate. Sen. Drayton was absolutely right when she mentioned, "But look, buggery is not just confined to same sex; buggery is a sexual act and there is no rigidity about how you view it."

So, in closing, I wish to say that this Bill is not a step forward in the right direction. Mahatma Gandhi said, "The longest journey begins with a single step". I think this is not just a single step, but this is a leap in the right direction. It is a leap towards bridging the gap that exists between society's responsibility to take care of our

children and the young and innocent, and where they are on the other side of the river. In bridging that gap, we have a responsibility to continuously monitor the law to make sure that it keeps apace with the changes that are taking place in the homes, bedrooms and the classrooms where our children are. I want to express this Government's commitment to do precisely that, and to keep our finger on the pulse and to make sure that we move with the times.

With those few words, I thank you, Madam Vice-President. [*Desk thumping*]

The Minister of Gender, Youth and Child Development (Sen. The Hon. Verna St. Rose Greaves): Thank you, Madam Vice-President. I feel honoured to stand here today to do the wind-up of this very important Bill, but it is with a great deal of pain that I stand here, and somewhere deep in my soul, I wish I did not have to do this, but I must.

Madam Vice-President, this Bill has been long in coming, as we have heard from so many of us who have contributed in this honourable Senate, and I have been on that journey for many years. I have been on that journey because I recognized a very long time ago that if we did not pay attention to our children, we would be in the trouble that we are in today.

So many people have spoken about the problems that we are experiencing in this country; all the things that are wrong with our institutions; all the things that perhaps we need to do, and we needed to do, and must do, and I want to say that I have had so many documents in my possession. I have been through so much of this over the years, and it bothers me sometimes when I recognize it is almost as if we are in denial about what ails us. I have in my hand here, a report to examine the entire Family Services Delivery System in Trinidad and Tobago, and I am not going to read from it right now—1986 Social Workers.

6.00 p.m.

I have another document here, "Situation Analysis of Children in especially Difficult Circumstances in Trinidad and Tobago" by Jacqueline Sharpe and Joan Bishop. I am not going to read from it now. If we go through the documents in this country—pretty, glossy documents, old pages, whatever—we would not even be spending time talking. We would be moving post-haste to get not just the legislation passed but to get the structures up and running so that we can try to catch up on what we have ignored for such a very long time.

Madam Vice-President, I am in politics not because I want to be a politician. This is the reason I am in politics. [*Desk thumping*] I got involved in electoral politics because of this Bill, because of the children of this nation, because I wanted to

make a contribution to this nation that would stand up and would be tangible and that would make a difference. [*Desk thumping*] That is why I am here. I am not here for fame, for fortune, for status, to stay on somebody's social list or anything. I am not here for that. That is not important to me. I am here because this legislation and the work that would stand up for our children in this country needs to be done.

It has been a long journey. I have attracted all kinds of labels: mad woman, crazy woman, the woman with the bell, all kinds of things. I have taken up beating and bullying up to recently here, and I continue to take it, because this has to happen. [*Desk thumping*]

So that when I got the opportunity—and one of the things I have to do is sincerely thank the Prime Minister, Mrs. Kamla Persad-Bissessar, for offering me an opportunity to reinvent what I was doing for so many years and to be here today. [*Desk thumping*] And in saying that I want to wish her good wishes for a speedy recovery, so she can stand and she can do what she has been directed to do, that mandate she been given for the children of this nation; if she does that all other things will be added unto her. This is not something that we can pay lip service to. We have to do what we have to do for the children of this nation.

That is why when I first saw this piece of legislation—and I took some time to study the legislation, to study the processes, to watch how we were approaching it, I knew that it had to come to the House. I knew that we had to take a collaborative approach or else we would spend another 10—12 years discussing what was right, what was wrong, what was weak, what was strong and I understood.

I do not care for my name to appear on anything saying that I piloted this. I tell people all the time, I have five children and the greatest joy I get is when I have my children's birth certificate and my name is there. That is all I want. I do not want anything else: no accolades, no honour, no anything. But, I knew that I had to come here so that the Opposition, the Government, the Independents, and the people of this society could collaborate in a way that nobody says it was mine, it was theirs, if it does not work it was not me, it was somebody else. But we can all claim this because this is ours, these are our children.

I was so happy when I brought the legislation and I got immediate buy-in almost from the Opposition, from the Independents and from somebody else, because I knew if we went ahead with that kind of approach then we could not fail. We would get what we believe at this point in time is the best. No piece of

legislation is going to be perfect. There are going to be kinks and there are going to be mistakes but I want us to continue to own it and to hold it and to have the commitment not just for us to pass it here but for the proclamation and for us to monitor and evaluate and to ensure that implementation happens that we continue to think about it so that we resource it in ways that we do not have to question what is happening. Give the money, do what needs to be done, get the best people, so that we can do this work. That is all that I am asking for today.

Madam Vice-President, in this country we spend a lot of time fighting. It is fight, fight, fight and when we fight usually somebody suffers. A lot of time it is the children. I want to suggest that we get to a place, because we are talking about the children watching us and the children learn by example, and we have to understand that sometimes we think that we are talking about other people but we are talking about ourselves. I just want to suggest—I do not want to break any rules and I do not want to disrespect the Senate or to disrespect anybody, but, we have heard so many examples of things that are happening all over the world—that if we in this Senate do an honest appraisal, an honest self-appraisal, we would see certain things that we do not have to go outside of this room. If we honestly look at ourselves in this room we would find one person who may have abused a child; we may find one person who would have beaten up on a woman; we would find one person who would have given drugs to a child; we would find one person in almost everything that we talk about, because it is not outside of us, it happens right here, in every place in this country.

During the discussion in the debate we have heard people talk about certain things sometimes alluding to lower-class families or certain districts; the things that we are talking about happen everywhere. We know of people—and I am including myself—who would have been sexually abusing children. We knock glasses with them. We are selecting people to run for high office, we have the information, we select them, and we put them in places where they are in control of children. We sit next to people who we know are doing things to children that they should not do. We turn a blind eye; we pretend that we do not know. In our own homes, in our neighbourhoods, in our offices, wherever we are in this country, it is there. People who abuse their wives, who abuse their children, who abuse their workers, who take advantage of people they see as less powerful than them and we stay silent because it is not our business.

I have had so many chances and opportunities over the years to report incidents and to report cases, and people say to me, “Bring the evidence.” I say, “You have the information” We can find the evidence. At least let us act on the

information. Unless we are prepared to do that—because I have heard from my colleagues that the legislation alone will not save us, and we have to take that. We cannot think that it is the person down the road that we are waiting on to report, we ourselves must do it. We ourselves must refuse to rub shoulders and knock glasses with people who we know are doing these things; people who we know are taking advantage of our children; people who we know: all the things we talk about.

I heard examples come here about a father in Austria who imprisoned and raped his daughter for several years resulting in the birth of several children. Why Austria? Right here on the outskirts of Port of Spain; I know. I know of a man who had children with his daughter and then had children with those children and then started to abuse that next generation of children. When you report even your superiors in the office tell you, “That is not what we sent you there for, mind yuh business and leave the people business alone.” So we do not have to go to Austria.

Some of us have been selective in our examples; we talked about child soldiers in Africa. How do we see these young men, these boys in this country where we have people who should know better bringing in guns and putting them in the hands of those children? How different are they from the Cobys and the others who are grooming and having child soldiers to do their dirty work; training them to kill their parents, to kill their neighbours, it is not far different. So we do not have to go too far.

Bestiality. We talk about bestiality. It is not outside, it is right here. A children’s home in this country where there was a pack of 12 dogs that the staffers used to sit and watch the children have sex with them. Do not tell me about outside. Do not talk to me about what is happening outside. We have it right here. We have to start to hold up the mirrors to ourselves to understand.

The reason this legislation has not gone forward before is because we spent so much time over the years arguing about crossing t’s and dotting i’s or which Government will bring it in and which Government will not bring it in, [*Desk thumping*] and meanwhile our children’ our children, our children—forgive me, Madam Vice-President, our children. Do not talk to me about what is happening outside. Do not talk to me.

I know of a 15-year-old Guyanese girl who was brought to this country; she was taken from her mother in Guyana because her two sisters had already fallen victim to incest and her mother wanted to save her. A woman of money in this country took that child and brought her into her house promising to help her,

brought her to clean and to help around the house. That women had a son who was mentally and physically challenged. The little girl thought that she was coming to clean and her services included having sex with that young man.

How do we make peace? You know why I am saying that—I stood in the Senate and I heard us beat up on women. We beat up on women, we beat up on mothers. We do not take time to understand the difficult situation that women are in or the choices that mothers have to make sometimes. How do you make peace that one mother felt that to take care of the needs of her child she had to abuse the rights of someone else's?

When the child needed to go back home her mother could not take her back home, because she did not want her to have sex with her father and she had to balance—which is worse, having sex with your father or having sex with a stranger even though it is not of your own free will? Those are the choices mothers have to make sometimes. We have to be easier on mothers. We can all run our mouths; they need support. Parents need support, they need help, and they need information.

I give thanks all the time that I have not fallen victim to abuse in that way. You know why? My mother gave me information and my father gave me tactics and tools to defend myself. We have to understand that we have a responsibility to give information to our children. But what kind of information?

We all sat here and we heard us talk about children of all ages being engaged in sex. We heard about “boom-boom” rooms and all kinds of other of things. We heard about incest; we heard all kinds of things, about porn, et cetera. Yet in this country once you talk about sex education people go crazy; they do not want us to teach the children about sex education. We always like to nice it up. We give it all kinds of titles because we do not want to talk about sex and sexuality, which is normal and natural, basic and human. And, therefore, we have a responsibility to teach our children, to give the information and to give it to parents. We must give that information to parents, and fortunately for us at the Ministry of Gender, Youth and Child Development this is one of the things that we are working on to see if we can give the information to the parents so they can pass it on to the children, because the beaucracy does not allow for you to get into the school early on and get the work done.

We have to decide what we want for our children; what we want for our country. We have to stop being hypocritical, we have to face up to the ugly in a lot of cases that we have become, because it is not pretty. It is not pretty.

6.15 p.m.

I keep telling people that the stories will continue while we continue to play games and not treat with implementation. We must speak to some of these things that are happening. We must decide what we want for our children and we must do what we must do. [*Desk thumping*]

When I heard us talking about mothers, I sat here with a knot in my stomach, my belly was hurting “meh”, because I keep wondering whether we truly understand the situation of women in this country. Again, I have to say thanks that we are at a place where we are doing the education in terms of understanding gender, and at the core of everything that we do, it will be a question of understanding self—who am I—and that will lead us to understand better who we are as a nation. We have to understand that mothers, you know, not just need the support, but nobody—we do not teach parenting. We take it for granted, because we did it and our mothers and our grandmothers taught us how to, that it is easy.

One of my colleagues spoke about the age of technology and how technology has changed everything. Well, indeed, technology has changed a lot and it says to us that we now have to understand the need to teach more, to teach differently, and to get to the people in the communities. We have to go back to those communities, we cannot run from it, we cannot hide from it, to teach people things that we took for granted, the non-market values, because we spend too much time talking about money and academic success and whatever. Those non-market things like caring, being kind and respectful, organizing and taking care of one another, we have given up to a large extent on those things. I am suggesting that while we pursue the lofty ideals, which we must, we must go back to some of those core values. The same way the technology can give us the negatives, let us use the technology to give us the positives. I was very happy to hear the suggestion in terms of even our calypsonians, how do we get the positives and things that can build nation. We, at the Ministry of Gender, Youth and Child Development, are working with TUCO, and trying to see how we can approach those issues in terms of gender development and nation-building. I think that we have to do much more of that.

Madam Vice-President, I sat here, and I know I got very anxious the last time when I heard Sen. Penelope Beckles speak to her visit to the St. Michael’s School for Boys. I was very happy to know that she had, in fact, visited the St. Michael’s School for Boys.

PROCEDURAL MOTION

The Minister of Public Utilities (Sen. The Hon. Emmanuel George): Madam Vice-President, I beg to move that this Senate do sit until the conclusion of the debate on this Children Bill.

Question put and agreed to.

CHILDREN BILL, 2012

Sen. The Hon. V. St. Rose Greaves: Thank you, Madam Vice-President. She said that she had gone to the St. Michael's School for Boys, and she talked about a fire. I think Sen. Hinds talked about it, again, today, that there was a fire more than a year ago, and it has not been repaired. I want to say that, perhaps, we need to revisit many of our documents and our documentation. Perhaps, we need to get the old copies of the Bills that were passed before and were not proclaimed, and let us make a comparison of what the changes were and what are the things that we are going to now.

But, I also want us to look at the documentation and find out when that first big fire in St. Michael's took place and how long it took for the home to be rebuilt. We need to do those things because, sometimes, we come here and I do not know whether it is the cameras that get us in a state, where we say these things without really considering the implications. This has been long in coming and there is much for us to treat with. We have to ask ourselves why our children's homes, not just the homes where we put those children, but even our youth camps, why they have all reached to a stage where we are now replicating the prison's complex.

Many of our homes are replicating the prison's complex and it says something about us. It says that when we look at our children, all we see for them is a future of crime, a future that is dark, and we do not understand the responsibility that we have to brighten that possibility for them. We have to look at these things squarely and honestly; we cannot pretend anymore. We have made mistakes, and let us accept those mistakes as a collective because it is the only way that we can go forward. It is this fight and this blame that has us in the situation that we are in now.

I want to say to the national community that we must not wait for when we have a debate to visit a children's home. We want people to visit the children, to go and see for themselves. Sometimes when there are visitors, things that would normally happen, people would be afraid to do, because they think that someone

would come in and they would notice. Those children in there need people to read to them; people just simply to be in their space; people to show that they care, and I am suggesting that that is an approach that we have to take. Some of those children just want to be hugged; some of them have never been hugged. They want somebody to tell them “I believe in you; you can do it.” That is all some of them need and we have to get to a place where we do that. [*Desk thumping*]

I became persona non grata in some of the children’s homes, because they felt that once I came in there, I was coming to see what was wrong, but, I felt that I had a duty because I wanted to know what was happening. I know how difficult it is for people who work in children’s homes; it is not easy. It is extremely difficult, and we have to seek to lift their condition, give them the tools and the resources that they need; give them the support, and to refurbish those homes and bring them up to a particular standard.

I was also a little bit put out when I heard Sen. Penelope Beckles talk about the system, and I think I got really anxious then, because, I am tired of hearing about this system. We have talked over the years about a system—the system is made up of people. When we say “the system”, we disengage from it, so it is not me; and if all of us say, “It is not me, it is a system”; the system is made up of people. [*Desk thumping*] The system is about us. It is about each of us taking responsibility and deciding that we are going to do what we have to do. So, do not tell me about the system, because we can change it; we have the power to do that. I am imploring all of us, let us not hide behind these airy-fairy things that we talk about as if they are not connected to us when, indeed, we are the framers, we are the sustainers, and we are the ones who have the power to change them. [*Desk thumping*] [*Crosstalk*]

Madam Vice-President, I do not believe in beating children.

Hon. Senator: Or big men. [*Laughter*]

Sen. The Hon. V. St. Rose Greaves: I do not believe in beating children. I do not believe in beating children. But, Sen. Hinds, I am so happy that you talked about the death penalty. Early in your contribution, apart from trying to take credit for the Bill which, I think, we should all share—I think it is to all our credit that we can do that—you brought up the question of abortion, you brought up the question of same-sex marriage, you brought up the question of homosexuality, and you could not leave without bringing up the question of the death penalty. I was so happy that you did, because I have to make the point that we live in a democracy, and sometimes we tend to forget what a democracy is and what democratic processes are.

I want to suggest that, perhaps, in doing our awareness in education, we have to talk about what a democratic society requires if not demands. For me, one of the things is that citizens engage in the exchange of ideas and share their opinions and thoughts on issues as they affect and impact the national community. Democracy is about the freedom to express one's opinion whether it is popular or not. So whether it is about same-sex relations or termination of pregnancy, or even the death penalty, we must express those opinions, for it is the way that we will engage in dialogue that can lead us in the way that we want to go. [*Desk thumping*]

I cannot for the life of me understand that we have spent so much time in this Senate: we have talked about young people going to the pharmacy where adults sell them medication that would allow for them to terminate their pregnancy. We know that so many of those young people either damage themselves, damage the foetus if the termination is not complete, harm themselves permanently. We have talked so much about incest with children and all the other things that happen in terms of child-bearing. People have raised the issue of Amy's mother and Aaliyah's mother, and the question of abuse and why they have these children, and the horror of having your father's child or your grandfather's child, and looking at that child—we have talked about all those things. But yet, when we dare to suggest—well, I am not saying “we”—when I, as the Minister of Gender, Youth and Child Development, under my mandate and rightfully so, dare to raise an issue that we must discuss in terms of what is the option that is available if a young child, a young woman, a girl, finds herself in a difficult situation, either she is raped—raped in the context of incest or by a stranger—whether she wants somebody to turn to, she is not going to go to the parlour. She wants a place where she can go to where someone will be able to listen to her plight and speak to her about what are the options available; that we can help you through this, we can do X, Y or Z, or whatever option is available. Those are conversations that civilized societies must have. But, in this country, where we have people who feel that they can bully other people, I have been bullied directly and indirectly simply for putting such things on the table.

Over the past few days, my relatives have been called, my close friends have been called, people whom they think I listen to have been called, because somebody needs to beat up on Verna one more time. Well, bring on “de” licks. When my father came from Montserrat, he came with an arrowroot plant in his pocket, and whenever it was required, around our house, he would plant arrowroot; and he would always have a goat, so, I grew up on goat milk and

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[SEN. THE HON. V. ST. ROSE GREAVES]

arrowroot. When we had arrowroot, we would be powdering with it, would make cookies with it, we would drink it in the goat milk; so beat up. Because, when people in this country beatup on you—because we are talking about bullying with children but we are not understanding that we do it to adults—they want when you come out now, you bow down and you bend over because you are so broken. So they are sending people now to find out how “she” is doing. Well, to all and sundry, I am good. Yet, I am alive to see God’s face and I thank, I thank, all the time, every time. We cannot continue like this.

We must put the ideas and the issues out there. We must sit and have respectful discussion. Our discourse is what will decide how we go forward. It cannot be that as soon as someone says something that you do not agree with, you beat up on them, or you shut them down, or you organize yourselves simply to put pressure on that person to silence them. I will not be silenced; I refuse to be silenced. I have a job to do for the children of this nation, and I intend to do it for as long as I can. I have no desire to hold on to anything. I have no whims about “I am the only person who can do it.” I can run the first relay or the second relay and pass on to somebody else. That is how it works. Nobody can do everything.

That is why I am so happy, and I want to thank you all again for coming together and for us to decide we will make this happen, because I may not be around but somebody else can take it up and run the next lap. I want to give thanks for that all the time. [*Desk thumping*]

6.30 p.m.

Madam Vice-President, I will not go into the history of the Bill because I think we have spent a lot of time talking about the history, and that we all know how many people have worked on it. In the more recent situation, I want to certainly give thanks to Miss Gaietry Pargass, human rights lawyer, of great note, she is not just a human rights lawyer as a job, she truly believes in what she has been doing. Gaietry has done yeoman service and I really want to thank her for that. [*Desk thumping*]

Sen. Karim: “She come from my village.”

Sen. The Hon. V. St Rose Greaves: Take credit. [*Laughter*] I know that we are all here to do the best for the children, and I am prepared to take into consideration the views that have been expressed, and I know that the committee stage is not for much debate, but we are willing, we are open, and I really want that at the end of the day, when this is done, we can all claim it as perhaps not our best work, but certainly good work, a step in the right direction, and that we continue to be open.

When I started working on this piece of legislation and understanding it, I found discomfort with, I think, about four aspects, serious discomfort. There were things I was not too clear about, and I was unhappy with, but I was very, very worried. Over the years I have always protested the idea of criminalizing sex between minors, and that has been difficult for a lot of us, and I hope we can get to some level of comfort.

I was also concerned about the age of sexual consent. I had a difficulty with the United Nations Rights of the Child 18 years old, because I know we have a lot of people in this country who are already in relationships, who already have children, and I had hoped that perhaps we would find a way to settle a little lower on that, but that has not happened, and I will be comfortable with whatever we decide on as we go forward. We will have some challenges there, but I trust we are committed and I am going to try my best to set up the structures and so on, that could help us to treat with some of those issues.

The child marriage: everyone knows that was a bitter, bitter area for me, and it surprises me when I recognize that there are a lot of people, even in terms of in this Senate, who were not aware that Muslim marriages were 12 years and 14 years, Hindu marriages were 14 years and 16 years, Orisha marriages were 16 years and even the Christian marriage, people with their parents consent can get married as early as 12 years. I think it is important for us to understand that so that the marriage exception is something that I was not comfortable with, and hence the reason we went out to consultation. We are in the middle of the consultations and my advice has been that we cannot touch that unless we treat with the parent Bill. I am not a lawyer, I do not know; there are legal minds here who perhaps can clarify that.

The other one was the parental liability; I also found some difficulty with that although in some cases it is necessary, if not required, but I truly feel that we need to do a lot more work supporting parents, educating parents and helping parents in order to effect that kind of liability, because sometimes we assume that people know. My experience has been that sometimes people just do not know.

We talk about young parents, early parenting and nobody has taught them how to be a parent. I remember on Emancipation morning they are beautiful and they are out there with their children, they are full of energy, but they are not even aware of what the noise can do to the children. So they are standing there under the box or in the hot sun with the child without giving them sufficient water, and you very gently, simply have to go and tell them you know: "I am concerned about the baby," not the way that we like to do it sometimes to make them feel they are less than and that are just stupid. It is something we have to do all the time.

I mean even when we have parents walking on the road talking on the cellphone, and the child on the right hand nearer to where vehicles are passing, and you know I say: “Oh my God!” Nobody is stopping to say well, you know: “put the child on the inside, nah; come off the phone until you cross the road,” or whatever. So those are little things sometimes we think people know and they truly do not know. So I would always be for giving a lot of support rather than for the punishment. But, of course, it is legislation and there must be punishment, but that does not mean we are not going to be working on the other things.

The question of the criminalizing of same sex-relations between children under the Romeo clause. We had real discomfort with that in terms of—we did not think it should be criminalized, but coming out of discussions with people—I did not want it—I have been advised that we have to treat with that under the Sexual Offences Act. The brilliant lawyers in here can advise me. If it is we can change that here, we are the lawmakers, we are the people in here to do it. If it is we can do it without postponing the passage of the Bill, then I say, hooray, let us do it, but I would not want to be selfish.

Sen. Hinds: The urgency of this Bill is to announce to the public.

Sen. The Hon. V. St Rose Greaves: No! No! No! That would be—to say that the urgency of this Bill is to announce it to the public is so untrue. I am sorry; I have been on this road for a long time. The urgency of this Bill for me and for the Government, and for all of us—I do not think any of us want to see this Bill lapse another time, has to come back to us for selfish reasons. [*Desk thumping*] I am suggesting that we can no longer be selfish because we have been selfish. Let us treat with the Bill, what we can change now without having it to go back to Cabinet and whatever else, let us do it and I will give a commitment and I will ask the other Members for us to give a commitment, that those things that are sore points with us, we bring them back and we work on them.

So the Marriage Act, the consultations are ongoing, the feedback has been really good, we have gotten support from areas where support was not there before, and I think it is something we have to do, but I would not want to be selfish and say that the Bill should not go forward because of discomfort with one or two areas. I think we must find a way to make this go forward. I will not be able to hold my head up and watch those children who I know are under pressure. The volcanoes that I have been dealing with since I took office as the Minister of Gender, Youth and Child Development, it is critical, I cannot go into all the details, but I am saying to you there is a red flag, it is only for the siren to happen now. Every day, everywhere, our children are in trouble.

The ones who make it to the newspapers are because they are dead or they are so badly harmed that they make it. But under there is layer of trouble that is happening, and we must do something about it. We need this legislation so that we can fully operationalize the Children's Authority. We have other pieces of legislation that need to be proclaimed and we need to do that. We need to get the things up and running so that I am saying post-haste, we cannot wait any longer.

Madam Vice-President, we have tried—[*Interruption and crosstalk*]

Hon. Senator: “Yuh spend more dan ah hour day, let de lady talk nah man. Nobody interrupt you. You had ah whole hour for yourself.”

Sen. Hinds: “She said she hurry.” [*Interruption and crosstalk*]

Senator George: “Sit down and listen sometimes nah, yuh want everybody to listen to you. Yuh eh want to listen to nobody.”

Hon. Senator: “Read yuh newspapers nah.”

Sen. Dyer-Griffith: Continue, Senator. Continue, please.

Hon. Senator: “Read de back page. Read de back page.”

Sen. Hinds: All right. “All right, leh me read it.” [*Sen. Hinds holds up a newspaper*] [*Laughter*]

Hon. Senator: “Right dat is it. Read it. Stay quiet.” [*Laughter*]

Sen. The Hon. V. St Rose Greaves: You see, Madam Vice-President, Sen. Hinds was fortunate like myself, that there were people to look out for us when we were growing up. He has a way he always says: “Well, we made it.” But some made it better than others. I do not know if I have made it, but it was because a lot of people— [*Interruption*]

Hon. Senator: “You went St. Joseph's Convent.”

Sen. The Hon. V. St Rose Greaves:—and that is a good thing, is it not?

Sen. Hinds: Prestige life.

Sen. The Hon. V. St Rose Greaves: Thank you so much. [*Interruption*]

Sen. Hinds: You had arrowroot. [*Laughter*]

Sen. The Hon. V. St Rose Greaves: We have tried to incorporate many of the proposals which other Members of the Senate have contributed. We have dealt with the issue of recognizance as raised by Sen. Baptiste-Mc Knight and this is now left to the discretion of the court to determine its length.

Having regard to the exceptions under the clause dealing with pornography, the Bill now includes defence lawyers and teachers.

Under clause 60, subclause (5), the Bill now makes it mandatory for children to be separated from adults while in detention. That is a critical area because we know we have young women at the women's prison for several years, it has been ongoing, and we have to treat with that. At the Ministry we had meetings with the former Commissioner of Prisons and we have had meetings with the present Commissioner of Prisons, and we are working to see how quickly that situation can be remedied. *[Interruption]*

Sen. Hinds: Just hush, and stop disturbing the debate. Madam Minister, I want to ask, on that point you have just raised, notwithstanding the buzzing coming from the Leader of Government Business, on that point you have raised about separating children in the context of detention, does that include remand? Or is it a convicted person?

Sen. The Hon. V. St Rose Greaves: Both. Both. *[Desk thumping]* Madam Vice-President, Sen. Baptiste-McKnight—well, we have addressed in part her concern about criminalizing same sex between children, and as I said, it is a long-standing issue, and it is one of the reasons I think that has held back this legislation over the years. So I really look forward to us going forward. *[Interruption]*

Sen. Drayton: The clause does not have to be there. It is already against the law. Take it out. It does not need to be there.

Sen. The Hon. V. St Rose Greaves: And I will be happy to do that once we get into the committee stage, it is something that we can consider—*[Desk thumping and crosstalk]* but we would have to—Sen. Al-Rawi, the Attorney General and others are working on it and we will have to come to some conclusion on that.

The Government is very concerned about the rights of all marginalized groups and I want say that, but as the Attorney General said, lots of people in this society have different views, and we have to take those views into consideration.

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

Motion made: That the hon. Senator's speaking time be extended by 15 minutes. *[Sen. The Hon. F. Karim]*

Question put and agreed to.

Sen. The Hon. V. St Rose Greaves: [*Desk thumping*] Thank you very much. Thanks to Members of the Senate. I want to talk a bit—there were some specifics of the Bill that we needed to go into, but I think the Attorney General, Sen. The Hon. Anand Ramlogan spent some time on that, and I do not know whether he had left out any of the other things people had raised, and I truly hope that perhaps in the committee stage we can clarify some of those issues if I do not find the time to get into them.

But I know an area of concern for a lot of people was the structures in place for implementation of the Bill, and the response for children who find themselves in difficult situations. We acknowledge that the structures to support the Bill must be in place. We acknowledge that. Some of these structures are already in place, and some need strengthening, while we are in the process of establishing others which will respond to the emerging needs of children and their families, because every day as we go through, we find new things coming up that perhaps we had not thought of before.

The Ministry is developing policies and initiatives that would strengthen the way we work particularly in terms of protecting and rescuing children. And I know there were concerns about the 24-hour service and we are looking at that, and we are trying to work towards that. It has been pointed out to us the whole issue of treating with the trade unions and so on, and we would be doing that too, but there are people who are already willing and have already been working outside of regular working hours.

6.45 p.m.

Cabinet has recently approved the Ministry's National Strategy Plan for Child Development, 2012—2016. It is a comprehensive plan which covers several areas critical to child development. It emphasizes that children will thrive best in child centres and family-focused environments. One of the main objectives of the plan is to bring together different Ministries such as Education, Health, Social Development, National Security and Labour so that we can develop efficient ways to promptly and effectively respond to children and families in need. We cannot treat with children if we do not treat with families.

An interministerial committee and an advisory council have been approved and are soon to be established so that we can coordinate the response. This will facilitate a more connected and expedient approach in dealing with children and families in crisis.

This Ministry is at the foundation stage of building a children's unit, which we are trying to staff with child development specialists whose remit is to ensure that the Ministry adopts an approach to child development that will treat with the whole person and with the situation surrounding the child.

Our five key goals of the unit's operations include the comprehensive, coherent and harmonized initiatives to promote, protect and respect child rights and to promote a secure and nurturing environment for all children. Some of the front burner initiatives are the development of an anti-bullying campaign, but I keep saying that I do not even want to think about an anti-bullying campaign until we recognize that our behaviours in this society are really what the children are patterning theirs after.

The Children's Authority will play a key role in the implementation of the legislation. The new board has been recently appointed and there has been increased staffing. Cabinet gave permission for the appointment of a high level ministerial committee to help the Authority to get on its feet and I think they are well on their way; they are doing much more than they did before in terms of setting of standards and registration of homes. They need a substantial budget and I trust, bearing in mind the importance of this Ministry and the work we must do with children, that our budget requests would be honoured. We cannot pay lip service and not put our money where our mouth is where our children are concerned.

We were exploring initiatives for overnight childcare facilities. We have had several complaints and so on from parents who must work the night shift and who do not have safe and secure places where they can leave their children. We have taken the road to communities to have facilities near to homes where people do not have to go through too much trouble to get their children to those places. We are also dealing with day-care and after-care centres nearer workplaces or inside workplaces so that employees and others can benefit.

At the Ministry, we are in the very early stages of setting up a children's registry that can help us to improve the way we track and follow up our children from birth to 18 years old. I know somebody had some concern that if we were going to put a microchip in the children, Uncle Sam or whoever Big Brother will always be watching. That is not our intention. We simply want to know that every child that is born in this country, if he is supposed to have his immunization started at a particular time; if he is supposed to have visits to the health centre, we want to have a database that we can know if he did not turn up; if we have a report of failure to thrive or something that is happening with him, then we can find that person and ensure that he gets the treatment he deserves.

In terms of proactive mechanisms for families, we are, again, putting in intervention centres and related facilities within the communities. We have started to build a social care crisis response team for a greater presence of social workers,

community guardians, wardens and support staff in our communities; not just for treatment, but we want to prevent. We want to have people on the ground in the communities who can pick up—train them sufficiently so that they can pick up when a child is going to be harmed or something is likely to happen where they are not properly supervised and so on; that we can be notified so that interventions can be made in terms of helping the parent or guardian to tutor that.

Civil society organizations, Madam Vice-President, have for a long time supported the Government's work and we must continue to work with them more closely, to depend on them and to help them so that they can continue to provide those service delivery components that they do. They have established roots and relationships within communities and over the years families have been turning to them and we want to maximize their role in the communities.

Our collaboration with them is critical. We need to develop the organizations, ensure that they can pay well-qualified staff who know what they are about and they can also have an organized volunteer core that will help with the work.

We are aware that people are eager. People are not too hopeful because they have heard these stories so many times before—all the promises of the beautiful things that we are going to do—and they never materialize. So we want to let the public know that the necessary infrastructure is being put in place. Cabinet has already approved the construction of several facilities and the call for proposals have gone out to construct three interdisciplinary child development centres, a model children's home, three safe houses and two respite centres. We are working on developing four assessment centres and two transition homes for children who previously resided in institutions. That has been a problem over the years—children leave institutions and they have nowhere to go. They have no families to go back to. So we are working on having transition homes so that we can prepare them for that.

Included as a priority is the establishment and the construction of an institute of healing. That institute of healing, we believe, is essential if we are to deal with the pain, trauma and hurts experienced by individuals, families and communities as a result of exposure to crime and terror over the years and to help them to renew hope.

We have had kidnappings, murders, rapes; all kinds of things. The trauma is real and it is raw and we do not think that we have done sufficient in terms of treating with trauma and in terms of bringing healing. At the institute of healing, we hope to do that.

We want to treat with more effective data collection because the figures are all over the place and we think that we need to be able to get that closer to us. We are instituting a referral system. We have already begun a national referral system, which we will use at our Ministry first and then connect to other Ministries and which will put people in touch with resources and will also help us to see where the gaps are and what else needs to be done.

We already have a hotline. We want to make the Ministry a practicum hub with heavy research done there for social workers, community workers, psychologists, psychiatrists, law students, so that they can come to the Ministry to get the practical experience. One of the challenges that we face is that we come out with a lot of academia sometimes and, when faced with the raw truth of what is happening in the society, many of the students do not know how to cope and we want to bridge that gap.

All of this is just part of what we plan to do so that we can do the work that needs to be done. We have started some, as I said, and some are still on the drawing board. We move forward steadily, day in, day out, trying to do the best that we can.

The passing of this piece of legislation is not only important for our children; it is also important for all of us, in all sectors. It is designed to transform the way the State responds to the needs of children and their families and it is also intended for us to review and improve the way we parent and interact with our children and our young people. It calls for cultural transformation of the ways we respond and the ways we behave.

We have pointed out a lot that is wrong—the issues of criminalizing and so on. One Senator reminded us that there is still a lot that is right. I truly believe there is still a lot that is right. [*Desk thumping*] I see it all the time. We are good people, so we have to dig deep. We have to understand what our responsibilities are and we have to have the political will to make it happen.

Sen. Deyalsingh spoke to what he described as the depravity of the human condition; the horrors of what we are seeing and what we are doing. People talked about what the media is serving up to us and it is really about the depravity of the human condition. I stand here today, as I stand on the shoulders of my ancestors, and appeal to the strength and the resilience of the human spirit. I appeal to the humanity in all of us to ensure that this legislation and all that it requires is not used as a political tool; that we as a society and a nation must commit, not only to this stage, as I said before, but also to the proclamation and the establishment of the support structures and to its full implementation.

I want all of us to understand that this piece of legislation gives us yet another chance to do what is right for our children. As I said before, I do apologize if I have not gone into some of the specifics. I have them here, but when I heard Sen. Anand Ramlogan, the Attorney General, treat with some of them, I did not want to repeat them. If there is anything that was not clarified, I have them here; my legal people are here and I hope that in the committee stage we can treat with some of those issues.

I remain open and I thank each and every one of you for the collaborative approach that has been taken on this Bill. Sen. Al-Rawi has been working right through all of the sittings trying to fix things as some others have been doing and I truly, truly appreciate what we have done so far and what we will continue to do.

Madam Vice-President, I beg to move. [*Desk thumping*]

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

Senate in committee.

7.00 p.m.

Madam Chairman: Senators, the amendments circulated by the Government is dated May 23, 2012, on the last page, so you will know it is the updated version.

Clauses 1 and 2 ordered to stand part of the Bill.

Clause 3.

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

Sen. Ramlogan SC: Madam Chairman, I beg to move that clause 3 be amended as follows:

Delete the definition of “Juvenile Court”.

Sen. Al-Rawi: Madam Chairman, there are a number of observations in respect of clause 3 which deals with the definition section in part, some conceptual and some by way of actual movements. I am wondering, for your guidance, whether we wish to take clause 3 in terms of strict amendments toward the end, because the terms are used throughout the Bill, and that may impact upon the decision of the particular terms now, or whether we would be permitted to ask a few of the questions in relation to some of the policy behind some of the definitions, because I think that several of us have those issues for clarification.

Madam Chairman: Well, I see there is also an amendment from the Government.

Sen. Ramlogan SC: Well, we have circulated one amendment to clause 3, which is to delete the definition of “Juvenile Court”. Well that, apart, we think that it would be wise to deal with the definitions now seeing that they come later on in the Bill, so that whatever we change now we will be able to read it as we go along with that change in mind, but the only amendment we circulated is to delete “Juvenile Court”. So, if there is any other suggestion, perhaps, it could be mooted.

Sen. Al-Rawi: Madam Chairman, if I could ask—relative to the definition of “Juvenile Court” dealing with the Government’s suggestion first, I had the query later on about the use of “Juvenile Court” in particular sections—for the rationale for the deletion of “Juvenile Court” in and of itself, because it ties in as well to the definition of court itself—[*Crosstalk*] Good!

I am hearing aloud that it is including court, because my recommendation with respect to court—I have looked at Act 4:01 of the laws of Trinidad and Tobago, and in looking at that particular position, I noticed in other legislation as well that we use “court” in and of itself in a different way to that proposed here. So in relation to “courts” and the definition for “courts”, we have suggested in this Bill that we include a “court” as a court includes a Magistrates’ Court.

In other legislation, we do not actually say that. We say a court is a court of competent jurisdiction, allowing, therefore, for the creation of other types of courts which we cannot yet foresee and which some other pieces of legislation contemplate that we have already amended in law, but may not yet have been proclaimed. I am referring to, for instance, the one where we established master’s courts and other aspects which could kick into here.

So, I was wondering whether, assuming that we delete the definition of “Juvenile Court”, did we want to consider the amendment to the definition of “court” to read “courts should be a court of competent jurisdiction.”? Would that preclude the inclusion of a Magistrates’ Court?

Sen. Ramlogan SC: I raised the point with the drafting officers, and their explanation is that they wanted to specifically refer to the Magistrates’ Court, because it is used in the other sections. But I thought we could have said “a court means any court in Trinidad and Tobago.” I do not think it makes sense with respect, to say, “a court means a court of competent jurisdiction”, because you cannot have a court of incompetent jurisdiction.

Sen. Al-Rawi: I borrowed the term, hon. AG, for instance from the Electronic Monitoring Act which comes up before us, which describes it that way, so I was trying to be consistent with the current approach coming out.

Sen. Ramlogan SC: Could we just say “court includes a Magistrates’ Court”, because I think the drafting officers specifically want to refer to Magistrates’ Court having regard to the seminal role it plays in the legislation, and there has been some doubt apparently in the past.

Sen. Al-Rawi: Insofar as we have, AG—and this is to just broaden it in the widest way possible—an extraterritorial effect clause which would in international law involve the doctrine of renvoi or double renvoi at times, and we may be calling into aid a court in a foreign jurisdiction deemed to be a competent court as opposed to incompetent. Did we want to broaden it to say: “court means a court of competent jurisdiction including a Magistrates’ Court”?

Sen. Ramlogan SC: We can do that.

Sen. Al-Rawi: Or is it otiose? If it is superfluous, I would be fine to avoid it.

Sen. Ramlogan SC: I will accept that.

Sen. Al-Rawi: I am not pushing it. It really is for thought as to whether we want it or not.

Sen. Ramlogan SC: That is fine. I think it does not add or detract too much, but if it will make the Opposition happy, I am prepared to, you know—

Sen. Al-Rawi: It is not that AG. What I was looking at is, in the context of an extraterritoriality and the private international law context. That is the only way I was looking at it. I agree locally that it is superfluous. The question was, if we were to invoke a foreign jurisdiction and deem it under the private international law principles to be competent, that is where I was looking at it from.

Sen. Ramlogan SC: What is the formulation you have in mind?

Sen. Al-Rawi: I am borrowing from the Electronic Monitoring Act, which defines it as “a court means a court of competent jurisdiction”. Hon. AG, if it is that your advisors tell you that it is okay, otherwise, I am fine with it. I am not pushing the point, because it would be on the record.

Sen. Ramlogan SC: The consensus among the drafting team would be “court includes a Magistrate’s Court” so we will add the word “court” and leave it as is.

Sen. Al-Rawi: Okay, then subject to what anybody else has to say, I will rest my point there.

Sen. Ramlogan SC: Well, we are grateful. Nobody has anything else to say.
[Laughter]

Madam Chairman: Clause 3 is amended by adding after the word “Magistrate” the word “court” and by deleting the definition of “Juvenile Court”.

Sen. Al-Rawi: Sorry, Madam Chairman, there are a few more questions in relation to clause 3 of itself. I was just dealing with that one issue of the deletion of “Juvenile Court”. Madam Chairman, if I could refer you to the definition of “Children’s Home”.

“‘Children’s Home’ has the meaning assigned to it under section 2 of the Children’s Community Residences, Foster Care and Nurseries Act;”

My check of it said that that Act is called the foster homes and nurseries Act. It was changed?

Sen. Ramlogan SC: That has, in fact, been changed. The Act was amended.

Sen. Al-Rawi: Thank you.

Sen. Ramlogan SC: So that is consistent with the amended version of the Act.

Sen. Al-Rawi: Thank you, hon. AG. In relation to the definition of “family matter” it says:

“‘family matter’ means any cause, matter or legal proceeding—” Now, there is an exclusion here. It says:

“concerning maintenance, guardianship, wardship, access, custody...”.

And it excludes probate and administration of estates. I wondered two things: one, taking avail of one of the contribution points by Sen. Prescott, whether we wanted to include a domestic violence scenario, two, why were accepting probate and administration of estates insofar as there may be contentious proceedings there which could affect the situation when you have settled land, for instance, which could be deemed to be a tool of economic exploitation by those with power as trustees and there is a challenge to that. So let me translate that.

At law, there are contentions and non-contentious proceedings in relation to probate and administration. You die, you have administration on the one hand, if you do not have a will, and you have probate if you have left a will. Insofar as probate and administration of estates may be contentious, and a child, for example, an orphan, is left in the context of a contentious probate or administration action, and the trustee was not acting properly, but a court in the High Court had jurisdiction over the matter, the child was being exploited and could not get money from the point, why would we exclude that point, because it could fall within the definition?

Sen. Ramlogan SC: If we deleted “(a)” and went with “(b)” — “arising out of a written law or other law...” it would cover everything.

Sen. Al-Rawi: Possibly, yes.

Sen. Ramlogan SC: Because (a) really is superfluous, because if you try to list matters, you run the risk of leaving out some, and a family matter should really mean any matter involving or arising out of the family. So, I would want to suggest that (b), we delete (a) and say, “arising out of a written or other law and connected with a matrimonial, familial or other domestic relationship.”

Sen. Al-Rawi: Hon. AG, the only thing that concerns me is the ejusdem generis rule with respect to domestic relationship.

Sen. Ramlogan SC: It says, “or other domestic relationship”.

Sen. Hinds: AG, arising out of any written or other law, and I think the ejusdem generis point will take care of Sen. Prescott’s concern.

Sen. Ramlogan SC: Yes.

Sen. Hinds: I think so.

Sen. Ramlogan SC: Sen. Prescott?

Sen. Prescott SC: Yes, I am happy to see that domestic violence will also now be covered.

Sen. Ramlogan SC: That is why I am doing it, so it will also cover your point. I did not really want to give you too much credit for it, but the point is yes, it was meant to take into account your point into the debate as well .

Sen. Prescott SC: There are people here on my side.

Sen. Ramlogan SC: Sorry?

Sen. Prescott SC: There are people here who are on my side. *[Laughter]*

Sen. Al-Rawi: That is why I raised it for you.

Sen. Ramlogan SC: So, we will delete “(a)” and say, “arising out of any written or other law...” and the rest follows. Are you happy with that, Sen. Prescott SC?

Sen. Prescott SC: We just make one full sentence out of it.

Sen. Ramlogan SC: Yes. The point is the drafting cleaning up will be, since there will be no (a) and (b) it will continue from proceeding — “family matter’ means any cause matter or legal proceeding arising out of any written or other law and connected with...”

7.15 p.m.

Sen. Al-Rawi: “Or other law” will take care of the context of common law and developments carried—

Sen. Ramlogan SC: Anything else.

Sen. Al-Rawi: That is excellent.

Madam Chairman: So there is an amendment to the definition of “family matter”.

“family matters’ means:

any cause, matter or legal proceeding arising out of any written or other law and connected with a matrimonial, familial or other domestic relationship.”

Sen. Ramlogan SC: Agreed.

Sen. Prescott SC: May I suggest we consider introducing a definition of the word “constable”.

Sen. Dr. Balgobin: Why constable?

Sen. Ramlogan SC: Constable means police.

Sen. Prescott SC: I think we could say that it means “any member of the police service”, and then you put the related services.

Sen. Dr. Balgobin: Why do we not just say “police officer”, as we do in other legislation?

Sen. Ramlogan SC: Then you have the Learie Joseph phenomenon of SRPs, “something resembling police”, coming into play.

Sen. Prescott SC: Do you want to take away from those other police officers the power to take the steps that constables are allowed to take here? I think if you say ‘constable’, means any member of the police service” and then you add the other services that have police—

Sen. Ramlogan SC: In section 83 of the Interpretation Act the word “constable” is actually defined, and constable includes any member of the police service, so that would cover it.

Sen. Prescott SC: It ends with “police service”?

Sen. Ramlogan SC: That is correct.

Sen. Dr. Balgobin: That would not include an SRP, for example?

Sen. Ramlogan SC: An SRP would be considered a member of the police service, yes.

Sen. Prescott SC: We have municipal police, we have all these other types, so you want to leave it like that.

Sen. Dr. Balgobin: Then you open it up too wide and that is what you are trying to avoid.

Sen. Ramlogan SC: Yes. You see the point is about municipal police—

Sen. Hinds: They are coming under the Supplemental Police Act.

Sen. Ramlogan SC: They do.

Sen. Dr. Balgobin: But in the Interpretation Act they are all considered police officers.

Sen. Ramlogan SC: They will all be covered, because you would want to ensure that we cover the largest possible spread. So that is fine, we can leave it as is. That is not a good point.

Sen. Al-Rawi: Madam Chairman, if I could ask for some guidance in relation to three terms used in the definition section. The first one is the definition of guardian following under family matters:

“‘guardian’ in relation to a child, includes any person who has, in the opinion of a Court having cognizance of any case in relation to the child, responsibility for the child;”

Then we have the definition of legal guardian, which is on the page over, in relation to a child, means a person appointed to be his legal guardian in the traditional sense by trust or deed or competent court. That now ties into a question which I have for clarification in relation to the use of responsibility as defined:

“‘responsibility’ includes custody, charge, care and control;”

And then in subclause (3) of this clause 3 we have for the purposes of the Act what responsibility, charge and care mean in paragraphs (a), (b) and (c). The reason I raise these three together, that is, guardian, legal guardian and responsibility as further defined by subclause (3) of clause 3, is that throughout the Act following we are going to be using the term “parent” or “guardian” in relation to establishment of offences and then we are going to be using, at some times, the person responsible for the child. The question is: how broad do we want to go or how narrow do we want to go?

Insofar as the judicial officers, which include the magistrates and the High Court judges, have the discretion to decide whether somebody in the context—the purpose of asking this is really so that when the interpretation comes up as an issue, we have the guidance. What I am getting from the hon. Attorney General’s team, through you, Madam Chairman, is that in the period in the issue arising, we have looked at the usage of the word “responsible” at times and “parent and guardian” and we are comfortable so far with how broad that context goes. Is that correct?

Sen. Ramlogan SC: The idea was to have a tiered approach. At the top you have a parent or a legal guardian, so that would be a parent or someone who has been legally appointed as a guardian. The second tier you have persons who the court recognizes, may be in the position of a guardian, but has not formally appointed them a guardian. So, for example, in the Magistrates’ Court—yes, uncle or aunt. Sometimes in the Magistrates’ Court you see, for example, that they release the person into the care of the grandmother or the aunt and so on. The court does that without formally appointing them a legal guardian, but in that case the court is making them a guardian, but it is not a legal guardian. In the third level, you have the contextual one of responsibility.

You could, for example, have said that the last one, if you define it properly, means “anyone with responsibility for a child,” and the word “responsibility” includes custody, charge, care and control. It would cover the first two in any event, and would be fine, but I think the drafting officers felt that they wanted to approach it to take the tiered approach to maintain the distinctions.

Sen. Al-Rawi: I am grateful for the explanation for the purposes of *Hansard*. That is something that troubled me a little as to how wide a net of responsibility we wanted to cast. So I am satisfied with the answer. Thank you, hon. AG.

Sen. Ramlogan SC: You are welcome.

Sen. Prescott SC: If you look at clause 4 where the concept of responsibility is captured once again.

Sen. Ramlogan SC: Clause 3 you mean?

Sen. Prescott SC: No, I mean clause 4. Which of the two approaches to responsibility applies here? Is it the presumed one under subclause (3) that we have just looked at or the definition of responsibility meaning charge, care and control—custody, charge, care and control?

Sen. Ramlogan SC: It is the last one.

Sen. Prescott SC: That is what responsibility means—not someone who is—
[*Interruption*]

Sen. Ramlogan SC: Yes, custody, charge, care and control.

Sen. Prescott SC: So this offence does not apply to someone who is presumed to have responsibility?

Sen. Ramlogan SC: No, a person who is presumed to have responsibility will also have responsibility. Presumptive responsibility does not sit at odds with actual responsibility.

Sen. Prescott SC: Let us look at it again. Subclause (3) of clause 3 says that you are presumed to have responsibility if you are within a certain relationship with the children.

Sen. Ramlogan SC: Yes.

Sen. Prescott SC: The definition clause, (3)(1) says it includes custody, charge, care and control. So presumably, if the court presumes you to be responsible, then you are likely to be an offender under clause 4?

Sen. Ramlogan SC: Yes.

Sen. Prescott SC: But it is only if the court declares that you are a person with responsibility.

Sen. Ramlogan SC: In clause 4?

Sen. Prescott SC: Is that not so? The person who causes a child to suffocate must first be presumed to have responsibility.

Sen. Al-Rawi: Hon. AG, this is something that we raised. I know that you were out of the country at the time. I am sure you got the notes of it, and we had discussions with some members of the team. The question that I looked at—I looked at it exactly the way Sen. Prescott has just raised the analogy in clause 4. My first question when I looked at, “Okay, I have somebody fitting the circumstances of clause 4, responsibility was: Do I go to responsibility in the broad sense, just the small responsibility section?” What really caused me the problem was the use of clause 3(3) where responsibility is redefined in some senses as meaning only a parent or legal guardian.

Sen. Ramlogan SC: Is clause 3 necessary?

Sen. Al-Rawi: In light of the responsibility definition and guardian definition and legal definition? That was my view.

Sen. Ramlogan SC: Clause 3 does not add anything, and I would want to delete it.

Sen. Al-Rawi: That takes care of a massive number of concerns that follow later on in the Bill.

Sen. Ramlogan SC: Can we go back and delete clause 3(3), please, Madam Chair? There is no need to have presumptive concept of responsibility in the case of a legally appointed guardian or parent.

Sen. Al-Rawi: Particularly with the definition of responsibility given as custody, care and control.

Sen. Ramlogan SC: Yes. The idea is that responsibility, as is widely defined, will, in any event, capture both guardian and legally accepted guardian and parent. You cannot have a parent without responsibility.

Sen. Deyalsingh: So it captures presumptive plus—

Sen. Al-Rawi: In the widest sense.

Sen. Ramlogan SC: Yes, it captures *de jure plus de facto*.

Sen. Dr. Balgobin: Attorney General, if we accept that I would just like to go back to 3(2)(b)(i) and (ii).

Sen. Ramlogan SC: Yes, a reasonable person will consider—

Sen. Dr. Balgobin: I was not quite sure whether—is that a distinction that needed to be made?

Sen. Ramlogan SC: One second—3(2)(b).

Sen. Dr. Balgobin: Where (ii) says because of its nature, but (i) says whatever its circumstances.

Sen. Al-Rawi: Hon. AG, and with the greatest respect to Sen. Dr. Balgobin, if we could just raise a few more shorter point positions and then come back to this one, if it is convenient?

Sen. Dr. Balgobin: Fine by me.

Sen. Ramlogan SC: He has given way, so let us just—

Sen. Al-Rawi: Thank you very much, just to crystalize the point for the sake of the *Hansard*. I am of the view and I agree that responsibility covers the broader sense, *de facto* and *de jure*, as you put. I would be happy to see clause 3(3) be deleted,

but I raised it in the context of looking at guardian, legal guardian and responsibility. If I could just touch two more quick short positions in the general description points.

Sen. Ramlogan SC: Sure.

Sen. Al-Rawi: That would be:

“‘video recording’ means any recording on any medium from which a moving image may by any means be produced, whether or not accompanied by a sound track;”

I wondered whether that took care of transmission without storage on medium? So in the current state of technology you have cloud technology, where you do not have physical recording or storage, but which is streamed to you. I wondered whether—because I know the Minister had some guidance from a technical expert on IT—this covered the aspect of streaming. And secondly, did we want to say transmitted as opposed to produced? Because production in copyright has a different concept to transmission.

Sen. Ramlogan SC: It is both, so we can do that.

Sen. Al-Rawi: Produced and/or transmitted.

Sen. Ramlogan SC: That is fine. I did not raise a fuss about it because it would still be captured by visual representation below.

Sen. Al-Rawi: And then that is the next one I was going to come to:

“‘Visual representation’ includes a photograph, film or video, whether or not it was made by electronic, mechanical or artistic means.”

The question is whether we want it to include—and this is not going too deep down—a drawing or still visual representation. An artistic mean can be—it does not capture the manual artistic mean of a drawing, which can be equally offensive. So: “visual representation includes”—I would have added before the word “photograph”, “a drawing”. I was wondering whether we wanted to go with a “still visual representation” and then continue as it is there.

Sen. Dr. Balgobin: How is it employed in the legislation?

Sen. Al-Rawi: Visual representation comes down in the definition of child pornography, and in the context of child pornography, it could be offensive to have an artistic impression of it as opposed to just—

Sen. Dr. Balgobin: Then you cannot confine that just to a drawing, it also has to be for a sculpture or—

Sen. Al-Rawi: That is why I thought of the words “visual representation”.

Sen. Ramlogan SC: We use the word “includes” so it does not exclude that, but at the same time I would not want to mention it specifically. I think Sen. Hinds and Sen. Beckles may understand why.

Sen. Beckles: Not only that, those are policy decisions as it relates to the rights of the artiste, which would put us all in a lot of trouble.

Sen. Ramlogan SC: I agree.

Sen. Beckles: That is freedom of expression. I think that is going a little too far.

Sen. Ramlogan SC: Absolutely!

Sen. Al-Rawi: Whilst I agree with that, the question is, the offence is only committed if a court is convinced of it. What I am looking at, and I will tell you where the thought comes from. It comes from the law of copyright in particular, when you are looking to deal with infringement, and the issues arise as to visual representation. So a visual representation is something that is much broader than any one particular media which we have specified here. I did not want a child pornographer to come forward with a drawing traced off over a film—in fact, there is a technique where people do that—and say, “Well, I am sorry, this is not pornography, because it is a drawing.”

Sen. Ramlogan SC: All of that would be covered by the word “includes”.

Sen. Al-Rawi: So long as we are stating it on the record, I think I would be happy with that if we are all agreed.

Sen. Ramlogan SC: It has artistic means as well. That one I do not think we need to trouble ourselves with it, because the court would be alive to the mischief that we are trying to prevent, and the mischief is clearly child pornography.

Sen. Al-Rawi: So we could rely on a purposive interpretation policy point?

Sen. Ramlogan SC: Yes, a purposive interpretation in the context and scheme of the Act. I would find it rather odd for a judge to—you know.

Sen. Al-Rawi: Agreed, thank you.

Sen. Ramlogan SC: So we go with video recording produced and/or recorded. We leave visual representation as it is, produced or transmitted, and we delete clause 3 and we could move on.

7.30 p.m.

Sen. Al-Rawi: And we will come back to Sen. Dr. Balgobin's point—

Sen. Ramlogan SC: Back to Sen. Balgobin's point.

Sen. Al-Rawi:—subclause (2).

Sen. Ramlogan SC: Sen. Dr. Balgobin.

Sen. Dr. Balgobin: I was just trying to understand if there was a substantial difference between (2)(b)(i), and (2)(b)(ii)? That is (i) and (ii)?

Madam Chairman: Could you repeat that please?

Sen. Dr. Balgobin: I am just trying to understand whether there is a substantial difference between (2)(b)(i), and (2)(b)(ii) because while one can make the argument that one is objective and one is subjective, the objective one really says, “whatever its circumstances” and is preceded by the statement, “a reasonable person would consider that”, and therefore, I was not sure that I understood really what the clear distinction was.

Sen. Ramlogan SC: I see your concern; I see your point. I suppose the “reasonable person” which is the yardstick by which both would be measured, is in fact an objective standard in law, and that “reasonable person” applies to both. So that is the standard applied, but I share your concern. Your concern is “whatever its circumstances”.

Madam Chairman: Attorney General, at what point would that intention be required? Would it be at the court or would it be at the police, would it be at the home, would it be the social service? So at which point, and then may be if you look at—
[*Interruption*]

Sen. Ramlogan SC: It is at both, but I am looking at it to see even the intention was not to leave out “intention”. The idea was to make this a strict liability offence, as it were, so that if a “reasonable person” would consider that the person's purpose in relation to it is—yes it is—is the test, because of its nature, sexual—and a “reasonable person” means a hypothetical man in the maxi taxi going home after a hard day's work, kind of thing.

Sen. Al-Rawi: Hon. AG, just to assist—[*Interruption*]

Sen. Ramlogan SC: Yes.

Sen. Al-Rawi: The “reasonable person” definition would fall into the Caldwell-type definition in law, it is a subjective objectivity in this context, from my reading of the cases, it is not strictly objective. It is a subjective objectivity in law. I would probably put that just on the record for that. It helps with Sen. Balgobin's concern, that it may be objectively too wide.

Sen. Ramlogan SC: I think Sen. Balbogin's point is really the "whatever its circumstances", and I think that is a legitimate point, actually, because if you say, "whatever its circumstances", then you immediately block out, you know. We could amend it to say, "a reasonable person would consider that", and we delete "whatever its circumstances or", and we can take out "any" and say "the". "A reasonable person would consider that the person's purpose in relation to it is", take off "it", "is, because of its nature sexual".

Sen. Dr. Balgobin: And then is there a need for (ii)?

Sen. Ramlogan SC: And (ii) "because of its nature, it may be sexual and because of its circumstances or the purposes of any person in relation to it or both of it."

Sen. Dr. Balgobin: Is it necessary to then to have (ii)? Can we not delete (ii)? I do not know what it means. I have read it several times over the last—

Sen. Al-Rawi: Hon. AG, I understand it as trying to set up the objective test.

Sen. Ramlogan SC: I am advised that this comes from the United Kingdom.

Sen. Al-Rawi: *RvS*.

Sen. Ramlogan SC: Yes. I am advised that it comes from the United Kingdom legislation—*[Interruption]*

Sen. Al-Rawi: I read the case.

Sen. Dr. Balgobin: Does that mean they know what it means?

Sen. Deyalsingh: AG, AG.

Sen. Ramlogan SC: I am saying what the advice is, I did not go on to make my comment.

Madam Chairman: Would it also, just for clarification—*[Interruption]*

Sen. Ramlogan SC: Sure, Ma'am.

Madam Chairman:—in the first one it identifies the person's purpose, but in the second one it identifies circumstances—*[Interruption]*

Sen. Ramlogan SC: And the material.

Madam Chairman:—so therefore, one was covering the purpose, and the other one was more so relating to the circumstances as well, to cover both?

Sen. Ramlogan SC: They both deal with purpose.

Madam Chairman: In your amendment, he is deleting “whatever its circumstances or any”, and replacing it—the proposed amendment is “the person’s purpose”, so you would be deleting those words “circumstances”.

Sen. Ramlogan SC: Perhaps I could look at it another way around, do we need (i)?

Sen. Dr. Balgobin: Probably not.

Sen. Al-Rawi: Hon. AG, just on a pause, this clause, I understand, comes from case law, it is meant to be a codification—*[Interruption]*

Sen. Ramlogan SC: Yes.

Sen. Al-Rawi:—of a description—*[Interruption]*

Sen. Ramlogan SC: Yes, that is why I am saying let us leave out (i).

Sen. Al-Rawi: Correct. I have read a couple cases on it—*[Interruption]*

Sen. Ramlogan SC: Sure.

Sen. Al-Rawi:—and I thought even though it took a few reads to get it right, it is when I went to the case law that I felt some comfort that as described, even with the language in (i), without redaction, that as described, it gave the room that a court would look at in line with the common law. So I am not so comfortable, even though it reads better; from a logical point, it reads better with the redaction as proposed by Sen. Dr. Balgobin. My question is do we want to do it because it is a deviation away from the common law at present. The flip side to that is, that by having it in a common sense way described, we would not fetter the development of the case law, so there is a pro and a con to it.

Sen. Ramlogan SC: Sen. Balgobin, I understand the point that you are making. I am prepared to take off the “whatever its circumstances or any”, and leave (i) as is. But (ii), I think the Chair is probably right, it is not a distinction without a difference, but there is a slight variation; (ii) speaks to the nature—the nature may be sexual, and because of circumstances or the purpose of any person in relation to it, or both, it is sexual. I think that we can leave it. So if we take off the “whatever its circumstances”, I think we can leave (ii), and that should be okay.

Sen. Prescott SC: Could you read (b) for us?

Sen. Al-Rawi: Yes we keep (ii).

Sen. Prescott SC: Could you read (b) for us again?

Sen. Ramlogan SC: (b) (i)—well (ii) remain as is. (b) (i), will now read, “a reasonable person would consider”—

Madam Chairman: “the person”.

Sen. Ramlogan SC:—“would consider that—(i), the person’s purpose in relation to it”, delete “it” again, “is, because of its nature, sexual”. Is that all right?

Madam Chairman: Yes.

Sen. Prescott SC: No (ii)?

Sen. Ramlogan SC: And we will keep (ii).

Sen. Deyalsingh: Which will now become [*Inaudible*]

Sen. Ramlogan SC: No.

Sen. Al-Rawi: No. (i) you will redact.

Sen. Ramlogan SC: (i) stays as amended, (ii) stays as is—circumstances.

Madam Chairman: For the purposes for all Senators, let me read the full explanation here. This is clause 3, subclause (2): “For the purposes of this Act, penetration, touching or any other activity is sexual if—

(a) it is not done for medically recognized purposes; and

(b) a reasonable person would consider that—(i) the person’s purpose in relation to it is, because of its nature, sexual; or

(ii) because of its nature it may be sexual and because of its circumstances or the purposes of any person in relation to it, or both, it is sexual.” So

(ii) remains as is, the change is in (b) (i).

Sen. Hinds: Could you put a comma after nature?

Sen. Drayton: I thought (ii) captures (i).

Sen. Al-Rawi: No there is a distinction to it.

Sen. Hinds: There is a difference.

Madam Chairman: Correct. Sen. Hinds.

Sen. Al-Rawi: It is from two different ends.

Madam Chairman: Because of its nature.

Sen. Al-Rawi: It is a legal concept.

Madam Chairman: It may be sexual.

Sen. Dr. Balgobin: Explain to me [*Crosstalk*]

Hon. Senator: It would take a little while.

Sen. Dr. Balgobin: That is okay. I would like to know—because the courts are the courts, the Judiciary is the Judiciary. I would just like to understand the distinction.

Sen. Hinds: The first part, as I understand it, deals with person's purpose or intention in relation to it, and that purpose or intention is, "because of its nature, sexual", and in the second part "because of its nature, it may be sexual and because of its circumstances or the purposes of any person in relation to it or both, it is sexual", I think that is it.

Sen. Drayton: So then it covers (i)?

Sen. Al-Rawi: No it does not because (i) deals with the intention of the person, and (ii) deals with the recklessness of a circumstance where you may not have intended it, but the circumstance is there, so broad, that you ought to have considered it, and therefore, you are guilty.

Sen. Dr. Balgobin: Except that it says in (ii), "or the purposes of any person in relation to it, or both it is sexual". So if one is intended to say, "purpose" and the and other is intended to say, "circumstance", then—[*Interruption*]

Sen. Al-Rawi: There is a difference.

Madam Chairman: One might be significant enough to determine just the purpose by itself is an offence, and there is another case—[*Interruption*]

Sen. Al-Rawi: Madam Chair—[*Interruption*]

Madam Chairman:—where you may have "circumstances" without original intent, but by the circumstances and the sexuality of the circumstances, and then you may then deem "purpose" out of it, one way not—

Sen. Deyalsingh: Madam Chair, if I may address this to the hon. Attorney General. With the rewording of this clause to give comfort to Sen. Balgobin, are we saying that we are retaining the objective test, as stated by a "reasonable person", but that it can be judged subjectively, we can judge the circumstances subjectively, so retaining the objective test, and giving people who are judging these things the ability to judge subjectively what went on?

Sen. Hinds: Just a short example in terms of circumstance—[*Crosstalk*]

Sen. Deyalsingh: That is a BSc in bush law.

Sen. Hinds: He comes along with some marijuana, he comes along with condom, he turns off the light, those are the kinds of circumstances in (b).

Madam Chairman: That is right, and it tells you his intention, almost like an inference.

Sen. Prescott SC: Madam Chair, may I make an intervention? If the hon. AG could tell me whether we should not be considering that it is sexual if the victim says, “it appeared so to me”.

Sen. Ramlogan SC: Sorry.

Sen. Prescott SC: A subjective test only. It is sexual if the victims says, “that is the impression I had”. You penetrated me or you touched me or you did some other activity in relation to me which I thought was sexual.

Sen. Hinds: No. You cannot convict a man because of what someone else necessarily only thought.

Sen. Prescott SC: Well, I threw that out. We are using an objective test where we should be using a subjective one.

Sen. Hinds: It has to be now the reasonable person looking on must consider that it was sexual, but for me to be convicted only because you felt it was sexual, I think that is dangerous.

Sen. Ramlogan SC: I think Sen. Balgobin, what happened, the difference between the two really, is in the use of the words “because of its circumstances”, that is the difference. Because you are correct, both (i) and (ii), deal with the concept of the nature of the material, and they also address the question of the purpose. The only difference is in relation to “because of its circumstances”, and the combination option.

Hon. Senator: That is right.

Sen. Ramlogan SC: Now, I suppose—sorry?

Sen. Dr. Balgobin: It does not say “and”, it says, “or the purposes of any person” after—[*Interruption*]

Sen. Ramlogan SC: Well it says, “or both”.

Sen. Dr. Balgobin: “or both”.

Sen. Ramlogan SC: So that is the “and” really in it, and I think that is the major difference. Now when you look at what we deleted—[*Interruption*]

Sen. Dr. Balgobin: “whatever its circumstances”.

Sen. Ramlogan SC:—yes; so I think I would want to leave this to cover that because of the deletion, I would agree with it, if you do not mind?

Sen. Dr. Balgobin: That is fine.

Sen. Ramlogan SC: All right.

Sen. Al-Rawi: And subparagraph (ii) is broader because of the use of “any person” as opposed to “the” because there may be a combination aspect. There is one other clause I would like to mention in the definition section, Madam Chairman, that is under the definition of “child pornography”.

Sen. Ramlogan SC: Sorry, you are on another point?

Sen. Al-Rawi: Yes. The last point under the definition section, under “child pornography”. If we look after paragraph (d), “but does not include any visual representation produced or reproduced for the purposes of education, counselling, the promotion of reproductive health or as part of a related criminal investigation and prosecution;” I am wondering whether—two things, one, insofar as this Act contemplates civil liability not being excluded, that we wanted to not confine ourselves to criminal, and two, there is no exception for medical purposes. So, child pornography means, the first part, or other methods that show for a sexual purpose engage—*[Interruption]*

Sen. Ramlogan SC: What we will do, sorry to interrupt you, I beg your pardon, what we will do, we did in fact make an amendment, as a result of a point made in the debate, to create further exceptions, that the teacher—and the whole point really was that, if it is being done as part of your professional duties—*[Interruption]*

Sen. Al-Rawi: That is right.

Sen. Ramlogan SC:—so what I will do, anytime you go down the road of enlisting, and we say, medical, reproductive health, and counselling, you are bound to leave out some that you cannot think of here. So rather than try to capture all the permutations what I will do is incorporate into that part, “anyone doing it as part of their official duties and functions”, if you see what I mean, which would cover the medical, cover counselling. Leave it as is, but I will add in a catch-all phrase. So you see what I mean?

Sen. Al-Rawi: Official and/or professional, yes that could do it.

Sen. Ramlogan SC: Yes, that could do it. So that will do it and cover everything else that we will have in mind because that is not mischief that the legislation is intended to capture.

7.45 p.m.

Sen. Hinds: How do you treat with the situation where the professional becomes sexual in the course of this duty?

Sen. Ramlogan SC: Well, the answer is this; it would not be in the course of duty.

Sen. Al-Rawi: Exactly!

Sen. Ramlogan SC: It would not be. It would not be. No!

Sen. Hinds: Just a moment, the physical act cannot be distinguished.

Sen. Ramlogan SC: A doctor could never argue that the penetration of a child is part of his/her duty. [Interruption]

Sen. Hinds: Oh; no, no; not penetration, we are talking about touching.

Sen. Ramlogan SC: Certainly, he may argue touching, but that equally applies to adults, and it has not stopped the law from being the way it is. [Interruption] It will be a question for the jury to determine as a question of fact whether the doctor touched that patient inappropriately.

Sen. Al-Rawi: Correct.

Sen. Hinds: Well, I was just wondering aloud whether the category, as you have described it in satisfaction of the concern raised, whether that would not have interfered with getting the doctor—[Interruption]

Sen. Al-Rawi: No, it is a different concern, hon. Senator, we are talking about child pornography. What I am addressing my mind to is a professional, for instance, a doctor or a lawyer in possession of photographs by way of evidence or for medical purposes, which show something which is child pornography. That is where I am.

Sen. Ramlogan SC: Sure. And I am prepared to meet that by the official duties part.

Sen. Al-Rawi: Thank you, I agree.

Sen. Hinds: But that “official duties” apply to other aspects of the legislation.

Sen. Ramlogan SC: It would apply to any—once you had to use, suppose—let us say for example, the court; I mean the custodian of the picture, of the rape victim, may very well not be the judge, may not be the lawyer, it may be the registrar or it may be the registrar’s clerk, but that is part of their official duty.

The man who has to actually hold up the picture in court or get it reproduced on a screen for the court, that is part of his duty, so it would cover all of that. It would also cover a doctor who has to examine a child who has been raped, they must, by necessity, conduct an examination—they may have to take a manual—invasive—examination, but the point is the mischief that they intend to capture in the legislation is whether or not it was part of the official duty or did you cross the line.

Sen. Al-Rawi: That is right.

Sen. Ramlogan SC: But that would be a question of fact for the jury to find in any case where an allegation is made of sexual harassment or any kind of child abuse, as it were.

Sen. Hinds: That is why I was thinking, hon. Attorney General, that formula that you would use in your professional capacity, that will stand as a defence to the doctor, who, in touching becomes sexual. That is what I was concerned about.

Sen. Ramlogan SC: It will. The answer is yes. It will. But conversely, if you do not put it like that it opens up the doctor's and, all of the other professionals to the possibility of criminal penalization and prosecution whilst they are performing their duties—*[Interruption]*

Sen. Al-Rawi: That is right. And the Bill reverses the burden.

Sen. Ramlogan SC:—and you reverse the burden of proof onto them. You see what I mean? On them, so what we would do now is we will—*[Interruption]*—add in—no, hang on. *[Interruption]* Sen. Prescott, Sen. Al-Rawi, this is what we have come up with. We will add after the word “prosecution”, “or in the performance of one's professional duties.”

Madam Chairman: Could you repeat that for me please?

Sen. Ramlogan SC: “or in the performance of one's professional—*[Interruption]*

Madam Chairman: There are professional people who make a living out of pornography in terms of the production of it.

Sen. Ramlogan SC: No, no.

Madam Chairman: Then, maybe we have to go with the word “legal.”

Sen. Ramlogan SC: This is about the child. This is about the child. So, “or in the performance of a person's professional duties and functions.”

Sen. Prescott SC: Somebody suggested using the words “unlawful duty.”

Sen. Ramlogan SC: If it is unlawful it would be unlawful anyway.

Sen. Prescott SC: If you have a lawful duty?

Madam Chairman: Correct.

Sen. Ramlogan SC: “Performance of one’s lawful professional duties and functions.”

Sen. Al-Rawi: Yes.

Madam Chairman: Yes.

Sen. Hinds: Unlawful performance of his duty.

Sen. Al-Rawi: Hon. Attorney General, question here; related criminal investigation or prosecution?

Sen. Ramlogan SC: One second, Sen. Hinds has a question, I think is—
[*Interruption*]

Sen. Hinds: Lawful performance of his duty.

Sen. Ramlogan SC: Sen. Prescott SC, Sen. Hinds—[*Interruption*]

Sen. Hinds: Lawful performance of his lawful duty.

Sen. Ramlogan SC: Is it lawful performance or performance of lawful duties?

Madam Chairman: It basically has to be done under the law. Your occupation or profession should be a legal profession.

Sen. Ramlogan SC: I would have left out the word lawful quite frankly, because, I mean, it is in the performance of one’s duties or functions because if the performance of the duties were unlawful then it should—[*Interruption*]

Sen. Hinds: Chair, let us get back to the point, seriously speaking, doctors and professionals—all right.

Sen. Ramlogan SC: I understand.

Sen. Hinds: Just now—seriously, a dentist can extract teeth that he is not supposed to, you know, and that is negligence too, as has happened recently. A woman maliciously, they reported, took out all the man’s teeth under an anesthetic. [*Laughter*]
Now, I am saying to you—[*Interruption*]

Madam Chairman: No, but it can happen under the guise of medical profession.

Sen. Hinds: A professional can, in the course of his professional duty, act unlawfully. That is what negligence is all about, and he can commit a criminal offence in the process too. *[Laughter]*

Sen. Ramlogan SC: Well, we can say in the lawful performance of a person's professional duties and functions. All right?

Sen. Hinds: Yes.

Sen. Al-Rawi: Last caveat to this point—*[Interruption]*

Sen. Ramlogan SC: Let us make sure the Chair gets it. *[Laughter]* It would appear that somebody has been bitten by the teeth.

Madam Chairman: Can we look at clause 3—*[Interruption]*

Sen. Al-Rawi: One more.

Madam Chairman: One more?

Sen. Al-Rawi: There is one more caveat to this point and it is the question of the dichotomy between civil and criminal. If we have a criminal investigation and prosecution, it excludes civil, criminal and investigation. Same clause. Child pornography, the end, the last line, you see the word “criminal investigation and prosecution.” So, as a part of a related—*[Interruption]*—you could say legal as opposed to criminal or civil. So, “as a part of legal investigation and prosecution”.

Sen. Ramlogan SC: That is fine.

Madam Chairman: Right. So, okay, clause—*[Interruption]*

Sen. Hinds: Can we have a legal—*[Interruption]*

Sen. Al-Rawi: I initially thought of legal proceedings—*[Interruption]*

Sen. Ramlogan SC: I think legal proceedings would be more appropriate, you know.

Sen. Al-Rawi: Then we would have to go as the path, related investigation—*[Interruption]*—well, you see, prosecution does not include defence, eh. But you could prosecute a defence, one could argue. So, investigation and prosecution—here is the mischief in my mind. *[Interruption]* The thing in my mind, in the pre-action stage in civil proceedings is that it is contemplated proceedings as opposed to actual.

Sen. Ramlogan SC: The intention was not to deal with civil, but I think during the course of the discussions and so on, it would appear that to cater for the future, given the way—

Sen. Al-Rawi: Also too, Attorney General, the Bill itself is constructed without prejudice to any other written law.

Sen. Ramlogan SC: Sure, that is fine. I am putting in that. What we would do is we would put “or as part of a related criminal investigation and prosecution or civil proceedings or in the lawful performance”—[*Interruption*]

Madam Chairman: Why we do not leave out [*Inaudible*] and simply say, “legal proceedings”, would it not cover everything?

Sen. Al-Rawi: The question with legal proceedings is contemplating proceedings.

Sen. Ramlogan SC: Yes, that is the problem with it.

Sen. Al-Rawi: The investigation is prior to.

Sen. Ramlogan SC: It precedes the proceedings. The proceedings only arise when you lay the charge.

Sen. Al-Rawi: So that is anticipated proceedings or investigative proceedings.

Sen. Ramlogan SC: That is why I am leaving it like that, but is a good point.

Sen. Al-Rawi: Question: would it be simpler for you to consider, overhearing as I ought not to—read with me from the second line: “reproductive health or as a part of a related”—scratch the word “criminal”—“investigation and prosecution of legal proceedings.”

Parliamentary Counsel: Leave “investigations”?

Sen. Al-Rawi: No, no; leave all of that in, I am getting down now to the mischief caused by “criminal” being too restrictive, and I am wondering whether it would be simpler to say, “of a related”—scratch “criminal”—“investigation and prosecution of legal proceedings”, because—

Sen. Ramlogan SC: No, no, no.

Sen. Al-Rawi: Just let me explain why.

Sen. Ramlogan SC: No, I would prefer to leave it. You see, as part of a—you do not even need the word “related”—take off the word “related”; as part of a criminal investigation and prosecution or civil proceedings or in the lawful performance of one’s professional duties or functions.”

Sen. Al-Rawi: That takes care of the mischief that I had with “related”, so thank you.

Madam Vice-President: The question is that clause 3, firstly be amended as circulated by the deletion of the word, “or” in the definition of “Juvenile Court”, and further amended under clause 3(1), the definition of “child pornography” following the words, “but does not include any visual representation produced or reproduced for the purpose of education, counselling, the promotion of reproductive health or as part of a criminal investigation and prosecution or civil proceedings or in the lawful performance of a person’s professional duties and functions.”

8.00 p.m.

Further, the definition of “Court” to include—amended—“Court” to include a “Magistrate’s Court”. To delete after “family matter means, any cause, matter or legal proceeding”—delete “(a)” and continuously read:

“arising out of any written or other law and connected with a matrimonial, familial or other domestic relationship.”

Page 5, under the definition of “video recording” to include the words:

“any means be produced or transmitted whether or not accompanied by a sound track;”

Further, subclause (2)(b)(i):

“(b) a reasonable person would consider that—

- (i) the person’s purpose in relation to it, is, because of its nature, sexual; or
- (ii) because of its nature, it may be sexual and because of its circumstances or purpose of any person in relation to it, or both, it is sexual.”

And further by deleting completely subclause (3)(a), (b) and (c).

Hon. Senator: The definition of “Children’s Attorney”.

Sen. Ramlogan, SC: Children’s attorney—section 66 should really be section 88. So if we just change the 66 to 88.

Madam Chairman: By amending the word “66” to replace it with “88” under “Children’s Attorney”.

Question put and agreed to.

Clause 3, as amended, ordered to stand part of the Bill.

Clause 4.

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

Sen. Ramlogan SC: Madam Chairman, I beg to move that clause 4 (1)(b)(ii) be amended as follows:

Insert after the word “effect”, the words “and this resulted in the suffocation of the child”.

Sen. Prescott SC: Could the hon. AG tell us whether the word “person” is intended to include a child or any person under the age of 18 at all?

Sen. Ramlogan, SC: Can we look at the circulated list of amendments—
[*Interruption*]

Sen. Prescott SC: I am.

Sen. Ramlogan SC: And am—[*Interruption*]

Sen. Dr. Balgobin: May I.

Sen. Ramlogan SC: No, I am not seeing it.

Sen. Prescott SC: It says: “Where a person has responsibility for a child.”

Sen. Ramlogan SC: Sorry.

Sen. Prescott SC: My question was whether “person” there intended to exclude children. Does it include a person who is age 16 and has responsibility for a child—
[*Interruption*]

Sen. Dr. Balgobin: It implies that it is an adult.

Sen. Ramlogan SC: It applies to all persons.

Sen. Dr. Balgobin: Oh, good!

Sen. Prescott SC: So we should say “persons” including children?”

Sen. Ramlogan SC: Yes, I think we should, to make it clear.

Sen. Prescott SC: You sure that is what you want to say?

Sen. Ramlogan SC: One second. This is a serious one.

Sen. Dr. Balgobin: So this would apply to say, a big brother or sister who has charge of younger siblings?

Sen. Ramlogan SC: Yes.

Sen. Al-Rawi: And then you have all the exceptions at law.

Sen. Ramlogan SC: We will make it clear that it refers to children. So where a person including a child—no? What it is? A person is normal. We do not need to amend it. A person is a person.

Sen. Dr. Balgobin: Madam Chair, through you to the hon. Attorney General—
[*Interruption*]

Sen. Ramlogan SC: Can I just refer us as well to the circulated amendment on the causation point which is there.

Madam Chairman: Before you go on Sen. Balgobin, I think for clarification what I am reading here, AG, is that it says: “Where a person...” therefore the person meaning anyone having responsibility for a child, referring to any person under the age of 18. So it is clear there. So you do not have to change the word “person”?

Sen. Ramlogan SC: No.

Sen. Prescott SC: I am not happy, but I guess I cannot always be. Juxtaposed it is so close to the word “child”, I think we need to distinguish them. That is my only recommendation, that we should say, “a person including a child”.

Sen. Ramlogan SC: Well, the draftsmen are kicking up a—[*Interruption*]

Sen. Prescott SC: Yes, I am hearing the advice you are getting and—
[*Interruption*]

Sen. Al-Rawi: The point is this you know, to avoid an interpretation issue—
[*Interruption*]

Sen. Ramlogan SC: I do not have a problem clarifying it.

Sen. Hinds: Conceptually, can a child have responsibility in this legal sense for another child?

Sen. Ramlogan SC: You can.

Sen. Al-Rawi: A seventeen-year-old can.

Sen. Hinds: Can a 12-year-old have a responsibility for a 17-year-old in this context?

Sen. Al-Rawi: With the deletion of the word “responsibility”—with the deletion of the broader context of responsibility in clause 3(3), we may be getting closer because the court now—we are falling back to a person who a court recognizes to have responsibility.

Sen. Hinds: But responsibility says care, custody and control.

Madam Chairman: With respect to your question you may have a 17-year-old who is disabled or bed-ridden, and you may have a 12-year-old sibling who is left responsible for that person.

Sen. Ramlogan SC: Remember we had the original provision which said: a person over the age of 16; in the other place there was much debate and consensus was arrived at, to delete that provision to make it applicable to one and all. That was a joint position taken in the Lower House.

Sen. Hinds: Well, notwithstanding, the question now is—and I take the point made by the Chair, but beyond that, in addition to that even, can an 11-year-old have legal responsibility for a seven-year-old?

Madam Chairman: With care; the wider definition.

Sen. Al-Rawi: Responsibility includes custody, charge, care and control. But there would have to be a judicial discretion as to whether it amounts to the kind of responsibility which a court would, on a good morality principle, acknowledge as one which bites. I want to be careful not to fetter the court's exercise of discretion, particularly insofar as this Act in dealing with child offenders provides as a specific clause, even in the case where they are satisfied of guilt, the first one is the ability to dismiss the charge; even when satisfied of guilt.

So that is something that I looked at and I had a question mark and I went back to this child offender position. So there is enough judicial discretion in there, even if you are satisfied of guilt that this child somehow had responsibility under the terms of the Act, you could discharge. Similar to a reprimand and discharge provision under the Summary Courts Act. That is what we intended by it.

Madam Chairman: We leave as is, right?

Sen. Prescott SC: Before we leave it, can we look at the Children's Authority Act. The Children's Authority Act makes a reference to children over the age of 16.

Sen. Ramlogan SC: What section you are looking at?

Sen. Prescott SC: Bear with me a moment, please.

Sen. Ramlogan SC: Sure.

Sen. Prescott SC: Section 3, I have a note and I need to just get back to it.

Sen. Ramlogan SC: Sen. Prescott, your difficulty is that this allows—it opens a window for a child on child care and that could lead to criminal prosecution. Well, the answer to that, that they have provided which is a concern I share, is that the court is given a lot of flexibility with a wide range of options which include, really just not, you know, convicting and reprimanding as it were, or referring the matter elsewhere; they would obviously take into account the context and circumstances including the age of the parties, the relationship between them.

Sen. Prescott SC: I was a little more concerned about the process between the arrest and arriving before the judge. The police officer who has to make that discretionary decision, is this a person or a child to whom this section refers? I have an incident here of a child suffering physical or emotional disadvantage at the hands of another person who is 16. I am not sure if I have an offence under section 4, so I am going to charge you just in case. Or worse, he has interpreted it to mean anybody. So he brings the 12-year-old before the court or the 14-year-old or the 15-year-old before the inspector or the superintendent and eventually to the court who says, you should not have brought this child here.

Sen. Al-Rawi: Sen. Prescott, if I could mention, first of all—well we will come to the children's attorney in a while in terms of how they get involved. But any charge—and this comes out later in one of the clauses. We have a clause that says any proceeding under Parts IV, V and VII of the Act, must be done with the consent of the DPP. And that is the key which provides a fetter before a charge can be levelled against or prosecution can be brought against a child.

There is also the provision in the architecture of this Bill for parents to be held responsible for children in the discretionary items that the court takes into account. So I did not have too much difficulty with the child being held responsible for the child, insofar as there appear to be enough safeguards as to prosecution in relation to the child insofar as the DPP must be involved, and we should look at that; and secondly, insofar as the parent or person with responsibility for the child could be made to be liable for the whole event. The only position where I had concern was in the involvement of, at the moment of detention, the children's attorney—and we will come to that in a later section. I do not know if that assists you at all' Senator.

Sen. Ramlogan SC: All right, fair enough. So we can leave this for now.

Sen. Baptiste-Mc Knight: I have a little problem, Madam Chair. Does the person necessarily have to have responsibility for the child in order to be guilty of an offence?

Sen. Ramlogan SC: On the current wording, yes.

Sen. Baptiste-Mc Knight: Why is that necessary?

Sen. Al-Rawi: Because otherwise it is too wide a discretion.

Sen. Baptiste-Mc Knight: So if somebody who is not responsible for a child ill-treats or assaults a child, where are they charged?

Sen. Ramlogan SC: Sen. Baptiste-Mc Knight, there are other offences in law that they would be charged under, summary offences and offences against the person. There are a number of offences that would apply in those cases. This Bill was designed specifically to deal with the persons in *loco parentis* and in custody and intrust positions.

Sen. Baptiste-Mc Knight: So where would you deal with people who are bullying children?

Sen. Ramlogan SC: Bullying children?

Sen. Baptiste-Mc Knight: Yes.

Sen. Dr. Balgobin: May I intervene? May I make an intervention here? I actually wanted to propose an inclusion here that addresses the question of bullying. I wanted to propose an amendment—well, not an amendment, but actually a new subclause here under 4 which would address that and perhaps treat with Sen. Baptiste-Mc Knight's concern, because a lot of this seems to be obsessed with sex and violence, but bullying, of course, is a very significant condition in our schools today.

And so I wondered whether the Attorney General and the hon. Minister would consider the inclusion of a subclause that sounds something like this:

“Where a child wilfully assaults, ill-treats or exposes a child, or causes or procures a child to be assaulted, ill-treated or exposed in a manner likely to cause suffering or injury to his physical, mental or emotional health, that person commits an offence.”

Sen. Al-Rawi: It is covered under clause 50(14). Clause 50 says potentially, Sen. Dr. Balgobin:

“Where it appears to a Court on complaint on oath of a person...that a child has suffered, is suffering, or is likely to suffer such harm as to cause concern for the welfare...the Court may require ...”—[*Interruption*]

Sen. Dr. Balgobin: 50 what?

Sen. Al-Rawi: Clause 50.

“50.(1) Where it appears to a Court on complaint on oath of a person...”
[*Interruption*]

Sen. Dr. Balgobin: Which subclause?

Sen. Al-Rawi: Subclause (14); clause 50(14).

Sen. Dr. Balgobin: I do not have subclause (14). Oh yes I do.

Sen. Al-Rawi: Subclause 14 says:

“...harm includes—neglect or abandonment; assault; ill-treatment, physical or otherwise,...”

So we may look to deal with “the bullying” clause, insofar as, we can tweak an amendment to clause 50 of the Bill to include the child aspect as opposed to parents and guardians only. Just trying to catch up to your point and say that the appropriate place to probably park it would be in clause 50 of the Bill.

Sen. Dr. Balgobin: Well, I did not know because clause 50—but that really treats with ensuring the safety of children and then there is Part X which deals with child offenders but really under Part II where you have prevention of cruelty to children—*[Interruption]*

8.15 p.m.

Sen. Al-Rawi: Just to join you, Sen. Balgobin, that is where I have the concern as to bringing the definition of “harm” closer to “cruelty” which has a subclause of neglect in the Bill itself. So I had a problem with how far away the harm clause was, particularly in view of domestic violence—another point. So that is something which I plan to raise a little later on. I do not know if it would meet your concern to deal with it that way.

Sen. Ramlogan SC: I think, Sen. Balgobin, I am being advised, we have no violent objection to the issue, because apparently it was already within the contemplation of the draftspersons. It is just that they subsumed it within “cruelty”. I do see, however, the point made by the Independent Bench that bullying is a problem in our country, in our schools and in our society, and to subsume bullying and to use it as part of cruelty will not be right, in my view, and it would be implicit but it needs to be dealt with explicitly and expressly. However, in light of that, I do not think it should be made a subclause. It needs to be a proper clause with its own marginal note that says “bullying”.

Sen. Dr. Balgobin: I would like that very much.

Sen. Ramlogan SC: And having regard to what I have been advised by the legislative draftspersons that it was already within their contemplation, I will defer that for Mr. Griffith to draft an appropriate section that deals with bullying and we will come back to it at the end and we will insert it at the appropriate page. All right?

Sen. Dr. Balgobin: Okay. I would like that.

Sen. Ramlogan SC: Sen. Dr. Balgobin, that rather unhelpful draft, could you pass it to us, please?

Sen. Dr. Balgobin: You said unhelpful?

Sen. Ramlogan SC: A freudian slip, Sir. Sorry.

Sen. Dr. Balgobin: I will rewrite it for you.

Sen. Al-Rawi: I do not know—Madam Chairman, we are dealing with clause 4 still. Clause 4(1)(b) deals with “in bed or any other place of rest”. And the first question I had was, could “rest” be interpreted to mean any place somebody falls asleep; the back seat of a car, whatever it may be? So that is point one. But point two that crossed my mind insofar as an offence is dealt with—and we are dealing with an offence of cruelty, so let us go to the architecture first.

“4(1) Where a person has responsibility for a child and the person—”

In (a), traditional aspects of cruelty are set out here: wilfully assaults, ill-treats, et cetera. In (b), we go now to the SIDS, (sudden infant death syndrome) and just carelessness and recklessness in killing a child. At the end now, the person commits the offence of cruelty to a child. What crossed my mind was whether we were unwittingly providing a defence of cruelty to a child which could strike out manslaughter or murder.

In the United Kingdom there was an amendment to the Criminal Proceedings and Immigration Act 2008 which dealt with what became a habitual abuse of a defence where two people would conspire as persons charged to say that each other had killed the child and therefore it reduced the sentence automatically to manslaughter. What crosses my mind here is whether co-accused, insofar as they may be guilty of the offence of cruelty, killing a child in the classic sense of what we call in the criminal law, Caldwell recklessness—so Caldwell is the case that sets the objective/subjective standard to recklessness and being equal to murder there, and reduction to manslaughter. Are we, by allowing a child to be killed through negligence, prohibiting ourselves from laying a charge of manslaughter or murder? And I will draw the point to Casey Anthony—*[Interruption]*

Sen. Ramlogan SC: The answer is no, for the following reasons. If you look at the amendment circulated—*[Interruption]*

Sen. Al-Rawi: I have not seen that.

Sen. Ramlogan SC: You see, we put in, in light of Sen. Hinds’ contribution we dealt with the issue of causation. So that there is a connection now between the death of the child and it must be caused by the person.

Sen. Al-Rawi: Okay, but what I am saying is this. This act, a person lies down on a bed, has a child, goes to bed drunk or under some drug and kills the child, there is the causation as amended now, but the offence is only an offence of cruelty. Are we excluding—because we do not have the clause which we have in other places where we say, “without prejudice to any other offence under any other written law”; are we excluding now, laying a charge of manslaughter or murder in the Caldwell-type of recklessness as recognized in criminal law? That is the question.

Sen. Ramlogan SC: Yes.

Sen. Al-Rawi: It can be solved, hon. Attorney General, if we were to have—

Sen. Ramlogan SC: No, no. You see, the point is this: if we are putting in causation, then the issue is whether you need it at all.

Sen. Al-Rawi: What I was concerned with is to allow the discretion to prosecute for the more heinous crime if you wish to, and that could be achieved by having the exception saying—*[Interruption]*

Sen. Ramlogan SC: I want to tread with some caution here, because I know that this is a matter that came—*[Interruption]*

Sen. Beckles: I was saying that the reason you did not need the clause is because you have two options. You could have still had an inquest, as well as the police still have the option of manslaughter/murder.

Sen. Ramlogan SC: Yes. I know.

Sen. Beckles: Because in any event, there is no way that the person is just going to get away “scotch” free, you know.

Sen. Al-Rawi: It is that very exception that Sen. Beckles just recognized that I was thinking of, by saying that, “nothing shall prejudice—”

Sen. Ramlogan SC: We need to protect and preserve the other option.

Sen. Al-Rawi: That is right. My key is to protect and preserve the other option. We have language elsewhere in the Act where we say—*[Interruption]*

Sen. Ramlogan SC: What is your suggestion?

Sen. Al-Rawi: I think that there is a clause in the Bill itself, nothing shall excuse the effect “of any other written law”. So that that preserves the discretion. We use it elsewhere in the Bill.

Sen. Ramlogan SC: We can put that as subclause (8). That is fine.

Sen. Al-Rawi: Thank you. The words would be: “nothing in this section shall be taken as preventing proceedings from being brought against any person in respect of an indictable offence under any written law.”

Sen. Ramlogan SC: Where are you getting that from again?

Sen. Al-Rawi: That is later on in the Bill, but those are the exact words. I cut and I pasted it into the version I have here.

Sen. Ramlogan SC: We will find it.

Sen. Drayton: I just wanted to raise a clarification under the same clause 4(1)(b)(ii). Are we there yet? Can I raise it now?

Madam Chairman: Yes, you can go ahead.

Sen. Drayton: Where it says here:

“the person was, at the time going to bed or in any other place of rest, under the influence of drink, dangerous drugs or other substances having a similar effect,”

Does this include prescribed medication?

Sen. Al-Rawi: You see, it may be reckless for you knowing that you had prescribed medication to go to bed with the child, and I think that that is the point. I do not know if that helps at all. I am just answering quickly.

Sen. Baptiste-Mc Knight: But they might not be aware that it would make them that—*[Interruption]*

Sen. Ramlogan SC: But you see, that is why we put in the causation.

Sen. Drayton: I was just about to elaborate.

Sen. Ramlogan SC: No, your point is well taken.

Sen. Drayton: There are so many cases where, I mean, the circumstances of living is one room; there is one bed; there is mother who is on prescribed drugs—*[Interruption]*

Sen. Ramlogan SC: That is why I accepted the point made by Sen. Hinds and we have put in the causation, because the idea is—and a proper interpretation is really that you were reckless and you caused the child’s death. That is what we are looking at, not that it was the mother who has to take medication or the father who has to take medication and just—you know.

Sen. Hinds: But even so, I gather that the Senator was asking whether being under the influence included medication or so. Like if someone—[*Interruption*]

Sen. Drayton: Certain medications would certainly have the similar affect to other substances which might, you know—[*Interruption*]

Sen. Hinds: Like, you know, you have Panadol Multisymptom; you have “night and day”, the drowsy and non-drowsy.

Sen. Drayton: So if you put recklessness into the wording—[*Interruption*]

Sen. Hinds: What the Senator is probably wondering, if you take drowsy for the night—you have the flu and you take some Panadol, drowsy, that makes you really—[*Interruption*]

Sen. Al-Rawi: [*Inaudible*] complications with something else, for instance, unwittingly.

Sen. Hinds: Of course!

Sen. Ramlogan SC: I understand what you all are saying.

Sen. Deyalsingh: AG, if I could ask your drafters, how is “dangerous drugs” classified in the Dangerous Drugs Act?

Sen. Ramlogan SC: That is a useful analogy, and I think that it is here.

Sen. Drayton: You see, the clause specifically says “other substances having a similar effect”. So I was wondering, yes, if there was this recklessness clause, it would take care of that particular—[*Interruption*]

Sen. Hinds: Other substances is *ejusdem generis* of the same type, of the same genre.

Sen. Ramlogan SC: It is a valid point. Yes, true. The problem is, though, with this, there are many persons now who abuse prescription and non-prescription drugs. I know a lot of people are addicted to pethidine, for example; a lot of people are getting high on smelling glue; magic mushrooms.

Sen. Al-Rawi: Hon. AG, I think we could solve it.

Sen. Hinds: Other substances having a similar effect.

Sen. Al-Rawi: The difficulty may be solved. Clause 4(1)(a) has a nice caveat because it says, “wilfully”. Clause 4(1)(b) is where we have difficulty in the paragraphs (i) and (ii), insofar as we have not introduced any concept of recklessness. If we had a concept of recklessness, which has its own meaning in the common law, we could probably take care of the mischief of somebody who was not reckless, because they did not have the animus.

Madam Chairman: Attorney General, could I ask a question here? In clause 4(b), if an infant dies as a result of suffocation, why does it have to be in a bed or a place of rest? Are we ruling out that an infant can be suffocated at any place?

Sen. Ramlogan SC: By placing a pillow over its mouth on a couch?

Madam Chairman: Why not in a moving car?

Sen. Al-Rawi: That is what I asked you earlier.

Madam Chairman: So why do we simply not change the entire format of the line and remove that, and include the words, “including a place—*[Interruption]*”

Sen. Ramlogan SC: You do not need to even include the place in your analogy.

Madam Chairman: Yes, because why stop it there?

Sen. Beckles: But you still go back to, if that happened in the circumstances pointed out by the Chair—remember you still have the investigation of the police that could result in an inquest or manslaughter or murder. That still exists.

Sen. Al-Rawi: But only with the exception as amended, hon. Senator.

Madam Chairman: But this here is limiting where a child can be suffocated.

Sen. Ramlogan SC: The point Sen. Beckles is making, quite rightly, is that once there is a death of any human being, including a child, manslaughter and murder would apply. And once the child dies, and the elements are there, you would have to charge. You still have that open to you.

Madam Chairman: So then what is the point of this section if you have—*[Interruption]*

Sen. Ramlogan SC: I raised that earlier. Do you all really need this?

Sen. Beckles: I told you from early, you know, I do not really see the need for it.

Sen. Ramlogan SC: Could I just say this? The problem is, we had taken this clause out. It was the Opposition in the other place that insisted and put it back in. So the Opposition needs to be consistent in its position.

Sen. Hinds: No, no, no. That is disingenuous.

Sen. Al-Rawi: You are going down a different line now, AG.

Sen. Ramlogan SC: No, that is the reality.

Sen. Al-Rawi: “Nah, nah, nah, nah.”

Sen. Hinds: No, no. That is not how we are doing it.

Sen. Beckles: I do not know if what I am raising was raised then. That is a different matter, you know. I understand the issue that you all—well, as a matter of fact, I am not clear when they discussed it in the Lower House, looking at the discussion, what is the mischief that they were trying to sort out, because all these are natural deaths, as you spoke about, that could happen. It may be that it is an area—and as you know, an inquest could take so long. So this is probably something that they probably want to speed up, so I can understand it.

Sen. Ramlogan SC: What is your proposal?

Sen. Beckles: What I wanted to find out is that those who came up with the clause, what is the mischief that we really want to treat with? Do you know?

Madam Chairman: If you eliminate (b) and just leave the first part (a) which covers death and injury in any manner to a child and would cover, whether it in the place or not.

8.30 p.m.

Sen. Hinds: But you see you can have—*[Interruption]*

Madam Chairman: No. Just now, wait, Sen. Deyalsingh was—

Sen. Deyalsingh: If I could just speak to the question that Sen. Beckles asked: “What was the rationale for the clause?” It goes back to Sen. Ramlogan’s contribution. It has to be sudden infant death syndrome (SIDS). In other countries it was found that parents were deliberately murdering their young kids and passing it off as SIDS, and this type of clause was put in to catch those types of circumstances.

Madam Chairman: But the word “wilful” in paragraph (a), would that not cover—*[Interruption]*

Sen. Deyalsingh: Most likely. I am just telling Sen. Beckles what was the rationale in the first place for this type of clause.

Sen. Al-Rawi: Madam Chair, you raised the exact point that I had raised a little earlier. “Wilful” in (a) takes care of the—well, there is a beautiful word in paragraph (a). The problem is that we do not have a concept in paragraph (b) which provides the fetter. What I had suggested was the issue of recklessness in going to bed, because recklessness has been defined in law as a very subjective thing. So that is what I was driving at.

Madam Chairman: Sen. Hinds, you wanted to say something?

Sen. Hinds: I have assessed the situation as follows: you can have a wilful harming of the child causing the death in the bed, or anywhere for that matter; on the other hand, the person can be saying, and it in fact may be the case, that I went to bed with this infant under my arm and I rolled over and suffocated it.

Now, the policy issue here is—and I suspect this is where this is coming from—in those circumstances should the person be absolved of all responsibility or should we raise the bar and say, “You have to take some responsibility because you consumed your alcohol and your narcotics and were so reckless, almost like criminal negligence, you caused the death of the child, because you ingested these drugs and brought yourself to the state where you could not soberly act, so you fell over on the child and you killed it”? So, there is an issue here. I think this is what it was getting to.

While I am on my legs, in metaphor, AG, let me say that the element that we are proposing to add to (ii) still does not meet my concern. If you add the words as you are proposing and this resulted in the suffocation of the child, what is this: the fact that I consumed narcotics, or is it the fact that I rolled over and suffocated the child? I can use all the narcotics in the world, God forbid, and I can still be on one corner and the baby on the next and I did not cause its death.

Madam Chairman: Attorney General to follow on that, I would just like to ask: if you are leaving (b) and if you go further into (ii) and it says you are again defining that the time of the person under the influence of drink, drugs, in a bed, but then again it comes back to what if you are not even in a bed but you cause harm or cruelty, because the entire section is cruelty to children and it is now just SIDS?

Sen. Ramlogan SC: I think the idea of this clause—I agree that this clause is a bit nebulous, which is why we are taking it out in the first place. It was put in at the insistence of the Opposition in the Lower House. I think the idea behind this clause, really, is if you know you have a newborn baby, for example, and you know that that newborn baby needs to be fed every three hours within the first three months and—because babies need to be fed regularly and burped within the first year—if you get drunk and you go to sleep knowing full well in that intoxicated state you may not be able to get up to give that baby the bottle when it is crying at 12.00 midnight—*[Interruption]*

Madam Chairman: What if the person is not under the influence of drink, drugs or any other substance and is actually in a bed where the baby under three dies?

Sen. Al-Rawi: I have a potential solution. If we were to look at clause 4(1)(b)—and this is inelegant, but it may lead us towards the solution—“is in bed or in any other place of rest”—I would have said any other place and drop rest—*[Interruption]*

Sen. Ramlogan SC: You can.

Sen. Hinds:—“with an infant under the age of three...and that infant dies as a result of...”—and here is the ticklish bit—“the recklessness of the person and suffocation”. The point is how to marry the two, the child suffocating and the recklessness of the person.

Madam Chairman: Could you not marry that into clause 1?

Sen. Ramlogan SC: You do not need to have suffocation.

Sen. Deyalsingh: Just put “recklessness”.

Madam Chairman: Could you not incorporate it into (a)?

Sen. Hinds: What (ii) is getting to AG, is that this child dies by virtue of suffocation, okay, while in bed or in a place of rest with the suspect—let me call it that—and the suffocation cannot be explained as a consequence of any disease, it cannot be explained because of any foreign body in the throat or air passages, and it cannot be explained by any other medical cause. Now, AG, SIDS would be a medical cause because it is a recognized phenomenon. You with me?

Sen. Ramlogan SC: “Uh hmm!”

Sen. Hinds: Therefore, if the child under three years suffocates and it cannot be explained—*[Interruption]*

Sen. Ramlogan SC: The causation will come in.

Sen. Hinds:—and if the death by suffocation cannot be explained on any of those grounds then you have an explanation to give. It means that you caused its suffocation; you rolled over on it or such thing. I think this is what it is getting to.

Madam Chairman: There is one other thing; SIDS is not only caused by suffocation.

Sen. Hinds: No, no, no I did not say that.

Sen. Al-Rawi: Madam Chair, if we substitute the word “recklessness” of the person as opposed to “suffocation”, we might catch it all.

Madam Chairman: Yes. I find we are limiting it there.

Sen. Ramlogan SC: Here is what we will do. In (b) I wish to delete the first line altogether. So it will now read, “where a person has responsibility for a child and the person...”—one second.

Sen. Al-Rawi: In bed or any other place.

Madam Chairman: A place is by itself.

Sen. Ramlogan SC: “The person” will really have to come before “wilfully” in (a), because it will not apply to (b). What I had in mind is: “Where a person has responsibility for a child and—so now 4(1) would read, “Where a person has responsibility for a child and the person—”will go before (a)—[*Interruption*]

Sen. Al-Rawi: Right.

Sen. Ramlogan SC: And (b) will now read, “where a person has responsibility for a child and an infant under the...”—you insert “an”—“an infant under the age of three years...”—take off “and that infant”—“dies as a result....” Are you with me, Madam Chairman?

Madam Chairman: Yes.

Sen. Ramlogan SC: So it will read: “Where a person has responsibility for a child and an infant under the age of three years dies as a result...”—you do not need to say “as a result of suffocation”. Take off as a “result of suffocation”—“dies whilst in bed or any other place”—take off “of rest with that person”—“and it is proved that the death”—not suffocation—“was not caused by” and you would continue reading, (b), (ii) remains as is and before the words—[*Interruption*]

Madam Chairman: Before you continue, after “the death was not caused by”, because the rest of it was dealing with causes of suffocation.

Sen. Ramlogan SC: “The death was not caused by disease or the presence of any foreign body in the throat”—I see.

Madam Chairman: Or foul play. Could you put in words like “foul play” or something—[*Interruption*]

Sen. Ramlogan SC: “Nah, nah.”

Madam Chairman: It changes that? All right!

Sen. Ramlogan SC: Well, “by disease or by any other medical cause.” Well (ii) remains as is. At the end of (ii), just before “the person commits the offence”, we put “and this resulted in the death of the child”.

Sen. Al-Rawi: Look at “place of rest” in (ii).

Sen. Ramlogan SC: Well, we will have to change it a little. The person was at the time of going to bed. We can say, “the person was at the material time under the influence of”. In (ii), “the person was” not—we will delete “at the time of

going to bed or in any other place of rest” and we say “the person was at the material time, under the influence of drink, dangerous drugs or other”—do we want to say other prohibited substances, Sen. Drayton, to take care of your point?

Sen. Drayton: Well, you know prescribed medication is one thing—
[*Interruption*]

Madam Chairman: But then medication is not prohibited.

Sen. Al-Rawi: A substance in combination—[*Interruption*]

Sen. Ramlogan SC: We have influence of drink.

Sen.-Al-Rawi: Yes.

Sen. Ramlogan SC: So this is a separate thing.

Sen. Al-Rawi: A substance may be prohibited, but in combination may be dangerous. So I would leave it as it is. But, hon. AG, I think that that reformulation is actually an excellent one.

Sen. Ramlogan SC: Thank you very much.

Sen. Drayton: So that will take care of the prescribed—[*Interruption*]

Sen. Ramlogan SC: Yes. All right. So that is it. If you can read it back to make sure we got it.

Madam Chairman: Yes. Prevention of cruelty to children, section 4(1):

“Where a person has responsibility for a child and the person—

(a) wilfully assaults...”

Sen. Al-Rawi: Chair, “the person” drops down—[*Interruption*]

Sen. Ramlogan SC: “The person” is a part of (a). It is at the beginning of (a) now.

Sen. Ramlogan SC: Just the words “the person”. Sorry.

Sen. Al-Rawi: It should read “Where a person has responsibility for a child and—”, take “the person” and put it before (a).

Sen. Ramlogan SC: Yes, that is correct.

Madam Chairman: Okay I see. So your change is where the person—okay.
4(1):

“Where a person has responsibility for a child and—

(a) the person wilfully assaults...or;

(b) an infant under the age of three years dies and it is proved—

Sen. Ramlogan SC: An infant under the age of three years dies—

Madam Chairman:—“whilst in bed or any other place, and it is proved that:

- (i) the death was not caused by disease or any other medical cause; and
- (ii) the person was, at the material time, under the influence of drink, dangerous drugs or other substances having a similar effect, the person commits...”

Sen. Ramlogan SC: No, no, the amendment.

Sen. Hinds: Hear why I am unhappy. Madam Chair, hear why I am unhappy. I can have responsibility for a child, but I am in Port in Spain and the child is in Siparia. The child is not in bed; the child is in any other place as we have just reformulated it. I am heavily under the influence of drink and drugs in Belmont and the child dies in Siparia, but I have responsibility.

Sen. Ramlogan SC: But how you caused the death?

Sen. Hinds: This is what is lacking from it.

Sen. Ramlogan SC: No, we just put it in and this resulted in the death.

Sen. Hinds: How could it possibly result—*[Interruption]*

Sen. Ramlogan SC: Well, that is the point.

Sen. Hinds:—if I am in Belmont? Just now! Just now! What we have just done is move far from the mischief that this thing was designed to deal with, that is, the roll over and causing the death negligently in the bed. That is the phenomenon we were attacking. The formulation that we have just put does two things: one, it removes that rendering the whole idea in otiose and two, there is going to be no causation. I could be tight as I tell you in Belmont and the child is in another place, Siparia, but I am responsible.

Sen. Ramlogan SC: You see the counter to that is equally—this is why we did not put in this provision, because equally you do not have to be drunk or high on drugs to roll over a child and suffocate it.

Sen. Hinds: Well, no, but you see in the first part it spoke wilfully.

Sen. Ramlogan SC: It could happen with breastfeeding, that is right.

Sen. Hinds: Yes. In the first part it dealt with wilfully, but in the second part, (ii), I gathered that it was dealing with the case of what we used to call criminal negligence, where, because I have ingested these substances I lost my sobriety and I clumsily rolled over on my baby and killed it, should I be absolved of all responsibility or should I be held to account, because I put myself under the

influence of drink and drugs? That is the question. So if it is that the issue we are trying to treat with is the question of causing the death of a child while rolling over in a bed, typically in a place of rest, sufficiently carelessly to attract criminal sanction, that is what we are dealing with. If that is what we are dealing with, the formulation we have just gone to loses that, and it is far too wide.

Sen. Ramlogan SC: So are you happy with it as it is in its original form? Do you want it deleted or do you want to propose a change?

Sen. Hinds: I was quite happy with it in its original form, except for—
[*Interruption*]

Sen. Ramlogan SC: Well, then Sen. Al-Rawi, you have—[*Interruption*]

Sen. Hinds: No, no, AG, do not try that, do not try that. Do not try to put a wedge in here. My only concern—[*Interruption*]

8.45 p.m.

Sen. Ramlogan SC: So, if I leave in “of rest” would that help you?

Sen. Hinds: No, no, that was not my concern. My concern was, I had begun by—and this is the last time that I am going to say it, I do not want to detain us—explaining in the debate that I am in a place of rest on a king size bed, I am drunk like hell on the left side and the baby dies on that side, and it cannot be demonstrated that the baby died from, as in (i) any of the medical causes, something in the throat and so on. But, I am under the influence of being drunk, I have never made any physical contact so, I thought that ought to have been a link that I—[*Interruption*]

Sen. Ramlogan SC: Causation. We will put in that.

Sen. Hinds: Causation.

Madam Chairman: But would not the word “wilful”—wilfully cause the death.

Sen. Hinds: No, not necessarily wilfully. I thought, AG, that the formulation that we structured to attend to my concern did not meet it. The reason I did not—
[*Interruption*]

Sen. Ramlogan SC: Right. What do you propose?

Sen. Hinds: Just a moment; I am not as brisk as you are. [*Laughter*] You said “and this resulted in the”—after the word “effect”—“and this resulted in the suffocation of the child.”

Madam Chairman: Sen. Hinds, before you go on, I think your point was raised, but after you said your point, the discussion went further to ask does a person even have to be—the first question was: does the person even have to be on a bed or any other place of rest to even suffocate the child in that case. And then the discussion went further until it was—*[Interruption]*

Sen. Al-Rawi: Madam Chairman, I think that it has been answered by the proposed amendment that came earlier before we did the reaction which I am happy with, the Attorney General's proposal. I am asking probably, if we could consider, because, I think, Sen. Hinds has explained his point very well, with the causation added in after the word "effect", if after taking in the amendments proposed by the AG, we were to include the words, at the end of "effect", "and this resulted in death of child", then that is the link between—*[Interruption]*

Sen. Ramlogan SC: That is why I put it.

Sen. Al-Rawi: Exactly. So that means that you could not be in Belmont and the child died in Siparia because it was your drunkenness that caused the death, by way of example.

Sen. Ramlogan SC: Exactly.

Sen. Drayton: So, what about the issue of the prescribed drugs?

Sen. Ramlogan SC: Any drug; it is included. If you know, if you have a child under your care, because the problem is even with prescribed drugs, you have a problem—overuse, abuse. Well, Madam Chairman, I think we will put it as it stands. We need to move on from this clause. So, as formulated, I will ask that it be put and we move on from this clause because we have spent an awful lot of time on it.

Madam Chairman: So undo all the changes?

Sen. Ramlogan SC: No, leave my changes as is.

Sen. Al-Rawi: Madam Chairman, you are adding at the end of the word "effect" in (i) "and this resulted in the death of the child."

Madam Chairman: That was the next point that I was going to raise. To change—

Sen. Ramlogan SC: You have that.

Madam Chairman: No, you have the words "and suffocation of the child".

Sen. Ramlogan SC: Change "suffocation" to "death".

Madam Chairman: So we are changing the word “suffocation” to “death”?

Sen. Prof. Ramkissoon: Madam Chairman, I just want to find out, we are trying to deal with a specific mischief here—suffocation. How often does this happen in the society? Do you have any idea? Is it a regular feature in this society? Is it prevalent?

Sen. Ramlogan SC: No, not particularly.

Sen. Hinds: I would not say it is prevalent: it happens.

Madam Chairman: Death, death!

Sen. Ramlogan SC: That is the point, we are spending a lot of time on things that do not really happen and detaining this Bill. We will be here for the next six months discussing this matter after the 10 years that we have taken to come here.

Sen. Drayton: And when it happens, how do we treat with it under the law right now?

Sen. Ramlogan SC: When it happens, as Sen. Beckles adverted to earlier, you would have either:

- a) a coroner’s enquiry.
- b) the police still have the option when anybody dies—children or adults—to actually charge in the normal course.

Sen. Drayton: So we really do not need the clause?

Sen. Ramlogan SC: That is why we took it out, but the Opposition insisted that we put it back. Hence my frustration.

Sen. Al-Rawi: Just for the record, the clause is very useful. Madam Chairman, the clause as recast—[*Interruption*]

Sen. Ramlogan SC: I took it out. [*Crosstalk*] No, I took it out before it reached the Parliament. It was there when the draft came and I took it out.

Sen. Al-Rawi: Madam Chairman, hon. AG, we are going good. Can I say this: the clause as recast, I think, provides the nexus between the individual causing the cruelty and the death, and it provides centre stage in the manner that we hope to do with bullying for instance. So, as amended, agree with the AG, if we put it to the vote, we could probably go there, but I do not think we need to go there, I think the clause as amended reads well.

Madam Chairman: I read it already but I will read it again for you.

“Whereas a person has responsibility...”

Hon. Senators: “Where”.

Madam Chairman: At that point and that error, I would like to identify that dinner is available as well, so that those persons who may wish to stream, please bear in mind that we do have a quorum required at all times during the sitting. Clause 4(1): “Where a person has responsibility...”

Sen. Ramlogan SC: Can we pause and take into account Sen. Prescott’s point there. He wanted to specifically include “Where a person including a child”—that is what you said?

Madam Chairman: No, they said if you put that in, a child is already included.

Sen. Ramlogan SC: Okay, that is fine.

Madam Chairman: Clause 4(1):

“Where a person has responsibility for a child and—

- (a) the person wilfully assaults, ill-treats, neglects, abandons or exposes the child or causes or procures the child to be assaulted, ill-treated, neglected, abandoned or exposed in a manner likely to cause that child suffering or injury to his physical, mental or emotional health; or
- (b) an infant under the age of three years dies whilst in bed or any other place and it is proved that”—[*Interruption*]

Parliamentary Counsel: “with that person”

Madam Chairman: We did not have that.

Sen. Ramlogan SC: It is there already.

Sen. Al-Rawi: It is there already. We are not deleting “with that person”. Just take off “of rest”, leave “with that person and it is proved that”.

Sen. Ramlogan SC: That is correct.

Madam Chairman: “or any other place with that person and it is proved that—

- (i) the death was not caused by disease or any other medical cause; and
- (ii) the person was, at the material time, under the influence of drink, dangerous drugs or other substances having a similar effect, and this resulted in the death of the child,

(iii) the person commits the offence of cruelty to a child.”

And subsection (2) remains as is.

Sen. Al-Rawi: Madam Chairman, just to make sure that we are including in this, the words “nothing in this section shall be taken as preventing proceedings from being brought against any person in respect of an indictable offence under any written law” as a new subclause (8).

Madam Chairman: Just a minute.

Sen. Al-Rawi: Insofar as we are voting on this clause 4, correct? Or it is only the subsection?

Madam Chairman: Clause 4(1), (2)—yes, clause 4.

Sen. Al-Rawi: Clause 4 has seven subclauses right now. I was not sure if we were taking the vote on all of clause 4. If so, then a new subclause (8) needs to be added which has the words:

“Nothing in this section shall be taken as preventing proceedings from being brought against any person in respect of an indictable offence under any written law.”

Madam Chairman: So tell me what it is. What is that?

Parliamentary Counsel: He is saying repeat clause 6(2) as subclause (8) of clause 4.

Sen. Ramlogan SC: Clause 6(2).

Madam Chairman: Clause 6(2):

“Nothing in this section shall be taken as preventing proceedings from being brought against any person in respect of an indictable offence under any written law.”

And that will be subclause (8). Good!

Sen. Al-Rawi: Question just by way of clarification, and this for the purposes of *Hansard*. I am looking at subclause (4) and it says—this is still clause 4(4):

“Where a person is charged with the offence of neglecting a child in a manner likely to the cause injury to his health under subsection (1)...”

So, we are speaking of a neglecting a child charge, and this really deals in subclause (1) with an offence of cruelty. So was there a distinction between the two? So, if you neglect a child under clause 4(1)—[*Interruption*]

Sen. Ramlogan SC: Your particular focus is on the word “neglecting”?

Sen. Al-Rawi: Yes, because it says where you are charged with an offence of neglecting.

Sen. Ramlogan SC: Well, can we just say “with the offence”—[*Interruption*]

Sen. Al-Rawi: “of cruelty” because cruelty includes wilfully neglecting as defined above in clause 4(1).

Sen. Ramlogan SC: Or we can say “charged with an offence under subsection (1).” All right and delete the rest.

Sen. Al-Rawi: Just let me read it aloud to make sure that we are not throwing the baby out.

Sen. Ramlogan SC: It will cover everything because really and truly, he would not have the mens rea in law anyway.

Sen. Al-Rawi: Yes, that would take care of it.

Sen. Ramlogan SC: So, Madam Chairman, on subclause (4), we will say:

“Where a person is charged with an offence”—take off “the”—“an offence of”—take off the word “of” and you delete the entire next line from “neglecting” straight on to “health”. The rest stays as it is.

So it will read:

“Where a person is charged with an offence under subsection (1), it is an offence...”

Sen. Al-Rawi: Madam Chairman, hon. AG, I need your attention on this. I have 211 more comments which could be quick, but, I am just looking at the fact that the drafting is going to take a bit of time, and it is not for being difficult on it. I am just wondering, insofar as we are sitting as a Senate, a lot of this could be done across the floor, not only here, but let us say we had a special select group of us only for one day—[*Crosstalk*] Just hear me out. If we were to sit across a table, hon. AG, a couple of us, nominated by our peers, and run through the provisions—[*Interruption*]

Sen. Ramlogan SC: I would much rather the sadi roti option for breakfast in the morning and let us continue tonight.

Sen. Al-Rawi: I do not mind. But why I am raising it is that I know that you and I and a couple others have the resolve to go through, but I am wondering whether other people would pay attention and whether we would have diminishing returns.

Sen. Ramlogan SC: You see, if we go with a select committee, they would not be there anyway so this would be the select committee right now.

Question put and agreed to.

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

Sen. Al-Rawi: This is what I mean by having the resolve to go through the particulars, so just a moment on clause 4, please. Sorry, Madam Chairman. No, no, this is us working together to try and get it right. I mean no offence, Madam Chairman.

Madam Chairman: Before you proceed, Sen. Hinds, I would like to indicate to all Members—Sen. Al-Rawi, sorry—part of this probably could have been solved in terms of the actual details if amendments, as indicated at the start of the session, were circulated so that the legal drafters may have had an opportunity to look at them, and even the possibility of accepting them would have been done without this detail debate. So proceed.

Sen. Al-Rawi: If I could just—that is a very important and laudable point, and Mr. President and you, were both careful to caution Senators to come that way prepared. It was only in the course of sitting here today, having sat four times in the last week, that I was able to complete the observations on the Bill. Unfortunately, preparing amendments by way of permutations to policy going one way or the other, is to create four times the work. I simply do not have the resources to do it that way.

So, if the Attorney General tells me go left and I have three options, and if he tells me go right and I have four, then if I were to circulate amendments, I would have to present seven amendments, whereas on the floor, I could only circulate four.

Madam Chairman: Senator, we understand that your workload is tremendous.

Sen. Al-Rawi: No, our workload is what I am talking about.

Madam Chairman: But, at this point, we have had several Senators submit amendments and circulated before we started, but, I hear you and could you make your point. You wanted to go on with clause 4.

Sen. Al-Rawi: Just for one quick moment.

9.00 p.m.

Sen. Al-Rawi: Clause 4(3) states:

“For the purposes of subsection (1), a parent or other person who is legally liable to maintain a child...”

Did we want to consider using the rubric of “responsible for a child”, because this is a narrower subset of person, or is it the intention that we catch only the legal point?

Sen. Ramlogan SC: No, no, this is the intention. That is fine.

Sen. Al-Rawi: That is the intention? Okay. That is for the purpose of clarifying.

Sen. Ramlogan SC: Yes, sure.

Sen. Al-Rawi: In clause 4, we have taken care of the amendment. Thank you, and that would rest my amendments for clause 4.

Sen. Ramlogan SC: Right, so is clause 4 passed?

Madam Chairman: Thank you. So we are finished with clause 4. We have already voted.

Sen. Al-Rawi: One moment, Madam Chairman. Can I ask for the purposes of interpretation later, whether clause 4(7), what is the effect of that, if the hon. Attorney General could look at it with me?

“Reasonable punishment referred to in subsection (6), in relation to any person other than a parent or guardian, shall not include corporal punishment.”

Sen. Ramlogan SC: Yes, that is the intent.

Sen. Al-Rawi: That is the intention. Is it therefore, the intention to officially outlaw corporal punishment by this section?

Sen. Ramlogan SC: Except for parents, yes.

Sen. Al-Rawi: Thank you, Madam Chairman.

Clause 5.

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

Sen. Al-Rawi: In relation to clause 5(1), after paragraphs (a) and (b), going down to the fine:

“...a fine of three thousand dollars and to imprisonment for six months.”

The fine for not wearing your seatbelt is \$1,000. Do we consider that this fine of \$3,000 is enough?

Madam Chairman: I think it is a good question.

Sen. Ramlogan SC: “What yuh saying, it too high?”

Sen. Al-Rawi: Too low.

Sen. Hinds: Would you consider the payer would be a beggar?

Sen. Al-Rawi: I am asking because—*[Interruption]*

Sen. Ramlogan SC: I do not particularly want to raise it because, they are already begging. It is tantamount to a jail term you are talking about there already. It is automatic jail.

Parliamentary Counsel: It used to be \$1,000.

Sen. Al-Rawi: It used to be?

Sen. Prof. Ramkissoon: I would go along with that, but I thought initially it was a bit too low.

Sen. Ramlogan SC: Too low? I see. I am reluctant to increase it, having regard to the—it will really translate into reality for—*[Interruption]*

Sen. Al-Rawi: Hon. Attorney General, I am grateful for the explanation for clarity. I am happy with the explanation.

Sen. Ramlogan SC: Thank you very much, Sir. So, we move on.

Sen. Hinds: Could someone, just before we proceed, just refresh my memory? I have seen it before, the formulation. Could someone assist me in determining what is the difference between begging and receiving alms?

Madam Chairman: Someone can give you alms particularly in a home. You can receive in a home. For example, giving alms, there are people who officially go to places and give alms.

Sen. Hinds: Well, then I would not be doing wrong if somebody gave me something.

Sen. Ramlogan SC: No, but the act of solicitation which precedes the receipt of the money is what constitutes the begging.

Sen. Hinds: But this says “receiving alms”. It says: begging or receiving alms. If I simply receive alms, whether I asked in advance or not, am I committing the offence? Or why should I be committing an offence?

Sen. Al-Rawi: That is my point. Break it down and read it and you will see it that way.

Sen. Hinds: I think the issue here is about begging; this old, antiquated concept of receiving alms.

Sen. Ramlogan SC: It is a wholesale copy over from the 1925 legislation.

Sen. Hinds: We can pull that out.

Sen. Ramlogan SC: And I think that is probably why it is there. Let us look at it.

Sen. Al-Rawi: That came from the old phrase “alms for the poor, alms for the poor”.

Sen. Ramlogan SC: That is exactly where it came from.

Madam Chairman: If you took off “or receiving alms” and simply left for the purpose of begging or inducing the giving of alms?

Sen. Ramlogan SC: Yes, that is fine.

Madam Chairman: Which changes the—*[Interruption]*

Sen. Hinds: So inducing the giving of alms must be an offence?

Sen. Al-Rawi: No, it is out, is what we are proposing.

Sen. Ramlogan SC: We will take off, “or receiving or inducing” and say “for the purpose of begging”.

Sen. Hinds: Yes, which is the mischief.

Sen. Ramlogan SC: All right? You did not have to beg for that one.

Madam Chairman: Is there any other change?

Sen. Dr. Bernard: Madam Chairman, can we not, as a first recourse rather than going to the punitive element of a fine of \$3,000 or imprisonment, suggest counselling as a first recourse?

Madam Chairman: But there is an offence, so what—*[Interruption]*

Sen. Hinds: The only person who got counselling for an offence in this country was Commissioner Gibbs.

Sen. Al-Rawi: Discretion to the hon. Senator, the theory behind the criminal law would be, define the mischief, subscribe an offence by way of sanction, but there is a discretion later down in the Act to apply it or to send for counselling. So, the counselling is included already in the later section.

Sen. Ramlogan SC: I would be very surprised if a court actually goes the distance that we are providing for. I would be very surprised. I rather suspect that what you mention and the alternative options may be you know—*[Interruption]*

Madam Chairman: One thing, Sen. Dr. Bernard, clause 115, I am directed by the drafters, identifies that the court can then make the determination for the person to be referred for counselling or any other rehabilitative intervention or treatment. So, that is within the provision, but I think this clause deals with it as an offence.

Sen. Al-Rawi: We are on the provision of begging. I am close to begging you for a short break because, I cannot, with good conscience, get up and go even though to stretch my legs.

Sen. Ramlogan SC: “Why, yuh doh trust yuh colleagues?”

Sen. Al-Rawi: I trust my colleagues, but I would be denied the pleasure of listening to the hon. Attorney General, and I would not want to do that because he has not been here with us for a while.

Sen. Ramlogan SC: I will get up and take “ah” walk too.

Madam Chairman: I am almost tempted to say that we may move faster and we may actually finish.

Sen. Al-Rawi: Madam Chairman, seriously, even if it is just a short break.

Sen. Drayton: We are not reliant on anyone, but you do not want to miss anything important. I think there is good reason for it.

Sen. Al-Rawi: What I am saying is that we have not risen for four hours so far.

Madam Chairman: Are we finished with clause 5?

Sen. Ramlogan SC: We can take the break at 9.15 p.m.?

Sen. Al-Rawi: Sure, as you please.

Madam Chairman: We may, at least, finish off. Clause 5 will now read:

“(1) A person who—

- (a) causes or procures any child; or
- (b) having responsibility for a child, allows that child, to be in any street, premises, or other place for the purpose of begging, without the written approval of the Authority, commits an offence and is liable on summary conviction to a fine of three thousand dollars and to imprisonment for six months.”

There are no other changes and the rest of the clause stands as is. Yes?

Sen. Ramlogan SC: “Yep.”

Sen. Al-Rawi: Yes, Ma’am.

Question put and agreed to.

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

Clause 6 ordered to stand part of the Bill.

Sen. Dr. Bernard: Madam Chairman, I know we are still timid on the corporal punishment bit. In fact, as I said in my earlier contribution, I wish we had been able to include parents in this and literally abolish all forms of corporal punishment. Is it possible, in clause 6, if only to make a point as to reasonableness, that we include:

Nothing in this section shall be construed as affecting the right of any parent, teacher or other person having the lawful control or charge of a child to administer reasonable punishment to such child and in a manner consistent with the child’s human dignity.

Sen. Ramlogan SC: No, no. This is dealing with the risk of burning. What that will do is—*[Interruption]*

Sen. Dr. Bernard: “Or”, that deals with the risk of burning?

Sen. Ramlogan SC: Yes.

Sen. Dr. Bernard: All right.

Sen. Al-Rawi: Hon. Senator, you might be looking, perhaps you could move it later on for a new insertion into clause 4(7), which deals with reasonable punishment. Maybe you could look at it there.

Sen. Ramlogan SC: Let us move on.

Sen. Al-Rawi: Madam Chairman, did you move that clause 6 be ordered to stand part of the Bill?

Madam Chairman: Yes.

Sen. Al-Rawi: Yes? Forgive me.

Clause 7 ordered to stand part of the Bill.

Sen. Al-Rawi: Just a moment to consider three points which I have here. I am looking at clause 8(1):

“A person who gives, sells, lends or rents a firearm or ammunition to a child commits an offence and is liable on summary conviction to a fine of fifty thousand dollars and to imprisonment for ten years.”

Did we want to include: “otherwise putting the child into possession of the firearm”?

Madam Chairman: Would not all of that also assume possession?

Sen. Al-Rawi: That is my question, just to be sure.

Sen. Ramlogan SC: I think we are happy with the current wording, because that—gives, sells, lends, rents. I do not see how you can put him into possession without giving him, selling him, lending him or renting him.

Sen. Al-Rawi: What I was looking at here was where you are careless in the possession. So, I did not give you, I did not lend you, I did not rent it to you, but I came home late last night—*[Interruption]*

Sen. Hinds: Clause 7(1).

Sen. Al-Rawi: Clause 7(1)?

Madam Chairman: “...fails to take reasonable precautions...”

Sen. Al-Rawi: Right, and this is injury or death by firearm or ammunition. So, clause 7(1) is limited to the fact of causing injury with the firearm, which you forgot.

Madam Chairman: No, Senator, it went on afterwards to say:

“...and by reason thereof, the child has access to the firearm...and injures himself or another...”

Sen. Al-Rawi: Right, and it is the conjunctive “and”, which ties the offence.

Sen. Dr. Balgobin: Maybe it should be “or”.

Sen. Al-Rawi: In clause 8, you are dealing with the fact of the possession per se.

Sen. Ramlogan SC: We could change that to “or”.

Sen. Dr. Balgobin: Just change that to “or” instead of “and”. So, whether he injures someone or not.

Sen. Al-Rawi: That is right. That is the point I am looking at.

Sen. Hinds: He takes it and carries it to school.

Sen. Dr. Balgobin: In clause 7(1), after the bold:

“or ammunition, and by thereof, the child has access to the firearm or ammunition...”

I would change “and” there after the word “ammunition” to “or”.

Sen. Al-Rawi: I am having a little difficulty with the changing of the intention as properly set out in clause 7. What I am driving at, which is why I was looking at it in clause 8, was the case where you are careless in allowing the child to come into the possession of the firearm. That is the mischief I am looking at. I am not sure how to craft it yet.

Sen. Dr. Balgobin: May I suggest, in clause 8(1).

Sen. Ramlogan SC: What do you have within your contemplation that access simpliciter would be criminalized?

Sen. Al-Rawi: No, the point is the firearm licence holder is always guilty of an offence and the subclause further allows you to prosecute under that. But, insofar as we are dealing with peaking it in relation to a child, what I am looking at is where you are a firearm holder under licence and you carelessly allow this child to come into possession, you commit an offence, which is of a higher standard than if you allowed anybody else to come in.

Sen. Ramlogan SC: If a child is in possession of a firearm without a licence that is an offence in any event.

Sen. Al-Rawi: I accept that, but listen to clause 8(1), which says:

“A person who gives, sells, lends or rents a firearm or ammunition to a child commits an offence...”

Sen. Ramlogan SC: Yes. I think the intention there is to deal with the positive act. What you are dealing with is not commission but omission and the intention here is to deal with the commission, a positive act. The negative one, if a child is found in possession of a firearm which was carelessly left by the father who forgot to lock the safe or whatever the case is, the fact that they are in possession of the firearm without a licence, the child would be guilty of an offence, the father would also be guilty of an offence and that is taken care of in the ordinary law. But this here is specific and we are happy to leave it as is.

Sen. Al-Rawi: I can live with that. I was just looking at whether we wanted the omission and commission at the same point.

Sen. Ramlogan SC: No, that was not the intention for this section.

Sen. Al-Rawi: Okay, sure.

Madam Chairman: So we go on to clause 8?

Sen. Dr. Balgobin: While I accept the Attorney General's ruling on the matter, it is worthwhile to note that the Firearms Act does not appear to—I wonder if there is merit in Sen. Al-Rawi's point, that we should have a stiffer penalty for a person who has a firearm—*[Interruption]*

Sen. Al-Rawi:—and who has a child.

Sen. Dr. Balgobin:—and who allows that child to come into possession of the firearm, because the standard penalties in the Firearms Act—*[Interruption]*

Sen. Ramlogan SC:—are very low?

Sen. Dr. Balgobin:—are very low and we had an incident—*[Interruption]*

Madam Chairman: The question that is up here now is whether it should be \$50,000 or more for the fine?

Sen. Ramlogan SC: I am being told that these are on par with the Firearms Act in any event.

Sen. Dr. Balgobin: I think the point was: do we want to make it harsher and if not, well, I accept it.

Sen. Ramlogan SC: I prefer to leave it as is. Do you know why? I understand what you are saying but—picture the scenario of a bright child who watches the combination being entered on the safety deposit box and goes in and enters it and takes the firearm to school. “Now, dey eh kill nobody, dey eh injure deysel” but the mere fact of possession will trigger a higher penalty here and the parent is not at fault. Do you see what I mean? I would prefer to leave it as the positive act for now and let the general law take care of it. All right?

Sen. Al-Rawi: And the actual offence under the Firearms Act is higher. It is 10 years per bullet—*[Interruption]*

Sen. Ramlogan SC: That is the point.

Sen. Al-Rawi:—and per point. So the Firearms Act is actually higher than this.

Sen. Ramlogan SC: It is actually better.

Sen. Al-Rawi: Because one of the questions I had here was whether it was a fetter on the offences, but it is not, in light of the subclause after.

Sen. Ramlogan SC: No, it is not. That is precisely it. So can we put it, Madam Chairman? [*Interruption*] We had already put it. He had just gone back to the question, so clause 7 is finished, so clause 8.

Clause 8.

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

Sen. Al-Rawi: Just for the sake of clarity in the *Hansard*, hon. Attorney General, the use in clause 8(3), which is the exception in respect of indictable offences only, did we want to say “an offence”?

Sen. Ramlogan SC: Yes, “an offence”. In subclause (3), take off the word “indictable” in the last line.

Madam Chairman: “In respect of an offence under any written law”, is that how it would be?

Sen. Ramlogan SC: Yes. We would have to take it off before where we copied.

Sen. Al-Rawi: Yes, Ma’am. If we could, I was just going to make that observation.

Madam Chairman: Just for clarification, clause 8(3) reads:

“...against any person in respect of...”

Delete the word “indictable”, and it continues:

“offence under any written law.”

Sen. Al-Rawi: That applies in revision, not only the one we copied and pasted, but also clause 6(2).

Madam Chairman: Anywhere else it occurs.

Sen. Ramlogan SC: Anywhere this formulation applies, the word “indictable” is deleted.

Sen. Al-Rawi: Thank you.

Sen. Drayton: So, it is just in respect of one, an offence?

Sen. Ramlogan SC: Yes, not indictable. There are summary offences and common law offences. We can leave all in. We break.

Question put and agreed to.

Clause 8, as amended, ordered to stand part of the Bill.

Madam Chairman: At this point, 9.18 p.m., we will take a 30-minute break. Committee stage is now suspended and we will resume at 9.50p.m.

9.18 p.m.: *Committee suspended.*

9.50 p.m.: *Committee resumed.*

Sen. George: Let us go, let us go, come on. Let us go to the clauses quickly.

Sen. Maharaj: Clauses 9 to 123.

Clause 9.

Question proposed: That clause 9 stand part of the Bill.

Sen. Al-Rawi: A few policy issues—*[Interruption]* The policy issue can be included insofar as the amendment may deal with something which you may be opposed to as a matter of policy. The first one is this offence of female genital mutilation. In the United Kingdom, they dealt with this by including sending someone overseas to have the mutilation. I wondered whether we wanted to include that in our section.

The section also has, in clause 9(1)(b), a fine. This is something which is repeated right through in commentary that is going to come in further sections. We contemplate in the architecture of this Bill, allowing for the moneys which you pay on a fine to be paid to the complainant. I wondered why, from clause 9 onward, many of our indictable offences do not have a fine attached to them. If you look at clause 9(1)(b):

“on conviction on indictment, to imprisonment for twenty years.”

My proposal would have been, insofar as we have the ability to pay under further sections, the moneys realized on offences, we have the ability to pay them in terms of costs, damages, and other issues, and I wondered why we did not include a fine in clause 9(1)(b).

The other point that I wondered was—*[Interruption]*

Madam Chairman: Similar to clause 11?

Sen. Al-Rawi: Yes, Ma’am, right through the Bill. This is something which I have many comments on right through. Wherever we have an indictable offence and we prescribe—*[Interruption]*

Sen. Ramlogan SC: That is not a big problem. What we can do is, the same fine that would apply in the summary conviction, can equally be inserted and applied on the conviction and indictment.

Sen. Al-Rawi: We actually have positions in this Bill, which are indictable plus a fine. You would see that we do not have a distinction between summary and fine, and

indictable and no fine. In this very Bill, as proposed, we have a sentence of imprisonment and a fine for indictable offences. I was hoping that we could have kept it straight through. For instance, if you look at clause 44—*[Interruption]*

Sen. Ramlogan SC: We will be consistent and have that throughout.

Sen. Al-Rawi: Okay, good! And the example could be found in clause 44 of the Bill later on. Clause 44, for instance says:

“The court may...”

Sorry, this is “compensation for complainant”, but you would see that we have, and I would point it out in other sections where the fine is there for indictable thank you, Hon. Attorney General, for that.

The other position is in clause 9(2)(a):

“A person shall not be liable under subsection (1) if—

- (a) the performance of a surgical operation on a child is necessary for her physical or mental health and the operation is performed by a medical practitioner;”

The issue of midwives performing surgeries happens. We have taken cognizance of somebody other than a medical practitioner in clause 9(2)(b), where we have a person undergoing a course of training. If I were to summarize the commentary in respect of clause 9, it would be as follows:

Firstly, sending the child abroad where the mutilation is done; the person who sent that child, knowingly. Secondly, it would be to include, relative to the imprisonment for 20 years on indictment, a fine of an appropriate level and that would be to allow for clause 44 to bite for the payment to the complainant. Then I would look at clause 9(2) in relation to persons other than medical practitioners not having liability, including midwives and other persons who can perform surgeries lawfully. Those would be the comments in clause 9.

Sen. Ramlogan SC: The first one, with respect to penalizing or criminalizing the option of sending them aboard to have the genital mutilation, I think in the United Kingdom that provision exists because of the close proximity between the United Kingdom as a matter of sheer geography, with the Middle East and other countries where it is actually prevalent and strong. In Trinidad and Tobago, this is not as strong a problem as exists in some of those countries where the communities that have migrated and settled in the United Kingdom come from. We are content to leave it as a matter of policy territorially for Trinidad and Tobago.

With respect to the second one—[*Interruption*]

Sen. Al-Rawi: I am happy with that explanation. Thank you.

Sen. Ramlogan SC: Sure. With respect to the second one, I have no difficulty including a fine and imprisonment. The same fine that would apply on the summary conviction can be easily inserted throughout the legislation. Wherever that problem occurs, to save time, the same fine can be inserted. [*Interruption*] The same fine I am saying Ma'am. That is what same fine means. The same fine will be inserted throughout. The reason for that is, remember the accused may opt for either summary or, because you are creating either way.

Sen. Al-Rawi: Yes, an offence triable either way.

Sen. Ramlogan SC: If you make it top-heavy on the indictment they would just go for summary trial.

Sen. Al-Rawi: Yes.

Sen. Ramlogan SC: And we already have on the summary side, a term of imprisonment twice as much, which is 10 and 20, and I suspect that replicates itself throughout the Bill, which is why I am prepared to just go with the same fine and you put it before, which will satisfy your point.

Sen. Al-Rawi: My point was to allow the access through clause 44 for payment to the complainant.

Sen. Ramlogan SC: Sorry?

Sen. Al-Rawi: My point was, and I think you are on it, to allow the fine, whatever value you come up with, to be paid on the indictment offence so that we can access it through clause 44, which is the provision in this Bill, which allows us to pay moneys to the complainant.

Sen. Ramlogan SC: “Yep”, well, that is fine. That would be done by operation of clause 44.

Sen. Al-Rawi: Sure.

Sen. Ramlogan SC: So, we do not need a special additional provision here for that.

Sen. Al-Rawi: So, we would put a catch-all phrase, where any offence is on indictment and no fine has been prescribed that you provide a fine in general? How would you treat with it?

Sen. Ramlogan SC: No, we would do it as we go along.

Sen. Al-Rawi: Okay, because I think it would be neater if you just provided the same fine as you say, summarily, to take care of the triable offences either way and we go that way.

Sen. Ramlogan SC: That is fine, or else you render nugatory and meaningless the indictment option, because people would just opt for summary trial. You see what I mean?

Sen. Al-Rawi: Fine.

Sen. Ramlogan SC: Quite frankly, as it is right now, they may very well do it.

Sen. Al-Rawi: And the medical practitioner?

Sen. Ramlogan SC: With respect to the midwives provision, I think the idea is really to—*[Interruption]*—“Yeah” in law, the midwives really are not allowed to actually do surgery. So we cannot leave it in because we would be legalizing something that is not lawful.

Sen. Al-Rawi: Sure. Thank you.

Sen. Ramlogan SC: The only change we will make is: “on conviction and indictment”, we insert “to a fine of fifty thousand dollars and to imprisonment for ten years.”

10.00 p.m.

Sen. Al-Rawi: Is it the prosecutor’s option?

Sen. Ramlogan SC: “Yeah”, that is what I am asking—*[Interruption]*

Sen. Al-Rawi: “Yeah”, to clarify prosecutor or defence.

Sen. Ramlogan SC: I do not know if it is an either way offence.

Sen. Al-Rawi: Could we do it this way? If we agree in principle that an appropriate fine ought to be tagged on in all of these places, I would be very happy to leave it in your discretion as to quantum to take care of the issues being solved, one is it triable either way and, two, whose discretion to try—*[Interruption]*

Sen. Ramlogan SC: For now, I am content to just put it in as the \$50,000 and let us move on; we could always—I do not anticipate a problem.

Sen. Al-Rawi: Okay. And if I could suggest to Senators, through you, Madam Chairman, that we leave the discretion of the amount to go up if you see the room for it to go up, and it would not prejudice, I would be happy with it going up.

Sen. Ramlogan SC: Sure. And this one, we will run with the \$50,000.

Madam Chairman: Clause 9(1)(b) as amended would read:

“on conviction of indictment to a fine of fifty thousand dollars and to imprisonment for twenty years.”

The rest of the clause will remain as is.

Question put and agreed to.

Clause 9, as amended, ordered to stand part of the Bill.

Clause 10.

Question proposed: That clause 10 stand part of the Bill.

Sen. Al-Rawi: Madam Chair, again, it may be quick, “the wheresoever done factor.” I accept the very good explanation you gave of the UK and the migrant communities there; did we want to consider “wheresoever?” Because here it is:

“A person who aids, abets, counsels or procures a girl to...mutilate...”

So that is the girl doing it herself, and she may not do it here; in a sense it is a voluntary participation.

Sen. Ramlogan SC: There are practical reasons why I do not want to go down that road. You would need to get evidence from the place where she had it done to actually prosecute that charge, because you need to get evidence from the doctors to say she did it voluntarily, or they did it involuntarily, as the case may be and so on, and it becomes a little unworkable and impractical in real life. So I would prefer to leave it as is, because in any event if they go to a country where it is illegal also, it will be taken care of by the laws of that country and the person may very well be disbarred from practising medicine.

Sen. Al-Rawi: Even with the mutual assistance aspect, and if you were to look at it from a position this way, if we included the “wheresoever”, it does not fetter the right for its operation here; we may not go there.

Sen. Ramlogan SC: You see, the reason I do not want to include the “wheresoever” is this: she may have it done in a country where it is lawful, and then she returns to a jurisdiction where it is illegal, and then what happens? You see?

Sen. Al-Rawi: Well, under our Act it would be illegal, because it is to punish the person who procures it.

Sen. Ramlogan SC: I know. A father and a daughter live in Saudi Arabia where it is legal; they actually have it done and then they both relocate to Trinidad and Tobago. What? Are we then going to charge the father in Trinidad and Tobago because it is illegal here, but it was legal there? You see?

Sen. Al-Rawi: We actually have a provision later in the Bill that allows exactly that, clause 121.

Sen. Ramlogan SC: On this one I think the spotlight is really on the local situation and I prefer to leave it there for now.

Sen. Al-Rawi: Okay.

Sen. Ramlogan SC: But your point is noted.

Sen. Ramlogan SC: I think Sen. Baptiste-Mc Knight is giving you some wise counsel and saying, no, no, no. [*Laughter*]

Sen. Drayton: Why is the word “own” there after “her?”

Sen. Ramlogan SC: I beg your pardon?

Sen. Drayton: Why the word “own?” Is it to make sure it is not somebody else’s? I am trying to figure out why that is there?

Sen. Ramlogan SC: She wants to change “own” to “the”? “It is ah drafting thing.”

Madam Chairman: It is hers. It is on her “own” self.

Sen. Ramlogan SC: You do not need the word “own.”

Sen. Drayton: Yes. Yes, that is my point.

Sen. Ramlogan SC: Well, I am agreeing with you.

Madam Chairman: Just for emphasis mostly, I think. [*Crosstalk*]

Sen. Ramlogan SC: We wanted to make sure, doubly sure, but it is taken out.

Sen. Drayton: Thank you for taking it out.

Madam Chairman: The question is that clause 10 as amended by deleting the word “own” after “her” in line 3, now stand part of the Bill.

Question put and agreed to.

Clause 10, as amended, ordered to stand part of the Bill.

Clause 11.

Question proposed: That clause 11, stand part of the Bill.

Sen. Ramlogan SC: Madam Chair, I beg to move that clause 11 be amended as follows:

In the chapeau, insert after the word “brothel” the words, “as defined in section 2 of the Sexual Offences, Act,”

Sen. Al-Rawi: Oh, great, this takes care of my very concern.

Sen. Ramlogan SC: Good! “Well den doh make no big contribution on it nah man.” [Laughter]

Madam Chairman: So, you agree to this amendment?

Sen. Al-Rawi: Yes, Madam Chairman. My only question was whether we wanted to include it in the definition section as opposed to here. And the reason would be “brothel” as defined in this Bill would be a little better in the definition section.

Sen. Ramlogan SC: As a matter of fact, in the drafting it is only used once in this entire Bill and, therefore, it is—[Interruption]

Sen. Al-Rawi: Okay, no repetition. I will accept that. And responsibility as we have cast it here stands in light of the amendment. So thank you, Madam Chair.

Sen. Hinds: One moment please, Madam Chair. Does someone have section 2 of the—[Interruption]

Sen. Al-Rawi: I have it.

Sen. Hinds: How is it defined?

Sen. Al-Rawi: “‘brothel’ means a place resorted to by persons of either sex for the purpose of prostitution;”

That is the definition in section 2 of the Sexual Offences Act. And just to point out here AG, here is where we have the \$50,000 indictment tag, if you look at clause 11(b); so it is consistent.

Sen. Ramlogan SC: Sure. Thank you very much.

Sen. Hinds: Right. What about the question of “allow” as opposed to “knowingly allow”?

Madam Chairman: Can you not knowingly allow?

Sen. Hinds: Well, yes, but I have to have some *mens rea*, because if I am sending my child to that location without being aware of the activities conducted thereat, I may not be guilty in the strict sense of that—and it is a serious criminal offence, and I may very well send the child.

Sen. Ramlogan SC: Well, I think this imports some *mens rea*—

Sen. Hinds: I suspected that. However, I am allowing; it and doing it, but not knowing that it is—

Sen. Al-Rawi: “Ah ha”, I can assist here. Section 23 of the Sexual Offences Act has a section:

“SUPPLEMENTAL PROVISIONS

(1) A person who—

(a) knowingly lives wholly or in part...

(b) in any place solicits...

is guilty of an offence...

(2) If it appears to any Magistrate...on oath...there is reason to suspect...”

So the importation here is with knowing, so we may want to reflect on the Sexual Offences Act from which we get this, particularly insofar as—*[Interruption]*

Sen. Ramlogan SC: So, what you are proposing?

Sen. Al-Rawi: Well, “knowingly”

Madam Chairman: To allow, knowingly.

Sen. Ramlogan SC: Well, I mean the intention is—just let me confer with the Minister.

Sen. Hinds: I am saying, I sent my child there, and I frequently send my child, I am not denying that, but I did not know—*[Interruption]*

Sen. Drayton: It could be a home.

Sen. Hinds: That is the point. It could be a home, based on the definition. So I think we should insert the word “knowingly”.

Sen. Ramlogan SC: Madam Chairman, we can insert the words “knowingly allows” and I want to add “or encourages”.

Madam Chairman: Attorney General, I just have one question here. When you say “to frequent a brothel”, does it mean that it is okay to go occasionally?

Sen. Ramlogan SC: Well, the word frequent is the English language—*[Interruption]*

Sen. Hinds: “or frequent”.

Sen. Ramlogan SC: “or frequent”.

Sen. Hinds: You knowingly allow—*[Interruption]*

Sen. Al-Rawi: Madam Chairman, sorry. Hon. AG—*[Interruption]*

Madam Chairman: No, I am asking: when does it become wrong? At which point, once, twice or occasionally?

Sen. Al-Rawi: That is for the discretion of the judge in terms of point, but if I could point out—*[Interruption]*

Sen. Ramlogan SC: Hold on! Hold on! Let us deal with the Chair’s point. I understand what you are saying, so maybe we should say “or visit”, but you see the problem? I do not know of many young men in this country who have grown up to the stage of adulthood without having visited one of these places, and the problem is then we will be criminalizing the visit as part of the exploration and adventures of adolescents. I see Prof. Ramkissoon nodding vigorously in agreement. *[Laughter and crosstalk]*

Sen. Deyalsingh: “Yuh nodding yes or no?” *[Laughter]*

Madam Chairman: No, the question is not so much—

Sen. Hinds: Tell him purely from a scientific—

Madam Chairman: It is not so much the young man who is visiting the place, it is the question of the services of the young ladies who might be under this particular piece of legislation, the rights we are trying to protect, far more than the rights of the young man to go.

Sen. Al-Rawi: Madam Chairman, let me just point to this; this Bill repeals section 21 of the Sexual Offences Act in the First Schedule. Section 21 in the Sexual Offences Act says:

“(1) A person who—

- (a) being the owner, occupier or manager of premises; or
- (b) having control of premises or assisting in the management
or control of premises,

permits a minor under sixteen years of age to resort to or to be in or upon the premises for the purpose of having sexual intercourse with any person is guilty of an offence and is liable on conviction to imprisonment for ten years.”

Subsection (2) which is now repealed:

“(2) It is a defence for a person charged under this section to prove that he did not know or had no reason to believe or suspect that the minor was under the age of sixteen years.”

Just to point out, this section 21 which we are repealing is a well-drafted section which imports the knowledge, and the frequency aspect which you just mentioned, Madam Chairman.

Madam Chairman: But there is also the difference there; section 21 of the particular Act deals with the person who owns the premises, whereas clause 11 here, refers to the person who has responsibility for the child.

Sen. Al-Rawi: That is what I just said; who permits the child to go. I understand that, but what I am pointing out here is that the two concerns that came onto the floor just now, was the aspect of knowledge—*mens rea*—and secondly, the issue of frequency as defined.

Madam Chairman: No. No. No. I would like to ask—I understand that point, and I saw the allowance of “knowingly” but the word “frequent”, at what point do we stop?

Sen. Ramlogan SC: I was going to change it to say “visit.”

Sen. Al-Rawi: Here we have “resort to”.

Sen. Ramlogan SC: It would now read:

“A person having responsibility for a child who knowingly allows or encourages that child to reside in or visit a brothel...”

Then I raised the question about whether or not that is going too far, because a visit to a brothel if we are going to make—[*Interruption*]

Sen. Al-Rawi: I would prefer “frequent.”

Sen. Ramlogan SC: You see, “frequent” is more visits, and you see you need to take into account the—[*Interruption*]

Sen. Al-Rawi: The one-off occasion.

Madam Chairman: But the prostitute or the person whose services have been procured, is that not the object of this legislation?

Sen. Al-Rawi: That is why I raised section 21.

Sen. Ramlogan SC: And I know—[*Interruption*]

Madam Chairman: So rather than saying that we should allow maybe more than one visit, the onus of this here is the person who is on the receiving end.

Sen. Ramlogan SC: Well, more importantly, this does not protect the child, this is really aimed at the person with responsibility who allows it.

Sen. Al-Rawi: That is right, nor is it addressing the issue of prostitution per se.

Madam Chairman: It is in the going into the building side.

Sen. Al-Rawi: To be in a house of ill repute.

Sen. Ramlogan SC: It criminalizes the bad parent, the bad legal guardian, and the practical point is that a lot of prostitutes actually take the young child with them.

Madam Chairman: Prostitution itself is illegal.

Sen. Ramlogan SC: Yes.

Sen. Al-Rawi: Madam Chairman, we are not dealing with the issue of prostitution here.

Sen. Ramlogan SC: We are not dealing with that.

Sen. Al-Rawi: We are dealing with the issue of being found in a place where prostitutes are, and you do not have to be with the prostitute.

Madam Chairman: So you can visit occasionally?

Sen. Al-Rawi: If we look at it “frequent” takes care—first of all the clause deals with the fact of being in the place on an ongoing basis and being subject to morality concerns. It does not deal with the aspect of prostitution in and of itself, that is dealt with elsewhere in the law, but the point is that insofar as it puts an obligation on the parent or person responsible, I would think that the wider term “frequent” is the better term to use.

Sen. Ramlogan SC: I would want to leave the “frequent” but just include the change:

“responsible for a child, knowingly, allows or encourages...”

That is all.

Sen. Al-Rawi: Yes.

Madam Chairman: The question is that clause 11 be amended as circulated and further amended. By inserting after “who” “knowingly allows or encourages that child to reside in or to frequent a brothel commits an offence and is...”

Sen. Al-Rawi: The circulated amendments, Madam Chairman.

Madam Chairman: I did not say that. And it is inserted where?

Sen. Al-Rawi: After the word “brothel.”

Question put and agreed to.

Clause 11, as amended ordered to stand part of the Bill.

10.15 p.m.

Clause 12.

Question proposed: That clause 12 stand part of the Bill.

Sen. Ramlogan SC: Madam Chairman, I beg to move that clause 12 be amended as follows:

In 12(4)(a):

Delete after the words “into a” the words “recognizance for a period of not more than eight years” and substitute the word “recognisance”.

Sen. Al-Rawi: Madam Chairman, similarly, at clause 12(1), after the word “life”, the issue of the inclusion of a fine here. Again, after “ten years”, under subclause (2), the issue of a fine again to allow the importation through clause 44 of the Bill for the payment to the complainant. The question is how appropriate the fine would be because this is not—[*Interruption*]

Sen. Ramlogan SC: What clause are you on, sorry?

Sen. Al-Rawi: 12(1).

Sen. Ramlogan SC: I think the intention is to have imprisonment for life. No fine.

Sen. Al-Rawi: The “ten years” comes later in (2). On (1), why I would like you to consider the issue of a fine is that this deals with the person who has caused the effect and the Bill very laudably provides the clause 44 which allows you to be paid.

Sen. Ramlogan SC: I see where you are headed, but the problem is that the person who will be—this really caters for a person who has the responsibility for a child, but is pimping out the child or encouraging them in this to get money. When you put an imprisonment for life provision together with a penalty fine provision, I do not really know, practically, if they imprison them for life, they will pay the fine.

Sen. Al-Rawi: Here is what I was thinking, hon. Attorney General, on the Proceeds of Crime Act, in forfeiture of property, because pimps are usually perceived as persons having some form of means and where I was looking on is in the victim's protection and the rights of victims. Insofar as I would look to counselling and to payment and rehabilitation, even though we have a life imprisonment that is where I was going.

Sen. Ramlogan SC: It was pointed out that in the Sexual Offences Act, we have no fines for these offences and they would want to achieve some measure of consistency.

Sen. Al-Rawi: We are repealing in the Sexual Offences Act all things to do with children specifically, in the First Schedule of this Bill and we are now open, insofar as we are dealing with the Children Bill, to include a fine here, particularly because we are in clause 44 having the ability to deal with the redress to the victim.

Sen. Ramlogan SC: We have to leave it as is because the concept of the fine is inconsistent with the life imprisonment.

Sen. Al-Rawi: How about something under the Proceeds of Crime Act? This person who is guilty of putting this child into prostitution, now repealing the Sexual Offences Act, how else can we get the measure of retribution or recovery or position for the child? That is what I am looking at.

Sen. Ramlogan SC: I understand. The practicality of it is what we are discussing. Realistically, if a man has to pimp out a child to make a living, he may not have much in his name. I understand what you are driving at. It is a noble objective, which is to have something there in the kitty for the child who has to move on without this person who would have been *in loco parentis*.

Sen. Al-Rawi: And the consistency in law, hon. Attorney General, is the Trafficking in Persons Act.

Sen. Ramlogan SC: We will put a fine of \$500,000.

Sen. Al-Rawi: Hon. Attorney General, if you could think—the time may be too tight now, but the consistency in law—you raised a good point, the Trafficking in Persons Act specifically allows us to get money for these kinds of things, so you might want to reflect upon that after in terms of a subsequent amendment you may want to move.

Sen. Ramlogan SC: Five hundred thousand dollars and imprisonment for life.

Madam Chairman: And where are you putting this?

Sen. Ramlogan SC: Just before “is liable on conviction on indictment, to a fine of five hundred thousand dollars and to imprisonment for life”. That is in 12(1).

Madam Chairman: Sorry. Is liable on conviction—[*Interruption*]

Sen. Ramlogan SC: “is liable on conviction on indictment, to a fine of five hundred thousand dollars and to imprisonment for life.”

Sen. Al-Rawi: Then the issue of subclause (2), after (a) and (b):

“A person who—

(a) being the owner...

(b) having control...

permits a child to resort to...”

This comes from the Sexual Offences Act:

“or to be in or upon the premises for the purpose of causing or encouraging the seduction, prostitution...and is liable on conviction on indictment...”

If you can use the “fifty thousand dollars and ten years” here, I would be grateful.

Sen. Ramlogan SC: Yes, that is fine; “fifty thousand dollars and ten years”. That is fine. I think we should go a little higher than \$50,000 on this one because this is really the owner of the club. I think, on this one, we should go for about—let us make it \$250,000.

Madam Chairman: That will be in 2(b)?

Sen. Ramlogan SC: Yes.

Madam Chairman: How much you had said?

Sen. Ramlogan SC: Two hundred and fifty thousand dollars and ten years.

Sen. Al-Rawi: And the reason would be because of the owner and the fact that you could forfeit the property under the Proceeds of Crime Act.

Sen. Ramlogan SC: I see Sen. Drayton and Sen. Baptiste-Mc Knight happy with that one.

Madam Chairman: Just for clarification:

“12(a) person having responsibility...”—it goes on and says—“that child commits an offence and is liable on conviction on indictment, to a fine of five hundred thousand dollars and to imprisonment for life;

(2)(b) ...prostitution or sexual penetration of that child commits an offence and is liable on conviction on indictment, to a fine of two hundred and fifty thousand dollars and imprisonment for ten years.”

Sen. Al-Rawi: If I could make reference to subclause (4) to clarify whether we intended—[*Whispered consultation*]

Madam Chairman: That is different.

Sen. Al-Rawi: Could we find out to be sure? I would not want to defeat it that way in the elective point. I can make a call as well. Fitz, you want to make a call to Gilbert, maybe?

Sen. Hinds: Yes.

Madam Chairman: So, we will come back to clause 12?

Sen. Al-Rawi: I would like to make reference to subclause (4), just to clarify whether we intended—we are going to ask a question and come back to it, relative to the elective aspect. I agree with you, if there is a risk that they may elect for the fine—[*Interruption*]

Sen. Ramlogan SC: When you put “and a fine and imprisonment”, I want to make sure that is not giving the court the option of imposing the fine with no sentence or imprisonment, or vice versa as the case may be. If it gives the court the option of imposing the fine and not the imprisonment, then that really is not the intention. We will have to get that clarified, but we will move that it, subject to that. Faris, flag those areas for me.

Sen. Al-Rawi: Sure. Something that may not be an issue, but just for clarification on clause 12(4).

“(4) Where it is shown to the satisfaction of a Court, on the complaint of any person, that a child is, with the knowledge of the parent or guardian...”

Children Bill 2012
[SEN. AL-RAWI]

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Compare that with (3):

“(3) Where the child referred to in subsection (1) has been seduced, becomes a prostitute...the person having responsibility for that child...”

So we have gone with the broad umbrella of responsibility and then we have gone parent and guardian in subclause (4). The issue is whether we want to keep with the wider scope of the person with responsibility.

Sen. Ramlogan SC: We can change that to the person with responsibility. One second. That has to remain as is.

Sen. Al-Rawi: I just wanted to get the policy right; whether it was parent and guardian you are actually looking at.

Sen. Baptiste-Mc Knight: Before we move on, Madam Chairman.

Madam Chairman: We are coming back to clause 12. We are not voting on it at this point. You want to wait until we come back to it or do you want to raise it so that we can consider it before?

Sen. Al-Rawi: I think we should raise it now.

Madam Chairman: If you want to raise it, raise it.

Sen. Baptiste-Mc Knight: Under 4(a), I wonder whether a maximum of eight years is appropriate. What if the child were younger than 10?

Sen. Ramlogan SC: That has been changed.

Sen. Baptiste-Mc Knight: It is?

Sen. Ramlogan SC: That is deleted. It is “enter into a recognisance to exercise due care”. That was taken out because of the very point you made.

Sen. Al-Rawi: Madam Chairman, I would raise here 13(1)(b) subject to the clarification that we are going to receive.

Sen. Ramlogan SC: Could we leave all those points until we get a clarification?

Sen. Al-Rawi: We are just flagging it there because we may not be able to devote—[*Interruption*]

Sen. Ramlogan SC: I do not have difficulty with that provided it is conditional.

Sen. Al-Rawi: I am on the same page with you, so 13(1)(b), if we can then defer this one as well.

Sen. Ramlogan SC: What we are agreeing, Madam Chairman, is that the penalty provisions throughout the Bill, subject to what Sen. Hinds tells us now, we will either include the option of the fine or not. What we do not wish to do is to give the court the option of fining without sentencing because that is not our intention and that is what I fear is in fact the correct interpretation. So, Sen. Hinds is now going to tell us.

Sen. Hinds: I have just been advised, as we had thought, the court does have the option and so it is.

Madam Chairman: What do you propose?

Sen. Hinds: Also, there is a matter before the court right now where, in the Dangerous Drugs Act, Parliament sought to restrict the judges' sentences by saying a minimum of X number of years.

Sen. Ramlogan SC: I am grateful to you, Senator. That is the point I was making when this option came up. We will have to revisit those provisions where we created the option of a fine.

Madam Chairman: So, just leave it as the original wording?

Sen. Ramlogan SC: Yes. I have just gotten the section. It is actually section 68(3) of the Interpretation Act. I will read it because we are all legislators and it is good to know this. Section 68(3) of the Interpretation Act deals specifically with penalties. It reads as follows:

“Where in any written law more than one penalty linked by the word ‘and’ is prescribed for an offence, this shall be construed to mean that the penalties may be imposed alternatively or cumulatively.”

We will now leave it as is and delete all those amendments Sen. Al-Rawi proposed in respect of the penalties provision. That will save us a lot of trouble going forward as well.

Sen. Al-Rawi: Madam Chairman, I took the opportunity to confer and, on the issue of caution—I just spoke with senior counsel who is dealing with the matter in the Court of Appeal, relative to minimum terms of imprisonment. He has advised, and that is subject to us all here, whilst it is permissible, there is a challenge to it and it would be better to err on the side of caution.

10.30 p.m.

So the only thing that I would ask the hon. Attorney General to do is to look at the issue further in terms of other advice that he may receive after, and, if it is permissible and the court comes in our favour, to look at it then.

The other thing that I had asked the hon. Attorney General to look at is whether—well this may be done under clause 44 when we come to it—there is some way of invoking the Proceeds of Crime Act or some other measure.

Sen. Ramlogan SC: I understand what you are aiming at and, as I said, it is a noble aspiration, but what we want to do is to pass this Bill, and you see that is something we can look at separately. That is a very good idea, but it requires a policy decision and a careful study, because there is a lot to take into account in terms of asset tracing, asset forfeiture and asset management, because you are dealing with minors.

Sen. Al-Rawi: I will be happy once you look at it.

Sen. Ramlogan SC: And I will. All right? Let us move on, but we will have to undo those changes we made before. I do not know if we can do that by way of sweeping agreement now.

Sen. Al-Rawi: Yes.

Question put and agreed to.

Clause 12, as amended, ordered to stand part of the Bill.

Clause 13.

Question proposed: That clause 13 stand part of the Bill.

Sen. Al-Rawi: Madam Chairman, I was looking at the definition of “payment” in clause 13(2) which says:

“In this section ‘payment’ includes the discharge of an obligation to pay or the provision of goods or services.”

This is somewhat narrower than the general definition of “consideration at law”. Did we capture everything there?

Sen. Ramlogan SC: It includes, so it is not exhaustive. All right?

Sen. Al-Rawi: Thank you. One moment. Thank you.

Question put and agreed to.

Clause 13 ordered to stand part of the Bill.

Clause 14.

Question proposed: That clause 14 stand part of the Bill.

Sen. Ramlogan SC: Madam Chairman, I beg to move that clause 14 be amended as follows:

- A. Renumber clause 14 as clause 14(1).
- B. In the chapeau of clause 14(1), as renumbered, delete after the word “Tobago” the words “or elsewhere”.
- C. Insert after subclause (1), as renumbered, the following subclause:
 - “(2) Where a national of Trinidad and Tobago does an act in a country outside of Trinidad and Tobago which would, if it had been done in Trinidad and Tobago, constitute an offence under this section, he is liable to the penalty prescribed under subsection (1).”

Madam Chairman: The Government has circulated several amendments.

Sen. Ramlogan SC: There are three amendments circulated. It is really to deal with the extraterritorial aspect of it, Sen. Al-Rawi. It is A, B, and C, but C is the main one really.

Sen. Al-Rawi: Okay, thanks. I had raised this in the debate, thank you. I have a question here, and it arises on a subsequent clause so we could resolve the issue now. In the United Kingdom—I think it is clause 121 later—they prescribed a resident also to be liable as opposed to national only. The issue is whether we wanted to do that, because we may have people who are resident here properly, and who are not nationals, and the issue is whether we want to catch them. I think it is in particular—I have the section here—

Sen. Ramlogan SC: I am advised that this was considered and they wanted to leave it to nationals, and I will go along with the team in that regard.

Clause 14, as amended, ordered to stand part of the Bill.

Clause 15.

Question proposed, That clause 15 stand part of the Bill.

Sen. Ramlogan SC: Madam Chairman, I beg to move that clause 15 be amended as follows:

- A. Renumber clause 15 as clause 15(1).
- B. In the chapeau of clause 15(1), as renumbered, delete after the word “Tobago” the words “or elsewhere”.
- C. Insert after subclause (1), as renumbered, the following subclause:
 “(2) Where a national of Trinidad and Tobago does an act in a country outside of Trinidad and Tobago which would, if it had been done in Trinidad and Tobago, constitute an offence under this section, he is liable to the penalty prescribed under subsection (1).”

Question put and agreed to.

Clause 15, as amended, ordered to stand part of the Bill.

Clause 16.

Question proposed: That clause 16 stand part of the Bill.

Sen. Ramlogan SC: Madam Chairman, I beg to move that clause 16 be amended as follows:

- A. Renumber clause 16 as clause 16(1).
- B. In the chapeau of clause 16(1), as renumbered, delete after the word “Tobago” the words “or elsewhere”.
- C. Insert after subclause (1), as renumbered, the following subclause:
 “(2) Where a national of Trinidad and Tobago does an act in a country outside of Trinidad and Tobago, which would, if it had been done in Trinidad and Tobago, constitute an offence under this section, he is liable to the penalty prescribed under subsection (1).”

Sen. Al-Rawi: Madam Chairman, hon. Attorney General, when you look at clause 16, through you, Madam Chairman, you will notice that we deal with prostitution on the elsewhere basis which is why I was referring to it. It is amended?

Sen. Ramlogan SC: It is amended.

Sen. Al-Rawi: You took it away. I have seen the amendments, I agree.

Question put and agreed to.

Clause 16, as amended, ordered to stand part of the Bill.

Clause 17.

Question proposed: That clause 17 stand part of the Bill.

Sen. Al-Rawi: Madam Chairman, I am just looking to the definition of “prostitute” under the Sexual Offences Act. “Prostitute” under the Sexual Offences Act, section 2, reads as follows:

“‘Prostitute’ means a person of either sex who engages in prostitution.”

We have here in this part: “‘prostitute’ means a person who...” and then we have gone on to define it. Did we want to be as expansive as that or did we want to incorporate the sexual offences?

Sen. Ramlogan SC: I think so, to have a definition and say, “A prostitute is somebody who engages in prostitution”—[*Interruption*]

Sen. Al-Rawi: No, they defined “prostitution” as well in the Sexual Offences Act.

Sen. Ramlogan SC: Well, I think this covers what we want really. Where they define prostitution, is it at odds with this?

Sen. Al-Rawi: Yes, it is. The “prostitution” definition in the Sexual Offences Act reads as follows:

“...means the offering of the body by a person of either sex for the purpose of arousing or gratifying the sexual desire of another for payment in return.”

Sen. Ramlogan SC: We did look at it, and ours was deliberately drafted wider—[*Interruption*]

Sen. Al-Rawi: Okay.

Sen. Ramlogan SC: —having regard to the nature of this—

Sen. Al-Rawi: I was just looking for the consistency, particularly, in light of clause 122 later which cuts off the other clause.

Sen. Ramlogan SC: Sure. Madam Chairman, we will go with it as is; and “person” includes man and woman.

Question put and agreed to.

Clause 17 ordered to stand part of the Bill.

Clause 18 ordered to stand part of the Bill.

Clause 19.

Question proposed: That clause 19 stand part of Bill.

Madam Chairman: Is it for clause 19 or you are going back?

Sen. Al-Rawi: Well, Madam Chairman, I am hoping to assist you by telling you that in light of some resolutions that we have had on policy, I have no issues—and this is subject to any other Senator—with clauses 18, 19, 20 or 21. [*Crosstalk*] That is why I am saying subject to anyone else.

Madam Chairman: Amendments were circulated from Sen. Baptiste-Mc Knight for clause 20, and we also have an amendment by the Government for clause 22.

Sen. Al-Rawi: So, which clause, Madam Chairman, sorry?

Madam Chairman: So we are on clause 19. We would just move quickly along until the amendments are there.

Question put and agreed to.

Clause 19 ordered to stand part of the Bill.

Clause 20.

Question proposed: That clause 20 stand part of the Bill.

Sen. Baptiste-Mc Knight: Madam Chairman, I am suggesting that clause 20(1)(c), 20(2)(c) and 20(3)(b) and (c) be deleted.

Sen. Ramlogan SC: Madam Chairman, this is a matter of policy and, as I indicated, during the course of my contribution, I think our society has matured to the point where this issue, in its wider context, is ripe for discussion, and it is a matter—I am sure that the society will be engaged in a debate on this issue, no doubt, and depending on the resolution of that issue, then these are matters that we can review, but for now the policy position, as we have received this Bill from the elected House is such that we, on the Government side, will rest as it stands, as it is.

Sen. Dr. Balgobin: Madam Chairman, may I make an intervention, if I may, Sen. Baptiste-Mc Knight? I understand what the Attorney General is saying, but I was at a loss to understand why this should be specifically included, given that it is already an offence, buggery. I do not believe that—I mean the Sexual Offences Act, section 13(1), I believe, is very clear on that point and it does not relate to male only. I do recall that quite clearly. So, I was not clear why we would take pains to include it here again.

Why do we have to have it? It is already a crime. I am asking the Minister—the Minister has said on more than one occasion that this is something that the society needs to engage in a discussion on. The Attorney General has echoed

those views. [*Crosstalk*] Okay, we will come to that. Why then, if it is something that is ripe for discussion, why do we have this explicitly included here? If it is something that we want to discuss, take it out.

I would beseech the Government to reconsider that position. I am not advocating anything. I am saying if you are saying that you need to have a mature discussion about it, well then do not say that and put this inside of here. I do not think it injures the intent of the Bill at all, if the suggested amendments were accepted which is just to delete. You can take it out, and it would not injure the intent of the Bill at all.

Sen. Al-Rawi: It helps this Bill as well. The Second Schedule amends the Sexual Offences Act to increase the penalty for buggery. So, there is an acknowledgement that where there may be merit to that point. Where I am cautious is that the elected House has dealt with this in a particular way in terms of a national discussion, but Sen. Dr. Balgobin's point about reinforcing something to be discussed is very noble.

Sen. Dr. Balgobin: Could I just say I am not—[*Interruption*]

Madam Chairman: Let me just interject there. I guess those children who are referred to between the ages of 16—21, the idea is that during that phase, if we are honest enough, there is a lot of experimenting and there is a lot of things taking place. Is it that we are trying to criminalize the element?

Sen. Dr. Balgobin: It is okay to have heterosexual sex.

Sen. Ramlogan SC: To make it clear. The effect of taking it out would be to decriminalize same-sex experiences.

Sen. Dr. Balgobin: For this age cohort.

Sen. Ramlogan SC: Sorry?

Sen. Dr. Balgobin: For the age cohorts dealt with under clause 20, and I think that is productive part.

Sen. Ramlogan SC: That is the stage at which young persons in adolescence and so on with sexual curiosity will explore, in all forms and fashions. Now, that I am saying is a major policy decision that both the Opposition and the Government would need to engage upon.

Sen. Dr. Balgobin: But taking this out does not decriminalize it. Does it?

Sen. Ramlogan SC: It would, yes.

Sen. Al-Rawi: It causes an inconsistency in law.

Sen. Ramlogan SC: It will remain a criminal offence for adults, but it will be decriminalized for children. Now, I understand perfectly, and I see great force and merit in the argument that look, young children who are now becoming aware of themselves as sexual beings will engage upon all sorts of adventures and experiments, as says. And the issue as Sen. Hinds is raising, is that if we decriminalize it, the argument will be that by decriminalizing it for under 18s or for the various age groups we have here, then once they engage upon it whilst they are growing up, then they would obviously transition into any adulthood with it.

10.45 p.m.

Sen. Dr. Balgobin: Since we are in the realm, if I may, Madam Chair—because I am not persuaded that we should adhere to the guidance of the Lower House; the other place is the other place; we are here now. I have a question, given the evolution of sex and sexuality and so on, this assumes, section 20, that this act involves two people, but very often in a young person’s experimentation, in their sexuality, it may involve three or four or more. What happens then? So if there are two girls and a boy?

Sen. Al-Rawi: Sen. Dr. Balgobin, I am sorry to do this, but just on a principle of law, not the policy, because I join you on the policy, clause 121 of this Bill says:

“Where a person may be charged in respect of the same conduct both with an offence under the provisions of this Act and an offence specified under any other enactment, the provisions of this Act shall apply to the exclusion of any such enactment.”

That is to say, if we do not keep with consistency in law, the issue of sexual offences in the Sexual Offences Act and this Bill, we will be doing two things which are open to wide challenge. One is, we will be inviting a constitutional challenge for discrimination on the basis of section 4(a) of the Constitution as to the right of equality of treatment, and the second point is that we will be dealing with a difficulty of an implied repeal of law potentially argued. So until the policy decision is taken at a larger level, which is I think is the AG’s point, we would have some difficulty in prescribing the legal effect and the policy effect. That is my only caution in this discussion at this point.

Sen. Dr. Balgobin: But if the Sexual Offences Act is really the primary source of the problem and this legislation takes precedent, let us change the Sexual Offences Act. It cannot be that we do something we know to be backward

and say we will come back and deal with it. We never ever do. There has been enough of us around here long enough to know we do not. We do not get back to it.

Sen. Ramlogan SC: Chair, as indicated, this is a matter of some delicacy and sensitivity. Emotions and passions run very high on both sides of the divide. It is a matter that has come to this House from the elected Chamber, and whilst we are not bound, certainly on the Opposition and Government side on this particular issue it is of high persuasive value in terms of preserving the status quo on this particular troubling and vexatious policy issue. That is not to say that the Government does not recognize the need to have a mature debate on this long overdue issue.

That debate has already been inspired by comments made by my colleague, Sen. Verna St. Rose Greaves, and I have no doubt that that debate shall continue. When that debate is concluded, I have no doubt that these are matters which will be reviewed, if appropriate, because the points made are well noted. But it is certainly not within the mandate of either the Opposition or the Government to interfere with a matter on such policy, with such great policy implications, and to change or introduce new policy as if it were by a side wind. I understand the concerns expressed by several Senators of the Independent Bench, but I say this is a matter that we must rest down our anchor as it stands right now.

Sen. Al-Rawi: I want to also just add in one point, if I may. In the discussion on the equal opportunity legislation which is going to happen, I think that would be a very appropriate forum to advance this issue and to cause consequential amendments further. I just want to echo the Attorney General's position on this and to say that the Opposition has a very strong desire to deal with this issue with fairness and equity, but we need to have the consultation to do it.

Sen. Drayton: We have had debate on this, and my problem with this particular clause is that we have spoken about it in the context of children experimenting. You are going to criminalize one child and you are going to absolve another child. If that is your policy, then what I want to suggest for purposes of record take a divide, so that some of us could express our dissatisfaction.

Sen. Baptiste-Mc Knight: Madam Chair, before we do that, I would like to ask two questions. One: what is the situation with children under the age of 12? My second question is: is a child of 13 and under recognized as a person that is competent to hold a position of trust?

Sen. Al-Rawi: Madam Chair, section 26 of the Sexual Offences Act describes the age limit for animus at 12 years old; so to answer the first question, if I could, anyone who is under 12-years-old does not have the mental discretion to commit certain offences of a sexual nature. The second question however, I would think the answer is yes, under the cruelty provision that we dealt with in the earlier clause, that that person is.

In dealing with the wider point that we started off, I want to remind us that we do have discretion in relation—even though we criminalize or rather we maintain the consistency of the criminality of the same-sex issue, with the Sexual Offences Act and other legislation, the point is that the discretion provided to the judicial officer in determining what is to happen, even on guilt, is the balance to that in terms of a section 13 exception to the Constitution. I do not know if that helps to look at the issue that way, whether there is an adequate proportionality in the offence and in the treatment of the offence and the sanction. It may be answered insofar as there is proportionality within the meaning of proportionality in case law, to deal with that provided by the discretion given in the judge’s consideration of the issue.

Sen. Drayton: What you have just explained there is that the law is very inconsistent, which is exactly what you are—it is consistently bad and it is inconsistent.

Sen. Al-Rawi: Consistently bad is more like it.

Sen. Baptiste-Mc Knight: I would go a little further to say that this discriminates against girl children, because you are talking about teen pregnancy. Only girls get pregnant, and you are allowing this situation to be decriminalized, with which I agree, where it is the girls who are in jeopardy.

Sen. Al-Rawi: It does not allow decriminalization for girls. This section, even though it gives the word “he”, the section in the Interpretation Act—*[Interruption]*

Sen. Baptiste-Mc Knight: No, no, no; we are talking about heterosexual sex between—*[Interruption]*

Sen. Al-Rawi: Versus same sex. I see.

Sen. Baptiste-Mc Knight: Right. And it is only in the case of the former that a girl could get pregnant, at least this is what I think. *[Laughter]*

Hon. Senator: For now. *[Laughter]*

Sen. Baptiste-Mc Knight: I just want us to be very clear on the fact that the decision of the Government and the Opposition that the people voted for, is that it is okay for children under the age of 21, with two-year and three-year gaps, according to this legislation, to copulate and get pregnant with no consequences. But those who have other sexual orientations end up in YTC or the women's prison. I would like to ask that we have a division on this, because I would like to express myself.

Sen. Prof. Ramkissoon: Madam Chair, this thought also worries me, troubles me. If we are going to decriminalize this sort of act, I think this is the place where we start, with people at this age group. That is where you need to start. [*Desk thumping*]

Sen. Dr. Balgobin: We should not cement a backward policy in new law. This is groundbreaking legislation; the place to turn the tide is here.

Sen. Ramlogan SC: I must confess that Sen. Baptiste-Mc Knight's last contribution does fall on some fertile soil, because there is a concern that has been raised in some quarters, and it is one that has crossed my own mind as to whether or not it could be argued as being discriminatory, whether it is gender-based discrimination, save and accept that we will be passing it with a constitutional majority.

Sen. Dr. Balgobin: If we want to use our constitutional majority to pass something that is discriminatory like that—

Sen. Al-Rawi: Just to point out, these are the pros and cons of dealing with the issue now. Insofar as we are amending the Sexual Offences Act by repeal and amendment in this Bill, there is merit in the proposition that here is the place to deal with it. The question is if the policy can be dealt with.

Sen. Ramlogan SC: Chair, these are very weighty and lofty and very important policy considerations. What I would like to ask is that we skip this provision, and if my learned friends on the Opposition could perhaps get some directive, because it has policy implications, I will certainly undertake to do likewise. I see there is almost a virtual unanimous feeling on the Independent Bench, and we can come back to this at a later stage. So that if someone from the Opposition could give us some feedback as to what the Opposition's position is, we will then perhaps revisit this at the appropriate stage.

Madam Chairman: Clause 20 is now deferred until we come back to that, so we go to the next clause.

Sen. Drayton: Just before we defer it. There is one other question to clarify and when we come back to it, we might want to address that. It is a point that I raised in my contribution, the fact that you have, according to this Bill, children in the

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workplace, and the relationship between a 17-year-old worker and a 21-year-old worker, because the age gap here by which you would be criminalized, I think it is within the scope of two to three years. So you have a 17-year-old and you have a 21-year-old working, co-workers, in a relationship, and there is penetration; is that person now a criminal in accordance with this law?

Madam Chairman: There is one person under the age of 16—[*Crosstalk*]

Sen. Drayton: If this Bill becomes law, what in effect it means is that you have a 17-year-old and a half-year-old in the workplace in a relationship with a coworker who is 22, this Bill makes the 22-year-old a criminal.

Sen. Ramlogan SC: Yes, that is what it does.

Sen. Drayton: Is that acceptable?

Sen. Al-Rawi: How else to formulate it is the question.

Sen. Drayton: I think we need to do what is right. I do not think we can go around passing laws and simply with one broom criminalize, I do not know what percentage, of your male population.

Sen. Dr. Balgobin: If I could ask the question: where did this two- and three-year age gap come from? It seems kind of arbitrary for me. [*Interruption*] I mean, I do not know what kind of scientist Shakespeare was, but this thing just seems to have been plucked off a plum tree.

Sen. Drayton: All we are doing is criminalizing young men, which is wrong.

Sen. Al-Rawi: The fact is, Sen. Dr. Balgobin, the Romeo clause was a concept discussed, originating in England in their recent legislation, but since abolished in England, if I am correct.

Sen. Drayton: Could we then make some provision, some clause, tagged on to this very—let us see, we have 20(3), maybe a 20(4), which simply makes provision for that, where you are dealing with a person over 16 in the workplace or wherever. We cannot just pass the law and make—you are talking probably about thousands of young men that you are going to criminalize. It is just not realistic. If you want to pass a law and there are criminals, but you cannot enforce the law, then what is the purpose of the law?

11.00 p.m.

Sen. Dr. Balgobin: You know other versions of the Romeo clause that I pulled up on the Internet do not establish a band between one party and the other, it sets a specific age.

Sen. Drayton: Yes. And if there is consent, can we come up with a catch all clause that—*[Interruption]*

Sen. Dr. Balgobin: You are kind of unlucky—

Sen. Drayton: If there is consent—*[Interruption]*

Sen. Al-Rawi: It shall be a defence in respect of “X” as it has—*[Interruption]*

Sen. Drayton: Well, if you say it is an offence—*[Interruption]*

Hon. Senator: Defence.

Sen. Drayton: If you are saying that it is defence, it means that that person, for whatever reason, could be arraigned, could be charged, taken accord, and then have to defend himself? You are asking a 24-year-old young man, for absolutely no reason, to have to go to court, and put up a defence for having a relationship, with consent with a co-worker, who in the workplace is an adult, is treated like an adult, paying NIS, paying taxes, and you are criminalizing a young man.

Sen. Al-Rawi: Senator, where your—*[Interruption]*

Madam Chairman: Senator, sorry.

Sen. Al-Rawi: Sure.

Madam Chairman: Attorney General and Senators, I am just trying to figure out here the authority we have at this point, and while this is the Senate, I would like to suggest that this was debated in the Lower House, whatever pertained and obtained from the Lower House, came as result of their discussions on all of that, and without the benefit of any changes or even the ability right now to go back to what was there *[Crosstalk]* we have proceedings here—*[Crosstalk]* No, no, what I am suggesting is, could we allow for a little more consultation anywhere else or—*[Interruption]*

Sen. Drayton: I made an earlier suggestion that this thing requires—this is a sweeping Bill; it is a critical piece of legislation, and the least we can do is to treat it with respect and do it right, and not perpetuate all the consistencies, and archaic nonsense that went on before. So that if we have to stay here, if we do not want to put this Bill to a special committee of this Senate, and if we have to stay here until Monday, I have no problem, but we need to get it right. I cannot countenance a situation where we are going to criminalize thousands of young men who are in a consensual relationship with someone.

Sen. Ramlogan SC: One option would be to differentiate and to reduce the age for kissing, penetration and non-penetrative sexual conduct.

Sen. Drayton: Sorry.

Sen. Ramlogan SC: One option would be to have two different ages for penetrative sex, as opposed to non-penetrative sex. [*Crosstalk*] We can reduce it further. We can reduce the age of consent with penetration to 16.

Sen. Al-Rawi: To the same law; to the laws it was prior?

Sen. Ramlogan SC: Yes.

Sen. Al-Rawi: And the defence existed prior?

Sen. Ramlogan SC: Yes.

Sen. Drayton: Anything that corrects that situation where it is right and it is—[*Interruption*]

Sen. Dr. Balgobin: So let me see if I understand this. So what clause 20 would do now is say that the minimum age for consensual sex would be 16? Yes? Okay. [*Crosstalk*] I could live with that.

Sen. Al-Rawi: Madam Chair—[*Crosstalk*]

Sen. Ramlogan SC: It is clause 19 really is it not? Okay 18 and 19. [*Crosstalk*]

Sen. Al-Rawi: AG, can I ask you a question?

Sen. Ramlogan SC: Yes.

Sen. Al-Rawi: The position as proposed here is something that caused a lot of agony in the Lower House as well, the whole concept of criminalization of sexual activity in a particular bracket. The Romeo add-on came on, I know, with a lot of agony and how to deal with it; Colm Imbert in the Lower House was at pains to point out about the 17-year-old and 11 months and 30 days position.

If I could ask that we have just a moment to reflect, because if I have heard the utterings correctly, we would be looking to revert to the common law or in fact the position prior, under the Sexual Offences Act, being 16 years for the age of consent, and defences which apply. I know that some of our Senators seek some guidance on the policy point; are you in a position to deal with that policy here as well?

Sen. Ramlogan SC: On the 16 year point, we are okay on that; on the other one, that is where we have to defer. [*Crosstalk*] Sen. Hinds could probably report on that. [*Crosstalk*] Put on your mic. Well that is the point, all right. Chair, I understand from my colleagues on the Opposition Bench that the position of the Opposition is that they will abide by the Bill, on this particular issue, as it came from the—[*Interruption*]

Sen. Hinds: That was the position that came from both sides in the Lower House.

Sen. Ramlogan SC: Sure, sure.

Sen. Hinds: Is the Government minded to change that position tonight?

Sen. Ramlogan SC: Well, no.

Sen. Hinds: Okay.

Sen. Ramlogan SC: Not without the Opposition's support.

Sen. Hinds: Well, our position stands, and I am happy to know that the Government is, as well, not wanting to change its position in the Lower House, but it stands.

Sen. Dr. Balgobin: Madam Chair, this is something that I will stand against this thing for because it cannot be. I understand what everybody says, but if this is a rubber stamp at 11.08 p.m. we have other places that we could be. Let us vote for it now. Let everybody vote, I will not vote for it.

Sen. Ramlogan SC: Put on your mic and talk "nah man".

Sen. Dr. Balgobin: If the Senate is a rubber stamp, then we have a problem. Let us try to fix the legislation, so we get something sensible passed. Can we try to encourage all of the players to have a quick dialogue, and see if we cannot get this thing positively resolved?

Madam Chairman: Sen. Hinds, did you want to say something?

Sen. Hinds: I am fine.

Madam Chairman: Okay, well we will have to put it to a vote. The question is that clause 20 be amended as circulated by Sen. Baptiste- Mc Knight:

Delete clause 20(1)C, (2) (2)(c) and (3)(b) and (c).

Question put.

Sen. Baptiste-Mc Knight: We voted already, Madam. Do you want us to vote again?

Madam Chairman: We will call for a division.

The Senate divided: Ayes 6 Noes 15

AYES

Baptiste-Mc Knight, Mrs. C.

Drayton, Mrs. H.
Balgobin, Dr. R.
Ramkissoon, Prof. H.
Sydney, A.
Bernard, Dr. L.
NOES
George, Hon. E.
Ramlogan, Hon. A.
Sandy, Hon. Brig. J.
St. Rose Greaves, Hon. V.
Karim, Hon. F.
Ramnarine, Hon. K.
Dyer-Griffith, Mrs. N.
Abdulah, D.
Maharaj, Hon. D.
Baynes, T.
Mohammed, J.
Burke, Arch. B.
Bagaloo, K.
Bharath, Hon. V.
Maharaj, Hon. D.

Senators F. Hinds, Dr. L. Henry, S. Cudjoe, F. Al-Rawi and T. Deyalsingh abstained.

Question, on amendment, [Sen. Baptiste-Mc Knight] put and negatived.

Madam Chairman: Just to clarify the numbers as they came out for the vote on the amendment: 15 against, six for, and five abstentions.

Question put and agreed to.

Clause 20 ordered to stand part of the Bill.

Clause 21.

Question proposed: That clause 21 stand part of the Bill.

Sen. Drayton: Madam Chair, sorry. With respect to that point about the consensual age in the context of 20. You did some amendment for that, but you did not read out the amendment.

Question put and agreed to.

Clause 21 ordered to stand part of the Bill.

Clause 22.

Question proposed: That clause 22 stand part of the Bill.

Sen. Ramlogan SC: Madam Chairman, I beg to move that clause 22 be amended as circulated:

Delete after the words “imprisonment for” the words “twenty-five years” and substitute the word “life”.

Sen. Al-Rawi: Madam Chair, in respect of clause 22—[*Interruption*]

Madam Chairman: We have amendments circulated.

Sen. Al-Rawi: I see. [*Crosstalk*]

Sen. Ramlogan SC: Change your line.

Sen. Al-Rawi: Oh, thank you.

Question put and agreed to.

Clause 22, as amended, ordered to stand part of the Bill.

11.15 p.m.

Clause 23.

Question proposed: That clause 23 stand part of the Bill.

Sen. Al-Rawi: Question, Madam Chairman. In light of the concern that we raised earlier recognizing the nobility in the intention to have an indictment and a fine, I would invite your attention to 23(2)(b) “on conviction on indictment, to a fine of fifty thousand dollars and to imprisonment for ten years.” Would there be any need for consistency in view of the discussion?

Sen. Ramlogan SC: No, I think this was deliberate, because there were issues raised about parents in one room, in small—[*Interruption*]

Sen. Al-Rawi: Right. Okay, thank you.

Sen. Drayton: So, we are leaving it as an inconsistency?

Sen. Al-Rawi: No, I think that the point here is, insofar as single-room families, parents may commit an act deemed to be an offence in front of their children with the election for the judge being between fine and/or imprisonment, that was something that was purposeful as opposed to including it, and therefore, letting off the prison sentence where we had a fine proposed otherwise.

Sen. Dr. Balgobin: What?

Sen. Al-Rawi: Okay, this section has the indictable offence and says you are liable on indictment to imprisonment and a fine of fifty thousand dollars. When we proposed earlier that a fine be included for indictable offences, which were serious, the point was taken that it could not be done because that would give the discretion not to impose the prison sentence and you could get just the fine. What I am saying is that I understand this clause to be specifically to allow that purpose, that is where you would charge the person, take them before the court, find them guilty and then you have an election as to whether there is to be a fine on indictment or imprisonment on indictment or both.

Sen. Drayton: So, this is with respect to the point which was made, that where you have people living in poverty, in a one-room area—[*Interruption*]

Sen. Al-Rawi: I would think so.

Sen. Drayton: I am just looking at the scenario. Somebody is that dirt poor, five people living in a shed and they would have the ability to pay a fine. So, in other words you are going to make a jail anyway.

Hon. Senator: Yes.

Sen. Baptiste-Mc Knight: That is right.

Sen. Al-Rawi: Potentially, yes. [*Crosstalk*]

Sen. Drayton: But, how do you protect the children?

Sen. Baptiste-Mc Knight: If they are in jail, the children cannot see anything altogether. [*Laughter*]

Sen. Drayton: I mean this really—what are we doing to our people? We understand and we all agree that children should not be exposed to these things, but why are we passing laws that would criminalize half of the population, and you cannot enforce the law? Why would you want to send parents to jail, they are in a one-room shed with five children.

Sen. Ramlogan SC: No, if you read the section, Senator, that is not the intention at all. There are three limbs to this offence. The first is the activity must be sexual, the second is that it must be done in front of the children for the purpose of obtaining sexual gratification, and the person who engages in it, they must do it where a child is present or where a child is in a place from which the person can be observed, like leaving the door ajar, knowing and believing that the child is aware, or intending that the child should be aware, that the person is engaging in sexual activity. This really deals with a completely different situation. [*Desk thumping*]

Sen. Hinds: That is criminal behaviour!

Sen. Ramlogan SC: And for the *Hansard* record, the person thumping the desk is Sen. Fitzgerald Hinds, in support.

Sen. Hinds: And I want to just for the *Hansard* record suggest that I thumped the desk based on your very clinical analysis of the law.

Sen. Ramlogan SC: Thank you very much, Sir.

Sen. Hinds: However, I must add that I think that kind of conduct is indeed, deliberately and wantonly criminal and ought to be treated seriously, poor or no poor, because it is a moral question not an economic or financial question. That is why I thumped the desk. [*Desk thumping*]

Sen. Baptiste-Mc Knight: I have got to admit that I have a problem that is very unusual, because I am a night person so that I am fully awake at this hour. I have a problem understanding that if you live in one room and you have children in the room, and you have a husband in the room, what are you supposed to do with the children?

Sen. Al-Rawi: Hon. Senator, the point in here, the offence, the mischief to be driven at, is the fact that you are being gratified by the fact that this child is observing your sexual activity, and therefore, that is why you are doing it.

Sen. Baptiste-Mc Knight: O'clock in the morning you are worried about the children gratified?

Sen. Al-Rawi: No, no, no. The clause is meant to be for the perversion, Senator. It is really for the perversion. [*Crosstalk*]

Sen. Dr. Balgobin: Madam Chair, may I ask—[*Interruption*]

Sen. Ramlogan SC: Wait till they go to sleep and cover with a blanket.

Sen. Dr. Balgobin: Madam Chair, perhaps someone in this august Senate could tell me, how would a court of law, or a police officer for that matter, go about determining that sexual activity between parents in the presence of a child would constitute gratification? How does a person prove something like that? It is just a question that I was a little confused about. At what point does a police officer or a judicial officer say, well, you did this to get your jollies, as opposed to—because you can ask a child and the child may be able to testify against the parents, which, would be quite bizarre, but the child may be able to testify that they have in fact witnessed something. How do you prove that?

Sen. Ramlogan SC: We are going a bit astray, you know—the idea of the child testifying against the parent on the basis of what happened and so on. This is about a very extreme situation where sexual gratification is sought by deliberate exposure to the children for the purpose of enhancing the sexual gratification. It is like people who like public sex, for example. Some people like public sex in washrooms, some people park up in car parks, in the mall and wind down the glass. It is about the extra gratification that comes from exposing it to the child. So, to answer Sen. Dr. Balgobin's question—*[Interruption]* one second—that will come from the evidence. It is an evidential question. If, for example, you deliberately leave the room door open—*[Interruption]*

Sen. Baptiste-Mc Knight: There is no door to leave open in a one room; you do not leave a door open.

Sen. Ramlogan SC: If, for example, you do not wait until the children go to sleep and you put on the light in the same one-bedroom shack, then that is evidence that would no doubt point a certain way. If you are looking at the child whilst you are engaging in the act, instead of the adult person who you are engaging in the act with—that is the kind of evidence that would, no doubt, form the basis for it.

Sen. Dr. Balgobin: There is an emphasis here on visual stimulation, what if the door is closed but you can hear?

Sen. Ramlogan SC: It depends. It would depend again on the evidence and the intent.

Sen. Dr. Balgobin: How would you prove intent if some people are just noisy? *[Laughter]*

Sen. Ramlogan SC: At one point in time that is where socks and stockings came in handy.

Sen. Maharaj: Sen. Balgobin, on the point of the evidence, if the adult goes now and tells his friend that “I am doing this; I am getting pleasure out of this”, you could adduce that before the court as evidence. So, evidence may take different forms based on the facts of the case, and that is at the discretion of the court. [*Desk thumping*]

Hon. Senator: Brilliant point!

Sen. Dr. Balgobin: I think you forgot to add that his friend was “a police”. [*Laughter*]

Sen. Drayton: Could I seek further clarification here?

Sen. Dr. Balgobin: It is exactly that though, it leaves a lot of scope for hearsay, a lot of scope for, well, you said this and he said that.

Sen. Ramlogan SC: Yes, but those are not matters—I mean, we make the law but they will deal with the evidential issue. It may very well be—we have a Children Act since 1925 and let us be real, there are some provisions that may take 10 years and nothing happens. I mean, I really think this is one of those situations where it would have to be the extreme.

Sen. Drayton: So, could I ask a question? We are looking here at clause 21[sic] (b)(i) and (ii); now, I understand (ii) based on what you are saying, knowing or believing that the child is aware. That is okay. That is fine. In (i), we are saying, “when a child is present or when a child is in a place from which the person can be observed”, and that is the clause.

Sen. Ramlogan SC: But they are all conjunctive. All must be satisfied.

Sen. Drayton: This is what I am asking, is it 23(i) and (ii) must take place before the thing could happen; it is not (i) or (ii)?

Sen. Ramlogan SC: No, it is conjunctive; we say “and” at the end of (i). It is “and”, both. So that is our position on this.

Question put and agreed to.

Clause 23 ordered to stand part of the Bill.

Clause 24.

Question proposed: That clause 24 stand part of the Bill.

Sen. Al-Rawi: Madam Chair, just a question in relation to causes and the issue of whether knowledge is required here, I mean, knowingly, intentionally causes, that sort of language? Because this 24 hearkens us back now to the one-

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room issue that we were dealing with in the last clause, because of the use of the word “causing”, the reading of knowledge and intention. I really just want to put it in the *Hansard* in particular.

Sen. Ramlogan SC: Yes, that is fine, so we can run it as a [*Inaudible*]

Question put and agreed to.

Clause 24 ordered to stand part of the Bill.

Clause 25.

Question proposed: That clause 25 stand part of the Bill.

Sen. Al-Rawi: Madam Chair, I had a question in relation to clause 25 and this is the grooming offence, two occasions and taking a step after that to enact the preparation for this child. What about, as happens in all lot of the cybercrimes—because I have read some of the Internet cases—where you caused someone else to meet? This clause proposes “A” gets into contact with “B” on two occasions, and then goes to meet or attempts to meet “B” anywhere in the world with a view to carrying out a sexual activity. What about where “A” uses someone else to do the talking and then impersonates that person after? So, the Bill right now proposes—[*Interruption*]

Sen. Ramlogan SC:—[*Inaudible*] the third party. For example, I set up a dating agency.

Sen. Deyalshingh: The wing man.

Sen. Ramlogan SC: Sorry?

Sen. Al-Rawi: The wing man, the cohort; the person in sexual prostitution of children.

Sen. Ramlogan SC: No, if I set up a dating agency and I put like eharmony.com and I put—[*Interruption*]

Sen. Deyalshingh: Any third party.

Sen. Ramlogan SC: Yes. This, really, is meant to deal with the direct interaction. If we have to deal with that we would probably have to insert a different clause to deal with that.

Sen. Al-Rawi: Because somebody sophisticated enough as a sexual predator of children would think about saying by way of a defence, “Well, I was not the person who contacted, here is my URL address, here is my IP address; it was really John Brown who did it.”

Sen. Ramlogan SC: Do you have a suggestion that we could include on this?

Sen. Al-Rawi: No.

Sen. Ramlogan SC: Well, that is the problem.

Sen. Al-Rawi: I could not think how to—I know the mischief but I am not sure how to cast it.

Sen. Hinds: Did you look at line 3 “by any means?”

Sen. Ramlogan SC: Yes.

Sen. Hinds: Therefore, it means agent. Look in line 3 you would see “by any means”.

Sen. Al-Rawi: Would it be appropriate to say, “where a person”—well, the issue of agency to person, I think, would capture it, as Sen. Hinds is proposing.

Sen. Ramlogan SC: So, we can leave it as it is then?

Sen. Al-Rawi: But are we sure that it is there?

Sen. Ramlogan SC: Well, no, “by any means”; he is right. Sen. Hinds is right, “by any means” there would include a third medium.

Sen. Al-Rawi: Right, and now for the purposes of *Hansard*, for the interpretation later then, the statement is we contemplate specifically as the framers of this legislation “that by any means” would catch the agency principle for anyone who acted as a cohort in the crime.

Sen. Ramlogan SC: Yes, and I can also say if we want to consider aiding and abetting, or facilitating, that would help.

Sen. Hinds: That is to charge the third party.

Sen. Ramlogan SC: So if we can just look at it, “where a person”—

Sen. Hinds: Although, if the third party is known to have acted in the circumstances, he too could be directly responsible for grooming—

Sen. Al-Rawi: And that is how child prostitution starts.

Sen. Hinds:—because, he too would have met “for the purpose”.

Sen. Ramlogan SC: Can we not draft a simple section saying “includes aiding and abetting”?

11.30 p.m.

Sen. Hinds: Except of course AG—[*Interruption*]

Hon. Senator: Would not aiding and abetting be covered under “any other act”?

Sen. Ramlogan SC: We can defer this and come back to this while we draft a subclause to deal with aiding and abetting that will clarify it.

Sen. Hinds: In this case the third party may be guilty of the direct offence too, because he was meeting—*[Interruption]*

Sen. Ramlogan SC: In which case they could charge him either—*[Interruption]*

Sen. Hinds: So he would not be dating—*[Interruption]*

Sen. Ramlogan SC: So can we go on to clause 26?

Clause 25, by leave deferred.

Clause 26.

Question proposed: That clause 26 stand part of the Bill.

Sen. Dr. Balgobin: Madam Chair, am I to understand in clause 26 that it is the Government’s intention to permit someone who is 12 years old to engage in sexual activity with an adult as long as that person is married, and therefore, by extension, is saying that sex can be considered consensual as long as the person is 12 and married?

Madam Chairman: I think this also was raised by several Senators as it refers to the Marriage Act in particular.

Sen. Ramlogan SC: It is one of those policy matters that we rest our anchor on this particular thing. I think that applies for both sides here.

Sen. Dr. Balgobin: So we are saying then that in clause 20 the legal age for a child to have sex is 16?

Sen. Ramlogan SC: If they are married.

Sen. Dr. Balgobin: No, but in clause 26 we are saying now that we can actually drop another four years off that if they are married. *[Crosstalk]* Yes, but this is the mother of all Acts that is supposed to change all of those other Acts. Why perpetuate that?

Madam Chairman: Minister, St. Rose Greaves had you indicated that some commitment be given to looking at the Marriage Act and consultation.

Sen. Dr. Balgobin: What does that mean?

Sen. St. Rose Greaves: We are going to be treating with that. It has to be dealt with under the Marriage Act.

Sen. Al-Rawi: There are three marriage Acts: the Hindu Marriage Act, the Orisha Marriage Act and the Muslim Marriage Act. [*Crosstalk*] Madam Chair, I would just like to point you to subclause (2) of clause 26:

“(2) Subsection (1) does not apply in the case of sexual penetration...”

Sen. Dr. Balgobin: What is the deal with that? I did not understand that either.

Sen. Al-Rawi: Well what it says is that—it seeks to legislate sexual activity between married people in a particular way.

Sen. Dr. Balgobin: But why are we getting so wrapped up in what people do with each other? Why did we make a whole section on that?

Sen. Al-Rawi: My point is, under marriage, if there was a genuine belief of lawfulness as a defence here, I am not sure if clause 26(2) is in the fact required to be here. It does not take us—[*Interruption*]

Sen. Dr. Balgobin: But if I may, Sen. Al-Rawi, if two people are married—[*Interruption*]

Sen. Al-Rawi: Well, you and I are on the same page, “eh”.

Sen. Dr. Balgobin: —how is it that the law says they cannot do that if they want to do that?

Sen. Al-Rawi: Yes, that is my point.

Sen. Dr. Balgobin: That is a criminal act.

Madam Chairman: Would you not require a provision in the law that if it is done against your will, even under marriage, that you have a law that allows for that? [*Interruption*]

Sen. Al-Rawi: Well, you see that is where domestic violence and rape and other factors kick in other laws.

Sen. Dr. Balgobin: Section 4 of the Sexual Offences Act is very clear about that, so that is covered in existing legislation. This says that you can have vaginal sex, but it is not okay to have anal sex, for example—if you are married, you are married. So somebody from the State is coming inside of your house, inside of your marriage to tell you what you can and cannot do. So what is the legal position on fellatio and cunnilingus, and so on?

Sen. Al-Rawi: Somebody who wickedly brings a charge and says: “Even though I am married, here is the evidence of the fact that it happened—*[Interruption]*”

Sen. Dr. Balgobin: Are there positions from the State? Are there positions that are outlawed? Are there tools and devices that one cannot use? *[Laughter]* Are we restricted to the *Kama Sutra*. Where does this end? *[Crosstalk]*

Sen. Drayton: Basically, what it says, we are continuing to put laws on the books that cannot be implemented.

Sen. Al-Rawi: No, but there is a wicked side to that law. The point is that—*[Interruption]*

Sen. Dr. Balgobin: It affects your freedom as an adult, as a married person, as a citizen of the society. Why do you not have that freedom—*[Interruption]*

Sen. Al-Rawi: No, but this is in the context of marriage.

Sen. Dr. Balgobin:—to do what you wish with your wife or your husband?

Sen. Drayton: So, Sen. Hinds, this is morality?

Sen. Dr. Balgobin: This feels decidedly, police “statisth”. It is Orwellian, 1984, is what it is.

Question put and agreed to.

Clause 26 ordered to stand part of the Bill.

Clause 25 reintroduced.

Sen. Ramlogan SC: Before we go, we had a conversation on clause 25, and I have in fact looked at clause 25 with respect to the proposed amendment. In fact, section 66 of the Interpretation Act specifically states that in interpretation, aiding and abetting and attempting and conspiracy to commit an offence are impliedly read in.

Hon. Senator: Great!

Sen. Ramlogan SC: So conspiracy to commit the offence, that would include a third party; the aiding and abetting or counselling to procure that offence and an attempt to commit that offence are all there. So I think “by any means”, in addition to that, as is, we can put it.

Sen. Al-Rawi: Great! The only question with respect to that is in subclause (3) “For the purposes of this section”; do you want to say “Act” because we referred to sexual grooming elsewhere?

Sen. Ramlogan SC: Did we refer to grooming elsewhere?

Hon. Senator:No!

Hon. Senator: You sure?

Sen. Ramlogan SC: You sure? Apparently not, that is why it is there. So we can put it as is, “man”.

Question put and agreed to.

Clause 25 ordered to stand part of the Bill.

Clause 27.

Question proposed: That clause 27 stand part of the Bill.

Sen. Al-Rawi: Relative to clause 27 where we are at present; quick question: the lawfully married issue, there is no exception if it is that you are not lawfully married but you believed you were lawfully married, similar to (b)—

Sen. Ramlogan SC: If you get conned into having sex on the basis that you are thinking that you are married—*[Interruption]*

Sen. Al-Rawi: No, no this deals with the minors point. But the point is you may find out that you were lawfully not married for a technicality.

Sen. Ramlogan SC: No, but those are matters that obviously a judge would take into account.

Sen. Al-Rawi: No, no, no, in this Bill a judge would be open to say—elsewhere in the Bill we say, it is not an offence if people believed that they were married. We have used it here. We said here:

“26. (a) the person and the child were lawfully married; or

(b) the person believed on reasonable grounds that he was lawfully married...”

Sen. Ramlogan SC: I think this was a policy matter. The intention was to ensure that this takes place given, it is a child involved, on the basis that they are in fact lawfully married.

Sen. Al-Rawi: Clause 26 deals with a child as well, and we used the exception there. A judge reading this will say Parliament in its wisdom did not consider it appropriate to provide the exception. And we did it in another clause.

Sen. Ramlogan SC: While it is there in clause 26, then we should put it in clause 27 too? For consistency and in the interest of time, I will replicate clause

26(b) in clause 27 by saying, “if they are or believed on reasonable grounds that they were lawfully married to each other.”

Sen. Al-Rawi: Yes, and we could use the same type of intro as clause 26 “at the time of the conduct is not an offence if”—we could import the words of clause 26—“if, at the time of the conduct,” and then we can break it down to (a) and (b).

Sen. Ramlogan SC: No you do not need that you know—

“Conduct by a person in relation to a child which would otherwise constitute an offence against a child under section 23 is not an offence if there are only two persons involved and they are or believed on reasonable grounds that they were lawfully married to each other.”

Sen. Al-Rawi: Okay, that is fine.

Madam Chairman: If there are more than two persons?

Sen. Ramlogan SC: We are not encouraging that for marriage. [*Laughter*] — “...and they are or believed on reasonable grounds that they were”.

Madam Chairman: The question is that clause 27 be amended as follows:

In line 3 to insert after the words “involved and”, “they believed on reasonable grounds”—[*Interruption*]

Sen. Ramlogan SC: “...they are or believed”—[*Interruption*]

Madam Chairman: —“they are or believed on reasonable grounds that they are”—[*Interruption*]

Sen. Ramlogan SC: “they were”.

Madam Chairman: Well you have, “they are or they reasonably believed they are lawfully married to each other.”

Sen. Al-Rawi: —No, “believed on reasonable grounds that they were”. [*Interruption*]

Sen. Ramlogan SC:—“That they were”? Is “were” or “are”?

Sen. Al-Rawi: If you are not, but you believed it is “were”.

Sen. Ramlogan SC: That is what I am saying.

Sen. Dr. Balgobin: If I may, Madam Chair, so are we saying—[*Interruption*]

Sen. Al-Rawi: Yeah, because they used the past tense in (b), in clause 26 above.

Madam Chairman: So we are changing the tense in that clause 26?

Sen. Al-Rawi: In clause 26 it is in past tense, “was” so you are keeping it to “were”.

Madam Chairman: No, but “are” or “were”?

Sen. Ramlogan SC: “...They are or believed on reasonable grounds that they were lawfully married to each other.”

Sen. Al-Rawi: Correct!

Sen. Dr. Balgobin: So if I may just ask—*[Interruption]*

Sen. Drayton: We are talking about a child here, 12 years old?

Hon. Senator: Yes.

Sen. Drayton: And we are saying a child has the ability and the faculties to make those decisions. You know we have a whole Children Bill and there are two things about it; the whole Bill is about sex and sending children to jail.

Sen. Dr. Balgobin: Could I just ask in clause 27 just for clarification, Madam Chair, is it that clause 27 is trying to say that clause 23 would not apply if two people think that they are married? *[Interruption]*

Sen. Al-Rawi: “On reasonable grounds”.

Sen. Dr. Balgobin: I do not understand. If I look at clause 23, there is a three-legged stool or logic that the Attorney General was kind enough to explain in some detail earlier. So what does the question of whether they were married or not have to do with clause 23? Am I reading something wrong?

Sen. Al-Rawi: It took me two weeks to get it. Clause 23 is the voyeurism clause if I could call it that. Clause 27 deals with—clause 23 is the voyeurism clause in relation to a child being present. Clause 27 deals with the fact where one of the children present is lawfully married. And I remind you that until the Muslim Marriage Act and the Hindu Marriage Act and two other bits of legislation are amended, children may in fact be married at obscene levels of age, with the consent of the parents. So clause 27 deals with the fact where there is a lawful marriage—*[Interruption]*

Sen. Dr. Balgobin: But clause 27 does not say that.

Sen. Al-Rawi: Yes, it does.

Sen. Dr. Balgobin: No, it does not.

Sen. Al-Rawi:—where there are only two people, one of who must be the child, involved, and they are lawfully married or believed on reasonable grounds that they were lawfully married.

Sen. Baptiste-Mc Knight: So what the child is peeping at if there are only two people?

Sen. Al-Rawi: You see, the point is that it is the presence of the child in the two-people arrangement, he being one of them, just was another person that caused it.

Sen. Dr. Balgobin: But how come you have voyeurism if you only have two people?

Hon. Senator: This is the point.

Sen. Dr. Balgobin: So it is illegal for a child to witness sex but it is legal to have sex at 12.

11.45 p.m.

Sen. Baptiste-Mc Knight: But they are allowed to watch themselves having sex.

Sen. Drayton: Let us compound it—sorry—we will send them to jail for 15 years for pornography. So they could marry at 12; they could have sex at 12—*[Interruption]*

Sen. Dr. Balgobin: They cannot witness sex at 12, though.

Sen. Drayton:—they could be in positions of trust at 12, and they cannot see any sex, and we send them to jail for up 15 years for the porn. You are serious?

Sen. Dr. Balgobin: Clause 23 seems to suggest there is at least a third party.

Sen. St. Rose Greaves: Sex is not necessarily with the two people.

Sen. Dr. Balgobin: It says sexual gratification.

Sen. St. Rose Greaves: They can be masturbating; it could be bestiality. It could be a number of things and the other person in the relationship is watching—a number of things that they can do.

Sen. Dr. Balgobin: But that is clause 23.

Sen. Ramlogan SC: Yes.

Sen. Dr. Balgobin: Clause 27 says there are only two people.

Sen. Al-Rawi: Yes, and one of them is in a gratification of bestiality or some other act and the other person is a child and is watching.

Sen. Dr. Balgobin: But if that child is married, it is okay?

Sen. Al-Rawi: The question for them is, does clause 23 require more than one person to muster?

Sen. Dr. Balgobin: So what in clause 23 would apply?

Sen. Ramlogan SC: Do we need clause 27, really?

Sen. Al-Rawi: Agreed. But they believe that it does.

Sen. Dr. Balgobin: I do not understand, you see. If clause 23 assumes that there are two people, not three; clause 26 clears that away, does it not? Clause 26 varies clause 23. [*Crosstalk*]

Sen. Ramlogan SC: We can solve this problem by just inserting 23 after 19, and take out 27.

Madam Chairman: Say that again slowly, please.

Sen. Ramlogan SC: In clause 26, the third line “against a child under 18, 19”, we will insert there “23 or 24” and we delete 27.

Madam Chairman: Okay, good.

Sen. Dr. Balgobin: Just for the advisors to note that someone 12 years old might just be stupid enough for you to fool and tell them they are married.

Madam Chairman: Could you say that again, please, Sir?

Sen. Dr. Balgobin: You can actually convince a 12-year-old that they are married, “eh”. How would a 12-year-old know? It is just an observation.

Sen. Al-Rawi: But we must remember that the Muslim Marriage Act and the Hindu Marriage Act have specific requirements as to when you are married, which require written consent. So it is not that easy. I know your point is that the 12-year-old may be told by some wicked parent, “Listen, I got you married; there was the ceremony”, and the writing was never done. But then that would fall afoul of all kinds of other offences as well.

Sen. Ramlogan SC: Madam Chairman, I am advised that the committee which was in place on this matter headed by senior counsel, Ms. Daly, they wanted to, in fact, specifically differentiate between clause 26 and clause 27. That is why they left out

clause 23 to treat with it separately in a separate clause in clause 27. And there is no reasonable ground in clause 27 as we have in clause 26(b).

Sen. Al-Rawi: But then the problem with that, hon. AG, is that we would be putting the child under a greater jeopardy in clause 27 than clause 26. We have an offence being committed in both clauses and we do not have a statement as to what the offence is; it comes later, so the offence applies to both, but if a child was caught in clause 27 and did not have the protection of the reasonable belief as to marriage—*[Interruption]*

Sen. Ramlogan SC: Remember I was amending it to put in that.

Sen. Al-Rawi: I know.

Sen. Ramlogan SC: Can we put in that and just move on? The other issue that the draftsman is raising is, if you delete that clause 27, it affects the whole Bill.

Sen. Al-Rawi: So if we could just add “in the reasonable belief” in clause 27?

Sen. Ramlogan SC: Yes, absolutely. So, Chair, I am minded to include “or believe in reasonable grounds”, that we had, and just put it to the vote, please.

Madam Chairman: So we are leaving 27.

Sen. Ramlogan SC: Yes, as amended. The amendment was:

“...they are or believed on reasonable grounds that they were lawfully married to each other.”

And let us move on.

Madam Chairman: Well, we had done that already. I already stated that.

Question put and agreed to.

Clause 27, as amended, ordered to stand part of the Bill.

Clauses 28 to 32 ordered to stand part of the Bill.

Clause 33.

Question proposed: That clause 33 stand part of the Bill.

Sen. Ramlogan SC: Madam Chairman, I beg to move that clause 33 be amended as circulated:

Clause 33(2) In the chapeau, delete after the word “shall” the word “immediately” and substitute the words “, as soon as practicable.”

Sen. Al-Rawi: One moment, please, Madam Chair. Madam Chair, in clause 33 I am raising the issue which is going to come a little later relative to the children’s attorneys. Clause 33(2) states:

“Where a constable has reasonable cause to believe that a sexual offence has been committed by a child, the constable shall immediately notify –

- (a) the parents, guardian or the person responsible for the child; and
- (b) the Authority.

- (3) A constable referred to in subsection (2) shall make a written report of the action taken under this section to his superior officer within seventy-two hours of the taking of such action.”

The question is, upon having reasonable cause and having created the office of children’s attorney under the Act, whether we should also immediately inform the children’s attorney. This comes down to tie down now to the duty counsel concept under the Legal Aid and Advisory Act, so that we can ensure that the child’s rights are protected, particularly insofar as the constable may take, in clause 33(1) without a warrant, someone into custody.

Sen. Ramlogan SC: I think in the legal aid amendment there is a duty counsel specifically provided for in the case of minors and that is what would be triggered there.

Sen. Al-Rawi: Okay. Just to explain where I am on this as well. We are creating the Authority, the body of the children’s attorney—*[Interruption]*

Sen. Ramlogan SC: I understand the point, but what would happen—you are right, it is a little disjointed, but the point is that, you see—*[Interruption]*

Sen. Al-Rawi: I was looking at the funding, AG—sorry to cut you off.

Sen. Ramlogan SC: Yes, sure.

Sen. Al-Rawi: The legal aid has one set of funding which, as the mover of the legal aid amendments the other day called attorneys who got accustomed to driving Zephyrs as opposed to Benzes, and he said that it is purposefully low and things like that—no insult intended there—but insofar as the children’s attorney being a separate body created by the Judicial and Legal Service Commission would have the ability to probably be a bit better funded, it may be interesting here to segregate them from the duty counsel under the Legal Aid Act, because the Legal Aid Act is a measure in and of itself.

Sen. Ramlogan SC: I would prefer to leave that as a very reasonable and obvious administrative measure, that upon the Authority being informed, that would trigger that, bearing in mind, in any event, the court would have to appoint the counsel and, of course, at the time of arrest the duty counsel would have to come from the

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Legal Aid Board, and that is already provided for. So you have several safeguards that will have to obviously trigger that. The whole point in notifying the Authority is so that they will in turn contact the relevant person to get them to protect and defend the rights of the child.

Sen. Al-Rawi: Hon. AG, thank you for the clarification. Later on in the Bill we have—in the clause that deals with a court’s suspicion as to a minor being in its presence, that the court shall identify the minor and then proceed to take the evidence, it does not, for instance, provide the safeguard. Under the United Nations aspects to deal with children, the treatment of children is a very special incident, particularly because under the DNA Act, as now put in, you have the right to take samples and other issues and to keep them.

Sen. Ramlogan SC: Yes, but none of those things you can do without an attorney being present for a minor.

Sen. Al-Rawi: But the point is whether we are making it clear in this particular legislation. Instead of having to go through the Solicitor General’s office by the court maybe making that recommendation as this Bill contemplates, whether we should be specific enough to safeguard the child’s right by including the notification to the children’s attorney.

Sen. Ramlogan SC: I am advised that the administrative machinery is that there would be close collaboration and they will be working in tandem with the duty counsel, who will have a direct relationship with them, and they prefer to leave this as part of the administration and the administrative measures they will put in place, which will, in fact, address that point.

Sen. Al-Rawi: Okay, once we resolve this issue here, it would take care of a number of consequential concerns that come out, so just bear with me for a moment.

Sen. Ramlogan SC: Sure.

Sen. Al-Rawi: What I am trying to understand that we are doing is creating the obligation on the arresting officer, on the other people, to actually inform, a positive duty.

Sen. Ramlogan SC: In the interest of time, if you are saying that this will curtail your contributions on the rest of the Bill, I am happy to put it in, you know.

Sen. Al-Rawi: It will. And surely for the merit of the children as well, AG.

Sen. Ramlogan SC: Because it does not render, in any way—[*Interruption*]

Sen. Al-Rawi: Just to create the positive obligation.

Sen. Ramlogan SC: Okay.

“...shall immediately notify –

(a) the parents, guardians or person responsible for the child...”

Well, we could say, “parents, guardian”; take off “or”, the “person responsible for the child; and (b) the Authority—[*Interruption*]

Sen. Al-Rawi: I would leave the word “or”.

Sen. Ramlogan SC: No, we will put a (c).

Sen. Al-Rawi: Delete the word “and” at the end of (a), include it at (b) with the “;” and “(c), the Children’s Attorney.”

Sen. Ramlogan SC: Right. The “and” will come after “the Authority” in (b).

Madam Chairman: I have one question. Clause 33(1) refers under clause 18 or clause 19(3), but then clause 13(2) says that if “the constable has reasonable cause to believe that a sexual offence has been committed by a child”, and I am just suggesting that maybe the word is not “by”, it is “to”.

Sen. Al-Rawi: These are child offenders.

Sen. Ramlogan SC: No, “by”.

Madam Chairman: No, but clause 33(1) starts off by referring that whole clause to 18 or 19(3).

Sen. Al-Rawi: To clause 18 or 19, but a child may be married.

Madam Chairman: No, no, no. Clause 18 says that a “...person who sexually penetrates a child commits an offence...”

Sen. Al-Rawi: And that person may be a child as well.

Madam Chairman: “and is liable...on indictment, to imprisonment for life.” And then clause 19(3) goes on to say: “Where a person commits an offence by placing a part of the body or object, et cetera, that person is liable on conviction on indictment—[*Interruption*]

12.00 midnight

Sen. Al-Rawi: And the person may be a child; again. So it is because the person may be a child that you need to deal with this issue of it by a child. This clause deals with offences by children, and “person” as we dealt with in clause 4 includes a child.

Madam Chairman: The question is that clause 33 be amended as circulated and further amended by including under paragraph (b) “the Authority” and (c) “the children’s Attorney”. Oh, sorry, in (a) deleting the word “or” after “guardian”—“the parents, guardian, the person responsible for the child; (b)...”
[*Interruption*]

Sen. Al-Rawi: You should leave the word “or” you know.

Madam Chairman: “The Authority, and (c) the Children’s Attorney.”

Sen. Al-Rawi: “Children’s Attorney”; and I am not sure whether we should delete the “or” in subclause (2)(a).

Sen. Ramlogan SC: Yes, you can leave “or” in (a).

Sen. Al-Rawi: You should leave it in.

Madam Chairman: Leave “or”.

Sen. Ramlogan SC: Leave “or”; you do not need to delete it.

Madam Chairman: Okay. You had said to delete it.

Sen. Baptiste-Mc Knight: Madam Chair, could I just ask: what happens to the child who is the perpetrator?

Sen. Ramlogan, SC: What happens to them is the question.

Sen. Baptiste-Mc Knight: What happens to the child?

Sen. Ramlogan SC: Well, it is an offence.

Madam Chairman: Somehow I feel something is wrong. This is not supposed to be here.

Sen. Ramlogan SC: It is an offence; it goes through the DPP, if the DPP feels in his discretion to charge and so on.

Sen. Baptiste-Mc Knight: No. But you say it is decriminalized, so where does the charge come in?

Sen. Ramlogan SC: He determines what that charge is. The DPP can decide, on appropriate evidence, to charge for any of the offences that are relevant, or to not charge.

Sen. Baptiste-Mc Knight: But I thought that clause 20 said that they were not going to be charged.

Sen. Ramlogan SC: Well, no, anything outside of clause 20 we are referring to.

Sen. Baptiste-Mc Knight: No. But this talks about a child committing an offence under clause 18 or 19 and clause 20 deals the children with committing these offences.

Sen. Dr. Balgobin: Or, are you saying that clauses 18 and 19 really treat with rape or something?

Madam Chairman: Those who committed crimes against the children. Then you start off clause 33 by saying that the constable takes into custody a person who has committed—so again you are referring in (1) to those persons who have committed crimes against the children, but then you reach into (2) and all of a sudden it comes into—*[Interruption]*

Sen. Ramlogan SC: That is the point you were making about a gap?

Madam Chairman: Yes, so I am thinking that point should follow from (1). to say that the sexual offence has been committed to the child and so the constable should immediately notify the parents, et cetera.

Sen. Ramlogan SC: Listen, I think she is making sense, you know.

Madam Chairman: But (1) does not deal with it.

Sen. Drayton: If I may, Madam Chair, just to clarify: are we speaking about children who have committed a sexual offence?

Madam Chairman: It is not clear.

Sen. Drayton: Yes? Because this is what the clause says.

Madam Chairman: Well, this is the point I myself am trying to identify.

Sen. Drayton: Is it in this case that it is non-consensual? Is it that?

Sen. Ramlogan SC: Like coercion or something, yes. *[Crosstalk]*

Madam Chairman: You see this clause specifically references 18 or 19(3) Because 33(1) starts off with specific reference to 18 or 19; what happens after there is nothing that follows from subclause (1). So what happens if the constable does that? There is nothing to follow. So therefore, (2) has to follow. *[Crosstalk]* So in subclause (1), if there is an offence committed against the child, does that officer also have a responsibility to contact the parent and all that, which you are now saying in subclause (2)? Would they not also have that responsibility? But, you see it does not—*[Crosstalk]*

Sen. Ramlogan, SC: The Chairman is right, you know. You all are not following what she is saying. She is saying that in (1) the offence has is been committed—*[Interruption]*

Sen. Baptiste-Mc Knight: Madam Chair, can the rest of us have the benefit of this sidebar that is going on there?

Sen. Al-Rawi: It looks awfully like a special select committee. [*Crosstalk*]

Sen. Hinds: Today is the 24th.

Sen. Ramlogan SC: One deals with the situation, “has committed,” and that is fine. The Chair is raising the concern and the point that if a minor has committed that offence do you inform the parents?

Madam Chairman: It would have followed naturally.

Sen. Ramlogan SC: The same procedure in subclause (2) should equally apply to the child in subclause (1).

Madam Chairman: There you have the connection now with even, subclause (2) because it deals with two different things. [*Crosstalk*]

Sen. Ramlogan SC: Mr. Griffith, any ideas? Madam Chair, can we defer this and come back to it please. Mr. Griffith, I ask you to look at this please, Sir. Come up with a solution!

Madam Chairman: Clause 33, by leave, deferred.

Clause 34.

Question proposed: That clause 34 stand part of the Bill.

Sen. Al-Rawi: Simply, whether we wanted to use the word “Part” in the chapeau of the clause: “Notwithstanding any other Act;” do we want to use the word “Act” or “Part” in the chapeau of clause 34?

Sen. Ramlogan SC: “Notwithstanding any other order.”

Sen. Al-Rawi: Clause 34, right: “Notwithstanding any other order, the Court may make with respect to any child who has been the victim of any offence in this Part,”—do you want to say “Part” or “Act.”?—“The court may—(a), (b), (c), (d).

Clerk: The Act is divided into parts.

Sen. Al-Rawi: I know. But the question is whether it was broader than just the part.

Sen. Ramlogan SC: I think the intention was to deal with this part. So we leave it as is.

Question put and agreed to.

Clause 34 ordered to stand part the Bill.

Clause 35.

Question proposed: That clause 35 stand part of the Bill.

Sen. Al-Rawi: In clause 35, what do we mean by the word “exposes” in the first line?

Sen. Ramlogan, SC: “Exposes”? Well that is in the ordinary literal use.

Sen. Al-Rawi: Open to judicial definition of exposure.

Sen. Ramlogan SC: The dictionary’s literal meaning—exposes?

Madam Chairman: Exposes a child to a dangerous drug.

Sen. Al-Rawi: Okay. I am just wondering if it meant literal or definition.

Sen. Ramlogan SC: That is fine.

Madam Chairman: Separately. Clause 35.

Sen. Dr. Bernard: Before you move on, Chair; Sen. Wheeler, on the last day of his contribution, raised an interesting question. I am wondering if we should not consider this in the light of clause 35. He asked, what about mothers who use illegal drugs or alcohol while pregnant, can they be in fact exposing the foetus to what we know as alcohol foetal syndrome and drug foetal syndrome?

Sen. Ramlogan SC: The definition of child does not include a foetus, so that would not arise.

Sen. Dr. Bernard: It will not?

Sen. Ramlogan SC: No, because a person who exposes a child—
[*Interruption*]

Sen. Deyalsingh: A child has been expelled from the uterus.

Sen. Ramlogan SC: Even then.

Sen. Hinds: It is independent; on its own. The definition has been independent.

Sen. Ramlogan SC: A child is afterbirth.

Sen. Deyalsingh: No, no a child is not afterbirth.

Sen. Ramlogan SC: Well, you know.

Sen. Hinds: It is not an afterbirth. It is after birth. The child has an independent person.

Sen. Dr. Bernard: Even in the later stages of foetal growth, would it not be considered?

Sen. Hinds: It does not have an independent life of its own.

Sen. Ramlogan SC: In law it does not. So it does not arise. That is fine.

Question put and agreed to.

Clause 35 ordered to stand part of the Bill.

Clause 36.

Question proposed: That clause 36 stand part of the Bill.

Sen. Dr. Balgobin: Madam Chair, if I may just ask; I heard the Attorney General's explanation in his usual illuminating talk in the debate, but I was a little confused still, why giving a child a dangerous drug carries a lower sentence than having the child carry a dangerous drug which is on 36 and 37, which was really the inconsistency I had sought to highlight and which I gathered the hon. AG was seeking to respond to. Could you clarify?

Sen. Ramlogan SC: The idea was that the use of—they wanted to be strong on discouraging the use of children in the drug trafficking trade itself as part of the criminal enterprise, because that is something that we face in the courts in a very real way, where children are oftentimes used/and or blamed because they can attract a lesser sentence. That is why we came down so heavy on the giving of the dangerous drug to the child, because most of the time the social workers told us that that happens amongst your peers,—yes, it could conceivably happen outside of that. But because,—it could happen, a bunch of young “fellas”—I mean when did you take your first cigarette? In school at the back of the washroom or in the changing room in the gym or whatever but it was with your peers. And we do not want to come down so heavily on that, that we would run the risk of, you know—
[*Interruption*]

Sen. Dr. Balgobin: Then is there not a distinction to be made, hon. AG, say in 36, between a child who gives a drug to another child, which would be more in relation to the kind of peer activity that you are talking about as opposed to a person, which implies that an adult can also do that? I understand and accept the logic for the child.

Sen. Ramlogan SC: I understand the point. You see, the problem there is, if you differentiate between the child giving the drug to the child—already we have a problem in the schools with drugs in the schools but being pushed by students in

the schools, and what the drug pushers will do is they will then increase that line in the chain of distribution and that link would become a much more important link.

Sen. Dr. Balgobin: No, but it is already very heavily dealt with under clause 37, “eh”. No? Where a child being used to sell attracts a heavier penalty—I am wondering whether in 36 if the intent was to say child giving child, whether clause 36 should not read, a “child who gives or causes to be given a child”?

Sen. Ramlogan SC: Yes. Well, it will be a criminal offence for an adult or a child to give another child a prohibited drug anyway.

Sen. Dr. Balgobin: But if you are giving them a lower sentence here than what would obtain on clause 37?

12.15 a.m.

Madam Chairman: You all are staying with the word “person” or you are adding any other thing, as is?

Sen. Ramlogan SC: No, I think we will go with it as is.

Sen. Al-Rawi: Madam Chairman, if you could pause for one minute before putting the question.

Madam Chairman: I know, I proposed that. Sen. Al-Rawi is asking that—I was going to propose that we do a 10-minute washroom break.

Sen. Al-Rawi: I was just wondering whether we wanted to have a small chat so that we could confer with a few things before putting the question, Madam Chair.

[The Attorney General and the Leader of Government Business confer]

Hon. Senator: *[Inaudible]*

Madam Chairman: No, I have to decide what we are doing here. Could we then take a break? I propose that we take a short break and resume at 12.30 a.m.

12.17 a.m.: *Committee suspended.*

12.30 a.m.: *Committee resumed.*

Question put and agreed to.

Clause 36 ordered to stand part of the Bill.

Sen. Al-Rawi: Question on clause 36(b) just to be sure that we wish the \$50,000 and imprisonment for 10 years to stand as it is, and this is in relation to the fact that we are talking about dangerous drugs and substances having effects upon children.

Sen. Ramlogan SC: I think the answer is yes, because of the possible scenario where it will happen amongst their peers.

Sen. Al-Rawi: I see. Thank you.

Sen. Baptiste-Mc Knight: Thank you, Madam Chairman. I would like to propose, with the greatest respect, seeing that we are a third of the way through this Bill, we agree to send this Bill to a select committee with a one-day, two-day time limit and come back, because there are just too many problems that make me worry that this Bill, when passed, will not be implementable. Madam Chairman, I would like you to put this to the vote and see where we go from here.

Madam Chairman: Okay, I am being advised by the clerks that at this point, Standing Order 51(1) of the Standing Orders in determination of the committal of a Bill: “When a Bill has been read a second time, it...stand committed to a Select Committee and...provisions of Standing Order 69(1) shall take effect...” Unless you wish to have an informal committee which—

Sen. Al-Rawi: Madam Chairman, just for guidance under our own practice, we have done it with the Data Protection Act, in committee stage, paused for one day, sat together with the legal advisors so that we did not have to go through the rank, got the ideas exchanged quickly, and came back within one day as well. So it would just be apposite to allowing for circulation of amendments, if any, by having that quick discussion go through because, if we look at the time frame—

Madam Chairman: If you had amendments circulated, you mean?

Sen. Al-Rawi: Yes, Madam Chairman.

Madam Chairman: I see.

Sen. Al-Rawi: So what I am saying is that if that period were to be allowed, we would be able to come back within a day or so, and have amendments circulated which would, in fact, already be agreed upon. It would seriously truncate the time.

Sen. Drayton: Madam Chair, I certainly would like to support.

Madam Chairman: It will not—I just want to make note that such a committee is not an official parliamentary committee.

Sen. Drayton: I understand.

Madam Chairman: So, I am being urged strongly by the Clerks and in this case, I am going to take my advice from the clerks of the Senate that we have passed the stage where that will be allowed. I do not know if the Attorney General will agree with me, but at this point, we have already passed that stage, and I am being urged and advised very strongly by the Clerks and I will abide by that. So we will proceed as we are going and—[*Interruption*]

Sen. Ramlogan SC: Madam Chairman, thank you very much. The position of the Government is that the two major issues of contention that have arisen during the debate that have caused some consternation to the Members of the Independent Bench in the Senate appear to be, one, the same-sex issue, and two, the issue of the age of consent and marriage falling under the other pieces of legislation for Hindus and Muslims. Those are not issues that can be resolved by any informal joint committee of this Senate. Those are major policy issues, and I did, in fact, raise with my colleagues on the Opposition, as to whether or not, they could get instructions to see whether there is any movement on either side—the Government or the Opposition—with respect to those two major policy issues; the answer is no.

This is a Bill that occupied the better part of a decade in the annals of this country's legislative history. It is a Bill that has been subjected to the most intense scrutiny by a committee chaired by Ms. Stephanie Daly. I was at pains, during my contribution, to read out the number of persons, the mixture and blend of expertise, and I am not saying that it is perfect; no legislation that we pass will ever be perfect, but we need to put an end to the analysis-paralysis and get on with passing this law for the benefit and protection of the children. The Lower House sat all night. There is a doubles vendor on the corner by Jenny's Wok. I have made contact with them. The Government is prepared to sit all night and complete this Bill, and that is our position.

Sen. Al-Rawi: Madam Chairman, if I may.

Madam Chairman: Are we debating or should we now proceed? Because I think the Parliament is being guided already and—[*Interruption*]

Sen. Al-Rawi: I am sure you wish to hear me.

Madam Chairman: On a Bill, on the clauses, yes.

Sen. Al-Rawi: Madam Chair, we have paused on the RHA Bill; we have paused on the DNA Bill—[*Crosstalk*] Hold on; just hear me out. The question is really: how do we make best use of the time? We have sat for four days in the last

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week, and we are willing to sit at any other point before Parliament prorogues with urgency within a day or two. All that we are suggesting even if the big item clauses cannot be agreed, then we have at least the position of agree to disagree, but we would have disposed of all the other smaller amendments to be dealt with in an efficient fashion. That is all that I am suggesting.

Madam Chairman: I hear your suggestion, Sen. Al-Rawi and I agree with you that there were ways that we could have dealt more efficiently with the disposing of amendments had they been circulated prior, and had the drafters had prior notice of the requested or proposed amendments.

Sen. Al-Rawi: And if the Parliament had time to consider it.

Madam Chairman: And so it would have been done in a more efficient manner. But having started this process with two lists of amendments, we will now proceed; we have already passed the stage.

Sen. Al-Rawi: *C'est la vie*, Madam Chairman. If that is your view, let us press on.

Madam Chairman: I am being—this is not my view.

Sen. Al-Rawi: It is your view.

Madam Chairman: This is the opinion of the Chair after advisement from the clerks of the Senate.

Sen. Al-Rawi: Would you just repeat what the advice is?

Sen. Ramlogan SC: No, no, no.

Sen. Al-Rawi: Just to get it clear.

Madam Chairman: If you did not hear, I can ask Hansard to get a recording for you if you like.

Sen. Al-Rawi: That is being churlish; I am sure you do not mean that.

Sen. Ramlogan SC: I am sure you cannot tell the Chair that.

Sen. Al-Rawi: No, no, I am being serious. It is 12.37 a.m.; we want to get on with getting the law passed.

Sen. Ramlogan SC: With the greatest of respect, you cannot tell the Chair she is being—

Sen. Al-Rawi: With respect, we are descending into difficulties.

Sen. Ramlogan SC: “Nah, man, you are out of place.”

Sen. Al-Rawi: “Nah man, come on.”

Sen. Beckles: Madam Chairman, I just want to make the point that this statement, that it is not possible for us to have a suspension of the committee at this stage, is very new to me. I have been sitting in this Parliament from 1995, and this is the first time that I am hearing that it is not possible; the first time I am hearing that.

The fact that you have reached committee stage does not mean, especially when there are substantial concerns about the Bill, that it is being said that Members of the Opposition, the Government, and the Independents cannot meet to resolve some of these issues. That, I totally reject, and I know that that is not correct, because it is not a question of putting a formal committee. The point is that there is the discretion particularly where—you know, it is easy for people to say that you had time to put amendments when you do not have resources to do what the Government is doing, when we are sitting two days this week, two days last week, and when we are doing substantial Bills, and when we get a Bill with 100 and something clauses, okay, just a week before, and you say you are doing one Bill and it is changed.

All of us understand that this has taken 10 and 11 and 12 and 13 years, but we also understand that the Children’s Authority Bill was passed in 2000 for the same reason, and in 2012, cannot be assented to for the same discussions that we are having today. So let us proceed.

Madam Chairman: Let us proceed. But I would like for the record though—I keep hearing that we have had this Bill for one week only; I would like to remind all Senators that the notice of this Bill being debated came somewhere on May 08, and we are now nearly four weeks debating this. To say that we cannot because we only had one-week’s notice; that is there. Plus, this Bill has been already—*[Crosstalk]*

Sen. Beckles: We were not idle between the 08 and the 23rd.

Sen. Al-Rawi: So, we did no other work in this Senate?

Sen. Baptiste-Mc Knight: Madam Chair, are you saying that we had nothing to do but consider this Bill from May 8?

Sen. Beckles: It would seem so.

Madam Chairman: No, no! Of course not! I would never presume to say that, Senator.

Sen. Baptiste-Mc Knight: But surely, that is the implication? [*Crosstalk*]

12.40 a.m.

Madam Chairman: Just a minute, please. Excuse me. I am saying that all Senators—in fact if the clerks would give me a listing, I believe more than 30 Senators, by today, would have spoken on this Bill.

Sen. Al-Rawi: And?

Madam Chairman: No I am not saying—there is no “and”. The question is that 30 Senators not could have spoken in just one week. It was spanned over a period of time and amendments and all of that were considered.

Sen. Baptiste-McKnight: Madam Chairman, I want you to know that if you give me a Bill today and you tell me you want me to talk on it tomorrow, I will come here and make sense. Do not tell me that because I have had it for more than a week—
[*Interruption*]

Sen. Beckles: With nothing else to do but the Parliament, we discussed nothing?

Madam Chairman: No, no, of course we did.

Sen. Ramlogan SC: Madam Chairman, can we get back to the Bill and the business of the Senate at hand? I believe we are on clause 37.

Sen. Beckles: I would just really like to know—they are saying this advice has come from the clerk, could we be told which clerk has given that advice?

Sen. Al-Rawi: Let us hear the advice.

Sen. Ramlogan SC: Please!

Sen. Beckles: No, I want to know who.

Madam Chairman: I believe there is a level of hostility that I really do not appreciate.

Sen. Beckles:—with probably good cause.

Madam Chairman: I am being guided by my clerks. I have indicated that the Standing Orders are clear; you cannot go to a special select committee—
[*Interruption*]

Sen. Beckles: Nobody asked for a special select committee.

Madam Chairman:—and the Attorney General has indicated that any other—
[*Interruption*]

Sen. Beckles: Nobody asked for a special select committee. Nobody asked for that.

Madam Chairman:—committee will have the authority to do the changes that you have requested.

Sen. Beckles: “You all proceed man!”

Madam Chairman: Regarding the two clauses?

Sen. Hinds: The Attorney General said so. We just want to tidy up this is as we—*[Interruption]*

Sen. Ramlogan SC: That is what the committee stage is about.

Sen. Beckles: Proceed man. Go ahead!

Madam Chairman: Okay, proceed.

Sen. Ramlogan SC: Which clause are we on?

Question put and agreed to.

Clause 36 ordered to stand part of the Bill.

Clause 37.

Question proposed: That clause 37 stand part of the Bill.

Sen. Al-Rawi: Madam Chairman, in respect of clause 37, first paragraph:

“A person who uses a child or causes a child to be used as a courier, in order to sell, buy or deliver a dangerous drug...”

The issue here is whether the child is aware of being used as a courier or not.

Sen. Ramlogan SC: It does not matter.

Sen. Al-Rawi: If it does not matter and this Bill prescribes offences by children, would knowledge be important? A child can be caught under this provision as a child offender under the Act.

Sen. Ramlogan SC: The spotlight here is on the person who is in fact using the child, as opposed to the child that is being used and the person who is using the child; they are the ones who would be guilty of this particular offence.

Sen. Al-Rawi: Great! So then there is no need for exception in relation to the child’s role?

Sen. Ramlogan SC: No.

Sen. Drayton: May I seek one clarification here? What if this child is 17 years old?

Sen. Ramlogan SC: Yes.

Sen. Drayton: I am just asking for clarification. This is a 17-year-old child who is working.

Sen. Ramlogan SC: Yes.

Sen. Drayton: You are saying that this child would not be incriminated in any way?

Sen. Ramlogan SC: No, no. Sorry, what role and capacity are you envisaging the child in; as the person carrying the drugs?

Sen. Drayton: “A person who uses a child or causes a child to be used as a courier...”

Sen. Ramlogan SC: Yes.

Sen. Drayton: So, let us just say a police officer/constable, intercepts/intervenes and a child, 17 years old, who is working, paying taxes, et cetera, is found with the drugs, and that 17-year-old youth from the usual hotspots or whatever; I am just—*[Interruption]*

Sen. Ramlogan SC: And the 17-year-old is the courier.

Sen. Drayton: And the 17-year-old is the courier.

Sen. Ramlogan SC: Yes.

Sen. Drayton: And the police found that 17-year-old with the drugs, you are saying that 17-year-old is a child?

Sen. Ramlogan SC: Yes.

Sen. Drayton: Because I know you have picked up a lot of children—

Sen. Ramlogan SC: Sure.

Sen. Drayton:—and thrown them into jail already, so I am seeking clarification.

Sen. Al-Rawi: They are liable under the Interpretation Act, insofar as aiding, abetting, courier; the offence of being a courier is also there.

Sen. Ramlogan SC: That will still be an offence.

Sen. Drayton: So, the 17-year-old child and, let us just say, an eight-year-old child as a courier, will be treated under the law the same way?

Sen. Ramlogan SC: It will depend on the circumstances.

Sen. Drayton: They are both couriers.

Sen. Ramlogan SC: Yes.

Sen. Drayton: But when the question was first raised by Sen. Al-Rawi, you indicated that the focus is solely on the person who is using the child.

Sen. Al-Rawi: Precisely!

Sen. Drayton: Now, the clause deals with the person who is using the child. I am trying to establish whether the child has any liability here at all.

Sen. Ramlogan SC: The child, prior to this Act—subsequent to this Act, if anyone is involved in the trafficking of drugs, whether as a courier or otherwise, they will be guilty of an offence. If you are a child, the judge will take that into account in sentencing, and we have made special provisions in this Bill for the situation of a child who finds himself committing an offence under this law. But, child, adult or otherwise—*[Interruption]*

Sen. Drayton: The child then will have to prove that it did not know that he or she was carrying a drug?

Sen. Al-Rawi: Correct.

Sen. Ramlogan SC: Yes.

Sen. Al-Rawi: There is a reversal of burden, which was my point. Then that leads on to paragraph (b). Insofar as you are seeking to bring an offence to the person procuring the child's carriage, in this case I would have preferred—I am grateful for the statement of knowledge so that the offence, when it is viewed, can be viewed in the context of what we intend in our statements now. When we look at paragraph (b), do we then want to hold on to the inclusion of the fine here, insofar as there is the “either or” provision? Do we want to make it as strong as to say “just imprisonment” because of the election aspect?

Sen. Ramlogan SC: Yes, because of the fact that the persons who may be involved in the drug trade; the food chain ranges from the wealthy barons straight down the distribution chain, so you could conceivably have the guys outside the school who are still of school age and you would need to cater for them as well. We would leave it to the discretion of the judge.

Sen. Al-Rawi: Okay.

Question put and agreed to.

Clause 37 ordered to stand part of the Bill.

Clause 38.

Question proposed: That clause 38 stand part of the Bill.

Sen. Ramlogan SC: Madam Chairman, I beg to move that clause 38 be amended as follows:

38(2) Delete and substitute the following subclause:

“(2) A person or child referred to in subsection (1) shall heed the warning of the constable and comply with the request by him for information.”

Sen. Al-Rawi: A question in relation to clause 38:

“38(1) Where a constable reasonably believes...”

Why have we deviated from reasonable suspicion formula words? Does it matter? Is it a preferred choice?

Sen. Ramlogan SC: I think they probably intended the same thing. A constable reasonably believes or reasonably suspects: six of one, half a dozen of the other. If you want to change “believes” to “suspects”, but I think that is fine. I think “believes” captures it really.

Sen. Al-Rawi: Sure. And then the question is:

“Where a constable reasonably believes that a child or person whom he reasonably believes to be a child is—

- (a) in possession of tobacco...
- (b) smoking...products; or
- (c) drinking...

the constable shall—

- (i) issue a warning...
- (ii) obtain the name...
- (iii) immediately notify the Authority...”

Sen. Ramlogan SC: Yes.

Sen. Al-Rawi: Then it goes on:

“(2) A person or child referred to...shall comply with warning...

(3) Subsection (1) does not apply where a person referred to can establish that he is an adult.”

The English provision has—[*Interruption*]

Sen. Ramlogan SC: Clause 38(2) is amended.

Sen. Al-Rawi: Okay, I have not seen it just yet. I would look at it.

Sen. Ramlogan SC: It is amended and it has been circulated.

38(2) Delete and substitute the following subclause:

“(3) Where a person is charged with an offence under subsection (1), it is a defence for him to prove that he had not himself seen the child pornography, or did not know or did not have any cause to suspect it to be child pornography.”

Sen. Al-Rawi: But before we get to clause 38(2)—sorry, in saying that I have not looked at it, I have not had the time to look at it having just arrived—well, earlier this evening.

Sen. Ramlogan SC: Sure.

Sen. Al-Rawi: In England, we have the ability for the police, with the similar offence here, when the child has been viewed to be an habitual offender, for the policeman to actually seize the product. We have not extended the power here. So we have:

“(i) issue a warning...

(ii) obtain the name of...child...

(iii) immediately notify the Authority, who shall contact the parents of the child forthwith...”

On subparagraph (iii), why are we going only to the parents, as opposed to person responsible, which would be a broader term and more appropriate to the various formulae that we have?

Secondly, do we want to also include at least the power of seizure of the products? In England they describe it in respect of habitual offenders.

Sen. Ramlogan SC: I think the seizure—putting power in the hands of police officers to actually seize tobacco, smoking products, drinking alcohol found on minors may be carrying it a bit far. Normally, the court would have to convict someone of an offence or the substance would have to be illegal for the police to have that kind of power to seize it, and then issues may arise. Suppose the father sends the child to the parlour to buy a bottle of rum because family or friends are coming over.

Sen. Al-Rawi:—which we have criminalized in the Act.

Sen. Ramlogan SC: The point is the seizure. I am not sure that even the seizure element of the item is a policy extension that we want to go as far.

Sen. Al-Rawi: Okay, I hear you. Let us go now to the theory of law and justification of sanction for something which does not prescribe an offence. We have criminalized dangerous drugs, tobacco, et cetera. Here we have a provision, clause 38, just floating, in a sense, because there is no sanction applied to it or breach. All that it says is warning, obtain name, notify Authority. There is no form of follow-up whatever. So, if we do not have any form of sanction, why are we putting it into the law?

Sen. Ramlogan SC: I think this is one of those grey nascent areas where you do not want to really have the sanction. The sanction really is when you inform the parents and the Authority. They are meant to do the follow-up if it is counselling, contacting the children and having discussions. But this is not one, at this early stage, where you would want to impose a criminal sanction.

Sen. Al-Rawi: So our intention, for the record, would be: the meaning of this clause is to cause the Authority to undertake further action if necessary?

Sen. Ramlogan SC: Yes, and the follow-up action would take place.

Sen. Al-Rawi: What about the case now, where we have habitual offenders because there is no offence in relation to this?

Sen. Ramlogan SC: I still would not want to criminalize anyone who is an habitual offender for smoking or drinking. Criminalizing it and putting them in a jail will not help and it will probably hearken back to the point made earlier. This is one of those situations where counselling and discussion, with the involvement of parents and counsellors and the involvement of the Authority is, perhaps, needed and that is the policy position we rest on.

Sen. Al-Rawi: I looked at the English development of the law as to why they are putting the provision for seizure of products where the constable knew that the child was an habitual offender, and it came about, really, in the amendment when they brought it in, because the view was held that the legislation had no teeth on

this particular clause and therefore it was just of nuisance value. You will get recalcitrant individuals—children—who would just say: “Well, what can you do about it? There is nothing that you can do about it.” I come back to the point: of do we want to consider, at all, the inclusion for repeat offenders in relation to this as the English have?

Sen. Ramlogan SC: I think that is a futuristic position; that is worthy of consideration in the future, but for now, this is a new cultural, social transformation.

Sen. Al-Rawi: So you build it as you see the results of it?

Sen. Ramlogan SC: Yes, in the first instance. This is the kind of law—I made the point during my contribution—we would expect that we would have to come back to because things are going to change very quickly with technology and new things that would arise. But for now, because of the social, transformational issues that will arise in introducing this—Trinidad is a situation where parents “doh like nobody talking to dey children and all kinda craziness”.

Sen. Al-Rawi: I am happy with the explanation.

Sen. Ramlogan SC: I think we would like to go with the gentle introduction. Then there are issues of the police, putting them under pressure, allegations against the police and so on and we would leave it for that.

Madam Chairman: Are you changing “the parents” to broaden that?

Sen. Ramlogan SC: Yes, we would broaden “the parents” to “contact the parents or person responsible”.

Sen. Drayton: If I may clarify again: so, we are saying that the police on engagement with this child, and we use the example of the long weekend. I do not know whether the Children’s Authority is operating 24/7.

Sen. Ramlogan SC: Yes.

Sen. Drayton: So the police will not be calling the parents?

Sen. Ramlogan SC: Why not?

Sen. Drayton: Well, this does not say that.

Sen. Ramlogan SC: It says they would immediately notify the Authority who shall contact the parents. But bear in mind that comes after “obtain the name of and address”—I suppose we should put telephone number.

Sen. Drayton: So what, would the authority be operating 24/7?

Sen. Ramlogan SC: That is an administrative goal.

Sen. Drayton: I am just asking.

Sen. Ramlogan SC: That is a goal.

Sen. Drayton: You are saying it is a goal; so that under normal circumstances now, if they are issued—the police take the kid down to the jail, call the parents and the parents come and pick up the children or the child—[*Interruption*]

12.55 a.m.

Sen. Ramlogan SC: Not for this, this is not an offence, so they cannot take them down anywhere.

Sen. Drayton: When I say take them down, not for purposes of arrest or anything like that.

Sen. Ramlogan SC: They cannot do anything except (i), (ii) and (iii).

Sen. Drayton: Okay.

Sen. Ramlogan SC: That is it. So we will accept the one with “the parents”:

“Who shall contact the parents or person with responsibility for the child.”

Sen. Al-Rawi: The phrase we used before is: “parent, guardian or person with responsibility for the child.”

Sen. Ramlogan SC: Yeah! That is fine.

Madam Chairman: AG, one question; during the debate, somebody—I cannot recall who raised the point—when it says if a person is found in possession of tobacco, et cetera, then the constable, and I think the question was: are you then going to notify the Authority who will then contact the parents, or should it not be that the constable should be so authorized to contact the parents almost immediately?

Sen. Al-Rawi: Or both!

Madam Chairman: I think the point was raised that what if it is a Friday, and do you contact, let us say the Authority or for some reason over the weekend, and I think that was raised.

Sen. Ramlogan SC: I am advised that in the Lower House, this matter was the subject of some debate and it was agreed that they would contact the Authority. But one amendment I wished to suggest is in (ii): “obtain the name of and address of the child or person;”

Sen. Al-Rawi: Contact details.

Sen. Ramlogan SC: I thought the contact details, you know, the telephone number somewhere because it would cater to the point raised by Sen. Drayton about the weekend.

Madam Chairman: But contact person of whom? Because they are right there with you—[*Interruption*]

Sen. Ramlogan SC: I would say obtain the name or address of the child or person and I would say the parent or guardian.

Madam Chairman: Yes, because the child is already there with you, and with the constable.

Sen. Ramlogan SC: “Name, address and”—[*Interruption*]

Sen. Al-Rawi: “and contact details...” [Interruption]

Madam Chairman:—and the parent or guardian.

Sen. Ramlogan SC: Both, yes.

Sen. Al-Rawi: “obtain name of and address and contact details of.”

Sen. Ramlogan SC: You do not need “name of and address of,” name and address of.”

Sen. Al-Rawi: Right, so “name, address and contact details of the child or person,” and then you could put a further subclause: “in respect of the person responsible.”

Madam Chairman: The thing is when you have the child in front of you now, what do you do? You require the information to call the parents.

Sen. Ramlogan SC: That is the point.

Sen. Al-Rawi: I was just saying that you could either include it in this, or put a new (iii) and say the same thing in respect of the parent, guardian and/or person with responsibility for the child, and then renumber (iii) as (iv).

Madam Chairman: Well, then can we just leave it as (ii) and say “obtain the name, address and contact information of the child or person”? Why are we saying “or person”?

Sen. Al-Rawi: Because it is a person whom you reasonably believe to be a child.

Madam Chairman: Right, “and the parents, guardian or persons responsible”? So you will cover everything in one, right?

Sen. Al-Rawi: “and the parent, guardian or person with responsibility for the child or person.”

Sen. Baptiste-Mc Knight: Madam Chair, may I ask: in the very likely event that the child does not give the right name and contact number, what happens?

Sen. Ramlogan SC: When you call the phone, you will be able to verify that if they did or did not, because you will ask to speak to mother, father, uncle or aunt whomever it is they give you, and that should become evident. But to answer your question, really and truly at this stage, bearing in mind we are dealing smoking and drinking, you cannot do anything much, and we are not proposing to go the full distance or the full monty on it. What we are seeking to do is regulation with the involvement of a partnership with the parents and the Children’s Authority. I think that is what we are aiming for. It is really counselling and rehabilitation; because it is really smoking and drinking which is prevalent and widespread in society, but it is not, you know—okay chief? We will put the amendment.

Madam Chairman: I would like to read clause 38, as amended:

- (ii) obtain the name, address and contact information of the child or person, and of parents, guardians or persons with responsibility for child or person;
- (iii) immediately notify the Authority, who shall contact the parent, guardian or persons with responsibility for the child forthwith on receiving the information.”

Question put and agreed to.

Clause 38, as amended, ordered to stand part of the Bill.

Clause 39.

Clause 39 ordered to stand part of the Bill.

Clause 40.

Question proposed: That clause 40 stand part of the Bill.

Sen. Ramlogan SC: Madam Chair, I beg to move that clause 40 be amended as follows:

40(3) Delete and substitute the following:

“(3) Where a person is charged with an offence under Subsection (1), it is a defence for him to prove that he had not himself seen the child pornography, or did not know or did not have any cause to suspect it to be child pornography.”

- 40(5) A. In paragraph (f), delete after the word and semicolon “pornography;” the word “or”.
- B. Renumber paragraph (g) as paragraph (i).
- C. Insert after paragraph (f) the following paragraphs:
 “(g) a legal officer involved in defending his client;
 (h) a teacher or counsellor in the execution of his duties for the purpose of education or counselling; or”.
- D. Insert after the word “official” the words “or professional”.

Sen. Al-Rawi: I make a few enquiries with respect to clause 40(1)(b): “publishes, distributes or shows any child pornography;”

In view of Sen. Deyalsingh’s contribution which reminded us of the use of Trojan technology viruses, I wondered whether we wanted to include the word “knowingly”, before this, because you may innocently do it insofar as it may find itself onto your computer, and somebody—your child may have access to it unbeknownst to you. That could happen in educational institutions and other things like that.

Sen. Dyer-Griffith: Yes.

Sen. Deyalsingh: Thank you.

Sen. Al-Rawi: It could be solved by the word “intentionally” in the chapeau.

Sen. Ramlogan SC: I am being advised that the intention requirement is implied into the wording as it stands by the prohibition.

Sen. Al-Rawi: I am—*[Interruption]*

Sen. Ramlogan SC: I am being told it is a presumption that the court is expected to make, but I agree with you we should make it express; in this case we must make it express—“knowingly”.

Sen. Al-Rawi: Thank you.

Madam Chairman: Then you have it in (d): “knowingly obtains”.

Sen. Al-Rawi: You see that is exactly why, for the consistency point “knowingly” is added there.

Sen. Ramlogan SC: Why do we not say “a person who knowingly” and let all follow?

Sen. Al-Rawi: Yes. Well, that was what I was going to say, in the chapeau.

Sen. Ramlogan SC: We should say:

“Subject to subsection (5), a person who—knowingly...”

And it will apply to all, and we could take it off as we go along.

Sen. Al-Rawi: Yes. You can take it off from (d) and (e) accordingly. And if I could go back to (b), there is a difference between publishing, transmitting and distributing.

Sen. Ramlogan SC: We can include “transmitting”.

Sen. Al-Rawi: Great! Thank you.

Madam Chairman: “distributes and transmits”?

Sen. Ramlogan SC: “publishes, distributes, transmits or shows”.

Sen. Al-Rawi: Then in relation to (e), proposing a deletion of “knowingly” from (d) insofar as we will include it into the chapeau and (e) as well; with respect to (e): “has in his possession or control”, I wonder if we wanted to add that—
[*Interruption*]

Sen. Ramlogan SC: We could say “possession, power, custody or control”.

Sen. Al-Rawi: And that is to take care of cloud technology and offsite storage.

Sen. Ramlogan SC: “possession, power, custody or control”.

“(e) knowingly has in his possession, power, custody or control;”

Sen. Prescott SC: Power or control does it not mean the same?

Sen. Al-Rawi: I would have used just possession and control.

Sen. Ramlogan SC: Control, that is fine.

Madam Chairman: “possession, custody, power and control”?

Sen. Al-Rawi: “or control”.

Madam Chairman: Or.

Sen. Al-Rawi: After (f):

“commits an offence and is liable on conviction on indictment, to a fine of thirty thousand dollars and to imprisonment for ten years.”

Probably I am anticipating that this threshold is a bit low insofar as you may have some who are caught into the net innocently. But insofar as we are putting “knowingly” inside here and the presumption would be stronger, I wonder whether we had to match with the 10-year factor an increase in the \$30,000 provision. Also too, when you look at offences for copyright infringement that stand in the law, an offence per copyright infringement is \$100,000 per infringement, every copy. So very, very, very high infringement on a summary level in a Magistrates’ Court with criminal and civil consequences, and yet we have child pornography with 10 years, which I am happy with, but with only \$30,000.

Sen. Ramlogan SC: I would prefer to leave it as is, because a child can be showing child pornography to another child in the school; you can have it in the home through the Internet quite easily, and I do not want to carry it too far. So policy-wise, I will leave it as is.

Sen. Al-Rawi: But here is my point, we have the balance in child offender provisions, in this Bill, to consider the discretion to the judge to, in fact, on the satisfaction of guilt of the offender—it is provided in the clause later on—to dismiss the charge, waive it, put it in counselling; but if I keep a low threshold here and I have a wicked man dealing with child pornography knowingly in his control an offence, he gets off with \$30,000.

Sen. Ramlogan SC: Well, not necessarily. You are assuming that the judge will allow a wicked man, with the kind of evidence that you referred to, and the judge will impose \$30,000. In a situation like that we should expect the judge to impose 10 years plus the \$30,000, but he has the discretion.

Sen. Al-Rawi: Correct, but we have an issue as to the alternative use of the charges which we have already raised with respect to indictable offences.

Sen. Ramlogan SC: Sure, but it is a matter for judicial discretion; we think that we should leave as is to give the judge the option having regard to the circumstances, because the circumstances are endless and this can occur quite easily in a wide range of situations, including curious children themselves.

Sen. Al-Rawi: But then the exception is provided in the discretion of the judge. The point is, look at Boos case, a horrible, horrible real life example, and these people usually engage in child pornography—some of them are engaged in it for profit, and \$30,000 just does not hack it in terms of profiteering.

Sen. Ramlogan SC: But the \$30,000 is not what the judge has at his disposal.

Sen. Al-Rawi: I follow the imprisonment factor.

Sen. Ramlogan SC: He has both, and he can do both, and in a serious case one would expect a rational, competent judge to impose a sentence, the severity of the which will be commensurate with the nature of the gravity of the offence given the circumstances in which the offence occurred; but on this matter, I am not prepared to deal with it any further, this is our position.

Sen. Al-Rawi: Then there is also the fact, in the Firearms Act and in the Copyright Act, offences are provided per copy. So you could put in a discretion with respect to per copy, DVD pirates on the roads, \$100,000 for each copy that they have standing in the law books of Trinidad and Tobago not applied, save in certain circumstances, and yet we have child pornography in multiple copies at \$30,000 only for a vast cash of it potentially.

Sen. Ramlogan SC: That is it, Madam Chairman.

Sen. Al-Rawi: There are more proposals with respect to this. In subclause (2):

“For the purposes of subsection (1), a person distributes child pornography, if he—

(a) offers; or

(b) transmits by any means including post, courier, electronic means or facsimile,”

Do we want to include here the concept of “knowingly” in paragraph (b)? The problem here is that with current technology and with embedded issues—*[Interruption]*—but it is in the concept now of the knowledge that you are distributing it. You can innocently distribute it, and again, I draw the analogy to the Copyright Act.

Madam Chairman: Like on Facebook, if you send a video to somebody there and unknowingly you would set off a stream of people distributing—*[Interruption]*

Sen. Ramlogan SC: I think it was not meant to capture anybody who does not know, but I mean if it will give some comfort to put in “knowingly,” then we will do that, but I do not see how somebody could “not knowingly” be distributing child pornography.

Sen. Al-Rawi: Madam Chairman, I will give you a real-life example.

Sen. Ramlogan SC: But Senator, no need to belabour the point, I understand the point, and we will put “knowingly.”

Sen. Al-Rawi: Thank you.

Madam Chairman: So you are putting “knowingly” where?

Sen. Ramlogan SC: “a person...if he knowingly distributes...”

1.10 a.m.

Sen. Al-Rawi: Then, Madam Chairman, in subclause (3)—

Sen. Ramlogan SC: (3) is out. Oh yes, the new (3).

Sen. Al-Rawi: Did we include (f), if there was an amendment there?

Sen. Ramlogan SC: (3) came out altogether.

Sen. Al-Rawi: The new (3) is:

“Where a person is charged with an offence under subsection (1), it is a defence for him to prove that he had not himself seen the child pornography...”

There is no (3) here again as it reads in the Bill.

Sen. Ramlogan SC: There is the new (3), a substitute (3).

Sen. Al-Rawi: Okay, I have seen it. Thank you. Then in paragraph (g), that is of 5(g), we are providing in subclause (5) “a person who is...”, persons of certain categories—paragraph (g), the police service, prisons, defence, customs, et cetera.

Sen. Ramlogan SC: It would include the legal officer—*[Interruption]*

Sen. Al-Rawi: Great! Is there an amendment to that effect?

Sen. Ramlogan SC: Yes.

Sen. Al-Rawi: Sir, I have not seen it. What does it say?

Sen. Ramlogan SC: It says:

“A legal officer involved in defending his client;

(h) a teacher or counsellor in the execution of his duties for the purpose of education or counselling;”

Then at the end, we have: “done by him in good faith for the purpose of his official or professional duties.”

Sen. Al-Rawi: How about a legal officer involved in prosecuting on behalf of the State as opposed to someone who is defending? My concern with paragraph (g), “a legal officer involved in defending his client” is that it does not apply to people who may be dealing with prosecution.

Sen. Ramlogan SC: Beg your pardon?

Sen. Al-Rawi: The proposal for a legal officer involved in defending his client excludes a person who may be prosecuting for his client, who may be the State by fiat for instance.

Sen. Ramlogan SC: That would come about at the last part. I said: “in good faith for the purpose of his official or professional duties”.

Sen. Al-Rawi: Just to get the actual amendment, where is that?

Sen. Ramlogan SC: That is coming in the last line. So, “does not commit an offence under subsection (1), if the act which would otherwise constitute an offence under that subsection is done by him in good faith, for the purpose of his official or professional duties.”

Sen. Al-Rawi: Okay. Could I just suggest in (g) a simple word insertion: “a legal officer involved in prosecution or the prosecution or defence of his client”. That would take care of the mischief specifically; “prosecution for or on behalf of his client”. You can use the word. I may prosecute for the State—[*Interruption*]

Sen. Ramlogan SC: Do we not really need (g) and (h) in light of the change we are making at the bottom? Anyone who is acting in good faith for the purpose of his official or professional duties will be covered. That would cover the legal officer, the teacher and everyone.

Sen. Al-Rawi: Insofar as we have taken our time to set out members involved in the chain of dealing with this offence—[*Interruption*]

Sen. Ramlogan SC: The problem is that once you start listing, you run into the problem of the exclusion.

Sen. Al-Rawi: Having specifically left out attorneys—and it is traditional; in the Interception of Communications Act, in lots of legislation—

Sen. Ramlogan SC: I do not have a problem with that. I am with you on that, but I want to widen it so that we will have people that we cannot even think of now. I am saying that rather than list it, let us focus on the last part:

“Does not commit an offence under subsection (1), if the act which would otherwise constitute an offence under that subsection is done by him in good faith, for the purpose of his official or in the performance of his professional duties.”

Sen. Al-Rawi: That addition of “professional duties” would assist.

Sen. Ramlogan SC: That is the point, and then we need not go with the new (g) and (h) for legal officer and teacher and counselor, because they would obviously be acting in good faith in the performance of their professional duties.

Sen. Al-Rawi: The addition of the word “professional” would assist me there as a specific catch-all conclusion. My own view is that, commensurate with other legislation, there ought to be and the catch-all could still be with the professional.

Sen. Ramlogan SC: The way it is drafted, (g) and (h) and all of the above would be governed by this little clause here. We are putting in the “professional duties”, but we are leaving the legal officer involved in the prosecution or defence on behalf of his client.

Sen. Al-Rawi: Thank you.

Sen. Ramlogan SC: “A legal officer involved in the prosecution or defence of a case.”

Sen. Al-Rawi: “of a case” would take care of the widest possible situation.

Sen. Ramlogan SC: Then we add “for the purpose of his official or professional duties” and that will cover it.

Madam Chairman: Where are you putting it?

Sen. Al-Rawi: At the end of the last line, between “official” and “duties”.

Sen. Ramlogan SC: “official or professional duties”.

Madam Chairman: Sen. Al-Rawi, do you have any more under that?

Sen. Al-Rawi: No, Ma’am.

Madam Chairman: This would then read:

“Subject to subsection (5), a person who”—insert the word “knowingly”—and the rest follows.

Under (b), “publishes, distributes”—insert the word “transmits”; “or shows any child pornography”; and

(d), remove the word “knowingly” before “obtains”;

(e), remove the word “knowingly” and insert after the word “possession”, “or control any child pornography; or”.

Under subclause (2), “For the person of subsection (1), a person”—insert the word “knowingly”—“distributes child pornography,”.

In subclause (3) delete, after the words “subsection (1)”, (a), (b), (c), (d) or (e) and under 5(g) to change to a “legal officer involved in the prosecution or defence of a case”.

We are inserting (h) as circulated, “a teacher or counsellor in the execution of his duties for the purpose of education or counselling” at the last line—

Sen. Ramlogan SC: You are inserting (g) and (h).

Madam Chairman: Yes, you have changed (g) as well and inserted (h) as circulated and included in the last line, after the words “purpose of his official duties or professional duties.”

Sen. Al-Rawi: Just to clarify, Madam Chairman, that 40(3) is being deleted and replaced as circulated.

Madam Chairman: Yes.

Sen. Al-Rawi: Okay, because you said delete 1(a), (b), (c), (d) and (e). So, I am just clarifying that.

Madam Chairman: Okay.

Question put and agreed to.

Clause 40, as amended, ordered to stand part of the Bill.

Clause 41.

Question proposed: That clause 41 stand part of the Bill.

Sen. Ramlogan SC: Madam Chairman, I beg to move that clause 41 be amended as follows:

Insert after the word “who” the word “intentionally”.

Sen. Al-Rawi: Madam Chairman, the question with respect to clause 41 is that whether the word “exposing” should carry with it the caveat of “knowingly” or “intentionally”.

Madam Chairman: We have an amendment circulated.

Question put and agreed to.

Clause 41, as amended, ordered to stand part of the Bill.

Clause 42.

Question proposed, That clause 42 stand part of the Bill.

Sen. Ramlogan SC: Madam Vice-President, I beg to move that clause 42 be amended as follows:

- A. Renumber clause 42 as clause 42(1).
- B. In the chapeau of clause 42(1) as renumbered, delete after the word “Tobago” the words “or elsewhere”.
- C. Insert after subclause (1), as renumbered, the following subclause:

“(2) Where a national of Trinidad and Tobago does an act in a country outside of Trinidad and Tobago which would, if it had been done in Trinidad and Tobago, constitute an offence under this section, he is liable to the penalty prescribed under subsection (1).”

Sen. Al-Rawi: Madam Chairman, in respect of clause 42:

“A person who intentionally causes, incites, controls, arranges or facilitates a child’s involvement in pornography in Trinidad and Tobago or elsewhere is liable—

- (a) on summary conviction, to a fine of thirty thousand dollars or to imprisonment for five years; or
- (b) on conviction on indictment, to imprisonment for twenty years.”

I was wondering, in view of the fact that this is a person who intentionally causes, incites, controls, arranges, facilitates a child’s involvement in pornography, why on earth would we want a summary offence to be here? Should paragraph (a) not be deleted entirely and we be left with the flow through to paragraph (b)? Why would I ever want someone who is intentionally—*[Interruption]*

Sen. Ramlogan SC: We can delete (a) and we can join (b) as part of 42(1).

Sen. Al-Rawi: After the word “liable”, you would take up (b), which says: “is liable on conviction on indictment, to imprisonment for twenty years.”

Sen. Ramlogan SC: The question was rhetorically asked why you would ever want somebody who is intentionally doing this; I just want to pause a moment to highlight that it may very well be that a 17-year-old is doing this or another child. I am just flagging it to answer the question why they may have had a distinction. You are picturing the big bad guy doing it, but there may be other persons. You follow?

Sen. Al-Rawi: I accept that, but I would prefer to put my faith in the discretion of the judge on the offence.

Sen. Ramlogan SC: What I would do is rather than put an imprisonment alone, should we not put a fine?

Sen. Al-Rawi: So that you could have the alternative?

Sen. Ramlogan SC: Yes, so we put a fine of \$250,000—or \$500,000.

Sen. Al-Rawi: I follow your point.

Madam Chairman: If you wanted to go straight to 20, then the fine should be hefty enough.

Sen. Al-Rawi: This is the point I was making earlier that the 30 was very low.

Madam Chairman: This is one who arranges and facilitates—[*Interruption*]

Sen. Ramlogan SC: It is intentional.

Sen. Al-Rawi: Insofar as there is a discretion to the judge—[*Interruption*]

Sen. Ramlogan SC: We have to take a strong stand on this one, so let us leave it at 20 and move on. Any other point, Sen. Al-Rawi?

Sen. Al-Rawi: No, Sir.

Question put and agreed to.

Clause 42, as amended, ordered to stand part of the Bill.

Clause 43.

Question proposed: That clause 43 stand part of Bill.

Sen. Ramlogan SC: Madam Chairman, I beg to move that clause 43 be amended as follows:

- (1) A. in the chapeau—
 - (a) delete after the words “this Act” the word “and” and substitute the word “or”; and
 - (b) insert after the words, “these Parts” the words “or the Sexual Offences Act”.
- B. In paragraph (b), delete after the word “is” the words “sixteen years of age or under” and substitute the words “under sixteen years of age”.

Sen. Drayton: Madam Chairman, the child offenders here, will the judge have any discretion or options with respect to counselling, things like community work, rehabilitation, other than sending to prison?

Sen. Ramlogan SC: The answer is yes.

Sen. Drayton: Where is that?

Sen. Ramlogan SC: That is in clause 59, “Determination of sentence for child”.

Sen. Al Rawi: Yes, it is under Part X—Child Offenders.

Sen. Ramlogan SC: All right, Let us move on.

Question put and agreed to.

Clause 59, as amended, ordered to stand part of Bill.

1.25 a.m.

Clause 44.

Question proposed: That clause 44 stand part of the Bill.

Sen. Ramlogan SC: Madam Chairman, I beg to move that clause 44 be amended as follows:

Delete the word “complainant” wherever it occurs and substitute the words “virtual complainant”.

Sen. Al-Rawi: Just a question, and thank you for the circulated amended, which I know arose as a result of my own question. I took a double check of the Interpretation Act; does “complainant” include “virtual complainant” in the interpretation section?

Hon. Senator: Yes.

Sen. Al-Rawi: My intention in raising it—[*Interruption*]

Sen. Ramlogan SC: We checked with the DPP on this one and “virtual complainant” is the appropriate term.

Sen. Al-Rawi: Thank you, great, I am glad to know.

Question put and agreed to.

Clause 44, as amended, ordered to stand part of the Bill.

Clause 45.

Question proposed, That clause 45 stand part of the Bill.

Sen. Al-Rawi: Madam Chairman, clause 45 says:

“(1) Without prejudice to any power conferred upon a constable at common law or under any other written law, a constable, a person referred to in section 50(2)(a) or (b)”—those are persons who can act as public officers—“or a person authorized by a Court may take to a place of safety, any child...Schedule 1...or there is reason to believe has been, or is likely to be...shall notify the Authority forthwith.”

In today’s world, where you are picking up a child without reference to anyone—I accept that the Authority has a lot behind it once it kicks into gear—but if we are going to deal with the physical removal of a child sometimes without reference to somebody else, should we not also inform the police, lest we be guilty of something, causing a panic in relation to kidnapping or some other aspect?

Madam Chairman: But this is a constable authorized by the court.

Sen. Ramlogan SC: You see, apart from constable you have social workers and so on. I mean, administratively, one would expect that would be done, that they would inform the custodians of the child, the police. It is not just the police, but you would have to inform the parents of the child and you may want to inform the school. Suppose the child is, you know—*[Interruption]*

Sen. Al-Rawi: I will tell you what my fear is. If I draw an analogy to the Security of Land Tenure Act when we did not see the body kick into effect, which was contemplated by statute, the court had to interpret another body as the performer of the role. In the event that the Authority for some reason has difficulties in its capacity, I was wondering whether the police should also be informed.

Sen. Ramlogan SC: I think on this point, the child would be taken before the court and the court, obviously—if you look at section 50(2), the court would require the public officer, a parent or guardian and there is a list there.

Sen. Al-Rawi: And while we are referring to that point, AG, if we could look at the issue—specifically, because in subclauses (2) and (3) you are being brought before a court, I wonder whether we want to also include, as a person to be notified, the children’s attorney, because here you are actually going to seize the child, and that is where the concept of making sure the rights of the child are looked at.

Sen. Ramlogan SC: These are all valid points, but the thing is we cannot over-legislate. We have to leave some things for the administration of the Authority to work out, and it is obvious that this piece of legislation is meant to work in collaboration with

the other arms of the State that deal with these matters—these are other stakeholders—and rather than to put a substantive provision in the law that would create in itself problems and legal loopholes, for example, you say the police officer must notify the parents, and then, what? The parents are nowhere to be found, they are on vacation in America—[*Interruption*]

Sen. Al-Rawi: But the Act provides for that. The Act provides for the court being satisfied that the parents cannot be found.

Sen. Ramlogan SC: No, no. I am not talking about the court, because that is okay. Once the child is brought before the court, you do not have a problem, which will be overnight or the only possible is on a weekend that concerns me.

Sen. Al-Rawi: Okay, let me flip it on its head. If I look at a mischief this way, I have somebody under 18 years old who is a child.

Sen. Ramlogan SC: Yes.

Sen. Al-Rawi: I take up this person and I detain him to take him before someone. I have notified the Authority which I am not sure is open yet or has resources or how much money is committed to it.

Sen. Ramlogan SC: Okay. Who do you want them to notify?

Sen. Al-Rawi: The children's attorney, because this Bill proposes creating an institution in law.

Sen. Ramlogan SC: Well, I would say if we are going down that road, we should say the children's attorney, the child's parents or legal guardian, or person with responsibility. [*Crosstalk*] If you take this child on a Friday and "you eh tell nobody, de mother and father go go and report the child as missing." [*Crosstalk*]

Sen. Al-Rawi: It applies to a victim as well.

Sen. Ramlogan SC: Even so, a young girl is raped, she is a victim yes, but she does not want the parents to know. Do you follow? I can see the sense in putting that in, and I think Sen. Drayton—so let us craft a provision to inform the parents, guardian or the person with responsibility, the children's attorney and the police.

Sen. Al-Rawi: And the police, yes.

Sen. Ramlogan SC: So those are the three persons. So could we work on that?

Sen. Al-Rawi: Thank you.

Madam Chairman: Are you doing that now?

Sen. Ramlogan SC: Yes. While they are working on that, do you have any other point? Mr. Griffith, you all will work on that for me please? Draft that as a new subsection, we will throw it in at the end because they are related to the children's attorney.

Sen. Al-Rawi: That would take care of the other observations I had.

Sen. Ramlogan SC: Well, we will put that in as a new subclause (8).

Sen. Drayton: Sorry, where is that?

Sen. Ramlogan SC: In clause 45 subclause (8). We want to insert a subclause (8). Who is drafting that new subclause for me? [*Crosstalk*]

Madam Chairman: Attorney General, do you not want to put that right after subclause (1), because it is referring to whom you are contacting Immediately?

Sen. Ramlogan SC: It does not matter where we put it.

Sen. Al-Rawi: We could easily include it after the word "Authority".

Sen. Ramlogan SC: "shall notify the Authority, the parent, the guardian, or person with responsibility—[*Interruption*]

Sen. Al-Rawi: No, "parent, guardian or person with responsibility for the child".

Madam Chairman: The same thing like we did just now.

Sen. Ramlogan SC: Yes, the same thing, but it is three people. Should we not separate it and say shall notify (a), (b), (c) (d) and (e)?

Sen. Al-Rawi: Yes.

Sen. Ramlogan SC: It would be tighter drafting.

"...shall notify—

- (a) the Authority;
- (b) the parent, guardian or person with responsibility for the child;
- (c) the Children's Attorney; and
- (d) the district police station."

Sen. Al-Rawi: Perfect; the police station in the magisterial district or words to that effect.

Sen. Ramlogan SC: Where the child resides. [*Crosstalk*]

Sen. Al-Rawi: I would not say where the child resides, but I would say where the child was picked up.

Sen. Ramlogan SC: The parent will go to the police station where they are living first.

Sen. Al-Rawi: You see, at least reports would be made right around, because a bulletin could go out.

Sen. Ramlogan SC: “Shall notify the police”. Just say police.

Sen. Al-Rawi: And then leave it to the administrative measures.

Sen. Ramlogan SC: Yes. So that is fine, Madam Chairman. Thank you very much.

Madam Chairman: Clause 45 is amended as follows:

Remove the words “the authority forthwith” and include the words “and shall notify:

- (a) the Authority;
- (b) parent, guardian or person with responsibility for the child;
- (c) the Children’s Attorney; and
- (d) the police.”

Sen. Al-Rawi: We would use the word “a”, “a children’s attorney”.

Madam Chairman: Okay, “a Children’s authority”. Do we put the word “forthwith” there at all?

Sen. Ramlogan SC: I thought about that, but it is not necessary.

Sen. Al-Rawi: I did not know whether we wanted “as soon as is reasonably practicable” or “forthwith” or none at all. [*Crosstalk*]

Sen. Ramlogan SC: The point is being made that if the police is doing the removal, informing the police would be tautological.

Sen. Al-Rawi: The same where the E999 does not know what another branch is doing, practically—[*Interruption*] Okay, but here is the point. One of the methods of protecting the police from a malicious prosecution aspect is the fact that they made a notification.

Sen. Ramlogan SC: We will leave it as is, let us move on.

Question put and agreed to.

Clause 45, as amended, ordered to stand part of the Bill.

Clause 46.

Question proposed: That clause 46 stand part of the Bill.

Sen. Al-Rawi: With respect to clause 46, it says:

“Where a person having responsibility for a child has been...”

I thought that it would have been better architecturally to break it at the word “been” and put a “:”

“(a) convicted of committing an offence under this Act or an offence mentioned in Schedule 1 in respect of that child.

Delete the words “or has been” and make “(a)” now “(b)” —

“(b) committed for trial in any such offence; or”

(b) would become (c);

“(c) bound over to keep the peace towards such child,”

and then it continues:

“by any Court, that Court, without requiring any new proceedings to be instituted, shall forthwith take the child of the responsibility of the person, and bring the child to the attention of the Authority.”

So the first point is on the architecture there, because it did not read right the way it was phrased.

Sen. Ramlogan SC: Well, that is another matter that may require an amendment per se, but it is fine. It is stylistic and we are fine with it.

Sen. Al-Rawi: Thank you. Secondly, just to jump back up to subclause (7) in the clause above, I have just seen it here and I had a comment in relation to it.

Madam Chairman: Subclause where?

Sen. Al-Rawi: Subclause 45(7). Sorry, Madam Chairman. Just for clarification:

“A constable or a person referred to in section 50(2)(a) or (b) shall make a written report of the action taken in seventy-two hours under this section...”

I will leave that.

In subclause (2) it says:

“Where at any time during the proceedings—

(a) a person having responsibility...”

Now the question here is what proceedings.

Madam Chairman: There was nothing before to give the indication.

Sen. Ramlogan SC: We said the convicted and committal above it, refers to that.

Sen. Al-Rawi: Well did it mean the proceedings above or did we mean here, when we look at (a) and (b), did we mean any proceedings?

Sen. Ramlogan SC: It could be either/or. It is wide enough to cover any proceedings.

Sen. Al-Rawi: If so, we could delete the word “the”, “Where at any time during proceedings...”

Sen. Ramlogan SC: I think it really refers to the proceedings in (1).

Sen. Al-Rawi: Well, that is what I wanted to be sure.

Sen. Ramlogan SC: It is (1).

Sen. Al-Rawi: So...“where a person having responsibility... has been—

(a) convicted...

(b) committed for trial...

(c) bound over by any Court, that Court, without requiring any new proceedings to be instituted, shall forthwith take the child out of the responsibility...”

Now, you are saying that (2) says: “Where at any time during those proceedings...”

Sen. Ramlogan SC: Well, the proceedings above, we can say that.

Sen. Al-Rawi: But read the rest—“Where at any time during...”—let me just use the word “those” for now.

Sen. Ramlogan SC: Sure.

Sen. Al-Rawi: “Where at any time during these proceedings—

(a) a person having responsibility for a child is charged with any offence in respect of that child, before any Court; or

(b) it has come to the knowledge of a Court that an offence has been committed in respect of a child,”

That does not lead me to believe that we are talking about the proceedings above. I think they were actually talking about any proceedings. So, in the middle of any proceedings before a court, a court becomes aware of an offence or a charge in relation to the child, it is in those other proceedings that the court may do something else, which subclause (2) seeks to deal with.

1.40 a.m.

Sen. Al-Rawi: That court may, without requiring any new proceedings, be instituted for that purpose to bring the child.

Sen. Ramlogan SC: I am being advised by the draftsman that they were mistaken and that, yes, it is referring to any proceedings.

Sen. Al-Rawi: Thank you. That would take care of the concern I had there.

Madam Chairman: So what would be the change?

Sen. Al-Rawi: Instead of “the” we could put it with “any” in subclause (2). If I look at 2(b)—

Sen. Ramlogan SC: “Where at any time during any proceedings.”

Sen. Al-Rawi: Or you could say just delete the word “any”—“Where at any time during proceedings”, but “any” would be better, even though it sounds odd.

Sen. Ramlogan SC: Just take out the word “the”.

Madam Chairman: Could I suggest, if you say “Where during any proceedings” and just leave out “at any time”—“Where during any proceedings”.

Sen. Al-Rawi: “at any time” is a borrow-on from the rules of the Supreme Court which speak to time in the context of proceedings.

Sen. Ramlogan SC: “Where at any time during any proceedings”—you would repeat “any”? Do we leave both “anys” then? “Where is the grammar police?”
[Laughter]

Sen. Al-Rawi: I would leave “any” in terms of the context.

Sen. Drayton: My question really is: where does the Authority come in here, or when, at what point?

Sen. Ramlogan SC: This is the court, the children’s attorney would be there and so on.

Sen. Al-Rawi: In subclause (2)(b) where it says:

“(b) it has come to the knowledge of a Court that an offence has been committed in respect of a child,”

Did we mean to say just offence? Because offence requires that we have gone through the process of conviction in a sense; I do not know an offence has happened until I go through the judicial process.

Sen. Ramlogan SC: I think that is deliberate, because if you look at (a) above, it speaks to “it is charged”, it is in process and this one is post.

Sen. Al-Rawi: Great; excellent. That takes care of the clarification on the record. I am continuing after (b):

“...that Court may, without requiring any new proceedings to be instituted for that purpose, bring the child to the attention of the Authority and refer the child to the Court with jurisdiction in family matters.”

Clause 46(2) deals with any proceedings where a court becomes aware that an issue, not necessarily an issue under this Act, as it may become, but in anything going on before it, something to do with a problem with a child. And now we are saying the court may, without new proceedings, bring the child to the attention of the Authority. Insofar as I would have the ability to physically take that child somewhere, I would have wanted the children’s attorney to be brought in here, because I have no immediate understanding that the child’s rights would be looked after that way.

Madam Chairman: It says, “bring the child to the attention of”.

Sen. Ramlogan SC: But the attorneys involved sought the court process.

Sen. Al-Rawi: No.

Sen. Ramlogan SC: Unless the attorney is relieved by the court, they will be in court.

Sen. Al-Rawi: This is why I went through the difference between (1) and (2). Clause 46(1) we have dealt with; 46(2), “any other proceedings”—a man is on a drunken driving charge, he is in court, evidence comes out in the witness box that a child is in difficulty, the court says, “Aha, I have found out something.” They do an antecedent trace on the guy, they come up and say, “Offence committed under the Children Act.” Immediately the court says, “Hold on, I have the jurisdiction under 46(2), under that drunken driving charge, an offence has come up by way of tracing, you have a child in your possession, take that child away.”

Sen. Ramlogan SC: No, no, to exercise judicial discretion in such a manner would be totally irrational.

Sen. Al-Rawi: The point is simply because we have the Authority being a separate creature under this Act from the children’s attorney, we should at least—because that body is going to become an autonomous body under the Judicial and Legal Service Commission.

Sen. Ramlogan SC: What is your suggestion?

Sen. Al-Rawi: Just to add the children’s attorney.

Sen. Ramlogan SC: But they would be involved. This is a matter that is before the court.

Sen. Al-Rawi: Here is the thing: the Bill further on proposes that the Solicitor General may in court proceedings invoke the introduction of a children’s attorney; not “shall”, “may”, and I have to be in court, tell the court that there is an issue, or the court becomes conscious of the issue, the court then, in our highly bureaucratic system, goes to the “SolGen”, the “SolGen” has somebody appointed. That is not as immediate enough as the UN Convention says we ought to be in relation to protecting the rights of the child.

Madam Chairman: Attorney General, could we go back to (2) where it says, “at any time during any proceedings”, because what follows after that—

“(a) a person having responsibility for a child is charged with any offence in respect of that child...”

So these are the proceedings that you are referring to. And then it says it has come to the knowledge of the court that an offence has been committed in respect of a child, and that follows from (a). So the whole point of (2) is referring to a specific offence and proceeding as it relates to the person having responsibility for the child.

Sen. Al-Rawi: Good point, but (b) is separate from (a); (b) is in any other proceedings. My point is simply this—[*Interruption*]

Madam Chairman: No, no, I am just suggesting here that (2) is not any proceedings, just that traffic offence of a drunk driver coming in.

Sen. Al-Rawi: 2(b) is. Well, maybe you have to look in that referring to (a); so it has to tie in to (a).

Sen. Al-Rawi: (a) I think you are right on, but 2(b) is a broader clause, from my reading of it at least.

Madam Chairman: Then 2(b) should be linked to (a).

Sen. Al-Rawi: My point is, the minute I am taking the child away, I am removing the child to the attention of the Authority; we have created an autonomous body under the Judicial and Legal Service Commission, separate powers, et cetera, send it to that body, at least the information that a children's attorney is required.

Sen. Ramlogan SC: I think this is another example of not wanting to over-legislate. We have to trust in the Children's Authority; they would have to work like right hand and left hand with the children's attorney.

Sen. Al-Rawi: AG, I trust you.

Sen. Ramlogan SC: Once you bring the child to the attention of the Authority, there is a lot that they would have to do. They would have to contact the child's mother.

Sen. Al-Rawi: AG, can I point out something to you? The realities of this system is that we would be informed by existing systems. So let us take the Legal Aid Authority, for instance; the bureaucracy level that exists in the "SolGen" department—*[Interruption]*

Sen. Ramlogan SC: That is why I do not want to put it; it will add an even further layer of bureaucracy.

Sen. Al-Rawi: Under section 88 of this Bill which deals with the creation of the children's attorney, the court only gets a children's attorney under this Bill, when the court says to the Solicitor General, "Bring a Children's Attorney." So I have to go to court, child detained, child in station—we have attended to that now—child gets to court under 46(2)(b), for instance, the court then says, "Hold on, hold on; get the SolGen, let the SolGen bring a children's attorney." That may be too late in terms of the right to self-incrimination. The court must have an independent officer similar to a supervising attorney, as we have in the law of Anton Piller. I understand about the over-legislating point.

Sen. Ramlogan SC: I am content to leave this, and say for the record that we would expect in the normal course that this kind of relationship in the administration of the Authority—the whole point in establishing the Authority is to look after the welfare and interest of the child, and one would expect that once the law is involved, and the Family Court is where you would be referring the child in any event, that the children's attorney would become involved. I am not prepared to go the distance to legislate what we must tell the children's attorney.

Sen. Al-Rawi: Hear one more point. I read the cases as they would arise under clause 51 of this Bill, in relation what they call "kettling" in England. That is where you have crowd control in riots and the children going—correct, and the

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separation of children. But what goes on there, the case law in particular found that there was no breach of the Human Rights Convention, 1998 UK, because the children's attorney was brought in immediately. So even though they were commingling with adults at the point, it was the protection of an independent officer of the court which could speak to the best welfare of the child that we are dealing with.

Madam Chairman: That supports what the AG is saying.

Sen. Al-Rawi: No, no, we are two steps removed. The point is the Bill creates a children's attorney. The first time we heard this concept is in this Bill. This creates a children's attorney for the purposes of this Act.

Madam Chairman: The Family Court has it.

Sen. Al-Rawi: No, the Family Court does not have it. I practise in the Family Court; we do not have it.

Madam Chairman: That was my recommendation when we debated it, but anyway—[*Interruption*]

Sen. Al-Rawi: They should have listened to you.

Sen. Ramlogan SC: Chair, this matter was extensively discussed at the level of the committee, and the intention, just to alleviate your concern—I am being reminded by the draftsperson—is that the children's attorneys will be really working hand in glove with the Children's Authority. So that is bound to happen in the administration of it, but I do not want to legislate these things, because we will be legislating for the step-by-step administration of it; but they will have to.

Sen. Al-Rawi: If that is the point you and are putting it on the record it could be interpreted that way, then—

Sen. Ramlogan SC: Yes, I am putting it in the record, sure.

Sen. Al-Rawi: Madam Chairman, 46(3) “section”, should “section” be “Act”?
Second line:

“Upon a child being brought to the attention of the Authority under this section...”

We come to the attention of the Authority under different sections as well.

Sen. Ramlogan SC: Yes, that is fine.

Sen. Al-Rawi: I did not know if you wanted to say “Act”.

Sen. Ramlogan SC: That is fine. “Upon a child being brought to the attention of the Authority under this Act...”

Madam Chairman: No, but then this is the section that deals with arrangements for courts, so then it covers under the whole Act.

Sen. Al-Rawi: Once “section” is correct, is all I am asking. “section” is correct?

Sen. Ramlogan SC: “section” is correct.

Madam Chairman: So the question is that clause 46 be amended as follows:

“Where a person having responsibility for a child has been—

- (a) convicted of committing an offence under this section;
- (b) an offence under this section...”

Was that not what we just changed?

Sen. Ramlogan SC: No, no, no.

Sen. Al-Rawi: They are leaving it as “section”.

Sen. Ramlogan SC: The first one is “Act”; 46(1) is “Act”, 46(3) is “section”.

Madam Chairman: “under this Act or an offence mentioned in Schedule 1 in respect of that child, or has been—

- (b) committed for trial of any such offence; or
- (c) bound over to keep the peace towards such a child.”

It continues in subclause (2):

“Where at any time during”—deleting the word “the” and replacing it with “any proceedings”—continuing on to the second line of the paragraph after (b):

“that Court may, without requiring any new proceedings to be instituted for that purpose, bring the child to the attention of the Authority...” [*Interruption*]

All right, that is it.

Question put and agreed to.

Clause 46, as amended, ordered to stand part of the Bill.

Clause 47.

Question proposed: That clause 47 stand part of the Bill.

Sen. Al-Rawi: Madam Chairman, my question in relation to clause 47 is whether we wanted to contemplate introducing a provision, where the parent or person who has responsibility for the child or the person who is assisting, has at least a grace period to report:

“Where a person—(a) knowingly assists or induces...a child to escape from the person

knowingly harbours”—in part (b) in particular—“conceals or prevents a child who has so escaped from returning,

he is liable on summary conviction...”

I am wondering here whether there is any kind of provision for a person—a young child, 12 years old in a children’s home, runs away and goes to an uncle or aunty, uncle or aunty cannot keep this child because he or she is guilty of an offence right away, wants to report, but keeps the child in custody until some counsellor steps in.

Sen. Ramlogan SC: The answer is no, we would not wish to contemplate that.

Sen. Al-Rawi: You do not want the grey area inside there?

Sen. Ramlogan SC: No, not at all. It is an offence and that is a serious matter.

Sen. Al-Rawi: So you will fall on discretion of the court—*[Interruption]*

Sen. Ramlogan SC: Yes, absolutely.

Question put and agreed to.

Clause 47 ordered to stand part of the Bill.

Clause 48.

Question proposed: That clause 48 stand part of the Bill.

Sen. Al-Rawi: I have a question in relation to clause 48.

Sen. Ramlogan SC: Sure.

Sen. Al-Rawi: Clause 48 deals with maintenance of children placed in care. The family law and guardianship Act has provisions to deal with maintenance. Are we intending to impliedly repeal those provisions by this one specifically, because we have not dealt with it?

Sen. Ramlogan SC: The answer is no. This comes from the Children Act itself.

1.55 a.m.

Sen. Al-Rawi: Okay. So, as a statement for posterity there is no implied repeal of or redound to the maintenance provisions?

Sen. Ramlogan SC: No.

Sen. Al-Rawi: Okay. Next question; 48(1):

“where a Court makes an order to place a child into the care of a person, the Court may...order the parent or any other person liable to maintain the child...”

Sen. Ramlogan SC: Yes?

Sen. Al-Rawi: Did we want to reflect upon the issue of person with responsibility for the child?

Sen. Ramlogan SC: No, because that would be covered by “any other person liable to maintain the child.

Sen. Al-Rawi: So we would leave it to court’s discretion to decide the issue of liability in the first instance—[*Interruption*]

Sen. Ramlogan SC: Sure.

Sen. Al-Rawi:—and then go that way?

Sen. Ramlogan SC: Sure. You see because it may not be a person who has responsibility for the child, but they are liable to maintain the child.

Sen. Al-Rawi: Right. I just want to be sure; this is for the purpose of originating legislation.

Sen. Ramlogan SC: Yes. [*Crosstalk*] They may not be a person who has responsibility for the child, but they may nevertheless in law be liable to maintain the child. So, for example, a person who is married to a woman and she has children from a previous marriage, he accepts the children as his own, lives with them, and then subsequently something happens, he is still liable.

Sen. Al-Rawi: Secondly, 48(2); this is the invocation of getting the maintenance paid. Right now we are contemplating:

“An order under subsection (1) may be made—

- (a) on the complaint or application of the person into whose the child is placed; and
- (b) at the time when the order to place the child...”

Sen. Ramlogan SC: Yes.

Sen. Al-Rawi: I have no provision in here for the court to make an order of its own volition.

Sen. Ramlogan SC: No, no, it is on application.

Sen. Al-Rawi: It is on application. And complaint to application allows me complaint for the summary jurisdiction and application for the High Court jurisdiction?

Sen. Ramlogan SC: Correct.

Sen. Al-Rawi: Okay. Next one;

“(3) the sums contributed by the parent or such other person liable to maintain the child pursuant to ... (1) shall be paid to the person into whose care the child is placed and be applied...”

Does this allow for the facility for maintenance payments to be received through the court because of dangerous circumstances?

Sen. Ramlogan SC: Yes.

Sen. Al-Rawi: It does?

Sen. Ramlogan SC: Yes.

Sen. Al-Rawi: Okay. Those would be my questions.

Question put and agreed to.

Clause 48 ordered to stand part of the Bill.

Clause 49 ordered to stand part of the Bill.

Clause 50.

Question proposed: That clause 50 stand part of the Bill.

Sen. Al-Rawi: Madam Chairman, I have a question in relation to clause 50(i).

“Where it appears to a Court on complaint on oath of a person ...

that a child has suffered, is suffering,... the Court may require a parent or guardian of the child to appear before it and shall notify the Authority immediately.”

The first question here has to do with jurisdictional issues between the Magistrates’ Court, and the High Court. A complaint on oath implies a summary jurisdiction approach to the Magistrates’ Court.

Sen. Ramlogan SC: Yes.

Sen. Al-Rawi: It almost requires me, even though there is a later section which deals with where it comes to the attention of the court that the High Court has proceedings—section—[*Interruption*]

Sen. Ramlogan SC: This is in the current Act?

Sen. Al-Rawi: Whether it is the current Act or not—[*Interruption*]

Sen. Ramlogan SC: Yes, I understand.

Sen. Al-Rawi:—the point is, this legislation contemplates a mixed jurisdiction approach, and what I am trying to do is to avoid entrenching a route where you must where you must to go to the Magistrates' Court and then have it transferred to the High Court. In most instances you would know or there may be the option in High Court proceedings to give the High Court judge jurisdiction.

The practice in the Family Court jurisdiction between the Magistrates Division and the High Court jurisdiction is such that, significant delays are suffered when you are bound to go, domestic violence in the Magistrates' Court, end proceedings there, and then when High Court proceedings are brought to have them joined. What I am trying to make sure that we do is remove the need to go to the Magistrates' Court where it is not necessary, by drawing the example from the clause which we did just before where, “on complaint on oath,” or on application to the court, because then that would preserve both jurisdictions, High Court and magisterial.

Sen. Ramlogan SC: The intention was to leave this in the Magistrates' Court, is that not it? Yes. The policy intention here was specifically to leave this with the Magistrates' Court, and the rationale behind that is many fold. Firstly, there are Magistrates' Courts spread across the length and breadth of the country—[*Interruption*]

Sen. Al-Rawi: Okay, hon. AG,—[*Interruption*]

Sen. Ramlogan SC:—which would allow for easier access to the person—[*Interruption*]

Sen. Al-Rawi:—hear the reason why I am pushing for High Court jurisdiction. The operative word in clause 50 (1), is to be found in the line, that is the word “harm”; “harm” is described in clause 50(14).

Sen. Ramlogan SC: Sure, that is fine, yes.

Sen. Al-Rawi: Now, the High Court has much wider powers than the Magistrates' Court.

Sen. Ramlogan SC: Well, not under this Act, they would not. The powers under this Act would apply equally to a magistrate as to a judge.

Sen. Al-Rawi: Right.

Sen. Ramlogan SC: And I want to tell you as well, the experience with the magistracy, which has really been carrying the bulk of these kinds of matters, has been a very good one. From the feedback that we have been getting thus far, it has not been bad at all. The magistrates have been trying, and with the abolition of the preliminary enquiries they would have more time to devote to some of these kinds of matters. Apart from which, there is in fact a referral provision in clause—*[Interruption]*

Sen. Al-Rawi: Yes, I alluded to it earlier.

Sen. Ramlogan SC:—so that it can be done.

Sen. Al-Rawi: My point was whether I wanted to preserve both jurisdictions as opposed to—*[Interruption]*

Sen. Ramlogan SC: No.

Sen. Al-Rawi:—you must go through the Magistrates' Court route.

Sen. Ramlogan SC: No, it must. That is the intention.

Sen. Al-Rawi: That is the intention.

Sen. Ramlogan SC: That is fine.

Sen. Al-Rawi: Okay. It is the delay in procedure I am concerned about.

Sen. Ramlogan SC: That is fine; that is the policy position.

Sen. Al-Rawi: And the question here would be relative to use of the word “parent or guardian” of the child, insofar as we redefined clause 3, for the person with responsibility for the child, did we want to look at that?

Sen. Ramlogan SC: Yes, we can insert that in (2). The court—50 (2).

Sen. Drayton: Yes, I think probably we should make a general statement, but wherever we see that it should be—*[Interruption]*

Sen. Ramlogan SC: Yes, sure, wherever we see “parent or guardian” we should include—*[Crosstalk]*

Madam Chairman: Or person with responsibility for—*[Interruption]*

Sen. Ramlogan SC: “Parent or guardian” before, we will include a person—*[Interruption]*

Sen. Al-Rawi: Great, so that would be in 50(1) and 50(2).

Sen. Ramlogan SC: It could be in both.

Madam Chairman: All right. Clause 50(2) to read and to include “a prevent, guardian or a person write responsibility for a child”—*[Interruption]*

Sen. Al-Rawi: And section 50(1) as well, in the penultimate line, after the word, ‘child’, guardian or person with responsibility for the child”. So there is one amendment in 50(1), there is another amendment in 50(2).

Madam Chairman: So in 50(1) and (2) these is the same inclusion, I should say.

Sen. Al-Rawi: Wherever those words appear in 50, because it occurs in 50(4)(a)—*[Interruption]*

Madam Chairman: Yes, the parent or guardian in this section here, I guess would refer to “a parent or guardian or a person with responsibility for”. So that would be changed in 50(1) and 50(2) at the appropriate places.

Sen. Al-Rawi: Madam Chair, just hold on one moment. So just to have it clear, wherever that limited phrase “parent or guardian” appears in 50 *[Interruption]*

Sen. Ramlogan SC: It would include someone with responsibility—*[Interruption]*

Sen. Al-Rawi:—we look at it there.

Sen. Ramlogan SC: That is correct.

Sen. Al-Rawi: So 8 and other sections. One moment.

Sen. Ramlogan SC: Chair, with the greatest of respect, the committee stage is not to permit the reading of the Bill.

Sen. Al-Rawi: I am being sure; we have four sheets of amendments, and I am cross-referencing, none of them are marked up, save for my own. So I am just trying to get it right.

Sen. Ramlogan SC: But still, you know.

Sen. Al-Rawi: Well they were just handed out. Those would be the concerns here, Madam Chairman.

Sen. Ramlogan SC: Yes, that is fine.

Sen. Al-Rawi: The last question at (14), “domestic violence” just before part 10, just before clause 51, do we want to provide a definition for domestic violence, as under the Domestic Violence Act?

Sen. Ramlogan SC: No.

Sen. Al-Rawi: I know that you are tired?

Sen. Ramlogan SC: No I am not.

Sen. Al-Rawi: You are sure?

Sen. Ramlogan SC: No, I am not. We are happy with that. We are fine with that.

Question put and agreed to.

Clause 50, as amended, ordered to stand part of Bill.

Clause 51.

Question proposed: That clause 51 stand part of the Bill.

Sen. Al-Rawi: A few observations, Madam Chairman. Do we want to put a qualification for time frame for the officer in charge of the station—to enquire forthwith? So: “Where a person who appears to be under the age of eighteen years is apprehended with or without warrant, and cannot be brought before a Court, the officer in charge of the Police Station to which such person is brought shall”—I would have preferred to see the word “forthwith”—“enquire into the case and may”, because of a sense of urgency with respect to children. Then paragraph (a), “unless the charge is for murder”; these are words that concern me, AG.

Sen. George: You must expect that, when the person is brought in the police shall enquire forthwith.

Sen. Al-Rawi: Senator, those of us that practise in the court, that do not have a time frame, it gives for detention provisions which are different, which leads to malicious prosecution, false imprisonment and damages.

Sen. Ramlogan SC: The problem is that the converse is equally true, if you put “forthwith”—*[Interruption]*

Sen. Al-Rawi: As soon as practicably possible—*[Interruption]*

Sen. Ramlogan SC: But that would be implied.

Sen. Al-Rawi: Sen. Hinds, what do you think about that?

Sen. Ramlogan SC: That is fine, that would be implied.

Sen. Al-Rawi: Second question—*[Interruption]*

Sen. George: Thank you very much.

Sen. Al-Rawi: 50(a), unless the charge is for—*[Interruption]*

Sen. Ramlogan SC: 50 or 51?

Sen. Al-Rawi: Fifty-one, sorry, paragraph (a); “unless the charge is for murder or any other offence which would have been indictable if it were committed by an adult.” Indictable offences here include things like rotten tomatoes being sold by vendors.

Sen. Ramlogan SC: Yes. Well, we will leave that to judicial discretion upon sentencing.

Sen. Al-Rawi: But what you are saying here is that this person gets no bail?

Sen. Ramlogan SC: It is you know—*[Interruption]*

Madam Chairman: Under the age of 18.

Sen. Al-Rawi: An indictable offence is a very, very broad, broad thing at law, and one of the provisions of legislation of other types has been to avoid populating the system. When we come to electronic monitoring for instance, you would see that the reduction in population of the system is an aim of the Judiciary. I could understand scheduled offences, blood crime offences, very serious offences, but not just any indictable offence automatically disqualifying the discretion.

Sen. Ramlogan SC: The word “may” would take care of that. It is not mandatory that the bail is refused, you see? It is “may” he has a discretion.

Sen. Al-Rawi: All right. But here it is, he may—*[Interruption]*

Sen. Ramlogan SC: Yes.

Sen. Al-Rawi:—unless the charge is an indictable offence—*[Interruption]*

Sen. Ramlogan SC: Yes.

Sen. Al-Rawi: So that takes away his discretion—*[Interruption]*

Sen. Ramlogan SC: On that point.

Sen. Al-Rawi:—release that person. So he cannot release him because it is an indictable offence. He might want to but he cannot. Yes, it should be blood crimes. *[Crosstalk]*

Sen. Ramlogan SC: We cannot define it. What we will do—*[Interruption]*

Sen. Al-Rawi: Serious offences.

Sen. Ramlogan SC: I was about to say, we can borrow with the anti-gang and other legislation—*[Interruption]*

Sen. Al-Rawi: That is what I was thinking of, we had a whole schedule of them.

Sen. Ramlogan SC: We can just refer to it. You know what we can do, we can say—I know what I would do: “unless the charge is for murder or any other offence which would carry a term of imprisonment in excess of five years.”

Sen. Al-Rawi: Sure?

Madam Chairman: Leave out the other, delete the rest of that line?

Sen. Ramlogan SC: “Unless the charge is for murder or any other offence which carries a term of imprisonment in excess of five years.”

Madam Chairman: Which carries, or would carry?

Sen. Ramlogan SC: Which would carry, but it would—*[Interruption]*

Sen. Al-Rawi: I could hear certain Members in the Lower House reminding me that five years is applied for a whole host of trivial things.

Sen. Ramlogan SC: Not really you know, but still five years imprisonment is still relatively—you certainly cannot get five years for rotten tomatoes.

Sen. Al-Rawi: “Yeah”.

Sen. Ramlogan SC: But I do not want to drop it lower.

Sen. Al-Rawi: Okay.

Sen. Ramlogan SC: All right?

Madam Chairman: Term of imprisonment—*[Crosstalk]*

Sen. Al-Rawi: Okay, AG, at the end of clause 51—*[Interruption]*

Sen. Ramlogan SC: Right.

Sen. Al-Rawi: —“and shall bring the child to the attention of the Authority”.

Sen. Ramlogan SC: Yes.

Sen. Al-Rawi: Here is the first detention: somebody appears to be a child in the station, do we want to invoke the children’s attorney here at the station, it is the most critical stage?

Sen. Ramlogan SC: Remember that comes from the Legal Aid Act.

Sen. Al-Rawi: But remember it is two regimes.

Sen. Ramlogan SC: Yes, it is.

Sen. Al-Rawi: So duty counsel is created under the Legal Aid and Advice Act.

Sen. Ramlogan SC: The duty counsel comes in the middle of the night, or whatever the case, but the minute the child goes before the court, again the machinery would have to be allowed to operate and run its course. When the duty counsel comes, the duty counsel obviously, would have to notify and get in touch with the children's authority. They may be there in court the following morning, by which time the court—because under the Legal Aid Act, you cannot release yourself, you have to have to appear in court. So the child would be protected legally, until such time as the duty counsel takes over, but we do not have to legislate that. All right?

Sen. Hinds: Not the duty counsel, the children's attorney.

Sen. Ramlogan SC: The children's attorney, sorry. Yes.

Sen. Al-Rawi: Okay.

2.10 a.m.

Madam Chairman: Could you clarify, please, Attorney General?

Sen. Ramlogan SC: “unless the charge is for murder or any other offence which carries a term of imprisonment in excess of five years.”

Sen. Al-Rawi: “which would have been indictable”—[*Interruption*]

Sen. Ramlogan SC: You do not need the indictable, anything—“which carries a term of imprisonment in excess of five years”.

Sen. Al-Rawi: Okay, because there are some summary offences that carry more.

Madam Chairman: “If it was committed by an adult”?

Sen. Ramlogan SC: No, you do not even need that.

Madam Chairman: We do not need that so we are deleting that.

Clause 51, as amended, which would read at (a)

“unless the charge is for murder or any other offence which carries a term of imprisonment in excess of five years”, and then follows as is.

Question put and agreed to.

Clause 51, as amended, ordered to stand part of the Bill.

Clause 52.

Question proposed: That clause 52 stand part of the Bill.

Sen. Ramlogan SC: Madam Chairman, I beg to move that clause 52 be amended as follows:

Delete after the words “accordance with” the words “section 49” and substitute the words “section 51”.

Sen. Al-Rawi: Madam Chairman, clause 52, third line, I believe section 49 reference should be section 51.

Madam Chairman: That is the amendment that was circulated.

Sen. Al-Rawi: Okay, sorry, I have not seen that.

Question put and agreed to.

Clause 52, as amended, ordered to stand part of the Bill.

Clause 53.

Question proposed: That clause 53 stand part of the Bill.

Sen. Ramlogan SC: Madam Chairman, I beg to move that clause 53 be amended as follows:

Delete after the word “preventing” the words “, so far as practicable”.

Sen. Al-Rawi: Could you clarify the amendment in clause 53, delete the word—*[Interruption]*

Sen. Ramlogan SC: It would read “...for preventing the child from associating with an adult...”

Sen. Al-Rawi: So we are deleting “so far as practicable”?

Sen. Ramlogan SC: Yes.

Sen. Al-Rawi: Thank you.

Question put and agreed to.

Clause 53, as amended, ordered to stand part of the Bill.

Clause 54 ordered to stand part of the Bill.

Clause 55.

Question proposed: That clause 55 stand part of the Bill.

Sen. Ramlogan SC: Madam Chairman, I beg to move that clause 55 be amended as follows:

- A. In subsection (4), delete after the words “referred to in” the words “section 48(1)” and substitute the words “section 50(1)”.
- B. In subsection (6), delete after the word “Court” in the first place where it occurs, the word “shall” and substitute the word “may”.

Sen. Al-Rawi: One moment, please. Madam Chair, the question that I have here is the expansion of the reference to his parent or guardian, and the inclusion of “or person responsible with responsibility for the child”.

Sen. Ramlogan SC: Yes, well that follows automatically from what we have read before.

Sen. Al-Rawi: Okay, just out of caution. And, similarly, subclauses (1), (2), (4), (4)(a) and wherever else it continues here.

Sen. Ramlogan SC: That is fine, that is throughout the Bill.

Sen. Al-Rawi: Okay, great. Question in relation to subclause (6).

Sen. Ramlogan SC: “shall” changed to “may”.

Sen. Al-Rawi: Okay, that was one. “...in any case where the child was, before the institution of the proceedings, removed from the custody or care”; the question was whether the parent had the right to know about this. “The attendance of the parent or guardian of the child in the proceedings of the court shall not be required under this section”. I see, okay.

Madam Chairman: “may not”.

Sen. Al-Rawi: Thank you, the “may” deals with that.

Question put and agreed to.

Clause 55, as amended, ordered to stand part of the Bill.

Clause 56.

Question proposed: That clause 56 stand part of the Bill.

Sen. Al-Rawi: With the consequential amendments to “parent or guardian”—
[*Interruption*]

Sen. Ramlogan SC: “Mm hmm.”

Sen. Al-Rawi:—right through there—[*Interruption*]

Sen. Ramlogan SC: “Yep.”

Sen. Al-Rawi: No other comments.

Sen. Ramlogan SC: Right.

Sen. George: But there is one little marginal thing I want to commission because it would make it read the same as 55(1). It says: “Where a child is charged with an offence and brought before a Court”, which would read the same as 55(1), which says: “Where a child is charged with an offence and brought before a Court”. So, we should remove “with an offence” and put it after “charge”. It should read better, I think, in keeping with 55(1). I do not know if you see what I mean.

Sen. Al-Rawi: “Where a child is charged with an offence and brought before the Court.”

Sen. George: Yes.

Madam Chairman: Then you have it right after, anyway, with the court; it is not there in 55, but it is already there in 56, it is just where it is put.

Sen. Ramlogan SC: It is a style really and I agree with you. Well, we can change it, and it is consistent.

“Where a child is charged with an offence and brought before the Court...”

Madam Chairman: So, we are just shifting it around?

Sen. Ramlogan SC: Yes.

Madam Chairman: Okay.

Sen. Dr. Balgobin: Sen. Prescott SC would be delighted that you observed that, Leader of Government Business. [*Laughter*]

Sen. Hinds: What do you mean by subclause (2) in 56—“the Court may order the parent or guardian to give security for his good behavior”?

Sen. Al-Rawi: Yes, that is later on under—[*Interruption*]

Sen. Hinds: Clause 56, I am talking about?

Madam Chairman: Clause 56(2)?

Sen. Hinds: “...give security for his good behavior.”?

Sen. Al-Rawi: That is one of the provisions offered later on in the Bill, under parents having responsibility for the offences which their children have; I think it is 60, 58—[*Interruption*].

Sen. Hinds: Are we maintaining that?

Sen. Ramlogan SC: Yes.

Sen. Hinds: Clause 57?

Sen. Ramlogan SC: Yes.

Sen. Hinds: Parents' responsibility?

Sen. Ramlogan SC: Yes.

Madam Chairman: Okay now?

Sen. Ramlogan SC: Yes, go ahead.

Madam Chairman: The question is that clause 56, as circulated, and amended further to read—*[Interruption]* Yes, it was changed, was it not?

Sen. Ramlogan SC: No, 56 was not circulated.

Madam Chairman: Clause 56, as amended, would then read:

“(1) Where a child is charged with an offence and brought before a Court the commission of which attracts...”

Question put and agreed to.

Clause 56, as amended, ordered to stand part of the Bill.

Clause 57.

Question proposed: That clause 57 stand part of the Bill.

Sen. Ramlogan SC: Madam Chairman, I beg to move that clause 57 be amended as follows:

57(3) Insert after the word “enter” the word “into”.

Sen. Al-Rawi: We would look at in clause 57, again, just out of caution, just in case the policy may be different on this—*[Interruption]*—right, okay.

In clause 57(1)(a), relative to fine, did we want to make any association with compensation to the complainant?

Sen. Ramlogan SC: No, not in this case.

Sen. Al-Rawi: And then subclause (3), page over, “Where a parent or guardian”—as amended—“refuses to enter into a recognizance and the Court considers the refusal to be unreasonable, that person commits an offence and is liable on summary conviction to...five thousand dollars”, do we think that that is too low a position for a parent?

Sen. Ramlogan SC: No, I think we are running into unchartered waters and let us start low and see what happens, because remember these are—
[*Interruption*]

Sen. Al-Rawi: I am fine with that answer, very sensible.

Question put and agreed to.

Clause 57, as amended, ordered to stand part of the Bill.

Clause 58.

Question proposed: That clause 58 stand part of the Bill.

Sen. Al-Rawi: Relative to clause 58 and the limitation of cost 3; clause 58:

“(1) Where a child is ordered by the Court to pay costs in addition to a fine, the amount of the costs ordered to be paid shall not exceed the amount of the fine.

(2) The Court may order—

(a) fees payable or paid by the complainant in excess of the amount of costs ordered to be remitted...”—the fine...”

My question here, insofar as the parent can be viewed to be liable to pay for the child later on in the Bill, why would we want to have a limitation of costs, particularly when if we look to the jurisdiction being grounded in the High Court, the discretion under the High Court Rules, under the Civil Proceedings Rules and the Matrimonial and Family Proceedings Rules, allows for costs to be assessed and determined in the discretion of the court? Why fetter the court’s jurisdiction and discretion?

Sen. Ramlogan SC: In what way is it fettered, sorry?

Sen. Al-Rawi: Okay, so 58(1) limits costs as never being exceeding the fine, whereas the costs may be well above that in certain instances and properly justified, why do we want to fetter the costs which can be assessed by a court in any event?

Sen. Ramlogan SC: No, well you see, that is a dangerous thing, because I think we want to keep it here. He is right, the legal fees can exceed the fine, but the fines we have put in this are pretty hefty in most cases and, bearing in mind we would be dealing with people at the full social spectrum, I do not think it right to impose a further penalty where the costs could outstrip the fines. I mean, you would have to pay legal fees in excess of the fines, and the fines that is pretty draconian to be. [*Inaudible*]

Sen. Al-Rawi: I am okay with that concept in the magisterial jurisdiction. It is in the High Court jurisdiction insofar as the rules of court permit under section 66 of the CPR for instance, a discretion.

Sen. Ramlogan SC: But it is a child being ordered to pay the cost, “eh”.

Sen. Al-Rawi: Yes, but I will raise it in the context later on where the parent is paying the cost for the child.

Sen. Ramlogan SC: But, even then, the parent paying for the sin of the child, that kind of thing—I feel comfortable with this as is.

Sen. Al-Rawi: A low bar for now with a move to test?

Sen. Ramlogan SC: Yes, sure.

Madam Chairman: It allows them to live as well, to live after; have a life after.

Sen. Ramlogan SC: Yes, of course, you see we want to—the aim of this is to have a measure of rehabilitation as well and they have to live after, so let us put it.

Sen. Al-Rawi: Just out of an abundance of caution in terms of implied effect upon the Proceeds of Crime Act or any other restitution legislation, this does not affect those things, right?

Sen. Ramlogan SC: The answer is no.

Sen. Al-Rawi: Okay.

Question put and agreed to.

Clause 58 ordered to stand part of the Bill.

Clause 59.

Question proposed: That clause 59 stand part of the Bill.

Sen. Al-Rawi: Relative to clause 59(1)(b), in relation to a child who is 14 years of age, why the limitation on the age; because the juvenile court has no restriction and we are not dealing with sexual—*[Interruption]*

Sen. Ramlogan SC: I do not know whether or not the thinking of the committee was that 14 and over—*[Interruption]*

Sen. Al-Rawi: Because you are requesting the court file.

Sen. Ramlogan SC: Yes, but you see, I do not know whether or not they had in mind that sensitive matters would be disclosed in the court in relation to younger children, and the idea was to, you know—*[Interruption]*

Sen. Al-Rawi: But this is now sentencing, where the court would ostensibly want to have the most information available to it, and I wondered why a 13-year-old, 11 months and 30 days would be brought? Surely the court would have a discretion. The Bill provides for the sealing of records and evidence—[*Interruption*]

Sen. Ramlogan SC: Could the court sentence a child under the age of 14? Are you all following me?

Parliamentary Counsel: Yes, the court could sentence a child under the age of 14.

Sen. Al-Rawi: It is not the sentence, it is the ability to reflect upon the record of the child who is under 14.

Sen. Ramlogan SC: The only logical explanation that I can think of, for coming up with that, is really they felt that some protection should be given to children under the age of 14. But I hear you.

Sen. Al-Rawi: But it is exactly that, whether the protection would be denied by not having the access to the child's file.

Sen. Ramlogan SC: We can say "in relation to a child" and take off "who is 14 years of age or over". All right?

Sen. Al-Rawi: Yes.

Madam Chairman: What is the wording there?

Sen. Ramlogan SC: Take off "...who is 14 years of age or over".

Madam Chairman: "...in relation to a child request a copy", because you have the definition of a child aged anyway, okay?

Sen. Ramlogan SC: Yes.

Madam Chairman: Clause 59, as amended, under section (b) to read:

"in relation to a child request a copy of any proceedings from the Court with jurisdiction in family matters..."

Sen. Al-Rawi: And with the consequential amendment, of course, to (2)(g), "parent or guardian"—looking at the concept of responsibility—

Sen. Ramlogan SC: That applies throughout and the drafting officer will take care of that.

Question put and agreed to.

Clause 59, as amended, ordered to stand part of the Bill.

Clause 60.

Question proposed: That clause 60 stand part of the Bill.

Sen. Al-Rawi: Question in relation to the wording at clause 60 subparagraph (2):

“Where a child—is convicted of an offence which is punishable, in the case of a person 18 years of age or over, by imprisonment;”

Where a child—would it not be easier to say “who is not a child”? I cannot figure out why we are using this language. “Where a child is convicted of an offence which is punishable by imprisonment”; so the distinction here is, if the person were not a child if that conviction was imprisonment?

2.25 a.m.

Sen. Ramlogan SC: What wording do you suggest?

Sen. Al-Rawi: “Where a child—

(a) is convicted of an offence which is punishable, in the case of a person”—who is not a child—“by imprisonment;” because 18 years or over is a person who is not a child.

Sen. Ramlogan SC: This is a Lower House amendment to the clause. I understand the point about the inelegance of the language, but it being a Lower House amendment, agreed to by both sides, I would rather not tinker with it unless it is really substantial.

Sen. Al-Rawi: You are right. It is inelegant, I just could not figure it and then there is a typographical error in subclause (3) “rehabilitative” just needs to be corrected there—the spelling. That would be it in terms of my observations.

Sen. Ramlogan SC: Sure.

Madam Chairman: So there are no amendments really.

Sen. Ramlogan SC: So we can say—what do you want to say?

Madam Chairman: But you said you wanted to leave it.

Sen. Ramlogan SC: Listen, can it stay as is?

Sen. Al-Rawi: I am okay as it is. It is just very awkward.

Sen. Ramlogan SC: That is fine. Let us go with it.

Question put and agreed to.

Clause 60 ordered to stand part of the Bill.

Clause 61.

Question proposed: That clause 61 stand part of the Bill.

Sen. Al-Rawi: The only question here in clause 61 is whether “under this part” was intended specifically or was it Bill in the penultimate line, middle:

“Community Residence under this Part”?

Sen. Ramlogan SC: “Yeah”, I think it is meant to be “under this Part”.

Sen. Al-Rawi: Okay, that was just for clarification.

Sen. Baptiste-Mc Knight: Madam Chair, does clause 61 refer to a child offender or just a child?

Sen. Al-Rawi: The parent or guardian who rolls up at courts—*[Interruption]*

Sen. Ramlogan SC: A child, a child.

Sen. Baptiste-Mc Knight: Just a child.

Sen. Ramlogan SC: Yes.

Sen. Al-Rawi: My question here is, there is an existing law in the juvenile court—everybody roles up, horrible cases which I have seen. Are we impliedly repealing that law in view of clause 122 of this Bill?

Sen. Ramlogan SC: No.

Sen. Al-Rawi: “You sure?”

Sen. Ramlogan SC: No, we are not repealing that.

Sen. Al-Rawi: Because clause 122 says, “where this Bill exists and another Bill has a similar provision this Bill prevails.”

Sen. Ramlogan SC: “Yeah”, but that does not mean a repeal of it.

Hon. Senator: Because it would have effect in other areas.

Sen. Ramlogan SC: “Yeah”, so in any case of conflict the Bill will remain in respect of all else.

Sen. Al-Rawi: So the question would have been—just for caution if your team could look at it, if they could find the provision. I could not find it immediately with respect to the abandonment of the child before the court that is

where the parent is saying, “I cannot control this child, send him to St. Jude’s” or wherever it is. If we could just look at those provisions, because I did not find it myself and I had a question mark in my mind.

Sen. Ramlogan SC: Sure.

Question put and agreed to.

Clause 61 ordered to stand part of the Bill.

Sen. Ramlogan SC: May I just enquire, Chair, from my learned friends on the other side, clause 62 go straight down to clause 74—*[Interruption]*

Sen. Al-Rawi: Clauses 62 and 63, no issues.

Sen. Ramlogan SC: Clauses 62 to 74—a provision I see that came from the Lower House and I am wondering whether—*[Interruption]*

Sen. Al-Rawi: Clause 64, just a question; 65, 66 67 and 68—just a few clarifications.

Sen. Ramlogan SC: Well, clause by clause, because it does not make sense—*[Interruption]*

Madam Chairman: Clause by clause.

Sen. Al-Rawi: You could take the next two—clauses 62 and 63 subject to what someone else says.

Clauses 62 and 63 ordered to stand part of the Bill.

Clause 64.

Question proposed: That clause 64 stand part of the Bill.

Sen. Drayton: Could I just seek a clarification on 64 in relation to—I think it is clauses 18 and 19 with respect to decriminalization if it is a sexual offence.

Sen. Ramlogan SC: Sorry? Beg your pardon, 18 and 19?

Sen. Drayton: I think under 18 and 19 is where you decriminalized consensual—no?—20.

Sen. Ramlogan SC: Yes 20, the Romeo clause.

Sen. Drayton: Just for clarification, how this 64(1) relates to that, if it is a sexual offence.

Sen. Ramlogan SC: Well it refers to a child offender. So you know you would not be offending if it is permissible.

Sen. Al-Rawi: My question there which kind of joins this is in view of clause 26 of the Sexual Offences Bill which does not give a discretion—does not give the animus in respect of a child under 12 years. So I had a concern in my mind about the 10 year—a child 10 years and under. [*Crosstalk*] Okay, so the age of criminal liability is seven, but sexual conduct is 12. Okay, that takes care of the concern I had.

Just a quick question. I appreciate that clause 64(2) asks for the consent of the offender and his is really to take care of the constitutionality provision of incarceration for further periods. I had a question here: what about the case where a court being of the view that the nature of the offence is so grave and that the circumstances permit that there should be a continuation of the committal? In other words then, without the consent. So where I have a situation—[*Interruption*]

Sen. Ramlogan SC: Would that not be a—[*Inaudible*] kick in there? He would have already been sentenced in (1).

Sen. Al-Rawi: Well, the question is the extension to the age of 21. That is it.

Sen. Ramlogan SC: No. Once the judge determines and gives a sentence and he has served his time, you know you really cannot extend—[*Interruption*]

Sen. Al-Rawi: So the Bill says, children up to 18—[*Interruption*]

Sen. Ramlogan SC: Yes.

Sen. Al-Rawi:—you serve your time. This subclause (2) says: listen, if the child consents, we will extend it to 21.

Sen. Ramlogan SC: So the court does not have the power to do it over—[*Interruption*]

Sen. Al-Rawi:—of its own volition.

Sen. Ramlogan SC: No, and cannot do it beyond the age of 18.

Sen. Drayton: So you are saying with the agreement of the centre what basically you are saying here—so you are extending the stay at that centre until 21?

Sen. Ramlogan SC: With the consent of the child. Yes, to help them further.

Sen. Drayton: I understand, I just wanted clarification.

Sen. Ramlogan SC: That is all they may know in life.

Question put and agreed to.

Clause 64 ordered to stand part of the Bill.

Clause 65 ordered to stand part of the Bill.

Clause 66.

Question proposed: That clause 66 stand part of the Bill.

Sen. Ramlogan SC: Madam Chairman, I beg to move that clause 66 be amended as follows:

“A. In subclause (1)—

- (a) in the chapeau, delete after the word “defined” the words “by Part V” and substitute the words “in clause 29(3)(c)”;
- (b) in paragraph (a), insert after the words “Residence;” the word “and”;
- (c) delete paragraph (b); and
- (d) renumber paragraph (c) as paragraph (b).

B. Delete subclause (4) and substitute the following subclause:

- (4) Where the child is a child offender, the managers of the Community Residence may at any time, by order in writing made with the approval of the Authority revoke any such licence and order the child offender to return to the Community Residence.
- (5) Any child offender escaping from the person with whom he is placed in pursuance of this section, or refusing to return to the Community Residence when required to do so on the revocation or forfeiture of his licence, is liable to the same penalty as if he had escaped from the Community Residence.”

Sen. Al-Rawi: Madam Chair, just a simple position, subclause (3)—fifth line: “care of the child provided that the child may” as opposed to, “provides” and then the last line common “a” to capital “A” in “Authority.”

Sen. Ramlogan SC: That is fine, I have no problem with that.

Madam Chairman: That is fine. Yes? So in: “care of the child provided that the child may be temporarily placed...”

And “authority” is referred to with a capital “A”.

Sen. Al-Rawi: Then the question in relation to subclause (5), whether “...is liable to the same penalty as if he had...” whether we want to put any discretion as to “may be reliable”.

Sen. Ramlogan SC: No. That is fine. He is liable.

Madam Chairman: Offender, escaping from.

Sen. Baptiste-Mc Knight: Madam Chair, just to draw to your attention in the amendment (b) the third line “the approval” is duplicated.

Sen. Ramlogan SC: Which line?

Sen. Baptiste-Mc Knight: Line 3—the circulated amendments. It is just a slight typo.

Madam Chairman: Thank you.

Question put and agreed to.

Clause 66, as amended, ordered to stand part of the Bill.

Clause 67 ordered to stand part of the Bill.

Clause 68.

Question proposed: That clause 68 stand part of the Bill.

Sen. Al-Rawi: Just a small observation in respect of 68. Is it intended here to confine this to magisterial jurisdiction solely?

Sen. Ramlogan SC: Yes.

Sen. Al-Rawi: Great. Then the consequential amendment for responsibility —
[*Interruption*]

Sen. Ramlogan SC: Throw out that, you do not need to repeat that again ever.

Sen. Al-Rawi: Thank you, AG.

Question put and agreed to.

Clause 68 ordered to stand part of the Bill.

Sen. Al-Rawi: Madam Chair, clauses 69, 70, 71, 72, 73, 74, 75, I personally have no issues with. I do not know if anybody else does.

Madam Chairman: Well we do have an amendment circulated for clause 71, so we can just do clauses 69 and 70.

Sen. Ramlogan SC: The distinguished Professor says that he has a minor observation on clause 73.

Clauses 69 and 70 ordered to stand part of the Bill.

Clause 71.

Question proposed, That clause 71, stand part of the Bill.

Sen. Ramlogan SC: Madam Chairman, I beg to move that clause 71 be amended as follows:

Madam Chairman: Clause 71 is amended as follows:

“71(1) Delete after the words “care to a” the words “hospital or asylum” and substitute the words “general hospital or mental hospital.

71(2)A. Insert after the words “certifying that the child” the word “offender”.

A. Delete after the words “discharged from the” the words “hospital or asylum” and substitute the words “general hospital or mental hospital”.

B. Delete after the words “signed by the”, the words “Chief Medical Officer (Attendant)” and substitute the words “Medical Chief of Staff”.

Question put and agreed to.

Clause 71, as amended, ordered to stand part of the Bill.

Sen. Baptiste-Mc Knight: Madam Chair, please, 71. Could you just tell me how that would read now?

Madam Chairman: Sure it would read:

“71. (1) The Court may order a child offender placed in a Community Residence to be transferred for medical treatment and care to a general hospital or mental hospital...”

Sen. Baptiste-Mc Knight: Okay, right.

Clause 72.

Question proposed: That clause 72 stand part of the Bill.

Sen. Ramlogan SC: Madam Chairman, I beg to move that clause 72 be amended as follows:

Madam Chairman: Clause 72 is amended as follows:

“72(1) A. Delete the words “Community Residence” wherever they occur and substitute the words “Rehabilitation Centre”.

C. Delete after the words “order that he be” the words “again sent” and substitute the word “re-committed.”

Madam Chairman: Yes, okay so we proceed.

Question put and agreed to.

Clause 72, as amended, ordered to stand part of the Bill.

Clause 73.

Question proposed: That clause 73 now stand part of the Bill.

Sen. Prof. Ramkissoon: Madam Chair, just a query. I just wanted to find out if somebody is sentenced at age 16, let us say for a five year term in prison, and goes to the rehabilitation centre at age 18 that person has to leave the rehabilitation centre—*[Interruption]*

Sen. Al-Rawi: Unless he consents to extend—*[Interruption]*

Madam Chairman: And then go to 21.

Sen. Prof. Ramkissoon: He goes back to prison?

Madam Chairman: No, remember we had made an amendment—*[Interruption]*

Sen. Prof. Ramkissoon: Oh, you made an amendment?

Madam Chairman: Yes. Clause 64 was amended to include that after such time, and subclause (2), that with the consent of the offender the centre can take him up to 21 years.

Sen. Prof. Ramkissoon: Thank you.

Question put and agreed to

Clause 73 ordered to stand part of the Bill.

Clause 74.

Question proposed: That clause 74 now stand part of the Bill.

Sen. Baptiste-Mc Knight: Madam Chairman, I am having a little problem with clause 74. It seems to me as if the main purpose of this is not really to complete the rehabilitation of these youngsters, because if their training programmes are not finished at the stipulated ages, what happens?

Sen. Ramlogan SC: If they are, sorry, under?

Sen. Baptiste-Mc Knight: Clause 74.

Sen. Ramlogan SC: If they are under the age of 13?

Sen. Baptiste-Mc Knight: Over the age of 13 it says that they go up to 21, right?

Sen. Ramlogan SC: Yes.

2.40 a.m.

Sen. Baptiste-McKnight: But if the person has not finished the course? It looks like it is a seven-year period, but quite possibly a 13-year-old would be getting in there totally illiterate. And if they, sort of, take off at age 15 and start a course and doing well—

Sen. George: You do not want to put that in the law. That is administrative, I think.

Madam Chairman: It would suit the academic capability of the child and the circumstances and even the time expected to stay at the centre. I am sure that would take place.

Question put and agreed to.

Clause 74 ordered to stand part of the Bill.

Clause 75 ordered to stand part of the Bill.

Clause 76.

Question proposed: That clause 76 stand part of the Bill.

Sen. Al-Rawi: Madam Chairman, if I could just have—for the statement of the record, what is meant by clause 76(1)?

Sen. Ramlogan SC: It means that having regard, perhaps, for example, to the age or circumstances of the child, it gives the court an option that did not hitherto exist in law. Where there are fixed penalties for the crime stipulated, the court will now have the option where a child is involved to actually avoid those mandatory sentences and impose this sentence, which is to place the child in a community residence. One may recall, for example, in the UK, the famous trial of James Bulger. But, I mean, that was committed by very, very young children, and we have in this jurisdiction many other examples of that. And where the sentence for the crime is fixed by other legislation that may not give any elbow room to the judge, this one will do it.

Sen. Al-Rawi: So this is out of an abundance of caution for these particular offences to actually allow the application of this Act?

Sen. Ramlogan SC: That is correct.

Sen. Al-Rawi: Okay, because the Act itself allows for community residences, so it is just out of caution for clarity in relation to those offences.

Sen. Ramlogan SC: That is correct.

Sen. Hinds: Just back on clause 75, if I may. Was that not always the case?

Sen. Ramlogan SC: Yes, that is a restatement of the law, yes. That is right.

Sen. Hinds: So then it is not an abolition. I see the side note saying “Abolition”.

Sen. Ramlogan SC: No, it is a marginal—[*Interruption*]

Sen. George: It is not an abolition.

Sen. Hinds: Sentence of death was never passed on persons—[*Interruption*]

Sen. Ramlogan SC: His point is the marginal note should never say “Abolition” but, you know—[*Interruption*]

Sen. George: It is non-application really, in the sentence, is it not? It is not abolition.

Sen. Hinds: No, it is not an abolition.

Sen. George: No, no, but is it non-application?

Sen. Ramlogan SC: The draftspersons are going to take that into account in fixing the marginals. So that is fine. We will change the word “Abolition”. So we are back on clause 76 to be put. .

Sen. Baptiste-Mc Knight: Not quite yet, Madam Chairman. Clause 76(2)—are community residences supposed to be correctional institutions?

Sen. Ramlogan SC: Both. It can have the capacity and ability to perform both functions.

Sen. Baptiste-Mc Knight: I will tell you what. It worries me slightly, because it means that given our society, any child in there is going to be considered—[*Interruption*]

Sen. George: To be in legal custody.

Sen. Baptiste-Mc Knight: Right. I have no ideas on how it could be phrased, but it is something that we have to be sensitive to.

Sen. George: The stigma.

Sen. Ramlogan SC: Yes. Well, we will have to deal with that by way of public education, really, and we intend to up these residences to as much interaction.

Sen. Hinds: But would all children be there as a consequence of legal proceedings?

Sen. Ramlogan SC: They would, in which case you will need—that is why you have to deem it as being in legal custody, otherwise it would not count.

Madam Chairman: And how do you treat with it now?

Sen. Ramlogan SC: You cannot. It has to remain as is.

Sen. Hinds: It is just nomenclature.

Sen. Ramlogan SC: That is correct.

Sen. Hinds: By the end of the day they “lock up”.

Sen. Ramlogan SC: “Yeah.”

Question put and agreed to.

Clause 76 ordered to stand part of the Bill.

Sen. Al-Rawi: Madam Chair, unless somebody has any other comments in relation to up to clause 80, I have none.

Question put and agreed to.

Clauses 77 to 80 ordered to stand part of the Bill.

Clause 81.

Question proposed: That clause 81 stand part of the Bill.

Sen. Ramlogan SC: Madam Chairman, I beg to move that clause 81 be amended as follows:

Clause 81(5)

Delete the words “Proceedings in the Juvenile Court” and substitute the words “Proceedings in any Court with respect to sexual offences involving children”.

Sen. Al-Rawi: Just a question for a statement here. In clause 81(1):

“shall sit—

(i),... (ii),... (iii),... (iv),...

from those (days) at which the ordinary sittings are held, unless the child is charged jointly with any other person not being a child.”

Now I understand how that process works, but would that prevent the court from otherwise making the proceedings in camera?

Sen. Ramlogan SC: No, it would not.

Sen. Al-Rawi: Just a quick question relative to the fine prescribed at subclause (7), that is for publication of names, addresses, photographs, et cetera:

“A person who contravenes subsection (6) is liable on summary conviction to a fine of fifty thousand dollars.”

I think we recently amended fines in other legislation upward to that. I think it was a higher sum, I am not sure, and whether we want it to be commensurate with it.

Sen. Ramlogan SC: Having regard to the fact that these amendments are agreed to in the Lower House, I do not want to tamper much unless it is really substantial. I will leave it as is, if you do not mind.

Question put and agreed to.

Clause 81, as amended, ordered to stand part of the Bill.

Clause 82 ordered to stand part of the Bill.

Clause 83.

Question proposed: That clause 83 stand part of the Bill.

Sen. Al-Rawi: Madam Chairman, with respect to clause 83, this contemplates a child having gone through a judicial process already which may or may not be in the magisterial jurisdiction and/or high court jurisdiction. Why do we want to automatically go to magisterial only then, only to be kicked up to the High Court, because there would be existing proceedings?

Sen. Ramlogan SC: The policy, as you have picked up throughout the thing—the policy decision really is to allow for access to the Magistrates' Court in the first instance and to allow the magistrates to actually determine if it is a matter they want to send to the High Court and vice versa, quite frankly, because the experience has been, from what we have been told by the practitioners who sat on this committee, that the court itself has been referring a lot of matters back down.

Sen. Al-Rawi: Okay, thank you.

Question put and agreed to.

Clause 83 ordered to stand part of the Bill

Clauses 84 and 85 ordered to stand part of the Bill.

Clause 86.

Question proposed: That clause 86 stand part of the Bill.

Sen. Ramlogan SC: Madam Chairman, I beg to move that clause 86 be amended as follows:

Delete all the words after the words “fine of” and substitute the words “five thousand dollars and to imprisonment for nine months.”

Sen. Al-Rawi: Madam Chairman, with respect to clause 86, in clause 68(2) of this Bill we used the expression “without reasonable cause”. Would it be appropriate to consider that in clause 86, by adding in “where a person without reasonable cause knowingly assists; knowingly harbours”? That would provide the kind of discretion that clause 68(2) actually factored.

Sen. Ramlogan SC: On this issue, no, because, you see, having regard to the offence, which is assisting, escaping and harbouring, we do not really want to introduce the concept of—*[Interruption]*

Sen. Al-Rawi: Look at clause 68(2) of this Bill.

“If a parent or guardian fails to produce the child in accordance with the summons...without reasonable cause...”

And this is in the context of a revocation of licence and the child has run away.

Sen. Ramlogan SC: No, but they are two completely different things. There is where there is failure to produce a child in accordance with a summons, and there is reasonable cause because you have no control over the child there. That is a third party and you are being liable for it. In this case this is your own act, because you are the one who is harbouring; you are the one who is—you know.

Sen. Al-Rawi: I could hold on to that in the context of wanting to set a strict standard, but I wanted to ask insofar as there appeared to be an inconsistency between clause 68(2) and that.

Sen. Ramlogan SC: No problem.

Question put and agreed to.

Clause 86, as amended, ordered to stand part of the Bill.

Clause 87.

Question proposed: That clause 87 stand part of the Bill.

Sen. Ramlogan SC: Madam Chairmn, I beg to move that clause 87 be amended as follows:

- A. In subclause (1)—
 - (a) delete after the word “Part” the word “may” and substitute the word “shall”; and
 - (b) delete all the words after the word “managers” in the second place where it occurs.
- B. In subclause (2), delete all the words after the word “managers”.

Sen. Al-Rawi: Just a question in relation to this, I found the words, “or their secretary or a clerk” in clause 87(1), (2)—

Sen. Ramlogan SC: It is deleted—“managers”.

Sen. Al-Rawi: Thank you.

Sen. Baptiste-Mc Knight: According to the circulated amendment, it says “in the second place”, and I would like to see it removed in both places.

Sen. Ramlogan SC: It is removed in both.

Sen. Al-Rawi: Yes, it is in two places. Just out of clarity, wherever it appears in clause 87, we will remove those, right?

Sen. Ramlogan SC: Yes, that is right.

Question put and agreed to.

Clause 87, as amended, ordered to stand part of the Bill.

Clause 88.

Question proposed: That clause 88 stand part of the Bill.

Sen. Ramlogan SC: Madam Chairman, I beg to move that clause 88 be amended as follows:

88(2) Delete after the word “under” the words “Part I” and substitute the words “Parts I and II”.

88(3) and (4) Delete and substitute the following subclauses:

“(3) The Senior Children’s Attorney shall be an attorney-at-law with not less than seven years’ experience as a family law practitioner.

(4) The Children’s Attorney shall be an attorney-at-law with not less than three years’ experience as a family law practitioner.”

Sen. Al-Rawi: Madam Chair, clause 88, I accept the hon. Attorney General’s statements in relation to the buy-in of the duty counsel and the fact that we will look at this progressively, because I genuinely want to make the cry that I consider the two authorities to be very different: the duty counsel under the Legal Aid Act and the children’s attorney here. But as the Children’s Authority comes up to speed, perhaps we can look at that.

Sen. Ramlogan SC: Absolutely.

Sen. Al-Rawi: In relation to the experience, 88(2)—

Sen. Ramlogan SC: Yes. Seven years.

Sen. Al-Rawi: Clause 88(2), Part I of the First Schedule of the Judicial and Legal Service Act deals only with civil law.

Sen. Ramlogan SC: We put both.

Sen. Al-Rawi: You put both? Okay, so Part II has criminal with it?

Sen. Ramlogan SC: That has been dealt with.

Sen. Al-Rawi: And then I was sort of concerned about the senior children's attorney having only seven years' experience.

Sen. Ramlogan SC: The difficulty is, right now I am advertising for people with five and you cannot get them.

Sen. Al-Rawi: Okay. And then that would tie on to the three years minimum, but I suppose the problem is—*[Interruption]*

Sen. Ramlogan SC: Yes, that is correct.

Sen. Al-Rawi:—insofar as you are setting a minimum goal. And then subclause (5), this is what caused me difficulty throughout the rest of the Bill.

“In any court proceedings, the Court may request that the Solicitor General assign a Children's Attorney...”

This is where I view there to be some delay in the factor of getting a children's attorney on board.

Sen. Ramlogan SC: But, you see, the thing is, this is a second-base measure, you know. The court normally will—there are mandatory provisions. The court has to appoint—a children's attorney will be there. This, I think, caters for any extra kind of case that may not be where the child is not the subject or the defendant or perhaps the main protagonist in the proceedings and the court may, somehow, feel that, you know, going down the road looking at this, the child should get someone.

Sen. Al-Rawi: Okay. Even if you at least undertake to consider when we are doing regulations that come up, the tightening up of the involvement of that external independent entity of the children's attorney, I think would only help the situation.

Sen. Ramlogan SC: Yes, sure. As I say, we have to review the operations and workings of this and we will certainly give consideration in due course.

Sen. Al-Rawi: Thank you.

Question put and agreed to.

Clause 88, as amended, ordered to stand part of the Bill.

2.55 a.m.

Clause 89

Question proposed. That clause 89, stand part of the Bill.

Sen. Ramlogan SC: Madam Chairman, I beg to move that clause 89 be amended as follows:

89 (1) Delete after the word “section” the word “66(4)” and substitute the word “88(4)”.

Sen. Baptiste-Mc Knight: Madam Chairman, I would like to understand why these attorneys would be engaged on contract, because I feel that there needs to be some permanence of more than three years.

Sen. Ramlogan SC: Senator, the reason for that, right now I could tell you that—you may have seen repeat ads from the Ministry of the Attorney General and from DPP. The reason is, you are having difficulty attracting and retaining staff. The contract is something that they are more amenable to because it gives them a gratuity at the end, and it makes it a little more competitive.

Sen. Al-Rawi: And the minimum three years—*[Interruption]*

Sen. Ramlogan SC:—and the minimum three years. Yes, Sen. Al-Rawi is right. That is our reality in the legal profession.

Sen. Baptiste-Mc Knight: Yes, but how—I can see you taking people on contract to fill the positions while you get more permanent people, but we got to—*[Interruption]*

Sen. Ramlogan SC: No, but you see lawyers with over seven years call will not leave their practice to come and do this full time alone. They would not. That would not happen or else I will gladly hire Sen. Hinds and Sen. Al-Rawi. *[Crosstalk]*

Question put and agreed to.

Clause 89, as amended, ordered to stand part of the Bill.

Clause 90.

Question proposed: That clause 90 stand part of the Bill.

Sen. Al-Rawi: The only question, Madam Chairman, is why do we have a 90(1) if we do not have a (2), (3) and (4)?

Sen. Ramlogan SC: Yes, you can take off the (1).

Mr. Chairman: Yes, we can take that off. Thank you.

Question put and agreed to.

Clause 90 ordered to stand part of the Bill.

Clause 91.

Question proposed: That clause 91 stand part of the Bill.

Sen. Al-Rawi: Madam Chairman, the question in this clause is in reference to clause 120 of the Bill which applies for the applicability of section 31(B), (C), (D) and (E) of the Sexual Offences Act, mutatis mutandis, wholesale importation.

When I tried to cross-read the two sections it was a little bit confusing particularly because there seems to be an omission as to the admissibility of evidence taken as prescribed under section 31(B) in particular, and 31(A) is left out. So, I wondered if we wanted to state in here the rules of admissibility of evidence specifically, because I am not quite sure that when you read the two sections of evidence and admissibility between the Sexual Offences Bill and this Act that they actually match up.

Madam Chairman: But could you put in a provision where it is consistent with any law?

Sen. Ramlogan SC: (A) has been amended—*[Interruption]*

Sen. Al-Rawi: Is that in the schedule?

Sen. Ramlogan SC: Yes.

Sen. Al-Rawi: Well then that takes care of where I was. I have not seen that point. So (A) is amended in terms of the schedule amendment—*[Interruption]*

Sen. Ramlogan SC: That is correct.

Sen. Al-Rawi:—so we deal with repeal first and then amendments to the positions, right? Okay. The only point would be the admissibility per se as to the facts contained in the statement. So, is it that—clause 91 puts a nice long position—*[Crosstalk]*

Sen. Ramlogan SC: There is no objection to being consistent with the sexual Offences Act in terms of the rules of admissibility of evidence so that we can just put a clause that says that.

Sen. Al-Rawi: Just out of caution, because it seemed to me that there were some things missing.

Sen. Ramlogan SC: “Yeah!”. Well, you know—well, we can say at the end of 91(9), we can put a (10). We put it in 99(9) and—*[Interruption]*

Sen. Al-Rawi: And I had an observation on 99(9) for your notation there.

Sen. Ramlogan SC: All right, I will come back to that, but that (9) will now be (10). Right?

Sen. Al-Rawi: Right.

Sen. Ramlogan SC: And we put as (9)—*[Attorney General speaks with his advisors]*.

Sen. Al-Rawi: Well, we already have in clause 120—just take a peek at clause 120. Clause 120 applies specifically to sections 26, 30, 31(B) to (E), 32, and Part III of the Sexual Offences Act. The question was when you read in particular section 31(B) to 31(E), there seemed to have been an inconsistency between what we set out here in evidence and procedures in 91; taking of the video and that kind of stuff. I left my Sexual Offences Act home, so that is the problem.

Sen. Ramlogan SC: The team is saying that they are comfortable with the rules that they have set out here; to the extent that there are any material differences, they seem to be happy that that is what they intended.

Sen. Al-Rawi: I just ask for them to look at it carefully, in particular the admissibility of the content of the material.

Sen. Ramlogan SC: We stand as is on this clause, Madam Chairman.

Sen. Al-Rawi: Okay. And just in relation to subclause (9), I was wondering: “For this purposes of the section—“audio-digital recording means an audio recording taken with digital equipment””.

Sen. Ramlogan SC: Sure.

Sen. Al-Rawi: And then ““video-digital recording’ means ‘a video recording taken with digital equipment.” This does not contemplate the evolution of technology.

Sen. Ramlogan SC: That is true but you know—

Sen. Al-Rawi: So if you had ““audio-digital recording’ means audio recording taken with digital”—you see the problem is the technology evolves so quickly—*[Interruption]*

Sen. Ramlogan SC: I know, but let us deal those things in—*[Interruption]*

Sen. Al-Rawi:—as they come up?

Sen. Ramlogan SC: Yes. I think so because those things—you know what is going to happen? We have a number of pieces of legislation where this problem is going to crop up, and we may very well have to start—*[Interruption]*

Sen. Al-Rawi:—a miscellaneous provisions amendment position?

Sen. Ramlogan SC:—and apply it to all.

Sen. Al-Rawi: Because I prefer the more generic term—electronic or other means. You need to look at it because of how it is going to go.

Sen. Ramlogan SC: Point taken, but we have to deal with that in a more generalized way.

Sen. Al-Rawi: The key is recording it on any other means, but you could look at that point.

Sen. Ramlogan SC: What other means—by any other electronic means?

Sen. Al-Rawi: You see recordings are now done magnetically, they are done by—*[Interruption]*

Sen. Ramlogan SC: All right, we will revisit that in the future. Come on let us get on.

Sen. Al-Rawi: So you need to look at it.

Sen. Ramlogan SC: Our court still hand writing we will—*[Interruption]*

Madam Chairman: The question is—*[Interruption]*

Sen. Al-Rawi: Hold on, hold on, just one point here. We provide in clause 91 the fact that the record shall be sealed. Right? We provide in clause 91, the fact that when we take this evidence that the evidence shall not be made public. And then we go on to take audio digital and video digital, but we do not make the same non-disclosure provision for it.

Sen. Ramlogan SC: We do not need to because it will still be part of the evidence. Once it is part of evidence it is covered.

Sen. Al-Rawi: Just let me be sure.

“and the Clerk... and the Deputy Registrar... with jurisdiction in family matters to whom any such deposition is transmitted shall preserve, file, and record the deposition and not otherwise disclose its....”

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[SEN. AL-RAWI]

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And then the next subclause goes on.

“If the evidence...is recorded by audio-digital recording...”

I do not know if that includes being a deposition.

Sen. Ramlogan SC: Once it is evidence in the case it will be covered.

Sen. Al-Rawi: Okay. So as long as the deposition covers that position—and I suppose it would suffice if we said in *Hansard* now that the intention is that this also be subject to the non-disclosure provision.

Sen. Ramlogan SC: Absolutely!

Question put and agreed to.

Clause 91 ordered stand part of the Bill.

Sen. Al-Rawi: Madam Chairman, I have no concerns up to 94. I do not know if you have consequential amendments. Sorry, up to clause 93 and then clause 94, I had one quick question.

Sen. Ramlogan SC: Well, let him ask the question and we will put all together.

Sen. Al-Rawi: Thank you, thank you.

Sen. Ramlogan SC: What is 94?

Sen. Al-Rawi: Clause 94 is.

“Where a video recording is admitted into evidence under... 93(1), cross-examination of the child... shall be by means of video conferencing.”

Sen. Ramlogan SC: Yes. That was deliberate.

Sen. Al-Rawi: It was deliberate—“unless ordered by the court or otherwise”, you did not want to put?

Sen. Ramlogan SC: No. Because you see with the video recording—if the evidence was recorded by video in the first instance, that would have been because they wanted to avoid the confrontation.

Sen. Al-Rawi: Well then I will say that I have no concerns straight up to clause 98 if I skip that out.

Clauses 92 to 98 ordered to stand part of the Bill.

Sen. Al-Rawi: Then, Madam Chairman, clause 99 to 102 inclusive, I have no issue with.

Clauses 99 to 102 ordered to stand part of the Bill.

Clause 103.

Question proposed: That clause 103 stand part of the Bill

Sen. Al-Rawi: Madam Chairman, my issue in relation to 103 was the definition of family being confined to lineal antecedents and descendants was very limited.

Sen. Ramlogan SC: “Who yuh want to include as your family, lemme hear?”

Sen. Al-Rawi: Okay. The difficulty inside of here is that people in cohabitational relationships or with lateral associations are not afforded the protection in this position. So the clause in itself becomes very unworkable.

The other position is whether consent of the parents—and that is an iffy thing; on thin ice there already—could deal with this. My concern is where we have a genuine—my nephew or niece comes to work with me and it is my cousin’s child, or my neighbour’s child. And you know in Trinidad we call everybody uncle and auntie. I grew up calling everybody uncle and auntie.

Sen. Ramlogan SC: I think the idea—you see this one was the subject of discussion, “eh”, and I know that there were a lot of cultural issues that were raised when this matter came up. Eventually the committee felt that we would go with a narrow definition; not that it would expose vulnerable issues in the other areas.

Sen. Al-Rawi: You see, the Cohabital Relationship Act—*[Interruption]*—no, no, they do not, because this definition is narrower than the definition of family in the beginning.

Sen. George: So what you think it should say?

Sen. Al-Rawi: I think we have a definition of family elsewhere in the Bill which includes the child of a cohabitant and a stepbrother of a cohabitant, and those kinds of things.

Sen. Ramlogan SC: You see the problem is where you will put the full stop; you know, aunt, uncle, cohabitational or—*[Interruption]*

Sen. Al-Rawi: You see the problem is in the converse. If we are criminalizing employment of a child and every child comes for a summer job—*[Interruption]*

Sen. Ramlogan SC: You see that is why I want to keep it narrow, and that is why this matter would—*[Interruption]*

Sen. Al-Rawi: No, but what I am saying is that you are allowing them to work with family. Anybody under 16 years of age cannot be employed unless it is your direct descendant.

Sen. Ramlogan SC: So you want to make it wide so you could employ more?

Sen. Al-Rawi: Job experience.

Sen. Ramlogan SC: I hear you.

Sen. Al-Rawi: I do as a part of payment to my alma mater, lots of kids come in and do summer jobs particularly because we are using the expression employ and work; employ and work.

Sen. Drayton: What are we on now?

Sen. Al-Rawi: We are on 103 in the definition of family.

Sen. Ramlogan SC: So we are seeking a wide formulation then?

Sen. Drayton: Okay.

Sen. Ramlogan SC: Sen. Al-Rawi, let us work it out. Who do you want to put?

Sen. Al-Rawi: I am looking for it elsewhere in the Bill to see if we have it here. I do recall seeing it.

Sen. Ramlogan SC: Sen. Dr. Bernard?

Sen. Dr. Bernard: No one took me on for the family in the initial definition, but even here—I am sorry I missed that point—we are doing a dishonour to the Caribbean family, and more so Trinidad and Tobago. We have forged in this country a unique range of families, or types of families that we are losing because we are linking it now with this narrow nuclear. I can see adopted parents in here; I can see surrogate parents in here—*[Interruption]*

Sen. Ramlogan SC: Aunt, uncle, grandmother with the parlour—*[Interruption]*

Sen. Dr. Bernard: I can see benefactors as well.

Hon. Senator: Who?

Sen. Dr. Bernard: Benefactors; people who in fact—*[Interruption]*

Sen. George: “It have godfather and ting too in and all dis—*[Interruption]*”

Sen. Dr. Bernard:—godfather, “yeah”.

3.10 a.m.

Sen. Al-Rawi: I think the Sexual Offences Act or the family law guardianship of minors Act—I think that is where it is. Hold on.

Sen. Ramlogan SC: Can we take it at clause 32? Would that be okay?

Sen. Al-Rawi: Just looking for it.

Sen. Ramlogan SC: I think that is wide enough.

Madam Chairman: Just for clarification, clause 32—*[Interruption]*

Sen. Ramlogan SC: We just have to say family refers to “family” as defined in clause 32”. That is all. *[Crosstalk]*

Sen. Al-Rawi: That is the one that I was looking for.

Sen. Ramlogan SC: Yes, so we change the definition of “family” to say “‘family’ means anyone in a familial relationship”—*[Interruption]*

Sen. Al-Rawi: “a person within a familial relationship as defined in section 32 of this Act.”

Sen. Ramlogan SC: Correct. “a person within a familial relationship as defined in section 32”—in clause 3. That is it. That takes care of your concern, Sen. Al-Rawi?

Sen. Al-Rawi: Well, I recognize that we are going to have to come back and amend this Act sometime later but we do not want the horse to starve while the grass is growing.

Sen. Ramlogan SC: No, no, remember that is what we have been doing for 12 years.

Sen. Al-Rawi: And longer.

Sen. Ramlogan SC: And longer. We have to get a start; “rome was not built in a day”.

Madam Chairman: So it reads ‘family’ means person with familial relations as it relates to clause 32”?

Hon. Senators: “as defined as”

Parliamentary Counsel: “a person within a familial relationship as defined in section 32”.

Sen. George: Section or clause?

Sen. Al-Rawi: Section.

Madam Chairman: “as defined in section 32”. Okay.

Question put and agreed to.

Clause 103, as amended, ordered to stand part of the Bill.

Clause 104, ordered to stand part of the Bill.

Clause 105

Question proposed: That clause 105 stand part of the Bill.

Sen. Drayton: Madam Chairman, clause 105; just seeking to ask a question here because, basically, what it says is that a child under sixteen years of age shall not be employed or work in any public or private undertaking, or in any branch thereof, other than an undertaking in which only family members, et cetera, so I want to raise this question.

We have thousands of youths, who are unemployed, who are not in school. Let us assume that this Bill goes through and it is proclaimed within six months. The Government has a plan whereby all those thousands of youths who are now out there, or who are working, they are under sixteen and they are working, because they leave school at 12, 13, 14 as the case might be, the Government has a plan to put all of them back in school until sixteen? What is going to happen? Because it means that all these youths who might have been working now—
[*Interruption*]

Sen. Ramlogan SC: I hear you, but they would have been probably working illegally in the first place because under 16, you should be in school, and the labour laws, I do not know if it will permit it.

Sen. Drayton: No, no. What is the school leaving age? The school leaving age is at 12. I do not know that a school leaving age anywhere is 16 years.

Madam Chairman: No, no, no.

Sen. Drayton: What is the school leaving age?

Sen. Ramlogan SC: You see, what happened, it is the Ministry of Labour and Small and Micro Enterprise Development consistent with what obtains elsewhere that gave us advice on this particular clause.

Sen. Al-Rawi: But, it is unworkable.

Sen. Drayton: But the question that I am asking—[*Interruption*]

Madam Chairman: Yes, it is. Our education Act has 16 years.

Sen. Ramlogan SC: No, but I understand your point.

Sen. Drayton: Yes, I just want to amplify something, if this Bill is proclaimed, let us say within the next six months or year, are we saying that all the employers who right now, who may have, between say 15 and 16 or 14 and 16 years, in their employ, they must be dismissed? I am trying to establish how practical this is. I understand the need to keep children in school until 16, but we have a reality where a lot of kids leave school at 12, 13; some of them are in the workplace—*[Interruption]*

Madam Chairman: Well, then they are being employed illegally. That is the point.

Sen. Drayton: I beg pardon.

Sen. Ramlogan SC: No, you go ahead.

Sen. Drayton: The question is: whether they are employed legally or not, you are talking about probably thousands of young people being dismissed, because the situation is amplified once this becomes legal, that if you are under 16, you cannot be employed anywhere unless it is in some private, or you cannot be self-employed either. So, I am trying to establish, when this Bill becomes law, what happens to the thousands of people out there who are self-employed in public places or employed? That is all I am asking.

Sen. Dr. Bernard: Madam Chairman, I got part of the answer to Sen. Drayton's concern in clause 106(b), and I think it meant, specifically to deal, if not specifically, I think it is there, shrouded a bit, in that section, where taken into account, some levels of apprenticeship. Notice it speaks of age 14 and I think it means 14-16 years.

I think one of the areas that is not—and I support Sen. Drayton on this too—handled is the fact that some of these young people are apprenticed, not to the formal sector, but the non-formal sector. That is, they can be attached to a craftsman, an artisan and so on, and be working. I think Sen. Beckles had raised the point that you also have some of them seeking part-time work at supermarkets and elsewhere.

Sen. Drayton: Some of them are working at fast food outlets.

Sen. George: There are some of them who bring newspapers around the community, for example, on a bicycle and they might be 12, 13, 14, and that is work.

Sen. Dr. Bernard: So, we need to put in somewhere, the question of apprenticeship in the non-formal sector. It is not there.

Madam Chairman: But the fact that we have prostitutes, does it not change—*[Interruption]*

Sen. George: But does it not say here that you can get the approval of the Minister for that kind of thing? That is apparently what it is saying here.

Sen. Dr. Bernard: Under the Minister will be the formal sector; non-formal—*[Interruption]*

Sen. Ramlogan SC: I understand the point. Because, you have—in the rural areas, I mean, I used to go and help by brother-in-law with “lil joinery and thing” after school sometimes and he give me a “lil” change.

Sen. Hinds: But, is Sen. Drayton correct on the self-employment question?

Sen. Drayton: What about all those in agriculture? They are selling on the roadside, we see them every day.

Sen. Ramlogan SC: The Minister cannot give the approval for that.

Sen. Al-Rawi: Kids on summer holidays is what really bothers me. The exception from the Ministry of Labour and Small and Micro Enterprise Development is one thing vacation, but every summer, long vacation, Christmas—in my family in particular, every man jack, child, works for uncle and aunt in places that are not only family.

Madam Chairman: Could I ask if we are trying to create the protection for those persons who may do it as a hobby, or are we not trying to protect those children who are so forced?

Sen. Ramlogan SC: That is the point.

Madam Chairman: So how do we make the discrimination?

Sen. Ramlogan SC: The idea here is to prevent exploitation of children in the workplace and exploitation by children working, but, you see, it is—*[Interruption]*

Sen. Drayton: This law is specific even—*[Interruption]*

Sen. Al-Rawi: If we were to put language in clause 105—sorry—if we found language which could encapsulate labour being forced to the view of an objective bystander, in other words, then, if we were to put a test of reasonableness to the observer as to whether the employment would be viewed to be coercive, that might help us. *[Crosstalk]*

Sen. Drayton: Even, with all due respect, in the cottage industry, in agriculture, they are in the field, they are in fast food places.

Sen. Ramlogan SC: The option is—what you are saying really is this: for a child who does not pass Common Entrance [*sic*] and really wants to learn a trade from his uncle or do something in the village—[*Interruption*]—well, whatever, or if they drop out of school because they are not academically inclined or whatever the case is, now, if you criminalise their ability to work, to actually learn a trade or profession, from a young age, then it poses some challenges, I suppose.

Now, the Minister's point is, however, that people have been complaining about children being forced to work for such a long time, and now we are trying to do something and it is equally a problem. The Ministry of Labour and Small and Micro Enterprise Development insisted on this provision.

Sen. Drayton: I am just asking a question. We already have a serious crime situation, and I am asking a simple question: if this Bill is proclaimed in three or four months' time, the thousands of young people who are under the age of 16 and are working—they are not in any apprenticeship or anything like that; they are in the labour force, they are working—are you sending a message to the employers, or whoever, dismiss them? Are you saying in agriculture, pull them out of the field where they are planting their little chive and tomato and going on the roadside and selling? What are these thousands of young people going to do? That is the question I am asking.

I am not saying that I disagree with the intent. I think the intent is fine, it is honourable. It is a laudable objective. But, I am just asking to be practical.

Madam Chairman: Attorney General, I think Sen. Dr. Bernard raised a very critical point. He said if you go to clause 106, it tells you where it does not apply, and, for example, where a child might be involved as Sen. Al-Rawi is saying in summer school, it clearly says here that it does not apply to a child in school or other training institutions. So it does not apply to a child who is taking up, let us say a summer job, because the child is in school in general.

Sen. George: Right, but if the child is out of school?

Madam Chairman: If the child is out of school and then go on to the other one, under the age of 14—[*Interruption*]

Sen. Al-Rawi: Clause 106(a) does not say that.

Sen. Ramlogan SC: The problem here—I understand why the Ministry of Labour and Small and Micro Enterprise Development is insisting, apparently, the ILO Convention on the Rights of the Child, that is the age that they used, and that has been

proclaimed since 2007. So this is one of those areas where you turn a blind eye in our society and these things happen. But I understand the point. Now, the issue is how do we resolve this bearing that point in mind?

Sen. Al-Rawi: If we were to define the mischief as the exploitation of a child being “forced or viewed to be forced” into some kind of labour which is to his detriment, his psychological or emotional well-being, we would probably be on the right track.

Sen. Abdulah: Madam Chairman, may I assist? What Sen. Al-Rawi is suggesting is very difficult. There are adults who are working in conditions where the minimum wage law and other laws apply and employers are violating these basic rights, and those workers find it exceptionally difficult to have the law applied because they would lose their job. I raised that issue, we had discussed that when we were debating the Maternity Protection Act a week or so ago.

Now, if that is the case with adults, how are you going to get a child to come forward to say that their rights are being violated?

Sen. Al-Rawi: Because the Ministry of Labour and Small and Micro Enterprise Development has inspection.

Sen. Abdulah: The inspectorate can only rely on the evidence of the workers when they come forward. I am well aware of situations where workers, who are adults, report to the inspectors and they lose their jobs.

So, I think that we have to be consistent with the policy position, that we respect in the ILO Decent Work Agenda. That is a policy position that was enunciated by the Government. Therefore, to go against something that—
[*Interruption*]

Sen. Drayton: That is different from what we are talking about.

Sen. Abdulah: No, it is not.

Sen. Drayton: ILO decent work.

Sen. Abdulah: Yes, but decent work includes all those issues with respect to child labour.

Sen. Ramlogan SC: This really is a policy issue, Madam Chairman. I think that this is a matter that came by agreement from the Lower House. On this issue, the policy position of the Government is: we cannot run contrary to the ILO Convention.

3.25 a.m.

This may very well be one of those instances where society might turn a blind eye for the greater good of the child, and we would have to let good sense and common sense prevail, but we cannot legislate contrary to the ILO provision. Having heard from the labour element in the Partnership, I rest our case.

Sen. Al-Rawi: Hon. Attorney General, if you could just undertake to have your team look at how we could do this—*[Interruption]*

Sen. Ramlogan SC: Sure.

Sen. Al-Rawi:—because I accept that the time does not really allow us to do that and this is a difficult point.

Sen. Ramlogan SC: We cannot do it.

Sen. Al-Rawi: It is a difficult point.

Sen. Ramlogan SC: But we will look at this. As I said, these things we would have to review. But, I do not really think—Sen. Drayton, I understand your point, yours and Sen. Dr. Bernard's. I understand the point you all are making. I come from the rural countryside where it happens in the agricultural sector, joinery, carpentry, all sorts of things and it is for the benefit of the child. It is not to the detriment of the child. In fact, criminalizing it may have the counterproductive effect of being to the detriment of the child. But I think this is one of those situations where, having regard to our international treaty obligations, we really have no choice and we would have leave to it there.

Sen. Al-Rawi: Agreed!

Sen. Drayton: Could I just say, for the record—*[Interruption]*

Sen. Ramlogan SC: Yes.

Sen. Drayton:—that we are making a conscious decision that we would leave this in the Bill as is?

Sen. Ramlogan SC: Yes.

Sen. Drayton: We would implement a law that is counterproductive to our social situation and which may have serious consequences in terms of crime. Alternatively, we are consciously implementing a law, knowing full well that we have to turn a blind eye to it. I rest. I rest.

Sen. Al-Rawi: That is the point.

Sen. Ramlogan SC: What I would say, by way of response for the record equally, is what we are doing is legislating in a manner consistent with our international treaty obligations, in accordance with the universally recognized and accepted standards for the rights of the child in a matter that can cause grave harm to our reputation as a country if we do otherwise and also raise serious questions as to our adherence to the ILO Convention. I support entirely what Sen. Abdulah has said and we would have to leave it there.

Sen. Drayton: I have no problem in principle.

Sen. Ramlogan SC: Sure.

Sen. Drayton: My issue is—*[Interruption]*

Sen. Al-Rawi: We are legislating something which we cannot look at, at all. It makes no sense.

Sen. Drayton:—that once again we are legislating something which we know really cannot be implemented and which the Government again has brought a Bill, which has not been thought through, in terms of the full consequences, and what the Government is saying is that it is a policy position and that it is aware that it has to review that policy. I rest my case too.

Sen. Ramlogan SC: The only qualification I would add to that last submission is that it is not just the Government saying this, this is a Bill that has come from the Lower House with the unanimous support of both the elected Opposition and the Government of the day and we rest our case in that consensus.

Sen. Al-Rawi: Just to clarify, Madam Chairman; insofar as our leader in the Opposition has told us that each House stands on its own and that we must improve the Bill in each House, I will hold the Attorney General to his undertaking—and I know he means it, and I hope he means before proclamation of this Bill—that the hard questions in sections 105, 106, et cetera, will be looked at because we know that we do not want to do, as the courts say, a court never makes an order in vain, we would not want to legislate in vain.

Sen. Ramlogan SC: We cannot go contrary to ILO either.

Sen. Al-Rawi: I think that there is a solution out of it in terms of an objective standard test or even a very subjective standard test. If we could just look at it that way.

Sen. Dr. Bernard: May I still plead, Madam Chairman, for (iv)—*[Interruption]*

Sen. Ramlogan SC: Sen. Dr. Bernard, can I take you up on one point you have made? Could we not look at expanding clause 106(b) to, perhaps, take care of this problem?

Sen. Dr. Bernard: Put in the apprenticeship in the non-formal sector as (iv), a programme of apprenticeship.

In fact, it will still be governed under the responsibility of the Ministry, but it will in fact be an apprenticeship programme because it is true to say that—
[*Interruption*]

Madam Chairman: Training and apprenticeship, are they not the same?

Sen. Dr. Bernard: No, no. Apprenticeship, you are articulated to the individual; you may or may not be certified, because the guy who teaches you to mend the nets cannot issue a certificate of completion, but you become an excellent mender of nets, as is the case with Mayaro young men who, in fact, do this for a living. So, if we let this go as it is, I do not know what will happen.

Sen. Ramlogan SC: Nothing will happen. You help us to draft an amendment to enlarge the exceptions. What we need now are proposals.

Sen. Drayton: If I may, I am not a lawyer so I really cannot come up with the terminology at this point in time. We can probably use the terminology that anyone between that age group who is employed wherever they are employed, because they are gaining skills and it is in itself a type of apprenticeship below 16 years of age. It is just to open up that definition of “apprenticeship” and then it is up to the Ministry of Labour and Small and Micro Enterprise Development to work out the administrative part of it to get in all these groups registered or something.

Madam Chairman: Clause 106(iii) states:

“a programme of guidance or orientation designed to facilitate the choice of an occupation or of a line of training.”

Yes, would not a person who chooses an occupation have an orientation designed to facilitate the choice of that occupation? Would not all of that cover?

Sen. Dr. Bernard: I am still in the formal sector, with people requiring some form of credential [*Inaudible*]. What we need to add is something that suggests that it is in the non-formal sector, that is it can happen ad hoc, it can happen at the spur of a moment; somebody just gathering a number of people around them to work with them. I think we are safe under the apprenticeship umbrella, in that it cannot be considered to be decent work in the context of a paid salary but rather a stipend, and there are ways around that.

Sen. Al-Rawi: In addition to that, could I ask you, Hon. AG, to consider two factors? In clause 105—I do not know why we have 82 and 83 there. If we look at clauses 104 and 105, and what are the numbers 82 and 83 there about? Or, those are the previous clauses. So, that would come out by natural course.

I was thinking, in clause 105:

“Subject to section 106, a child under the age of sixteen years shall not be employed or work in any public or private undertaking, or in any branch thereof, other than an undertaking...” and I was hoping to use these words: “controlled by members of the same family and any person who employs such a child commits an offence.”

That is the first thought that I was thinking of.

The second one I was thinking of is in clause 106 after (a), to put in a new (b). So: “clause 105 shall not apply to work done by a child on official school vacation for the period of that vacation, provided that the child has the written consent of the parent, guardian or person with responsibility for him. Then I would have added a clause afterwards which says that: “Nothing precludes the court on an application of a person, from declaring that employment or work done by that child to be in contravention of the Act, if the court so considers.” It takes care of the school vacation. It also—with the caveat that I have just put by saying that nothing prevents a court from determining that employment to be against the child’s best welfare—makes it a catch-all phrase.

Madam Chairman: If working under a certain law is illegal, or contrary to the Conventions of the ILO, then whether it is working, begging or prostituting, it is illegal. Therefore, whether you have consent of parent or not, it remains an illegal act.

Sen. Al-Rawi: I have the answer to that. I have looked at the ILO treaties, a number of them when we did the Maternity Protection Bill the other day, and they always have the clause: “subject to the laws of the country or the practices of the country.”

Sen. Drayton: Exactly!

Madam Chairman: This is here as well.

Sen. Al-Rawi: So, that is number one. Number two, we must recognize in our country that we are dealing with the fact that children work in familial businesses or for friends, et cetera, during the summer—no it is not there—clause 106(a) says that the prohibition against working:

“...shall not apply to work done by—

(a) a child in school for general, vocational or technical education or in other training...”

That is tech schools. But the exception for the summer vacation child, working or employed with the consent of the parent and with the caveat saying that nothing prevents the court from lifting that veil takes care of the mischief we are looking at.

Sen. Drayton: But, is that only during the vacation period? I am speaking about youth working throughout the year. [*Crosstalk*] I am not talking about youth working temporarily in banks and other places like that, or work study programmes. I am speaking about youth who are working for a livelihood.

Sen. Al-Rawi: I understand, but I am trying to get the words for you.

Sen. Ramlogan SC: I have a proposal—subject to what my colleague, Sen. Abdullah may advise on this matter, and I would be guided in this regard by his advice because he is the expert in this area on our side—what if we drop the age from 16, because the concern here is that children should be in school up to a certain age whether it is at the minimum of 12?

Sen. Drayton: And we all agreed with that. Sixteen is ideal.

Sen. Ramlogan SC: I understand the social problem—look, a child who is not academically inclined—I have seen this in my own family. I have a nephew who was not interested in school and he was not interested in going to any formal thing either, but he joined a machine shop. Today, he owns a machine shop, but he dropped out of school. But he is earning more and doing better than some of them who continue in school. To criminalize his experience in dropping out of school early, in recognition of the fact that he is not academically inclined, would have deprived this country of a guy who successfully owns a machine shop and working Sunday to Sunday.

If we are able to lower the age from 16 to 14, or 12 after common entrance [*sic*], you must be in school, nothing about work.

Sen. Drayton: I do not think it is a question of lowering the age. I think lowering the age defeats the purpose. Let me back up. I understand the intent. It is laudable. We want our children to stay in school as long as they can, and if even they are not academically inclined, then they should still be in school learning in accordance with their style, their aspirations, et cetera. I think that is what all the social workers, including Sen. The Hon. Verna St. Rose Greaves, would like to see. So I do not think it is a question of the age. There has to be a clause where we

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can capture the situation, that social situation, and then we have the grace period to administratively put in whatever the Minister of Labour and Small and Micro Enterprise Development wants to put in.

Sen. Ramlogan SC: You are talking about grace period. My point is whether we should be criminalizing it at all.

Sen. Drayton: This is what I am saying. We should not be criminalizing it and do not think—*[Interruption]*

Sen. Ramlogan SC: If we drop the age to 12 or 14—*[Interruption]*

Sen. Drayton: No, then what you are saying is that children can leave school, which is what they are doing now, at 12, and you do not want to do that. The purpose of this Bill—*[Interruption]*

Sen. Ramlogan SC: No, it is not just that. There are students who come home after school and they go and learn a trade, in the afternoon.

Sen. Drayton: Okay, but—*[Interruption]*

Sen. Dr. Bernard: But we are guided by what is called post-compulsory education.

Sen. Ramlogan SC: Which really is 16, which is why the Ministry of Labour and Small and Micro Enterprise Development asked for 16, in consultation with the Ministry of Education. That is the conundrum.

Sen. Drayton: But we have a situation and—*[Interruption]*

Sen. Ramlogan SC: I would defer it to the leader of the MSJ in the Partnership and let him have the final say on this clause. So we can rest an anchor on it, having regard to the fact that this matter came in its present form from the elected Chamber.

Sen. Al-Rawi: Before you go to the final say, have you heard the amendments that I put to you just now?

Sen. Ramlogan SC: Yes, I did.

Sen. Al-Rawi: Repeat them?

Sen. Ramlogan SC: I cannot repeat them because I did not write them down. I heard them, but I did not write them down.

3.40 a.m.

Sen. Al-Rawi: Let me put them again. I have suggested in clause—*[Interruption]*

Sen. Ramlogan SC: No, I heard them, “controlled by the family” and so on.

Sen. Al-Rawi: Yes.

Sen. Ramlogan SC: But the point is that would not take care of their concern.

Sen. Al-Rawi: No. While we are discussing the policy I have been trying to fix a wording to catch it—*[Interruption]*

Sen. Ramlogan SC: That is the point, we cannot discuss policy.

Sen. Al-Rawi: But hold on, I have been trying to get a wording that may be palatable, at least in respect of clause 105 where there is an exception, I think it would read much better if we were to make the following amendment.

Sen. Ramlogan SC: Sure.

Sen. Al-Rawi: Go down to the fourth line: “undertaking,” I would delete “in which only”, and I would add in after the word “undertaking”, “controlled by members of the same family”. I would delete the words “are employed”. That is in clause 105.

At clause 106, I would make clause 106(1) just before section 105.

Sen. Ramlogan SC: Yes.

Sen. Al-Rawi: Then, I would say after paragraph (a), I would put in a new paragraph (b) which would read something like this, therefore, clause 106 (1):

“Section 105 shall not apply to work done by—

- (b) a child on official school vacation for the period of that vacation provided that the child has the written consent of his parent, guardian or person with responsibility for him;”

Then I would go on in clause 106(2) after I went through these things to say:

“Where it appears on complaint on oath of any person, that a child is employed or working in circumstances contrary to his best interests”

And then go along that line.

Sen. Ramlogan SC: That is a complete rework of this, I am not going to go there. Sen. Abdulah?

Sen. Abdulah: Madam Chairman, in response to some of the issues, I think that—and I am just asking for the legal position on it—that there is somewhere a minimum age for work, which as far as I know is 16; which is why the 16 is there

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and, therefore, it is consistent with what is already legislated elsewhere as the minimum age for work. But clearly, apprenticeship programmes start before 16. Now, the issue with—and I do not think we should try, with respect Sen. Al-Rawi, to make the thing very complicated for people to have to go on oath, that is not going to work, because people would not just do it. So the issue would be to have clause 106(b)(iii) understood, that “a programme of guidance or orientation...”

Because the point that the hon. Attorney General was making with respect to his nephew worked, but there may be instances where it does not work well, and people are taken advantage of in a machine shop. But there are instances where young men or maybe young women and so on, do engage in, what is in effect an apprenticeship, in an informal arrangement. It is not a formally structured programme, but they, in fact, learn the craft or the skill as the case may be, and develop to be very highly skilled people.

I think one of the things we may wish to—and this (b)(iii) may suggest that we try to encourage some level of standard for those programmes and, therefore, it may be in practice—and I do not know how it is working, so I am talking purely without guidance now—that programme of guidance or orientation could be where the employer goes to the Ministry and says: “Can I have young people below the age of 16 working in my employ in effect in a programme of apprenticeship without it necessarily being a formal programme over five or seven years as a normal apprenticeship programme is.

So it may be captured here, Madam Chairman. What I am suggesting is that (iii) may capture in effect what people are saying, but simply seeking to have it regularized, rather than totally arbitrary, because when it is arbitrary you are opening the possibility for young people below the age of 16 to, in fact, be exploited. So I do not know if that helps.

Sen. Dr. Bernard: That, Sen. Abdulah, makes good sense, and I am sorry Sen. Karim is not here at this point, because the NTA has an excellent model of apprenticeship which can allow us to latch on the informal element to what they have already designed as an apprenticeship system.

Sen. Hinds: Hon. AG, I think with great respect to all of our colleagues, this is a committee stage, we have something before us, we need to cut to the chase here.

Sen. Ramlogan SC: “Yep, agreed.”

Hon. Senator: We legislating in vain on this clause.

Sen. Hinds: While the contributions are very worthwhile you know, but at this stage I am beginning to feel exploited. [*Laughter*]

Sen. Ramlogan SC: It is a good thing you are not a child, my friend. Sen. Dr. Balgobin?

Sen. Hinds: Yes, yes. So let us cut to the chase on this one.

Sen. Dr. Balgobin: If I may make a quick observation on—[*Interruption*]

Sen. Hinds: Let it be very quick, I trust.

Sen. Dr. Balgobin:—clause 105. I think I understand Sen. Al-Rawi’s concern, and I do support those minor changes. [*Interruption*]

Sen. Ramlogan SC: With respect to “owned or—

Sen. Dr. Balgobin:—controlled by members of,” and the reason being you have a family business, a small business—[*Interruption*]

Sen. Ramlogan SC: You could be the general manager.

Sen. Dr. Balgobin: Right. And you come to work for the summer, as is often the case, or they come after school sometimes and they help out, it is not a big issue, so I did not have a problem with clause 105, and the slight word changing.

Madam Chairman: Attorney General, it is now 3.46 a.m. In order for all the apprenticeship, summer programme, agricultural, even within the laws, et cetera, that we go to clause 106(b)(iii), my suggestion is that we say:

“a programme of guidance or orientation designed to facilitate the choice of an occupation, apprenticeship or any line of training formal or informal.”

Would that not cover agricultural and summer programmes?

Sen. Ramlogan SC: That certainly is an improvement. That is fine by me.

Madam Chairman: Yes?

Sen. Ramlogan SC: Yes.

Madam Chairman: Okay.

Sen. Ramlogan SC: Thank you very much, Madam Chairman.

Madam Chairman: You are welcome.

Sen. Hinds: Does that cover the self-employed?

Sen. Ramlogan SC: Everything.

Sen. Hinds: All right.

Sen. Al-Rawi: I guess that is a very ingenious position there.

Sen. Ramlogan SC: “Ah jus tell she dat.” [*Laughter*]

Sen. Al-Rawi: It might, because it is pregnant with a whole load of implications.

Madam Chairman: Okay. So we go back to clause 105.

Sen. Ramlogan SC: We will accept the amendment to clause 105, we will say:

“...other than an undertaking owned or controlled by members of the same family...”

And just delete the rest up to the semicolon.

Question put and agreed to.

Clause 105, as amended, ordered to stand part of the Bill.

Clause 106.

Question proposed: That clause 106 stand part of the Bill.

Sen. Ramlogan SC: Madam Chair, I beg to move that clause 106 be amended as follows.

(iii) A programme of guidance or orientation designed to facilitate a choice of occupation, apprenticeship or any line of training formal or informal.

Question put and agreed to.

Clause 106, as amended, ordered to stand part of the Bill.

Sen. Ramlogan SC: “Sen. Al-Rawi, yuh have any objection going down de road?”

Sen. Al-Rawi: Madam Chairman, apparently I have no comments until we get to clause 119.

Hon. Senator: Nice! [*Desk thumping*]

Sen. Ramlogan SC: “Yeah! Yeah!”

Sen. Ramlogan SC: May Bhagwan bless you. [*Laughter and crosstalk*]

Clause 107.

Question proposed: That clause 107 stand part of the Bill

Madam Chairman: We have some amendments, so we will have to deal with clause 107.

Sen. Ramlogan SC: Madam Chair, I beg to move that clause 107 be amended as follows:

(3) Delete all the words after the words “fine of” and substitute the words “twenty thousand dollars and to imprisonment for one year.”

Question put and agreed to.

Clause 107, as amended, ordered to stand part of the Bill.

Clauses 108 and 109 ordered to stand part of the Bill.

Clause 110.

Question proposed: That clause 110, as circulated, stand part of the Bill.

Sen. Ramlogan SC: Madam Chair, I beg to move that clause 110 be amended as follows:

Insert after the word “offence” the words ‘and is liable on summary conviction to a fine of five thousand dollars.

Question put and agreed to.

Clause 110, as amended, ordered to stand part of the Bill.

Clauses 111 to 113 ordered to stand part of the Bill.

Clause 114.

Question proposed: That clause 114 stand part of the Bill.

Sen. Ramlogan SC: Madam Chair, I beg to move that clause 114 be amended as follows:

Delete all the words after the words “fine of” and substitute the words “twenty-five thousand dollars and to imprisonment for three years.”

Question put and agreed.

Clause 114, as amended, ordered to stand part of the Bill.

Clauses 115 to 119 ordered to stand part of the Bill.

Sen. Al-Rawi: Madam Chairman, to put it correctly, I withdraw my—okay, I had an observation on clause 119, which had been taken care of by something earlier, so I will have nothing there. Is it that we have one for clause 120 circulated?

Madam Chairman: There is one for clause 120.

Clause 120.

Question proposed: That clause 120 stand part of the Bill.

Sen. Ramlogan SC: Madam Chair, I beg to move that clause 120 be amended as follows:

In paragraph (a), delete the words “sections 26 and” and substitute the word “section”.

Question put and agreed to.

Clause 120, as amended, ordered to stand part of the Bill

Clauses 121 to 123 ordered to stand part of the Bill.

Madam Chairman: [*Madam Chairman speaks to the Clerk*] Could we finish all the Schedules and everything and then go back?

Clerk: We will revisit, but we have to do the clauses first.

Madam Chairman: Okay. We have to go back. We would like to revisit clause 33. Do you have an amendment?

Clause 33 reintroduced.

Sen. Ramlogan SC: Clause 33(1) will be 33 in its entirety, and we will put in a 33A, and 33A, will now comprise (2) and (3) of the old 33; which will be renumbered (1) and (2). So, (2) and (3) of clause 33 will now be called clause 33A.

Madam Chairman: So the first line is just a statement of 33 and then (2) is A and (3) will be B?

Sen. Al-Rawi: So it will be 33A and then (1) and (2).

Madam Chairman: Okay. I see. The amendment: will now read:

Delete (1) after 33 to read: 33A constable may take into custody”,

To renumber section 33(2) to read: “33A(1) Where a constable has reasonable cause to believe”;

Renumbered 33(3) to read 33A(3)

“A constable referred to in subsection (1) shall make a written report”

Question put and agreed to.

Clause 33, as amended, ordered to stand part of the Bill.

3.55 a.m.

Schedules 1 and 2 ordered to stand part of the Bill.

Schedule 3

Question proposed: That Schedule 3 stand part of the Bill.

Sen. Ramlogan SC: Madam Chairman, I beg to move that Schedule 3 be amended as follows:

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| Schedule 3 New Item 3(g) | <p>A. Renumber paragraphs (g) to (i) as paragraphs (h) to (j)</p> <p>B. Insert after paragraph (f) the following new paragraph:</p> <p>“(g) in section 26, insert after the word ‘Act’ the words ‘or under Parts V, VI or VIII of the Children Act 2012’”.</p> |
| Schedule 3 Item 3(j)(b) as renumbered | <p>Insert after the words ‘Children Act’ a comma and the word “, 2012”.</p> |
| Schedule 3 Item 6 | <p>A. Insert after the chapeau the following paragraph:</p> <p>“(a) in section 3, in the definition of “fit person” delete after the word “children” the words “and young persons”;</p> <p>B. Renumber paragraphs (a) and (b) as paragraphs (b) and (c) respectively.</p> |
| Schedule 3 Item 8(b): | <p>Delete and substitute the following paragraph:</p> <p>(b) in section 41(b), delete after the words “fit person” the words “under section 23(1)” and substitute the words “as defined in section 3”.</p> |

| | |
|-------------------------|---|
| Schedule 3 Item 8(c) | Delete the words “section 64” and substitute the words “section 66(1)”. |
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Question put and agreed to.

Schedule 3, as amended, ordered to stand part of the Bill.

Preamble approved.

Question put and agreed to: That the Bill, as amended, be reported to the Senate.

Senate resumed.

Bill reported, with amendment.

Question put: That the Bill be now read a third time.

Madam Vice-President: This Bill requires a three-fifths special majority.

The Senate divided: Ayes 20

AYES

George, Hon. E.

Ramlogan SC, Hon. A.

Sandy, Hon. Brig. J.

Bharath, Hon. V.

St. Rose Greaves, Hon. V.

Karim, Hon. F.

Ramnarine, Hon. K.

Maharaj, Hon. D.

Dyer-Griffith, Mrs. N.

Abdulah, D

Maharaj, D.

Baynes, T.

Mohammed, J.

Burke, Abp. B.

Bhagaloo, K.

Beckles, Miss P.

Hinds, F.

Cudjoe, Miss S.

Al-Rawi, F.

Deyalsingh, T.

The following Senators abstained: Mrs. C. Baptiste-Mc Knight, Mrs. H. Drayton, Dr. R. Balgobin, Prof. H. Ramkissoon, A. Sydney, Dr. L. Bernard.

Question agreed to.

Bill accordingly read the third time and passed.

ADJOURNMENT

The Minister of Public Utilities (Sen. The Hon. Emmanuel George): Madam Vice-President, I thank the Members of this Senate for their input into the debate on this Bill and for the sacrifice they have made to spend time with us here in this Senate until 4.00 a.m. to ensure that the debate on this very vital Bill has been concluded and successfully so. [*Desk thumping*]

I want to thank the staff of the Parliament, [*Desk thumping*] the legal draftspeople [*Desk thumping*] and also the police officers who have stayed up late with us. To you, Madam Vice-President also, thank you very much for presiding over the committee stage in particular.

I beg to move that this House do now adjourn to next Tuesday, May 29, 2012, at 1.30 p.m. when we hope to conclude the debate on the Regional Health Authorities (Amdt.) Bill, 2011 which was in committee when we broke, and to begin the debate on the Administration of Justice (Electronic Monitoring) Bill, 2011.

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

Madam Vice-President: Hon. Senators, before I put the question, I believe that what I saw today was quite a collaboration, in particular with the absence of Senior Counsel Elton Prescott. I would like to thank Sen. Al-Rawi, on behalf of all Senators, for his efforts. I believe you guided legislation and assisted the Attorney General quite efficiently and competently in the passage of this Bill. [*Desk thumping*]

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 4.04 a.m.