SENATE

Friday, September 21, 2018

The Senate met at 1.30 p.m.

PRAYERS

[Madam President in the Chair]

LEAVE OF ABSENCE

Madam President: Hon. Senators, I have granted leave of absence to Sen. Ronald Huggins, who is ill.

ARRANGEMENT OF BUSINESS

Madam President: Hon. Senators, I am awaiting the instrument of appointment, so with your leave I will revert to this item later in the proceedings.

PAPERS LAID


Administration and Operations of Caribbean Airlines Limited. [Sen. The Hon. A. West]


JOINT SELECT COMMITTEE REPORTS
(Presentation)

Human Rights, Equality and Diversity

Sen. Saddam Hosein: Madam President, I have the honour to present the following reports:

Perceived Inequality Faced by Single Fathers in Trinidad and Tobago

Treatme不断发展 and Conditions of Holdings Cells in Trinidad and Tobago Police Stations


Finance and Legal Affairs

National Insurance System of Trinidad and Tobago

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Madam President, I have the honour to present the following report:


URGENT QUESTIONS

Dry-docking of Cabo Star

(Availability of Replacement)

Sen. Wade Mark: Thank you, Madam President. To the hon. Minister of Works and Transport: In light of the dry-docking of the Cabo Star last evening and the absence of any alternative cargo vessel to replace same, can the Minister advise what is being done to mitigate the impact of the lack of such a cargo vessel?

The Minister of Works and Transport (Sen. The Hon. Rohan Sinanan): Thank you, Madam President. Madam President, the Trinidad and Tobago Inter-Island Transportation Company Limited advised by press release that
from September 20, 2018 to September 30, 2018, the *MV Cabo Star* will undergo its planned annual maintenance programme at the Caribbean dry-dock yard. Hence, for the 10 days that the vessel would be on dry-dock, the authority has put in place the following contingency measures:

- Additional sailing of the *MV Cabo Star* was scheduled on Saturdays during the period Saturday 26 August, 2018, to 15 September, 2018.
- Vehicles up to 7,000 kgs would be accommodated on the *T&T Spirit* during this period of dry-docking.

Sailing of the *T&T Spirit* on Wednesday 19th and 26th September, during the dry-docking period, was scheduled. I thank you.

**Sen. Mark:** Madam President, can the hon. Minister indicate whether the *T&T Spirit* will be taking up the slack left by the *Cabo Star* during this period of dry-docking for the period which will start from today, right until the return of that vessel, the 30th?

**Sen. The Hon. R. Sinanan:** Thank you. Madam President, the *Cabo Star* is a cargo vessel, the *T&T Spirit* is a passenger vessel. However, vehicles up to 7,000 kgs will be accommodated on the *T&T Spirit*. This dry-docking was planned and the stakeholders, both in Trinidad and Tobago, would have been consulted. There have been additional trips, and up to the day before the vessel went into dry-docking significant volumes were utilized on the cargo vessel. So it is anticipated that the *T&T Spirit* will take the cargo that is below 7,000 kgs. Thank you.

**Sen. Mark:** Madam President, can the Minister indicate whether the bulk cargo that is normally transported by the *Cabo Star* via the truckers that would enter the dock to dispose of such goods on the *Cabo Star*—can the
Minister give this country the assurance that the *T&T Spirit* would be able to fill that gap in terms of the cargo that is required?

**Sen. The Hon. R. Sinanan:** Madam President, this dry-docking is the annual planned dry-docking. This is not the first time that we have to send any cargo vessel working in service to dry-docking. And this is why, again, it was a planned dry-docking where the stakeholders would have been given ample notice. Most of the bulk cargo that has to go to Tobago would have been transported over the last two weeks with extra sailing. Everyone was informed that the cargo to go on the *T&T Spirit* would have to be cargo that is less than 7,000 kgs for this period. I thank you.

**ANSWERS TO QUESTIONS**

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Thank you very much, Madam President. Madam President, the Government is pleased to announce it will be answering question Nos. 184 and 185. We ask for a deferral of two weeks to question No. 186.

**Sen. Mark:** Madam President, I seek your guidance and indulgence here because these matters have been on the Order Paper, as you know, for some time now and the hon. Leader of the House is aware that within a few days from today Parliament would prorogue. So to really ask this honourable House, through you, to have these matters deferred for two weeks, I think he needs to be a little more serious than that.

**ORAL ANSWERS TO QUESTIONS**

*The following question stood on the Order Paper in the name of Sen. Wade Mark:*

**Phasing out of Styrofoam**

*(Objective to be Realized)*

**UNREVISED**
186. Given recent reports that the Tobago House of Assembly intends to collaborate with the private sector to phase out the use of styrofoam on the island, can the hon. Prime Minister inform the Senate how this objective is expected to be realized?

*Question, by leave, deferred.*

**EMBDC and National Quarries Limited**

**(Requisite Licences)**

184. **Sen. Wade Mark** asked the hon. Minister of Agriculture, Land and Fisheries:

In light of an admission by the Minister that both the EMBDC and National Quarries Limited have been operating without the requisite licences, can the Minister indicate when will the relevant authorities be addressing this situation?

**The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat):** Thank you very much, Madam President. Madam President, I thank Sen. Mark for this question. In relation to the issue of the National Quarries Limited operating without mining licences, this came out of a joint select meeting held on Monday 29 January, 2018. A subsequent advertisement in March 2018, confirmed that the National Quarries had sought to renew certain mining licences. My understanding is that that is in progress with the Ministry of Energy and Energy Industries.

With respect to the EMBD, it is public knowledge that the Government took steps to deal with this issue which existed since 2003. The EMBD is working with the Ministry of Energy and Energy Industries to obtain the appropriate quarry licences. Thank you.

**Sen. Mark:** Madam President, through you, can the Minister indicate how
long will it take for both National Quarries and the EMBD to secure those licences from the Ministry of Energy and Energy Industries?

**Sen. The Hon. C. Rambhartat:** Madam President, in relation to National Quarries I could tell Sen. Mark that I spoke to the CEO who indicated to me that they are working with the Ministry of Energy and Energy Industries and they hope to have those licences in place shortly. In relation to EMBD, I could say that Cabinet has approved the grant of the mining licences. EMBD has prepared the cheque for the fees to be paid and we expect that very shortly the EMBD’s licences will be in place. Thank you.

**Sen. Ramdeen:** Thank you, Madam President. Madam President, through you, to the hon Minister: Minister, can you tell us in relation to National Quarries Limited, how long was National Quarries operating without the requisite licences from hence go back?

**Sen. The Hon. C. Rambhartat:** Madam President, I am not in a position to provide that information. As I indicated in the answer, the commentary attributed to me arose from the Joint Select Committee meeting of January 29, 2018, and perhaps the record of that meeting would supply the details, but I am not in a position to supply that now.

**Sen. Ramdeen:** Madam President, thank you again. Through you, to the hon. Minister: Minister is there any legal consequence that arises from National Quarries operating without the requisite licences?

**Sen. The Hon. C. Rambhartat:** Madam President, that is a matter for the regulator, the Ministry of Energy and Energy Industries, to determine whether anything arises from not operating or operating without a licence.

**Madam President:** Sen. Mark, you wanted to ask a supplementary question?
Sen. Mark: Thank you, Madam. I just wanted to ask the hon. Minister, what time frame—because, Madam President, we are hearing this thing will be done shortly, but this thing has been going on for some time now. So I am asking the hon. Minister, through you, can he identify a period where the National Quarries would be able to secure their licence formally, from the Ministry of Energy and Energy Industries?

Madam President: Sen. Mark, I believe that was posed by Sen. Ramdeen as his first supplementary question about the time frame. No? [Crosstalk] You want to ask another question, supplementary, because that question was posed about the time frame. [ Interruption] Yes, Sen. Ramdeen asked, “how long”. Was it not? Sen. Mark, ask another question. That question, the timeline, has already been asked of the Minister. Okay. Next question, Sen. Mark.

Sen. Mark: Question 185 to the hon. Minister of Education.

Madam President: Sen. Mark, before I call on the Minister could we revert to question 184? It is my misunderstanding. Pose your supplementary question to the Minister. Minister, do you remember what Sen. Mark wanted to ask?


Madam President: Can you answer, please? It is my misunderstanding. I apologize.

Sen. The Hon. C. Rambharat: I have answered it in a few different forms, so let me be very clear. Madam President, with all due respect to Sen. Mark, I am not the line Minister for National Quarries and I am not responsible for the issue of the licences. But out of regard for Sen. Mark and the appreciation of the question, the issue arose from a joint select committee
and that is why I commented publicly because I am the line Minister for EMBD. I could speak with clarity on EMBD but not on National Quarries, except to say that I spoke to the CEO a short while ago and he indicated to me that they have been working closely with the Ministry of Energy and Energy Industries, both on the licences and their plan for quarrying up in the north-east. Thank you.

Madam President: Next question now, Sen. Mark.

Replacement of ICT System – UTT
(Procurement Procedures Used)

185. Sen. Wade Mark asked the hon. Minister of Education:

In light of reports that the University of Trinidad and Tobago has taken a decision to replace its ICT system with a new system which is estimated to cost some $45 million, can the Minister indicate what procurement procedures were used in acquiring this new technology?

The Minister of Education (Hon. Anthony Garcia): Thank you very much, Madam President. Madam President, in spite of the fact that Sen. Mark and I share a very special relationship—he is my very good friend—this question is based on the wrong premise. There has been no cost, or no systems have been put in place. There have been no procurement procedures that we have entered into, but let me explain. Madam President, UTT currently utilizes a student management system which is limited to students’ applications and records, but is not integrated with finance, human resources and other management systems. Recordkeeping is cumbersome and prone to errors.

Most universities around the world utilize integrated management systems which significantly enhance the efficiency of the operations. Banner is one
such integrated system that is widely used internationally at institutions which include UWI and COSTAATT. Banner has been in contact with UTT for more than 10 years, promoting the use of their software at UTT. Over the past six months, personnel from Banner have visited UTT to evaluate the needs of the organization and assess the current methodologies used for information, processing and recordkeeping. The outcome of these visits will be a proposal to UTT for an integrated management system utilizing standard modules but tailored to the specific needs of UTT.

This proposal is yet to be received and no decision has been taken by UTT or its board regarding the acquisition of any software. All discussions between UTT and Banner to date, have been exploratory. Formal procurement procedures will be utilized by UTT for the tendering, evaluation and acquisition of, and the software related to the integrated management system. Thank you very much.

Sen. Mark: Thank you, Madam President. Could the Minister indicate whether he is aware that some $45 million has been allocated by UTT to introduce this new ICT system which would be able to provide services, or which would be implemented I should say, over a three-year period; is the hon. Minister aware that some $45 million of taxpayers’ dollars have been allocated for that purpose?

Hon. A. Garcia: Madam President, I am not aware that any money has yet been organized, or appropriated, or envisaged. All I can say is that we are in exploratory discussions and no decision has been taken as yet. Thank you.

Sen. Mark: Can the hon. Minister share with us a time frame for a conclusion of these discussions with view to arriving at a decision?

Madam President: Sen. Mark, I will not allow that question. Next
DEFINITE URGENT MATTER
(LEAVE)

Adequate Maintenance of the Nation’s Sea Bridge
(Failure of Government)

Sen. Wade Mark: Madam President, I hereby seek your leave to move the adjournment of the Senate today under Standing Order 16 for the purpose of discussing a definite matter of urgent public importance, namely, the continuous failure of the Government to adequately maintain the nation’s sea bridge. The matter is definite because it pertains specifically to the continuous failure of the Government to adequately maintain the nation’s sea bridge by not providing an alternative vessel in light of the dry-docking of the *Cabo Star*.

The matter is urgent because the *Cabo Star* will be out of commission until September 30th which will once again result in loss of revenue for businesses in Tobago. The matter is exacerbated due to the fact that with the upcoming holiday weekend, businesses in Tobago will not be able to take advantage of the expected influx of persons to the island. The matter is of public importance because the continuous lack of a reliable inter-island transport service adversely affects Tobago’s economic health.

I so move, Madam President.

Madam President: Hon. Senators, I have considered the Motion and I am not satisfied that this matter as presented qualifies under this Standing Order.

MISCELLANEOUS PROVISIONS (SUPREME COURT OF JUDICATURE AND CHILDREN) BILL, 2018

[Fifth Day]
Bill committed to a committee of the whole Senate.

Senate in committee.

Madam Chairman: Hon. Senators, before we begin, I just want to treat with some housekeeping issues. All Members should have, distributed on behalf of the Attorney General, the Bill with all the track changes. You should have a document with the rationale for the amendments—yes? I hope I am not speaking to myself. Yes, Members?—and then today there was circulated a list of proposed amendments on behalf of Sen. Mark. Is everyone in possession of these documents?

Mr. Al-Rawi: Just to indicate also for better assistance to all Senators, I also circulated by email through the Clerk, all of the laws as proposed to be amended in marked up version as well so that the amendments could be factored in context.

Madam Chairman: Yes, Sen. Raffoul?

Sen. Raffoul: I do not have the hard copies with me and my soft copies are not downloading onto my computer, could I request a two-minute break so I could have some assistance with my computer?

Madam Chairman: No, we will furnish you with some of the copies.


Sen. Ramdeen: Madam President, before we begin, can I just simply express my deepest sense of gratitude to the Attorney General for the documents that have been submitted, both in track form changes as well as the bundle of documents that were submitted with all of the laws that encompass all of the amendments that are to be done. It was very, very helpful. I did indicate to the Attorney General that on the part of the
Opposition we have tried to do the best that we can in terms of circulating the written proposed amendments or we would like to be able to go through those that have not been circulated while we go through the committee stage.

**Mr. Al-Rawi:** Madam Chair, Sen. Ramdeen did indeed say to me exactly as he has just said and, of course, the Government welcomes any suggestions that could take us to a better place with respect to this Bill, subject of course, to your guidance.

**2.00 p.m.**

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

**Clause 3.**

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

**Madam Chairman:** May I just point out that we have for clause 3, amendments circulated by the Attorney General. No? By Sen. Mark alone. So, Sen. Mark?

**Sen. Mark:** Yes, Madam Chair.

Clause The Supreme Court of Judicature Act is amended as follows:-

3 (a) In section 7-

(i) In subsection (1) by deleting the word “England”.

(ii) In subsection (1) by inserting after the word “of” the words “any Commonwealth Caribbean country”.

(iii) In subsection (2)(b) by deleting the word “England”.

(iv) In subsection (2)(b) by inserting after the word “England” the words “any Commonwealth
My colleague will assist me on this one as well. But let me begin by indicating that we are just a couple of days away from being a Republic represented in the 42nd Anniversary, I should say, of Republicanism. And I just wanted to let you know that we are suggesting that what the Government is proposing is not in keeping with what we would like to have established at this time on behalf of the citizenry.

And as you would know, when you go to this particular provision of the legislation the word “England” is used and there has to be context for this interpretation of that particular word and it is so broad and so wide. At this time, we are suggesting that as a modern democratic, sovereign independent state, we would want to suggest to the Attorney General we delete that term or that word “England” because as you would imagine, Madam Chair, that would have come into being during and before our Independence, when judges were being brought from London in many instances on the Bench here and it was retained, as you would know, subsequently. So in the current reality that we are in, we are suggesting that the Attorney General give serious consideration to its deletion—the word “England”—and to substitute instead the words “any Commonwealth Caribbean country”.

Because we again believe that, with the whole Caribbean Court of Justice concept that the Government has been promoting, we are of the view that this question of bringing judges conscious of the reality of culture and context, it would be more appreciated and appropriate for persons who are in that place to be located within the Commonwealth Caribbean, as opposed to the entire Commonwealth as is being suggested.
Madam Chair, we are proposing further that we again delete where the word “England” appears and substitute “any Commonwealth Caribbean country”. And, that again, Madam Chair, is trying to ensure that we do not have strangers come in our midst from jurisdictions outside of the Commonwealth Caribbean.

So I hope that the Attorney General would understand that we are trying to address a very, very sensitive issue and that he would give consideration to our proposal. But my colleague, Sen. Ramdeen, I would like him to further elaborate on this particular provision that we are putting forward for consideration.

**Sen. Ramdeen:** Thank you, Madam Chair. Madam Chair, through you to the hon. Attorney General. There are three points that I wish to make on the proposal that Sen. Mark has put forward for your consideration. Firstly, the rationale as you have done—I am trying to set out what the rationale is. The rationale firstly is that I think we have come a very long way from where we were at Independence to where we are now. And I think that it is either in your contribution, or I think it is the contribution of Sen. Chote, it was described that in 1962, all of the judges of the Supreme Court would have been members of the English Bar. I think, when you look back at Act No. 14 of 1964, where this particular provision in the Supreme Court and Judicature Act comes from, I think the rationale was clearly at that point in time we did not have a fused profession and therefore, there was—if you wanted to become a barrister you had to go to England and do the courses or if you wanted to become a solicitor. In order to incorporate those professions into our unfused profession at that point in time, these qualifications were put there.
I think it was raised with you before, during the debate, that one of the ways in which we would like to see the profession move forward is that if you are going to be a member of the Judiciary, whether it be in the High Court or the Court of Appeal, one would have expected that you would at least be qualified to be a member of the Bar. And, therefore, that is where the rationale for the first requirement is. I think we have come so far that I do not see that there is a need for us to continue to have a requirement that you can be qualified to be a member of our Judiciary by being a member of the Bar of England.

And, to just use an analogy, when you go back to the Legal Profession Act and you look at the way in which someone from our jurisdiction, if they have to be a member of the Bar of England, there are certain mandatory courses that you have to do: EU Law, and Land and Trust, and these kinds of things. And, therefore, I want to ask whether you would consider that we shy away or we come to an end for this requirement, that if you are qualified to be a member of the Bar of England, that gives you a qualification to be a member of the Judiciary. That is number one.

Number two is that we have asked that you consider whether you would delineate or limit the Commonwealth categorization that you have proposed by being a member of the Commonwealth Caribbean. There are two things that arise from that, Attorney General. Firstly, I think it accords with us as a Caricom country. It recognizes the fusion and the way in which the legal profession operates by the fact that we have three law schools that give anyone who is qualified the right to practise throughout the Caribbean. And I think that it falls well in line with the fact that—even though Sen. Prescott made some reservations about what which Caribbean country you
come from—I think we all are bound together by a certain degree of commonality that would give each person who belongs to a member of a Commonwealth Caribbean Bar a certain degree of unique knowledge of the culture that binds us together as a Caribbean country. And that is the rationale for that.

But there is a third thing that came to mind this morning that raised a bit of concern; and it is quite a serious concern. If we have anyone from the Bar of a Commonwealth country coming to become a member of the Judiciary, they would obviously be entitled to all the benefits that are attributed to someone who is working here. But if that person is not a Trinidad and Tobago citizen, the issue will arise about they have to get a work permit to work here if they are outside of Caricom because we would not have that problem with the freedom of movement inside of Caricom.

But if you have someone who is outside of Caricom coming into Trinidad and Tobago to become a judge, and it happened before when we had a judge from England on the Bench—Brooke. I do not know how it was done. But there is something serious for you to consider as Attorney General, which is, that person would have to apply for a work permit, and that work permit has to be granted by a Minister of Government. And there will be an issue about the boundaries and how that relationship—it is something that can lead to some kind of challenge, constitutional or otherwise. And that is probably one of the things that arose out of my research into this. Perhaps, you can clear it up.

But I really think, Attorney General—I applaud the fact that you are increasing the number of judges in the High Court and the Court of Appeal. I think it is a step in the right direction but I think that the time has come for
us to decide whether we want to continue allowing. I do not know that it reciprocates that a member of the Trinidad Bar—I am sure—cannot be a member of the Judiciary in the United Kingdom, Ireland and Wales. And, therefore, we are conferring a benefit on people who we do not have a reciprocal benefit to our citizens. And I think the time has come for us to do away with that. I think that, in accordance with the things that you have said, and I do understand your argument—

**Madam Chairman:** Sen. Ramdeen, I think you have made the points on the proposed amendment, and I am going to invite anyone else. Because I think you have covered all the points that you wanted to make. Anyone else wants to say anything on the proposed amendment? Sen. Chote?

**Sen. Chote SC:** Thank you, Madam Chairman. Actually it is just a question which occurred to me arising out of the closing of the hon. Attorney General at the last session. Does this mean that citizens of the Republic of Trinidad and Tobago, who are admitted to the Bar of England and Wales, can bypass the procedure required for admission to the Bar here and make an application to the Bench as is now being permitted to all members of the Commonwealth? So I just wanted to know if it was possible to clear that up.

**Madam Chairman:** Any other question or comment before I ask the Attorney General? Yes, Sen. Hosein.

**Sen. S. Hosein:** Madam Chair, it is just one query. In terms of the number of judges, I just wanted to find out from the Attorney General, where did the figure 65? “Why we increase so much” in terms of the allocation to the courts?

**Madam Chairman:** Okay, well we are dealing right now—let us deal with the amendment that has been proposed by Sen. Mark. That is what we are
treat with right now.

Sen. S. Hosein: Okay, I will raise the query later on.

Madam Chairman: Sure. Any other Member wishes to say something or raise an issue with respect to the amendment proposed by Sen. Mark?

Mr. Al-Rawi: Much obliged, Ma’am, and I thank my learned colleagues for their contributions. May I begin by acknowledging the bona fides of the philosophical and esoteric exhortations with respect to the boundaries of admission to the Judiciary? It is true to say that we have advanced as a Republic since our days of Independence when in 1962, we had the Supreme Court of Judicature Act, and in 1964, we had these amendments by Act No. 14 of 1964.

If I could be permitted to answer Sen. Chote’s question first. Yes, Senator, it is correct that there can be a technical bypass, but it is not something which is recent. It is something which is, and has always been the case, in this particular Supreme Court of Judicature Act since at least 1964 when the amendments to introduce the qualification for the Bar of England first arose. So it is possible for a Trinidad and Tobago citizen, who has qualified at the Bar of the United Kingdom, and who has been in practice for over 10 years, and who meets the requirements of 18 years ago, that is the scheduled requirements issued under the Supreme Court of Judicature Act under the Constitution, under section 105 of the Constitution, to technically come in without being admitted to the Bar of Trinidad and Tobago, and that has been the case since 1964.

With respect to Sen. Mark’s specific amendment, as factored by Sen. Ramdeen’s fulminations, which I acknowledge as genuine thoughts for us as a Senate and as a Republic, may I say that the recommendation coming from

UNREVISED
Sen. Mark is that we effectively remove that with which we have operated since 1964? Remove the admission to the Bar of England and now get rid of it once and for all. But that must be respectfully factored in the context of the very issue that we are wrestling with on the practical side. And that practical side is essentially the fact that we require more judges. England is effectively the birthplace of our Commonwealth jurisprudence.

But more particularly, our final Court of Appeal pursuant to section 109 of the Constitution is the Privy Council. Therefore, moving away from the anchoring into the jurisdiction of the Commonwealth, the common-law jurisdiction, in the United Kingdom whilst we treat with it at our High Court and Court of Appeal level, that the Supreme Court of Trinidad and Tobago, it is a contradiction, unless we treat with it at our final Court of Appeal level.

Now, as we know, the appellate jurisdiction in the CCJ is only exercised by Trinidad and Tobago with respect to matters of original jurisdiction, meaning matters to the Treaty of Chaguaramas. We did not have the final Court of Appeal as the CCJ being adopted, for reasons which I would not go into right now. But suffice it to say, without unanimity between Opposition and Government that cannot happen. And whilst Government is readily and has always been readily able to consent to that, that has not happened. So, the move away from England at present would be extremely complicated because our final Court of Appeal, the Privy Council, would still be England.

If we get to now the bona fides in the argument of restricting Commonwealth to Commonwealth Caribbean, again I must have reference to four particular points of call. Firstly, section 109 of the Constitution, which prescribes the Privy Council as our final Court of Appeal, and under
the rules of engagement for the Privy Council any member of the Commonwealth can in fact sit in the Privy Council.

Secondly, with respect to the CCJ, where we have original jurisdiction locus as a country, the CCJ itself permits not only “Commonwealthers”, if I may that expression, to sit on the CCJ, but it expressly also permits persons from the civil law jurisdictions, that is outside of the Commonwealth, to sit in the CCJ. And I draw immediate reference to Mr. Justice Wit, who sits on the CCJ, coming from the civil law jurisdiction of the Netherlands. That is a non-Commonwealth country.

I then take refuge in the third position, which is that the other jurisdictions in the Commonwealth Caribbean, which we are asking ourselves to be limited to, those appellate jurisdictions, and I refer to the nine territories that comprise the Eastern Caribbean. I refer to the Bahamas. I refer to the Cayman Islands. I refer to the BVI. I refer to Belize. I refer to Turks and Caicos. All of those jurisdictions allow for Commonwealth persons to be in that appellate jurisdiction and Supreme Court jurisdiction.

The last port of refuge, which I will ask hon. Senators to consider, is the Legal Profession Act. The Legal Profession Act in fact allows for persons from the Commonwealth with suitable qualification to be practitioners in Trinidad and Tobago provided that they meet certain prescribed elements in that law. The point that must be borne in mind with that fourth port of refuge, as I have painted it, is that there is a material distinction between practising at the Bar— where attorneys practise—and practising on the Bench, which is in front of the Bar.

And in the round, as I summarize now, I would think, because of the inconsistencies that I have portrayed so far, that it is not appropriate at this
stage to abandon the Bar of England. I would think that the Commonwealth is a safe refuge, particularly when we look to the statistical output from the Judiciary where we have seen that the criminal law statistics to be found at page 73 of the annual reports of the Judiciary of this year demonstrates that we have a 40 per cent disposition rate. Sixty per cent goes into arrears. We have the position where we only have, at best, an 11 per cent probability of having a matter in the criminal jurisdiction dealt with inside of one year. We have had the statistical demonstration that if we wanted to clear the backlog on murder alone we would take all of the judges of the Supreme Court and assign them, all of the Assize judges in particular. It would take every judge taking no new matters 10 years to cross the backlog.

The last point that I would make in relation to that is that, with the advent of financial crimes burgeoning our country right now, because there are a number of financial crimes in the mix right now and there is a considerably larger menu of same about to come, we do require specialist field endeavour on the Judiciary insofar as they treat with things like terrorist financing, money laundering, et cetera, all of which I dare say do not really revolve around more than technically core areas: financial administration, balance sheeting, et cetera.

So, Madam Chair, if I could say at this point, acknowledging the esoteric and philosophical bona fides of my learned colleague’s arguments, the Government is regrettably not in a position to accept the recommendation coming from my learned colleague, Sen. Mark.

Sen. Mark: Madam Chair, my colleague did not articulate or elaborate on the very important submission made by Sen. Ramdeen and that had to do with a judge coming into our country from the wider Commonwealth
seeking a work permit. And if he is seeking a work permit, he has to get it
from the Executive arm of the State. And what would that conjure if a judge
has to go to a Member of the Executive branch to secure a work permit?

Mr. Al-Rawi: I thank Sen. Mark for that line of enquiry. May I point out,
every person at the Caribbean Court of Justice, which is one of our Courts of
Appeal for matters of original jurisdiction, save for Madame Justice
Maureen Rajnauth-Lee, who is a Trinidadian, they all fall into that category
right now.

Secondly, the exemptions from work permits are perfectly permitted.
Thirdly, the work permit functionality is addressed by a committee and not
just the Minister. Fourthly, the Judiciary would have an ability, in its
separation of powers principle, to certainly not accept a ministerial
indiscretion, if I could put it that way, or intervention. So, that in the round
means it has been working and is working with respect to the CCJ. It worked
and did work well with respect to Mr. Justice Brooke who came from the
Bar of England as a judge in the Assizes most recently, and also there are
remedies to treat with any form of malfeasance that could be treated with
that way.

Attorney General, I think we are perhaps mixing things up because the CCJ
is an international court. What we are talking about is the introduction of any
Commonwealth citizen who has been admitted to the Bar to be able to
second our Bench. That is the narrow point that we are looking at. So all this
talk, with all due respect, about who sits on the Privy Council and who sits
on Appellate Courts in other jurisdictions, and so on, really does not help us
too much. Are you willing to consider, perhaps, putting a sunset clause on

UNREVISED
this, so that we can see how—if persons from the wider Commonwealth are bought into the Judiciary, we know a judge cannot be removed except in circumstances, but certainly we will have an idea of how it is it working and whether the law needs to be changed again.

**Mr. Al-Rawi:** I respectfully disagree with your distinction as to the CCJ because whilst it is an international court, it sits here in Trinidad and Tobago.

Secondly, I am not in a position to accept the recommendation for a sunset clause on an issue such as this. Again, I revert to the fact that if one were to take the argument of the Bar of England alone, that certainly is something which is just 1964 move forward.

The other position is that I respectfully also do not agree with the position that all that talk about the Privy Council is not relevant to the confines of Trinidad and Tobago, because the position, as I see it, and again I accept hon. Senator that we have agreed to disagree, the position as I see it is that that court, the Privy Council, is our final Court of Appeal. And, therefore, the functionality of the Privy Council, in terms of our jurisprudence, is as relevant in my mind as the functionality of the Supreme Court of Judicature, which is the Court of Appeal and High Court. So, respectfully, I cannot agree to—the Government cannot agree to a sunset clause on this position.

**Sen. Mark:** Madam Chair, the hon. Attorney General made reference when he was submitting his case, re: work permits for judges. He talked about a category of exemptions and I would like to ask, through you, if we could elaborate on whether the judges that are going to be coming from the wider Commonwealth to get into the Bench, are you suggesting that they would be

UNREVISED
exempted from being able to access or required to have work permits? Is that what I am getting? Just clarify for me.

**Mr. Al-Rawi:** I cannot, armed with the information that I have now on this issue, answer that question yes or no. What I can say is that work permits are treated with under the ambit of a work permit committee. The work permit committee is permitted a discretion. Then there is the possibility of an appeal to the Minister of National Security.

But any decision made by the Minister of National Security is also one which is subject to review. So I am saying that there is an adequate remedy if there were to be an intrusion in this purpose to make sure that there was no abuse. The question is: Can any abuse be managed effectively? And the answer to that has got to be yes.

**Sen. Ramdeen:** Madam Chair, I just want to flag an issue for the Attorney General. Attorney General, with respect to the Privy Council and the Caribbean Court of Justice, I wonder if you would consider that those are third-tier courts, and therefore, in 99 per cent of the cases, those courts are called upon in making their determinations to give deference to findings of facts that would be from the High Court and for the Court of Appeal in almost all of the cases.

I am wondering whether you are not concerned that the people that will come from outside of our jurisdiction and from far and wide in the Commonwealth, whether they would have the ability to properly determine findings of fact that may be intrinsic to a Trinidadian and Tobagonian and the culture in which we exist in here, especially for sitting in the High Court. I think Sen. Chote, in her contribution had made reference to the problems that can exist when you put—and you have flagged yourself that some of
these judges may sit in the criminal jurisdiction.

Also, I wanted to just tack on to that the fact that we have now, not yet proclaimed, but we have passed legislation that allows for a judge alone. So you may well find yourself in a position where a defendant being tried for any crime in our jurisdiction that may be sitting without a jury because I expect that one of your replies is going to be that, well, findings of fact are really a matter for the jury. But in a case where someone elects to have a judge alone trial, do you not think it is quite dangerous to a judge alone trial for someone who is not acquainted with our culture or does not come from our background?

**Mr. Al-Rawi:** I thank Sen. Ramdeen for not only raising the issue but for also anticipating part of what the response would have been, and that is, of course, that findings of fact at present in the jury system are made by citizens of Trinidad and Tobago, and that also acknowledging that, albeit not the norm, it is still open to an Appellate Court to disturb findings of fact if they find that there is a manifest in justice with respect to same.

I am comforted and I give answer to the question of the mischief or the expression of danger to say that the due processing of any court, through its final stages, up to and including its final stage, is an adequate safeguard. So if there were to be any finding because of a failure to have cultural understanding of Trinidad and Tobago then the process through the Court of Appeal and up to the Privy Council is an established mechanism and safeguard for due processing.

Permit me to say this by way of a live example on this. I have sat in a court myself, in a Criminal Assize, where a Trinidad and Tobago judge would not accept the explanation coming from a witness, which was as...
follows: “Reddos did it”. And then the judge went into a long discourse as to what “reddos” meant. And it went into an explanation onto the record as to what a “red man” in Trinidad and Tobago is.

2.30 p.m.

And quite remarkably that judge was Mr. Herbert Volney. I sat in that court while that happened. It is one of those things that stand out in your mind. So, Sen. Chote had given us a very good example of an Englishman who had not understood local culture and there I was faced with a Trinidad and Tobago judge not understanding what a “red man” is on the record. So I am not quite persuaded that foreigners do not understand our positions necessarily, but I do fall back upon the position that the due processing through the court is an adequate safeguard.

Madam Chairman: Sen. Chote, Sen. Mark, at some stage you will appreciate that I will have to put the issue to a vote. I am going to allow Sen. Mark and Sen. Chote, one last intervention in respect of this amendment. Sen. Mark.

Sen. Mark: Madam Chair, I know that this provision—

Madam Chairman: I understand. So go ahead Sen. Mark. Sen. Mark, no you go ahead, I have given you the—

Sen. Mark: Yes. Madam Chair, this is a very disturbing and worrying and very dangerous matter that we are dealing with at the moment. And we—unless you know there is some other objective or ulterior motive behind this provision, we have done our homework and we have sought to bring to the attention of the Government a position that we believe that we can live with and parties can live with.

If the Government is insisting, Madam Chair, that they are not
prepared to bend, they are not prepared to compromise, they are inflexible, then we have to draw our conclusions and it would be unfortunate. Because I had my own thinking.

**Madam Chairman:** But, Sen. Mark—

**Sen. Mark:** No, no, no, I am just saying that I do not want to say exactly what I want to say here and now. And I would not say it. But I am giving the Attorney General the opportunity and the Government the opportunity to meet the country and the people half way on this particular amendment, and the Attorney General has rejected every effort. So one can only come to the conclusion what I had in my mind before. There is an ulterior behind that.

**Madam Chairman:** Yes, Sen. Mark. Sen. Chote.

**Sen. Chote SC:** Thank you, Madam Chairman. Hon. Attorney General, as a practitioner at the Bar, I must say that my concerns have not been allayed by what you have said thus far. And I am just wondering whether comfort may be had for people who think like me, other practitioners at the Bar, if you are able to tell us which of the stakeholders in the judicial system had been consulted during the process by which it was determined to have this legislation brought before Parliament.

**Mr. Al-Rawi:** Sure. Firstly, if I may begin and just put a quick answer to Sen. Mark’s submission. I do not accept Sen. Mark’s submission. I want to bring to the fore that by Act No. 4 of 2010, the UNC had a clear opportunity to address concerns with the Bar of England and it was not adopted. That prevailed, and the Bar of England allows for all of the so-called mischief, if one puts it that way, to have flowed in any event because a citizen from any country coming through the Bar of England could have come. So for the last eight years, since the last amendment by Act 4 of 2010, I note that the UNC
has been silent on any cure to any proposed remedy for some issue that they spotted. So I just wish to put that onto the record.

Secondly, with respect to Sen. Chote’s question, the stakeholder request went out to a wide array of people. You said judicial system; I presume you mean more than just the judges, correct?

**Sen. Chote SC:** Yes.

**Mr. Al-Rawi:** Yes. So the request for submissions went to the public, they went to the Law Association, they went to the DPP’s office, they went to the Judiciary. That is three major participants in that. The Law Association did write in in terms—expressed by many Senators as expressed under the hand of Mr. Douglas Mendes of Senior Counsel, and that position was dealt with in the course of the debate with positions for and against coming.

Sen. Mark’s submission that this is dangerous can be also equally met with this is equally novel and solution finding. Thank you, Madam Chair.

**Sen. Mark:** Did you consult the Criminal Bar?

**Mr. Al-Rawi:** The Criminal Bar. Well first of all, the Law Association pitched out to all of its members—every single member of the Law Association received the emails, received the Bill, received the letters passing between the Law Association and the Office of the Attorney General, and that was allowed in the period June 29th straight up till September when we returned, and even prior because this stood on the Order Paper and was already with the Law Association.

Law Association has in fact hired somebody from the Parliament who now works at the Law Association and there is a constant tracking mechanism of all Bills.

So I want to say that was ample time; there was written
correspondence, there were positions put for and against. We have had three or four days of debate on this particular matter and the Government has made its position clear for the reasons espoused thus far.

**Madam Chairman:** Hon. Members, at this stage I will now put the question.  
*Question put.*

**Sen. Mark:** Can I have a division on it?

*The Committee divided: Ayes 8 Noes 15*

**AYES**
Mark, W.
Haynes, Ms. A.
Ameen, Ms. K.
Hosein, S.
Obika, T.
Ramdeen, G.
Chote SC, Ms. S.
Raffoul, Ms. J.

**NOES**
Khan, F.
Gopee-Scoon, Mrs. P.
Baptiste-Primus, Mrs. J.
Rambharat, C.
Sinanan, R.
Moses, D.
Hosein, K.
West, Ms. A.
Le Hunte, R.
The following Senators abstained: Dr. D. Mahabir, Ms. M Ramkissoon, Mr. S. Creese.

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

Madam Chairman: Before I put the vote on the clause itself, I think Sen. Hosein asked a question of the Attorney General.

Sen. S. Hosein: Thank you very much, Madam Chair. AG, with respect to the number of judges that we are increasing by, recently the number was increased by the Family and Children Division and now we are going to increase again. Can you just tell us the rationale for the figure of 65?

Mr. Al-Rawi: Sure. Madam Chair, it is bifurcated firstly by an under-calculation in the Family and Children Division numbers. That court has approximately some 2,000 matters before it right now, so it has grown exponentially.

Secondly, the Government intends to aggressively return to the establishment of a Family Court in San Fernando, and that is a project for this year, and therefore there is need for increased judicial capacity on that end.

Thirdly, in anticipation of the creation of the Criminal Division, and specifically in the creation of specialist courts so that we can divide out the work. I can say that immediately we intend to begin with a Sexual Offences
Court because those matters have been dusted off and are ready to move. And this has been evidenced by the passage of 156 persons through maximum sentence indication over the long vacation which just happened last month. So we have aggressively operationalized, we have recalculated the numbers on the family and children boom, because that Children’s Court literally went from zero to 2,000 overnight. We intend to have specialist courts in the criminal division, which is a proposal on deck immediately for the sexual offences aspects.

And thirdly, we expect that there will be a significant amount of financial crime for matters in the past, not only matters yet to come, that are about to come on deck. So there is a need for judicial capacity.

**Sen. S. Hosein:** Madam Chair, through you, sorry. How many specialist courts are we looking at with respect to the criminal division?

**Mr. Al-Rawi:** I could not say yet, that would be for the purview of the hon. Chief Justice and the Judiciary, but I am aware that the exhortations that we need to crunch the backlog have been taken seriously, and I have taken note of the Chief Justice’s utterances thus far.

**Sen. S. Hosein:** Thank you.

**Madam Chairman:** Sen. Ameen.

**Sen. Ameen:** Thank you, Madam Chairman, just continuing on the same note. I understand your indication in terms of the need for more judges in terms of increased matters and so on, and I think what we are trying to get is if this is informed by some sort of research? Has the Judiciary provided any data to support a specific number and how did you come up with that number?

**Mr. Al-Rawi:** Madam Chair, I did in the wrap-up of this matter on the last
day that we were here, give a very solemn exhortation to all my learned colleagues to read “Improving Court Services through Process Reform: Annual Report 2017-2018”, and this particular volume has every bit of data down to probability of disposition on current numbers. And I have referred to the pages already: pages 73 onward, page 28, the backlog clearing. It is an absolute testimony of what is required, what is prescribed, what has been recommended and what is working. So all the data is before us.

Sen. Ameen: If I am not mistaken, this report came after the Bill was laid.

Mr. Al-Rawi: Yes, I did say that it came the night before, it came the day of the opening of the court term. But in terms of the data—

Sen. Ameen: So that would not have informed when the Bill was being drafted?

Mr. Al-Rawi: Yes. Remember the publication of the report is merely a publication. One obviously writes the report for at least six months beforehand. All of that data was factored into the creation of this Bill. So it is just—

Sen. Ameen: The report did not give a number.

Mr. Al-Rawi: Yes. There is a section in the report which talks to judicial capacity. I would invite my learned colleague to read it.

Sen. Ameen: I was just trying to gather. Thank you AG. Thank you, Attorney General.

Mr. Al-Rawi: You can read it.

Madam Chairman: Sen. Mark.

Sen. Mark: No. I was just asking—I think I got clarification. It came from the Judiciary.

Question put.
Sen. Mark: Division.

The Committee divided: Ayes 15 Noes 10

AYES
Khan, F.
Gopee-Scoon, Mrs. P.
Baptiste-Primus, Mrs. J.
Rambharat, C.
Sinanan, R.
Moses, D.
Hosein, K.
West, Ms. A.
Le Hunte, R.
Henry, Dr. L.
Singh, A.
Cummings, F.
De Freitas, N.
Dookie, D.
Phillips, Ms. Z.

NOES
Mark, W.
Haynes, Ms. A.
Ameen, Ms. K.
Hosein, S.
Obika, T.
Ramdeen, G.
Mahabir, Dr. D.
Question agreed to.

Clause 3 ordered to stand part of the Bill.

Clause 4.

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

Sen. Mark: Yes. Madam we had proposed for the hon. Attorney General’s consideration certain amendments which we have circulated.

Clause 4 The Summary Courts Act is amended as follows:-

(a) In section 2 by inserting in the appropriate alphabetical sequence the following definitions:-

“older child” means any person who is fourteen years of age and upwards and under the age of eighteen years”

“younger age” means any person who is seven years of age and upwards and under the age of fourteen years”

(a) In the definition of “guardian” by inserting after the words “younger child” the word “and”.

(b) In the definition of “older child” by deleting the words “, in the opinion of the Court before whom he appears or is brought”

(c) In the definition of “younger child” by deleting the words “, in the opinion of the Court before whom he appears or is brought”.

(d) In section 2 by inserting a new definition of “guardian” by inserting the following definition:-
“guardian in relation to an older child means the parent or other lawful guardian of such younger child and includes any person who, in the opinion of the Court having cognizance and of any cause for which such older such older child is concerned, has for the time being in custody, control or charge of such older child”.

(e) In section 99 by deleting the words “the case shall be dealt with summarily and it shall not be necessary to ask the parent or guardian of the child if he consents to the child being dealt with summarily” and inserting after the word “manslaughter” the following words “and the Court becomes satisfied at any time during the hearing of the case that it is expedient to deal with it summarily, the Court shall put to the younger child the following or similar question, telling him that he may consult his parent or guardian before replying- “Do you wish to be tried by this Court or by a jury”? and the Court shall explain to the younger child and to his parent or guardian the meaning of being so tried and the place where the trial should be held. The Court shall certify on the Court record the response of the younger child his parent and/or guardian.

(f) In section 99 (3) by inserting after the word “held” the words “The Court shall certify on the Court
record the response of the younger child his parent
and/or guardian”

I believe he might be very amenable to these amendments. So may I say that we are proposing in the definition of “older child” that we delete the words “in the opinion of the Court before whom he appears or is brought, is fourteen years of age or upwards and under the age of eighteen years” and to substitute the words “is fourteen years of age and upwards and under the age of eighteen years”.

As I said, Madam President, this has been circulated. I do not need to go through each provision that we are advancing. But suffice to say, it is all designed to strengthen this particular section of the legislation. I will call on my colleague, Sen. Ramdeen to fully elaborate on these provisions.

**Madam Chairman:** Sen. Ramdeen.

**Sen. Ramdeen:** Thank you, Madam Chair. Attorney General, if you look at the definition section. I understood your reasoning for including the definition of “older child” and “younger child”, being the differences within the age of criminal culpability. But there is one thing I want to make reference to. I see that you have concluded in the definition a part of the definition that is already existing in the existing law, which is in the definition of “guardian”.

I have not been able to ascertain why in the definition of “guardian”, in the definition of “older child” and in the definition of “younger child” we are adhering to giving the court a judicial discretion to determine whether somebody is over 14 and under 18, or over seven and under 14.

And I will give you—I just want to give you a practical example of something that is happening as we speak, right? It is not sub judice.

**UNREvised**
Mr. Al-Rawi: Before you go ahead, would you permit me?


Mr. Al-Rawi: The reason is that we have been drawn to the example of where birth certificates cannot be found or we are dealing with adoption aspects where age is an issue. And therefore the court has been called upon on umpteen occasions to actually determine what the age of the child is because it cannot be ascertained by records. This became very apparent when we were doing the insertion exercise for birth certificates which is an exercise at the Legal Affairs end of the Ministry of the Attorney General and Legal Affairs. And we have come across hundreds of matters where we just cannot determine the age other than by way of circumstantial evidence and that was the rationale for maintaining what the older law had.

Sen. Ramdeen: Well, I understand that. That is rational, right. But in most of the cases I “doh”—all right let me put my concern on the table. My concern is that you will have a case where there may be evidence that can be ascertained by virtue of—the easiest thing is a birth certificate. Because the age of someone is a definite fact, right? That is provable on your birth certificate. Now, I do not want a situation to arise where a court goes on a frolic of their own to determine in the absence of a birth certificate whether somebody is over or under the age of 18.

And why I told you, let me give you a practical example. There is currently, right, somebody who is sitting in prison for 33 years under the sentence of death that has been commuted, and that person is only sitting in prison because at the time that they were convicted, the court was of the opinion without any birth certificate or anything that the person was over the age of 18.
And I am concerned about the fallback position. I understand your rationale for having it there, but my fallback position is that how do we protect—or perhaps you can answer it this way. How do we ensure that where there is evidence, so that you can determine it by virtue of a birth certificate or something, that the court acts on that evidence and makes a proper finding of fact, and does not, in the absence of that evidence, proceed on the basis that I assume or goes on to some kind of process of finding whether the person is under or over the age of 18. Do you wish me to deal with all of them or do you wish me to deal with—

**Mr. Al-Rawi:** I know Madam Chair prefers that, but I find it rather difficult to answer 25 submissions in one round. I will be guided by the Chair.

**Madam Chairman:** Does anyone else have a question or comment on that aspect of the proposed amendment? Then, shall we move on to the other amendments, Sen. Ramdeen?

**Sen. Ramdeen:** Attorney General, I looked at the way in which “older child” and “younger child” is being used in terms of the Act for the purposes of the definition. And if you go to where it is referenced, which is 66? Sorry 99. If you look at 99, you have a provision that references “guardian” in relation to an “older child”, which is in 99(3), if I can be allowed to take you to 99(3)?

**Mr. Al-Rawi:** Sure, I am there.

**Sen. Ramdeen:** Clause 99(3), and if you go to six lines down you will see that the purpose of this particular provision is to allow for the guardian in the case of an older child to exercise the election on the child being put to election for a criminal offence. And therefore, I did not understand why there was an omission to define “guardian” in relation to an older child when
you are taking out the definition of “child”. So I have asked for that definition to be put in the definition section in relation to an older child to just make sense of 99(3). You would see that you have it only in relation to a younger child.

Mr. Al-Rawi: Madam Chairman, may I be permitted please, because—first of all I thank Sen. Ramdeen for noticing something which is extremely important. But, we are now down this avenue and you have not yet asked me to respond to the first one. You asked “anyone else?” I know that the preferred style is usually I take notes of everything, but that is in my view sometimes a little bit awkward.

Madam Chairman: Let us proceed on that basis until the awkwardness sets in.

Mr. Al-Rawi: But it has really.

Madam Chairman: Well, not really. It is simply—

Mr. Al-Rawi: We are on the second issue.

Madam Chairman:—yes.

Mr. Al-Rawi: Which is why I am saying it is awkward and I have not answered the first one yet. So the first one was a question on safeguards with respect to birth certificates. We are now down the second issue which is why I am saying it is awkward, okay?

Madam Chairman: Go ahead, Attorney General.

Mr. Al-Rawi: So, if I can just wrap up the first issue—answer. The hon. Senator, I think, accepts that the need for judicial discretion is perhaps there, because one way or the other we may have either a difficulty as in the example Sen. Ramdeen pointed out or a genuine circumstance as I have pointed out.
I think that this will become less and less an issue as we perfect the digitization of birth records, and now we actually have records being done at the hospital. So it is really only with respect of persons who are adopted and who may come from abroad that we may have those issues. So I think that over time the system will take care of itself, but we prefer to maintain the judicial discretion because of the vicissitudes of the issue going one way or the other.

Sen. Ramdeen has in this submission with respect of “guardian” observed a very important point, that the amendment that we had proposed with respect to “guardian” in the definition section where we replace “child” with “younger child” only, that in light of the wording of 99(3) that there is perhaps a need for commonality and that the definition of “guardian” should not be just for younger children but it should be for both categories, that is everyone under the age of 18 years. So, we will propose that we address that by way of an appropriate amendment. Would you permit me a moment to ask?

Yes, so my CPC team is suggesting to me that we can amend the Bill. This would be at page 4 of the Bill. What we would be saying is that in section 2 of the definition of “guardian” by deleting the word “child” wherever it occurs and substituting the words “younger child or older child”. So we would just insert the words “or older child”.

Madam Chair, would you permit us a small—the CPC Department is saying that they are satisfied with what I have just suggested there.

**Madam Chairman:** We are adding the words “or older child”?

**Mr. Al-Rawi:** Yes, Madam Chair. But if I can just look at it—you see, the amendment before us is Sen. Ramdeen’s. So I am now going to look at it in
the context of the wording that he has proposed.

**Sen. Ramdeen:** No, I just asked for a new section, AG, so that you would have them separately. So that you would have a guardian in relation to “younger child” and you would have a guardian in relation of “older child”. It is just a matter of style.

**Mr. Al-Rawi:** We have a definition of “guardian” in the current legislation and what we did was to just delete “child” and put “younger child” and we really should not have done that. We should have put “younger child or older child” both at the same point so it is one common definition.

So I am proposing that what we should do in clause 4 is to amend clause 4(b) and then, as it is set out in the amendment, it will be in section 2, the wording stays exactly the same until we get to the end after the word “child”. Then we insert just after those inverted commas and before the semicolon, the following words, “or older child”, and that would take care of it.

**Sen. Ramdeen:** AG there is a typo—not really a typo but a grammar. In your long definition that you have I think you need to put an “and” after the second “younger child”.

**Mr. Al-Rawi:** Sorry, would you repeat that?

**Sen. Ramdeen:** If you look at the “Summary Court” that you gave to us, it has the definition there. You would see after you strike the second “child” it says “younger child” and I think it is supposed to be “and includes”.

**Mr. Al-Rawi:** So the marked-up version is not as accurate as the Bill-says-it version. So when we look to the text of the Bill in 4(2) I think that that takes care of it. But let me just double-check here. If we look at the Bill at 4(b)—sorry—which is at page 10 of the Bill.
Sen. Ramdeen: It would not cure it. You see “and” is out of the principle—
Mr. Al-Rawi: I see. So put in the word “and” before the words inserted.
Sen. Ramdeen: Just have a look at it so that it makes sense, after—
Madam Chairman: Sen. Ramdeen, where are you, specifically in the Bill?
Mr. Al-Rawi: Page 10.
Sen. Ramdeen: It will be, as the Attorney General says, at page 10, clause 4(b), and the second to last paragraph from the bottom. Page 10 of the Bill.
Madam Chairman: The only thing is that we are dealing right now with clause 4 and I think if you—
Mr. Al-Rawi: So, Madam Chair, you see the words that I just gave to you it would just be that we add the word “and” before the other words the second time it occurs. Madam Chair, if you would allow the CPC Department to get the language in written form right for us—?
Madam Chairman: Sure.
Mr. Al-Rawi:—we could perhaps treat with it that way.
Sen. Ramkissoon: Thank you, Madam Chair. In relation to—I would like to go back to the “guardian” definition because I raised it at my debate where I asked about the definition for the child because we were excluding the 14 and 18. But what I wanted to ask—if the Attorney General could consider just keeping the definition as it is and just taking out subclause (b) all together because “child” means any person under the age of 18. And, instead of separating it because—
3.00 p.m.
Mr. Al-Rawi: I must explain why. So, the definitions of “younger child”
and “older child” fall into the manner in which those particular age categories are treated with from a processing in-court point of view. So this Summary Courts Act is when the child attends before a magistrate in certain circumstances, and where the magistrate calls upon the child to plead or address the court as to how they wish to proceed. There is a separation between the two. The younger category must have somebody acting with the child, because the child is not considered in terms of how the law treats that child, as having the discretion or understanding to elect for himself or herself.

It is different with the case of the older child. So we cannot harmonize the two to say “any child”. It must be that within section 63A, section 99 of the Summary Courts Act, that we still observe the processes that these children are invited to be treated by the court, because there is an established jurisprudence on the back of that.

**Sen. Ramkissoon:** Okay. So, just to clarify, you have raised another point then, because “younger child” means seven to 14 and “older child” means 14 to 18, and in your submission just now, you are talking about the younger child in seven. What happens in that case then?

**Mr. Al-Rawi:** So, you need to turn, for instance, to section 99 of the Summary Courts Act:

1. Where a younger child—that is the seven—is brought before a court for any offence, the court shall explain to him in simple language the substance of the alleged offence.
2. Where a younger child is charged before a court of any offence other than murder or manslaughter, as the case may be, the case shall be dealt with summarily.
In other words then, it is never dealt with indictably. You cannot go the more serious, put the child before a jury and preliminary enquiry route, and:

…it shall not be necessary to ask the parent or guardian if he consents. Because in certain scheduled offences—and the difference between indictable and summary offences, you could have elected which route you wanted to go. What we are saying is, under no circumstances, should this younger child ever be exposed to an indictable route. This child must always be treated within the, relatively speaking, softer route, with lesser sentencing, et cetera. So, it is rather complex in terms of how the law operates, but it is a safeguard for that cohort of child.

**Sen. Ramkissoon:** But, Attorney General, if we go back to the definition, it says that in relation to a child, which you are trying to amend now, to older or younger, means the parent or other lawful guardian of such child, and that is why I am asking you, in 99 you are giving the provision to not ask the parent or child—I mean the parent or guardian sorry. So why would you not want to keep that age group in the guardian definition, because you have the provision to exclude them, fine. So that is why I say, why do you not just simplify it and just have “child” and leave it as it is in the Bill before us, the original parent Act. That is my submission.

**Madam Chairman:** Is it in relation to what Sen. Ramkissoon has just raised? Yes?

**Sen. Ramdeen:** Yes.

**Madam Chairman:** Yes.

**Sen. Ramdeen:** Attorney General, perhaps you could just deal with it in full “one time”. I do not know if it is a drafting error, but when you look at the way in which—and that is why I have proposed an amendment, you can
tell me—the way in which section 99 is structured is that you are giving an
election in relation to an older child. That is by virtue of subsection (3), and
you have just explained, with a certain degree of clarity what happens or the
justification and the rationale for subsection (2). But when you come and
looked at the Bill in relation to subsection (4), it seems as though it includes
older and younger in relation to what transpires in terms of process between
(4) and the rest of the section which goes all the way down to subsection (8).

So I had proposed, because I do not accept that subsection (2) should
be the law as it is, because I want to go with what you have suggested, in
terms of—I was trying to make sense of your suggestion at (5), because
while there is an exclusion for murder and manslaughter in relation to
subsection (2), there are a host of very, very, serious offences, that someone
who is between the age of seven and 14 can commit.

Now, I do not know when this law was promulgated, but I would like
to think that we have reached a position where someone who is 12 or 13,
Attorney General, or 14, they should have the right or the understanding to
be able to elect for a very serious offence and, therefore, I would ask that
you consider, with a great degree of caution, whether we cannot allow, as
you are defining “younger child” and “older child”, and as you have already
proposed in relation to subsections (4) to (8), why do we not allow that same
protection that the child has in relation to an indictable offence between the
ages of 14 to 18, which is covered by subsection (3), that the younger child
does not have that election?

There are two people that the law recognizes to be the guardians:
parens patriae, the court and the parent. And therefore, if it is that the child,
you are going to give that election to an older child at (3), I do not see, or I
do not accept respectfully, not your suggestion, but I do not accept the present law as being in line with proper protection of that child, because why should that child—I mean, let us ask a question. Why—

Madam Chairman: Hon. Senator, I think your point has been made. So, Attorney General, could you respond to Sen. Ramdeen please?

Mr. Al-Rawi: Well, I would have preferred to just hear the tail end of what the Senator was about to say—

Madam Chairman: Attorney General, please, please.

Mr. Al-Rawi: You are asking me—

Madam Chairman: Just one second. Sen. Richards, you wanted to raise an issue?

Sen. Richards: Yes, thank you. Thank you, Madam Chair. Through you, I am in agreement with the Attorney General’s differentiation, simply from what my training in psychological assessment provides as best practice. There is a significant differentiation made between children at seven years as different to children eight to 14, as different to children 15 to adulthood, because of the different stages of prescribed competence and cognitive ability and abstract thinking of children at those different age differentiations, and this has been established best practice in the world of psychology, and trying to amalgamate what a seven-year-old’s cognitive and abstract thinking ability is with somebody who is 15, it is vastly different. So I am in agreement with the Attorney General’s approach on this.

Mr. Al-Rawi: Madam Chair, I try my best, because I was trying to distil the final argument that Sen. Ramdeen was about to bring, but I will work with what you have limited me to. There is a suggestion coming from Sen. Ramdeen which I thought is quite intriguing, and that is that we amend the
existing law, which is not something that we had proposed to do. What we proposed in this Bill to do is to move up from 16 to 18, so we capture children in the definition as we now have it under the Children Act. So we move from 16 to 18, that is the first purpose.

The second purpose was to ensure that wherever that definition is now moved—so older child is no longer at 16 but up to 18—that we retrofitted it in terms of the language which we now use in terms of the manner in which we engaged what was once called “juveniles” and we are now calling “child offenders”. So that is why we have gone for “younger child” and “older child” to fit within the current terminology.

We had left the law as it is, that is battling with the age-of-discretion principle, because there is a live debate in our country as to whether our age of discretion ought to be adjusted or not, and that is a product which we are taking consultative input on right now. But whilst I consider Sen. Ramdeen’s proposal quite novel, and may be the way that we want to head eventually, I am not genuinely yet equipped in terms of the final consultation to commit to that form of change. I mean, I can see the merit in the argument. I think that there is a certain benefit that can be brought that way, but the Children’s Authority, the Office of the Prime Minister, Gender Affairs Division and our work with the United Nations and the rehabilitative approach that we are taking now requires a bit more exploration on that.

I do accept the recommendation coming from Sen. Ramdeen that we needed to do surgery to the definition of “guardian” and that we should, perhaps, adjust the terminology for the amendment that there be an amendment to 4(b). I do not know if you are minded yet to take that wording, Madam Chair. Yes?
Madam Chairman: Yes, we will.

Sen. Ramdeen: I also propose another amendment in relation to—

Mr. Al-Rawi: Sure.

Madam Chairman: May I ask, Sen. Ramdeen, just so that I could, you know.


Madam Chairman: The further amendment you are proposing, is it apart from the amendment that the Attorney General was going to present for (b)?

Mr. Al-Rawi: I think it is “(iv)”, is it?

Sen. Ramdeen: No, “(iii)”, because that is what you are dealing with now.

Mr. Al-Rawi: That is what I understood you were going to say when Madam Chair invited me to stop.

Sen. Ramdeen: I am lost as to which one we are dealing with.

Mr. Al-Rawi: “(iii)”.

Sen. Ramdeen: Right. That is what I am saying. I propose an amendment to “(iii)”, if you are leaving it as is, which is like the way you have proposed. I have proposed in the Opposition’s proposal that at the end of that section—are you with me on the substantive law?

Mr. Al-Rawi: Yes.

Sen. Ramdeen: On “(iii)”, that after the word “held” I have asked that you consider putting in a sentence there that:

The court shall certify on the court record the response of the younger child, his parent and/or guardian.

As a safeguard on the election, because there have been—

Mr. Al-Rawi: Madam Chair, is it—

Sen. Ramdeen: AG, I could just finish? The only reason I am asking you
to put in that as a requirement as a safeguard is because sometimes, in many cases, the election is done in court and there is an absence of anything saying aye or nay on the election.

Mr. Al-Rawi: I understand.

Sen. Ramdeen: And in the absence of that sometimes the entire trial—

Mr. Al-Rawi: We cured that, most recently, by the Children’s Court Rules. So we have put that prescriptively into the rules, but I hear you that the intention is to look at it from the parent law perspective. Right? Madam Chair?

Madam Chairman: Yes.

Mr. Al-Rawi: Could I indicate—and I do not know, you can guide me on how far I can go on this. We are in the course of preparing some tweaks to a miscellaneous package which will treat with preliminary enquiries, some aspects of evidence and the Summary Courts Act. We are nearly finished with that which we intend to bring just as we come back to Parliament in the next session.

What Sen. Ramdeen is referring to here albeit that we have captured it in the rules—the Children’s Court Rules we have dealt with it expressly that you must record the answer, et cetera, et cetera. There may be merit in that suggestion, but I am not best equipped to treat with that recommendation now. I can give an undertaking that we intend to look at it and come back because we do have a Bill drafted, a Miscellaneous Provisions Bill, to treat with PI evidence and summary court amendments and the Summary Courts Act as well as. There are several of them flowing, in fact, as recently as discussions with the DPP’s Office up to yesterday. So if we could undertake to look at that and to come back at that point, I am certainly prepared to do
that. Madam Chair, may I address, if it is convenient now, the proposed amendment to 4(b)?

**Madam Chairman:** Yes.

**Mr. Al-Rawi:** So, Madam Chair, if I could just read it as it ought to be, that there be an amendment to 4(b) of the Bill, and it would say this:

In section (2), in the definition of “guardian”, by deleting the word “child”—and here is where it gets new—the first and third times it occurs.

So may I repeat that?

…the first and third times it occurs.

And then it would continue:

…and substituting the words “younger child or older child”—and here it gets new again—and the second time it occurs by substituting the words “younger child or older child and”

Madam Chair, a small tweak to what you have observed, and I would just say that this is what we have been doing for the last two years in the AG’s office. You heard me repeat a short while ago, the first and second time, the first and third time.

**Madam Chairman:** Yes.

**Mr. Al-Rawi:** It really should be: “The first, third and fourth times.”

**Madam Chairman:** I will just read it over.

**Mr. Al-Rawi:** Should it please you.

**Madam Chairman:** I will just read it over, Attorney General, for Members as well. This is the proposed amendment of the Attorney General. It is at page 4 of the Bill at section (b):

In section (2), in the definition of “guardian” by deleting the

**UNREVISED**
word “child” the first, third and fourth times it occurs and substituting the words “younger child or older child and the second time it occurs by substituting the words “younger child or older child and”

Mr. Al-Rawi: I apologize for the difficulties, Madam Chair.

Madam Chairman: That is fine.

Mr. Al-Rawi: And I thank Sen. Ramdeen for the observation.

Madam Chairman: So, hon. Senators, the question is that clause 4 be amended as circulated by Sen. Mark.

Mr. Al-Rawi: So, just for clarity, Madam Chair, so I know how to answer. We are adjusting that which we just did as Sen. Mark’s amendment.

Madam Chairman: No.

Mr. Al-Rawi: No?

Madam Chairman: No. I am putting Sen. Mark’s amendments as they have been presented, and then I will then go on to put the amendment as proposed by the Attorney General. Okay?

Mr. Al-Rawi: Thank you, Madam Chair.

Madam Chairman: So, hon. Senators, the question is that clause 4 be amended as circulated by Sen. Mark.

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

Madam Chairman: Hon. Senator, the question is that clause 4 be amended as proposed by the Attorney General and as read out by me. I will now read it over again, 4(b):

In section (2), in the definition of “guardian” by deleting the word “child” the first, third and fourth times it occurs and substituting the words “younger child or older child” and the second time it occurs by substituting the words “younger child or older child and”
Question put and agreed to.
Clause 4, as amended, ordered to stand part of the Bill.

Madam Chairman: Hon. Senators, at this juncture, I am in receipt of the instrument and, therefore, I would like to resume the Senate and we can deal with that matter. So the Senate will now resume.

Senate resumed.

SENATOR’S APPOINTMENT

Madam President: Hon. Senators, I have received the following correspondence from Her Excellency the President, Paula-Mae Weekes O.R.T.T.:

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By Her Excellency PAULA-MAE WEEKES, O.R.T.T., President of the Republic of Trinidad and Tobago and Commander-in-Chief of the Armed Forces.

/s/ Paula-Mae Weekes
President.

TO: MR. NDALE YOUNG

WHEREAS Senator Ronald Huggins is incapable of performing his duties as a Senator by reason of ILLNESS:

NOW, THEREFORE, I, PAULA-MAE WEEKES, President as aforesaid, acting in accordance with the advice of the Prime Minister, in exercise of the power vested in me by section 44(1)(b) and section 44(4)(a) of the Constitution of the Republic of Trinidad and Tobago,

UNREVISED
do hereby appoint you, NDALE YOUNG to be temporarily a member of the Senate, with effect from the 21st September, 2018 and continuing during the absence of Senator Ronald Huggins by reason of illness.

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 21st day of September, 2018.”

**AFFIRMATION OF ALLEGIANCE**

*Sen. Ndale Young took and subscribed the Affirmation of Allegiance as required by law.*

**MISCELLANEOUS PROVISIONS (SUPREME COURT OF JUDICATURE AND CHILDREN) BILL, 2018**

*Committee resumed.*

**Madam Chairman:** Hon. Senators, we will now resume the committee of the whole.

*Clause 5 ordered to stand part of the Bill.*

*Clause 6.*

*Question proposed:* That clause 6 stand part of the Bill.

**Sen. Ramdeen:** Attorney General, if you go to the DNA Act, and the section that you propose to amend by clause 6(b) which relates to section 13(2)(d) and section 14(6)(d), 13(2)(d), you see that we are making provision—are you with me? It is on page 8. I would prefer if you look at the one that you have supplied to us with the writings inside. I did not
understand when you marry this particular provision to the new YODA, if I can call it that, there are provisions that allow someone to be charged—who is charged and in custody on remand—to be held at a community residence and a children’s home as well. So by including “rehabilitation centre” here you have excluded someone who is being held, remanded, at a children’s home. Are you with me?

Mr. Al-Rawi: Yes, I am. And the reason is that we are not anchoring into the Child Rehabilitation Centre Act. We are actually anchoring into the Children’s Community Residence, Foster Care and Nurseries Act, Chap. 46:04, and the definition there of a rehabilitation centre which is a community residence and then the community residence catches both ends.

Sen. Ramdeen: Well, how does that—I am just—it will help in a lot of different ways.

Mr. Al-Rawi: So, unfortunately, the DNA Act, references a child rehabilitation centre. We call it a rehabilitation centre and we say, it has the meaning assigned to it under section (2) of the Children’s Community Residences, Foster Care and Nurseries Act. So, when we go to that which I have also supplied to hon. Members—it is in reference to clause 11 however—we go to the definition there, we have the definition of—you will see it at page 2 of that marked-up Act which I circulated around:

“rehabilitation centre” means a community residence for the rehabilitation of child offenders who had been convicted and remanded.

Sen. Ramdeen: AG, sorry. Where are you?

Mr. Al-Rawi: So, if you look to—I do not know if you have had—forgive me, Madam Chair. Is it okay that we jump this way?
Madam Chairman: That is fine. So far so good, yes.

Mr. Al-Rawi: So, if you look to the marked-up Act that I supplied—

Sen. Ramdeen: Which one?

Mr. Al-Rawi: The Children’s Community Residences, Foster Care and Nurseries Act.

Sen. Ramdeen: Just now, just give me one minute.

Mr. Al-Rawi: Sure.

Sen. Ramdeen: Correct, yeah.

Mr. Al-Rawi: So this DNA Act references that particular Act, because we call a rehabilitation centre in the DNA—we used the term “rehabilitation Centre” means that definition in the Children’s Community Residences, Foster Care Act. So when you jump to that latter Act, and you look at rehabilitation centre, “rehabilitation centre” means a community residence, and a community residence is, in fact, a children’s home or a rehab centre. So that combined definition, “rehabilitation centre” means, a community residence for the rehabilitation of child offenders, in both categories, that is, convicted and remanded or children who have been charged with an offence and are in custody pending a hearing. So it is because the children’s package was so closely knitted that the Children’s Authority amendments, Children Act amendments. Children’s Foster Care and Nurseries Act and what was YODA, that is how it is construed.

Sen. Ramdeen: That is a very—and forgive me—very untidy—and I say that not in any bad way.

Mr. Al-Rawi: I understand.

Sen. Ramdeen: If you follow the process that you have just said, “rehabilitation centre” means—and I am on the Children’s Community

UNREVISED
Residence, Foster Care and Nurseries—a community residence for the rehabilitation of (a) and (b).

Mr. Al-Rawi: Yes.

Sen. Ramdeen: And then you jumped back now, right to the top definition, “community residence” means a children home or rehabilitation. It is just very circular.

Mr. Al-Rawi: Unfortunately, I was chained to how it came forward and it came forward in a previous iteration.

Sen. Ramdeen: I just was concerned that when you come to the DNA that you do not leave out the ability that any law enforcement would have to capture either place. So, if you marry it like that.

Mr. Al-Rawi: I got you. We got both, but in 2012 when the amendments came up, that was the formulation that was used. So the Law Revision Committee is right now at work in trying to see how we could harmonize some of this, but that is only now at work.

Sen. Ramdeen: I am fine with that.

Mr. Al-Rawi: Thanks. Madam Chair, thank you.

Question put and agreed to.

Clause 6 ordered to stand part of the Bill.

3.30 p.m.

Clause 7 ordered to stand part of the Bill.

Clause 8.

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

Madam Chairman: Hon. Senators, I will advise that there are amendments circulated to clause 8, by Sen. Mark, and there are amendments circulated by the Attorney General. I also will ask Members, clause 8 is very detailed and
I therefore would ask that everyone try and pay attention as we deal with the different parts of clause 8. Okay? Sen. Mark? Sen. Ramdeen?

“Clause 8  
(a) By deleting in the new proposed subsection the following words “ensure that policies are prepared with respect to” and inserting the words “forthwith publish the policies that shall govern”.
(b) By inserting the a new subsection 2A(f) as follows:- “The policies published in accordance with section 2A shall be brought to the attention of all residents of the Rehabilitation Center”.
(c) By inserting in the new subsection 3 (1) the following words before the word “rehabilitation” the following words “Subject to section 2 a”.
(d) By inserting in section 4A(1) a new subsection 3 as follows:- “Where an allegation is made to the Commissioner of Prisons and the authority pursuant to subsection 2 the Commissioner of Prisons and the Authority shall forthwith conduct an investigation into the allegation and notify the person making the complaint of the findings of the investigation upon completion”.
(e) By deleting the words in subsection (3) “(iii) creating a disturbance.”
(f) In subsection (4) by inserting after the word “to” the following words “the resident,”
(g) In subsection (5) by inserting after the word
“Superintendent” the following words “, the resident, the Child Probation Officer and the Authority,”

(h) By inserting a new subsection 6A as follows:
“Any recommendation made by the Medical Officer under sub-section 5 shall forthwith brought to the attention of the resident, the Child Probation Officer and the Authority by the Medical Officer”

(i) By inserting a new subsection 68 as follows:
“Any recommendation for the extension of the period of restraint pursuant to subsection 7 above shall be brought to the attention of the resident and an effective opportunity to be heard be granted to the resident before the Commissioner before the recommendation is complied with”.

(j) In section 5(b) by inserting after the words “good conduct” the words “and remission”.

(k) In section 7 (1) by inserting after the words ‘of any offence” the words “except murder or manslaughter”

(l) A new subsection 12 (4) in the following terms:
“Any application made by the Commissioner of Prisons under subsection shall be brought to the attention of the resident and the resident shall have a right to be heard by the Court.

(m) By inserting a new subsection 12 (2) in section 12A as follows:
“On the hearing of any application made by the
Commissioner under section 12 A(1) the resident shall have right to be heard."

(n) By inserting in subsection 12 A(4) the following words after he words “any time” apply to the Court to”."

(o) By deleting subsection 12A(4)

Sen. Ramdeen: AG, I think what—

Madam Chairman: So, Sen. Ramdeen, how about you address the AG through me?

Sen. Ramdeen: Sorry, I apologize. Attorney General, let us take them one by one.

Madam Chairman: So, let us deal with your clause 8 amendment at (a).

Sen. Ramdeen: All right. But just before we deal with that, Madam Chair, through you to the Attorney General, I just wanted to flag something in clause 8(c), which I have not proposed an amendment for the reason that I thought I would just ask in the committee stage about it. This is on page 13 of the Bill, midway down, (c), in section 2. Attorney General, I have a concern—

Madam Chairman: Sen. Ramdeen, I am just trying to understand how is it that in dealing with subclause (c), it sets some sort of context for the amendments that you have proposed at (a) and (b)? Yes?


Madam Chairman: All right. So can you just succinctly say what is the issue?

Madam Chairman: Yes.

Sen. Ramdeen: Attorney General, what you are proposing to do is to create the YTC into a rehabilitation centre, and that is a sui generis demarcation. My concern is that in (c)(ii), I understand why you have taken out 4, 5—all of these sections from the Community—

Mr. Al-Rawi: The licensing for homes.

Sen. Ramdeen: Right. But there are some sections that you may wish for your drafting team to look at between section 12 and section 22, and I will just make reference to one. You have proposed an amendment that was not in the marked-up version that deals with the corporal punishment part that fell in between 12 and 16, and I was looking for it and then I found it in the Bill, but it was not the marked-up version, and I just think that there are parts of those sections that you have made a blanket provision to take out, and I just have not had the time to go through them individually.

But there are certain protections in those parts that may be safeguards that you would want to include, notwithstanding the fact that you have the rehabilitation centre at YTC as a separate category. Because I understand all the licensing provisions, and stuff like that, but there are certain aspects of it. Let me give you one example, you have excluded out the policing—for want of a better word—of the Children’s Authority over the YTC aspect of it. There are some parts of it that they are in, but if you look at these particular sections that you have excluded, there are certain parts that apply to, what I would call the normal community residence rehabilitation centre, that is excluded here. Forgive me, but I just cannot pull them out individually now. So I just want to flag that. Let me go to the amendment that I have proposed at 2A, which is in (d) at the bottom of the page 13. You have proposed a new
2A, correct?

Mr. Al-Rawi: Yes.

Sen. Ramdeen: Right. Which says that:

“The Commissioner of Prisons shall ensure that policies are prepared with respect to the following areas:”

And you set out four areas, and then you have an omnibus provision at (e). I am flagging for you that this formulation, if it is passed in this way, could open up the Commissioner of Prisons to a judicial review, because if he does not have these things in place at the time that this is passed—remember this is a Bill that is passed already—we are putting a duty on him now to do these things. I do not know if you can help me with the state of readiness of these particular things. I want to flag for your particular attention, (d), your (d), which is:

“the making of applications to the Court for permission for a resident over the age of sixteen years to engage in on-the-job training outside of a Rehabilitation Centre;”

And why I flagged that particular one is because that has the ability to affect your access to court. I am saying, my proposed amendment is that you take out the words “ensure that policies are prepared with respect to” and you insert the words, “forthwith publish the policies that shall govern”. It is for your consideration because you would know what stage this is at, but I am just flagging that if we pass this as is and it is not there, it is going to open up the Commissioner for a judicial review.

Mr. Al-Rawi: Madam Chair, could I ask for your guidance, please? There are letters (a) to (o), there are 15 amendments proposed by Sen. Mark, which Sen. Ramdeen is assisting us with, do you propose that I wait for all 15 or do
you want me to treat with them?

**Madam Chairman:** Attorney General, we are going to go through, but I need to ask Sen. Ramdeen something first. Your first paragraph (a), is it that you have set out this amendment in relation to the Bill or to the Attorney General’s proposed amendments?

**Sen. Ramdeen:** No, to the Bill.

**Madam Chairman:** So, at your (a) where you say:

“(a) By deleting in the new proposed subsection the following words”—

Where exactly are you?

**Sen. Ramdeen:** At page 13.

**Mr. Al-Rawi:** 8(d), to answer the Chair’s question, which is at page 13 of the Bill. So, it is in the original Bill, not any amendment proposed by me.

**Madam Chairman:** Right, but it is not—

**Mr. Al-Rawi:** Styled that way?

**Madam Chairman:** Yeah. It is not styled in the way of the Bill, so it is a little difficult to follow it. You see what I am saying? Yes. It seems that the (a) in Sen. Ramdeen’s—Members, in the amendment proposed, that (a) is really in respect of 2A at page 8, correct?

**Mr. Al-Rawi:** No, that is at 8(d) on page 13.

**Sen. Ramdeen:** That is a different version. Yes, that is correct.

**Mr. Al-Rawi:** I see. Yes.

**Sen. Ramdeen:** AG, I am following from your copy, that is the problem.

**Mr. Al-Rawi:** I understand. Madam Chair is right.

**Madam Chairman:** So, have the proposed amendments been submitted in respect of the Bill or in respect of the—because the (a) that you are talking
about, Sen. Ramdeen, we have an (a) at clause 8(a) in section 1:

“in section 1, by deleting the words ‘Child Rehabilitation Centre Act’
and substituting the words ‘Child Rehabilitation Centres Act’;”.

So there is some confusion.

Sen. Ramdeen: I accept that, Milady, it is my fault in drafting the way it is
drafted, but it is really in relation to page 8 of the Bill, midway down the
page that is side noted:

“Commissioner of Prisons to make policies”

Mr. Al-Rawi: So, Madam Chair, in the Bill itself, if I could assist, it is page
13, and it would be referenced to 8(d).

Madam Chairman: Yes. So here is what we will do, because the clause
goes over several pages, let us deal with what there are no amendments for,
so that we can just get through it, proposed amendments. So, for example,
8(a), neither the Attorney General nor Sen. Mark has proposed an
amendment to 8(a), am I correct?

Mr. Al-Rawi: That is correct.

Madam Chairman: So, can I tick that off for the time being? I think this
will help other Members follow the proceedings.

Mr. Al-Rawi: I definitely agree. It is a clearer approach.

Madam Chairman: Okay?

Mr. Al-Rawi: Yeah.

Madam Chairman: 8(b), I do not think anyone has proposed anything.

Sen. Mark: But I have a little clarification, with your leave?

Madam Chairman: Sure. Yes.

Sen. Mark: Madam Chair, to the Attorney General, the term or concept,
“prohibited article”, what is a “prohibited article”, and where are we going
to find this? Do we have regulations that were defined, or are we leaving that up to the discretion of the Commissioner of Prisons and the team that would be under his jurisdiction, because it is not properly defined? I think that when I was going through it, I took a little note, and I said that I would ask through the Chair, your good self, where is this “prohibited article”, you know, defined? Is it going to be in Regulations?

**Madam Chairman:** Yes. Attorney General?

**Mr. Al-Rawi:** Madam Chair, forgive the smile, but this is a definition, so it is being defined here. So:

“‘prohibited article’ means”—in the definition clause—“any item, substance or thing”—(a)…(b)…(c);”

—and so this is the definition. This definition has come about because we all have heard of the concept of shanks—in other words then, a toothbrush being made into a weapon to kill someone, or a piece of glass, or something which is otherwise innocuous in its normal state and condition, which can be mutated and altered to some detriment. So this is the definition for it, and this has come from the Prisons Authority specifically. Secondly, we also do have in the Regulations, further fine-tuning of some of these things.

**Sen. Mark:** Madam Chair, okay, I think I would wait until—

**Madam Chairman:** So that—

**Sen. Mark:** We have (b), but under (b) we have (i), and then we have (a) and (b), are we taking all at the same time under (b)?

**Madam Chairman:** If you have an issue that you want to raise—

**Sen. Mark:** Just clarifications?

**Madam Chairman:** —clarification, you can certainly raise it.

**Sen. Mark:** Under (b), right?
Madam Chairman: Yes.

Sen. Mark: All right, cool. Another one I am seeking clarification on is under (b), in terms of the article that you mentioned, you have (a) and (b), what is meant by the Commissioner—it reads as follows:

“…Commissioner to be a threat to the maintenance of security, good order or discipline;”

What does that mean? Because, you see, I am saying that we are leaving—we are dealing with children here who are in a rehabilitation centre, and from what I learnt is that you cannot put anything between the ages of 10 and 18.

Madam Chairman: I think, Sen. Mark, the Attorney General has a grasp of what you are asking. Attorney General?

Mr. Al-Rawi: Thank you, Madam Chair. Well, first of all, I would just remind that we passed the Regulations by way of affirmative resolution in this House, and this is the same definition from the Regulations. So we have had four opportunities at this particular definition already, two in the House, two in the Senate, so it is the same definition. What we are doing here is we are harmonizing into this law that particular purpose.

Secondly, Madam Chair, because of what I just said a short while ago, because you can mutate or alter a toothbrush or a comb into a weapon, it really is left up to the supervisor, the person with responsibility for the prison because it is in fact a prison, to have that discretion. So just to assure hon. Senators that we have looked at this a couple of times well as a Senate on several occasions, and we have affirmatively passed this very definition in this session.

Madam Chairman: So if we turn the page, we now arrive at 2A. Sen.
Ramdeen, is 2A where your proposed amendments are grounded?

Sen. Ramdeen: Yes, Madam Chair.

Madam Chairman: All right. So would you like to now—

Mr. Al-Rawi: Madam Chair, just to catch up with you, so we dealt with 8(b) just now, right?

Madam Chairman: Yes. We have dealt with everything leading up to 2A.

Sen. Ramdeen: But we did not do (c).

Mr. Al-Rawi: I see, which is (d)? Which is what I am asking.

Madam Chairman: We have dealt with everything, because I look up to see if anyone wants to raise something. Remember these are not—no one has asked for anything to be amended here, so I am checking, I am looking, and I am moving along. So we are now at 2A on page 8.

Mr. Al-Rawi: 2(d).

Madam Chairman: No, we are starting with 2A.

Mr. Al-Rawi: Of 2(d).

Madam Chairman: At page 8, for all Members.

Mr. Al-Rawi: 8(d).

Madam Chairman: I am just trying to keep everyone, including myself, to follow what is going on here. So we are at 2A, page 8. Sen. Ramdeen.

Sen. Ramdeen: Attorney General, I think I have explained the rationale for that. There are two aspects to it. The first one is what I have explained about when, in terms of it is just a time factor. The second one I think is quite important, and I think you should want to consider it carefully, which is that these things that are being published by the Commissioner in a rehabilitation centre that governs the management and the way in which things are to be done, pursuant to your substantive provision in the Act, will make no sense
to anyone, because the persons who are affected must know what they are. Therefore, just to draw an analogy, there is a similar provision in the Prison Rules, 18(38), even though they are so dated that the Prison Rules themselves, when they are made, are to be brought to the attention of those persons, the inmates who are incarcerated. And therefore, apart from the suggestion that I made to you in relation to 2A, with the Commissioner and when it is to be done, I have also suggested to you that we add a 2A(f), which is that:

“The policies published in accordance with section 2A shall be brought to the attention of all residents of the Rehabilitation Centre.”

I think it is quite important because these are the things that directly affect their conduct, and I would also expect that when you publish your rules that go along with these things that they would be brought to the attention of the residents, because there would be—the failure to do any of those things would amount to some kind of breach. So I thought as a safeguard, that we put in an (f) that would include what I have suggested.

Mr. Al-Rawi: May I, Madam Chair? Madam Chair, I thank my learned colleague for the caution, and I think it is so well pointed that we ought to, when we come later to the introduction of new clauses, we should perhaps include a proclamation clause.

Sen. Ramdeen: Yeah, and that is why I was checking.

Mr. Al-Rawi: Yeah. So we will be proposing, a little bit later when we get to new clauses, the insertion of a proclamation clause which would allow us to then partially proclaim as we go and we checklist out what is ready or not. But to answer the question, we are actually ready for this now. So, first of all, we are operationally prepared and we actually have the mandatory
aspects in the Regulations that you, upon admission of a child to the centre, must explain to the child, they must acknowledge, the rules must be handed; it must be done in a language that the child can understand; the care package for the child is then published, so all of these things are mandatorily provided in the Regulations themselves.

Sen. Ramdeen: So would there be any harm in putting, in relation to these, because I am not sure that these would be covered by the Regulations. That is all I am asking. I understand what you are saying, which is those that are covered by the Regulations, no difficulty; these that are now going to be put in place—

Mr. Al-Rawi: Madam Chair, you would allow me a moment? So, Madam Chair, it is certainly something which is very amenable, that the 2A(f) could be introduced,

“…policies published in accordance with…2A shall be brought to the attention of all residents of the Rehabilitation Centre.”

And mainly because it is done in the Regulations, but if it is done there, why not put it in the parent law?

Sen. Ramdeen: And are you prepared to leave 2A, the top part, as is?

Mr. Al-Rawi: The, “ensure forthwith”, well, we have a mandatory provision. The “forthwith” sort of causes me some concern in terms of the immediacy of that.

Sen. Ramdeen: No problem. The only reason I put it in is because I actually looked to see if there was a proclamation clause and there was not any.

Mr. Al-Rawi: There was not, which is why I thought that we could invite, Madam Chair, to consider the introduction of a proclamation clause.
Sen. Ramdeen: And through you, Madam Chair, if you are going to do that perhaps you can take out the word “forthwith”, and you can put in there a time period that fits in with the fact that you have proclamation clause which you can say 30 days or 60 days, or whatever you might—

Mr. Al-Rawi: As we have it now,

“The Commissioner…shall ensure that polices are prepared with respect…” —and then putting in the 2A(f), which says—

Madam Chairman: 2(b).

Mr. Al-Rawi: Then putting it in later as a new 2(b) that he shall ensure that it is given to all residents. I think that those two should achieve the purpose.

Sen. Ramdeen: Once you are sure that it is done, because if it is not done—

Mr. Al-Rawi: JR.

Sen. Ramdeen:—giving him a period of time—giving yourself, let me put it this way, giving him 30 days or 60 days will give him that window upon proclamation. So you could have put it in to give yourself that safeguard, because as it is now—

Mr. Al-Rawi: Understood.

Sen. Ramdeen:—if you proclaim and it is not there, I will JR.

Mr. Al-Rawi: Right. So, Madam Chair, I take my learned friend, colleague—it is a very practicable suggestion, but just to say that we have actually prepared all of these already. So we are ready for that, and the proclamation clause will take care of us being able—what we do is we do a proclamation schedule to ensure that we have checked all boxes before we actually proclaim. That is the way we go about it.

Madam Chairman: So, Attorney General, are you suggesting that we incorporate what Sen. Ramdeen has at (b), so we will insert a new 2A(f)?
Mr. Al-Rawi: Madam Chair, we would propose a slight surgery to that.

Madam Chairman: Okay.

Mr. Al-Rawi: We are proposing that instead we insert a new 2(b). So, as it is now we are proposing a 2A, so we would propose a fresh new one, a stand alone, which would be a 2(b). So it would be that we insert into clause 8(d), a new 2(b), because remember that 2A falls under 8(d), right? So we are proposing in (d):

“by inserting after section 2, the following new section:”

—it really should be “the following new sections”. So in the chapeau, there it would be “sections”, and then 2A would read as it does, and then we propose that you have a 2(b). The language for 2(b) would be, “the policies published in accordance with section 2A”, exactly as Sen. Ramdeen had suggested. And we just spell “centre” with an “re” as opposed at an “er”.

Madam Chair, just when you are ready, a small adjustment to the marginal note as well. So the marginal note, Madam Chair, where it says, “Commissioner of Prisons to make policies”, there would be a marginal note to 2(b), which would say, “residents to be notified”. Madam Chair, if you are looking in the text that came from Sen. Ramdeen’s draft, instead of, “the” Rehabilitation Centre, the last three words, it really should be, “a” Rehabilitation Centre.

Madam Chairman: Sen. Ramdeen, will you continue on your proposed amendments?

Sen. Ramdeen: Sure. AG, for the next amendment, your subsection, we are at (e), which is in your page 14:

“in section 3—

(i) by repealing subsection (1) and substituting the…new
subsection:”

You are with me?

**Madam Chairman:** Call it again, Sen. Ramdeen? Say that again.

**Sen. Ramdeen:** We are at (e) in the Bill, 8(e), page 14 of the Bill.

**Madam Chairman:** Yes.

**Sen. Ramdeen:** Remember in your—this was to cater, Attorney General, for the fact that you have excluded certain provisions. I am trying to follow it here now. This section 2 of the Bill.

**Mr. Al-Rawi:** This was specifically to marry up the Children’s Authority.

**Sen. Ramdeen:** No. This is to give you some protection in relation to your exemptions of the Children’s Authority from the rehabilitation centre. You understand?

**Mr. Al-Rawi:** Yeah.

**Sen. Ramdeen:** Where you would have taken out the same provisions that I spoke about, which is in your section 2A.

**Mr. Al-Rawi:** Yeah.

**Sen. Ramdeen:**—right, (i) in the Bill. When you come to your new section 3, would you not want to have the protection of saying, “subject to that”, because that is the part that you are taking out, because you are actually applying?

**Mr. Al-Rawi:** I understand. [*Confers with CPC]* May I respond on this, Madam Chair?

**Madam Chairman:** Yes.

**Mr. Al-Rawi:** So I thank Sen. Ramdeen for raising the issues. So if I try to clarify it this way, I would put it this way: Sen. Ramdeen is cautioning, because we amended section 2(3) of the parent Act by making the
exceptions for children’s homes in the manner that we did, which is where we took away the licensing, et cetera, because we did that he is pointing out that there may be a need for caution when we are introducing this new subclause (1) to section (3). Because section 3 would be saying:

“A Rehabilitation Centre shall be under the management and control of...

Prisons subject to the Children’s Authority Act”—and here is the bit—“and

the Children’s Community Residences, Foster Care and Nurseries Act.”

So what Sen. Ramdeen is cautioning is whether we need to make that exception which we did above. But I am told by the CPC’s department, and I agree with them, that having made the exception, the disapplication of those provisions of Children’s Community Residences, Foster Care and Nurseries Act, that we do not need to do that cross-reference, because there may be other laws which caused amendments, which we have not factored in the one that we have done now. But I take the caution.

**Madam Chairman:** Sen. Mark.

**Sen. Mark:** No, I am listening to the AG. You are through?

**Mr. Al-Rawi:** Yeah.

**Sen. Ramdeen:** If that is the position I am fine, I am fine in withdrawing my proposed amendment, which is my (c), so then you can have (e) as approved as is, in the Bill.

**Mr. Al-Rawi:** So we have done (d), we put in the new 2(b), and we just did (e), so now we are on to (f).

**Madam Chairman:** What is the next amendment you are seeking, Sen.
Ramdeen?

**Sen. Ramdeen:** 4A(1), the AG’s new proposed section for 4A(1), which is the one that is lifted out of the Children’s Community Residences, Foster Care and Nurseries Act.

**Mr. Al-Rawi:** So that is (ga), Madam Chair—

**Madam Chairman:** So we are now dealing with your amendment as well, your proposed amendment?

**Mr. Al-Rawi:** Yeah. So I will take it, Madam Chair, just so I keep up with you, right, that we are now moving past (e), (f), (g), and coming to (ga), yes?

**Madam Chairman:** Yes.

**Mr. Al-Rawi:** So, do you want me to address the (ga), Madam Chair?

**Madam Chairman:** Well, I am trying to get through Sen. Ramdeen’s so that I can then see where they marry with the amendments proposed by the Attorney General.

**Mr. Al-Rawi:** Understood. Sure.

**Madam Chairman:** So, Sen. Ramdeen, perhaps you would like to talk about your proposed amendment?

4.00p.m.

**Sen. Ramdeen:** My proposed amendment, Attorney General, is that I appreciate that you have put in this section, but when you come to—there are two things that arise. Firstly, where at page 15 of the Bill under (ga), you have:

“Where a person alleges that a resident at a Rehabilitation Centre has been the subject of any form of the prohibited methods of punishment referred to in subsection (1), the person shall report the matter to the Commissioner of Prisons and the Authority.”—meaning the
Children’s Authority.

After that section, there is no provision as to what takes place thereafter, and I think in a matter that is so serious relating to corporal punishment, restraint of force as a form of punishment, the reduction in diet and denial of a family contact, I propose that we add a safeguard in the form of a new subsection (3) that would be:

Where an allegation is made to the Commissioner of Prisons and the Authority—it could be “and the Authority, pursuant to subsection (2), the Commissioner of Prisons and the Authority shall forthwith conduct an investigation into the allegation and notify the person making the complaint of the findings of the investigation upon completion.

I am just speaking from experience. These things happen almost all the time and—

Mr. Al-Rawi: Madam Chair, may I? I accept the bona fides of the submission. I was just double-checking because I had recalled it vividly, we did it in the regs. So if they are in the regs there would be no harm in including it in the parent law certainly.

Sen. Ramdeen: If you could get the wording.

Mr. Al-Rawi: So I was just literally leaning over to CPC asking if we had the wording from the regs, so that we could harmonize the two. Just permit me one moment. Is it convenient?

Madam Chairman: Of course.

Mr. Al-Rawi: Madam Chair, perhaps I may suggest that while our team is looking for that particular language, is it convenient for us to press on, and just put a little marker next to this one? Madam Chair? We do not want to
get it wrong.

**Madam Chairman:** So we will stand down that part of the amendment proposed by Sen. Ramdeen. Sen. Ramdeen, can you move on to your next—

**Mr. Al-Rawi:** Madam Chair, just to clarify, this may assist: what Sen. Ramdeen just referred to was actually an amendment to my amendment, which we have not come to yet.

**Madam Chairman:** I know, but we have stood it down, it is fine. Yes, I am clear.

**Mr. Al-Rawi:** Because we could pick it up in my amendment.

**Madam Chairman:** Yes.

**Sen. Ramdeen:** AG, I think this one struck me as being quite important. You have created an exception to the forms of punishment that are not permissible, that you have prohibited by the Act, and while I understand (a), (b) and part of (c), if we look at it:

“for safe custody during removal or transportation from the Rehabilitation Centre;”—no problem.

“on the direction of the Medical Officer...”—no problem.

“for the purpose of preventing the resident from—(i) injuring himself;”—no problem.

“(ii) damaging property...”—no problem.

But (iii), Attorney General, I really want to caution us including that, which is creating a disturbance, because creating a disturbance, in my respectful view, is too wide a catchall discretion to allow a Commissioner of Prisons to impose these kinds of punishments on somebody.

**Mr. Al-Rawi:** Madam Chair, this is something that we wrestled with for months literally. Just to inform that the table that sat to come up with these
thoughts included the Children’s Authority, the Prisons, the Judiciary, the family law practitioners, et cetera, so we had a long round table of conversations on this. The prisons officers in particular were cautioning that some of these children are not just children, because we are dealing with under 18, and the disturbance factor is something that they have to manage, because it can actually get up to a riot stage at some point.

So what we sought to do in treating with it—because obviously it could be quite capricious to say “any disturbance”, right?—was to put in the safeguards for it, who must know, the supervision of it, the reporting of it, the ability in 2(a) as we amended it, to have the Children’s Authority in lockstep with it. So that means that the child attorneys also get involved in the Solicitor General’s Department if they are brought in on that whole perspective. So the prison was very, very, very insistent that whilst they agreed that for the first time we should start to limit these forms of discipline that they otherwise had under the Prisons Act—because we are now prescribing these downward—they really wanted us to make sure that we did not throw the baby away with the bathwater in how we treated with the disturbance aspect because it is severe.

**Sen. Ramdeen:** Well, I understand why they “does do that”, because I could probably speak from a different perspective from everybody else. I mean, creating a disturbance, while I accept could be as much as reaching up to the riot stage, on the other extreme it could be that somebody has an altercation with a prisons officer, and one of the residents simply say, “We ent taking dat”, and everybody jump up and a whole disturbance starts with that. While I accept you have to caution on one extreme, the other extreme is that the bar is put so low that almost anything falls into creating a
disturbance. I mean, I have done a case where a plastic bag “gone out” of a man’s cell and they had a riot in Port of Spain, and everybody “geh licks”, and that is how it works. I just think, while all of these things are here, creating a disturbance is so wide.

**Mr. Al-Rawi:** Madam Chair, it is a really important point, and if you would permit me to just put the counter this way. So we are moving from a situation where you can use all of the methods right now, and we are now for the first time saying, look, you cannot do these things, and we are creating the exception. The prisons authority was very, very keen to make sure that we took this in a gradual step, because the counter to that of somebody walking in to say, “look, you cannot discipline me at all” became an Achilles heel in many senses.

**Sen. Chote SC:** Would it be possible then—because sometimes you have to create a disturbance to attract the attention of an officer when an inmate is ill and that kind of thing, because of low staffing at these institutions. Could we not qualify it by saying “an unnecessary disturbance” or something like that?

**Mr. Al-Rawi:** I think that that is a very laudable suggestion, but the difficulty that I had there is what is “necessary” versus “unnecessary”, and therefore whether one has a right to cause a disturbance per se. So how to draw that line in the sand is something I am wrestling with.

**Sen. Chote SC:** Well, hon. Attorney General, I have experienced instances where men have died with other inmates causing a disturbance trying to get medical attention for the dying person in custody. So Sen. Ramdeen’s point, with all due respect, is not one to be dismissed lightly. There certainly can be no harm by qualifying the words in that way.

**Madam Chairman:** Let me just say what is happening right now. It is
becoming clear to me the way we are proceeding, there are some administrative problems. Let me explain what I mean by that: the Attorney General has circulated amendments to the Bill that is before us. Sen. Mark has circulated amendments to the Attorney General’s amendments and not to the Bill. We are now treating with Sen. Mark’s proposed amendments to amendments that have not even been sanctioned as yet, and so administratively we are running into some issues.

I am seeing from some of the Senators’ faces that there is confusion, and while my face may not show confusion I will tell you it is not a very happy face right now because some of the issues are really becoming a little unwieldy. So what I am therefore going to do at this stage is suspend. When I return I am going to treat with the Attorney General’s amendments. If Sen. Mark wishes to further amend then we will treat with it like that, because the amendments as submitted by Sen. Mark, you heard, are to amendments and not to the Bill. All right?

So I am going to suspend at this stage. We will take an early break. We will return at 10 minutes to 5.00, and hopefully when I return we will start with the Attorney General’s amendments, go through, if there are further amendments to be made we will incorporate it at that stage. So we are suspended until 10 to 5.00.

**4.11 p.m.: Committee suspended.**

**4.50 p.m.: Committee resumed.**

Madam Chairman: Members, are we ready? So we will resume our deliberations on clause 8. Attorney General.

Clause 8:

*Question proposed:* That clause 8 be amended as follows:

UNREVISED
Insert the following paragraph after paragraph (g):

“(ga) by inserting after section 4 the following new section

4A.(1) The Commissioner of

“Prohibited Prisons shall be responsible for

punishment ensuring that each resident is not

and

subjected to –

restraint

(a) corporal punishment;

(b) restraint or force as a

form of

punishment;

(c) the reduction or change of

diet as a form

of punishment; or

(d) the restriction or denial

of contact

with family as a form of

punishment.

(2) Where a person alleges that a

resident at a Rehabilitation Centre

has been the subject of any form of

the prohibited methods of

punishment referred to in

subsection (1), the person shall

report the matter to the
Commissioner of Prisons and the Authority.

(3) Notwithstanding subsection (1)(b), the Superintendent may order that a resident be put under restraint—

(a) for safe custody during removal or transportation from the Rehabilitation Centre;

(b) on the direction of the Medical Officer on medical grounds; or

(c) for the purpose of preventing the resident from—

(i) injuring himself or others;

(ii) damaging property; or

(iii) creating a disturbance.

(4) The Superintendent shall give written notice of an order for restraint without delay to the Children’s Probation Officer and
the Medical Officer and shall state –

(a) the grounds for the restraint; and

(b) the period of the intended restraint.

(5) On receipt of the notice referred to in subsection (4), the Medical Officer shall inform the Superintendent whether there are any reasons why the resident should not be put under restraint and the Superintendent shall give effect to any recommendation made by the Medical Officer.

(6) The Medical Officer may at anytime recommend that the restraint on a resident be removed.

(7) A resident shall not be kept under restraint longer than necessary, nor shall he be kept under restraint for longer than twenty-four hours, and at the end of
the period, any further extension of the period of restraint shall be subject to the recommendations of the Medical Officer, psychologist or psychiatrist.”.

Mr. Al-Rawi: Thank you, Madam Chair. We have circulated amendments to clause 8 just proposing two amendments. Firstly, to have inserted clause 8(ga) as circulated, and secondly at clause 8(l) in clause 12D to do some adjustments to the marginal note. So it is 8(l), which will be in clause 12D, but it is as headed there.

So, Madam Chair, with respect to the inserted clause that we propose which is 8(ga), the rationale that we offer with respect to this is, we are for the first time prescribing against punishment and restraint in the confines of the Child Rehabilitation Centre context, specifically the Child Rehabilitation Centre which was previously called the Youth Offenders Detention Centre, YODA, under the YOD Act.

What we are proposing here is that we deal with a prescription against corporal punishment, restraint or force, reduction or change of diet, restriction or denial of contact, et cetera, and these are of course as observed in the debate, matters which come from the international conventions. They also come from our Regulations.

Now, Madam Chair, I should inform or remind hon. Members that there are two types of Regulations that govern this particular centre. The first is done under the hand of the Minister of National Security by way of an order, it becomes law. It is not subject to Parliament’s scrutiny, and that in
fact came about in 2017. The second type is subject to affirmative resolution of both Houses of Parliament. We treated with that this year, and therefore there are two regulations that run concurrently with this.

The amendment that we propose is to harmonize into the parent law that which we have already in both the Order and in the Regulations, and it is in the terms offered in the draft that we have circulated.

The second position that we offer, Madam Chair, is to be found at page 24 of the Bill, and it is at clause 8—and I will give you the precise number, (l), 12D, at 24. That is the correct number of it. So clause 8(l), 12D to be found at page 24 of the marked-up Bill. What we propose here is to just adjust the marginal note to include the concept of guardian or person with responsibility for the child, amending the reference to just simply “parent”, keeping it in tandem with the Children Act, where we established that larger role of persons with responsibility for the child.

Those are the amendments that the Government proposes, and, Madam Chair, just permit me a moment.

So, Madam Chair, we had engaged in an exercise a little bit earlier that we adjusted some language from Sen. Ramdeen’s position. So we can volunteer that now in terms of the Attorney General’s amendments in that which we had spoken already, which is specifically 4A(2).

**Madam Chairman:** 2B where we said the policies, the marginal would be:

Residents to be notified 2B the policies published in accordance with section 2A, shall be brought to the attention of all residents of a Rehabilitation Centre.

**Mr. Al-Rawi:** Yes, so that is 8D by the introduction of a new 2B. And then there is also one further point, and that will be: we are proposing for
consideration—and permit me to just read this to you first and then perhaps indicate its location. It would be 4A(2).

Madam Chairman, so in our draft as circulated—let us look to the list of amendments—we had proposed (ga):

“inserting after section 4 the following new section”

And it started off with 4A. So this is the 4A that I am referring to now. You have one, 4A(1), then you have 4A(2). And in that 4A(2) we are proposing that we insert after the word “Authority”—so if you look at 4A(2):

“Where a person alleges that a resident...Rehabilitation Centre has been subject...any form of...the person shall report the matter to the Commissioner of Prisons and the Authority.”

So you come right down to the end. Just before the full stop we are proposing that we insert the words:

and the Commissioner and the Authority shall investigate the allegation and on its completion shall notify the person who made the allegation of the findings.

So if I just repeat that. In the circulated (ga), which is the amendment to 4A, in subclause (2) by inserting those words just dictated, just before the full stop at the end of the paragraph and after the word “Authority”.

Madam Chair, if I could further request your indulgence. If we look to that same 4A that we just dealt with (2) on, if you go down to subclause (4), we are proposing just in the second line:

The Superintendent shall give written notice of an order for restraint without delay...2(d) insert the word “Authority,”—and it would continue as set out there—Children’s Probation Officer and Medical Officer and shall state—
Then, if you would again move to subclause (6), and we go right to the end at the word “removed” before the full stop, and if you would insert the following words please:

And the Children’s Probation Officer shall be immediately informed.

Madam Chair, with your indulgence, so we went (6) and then we had (7) in the draft as circulated, if you would kindly consider the following which is to insert a new sub (8). This new sub (8) would read as follows—and I am borrowing from part of Sen. Ramdeen’s considerations—so we will be inserting subclause (8) which would read:

Any recommendation for the extension of the period of restraint pursuant to subsection (7) shall be brought to the attention of the resident, and he shall be afforded an opportunity to be heard before a decision is made.

I thank you for your indulgence.

**Madam Chairman:** Let me repeat that sub (8):

Any recommendation for the extension of the period of restraint pursuant to subsection (7) shall be brought to the attention of the resident, and he shall be afforded an opportunity to be heard before a decision is made.

**Mr. Al-Rawi:** Yes please. Those are the amendments that we propose. Just for clarification, what we have done in the break was to look at some of suggestions made by my learned colleague, Sen. Ramdeen, and to incorporate them in the language that I have just asked you to consider.

**Sen. Ramdeen:** Thank you, Madam Chair, through you to the Attorney General. Attorney General, thank you for the considerations that you have given to the proposals, perhaps we could just bring some closure to it. I just
want to put on the record that I still hold firm to the view that (iii) of creating a disturbance is something that I asked to be taken out. I heard your response before the break and I expect that you would hold firm to that.

When we come to subsection (4), is there a reason, Attorney General, that in subsection (4):

“The Superintendent shall give written notice of an order for restraint without delay to the Children’s Probation Officer and the Medical Officer...”

And that is giving the grounds. You have incorporated the Authority later on, but we have not incorporated the Authority here, neither have we—

5.05 p.m.

Mr. Al-Rawi: Sorry, we did. So, we proposed to, Madam Chair—

Sen. Ramdeen: We have not incorporated, I apologize, my mistake. We have not incorporated the “resident”.

Mr. Al-Rawi: “and shall inform the resident”. Yes. We did that.

Sen. Ramdeen: I think later on.

Mr. Al-Rawi: Yeah.

Madam Chairman: In sub (8).

Sen. Ramdeen: In sub (8).

Mr. Al-Rawi: In the sub (8).

Sen. Ramdeen: But the sub (8) is in relation to the extension, that is why I was wondering why we did it with the extension and we did not do it with the initial restraint.

Mr. Al-Rawi: I hear you, Madam Chair, I have no objection to the —

Sen. Ramdeen: I just did not want to leave it out. I just want to be consistent.
Mr. Al-Rawi: Sure.

Sen. Ramdeen: So that if we are doing it for the extension, it should be more important to put it on the initial ones.

Mr. Al-Rawi: Yes.

Sen. Ramdeen: To just add that in.

Mr. Al-Rawi: I think out of caution and for good sense, Madam Chair, in that subclause (4), that we could include the point of the exercise which is the “resident”. Just let me see where we go there.

Madam Chairman: So it is without delay to the Authority, the Children’s Probation Officer, the Medical Officer and the resident?


Mr. Al-Rawi: Madam Chair, so yes, as you read into it just now, Madam Chair, I confirm the person of the resident to be included in subclause (4).

Madam Chairman: So it would read:

“…without delay to the Authority, Children’s Probation Officer, the Medical Officer and the resident…”

Mr. Al-Rawi: Yes, Madam Chair, that is it.

Madam Chairman: Right?

Mr. Al-Rawi: “…and the resident and…”—

Madam Chairman: “…and shall state…” and continue.

Mr. Al-Rawi: Yes, Ma’am.

Madam Chairman: Sen. Ramdeen.

Sen. Ramdeen: Attorney General, can I ask you, Madam Chair, through you to the Attorney General. Attorney General, can I ask you to look at sub (5) which takes care of the position where:

“On receipt of the notice…”—
That is the notice of the Medical Officer prior—

“…referred to in subsection (4), for the Medical Officer shall inform the Superintendent whether there are any reasons why the resident should not be put under restraint and the Superintendent shall give effect to any recommendation made by the Medical Officer.”

I had suggested that a clause be put in that places a requirement upon the Medical Officer to inform the resident, the Children’s Probation Officer and the Authority of any recommendation for the child not to go under any restraint. And the reason, the rationale behind that is simply to have a safeguard that in the event—and you prepare for the worst and hope for the best.

**Mr. Al-Rawi:** I understand the rationale. Madam Chair, that would be very amenable. What we could do—Madam Chair, is it convenient?

**Madam Chairman:** Yes.

**Mr. Al-Rawi:** Yeah?

**Madam Chairman:** Just point out where you are going.

**Mr. Al-Rawi:** Sure. So just after clause (6), so just after (5), forgive me, we can insert a 5A which would read as follows:

“All recommendation made by the Medical Officer under subsection (5) shall forthwith…”—No, sorry. Let us look for the harmonized language. “…shall be brought…”, forgive me, Madam Chair, “...be brought to the attention of the resident, the Children’s Probation Officer and the Authority by the Medical Officer.”

That is correct?

**Madam Chairman:** May I read that, Attorney General?

**Mr. Al-Rawi:** Yes, please. Madam Chair.
Madam Chairman: “Any recommendation made by the Medical Officer under subsection (5), shall be brought to the attention of the resident, the Children’s Probation Officer and the Authority by the Medical Officer.”

Mr. Al-Rawi: Yes, Madam Chair.

Sen. Ramdeen: Attorney General, can I ask you to use that exact same wording and do it in 6A for the same purpose?

Mr. Al-Rawi: In the 6A that you have just suggested here?

Sen. Ramdeen: No. You just suggested 5A.

Mr. Al-Rawi: Yes.

Sen. Ramdeen: Right. I am asking you whether you would consider using the exact formulation that you just did and have a 6A with the exact wording.

Mr. Al-Rawi: Yes. So if I catch you, if I get you correct. So that when the decision of the Medical Officer is now done that the information be repeated because it is a step further.

Sen. Ramdeen: Yes. We are just doing them step by step. So the 6 now provides for when it is to be removed, 5 should not be put under restraint; that he should know. Now, if he is under restraint and the Medical Officer says at any time it should be removed, it should have that same safeguard for that.

Mr. Al-Rawi: [Discussion with CPC] Madam Chair, so in light of Sen. Ramdeen’s suggestion I had invited you a little bit earlier to cause an amendment into clause 6. Right?

Madam Chairman: Yes.

Mr. Al-Rawi: That language would have only taken us part way. So if we
were to delete those recommended words and instead insert a clause 6A and we would be repeating the very language that we did for clause 5A.

**Madam Chairman:** There is going to be a 6A?

**Mr. Al-Rawi:** Yes, Madam Chair.

**Madam Chairman:** Thank you.

**Mr. Al-Rawi:** Yes, please, Madam Chair. Thank you, Sen. Ramdeen.

**Sen. Ramdeen:** And you have covered 7. Previously, in your contribution you had covered 7 with what part of what I had suggested, so I am satisfied with that. So as far as I am concerned, what you have proposed as your 8(ga), and what I propose in relation to any of the amendments to your proposed amendments has been covered.

**Mr. Al-Rawi:** Yes.

**Sen. Ramdeen:** No. I am telling you, I am satisfied with that.

**Mr. Al-Rawi:** Thank you very much for your confirmation.

**Sen. Ramdeen:** Madam Chair, the amendments that are proposed by Sen. Mark in relation to clause 8(ga) which is the new proposed amendment by the Attorney General, I withdraw the amendments on behalf of Sen. Mark in relation to those.

**Madam Chairman:** Sure. Are there any amendments with respect to clause 8 in your list, in Sen. Mark’s list that you are proceeding with?

**Sen. Ramdeen:** Yeah.

**Madam Chairman:** Because, all right. So could I just ask, which ones? What I will now do is—I apologize, Sen. Richards, you wanted to say something. No. Let me just invite Sen. Richards to comment.

**Sen. Richards:** Thank you, Madam Chair. It is just that I want to make a contribution based on Sen. Ramdeen’s concern about 8(e)(iii), with the
“creating a disturbance”, where Sen. Ramdeen had a concern about the interpretation and the wide berth interpretation of disturbance. And I would suggest, “disruption” may be more precise for consideration.

**Mr. Al-Rawi:** Madam Chair, we are amenable to that. I had a chance to chat with Sen. Richards during the debate, and I think that there is merit in the altering the words, because “disturbance” and “disruption” are different enough to be able to capture the more violent sort of riotous run, as opposed to the just I-made-noise disturbance.

**Madam Chairman:** All right. So where are we?

**Mr. Al-Rawi:** So Madam Chair, in the draft as circulated by me, if you are looking at (iii)(c) and it begins with:

“for the purpose of preventing”

in (iii), we would change the word “disturbance” to “disruption”.

**Madam Chairman:** What I propose to do at this stage is to put these amendments that have been proposed. Right?

**Sen. Mark:** The amendments that have been proposed, I wanted to get some clarification before you propose those amendment because they were just proposed—

**Madam Chairman:** Sure.

**Sen. Mark:**—and I would not have the chance—

**Madam Chairman:** Okay. Yes.

**Sen. Mark:** Would you allow me?

**Madam Chairman:** Yes.

**Sen. Mark:** Thank you very much, Ma’am. Madam Chair, through you to the Attorney General. Attorney General, the amendment that you have put forward to 8, which is contained on page 1, I should say, 4A(1).
Mr. Al-Rawi: Yeah.

Sen. Mark: I am going to page 2. Right?

Mr. Al-Rawi: Yes.

Sen. Mark: Right. When you, let us say 3, notwithstanding subsection (1)(b). Right?

Mr. Al-Rawi: Yes.

Sen. Mark: “the Superintendent may order that a resident be put under restraint…”

And I was trying to understand, is that too ambiguous and too broad?—in terms of the ability of the superintendent of prisons to interpret what “restraint” would mean in this context. And I say this against the background of my worry, given the fact that we are governed and we are doing everything to be in compliance with the United Nations Convention on the Rights of the Child.

And that is why I wanted to ask you whether you are comfortable with the Commissioner of Prisons and the Superintendent of Prisons being responsible for a rehab centre involving children, even though, AG, they might have committed some acts, some felony or whatever. I am just uncomfortable with the punitive, cultural upbringing of the prison officers and whether they will have the capacity to achieve the objective that we all are trying to achieve, rehabilitative and developmental.

That is why I asked the question: How would you interpret “restraint”, and whether you want to put some kind of definition to that?—to constrain the superintendent leaving it up to him to put an interpretation when you are talking about children who are 18 years and under. You remember what you do not want to do is challenges being put to this thing, and we have—I want
to say the taxpayers have to face the courts—because of these people’s inconsiderate approach to a sensitive piece of legislation that we are governed by.

**Mr. Al-Rawi:** I get you.

**Sen. Mark:** Good.

**Madam Chairman:** Attorney General.

**Mr. Al-Rawi:** Sure. Madam Chair, it is an important point on many levels, it is philosophically and esoterically and practically hitting many issues. The point is this. We are moving away from right now the facility to do any form of restraint, any form of management, and we are now for the first time prescribing these down in a very careful way. These must operate with the benefit of three things in place. The first thing is that the Children’s Authority is always involved in these matters. That has a few subsets because the children’s probation officers and the medical officers are also inside of there, but if I take those under one heading it is that.

Secondly is that the Minister’s orders, child rehabilitation centre order kicks in, which has subsidiary rules that govern that.

And then the third thing is, the child rehabilitation centre rules which are rules done in conjunction with the Children’s Authority, those have to be complied with as well.

The difficulty in fixing the definition of “restraint” is that the thing needs to be fluid enough to adjust to situations. I think that the mischief is managed by, firstly, the category of people that manage the situation which we have now very specifically included to be more than just the prisons officer. In the past you had a superintendent of prisons, an inspector of prisons who would come in and that would be your check.
Now for the first we have brought in Children’s Authority, children welfare officers, probation officers, the medical officers, et cetera, so we have much more inspection. But I can say that the prisons officers themselves are now being specifically trained and managed, and that is being done in conjunction with the work from the Government of Canada. So the commissioner, Commissioner Head is his name, he is actually the head of corrections for Canada, he is currently in an active project right how on an MOU basis between Trinidad and Tobago and Canada where we train up this cohort.

So, we have added in a lot of other safeguards into it, but we could not, respectfully, define “restraint” because we needed to have the fluidity to work it out as it is the first time that we are doing this.

**Sen. Mark:** Another area I would just like you to clarify for me and it is on page 3, Attorney General, item under bullet point seven or let us say number seven. It reads:

“A resident shall…”

Now, I would like to ask for your consideration in terms of an amendment, and I was saying that, when you read:

“A resident shall not be kept under restraint longer than necessary, nor shall he be kept under restraint for longer than twenty-four hours…”

And I was asking that, if you put there the following wording, if you look at an inspection, because this person is under restraint—right?—and we want to get the welfare officer included. I may not have the correct wording, but I am suggesting for your consideration “an inspection” after the words “twenty-four hours”, “an inspection by a welfare officer” must be made to ensure that restraint methods have not been exceed. Because you remember
you are in a situation here where people are being restrained, and we do not know to the extent of the force that is being used or the methods that would be employed.

But if we get the welfare officer engaged to do a report upon, and put some provision here so you can have, for instance, a buffer so that this thing would not be left open really either to the superintendent, the Commissioner of Prisons or whoever is in charge here. Because when you talk about “restraint”, AG, there are instances where children are placed in what is called “black holes” because they want to confine them. That is a form of punishment in terms of how somebody might interpret their behaviour, and I do not think that is what we are looking for here. So, I would like you to consider that amendment.

**Mr. Al-Rawi:** Madam Chair, sorry to interrupt my learned colleague, I think that Sen. Mark has hit upon a very important point, and we took the opportunity just to pull up very quickly the Child Rehabilitation Centre regulations 2017. And I think that now is perhaps an opportune moment to harmonize the two. But let me tell you how solid the regs are, and I think that we should probably do a little bit of adjustment here. So the regs say:

“A resident shall not be kept under restraint longer than necessary, nor shall he be kept for longer twenty-four consecutive hours without a direction by the court.”

Right? So in the regulations we had said, if you are going to restrain this child for more than 24 hours, go to court. *[Crosstalk]* Pardon.

**Sen. Ramdeen:** Just as the Attorney General has raised that a very serious thing to have that kind of provision in subsidiary legislation—

**Mr. Al-Rawi:** Which is why I am suggesting that we lift it now into the
parent. So having had the chance to cross-reference the two because you would appreciate that this law has been amended so many times that it is almost fragmented.

So, Madam Chair, in subclause (7) if we look at it together perhaps we should say this completely. Let us delete subclause (7) and I will give you the fresh language for it if it is convenient to you?

**Madam Chairman:** Is this the clause—[Inaudible].

**Mr. Al-Rawi:** Yes, Madam Chair. So what we will do, we will just cut and paste from the regs itself. So if we delete the language at (7), and we say as follows, this is the new (7) then—that (7) which will replace the one that was there:

“A resident shall not be kept under restraint longer than necessary, nor shall he be kept for longer than twenty-four consecutive hours without a direction by the court.”

**Sen. Richards:** Madam Chair, if I can just interject because I want to comment on this same, by your leave, this same clause that the AG is amending.

**Madam Chairman:** Yes.

**Sen. Richards:** Thank you. There are just two points regarding what Sen. Mark was raising and then Sen. Ramdeen earlier on in the DSM, “restraint” is specified, type or “restraint” is specified. That is the Diagnostic Statistical Manual dealing with children. The type of restraint is specified because types of restraints can hurt some children because it may not have the intention of quieting them down as intended.

In addition to the fact that, as the just suggestion for the, the recent suggestion for the amendment of subclause (7), I would respectfully submit
that we consider including:

“A resident shall not be kept under restraint longer than necessary and without supervision.”

If you are going for 24 hours of restraint, because if you leave a child in some types of restraint, for 24 hours that child can hurt himself.

Mr. Al-Rawi: Yeah. Madam Chair, that is a move in a better direction. Yes, Madam Chair.

Madam Chairman: “A resident shall not be kept under restraint…”—

Mr. Al-Rawi: Without, after the word “restraint”, perhaps we can put it after “restraint”, without supervision and. Thank you, Sen. Richards, Madam Chair, through you. And no longer. Sorry, Madam Chair, and “no longer”; so the word “no” after “and”.

Madam Chairman: I think at this stage it is important for us to read all of the amendments and further amendments that we have applied to this clause before we deal with any more. All right? I am not finished, Members, I am not putting it to the vote, but we have done numerous amendments and re-amendments so we need to just get it right. Okay? AG, I will just let you know what I have taken down and we will take it from there.

Are we all dealing with the Bill that has the track changes? Yes? So at page 13 sub (d), by inserting after section 2 the following new sections, you added an “s”. Correct?

Mr. Al-Rawi: Yes, Ma’am.

Madam Chairman: On page 14, there is an insertion of a 2B. The marginal note says “residents to be notified”.

2(b), the policies published in accordance with section 2(a) shall be brought to the attention of all residents of a rehabilitation centre.

UNREVISED
Mr. Al-Rawi: Yes.

Madam Chairman: Page 15, 14A sub (2), the following words are added:
and the Commissioner and the Authority shall investigate the allegation, and on its completion shall notify the person who made the allegation of the findings.

Mr. Al-Rawi: Yes.

Madam Chairman: Page 16 there is a 5A to be inserted. No. I am sorry. On page 16, at sub (c) (iii) “creating a disruption”. At 4:
“The Superintendent shall give written notice of an order for restraint without delay to the Authority, Children’s Probation Officer, the Medical Office and the resident.”

Mr. Al-Rawi: And shall state—

Madam Chairman: Yes.

Mr. Al-Rawi: Okay.

Madam Chairman: Okay? Then 5A:
“Any recommendation made by the Medical Officer under subsection (5) shall be brought to the attention of the resident, the Children’s Probation Officer and the Authority by the Medical Officer.”

6A, a new 6A:
“Any recommendation made by the Medical Officer under subsection (5)?

Mr. Al-Rawi: (6).

Madam Chairman: Sorry.
“…under subsection (6) shall be brought to the attention of the resident, the Children’s Probation and the Authority by the Medical Officer.”

UNREVISED
Mr. Al-Rawi: Yes.

Madam Chairman: Subsection (7) is deleted and replaced by the following:

“A resident shall not be kept under restraint without supervision and no longer than necessary nor shall he be kept for longer than twenty-four consecutive hours without a direction by the court.”

And sub(8):

“Any recommendation for the extension of the period of restraint pursuant to subsection (7) shall be brought to the attention of the resident and he shall be afforded an opportunity to be heard before a decision is made.

That is where we have reached thus far.

Mr. Al-Rawi: Just a question. “Twenty-four hours, we put “twenty-four consecutive hours”. Right?

Madam Chairman: “Twenty-four consecutive hours”.

Mr. Al-Rawi: Yes, please. Madam Chair, so the only thing right now is to just make sure that the (8) which we read is still necessary, and I think it is not because we have now deferred to the court. So, we can potentially consider deleting the (8) because we were not going for a court order.

Madam Chairman: Subclause (7)?

Mr. Al-Rawi: Yes.

Sen. Ramdeen: Madam Chair, through you to the Attorney General, only to say, will it be too much to ask, if I ask you, Madam Chair, through you to the AG, to just read back the (7) that we had that is now proposing to delete?

Mr. Al-Rawi: Sure.

Madam Chairman: Where we are deleting the clause (7) and we are replacing it as follows?

Sen. Ramdeen: No. The one that we are deleting.

Mr. Al-Rawi: It is shown in the marked-up, subclause (7).

Madam Chairman: Page 17 of the marked-up version?

Mr. Al-Rawi: Top of the page in red.

Sen. Ramdeen: No. You had proposed something after that.

Mr. Al-Rawi: Right. So, we had proposed an (8).

Sen. Ramdeen: Right. That is what I am asking, the (8).

Mr. Al-Rawi: And the 8 would been:

“Any recommendation for extension of the period of restraint pursuant to subclause (7) shall be brought to the attention of the resident and he shall be afforded an opportunity to be heard before a decision is made.”

Sen. Ramdeen: Right. Now you are saying, it will be brought in the court?

Mr. Al-Rawi: Yes.

Sen. Ramdeen: Right. All I am asking is that I think it is important, now that we have that provision for the court, that we subscribe in the legislation for the resident to be given a right to be heard on that application, which is one aspect of what you have there.

Mr. Al-Rawi: Yes. So, he would have, through you, Madam Chair, because any application for further restraint beyond 24 consecutive hours would go to the court, the court is going to require everybody who can speak to the issue to be there. So the children’s welfare officer, the resident, through the voice of the children, because remember the children’s attorney kicks in under the Children’s Act, so the child will have to have a view inside of
there.

**Sen. Ramdeen:** So, I do not want to anticipate, but later on in the provisions you have made specific provision for applications to be made to the court for the voice, the way you phrased it is that for “the voice of the child to be heard”, I think, in the subsequent provision.

**Mr. Al-Rawi:** Yes.

**Sen. Ramdeen:** I do not see that there is anything that—I do not think that we should leave it for the court to determine who has an interest. I think between you and I, obviously the person who is most directly affected is going to be the child.

But, Madam Chair, through you to the Attorney General, I think this is nothing, just as you have had only that particular clause in (8), that is why I asked you to read it out. Because there is one particular clause in there that deals with this, in your (8) that you are striking out.

**Mr. Al-Rawi:** Yes. So Madam Chair, I submit to your guidance, Madam Chair, so in the (7) that we have removed and replaced, we borrowed from the language of the regs, and maybe we can actually in that reg language, so the reg language was:

“A resident shall not be kept other than no longer without a direction of the court.”

**5.35 p.m.**

I am trying to figure out how to read in the “voice of the child” there. I know it as a matter of course that the court would factor the voice of the child.

**Sen. Ramdeen:** I do not think we should leave it like that.

**Mr. Al-Rawi:** Madam Chairman, do you have any—in subsection(7) as we have reworded it, where we say “without a direction of the court”.

**UNREVISED**
Sen. Ramdeen: Can we just add another subsection, Attorney General, and say “on any application made pursuant to subsection (7), the resident shall be afforded a right to be heard”, and just leave it like that?

Madam Chairman: Is that not the 8?

Sen. Ramdeen: No, we are taking that out.

Mr. Al-Rawi: So, Madam Chairman, actually yes, we are with you. Right?

Madam Chairman: Right.

Mr. Al-Rawi: So, yes, it will be an 8, but modified, because the 8 that we had suggested a while ago came on the back of no court order. So, now that we are putting in a court order, it may be very well that we just modify the 8 that we have. In the very language that Sen. Ramdeen just uttered, I think that he got the wording quite right. So, it would be—

Sen. Ramdeen: On any application made pursuant to subsection (7), a resident shall be afforded the right to be heard.

Mr. Al-Rawi: “Mmhmm.” So, Madam Chair, that language recommended is certainly one that I think we could go with. Yes?

Sen. Ramdeen: On any application made pursuant to subsection (7), the resident shall be afforded the right to be heard.

Mr. Al-Rawi: You have to watch the hand that is writing.

Sen. Ramdeen: It is like before we had FTRs. “The resident shall be afforded the right to be heard.”

Madam Chairman: Attorney General, I think that is the end of your—

Mr. Al-Rawi: Yes Ma’am, that is it.


Madam Chairman: Sen. Ramdeen, your amendment?
Sen. Ramdeen: I indicated earlier that having regard to the proposed new amended subclause 8(ga) that was proposed by the Attorney General, my proposed amendments that are to be found at page 2 on to page 3 of the amendments proposed by Sen. Mark, from (a) to (i), are hereby withdrawn.

Mr. Al-Rawi: The other page will be (j) to (o).

Madam Chairman: (j) to (o)

Sen. Ramdeen: Yes. So, do you want to confirm these?

Madam Chairman: Because, Attorney General your amendments are now—

Mr. Al-Rawi: Yes Ma’am, yes.

Sen. Ramdeen: Are we dealing with 8, still?—(ga), or are we moving on now to what I have as (j)?

Madam Chairman: We have to deal now with yours. Right, (j), (k), (l), (m), (n).

Sen. Ramdeen: Does the Attorney General have any backs upon these that you want to do first?—because we said that is how we are going to do it.

Mr. Al-Rawi: Could we look at them? So, Madam Chair, that would have been the end of my amendments. If it is convenient to you to now explore the amendments—yes?

Madam Chairman: Yes, Because now we can understand—

Mr. Al-Rawi: Smoothly. Yes, Ma’am.


Sen. Ramdeen: Let me just—sorry. Attorney General, if you could just go to the marked-up version of the Child Rehabilitation Centre Act, at page 5.

Mr. Al-Rawi: Right. Yes.
**Sen. Ramdeen:** You are prescribing what the Regulations are to deal with. I have not examined the Regulations that are already drafted, but I am only concerned about (b), which says “The establishment of a system of discipline, marks and rewards for good conduct”, and I had suggested that you put in the words “and remission”, because under the jurisprudence as it stands now, you are going to have persons who are going to be held at a rehab centre—at this rehab centre I should say—who are going to be entitled to remission that you will have to provide for in the Regulations.

**Madam Chairman:** Sen. Ramdeen, I apologize, but what are you talking about, in reference to what clause, are you using the Bill with the track changes?

**Sen. Ramdeen:** It would be 8.

**Madam Chairman:** Are you using the original Bill? Could you just help us please?

**Sen. Ramdeen:** Sorry.

**Madam Chairman:** Yes.

**Sen. Ramdeen:** I was referring to the Bill with the consolidated version that the Attorney General provided us with, and that goes back to—

**Madam Chairman:** Right. Could you just tell us the page number?

**Mr. Al-Rawi:** 17(h). Paragraph (h) on page 17.

**Sen. Ramdeen:** 17(h). I am grateful to the Attorney General. 17(h), which is the second paragraph on page 17 of the Bill, and I had suggested that—the Attorney General is suggesting that we substitute the words “discipline, marks and rewards for good conduct”, and I was suggesting that we add to what the Attorney General has there, the words “and remission”, for the purposes, as I explained Attorney General, people who are going to bei
these rehab centres, the children, sorry, the residents, that are going to be there, are going to be going into remission.

**Mr. Al-Rawi:** Madam Chair, I am okay with the concept, but we had not used it in any of the other places, so the concept of remission. Because, the “discipline, marks and rewards” sort of capture that, albeit in a different formula. Could I better understand, through you, Madam Chairman, the concept of remission?

**Sen. Ramdeen:** Because the acting judgment came before these Regulations—

**Mr. Al-Rawi:** Yes.

**Sen. Ramdeen:**—one of the questions that the Court of Appeal was directly asked in acting was: Is a juvenile offender who is subject to a minimum term of imprisonment, that is of indefinite duration, whether they are entitled to remission? That would obviously have been based upon the law as it then stood. I have not seen what you have captured in your definition of “discipline, marks and rewards for good conduct” is going to capture the concept of remission in the way in which the Court of Appeal had asked for it to be treated. Because, the way the Court of Appeal asked for it to be treated is how it is currently treated, which is one-third off of the sentence, and I do not know if that is going to be the same formulation. So, it may well be that you can put it in the substantive law and work it out in the Regulations.

**Mr. Al-Rawi:** I understand. So, Madam Chair, what we had done here, was to make Regulations. So, the clause that we are proposing that is—sorry, the section of the law that we are proposing be amended by (h), 8(h), is to deal with the substantive clause which says, “The Minister may after consultation
with the Commissioner of Prisons and Authority make regulations for”. So, we did not think—well, we had not thought about it the way Sen. Ramdeen had put, that our Regulations would take care of remission issues, because those would be judicial issues.

**Sen. Ramdeen:** But no, not necessarily. It actually is execution of the order, which is totally an executive issue, and that is why I think it is important to do it like that. Because someone, subsequent to the making of this legislation, can then come and say that they are entitled to that by virtue of the decision of the Court of Appeal, which is the current law.

**Mr. Al-Rawi:** Correct.

**Sen. Ramdeen:** And there is nothing in the Regulations that causes it to be worked out. And while one aspect of it is covered by your words, which is “good conduct”, the remission also includes industry, which, I am not sure that it will be covered, I just think, you can work it out however you want in terms of the regs, but I think in the substantive law, unless that power is given there he would not be able to do it in the regs.

**Mr. Al-Rawi:** The springboard. Could I just get back to you on that?

**Sen. Ramdeen:** Through you, Madam Chair, if one of the researchers—say there is a decision of the Court of Appeal that says, Chuck Attin, No. 2—

**Mr. Al-Rawi:** I got you.

**Sen. Ramdeen:** And it is there.

**Mr. Al-Rawi:** I got you. So, Madam Chair, Sen. Ramdeen is referring to something that I consider is important. Currently sitting here as I am now, I am genuinely without the benefit of consultation in particular with the other stakeholders, the Judiciary, the other aspects, and we have been carefully managing how we treat with the concept. So, the remission point, if you take
it at its inception, one can say is a judicial discretion aspect. However, Sen. Ramdeen has said to us that that is administrative in the manner in which it is meant to be worked out. My difficulty here is that I do not feel qualified without the stakeholders’ views on the point to treat with the issue. What I can say is that we do have an omnibus Bill to come again, which has some of these amendments that we can treat with. So, if I could ask you, Madam Chair, to record an undertaking that I look at that issue, because I would need to get a little bit more consultative approach on it.

**Madam Chairman:** Sen. Ramdeen.

**Sen. Ramdeen:** If the Attorney General is offering an undertaking I would accept that.

**Madam Chairman:** So, you are withdrawing?

**Sen. Ramdeen:** (j).

**Madam Chairman:** Can we move on to your (k)?

**Mr. Al-Rawi:** So we are looking at (i), Madam Chair, on page 17.

**Sen. Ramdeen:** Sorry, I am obliged.

**Madam Chairman:** Sen. Ramdeen will have to tell me where we are looking.

**Sen. Ramdeen:** Sure. It is at (i). As the Attorney General indicated, (i) at page 17, under (h). Attorney General and Madam Chair, can I ask, to just make life a little bit easier for everyone to understand the proposed amendment, if we could look at the marked-up version of the community residences, where that is to be inserted?

**Mr. Al-Rawi:** Which is section 7.

**Sen. Ramdeen:** It is at section 7. Attorney General, I have a real difficulty in the way this legislation is crafted. Because, the way this legislation is
crafted, and I think as a matter of public policy one has to be very careful that what section 7—on the face of it, unless I am wrong—provides is that a child who is convicted of murder can be subject to any one of these provisions here. Or a child convicted of manslaughter can be subject to any of these provisions here. And if you look at what these provisions provide, it would mean that a court that has convicted a child for murder or manslaughter can simply pass a sentence for this child to be in a rehabilitation centre for a period of time with absolutely no periodic review or any provision provided for that, and I think it is very dangerous. So that my position on the amendment, my proposed amendment, is that at the very least, for section 7, we except or we exempt out the offence of murder and manslaughter, and that it goes—I propose that right after the second line, “where a child is convicted before the High Court on indictment for any”—

Madam Chairman: I am so sorry to interrupt, but I think—am I wrong in assuming that you are referring, you are making, you are suggesting an amendment—

Mr. Al-Rawi: To the Bill.

Madam Chairman:—to a clause that is not in the Bill?

Mr. Al-Rawi: That is in the Bill, Madam Chair.

Sen. Ramdeen: It is in the Bill.

Madam Chairman: Where is it in the Bill, please?

Mr. Al-Rawi: It is at page—it is (i) of the Bill.


Mr. Al-Rawi: I see what you are saying, Madam Chair. Yes, I follow you, so it would be a new amendment. Because what we propose in section 7 is not that. Yes.
Madam Chairman: And is it—and my question therefore, because in managing the committee at this stage, we have to deal with amendments that are relevant to the Bill. And therefore, what I am hearing is that an amendment is being sought to one of the Acts, but that is not contemplated by this Bill in question. Am I right, or am I wrong?

Mr. Al-Rawi: You are right.

Madam Chairman: I am right. So, Sen. Ramdeen, I do not think that this is something that we can deal with at this stage because it is not relevant to the proceedings in question.

Sen. Ramdeen: I am obliged, Madam Chair.

Madam Chairman: Yeah? So, with your leave Sen. Ramdeen, will you withdraw, is it (k)? Yes? And let us now deal with (l). So can you tell me where you are at (l), Sen. Ramdeen?

Sen. Ramdeen: I am at page 18 of the Bill.

Madam Chairman: Right. 12A (4)?

Sen. Ramdeen: Marginal note:

“Application by Commissioner of Prisons for leave for a stated purpose.”

Madam Chairman: Yes. Okay, yes.

Sen. Ramdeen: You have it, Attorney General, page 18 of the Bill?

Mr. Al-Rawi: Madam Chair, unfortunately, with you having clarified what you just said, we are actually outside the terms of the Bill because we were amending 12A and not clause 12. So, the suggestion in (l), which is a 12(4), is not one of the sections that we propose. However, both (k) and (l) on Sen. Ramdeen’s list are two matters that I will look at by way of undertaking—
Sen. Ramdeen: Attorney General—

Madam Chairman: I think in this case it may be—

Mr. Al-Rawi: Could you help me?

Madam Chairman: Yes. I think in this case there is an issue with how you have worded the amendments, Sen. Ramdeen. I think though, Attorney General—

Mr. Al-Rawi: Yes.

Madam Chairman:—if you look at 12A (4)—

Sen. Ramdeen: Yes, Attorney General, it is because I have (4), it is really 12A, your subsection (4)

Mr. Al-Rawi: Okay. Sorry, I was looking at the section 12.

Sen. Ramdeen: No, no, I am sorry.

Mr. Al-Rawi: I apologize.

Madam Chairman: Right, so it is 12A (4)

Sen. Ramdeen: Of the Bill?

Madam Chairman: Yes.


Madam Chairman: Which reads—in the original it reads:

“The Commissioner may, at any time, rescind the permission for a resident to remain on leave and cause the resident to return to the Rehabilitation Centre.”

You are seeking to amend that Sen. Ramdeen?

Sen. Ramdeen: Yes.

Madam Chairman: And you are seeking to amend it by replacing it? Deleting and replacing with, or you are adding?

Sen. Ramdeen: Can I just have one minute, Madam Chair?
Madam Chairman: Sure.

Mr. Al-Rawi: I do not think it is that, you know.

Sen. Ramdeen: I would just explain it, through you, to the Attorney General. Attorney General, are you there on it?

Mr. Al-Rawi: Yes.

Sen. Ramdeen: Right. There are two issues that arise: The first is, that the Commissioner under this, is being given a power to apply to the court to permit the resident to leave the rehabilitation centre.

Mr. Al-Rawi: Yes.

Sen. Ramdeen: So, what I foresee from that is the court is going to make an order that allows him—because he is there by virtue of the court order. So to vary that you have to go back to court. I have no problem with that.

Mr. Al-Rawi: Yes.

Sen. Ramdeen: The Commissioner then notifies the resident, in subsection (2), the resident shall not leave without the permission of the Commissioner. But then when you come at (4), the Commissioner is going to be given a power to rescind that permission, for the resident to leave—

Mr. Al-Rawi: Got you. And reference back to the court.

Sen. Ramdeen:—back to the court.

Mr. Al-Rawi: Unilaterally. I understand.

Sen. Ramdeen: First thing is, I do not know how you want to surgically deal with that, but I do not think he has—he can have that power.

Mr. Al-Rawi: I think it ought to be removed, and I am now reminded that the Law Association had made that observation. So it would make sense insofar as he had gone to the court to gain the permission that he ought not to be allowed the privilege to act without reference back to the court.
Sen. Ramdeen: And I think you are protected, because when you look at subsection (5). Subsection (5) actually provides for that.

Mr. Al-Rawi: So, if your amendment is that we delete 12A (4), I would accept that.

Sen. Ramdeen: Right.

Mr. Al-Rawi: So, that is one. Then we go to (5), where this is what he should do if everything remains equal:

“The Commissioner may, at any time, apply to the Court for the revocation of an order made under subsection (1).”

Now, that would in one way or the other obviously affect the ability of the liberty of the person who is subject to that order.

Mr. Al-Rawi: Yes.

Sen. Ramdeen: And that is why I proposed that:

“Any application made by the Commissioner of Prisons under that subsection”—which would be subsection (5)—“shall be brought to the attention of the resident and the resident shall have a right to be heard by the Court”—on that application.

I know it is just a simple right-to-be-heard application.

Mr. Al-Rawi: Yeah. It fits in with the due process, Madam Chair. So, perhaps that could be, if Sen. Ramdeen’s amendment is, delete subsection (12)(4)—

Madam Chairman: 12A (4)

Mr. Al-Rawi: 12A (4), forgive me. If that was the first part of his submission I would agree with that. And then, if the second part of his submission is, after subsection (5) to insert a new subsection 5(a), which would read as
provided by Sen. Ramdeen there, beginning with the words “Any application made by the Commissioner of Prisons”.

**Madam Chairman:** Would it just be (5), because you will have a new (4) that you renumbered accordingly? And then it would be—so it would be (5)?

**Mr. Al-Rawi:** So, insofar as there are insertions, I will just double-check.

**[Confers with CPC]** So Madam Chair, thanks. Insofar as these are all new insertions, the Parliament would note that we would renumber consequentially. So, if we delete subsection(4) and then renumber subsection(5) as (4), and insert a new subsection(5), everything else would flow, save for the amendments in (6) and (7) where the cross-references would need to just be double-checked. **[Interruption]** Sorry, Madam Chairman?

**Sen. Ramdeen:** AG, Madam Chair, through you, before we reach all the way down to (5), I have just noticed that—obviously I take full responsibility for it. What I have as (m) is numerically—probably should be dealt with after your 12A(1), which is, I am suggesting—

**Madam Chairman:** No. Let us just deal—because we are still trying to accommodate the application that you have suggested.

**Sen. Ramdeen:** But it would affect that, Madam Chair.

**Madam Chairman:** Let us just get the wording in, and we will revert because we really should not be just jumping all over the place.

**Sen. Ramdeen:** Okay.

**Madam Chairman:** Okay?

**Mr. Al-Rawi:** I understand, Madam Chair.
Madam Chairman: “An application”—this is the wording that Sen. Ramdeen has here, is that what you are going to—

Mr. Al-Rawi: Yes, Madam Chair. So we would be deleting subsection (4)—

Madam Chairman: Yes.

Mr. Al-Rawi:—and then we would be keeping (5), as it is numbered?

Drafter: Yes, please, and then just insert.

Mr. Al-Rawi: And then we would be inserting a 5(a). And that is so that it would pick up the words at (l) in Sen. Ramdeen’s draft. So delete subsection (4), insert subsection (5)(a), which would read:

“Any application made by the Commissioner of Prisons under”—subsection (5)—“shall be brought to the attention of the resident and the resident shall have a right to be heard by the Court.”

And, Madam Chair, instead of “any” application we will just use the word “an” okay? I apologize. [Interruption] And, Madam Chair, it would be, just to be clear, it would be “Commissioner” and not “Commissioner of Prisons”, because it is a defined term.

Madam Chairman: Sen. Ramdeen that takes care of your (m)?


Madam Chairman: Your (l). Yes, (l) and (m).

Sen. Ramdeen: No. It does not take care of (m).

Madam Chairman: So, will you now withdraw your (l), it being—

Sen. Ramdeen: Yes.

Madam Chairman: So now we are on to (m)?

Sen. Ramdeen: Yes. Attorney General, the (m) is in relation to 12A(1), so you can borrow the same words that you just used for the revocation, you
will have to have a new subsection that gives him a right to be heard on the application being made under (1) to leave, actually.

**Mr. Al-Rawi:** Madam Chair, so, it would be that we insert after subsection 12A(1), subsection(1)(a).

**Sen. Ramdeen:** Use the same wording that you used before, AG.

**Mr. Al-Rawi:** Yes? And that would be—

**Sen. Ramdeen:** An application.

**Madam Chairman:** I am sorry, is this not the application—

**Mr. Al-Rawi:** To release him.

**Madam Chairman:** But it is on behalf of the resident to leave?

**Mr. Al-Rawi:** Yes. I was trying to get the wording right first. Now, the philosophy behind it I understand to be that it is not just the Commissioner himself without the voice of the resident, if that is what I understand it to be. Yes?

**Sen. Ramdeen:** Totally.

**Mr. Al-Rawi:** So, it is to allow the resident to have a say inside of there.

**Madam Chairman:** Okay.

**Mr. Al-Rawi:** I can find nothing offensive about that.

**Madam Chairman:** That is fine, can I have the wording?

**Mr. Al-Rawi:** Madam Chair, it would be—so it would be (1)(a):

An application made by the Commissioner under subsection (1) shall be brought to the attention of the resident and the resident shall have a right to be heard by the Court.

**Madam Chairman:** Attorney General, okay.

**Mr. Al-Rawi:** Yes, Madam Chair, thank you.

**Madam Chairman:** Just 12(A)?
Mr. Al-Rawi: Yes.

Madam Chairman: Is it that you want to just take off the words “of Prisons” after “Commissioner”, 12A (1)?

Mr. Al-Rawi: Yes, please, Ma’am. Thank you.

Madam Chairman: You also have it at 10(b), “Commissioner of Prisons”.

Mr. Al-Rawi: Yes, it should be “Commissioner”. Yes, please.

Madam Chairman: So, it will be, 12A (1) (a). So, Sen. Ramdeen?


Madam Chairman: We are now on to (n).

Sen. Ramdeen: (m), (n) and (o). I said I withdraw (m), (n) and (o).

Sen. Khan: He should be glad to hear that. [Laughter]

Mr. Al-Rawi: Madam Chair, thank you for guiding us there, and thank you to Sen. Ramdeen for the significant improvements.

Madam Chairman: Hon. Senators, the question is that clause 8 be amended as circulated, and further amended as follows. At 8(d):

“The new sections”, plural?

Mr. Al-Rawi: Yes.

Madam Chairman: At 2(b), the marginal note will read:

Residents to be notified.

And—

2(b) The policies published in accordance with section 2A shall be brought to the attention of all residents of habilitation centre.

Mr. Al-Rawi: Yes.

Madam Chairman: At 4A(2):
…and the Commissioner and the authority shall investigate the allegation, and on its completion shall notify the person who made the allegation of the findings.

Madam Chairman: Yes. Attorney General, if I could just point out, in my sorrow, that you have “Commissioner of Prisons” here as well.

Mr. Al-Rawi: Yes. Madam Chair, I apologize, it should be “Commissioner.”

Madam Chairman: So, at 4A(1), delete “of Prisons,” 4A(2), delete “of Prisons” as well.

Mr. Al-Rawi: Yes, Madam Chair.

6.05 p.m.

Madam Chairman: At 4A(3)(c)(iii), delete the word “disturbance” and replace with the word “disruption.”

At sub (4):

…without delay to the Authority, Children’s Probation Officer, the Medical officer and the resident

At 5A:

…any recommendation made by the Medical Officer under subsection 5, shall be brought to the attention of the resident, the Children’s Probation Officer and the Authority by the Medical Officer.

6A:

Any recommendation made by the Medical Officer under subsection (6), shall be brought to the attention of the resident, the Children’s Probation Officer and the Authority by the Medical Officer.

Subclause 7 is deleted and replaced as follows:

A resident shall not be kept under restraint without supervision and no
longer than necessary, nor shall he be kept for longer than twenty-four consecutive hours without a direction by the court.

And sub (8):

On any application made pursuant to subsection (7), the resident shall be afforded the right to be heard.

At (k)(b), removing the words “of Prisons”. At k(l), at 12A, removing the words “of Prisons”, at 12A(1) and then inserting 12A(1)(a), to read:

An application made by the Commissioner under subsection (1), shall be brought to the attention of the resident and the resident shall have a right to be heard by the Court.

Subsection (4) is deleted and there is a 5A to read as follows:

Any application made by the Commissioner under subsection (5) shall be brought to the attention of the resident and the resident shall have a right to be heard by the court.

Mr. Al-Rawi: An application.

Madam Chairman: “An application”, sorry.

An application made by the Commissioner.

And just to point out that the marginal note for 12A, application by Commissioner.

At subclause 12A(11), delete the words “of Prisons”.

Question put and agreed to.

Clause 8, as amended, ordered to stand part of the Bill.

Clause 9.

Question proposed: That clause 9 stand part of the Bill.

Madam Chairman: Amendments have been circulated by the Attorney General. Attorney General.
“9 In the marginal note, delete the words “all legislation” and substitute the words “any written law”.”

Mr. Al-Rawi: That is the new 9A, right? Madam Chair, it is a new clause. Can we take it now? Yeah? I know we usually take them after.

Madam Chairman: Just one second.

Sen. Mark: Where we are, Madam Chair? Could you advise us?

Madam Chairman: We are at clause 9, the amendments circulated by the Attorney General.

Mr. Al-Rawi: Yes, Madam Chair, sorry, many papers before me. So, Madam Chair, it is a very simple amendment to the marginal note, simply, in the manner I have circulated.

Madam Chairman: Yes. Yes.

Mr. Al-Rawi: Should it please you.

Madam Chairman: Yes. Members. Have you set it out? It is amendment to the marginal note, Members.

Mr. Al-Rawi: I just said that.

Madam Chairman: Any questions, comments.

Question put and agreed to.

Clause 9, as amended, ordered to stand part of the Bill.

Clause 10.

Question proposed: That clause 10 stand part of the Bill.

“10(a)(i) In the definition of “appropriate adult” in paragraph(b), delete the words “welfare worker” and substitute the words “welfare officer (probation)”.”

Mr. Al-Rawi: Madam Chair, we have circulated an amendment to clause
10(a)(i):

“In the definition of ‘appropriate adult’ in paragraph (b)—to—
“delete the words ‘welfare worker’ and substitute the words ‘welfare officer (probation).’”

That is to take care of the new designations which we harmonized in the Probation of Offenders Act. So it is a straightforward amendment on our part.


Mr. Al-Rawi: So we are just in—in the Children Act, we are swapping definition “welfare worker”, instead now, “welfare officer (probation)” in keeping with how it is now classified and described. That is how it is in the Act.

Sen. Mark: Is that the whole concept of appropriate professional?

Mr. Al-Rawi: Yes. “Appropriate adult”.

Sen. Mark: Adult.

Mr. Al-Rawi: Yeah.

Sen. Mark: Well, what is “appropriate professional”? 

Mr. Al-Rawi: You see, so what we are proposing is that we—the term “welfare worker” did not exist. So what we went for instead was “welfare officer (probation)”, which is a term which is defined in the Act.

Sen. Mark: Right.

Mr. Al-Rawi: So we are just making sure that the correct term is there so there is certainty as to the individual.

Sen. Mark: Is that the provision that deals with a person suffering with a disability?

Mr. Al-Rawi: In section 3 of the Children Act? It is the Interpretation
section of the Children Act itself.

Sen. Mark: Okay.

Mr. Al-Rawi: So, Madam Chair, maybe I could assist this way. We are proposing that we insert a definition for the Bill itself, right? So the Bill proposes the insertion of a definition in the Children Act of an “appropriate adult”. That definition of “appropriate adult” comes from the Judges’ Rules. So we are now bringing this into parent law for the first time because it is actually used in the rules.

What we have before us now—the proposed amendments—is that we just tighten the reference as I have put out, that in the definition of “appropriate adult”, which the Bill had proposed, that instead of using the term “welfare worker” we have “welfare officer (probation)”. So I am just explaining for the benefit of the larger Bill. So the Bill itself, where we say, “to amend the Children Act”, that is where we introduce “appropriate adult”. And it is in our 2017 rules as well. So it is in our Child Rehabilitation Centre Regulations which came in on 15th May, 2017.

Sen. Mark: Madam Chair, just as how the AG is proposing that we put in the definition section at the beginning of the Bill an “appropriate adult”, I was wondering AG, how do we capture this term “appropriate professional”, because there is no definition for it in the legislation. So I do not know if an appropriate professional in certain contexts remains a professional child caregiver. I do not know.

Mr. Al-Rawi: I now follow Sen. Mark, I apologize. I was not on the same wavelength, if I could put it that way. So, Madam Chair, I think Sen. Mark is referring to the Bill which in the definition of appropriate adult, in subclause (f), uses the term “appropriate professional”:

UNREVISED
“in the case of a person with a disability, the appropriate professional,”
And we could not define “appropriate professional” because the range of disabilities could be so wide. So we are relying upon the plain, the literal interpretation rule, the plain and ordinary meaning, that if you needed a doctor, it would be a medical doctor or a psychologist or a psychiatrist as a professional that it would be those persons.

Sen. Mark: But do you not believe that because of the importance of what we are dealing with here it might be useful to have the definition?

Mr. Al-Rawi: Then we would have to list every single professional possible and then we would fall upon the sword of ejusdem generis. So the interpretation rule of ejusdem generis and how it is used would mean that we would unwittingly then cut things off particularly as the professional subcategories emerge and evolve, we may find that we have to come back to Parliament every time a new profession is born.

Sen. Mark: Okay. Another area I would like to ask the Attorney General to clear up for me is that—Attorney General, there is a section of the Bill that deals with almost your outlawing of corporal punishment. But there is no provision that deals with if someone does inflict corporal punishment, what are the sanctions?

Mr. Al-Rawi: There is an offence. It is an offence which is provided for in the amendments.

Sen. Ramdeen: No, nothing.

Mr. Al-Rawi: You mean in the Children Act?


Mr. Al-Rawi: Under general offences?
Sen. Ramdeen: No, no, no. Look at your consolidated version AG at page 15 of the Children Act. The Bill at—

Mr. Al-Rawi: The Children Act, right?

Sen. Ramdeen: The Bill, at page 27 of the Bill, clause 7A.

Sen. Mark: Clause 7A.

Mr. Al-Rawi: Page 27 of the Bill, clause—

Sen. Ramdeen: Watch at the top, 7A.

Mr. Al-Rawi: 7A.

Sen. Mark: You see where there is no accompanying punishment or sanction I should say, in the event that—

Madam Chairman: Sen. Ramdeen, could I just ask you to prepare your presentation to your amendment, please?


Mr. Al-Rawi: So, Madam Chair, Sen. Mark has pointed out—both Senators Ramdeen and Mark have pointed out the need for us to reflect upon providing a sanction for a breach of this prohibition. It is not provided. It is provided in the children nurseries foster care, et cetera. So we are just looking for that clause now so that we do not have to fall upon the general, where there is no prescription, the general offences provision. So with your permission, Madam Chair, for us to just find that.

Madam Chairman: Well, while that is being sought, could we just deal with the amendment proposed by Sen. Mark to clause 10 and we will come back to that point? Attorney General, are you seeing the amendment? Sen. Ramdeen your amendment to clause 10—well Sen. Mark’s amendment. The insertion of a new subsection (2B). Would you like to speak on it please because it is quite extensive?
“Clause 10

In paragraph(s):

- Delete the word “subsection” and insert the word “subsections”

- Insert the following new subsection (2B):
  “(2B) Sentence of death shall not be pronounced on or recorded against a person convicted of an offence if it is proven to the court that at the time when the offence was committed he was under the age of eighteen years; but in lieu thereof the court shall sentence him to be detained during the Court’s pleasure, and, if so sentenced, he shall be liable to be detained at a community residence on such terms and under such conditions as the Court may direct.

Upon conviction the Court shall state in open Court the minimum period that the child must be detained at the community residence.

In making a determination of the minimum period the court must take into account:

(a) the penal objectives of retribution and general deterrence;
(b) the seriousness of the offence;
(c) the principle of individualised sentencing;
(d) any aggravated or mitigating factors; and
(e) any other relevant matters.
The trial judge must state in open court his/her reasons for making the order.

Sentences to be served ‘during the court’s pleasure’ must be reviewed by a judge of the High Court at 3-yearly intervals, or at shorter intervals if exceptional circumstances arise. An oral hearing will not normally be required unless the Chief Justice thinks that this is necessary. The decision ought, however, to be announced in open court.

For the purposes of a review of sentence, the court must be provided with:

(a) a full report on the offender from the Superintendent of Prisons, addressing the conduct of the offender during detention; his/her responses to the punishment and any counselling and/or rehabilitative programmes sponsored by the prison authorities; his/her attitude to the crime (for example, genuine sorrow and remorse); and any recommendations by the Superintendent of Prisons for the guidance of the court;

(b) a report from the Chaplain of Prisons detailing the offender’s response to any moral and/or religious teaching;
(c) an up-to-date medical report from a medical practitioner assigned to the prison;
(d) such other information derived from the record of the case or otherwise as the court may require; and
(e) information relating to the progress and development of the offender (generated by the appropriate department in the prison at yearly intervals).

All relevant reports are to be transmitted to the Registrar of the Supreme Court for the purpose of review every 3 years; the registrar must forward the reports to the Chief Justice who will fix the matter for review before a judge, or delegate the task of fixing the matter for review to another judge."

**Sen. Ramdeen:** Madam Chair, through you to the Attorney General. Attorney General, are you with me?

**Mr. Al-Rawi:** One second, eh. Madam Chair, we found the language at page 41 of the Bill, so I would formulate it while I catch up now. Sorry, through you, Madam Chair, could I just get back to where you are referring me, Sen. Ramdeen?

**Madam Chairman:** So it is Sen. Ramdeen’s proposed amendment to clause 10. It is quite an extensive amendment. So Sen. Ramdeen, can you indicate the purpose of your amendment?

**Sen. Ramdeen:** Sure. Attorney General as you would have recognized by
your proposed amendment to section 75A of the Children Act, the substantive Children Act did not provide for a sanction where a child was convicted of murder. It provided that the death sentence should not be pronounced upon a child, but then it was left open—what is the order of detention that should be made?

So I propose that we reformulate the section as proposed in section 75A to what I have proposed. And as we did previously, this involves a process. First, we provide for the death sentence not to be pronounced; that is the first step. Secondly, we must accept that there is a punitive and a rehabilitative element of the order of detention that follows. The purpose of this section is to put into statute what the current law is which is that a child who is convicted of murder at the time of the commission of the offence is subject to an order of detention forfeiting his liberty on the basis that the object of the detention is for his rehabilitation back into society. There is a punitive element to it and there is a rehabilitative element to it. And therefore, what I propose is that we put into effect the fact that the court is authorized to make an order of detention upon the conviction that allows the State to forfeit the liberty of the subject for a particular period of time. That is in the first instance.

In the subsection that follows that, it provides for the court to indicate in open court what would be the minimum term of detention that that child is supposed to undergo, whether it be at a community residence or a rehabilitation centre because the amendment that I had sought to put forward with respect to the substantive law we cannot change at this point in time. So that that person is going to be subject to an indefinite term of detention that has to be subject to periodic review in order to take into consideration the
fact that a child—the purpose of detention is for the rehabilitation back into society.

Attin says that periodic review must be done in a particular way and I have the judgment here if you wish to see it. And what I propose that we do is to put into substantive law, as we did in the Special Select Committee—I do not know if it is possible for us to pull that now because that would give you the mirror image of what I think we should put here, and we marry that into the substantive law so that everyone will understand as of now when a child is convicted for murder what the position is from beginning to end including all of the periodic reviews. And if we could get that now we could formulate it and accept it like that and that will cure the very large lacuna that exists right now in relation to how that child is to be treated.

Mr. Al-Rawi: Madam Chair, thank you. I thank Sen. Ramdeen. This is a very significant point. It is not the first time we as a Senate are embracing thoughts on this. In fact, when we engaged in trial by judge alone and we were amending the procedures to treat with criminal procedures we had a Special Select Committee. Sen. Chote, Sen. Ramdeen, a number of us sat on that and we dealt with the position of diminished responsibility in a particular way. That is what Sen. Ramdeen is referring to. We had the benefit of some consultation from Prof. Hutchinson and others.

Now, this is exceptionally important, but I fear that I am ill equipped at this stage without the benefit of some degree of consultation on the point to tighten it up. It is something that I think does need to be treated. We had looked at it in a particular context but we have not finished the review of it. I would love to do it but I fear that if I make a decision legislatively now it is going to cast me in a particular mode that would be very difficult to break
May I crave through you, Madam Chair, the Senate’s indulgence to return to this issue in separate course? And I will say why. It will allow me to have the benefit of the consultation that must be confirmed in particular with the Law Association and the Judiciary. And it will allow us to cure a lacuna because right now we are reading into it in the Children Act, in section 75, and 75A and then when we do the prescriptions as to how you can treat with children charged for murder elsewhere, it is not tightly confined.

The Attin decision I am familiar with. In fact we dealt with it in the Special Select Committee where we then legislated the periodical reviews that we ought to do. We anticipate that we would be able to do this in a draft of law, a miscellaneous provisions of law, as soon as we finish the budget. We have a work product there which whilst we are treating with preliminary enquiries and some amendments to the other laws that touch with some aspects that must be amended that we can treat with that. So I give the correct undertaking now with the liberty of the hon. Members of the Senate to come back to that issue because Sen. Ramdeen has actually provided us with a very excellent draft, but I need to do the consultative approach. I am reminded that the Government does not legislate for itself and that we need to step outside sometimes to have a bit of conformation of the position.

**Sen. Ramdeen:** Thank you, Madam Chair. Madam Chair, through you to the Attorney General. The only difficulty that I have with that proposition, Attorney General, is that as it stands now, because you will be detaining people at present in a rehabilitation centre then what—there is going to be no provision as to how that rehabilitation centre is going to be treating with
persons who are subject to a conviction for murder and are under the age of 18 and are being detained at a rehabilitation centre that is not subject to the Prison Rules.

Mr. Al-Rawi: Two things, jumping on that. The first thing is that there are actually live cases now which we have on appeal to the PC, two of them in particular with children who are charged with murder and we are treating with the existence of child rehabilitation centres, et cetera. So I am cautious in my mind without calling the names of the cases. I know my learned friend is aware of them, to allow for some room for the PC to give us some of its reflection as well.

Sen. Ramdeen: Well, just to cut in and say that the difficulty with those cases is that those are cases of persons who are not convicted.

Mr. Al-Rawi: I know, they are remanded.

Sen. Ramdeen: So that this particular section does not bite on those—

Mr. Al-Rawi: I know, it deals with the convict, right. So 75A, where a child has been convicted of murder, I accept that. But I am looking now at the general reflections that we can get there. But in the meanwhile, I do feel at least some marginal degree of comfort that we have the children’s authority and the regs and the other provisions inside of there. So in fact there is a mandatory continuous review that is going on, the child welfare plan, the positions and then the menu of opportunities. Because, as it is right now, quite interestingly, a child who is convicted of murder can actually find himself or herself on release on licence elsewhere under the provisions of the Children Act because they are not debarred from enjoying those sorts of privileges which the Commissioner of Prisons—a host, further education, or employment—can offer.

UNREVISED
So there is at present an active system of management. I do not think it goes as far as the prescriptive elements offered by you, which I think are extremely commendable and in line with the approach that we took on the judge-only considerations in the Senate. But I fear that I am not in a position yet to treat with the amendment in crystal form as proposed by you because I need to do some of the consultation.


Sen. Ramkissoon: Madam Chair, if I may? Attorney General, the point that Sen. Ramdeen has raised is something of concern to me as well because I have raised it in my debate in terms of children who were convicted, not convicted, but who had murder offences against them. And one of the clauses in the Bill that we have before us is where children can be transferred from these rehabilitation centres to children’s homes, and we do not want a case to slip through where these children who have not had a charge come before them for murder—were not being convicted of murder—and now are transferred to a children’s home due to space constraints or anything like that.

So I would not want that to ever happen in our country, especially since you are not in a position to make a crystallized formula on it and I think it is very important that we do look at it closely or have our opinion.

Mr. Al-Rawi: Madam Chair, I accept the hon. Senator’s exhortation that we do treat with the issue sincerely and I have given that undertaking. But just to remind that the children’s homes versus the child rehabilitation centres disaggregate the age groups in particular, “under tenners” and “over tenners”. And we must have the facility if an 11-year-old or a 10-year-old commits murder that it may be appropriate because that has happened or can
happen, that we have the ability to move to the children’s home.

But remember that any movement has to be sanctioned by the court and has to be subjected to the Children’s Authority and the rules and regulations. Anybody who is on a charge of murder is not permitted the liberty of bail. And very importantly, that child has to be managed in a very strict environment. But the “intertransition” between home and rehab centre is something that is extremely carefully monitored and is done by the court. So the skipping through the crack, it is not as if they could just one morning say, well you know, “take da one”. You have to go through a whole process and the court must verify and confirm that process.

**Sen. Ramkissoon:** Thank you, hon. AG.

**Madam Chairman:** Sen. Ramdeen in light of the Attorney General’s comments—

**Mr. Al-Rawi:** And undertaking.

**Madam Chairman:** And undertaking—

**Sen. Ramdeen:** I withdraw the proposed amendment to clause 10. Attorney General, just before we move on from clause 10, I recall and I just want to seek perhaps the drafter’s guidance. There is a provision that I think that has been proposed about a child who is to be transferred to a prison beyond the age of 18.

**Mr. Al-Rawi:** Yes.

**Sen. Ramdeen:** Can you just direct me if that is in this particular section that we are dealing with because I just want to make sure that I do not miss it.

**6.35 p.m.**

**Mr. Al-Rawi:** [Confers with technocrats] I have a team of experts here that
are just double-checking the reference. Madam Chair, while we are looking for that, we have come up with proposed language for the inclusion of the offence, how it is to be treated. I do not know—if you could guide me, if you are going to treat with it—yes, it will be a proposed insertion.

**Madam Chairman:** Clause 11 we are dealing with, right?

**Mr. Al-Rawi:** It is clause 10.

**Madam Chairman:** Clause 10.

**Mr. Al-Rawi:** Yes, Madam Chair.

**Madam Chairman:** And this sanction falls within clause 10—

**Mr. Al-Rawi:** Yes, Ma’am.

**Madam Chairman:** So we can insert it.

**Mr. Al-Rawi:** Okay. Just let me find the place for it.

So, Madam Chair, in the Bill, it would be found at page 22. It would be in section 4. I am just going to see where section 4 is. So it is 10(b) of the Bill.

**Madam Chairman:** 10(b), yes.

**Mr. Al-Rawi:** Yes, just getting there with you, Madam Chair.

**Madam Chairman:** Can it not go after (7A), but before (c)?

**Mr. Al-Rawi:** Yes, Madam Chair. So, Madam Chair, at (b) where we say:

“in section 4, by inserting after subsection (7) the following new subsection:”

(7A)—

We would insert the number “(1)” and then after that if we jump to the bottom by (c), we would then now insert a number “(2)”, and the number “(2)” would read as follows:

A person who contravenes subsection (1) commits an offence and is
liable.

(a) on summary conviction to a fine of five thousand dollars and imprisonment for six months; or

(b) on indictment to a fine of fifty thousand dollars and to imprisonment for 10 years.

And it should be “conviction” on indictment as opposed to “on indictment”. So at (b) it should be “conviction on indictment”. I omitted the word “conviction”. And, Madam Chair, the question was just asked about—sorry, let me get this—

Sen. Ramdeen: Transfer.

Mr. Al-Rawi: Transfer? Where it was? Yes, Sen. Mark asked where it was. It is in section 54. Where we proposed amendments to section 54 of the Children Act, we provide under the power of the court where a child is charged, appears before it, we are amending (a) through (d) in the manner that we have circulated. So we are treating with that.

Sen. Ramdeen: Can I comment on that, through you, Madam Chair?

Madam Chairman: Attorney General, just one thing. The (7A)(1) and (2), just before that you had at (b):

“in section 4, by inserting after subsection (7) the following new”—

Is it “subsections” now, plural, as opposed to “subsection”?

Mr. Al-Rawi: Yes—it is (7A), so it is not “subsections”. It is singular because it is only (7A). Apologies, Ma’am.

Madam Chairman: It is fine. The matter you were just dealing with, does that fall within clause 10?

Mr. Al-Rawi: Yes, it is 10(j), is it? Yes, 10(j) at page 31 of the Bill.

I believe Sen. Ramdeen was just about to ask a question on it, through
you, Madam Chair.

**Madam Chairman:** Sen. Ramdeen.

**Sen. Ramdeen:** Attorney General, the practice at present is exactly the way the legislation is, which is that when a child is at the YTC rehabilitation centre as you have it now, and they attain the age of 18, they are transferred to the adult prison. I do not know what the policy is behind doing that, but my understanding of what the law should be is that when a child is subject to a regime of rehabilitation at a rehabilitation centre, the mere fact that that child attains the age of 18 for the purposes of being categorized legally, as to whether that person is a child or an adult, is not a proper justification for any court or administrative body to take that child and place that child into an adult prison.

And the safeguard that you have put into the legislation—which is that the child should be kept separately in the adult prison when that child attains the age of 18, if the court is able to make that order to send that child to the prison upon attaining the age of 18—I do not think is sufficient enough to be able to provide a basis of legality for that continued detention of the child in an adult facility beyond the age of 18. The rationale for that is that when a child is subject to that form of detention, the nature and character of that detention cannot be satisfied in an adult prison even though that is the practice at present, and it is just a matter of time before it will be challenged and the law will then take its course as to one way or the other. But I do not think—there are situations now where there are children at YTC who are over the age of 18 but they continue to be there, and that too raises a discrimination aspect of it, because you might have situations where a child is over the age of 18 but they continue to be detained at the rehabilitation
centre. And then you have children who are above the age of 18 and they are then transferred to an adult facility.

And we also have to bear in mind that underpinning all of that is that in most of the cases where a child attains the age of 18, while subject to an order of detention, they are presumed to be innocent, because most of the time they are on remand. So, I know you might have your policy decisions and your rationale for it, but I want to ask you to carefully consider what we are authorizing a court to do by virtue of section 54A(c)(ii).

**Sen. Ameen:** Madam Chair.

**Madam Chairman:** Yes?

**Sen. Ameen:** Just to add to the suggestion. The purpose of sending children to the rehabilitation centre is to rehabilitate them. We know what the conditions at our prisons are like, and I had suggested in my contribution during the debate that provisions be made for a revision at the age of 18. So at the time of the offence, at the time of sentencing, the judge may not be able to determine how the recovery rate, or how the rehabilitation of that child will be, and therefore his file and his documents, and so on, with his progress, should be taken into consideration. But you cannot do that before he reaches the age of 18. And I feel that sending a child to the adult prison after serving time in the rehabilitation centre will defeat the purpose of the rehabilitation of the child, because we know the conditions in the prisons. And that is something—for that reason I cannot support it. I would like us to look for an alternative.

**Mr. Al-Rawi:** Could I get some clarification from Sen. Ameen? What exactly can you not support?

**Sen. Ameen:** What I said is that I am agreeing with the point that Gerald is
making. He is making his based in law, and I am saying that based on the social condition, based on what you want to achieve with the child, I do not feel that you will achieve that by—when the child spends time in the rehabilitation centre in a different type of environment that is supposed to be more rehabilitative, knowing the conditions of our adult prison, when at the end of that time in the child rehabilitation centre, you then send that child to the prison, I feel it will defeat the purpose of the rehabilitation efforts. So for that reason I would like us to look for an alternative to simply sending them there to finish the balance of their sentence.

Mr. Al-Rawi: Could I explain, Madam Chair? So this 54A is actually radically important. The law right now is that under 18 you are a child. If you are a child you go to a child rehabilitation centre. Anybody 18 years and over, you are an adult, you go to Remand Yard if you are remanded, and you go to adult prison if you are convicted. 54A is designed specifically for the first time to take us away from an illegality which has been prevailing, and that is where over-18-year-old people were continuing to be kept in child rehabilitation centres, and that was the blind eye of the law. Because what happened was, these were children who were in school, who were in development programmes, who had access to education, who were remarkably well-developed children, and then all of a sudden they aged out and then, by law, they had to be sent to the prison.

What we are doing in 54A is to say, “hold strain”. Let the court decide whether they actually have to go to the prison or not, because they mandatorily had to go to the prison before. Allow the court the opportunity to keep the child in the child rehabilitation centre, because it may suit the restorative approach of justice to allow that. Because without 54A, this
elephant in the room where people are being kept over 18 for their safety or for their education or benefit at a rehabilitation centre, albeit separate, so that they are not mixing with children, is to put legal clothes on that for the first time.

So the policy decision in advocating 54A in the context of clause 10 is specifically to give that which Sen. Ameen, I think, supports, which is that you do not just send the child to an adult prison. And that is why we do this. Now, to allow it to withstand scrutiny we say, let the court decide. So that is where all of the child rehabilitative information: the reports; the Children’s Authority; the child welfare officer or probation officer, all of those things come to the court and then the court makes a decision.

Now, Madam Chair, this fits in with something which the Government very purposefully did, which is to allow for judge-only trial, which we are shortly to have proclaimed. We are working out on the rules and regulations and training aspects. Because it is the lads and lasses at YTC who, when we engaged with them said, “Look, I was 12 years old when I was alleged to have killed somebody. I am now 22 years old and if I go before a jury they are going to see me as a hard-back man, not as the 12-year-old child who slipped and fell and the knife killed someone”.

So it was with all of that in mind that we carved out “judge-only” in particular, and very specifically, the Children Court, and very specifically, this “we can keep you beyond 18” provision in 54A. And extremely important onto that was the segregation aspect. So if you are over 18 and we are keeping you at a rehab centre, we are going to ask you to also be separated out, so we maintain the integrity of the “children” side of the equation. This fits in now with the FCD rules—well, actually with this,
where we are saying in another law, the court can treat with you as a child. Specifically, we preserve the rules there. So it really is a whole matrix of amendments that we have put together over the last three years to allow us to come up with this position.

**Sen. Ameen:** Attorney General, I just want to ask you—we know that in our courts we have a lot of delays. Some things take quite a lot of time. If a child attains the age of 18 before he is presented before a judge to make that decision, will he then stay at the rehabilitation centre until the court makes a decision?

**Mr. Al-Rawi:** This allows the court for the first time to allow that.

**Sen. Ameen:** So he will stay at the rehabilitation centre.

**Mr. Al-Rawi:** —can. It is up to the court. The court will look at all of the circumstances and then make a decision.

**Sen. Ameen:** Oh, certainly. But if in the case where the court does not hear it promptly before he turns—his 18th birthday?

**Mr. Al-Rawi:** Then the—forgive me, Madam Chair, all through you. Then it would be the Commissioner of Prisons who would be under an obligation to start to treat with it by way of applications. And what I can tell you is that, actually, enquiries are being made as to who is over 18 or not, and it has caused concern because there are some genuine cases where you do not want to have to mandatorily transfer these—previously—kids, to adult prison, particularly if they are remanded.

**Sen. Ameen:** I am not talking about the existing situation. I mean, the provisions of the law as is—

**Mr. Al-Rawi:** If you age out and you did not come to court yet.

**Sen. Ameen:**—if for some reason the application is not before the judge
before the child’s 18th birthday, is it that the Authority will keep them at the rehabilitation centre until their matter is heard, even though they may have crossed the age of 18? It may be a few months. But what I am asking is, if the Commissioner of Prisons, or if the administration of the home will then—because they still fall under the Commissioner of Prisons. So is it that the Commissioner could transfer them to the adult prison until their matter is heard? Or is it that they will stay at the rehabilitation centre until their matter goes before a judge and it is decided, in the time that it would take the court to decide in the cases? It will not happen in all the cases, but in the instance that it does, where does the child stay until that decision is made?

**Mr. Al-Rawi:** To answer your question specifically as posed, it is both. The practice in the prisons has been that anybody who was, as a child, they continue to treat with a slightly different approach, because they are in care programmes. So what they have been doing is that they have been keeping them there and now tidying up the situation where they will take the matters to court to say, “Look, well, we have had this child for two years” or “one year”, or “three years” or “10 years. The child has now aged out. Court, could you tell us what to do in light of welfare officers’ report, education?”—et cetera. Because what has happened as well, the Prisons Rules which were passed in 2014, we have not been able to operationalize those Prison Rules because the plant and machinery in the prisons have not been improved fast enough. So while we are improving that, including toilets, decanting the remand cells, which we are doing with the Government of Canada; while we are doing that we are extremely careful not to bring the unpolluted, relatively speaking, into the polluted. So it is being managed by process.
Sen. Ameen: And I understand that. And what I am asking—because you may have an intention. You may not be Attorney General, and in the future this law—this is what I am asking, if there will be a loophole for that space. What is the default position? Because you apply to the court, to the judge—

Mr. Al-Rawi: I understand.

Sen. Ameen:—to have the child remain at the child facility—

Mr. Al-Rawi: I understand—

Sen. Ameen:—but is it that the default is that the Commissioner could take him to the adult prison?

Mr. Al-Rawi: So, forgive me for interrupting. Your questions is—the mischief is identified as follows: Can a Commissioner, without reference to the court, upon somebody ageing out 18 years at midnight, just say, “over to adult prison”? The answer to that is, yes. Technically, that can be done because that is the law. Is it practically the situation that it is not done? Yes. Can we find a gap to treat with that? We are trying to. The first step to that is 54A, as we put out now, so that at least the child can now say, “Well, look, hold on. Even though you are transferring me”—the child has the right to tell the lawyer, “Look, I really want to stay here.” So it is now a double-edged sword—the ex-child.

Sen. Ameen: My fear is that just as there are people on remand waiting for years for their case to be heard, a child could end up in the adult prison, even if it is for six months. That is a long time in a person’s life at that stage. And a child could end up in the adult prison waiting for his matter to be heard before the judge for his application to stay at the rehabilitation centre. So if there is some way for the default position—

Mr. Al-Rawi: No, no, no, just to deal with that. Because we have created a
Children Court for the first time and because we now have judicial capacity on that side, that interlocutory application to stay somewhere or to not be transferred, is not going to be the same as waiting for your matter at the assizes. Those are dealt with much faster.

Madam Chairman: Hon. Senators, I think, unless it is a new point, Sen. Ramdeen—

Sen. Ramdeen: Of course.

Madam Chairman: Is it a new point?

Sen. Ramdeen: It is.

Madam Chairman: Yes? Is it clause 10?

Sen. Ramdeen: Yes. Attorney General, the easy away to solve this entire dilemma and fix—

Madam Chairman: Well then, that is not a new point.

Sen. Ramdeen: No, it is in relation to what the Attorney General is proposing here, which is, let us just take your amendment and add a new subsection that says:

Within two months of a resident turning 18, the Commissioner of Prisons shall make an application to the court for the court to determine whether the resident is to be kept at the rehabilitation centre upon turning the age of 18.

It is just putting in a provision that safeguards the position of the resident. Because, the problem is, there is no trigger mechanism for it.

Mr. Al-Rawi: I hear you. The default position in terms of capacity right
now is, what if it cannot be done within two months?

**Sen. Ramdeen:** Well, let us forget about the two months; before he turns the age of 18.

**Mr. Al-Rawi:** Again, right now, the difficulty in accepting the submission is that I have not factored the capacity issues. So I wrestled for a full year in coming up with 54A to at least bridge that gap, but I am dealing with the logistics, right now, of making sure that the State does not find itself paying millions of dollars in liability on child issues. In particular we found ourselves in those circumstances previously, under the previous Attorney General where we had some difficulties there. So I cannot easily throw in the provision just now.

**Sen. Ramdeen:** The same point that Sen. Ameen was making, if we do not do that, the position is going to be that you run the risk—you are looking at if it is not done, but look at the position on the other side. If you do not do it and the child turns 18, and the child then is automatically transferred, which is the mischief that you are dealing with here in 54—a decision is made by the Commissioner, the Commissioner transfers the child to the adult prison; upon the child being transferred to the adult prison, the court is then activated in some way and the court has to now determine, does that child—[Crosstalk]

**Mr. Al-Rawi:** Madam Chair, I was just wondering about reversing the position. Where a person who has been—[Crosstalk]

**Madam Chairman:** Just one second. Members, there seems to be a little restlessness. So can I ask Members, please, if you are feeling young and you are feeling restless—[Laughter]—you can step out, just for a little while. All right? Because the Attorney General—[Crosstalk] Sen. Mark, are you in the
young and restless as well? [Laughter]

Hon. Member: Far from.

Madam Chairman: Could we please, please? All right?

Mr. Al-Rawi: Madam Chair, I was saying, perhaps if we looked at it this way: where a person who has been transferred from a rehabilitation centre to a prison—if we are looking at that situation; if we put the obligation upon that person to apply for the court to consider whether he ought to be continued to be remanded in the children’s end, then at least that would take care of the capacity issues.

Sen. Mark: Nah. AG—honourable—Madam Chair, I want to remind the AG, he is on very dangerous grounds. There is a convention on the rights of the child and I remember we had exhausted this discussion some time ago.

Madam Chairman: I think, Sen. Mark—

Sen. Mark: No—

Madam Chairman: Hold on one second. The issue has been articulated both by Sen. Ameen and Sen. Ramdeen. The Attorney General is now conferring with his technocrats to see if there is some sort of position that he can arrive at. So could we just hold on, please?

Sen. Mark: I thought he had arrived at a position, but I will be so guided.

Sen. Ameen: Through you, Madam Chair, for the consideration—

Madam Chairman: Let us just let the Attorney General confer with his technocrats. [Crosstalk] So, Senators, now that you all have flexed a little bit, the Attorney General is ready now to address on the issue.

Mr. Al-Rawi: So, Madam Chair, it is an important issue. Let us start off with all of the right bells ringing. Our heads and hearts recognize the issue, through you, Madam Chair. I know I am not permitted to do this, but just to
say that—well, I guess I am permitted. In conferring with our technocratic team, there are people sitting with me that have served in the prisons for 16 years, at Children’s Authority, at Gender Affairs, et cetera, and we have been working with these concepts and trying to find maps now for well over a year, in particular on this last amendment, since we did the FCD 19 laws. The difficulty that I have is that I need to process out the flows at the same time with the law, because there is a bit of a balancing act to be factored.

So that potential options on the table, on the one side: stay, if you have been there and you are about to be transferred, approach the court in advance of turning 18, and let the court decide if you should continue in rehab centre or move to adult side. On the other hand—and that has a capacity issue attached to it. On the other hand, if you are moved, you can apply immediately to the court and say, “I want to move back”. And you could probably park that with a—if you have just become an adult and you were in a rehab centre, step one, segregate you in adult prison, so that the ability to be harmed is limited immediately, and then secondly, allow for the application to go into court.

The difficulty that I have at present is that I have to have some consultation on it. Because the Attorney General’s office is not legislating for itself in terms of the recommendations, albeit, let me be absolutely fair, obviously the Parliament, in its wisdom decides what it ought to do. But it is driven on the back of consultation. We do have, as I informed a bit earlier, Madam Chair, on a couple of occasions, another round of amendments coming. My mind is leaning already in terms of some of the proposals, to put the application upon the person who is moved, but to make sure the person who was detained as a child is segregated at the adult prison in the
event that that person is moved and then allow for the court to pronounce upon whether to return or continue, depending upon the rehabilitative approach. But I fear that I need to get some better guidance on that and to confirm the policy aspects.

**Sen. Ramdeen:** Madam—

**Sen. Ameen:** Madam Chair—

**Madam Chairman:** Just one second.

**7.05 p.m.**

**Mr. Al-Rawi:** Madam Chair, I think—because the drafters have been working while I have been speaking—we are looking at formulating language—but again, I have just got to have some small consultation as well—which would say—and I would like to hear your view, Madam Chair, and that of hon. Senators.

If a child has been in a rehabilitation centre and is transferred into adult prison, firstly, that he should be housed separately at the adult prison and, secondly, that the child may also make an application to the court for the court to consider whether he may be returned to the rehabilitation centre in accordance with the recommendations in 54A. That might be a halfway-house approach.

**Sen. Ameen:** Madam Chair, I just want to suggest to the Attorney General, if you could consider perhaps letting the responsibility for the application be on the side of the Commissioner of Prisons, so that the Commissioner must apply to transfer the child to the adult prison before he reaches the age of 18. So perhaps that way he will remain in the custody of the rehabilitation centre until that application is dealt with. So you put the responsibility on the Commissioner. It is just a suggestion for you to consider.
Sen. Mark: Madam Chair, Attorney General I know that you are trying your endeavour best to deal with this one, but I must remind you of the Convention on the Rights of the Child and I want to refer you to Article 37(c) on that Convention. It does not permit what he is proposing. We are going to be in violation of international law if we approve what the AG is proposing.

AG, I would like you to look at the Convention, Article 37. What you are proposing, I know where you are and I know where you are coming from, and I know you are trying, as you said, to have a proper situation established, but we will be going against international law and against the UN Convention that we have signed up to.

Mr. Al-Rawi: Madam Chair, so if I were to encapsulate the issue under one label we are looking at transitioning. So the thing is transitioning. The problem with going stone cold, you are an adult now at midnight is an extremely difficult one. The recommendation by Sen. Ameen is under the veil of ignorance—when you are drafting law it is an excellent submission. Put it upon the State that ought to have the resources to manage the positions, but the naked truth is that the State just does not have the resources just yet. Now, it may be acceptable that that is just not an excuse. I can understand that, but then we find all sorts of other things spinning from that. In the difficulty of not having the benefit to consult, relative to the policymakers and the persons who will operationalize the law because we are on the floor of the Parliament now, I have a potential halfway house for consideration and it could read something like this:

Notwithstanding subsection (1)—which would have been the 54A—where a child attains the age of 18 years and is transferred to a
prison—that is where the jeopardy can come in—

(a) he shall be housed separately from the main population; and

(b) he may apply to the court to be transferred to a rehabilitation centre.

That at least recognizes that the person in custody has (a) legal aid, (b) may not have his or her own attorney-at-law and can invoke the process himself or herself. So it would at least oblige a court to hear the issue.

I think the only thing that is missing from this draft—because I am now seeing it—is how long he shall be housed separately. He shall be housed separately until an application under (3)(b) is heard and determined. So at least you know you do not find yourself in the limbo of being there indefinitely.

Sen. Chote SC: Madam Chairman—

Sen. Ameen: I strongly believe the child should be housed at the rehabilitation centre.

Madam Chairman: Could I just ask just one question before you—Attorney General, section 54A, is it not dealing with a court application and what the court may do including the power to remand to a prison?

Mr. Al-Rawi: Yes, it does.

Madam Chairman: And what you are suggesting now is therefore outside of an application to the court?

Mr. Al-Rawi: Your surgical precision is upon me.

Madam Chairman: Sen. Chote.

Sen. Chote SC: Madam Chairman, I was just wondering whether that section could be tweaked to make it clear that it would include the situation of a young person turning 18 so that the application would be made by the
Commissioner. Is that at all possible?

**Mr. Al-Rawi:** So, Madam Chair—

**Sen. Chote SC:** Because the Commissioner you see, hon. Attorney General, is represented by the hon. Attorney General’s Office. A child turning 18 does not usually have legal representation and you want to ensure expeditious movement at this point in time. So it seems to me when you balance it out that it makes more sense to place some sort of onus on the Commissioner, or somebody from the prisons to make an application to the court before the child is moved because if you separate someone in the prison essentially you are putting them in isolation which in itself is a form of punishment. So it is not as easy as we think. It is just a thought.

**Madam Chairman:** Sen. Richards.

**Sen. Richards:** Thank you, Madam Chair. Just two considerations for the hon. AG, through you. One is the issue of the backlog situation that the hon. Attorney General is trying to address which is the issue of those in the centres that have already attained the age of 18 and the resources may not permit them to be processed quickly and the AG’s suggestion will possibly take care of that, but we also have to consider that the restorative justice process, or the harm in just the transfer to a prison may impact the individual so significantly that it reverses much of the process that would have taken place in getting that individual ready for rehabilitation or reintegration into society.

I do not know if it is possible, but maybe a suggestion of the child upon attaining the age of 17, the onus on the Commissioner of Prisons to start the application process if that child’s detention is to go past its 18th birthday to allow for a 12-month period of processing as a pre-emptive strike
in addition to the AG’s suggestion for those who would have already attained the age of 18.

So you have a two-pronged approach, those who have attained the age of 17, the onus is on the Commissioner of Prisons to start the application process and that will deal with a backlog issue because we also have to make the law to deal with those who would have already attained the age of 18 to try to mitigate that transfer which will have some, if not physical, psychological impact on that individual. Thank you, Chair.

Mr. Al-Rawi: So, Madam Chair, coming back to your question, it is not outside the parameters of 54A because notwithstanding 54A(1) by the proposed language which I just referred to. I think Sen. Chote has made a very important observation, the equality of arms principle, effectively who has better resources or not. And then, of course, Sen. Richards has made the obvious impact. I mean, one hour in adult prison may undo everything, literally. Five minutes there, who knows? The question is in trying to find the balance.

One of the difficulties that I am wrestling with in the chair here now is that I am very conscious that the record-keeping is not the way it ought to be and we are trying to fix that as we speak. For instance, prior to getting the Criminal Court Division up and installing the software into the courts, the manual checks between prisons and each remanding date for each individual was literally like staccato gunshots all over the place. If you were to go to the court and say pull up the records of every child who is at a rehabilitation centre and give me the dates of remand, they cannot tell you because it is a manual system that exists.

Quite surprisingly, there was quite a bit of lack of support for the
criminal division, but that is one of things the criminal division pushed at. The issue here now is knowing that that is the way the system is in creating the structure where you are putting the obligation upon the Commissioner, what is going to happen is you run the risk of being in default and liable to damages for the position that you just have no way of knowing about which is a reality and which the taxpayers also manage in the context.

So finding that balance is a critical position because the system has not been attended to for—prior to 2015, prior to 2016 in particular, none of this was attended to. No computerization, nothing. Now, Sen. Chote said something which I am deeply concerned to make sure is right, keeping the child separate could be isolation, but in fact we are keeping—we had to keep a particular individual who is under 18 and who was at the women’s prison, we had to separate that person. There was only person in that female child rehabilitation centre and that was a separate wing, just happened to have one person.

So it is not as if we are going to just lock this child away in a room and that is it. So we have created already at the prisons a separate arm for detention of persons, segregation of persons. Where it becomes extremely alarming for anybody that have seen the Remand Yard is if you have a remandee in a child rehabilitation centre moving to a Remand Yard in particular in the condition that we have now. So what we have so far, Madam Chair, is the notwithstanding subsection (1) of 54A, the same 54A.

Madam Chair, if I could put it this way, we are flying by the seat of our pants at this point without proper process mapping. I understanding the need and the heart—I mean, I will confess I have an 18-year-old child. If my child was in that situation and had been 17 and just turned 18 my heart
would be bleeding immediately. All of us understand that position, nephews, nieces, children, whatever it may be. 54A as we have brought it is the first time that we have allowed this to be clothed in law, but to process-map this out properly I have to make sure that I could balance it.

So, for instance, if the child was moved, segregate. Segregate for how long? Put the obligation or bifurcate it to allow the child to apply, and/or if the child requests, for the Commissioner to apply and then put a cut-off point, but I have to policy-map and process this out. So the best that I can do, wanting to do the justice that everybody recognizes here, is to again give an undertaking to treat with it in the legislation which we have coming as quickly as November, if not October when the budget is finished, and then to treat with that issue, but I would like to get it right.

The risk of dropping the hammer, dropping the sword now is that I may be doing injustice one way or the other and I fear that I genuinely do need to have the consultative approach. So I would like to recognize the sincerity of the position. I would like to say that 54A is nuclear in its effect for the first time. It never existed before. It has been like this forever. We have made at least one step forward. To get the right balance requires a little bit more. We have a Miscellaneous Provisions coming very shortly. We have already drafted it. It would just be now to fit in. Just to give you the assurance of how we have been keeping the undertakings, in this Bill the undertaking which I gave last week to treat with the Court Pay is here. So we are treating with these things as we come along, but I do require the input of the Children’s Authority, the Prisons Authority, the Judiciary, the DPP’s Office, the Prisons Officers’ Association, et cetera, to case-manage this out and I give that undertaking on the record.
Madam Chairman: Sen. Obika, a brief comment.

Sen. Obika: Madam Chair, regarding the comment on solitary and also regarding transferring them to prisons, I wonder if we consider prison culture where—I am not an expert on—for example, someone is getting preferential treatment they will be seen as a soft target by the persons who are already part of the prison population if you are separating them from the rest, and they may actually be greater disenfranchised.

The other point I want to make is the regulations on the Bill that are mended in clause 11 do not treat with solitary confinement. I am not sure if there are other Bills that have regulations that treat with it, but the regulations do not treat this solitary confinement. So I think because the regs do not, we should treat with solitary in the law.

Madam Chairman: Attorney General, with respect to what was said about clause 11, we will deal with that later on. You made a comment about clause 11?

Sen. Obika: Yes, Chairman, and I apologize for putting that in, but I was really just dealing with the solitary, but the first point is a concern that I feel should be considered.

Madam Chairman: Yes, I think we have all spoken on this matter. The Attorney General has given an undertaking. It is time now for me to put clause 10 to the vote. So hon. Senators, the question is that clause 10 be amended, as circulated, and—Sen. Raffoul, yes.

Sen. Raffoul: Madam Chair, can I ask for clarification?

Madam Chairman: On?

Sen. Raffoul: Clause 10. It is on the system framework that we need to have. My understanding is that—
Mr. Al-Rawi: On what?

Sen. Raffoul: You were saying we need to have a data framework, but at the same time you always say, which I respectfully agree with, that we cannot always wait on perfection. We need to have effective law. I completely agree with Sen. Mark’s point that if we allow this clause to continue that we would be in contravention of international law when it comes to protecting the rights of children. My concern is that as a millennial it is extremely easy to create an Excel spreadsheet, and if we say that we need to have a perfect data system to be able to track data then we might be compromising the human rights of our citizens, and our young persons in particular, and it is not impossible to create an Excel spreadsheet with young persons’ birthdates and the date on which they are turning age 18.

Mr. Al-Rawi: Madam Chair, Sen. Raffoul is correct. Just to let you know there is more than an Excel data sheet at the prisons. The prisons is not the problem. The prisons is spot-on correct. In fact, if you ask the prisons for information now, within two minutes flat you will get it. The difficulty is in the court. So in marrying the dates, I had the worst time of my life in trying to transfer children from St. Michael’s to the child rehabilitation centre which we had created, which was leaps and bounds better, and we could not get from the court because it is a manual logbook system in the Magistrates’ when their dates for trial came up and we were obliged to wait for the remanded dates as the court gave notice.

So the problem is not the Excel spreadsheet, the problem is not the prisons end, the problem is the data system in the magistracy, which in the annual report you will see TT jim has been created. That is in the process of being solved right now. So we expect that to be done as a matter of priority.
in weeks, sort of thing, because we have segregated out the child’s point. This is why we are asking for more judges, this is why we are asking for the progress in the fashion that we are going, and if you would read the annual report of the Judiciary you would see that this work where that black hole was—the black hole was the court—that has for the first time in for 26 years— In fact, that has for the first time since 1950 been addressed.

**Sen. Raffoul:** Thank you for clarifying.

**Madam Chairman:** Hon. Senators, the question is that clause 10 be amended, as circulated and further amended as follows:

At 7A(1) by inserting (1) and inserting 7A(2) to read as follows:

(a) person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of five thousand dollars and to imprisonment for six months; or

(b) on conviction on indictment to a fine of fifty thousand dollars and to imprisonment for ten years.

*Question put.*

**Sen. Mark:** Division.

*The Committee divided: Ayes 17   Noes 10*

AYES

Khan, F.

Gopee-Scoon, Mrs. P.

Baptiste-Primus, Mrs. J.

Rambharat, C.

Sinanan, R.

Moses, D.

Hosein, K.
West, Ms. A.
Le Hunte, R.
Henry, Dr. L.
Singh, A.
De Freitas, N.
Cummings, F.
Dookie, D.
Young, N.
Phillips, Ms. Z.
Richards, P.

NOES
Mark, W.
Haynes, Ms. A.
Hosein, S.
Obika, T.
Ramdeen, G.
Shrikissoon, T.
Ramkissoon, Ms. M.
Chote SC, Ms. S.
Creese, S.
Raffoul, Ms. J.

Question agreed to.

Clause 10, as amended, ordered to stand part of the Bill.

Clause 11.

Question proposed: That clause 11 stand part of the Bill.

| 11(a)(i) | Delete the words “word “2016” and substitute the words |

UNREVISED
<table>
<thead>
<tr>
<th>Clause</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>11(a)(iii)</td>
<td>Delete after the words “temporary residence licence” the word “and”.</td>
</tr>
<tr>
<td>11(a)(v) and (vi) inserted</td>
<td>Insert after paragraph (iv) the following new paragraphs: “(v) by deleting the definition of “community residence” and substituting the following definition: “Community Residence” means a Children’s Home or a Rehabilitation Centre; and (vi) by inserting in the appropriate alphabetical sequence the following definition: “child charged” has the meaning assigned to it under section 1A of the Child Rehabilitation Centres Act.”</td>
</tr>
<tr>
<td>11(ca) inserted</td>
<td>Insert after clause 11(c) the following new paragraph: “(ca) in section 3(2), by deleting the words “community residence” wherever they occur and substituting the words “Children’s Home”.”</td>
</tr>
<tr>
<td>11(e)(i)</td>
<td>Delete the words “Community Residence” and substitute the words “community residence”.</td>
</tr>
<tr>
<td>11(f)(i)</td>
<td>Delete the words “Community Residence” and substitute the words “community residence”.</td>
</tr>
</tbody>
</table>

UNREVISED
| 11(g)(ii) | In paragraph (A)—
  | (i) delete the words “word “three”’’ and substitute the words“ words “three years’’”; and
  | (ii) delete the words “word “one’’’’ and substitute the words “words “one year’’”. |
| 11(h)(ii)(B) | Delete the words “Conditional Licence” and substitute the words “conditional licence”.
| 11(h)(iii)(A) | Delete the words “Conditional Licence” and substitute the words “conditional licence”.
| 11(j) | Delete and substitute the following paragraph:
  | “(j) in section 11(3), by deleting the words “,being not less than six months after the date of the notice”,”. |
| 11(l) | Delete the words ““Community Residence” and”.
| 11(m) | A. In subparagraph (i), delete the words “Community Residence” and substitute the words ““community residence” wherever they occur”.
  | B. In paragraph (iii), delete the words “community residence” and substitute the words “community residences”.
| 11(n) | In clause 17B, delete the words “Children’s Homes” and substitute the words “Community Residences”.
| 11(s)(ii)(A) | Delete the words “Community Residence” and substitute the words “community residence”.
| 11(t) | Delete paragraph (t) and substitute the following paragraph
  | “(t) in section 24 , by deleting the words “community
<table>
<thead>
<tr>
<th>Amendment</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>11(z)</td>
<td>Delete the word “and” after the semicolon.</td>
</tr>
<tr>
<td>11(aa)(iii)</td>
<td>Delete the full stop after the word “Homes” and substitute the words “; and”.</td>
</tr>
</tbody>
</table>
| 11(ta) inserted | Insert after clause 11(t) the following new paragraph: “(ta) in section 25—

(i) in the marginal note, by deleting the words “community residences” and substituting the words “Children’s Homes”; and

(ii) by deleting the words “community residence” wherever they occur and substituting the words “Children’s Home”.” |
| 11(ab). inserted | Insert after clause 11(aa) the following new paragraph:

“(ab) by deleting the words “community residence”, “community residences” and “rehabilitation centre” wherever they occur and substituting the words “Community Residence”, “Community Residences” and “Rehabilitation Centre” respectively.” |

**Mr. Al-Rawi:** Madam Chair, thank you. The Government has circulated what I would call very innocuous amendments to clause 11, specifically to 11(ca), 11(e)(i), 11(f)(i), 11(g)(ii), 11(h)(ii)B, 11(h)(iii)A, 11(j), 11(l), 11(m), 11(n), 11(s)(ii)A, 11(t), 11(z), 11(aa)(iii), 11(ta) as an inserted position. All of these are simply to harmonize the language between
capitalization of C and R in community residences, to “commonizing” those common c, community, common r, residences, wherever they occur, et cetera. This has come about by way of the amendments we did to the Family and Children Division Act No. 6 of 2015, the Fifth Schedule, where we amended the 19 laws in that past. So this is just to bring it up to speed as we did the checking and cross-checking of the laws and in default of the Law Revision yet doing the harmonized version. That is the genuine rationale for these proposed amendments.

**Madam Chairman:** So, hon. Members, the question is that clause 11 be amended as circulated.

**Sen. Mark:** Madam Chair, you are going a bit faster now.

**Madam Chairman:** No, Sen. Mark, fast cannot be described.

**Sen. Mark:** Yeah, I agree with you. [Crosstalk]

**Madam Chairman:** I did invite questions. Members, please. Did Sen. Ramdeen not ask the Attorney General something?

**Sen. Mark:** Where, here?

**Madam Chairman:** On this clause 11?

**Sen. Mark:** No.

**Madam Chairman:** Yes, he did?

**Sen. Mark:** He did?

**Madam Chairman:** Did you not ask about community residences? Did you not ask that?

**Sen. Ramdeen:** I asked about amending.

**Madam Chairman:** Is that not in asking a question, Sen. Ramdeen? So why are you saying there was no opportunity to ask a question, Members? I would ask that you all—
Sen. Obika: I apologize but I really need to ask this question.

Madam Chairman: Yes, hold on. Members, I am going to reopen—I had just started putting clause 11 to the vote, those Members who wish to ask the Attorney General a question please do so promptly and succinctly. Sen. Obika.

Sen. Obika: Thank you, Madam Chairman. Clause 11(n) which seeks to amend 17A, with that 17A in it, it does not include—

Madam Chairman: It says 17B, Sen. Obika. 11(n).

Sen. Obika:—where it lists corporal punishment, restraint or force as a form of punishment on the Bill—I am looking at the Bill eh. That is what I am looking at—it does not list, and the regulations have no mention whatsoever of solitary, confinement, or any other punishment that may compromise. So solitary confinement and placement in a dark cell, those two forms of punishment which are part of section 67 of the Havana Rules are not listed there and I clearly remember when I was making my contribution in the debate the Attorney General said that they are part of the regulations. They do not form part of regulations and I believed that they should form part of the Bill.

Mr. Al-Rawi: Sorry, I do not recall precisely in my wind-up what I was referring to because I dealt with Sen. Obika’s contribution in the round. So I apologize if I misunderstood what the hon. Senator was saying. I am not even sure if what he said I said is what I recall either, but in any event the Senator is raising—Madam Chair, just to be clear, may I understand what precisely is he proposing—an amendment to the clause? What is it that has been proposed?

Sen. Obika: What I am saying is if I look on page 37 of the Bill in front of
us, it has the prohibited forms of punishment and the wording of the Havana Rules—section 67 of the Havana Rules under disciplinary procedures. However, Havana Rules also state “placement in a dark cell” as well as “closed or solitary confinement”, and they also said all disciplinary measures constituting cruel, inhumane or degrading treatment, which is a catch-all.

7.35p.m.

And I am humbly requesting that those three be inserted. So where you have:

“(a) corporal punishment;
(b) restraint of force as a force as a form of punishment;”

This is on page 37 of the Bill.

Madam Chairman: Attorney General, it is 17A, page 37 of the original Bill. In your track changes it is page 41.

Mr. Al-Rawi: Thank you.

Sen. Obika: So now that we are there, the three things I could reiterate:

“All disciplinary measures constituting cruel, inhumane or degrading treatment…”

That is one to be prohibited. The second is:

“…placement in a dark cell.”

And the third is:

“…closed or solitary confinement.”

Thank you, Madam Chair. I am very grateful.

Mr. Al-Rawi: Madam Chair, I thank the hon. Senator for pointing that out. We have a matter that is on appeal at present on this whole issue of what is solitary confinement. We are awaiting right now clarification on that. In fact, I began to address it when I was looking at what Sen. Chote was speaking
about which is whether one person just being one occupant and nobody else there can be viewed to be solitary confinement. We are awaiting that judgment right now so we have not treated with the issue squarely just yet.

I would like to get the benefit of that judicial interpretation because we have had a live situation where we have had only one resident and that one resident was put in—you see, I do not even want the legislation to be ad hominem. So let us start with that. It would be dangerous to talk about it. Right? But suffice it to say there is a live issue which we are waiting on appellate decision for. It is at the Privy Council as we speak and I need the benefit of the judgment.

Madam Chairman: Sen. Obika.

Sen. Obika: Madam Chair, is it possible then to add in the catch-all: “all disciplinary measures constituting cruel, inhumane or degrading treatment”?

Mr. Al-Rawi: Just to repeat it again. The Privy Council matter concerns that very issue And we are going to be materially benefited from the fulminations coming there. It is (a), specifically in relation to children; and (b), specifically in relation to the matters.

I just want to point out, because it sort of ties in with something that we discussed a little bit earlier. I want to remind that we dealt with these laws in 2012, under a UNC Government and the explanations provided—because I sat actually where you are right now, Sen. Obika, and I proposed 237 amendments to the Children Act, and we finished at 4.00 a.m. that morning. Every single amendment that I proposed was not accepted at first, but then we got into the groove, much as we do.

But, in raising these points, the then Government asked for, and we agreed as an Opposition to support the legislation because we knew that it
was a work in progress. It is the same thing I am asking now. The difference then was that every Independent Senator voted against the Bill and all Opposition Senators, PNM Senators, voted for the Bill. And that is how the Children Act came into being and the other positions came ahead because we recognized that we needed the benefit of positions. So that which Sen. Mark now calls unconstitutional was passed by the UNC Government.

And when we have come forward to advance the position now, like we have just done, we are being met with a different sort of story. So, I have set out that there is a case which we would like the benefit of Privy Council determination on. I would not go into the name of the case because I would make the legislation ad hominem, at risk and, therefore, I am asking that we bear in mind that there is a larger-round issue that we are soon to have a judgment on.

**Madam Chairman:** Hon. Senators, there is Procedural Motion that we have to deal with. So the Senate will now resume.

**Mr. Al Rawi:** But, Madam Chair, just one last point on the Constitution.

**Madam Chairman:** Attorney General, the Senate will now resume.

**Mr. Al-Rawi:** Oh, oh, sorry, sorry, sorry.

7.39 p.m.:  *Committee suspended.*

7.40 p.m.:  *Senate resumed.*

**PROCEDURAL MOTION**

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Thank you very much, Madam President. Madam President, in accordance with Standing Order 14(5), I beg to move that the Senate continue to sit until the completion of the business at hand.

*Question put and agreed to.*
Madam President: Hon. Senators, we will now resume the committee of the whole.

Committee resumed.

Madam Chairman: Sen. Mark, you had something you wanted to raise about clause 11?

Sen. Mark: Yes. Succinctly, Ma’am.

Madam President: Yes.

Sen. Mark: Madam Chair, through you, to the hon. Attorney General. I am referring to clause 17A(3), which reads, and I just want you to follow me, Attorney General:

“Where a person alleges that a child…”

Madam Chairman: Just a second, Sen. Mark. Sen. Hosein and your counterpart on the Government Bench, if you wish to have a discussion as loud as the one that you all are having please take it outside. Sen. Mark, please continue.

Sen. Mark: Yes, thank you, Madam Chair. Hon. Attorney General, through the Chair:

“Where a person alleges that a child in a Children’s Home has been the subject…”

That is heading. So I just want you to follow.

Mr. Al-Rawi: Yes, I am.

Sen. Mark: Right, I am saying, apart from reporting the matter forthwith to the Authority, which is the Children’s Authority, I would ask if you could include an amendment “and to the Trinidad and Tobago Police Service” because I believe that I do not want to put my confidence only in reporting this matter to the Children’s Authority. If I see torture, cruelty and
oppression taking place, involving a child, I want to go to the Authority and I want to follow it up, Madam Chair, by going to the TTPS and the new Commissioner himself.

**Madam Chairman:** Attorney General.

**Sen. Mark:** So I ask the hon. Attorney General to consider that as an amendment. So as a citizen I will have that right.

**Mr. Al-Rawi:** Madam Chair, we addressed the reporting to the Authority because of the specific capacity of the Authority to treat with the issue. I should remind that the Authority is also with an embedded relationship with the TTPS. We have 169 child protection officers assigned specifically for this purpose and therefore, the TTPS is an axiomatic fit into this.

We felt that if we were to bifurcate the responsibility it would become cumbersome but the Authority has embedded TTPS with them, specifically the Government—this Government—created a Child Protection Unit in the TTPS. It is now up to 169 officers in capacity and they are in lockstep with this.

**Sen. Mark:** You are sure it is the Government or that was under the former Minister of National Security?

**Mr. Al-Rawi:** This Government.

**Sen. Mark:** Gary Griffith was the Minister of National Security at the time. He is “de man who establish dat. So doh mislead de Parliament, please.”

**Mr. Al-Rawi:** You are mistaken.

**Sen. Mark:** No, no, no.

**Madam Chairman:** Sen. Mark, please.

**Sen. Mark:** “Yuh wrong wit dat.”

**Madam Chairman:** Sen. Mark, you are imputing improper motives.
Sen. Mark: No. I withdraw it, Ma’am.

Madam President: Thank you very much.

Sen. Mark: I am just saying that he is wrong.

Madam President: Sen. Mark, please. I will now put—[Interruption]—do you need to answer Sen. Mark?

Mr. Al-Rawi: I think Sen. Mark is perhaps just a little bit tired and confused.

Sen. Mark: It is very, very clear in my mind.

Question put and agreed to.

Clause 11, as amended, ordered to stand part of the Bill.

Clause 12.

Question proposed: That clause 12 stand part of the Bill.

Madam Chairman: Attorney General, you have circulated amendments?

Mr. Al-Rawi: Yes, Madam Chair. The Government has circulated amendments.

Family Law Act

A. Delete the definition of “Court’s Custodial Bank Account” and introduce the system substitute the following definition; of electronic payment

“Custodial Trust Bank Account” of maintenance

12 (a) means an account which is a monies in keeping public account for the purposes with the Payments of section 116 of the into and out of Court Constitution and is held under Bill, 2018 and the name of the Judiciary of provision of more Trinidad and Tobago at a Collecting Officers Financial Intermediary in

UNREVISED
Trinidad and Tobago for the purpose of receiving and paying out monies pursuant to a maintenance order;”.

B. Insert the following definition in the appropriate alphabetical sequence:

“Financial Intermediary” means a financial institution as defined by section 2 of the Financial Institutions Act or such other institution that may be approved by the Treasury.”.

C. Delete the definition of “Magistracy Registrar and Clerk of the Court” and substitute the following definition:

“Magistracy Registrar and Clerk of the Court” means a person holding the office of Magistracy Registrar and Clerk of the Court listed in the Second Schedule of the Judicial and Legal Service Act;”.

12(b)(i) Delete the words “Registrar and the”.

12(b) (i) Insert after subparagraph (i) the following new subparagraphs:

(ia) “(ia) by inserting after subsection(4)
inserted the following new subsection:

“(4A) Notwithstanding subsections (3) and (4), for the purposes of maintenance orders, the Collecting Officer shall be in the case of an order made by the High Court, the Registrar of the Supreme Court

(ib) in subsection (9), by inserting after the word “therefrom” the words “except as authorised by Court order, Rules of Court or any other written law;”.

A. Delete and substitute the following new subparagraph:

“(ii) by repealing subsection (10) and substituting the following new subsection:

“(10) The Collecting Officer shall pay the amount stated in the maintenance order directly to the applicant or any other person named in the order where the applicant or the person is resident in the town in which the office of the Collecting Officer is located.”
12(b)(iii) Delete and substitute the following new subparagraph:

“(iii) by inserting after subsection (11) the following new subsections:

“(11A) Notwithstanding subsections (10) and (10A), payments may also be –
(a) received into the Custodial Trust Bank Account, electronically; and
(b) paid out to the applicant electronically –
(i) in the case of payments out of the Custodial Trust Bank Account, by transferring the payments into an account at a Financial Intermediary or on to a pre-paid debit card issued by a person licensed under the Financial Institutions Act which pre-paid debit card the applicant has registered with the Court
Executive Administrator for that purpose; or

(ii) by directing the bank where the Custodial Trust Bank Account has been opened, to pay the monies to the applicant on production of identification and to provide the Court Executive Administrator with proof of payment out.

(11B) Electronic records of payment out to the applicant shall suffice as proof of payments out.

(11C) A requirement under any written law for monies to be paid to –

(a) the Court;
(b) the Judiciary;
(c) a Magistrate;
(d) the Registrar and Marshal;
(e) the Court Executive Administrator;
(f) a Marshal;
(g) a Deputy Marshal;
(h) a Second Deputy Marshal;
(i) a Marshal Assistant;
(j) a bailiff;
(k) a Magistracy Registrar and Clerk of the Court;
(l) Collecting Officer; or
(m) Collector of Revenue, is satisfied by those monies being paid into a Custodial Bank Account held for that purpose.

(11D) The Exchequer and Audit Act shall apply to this Act and in the event of conflict between this Act and the Exchequer and the Audit Act, this Act shall prevail.

12(b)(iv) A. In subclause (14) -
(a) delete word “Court’s”; and
(b) insert after the word “Custodial” the word “Trust”.

B. In subclause (15) -
(a) delete the word “payment” wherever they occur and substitute the word
“payments”; and

(b) delete the word “receipt” and

substitute the word

“receipts”.

Madam Chair, we propose specifically that we cause six amendments in the round to clause 12. The first of them is the amendment to the Family Law Act, in keeping with the undertaking that I gave last week to cause amendments in line with the CourtPay Bill, which the Parliament has just passed in complete form in the House of Representatives. We propose to, in the definition of “Court’s Custodial Bank Account”, substitute the following definitions, specifically that for Custodial Trust Bank Account, Financial Intermediary, Magistracy Registrar and Clerk of the Court. This would keep us in pari materia with the CourtPay legislation, Madam Chair.

Secondly, we propose a small tidy-up in clause 12(b)(i) by the deletion of the words “Registrar and the”.

In 12(b)(ia) and (ib), we are proposing an insertion after (i), that we have inserted—the definitions I have circulated:

“…for the purposes of maintenance orders, the Collecting Officer shall be…” and we define the person there.

We then also tidy up in (ib) as circulated above.

In 12(b)(ii), we propose that we delete and substitute the subparagraph at (ii) in subsection (10). And here is where we define the “Collecting Officer”. And that is because the Collecting Officer’s responsibility needed to be stated carefully that there is a positive obligation to pay the amounts stated directly to the applicant, et cetera, in circumstances specified there.

At 12(b)(iii) we are again proposing a deletion and substitution.
Firstly at (iii), by inserting after subsection (11), a new subsection—the following new subsections (11A) that we can receive into Custodial Bank Account electronically and payout electronically. This language which appears here, which is (11A), (11B), (11C), (11D). These are all taken directly from the CourtPay legislation, which both Houses of Parliament have just passed up to last week.

The last one is where we treat with, in clause 12(b)(iv), at subclause (14), a tidy-up. We are deleting the word “Court’s”. We are inserting after the word “Custodial” the word “Trust”. And then we are deleting the word “payment” wherever they occur and putting “payments”.

Madam Chair, in clause 12, I would ask you to note, just as an omnibus amendment, that wherever we have used the word “M-O-N-I-E-S”—moneys—that in legislative-speak is with a “Y”, M-O-N-E-Y-S, a bit of an archaic spelling of “moneys”, but it is in keeping with the CPC’s directive.

Those in the round, therefore, are the amendments proposed and the rationale offered and they are, therefore, the amendments as circulated, Madam Chair.

**Sen. Mark:** Madam Chair, I agree with you that we are all becoming tired. Madam Chair, I believe that the Attorney General and whoever helped draft this Bill may have overlooked that there is a repetition twice in the proposed list of amendments.

If you go to 9(a) of the list of amendments earlier circulated, Madam Chair, and passed already and you go to 12(b)(ii), you will realize we are going to pass the same provision twice, if I was not—I am very alert and not confused and it is a manifestation of my alertness. So I want to bring that to
the attention of the Attorney General.

**Madam Chairman:** Attorney General, do you want to comment on Sen. Mark’s state of alertness?

**Mr. Al-Rawi:** No, Ma’am, I would certainly not do that. But what I would say is that where Sen. Mark could do with a little bit of sharpening is the fact that we have not dealt with 9A at all, yet. So I do not know what Sen. Mark is talking about that we have already dealt with something. So 9A is a new clause to be inserted. So we have not dealt with it yet. So let us start on that point.

**Sen. Mark:** Well then—

**Mr. Al-Rawi:** I am not finished because Sen. Mark professed to be completely awake and alert and ready for us. So let us start off with the mistake of fact.

The second part is that we are looking at a definition of “Collecting Officer” in the Family Law Act and Attachment of Earnings (Maintenance) Act, where the terms are used. What we are proposing in 12 of the Family Law Act is slightly different from that. Perhaps my learned colleague may refresh himself when he reads it in the round. We did in fact, Madam Chair, provide as an aid to all hon. Senators, as best as we could, a marked-up version of all the Acts that we are amending.

I want to remind that certainly in the eight years that I have served in this Parliament, and for definitely the five years and three months that I served under the UNC Government, there was never ever a circulation of documents in the fashion that we do now to try to make it easier. So Madam Chair, all that I would say to Sen. Mark is that I have tried my best but I regrettably cannot provide a cup of coffee for him at this point. [Laughter]
Sen. Mark: Thank you, thank you, AG. I would catch it myself, Sir. Madam Chair, I just would also—

Mr. Al-Rawi: “Saddam set yuh up boy.”

Sen. S. Hosein: The AG is imputing improper motives.

Sen. Mark: I think everybody is having a good time. Madam Chair, may I, through you, call upon the Attorney General my distinguished and hon. colleague to delete completely (11D), which, you know, he did completely delete in the Payments into Court Bill that we have just concluded a few days ago. So to have it resurrected here—

Mr. Al-Rawi: Absolutely. Sen. Mark is sharp on that point. I had myself instructed the CPC’s team to delete that because that was out. I heard a small sorry from my left which I accept wholeheartedly. They have been trying their best but, Sen. Mark, thank you for that precise and sharp observation.

Sen. Mark: No problem. Madam Chair, if I could also engage the Attorney General, I would like to go to the section that deals with the fees. What page are you on, Ma’am?

Madam Chairman: Page 55.

Sen. Mark: Is that the 55? Yes, yes, yes, Ma’am. I would just ask the Attorney General to be consistent because in the Payments into Court Bill, we did in fact give the Rules Committee the power to deal with fees and the setting of fees. And as you would see in (iii), this Rules Committee is also going to be imposing fees. But those fees cannot be imposed unilaterally. It must be subject, as the hon. Attorney General would know, to a negative or an affirmative—we prefer an affirmative—resolution and the Law Association has also called for an affirmative resolution. So I ask the Attorney General to insert after (iii) that the rules be subject to an
affirmative resolution of the Parliament, or the both Houses of Parliament. Madam Chair, I am okay? Okay.

**Mr. Al-Rawi:** I just double-checking against the Act, so if you would permit me a moment. Okay? Madam Chair, I have double-checked the provisions, section 51 of the legislation, and I am referring to Family Law (Guardianship of Minors, Domicile and Maintenance) Act. In the Bill—not the circulated amendments—we did ask for section 51(1) of the Act to be amended. The Act had, unfortunately as passed by previous Governments, said:

“The Minister may make rules and prescribe forms and fees for carrying into effect the provisions of this Act.”

That should have been “The Rules Committee”.

Firstly, it should be “The Rules Committee” pursuant to section 77 and 78 of the Supreme Court of Judicature Act. And the fees that we are treating with here are not the CourtPay fees. The payments into court and out of court legislation preserves into the Treasury, the Minister of Finance qua Treasury, to make those rules for fees in accordance with the Exchequer and Audit Act. This prescription for fees here for the Rules Committee will only ever be the fees under section 78 of the Supreme Court of Judicature Act, which is fees other than Treasury fees. So, as it is described, it is quite correct. But I thank the hon. Senator for having us double-check it. So, Madam Chair, we would not be advancing (11B) in the circulated.

**Madam Chairman:** I have that already.

**Mr. Al-Rawi:** Thank you, Madam Chair.

**Sen. Ramdeen:** Attorney General, the fees that are prescribed under sections 77 and 78 of the Supreme Court of Judicature Act, those are
Treasury fees, you know.

**Mr. Al-Rawi:** No, no. Those are fees for filing fees, et cetera, but not—

**Sen. Ramdeen:** But that goes into the Treasury.

**Mr. Al-Rawi:** No. But the separate fees for the electronic side of it, in the CourtPay legislation—

**Sen. Ramdeen:** I am not saying that, I know. But that CourtPay thing is separate; I accept that. But the fees that the Rules Committee has the power under sections 77 and 78 to prescribe for, those are public funds that go into the Treasury.

**Mr. Al-Rawi:** Yes, yes.

**Sen. Ramdeen:** The point that Sen. Mark was making is that the prescription of those of the power to impose those fees must be subject to the negative resolution.

**Mr. Al-Rawi:** So, let us look at section 51. Okay, the simple point now, not as opposed to fees, is the qualification of subject to negative resolution. Yes? Yes, I would accept that that is correct.

**Sen. Mark:** Well you see, I was thinking about an affirmative with your support.

**Mr. Al-Rawi:** No, you see the Rules Committee in every piece of legislation is subject to negative resolution. So we must harmonize that. It would cause a cascade of difficulties.

**Madam Chairman:** So Attorney General, what are you suggesting?

**Mr. Al-Rawi:** So Madam Chair, it should be, therefore, and I thank Sen. Mark, that we do include—section 51 as it was passed in 2012 to 2014, whenever it was, we had: (a) mistakenly used “Minister”; and (b) we have all now spotted—thank you Sen. Mark—that we should have negative
resolution. Just allow me one moment to pull the wording for you, Madam Chair. So, the amendment to the Bill should be in section 12(e). That is where we are looking at. If we look at Bill itself, it is page 55 of the Bill. It says section in 51(1) we do these things. So we should put (e)—it really ought to be (e)(i). And then we will insert a (ii). Is that correct? Yes? And the (ii) should be: in section 51—

**Madam Chairman:** Attorney General, if I can suggest?

**Mr. Al-Rawi:** Yes Ma’am.

**Madam Chairman:** Should it not be a (iv)? Because it is (e) says in section 51(1)?

**Mr. Al-Rawi:** Yes, Ma’am. You are correct. Thank you. That is it. So it will be (iv) in section (e) of the Bill at page 55, and it would say:

By inserting after section 51(1), a new subsection (1A) “Rules made under subsection (i) shall be subject to negative resolution of Parliament”.

Thank you for your guidance, Madam Chair. Thank you CPC.

**Madam Chairman:** Sen. Mark, shall I read that for you? You have got it?

**Sen. Mark:** Just read it, please.

**Madam Chairman:** At (e) in section 51(1)

(iv) by inserting after section 51(1), a new subsection (1A) “Rules made under subsection (i) shall be subject to negative resolution of Parliament.”.

Okay?

**Sen. S. Hosein:** Thank you very much, Madam Chair. AG, at the new (11A), the payments that were made in and out of court, you would have an electronic record and also a physical record. Now, this morning I was
reading an article online and there were some issues with regard to manipulation of dates for payment. I think it was in a few states in the US. Click2Gov was the platform that they were using. It is just a concern, how safe is it or how encrypted is the network, the Court Pay system, with regard to this—

**Madam Chairman:** Sen. Hosein, I do not think that question is relevant to this debate because these amendments are pursuant to an Act that is already passed.

**Sen. S. Hosein:** The reason I am asking, Madam Chairman, is because this includes proof of payment, in terms of the date in which payments were made.

**Mr. Al-Rawi:** I can answer quickly, you know.

**Madam Chairman:** I will ask the Attorney General to answer quickly.

**Sen. S. Hosein:** Thank you very much.

**Madam Chairman:** And I will ask that there be no further questions on it. Okay? Sen. S. Hosein: Sure.

**Mr. Al-Rawi:** So, Madam Chair, if we look to the existing Court Pay system it is built on the backbone of PayPal, and PayPal is an internationally recognized system. No IT system is 100 per cent fool proof. It is a state of constant evolution for crypto security, et cetera and encryption and there are, of course, remedies for things that go wrong by discovery and otherwise. It is perhaps eminently more sensible than just cash in a drawer, which can equally go wrong or a ledger gone wrong. I am confident, in terms of the future of technology going to be made better by the immutability of Block chain transfer technology.

**Sen. S. Hosein:** You want to get a physical receipt with the electronic
receipt? Thank you.

**Madam Chairman:** So, Hon. Senators, the question is that clause 12 be amended as circulated and further amended as follows—

**Mr. Al-Rawi:** Except 12(d).

**Madam Chairman:** The question is that clause 12 be amended as circulated and further amended as follows:

By the deletion of clause (11D) and at section 51(1) by inserting sub (iv) with the following words:

By inserting after section 51(1), a new subsection (i)(a): Rules made under subsection (i) shall be subject to negative resolution of Parliament.

*Question put and agreed to.*

Clause 12, as amended, ordered to stand part of the Bill.

8.05 p.m.

Clause 13.

*Question proposed:* That clause 13 stand part of the Bill.

**Madam Chairman:** Attorney General, there are amendments circulated?

**Mr. Al-Rawi:** Yes, Madam Chair. There are amendments circulated specifically.

Children’s Authority Act

In the chapeau delete the words Drafting “Sequence” and “definition” and substitute the words “sequence” and “definitions”, respectively.

13(a)(i) “definitions”, respectively.

13(c)(i) In subclause (2B)(g), delete the word Drafting “adminstration” and substitute the word 

UNREVISED
“administration”.

13(ca) Insert after clause 13(c) the following subclause:

“(ca) in section 22(1A), by deleting paragraph(e) and substituting the following paragraph:

“(e) is a child in need of supervision in accordance with section 50A of the Children Act;”.

This change is in keeping with the new term for “beyond control” children which is a “child in need of supervision”.

13(d)(ii) In subclause (2), delete the words “Community Children’s” and substitute recent legislation the words “Children’s Community”.

We proposed in the Children’s Authority Act that we cause four amendments to be considered. Firstly, at 13 (a)(i) in the chapeau to delete the words “Sequence” and “definition” and substitute the words “sequence” and “definitions” just moving from “S” to “s”, and “definition” to plural “definitions”.

In 13(c)(i), in subclause (2B)(g), to delete the word “administration” and substitute the word “administration”. It is just a drafting correction in (2B)(g).

We propose in 13(ca) that we insert a new (ca) in section 22(1A) by deleting paragraph (e) and substituting the following paragraph:

“(e) is a child in need of supervision in accordance with Section 50A
of the Children Act;”.

This is in keeping with the manner in which we treat with beyond-control children. So we are now harmonizing those children in need of care from the beyond-control categorization.

In 13(d)(ii), in subclause (2), we are deleting the words ‘Community Children’s” and substituting the words “Children’s Community” and again, this is just to keep it in tandem with recent legislation. Those are the amendments that we propose, Madam Chair, for the reasons volunteered, to clause 13 of the Bill.

**Sen. Mark:** I would like to ask the Attorney General: What is the rationale for the increase in the number of members of the Children’s Authority?

**Mr. Al-Rawi:** Very, very important point Sen. Mark. Thanks for raising it. At present the board—so the Children’s Authority has multiple functions. It treats with its main supervisory jurisdiction. It treats with adoption. It treats with foster care. It treats with nursery aspects. It treats with licensing, et cetera. The board itself has to, in terms of its management of its multiple roles—let us take adoption alone—it has to constitute itself into subcommittees.

So what we found is that the work of the subcommittees of the board was stymied by the fact that the membership was just too low. The second aspect of difficulties is that the formula for prescription was too static, and therefore we found an obstacle in finding people to fit the categories because there was an objection by the Solicitor General or the Office of the President that this person did not meet the specified criteria, and sometimes you find yourself up to six months trying to find someone to fit the technical categorization. So we borrowed a different formula for description and we
increased the numbers so that we can get the subcommittees to assist the board more effectively in the discharge of the mandate.

Madam Chairman: Sen. Ramkissoon.

Sen. Ramkissoon: Thank you, Madam Chair. My question is in relation to (c) in section 7. So it is (2A), for the board members; that is from page 56:

“(2A) Four members of the board shall be—

(a) a person under the age of twenty-eight years”

I just wanted to ask you, AG, if you could share with me and the Senate, why you chose 28 years old.

Mr. Al-Rawi: Sure. The problem was at the lower age which was prescribed before, by the time you got someone qualifying, they effluxed. So you get a 22-year-old—I mean, think about it this way. To find someone available who is not at university or is in not active development positions to fit this role, you are looking at a person in a tight bracket between 22 and 25, let us say. What happens is the person then gets into two years or one year and then they are disqualified by the fact that they are now aged out. So what we did is to bump the bracket up to 28 to allow us to have a little more continuity of the youthful involvement. And that is the international standard I am told.

Sen. Ramkissoon: Thank you. All right. I was actually looking at that so I looked at the Commonwealth Youth age, and it is 15 to 29. So I was wondering why we did not look at someone who is under 30 instead.

Mr. Al-Rawi: I would happily take 29.

Sen. Ramkissoon: That is the Commonwealth Youth, and I know we have a lot of Commonwealth words in here. So I was thinking that would have been—I mean, other youth ages are 14 as the minimum and maximum at 35.
I went to parliamentary—

Mr. Al-Rawi: Madam Chair, if it is the will of the Senate to go for 30, I would be extremely happy with that. It will allow for more time for participation.

Sen. Ramkissoon: And that would support, yes, your argument. Now, I attended a Parliamentary conference—

Mr. Al-Rawi: Is that your proposal that we move to 30?

Sen. Ramkissoon:—and the maximum age for—because the range was actually 15 to 35. I was very surprised by that, that the actual for youths, was actually a maximum of 35 in other countries. So it is only actually if Trinidad and Tobago wants to put that, but in terms of the youth for Commonwealth, the age is actually 15 to 29. So I am okay with either putting 30 or 35. So those are my two proposals for you.

Mr. Al-Rawi: I would welcome the views of the hon. Members of the Senate, Madam Chair, through you.

Madam Chairman: Any Member wishes to speak on this point?

Sen. S. Hosein: Madam Chairman, as a young person also, I would like to join with Sen. Ramkissoon so that we can—

Mr. Al-Rawi: Have you declared your interest? [Laughter]

Sen. S. Hosein: Yes, I am only 27. So that we can have a wider gap. I would like to go towards 30, more. When you cross 30, the mindset changes a bit so, I think 30 is a good gap.

Mr. Al-Rawi: Member Chair, if it pleases the hon. Members of the Senate then may we propose in clause 13 that we—

Madam Chairman: Under the age of 30?

Mr. Al-Rawi: Yes, Madam Chair, and I think that that would fall in (c).
Madam Chairman: Yes. (c)(2A)(a).

Mr. Al-Rawi: Yes, Madam Chair. Thank you so much.

Madam Chairman: Yes? Any other questions or comments? Hon. Senators, the question is that clause 13 be amended as circulated and further—Sen. Mark?

Sen. Mark: Madam Chair, just one point of clarification with your leave and—I apologize to you. Madam Chair, I would like to ask the hon. Attorney General whether he would not want to consider the section that deals with 28, dealing with those persons who assist or induce or attempt to induce a child to whom sections 22, 23 and 25 applies to run away from the care of the Authority or who harbours or conceals a child who has run away from the care of the Authority? Children are too important and I am suggesting that we consider bringing that to $50,000 and a minimum of five years. If we want to protect our children—they are in the care of the Authority. We should not have anybody trying to snatch them and conceal them or traffic them.

Madam Chairman: Sen. Mark, I apologize, but where are you? What clause are you dealing with?

Mr. Al-Rawi: Page 58.

Sen. Mark: I do not have the marked-up version, right?

Mr. Al-Rawi: Page 58(E).

Sen. Mark: Right, you are following along?

Madam Chairman: Yes.

Sen. Mark: Right, so I am asking the Attorney General, given the fact that it is just $5,000 it gives people—

Sen. Ramdeen: No deterrent.
Mr. Al-Rawi: So what is the recommended sum?

Sen. Mark: I am saying $50,000 and five years.

Mr. Al-Rawi: Fifty thousand and five years?

Sen. Mark: So that they will know that they do not tamper with children when they are in the good hands of the Authority.

Mr. Al-Rawi: Madam Chair, I think it is a very commendable recommendation by Sen. Mark and I would be very pleased to recommend—in any event those are maximum figures and I think it is an eminently sensible suggestion on the part of Sen. Mark. So that would be, Madam Chair—

Madam Chairman: I will put it now.

Mr. Al-Rawi: Thank you so much.

Madam Chairman: Yes. So hon. Senators, the question is that clause 13 be amended as circulated and further amended as follows. In section (c) at section 7 at (2A):

Four members of the Board shall be—(a) a person under the age of 30 years instead of 28.

And then at (e) in section 28 by substituting

“a fine of $50,000 and to imprisonment of five years.”

Mr. Al-Rawi: Yes.

Madam Chairman: Yes?

Mr. Al-Rawi: Yes, thank you, Madam Chair.

Question put and agreed to.

Clause 13, as amended, now stands part of the Bill.

Clause 14.

Question proposed: That clause 14 stand part of the Bill.
Mr. Al-Rawi: Madam Chair, we have circulated proposed amendments to clause 14 of the Bill which treats with the Family and Children Division Act, 2016.

14 (a) Delete and substitute the following paragraph:

“(a) in section 3-

(i) by inserting in the appropriate alphabetical sequence the following definitions:

“anonymised” includes:

(a) the removal of sensitive data while preserving its format and data type;
(b) the process by which original data containing identifiers is replaced with consistent placeholders while preserving their format and data type; and
(c) the process of separating disclosable data from non-disclosable data by the blocking of words,

The concept of anonymization in both the Family and Children Courts is very important and a new concept re Court reporting of children matters.

(ii) This is a more detailed definition with respect to the types of DV circumstances which will constitute children matters.

UNREVISED
sentences or paragraphs before releasing a document in response to a records access request;

“consistent placeholders” means the same replacement words whenever the original identifiers are to be replaced.”;

and

(ii) in the definition of “children matter”, by deleting paragraph (f) and substituting the following paragraphs:

“(f) matter, in relation to a child, where –

(i) there is an application for a Protection Order under the Domestic Violence Act;

(ii) there is the enforcement of a Protection Order under the
(iii) the child is a victim or an affected bystander;

(fa) matter concerning wardship; and”.

14(b) Delete Not needed
14(ca) Insert after clause 14(c) the following new inserted paragraph:

“(ca) in section 20 –

(i) in subsection (2), by deleting the words “a judgment and ruling of the Family Court shall” and substituting the words “the proceedings, judgment or order of the Family Court may”;

(ii) by repealing subsection (4), by substituting the following new subsection:

“ (4) The Family Court may, in

UNREVISED
any proceedings before it,

order that copies of any proceedings, judgment or ruling be anonymised by the Family Court Records Management, Court and Law Reporting Subunit before they are published.”; and

(iii) in subsection (5), by deleting the words “involving a child” and substituting the words “before the Court”.

14(e) A. In subsection (2), delete the words “a judgment and ruling of the Children Court shall” and substitute the words “the proceedings, judgment or order of the Children Court may”. B. Delete subclause (4) and substitute the following new subclause:

“(4) The Children Court may, in any proceedings before it, order that copies of any proceedings, judgment or
ruling be anonymised by the Children Court Records Management, Court and Law Reporting Subunit before they are published.”.

C. In subclause (5), delete the words “involving a child” and substitute the words “before the Court”.

We are proposing, Madam Chair, that we deal with the whole concept of anonymisation and therefore we propose four amendments in clause 14. The first is to be found at clause 14(a), as in alpha. And we are proposing to insert definitions for “anonymised”, “consistent placeholders”. Again, this concept is something that we had introduced in the FCD, the Family and Children Division, but we wanted to have a more detailed version, particularly to treat with matters involving domestic violence, et cetera. So born from the experience that we have seen in the FCD we have now come back to lift this a little bit further in the concepts that we apply here.

In the same vein, we are proposing in the definition of “children matters” that we delete that which appeared in the FCD and we improve it by adding in:

“(f) matter, in relation to a child, where—

(i) there is an application for a Protection Order under the Domestic Violence Act where there is an enforcement of a protection order under Domestic Violence Act;”—and

“(iii) the child is a victim or an affected bystander.”
This is a very significant improvement, again borne on the back of the successful operationalization of the Children Court and FCD in the merger of jurisdictions which we had. We are now beginning to get to the point where we can absolutely target some of the mischief which was lost when we had separate jurisdictional things.

Remember the Domestic Violence Act, Madam Chair, could only have been dealt with in the magistracy before and not by High Court jurisdiction. Now that we have merged those two jurisdictions we have made a huge breakthrough so we are finally able to fine-tune these provisions a little bit better.

We are proposing a deletion in 14(b) simply because it was not needed. When we looked to 14(ca) we are asking for an insertion in section 20 and we are saying that we should delete the words:

“a judgment and ruling of the Family Court.”

And instead, we should substitute the words:

“the proceedings, judgment or order of the Family Court.”

This is an amendment to section 20 to introduce the concept of anonymisation itself. So this was the consequential amendment to cause that to happen.

Similarly, we treat in subsection 4 a—

“Family Court may, in any proceedings before it, order that copies of any proceedings, judgment or ruling be anonymised by the Children Court Records Management, Court and Law Reporting Subunit before they are published.”

So we have personified the entity with responsibility. This is the very purpose for introducing the divisions of court, be it the Family Division,
Children Division and the Criminal Division where we specified the responsibility onto the administrative arms.

We have moved away from the words “involving a child” and we have put “before the Court”.

The last amendment here is an amendment of section 34 to introduce again the concept of anonymisation. We are introducing a repeal and replace of subclause 4, and we are saying specifically that the Children Court may in proceedings before it give life to the anonymisation by the defined entity being the Children Court Records Management, Court and Law Reporting Subunit before they are published. This is to make sure that we do not have any inadvertent publication of judgments which could lead to us running afoul of the concept of anonymisation for the protection of children and family members.

Madam Chair, a little small tidy-up in subclause 5 as circulated. That is the rationale for the amendments as circulated for the reasons given.

Madam Chairman: Sen. Ramdeen.

Sen. Ramdeen: Attorney General, the penultimate set of amendments that you explained with respect to the sealing of the documents is to amend what section?

Mr. Al-Rawi: Section 34. So, we do section 20, section 34. Those are the last two that we are treating with.

Sen. Ramdeen: Section 20?

Mr. Al-Rawi: Yeah.

Sen. Ramdeen: Is an amendment to 20?

Mr. Al-Rawi: Yes, in (ca) which is on page 60 of the Bill. You will see—

Sen. Ramdeen: It is not in the full version.
Mr. Al-Rawi: Right, so I apologize. I did circulate out the FCD, but we did not have it perfected. So, if you were looking at the parent Act itself I apologize, I could not get—

Sen. Ramdeen: I just want to try and see what it covers. Can you give me a minute?

Mr. Al-Rawi: Sure. Subject to Madam Chair?

Madam Chairman: This spoke about deletion?

Mr. Al-Rawi: Yes, Madam Chair. So, as circulated. Thanks, Madam Chair.

Sen. Mark: Madam Chair, may I seek some clarification through you? Yes, Madam Chair, through you. The whole idea of the sealing of documents, transcript proceedings. I always have—I am very fearful of that and especially a recent experience we had. I would want to suggest that the Attorney General considers, maybe upon application by one of the parties involved that is before the court, you can make that submission to the judge.

Mr. Al-Rawi: It is there in 20(1):

“In any proceedings, the Family Court may, at its own instance”—the court of its own volition, consistent with inherent powers of the Judiciary as the basic concept—

“or on the application of a party, restrict the publication of the names of the parties or of any proceedings before the Family Court.”

Sen. Ramdeen: I think the point that Sen. Mark is making—I understand that to be the position in 20. I think that Sen. Mark is dealing with the proceedings itself.

Mr. Al-Rawi: Right.

Sen. Ramdeen: The sealing of the proceedings under section 34. Not under the section 20 which is what we are accustomed to, like SS or BS—
Mr. Al-Rawi: Right.

Sen. Ramdeen: —which is the identity issue. But what Sen. Mark is advancing is in relation to the general power of the court to actually seal the proceedings themselves. It does not have to do—like with the intertwinemen to restrict the names of the parties. So I think in practice now is—and the practice envisaged by legislation is that the sealing can be done by the judicial officer of their own ex proprio motu.

All we are suggesting is that because of the concept of open justice—and this is a superior court of record—that the sealing of the proceedings be limited to an application by one of the parties, and even if the court is of the view that the proceedings should be sealed at least the parties should be given an opportunity in those circumstances to advance whether they agree that the position of the proceedings should be sealed or not.

Typical example is that—I am not dealing with the foreign matter. We had recent litigation in Trinidad where I was involved in public law proceedings and the registrar took it upon themselves to seal the proceedings without even contacting the parties. And that could never be correct because what you have is that you have proceedings that are sealed that the defendants of the litigation do not even know what is the accusation being made against them and it has been sealed without them even having the opportunity to make a submission to the court as to whether it should be sealed or not.

Mr. Al-Rawi: Sure. Madam Chair. In the context of what we propose in section 34, which is at page 61 of the Bill in paragraph (e). What we are actually proposing, if I go through the logic of it, and I am just trying to spot the need for caution because I do not quite grasp it yet. I understand
philosophically the discussion.

So we start for at 34(1) saying

“In any proceedings, the Children Court may…” ex proprio motu, “…at its own…” volition “…or on application of the…” parties “…restrict the publication of the names of the parties to any proceedings…”

This is, okay, seemly.

Subclause 2. Any publication of the proceedings, judgment, or order of the Children Court, may be

“…done in such a manner that the parties to a…” Children Court “…matter or the children to whom the matter may relate cannot be identified.”

Again no injustice here; that is just the anonymisation aspects.

Subclause (3).

“The Children Court may, in proceedings before it, order that the proceedings—

(a) be held in camera;”—fine— “and

(b) not be published.”

But that is the court in its discretion ordering something.

Subclause (4).

“…the Children Court may, in any proceedings before it, order that copies of any proceedings, judgments or rulings be anonymised by the Children Court Management…” Unit, et cetera.

Subclause (5)—

Sen. Ramdeen: That is the one.

Mr. Al-Rawi: Right.
“The Children Court...Judge or Children Court Master, may seal the
copies of the transcripts of any proceedings...” before the court
“...and any documents relative to such proceedings.”

So this is the one, right?

So what we did here was simply change “involving a child” and we
said “before the Court”. So this subsection 5 is what we considered in our
Joint Select Committee on the FCD and we came back and we passed this.
So, here again—I just want to understand what the mischief is. Is the
mischief that the court may seal? Because—is that not within the court’s
jurisdiction in any event?

**Sen. Ramdeen:** No, but they cannot. Because the court has an inherent
power perhaps to exercise in the public interest to seal the documents. But
the sealing of the documents goes against the concept that these are open
justice proceedings in a court of superior record and therefore the
presumption is that it should not be sealed and therefore if the presumption
is that it should not be sealed and it should be open then there must be some
basis upon which the court must act in order to exercise that power.

I am not challenging that the court has the power to seal the
documents. I am just saying that prima facie the document should not be
sealed and if the court is going to make a decision to seal the document one
party to the proceedings may say “I do not want to be sealed” and at least
that party should have a hearing before the court can act of its own motion to
seal the documents.

**Mr. Al-Rawi:** So would—may I ask through you, Madam Chair? So,
subsection 5 comes after subsection 1 and the clause itself 34 reads as a
whole:

UNREVISED
“In any proceeding, the…Court may…” of its volition or within its inherent power, if I put it that way, “…restrict…publication…” or it may be on the application of a party.

Would it cure the apparent issue if we were to include the words “the court may, of its own volition or on the application of a party”? You see, I am reading the clause as a whole, subsection 5 following 1 to 4 inclusive, and I am wondering—I do not necessarily think that the court in exercising its jurisdiction under subsection 5 could ever do that capriciously because it would always be open to someone—

Sen. Ramdeen: It is like a superior court of record makes a gag order, like in Dole Chadee. The court made an order gagging the proceedings and the Privy Council held that it was unlawful. They had no power to do that. And that was in the extreme circumstances of trying to protect a state witness and even though Jones made the Order, when it reached to the Privy Council in Observer Publications he said a superior court of record does not have that power.

Mr. Al-Rawi: But does that not, through you, Madam Chair, in and of itself recognize the remedy? That you may complain about the sealing of the proceedings or record and therefore have a right to have it unsealed? Because there is nothing to stop any party from approaching the court to say “This ought not to be sealed”.

Sen. Roach: Madam Chair, I think I am losing the gist of what Sen. Ramdeen is trying to convey. I would appreciate if he could just clarify for my purposes what he is saying because I am not sure if he is saying—taking issues with section 5 here, saying that the court cannot seal. Is that what you are saying?


Sen. Ramdeen: No, no, no. I have just said something that was incorrect. So in Independent Publishing, right, in Dole Chadee’s trial the issue was somebody was convicted of contempt for breaching an Order just like this.

Mr. Al-Rawi: Yeah.

Sen. Ramdeen: Right. And the Privy Council held that the Order that was made was unlawful because the High Court judge did not have the power to do that. That was a gag order. Now, this is equivalent to a High Court saying I am not going to allow the proceedings to be published or disclosed in the form that the proceedings are.

My point is that you must, when you start to analyze this clause, you start from the proposition that you do not have—

Mr. Al-Rawi: I am so sorry to interrupt. Could I ask a question? Would the qualification of the nature of implied discretion assist? In other words then, the court being in the interest of justice the court may, on the application of parties, the court may in those circumstances effect the sealing?

Sen. Ramdeen: Well, when you made reference back to clause 1, and you said that in any proceedings the Children Court may at its instance, right? I asked for the application of a party to put in some kind of safeguard. But, I am not sure that a superior court of record can, of its own motion, seal the proceedings. There is jurisprudence on this from the European court, but I do not think that a court has the power to seal public proceedings.

This entire concept here goes against the fact that proceedings of a superior court of record are supposed to be public.
Mr. Al-Rawi: So, Madam Chair, my thought for consideration by hon. Members is that we are dealing with a very special cohort of cases here and this is the Children Court. What we did was to specifically borrow from the United Nations because it was the anonymisation aspects from the UN prospective that brought us to here. That is why we went a step further. We put in the UNDP rules so that even when you get to the station we have anonymised you. There is now a code reference number, et cetera, so that the identity of the child, even at the station pre-charge, just on a report, is completely anonymous.

So I accept what Sen. Ramdeen is saying but we are providing here—I cannot see that a court could not in its own discretion within the ambit of its inherent power not have the ability to seal proceedings. It may be disturbed on application or it may be found to be unlawful—

Sen. Ramdeen: Let us take the example of the case before the Privy Council now, right? The judge in that case—it started off, right, with the parties being named. When he published the judgment he said BS and SS. I have no difficulty with that. But what we are effecting by this is that that entire proceedings with the reports, the affidavits, the motion, everything. All of that he will seal. He will have the power under this provision to seal all of that. I do not know if he has the power—I am with you on the name, right, which is what you had catered for under 2, 3 and 4. But I do not know that he can just simply seal the proceedings.

Mr. Al-Rawi: So, number one, this subsection 5 is something which is part of the current law and in operation. So the recommendation on a question, premised upon the fact that the judge may potentially not be able to seal is delete the existing law, which is subsection 5.
Sen. Ramdeen: Is this the existing law?

Mr. Al-Rawi: Yeah, yeah, it is the existing law. All that we doing in subsection 5 is changing the words “involving a child” and putting the words “before the court”. So subsection 5 is the standing law as it is. And my submission on this is that because we are dealing with the Children’s Court and we have taken that whole UNDP, UN, USAID, best in class for juvenile justice or child rehabilitative justice approach, the ability for the court was expressed in the language of subsection 5. But I do genuinely believe that a court exercising its discretion appropriately can seal. I think that that is within the inherent jurisdiction of the Supreme Court, a court of superior record. Notice the qualification of language: a court exercising its jurisdiction appropriately.

8.35 p.m.

In circumstances where it is not exercised appropriately, findings such as that made against Mr. Justice Jones in the Dole Chadee matter may very well result, that is why the court is there to challenge that aspect. So, I am comfortable with (5) as expressed in the dynamic that it exists in the Children’s Court itself.

Sen. Roach: I am just wondering if the Attorney General can get guidance on what is the Civil Proceeding Rules on that. I do not know it offhand.

Mr. Al-Rawi: So the rules which should apply here would be the children’s rules. They are separate rules. So the CPR rules are not the rules which apply in this.

Sen. Roach: I understand, but what are the CPR rules?

Mr. Al-Rawi: I do not have them with me offhand, so I do not want to misrepresent you, but I am not even down to subsidiary legislation yet. I am
on inherent jurisdiction of the court.


Sen. Chote SC: Hon. Attorney General, I agree with you especially having regard to the nature of the kind of case that you are dealing with here. I think the first option should be to have the judge have the power to say seal the records. It is different in a criminal case where you are dealing with open justice and you want the public to see it and someone’s constitutional rights are held and this kind of thing. I think sealing the record does not deprive the litigants of anything, and if there is a possibility that such a thing may happen, certainly, they may bring it to the attention of the court. There is nothing precluding them from doing that. So, I do not see that this is at all contentious. Mr. Al-Rawi: Thank you, Senator.

Question put and agreed to.

Clause 14, as amended, ordered to stand part of the Bill.

New clause 9A.

Mr. Al-Rawi: Madam Chairman, I propose a new clause 9A which reads as follows:

Collecting Officer 9A. In any written law, for the purposes of attachment of earnings and maintenance orders, Collecting Officer means -

(a) a person so appointed, designated or required to perform the functions of a Collecting Officer with regard to any act required by or for the Judiciary pursuant to any Rules of Court or any law; or

(b) any person who has been so appointed or
designated under any written law.

*New Clause 9A read the first time.*

*Question proposed:* That the new clause be read a second time.

**Mr. Al-Rawi:** Yes, Madam Chair. Madam Chair, I thank you. Madam Chair, this Bill treats with amendments to 12 pieces of law, named pieces of law, and then they treat with one general reference to all written laws. So clause 9 of the Bill treats with any reference to a written law. Clause 9A now proposes that in any written law—again, this omnibus approach—for the purposes of attachment of earnings and maintenance orders, “Collection Officer” means persons who are appointed, et cetera, as circulated. This was something which we observed in the consideration in the court payments into and out of court Bill, which has now been passed by both Houses of Parliament and, therefore, pursuant to the undertaking that I gave in the Senate, I have returned now with this definition in all written laws in the manner circulated.

**Sen. Mark:** Madam Chair, I am just trying to get some clarification because I recall going through earlier the submission of the Attorney General raised amendments, and as if this particular provision that we have in 9A was located somewhere else in the actual amendments that were circulated, as if it was like a duplication. [Crosstalk] Okay. Madam Chair, I will not pursue that matter.

*Question put and agreed to.*

*Question proposed:* That the new clause be added to the Bill.

*Question put and agreed to.*

*New clause 9A added to the Bill.*

**Mr. Al-Rawi:** Madam Chair, in keeping with a discussion we had earlier
about the need for a proclamation clause, I am proposing if, perhaps, you
could take a note of this if convenient that a new 1A be now read a second
time and the language for the new clause 1A would be:

1A This Act comes into operation on such date as is fixed by the
President by Proclamation.

Capital “P” in both instances.

New clause 1A:

New clause 1A read the first time.

Question proposed: That the new clause 1A be read a second time.

Question put and agreed to.

Question proposed: That the new clause be added to the Bill.

Question put and agreed to.

New clause 1A added to the Bill.

Long title.

Mr. Al-Rawi: Madam Chair, we inadvertently referenced a Bill that—
sorry, an Act, which ought not to have been referenced in the long title.
Specifically, we had referenced the Indictable Offences (Preliminary
Enquiry) Act, Chap 12:01. That was inadvertently incorrect. We should
instead be inserting instead of that—so we delete the words “Indictable
Offences (Preliminary Enquiry) Act, Chap. 12:01” and instead reference
properly, the words, “the Family Law (Guardianship of Minors, Domicile
and Maintenance) Act, Chap 46:08” and that is as circulated, Madam Chair.

Sen. Mark: May I seek some clarification through you, Madam Chair?

Madam Chairman: Yes.

Sen. Mark: Attorney General, what will happen to children who commit
indictable offences? I am seeing that we are removing this from it. Would
that be reflected in the law itself?

Mr. Al-Rawi:  The method of treating with children summarily versus indictably is treated within the Summary Courts Act in sections 99, 63(a) and 37(2), if I remember—the last one, I am not sure about. But it is that method that we treat with them and in other circumstances in other legislations, but in the preliminary enquiry Act, we do not treat with that process itself. Remember the first port of call is in the summary courts before the magistrate, so we did not need to treat with that. Sen. Mark:  All right, all right. Okay. Thank you.

Madam Chairman:  So I would just, for the record, read out the long title of the Bill:

An Act to amend the Interpretation Act, Chap. 3:01, the Supreme Court of Judicature Act, Chap. 4:01, the Summary Courts Act, Chap. 4:20, the Bail Act, Chap. 4:60, the Administration of Justice (Deoxyribonucleic Acid) Act, Chap. 5:34, the Legal Aid and Advice Act, Chap. 7:07, the Child Rehabilitation Centre Act, Chap. 13:05, the Children Act, Chap. 46:01, the Children’s Community Residences, Foster Care and Nurseries Act, Chap. 46:04, the Family Law (Guardianship of Minors, Domicile and Maintenance) Act, Chap 46:08, the Children’s Authority Act, Chap. 46:10, and the Family and Children Division Act, 2016

Question put and agreed to: That the Bill, as amended, be reported to the Senate.

Senate resumed.

Bill reported, with amendment, read the third time and passed.

ADJOURNMENT

UNREVISED
The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Madam President, I beg to move that this Senate do now adjourn sine die.

GREETINGS

(Republic Day)

Madam President: Hon. Senators, before I put the question for the adjournment, I now invite Senators to bring greetings on the occasion of Republic Day which will be celebrated on Monday, September 24, 2018. Leader of Government Business.

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Thank you very much, Madam President. Madam President, it is a pleasure to bring Republic Day greetings to the nation on behalf of the Government of Trinidad and Tobago. Let me start by wishing all citizens of our beloved country, happy 42nd anniversary of our proud Republic; both on behalf of the Government of Trinidad and Tobago and on behalf of the ruling party, the People’s National Movement.

Madam President, it is public knowledge—and I want to remind Members opposite and the nation at large—that it is the PNM that has championed the Independence and the Republicanism movement. [Desk thumping] Led by our PNM founder and father of the nation, Dr. Eric Eustace Williams, he championed the anti-colonial and independence movement. With colleagues—in fact, I should say, renowned colleagues, like Jawaharlal Nehru of India, Kenyatta of Kenya, Nkrumah of Ghana, Julius Nyerere of Tanzania to name a few.

We finally earned our independence in 1962, and after a mere 14 years—just 14 years which is short in the historical evolution of a society—
we attained Republican status, all under the People’s National Movement. But I just want to put on the record, because people forget this, that after being a Republic for 23 years, in 1999, under the UNC Basdeo Panday administration, when they made Spiritual Shouter Baptist Liberation Day a public holiday, Republic Day, as significant as it is, was removed as a national public holiday, from 1999 to 2001. That is patriotism.

Under the Patrick Manning administration, one of his first acts, coming to this Parliament in 2002—because the Parliament did not sit in 2001—he reinstated Republic Day as a national holiday in Trinidad and Tobago [Desk thumping] and I am pleased to see that Republic Day has always been the stepchild, so to speak, of the whole liberation movement, and over the years Republic Day has started to get more and more status in the society. I am happy that the decision of His Excellency and Her Excellency the President, that they have now migrated the National Awards from Independence Day to Republic Day, and I think they should be congratulated for that. [Desk thumping]

But, Madam President, as a Republic, despite our challenges, I think we have done extremely well as a society. Let us count our blessings. For those of us who can remember life in the 1960s and 1970s, we have done well. We have done well in health care, we have done well, extremely well in education—free secondary education, free tertiary education up to a point [Desk thumping]—from kindergarten to university. [Desk thumping and crosstalk]

We have done well in infrastructure development. Remember the days when the Churchill Roosevelt Highway was a single carriageway highway, when what is now the Uriah Butler Highway was called the Princess
Margaret Highway. Look at the state of our national infrastructure. When Port of Spain was just a city of two-storey wooden buildings. Check the skyline of Port of Spain today, it is a modern city. All this has impacted on the quality of life.

   In economic development, we have done extremely well and, most importantly—and this is really where the transformation in this society came about—is in social mobility. Do not underestimate that. Trinidad and Tobago is one of the few countries in the world where you can be born in poverty, where you can come from very humble beginnings and reach the highest office in this land in one generation. All our leaders are examples of that, on both sides of the fence.

   [MR. VICE-PRESIDENT in the Chair]

   This is the only country in the world that I know—not even the mighty democracy of the United States of America, you have to be wealthy to get into politics—Trinidad and Tobago has provided an open playing field for all and sundry for this society in equality of opportunity and opportunity based on a meritocracy. [Desk thumping]

   So, we have done well, but if I should say so myself, Mr. Vice-President, there is one major gap that is still remaining, and I went to look at the definition of “Republicanism”. It states:

   The political ideology centred on citizenship in a state organized as a Republic under which the people hold sovereign power.

   And what is sovereignty?

   The authority of a state to govern itself. Sovereign states are neither dependent nor subjected to any other power or state.

   I make this point, Mr. Vice-President, because it is in my humble view and
the humble view of the PNM that we cannot claim to be a full Republic until we accept the Caribbean Court of Justice as our final court of appellate [Desk thumping] because we are still subject to another power. [Crosstalk] This is our true independence. There is still a big gap and unless—I know when the Opposition make their contribution they will say all kinds of nice thing about Republicanism, but I want to tell them that in the next session of Parliament, we will be bringing back the CCJ issue to the Parliament for its jurisdiction [Desk thumping] and I want them to support it and I crave their indulgence to support whatever we bring because that is the ultimate form of the Republicanism. [Crosstalk]

So, let me just quote a personal example on this, not personal, but a specific example. I remember former Prime Minister, Patrick Manning, telling me some years ago, that at a CHOGM conference, the then Indian Prime Minister, called him aside and said: “What kind of Republic are you all? What kind of Republic are you, because I want to tell you that the Supreme Court of India is supreme.” Let me repeat that. “What kind of Republic are you, because I want to tell you the Supreme Court of India is supreme.” That is jurisprudence. That is what Republicanism means. [Crosstalk] So, through you, Mr. Vice-President, if the Opposition is serious, I expect them to support the CCJ as the final appellate Court of the jurisdiction of Trinidad and Tobago.

So, in closing, Mr. Vice-President, as we build our Republic from strength to strength, I think with all our challenges this country has a bright future, and I take this opportunity to invite the public on behalf of the hon. Prime Minister, to a show called “Songs of Devotion” at the Queen’s Park Savannah on Republic morning at 9.00 a.m. Come out and let us sing praises
Greetings (Republic Day)  
Sen. The Hon. F. Khan (cont’d) 


to the Lord. With all our restrictions and all our challenges, we have done well as a society and God has blessed this nation eternally. I thank you very much, Mr. Vice-President. [Desk thumping] 

**Sen. Wade Mark:** Thank you very much. [Desk thumping] Mr. Vice-President, on this very important occasion that is about to visit us, we wish on this side, on behalf of the alternative Government [Desk thumping] and our distinguished hon. Political Leader and Opposition Leader and this country’s next Prime Minister [Desk thumping], warmest greetings to the people of this beautiful twin-island Republic state on the occasion of Republic Day which will be celebrated, as we all know, Mr. Vice-President, on Monday, the 24th of September, 2018. Forty-two years ago, on September 24, 1976, Trinidad and Tobago became a Republic with an elected President replacing the British sovereign as Head of State. This act finally severed the bonds which symbolized a colonial society. Trinidad and Tobago, Mr. Vice-President, became a sovereign democratic state within the Commonwealth but, in spite of that, we have to recognize that there are many difficulties and challenges. It should be noted that Trinidad and Tobago became a Republic on the 1st of August 1976. The event was celebrated as a public holiday on September the 24th because this is the date when the first Parliament met under the new Republican Constitution.

Mr. Vice-President, a principled feature rather of our Constitution is the inclusion of a comprehensive set of fundamental human rights and freedoms whereby the citizens of Trinidad and Tobago and minorities are provided with effective safeguards against arbitrary Government and acts of the Executive or other bodies or authorities which may be inconsistent with the concept of the rule of law. These fundamental rights and freedoms have
been entrenched in our Constitution and any alteration of any of them can only be effected by the consent of the majorities of both Houses of Parliament. The supreme power rests in all the citizens, in all of our citizens, who are entitled to vote and who exercised their right and, through their representatives, elect the people who run this country—that is elected representatives—directly or indirectly as we know it.

Mr. Vice-President, on the occasion of the 42nd anniversary of our Republican status, I should say, our institutions are under severe assault and attack. I want to bring to you attention that liberties and freedoms that we take for granted are also under assault in our country.

Mr. Vice-President, I do not know if you are aware that the United Nations in a recent report dated August the 24th has accused Trinidad and Tobago of violating fundamental liberties of one of our citizens, one Mr. Zaheer Seepersad in which, for instance, basic liberties that we take for granted, Mr. Vice-President, freedom that we take for granted, can be snatched away and it has reached the point and it has reached the ears of the United Nations, and they have called for an investigation, by this Government, into the violation of this citizen’s fundamental human right.

Mr. Vice-President, as we celebrate or as we reflect on the 42nd anniversary, I know that many citizens are under severe stress. We have where thousands of workers could face the breadline very shortly as we prepare to celebrate the 42nd anniversary. So we are talking about our economic—limited as it may be—independence being threatened by this Government’s decision [Desk thumping] to close down Petrotrin and to place thousands of workers on the breadline. So that is a real issue that we face in Trinidad and Tobago, as we celebrate our 42nd anniversary of

UNREVISED
Republicanism.

And, Mr. Vice-President, I may also tell you that, like my friend, Sen. The Hon. Franklin Khan, he has an interest and his Government in bringing about the Caribbean Court of Justice and we recognize why they have an interest in that and we appreciate that.

9.05 p.m.

We also have an interest on this side in preserving the freedoms and the liberties and the fundamental rights of the citizens. [Desk thumping] And until we are able to be satisfied that our current arrangement provides that avenue, we too, like him, would want to maintain our position. So you want the CCJ, you take that; we will retain our position insofar as the final Court of Appeal until we decide otherwise. So that is a difference we will have. So bring your legislation. Bring it as how we brought the capital punishment Bill and you voted against it; [Desk thumping] we will do what we have to do when you bring the CCJ.

So, Mr. Vice-President, on the occasion of the 42\textsuperscript{nd} anniversary of our republic, I wish to extend to you and to your family and to the people of our country a safe, a peaceful, and, I would say, I hope that they have a happy Republic Day, 2018. So where my friend is saying he wants us—he would like us to join him at the Savannah to celebrate, and so on, I think many people, and so on, during this period, Mr. Vice-President, are mourning, are in a state of sadness, so we commiserate with them, and we look forward, and so on, to the backs—seeing the backs of this Government. So when we celebrate the 44\textsuperscript{th} day, the 44\textsuperscript{th} anniversary of republic we will not be able to have a Government led by Dr. Rowley. I thank you very much, Mr. Vice-President. [Desk thumping]
Mr. Vice-President: Sen. Richards. [Desk thumping]

Sen. Paul Richards: Thank you very much, Mr. Vice-President. Good evening, colleagues, it is late and I will not be as pointed as either side. It is a great honour to be able to bring Republic Day greetings on behalf of my colleagues on the Independent Bench.

When I volunteered to bring these greetings, I wrote three different contributions and I scrapped them all, because I started to think about what it means for us to be a republic or to have attained republican status, and my mind went back to when we became independent in 1962. I was not born yet. I was born in 1963 so I have no personal reference to that. Then, when we became a republic in 1976, I was just 13 years old, so though I was aware I still had no real grasp of it. So a lot of it comes from research in what I have gained over the years. And, you know, to me, thinking about this honour of serving in this august House and thinking about being a citizen of this country, it took me right back, to me, what being a republic is about. Yes, it is about having the opportunity to make the choices and forge our own destinies and future.

And without being controversial, I also share the view, and I do not know when it will happen, that being attached to the Crown still, in one way or the other, is, in some way, an anathema to full governance and attaining our fullest independent selves or republican selves. But that is another debate. But I also think it is about understanding and appreciating our freedoms, rights and responsibilities. That took me back to, to me, basics. To me, when I look at this country, even with the challenges we have faced, we are still a wonderful twin-island republic, and I think we can all agree on that. [Desk thumping]
We have our challenges like any other country in the world; we are still a wonderful twin-island republic. It took me straight to basics, and I hope I am not breaching any protocols because I want to recite, to me, the document that personifies our freedoms, our rights, responsibilities, our aspirations and achievements. I do not know if it is a breach of protocol, but if it is I apologize in advance. The words are simple but very profound:

“Forged from the love of liberty
In the fires of hope and prayer
With boundless faith in our destiny
We solemnly declare
Side by side we stand
Islands of the blue Caribbean sea,
This our native land
We pledge our lives to thee.
Here every creed and race finds an equal place,
And may God bless our nation
Here every creed and race finds an equal place,
And may God bless our nation.”

It was interesting to me that the only two lines repeated in our wonderful national anthem are:

“Here every creed and race finds an equal place,
And may God bless our nation.”

I do not think that was by consequence or by guess. It was done to emphasize those important tenets of who we are as a country. It was done to unify us through difficult times; and every generation has difficult times.

When we think of the birth of our nation in 1962 and before that,
when we think of the Black Power Revolution, when we think of 1989, 1987, 1988, 1990, and those years, when we think of 1990, you know what? We made it through. We are still here and that is important to guide us through whatever difficulties may come. Very often we stand in this honourable House and there is a debate upon who did more and who did what, but from Dr. Eric Williams to George Chambers, to Patrick Manning to Basdeo Panday, to ANR Robinson to Mrs. Kamla Persad-Bissessar, and now Dr. Keith Rowley; from Sir Ellis Clarke to Mr. Noor Hassanali, to ANR Robinson to Max Richards, to Anthony Thomas Aquinas Carmona, and our Excellency Paula Mae-Weeks, they also stood on the shoulders of their predecessors. We have all contributed, and that is to me the essence of the lines I appreciate most in our anthem: every creed, every race, equal place, and to me we must hold on to that. That is what will get us through more than anything else.

One of the things I love my country to all, but sometimes I think we need to be understanding that we need to be patriotic in all aspects of our lives, [Desk thumping] not only when Dwayne Bravo and the boys win cricket, not only when Brian Lara breaks records, not only when Dwight and the boys take us to the World Cup, not only when Hasely and Keshorn win gold medals, or Wendy, Janelle or Giselle Laronde win international pageants; from Naipaul to Nicki Minaj, we all have a role to play in taking our country forward. It is important that we understand the watchwords also. “Together we aspire, together we achieve” also exemplify that we cannot do it divided. We have to understand we are stronger, although diverse, together.

Mr. Vice-President, I want to leave with a message to us all as
legislators and leaders that the next generation is what we are preparing for. That is what our job is here, to secure their future. Recently I saw a trailer, because we need to understand our roles in preparing them for the future, a trailer for a movie, *The Autobiography of Quincy Jones*, who is a legendary musician, producer, arranger. He grew up in the roughest part of Chicago, and he said from one to 11 years all he wanted to be was a gangster because that is all he saw. At 11 years, he inadvertently walked into a club and saw Dizzy Gillespie playing *jazz* and from that moment he wanted to be a musician, and his quote is:

> Children say they become what they see. We have to be the light that inspires them to more than we are.

That is what I want to leave us with, understand our responsibility; understand our role in preparing this country for the next generation. Mr. Vice-President, it is indeed an honour to bring these greetings as we celebrate our 42\textsuperscript{nd} anniversary of republican status. On behalf of the Independent Bench I say, happy, holy, spiritual, blessed Republic Day to Trinidad and Tobago. I thank you. [Desk thumping]

**Mr. Vice-President:** Hon. Senators, I too wish to join you in bringing greetings on the occasion of our Republic Day. To understand its importance we must first understand what it means to be a republic. A simple search of the question what makes a country a republic results in the following answer:

> It is when a country’s national sovereignty lies in the authority of the Government and not in an emperor or monarch.

The word “republic” comes from the Latin language words, res publica, which means “is a public thing”. Countries with a king or other monarch and
free elections are called a constitutional monarchy and are not called republics. As such, it is a day that symbolizes the commitment of our forefathers and foremothers to the identity they sought to create for all citizens, present and future, upon our independence.

The exemplars of society, as they were then, believed in the human capital that existed in Trinidad and Tobago and our ability to face and overcome whatever may lie ahead on the strength of our own efforts. This belief, rooted in a principle that puts us above all else in a crowded world, continues today as we celebrate our modern-day exemplars of society. This principle which we all learn as children and try to implement as adults is what makes us all Trinbagonians, and that is:

“…every creed and race finds an equal place”

So as we celebrate our Republic Day may we never forget from whence we came, how far we have come, and the strength that lies within us. Happy Republic Day, and may God bless our nation. [Desk thumping]

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 9.17 p.m.