

SENATE

Tuesday, January 12, 2021

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. David Nakhid who is ill.

SENATOR'S APPOINTMENT

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

“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: MS. RENUKA RAMBHAJAN

WHEREAS Senator David Nakhid is incapable of performing his 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

UNREVISED

Opposition, do hereby appoint you, RENUKA RAMBHAJAN, to be a member of the Senate temporarily, with effect from 12th January, 2021 and continuing during the absence of Senator David Nakhid 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 12th day of January, 2021.”

OATH OF ALLEGIANCE

Senator Renuka Rambhajan took and subscribed the Oath of Allegiance as required by law.

NEW YEAR GREETINGS

Madam President: Hon. Senators, it was remiss of me as I entered the Chamber and after we said the prayer to wish everyone a Happy New Year. [*Desk thumping*]

PAPERS LAID

1. Annual Administrative Report of the InvesTT Limited for the year ended September 30, 2018. [*The Minister of Trade and Industry (Sen. the Hon. Paula Gopee-Scoon)*]
2. Annual Administrative Report of the National Information and Communication Technology Company Limited (iGovTT) for the period October 01, 2018 to September 30, 2019. [*The Minister of Public Administration and Digital Transformation (Sen. The Hon. Allyson West)*]
3. Ministerial Response of the Office of the Attorney General and Ministry of Legal Affairs to the Eighth Report of the Joint Select Committee on Finance and Legal Affairs, Fifth Session (2019/2020), Eleventh Parliament on an Inquiry into the Adequacy of Magistrates' Court

Facilities. [*The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan)*]

JOINT SELECT COMMITTEE REPORT

(Presentation) Shipping Bill, 2020

The Minister of Tourism, Culture and the Arts (Sen. The Hon. Randall Mitchell): Madam President, I have the honour to present the following report as listed on the Order Paper in my name:

Interim Report of the Joint Select Committee appointed to consider and report on the Shipping Bill, 2020, First Session (2020/2021), Twelfth Parliament.

URGENT QUESTION

ASYCUDA System (Challenges Arising from Upgrade)

Sen. Wade Mark: Thank you, Madam President, and Happy New Year to you. To the hon. Minister of Finance: Given the technical challenges arising from the newly upgraded ASYCUDA system and the consequential delays leading to increased costs to business owners, can the Minister indicate how is this situation being addressed?

The Minister of Finance (Hon. Colm Imbert): [*Desk thumping*] Madam President, the Trinidad and Tobago Customs and Excise Division has upgraded its system, its electronic document management system to ASYCUDA version 42.2. And this is a version of the ASYCUDA World system. Previously the Customs and Excise Division used ASYCUDA 4.0, World 4.0.

The benefits of 42.2 is that software is provided at no cost to the users along with training. It allows for the seamless transfer of information and the development of electronic documents, and it provides for transparency at all levels

of the cargo reporting and releasing processes. And that I am told that after some initial teething problems, the users of the system are in fact enjoying the benefits of greater transparency and the seamless transfer of information and the development of e-documents.

I am told by the Customs and Excise Division that shipping agents were required to update their XML files, and this information was given to them in September. Unfortunately, not everybody did that, so that with the implementation of the ASYCUDA World 42.2 a week or so ago, there were some issues but as a result of communication between users of the system, myself, the Ministry of Finance, the Customs and Excise Division and various business organizations, I am advised that most of these teething problems have been resolved. There is constant dialogue with the UNCTAD technical team who is providing the technical support for this upgrade. With respect to additional cost, if any, this will be dealt with on a case-by-case basis.

Madam President: Sen. Mark.

Sen. Mark: Madam President, can the Minister indicate whether the system is up and fully running to allow those persons who import goods to clear same? Can the Minister indicate whether this system is up and running as we speak?

Madam President: Minister.

Hon. C. Imbert: I am advised that the system is functioning at a level which will allow normal operations to continue.

Madam President: Sen. Mark.

Sen. Mark: Hon. Minister, are you aware that several businesses, small and medium-sized businesses in particular have not been able to clear their cargoes or their goods in the last two weeks, and it is having a very negative impact on them? Is the Minister aware of this? And if he is, can the Minister indicate what steps will

be taken to address this matter?

Madam President: Sen. Mark, one question.

Sen. Mark: Okay. Is the Minister aware?

Madam President: Minister.

Hon. C. Imbert: Well, in the first place, Madam President, the first working day of the year was the 4th of January, so it is not two weeks. Sen. Mark in his usual exaggeration always doubles everything. And there were teething problems, and the business community reached out to me and to other officers, to the Comptroller of Customs. As a result of dialogue between users and the Customs and Excise Division, I am advised that most of the teething problems have been resolved however, the benefits of ASYCUDA 42.2 are significant, and in particular the question of improved transparency and real-time information cannot be understated.

ANSWERS TO QUESTIONS

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Thank you very much, Madam President. Madam President, as per usual the Government will be answering all questions on the Order Paper.

WRITTEN ANSWERS TO QUESTIONS

Children's Registry Initiative (Delay in Implementation)

54. Sen. Paul Richards asked the hon. Prime Minister:

Can the Prime Minister provide the reason(s) for the delay in the implementation of the proposed 'Children's Registry' initiative?

SEED Grant (Details of)

55. Sen. Paul Richards asked the hon. Minister of Social Development and Family Services:

With regard to the SEED Grant, can the Minister indicate:

- (i) how long has this programme been in operation;
- (ii) what are the criteria used to determine whether a person qualifies for said grant;
- (iii) how many persons have benefitted from this grant as at September 30, 2020;
- (iv) what is the total value of the grants issued as at September 30, 2020;
- (v) what categories of businesses have received assistance through this initiative;
- (vi) what type of training, if any, are applicants required to complete prior to receiving funding?

Vide end of sitting for written answers.

ORAL ANSWERS TO QUESTIONS

Economic Challenges of Small and Medium-Sized Businesses (Measures Taken by Government to Ease)

19. Sen. Wade Mark asked the hon. Minister of Finance:

In light of the financial and economic challenges facing thousands of micro, small and medium-sized businesses, as well as the interest rates and service charges applied by commercial banks, can the Minister indicate what measures, inclusive of the introduction of legislation, are being taken to ease the burdens being faced by these businesses?

The Minister of Finance (Hon. Colm Imbert): Thank you, Madam President. Like every other country in the world that has been negatively impacted by the COVID-19 pandemic, Trinidad and Tobago has been forced to adopt measures to contain the spread of the virus.

We understand that the closure of non-essential businesses and our borders would have some adverse social finances and economic consequences. As a result

we established a safety net for the most vulnerable and for businesses.

I spoke about this in my 2021 budget presentation, Madam President, and I will now reiterate some of the measures we undertook as a government to ease the burden faced by micro, small and medium-sized businesses as follows.

We accelerated the payment of VAT refunds, 5,010 small and medium-sized enterprises with a VAT cycle threshold of up to \$500,000 received refunds accelerated.

We also issued VAT bonds, 460 companies with up to 10 million in refunds per VAT cycle received fully-tradable VAT bonds amounting in aggregate to \$3 billion. We have also introduced a system of zero interest government guaranteeing loans which are being managed by the commercial banks.

We have also provided a facility for members of credit unions. And this programme is in its infancy as we speak but the credit unions have begun to issue concessionary loans to various business owners. We have also established a micro-enterprise grant programme, and we are targeting 5,000 micro enterprises.

With respect to the availability of foreign exchange, 124 importers of essential items have received US \$75 million prior to the delivery of the budget, and an additional US \$75 million was approved, and has been disbursed since then in the first quarter of fiscal 2021.

We have also accelerated payments to contractors and suppliers; we continue to that. And we disbursed an additional amount of \$2 billion in 2020. The reserve requirement for the commercial banks was reduced from 17 per cent to 14 per cent, the Repo rate of 5 per cent to 3.5 per cent which created substantial access to credit with quite a phenomenal increase in excess liquidity which now stands at over \$10 billion as we speak.

Prime lending rates were reduced from an average of 9.5 per cent to 7.5 per

cent. Banks provided a moratorium on mortgage and instalment loans and waived penalties.

We have also, for Tobago, assisted with a \$5 million facility to assist small businesses in Tobago through their enterprise development programme. And we also established a special fund of \$50 million to provide grants for Tobago hoteliers for upgrade and financial support.

As announced in the budget, we will also be amending the Corporation Tax Act in fiscal 2021 to allow small and medium enterprises greater access to equity funding through the TTSC junior exchange.

We also plan to implement through this companies that list on the junior stock exchange an increase in the incentive period from five to 10 years, a full tax holiday for the first five years, and a 50 per cent tax holiday for the second five years. And these are just some of the measures, Madam President, there are many more but time does not permit me to outline all of them.

Sen. Mark: Madam President.

Madam President: Yes.

Sen. Mark: Hon. Minister, having regard to the reduction by the commercial banks re primary interest rates, as you said from 9.5 to 7.5, can the Minister indicate whether this reduction is still hurting thousands of small and medium-sized businesses particularly given the sluggishness in this economy at this material time?

Madam President: Minister.

Hon. C. Imbert: Madam President, that question makes no sense—a reduction in interest rate is hurting small businesses? I cannot answer that question. It makes no sense.

Madam President: Next question.

Hon. C. Imbert: Obviously it is helping, it is not hurting.

Madam President: Next question, Sen. Mark.

Sen. Mark: Madam President, can the Minister indicate whether the Government intends to introduce legislation to address the whole issue of interest rates and service charges as they apply to small and medium-sized businesses re commercial banks?

Madam President: Minister.

Hon. C. Imbert: Madam President, the ability of the Central Bank to set interest rates and margins is already contained in the Central Bank Act as being in the law for many, many years.

Madam President: Sen. Mark.

Sen. Mark: Can the Minister indicate whether his Ministry has gathered the necessary data and/or statistics dealing with the challenges faced by small and medium-sized businesses including closure of same, Madam President?

Madam President: Sen. Mark, that question does not arise.

Hon. C. Imbert: And it is not a matter for Finance.

Madam President: You have one more question?

Sen. Mark: Madam President, can the Minister indicate to this House whether as Minister of Finance he is satisfied with these measures having regard to the complaints being made by small and medium-sized businesses in our country?

Madam President: Minister.

Hon. C. Imbert: Before I answer, can I crave your indulgence to tell me how many supplementals are allowed on an urgent question?

Madam President: This is not urgent. This is the question on—

Hon. C. Imbert: Question on notice. Sorry. How many supplementals are allowed—

Madam President: Four.

Hon. C. Imbert:—on question on notice?

Madam President: Four.

Hon. C. Imbert: Four?

Madam President: Yes. This is the last one.

Hon. C. Imbert: I thought he answered me four already. I thought I counted four. I am afraid, Madam President, that my understanding of the Standing Orders does not allow a Minister to state an opinion.

Madam President: Next question, Sen. Mark.

Sen. Mark: I did not understand that, Madam President. I did not understand.

Madam President: You want the Minister—the Minister has indicated that his understanding of the Standing Orders does not allow him to express an opinion. That was his response. Next question, Sen. Mark.

Sen. Mark: How convenient.

**Heritage Petroleum Company Limited
(Waiver of Supplemental Petroleum Tax)**

26. Sen. Wade Mark asked the hon. Minister of Finance:

As regard the waiver of the Supplemental Petroleum Tax for Heritage Petroleum Company Limited, for a two-year period beginning July 2019, can the Minister advise as to:

- (i) the legal basis for said waiver; and
- (ii) the quantum of tax revenue foregone up to September 30, 2020?

The Minister of Finance (Hon. Colm Imbert): Section 21 of the Petroleum Taxes Act provides that:

“There shall be a tax known as supplemental petroleum tax charged on gross income.”

In addition, section 26G of that Act states that:

“Subject to sections 3 and 4, the provisions of the Income Tax Act in the Table below shall apply in relation to the taxes imposed under section 21 as they apply in relation to income tax chargeable under the Income Tax Act.”

With respect to the legal basis for the waiver, the basis for remission of the supplemental petroleum tax payable by Heritage Petroleum company is the application of section 124 of the Income Tax Act, as I indicated earlier which states:

“The President may remit or refund the whole or any part of the tax payable or paid, as the case may be, by any person if he is satisfied that it would be just and equitable to do so.”

In this regard, the President—in this case means the Cabinet—agreed to the remission of the supplemental petroleum tax to allow for the reinvestment in this state-owned oil company as the Government deems appropriate and necessary, and this reinvestment would be as agreed in exploration and production. The remission would deal specifically, the remission of the tax, would provide Heritage Petroleum with cash specifically for the drilling of new wells, the workover of existing wells, the maintenance and upgrade of ageing infrastructure such as pipelines, pumps, tanks, machinery critical for preservation of oil production. And this has been a sore point with our national oil company for many, many years. We think this is a very important policy decision on the part of the Government to allow the waiver or remission of supplemental petroleum tax for Heritage so that it can upgrade its plant and machinery.

It should be noted that Heritage is paying all of its other taxes in terms of royalties, levies, licences and so on.

The quantum of tax forgone up to September 30, 2020, which has been reinvested by Heritage Petroleum in exploration and production and plant

maintenance and upgrade is \$776,428,218.

Madam President: Sen. Mark.

Sen. Mark: Can the Minister indicate whether this tax waiver granted to Heritage Petroleum will be extended to other energy companies in Trinidad and Tobago, Madam President?

Madam President: Sen. Mark, that question does not arise.

Hon. C. Imbert: Well, the answer is no.

Sen. Mark: In the context of the supplemental petroleum tax, Madam President, can the Minister indicate whether the Government intends to extend this period of waiver beyond 2021?

Madam President: Minister.

Hon. C. Imbert: This was in agreement with the financiers of the re-financing of the US \$850 million bond that Heritage be allowed to reinvest SPT in exploration and production and the agreed period is for two years from inception.

Madam President: Sen. Mark.

Sen. Mark: Madam President, is the Government admitting that Heritage Petroleum is now actually being subsidized by the State because of its losses in its overall operations?

Madam President: Sen. Mark, I will not allow that question. You have one more.

Sen. Mark: Yes. So, Madam President, can the Minister indicate whether this decision by the Cabinet does not and could in fact lead to other energy-related companies approaching the Ministry for a similar waiver of supplemental petroleum tax?

Madam President: Minister.

Hon. C. Imbert: Thank you, Madam President. I just want to point out that Heritage has made a profit of over \$2 billion [*Desk thumping*] in its first two years

of operation, and has not lost anything as inaccurately stated by Sen. Mark in his usual way, and the answer is no.

Madam President: Next question, Sen. Mark.

Sen. Mark: [*Inaudible*]*—*for the time being, they do not go anywhere.

Madam President: Sen. Mark, your next question.

Sen. Mark: I want him to take Panadol when I am speaking.

Illicit Trade Involving Counterfeit Branding (Measures Taken to Address)

27. Sen. Wade Mark asked the hon. Minister of Trade and Industry:

Given reports that there now exists an illicit trade involving counterfeit branding, which is negatively impacting this country's revenue stream and its global trade ranking, can the Minister indicate what measures are being taken to address this situation?

The Minister of Trade and Industry (Sen. The Hon. Paula Gopee-Scoon): [*Desk thumping*] Thank you very much, Madam President. Illicit trade is a global phenomenon and the Government of Trinidad and Tobago is aware of the impact of such activity which not only results in the loss of tax revenue but also undermines legitimate local businesses and exposes consumers to potential health risks from substandard products. And as such the Government in recently outlined policy has identified the following broad measures for action to assist with combating illicit trade locally.

One, task the respective Ministries and border agencies to take immediate action to increase surveillance of retail operations, to seize illegal products and restrict the importation of illegal commodities.

Two, to facilitate consumer education on the responsible consumption of products. And three, enforce appropriate national standards for affected products.

Accordingly, the Ministry of Trade and Industry is spearheading

Government's efforts to combat illicit trade. The approach entails developing an action plan in collaboration with key trade related agencies and the private sector. It is anticipated that this collaborative public/private partnership will develop recommendations to address illicit trade in Trinidad and Tobago.

The Ministry has already begun consultations and is receiving overwhelming support from the private sector for the initiative. It is expected that the measures proposed will not only address illicit trade broadly but also target those products which are most frequently traded by illicit means in Trinidad and Tobago; and I am talking about tobacco, alcohol and cleaning agents.

A comprehensive action plan will be submitted to Cabinet in the second quarter of the fiscal year 2020/2021, and would be accompanied by a robust consumer-education campaign.

Other ongoing initiatives which will support Government's efforts to combat illicit trade include the introduction of a new consumer protection and empowerment Act which will inter alia treat with sale of counterfeit goods. The legislation will facilitate cooperation amongst the Consumer Affairs Division, the Trinidad and Tobago Police Service, the Customs and Excise Division and the Controller of the Intellectual Property Office, for enforcement of these provisions to address claims of counterfeit goods bought by consumers. It will also include ongoing consumer-awareness campaigns by the Consumer Affairs Division geared towards identification of counterfeit products and their associated risks.

Also continued implementation of the World Trade Organization agreement on trade facilitation which will enhance risk profiling of cargo by the Customs and Excise Division, and the public/private engagement undertaken by the Trinidad and Tobago Manufacturers Association including the establishment of an illicit trade task force in collaboration with the Trinidad and Tobago Police Service, the

Customs and Excise Division and the Controller of the Intellectual Property Office, and that is to increase awareness and to tackle illicit trade.

Sen. Mark: Yeah. Madam President, thank you. Madam President, through you to the hon. Minister. Can the Minister provide this Senate with a rough estimated value of this illegal trade in counterfeit goods that we have been experiencing in Trinidad and Tobago?

Sen. The Hon. P. Gopee-Scoon: Thank you, Sen. Mark. I do not have the figure with me but it is something that I can provide.

Sen. Mark: Madam President, may I also ask the hon. Minister whether she can share with the Senate the extent of losses experienced by the State as a result of revenue foregone given this illegal trade that is raging in Trinidad and Tobago?

Sen. The Hon. P. Gopee-Scoon: I will acknowledge that there is substantial revenue foregone but that figure I do not have with me.

Sen. Mark: Can you also provide that?

Sen. The Hon. P. Gopee-Scoon: Yes, please.

Sen. Mark: Yeah. Madam President, the hon. Minister referred to surveillance of illegal goods. Can the Minister indicate how successful that initiative has been that is being carried out by Customs and the police and other agencies, intellectual property rights, for example?

Sen. The Hon. P. Gopee-Scoon: Yes, thank you. It has been successful but, again, it has just been maybe a few raids but much more has to be done given the impact that this has on trade. So many more initiatives are expected but the action plan has been prepared by Government. I am looking at it at this time and we have given a commitment to bring it before the Cabinet before the end of the second quarter of this fiscal year.

2.00 p.m.

Sen. Mark: Madam President, I have a final question. Can I ask the hon. Minister whether the Government has identified the various sources that are utilized for the importation of counterfeit goods into our country? Has the Government been able to identify the sources, or the countries?

Sen. The Hon. P. Gopee-Scoon: But that is all part of the research which has been done, and we still have a bit of research to complete.

Sen. Mark: Madam President, you know as I am here—yes, I am getting back to that.

**Curepe Interchange
(Outstanding Payments to Property Owners)**

28. Sen. Wade Mark asked the hon. Minister of Finance:

In light of the completion of the Curepe Interchange, can the Minister indicate when will all outstanding payments be made to former property owners?

The Minister of Works and Transport (Sen. The Hon. Rohan Sinanan): Thank you, Madam President. Madam President, the Government will continue to undertake all the necessary action to facilitate the payment of outstanding claims to the former property owners affected by the construction of the Curepe Interchange. However, due to the need for property owners to meet the requirements of the process, a date cannot be provided at this time regarding when all outstanding payments will be made to the former property owners.

To date the following compensation payments were made by the Ministry of Works and Transport. Full and final settlement of 100 per cent - four applications have been processed, of which two payments have been issued. The remaining two payments will be issued once an application for release for payments are made by the Ministry of Work and Transport following the passing of the Finance Bill, 2021. That has been done.

Madam President, 80 per cent compensation payment. Where the property owners cannot reach an agreement with the Commissioner of Valuations, the COV, can issue an unconditional offer in full and final settlement under all admissible heads of claims. Subsequently, the property owners can request an 80 per cent advance of this offer without prejudice, and continue to negotiate the negotiation process for final settlement, or seek further determination in accordance with the Land Acquisition Act. To date a total of 17 unconditional letters have been issued, and 15 property owners have requested 80 per cent advance on compensation payment, of which nine have been paid. Two payments are to be issued upon receipt of the release of funds, applications which have been made. One payment has been submitted to the Cabinet for approval, and three property owners have failed to produce valid titles to certify proof of ownership. These property owners have been officially notified that payment cannot be issued until proof of ownership is provided by them.

Relocation of state lands: Eight property owners whose dwelling houses were acquired at the market value set by the Commissioner of Valuations on terms and conditions set by the Commissioner of State Lands, have received approval for the purchase of identified lots of state land. Cabinet approval is being sought for one additional applicant. The market value of the land will be deducted from the final compensation package legally due to the property owners. Cabinet has approved the offer of a parcel of state land as compensation to the Trinidad and Tobago National Petroleum Marketing Company Limited for the acquisition of a service station required to facilitate the Curepe Interchange. This matter is being addressed by the Office of the Commissioner of State Lands.

Outstanding claim: One property owner has not submitted a claim in respect of three parcels of land. The Ministry of Works and Transport does not anticipate a

claim will be submitted for these parcels of land. However, should a claim be submitted, it will be dealt with in accordance with the Land Acquisition Act. And, two, the Kay Donna property is being addressed by the Office of the Commissioner of State Lands, as the lease for the land has expired, and a claim was submitted for the chattel. Contrary to a report, no payment has been made on this property so far. Thank you.

Sen. Mark: Madam President, can I ask the hon. Minister whether compensation has been made to KFC and, I think Pizza Hut, because we are all aware that a piece of land would have been extracted for the Interchange? Can you advise this honourable Senate whether payments have been made?

Sen. The Hon. R. Sinanan: Madam President, as indicated, all land owners who would have complied with the land acquisition process would have either been paid or is in the process of being paid, and if the KFC/Pizza Hut franchise does have land there, they will be paid. My information is that KFC/Pizza Hut does not own any land there. But, if the owners of the property where the business was situated on would have submitted a claim.

Sen. Mark: Madam President, seeing that the Minister himself is conflicted in this matter, since he is an owner—

Madam President: Sen. Mark, you cannot—I will not allow you to say that. Please ask a question.

Sen. Mark: Can I ask the hon. Minister whether his company has been compensated by the State?

Madam President: Sen. Mark—

Sen. The Hon. R. Sinanan: Madam President.

Madam President:—I will not—Minister, I will not allow that question to be posed in that way. Ask again.

Sen. Mark: Madam President, can I ask the hon. Minister whether he is aware of any payments to the former owners of the Kay Donna property, which would have been taken by the Government to construct the Curepe Interchange?

Madam President: Sen. Mark, I think in the answer given by the Minister there was reference to what you are now asking about.

Sen. Mark: Can I ask the hon. Minister, Madam President, if he can give this honourable Senate the total value of compensation arising to the various property owners as a result of this project and development, Madam President?

Sen. The Hon. R. Sinanan: Madam President, to give an indication of each property might be a lil difficult at this time. However, what I will indicate, in 2013 the previous UNC government approved \$150 million for property acquisition. In 2017 the then Government, the PNM Government, approved a total budget of \$85 million, and so far the compensation package has not only been within the approved budget, but below the approved budget for all the properties that have been acquired.

Sen. Mark: Can you—

Madam President: No. Sen. Mark, you have utilized all your questions. Next question, Sen. Roberts.

**Paria Fuel Trading Company Limited
(Details of Gasoline Purchase)**

- 36. Sen. Anil Roberts** asked the hon. Minister of Energy and Energy Industries: In light of the issue involving Paria Fuel Trading Company Limited and ES Euro Shipping SA, can the Minister indicate the following:
- (i) whether Paria Fuel Trading Company purchased gasoline/fuel from Italy in February 2020;
 - (ii) whether the gasoline/fuel purchased was for domestic consumption; and

(iii) when did Paria Fuel Trading Company receive said gasoline/fuel?

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Thank you very much, Madam President. Madam President, Paria Fuel Trading Company did not purchase gasoline/fuel from Italy in February 2020, and therefore the responses to the other questions at (ii) and (iii) do not arise.

Sen. Roberts: On record Minister of Energy and Energy Industries, from Augusta Georgia—from Augusta Italy, you already stated that Paria received fuel from the Port of Augusta in February 2020. Are you changing that answer?

Sen. The Hon. F. Khan: Madam President, question and answer and an input from Paria Trading Fuel Company, and this is the answer that was received and I crosschecked and they say they stand by this, that no purchase of gasoline or fuel from Italy in February 2020.

Sen. Roberts: Thank you, Madam President. A consignment of gasoline arrived in Pointe-a-Pierre from Augusta—

Madam President: Sen. Roberts. Sen. Roberts, please ask a question as opposed to making a statement.

Sen. Roberts: This fuel that arrived in February 2020 and was resold to ES Euro Shipping at a loss of \$478,000 US, was this originally purchased for domestic supply or for resale?

Madam President: Sen. Roberts, I would not allow that question.

Sen. Roberts: Is the hon. Minister aware that Paria Fuel Trading Company Limited purchased fuel from Wilmer Ruperti, Trafigura Pte and sold it to Wilmer Ruperti ES Euro Trading?

Madam President: Sen. Roberts, that question does not arise.

Sen. Roberts: Is it not true that no actual money transferred hands or was deposited in accounts of Paria Fuel with regard to this purchase?

Madam President: Sen. Roberts, that question does not arise. Next question, Sen. Seepersad.

**Negative Impact of Money Owed to NIB
(Measures Taken to Address)**

44. Sen. Charrise Seepersad asked the hon. Minister of Finance:

In light of reports that many employers owe the National Insurance Board (NIB) approximately \$437M in national insurance contributions for their employees, and that the reported 2018 ratio of contribution arrears to income increased to 10%, thereby having a negative impact on the National Insurance Fund deficit, can the Minister advise:

- (vii) what measures are being taken by the Government and the National Insurance Board to collect the contribution arrears owed by employers;
- (viii) with regard to the measures identified at (i), is any consideration being given to offering an amnesty for the payment of outstanding contributions; and
- (ix) what are the suggested time frames for said measures to be implemented?

The Minister of Finance (Hon. Colm Imbert): Is it question 44, Madam President?

Madam President: Yes.

Hon. C. Imbert: Thank you. The measures adopted by the Ministry of Finance with respect to the first part of the question are as follows: The Ministry has written to all of the various Ministries, Departments and agencies as identified by the National Insurance Board, advising them of the need to reconcile their records of deductions against the NIB's estimate of the debt to collaborate with the Budgets Division to identify unutilized balances in their allocations that may be

redirected towards settlement of determined debt, and of the need to comply with sections 38 and 39 of the National Insurance Act.

Additionally, by memo dated September 21, 2020, the Comptroller of Accounts was instructed to launch an investigation into the circumstances surrounding the failure of Ministries and Departments to comply with the National Insurance Act, specifically sections 38 and 39. Further, the Budgets Division also by memo was requested to collaborate with Ministries to ensure that they paid their National Insurance contributions promptly. The Ministry also issued a circular in April of 2019 to the Heads of all state enterprises, statutory authorities, and to Permanent Secretaries, reminding them of their statutory obligations and the consequences for failure to comply as it relates to the payment of all taxes and National Insurance contributions.

The measures adopted by the National Insurance Board, I am advised, are as follow:

- The development and application of policies and procedures specific to employer and employee determination and registration;
- The conduct of audits of employers;
- The conduct of investigations into allegations of non-payment of contributions by employers; and
- The establishment of debt and debt recovery through litigation.

Additionally, the NIB has also established and maintained a team of qualified and trained officers to engage employers to ensure that contributions are remitted on behalf of their employees. Strategies involved include enhancing back office capacity to conduct more audits, thereby allowing for possible establishment and agreement on debt. The development and implementation of additional online services to allow employers greater ease of doing business and accurate calculation

of contributions due and owing. And also promotion of a culture of compliance, including the conduct of free education seminars and publications in the print and social media.

Additionally, the National Insurance Board identifies errant employers through reminding employees to check the status of their contributions on a regular basis and making complaints as required against any employer who may be delinquent. The board also collaborates with other agencies through various MOUs to identify new employers and treat with delinquent employers. And it also conducts special exercises to unearth employer non-compliance. The NIB also has a clearly defined debt recovery process, which is currently being reviewed for improvement, and in the future will feature an electronically based system to record and monitor established debt with more sensitive and timely reporting. Recovery of contribution debt from employers via documented legally binding agreements, a fast-track process for high-risk employers, the use of other legally persuasive debt recovery strategies, and a robust litigation procedure. The result of all of these strategies that I have outlined is the collection of \$437 million in arrears; \$565 million in arrears; and \$383 million in arrears, in the years 2018, '17 and '16 respectively.

With regard to part (ii): The National Insurance Act does not provide for an amnesty, but in the Ministry of Finance we are looking at the desirability of amending the Act to allow that.

The timeframes with respect to part (iii): There is no specific time frame, because the reconciliation exercise will vary depending on the period of arrears and the accuracy of the data. However, we have targeted to complete this process by the end of this fiscal year.

Sen. Seepersad: Thank you, Madam President. Through you, Madam President, Minister, does the Government plan to enhance the human and physical resources of NIB to deal with the arrears, because there seems to be some deficit in the human resources?

Hon. C. Imbert: That, as far as I am aware, is a matter for the National Insurance Board itself. The Government does not directly employ personnel at the NIB or engage consultants to assist the NIB. That will be a matter for them. But it is something I can raise with them.

Sen. Mark: Madam President, can I ask the hon. Minister, how many government Ministries, agencies and Departments are guilty of not honoring their NIS contributions on behalf of their employees to the NIB? Can the Minister share with us that data?

Hon. C. Imbert: I know Sen. Mark believes that I can answer any question but I do not have that information at this time. I am not a magic man.

**World Bank Public Expenditure Review 2019
(Progress Made re Recommendations)**

46. Sen. Amrita Deonarine asked the hon. Minister of Finance:

Can the Minister advise as to what progress has been made in implementing the recommendations contained in the World Bank Public Expenditure Review 2019, on reducing the inefficiencies in social protection spending in the country?

The Minister of Finance (Hon. Colm Imbert): Thank you, Madam President. With respect to the various recommendations outlined in the World Bank Public Expenditure Review, the recommendations—the implementation of the recommendations so far is as follows.

The first recommendation in the social protection sector was to improve the efficiency and effectiveness of social protection spending in the medium to long

term. In 2015 when we came in, Madam President, this Government embarked on a path to reduce cost and increase savings through a number of approaches. One such approach was the introduction of a standard means test for social programmes. This mechanism has resulted in a significant reduction in the number of persons who are receiving assistance from various social programmes. For example, the beneficiary database of the Public Assistance Grant was reduced from 25,968 persons to 18,699 persons; the database for food support was reduced from 27,435 persons to 22,395 persons. Enrolment of new beneficiaries for the Public Assistance Grant also declined from 4,877 in fiscal 2016 to 2,716 in fiscal 2020. And the recertification of food support clients removed some 13,000 ineligible individuals from the system. Prior to the implementation of the standard means test the government expenditure on public assistance grant and food support exceeded \$400 million and \$200 million respectively on an annual basis. The standard means test has seen a significant decline in expenditure from 464 million in fiscal 2016 to 339 million in fiscal 2020, for the Public Assistance Grant, and from 260 million in 2016 to 194 million in fiscal 2020 for food support. And this is notwithstanding the actual increase in the value of these grants.

With respect to the recommendation to consolidate programmes with similar objectives, target populations and transform modalities, the Government is addressing institutional fragmentation programme overlap and likely duplication of benefits by consolidating a number of units such as the National Poverty Reduction Eradication Programme Coordination Unit under the National Social Development Programme and Targeted Conditional Cash Transfer Programme, now food support under the Social Welfare Division. Further changes are expected with the consolidation of the National Social Development Programme, Social Welfare

Division, and the National Family Services into a proposed support empowerment unit as part of the roll out of a National Social Mitigation plan.

With respect to the recommendation to revise the programme rules to eliminate duplicate receipt of benefits for similar purposes, the standard means test has been an effective targeting mechanism for assessing a household's eligibility to receive benefits based on income or other income related characteristics. It has helped to eliminate a lack of consistency of the qualifying requirements for services provided, improved the level of effectiveness and efficiency in delivering services by reducing inclusion errors such as the inclusion of persons who are simply not eligible for the grants.

The Government at the same time is in the process of introducing the integrated social enterprise management system, which is an enterprise resource planning solution, case management solution, designed to provide for a singular approach for assessing social services. This extremely important digitalization project will allow for the consolidation of major programmes and delivery units as well as improved the effectiveness of social services which would be delivered through automation and integration of business processes.

With respect to the recommendation to streamline fragmented service delivery system through a unified approach, again, the standard means test was introduced to streamline service delivery associated with various programmes.

Madam President: Minister. Minister.

Hon. C. Imbert: Yes, Madam President.

Madam President: Your time is up.

Hon. C. Imbert: Thank you.

Sen. Deonarine: Hon. Minister of Finance, thank you for that information, it was quite valuable. In terms of the targeting of the accuracy of social protection

programmes, are any of the recommendations in the World Bank Public Expenditure Review Initiative, are any of them being particularly targeted to improve the accuracy of these programmes?

Hon. C. Imbert: I think that is an overall recommendation, and I think the Ministry of Social Development and Family Services has been tasked to continuously improve the accuracy of its data gathering and also the performance of its implementation. But I cannot give you a specific answer on that at this point in time.

Sen. Deonarine: Thank you, Madam President. Hon. Minister of Finance, is there a timeline under which the Government is looking at to have all these recommendations be implemented over?

Hon. C. Imbert: I would hope that these recommendations will be implemented within the next two to three years.

Sen. Deonarine: Thank you, Madam President. Now, an observation in the World Bank Expenditure Review saw that there was a high concentration in the URP projects, CEPEP project, senior citizens—

Madam President: Sen. Deonarine, you need to ask a question.

Sen. Deonarine: Okay. Thank you, Madam President. Are there any intentions to reduce the concentration of social expenditure under these programmes and redirect it towards social—

Madam President: And one question. So, let me just— Minister, the first part of that question.

Hon. C. Imbert: Well, we did not agree with everything that the World Bank recommended. We have reserved our decision on a number of matters. There is no intention at this time, especially in this COVID-19 pandemic period, to reduce those very basic social services, because in many cases that is the only source of

income that people have. So there is no intention at this time to reduce expenditure on URP and CEPEP and so on.

Sen. Deonarine: Thank you, Madam President. Thank you hon. Minister of Finance. With that being said, and observing the fallout of the COVID-19 pandemic, what measures are being taken to increase spending on youth unemployment?

Madam President: Sen. Deonarine, that question is not allowed.

Hon. C. Imbert: I do not have the information to answer that question.

Community Recovery Committee (Status Report on)

53. Sen. Paul Richards asked the hon. Prime Minister:

Can the Prime Minister provide a status report of the work done by the Community Recovery Committee?

Madam President: The Minister in the Office of the Prime Minister.

The Minister of National Security and Minister in the Office of the Prime Minister (Hon. Stuart Young): [*Desk thumping*] Thank you very much, Madam President. Madam President, the Community Recovery Committee initiated a series of activities designed to provide a framework for conducting its activities. The initial phase was focused on critical internal arrangements, following which the CRC initiated a series of activities to engage key communities and stakeholders. The committee has established a database of organizations and agencies that provide programmes or services for the greater Laventille, East Port of Spain communities. A preliminary list of stakeholders that are offering support for community programming interventions along with a list of interested volunteers has also been created.

The committee has conducted a partial review of reports on activities and interventions in the communities targeted, and has developed a framework

including roles and responsibilities for their intervention and activities. A preliminary framework for research into operational definitions of community recovery and community public perceptions have also been established. The CRC, working closely with the Ministry of Youth Development and National Service and iGovTT is currently developing a website, and has created a social media presence for the committee. Social media pages of the committee are currently active and were used to promote an NLCB approved competition launched by the committee for young persons within the catchment area to design the logo of the committee. This initiative reflected on of the committee's focal areas: talent and potential identification of talent. Twenty-five submissions were received and will be judged to determine the official logo of the committee.

In term of outreach to the communities, the CRC has also engaged members of 13 communities in their first round of stakeholder engagements; Beverly Hills, Beetham, Sea Lots, Second Caledonia, Never Dirty, John John, Belmont and Gonzales are some of the communities in which stakeholder consultations have been held. The committee used these sessions to understand the current situation and issues in each community from different points of views. The committee was also able to identify some of the needs of these communities and the ways in which the committee can facilitate their aid and development. Some issues identified were employment, employability, education and infrastructure. A report was done outlining the findings from the first round of stakeholder consultations. One critical dimension of these engagement sessions was seeking and receiving input from the communities on what they considered to be committee recovery.

These inputs have been included in the committee's overall framework which addressed community pride and ownership, social support and cohesion, human development, business and economic development. The committee has also

engaged both government and non-governmental agencies to gather information about projects and programmes offered. A database of facilities offered by GORTT relevant to target communities is being made to bridge the gap between the services offered and their recipients. The committee is currently in discussion with CARIRI and Caribbean Fisheries Training and Development Institute towards providing training for young persons in the East Port of Spain areas, and has facilitated the distribution of 38 tablets to students in need through the Ministry of Education. Requests has been made to the committee during their outreach engagement activities. The Ministry of Education issued tablets to communities through their Adopt a School Programmes.

These devices were distributed to students in need through the Sea Lots, Beetham, Stephenville Community Village Council, Beverly Hills Police Youth Club. The committee has confirmed that there are many resources available for the benefit and development of communities they are currently servicing. The CRC is committed to the principle that the delivery of these resources to communities can be improved, and the committee is committed to bridging the gaps and being the resource linker in these communities.

2.30 p.m.

The following outreach interactions have been done by the Community Recovery Committee: CARIRI's Centre for Enterprise Development, Caribbean Fisheries Training and Development Institute, IDB, Emancipation Support Committee, Direct Cooling Limited, Caribbean Fisheries Training and Development Institute, UTT, Ministry of Youth Development and National Service and sports stakeholders, an initial meeting was also held with the East Port of Spain Development Company. The CRC continues to discuss and advance a process for the linking of Trinidad and Tobago Social Workers Association to the

Beverly Hills community to assist with design implementation of trauma reduction interventions. We have conducted engagement sessions and discussions with external stakeholders such as—

Madam President: Minister.

Hon. S. Young: Thank you, Madam President.

Madam President: Yes. Hon. Senators, the time allotted for questions for oral answer has expired and I will therefore remind Members of Standing Order 27(12) with respect to the other questions on the Order Paper.

JOINT SELECT COMMITTEE

**(Extension of Time)
Shipping Bill, 2020**

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Madam President, having regard to the interim report of the Joint Select Committee appointed to consider and report on the Shipping Bill, 2020, First Session, 2020/2021, Twelfth Parliament, I beg to move that the Committee be granted an extension to July 31, 2021, to complete its work and submit a final report.

Question put and agreed to.

JOINT SELECT COMMITTEE

(CHANGE OF MEMBERSHIP)

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Madam President, I beg to move the following Motion:

Be it resolved that the Senate agree to the following appointments to the Joint Select Committees:

1. On the Joint Select Committee on Social Services and Public Administration:

Mr. Avinash Singh in lieu of Ms. Allyson West.

UNREVISED

2. On the Joint Select Committee on Foreign Affairs:
Ms. Donna Cox in lieu of Mr. Avinash Singh.
3. On the Joint Select Committee on Finance and Legal Affairs:
Mr. Hassel Bacchus in lieu of Mrs. Renuka Sagramsingh-Sooklal.
4. On the Public Accounts Committee:
Dr. Amery Browne in lieu of Mr. Randall Mitchell.

Question put and agreed to.

Madam President: Attorney General.

EVIDENCE (AMDT.) BILL, 2020

Order for second reading read.

The Attorney General and Minister of Legal Affairs (Hon. Faris Al-Rawi):

Thank you, Madam President. [*Desk thumping*] Madam President, I beg to move:

That a Bill to amend the Evidence Act, Chap. 7:02, be now read a second time.

Madam President, the number one purpose of a Parliament is to pass laws to the peace, order and good governance of a society, so set out in section 53 of our Constitution. It is important for us therefore to consider the parameters of amendments to the Evidence Act. Trinidad and Tobago has been wrestling with the issue of crime and its security, that feeling and sense of well-being for decades. Many people are of the view that the judicial system, the justice system as it is referred to, does not work. People are often subjected to anachronisms in terms of practice and flow and process.

The Government has, in its previous tenure in the period 2015 to 2020, invested a significant amount of time in attending to the four pillars of the reform of the criminal justice system, that is, the introduction of plant and machinery,

people, processes and law. It is in that context of reform, having had significant development in the system of justice that we come to this Bill today. This Bill proposes significant amendments to the Evidence Act, Chap. 7:02. Chap.7:02, the Evidence Act, was born by way of an Act of Parliament, No. 4 of 1848 and today's amendment would represent the 30th amendment to the legislation.

Indeed, today's amendment seeks to bring some sense of relief as to the process by which our evidence is considered in courts. It introduces significant reform by way of due process amplification, that is, protecting the rights of persons involved in trials. It brings us into the modern age of development and it allows us therefore to provide that much needed oil to the mechanics of the system. I must say that this law squarely contemplates events which are upon us and that is, the state and system of complex matters in our jurisprudence; complex matters in our criminal justice system and even in our civil system as this law applies both to criminal systems and to civil systems, but with greater focus today upon the criminal system. So let us jump directly into this.

Madam President, in 2013, there was a significant amount of work which crystalized in the then Ministry of Justice relevant to the amendments to the Evidence Act. Unfortunately, that work did not see the light of day and it required a significant amount of stakeholder contribution and consideration. In 2017, as Attorney General, we took—the Office of the Attorney General, we took the issue of evidence alongside our other reforms and brought significant focus upon the improvement of the Evidence Act. That policy resulted in a Bill which was put out for stakeholder consultation and that stakeholder consultation saw the introduction of legislation in the Fourth Session of the last Parliament and then in the Fifth Session where we brought over work. Indeed, Madam President, when we look to the work which was done by the last Parliament and how we managed that, it is

that work which has brought us here today into this new Bill. Permit me to address some of the historical maneuvering around this legislation as it is very relevant to concerns in the legislation before us.

This Bill is 12 clauses in length but some of these clauses are very large. In fact, when you look to the length of the clauses, there are five Divisions which are introduced into the legislation as we look to the structures surrounding, in particular, the introduction of a new Part IA and that is to deal with identification and other measures. But, Madam President, it was in the Fourth and Fifth Session of the last Parliament that we introduced a special majority Bill into the Parliament and that special majority Bill was in fact brought forward on January 29, 2019, nearly a year ago.

When we brought forward that Bill, there was a very significant aspect of the law which dealt with something called, “anonymous witness evidence”. That anonymous witness evidence is quite frankly groundbreaking, it is something used in other jurisdictions. But that anonymous witness evidence, even though it found great favour with the stakeholders that came before the Special Select Committee established by this Senate in the last Parliament, that anonymous witness evidence fell into difficulty on the Opposition Bench. And indeed that Special Select Committee, which was established to consider the Bill brought in January 2019, that Special Select Committee confirmed by way of a majority report, the progress of legislation including, anonymous witness evidence, but there was a submission of a minority report coming from then Sen. Saddam Hosein who indicated that the Opposition was not willing to support the anonymous witness evidence procedures, and therefore, it became apparent that the legislation would not pass.

The simple majority legislation therefore has come before this Parliament today, this Senate today. It does not include the use of witness anonymous

evidence that would have required a special majority consideration debatably. One could always fall upon the doctrine in *Suratt* and the law that stands with the intrusions into sections 4 and 5 rights, but for today's purposes, the Bill before us, as a simple majority Bill, does not include the use of anonymous witness evidence. As much as I would advocate that, as an Attorney General and as a citizen of this country, it has unfortunately been left out because we have been warned by the Leader of the Opposition that they would simply not be supporting legislation in this Parliament. It is what it is and therefore we must press on with the work before us.

Madam President, I can tell you in terms of consultation that this legislation has had—that we have had the input of Judiciary of Trinidad and Tobago, the Trinidad and Tobago Prison Service, the Office of the Director of Public Prosecutions, the Legal Aid and Advisory Authority, the Ministry of National Security, Trinidad and Tobago Forensic Science Centre and Custodian Unit, the National Forensic DNA Databank of Trinidad and Tobago, the Trinidad and Tobago Police Service, the Children's Authority, the Justices of the Peace Association. And, Madam President, with that said, we then get to the nuts and bolts coming into the 12 clauses before us.

The 12 clauses before us fall into several subheads. And essentially, if I were to put it from a high-level perspective, we are looking at the identification of suspects; the electronic recording of the interview of suspects; the provision of special measures to allow the testimony of vulnerable witnesses without their security or identity being compromised; the appearance of or the receiving of evidence from persons before courts or in criminal proceedings by means of video link; the provisions for the repeal and replacement of sections 14B and 40 which deal with the issue of computer evidence in criminal proceedings, as it relates to

section 14B and in civil proceedings, as it relates to section 40. We are also, Madam President, regaled by improvements as it relates to certification via entities now including the Director of the Financial Intelligence Unit and by also addressing the issue of the right of reply of the prosecution in certain circumstances and then some amendments to the Schedules in the Act.

Permit me to say, Madam President, that this Bill before us has had the benefit of that Special Select Committee and there were a significant number of sessions. There were 12 sessions in total, spread across the Fourth and Fifth Sessions of the last Parliament, and we had some marathon sessions in terms of the reflection upon the work. We had detailed written submissions coming from those stakeholders that I have referred to and then we had the Committee's work go into an excellent exercise, in my respectful view, chaired by Sen. Rambharat, it being a Special Select Committee. And those members of the Committee included: Sen. Nigel de Freitas, Ms. Donna Cox, then Sen. Saddam Hosein, and Mr. Anthony Vieira. And I would just like to publicly thank those members of the Special Select Committee for their work that they engaged in producing the reflective position, because obviously this law is quite complex, it is evidential in basis. Those of us that passed through law school will tell you that when we had to study evidence, it was not something that you jumped into willingly. It took you a little time to get accustomed to the temperature as it relates to evidence. That work, however, has stood us well because effectively we have had 2017, '18, '19, '20; four years of reflective consultation into the work.

Now, Madam President, permit me for the purposes of *Hansard* and the rule in *Pepper v Hart* in statutory interpretation to say that, obviously, we are bringing into context today the Judges' Rules and administrative directions to the police that was actually produced by the Government Printery in 1965 at the glorious cost of

25 cents. We are also looking at the identification parade Judges' Rules which was produced in the context of September 1994. We are specifically bringing to life provisions of the Trinidad and Tobago Police Service Standing Orders, 29, as it relates to identification of suspects. We are specifically reflecting upon "Code D" of the "Revised Code of Practice for the identification of persons by Police Officers" coming out of the United Kingdom. We are specifically also contemplating identification, the learning coming from identification of suspects by eyewitnesses, et cetera, set out in Blackstone and we are, of course, looking at the Criminal Justice Act 2003 of the United Kingdom, as well as several other pieces of law coming, model Caricom legislation, several other Acts in the United Kingdom, including the youth and criminal procedure legislation, et cetera.

We are taking also careful note of several cases as it relates in the criminal jurisdiction and we are coming forward therefore to do a consolidation of best practices in a number of jurisdictions, standard and procedures, and also, taking careful note of the state of the common law. This law, quite simply put, is exceptionally important for the benefit of Trinidad and Tobago.

Permit me, therefore, to jump immediately to the Bill and to say that the first two clauses are fairly innocuous. The first one is the short title. We put the commencement clause in the first clause. We did that specially because we did not want to have to renumber the legislation knowing that many Senators had spent over certainly—two years certainly and four years for others, so we wanted to keep the numbering fairly consistent in the Bill. We have proposed that there is a proclamation clause applied to this and even partial proclamation.

Clause 2 is that the Act means the Evidence Act. Clause 3, we have proposed to insert a definition section here. We are lifting this definition section out of section 14 of the Evidence Act where it originally resided, because section

14 only applied those definitions to section 14. We have the need to lift definitions into the larger context of the Act specifically because there is a grey area in respect of documents and statements. And as we contemplate complex fraud matters in this jurisdiction and complex matters in the civil jurisdiction as well with terabytes of data, we have to contemplate the admissibility of computer evidence. And therefore, we went to the United Kingdom and to the United States and brought in their provisions there, because we have to contemplate that the manual admission of evidence, where you mark the document, it could take you decades to actually admit the evidence into court, and therefore, we have to contemplate the ease with which the evidence is brought in.

Clause 4 of the Bill sees the introduction of a new Part IA, and that is divided into five Divisions. It will deal with the general aspects beginning at page 2 of the Bill. It will then go into Division 2, which is the identification procedures beginning at new sections 12A to 12P as in “Papa”. It will then go to Division 3, which treats with the aspects of interview and oral admissions, that is, new sections 12Q as in “Quebec” to Z as in “Zebra”. It will then go to Division 4, which is new sections 12AA to AG as in “Alpha Golf”. And that would deal with special measures by an evidence by video link and then we will get to Division 5, which is the supplementary provisions of CCTV, et cetera, and that begins at new section 12H onward.

In summary, Madam President, permit me to say that the definition section in new section 12, as we get into Division 1 of this Bill, this allows for us to bring to life all of the definitional aspects that we are going to need, not only in this law but also in the regulations which follow. Permit me to stick a pin for a moment. I asked the members of the Secretariat of the Parliament to circulate for hon. Members, not for analysis, but for evidence of the fact that it was done, the fact

that we have already drafted the regulations which are proposed to articulate with this law. In this particular construct, these regulations are proposed to be settled by the Minister of National Security after consultation with the Director of Public Prosecutions and the Commissioner of Police. Hon. Members have that circulated across there. Obviously, those regulations will come to the Parliament for its attention in due course but we are effectively ready and set to treat with this law after some four years of consultation and fine tuning.

We get, Madam President, into Division 2 for identification procedures. And permit me to say, Madam President—Madam President, if I could ask what time is full time?

Madam President: You finish at three minutes past three.

Hon. F. Al-Rawi: Okay. So I regret that I will have to be very fairly short in the level of detail that I would like to. Not even a full 45 minutes would assist in this regard but fortunately, I would like to refer hon. Members to the Special Select Committee Report of the Senate appointed to consider on the Bill entitled: An Act to amend the Evidence Act, Chap. 7:02. It is to be found as a Senate Paper of 2020. It is a part of the record which is material for consideration. I wish to adopt for the purposes of interpretation of this law all of the content of that, where the marked up versions and submissions of stakeholders and verbatim reports will be set out. It is a place where you would find the full explanation of the law and in its large form as it is relevant before us.

So Division 2 treats with identification procedures. Effectively, what we have done in the identification procedures rubric is we have managed to capture the best in practice approach to a lot of our positions. Permit me to add into that, that we are obviously taking forward in that position the whole concept of due process, that which is known to the criminal practitioners before us of establishing

the first description of a witness, as you would see it appearing in the new section 12A where we are referring ourselves for the purpose of interpretation to Code D of the PACE UK law where we have borrowed from that particular perspective.

We are also bringing to life the caution set out in that very classic case referred to as the *R v Turnbull*, 1977, Queen's Bench at 224, where we establish in legislation now the Turnbull guidelines to exercise caution when we are looking at the particular identification parameters suggested at the law as we know it now. We have, Madam President, incorporated into this Bill a number of provisions referred to us for consideration by the stakeholders, including the DPP, very importantly adopting some of the submissions by the Law Association in their April 2019 submissions. There are some proposed amendments that I would ask the hon. Members to consider when we get to committee stage coming out of the recent submissions coming from the Law Association, which is the December 2020 submissions. We have taken on board some of these submissions coming from the Opposition, Sen. Hosein then sitting in the Senate. We have brought forward some of his positions there as well, and of course, the Judiciary's comments as we took it.

We deal with the use of photographs. Obviously, we are bringing to life there the Police Standing Order 29, rule 13, as we look to the Police Standing Orders. We are of course in the careful zone of photographs not being identification method itself but an aid to identification in certain circumstances. We are providing for the bringing into life the Police Service Act in certain forms where we look at the recommendations that the Law Association and the DPP provided to us as we look to the new section 12B.

When we look to the conduct of identification and we look to the manner in which 12C, the proposed new section 12C brings about, we are looking again at

the Police Standing Orders and we are bringing to life the practice set out by Archbold which is the classic text for non-lawyers as we look to criminal practice, the spread between Archbold and Blackstone as we look to the practice that we govern. We are looking to witness availability. We are looking to the prioritization of identification methodologies. We are looking to the aids, to those purposes. The prioritization is obviously set out in careful detail in the legislation.

In the original Bill that we had looked at in the last Parliament, the prioritization was set out differently. We have taken a careful note of the prioritization suggested by a number of stakeholders, including comments coming from the average man on the street as well and we have certainly asked for that reorientation of priorities so that we can include identification in the usual process. We can look at the use of video technology, we can look at public place identification without consent or with consent and then, we can deal with the classic methodology of confrontation by way of identification.

We are, Madam President, also very conscious of the provisions for who should be conducting, who is the identification officer, who is the investigating officer. We are putting very careful guidelines to separate out those provisions so that you do not find yourself with someone leading an eyewitness astray, notwithstanding the Turnbull guidelines which give you some solace in terms of protections. It is important to separate out those processes. Again, we are borrowing from the UK PACE D provisions. We have reoriented, as I said before, we have moved video identification down in the line. We have gone for live identification parade as the number one priority, followed by video identification; then identification in a public place with consent; identification in a public place without consent; identification by means of confrontation and then, identification by means of verification, pursuant to recommendations, importantly those

including the DPP.

Madam President, we also look to the rights, consent and caution. It was something that was very important for us to add into this position to give the due process analysis. We have also, Madam President, then looked at the need for legal representation of a suspect to make sure that the rights are balanced in this equation, again being very mindful that the best intention in identification can go wrong if there is not a careful safeguard to the process. We have, Madam President, also looked at the time frame, the caution, the number of pictures, the number of witnesses, the careful safeguards that have been massaged into the law by years of practice, decades of practice in other jurisdictions and indeed in this jurisdiction, where we record evidence, station diary, the need for a register of identification as well, as we contemplate the move towards an electronic system of management of data and the maintenance of data. We have safeguarded how you keep, manage and destroy evidence, including photographs.

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

Hon. F. Al-Rawi: Regrettably so, Madam President, and we take ourselves right through the parameter of positions. I think that this Bill is going to be one that will require a couple of days of consideration in this House. Certainly it is the Government's intention to take our time with this particular point. We have looked at interviews and oral admissions as I said before across the provisions of the other aspects. We have gone to special measures and evidence by video link. Permit me to put this onto the record. The need to protect vulnerable witnesses is critical in this point and vulnerable witnesses in the context of our children most importantly. Those who are in circumstances of fear, those who are immature, those who are operating on disability, trauma, people who are subjected to sexual offences, these have to be managed in a very careful way, and therefore, Division 4 is critically

important.

We have precedent in our Children Act and other positions of using special measures, special aids, special persons, again subjected to the court discretion and guidelines. It is the something that we had very much wanted to look at, the witness anonymity, but that is now out from that Division because we were quite simply not obtaining the Opposition's support in the House of Representatives. So we will have to come back with that when the structure of the Parliament lends itself to better consideration.

We are looking at supplemental provisions, importantly at CCTV evidence. As our nation builds out eyes everywhere, as we look to CCTV evidence, as we recognize that people are afraid to step forward and give evidence, we must use the tools of technology to take us there, and therefore, bringing CCTV evidence to life in a better way, an easier way is important.

3.00 p.m.

We went back to the drawing board in light of the difficulties of the law in relation to recent complaint and the amendments made in 2010, and instead we have come now to the presumption criterion of the computer actually working as opposed to proving that it is working. It is deemed presumed to be working unless evidence to the contrary is brought forward. We have therefore brought ourselves in line with the law of Singapore and the law of the United Kingdom, and therefore, we find ourselves in good comfort.

Madam President, very importantly, the prosecution was constrained by the fact that if you had called only one witness, meaning the accused, that the prosecutor did not have the right to address a wrap up or a reply, and therefore, we proposed an amendment to section 15 of the Evidence Act in the form set out in clause 7. In clause 8 is where we treat with the amendments to section 40 of the

Evidence Act which is where you are dealing with the rules of admissibility of computer evidence in civil trials.

Madam President, clause 9 is to deal with the consequential amendments necessary in light of the modification to section 40, which is the computer admissibility of evidence for civil matters. In clause 10, we are looking similarly to do consequential amendments. Clause 11 is where we introduce the use of forms in this case where there is an unrepresented accused and importantly, Madam President, we are looking in clause 12 at the introduction of the Financial Intelligence Unit. This relates to the ability to certify for the purposes of United Nations Security Council Resolutions 1272 and 1373—1276 and 1373 where there is a delay in time in certification because we have to go to a Permanent Secretary as opposed to the Director of the FIU, and therefore, this helps us in our compliance for our international obligations.

Madam President, I fear with mere seconds left before me that this legislation is one that will require us to, in individual component parts certainly as a Parliament, consider ourselves in the progress of this law. This law has received a significant amount of attention. We had an excellent special select committee. We took off the offending bits for the three-fifths majority simply because we want to pass this law. It comes in a bedrock of improvements that we have had in the increase in number of judicial officers, courts, processes. Needless to say now, we are operating in an environment of criminal proceedings rules in multiple fashions and, Madam President, I look forward to the contributions of my learned colleagues and I beg to move. [*Desk thumping*]

Question proposed.

Sen. Jayanti Lutchmedial: Thank you, Madam President. Madam President, this is in fact as the Attorney General has said a very important piece of legislation. It is

extremely important and I do not think that with our reduced speaking time I can really do justice to all that needs to be said about it. It is quite unfortunate that we are so circumscribed by those requirements, but in any event, I will try my best to do what I can.

Madam President, if the Government was really serious about tackling crime, there are several things that they will do, and you will hear me repeat that all the time that this Government is not serious. The first point that I want to make is on the constitutional majority of this Bill. The Attorney General says, “Well, the anonymous witness part was—the Opposition said they were not going to support it, so we take that out and now we can push this through as a simple majority Bill.” Madam President, it does not work that way. The Bill was brought before, the special select committee had a chance to look at it. Yes, there are some changes. They put in certain suggestions that were made by my colleague, then Sen. Saddam Hosein, but there are still areas of this Bill that interfere with fundamental human rights. For example—and I cannot go through the entire Bill, but I can pull out the examples—section 12G(3) of the Bill says that a minimum of nine hours’ notice would be given to someone when they are going to deal with the conduct of the identification procedure—whatever procedure is selected by the police—because, of course, it is within the discretion of the identification officer when they are conducting identification procedures. And the identification officer, which says at subclause (4) there, that if the representative is unable to attend that he may appoint a Justice of the Peace instead to seek the interest of the accused person, the person who is in custody, the suspect, during this very important procedure.

Now, Madam President, it can definitely—and I can see it being argued that it deprives a person who has been arrested or detained of their right to instruct a legal advisor of their own choice. This is an interference with section 5(2)(c). So,

Madam President, you cannot just chop off one thing that is identified in a committee as being a special majority-type requirement and say, “Well okay, I have taken that out. I come here now and I am pushing this through as simple majority because I want to get it pass.” It is irresponsible, it is not how it works. I know we were taking bets—I know the AG two favourite cases, Suratt and Northern Construction, and we were taking bets as to which one he was coming to talk about today and he has not disappointed. He talks about Suratt.

Madam President, I want to tell the Attorney General, the race is not to the swift or the strong, but to those who endure to the end. You must pass laws that could withstand judicial scrutiny, [*Desk thumping*] the trends that are happening in our country. I want to implore the Attorney General, stop only reading Suratt and Northern Construction. Read the dissenting judgment in Barry Francis. Read! It is a very powerful, very powerful dissent and since then, we have had cases like in Jason Jones and you are seeing judicial sentiments. I have spoken about it here before with the procurement legislation, moving towards the fact that look, you cannot just say everything is proportional and we have the safeguards, and therefore, I can pass this as a simple majority. So I do not agree that this is simply because you took out the anonymous witness aspect of the 2019 Bill and brought it back, that you can simply pass this Bill through Parliament as simple majority. It is dangerous. It interferes with certain fundamental rights and freedoms, the rights of persons who are in custody.

Madam President, I agree. I was a prosecutor for a very long time and nobody knows better than myself and my colleague joining me here today, Sen. Rambhajan, temporary Senator, how important it is to protect witnesses. But, Madam President, in a free and fair and democratic society, the rights of the accused are equally important and we cannot simply say that we have a problem

with crime. We need to protect witnesses and therefore, we will run roughshod over the rights of the accused person or suspects. Far too many persons in this country are wrongly accused, treated as suspects, and then subsequently released.

One only has to read the newspapers to see the number of malicious prosecution and false imprisonment claims that are brought against the State, and the millions and millions of dollars that have to be paid out sometimes undefended. And why are they undefended? Because there is no defence. The State and the police are hard-pressed to defend themselves against allegations that they have treated persons and suspects and even accused persons unfairly. So when we are bringing these laws, this balancing exercise that has to be conducted, we must go deeper than that. You cannot chop one thing off and say it is fine and we move forward.

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

Now, the other thing that I say I have an issue with here Codes D, E, N, F of PACE, that is exactly what we have really looked at in this Bill and what the Government is trying to bring into the law. I do not know how the Government is so back to front sometimes, Mr. Vice-President, but what should be in regulations or subsidiary legislation, they are sticking it into the primary Act. The Evidence Act is about the admissibility of evidence, not which form you are put something in, and where you record it, and how you take it, and what questions you must ask. Those are things for regulations. The flexibility that anybody would need to be able to—so if they came out— so they have taken all the Turnbull guidelines and put into the Act. If the Privy Council had a judgment in the morning that said that there were other questions that really ought to be asked when you are dealing with visual identification, you are going to come back to Parliament to amend the Evidence Act again?

I mean, we have had this argument in reverse where I have told the Attorney General that, you know, really the things that you are putting into regulation should be in primary legislation, and he said, “Well, you know, we do not have the flexibility.” So we need the flexibility and that is why we just pass a basic amendment sometimes in here like the Public Health Regulations and the Public Health Ordinance, and then everything else comes by order and regulations later on down the road. So this is a back to front approach now. Very technical specific things, Codes of Practice. It is called the Codes of Practice in the United Kingdom and you all have now brought it in here.

You find a space in section 12 because in '96 they took out section 12, “spousal privilege”, and you all find a space there so you “chook” everything in there. This whole Bill, all 70-something pages of it into section 12, to stick all of these procedural things. Procedural matters such as this do not belong in parent legislation. The Evidence Act should deal with admissibility. Example, when we wanted to introduce DNA evidence, we did not find a place in the Evidence Act, and I say we because that very important and significant piece of legislation was brought by the Partnership government in order to tackle crime. It is unfortunate that it has not really been of much use because the resources needed has not been allocated and we do not see it really being used to it fullest potential. But if the Government is really serious about doing this thing, you know, pass proper procedures, pass the things in it.

When we had the DNA legislation we brought, we passed a separate Bill, we outlined the manner in which everything was to be collected and so on, and we made it admissible. And the Evidence Act really just deals with the admissibility. It says so in the beginning. It deals with the admissibility of evidence. So again, a little bit of a back to front approach. It might be—we could argue that it is

probably stylistic, I do not agree. I think that it lends itself to being very inflexible for anyone who has to administer this piece of legislation. The collection of evidence and— you see, when you practise, especially in the criminal courts, and you understand that today there could be a significant judgment coming out from anywhere that deals with fairness and the admission of a statement and keeping identification evidence, because all the years—and the one thing from the cases back to Shabadine Peart out of Jamaica when they went to the Privy Council, they said, listen you could follow the Judges Rules to a T, dot the i's and cross the t's, but the judge must still determine at the end of the day whether there was overall fairness, and that is what governs the admissibility of identification evidence, that is what governs the admissibility of statements and so on.

So all these technical nitty-gritty things that you have now put into the Act, I mean, what is the— I think the Law Association raised it. They asked: Is there any sort of consequence for breaching one of these things? Because in a lot of the cases, we have seen references to where is reasonable practicable. So now you are going to have voir dire and evidence being led before a trial judge about why something, if it was not done that is required under the Act, whether it was reasonable or not. You are making the process of a criminal trial extremely encumbered and very cumbersome for anyone to be able to lead evidence and to successfully have evidence admitted.

So I think that to some extent you are really defeating the purpose of being good. It is good. I agree that it is good to have video recorded evidence and all of those things and to allow photographs, but the process by which it is being done here must be equally good and must be equally workable. And the Attorney General has said that the committee has taken on board suggestions and so on, but I think from a practical perspective, there is a lot to be said.

Moving on very quickly, we have seen the use of approved forms being brought in by this Bill. Almost everything that they are dealing with here, there is an approved form for it to be recorded. I cannot understand the reasoning why these forms are not brought by regulations as well to the Parliament. The kind of information that you want to record in these forms, what was done, when objections are raised, how things are done, those things are going to be integral in trials. They are going to form evidence. The prosecution, if they are challenged on the admissibility of a statement, a video, a photograph or anything like that, they are going to have to produce those forms the same way that we produce station diaries now and the records in your diary, to say what was done and so and so. The content of those forms, even though in certain parts of the legislation they have outlined what the forms should have and what should be recorded, I think that it is extremely important for a Parliament to see those forms.

Getting around parliamentary oversight is not an accomplishment. I do not know why it is treated in such a way that there is some sort of accomplishment that we bring a Bill here and we do not bring everything and that we will run away from here and go and do things on our own. It really is not proper and it is not effective because, yes, you can consult with many other people but at the end of the day, it is the Commissioner of Police who must approve these forms alone. Why is it that the Minister of National Security cannot bring the forms to Parliament via regulations? Even if it is negative resolution, at least give persons on the other Benches an opportunity to scrutinize them.

We had a judgment very recently from, as he then was, Justice Boodoosingh, where he talked about, you know, with the Public Health Regulations again, stop trying to avoid scrutiny with important things; stop trying to avoid parliamentary scrutiny. Find a way to bring things that are important into the Parliament and give

everyone an opportunity to have a look at it. So these forms that you are required to record things in are going to form part of trials, they are going to be evidence. It will be somehow in some cases—because I have noticed as well that in certain areas, you have to record things both in the form and in the station diary, and in other places, you only need to record it in one of the forms. And those forms you can disclose it, you can ask the person to sign, either the suspect or the representative, and it goes on and on and on. Now these are very, again, detailed steps that have to be followed.

Any breach of any of these steps can result in an identification being excluded, and an entire trial can collapse. Any breach can result in a statement being found to be not voluntary or some sort of oppressive conduct having taken place and they can be excluded. So you need to be very careful when you are drafting laws such as these in terms of what you are going to put into them, and not just what you are putting, but who you are giving the power to or the responsibility to. You know, most people would look at this and say, “Well, there is a lot of power in here for the police.” I think it is a lot responsibility and I could tell you as somebody who spends a lot of time in police stations and a lot of times dealing with the police, especially at first instance when people are arrested and so on—I still do duty counsel as a legal aid attorney, which I do not know why you all left out duty counsel by the way and legal aid when it comes to having a representative. You all went straight to the mere point, a JP. We have a whole duty counsel system.

Again, if the Government was serious, they would fund it a little bit better. You have sometimes duty counsel being called out now. They only have enough duty counsel, and they could only afford to pay duty counsel for capital matters and matters involving children. But very serious other types of offences, people are

not afforded duty counsel and that is very, very, very bad. It is not proper at all that a man could be charged for very serious offences, attempted murder, the second most serious offence, and he is not afforded duty counsel. Why—I do not know in section 12G, you went straight to, I think in subsection (4), when you talked about he may appoint a JP in the place of a representative, at least at a minimum, because I know we have resourcing problems at this point in time, but as a very minimum, for a capital matter, duty counsel should be afforded, a legal person.

So as I was saying, I do duty counsel and I go to stations and so on all the time and I know the importance, and I know how things operates, and I have seen the struggles that they encounter and I will get to them in a little while. But, for example, when you ask that things be recorded in the diary—now under the Standing Orders, the station diary— Standing Order 17, the station diary is still the official account of everything that happens in the police station, particularly when you are dealing with persons in custody. Down to the weather—ever so often, they have to report what the weather is like around the police station. They record because, you know, if a man says his cell was leaking, which happens all the time, and I get wet in the rain, you can verify in the diary that it was rainy on that day and rain was in fact falling. That is the nitty-gritty level that you go to when you are involved in voir dire in a criminal trial. So how important it is to record things in a diary.

The proposed section 12K(5) when someone takes an objection to someone being in the line-up, for example, of the ID parade, this is very significant because you are essentially—and they say that they will change the persons, if again, where practicable. So where reasonably practicable, where practicable. Again, those of us who have the experience, when you sit there and you argue in court what is reasonable, what is practicable, is it must be reasonable practicable or was it just

simply practicable, you need to be very tight with your wording when you are bringing these types of very important pieces of legislation and these very stringent requirements when you are dealing with people's liberty. You are dealing with people's liberty and freedom when you bring these things to the Parliament. So you need to be a little more careful.

But they say where practicable they should take steps to remove the persons who is objected to, and where it is not practicable to take steps. The reason for the objection whether it is the suspect, the JP who they bring, or the representative, should be told why it cannot be met and they are only putting it in the form, but they have no requirement there, for example, to put it into the station diary. So these types of matters that affect fairness, there is exercise of discretion by the, not the investigating officer, but the identification officer as it has been defined in the law.

I think that those things you have to be more careful. You have to—when you are exercising discretion, the way you record your reasoning— because the reasoning behind the exercise of the discretion by the identification officer will be so significant 10 years down the road when you are in front of a jury that you cannot simply rely on this form. And if you are relying on this form, then we ought to be able to see those forms, scrutinize those forms and see how those forms are going to be used. Do not leave it to the Commissioner of Police to simply develop a form. Again, I said where you need flexibility, you have not put it and then you are giving too much flexibility in areas where it is not required. It is a kind of back to front approach and I do not understand it.

When you are dealing with the “Interviews and Oral Admissions”, section 12Q, I see that it is discretionary against sometimes to video record and you do not necessarily have to video record it where it is not practicable to do so. And in that

case they said, yes, you can put it into the diary, but something that is very significant about the representative who the suspect elects to be there, not being able to attend, there is no requirement to put that into the diary. Because, you see—listen, this is how it happens and I will tell you again I do this all the time. The police arrest you at three o'clock in the morning on a warrant and they bring you to the police station, and the police officer who worked that night—so he is going home to sleep in the morning and he wants to come back five o'clock in the afternoon because that is when he is picking up the next shift, and he will tell you, “Well, I coming to conduct the interview at five o'clock in the evening.” And you could say, “Well, my lawyer is Ms. Lutchmedial and I would like her to be here”, but Ms. Lutchmedial has a baby home. Ms. Lutchmedial “ain't” coming five o'clock in the evening. Right?

So you need to say—and that is the representative of his choice. If he is going to say, “Well, you cannot get Ms. Lutchmedial, I bring a JP instead,” you must put it. You must record that in the diary and why it is you cannot defer the interview until that happens. Now I can tell you in practice right now, the police are very flexible. From time to time, they try to work with the representative and all of that. But if someone does not have a lawyer and they say, “The person I want to contact is— I have this cousin.” You know, everybody have this one cousin who, you know, he is the person who they kind “ah” go to. He might be smartest person, the most educated person in the family, the most responsible one. So, “I really want to get in contact with meh cousin. I have ah cell number for him.” The police might call, they “ain't” find him whatever, and the police go ahead and they do the parade or they do the interview without cousin being present.

You must record these things and you must record all of the efforts that you have made in order to have the elected person there, not just their name, not just

their number, but all of those things. So if you are going to put these—and I am saying it is done in practice sometimes, it is done in practice. So if you want to codify these things now in parent legislation, then you have to be very careful with how you are doing it and you do not leave room for people to manipulate and to find loopholes, and to get around the requirements, requirements which are there to ensure the fairness to the accused person and to the person who is in custody.

Now, when we deal with impracticalities, and this is where we have to get down to it, funding for the TTPS has been cut significantly in the last budget. It featured extensively. Goods and services was cut from \$515 million in 2020 down to about \$334 million in this fiscal year. That is almost \$181 million we have a cut by. Even in previous years we heard that there was a shortfall in terms of the releases by almost \$100 million. Mr. Vice-President, police does be throwing barbecue on a Friday to raise money to buy paper and ink for the station, and I can tell you that because they are always coming, “Ms. Lutchmedial, you go sponsor the dinner rolls, you go buy two tickets.” It is a normal thing. It is normal.

I have been to police stations where people get arrested for obscene language and a JP is waiting to grant them bail in the station because they got locked up at one o'clock in the morning, and you know what the police will tell you? “We have no paper to print the charges on. You think you could go and get some paper for us?” And at two o'clock in the morning, I have to carry paper to a police station. And if you think I am making this up, I can give you name, rank and regimental number because I could tell you that this is what the police is facing.

So when you bring a law that says the first responder—do not even talk about that first responder thing, do not even understand what is a first responder, who must identify on the scene the initial identification and how that works, it should be video recorded and all of that. You are asking the police service, a police

service that is struggling for paper and ink. Cases are being thrown out of court, of Magistrates' Courts every day because the police did not do the disclosure and why? Because they cannot afford to copy the documents, they cannot get a copy of the statement, they do not have a scanner now. Well, now with COVID, I think things are a little bit better and some of them are trying. But you still have police officers who will scan documents with their phone and ask you for your number so they could WhatsApp it to you. That is what happens in reality. And you come with all these fancy requirements now that an investigating officer must video record the first description of the suspect in the approved form and so on, and do all of these nice things. It is nice to have these things but you what is also nice to have? The resources to do them. And without the resources, none of this makes any sense.

What you will do now is have a whole set of requirements again that are so difficult to comply with that you create room for things to be simply thrown out of court and for people to walk free. So if your intention is to make it easier for the prosecutor to bring a case to trial when it does happen—because you see, the relevance of what happens on the scene of the crime and in the days that follow when the suspect is brought to the station, when he is arrested, when you are doing the ID parade or the confrontation or whatever else happens, those things do not—the relevance is 10 years down the road. It literally is 10 years down the road. The DPP said it very recently, how many indictments they have that are more than 10 years old. So do not tell me that is a one-off case. It is actually the majority of cases and indictments that when they get to the High Court, it is 10 years later, the police dead—and again this is a next serious thing about recording in diaries and all these forms that you all want to use. How many times do we have to rely—and I can tell you as a prosecutor, you rely on that diary and the admissibility of the

diary evidence because the witness is no longer there.

So you have to look at that time lapse and how you are going to record these things. And the requirements that you are putting in place now, 10 years from now, when the trial comes up, if they have not complied with it—because nobody is going to sit down and think back and tell the jury, well you know what 10 years ago “dem” video recorder we had was not really working that well. I mean, we have better resources now but back then it was not— that is it you know, man walk. Man walking out of the High Court because the statement get thrown out, the identification gets thrown out, the first description was not properly recorded and that is the end of that. So you have perhaps the best intention to come here and make laws that would be very high-tech and incorporate all the technology.

I have no objection to the use of technology, but when people do not have paper in a police station—I mean, baby steps. Let us learn to creep before we start to run and sprint. We have to address the serious resourcing issue in the police service before we can have laws like this making any impact. So again, I would like to hear from the AG in his reply or from any other Minister, how do they intend to really deal with this, especially in a year when funding to the TTPS has been cut?

Now, with the respect to the ease of admitting evidence, and this is where the intention I feel is not so good because, you know, I sat there and I listened to the Attorney General and there were only two things coming into my mind, ad hominem—

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

Sen. J. Lutchmedial: Thank you—ad hominem legislation. Let me declare we had the appeal in this matter yesterday, it is in the newspapers today, EMBD. EMBD is the reason why they want this ease of admitting evidence. Now, EMBD will go

down in the history books of this country not because of the volume of evidence because I am certain some of these evidence will never see the light of day, some of these so-called evidence that they are trying to collect, but it is the most expensive witch-hunt that this country will ever see. I represent one of the persons in that civil matter that was on appeal yesterday in an application to strike out, and a British—I declare my—

Mr. Vice-President: Senator, just to remind you, you are going down the line of talking about an active case that is going on the Judiciary.

Sen. J. Lutchmedial: Yes, I am guided.

Mr. Vice-President: Right. So I will caution you not to go down that road. If you could just skip over that and move on.

Sen. J. Lutchmedial: I am guided, but there is an active matter in the civil court. We heard last year in the media that there is a criminal investigation. Is it that—and the Attorney General very cleverly says that we have to take note of what is happening and so on. Is it that you are trying to pass legislation because you have a specific case in mind that you want to bring? Because that is most improper.

Mr. Vice-President: Senator, again, so now you are going down the line of imputing improper motives—

Sen. J. Lutchmedial: I am guided.

Mr. Vice-President: —in doing that. So again, you are guided. Please refrain from going down that line.

Sen. J. Lutchmedial: I am guided. I did not say that the Attorney General was trying to do that. I said if he is trying to do that, it would be improper.

3.30 p.m.

So that when as reported in the newspaper today, we talk about sophisticated conspiracies where they do not yet have the evidence because that is what is

reported as being said. So Trinidad and Tobago nationals keep paying pounds to have a witch hunt take place that no charges have yet been brought.

Mr. Vice-President: Again, Senator, you are referring to an active case that is going on in the Judiciary. Even though it is reported in the newspaper, I would ask you to refrain from referring to that particular case.

Sen. J. Lutchmedial: Mr. Vice-President—sorry, I am guided, however I am dealing with the reported criminal investigation, there is no criminal case in court. We continue to pay for a criminal investigation that is yet to yield charges. We continue to spend money on these things and it is really essentially that the Government now feels that bringing—from what is said here today and what we see here today that perhaps it is necessary to have—the Attorney General said, have a way to admit a volume of evidence via electronic means because of what we are seeing.

So I believe that it is something that the population ought to take note of, that this Parliament ought to take note of, and it is very important for us to be guarded that we do not come here and make legislation to suit the purposes of any particular person who may have an interest or to target any particular set of persons. That is improper if it is that that is being done and I would guard against though.

So with those very few words in the limited amount of time, I thank you, Mr. Vice-President. [*Desk thumping*]

[MADAM PRESIDENT *in the Chair*]

Sen. Hazel Thompson-Ahye: Thank you, Madam President. In a particular jurisdiction, where I used to reside, the police station is situated near the criminal court. The story is told of a judge whose court was interrupted not for the first time by loud noises emanating from the police station. “Whap, whap” was followed by

loud screams. He turned to counsel at the Bar saying “another voluntary confession”. The lawyer who related this story to me was laughing. The judge however was not amused. He was concerned, as judges are, about the right of the accused to a fair trial, in particular, a trial where evidence produced is admissible and not obtained by any unfair means or confession.

Among the rights enshrined in our Constitution is the right to person charged with a criminal offence not to be deprived of a fair trial or in the words of section 5(2)(f)(ii):

“...a fair and public hearing by an independent and impartial tribunal.”

And the right not to be deprived:

“...of the right to such procedural provisions as are necessary for the purpose of giving effect and protection to the aforesaid rights and freedoms.”

Now this Evidence (Amdt.) Bill, 2020, seeks to amend—once again, the Attorney General I think has said 30 times it is being amended—the Evidence Act. Evidence is very important. Without it, a case cannot be proven. We have to pay special attention to what this Bill is seeking to do to the law of evidence. Does it enhance or improve the right to a fair trial? Or does it do violence to that fundamental human right guaranteed in our Constitution? Whose human rights do we need to protect? Accused persons, victims, witnesses?

There are several components to a fair trial. All are not relevant here. I propose to deal only with what is relevant. My new year’s resolution differs from the stance of another Senator who once said his purpose in inviting rules is to provide exercise to maintain good health. But the question here for me: Does this Bill interfere with fundamental human rights enshrined in the Constitution? We have heard a view that it does. If it does, one would expect a provision for a special

majority. The Constitution requires that.

So like Shylock, frantically I looked through the Bill. As Shylock was looking for his blood for the pound of flesh that he must cut, I searched for the requirement and concluded like Shylock, it is not in the Bill. Does this mean, therefore, I ask myself, that the Bill does not interfere with those fundamental rights and consequently the special majority is unnecessary? The Attorney General says so. Can I trust him? I am asking for myself. But then realization dawned like the Mighty Spoiler, herself ask herself: Is there any other way we can find to answer this question? There must be clues outside the Attorney General's assertion by omission or subsequent statement.

Now, similar legislation has been enacted in several jurisdictions. While the accompanying Bill Essentials speaks about Barbados, Guyana and Bahamas, my research took me further afield to look at similar laws like the Youth Justice and Criminal Evidence Act, 1999 of the UK; Vulnerable Witnesses (Scotland) Act 2004; St Vincent and the Grenadines Witness (Special Measures) Act, one I particularly like. You have Evidence (Special Measures) Act, 2012, Jamaica to name a few. And I just want to mention here, Mr. Attorney General, although the Jamaican Act came out in 2012, it was only proclaimed in 2015 so it was brought into force together when the regulations were also 2015. So we have to think about bringing them both together. Continuing in Spoiler's vein, herself ask herself again: Is the adoption of such measures by numerous jurisdictions a case of, you know, what Sparrow talked about, how many people can be wrong? Is it tyranny by the majority or simply a balancing of rights? Maybe, therein lies the rub. So let us see.

Now my contribution will, as one would expect, be centred around vulnerable witnesses. But I wish to say a word about identification procedures and

section 12 defines “identification procedure” as methods:

“...of ascertaining or determining the identity of a suspect for the purposes of an...” identification.

So you have examples of:

- “(a) an identification parade...
- (b) identification using video...
- (c) identification in public place with the consent of the suspect...
- (d) ...without the consent of the suspect...
- (e) ...by confrontation...”

And:

“(f) ...verification...”

These provisions are quite comprehensive and caters for a variety of situations. My concern though is who is to police the strict procedural requirements to prove that they were complied with and which may be honoured more than in the breach and in the observance? Section 12N(2) provides for:

“...the presence of a Justice of the Peace”—when—“...the procedure is done without the consent or co-operation of the suspect.”

But can there not be breaches when the suspect cooperates, Mr. Attorney General?

Perhaps, through you, Madam President, we can hear some more about that.

But one clause which resonates with me is section 12C(5)(b) and it states:

“An investigating officer may also conduct an identification proceeding where—

...a suspect is in police custody and an eye-witness, with no previous knowledge of the suspect, saw the suspect commit the crime or saw him in circumstances relevant to the likelihood of his having done so;”

Now, I like to concretize things. So one may very well ask what does it mean to

see the accused in circumstances relevant to the likelihood of him having committed the crime? And let me explain by an actual personal experience. Forgive me if I had spoken about this in another context. Our lawn mower was stolen, we made a report to the police. On our way home from the police station, my husband spotted a pick-up driving in front of us, he began following the vehicle. I did not understand what was happening, he was not saying anything to me. He continued driving past the turn off to our home which was strange.

When the traffic light changed right by Trincity Mall, he alighted from the car, walked up to the vehicle because the vehicle had to stop too and say ‘That is my lawnmower’ and he began to retake his property. Meanwhile I spoke to the man sitting in the vehicle asking his name and address, he wrote down the number of the vehicle. The driver assisted my husband to remove the lawnmower from the vehicle. The driver said he was just asked to transport it and he drove off leaving whom we assume to be the suspect on the road way. We decide to return to the police station to give the police an update. The officer called us back to the station some three hours later, I was asked to give a statement. The police even asked if I had seen the man as I entered the police station. Now I have no visual memory so I was unsure. Everybody else was saying “but you just talk to the man”. Imagine I engaged “the man in talk, he wearing the same clothes”, I have been asked for identification by confrontation. It was likely, most likely, the man seated there was the man I had seen earlier in possession of the stolen property. He had stolen it since the driver had said he had hired him to remove it. So the circumstances were relevant to the likelihood of his having committed the crime.

So I gave the police a statement. When I got to the part that the guy had written down the car number, the police went and retrieve the page from the pocket diary. As the man had seen me enter the station, he was so smart, he pulled out the

page and he throw it out the window. The police smarter, they went outside and retrieved the page. End of case. Those were the days when the police used to solve crime, you know. They informed me that the suspect had just been released from prison. He had gone to prison because he had broken into the Hector Mc Lean's home and his modus operandi was to steal things from around people's homes. So they knew exactly who was the culprit. The police later told me the man confessed to the crime. Thank God I did not have to give evidence, I would have made a very poor witness for the prosecution.

This Bill details identification by confrontation. It is clear in this case that proper procedures were not followed and so frequently proper procedures are not followed by the police. But in this case, there was other evidence which produced the desired result.

Section 12AA provides for:

“...an application...”—to be—“...made...”—in any criminal proceedings—“...by a party to the proceedings or on its own motion in the interests of justice...”—for—“...special measures or a combination of special measures...”—to—“...be used for the giving of evidence by a witness.”

Now, special measures are not granted as a right. Before the court gives such a direction, it must be satisfied that:

- “(a) the witness is a vulnerable witness; and
- (b) the quality of the evidence given by the witness is likely to be diminished by reason of fear or distress on the part of the witness in connection with testifying in the proceedings.”

Who are vulnerable witnesses? It is there in the legislation. The ability of that witness:

“...to give evidence or the quality of whose evidence is likely be affected by reason of—

(a) the age or immaturity of the witness;”

That is number one.

“(b) the physical disability or mental disorder of the witness;”

Then we have:

“(c) any trauma suffered by the witness;

(d) the fear of intimidation of the witness; or

(e) the witness being a virtual complainant in proceedings for a sexual offence.”

And so many of us can and are vulnerable witnesses in many of these circumstances, except for age, of course, but I mean, I would not talk about the maturity.

Madam President, in these dangerous times in which we live, where we seem to be in “ah Wild West movie”, you do not even have to change to the cowboy channel to understand the fear and the trauma that comes from intimidation of witnesses. Cries for the hunting season to be opened during the times of COVID to pursue, kill and eat exotic animals of our forest did not fall on deaf ears. So we actually have now an open hunting season. But, Madam President, the hunting season for women and children was never closed. It is open season all year around for women to be killed, for children to be raped and lose their innocence or sometimes killed or kidnapped or trafficked through the evil deeds of demonic persons whom we call human beings but lack humanity. Sometimes we call them animalistic but in fact we are insulting the animals. Some kill and maim intimate partners and children whom they are supposed to love and protect. When will it end? Will it ever end? When will it ever end?

So we have a number of special measures and I just want to remind that yesterday was trafficking in persons' day. January is trafficking for the whole month and yesterday was a special day. I did not see anything happened to mark that.

So you talk about "Closed proceedings" where only persons involving the matter are allowed to attend. So you have the presiding judicial officer, you have the lawyers, you have the jury, you have the court staff, you have the accused and person giving evidence. Then we have the use of a screen or other arrangement to prevent the witness being seen by the accused but can be seen by the presiding judicial officer, the jury, the attorney-at-law in a proceeding and we have the use of video links—in fact, video links are being used now—a support person as the court thinks fit. Then we have appropriate devices to assist witnesses to overcome disability and we have witnesses who are struggling sometimes with various disabilities and there are no appropriate devices available to them. We have disorder or impairment that may affect the ability of the witness to hear or understand questions and communicate answers.

So the Bill is providing for evidence by video and the section 12AA says that:

"...the Court may...issue a direction that a special measure or a combination of special measures..."

You find one may not be enough so you may have to combine them because what you are doing really is to try to get at the truth, to try to get that evidence out there so that the case can be proven. But the:

"...application..."—must be—"made by a party to the proceedings or..."—the court's—"...own motion in the interests of justice..."

The interest of justice, that can only—you know, it cannot be stressed enough, that

is what the Bill is trying to do.

“(2) Before issuing a special measure direction, the Court...”—must—“...be satisfied that—

“(a) the witness is a vulnerable witness...”

And that should not be too difficult to determine.

“(b) the quality of the evidence given by the witness is likely to be diminished by reason of fear or distress on the part of the witness in connection with testifying in the proceedings.”

And many times, that is what is happening.

I had spoken before about the schoolteacher who had to go to court on this rape case. She had taught infants all her life and she was very, very quiet and subdued and every time I met her in court, she would say, you know, the case is up again and she is dead now but most people at that funeral, including Bishop Harvey, knew that story about her and having to go—she certainly was a vulnerable witness. She was scared to death. There was no provision made for her.

So in making the decision, the court is not making it in a vacuum and the legislation is actually assisting by pointing out what are the criteria, whether or not it is reasonably practicable to secure the physical attendance of the person at the proceedings, having regard to the expense that would be incurred. So that if you are not going to be present, you can still have that evidence brought to the court. Is it going to be too expensive to bring a person to attend a proceeding? What about people who these days are COVID absent from the country? Is there not a way that that person can come in virtually and give evidence?

We look at the logistical difficulties in a person attending the proceedings or any other factors which the court considers relevant and we look at whether the use of a video link is appropriate, again, that phrase “in the interest of justice” and that

is something we must always bear in mind, “in the interest of justice”. So in determining whether the use of video link is appropriate in the interests of justice again under subsection (2), the court shall consider a number of factors and these are written into the legislation:

- “(a) the views expressed by, or submissions made on behalf of the person or a party;
- (b) the nature of the evidence to be given;
- (a) the availability and quality of the technology...to be used;
- (b) the ability of the party or the person, to participate effectively in the proceedings;”

It makes no sense you having a witness and that person cannot participate effectively and that is what you want to get at, that it must be an effective participation. So you use whatever is required in the interest of justice.

“(f) any other matter the Court considers relevant.”

The court also takes into account:

“...in determining whether to allow an accused...to give evidence by video link...

- (a) the risk that the personal security of a particular person including the accused...”

So it is not that the court is only looking out at the witness, you know, it is not the court is only looking out at the victim but the court is also taking into consideration the welfare of the accused. So if he is going to:

“...be endangered if...”—he—“...appears in the courtroom or any other place where the Court is sitting;”

And we know the history of people who have been killed before a trial, during trial. We have:

“(b) the risk of the accused...escaping, or attempting to escape from custody when attending the courtroom or any other place where the Court is sitting;”

And we know we have escape artistes in Trinidad and Tobago and some of them go abroad, just this week, you read in the newspaper about this person who we cannot find who is alleged to have killed a child.

You look at:

“(c) the behaviour of the accused person when appearing before a Court in the past;”

And we have had instances where the accused have had to be removed from the courtroom because of his behaviour, threatening, you know, people within the court. The present Ombudsman had things thrown at him, I remember, when he was sitting as a magistrate. So we have the history of people who cannot behave properly in the court and they have to be removed. You have:

“(d) the conduct of the accused person while in custody, including the conduct of the accused person during any period in the past where the accused person was being held in custody in a prison;”

So you are looking at the history of the matter and you are looking at the person and the personality.

“(e) safety and welfare considerations in transporting the accused person to the courtroom or any other place where the Court is sitting;

(f) the efficient use of available judicial and administrative resources...”

Very much uppermost in our mind and:

“(g) any other relevant matter raised by a party to the proceedings for the making of the direction.”

So:

“(5) Where evidence is given by...video link, the person...”—deemed—“...to be physically present...”—if that—“...evidence...”—is deemed—“...admissible to the same extent and effect...”—that is going to be deemed as effective as—“...direct oral testimony.”

There is provision for cross-examination and:

“...the Judge...”—of course—“...may give the jury...warning as...”—considered—“...appropriate, to ensure...a direction...does not prejudice the accused...”

So he will advise what inferences can be drawn and what inferences cannot be drawn because of the manner of giving evidence. So does this Bill talk about fair trial or not?

And I want to refer to Laura Hoyano who wrote in the Criminal Law Review 2001 a Paper: “Striking a balance between the rights of defendants and vulnerable witnesses: will special measures directions contravene guarantees of a fair trial?” And this is exactly what we are talking about here. Will it interfere with the guarantees of a fair trial? And she says, if I may, Madam President:

“Because Canada was the Commonwealth pioneer in enacting reforms affecting the evidence of children, it is perhaps not surprising that the Criminal Code of Canada takes what in hindsight appears to be a fairly conservative approach to vulnerable witnesses. The use of screens or live television link is authorised for witnesses under age 18 or who have difficulty communicating the evidence due to physical or mental disability, if the judge is of the opinion that keeping the complainant from seeing the accused is necessary ‘to obtain a full and candid account of acts complained of from complainant’. In a trial of charges of child molestation or sexual

assault, a videotaped interview with a complainant...is admissible as part of the child's examination-in-chief.

Constitutional challenges to these measures under the Canadian Charter of Rights and Freedoms have been mounted..."

So it is not strange to have constitutional challenges because they:

"...guarantees 'the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice'..."

So the Criminal Act:

"...section 11 which guarantees procedural fairness to defendants in criminal proceedings, including the right to 'a fair and public hearing by an independent and impartial tribunal'."

So this is not unique to Trinidad. These concerns that are being expressed here.

"Unlike the American Constitution"—she says—"the potential conflict between fundamental rights and freedoms is recognised and mediated through section 1 of the Canadian Charter, which envisages their reasonable limitation 'as prescribed by law' where this can be 'demonstrably justified in a free and democratic society'."

Remember that provision from our Constitution? Sounds familiar to me. So:

"This balancing language is reminiscent of many provisions of the ECHR"—European Union Court of Human Rights.

"The Supreme Court's approach to Parliament's solutions"—for—"the problem of prosecuting child abuse was outlined by..."—Madame—"L'Heureux-Dubé J. for a unanimous court in R. v. Levogiannis in a wildly quoted passage:

It is important to examine the context in which the determination of

constitutional questions should be made...The examination of whether an accused's rights are infringed encompasses multifaceted considerations, such as the rights of witnesses, in this case children, the rights of accused and court's duties to ascertain the truth."

So anything that prevents the ascertaining of the truth, we should try to avoid that and try to strive for getting that evidence out because the fair trial involves a number of parties.

"The goal of the court process is truth seeking and, to that end, the evidence of all those involved in judicial proceedings must be given in a way that is most favourable to eliciting the truth. In ascertaining the constitutionality of [screens under]...the Criminal Code, one cannot ignore the fact that, in many instances, the court process is failing children, especially those who have been victims of abuse, who are then subjected to further trauma as participants in the judicial process..."

So:

"Despite the increase in child sexual assaults complaints since the early 1980s"—she says—"the ratio of charge to conviction rate remains unchanged. In addition, young complainants often suffer tremendous stress when required to testify before those whom they accuse..."

And not only young children but I have spoken to women who are afraid. They do not want to go to court.

"The plight of children who testify and the role courts must play in ascertaining the truth must not be overlooked in the context of the constitutional analysis in the case at hand.

Explicitly espousing a 'common sense approach' to the evidential problems of child abuse prosecutions..."—a common sense approach—"the Supreme

Court of Canada has upheld the constitutionality of screens and videotaped interviews as necessary measures ‘to sensitise the law to the realities of the child witness’. Recourse to the balancing provision...”

And I keep talking, balancing provision is a balance all the time.

“...has not been required because of the flexible approach to the fair trial guarantees. Videotaped interviews are admissible as part or whole of the child’s examination-in-chief, a choice left to prosecuting counsel. The interview also may be admitted as the child’s entire testimony under the new judicially created discretion to admit hearsay evidence where it is necessary and reliable, where the...child is ruled testimonial incompetent, and, even more radically, if the child refuses to testify at the trial.

This survey of the fate of protective measures for vulnerable witnesses in two common law jurisdictions suggests therefore that the concept of balancing the interests of witnesses and of the defendant is not necessarily inimical to a robustly adversarial trial process.”

Madam President: Sen. Thompson-Ahye, you have five more minutes.

Sen. H. Thompson-Ahye: Thank you, Madam. I just want to refer to European Judicial Training Network. They put out an article, of course, for judicial training: “Protection of an anonymous witness vs. the right of the defence to a fair trial according to Article 6...”—of—“...ECHR”. And the “Conclusion” is:

“The duty to testify about facts important for the criminal proceedings according to criminal procedures acts of Member States is one of the basic duties of every citizen of European Union. It is possible that fulfilling this obligation is going to be problematic at the moment, when it could pose a risk to life, health and physical integrity not only for a person who provides testimony but...for people living around him. Intensity of this threat is

increasing as the organized crime gradually infiltrates into structure of crime and also as the violent forms of this crime increased during the second half of 20th century. Not only witnesses but also the victims are afraid to testify and therefore the criminal proceedings in particular case doesn't start just because there is nobody who would file a criminal complaint because he was successfully threatened. It should be the main interest of whole society to effectively protect the witness by fulfilling his abovementioned civil duty. Analyzed legal acts of European integration grouping are to be considered as a manifestation of effort to reach an appropriate degree of witness protection at the European level. The provisions of these acts were without change implemented into national criminal proceedings codes and they set many procedurals instrument which serve to help to reach the mentioned aim."

So:

"Procedurals measures for witness protection are getting beyond question into collusion with the defendants right to effective defense, which awaken European case law to the effort to set the boundaries of application of evidence that have been based on testimonies of anonymous witnesses."

4.00 p.m.

So, I will skip here.

"By the effort of guaranteeing sufficient witness protection is to be aware of the risky situations which can eventually occur by accused of a crime in case of misusing the anonymous..."

We are not going into that.

"In the legal state abovementioned conflict between witness protection and defendants' interest narrows the space for granting him the protection which could without merit affect the contradictory of a particular stage of criminal

proceedings...

We suppose that it is impossible to bring abovementioned process of searching for the balance which every time depends on circumstances of particular case to an end and that this process is even beneficial because it makes the participating parties maintain mutual comparable quality of procedural rights.”

So, this Bill has given rise to some degree of anxiety. It goes against the grain of how attorneys do business in the courts. But it cannot be business as usual, when so many people are at risk of being annihilated by terrorists who have not been known to reside here, where the crime rate outstrips those of countries much larger than ours.

There are issues requiring drastic measures. Even while we must recognize the rule of law. The Legislature has been called upon and must perform a balancing act; the rights of different individuals against the rights of other individuals. Victims and witnesses must be protected and the accused must have a fair trial. This Legislature seeks to get it right by procedural safeguards. It is my humble opinion that in the main, they have got it right, and it is left for us to try do the best we can. Thank you. [*Desk thumping*]

Madam President: Minister in the Office of the Attorney General and Legal Affairs.

The Minister in the Office of the Attorney General and Legal Affairs (Sen. The Hon. Renuka Sagramsingh-Sooklal): Madam President, I thank you for the opportunity to make a contribution to this debate, a very important Bill aimed at amending the Evidence Act, Chap. 7:02, to provide for the use of different identification procedures, interviews, oral submissions, special measures and the taking of evidence by video link. That is the Bill, Madam President, that is being

debated here today.

Madam President, and my most esteemed colleagues of the Independent Bench, do nothing, do absolutely nothing is the modus operandi of this Opposition. So if we as a Government are to pay heed to the noise by the Opposition, nothing, absolutely nothing will happen in this country.

This Bill, Madam President, is not ad hominem. It is not directed to any particular person or any particular matter. This Bill, Madam President, is an effort on the part of our Government to continue in our crime-fighting strategies. The Government of Trinidad and Tobago will continue to reject the noise of the Opposition. We will continue to do the work of the people of Trinidad and Tobago with the support of the Independents. [*Desk thumping*] We will act proportionally and in the interest of all our people.

Madam President, for far too long, the law, as it relates to adducing and admitting evidence for criminal matters, has been unaddressed. The time to rectify this is now. The time to bring change, radical change to the law, as it relates to evidence, is now and I call upon the learned Senators in the Independent Bench to listen to what the Attorney General and all Members of this Government Bench will present here today, in an effort to convince each and every one of you that you can play a part, a significant part, in radically amending and radically changing the criminal justice system of Trinidad and Tobago.

As a Government and a Parliament both the Opposition, as well and the Independent Senators, we have the power as the highest court of the land, as the highest court of the land, to support legislation which will equip the police and the prosecution in the combat against crime.

Madam President, I want the listening public to understand in a rather simple manner what is before this honourable Senate today, what our Government,

through our learned Attorney General, is attempting to achieve in this honourable Senate today.

Madam President, I will simply build on areas of this Bill which will radically improve the criminal justice system. The areas of this Bill that I also as an advocate in a previous incarnation, also as an attorney-at-law who would have practised in the courts of Trinidad and Tobago, also a practitioner of the criminal law certainly believe that if these amendments are brought, it will certainly, it will certainly improve the manner in which we are able to bring remedies to the problems facing our criminal justice system.

The areas of this Bill, Madam President, that I am particularly fond of and that I certainly believe will contribute significantly to improving the criminal justice system is as it relates to vulnerable witnesses, and video link evidence as alluded to by my learned colleague Sen. Hazel Thompson-Ahye, which I am in agreement with most of her points and her submissions, which I intend to adopt most of it.

I would also contribute to the electronic evidence, the amendments brought to the electronic evidence, in section 14B, the admissibility of CCTV evidence, which the learned Attorney General, because of time could not totally develop and aspects of identification procedures and offences created under this Bill.

I want to say, Madam President, to Sen. Lutchmedial, I too practised in the courts of Trinidad and Tobago. I too was an advocate and more so I too was a defence counsel in a previous incarnation. Now where I stand, it is in a different position, it is in a different place. So I think I too am equally placed to understand what needs to be done, to a great extent, to improve the criminal justice system of Trinidad and Tobago.

Madam President, I will begin by—if I can take my learned colleagues to

section 12AA of the Evidence (Amdt.) Bill, which is before us here today and also section 12AD of the proposed section of the Bill which deals with video link evidence. These were sections, of course, that were dealt with in great detail by my learned colleague, Sen. Hazel Thompson-Ahye.

But I have to make my contribution towards it, because I believe this particular section, as included in this Bill, will play a significant part in contributing to witnesses and people being willing to come to the fore and give evidence in criminal matters, which too often is one of the major hurdles that the prosecution often faces.

Now in a very simple term, Madam President, and this is for the benefit of Trinidad and Tobago, the layman who is listening, in a very simple term, this proposed section 12AA introduces special measures and vulnerable witnesses. Now, to the listening public, what is a special measure? Very simply, Madam President, a special measure is a direction issued by the court to facilitate a witness in the giving of evidence and as adopter, I will adopt the position of my learned colleague, again Sen. Hazel Thompson-Ahye. And to avoid tedious repetition, that particular section, of course, would have identified section 12AA(2), would have gone into details as to what the court must be satisfied of in subsection (a) and (b) as to what determines a vulnerable witness. And to my mind, this is a very, very fair procedure, because the court must be satisfied that (a), the witness is vulnerable, and (b) that the quality of evidence given by the witness is likely to be diminished by reason of fear or distress.

So if I may develop this, for the listening public, from a very layman's perspective, sometimes as attorneys-at-law, as advocates, you will sit in a conference room with your client, and because it is you and your client alone, the client is very, very open. The client is very open about events that would have

transpired in a particular incident. But for some reason, from the time that very same client is placed in an open court setting, because of the very intimidation of that court setting, what you may find is that the nature in which they give evidence is severely compromised and that sometimes very well goes to the credibility of this witness now in an open court setting.

The reason why I am reiterating this in a very simple form is for Trinidad and Tobago to really understand what the Government is trying to achieve today. We want to put in, we have brought amendments that can only significantly contribute to persons in Trinidad and Tobago, witnesses being willing to come to the fore and give evidence, because we understand. Sometimes a lot of matters are lost in the court as a result of insufficient witnesses. A learned Senior Counsel or a learned defence counsel, through the tact of cross-examination, can mash up, can mash up a witness who is fearful of a normal court setting. I have seen that on many occasions. And this amendment, as simple as it may seem, it stands to contribute significantly to improving our criminal justice system.

Now I remember, Madam President, in the case of Dole Chadee, which is Nankissoon Boodram, et al against the State, now this particular case would have contributed significantly on many areas of law. But I remember in that case, in the obiter by Justice de la Bastide, Justice de la Bastide stated that in a jurisdiction like ours, witnesses are often murdered and they refuse to testify because they are afraid.

Trinidad is such a small country, given the small geographical area, there is a likelihood that you always know somebody who knows somebody, and I respectfully submit to this honourable Senate that this provision, as simple as it may appear, it carries significant weight to certainly change the trajectory of the criminal justice system in Trinidad and Tobago, and that is why I started from the

onset by saying that I agree with the hon. Sen. Hazel Thompson-Ahye about the importance of this simple amendment and what it stands to bring to the people of Trinidad and Tobago.

Now, Madam President, if I may take the honourable Senate to section 12AD of the Bill which is before us today. Now, this particular section, Madam President, deals with the use of video link evidence. And video link evidence as we stated before is a type of special measure that upon the application of the court it can be granted. So what this simply means is that either a prosecution or defence counsel can go to the court at a CMC stage, because again, through our learned Attorney General we already have rules of the criminal court being introduced. So at a CMC stage, very practically, an application can be made by counsel, defence or prosecution, for the use of a video link evidence. Again, as it relates to vulnerable witnesses.

But the court does not make this decision willy-nilly. The court, of course, will assess the judicial officer, which being the judge will assess the matter which is before her or him before such a decision made. So certainly, even relative to applications being made for video link evidence, there is a level of due process in the application. So therefore we do not have the rights of even the accused being trampled upon. And the learned Attorney General was specific when drafting this particular amendment to ensure that those rights, even of the accused were not trampled upon.

Now Madam President, the use of video link evidence, if I may respectfully submit, in this particular jurisdiction, as most of my colleagues who are attorneys-at-law would know, is governed by the common law. We are still in a rut, as it relates to the use of video link evidence, because of the principles in *R v Davis* and *R v Ellis*.

Now this decision, which is highly persuasive, the decision in *R v Ellis* and *R v Davis*, now Davis went straight up to the House of Lords. And in this particular decision, what the court would have stated was that the use of video link evidence would have severely compromised the fairness of the trial. So in that case, that statement was made. It was made that video link evidence, and in this particular case of *R v Davis*, voice modulation was used as well, for a witness. And the court did agree at that level that it affected the fairness of a trial in *R v Davis*. But what is an important obiter, what is an important learning that came out of that case is that the House of Lords deferred to the Parliament to intervene in cases in longstanding common law, as it relates to the status and exposure of vulnerable witnesses.

So while in that case, the court did say that the fairness of a trial may have been impacted upon, the court deferred to the Parliament and say: listen, in essence, you are the highest court of the land, you have within your hands the power to bring legislation that will diminish common law principles that stand as a blockade to criminal justice.

And that, Madam President, that Members of this honourable House, is what we are attempting to do here today. So by referring to this particular section we are, as a Parliament, we have come here to remove common law blockades that exist in our judicial process. We are here as a Parliament to, of course, bring law, statute that is now going to take precedent over any common law principle and of course give the police, give the prosecution the teeth that it needs in order to bring an end to crime in this country.

Now, Madam President, I would now like to go to Part 3, which is clause 6 of the Bill which is before us. This, Madam President, this particular section I believe is fundamental and it is so crucial again, as I may sound repetitive, to improving the criminal justice system. Because, Madam President, it refers to

evidence by electronic records. Now the question is, for the layman again and for the benefit of the non-lawyers here, the Bill itself speaks to what is an electronic record.

Now electronic record, in summary, is a record generated communicated, received, stored by electronic means in an information system or for transmission from one information system to another. Information meaning data, text, images, sounds, codes, telephone communication. In this country and in the world everyone has a phone and people use their phone as ammunition: “Ah go videotape yuh. Ah get ah tape of it. Ah have it”—

Madam President: Minister, you have five more minutes.

Sen. The Hon. R. Sagrarsingh-Sooklal: Thank you, Madam President. This particular section, Madam President, it is crucial. Because why? It means that these things that can we can tape on our phones are now admitted and can be admitted into evidence. Before we often threaten people that “ah have ah recording and ah have ah video and ah have this”. Under the previous section, Madam President, it was a very high standard that had to be proven before such recordings, such electronic records could be deemed as admissible into court. What the court will have to—what counsel who intends to adduce that as evidence or admit that into evidence, will have to prove, of course, they would have to prove the workings of the device which was used in order to be able to capture that information. And what you would have, and I have seen personally, because in a previous incarnation I believe and I will say publicly that I practised with one of the best criminal attorneys in this country, Pamela Elder Senior Counsel, and I have seen and I have personally witnessed where my senior was able to destroy evidence by the prosecution because of their inability to lay that crucial foundation in proving the workability of the device.

This Act, in section 14, by repealing section 14 and the new inclusions that have been made, this is fundamental because the workability of the device is going to be presumed as working well. And then of course, the sections, of course, go on to speak to if there is a doubt. There are sections, of course, that go on to speak to—yes. If however, there is a challenge as to the workability or the workings of the device—[*Interruption*] correct. So therefore there is still a process. There is still due process which applies to this particular section. All right?

But, Madam President, I respectfully submit and I know time is of the essence now, section 14B is crucial to this Bill and it is a very important piece of legislation that we have brought to the Senate today and I would passionately say that it stands to contribute significantly. It stands to contribute significantly to the manner and the type of evidence that we are now allowed to enter and to admit into court proceedings.

Very quickly, Madam President, the learned Attorney General would have focused on CCTV and CCTV recordings. This is dealt with in section 12AH of the Bill, which is before us. If I must say, Madam President, this particular amendment is a significant step in the Government's commitment to the digitization of our nation. There are several ways in which CCTV could be used, especially in criminal justice outcomes and it can also be used significantly in civil proceedings as well. When we think of how many matters that clog our judicial system, based on road accidents and road fatalities, CCTV can play, and the admissibility of this CCTV evidence can certainly play a crucial role in bringing an end to some of these matters where liability is being challenged.

So, of course, we have also taken that into consideration, and if I may finally look at section 12Z of the Evidence Bill, which is before us, this is Part 6. This deals with the issue of offences. Now what we have—to whom much is given,

much is expected and I believe this has been the modus operandi of our learned Attorney General where, in every piece of legislation that has been created, mechanisms have been put into place, for want of a better word when you ask: “Who will guard the guard?” These provisions are put in here to ensure that this happens. So for example, these offences that have been created, the proposed section 12Z which creates the offences, under this new law a person who disseminates, copies, modifies, or even erases recordings in an interview without lawful authority commits an offence and would have either to pay a fine of 100,000 or to be imprisoned for two years, or pay a fine of 500,000 or face seven years of imprisonment.

So, of course, this offence is an increasing offence and included in offences we are ensuring that the police is now liable, staff is now held liable. That is in order to, of course, maintain the integrity of the evidence.

So in closing Madam President, as a Parliament—

Madam President: Minister, your time had expired.

Sen. The Hon. R. Sagrarsingh-Sooklal: Thank you very much, Madam President. [*Desk thumping*]

Sen. Renuka Rambhajan: [*Desk thumping*] Thank you very much, Madam President. It is ironic that I follow-up on the hon. Senator and we share the same name. But it seems as if the only thing we share in agreement today is our first name. Regrettably, I cannot agree with my friend when she says: “I too practised. I was a defence counsel” and I say that to say this, when you prosecute, as my learned friend Sen. Lutchmedial indicated, you look at things differently. When you are a defence attorney, you look at things differently. Your aim, your purpose is completely different in the trial process and as a consequence, I stand, having sat in both roles and I know that Independent Sen. Welch has done the same. So I am

grateful to have my voice heard today on this piece of legislation.

Now, why do we need this legislation at all? The learned hon. Attorney General started his presentation by saying, and quoting rather, a list of things that were used to prevent this legislation. And he quoted a number of different things, the report of the committee. He quoted the Judges Rules. He quoted the Police Standing Orders. And my question is this: If we have all of these things in place already, why is it not being used appropriately? Is codifying an existing standard of conduct going to make it better? I would answer my own question. It will not. I suggest respectfully to the Members of the Independent Bench that what will happen is a plethora of cases being dismissed because police officers are incapable or unable to satisfy the statutory burdens that the hon. Attorney General wishes to place upon them, through this piece of legislation.

I will start by looking at the PACE Act. The hon. Attorney General said that the legislation, the amendments were drafted to take into account the English position. Interestingly enough, when you look at the Bill essentials, PACE is not referred to there. So it is not a comparator that was used. Yet, when we look at PACE, these amendments are exact replicas of the English legislation. The difference between England and Trinidad and Tobago is we do not have the resources that they do. When they passed the Police and Criminal Evidence Act in 1984, the English Parliament made it clear that if we are passing this and the purpose of PACE at the time, if you research it you will see it says is to institute a legislative framework for the powers of the police. If you are giving them legislative duties, you have to equally give them resources.

And I support my colleague, Sen. Lutchmedial, who indicated that there was a budgetary cut. So how are we doing the two things? “Yuh know in Trinidad, we say one hand doh clap. So yuh want de police do something but yuh not giving

dem nothing tuh do with it.” [*Desk thumping*] That is the reality.

Now, I know I will be challenged and I will be told that—the Attorney General said it. He said we have provided the plant, the machinery, the tools and the people. Where is it? I am not seeing it, with the greatest of respect. As well-intentioned as the legislative amendments might be, if we do not have the practical capabilities to implement it, it is merely words on paper. That is all it is. And when you are dealing with the fundamental rights and freedoms of the citizens of the Republic of Trinidad and Tobago, we cannot just reduce it to words on paper. Because a man who is held two o'clock in the morning by the police, who refuse to show him a warrant and take him to the station in his boxers and a vest and puts him in a cell where there is a hole in the ground for him to conduct his human business and he is told: “I have 48 hours to keep you in here.” And he says: “So what about my phone call?” And the police officer “say: Yuh have ah cell phone? Yuh want tuh use it?” That is the reality of the current process. So would the police have the relevant training, knowledge applicability to do that which they want to do through this piece of legislation? I say to you they will not.

Now photos, sounds simple, we are doing identification by providing photos. I am sure we have seen it done on television but the problem is the legislation starts to create a process and then it stops short. So you have several lacunas. With the photograph, you have to provide a lineup of photos. We do not know where the photos are coming from. We do not if there is a database of persons that are being used. We do not know if it would be, we have right now on social media, constantly on Facebook “Wanted” Beyond the Tape. Different shows have different persons and their photos are being placed on social media and on television. That affects the ability of a court to consider the admissibility of identification. Because if a witness says: “I saw him on TV” and then he goes the

next day and he does an identification parades, that identification parade gets thrown out. So we must understand the reality. As well-intentioned as we might be to try and fix the criminal justice system, you must first understand it. And to understand it, it means to be there with the people who are in the cells; who are suffering. [*Desk thumping*]

As much as we have good police officers, sometimes we have bad ones. And we have to make sure that if a standard of conduct is being given, it can be practised across the board without prejudice to anyone. And the only way that can be done is if the police is properly resourced. I tell you this to say, when I started the point about the photographs, currently in trial court in the High Court of both Port of Spain and San Fernando, when you do a trial, the police would provide you with photographs that are black and white. In 2021, black and white photographs are being used in the trial court. Worse, the police will come and say: “We do not have the paper print the photographs on, so these are photocopies.” I have done trials where photocopies have been used as exhibits.

4.30 p.m.

So if you cannot provide the material that the police need to prosecute a case in the courts of the Republic, how are you going to provide them with 12 photos to conduct a photo ID parade?

Station diaries, a lot of mention of it in the proposed amendment. There is an existing duty every criminal defence attorney I know my learned friend Sen. Sagrainsingh-Sooklall will know Standing Orders 16 and 17, that is the bible in the criminal court. And both 16 and 17 deal with an officer’s pocket diary and their station diary. And every time you ask them for their pocket diary, “we were never issued one, I have a personal diary.” When you ask for the station diary, it is missing. So there are several sections in this legislation that speaks to a notation

being made in the station diary. That already exists and is not being done. How can we fix that? Certainly not by passing legislation that starts the process and then stop short. There are several lacunas in the legislation when you look at the practical and the pragmatic purpose of trying to implement a new system to improve the criminal justice system.

Now, something that troubled me was the “Register of Interviews” that is to be maintained by the Commissioner of Police. The Commissioner of Police has a purpose, his purpose is not to approve forms. When you look at the definition section, the definition section says that the form, an approved form—a record is to be kept in an approved form and the “approved form” is defined in the definition section as:

“...a form approved by the Commissioner of Police;”

Why are we telling the Commissioner of Police how to exercise his discretion and how to do his job? The old people does say “sometimes yuh hadda bat in yuh crease”. [*Desk thumping*] If you want to legislate, let the Commissioner of Police understand what his duties are under the Act, and let him tell his officers how to implement it, using the very same Standing Orders and Judges Rules that currently exist.

If you are creating a legislative framework akin to the English standard—well if you look carefully at the English legislation you will see that the rights, freedoms, that are given to the accused it is maintained in the Act. Here, it is absent. Every single section of identification whether it is the parade, identification by photograph, identification in a group, confrontation, verification, or confrontation, all of them say if the person objects or his representative objects a note is to be made by the officer in the station diary.

Okay, so I object, what happen now? “Oh, it doh have ah clause fuh dat.” so

what is going to happen? If the legislation does not go further to say, “as a consequence no ID parade can be conducted” or “these are the circumstance within which an ID parade can be conducted despite the objection of the accused person”. That is proper legislation. You cannot stop short of every single section that deals with identification and objections. An accused person is innocent until proven guilty. [*Desk thumping*] So his rights, his freedoms, must be fiercely protected by the very same police who are supposed to protect and serve. But their agenda is different, their agenda at that point in time is to charge. So they are not looking to protect you, they are looking to put you in a cell. So how do we match the differing agendas? By using proper legislation, you do not come with a plaster for a sore. “Yuh doh say, fuh how much years we trying to fix de criminal justice system, and den yuh bring ah piece ah legislation that starts to copy something, and den stops when it gets to de good part.” [*Desk thumping*]

My learned friend, Sen. Sagrainsingh-Sooklal, said this side only making noise. I want to say this, where there is breach of persons’ fundamental rights and freedoms, I will never shut up. [*Desk thumping*] Because when you look at the right to representation, what is the first thing somebody “does do” when they get charged? Call a lawyer. Why do you need a lawyer? Because as a layman I do not understand what the police is telling me. I want somebody to come there who will explain to me if you sign this, this is what will happen. If you agree to this, this is what will happen. The right to representation in this piece of legislation, my learned friend says that the hon. Attorney General took great pains to protect the rights of the accused not being trampled on. Well then, let me take you straight to the section, 12S which deals with the recording of a statement, a confession from an accused person and 12S(3) says:

“the interviewee may be allowed to communicate with his attorney-at-law

relative or other person if...”

So I am putting a proviso on your constitutional right:

“...if no hindrance is reasonably likely to be caused to the process of investigation, or to the administration of justice...”

That is extremely dangerous because it says that my right as an attorney to see my client is subject to an officer telling me I am a hindrance to the investigation. And I know many people may not have a lot of respect for attorneys at law. We have been called many names.

Hon. Member: Shame.

Sen. R. Rambhajan: But you know what the reality is? We are certainly not a hindrance. We are the ones who ensure the police do what they are supposed to do, because if we do not, quite frankly sometimes you will find innocent people before the court.

Madam President: Sen. Rambhajan.

Sen. R. Rambhajan: Yes please, Madam President.

Madam President: You have five more minutes.

Sen. R. Rambhajan: Five minutes please—when we look at the legislation it is inconsistent with other pieces of legislation that side brought. For example, the right to representation in 12S, or I should say the lack of the right to representation because it is subjective to the police officer, is repeated in section 12G where you are given nine hours’ notice. Now, the section reads:

“...he shall be—

(a) allowed a telephone call...”—but (b) is the most important one—

“...a suspect is involved in an identification procedure, he shall be—

(b) given a reasonable opportunity to have his representative present...”

What determines what reasonable is? Why is reasonable in the circumstance? If you are legislating conduct, legislate everything. Tell me, what is reasonable? Is it four hours? Is it five hours? The same way “yuh gimme” nine hours as the length of time to organize an ID parade and present myself to the police station, what is reasonable? If we are drafting legislation to fix something, do it right.

My friends on the other side, Sen. Sagrarsingh-Sooklal said, “do nothing is this modus operandi” I beg to differ, the difference is “hurry bird doh build good nest”. [*Desk thumping*]

At the end of the day we are responsible to ensure that any legislation passed here is right, proper, and well balanced. It is fair to the people out there. Right now you have persons in Trinidad and Tobago who have fallen afoul of the criminal justice system because they do not have Internet access, they do not have a laptop, they do not have a cell phone with data on it. So when they have virtual hearings they cannot attend, they do not know what is happening. We need to be practical and pragmatic.

When we look at the way police officers may investigate or conduct an investigation it might not be to the standard that we expect in this legislation. And then what happens? A smart defence attorney like Sen. Sagrarsingh-Sooklal would make an application to the court to have the identification parade thrown out. And what happens to the matter now? It gets dismissed.

So, as well intentioned as this honourable House might be—this honourable Chamber rather—and the Attorney General, your intentions sometimes do not match with the practical reality of what is on the ground. For example, you passed a series of Ordinances, Public Health Ordinances, people getting charged. You see that there are issues right now with interpretation, you have the police charging persons under the Public Health Ordinance, and you know what is happening? It is

being dismissed en masse. So “yuh” pass legislation, “yuh” tell the police to enforce it, and then when they do try to enforce it and they go before the court it gets dismissed. Alicia’s Guest House, big deal everybody talked about it, it was dismissed. All 15. Recently this year since the year started, 10 were dismissed in Arima. Why? Because of the non-performance of the police officers in bringing the case to the court.

So what this legislation would seek to do, Madam President, with the greatest of respect to the hon. Attorney General, is to create more problems for the police, greater avenues for the guilty to go free, and opportunity for the innocent to be abused. And that is something, in my respectful view, we cannot support.

When you look at several of the sections, group identification for example, the ability to take an accused person who is in handcuffs in a public place in Trinidad and Tobago where he might run, Sen. Thomson-Ahye spoke about it that we have escape artistes. Are we really looking at the fundamental things that we need to look at to try and fix this system? Or are we just playing for the public perception that we are trying to do something? That is a question I would leave for the public to answer. But I would say respectfully to the Members of the Independent Bench that this piece of legislation needs a great deal of rework. It stops short on several main points, and it creates a responsibility that the police simply do not have the resources to perform. Madam President, this is my submission. I thank you. [*Desk thumping*]

Madam President: Hon. Senators, permit me to congratulate Sen. Rambhajan on her maiden contribution. [*Desk thumping*] Sen. Vieira.

Sen. Anthony Vieira: Thank you, Madam President. Madam President, before I begin let me just say that while I am known as an intellectual property lawyer, I was also for a couple years a prosecutor in the British Virgin Islands as Senior

Crown Counsel there, and for many years I practised as a defence criminal lawyer, often with Mr. Vernon De Lima. So I do have too some background in criminal practice and procedure.

The law of evidence is indispensable to our system of legal practice which is based as we have heard on English common law. It is the law of evidence which guides judges in determining the facts underlying the disputes before them, re-enforcing the idea that if the facts are inaccurate then the law is not properly enforced. Our Evidence Act took effect in 1848 and has only been amended as we have heard 30 times in the past 173 years. So, this legislation is a big deal in that it speaks to the adjudicative procedures fundamental to a fair trial.

I would like to quote Britain's former senior Law Lord on one of the world's most astute legal minds, Baron Tom Bingham, in his book *The Rule of Law*. He says:

“The right to a fair trial is a cardinal requirement of the rule of law...

First, it must be recognized that fairness means fairness to both sides, not just one. The procedure followed must give a fair opportunity for the prosecutor or claimant to prove his case as also to the defendant to rebut it. A trial is not fair if the procedural dice are loaded in the favour of one side or the other, if there is no equality of arms. This is sometimes overlooked, and evidence is not infrequently the subject of objection in criminal trials as ‘prejudicial’ when the real basis of the objection is simply that it is damaging to the defense. In truth, of course, almost all prosecution evidence is, or is intended to be, damaging to the defense.

It must secondly, be accepted that fairness is a constantly evolving concept, not frozen at any moment of time...”

Wise words indeed, words we should use as guide posts in navigating this

legislation. We are in an age of growing technology where paperless courts and virtual hearings are the new normal. The amendments brought by this Bill seek to update our evidence law in meeting some of the challenges posed in the 21st Century. In the main the amendments treat with the conduct of identification procedures, the use of witness identification evidence, the admissibility and use of electronic evidence and records, in particular, video and audio recordings, virtual hearings, and evidence by video link, controlling the use of archived evidence, and the protection on vulnerable witnesses.

Now, as these amendments clearly have far reaching effect, it was important to get the views and support of key stakeholders. And so, it went to a select committee and it should be noted that the Bill was carefully scrutinized by the Judiciary, the Law Association, the DPP, the police, the prisons, the Children's Authority, the Legal Aid Authority, all of whom have made valuable contributions and recommendations.

The special select committee appointed to consider and report on the Bill, of which I was a member, reflected on all comments and recommendations with a view to melding them purposefully, harmoniously, and to bring clarity in this important area of the law. Now, there is always—*[Electronic device goes off]*

Mr. Vice-President: Would the Senator with the offending device please step outside for five minutes, turn it off, make sure everything is silent and then return.

Sen. A. Vieira: Let us not beat around the bush. When you are talking about the law of evidence there is always going to be different points of view. Many of them will have degrees of validity. That is the nature of the subject. There is always a degree of tension inherent in the law of evidence, inherent in the framework of rules which would have developed over time to protect the fairness of trials.

There is a degree of tension in the two main aspects of evidence law. Those

rules which exclude logically probative evidence and those which allow evidence which is not in itself logically probative to be given. In other words, the rules of inclusion and exclusion and the exceptions to them. And that is the tension, the legal draftsmen, the various stakeholders, and we in this Senate must grapple with, how to accommodate competing interests and goals generated by rights? How to balance competing values and principles on the scales of open justice? How to reduce the risk of wrongful conviction in individual cases? These challenges and the challenges addressed by evidence law, they are timeless. And as legislators our task is to provide the framework, a happy medium for cases to be dealt with fairly, when using new technology and in extreme situations where witnesses may be vulnerable to the likes of organized crimes, terrorists, and those who would intimidate them and those closest to them.

Sen. Thompson-Ahye places great emphasis on the phrase “in the interest of justice”, reminding us that ultimately it falls to the common law and to the courts to determine, to develop, to refine, what is consistent and what is inconsistent with the rule of law, the litigant’s right to a fair trial, and what is in the interest of justice, getting the right balance when competing rights, interest, and goals are concerned, and where many principles operate asymmetrically. It is challenging, it is challenging for the courts, and it is challenging for us as legislators. But we must rise to the occasion.

The Legislature has been called upon and must perform that balancing act. Are we loading the procedural dice in favour of one side or the other? I do not think so. Is this consistent with our concept of fairness today? I think, yes. And while balancing these concerns, does the legislation have sufficient regard to broader institutional values, the notion of open justice, and the growing impact of human rights? I believe it does. I believe this legislation strikes the right tone, and

balance, and of course we will deal with the outstanding and the new issues that have been raised by specific stakeholders at committee stage.

Now, Sen. Lutchmedial spoke about the difficulties encountered by the lack of paper at police stations when there late at night. And it is a real problem. I have had that experience as well. We also heard about black and white photos and photos on photocopied paper. Personally, I think this actually supports the need for electronic evidence where you can see photos on a screen in colour. These needs have to be addressed, there is no doubt about that. But in the grand scheme of things, is that a reason to criticize, to hold back, or challenge this legislation? To focus narrowly on tangential and even though important issues such as paper and photographs, I think misses the broader picture.

Before concluding, I would just like to put on record, I would just like to express my disappointment about the exclusion of anonymous witness evidence. It needs to be noted that the Judiciary, the Law Association, and the DPP, all recognize the dangers inherent in anonymous witness orders where they infringe upon a defendant's opportunity to see his accuser. But all agree, all agree, that they may at times be necessary, and should be allowed under strict conditions with robust criteria in place striking the right balance for such orders to be made. Many stakeholders are going to be very disappointed by this omission. And I think we may have missed an important opportunity.

Our way of life is under attack when witnesses are assassinated and it is happening, let us not be blind to that. When it comes to the preservation of our way of life and our rights and freedoms against those who would seek to destroy them, organized crime, terrorists, we should not be hesitant to create exceptions where necessary. We need to reason from pragmatism, not slogans or propositions which set up false paradoxes. We need to strike a happy medium. All legislation is

important, but when it has epoch-making dimensions as this Bill does, and when it will profoundly impact one's profession, it is really an honour and a privilege to be part of the lawmaking process. [*Desk thumping*] Mr. Vice-President, I thank you.

Mr. Vice-President: Minister of Tourism, Culture and the Arts. [*Desk thumping*]

The Minister of Tourism, Culture and the Arts (Sen The Hon. Randall Mitchell): Mr. Vice-President, I wish to thank you for giving me the opportunity to contribute to this Evidence (Amdt.) Bill. And Mr. Vice-President, these amendments seek to strengthen the criminal justice system in keeping with the overriding objective of the criminal procedure rules and that is to deal with cases justly. And that includes dealing with the prosecution and the defence fairly, it includes ensuring the protection of all the rights of an accused person, and considering the interest of the accused witnesses, victims, and the jurors.

In the main, Mr. Vice-President, this amendment Bill does a number of things. In Part 1, Divisions 2 and 3, it creates a framework in parent legislation for the proper conduct of criminal investigations by the police for the gathering of evidence as it relates to the identity of suspects and interviews and oral admissions. And in Division 4, it sets out the circumstances where the court in criminal proceedings can give a direction that special measures be afforded to certain vulnerable witnesses when giving evidence. And it also allows and identifies the test for any person to give evidence by video link. There are supplemental provisions which are provided for in Division 5 which treat with the admissibility of evidence via CCTV, and importantly gives a discretionary power to the court to exclude any unfair evidence gathered under this new part A.

Mr. Vice-President, I wish to turn to the contribution of Sen. Lutchmedial. And in Sen. Lutchmedial's contribution she argued that it was a breach of the accused constitutional rights to be given at least nine hours to have his

representative attend. But Mr. Vice-President, I think Sen. Lutchmedial may have misinterpreted or not read the section 12G carefully and seen exactly what it intends to convey. Because in section 12G, Mr. Vice-President, it says at:

“(3) For the purposes of subsection (1), a suspect shall be given at least nine hours’ notice of the time and place at which the identification procedure is to be conducted.”

And in 12(1)(2)—12G(1)(2):

“...where a suspect is involved in an identification procedure, he shall be—
(b) given a reasonable opportunity to have his representative present during the identification procedure.”

And that is it. I respectfully submit, Mr. Vice-President, that that is entirely fair in the circumstances. And perhaps Sen. Lutchmedial does not know or does not recall that in Standing Order 29, section—Standing Order 29 of the Trinidad and Tobago Police Service, section 8C only gives a maximum of 12 hours. So this is very fair in the circumstances.

And, Mr. Vice-President, I also submit that a suspect has the right to representation but a suspect does not have the right to delay criminal proceedings indefinitely. Sen. Lutchmedial also chastised the very comprehensive nature of the framework in Part 1 saying that it was too inflexible and it should be in Regulations.

5.00 p.m.

But, Mr. Vice-President, this is a broad framework and there is the need for further specificity in these circumstances, for example, where interviews are concerned in the parent legislation, it is not contained. But this is where regulations will now be needed to, for example, treat with how you deal with deaf persons, how you deal with blind persons. The time for—that interviews may be allowed to

happen and what happens when the interviewer and the interviewee need a break. So there is that further need for specificity.

And then on the other side of it, Sen. Rambhajan spoke about the clauses in the legislation stopping just before we get to the good part. And Sen. Rambhajan knows or ought to know, as Sen. Lutchmedial has argued, that not everything can go into the parent Act. The parent Act here gives a very broad framework. But for example, where ID—where the Division 2 is concerned for identification procedures, the Attorney General has circulated and perhaps Sen. Rambhajan did not have the opportunity to have a look. But Attorney General has circulated regulations, the Evidence Identification Procedures Regulations 2020 Draft Regulations, and these regulations for those 16 sections, these regulations are 45 clauses long. So there is that need for further specificity that will be provided in the regulations.

Mr. Vice-President, let me turn to clause 4. And clause 4 of this Bill creates a new Part 1A which is inserted into the Act and it lays down—it creates five new divisions and lays down the legislative framework as I indicated, for the police in the conduct of criminal investigations, and the treatment of certain witnesses and evidence in criminal proceedings. So the Attorney General touched on it. Division 1 creates a number of definitions that are applicable to this new part. Division 2 treats with the framework for the conduct of identification procedures in the management and performance by the police in criminal investigations. And, Mr. Vice-President, as you are aware there are a number of methods by which the police are able to gather evidence of identity, that the suspect was the person who committed the actus reus of the offence in question. There are methods that are scientific, and those methods are DNA and fingerprinting. But of course the simplest method is the method of identifying the accused as the person who has

committed the offence in question and that is to call an eye witness to see whether that eye witness can or cannot identify the persons suspected of committing the crime.

And the basic rule, Mr. Vice-President, is that where there is any possibility of a dispute arising at a suspect's future criminal proceedings about him being seen in a place, committing certain acts, the police should give him a chance of an identification procedure at which the witness or the witnesses can try to pick him out. And in the proposed sections 12A and 12B, these first two sections set out the procedure involving the investigating officer and the procedure that occurs prior to an identification procedure.

And in 12A the concept of first description is introduced and this is what would happen during the initial stages of the investigation. Usually, the victim of the crime would attend, the police would speak to the victim of the crime and the investigating officer must take a record of the first description of the suspect given by the eyewitness. It must be, according to the Bill:

“...in an approved form...

...details...the description to be accurately produced...in a...form...”—which

“... can be given to the suspect or to his representative...”

Fairness.

It must also include a statement and this is where the Turnbull guidelines come about. It must also include a statement which also describes the surrounding circumstances, that is:

“...the distance from which the eye-witness was from the suspect;

...the lighting conditions...

...the length of time...”—the observation was made.

The number of times the witness has seen the suspect before, any impediments to the eyewitness' view and the length of time between the original observation and the subsequent identification to the police. The investigating officer must ensure that the first description has been recorded in the approved form before the eyewitness is shown any photographs, or any computerized artist's sketch. And this, Mr. Vice-President, is to ensure and to be very clear that the witness' description is a good fit for the actual appearance of the suspect, prior to establishing the identity of deception, totally fair, totally fair.

The other clauses make provision for the eyewitness and the suspect to receive records of the first description given. So the eyewitness, him or herself, must receive the record of the fullest description as well as the suspect or, his or her representative. But further, 12B establishes in the conduct of the investigation procedure, the investigating officer may use photographs to assist in establishing the identity of the suspect. And the procedure mandates that a minimum of 12 photographs are seen at one time and it is expected that the police have some sort of rogues gallery, a number of photographs of persons who are known to them, and those would be shown to the victim or to the complainant, in an attempt to establish the first description of the suspect.

In 12C, 12C describes where an identification procedure should or should not be conducted. It says that:

“...an identification procedure may be conducted where the investigating officer in charge of the investigation considers it to be useful”—and the identification is in dispute.

And of course where the requirements for recording and submitting to the eyewitness and the suspect or, his representative the recording of the first description. But it says that:

“...an identification procedure shall not be conducted unless the suspect is known and available and—

...an eye-witness claims to have seen the suspect...”

—and the eyewitness is:

“...available”—and has the—“ability...or a reasonable chance...to identify a suspect.”

It should also not be conducted where the same eyewitness and the suspect participated in an identification procedure and a subsequent identification procedure shall not be conducted with respect to the same eyewitness and suspect.

And then it says:

“An identification procedure need not be conducted where—

...it is not practicable to hold one; or

...where—

...it is not disputed...the suspect is well known to the eyewitness.”

That is the case of perhaps a husband and wife, family members, neighbours, close relatives.

12D identifies the responsibility of the identification officer and specifically prohibits that person from being involved in any way, form or fashion, in the criminal investigation of that specific offence.

12E, Mr. Vice-President, treats with the order of priority of the types of identification procedures that are allowed and it identifies six types of identification procedures and states the order of priority in which they are to be conducted, subject of course to practicability or the availability or cooperation of the suspect starting with an identification parade. first order of priority.

The next proposed section, treats with the rights, caution and consent of the suspect. And with respect to the rights of the suspect this clause mandates that the

suspect must be made aware of his right to—

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

Sen. The Hon. R. Mitchell: Thank you—must be made aware of his right to have a representative present and his right to contact that representative and arrange for, as I said before, a reasonable time to which the conduct of the identification procedure is to occur. And reasonableness, what is reasonable, is a matter that is known to attorneys and is known in the criminal justice system. Those are matters that the courts pronounce upon all the time.

Mr. Vice-President, in terms of—let me turn to Division 4. Division 4 treats with a discretion of the court to allow for special measures for witnesses, including the accused, to give evidence to secure their protection and testimony. And I would say to Sen. Lutchmedial and to Sen. Rambhajan, who keep arguing or kept arguing that we simply cannot get it done, we simply cannot get it done. The police does not have the ability to get it done. But I will say to both Senators, we have to get it done. We must get it done. Witnesses, Mr. Vice-President, give their evidence in open court, with the identity disclosed to all and for a long time in this country, we have had the problem of witness intimidation, and the elimination by murder of witnesses to serious crime in this country. And in other jurisdictions, and for some time now, the courts have given the discretion for witnesses to even give their evidence anonymously. And it was in the previous version of this Bill taken out, or in other jurisdictions, courts have allowed for the departure from the normal course of giving testimony in criminal proceedings through special measure direction, whether it be from behind a screen, or that the proceedings be held in camera as it obtains here in matters of rape.

These special measures have been allowed in the interest of securing justice and for the protection of witnesses from intimidation, reprisal, and to protect the

identities of law enforcement, and for example, informants, whistleblowers, et cetera. And this new provision in Division 4 allows for the court's discretion in issuing a direction that a witness shall be assisted and allow to give evidence utilizing a special measure, direction or combination of special measures. And Sen. Sagrarsingh went through some of these, closed in camera proceedings, evidence by video link, the use of special screens, and Sen. Sagrarsingh also spoke about what a vulnerable witness is defined as, someone:

“...whose evidence is likely to be affected by reason of—
...the age...immaturity...
...physical”—and—“mental—disability.”

Someone who, for example, has suffered post-traumatic stress disorder, someone who is fearful and intimidated, as a witness and a:

“...witness being a virtual complainant in...a sexual matter”
—and that the quality of evidence is likely to be diminished by reason of fear or distress.

I will go in the limited time that I have quickly to Division 5 and to speak about in Division 5, the proposed section 12AK, which gives, or confers onto the court a power to exclude prosecution evidence obtained illegally or unfairly owing to a breach of this new Part 1A and:

“the circumstances”—surrounding how—“the evidence was obtained.”

And, Mr. Vice-President, this is a significant safeguard being placed into the legislature. And this power would ensure that in criminal proceedings the defense is treated fairly and that the rights of the accused is preserved and protected.

And for example, and Sen. Ahye spoke about it, in the case of an alleged confession procured by force, a failure to use audio visual recordings to support a

confession where the accused alleges and proves his injuries that force was obtained—used to obtain that confession, that confession is likely to be thrown out. But on the flip side, adherence to the procedures by the police and by police investigators, the prosecution will likely be protected from false allegations of brutality and bias.

Mr. Vice-President, in conclusion, I say I commend these amendments to this honourable Senate. These amendments will further strengthen the criminal justice system and aim to deal with cases justly, fairly, while ensuring the interests of all parties in criminal proceedings, and Mr. Vice-President, I thank you for the opportunity.

5.15 p.m.

Sen. Wade Mark: Thank you, Mr. Vice-President. Mr. Vice-President, I am very happy to contribute to this Bill to amend the Evidence Act, 2020. And I want to say from the outset, I continue to protest over the suppression of my rights to speak for my full 40 minutes because of the PNM's decision to use its majority to accomplish that objective, but time is longer than twine.

[MADAM PRESIDENT *in the Chair*]

Madam President, this is what I would like to describe as a snake-oil piece of legislation. It represents a concoction of questionable and deceptive clauses where deliberate attempts are made to weaken what I described as the guardrails of our democracy. And, Madam President, I will show where the Government is seeking to place greater legislative-making power in the hands of members of the Executive at the expense of the Parliament.

I want to say, Madam President, democracy dies not with a big bang, but it dies slowly, steadily and sometimes imperceptibly. The amendments being proposed are very wide and far-reaching and even sweeping, and could constitute a

very fundamental change in the culture of criminal investigations within our country—suspect identification procedures, confession statements and the mood of examining witnesses—all of which are matters that are being altered by this Bill—go to the very root of the criminal justice system and investigative procedures.

Madam President, there is no mitigating the fact that there is an abysmal crime detection rate in Trinidad and Tobago and equally, abysmal conviction rate. Citizens have become all too familiar with serious crimes being perpetrated by their loved ones, and when those perpetrators are caught and prosecuted, these criminals are still able to escape the clutches of justice, because of some technicality. So we understand this. However, it may be desirable, Madam President, for the Government to introduce legislation in order to regulate these critical procedures. And this Government, along with the Attorney General, as usual, seems somewhat hell-bent on decimating, reducing, eroding and subverting constitutional rights.

Madam President: Sen. Mark, I will ask you to withdraw that statement. It is improper.

Sen. W. Mark: Madam President, it is my view, but if you are guiding me to withdraw it, it is an opinion that I am entitled to express, but I am guided by you. I withdraw. And I raise this point in the context, Madam President, of our Parliament being relegated to a role that is not envisaged in our Constitution.

This Bill seeks to entrust regulation-making power in the hands of the Executive, without ensuring any form of parliamentary scrutiny or oversight. Madam President, this is dangerous. For example, the Bill seeks or speaks of an approved form. This form is not a mere administrative form, such as a form used to make an application for a licence or a passport. This form will be a statutory instrument which is being introduced as a safeguard to citizens when undergoing

identification procedures. Madam President, in other words, the recordkeeping function of these forms contributes to the overall fairness of the identification procedure and may become a critical piece of contemporaneous evidence at a trial.

In this regard, Madam President, I ask: Why should that form be created and approved by the Commissioner of Police? The police are about detecting crimes and obtaining convictions. And, quite frankly, the police have little or no interest in creating a document that will preserve the interest of a suspect. Madam President, it is our position that this form must be approved by the Parliament, not by the Police Commissioner, and this is important to ensure overall fairness, and it will also bring parliamentary scrutiny to bear on this exercise. Parliament should and must have oversight of that form, not the Police Commissioner.

Madam President, another instance where this legislation is disrespecting our Parliament, deals with a provision or a clause that relegates, again, the importance of parliamentary scrutiny and oversight, as it deals with the issue of regulations for the use and admission of CCTV evidence. This time, Madam President, instead of these regulations being laid in Parliament, the Attorney General has entrusted, in the legislation, this function to a triumvirate of persons: the Director of Public Prosecutions, with the greatest respect; the Minister of National Security and the Commissioner of Police. Those three persons will make regulations.

Madam President, I am wondering if these are the same regulations that we got yesterday evening at 3.04 p.m.? It is draft regulations that we have received. But what is the significance and/or importance of these regulations? You tell us these are draft. But, Madam President, what is the role of the Parliament in looking at these draft regulations when the legislation does not give the Parliament the overall responsibility of approving these regulations that have been circulated,

because nowhere in the legislation are these regulations subject to an affirmative resolution of the Parliament. So I can only assume, Madam President that the regulations that we have before us that have been circulated are consistent with this draconian measure that we have in the legislation dealing with evidence, Madam President, and putting evidence in the hands of members of the Executive. So the Executive, Madam President, will be responsible for formulating what we have before us in the Parliament today. Madam President, we reject that completely. This must be withdrawn and if it is to remain, it must be subject to an affirmative resolution of the both Houses of Parliament. [*Desk thumping*]

Madam President, if these were just administrative matters, that may have some degree of acceptability. But, Madam President, the provision that is in the legislation also includes what is called wide-sweeping power which allows the DPP, the Minister of National Security and the Commissioner of Police to make regulations for and I quote, Madam President, in accordance with the law that is before us, the Bill that we are debating.

“...such other matters as are necessary or expedient for giving effect to this Part.”

So, Madam President, what is this Parliament really in existence for? Just to rubber stamp legislation and to give to the Executive the power to make regulations, and we have no role after those regulations have been made? We will see a legal notice somewhere outlining those regulations? Madam President, I must remind this honourable House, this is how democracies begin to die when the Parliament that is supposed to be the bastion of democracy is undermined, and when the Executive arrogates onto itself, as we are seeing in this piece of legislation, power of legislative or lawmaking. That is wrong. That must be rejected, Madam President.

Madam President, the Attorney General is giving, as I said, the DPP and these other persons, all of whom are prosecution oriented. Where is this balance, Madam President? You are giving people who are prosecution oriented to make regulations for matters concerning the regulation and admission of CCTV footage evidence? Madam President, where is the balance? Where is the proportionality? Who is seeking the interest of the ordinary citizen in our country?

This Bill, several provisions of it, is what can simply be described as a prosecution paradise. This is in favour of the prosecution. And in our Constitution, there is a section called section 5, section 5(2)(f), which talks about a fair trial, Madam President, by an independent tribunal. But if you have, Madam President, from the outset, this matter being skewed in favour of the prosecution, then we are in trouble as a Republic and as a democracy. [*Desk thumping*]

Madam President, I emphasize the importance of looking at the role of our Parliament in terms of scrutiny and oversight. Those functions are very critical, Madam President. We cannot continue along the path of giving members of the Executive, Madam President, that kind of lawmaking power. At the end of the day, if we do this, Madam President, we will not have the—

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

Sen. W. Mark: Thank you, Madam President—democratic legitimacy, Madam President.

Madam President, it is clear that when we look at the legislation, there are many weaknesses in the legislation. I want to also point out to you, Madam President, there is a section of this legislation which, again, Madam President, gives power to the Executive to make regulations. Madam President, that is unheard of. We cannot give the Executive the power to make regulations that will deal with people's fundamental rights and liberties. This must be either subject,

Madam President, to an affirmative resolution or it must be removed.

Madam President, when we go to the legislation, I want to take you briefly on this journey where we focus on electronic communication, electronic record information and data information as well as information systems. There is a section, Madam President, that I need to bring to your attention and to try to get some clarification. We are seeing, Madam President, in clause 6 of the legislation—and if we go to what is called new section 14B(1) and (2), we are talking about:

“Where a device or process is one that, or is of a kind that, ordinarily produces or accurately communicates an electronic record...”

And it goes on to talk, Madam President, of:

“...the court shall presume that in producing or communicating that electronic record on the occasion in question, the device or process produced or accurately communicated the electronic record...”

And it goes on to indicate how and why.

I would like to ask the honourable Senate, at this time, and I would like to ask the Attorney General, in particular, when it comes to sub (4) of this same clause 6, it deals with the following concepts that are very vague and very difficult to interpret because there is no definition for the interpretation of these concepts. So, Madam President, in subclause (5) or clause 6 sub (5), it reads:

“Where it is intended to prove the authenticity of an electronic record as evidence, it is permissible to have the evidence of the expert relating to the authenticity of an electronic record...”

Nowhere are we told what and who is an expert. We do not know the definition of the expert. It goes on in subsection (6) to say that the certificate presented by this expert would have to be—well, no.

“The certificate under subsection (5) shall be prepared by—

- (a) a person occupying a responsible position in relation to the operation or management of a specified security procedure provider...”

Madam President, what is a specified security procedure provider? I do not know. There is no definition of a security procedure provider? What is that? We need clarification and definition. And then we talk about an expert appointed or accepted by the court. Again, Madam President, no definition for guidance. It is vague, Madam President, and that is dangerous in this kind of legislation. Madam President, I know that my time is up.

Madam President: Yes.

Sen. W. Mark: I want to thank you for the opportunity for making this brief contribution. Thank you so very much.

Sen. Evans Welch: Madam President, I express my gratitude for the opportunity to address this honourable Chamber on this most significant and important Bill. Madam President, my examination of this Bill reveals that, broadly speaking, it can be divided into two categories, and I think it is very important to make that point from upfront. One relates to the police investigative procedures in relation to identification procedures with respect to a suspect and also the procedures relative to the taking of statements from persons in police custody; and the second category really relates to updating the methods by which evidence is received in a courtroom from a witness. The traditional method being, the witness comes and gives viva voce evidence and is cross examined. Now, there are a number of ways which evidence can be received, not in that traditional manner, from both a witness and an accused person.

When it comes to that second category that this Bill deals with, I am in full

agreement with its provisions. I think they are very progressive. The special measures that are being introduced, the CCTV footage being evidence, electronic records, et cetera, and I will address that later if I do have time to look at some of those measures as to why I support them. However, when it comes to the earlier part, that is the investigative procedures with respect to identification of suspects and recording of statements, I do have some concerns in that regard which I, perhaps, think 20 minutes will not allow me to fully address, but which I propose to deal with to the extent that I can during the committee stage.

However, before speaking of my concerns, with respect to the identification procedures, let me say, I commend certain aspects of this in that it is very progressive in that it introduced new concepts in the investigative steps relating to identification of suspects in or out of police custody. Now, I think it very important, the measure which states that the identification procedure—let us say an identification parade should be video recorded, because quite often in a courtroom, in a criminal trial, there is a lot of contention over what took place on an identification parade. So if you have a video recording of that parade, it should largely settle that issue, and it is also important, the measure by which the Bill proposes that a copy of the DVD recording of that identification procedure be provided to a suspect or his representative.

I also applaud the fact which does not currently exist in police procedures as they presently stand, whereby the first description of a suspect is provided—the first description of a person committing a crime is provided to a suspect or his representative prior to any identification procedures being held. This is modern, it makes a lot of sense and it is a measure which I support.

I also commend the expansion of identification procedures to include moving video images of a suspect as well as the order of priority of identification

procedures, with identification parades being number one in that priority. And the reason why that is important is because quite often the admissibility of identification evidence turns on whether the procedure adopted for identification in a police station was the correct procedure, and that is a very subjective matter and, quite often, a case may fail on that basis. A court may consider the identification procedures that were adopted were compromised.

So if there is a prioritization and a layout of the manner in which it should be proceeded with and which procedure should be given priority, and those are guidelines which the police are required to follow, then in those circumstances there is less room for contention as to what should have been done or should not have been done, and the issue should be a fairly simple one when it comes to the courtroom. There is also an onus placed on an identification officer to ensure that certain procedures are adopted to preserve the integrity of the identification process.

Now, Madam President, I also salute the intention of bringing all these measures into one place where they can be ascertained. At present, investigative measures are spread out between the Judges Rules, the Police Standing Orders, as well as the common law. So if one has it incorporated into one place, it makes for certainty of knowledge on the part of the suspect as to his rights. It also makes it very clear to police officers, what exactly is the required procedure and it makes it very easy to ascertain that procedure.

What I questioned, however, is whether—and I know Sen. Lutchmedial has made the point—it is ideal to put this into parent legislation. Whether it is ideal to make police procedures law and a legislative measure in that sense, a legislative provision. Because we who are familiar with the practice of the criminal law would know that presently, police procedures are governed by the Standing Orders and

the Judges Rules, and if there is a breach of any of those procedures, it does not automatically exclude the evidence.

5.45 p.m.

There are numerous cases which say these procedures are merely administrative guidelines and if unintentionally or inadvertently there is a breach, there is not an automatic exclusion but the court has a discretion to exclude. However, when these provisions are put and made part of the parent legislation they give a connotation that they carry some greater significance. It is no longer just a breach of an administrative guideline but where there is a misstep it almost constitutes a breaking of the law by the police, whether intentionally or inadvertently or not. And on the face of it the connotation or implication is that it may carry greater significance or consequences relating to admissibility, than a mere breach of an administrative guideline.

That was one of my concerns about elevating procedures such as these to legislative provisions in a parent Act and that concern has to some extent been allayed by the provision which provides under Division 5, what is called Division 5 of the Bill, under 12AK which says that a breach of these measures may result in the exclusion of evidence. So the discretion to exclude or to admit is still preserved notwithstanding it has been elevated to a legislative measure. The court still has a discretion to allow such into evidence. So to some extent that has allayed my fears but I still maintain that for other reasons it is better to have these provisions enacted pursuant to some form of delegated legislation where we have some sort of code of practice created which could perhaps be called the commissioner's guidelines in respect of identification procedures and the taking or recording of statements.

Now, Madam President, I do have some issues with some of these measures.

As I have said, they are progressive indeed but there are some provisions in this legislation which concern me, in this proposed legislation. In terms of the order of priority, immediately after identification parades, the order of priority suggests the next step that should be taken if an identification parade is not practical is to be shown moving images—for a witness to be shown moving images of a suspect and that comes ahead of public identification in a public place, which we criminal practitioners are familiar with, you put a suspect among a number of persons in the public and the witness is expected to make an identification in those circumstances. The reason why I am concerned about putting “moving images” above putting a suspect in a public place is that with respect to “moving images” coming second after identification parades, the difficulty I have with that is that the proposed legislation specifically states that when it comes to moving images the suspect is not to be present.

As far as I am concerned, if a suspect is going to be identified he should at least know and be able to understand that that is taking place and be aware of that process himself taking place. When he is identified in a public place he is immediately advised, “You have been picked out”. Where you have moving images done in a private room somewhere, that is slightly different. He is not really participating in the process unless of course moving images can be taken care of by the regulations in a manner to avoid such.

I am also very concerned about the fact that 12C(5) is a departure from existing practice and it is a departure from the existing practice whereby an investigating officer is under no circumstances allowed to conduct an identification procedure with a suspect. The present practice is that someone who is totally and absolutely not involved in the investigation is the one who conducts such a procedure. I see every reason why that practice should be maintained. And this

notion of introducing a situation in which an investigating officer is allowed to conduct an identification procedure in some circumstances, I see it as unnecessary and a wrongful departure from existing practice. And there is nothing about the circumstances in which the Bill is going to allow this, which really explains why such a measure is being introduced.

For instance, it allows this where the witness claims to know the suspect and the suspect denies this. Well, this is a classic case in which an independent officer conducts the identification parade or other identification procedure where the suspect denies that the witness knows him. Another situation in which it is going to be allowed is where a witness and suspect are not well known to each other and neither party disputes this. That is another circumstance in which it is clear that an officer involved in the investigation or the investigating officer should not be the one conducting it.

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

Sen. E. Welch: Madam President, there are principles regarding first description which I would seek to address in committee stage in that I think, whereas the essence of the first description being provided makes a lot of sense, I think a lot of the principles regarding it in the proposed Bill make it very cumbersome. For instance, the first description must be taken by the investigating officer. Quite often a first description is not given to an investigating officer. It comes soon after a crime is made, is committed and it is reported to the first responder or to the first police that a witness meets on entering into the police station. So there is no reason or sensible requirement to put that it shall be given to the investigating officer or someone involved in the investigation. It should be to any officer to whom a crime is reported.

There is also the notion of expanding first description to include a whole

number of other notions, such as what was the weather like, the lighting conditions, et cetera; the length of time you had them under observation. That is not literally and grammatically part of the first description and there is no reason to expand first description to include such concepts because it makes it difficult, because on presentation and making a report one does not have time to record all these other details. The focus is on what he had on, what colour was his clothing, his facial features, et cetera. So this is an unnecessary complication.

Madam President, my other concern is the question of it is stated that a statement should be recorded by video; a statement being given by a suspect should be recorded in the order of video first, audio and then written statement if the first two are not practical. This is not a suggestion which I agree with because when carefully considered it eliminates the written statement with which we are usually familiar. The written statement ought not to be eliminated. What should be done is that there should be a requirement of a video recording of the written statement as opposed to the replacement of a written statement with simply a video recording of a suspect giving a statement. They should go hand in hand because what is being stated here is that you get rid of the written statement, you use a video recording only and you bring the video recording into court and you tender it in evidence. That creates a number of difficulties because when you are in a trial you cannot constantly be calling a technician to play a video.

I have been in trials both as prosecutor and as defence attorney in which video—numerous times in which video recordings and statements have been used and once one looks at that video one puts that aside and your statement, signed statement by the suspect is what is used thereafter for every purpose throughout the trial. It is cumbersome and impractical to eliminate the written statement and use video throughout because at every stage of a trial you may need to refer to that. So

I suggest that that is an unnecessary and complicated provision. Now, I am also very, very concerned—I am also very concerned about 12Y, because what 12Y is saying is that the video recording of a witness statement can be tendered in evidence instead of the witness being called to give evidence. So the witness is giving a statement, you video record that statement and you bring the video as the evidence instead of the witness.

There are no circumstances under 12Y specified as to the circumstances in which this is to be done, so it means the prosecutor can say, “I am simply relying on 12Y”. And then further, as part of 12Y, it says it must be appropriate—

Madam President: Sen. Welch, your time has expired. [*Desk thumping*] Leader of Government Business.

ADJOURNMENT

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Thank you very much, Madam President. Madam President, I beg to move that this Senate do now adjourn to Tuesday the 19th of January, 2021, at 1.30 p.m. During that sitting we will conclude the debate and take this Bill through all of its stages.

Madam President: Hon. Senators, before I put the question on the adjournment, leave has been granted for two matters to be raised on the Motion for the adjournment. Sen. Seepersad.

Illegal Use of Fireworks (Government’s Strategy to Address)

Sen. Charrise Seepersad: Thank you, Madam President. I want to raise the following matter on the adjournment: the need for the Government to prioritize the strategy to address the irresponsible and illegal use of fireworks and the negative effects on residential communities and animals. Madam President, we are all aware

that explosives and incendiary devices commonly called fireworks, are used all over the world in the observance of celebratory occasions. I feel certain that on the observance of the new year we would have all enjoyed the displays in Dubai, Australia, London and other countries. In these countries there are rules and regulations for the sale and use of these devices and I am equally certain that the authorities in most countries enforce the laws.

In Trinidad and Tobago, we have enacted similar regulations for the sale and use of fireworks but every year without fail the authorities publicly announce that they will crackdown on the illegal sale and unlawful use of fireworks. Citizens in residential areas can attest that these are promises and that is all they are, empty promises. We hear the same pathetic appeal to the public to exercise caution and act responsibly, but the illegal sale and unlawful use continue unabated without any noticeable intervention or consequences from the authorities. Despite the efforts or lack thereof, very little has changed. In fact, the fireworks nuisance has gotten bigger, louder, deadlier and more expensive. The controlled use of fireworks for approved events in wide open spaces may be tolerated. However, a few weeks ago in the constituency of the Minister of National Security, the level of disturbance was intolerable to say the least and the unbearable, loud and rapid explosions continued for at least two hours. The noise and cordite pollution harm animals, whether they are domesticated or wild, and sensitive members of society including infants and the elderly.

Madam President, I have four large dogs. I have to tranquilize them, bring them inside, turn classical music on to the loudest, put on the AC just to keep them calm. Why must law-abiding citizens have to endure this trauma, stress and anxiety on every celebratory event? I guess the residents of Woodbrook are very happy that they do not have to endure this annual noise pollution and fireworks and

sleepless nights this year. Citizens have every right to enjoy peace and quiet in their homes. Why must the inhumane treatment of animals continue with many suffering heart attacks and some becoming trapped trying to escape and meeting their deaths? Why must these poor creatures whose hearing is magnified have to be scared out of their wits? What about babies and small children who are extremely traumatized? At the zoo this is a nerve-wracking time. The zookeepers must take measures to protect the animals from the trauma of the explosive noises. It is alleged that Joey the kangaroo at the Emperor Valley Zoo died as a result of the 2019 Independence Day fireworks at the Queen's Park Savannah. Fireworks also disrupt nesting birds. They abandon their young out of fear for their own lives.

Over the past weeks the photographs of traumatized animals flooding social media in the aftermath of our joyride is too much to bear. Is this fun? What about air pollution? Firecrackers are poisonous and their explosions release harmful particles such as fine dust that is toxic to inhale. Madam President, citizens do not use their moral compass and make decisions fitting for the highest of creation. Our character is shown in how we treat those who are unable to speak for themselves or to seek justice. [*Desk thumping*] The use of fireworks by the general public promotes a culture that is frivolous, expensive, destructive and disrespectful to neighbours, the community and animals. What is even worse is that businesses are implicitly encouraging this endeavour as our precious foreign exchange is literally dissipated in a puff of smoke. It is evident that foreign exchange is readily available to the sellers of fireworks in unlimited amounts.

The EMA conducted an online survey between June 19 and July 31, 2020, on the effects of fireworks. There were 2,950 respondents between the ages of 25 and 75; 70 per cent of the respondents said that they and their household members were negatively affected by fireworks. Issues included irritability, anxiety, stress,

panic attacks, sleep deprivation, et cetera. Some of the effects exhibited by their pets included loss of life, erratic behaviour, seizures, running away, anxiety, distress and self-destruction. The animals affected were: dogs, 60 per cent; cats, 17 per cent; birds, 13 per cent; squirrels, fishes, horses and other livestock, 17 per cent.

Madam President, there are several laws dealing with fireworks and how they should be handled. The Summary Offences Act, Chap. 11:02, section 99 states:

“...any person who throws, casts, sets fire to, or lets off any fireworks within any town is liable to a fine of...”—ten—“...thousand dollars.”

The Explosive Act, Chap. 16:02, section 10(1) states:

“No person other than a wholesale or retail dealer shall sell gunpowder, or offer or expose the same for sale.”

Section 10(2) states:

“Any person who contravenes the provisions of this section is liable to a fine of two thousand dollars.”

The Explosives (Prohibition of Scratch Bombs) Order, 2018, prohibits people from manufacturing, importing, keeping, conveying or selling of scratch bombs. Anyone breaching the Order may be liable on indictment to a fine of \$20,000 or 10 years' imprisonment and forfeiture of the items.

Notwithstanding all these laws, Madam President, the use of fireworks has grown exponentially going beyond major public holidays and festive occasions, including Christmas and Old Year's Day, Divali and Independence. These devices are routinely set off in breach of the law in residential areas.

Some examples where similar kinds of advocacy against the pervasive use of fireworks include almost 5,000 citizens in Cedar Rapids, Iowa, USA, signed a

petition appealing against the City Council's allowance of fireworks for the 4th of July independence festivities and for New Year's Eve. As a result of this petition the City Council banned the use of fireworks and restricted sales within the city limits. In the town of Collecchio in Italy after sustained protest fireworks were totally banned when the trauma to people, pets and wildlife was acknowledged. Fireworks in this town must be silent. Madam President, when will the recommendations detailed in the report of the Joint Select Committee enquiry into the Adverse Health Effects of Fireworks Report, May 2018, be advanced? I strongly believe that we are negligent in not having adequate enforceable regulations to include the time of use, days, events, et cetera.

My recommendations include retail sale of these devices to the general public must stop. Only noiseless fireworks should be used. All purchases must be accompanied by an authorized permit. Sellers must keep a ledger of all sales with contact details. There must be a strict time period for approved use. There must be designated areas for usage under expert supervision. Fireworks are to be prohibited from residential areas, parks, wildlife areas. The laws must be enforced without exception and scarce foreign exchange should not be available for nonessential goods and services. Madam President, I thank you. [*Desk thumping*]

Madam President: Minister of Agriculture, Land and Fisheries. [*Desk thumping*]

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Thank you very much, Madam President. And, Madam President, the reality is that there is not much for me to disagree with in relation to Sen. Seepersad's contribution. I am very familiar with the position of the Zoological Society of Trinidad and Tobago. As the Minister with responsibility for the zoo, I am very familiar with the report, the JSC report because at my request the zoo responded and took a particular position in relation to that report. So I would say

six things, Madam President, in relation to the Motion. The first is that the Government is committed to address the public's concern in relation to fireworks. In dealing with those concerns it is necessary to identify properly the categories of fireworks, identify the risks, and in some cases identifying the steps to eliminate risks or reduce risks, and those risks relate to noise.

I know my colleague has specified animals but it also impacts human beings, in particular those who live in these tight urban areas. But the nature of the housing arrangements has certainly changed, people are tightly and closely packed and the impact of noise, whether it is from fetes or fireworks, it is more damaging than it may have been in the past when Woodbrook houses were on half-acre and one-acre plots. So noise, the explosion, the fire that could emanate, and we have seen from time to time serious personal injury.

The third thing I would say is that it requires consultation with the various interest groups, in particular the public, members of the public; those with a specific interest in animal welfare, health and safety, those with an interest in security, safety, and of course, Madam President, the event organizers for whom fireworks is an important part of their events. Madam President, we have not sat back and done anything as a first step, a step towards dealing with it. The scratch bombs were banned but of course we continue to see and hear scratch bombs being detonated and that is a matter for law enforcement and policing.

The other thing we have done, Madam President, and something which my colleague may not have recalled, it is that in this Parliament in July we completed the debate in the other place on the Animal (Diseases and Importation) Amendment Bill, 2020. And clause 28, if you recall, of that Bill which seeks or sought to replace section 21 of the parent Act, created a new provision, a sub provision (g), and (g) deals specifically with this issue of fireworks and it creates

an offence where someone:

“permits an act or an omission...by another person that causes unnecessary suffering to an animal including suffering caused by exposure to fireworks;”

It is a very serious offence that attracts a fine of \$200,000 and five years in prison. And the second area of that Bill that dealt with matters relating to fireworks is clause 18 which expanded the regulatory-making powers of the Minister with the inclusion of new subsections (k) to (ab), including at subsection (o), the power of the Minister to create standards for animal welfare in accordance with best practices, and though not specified, I am very clear that any prudent Minister would address the issue of fireworks in the making of regulations.

Those are the things we have done so far, Madam President, and just to say that that particular amendment, that Bill was passed on July 01, 2020. It is the last piece of legislation passed in the Twelfth Parliament. It was assented to on the 3rd of July, 2020, and we are currently working with the hon. Attorney General on a proclamation agenda for that important amendment as it pertains to animals. But as I have said before, fireworks really affect a broad, you know, the country in a broad way, including animals and human beings. Thank you very much, Madam President. [*Desk thumping*]

6.15 p.m.

**Lake Asphalt T&T Limited
(Government's Plan for Workers)**

Sen. Wade Mark: Thank you, Madam President. I believe it was in the 2016 budget that the Minister of Finance announced that the Government was looking for a strategic partner for Lake Asphalt. Subsequent to this statement, the Prime Minister upon his return from China, I think was in May of 2018, also I believe announced that the Government was looking for a strategic partner, and preferably

from China, in order to invest or partner with Lake Asphalt.

Now, the Government did announce, I believe in its 2021 *State Enterprises Investment Programme*, that the partial divestment of some 49 per cent of shareholding of Lake Asphalt of Trinidad and Tobago (1978) Limited, they were seeking to establish an international strategic partnership. However, I believe it was in early 2016 when the board came into office, they met an operating capital or cash flow amounting to some \$275 million in the bank. This is what the UNC-run board left in the coffers of Lake Asphalt. With the closure of Petrotrin in 2018, Lake Asphalt was severely affected since it depended a lot on bitumen supplied by Petrotrin. In fact, some 80 per cent of Lake Asphalt's income derived from the supply of bitumen and bitumen-related products.

It is also to be noted that between 2016 to 2018, the company's management spent close to \$200 million, leaving just a mere \$80 million for operating capital. It is to be noted, Madam President, that the current workforce is made up of some 300 members, comprising of casual, temporary and permanent workers.

During the second half of 2020, the company made a request for subvention from the Government to pay workers' salaries and other day-to-day expenses. As we speak, Madam President, the company is living literally on overdraft, simply to deal with its everyday expenses, inclusive of salaries and wages. Not only did the closure of Petrotrin negatively and adversely affect the profitability of this company, but even before that, the company was on a slippery slope through waste, mismanagement and incompetence.

Our current Minister of Labour, I understand, was himself a former member of the board directors, and he was responsible for finance and strategy at that time. Madam President, that Member would have an intimate knowledge of the circumstances leading to the current precarious situation facing this company.

It is therefore important to note that the greatest fear confronting the workers of Lake Asphalt is the possibility of mass retrenchment or even the complete closure of the company. Grave uncertainty lies ahead. These workers do not know if they are coming or if they are going. The Government needs to come clean with the workers and their union, the Contractors and General Workers Trade Union, and to level with them, not tomorrow, not the following day, not next month, but to level with them now.

Is the Government going to privatize Lake Asphalt and bring in the Chinese to take charge of that company, I ask? Or is the Government willing to inject new capital to revive, renew and restore the financial and economic health of this company? Or is the Government going to embark on mass retrenchment of workers? Let the workers know the truth. Stop pussyfooting with these workers. Stop the secrecy. Stop the lack of transparency in this matter that involves literally life and death.

Madam President, I call on the Government to come clean and tell the population what is the future of these 300 temporary, casual and permanent workers currently employed at Lake Asphalt. The people demand that they get answers and they get answers today and now.

Madam President, I thank you.

Madam President: Minister of Energy and Energy Industries.

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Thank you very much, Madam President. I thank Sen. Mark for bringing this Motion, and he outlined a lot of the facts there that are, in fact, real facts for once. I just want to put this whole Lake Asphalt Trinidad and Tobago Limited in perspective.

The current operations of Lake Asphalt are as follow: the extraction,

processing and sale of Trinidad and Tobago Lake Asphalt, which is the Pitch Lake, both locally and internationally; the manufacture and sale of TLA, which is Trinidad Lake Asphalt, modified bitumen; the impact and sale of what is called 60/70 bitumen, which was sourced from the Petrotrin refinery a couple of years ago; the manufacture of LASCO range of products like sealants, undercoating, et cetera, and it is now developing a new product called CMTLA, which is coal mill TLA, and I will deal with that very shortly.

Lake Asphalt was formed to mine the lake at La Brea and to market the product, in particular, TLA modified bitumen. TLA modified bitumen is world class. It is so good that they use it to pave airport runways in Germany, in China. The large Beijing International Airport, which is now the largest in the world, it is TLA on the runway. However, here again was a company that was based on a false premise.

When they started to experience some financial problems about two decades ago, a deal was struck with the Government of the day for Petrotrin to sell them refinery bitumen at subsidized rates and they would mark it up and sell it to the local market.

If you remember the Prime Minister indicating very early in our last term, in around 2016, that Lake Asphalt was, in fact, a P.O. box, because all they were doing was taking a work order, an order, processing it, marking it up, giving it back and you go to collect your 60/70 bitumen at the Pointe-a-Pierre refinery. Sen. Mark is right, 80 per cent of their revenue was based on that. It was a non-business which was put together because some Government policy say Petrotrin sell them the bitumen at subsidized price, and you mark it up to suit yourself and sell it on the local market. That is not a business model. So all hell broke loose when the refinery, for other reasons, had to be closed because it was uneconomical, and

Lake Asphalt was left in the lurch.

At that point in time, Lake Asphalt indicated to the Government that they wanted a monopoly to import 60/70 bitumen, mark it up in the same way they used to mark up and send the price of 60/70 bitumen through the roof, which would have impacted on the road paving exercise of the day. Obviously, we could not do that.

We told them they could import bitumen, and we open the market for the large contractors and whosoever wanted to import the bitumen and compete. That is what kept the price of bitumen within range since the closure of the Petrotrin refinery. However, it impacted on Lake Asphalt's bottom line, because the high markup that they were accustomed to, buying at a low price and selling at a fairly high price, no longer existed. The large contractors were able to bring in bitumen cheaper than what Lake Asphalt was putting on the market for sale. So therein lies the fundamental problem with Lake Asphalt.

The second problem is the TLA itself, which is exported in drums. It is not a user-friendly product anymore, and everything now is user-friendly. So there is a project now called CMTLA, which is to pulverize it and sell it in 25-kilogram bags like cement. So it is exportable, it is easy to handle and there is not such a double usage and double handling charge. That will transform Lake Asphalt.

However, the plant costs money to build. They are strapped of cash. The Government is strapped of cash. So this is the position we are in now. It is so important that the Prime Minister has set up an inter-ministerial committee, which includes myself, Minister West and the Minister of Labour, to look at Lake Asphalt and come up with a proposed path for their future. That report was completed about a month ago, it was submitted to the Prime Minister and I do not want to disclose what his recommendations are. But, once it is accepted by the Cabinet, we

will implement a revitalization of Lake Asphalt Trinidad and Tobago Limited.

The workers, I would not say they have to understand, it is a new paradigm now. As far as possible, we will be protecting their jobs, but this is about protecting their jobs with a cause. It has to be a profitable business. One of the problems this country faces is inertia. We do not look at the market and how the market changes, and adapt your business to suit it. We just lie in a state of inertia: the body's state of rest or uniformed motion in a straight line, physics.

Sen. Roberts: Balisier House!

Sen. The Hon. F. Khan: And that is what has killed some of the good industries. Okay, we have to understand this world is changing so quickly and so fast. If you are not current with market conditions, you could be out of business in a blink of an eye, and we have to stay on the ball, and boards of directors and managers have a responsibility, but they get away with murder, because they know the population blame the politicians. And you come to the Parliament every day and ask hard questions for us to answer. But the responsibility lies with the boards and the management to make their business work. The Government could be a facilitator.

So, Madam President, some of the factual statements that Sen. Mark raised are, in fact, factual. What I have outlined today is the Government has a plan for Lake Asphalt. It will be made public in the shortest possible time. I thank you.

[Desk thumping]

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 6.29 p.m.