

*Leave of Absence**Wednesday, June 11, 2014***SENATE***Wednesday, June 11, 2014*

The Senate met at 11.30 a.m.

**PRAYERS**[MR. PRESIDENT *in the Chair*]**LEAVE OF ABSENCE**

**Mr. President:** Hon. Senators, I have granted leave of absence to Sen. The Hon. Raziah Ahmed, who is out of the country. I expect to get correspondence later today from His Excellency the President. At that point, we will resume on the question of announcements.

**ARRANGEMENT OF BUSINESS**

**Mr. President:** Members will recall yesterday we suspended the House whilst we were in committee and, therefore, this will be the next stage to which we will proceed if my Clerk tells me okay. Therefore, the committee stage will be resumed on the Bill that was before the Senate on the last day, which is an Act to provide for public procurement and for the retention and disposal of public property in accordance with the principles of good governance, namely, accountability, transparency, integrity and value for money, the establishment of the Office of Procurement Regulation, the repeal of the Central Tenders Board Act, Chap. 71:91 and related matters.

**PUBLIC PROCUREMENT AND DISPOSAL  
OF PUBLIC PROPERTY BILL, 2014**

[Fourth Day]

*The committee of the whole Senate resumed its deliberations on the Bill.*

[Chairman: Sen. Hamel-Smith]

**Mr. Chairman:** We ended yesterday at clause 25. I was asked by Sen. Drayton if we could revisit 24(4) as it relates to the Speaker and the question of putting the report before Parliament.

**Sen. Robinson-Regis:** Mr. Chairman, we also may need to revisit 14.

**Mr. Chairman:** We have deferred that. That is on the record already.

**Sen. Al-Rawi:** Mr. Chairman, I was going to join in to request that you, firstly, reread what we amended clause 24 as, because I had a lingering doubt in my mind that the Speaker could put something before the Senate.

**Mr. Chairman:** What I would like to do is, if this is in order, to hear from Sen. Drayton on what she would like and then we will read the entire thing, if Sen. Drayton wants to focus on 24(4), as I understand it. I want to get that right and I can read that before Sen. Drayton intervenes.

**Sen. Al-Rawi:** Much obliged. Thank you, Sir.

**Mr. Chairman:** The way I have it, clause 24(4) says:

The Speaker shall, as soon as practicable, cause the report to be laid before Parliament and stand referred to a Joint Select Committee whose sole business shall be matters related to public procurement and the disposal of public property.

I am sure, Sen. Drayton, you would want to—

**Sen. Drayton:** Thank you, Mr. President. I have done some checking on this and there is a technical flaw because the Speaker cannot cause a report to be laid before Parliament because Parliament is made up of two Houses and he cannot cause a report to be laid before the Senate.

Now, I referred to the Constitution, section 116 and the wording is as such:

“The President of the Senate and the Speaker shall cause the report to be laid before the Senate and the House of Representatives, respectively, at the next sitting of the Senate and the House of Representatives after the receipt thereof, respectively.”

So I think that that could guide our wording.

The second matter I just wanted to raise with respect to that same subclause (4) was that laying the report at the next sitting is more than just a convention because it is in the Constitution with respect to the Auditor General report. As I said, the Auditor General deals with the accounts of statutory bodies, which is the public’s purse and, in procurement, we are dealing with the public purse.

And the final matter emanating from that is that when the joint select committee recommended the Public Accounts Committee—and we have subsequently changed that, which we all agree with, because of the workloads of the Public Accounts Committee, and that we should have a specific committee for procurement, what I noted in the Constitution, as well, is that the Public Accounts Committee is chaired by a member of the Opposition, which is a convention internationally. In the context of procurement, as I said, we are dealing with the same thing, which is the public purse. Therefore, this part of my commentary is really to ask whether the intent will be to maintain that convention that this special committee dealing with procurement—and also in keeping in good faith with what our discussions were—that the joint select committee will be chaired by the Opposition or a Member of the Independent Bench. Thank you, Mr. Chairman.

**Sen. Al-Rawi:** Just before you answer, hon. Minister, through you Mr. Chairman, because it resonates with the same point. I had a slightly different spin on exactly the same issue. I, too, referenced the Constitution and, in particular, the provisions dealing with the Auditor General. I do not necessarily think that the Minister needs to lay the report. In fact, the language in the Constitution used in section 116(5) with respect to the Auditor General, is that:

“The President of the Senate and the Speaker shall cause the report to be laid before the Senate and the House of Representatives, respectively, at the next sitting of the Senate and the House of Representatives after...receipt thereof, respectively.”

And the provision before that 116(4) provides:

“The Auditor General shall submit his reports annually to the Speaker, the President of the Senate and the Minister of Finance.”

Insofar as it is intended that Parliament has this oversight, I would think it appropriate, bearing in mind the architecture of this particular clause 24 and the philosophy behind the Bill, to perhaps use the language of section 116(4) and 116(5) of the Constitution directing it specifically, by the regulator, to the Speaker and the President of the Senate and to use the same wording.

I join in the issue of who shall chair, but I believe that that is a matter for the Standing Orders as opposed to the Bill. I am not quite sure if it should fit inside of there.

**Sen. Dr. Tewarie:** I agree with that. We have no real objection to that. The advice on the Speaker causing to be laid was really given to the CPC by the Clerk of the House in consultation. Anything that would improve it, but achieve this same objective, I have no problem with.

On the issue of the chairing of the committee, I do agree that that is a matter better attended to as far as the Standing Orders are concerned, but I would say that our preference for an institution such as this would be to have an Independent Senator chair it.

**Sen. Al-Rawi:** Mr. Chairman, in that context then, may I propose specifically that clause 24(1), which provides that:

“The Regulator shall submit an annual report to Parliament...”

If we can use the language of section 116(4) of the Constitution and say:

The Regulator shall submit an annual report to the Speaker, the President of the Senate and the Minister of Finance...

*Public Procurement Bill, 2014*  
[SEN. AL-RAWI]

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So you are striking the words “Parliament no later than”. The Minister comes after, so “to the Speaker and the President of the Senate” and then “no later than ninety days after expiry to which that report relates and provide the Minister with a copy thereof”. We can go that way.

And then in subparagraph (4) of 24, we could use the words, instead of “the Speaker”, strike “Speaker” and put, “President of the Senate and Speaker” and then it continues “shall”. We may wish to consider whether, “as soon as is practicable”—I have no specific objection to that—but the wording in section 116(5) is, instead:

“...cause the report to be laid before the Senate and the House of Representatives, respectively, at the next sitting of the Senate and House of Representatives after the receipt thereof, respectively.”

**11.45 a.m.**

**Mr. Chairman:** What I have asked my Clerk to do is to have that typed out and circulated to everybody. It is a bit much to ask to follow having read it out. So, we are going to look at (4) and (5), and we will circulate that. We will add on to it the words “the joint committee” and the fact that it would be to the exclusive joint committee. What we have read there we would type it up. We would revisit it when we come back.

**Sen. Al-Rawi:** Much obliged.

**Mr. Chairman:** So, I also remind you we had deferred 14.

**Sen. Dr. Tewarie:** That is correct.

**Mr. Chairman:** And, therefore, I take it we will deal with that later in the proceedings. If we can now start where we had stopped.

**Sen. Young:** Mr. Chairman, as we are still looking at clause 24, might I respectfully—it comes at a clause later on, what I am about to propose, but seeing that you are going to have clause 24 retyped, if I may, with your indulgence, ask that we look very briefly at—sorry, I just had it here. Sorry, Mr. Chairman. On a later clause, what we do is provide for—right, it is clause 44, where it talks about the outcome of an investigation.

“After conducting an investigation under this Act, the Office shall without delay, in writing, inform the public body concerned and the Minister having responsibility...”

What I would like to suggest is that this should also form part of the report to Parliament, these outcomes, and I was going to suggest and ask that we consider adding a “(k)” to 24(2) to just include that part of the report should include it.

**Sen. Al-Rawi:** And I see the hon. Minister nodding his head.

**Sen. Ramlogan SC:** Chair, that may have carried with it some problems because of prejudicial value in terms of consequential legal proceedings. If you look at, for example, the classical case of an investigating body would be the Integrity Commission. *[Interruption]* No, they do not actually. The Integrity Commission does not, in fact, publish anything about its investigations in its reports. In fact, I have taken that point up many times, but they do not, and the reason they have given—*[Interruption]*

**Sen. Young:** They now have a table and it shows this is the status, et cetera. So, the outcome could simply be referred to the Director of Public Prosecutions.

**Sen. Ramlogan SC:** We can check, but my recollection is that the Integrity Commission—*[Interruption]*

**Sen. Young:** This is just two weeks ago. The last report has the table.

**Sen. Ramlogan SC:** But no, if they do, we have to look and see how they do it. We have to be careful about it.

**Sen. Young:** Sure. That is the point.

**Sen. Ramlogan SC:** I am concerned about the prejudicial impact of it. If they do it, it will have to be done in a very generic way, you know.

**Mr. Chairman:** What I would say, when you look at clause 24(2), it says a report shall include, and I take it that, therefore, whatever that the regulator believes, relates to matters which should be before the Parliament, he would put in his report.

**Sen. Dr. Tewarie:** Yeah, exactly. And Chair, there is a very important consideration there, and sometimes confusion about roles and structures lead to confused results in Bills or in legislation which then end up in confused activities and actions in the life of the public, and there is a structure of government. If there is an investigation into someone in a public body, those public bodies fall under the jurisdiction of Ministers in the Cabinet system, and it is reasonable and right that the Minister would be informed of something that is going wrong in his or her Ministry.

**Sen. Al-Rawi:** We have no objection to that.

**Sen. Dr. Tewarie:** Right. You cannot complicate that by making the matter publicly available in the Parliament.

**Sen. Young:** Minister, this is after the process is completed.

**Sen. Dr. Tewarie:** But it would be part of his report. I am off the record, it is your decision to make.

**Sen. Ramlogan SC:** Sorry, Senator. May I just point out that at “(f)” you already have the names of public bodies that have failed to comply with the Act. Now, the investigation is a means to an end. The end result of any investigation must be to determine a failure to comply with the Act or not as the case might be. I mean, failure to comply would be a not.

**Sen. Al-Rawi:** AG, we follow you. We are on the same page. I think Sen. Young was just looking at the provisions, not only at 44 but at 45 which we may have some discussions to ask you about to clarify, but it was in that regard that it was raised.

**Sen. Young:** We could move on.

**Sen. Ramlogan SC:** Fair enough. That is fine.

**Sen. Robinson-Regis:** Could I just indicate to the Minister that we understand that the report could include that information, but the report would be after something has either been investigated or not. The report would be a succinct report that would give the details of what has transpired. So we have no difficulty with that.

**Sen. Ramlogan SC:** Okay, sure, fair enough.

**Sen. Robinson-Regis:** Thank you.

**Mr. Chairman:** Okay, so we would start at 26 which was the substantive clause at which we ended.

**Sen. Dr. Tewarie:** Chair, can I ask if the Opposition has circulated any amendments?

**Mr. Chairman:** I was approached by Sen. Shamfa Cudjoe with some amendments. She made amendments to her amendments, so she is having them retyped, but she would produce them for me and we would circulate it. It is related to clause 14 which we have deferred.

**Sen. Dr. Tewarie:** Okay, so we will come to that. But for the rest of the Bill going forward, have there been any circulated amendments by the Opposition?

**Sen. Robinson-Regis:** Mr. Chairman, could I indicate that the examination in committee stage is an examination, and if there are issues, whether the amendments circulated—there may be some are circulated amendments which we will give—it is a clause-by-clause examination and if issues arise while we are examining it clause by clause, we will raise those issues.

**Sen. Dr. Tewarie:** Well, that is an explanation of how the committee is supposed to work, but I am asking a specific question.

**Sen. Robinson-Regis:** And we have indicated, Chairman, that there are two amendments that Sen. Cudjoe will be bringing to you, however, we want to maintain that it is a clause-by-clause examination and as issues arise we will bring it to the attention of the committee. I think we should allow that opportunity.

**Sen. Maharaj:** Mr. Chairman, Standing Order 53(2):

“Any proposed amendments of which notice has not been given shall be handed to the Chairman in writing.”

I would like to find out if there are any such amendments now that have been given to you in writing.

**Sen. Al-Rawi:** Mr. Chairman, I can assist my learned colleague that the Standing Orders are looked at as a whole and not in specific parts only. We appreciate the point given. Last night, a request was made by the hon. Minister for amendments to be circulated. Senate was adjourned at midnight to come back today. We have fixed it for 11 o'clock, 11:30 this morning. Mr. Young, Mrs. Robinson-Regis and I have just arrived from our other duties. In our case, Mr. Young and I have left court to come here and cancelled other fixtures. We will make our very best endeavour to be succinct and useful in committee stage as we always are and, if we are able, while we are sitting here, to continue drafting some things which we wish to propose as specific amendments, we will do it.

**Sen. Maharaj:** Chair, again, I want to repeat: I would like to find out, pertaining to Standing Order 53(2), if any proposed amendments have been submitted in writing.

**Sen. Robinson-Regis:** We just said so.

**Sen. Dr. Tewarie:** Yes, but let the Chair answer.

**Sen. Maharaj:** I am calling on the Chair for guidance on this, not the Opposition.

**Mr. Chairman:** I indicated that Sen. Shamfa Cudjoe produced to me some amendments, but she had some handwritten transcript in it, and she felt that she would like to have it retyped so that it look good. I recall one of them was on clause 14 which we deferred. I do not know what the other was on.

**Sen. Maharaj:** Is it that we are only going to be treating with that 14?

**Mr. Chairman:** That is the extent of the amendment.

**Sen. Maharaj:** Okay.

**Sen. Robinson-Regis:** Mr. Chairman, could I indicate as I had said previously, it is clause 14 and clause 44.

**Mr. Chairman:** But we have not reached clause 44 yet.

**Sen. Robinson-Regis:** Those are the two that we have, but it is a clause-by-clause examination.

**Sen. G. Singh:** Thank you. Chairman, I just want to indicate, lest it be told to the public that we only asked for this last night. When we adjourned last week, we adjourned on the basis that we would come to committee stage and that, therefore, there was a week of preparation that is required and that therefore—I want to thank Sen. Vieira and Sen. Drayton for having taken the time and to circulate their amendments appropriately.

**Sen. Al-Rawi:** And, Mr. Chairman, may I also indicate as well, just for the record, that the Government undertook, in light of the debate on the adjournment, to circulate their amendments in writing to also provide Senators on the standing request for a track-change version to submit comments and amendments as we have done every time, but we got the Government's amendments at the table at 1.30 yesterday.

**Sen. Ramlogan SC:** And what does that have to do with that?

**Sen. Al-Rawi:** We are just balancing the record.

**Sen. G. Singh:** No, no, no.

**Sen. Al-Rawi:** Just before committee stage we got it. In fact, not even at 1.30.

**Mr. Chairman:** I would suggest all of this is on the record now.

**Sen. Dr. Tewarie:** Chair, no. [*Crosstalk*] I am particularly affected by the approach of the Opposition to always put the Government in a position as if it had made an error.

**Sen. Al-Rawi:** It has.

**Sen. Dr. Tewarie:** I want for the sake of the clarity and precision of the record to indicate that this Bill came to Parliament, and we gave notice that it would be debated three weeks thereafter. In fact, the Bill was debated six weeks thereafter. Following the debate and the beginning of the closing submission by the Minister responsible, who was myself, we then gave a full week for amendments to be made. Just as Sen. Drayton did; just as Sen. Vieira did; we also prepared our amendments and had them brought to Parliament on the day—the beginning of the committee stage—which was yesterday. The Opposition could have done the same.

In addition, we took the opportunity in collaboration with the Chief Parliamentary Counsel to do a track-change version for ease of reference for all members of the committee. I hope that there is no additional attempt to change reality by the Opposition. These are the facts.

**Sen. Al-Rawi:** Mr. Chairman, we would be relying on Standing Order 53(1), for the absolute clarity of this Government. If you do not wish to take amendments, we will examine, clause by clause, within the parameters of the Standing Orders, and nothing is going to truncate our inspection as we are required to give on legislation before this House.

**Sen. Dr. Tewarie:** That is not in question. I am just trying to establish the facts. The Chair is in charge of the proceedings which are clause-by-clause examination.

**Sen. Al-Rawi:** And we are here to participate.

**Sen. Robinson-Regis:** We will examine it clause by clause.

**Sen. G. Singh:** Mr. Chairman, I beg to move that the Senate resume to revert to the item of business, "Oath of Allegiance".

**Mr. Chairman:** Hon. Senators the question is that this Senate do revert to the item of "announcements" that I deferred, with specific reference to Oath of Allegiance.

*Question put and agreed to:* That the Senate revert to Announcements.

*Senate resumed.*

#### SENATOR'S APPOINTMENT

**Mr. President:** Hon. Senators, I have received the following correspondence from His Excellency The President, Anthony Thomas Aquinas Carmona, S.C., O.R.T.T.:

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency Anthony Thomas AQUINAS  
CARMONA, O.R.T.T., S.C., President and  
Commander-in-Chief of the Armed Forces of  
the Republic of Trinidad and Tobago.

/s/Anthony Thomas Aquinas Carmona O.R.T.T. S.C.  
President.

*Senator's Appointment*

*Wednesday, June 11, 2014*

TO: MR. LARRY LALLA

WHEREAS Senator the Honourable Raziah Ahmed is incapable of performing her duties as a Senator by reason of her absence from Trinidad and Tobago:

NOW, THEREFORE, I, ANTHONY THOMAS AQUINAS CARMONA, President as aforesaid, in exercise of the power vested in me by section 44(1)(a) and section 44(4)(a) of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, LARRY LALLA, to be temporarily a member of the Senate, with effect from 11th June, 2014 and continuing during the absence from Trinidad and Tobago of the said Senator the Honourable Raziah Ahmed.

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 11th day of June, 2014."

**OATH OF ALLEGIANCE**

*Sen. Larry Lalla took and subscribed the Oath of Allegiance as required by law.*

**12.00 noon**

**PUBLIC PROCUREMENT AND DISPOSAL  
OF PUBLIC PROPERTY BILL, 2014**

[Fourth Day]

*Senate in committee.*

**Sen. Ramlogan SC:** Mr. Chair, before we proceed to Part III, we have circulated the amendment which was discussed yesterday to clause 14, and I thought it might be an appropriate juncture to deal with it before we move on to Part III.

**Hon. Senator:** We did not get it.

**Sen. Ramlogan SC:** Oh, you have not gotten it? [*Crosstalk*] Oh, I see. Beg your pardon. All right, that is fine.

**Mr. Chairman:** There are two things. I am awaiting a proposed amendment from the Senator.

**Sen. Ramlogan SC:** Sure.

**Mr. Chairman:** So that I propose to start at clause 26, which is where we left off.

*Clause 26.*

*Question proposed:* That clause 26 stand part of the Bill.

**Sen. Al-Rawi:** Hon. Minister, may I ask whether the establishment intends that the office shall be responsible and own and manage the database?

**Sen. Dr. Tewarie:** Well if you look at the Bill you will see that while the procurement regulator is the custodian of the database, the responsibility for ensuring the accuracy of information for any given company is the responsibility of the company, and that is the process that is going to be used.

**Sen. Al-Rawi:** Okay. I asked it in the context of Chap. 22:04, the Data Protection Act, which requires that specific responsibility be undertaken by way of ownership and management. In the Data Protection Act, we had actually used those words, and I just wanted to be sure that we were in keeping with that concurrent piece of legislation.

**Sen. Ramlogan SC:** I think 26(1) which says that “The Office shall establish”, unless anything is said to the contrary—*[Interruption]*

**Sen. Al-Rawi:** It should hold.

**Sen. Ramlogan SC:** Yeah. It should hold as—*[Interruption]*

**Sen. Al-Rawi:** Thank you very much, Minister.

**Sen. Dr. Balgobin:** May I just ask the Minister; what is the purpose of this central depository?

**Sen. Dr. Tewarie:** What it means is that for the general public, the ordinary citizen, anyone is able to go on the database and see the bona fides as articulated by individual companies on the register, and the companies themselves will have an opportunity to look at other companies in the database on the manner. So really it is a transparency.

**Sen. Dr. Balgobin:** But then, do you think that 26(1) would be strengthened if we did not limit the information that one might collect to qualifications and experience alone?

**Sen. Dr. Tewarie:** Well, I mean, once—*[Interruption]*

**Sen. Dr. Balgobin:** I mean, I will leave it to the regulator to—*[Interruption]*

**Sen. Dr. Tewarie:** Yeah. You cannot put everything here, but I imagine that the office will indicate, you know. I imagine you would have a similar format for every company, and that would be the basis on which—*[Interruption]*

**Sen. Dr. Balgobin:** But is this restrictive then or is it not?

**Sen. Al-Rawi:** Obviously it is not.

**Sen. Dr. Balgobin:** So it is not restrictive, you could put other things in as you wish.

**Sen. Al-Rawi:** AG, if I may—*[Interruption]*

**Sen. Ramlogan SC:** Why are you saying that is Stuart?

**Sen. Young:** I do not think it is restrictive because they are saying:

“...establish a database, to be known as the “Central Depository” whereby suppliers can submit information with respect to their qualifications...”

So I think there is room for you via a regulation to says they can also submit other information, and you can govern it via regulations.

**Sen. Dr. Balgobin:** No. I do not know about that; it say “with respect to qualifications and experience”. I do not think that is—*[Interruption]*

**Sen. Ramlogan SC:** I agree with Sen. Balgobin, you see, because “can submit” there really speaks to the non-mandatory nature. It is optional but the substantive law would limit what they can submit as to their qualifications, what they are required to submit.

**Sen. Dr. Balgobin:** And you may wish to put in, for example, something on what is their core business and so on, you know.

**Sen. Dr. Tewarie:** Yeah, but I do not think they should get involved in that.

**Sen. Dr. Balgobin:** Or you may wish to say, and any other thing that the regulator—*[Interruption]*

**Sen. Ramlogan SC:** Rolph, would you be happy if we say “submit with respect to, among other things, their qualifications and experience”?

**Sen. Dr. Balgobin:** That is fine by me.

**Sen. Ramlogan SC:** And that way the regulations can flesh it out.

**Sen. Al-Rawi:** Chair, I have an issue in relation to that, just for you to cast your mind over.

**Sen. Ramlogan SC:** Sure.

**Sen. Al-Rawi:** The Data Protection Act requires the repository holder, in this case here, the office, to verify accuracy, et cetera. This Bill now says that the supplier for contractor shall be responsible for ensuring its accuracy, so we have a conflict between the two provisions.

**Sen. Ramlogan SC:** No. We do not. The Data Protection Act will speak to the accuracy where it is required by law, but in this case it is not a requirement by law and I do not think we should tie-up the procurement office in that kind of thing.

**Sen. Al-Rawi:** I do not want to. I am raising the caution insofar as—there is one law that says go left and another one that says go right.

**Sen. Ramlogan SC:** But they are scaling the same mountain from different sides.

**Sen. Al-Rawi:** Right. I just did not want anybody to turn up and say, well it is not my responsibility because it is yours instead.

**Sen. Ramlogan SC:** Sure. That is fine. It is an optional thing. The procurement regulator will have to create an entirely new structure if it has to verify the information submitted by every contractor.

**Sen. Young:** They cannot do that.

**Sen. Ramlogan SC:** They cannot do that. So, Chair, the amendment is to say with respect to—*[Interruption]*

**Mr. Chairman:** Can you tell me which subclause? Sorry.

**Sen. Ramlogan SC:** Clause 26(1): “submit information with respect to, among other things, their qualifications and experience.”

**Mr. Chairman:** “submit information”—*[Interruption]*

**Sen. Ramlogan SC:** “with respect to, among other things, their qualifications and experience”.

**Sen. Al-Rawi:** I am not in agreement with that, you know. I think that this is framework legislation and that the matter of what goes on to the registry should have the flexibility of time, permitting changes of that.

**Sen. Ramlogan SC:** The “among other things” will allow that and the regulations will flesh it out.

**Sen. Al-Rawi:** Okay. Right.

**Sen. Ramlogan SC:** Sen. Balgobin, what is your point, do you agree with that? Sorry.

**Sen. Dr. Balgobin:** That was my point, thank you.

**Mr. Chairman:** I think the intent was to ensure that we do not restrict it, but we allow it to be as wide as possible.

**Sen. Ramlogan SC:** Yes. Indeed.

**Sen. Al-Rawi:** I was just concerned about the ejusdem generis principle.

**Sen. Young:** Mr. Chairman, through you, if I may, and the hon. Minister would be aware of this; we have in Trinidad and Tobago, in the commercial world, a body already with the name “central depository”, the Trinidad and Tobago central depository for stock exchange, et cetera. I was going to suggest, because we know this can be confusing later on, that you consider adding “central procurement and disposal depository”, so the words “procurement and disposal” in-between central and depository, so it is clear on the face of it. Because it is going to be used going forward in the future and people would say central depository.

**Sen. Dr. Tewarie:** Well, we could say “procurement depository”.

**Sen. Young:** Correct. I just wanted to make that difference between central depository.

**Sen. Ramlogan SC:** Yeah.

**Mr. Chairman:** So rather “central depository”—[*Interruption*]

**Sen. Ramlogan SC:** Procurement depository. That is fine.

**Hon. Senator:** Central procurement?

**Sen. Ramlogan SC:** No, just “procurement depository”. I do not want it to say central, they will complain we took it out of Port of Spain. [*Laughter*]

**Sen. Prescott SC:** Mr. Chairman, may I make a language observation?

**Mr. Chairman:** Sorry, Sen. Prescott.

**Sen. Prescott SC:** I wonder whether the use of the word “whereby” does not wholly give a wrong impression. If it means “by which”, then certainly you could not be using “whereby”, it should be “to which”.

**Sen. Ramlogan SC:** “by which”, yeah. Okay, we can put “by which”.

**Mr. Chairman:** I think he was saying “to which”.

**Sen. Ramlogan SC:** “to which”?

**Sen. Dr. Tewarie:** Yeah, “to which”. I do not have a problem with “to which”.

**Mr. Chairman:** “to which”, yes.

**Sen. Dr. Tewarie:** Chair, I would just like to explain that there is a very practical reason for this.

**Sen. Prescott SC:** For “whereby”?

**Sen. Dr. Tewarie:** No, not “whereby”, for this thing, the depository, which is that contractors often complain that they have to send the thing a hundred places.

**Sen. Al-Rawi:** We agree with you, hon. Minister, it is a good policy.

**Sen. Prescott SC:** He was unhappy with that?

**Mr. Chairman:** Can I read 26(1), so that all Members will be aware of what we propose, which is:

“The Office shall establish a database, to be known as the “Procurement Depository”, to which suppliers and contractors can submit information with respect to, among other things, their qualifications and experience”.

**Sen. Ramlogan SC:** Yeah.

**Sen. Prescott SC:** Just permit me one further observation, please, Chair. In clause 26(4) the correct reference should be 29(1)(e) and not (30). In 26(4) the correct reference should be to 29(1)(e) and not 30(1)(e).

**Sen. Ramlogan SC:** Not 30(1)(e), 29.

**Mr. Chairman:** What cross reference is it?

**Sen. Al-Rawi:** Was that circulated, Senator?

**Sen. Prescott SC:** No, it has not been circulated. I am sorry. I hope I do not contravene the Standing Orders.

**Sen. Ramlogan SC:** Well, you have but we will excuse you.

**Sen. Prescott SC:** I am most grateful.

**Sen. Dr. Tewarie:** Chair, I would just like to point out that “Central Depository” will be changed to “Procurement Depository” everywhere.

**Mr. Chairman:** Everywhere. I see. We probably may have to pick it up elsewhere in the Bill, I take it. So that if I may, again, on clause 26 read what I have:

“(1) The Office shall establish a database, to be known as the “Procurement Depository”, to which suppliers or contractors could submit information with respect to, among other things, their qualifications and experience.

*Public Procurement Bill, 2014*  
[MR. CHAIRMAN]

*Wednesday, June 11, 2014*

(2) The Procurement Depository”—likewise in (3) and (4), the “Procurement Depository” rather than the “Central Depository”.

And in (4), the reference should be “pursuant to clause 29(1)(e)”.

**Hon. Senator:** That should be section.

**Mr. Chairman:** Oh, section. So we are taking out the word “clause”? So “In concluding its due diligence”—at (4)—“pursuant to section 29(1)(e)”.

*Question put and agreed to.*

*Clause 26, as amended, ordered to stand part of the Bill.*

*Clause 27.*

*Question proposed:* That clause 27 stand part of the Bill.

**Sen. Cudjoe:** Mr. Chair, I do not know how to structure it, but I think this is kind of unrealistic. I know it is unrealistic for the Tobago House of Assembly and I think it may be unrealistic to other public bodies, because we know what we receive on the day the budget is read, and we have to go back to the drawing board and reallocate our funding as to what we can really afford to do and what we cannot afford to execute, and, as you know, the cycle runs as a quarterly basis. The Minister of Finance and the Economy would be able to explain it also because he is quite familiar. I know this would be challenging for us because it takes us some time after the day the budget is read, because we are now getting the figures, to go back and say how, what we are going to do. I do not know if there are any—it is kind of unrealistic.

**12.15 p.m.**

Secondly, if you look at the website and electronic databases for most of these Ministries, they have not been updated since 2012, 2013. It is kind of unrealistic. Take for instance the Ministry of Justice, nothing since 2013; Ministry of Labour and Small and Micro Enterprise Development, nothing since 2012.

**Sen. Bharath:** What about the Ministry of Trade and Investment?

**Sen. Cudjoe:** Ministry of Trade and Investment is on point. Ministry of Legal Affairs—no updates whatsoever. I started going through the Ministries, and they have not been active online at all. So I do not know if this is realistic; I do not know what the penalties are if it is not done. I just want to make sure that we are creating law that we are prepared to follow.

**Sen. Al-Rawi:** In relation to that, hon. Minister, particularly when you look at the sanction attached to (2)—well, there is a sanction because the word “shall” is put just after “procuring entity”. That then brings into operation section 61 which is a penalty. Any breach of a provision of this Bill, where there is no penalty prescribed, you should get \$5 million and seven years. So this now is inviting every procuring entity, which is any public body, who does not comply with the six weeks, to be guilty of an offence under the legislation, and the six weeks, particularly with the timing of the delivery of the budget is a problem.

In addition to that, if you look at the language at line 3:

“...no later than six weeks after the presentation of the National Budget, publish on its website or in any other electronic format...”

Perhaps the qualifier which is available to the public may need to be put in there, because I could put it on a Microsoft Word document and keep it on my computer and have published it in any other format. So you need to put a qualifying point there.

In subsection (2):

“Where the information referred to in subsection (1) is unavailable or not forthcoming, a complaint may be made to the Regulator.”

Well, what is the purpose of that? Do we want to drill down to a further point? Many entities may just simply—because there is no strict sanction here, other than just a complaint, and the complaint just does not really go anywhere. It can go into a direction, it can go into a position, but we come back now to the point of excessive criminalization if you are going that route, where you are being invited to be relying upon section 61 of the offences sections.

**Sen. Dr. Tewarie:** I will start from the end. The question of criminality does not arise. Secondly, the normal process of any public entity preparing for a budget is that they will know what they intend to do for the year, in making requests at the level of basically Ministry of Finance and the Economy and including the PSIP projects.

The allocation process by the Ministry of Finance and the Economy at the end will determine what is funded and what is not. If you look at the end here on 27(3), you will see that:

“Publication under this section does not—

- (a) constitute a solicitation;
- (b) oblige a procuring entity to issue a solicitation; or
- (c) confer any rights on suppliers or contractors.”

So it is a publication of intended projects, likely projects, and the purpose is for the sake of transparency. The fact that people have been negligent in the past or people have been not efficient in the past, is no excuse for not making law that imposes efficiency on the institutions itself.

**Sen. Al-Rawi:** On the criminality—

**Sen. Dr. Tewarie:** I said I spoke to the issue already. It does not arise.

**Sen. Al-Rawi:** Clause 61:

“Any person who contravenes this Act commits an offence and where no penalty has been provided for the offence, the person is liable on conviction to a fine of two million dollars...”

**Sen. Dr. Tewarie:** The procurement regulator will have to trigger that. He might have somebody talk to the Ministry.

**Sen. Al-Rawi:** No, no, no; just to point this out you, hon. Minister. There is a piece of law called the Preliminary Enquiries Act; you also have legislation which permits any civil person, any natural person, to go to the court on the basis of a summons, to lay a charge called a “private indictable”, against anybody in Trinidad and Tobago and lay a criminal charge.

“A procuring entity shall no later than six weeks...”—do something.

If you do not do it, clause 61 says: A person who contravenes this Act commits an offence. I can therefore as a citizen go to the court under a private indictable, which I do not need consent for from the DPP. The DPP only steps in if he wishes to take it over or objects to it on an application put to him in that regard, and I can prosecute any public body for a breach of this Act.

**Sen. Dr. Tewarie:** With all due respect, I think what is being said is alarmist, and I think it is also exaggerated.

**Sen. Al-Rawi:** But I have done it before in the courts of Trinidad and Tobago, Minister, on many occasions.

**Sen. Maharaj:** Sen. Al-Rawi, I think respectfully that clause 41 will come into play before clause 61. If there is a breach, a complaint has been made, Part IV—there is some kind of consideration and enquiry will have to come—

**Sen. Al-Rawi:** We have Sen. Larry Lalla here today, who is a practitioner in criminal law of many years’ experience, who sat as a High Court judge. He will be able to tell you that a private indictable is a well-used phenomenon in the courts. I have used it on many occasions.

**Sen. Maharaj:** Look at 41.

**Sen. Ramlogan SC:** Look at clause 41 to which Sen. Maharaj is referring.

**Sen. Al-Rawi:** Mr. Chairman, 41 is not an answer.

**Sen. Ramlogan SC:** Clause 41 says:

“The Office may on its own initiative, or shall as a result of a complaint made under this Act...”—the complaint there would include 27(2).

**Sen. Al-Rawi:** That is if you decide to complain. If I just decide, you have not done it, I go to clerk of the peace in the Magistrates’ Court—[*Interruption*]*—hold on, hold on, hold on—let the practitioners in the court talk.*

**Sen. Ramlogan SC:** No, no, no.

**Sen. Maharaj:** I take offence to that, Sen. Al-Rawi, [*Crosstalk*] and everybody here who is not an attorney should walk out.

**Sen. Al-Rawi:** All right, I withdraw the remark. Unreserved apology.

**Sen. Ramlogan SC:** Who are you apologizing to?

**Sen. Al-Rawi:** To everybody, the whole Government. Sorry to the Government, except the practitioners. [*Crosstalk*]

**Mr. Chairman:** Senators, Senators, can we listen to Sen. Al-Rawi, please.

**Sen. Al-Rawi:** Clause 41 comes in aid, AG, if a complaint is made or if the office of its own initiative does something. If I choose not to make a complaint, just rely upon the fact that they did not do something, it was mandatory—it is prescribed by the word “shall”—go to the clerk of the peace, issue a summons, serve it on them, they have a charge to answer in the court. That is the mischief I am trying to avoid.

**Mr. Chairman:** Sen. Drayton.

**Sen. Drayton:** I just need to seek clarification here. With respect to the six weeks—because, again, when it comes to matters relating to accounts and records and things like that in Ministries and public bodies, it is the responsibility of the accounting officer. I am just wondering whether six weeks after the presentation of a national budget—and let me just say up front that I agree that the list of procurement for the year should be made available somewhere. I am just asking: Is this realistic, given the procedures within public bodies, with respect to documentation and having sufficient information six weeks after a budget has been approved in Parliament that it is possible to put up all the procurement information? I am just asking this for clarification. It is just a list of projects. So are you saying this is a list of projects that would be outlined in the budget?

**Sen. Dr. Tewarie:** For every Ministry you will have the PSIP.

**Sen. Drayton:** So it will be a list of projects, that is what you are speaking about?

**Sen. Dr. Tewarie:** Yes.

**Sen. Ramlogan SC:** Senator, what are you proposing, that we give them more time?

**Sen. Drayton:** Just a safeguard here. I really do not know if six weeks is realistic after the national budget, although I know you said there will be a list of projects. I am not saying you should take it out. The reason I am asking is that if they will have the accounting officer who would have that information then so be it.

**Sen. Ramlogan SC:** I hear you.

**Sen. Drayton:** But we ought to learn lessons from remarks in the Auditor General's report and things like that.

**Sen. Ramlogan SC:** Chair, through you, let us hear from a practitioner in the industry, who is a practitioner with experience in these matters, Sen. Small.

**Sen. Small:** Thank you very much, Mr. Chairman. I want to join on this particular point because I think that anyone who has operated or functioned within any state agency, whether it be a state enterprise or a Government Ministry, the normal practice is in the budgeting cycle, several months before the end of the financial year, all of your plans and projections that you can foresee at that point in time, are prepared, you budget for them and you put all the things that you need to procure.

Those are submitted well in advance to the Ministry of Finance and the Economy, because that is how that Ministry's budgeting process works. So I am struggling to understand what the challenge is, because they would have had that information, certainly well before the budget is read. So that if we are giving those six weeks after the budget is read to submit information that they already have, I think six weeks is more than fair. The only real time challenge is understanding. They will always submit a whole shopping list, and then the Minister of Finance and the Economy will come out with his red pen and say, "Okay, nice," but he would make whatever adjustments are required. So I think that the state agencies—I am well aware, I have sat on state agencies, and they are very, very clear in their procurement requirements for the year ahead.

**Sen. Robinson-Regis:** Thank you very much, Mr. Chairman. I would just like to ask a question. Given the fact that this Bill is not only for PSIP projects, but for procurement generally, so that other items will be procured and the suppliers, the issue of recurrent, are those matters also to be put on that list? I am just asking a question. So the recurrent that is to be procured is also to be put on that list? Could I also ask whether any of the accounting officers in Ministries were consulted with regard to this, especially in relation to recurrent? Because the PSIP is easy; I mean, the projects are there, you have a PSIP document, but with regard to recurrent expenditure, sometimes things may happen that you did not anticipate. So I just wanted to find out how you deal with the recurrent.

**Sen. Dr. Tewarie:** A careful reading, Chair, of the clauses involved here, will indicate that what it addresses is the issue of transparent publication of projects, so businesses can have a sense of what is happening in the state sector and, therefore, plan their business accordingly.

There is no penalty for missing out a project. There is no penalty for overstating the number of projects. What it requires is simply you publish a list of the anticipated projects for the year. I do not know what this source of worry and consternation is.

**Sen. Drayton:** Minister, I raised the question so that it could be clarified as to whether the six weeks period is in fact good time; is realistic.

**Sen. Ramlogan SC:** Is a realistic time. But Sen. Small is saying yes, from his experience.

**Sen. Drayton:** If what you are saying is to be published, that really is all that it is, then I see no issue with six weeks. I raise it for the purpose of clarification and, yes, there is an issue with respect to recurrent projects, but if you saying that that too is easily captured and can be placed in six weeks, then fine.

We want to make law that is quite balanced as well and law that is realistic, because we have sufficient experience in the public domain, for instance, and we see that every year in the Auditor General's report. The things that should be done within the law are not done and, therefore, was the system realistic in the first place. So I fully endorse the objective of transparency, and if the six weeks you are saying it is adequate, then so be it. Let the record show.

**Sen. Dr. Mahabir:** For the longest while, Mr. Chair, I have been trying to get my words in, but it seems as though legal practitioners want to dominate proceedings. [*Laughter and desk thumping*] I have produced PSIPs in my career—

[*Interruption*]*—*eminent attorneys. I have produced PSIPs and I understand the intent of clause 27 but, you see, a PSIP, Mr. Chair, is something that changes and, therefore, we have something known as a “rolling PSIP”. Projects planned at the beginning of the year may or may not be executed and there may be changes to the investment programme.

**12.30 p.m.**

And I think it is very important to keep 27(1). But six weeks after the budget is read, I think is more than adequate time—because those projects were planned well in advance. However, during the course of the year it is critical that the database be updated because six weeks after the budget is prepared, there may be a list which will inevitably change during the course of the year.

And so I am recommending to the Minister that the line reads as follows:

“publish on its website or in any other electronic format, information regarding all planned procurement activities for the following twelve months. Such information shall be regularly updated and the printed copy of the information shall be provided...”

And I think if we regularly update the information during the course of the year, we will achieve the intention and the database will be up to date. Thank you.

**Sen. Robinson-Regis:** Could I?

**Sen. Ramlogan SC:** Sen. Vieira was trying to—

**Sen. Robinson-Regis:** Could I just say that with regard to that amendment, I think that will also assist with the recurrent expenditure because if you are updating it regularly, you would be able to capture the recurrent in that update.

**Sen. Vieira:** I just wanted to turn my attention back to the question about the criminal offence, and I think it is—I do not want to use the “disingenuous” because that might be too strong—but I do not think it is correct to read subclause (2) in isolation.

**Sen. Dr. Tewarie:** Exactly.

**Sen. Vieira:** Subclause (2) follows subclause 27(1).

**Sen. Ramlogan SC:** Yeah.

**Sen. Vieira:** So what I see this provision saying is that, you have a duty to provide information, but if it is not forthcoming or it is unavailable, you complain to the regulator. It then behoves the regulator to decide to take it further.

**Sen. Ramlogan SC:** That is right.

**Sen. Vieira:** I do not think a court would entertain—

**Sen. Ramlogan SC:** But that is where Sen. Devant Maharaj’s point came in about clause 41. Because when the complaint is made, clause 41 is triggered.

**Sen. Al-Rawi:** No, it is that you “may” complain. If you choose not to complain, you have your rights in law.

**Sen. Ramlogan SC:** All right.

**Sen. Al-Rawi:** AG, listen. If you want to be comfortable on a genuine mischief pointed out to you, that can legitimately be pulled either left or right, Sen. Vieira has a point of view, I have a different point of view. I have stated the mischief for the record. If you are comfortable with it, then that is your business, but I consider it dangerous and disproportionate.

**Sen. Ramlogan SC:** I am with Sen. Vieira on this one. I think were *ad idem*.

**Sen. Lalla:** A short while ago, Sen. Al-Rawi called my name—and he is my friend, and I would not be too harsh on him—but I agree with Sen. Vieira. Unless you have a direct personal interest in an issue, as opposed to a public broader public interest, the court will not entertain a private complaint. So therefore I disagree with the hon. Senator.

**Sen. Al-Rawi:** And you have read the fact that any person under this legislation has a right. You have seen that in the Bill.

**Sen. Lalla:** You could go to the court and do anything, but the issue is whether the court will entertain that complaint.

**Sen. Al-Rawi:** You see, Sen. Lalla, what I am pointing to, is that a disgruntled person who wants to cause mischief in procurement, may—[*Crosstalk*]

**Sen. Lalla:** That is exactly what the court will see him as.

**Mr. Chairman:** I think we need to make a determination and go forward. I will have one more from Sen. Prescott.

**Sen. Prescott SC:** This is directed to the Minister. Is it intended that the publication requirement is mandatory or is it discretionary? If it is mandatory, then I suppose we must observe “shall”. If it is discretionary we may use the word “may”, but more importantly, could we not give a liberty to the procurement regulator to extend the time for filing? Is the mischief really you do not want someone to file too late, or not at all, or it really is just to keep the public updated on what is happening?

**Sen. Dr. Tewarie:** The purpose is to keep good order and transparency and to establish principles of accountability in the procurement process. And one of those would be information. And therefore, the information base is important.

**Sen. Prescott SC:** In which case, Minister, if we say that he may do it or even if we use the word “shall”, but we give to the regulator the power to extend the time in which—

**Sen. Dr. Tewarie:** Well, if somebody complains or needs more time, they will engage the regulator.

**Sen. Cudjoe:** Mr. Chairman.

**Sen. Dr. Tewarie:** If we have to put everything in the legislation, we need more time.

**Sen. Cudjoe:** Mr. Chairman, they “doh” want to hear me because they think I am going to talk about Tobago, but I am really trying to mind some of their business. Mr. Chairman, on a point—I need some clarification for Ministries or public bodies that do not have an online presence, for instance, Ministry of Communication, Ministry of the Environment and Water Resources—I am looking out for Sen. Singh—Ministry of National Diversity and Social Integration that do not even have an online presence. Do they have the option to then submit a hard copy or some other alternative way in making their submission? [*Crosstalk*]

**Sen. Dr. Tewarie:** Then could publish it in the papers.

**Sen. Drayton:** Chairman, if I may.

**Sen. Cudjoe:** Then we should say that here.

**Sen. Drayton:** Yeah. I think, you know, there comes a point in time where we want to do the right thing and set proper standards. And we cannot be setting standards and then turning around and having prescriptions that would lower those standards, you know.

**Sen. Dr. Tewarie:** That is right.

**Sen. Drayton:** So, quite frankly, I endorse the idea suggested earlier on by my fellow Senator here, and that is the six weeks with regular updating. If you do not have a website now, then make sure and put one up before the law is proclaimed.

**Sen. Ramlogan SC:** Can I just make two points in light of the contributions that have been made, Chair? Two points in light of the contributions that have been made. I think, firstly, the hon. Minister of Finance and the Economy and I had a brief chat,

and instead of saying “after the presentation of the national budget”, I wanted to change that to “the approval”. All right. I think that will give us the extra time we are looking for, it would be six weeks, because in any case from presentation to approval, the budget may change. So that gives us a little flex, you know, without changing anything much.

With respect to Sen. Prescott’s point, with respect to the extension of time, we can take that into account very easily, Chair, if we add to 27(2)—my proposal is 27(2) would read:

“where the information referred to in subsection (1) is unavailable or not forthcoming, a complaint may be made to the regulator who shall conduct an investigation and extend the time if necessary”—or if justified—“as the case might be”; something to that effect. “Who shall conduct an investigation in accordance”—

**Mr. Chairman:** If justified—

**Sen. Ramlogan SC:** Yes. I think—no—you need to put the power. You see, if you do not put the power he will not have the power, in law, to extend the time. And I take the point about not watering down and diluting the legislation, but I think it is important that we give him that flex as well because he himself may want to have that kind of elbow room and discretion.

**Sen. Dr. Mahabir:** But, AG, in the regulations would the regulator not have that flexibility?

**Sen. Ramlogan SC:** No. No. Not if the substantive law does not give him.

**Sen. Al-Rawi:** The power must prescribe otherwise it is ultra vires.

**Sen. Ramlogan SC:** You must be given the power in the substantive law. Then we do take on board—

**Mr. Chairman:** Under 41.

**Sen. Ramlogan SC:** Yes at the end—sorry. Yes. “who shall conduct an investigation in accordance with section 41 and extend the time if justified...”

**Mr. Chairman:** I say, “and if justified grant an extension of time.”

**Sen. Ramlogan SC:** That is right. That is fine. And I think that we do take on board Sen. Mahabir’s point about the regular updates. I just wanted to ask whether or not Sen. Mahabir, you would prefer—instead of saying “and shall regularly update” which could mean everyday whether or not, you know, we should not say “quarterly” or something.

**Sen. Dr. Mahabir:** Quarterly basis.

**Sen. Ramlogan SC:** And should regularly update on a quarterly basis.

**Mr. Chairman:** Twelve months. You want to insert—[*Crosstalk*]

**Sen. Howai:** Semi-annually.

**Sen. Ramlogan SC:** Semi-annually instead of quarterly.

**Mr. Chairman:**—and update—

**Sen. Dr. Mahabir:** I prefer quarterly.

**Hon. Senator:** That is too onerous.

**Sen. Howai:** I know that you would prefer quarterly, but I suspect there is probably some transitional things to that could be done. The Ministries to come up—

**Sen. Al-Rawi:** Put your mike on.

**Sen. Howai:** So I would say, you know, once we get the semi-annually going well, we could then tighten it to quarterly and so on. I do not know how you put that into—unless you put it into regulations.

**Sen. Al-Rawi:** “such period as shall be prescribed by the regulator”, could work.

**Sen. Howai:** Something like that. Something—

**Sen. Al-Rawi:** And that leaves the room to shorten or lengthen or make suit fit—

**Sen. Howai:** Yeah.

**Sen. Al-Rawi:**—because “public bodies” is such a wide definition that you cannot put one size for all.

**Sen. Howai:** Yeah. So if we—I have no difficulty with Sen. Al-Rawi’s suggestion.

**Mr. Chairman:** I am suggesting that after 12 months we add “and update the information at such intervals, as shall be provided in the regulations”—

**Sen. Howai:** Yes.

**Mr. Chairman:**—“and update the information at such intervals as provided in the regulations.”

**Sen. Young:** "...as may be provided...".

**Mr. Chairman:** Any comment?

**Sen. Dr. Tewarie:** Well, I mean, I do not like it.

**Sen. Young:** Why?

**Sen. Dr. Tewarie:** I do not like it because—I mean, we talked about the legislation. You all want to prescribe everything now, and you are making this a very onerous exercise. Everything is a problem, and basically you would expect that if you know that the principle that you are trying to inform is information availability, access and flow, that what will be required is the updating of information, and that would be a normal requirement of everything. You cannot tell people how to live, how to act, how to behave, et cetera, and I do not know of any legislation in any part of the world that does it. I am sorry. It is philosophical position I have. What do you want to have? You want to regulate everybody's lives. It is ridiculous.

**Sen. Dr. Mahabir:** Is it ridiculous that we would be requesting regular updates and information?

**Sen. Dr. Tewarie:** We can say "and updates", but to prescribe the time; it is as necessary. You do it as necessary for the provision of public information.

**Sen. Dr. Mahabir:** Updated information. Yeah. Okay.

**Mr. Chairman:** You want to say "and update the information as necessary"?

**Sen. Dr. Tewarie:** Yes.

**Sen. Ramlogan SC:** All right. Well the Minister "wants information as necessary". Yeah. And that is a very solid point. [*Crosstalk*] Sorry.

**Sen. Al-Rawi:** Shamfa, that is the point. [*Crosstalk*]

**Mr. Chairman:** I am sure the regulator considers it was not being done, he will start investigations.

**Sen. Dr. Tewarie:** No. But I want to say something. What the articulations of the Opposition proved over and over again is ideological confusion. [*Crosstalk*]

**Hon. Senator:** And the Independents.

**Sen. Cudjoe:** These are recommendations from the Independents too, "yuh" missing something.

**Sen. Ramlogan SC:** That reinforces the point.

**Sen. Al-Rawi:** And the prescription by the regulator—I cannot understand that being a problem. AG, yesterday were we not talking about “soft touch, and hard touch, and graduated responses”? Why would you want to take that away?

**Sen. Robinson-Regis:** Leave it alone.

**Sen. Dr. Tewarie:** You can put “as may be required from time to time”.  
[Crosstalk]

**Mr. Chairman:** I will read what I have from 27.

**Sen. Ramlogan SC:** Let us go guys. Come on.

**Mr. Chairman:** It is:

“A procuring entity shall, no later than six weeks after approval of the National Budget, publish on its website or in any other electronic format, information regarding all planned procurement activities for the following twelve months and update the information as necessary.”

**Sen. Dr. Tewarie:** Yes.

**Mr. Chairman:** Full stop.

**Sen. Ramlogan SC:** Good.

**Sen. Dr. Tewarie:** You are all right with that?

**Mr. Chairman:** “Printed copies”—with a capital A—“of the information could be provided upon request on payment of the prescribed fee.”

And then I have a (2)—27(2):

“Where the information referred to in subsection (1) is unavailable or not forthcoming, a complaint may be made to Regulator who shall conduct an investigation in accordance with section 41 and if justified, grant an extension of time.”

**Sen. Ramlogan SC:** Correct. We are good to go.

**Sen. Al-Rawi:** So you are not qualifying, Mr. Chairman, “electronic format”?

**Sen. Ramlogan SC:** No.

**Sen. Al-Rawi:** Okay.

**Mr. Chairman:** Copies can be provided in hard copy. I take it that is why—

*Question put and agreed to.*

*Clause 27, as amended, ordered to stand part of the Bill.*

**12.45 p.m.**

*Clause 28.*

*Question proposed:* That clause 28 stand part of the Bill.

**Sen. Al-Rawi:** May I enquire of the hon. Minister, why 28(3) prescribes that a declaration shall not be altered?

**Sen. Dr. Tewarie:** What is that?

**Sen. Al-Rawi:** I am asking, hon. Minister if you could just shed some light as to the policy behind 28(3):

“A declaration made under subsection (2) shall not be altered.”

**Sen. Dr. Tewarie:** Yes, because the whole intention is this: if you publish and you say this is limited to local industry, you cannot come and change that now, and therefore change the game. If you say it is open to all, you cannot come and then change it and say it is open only to local industry, so that is why you have that.

**Sen. Al-Rawi:** Thank you, Minister. What I am asking though is that if there is a change and the process is to scrap and restart.

**Sen. Dr. Tewarie:** That is right, you can change it.

**Sen. Al-Rawi:** Okay, yes. I just wanted to know. I was looking at the savings provision in legitimate circumstances, but the option is that you may scrap and just restart the process.

**Sen. Dr. Tewarie:** You could start over.

*Question put and agreed to.*

*Clause 28 ordered to stand part of the Bill.*

*Clause 29.*

*Question proposed:* That clause 29 stand part of the Bill.

29(1)(c), pg 10 Delete all the words after the word “offence”.

**Sen. Al-Rawi:** Mr. Chairman, on 29(b) starting, “usual due diligence requires that you also disclose any threatened litigation, so that at the end of (b), “that they are not the subject of legal proceedings of any of the foregoing”—I think it prudent to include—“threatened litigation in respect of any of the foregoing” as well. In (c), I have a significant problem in relation to misrepresentations as to their qualifications—*[Interruption]*—has it?

**Sen. Young:** If I may, just to take up there, at 29(c), I would like to caution because as it stands now you all have deleted, which I agree with, but you now have “been convicted of any criminal offence”, and I mean that, so a traffic offence, et cetera, you are capturing that and surely we do not want to capture the smaller offences. I do not know what is the typical type of language used to—

**Mr. Chairman:** Earlier on we talked about one year.

**Sen. Young:** Correct, you can qualify it by—

**Sen. Ramlogan SC:** The problem here, Sen. Young, is this. Any time you put a cap, like the one year, the amount of laws that we have, I mean, you would be surprised to know what would fall in that one year that might be relevant. So, it is better to err on the side of caution—let them disclose, if it is a trafficking ticket, good sense would prevail and no one would hold that against them, but you would be surprised with forgery of a will or some kind of fraud, common law offence and it may be relevant.

**Sen. Young:** And listen, remember I started by saying I just caution, and that makes sense to me.

**Sen. Ramlogan SC:** Yes, fair. Well, thank you very much.

**Sen. Prescott SC:** Sorry, Chair, in subparagraph 29(1)(d), I am unclear as to what “contributions” are.

**Sen. Ramlogan SC:** NIS.

**Sen. Prescott SC:** Is that it?

**Sen. Ramlogan SC:** Health surcharge, NIS and so on.

**Sen. Al-Rawi:** Green Fund, levy, unemployment.

**Sen. Dr. Tewarie:** Yes, whatever businesses are required to—

**Sen. Prescott SC:** Statutory contributions here?

**Sen. Ramlogan SC:** Well, I think it is qualified by required taxes and contributions. I think it is clear.

**Sen. Prescott SC:** Okay, I could not be sure.

**Sen. Ramlogan SC:** But one point would be on a practical administrative note, there would have to be a relationship between the procurement office and the Board of Inland Revenue to ensure that this—

**Sen. Young:** I think, AG, my experience of how I have seen these things and I think you can get a certificate—you would certainly get a VAT, a PAYE and an income tax certificate.

**Sen. Ramlogan SC:** I am not sure about the income tax one.

**Sen. Al-Rawi:** I am following the AG in terms of reporting requirements on certain other issues, I had it in another clause to raise, but I understood this clause as just simply requiring the production of a tax clearance certificate.

**Sen. Ramlogan SC:** Sure, that is fine, Chair, let us move.

**Sen. Al-Rawi:** Just to be clear, from “misrepresentation” down to “disqualified” has been deleted, right?

**Sen. Ramlogan SC:** That is right.

**Sen. Al-Rawi:** Okay, thank you. Related, sorry, related, to their professional.

**Sen. Prescott SC:** One more question, please, in 29(5)? The term “legalisation of documentary evidence” is not quite clear to me, it seems very ambiguous.

**Sen. Al-Rawi:** “Legalisation” is a provision usually done by apostille or at a notary public, and I too had a problem with that, and also with the use of the word “successful”. I also wondered whether we wanted to qualify “false” in paragraph (6).

**Sen. Ramlogan SC:** Well, let us do (5) first, “nah”.

**Sen. Al-Rawi:** Okay, sure.

**Sen. Prescott SC:** So, is it “notarization” we were after there?

**Sen. Ramlogan SC:** You know, that is imposing a real unnecessary hurdle, eh, I mean, in notarization—

**Sen. Prescott SC:** Well, what is the thinking behind “legalisation”, if it is “notarization”, if it is more than that, if it is merely an affidavit, I do not know.

**Sen. Ramlogan SC:** Well, I mean, but is that necessary?

**Sen. Prescott SC:** Well, it was there.

**Sen. Al-Rawi:** “Legalisation” is just very vague, so we wondered the many routes to achieve it.

**Sen. Ramlogan SC:** Mac, is that necessary?

**Sen. Prescott SC:** Remember, it is a discretionary request to meet.

**Sen. Ramlogan SC:** We can say verification by the supplier. That is the suggestion from the CPC. I prefer that, because, you see—

**Sen. Prescott SC:** Well, no, it is documentary evidence, could it be authentication?

**Sen. Ramlogan SC:** Listen, we all know in this country the bureaucracy that we face, to authenticate something, it does take a hell of a lot of time sometimes, you know. Remember I—*[Interruption]*—what is the object we are trying to achieve, you know?

**Sen. Dr. Tewarie:** Ensure that they do not misrepresent.

**Sen. Al-Rawi:** You can achieve it—a good tool sometimes used is that you verify on oath that it is true on a statutory declaration, which you are then subject to penalty for imprisonment for.

**Sen. Ramlogan SC:** You see, that is right. I would prefer that there is simply a declaration by the person who is submitting the information that everything they submit is true and correct.

**Sen. Prescott SC:** True, true.

**Sen. Dr. Tewarie:** I can live with that.

**Sen. Ramlogan SC:** And that is all.

**Sen. Dr. Tewarie:** I can live with that.

**Sen. Al-Rawi:** It is like the forms we use for incorporation of a company, it is a statutory declaration form.

**Sen. Dr. Tewarie:** I can live with that. I think the AG's suggestion—

**Sen. Ramlogan SC:** So, we can say “notwithstanding subsection (4) a procuring entity”—

**Sen. Prescott SC:**—“may require the supplier or contractor to certify on oath that they”—

**Sen. Ramlogan SC:** You think we need it on oath?

**Sen. Young:** So that it is force of penalty.

**Sen. Ramlogan SC:** The powerful deterrent is the penalties and so on in this Act.

**Sen. Prescott SC:** And therefore it is on oath.

**Sen. Ramlogan SC:** Yes, okay.

**Mr. Chairman:** So, “may require”—

**Sen. Al-Rawi:** “the supplier or contractor”.

**Mr. Chairman:** Leave out “legalisation of document”—“the supplier or contractor presenting the successful submission to certify on oath”—

**Sen. Prescott SC:** “to certify on oath that the”—is it the document’s certificate—*[Crosstalk]*

**Mr. Chairman:** “that the documentary evidence”—

**Sen. Dr. Tewarie:** “to certify that his submission is true and correct.”

**Sen. Ramlogan SC:** Yes, “to certify that his submission is true and correct”.

**Sen. Al-Rawi:** No, this one is documentary evidence.

**Sen. Prescott SC:** “that the evidence provided is true and correct.”

**Sen. Ramlogan SC:** “that the documents provided”.

**Sen. Prescott SC:** “that the documentary evidence provided is true and correct.”

**Sen. Ramlogan SC:** “that the documents”—to certify that the documents”—

**Mr. Chairman:** “Provided”.

**Sen. Ramlogan SC:** “Submitted” or “provided”, yes.

**Sen. Al-Rawi:** “the documentary evidence”, same words—“the documentary evidence provided by the supplier or contractor presenting the successful submission so far as to demonstrate his qualification or particulars are true”.

**Sen. Prescott SC:** “and correct.”

**Sen. Al-Rawi:** “and correct.”

**Sen. Dr. Tewarie:** Okay, I do not have any problem with that.

**Sen. Prescott SC:** Oh, thank you very much, I appreciate that. *[Laughter]*

**Sen. Dr. Mahabir:** Mr. Chairman, I would just like to commend the Government for including in the requirement 29(1)(d), when it includes contributions as well as income taxes, because there is a huge problem in this country where a lot of agencies are not paying their NIS contributions, and I think it is necessary, as a matter of course. *[Desk thumping]* And I commend you Minister for having the foresight to put this in here to force people now to pay their NIS contributions.

**Sen. Dr. Tewarie:** To comply, yes.

**Sen. Al-Rawi:** AG, can I ask you to look at paragraph (6)?

**Sen. Ramlogan SC:** Sorry, let us just make sure he is finished before I deal with you.

**Sen. Al-Rawi:** Just to cast your mind, the point is that false, whether you want it to qualify it with knowingly and willingly. [*Interruption*] You see, the problem is that paragraphs (6) and (7)—

**Sen. Ramlogan SC:** Yes, what is the problem with false?

**Sen. Al-Rawi:** You have the original Bill before you, AG? Yes? Look at this. If you could read the two lines of the two paragraphs simultaneously, “A procuring entity shall disqualify a supplier or contractor if it finds at any time the information”—that the information—“submitted concerning”—same wording—“the qualifications of the supplier”—same wording—“or contractor”—same wording—“was”—changed—“materially inaccurate or materially incomplete.”—in (7). In (6): “false or constituted a misrepresentation”. So, the two clauses have a little issue between them.

**Sen. Ramlogan SC:** Well, the first one would incorporate the second one; (6) covers (7).

**Sen. Al-Rawi:** Yes. So, the point was (7) seemed to be superfluous and provides a little contradiction to (6) as well. Because, the “materially inaccurate”, I thought was a very good thing to put in, because somebody may innocently make a mistake on a representation and turn out to be false, so I thought that having some darker approach to the mental element was required, not just an innocent mistake taking care of that.

**Hon. Senator:** Good observation.

**Sen. Ramlogan SC:** So what is your suggestion?

**Sen. Al-Rawi:** I was wondering—well, “materially inaccurate and materially incomplete” in (7), I thought was the better approach to go.

**Sen. Ramlogan SC:** So, what are you saying, delete (6)?

**Sen. Al-Rawi:** Yes, I wondered whether—

**Mr. Chairman:** I thought you still want to add after “materially inaccurate and materially incomplete”, so as to constitute a misrepresentation.

**Sen. Al-Rawi:** Sure, sure.

**Sen. Ramlogan SC:** You have read my mind. Yes, and we can delete (6).

**Sen. Dr. Tewarie:** If we add that.

**Sen. Ramlogan SC:** If we add that, we delete (6)—

**Sen. Al-Rawi:** Sure.

**Sen. Ramlogan SC:** And the hon. Minister agrees.

**Sen. Dr. Tewarie:** “so as to constitute a misrepresentation”. [*Interruption*]

**Mr. Chairman:** So, I would read what is proposed in relation to amendments to clause 29, as circulated.

Delete all the words after the word “offence”.

**Sen. Young:** Sorry, we are not finished yet, Mr. Chairman. If I may, there was one further suggestion, hon. Minister, and that is a (12), because what we are doing here in this clause is we are going through and saying these are the ways where a procuring entity can be disqualified, et cetera, and, of course, later on we have the ineligibility list. So, I was going to suggest that a (12) be added “That any supplier or contractor who is disqualified under this section shall be added to the ineligibility list.”

**Hon. Senator:** You are suggesting a new (12)?

**Sen. Young:** A new (12), yes.

**Sen. Dr. Tewarie:** Why do we want to do that?

**Sen. Young:** Because you are disqualifying the person, et cetera, you want to make sure they do not come up on the list.

**Sen. Dr. Tewarie:** They may be disqualified from a particular issue, you do not want to—

**Sen. Young:** But for these serious reasons where you are saying they have provided misinformation, they have misrepresented.

**Sen. Ramlogan SC:** Well, it is hardly likely they would be disqualified but eligible on the issue—I would prefer leave that for regulation, Stuart, because, you know, they could redeem themselves. Who knows? There may be an explanation, they could go to court and explain themselves.

**Sen. Young:** No, but there is also—

**Sen. Prescott SC:** It is a subclause in any event which says that if he can remedy.

**Sen. Ramlogan SC:** Yes, that is right. That is why I want to leave it there, so we leave that as is. Chair, we are okay with that.

**Mr. Chairman:** All right, so if I may read what I have before me as the amendment; 29(1) we had (c) amended as circulated; and (5), I have it to read:

“Notwithstanding subsection (4), a procuring entity may require the supplier or contractor presenting the successful submission to certify on oath the documentary evidence provided...”

**Sen. Dr. Tewarie:** “to certify that the documentary evidence...”

**Mr. Chairman:** Yes, “that the documentary evidence is true and correct so as to demonstrate his qualifications for the particular procurement.” We have deleted (6) entirely, and at the end of (7), we have added “so as to constitute a misrepresentation”.

**Sen. Prescott SC:** Chair, could you read line two in (8), for me, please, or that sentence entirely?

**Mr. Chairman:** Line two in (8), there is no amendment.

**Sen. Prescott SC:** No, pardon me, I think it reads cumbersome, one of those words is superfluous.

**Mr. Chairman:** Line two, again—[*Crosstalk*]

**Sen. Prescott SC:** In subclause (8)—

**Mr. Chairman:** Which we have not touched at all, yet.

**Sen. Prescott SC:** Okay, I am recommending that the CPC should consider whether he wants to write the sentence that way, that: “a supplier or contractor if it finds that at any time that the information submitted”. One of those words is superfluous.

**Sen. Young:** “A procuring entity may disqualify a supplier”—

**Sen. Prescott SC:** He says “that at any time that the information submitted”— it is just a simple thing, my usual policing.

**Hon. Senator:** Take out the first “that”.

**Sen. Prescott SC:** Or the second, choose one.

**Mr. Chairman:** I suppose the second “that” the CPC agrees, will come out.

**Sen. Prescott SC:** Is there any need at all to say those words? Could he not simply say “a contractor or supplier if it finds that the information submitted”. I mean, he will find it at some time. Could it not simply be that it says, “he may disqualify a supplier or contractor if it finds that the information submitted”.

**Mr. Chairman:** What I found odd is that it talks about a non-material respect, I would have thought material is what had intended.

**Sen. Al-Rawi:** Well, this is the failure to remedy something which you have been cautioned to do.

**Mr. Chairman:** If is not material, it is not odd that you would.

**Sen. Al-Rawi:** But I think that the point is compliance—giving the power of compliance.

**Hon. Senator:** Each practitioner feels should be there, you know.

**Sen. Ramlogan SC:** Yes, the word is material respect. It has to be material.

**Sen. Al-Rawi:** AG, you sure that is what was intended?

**Sen. Ramlogan SC:** Yes, I think it has to be material because—[*Interruption*—]—yes, it has to be material respect because you would not want—yes. Delete “non-”.

**Mr. Chairman:** So, if I may read:

“A procuring entity may disqualify a supplier or contractor if it finds that at any time the information submitted concerning the qualifications of the supplier or contractor is inaccurate or incomplete in a material respect and the supplier or contractor fails to promptly remedy the inaccuracy or incompleteness upon the request of the procuring entity.”

**Sen. Dr. Mahabir:** Chairman, just for economy of words, and this is where I defer to the legal experts. [*Laughter*]

**Sen. Ramlogan SC:** Well, because you are an economist, you can play with the economy of words, yes.

**Sen. Dr. Mahabir:** I could very well, yes. I am just thinking there would be absolutely no violence done if we remove completely in the second line from “it finds that at any time that”. We could just strike that out.

**Sen. Ramlogan SC:** You can, yes.

**Sen. Dr. Mahabir:** “if it finds that at any time that”—take it out and the meaning shall not be altered in any substantive way.

**Sen. Ramlogan SC:** You can.

**Mr. Chairman:** You want to take out “at any time that”?

**Sen. Dr. Tewarie:** “If it finds that”.

**Sen. Dr. Mahabir:** “if it finds that at any time that...”—in the second line—

**Sen. Ramlogan SC:** “if it finds at any time that”, yes.

**Sen. Dr. Mahabir:** Yes, take that out.

**1.00 p.m.**

**Sen. Dr. Tewarie:** Yeah, that is better.

**Sen. Al-Rawi:** Read it, Sen. Mahabir.

**Sen. Dr. Mahabir:** This is how it reads:

“A procuring entity may disqualify a supplier or contractor if the information submitted concerning the qualifications of the supplier or contractor was inaccurate or incomplete in a non-material respect and the supplier or contractor fails to promptly remedy the inaccuracy or incompleteness upon the request of the procuring entity.”

**Mr. Chairman:** Yeah, that seems sensible.

**Sen. Ramlogan SC:** You did better than the practitioners, Sir. [*Laughter*]

**Sen. Dr. Mahabir:** I will get into your field at one time.

**Sen. Dr. Tewarie:** Chair, it is “material” and not “non-material”.

**Mr. Chairman:** Just to correct, the only change to what, Sen. Dr. Mahabir said, is that we have not retained “non-material”, we have taken out the “non-” and the dash.

**Sen. Ramlogan SC:** Chair, before you do, there is one last one. I want to take out—there is an issue of whether it should be material or non-material. I would say, “inaccurate or incomplete in any respect”. So “inaccurate or incomplete in any respect”.

**Mr. Chairman:** That is a discretionary—

**Sen. Ramlogan SC:** So, “incomplete or inaccurate in any respect”.

**Sen. Al-Rawi:** Mr. Chairman, I want to agree with that, because I thought that the non-material came about because of a borrow from the contractor general's provision. So I was thinking that it had merit in the non-material side to show that the requirement of—

**Mr. Chairman:** It sounds very odd, the thing is material, but you do not do anything about it. You only do it now because it is materialized. That is very odd.

**Sen. Ramlogan SC:** And just to credit it, that was Sen. Howai's point, not mine.

**Mr. Chairman:** Thank you. [*Desk thumping*] So, if I may read (8) again:

“A procuring entity may disqualify a supplier or contractor if the information submitted concerning the qualifications of the supplier or contractor was inaccurate or incomplete”—in any respect—“and the supplier or contractor fails to promptly remedy the inaccuracy or incompleteness upon the request of the procuring entity.”

*Question put.*

Senators, it is now one o'clock, is it?

**Hon. Senators:** Yes.

**Mr. Chairman:** Are you minded to take—lunch is available. How do you want to proceed?

**Hon. Senators:** We should go together.

**Sen. Cudjoe:** I want to eat with Sen. Tewarie today. Can we all go together?

**Mr. Chairman:** All right, at 1.30 p.m. we will take the break.

**Sen. Robinson-Regis:** Mr. Chairman, I am so sorry to do this, but the clause that we just approved, I just wanted to point out that 29(7), also says, “...if it finds”—the same wording that we had in (8). So I do not know if you wanted it to be consistent or, because it appears right through this clause.

**Sen. Dr. Mahabir:** You could take that off.

**Sen. Ramlogan SC:** Well, you could take it out.

“A procuring entity shall disqualify a supplier or contractor...”

**Sen. Robinson-Regis:** Yeah, and it is also in (6).

**Mr. Chairman:** We took out (6) altogether.

**Sen. Robinson-Regis:** Well, okay, I must have been in the bathroom at the time.

**Mr. Chairman:** So if we would revert, it would be:

“A procuring entity shall disqualify a supplier or contractor if the information submitted concerning the qualifications of the supplier or contractor was”—materially inaccurate or materially incomplete so as to—“constitute a misrepresentation.”

And of course there would have to be a renumbering of the clause, okay.

**Sen. Robinson-Regis:** Right. Thank you.

*Question agreed to.*

*Clause 29, as amended, ordered to stand part of the Bill.*

*Clause 30.*

*Question proposed:* That clause 30 stand part of the Bill.

**Sen. Al-Rawi:** Mr. Chairman, on clause 30, I have a concern, insofar as the prescription is that, and I understand quite properly why it should be:

“A procuring entity shall comply...general guidelines...special guidelines...handbooks...special guidelines...handbooks”

Just abbreviating. If we turn to clause 62 of the Bill. I was looking at the fact of the lack of any grade with respect to criminality. And the fact that the “shall” invoked 61 which means a contravention of the Act. Clause 62, any regulations, any subsidiary aspects to be delivered also invite the application of very strong sanctions. Surely it is a safer approach to have some grade for approach to a breach of the law, because minor aspect should attract minor offences and major offences should attract, should be given to major infractions. So I am concerned as to the proportionality of the clause.

**Sen. Ramlogan SC:** Perhaps we can consider this point, which is an ideological and philosophical point really. We can consider it when we come to that part of the Bill, and we can see if we can amend it if necessary—

**Sen. Al-Rawi:** That would work.

**Sen. Ramlogan SC:**—to look at a tiered approach if needs be, a graduation. Mac, if you can look at that for me.

**Sen. Al-Rawi:** Sure, thank you.

I was just wondering then on the language itself of clause 30(2)(b):

“may provide that general guidelines under subsection (1)(a) shall apply to a procuring entity subject to such exemptions or amendments as are specified in the special guidelines.”

I was wondering if that required the approval as well. So if you look at (2)—  
[*Interruption*]

**Sen. Ramlogan SC:** Approval of what?

**Sen. Al-Rawi:** Clause 30(2) says:

“Special guidelines under subsection (1)(b)”—that is relating to public procurement as the office may prescribe—“shall be...submitted to the Office for its approval.”

Or:

“Special guidelines under...1(b)—may provide that general guidelines under...1(a) shall apply to a procuring entity subject to such exemptions or amendments as specified in the special guidelines.”

**Sen. Ramlogan SC:** Well, the special guidelines come from the office.

**Sen. Al-Rawi:** Just follow me here. AG, what I am saying is this, one provides that—[*Interruption*]

**Sen. Ramlogan SC:** I understand you, Faris, but the point is that the special guidelines pursuant to which these exemptions and amendments are made are in (1)(b), and (1)(b) says, as the Office may approve. So in other words it already has the implicit rights over the office.

**Sen. Al-Rawi:** I accept that there will be approval of a general template guideline or a special template guideline. What I am concerned with is the procuring entity coming up with a mix and match scenario that the regulator may have some problems with, and I wondered if, just as we have in (a) that it should also be submitted to the office for its approval.

**Sen. Ramlogan SC:** No, but I think that is implied, I mean, it will have to be. I think we are okay on that.

**Sen. Al-Rawi:** Because (a) makes it specific. You only—if you are going for special guidelines, send it in and approve. In (b), you may mix and match and you do not need approval, is what it says.

**Sen. Ramlogan SC:** Well I think we are okay with this, Chair, as is.

*Question put and agreed to.*

*Clause 30 ordered to stand part of the Bill.*

*Clause 31.*

*Question proposed:* That clause 31 stand part of the Bill.

**Sen. Robinson-Regis:** May I ask a question, please? Thank you very much. Throughout this part we have been using the term “procuring entity” and not “public body”, and this particular clause says “public body”. Is there a reason? And then the following clauses go back to “procuring entity”.

**Sen. Ramlogan SC:** I think we can change it to “procuring entity”. Yes, that is a valid point.

**Sen. Robinson-Regis:** I only make valid points. [*Laughter*]

**Sen. Ramlogan SC:** As I was saying that is a valid point.

**Sen. Robinson-Regis:** And I only make valid points.

**Sen. Al-Rawi:** Quick question. I can understand avoidance of public procurement through the splitting of contracts. It is just generally frowned upon in general. But there may be legitimate circumstances for the splitting of a contract, so I was wondering if that is provided—

**Sen. Ramlogan SC:** No, you cannot, no way. Any time you introduce an exception here it is open to abuse.

**Sen. Al-Rawi:** For instance, by approval by the regulator.

**Sen. Ramlogan SC:** Sen. Drayton, any time we create an exception here it is open to abuse. So I think we will leave this as is. As a matter of policy, we rest on this—no change.

**Sen. Al-Rawi:** I did not want any change, I just wanted to know what the position is.

*Question put and agreed to.*

*Clause 31, as amended, ordered to stand part of the Bill.*

*Clause 32.*

*Question proposed:* That clause 32 stand part of the Bill.

**Sen. Al-Rawi:** The question is, in relation to the remuneration in subclause (2), 32(2). I just want to be sure that we specifically include, “any other benefit”. Are all benefits included other than remuneration? There is a whole conversation in Singapore and in other jurisdictions as to public procurement being done at the behest of other forms of I want to be delicate about this—payment. In fact they passed law in Singapore specifically providing that sexual benefits are to be excluded, et cetera. True fact. We have seen that arise in allegations right here in Trinidad as well, so I was just wondering about remuneration being exclusive.

**Mr. Chairman:** I thought all remuneration captured—it says, “all forms”. [*Crosstalk*] I imagine it is in kind as well.

**Sen. Al-Rawi:** In light of recent scandals in Trinidad, I just want to be sure that we cover them all. [*Crosstalk*]

*Question put and agreed to.*

*Clause 32 ordered to stand part of the Bill.*

*Clause 33.*

*Question proposed:* That clause 33 stand part of the Bill.

**Sen. Drayton:** Clause 33(b) makes reference to 35(6), and I think that should be 35(10).

**Mr. Chairman:** It is a cross reference to 35(10) rather than 35—

**Sen. Drayton:** I think so.

**Mr. Chairman:** Well 36 does not have 10 subsections.

**Sen. Drayton:** But 35(10).

**Mr. Chairman:** So you say it should be 35(10)?

**Sen. Drayton:** I think so.

**Sen. Al-Rawi:** Yeah, 36 only has two subclauses, in Mr. Chairman’s point. And 35(10) itself:

“If the supplier...”

**Sen. Drayton:** Yeah, it says:

“(b) after the successful submission is accepted under the circumstances referred to in section 35(6).”

**Sen. Al-Rawi:** Which is the standstill period.

**Sen. Drayton:** Which is a standstill period.

**Mr. Chairman:** And (10) does talk about the submission accepted. Correct?

**Sen. Al-Rawi:** I believe it is supposed to be (6), which is the expiry of the standstill period. But Mr. Chairman, I had a question in relation—[*Interruption*]

**Sen. Drayton:** Is it correct?

**Sen. Al-Rawi:** Yeah, I think it is correct. While he is looking for that, AG, could I invite you to consider 33(5)?

“A procuring entity shall not incur any liability solely by virtue of its decision to cancel a procurement.”

Why?

**Sen. Ramlogan SC:** Why, what?

**Sen. Al-Rawi:** 33(5).

**Sen. Ramlogan SC:** Why, what? If they want to cancel a procurement.

**Sen. Al-Rawi:** Well, that is to exclude all forms of litigation and liability which is currently the norm, and somebody may have a legitimate right to sue a procuring entity for a cancellation of a project. There is legitimate expectation, they may have spent money, so we are giving a complete get-out-of-jail card here.

**Sen. Dr. Tewarie:** That is a disaster zone. Ask Colm Imbert. [*Crosstalk*]

**Sen. Al-Rawi:** Correct, any liability is criminal, it is civil, it is all.

**Sen. Ramlogan SC:** I think what we can do is insert the word “criminal”.

**1.15 p.m.**

**Sen. Al-Rawi:** Well, I am not sure AG. I understand the need to limit certain civil—I have a problem, (a) with the fact that it is any liability, (b) the fact that—

**Sen. Ramlogan SC:** Do we need that subclause at all here?

**Sen. Al-Rawi:** That is my point. That is my precise point.

**Sen. Ramlogan SC:** I do not think it is necessary.

**Sen. Al-Rawi:** I do not think it is necessary at all. I think it is dangerous.

**Mr. Chairman:** The law stands as it is.

**Sen. Ramlogan SC:** Yes, the law stands as is. We will delete subclause (5)—

**Sen. Robinson-Regis:** Maybe the Minister had a legitimate reason.

**Sen. Ramlogan SC:** 35(6) is correct in the cross-reference, according to the CPC.

**Sen. Drayton:** And we are deleting (5)?

**Sen. Ramlogan SC:** We are deleting (5), yes, because the general principles of ordinary law will take care of that, but you should not oust the court's jurisdiction and it does have implications for third party rights.

**Sen. Robinson-Regis:** That is correct. But did the Minister have a reason for leaving it? [*Crosstalk*]

**Sen. Prescott SC:** So subclause (5) is deleted?

**Sen. Ramlogan SC:** Yes. Subclause (5) is deleted.

**Sen. Robinson-Regis:** 33(5)?

**Sen. Ramlogan SC:** 33(5) is gone.

**Mr. Chairman:** So the question is that clause 33 be amended by the deletion of subclause (5).

*Question put and agreed to.*

*Clause 33, as amended, ordered to stand part of the Bill.*

**Sen. Prescott SC:** Chair, before you go to the next section, I wonder if a general enquiry could be made at this stage. There is a substantial degree of criminalization throughout this Bill. If you look at the provisions in clauses 30 to 33, you will find that the procuring entity is obliged to do several things, one of them is, in 33(2), "not open any tenders or proposals after taking a decision to cancel", and in each of those cases, section 61 applies. I wondered whether it could not be that we should establish a schedule of criminal liability and exclude certain things.

**Sen. Ramlogan SC:** I had made a point earlier, Senator, that we would consider that when we come to the penalty sections lower down, and we will look at a tiered approach, or something of that kind. I have asked the CPC to prepare something for my consideration. So it is a point that is on my radar.

**Sen. Al-Rawi:** And AG, something concerned me here which dovetails exactly into that. Clauses 30, 31, 32, 33, a lot of these resemble what could very well fit into regulations—subsidiary law.

**Sen. Ramlogan SC:** No, we want that in the substantive law.

**Sen. Al-Rawi:** All right. Because a more desiccated version of this, particularly where you prescribe the tiered approach that we may look at later.

**Sen. Ramlogan SC:** Okay, let us move on. We want that in the substantive law.

**Sen. Al-Rawi:** All right, just for the point. The position is that I think that they should come out and go into regulations.

**Sen. Ramlogan SC:** Sure.

*Clause 34.*

*Question proposed:* That clause 34 stand part of the Bill.

**Sen. Al-Rawi:** I had a question. I understand that abnormally low bids are to be shunned at times, but there may be circumstances where somebody wishes to loss lead, put their foot in the door and actually have an abnormally low bid in circumstances that do not equal to bid rigging. So I was wondering about that.

**Sen. Ramlogan SC:** Well, we left it for the procuring entity, where the procuring entity is of the opinion that the submission is not just low, it is abnormally low. So I think we are comfortable with that language. In other words, it strikes you when you look at it. Sen. Small?

**Sen. Small:** I am fine with the language.

**Sen. Ramlogan SC:** Good.

**Sen. Lalla:** Not only that, when you read 34(1) in total, it takes care of the concern that Sen. Al-Rawi has because it then gives rise to the right of the procuring entity to write and ask for an explanation why is this so low.

**Sen. Ramlogan SC:** Yes. Good point.

**Sen. Al-Rawi:** Okay, thanks.

**Sen. Robinson-Regis:** And as a matter of fact, AG, at present that is what occurs.

**Sen. Ramlogan SC:** Yes. At present that is what happens.

**Mr. Chairman:** It is a reflection of reality.

**Sen. Robinson-Regis:** It is reality.

**Sen. Al-Rawi:** Sure. I was just looking at it from the business side of it as opposed to a legal side.

**Sen. Robinson-Regis:** It is reality. That is what occurs.

*Question put and agreed to.*

*Clause 34 ordered to stand part of the Bill.*

*Clause 35.*

*Question proposed:* That clause 35 stand part of the Bill.

**Sen. Ramlogan SC:** I have an amendment as circulated to subclause (3) which reads as follows:

35(3)(c) Delete the words “and in accordance with the requirements of the Regulations”.

**Sen. Al-Rawi:** So we struck off regulations which I had a concern with. I wondered about subclause (6):

“Upon expiry of the standstill period or, where there is none, promptly after the successful submission is ascertained, a procuring entity shall dispatch the notice of acceptance of the successful submission to the supplier or contractor who presented that submission, unless the Office orders otherwise.”

**Sen. Ramlogan SC:** That is fine. Nothing is wrong with that.

**Sen. Al-Rawi:** Well, I have a problem with “dispatch” per se.

**Sen. Ramlogan SC:** “Dispatch?”

**Sen. Al-Rawi:** Yes, how it is done, et cetera.

**Sen. Ramlogan SC:** But that is for regulations. That is for practical administration. We cannot put that in here.

**Sen. Al-Rawi:** I am just raising it. Subclause (7) continuing from (6): “Unless a written procurement contract is required...”

Am I bothering you, Minister?

**Sen. Dr. Tewarie:** No.

**Sen. Al-Rawi:** Okay. I just want to be sure.

**Sen. Ramlogan SC:** No, no, go ahead “nah man”.

**Sen. Al-Rawi:** “Unless a written procurement contract is required, a procurement contract in accordance with the terms and conditions of the successful submission enters into force when the notice of acceptance is dispatched to the supplier or contractor concerned, so, however, that the notice is dispatched while the submission is still in effect.”

**Sen. Lalla:** That is normal contract principles.

**Sen. Al-Rawi:** No, it is not.

**Sen. Lalla:** Yes, it is.

**Sen. Al-Rawi:** It is not. Larry, if I put it this way. Why it is not normal contract principles is that it is devoid of consideration at this point.

**Sen. Lalla:** It is an offer and an acceptance, and therefore the formation of a contract.

**Sen. Al-Rawi:** Where is the consideration as the third element of the contract?

**Sen. Ramlogan SC:** Chair, we are comfortable with this as is. The contract is formed by virtue of the acceptance being dispatched and it is consistent with ordinary contract principles with the postal office rule.

**Sen. Dr. Tewarie:** Exactly. And all the considerations are in the submissions.

**Sen. Al-Rawi:** I disagree with that position, for the record. It is noted.

**Sen. Ramlogan SC:** Okay, fair enough.

**Sen. Prescott SC:** Mr. Chairman, just before the AG closes off on it, have you looked at 35(9)?

**Sen. Ramlogan SC:** No, well, we did not reach there yet, so why “yuh” jumping there?

**Sen. Prescott SC:** Well it impacts on (7).

**Sen. Ramlogan SC:** Sorry? Beg your pardon?

**Sen. Prescott SC:** In the way that it impacts on (7). It speaks of that period between the dispatch and the notice and the entry into force as though there is a lag time. Are you with me? 35(9).

**Sen. Ramlogan SC:** Yes, I am reading it.

**Sen. Prescott SC:** The dispatch seems to create the contract.

**Sen. Ramlogan SC:** Yes.

**Sen. Prescott SC:** But 35(9) speaks of a period between that creation and the entry into force. Are you with me?

**Sen. Ramlogan SC:** Yes, I am with you.

**Sen. Prescott SC:** Just a clarification, please.

**Sen. Al-Rawi:** And AG, having flagged “dispatched” as well, which flows into what Sen. Prescott is saying, subclause (11)—so the contract, according to Sen. Lalla is formed on dispatch and that is normal. Listen to what “dispatch” is”

“Notices under this section are dispatched when they are promptly and properly addressed or otherwise directed and transmitted to the supplier or contractor...”

So once I write Sen. Bhoendradath Tewarie, put it on the envelope, put it in an out-tray to go out by the secretary—

**Sen. Ramlogan SC:** I understand the concern. Let me address it. I mean, this is consistent with the normal contract law principles. I think what they tried to embody was probably the postal office rule, but what it seems to contemplate on the face of it is a physical dispatch by somebody, you know, like riding a bicycle or carrying it to physically hand delivering it. But in the regulations, one would expect that you can have electronic transmission, for example, of the notification of the award of the contract, and that would be within the meaning of “dispatch” as Sen. Young rightly points out. So that, can we leave this for the regulations? But I think the period of interregnum which subclause (9) addresses, is to take care of the point that really, until you really receive it, from the time of dispatch to receipt, you really would not know that you get the contract, so you really cannot do anything anyway, so it might be superfluous, somewhat. But I think the idea here is to deal with, perhaps, corruption because you will not have received it; it is dispatched, but somebody might pick up the phone and say, “Ay, yuh get de ting, eh.” So, the point is that until you get the official notification informing you on a letterhead that you get the contract, do not do anything. In that way you cannot sue.

**Sen. Al-Rawi:** But, AG, that is good—

**Sen. Prescott SC:** Pardon me, Sen. Al-Rawi. Could we not use “delivery” in place of “dispatch” in (5)?

**Sen. Al-Rawi:** Correct.

**Sen. Ramlogan SC:** Well, I thought “dispatch” would import—you know—*[Crosstalk]* So we can change “dispatch” to “delivery”. That is fine. I do not have a problem because I anticipate the regulations will, you know, allow for electronic delivery.

**Sen. Al-Rawi:** AG, subclause (9) does not seem to say what you just said. Subclause (9) says:

“Neither a procuring entity nor the respective supplier or contractor shall take any action that interferes with the entry into force of the procurement contract...”

**Sen. Ramlogan SC:** Sure.

**Sen. Al-Rawi:** It would not be interfering with the coming into force of the contract if I were to actually start dealing with the contract.

**Sen. Ramlogan SC:** No, but I think we are comfortable with this as is. I mean, I understand the mischief we are trying to prevent and I do not think—listen, we cannot legislate for every little thing, eh guys.

**Sen. Al-Rawi:** Just to point out this point. You can move on after this. In my view, taking a step which is in reliance on the contract is different from taking a step which interferes with the entry of the contract.

**Sen. Ramlogan SC:** Okay. Well, we are happy with this as is and on the “dispatch” versus “delivery”, the considered view seems to be we stick with “dispatch”.

**Sen. Vieira:** The concern is this, once it is dispatched, the contract is now in effect.

**Sen. Ramlogan SC:** Sure.

**Sen. Vieira:** I am now contractually bound, but I do not even know that the contract has been awarded to me. I have not been in receipt of the notice. Things get lost in cyberspace; things go awry from post offices. So it is just that little concern, that gap.

**Sen. Prescott SC:** Put “delivery” in (7) and “dispatch” in (9), you know. When you received it—

**Sen. Ramlogan SC:** Chair, we can go with that; “delivery” and let us move on. I just want to say, for the record, we are now at the halfway mark of this Bill.

**Sen. Prescott SC:** We are doing well.

**Sen. Ramlogan SC:** So let us move on with great despatch. [*Laughter*]

**Sen. Prescott SC:** That is spelt d-e.

**Mr. Chairman:** Just to get clarification, AG. You talked about “delivery” in one case and “dispatch” in another. I needed to record where the “delivery” would take place and the “dispatch”.

**Sen. Prescott SC:** Chair, my recommendation is that in line five of (7)—

**Mr. Chairman:** So you want to say, “acceptance is delivered”.

**Sen. Prescott SC:** "...when the notice of acceptance is delivered to the supplier", and in subclause (9), therefore, it would begin to make sense, that there is a time between the dispatch. That is all, Sir.

*Question put and agreed to.*

*Clause 35, as amended, ordered to stand part Bill.*

**Sen. Prescott SC:** Chair, would you consider at this time revisiting your earlier time plan?

**Mr. Chairman:** Yes. It is now 1.27. I was suggesting 40 minutes would be—

**Sen. Prescott SC:** Make it 43, Sir.

**Mr. Chairman:** Forty-three? All right. Forty-two, it just went to. *[Laughter]*

This committee stage will be suspended and we will resume here—Dr. Mahabir, what is 40 plus 28?

**Sen. Prescott SC:** At 10 minutes past two.

**Mr. Chairman:**—at 10 minutes past two—2.10 p.m.

**1.28 p.m.:** *Committee suspended.*

**2.10 p.m.:** *Committee resumed.*

*Clause 36.*

*Question proposed:* That clause 36 stand part of the Bill.

**Sen. Al-Rawi:** AG, I was just wondering—just a small concern—as to, “on its website or in any other electronic format”.

**Sen. Ramlogan SC:** I think we should leave it as is at. What are you wondering about that?

**Sen. Al-Rawi:** Which is accessible to the public.

**Sen. Ramlogan SC:** No. But if it is on the website they must be accessible to the public.

**Sen. Al-Rawi:** No, but any other electronic format is anything, a Word document, Microsoft Excel.

**Sen. Ramlogan SC:** I think that is okay, man.

**Sen. Lalla:** Yeah, but I mean, if you look at the note in the margin “Public notice”, it must be understood that it has to be in a format that is available to the public.

**Sen. Young:** You would be aware, Sen. Lalla, that the notes in the margin have no value whatsoever. I would not expect that comment from someone from the Bar.

**Sen. Lalla:** It is common sense. If you are saying electronic format on a website, it must mean that it has to be available for the public.

**Sen. Young:** Yes, but then you look in the interpretation.

**Sen. Lalla:** You cannot put everything in writing in an Act. You must leave something for good sense.

**Mr. Chairman:** What I would say, Senators, it just says “promptly published”. I cannot imagine publication would amount to something which you kept within your drawer.

**Hon. Senator:** Correct.

**Sen. Al-Rawi:** Publication under the Copyright Act is achieved just by a simple piece of paper.

**Sen. Ramlogan SC:** No, no. Come on, let us be reasonable guys. Chair, we are leaving this as is.

**Sen. Al-Rawi:** I have raised the concern. I think that it should be better language, but *c'est*. The response is look at the margin.

**Sen. Prescott SC:** Chair, I wish to raise a question.

**Mr. Chairman:** Sorry, Sen. Prescott SC.

**Sen. Prescott SC:** Is there somebody who controls this PL besides me?

**Hon. Senator:** Yes.

**Sen. Prescott SC:** I must throw my voice so that persons can hear me. However, in my contribution I had raised the question for consideration that it would be necessary to have the public know who are the personalities involved, and there may be financiers who are not too distant from the named contractor. I would be happy if I were able to read beyond what is stated in the website, that there are people whose moneys are tied up in the work that he is doing. It may appear intrusive, but it does have a certain value and I thought that some consideration should be given to it.

**Sen. Ramlogan SC:** Consideration given to what?

**Sen. Prescott SC:** Naming the persons whose money is involved.

**Sen. Ramlogan SC:** Naming the person whose money is involved?

**Sen. Al-Rawi:** Yes, that is the issue of guarantors—*[Interruption]*

**Sen. Prescott SC:** The source of the funding—the guarantor.

**Sen. Ramlogan SC:** Oh, you mean like that.

**Sen. Prescott SC:** Yes, who is behind that name?

**Sen. Ramlogan SC:** I do not know. I do not think we will—*[Interruption]*

**Sen. Prescott SC:** You know like Uncle Khalid. So you want to know who is the real money man in this deal.

**Sen. Ramlogan SC:** No, I think if anybody wants to know that, it is a simple search on the Companies' Registry online to find that out.

**Sen. Prescott SC:** And it may not be a director or an officer.

**Sen. Ramlogan SC:** I think that is going outside the scope of the procurement legislation really, which is really to regulate procurement. And if it is you are going to go outside with that now, to go behind, you know, then that might be asking a little too much. It certainly was not part of the policy intention of the Government to go as far.

**Sen. Prescott SC:** It is something that interests me and I will be subject to it.

**Sen. Ramlogan SC:** I hear you. I take note of your interest.

**Sen. Dr. Tewarie:** That is a question like who owns Trinidad and Tobago.  
*[Crosstalk]*

**Sen. Prescott SC:** I know the answer to that one.

**Sen. Al-Rawi:** Who owns SIS?

**Hon. Senator:** Who owns SIS?

**Sen. Al-Rawi:** May I also invite your attention to subclause (2). AG:

“Where the information referred to in subsection (1) is unavailable, a complaint may be made to the Regulator.”

**Sen. Ramlogan SC:** Sure.

**Sen. Al-Rawi:** I thought in keeping with the amendment that we made earlier, that some better form of description of a sanction or an approach could be made.

**Sen. Ramlogan SC:** “Nah”. I think this one is simple and clear because this is about notifying the public of the award of the procurement, and on this one, the notification of an award is a simple matter. So I will leave this one simple and effective as it is.

**Sen. Al-Rawi:** And my concern is borne about because you “shall promptly notify”. If you do not do it, the sanction that I have right now is just a complaint.

**Sen. Ramlogan SC:** Remember the sanction may be down the road as well.

**Sen. Al-Rawi:** Right. I am just looking at now parity for the amendments that we made a bit earlier, where we had the same clause that a complaint may be made. It is in 27(2):—*[Interruption]*

**Sen. Ramlogan SC:** I remember it, yeah.

**Sen. Al-Rawi:** “Where the information referred to in subsection (1) is unavailable or not forthcoming, a complaint may be made to the Regulator.”

We had added in the words “who shall conduct an investigation in accordance with section 41” and if justified, extend the time.

**Sen. Ramlogan SC:** No, not in this clause. This clause is simply about notifying you about who get the contract, and I can see no justification, no rational explanation must be admitted because if you hide who get the contract, that is a very serious matter—*[Interruption]*

**Sen. Al-Rawi:** But that is the point.

**Sen. Ramlogan SC:**—and it is too easy to do it.

**Sen. Al-Rawi:** So, AG, that is the mischief I am seeking to drive at. The fact that I just do not do it, and all that happens now, if I borrow the logic that flowed from the Government’s response to issues raised before, all that you have is a complaint. Well what next.

**Sen. Lalla:** Yes, but you do not expect the regulator to receive a complaint and not treat with it in a reasonable manner.

**Sen. Al-Rawi:** Look at the Integrity Commission.

**Sen. Lalla:** So if it is something that needs to be proceeded, you will expect the regulator—*[Interruption]*

**Sen. Al-Rawi:** We are looking at the operational functionality and efficacy. Look at the Integrity Commission, great piece of law buried inside of issues where so many complaints come till, they cannot do anything about it at all, or it does not appear to be delivering any solution.

**Sen. Lalla:** You have to leave some things up to the good sense of the regulator, Sen. Al-Rawi.

**Sen. Young:** So why at 27(2) did we add the words “who shall conduct an investigation”? We are not asking for an extension here. We are asking for who shall conduct an investigation in accordance section 41.

**Sen. Ramlogan SC:** All right. May I just answer this by pointing out under section 14(1)(c), the regulator, the office, has the powers under 14(1)(c) to:

“issue directions to public bodies to ensure compliance with the Act;”

So that one would expect that when the complaint is made, the regulator will issue a direction pursuant to 14(1)(c) to ensure that there is compliance with the Act, and that will take care of it.

**Sen. Al-Rawi:** AG, having put in words from a drafting perspective in section 27(2)—[*Interruption*]

**Sen. Ramlogan SC:** No! The purpose here is totally different.

**Sen. Al-Rawi:** The purpose is to make sure that people do not hide behind the fact that they are not publishing a list.

**Sen. Ramlogan SC:** And I am saying to you that the law as it stand, you have the right to issue directions, and when the complaint is made, one would expect that the regulator would issue direction to ensure compliance. So, Chair, the Government rests on this as a matter of policy. We are comfortable with this.

*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:** Mr. Chairman, I wondered about contracts awarded in the context of framework agreements again.

**Sen. Ramlogan SC:** I think we are comfortable with contracts because that is when the legally binding obligations and the expenditure will flow.

**Sen. Al-Rawi:** Just expressing my point of view. Dissatisfied insofar as the framework agreement may be relevant as well, but thank you.

*Question put and agreed to.*

*Clause 37 ordered to stand part of the Bill.*

**Sen. Ramlogan SC:** One second. The CPC has a proposed amendment:

To insert a 37(2) in the following language:

**Mr. Chairman:** So this is to introduce a 37(2)?

**Sen. Ramlogan SC:** Yes.

A procuring entity shall notify the office of any material change in or variation of a contract referred to in subsection (1) within a reasonable time of the change or variation.

But you know, CPC—[*Interruption*]

**Sen. Young:** But you cannot do that AG, because if you have awarded the contract you cannot come and change it.

**Sen. Ramlogan SC:** No, we are not going to pursue that. We are not pursuing that, no. 37 as is.

**Sen. Young:** Thank you.

**Sen. Drayton:** That was something I had raised yesterday, but it was raised more in the context of clause 39 with respect to the confidentiality of conversations.

**Sen. Ramlogan SC:** But can we consider it there then?

**Sen. Drayton:** Yes, I think so, and just discuss it briefly because it was not a question of—[*Interruption*] Beg pardon?

**Sen. Young:** It was not a question of varying

**Sen. Drayton:** No, so let us wait until.

*Clause 38.*

*Question proposed:* That clause 38 stand part of the Bill.

**Mr. Chairman:** You have some amendments to propose as circulated.

**Sen. Ramlogan SC:** Clause 38 amended as circulated, please:

- A. In the marginal note delete the words “processing system” and substitute the word “means”.
- B. In subclause (1)-
  - (a) delete the word “all”;
  - (b) delete the words “processing system” and substitute the word “means”.
- C. In subclause (3), insert after the word “may”, the words “, on the recommendation of the Office,”.
- D. Delete subclause (5).

**Sen. Prescott SC:** May I on clause 38? I had made an observation that I was not satisfied that the Minister should be empowered here, and give him a discretion as to whether regulations should be made in respect of procurements done using the electronic processing system. Under clause 62, the Minister has a certain power, he will exercise it to make regulations on the recommendation of the office, and for some reason this particular process has been plucked out and given to him entirely, left entirely in his gift. *[Interruption]*

**Sen. Dr. Tewarie:** No, that is not true. The amended version—*[Interruption]*

**Sen. Ramlogan SC:** The amended version is the Minister on the recommendation of the office.

**Sen. Prescott SC:** That is on the track document?

**Sen. Ramlogan SC:** Yes. So that has been taken care of.

**Sen. Al-Rawi:** And AG, in terms of a drafting architecture, clause 62 provides what we wanted:

“(1) The Minister may, on the recommendation of the Office, make Regulations to give effect to the provisions of this Act, including...”—et cetera.

And then there is subclause (3) which makes it negative. Why are we repeating ourselves here if we have an omnibus provision later on?

**Sen. Ramlogan SC:** No, we can delete (3). We do not need it.

**Sen. Prescott SC:** Satisfied with—*[Inaudible]*

**Sen. Ramlogan SC:** But we have not reached there as yet.

**Sen. Prescott SC:** Oh, we are deleting (3).

**Mr. Chairman:** So we will renumber?

**Sen. Ramlogan SC:** Yes. (3) and (4) come off.

**Mr. Chairman:** (4) meaning “In this section, ‘electronic processing system’”.

**Sen. Al-Rawi:** No, the Minister may make regulations negative.

**Sen. Ramlogan SC:** Negative resolution.

**Mr. Chairman:** Oh, I see. So all we have are two subsections?

**Sen. Al-Rawi:** And then (4) becomes (3)—(5) becomes (3).

**Sen. Ramlogan SC:** (5) is out.

**Sen. Al-Rawi:** Sorry, (5) is deleted by the amendment.

**Mr. Chairman:** So the question is that clause 38 be amended as circulated and further amended by the deletion of subclauses (3), (4) and (5).

*Question put and agreed to.*

*Clause 38, as amended, ordered to stand part of the Bill.*

*Clause 39.*

*Question proposed:* That clause 39 stand part of the Bill.

**Mr. Chairman:** Can I just ask the Minister if he has amendments. I will put the question first and then—so the question is that clause 39, be amended as circulated:

Delete the words “applications to pre-qualify or for pre-selection and”.

**Sen. Drayton:** I have absolutely no problem in principle with the confidentiality arrangements in these clauses. I noted that they are, yes, exact replicas of Article 24 in the UNCITRAL model. However, the respective relevant article in the UN model, it is subject to certain transparency obligations under Article 25 and, what I have noted is that in this Bill, while I have seen in other sections certain clauses supporting transparency, this particular section is open to a certain amount of abuse.

**Hon. Senator:** How?

**Sen. Drayton:** Well, let us read. “Any discussions, communications, negotiations” and it is that word that led me, again, going through the UN model, to suggest the clause or something like that the CPC had just passed. It says:

“(3) Any discussions, communications, negotiations or dialogue between...procuring entity and a supplier or contractor shall be confidential, unless required by law or ordered by the court,...”—et cetera, et cetera.

So, this certainly supports the view that negotiations take place between a procuring entity and a contractor, and these negotiations are often verbal communication and for transparency reasons, and to allow the auditor a point of auditing these verbal agreements or any verbal agreements arising from negotiations under this section—*[Interruption]*

**Sen. Ramlogan SC:** So your concern is that the verbal agreement should be recorded somewhere.

**Sen. Drayton:**—must be recorded somewhere. So I am making a suggestion—two suggestions.

**Sen. Al-Rawi:** AG, before—*[Interruption]*

**Sen. Drayton:** Could I just conclude, please?

**Sen. Al-Rawi:** Sorry, sorry. Go ahead.

**Sen. Drayton:** And that is the procuring entity must maintain detailed records of all procurements proceedings, including verbal agreements made with suppliers or contractors

**Sen. Ramlogan SC:** Can I?

**Sen. Drayton:** Let me just conclude.

**Sen. Ramlogan SC:** Sorry.

**2.25 p.m.**

**Sen. Drayton:** The other aspect of it was that if through negotiations, any material changes were made because this clause suggests that, then it must be brought to the attention within a reasonable time frame to the regulator. It cannot be at the end of the year, after the change was made to the contract or whatever, that the procurement regulator is now aware of it. What I am suggesting here is nothing new, I think the drafters are well aware of it because if they read the UN model which, of course, they have done, as I said, this clause is a direct lift from that but it is without the transparency obligations that should support this clause and that was the reason for my suggestions.

**Sen. Ramlogan SC:** But, Senator, may I just say I do not have a problem with—*[Interruption]*

**Sen. Drayton:** And yesterday, you agreed on it.

**Sen. Ramlogan SC:** Yeah, I know, I do not have a problem, I am going to suggest, however, that there may be other permutations that we cannot think of now.

**Sen. Drayton:** Yes.

**Sen. Ramlogan SC:** You have mentioned two. One is a verbal agreement being recorded and, two, any variation or change, and I am saying, there may be a broad spectrum of possibilities that we cannot now think of including those two.

**Sen. Drayton:** Exactly. Yes.

**Sen. Ramlogan SC:** And therefore, I would want to commit on the record that those two matters—that concern be addressed in the regulations because there may be other things that we cannot now think of that should, in fact, be dealt with in the regulations with respect to the record keeping, and what kind of records and what kind of details should be required as part of the record keeping exercise, but I do agree with you. It is something that should be—there should be some legal framework to guide them on that issue.

So, for example, in the handbook, I would expect, for example, a procurement regulator to put in the handbook that subsequent to the award of a contract, if there is any verbal agreement that leads to a variation or alteration of the contract that if be recorded, and that it be made available.

**Sen. Drayton:** Well, it is not just that it be recorded, it must be brought to the attention of the regulator. If it is a material change, it must be brought to the attention of the regulator really promptly and that is how it is addressed in proper law.

Now, I do not like the idea that it is not in—it is sufficiently important to have made just these two little statements to support clause 39. It is sufficiently important.

**Sen. Ramlogan SC:** It is and I am recognizing that. I am not at all disagreeing.

**Sen. Drayton:** And I appreciate that.

**Sen. Ramlogan SC:** But you see, the reason I am on the issue of the regulations, it being dealt with in the regulations, I mean, I remember when I served on the board of Petrotrin, for example, and we were doing the refinery upgrade, we had an arbitration against SNC Lavalin that lasted for quite some time. But when you look at the contract documents and you speak to the engineers, their major complaint was that we bog them down sometimes with so much requirements, they cannot do the job and comply with what is required of them without appropriate guidance. And I thought that when we are doing the regulations, we might be able to speak to some of the people, you know, on the ground as they may have other ideas, but that we might have a detailed code to say what, your record keeping, as it relates to the question of procurement, should entail, because it may not be limited to this. So that is why I wanted to suggest that we leave it for the regulations.

Because, in any event, the question of what your record keeping, as it relates to procurement, should contain is a matter better left to the regulations than the substantive law. That is my view.

**Sen. Drayton:** You know, I am prepared to—*[Interruption]*

**Sen. Ramlogan SC:** Yeah, and I am giving that statement on the record, that it will be addressed in the regulations.

**Sen. Drayton:**—accept that as we on *Hansard*, but, as I said, particularly subclause (4) of clause 39, it is open to abuse, and usually, Chairman, this is where a lot of mischief takes place with respect to procurement contracts. It is the type of communication and negotiation subsequent to opening the bid, viewing and examining, making a decision, and then there is secret dialogue that takes place, you know.

**Mr. Chairman:** I would not say secret but the truth is that in every construction contract I know, there are variations.

**Sen. Ramlogan SC:** They must. That is the point.

**Sen. Drayton:** Yes, exactly.

**Mr. Chairman:** Construction agents could never predict all the circumstances that could will occur during so there are always variations and therefore—

**Sen. Ramlogan SC:** And it is on the trot, that verbal—

**Mr. Chairman:**—a need to negotiate how you will treat with those.

**Sen. Ramlogan SC:** That is why I am suggesting it should go in the regulations, Chair.

**Sen. Drayton:** Okay. As long as the regulations are clear—*[Interruption]*

**Sen. Ramlogan SC:** Yes, certainly.

**Sen. Drayton:**—that substantial changes must be brought to the attention of the regulator.

**Sen. Ramlogan SC:** You see, because when you say, if I put it in the substantive—*[Interruption]*

**Mr. Chairman:** You will make nonsense of it.

**Sen. Drayton:** Yeah.

**Sen. Ramlogan SC:** It will make a nonsense of it. You see, on the trot, these things are done. I mean in the industry, the oral variations are—you make them almost every day on site, and that is why I want to think about it so that we can—we have to be careful we do not make something that is not practical so I want to think about it

I mean, Sen. Small, you have worked in the industry. I would welcome your views on this.

**Sen. Small:** I think that a mix of approaches is required. I share the view that on a live construction arrangement, variations happen on the fly. You put through a call and you get the approval from the man on the ground. So it is not necessarily unusual. It is something that, at the end of the day, somebody still has to write it up, but it is not unusual.

**Sen. Ramlogan SC:** Exactly.

**Sen. Small:** But I take Sen. Drayton's point that it an area where, because flexibility is required on a live site, it leaves room for mischief. Yeah?

**Sen. Ramlogan SC:** Yes.

**Sen. Small:** As I have the opportunity to speak, if you would permit me, I have just one question to ask about 39(1) regarding confidentiality, and I am not sure if we could even treat with it. But again, just like you, I have sat on a State board and I wondered whether I should have raised this on clause 34 when we talked about abnormally low.

I have seen the companies prepare what they call in-house estimates. and the in-house estimate is \$27 million and then somebody bids \$26.99 million and you sit on the board and you wonder, well, how did this happen. It is clear that there was some information shared between the internal parties and a preferred bidder, but everything else is lined up on the bid. So I am not sure if we could treat with it all, but I think that is something that happened—I have seen it happen too many times, that there is a confidentiality arrangement, people in the company prepare an in-house estimate and, somehow, bidding parties get that in-house estimate.

**Sen. Ramlogan SC:** Sure. I mean the only way you can deal with that is to have the deterrent of the heavy sanctions that we have imposed. I mean, other than that, you cannot really—it will be virtually impossible to police it.

**Mr. Chairman:** But what is particular was because it is on the fly that you make amendments, we could not tell them a time frame within—at least that is my experience.

**Sen. Ramlogan SC:** Yeah, you cannot.

**Mr. Chairman:** If you know these things are happening, you know, maybe you could do it, I do not know, three months. You need to collate all of them at some point in time.

**Sen. Al-Rawi:** But there may be procedures in FIDIC or otherwise which may govern it which prescribe other rules, et cetera, so you need the flexibility. I want to agree with the AG on that point.

**Sen. Ramlogan SC:** All right. Fair enough.

**Sen. Al-Rawi:** AG, I just want to point out in relation to 39 which does two things. It creates the confidentiality aspect, breach of which is clause 61.

**Sen. Ramlogan SC:** Sure.

**Sen. Al-Rawi:** But very importantly, it not only brings in UNCITRAL, it brings in the FOIA, because these are some of the traditional markers under the Freedom of Information Act. What concerns me here is the fact that unless disclosure of that information is ordered by the court—[*Interruption*]

**Sen. Ramlogan SC:** Where are you reading from?

**Sen. Al-Rawi:** Tail end of 39(1). Right? So it ends with—so it provides confidentiality and then the usual FOIA exceptions:

“...unless disclosure of that information is ordered by the court and, in such case, subject to the conditions of such an order.”

But, unlike the FOIA, we have not prescribed the procedural in the legislation as the FOIA does as to when the procuring entity should reply, what the content of it must be and what the right to the court ought to be in similar fashion to the Freedom of Information Act.

**Sen. Ramlogan SC:** I do not think that is necessary because, you see, I do not think the Freedom of Information Act is what is contemplated here. When they say “unless disclosure of that information is ordered by the court”, I think they mean, for example, if there is a challenge—[*Crosstalk*] Sorry?

**Sen. Young:** A specific order—

**Sen. Ramlogan SC:** Yes, there is a specific order, yeah, like in criminal proceedings or anything of the sort.

**Sen. Young:** I understand that, but—

**Sen. Ramlogan SC:** So, I do not think you need the procedure. It is really in any proceedings, if the court should so order, then, you know.

**Sen. Al-Rawi:** You see, in the Bill itself, you have a right—clause 41, “Investigation and Enforcement”. I am looking for the comparative right on the part of a person who is a party to a procuring entity, one of the bidders who did not go right. He asked for information from this public body. The public body says to him, “Well, no, under section 39, we are not disclosing this because it will be detrimental to the legitimate commercial interest of the suppliers”. He then says he is going to court.

**Sen. Ramlogan SC:** Sure, he goes to court under the FOIA.

**Sen. Al-Rawi:** Well, no, he does not have to come under the FOIA, he is coming under clause 39.

**Sen. Ramlogan SC:** No, but he can go under the FIOA as well.

**Sen. Al-Rawi:** Correct, he can. Right? But he is coming under this piece of legislation in this procurement process. This Bill does not contemplate the manner in which somebody approaches the court to deal with this.

**Sen. Ramlogan SC:** Listen. Chair, I think this is clear. The policy in clause 39 deals with the confidentiality requirements, it does not seek to create a right of access to information separate and apart from the existing law. The right to access information from a public authority is covered by the Freedom of Information Act, and also by the normal rules of disclosure that apply in court. The Government is happy with this clause as is and we rest.

**Mr. Chairman:** Your mischief you are trying to treat with is confidentiality.

**Sen. Ramlogan SC:** That is correct, yes.

**Sen. Al-Rawi:** Mr. Chairman, just to—thank you, AG, for that explanation. What was driving me because you, of course, have a breach of contract or a JR aspect that you could take, you have an FOIA aspect. Why I was attracted to the FOIA approach was the limitation on costs and the availabilities inside of there, and the transparency of the entity being required, as the FOIA says, to say, “Well, look, I have told you no but be aware you have the right to approach the court, and I am obliged under the law to tell you, you have the right to knock on the door of the court” and that was the thing that I was looking at because it is a public procurement system.

**Mr. Chairman:** And it is not excluded.

**Sen. Ramlogan SC:** Yeah, that is fine. Let us move on, Sir.

**Sen. Al-Rawi:** But it is not prescribed either, Mr. Chairman.

**Mr. Chairman:** Yeah, sure.

**Sen. Al-Rawi:** And it is the specific prescription in the parent law.

**Mr. Chairman:** We have not even locked out the FOIA.

**Sen. Al-Rawi:** I am just saying that for the user, it may be more expensive on the JR approach and otherwise.

**Mr. Chairman:** Sen. Prescott.

**Sen. Prescott SC:** Can we look at 39(3) again? I think the language is cumbersome and probably not well thought out. It clearly sets out to do two things. It says there shall be confidentiality and it asserts that a law may require disclosure or a court may order disclosure.

**Sen. Ramlogan SC:** Yeah.

**Sen. Prescott SC:** Maybe if it were broken into two sentences, it might present a better language or maybe if you use the approach in 39(1) of saying unless disclosure of that information is required by law or ordered by court.

**Sen. Ramlogan SC:** I think I would like the 39(1) approach, it makes it simpler.

**Sen. Prescott SC:** So 39 speaks to—*[Interruption]*

**Sen. Ramlogan SC:** Unless required by law or ordered by the court.  
—unless disclosure of that information is required by law or ordered by the court.

**Sen. Al-Rawi:** Could you look at the language as well in 39(4), particularly (b):

“Subject to subsection (1), in procurement involving classified information, a procuring entity may -

(a) impose...;”

I am okay with that.

“(b) demand that suppliers...ensure...”

That is not an obligation. I can demand it but I cannot compel it.

**Sen. Ramlogan SC:** No, I think it is a policy intention really that can stay.

**Sen. Al-Rawi:** I am looking for the efficacy of it.

**Sen. Ramlogan SC:** “Nah”, that would be—

**Sen. Al-Rawi:** Require is a different position from demand. Once a demand is made, and say, “Okay, you demand it”, I say, “No”. Because what you want to do is you want to bind the confidence for other people who are receiving the disclosure.

**Sen. Ramlogan SC:** It is a semantic. If you require it, you demand it; if you demand it, you require it.

**Sen. Al-Rawi:** I disagree.

**Sen. Ramlogan SC:** Yeah, let us move on, “nah”, we want to press on.

**Mr. Chairman:** AG, can I just get 39(3) right? I am not sure what you had in mind.

**Sen. Ramlogan SC:** Yes, Sir, clause 39(3). Mr. Prescott.

**Sen. Prescott SC:** Chairman, line 4 should now read—well, I will start from 3: unless disclosure is required by law or ordered by the court.

So the two words you are introducing there are “disclosure is” at the start of line 4.

**Sen. Ramlogan SC:** And the rest comes off.

**Sen. Prescott SC:** And you delete the rest.

**Mr. Chairman:** So it is going to read:

“Any discussions, communications, negotiations or dialogue between a procuring entity and a supplier or contractor shall be confidential, unless disclosure is required by law or ordered by the court.”

**Sen. Prescott SC:** Yes, Sir.

**Sen. Ramlogan SC:** Yeah, it is fine.

**Mr. Chairman:** All right. So the remainder of that clause comes out?

**Sen. Prescott SC:** Yes, Sir.

**Mr. Chairman:** No question of consent by the other party or anything?

**Sen. Ramlogan SC:** “Nah.”

**Sen. Prescott SC:** The order will determine what condition.

*Question put and agreed to.*

*Clause 39, as amended, ordered to now stand part of the Bill.*

**2.40 p.m.**

*Clause 40.*

*Question proposed:* That clause 40 stand part of the Bill.

**Sen. Al-Rawi:** Just the sole question in here, AG. Just to be clear, this also includes the fact that you will not sue your employee, right?

**Sen. Ramlogan SC:** Sorry?

**Sen. Al-Rawi:** In clause 40, I just want to be clear, that it includes the fact that you will not sue, bring proceedings, claims, demands—[*Interruption*]

**Sen. Al-Rawi:** Yeah, yeah, that will be it, that is obvious. Yes, sure.

**Sen. Young:** If I may just, two—at 40(a)(iii)—[*Interruption*]

**Sen. Ramlogan SC:** 40 what?

**Sen. Young:** 40(a)(iii):

“refused to do”—I would suggest a comma there—“or stated the intention of refusing to do”—another comma...

**Sen. Ramlogan SC:** Well, those things can be tidied up on the—normally, we do not do the punctuation like commas and thing, on amendment or anything.

**Sen. Al-Rawi:** The ubiquitous semicolon, sometimes is required.

**Sen. Ramlogan SC:** Yes Sir, if we could put it.

*Question put and agreed to.*

*Clause 40 ordered to stand part of the Bill.*

*Clause 41.*

*Question proposed:* That clause 41 stand part of the Bill.

**Sen. Al-Rawi:** AG, I just—I wondered whether clause 41 clearly allowed for an anonymous complaint to be made, as the Integrity in Public Life Act does.

**Sen. Ramlogan SC:** Well, it says a complaint, I mean, I do not know that, you know—[*Interruption*]

**Sen. Al-Rawi:** So a person may do so in writing.

**Sen. Ramlogan SC:** I do not know that the Integrity in Public Life Act necessarily allows for an anonymous complaint, you know. That is not correct. [*Crosstalk*] You cannot create mischief like that, you know. If somebody—in this procurement business, if you want to make a complaint, you make it, you understand.

**Sen. G. Singh:** You must have merit in your complaint source.

**Sen. Ramlogan SC:** As a matter of policy, we think we are happy with it as it is. We do not think we need to adjust that now.

**Sen. Young:** If I may, just before that decision. When looking at subclause (2) right, and you are saying:

“...may do so in writing to the Office.”

So you are saying:

“A person who wishes to allege or make a complaint that—”

You have (a), we have (b), “may do so”. Might I suggest that you put “should”, and the reason for that is by using “should”, it serves in my view, as a sifting process. So you are telling the person, look, you should put it in writing and, therefore, once they have committed themselves to doing it in writing, it kind of gets rid of—*[Interruption]*

**Sen. Lalla:** It seeks to develop the person.

**Sen. Young:** Well, obviously, it is to the will of the person. So what, you will accept an oral complaint?

**Sen. Lalla:** It is up to you to make the complaint or not, and if you do so, do it in writing, that is all it means.

**Mr. Chairman:** “You should”, almost sounds like a moral obligation.

**Sen. Ramlogan SC:** Chair, we are happy with “may”.

**Sen. Lalla:** It is good as it is.

**Sen. Ramlogan SC:** May we move on?

*Question put and agreed to.*

*Clause 41 ordered to stand part of the Bill.*

*Clause 42.*

*Question proposed:* That clause 42 stand part of the Bill.

**Sen. Al-Rawi:** Clause 42(1):

“Where the Office considers it necessary or desirable for the purposes of performing or exercising its functions...it may, by written notice served on any person, require the person—

(a) to supply...

(b) to produce...

(c) reproduce...”—allowing a reproduction—

“(d) to appear before the Office...”

I am concerned about the balance of this in light of some form of judicial inspection or approval for this.

**Sen. Ramlogan SC:** No, no, no, this is fine. You see, you do not want to complicate things. Sen. Drayton made a very important contribution yesterday. If you complicate this thing, it has the effect of undermining and diluting it. If you put too many layers of bureaucracy, then you are handcuffed.

**Sen. Al-Rawi:** I am talking about due process, not bureaucracy.

**Sen. Ramlogan SC:** No, but even so, I mean, in the FIU legislation, in the Integrity in Public Life Act, and so on, we have given direct powers. I mean, if the office does not have the power to require them to supply documents, and produce it to them without going to court and so on, I mean, that will complicate matters. I do not think so. Sen. Vieira, what do you think?

**Sen. Vieira:** I do not have a problem with this clause, but I think—  
[*Interruption*]

**Sen. Ramlogan SC:** Right, “put ah full stop” right there. [*Laughter*] “We good to go.”

**Sen. Young:** If I may just? Sorry? At 42(1)(c):

“...if necessary, to reproduce, or assist in reproducing, in usable form, information recorded or stored in any book, record or document...”

I just want to know if we—[*Interruption*]

**Sen. Ramlogan SC:** Document will include electronic.

**Sen. Young:** Or is it record, that will include electronic?

**Sen. Al-Rawi:** Document is defined in the section which is dealing with electronic. [*Interruption*]

**Sen. Ramlogan SC:** So that is fine. Yes, Chair.

*Question put and agreed to.*

*Clause 42 ordered to stand part of the Bill.*

*Clause 43.*

*Question proposed:* That clause 43 stand part of the Bill.

**Mr. Chairman:** Do you have an amendment to make?

**Sen. Ramlogan SC:** Mr. Chairman, clause 43 is amended as circulated:

Delete subclause (3) and substitute the following subclause:

(3) An authorized officer shall not enter the premises of a public body or person outside of normal business hours or premises which are in actual use as a dwelling, unless the Office first obtains, on an *ex parte* application to a Judge of the High Court, an order authorizing him to enter the premises to conduct an examination under subsection (1)(b).

**Sen. Young:** Sorry, hon. Minister and hon. Attorney General, this is one that I had cautioned about in the debate, and we are giving serious powers here. What I would like to suggest is that at 43(1):

“Any officer in the service of the Office and authorised by the Regulator in writing (hereinafter referred to as an “authorised officer”) may, for the purpose of conducting an investigation into any alleged or suspected breach of this Act—”

I would like to import right there “after obtaining on an *ex parte* application to a judge of the High Court, an order authorizing him to do any of the following acts.” So in other words, he has to go for authorization at that point before he does any of the following acts, (a), (b), (c), (d) and then that would make the (3) redundant, because I think it is sufficiently important. These are search and seizure provisions, that before any authorizing officer goes and does any of these things, they should go to *ex parte*. So it *ex parte* it is not bureaucratic.

**Sen. Ramlogan SC:** If you look at the amendments circulated—[*Interruption*]

**Sen. Young:** No, but the amendment is just that they cannot enter. I think it should be broader than—[*Interruption*]

**Sen. Al-Rawi:** I want to support that wholeheartedly.

**Sen. Young:**—not entering, because this is very, very intrusive.

**Sen. Ramlogan SC:** Let us hear Sen. Small. Sen. Small?

**Sen. Small:** Unfortunately the history of Trinidad and Tobago is what I am concerned about. I take the point made by Sen. Young, about potentially this could be something that could be abused—[*Interruption*]

**Sen. Ramlogan SC:** So you like the idea of going to court?

**Sen. Small:**—and it gives wide latitude, but I am supportive of giving them wide latitude, because I think we are in a situation where—[*Interruption*]

**Sen. Ramlogan SC:** They will tie it up in court.

**Sen. Small:**—we have become very creative—*[Interruption]*

**Sen. Al-Rawi:** It is ex parte.

**Mr. Chairman:** Sen. Vieira has an amendment.

**Sen. Small:** Let me hear Sen. Vieira.

**Mr. Chairman:** It was circulated as an amendment to clause 43.

**Sen. Vieira:** My amendment is not cast in stone, but what I do want to preserve in the amendment is, I think it is important that the investigating officer must be able to produce some form of identification.

**Sen. Ramlogan SC:** Yeah, well that could be dealt with in the regulations, because that normally would be a matter for regulation, because the form of the identification, is it a pass, your ID card. So we will deal with that in regulations. I hear you on that.

**Sen. Al-Rawi:** AG, the caution offered by—*[Interruption]*

**Sen. Vieira:** But we also need to make sure that the grounds upon which you are entering and searching, those are objective grounds. I think we need to have the safeguards.

**Sen. Al-Rawi:** That is the judge's discretion. AG, all that we are concerned about is the due process qualification, and I think that the insertion higher up is definitely a—*[Interruption and crosstalk]*

**Sen. Dr. Tewarie:** No, I would like (3) as it is because it makes a distinction between working hours or not, and it makes a provision for not entering the home of someone.

**Sen. Lalla:** Senator, sorry. Sorry, Chair. Sen. Al-Rawi, I must admit that when I read the section as originally drafted, I shared the concerns expressed by your good self, and Sen. Vieira. But having looked at the proposed amendment this morning, I think that covers the concerns that one could have about abuse of power and violation of private rights.

Amendment (3)—the proposed amendment to subclause (3), allows an officer to go to a business place or the place where a person is, if that is not a home, during normal business hours. If you are going after business hours, or you are going to a home, you have to go before a judge. I think that strikes the balance.

**Sen. Al-Rawi:** Here is my problem with that. Thank you, hon. Senator, but here is my problem with (3) as written. So (1) allows you all of the powers, examine, take property, make copies, abuse the right of self-incrimination, (1) gives you all of that. So we are saying now, let us rely upon—[*Interruption*]

**Sen. Lalla:** You cannot abuse the right of self-incrimination.

**Sen. Al-Rawi:** All right, you may, somebody—[*Interruption*]

**Sen. Lalla:** A person always has a constitutional right against self-incrimination

**Sen. Al-Rawi:** True. Sen. Lalla, if I put it this way, if my child is in my business place, 18 years old, an adult; not to aware. I said, listen, I am coming back just now, the offices have all of the documents, et cetera. Police enter, they say under (3), I am an authorized officer, I am entering these premises in normal working hours, because it is now three o'clock. It is not a dwelling house. I now, no longer need to go to a judge ex parte on application. I walk in and I tell that 18-year-old, non-sophisticated person, see all of those files in the back there, open that drawer and I take everything. How could that be a balanced position?

**Sen. Ramlogan SC:** No, they would be coming there with a court order.

**Sen. Al-Rawi:** No. The court order is only—if you read (3), AG:

“An authorized officer shall not enter premises of a public body”—and that is wide—“or person outside of normal business hours”, et cetera, et cetera, et cetera—“unless he first obtains...”

So if you come in normal working hours, you could take everything.

**Sen. Ramlogan SC:** In the case of the child, I mean, “leh we be” reasonable, guys. The first thing the child will do is obviously call “he pappy”.

**Sen. Al-Rawi:** No, AG. You cannot rely on that, AG, normal working hours, right to property. You remember this is a four-fifths Bill, eh.

**Sen. Ramlogan SC:** Chair, I do not think you can legislate for every conceivable permutation.

**Sen. Al-Rawi:** This is not every conceivable AG.

**Sen. Ramlogan SC:** But we are comfortable—[*Interruption*]

**Sen. Al-Rawi:** AG, AG, AG listen. AG, AG, just watch me a second, “nah”. We want to support this legislation.

**Sen. Ramlogan SC:** “I doh think”—[*Interruption*]

**Sen. Al-Rawi:** AG, listen to me “nah please, ah beggin yuh”, listen. This is important law for Trinidad and Tobago. We are really concerned about the due process approach here. It is a simple fix, to say to the officers, they have voluntary ability in the section previously, right?

**Sen. Ramlogan SC:** You see, the reason—[*Interruption*]

**Sen. Al-Rawi:** AG, just hear me out “nah”, right?

**Sen. Ramlogan SC:** “Yuh talk enough, ah hear yuh ah ready, man.”

**Sen. Al-Rawi:** But they have the voluntary power to go in and somebody could say, well sure you could take it. But in circumstances where they say no, it is reasonable that they should obtain an ex parte order for search and seizure and then go—[*Interruption*]

**Sen. Ramlogan SC:** The reason—[*Interruption*]

**Sen. Young:** That is only limited to public bodies AG, person.

**Sen. Ramlogan SC:** I know. I know. Listen, the reason I do not support it is this. If you go for the ex parte order using your example, when they come with the order of the court, and the child is there, they bypass the child “throw de order on de chile” and they go anyway.

**Sen. Al-Rawi:** Lawfully, with due process, a judge had said it, and AG do not forget the condition of an Anton Piller order, is that you have a supervising attorney present.

**Sen. Ramlogan SC:** Listen—[*Interruption*]

**Sen. Dr. Tewarie:** This is an investigation which is why you have got to give the office powers.

**Sen. Al-Rawi:** With due process, Minister, with due process. No, with due process.

**Sen. Dr. Tewarie:** With due process. Listen, you—[*Interruption*]

**Sen. Dr. Balgobin:** Chairman, may I? [*Crosstalk*]

**Mr. Chairman:** Let us listen one at a time. The Minister is speaking. Let the Minister—[*Interruption*]

**Sen. Vieira:** From Thornton's *Legislative Drafting* on this point, right. Because we are talking about powers of entry, search and seizure:

“The right to be protected from unreasonable search or seizure of the person or property is one to be honoured and treasured. In some jurisdictions, it is regarded as of such importance as to merit inclusion in the Constitution or Bill of Rights.”

Everyone has a right to be secure against unreasonable search or seizure, whether of the person, property or correspondence or otherwise, but there are competing interests that must be balanced carefully.

“The interests of society and those of the individual may be in opposition.”

The point is—“The importance of such powers imposes a particular duty on drafters to be explicit and to be clear. The exercise of the powers is likely to be easier and more trouble-free if persons exercising the power understand the extent and conditions of the power and if others concerned can see in plain terms that the inspector or other person exercising the powers is clearly acting within the scope of the law.”

They go in. The point is that we have to be very careful how we limit it, how it is exercised. The inspector must come within reasonable hours. The way this is worded, it means that I could come, once I am within normal business hours, I do not need to go to any judge at all. That cannot be right.

**Sen. Al-Rawi:** Correct. [*Desk thumping*]

**Sen. Vieira:** That cannot be right, that is more power than a police officer.

**Sen. Ramlogan SC:** But Senator, let me engage you on that. I do not accept that. I will tell you why. In the FIU legislation, we have similar provisions, and we did not—[*Interruption*]

**Sen. Dr. Balgobin:** Chairman—

**Sen. Al-Rawi:** AG, let us bring the FIU Act, that cannot be correct AG.

**Sen. Ramlogan SC:** Now, hold on. Hold on.

**Sen. Al-Rawi:** AG, that cannot be correct.

**Sen. Ramlogan SC:** Hold on, let me finish, “nah”. There are many bodies with investigative functions, and if you ask that they go to court to get an ex parte order before they are able to conduct this investigation, then you are unnecessarily bureaucratizing—if I might use that word—the whole process.

**Sen. Al-Rawi:** No, no, no, no, AG.

**Sen. Ramlogan SC:** I mean, listen what would happen.

**Sen. Al-Rawi:** AG, bring the FIU Act.

**Sen. Young:** He is giving the investigating officers more powers in this country than police officers. Police officers can walk into a house—*[Interruption]*

**Mr. Chairman:** Sen. Balgobin, can I hear from you? *[Crosstalk]*

**Sen. Dr. Balgobin:** I thought that I was a fly on the wall. I have a concern here, you know, hon. Minister. I will tell you what. We have in the last few years alone set aside this requirement, that someone has to go to the court before they can trespass on your property, before they can invade your personal space. Ostensibly, he has to get information for an investigation. Even when we are, you know, in the select committee where we are looking at planning, and so on, we are giving people those rights. We have given the SEC these rights. A lot of other agencies and institutions have this, and I think that that—*[Interruption]*

**Sen. Al-Rawi:** No, they do not.

**Sen. Ramlogan SC:** A simple—*[Interruption]*

**Sen. Al-Rawi:** FIU Act, section 12: “Where a financial institution or listed business—they shall apply to the court. *[Interruption]*”

**Sen. Dr. Tewarie:** There is no respect for the fact that—*[Crosstalk and interruption]*

**Sen. Dr. Balgobin:** I feel well—*[Interruption]* I think that we may be chipping away one piece of legislation at a time, at a very hallowed principle, that a citizen has a right to enjoyment of privacy and to property. I want to ask whether you would not consider requiring that they—*[Interruption]*

**2.55 p.m.**

**Sen. Ramlogan SC:** If that is the considered view, we have a divergence of opinion, may I suggest this: if we look at the track changes to subclause (iii), if it reads, “an authorised official shall not enter the premises of a public body or person unless the office first obtains” and we continue.

**Sen. Al-Rawi:** Sure.

**Sen. Ramlogan SC:** And we will be all right with that, guys?

**Sen. Al-Rawi:** Sure, that is fine.

**Sen. Ramlogan SC:** So we will delete the words “outside of normal business hours or premises which are in actual use as a dwelling”. From “outside” to “dwelling” goes and we should be all right with that.

**Sen. Al-Rawi:** Excellent. That meets section 12 of the FIU, AG, which is almost exactly on that point.

**Sen. Ramlogan SC:** Let us move on guys.

**Sen. Vieira:** A lot of these instances, if the person consents and you do not need the warrant, you can search—

**Sen. Al-Rawi:** That is the clause before.

**Sen. Ramlogan SC:** No, no, no.

**Sen. Vieira:** You can consent, but if you do not get the consent, you can go on. Well you have an option. You can decide, well, if I go to consent, I am tipping them off.

**Sen. Dr. Tewarie:** Chair, I would like to say something on this matter. I am not going to go against the consensus position that the AG is seeking to arrive at, but I think, in principle, the whole argument is wrong. What I want to say is this: anybody who is being investigated in this matter by the procurement regulator would have been part and party to a procurement engagement to which the procurement regulator would have had access. The procurement regulator, on the basis of investigation and scrutiny of these matters would then be in a position to determine whether further investigation and access are necessary.

My view on this matter is that you circumscribe the powers of the procurement regulator to establish a decent, honourable and honest procurement regime if you take away these powers and then require him to have notification, basically, of the person intending to be investigated.

**Sen. Ramlogan SC:** Chair, it is ex parte, so there will be no notification. Let us put it and let us move on. It is ex parte. There will be no notification.

**Mr. Chairman:** The question is that clause 43, amended as circulated and further amended in subclause (3) to read:

An authorized officer shall not enter the premises of a public body or person, unless the Officer first obtains on an ex parte application, to a Judge of the High Court, an order authorizing him to enter the premises to conduct an examination under subsection (1)(b).

**Sen. Ramlogan SC:** We do not want to be limit it to (1)(b)—under subsection (1), take out the “(b)”.

**Sen. Young-Rawi:** Attorney General, should we consider ex parte application to a judge in chambers. So it is like proceeds of crime, no? You do not want to do that?

**Sen. Ramlogan SC:** That is not necessary.

**Hon. Senator:** In subclause (4), Chair, you do not want to put a time frame on that? In subclause (4), when they submit the report, you do not want to give them a time?

**Sen. Prescott SC:** He is the procurement regulator’s man, you know. I suppose he determines when he is—

**Sen. Ramlogan SC:** Leave that to the administrator’s discretion.

**Mr. Chairman:** The question is that clause 43 be amended—

**Sen. Al-Rawi:** Sorry, just one quick question, AG. Have we provided for an indemnity for the officers of the procurement office?

**Sen. Ramlogan SC:** Sorry?

**Sen. Al-Rawi:** Have we provided an indemnity, a goodwill exception in non-malice indemnity for the officers acting?

**Sen. Ramlogan SC:** No, we do not need to do so.

**Sen. Al-Rawi:** To protect the officers?

**Sen. Ramlogan SC:** No, no.

**Sen. Vieira:** Remember I raised that clause and you said you will deal with it after.

**Sen. Ramlogan SC:** That is right.

**Sen. Vieira:** It will cover that Faris, but the amendment we are doing is we are stopping after “to conduct an examination.” We are not putting “under subsection (1)”.

**Sen. Ramlogan SC:** We were going to leave it and take out the (b) and leave it under subsection (1). That is fine?

**Hon. Senators:** Yes.

**Mr. Chairman:** The question is that clause 43 be amended as circulated and read.

*Question put and agreed to.*

*Clause 43, as amended, ordered to stand part of the Bill.*

**Sen. Dr. Tewarie:** Chair, I just wanted to ask if this Bill then can be passed with a simple majority now?

**Sen. Ramlogan SC:** It can. The only reason it needed a special majority was because of that provision, which we have now amended, so the Bill can go into simple majority.

**Sen. Dr. Tewarie:** And this is what the Parliament wants? I want to put this on the record. I am asking.

**Mr. Chairman:** Which would mean that you would take away the provision relating to—

**Sen. Al-Rawi:** You want to be sure about that, hon. Minister. I think you may want to check that. This is property rights.

**Sen. Ramlogan SC:** We will continue as is, please. Let us move to the next clause, please.

**Sen. Dr. Tewarie:** I just want to alert the Parliament that what is being done to the Bill and I want to make it clear.

**Sen. Al-Rawi:** We do not agree with you. We do not agree with you. You need a three-fifths.

**Sen. Ramlogan SC:** Let us move on to the next clause, please.

**Mr. Chairman:** We will tackle that as we come to it.

*Clause 44.*

*Question proposed:* That clause 44 stand part of the Bill.

**Sen. Cudjoe:** Chair, I have an amendment, a circulated amendment to clause 44.

**Mr. Chairman:** I take it everybody has the amendment, Sen. Cudjoe has circulated, to clause 44:

After the word “Minister”, the insertion of “Chief Secretary” or “Public Official”.

**Sen. Ramlogan SC:** That is fine.

**Sen. Cudjoe:** Thank you.

**Hon. Senators:** Why would you want “Public Official”?

**Sen. Cudjoe:** Because, like the Office of the President does not have a Minister in charge, so the person would be the President, the Judiciary; remember we would have stated in the definition what a public body is and all public bodies do not have a minister in charge, so whoever is the official in charge, you make the recommendations to.

**Sen. Prescott SC:** I am sorry. I do have a comment on 44. The requirement that the outcome of the investigation be communicated to the public body ought to extend to the private individual as well.

**Sen. Al-Rawi:** Yes. To the person who is the subject of the enquiry.

**Sen. Ramlogan SC:** Shall we say “shall inform the affected parties”?

**Sen. Vieira:** Yes.

**Sen. Ramlogan SC:** “Shall inform the affected parties”. Take off everything and just put “inform the affected parties of the result of that investigation”. And you continue.

**Sen. Dr. Balgobin:** May I ask a question of the officers of the court seeing that you all are here? [*Laughter*] If I have found, as the procurement regulator, something that you have done that is suspicious and so I make my report available to you—I forward a copy to the Director of Public Prosecutions who may wish to prefer charges against you—am I in any way disadvantaging the DPP by sending my report?

**Sen. Ramlogan SC:** No, because what will happen, what you will send him is a letter simply saying that you have been found to be in violation of section—

**Sen. Dr. Balgobin:** So he is not seeing the actual report?

**Sen. Ramlogan SC:** No, you do not give the report.

**Sen. Al-Rawi:** It is the equivalent of a salmon letter.

**Sen. Ramlogan SC:** Yes, that is right.

**Mr. Chairman:** The question is that clause 44 be amended as follows:

After conducting investigation under this Act, this public office shall without delay, in writing, inform the affected parties and the Minister, the Chief Secretary or Public Official having responsibility for that body, of the result of that investigation and make such recommendations as it considers necessary in respect of the matter which was investigated.

*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:** AG, could I ask you a question on clause 45? Clause 45, in principle, I understand what is being done here and why we are sending it to different positions, but:

“The Office shall submit a special report to the Speaker if, during the course of its investigations...there is evidence of a criminal offence...”

And then you go to Commissioner of Police, DPP, et cetera.

“(2) The Speaker shall, as soon as practicable, cause that report to be laid before Parliament and be referred to a Joint Select Committee...”

How are we doing that?

**Sen. Ramlogan SC:** You know—

**Sen. Dr. Balgobin:** That is an operational thing?

**Sen. Ramlogan SC:** No, no, it is not just operational. Would this not be a matter in the annual report?

**Sen. Al-Rawi:** So I understand that because we have parliamentary oversight, we would want certain things, but I am concerned about the pre-trial public disclosure.

**Sen. Ramlogan SC:** Can we just take out the reference to the Parliament, please, so we can say:

The Office shall submit a special report if during the course of an investigation or conclusion...

If we take out: “The office shall submit a special report to...” Take off the words “the Speaker” and if we continue, what happens there? Is that okay?

**Sen. Vieira:** No, you need to say, “to whom”, who you are putting it to.

**Sen. Ramlogan SC:** Yes, to the Commissioner of Police and the DPP.

**Sen. Prescott SC:** Why do they need to get this report?

**Sen. Ramlogan SC:** Well, yes, I was just thinking that.

**Hon. Senator:** Makes a report; just report.

**Sen. Ramlogan SC:** Yes, so take off the special.

**Sen. Vieira:** You can perhaps say, “if it finds that there is evidence of a criminal offence, breach of duty or misconduct on the part of an officer or member of a public body, the Office shall without delay, in the case of a criminal offence, refer the matter to”.

**Sen. Al-Rawi:** That sounds good.

**Sen. Ramlogan SC:** I am just about to check to see what is the section in the Integrity in Public Life Act when the Integrity Commission completes its investigation and the powers to refer it to the DPP. I think we should just cut and paste that section really. It does not make sense reinventing the wheel and there is no need to get Parliament involved. In fact, it might be a breach of the separation of powers to be reporting to the Speaker. So we will get that provision and we will use that because that provision might also refer to any violation of any section of the Act and so on.

**Mr. Chairman:** You want to defer that and come back to it.

**Sen. Ramlogan SC:** I think Mr. Macintyre has it. It will read as follows:

Where after the conduct of an investigation, the Office or the Regulator whatever we want to say—the X is satisfied that there are reasonable grounds for suspecting that an offence has been committed, it shall make a report to the DPP who may take such action as he thinks appropriate.

**Sen. Al-Rawi:** And you may want to put “during” because this thing has—

**Sen. Ramlogan SC:** “I doh not want to put nутten again”. I taking this from the Integrity in Public Life Act.

**Sen. Al-Rawi:** I am more comfortable with that.

**Mr. Chairman:** So that is section 5 of—

**Sen. Vieira:** That is 34(5) of the Integrity in Public Life Act.

**Mr. Chairman:** 35(5)?

**Sen. Ramlogan SC:** 34(5) of the Integrity in Public Life Act.

**Sen. Al-Rawi:** Chap. 21:01.

**Mr. Chairman:** The question is that 45 be amended in the manner as read.

**Sen. Al-Rawi:** AG, you sure are there was not an amendment, right?

**Sen. Prescott SC:** Chair, 45(2), please? Are we using the same approach with 45(2) as we did with an earlier section which required the Speaker to—

**Sen. Ramlogan SC:** No. We are deleting the whole of 45 and we are just replacing it with that one section because it will form part of the annual report.

**Sen. Prescott SC:** All of 45?

**Sen. Ramlogan SC:** Yes.

**Mr. Chairman:** Presumably, AG, (2) will come out—

**Sen. Ramlogan SC:** Yes, absolutely. Yes, Sir.

**Sen. Al-Rawi:** It is section 34(7) of the amended Integrity in Public Life Act.

**Sen. Ramlogan SC:** Thanks.

**Mr. Chairman:** So the question is that clause 45 be amended in the manner read.

*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. Young:** AG, I was going to suggest—sorry, in clause 46:

“No person shall, without lawful purposes, withhold, conceal, destroy...”

So the addition of “without lawful purposes”.

**Sen. Al-Rawi:** AG, the Bill does provide for people being allowed to claim their privileges, right, so I accept that and to be represented under section 42. But I was concerned whether it needed to be qualified other than by way of implication and, in this case, obvious implication.

**Sen. Ramlogan SC:** Well, I do have a circulated amendment later on which I think the concept of reasonableness is one that has to pervade the entire Act and if you look at the amendment we circulated, we can make that a kind of generalized thing but the amendment speaks to say, “no public body”, but we will have to change “public body”—I do not know why we are limiting it to a public body—but “no X shall, without reasonable justification, fail to comply with this Act or any directions issued under it”.

**Sen. Al-Rawi:** AG, you mean instead of 46, which is the “withhold”—

**Sen. Ramlogan SC:** We will have 46 as is, but I am saying we will insert a provision that is a catch-all later. I have circulated it and the provision will read something to the effect, Sen. Vieira:

No “X”—public body or person as the case may be—shall without reasonable justification fail to comply with this Act or any directions issued thereunder.

**Mr. Chairman:** We will circulate it, but we have not got it yet.

**Sen. Ramlogan SC:** Yes, it was circulated.

**3.10 p.m.**

**Sen. Vieira:** I think Sen. Young and Sen. Al-Rawi were concerned with the 46, about somebody that might be invoking the privileges against self-incrimination.

**Sen. Ramlogan SC:** But, you see, would that not be reasonable justification? It would.

**Sen. Vieira:** One section seems to contradict the other and for harmony—  
*Interruption]*

**Sen. Ramlogan SC:** Which section contradicts it?

**Sen. Vieira:** Clause 46 sounds absolute, “No person shall withhold” and do these things, so I think you want to dovetail it with the section that you have just read out.

**Sen. Ramlogan SC:** But this section I read out is one that I wanted to permeate there. It would be a common thread throughout the Act. So we would say that:

No person, no public body shall without reasonable justification fail to comply with this Act which will include any of the provisions.

**Sen. Vieira:** The problem is if you give them reasonable justification in 46, then that gives them a wide latitude to come up with all kinds of excuses as to why reasonable, so without lawful—I would want to—[*Interruption*]

**Sen. Ramlogan SC:** Well, you could say “without lawful justification” if you want, but the point is you cannot do it specific here, and then you have to go through every single one and then put in a provision like that. It is better to do it an with omnibus clause that would permeate there, you know.

**Sen. Vieira:** I agree.

**Sen. Ramlogan SC:** I like how you say the first two words, “I agree”.

**Sen. Al-Rawi:** AG, while they are thinking about other words, it is just something that struck me. In section 40—if you could get a chance to look at it a little bit later—that is the section which deals with people being harassed or dismissed, et cetera. Is it envisaged that the person who is the victim of this can complain and, if so, to who? So we prescribed quite properly that you shall not be victimized for upholding this procurement law.

**Sen. Ramlogan SC:** Yeah, we are fine on that, we are not going back there. If the person is victimized and dismissed under that, it will clearly be a matter that he can use in the Industrial Relations Court and cite in Crane (a), the section 40. Also, it would be a matter that he would make a report to the police and the prosecution will deal with that.

**Sen. Al-Rawi:** So a breach of the Act in general—[*Interruption*]

**Sen. Ramlogan SC:** Chair, we would rest on 46 as is, and we ask that you move on.

*Question put and agreed to.*

*Clause 46 ordered to stand part of the Bill.*

*Clause 47.*

*Question proposed:* That clause 47 stand part of the Bill.

**Mr. Chairman:** Sen. Vieira, are you permanently on?

**Sen. Vieira:** Sorry.

**Sen. Ramlogan SC:** Okay, we are good to go.

**Sen. Al-Rawi:** AG, just the question, insofar as we have provided the exemption for people complying with the Act, other than the public body, I am just sort of concerned to find that equivalent to a section 44E of the Central Bank Act, which provides an indemnity for the officers or employees of the procurement regulator to be indemnified in circumstances where they act in good faith in compliance with the Act.

**Sen. Ramlogan SC:** But being indemnified from, what?

**Sen. Al-Rawi:** Full stop.

**Sen. Ramlogan SC:** But being indemnified from what? If an officer from the procurement office is sued, it is the Attorney General, under the Constitution, that would provide legal representation and I would be sued. If they are sued in their personal capacity for any form of criminal liability then that is a separate, matter then they would have to face the ordinary course of the criminal law, but indemnify them from what.

**Sen. Al-Rawi:** Well, I am borrowing the terms of indemnity which is traditionally—[*Interruption*]

**Sen. Ramlogan SC:** I know, but indemnify them for what. Give me an example.

**Sen. Al-Rawi:** For actions under the Act; for actions taken in acting in accordance with the Act.

**Sen. Ramlogan SC:** No, they could only be sued in two possible ways: a civil or criminal. If they are sued civilly, the Attorney General is the person that will be dealing with that, and if there is any compensation to be honoured, it would be against the State. Criminally, I do not think we can and we should provide criminal indemnity. So, I am happy with that as is.

**Sen. Al-Rawi:** All right. The other thing to think about was whether we wanted to put in a bribery provision at all inside of this Bill.

**Sen. Ramlogan SC:** For what?

**Sen. Al-Rawi:** Any member of the office.

**Sen. Ramlogan SC:** No, because under the normal criminal law that would be an offence in any event. To bribe any public official is against the law. [*Crosstalk*] Yes, misbehaviour.

*Question put and agreed to.*

*Clause 47 ordered to stand part of the Bill.*

*Clause 48 ordered to stand part of the Bill.*

*Clause 49.*

*Question proposed:* That clause 49 stand part of the Bill.

**Sen. Cudjoe:** Chairman—[*Interruption*]

**Mr. Chairman:** Sen. Cudjoe.

**Sen. Cudjoe:**—I think all of Part IV is somewhat related to 14.

**Mr. Chairman:** Part IV? We are on V?

**Sen. Cudjoe:** Sorry, Part V, would be somewhat related to—I made a recommendation on clause 14, it would probably be better suited under Part IV. I do not know where in Part IV.

**Sen. Ramlogan SC:** Well, I can tell you that we have looked—perhaps, I can deal with this. We have looked at the amendment circulated by Sen. Cudjoe, and the amendment seeks a to exempt the Tobago House of Assembly.

**Sen. Cudjoe:** No, no.

**Sen. Ramlogan SC:**—from the provisions of this Act—[*Interruption*]

**Sen. Cudjoe:** No.

**Sen. Ramlogan SC:**—by stating that in matters involving the THA, parties shall be guided by the THA Act. The Government, as a matter of policy, we are not in agreement with that. In fact, what you have highlighted points—as advised by the CPC—to the fact that we need to repeal section 28 of the THA Act, to make the THA expressly subject to the procurement legislation, and that is what we propose to do.

**Sen. Prescott SC:** That is what you are saying for the record, that you will move to repeal 28.

**Sen. Ramlogan SC:** Yes. And section 28, just for the record, is the section that deals that says the THA is subject to the Central Tenders Board Act. Section 28 of the THA Act says:

“The Assembly, in pursuance of its functions, shall be subject to the Central Tenders Board Act until such time as there is in effect alternative provision therefor made by the Assembly under section 52.”

We will be repealing that, and we will make the THA expressly subject to the procurement laws of the procurement law, and that is it.

**Mr. Chairman:** And that is section 20 what of the THA Act?

**Sen. Ramlogan SC:** Section 28 of the THA Act. So, we will be repealing that.

**Sen. Prescott SC:** May I? Just, before you leave it.

**Sen. Ramlogan SC:** Yes, Sir.

**Sen. Prescott SC:** Remember it goes on to say until such time as they make their own rule.

**Sen. Ramlogan SC:** No. Well, we will be repealing it in toto. They cannot make their own rules and thing. THA is funded by taxpayers of this country just like every other public authority that we are making subject to this legislation.

**Sen. Prescott SC:** I imagine it will come before us and we will have to agree.

**Sen. Ramlogan SC:** Sorry?

**Sen. Prescott SC:** I imagine it will come before us and we may have to agree.

**Sen. Ramlogan SC:** I imagine you would most certainly get your chance to speak on it, yes.

**Sen. Cudjoe:** Mr. Chairman and Attorney General, that was not my intention to have the Tobago House of Assembly exempted from this piece of legislation. You totally misconstrued me. Now, Mr. Chairman, if Ministries of the Government would be guided by this, or must comply with this then, of course, the Tobago House of Assembly must comply too.

**Sen. Ramlogan SC:** Fair enough, good.

**Sen. Cudjoe:** But I was making the point—I am trying to bring home that we should also be guided by the Tobago House of Assembly Act where the House of Assembly has the authority to make like policy direction and so on for the Tobago House of Assembly. What I am more concerned about also is the ability of public bodies, all public bodies—which is my second recommendation for 14—that I am saying is better suited here in Part V, should be given the ability to be heard should they be aggrieved by some direction or something. This is what we were discussing yesterday.

**Sen. Ramlogan SC:** Sure.

**Sen. Cudjoe:** So, this is not about trying to get the House of Assembly away from it. Get it right.

**Sen. Ramlogan SC:** That second suggestion is one I did consider and that is the one that says:

A public body may bring challenge proceedings where it is aggrieved by directions or decision made by a Regulator or his Office.

Now, the challenge proceedings, we already have it in clause 49 where they have the right of appeal, and we are content with that.

**Sen. Cudjoe:** Clause 49 speaks about the supplier and the contractor, but it does not speak about the public body. All of Part V speaks about the supplier and the contractor, but it does not give the public body the ability or the opportunity to be heard or to even consult with the office should there be a decision or a direction. Even you, AG, had addressed this yesterday about the right to be heard. Sometimes the fact that you have been heard does not mean that the direction is going to change, but you at least want to have the opportunity to have that discourse and maybe it may influence the decision or the direction of the office.

**Sen. Ramlogan SC:** Okay, if you look at clause 48, you will see that there is, in fact, the opportunity to be heard in 48, so it is covered there. Right?

**Sen. Dr. Tewarie:** Full opportunity to be heard.

**Sen. Ramlogan SC:** Full opportunity to be heard either in person or by an attorney-at-law, so it is there.

**Sen. Young:** If I may, Mr. Chairman, through you, hon. Minister, hon. Attorney General, with these challenge proceedings it seems to me—and I am asking, what exactly is the decision, because right now we say:

“Challenge proceedings may be made by way of an application for review by the Office...”

So, we are envisaging that it is a review being done by the office, but we know with other similar legislation equal opportunity, the Environmental Commission, we actually set up a commission to deal with it. You do not want to bog down your board. Certainly, it cannot be your board dealing with these challenge proceedings, et cetera. So the question I have is: do you—*[Interruption]*

**Sen. Dr. Tewarie:** That is why they have the committees.

**Sen. Young:** No, a committee cannot be the committee set up to deal with challenges.

**Sen. Dr. Tewarie:** Why could you not have a committee that specifically deals with it?

**Sen. Young:** The Attorney General will do the answer to that. It is not only a duplication of resources. What we are giving here is, we are giving quasi-judicial powers to a body, so you have—you can say it very simply here—you have to set up a specific body now to deal with the challenge proceedings. Do not bog it down; bog down your administrative officers—*[Interruption]*

**Sen. Al-Rawi:** Exactly.

**Sen. Young:**—with having to deal with challenge proceedings or refer it to an existing body like the Equal Opportunity Commission.

**Sen. Ramlogan SC:** I think what you are challenging here is, you are challenging the actions of the procuring entity. So the proper place—*[Interruption]*

**Sen. Young:** Correct. So, a Ministry has put out a procurement process and you are not pleased with it, so you want to challenge it.

**Sen. Ramlogan SC:** So, one of the bidders is taking a Ministry before the procurement office for adjudication on whether the Ministry in its capacity—*[Interruption]*

**Sen. Young:**—correct, has gotten it wrong. So, are we leaving the office—we are just leaving it as broad as the office, and let them figure out who they are going to put in place to deal with it.

**Sen. Ramlogan SC:** Yes, and in the regulations we can look at that. That is fine.

**Sen. Al-Rawi:** AG, it would also make sense—sorry, Sen. Lalla—as well—I do not know what your policy is on this—to refer it to a body such as the Equal Opportunity Commission which has an existing structure.

**Sen. Ramlogan SC:** No.

**Sen. Al-Rawi:** Secondly, the other concern that catches my eye is the fact that in a judicial review—because this is that you may—*[Interruption]*

**Sen. Ramlogan SC:** “Continue and make the point nah man.”

**Sen. Al-Rawi:** “Challenge proceedings may be made by way of application for review by the office.”

**Sen. Ramlogan SC:** Yeah.

**Sen. Al-Rawi:** What I am cautious about is a judge saying to you on a judicial review application independent, but you do not want to go there, where the judge says, “Well, hold on”—*[Interruption]*

**Sen. Lalla:** You have an alternative remedy.

**Sen. Al-Rawi:** Exactly, you have an alternative remedy.

**Sen. Lalla:** And what is wrong with that?

**Sen. Ramlogan SC:** Nothing is wrong with that.

**Sen. Lalla:** That is a good thing.

**Sen. Ramlogan SC:** That is the intention here, because you do not want to challenge—[*Interruption*]

**Sen. Lalla:** You have a statutory alternative remedy, make use of it before you come to the court.

**Sen. Ramlogan SC:** That was deliberate Faris; that was deliberate.

**Sen. Al-Rawi:** I just want to make sure that we are aware of the concern there.

**Sen. Ramlogan SC:** We are clear on that. We are very clear on that.

**Sen. Lambert:** Do not let him fool you.

**Sen. Ramlogan SC:** Yes, Chair, we are okay. [*Crosstalk*]

*Question put and agreed to.*

*Clause 49 ordered to stand part of the Bill.*

*Clause 50.*

*Question proposed:* That clause 50 stand part of the Bill.

**Sen. Al-Rawi:** Just a question, AG, the time frames, these are shorter time frames than even what the High Court prescribes. The office has no capacity yet. I do not know how much capacity we are putting in there: three days, seven days, within 20 days. I mean, this thing has to be the most efficient entity in the whole of Trinidad and Tobago.

**Sen. Dr. Tewarie:** That was the idea.

**Sen. Al-Rawi:** Great idea behind the Integrity Commission, and everybody else, the question is making it work.

**Sen. Maharaj:** So, should we prepare for the worst then?

**Mr. Chairman:** The thing is that in construction contracts, I imagine that time is money for delays.

**Sen. Dr. Tewarie:** And there has been litigation which indicates why—[*Interruption*]

**Sen. Al-Rawi:** I am drawing my concern on to the time frame. It is not “my view is the right view”, I am just saying that I am concerned that the time frames are unusually tough.

**Sen. Ramlogan SC:** Faris, I hear your concern, and it may very well be that later on I think somewhere we had put in a provision to allow the office to extend time. Do you remember that? So, that will take care of your concern. [*Crosstalk*] So, we are okay, Chair.

*Question put and agreed to.*

*Clause 50 ordered to stand part of the Bill.*

*Clause 51.*

*Question proposed:* That clause 51 stand part of the Bill.

**Sen. Ramlogan SC:** We are good, Chair.

**Sen. Young:** No, no, not yet, Mr. Chairman, sorry. One of the concerns—and it was actually a concern raised with me by Sen. Cudjoe—is, we say here:

Any supplier or contractor participating in the procurement proceedings to which the application relate, as well as any public body whose interest could be affected... shall have the right to participate.

So a public body can participate if it is affected. The question I have is that we did not give the public bodies the right to commence action. It is only the suppliers and the contractors who have the right to commence an action. If a public body—can we envisage a circumstance where a public body would stand in similar shoes to a supplier or contractor, but not fall under that definition to allow them the ability. [*Crosstalk*] You might be able to. One procuring entity might actually be doing so on behalf of another public body.

**3.25 p.m.**

**Sen. Ramlogan SC:** You see, the concern here is whether you are creating a wasted situation where state resources are just wasted, because you would have a state agency taking another state agency to court.

**Sen. Young:** But that is like the AG versus the THA.

**Sen. Ramlogan SC:** Yeah. [*Laughter*]

**Sen. Al-Rawi:** Well, no problem with that.

**Sen. G. Singh:** National Quarries versus EMA.

**Sen. Young:** Correct. [*Laughter*] EMA versus Petrotrin.

**Sen. Al-Rawi:** Locus and starter became a big issue in section 242 litigation in the Companies Act. [*Crosstalk*]

**Sen. Young:** So we should allow the public authorities to commence challenge proceedings as well.

**Sen. Ramlogan SC:** I think, on a matter of policy, we are prepared to leave it as is so that the State apparatus will be bound by the directions given by the office.

**Sen. Dr. Tewarie:** Yes, or else you will cripple it.

**Sen. Ramlogan SC:** Yeah. Sure.

**Sen. Young:** All right. We have raised it; it is your decision.

*Question put and agreed to.*

*Clause 51 ordered to stand part of the Bill.*

*Clause 52.*

*Question proposed:* That clause 52 stand part of the Bill.

**Sen. Al-Rawi:** In 52, which is the exemption against public hearings, et cetera, can this be challenged? And, if so, how?

**Sen. Ramlogan SC:** No. Challenge how? I do not understand. What was your question? Sorry.

**Sen. Al-Rawi:** So if I stand up and I say, look, I am invoking the issue of prejudice—there is prejudice to the legitimate commercial interest of the suppliers or contractors and then you are excluded out, is there any way to test this?

**Sen. G. Singh:** I do not understand.

**Sen. Al-Rawi:** If you object to it being private as opposed to public, or the non-disclosure?

**Sen. Ramlogan SC:** No. But I am sure in law you could always challenge anything you want.

**Mr. Chairman:** And imagine you would go to court—[*Inaudible*]

**Sen. Ramlogan SC:** Yes.

**Sen. Al-Rawi:** I know, but that is exactly the point I was driving at, unless ordered by a court otherwise.

**Mr. Chairman:** I imagine it will always be that way.

**Sen. Ramlogan SC:** It will always be that way, you do not need to say that. We are okay with this as is, Chair.

**Sen. Al-Rawi:** But we said it elsewhere in the legislation.

**Sen. Ramlogan SC:** Yeah, we are good. Let us go.

**Sen. Al-Rawi:** You cannot be inconsistent in drafting—cannot be sometimes.

**Sen. Dr. Mahabir:** Mr. Chairman, just for clarification, I am not clear with respect to (e); how is this going to impede fair competition?

**Sen. Ramlogan SC:** Well, we do not know, because it is one of the grounds that they could, you know, make it. I will tell you how, for example. You may say that if you have this hearing in public, my competitor, because it is a public hearing, will know all my trade secrets. They will know the recipe for original and spicy chicken for KFC. So I do not want them to know, therefore have it in private.

**Sen. Dr. Mahabir:** But it really would not affect competition; it will simply affect the transfer of information relevant to my trade or industry.

**Sen. Ramlogan SC:** Well, yeah, but that is another way of saying impede fair competition in legal language.

**Sen. Dr. Mahabir:** All right.

**Sen. Ramlogan SC:** So we are good to go.

*Question put and agreed to.*

*Clause 52 ordered to stand part of the Bill.*

*Clause 53.*

*Question proposed:* That clause 53 stand part of the Bill.

**Sen. Drayton:** Very quickly, it is just that the definition under 53 itself—well, not quite definition—where it says:

“This Part applies with respect to the retention and disposal of stores and equipment of a public body that are unserviceable, obsolete or surplus.”

Now, why are we defining why is it to be disposed of?

**Sen. Al-Rawi:** Correct.

**Sen. Ramlogan SC:** Okay, fair enough. We could change it to:

This part applies to the retention and disposal of any asset owned by a public body.

**Sen. Drayton:** Yeah. Whatever.

**Sen. Al-Rawi:** Well that would take care of the concern that I have as to why the exclusion for real property, et cetera.

**Sen. Ramlogan SC:** Yeah.

**Sen. Drayton:** Yeah.

**Sen. Ramlogan SC:** That is what I had in mind as well. So we can say that, Chair.

**Mr. Chairman:** Yeah. So the question is that clause 53 be amended to read:

This Part applies to the retention and disposal of any asset of a public body— but then it goes on to say—that are unserviceable—[*Interruption*]

**Sen. Ramlogan SC:** No. No. Full stop after “body”.

**Mr. Chairman:** Oh. I see. We are taking that out.

**Sen. Ramlogan SC:** Yeah, and we good to go there.

**Sen. Al-Rawi:** And we will amend the heading, “disposal of”.

**Mr. Chairman:** At the end of “a public body”.

**Sen. Ramlogan SC:** Yeah. And we will amend—CPC, we will amend the heading accordingly, but we do not have to do that here.

**Sen. Vieira:** A question though, because this was something that was troubling me. At one point I thought that we were talking about personal property, which is actually defined as part of public property—

**Sen. Al-Rawi:** Yes.

**Sen. Vieira:**—but then since personal property or any asset—which is the language now—is so broad, would this include something, for example, like spectrum under the Telecommunications Act?

**Sen. Al-Rawi:** Yes. Which is a very valuable commodity.

**Sen. Vieira:** Which is why, although at one point I was leading towards the wider definition, I feel perhaps you may want to just restrict it to unserviceable, obsolete equipment, because if you go with any asset, or you go with— [Interruption]

**Sen. Al-Rawi:** What about real property?

**Sen. Vieira:** No. Real property and land is not personal property.

**Sen. Al-Rawi:** I know, but it is not provided anywhere else other than in the functions.

**Sen. Vieira:** Yeah, but, you see, with land you have to go with certain conditions and the deeds about that. But I am very concerned that we do not open up a Pandora's box.

**Sen. Ramlogan SC:** And we are opening it too wide. Yeah.

**Sen. Vieira:** This section was really geared to clearing—*[Interruption]*

**Sen. Ramlogan SC:** Yeah. Old computer and thing.

**Sen. Vieira:** Yeah. Yeah.

**Sen. Al-Rawi:** AG, this comes from the Central Tenders Board Act, right?

**Sen. Dr. Tewarie:** Yes, it does.

**Sen. Ramlogan SC:** It does. Yeah.

**Sen. Al-Rawi:** So I am familiar with the section. The amendment to the CTB, which dealt with land, we dealt with under the functions of the authority—*[Interruption]*

**Sen. Ramlogan SC:** Let me hear your proposal. Keep the “kahaanee” short.

**Sen. Al-Rawi:** Good. I want to know where we are dealing with real property. There are circumstances where you may want to dispose of property as an asset on your balance sheet, which is quite serviceable and quite useable, et cetera. Sen. George would remember the TTPost, when we did that and we wanted to dispose of land and property because it affected the viability.

**Sen. Ramlogan SC:** I agree with you. You see, Sen. Vieira, I understand what you are saying but, you see, the problem is this: the Pandora's box that we are opening, as you say, is subject to clause 54 which will deal with the guidelines for this to be done and at the moment, in the state sector as a whole, you do have a problem with respect to, you know, getting the disposal, and retention and disposal policy, on the whole, is problematic.

**Sen. Vieira:** I agree. But we are talking about stores and equipment. When you say “any asset”—*[Interruption]*

**Sen. Ramlogan SC:** Yeah, I understand. Yeah.

**Sen. Vieira:**—it is a bigger, bigger thing.

**Sen. Ramlogan SC:** Well, in that case, listen—Chair, the line Minister has spoken to me; the policy here was not to treat with land and nothing else, it really is to replicate what is in the existing law in the Central Tenders Board Act, and we are going to leave it as is.

**Sen. Al-Rawi:** That is okay. The question is where do we deal with to give life to the power which we give, the function and power that we give the authority where we establish the office as the agent for public disposal? Right. Where are we dealing with that mechanism for other assets other than this? I am okay if you are treating this separately. The mechanism is okay.

**Sen. Ramlogan SC:** No. I think that would fall under the normal law that governs it. Yeah. In the Act that establishes each body, they would normally have the power to do it and they set out those things there for each body.

**Sen. Young:** So they could just get rid of their assets, *carte blanche*?

**Sen. Ramlogan SC:** No. No. No. Not *carte blanche*. Yeah, according to those laws. Yes.

**Sen. Al-Rawi:** AG, all I am looking to do, to make sense of—I am okay with what you have described there.

**Sen. Ramlogan SC:** Sure.

**Sen. Al-Rawi:** I am fine with the Minister's proposal on the CTB point here, but I just want to know; do we need to put any enabling clause in the Bill to deal with the public bodies complying by sending it through? Remember we said that one of the functions is that they act as agent for public bodies for disposal.

**Sen. Ramlogan SC:** No, I do not think we need to.

**Sen. Dr. Tewarie:** No.

**Sen. Ramlogan SC:** We are okay with this, Chair.

**Sen. Dr. Tewarie:** Yeah, we dealt with that yesterday on page 13.

**Sen. Young:** On page what?

**Sen. Dr. Tewarie:** Page 13.

**Sen. Ramlogan SC:** Let us move on guys, come on.

**Sen. Al-Rawi:** Mr. Chairman, hold on.

**Sen. Vieira:** What is the language? We are using equipment?

**Mr. Chairman:** We are not making any change.

**Sen. Ramlogan SC:** No, we are not making any change, stores and equipment. We leave it as is.

**Sen. Vieira:** In other words, it will have knock-on right through.

**Sen. Ramlogan SC:** We leave it as is because we want you to support the rest of clauses.

**Sen. Young:** The hon. Minister said a short while ago, we dealt with it yesterday at page 13, but what we were dealing with yesterday at page 13, we were getting right the function of the office, so we said—*[Interruption]* Right. And now we are coming to how does it function. So we have here:

“act...in the name”—of—“and on behalf of the State to dispose of real property owned by the Government”

So we are saying that this office can do so. I think the question Sen. Al-Rawi is asking is: Where are we now providing for it to be done?

**Sen. Ramlogan SC:** In clause 54(1): “A public body shall comply with...”

**Sen. Al-Rawi:** But, AG, this is under disposal of stores, equipment that is obsolete, unserviceable.

**Sen. Ramlogan SC:** No but outside of stores and equipment, if the public body wants to dispose of its land or anything, that would be governed by the normal ordinary procedure that currently applies.

**Hon. Senator:** AG, I agree with you on that.

**Mr. Chairman:** Can we just put the heading as assets? So it will cover the stores, it will cover real property.

**Sen. Al-Rawi:** That would work?

**Sen. Ramlogan SC:** No. No. No. That is not the intention.

**Sen. Vieira:** No. No. I would have a real problem if you let land be part of this.

**Sen. Ramlogan SC:** No. No. We are not. That is not the intention.

**Sen. Vieira:** Okay. And I think the language as cast, is the correct way.

**Sen. Al-Rawi:** Just for clarification, Sen. Vieira, would you mind explaining to me, for clarity, how the—*[Interruption]* *[Crosstalk]*

**Sen. Ramlogan SC:** All right. Come on, guys. [*Crosstalk*]

**Sen. Young:** Explain it to Sen. Lambert then.

**Sen. Al-Rawi:** Sen. Vieira, if you would mind just assisting me for the public record. How do you propose that land is being dealt with—disposed of as a power under this Act that is enabled, that is enacted?

**Sen. Vieira:** Well, first of all, I do not know if land should come under the procurement regulator at all.

**Sen. Ramlogan SC:** No. At all.

**Sen. Vieira:** Take, for example, when you had that recent auction of land that the Muslimeen bought, that I do not think would have been a vehicle that would have been amenable to this legislation. So when it comes to land, you have different types of circumstances, and I think we would have other remedies and other laws to deal with land. But I would be very, very cautious about fettering the State and all these other agencies when it comes to real property and land. I think it was wisely kept out.

**Sen. Ramlogan SC:** Sure. Let us move on, Chair.

**Sen. Al-Rawi:** Mr. Chairman, just out of caution, please.

**Sen. Ramlogan SC:** “Oh gosh man, Faris.”

**Sen. Al-Rawi:** I just want to be clear.

**Sen. Cudjoe:** Faris?

**Sen. Al-Rawi:** Yeah.

**Sen. Cudjoe:** It would not be good for us.

**Sen. Ramlogan SC:** Yeah. Take the caution. Let us move on, Faris. We took your points already.

*Question put and agreed to.*

*Clause 53 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. Young:** If I may suggest, AG, that we add at the end of this clause:

and it shall soon notify the Office of the composition of its disposal committee

So in other words, you go ahead and decide your disposal committee, who your members are, but you must notify the office who the members are.

**Sen. Ramlogan SC:** I do not really think that is necessary, you know, Stuart. That is an administrative matter. That is none of their business, really.

**Sen. Young:** All right.

**Sen. Ramlogan SC:** Let us move on, Chair.

*Question put and agreed to.*

*Clause 55 ordered to stand part of the Bill.*

*Clause 56.*

*Question proposed:* That clause 56 stand part of the Bill.

**Sen. Al-Rawi:** Question. Question. Question. Question.

**Sen. Maharaj:** I am not surprised.

**Sen. Al-Rawi:** On (4), we introduced for the first time the term “accounting officer”; did we need to put in the definition clause any reference to that?

**Sen. Lambert:** There is no need to.

**Sen. Ramlogan SC:** No. An accounting officer is known—[*Interruption*]

**Sen. Maharaj:** In the public service.

**Sen. Ramlogan SC:** Yeah, that is known in the public service, who the accounting officer is.

**Sen. Maharaj:** The accountable head.

**Sen. Ramlogan SC:** Yes, it is defined in the Exchequer and Audit Act, so we are fine there.

**Sen. Al-Rawi:** Thank you.

**Sen. Robinson-Regis:** Mr. Chairman, sorry, I just wanted to ask a question. With regard to public body, I know we have the definition of public body, but agencies such as the Integrity Commission, the Trinidad and Tobago Police Service, the EBC—[*Interruption*]

**Sen. Ramlogan SC:** They are all caught by it. They are all caught.

**Sen. Robinson-Regis:** Are you sure?

**Sen. Ramlogan SC:** Absolutely sure.

**Sen. Maharaj:** Look at the definition.

**Sen. Ramlogan SC:** Absolutely sure. Absolutely sure.

**Sen. Robinson-Regis:** Yeah, I looked at the definition.

**Sen. Ramlogan SC:** You know why they are caught, Senator?

**Sen. Robinson-Regis:** Tell me.

**Sen. Ramlogan SC:** Because of the (l) provision with the funds, the public funds.

**Sen. Maharaj:** The public taxpayers' fund.

**Sen. Robinson-Regis:** If I may, Mr. Chairman, let me just assure myself.

**Sen. Maharaj:** The Integrity in Public Life Act has a similar definition for public body.

**Sen. Ramlogan SC:** Mac, what provision is it again?

**Sen. Maharaj:** On page 4.

**Sen. Robinson-Regis:** Okay. I just wanted to be assured.

**Sen. Ramlogan SC:** Right. No problem, Senator. That is fine.

**Sen. Robinson-Regis:** Thanks very much.

*Question put and agreed to.*

*Clause 56 ordered to stand part of the Bill.*

*Clause 57.*

*Question proposed:* That clause 57 stand part of the Bill.

**Sen. Young:** With respect to clause 57, we say we limit it to an employee, I was trying to understand why it is only limited to an employee and I would like to suggest:

...surplus stores and equipment to an officer, employee, or agent of the public body or a member of the board or committee.

**Sen. Ramlogan SC:** No, I think employees—[*Interruption*]

**Hon. Senator:** But “employee” is limited.

**Sen. Ramlogan SC:** Yeah, but—No, an officer would be an employee.

**Mr. Chairman:** It is not only an employee, a member of the board or a committee of the public body.

**Hon. Senator:** The regulator would be an employee.

**Sen. Ramlogan SC:** Yeah. Yeah. Yeah.

**Mr. Chairman:** And it says, “...expressly allowed under Regulations.”

**Sen. Ramlogan SC:** Yes. Yes. We are fine there.

*Question put and agreed to.*

*Clause 57 ordered to stand part of the Bill.*

**3.40 p.m.**

*Clause 58 ordered to stand part of the Bill.*

*Clause 59.*

*Question proposed:* That clause 59 stand part of the Bill.

**Sen. Al-Rawi:** Just a question on the attempt to capture connected parties in clause 59, whether we want it to have a more expansive definition, similar to the SIA or the FIA.

**Sen. Dr. Tewarie:** Which clause?

**Sen. Al-Rawi:** Clause 59.

**Sen. Ramlogan SC:** No, no, we are fine with this. This is fine.

**Sen. Young:** Mr. Chairman, just on a point that was drawn to my attention by Sen. Vieira. At 59(3), we are using that language though:

“No member, officer or employee of a public body...”

**Sen. Ramlogan SC:** That is all right, we did not want to use it twice.  
[*Laughter*]

*Question put and agreed to.*

*Clause 59 ordered to stand part of the Bill.*

*Clause 60.*

*Question proposed:* That clause 60 stand part of the Bill.

**Sen. Al-Rawi:** Mr. Chairman, sorry, “ah” feeling rushed; I am seeing too many smiles opposite me. [*Laughter and crosstalk*]

**Sen. Al-Rawi:** You are on clause 59 or 60?

**Mr. Chairman:** We are on clause 60. [*Laughter*]

**Sen. Al-Rawi:** Sorry, Mr. Chairman, seriously.

**Mr. Chairman:** Sen. Prescott SC, you wanted to break the—

**Sen. Prescott SC:** Yes, the rhythm. Are we at 60?

**Mr. Chairman:** We are on 60.

**Sen. Prescott SC:** I wish in 60(b) that consideration be given, not only to the influencer providing unfair advantage for himself, but for another.

**Sen. Ramlogan SC:** But where does it exclude that in the current wording?

“...directly or indirectly influences in any manner or attempts to influence in any manner any procurement proceedings...”

**Sen. Prescott SC:** I think “obtains” suggests that it is for himself.

**Sen. Young:** “...in order to obtain an unfair advantage...”

**Sen. Ramlogan SC:** No, it does not.

**Sen. Prescott SC:** Would you consider that it might be broader, if it says “for himself or another”?

**Sen. Ramlogan SC:** No, I think that is fine—to obtain an unfair advantage. If it had said to obtain an unfair advantage for himself, I would agree with you, but I do not think it does.

**Sen. Prescott SC:** I am urging that you consider putting the broader language in.

**Sen. Ramlogan SC:** To say what: “in order to obtain an unfair advantage for himself or another”?

**Sen. Prescott SC:** For himself or another.

**Sen. Lalla:** The language as drafted would not prevent secondary parties from being charged.

**Sen. Prescott SC:** It will be difficult to get the conviction.

**Sen. Lalla:** No, a conspiracy is a conspiracy, so if there are secondary parties influencing the person who is involved in it directly, they would still be charged.

**Sen. Al-Rawi:** Interpretation Act.

**Sen. Ramlogan SC:** Under the Interpretation Act, that is correct.

**Sen. Prescott SC:** I am prepared to let it go.

**Sen. Ramlogan SC:** All right; that is wise.

*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:** AG, I think you had some thought on 61 since then.

**Sen. Ramlogan SC:** Mr. Chairman, I beg to move that clause 61 be amended as follows—let us look at this wording, Chair:

Any person who contravenes a section referred to in the first column of Schedule II commits an offence and is liable on conviction to the penalty specified in the third column of that Schedule.

**Sen. Dr. Tewarie:** So we will list them, criminal versus other.

**Sen. Al-Rawi:** Sounding good. If I may just refer us back to—no salt intended to be rubbed into any wound—section 34. We just want to be sure about what we are doing now in terms of the matrix of what constitutes a scheduled offence or not.

**Sen. Ramlogan SC:** We will circulate that.

**Sen. Al-Rawi:** Could we look at that with some care?

**Sen. Ramlogan SC:** We will circulate it, right.

**Sen. Al-Rawi:** So can we come back to that then?

**Sen. Ramlogan SC:** Let us skip that and come back to that then.

**Mr. Chairman:** So we have deferred 61.

*Assent indicated.*

*Clause 61 deferred.*

*Clause 62.*

*Question proposed:* That clause 62 stand part of the Bill.

**Sen. Drayton:** Chair, just for clarification:

“The Minister may, on the recommendation of the Office, make Regulations to give effect to the provisions of this Act...”

I just want clarification of what is meant by “may” here. Is it that he may not, or is it that he may make both on the recommendations of the regulator as well as in his own initiative? I just need clarification.

**Sen. Ramlogan SC:** No, it means he will make the regulations on the advice of; that is how I read it. He makes it on the advice of the office. [*Crosstalk*]

**Sen. Drayton:** This is not discretionary then?

**Sen. Ramlogan SC:** No, I do not think so.

**Sen. Al-Rawi:** Is your trouble with the word “may”, Senator?

**Sen. Drayton:** Well, it seems a bit discretionary to me. If he has the discretion whether to make the regulations or not, I just find it very peculiar.

**Sen. Al-Rawi:** The only care that I have on that AG—[*Interruption*] yes, exactly. I prefer the word “may” for two reasons.

**Sen. Ramlogan SC:** Yes, I think so.

**Sen. Al-Rawi:** One is that we have used it consistently in legislation going, but, two, if we have “shall” and he has not done it, then we are going to invite an immediate lawsuit, even though he probably deserves it.

**Sen. Ramlogan SC:** He will be in breach of the Act and liable to a criminal suit.

**Sen. Al-Rawi:** Correct, so I am sort of cautious about that.

**Mr. Chairman:** It is intended to be permissive in this particular process.

**Sen. Al-Rawi:** That is correct. It is permissive.

**Sen. Ramlogan SC:** That is fine, Chair.

**Sen. Vieira:** Chair, I have a problem with section 62(3). I had circulated a proposed amendment:

Delete the word “negative” and replace with the word “affirmative”.

I feel very strongly that it should be subject to affirmative not negative resolution.

**Sen. Drayton:** Chairman, I think I have a similar amendment.

**Sen. Vieira:** If I may, this Bill is being submitted without regulations. We do not know what those regulations may look like. Everything is going to stand or fall on the strength of those regulations. They need parliamentary scrutiny. We put affirmative regulations for the nurses and midwives council, and to me this is much more significant.

**Sen. Drayton:** Let me add my voice here, because throughout the two years sitting on the Joint Select Committee, this is something that was stressed. The reason for that is that while you have primary law for procurement, the real heart of that law is in the regulations. Everything about procurement is about regulations, and this is why yesterday I asked the question: to what extent do handbooks that are advisory have the force of law? Well, if they do and the legal people here say yes, so be it, but procurement regulations go to the heart of what procurement is all about.

The primary law, as you said, is really skeleton framework law, but the critical core of procurement is what happens in that whole offer/tendering process. And it was agreed—in the committee it was stressed and we have accepted that you could not bring regulations at this point in time, since you do not yet have a regulator, but I think in keeping with the spirit of the entire exercise, which started two years ago, and keeping good faith, if I may plea, that we ought to have the regulations by affirmative action.

**Sen. Dr. Tewarie:** Chair, if that is the wish of the Senate, I have no problem. I just want to say this: a negative resolution does not mean it is not subject to scrutiny or debate.

**Sen. Drayton:** We know that.

**Sen. Dr. Tewarie:** What it does mean, however, is that it is an option that can be taken. Affirmative resolution means you have to debate every single resolution that comes here, and if that is the will of the Senate, then that is fine.

**Sen. Drayton:** Yes.

**Sen. Dr. Tewarie:** But the end result of that is that you may end up with no regulations to manage the procurement.

**Sen. Drayton:** Yes, we take our chance on that.

**Sen. Vieira:** We will take our chances.

**Mr. Chairman:** So the proposal is to affirmative resolution?

**Sen. Ramlogan SC:** Yes, that is fine. [*Crosstalk and laughter*]

**Mr. Chairman:** So the question is that clause 62 be amended by deleting the word “negative” in subclause (3) and replacing it with the word “affirmative”.

*Question put and agreed to.*

*Clause 62, as amended, ordered to stand part of the Bill.*

*Clause 63.*

*Question proposed:* That clause 63 stand part of the Bill.

**Sen. Ramlogan SC:** Mr. Chairman, I beg to move that clause 63 be amended as follows:

63(2) Section 28 of the THA Act is hereby repealed.

Chair, I want an amendment at that stage there. I want to put in the amendment. The repeal of the THA provisions should go in there.

**Mr. Chairman:** Is that a (2)?

**Sen. Ramlogan SC:** Yes.

**Mr. Chairman:** Is THA Act a defined term?

**Sen. Al-Rawi:** Tobago House of Assembly.

**Mr. Chairman:** I know what it is. [*Laughter*]

**Sen. Al-Rawi:** Very subtle, Mr. Chairman, very subtle.

**Sen. Ramlogan SC:** In the marginal note, we change it to repeal.

**Mr. Chairman:** The marginal note says repeal.

**Sen. Cudjoe:** I do have a question. Has there been any consultation with the Tobago House of Assembly on any of this Procurement Bill?

**Sen. Ramlogan SC:** We have not consulted any procurement entity on this.

**Sen. Cudjoe:** Okay.

**Hon. Senator:** In the marginal note, 71:91, the CTB Act.

**Sen. Ramlogan SC:** We changed it to be repealed—marginal note.

**Mr. Chairman:** So you are going take out Chap. 71:91?

**Sen. Ramlogan SC:** Yes, we just say repeal, that is all.

**Sen. Prescott SC:** May I just hear the language of the amendment, please?

**Mr. Chairman:** Section 28 of the THA Act is repealed.

**Sen. Prescott SC:** Do you have the time to look at the Act again? The Act allows for the THA to create its own—

**Sen. Ramlogan SC:** Yeah, but no; as a matter of policy, we are not prepared to allow for that to happen.

**Sen. Prescott SC:** The power to do so does not reside in 28, you see.

**Sen. Ramlogan SC:** Sorry?

**Sen. Prescott SC:** The power to make—

**Sen. Ramlogan SC:** Well, no, but there will be an implied repeal of anything else that will affect this.

**Sen. Al-Rawi:** No, no, no.

**Sen. Prescott SC:** Let us look at it again. I do not have it before me. Is it 71? It is 28 and 71? *[Interruption]*

**Sen. Ramlogan SC:** Sen. Prescott SC, could you just for the benefit of CPC repeat that point.

**Sen. Al-Rawi:** The power is not in section 28.

**Sen. Ramlogan SC:** Not you, Faris. *[Laughter]* The next Prescott. *[Laughter]*

**Sen. Prescott SC:** Under section 28, it is said that the THA is subject to the Central Tenders Board until it makes provisions—I think it is—under the fund. I do not remember the language, but it is a reference to section 71 of the THA Act, which empowers the THA—

**Sen. Ramlogan SC:** Section 52 I think it is.

**Sen. Prescott SC:** I do not remember the number either; as soon as the device is passed to me. *[Interruption]* So I am wondering whether the power—*[Interruption]*

Section 28 says:

“The Assembly, in pursuance of its functions, shall be subject to the Central Tenders Board Act until such time as there is in effect alternative provision therefor made by the Assembly under section 52.”

Section 52 says:

“Within two months of the coming into force of this Act, the Assembly shall, subject to the approval of the President, make such Financial Rules as are necessary for the proper management of its finances...”

**Sen. Ramlogan SC:** Sen. Prescott SC, I am advised by the CPC, and it seems to make sense to me, that section 52 which deals with the financial rules and the THA's power to make those financial rules, will simply mean now, in light of this provision, the THA will have to get its act together and amend its financial rules to bring it into conformity with the Procurement Act of Trinidad and Tobago. It is that simple.

**Sen. Prescott SC:** I reminded you yesterday that there was some necessity in the Act for taking into account the views of the Assembly. I think it was 26(3).

**Sen. Ramlogan SC:** No, we have not—

**Sen. Prescott SC:** It was 26(3) that actually said so, of the THA Act. I am trying to do this on the fly. All it requires—[*Interruption*] It is only 3.54, let us go six minutes more.

**Sen. Ramlogan SC:** No, I think, Chair, we are happy with it as is.

**Sen. Al-Rawi:** But, AG, you also have to be happy with the savings provision too. You are putting in a new (2) and we have to save the work done under the THA.

**Sen. Ramlogan SC:** Well there is a transitional provision. When we come to that, we will—it is 64.

**Sen. Al-Rawi:** Look at the language of 63. [*Crosstalk*]

**Sen. Ramlogan SC:** We will deal with it when we come there, Faris. That is fine, but we are on 62 now, you know.

**Sen. Al-Rawi:** No, we are on 63.

**3.55 p.m.**

**Sen. Young:** Sorry. I think the specific provision in the Tobago House of Assembly Act is 25—25(1) says:

“Without prejudice to section 75(1) of the Constitution, the Assembly shall, in relation to Tobago, be responsible for the formulation and implementation of policy in respect of the matters set out in the Fifth Schedule.

“(2) For the better performance of its functions, the Assembly is hereby empowered to do all such acts and take all such steps as may be necessary for, or incidental to the exercise of its powers or for the discharge of its duty and in particular the Assembly may—”

And this the particular provision:

- “(a) devise mechanisms to ensure protection and security of property, buildings, or other assets under its control;
- (b) enter into such contracts as it deems fit for the efficient discharge of its functions;” et cetera, et cetera.

**Sen. Ramlogan SC:** I understand.

**Sen. Young:** So it specifically sets out, and the Constitution protects that the THA has the right for the formulation of policy. That is one of the things that was dealt with the Milshirv matter.

**Sen. Ramlogan SC:** I do not think that this is a matter that affects their right to make policy for anything. This is a matter that speaks to—

**Sen. Young:** No, but it is implementation not formulation and implementation.

**Sen. Ramlogan SC:** No. Hold on. Sure. But this is a clause that would speak to the method or the process and procedure by which you procure goods and services. It does not in any way interfere or tamper with the THA’s ability to make policy for Tobago.

**Sen. Young:** So they will come with their own regulations, their own guidelines, et cetera, for approval by the office.

**Sen. Ramlogan SC:** Yes. Correct.

**Sen. Young:** That is one way of dealing with it.

**Mr. Chairman:** I am surprised that we had two forms of procurement, one for Trinidad and one Tobago.

**Sen. Ramlogan SC:** Indeed.

**Sen. Young:** That is not the point being made, with the greatest of respect.

**Sen. Ramlogan SC:** So can we therefore proceed on that basis then?

**Sen. Prescott SC:** It is the financial rules and substitute that spell troubled rules.

**Sen. Al-Rawi:** That is exactly it.

**Sen. Ramlogan SC:** But you know, on that, the advice of the CPC is that they will have to bring their financial rules into conformity with this Act.

**Sen. Prescott SC:** And what obliges them to do so? Is it—

**Sen. Ramlogan SC:** Well the fact that they are going to jail if they do not. That is what obliges them to do so.

**Sen. Prescott SC:** No. Some legislative language could be used that makes it—[*Crosstalk*]

**Sen. Young:** Just exclude the financial rules.

**Sen. Ramlogan SC:** We cannot exclude the financial rules. If the financial rules conflict with this Act, then the Act must override.

**Sen. Cudjoe:** If you read—may I make an intervention here, please? I think we are talking around a non-issue because if you read the end of 52 it says that:

“these financial rules and regulations have to be brought to Parliament.”

And I know that the THA is in consultation with the Minister of Finance and the Economy on these financial rules.

**Sen. Ramlogan SC:** Sure.

**Sen. Cudjoe:** So they will have to be brought to Parliament.

**Sen. Ramlogan SC:** Sure. So they will make sure that they conform. Thank you. That is fine.

**Sen. Al-Rawi:** What is your point?

**Sen. Ramlogan SC:** All right. Let us move on, Chair.

**Sen. Cudjoe:** No. No. I have a question. Therefore, it does not make sense to delete 28.

**Sen. Ramlogan SC:** No. We have to delete 28, that is the advice of the CPC and I agree with him because—

**Sen. Cudjoe:** Because if you are saying that the Assembly has to comply with the legislation, which you have already said in 14, now saying that—

**Sen. Al-Rawi:** AG, you will have to keep it, but amend it. Remove Central Tenders Board Act reference and substitute this Bill: “Where upon proclamation.” Remember, it happens upon proclamation. That will then feed the life into section 52, and make a sense of the Act.

**Sen. Young:** That is the most sensible way because it will then read.

“The Assembly, in pursuance of its functions, shall be subject to the Public Procurement”—

**Sen. Ramlogan SC:** All right. Chair, on this issuing the advice of the Chief Parliamentary Counsel is that we should repeal and there is no need to do anything further, and the Government rests on that, Sir. Thank you very much.

**Sen. Al-Rawi:** No.

**Sen. Cudjoe:** No. No. No. No. If you—

**Sen. Al-Rawi:** Just give me the logic as to what the mischief is in amending section 28?

**Sen. Ramlogan SC:** The logic as provided by CPC, with which I agree, is that this Act already says that the THA is subject to the provisions of it as a public body, and therefore, in light of that we need to expressly repeal a conflict in provision that makes the THA subject to the Central Tenders Board rules and regulations, and in so doing, once we repeal that, the THA then falls to be subject to this Act, and any consequential things that are required to be done by the THA, just as any government Ministry or Petrotrin or WASA, will have to be done. It is that simple.

**Sen. Al-Rawi:** Will you achieve the same purpose and keep the sense of the THA Act by saying that the THA shall be subject to the procurement Bill.

**Sen. Ramlogan SC:** That is already said.

**Sen. Dr. Tewarie:** It already is.

**Sen. Ramlogan SC:** And it already subject to this.

**Sen. Al-Rawi:** We are talking about making sense of sections 52 and 28—

**Sen. Young:** Because it is already in the CTB Act. The CTB Act already would have the same reference to the THA Act, and vice versa. So by saying that this procurement Bill now refers to the THA Act, is not the answer. When you look section 28 of the THA Act, it is very specific.

“The Assembly, in pursuance of its functions, shall be subject to the Central Tenders Board Act...”—let us pause here.

We can remove that and replace it with “Public Procurement and Disposal of Property Act”, whatever day, whatever year:

“until such time as there is in effect...”

**Sen. Ramlogan SC:** All right. Listen, we have heard you all. The advice of the CPC, with which I agree and the Government rests on, is that we will repeal section 28, and we will proceed on that basis. Thank you. [*Crosstalk*]

**Sen. Al-Rawi:** That is inviting a constructive summons.

**Sen. Prescott SC:** Without disagreeing with the Attorney General, why do you not take the bold step of addressing 52 and say “There shall be no financial rules”?

**Sen. Ramlogan SC:** It conflicts with this?

**Sen. Prescott SC:** No. They shall not make any.

**Sen. Al-Rawi:** Correct.

**Sen. Prescott SC:** Insofar as it addresses—[*Crosstalk*]

**Sen. Ramlogan SC:** I can do that.

**Sen. Prescott SC:** Insofar as it addresses procurement, I am saying.

**Sen. Al-Rawi:** The problem is that you are constitutionally dealing with—

**Sen. Ramlogan SC:** Well, Mr. Prescott, the only reason I do not want to go there is because—look, it would be impossible after this becomes law for the THA to make any financial rules that is in conflict with this Act.

**Sen. Prescott SC:** Actually I was saying specifically towards procurement.

**Sen. Cudjoe:** Specifically towards procurement.

**Sen. Ramlogan SC:** Let us leave it—by necessary implication—

**Sen. Prescott SC:** They cannot go against this.

**Sen. Ramlogan SC:** Correct. Correct. All right.

**Sen. Prescott SC:** I could resign from that position.

**Sen. Lalla:** The point is that this Act, being a specific Act which is later in time must trump the THA Act to the extent that there is any inconsistency.

**Sen. Cudjoe:** But constitutionally.

**Sen. Al-Rawi:** And Sen. Lalla, what we are trying to do is to avoid having a judge construe the legislation in that way. Why make an application to court necessary for doubt.

**Sen. Lalla:** But there is only one way it can be construed.

**Sen. Al-Rawi:** Because we are repealing this section which feeds back to 28 and feeds back to 52, that is our concern in conjunction with the constitutional guard.

**Mr. Chairman:** The question is that clause 63 be amended by introducing a subclause (2) as follows:

“Section 28 of the Tobago House of Assembly Act is repealed.”

**Sen. Al-Rawi:** The concern with that, Mr. Chairman, is that 63(1) would have the good caution introduced saying that the Central Tenders Board continues to have effect and a reference, et cetera. Is there to be parity with respect to the arrangements on the THA.

**Mr. Chairman:** Right now I am putting the question—

**Sen. Al-Rawi:** Okay.

**Mr. Chairman:**—and therefore, it calls for a vote.

**Sen. Al-Rawi:** AG, did you just hear what we just said?

**Sen. Ramlogan SC:** Yeah.

*Question put.*

**Sen. Ramlogan SC:** Clause 63.

**Sen. Al-Rawi:** So would you just read what 63(1) would be, Mr. Chairman, in its entirety because you have introduced a 63(2)?

**Mr. Chairman:** One remains exactly at it is. It has the figure (1) before it.

**Sen. Al-Rawi:** So the words:

“...save that any actions in respect of a procurement or disposal of public property which had commenced before the proclamation of this Act shall proceed as if the Central Tenders Board Act continues...”. That is not to apply to the THA.

**Hon. Senator:** Of course, it does.

**Sen. Al-Rawi:** Just being sure.

**Mr. Chairman:** The repeal will now take effect until the proclamation is made.

**Sen. Ramlogan SC:** Yes. Come on now, Faris, man. That is—

**Sen. Al-Rawi:** I am looking at the “savings”, you know, guys.

*Question agreed to.*

*Clause 63, as amended, ordered to stand part of the Bill.*

*Clause 64 ordered to stand part of the Bill.*

*Clause 65.*

*Question proposed:* That clause 65 stand part of the Bill.

**Sen. Al-Rawi:** Quick question, AG.

**Sen. Ramlogan SC:** Yeah.

**Sen. Al-Rawi:** Does the assent—does the reference to the section applying to an officer who at the date of assent purposeful, as opposed to proclamation?

**Sen. Ramlogan SC:** We can say “proclamation”, that is fine.

**Sen. Al-Rawi:** No. No. I just want to be sure because I want—

**Sen. Ramlogan SC:** I am agreeing with you.

**Sen. Al-Rawi:** No. But I am not sure. I am asking the question because I wondered if you needed it enabled for pension benefits prior. So I do not know if it was a mistake or on purpose.

**Sen. Ramlogan SC:** No.

**Sen. Al-Rawi:** It is deliberate.

**Sen. Ramlogan SC:** It follow TTPost.

**Sen. Al-Rawi:** That is what I wanted to know. It is to preserve the entitlement to superannuation. Right.

**Chief Parliamentary Counsel:** There is a separate provision for superannuation.

**Sen. Ramlogan SC:** So why is it relevant here to put assent as opposed to—?

**Chief Parliamentary Counsel:** Because you want them to start working on—

**Sen. Ramlogan SC:** It is to facilitate the commencement of operationalize the Act.

**Sen. Al-Rawi:** Thanks for clarifying.

**Sen. Ramlogan SC:** Right.

*Clause 65 now stands part of the Bill.*

*Clause 66.*

*Question proposed:* That clause 66 stand part of the Bill.

**Sen. Al-Rawi:** AG, unless no one has any objections, I have nothing up until 69 to make any adjustments. [*Desk thumping*]

**Sen. Ramlogan SC:** Yes, Chair, can we take them in groups? We will take them in a group. [*Crosstalk*]

*Question put and agreed to.*

*Clause 66 ordered to stand part of the Bill.*

*Clauses 66 to 68 ordered to stand part of the Bill.*

*Clause 69.*

*Question proposed:* That clause 69 stand part of the Bill.

**Sen. Al-Rawi:** AG, I also—I thought Sen. Young had an observation there which is why I reserved it. Just give me one second. No. Thank you. We are okay on it.

*Question put and agreed to.*

*Clause 69 ordered to stand part of the Bill.*

*Clause 14 recommitted.*

*Question again proposed:* That clause 14 stand part of the Bill.

**Mr. Chairman:** We are revisiting clause 14. It is on page 14 of the track change Bill. Clause 14 we are revisiting, also on page 14 of the track change. You have a typed version of what you want? Or shall I read it out first—

**Sen. Ramlogan SC:** Yes. Please do.

**Mr. Chairman:**—so that Members understand what we have on the table and what they would like to do.

**Sen. Ramlogan SC:** Yes, please. Clause 14, please.

**Mr. Chairman:** So is it as this? I am not sure where it came from.

**Sen. Al-Rawi:** Is there a circulated amendment?

**Sen. Ramlogan SC:** At 14(2), and we propose this:

“No public body or person shall without reasonable justification fail to comply with this Act or any directions issued to it”—or any directions issued thereunder, I suppose.

And that is it. [*Crosstalk*] Yeah. Yeah.

**Mr. Chairman:** You said, “issued thereunder” right.

**Sen. Ramlogan SC:** Yes.

**Sen. Al-Rawi:** This is different to what was circulated.

**Sen. Ramlogan SC:** “No public body or person shall without reasonable justification fail to comply with this Act or any directions issued thereunder.” Sen. Vieira.

**Sen. Vieira:** No problem.

**Mr. Chairman:** Can I ask under subclause (3), is it no finding that a “public body or person”—you are going to introduce there?

**Sen. Ramlogan SC:** Sorry. No. No. We are not pursuing the subclause (3) beneath it because clause 48 already deals with that.

**Mr. Chairman:** All right.

**Sen. Ramlogan SC:** I beg your pardon. Forty-eight. Yeah.

**Sen. Drayton:** So it is only 14(2) then?

**Sen. Ramlogan SC:** Yes.

**Sen. Drayton:** Okay.

**Mr. Chairman:** So 14(1) remains as is. And in place of 14(2) that is here, we bring in a new (2) which the Attorney General just read. Correct?

**Sen. Ramlogan SC:** Yeah. But I think Sen. Prescott wanted to check clause 48 to make sure that—it speaks of the report. Is it wide enough to cover or—you are happy with it?

**Sen. Prescott SC:** Yeah.

**Mr. Chairman:** So we will only have (1) and (2) in 14 now as proposed.

**Sen. Cudjoe:** I have a question; a clarification, please. AG—

**Sen. Ramlogan SC:** Yes.

**Sen. Cudjoe:** By saying what you just said under 14(2), right—

**Sen. Ramlogan SC:** Yeah.

**Sen. Cudjoe:**—without reasonable justification, right—

**Sen. Ramlogan SC:** Sure.

**Sen. Cudjoe:**—that means you are supposed to create an avenue for that “public body” to present that “reasonable justification”—48.

**Sen. Young:** Actually, we just looked at 48, and 48 is something specific to a report. This is not—

**Sen. Ramlogan SC:** I was just asking Mr. Prescott. [*Crosstalk*] So you realize what I was saying.

**Sen. Cudjoe:** And that is what I was saying earlier, it should be under Part V.

**Sen. Ramlogan SC:** One second. One second. You understand what I am saying?

**Sen. Prescott SC:** My original position needs to be—

**Sen. Ramlogan SC:** Correct.

**Sen. Prescott SC:**—that your new (3)—

**Sen. Ramlogan SC:** Needs to be in.

**Sen. Prescott SC:**—needs to stand on its own.

**Sen. Ramlogan SC:** That is what I was thinking. So we will need to put in both subclauses, Chair.

**Mr. Chairman:** Oh, you want to put in—

**Sen. Ramlogan SC:** The (2) and (3). Yeah. Because, you see, 48 deals with a special report situation; it is very limited.

**Sen. Prescott SC:** Thank you very much.

**Sen. Ramlogan SC:** Yeah. So we go with (2) and (3).

**Mr. Chairman:** So I will ask the question, after “public body” in line one, are you adding “or person”?

**Sen. Ramlogan SC:** Yes, we are, Chair.

**Sen. Dr. Tewarie:** Did you include in there Sen. Vieira’s amendment?

**Mr. Chairman:** I thought he had, in light of this that—

**Sen. Vieira:** No. No. No. I had disposed of one amendment which was the one about giving them protection against personal liability.

**Sen. Ramlogan SC:** Well, we will come to that after this, please. [*Crosstalk*]

**Mr. Chairman:** But on 14, [*Crosstalk*] on 14.

**Sen. Vieira:** I took out my 14.

**Mr. Chairman:** That is what I understood. Sen. Prescott.

**Sen. Dr. Tewarie:** So you do not want it?

**Sen. Prescott SC:** The words “or person” will appear in line four. Is that right? Well lines one and four.

**Sen. Al-Rawi:** One, two, three—three times.

**Mr. Chairman:** And a “public body or person”—

**Sen. Prescott SC:** Twice in line four.

**Sen. Al-Rawi:** The reference to subsection (1)(c) in the new (3) has to come out.

**Sen. Ramlogan SC:** No, that has to come out, yes. It is any direction issued under this Act.

**Mr. Chairman:** Under this Act, rather than subsection (1)(c).

**Sen. Ramlogan SC:** Yes, Sir. And we are accepting Sen. Vieira’s amendment to clause 14.

**Sen. Dr. Tewarie:** Yes.

**Sen. Ramlogan SC:** Which he withdrew, which we have insisted upon because the Government is interested in and committed to transparency and integrity in public life—not to imply that Sen. Vieira is not.

**4.10 p.m.**

**Mr. Chairman:** Attorney General, are we restricting 14 to an additional (2) and (3)?

**Sen. Ramlogan SC:** And a (4), as per Sen. Vieira.

**Mr. Chairman:** Oh, and (4), as per Sen. Vieira.

**Sen. Ramlogan SC:** Yes. We are accepting his amendment.

**Mr. Chairman:** Despite his withdrawal?

**Sen. Ramlogan SC:** Yes, we have withdrawn his withdrawal.

**Mr. Chairman:** So, we have Sen. Vieira having circulated at 14(3)(a) that says:

“at all times the office shall in the performance of its functions and exercise of its power act in an objective and non-discriminatory manner.”

and 14 is amended by the inclusion of a (2) which will read:

“No public body or person shall without reasonable justification fail to comply with this Act or any directions issued thereunder;”— and at (3):

“no finding in a public body or person failed without reasonable justification to comply with the direction issued under this Act shall be made unless reasonable notice has been given to the public body of the alleged failure”—

**Sen. Al-Rawi:** “or person.”

**Mr. Chairman:**—“or person of the alleged failure, and the public body or person has been allowed full opportunity to be heard either by a senior officer or by an attorney-at-law;”

And then (4) as read, presented by Sen. Vieira, withdrawn and restored.

*Question put and greed to.*

*Clause 14, as amended, ordered to stand part of the Bill.*

*Clause 24 recommitted.*

*Question again proposed:* That clause 24 stand part of the Bill.

**Mr. Chairman:** Clause 24 is the next one we deferred and we revisited.

**Sen. Ramlogan SC:** What was the issue here again? I thought we passed clause 24, did we not?

**Sen. Al-Rawi:** No, section 66A.

**Mr. Chairman:** No, we had taken that out.

**Sen. Al-Rawi:** Oh, we took it out, okay.

**Sen. Ramlogan SC:** Yes, so that is fine. We can put it to the vote if you did not already have it, but I think we had voted on it, you know.

**Sen. Young:** What it was, is the chairman had said he would get a typed up one of all the various amendments, but I think—

**Sen. Ramlogan SC:** Yes, we passed that. Just put it to the vote, Chair, for the record?

**Sen. Al-Rawi:** That was the Audit and Exchequer Act inclusion, right.

**Mr. Chairman:** What I would say to you, I will just read the new (4) which is 24(4). “the speaker shall as soon as practicable”—no, no.

**Sen. Al-Rawi:** It cannot be speaker.

**Mr. Chairman:** Well, I do not have one.

**Sen. Lalla:** The President of the Senate and the Speaker—

**Sen. Ramlogan SC:** No, we circulated it, one second, Sir. Here it is.

**Sen. Al-Rawi:** We have not seen that yet, eh.

**Sen. Ramlogan SC:** Mac, is this it, pass the Chairman a copy. You all have a copy?

**Sen. Al-Rawi:** No, what we got was the Audit and Exchequer provision. We did not get that.

**Sen. Robinson-Regis:** Yes, we have not got that

**Mr. Chairman:** I will read it out.

**Sen. Ramlogan SC:** Yes, that is correct. [*Interruption*]

**Mr. Chairman:** All right, so what I have here is, (4) will now read:

“The office shall submit its reports annually to the Speaker, the President of the Senate and the Minister.”

And then we have another subclause which reads:

“The President of the Senate and the Speaker shall cause the report to be laid before the Senate and the House of Representatives respectively at the next sitting of the Senate and the House of Representatives after the receipt thereof respectively.”

So that we would renumber what is (5) into (6), based on what we circulated.

**Sen. Al-Rawi:** Only question is, did CPC look at 24(1) and is that okay in light of those amendments? “The regulator shall submit an annual report to Parliament no later than...” [*Interruption*] No, I understood that, Mr. Chairman, he had amended subsection (4), introduced a new (5), I do not think he dealt with (1).

**Mr. Chairman:** Oh, I see. So, “The office shall submit its reports annually to the Speaker, the President of the Senate and the Minister.”

**Sen. Al-Rawi:** “Regulator”.

**Mr. Chairman:** Is it “Regulator” or “office”?

**Sen. Young:** Clause 24(1) is, “The Regulator shall submit an annual report to the Speaker”—or—“to the President of the Senate and the Speaker of the House of Representatives”.

**Mr. Chairman:** So that 24(1) would be deleted as it stands in the draft circulated. and would be replaced by:

“The Regulator shall submit his reports annually to the Speaker, the President of the Senate and the Minister.”

**Sen. Young:** That would make sense. Correct.

**Mr. Chairman:** The other clause would be the new replaced (4).

**Sen. Al-Rawi:** Yes, you are deleting 4 and replacing it with what is (5) on the circulation.

*Question put and agreed to.*

*Clause 24, as amended, again ordered to stand part of the Bill.*

*Clause 61 reintroduced.*

**Sen. Ramlogan SC:** This is the Schedule. We have circulated them.

**Sen. Al-Rawi:** No, we have not gotten it.

**Sen. Ramlogan SC:** Mac.

**Sen. Robinson-Regis:** We do not have it.

**Sen. Ramlogan SC:** Wait one second, it is coming.

**Sen. Dr. Tewarie:** Schedule 2.

**Mr. Chairman:** It is being circulated.

**Sen. Ramlogan SC:** Chair, can the person deal with the clause to introduce the Schedules? The amendment to the clause would be at 61, “a person who contravenes a section referred to in the”—[*Interruption*—]—did you get it before?

**Sen. Al-Rawi:** No.

**Sen. Ramlogan SC:** It will be 61(1):

“any person who contravenes a section referred to in the first column of Schedule II is liable on conviction to the penalty specified in the third column of that Schedule.”

All right? And here we have attempted to set out all of the offences in the Act. I took great trouble and care to do this last night, Sen. Vieira.

**Sen. Vieira:** I like it.

**Sen. Ramlogan SC:** You like it.

**Sen. Vieira:** And that explains why we still need a three-fifth majority.

**Sen. Ramlogan SC:** Yes. Mac, you did not want to clarify it.

**Mr. Chairman:** So, can I read it as I have it?

**Sen. Al-Rawi:** We want to digest it first, Mr. Chairman, if it is okay? Sorry, the Schedule, I thought you were going to re-read the whole thing.

**Mr. Chairman:** Oh, no.

**Sen. Al-Rawi:** Just the first part? Sure, sorry about that.

**Mr. Chairman:** Yes, just the first part, the actual substantive clause will read: “Any person who contravenes the section referred to in the first column of Schedule Two, commits an offence, and where no penalty has been provided for the offence, is liable on conviction to the penalty specified in the third column of that Schedule.”

And yes, you would review the schedule. *[Interruption]* No, they want a chance to review it and see if they have anything. Sen. Al-Rawi, we are going to take the schedule as a separate item as we are required to do.

**Sen. Al-Rawi:** I understand, I am just trying to digest the fact that column three actually has specified penalties, so I see the dash is indicative of no penalty. Right? So, then that does not make sense of the amendment? *[Crosstalk]* Well, help me, help me?

**Hon. Senator:** Dash is a ditto.

**Sen. Al-Rawi:** Well, a dash is not a ditto, you know.

**Sen. Young:** Well, that is what I was now saying, this thing has no teeth. Okay, so it is ditto.

**Sen. Ramlogan SC:** Ditto, ditto. We can take out the ones marked, “complain to the regulator”, because that is not meant to be there. I put it in any event just so you can see it.

**Mr. Chairman:** Dash is the new ditto, I think?

**Sen. Ramlogan SC:** Yes, that is right. *[Interruption]*

**Sen. Robinson-Regis:** Mr. Chairman, are we going to go through the schedules separately?

**Mr. Chairman:** We are going to go through the schedules separately as we are required to do, so can put the question now and go to the schedule. Okay? So, now we understand what dash means, it does not mean dash away, it means ditto. [Laughter]

*Question put and agreed to.*

*Clause 61, as amended, ordered to stand part of the Bill.*

**Mr. Chairman:** Sen. Drayton, are there anymore clauses that you want to put forward for our consideration?

**Sen. Drayton:** Well, there was one, but, you know, I think it is something that could be dealt with in the regulations, and really it had to do with terms of reference with respect to the members of the board and the committee, in particular, and that is members of the board and the committee. Of course, they should not be members of any municipal corporation, Parliament, the Tobago House of Assembly, and subject to section 19, employed in any capacity in the service of a public body.

In other words, this law establishes committees, so that if you have a person who is a consultant, say, to T&TEC, on projects, et cetera, one would assume that such a person would not qualify to sit on a committee, civil or otherwise. I think it is sufficiently important. It is not just a question of conflict of interest, in that conflict of interest means you just recuse yourself from meetings, but such a person should not be party to deliberations of the board or the committee.

And in as much as we are addressing fit and proper guidelines in the regulations, this is something that could be addressed in the regulations as well, but I think it is sufficiently important and it would be found in Central Bank and other regulatory frameworks.

**Mr. Chairman:** Minister, Sen. Drayton is saying you should expect that those things be addressed in the guidelines.

**Sen. Drayton:** In the regulations.

**Mr. Chairman:** In the regulations.

**Sen. G. Singh:** Chairman, that undertaking was given—

**Mr. Chairman:** Who a fit and proper person—may be excluded.

**Sen. G. Singh:** That undertaking was given by the Attorney General.

**Mr. Chairman:** And Sen. Vieira, you have anything further?

**Sen. Vieira:** I have one amendment to be accepted, Sir.

**Mr. Chairman:** To which clause?

**Sen. Vieira:** It was a new clause.

**Mr. Chairman:** A new clause, all right. So, we are coming to a new clause. And that is?

**Sen. Vieira:** Limiting personal liability—I think Sen. Al-Rawi had also raised the concern about authorized officers doing searches and inspections, so my clause was that:

“No personal liability shall attach to the regulator or to any member of the office, personnel of the office, or authorized officer for—

(a) any act or omission of the office; or

(b) anything done or permitted in good faith in the course of the operations of the authority under this Act.”

**Mr. Chairman:** I think two things the Attorney General had said relative to this, there were two claims that fell in the categories of either civil or criminal, that if it was civil, then the Attorney General would defend the matter or have to compensate, and if it was criminal, then he would not want to protect any officer or member of the commission.

**4.25 p.m.**

I do not know if that addressed your issue, but I recall that statement.

**Sen. Vieira:** No, because, maybe you can sue and the office will indemnify the particular individual. But what you do not want, is when you have regulators who are carrying out public duties, feeling at risk of a lawsuit in which they may be personally liable, you see, and cost orders being made against them.

**Sen. Maharaj:** How does that mesh with the third item on the Schedule, where the regulator is personally liable for \$500,000.

**Mr. Chairman:** You understand what he is asking, Sen. Vieira?

**Sen. Vieira:** Yes.

**Sen. Lalla:** There are certain omissions under the Act that might attract a criminal sanction. [*Crosstalk*]

**Sen. Ramlogan SC:** I think if we can start by looking at the ones at clauses 20, 24, 26 and 27. I do not think they belong here.

**Sen. Coudray:** No, the language too. [*Crosstalk*]

**Sen. Ramlogan SC:** Yeah, a lot of them do not belong, so we can go through it and take them out, you know. Because those are not really things to be criminalized as such. Let us go through it one by one, like clause by clause, but we are going to finish.

**Mr. Chairman:** We still have this clause to consider. I do not know what has happened to it.

**Sen. Ramlogan SC:** Which other clause?

**Mr. Chairman:** We need to finish—there is a new clause being proposed by Sen. Vieira in his amendment.

**Sen. Vieira:** Suspecting against personal liability for people in the office in the course of the performance of their duties and functions.

**Sen. Ramlogan SC:** I thought I had addressed that with Sen. Al-Rawi. You may recall that I pointed out that on the civil side, there is really no room for personal liability because you would be acting—once you are performing your duties as a functionary of the State, it is the State that accepts liability for any civil wrong doing on the part of its employees. So there is really no need for that, and we cannot immunize them from criminal liability. But on the civil side, any public servant who does anything in the performance and execution of their public duties, it is the Attorney General that you sue, police officers, you know.

**Sen. Vieira:** I know you sue the Attorney General, but a person could still feel that they might be subjected to personal liability—they are not always assured.

**Sen. Ramlogan SC:** No, but if we start putting it in this law, we would have to put it up in every single law.

**Sen. Al-Rawi:** AG, it is already there. It is in the major laws. It is in the FIU, it is in the Central Bank, it is in the SIA, in the securities, in planning. It is in all the major laws where you have an investigator function being performed. It is in all of them.

**Sen. Ramlogan SC:** No, but I think it is—

**Sen. Maharaj:** Which major law?

**Sen. Al-Rawi:** Central Bank, section 44E. Securities Industries Act; SEC Act; the Insurance Act; in the planning Bill—

**Sen. Vieira:** It is in the Public Authorities and Protection Act, the Data Protection Act, it is in the EMA Act, it is in the Securities Industry Act.

**Sen. Ramlogan SC:** No, but what you indemnify them from though?

**Sen. Al-Rawi:** It is civil liability.

**Sen. Vieira:** It is the civil liability. I am not looking to indemnify them against criminal. If you break the criminal laws, you are sued for that.

**Sen. Ramlogan SC:** Right, so the criminal, you are not going there.

**Sen. Vieira:** You are sitting, you are carrying out public performance, public functions. The officers are acting on instructions. They want to be assured that they are not going to have personal liability unless they did something deliberately, wrongfully or there was an omission.

**Sen. Ramlogan SC:** You see the reason—

**Sen. Lalla:** What you are addressing is not civil liability per se, but personal civil liability.

**Sen. Vieira:** Yes. My clause is limiting personal liability—*[Interruption]*

**Sen. Lalla:** There is a difference, Sen. Young.

**Hon. Senator:** What is the difference?

**Mr. Chairman:** You all have to insert the word “civil” between “personal and liability”. Is that your proposal?

**Sen. Ramlogan SC:** Can I have the amendment, Sen. Vieira.

**Mr. Chairman:** It was circulated.

**Sen. Ramlogan SC:** Oh, sorry, it is on your list.

**Sen. Vieira:** But there was a good reason for this type of provision.

**Sen. Ramlogan SC:** Let me try this. Let me propose this.

“No personal liability shall attach to any member of the”—board a committee or the staff—“of the Office or to any authorised officer for anything done”—omitted—“or permitted in good faith in the course of the operations”—of the Office—“under this Act.”

All right, that is fine?

**Mr. Chairman:** Can I take that?

**Sen. Ramlogan SC:** It is saying the same thing you say but in a different way, so I can save face and look better than you.

**Sen. Vieira:** I will agree with you.

**Mr. Chairman:** I want to record it, AG. Sorry to ask you.

**Sen. Ramlogan SC:** Yes, Sir.

“No personal liability shall attach to any member of the”—board—

**Sen. Vieira:** Office.

**Sen. Ramlogan SC:** “Ah coming.”

—a committee or the staff—“of the Office or to any authorised officer for anything done,”—omitted—“or permitted in good faith in the course of the operations”—of the Office—“under this Act.”

**Sen. Vieira:** I will accept that.

**Sen. Ramlogan SC:** Is that all right?

**Sen. Vieira:** Fine.

**Mr. Chairman:** And AG, do you have a suggestion as to what number or where we should place it.

**Sen. Ramlogan SC:** A new clause 62, Sen. Vieira? No, but make sure it is looking good where we put it in.

**Mr. Chairman:** Is that a subclause of the existing 62, or a brand new clause?

**Sen. Ramlogan SC:** A new one.

**Mr. Chairman:** All right.

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

**Sen. Ramlogan SC:** Let us just finish this, “nah”.

**Sen. Al-Rawi:**—on that clause, just to give you on that clause. The language of the Central Bank for Sen. Maharaj’s benefit, section 44H:

“Neither the State, the Minister, the Bank, its directors and officers, any person acting on behalf of the Bank nor any person appointed by the Bank under section 44D is liable to any action, claim or demand or any liability in damages or any other remedy whatever including costs, for anything done or omitted in the discharge or purported discharge of the functions of the Bank under this Part, unless it is shown that the act or omission was reckless or in bad faith.”

So that is the traditional type of exemption that is given.

**Sen. Ramlogan SC:** Sure, okay.

**Sen. Al-Rawi:** I am not sure, because while I was looking for this, I did not hear the wording fully of the reworked of Sen. Vieira version. So have we captured acts and omissions?

**Hon. Senators:** Yes.

**Sen. Al-Rawi:** Okay, good. Is it substantially the same as yours?

**Sen. Vieira:** It is very close to the Integrity in Public Life Act, the indemnity that we are using.

**Sen. Ramlogan SC:** The only thing from that is the, “unless they act recklessly” part that we do not have.

**Mr. Chairman:** You want to introduce it?

**Sen. Ramlogan SC:** Yeah, I think we should.

**Mr. Chairman:** So after “Office” we will add—

**Sen. Ramlogan SC:** Unless—

**Sen. Al-Rawi:** “unless it is shown that the act or omission was reckless or in bad faith.”

Any way you want to put it, but the point is to add in the reckless aspect.

**Mr. Macintyre SC:** We could delete the words “in good faith” and put “unless”.

**Sen. Al-Rawi:** Let us just see it.

**Sen. Ramlogan SC:** Well, the Chair will read it out.

**Mr. Chairman:** And you want to put this new part where “in good faith” was or at the end of it?

**Sen. Ramlogan SC:** At the end.

**Mr. Chairman:** So I will read it:

“No personal liability shall attach to any member of the Board a committee or the staff of the Office or to any authorised officer for anything done, omitted or permitted in the course of the operations of the Office unless it is shown that the Act or omission was reckless or in bad faith.”

**Sen. Robinson-Regis:** Could I ask a question please, Mr. Chairman? Would accounting officers of Ministries be included in this, because they would be the main ones who would be doing the procuring?

**Hon. Senator:** No.

**Sen. Robinson-Regis:** I am just asking.

**Mr. Chairman:** I do not think it is related to the procurement.

**Sen. Ramlogan SC:** No, you cannot, they cannot be. No, no, not at all.

**Sen. Robinson-Regis:** I am just asking.

**Sen. Maharaj:** Based on the regulator and staff.

**Sen. Robinson-Regis:** Only. So the various criminal offences would only attach. Okay, just wanted to be sure.

**Sen. Vieira:** Senator, I think they would be covered under the Public Authorities Protection Act.

**Mr. Chairman:** I am still asking the question of, where? We said this would be 62. Does that mean the current 62 would become 63 and so on.

**Sen. Ramlogan SC:** Yes.

**Mr. Chairman:** The clerk is going to read the new title of the new clause.

**Clerk:** New clause 62, Immunity.

*New clause 62.*

No personal liability shall attach to any member of the Board a committee or the staff of the Office or to any authorised officer for anything done, omitted or permitted in the course of the operations of the Office unless it is shown that the Act or omission was reckless or in bad faith.

*Question put and agreed to.*

*Question proposed:* That the new clause 62 be added to the Bill.

*Question put and agreed to.*

*New clause 62 added to the Bill.*

*Schedule 1.*

*Question proposed:* That Schedule 1 stand part of the Bill.

**Sen. Ramlogan SC:** Chair, are we going through it one by one?

**Mr. Chairman:** Yeah. Okay, we will renumber the Schedule that now appears as the Schedule, Schedule 1 in the Bill. [*Crosstalk*]

**Sen. Al-Rawi:** You will have to make the consequential amendment in the Bill, where it is first mentioned as Schedule.

**Mr. Chairman:** We will make the consequential amendment.

**Sen. Ramlogan SC:** Yeah, we will do that. That is fine.

*Question put and agreed to.*

*Schedule 1 ordered to stand part of the Bill.*

*New Schedule 2.*

**Mr. Chairman:**

#### SCHEDULE 2

##### OFFENCES AND PENALTIES

Column 1 SECTION	Column 2 OFFENCE	Column 3 SPECIFIED PENALTY
17	Failure of a member to disclose interest in a matter under consideration	Summary conviction - \$500,000 and imprisonment for one year [17(2)]
20	Failure to establish a pension fund plan within five years	-
24	Failure of Regulator to submit an annual report to Parliament within ninety days after the expiry of the financial year	-
26	Failure of Office to establish the Procurement Depository that is accessible for public viewing	-
27	Failure of procuring entity to publish information regarding planned procurement activities	Complaint to be made to the Regulator
28	Failure of procuring entity to make necessary declaration with respect to the limitation of participation of suppliers or contractors	-

*Public Procurement Bill, 2014**Wednesday, June 11, 2014*

Column 1 SECTION	Column 2 OFFENCE	Column 3 SPECIFIED PENALTY
30	Compliance with guidelines and handbooks	-
29	Due diligence requirements	
32	Failure of procuring entity to comply with requirement with respect to the estimation of the value of a procurement	-
33	Cancellation of procurement	-
34	Failure of procuring entity to comply with requirements with respect to abnormally low bids	-
35	Failure of procuring entity to comply with requirements with respect to the acceptance of a successful submission	-
36	Failure of procuring entity to comply with requirements with respect to the publication of the award of a contract	Complaint to be made to the Regulator [28(2)]
37	Failure of procuring entity to submit quarterly report to the Office	-
39	Failure of procuring entity to comply with requirements with respect to the confidentiality of information	-
40	Prohibition of victimisation	-
41	Failure of Office to investigate alleged breach of the Act	-
	Failure of a person to report instances of collusion	
	Making of false reports to the Office	\$500,000 and ten years' imprisonment

*Public Procurement Bill, 2014**Wednesday, June 11, 2014*

Column 1 SECTION	Column 2 OFFENCE	Column 3 SPECIFIED PENALTY
46	Concealing or destroying information required for an investigation	-
48	Failure to provide procuring entity with an opportunity to be heard before publication of an adverse report	-
50	Failure to comply with requirements with respect to applications for review	-
52	Failure to comply with requirements with respect to confidentiality in challenge proceedings	-
54	Failure of public body to comply with guidelines or handbooks with respect to disposal requirements	-
55	Failure of public body to establish a disposal committee	-
56	Failure to comply with the procedure for disposal	-
57	Disposal to an employee or member of board	-
58	Failure of Office to comply with procedure with respect to ineligibility list	-
59	Engaging in conduct to influence a public officer	One million dollars and five years' imprisonment
60	(1) Offence of bid rigging or influencing procurement proceedings to obtain unfair advantage	Five million dollars and ten years' imprisonment
	(2) Offence of altering procurement documents to influence proceedings	Two million dollars and seven years' imprisonment

*Public Procurement Bill, 2014*

*Wednesday, June 11, 2014*

Column 1 SECTION	Column 2 OFFENCE	Column 3 SPECIFIED PENALTY
		Summary conviction – two million dollars and 10 years’ imprisonment
62	Contravention of Regulations made under the Act	One million dollars and five years’ imprisonment

*New Schedule 2 read the first time.*

*Question proposed:* That the New Schedule 2 be read a second time.

**Sen. Ramlogan SC:** Chair, we would want to go through these—the number 17, item by item.

“17	Failure of a member to disclose interest in a matterter consideration	Summary conviction - \$500,000 and imprisonment for one year [17(2)]
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We propose that that remain. Any objections anyone?

**Sen. Al-Rawi:** AG, if I could just say, for my own satisfaction, I am going through the Bill to double check that, the Bill itself, not just the Schedule, to make sure that each clause referred to is not something that the CPC may have missed out. Just out of caution, because it has just come. I would honestly like to have just a little bit of time to think about this and I am suggesting that we take a small 10-minute coffee break or 15-minute coffee break so that we can consider this.

**Sen. Ramlogan SC:** No, we are doing it clause by clause, so you will get the option to consider it while we do it. Let us go through guys, come on. [*Crosstalk*] No, no, I am afraid not.

**Sen. Al-Rawi:** AG, if we get this wrong it is a serious wrong, you know.

**Sen. Ramlogan SC:** I know, we know, and we are still doing it clause by clause.

**Sen. Al-Rawi:** The House where you have a majority. [*Sen. Al-Rawi turns and speak to Independent Senators*] You all are comfortable with this? [*Crosstalk*]

[*Sen. Al-Rawi leaves the Chamber*]

**Sen. Ramlogan SC:** So 17 remains as is. Clauses 20, 24, 26 and 27, I put it there, but I do not propose that they should be criminalized.

**Hon. Senator:** So we are deleting it.

**Sen. Ramlogan SC:** Yes. Clauses 20, 24, 26 and 27, we delete those.

**Sen. Robinson-Regis:** We are deleting the penalties?

**Sen. Ramlogan SC:** Yeah, we are just not making it a criminal offence. Clause 28:

“Failure of procuring entity to make necessary declaration with respect to the limitation of participation of suppliers or contractors”

**Sen. Prescott SC:** Attorney General, a reading of 28 does not suggest that that is a criminal offence?

**Sen. Ramlogan SC:** No, I agree. So we can take that off as well.

**Sen. Prescott SC:** The same goes for 29.

**Sen. Ramlogan SC:** Clause 29 as well.

**Sen. Dr. Tewarie:** For “Due diligence requirements”.

**Sen. Prescott SC:** Yeah, if you look at it carefully—

**Sen. Ramlogan SC:** You want to criminalize it?

**Hon. Senator:** “Nah”, no.

**4.40 p.m.**

**Sen. Ramlogan SC:** Now 30—we are on 30, Sen. Prescott?

**Sen. Prescott SC:** Yes.

**Sen. Ramlogan SC:** How do you feel about 30?

**Sen. Prescott SC:** Thirty does have some provision in it which we should want to consider.

**Sen. Ramlogan SC:** Yes, I think so. [*Crosstalk*]

**Sen. Prescott SC:** If you do not comply with the handbook.

**Sen. Ramlogan SC:** No, no, compliance with the handbook.

**Sen. Prescott SC:** Compliance with the guidelines.

**Sen. Ramlogan SC:** Is this a matter that you want to just secure compliance in the ordinary administrative machinery of the Act whereby they secure compliance, or do we want to make it a criminal offence?

**Sen. Young:** Can I ask this? Who are you going to charge with this criminal offence? A public body? So you use a Ministry—Sen. Devant Maharaj’s Ministry—and the people under him are doing it. No, but how do we—Who does it stick on when you have something like a Ministry? Is it going to be the accounting officer? Who is it? So PSs now are—

**Sen. Robinson-Regis:** That is why I wanted to find out about PSs. How will they be dealt with?

**Sen. Ramlogan SC:** Can we come to that after we go through this? Because that is something we—

**Sen. Young:** That is why we should have taken the break.

**Sen. Ramlogan SC:** As you know, we have provisions that speak to the corporate liability and so on, so we would treat with that.

**Sen. Young:** I mean, it is a lot more complicated—

**Sen. Ramlogan SC:** It is a little different, yes. I accept.

**Sen. Cudjoe:** AG, many of the other offences refer to the very same thing. Who are you going to charge?

**Sen. Ramlogan SC:** Sorry?

**Sen. Cudjoe:** Many of the other offences relate to the same thing.

**Sen. Ramlogan SC:** Well, I have put them all so that we can cherry-pick which ones we think—the list looks long but it is really not long. That is what I am saying. But I wanted everyone to have a look at it to see what exactly we would like to make a criminal offence. That is all. I did not want to be accused of hiding anything; leaving out anything, so I have put everything and let us look at it together and collectively decide what should be a criminal offence. We are in agreement, section 17 remains as is. We are going down the road. Compliance with the handbook and the guidelines, that is where we are at.

**Sen. Prescott SC:** And we are deferring that.

**Sen. Ramlogan SC:** And we are deferring that. We are going to pause on that one. “Splitting of procurement”.

**Sen. Dr. Tewarie:** Yes.

**Sen. Young:** It should be, but, again, who will we charge?

**Sen. Ramlogan SC:** No, well, we will come to the “who you are going to charge” after, but let us for the time, focus our attention on whether it should be a criminal offence. [*Crosstalk*] I have said we will come to that. That is part of the discussion, but for now let us decide whether we want the breach to be a criminal offence. I think 30 and 31, we are in agreement we will come back to those. Clause 32, I do not think that should be a criminal offence; 33 either. Thirty-four, I do not think that should be either. Thirty-five—

**Sen. Prescott SC:** You reach 35?

**Sen. Ramlogan SC:** Yeah.

**Sen. Prescott SC:** That is terrible.

**Sen. Ramlogan SC:** Why? What happen?

**Sen. Prescott SC:** I mean 35 is terrible.

**Sen. Ramlogan SC:** In what way? You do not want it to be an offence, or you want it to be?

**Sen. Prescott SC:** Not criminal, in my view.

**Sen. Ramlogan SC:** Not criminal in your view. I agree.

**Sen. Drayton:** Sorry, could I seek clarification? So from what we are seeing here, there will be two sets of offences, one being a criminal offence and the other one being—

**Sen. Ramlogan SC:** Subject to administrative enforcement to secure compliance. It is not going to be a criminal offence.

**Sen. Drayton:** All right. So that in both instances, we will be identifying a position.

**Sen. Ramlogan SC:** No. What we are doing here is simply deciding what breaches of the Act should constitute criminal offences. All of the other things that we leave out will be subject to administrative enforcement to secure compliance through the provisions we have already been through, whereby they have an investigation and all of that. But that is an administrative machinery in the Act for the procurement regulator to secure compliance.

**Sen. Young:** Or you seek a declaration against them if they were in breach, et cetera.

**Sen. Ramlogan SC:** That is right. Yeah. Correct.

*[Sen. Drayton sighs]*

Do not sigh. You can tell me what you think should be a criminal offence.

**Sen. Drayton:** No, no, I understand that, but it points to something that has been bothering me all the time.

**Sen. Ramlogan SC:** What is that?

**Sen. Drayton:** It goes back to consequences for non-compliance by a public body or persons in a public body for infringements of the law.

**Sen. Ramlogan SC:** Yes.

**Sen. Drayton:** Okay? We have, as I said, the situation in front of us, rampant breach of the Constitution and the Exchequer Act and financial regulations, when you read the Auditor's report, not just for 2012, but going back in years. Now, the law identifies an accounting officer who is held, and who under the law is accountable, and is not absolved.

**Sen. Ramlogan SC:** I understand all that, but what is your point?

**Sen. Drayton:** So in this procurement law, what bothers me, you are speaking of ensuring compliance and the regulator—okay, so that WASA is not complying and has not complied, and failed to comply, who are you going to hold accountable?

**Sen. Ramlogan SC:** No, we said we will come to that after, Senator.

**Sen. Drayton:** So we will come to that.

**Sen. Ramlogan SC:** Yes, we had said that.

**Sen. Drayton:** So we will identify—

**Sen. Ramlogan SC:** Yes, yes, we have said that, yes.

**Sen. Drayton:** Okay. All right.

**Sen. Ramlogan SC:** Right now we are on the question before that. Before you decide who to be held liable, we are trying to decide what you are going to hold them liable for, i.e., what are we “offencifying”. So we are at 35.

**Mr. Chairman:** I thought you said 35 came out.

**Sen. Ramlogan SC:** Thirty-five came out, yes. Thirty-six and 37, I would say take it out. I think 39 we could come back to, confidentiality. That is a very important one. Forty, I think we should come back to. Forty-one should come out.

**Sen. Prescott SC:** I think 40, if you look at it—

**Sen. Ramlogan SC:** “Prohibition of victimization?”

**Sen. Young:** That cannot be criminalized. “Yuh eh go charge a man for”—

**Sen. Ramlogan SC:** Well, I mean, you see you would not want to. It is “kinda” like a whistle-blower thing too. Why would you want to criminalize someone—

**Sen. Young:** So you are taking it out or you are not?

**Sen. Ramlogan SC:** No, I am leaving it in for now. We will come back to it.

**Sen. Prescott SC:** Yeah, let us come back to 40.

**Sen. Young:** So that was the protection for the whistle-blower.

**Sen. Ramlogan SC:** Yes, it is protection for whistle-blowers. If they victimize the whistle-blower, I think we should make that a criminal offence.

**Sen. Young:** All right.

**Sen. Ramlogan SC:** Forty-one: “Failure of Office to investigate alleged breach...” I think that should come off. “Failure of a person to report instances of collusion”. That should stay in. “Making of false reports...” Well, that could come out because it is already an offence.

**Sen. Dr. Mahabir:** AG, could you just go back to 41?

**Sen. Ramlogan SC:** Yes, Sir. We are on 41.

**Sen. Dr. Mahabir:** Right. “Failure of Office to investigate alleged breach of the Act”, I think that is a serious offence, you know.

**Sen. Ramlogan SC:** Yes. We will come back to it, then. We will leave it in and come back to it.

**Sen. Dr. Mahabir:** Okay.

**Sen. Prescott SC:** All of 41, eh.

**Sen. Ramlogan SC:** But, you see, that is the office of the procurement regulator. So you will be making a criminal offence to jail the regulator there. You see?

**Sen. Dr. Mahabir:** All right. But he has been delinquent in his duties, you know, and he is jeopardizing the public interest. [*Crosstalk*]

**Sen. Ramlogan SC:** Sure. We will come back to it. That is fine. The last one, “Making of false reports...”, that is already a criminal offence and we propose to leave it as is, so that will come off. “Making of false reports” is already an offence—half a million and 10 years. So we take it off. Forty-four, we take it off. It is an administrative matter. Forty-five to 50, in my view, should come off.

**Sen. Young:** Well, look at 46.

**Sen. Ramlogan SC:** Sorry, 46, we should leave in and come back to.

**Sen. Drayton:** What do you mean by leaving out 45? Is that to do with the special report which might compromise investigations—

**Sen. Ramlogan SC:** It is not a criminal offence if they fail to do that. I mean, that is an administrative matter.

**Sen. Drayton:** Okay. All right. So we are creating a second schedule—another schedule.

**Sen. Ramlogan SC:** No, no. That is already dealt with in the Act. Those are administrative matters. You cannot send somebody to jail for that.

**Sen. Prescott SC:** You should not.

**Sen. Ramlogan SC:** You should not. Fifty-two.

**Sen. Prescott SC:** We dealt with 48 already.

**Sen. Ramlogan SC:** That is an administrative natural justice matter. I do not think we could make that a criminal offence. Fifty-two.

**Sen. Dr. Mahabir:** Breach of confidentiality seems to be serious.

**Sen. Ramlogan SC:** Yes, I think that is a serious matter. Fifty-four.

**Sen. Young:** This is the same thing as above, when we first started. Look, you know this is a serious thing but who do we charge? What do we do about it? So we park that one—

**Sen. Ramlogan SC:** We will come back to 54. Fifty-five, 56 and 57.

**Sen. Vieira:** Well, 55 should go. “...to establish a disposal committee”.

**Sen. Ramlogan SC:** Yes, 55 and 56 should go. Yes, I agree.

**Sen. Prescott SC:** Fifty-six is questionable. We should come back to 56, please.

**Sen. Vieira:** No, well, 56 is to refer to the disposal committee, eh.

**Sen. Prescott SC:** And 57 should come back as well.

**Sen. Ramlogan SC:** 57 is out?

**Sen. Ramlogan SC:** No, it should come back.

**Sen. Prescott SC:** It should come back. Yes, that is what I thought. Fifty-eight is out, and on the other page, all of those are really out. They are put for information. They are already specific offences created in the Act. Fifty-nine to 62.

**Sen. Young:** Well, 61 is a repeat of—61 we have deleted. Sixty-one, we have amended. That is what we are seeking to amend, right?

**Sen. Ramlogan SC:** Yes, well, that is fine. So 61 will come out because we have amended that, yes.

**Sen. Prescott SC:** It is confirmed that these are summary offences in 61?

**Sen. Ramlogan SC:** What is that, sorry?

**Sen. Prescott SC:** Is it confirmed that 61 offences are summary offences?

**Sen. Dr. Mahabir:** There is no prescription.

**Sen. Prescott SC:** It does not say “indictable”.

**Sen. Vieira:** It says “summary conviction”.

**Sen. Prescott SC:** It does?

**Sen. Vieira:** Yes, at the beginning of column 3: “Summary Conviction...”

**Sen. Ramlogan SC:** In column 3, when we decide on the penalty, we can specify indictable or summary.

**Sen. Vieira:** Yes, but you all have it saying “summary”.

**Sen. Prescott SC:** I did not think that would apply to all.

**Sen. Howai:** That was only the first one.

**Sen. Ramlogan SC:** That was only the first one.

**Sen. Vieira:** At the beginning of column 3.

**Sen. Prescott SC:** That was only for 17.

**Sen. Ramlogan SC:** That is in the Act. The first ones come off because it is specified as “summary”.

**Mr. Chairman:** So we start at the beginning.

**Sen. Ramlogan SC:** Yes. So we are now starting at—

**Sen. Dr. Tewarie:** No, but there is one that was left out which is the intent to influence the outcome of procurement proceedings.

**Sen. Ramlogan SC:** Where did you get that from?

**Sen. Dr. Tewarie:** This is from 60, I think.

**Sen. Young:** It is already an offence in the Act.

**Sen. Ramlogan SC:** It is already an offence in the Act. That is why we left it out, yes. So we start at number 30, “Compliance with guidelines and handbooks”. Do we want to make this a criminal offence and, if so, what would be the penalty?

**Sen. Prescott SC:** Failure to comply with guidelines, I think should be an offence.

**Sen. Vieira:** If you are making it a criminal offence, I was going to suggest you put: “A person who, without reasonable excuse, fails to comply with guidelines and handbooks.”

**Sen. Ramlogan SC:** Well, remember I have put in that general provision about reasonable justification, so that will cover that as well, so we do not need to put it specifically.

**Mr. Chairman:** Should we have a first offence that differs from second or whatever?

**Sen. Young:** Section 30, when you look at it, is, “a procuring entity shall comply with” and the special guidelines, the handbooks. Right? So it is the procuring entity.

**Sen. Ramlogan SC:** Sure.

**Sen. Young:** So if we are criminalizing it, who—now, this is a serious thing. If an entity is failing to follow the guidelines, the regulations, et cetera—

**Sen. Ramlogan SC:** The recommendation here is this:

“Where an offence committed under this Act by a public body that is not a body corporate is proved to have been committed with the consent or the connivance of a Permanent Secretary, Chief Technical Officer or other officers concerned in the administration of the public body, or any person purporting to act in any such capacity, he, as well as the public body, commits an offence and is liable to be proceeded against and punished accordingly.”

It comes from the Interpretation Act and it speaks—

**Sen. Robinson-Regis:** Could you circulate that?

**Sen. Ramlogan SC:** Yes, we will circulate it.

**Sen. Vieira:** You also have that language in the Companies Act.

**Sen. Ramlogan SC:** Yes, we do.

**Sen. Vieira:** And you have it in the Copyright Act.

**Sen. Ramlogan SC:** That is right.

**Sen. Vieira:** It talks about where you deal with corporate offenders, every person who is involved.

**Sen. Ramlogan SC:** So whilst we are on that, could we return to the offences in the meantime?

**Sen. Vieira:** Yes, 70 of the Interpretation Act.

**Sen. Ramlogan SC:** Yes, that is exactly where it came from. All right. So we are on the compliance with guidelines and handbooks.

**Sen. Lalla:** AG, there is a concern I have.

**Sen. Ramlogan SC:** Sure.

**Sen. Lalla:** Where you say that the procurement regulator will prepare general guidelines and you want to make non-compliance with general guidelines a criminal offence, you might have a problem because in order to make something a criminal offence, you must provide specific notice.

**Sen. Ramlogan SC:** There must be certainty.

**Sen. Lalla:** Correct.

**Sen. Ramlogan SC:** I agree.

**Sen. Lalla:** And you could have a problem there.

**4.55 p.m.**

**Sen. Ramlogan SC:** I think this is a matter we should not criminalize, guys.

**Sen. Young:** Yes, I agree with that.

**Sen. Ramlogan SC:** Yeah.

**Sen. Vieira:** But that is what we were saying.

**Sen. Prescott SC:** What therefore would be disadvantage or—[*Interruption*]

**Sen. Ramlogan SC:** Of criminalizing it?

**Sen. Prescott SC:** How do we disadvantage the person who has failed?

**Sen. Ramlogan SC:** If you have failed to comply—*[Interruption]*

**Sen. Prescott SC:** Yes? Somebody must knock him on his knuckles.

**Sen. Howai:** No, but internally within the organization—*[Interruption]*

**Sen. Al-Rawi:** Yes, you can have a graduation.

**Sen. Howai:**—the person could be dismissed, they could be demoted. It is more an administrative action in the organization.

**Sen. Prescott SC:** The Permanent Secretary or the accounting officer.

**Sen. Ramlogan SC:** We could limit it to a fine, can we?

**Sen. Prescott SC:** I do not need for it to be criminalized. I am just saying somebody has failed to comply.

**Sen. Ramlogan SC:** No, I take your point. What will be the deterrent?

**Sen. Al-Rawi:** AG, what we are looking is, making sure that the administrative fallback is equally clear. I am very comfortable with making regulations subject to certain offences. The guidelines and handbooks approach were a little difficult. *[Crosstalk]*

**Sen. George:** I just want to make a point and this is just for my own clarification. In the case where the oil company, for example, and you had the oil spill, the EMA was able to fine, could we not put a fine inside there for the procurement agency as against trying to single out some official of the procurement agency? I am just enquiring.

**Sen. Prescott SC:** So why the—*[Interruption]*

**Sen. Ramlogan SC:** Sen. Prescott, can I just intervene to direct your attention, Sir, to clause 62(2)?

**Sen. Prescott SC:** That numbering is the original numbering?

**Sen. Ramlogan SC:** It is track changes document I am using. Page 41.

**Sen. Prescott SC:** The one that reads the Minister may?

**Sen. Ramlogan SC:** The Minister may. That is right, Sir. Subclause (2):

“Regulations made under this section may provide that the contravention of any regulation constitutes an offence and may prescribe penalties for any offence not exceeding a fine of one million dollars and imprisonment for five years.”

I was thinking that the compliance with the handbook could be dealt with under that in the regulations.

**Sen. Prescott SC:** Constitutes a criminal offence.

**Sen. Ramlogan SC:** Yes, but one subject to a fine. In other words, the handbook—you could have a graded approach. Your first time offence a fine, second time a bigger fine. We could deal with that in the regulations.

**Sen. Dr. Mahabir:** AG, who is imposing this fine? Is it the regulator that is imposing this fine or the courts?

**Sen. Ramlogan SC:** No, the court.

**Sen. Dr. Mahabir:** Okay. So the regulator, according to Sen. George, will not have the opportunity to examine someone and to deem that this individual is in breach of some of its regulations and be able to impose a fine on its own?

**Sen. Ramlogan SC:** No.

**Sen. Al-Rawi:** It is envisaged, however, in other jurisdictions that people may make admissions as to liability before the regulator in a review, and in those circumstances they are usually given warnings or certain aspects. We have done it in the securities industries approach.

**Sen. Ramlogan SC:** We can treat with that in the regulations as well.

**Sen. Al-Rawi:** I agree.

**Sen. Ramlogan SC:** I have all of that in my mind.

**Sen. Al-Rawi:** So what I am saying, AG, is that I am comfortable with regulations having offences, but I think that guidelines and handbooks and breaches of those are of a lesser quality and should be excluded out.

**Sen. Ramlogan SC:** All together?

**Sen. Al-Rawi:** All together, and I will say why. Because the regulations come for affirmation resolution, whereas guidelines and handbooks do not.

**Sen. Drayton:** I just want to make one observation though. Just one observation here. I understand the principle of that. Now, we have some serious offences, things like bid rigging and all that sort of thing, but the reason why you have all these guidelines—[*Interruption*]

**Sen. Ramlogan SC:** Is to prevent that.

**Sen. Drayton:**—is to prevent that.

**Sen. Ramlogan SC:** Sure.

**Sen. Drayton:** So that if there are going to be no consequences of significance for breaching the guidelines—and that is why I asked the question: do guidelines have the force of law? But they do not.

**Sen. Ramlogan SC:** No, they do under this Bill.

**Sen. Drayton:** They do, but the consequences.

**Sen. Ramlogan SC:** Which is what we are on. So your suggestion is, there should be a criminal consequence or not? That is the question.

**Sen. Drayton:** No. All I am saying, there has to be severe consequences, for somebody must be held accountable. And the regulations, not guidelines, it got to be regulations that say, that if you breach this—[*Interruption*]

**Sen. Ramlogan SC:** We are all in agreement on that, Senator. We are all in agreement.

**Sen. Drayton:** Okay, but I am not hearing that. I am hearing that these are guidelines in a handbook, and therefore, let us set this aside.

**Sen. Ramlogan SC:** No, no, Senator.

**Sen. Prescott SC:** Attorney General, before you—[*Interruption*]

**Sen. Drayton:** I just want that to be clear, otherwise we have now just diluted the entire law.

**Sen. Prescott SC:** Chair, may I suggest that in relation to clause 30, it is clear that 30(1)(b), special guidelines for that procuring entity—[*Interruption*]

**Sen. Ramlogan SC:** Sen. Lalla was just making that point to me.

**Sen. Prescott SC:** Oh, is he? Well I defer to him.

**Sen. Lalla:** I was saying that our considerations provide fertile ground if you look at (b) and (c). Because if you have specific regulations for the entity and those are not complied with, well then we could have a problem, and the issue of there not being adequate notice that you need to comply with this does not arise.

**Sen. Prescott SC:** Does not arise.

**Sen. Ramlogan SC:** So we remove clause 31 and this will be dealt with in regulations.

**Sen. Prescott SC:** No, Sir, we are on 30.

**Sen. Ramlogan SC:** Beg your pardon. 30, sorry.

**Sen. Prescott SC:** (1)(b) and (1)(c), we are saying require a higher degree of—*[Interruption]*

**Sen. Ramlogan SC:** And in the regulations, we will have a tiered approach that will reflect that.

**Sen. Al-Rawi:** Yes, because the regulations can actually be superfluous and take into account certain guidelines that are fit to be in the regulations. So there is nothing to say that it cannot be there.

**Sen. Ramlogan SC:** So, let you leave that to the regulations, guys.

**Sen. Vieira:** I agree with the question of a tiered approach and that some offences are more administrative and minor, but I am looking now at the criminal ones, the serious offences, and coming back to the point about, can we target individuals, and we looked at the Interpretation Act. Now, Sen. George talked about the EMA. I actually like the EMA because the EMA provides for liability of private and public officials. 71 of the EMA reads:

“Where a violation of any environmental requirement has been committed by a person (other than an individual), any individual who at the time of the violation was a director, manager, supervisor, partner or other similar officer or responsible individual, or who was purporting to act in such capacity, may be found individually liable for that violation if, having regard to the nature of his functions in that capacity, the resources within his control or discretion, and his reasonable ability to prevent the violation—

- (a) the violation was committed with his direct consent or connivance; or
- (b) he, with knowledge, did not exercise reasonable diligence to prevent the commission of the violation.”

Now, I think that nails it.

**Sen. Ramlogan SC:** I do not have a difficulty with that, save and except it does not address the question of the public entities and the Ministries and so on.

**Sen. Al-Rawi:** Well, it does in a much more targeted way.

**Sen. Ramlogan SC:** With person responsible?

**Sen. Al-Rawi:** The point is the accounting officer.

**Sen. Ramlogan SC:** The person responsible there, we might need to tweak it a bit. Look, do you all wish to do that section now and then turn back to the offences or can we just continue?

**Sen. Vieira:** I am just putting it out here, but I think we need to the nail down—we cannot just leave it vague.

**Sen. Ramlogan SC:** What we can do, is if you can have that photocopied and circulated so we can have that and the one from the—[*Interruption*]

**Sen. Vieira:** Interpretation.

**Sen. Ramlogan SC:** Yes. We have the Interpretation one. We have circulated it already.

**Sen. Al-Rawi:** Which is standard. It is just officers, et cetera.

**Sen. Vieira:** And as I say, you will see that. If you check the Copyright Act, they also have it, and I think—but this one in the EMA is the best.

**Sen. Ramlogan SC:** We will come back to it. So, on clause 30, we agree that that will go in the regulations. We now turn to 31, “Splitting of procurement”. Here criminal, shall we stick to the same one year and half a million as in clause 17 at the top? I think that is fair.

**Sen. Dr. Tewarie:** Yes, I think that is reasonable.

**Sen. Ramlogan SC:** All right? So, “Splitting of procurement”, summary conviction—half a million and imprisonment for one year.

**Sen. Prescott SC:** And although I think I know the answer, the recommendation that will be coming for a change to rely on the Interpretation Act’s formulation will apply to this procuring entity. The Permanent Secretary or the Chief Technical—[*Interruption*]

**Sen. Ramlogan SC:** Yeah.

**Sen. Prescott SC:** Those provisions will apply?

**Sen. Ramlogan SC:** Yeah, sure. The provision would apply to decide who you should prosecute and who will be penalized for any procuring entity. And we now come to 32, “Failure of procuring entity to comply with the requirement”—no, we are taking out that, sorry. We go to 39, “Failure of procuring entity to comply with the requirements with respect to confidentiality”—[*Interruption*]

**Sen. Young:** Attorney General, I do not practise in the criminal arena, but what dawns on me, if we are charging someone and you are making them liable to these as criminal offences, and let us just unfairly use a PS as the example as being the responsible person, but from a fact pattern the PS was not the person in charge and did not know what was going on for the splitting of procurement—[*Interruption*]

**Sen. Ramlogan SC:** Or the Minister.

**Sen. Young:**—or the Minister, how does that person then have the mens rea?

**Sen. Ramlogan SC:** It is a live concern on my mind, which is why I have asked that we deal with that separately and after we get through these things because we have—[*Interruption*]

**Sen. Young:** We will soon have the mens rea. The actus reus is being performed but where is the mens rea.

**Sen. Ramlogan SC:** I am totally with you on that, but let us get past—[*Interruption*]

**Sen. Al-Rawi:** But AG, we only raised it in the context of you saying, yes, to Sen. Prescott’s question that you would be relying upon the aid of the Interpretation Act which makes the PS liable.

**Sen. Ramlogan SC:** No, I just told him that to kind of bypass him, but what I really meant is we will get back to that after because Sen. Vieira is photocopying two alternative formulations. So we have not gone there as yet.

**Sen. Prescott SC:** Sometimes candour does not become you. [*Laughter*]

**Sen. Ramlogan SC:** No, I thought so, Sir. I will revert to my usual diplomatic and tactful self. We are on clause 39, the confidentiality. Shall we stick to the same one year and half a million, I think.

**Sen. Dr. Mahabir:** “Um hmm”, because the confidentiality is serious.

**Sen. Ramlogan SC:** So we will stick with that because it is a very serious matter. And we then come to the victimization provision in clause 40.

**Sen. Al-Rawi:** Summary as well, right?

**Sen. Ramlogan SC:** Yeah. The victimization one. This is where you victimize the whistle-blower, essentially.

**Sen. Dr. Mahabir:** It is a criminal.

**Sen. Ramlogan SC:** Yeah, I agree that too is criminal. I think we can leave that the same half million and one year. Summary conviction, agreed. Then we come to “Failure to report instances of collusion”.

**Sen. Dr. Mahabir:** Yes.

**Sen. Ramlogan SC:** Same thing?

**Sen. Dr. Mahabir:** Same thing.

**Sen. Ramlogan SC:** I agree same thing. Then we come to 52.

**Sen. Dr. Mahabir:** Making false reports to the office, AG?

**Sen. Ramlogan SC:** Oh, yes, that is in 46.

**Sen. Dr. Mahabir:** That to me is an extremely serious offence, you know.

**Sen. Ramlogan SC:** It is already an offence. So we next come to 46.

**Sen. Prescott SC:** May I ask you just to step back just a bit to 41. Look at 41(3) and (4), it seems as though those are offences, but I do not think that (1) and (2) are.

**Sen. Ramlogan SC:** Clause 41(3) and (4).

**Sen. Prescott SC:** 41(1) could not be an offence.

**Sen. Young:** No.

**Sen. Prescott SC:** Nor I suspect 41(2).

**Sen. Ramlogan SC:** Yeah. I agree with you on that, yes. But where does it say we are criminalizing everything in 41?

**Sen. Prescott SC:** It fell from your lips. You said 41 will result in an offence.

**Sen. Ramlogan SC:** Oh, I see what you mean.

**Sen. Prescott SC:** I am saying specify 41(3) and (4).

**Sen. Ramlogan SC:** Sorry.

**Sen. Young:** So we should take that out.

**Sen. Ramlogan SC:** No, we have taken that out. We took that out.

**Mr. Chairman:** All I have is “Failure of a person to report instances of collusion”.

**Sen. Ramlogan SC:** Yeah, that is right.

**Sen. Dr. Mahabir:** It is 41(2).

**Sen. Ramlogan SC:** It is 41(2). That is the one we are making \$500,000 and one year.

**Mr. Chairman:** Yes, that is what I have.

**Sen. Ramlogan SC:** Right. And then we will go next to 46 now.

**Sen. Prescott SC:** No, pardon me. 41(2):

“A person who wishes to allege or make a complaint...may do so in writing...”

Is that not what 41(2) says?

**Sen. Ramlogan SC:** Listen, what I am dealing with is, “Failure of a person to report instances of collusion”.

**Sen. Prescott SC:** Well, that could not be 41(2)?

**Sen. Ramlogan SC:** Well it is 41(3).

**Sen. Prescott SC:** It is probably (3) and (4). The person shall make a report, 41(3)—[*Interruption*]

**Sen. Al-Rawi:** 41(3) is that you have an obligation to report bid rigging.

**Sen. Prescott SC:** Yes, and 41(4) says if you mislead, it already has its own built-in fine.

**Sen. Ramlogan SC:** That has its own penalty.

**Sen. Prescott SC:** So it is 41(3) we are talking about.

**Sen. Ramlogan SC:** It is 41(3).

**Sen. Al-Rawi:** And it is not 10 years; it is one year.

**Sen. Ramlogan SC:** It is 41(3), yes. It is 41(3).

**Sen. Prescott SC:** You are welcome.

**Sen. Ramlogan SC:** Good.

**Sen. Al-Rawi:** In 41(4) is one year.

**Sen. Ramlogan SC:** Yes, it is correct in the Bill. All right. So can we go to 46? 46: “Concealing and/or destroying information required for an investigation”—\$1 million and two years.

**Sen. Dr. Mahabir:** Do you not want a larger fine than that, AG? That is a serious evidence, you know. Concealing information and destroying evidence, that, to me, is one of the most serious breaches. Because, you see, what you are doing here in procurement—[*Interruption*]

**Sen. Ramlogan SC:** What do you want to propose? We understand all of that.

**Sen. Dr. Mahabir:** Well, a larger fine.

**Sen. Ramlogan SC:** A larger fine.

**Sen. Vieira:** Is that not in line with obstruction of justice and that kind of thing?

**Sen. Ramlogan SC:** Well can we say \$2 million and five years.

**Sen. Dr. Mahabir:** Let us make it into a larger offence than the \$1 million that you are talking about.

**Sen. Ramlogan SC:** Two million and five years?

**Sen. Dr. Mahabir:** Because destroying information to my mind is one of the most serious breaches of this law, information and evidence. It has to be significantly larger than what we had before.

**Sen. Ramlogan SC:** Sen. Prescott SC, what do you think?

**Sen. Prescott SC:** I think serious.

**Sen. Ramlogan SC:** I know, but what figure we should go to?

**Sen. Prescott SC:** I do not like bandying about numbers; I really prefer a schedule that tells us what to look for. I do not wish to comment on the quantum.

**Sen. Ramlogan SC:** I hear you. Okay, fair enough.

**Sen. Young:** That is a policy decision.

**Sen. Al-Rawi:** It is arbitrary.

**Sen. Ramlogan SC:** It is a policy decision really.

**Sen. Young:** It is also the maximum, eh.

**Sen. Ramlogan SC:** Yeah, it is also the maximum. That is right. Larry, what do you have in mind?

**Sen. Howai:** No, I am saying what do we do in the other Acts, just be consistent. I am not sure—*[Interruption]*

**Sen. Ramlogan SC:** I say we are doubling the fine, which is \$2 million, and instead of one year, you go up to five years. That will be the maximum.

**5.10 p.m.**

**Sen. Al-Rawi:** AG, just to let you know, in the insurance and securities, we are comparing a matrix right now where we have 10 years and several million dollars for less offences than this. So, we are keeping within the spirit of this, but I, too, feel a little uncomfortable about how we pluck figures out of the air.

**Sen. Drayton:** Yes, I really think we should define it in light of all at stake because there is similarity in the offences, you know, bid rigging, collusion.

**Sen. Ramlogan SC:** Hold on. Well, we have put all. If bid rigging is five million and 10 years and two million and seven years.

**Sen. Drayton:** That is what? In the—

**Sen. Ramlogan SC:** If you turn to the last page, it is right there, clause 60. So let us go to the—Sen. Small was correct, five million and 10 years.

**Sen. Small:** Someone doing this frustrates the entire process, frustrates the entire operation.

**Sen. Dr. Mahabir:** Mr. AG, I think that the Act is contemplating by this particular action, because, you see, a person who does this, he undermines everything that the Act is intending to do.

**Sen. Ramlogan SC:** So you think we should—

**Sen. Dr. Mahabir:** What is the heaviest fine that the Government is willing to consider? I will consider.

**Sen. Ramlogan SC:** I think the five million and 10 years is sufficient.

**Sen. Dr. Mahabir:** Yes, I think we need to send a signal that this is a serious offence.

**Sen. Ramlogan SC:** Yeah, five million and 10 years, and we go to clause 52.

**Sen. Al-Rawi:** Indictment or summary?

**Sen. Ramlogan SC:** That should be indictment.

**Sen. Prescott SC:** Indictable.

**Sen. Ramlogan SC:** Yeah, indictable. Clause 52, confidentiality, I think we should go to summary conviction, half a million and one year, revert back. Clause 54, guidelines and handbooks again.

**Sen. Al-Rawi:** Sorry, 52 was what?

**Sen. Ramlogan SC:** One year and half a million, summary.

**Sen. Prescott SC:** Do you remember what you said in clause 30 for guidelines.

**Sen. Ramlogan SC:** Yeah.

**Sen. Prescott SC:** Do you think it should apply here?

**Sen. Ramlogan SC:** We said we will be putting it in the regulations. So we will deal with 54 in regulations as well. Clause 57.

**Sen. Prescott SC:** Clause 55?

**Sen. Ramlogan SC:** “Nah”, 55 and 56 went and 57, I think “Disposal to an employee or a board member”.

**Sen. Dr. Mahabir:** That is a minor offence. That is not a major offence.

**Sen. Ramlogan SC:** Yes, we will deal with it in regulations, I think.

**Sen. Al-Rawi:** 56, we had a question mark next to it.

**Sen. Ramlogan SC:** 56 and 55 went, and 57, we deal with in regulations. We then cast our eyes now to Sen. Vieira and the—

**Sen. Al-Rawi:** So when they went, 55 and 56, they are being dealt with in the regs?

**Sen. Ramlogan SC:** Yeah.

**Mr. Chairman:** So we are finished with Schedule 2.

**Sen. Ramlogan SC:** We are finished with Schedule 2.

**Mr. Chairman:** Do we want to now ask the question in relation to that? We are going to refer back to some other clauses.

**Sen. Al-Rawi:** Anybody in the backbench who truly understands everything the AG said?

**Sen. Ramlogan SC:** Yeah, Sen. Prescott does.

**Sen. Prescott SC:** I was following it.

**Sen. Drayton:** This 10 million thing—

**Sen. Ramlogan SC:** Why? Too low?

**Sen. Drayton:** No, this 10 years for these offences, we are really—

**Sen. Ramlogan SC:** It is the maximum, you know, that does not mean that is what you will get. The court has a discretion.

**Sen. Vieira:** But I think it may give them comfort if it says “not exceeding”.

**Sen. Ramlogan SC:** No, but you do not need to say that. We are having the other formulation circulated now.

**Sen. Al-Rawi:** So, AG, all of these things that we have taken out will come out of the Schedule, right, and therefore would be dealt with administratively under the regs, et cetera, so we will have a desiccated Schedule as prescribed.

**Sen. Ramlogan SC:** That is correct.

*Question put and agreed to.*

*Question proposed:* That the new Schedule 2 be added to the Bill.

*Question put and agreed to.*

*New Schedule 2 added to the Bill.*

*Clause 61 recommitted.*

*Question again proposed:* That clause 61 stand part of the Bill.

**Sen. Al-Rawi:** Okay. Did you want to look at the language of 61 to include the summary versus indictable approach? I did not know if you needed to tweak the language for that because—

**Sen. Ramlogan SC:** No, because in the Schedule, we dealt with that. The Schedule dealt with that. Each offence, we specified whether it was going to be—yeah, we did.

**Sen. Al-Rawi:** Okay. Because it says on conviction to the penalty specified. The question was in the manner.

**Sen. Ramlogan SC:** Yeah, but in each offence, we dealt with it.

**Sen. Al-Rawi:** All right. No, I know that but I meant the operational side of it, clause 61:

Any person who contravenes a section referred to in the first column of Schedule 2 commits an offence and where no penalty is provided for the offence, is liable on conviction...

Here is where you would usually say on summary or indictable to the penalty specified in the third column. So, without those words, I was wondering how you would incorporate that back into the parent clause. That is what I was wondering.

**Sen. Ramlogan SC:** We have put it in the third column for each offence so we are all right with that. Do we have both now? Let us look at the EMA formulation, section 71.

**Mr. Chairman:** AG, of course, that will constitute a new provision altogether for which we have a different procedure to follow. I just wondered if we could put 61 to rest and then come back to that.

**Sen. Ramlogan SC:** Sure, certainly, Sir.

**Mr. Chairman:** You have circulated a 61?

**Sen. Ramlogan SC:** No, we did not circulate it, we had circulated the Schedules.

**Sen. Young:** The language of 61.

**Sen. Ramlogan SC:** We did? 61? Beg your pardon. Okay. Oh yes.

61(2) For the purposes of this Act, a public body shall appoint or designate a procurement officer who shall be responsible for public procurement and the disposal of public property for that body.

(3) A reference in this Act to the commission of an offence by a public body shall be construed as a reference to the commission of the offence by the procurement officer referred to in subsection (2) or an officer who purports to act in such capacity, if it is proved that -

(a) the offence was committed with his direct consent or connivance; or

(b) he, with knowledge, did not exercise reasonable diligence to prevent the commission of the offence.

(4) No prosecution of an offence under this Act may be instituted without the written consent of the Director of Public Prosecutions.

**Mr. Chairman:** We introduced two new subclauses.

**Sen. Al-Rawi:** I think you should read section 61 from start to end just for clarity, please, because we amended 61(1).

**Mr. Chairman:** All right, so I will read 61:

Any person who contravenes a section referred to in the first column of Schedule 2 commits an offence and where no penalty is being provided for the offence is liable on conviction to the penalty specified in the third column of that Schedule.

**Sen. Al-Rawi:** Do we need that wording “and where no penalty is provided for the offence”?

**Sen. Ramlogan SC:** No, we do not need that.

**Sen. Al-Rawi:** We do not need those words because we have now provided for—right, so those should be deleted.

**Mr. Chairman:** So that would be subclause (1), 61(1)?

**Sen. Robinson-Regis:** Mr. Chairman, just before you proceed, if this is Schedule 2, the columns are 1, 2, 3, so is your wording correct, the first column?

**Mr. Chairman:** Any person who contravenes a section referred to in the first column of Schedule 2—

So the section is in the first column.

**Sen. Robinson-Regis:** Right.

**Sen. Ramlogan SC:** Column 1.

**Mr. Chairman:** You want to say column 1?

**Sen. Ramlogan SC:** Yeah.

**Mr. Chairman:** Other than first column.

**Sen. Al-Rawi:** What really should happen is that a line should go after column 2, after offence, and the section and the offence description should be one column and the penalty the second.

**Sen. Robinson-Regis:** Because column 1 specifies the section, column 2, the offence and column 3, the penalties.

**Mr. Chairman:** What I thought is that why they circulated it and put this, it is just for our benefit, but I do not think it would go into the legislation at all.

**Sen. Robinson-Regis:** So actually in the legislation is—all right.

**Sen. Ramlogan SC:** Yeah.

**Mr. Chairman:** In fact, what that means is, there is no column 2.

**Sen. Al-Rawi:** No, there would be.

**Mr. Chairman:** What would be in column 2?

**Sen. Al-Rawi:** Oh, I see what you are saying, no column 2. Yes, because that is what it said. So column 1 and column 2 would merge in some form or fashion.

**Mr. Chairman:** It is not merged. All you have is the section number.

**Sen. Ramlogan SC:** Yes, that is right.

**Mr. Chairman:** Right? And then you have a column 2 which specifies the penalty.

**Sen. Ramlogan SC:** Yes, that is correct.

**Sen. Robinson-Regis:** So you need to fix the language.

**Mr. Chairman:** So therefore, at the end of it, instead of in column 3, it would say column 2 of that Schedule.

**Sen. Al-Rawi:** Yeah. Could I just ask the CPC, through you, Mr. Chairman and AG and Minister, is it prohibited to give the brief description as to what the offence is in that Schedule because that is what helps? Something akin to what a marginal note would look like. Is it done that way?

**Mr. Macintyre:** We can put it in.

**Sen. Al-Rawi:** Because the way it is done here, it is quite helpful. So instead of just saying clause 17 with no description as to what 17 is and then a fine—I do not know, I am asking—do you put clause 17 and something that looks like a marginal note and then the point? So that is how it can be done. Right? Okay, thanks.

**Sen. Dr. Tewarie:** But would the definition of the offence not be in here?

**Sen. Ramlogan SC:** Yeah, it would be.

**Sen. Al-Rawi:** No, I know, this is just for ease.

**Sen. Ramlogan SC:** Sen. Al-Rawi, let us move on, “nah”, those are administrative matters, we will sort that out.

**Sen. Al-Rawi:** Right. So we are changing third column to second column.

**Sen. Ramlogan SC:** Yeah.

**Mr. Chairman:** So the question is, and of course, as circulated, there will be a 61(2) and a 61(3).

**Sen. Ramlogan SC:** We have another thing circulated from Sen. Vieira.

**Mr. Chairman:** That is the EMA Act and the Interpretation Act.

**Sen. Al-Rawi:** Mr. Chairman, before you go there, just to complete 61, just to get the correct language of the two subclauses that are going in. Would you please read it as you have it?

**Mr. Chairman:** Sure.

**Sen. Al-Rawi:** So we did 61(1) and we amended it somewhat.

**Mr. Chairman:** You want me to read 61(1)?

**Sen. Al-Rawi:** We read 61(1), we took off certain words; we changed third column to second column. What is 61(2) and (3)?

**Mr. Chairman:** Do you not have it circulated?

**Sen. Al-Rawi:** I want you to read it, please.

**Mr. Chairman:** Where an offence committed under this Act by a public body that is not a body corporate prove to have been committed with a consent or connivance of a permanent secretary—[*Interruption*]

**Sen. Al-Rawi:** Let us stop there. There is a problem there.

**Sen. Ramlogan SC:** Can we look at the environmental management provision?

**Sen. Al-Rawi:** AG, we are just getting the language right in 61(2).

**Hon. Senator:** No, but he is going to suggest changing it.

**Sen. Al-Rawi:** Oh, I see, okay.

**Sen. Ramlogan SC:** Yeah, I am switching frames. So, Chair, we are looking at section 71 of the EMA Act:

“Where a violation of any...”—

Well, it would not be an environmental requirement.

**Sen. Young:** Well, you could just change it. Where an offence committed under this—

**Sen. Ramlogan SC:** Yeah.

Where an offence has been committed by a person—well, I suppose we can change that to say a person or public body—any individual who at the time of the violation was a director, manager, supervisor—that is too wide though, so we have to treat with that and decide how we want to. Sen. Vieira, you want to help us with the tweaking, seeing that you brought all this?

**Sen. Prescott SC:** Just permit me to put it forward.

Where an offence has been committed by an individual who is a permanent secretary, chief technical officer or other officer concerned in the administration of a public body or any person who is purporting to act in any such capacity, he as well as the public body commits an offence and is liable to be proceeded against and punished accordingly.

Should I read that again?

**Sen. Ramlogan SC:** No, I got you.

**Sen. Vieira:** This is the interpretation section.

**Sen. Ramlogan SC:** Yeah. Actually, now that I look at it, it seems a little more relevant. Are you happy with that, Sen. Prescott?

**Sen. Al-Rawi:** Senior, would you read that one more time?

**Sen. Prescott SC:** I would like to read it again.

**Sen. Ramlogan SC:** It is the interpretation one, Faris.

**Sen. Al-Rawi:** I know but he made an amendment to it.

**Sen. Prescott SC:** Yeah, it is slightly different. It says:

Where an offence has been committed by an individual who is a permanent secretary, chief technical officer or other officer concerned in the administration of a public body or any person who is purporting to act in any such capacity, he as well as the public body commits an offence and is liable to be proceeded against and punished accordingly.

Now, I have not made any reference to consent or connivance but if that is needed, we can slot that in as well.

**Sen. Ramlogan SC:** Now, Sen. Dr. Tewarie has made the point that when this legislation comes into force—*[Interruption]* Sen. Dr. Tewarie has made the point that when this Bill becomes law, every public authority and public entity would be required to establish a procurement unit.

**Sen. Dr. Tewarie:** Not be required, but they may well move to.

**Sen. Al-Rawi:** To do what?

**Sen. Dr. Tewarie:** The establishment of a procurement department or unit because every—

**Sen. Ramlogan SC:** Yeah, but to take care of that, we will say the person with—should we not say the person with responsibility for procurement? In the Freedom of Information Act, you have a designated officer, that is mandated by law.

**5.25 p.m.**

**Sen. Al-Rawi:** And data protection and—*[Interruption]*

**Sen. Ramlogan SC:** So that if we can say here that, a person shall be designated the procurement officer in each such agency, and then fix the liability on that person and make it simple.

**Sen. Young:** But you are still running into the same problem we discussed a short while ago, because this is criminal offences now, that is all well for civil. But now with criminal offences, you are correct, the mens rea—that that person is the person charged with the responsibility for the procurement process, but the breach of the process is done by someone else.

**Sen. Ramlogan SC:** No, but you see it will be their duty to ensure—*[Interruption]*

**Sen. Young:** I know, but I mean, you could be—*[Interruption]*

**Sen. Al-Rawi:** You want to catch the offender and not just the accounting officer per se.

**Sen. Ramlogan SC:** No, but you see, if you use that, you will never be able to prosecute anybody.

**Sen. Young:** You must be able to find who it is.

**Sen. Ramlogan SC:** The Companies Act provisions would not make sense and that has been with us.

**Sen. Vieira:** Just a reminder, the public bodies include Judiciary, Parliament, Regional Health Authorities, so we have to be mindful of—*[Interruption]*

**Sen. Ramlogan SC:** Yeah, sure, sure, but that was why I was going to say the person with responsibility for procurement, and make that person a designated officer, that every public body or procuring entity must appoint, and fix the liability on that person.

**Sen. Dr. Mahabir:** Right, but is that going to come under the regulations?

**Sen. Ramlogan SC:** No, no, we have to do it here. *[Crosstalk]*

**Sen. Dr. Mahabir:** Okay, good.

**Sen. Al-Rawi:** The question is where there is none.

**Sen. Ramlogan SC:** I know, I know, that is what I am saying.

**Sen. Prescott SC:** In such a case, we probably want to reintroduce the consent of connivance element, because it is a lower level officer who may well have been guided or conspired—*[Interruption]*

**Sen. Ramlogan SC:** I agree with that, and it takes care of Sen. Young's point about the mens rea as well, you know. So if we can all put our heads together, and have Sen. Prescott draft something; that will be good. *[Laughter]*

*[Mr. Chairman confers with the Attorney General]*

**Mr. Chairman:** What I am proposing is, suspend the House for 15 minutes, all right, which would give you an opportunity to get the new clause formulated, hopefully, in a manner which we will all accept, and come back here. I think it is going to need some massaging to perhaps—*[Interruption and continuous crosstalk]* So we are going to suspend this House until 5.45 p.m., *[Interruption and continuous crosstalk]* and we will resume committee at that stage.

**Sen. Dr. Mahabir:** Could we go to six o'clock, Mr. Chairman, and then we come back and we work right through?

**Sen. Ramlogan SC:** "It eh hah no right through. We dun."

**Sen. G. Singh:** This is the last one.

**Mr. Chairman:** It is the very last.

**Sen. Ramlogan SC:** Let us finish it, 5.45. *[Interruption]*

**Mr. Chairman:** If we put a time target of 5.45, if you start to slip, I am sure you will get word to me.

**Sen. Ramlogan SC:** No, no, no, there will be no slippage, no slippage.

**Mr. Chairman:** We will give you a target.

**Sen. Al-Rawi:** Thank you, Mr. Chairman.

**5.28 p.m.:** *Committee suspended.*

**5.52 p.m.:** *Committee resumed.*

**Sen. G. Singh:** Mr. Chairman, there will be a resumption of the Senate.

**Mr. Chairman:** The Senate will now resume.

*Senate resumed.*

#### PROCEDURAL MOTION

**The Minister of the Environment and Water Resources (Sen. The Hon. Ganga Singh):** Mr. President, in accordance with Standing Order 9(8), I beg to move that the Senate continue to sit until the completion of the business at hand.

*Question put and agreed to.*

**Sen. Prescott SC:** Mr. President, did I hear you sat at 6.15 p.m.?

**Mr. President:** I did not mention a time.

**Sen. Prescott SC:** I am obliged, Sir.

**Mr. President:** At the completion of the business at hand.

**6.05 p.m.**

#### PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC PROPERTY BILL, 2014

[Fourth Day]

*Committee resumed.*

**Sen. Ramlogan SC:** Chair, we would like to propose a new insertion, 61(2), (3) and (4), which reads as follows:

- (2) For the purposes of this Act, a public body shall appoint a procurement officer who shall be responsible for public procurement and the disposal of public property for that body.
- (3) A reference in this Act to the commission of an offence by a public body shall be construed as a reference to the commission of the offence by the procurement officer referred to in subsection (2) or an officer who purports to act in such capacity, if it is proved that:

- (a) the offence was committed with his direct consent or connivance;
  - (b) he, with knowledge, did not exercise reasonable diligence to prevent the commission of the offence.
- (4) No prosecution of an offence under this Act may be instituted without the written consent of the Director of Public Prosecutions.

**Sen. Prescott SC:** Just read (a) again.

**Sen. Ramlogan SC:** (a): the offence was committed with his direct consent or connivance;

**Sen. Prescott SC:** And then say “or”, “or (b)”.

**Sen. Ramlogan SC:** “or (b)”.

**Sen. Drayton:** I just want to say that whatever little tweaking or rewording, I really think this is excellent because we had gotten to the point where we were actually putting around the whole issue of accountability and similar to the financial regulations, I would think that in our regulations that is what would now empower this person and also work out their relationship. So I think this is excellent and I feel comfortable, subject to whatever tweaking the legal people may have.

**Sen. Prescott SC:** Chairman, I know the technical people will be praised eventually, but I want to offer my own compliment to their hard work.

**Sen. Vieira:** You are throwing your hat in the ring.

**Sen. Prescott SC:** I wish only to compliment the technical officers.

**Sen. Al-Rawi:** One question AG, in subclause (3), “A reference in this Act to the commission of an offence shall be construed”, et cetera, “or an officer who purports to act in such capacity”. Did you want to say “or a person”, because not every public body may have an officer?

**Sen. Ramlogan SC:** No, I prefer “officer” there because you would want to specify that, you know.

**Sen. Lalla:** You do not have to be designated “officer” to be an officer in law.

**Sen. Ramlogan SC:** If you are a person working for the company responsible for procurement, in the eyes of the law, you will be an officer. It does not have a technical meaning. You would be an officer, and you would be a person. You cannot have an officer who is not a person. Unless “all-yuh wha we” put in something against aliens.

**Sen. Vieira:** Just to point out that there actually is a definition of senior officer in the Bill. Under Miscellaneous:

“senior officer’ means a managing director, chief executive officer, chief operating officer, deputy managing director, president,”—blah blah blah.

**Sen. Ramlogan SC:** That is the EMA Act.

**Sen. Vieira:** No, this Bill.

**Sen. Ramlogan SC:** What page of the track changes?

**Sen. Vieira:** This is the original Bill, page 42, clause 58(1).

**Sen. Al-Rawi:** Page 37 of the track changes, but the point is when we were looking at this, we certainly did not have in mind to confine it to senior officers because we recognize that there may be officers who are junior to the process.

**Sen. Ramlogan SC:** That is correct, so we will leave it as is.

**Mr. Chairman:** So the question is that clause 61 be amended—

**Sen. Ramlogan SC:** Chair, I just had one question I wanted to raise. What will happen, pray tell, if you advertise for a procurement officer and you do not get one because people do not want this “wuk” because of the liability. I know we have said “persons who purport to act in the capacity”, but should we not put in a default position that until or if you do not get a procurement officer that somebody has to perform the duty or be responsible?

**Sen. Dr. Mahabir:** The person responsible for procurement will, in fact, become the procurement officer.

**Sen. Ramlogan SC:** Yeah.

**Sen. Vieira:** But that is captured because you say “shall appoint a procurement officer who shall be”.

**Sen. Ramlogan SC:** Yeah.

**Sen. Prescott SC:** Might it not be that the public body because it is they who commit the offence; it is the accounting officer of that public body in any event. What this new amendment has sought to do is to drive down below the Permanent Secretary or senior officer to the person who has the management of the thing. If, therefore, you have not yet appointed a procurement officer—

**Sen. Ramlogan SC:** You advertise and nobody “eh” want de “wuk”.

**Sen. Prescott SC:** The cream remains at the top. The senior person is responsible.

**Sen. Ramlogan SC:** Now, you see, that is why I am flagging it because if you advertise for a procurement officer—because remember now we are creating vacancies across the board—and if you advertise and no one is willing to take up this job because this is a job that imposes and carries criminal liability—you could go to jail for 10 years and you could be fined for \$2 million and \$5 million—so nobody applies for the job, what happens then?

**Sen. Dr. Mahabir:** The officer in charge of procurement—

**Sen. Ramlogan SC:** And let us make sure that this captures that person as well.

**Sen. Prescott SC:** The same officer who acts in that capacity.

**Sen. Vieira:** I was not thinking of holding out a post of officer. Under the FIU, proceeds of crime, we have compliance officers who are appointed.

**Sen. Ramlogan SC:** The CPC has solved it for us. In 61(2), for the purposes of this Act, “a public body shall appoint or designate” and that solves it. That means that if nobody “ain’t” want it, you are forced to designate somebody.

**Sen. Vieira:** Like a compliance officer under FIU.

**Sen. Maharaj:** AG, if you are changing the terms and conditions of service of “public officer” there, you run into some difficulties, you know, because this is not a designated officer like the FOIA where there are no penalties attached for not doing your function. You are talking about fines and criminal imprisonment and so on.

**Sen. Al-Rawi:** That is a very good point, Sen. Maharaj.

**Sen. Maharaj:** If you change their terms and conditions—

**Sen. Al-Rawi:** Yes, you will have to use a contract officer.

**Sen. Maharaj:** I am sure Sen. Lambert, you could ask him.

**Sen. Lambert:** If the person is a contract worker, there will be terms and conditions that will be developed within the contract.

**Sen. Maharaj:** We are not talking about contract—

**Sen. Al-Rawi:** Sen. Lambert, we agree with you. He said to get around that difficulty it will have to be a contract worker.

**Sen. Lambert:** Well, obviously, because I cannot be the one to fix the terms and conditions of the public sector worker. You cannot do it because they are governed by regulations.

**Sen. Ramlogan SC:** I rather suspect that we are creating a new office and, therefore, the job spec for this will have to speak directly to these matters, such that it will not be an alteration to the terms and conditions of the person. *[Interruption]* Or the designate part?

**Sen. Maharaj:** They will have to designate a contract officer.

**Sen. Ramlogan SC:** No, no, the Permanent Secretary—I suppose—

**Sen. Prescott SC:** If he does not have an appointee within his establishment.

**Sen. F. Al-Rawi:** You can meet it by saying “until a procurement officer is appointed, the senior officer shall be deemed to be”.

**Sen. Ramlogan SC:** What about when they get appointed and they leave the “wuk”?

**Sen. Young:** Even so, the senior officer would still have the same objection.

**Sen. Al-Rawi:** I am dealing with the fourth provision in terms of an alternate.

**Sen. Ramlogan SC:** I do not see that—we borrowed this liability provision from the Interpretation Act, and no one raised the issue of an alteration to the terms and condition when we imposed that liability in the Interpretation Act. In the Exchequer and Audit Act and in the financial rules and regulations and so on, we have always imposed penalties on public officers. I do not think that is an alteration of your term and condition. Your term and condition has to do with your right to vacation, sick leave, your pay and so on. But this is not an alteration to your term and condition.

**Sen. Young:** I suspect there is merit in that because remember this requires the officer to commit an offence. That is something that is within, so you are not imposing it. You are not telling them you are going to jail or there is a fine. They still have to do a positive act on their part.

**Sen. Ramlogan SC:** Yes, if we pass a law now to say that any public officer guilty of corruption must go to jail for 10 years, that does not alter their term and condition? It does not.

**Sen. Dr. Mahabir:** And, also, there has to be someone doing the procuring. In every agency, there has to be someone, whether you call them the procurement officer or designated procurement officer, this is the individual who is procuring. He is the individual who is going to be subject to wrongdoing and breaking the law and that is the individual we need to identify.

**Sen. Lalla:** I suggest we say “procurement officer or person performing the functions of procurement officer”.

**Sen. Dr. Mahabir:** Yes, someone performing the functions of, who would be engaging in the negotiations, discussing the terms of the contract and so on.

**Sen. Al-Rawi:** I think we can survive with the “or designate”, you know.

**Sen. Ramlogan SC:** That is why we have to “appoint or designate”.

**Sen. Al-Rawi:** I think the designate is safe AG.

**Sen. Ramlogan SC:** It is safe to say “appoint or designate”. I think so. All right, guys? Good.

**Sen. Robinson-Regis:** May I ask a question?

**Sen. Ramlogan SC:** Yes.

**Sen. Robinson-Regis:** Are we having a separate definition of procurement officer or just in the clause?

**Sen. Ramlogan SC:** No, it is defined in 61(2). That is fine.

**Sen. Robinson-Regis:** Just in the clause? Okay.

**Sen. Ramlogan SC:** Okay, Chair. My concern is just by the imposition of the word “designate” and we are fine.

**Mr. Chairman:** So the question is that clause 61 be amended by the insertion of the existing 61 as (1) and by introducing three new subclauses (2), (3) and (4) reading as follows:

- (2) For the purposes of this Act, a public body shall appoint or designate a procurement officer who shall be responsible for public procurement and the disposal of public property for that body.
- (3) A reference in this Act to the commission of an offence by a public body shall be construed as a reference to the commission of the offence by the procurement officer referred to in subsection (2) or an officer who purports to act in such capacity, if it is proved that:

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- (a) the offence was committed with his direct consent or connivance;
  - (b) he, with knowledge, did not exercise reasonable diligence to prevent the commission of the offence.
- (4) No prosecution of an offence under this Act may be instituted without the written consent of the Director of Public Prosecutions.

*Question put and agreed to.*

*Clause 61, as amended, again ordered to stand part of the Bill.*

**6.20 p.m.**

*Preamble.*

*Question proposed:* That the Preamble be approved.

**Sen. Prescott SC:** Well, sorry, no. Is that the one that reads “procurement regulation” in the third to last line—the office of procurement regulation? Is it that or am I reading the wrong thing?

**Mr. Chairman:** It is the Preamble to the Act.

**Sen. Prescott SC:** What does it say?

**Sen. Al-Rawi:** By procurement.

**Sen. Prescott SC:** That is all it says?

**Sen. Vieira:** Yes.

**Sen. Prescott SC:** Where is it? [*Crosstalk*]

**Mr. Chairman:** It is all the recitals. [*Crosstalk*]

**Sen. Prescott SC:** Or, that is the Preamble.

**Hon. Senator:** Yes.

**Mr. Chairman:** It starts under the long title to the Bill: “Whereas it is enacted by section 31(1)...”—and so on.

**Sen. Prescott SC:** Is the long title subject to our approval here?

**Mr. Chairman:** The Clerk reads the long title of the Bill.

**Sen. Prescott SC:** Well, if you would read it with the correction to the word procurement “regulator” instead of “regulation”. Is it procurement regulation?

**Hon. Senator:** Yeah.

**Sen. Prescott SC:** Very well, I withdraw. [*Crosstalk*]

**Sen. Al-Rawi:** Part II, clause 9 is procurement regulation.

**Sen. Prescott SC:** It is getting late. Chair, I am sorry, my apologies.

**Mr. Chairman:** Sorry, Sen. Robinson-Regis.

**Sen. Robinson-Regis:** Thank you. Given the fact that we—well, I guess it might be covered with related matters—seeing that we repealed the Central Tenders Board, and we also repealed that section of the THA, should we put it in this Part in the long title?

**Sen. Ramlogan SC:** No.

**Sen. Robinson-Regis:** No? And related matters would cover it?

**Sen. Ramlogan SC:** Yeah. That is fine.

**Sen. Robinson-Regis:** Okay.

*Question put and agreed to.*

*Preamble approved.*

*Question put and agreed to:* That the Bill, as amended, be reported to the Senate.

*Senate resumed.*

*Bill reported with amendment.*

**Mr. G. Singh:** Division.

**Mr. Chairman:** We will now conduct a division as this Bill requires a special majority. [*Laughter*]

*Question put:* That the Bill be now read a third time.

*The Senate voted: Ayes 28*

AYES

Singh, Hon. G.

Coudray, Hon. M.

Ramlogan SC, Hon. A.

Howai, Hon. L.

Griffith, Hon. G.

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Hadeed, Hon. G.

George, Hon. E.

Karim, Hon. F.

Tewarie, Hon. Dr. B.

Bharath, Hon. V.

Moheni, Hon. E.

Lambert, Hon. J.

Maharaj, Hon. D.

Ramnarine, Hon. K.

Lalla, L.

Robinson-Regis, Mrs. C.

Al-Rawi, F.

Baldeo-Chadeesingh, Mrs. D.

Cudjoe, Miss S.

Young, S.

Drayton, Mrs. H.

Wheeler, Dr. V.

Prescott SC, E.

Mahabir, Dr. D.

Vieira, A.

Small, D.

Abdul-Mohan, Rev. J.

Edwards, Dr. A.

*Question agreed to. [Desk thumping]*

*Bill accordingly read the third time and passed.*

*Adjournment*

*Wednesday, June 11, 2014*

**ADJOURNMENT**

**The Minister of the Environment and Water Resources (Sen. The Hon. Ganga Singh):** Mr. President, I want to congratulate you and all Senators of the Senate for the marathon session yesterday and today. I think that we have participated in history, and in making landmark legislation for the benefit of the country. [*Desk thumping*] We want to pay particular regard to the Office of the Chief Parliamentary Counsel—[*Interruption*]

**Sen. Ramlogan SC:** Yeah, yeah. [*Desk thumping*] I tell him to say that. [*Laughter*]

**Sen. The Hon. G. Singh:**—and also the Senior Legal Officer in the Ministry of Planning and Sustainable Development.

**Sen. Ramlogan SC:** Yeah, yeah. [*Desk thumping*]

**Sen. The Hon. G. Singh:** Mr. President, I beg to move that this Senate do now adjourn to Tuesday, June 17, 2014 at 11.30 a.m. to conclude the Private Motion by Sen. Drayton on campaign finance reform and, time permitting, to conclude the committee stage of the Nurses and Midwives Registration (Amdt.) Bill; and to commence the debate on the Motion to adopt the report of the Planning and Facilitation of Development Bill, 2014.

**Mr. President:** Hon. Senators, before I put the question on the adjournment, leave has been granted for a matter to be raised on the motion for the adjournment of the Senate. Are we dealing with that today, Leader of Government Business?

**Sen. The Hon. G. Singh:** By agreement, Mr. President, and having regard to the very productive work we have engaged in over the last two days, by mutual agreement, we will postpone that to the next occasion of the sitting of the Senate.

**Mr. President:** I see.

*Question put and agreed to.*

*Senate adjourned accordingly.*

*Adjourned at 6.30 p.m.*