SENATE

Tuesday, January 29, 2019

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. The Hon. Robert Le Hunte, Sen. The Hon. Dennis Moses and Sen. Hazel Thompson-Ahye, all of whom are out of the country, and to Sen. Anita Haynes who is ill.

SENATORS’ APPOINTMENT

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

“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. AUGUSTUS THOMAS

WHEREAS Senator Dennis Moses is incapable of performing his duties as a Senator by reason of his absence from Trinidad and Tobago:

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)(a) and section 44(4)(a) of the Constitution of the Republic of Trinidad and Tobago, do hereby
appoint you, AUGUSTUS THOMAS, to be temporarily a member of the Senate, with effect from 29th January, 2019 and continuing during the absence from Trinidad and Tobago of the said Senator Dennis Moses.

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 28th day of January, 2019.”

“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. JOSH O.W. DRAYTON

WHEREAS Senator Hazel Thompson-Ahye is incapable of performing her duties as a Senator by reason of her absence from Trinidad and Tobago:

NOW, THEREFORE, I, PAULA-MAE WEEKES, President as aforesaid, in exercise of the power vested in me by section 44(1)(a) and section 44(4)(c) of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, JOSH O.W. DRAYTON, to be temporarily a member of the Senate with effect from 29th January, 2019 and continuing during the absence from Trinidad and Tobago of the said Senator Hazel Thompson-Ahye.

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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 29th day of January, 2019.”

**Madam President:** Hon. Senators, I have to receive two further instruments and I will, with your leave, revert later on in the proceedings to the swearing in of those two temporary Senators. But Senators are now required to take the oath.

**OATH OF ALLEGIANCE**

*Senators Augustus Thomas and Josh Drayton took and subscribed the Oath of Allegiance as required by law.*

**PETITION**

**Request for Hansard for Use in Court Proceedings**

**The Attorney General (Hon. Faris Al-Rawi):** Madam President, I beg to present a petition on behalf of Kadine Matthew, Attorney-at-Law for the Chief State Solicitor of Trinidad and Tobago of No. 23-27 St. Vincent Street, Port of Spain.

I move that the Clerk be allowed to read the petition.

*Petition read.*

*Question put and agreed to:* That the petitioner be granted leave to proceed.

**PAPERS LAID**


2. Annual Report of the Financial Intelligence Unit of Trinidad and Tobago (FIUTT) for the year ended September 30, 2018. [Sen. The Hon. A. West]

3. Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the San Juan/Laventille Regional Corporation for the years ended September 30, 2011. [Sen. The Hon. A. West]


5. Land Acquisition (Requisition) Order, 2018. [The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat)]


JOINT SELECT COMMITTEE REPORT

Public Administration and Appropriations Committee
Public Sector Investment Programme Implementation

(Presentation)

Sen. Wade Mark: Madam Speaker, I have the honour to present the following report as listed on the Supplemental Order Paper in my name:

Sixteenth Report of the Public Administration and Appropriations Committee, Third Session (2017/2018), Eleventh Parliament on an Examination into the implementation of the Public Sector Investment Programme.

URGENT QUESTIONS

Computer Generated Birth Certificates
(State of Readiness)

Sen. Wade Mark: Thank you, Madam Speaker. To the Attorney General: In light of the United States Embassy’s request that all prospective applicants for US Visas must possess computer generated birth certificates, can the Attorney General advise as to what is the state of readiness to deal with this matter?

Madam President: Attorney General? [Desk thumping]

The Attorney General (Hon. Faris Al-Rawi): Thank you, Madam President. Madam President, there is a material error in the question. The US Embassy’s publication is not that all visas are required to have these polymer certificates. They are specifically limited only to immigrant visas which are very few in number. I am able to say that the Registrar General’s department has, in fact, been issuing polymer certificates since February 2016. We are well ahead of that curve. Persons can apply for and obtain the certificate on the same day of the application
at the department’s head office at Port of Spain or any of its sub-offices at San Fernando, Arima and Tobago. Applicants can also apply for birth certificates via the department’s online service at the Ministry of Legal Affairs’ website. However, an applicant who uses this service will have to come in and pay for the requisite fee to collect the certificate. In the circumstances we are well ready, but this issue of the United States position is limited only to immigrant visas and not the regular visas for tourist travel.

Madam President: Next question. Sen. Mark?

US Government’s Sanctions on PDVSA
(Impact on Dragon Gas Deal)

Sen Wade Mark: To the hon. Minister of Energy and Energy Industries: In light of the US Government’s decision to impose sanctions on the Venezuelan oil company Petroleos de Venezuela SA (PDVSA), can the Minister state what impact this decision is likely to have on the recently concluded Dragon gas deal?

Madam President: Minister of National Security?

The Minister of National Security, Minister of Communications and Minister in the Ministry of the Attorney General (Hon. Stuart Young): Thank you very much, Madam President. [Desk thumping] Madam President, the recent sanctions imposed by the United States of America on PDVSA are currently the subject of advice. We are seeking advice with respect to same to understand exactly how it may, and I emphasize the word “may”, because as the sanctions themselves say—they start off by saying how they may affect certain things; how they may affect the Dragon deal. So we are currently awaiting advice. So it is very premature at this stage to say what, if any, effects it may have.

Madam President: Sen. Mark?
Sen. Mark: Can the Minister indicate to this Senate whether the Government of Trinidad and Tobago intends to hold discussions with the Government of the United States on this entire matter of the Dragon gas deal?

Madam President: Sen. Mark, that question does not arise. Next question, Sen. Mark. [Desk thumping]

Overflowing Cesspit at Cedros Port
(Measures to Rectify)

Sen. Wade Mark: To the Minister of National Security: In light of the recent closure of the Cedros Port due to an overflowing cesspit, can the Minister inform this Senate what measures are being taken to rectify this problem?

Madam President: Minister of National Security.

The Minister of National Security, Minister of Communications and Minister in the Ministry of the Attorney General (Hon. Stuart Young): Thank you very much, Madam President. Madam President, this situation is currently attracting the attention—the Ministry of National Security has requested the expert assistance of the Ministry of Works and Transport and asked that their engineers visit the particular location, do an assessment and then come back to us, telling us what they have found. Unfortunately, it was someone from the regional corporation who decided to make an issue of it. But we have asked the Ministry of Works and Transport to take a look at it and to get back to us.

Madam President: Sen. Mark?

Sen. Mark: Madam President, can the hon. Minister indicate to this House what impact this temporary closure will have on the inflow of persons from Venezuela, including citizens of our Republic?

Madam President: Minister of National Security?

Hon. S. Young: Madam President, what it meant is that yesterday when it was shut by the immigration and other officers—it houses immigration, customs and
the police service at the port of Cedros. When they were shut they were not able to take any inflow of persons entering through the legal port of entry. So until it is reopened, persons cannot come in through that legal port of entry.

**Madam President:** Sen. Mark?

**Sen. Mark:** Can the hon. Minister indicate what time frame he anticipates for the reopening of that port?

**Madam President:** Minister of National Security?

**Hon. S. Young:** Not at this stage, Ma’am. As I said earlier, we are currently awaiting an assessment and recommendations from the engineers and experts from the Ministry of Works and Transport.

**Madam President:** Next question.

**Exemption of Stamp Duties**

**(Implementation of Increase by BIR)**

**Sen. Wade Mark:** To the hon. Minister of Finance: Can the Minister advise as to when the Board of Inland Revenue will be implementing the increase in the exemption on stamp duties for first time homeowners as passed in the 2019 Budget?

**Madam President:** Minister in the Ministry of Finance?

**The Minister in the Ministry of Finance (Sen. The Hon. Allyson West):** Thank you, Madam President. Madam President, we have been advised by the Chairman of the Board of Inland Revenue that they will be in a position to start granting the said relief by January 21st of this year.

**Sen. Mark:** Can I ask, through you, Madam President, persons who have applied and have not been successful, would they be entitled to retroactive payment on their stamp duties?

**Madam President:** Minister?
Sen. The Hon. A. West: Sen. Mark, we have—I have spoken to the PS who has spoken to the chair about providing for refunds to the people who would have overpaid stamp duty on these first-time purchases.


**TTUTA’s Legal Action on SBAs (Impact on Students)**

Sen. Taharqa Obika: Thank you, Madam President. To the Minister of Education: In light of TTUTA’s legal action in respect of School Based Assessments, can the Minister advise as to what impact if any this action is having on the students?

Madam President: Minister of Education? [Desk thumping]

The Minister of Education (Hon. Anthony Garcia): Madam President, the Ministry of Education has not received any reports that students have been adversely affected by TTUTA’s action with respect to SBAs. Thank you.

Madam President: Sen. Obika?

Sen. Obika: Thank you very much, Madam President. Given the Minister’s response, is it that we should take lightly the reports by TTUTA’s President that they are looking seriously at the fact that the Jamaican government pays their teachers for marking SBAs and not the Trinidad and Tobago Government?

Madam President: Sen. Obika, that question does not arise. You have one more question if you wish to ask?

Sen. Obika: Could the hon. Minister indicate if they will be addressing payment of SBAs to teachers in Trinidad and Tobago?

Madam President: That question also does not arise, Sen. Obika.

**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 that it will be answering all questions on the Order Paper listed today.

**ORAL ANSWERS TO QUESTIONS**

**Number of Deaths**
*(Police Confrontations)*

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

How many persons have died as a result of confrontations with the police over the last five (5) years?

The Minister of National Security, Minister of Communications and Minister in the Office of the Prime Minister *(Hon. Stuart Young)*: Thank you very much, Madam President. Madam President, over the period January 01, 2014 to present, a total of 169 persons were killed following confrontations with officers of the Trinidad and Tobago Police Service.

**Sen. Mark:** Can the hon. Minister indicate whether the Government intends to conduct any official coroner enquiry or inquest into the deaths of these—did I hear him right, Madam President, 169 deaths, persons at the hands of the police?

**Madam President:** Minister?

**Hon. S. Young:** Thank you very much, Madam President. Madam President, I would have thought as an experienced legislator, one would know that it is not for the Government to call upon the conduct of the coroner’s enquiries. Coroner’s enquiries are being conducted. I believe my friend, Sen. Mark has a follow-up question, No. 14 that deals specifically with coroner’s enquiries.

**Madam President:** Sen. Mark, next question?

**Police Involved Killings**
*(Number Forwarded for Coroner’s Inquest)*

40. **Sen. Wade Mark** asked the hon. Minister of National Security:
Can the Minister inform the Senate of the number of matters involving police killings that have been forwarded for a coroner’s inquest?

The Minister of National Security, Minister of Communications and Minister in the Office of the Prime Minister (Hon. Stuart Young): Thank you very much, Madam President. Madam President, the answer to Question No. 40 is, during the year 2017, three fatal police shootings were forwarded for a coroner’s inquest, two from the Southern Division and one from the Professional Standards Bureau. Furthermore, for the period January 01, 2018 to present, two fatal police shootings were forward by the PSP, the Professional Standards Bureau, for coroner’s inquest.

Sen. Mark: Madam President, can I ask, through you to the hon. Minister, what urgent steps are being taken by the Ministry of National Security to provide police officers with alternative instruments or devices when confronted by, let us say, citizens, rather than using, let us say, force, that could result in the death of citizens, for example, Taser, pepper spray, et cetera?

Madam President: Sen. Mark, that question does not arise from the question asked or the answer given. Any further supplementary questions? Next question, Sen. Mark?

Curepe Interchange Project
(Details of)

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

As regards to the Curepe interchange project, can the Minister inform the Senate of the following:

i. has there been agreement between the Government and all of the homeowners who must be relocated for the building of the interchange;

ii. if yes, how many families have been affected;

iii. what has been the cost of the relocation/acquisition;
iv. is the project on schedule to meet its completion date; and
v. what is that date?

**The Minister of Works and Transport (Sen. The Hon. Rohan Sinanan):** [Desk thumping] Thank you, Madam President. Madam President, the question on the Curepe Interchange, part (i): Has there been agreement between the Government and all the homeowners? Madam President, there are 10 homeowners who have to be relocated. Government has reached agreement with nine of them. The agreement for the final homeowner is being finalized. However, that property is not critical to the project at this stage.

Part (ii), how many families? Ten families have to be relocated.

Part (iii), cost of the relocation. Madam President, negotiations continue. So at this time there is no final figure and the project date has been—the final date for the project has been rescheduled to December 2019. Thank you.

**Madam President:** Sen. Mark?

**Sen. Mark:** Madam President, could the Minister indicate what was the nature of the agreement arrived at between the nine homeowners and the Ministry of Works and Transport?

**Madam President:** Minister?

**Sen. The Hon. R. Sinanan:** Thank you, Madam President. Madam President, the nine homeowners have agreed to accept the Commissioner of Valuations offer of 80 per cent of the value while negotiations continue, and give vacant possession of the land. Thank you.

**Madam President:** Sen. Mark?

**Sen. Mark:** Can you advise this House whether the owners of Kay Donna have been paid at this time for their property?—the owners of Kay Donna.

**UNREVISED**
**Madam President:** Sen. Mark, that question does not arise. I think I am seeing the question asked about homeowners.

**Madam President:** Well, I think they are a homeowner as well, the people of Kay Donna, who owns the property. [Crosstalk]

**Madam President:** Sen. Mark! Sen. Mark, no. Please take your seat. So your supplementary question was not allowed. Do you have any further questions to ask? Yes?

2.00 p.m.

**Sen. Mark:** Can the hon. Minister advise this House whether any part payment has been made to the nine homeowners in which agreements have been arrived at, Madam President?

**Madam President:** Minister of Works and Transport.

**Sen. The Hon. R. Sinanan:** Madam President, the agreement has been arrived at. Some owners—my information is that the cheques have started to be prepared over a week ago. I cannot say at this time if any of them have collected their cheques, or if that process has been completed, but the process has started and no cheque was paid to any of the other landowners including Kay Donna. Thank you.

**Sen. Mark:** Is the Minister, through you, Madam President, in a position to share with this House what is the value of those cheques that have been processed but are yet to be distributed to the homeowners where there has been agreement thus far?

**Madam President:** Minister.

**Sen. The Hon. R. Sinanan:** Madam President, it will be very irresponsible of me as a Minister to come to the Parliament and call the figures that are being paid to homeowners at this point in time. But I can say the Commissioner of Valuations would have put an evaluation and the homeowners would have accepted 80 per cent of that value. I am not going to be responsible to say what is the value that
Oral Answers to Questions (cont’d)  

each homeowner is getting. [Desk thumping] Thank you.

Madam President: Sen. Mark, you have no more questions on this one. Next question, Sen. Mark.

Closure of Petrotrin Refinery  
(Laying of Reports)

61. Sen. Wade Mark asked the hon. Minister of Energy and Energy Industries: Having regard to the Minister’s public statement that the closure of the Petrotrin refinery was informed by HSB Solomon & Associates and the McKinsey & Company reports, does the Government intend to lay said reports in the Parliament, and if so, when?

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Thank you very much, Madam President. Madam President, as I have stated on many, many occasions in this Parliament and outside of this Parliament, the decision to close the refinery was based on the valuation of the business model under which Petrotrin operated. In all scenarios developed by the board of directors, the refinery sustained substantial losses and, more importantly, eroded gains achieved by the exploration and production side of the business. HSB Solomon & Associates’ activities comprised a workforce optimization study, an exploration and production benchmarking exercise and other professional services.

McKinsey & Company did not produce any specific reports. McKinsey & Company was engaged as industry experts to assist the board to understand and design solutions to the continuously deteriorating operations of Petrotrin. This was done in incremental work streams that involved experienced Petrotrin subject matter employees working in a team together with the consultants. McKinsey’s engagement covered several modules. These are strategic review, review of upstream and downstream operations and the current transition fees.

The activities conducted by McKinsey and Solomon were important in
assisting the board to understand the business, but were a part of a number of factors that led to the decision to close the refinery. For this reason, there is no specific report on the closure to lay in this Parliament.

**Madam President:** Sen. Mark.

**Sen. Mark:** Can I ask, through you, whether the Minister is prepared to lay in this Parliament the several modules that were devised by McKinsey?

**Sen. The Hon. F. Khan:** Madam President, the modules were derived in consultation. Sometimes they are written, sometimes they are slide presentations, but it was part of a holistic process of looking at the company, its weaknesses, its strengths, and the restructuring exercise. There are no specific reports to lay in Parliament.

**Madam President:** Sen. Mark.

**Sen. Mark:** Would the Minister be prepared to provide this Parliament with the written and slide presentations delivered by McKinsey on this whole question of Petrotrin?

**Madam President:** Minister.

**Sen. The Hon. F. Khan:** Madam President, it has been said on many occasions here that McKinsey did not specifically recommend a closure of the refinery. McKinsey was involved together with Petrotrin’s management at the time to evaluate the company, its strengths, and its weaknesses, and I want to repeat there is no specific report to lay in this Parliament.

**Madam President:** Sen. Mark.

**Sen. Mark:** Can the hon. Minister provide us with some specimens or some answers as it relates to the design solutions that were advised or advanced by McKinsey during this whole strategic review exercise of Petrotrin? Can he provide us with some elements of those design solutions as advanced by the hon. Minister?
Madam President: Minister.

Sen. The Hon. F. Khan: Madam President, the design solution is now in the public domain: Trinidad Petroleum Holding Company as a holding company; Paria, trading and terminalling operations; Heritage, exploration and production; and Petrotrin which is a legacy company to hold the historical legacy matters that Petrotrin will have to continue to address for several years.

Sen. Mark: Can the Minister indicate since he spoke about Paria as one of those companies, is the Minister aware that the last shipment of our crude oil which was transported by a company call BW EAGLE was taken to the St. Croix refinery in the US Virgin Islands for refining purposes? Is the Minister aware using the Paria oil company?

Madam President: Sen. Mark, that question does not arise. Next question. I believe Sen. Mark, you are asking it on behalf of Sen. Haynes?

Sen. Mark: Yes, I ask this question on behalf of Sen. Anita Haynes, Madam President, and that is question No. 101.

Madam President: Sen. Mark, my apologies. The next question is number 62.

Sen. Mark: Oh, I myself was frazzled. Thank you very much, Ma’am.

Minerals Division
(Increase in Staff)

62. Sen. Wade Mark asked the hon. Minister of Energy and Energy Industries: Having regard to the human resource constraints that exist at the Minerals Division of the Ministry and the impact on the division’s ability to properly manage mining licences and exercise effective regulatory controls, what is being done to increase the complement of staff in the division?

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Thank you very much, Madam President. Madam President, the Minerals Division of the Minister of Energy and Energy Industries is currently staffed by 21
technical officers on the permanent establishment, 20 daily-paid employees and 10 quarry management officers on contract. There are nine vacant offices comprising of four Geologists, three Mining Inspectors and one Geoscience Surveyor I/II, and one Draughtsman I and one Draughtsman II. The Minister of Energy and Energy Industries is working assiduously with the Service Commissions Department to ensure that these vacancies are filled in the shortest time frame.

In addition, it is envisaged that in the first quarter of calendar year 2019, the Ministry will finalize its phase two of its restructuring exercise. This exercise is intended to assess and determine the human resource needs of each division to ensure alignment with its mandate. The Minerals Division is an integral part of this process.

**Madam President:** Sen. Mark.

**Sen. Mark:** Madam President, in light of what we have been advised, can the Minister indicate what kind of time frame would be required to first of all—well, I should say fill—those vacancies identified by the hon. Minister?

**Madam President:** Minister.

**Sen. The Hon. F. Khan:** Madam President, as everybody who operates in the public service is aware, the recruitment process in the public service falls under ambit of the Service Commission. The Ministry, the Minister, nor the PSs, have absolutely no say in that recruitment process and we have been working very close with Service Commission, but historically the Service Commission—I make no apologies for this statement—has been a slow-moving wheel and we are working with them to see how fast they can accelerate this recruitment exercise.

**Madam President:** Sen. Ramdeen.

**Sen. Ramdeen:** Thank you, Madam President. Madam President, through you, to the hon. Minister of Energy and Energy Industries: Minister, having regard to the
answer that you have given with respect to the staff at the Minerals Division, how has this shortage of staff affected the ability of the Ministry to monitor the illegal quarrying that takes place?

**Madam President:** Minister.

**Sen. The Hon. F. Khan:** Thank you very much, Sen. Ramdeen for that question. Madam President, as is publicly known, we do have serious concerns about illegal quarrying in Trinidad. Illegal quarrying largely occurs in north-eastern Trinidad on state land. We are now initiating a coordinated multi-agency approach which involves the Commissioner of State Lands, the Director of Minerals and the Commissioner of Police, and we have established operational and investigative SOPs in conjunction with the Office of the DPP to have a coordinated effort and we hope to strike soon.

**Madam President:** Sen. Mark.

**Sen. Mark:** Can the hon. Minister indicate to this Senate how have the vacancies impacted on this division issuance of licences to scores of legitimate quarry owners who have been seeking proper licensing from the Ministry of Energy and Energy Industries?

**Madam President:** Minister.

**Sen. The Hon. F. Khan:** Madam President, Sen. Mark has hit another important question. What is happening with the renewal of licences is that the Minerals Act was revised in 2015, and the new Act and this regulation has made very specific requirements to be granted a licence. Most of the old quarry operators did not comply before, but now to get their licence renewed they have to have a series of statutory approvals including EMA, including water extraction permits from WASA, and a whole myriad of fundamental documents that they need to provide. That is taking some time. They think it is a hindrance, but as a modern society that
has to deal with the extractive industry we do not think so. So the process has been slow, but we are trying to impress on the “legitimate quarry operators” that they have to comply with the new Act.

**Madam President:** Sen. Mark.

**Sen. Mark:** Madam President, in light of the existence as the Minister has advanced of a multi-agency task force to deal with the illegal quarrying situation, can the Minister advise this honourable House whether the Government intends to introduce specific legislation to deal with criminality in the illegal quarrying business in Trinidad and Tobago that currently does not exist under the legislation that governs this particular area of operation?

**Sen. The Hon. F. Khan:** Madam President, the Ministry of Energy and Energy Industries has no intention to create specific legislation to deal with any form of criminality. Criminality is a function of the Ministry of National Security and the police service. We will work closely with the police service to implement and to bring a reduction in the proliferation of illegal quarrying in Trinidad and Tobago.

**Madam President:** You have one more.

**Sen. Mark:** Is the Minister aware, through you, Madam President, that there has been languishing at the Legislative Review Committee for some time now, legislation to upgrade and enhance the whole question about supervision and regulation of the quarrying industry? Are you aware of such legislation and, if you are, can you tell this Senate when—

**Madam President:** Sen. Mark, you are asking two questions there.

**Sen. Mark:** Well, whether he is aware and—

**Madam President:** Well no, whether he is aware. Minister.

**Sen. The Hon. F. Khan:** I am very much aware and the Chairman of the Legislative Review Committee, Sen. Rambharat, is also aware.
Madam President: Next question, Sen. Mark.

Derelict Police Vehicles
(Intention to Refurbish)

101. **Sen Wade Mark** on behalf of Sen. Anita Haynes asked the hon. Minister of National Security:

With regard to reports indicating that there exists over 500 derelict police vehicles, can the Minister indicate whether the Government intends to refurbish said vehicles and when?

**The Minister of National Security, Minister of Communications and Minister in the Office of the Prime Minister ((Hon. Stuart Young))**: Thank you very much, Madam President. Madam President, the Trinidad and Tobago Police Service currently has 377 non-operational vehicles. During 2019, the Trinidad and Tobago Police Service plans to conduct a thorough and comprehensive assessment of approximately 200 non-operational vehicles to determine whether the vehicles will be disposed of or refurbished. Vehicles are disposed of once they are no longer feasible to maintain, and that determination is based on factors such as cost, age and state of disrepair.

**EVIDENCE (AMDT.) BILL, 2019**

Bill to amend the Evidence Act, Chap. 7:02 [*The Attorney General*]; read the first time.

**SEXUAL OFFENCES (AMDT.) BILL, 2019**

Bill to amend the Sexual Offences Act, Chap. 11:28 [*The Attorney General*]; read the first time.

**ADMINISTRATION OF JUSTICE (INDICTABLE PROCEEDINGS) (AMDT.) BILL, 2018**

Order for second reading read.

**The Attorney General (Hon. Faris Al-Rawi)**: Madam President, I beg to move:

**UNREVISED**
That a Bill to amend the Administration of Justice (Indictable Proceedings) Act, 2011 (Act No. 20 of 2011), be now read a second time.

Madam President, it gives me great pleasure to continue what is the very important work of the people of Trinidad and Tobago as identified by, not just the Government, but by all of us citizens of Trinidad and Tobago. Crime remains the number one issue in our economy. The battle against crime is directly related to the population having confidence that there is a result to be applied in stamping out crime. The very haggard statement of committing a crime and doing the time seems to be something which does not apply in Trinidad and Tobago if one looks at the history of the criminal justice system operations. Trinidad and Tobago has been grappling with the issue of preliminary enquiries for a number of years. Indeed, preliminary enquiries as a feature of our law started by an Act of Parliament in 1917, and when we look to the laws of Trinidad and Tobago and we start off with that important law, the Indictable Offences (Preliminary Enquiry) Act, Chap 12:01, that is an Act of Parliament, No. 12 of the year 1917. That Act has been amended 26 times in the course of its history, 21 of them in large part intended to tweak the law, and on a couple of the occasions five of them in attempts to actually repeal and replace law, and the question for us right now is what are we intended to do these mere 30 clauses.

It is necessary for us to have a little bit of a recap as to what this law is about—what is a preliminary enquiry; what it is intended to do; where does it fit within the architecture of the criminal justice system; what does that criminal justice system look like statistically for us in Trinidad and Tobago, so we know what we are dealing with in terms of Trinidad and Tobago and not elsewhere; how does the amendment fit within the structure of reform; and then how do we
operationalize it? And I expect today that there may be unanimity of purpose on the legislative aim from what I have looked at, but I feel that the real debate goes to the operationalization and, therefore, I confess immediately that in piloting a Bill of this type I may not be able to do immediate justice to that which is to be said on operationalization, but at the wrap-up I am certain that I will be able to answer questions raised. Because one has the obligation to present the Bill to lay the proportionality and make it survive constitutional consideration, and then one has the obligation to speak to the operationalization of the law.

So let us dive into this. Preliminary enquiries are a feature of our English common law, our English inherited law, birthed in the year 1555 by the Marian Committal Statutes, a mere 464 years ago. In 1836, we had the Prisoners’ Counsel Act, 183 ago. In 1848, we had the Indictable Offences Act, Sir John Jervis Act, 171 years ago that applied in our jurisdiction. In 1917, of course, 102 years ago we had the preliminary enquiries Act, Chap. 12:01. In 2005, some 14 years ago, we made some improvements to the criminal arena, the preliminary enquiries arena, by taking account of what we call paper committals. In 2011, eight years ago, we had the law which we now seek to amend come to the Parliament; we are dealing with Act No. 20 of 2011, today we come to amend that law, eight years later.

In 2012, we had a repeal of that 2011 law where we dealt with the very infamous section 34 proclamation in having to reverse it. In 2014, we adjusted gears as a country; we moved to something called committal proceedings in an attempt to remove indictable proceedings. In 2017, we as a Senate, some of us, indeed Sen. Chote and Sen. Richards in particular on the Independent Bench, and my colleagues on the Opposition Bench, we sat and we considered a new formulation to treat with indictable route and how we deal with preliminary
enquiries. We took away the learning and experience from that and then came back to this Bill in circumstances which I will explain in a moment.

So what is a preliminary enquiry? A preliminary enquiry ideally has two specific purposes. It is in effect, in one large sense, a filtration mechanism to ensure that a case is being properly put for an accused to answer. Obviously that dual purpose is to allow the accused person to be aware of the case on the one hand, and then secondly, to give him an opportunity to probe and counter that case. Preliminary enquiries run alongside this criminal justice system. What is the criminal justice system? We have the courts: the Magistrates’ Court, the High Court, the assizes being the High Court, the Court of Appeal and then the Privy Council.

We have the actors and players in the courts: we have the prosecutors, the defence attorneys, the judges, the witnesses, the prisons management, the ancillary staff; we have, of course, the accused and the victim; we have this mechanism going to work in prosecutorial arms of the DPP’s Office and also in the Commissioner of Police. The DPP does 5 per cent of the prosecutions in Trinidad and Tobago, and the Trinidad and Tobago Police Service, pursuant to the Police Service Act, they conduct 95 per cent of prosecutions.

So before we go into the Bill, let us dive into some of the statistics. What is Trinidad and Tobago? What do we look like? What are our statistics? What have we been doing in our system of justice? I can tell you this. In our arena, of course, we have 46 Magistrates, 12 magisterial districts, we have the Supreme Court with 13 Justices of Appeal, 35 puisne Judges, 14 Masters. We have since amended laws to increase those numbers. For instance, at the Bench in the High Court up by 77 per cent, we have taken those to 64 in the Appellate Division from 12 to 15. What
does our backlog look like? In the criminal justice arena we are treating with a caseload at the Magistracy and also at the Supreme Court. The Supreme Court is the High Court and the Court of Appeal. This is what we look like, Madam President.

The statistics on criminal matters pending as at December 11, 2018, at the Magistracy and at the Supreme Court, let us look first at the Supreme Court. As at that date, December 11, 2018, 2,518 cases are pending; sexual offences, 470; murder, 327; offences against the person, 497; manslaughter, 25; attempted murder, 111; firearms, 235; dangerous drugs, 119; other indictable, criminal offences such as larceny, fraud, kidnappings, 797. But listen to this. In the subcategories; if you take it by the number of years that matters are pending at the High Court, there are 149 cases of the 470 which are pending for over 10 years in the High Court; for murder, there are 84 cases pending for over 10 years; offences against the person, 219 cases of 497 pending for over 10 years; firearms, 131 out of 235 pending for over 10 years.

Let us go to the Magistrates’ Court where the bulk of matters happen. For the period ending July 31, 2018, the matters that are pending at the Magistracy, hear this number, 43,109 cases are pending; of that, if we look to murder, in the period above 10 years at the Magistrates’ Court, meaning they have not yet gone to the High Court, we have 584 cases pending; attempted murder, 255; kidnapping, 394; arms and ammunition, 6,746; sexual offences, 2,915; narcotics, 5,596; fraud, 5,957; larceny, 4,188.

But let us put this into the human context. In the bulk of matters above the category of sexual offences we have above five years, 184, plus 108, plus 45, plus 13, plus two, plus 17, plus six, plus three, plus two. Those are the number of cases
in each year above five years. Imagine someone waiting with 24 matters above 14 years of age for sexual offences, that is victim, that is perpetrator so alleged, that is juror, that is Judge, traipsing up and down in our courts for 14-plus years to relive a sexual offence encounter.

Now, these are all in the context of preliminary enquiries. Our preliminary enquiries law says that you have to have a preliminary enquiry, you go before a Magistrate, the Magistrate looks to see whether there is sufficient evidence to either bring you forward for a trial at the High Court or discharge you. The DPP has a power under section 23 of the existing law to recommend an indictment in certain circumstances without a preliminary enquiry, but we have in Trinidad and Tobago—and if I take without going into the case itself, I take the example of the Piarco Airport matter simply to say that the allegations arising in that matter arose in the period 1995 to the year 2000. We stand in 2019, in the month of January, and suffice to say that the preliminary enquiries into those matters are still going on. From allegations in 1995, 1997 to the year 2000, the allegations are still being tested in preliminary enquiry in the year 2019.

And in other jurisdictions where this matter has been dealt with, pleas of guilt were entered, people served time, they forfeited millions of dollars of assets, Trinidad and Tobago repatriated—and, in fact, I am pleased to announce today that as a result of an appellate ruling in the United States of America, Trinidad and Tobago having picked up a case which was going nowhere under my predecessor, we have secured millions of dollars US in benefit for Trinidad and Tobago coming out of these matters in the United States [Desk thumping] and I will give the particulars of that in just a little while.

So, Madam President, in our country sexual offences, fraud, people have a
right to either be acquitted or if accused stand trial and in fact serve their time, but that is not the case in our jurisdiction. Now, is this Government the first Government to come up with the idea of improving preliminary enquiry route? No, we are not the first. In the United Kingdom there has been a clear course of effort coming through the 1998 laws to the 2001 and 2003 laws in the pace reforms, and the crime and other package amendments that they produced in the United Kingdom. But right here in Trinidad and Tobago, in 2005, when we dealt with improvements to the law, in the year 2011, when we birthed this Act, in 2014 when we dealt with it, we have had the experience of being in analysis paralysis.

Let us discuss, let us tweak some more, let us manage the situation a little bit better but it results in statistical information of the type that I have just put on to the *Hansard* record: 43,000-plus cases in arrears in the Magistracy and 2,900-odd-plus in the High Court. The definition of insanity is to expect a different result while engaging in the same activity on a continuous basis.

2.30 p.m.

So the Government has come forward today. The Government has said let us come to amending the 2011 law. Why do we say that? We say that because whilst we came to the Parliament in 2017, whilst we engaged in debate in this Senate, whilst I piloted and dealt with law coming down to the month of September as well, in that exercise of considering a different route, because we came to the Parliament with the route that recommended that we allow the Director of Public Prosecutions the authority to say whether you are going to the High Court straight away or you are going to Magistrates’ Court. We did so on the back of the Constitution of the Republic of Trinidad and Tobago, the supreme law so declared by section 2 of the Constitution which allows in section 90, the Director of Public
Prosecutions three aspects of power. One, to commence any prosecution; two, to take over any prosecution and three, to end any prosecution. That was deemed to be a little too novel. People were concerned about the DPP’s involvement.

We went back to the drafting aspects but while we were drafting and consulting in the period since last we were there, we were busy operationalizing the court systems. This Senate participated in the birthing of the Family and Children Division. We participated in the operationalization which is imminent in respect of moving 102,000 cases per year from the Magistracy into traffic violations. We have 146,000 cases every year. We are moving 102,000 of them out. We created the Criminal Division and Traffic Division. We have proclaimed that Criminal Division. We are about to adjust a small aspect of that at the Cabinet level. We have introduced the Criminal Procedure Rules. We have already approved the public defenders division. We are out for advertisements on that. We have increased the judicial capacity by 77 per cent. They are shopping for that arena of Commonwealth judges as we speak. We have introduced plea bargaining, bail-only. We have introduced access to justice provisions. We have been busy operationalizing but very importantly, we birthed new courts for the first time in this country. We appointed criminal Masters and we put in Criminal Procedure Rules. That, therefore, left obvious an alternate route for operationalizing this law.

Whilst we were consulting, we were busy operationalizing and we came forward to the 2011 Act, No. 20 of 2011, the Administration of Justice (Indictable Proceedings) Act. We took what we had learnt from our research and consultation. We applied it into the Act and we come forward with these 30 clauses in this Bill to ask this Senate to consider an improvement to the law in very material areas of closing gaps in the 2011 legislation which we have had the benefit of considering.
So whilst we were developing law, we were busy operationalizing law and we were operationalizing law so we could have an immediate start. So let us dive into the Bill.

This Bill in its 30 clauses—and I have asked, I thought it courteous to provide a consolidated marked-up version of the Bill for every Senator. This is not a usual feature of any Government. We have been consistent, in my tenure as Attorney General, to provide the Parliament with this information and I have provided it for all Senators so that you can read the amendments in the context of the law that we are fixing. Secondly, we have circulated what the flow chart of it in its operation looks like. So that you can understand what the indictable-only route is, the triable either-way route is, the summary charges which accompany look like and how they ought to flow, and we have done this to ensure that Members have a better understanding of how the law is intended to be applied once operationalized. So let us dive quickly in the short time that one has to pilot this Bill into what we are looking at in the amendments.

We propose in clauses 1 and 2 the usual standard. Clause 1 is the short title of the Bill. Clause 2, we are dealing with, an Act means the 2011 Act. Clause 3 is the interpretation section. In the interpretation section we are adding in some very important features that were not present in the 2011 law. They are, firstly, a definition of what is an “arrest warrant”. Throughout the 2011 law, there was confusion between search warranting and arrest warranting and we thought it prudent to define arrest warrants. We have dealt with the understanding of what “documentary exhibit” is. Very importantly adding in:

—photographic evidence—“computer printout or other document;”

Why?
Because we intend to treat with what would otherwise be massive numbers of things for the police to manage or the courts to manage by way of documentary evidence for photographs, so we can return them, we can dispose of them but we can catalogue them without having—as a question in the Parliament earlier had—hundreds of motor vehicles impounded for years rotting, when you simply need a photograph so certified as the evidence of the thing which was stolen or managed in a particular way. Very importantly we have identified what an “either-way offence” is and we have done that by reference to obviously, an offence which is triable either indictably or summarily and we have also referenced it to a schedule of offences so that we can know what the either-way route is.

In the 2011 law, there was a little bit of confusion at the point of start. In the 2011 law, we ought to have gone a little bit further by saying what happens at the point of first contact with the court. When you have that first contact, what about the nature of the matters? For the non-lawyers listening, when you are charged, you may have an indictable offence, meaning it is a serious offence, it must be dealt with by the High Court. You can have a summary offence which can be treated exclusively by a Magistrate. Then you have a category or specie of offences called a triable either-way. It can either be indictable, it can either be summary, in which case you have to decide which court are you going to, and in this law we have proposed that the Director of Public Prosecutions, the prosecutor, it may include a police prosecutor, has the election to say which way you are going to. Obviously, the DPP has his constitutional intervention powers in section 90 of the Constitution and he can obviously have an input into that. “Indictable offence” we have defined. We have included a definition for an “interpreter”, for a “Keeper”. We have harmonized the “Keeper” meaning with three particular laws: the
Summary Courts Act, the Indictable Offences (Committal Proceedings) Act, the Extradition (Commonwealth and Foreign Territories) Act, Chap. 12:04.

We have added in a prosecutor because we have taken note of the vigour of the current Commissioner of Police. He having accepted that prosecutorial reform in the police is required. He having announced, quite commendably, a view which the Government shares and we are grateful that the police prosecution route has to be amplified and bettered. We have included as a prosecutor, not only the DPP’s department or lawyers but prosecutors in the meaning to be ascribed at the Police Service Act, Chap. 15:01 where a police officer has the power to prosecute a person who commits any offence.

And I am very pleased to observe that the Commissioner of Police has announced a particular marriage of divisions under a financial investigation division which is a marriage of the Anti-Corruption Investigation Bureau, the Fraud Squad, the Cybercrime Unit and the Financial Investigation Branch as financial crimes lay themselves as a solution to the scourge of criminality. Why? The Government’s agenda shared obviously by the rest of the thinking world is, follow the money. We do not need Al Capone’s experience to tell us that I can take you down for tax evasion if I cannot catch you for murder, and this Senate has participated in umpteen amendments to the money laundering, proceeds of crime and income tax amendments to allow that “follow the money”, as civil asset forfeiture, explain your wealth and registration of title and trust legislation will come to this Parliament almost imminently. [Desk thumping] We go further, we define “search warrant”.

Let us jump straight to clause 4 of the Bill which treats with section 5 of the Act. We have very importantly adjusted the concept of “believing” to “suspecting”
and we say:

A Master who is satisfied by proof on oath that there is reasonable 
ground for suspecting—as opposed to believing—that there is any in 
building, ship, vessel, box, receptacle, computer or electronic device... — anything, then you can have a warrant, you can search and seize, and then you can have it reported to a Master. This amendment to section 5, via clause 4, has some dynamite provisions in it. Number one, you store data in computers. A computer is a device including your phone. Much of the warranting evidence that we have managed to secure which is evidence of criminality, we have found on computer bases and therefore, it is necessary to speak in a positive sense so that we can capture the widest possible range of evidence.

Importantly, when you search and seize, you seize it and report it to a Master issuing the warrant or another Master and importantly:

“Upon the execution of a search warrant, a constable shall forthwith complete a report describing anything seized, whether specified in the search warrant or not, and shall—

(a) forthwith serve a copy...on the owner or occupier...

(b) within fourteen days—

(i) deliver a copy...to the Master...

(ii) file the report in the High Court.”

And then we go further on to say that the Commissioner of Police can organize the safekeeping of that evidence, either in his own custody or someone authorized by him to receive it. What does that mean? We can lawfully provide for the FBI or certain computer-related agencies that can scrub or any agency authorized by the Commissioner of Police to have custody of evidence in the chain of command

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procedure so that we can data scrub, capture and manipulate information. The prosecution and the investigators at the TTPS have the ability to do that so that we can better track criminal activity.

The provisions of providing notice and filing in the court obviously are an aid to proportionality and to making sure there is a right to fair hearing and due process balancing in the equation. That was absent in the 2011 law. We have also allowed, notwithstanding any other provisions, that a police photographer may take photographs of things served in the presence of a Justice of the Peace. We have formalized the forms for the usage of that. We have provided for the mechanisms for the restoration of property in certain circumstances. We have catered for all of the scenarios. What happens if the person who owns the thing that they seized refuses to sign, then we provide for the certification of evidence where there is an involuntary act on the part of the accused or person who is suspected. We have gone through the methodology of making sure that each step of the process has been identified in the parent law in the manner that we have set out, the amendments to section 5, via clause 4 demonstrate.

We have gone next to clause 5 in section 6 of the Act. We seek to clarify the issues of warranting, whether search warranting or arrest warranting. We have been very specific in stating the type of warrant that we are looking for. In this case here, it is the arrest warrant that we are looking for. The amendments there, of course, are just to clarify the law and make sure that there is clarity in process.

Clause 6 of the Bill amends section 7 of the Act in treating with the summons aspects. We have, again, formulated the matter of what the summons should look like in a scheduled form as Form 5 in Schedule 1 demonstrates. But we have said very importantly in the amendment that clause 7 proposes to section
8, we are saying:

“In determining whether to issue an arrest warrant, a Master shall consider—

(a) the nature and seriousness of the offence;

(b) the likelihood of the accused evading service of a summons;

(c) the character, antecedents, associations and social ties of the accused; and

(d) any other factor which appears to be relevant.”

We have thought it prudent to put forward the conditionalities so that the court is guided on the standards and weight of its decisions and how it gets to a decision in the manner that we think is most prudent from a proportional perspective.

We have gone further to, of course, provide for the Master managing in circumstances where you are brought before a Magistrate. So let me stick a pin for a moment. In this formula of removal of preliminary enquiries, the process flow looks as follows. You come before the court by a summons, by an arrest, by a complaint or an indictment, the law contemplates that you really come before a Master of the High Court, a Criminal Master. That Criminal Master is somebody who will conduct an initial hearing within the parameters of section 11 of the Act, who will do a sufficiency hearing thereafter, who will then consider whether you have a case to answer or not, who will send the matter by way of a scheduling order to the High Court, giving the information to the DPP, to the accused, etcetera, who may decide that you do not have sufficient evidence and may dismiss it, who will inform the DPP who has a second bite at the cherry. He may send it, the Master, to the Magistrate; the Magistrate will hear summary matters or in certain circumstances, deal with issues of bail, et cetera. So what we have sought to do is to use the existing system of law.
Criminal Masters which we have—and more of whom are coming on board—Magistrates who are in operation, so that they now start dealing with the summary matters and get on with justice. Magistrates who are now without the encumbrance of 102,000 traffic offences which they do not need to hear, they rather spend their time on the 43,000-odd cases left for them, remove that 102,000 cases per annum from their docket in an environment where we have added computerization, case management, judicial research officers, judicial officers as assistance into the scenario. All of those matters having been approved by the Cabinet right now and out for hire they are. In other words then, all of this is going on right now. In the same way that we were able to operationalize the criminal division of the Children Court in two brand-new courts which are up and running, it is the same way that we effectively intend to operationalize this law.

If I go to clause 8 and I look to the insertion of a new section 8A, here is where we are disaggregating now indictable, triable either-way and offences which are associated with either pack. Here in new section 8A, as we deal with that insertion, we are dealing with the indictable-only route. In new subsection (2), we treat with the either-way category. In new subsection (3), we are dealing with summary offences which ought to follow the indictable offences and then in new subsection (4) with the either-way offences and summary offences. Effectively put quite simply, indictable goes to the High Court; summary, Magistrates’ Court. If you have mixed charges, indictable, something that is either-way or something that is summary, all go upstairs to the High Court. If they are purely summary matters, they stay downstairs. If something has gone indictably, the DPP, in his fulmination, may consider that that ought not to be indictable, remove it from the High Court, send it to the Summary Court. So we have managed the point of first
contact, Magistrate or Master, DPP or Registrar, all of these are now set out in prescriptive fashion in the Bill before us and in the amended Act as we hope this Senate will consider appropriate to pass.

We go next to the routeing in clause 9. Clause 9, of course, treats with the Master treating with bail in the circumstances set out there: the Master, the warranting, the endorsement on the bail. You can issue a warrant at the time and set bail in advance and it is so endorsed on to the matter.

Clause 10 amends section 10 of the Act. We have harmonized the utilization of the expression “Clerk of the Peace”. Remember, as a Senate, as a Parliament, we removed untrained persons who were not attorneys-at-law from occupying the position of Clerks of the Peace and we have instead put a Magistracy, Registrar and Clerk of the Peace which is a judicially-held position as a qualified attorney-at-law. The intended date for proclamation of that is supposed to be the 1st of February. We have received communication from the Judiciary asking us to adjust that timetable and we have agreed to present that to Cabinet. It will be adjusted to the 31st of March because the advertisements are out and they need a little bit more time to complete the interview process to fill those positions. I might add that the existing Clerks of the Peace are not going to be put out on their ears. They continue to function, having provided yeoman service to Trinidad and Tobago, in a slightly different capacity with no derogation of terms and conditions in their respective dockets.

Clause 11, we cause amendments to the initial hearing which is an important anchor point of the legislation, and here is where we tidy up the trial on indictment and summary offences routes. We contemplate that we have particulars for the scheduling of the orders as we make an amendment to subsection (h) and we say
specifically what it is the police shall submit to the Director of Public Prosecutions prescriptively in the new (iia).

We then in clause 12 cause an amendment to section 12 of the Act. We are massaging here the either-way and summary routes in the manner that we suggest in that.

Clause 13, we have moved the time frame from five to 10 days for the notice of alibi and we have added in a procedural safeguard in the new subsection (3A) as to how the Director of Public Prosecutions shall consider the alibi prescriptions that we add into there.

Clause 14 amends section 15 of the Act. We allow very importantly a new subsection (3). In that new subsection (3), we are allowing for the Master to effectively manage the irregularities in process as opposed to rely upon the Criminal Procedure Rules themselves or just the inherent jurisdiction of the court. We are allowing for it to be expressed in a new subsection (3) of section 15.

We go next to clause 15 which treats with section 18 of the Act. We have, again, removed “Commissioner of Prisons”, used the expression the “Keeper” because that is consistent with three other pieces of law as we have now come to manage that titling of the position of Keeper as against Commissioner of Prisons.

Clause 16 causes an amendment to section 19 of the Act. This is Part III under the rubric Sufficiency Hearing and we have specifically managed to treat with the delay factors that no delay in the new subsection (5A) should affect the scheduling order in the circumstances that we have provided there.

Clause 17 amends section 20 of the Act. Here it is we are adding a better proportional route. We are making sure that it is not only the prosecution that has that one-sided approach in the sufficiency hearing to allow for the treatment of oral
submissions, we have actually balanced now both the prosecutor and the defence because it was not appropriately addressed or proportional in that regard.

Clause 18 treats with the conditions which are set forward for a witness statement to be filed by the prosecutor and we have put in the safeguards in respect of children: those whom are under 14 years and those who are above 18 years, and we have made it consistent with the Children Act, in particular section 54 of the Children Act. We have added for the safeguards for the interpreter, the person who is incapable of hearing, the safeguards for certification by the witnesses to those events in the manner that we have set out there.

Clause 19 treats with the Master on application of the prosecutor or the accused permitting either of them to file further evidence. Again, we thought that this was a better procedural safeguard to allow for the balance between prosecutor and defence. Both should have the equal access to the position.

Clause 20 is where we treat with the review of evidence submitted by the prosecutor and here you will note that we are treating with discharge or being put on trial or making any other order but it is tied to sections 24 and 25, and in section 24, when we come up to clause 21, very importantly, we are removing the reference to a prima facie case. No longer will the Master be satisfied that there is a prima facie case against the accused and of course, we have deleted the definition of “prima facie” because it was something flowing from the common law position in the *R v Galbraith* decision in particular, the 1981 case which the lawyers will be well familiar with. We have reverted to sufficiency of evidence as section 23 of the existing law provides and as the 2014 law contemplated in the committal proceedings route.

In section 25 by clause 22, we again harmonize the removal of the prima
facie element back to sufficiency of evidence which is the current law.

In clause 26, we are seeing amendments—sorry. In clause 23, we are seeing amendments to the Act by the insertion of a new section 26A where we are treating with what happens when you have lost documents, originals cannot be found that we could go—

**Madam President:** Attorney General, you have five more minutes.

**Hon. F. Al-Rawi:** Thank you, Madam President—where we can have the return to the Registrar’s information and certification of information. That sees the addition of a new 26A, 26B, 26C in the circumstances set out. 26B, we treat with the fresh evidence approach; 26C, where the DPP may go summarily and the process which the DPP ought to exercise in getting there.

Section 27 is amended by clause 24 and this is the delay provision. In this particular provision, we are saying that once the DPP has reached the stage where he has received the order to put on trial after the scheduling order, the DPP has 12 months—this is the existing law as it sets out—to proceed unless he applies to extend the time, of course, which he is permitted, and if after 12 months, that does not happen, then, of course, the matter is put out of the court.

But what we have done, very importantly in subsection (3), we have amended the circumstances where you would not have a sufficiency hearing. The language is put in the inverse sense. It was set that way in 2011:

“Where the”—DPP—“prefers and files an indictment, a sufficiency hearing shall only be conducted in the following instances, on the request of the”—DPP.

In other words then, if the DPP does not request the sufficiency hearing, it goes automatically to indictment. Importantly, I would like you to observe that we are
adding in what is the existing law in section 23 of Chap. 12:01:

“where the accused is charged with an offence involving serious or complex fraud;”

Importantly:

“where a Magistrate was unable to complete a preliminary enquiry before the coming into force of this Act, or a Master is unable to complete…

(i) physical or mental infirmity;
(ii) resignation;
(iii) retirement;
(iv) death; or
(v) inability for any other compelling reason…”

This flows out of the interpretation summons which I took to the court in the circumstances of the Marcia Ayers-Caesar matter where the hon. Madam Justice Gobin held that it was entirely proper and sensible for the Attorney General to have done that and her observation in that case was quite important. You cannot send the matter before another Judge, another Magistrate, it would have to go de novo, it would have to start again, all anew, but importantly this allows the DPP to skip past that process. Serious fraud, other disability, wasted time has happened, let us go directly and have you answer the charge in a fair environment with due process applied.

Madam President, we have very important amendments by clause 25 which treat with the circumstances of professing guilt. That is to be found in clause 26 as well.

I recommend that hon. Senators consume what these clauses are doing. We are allowing for a simplification of the process where somebody, because of,
perhaps, good plea bargaining legislation, better prosecutorial environment, we now manage the process of an admission of guilt and how that is to be taken forward to ending the process. Madam President, that is to be found at clause 27, 28, et cetera. Clause 28, we are dealing with how the accused gives notice. We are putting in better safeguards and then we amend the Schedules.

Forty-five minutes is nowhere near enough time to do justice to the kind of law that we are bringing here. I urge hon. Senators to put forward their suggestions during the course of debate. I do give the undertaking that I will be giving a very fulsome reply on the operationalization and other issues that hon. Senators may raise. Suffice it to say, this law is proportionate in the Government’s view. It is a material improvement on the 2011 law and it is something which I recommend, and in those circumstances, I beg to move. [Desk thumping]

Question proposed.

3.00 p.m.

Sen. Gerald Ramdeen: Good afternoon, Madam President, and I stand here to contribute to a Bill to amend the Administration of Justice (Indictable Proceedings) Act, 2011 (Act No. 20 of 2011). Madam President, the Attorney General, in piloting this Bill, has given us in this Senate an entire overview of the history of preliminary enquiries, and where we have come some 400-plus years ago, to where we are today. And I do not think that there is anyone in Trinidad and Tobago today that would argue with the proposition that the time has come—eight years on—that we should put an end to this issue of preliminary enquiries.

The Attorney General has also given us a complete overview of the position that the Government has taken with respect to their fight against crime and criminality. What the Attorney General, to quote him, says: “the most important
issue that faces our country today”. And no one can argue with that. But the Attorney General was very correct, Madam President. Where we may perhaps part ways in relation to this debate is the operationalization of this piece of legislation. The Attorney General has given us what we have come to be—a very familiar shopping list of all of the legislation that the Government has passed, what we are supposed to expect as a society from that legislation.

But what I want to delve into, Madam President, is really where we are at now, because as a society, we have heard about the courts that have opened, we have heard about the legislation that has been passed. We have now been faced with this piece of legislation, which from where I sit, Madam President, is clearly a work in progress.

And I want to start this debate this afternoon on behalf of the Opposition by first of all indicating that I want to thank in the Opposition, since this piece of legislation was laid in the other place on the 9th of November, 2018, the Opposition has met on a number of occasions, led by the Leader of the Opposition, with a number of interest groups and a number of persons who are affected by the operationalization of this legislation. And what I will do, Madam President, is in my contribution, I want to highlight certain aspects of the Bill that will affect certain categories of persons, and I know that the Attorney General will take on board what we are saying.

Just for completeness, Madam President, the Opposition and a group that has been nominated by the Leader of the Opposition has met, and let me list it out for you: attorneys-at-law, members of the Law Association, Justices of the Peace, persons who are before the court now who are to be affected by this legislation, Magistrates and members of the public. And since the 9th of November, we have
collated that information that will form the basis of the contribution that the Opposition will give here today in relation to how we treat with this particular piece of legislation.

And why we have done that, Madam President, is because this legislation, since 2011, was piloted, 2011, 2015, 2018, and 2019, to bring substantial change to the criminal justice system. If it works, Trinidad and Tobago will clearly benefit. If it does not, the consequences can be disastrous and that is why we must be careful about how we deal with these changes. Nobody here can give the Attorney General the undertaking that nobody here does not want this legislation to work. [Desk thumping] We all want it to work because once it works it does not matter who brings it. This is a work product of two different administrations and we have come here today to try and put forward what we consider to be the direction that we should be moving in.

But, Madam President, the Attorney General did indicate statistically, we do not have the benefit of all the statistics, some of them I have taken down. But statistically, the Attorney General has given us an overview of what the backlog is in the criminal justice system as we speak presently. Let me take those statistics, Madam President, and present a picture to the country, so that people can understand, those that are here can understand, where we are in relation to this thing called the criminal justice system. The Attorney General rightfully made reference to a matter that the Attorney General brought to the High Court in The Attorney General of Trinidad and Tobago—in the Interpretation Summons—v Busby Earle-Caddle, Maria, Her Worship Chief Magistrate (Ag.), Director of Public Prosecution and involved in that was the Law Association; The Criminal Bar Association; Ramchand; Lutchmedial; Brian Seepersad; Desron, Nero; and

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two other persons.

Madam President, I want to set the background of this conversation that we are having by reading into the record of the *Hansard* the position that the applicant in this particular case, Akili Charles, found himself in, as a result of what we are treating with here today, which is this system of preliminary enquiries. And this is what the Judge had to say, Madam President, and I quote:

“In the case of Mr. Charles the dire consequences of his matter being rendered abortive have been disclosed in his affidavit.”

Listen to what this citizen of Trinidad and Tobago who is presumed innocent for what it is worth under the Constitution had to go through.

“He was charged for murder on December 5, 2010. He has been in custody since that date at the Royal Jail in Port of Spain. The conditions there”—that is in the jail—“were found by this Court almost one decade ago to be inhumane.”

Listen to this part, Madam President.

“There is no reason to believe that there has been any improvement in the conditions.”

For a decade, the High Court declared those conditions at the Port of Spain prison to be unconstitutional, cruel and inhumane and they remain so as we speak in 2019.

“The hearing of his Preliminary Inquiry finally began in January 2012 and spanned 5 years up until April 3, 2017 about two weeks before the elevation of the Chief Magistrate. There was no indication on that date that she would not be available thereafter. More than sixty witness statements had been received and several witnesses have been cross-examined on their
statements. Mr. Charles paid one hundred and fifty thousand dollars for his legal representation over the period which he cannot recover. He will have to pay for representation for a new hearing. He has no means of raising further funds for his defence. That he should have to start over is oppressive.”

Now, Madam President, I want to just put this into the context of the Bill that we are being asked to debate today and the Attorney General made specific reference to section 27, which I will come back to. But that is the section that the Attorney General made reference to is designed to, perhaps, cure this situation that occurred that Mr. Charles found himself in.

But, Madam President, with all that has been said by the Attorney General, this is what a High Court Judge has to say about the administration of justice in Trinidad and Tobago today. And I quote:

“What has happened here is a travesty of Justice. The stain on the administration of justice will remain indelible long after the cries and protests of justifiably angry suffering prisoners have gone quiet and long after the families of victims who, too, have been waiting for justice to be done, resign themselves to further delay. It may go some small way to alleviating the pain and the injustice of this on all sides if those responsible are held to account.”

I want to come back to that.

“Almost two years on, since the Chief Magistrate’s elevation the initial shock and disbelief that this could have happened has dulled. But the ill effect…”

Listen to this, Madam President:

“…on the public confidence in the administration of justice and the
institutions which allowed this to happen whether through lack of due diligence as suggested by the Law Association, or recklessness will persist. So far the financial cost to the taxpayer is limited to the cost of litigation in this and other cases which have been filed as a result of this colossal misstep.”

You see, Madam President, as legislators we look at the Bill, we look at the provisions, we can tell whether they are proportionate, whether they pass Constitutional threshold. But what we must understand is that there is a real-life effect of this legislation. This is legislation that affects the lives of thousands of people and has the potential to cause a continuing effect on the lives of thousands of people.

And what I want to ask myself today in this debate, Madam President, is this. After the courts have been built, the rules have been passed, the legislation has been amended to increase judicial capacity—we are told up to 77 per cent by the Attorney General—from 35 Judges to 64, after the children’s court has been opened, what is the state that we find ourselves in in terms of being ready to operationalize this piece of legislation? The most important body, the most important institution, this is responsible for the operationalization of this piece of legislation by the 30 clauses that we are asked to amend today of the 2007 law, is the office of the Director of Public Prosecutions.

Coincidentally, over the past week, we have had statements by the Director of Public Prosecutions before a Joint Select Committee of Parliament and we have heard what that position is. But, Madam President, there is a reality behind this legislation. This legislation when proclaimed gives a limitation period to the Director of Public Prosecutions to file an indictment in certain cases, save and
except Schedule 6. How is the Director of Public Prosecutions—or let me put it in a question rhetorically: Is the office of Director of Public Prosecutions ready to implement this piece to legislation that we are asked by these 30 clauses today to amend? The 2011 law?

Well, Madam President, let me put in context now, after we have heard about the judicial system and judicial capacity and all to these things. Let me tell you what the position is at the Director of Public Prosecutions’ office. And if we do not get this right, if we continue with the DPP’s office in the position that it is in today, I want to say, and I make no apologies for saying it, we are going to cause more harm than good to the public interest in Trinidad and Tobago. [Desk thumping]

Madam President, let me read into the record what the position is at the office of the Director of Public Prosecutions. At present there are different categories as we all know in relation to the staffing. There is the Deputy Director of Public Prosecutions, Assistant Director, Senior State Counsel, State Counsel III, State Counsel II and State Counsel I. These are the people who are directly mandated by these amendments to carry out—and as to use the words of the Attorney General—“to operationalize this legislation” that we are being asked to amend today. Are we ready? Let us judge for ourselves. Let Trinidad and Tobago judge.

The total positions of Deputy DPP are three. “How much” are there filled? One. Assistant Director of Public Prosecutions, six. How many are filled? Two. Four are vacant. Senior State Counsel; number of positions? Fifteen. Fifteen Senior State Counsels. How many are filled? Two; 13 vacant. State Counsel III; how many positions on the establishment? Twenty-five. How many are filled? Thirteen.
How many are vacant? Twelve. But listen to this one, Madam President. State Counsel II, positions 46. Positions filled, eight. Number vacant, 38. State Counsel I, 33, positions filled 28, number vacant five.

So at the end of the day the equation is this: On the establishment of the office of the DPP that has to operationalize this—has to take the evidence at the sufficiency hearing and determine whether an indictment should be filed; this is the office that has the responsibility to do that—there are 128 positions on the establishment; 54 are filled and 74 are vacant.

Madam President, if we pass this legislation—which everybody who wants to solve crime, who wants a better Trinidad and Tobago, who wants safety and security for their children and their family and for the society that we live in, village, town wherever—if we pass this legislation, what is going to be the position where we set a limitation period for the Office of the Director of Public Prosecutions under section 27 to be able to file an indictment in a year in non-Schedule 6 offences and the DPP?—this is the position that the office finds itself in.

Madam President, we have to ensure that the main wheel that has to turn the wheel of justice in relation to what we are doing here is resourced. It makes no sense opening the children’s court, putting systems in place at the prison, all of these things that the Attorney General has talked about; 100,000 cases out of the Magistrates’ Court; 43,000 in the High Court. How is this going to effectively bring justice to the victims, ensure the rights of the accused are secured?—when at the end of the day the prosecutors—we have a new definition for prosecutors, the prosecuting authority of Trinidad and Tobago, that vests in the Office of the Director of Public Prosecutions is starved of resources. How could that be right?
What is going to be the result of the passage of this legislation in relation to that? So that is the position there.

Now, Attorney General, through you, Madam President, to the Attorney General. It does not fall within your Ministry and I understand that. But the Attorney General has come to the Parliament and has told us the Office of the Director of Public Prosecutions in San Fernando, they found accommodation for them there. The Office for the Director of Public Prosecutions in Tobago, they have found accommodation for him there. And now for the Office of the Director of Public Prosecutions in Port of Spain, they have found accommodation for them there.

Madam President, with respect to the Office of the Director of Public Prosecutions in San Fernando, since October 24, 2017, since October 24, 2017, that is almost 18 months, you know what the position has been, Madam President? A place has been found. It has been in this place called “The Property and Real Estate Services Division” and “the Commissioner of Valuations” since that date to now. So the office of the DPP in San Fernando cannot get accommodation because this is tied up somewhere in this place called “The Property and Real Estate Services Division” for more than 18 months. And we want the DPP to do all that he has to do under this piece of legislation. Is he going to do it without a proper office? Is he going to do it without staff? Do you not think that the Government and the Cabinet should devote the resources to the Office of the Director of Public Prosecutions to ensure that that body, which is Constitutionally mandated to carry out what is given to them to do under this piece of legislation, is properly resourced? That should be our number-one priority. [Desk thumping]

Madam President, I just want to end this part of it by saying, the
Government has tried, administration after administration. We understand what the problems are at the Service Commission. Things take long. So administration after administration, they have gone and gotten contract workers to be able to carry out the positions. Well, Madam President, you know what the position of contract workers is? There are 30 positions for contract workers at the Office of the Director of Public Prosecutions. Out of the 30, nine have been filled—

**Hon. Senator:** Oh God.

**Sen. G. Ramdeen:** So, Madam President, it does not paint a very good picture for the people of Trinidad and Tobago. And I want to leave that aspect of it there for a little while because it is very disturbing that the Government’s position is that crime is the number-one priority for the Government. Resources are being devoted, and let me just get to that aspect of it, Madam President.

In the budget documents that we were provided with with respect to this financial year. Madam President, you know what the resources that have been devoted to the judiciary are for this year? Four hundred and sixteen million dollars, $416 million, and this is the institution that is really the driving force of this piece of legislation. So we have had—the Attorney General has told us they have appointed five Masters. That has been done in the last two weeks. No problem, Madam President. I want to put my position on record, because the last time, a year and a half ago, that I put my position on record with respect to people being appointed to particular places, it “rell fell apart” after that.

So, I want to place my concern, Madam President, on this. This is an important piece of legislation. The Masters, the Criminal Masters to be appointed to operationalize this piece of legislation, they perform perhaps the most critical function to get it right and I want to be assured, through you, Madam President, to
the Attorney General, that the persons who are being appointed to fill these positions are qualified to operationalize this piece of legislation. [*Desk thumping*]

I want to say at the outset, Madam President, I am not going to call any names. I am not going to make any—cast any aspersions on anybody. I know who the five persons who were appointed to be Masters within the last 14 days, what the position is. And I can say with the little experience that I have that I am not satisfied that the persons who are appointed are able, from my little knowledge, my little experience, to be able to carry out these functions, I want to leave it there—*Desk thumping*—because, Madam President—.

**Madam President:** Sen. Ramdeen, I just want to caution you about the relevant Standing Order, and you know the Standing Order. So I am cautioning you. I would advise you to leave it there.

**Sen. G. Ramdeen:** So that is the position with respect to that. But, Madam President, the position is this. Throughout these meetings that we have had with respect to finding out, well what is the position with the administration of justice in relation to all that the Attorney General has told us about building out the courts, the children’s courts, putting in place all of these things that are supposed to operationalize this piece of legislation. So, the position is this. There is a particular provision under this legislation—a very important provision—that deals with these new provisions that the Attorney General is asking us to amend the principal legislation to deal with statements by—let me get the actual section. It is the amendment to section 21(4A) and the amendments to section 21(3A) and 21(4D) and (a). These are all the provisions, Madam President, that deal with the taking of the statements. And there is a specific provision that very commendably the Attorney General has put in with respect to persons who have to get their
statements—these are the witness statements—translated, and how that process is to take place, and who is to do it and how it is to be certified. So we want this to work.

Section 21 as amended says:

“Where”—a—“statement is made by a person who does not speak English…”

This is the amendment, Madam President that we are asked to put in.

“…his statement shall be taken through an interpreter and shall be—

(i) recorded on his behalf, read aloud and translated to him in English before he signs it or makes his mark thereon; and

(ii) accompanied by a declaration that states that it has been read”—out—

“aloud and translated to him and he has signed or made his mark thereon...”

Very, very good provision. Very good improvement on the law.

Will it work? Well let us find out. Tuesday December 11, 2018, Newsday article written by Laurel Williams, Headlined, “Translators want their $”—money.

“Translators and interpreters are owed more than $200,000 by state agencies for services done and they want their payments.

With days to go before Christmas, the workers said they do not have any money to celebrate the holiday or buy presents for their relatives. Saying they ‘dutifully’ spent long hours assisting police and the judiciary with investigations, they complained that they are broke.

‘When we ask for our money, they keep saying funds were not released. We are spinning top in mud here. We are working but we are not getting paid, yet we continue to work,’…
‘Sometimes in one day, we work a 12-hour shift. We have to go to different courts and we have to pay our money to get to different locations. It is hurting to know we already worked and cannot get pay. All we are asking for is our money.’”

Madam President, and I do not go into what the Judiciary says is the response and all of that. But, Madam President, if we are passing legislation for which there is a critical role to be played by interpreters and that is at the heart of one of the amendments that we are being asked to provide for here in 2011 legislation, and nobody can stand here and say it is not a provision that is in the best interest of the criminal justice system, how can we find ourselves in a position where the public body that is responsible for paying these people last year spent $404 million and cannot get $200,000 to pay these people—the interpreters? Do we expect it will work if that happens, Madam President? Well the answer is no.

Let me go to another aspect of it, and, Madam President, this is not us saying this to criticize, you know. This is for us saying this so that it will get it right so that when the legislation is passed we would not find ourselves in this position.

[Desk thumping] Can you imagine what would be the position, Madam President, where in some serious offence, there is a witness who cannot speak English and when they go to give their witness statement to the police the translators say, “We are not prepared to do it, because we have not been paid.” What is going to happen to the administration of justice there to the accused and to the victim?

So, I indicated at the outset, Madam President, that one of the groups that we spoke to are the Justices of the Peace. Well, they have an extremely important role to play under this legislation as well because six of the amendments that we are asked to pass today deal with—the Justices of the Peace are the persons who have
to certify these statements that are being given by the police officers under this new regime where witness statements are the order of the day.

Madam President, I do not know how many of us know, and I want to say this through you to the Attorney General. Madam President, do you know, I ask rhetorically, what the stipend of a Justice of the Peace is in 2019 today? The same people—last night I spoke to one from San Juan, and he told me, for the day already, five police officers came to him to authenticate statements. These are people who are paid a stipend, they are crucial to the operationalization of this piece of legislation with these amendments. They are the persons who are charged with the responsibility of ensuring there is fairness to the accused when the police officer brings someone there to give a statement under this piece of legislation. Madam President, the stipend for a Justice of the Peace in 2019 is $1,000 a month.

This is a person who is on call 24 hours for the day, you know. They go by their house at 10 and 11 o’clock in the night when they pick up an accused, or an accused “decide he ready” to give a statement at some wee hour of the morning, knocking on their door. And Justices of the Peace, who are critical just like the prosecutors in this piece of legislation, their stipend is $1,000 a month. I mean, are we really serious? Is it because nobody—they have an association, Justice of the Peace association. Is it that nobody communicates with these people to understand what their plight is?

Today, Madam President, through you, I want to ask the Attorney General. Attorney General, it falls under your Ministry. Please look into the plight of the Justices of the Peace. They perform a critical role and a critical function under this piece of legislation, and simply for being on call 24 hours of the day. Madam President, do you know that when we did our consultation in this matter that two
Justices of the Peace in this country have been murdered? Two Justices of the Peace have been murdered and there is every—all the evidence points to the fact that it had to do with them giving evidence in matters before the court. They put their lives on the line every day, Madam President, when they give a statement. You know why? It is because of their statement, it is because of their authentication that justice could be done and fairness is presumed in statements that they have given. That is the role that they play, and what happens is that they become targets because if you get rid of them, you virtually get rid of the statements. And that has happened over and over.

And therefore Attorney General, in addition to the stipend, let us pay a little bit of respect to the Justices of the Peace and at least provide them with a little security when the day comes. They only do not risk their own lives, you know. They risk the lives of their families as well. So to put that on the record.

3.30 p.m.

Now, Madam President, the Attorney General made a very, very important intervention with respect to these amendments, and I want to get to that—which are the provisions the Attorney General talks about that deal with the storage and the manner in which evidence, in whatever form as defined by this Bill, is to be dealt with. The section that is to be amended under the current law is section 5, and there is a procedural code here that sets out what the position is.

Now, for all intents and purposes, what the Attorney General has proposed is what the common law is at present. There is nothing wrong with that. That is not a criticism. It is good that we have put it into statute. There are some other additions that the Attorney General has added in; it is very commendable. But this is what I want to get at, Madam President. If the law is presently by virtue of the common
law, what has been put into statute here today in the amendments that we are being asked to approve—well, why is it that the police officers who have to operationalize this legislation under section 5, the Attorney General—I do not want to repeat it—has gone through all of the different—there are eight new subsections that the Attorney General has introduced. Well, Madam President, let me just put on record what the position is with this. You see this, Madam President, that the Attorney General has introduced here today, at present, no—I can say so, or, let me put it this way. The police service, more often than not, does not do what this legislation is asking them to do now even though it is the law, and let me tell you what the liability of the State is in relation to that, Madam President, and the Attorney General will know very clear. I want to go back to a question that I asked to the Minister of Energy and Energy Industries.

Madam President, I have a document here from the First Engineering Battalion, Defence Force Headquarters, dated the 5\textsuperscript{th} of December, 2018, and you know what this relates to Madam President? This is a document that sets out all of the equipment that the defence force has that they have seized in relation to criminal matters.

\textbf{Sen. Simonette:} Madam President, I do apologize. My learned friend well knows that what he is referring to—\textit{[Interruption]}—Standing Order 46(1). Madam President, my learned friend is referring to a matter that is sub judice, I do believe.

\textbf{Madam President:} Sen. Ramdeen, is that correct?

\textbf{Sen. G. Ramdeen:} I am referring to—this is not a court document.

\textbf{Madam President:} Is what you are reading—is it related to a court matter?

\textbf{Sen. G. Ramdeen:} No, it is not.

\textbf{Madam President:} Okay.
Sen. G. Ramdeen: This is a list of all of the material that is in the custody of the defence force, pursuant to what they are being asked to do here under this amendment to section 5. Now, Madam President, the position is this. If the police are not doing it now when this is the law, what is going to make it different that they are going to do it now when you put it into statute? What is going to make the difference? When you put these obligations on the police to provide a report, take pictures, present the material to the Commissioner of Police, the first thing one has to ask: Well, where is the Commissioner of Police going to store all of this? Where is the Commissioner of Police going to store all this material? And what is going to be the consequence?

The one thing that I found missing, Madam President, is: What is going to be the consequence of an officer breaching any one of these provisions?—because you have all the duties that they have but there is no sanction when none of this is done. And what is not sub judice is this. What is not sub judice is that there are decisions of the court that have shown—not appeal—that have decided this is costing the taxpayers of this country hundreds of millions of dollars; [Desk thumping] hundreds of millions of dollars. [Desk thumping]

So, I hope that something is done in relation to operationalizing this piece of legislation that would somehow make the police obey the law and do what they have to do under the piece of legislation. So that is that. Madam President—

Madam President: Sen. Ramdeen, you have five more minutes.

Sen. G. Ramdeen: Thank you, Madam President. Madam President, two sittings ago, a written question was answered in this Parliament. I think it was the Attorney General who had answered the question. The Attorney General can tell me if I am wrong. But we had asked—I had asked: What is the time that it takes the Director
of Public Prosecutions to file an indictment in a capital matter at present from the
time the documents are delivered to his office? And the Attorney General
answered that question—and he is nodding—and the answer was six years; six
years. It takes the Director of Public Prosecutions six years to file an indictment in
a capital matter, for a man who is presumed innocent under the Constitution, and
we are passing legislation today. And I say so respectfully, Madam President: How
is that time going to be cut down when we pass this legislation?

This is dealing with one aspect of the backlog, which is the position from
charge to committal. What is going to happen from the position of committal to
filing the indictment when what we are doing today—and, perhaps, I want to say
so, Attorney General—Madam President, through you, to the Attorney General—is
this. When you are familiar with the criminal justice system, it is so ironic that in
capital matters the period is six years. In non-capital matters it is not less you
know, it is actually more.

So you have cases the Attorney General referred to of incest, rape, sexual
offences. At present, the period to file an indictment for those is even longer than
six years. What I am saying, Madam President, is that if we are going to fix the
system, let us do it properly. Let us do it where we can see results. Let us not do it
because we can come here and say we passed legislation and it may work. Let us
ensure that when we pass legislation, it will work. [Desk thumping]

And, Madam President, as we speak, the system is broken. As we speak, the
Hall of Justice, Madam President, where people look to—or what I should say
people used to look to as a light, an institution, where they can go and enforce their
rights, is no longer that today, and the difficulty that we have is while we are
spreading the resources across the floor, as the Attorney General has so graphically
described about courts, judicial capacity, the truth about it is, Madam President, when you speak to the people who are directly involved in the criminal justice system—and let me just take out the words “criminal justice system”—when you speak to the people who are involved in the justice system, the truth is that those persons who devote their life to public service on behalf of the people of Trinidad and Tobago are not being provided with the resources to do their jobs, to discharge their duty in the public interest, and that is the saddest thing that is happening today. And this piece of legislation, well-intentioned as it is, to bring about changes to the criminal justice system—to make improvements to that system, to provide for all of the things that can improve the system—is not going to yield the results to the common man in Trinidad and Tobago that we would like to see.

And, at the end of the day, Madam President, while we sit as legislators here, the position is this, we must ensure that what we do here drills down to the common man on the street. The prisoner inside Golden Grove Maximum Security and Royal Jail must reap the benefits for what we do here today, and if at the end of the day, the accused and the victim together do not benefit, we have failed as a Legislature, and we must ensure that we do everything to ensure that we do not fail, Madam President. I thank you. [Desk thumping]

Sen. Charrise Seepersad: Thank you, Madam President, for the opportunity to contribute to the debate on the Bill to amend the Administration of Justice (Indictable Proceedings) Act, 2011 (Act No. 20 of 2011). At the onset, I would like to state that I am not an expert in these matters; however, I am very familiar with the term “justice delayed is justice denied”. Therefore, given the current enormous backlog of criminal cases, the fact that pre-trial detention could last up to 10 years, and some individuals are awaiting trials for periods which are longer than the
sentences that can be imposed, if they are convicted, it is obvious that for us to continue to maintain the status quo is foolhardy. Consequently, in this scenario, doing nothing is not an option.

The Bill before us advocates the introduction of judge-alone trials. While this is one system which may accelerate the processes in the criminal justice system, it is not to be viewed as a panacea for resolving all the problems being faced. The introduction of a new process or the modification of an existing one requires intelligent analysis, planning, strategy, construction, deployment and a feedback loop for measuring effectiveness in making adjustments. This is an ongoing and cyclical process to keep improving. Madam President, I expect that these steps are in train and this scenario of a failed system is not repeated in a few years.

The new legislation allows the accused to choose between either a trial by jury of his peers or judge-alone trial. It is also open to the accused to change their mind in how they want to be tried after a reasonable time; therefore, persons are not prevented from having a trial by jury of their peers. Madam President, there must be safeguards and additional procedures put in place to ensure that the rights of the individual are not violated and the high standard of justice is maintained. While judge-alone trials could potentially increase the efficiency of the criminal justice system, there are further measures that must be implemented including robust case management system, proper witness protection programme, appointment of additional Judges and other judicial officers, use of modern scientific evidence such as DNA, setting up of a public defender’s office, electronic monitoring.

Additionally, the Director of Public Prosecutions Office requires adequate accommodation so that it could be fully staffed. Currently, they are in cramped
Sen. Ramdeen (cont’d)

offices where only 73 persons can fit. However, the DPP requires a complement of 129 persons to function effectively and efficiently. It is therefore imperative that acquiring adequate accommodation be addressed in the shortest possible time. Other issues that must be dealt with in the quest to reform the criminal justice system include improving the investigative capabilities of the police service.

In concluding, Madam President, in addition to the measures and systems, some of which I have highlighted, it is imperative that adequate checks and controls are employed so that the efficiency of the justice system will be significantly improved. I envision set targets of, say, not more than 25 matters pending. No system will succeed without the adequacy of efficient and competent management and resources. Thank you.

**Sen. Garvin Simonette:** Madam President, I thank you for the opportunity to contribute to this debate on a Bill to amend the Administration of Justice (Indictable Proceedings) Act, which seeks to amend the parent Act which is an Act 20 of 2011. Madam President, this is an important debate and an important item of legislation concerning the criminal justice system and, accordingly, of deep concern and interest to all citizens. The debate is also important, Madam President, as it affords the country the opportunity to assess the performance of those on the other side, on which I will say more later with regard to the contribution of my learned friend, Sen. Ramdeen.

Madam President, the Magistrates’ Court, the High Court and our Court of Appeal are all courts of justice. They are not forums constituted to do book reviews or to deliberate on philosophical concepts. They are mandated to deliver justice. Madam President, for far too long in this country, in both the civil and, more so, in the criminal arena, our people have come to accept—and especially so in the criminal

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arena—that justice moves at two speeds: dead stop and slow. Accordingly, both victims as well as those wrongly accused, and some lawyers, rightly reject the continuation of the malaise. Justice can seldom be delivered by chronic delay and, especially, delay that can be avoided if fine minds apply themselves to the task of reform. And I agree with Sen. Seepersad who adopts the old maxim that justice delayed is justice denied.

The Attorney General has given a clear report on the statistics in the criminal justice system, and notwithstanding the attempt of my learned friend, Sen. Ramdeen, to indicate that there is some greater calamity to befall us, drawn against those chronic statistics of paralysis of the system, there is no doubt, Madam President, that we on this side are embarked on the right journey in the reforms that the hon. Attorney General has been making. [Desk thumping]

Madam President, the Bill before us today comes after delivery, as the Attorney General has indicated, of a suite of legislative interventions that have sought to address the reform of the entire criminal justice system. Indeed, the reforms implemented by my learned friend, the Attorney General, were promised to be delivered by then Minister of Justice in the PP Government, but as we now know, never delivered, never implemented. [Desk thumping] It is important to accept, notwithstanding the huffing and the puffing on the other side, that the parent legislation was introduced by the then PP Government, so that the attempt to reform is nothing new. Unfortunately, it was derailed by the infamous section 34 debacle. The reforms which the hon. Attorney General has summarized as having been already implemented are no mere reforms. There are reforms that go to the root of addressing the delivery of justice and the delivery of justice with certainty.

What this Bill seeks to do in removing and abolishing the preliminary
enquiry stage of proceedings is to ensure that justice is speeded up and delivered in a timely manner. The hon. Attorney General has already summarized some of the reforms that have already been put in place—the introduction of Criminal Procedure Rules to address the issue of timeliness and procedural sobriety to criminal justice procedure aimed at modernizing the Victorian criminal procedure that we knew before, the introduction of the Family and Children’s Court and Division and the Criminal and Traffic Division of the High Court and Masters to function in the criminal justice system.

The introduction of Masters is not new, so the complaint or the attempted complaint by Sen. Ramdeen as to questioning qualifications is a little surprising given the history of the initiative to lift the qualifications and lift the functions of adjudicators in the criminal justice system, starting back with then PP Minister of Justice. But he comes today to raise red flags that simply do not exist, and I do not think that that impresses either those of us seated here or those listening on the various media.

So, Madam President, when one looks at the genesis of the changes, one would start with the parent Act, Act No. 20 of 2011, which was introduced by the other side when they were in office. Undertakings were given, importantly, when that Act was introduced and those undertakings were given by the then Minister of Justice. Sen. Ramdeen seems to be suffering some degree of amnesia in that regard. The undertakings were: one, the Act would not be proclaimed unless and until Criminal Procedure Rules were brought into place; the Act would not be proclaimed unless the Masters were recruited and appointed. However, as we know, what was proclaimed was section 34, derailing the salutary attempt then to try to amend and intervene in a chronically flawed and inoperable criminal justice
system. Of course, those undertakings given, never performed, have now been performed by this Government and this Attorney General. [Desk thumping]

Madam President, it behoves me to note that in the light of the true history, the Opposition, as they are no longer PP—although they tried to re-erect the PP last weekend. However—[Crosstalk] If you deny it, you deny it. It is out there in the public domain. [Crosstalk]

**Madam President:** Senators, please.

**Sen. G. Simonette:** Madam President, I do apologize.

**Sen. Obika:** Madam President, Standing Order 46(1). Whilst he is celebrating our success over the weekend, I think he should be relevant to the Bill. [Desk thumping]

**Madam President:** Sen. Simonette, please continue.

**Sen. G. Simonette:** Madam President, my learned friend, Sen. Obika, continues to mystify an attempt to coalition that was—lasted no longer than 24 hours. It is now published as being success. Well, good luck, continue with that.

The stance of the Opposition is a clear—[Interruption]—Madam, may I have your protection, Madam President?

**Sen. Ameen:** “Yuh want protection now?” [Laughter]

**Madam President:** Sen. Ameen, please, could we listen? If you do not want to hear what the Senator has to say then you have a choice. Sen. Simonette, please continue.

**Sen. G. Simonette:** Madam President, I thank you. The stance of the Opposition now, both in another place and here, is the clearest example of their unfitness to perform the solemn duties of office. It is the clearest example of the inability of the Opposition to put the public interest and the greater good of citizens ahead of their
narrow political self-interest and the interest of their friends. Their conduct provides, Madam President, the clearest example of their inability to rise to the occasion in recognition of country before party. [Desk thumping]

The work being performed by this Attorney General, not just on this Bill—and Sen. Ramdeen comes on each occasion with the same, if I may say so respectfully, Madam President, diatribe—the law not properly drafted, it will affect somebody who did not get paid, the law will not work because the people you are hiring are not qualified. No meaningful intervention to criticize the actual provisions, the policy that drives it or the content of the law so that their conduct provides, again, the clearest example of their fundamental flaw and incapacity to perform and lacking in qualifications for the role of leadership of our beloved country.

Madam President, the chronic delays in our criminal justice system have too often been tolerated pursuant to the old adage, it is better that 10 guilty persons should escape than one innocent person go free. And what the Bill is attempting to do is to ensure, not just that accused persons are incarcerated, come what may, but to implement proportionality and balance in ensuring that those who are guilty are punished and those accused who are not guilty are released and as well, more importantly, the victims can come away with an appreciation and acceptance that justice has been delivered.

Madam President, modern society must revisit that maxim, the 10 to one maxim. This Government, undoubtedly, has demonstrated its ability and its competence to adjust the maxim so as to achieve that salutary balance between the interest of the innocent and the interest of the accused and that is what the provisions here in this Bill achieve in relation to the amendments being advocated.
for by the hon. Attorney General.

Madam President, the reforms have been delivered and continue to be delivered as this Government is driven to deliver progress. [Desk thumping] The Attorney General is driven to deliver progress [Desk thumping] and our Prime Minister and leader is driven to deliver progress. [Desk thumping]

Madam President, as early as 1946, Lord Chief Justice Goddard, in a case R. v. Gronkowski and Malinowski, 1946 Queen’s Bench, page 372 recognized the galloping disproportionate treatment by Judges in upholding the 10 to one maxim, that is, better to see 10 guilty men go free than one innocent man, the accused or his guilt be imposed upon him. And this is what Lord Justice Goddard had to say, and I am quoting from the case.

“The judge must consider the interests of justice as well as the interests of the prisoners. It is too often nowadays thought, or seems to be thought, that the interests of justice means only the interest of the prisoners.”

And what this Bill seeks to achieve, Madam President, is the balancing of that interest, the reversal of a trend identified as far back as 1946.

4.00 p.m.

Again, Madam President, Prof. Glanville Williams, a well-known criminologist and criminal lawyer, in his treatise, The Proof of Guilt, had this to say about the issue with which we now grapple, and I quote.

“The evil of acquitting a guilty person goes much beyond the simple fact that one guilty person has gone unpunished.”

It frustrates the arduous and costly work of the police, who, if this tendency goes too far may either become daunted or resort to improper methods of obtaining convictions.

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“If unmerited acquittals become general, they tend to lead to a disregard of the law, and this in turn leads to a public demand for more severe punishment of those who are found guilty. Thus the acquittal of the guilty leads to a ferocious penal law. An acquittal is, of course, particularly serious when it is of a dangerous criminal who is likely to find a new victim. For all these reasons it is true to say, with Viscount Simon, that ‘a miscarriage of justice may arise from the acquittal of the guilty no less than from the conviction of the innocent.’”

*R. v Stirland*, 1944, Appeal Case at page 324.

So, Madam President, the living experience of our criminal justice system today with its chronic delays is twofold. The criminals in our society operate with a firm knowledge that the justice system is not working in a manner aimed at bringing crime under control. So that the disregard that Glanville Williams spoke of, way back then in the 1940s, is a living matter here with Trinidad and Tobago for quite some time. The second item that is relevant is that the chronic delays are continuing to impose daunting and dismal effects on those who are charged with the duties of bringing criminal activity to account, and that is the police, the very Clerks of the Peace, Magistrates and Judges in the criminal justice system.

So that to continue with the Victorian preliminary enquiry as a procedural step in our criminal justice system, Madam President, is to continue a system which could adversely increase the cost of prosecution, lead to wasted expenditure and continued massive wasted expenditure in investigations, frustrate and demoralize hard-working policemen and women, continued deep-seated disregard for the law, which is something I have mentioned when I made my contribution on the other Bill the Attorney General brought earlier last year, late last year. And that
disregard for the law could well lead to the unleashing in this country of desperate measures deployed by both citizens and others to bring crime under control.

So that the amendments that we are seeking here are salutary. They cannot be derailed by any of the submissions made or the items raised by my learned friend, Sen. Ramdeen. The thrust of the Attorney General’s work is focused on reforming the criminal justice system and not just in passing legislation, but in operationalizing the system. He has demonstrated that in regard to the advances made with the Children’s Court, with the Criminal Division, and with the anticipated public prosecutions division that is to be implemented to afford qualitative prosecutorial assistance to those accused of crime. That cannot be derailed, Madam President, in my respectful view, by outstanding pay to translators or by the requirement of the DPP to recruit further lawyers to the department. It cannot be said that the Government is putting the cart before the horse when in 2011 the parent legislation was introduced by the other side. But, Madam President, may I say, the learned Attorney General is in good eminent company with regard to his focused reformation of the criminal justice system.

As early as 1965, Sir Hugh Wooding embarked and stipulated and advocated on the very changes that this Government and this Attorney General have pursued and now implemented, continue to pursue and continue to implement. Madam President, just three years after our country’s independence, which is some 53 years ago, Hugh Wooding had the following to say at the 1965 Commonwealth Law Conference held in Sydney Australia, and he said this:

The philosophy therefore should be that it is equally a miscarriage of justice for a guilty person to escape as it is for an innocent to suffer. Accordingly, just as the prescription of certainty as the standard by which
guilt should be adjudged is intended to ensure within the limits of human error that the innocent shall not suffer, so appropriate procedures should be evolved in order to ensure so far as justly attainable that the—

**Sen. Saddam Hosein:** Madam President, under Standing Order 53(1)(b) of tedious repetition, I think the Member has made this point several times. I am very familiar with this Standing Order.

**Madam President:** Sen. Simonette, please try and tie up your points.

**Sen. G. Simonette:** Madam President, how much time do I have left?

**Madam President:** You have until 4.22.

**Sen. G. Simonette:** Much obliged. So Hugh Wooding went on to indicate, and I quote:

> The better then to attain the aims of justice, revised procedures, which I recommend for consideration include—

And he said this:

(a) The abolition of the distinction long traditional but now largely meaningless between felonies and misdemeanours, and the reclassification of offences by their greater or lesser gravity as either indictable or summary.

What we see the Attorney General doing in the Bill, Madam President, is making the treatment of indictable and summary offences, and either-way offences dealt with in a certain way, giving to the Master the power, for example, and the court of having summary offences wedded to indictable and heard in the High Court, which is very akin to the advice being given in 1965, 53 years ago by Hugh Wooding. Hugh Wooding goes on to say, and this is very interesting, 1965:

> The substitution for a preliminary enquiry of a requirement that there be
served on an accused when it has been resolved that the charge will be proceeded with indictably and not less than a prescribed time before his trial, a complete record of the evidence which it is intended to prefer against him. This should expedite a final determination which is desirable since the most effective deterrent to crime is certainty and swiftness of punishment.

That is why I say the Attorney General is in good eminent company. The removal of the preliminary enquiry therefore is to be accepted, it is to be congratulate, and the question is how much longer shall we wait, how much more delay, what further is required to be done. Respectfully, Madam President, I have heard nothing from Sen. Ramdeen. Indeed, he seems to accept that that is what we should be doing, notwithstanding his red-flag initiative.

The hon. Hugh Wooding went on to say this, and to some extent it rings true now:

Liberty to the prosecution and to the Judge to make any comment on any conduct of the prisoner, including his silence at any time that he may reasonably have been expected to speak or make a statement or give evidence, provided only that in the whole of the circumstances the comment be fair.

Madam President, just to deal with one or two of the matters raised by hon. Sen. Ramdeen, Sen. Ramdeen gave us a very impressive list of those that he and his colleagues had consulted, but, respectfully, he did not condescend to particulars of what that consultation produced.

Sen. Ramdeen advises that the physical accommodation of the DPP ought—I am not sure if the point he was making was that—but he said it—ought to cause us to proceed with some degree of caution and possibly delay, possibly putting off
what we have come here to do, or what ought to be done. As we know, and it is in
the public domain, the DPP’s office is soon to move to accommodations, I believe,
on Park Street, no doubt to provide for the recruitment that he is already engaged
in. Sen. Ramdeen questions the qualifications of Masters but he does not
question that there ought to be Masters, and I am not sure that that is a relevant
criticism of the Bill itself. Importantly, he tried to dismantle the proposed
amendment to section 5 of the Act, but—and, I believe, to give him credit, it may
have been because his time ran out, he failed to address the provision of section 5
that indicates that the goods that are seized, after they have been photographed it
provides, ought to be returned to the owners, and that is section 5(7)(c). If I read:

“the thing seized be restored to its owner after the photographs and forms
have been filed…”

So that what the provision and the amendment are seeking to achieve, Madam
President, is a system whereby evidence can be preserved in photographic form
and property belonging to citizens returned to them in a timely manner. No doubt,
because of this Government’s appointment of a Police Commissioner, who, as all
can see, has been actively energizing the Trinidad and Tobago Police Service, the
criticism that the police not doing it and did not do it last year, and did not do it the
year before, ought to be rejected root and branch, and of course is irrelevant to the
amendment itself.

So that, Madam President, the last comment to be made on my learned
friend’s contribution, which is, and it is a repetitive refrain, that they are committed
to supporting fixing the system but they want to see it done properly—[Beeping
sound] Sorry, Madam President. [Laughter]

Hon. Senator: “Doh worry; she din even hear it.”
Madam President: Please, I do not like hearing myself being referred to as I just did, it is a little disrespectful. Please continue, Sen. Simonette.

Sen. G. Simonette: Madam President, I do apologize. Madam President, my learned friend, Sen. Ramdeen’s constant refrain is that we want to assist in fixing the system, we want to support good legislation but we want you to get it right. But he has not made, in his contribution, any contribution to what he proposes as being the amendments that he considers salutary or that he considers would work to get it right. So that at the end of the day, huff and puff, but he cannot blow the house down; empty barrel makes the most noise.

Madam President, if I may just highlight one or two of the provisions of the Bill that I think are—

Madam President: Sen. Simonette, you have five more minutes.

Sen. G. Simonette: Much obliged, Madam President. Madam President, if I could just highlight one or two items, sections of the Bill, the intent of which I think lead us to improving on the system. The Attorney General has already indicated the scheme contemplated by the initial hearing and the sufficiency hearing, and that of course is a provision in its substance that originates in the parent Act. But what it does also, Madam President, is create time frames within which the accused and the prosecution must do certain things, and this would bring some degree of monitoring and of dispatch to the procedure.

Again, with Masters of the criminal court empowered to treat with case management, that too will lead to increase in the speed at which matters are progressed, and that cannot be dismissed as trivial or as inconsequential. Madam President, one of the other interesting and effective reforms is the provision that permits for electronic evidence to be admissible, and in this technological age that
is a very important step in leading to the gathering of evidence with respect to white-collar crime, and as the Attorney General has constantly repeated, the “follow the money” aspect of bringing white-collar criminals to justice.

Madam President, the sections of the Act that improve the handling and recording of evidence, physical evidence, that is section 5, again are to be observed as improving the system in which evidence is preserved. We have heard on too many occasions in the past, and the listening public is aware of it; the rat ate the cocaine. The vehicle, somehow, that was stored outside of Besson Street has disappeared, it is no longer available as a critical item of evidence. So that is to be supported and to be encouraged.

Again, a most important amendment is the amendment concerning alibi evidence of an accused and the time frames in which such evidence is to be given, and the sanctions for failing to do so within sufficient time. But it also provides some degree of sufficiency for there to be alibi evidence referred to, provided sufficient time is afforded the prosecution to test the evidence, and that is section 13(b). The last provision I would like to comment on—

**Madam President:** Sen. Simonette, your time has expired.

**Sen. G. Simonette:** Much obliged, Madam President.

**Madam President:** Sen. Deyalsingh. [*Desk thumping*]

**Sen. Dr. Varma Deyalsingh:** Thank you, Madam President, for giving me the opportunity to speak on the Bill, an Act to amend the Administration of Justice (Indictable Proceedings) Act, 2011 (Act, No. 20 of 2011). Madam President, there is no doubt that this Act is very important in the proper runnings of the administration of justice. For far too much, we have heard of persons saying that they have instances where they have to go to court, they have to go Magistrates’
Court, High Court and it takes years; it is horrendous.
And as the Attorney General actually pointed out some of the figures, and the amount of cases that has to be—I think he had mentioned 43,109 cases outstanding for preliminary enquiries, and this delayed justice, this delay for the persons, the people out there, it actually causes a lot of frustration. A lot of frustration for the individuals who have to get money, go to court from time to time, travel to court, face the system, and it is really a way, I think, of, you know, the judicial system may be even sometimes re-traumatizing persons out there who have been traumatized by some sort of criminal event. And even victims of rape who may have to go and face the court system, and actually not get closure but continue facing these individuals who perpetrated the act. It is really, really unfair to some of our citizens. Persons have to go to court for 10 years to get some sort of closure, some sort of justifications to this. You have victims of crime, you have victims who are—like, you know, even the rapists, they suffer from post-traumatic stress disorder where they actually may have instances where they have flashbacks, they have these events; they are scared to go in certain places. They have instances where they—[Device goes off]

**Madam President:** Sen. Deyalsingh. Will the Senator with the offending device please leave the Chamber, organize the device and you can return in five minutes—well, actually, you can return after the tea break because five minutes will take us to the tea break. Sen. Deyalsingh, continue.

**Sen. Dr. V. Deyalsingh:** Sure. Thank you, Madam President. As I was saying, the judicial system has been guilty of re-traumatizing some of these victims, because these victims will have to come in week after week, month after month, for years at the time facing their perpetrators, or not even getting closure, facing persons who
in their community may have done acts to them, and sometimes it is no fault of these individuals.

This Bill, if it hopes to somehow fast-track these matters, I think it is well needed. It is well needed for the victims that we have there and it is well needed for victims of other crimes, because we even have cases where there is the Victim Support Unit run by the police officers, and they are overwhelmed. They are understaffed, and they and all complain that when they have to see these victims and see them for all these prolonged periods, we are not getting closure. We are not getting these individuals to move on to their normal lives, if they would ever be able to move on, because some of them never do. Twenty to 30 per cent of people who are victims of crime do get post-traumatic stress disorder, and I think we have to develop a system whereby if we can implement this Bill we may be helping some of those individuals.

Madam President, looking at the case of backlogs, you know, we look at the backlog of cases and I wondered how did it reach that situation. We looked at even at court cases years ago, most murder trials in the assizes would have taken, you know, sometimes two weeks, and complex cases would have taken like a month, but now, suddenly, cases are taking longer. So there is a challenge. There is a challenge in the sense that you may have more case matter coming before the courts. You may also have, you know, more complex matters sometimes may come before the courts, the law keeps changing. You may have cases where there may be different reasons for the delay, increased caseload, increased length of hearing, again, certain improvement in the courts’ management, certain new departments that the AG said he has put into place, like the Children’s Court and Family and Children Division, Criminal and Traffic Division, Criminal—you
know, all these are to be complimented; the Criminal Procedure Rules, all these can help, and all these, I am saying, are very important. Those implementations, the AG must be praised for that.

Also the levels of staffing that have you know, come about again in terms of more Judges, you know, the appointment of Masters, all these are areas where we have to look at the staff at higher level. Sen. Ramdeen mentioned his concern about sometimes the level of the Masters we have to be cautious of, which persons or who persons we are putting into certain positions to ensure that we have persons there that would ensure that justice is done in a manner that no one can question it. In the past we had cases where, you know—recently, where the case where a Magistrate had a certain case with a certain, you know, a cocaine possession, and that case that, you know, that Magistrate had, the DPP got involved, and while I am not going to name anything, the DPP got involved and actually had, you know, the police officers wondering why did that case not go to the High Court, why was it dismissed in the Magistrates’ Court and given, you know, a small, you know, some sentence where they are thinking in such a case as such important that it should have gone to the High Court.

So we may have cases where we may be suspect of certain things, we may look at certain things, and we have to look at the Magistrates, some of them may be appointed as Masters. And if Members may have concerns about the quality of the Masters, I am saying, probably it is time we looked at the judicial officers and see, do we need to bring them into the Integrity Commission’s purview, and this is something we may need to look at in the future. So looking at the fact that there is that delay that we are looking at, looking at the fact that the delays are there, we have to appreciate that the delay also, the backlog that we have—
Madam President: Sen. Deyalsingh, hon. Senators, at this juncture we will suspend the sitting and we will return at 5.00 p.m.

4.30 p.m.: Sitting suspended.

5.00 p.m.: Sitting resumed.

[MR. VICE-PRESIDENT in the Chair]

Mr. Vice-President: Sen. Deyalsingh.

Sen. Dr. V. Deyalsingh: Thank you, Mr. Vice-President. As I was elaborating before the break, I think we need a faster system, which I think the Bill will be able to give us. I mentioned I think people are out there, some are suffering with the burden, the long wait. The fact that they are frustrated as having to go to court week after week, victims of crime again are being re-traumatized. But while some are suffering, others may be using the system to gain.

As mentioned by Members on the other side, certain matters may have taken 19 years in the preliminary stage. It seems that if you can hire Silk, your matter can go on indefinitely, and some attorneys may be able to use the system in such a way as a delay tactic as part of their armamentarium to delay cases, to keep the cases going. I hope my learned friends and attorneys and persons with Silk will forgive me for saying this, but some attorneys may use it as a tactic to delay also. So again, it is not just against the poor man, but again it is a system that could be misused. I think that justice is blind, and the scales should not be tipped sometimes only in favour of those with large pockets. So we have to create a system—I am looking at—that again would be fair, quick and really be able to help persons in need.

Now, we are looking at the mention that there were departments in place already running, and the issue of staffing was raised. Staffing, that you had departments existing, the DPP’s office which is so important in the role of the
preliminary enquiries, to say which cases will go forward. I think it is commendable that yes we are going forward with certain Bills, but you see we have to show also that the systems we have in place, we are propping up those systems. We are making those systems function to the full capacity before we decide to go on and pass other legislation. So we have to look at the system and say, hey, they might be failing, but why is it failing? It is failing because we are not giving it the adequate staffing.

Recently also stationery—I remember recently there was a case where a Judge at a San Fernando court lamented the fact that basic items and stationery, photocopying material, were not afforded to him. When you look at these, basic things are not given, you would wonder, we are passing laws but we are not putting into place the mechanism for the existing machinery we have to be well oiled and run efficiently. So the DPP had lamented that fact also, that his office supplies were lacking. And sometimes another complaint besides the stationery supplies lacking I mentioned, on September 26, 2018, a Guardian report, the Justice there, a Judge said:

“Judge delays court order: No paper to write on.”

So there is definitely a need to see why we are not supplying these, why we are not looking in at the existing systems and propping them up properly.

I look also at the fact that there is the need to look at the police officers, because I think it was mentioned that 95 per cent of the cases are prosecuted by the police officers. So they play such an important role—such an important role—and then when you hear sometimes a police officer speak, they say, “We have to go to a court matter. We have to attend to other duties,” and sometimes they are overwhelmed. So to get this system to work, no matter what legislation we pass,
we need to look at the workings of the police officers who are really out there trying to implement most of these matters.

As Sen. Ramdeen made a plea for the Justice of the Peace to actually get better remuneration, I am thinking our hard-working police officers and prosecutors, those who are in that system dealing with that, may need to have some offers in place that may be a better financial benefit to them.

Officers play, as I said, an important role in the dispatch of these duties, who they can charge, who they cannot charge. We have to also look at any sort of a role where people may abuse the system. When we look at abusing the system, I remember a case in around, I think, it was the 17th of July, 2002. It was a case where the report was given, a Trinidad and Tobago report, news forum, had a headline:

Cocaine found at Sadiq Baksh residence—in his water tank, cocaine and missiles.

Now, we have cases like this occurring and we have to put things in place to ensure that certain things and certain positions are not misused. In a sense we have to have the correct checks and balances, and any persons that we put in these positions where they may be able to choose somebody arbitrarily and say listen, “We are going to charge you. We have enough evidence. Things are going forward.” It is important for us to have a sort of confidence in the system that, yes, it will run faster but, yes, we would have persons in place who would not be able to be somehow influenced or somehow be influenced by whatever politics of the day that goes by.

Looking at the backlogs that occur, it is a bit embarrassing. You know, we have backlogs in the health system. People have backlogs for surgery, people have
backlogs in delays in getting CAT scans, giving reports. So the backlogs are there, and it seems that all aspects in our society we have to deal with the level of backlogs we are getting. And we have to see why did we reach this, how did we reach that place that, you know, we have systems in place but yet still the systems are not running properly, they are not serving the people. It has reached to certain levels where we need to get it going better.

I think our duty is to put things in place where we can try to see, if somehow, even though we pass new legislation that it does not fall into the same backlog, the same persons, the same work ethic would be there, and we will be running it in the system, yes. We will have more court buildings, we will have more personnel, we may have more laws and rules in place, but if we do not get the persons to change their work ethic, to actually say that I am going to give my honest day’s work, I think we will be running into the same difficulty. So the issues of how do we get that change in our personnel is something we need to look at.

Now, a backlog of a case, let us say you are charged and you are so-called probably framed by a police officer—because we have had things like that, accusations like that in the past—imagine you are in prison and you are there waiting and your case is not being heard, and remember there is the presumption of even innocence. So you have persons there in prison, languishing in prison and they cannot get out of that system. Imagine that individual, what will happen to that individual eventually? You will end up undergoing some sort of psychological stress, depression, whatnot. It is really something we have to look at. The delays may actually cause problems for persons who may be innocently charged and awaiting justice.
Even the European Court of Human Rights looked at the case of backlogs of cases, and they have in their Article 6—they looked at lengths of time, because they realize there are backlogs, there are delays right through in the global system, different countries, and they actually looked at the situation and said cases should—they looked at two years as a reasonable time limit for simple cases, as well as up to five years as reasonable. They actually looked at eight years in certain cases, and they said anything more than that is really an abuse. I think that is really a human rights abuse. We have to be looking at the fact that if cases are going, 10 years someone is in prison, if you have to even be re-traumatized by going to court week after week, month after month, and you are going into that, the effect it has on you is really an abuse, and we need to see if we could come into terms of other jurisdictions or other recommendations to see if we can move into that space, from so many cases more than 10 years, and see if we are going to get to cases where it will somehow come down to the five, too, and aim for something better.

I think this legislation, the fast-tracking of this legislation, has us in a position where, yes, it may be good. We may be in a good point where we will be able to move forward. So the prisoners’ rights, the rights of the individual, the persons who are suffering waiting, all these persons will gain from this legislation. The fact that if you have legislation in place, we have to see why the old legislation is not being implemented, why it is not being implemented, why are things not working.

This again is a challenge that we will have to know how we could implement any existing legislation, be it the Litter Act or— coming to this Senate this morning, I actually saw litter on the road, but we have a Litter Act. I had noise pollution in a car next to me, we have the EMA with its laws. There was a socially
displaced person sleeping on the pavement, and I looked at it and I said, but we have laws against sleeping in the public. All these laws we have, but they are not being implemented. So therefore that shows that if we cannot get any laws implemented, we are going to be in the same situation as before.

So we are passing more laws, and we are not implementing some of the older ones. What I am saying is, okay we have more laws, we are keeping up in times. I mean, we have some beautiful laws that were passed by our Attorney General. We are looking at the procurement laws, we are looking at FATCA, those are excellent laws that are stepping up into time, looking at the international scene, other countries are doing it, so we are going there.

A Senator sometime in the past looked at laws and he said, the more corrupt the State the more numerous its laws. That was Tacitus. You would not know him. He lived around 110 AD in the Roman Empire, Publius Cornelius Tacitus. So I am just throwing out that. We are passing more laws, and we looked at it.

We got the inclination on the other side, they mentioned section 34—so it was mentioned. We know this Bill here today, there were 21 attempts, I think before, as the Attorney General was saying, to bring this Bill as it is now. So we looked at the fact that even when section 34 was passed, it was passed in this House. I do not think one side could blame the other side for this, because it was here, people voted on it, and I do not think anyone could extricate themselves from that law, because the Senate voted on it also. However, we have to be vigilant at any laws that any government passes. And being on the Independent Bench here you have to look behind the laws. Was there a reason people may bring in certain laws? I think a duty of an Independent Senator also is to look at the laws, look and see what is going to pass. Look to see if there is anything behind the law that could
be misused.

Remember it not just the last administration could be accused of section 34. We just have to remember Act No. 13 of 1970. I could not put this black power salute up. I could not give a black power salute, because even in that Act, the Public Order Act, where at the time it was outlawing the black power salute. It was outlawing persons to gather in more than three persons. It was a most draconian piece of legislation that came from a different government. Again, going further down the line, we looked at even the infamous White or Green Paper on media reform that was tried to pass by another government.

So being on the Independent Bench we have to look at laws that various governments may try to pass, for whatever reason, to probably try to maintain their level of power or maintain the level of their ability to probably manage the country as they think fit. But whatever it means, we have to be on the lookout for anything that may be hidden behind the laws.

Mr. Vice-President, I appreciate the fact that there are Members here from the Opposition who may point out certain things that I may not see. As I was saying, I am very impressed about the Attorney General’s discourse, and saying how this law came to pass and why it is needed, and I agree with him, it is needed. I just hope that the Attorney General also must ensure that we are not spending a lot of money in hiring new staff, new buildings. Even to get the implementation of laws, you know you have to get the staff to work at it, so we have to get value for money.

Even when you look at crime and the problems of crime in society, I looked at the 2017 report from the IDB, the Inter-American Development Bank, and it stated the cost of crime and violence. The article was “The Costs of Crime and
 Violence: New Evidence and Insights in Latin America and the Caribbean”. They actually said the homicide rates are rising, and Trinidad is on the track of having the highest murder rate in history. Public expenditure on crime per capita is highest in Trinidad and Tobago at US $460.60 per capita, which is more than double the region’s average of US $194.50. So therefore we may be implementing more laws. We may be having more buildings, we may be having more staff, but we need to get value for money in these economic times.

    I am thinking we have to look at what we are putting in place. Look at this report and ensure that whatever system we are putting in, whoever staff we are hiring, we have to make sure that they are doing the work that they are supposed to do, and it is serving the people, because it really has to serve the people now, because we are in a situation where crime has touched all of us. Every week that goes by I may hear some story from someone who has some level of crime, be it petty or be it major crime. So it is there, and this Bill I think will help bring the level of confidence back in the sense that something is being done.

    Mr. Vice-President, in closing I just want to quickly say that when I looked at this Bill trying to fast-track the system, we looked at some of the causes of crime, if you permit me. I am trying to say we have poor education. We have poverty, because you have what we call a “social strain” where people commit crime to get food, medicine, et cetera. Alcohol and drug use contribute to about 4 per cent of violent crimes, like sexual assault and robbery. Personality disorders—you have some people they may have some inherent trait, some personality disorder where they may be what you call sociopaths and psychopaths, and the prison system has a percentage of these persons.

    So this Bill might not even help those persons because, remember they will
be in the system, it will fast-track them there, granted. But you find that you look at the causes of crime, and when you look at even some of those individuals, their brain cells, the level of the grey matter in their brains is 11 per cent less than a normal individual. So some people cannot help it, they are there with these personality disorders. There is genetic link to crime, where twin studies show that if you have identical twins separated from birth and they are adopted by different parents, they are twice as likely to have criminal behaviour, compared to fraternal twins. So all these are causes of crime.

I had discussions with a previous Minister of National Security and Commissioner of Police, where we were looking at what causes crime in the country, how we can help put things in place to bring this crime situation, put this crime situation under control. So while we went through all of these, with the poverty and everything, we realized there is something called social learning. Social learning is if people see people rewarded for criminal behaviour, if children grow up and see the gang leader with their big chains, their women, their nice cars, they are buying their Range Rover, they will learn from that.

Even up to recently, our Police Commissioner, Mr. Griffith, actually made a very important point when he said state contracts are being given to gang leaders, and he will try all in his power to stop that. You see he is on the same page where I was a few years ago when I gave this advice, where we cannot let the children of our nation see there is a benefit from crime—we cannot. It is called modelling. So children will have to look and see you commit the crime, you have to serve the time. But I am adding something, “You have to serve the time in your lifetime”, because the way how it is taking 10 years and 15 years to hear cases.

So we need to realize it is important that we need to stop this indoctrination
of children. Even in the past, my neighbour who I had many discussions with years ago in Valsayn, Real spring, Desmond Cartey, he made a statement, “All ah we tief”, that attitude we need to get out. We need to get out of those attitudes. We need to know, ‘hey, this is Trinidad, if you do a crime, you are going to pay.” The children have to see that there is quick justice. The children will have to look and see there is a criminal activity, a gang man in the block, a gangster in the block, “puts down a work”, he goes to jail, he is out on bail, he cannot be flaunting it outside. He should not be flaunting it with all the ill gains that he has gotten from his activities.

So we have to show the children. It is something called “cognitive control” where they can look in society, they can see this Bill bringing people to justice quickly, we are now taking persons, quick justice, carrying them through the system, they are getting caught, they are getting prosecuted, they are getting jailed. This is why I am thinking this Bill is so important in helping our situation in our country. It is very, very much needed. So let persons see crime does not pay, and I support any moves for our citizens to get a fast, efficient, judicial system, a well-oiled machine. Thank you.

**Sen. Saddam Hosein:** Thank you very much, Mr. Vice-President, for giving me the opportunity to join this debate on an Act to repeal and replace—sorry, I have the wrong Bill before me—“an Act to amend the Indictable Offences (Preliminary Enquiry) Act of 2011”. I was looking at the marked-up version that the Attorney General would have provided us, and I deeply appreciate the resources that he would have provided for us in this debate.

Mr. Vice-President, I want to start off by saying that the criminal justice system in this country is made up of really three different bodies, which is the
police service, then we have the Judiciary and then you have the prison. The police service would be the ones responsible for the detection of crime. Then you will have the courts, the Judiciary, who will be responsible for the adjudication of these criminal matters to determine guilt or innocence, and based on the guilt or innocence of a person, if he is convicted and found guilty, he enters the prison system whereby he is now rehabilitated so that he can come back into society as a citizen who will not be inclined to commit crimes. But as we see it in our country currently, there is a breakdown of all three systems of the criminal justice system and not just the Judiciary which we are attempting to fix.

So in order to get the wheels of justice working, I plead with the Government that we must also address these other two arms which are the police service and also the prisons. Interestingly enough, 90 per cent of the prosecutions in this country are conducted by the police, and 10 per cent are being conducted by the Office of the Director of Public Prosecutions. The Act that we are asked to amend today was an Act on our law books since 2011. I am glad that this Government has not discarded that Act, and decided to build upon it. So that we as a Senate, we as a Parliament can work together so that we can properly introduce legislation into our country for the greater benefit of our citizens, but this Bill before us comes with a very long history.

With respect to the Indictable Offences (Preliminary Enquiry) Act, chap. 12:01, which is currently the existing law on which preliminary enquiries are conducted, that as the Attorney General rightly pointed out, was Act 12 of 1917, an Act over 100 years ago that currently our courts are applying when we deal with indictable offences. So by that indication alone it shows that something must be done in terms of the revision of the law.
The current system that we are asked to amend is that where a person is charged and brought before the court for an indicatable offence or a triable either-way offence, he is brought to the Magistrates’ Court and then a preliminary enquiry is conducted to determine whether or not a prima facie case is made out, so that the person can be committed to stand trial at the assizes.

The amendment that we are being asked to support in order for the introduction and the proclamation of this current Act is that all of those offences, be it an indictable offence or a triable either-way offence, which is an offence that is laid indictably, an indictable offence by the definition of the Act also, is that these offences will now be determined by a Master through firstly an initial hearing, and then a sufficiency hearing to determine whether or not a case is made out for that accused to stand trial. But before this position was here, an attempt was also made to try and speed up the system, and in 2005 by Act 23 of 2005, something called “paper committals” were introduced in Trinidad and Tobago.

These paper committals allowed for the police service or the police prosecutors, or the DPP’s prosecutors. So the paper committals allow for the tendering of statements of a witness in court before a Magistrate. Before, a witness could only give evidence through viva voce evidence. So he must go in the witness box, he must take the oath and he must give the evidence which, we will all appreciate, was very time consuming. Then the defence had an opportunity to cross-examine that witness. Again, something very time consuming.

So it was thought that in 2005 with the introduction of the paper committals that it would speed up the process, because you will now cut down the amount of time for a witness to give evidence in the witness box. But the right of a defendant to cross-examine the witness still existed. But the system did not work as planned,
because you still have police officers and prosecutors coming to the court saying that they are waiting for a witness statement from a witness for over three to five years. So you try to speed up the system but inadvertently the system has been shut down. And these are the issues that we are currently facing as a Parliament and as a country right now.

5.30 p.m.

So in 2011 this Act came, Mr. Vice-President, and this Act as I mentioned earlier on, introduced the new leg of the Master being the judicial officer who would be conducting these sufficiency hearings to determine whether or not a case is made out for a person to stand trial at the assizes.

Now, Mr. Vice-President, what the Bill interestingly also does is that it removes the right of the defendant to cross-examine a witness. So basically, the Master will have before him or her all of the statements that were tendered by the prosecution, and then the defence is allowed to make submissions on these statements. It could be on the admissibility of the statements, and thereafter, the Master in his sole discretion will determine whether or not this accused shall be discharged or he shall be committed to stand trial.

And this procedure, Mr. Vice-President, is nothing novel in Trinidad and Tobago because this is the procedure that was adopted from St. Lucia. And in St. Lucia they tried in order to speed up the criminal justice system in their country to introduce these Masters.

And, Mr. Vice-President, a similar reform was done in Antigua and Barbuda whereby they abolished the preliminary enquiries, and there is the case of *Hilroy Humphreys v Attorney General of Antigua and Barbuda*, Privy Council No. 8 of 2008, which stated that the abolition of preliminary enquiries are not—they are
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matter to be heard before a Judge and a jury. Thereby, the accused will now consent or he will elect where he would like his trial to be heard, whether or not before a Judge and jury or before the Magistrate, and the former Attorney General was explaining that there were no resolutions of this in the 2011 Act that was passed.

The third issue was that there is no provision in the Act for situations where there are multiple accused and there is no agreement as to whether a Master should remain before a Magistrate.

Now, I saw that the Attorney General would have addressed this one of the concerns in the amendments and also the issue before with respect to the election of an either-way offence where that consent is now removed and it is up to the prosecution to now determine whether or not they proceed indictably or summarily.

The fourth issue was that there is no provision in the Act:

“…where the statement of witnesses for the prosecution did not conform to the admissibility requirement of the”—2011—“Act.”

Five, the 2011 Act is also silent on the procedure that is to be adhered to where an indictment is filed. The accused appears before the Master and a sufficiency hearing is not conducted.

So what happens, a person is brought before a Master, no PI is being conducted, what does that person do? And the last concern that the former Attorney General raised was that the 2011:

“…Act did not make provision for the admissibility of evidence for witness statements from children.”

And I saw that amendment also being addressed, whereby a child gives a witness
statement under the present Act, it must be accompanied by a statement indicating that the child is competent enough to give evidence.

So, Mr. Vice-President, that is the history in which this legislation has been brought to this honourable Parliament. And when we look at what these Masters have to adjudicate upon under this Act, and what the DPP’s Office—we heard a lot about it from Sen. Ramdeen—has to face. Mr. Vice-President, from the Judiciary report, the Annual Report of the Judiciary for the law term 2017/2018, I am just going to quote a few of the courts.

Mr. Vice-President, in the Arima magisterial district there are three courtrooms, and the total number of matters filed was 23,744, and the number of matters disposed was 13,504.

The Chaguanas Magistrates’ Court, 23,363, numbers of matters disposed, 9,997; San Fernando Magistrates’ Court, 17,045 matters filed, 13,710 were disposed; and in Port of Spain, 40,208 matters were filed and 21,454 matters were disposed.

And, Mr. Vice-President, no one will agree that these figures are—we are satisfied with the disposition rate of these matters before these courts. And currently before what we have existing now are only five criminal Masters, so you have five criminal Masters who have to deal with all of these cases from 12 magisterial districts. So, Mr. Vice-President, we can see already that there will be some issues with respect to the implementation of this legislation. So probably, Attorney General—he promised during the wind-up—will address the operational issues, may address in terms of the appointment of additional criminal Masters to properly adjudicate upon these cases in order to lighten the work load of the current five criminal Masters that have been appointed in the Judiciary.
And when you look at the High Court, Mr. Vice-President, when you add the number of matters from the Port of Spain Assizes, the San Fernando assizes and the Tobago assizes, the total number of matters is 709, and 352 of those matters are 15 years plus and pending. So clearly we must also not only address that stage of the criminal proceedings that deals with preliminary enquiries, but we must also address the assizes.

Now, the Attorney General when he brought the last Bill before this honourable Senate that increased the number of Judges and also increased the eligibility of Judges to be anywhere from the Commonwealth, I can see that more Judges can be appointed. But, hon. Attorney General, through you, Mr. Vice-President, we need the courtroom, we need the infrastructure in order to put these Judges in place [Desk thumping] because we are doing a lot of case management, we are doing a lot of laws passing, but what it will appear as, is that we are just applying a fresh coat of paint on a car without an engine.

So, Mr. Vice-President, we really have to address the core issues in terms of how we are going to drive the criminal justice system forward. And this problem is not—it did not exist with the UNC, it does not exist only with the PNM, Mr. Vice-President, this is an inherent issue that every single administration faces and must address frontally.

Now, Sen. Ramdeen would have raised a point with respect to indictments being filed by the Director of Public Prosecutions. And under the amendment in this current Bill, the Director of Public Prosecutions has a time limit of 12 months, 12 months in order to file an indictment in the court after he receives the committal documents.

Mr. Vice-President, I worked at the Director of Public Prosecutions Office
so I can let you know what is the process in terms of how an indictment is filed. The registry at the DPP’s office will assign files to each state prosecutor, and these files are assigned in order for a state prosecutor to compile a summary of facts and also draft an indictment. Now, this is an addition to the prosecutor briefing witnesses, giving advice to the police, going to court and any other issues or opinions that may come from the Director of Public Prosecutions or any other senior officer.

So, you have all of these prosecutors drafting summary of facts and drafting indictments, and then these indictments will be vetted by a senior state counsel, and if there are any issues, you will be called into the office and he will address these issues with you. And then afterwards the indictment, the draft indictment is sent up to the DPP’s office, and the DPP will then sign off on the indictment for it to be filed in court.

Mr. Vice-President, I can tell you, while I was there, there have been files on some of these state prosecutors’ desks for over a year with respect to drafting indictments and summary of facts, and this is no fault of those prosecutors. Because, Mr. Vice-President, you will well appreciate the work load in which these prosecutors have, in addition to assisting the DPP with respect to the indictments. So there is a serious problem with respect to the staffing at the DPP’s Office and the resources allocated to them, and also the HR management, because the DPP himself is over worked.

Again, in addition to managing his entire staff with three branches, Port of Spain, San Fernando and Tobago, he also has the responsibility now under the Act, to file indictments within 12 months, and if he does not do so, he faces the consequence of that accused now being discharged, all of the work that was done
by the police in terms of the investigation, the gathering of statements, the judicial process of the Master determining the sufficiency of the hearing, will all go in vain, Mr. Vice-President, not because it is the DPP’s fault, but because he simply does not have the resources at his disposal to work with. And those are the issues that I would raise with respect to the operationalization of the Act.

And I would like to go now into the various clauses of the Bill. And I want to start off, firstly, with the amendment in the interpretation section which is at clause 3 of the Bill. And, Mr. Vice-President, where section 5 provides for the issuance of a search warrant, there is the word used, a “computer”.

Now, hon. Attorney General, through you, Mr. Vice-President, when we were doing the anti-terrorism debate, I looked back at the Act that we did, and you placed a definition of a “computer”, and a definition of a computer is:

“…means a device or group of interconnected or related devices which follows a programme or external instruction to perform automatic processing of information or electronic data;”

Now, this was an amendment, this definition was included in the Anti-Terrorism Act, I pulled it out and I saw the word “computer” appear in this present Act. I do not know if you would want to insert that definition in this Bill also.

When you look at section 5, the amendment in clause 4, you will see that the word “believing” was deleted. So it means that a Master must be:

…satisfied…on oath that there is reasonable ground for suspecting that there is in any building, ship, vessel, vehicle, box, receptacle, computer, electronic device—

anything upon…which an indictable offence has been suspected to have
been committed.

And, Mr. Vice-President, I want to ask the Attorney General: What is the reason for the change in “reasonable grounds for believing” to “reasonable grounds for suspecting”?

And based on my research, I came across an article by Terry Skolnik, it is a Canadian article titled, “The Suspicious Distinction between Reasonable Suspicion and Reasonable Grounds to Believe”.

And in a nutshell, Mr. Vice-President, this distinction in the both thresholds is that, the article went on to say that, where there is a reasonable suspicion, it is a very subjective test in which the judicial officer will have to apply, whether or not the police officer had any reasonable suspicion that the person who he wants the warrant for or who he wants to arrest, is guilty. Whereas the standard of reasonable grounds to believe is slightly higher, where there is both the subjective test that I just outlined, and also an objective test in which the Master or the judicial officer will have to apply.

So, I do not know if the Attorney General in this instance is going to apply a lower threshold, because I also examined other pieces of legislation, and in the Summary Courts Act in order for the issuance of an arrest, a search warrant, the standard remains “reasonable grounds to believe”. And also in the Anti-Terrorism Act the standard there also is “reasonable grounds to believe”.

The second issue I would like to raise is with respect to section 4 of the Act itself. Section 4 is being amended, in this case section 4, if you will permit me, Mr. Vice-President, this section is outside of the Bill, but it is relevant in terms of the implementation of the entire Act. And if you will allow me to read. Section 4(2) says that:
“Where proceedings were instituted prior to the coming into force of this Act, the prosecutor or the accused may elect to have the case determined in accordance with this Act and where evidence has been led, the Magistrate shall transmit the record of the proceedings and all relevant evidence to a Master.”

Now, Mr. Vice-President, what happens here is that a preliminary enquiry is being conducted currently, the Act comes into force. As soon as the Act comes into force, all the prosecutor has to say, or the accused, is that, “Listen, I want my matter to go before the Master now”.

Mr. Vice-President, we are asking if the prosecutor is going to make that election, that the accused be allowed a right to consent to the procedure being changed from that of the preliminary enquiry taking place before the Magistrate, to now being transferred to the Master, [Desk thumping] there must be a consent of the accused in this case to allow for some procedural fairness.

The other section that I want to address is section 6, subsection (2). Now, I know this was found in the parent Act, the Attorney General gave us the flow charts with respect to this. This deals with the Director of Public Prosecutions bypassing the entire procedure for a sufficiency hearing; once he bypasses this, he can indict automatically.

Mr. Vice-President, I am asking whether or not—let us just say the DPP, all he has to do now is just come of the opinion that there is a case to be tried in the assizes, and then he just takes the matter all the way to the assizes, bypassing the entire sufficiency hearing.

So those are some of the concerns I would raise. I know that this was present in the previous law. I know that, I accept that, but we are here as a Parliament to
try to better the law in terms of, let us get this thing working in a right way, protecting the rights of the accused in terms of procedural fairness.

When we look at new section 8A, I mentioned this point earlier that it removes the ability of an accused to consent whether or not he would like his matter to be heard at the Magistrates’ Court or at the assizes.

Now, 8A subsection (3), now it allows for summary offences to be tried in the High Court. So, Mr. Vice-President, where an accused commits an offence and in the view of the prosecutor, the accused commits an indictable offence, but together with committing the indictable offence he also commits a summary offence. So, for example, I know everybody talks about how I talk about the “cuss” case in the income tax matter, but let us just say, he uses obscene language and he commits an indictable offence; now it allows the Master to also deal with this summary offence.

Now, at what stage does the Master determine the guilt on that summary offence?—because he will be conducting a sufficiency hearing. At the sufficiency hearing there is no right to cross-examination, a preliminary enquiry or the sufficiency hearing is not a trial. In order to find guilt on a summary offence there must be a trial, evidence must be led, the accused must be given a chance, a right to cross-examine, and then the judicial officer will determine the guilt or innocence of the person.

Now, if the Master is determining a sufficiency hearing and also adjudicating upon the summary offence at the same time, is it that there are going to be two concurrent matters, an enquiry and a trial concurrently occurring? Or is it that he is going to determine the summary offence first, and then after he will conduct the enquiry to determine whether or not the indictable offence has been
made out for the accused to be committed to trial?–and that is one of the nuances that I identified. Maybe some clarification in the winding-up of the Attorney General might assist me in terms of that issue.

Mr. Vice-President, also with respect to these offences with joint accused, I was looking at the Bill that is before us. I know that the DPP does have the power to come after a committal is completed to join, to conduct a further sufficiency hearing where a co-accused is subsequently found after one of the accused has been committed, so that is one of the procedures that has been preserved.

Now, there is an interesting section that I would also like to raise which is section 10(1). And under section 10(1) of the Act, Mr. Vice-President, it amends the Act so that Magistrates and Magistracy registrars and Clerks of the Court which were formerly the Justices of the Peace have the jurisdiction with Masters, concurrent jurisdictions to issue search warrants, to receive complaints on oaths, to issue a summons on arrest, and to grant bail.

Now, I want to focus on the issue on the search warrants and, Mr. Vice-President, the reason that I am focusing on this is because, I know we have been clamouring in the Senate for Justices of the Peace to have higher remuneration so that they can conduct their businesses better so that their salaries, their stipends—sorry, can be in line with respect to the current standards of living, but there are always bad apples in a bunch, Mr. Vice-President.

And there is a habit, and I know of it, I have heard of it also, that some of these police officers who know these Justices of the Peace very well, they get some of these arrest warrants or search warrants signed before and stamped. And before the police officer goes to execute these warrants, Mr. Vice-President, all they do is to complete the address and the accused names. These are things that currently
happen in Trinidad and Tobago, it is nothing that is not known to us. And that is one of the issues in terms of the practicality and the workings of this Act, where there is room for some sort of corrupt behaviour, there is room in order for some persons to misbehave with respect to the powers that have been granted to them.

I may want to suggest that, some fine or some punishment be attached to persons who conduct themselves in this manner, because that is a very sacred power being given to these Magistracy registrars and Clerks of the Court and also these Magistrates.

And, Mr. Vice-President, I would like to quote from a Privy Council decision, the Attorney General v Williams, and this is 1997, 51, West Indian Reports at page 265. Where Lord Camden, Chief Justice, said:

“…our law holds the property of every man so sacred, that no man can set his foot upon his neighbour’s close without his leave; if he does he is a trespasser, though he does not damage at all; if he will tread upon his neighbour’s ground, he must justify it by law…we can safely say there is no law in this country to justify the defendants in what they have done; if there was, it would destroy all the comforts of society; for papers are often the dearest property a man can have.”

Mr. Vice-President, it shows how greatly the law establishes a man’s home is his castle, and a man’s liberty is one of the most fundamental rights that he has enshrined under our Constitution.

So therefore, when conducting these exercises in terms of the issuance of search warrants and arrest warrants, it must be done properly, and it must be done with respect to the various evidential standards being satisfied for the issuance of these particular instruments.
With respect to new section 26C, Mr. Vice-President, where the DPP has the power to refer back a matter after the committal—after the sufficiency hearing, sorry. So a case is made out, the case is made out saying that the person is to stand trial, and then after the DPP can determine, well, no, this case has to—I am of the opinion that this case should be tried as a summary case.

So the police laid all of their statements, the Master adjudicated upon it, and then well, you are thinking that well, it is my time to stand trial now. No. You have to go back down to the Magistrates’ Court and the Magistrate will determine whether or not a summary offence has been made out. So there can be a potential abuse of power in that section.

With respect to bail, bail is another issue that I identified. In the summary court, in the Magistrates’ Court an accused who is denied bail by a Magistrate has a right to apply for bail by a Judge in chambers.

Now, if a Master denies an accused bail, well then, what is his redress? He cannot go before a Judge in chambers, because a Magistrate and a Judge exercise the same jurisdiction as a judicial officer of the Supreme Court. So that is one of the issues that I also want to flag to the Attorney General in terms of bail.

Another issue is with respect to section 27 of the Act. Clause 24 of the Bill speaks of an amendment by the inclusion of new subsections (ba) and (bb). And I do not know if the reading of it makes sense, Mr. Vice-President, because it starts off:

“Where the Director of Public Prosecutions prefers and files an indictment, a sufficiency hearing shall only be conducted in the following instances, on the request of the Director of Public Prosecutions:”

I am going to read into amendment:

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“where a Magistrate was unable to complete a preliminary enquiry before the coming into force of this Act, or a Master is unable to complete a sufficiency hearing, because of his—

(i) physical or mental infirmity;
(ii) resignation;
(iii) retirement;
(iv) death; or
(v) inability for any other compelling reason…”

Now, I believe this subsection was inserted to cure the issues and the matters that had to be restarted de novo, the 53 matters before the Chief Magistrate. Now, the section has two requirements: one, the Director of Public Prosecutions must have preferred and filed an indictment; so that is one.

The second limb of it, is that the Magistrate must have been unable to complete the preliminary enquiry before the coming into force of this Act or a Master is unable to complete a sufficiency hearing.

Now, Mr. Vice-President, the Master or the Magistrate is determining whether or not a case is made out for it to be—for a person to be committed to stand trial in the assizes. Then how is it one of the requirements is for the DPP to file an indictment?—because the DPP can only file an indictment after the completion of the sufficiency hearing. So, I do not know if that new subsection is placed—

**Mr. Vice-President:** Senator, you have five more minutes.

**Sen. S. Hosein:**—thank you—in the right place. And if for some prescription, when you look at the existing law at section 24 subsection (8), which was subject of the case before Justice Gobin, you will see a prescription there where, I think,
may have cured or may try to reach the legislative intent in which this Bill is trying to attain.

**6.00 p.m.**

Another issue I saw was the removal of the standard of prima facie case. Now, what does constitute a sufficiency hearing? What evidential standard must the Master satisfy himself of in order to determine whether or not a person shall be committed to stand trial? And, Mr. Vice-President, I am confused, because it is settled law; at the preliminary enquiry stage a prima facie case must be made out. Now, if the Parliament, and the intention of this legislature, is to get or determine a lower standard, because you want to speed up the matters, well, then you should prescribe what standard the Master is to properly apply in these cases, Mr. Vice-President, because it will leave the litigant confused, it would leave the Master confused, and it will also leave the attorneys-at-law confused. I could foresee that there would be judicial adjudication on this matter to determine what was the intention of the Parliament and what legislative aim that this Bill is trying to achieve, Mr. Vice-President—how many minutes I have again?

**Mr. Vice-President:** You have till 6.04.

**Sen. S. Hosein:** Mr. Vice President, when again we looked at the speeding-up of criminal trials in this country, yes, this Bill will assist in some regard, but there is one particular instrument, or one particular technique that we can probably build on for cases to move quickly, and that is that if we have proper plea bargaining in Trinidad and Tobago.

And in order for plea bargaining to be effective you must have proper evidence. And one type of evidence that is probably undisputed is that of DNA evidence. So, we must put the resources there. I know the Government recently
appointed the DNA Custodian, but we must operationalize this because if we front-load these cases and confront an accused with compelling evidence then they might be more inclined in order to take a plea than go through the entire criminal trial down to the end because, once you take a plea there are certain circumstances in which you can get one-third discount from the sentence that will be imposed on you. There would be other factors. And this would actually help speed up the justice system.

Justice Lucky was doing a project in the prison, asking all of the prisoners who would like to conduct what we know as a goodyear hearing so that they can get a maximum sentence indication on the offence that they have been accused of committing. So, this is just one of the tools that we can use. This is a step forward in order to try to address the backlog in our criminal justice system. More must be done. We need to put the resources in the right place, and I think that we may be heading in a good direction. Thank you very much, Mr. Vice-President. [Desk thumping]

Mr. Vice-President: Sen. Cummings. [Desk thumping]

Sen. Foster Cummings: Thank you, Mr. Vice-President, for the opportunity to enter this debate on a Bill which seeks to amend the Administration of Justice (Indictable Proceedings) Act, 2011. And, Mr. Vice-President, this debate has been led primarily by esteemed attorneys-at-law on all benches. It is indeed a matter that most of my colleagues in the profession may be practising on a daily basis, and therefore—with the exception, of course, of my friend Sen. Dr. Deyalsingh. Therefore, quite familiar, what I want to focus on—because my contribution is going to be pretty short. A lot has been said by those who went before me, but, Mr. Vice-President, justice in Trinidad and Tobago has its challenges, and I must
commend the Attorney General and his team, because he has consistently brought legislation to this House to attempt and make efforts to deal with the backlog and the clogging within the justice system. We know only too well. We hear familiar stories every day of accused persons who have had to wait for years, sometimes approaching two decades, for justice. I know of a case in particular, Mr. Vice-President, where, it is a matter of a young lady who was a victim of rape, whom was 15 at the time, and that matter did not get to the trial stage until nine years after. So she was about 24 by the time the matter was called, and then the trial itself took a while. By the time the trial came she was a parent, and the family, of course, having to relive this trauma over all these years, I think that it is really not a situation that we want to encourage.

And so several attempts have been made in the past to treat with how do you try to fix this system of preliminary enquiries? But what we are about today, and the legislation before us, is to fix it in a permanent way by abolishing it altogether so that this system of PI that has caused such significant delays on both sides, because, Mr. Vice-President, we are talking about the victims of crime, we are taking about the accused, but we are also talking about persons involved in the judicial system: the police, the functionaries in the court system; and it is everyone that is affected by such delays. You have situations of officers who have laid charges against accused exiting the police service in retirement, and all of these things constitute and contribute towards significant delays.

Someone spoke earlier, or hinted at it, but there must be swift justice if we are to—if justice is to be a deterrent to crime. If persons who—citizens who prefer to live a life of crime know that upon committing such an act that you can spend years, sometimes out on bail, going through the system, some of them repeat
offenders. And you know, Mr. Vice-President, as I mention that, in the communities where certain things happen, you know, almost everyone in the community knows who commits the crime. You know? And when the police attempt to take action, you see we have seen situations on social media where the community comes out in defence of these persons and so forth.

Because really, a large segment of the public is beginning to lose faith in the justice system. They do not think really that there is any significant or real punishment for offending the law, and that is because of the significant delays. So by the time someone is arrested to the time that it takes for justice to be delivered the gap is so wide that a lot of things fall through the cracks. And we know of the stories of evidence that disappears, and stories in the past of rats having a feast with certain types of evidence and so forth. We need not go through that again. Mr. Vice-President, we know only too well of the matter that is some 19 years old in the system. It caused us great disquiet under the last administration when certain legislation—[Interruption]. You had your turn so just relax. It caused us a lot of disquiet, and I refer to the section 34 matter. And the world, if they are looking at us, will wonder what is happening in this twin island Republic when elsewhere persons can be brought to justice so swiftly, and yet, after all of these years, matters remain in the system approaching two decades.

Mr. Vice-President, today, as I alluded earlier, we are here to fix this issue, and there are those in our Commonwealth region who have gone on to abolish the question of preliminary enquiries: St. Kitts, Jamaica, St. Lucia and Antigua in close proximity to us, and we have adopted some of the—well, patterned this legislation, I think, mostly after the Antigua model. But the public is calling for action and cooperation from all legislators, and I am indeed looking on, as a lot of
our citizens, at the Opposition. Today is indeed a good day for us in this Parliament because I know that it is very difficult for anyone to justly oppose this piece of legislation. The public is looking on to see and to hope that legislators make the necessary changes to improve our judicial system. It is not about the politics. It is really about making sure that we have a judicial system that works for all the citizens of Trinidad and Tobago, Mr. Vice-President.

Because it really amounts to an abuse when someone who is accused of a crime has to wait years. There are those who are unable to meet bail. There is another situation of which I am aware, of an accused person who has been in remand for in excess of five years. Now I cannot pronounce on innocence or guilt, but to be waiting for those long periods of time and you have to—you are on the road and you see the flashing lights and the speeding trucks transporting persons to the Magistrates’ Court on a morning. You have to pull aside to give them the room to pass, sometimes some reckless driving involved. But, going to the court, matters being adjourned, new dates being set, and then it is just a cycle.

And what has the Attorney General and his team set out to do? With the traffic offences removed from the system, significant cases that continue to clog, to allow breathing room. So, while I understand the point made by Sen. Hosein, about providing new courthouses and so forth, it has to start somewhere, and the starting point is making sure that we fix the legislation so that the backlog in the system can be treated with.

The PI system, Mr. Vice-President, is just not working. It has almost come to a halt. It is no longer suitable for use in our judicial system. Whilst we understand that in terms of detection we are not where we should be, but even after the police would have performed their part of it in terms of detection and arrests
and so forth, Mr. Vice-President, you really get to a point where you wonder what is happening in the court system. An onlooker looking from the outside, how could it be possible, if we are talking about justice, for matters to be taking such a long time?—and I am not even going to delve into the prison system and the shortcomings there.

This piece of legislation—I was happy to see, Mr. Vice-President, in clause 4 of the Bill, that the Act would make it clear that the contents of computers and electronic devices can be searched under a search warrant. That is another matter that we knew recently caused some public attention. But there is another clause that I paid particular attention to, with the issuing of warrants on weekends and public holidays. Because, it has almost become—as I said I am not an attorney-at-law, but you know you observe—that it has almost becomes a practice for exercises to be conducted on a Friday evening and persons arrested, and that weekend period before they face the court on a Monday is almost a penalty in itself, and it is only really the person who would think that they are innocent of the crime who would really feel penalized by that, and also the exercises taking place on the night or the evening before a public holiday. I do not know if it is a—clearly it is a threat, but I was glad to see that clause being dealt with.

So, Mr. Vice-President, as I said at the beginning of my very short contribution, my focus really is to say that this piece of legislation is long in coming. It is certainly intended to fix a situation that successive governments have been making attempts to fix. This Government is committed to making sure that the justice system, the wheels of justice, turn in a manner that can restore confidence in the judicial system in Trinidad and Tobago, and we look forward to the support coming for this piece of legislation, not only from the Independent
Benches, but certainly from the Members of the Opposition, who I know would want to see justice and swift justice delivered in Trinidad and Tobago. I thank you. 

[Desk thumping]

[Madam President in the Chair]

ARRANGEMENT OF BUSINESS

Madam President: Hon. Senators, at this stage I would like to revert to Item 3 on the Order Paper. I am now in receipt of the instruments.

SENATORS’ APPOINTMENT

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

“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 Robert Le Hunte is incapable of performing his duties as a Senator by reason of his absence from Trinidad and Tobago:

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)(a) and section 44(4)(a) of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, NDALE YOUNG, to be temporarily a member of the Senate,
with effect from 29th January, 2019 and continuing during the absence from Trinidad and Tobago of the said Senator Robert Le Hunte.

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 29th day of January, 2019.”

“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. SEAN SOBERS

WHEREAS Senator Anita Haynes is incapable of performing her duties as a Senator by reason of illness:

NOW, THEREFORE, I, PAULA-MAE WEEKES, President as aforesaid, in exercise of the power vested in me by section 44(1)(b) and section 44(4)(b) of the Constitution of the Republic of Trinidad and Tobago, acting in accordance with the advice of the Leader of the Opposition, do hereby appoint you SEAN SOBERS to be temporarily a member of the Senate, with effect from 29th January 2019 and continuing during the absence of Senator Anita Haynes 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 29th day of January, 2019.”

UNREVISED
Senators’ Appointment (cont’d)

OATH OF ALLEGIANCE

Senators Ndale Young and Sean Sobers took and subscribed the Oath of Allegiance as required by law.

ADMINISTRATION OF JUSTICE (INDICTABLE PROCEEDINGS) (AMDT.) BILL, 2018

Sen. Anthony Vieira: [Desk thumping] Thank you, Madam President. It seems I have lost my voice. Madam President, we all want a better delivery of criminal justice system, and I think we all want to rein in the current crime scourge, and I think we are all happy to do away with the old style preliminary enquiry.

There is much in this Bill to commend it. Lots of hard work and thought have clearly gone into it, and I want to commend the AG for not only presenting it in a very erudite manner but for his very helpful flow charts, and for the consolidated version of the Bill. [Desk thumping] Before the Senate commenced, Sen. Ramdeen and myself were actually bemoaning the fact that it is so difficult trying to deal with legislation of this nature when you have the parent Bill here and the amendments there, and how you dovetail that. So, this is enormously helpful, and I thank you for that.

I particularly like aspects of this Bill. For example, making it easier for documentary evidence to be photographed. I remember many years ago having to go to the court for a very distraught wife who had lost all her jewellery in a robbery—a burglary—and of course the evidence was all with the police, and she did not know if the jewellery would be there when the case was finished. So it meant actually having to go and make a formal application, pay cost for lawyers, and then having to enter into a bond. And, it really is not necessary when you have this sort of readily available alternative, so that is enormously useful as well.

Making it easier for law enforcement to search computers and electronic devices. Again, very, very important provision. The safekeeping and the
maintaining of the chain of custody of evidence, very important. And again, this bit about allowing the DPP to file indictments when the Magistrate is unable to complete the preliminary enquiry instead of the Magistrate, it having to be done de novo, and I want to say this does not just arise, I think, out of the recent debacle. I can report many years ago, again, being junior to Vernon De Lima when we were prosecuting certain rape cases in Chaguanas. That was a very difficult prosecution because women having to relive the ordeal and they were crying. It was really very fraught with emotion and difficulty. But we were before Patrick Jaggassar, and then he was charged, and everything went out the window, because the case would have to start de novo.

So, this is a very important provision, and I could tell you from bitter experience, Madam President, that it is long overdue, and it is a welcome amendment. So generally I am in support, but there are a couple aspects that I am unsure about. In particular, this new tier of administrators, the criminal Masters of the High Court, the sufficiency hearings. I want to echo some of the concerns raised by Sen. Hosein on bail. And again, he raised the point that I was going to raise, how do you treat with summary offences where an accused person is charged both with indictable offences and matters which are purely summary? So I will try and treat with each of these in turn.

But before doing so, I would like to ask, on previous occasions the hon. Attorney General has read endorsements and expressions of some court from stakeholders and interested persons. On this occasion I would be interested to know if the Judiciary and the DPP were consulted, and if so whether they have expressed expressions of support and endorsement. Similarly, feedback from the Law Association and the Criminal Bar Association on this incarnation of the
I very much recognize, and I think we all do, that Trinidad and Tobago has limited resources, time is a perishable commodity, and we want to really, on the same theme about justice delayed being justice denied, it affects everybody. It affects the accused having to wait for his name to be cleared. It affects the victim waiting for so long for justice to be delivered. It affects witnesses. It is really—it is insufferable what it takes for people to have their day in court, and this really, I am hoping, will go to alleviating much of that. But, I do not want us to replace one bad system with another. I do not want us to introduce new untested elements into an already burdened system. So, I am hoping that we would really interrogate this legislation with a view to moving beyond just best intentions to something that really is going to be effective and efficient.

6.30 p.m.

Now, I believe this Bill is modelled after the UK Crime and Disorder Act of 1998 which was amended in 2003. That Act deals with indictable offences going up to the High Court, either-way offences where the prosecution recommend that the offence be tried indictably. In the UK, indictable offences are transferred from the Magistrates’ Court to the High Court and you get a hearing date in the High Court, for what is known as a plea and case management hearing. And that hearing takes place before a Judge. At that hearing you would have forms; [Senator holds up form] this is the form for the plea and case management hearing; it is a questionnaire. Both parties fill out the form.

So on that form, you will provide all the necessary information, number of witnesses; issues to be tried; if you have special witnesses, like experts; if you have special needs for witnesses, like sometimes you have to have screens or disabled
witnesses; timetables for the delivery of evidence. Basically, all part of the active case management dovetailing with the Criminal Procedure Rules and all aimed towards reducing what they call cracked trials and ineffective trials and an attempt to resolve legal issues. So, as you have indicated on many occasions this is part of an ecosystem. It does not stand on its own and what is called a sufficiency hearing under Part III in the UK, I think it is really, is really a dismissal hearing.

Now, here is the difficulty I have. Because at our sufficiency hearing, what we have is a Master who will decide if a case is dismissed or goes on to trial. In the United Kingdom this aspect is dealt with by experienced Judges; dedicated pool of experienced Judges who deal with these issues and who are aware of what is going on in those High Courts. So it is critical if we are going with the Masters that they are up to speed, because what we are really looking for are seasoned campaigners in the criminal courts. But the legislation, and I am looking at the parent Act, does not really say what are the qualifications and the experience necessary for a Master.

Now, I found this advertisement, put out by the Service Commissions Department: “…Vacancy: Master of the High Court—Judiciary”. This is for Masters in either the Family and Children Division, the Criminal or the Civil Court. Minimum qualifications:

“LLB and an LEC…
Admission to practice Law in Trinidad and Tobago
…Seven (7) years as an Attorney-at-Law.”

Well, not so long ago we were debating in this very Chamber that seven years was insufficient for an urban development—what was it? Urban Development Planner? We were adamant, 10 years was the minimum. Well I think
this is a lot more serious, because we are dealing with serious crime now, serious offences and I want to say not just 10 years standing as an attorney-at-law, and I think there used to be a convention, that if you were under 10 years you could not do a murder trial on your own. So there has always been a recognition that in the trenches it is not just having the paper qualifications because life and death is involved. So we have Masters here who may not have 10 years’ experience, who may have only had experience behind a desk, not really active criminal experience or experience as Magistrates.

Now, I am aware that there are five Masters right now and I understand that of that number many of them are very highly experienced Magistrates. But again, there is a big difference between the status of a Master and the status of a Judge. So assuming, but not admitting, that these current Masters have that expertise and qualification and gravitas. If they do, my solution would have been, make them Judges. We do not need this additional tier, because, and this is going to dovetail with the point that Sen. Hosein made, I will give you an example, let us look at bail. Are these Masters going to treat with bail as an appeal from a Magistrate who has not granted bail? Or, if the Master refuses, can I go now to a Judge in chambers to get bail, or do I have to go upstairs to the Court of Appeal to get bail? It is not quite clear in the legislation.

And you see we are doing some very significant things here, eh, things like bail and prima facie case. You really need a seasoned campaigner to sift this. Because I remember at one time after this Scott drug enquiry, we had a lot of very seasoned experienced Magistrates, but they all had to leave because they were tainted whether rightly or wrongly and we brought in a lot of young Magistrates. But truthfully, they really did not have the kind of seasoning and understanding
that goes with years of practice and being around people and all of that. So here we
now have these Masters who may be seven years, not really in the trenches,
dealing with matters that seasoned Judges should really be dealing with and we
have prima facie case being abolished.

Now, we know in Galbraith as you indicated, hon. Attorney General, prima
facie means sufficient evidence to satisfy the Judge that the accused has a case to
answer. There seems to be a case on the face of it. You did not drill down deeply
into the evidence. This—when you read the sections here, we have abolished prima
facie and so we are now coming with not sufficient evidence, but the very words
“not sufficient evidence” to my mind suggests that you now have to actually look
at the evidence, you have to delve into it to see whether there is sufficient or
insufficient evidence. And so to my mind I think we are actually raising the burden
of proof and if we are raising the burden of proof, is that helpful for a prosecution,
for a DPP’s department that is already overly burdened?

And, again, when you are dealing with a seasoned campaigner they could
look at the evidence, they will hear, because at this stage all we are dealing with is
legal submission, supposedly, right, but you would get a feel for the case. But in
my experience when you deal with young judicial officers who have not—who are
a little wet behind the ears, they fixate just on the paper in front of them. They are
in silos, they are not seeing the broader circumstance and to my mind if we are
going down that route there is a danger.

So my suggestion would be, again, if I had my way I would not have this
new tier at all. I would have simply increased the pool of Judges in the High Court
and I would have given them—I would have made them dedicated administrators
just treating with these sufficiency hearings and whatnot. So, and again this
sufficient evidence, I have a concern about that, because it seems to me now that moving away from prima facie we have actually increased the burden.

Another concern, yes, this is definitely going to take pressure off the Magistrates, but unless we make concomitant changes in the High Court and elsewhere, all you are doing is that you are just moving the burden of the backlog from here and you are putting it there. So we have to be mindful of not just shifting the deck chairs around on the Titanic but about really having a whole ecosystem that works seamlessly together.

So, again, it comes back down, I really think the shorter answer would have been having Judges, not having to have this additional tier. It really boils down, I think, to practical experience and that is why in the UK there are these dedicated pleas and case management courts and I think that is it. I thank you.

Sen. Sean Sobers: [Desk thumping] Thank you, Madam President, for recognizing me this evening and giving me an opportunity to contribute on the Administration of Justice (Indictable Proceedings) (Amdt.) Bill, 2018. Madam President, whilst seated in what seemed like detention, I paid very close attention, however, to what was said by many of the speakers who preceded me this evening. In particular, I paid earnest attention to the contribution of my good friend Sen. Hosein and he began his contribution in a manner in which I intend to also begin.

This issue of preliminary enquiries and the delay that has in fact paralyzed the system has its genesis, in my opinion, in that 2005 situation when witness statements were introduced into the criminal courts themselves, I believe, by then Attorney General, Senior Counsel John Jeremie, as he is known now. And I honestly believe in terms of my reading and understanding that the introduction of
witness statements then, Madam President, was not ill-intentioned at all.

I think when one juxtaposes what transpires in the civil realm with matters coming before a civil court, with respect to directions being given at a CMC for similar witness statements and other matters that the court concerns itself with, there has been a lot of expediency experienced with matters traversing those courts. And I think in terms of the introduction of the paper committal process and procedure it was thought back then that there would have been some measure of success experienced in the civil jurisdiction being naturally carried across into the criminal realm. But one could understand, if one practises in both jurisdictions, that what obtains in the civil realm, with respect to those directions, is the fact that there are certain time frames that are given to or run concurrently with the directions from the court. And those time frames have attached to them certain sanctions.

Generally, in civil matters you deal with property, moneys due and owing, other processes or matters that could be solved or fixed with some type of pecuniary benefit being given to the aggrieved party. But in a criminal matter, however, where one is dealing with one’s life and liberty, one cannot simply affix a time frame or a sanction or a consequence to a defaulting party if they do not comply or adhere to certain procedures that were directed to them at the first initial hearing. And I think in terms of the criminal realm this lack of sanction and time frame, or a time frame running with a sanction is what generally contributed to the failure of the paper committal systems in this country.

Being aware of that, considering what this legislation or the amendments to the parent Bill are expected to do, I thought it fit to juxtapose what currently occurs now in a preliminary enquiry system and what this Bill is intended to change. So
that we have an appreciation of whether or not, as good and positive intended these amendments are; as good and positive steps implementing this legislation, passing this legislation would be and possibly redound to citizens, I would have to echo the call of other Senators that it cannot stand alone in fixing a system that is all but paralyzed at this stage. [Desk thumping]

So as it occurs right now when an individual is charged he is brought before the Magistrates’ Court. He would face the Magistrate, the Magistrate would deal with certain housekeeping issues and the Magistrate would then set certain directions in terms of witness statements that have to be sworn, then filed and then served upon the accused individual. My understanding of this particular Bill and the amendments that run with it is that the same situation would occur, insofar as, the very first appearance of the accused would be before the Magistrates’ Court and that the Magistrate would deal with certain housekeeping issues and have the matter then transfer to Registrar of the High Court for the matter to be fixed before a Master once the matter is either indictable or either way in nature, at the election that is given by the prosecution that it should be dealt with indictably.

What caused a considerable amount of delay in the preliminary enquiry situation, the first delay would have been in terms of the filing—the swearing, then filing and tendering of the documents, the witness statements. This Bill before the House does not eliminate that. The prosecution would still have to swear and file and tender those witness statements. That procedure in itself takes about a year, all things being equal. So we still have that delay that we are going to experience with this particular piece of legislation.

Subsequent to the swearing, filing and tendering of the documents the accused in the preliminary enquiry is given an opportunity to name the witnesses
from that list that he or she so desires to cross-examine. That feature of the current legislation would now be absent in this particular legislation before the House, because no longer would persons be brought before the court to be cross-examined. Submissions would be made on the evidence that has been brought before the Master’s court. The element of cross-examination of those witnesses, which is the trial, if one were to use the term in the preliminary enquiry stage, would generally take about three to six months depending upon certain other delays.

Thereafter in both systems, the current one and the one before the House, the matters once ruled upon would have to be forwarded to the DPP’s office. That in itself as well takes about a year to two years to occur. So there is no change there either. And subsequent to receipt of the documents from the court, the DPP then has to indict. And I think Sen. Saddam Hosein pellucidly stated what would be the causes of that delay that occurs at the DPP’s office which as we stand here in this honourable House today still exists. And, unfortunately may continue to exist until some infrastructural changes are made.

So in reality, Madam President, really and truly what this Bill, in terms of amending any real delay experienced currently, all that would change is the fact that persons would no longer cross-examine the witnesses, there would just be submissions, which eliminates possibly a six months to a year of current delay, leaving the balance of delay that I just expressed to continue and subsist.

Does that mean, Madam President, that we should not support the Bill? In my humble opinion the answer to that is no. The Bill is a step in the right direction. The difficulty is, and it has been echoed by other Senators, more must be done to accompany this piece of legislation for real and tangible change to be redounded to the citizens of this country. [Desk thumping] And I know that early on in the hon.
Attorney General’s submission to this House he indicated that he would treat with some of the infrastructural changes that have been taking place. So I would eagerly await on that.

Madam President, having said all of that, I would like to start off with an excerpt from an article entitled:


“The formal structures of justice, high costs, and the culture of delays, and physical distances from courts limit the effective participation of the people, especially the poor in accessing justice. In the context of the need for alternatives to formal procedures…”—we—“need to construct new ways of pursuing a human rights vision of justice due to the failure of the old formal approach to guarantee effective access to justice. There was a need to incorporate procedures and institutions into the mainstream judicial system that guarantee better access to justice.”

With that being said and getting into the Bill itself, the first clause that I would like to have a look at would be clause 3, section 3(a)(ii), which can be found on page 3 of the Bill itself, the amended Bill. And that particular clause says:

“(ii) by deleting the definition of “prosecutor” and substituting the following definition:

‘prosecutor’ includes the Director of Public Prosecutions, a person acting under and in accordance with his general or special instructions or a police prosecutor or, in the case of the private prosecution of an offence, the person prosecuting that
This amendment here changes the parent legislation because it now widens the scope for the definition of a prosecutor to include a police prosecutor. There are benefits to such an amendment, insofar as the current human resource capita at the DPP’s office. Most of the prosecutions that occur in this country, be it indictable or summary, are in fact conducted by police prosecutors. But the serious indictable matters, such as murder, the capital offences are strictly done by prosecutors from the DPP’s office. Because these sufficiency hearings would involve capital matters allowing for police prosecutors to conduct the prosecutions instead of or alongside state counsel from the DPP’s office could in fact alleviate the delay that is experienced in some instances because there are not enough prosecutors at the DPP’s office to conduct these matters themselves.

But there is a problem and a drawback with allowing such an amendment. You see, because currently in terms of being—what qualifies an individual to be a police prosecutor? A police prosecutor is generally an individual who has obtained the rank of sergeant and above and has participated in some prosecutors’ course. Or that individual has an LLB degree. Now, having an LLB degree does not make you a lawyer, because you have not participated in any practitioners’ course to actually know what practice and procedure involves; being in a courtroom; being able to object; being able to submit; being able to cross-examine. You would not be aware of these issues if you have not participated in a practitioners’ course.

And the issues regarding the preparedness, the readiness of police prosecutors in matters have recently been echoed by the newly appointed director of legal of the Trinidad and Tobago Police Service. In an article, Madam President, if you would allow me, Trinidad and Tobago Newsday, Sunday 20th January, 2019,
entitled:

“LAW LESSONS
CoP’s lawyer to teach police prosecutors”

Mr. Christian Chandler who was recently appointed said:

“…his aim was to improve the skills of police prosecutors who sometimes went up against senior defence attorneys. He added some officers neglected their responsibilities by not going to court to address their matters.”

And he went on to say:

“I definitely want to improve the prosecution arm of the Police Service. What I intend to do is to revisit some of the regulations in the Police Service Act. Police have to make attending court their priority; that is something that has been falling by the wayside.

One of my intentions is to ensure police attend court so that cases will not collapse due to their absence.”

These are some of the issues involving police prosecutors. He went on to say that:

“…he planned to hold seminars on a monthly or bi-monthly basis where he would have state prosecutors to lecture his fellow colleagues and provide them with up-to-date rulings.”

Mr. Chandler’s sentiments in that particular article were also echoed by a very senior and experienced defence counsel whose name is well known throughout the length and breadth of the Caribbean, a gentleman by the name of Mr. Larry Williams. Mr. Williams said:

“…the plan to train police prosecutors was a good idea as that should result in officers having an improved conviction rate. He said while arrest rates were good, convictions were the ultimate prize for policing.”
Chandler then went on to say:

“…One of the disadvantages is that these prosecutors are up against trained and seasoned attorneys. What we intend to do is to equip them with the necessary tools to be more efficient.”

So that it has been recognized, Madam President, that unless we equip these police prosecutors with the necessary tools, such as, the training; the databases, because some criminal practitioners, at least most of them that I am aware of, utilize databases on a daily base, wherein they would utilize databases such as Westlaw, LexisNexis, CariLaw, to be very up-to-date and au courant with the law and proceedings. If we intend to throw our police prosecutors out into the deep end as it were, in capital matters, we need to properly equip them so that they are able to advance the State’s case in a manner that would be fitting of the position that they would now hold in a capital matter. And we would also need to treat with the level of delinquency that occurs with them not appearing in some matters as outlined by Mr. Chandler.

I move on to clause 4, which is located at page 5, subsection (5) and subsection (6). This particular clause says, it is on page 5:

“(5) For the purposes of safe keeping anything seized under this section for the purpose of evidence in criminal proceedings, the Commissioner of Police shall cause it to be detained in the custody of the police or a person authorized by him to receive it.

(6) A person shall, during any period that he is assigned responsibility for the safe keeping of anything seized under this section take reasonable care to ensure that it is preserved for the purpose of evidence in criminal proceedings.”
I listened to the hon. Attorney General in his submissions and I believe he mentioned one of these authorized persons could possibly be the FBI. The thing is, I am wondering whether or not, to be more prudent, we should actually define who these authorized persons are. Because it is not, as was mentioned earlier on in this honourable House, I think by Sen. Cummings and also other Senators, that it is not a foreign concept for items that have been seized to simply go missing. Senators would have raised the situation with the Forensic Science Centre and the disappearance of drug exhibits and whatnot.

Senators could also harken back to a time, in the not-so-distant past, where firearm exhibits, a huge arsenal of firearm exhibits, went missing in the Forensic Science Centre’s possession. I am none the wiser as to what took place with that investigation—if the firearms were even found; if the firearms were sold; if they are currently being utilized on the streets—we do not know.

Even in incidents where items are taken as exhibits, like automobiles, if in the commission of an offence an automobile may have been used and then the automobile is now seized and impounded by the police—I have been in situations where and I am certain other colleagues in this House who practise in the civil arena, in terms of making certain applications, like detinue and conversion, when we send off pre-action protocol letters and whatnot and the matters are settled, when we attend the impound lot that is operating, run and operated by TTPS, you would be ashamed and amazed as to the state of the vehicles currently in that lot.


Sen. S. Sobers: The one in Aranguez and in other areas, [Crosstalk] yeah. The condition of the vehicles, they are in total disrepair and these are vehicles owned by private citizens. So that when clients come to claim the vehicles and we are
walking around with them you realize, well, the officers seized my vehicle, “I had ah battery in my car, I doh know where the battery gone”, the lights gone. And they interfere with all sorts of stuff in the vehicles and no one is held accountable.

In some instances, yes, the State may treat with the cost. But I am saying today as well too in the Parliament why should the State have to pay for that. If these vehicles and exhibits have been seized under the authority of the TTPS and the TTPS is the one with the responsibility to treat with the safekeeping of these items then they should be made responsible for these things. And the state coffers should not be emptied to continuously be paying for errors being made by a particular organization when they are charged with a responsibility to do certain things. This particular section also gives the Commissioner of Police the ability to authorize another person, another body. And they have to take reasonable care.

7.00 p.m.

What is reasonable care? What steps are we taking as a Parliament to ensure that certain checks and balances are recorded over these authorities, these bodies, these authorized persons? This is an opportunity for us to change that and I would implore the hon. Attorney General to look at that as well too.

I move on. Section 8A, which is located on page 10, subsection 5. Now, some of these issues that I would raise here, hon. Attorney General, it is not me being pedantic at all. I have just noticed certain things and I would want to raise them. So subsection 5 deals with:

“Where a Magistrate makes an order under subsection (1), (2)(a), (3) or (4), the Magistrate shall issue a notice to the Registrar specifying the offence or offences with which the accused has been charged and the Magistrate shall cause—
(a) a copy of the notice to be served on the accused and filed in the High Court.”

In terms of that, just to be logistically tidy, I am wondering whether or not that should really reflect “that the notice to be filed first and then served on the accused thereafter”, as opposed to it being served and then filed thereafter, so that the accused has a copy of the filed document, as opposed to the document without any type of filing.

Further, on page 11, clause 8A, section 7 (a) and (b):

“Where an order is made under subsection (1), (2)(a), (3) or (4), the accused shall appear before a Master on—

(a) the next available session day as determined by the Registrar; or

(b) such other session day as may, subject to the approval of the Registrar, be agreed between the accused and the prosecutor.”

If I am reading this correctly, and with the other subsections above it, this would occur when the accused comes before the Magistrate first, and then the matter is adjourned for the notice to be filed at the Registrar at the Master’s court. If the matter has to be transferred to the Master’s court and there is a date to be fixed, the next available session before the Master, section (b) here says it could be a date wherein there is an agreement or consensus between all parties: the Registrar, the accused and the prosecution. But this comes after the accused has already—the matter has already been adjourned before the Magistrate.

So I am wondering, logistically, how is it going to be possible for the Registrar now setting a date before the Master to take a position with respect to that date, or the fixing of that date with a position from the accused and the prosecution? Is it going to be done round robin? I think it may very well be

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logistically impossible. And, I mean, at the end of the day, attendance at court should be of paramount importance for the accused before the court. So, generally, whatever day is fixed before the Master by the Registrar, the accused should make himself appear before the court, whatever that day is. If he cannot, for whatever reason, there are certain applications or procedures that can be adopted by him, or her, to facilitate his non-appearance on that date. But I just think in terms of having a provision for it to be agreed upon may be very difficult.

So I move on. Section 8A, subsection 10 on page 12. So this deals with the Magistrate adjourning a matter for no longer than 28 clear days in the absence of the accused. Now, I only raise this particular subsection because when one looks at the Bill Essentials that would have been circulated, at page 5 of the Bill Essentials, at the top of the page, it basically states that a Magistrate may also, in the absence of the accused, order the accused to be further remanded for longer than 28 clear days. So I am in agreement with the position in the amendment, because that is what occurs today within the courts. But just out of an abundance of caution and clarity, I just want to make sure that this is what we are going with within the amendment, as opposed to what the Bill Essentials makes reference to.

So subsection 10 located on that very said page, page 12, also deals—and I think Sen. Hosein touched on this as well, too—the appointment of Magistracy Registrars and Clerks of the Court, and giving Magistracy Registrars and Clerks of the Court certain jurisdiction to do certain things like issue summonses and warrants and care applications for bail. And I believe this is a good thing due to the fact that in some instances when persons appear before the court and there is no Magistrate present, what happens is, is that the Clerk of the Court—the Clerk of the Peace, rather—would come before the court and just basically
adjourn the entire list; an entire judicial day is wasted. So that giving these Clerks of the Court the ability to treat with certain issues, such as bail and whatnot, because the issues—it would assist in terms of furthering the judicial process along.

The difficulty is, as well too here, when one looks at the Bill Essentials, one would see that it speaks to Clerks of the Peace being given this concurrent jurisdiction. Now, a Clerk of the Peace and a Clerk of the Court are two different personnel, because a Clerk of the Court is someone who is legally trained. I think by the last circular that went out, a Clerk of the Court is someone who has an LLB degree, has an LEC and has practised for about three years. So they would be fairly au courant with certain procedures and practices before the court treating with issues such as bail. But a Clerk of the Peace would have no such experience whatsoever, and for them to be dealing with issues like bail could pose a serious problem. So I would just like the hon. Attorney General in wrapping up to just clarify the position.

Clause 11. So clause 11, located on page 15 of the amendments, section 11 of the Act is amended, and it deals with two subsections, subsection (ii), (iia), which speaks to certain documents that the police shall submit to the Director of Public Prosecutions. And going through the list of the documents that the police are charged to submit to the DPP’s office, I am actually very comfortable with all, save and except one, the last on the list which is located at (F), which speaks to:

“any available statement of the effect of the offence on a victim, a victim’s family or any other person;”

Now, I am wondering whether or not that particular document at this stage, it may, in fact, be a bit premature. Such documents would assist the prosecution if
they are treating with a maximum sentence indicator or a Goodyear hearing, and instead of that particular document, I am wondering whether or not maybe the station diary extract should be submitted to the DPP’s office. The station diary extract, for those who practise before the courts, is not a document, really and truly, disclosable as of right, but it would definitely assist a prosecutor and defence counsel in terms of preparing for the matter at hand, because it is, in fact, one of the most true depictions of what would have occurred by the police in furtherance of their duties on that particular day when the offence took place. The other thing is, in my opinion, this particular section should have some type of time frame attached to it for the police to submit these documents to the DPP’s office to safeguard against the few errant officers who would flippantly treat with forwarding this information to the DPP’s office.

Clause 17, section 20. So section 20 of the Act is amended in subsection—so it gives a detailed description of how it is amended, but basically, what I want to get to is the fact at (b) on page 18 of the amendments, it talks about repealing subsection (3) of the parent Act. And when one looks at subsection (3) of the parent Act, located on page 239 of the parent Act, it reads:

“Where an accused is not represented by an Attorney-at-law at a sufficiency hearing, the Master may, in the interest of justice, cause all witness statements and other documentary evidence filed by the prosecutor to be read aloud in the presence and hearing of the accused.”

This particular section is to be repealed by virtue of the amendments, and I am suggesting that it stays in. I know that there are some concerns with respect to time for the reading of all these documents, as voluminous as it may be, to the accused who is unrepresented. But there can be certain instances where the accused
could be illiterate. So he may have the documents in his possession. He does not have the means to hire an attorney-at-law. For whatever reason he may be unrepresented by legal aid, but he has the documents in his possession and he has no idea what the documents mean because he cannot read. And there are many accused who appear before the court, I guess unbeknownst to members of the public, who are, in fact, illiterate.

I have had several clients who could not read. And it is not a fact that individuals like to proffer as information to persons who they sit with. No one likes to admit that they “cyar” read the documents that are in front of them, or they do not understand what the documents are. But I think it is a judicial function for the court in the interest of justice and furthering that justice, that you take some time for those particular defendants before the court and read the documents to them. [Desk thumping]

I also looked at clause 19, section 22. That is located on page 20, where it deals with further evidence. Now, I agree with one of the submissions made by the hon. Attorney General in terms of further evidence that this amendment widens the scope as to the persons who can apply or make relevant applications for further evidence to be adduced at the sufficiency hearing. I think previously in the parent Act it was only allowed, or a provision was only made for the prosecution to so do. This amendment allows for actually the accused to do that as well, which is a good step. The only issue I had with respect to that amendment was that the amendment removes—so the parent section states this:

“Where, at a sufficiency hearing, the prosecutor wishes to adduce further evidence from a witness who has or has not already given a statement, the Master, if he considers it just and expedient to do so, may, on
the application of the prosecutor, allow the prosecutor no more than seven
days to file and serve on the accused, such additional witness statements and
other documentary evidence as the Master thinks fit.”

So the amendment allows for both the prosecution and the accused to adduce
further evidence, make the relevant application, but it removes the section where it says
“…it being just and expedient to so do…”

—which gives the Master a bit of a guideline in terms of processing the application itself.

And I know that there are judicial officers, and they should be able to
treat with the applications simply, in some instances, by attaching probative versus
prejudicial value to the application itself. But I would think we could err on the
side of caution and leave it in to state “just and expedient” as well as to leave in as
well too the time frame that was given there, and not remove the time frame as the
amendment attempts to do.

Further, in terms of section 27(3)—so clause 24, I believe, aims to
amend section 27(3), which, in essence, treats with the situation that we are very
familiar with, where certain cases were left incomplete by the ascension of Marcia
Ayers-Caesar. And in principle, I have no difficulty with the manner in which it is
presented here, save and except—and it would be remiss of me not to lodge this
concern on the Hansard. The amendment speaks to where a Magistrate was unable
to complete a preliminary enquiry before the coming into force of this Act, or a
Master is unable to complete a sufficiency hearing because of his physical or
mental infirmity, resignation, retirement, death or inability for any other
compelling reason, and the evidence filed before the Master discloses, in the
opinion of the Director of Public Prosecutions, sufficient evidence to put—

**Madam President:** Sen. Sobers, you have five more minutes.

**Sen. S. Sobers:** Yes, please, Madam President—to put the accused on trial. I am one who definitely believes in terms of the independence of the DPP’s office and I have absolutely no difficulty with the operations of that office. I think they do a tremendous job with the little that they have right now. The difficulty I have with this particular section, respectfully, is the fact that the DPP’s office would be party to some of the proceedings that they are now being called upon to make a decision upon, which results in himself unto himself; himself being a party to the proceedings before the matter was incomplete, for whatever reasons alleged above, and advancing a particular position during the course of that hearing, but now himself being removed from the hearing to make a decision on whether or not there is sufficient evidence for the matter to be sent to the High Court to go before—for a trial.

It more than likely would be evident, if at all material times during the course of the sufficiency hearing, the DPP’s office is advancing that there is, in fact, sufficient evidence, that the matter should go before a High Court Judge for a trial to take place. If you now appoint or place a cap squarely on his head for him now to decide whether there is, in fact, sufficient evidence, he will say that there is, in fact, sufficient evidence. I cannot reasonably see sufficient division in anyone’s ability to be party to a proceedings initially and then to be arbitrator in those very said proceedings thereafter. It just does not equate, in my opinion, to a level of fairness that should be present in such an amendment. There is an amendment, I think, we as a bench, would be proffering to the hon. Attorney General with respect to that. But that is my sole difficulty, and as I said before, it is not to cast
any aspersions upon the DPP’s office, but it is simply just to say that it does not seem as if it is a situation that could play itself out properly.

So these are some of the comments that I had on the Bill itself. Now, I know that Sen. Hosein raised a particular issue and albeit that it was not tabled as an amendment that came before the House, we, as lawyers and we as legislators here would obviously have had some cause to read the parent Act, and in reading the parent Act I did find the same issue that Sen. Hosein raised squarely with respect to section 4 of the parent Act, which speaks to:

“…proceedings”—that have been—“instituted prior to the coming into force of this Act, the prosecutor or the accused may elect to have the case determined in accordance with this Act and where evidence has been led, the Magistrate shall transmit the record of the proceedings and all relevant evidence to a Master.”

Respectfully, again, that should definitely be something that is done by agreement. If both the prosecution and the accused agree that at this particular stage, whilst the matter is ongoing, we firmly believe that the matter could be dealt with at the Master’s court and a sufficiency hearing will serve us better, then that decision is made by both individuals. And it should not be left up to one party who is a party to the proceedings to make that decision for the other individual. The accused before the court, treating with a preliminary enquiry at that stage, has a legitimate expectation that the matter would be treated with there and then. [Interrupton] Beg your pardon?

So, I mean, we do have an amendment that we would proffer to the hon. Attorney General with respect to that particular section. I eagerly await to hear him in his wrap-up. In closing, I would like to close in a manner in which I
began by saying that this Bill is a positive step in the right direction. The difficulty, however, is that more needs to be done. A lot more tangible changes have to be made for us to actually feel that the system itself is actually going in a positive direction and changing accordingly.

I am reliably informed in terms of the practice in the San Fernando Magistrates’ Court—actually in the practice in the southern jurisdiction, Princes Town court now shares its home in Rio Claro; that San Fernando, I am informed, will soon move to Princes Town, that there is a building to rent. I am also reliably informed in terms of a particular building that has been under construction to house the San Fernando Magistrates’ Court—

Madam President: Sen. Sobers, your time is up.

Sen. S. Sobers: Grateful, please. [Desk thumping]

Madam President: Minister of Agriculture, Land and Fisheries.

Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Madam President, thank you very much for allowing me to join the debate on this Bill. Right away, Madam President, let me caution Sen. Sobers that the Princes Town court operating in Rio Claro must be a vast improvement. Rio Claro is an outstanding town [Laughter] and I wish more courts would come to RioClaro.

Madam President, on page 44 of today’s Newsday—take my word for it—there is an article which reports that I completed the Trinidad and Tobago Marathon on Sunday, [Desk thumping] all 26.2 miles of it. But, Madam President, I did not run—

Sen. Baptiste-Primus: “Ah now going tuh ask yuh if yuh run.”

Sen. The Hon. C. Rambharat:—because I know my limits. I know the resources

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available to me, so I joined with the Trinidad and Tobago Olympic Committee, 41 of us, in walking the marathon. [Desk thumping]

**Sen. Baptiste-Primus:** It was for a worthy cause.

**Sen. The Hon. C. Rambharrat:** I set out to do it in seven hours and I finished in about that time, give or take a few minutes. Madam President, the 26 miles compared with the 26 years since I first embarked on this journey of getting rid of preliminary enquiries—I was in law school in Cave Hill alongside some future luminaries, the now Attorney General, Faris Al-Rawi, former Attorney General, Anand Ramlogan, and former Minister of Justice, Christlyn Moore. Maybe there is hope for me. [Laughter]

And in 1993, 26 years ago, we were cautioned to pay little attention to preliminary enquiries, a caution that would be repeated by the time we got to law school, because it was about to be abolished. But, Madam President, sometimes you could sprint and sometimes you need to walk, and this has been a fairly long walk, but it will end tonight.

You see, Madam President, I associate myself with the contributions of then Attorney General Jeremie and I recognize that my colleague, Sen. Hosein, read Mr. Jeremie’s contribution in 2005 when he commented on the 1994 amendments which did not work. I associate myself with the contribution of then Minister of Justice, Volney in 2011 when he piloted the now famous, with an infamous section 34. I associate myself with the contributions of then Attorney General Ramlogan in 2014 when he piloted the committal proceedings Bill, and, of course, my former classmate, Al-Rawi, MP, in relation to the 2017 Bill which lapsed in 2017, and this Bill that is before us which was passed in the other place in January 2019.

Madam President, let us be realistic. In 1993, when we were being cautioned
about avoiding—leaving the PIs alone; they will disappear, the murder rate in this country was about 97 in 1993. 1999 would be the last year we had a murder rate—annual murder rate—under 100. And let us recognize that if in 1993—because in 1994 when I did my in-service training with the DPP’s office, I sat during the August period in the court of Justice Lennox Deyalsingh, then Justice, and the effort during the usual break was to clear the backlog of murder trials. In fact, Madam President, I saw something during that August that I did not even know was possible. Justice Deyalsingh was conducting these trials, I would not say simultaneously, because that is impossible, but he had them scheduled at where a break was programmed on one, he moved to another court and continued the other one. And I saw the same foreman sit on the three juries, and the three juries returned convictions.

But in 1993, we were dealing with a backlog in the criminal justice system with 93 murders a year. Alongside that, as I have spoken before in relation to the younger attorneys, particularly the solicitors, by 1995 we were dealing with a backlog in the civil courts so that if you move in one category from under 100 in 1999 to 400 to 500 a year, you can imagine what is happening in the criminal justice system. And in fairness, as I told my colleague, Sen. Ramdeen before we started today’s sitting, we always seem to be fixing something and catching up, and there is a limit on how much resources we can throw behind this problem, because we have competing claims on the resource.

So this is a challenge that had been shared across administrations. Former Attorney General Ramesh Lawrence Maharaj, as I pointed out in a previous sittings, was very prolific. Can you imagine us in this session having to deal with 100 Bills? That is what was the norm during that period under Attorney General
Maharaj. So the increase in that one category has contributed to the backlog. And there is something that we pay very little attention to. I did not hear a single speaker so far talk about it.

But, Madam President, I always like to refer to the work of the various joint select committees and I have referred to this report on several occasions, that is the report of the Finance and Legal Affairs Committee, on an enquiry into the criminal case flow management, a report that was laid in this House and the other place, in the House on November 09, 2016 and in this House on November 15, 2016. I just want to draw a reference to one of the recommendations of the committee and one of the findings of the committee and let us not overlook this.

The report in the Executive Summary at 2.5 points out, number one in terms of the finding, the disparity between the small number of criminal practitioners and the volume of criminal cases in the assizes. So you have an increasing caseload. A previous—I believe it was Sen. Hosein, pointed to the reports from the Judiciary which show that, particularly in the Magistracy, we are adding more matters than we are disposing and with new prosecutions and new charges being laid every day, we are adding, and we have very few criminal practitioners so that on many occasions, if all the ducks are lined up, you will still be at the mercy of the number or the few criminal law practitioners that we have. And on many occasions when cases can go on, they will not go on. And that is a very important fact. So for this thing to work in relation to the case-flow management and the backlog, everything must work at the same time and on the same day.

And we spoke about the Commissioner and the police. Different speakers have said—and I just want to go back to, in that other life when I wrote for the Trinidad Express, there was one observation I made even before Dwayne Gibbs
The Admin of Justice (Indictable Proceedings) (Amdt.) Bill, 2018
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came to Trinidad to take up the post of Police Commissioner. I predicted that he will fail and he would fail for the simple reason that Dwayne Gibbs, based on my research, served in the Edmonton Police Service—police force. He was at the third level in the force, and the bulk of his work had been in human resources, and the force was 1,200 officers.

7.30 p.m.

Our establishment in this country is five times more than that. But the most important thing I pointed out is that no police officer, anywhere in Canada, had ever gone to work and found 3,000 murder cases on their desk, and by the time Gibbs was coming I said if he does not trip on the carpet coming in, he will collapse under the weight of those 3,000 murder cases which was growing by $400 to $500 a year. Gibbs was doomed to fail. Nothing in his career had prepared him for that. The numbers, we have to deal with the numbers, the backlog, the existing, what is added, and the resources, and all those things have to work together at the same time.

Madam President, I listened to my friend, Sen. Ramdeen, and I just want to make a few observations, but before I do that I want to thank Sen. Chote and Sen. Ramdeen. I remembered that day in September, or those two days in September, I think it was the 14th and the 17th of September, 2017, when we took a beating on the previous Bill. We took a beating first at the hands of Sen. Chote and then at the hands of Sen. Ramdeen, and we took a while before we came back. My colleague, Sen. Khan, likes to say, “Withdrawn with the severe injury”—

Hon. Senators: With heavy losses.

Sen. The Hon. C. Rambharat: Eh? “Withdrawn with heavy losses.” So we retreated, and we recalibrated, and we returned with what is before you, but I thank
them for their interventions that day. But I want to say in relation to what Sen. Ramdeen has said on the first question of whether the DPP is ready, well in 2011 when we had the Volney Bill which was passed, I do not know that the DPP was ready, and what confirms to me that the DPP was not ready, it seems as though nothing was ready except section 34. Because all that was done after the passage of that 2011 Bill, all that was done was that certain sections were proclaimed and I will talk about that just now.

But I want you to listen to then Minister Volney as he piloted the Administration of Justice Bill, 2011 on Tuesday 29th, November 2011, and this is what Mr. Volney says. He says:

“The Bill will come into operations on such date as is fixed by the President for proclamation. Mr. President, our Government wants to ensure that the stakeholder agencies are in a state of readiness when this Bill comes into effect. We anticipate that much skepticism is being created as concerns are raised in relation to the feasibility of the legislation. Common trepidation surrounds the lack of sufficient human resources, infrastructure”—efficient—“processes that are necessary to meet the timelines imposed by the legislation.

Mr. President, be assured that these issues have been considered and although the tight task may appear herculean, we have the cooperation of the stakeholders, who have been asked to review the legislation and identify their resources.... This Government, our government of the People’s Partnership, is”—fully—“prepared to provide any and all the necessary resources that are required to give full effect to the legislative intent of this Bill.”
And this Bill never saw the light of day.

So even Mr. Volney then, in piloting this Bill, recognized that there were songs about lack of resources and human resources, and so on, and when it was time, having gotten it through the Parliament, as I said on previous occasions, froze like a deer in the headlight and only managed to proclaim sections 1, 2, 3(1), 32, the infamous 34, and section 6. Nothing else in that Bill was ever proclaimed. That was 2011. When money flowed, we had the brilliance of so many minds in that Cabinet and it just did not happen. It just did not happen and it had nothing to do whether the DPP was ready or anything. It had to do with the political will to pass and proclaim the legislation and deal with it in terms of implementation. And when the AG responds, when the AG wraps up, the AG will talk about the difference between the readiness in 2011 and the readiness now because a lot of work that had to be done in preparation for this has been done.

My friend, then Attorney General Ramlogan came in 2014 with another version, another piece of legislation dealing with clearing the backlog and moving criminal trials along, and that Bill, Indictable Offences (Committal Proceedings) Bill, 2014, a lot of what was in that Bill is in the Bill that is before you now. And likewise, that Bill made it through the Parliament. Made it through the Parliament, it was assented on 5th September, 2014 and never proclaimed. Never proclaimed. I do not know if the DPP was not ready, if the air condition was not cold enough, if the prison was not large enough, if the prisoner transport truck was not fast enough. Madam President, this has been a 26-mile journey on foot, walking, not sprinting, but tonight we have to take it over the finish line. We have to take it over the finish line.

In relation to the point about the justices of the peace, I accept what Sen.
Ramdeen has said about reviewing the fees, and so on, but again I would say, you see these problems stride various political administrations. The parentage does not reside in the red side or the yellow side. Because, for example, there was a featured address delivered by the then Attorney General Ramlogan at the awards and magazine launching function of the Justice of Peace Association of Trinidad and Tobago, and towards the end of his speech then AG Ramlogan talked about some of the work that had gone in to improving the work that is done by Justices of the Peace. In fact, the only piece of legislation I know that has been brought to deal with Justices of the Peace was an attempt in 2001 by then Attorney General Ramesh Lawrence Maharaj, a Justice of the Peace Bill which lapsed. It lapsed. It was never debated anywhere. Nobody spoke on it.

And in this speech, Mr. Ramlogan traces some of the developments: 1997, the handbook for the Justices of the Peace. That is the first coming of the UNC; 2008, PNM. The engagement of a consultant to treat with the Justice of the Peace; 2008 September, PNM. The consultant report which recommended that Cabinet appoints a standing committee; November 2008, Cabinet agreeing to establish the standing committee for two years which took us into the Partnership administration of Kamla Persad-Bissessar. And then Ramlogan goes on to set out some of the things that he as Attorney General will do in relation to Justices of the Peace, and I believe it is Attorney General Ramlogan who moved the fees from 300 to 1,000 and my friend has said it should be increased, and the Attorney General will address what he is doing, but as far as I am aware the Attorney General has done a significant set of work in relation to Justices of the Peace.

My friend also referred to the defence force document and unfortunately he did not go into the details. He gave me sight of it before hand, but—[Interruption]
PROCEDURAL MOTION

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): 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 inclusive of matters for the adjournment.

Question put and agreed to.

ADMINISTRATION OF JUSTICE (INDICTABLE PROCEEDINGS) (AMDT.) BILL, 2018

Madam President: Continue, Minister of Agriculture, Land and Fisheries.

Sen. The Hon. C. Rambharat: Thank you, Madam President. And, Madam President, what I understand my friend to be saying is that there is an issue of storage, and what I understand the Bill to be doing is avoiding the need to retain some of these physical things that you retain, allow you to tender photos into evidence, as in most jurisdictions allow you to submit a report to the court that is vouched and save you having to retain all these pieces of things that are clogging up vehicles.

The Member of Parliament for San Fernando West will tell you about the historic buildings on the promenade and you cannot see them because of the vehicles, and as you go through this country—there was an exercise under Mr. Allard, Police Officer Allard, ACP Allard, to move some of those vehicles out of the police station yards, and so on, and move it into a centralized location, and if we move to allowing photos and allowing reports to be it tendered then we do not need to retain these things. But I do accept the point, which he did not make, in relation to the other issues relating to these seized pieces of equipment. And then the final thing in relation to my friend, Sen. Ramdeen, it is his point towards the end where he says, “if we are going to fix this system we must do it properly”.

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The system is broken in the Hall of Justice and I believe has lost its attribute which is his opinion, but nothing in the Bill before us tells me that it is not an attempt to finally fix the system. It represents what we did when we came in September 2017 and got the beating I referred to. It was a Bill which sought to repeal the 2011 Act which included section 34 for a short time. What you have before you now is a Bill that seeks to improve the 2011 piece of legislation and allow it to be fully proclaimed, and I cannot think—and you know I thank my friends so far. Sen. Mark has not spoken as yet so I do not want to speak before time and I do not want to anticipate, but my friends have offered no objection to the contents of the Bill. They have, and I have also had concerns in the past about the operationalizing of it and the resourcing and making it happen because it takes a lot to make it happen.

Madam President, in the debate on the previous version, as I said at the top, at that time I associated myself with then AG Ramlogan’s contribution on the Indictable Offences (Committal Proceedings) Bill, 2014, 7th of September 2014, and really I mean by having read this, Mr. Ramlogan set out why these preliminary enquiries should go. He talked about it not conferring any substantive rights on the defendant or the prisoner. It was largely superfluous. They have proven themselves to be costly and burdensome in the dispensation of justice. He spoke towards the end of the preliminary procedure giving the defence two bites of the cherry, and he used an expression—I know it involved some dancing—what you have is a sort of dress rehearsal for the real song and dance when the trial takes place.

Well, I would not say a trial is a song and dance. I understand what he is saying that you get two bites of the cherry and you are doing something that will largely be repeated—and, Madam President, many jurisdictions have struggled with it. In the Canada jurisdiction, for example, there is a 2018 Bill which in
Canada only 3 per cent of criminal trials still involved preliminary enquiries—only 3 per cent—but there is a Bill to reduce even that 3 per cent. So Canada has gotten it down. The system is similar to what is proposed before us today, and even that 3 per cent is considered to be a remaining clog on the system that needs to be removed.

Madam President, the next point I want to make is that we have to also be realistic. In the 26-mile journey to this point there was a time when murder was about the biggest headline act, and you sometimes made the news for a stabbing incident or possession of a penknife—1993—the occasional murder, and a stab here, and a pickpocket here and there, but the fact is when you consider how our legislative time is being utilized, how the resources in the Attorney General’s chambers are being utilized, and when you think that there was a period between ’93 and the early 2000 when we really spent a lot of legislative time on kidnapping, which was one of most significant crimes, and the bail provisions associated with the offence of kidnapping we spent a lot of time on that. But when you think now—for example, since September 2015, when you think of what our criminal caseload in this House, in our first session there were eight bills relating to criminal justice, the gambling, whistle-blower and anti-gang. In the second year there were 14, anti-terrorism, plea bargaining, cybercrime, indictable offences, pre-trial, trial by judge only. In session three we dealt with the criminal court division.

Several taxation measures for several things relating to tax legislation which has in criminal implications, family and children division, anti-gang. Even before you today we laid two additional pieces of criminal law legislation before this House. So that we have moved from kidnapping and bail to a series of pieces of criminal law legislation, some of which are home-grown and some of which are
demanded from us through our international obligations. And if you do not realize it by now, this load between now, the end of this session, whenever that comes, is just going to continuously increase a significant portion of which is legislation dealing with criminal law and criminal justice system.

So all of this, in as much as I, like Sen. Ramdeen, would like to see the caseload, the ratio reduced among the criminal prosecutors at the DPP’s Office, I would like to see all the office space and everything thing and everybody be comfortable, we cannot. We cannot stand like a deer looking in the headlights and get a piece of legislation like we did in 2011 and not proclaim it, get another one in 2014 and not proclaim it, we have to go the distance, we have to finish the 26.2 miles, and we have to take this over the finish line.

Madam President, this Bill impacts 25 sections of the 2001 Act, which it seeks to amend—2011—and it does so in three ways: first and, most importantly, it abolishes preliminary enquiries. Instead of that, the second thing it does it allows the court to hold an initial and sufficiency hearing, and this is done by a Master of the High Court. That is what all of this does. That is the key to it, that we are replacing, we are abolishing the preliminary enquiries that we promised to do across administrations for a long time, and we are replacing it with a sufficiency hearing to be conducted by a Master in the High Court. The second most important thing is that it is the prosecutor. Clause 12 provides an amendment to section 12 of the Act, where the prosecutor decides which way offences, which are triable either way, go. And, Madam President, a lot of what is in this Bill, as I have said, includes some of what was in the 2014 Act that was not proclaimed and includes submissions made since 2017 when we brought the predecessor Bill.

Madam President, I will serve no useful purpose, because you will stop me,
by going through the contents of this Bill. I want to thank you very much for allowing me to contribute and before I close, Madam President, I did not have the opportunity in December, but I want to welcome my former university student, Josh Drayton, to the Chamber and I hope if he stands up today and speaks on law, he discharges himself well and leaves me going home feeling I have made a good contribution. Thank you very much. [Desk thumping]

Madam President: Sen. Dillon-Remy.

Sen. Dr. Maria Dillon-Remy: Madam President, I thank you for the opportunity to contribute to this debate on a Bill entitled an Act to amend the Administration of Justice (Indictable Proceedings) Act, 2011 (Act 20 of 2011). My comments are going to be mainly dealing with the administration of justice as it refers to Tobago, the situation in Tobago. Before I do that though, I too would like to commend the hon. Attorney General for bringing this legislation to the House and I agree with many of the other persons who would have spoken that at the end of the day bringing legislation and getting it passed is one thing, but making sure that when the rubber hits the road the actions are taken so that indeed justice is improved in its administration in Trinidad and Tobago it is where we really want to go. I encouraged [Desk thumping]—you know that at the end of the day it is not about sitting here, and spending time, and bringing Bills after Bills and passing them, et cetera. It is about what happens to the people in our country. And I would cautiously say also this evening that I am very happy because it is the first time since I am here—I am only here a couple months—that I have experienced the level of collaboration and cooperation between the different benches, and I must say that I am happy to hear that we are looking at Trinidad and Tobago in terms of the impact of what we are doing rather than looking at how it would impact the
parties on either side. So I am just very thankful to hear what has happened in terms of the contributions so far today. I think all the Members of Parliament who have contributed so far deserve a round of applause. [Desk thumping] Thank you, Madam President.

Okay. As it relates to administration of justice in Tobago I would want to make a few points. One is, my understanding is that the High Court in Tobago has outlived the space that is provided in it because, again, as we have heard the numbers of cases, et cetera, et cetera, and recently space was made for the accommodation for the Children’s Court in Tobago. I would just like to ask: Would there be sufficient space in the High Court in Tobago for the additional category of staff, the Masters, when they are going to be operational? It must be looked at. There is only High Court in Tobago.

My other concern there is: Are we going to be moving the bottleneck as was mentioned before from Magistrates with the removal of the preliminary enquiry and now having Masters, them operating more efficiently and sending the matters up to the High Court? In Tobago, again, the number of sittings they have right now, and the number of matters that will be heard then, will you have the bottleneck being moved from the lower court to the higher court? It is something that I really do think that needs to be addressed because, again, we are interested in seeing justice being done, not just something being administered here where we have put in a new category of worker and it does not have the intended outcome.

I would just like to ask one question. We have heard that there are so many vacancies in the DPP’s Office, the question is: Why are those vacancies not being filled? I do not know, but I am asking. How are we going to ensure that in the next two, three, four or five years we do not have a similar situation with Masters that
we have so many spaces for Masters and we do not have enough? So that the matter—are we looking at these issues and seeking to address them rather than putting in a new category of staff?

Sen. Vieira mentioned that he would have preferred to see an increase in the Judiciary, in the Judges so that they can—so I am just asking that. I do not know the answer, I am asking: Are we just putting another category of worker in and thinking that it is going to answer at least this part of the issue rather than looking at the whole and seeing what else may contribute and, therefore, deal with those things also? So that is my first concern about the administration of justice as it relates to Tobago.

The second is not related specifically to the Bill, but it is concerning administration of justice in Tobago. When you have a matter that requires a person to come to the court, in Trinidad you get into a vehicle and you go to a court whenever it exists; when that person has to come from Trinidad to Tobago, or when you have persons in Tobago having to come to Trinidad, it is the ferry that is used. As we know we have had significant problems over the last couple years with the ferry service, and as a result when the T&T Spirit was being refurbished more than a year, my understanding is that there were no prisoners being carried between Trinidad and Tobago because the other ferry did not have a holding bay for prisoners.

Now that the T&T Spirit is back, prisoners are being taken between the two islands, but I am just putting this on record. The reason being we are talking about administration of justice and as it concerns Tobago, anything that is being done we must look at the logistics that are different with ours, with what happens in Tobago than what happens in Trinidad. And my understanding is that the promise of the
two new ferries that are coming, they are supposed to have holding bays and we do anticipate that that will be a reality.

My other point, Madam President, is that with matters concerning juveniles in Tobago. If there is a matter concerning a juvenile in conflict with the law there are no detention centres in Tobago, and right now the children are held in a home that is provided by the Tobago House of Assembly which is not in keeping with what should be happening. That system should be provided by Ministry of National Security, and what is happening right now it is not adequate. So again, as we are talking about administration of justice and there are things that were put in this Bill as it relates to children, that we should be looking at that aspect of the administration in Tobago.

8.00 p.m.

And my final point would be what concerns us in Tobago is that currently, there are two cells at Crown Point Police Station where you can have a female being held—for females and children and it is not adequate. The recent new police station that was built and probably soon to be opened, the Shirvan Police Station, the question is: would they have in that police station—very new and modern is what I understand, it is supposed to be the most modern in the Caribbean is what I have heard said—would they have the facilities there to at least assist with the services that are going to be provided for the females in Tobago?

Madam President, I would like the Minister to consider these things as they would impact the administration of justice in Tobago. I thank you. [Desk thumping]

Sen. Josh Drayton: Thank you, Madam President. It is indeed an honour and privilege to weigh in on this very important Bill. But first indulge me, Madam
President, to give you a little story about someone. During my time as an undergraduate student at UWI when I did my BSc in Government, I had a lecturer who taught me administrative law and that lecturer gave a little story about his experience as an extempo singer. He said one day he was walking on the road, he saw some people gathering around the place and he asked the nuts vendor, “What is going on in there”? So the nuts vendor said these guys are singing extempo but you could go ahead and sing too. He said, “But ah must warn yuh that they will give you a card and you will have to sing on that topic that they give you”. So he was worried, this lecturer, “I doh know, I doh know if the topic that they give me, I will be able to sing on”. The nuts man replied to him, “don’t care what they give me, I will sing on nuts”.

So, this is very inspiring and thought-provoking advice simply because, like many of the attorneys in here, I am not an attorney and I am taking the nuts man’s advice, I am going to talk on what I know as a political scientist. Interestingly enough, that lecturer later on became a Senator and is in this honourable House. So I will begin, Madam President. [Laughter]

It is known that crime is the single most important issue in Trinidad and Tobago at this time. The Government and all of us have the responsibility to increase that feeling of safety and security and that feeling of safety and security by citizens of our beloved country. This the amendment Bill, the Administration of Justice (Indictable Proceedings) Bill, 2018, and this amendment here in particular, offers some very good first steps in seeking to address the efficiency in which our Judiciary addresses the issue of administration of justice.

The hon. Attorney General mentioned quite a bit of data related to case backlogs, et cetera. I am not going to repeat some of the data that the hon. Attorney
General as well as some of the other Members mentioned, but just to pose a few questions. Is it fair that persons spend more than 10 years awaiting a preliminary enquiry? What is the cost to the individual, to the community and to the society? Theodore et al in 2008 in an article entitled “The Cost of Sexual Abuse and Domestic Violence: An Economic Perspective with Implications for Trinidad and Tobago” captured the cost of sexual abuse and domestic violence in Trinidad and Tobago in 2005. This gives us a snapshot of the impact of one type of crime covered under this Bill and allows us to further explore the impact of crime. Madam President, in terms of the pain, suffering and premature mortality, the cost in 2005 to Trinidad and Tobago, the annual cost, was TT $2.12 million. In terms of the cost to the health sector, $23.4 million. In terms of other economic costs and transfers, $24.8 million, and there are other categories. The gross total, the cost for particularly domestic violence and abuse was $487.7 million and that is in 2005 for just one specific type of crime. So can you imagine the real cost when you look at all the other crimes.

But let us drill down a bit more. If we were to look at clustering groups, the cost to the victim—and that is the annual cost in TT dollars—is $244.3 million and that is to the victim. The perpetrator, $33.5 million; to children, $46.5 million; to employers, $10.6 million; to friends and family, $0.4 million; to the Government, $80.6 million; and to the community, $71.8 million. So it is important to note this cost because this is something, bringing a different perspective and element to this debate, that crime has a cost and when we decide not to address it, we then incur that cost year after year after year.

Based on this data, are we treating with the problem or the symptom of the problem? By that I mean, what is the root cause of certain kinds of crime? Are they
socially constructed and are the sanctions strong enough to serve as a deterrent? This is important for us to reflect on but this Bill does not address the deterrent component, but really, it addresses the whole system of judicial efficiency. So then, what is judicial efficiency because we have been hearing about it? Judicial efficiency—and this is taken from an article by the U4 Helpdesk entitled “Indicators of judicial efficiency in corruption cases” in 2008. Judicial efficiency is defined as:

“A supportive legal framework and strong capacity of the judicial system in the form of adequate budgetary allocations, sufficient number of staff, adequate training of staff and good case management systems…”

So then, is it that this Bill is seeking to address all components?

And it is unfortunate that the hon. Attorney General is not present at this time, but one of my concerns—[Interruption] Thank you. He was hiding behind the wall, Madam President. [Laughter and crosstalk] What is interesting about this Bill—and I would echo the sentiments of the other Senators who thanked the Attorney General on the flowchart provided. But one of the things, perhaps, because of how I think, I would like to know or perhaps it can be illustrated, this is just a piece to a puzzle. Is it not? What does the picture look like? We just have a piece. So how does this particular Bill fit into—and somebody alluded to this term earlier on, I think it was Sen. Vieira—the ecosystem?

And while I understand that these are positive first steps, it is also important for us to delve a bit deeper into understanding how this, along with other pieces of legislation, is going to affect some kind of change to the existing system that we have, which then Madam President, kind of aallows me to reflect deeper into what really is the problem that we are trying to address.
And it was a bit confusing because I listened to the debate in the other place as well as here and reference was made to corruption, reference was made to backlogs, reference was made to the DPP’s office, but what is the problem? Because if we are unable to identify where the core problem is, is the problem the backlog? Is it judicial inefficiency? Is the problem corruption? Because we also would know that there are a few corruption-related cases both in the—well, in the High Court I should say, and very few bribery cases in the Magistrates’ Court. So what is it? So I think that we need to be very clear in terms of what the intent is of this specific Bill. I understand what it seeks to address but it will be useful at least in moving forward and I do recognize that the Attorney General and the Government have a legislative agenda, but how do all of these pieces fit within this puzzle that would give us this picture that would provide us with that kind of reflection that we can say, okay, this is step one, this is step two or this is the package that we are going to address?

Madam President, I do recognize that this Bill seeks to address problems of two main areas and this is from a policy perspective, the problem of process and the other one of procedure and that is really what this Bill seeks to address. But what are the expectations because we have heard about the data related to—and this is really background data in terms of how we develop the law itself. But what are the expectations? What are the projections in terms of addressing whether it is backlogs or judicial inefficiencies? What is the kind of exact—what we call in policy work, ex-ante evaluations, the forecasting that is done to say we expect, perhaps, a 0.5 reduction in X? Was that done? What is the actual cost of implementing and operationalizing this Bill? And the cost does not always have to be dollars and cents, it can also be in terms of behavioural change and these kinds
of things; social costs. Because that is the kind of reflection that I, perhaps, would like to see moving forward. I know it is not something that is usually done but when we make law it is not sufficient to say because we have certain gaps in the law that we just pass it but we must be able to say by doing these things today, these are the expected results tomorrow, the day after and the day after that.

So questions such as how does this action connect with other areas to enhance judicial—well, efficiency, in the first instance but also there is a bigger issue that we are not really talking about which is rebuilding public trust in our criminal justice system. How does this Bill seek to address these areas? How do we measure the kinds of outcomes or what are the proposed metrics that the Government, whether it is through the Attorney General’s Office? What are some of the outcomes that you would like to measure? Is it that you are going to return to the House two years, three years, five years from now and say this is not working? And what is the data that you are going to use to support that? So how are we measuring our progress?—because that is important. What kind of changes would you like to see within the system? And what should we expect by the passing of this Bill? What are your thoughts on that?

Madam President, I also think that Sen. Rambharat would be interested to know that while he was speaking, the two Clerks of the House, both of them, were also my former students so it is an interesting thing happening here. Madam President, I would like to thank you. [Desk thumping]

**Sen. Sophia Chote SC:** Madam President, thank you for the opportunity to speak to make a contribution on this Bill. There is considerably less for me to say at this stage than at the beginning of the debate because I think some excellent contributions have been made and I particularly liked the contribution of Sen.
Hosein because it was clearly thoroughly researched and made some excellent points [Desk thumping] and in many respects, I will like to adopt some of the points that he made and I will seek to do so very briefly while I run through the Act.

With respect to section 5 which talks about the standard that we use for obtaining a warrant, I do agree that there seems to be no good reason for changing the standard to “suspecting”. In fact, it is inconsistent with the standard which we use in other pieces of criminal legislation. So may I respectfully suggest that we keep it at “believing” or having “reasonable ground for believing”.

With respect to clause 4, new subsection 5(6), this is the subsection that talks about the person who is being assigned responsibility for the safekeeping of material seized. I am respectfully suggesting, having regard to my experience practising law and my experience in doing criminal cases, I think that we ought to say that there is a high standard or there is a heavy burden placed on those persons entrusted with that responsibility. So I am respectfully suggesting that instead of having the words “take reasonable care to ensure”, we have something along the lines of “take all necessary steps to ensure”.

With respect to new subsection (7) of the same clause, (7)(a), that is to do with the police photographer, may I respectfully suggest that where the suspect cannot be there—and it is highly unlikely that somebody remanded in custody will be brought to witness someone, the exhibits in the matter being photographed. So I am respectfully suggesting the insertion of words to include “or his representative” or “legal representative” as the case may be. Now, Madam President, I know the hon. Attorney General has not indicated whether he is taking on board any suggestions such as these but I hope that is the case.
Now, if I may go to amended section 8, we are talking about the test a Master will use to consider the issuance of an arrest warrant and it seems to me as though the factors identified here come straight out of the Bail Act:

“(a) …nature and seriousness of the offence;
(b) …likelihood of the accused evading service…
(c) …character, antecedents, associations and social ties of the accused;
and
(d) any other factor which appears to be relevant.”

Now, while I agree that there must be some sort of test set out, I cannot see that all of these factors that somebody—a police officer going to a Master and asking for a warrant of arrest to be taken out as opposed to a summons being issued, I cannot really see that police officer highlighting objectively the good character or the previous good character or the impeccable social ties of the person for whom the warrant is sought. So I found quite frankly that there was a little incongruity, if I may put it that way, between what I see the Legislature wishes to achieve and what is set out here as the conditions.

Now, may I pause to say this? I am extremely happy that this legislation has returned to the Senate because it is legislation which has gone through a very convoluted process and I do not know if to say if I have had the good fortune or the misfortune but I have been, in some way or the other, part of this process from the very start. So I am happy to see that the legislation is before the Senate but I do think there are a few little things that we can tweak.

Now, if I may move on to 8A(2) where we talk about the prosecutor indicating to the Master that he wishes to proceed with a case on indictment or whether he wishes to go to summary trial. I think Sen. Hosein had referred to the
fact that the issue of consent seems to have been removed from that and I was not quite clear why, and hopefully the hon. Attorney General, Madam President, will offer an explanation.

The idea of having summary matters going together with certain indictable matters to the High Court is actually an excellent one because sometimes you find that police officers seize weapons and so on and they find camouflage outfits and that kind of thing, military gear, with it. Now, you can only charge the person for a summary offence for the camouflage outfits and military gear and that kind of thing. So it actually works to the detriment of the person facing these charges because what happens is a preliminary enquiry in the past would take place with respect to the weapons and the summary charge would remain there languishing and very often, the person would not be brought to court and it is only after his case in the High Court is disposed of, that anybody recognizes that he still has a pending matter in the summary court. So this actually, in my mind, is a good thing.

Now, with respect to section 12, I found subsection (2) a bit odd because you are saying:

“Where an accused is charged with an…”—either-way—“offence…”—and a prosecutor—“…informs the Master that the case to be dealt with summarily, the Master shall forthwith transfer the matter to the Magistrates’ Court in the Magisterial District where the offence is alleged to have occurred.”

Fine, that is a procedural issue. But why go into penalty at this stage? Why are we interfering with the existing penalties for these either-or offences? There are existing penalties, I do not see why this subsection (2) is relevant or applicable at all, so I would respectfully ask for consideration to be given for the removal of that
because it seems to be out of place.

New section 27(3)(bb), I understand what the hon. Attorney General is trying to achieve here, especially in the light of the ruling on the interpretation summons brought by the hon. Attorney General and which was adjudicated upon by Madam Justice Gobin earlier in January. So in relation to the cases left behind, part heard by the former Chief Magistrate Madam Justice Gobin said that these cases have to be heard de novo. Fine. Well, the cases have to be heard de novo but this here seems to be saying that these cases do not have to be heard de novo, what can happen is that the matter can simply go to trial if it is in the opinion of the DPP to do so.

Now, what about those persons whose matters were instituted under the previous law and who had fully expected that their matters would have been concluded before the former Chief Magistrate and fully expected that they would be discharged for want of evidence or for any other reason? Out of this group of cases which were the subject of the interpretation summons, certainly we cannot stand here and say that everybody in that group would be better off if they are sent off to the High Court and indicted, because there may be individuals there who would prefer to have their matters heard de novo because all that will happen is that the statements will be admitted into evidence, because the statements are already in the evidence, there will be cross-examination which is limited and then you go to submissions.

So you may actually be able to get adjudication much more quickly if you take the de novo route. So I respectfully would like to see that option being kept for persons in that category because if we do not do that, then we are placing an incredible burden on these persons who found themselves in a predicament that
they could not have contemplated or anybody could really have contemplated, they had to wait for the High Court proceedings to be concluded and so on, and now they are facing the prospect of actually having the cases get on and possibly having their cases dismissed or discharged. And I do not think that we can sit here lightly and say listen, no, let us just indict them or have them go up to the High Court and then they will have their hearing, their trial very quickly. No, not with the kinds of numbers of cases which are currently before the High Court and which are going to continue to go to the High Court. We may be doing these people a great disservice.

**8.30 p.m.**

So, I ask the hon. Attorney General to please take that into account because some of these people have suffered so much. Now, Sen. Vieira spoke very eloquently about the lack of connection between what we see in the sections dealing with bail, and what is contained in the Bail Act, and in particular, section 28(d). What I am respectfully suggesting is that we have a greater tie-in between that piece of legislation and this. I do not think that we have sufficiently done that here. For example, I will just use this, in the Bail Act the prosecution has the power or the entitlement to make an application for the revocation of bail. And they do that. They do that in cases where they have reason to believe the person may abscond, or the person may commit a crime, or the person has breached his bail conditions. It is a regular process. But this seems to be providing for a different procedure for that to be done. So, I am simply suggesting that the wording, perhaps, could be changed to reference the Bail Act, and make it easier for practitioners to understand and use.

Now, I am looking at section 32, which says:

“The Indictable Offences (Preliminary Enquiries) Act is repealed.”
But,

“Notwithstanding…”—with—“…subsection 1, the Indictable Offences (Preliminary Enquiry) Act shall continue to apply to proceedings which were instituted prior of the coming into force of this Act where neither the prosecutor or the accused elects to have the case determined in accordance with that Act.”

I do not know if this is connected with the problem which I had referred to earlier, but perhaps it is. Maybe it is intended to be curative, maybe it is intended to say that there is an option, or an opportunity for the persons whose matters had commenced under the old law to say that we prefer to continue under the old law. But this does not seem to be as clear as it possibly could where neither the prosecutor nor the accused elects. Perhaps it simply should be “if the accused elects” so that would allow for the persons who want to have their matters heard de novo to be able to have that done.

Now we have—I just have a few more points to make and this has to do with the exhibits and how you keep exhibits and so on and in particular, if I may look at Schedule 1, Form 1, essentially what we are saying is that exhibits now may be photographed and they do not have to be taken before the court at the first opportunity for the court to write at the back of the information what the exhibits look like and that kind of thing. That is fine. In fact, in many cases that already happens, photographs are taken and are used. In any event, the common law provides that even where exhibits are lost, it does not mean to say that the case is lost for the prosecution. That is old law. That is settled law.

So, I am happy to see it in statutory form but I am respectfully suggesting that in the form set out here in the Schedule, where we have things seized, describe
each thing seized, I think we should have, perhaps, a little more specificity. For example, we may say, “describe the things seized with the markings placed thereon”, because generally speaking when exhibits are admitted in a court, in a criminal case, they are identified first of all by the markings. In fact, the markings are a crucial part in the chain of custody or proof, evidential proof of the chain of custody from the police to the Forensic Science Centre and back to the court. So I am respectfully suggesting that that be included.

Now, I see that there is a section which says that under this new procedure that if someone does not go to trial within 12 months, you can make application for the matter to be dismissed. I do not know that I am comfortable with that. In the first place, I do not think that any reasonable Judge is going to dismiss a murder charge or a murder indictment in 12 months because the prosecution cannot proceed. Sometimes it takes 12 months for police to get their statements ready for the prosecutor. So, I do not know if perhaps that time frame ought to be extended. Because, on the other side of it, it is sort of like a carrot to the accused person because the accused person says “Okay, you know, this is good for me because if they cannot proceed in 12 months then I can make an application to go home”. Well the reality, Sir, is that it is not going to happen. So let us not give an unrealistic expectation to the persons within the system. At the same time, let us have a realistic expectation of what we can achieve within the system. So, I am respectfully suggesting that that time frame of 12 months be revisited.

Now, I want to say a few things about what the hon. Attorney General mentioned during his opening, and we were given statistics about how many cases—how many thousands of cases come in each year and how many are disposed of. The thing about it is, I always say that we cannot rely on statistics,
because those statistics do not tell us how many cases are already in the system. And quite frankly, we are just being told, okay, 40-something cases are laid, 23,000 are disposed of. It gives you the impression that 50 per cent of those cases are dealt with. But, it does not give you an idea, or a clear idea, of what is the burden faced by the Magistrates’ Court; and it is a very, very heavy burden.

Much of the reason for this piece of legislation being so difficult is because many people could not decide whether including the third layer of the Master should be done legislatively or whether it should be simply the Magistrates moving forward under a different system, the sufficiency hearing, on to the Judge at the High Court. And that dispute caused a lot of conflict because people had very firm views one way or the other. The thing is we have Masters. The system is in place so we need to try to use the system. I think we have gone past that now. As to what the Masters may do in terms of bail, I suspect that the Criminal Procedure Rules which are currently being drafted to amend the current ones may address that. I do not know. I am speculating.

So, I think there is a direction and purpose to this legislation. But we also have the opportunity to improve the quality of it a little bit if we address certain issues, for example, the disparity between the laws set out here and that contained in the Bail Act and so on. So we can make it a little better if it is tweaked.

Now as I said, I do not know if it was good fortune or misfortune to have been involved in this process from the start. But I think I would be failing in my duty to this honourable House if I did not share some of the information which I have collected and kept throughout all of this. Now, there has been considerable consultation, not only by this administration, but the previous administration and the one before that with respect to the abolition of preliminary enquiries. So, I
think it is fair to say that anybody who had anything to say about it has been consulted and if they did not give an opinion by now then they probably do not have an opinion on the matter.

So, I feel fairly confident that this piece of legislation as reworked has tried to incorporate many of the views of the persons who had been consulted, because in fact, I am seeing—I am looking at the original material and I am seeing much of it reflected in the legislation here.

I want to preface my reference to two documents by saying this. Like Sen. Hosein, when I started practising in 1989, I started as a prosecutor at the Office of the DPP. At the time there was the princely number of four State Attorneys, four State Counsel I, to deal with the courts, Magistrates’ Courts of Trinidad and Tobago, which included Roxborough, Charlotteville, Cedros, Toco and so on. And it really is depressing to see that after almost 30 years, the Office of the DPP is still burdened with the same problems. In those days we had typewriters. Very often we would have to do our own work. We had no assistants. Photocopier never worked, lack of paper; does it sound familiar to anybody at all?—three decades later.

Three decades later that is indictment in my view of those responsible for the prosecution, or the administration of the prosecuting arm of the DPP’s Office. Not the Director because that is out of his hands; he does not have his own budget. But certainly, some Permanent Secretary somewhere must be able to account or to say why these positions remain unfilled in the Director’s Office. It is grossly disturbing, and I think what happens is that you tend to have people who are committed to their jobs, the ones who are there now are people who are very committed to their jobs. But, not because you have people working well in a broken system that you decide that you are just going to work them to death, or
work them until they drop down or leave. What you want to do is you want to keep
the quality of the personnel at the Office of the DPP. And I cannot imagine that 30
years have passed, or almost 30 years have passed, and the complaints are almost
the same.

This takes me to two documents that I want to refer to. As I said, I was
familiar with the consultation process and for the 2011 legislation responses were
sought from various bodies about the proposed legislation at that time which was
being piloted by the Minister of Justice—the then Minister of Justice. And, on the
6th of May, 2011, the Director of Public Prosecutions in his comments to the then
Minister of Justice, he indicated that the proposed legislation was a good idea, he
supported it, and he made some recommendations and so on.

But he began his letter by saying it is imperative that the number of
attorneys, support staff, resources and remuneration packages at the Office of the
DPP be significantly augmented. He also suggested that the Forensic Science
Centre had to be upgraded, otherwise you would be upgrading one arm of the
system which would not function without the other. His words were, it was his
unflinching and respectful view that should the above-mentioned recommendations
not be addressed—and that was his recommendations for more personnel, staff,
that kind of thing—there will be a merely cosmetic change in the system in that the
bottlenecks would have been shifted from the Magistrates’ Courts to the Office of
the DPP and to the Judiciary.

Now, his words in 2011 have resonance for us today in 2019, because that is
exactly what is likely to happen. You cannot have one part of the system working
at a certain speed and the other parts of the system which you require to work at
the same speed are unable to do so because they lack personnel, because they lack
plant, and because they lack equipment which is where the Forensic Science Centre and the Office of the DPP are.

Which brings me back to a point I forgot when I was speaking earlier, which is to say, we are talking about collation of all of this statements and so on and sending them forward to the Office of the DPP so that an indictment can be filed very quickly. What is going to happen when the Forensic Science Centre is unable to analyse a firearm and determine that it is a firearm under the Firearms Act within two years, or the Forensic Science Centre cannot analyse cocaine or marijuana within a particular period of time? The whole process is going to be kept back and a considerable number of the cases—indictable cases, or either-way cases—a considerable number of the cases before the courts are for those kinds of offences where you need to have the input of the Forensic Science Centre.

Now, pathologists play a crucial part, because you do not only need a pathologist to do a post-mortem on the deceased in a murder case. What you need to have is a pathologist who is able to take the time off if required to go to court to testify at some point. So, if you are not filling the positions of pathologist, then where are we?

But I think it could not have been put better than it was by the contribution from the Judiciary of the 4th of July, 2011. The Judiciary’s comments on the indictable offences criminal proceedings Bill, 2011 and proposals for reform, and this is what was said:

There is a direct correlation between the quantitative and qualitative output of the criminal justice system and the efficiency levels of its multiple constituent parts. Because the system is overall so interdependent, deficiencies in one area unquestionably impact upon other areas. Thus
modern common-law jurisdictions recognize the efficacy of what is termed the joined-up approach where collaborative dialogue is emphasized.

So, what the Director was saying in his contribution was echoed by what was said in the contribution of the Judiciary and to a great extent it has been echoed by Senators here today.

And I must confess that sometimes I feel as though I am two people. I am the Senator who comes to the Senate, and I look at nice well-drafted pieces of legislation, ply my mind to it, I speak in the Senate and on. It deals with areas in which I practise. And then I leave here and I am an attorney-at-law, and I have to go to court, and I have to go to court in Rio Claro, but Rio Claro is hosting three courts. Poor people from Princes Town and environs have to find the passage to come to Rio Claro on a regular basis. What is the reality? Very little goes on because the Magistrate for Rio Claro, she has to sit from nine to 11. Prisoners arrive in Rio Claro at about 10.30, so between 10.30 and 11 is the time that that Magistrate has to deal with persons who are in custody. Now, these are very real problems.

Madam President: Sen. Chote, you have five more minutes.

Sen. S. Chote SC: Thank you. These are very real problems and they are problems which affect the citizens of the country whose interests we are here to advance and to promote. So, you know jokes about air-conditioning and whether bathrooms are working and so on I do not find them appropriate at all. Because, sitting here very few people see the suffering of the people who have to stand in the sun, and wait for their court to sit or for their case to be called, or as happened, when I went to the Arima court last week, where the people have to stand along a narrow corridor with their backs against the wall. And I heard a police prosecutor saying, “Those of
you who have been standing here from 9 o’clock”—now this was after 12 o’clock in the day—“Those of you who have been standing here since 9 o’clock, you can come in now and sit in court one” because court one had taken a break for lunch.

No, no, no, our citizens deserve much better than that, [Desk thumping] and quite frankly, we in this country, we find money for so many different things and I think it is high time that we own up to the fact that crime fighting includes proper prosecutions. It includes having proper facilities for judicial officers at whatever level they operate, and that the emphasis be placed there. Thank you, Madam President. [Desk thumping]

**Sen. Wade Mark:** [Desk thumping] Thank you, Madam President. Madam President, I am very happy to make my contribution to this very important Bill that is before this honourable Senate dealing with the Administration of Justice (Indictable Proceedings).

Madam President, it has been said by the late Dr.Martin Luther King, Jr., that an

“Injustice anywhere is a threat to justice everywhere.”

[Desk thumping]And, Madam President, when we examine the matter that is properly before us today, within the system and the framework of the administration of justice we can all agree that this system has grown and has become highly dysfunctional in spite of the various consultations that have been held. We know that over the last few years as the Attorney General alerted us, crime has escalated out of control in our society. And we have taken the approach, Madam President, that laws apparently—and more laws without operationalizing the laws and without implementing the laws—seem to be the only way forward insofar as a solution is concerned. So, laws have been passed, some never
proclaimed or even assented to, or they have been assented to, but never operationalized.

But in the United National Congress, the alternative Government to this PNM, we have a holistic approach to dealing with crime. We always look at crime, Madam President from four perspectives. We look at prevention. That is critical, Madam President, and that is largely absent in many areas of our society today. We look at detection. That is very poor in relation to the reality. We look at conviction and, Madam President, that is also a sad story; and rehabilitation. I do not have to tell you what is the state of Remand Yard and the cells and jails in our country where people are housed.

And, Madam President, what is even more serious, and you must be concerned as I am concerned, we are dealing with legislation to speed up the administration of justice and the very bastion, the last bastion of our democracy, which is the Judiciary, is on trial in this country as we speak.

So, Madam President, who are we to look to for justice in this nation? My information, Madam President, is that there is a matter that we are waiting a result on from the Privy Council involving the JSCLC.

Hon. Senator: JLSC.

Sen. W. Mark: JLSC. And, Madam President, you are aware that we are also awaiting a decision on the Prime Minister—

Madam President: Sen. Mark, I will refer you to Standing Order 46(8) and I will ask you to refrain and to not go down the path you are going, okay?

Sen. W. Mark: I will deal with the conduct of anybody.

Madam President: Sen. Mark, I have already ruled and I will ask you to move on, please.
Sen. W. Mark: So, Madam President, these are some of the issues that to me and to the UNC we have to focus on if we are serious about justice in Trinidad and Tobago. We cannot speak about an attempt that is being made here which we recognize that we need to strengthen, enhance and upgrade the justice system to make trials to address the delays more speedily, Madam President. But, Madam President, you are aware that you cannot deal with the speeding up of justice, if you do not have the facilities and the resources available to you.

9.00 p.m.

Madam President, may I ask you to join me in looking at a publication in the Sunday Express of January the 27th in which the “DPP laments lack of priorities in fight against crime”, and in this article the DPP is saying that there is an absence or there is a lack:

“…lack of political commitment for putting”—what he calls—“real muscle behind the fight against crime.”

That is what the DPP is saying in our country, but we are here, Madam President, trying to deal with a measure, and when I get into the meat of it, I will tell you some of the concerns of the United National Congress as it relates to this measure.

But what is interesting, Madam President, in this particular matter, is that on that same page 4, the DPP is quoted—I use the expression “dysfunctional”. It is said in this article, and he has not denied it, that the system is:

“anachronistic”—that is the—“legal system moving at the pace of molasses for many; inhumane prisoner remand conditions that presume guilt rather that innocence, especially for the poor”—as was being told to us a short while ago—“and a steadfast resistance to modern technological solutions.”

So one of the areas that I want to advance this evening is the need for us,
Madam President, if we are serious about speeding up justice in our country, and if we are serious about dealing with the backlog in our system, we have to introduce a system of electronic recording in this land, and this is what the DPP is advancing in this particular statement before us in this newspaper, Madam President.

Madam President, I want to debunk and put to rest, once and for all, this thing about section 34 that so many people have spoken about here, from the Attorney General, to Sen. Foster Cummings, to Sen. Garvin Nicholas—Simonette rather. Madam President, I have the records before me, you know, but I would not bore you today, but I have the record.

**Hon. Al-Rawi:** Read it out.

**Sen. W. Mark:** “What happen”, you are getting jittery? Okay.

**Hon. Al-Rawi:** I am jittery.

**Sen. W. Mark:** Well, cool it. Madam President, the very Attorney General of this country who was then a Member of the Opposition, when the amendments were brought by Justice Volney—

**Madam President:** Sen. Mark, you are the 14th speaker on this Bill, at this stage, and you are repeating a lot of what has gone before. You may not recall, but Sen. Deyalsingh spoke about section 34 and what you are amplifying is what was said by Sen. Deyalsingh. So tedious repetition is now creeping in, and I am going to ask you to remember that.

**Sen. W. Mark:** We are the Opposition, and the Opposition—

**Madam President:** Senator Mark, is it that you think you have to educate me on the fact that you are the Opposition?

**Sen. W. Mark:** Do not ever believe that.

**Madam President:** Thank you very much. So, could you just move on please?
The Admin of Justice (Indictable Proceedings) (Amdt.) Bill, 2018
Sen. Mark (cont’d)

Sen. W. Mark: What I am saying, Madam President, is that the records would show that the Government voted unanimously for this particular measure in both Houses of Parliament. So, I hope that when the Attorney General rises to speak in this Parliament this evening, he will not go down that road because I am curbing my contribution, being guided by you, and I hope that you will guide him at the appropriate time, because I would—

Madam President: Just move on.

Sen. W. Mark: Yes, yes. Well, that is what I am doing now. Okay? [Interruption] “So you eh answering, you cyah answer, because I eh getting a chance to develop, so wah you go answer?” [Crosstalk] So, Madam President, the important point here is this. I would like to ask the Attorney General, in the matter that is before us—and I go Madam President, because I do not want you to accuse me—

Madam President: Sen. Mark, just make your contribution please.

Sen. W. Mark: Yes, Madam President, but I have to be guided by you.

Sen. Baptiste-Primus: Well, take the guidance.

Sen. W. Mark: Of course, I am doing it. Of course, of course. Remember I am the 14th speaker, so allow me to speak please. I am entitled to speak, you know. Okay?

Madam President: Sen. Mark—

Sen. W. Mark: Madam President—

Madam President:—are you carrying on a monologue? Please have a seat. Please, Sen. Mark, continue with your contribution. Do not speak to anybody but to me, please.

Sen. W. Mark: You would protect me, I would imagine, from these people.

Sen. Baptiste-Primus: Who is “these people?”

Sen. W. Mark: Well, the hon. Senator. Madam President, I address you. Madam
President, I would want to look at clause 4 of the Bill. I know you will give me the opportunity to do that. Madam President, I would like to get an appreciation and a clarification on this clause of the Bill. This clause of the Bill says that the Commissioner of Police is being authorized or being allowed to authorize other persons, Madam President, or persons other than the police to have what is called custody of seized items for safekeeping. That is what is in that particular clause, and I would like to ask the following questions: Who are those or these persons who will be assigned responsibility outside of the police to have custody of these items? I ask this question because I want to get answers. These are amendments that are being posed by the Government, Madam President. We would like to know whether these persons, Madam President, are independent in their qualifications or they have independent qualifications. We would like to know, Madam President, whether it is appropriate for non-police personnel to have possession of evidential exhibits, the chain of custody, of which could likely be a dispute.

Madam President, the safekeeping obviously of goods or exhibits would most likely come at a cost to the taxpayers, because the police commissioner is going to be authorizing persons and, I dare say, Madam President, we are talking about entities as well, although that is not highlighted. So the question I ask, Madam President: Why not allow the police who have traditionally done that task, why not provide the police with the necessary resources so that they can continue to carry out that responsibility? Why are we going to ask the police to engage persons and these persons remain unidentifiable?

Madam President, I want to ask this hon. Attorney General, through you, what are the safeguards going to be put in place to protect the integrity of these seized items kept by third parties? Will there be specific training in this regard?
What kind of security are we talking about for the protection of these items? Are there costs associated with reasonableness involved, given the circumstances? Madam President, further, I ask the Attorney General, through you, what type of seized items would be able to be handled by these third parties that are going to be asked to be in possession of these items? Madam President, certainly not drugs. It cannot be drugs, it cannot be firearms or anything containing genetic material, blood for example. Then, Madam President, what is left? Is it going to be stolen goods? What?

Madam President we do not have any information from the Government on this particular issue, and we have not had any information to suggest that the police is overwhelmed to such an extent in carrying out their duties that they cannot store these items properly. So, this is an area that we would like the hon. Attorney General to pay attention to.

Madam President, there is another area that concerns me, and I do not think—I refer to clauses 21 and 22 of the legislation, Madam President. And one gets the impression that the concept in law of prima facie is being eliminated in accordance with clause 21, section 24(1) of the legislation, and it is being replaced by something called sufficient evidence within the framework of what is called sufficiency hearing. One gets the impression this is a somewhat elastic approach.

I would like to ask the hon. Attorney General, through you, what is the standard that is being established for someone to determine in the personality of a Master, whether sufficient evidence put to the accused or there is sufficient evidence to put the accused on trial in the High Court for an indictable offence? Madam President, there has to be a test that is conducted, and is this test going to be subjective or is it going to be objective? That is an area that we require some
clarification on, because we are dealing with the liberty and freedom and we are dealing with the life of citizens in this country. And if you are putting this kind of power in the hands of a Master to determine whether there is sufficient evidence either to dispose or to propose a trial, at the level of the assizes, Madam President, there is need for us in this honourable House to get from the hon. Attorney General, what standard of measurement is going to be employed or deployed to guide this particular Master? Because justice cannot be based on arbitrariness, you know.

We cannot be arbitrary in what we are doing, and I have not seen anything in the legislation to convince us on this side that there is an objective test being established to guide the Master in determining matters and, therefore, it appears to our side that this thing is going to be largely subjective. I do not think, Madam President, when we are dealing with serious crime and matters of an indictable nature, we ought to be going down that path or that course. So I ask for clarification from the hon. Attorney General on this particular matter, Madam President.

Madam President, I also want to share with you some concerns with clause 24 of this Bill. Madam President, I would like to ask the Attorney General whether this section of the legislation is politically driven or politically motivated, because I do not want to sit as a Member of this Parliament and be party to any legislation that is designed politically against any political opponent of the Government. [Desk thumping] And I would like the hon. Attorney General, when he is addressing this House, to answer this question in terms of section 24 or clause 24 of this legislation.

**Hon. Senator:** Section or clause?
Sen. W. Mark: Clause 24 that deals with section 27(3) of the Act. I would like the hon. Attorney General to address that, because the public is telling me that there is more in the mortar than the pestle on this matter, and it seems like this is aimed at the heart of their political opponents, and I would like him to clear the air on that matter when he rises. Do not interrupt me now, you will speak at the appropriate time. [ Interruption ] No, I thought he was going to rise so I made sure he was stuck to his seat, do not rise. [ Laughter ] I just thought he was coming.

Madam President: Sen. Mark?

Sen. W. Mark: Madam President, I am addressing you. I also ask the question, Madam President, it is a very serious matter, because we are dealing with liberty here and we are dealing with the rights of the citizens in this particular clause that is in the Bill. So Madam President, I would like to ask the question because I looked—and I want to make it very clear, Madam President, you would know me for a long time and many other people would know me here. Those who do the crime must do the time. [ Desk thumping ] I drink no bush tea for nobody’s fever [ Desk thumping ] and I want to make that very clear but, Madam President, I want to make it also very clear that there must be justice and fairness and equality in all that we do in our country and in our Parliament. [ Desk thumping ] I think there must be fairness in the justice system and there must not be nit-picking or any special targeting of individuals.

Sen. Simonette: Madam President, I wish to cite 46(1). The learned Senator is talking about intentions against politicians. [ Crosstalk ] Is it not—?

Madam President: It is fine, Sen. Simonette. Sen. Mark continue, but if you could be a little more focused on the Bill, please.

Sen. W. Mark: So, Madam President, I am on the Bill and I will be little more
focused as guided. Okay? Madam President, what I am asking is simply this. If you go to clause 24, new subsection (bb), and you go to (v), the last section reads, if you would allow me:

“...the evidence filed before the Master discloses, in the opinion of the Director of Public Prosecutions, sufficient evidence to put the accused on trial;”

Madam President, I am seeking clarification from the Attorney General on this particular provision in this piece of legislation. Madam President, I am trying to clarify in my mind whether the Director of Public Prosecutions who I understand from the law—and I am talking about the Prevention of Corruption Act. Section 11 of that Act makes it very clear that no charges or no offence or prosecution of an offence can be laid against anyone in this country without the consent of the DPP.

And, Madam President, when I look at this section of the legislation, I am flabbergasted because in this section of the legislation—and I cast no aspersions on the good name of any officeholder. I am dealing with reality, I am dealing with fairness, justice and equality for everyone in T&T, and I am asking the hon. Attorney General, through you, when he is winding up, whether the Director of Public Prosecutions who would have navigated certain charges against individuals under certain laws of this country, would be the same individual who will now be making a decision to determine if those same persons should be put on trial.

I am trying to get clarification on this section of the legislation and that is why I wanted to know whether the DPP was party to the consultation. [*Desk thumping*] I would like to know, Madam President, if the DPP was party to the consultation, because you cannot be Judge, jury and executioner at the same time.

**UNREVISED**
[Desk thumping] And, I believe it might have been a genuine oversight on the part of the Attorney General and the Government.

**Hon. Senator:** Bring it to trial.

**Sen. W. Mark:** I am not asking for your clarification. [Laughter] You spoke. You spoke already and you had your phone very loud at the time. [Laughter] So, could you be quiet now?

**Madam President:** Really, Sen. Mark? Seriously?

**Sen. W. Mark:** Sorry, sorry. I withdraw. I do not know why he is disturbing me. I am on a good roll and you are enjoying me.

**Madam President:** Sen. Mark, all I am asking is that we—you have a few minutes left, so please, speak to me and focus on what you have to present please, bearing in my mind my two favourite words at this stage, tedious repetition.

**Sen. W. Mark:** Well, you know, whatever I raise is new. There is no tedious repetition on my part. So, Madam President, I am a safe-zone person. The other area I wanted to raise with you, through you, rather, to the hon. Attorney General, is an area where we are seeking to establish a new clause for the consideration of the Attorney General. Again, I believe the Attorney General and his drafting team may have overlooked the rights of individuals in Trinidad and Tobago and, Madam President, I want to refer you to section 4 of the parent Act, and I want to suggest that the Attorney General consider the following proposed amendment for his consideration.

**Madam President:** Sen. Mark, may I ask you, is section 4 of the parent Act the subject of this Bill that is before us?

**Sen. W. Mark:** I do not believe so.

**Madam President:** And, therefore, is what you are raising about section 4 of the
parent Act relevant to what we are dealing with now in the amendment Bill?

**Sen. W. Mark:** I am suggesting that if the Attorney General—Madam President, if you are dealing with good law and we have the Bill before us and we are amending this Act, I am suggesting for the consideration of the Attorney General and this honourable Senate that there is a serious defect that could impact on the liberty of individuals who could face death in our country, and I am suggesting that this is a matter that I would like this honourable Senate to consider. So I understand your point of view. I realize that I might be drifting in some choppy waters, but I am suggesting in the interest of justice and fair play and to ensure that I do not overlook a measure that I could bring to your attention and this honourable House’s attention, I failed to do it Madam President [*Desk thumping*] and that is all I am doing, because it is very, very serious.

So, all I am asking, Madam President, is for the Attorney General to consider when we go into the committee stage, this question of a new clause that would ensure, Madam President, that both the prosecutor and the accused must agree in order to have their case determine whether—to order to have the case determined within the Act and that Act would then be referred by a Magistrate and transmitted to the relevant Master as evidence. So, this is the simple point, so I would move on, Madam President.

Madam President, as I said, these are some of the areas that we wanted to address in this matter that we are dealing with today, and we really would like the hon. Attorney General to consider—there appears to be a fundamental difference in my concept of it, between a prima facie case, the concept of sufficient evidence, within the framework of sufficiency hearing, and I ask the Attorney General to look at that particular framework and concept as we move on. Madam President, I
want to thank you very much for giving me the opportunity to say a few words.

[Desk thumping]

The Attorney General (Hon. Faris Al-Rawi): Thank you, Madam President.

[Desk thumping] Madam President, may I express my profound gratitude to all Members of this distinguished House for their very excellent contributions. On the Opposition Bench and on the Independent Bench there were very good and important observations, some of which can be clarified, some of which I think are quite agreeable, and some of which I think are cautionary and one can easily take on board in terms of how we roll out.

There are a host of issues for analysis and answer. We start off with the operational. We certainly have the legal consideration as to what the law is intended to say and how it can be bettered, and we obviously have the golden question of when. And I would like to thank Sen. Rambharat for his graphic display of his logic in taking us through, in a very good example, as to how long things can take. I think Sen. Chote also had a very wonderful summary of when are we going to have enough discussion filled into our pots, and if we have not had consultation yet answered, when will it end? I think Sen. Chote was extremely right when she said that, because Sen. Vieira asked and I am obliged to answer, the consultation point.

Sen. Vieira asked: who was consulted; if so, what is that list of stakeholding consultation look like and when did it happen? So, I wanted to start off with, Madam President, in the management of some of the other work that I deal with, and in dealing with a matter at the Privy Council, I had cause to pull up the consultation on the 1975 work conducted. And forgive me, I would just like to mark the spot on this.
9.30 p.m.

In looking at work in a particular case in the Privy Council, I had cause to pull up the Constitution Commission of Trinidad and Tobago. This is a report of the Constitution Commission, presented to His Excellency, the Governor General on 22 January, 1974. This was a piece of work—there were reservations by some of the members. There were affirmative positions done. His Excellency, Sir Ellis Emmanuel Innocent Clarke, Governor General and Commander in Chief of Trinidad and Tobago, that was the position that he had then, and there was this request to consider the Trinidad and Tobago Constitution. The participants were: Sir Hugh Wooding; Mr. Justice Philip Telford Georges; Mitra Sinanan; Michael de la Bastide, just then Esquire; Gaston Benjamin; Julius Hamilton Maurice; Solomon Lutchman; Reginald Dumas; Anthony Maingot; Cecil Haig Dolly, Esquire.

A public officer was appointed as Secretary, and this commission went to work and defined something as to Trinidad and Tobago’s position, and I thought it quite relevant in looking at Sen. Chote’s fulminations as to how much, three decades later, from her point of analysis, in the 1980s, we now stand not so different, and I wanted to put this onto the record, permit me to get there. Introduction, and I read from this report at page 10, paragraph 20:

“As this Report is being written the survival of constitutional, parliamentary politics is being challenged as never before in Trinidad and Tobago. Many believe that the institutionalised channels of constitutional politics no longer respond unless there is some dramatic gesture of confrontation such as a ‘sick out’, a ‘go slow’, a boycott or a march to Whitehall to see the Prime Minister. Some groups have even called on citizens to consider withholding the payment of taxes. Secondary school children have begun to adopt
strategies of confrontation and non-negotiable demands. Others have carried this belief into even more extreme action by resorting to armed confrontation. The society has painfully to adjust itself to stories of shoot-outs and killings and woundings, of early morning searches and of widespread public fear of victimisation by one side or the other. There is danger that we may become insensitized by exposure to the human tragedy in the situation and accept this state of affairs as part of our political culture. Violence breeds violence. Violence or the fear of it invariably tends to make the citizen more receptive to strong police and military procedures.”

This, to me, written then as it was in 1974, consultations passing as they had is the story of Trinidad and Tobago in 2019. And in answering who was consulted and when, I want to put onto the record that in the 21 amendments to the preliminary enquiry legislation, in particular beginning 1977, ’79, ’86, 1990, ’94, ’94, ’96, ’96, ’98, ’98, 2005, 2011, 2014, 2016, 2017 and 2019, we have had legislative interventions done on the back of work, of consultation, of committees which were assembled to consider the state and condition of our preliminary enquiry journey. On this particular Bill it is true to say that—in fact, I have two IXL volumes of documents of consultation and that is the skinny version.

[MR. VICE-PRESIDENT in the Chair]

People may think that I arrive here with a speech pre-written, I have never read from a speech in my life. I speak with the aid of notes to pull up material in case it is referenced. This is internalized and worked upon, and what I would read from here is the commentary by way of consultation, whom I wish to publicly compliment now, Pamela Elder of Senior Counsel, who sat and drafted with the Attorney General’s office by way of deep consultation. We took into account all of
the work of every bit of consultation in the Attorney General’s office, in particular, that inherited from the Ministry of Justice in the period 2011 and 2014.

We wrote to, we received commentary from the members of the Bar, we received commentary from the DPP, from the Trinidad and Tobago Police Service, from the Judiciary, and we have received their comments in writing. September 03, 2018, from the TTPS; from the Judiciary, 28th June, 2018; Justices of Appeal, Alice Yorke-Soo Hon, Rajendra Narine, Prakash Moosai, Mark Mohammed; judges of the High Court, Malcolm Holdip, Devan Rampersad, Carla Brown-Antoine, Hayden St. Clair-Douglas, Maria Wilson, Norton Jack, Althea Alexis-Windsor, Gillian Lucky, Kathy Ann Waterman-Latchoo, Lisa Ramsumair-Hinds, all judges.

We have spent decades of analysis in coming forward with this Bill. But the lesson learnt most fervently came about—and I wish to thank Sen. Chote, in particular, for her contribution in the 2017 version of consultations, because in 2017 when we came to this Parliament, in July and in September, and we went through days and days of debate, we learnt a great deal of further reflection. You see, we had swung that pendulum to the DPP doing the work.

We had amplified section 90 of the Constitution. The DPP has that constitutional power to prefer any indictment, to commence prosecution, to take over prosecution or to end prosecution. That is the DPP’s power in the Supreme Law. But we took avail of the work and we went back specifically to the 2011 Bill, and I want to say this, we did so largely on the back of the Judiciary’s final say, because it was true that we were working in the operationalization of the Criminal Division, the divisions of court, the creation of Criminal Procedure Rules, all of the protocols that we had done, and in coming back to this we recognized three
cornerstones: one, the undertaking given by Mr. Justice Volney, the then Minister of Justice, was that there would be no proclamation of the 2011 law until you had rules of court in Criminal Procedure Rules, you had courts established, and you had Masters in place.

I am compelled to do this in a very succinct way to answer Sen. Deyalsingh. Sen. Deyalsingh made the contribution that the Government and the Opposition had paternity of the 2011 Bill, and therefore section 34, but I want to correct Sen. Deyalsingh. It is true to say, and I personally accept part paternity of the Bill, the 2011 Bill, but laws do not become laws until they are proclaimed, and a Parliament has no part of proclamation. The Senate Bench, the Independent Bench, the Opposition have no say in when a law becomes law. That is done by Her Excellency now, the President, or His Excellency then, the President, receiving a Cabinet decision saying that Cabinet has decided for a law to become law. I want to put onto the record where that came from, and it is to be found in the Cabinet Minutes that I, for the first time had access to—

Sen. Mark: Mr. Vice-President, 53(1)(b).

Hon. F. Al-Rawi: I am wrapping up, I am not tedious repetition.

Sen. Mark: Yeah, 53(1)(b), I did not get a chance to speak, you know, on this matter because I was shut down, so I am not going to allow the Attorney General to speak—

Mr. Vice-President: Okay. Okay. [Interruption] Okay. Attorney General, in relation to the Standing Order raised, and in relation to guidance that would have been given prior by the President of the Senate, I would ask that if you get through that particular point very quickly, do not labour on it too long and move on to the next point. So very quickly, Attorney General.
Hon. F. Al-Rawi: Thank you, Mr. Vice-President, I am guided. I am bound to answer in the wrap-up, positions put. Sen. Mark was interrupted because he was repeating what four other Senators had said, so the application of section 53, the Standing Order, is for repetition, but I will move along and answer as I am entitled to do on the—

Sen. Mark: Is he challenging your ruling?

Sen. Gopee-Scoon: What Standing Order is that?

Sen. Mark: That is the Standing Order.

Mr. Vice-President: Members, there is no reason to allow the Chamber to fall into a disorderly state. A particular point of order has been raised, I am giving guidance in relation to the guidance given by the President of the Senate on that particular matter. There is the right of reply in relation to a debate. That is why I have asked that you get through that point very quickly, do not labour on it because you are responding to what was said before, right?—but do not labour on it. Be guided by the statements made by the President of the Senate to the other speakers in the debate. That is my ruling. Continue.

Hon. F. Al-Rawi: Thank you. As I reply and not repeat, and therefore stand firmly assured of what I am doing in proper stance, I will reply and not repeat. And I will reply as follows to Sen. Deyalsingh having raised the point and being obliged to do so under the Constitution as the Attorney General of the Republic of Trinidad and Tobago under section 76 and say this, the Note that was produced by the Cabinet, No. 2119, dated August06, 2012, presided over by then Prime Minister, Kamla Persad-Bissessar, and others—

Sen. Mark: Mr. Vice-President, Standing Order 53(1)(b). Standing Order 53(1)(b), calling names now—I mean to say, why are you doing that?
Mr. Vice-President: Again, I am going to ask that there is no reason for this Chamber to fall into a disorderly state. Sen. Mark, you have raised the Standing Order 53(1)(b); Attorney General, continue.

Hon. F. Al-Rawi: Thank you. Mr. Vice-President, the Note for the Cabinet which was approved on the signature of then Prime Minister, Kamla Persad-Bissessar, and confirmed, the Note was approved on August 09, 2012. The Note asked for the proclamation of section 34, and these are the words succinctly put:

In order to facilitate the seamless transition, it is necessary for the Act to be proclaimed in part.

And it reads this:

With effect from August 31, 2012—

And these are the specific words:

—in order to facilitate the introduction of delayed provisions.

I end there. It is all that needs to be said.

So to Sen. Deyalsingh, an Opposition and Independent Bench, through you, Mr. Vice-President, could never proclaim law. You may vote for it, you receive the undertaking of the Government that it will not be proclaimed, unless you have courts, unless you have rules, and unless you have Masters. Only the Cabinet of Trinidad and Tobago, and only that Cabinet under Prime Minister Kamla Persad-Bissessar had the authority to proclaim as they did. So let us get it clear, we can pass law now, any clause, any section, who puts it into effect is only a Government. So I hope that that is clear for Members now. You see, I understand Sen. Mark’s anxiety and frustration of being found out on the truth of this, but it is just simply put that way, Mr. Vice-President, and it has been answered.

So, Mr. Vice-President, that treats with the observation made as to a
consultation; it is now on the record. It treats with the implementation of the law and the 2011 law recognized by Sen. Hosein, who I think did an excellent job in his contribution here today. Sen. Hosein said that he was very pleased that the Government had not abandoned the 2011 Bill, and he is right. The abandoning of the 2011 Act of Parliament, No. 20 of 2011, happened with the bringing in of the 2014 Act. And it was the 2014 Act, brought by the then Government, which actually the Opposition did not participate in supporting, that 2014 Act was the Act that abandoned the 2011 Act that Sen. Hosein is happy was not abandoned. So let us just get that correct. What we did is to take the experience of the 2017 debate. We took the 2014 positions which cured some of what the 2011 Act had in terms of gaps. We took the learning of Mrs. Elder of Senior Counsel in particular, and then we brought amendments and improvements into the 2011 legislation.

It is important to address the capacity of the DPP because many a Senator, quite properly raised the issue of capacity. Sen. Sobers, Sen. Ramdeen, Sen. Hosein, Sen. Deyalsingh, Sen. Vieira, Sen. Drayton, and I want to put onto the record where we stand in relation to the DPP. It is true that there was, as Sen. Mark put, last Sunday, quite an interesting position of reporting, an interview done with the DPP, I think that the interviewer’s commentary echoed on some sincere truths in terms of operationalization.

But what I can tell you, Mr. Vice-President, the only entity that treats with the filling of legal positions in the DPP’s office is the Judicial and Legal Service Commission—full stop—no Government. The Government’s role is to provide resources to the DPP, plant and machinery, equipment, and it is true to say that as at September 30, 2015, there were 91 vacancies in the DPP’s department, and as at January 2019, there were 75. So we are moving in the right direction. We have
gone from 91 vacancies to 75 vacancies, we have gone in the contract positions from 25 vacancies in 2015 to 21, and I want to point this out, that happened largely because the State Counsel I moved from 33 vacancies down to four. Let me explain that. The Judicial and Legal Service Commission filled nearly all of the vacancies at the lowest level, State Counsel I, but they could not fill vacancies unless they know that the vacancies are being filled by recommendation of the DPP from in-house promotions or by way of advertisements externally.

I am informed from the Director of Personnel that no recommendations for promotions came from the Office of the DPP and, therefore, that position is up to the DPP. Once there is an indication by the DPP that he wishes to fill those positions and commits it to personnel which goes to the Judicial and Legal Service Commission, obviously internal vacancies can be filled and advertisements can happen. What did the Government do? Because Sen. Chote is right, it is unacceptable that the DPP has a difficulty in accommodation and also in the money issue.

But I want to put this on record, since coming into office we have not planned to open offices, we have opened the DPP’s Tobago office at Lowlands, Tobago. We have provided computer equipment. We have provided case progression officers, and we have secured the Port of Spain rental of the Park Street property which is being outfitted, and we have, in the face of the Commissioner of Valuations not performing, we hired the valuations externally to advance the Gulf City accommodation for the DPP, which we expect to happen in a matter of months. So that is three buildings. All the low-level positions, because we urged the JLSC to provide those, we have been writing to the DPP to ask him to indicate whether he is promoting or filling those vacancies. But more
particularly, in our budget, year on year, you would have noticed a feature that you have never seen before, Mr. Vice-President. For the first time in the Office of the Attorney General, under the heading 23, which the heading for the allocation for the Attorney General, there is a ring-fencing of the DPP’s money.

As Attorney General I supervise 19 bodies, Equal Opportunity Commission, DPP’s office, et cetera, and of the budgetary allocation we have ring-fenced the DPP’s money. For the first time ever in the history of this country we have said, this money—which is the allocation for the Attorney General—of that, your money is ring-fenced and protected, and we have given the DPP a degree of financial autonomy that he has not had before.

I want to put on the record now as to the actual expenditure. You see, the Office of the Attorney General has been very careful to make sure that the lion’s share of money that the entire Attorney General’s office receives goes instead to the DPP, and I want to put it onto the record as to what that is. For the year 2016/2017, for example, the entire Attorney General’s office allocation for fees, legal fees, was $50 million; the DPP received approximately $40 million of that $50 million. Let me repeat that, 90 per cent of the money that came to the Attorney General’s office for legal fees went to the Office of the DPP; of the $40 million for 2019, $20 million of that has already gone to the DPP, and there is more to come to the DPP.

Therefore, we have not only provided plant and machinery, urged the JLSC to fill positions, but we have put our money where our mouth is. And in relation to the expenditure of legal fees, I would like to say that the DPP has been diligent in his pursuit of longstanding matters, and I wish to publicly compliment the very hard-working, independent mind of the person, the DPP, and the officers at the
DPP’s office, but we have ensured that the DPP’s flow of money for critical cases has reached to almost $400million in legal fees on one case alone.

Now, that is not the Government’s doing, that is the cost of the litigation. But I want to remind that when the Cabinet Notes for restructuring of the DPP’s office came about in 2014 and 2013, that was specifically in anticipation of the creation of the removal, I should say, of preliminary enquiries. So the staff expansion was to cater for PI abolition; therefore, we are on time now with three new offices, ring-fenced legal fees, more facilities to the DPP, we are on time and headed in the right direction, Mr. Vice-President. It was important to put that onto the record. May I ask what time my time expires, Mr. Vice-President?

**Mr. Vice-President:** You will finish at twelve past ten.

**Hon. F. Al-Rawi:** Without injury time? Thank you, Sir. So, Mr. Vice-President, that deals with the allocation of resources. I want to remind that we are treating with the building Sen. Hosein spoke about, prisons, Judiciary and the DPP’s office, and on the Judiciary side, I can tell you that we have not only created two of our courts in the children’s arena, but we are actually using specialist stand-alone locations. A site at Arima has been allocated. A site in San Fernando, the Attorney General was allocated land. We have given that to the Judiciary for the building of the San Fernando Magistrates’ Court, and, yes, the earthquake caused significant problems, but they caused problems on the back of a failure to make any form of improvement in judicial structures in the entire period, 2010—2015, except the Chaguanas Magistrates’ Court. We are on the development of those buildings and there has been stand-alone capacity improvement there.

Now, let me run to a few of the legal issues, and I want to say, the Government is of course wide open to amendments. We look forward to
improvements in a working structure together, but we have had a few suggestions that I think can be harmonized, and forgive me if I do not attribute the suggestion to the particular Senator. But we are looking, if I were to take Sen. Chote’s contribution, having added some of what was said already, she having adopted what was said by Sen. Hosein, I can say that the following things arise—and I will just take the headlights because I will address them in the committee stage where we have a little bit more room and amplitude can be given to the answers, but I will say this, when we are looking at the standard for a warrant—now, Sen. Chote had pointed out that there seems to be no good reason for the shift in the reasonable belief into suspicion, and Sen. Hosein pointed to certain laws which in fact have, as Sen. Chote acknowledged, the reasonable belief standard as opposed to reasonable suspicion.

[MADAM PRESIDENT in the Chair]

But I would like to say, we took reasonable suspicion for a couple of reasons, number one, it is in fact not a raising of the standard; number two, it is the language used in section 23 of the Indictable Offences (Preliminary Enquiry) Act, Chap. 12:01. In particular, I go to subsection (2) of section 23:

“Where the Magistrate is of the opinion, on consideration of the evidence”—that—“any statement of the accused, that there is sufficient evidence to put the accused on trial for any indictable offence, the Magistrate shall commit…”

So the existing law in 23(2) provides that; section 23(1) provides for the discharge of the accused if, on the whole of the evidence, the Magistrate is of the opinion that no prima facie case has been made. So you have the standard for discharge but the standard to put the accused on trial is a sufficient evidence standard.
And I would like to call in aid, not only the fact that the 2014 UNC legislation went to sufficient reasons, but also the Proceeds of Crime Act, section 23(10), speaks to the same sufficiency. The Dangerous Drugs Act and the Firearms Act, the Firearms Act, certainly in section 30, speaks to the position of sufficient evidence. So our laws actually have two versions. There are some, like the Anti-Terrorism Act that go for reasonable belief, and there are others like the Dangerous Drugs Act, and also the Firearms Act, and the existing preliminary enquiries legislation, and an Act of Parliament that still stands, the 2014 Committal Proceedings route, all of these use the sufficient evidence standard, and therefore we believe that it is quite proper for us to use that.

We do look at the issue of the suspect and his legal representative as a very important improvement, and I think that surgery can be done to the clause that treats with that. I think Sen. Chote’s observation shared by other Senators is in fact correct. In relation to the bail issue and whether there is a conflict between this law and the bail law, well, first of all, the criminal proceedings now in the Criminal Division—in the Criminal Division, and if I am not mistaken it is section 10, in section 10 of Act No. 12 of 2018 we have harmonized that Masters have concurrent jurisdiction with Judges, with criminal Judges and criminal Masters, and, yes, of course, they will be of equal jurisdiction in a higher jurisdiction than the Magistrate was, but in doing that the Bail Act is clear that if you go before a Master it is different from if you go before a Magistrate. The Bail Act already provides that if you go before a Magistrate and he does not grant bail, he has to inform you of that process and you have the right of appeal to a Judge. That is given.

Judge, under the Criminal Division concurrent with the Master, you can take
your appeal therefore in the High Court division before a criminal Master. That is a given by the existing law. But section 6(a) of the Bail Act also comes into effect because if a High Court Judge does not give you bail you can appeal to the Court of Appeal, and therefore if the Master has denied you bail, the existing provisions of the Bail Act, Section 6A of the Bail Act provide that your appeal is to the Court of Appeal. So there is not any collision, at least from what I have seen so far, and subject to amplification that Senators may have and wish to give in the committee stage.

When we looked to the position of the election and having the consent of the accused, both in the transitional provisions and also in the fact of section 27(3), we have the view, we hold the view that the removal of consent—if you want to find it in 8A, or you are dealing with it in section 27 of the Act, or you are looking at it in the context of whether one ought to have a right to keep your de novo, we have sought to simplify the position by saying that it is the election of either one, the accused or the prosecution, if you wish to go under the new system, if anyone of them says that they wish to go, it goes. It is not dissimilar to bringing matters under the CPR, if you recall in the civil arena where we abandoned the old rules and we went to the new rules, the Judges could have done it, the plaintiff or the defendant back in those days, now claimant and defendant, any one of those three could bring a matter under the Civil Proceedings Rules, and we saw it fit, if anybody wants to bring the matter under the rules that that happens.

10.00 p.m.

You see, this falls within the constitutionality recognized by the Privy Council in the Hilroy Humphreys case, that 2008 case which is persuasive, if not guiding, in our jurisdiction, that the change in procedure does not affect your right
to a fair trial, and that has been the standing upheld law and applies in this jurisdiction, indeed relied upon by the then Government, now Opposition, in 2011 and in 2014, and we also associate ourselves with that description of the law.

When we look to the position of preferring the de novo position, whilst that may be true that somebody may prefer that position, the fact is we have got to draw a policy line somewhere, and the policy line has got to be that the matter progresses and if the prosecution believes that bringing it under the new legislation is the route to go, well that is the policy position for the prosecution to adopt to advance this position forward. Yes, it may be inconvenient to some. Perhaps somebody may have had a point of view, but that is a matter of policy decision and we believe, in keeping with the 2011 and 2014 legislation, where the past Government, supported in 2011 by the now Government, held the same policy view, we have adopted that policy view.

With respect to repeal and saving, Sen. Chote referred to section 32. I think that she really meant section 33, when I looked at it. Perhaps the positions were done. I have addressed that, if the accused elects. Sen. Chote has raised an important point about the exhibits and how they are kept, and perhaps doing some surgery to the form and the language there. I welcome the suggestion when we can get to the committee stage.

Sen. Chote raised again a very important position of the dismissal in section 27, and section 27(2) of the parent law as we seek to amend it in the Bill, section 27(2) is important for us, I think, to look at in a little better detail.

Section 27(2) is the discretion of the DPP to prefer an indictment. We get to subsection 2:

“Except in the case of any matter listed in Schedule 6, where the…”—
DPP—“…does not prefer an indictment against the accused within twelve months of the making of an order to put the accused on trial, the accused may apply to a Judge for a discharge and the Judge may discharge the accused if, having considered the reason for the delay in preferring an indictment, he is satisfied that in all the circumstances of the case it would be just to do so.”

First point, we are not amending this clause. Second point, we have agreed to it in 2011 and 2014. Third point, it is the current law. You can apply to discharge on the ground of delay at any point in a matter. That is open to the defence to engage in that.

What is critical by way of safeguard, in my humble suggestion, in my humble view, is that this is a matter for discretion of the Judge after hearing of all of the circumstances of the case, and considering the law in the round. In any event, there is an appeal for the prosecution as of right to the Court of Appeal in this law as it stands in the 2011 Act. And therefore I feel certain that this issue is one that is proper, and certainly has not come into any consideration of odium in the communications coming from the DPP, for instance in relation to the proclamation of section 34, and any caution coming from any one of the stakeholders: Judiciary, the members of the Bar, the DPP’s office insofar as the letters from 2011 come forward echo. So the delay provisions, I think, is in section 27(2), something to be looked at but something which I feel can stand in all the circumstances.

We then move on to Sen. Chote’s recommendations, and forgive me for just attributing this to Sen. Chote. It is in the short time. I am echoing her last submissions which I acknowledge many other Senators have said, so forgive me
for enveloping those submissions and attributing it to only one Senator. I acknowledge that Sen. Hosein, Sen. Sobers, Sen. Ramdeen and several of the Independent Senators have made these suggestions, so please understand it in that fashion.

Sen. Chote and other Members reflected upon forensics, pathologists and the status of courts. I can tell you that the Government has gone to the United Nations. We have already gone to them and sought the availability of forensic pathologists. We are expecting four more of them to come into the jurisdiction. I can tell you that the Cabinet has approved already the construction of a brand-new forensic centre, the land has been allocated just next to Mt. Hope, and the preliminary works in respect of that are engaging our attention.

There is a squatting issue which we are treating with that is in court right now, but the planning and operationalizing of that is going ahead, not to say that we are waiting for that event. We have gone into the forensics centre and we have done the upgrades and we have in fact, redone the entire DNA laboratory, hired the Custodian, created the database, brought in the 15,000 swabs and have started the population of the DNA databank. [Desk thumping] So that is DNA, that is forensics, that is pathologists. All of those things I agree must articulate together with this legislation. But that is also on the back of Criminal Procedure Rules. The training that the Judiciary and the Law Association are engaging in, improving the law, that is also on the back of a criminal division, de-bottlenecking, creating electronic environments. That is on the back of the imminent launch of the Electronic Monitoring System.

Sen. Drayton asked if we had done the anti-considerations; and he is right. What do we expect? What can the society think of in this? A debate like this does
not give one the opportunity to explain the multiple versions of improvements that are going on, and it is true that people have reached the stage of frustration. Nothing seems to work, nothing happens far enough, billions of dollars are spent. But I want to remind that as Attorney General, the first public consultation that I went into and held was on the prison system. Why?

**Madam President:** Attorney General, you have five more minutes.

**Hon. F. Al-Rawi:** Much obliged. The prison system, because it is the litmus test of what we are doing wrong. We have nearly 1,000 people in the remand detention for murder, non-bailable, have to stay there. Some 3,000 people who cannot access bail, but it has been granted to them. So we have dealt with those aspects. But we went deeper to say how much it costs to keep a prisoner in there?—for how long and we extrapolated the cost. Madam President, $25,000 per head per month times 10 years, times 15 years, we are talking billions of dollars in expenditure to keep it as it is. So our Cabinet approved, and NIPDEC is in the course of constructing now. NIDCO, the toilet facilities for the first time in the Remand Yard.

The Canadian Government is on island with us working. Commissioner Head from Canada Corrections is here with us working on the improvements of the prison system. Our parole legislation is nearly ready to be brought to the Parliament. The Maximum Sentence Indication Goodyear Principles that Justice Lucky held in the long vacation just past, that did not happen by mistake. That happened as a result of the Government inviting the Judiciary to engage in the MSI, where 300 people stepped forward to have their MSIs given, so that they would know whether they ought to plead guilty or not, and you are beginning to see the system move for the first time ever.

Add that to the fact that the Government has approved the Public Defender
System. Thirty lawyers—you will see the advertisement come out this week, if I am not mistaken, asking for people to apply for entry into the Public Defender’s Department. We have secured the building for them. It is on Stanmore Avenue. It is a brand-new structure. It has been secured by the Ministry of the Attorney General. So let us put this into context as I wrap up.

Madam President, 77 per cent increase in Judges; divisions of court; rules of court; computerization of the Magistracy; CAT transcription, same transcription that we have by *Hansard* applying into the courts using voice masks. Public defenders, so that if your counsel of choice is not ready you get competent counsel given to you. Specialist training in the Judiciary. You are seeing it happen. Training by the Judicial Education Institute. The forensic centre improvements; the DNA implementation; more pathologists.

We are the first Government since the opening of the Family Court as a pilot project that has opened an entire division of courts with two brand-new courts; and that did not happen by mistake. So there are a lot of technical positions in the committee stage to be answered. We are wide open to addressing the issues and considering improvements to the legislation, but I want to say that Sen. Rambharat is right. Trinidad has not only walked a marathon. Some might say we have crept the marathon. It is time that we get past this position. The Government has engaged in operationalization at the same time that it has legislated it.

We accept that there is no perfect position, but we ask that we as a Parliament improve law and implement it. Our task will be to implement. We alone can proclaim this law—the Government. Nobody here agreeing to any clause can proclaim a clause. We alone can proclaim it, and proclaim a Bill. There are some amendments that we intend to circulate, having listened to what some hon.
Senators’ contributions brought forward, and I beg to move. [Desk thumping]

*Question put and agreed to.*

*Bill read a second time.*

**Hon. F. Al-Rawi:** I apologize, Madam President. I did not have a procedure with me. I know the procedure is that I beg to move that we move to committee stage, but I am just looking for the language.

*Bill committed to a committee of the whole Senate.*

*Senate in committee.*

**Madam Chairman:** Hon. Senators, the Attorney General will cause to be circulated shortly amendments to clauses 3 and 24, and seek also to introduce a new clause 29. Is any other Senator circulating any amendments?

**Sen. Mark:** We have several amendments, but we would like with your leave to address those as we proceed.

**Madam Chairman:** Well, you know Sen. Mark—

**Sen. Mark:** I know, I know, I understand.

**Madam Chairman:** The Bill is fairly voluminous. It has, what?—32 clauses, and the proper way to do it is to really circulate the amendments.

**Sen. Mark:** I know, I understand.

**Madam Chairman:** Can you just tell me how many amendments you are proposing? The Attorney General has three.

**Sen. Mark:** Well, we have about five as we go along.

**Madam Chairman:** All right, I am going to suspend for 10 minutes to allow the amendments of the Attorney General to be circulated, and perhaps you can put into writing, at least formulate it, so as we go through the clauses, you will be able to treat it with it immediately.
Sen. Mark: But we will not be able to do that in 10 minutes. We will probably need about—

Madam Chairman: No, no, I know you are not going to circulate them, but at least you will be able to have an idea of the amendments because I do not think it would be proper for us as we go through the clauses to be waiting for the amendments to be formulated.

So the committee is suspended for—we will return at 10.30 p.m.

10.16 p.m.: Committee suspended.

10.30 p.m.: Committee resumed.

Madam Chairman: Senators, may I remind you that there are 31 clauses in the Bill. May I also remind you that as we go through the clauses that we all keep our focus on where we are with the clauses, please. Okay?

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: Attorney General, you have caused to be circulated an amendment?

“Clause 3 In paragraph (a)(i), insert after the definition of “arrest warrant”, the following definition:

““computer” means a device or group of interconnected or related devices which follows a program or external instruction to perform automatic processing of information or electronic data;””

Mr. Al-Rawi: Yes, Madam Chair, I have. Sen. Hosein raised an important point as to the need to define a computer and so we have taken on board that recommendation, and we propose the inclusion after the words “arrest warrant”
that definition, that we add the definition for “computer” to mean:

“...a device or group of interconnected or related devices which follows a programme or external instruction, to perform automatic processing of information or electronic data.”

This is in harmony with the Anti-Terrorism Act, the Computer Misuse Act and now the Cybercrime Bill.

**Madam Chairman:** Any comment on the proposed amendment?

**Sen. Ramdeen:** AG, I know this is probably as low as my intelligence would get, but I think it should be after “complaint” and not after “arrest warrant”.

**Mr. Al-Rawi:** (a), (b), (c), (d). So we have arrest warrant. It is in the Bill that we are putting it in, so you are looking at the consolidated Act.

**Sen. Ramdeen:** Oh.

**Mr. Al-Rawi:** I apologize. I did the same thing a moment ago.

**Sen. Ramdeen:** Okay.

**Madam Chairman:** Any other question or comment?

*Question put and agreed to.*

Clause 3, as amended, ordered to stand part of the Bill.

**Clause 4.**

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

**Sen. Mark:** Madam Chair, I would like to suggest for the AG’s consideration in clause 4 sub (5) and (6)—that is subsection (5) and (6)—this matter of the Police Commissioner having to identify a person to hold or keep anything seized. I would like the Attorney General to just put a full stop after “police” and remove the words after. And that must be followed in sub (6) as well, because we do not know who this person is. We do not know who this entity is, and we think that the police, without any clear definition or guidance, we do not know where these things may
end up. So I would like the Attorney General for us to keep this thing within the laws and law and order—Police Commissioner.

**Madam Chairman:** Sen. Mark, you are asking that the words “or a person authorized by him to receive it” be deleted?

**Sen. Mark:** Yes.

**Madam Chairman:** And in the following sub (6), are you asking for something there as well?

**Sen. Mark:** Yes, because it continues “with a person” which follows from the previous one. So whatever amendments are made to 5 there would be consequential amendment to 6.

**Madam Chairman:** Any other question and comment on what Sen. Mark has proposed?

**Sen. Sobers:** Madam Chair, my suggestion was along the same thing with Sen. Mark, save and except if the hon. Attorney General intends to keep the authorized person, that some definition also be given with respect to “reasonable care” in subsection (6) as well as maybe some provision to treat with a degree of oversight for this authorized person, if the hon. Attorney General intends to keep that part of there being an authorized body.

**Madam Chairman:** I will ask the Attorney General to respond in due course, but in the committee stage to suggest that something about oversight be inserted is a little too vague. I think it is incumbent on you to formulate what it is you are seeking to have adjusted in the particular clause. Okay? Any other questions and comments?

**Sen. Chote SC:** Are we only looking at subsection 6?

**Madam Chairman:** No, we are on clause 4.

**Sen. Chote SC:** Well, hon. Attorney General I was wondering what was the reason

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for downgrading “believing” to “suspecting”.

**Hon. Al-Rawi:** Sure. There were multiple reasons. First of all we had received the advice of Mrs. Elder which was very fulsome in all of the case law that she produced for us to have a look at it. There is, in fact, a very interesting publication coming from the Law Revision Commission of Ireland which analyses the same position. That Law Revision position dealt with the allegations of subjectivity versus objectivity, and the position that there was a potential for lowering the standard.

In summary that very fulsome report suggested that insofar as arrests and insofar as other aspects of police intervention were done on suspicion, that the intrusion for seizure in this regard on a reasonable suspicion was no different from taking someone into custody for the same reason. Therefore, while there may be arguments that there is a divide between on the one hand subjectivity, and on the other hand, a blended subjectivity and objectivity, the Law Commission’s work there which we analyse through case law coming forward, suggested that there was really no difference to that.

So we went with the fulminations coming out of the 2014 legislation which Parliament had passed, the work coming from Mrs. Elder in particular; the Law Reform Commission report from Ireland, albeit in a different jurisdiction; and we went into harmonizing that which you can do for arrest with that which you can do for seizure.

**Sen. Chote SC:** Thank you.

**10.40 p.m.**

**Madam Chairman:** Attorney General, can you respond to the proposed amendment by Sen. Mark?

**Mr. Al-Rawi:** Sure, of course. Madam Chair, in the parent Act in section 32, there
is provision for the Rules Committee to make rules to provide for matters of the operationalization of this law. It is in those rules that oversight, chain of custody, delivery into custody, et cetera, will be managed. But the reason that we included “a person authorized by the Commissioner of Police to manage the property”, was springing out of two positions largely. One, there is a mischief that the police are not right now managing their assets well. And we heard it in the debate: derelict cars, positions, drugs that go missing, guns that you cannot even account for, thousands of weapons seized over the years, but if you were to try and find out today, as we are doing now, where are all of the firearms that were seized, you are going to have a hard question which cannot be answered. That is with the information we have.

So, we went with the fact that the mischief is that the police are not managing well. We acknowledge a chain of custody and authorization is an issue. They can be addressed by rules of court, subject to negative resolution, section 32 of the parent Act.

But, thirdly and very importantly, as we have done a significant amount of work on asset management as we intend to come to Parliament with civil asset forfeiture which must go into asset management, the best-in-class standard for asset management is an authorized representative. So, we have taken from the immense research that we have done on the asset management in the civil asset recovery positions and harmonized it in the context of what I have just described. In those circumstances therefore, we think it prudent to leave subclauses (5) and (6) as they are.

Madam Chairman: Sen. Hosein.

Sen. Hosein: Thank you very much, Madam Chair. AG, just on the response that you would have given to Sen. Chote with respect to the standard of reasonable
grounds for suspecting, when you look at the Summary Courts Act, the standard there for the issuance of an arrest warrant is “reasonable grounds for believing”. Now, we would both agree that summary offences are less serious than an indictable offence. The standard for issuing an arrest warrant on the basis to acquire evidence on an indictable offence, you would agree, should be much higher than that of a lesser offence?

Mr. Al-Rawi: So let us look to the Proceeds of Crime Act, section 32, subclause (10); it is reasonable suspicion. What is the difference? That is actually having things produced in those circumstances with an entirely different terminology. So we could pick apart examples of belief and suspicion all day long throughout the laws of Trinidad and Tobago.

Sen. Hosein: So is it that the standard is being lowered?

HonMr. Al-Rawi: No. We go with the suspicion standard. I mean, there will be this esoteric debate, quite legitimately, and the courts will ultimately come about as to what is reasonable or what is not. It is not uncommon, for instance, and I am drawing an outside example here now of malicious prosecution or mala fides in purposes. I think that our common law is well developed enough to understand what is proper and what is not and what springs by way of remedy in respect of that.


Mr. Al-Rawi: Thank you.

Madam Chairman: Sen. Ramdeen, is it a different point?

Sen. Ramdeen: It is a different point. Yeah. I just wanted to ask the Attorney General, with respect to subclause (5) and subclause (6), Attorney General, there is a specific standing order in the police service standing orders that deals with the way in which the police ought to treat with these things, and I just wanted to clarify
whether there are any of these provisions that would be in conflict with the duty that the police would have to discharge under the standing orders so that there is not one set of rules that the TTPS has to comply with under the standing orders, and then we enact legislation, albeit that the standing orders are subsidiary legislation, but that a police officer is not confused as to when he takes an item what his duties are under the standing orders, and then what his duties are under this piece of legislation that we are enacting to make that so.

Mr. Al-Rawi: You are 100 per cent correct. We have recognized that. In fact, we laid today a Bill in the Parliament to treat with evidence to legislate what standing orders really ought to look like in primary legislation. It is in the Evidence (Amdt.) Bill which we will come to, without anticipating it. You are 100 per cent on the mark. So what we have done is, we have hired the criminal justice advisor from the United Kingdom, combination with the UK and Canada, and we are revising all of the standing orders as we speak right now. So you are on the money.

Madam Chairman:Sen. Sobers.

Sen. Sobers: No.


Sen. Vieira: Just to put on the record that my understanding is that “belief” and “suspecting” are not synonymous at all. “Suspecting” is a much lower threshold than belief.

Mr. Al-Rawi: I thought that myself until I read the volumes provided to me by Mrs. Elder, and I thank her for it, and she went through the entire Commonwealth in looking at the case law. In fact, it is just on my desk over there. It is at page 10 of her first volume one and two. I literally just read it again.

Sen. Vieira: Well, the dictionary meaning of “belief” is “any cognitive content held as true” whereas “suspcion”, “an impression, a hunch that something might
be the case”.

**Mr. Al-Rawi:** Understood. And the courts have interpreted those things; I accept as well.

**Sen. Chote SC:** Madam Chairman.

**Madam Chairman:** Sen. Chote.

**Sen. Chote SC:** Thank you. I just wanted to enquire of the hon. Attorney General whether then we are to expect in other pieces of legislation which may deal with the issuance of warrants that we will be looking at the term “suspecting” instead of “believing”?

**Mr. Al-Rawi:** I will give you an example because I pulled it up while we were speaking here. If I go to, forgive me, section 23 of the Dangerous Drugs Act.

“A police officer who has reasonable cause to suspect that any dangerous drug…”—et cetera, is done.

And then in section 30 of the Firearms Act, the same terminology for “suspect”. We did not go to the “belief” which we had done in the anti-terrorism. We had a heated debate about grounds, for instance, versus certain other positions, and we felt in that occasion that we were leaning the language a little bit more to the argument of objectivity. I am reminded by the CPC that “reasonable suspicion” may be viewed to be lower, but it is certainly deemed to be sufficient to ground an investigation, and that has been recognized by the courts for a very long time.

So, Sen. Chote, that is a long way of saying “I am not sure”. It depends from Bill to Bill. I have seen legislative-speak come in many different ways towards me, and usually when it comes to those positions of dilemma, I go with where the experts have given me advice in writing. In this occasion I have the benefit of the Judiciary, all 12 Judges that commented. I have Mrs. Elder’s advice, the Law Association, the DPP was sent these comments, the TTPS was sent the comments,
and everybody came to the same conclusion, if not expressly, at least, impliedly insofar as it did not treat with the issue.

**Sen. Chote SC:** Yes. Madam Chairman, I just have two other questions; take “reasonable care to ensure”—that is subsection (6). And of the insertion of “his representative or legal representative”. Now, in your wrap-up, hon. Attorney General, through you, Madam Chairman, you had expressed some willingness to take these suggestions on board. Is that still the case?

**Mr. Al-Rawi:** I apologize. The CPC’s department was behind me whilst I was speaking, so we had agreed to do it, but the draft did not circulate it. So, I thank you for pointing it out. I apologize. It is intended to capture it, and it would be into subclause (6) to do that. So, Madam Chair, would you permit me the opportunity just to get the correct language, if just one second?

Madam Chair, there were two submissions coming from Sen. Chote which she has just reminded me of. The first one would appear in subsection (6) which is at page 5 of the Bill, and that is where:

“A person shall, during any period that he is assigned responsibility for safe keeping of anything seized under the section, take reasonable care…”

Sen. Chote had suggested in her debate, “take all necessary steps” to “take reasonable care”.

**Sen. Chote SC:** “…to ensure”.

**Mr. Al-Rawi:** “…to ensure”. But the point is—so the bit that I am hanging on to it is the “all necessary steps”. Bearing in mind that “all necessary steps” is a little bit more conclusive and fulsome than “reasonable” I was a little bit—I was not warmed to changing the language really because, under the principle of wasting assets, it is reasonableness that you must take to ensure that wasting does not occur; if I borrow from the civil remedy of how assets are managed.
Secondly, I know, because we have drafted, but I know I have not had the benefit of everybody else seeing it, even though the Law Association has had it for nine months, and has had it in circulation. Under the civil asset recovery and explain-wealth legislation, we have also treated with how the agency to manage assets is to treat with it and the standard coming out of England and the Commonwealth is, and even the civil law jurisdictions, is “reasonable care”. So it does not go to a conclusive “all necessary” which may find me in circumstances of review that I forgot to do something which was beyond the scope of reasonableness, insofar as that may be argued. So, I was a little bit cautious about that recommendation although I can see the merit of saying it. I was looking at the State being sued in those circumstances.

On the second aspect, if I could just give you the second before? It was at page 6 that Sen. Chote had very prudently pointed out that a suspect may not be available and in subclause (a), where we are taking a photograph in the presence of a Justice of the Peace, the owner, and where practicable, the suspect, it really ought to be that we add in “or his legal representative”, so that we take care of the position where the suspect is unavailable but may be legally represented. I do not know if that does justice to the mischief that Sen. Chote was pointing out, but it is the proposed addition of language.

**Sen. Chote SC:** Yes. I have no problem with that. But to say “take all necessary steps to take reasonable care” really just sounds extremely clumsy, and I do not know that the UK position is of assistance because they have a quality control code whereas we do not.

**Mr. Al-Rawi:** We were not proposing the “all necessary steps to”. I was trying to capture what I understood you to have said in the debate so forgive me if I have done injustice to capturing what was said. I am sure I did. Was there another
wording that you would suggest?

Sen. Chote SC: No. What I was suggesting is that we should up this standard of care. I know you have concerns about civil forfeiture and so on, but the majority of exhibits in criminal cases will not have anything to do with civil forfeiture. So, I was respectfully suggesting the removal of “take reasonable care” for the very reason that we do not have the quality control standards of other jurisdictions, and have those words replaced by “all necessary steps”.

Mr. Al-Rawi: So, forgive me, Madam Chair, for responding without your invitation. Now having the perspective that I do in acting for the State and not just the private sector, I am deeply concerned as to how much money the State pays out for a continuous basis for issues of negligence or lack of propriety.

And also, I do understand the position of “all necessary steps”, but—and just to correct the record—the civil asset forfeiture is the State forfeiting assets in a civil court. So it does not matter whether it is civil or criminal, it could be under POCA, the point is that the asset management and whether it is returned after a certain process. So the standard of care in maintaining the asset is what I was referring to even though I referred to civil asset. It is not to say that it is done in any lesser care or management than the State’s management responsibility.

Sen. Vieira: Yes, Madam Chair?


Sen. Vieira: Thank you. I agree with Sen. Chote that “reasonable care” is a little relaxed and it is less clear cut. I think when are talking about safe keeping of property and evidence and the chain of custody, there should be a somewhat stricter obligation. Now, I tend not to like “all necessary steps” because that incurs procedural aspects as well. But I think that you would be very familiar with “best endeavours” or “all reasonable care”, but I do think we need to up the obligation a
Madam Chairman: Sen. Sobers.

Sen. Sobers: And I think the problems that the hon. Senators are encountering would be because of the fact, in terms of the definition for there being absent any definition for who this authorized person would be, and then there not being connected with that authorized person any type of definition with respect to steps, actual steps, that this person is to take with respect to the custody of items in his or her or the body’s position is what places, at least, myself, when I was going through the Bill, some question in my mind as to what steps would, in fact, be taken by this body with whatever this body is or whoever this body is or whoever he or she is, in terms of keeping these things safe so that at the end of the matter it could be returned to the individual in a particular form and substance that it was in when it was actually seized, because of what transpires today with items seized and in custody of recognized bodies such as the TTPS and the FSC.

Madam Chairman: Sen. Ramdeeen and then Sen. Simonette.

Sen. Ramdeen: Madam Chair, to the Attorney General, through you. The way the section is drafted now, whatever you choose to do with the standard of responsibility or care, whichever way in which you choose to define what that standard would be; I am not too concerned about that. What I am concerned about is that the way the section is framed, it places a duty, the “reasonable care” standard as it is framed now, to preserve whatever that may be for the purposes of evidence in the criminal proceedings.

Now, there is an issue that arises from that which falls from what Sen. Sobers said, which is this: you can have an item that is seized pursuant to a warrant, you can then have it in the custody of the person. It is then preserved for the purposes of putting it into evidence which would satisfy the conditions that the
mischief of the subsection (6) is defining, but then what happens is that the proceedings continue for almost a number of years. So it goes into evidence, that duty is discharged, but there is no continuing duty on the person who is holding the item until the proceedings are concluded it to give it back.

So, you can satisfy the mischief that you are directing the subsection to here, but then what happens to the responsibility to keep the item?—which is what we talked about in the debate in some kind of form that it is, at least, some step is taken to preserve the item. And the most typical example is that you take the vehicles, the vehicle might go into evidence on the first day of the trial, and then what happens for the next five years?—and it then deteriorates and the same point that you are making which is the liability of the State that comes thereafter is something, I think, we should cater for here so that the responsibility is not limited only for the purposes of preserving it. You have already expanded the fact that you think the TTPS does not do it properly.

We have given the authority to someone else to be appointed by the Commissioner of Police, and that could only be so that it would be done in a better way. If we are improving the legislation to that extent, why not allow that item to be preserved for the purposes of the person who it might have to be returned to?


Sen. Simonette: Thank you, Madam Chair. I intervene to support the Attorney General’s reluctance to amend the clause, and if one could draw comparison to the civil standard of “best efforts” versus “reasonable efforts”, one would understand that it would be interpreted, if one were to insert those words there and a challenge were to be brought, it would be a challenge in civil law. And what “all reasonable efforts”, “all best efforts”, “all best endeavours” means in the authorities is “leave no stone unturned”.

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So, I think that to go that route would be to expose the State to further challenges likely, whereas as the Attorney General indicated, the legislation in the UK and so on, adopts the very, or has the very wording of this legislation, and obviously rules of court could stipulate certain courses that ought to be taken by such persons. But I think to tamper with the language, to elevate it to “best efforts” or “best endeavours” is to adopt an approach that could be very flawed with risks. Thank you.

**Madam Chairman:** May I just invite Sen. Chote as the last person to speak on this particular issue, and then the Attorney General will respond.

**Sen. Chote SC:** Just one final thing through you, Madam Chairman. Hon. Attorney General, my perspective is not about the State being sued. My perspective is from the prosecutor who is seeking to have an exhibit produced for admission into evidence, and because whoever has been appointed the holder of that evidence has not been held to a high standard, that the prosecutor finds himself or herself during the course of a trial unable to produce evidence, whether it is a video recording or something of that nature; and it has happened. And while it is true you can say you can prove your case without exhibits, when you do not place that high standard on those responsible for the care of exhibits, then it makes it much harder for the prosecutor. That is just my final say.

**Madam Chairman:** Attorney General.

**Mr. Al-Rawi:** I will attempt to do justice to the many contributions and I hope I have caught them right. I do understand the mischief that hon. Senators are pointing out. We have laws in Trinidad and Tobago which contemplate asset seizure, if I can use that expression. I take the Proceeds of Crime Act, the creation of the seized asset committee, the section 58 obligations under the Proceeds of Crime Act. And I am just remembering from the top of my head, forgive me if I
got the section slightly wrong. I looked at the creation of agency which we are intended to do, but that is speculative insofar as it is not before the House yet.

I also look at the fact that there are standing orders and there is a genuine inability of the State to manage assets, and people therefore have to resort to claim for the value, and then that ends up being an argument in and of itself because one may not have certified the value at the particular point in time.

The Government’s intention is to harmonize all asset management, and we have already created that formula coming out of a stand-alone civil asset Bill. Now, civil asset Bills are usually incorporated into Proceeds of Crime Act legislation around the world. We have separated it out because the DPP has asked us to keep the two separate, but really and truly, when we speak about civil assets and agency management of assets that are seized by the State, and that means all assets seized for evidence purposes, for whatever they go into, a pool of assets management, and that is what we are ultimately contemplating, which is why we have taken the Anti-Terrorism Act, our amendments to money laundering and POCA, the seized asset committee in POCA and the intended agency for civil asset management in a particular direction. We are right now working with the UK criminal justice advisory team to improve our standing orders.

Sen. Ramdeen made a point some time ago in another debate that people are not even complying with the existing standing orders, let alone new standing orders, meaning the police, and therefore, the enforceability of that is an issue which is why we are now bringing it into parent law, as is in the Parliament now.

All of that said is to say that we accept that there is a mischief that needs to addressed, but now here comes the balance from a state perspective. “Best efforts” from a civil law concept, particularly contract negotiating aspects “best efforts”, is really a very far swing of the pendulum from this sort of standard. “Reasonable
"care" is the standard which we are accustomed to under Proceeds of Crime or the general considerations of the State’s obligations. It is something that I am very cautious to approach, to improve in terms of state management, because at the end of the day there is an alternate remedy. The alternate remedy available to the person, not the prosecutor, I mean the person deprived of asset; I will come to prosecutor separately. The alternative remedy to the person deprived is to then prove the value and then have it paid. And there is in the parent law, by the way, the mechanism to return the asset. Where the accused is discharged, the recognizance is discharged, the surety is discharged and the assets are returned, and Act No. 20 of 2011 speaks to that.

Sen. Chote’s point is a nuclear point, the need for the prosecution to be able to pony up with the evidence. I provided disclosure in Miami proceedings, and what I handed forward was an eight and a half inch floppy drive, and the recipients of that asked me, “Well, what I am supposed to do with that? There is nothing left to read that information, the programme software does not exist, and the drive itself is useless”.

We were lucky to find the drive, but I catch the point. I do not know if improving the standard helps us. I wonder if it causes us distress, because now I have culpability of the police officer under the Police Service Regulations and the disciplinary aspects for not having taken, I am going to use the term “best efforts” or “all necessary steps”, et cetera, in that regard. So, I do not know how to strike that balance with those two mischiefs side by side.

Sen. Vieira: I think Sen. Chote and myself are coming from the same point of view. We are looking at it from the aspect of a prosecutor. Remember in a criminal trial, the burden of proof is on the prosecution beyond reasonable doubt. Once you have any break in the chain, anything that could poison that evidence, your
prosecution’s case can fall by the wayside, and this is where you have a real risk. So, I do think—I am not concerned too much about the civil aspect because you can sue the State for your lost and damaged goods. But I am more interested in the prosecution not losing their case—

**Mr. Al-Rawi:** So what is the language?

**Sen. Vieira:**—because somebody dropped the ball.

**Mr. Al-Rawi:** So what is the language? Right now we have “reasonable” care to ensure that it is preserved for the purpose of evidence in criminal proceedings. And then we allow for—[Crosstalk]—pardon?

**Sen. Vieira:** That is what I said, that is exactly the point; for the purpose of evidence.

**Mr. Al-Rawi:** Yes. So how do we improve that language having identified that mischief? What beyond the language of “reasonable care” takes us there?

**Sen. Vieira:** You can say, “all efforts necessary”, “all reasonable care”, and I come back to “best efforts”. But just “reasonable”, I think, is a little slack.

**Mr. Al-Rawi:** “All reasonable” is certainly doable, but it is the same thing. I mean, I do not want to be facetious and not say it, but to me it is the same thing. But if “all” will solve it, I will happily accept that; that is my point. I do not mean to be tongue-in-cheek to my good friend.

**Sen. Chote SC:** You know, the thing is we are dealing with things like DNA samples and so on.

**Mr. Al-Rawi:** But we have provided for that in the regs for DNA. We piloted that, we dealt with it and we dealt with storage disposal, destruction, we dealt with that in the regulations specifically for DNA. So those subset specialties I accept that, which is why we did the regs to say it must be in refrigerated positions, it must be maintained, it must documented, chain of custody; I agree with that, and we have
dealt with that in law already.

**Sen. Vieira:** I am just reading—I am looking at the different, the spectrum from “best endeavours”, “reasonable endeavours”, what is the difference between “best” and “reasonable endeavours”, and then they are talking about “all reasonable endeavours”, which is often seen as a compromise between “best endeavours” and “reasonable endeavours”, though it seems to steer closer to a “best endeavours” clause.

“Case law indicates that the definition of this clause is highly fact sensitive, and it may exhibit characteristics of both best and reasonable endeavours depending on the circumstances.”

**11.10 p.m.**

**Mr. Al-Rawi:** I am happy; “all reasonable” would take us there, but they will always be qualified by the word “reasonable”. So whether it is “all reasonable”, “every reasonable”, “such reasonable”, it is still “reasonable”. So to me, it is six a dozen of one and half a dozen of the other. Madam Chair, I would happily accept “all”. So, Madam Chair, in those circumstances, the proposed amendments beyond that circulated would be—

**Madam Chairman:** I have it.

**Mr. Al-Rawi:** Oh, thank you.

**Madam Chairman:** Yeah. Hon. Senators, may I remind—

**Mr. Al-Rawi:** Just one of eight that you will need to add in as well. Just so you would get it comprehensively. Because we have added in the legal representative and we did it in 7, CPC has just pointed out to me a second ago that we need to add it into 8, “where the owner or a suspect or his legal representative”.

**Sen. Ramdeen:** Madam Chair, I just wanted to—

**Madam Chairman:** Just one second. Yes, Sen. Ramdeen.
**Sen. Ramdeen:** AG, I just wanted to, on that point, the point about the legal representative. Why are we limiting it to a legal representative for? I am just asking, because you can have someone who achieves the same mischief who is not a legal representative. So just have “a legal representative”, or “someone appointed by”, or “an appointed representative”.

**Mr. Al-Rawi:** Agent, representative, all of the combinations are valid. I am saying—

**Sen. Ramdeen:** No, I am just saying—

**Mr. Al-Rawi:** Just now, I think it is sensible.

**Sen. Ramdeen:** I just think that you will cover it. That is just my—I am just saying to make it better. Because most of the times what you would have—for the practical part of it, most of the times you would not have a lawyer anyway, and what you want to do is to be able to get the independence of having the evidence there with somebody who—

**Mr. Al-Rawi:** So I liked “legal representative” because then you are bound under the Legal Profession Act just having “acting”.

**Sen. Ramdeen:** No, I am accepting that you know, I am just saying in addition to the—

**Mr. Al-Rawi:** So in addition to that, then “authorized representative”? 

**Sen. Ramdeen:** Yeah.

**Mr. Al-Rawi:** I have no objection.

**Sen. Ramdeen:** I have “appointed representative”. Anyone; I do not think it makes a difference.

**Mr. Al-Rawi:** Which one would you prefer, CPC? More organized or evidence alone? Madam Chair, I think it is a sensible recommendation from Sen. Ramdeen, we could add in “or authorized representative”.

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Madam Chairman: “Or his legal representative or”.

Mr. Al-Rawi: As opposed to just legal?—which would include— CPC is recommending, Madam Chair, that perhaps “authorized” can catch “legal” and therefore it is a term which could work for both, so we could substitute “legal” with “authorized”.

Madam Chairman: Okay, so “or his authorized representative”?

Mr. Al-Rawi: Should it please you. I thank you for your indulgence, Madam Chair.

Madam Chairman: Sure. All right, may I remind Members, there are four proposed amendments to clause 4, so I am going to deal with them separately? The first one is the amendment proposed by Sen. Mark, clause 4 at (c) sub (5), to delete the words, “or a person authorized by him to receive it”.

Sen. Mark: Madam, I would withdraw that.

Madam Chairman: Thank you very much Sen. Mark. So, the amendments to clause 4 as proposed by the Attorney General would be as follows:

- At 4(c) sub (6) to insert the word ‘all’ before reasonable.
- At (7) sub (a) to include the words after “suspect”,” or his authorized ‘representative’”; and
- At (8) after the word “suspect” to include the words “or his authorized representative”.

Mr. Al-Rawi: Yes, Madam Chair.

Question put and agreed to.

Clause 4, as amended, ordered to stand part of the Bill.

Clauses 5 to 7 ordered to stand part of the Bill.

Clause 8.

Question proposed: That clause 8 stand part of the Bill.
Sen. Sobers: Yes, Madam Chair. Clause 8A subsection (5) located on page 10:

“Where a Magistrate makes an order under subsection (1), (2)(a), (3) or (4), the Magistrate shall issue a notice to the Registrar specifying the offence or offences with which the accused has been charged and the Magistrate shall cause—

(a) a copy of the notice to be served on the accused and filed in the High Court.”

I am just wondering if we could change that to reflect “a copy of the notice…to be filed in the High Court”, and then “served on the accused”.

Mr. Al-Rawi: No objection, Chair. “To be filed in the High Court and served on the accused.”

Sen. Sobers: Yes.

Madam Chairman: Any other comments on clause 8?

Sen. Ramdeen: Yes. Please, Madam Chair. Alternatively as well to, on page 11, I believe that is clause 8A(7):

“Where an order is made under subsection (1), (2)(a), (3) or (4), the accused shall appear before a Master on—

(a) the next available session day as determined by the Registrar; or.

(b) such other session day as may, subject to the approval of the Registrar, be agreed between the accused and the prosecutor.”

In terms of my submissions earlier on I was wondering how logistically possible it would have been for such an agreement to take place between the Registrar, the accused and the prosecutor if at that juncture the accused—the matter would have already been adjourned and the accused would no longer be before the court. So is it something that would be done round robin? So, I was just wondering if that could have been deleted, the part where it says:

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“(b) …agreed between the accused and the prosecutor.”

So, it should just read, “such other session day as may, subject to the approval of the Registrar.”

Mr. Al-Rawi: May I, Madam Chair?

Madam Chair: Yes.

Mr. Al-Rawi: It was not meant to be understood that way, and if I could explain it perhaps this way. In the civil arena when you get a CMC, notice of a first CMC, it is fixed by the Registrar. The minute you file a defence they generate the first CMC, a Judge is docketed, and then you write to the court office and say that date is inconvenient. The other side consents, and you can apply for it to be varied either formally or informally, and it was in that circumstance that this was set out. So it was intended that there would be a fixture generated, just like it is in the civil arena, and that then there could be room to manoeuvre beyond that through the process of the court office.

Sen. Ramdeen: I am just wondering, through you, Madam Chair, whether in terms of a criminal procedure if that would actually cause some more delay? Do more harm than good?

Mr. Al-Rawi: We have the remanding. So, in the parent Act and in the amendments we say that you must come back no later than 28 days, and you also have—remember, we are now case managing these things. So, the run-up to get here is to go to an initial hearing, get to a Magistrate or a Master depending upon which route you get there by if you are there, if you are in custody or remanded. If not you are at liberty, you get the notice of a fixture, your attorneys or you yourself may enquire at the court office, and then manage your way around it. But in any event, what is absolutely sure is that we are going to have to have rules of court done that would massage this out pursuant to section 32 of the parent Act. So, I am
sure that that can be mapped out in the rules of court.

**Madam Chairman:** Sen. Vieira.

**Sen. Vieira:** Thank you. Just to put on the record, a difference between what we have here and in the UK. So, my understanding is that in the UK an accused is charged with both indictable offences as well as summary. Upstairs, the indictable offences are dealt with, and when the indictable offences are over, the Judge, if the accused says “I plead guilty to the summary offences” will sentence him right there and then according to the summary offences penalties and Act. But if he says he wants to fight the case, he does not tie up the High Court time, he remits that downstairs. Now, this actually might be a better approach, because—

**Mr. Al-Rawi:** We have a difference. We have the criminal division where we merge the Magistracy and the jurisdictions of the Magistrate and the High Court specifically contemplating that it would be difficult for us to resend, and commit, and delay. So, once it is with the Judge, either-way, indictable, or the entire package that goes with indictable hits the High Court, it is a Judge and jury. Judge and Jury deal with those issues first. The summary is left at the end where the Judge alone can act, having heard the facts in the previous run-up, got rid of the jury aspects, and we keep it before the Judge, and the run-up to that and lock in was the criminal division which we did last year to allow for the merger of jurisdictions to avoid sending back to the summary courts.

**Sen. Vieira:** So, I just wanted to compliment you on this approach.

**Mr. Al-Rawi:** Thank you.

**Madam Chairman:** Any other questions and comments on clause 8? So I will now put the amendment as proposed by the Attorney General. [*Interruption*]

**Mr. Al-Rawi:** Yes please. I am adopting Sen. Sobers’ very sensible suggestion.

**Madam Chairman:** Hon. Senators, the question is that clause 8 be amended as
follows, at 8A(5)(a) to read as follows—

“A copy of the notice to be filed in the High Court and served on the accused.”

Question put and agreed to.

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

Clauses 9 to 12.

Question proposed: That clauses 9 to 12 stand part of the Bill.

Madam Chairman: Sen. Sobers.

Sen. Sobers: I am grateful please, Madam Chair. Through you, with respect to clause 11 located on page 15, at least in subsection (2)(h), with respect to (iia), where we are dealing with documents submitted from the police to the Director of Public Prosecutions, I was wondering whether or not a time frame could have been placed there, so it should read something like “the police shall submit to Director of Public Prosecutions within seven days”. Could be extended.

Mr. Al-Rawi: Yes, you are perfectly right. There must be a time frame. It is dealt with in the Scheduling Order. So, all of those time frames kick in. So these matters are dealt with in the Scheduling Order, which comes up under section 12. [Mr. Al-Rawi looks through pages] Sorry, I will tell you now. The amendment list in the earlier part, I am looking into the parent Act as we showed it. So in the chapeau of the same 11(h), if you look to the parent Act:

“make a Scheduling Order in the form set out in Schedule” 1A “specifying the date on or before which—”

—and then we go to the same matters that we have spoken of. So it in the chapeau of the operational part of the Scheduling Order in section 11. So those things to be done by the police, by the DPP, must be done in accordance with a Scheduling Order in the form set out in 1A, Schedule 1A, specifying the date on or before
which.

*Question put and agreed.*

*Clauses 9 to 12 ordered to stand part of the Bill.*

*Clauses 13 to 20.*

*Question proposed:* That clauses 13 to 20 stand part of the Bill.

**Madam Chairman:** Sen. Ramdeen.

**Sen. Ramdeen:** AG, I see you have made an increase.

**Madam Chairman:** Sen. Ramdeen, can you speak up a little bit?

**Sen. Ramdeen:** Sorry. Hon. Attorney General, through you, Madam Chairman, in section 13, Attorney General, I see you have increased the time for the giving the alibi notice from five to 10. I was wondering if you would be minded to extend that time a little bit longer. In most of these cases, well not most of them, it is to cater principally for the person who would not have either known of the obligation to give that notice and when you have the—

**Mr. Al-Rawi:** Objection.

**Sen. Ramdeen:** I was speaking to Senior and we are suggesting 28.

**Mr. Al-Rawi:** I always find the selection of dates to be entirely arbitrary just like penalties and offences, so I welcome the views of hon. Senators, in particular, if I may, through you, Madam Chair, Sen. Chote SC who has the most experience of us in the criminal arena. Not to take away from what Sen. Ramdeen, of course, has said.

**Madam Chairman:** Can someone just point me to the proposed amendment?

**Sen. Ramdeen:** I am sorry, Madam Chair, it is clause 13A.

**Mr. Al-Rawi:** It is the first one, 13A. Sen. Chote, through you, Madam Chair, is there a date? A time frame?

**Sen. Chote SC:** Though what Sen. Ramdeen says, through you, Madam Chairman,
is correct, I am respectfully suggesting 28.

**Mr. Al-Rawi:** Agreed.

**Madam Chairman:** So 10 is going to become 28?

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

**Madam Chairman:** Any other questions? Comments?

**Sen. Sobers:** Is it 13 to 20?

**Madam Chairman:** Yes, we have dealt with clause 13. We are dealing with 13 to 20.

**Sen. Sobers:** Clause 17.

**Madam Chairman:** Yes, 17?

**Sen. Sobers:** Yes, please.

**Madam Chairman:** Yes.

**Sen. Sobers:** Where on pages 17 to 18, where section 20 of the Act is amended, and mainly part B by the repealing of subsection (3), and subsection (3) in the parent legislation—

**Mr. Al-Rawi:** You are reading out here?

**Sen. Sobers:** Yes. So, I am suggesting that we maintain the reading out of the documents, but subject to the hon. AG.

**Mr. Al-Rawi:** May I, Madam Chair?

**Madam Chairman:** Yes.

**Mr. Al-Rawi:** It is an important point; I understand. We consulted far and wide on this issue and the reading provision can be immense, particularly as we get into complicated charges, complex fraud, even though, yes, there is a caveat for that in section 27. Right? But, it has been identified as an item of significant abuse. I accept that there are circumstances such as illiteracy or diminished capacity, not in the medical sense, but slow intellect that may operate in these circumstances. But I
think that the courts inherent power to ensure that the accused understands what is happening is always there, particularly as we layer out in the criminal procedure legislation, the cautions that we must take. So, we had deliberately caused the removal of this as a matter of policy because all of the stakeholders identified it as a matter of significant abuse, but for—sorry, in respect of which there could be safeguards exercised by the court itself.


Sen. Ramdeen: Attorney General, with respect to clause 18, this pertains to the issue of the way in which you have very commendably dealt with the taking of a statement from the child. But, I think, and just please let me know if I am reading it wrong, while there is a provision that allows, which virtually codifies what the common law is, which is to, that is your 3A, this only takes you up to the point of insuring that the person, that is the child psychiatrist, the probation officer or any other qualified person determines that the child has sufficient intelligence to understand that the child is speaking the truth. But that is the first hurdle that must be overcome.

The second hurdle, which I think is not covered, but if you can show me I will accept it, is that the statement that the child then gives ought to be certified like an ordinary statement that is given by a person, that having certified that the child is able to tell the difference between what is truth and what is not the truth, that when the statement is taken from the child that statement should certify that the child—the second part of it is that the child certifies that is contained in the statement is the truth.

Mr. Al-Rawi: So, Madam Chair, I will jump back to the suite of legislation which we have done a lot of surgery on since 2015, which is the entire children’s package, then the Family and Children Division, and then the rules for the
children’s court, which also managed some of these affairs together with the protocols, the inclusion of the child advocate who sits alongside these positions as well, and then the court supervisory powers. The truth is that whilst we have the legislative, the Law Revision Commission is right now in the course of settling the many amendments that we have made, 13 on the first round—no 23 on the first round, 13 on the second round, and some more.

That certification aspect, if I am not mistaken, is dealt with in those packages. Because we also disaggregated the older child and younger child principles when we dealt with the Summary Courts Act in some of the amendments we did in December of last year. So, it is something that, I do not know if you would accept it, but I give you my undertaking to look at it. We have another round of children amendments to come back to Parliament, as we have done some further sweeping, and it is something that I could look at there. But I could not—I do recall vividly in the multiple versions of laws that we have amended in the last year, two years in particular, that we have treated with this. But, I do not have the prescriptive response to that right now, because I have not looked at it that way, but I recall it in my mind.

Sen. Ramdeen: Only to say that it just seems to be—listen, I have a consolidated version. It just seems to flow very well from what you have done here that that is why if you look at 21(4A), the amendments that you have made to 21(4A), capital A, 21(4A), the wording is, look at the last line that you have there, I think that is the wording, and I am only insisting because I think it makes sense.

Mr. Al-Rawi: I welcome it.

Sen. Ramdeen: To just fix it right there.

Mr. Al-Rawi: I welcome it.

Sen. Ramdeen: This is the one that deals with the translator.
Mr. Al-Rawi: Yes.

Sen. Ramdeen: So, if you look at the last line that you have here, “shall sign a declaration” all that on A and B, understood—what I am asking for is, understood what was written and confirmed.

Mr. Al-Rawi: What is in the chaussure?—I got you.

Sen. Ramdeen: Yes, that is good.

Mr. Al-Rawi: Madam Chair, I am operating with a slight disadvantage in that the several drafters of the children’s packages really come from the Judiciary end that I work with, there is a large team of 17 of us and I have this sneaking suspicion that I am about to trip something if I accept that. I will have to look at it a little deeper. It is very good point, Madam Chair. I can give the undertaking properly that I will look at it, and I know we have another round to come back, and I thank Sen. Ramdeen for it. I regret I do not have the response that I think is required to this.

Madam Chairman: Sen. Hosein.

Sen. Hosein: Thank you very much, Madam Chair. My comments are on clause 20.

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


Mr. Al-Rawi: 20.

Sen. Hosein: With respect to the deletion of the—in my contribution I would have raised an issue with respect to the deletion of the prima facie case standard for the sufficiency hearing. When I read the new 23 AG, respectfully, there is no standard whatsoever with respect to the Master. Now, without breaching the rules of anticipation, on the other clause, on the section 24 amendment, it speaks to not sufficient evidence in terms of a discharge. Now, AG, I would have raised the issues with respect to the confusion of what evidential standard that the Master
would have to apply in these cases for a discharge or a committal. Do you mind expanding on that, please?

**Madam Chairman:** Okay. Attorney General before you deal with this, I think Sen. Richards wants to raise something on clause 18. So I just wanted us to deal with it chronologically.

**Sen. Richards:** Yes, thank you, Madam Chairman. Apologies for not catching your attention before Sen. Hosein went to 20. AG, through you, Madam Chair, in 18B(3)(a), I have a concern.

Notwithstanding section 91 of the Children’s Act where a statement is made by a child under the age of 14 years, such statement shall be supported by a statement from a probation officer, child psychiatrist or any other person qualified to make and assessment of the child to assist the court in determining the child understands truth and consequence.

There is a big jump, to me, in competence and qualification between a probation officer and child psychiatrist in that competency. And the suggestion is that a child psychiatrist or any other person qualified may suffice as opposed to the probation officer which may not necessarily meet the benchmark for being qualified to make that assessment.

**Mr. Al-Rawi:** The package of personalities is harmonious with what we have done in the children’s packages. So, we generally tend to use the probation officer because it is a specified office holder in the court who is assigned for that purpose. The functional assistance of child psychologists and psychiatrists, there has been that debate whether we use it, then we went to the definition of “psychiatrist” which included psychologist, which is why we have used “psychiatrist” here. And, other laws go a little bit differently to include that there is a certain person accompanied who the child is comfortable with, and then certain classes of
exclusions, police officer who is related, et cetera, those sorts of things. So, this is a formula that we have used in other laws on several occasions in the last year, in particular. And, yes, it is with distinction that the psychiatrist versus the probation officer stands. The question is ultimately whether the court is satisfied that the person had the competence to give that certification of the child’s ability to give the evidence that the child is giving. And that is a matter for the court.

**Sen. Richards:** Thank you.

**Madam Chairman:** I think the Attorney General is going to address what Sen. Hosein raised about clause 20.

**Mr. Al-Rawi:** Sure. So, Madam Chair, clause 20 treats with section 23, and this is final decision on a sufficiency hearing. So, after reviewing the evidence submitted by the prosecutor and the accused and considering submissions, if any, pursuant to 21B, that is where they may be giving oral or written amplification of submissions,

“a Master may—

(a) discharge the accused pursuant to 24;

(b) order that the accused be put on trial pursuant to 25;” or

“(c) make any other order in relation to the case…”

So, Sen. Hosein’s question really springs in the next clause, which is clause 21, which deals with section 24, which is where we deal with the standard of moving from what the 2011 law said and going back to the 1917 current law and the 2014 law. So, perhaps the question is best answered in the next clause.

**Madam Chairman:** Sen. Ramdeen.

**Sen. Ramdeen:** Thank you, Madam Chair. Attorney General my enquiry really refers to clause 20 which deals with section 23, and the power of the Master to perform what you have set out there in (a), (b) and (c). My suggestion is this, Attorney General. Since we are moving from an inferior court to a superior
court with respect to the Master, that the one inherent disadvantage that I see by this move, not a criticism, but it is a reality, which is that you do not have any means the challenging a decision of the Master made in these proceedings pursuant to section 23.

11.40 p.m.

Formerly, what you would have had, you would have had the remedy of the judicial review if there is any error made by the Magistrate. And now because you have a superior court of record that avenue for challenge is out. I have looked at the Supreme Court of Judicature Act, I have it here, section 42, which defines what an appeal is. And an appeal pursuant to section 42 of the Supreme Court of Judicature Act would not apply to a decision of the Master in any of these circumstances and the mischief that I am focusing my submission on is that between the time of committal and the time of trial if the Master makes an order that is in some way an error of law, there is no means by which a decision of the Master in these types of proceedings can be challenged in a court of law. And I was wondering whether you would consider giving a right of appeal to an accused person who is before the court upon the decision of the Master exercised pursuant to section 23 in the same form as you have been making references thus far.

In the same form as you would have a procedural appeal in the civil arena with a limited time frame to be heard within 28 days so that you do not have the issue of delay and someone abusing the process and you can still afford the person the protection of the law in relation to challenging a decision of the Master.

**Mr. Al-Rawi:** Madam Chair, if ever there was a most important point, it is that which Sen. Ramdeen has just raised. It cuts to the crux of policy decisions. Both the last Government and the present Government put a cut-off line in the 2011 legislation where it would have been a court of superior record which would not
properly allow for the judicial review aspects to go to work. So that is absolutely correct. And that was done because people have now recognized that the JR-ing in and of itself, there are some well-known cases which I will not name, have taken us Privy Council and back in ultimate runs, stretching matters for tens of years, decades literally. So that was the policy decision behind the 2011 Act which we are amending right now.

Sen. Ramdeen has proposed something which is quite novel, it is an appeal to the Court of Appeal, well, ultimately right through. Because one can go to Privy Council on the Court of Appeal issues. But we are talking procedural appeal and it could be limited. But that is something that I certainly undertake to look at. I do not have the policy prescription with me now to make that decision because that would require, certainly the DPP and the Judiciary and the Law Association to at least have a view of that. That has the potential to significantly increase the time for the run by the time you hit Court of Appeal, Privy Council and then back.

I can see the merit in the submission, I genuinely can. If you look to somebody who is unjustly committed, if you could use that, and who has to suffer the indignity of having to wait for proceedings to begin in the assizes, I can understand that. But I would need to get the policy shift done in a larger scale to do that and to do the consultation. So, at best I can give an undertaking to look at it and to come to that, because that would mean a certain amount of, how should I say, creation of a space that we have not yet contemplated either in 2011 or now.

**Sen. Mark:** Madam Chair, may I ask, if for example, there is an error in law committed by the Master of the—at the level of the assizes or who is recommending that somebody be tried. We are being told by the Attorney General that he will consider this because the Government has not taken a policy on that. This is a matter of rights of citizens of the country and that is totally unacceptable.
If you have an error of law being breached by the Master, how can you tell an accused that he or she does not have the right of appeal. We are not living in a dictatorship.

**Madam Chairman:** Sen. Mark, your point has been—

**Sen. Mark:** No, no. Ma’am, this is a very serious matter.

**Madam Chairman:** And it has been made and I am going to ask the Attorney General to respond, please.

**Sen. Mark:** We cannot equivocate on this matter.

**Mr. Al-Rawi:** Yes. Please, Madam Chair. [Crosstalk]

**Sen. Chote SC:** I am sorry. Madam Chairman, before the hon. Attorney General responds, could I just make a suggestion that when this matter is being looked at we consider the provision in the Supreme Court of Judicature Act which allows for the Director of Public Prosecutions to have access to the Court of Appeal during the course of a preliminary hearing. So perhaps that could now be extended to the accused person.

**Mr. Al-Rawi:** That is an excellent submission. Again, a far-reaching measure as we have had in epochs where we have gone ahead. So I certainly undertake to look at it. Just to try to succinctly answer Sen. Mark’s submission, it is a serious issue. It is certainly a rights issue, but that door was closed in 2011, 2012, 2013, 2014 and 2015 when several persons would have looked at the policy, certainly because we have had amendments come forward. It was not contained in the 2014 committal proceedings legislation, that rights issue. It was not contained in the 2012 consideration of the repeal of section 34 or any other rights issues. It was not contained in the 2011 issue. It was not even spotted by a very eagle-eyed chairman in the House of Representatives back then on those many occasions. Perhaps Sen. Mark may recall that chairman in the House of Representatives. So it is certainly
something that we will look at, Madam Chair, and I thank Sen. Chote for adding to the observations of Sen. Ramdeen.

**Madam Chairman:** So hon. Senators, I am now going to proceed. Sen. Ramdeen, is it something new?

**Sen. Ramdeen:** I just want to flag one thing, AG. While you are looking at it just take into consideration that that issue might affect the constitutionality of someone who might be caught by that. That is all.

**Madam Chairman:** So we are the dealing with clauses 13 to 20. I am going to separate clause 13 because there is a proposed amendment. So hon. Senators, the question is that clause 13 be amended as follows at:

13 (a) by deleting the word “ten” and substituting the word “twenty-eight”.

*Question put and agreed to.*

*Clause 13, as amended, ordered to stand part of the Bill.*

Clauses 14 to 19.

*Question proposed:* That clauses 14 to 19 stand part of the Bill.

*Question put.*

**Sen. Mark:** Madam Chair, before you put the question.

**Madam Chairman:** I have put the question.

**Sen. Mark:** But it has not been completed.

**Madam Chairman:** What question are you asking me?

**Sen. Mark:** No, I am saying that there is a dispute on our side on this clause 20.

**Madam Chairman:** But I am doing 14 to 19, Sen. Mark.

**Sen. Mark:** I apologize.

**Hon. Senator:** You are sleeping.

**Sen. Mark:** No, I am not sleeping.
Question agreed to.

Clauses 14 to 19 ordered to stand part of the Bill.

Clause 20.

Question proposed: That clause 20 stand part of the Bill.

Sen. Mark: Madam Chair, I would like the Attorney General—he must have been aware of the implications of this provision long before it arrived in this Chamber. And, Madam Chair, you can have an accused or somebody languishing for six, seven years and not having the right of an appeal. And it is totally unacceptable for an accused to be languishing in the way that we are anticipating if there is no provision for an appeal in this particular section of the legislation. And I would like the hon. Attorney General to reconsider this matter and to consider an amendment where we would want to suggest along the lines that our colleague Sen. Ramdeen has proposed—no, I think Sen. Chote, in terms of the DPP having that right—

Sen. S. Hosein: No, the accused.

Sen. Mark: The accused rather, having a right of appeal. So we would like the AG to reconsider this position here and it is recorded, I think we should pause on this. We should not pursue this matter and have the Attorney General get his superiors on this particular matter because—

Madam Chairman: All right, Sen. Mark, I think you have made the point. Attorney General.

Mr. Al-Rawi: Yes, Madam Chair. I was well aware of this, 2014, 2015, 2016, 2017, 2018, 2019. This is a replica of clause 24 of the 2014 Bill which chairman Mark passed [Crosstalk] when he was sitting in the House of Representatives. [Interruption] You spoke and I did not interrupt. So for six years this has stood on the books. It is still part of the laws of Trinidad and Tobago. So, yes, I was aware for a full six years that this position exists. Now that Sen. Mark has been awakened
by someone else’s submission what I will say is that the submission when properly
filtered is for an amendment in another piece of law, not in this piece of law. And
therefore most respectfully, it is something which we have given an undertaking to
have a look at. To consider this, I have to have the consultation aspects on this
because it is an important point, both as made and also as ought to be factored. So
most respectfully I beg to differ with Sen. Mark that we pause now. It is something
which we will deal with and I have demonstrated to this Senate on many occasions
that when I give my undertaking I come back and treat with the law.

Sen. Mark: What time frame, Madam Chair, may I ask through you?

Mr. Al-Rawi: What time frame? Shorter than the six years it took you to listen to
someone else. [Laughter]

Madam Chairman: Hon. Senators, the question—

Sen. Mark: You see you are very insulting.

Madam Chairman: Hon. Senators, I think we have had—

Sen. Mark: Disrespectful.

Madam Chairman: Hon. Senators, I think we have had enough discussion—

Sen. Mark: I will deal with you in this Senate.

Madam Chairman: Sen. Mark—

Sen. Mark: You will run, you know.

Madam Chairman: Sen. Mark, please.

Sen. Mark: No, I take umbrage to the Attorney General’s disrespect, “man”.

Madam Chairman: Hon. Senators, the question is that clause 20—

Sen. Mark: I am not taking that from him.

Madam Chairman: —now stand part of the Bill.

   Question put and agreed to.

   Clause 20, ordered to stand part of the Bill.
Clause 21.

Question proposed: That clause 21 stand part of the Bill.

Sen. S. Hosein: Madam Chair, with respect to the submissions I made on clause 20 with the removal of the prima facie case standard, I rely on those submissions and I think the Attorney General said he would have replied at this stage.

Madam Chairman: Any other Senator wishes to speak on clause 21? Sen. Chote.

Sen. Chote SC: Yes. Thank you, Madam Chairman. I was just wondering, this is just a question, whether the reason for changing the standard from “prima facie” to “sufficient” is because we are calling it a sufficiency hearing. And whether we can still call it a sufficiency hearing but maintain the prima facie standard so that there would be no confusion moving forward. Because as it is, we do not have any clear definition of what is sufficient. So instead of creating a hornet’s nest of people trying to discern what it is, why do we not simply continue to call the thing a “sufficiency hearing” but maintain the prima facie standard?

Madam Chairman: Any other questions or comments on clause 21 before I ask the Attorney General to respond?

Sen. Mark: Yeah. We strongly object to the removal of the prima facie provision in this particular section of the legislation and we ask the Attorney General to maintain that provision as exists in the legislation, that is the parent legislation.

Sen. Vieira: Thank you. I agree with Sen. Chote. I think you could have the language, “sufficiency hearing”, but still against the backdrop of prima facie. I think the mischief that was trying to be cured was the wording of section 23 as originally cast, because that pitched prima facie way beyond the pale, you see. It said:

“…prima facie case against an accused is made out where a Master finds that the evidence, taken at its highest, is such that a jury, properly directed,
could properly return a verdict of guilty.”

So that was a poor definition of prima facie. Prima facie just means at first glance. So I think what we want to avoid is having a confusion of standards with sufficiency of evidence and prima facie, but I think the fact that you have sufficiency of evidence does not negate the prima facie standard and regime.

Mr. Al-Rawi: Madam Chair, I thank—Sen. Vieira hit the nail on the head as to why the removal was done. So in 2014, predecessor Attorney General made the very same argument for deleting prima facie. So when we went to the committal proceedings we ran away from prima facie then. I want to take a step back to Chap. 12:01. Section 23 of the current law starts with 23(1) and then goes to 23(2). The standard for a case to go to trial is stated specifically to be, where the Magistrate considers that there is sufficient evidence it goes to trial.

So this language is exactly that language. It is the same language as the 2014 Act as well, Act No. 14 of 2014. It is the same as in England. There is no definition of sufficient evidence, its either it is sufficient or it is not. The concept of the prima facie comes in in the existing law, Chap. 12:01, section 23, subsection (1) which says, that you can be discharged if there is a no case submission because you do not have a prima facie case.

So what is absent on this occasion is the prospect of an open opportunity for discharge for not having reached a prima facie case. And the advice that we have received from all of the stakeholders and, in particular Mrs. Elder, was that that is problematic in terms of delay. And therefore what we have done is to keep with the existing law, you have sufficient evidence. In fact, if you do not have sufficient evidence it may even be a faster trip than if you do not have a prima facie case. You see, this prima facie concept is quite misleading because the common law as it is applied is as was stated in the law which we are deleting now. The case when
taken at its highest and put to a juror, that is a very difficult standard to achieve in some of the submissions.

Others look at it and say well, look it is on its face, it is less than that burden but there has been no agreement on the position. And I have gone to all of the case law, I have taken advice from people that practise in the arena, not that I discount, obviously, my learned colleagues here, all of them, but the rationale is, (a) as stated, the language was too high, (b), we have returned to section 23(2) of Chap. 12:01 which is sufficient evidence, and (c) we accept that we are not stating obviously that there is no prima facie case, but it is open to the defence to say, you do not have sufficient evidence and you ought to discharge. So we have kept the position of discharge where that balance strikes now is obviously something for the court to finally consider. But this sufficient evidence is not something that is unique in these circumstances.

Sen. Mark: Madam Chair, I have looked at the St. Lucian Criminal Code and criminal rules which we have patterned this legislation on. And it is at complete odds—

Mr. Al-Rawi: That is true.

Sen. Mark:—with what the AG is saying. This is why I want to believe, Madam Chair, there is more in the mortar than the pestle, because, Madam Chair, look, I have before me, 10.3 of the St. Lucian Code and it is clear, just as how my friend said a short while ago, a Judge is also part of the proceedings. So under their law and their code, I quote:

“(2) At the sufficiency hearing a judge or master…”

So they have both a Judge and a Master. We are being confined to only a Master. And in addition to that, Madam Chair, what we have before us is a clear case where, let me just quote for you what is being stated here:
“(4) The documentary evidence submitted by the prosecution must disclose prima facie evidence that an indictable offence has been committed and that the defendant has committed it.”

And it goes on to explain in another section the probative value which I do not want to burden you with.

So I do not understand why the Attorney General is picking and choosing what he wants when this very law that we are dealing with came out of the St. Lucian experience.

Madam Chairman: Sen. Mark, I think your point has been made. Any other question or comment on clause 21 before I ask the Attorney General to respond?

Attorney General.

Mr. Al-Rawi: Thank you, Madam Chair. First of all, it is not true to say that we do not have Judges in this. We say Master but Sen. Mark is forgetting the Criminal Division and District Criminal and Traffic Courts Bill, now an Act of Parliament, where we have harmonized the jurisdiction of criminal court Judges and criminal court Masters. So that is not true. Let us start with that.

Secondly, Sen. Mark’s memory perhaps needs a little assistance. Sen. Mark is forgetting that his Government, now Opposition, came to the Parliament in 2014, poured scorn on the St. Lucia model, said that the prima facie standard was entirely wrong. It is on the Hansard record, “every man jack” who spoke in that debate for then United National Congress members said that this was a problem. Sen. Ramlogan as Attorney General, in fact went to say that they made a mistake in going with the St. Lucia model as it is. The Government has come forward with this in the journey that we have taken to come here, we took the best of 2011, the best of 2014 legislation, the learning experience and browbeating that we took in the 2016/2017 run-up to PI stuff, the advantage of volumes of reports and research,
the consultation with Judiciary, with stakeholders, with others, and this is what we came up with. So that is just to aid Sen. Mark’s recollection of how we got there as his own Government, and I want to add this as I end, the pouring of scorn on prima facie was not only Faris Al-Rawi, you know, it was the Leader of the Government, Kamla Persad-Bissessar, now Leader of the Opposition. So I do not know if my friend is at variance with his own leader on these matters.

Question put and agreed to.

Clause 21, ordered to stand part of the Bill.

Clauses 22 and 23.

Sen. Chote SC: Thank you, Madam Chairman. Oh, I beg your pardon this is clause 24(b). I apologize.

Question put and agreed to.

Clauses 22 and 23, ordered to stand part of the Bill.

Clause 24.

Question proposed: That clause 24 stand part of the Bill.

“24 Renumber the existing paragraphs (a) and (b) as paragraphs (b) and (c) respectively and insert a new paragraph (a) as follows:

“(a) by inserting after the words “files an indictment”, the words “under section 6(2)”.

Madam Chairman: I will remind Members that the Attorney General has caused to be circulated an amendment. Perhaps I should ask—Sen. Chote, before I ask you to state your comments I will ask the Attorney General to advise on his amendment.

Mr. Al-Rawi: Madam Chair, if I may, clause 24 treats with an amendment to section 27. The submissions in the contributions of hon. Senators was that there was ambiguity which needed to be cured. We have sought to capture what we
heard and I hope we have done some justice to it, by proposing an amendment in the—if you look to the parent law in section 27, if you look to 27(1), we are proposing that we immediately after the—sorry, this is an amendment to 27(3). That would be at page—mine is unnumbered. 27(3), we are proposing that just after the words—we are going to insert the after the words “files an indictment”, the words, “under section 6(2)”. So if you look to the chapeau of subsection (3):

“Where the Director of Public Prosecutions prefers and files an indictment”—under section 6(2)—“a sufficiency hearing shall only be conducted…”

And section 6(2) of the Act refers to:

“6. (1) Where a complaint in writing is made to a Master that an indictable offence has been committed by an accused the Master shall—

(2) Notwithstanding subsection (1), where the”—DPP—“is of the opinion that a person should be put on trial for an indictable offence, the”—DPP—“may prefer and file an indictment against that person, whether or not a complaint is made against that person.”

So 6(2) is consonant with the DPP’s powers under section 90 of the Constitution and to clarify 27(3) we are proposing that we qualify and clarify the circumstances that this ability to avoid a lack of clarity is bettered by making reference to 6(2) specifically. So, in the Bill itself we are proposing a new subclause (a) that is to add the words just described and then we will consequentially renumber paragraphs (a) and (b) of clause 24 into (b) and (c) accordingly. That is a long way of explaining the Bill to hopefully avoid questions that come.
Sen. Chote SC: Thank you, Madam Chairman. Hon. Attorney General, I express some concern about (bb) and by extension (ba), in the context of the de novo cases. I would like to enquire whether there are other cases apart from the de novo cases which would fall into this category and if so, how many are there?

Mr. Al-Rawi: Sure. So let me explain where we got this from. Perhaps that might assist. If you recall the Marcia Ayers/Gobin judgment, the reason that I took the interpretation summons was because the DPP asked a question of the Presiding Magistrate, Busby-earle-Caddle, asking whether the Magistrate—previously hearing the matters, Marcia Ayers-Caesar—whether she had in fact resigned. And he did that specifically and the response to him was, “I am not able to say”. So the acting Chief Magistrate could not say whether the previous acting Chief Magistrate had resigned because there was a question of law as to whether taking up a judicial appointment in the Superior Court was tantamount to a resignation where there was no expressed resignation. But the DPP asked that question in the context of saying, if you could tell me if she had resigned I would know if to exercise my powers under section 23(8) of Chap. 12:01.

12.10 a.m.

So the ability to move to indictment in circumstances of serious or complex fraud, that is in (ba), or where a Magistrate is unable to complete, most importantly, for any other compelling reason. It was in those circumstances that the matter came about. But in the Ayers-Caesar/Gobin J. judgment, the DPP specifically flagged that he had the option under the existing law, 23(8) of Chap. 12:01, to move straight to indictment, but that he was loath to take that step because the circumstances were too narrow in 23(8). Taking account of that judgment, we have preserved—(ba) is the existing law in 12:01. The DPP has the power to avoid the preliminary enquiry in matters of serious or complex fraud in
the existing law. So (ba) it was satisfied with:

“Where the accused is charged with an offence involving serious or complex fraud”—

—you can go straight to indictment.

(bb) just captures the additional circumstance that Gobin J. traversed, because Gobin J. has now—and there has been no appeal on it so it stands as the locus classicus, Gobin J. has said, in those circumstances there is no way you could take a part-heard and transfer it to someone to finish the part-heard. That was the thinking in Jamaica where it was challenged and in Trinidad where it was interpreted. And it was said that that would be unfair. Your only choice is de novo.

So I have now worked my way down to the de novo. In the de novo, as I got it from your contribution, hon. Senator, through Madam Chair, it was the circumstance where somebody says, “Look, I would like to preserve my de novo. I do not want to necessarily go and line up in the assizes to wait for when my session comes, because I might have a faster chance at discharging myself under the PI law de novo right now.” That is the way I understood the submission to be. But we have taken the circumstance that that is dealt with by a different section because it is under section—I will get it for you in a moment. It is the other section in this Bill and Act that says it is on the election of the prosecution or the accused, if either one of them wants to convert, bring it under the new law that they can.


Mr. Al-Rawi: Section 4(2). So I understand the position, but the policy decision that we have taken is, if either of the parties want to go under the new law, no preliminary enquiry. Under these proceedings either one of them can. We have avoided the situation of consent, because then consent brings in conflict, where one party wants to go or not. We are hanging our hat on Hilroy Humphreys in terms of

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fair trial is not a guaranteed right to a particular procedure at any one point in time, so we feel that constitutionally we are safe in those parameters. I do not know if that assists you in the argument.

**Sen. Chote SC:** Somewhat, but my question really was, apart from the de novo cases, are there other cases contemplated that this amendment would apply to?

**Mr. Al-Rawi:** Not in the immediate mind and if I—

**Sen. Chote SC:** So it is just those cases from the Chief Magistrate?

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

**Sen. Ramdeen:** Attorney General, I just want to ask, is it not in one of the Piarco enquiries the Magistrate has had to resign—in one of them? Because they have reached retirement, I mean. That is what I mean. Not resign. They reached retirement.

**Mr. Al-Rawi:** So the Magistrate reached retirement age and is continuing and there are—but I should not go into the sub judice.

**Madam Chairman:** No, and I am very uncomfortable in discussing a matter that is actively before a court.

**Mr. Al-Rawi:** So, Madam Chair, let us speak hypothetically.

**Madam Chairman:** That is correct.

**Mr. Al-Rawi:** But it is a very important hypothetical, lest section 34 happens all over again. So I will take the same formula that Sen. Prescott did in talking about it but not talking about it in a way as to affect it within the confines of Standing Order 47, if it is in this House. I do not remember the two—between Standing Orders of the House and the Senate.

So the question is, in my mind, are we going to affect any existing litigation? The Government has no intention that that is the case at all. I understand that what we are preserving here is what the Constitution permits for the DPP to do under
12:01, the existing preliminary enquiry law. He has that power right now under 23(8) to skip past, if he chose, or to take the circumstances where the accused is charged with an offence involving serious or complex fraud. That is a matter for the DPP. The Government has no fulmination, understanding or intention in that regard; absolutely sure. What the DPP does is entirely up to him, as he is constitutionally obliged to explain that to no one, because section 90 allows him that latitude and privilege.

**Madam Chairman:** Hon. Senators, the question is—

**Sen. Mark:** I have not finished.

**Madam Chairman:** Well, Sen. Mark—

**Sen. Mark:** No, I was waiting until the lady was over, but I realize your head is down—

**Madam Chairman:** No, my head is very much up.

**Sen. Mark:** You are not looking at me at all.

**Madam Chairman:** You want to ask a question?

**Sen. Mark:** Of course.

**Madam Chairman:** On clause 24?

**Sen. Mark:** Yes. I just wanted, Madam Chair, with your leave, to ask the Attorney General whether he would consider—because he did raise a matter earlier on 4(2) of the parent Act. I would like to ask the Attorney General if he would be willing to consider an amendment, and once he is, then I will frame it appropriately. And that has to do—

**Madam Chairman:** An amendment to what clause, Sen. Mark?

**Sen. Mark:** No, I am saying that the Attorney General made reference to 4(2) in the parent Act—

**Madam Chairman:** Yes.
Sen. Mark:—and I am asking the Attorney General, whereas in 4(2), Madam Chair, we are talking about the prosecutor or the accused may elect to have a case determined, whether he would be inclined to ensure that there is balance and certainty by substituting and advancing the following: that both the prosecutor and the accused must agree in order to have a case determined with this Act—whether the hon. Attorney General would want to consider that, so you have a balance here rather than leave it, Madam Chairman, in a case of abeyance as to whether the accused can do it or the prosecutor can do it. It is a bit hazy here. So I am asking the Attorney General to consider both. There must be an agreement between the prosecutor and the accused to go forward. AG, what is your say?

Madam Chairman: Attorney General.

Mr. Al-Rawi: Sure. So I had made reference to section 4 in answering a consideration on clause 24, which I think was specific. But insofar as I may be permitted an answer to Sen. Mark, section 4 is, first of all, not proposed to be amended and there is a very good reason why. Section 4 of the parent Act required a three-fifths majority. That is why section 4 was not touched, number one. But in any event, section 4 is clear in our mind. It is not hazy or ambiguous. It is that one party alone may decide. There is no need for unanimity. And we have done that to avoid the argument of “he-say, she-say” and who has to decide what “he-say, she-say” through a whole process of law. So the Government is not minded for those two reasons, to consider section 4 at all.

Sen. Mark: May I clarify the position, Madam Chair? So, AG, are you telling me that if I am a person, if I am accused and I want to take my matter or I want to keep my matter, I have the power under section 4(2) to so decide? Is that what we are telling me?

Mr. Al-Rawi: Section 4(2):

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“Where proceedings were instituted prior to the coming into force of this Act, the prosecutor or the accused may elect to have the case determined in accordance with this Act…”

Sen. Mark: Right.

Mr. Al-Rawi: “and where evidence has been led, the Magistrate shall transmit the record of the proceedings and all relevant evidence to the Master.”

It is 4(1)—and 4(1) and 4(2) must be read together. 4(1):

“Subject to subsection (2), this Act shall apply to proceedings which are instituted on or after the coming into force of this Act.”

So, it is clear. Either one who wants it, gets it. No need for unanimity. This has stood as the law since 2011. We are now in 2019.

Madam Chairman: May I also point out, Members, that during the debate when it was raised about section 4 of the Act, I pointed out that this Bill that is before the Senate does not deal with section 4 of the Act. Did I not say that?

Mr. Al-Rawi: Yes, Madam Chair.

Madam Chairman: And therefore, I would ask us to please let us now move on and deal with what is properly before us at this stage, which is clause 24.

Question put and agreed to.

Clause 24, as amended, ordered to stand part of the Bill.

Clauses 25 to 31 ordered to stand part of the Bill.

New clause 29.

New clause 29 read the first time.

Question proposed: That new clause 29 be read a second time.

Insert after clause 28, the following new clause:

“Section 29. Section 33 of the Act is amended –

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amended (a) in the marginal note, by inserting after the words “Chap. 12:01”, the words “Act No. 14 of 2014”; and

(b) by deleting the word “is” and substituting the words “and the Indictable Offences (Committal Proceedings) Act, 2014 are”.

Renumber existing clauses 29 to 31 accordingly.

Madam Chairman: Attorney General?

Mr. Al-Rawi: Yes, Madam Chair. We had failed to repeal the 2014 law and this clause just simply intends to do that. So we go back to the 2011 law because right now we technically have three Acts of Parliament: Chap. 21:01; Act No. 20 of 2011 and Act No. 14 of 2014. So this is intended to remove Act. No. 14 of 2014.

Madam Chairman: Any questions? Sen. Mark?

Sen. Mark: Your indulgence more than a question.

Madam Chairman: Sorry?

Sen. Mark: Your indulgence more than a question.

Madam Chairman: Sure, on the new clause 29?

Sen. Mark: Yes. I know that you have gone to a new clause 29. I think that I was a bit flat-footed. You caught me flat-footed. Madam Chair, I am seeking your indulgence—

Madam Chairman: Sen. Mark—

Sen. Mark: No, I am just—

Madam Chairman: I know, but let us deal with new clause 29, please.

Sen. Mark: Yes, first.

Madam Chairman: Yes.

Sen. Mark: And I am saying after that I would like to—

Madam Chairman: No, well we normally deal—

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Sen. Mark: Yeah, yeah, yeah, I know you are dealing with the new clause, but I am asking you, Madam Chair, whether you can revert, because there is a very important matter that we wish to raise with the Attorney General and that is clause 27.

Mr. Al-Rawi: We have past that.

Sen. Mark: I know. This is why I am asking the honourable Chair to—[Crosstalk]

Mr. Al-Rawi: No problem. If Madam Chair agrees. It is her House.

Sen. Mark: Madam Chair, it is a very important matter that—

Mr. Al-Rawi: Can we finish 29 and revisit?

Sen. Mark: It is clause 27, Madam Chair, subsection (7).

Madam Chairman: All right. Sen. Mark—

Sen. Mark: Yes, Ma’am?

Madam Chairman: Good morning to you.

Sen. Mark: Sorry, Ma’am, good morning.

Madam Chairman: So let us finish off our consideration of new clause 29—

Sen. Mark: Yes, Ma’am.

Madam Chairman:—and I will revert to clause 27 (7) specifically.

Sen. Mark: I am not a lawyer, but I am obliged. Thank you very much, Ma’am.

*Question put and agreed to.*

*Question proposed:* That the new clause be added to the Bill.

*Question put and agreed to.*

*New clause 29 added to the Bill.*

Clause 27 recommitted.

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

12.25 a.m.

Sen. Mark: Madam Chair, I am very grateful and very thankful, and good
morning as well—

**Sen. Baptiste-Primus:** And behave yourself.

**Sen. Mark:**—and behave myself. Madam Chair, I am asking the hon. Attorney General to revisit the “fourteen days” that is in the legislation under 27(7), and I would like to propose for his consideration “twenty-eight days”.

**Mr. Al-Rawi:** Agreed, Madam Chair. [Laughter]

**Sen. Mark:** And I will ask him to take charge of that point too.

**Madam Chairman:** How many?

**Mr. Al-Rawi:** Twenty-eight days, Madam Chair.

**Madam Chairman:** Hon. Senators, the question is that clause 27 be amended at sub (7) by deleting the word “fourteen” and substituting the word “twenty-eight”.

*Question put.*

**Sen. Ramdeen:** Madam Chair, can I just ask the Attorney General one question? Just one question on 27.

**Madam Chairman:** Could I just ask a question? It is just one word, Sen. Ramdeen—seriously?

**Sen. Ramdeen:** Yeah.

**Madam Chairman:** We asked to revert to 27(7), are you going to ask on 27(7)?

**Sen. Ramdeen:** No, 27(9).

**Hon. Senator:** You all are unprepared.

**Sen. Ramdeen:** “Buh you eh making no contribution.”

**Madam Chairman:** Sen. Ramdeen, you are going to ask, I will—[Crosstalk]

**Hon. Senator:** “You people sleeping.”

**Madam President:** Please! I will allow you to ask the question.

**Sen. Ramdeen:** I am obliged. I am very grateful. Attorney General, all I wanted to ask you was that you are imposing an obligation on the prosecution to give their
list of witnesses pursuant to new subsection (7) which you have agreed very kindly from “fourteen” to “twenty-eight”, but under new subsection (9) there is a concomitant obligation on the accused but there is no time period there limited for the performance of the registrar to do exactly the same thing as the registrar has to do with respect to the prosecution. And I was just wondering, as a matter of fairness, whether that ought to remain that way or you should at least give the prosecution the same advantage that you would have given the defence. Because new subsection (7) is to give the defence notice of the witnesses that the prosecution is going to call and there is no concomitant obligation at (9), and I was wondering if it would not be better to actually suggest that the same apply across the board as a matter of fairness, both to the prosecution and to the defence, but it is a matter for you.

Mr. Al-Rawi: Interesting point. The distinction lies, and I am not sure where it goes after I make this point, between “shall” and “may”. So we put the “Director of Public Prosecutions shall, at least fourteen days”, Registrar “shall” then do the subpoena aspects:

“An accused may also give notice to the Registrar of the names…whom he desires to attend at trial…Registrar shall subpoena such witnesses in like manner as for the prosecution.”

So when we get to “in like manner” we had thought that we would harmonize what was required in (7), that “twenty-eight days” would flow from that. Do you think that there is a danger or an improvement that is to be made in that?

Sen. Ramdeen: The only thing I am considering is that for the purposes of the trial. I understand how a criminal trial operates, but it may well be that you would want to give the registrar at least some kind of time to get the witnesses because what you might have is a—
Mr. Al-Rawi: I see. So you are looking for the dovetail into (8).


Mr. Al-Rawi: So, “The Registrar shall, on receipt of a notice under…(7), subpoena the witnesses in accordance with…Criminal Procedure Act.”

So let us go to (9):

“An accused may also give notice to the Registrar of the names of witnesses whom he desires to attend…and the Registrar shall subpoena such witnesses in like manner…”

So we thought that again, the “like manner” captures it.


Mr. Al-Rawi: All right. I thank you for the caution, and Madam Chair, I thank you for the indulgence.

Madam Chairman: Sen. Ramdeen, that is it?

Sen. Ramdeen: Yes, fine.

Question agreed to.

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

Question put and agreed to: That the Bill, as amended, be reported to the Senate.

Senate resumed.

Bill reported, with amendments, read the third time and passed.

ADJOURNMENT

Madam President: Leader of Government Business.

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Thank you very much, Madam President. It is a pleasure for me to beg to move that this Senate do now adjourn to Tuesday, 5th of February, 2019 at 1.30 p.m. During that sitting, we will do the Sexual Offences (Amdt.) Bill, 2019.

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Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 12.33 a.m.