SENATE

Tuesday, March 02, 2021

The Senate met at 1.30 p.m.

PRAYERS

[Madam President in the Chair]

CONDUCT IN CHAMBER

Madam President: Hon. Senators, in recent sittings, there has been conduct in this Chamber which propels me to make this statement. I make this statement pursuant to Standing Order 2(5), which provides that:

“The President shall have power to regulate the conduct of business in all matters not provided for in these Standing Orders.”

I suggest that hon. Senators remind themselves of the existence of this Standing Order and of the wider power it confers upon those who occupy this Chair.

I also suggest that hon. Senators remind themselves that the term “Presiding Officer” is defined in Standing Order 3 to mean:

“…the Senator who regulates the conduct of business in the sittings of the Senate;”

Matters of conduct not provided for in the Standing Orders of the Senate, such as, but not limited to, challenging, offering side comments on and making assessment on the floor of rulings made by the President; cell phones going off during sittings; improper wearing of masks; debating in loud and raised voices, and crosstalk between Senators, which can start off as banter but degenerates into loud and raised voices across the benches, all of these matters of conduct, which of course are not the whole sum of matters of conduct, are matters which the President has the power to regulate during sittings of the Senate.
The President’s responsibility, consistent with Standing Order 2(5) and Standing Order 3, is to ensure that the business of the Senate is conducted in an orderly manner. The discharge of this responsibility is assisted by the provisions of the Constitution, insofar as they relate to the minimum age requirement for the appointment of Senators. By section 41 of the Constitution:

“…a person shall”—not—“be qualified to be appointed as a Senator…unless, he is a citizen of Trinidad and Tobago of the age of twenty-five years or upwards.”

This is in contrast to the minimum age requirement for the appointment of Members of the House of Representatives. By section 47 of the Constitution:

“…a person shall”—not—“be qualified to be elected as a member of the House of Representatives”—unless he is—“of the age of eighteen years or upwards;”

The framers of the Constitution, therefore, clearly had in mind that the Senate would be a place for more mature citizens and with that, a place of more mature conduct. Time and time again, during this current Session of Parliament, I have had to rise from this Chair repeatedly to ask hon. Senators to remember that they are in the Upper House of Parliament and to ask that they tailor their conduct accordingly. What is worse is that hon. Senators can often be seen congratulating each other on the very conduct that has at times caused me to rise to appeal for adherence to mature behaviour. Hon. Senators, there is no cause for congratulations.

Part of mature behaviour is accepting rulings made from this Chair. It is not to be supposed that I do not understand how challenging that can be at times. I too, once sat where hon. Senators sit today. I was both an Opposition Senator and a Government Senator. I therefore understand, from my own lived experience, the
challenge that it sometimes is in this Chamber to hold one’s feelings inside, especially when one believes in the rightness of the point that one is making. But as committed and as passionate as we might be about our contributions in this Chamber, it does not do for hon. Senators to be conducting themselves and the nation’s business in the full glare of the public and of our young people, in particular, in a manner that runs counter to the mature standards of behaviour that the Constitution demands from hon. Senators.

We cannot be defeated by the challenges that debate in this Chamber poses. We simply have to rise to them and conduct ourselves accordingly. I make this statement today in the way of guidance to hon. Senators. Some of us are newer to this Chamber than others, but all of us are called to the same standard and mature conduct that the Constitution demands.

In recent weeks in Trinidad and Tobago, there has been something of a movement among our citizenry, sparked by exceedingly sad events which have broken this country’s heart, with people of all walks of life coming together to demand better from our leaders and from each other. Hon. Senators, it is not to be supposed that we in this Chamber are exempted or excused from this movement. Ours is the responsibility, as part of this movement and in the discharge of our duty under the Constitution to this Chamber, to demand better from ourselves in the way we conduct our business in the Senate. It will not do for us to say that the burden of change lies only on our citizens outside of these walls. The burden of change weighs heavy upon us in this Chamber as well.

I therefore call on hon. Senators to eschew all forms and manner of conduct and deportment not provided for by the Standing Orders of the Senate, but which nevertheless undermine the dignity and the authority of this Chamber. Rest assured that I would do my part in effecting change in this Senate by invoking Standing
Conduct in Chambers

Order 2(5) and Standing Order 3 as necessary, and by calling upon hon. Senators, scrupulously and always, to adhere to the highest standards of conduct and deportment in carrying out the business of the Senate.

Hon. Senators, after this statement, I do hope that I would not have cause to have to remind Senators of these Standing Orders again.

PAPERS LAID

1. Annual Audited Financial Statements of the National Gas Company of Trinidad and Tobago Limited (NGC) for the financial year ended December 31, 2019. [The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan)]


URGENT QUESTIONS

COVID-19 Vaccine Roll-Out

(Intervention by Government)

Sen. Paul Richards: Thank you, Madam President. Good afternoon, colleagues.

To the Minister of Health: In light of recent concerns expressed by the Prime Minister and Caricom Chairman that small countries are being overlooked in favour of larger countries in the global COVID-19 vaccine roll-out, what, if any, immediate intervention is being pursued by Government?

The Minister of Health (Hon. Terrence Deyalsingh): Thank you very much, Madam President, and thank you to Sen. Richards for the question. I would like to

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contextualize the answer by quoting from a January 13, 2021, statement put out by the Caricom. It says:

“…the Caribbean Community (CARICOM) is deeply concerned at the current prospect of inequitable access to vaccines…”

It goes on to say:

“The reality is that small states will find it difficult to compete in the market place to ensure equitable access for vaccines.”

What was the solution?

Caricom—“…therefore calls for a global summit in the context of the World Health Organization’s…Act-A Facilitation Council to discuss equitable access and distribution of…COVID-19 vaccines.”

That was January 13, 2021.

Specifically the Government. I now go to Prime Minister Dr. Keith Rowley’s statement at the WHO’s media conference on 18 February, 2021, where he calls specifically for:

“This being so we at Caricom have recently called upon WHO to immediately convene an international convention of the world’s peoples representatives to commiserate, explain, assist and commit to a fair sharing of the available vaccine resources for the benefit of all humankind and not just a privileged, well-heeled few.”

I have been informed by the Minister of Foreign and Caricom Affairs that out of this call, the Chairman of the House Foreign Affairs Committee intends to hold a Caribbean/US roundtable on Wednesday 24th March on vaccines and small island developing states.

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What else is the Government doing? With the expressed permission of the hon. Dr. Keith Rowley, I quote from a letter sent to Dr. Rowley from Dr. Tedros, dated—

**Madam President:** Minister, your two minutes—

**Hon. T. Deyalsingh:** Yes.

**Madam President:** Your time is expired. Sen. Richards.

**Sen. Richards:** Thank you, Madam President. Can the Minister indicate, in addition to the measures he has outlined with the meeting planned for the middle of March, if there are any other mechanisms the Government has employed to circumvent the disproportionate distribution of COVID-19 vaccines to smaller countries?

**Hon. T. Deyalsingh:** So, through the COVAX Facility, Trinidad and Tobago expects from the COVAX Facility, 100,800 vaccines by the end of March. That is the deadline given to us by PAHO. From the African medicines council platform, we were initially allocated 226,000 doses. That has now been increased to 426,000 doses. We are awaiting price estimates and estimated times of arrival. Through the Ministry of Foreign and Caricom Affairs, approaches have also been made, as stated publicly, to India, China, Germany, France and Canada. In addition, the Ministry of Health is in bilateral talks with several vaccine manufacturers. So that is what we are proactively doing against the background of a world shortage of vaccines. Thank you very much.

**Sen. Richards:** Thank you, Madam President. Thank you, Minister, for the response. Given what the Minister has outlined in terms of the three or four mechanisms and the fact that we are awaiting answers from some of these outlets, can the Minister indicate how many—what is the quantum of vaccines presently
available in Trinidad Tobago, given that frontline workers have already started being vaccinated?

**Hon. T. Deyalsingh:** The gift from Barbados of 2,000 vaccines can basically vaccinate 1,000 persons. That has been already exhausted. As I indicated yesterday, we have vaccinated 1,113 persons because each vial, we got an extra dose. So we have to keep the extra 1,000 or so doses to vaccinate those same people with the booster shot because the AstraZeneca vaccine, as we all know, is a two-dose vaccine: the primer and the booster. They have received the primer and we have to keep the booster in reserve, so we cannot use it. It is in reserve for those same frontline health care workers.

**ORAL ANSWERS TO QUESTIONS**

**Madam President:** Leader of Government Business.

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Thank you very much, Madam President. Madam President, there are six questions on notice on the Order Paper. The Government will be answering five and we ask for deferral of Question No. 83 to the Minister of National Security for two weeks.

**Madam President:** Question No. 83 is deferred for two weeks.

_The following question stood on the Order Paper in the name of Mr. Paul Richards:_

Trinidad and Tobago’s Repatriated Citizens

**(Details of)**

83. With regard to the return of individuals to this country since the closure of the nation’s borders, can the hon. Minister of National Security inform the Senate of the following as at February 05, 2021:

(i) the number of T&T citizens repatriated; and
66. **Sen. Wade Mark** asked the hon. Attorney General:

As regard the protests which occurred across East Port of Spain at the end of June 2020, can the Attorney General advise as to the following:

(i) the number of complaints, if any, filed with the Police Complaints Authority regarding criminal offences involving police officers, police corruption and serious police misconduct during the police response to said protests;

(ii) the number of investigations launched by the Authority into the complaints identified at (i);

(iii) whether the Police Complaints Authority has completed such investigation(s); and

(iv) when will the results of these investigations be made public.

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

Thank you, Madam President. Madam President, based on information received from the Police Complaints Authority, I provide the following responses to the issues raised.

Firstly, with respect to the question: the number of complaints, if any, filed with the Police Complaints Authority regarding criminal offences involving police officers, police corruption and serious police misconduct during the police response to said protests, the PCA has informed that it has seven matters which relate to the conduct of police officers during the June 2020 protests referenced.
Four of these seven matters were received by the PCA, following the submission of complaints by members of the public, and the remaining three matters were initiated independently by the Authority pursuant to its power under section 26 of the PCA Act.

Secondly, with respect to the question: the number of investigations launched by the Authority into complaints identified at (i) above, I can confirm investigations were launched in respect of all seven matters mentioned already.

Thirdly, with respect to the question: whether the Police Complaints Authority has completed any such investigations, I am able to say the investigation into one of the seven matters has been completed. The other six matters remain the subject of active PCA investigations.

With respect to the fourth aspect of the question, that is: when will the results of these investigations be made public? I can say that on June 28, 2020, the Authority issued a press release concerning the initiation of an investigation into one of the matters referenced above. The content of that press release is as follows:

Pursuant to section 26 of the PCA Act, the PCA has initiated an investigation into the fatal shooting of three men in Second Caledonia, Morvant area by members of the TTPS on Saturday, 27 June, 2020. The PCA civilian investigators will conduct an independent investigation of this matter, at the conclusion of which a report will be forwarded to the Authority.

Upon receipt of the said report, the Authority shall make an assessment and form an opinion as to whether there is sufficient evidence to support a recommendation for prosecution and/or institution of disciplinary proceedings.
Following this, on November 12, 2020, the PCA issued another press release, updating the public on the actions taken in respect of the investigation initiated on June 28, 2020. The content of that report includes that:

The PCA has completed its preliminary investigation into a police involved shooting in Second Caledonia Morvant on 27 June, 2020, and has forwarded its findings to the office of the DPP for further action in accordance with the principles of due process. The deceased—the name is called—Joel Jacob, Noel Diamond and Israel Moses Clinton were shot by members of the TTPS. After analysis of the evidence gathered by the PCA investigator, the information was sent to the DPP pursuant to section 30 of the PCA Act, which provides that: The Authority may conduct preliminary investigations to assist and identify whether or not there is conduct to justify a more complete investigation under the Act, or refer to the DPP, Commissioner of Police for further action.

The PCA went on to say that:

Their investigations and recommendations should provide assurances to both the public and police that deaths or serious injuries that happened during the following or during police contact would be properly handled.

In respect to the other six matters in which investigations are ongoing, the Authority has informed that they will make a decision on whether to make findings public once the matters are concluded.

1.50 p.m.

Sen. Mark: Madam President, through you, to the Attorney General. Can the Attorney General indicate when the other six matters—well, put it another way, Madam President, has the Attorney General been advised by the PCA when the other six matters would be completed?
Hon. F. Al-Rawi: Most certainly. As read out a short while ago from the PCA, as soon as they are completed, the public will be informed. It is improper to interfere into the affairs of the PCA, as my colleague is well aware, and they must be given the latitude in the independence of the PCA’s Act itself to pursue the matters that they are engaged in.

Sen. Mark: Through you, Madam President, whether the Attorney General has been advised by the PCA as to what are the factors that may be holding up the speedy conclusion of these investigations?

Hon. F. Al-Rawi: Madam President, in response to the question, may I just remind, the PCA is bound by secrecy. That secrecy is a statutory secrecy provision. It is well entrenched in law. It is not possible to make enquiries of this type, because there is always the risk of tipping off or positions. One has to be carefully, in conscious regard, of the laws of Trinidad and Tobago. The PCA has demonstrated that already one of these matters has reached conclusion, has gone to the Office of the DPP, and they have publicly provided press releases informing the public of the rest of the actions. I urge my hon. colleague to allow that process to continue so that the statutory mandate can be properly discharged without throwing the baby out with the proverbial bath water.

Sen. Mark: Madam President, can I ask the Attorney General whether the Government, through the PCA or other body, has reached out to the victims of the incident and, particularly, the person who unfortunately lost her life?

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

Sen. Mark: May I go to the next question, Madam President?

Madam President: Next question.
East Port of Spain Protests
(Details of)

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

In light of statements made by the Commissioner of Police that “a well-orchestrated plan to destabilise the country” was the cause behind the protests which occurred across East Port-of-Spain at the end of June 2020, can the Minister indicate:

(i) whether he has been made aware of evidence to support said statements;

(ii) what is the status of any investigations; and

(iii) whether the evidence referred to at (i) could be shared publicly?

**The Minister of National Security and Minister in the Office of the Prime Minister (Hon. Stuart Young):** Thank you very much, Madam President. Madam President, I was quite hoping I could have heard the answer to that next question, how someone could reach out to a deceased.

In light of the statements made by the Commission of Police that “a well-orchestrated plan to destabilise the country” was the cause behind the protests which occurred across East Port of Spain at the end of June 2020, can the Minister indicate:

(1) whether he has been made aware of evidence to support said statements;

The answer, Madam President, is that I have been and was made aware, at the time, of the intelligence to support the Commissioner of Police’s statements in June 2020. There are active investigations ongoing and the intelligence that I have referred to previously cannot obviously be shared with the public as this matter is still under active investigation, and involves very sensitive issues of national
security. But they are being pursued by our intelligence services as well as the Trinidad and Tobago Police Service.

**Sen. Mark:** Though you, in the public interest, can the hon. Minister indicate whether there is any timeline for these investigations to be concluded?

**Hon. S. Young:** Thank you very much. Madam President, the investigations are ongoing. Due to the nature of the individuals involved, they are under police investigation, they are under other types of surveillance, and I will not want to say more at this time.

**Sen. Mark:** Through you, for the public to gain and to build public trust in the police and, by extension, the appropriate authorities, would the Minister not agree with me that this matter is of public interest and every effort should be made to have this matter speeded up?

**Madam President:** Sen. Mark, I will not allow that question. Next question?

**Patriotic Energies and Technologies Company**

**(Status of Bid)**

69. **Sen. Wade Mark** asked the hon. Minister of Energy and Energy Industries: Can the Minister indicate the status of the bid by Patriotic Energies and Technologies Company for the acquisition of the assets of both the Guaracara Refinery and Paria Fuel Trading Company Limited?

**The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan):** Thank you very much, Madam President. Madam President, the final offer made by Patriotic Energies and Technologies Company Limited on February 05\(^{th}\) failed to meet acceptable conditions for the payment for the purchase price of the refinery and was not accepted. If that offer had been accepted, Madam President, the final burden on the Government and taxpayers would have been extremely onerous and would have required the State to accept liability for cost of TT $5
billion or more.

Accordingly, at its meeting on February 18, 2021, Cabinet agreed to the following:

(1) Trinidad Petroleum Holdings Limited and the Government of Trinidad and Tobago will thank Patriotic Energies and Technologies Company Limited for its proposal, to date, with respect to the purchase of the assets of the Guaracara and Paria and inform Patriotic that the exclusivity granted to it with respect to the acquisition of the Guaracara and Paria assets can no longer be supported by the Government of Trinidad and Tobago.

(2) The Government of Trinidad and Tobago, and Trinidad Petroleum Holdings will proceed immediately to return to the open market to explore all other options which may exist for the utilization of Guaracara, the refinery assets in the shortest possible time frame with the priority and main conditionality being to determine whether there are any suitable parties interested in operating the refinery; and

(3) Trinidad Petroleum Holdings Limited will submit for the consideration of Cabinet, in three weeks’ time, through the Ministry of Finance, a proposal for the canvassing of the current market for the exploration of options for the utilization of the assets of Guaracara.

Thank you, Madam President.

Sen. Mark: Madam President, through you, to the hon. Minister of Energy and Energy Industries, can the Minister indicate whether the offer to purchase the assets of both the refinery and Paria Fuel by Patriotic Energies and Technologies Company is dead?

Madam President: Sen. Mark, I will not allow that.
Sen. Mark: Can I ask in another way, Madam President?

Madam President: Yes, because this will be the second.

Sen. Mark: Can I ask whether in light of the deterioration of the refinery, is the Government considering reverting to Patriotic’s original offer of the three-year moratorium and the 700 million purchase price?

Sen. The Hon. F. Khan: Madam President, the answer to that is no. As the Cabinet has stated in its decision, within three weeks’ time, Trinidad Petroleum Holdings will come back to Cabinet for approval to proceed to go into a second round of requests for proposal for the disposal and/or lease of the Guaracara assets.

Sen. Mark: Through you, can the Minister indicate whether the Government was not aware that most buyers would have difficulties in purchasing the refinery, particularly Patriotic, when there was a lien on the assets of the entire refinery by bondholders?

Madam President: Sen. Mark, I will not allow that question.

Sen. Mark: Can I ask whether the Government did not know that Patriotic upfront consideration of 75 per cent of outstanding liabilities could not have been accepted until the Government had removed the lien on the—


Return Travel Exemptions

(Details of)

84. Sen. Paul Richards asked the hon. Minister of National Security: With regard to travel exemptions issued to nationals since the closure of the nation’s borders, can the Minister advise as to the following:

(i) what is the average waiting period for persons awaiting a “return travel exemption”;

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(ii) the number of persons awaiting “return travel exemptions” for more than three months, but less than six months; and

(iii) the number of persons awaiting “return travel exemptions” for more than six months?

The Minister of National Security and Minister in the Office of the Prime Minister (Hon. Stuart Young): Thank you very much, Madam President, to Sen. Richards as well. The average waiting time, waiting period for persons awaiting a return travel exemption is based on a number of factors. It is based on the number of persons in the queue, the quarantine space available and the availability of flights to Trinidad and Tobago.

With respect to part (ii) of your question, as at February 16, 2021, the number of persons awaiting return travelling exemptions for more than three months but less than six months is 3,531.

With respect to part (iii) of your question, the number of persons awaiting return travel exemptions for more than six months is 1,673 persons. In that particular category what we are finding is a lot of persons who traditionally go out of Trinidad and Tobago, spend time outside with family members, et cetera, and now have reached the stage that they want to come back. So the question being asked is: When did you leave Trinidad and Tobago? It brings them into this category.

Sen. Richards: Thank you, Madam President. Can the Minister indicate the impact of the online exemption process since its launch?

Hon. S. Young: Sen. Richards, when you asked, through you, Madam President, the impact, I mean, there are a lot of varying impacts with respect to the online system. I think what it has done, it is allowed—it has allowed rather, a more scientific data-gathering approach. So now due to the types of questions being
asked, it is very easy for the users of the system to be able to put persons into different categories and to see different elements. For example, can you afford state-supervised quarantine as opposed to state quarantine? What was the reason for you leaving? When did you leave? And this allows the assistance of AI in the determination of the lists of exemptions being granted.

**Sen. Richards:** Thank you, Madam President. Can the Minister indicate of the 1,673 persons awaiting exemptions for more than six months, as the Minister would have indicated before, if those persons have been prioritized in any way given the length of time they have been waiting?

**Hon. S. Young:** Thank you, Madam President. The answer is absolutely yes. They are in the biggest category, largest category of prioritization.

**Madam President:** Next question, Sen. Richards.

**Travel Exemptions**

(Details of)

85. **Sen. Paul Richards** asked the hon. Minister of National Security:

Given reports of the various categories of travel exemptions being granted to individuals since the closure of the nation’s borders, can the Minister indicate:

(i) the different types of travel exemptions granted by the Ministry as at February 05, 2021;

(ii) what is the official policy for the granting of exemptions to business persons; and what is the official policy for the granting of a “Special Exemption” or “Emergency Status Exemption”?

**The Minister of National Security and Minister in the Office of the Prime Minister (Hon. Stuart Young):** Thank you very much, Madam President. With respect to part (i) of your question, there are two types of travel exemptions
Oral Answers to Questions (cont’d) 02.03.2021

granted in Trinidad and Tobago since March 22\textsuperscript{nd}/23\textsuperscript{rd}, 2020. First is persons entering Trinidad and Tobago and the second is persons departing Trinidad and Tobago.

The second part of your question, the State is mindful of the need to encourage and support economic activity during the current pandemic, and continues to grant exemptions to businesses that request personnel to come to Trinidad and Tobago for the purposes associated with business activity and to business persons on a case-by-case basis.

The third part of your question, the Ministry of National Security continues to expedite special exemptions or emergency status exemptions, exemption applications on a case-by-case basis. For example, nationals requiring emergency attention abroad, the departure of students abroad and other types of this nature of request for exemptions that would fall into special exemption or emergency status, but they are considered on a case-by-case basis.

\textbf{Sen. Richards:} Can the Minister indicate what the process is for accessing these special exemptions or emergency status exemptions?

\textbf{Hon. S. Young:} Thank you very much. The process is that they apply online. The system has factors in it that would red flag the special exemptions. There is still the ability to reach out in certain occasions to the Ministry of National Security via email. And, generally speaking, they find a way to get their information to us and to bring it to our attention for consideration.

\textbf{Sen. Richards:} Can the Minister indicate what the time frame is for those special exemptions or emergency status exemptions once they are approved?

\textbf{Hon. S. Young:} When you say the time frame, again, because this is on a case-by-case basis, they would have different circumstances. So some may be emergency travel, for example, an air ambulance coming into Trinidad and Tobago to take the
patient and his or her family out. So that would be immediate. Others may be that, look, there is a flight that is going to be departing on so and so date, can you give consideration, because I need to go up for a medical check-up or I need to go for surgery, et cetera. So it really depends on the case by case, but we have been dealing with those in a speedy and prioritized manner.

**Sen. Mark:** Can I ask the Minister of National Security, when will the Government be tabling the official policy on the Parliament’s table as it relates to the granting of exemptions to business persons?

**Hon. S. Young:** Thank you very much. Madam President, this information has been out in the public domain. I have repeated it on a number of occasions. I can repeat it here again as I just did. What it is, is that persons—we have actually in the online system, there is a dedicated email which is corptravelexemption@mns.gov.tt where persons and businesses that fall into this category can email directly. It is picked up by the Permanent Secretaries, given consideration on a case-by-case basis. Generally speaking, all of the business applications that are being made, once they are legitimate business applications, are granted. And Trinidad and Tobago is quite fortunate, Madam President, in that our economy has been functioning, when you look at other economies all over the world, especially in the more sophisticated countries whose economies have ground to a halt and they are in complete rollback situations.

**COMMITTEE OF PRIVILEGES**

**(SEN. ANIL ROBERTS)**

**Madam President:** Hon. Senators, in accordance with Standing Order 30, leave has been granted for a matter of privilege to be raised. Leader of Government Business.
The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Thank you very much, Madam President. Madam President, I hereby seek your leave in accordance with Standing Order 30(2) to raise a matter directly concerning the privileges of the Senate, today being the first opportunity available to me to do so.

The matter concerns certain public statements made by Sen. Anil Roberts, following a ruling by the President of the Senate that he withdraw from further participating in the sitting of the Senate on Tuesday, February 23, 2021. The specific statements attributed to Sen. Anil Roberts were delivered in two episodes of his show “DouglAR Politics” broadcast on Tuesday, February 23rd and Friday, February 26, 2021, at 7.30 p.m. This show is usually carried live on Sen. Roberts’ Facebook and YouTube social media pages and it is also shared on his political party’s official Facebook page. Madam President, I have made a copy of these broadcasts available to the Clerk at the Table for your reference.

Madam President, during the broadcast, Sen. Roberts utilized satirical subtexts to allege that in the discharge of her duties as Presiding Officer of this Senate, the President of the Senate is biased towards him, referring to himself as “Booming Voice” and this Senate as a “Kangaroo Court”. While this may appear to some as harmless comedy, to me, it is not. It is, in fact, a dangerous pattern of conduct on the part of this Member that threatens this institution of democracy. Madam President, this esteemed Senate functions on the basis of well-established rules, procedure and precedent, and if any one of us wishes, there are respectable and dignified ways to challenge the rule of this Senate and the decisions of the Chair of this House. In his disturbing and outrageous reflection on the Senate, Sen. Roberts has therefore brought the Senate as a whole into public ridicule.

Such utterances by Sen. Roberts are also in direct contravention of the
previous ruling of the President of the Senate delivered at a sitting held on Thursday, December 10, 2020. On that occasion, Madam President cautioned all Members and Sen. Roberts, in particular, on a similar matter by stating definitively and I quote:

“Hon. Senators when these matters arise it really—one may think it is about me, but it is not. It is about this Senate and it reflects improperly on the Senate and it brings the Senate into disrepute. So where some people may be thinking that they are attacking the President of the Senate, they may even find that it is funny. But in reality—we are all adults here and you are attacking the integrity of this Chamber, and I call on Sen. Roberts to desist. I am giving a warning at this stage. I call on Sen. Roberts to desist from this type of behaviour. It is unbecoming of any Member of this Chamber…”

The President goes on:

“I give this warning at this stage and I really ask that we all try to do better to uphold the dignity of this Chamber…I once again call on you and call on Members, please, call on Members to desist from this type of behaviour. A reflection on the partiality of the Presiding Officer is a contempt in and of itself. But I am going—at this stage, all I am doing is giving a warning and urging Members to uphold the dignity of this Chamber…”

Madam President, according to Parliamentary Practice in New Zealand (3rd Edition) by David Mc Gee on pages 656, 657 and 658, and I quote:

“…speeches or writings which reflect on the character, conduct or proceedings of the House, or of a Member in the Member’s parliamentary role and capacity as a Member of the House, may be treated and punished as contempt.”

Madam President, parliamentary practice teaches and Mc Gee supports, and
I quote:

“…one of the more serious reflections that can be made on a Member concerns those made against the character of the Speaker or any other Presiding Officer—in particular, accusations that the Presiding Officers have shown partiality in discharging their duties.”

Madam President, end of quote.

Madam President, having regard to Sen. Roberts’ experience in this Parliament, having served at an earlier time, I am satisfied that the Member knows better and, therefore, his utterances via his social broadcast on Tuesday, February 23rd and, again, on February 26, 2021, cannot and should not be ignored by this Senate. The sanctity of this esteemed House must be protected from attempts by anyone who may wish to denigrate the Presiding Officer in the discharge of her duties, thereby bringing the Senate into odium and disrepute. This House has a duty to shield itself and its Members against attacks which would lower its public esteem and thus compromise its ability to function effectively.

Based on the foregoing, I submit that the Senator has committed a most egregious contempt of this esteemed Senate, and in this regard, Madam President, I move that this matter be referred to the Committee of Privileges for investigation and report. I beg to move. [Desk thumping]

**Madam President:** Hon. Senators, given the nature of the matter of privilege raised, I have referred this matter for the consideration of the Vice-President of the Senate who will deliver a ruling on same in due course.

**ANTI-GANG BILL, 2021**

Bill to make provision for the maintenance of public safety and order through discouraging membership of criminal gangs and the suppression of criminal gang activity and for other related matters, [*The Attorney General*]; read the first time.
TOBAGO HOUSE OF ASSEMBLY (AMDT.) BILL, 2021

Order for second reading read.

The Attorney General and Minister of Legal Affairs (Hon. Faris Al-Rawi):
Madam President, before I begin, I had asked for a procedure. I have not been given one as yet, not by email or in hard copy.

Madam President: May I just remind you that you have 45 minutes.

Hon. F. Al-Rawi: Thank you. Thank you to the Vice-President for lending me the procedure. Madam President, I beg to move:

That a Bill to amend the Tobago House of Assembly Act, Chap. 25:03 and to make consequential amendments to the Elections and Boundaries (Local Government and Tobago House of Assembly) Act, Chap. 25:50, be now read a second time.

Madam President, we come before the Members of the Senate, as a Government, to consider this Bill. All laws are made for the peace, order and good governance of Trinidad and Tobago pursuant to the Constitution itself, section 53, and all laws are designed to tackle a mischief. In this case, the mischief that is afoot is the democratic constitution of a legislature. The Legislature that we are looking at is the Legislature that sits in the confines of the Constitution of the Republic of Trinidad and Tobago, section 141A and the Tobago House of Assembly Act that we now seek to amend by this Bill. That Legislature in the Constitution of the Republic of Trinidad and Tobago, we find the reference to the establishment of the THA. As in 1996, there was a constitutional amendment Bill and in 1996 we had the birth of the THA Act, which repealed and replaced the 1980 THA Act.

In the Constitution of the Republic of Trinidad and Tobago, we have the fact that section 1 of the Constitution that Trinidad and Tobago stands as a united State;
two aspects merged into one. There is a history behind that which I will come to in a moment. But the section of the Constitution that stands before us, right now, in section 1 of the Constitution, is that Trinidad and Tobago stands as a unitary state. Section 141A under “Chapter 11A” says:

“(1) There shall be an Assembly for Tobago to be called ‘the Tobago House of Assembly’, in this Chapter referred to as ‘the Assembly’.

(2) The Assembly shall consist of a Presiding Officer and such other members qualified and appointed in such manner and holding office upon such terms and conditions as may be prescribed.”

THA established in no lesser place than the Constitution, THA saying that the THA itself is the Presiding Officer and members. The members are under terms and conditions and qualification as may be prescribed, and they are prescribed in the THA Act of 1996.

Our Constitution also recognizes a very powerful entity under Part IV of the Constitution, and that is the Elections and Boundaries Commission. The Elections and Boundaries Commission as an independent entity, so excellent in its purport and work that it was the backbone of the establishment of many an African state, as we saw the EBC from Trinidad and Tobago exported into the African content to begin the transformation of the African content moved into independence, it was the Trinidad and Tobago Elections and Boundaries Commission that did that.

We have had elections back to back each time they are due and sometimes when they are not expected, run by an EBC that has a statutory and constitutional requirement to report on its affairs. Reports are produced periodically, reports are designed to speak to boundary changes, variations, irregularities, and not once in
our distinguished history as a Republic, certainly, even as a colony, have we had a
difficulty with the discharge and functions of the EBC, the Elections and
Boundaries Commission.

2.20 p.m.

Tobago is the subject of great history and in fact many people would not
know that Tobago, in fact for nearly 100 years of its existence under the British
colonial system had full autonomy. It had a governor. It had a council. It operated
independent until Tobago found itself in the British colonial environment. Whilst
Trinidad was a Spanish colony, Tobago found itself in the construction of a
marriage in constitutional structures with other Caribbean islands, St. Vincent,
Grenada and the Grenadines and Tobago. That was the marriage under the British
colonial position. In 1768, the first Legislative Council was established under the
British colonial Constitution of 1763. Tobago, Grenada, the Grenadines, Dominica
and St. Vincent comprised the pack there; 29 years later in 1797 the British colony
itself established its structures, 64 years later in 1832 the Legislative Council was
put into effect in Tobago. In 1887, section 1 of the Trinidad and Tobago Act, 1887,
saw the Crown power used to unite the colony of Trinidad and the colony of
Tobago.

In November 1880, Trinidad and Tobago Order in Council, dismantled
Tobago, unified Trinidad and Tobago, effective 01 January, 1889, and of course,
St. Vincent, Tobago, Grenada Constitution Act, 1876, was repealed. What we saw
at the point in time was a very interesting exercise that forms part of a wider
movement in Tobago. In Tobago—and as a fan of history I recommend all
Members have a look at the Laws of the Republic of Trinidad and Tobago, you
will see at the Attorney General’s office that we have the digital library and the
digital library has all the laws. It is actually quite interesting to see Trinidad and Tobago Act, 1887; Order in Council, 1888; Order in Council constituting Tobago as a ward of the colony of Trinidad and Tobago. All of the history of laws are set out right there for Members to have a look at and in it we saw in the history of Trinidad and Tobago, a very interesting statement.

Historically, and as a matter of precedence, the Tobago Council which was quite opposed to Trinidad’s and Tobago’s union, passed on the eve of the law coming into effect, a very interesting resolution which I would like to read into the record. The Legislative Council of Tobago had this to say:

“That inasmuch as the wish of the people of Tobago for union with Trinidad has principally been based on the representation of the Government”—meaning Britain—“and the assurances given to the people that material benefits will result to Tobago from such union, the Secretary of State for the Colonies be respectfully asked in the event of such union taking place to afford the people”—of Tobago—“a pledge that should it prove disadvantageous to the Colony,”—of Tobago—“or otherwise undesirable to the majority of…”—its—“...inhabitants, this Colony”—meaning Tobago—“shall on petition have granted back to it the form of self-government which now exists here.”

That is our history. And today we come to the Parliament dealing with the mischief. What is the mischief? There was an election held in Tobago on Tuesday 17 November, 2020, the THA was dissolved. On the 25th of January, 2021, there was an election in Tobago, six seats of the 12 went to the People’s National Movement, six seats went to the DPD. On the 28th of January, 2021, the oath of office was administered to the assemblymen; all 12 were sworn in. The deadlock
stood at the door of the THA and still stands and prevents the election of a presiding officer. The presiding officer, put in simple terms, is the kingmaker. The presiding officer once elected by the members of the Assembly, being assemblymen sworn in, the presiding officer then moves immediately to the election of a Chief Secretary.

After the election of a Chief Secretary you move to the Minority Leader. After the Minority Leader you move to the councillors. You then move to the Deputy Presiding Officer, et cetera. But the THA Act strictly interpreted is such that the assemblymen having been sworn in, unless they take the step to an election of a presiding officer, nothing else can pass because the presiding officer is the key to forming the Assembly. And the mischief painted in law, the purpose of this Bill is that until a Chief Secretary is about to be sworn in, the Executive Council previously in office continues into office pursuant to section 34 and section 36 of the THA Act. Let me repeat that, the Executive Council in Tobago continues to discharge the functions under sections 25 to 27 of the THA Act and the Fifth Schedule of the THA Act. Those previous members, whether they ran for re-election, whether they lost a seat, once they are in office and do not resign they are not compelled by dissolution of the Assembly to step out of office, and therefore the mischief that we are treating with is that Tobago is being run by an Executive Council that ought to be reconstituted because an election was had; assemblymen have been sworn in. You need to get to the step of councillors, councillors are akin to Senators.

You need to get to the exercise of supervising the expenditure of the Executive Council and therefore democracy is at stake unless a legislative solution is brought to bear to solve what is now a constitutional crisis in Tobago. And the
constitutional crisis that I refer to is the fact that Tobago’s Executive Council needs to be supervised by an assembly that can call them to account for expenditure, that can examine them, that can discharge the desires of the elected representatives who of course bring the interest of their constituents to the fore. So that is the mischief.

The mischief is now to be factored against alternatives: Why this law? Why amend the Act? What alternatives are present? In this Bill, Madam President—

Madam President: Three o’clock.

Hon. F. Al-Rawi: Three o’clock. Thank you. Madam President, this Bill proposes an amendment to section 5 of the THA Act, it proposes an amendment to section 22 of the THA Act, it proposes necessarily amendments to the Elections and Boundaries Commission (Local Government and Tobago House of Assembly) Act because it is that mechanism that tells you how your seats are to be divided, et cetera. And when combined, the legislative recommendation before the Senate this afternoon is that this law is necessary to solve the mischief that I have just described because there is no alternative route available in law or in democracy.

Let us deal, number one, with the allegation that Trinidad is involving itself in Tobago’s affairs, that is why I started off with section 1 of the Constitution and the historical antecedents to demonstrate that Trinidad and Tobago as a unitary state functions in a Parliament where laws are made for the peace, order and good governance of Trinidad and Tobago. Let me put it in another way: for the peace, order and good governance of Tobago and Trinidad; that is one. Two, there has been floated in the public domain an allegation, a submission that reference can be had to a solution driven by way of adoption of the House of Representatives of the Republic of Trinidad and Tobago Standing Orders. In particular, Standing Order 4
of the House of Representatives of the Parliament of the Republic of Trinidad and Tobago. What does that say? That says in 4(10) that where there is an equality of votes in relation to the election of a Speaker of the House, that you can go by way of a process of elimination of candidates for Speaker by the drawing of lots.

The allegation flows from a Standing Order in the THA Standing Orders, and the THA Standing Orders are of course entrenched in section 69 of the THA Act, and the Standing Orders of the Tobago House of Assembly provide at Standing Order 92 an allegation that:

“In any matter not herein provided for, resort shall be had to the usage and practice of the House of Representatives of Trinidad and Tobago...”

Point number one, the same Standing Orders originating from the Constitution, section 141A of the Republic, to the THA Act itself as a body corporate in section 25 to section 22, to the Standing Orders coming from section 69 of the Act, the Standing Orders of Tobago say very clearly and very pellucidly at Standing Order 3, it provides the complete mechanism for the election of a presiding officer.

It goes into one person so nominated, if another person is so nominated what happens, and then it goes down to, in subsection (4):

“...where...”—there is—“...an equality of votes the election of the Presiding Officer...”—becomes—“...impossible,”—that—“the ballot shall be retaken in respect of the relevant Candidates.”

It goes on to describe that:

“Where on the second ballot...”—there is an—“...equality of votes...the Clerk shall propose the question that the member...”—et cetera—“...first...”

It then goes that:

“If...”—that—“...proposal is negative, the Clerk shall propose a like
question in respect...until the question is carried in favour…”

So Standing Order 3, coming from section 69 of the THA Act, drawing authority from the Constitution in section 141A says exactly what is to happen in the election of a presiding officer. Associated argument is, well, let this presiding officer—let this Clerk who is engaged in the election of a presiding officer—because 3(1) says the Clerk shall call upon members to elect a presiding officer. The only people with the authority to constitutionally and in terms of statute elect a presiding officer in the Tobago House of Assembly are the assemblymen, the members, nobody else. Secondly, the Clerk must engage in that function. And this reference, this argument that says, “look, draw lots”, fails because the Standing Orders of the THA at section 9, at Standing Order 9 specifically says:

“The Presiding Officer shall have power to regulate the conduct of business in all matters not provided for in the Standing Orders.”

Let me repeat that, the “Presiding Officer”, not the “Clerk”. The Clerk therefore cannot take avail of the argument to use the Standing Orders of the House of Representatives of Trinidad and Tobago via Standing Order 92.

This now entrenches a further position. The only rule that is relevant in this argument now becomes, well, can a court step in to decide this battle? Should the court decide whether the presiding officer drawing of ballots, et cetera, can be exercised by the Clerk? We have heard threat of litigation but there is none. There is no litigation and that is a very telling story that no litigation has been filed and therefore we speak openly now. But when you get to the fact that the Act is specific and the Standing Orders are specific and that the only authority to be exercised for the election of a presiding officer is via the assemblymen, you run into the constitutional argument of infringing upon the exercise of functions of the
THA itself, exactly the same way courts have repeatedly ruled in Trinidad and Tobago that the courts do not enter into the business of the Parliament. It runs to the root of the separation of powers principle upon which our democracy is founded, and therefore, if you have regard to section 76 of the THA Act which is pellucidly clear, that says that the House of Representatives management and autonomy is akin to that—the THA is akin to that, you are into constitutional separation of powers argument.

So number one, the Clerk is not the presiding officer. Number two, the presiding officer is the only person that could draw lots if 92 was to be used. Number three, a court cannot intervene into the affairs of the THA Act on this matter because of the separation of powers hurdle. And I am addressing the point, why this law, why now, and I am now going to underwrite the points a little bit further by saying that as we now stand on the 2nd of February, 2021, far removed from the 25th of January, 2021, there is a mechanism to solve the 6:6 impasse; that is called agreement. It is called accord. Has that been attempted? Well, the public record demonstrates that the THA has come, the members sworn in on the 28th of January, 2021, have attended and gone through the Groundhog Day exercise of repeating the attempt to elect a presiding officer.

The presiding officer exercises a very important role. For instance, the presiding officer is the person that has the ability to break a deadlock with a casting vote on the election of a Chief Secretary. Let us compare another point. Can we truly say, even if the arguments that I have presented so far do not hold water in hon. Members’ minds, can we say that it is appropriate to take the Chief Secretary’s post and put that into the hands of straws so that 6:6 becomes a majority of six and a minority of six? Let us consider this further and more
philosophically, is it appropriate to consider the role and function of the Chief Secretary as a Speaker of the House? A Speaker of the House is elected by the House, yes, but a Speaker of the House is ultimately subjected to the majority view of the House. The majority view of the House is exercised under the command of the Prime Minister and therefore it stands to reason that a Speaker can be moved from time to time by the will of the majority.

If we accept the argument that the Clerk should exercise the functions of the presiding officer by borrowing from the House of Representatives Standing Order to draw lots for the elimination, we are saying to Tobago, “We will decide who the Chief Secretary will be by the drawing of lots”, because that is ultimately what comes out. The presiding officer leads to the election of the Chief Secretary. Why?—because the presiding officer has a casting vote. And it is at that point, that intellectually, philosophically, morally we enter into the argument, well, is a Chief Secretary akin to a Speaker of the House? And I respectfully say that the answer to that is, no. And I take that even further into the position of the ridiculousness of my six being bigger than your six; my half bigger than your half.

Now, there was one point in time when my half was bigger than your half was made by reference to who received the popular vote. It is clear that the PNM won the popular vote in Tobago but does that really matter, respectfully? No. What mattered is whether the members who were sworn in on the 28th of January could have exercised a degree of compromise, perhaps engage in power sharing, engage in appointments, but that did not happen and has not happened. So this Bill now comes before us and we say to the population, let us look at the law.

We propose at section 5 that we delete the word “twelve” and we put the word “fifteen”. Section 5 of the THA Act is where you establish the THA as a
body corporate. The number is set in stone in that Act as “twelve” and the first thing we say is, “Let us go to 15.” Why 15? Without breaching the Standing Orders on anticipation or going into JSC’s work, I will speak about the 2018 JSC into Tobago autonomy and I will say that in the Government’s attempt at giving Tobago its historical desire, 150 years ago, and that pledge in the Tobago Council to have a degree of self-autonomy, we produced a Bill which went to Joint Select Committee in the last Parliament and in that Joint Select Committee there was massive and wide-scale consultation in Tobago which resulted in section 141B of the Constitution being proposed where we would prescribe 15 electoral seats. That went into the second Session to the new Parliament, this Twelfth Republican Parliament and that is there, I will not speak about that.

So 15 seats have come forward for recommendation; the first place you plug in 15 is at section 5 of the Act. The second place that we have to function our attention, focus upon, is section 22. Section 22 of the THA Act currently provides for two circumstances of an election. Number one, after four years of being in office your time runs out, you get dissolved and you go to an election. The Constitution of the Republic of Trinidad and Tobago has a similar mechanism, after five years and three months your time is up, you have to have an election. Section 22 says there is an alternative, you can call for an election by the Chief Secretary dissolving the Tobago House of Assembly prior to the four years but that must be done by way of a resolution of the Tobago House of Assembly.

So we are 6:6, no presiding officer, cannot give the Clerk the functions of the presiding officer, cannot invite the court to come and consider that position because the court is effectively out of place in the separation of powers argument. We lift the 15 from the consultations began in 2016. We bring it forward, we pull it
out of the Joint Select Committee, we apply it to the THA, section 5, section 22, and we proposed in section 22, the introduction now of a formula which says in subsection (3):

“Where the Assembly remains dissolved after a primary election and no Assembly is constituted…”—that is the material point.

You cannot constitute the Assembly until the Chief Secretary is about to take the oath because the old Council stays in. Dissolution does not stop the Executive Council from operating. They only resign or move out of office in law when the Chief Secretary is about to take the oath. That is what the law says.

Subsection (3) says:

“Where…”—that situation of—“…the Assembly…”—not being—“…constituted within fourteen days of such primary election, the Chief Secretary, after consultation with the President and Prime Minister, shall fix a date of a fresh primary election which date shall not be earlier than the expiration of two months…nor later…”—than—“…three months.”

So there is a specific formula. We then continue that by saying in relation to the tail end of clause 5, the proposed amendments to section 22, we say not later than three months:

“…after the coming into force of an Order made under section 4 of the Elections and Boundaries (Local Government and Tobago House of Assembly) Act nor later that the expiration of three months after the coming into force of that…”—Act.

So from THA, section 5, 12 to 15; section 22, mechanism to get back to the polls because you are in a deadlock; my six “eh” bigger than your six and nobody wants to agree to the presiding officer, enter the Parliament, avoid separation of
powers argument, avoid an unconstitutionality where you are not giving the Clerk the powers of the presiding officer because you just cannot do that. Let us get into how the order works. The provisions of clause 6 therefore become relevant; clause 6 says, let us amend the Elections and Boundaries Commission (Local Government and Tobago House of Assembly) Act. Let us go into the law that we are looking to amend and this law, Chap. 25:50, becomes relevant.

This is an Act of Parliament, 18 of 1967. This Act was badly drafted. Number one, it says for instance in section 3 of the Act:

“For the purposes of this Act, Trinidad and Tobago is divided into—

(a) …five Cities and Boroughs…”—and when you check the schedule, in Trinidad.

“(b) …nine Regional Municipalities…”—and when you check the schedule, in Trinidad.

“Braps; it done.” It stops there. So how is Tobago divided? The law did not condescend to that until you got to the schedule and the schedule is where it says 12 seats, but the Act obviously had a problem, so we propose to amend that Act. We propose to say, “Tobago is divided into 15 electoral districts mentioned in Part III.”

Accordingly, we take the opportunity to do further surgery to the bad language of the original Act by defining an “electoral district” because “electoral district” in section 2 of the Act is originally defined to mean:

“…in relation to a Local Government election a constituency as defined in an Order…”

Well, we know that the THA is a THA election, it is called a primary election and therefore the Act needs to be improved and so we propose to amend the definition
section for “electoral district”. That is where the amendment to section 4 proposed by clause 6 comes about of this Act:

“The Commission shall define and review the boundaries of the electoral districts into which an electoral area is, or is to be, divided and…submit”—
a—“…reports either—
(a) showing the constituencies…”—or electoral districts into which they are divided.”

We then go into reports because what happens is after a primary election the law currently says, “Listen, two years after the election bring your report”. You will see that in section 4(2) of this Act which says:

“in the case of…”—a—“first report…”—that is no longer relevant.
That is (2)(a); (2)(b):

“in the case of any subsequent report, not less than…nor more than three years from the date of the submission of its last report;”

So after the THA election, the primary election or a local government election you have three years that the EBC has to produce a report. We just had a primary election in Tobago, we now stand at the 2nd of February; we have to get to the fact that a report must be produced. Why do you want a report? Are there any electoral irregularities? What about your reflections from an independent perspective of the EBC in relation to how the election worked? These reports have been produced every time we have an election. If you look to 4(2)(a), when there was a first report they had six months to do it. The EBC has confirmed to the Government, upon our enquires, that they are in a position to conduct a report no later than three months from the primary election on the 25th of January, 2021, because they have done the work already. We therefore say for the year 2021, for the purposes of creation of
the 15 electoral districts that the EBC has 90 days, three months, after the proclamation of this law if it passes here today, they have 90 days to get their report.

2.50 p.m.

What happens next: They produce their report, they fall into the provisions of the Act, the report is given to the Minister of Rural Development and Local Government, the Minister of Rural Development and Local Government tables it in the Parliament, and a debate happens for the adoption of the report. Once that happens by way of affirmative resolution, where the contents of that report are brought to the scrutiny of Trinidad and Tobago, you adopt the report and an order is issued. It is at that point what is recommended and approved by way of affirmative resolution in the Parliament becomes the law, and 12 can become 15. Let us look to 12 and 15 a little bit further.

We have also provided for the future where the Assembly remains dissolved in another election, because 15 may be met with seven and seven and one, there may be a deadlock. There may be a situation where my seven and your seven and the one do not add up to a majority, people entrench themselves, so we must contemplate the fact that an odd number does not mean that you can avoid a deadlock theoretically. So we provide a further submission in the law to say: In the future, if this problem happens, you have 104 days to solve it from the primary election. Why 104 days? That is 14 plus 90, that is 104. So we are keeping the methodology in law tight.

We then get down to the provisions of the columns. We are proposing an amendment. The island of Tobago, we are moving it from 12 to 15—and I want you to stick a pin. Look at section 5 of this Act. I am sure many of you have looked
at it:

“The President may by Order—

(a) amend…Part II of the First Schedule by varying the number of electoral districts...”

There was a “ratch” in the law. It would have been a hard one to explain. The Cabinet is what “President” means, could have amended the Schedule by way of an order; 12 becomes 15. But that would collide with so many arguments: the parent law, the THA reference to 12 in section 5—too complicated, again demonstrating how difficult the drafting of this law was back in 1967.

So we take reference to the Second Schedule. The Second Schedule of this Act is the mechanism by which you determine the boundaries. In specific context, we must look to regulation 4 of the Second Schedule:

“The number of electors in an electoral district of a municipal electoral area shall be the number obtained by dividing by the number of electors in that electoral area by the number of electoral districts shown opposite the name…”—et cetera—“but the Commission may in consideration of topographical factors vary such number provided that in no case shall the number of electors in any one electoral district of an electoral area exceed or be less than the number of electors in any other electoral district of that electoral area by more than twenty-five per cent.”

What does that mean? You take the 51-plus thousand electors, you divide it by 15, you look at topographical and other areas, your variance must be no more a difference than a maximum of 25 per cent between any one of the other seats. So your margin of error is 25 per cent. That is the law. It has existed since 1967.

So, in summary, Madam President, there is a mischief to be solved. The
mischief is of a grave kind. Constitutionally, the people of Tobago, the people of Trinidad and Tobago, require an Executive Council to be supervised by an Assembly. That is democracy. You cannot have expenditure without accountability. The best accountability is under the privileges of a Legislature. We enjoy a privilege pursuant to section 55 of the Constitution. Sometimes that awesome privilege is lost on Members where we cannot be taken into civil odium or criminal odium for things we say and do in the Parliament. Therefore, that privilege to be exercised by the THA’s scrutiny of the acts of the Executive Council is critical. It is a mischief that must be solved.

Respectfully, my submission is that we cannot enter into the domain of the drawing of lots, where my six is bigger than your six, because the person to do that is the Presiding Officer, not the Clerk. So says Standing Order 9. So says the law, section 69 of the THA Act.

Respectfully, I make the further submission that we ought not to degrade the Office of Chief Secretary to that of a lesser office. The Chief Secretary is a quasi-Prime Minister of Tobago, and therefore, it is important for us to hold Tobago in high esteem because of our historical antecedence, some 150 years ago, and because that is what moral rights say ought to happen.

You can argue that that is part of the corpus juris for constitutional law as enshrined in international conventions on human rights. Indeed, that was the position taken by the late great ANR Robinson in 1977, when he moved a Motion for a new Tobago autonomy.

Respectfully, access to the courts—

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

Hon. F. Al-Rawi: Thank you, Madam President. Respectfully, access to the courts
becomes problematic when you have the entire precedent of a court not involving itself in Parliament’s affairs, and in this case, the THA’s affairs, pursuant to section 76 of the THA Act because of the separation of powers principle.

Therefore, hon. colleagues, in deference and in respect to our brothers and sisters in the island of Tobago, I ask this honourable Senate to consider the recommendations posed now in the Bill before us by allowing the process to unfold. Is there certainty in the process? Yes. Is there transparency in the drawing of boundaries? Yes, because the law provides for it, regulation 4, schedule two of the Elections and Boundaries Commission (Local Government and Tobago House of Assembly) Act, Chap. 25:50. Is there certainty in the time frame? Yes, they must produce it within 90 days of this Act, if it becomes an Act becoming law. That has the certainty of going to the Parliament for affirmative resolution, everybody has a view. Is there a process of challenging boundaries? Yes, it is in the law. It is in the manner in which the EBC receives objections. It is in the manner in which the THA Act has to operate in conjunction with Chap. 25:50.

So all of the bells are being hit in terms of democracy, proportionality, due process, respect for the separation of powers, and respect for the will of the people of Tobago being paramount to the drawing of lots, an exercise which just cannot happen in law, in my respectful opinion.

Madam President, I look forward to the recommendations and thoughts of my learned colleagues in the Senate, and I beg to move.

*Question proposed.*

**Madam President:** Sen. John. Sen. John, I remind you that you have 40 minutes.

**Sen. Jearlean John:** Thank you, Madam President. Thank you for the opportunity.
I thank the hon. Attorney General for reminding me of my history class at Roxborough Secondary in Tobago because, in fact, it always fascinated me that Tobago changed hands. I mean, in history it is recorded that Tobago changed hands the most in the history of the West Indies. Thirty-three times I think it is recorded.

Madam President, the Attorney General I think went to great lengths in terms of the overview and what I would say is more or less a preamble to where we are today, in that, we had the elections on the 25\textsuperscript{th} of January, he is correct. Coming out of that, we had both sides contesting, coming out, winning six seats each; six on one side and six on the other side. So on the 28\textsuperscript{th}, as we know, Her Excellency would have presided over the swearing-in ceremony.

Madam President, as subsequently, they sought to go to the next step of electing a presiding officer. As we know, at this date, there exists no presiding officer. I think the hon. Attorney General explained it as a constitutional crisis or problem, et cetera.

Now, based on the news, I would have read that the head of the Assembly on the PDP side would have referenced—and the Attorney General did reference that, and he said why this would not work—proposed that the deadlock be resolved by the section 92(1) of the Tobago House of Assembly Standing Orders. For the purpose of this House, I mean, we cannot read it partially. You see, what the framers did, they knew that they did not have all the answers. So what they did is to draft a catch-all section where they are saying go to a more mature jurisdiction, a more mature authority, which is the House of Representatives. Madam President, 92(1) says:
“In any matter not herein provided for, resort shall be had to the usage and practice of the House of Representatives of Trinidad and Tobago which shall be followed as far as the same may be applicable to this Assembly, and not inconsistent with these Standing Orders nor with the practice of this Assembly.”

That is very clear. They said:

“(2) In cases of doubt the Standing Orders of the Assembly shall be interpreted in the light of the relevant usage and practice of the House of Representatives.”

And then (3) says:

“No restrictions which the House of Representatives has introduced by Standing Order shall be deemed to extend to this Assembly or to its members until the Assembly has provided by Standing Order for such restriction.”

So it is very clear. What the framers were saying is that you go—if it is not there, you go to the House of Representatives and find your solution.

But you see, I read in the newspaper where, when the hon. Prime Minister was referring to this, in terms of what is clear in law, you know, whatever he said, you cannot break the law to say you are making law. You cannot do that. It is clear in law. The hon. Prime Minister said—I am reading from the Express of Saturday. He said, there would be—in calling for an election, he said:

“‘So what is this perceived advantage of the PNM? Any perception of the power of that vote lies in the hand of the voter…’
‘So all of…’”—this is gobbledygook argument.
Madam President, I am saying that I had mentioned in this House before that the hon. Attorney General comes to the Parliament with law and to me, it is like the way I did maths at school. I look at the answer and then I try to work it through. The answer is right here in front of us because, as he said, no six is better—is bigger than the other six. But it appears as if, when you go through 92(1), which takes you to the House of Representatives Standing Orders, one six—you see, what the outcome of one six or the other six is, it means one six has 50 per cent chance of winning or losing and the other six has another 50 per cent chance of winning or losing. Of course, it appears as if the Government wants to ensure that they do not lose. So this is about coming to this House and saying: How do we ensure that we cannot lose?

Because in saying—in this amendment of the number of 12 Assemblymen to 15, again, the hon. Attorney General, ensuring that we do not fall into conflict with what is currently before us in the Joint Select Committee—but our hon. Attorney General did mention it, and said that Tobago, in consultation, had mentioned these 15 Assemblymen. Well, of course, anybody can say anything, but that now must fall to process. But they did not just say the 15, they said:

Or any such other number of Assemblymen as corresponds with the number of electoral districts as provided for by an Order made by the President.

That is the end of that statement. They did not stop and say, 15. It went on to say, “any other number” based on the proper process, based on the law. Because we cannot come to this House with the intention to break the law.

Madam President, in addressing this issue, the other thing is, we heard about consultation in coming up to this magical number 15. There was consultation maybe in 2016, in 2018, but there has been consultation now without context.
People threw out a number. Now we have a context because we have six and six. Why have we not had any consultation with respect to this particular issue? There has been no consultation. There has been no current consultation.

As a matter of fact, it is reflected in an open letter to the hon. Prime Minister from one Dr. Vanus James—and, Madam President, if I may read from this open letter—one Dr. Vanus James and Dr. Winford James. Now, I do not know Dr. Winford James, but his views are always sought after in the national conversation. But I do know Dr. Vanus James, we grew up in the same village.

Now, I know they were saying UNC was interfering, blah, whatever. I have not seen or spoken to Dr. Vanus James in about 20 years, but in Tobago we have a saying—I want to make that clear—I have not seen or spoken to him in over 20 years, which might date me, but in Tobago we have a saying, “all ah we is one family”. Maybe sometimes there are exceptions now. But Dr. Vanus James who, during the cut and thrust of the last THA elections, which we are here discussing, was described as a vagrant, which means the temperature in Tobago has become very vitriolic. So I do not know if that is the reason there has been no consultation with the other six, and there has been one consultation only with one six.

Madam President, Dr. Vanus James and Dr. Winford James, very distinguished sons of Tobago, they wrote this open letter to the hon. Prime Minister and they said:

“We gather from both the Bill and the Statement that you have decided to bring an end to the 6-6 impasse—and everybody I suppose wants that—“brought about by the January 25 THA elections, by having Parliament amend the current THA Act # 40 of 1996.”
And of course, they went on to say what is going to happen, changing this electoral district from 12 to an odd number and I am saying, why not 13. So they said:

“Making consequential adjustments to the EBC Act…

For the year 2021, authorizing the holdover Chief Secretary to dissolve the House of Assembly and fix the date for a fresh primary election after consultation with the President and the Prime Minister.”

That is in law.

“Making 1 to 3”—well, of course—“above retroactively applicable.”

But, Madam President, what struck me more in this letter, they said that:

“Cabinet and Parliament are made up predominantly of Trinidadian voices; so that a Tobagonian problem will be solved, yet again, by Trinidad. Indeed, it cannot rationally be denied that the problem would be solved by a PNM Trinidad. The national government is run by the PNM. Parliament is controlled by the PNM. The holdover Executive Council is PNM. You are a PNM Prime Minister. You have consulted in broad daylight with the Chief Secretary and, outside of the light, with the Tobago PNM political leader.”

Madam President, how could this be fair? At the end of the day, no six is bigger than the other six. So we must come to reasonableness. Why is there no reasonableness? Why has there been no consultation with the other six, the PDP six?

I have in my hand again a letter that was floating around on social media. Now, I cannot vouch for its authenticity but I think with your permission, Madam President, I want to read it, because it has the crest of the Prime Minister at the top—well, Prime Minister of the Republic of Trinidad and Tobago, and it is
addressed to an Assemblyman. Assemblyman Faith B.—I think—Yisrael, Belle Garden, Goodwood:

Dear Assemblyman, you are invited to attend a meeting at the Magdalena Grand Beach and Golf Resort on Wednesday, March 03, 2021, at 9.30 a.m.

It means, Madam President—it appears as if what we are doing here is a done deal because after the fact is when there is a meeting with the other six, not prior to. How could that be reasonable that you just go to one six and decide, “I am going to go and change the law?” But there is already existing law to treat with this issue and they were pointed—the Clerk of the Assembly was pointing to that law and said, this is where the path we have to go. But as I said before, that law did not suit the purpose. That law did not confirm that one side is going to win, did not give a specificity in it, and that is the reason we are here today. Let us go and change the law. Let us use the law to break the law. So, Madam President, tomorrow is when the other six is being consulted with, after the fact—because there is probably an expectation that this law is going to be passed in this honourable House today.

Madam President, this amended Bill says, as I said, in clause 4:

“Section 5 of the Act is amended in subsection (1), in paragraph (a), by deleting the word “twelve” and substituting...”—just by the stroke of a pen. Where did that come from? I am happy to see that the hon. Attorney General recognized the supremacy of our Constitution, and that the EBC in section 71—provision 71(4)—I want to bring attention to section 71(4) to this House:

“A person shall not be qualified to hold office as a member of the Commission who is a Minister, a Parliamentary Secretary, a member of the House of Representatives, a Senator, a temporary member of the Senate, or a public officer.”
So there are no public officers, by virtue of the Constitution, who can be a member of the EBC. I am happy to hear that the EBC, our EBC, goes all over Africa and will help them to institute their processes and so on. That is a proud moment, but charity begins at home. They must know that the Government cannot direct them in terms of saying, we want 15 boundaries now. That is the flavour of the month.

       Further, Madam President, 71(8) of the Constitution says:
        “The Commission may regulate its own procedure.”
And then in (12) it goes:
        “In the exercise of its functions under this section the Commission shall not shall not be subject to the direction or control of any other person or authority.”
This is the supreme law of the land, and no simple majority law could overcome this law which came about by a special majority. So the EBC—there is a process by which the EBC conducts its business. It is not fly-by-night. They cannot just—someone cannot decide, we want 15 seats, and the EBC runs about and gets them 15 seats.

        As a matter of fact, Madam President, there was a report—the last report laid in this House by the EBC, by law, the “Fifth Report of the Elections and Boundaries Commission on the Boundaries of the Electoral Districts in the Electoral Area of Tobago, 08 September, 2020”. The EBC would have said—and again, I just want to reference the report. And this—they addressed it to, I supposed, the Minister in charge, Sen. The Hon. Kazim Hosein. They said:
        In accordance with section 4 of the Elections and Boundaries Commission (Local Government and Tobago House of Assembly) Act, Chap. 25:50, the Act...
So, again, this is law. Based on the law, they are coming to the Parliament, as they are mandated to do, based on the command of the law. Section 4(1) and (2) of the Act provides as follows—4(1), just briefly:

“The Commission shall define and review the boundaries of the electoral districts into which an electoral area is, or is to be, divided and shall submit to the Minister reports either—

(a) showing the constituencies which it recommends that an electoral area should be divided in order to give effect to the rules set out in the Second Schedule; or

(b) stating that, in the opinion of the Commission, no alteration is required...”

And then they went on to (2):

“Reports under subsection (1) shall be submitted by the Commission...”

So it is not the other way around. This exercise is led by the Commission. So they are talking about the first report not later than six months:

“(b) in the case of any subsequent report...”

But more importantly, in (c) they said:

“in the case of a report in reference to Tobago, not less than two nor more than four years from the date...”

So, Madam President, they are twisting themselves into pretzels. In trying to get to the right answer, they are looking at the back of the maths book. My teacher, Elle Cipery from Charlottesville Methodist, or Ms. Edris Jack, would not have called it gobbledygook. They would have said this really is “crapaud jig jig”. This makes no sense because, in law, the EBC cannot be—one cannot send them whenever as
they want, as they wish. They have to go according to—they have to follow the guide as set out—they shall follow the guide as set out under the Constitution.

Madam President, I go back to paragraph 3 of the report:

The last report on the definition and review of boundaries in the electoral area of Tobago was submitted to the hon. Minister of Rural Development and Local Government on the 29th of September, 2016.

So then, they came—and consequently, the deadline for presentation, they did a report on the 28th of September. They said:

The last election to the Tobago House of Assembly was held on 23rd January, 2017. Therefore, should the Assembly run its full term of four years, the next election to that body becomes due not later than three months after the statutory dissolution of the Assembly in February 2021.

But, Madam President, I just—they spoke about the Second Schedule and the number of electors in each electoral district—it is a very thorough report. They said in—I am reading from the report, paragraph 3, paragraph 4, paragraph 4(2.2):

There shall be 12 electoral districts in the electoral area of Tobago. In the division of electoral districts, in regional electoral areas, natural boundaries, such as major highways and rivers shall be used wherever possible—et cetera

This was laid in the honourable House in December of 2020. We are talking about a mere two months later that this House is being asked to approve, to vote in approval of three additional seats to solve a matter of inconvenience for the Government, but the law does not say that. The law prescribes very clearly where one has to go with this.

So they laid out all of the 12 electoral districts, and they said in paragraph 6:
Consequently, the Commission considers that no adjustment is necessary to the existing boundaries of the electoral districts in the electoral area of Tobago.

So how are we going to explain this? We cannot be moved by the whims and fancies of an individual or individuals.

So they went on in paragraph 7:

The Commission accordingly recommends that there should be no change in the boundaries of the 12 electoral districts in the electoral areas of Tobago.

And this was signed on the eighth day of September 2020 and laid by the—I suppose the folks who govern the Elections and Boundaries Commission. They call themselves the “Commission”, and their signatures are all here. So, Madam President, I do not understand how today we can be here debating a move from 12 to 15 seats.

Madam President, just like the hon. Attorney General, I want to refer to the hon. former President Arthur ANR Robinson, who maybe without him, we may not be sitting or standing in this House debating this Bill, because it was largely because of his efforts we have had the Tobago House of Assembly. He said:

“There have been countries, newly independent countries…”

This was his speech, Madam President—sorry, an address to the nation. It is dated here January 05, 2001, in this document. And he called it:

“A Matter of principle”.

He said:

“There have been countries, newly independent countries where numbers have counted, but it is one person who determined the course of events.
In the history of the world the same thing has happened, where dictatorships have risen on the basis of the influence of power of a single man.”

So I emphasize, what is important is reason. Can we today say that we have been reasonable in our approach to solve this Tobago issue, which is described as a constitutional crisis? Is there reason? Have we been reasonable by speaking to one six and not speaking to the next six? We will speak to the other six post facto, after the fact, after the deed is done, because hopefully hands and fingers are crossed hoping that this Bill is passed today.

How do we say this is reasonable, if no six is bigger than the other six? How come these folks have never been—there has been no consultation with them at all? That cannot be reasonable.

3.20 p.m.

And here is from a president, speaking about reasonableness. He said:

Trinidad and Tobago today is a democratic State but it did not happen by chance. A lot of us, our fathers struggled for it and I need not recount the background from which we have come. We all know that slavery, colonialism and then independence in 1962 and republican status in 1976.

You see, Madam President, I think all of us come here with good intentions to do our best for Trinidad and Tobago and particularly I can speak for the people I caucus with, because we do caucus and we do think about and talk about, how are we going to approach on the piece of legislation, of course, we will have directions, et cetera.

And every time we will say, you know, this Bill or that Bill is eroding, eroding rights, eroding our rights as citizens of this country. I mean, there was one that in which we had a very spirited debate and, I mean, we stood up, got myself
into trouble. But again, I want to quote the hon. President Robinson because maybe, Madam President, we could call him in Tobago parlance, a “seer man”, because here he says:

Mother used to tell us as children, bad habits are gathered at slow degrees; as streams run into rivers and rivers into seas, so things happen day by day, accept them and they keep creeping on until you are overwhelmed, you cannot do anything more about them. This is how it has happened in history. This is how it has happened in other countries of the world, and this is why many people including myself are disturbed—

—because he was disturbed about a particular situation but we could superimpose this on it, you know. It is the accumulation, bad habits growing by slow degrees.

So why are we fiddling with the bedrock of who we are as a nation, as a country? What makes us a democracy? Yes, we brag, we go all over and help people with this thing but if we are not practising it here, if it is openly, one could say they are going to instruct the EBC, Elections and Boundaries Commission, who—the Constitution is very clear, “the EBC shall—”. You see, this is what disturbs me in this entire process, Madam President.

“In the exercise of its functions under this section the Commission shall not be subject to the direction or control of any other person or authority.”

**Madam President:** Sen. John, could you just say what you are referencing.

**Sen. J. John:** The Constitution.

**Madam President:** And yes, and the section, just for the *Hansard*.

**Sen. J. John:** Yes, of course, Madam President. I am referencing the Constitution of Trinidad and Tobago, Part IV, the Elections and Boundaries Commission, section 71(12) in this regard.
Now I expected there and then that we would have heard post haste from the EBC in terms of them asserting their role under the Constitution. But, Madam President, the *Newsday* of Sunday 21st February says on Saturday, well the Elections and Boundaries and Commission must wait for the proclamation of the Bill—

**Madam President:** Sen. John—

**Sen. J. John:** Yes, Ma’am.

**Madam President:**—just finish the date, please. It is—

**Sen. J. John:** Sunday 21st of February, 2021.

**Madam President:** Great. Thank you.

**Sen. J. John:** That is good? All right. Thank you, Madam President. So the Elections and Boundaries Commission, EBC, must wait for the proclamation of the Tobago House of Assembly (Amdt.) Bill, 2021, as law before it can begin any exercise to increase electoral districts to 15. The three additional seats is proposed by Government as necessary to facilitate a fresh THA election to break the 6:6 deadlock.

Now, this is political business. That is not the EBC business. The EBC by law must follow their process, their well-set out process. But in this same document that I am quoting from Sunday 21st February.

“All the commission cannot make any change just yet, although the bill was passed in the House of Representatives on Friday with a government majority vote of 21 to 18.

‘We have to wait until, of course, the bill is debated in the Senate and there
is a proclamation and passage.”

This is illegal. The Constitution is very clear on the EBC's role. No one can direct them, so they cannot be there waiting for any Bill to be passed to go and do anything. They go out there and after there is a clear methodology as to what the EBC does. In the Constitution, Madam President, 72(2):

“(2) Reports under subsection (1) shall be submitted by the Commission no less than two nor more than five years from the date of the submission…”

And it went onto say:

“As soon as may be after the Commission has submitted a report under subsection (1)(a) the Minister designated by the Prime Minister for this purpose…”

—as had happened in September:

“(in this section called ‘the Minister’) shall lay before the House of Representatives for its approval the draft of an Order by the President for giving effect, whether with or without modification…”

It is clear.

**Hon. Al-Rawi:** Senator, may you give way for moment?

**Madam President:** The Attorney General is asking you, Sen. John, if you will give way?

**Sen. J. John:** Certainly.

**Madam President:** Yes.

**Hon. Al-Rawi:** Just by way of assistance, hon. Senator, are you aware that that provision is for general elections and not THA elections?

**Sen. J. John:** So, but, honourable, through you, Madam President, well this report of the 08 September, 2020, followed the same guideline. It followed the guideline
as laid out in the Constitution and out in the EBC Act. [Desk thumping] It followed the guideline. So I do not know. They must follow some guideline. There cannot be any arbitrariness in terms of how the—because, you see, Madam President, the Attorney General also said that the EBC would have been all over doing this thing and they have never come into any problems or any confusion and that is the way. If it is we believe that the EBC is polluted or there is interference, that goes to the heart, to the core fundamentals of our democracy, then we cannot believe anything, any work that is done is by this EBC, if they are waiting on the Government to give them direction.

I am saying, based on again what I am reading in this press report of the 21st February, where they asked whether the EBC would be able to do the work required to create boundaries for three new districts in Tobago and submit a report to Parliament in a shortened period as required by the Bill, the head of communication replied:

““We’re no stranger to operating in limited time-frames.””

And they went on to say, they have the resources. I think if this is the case, Madam President, the only resources the EBC needs is their car to take them wherever they should take them, for them all to resign, because they cannot be taking this instruction. Because if the law says from the Tobago House of Assembly, that where it falls short you go in the Standing Order 92(1) and you move on to the House of Representatives Standing Orders, it is very clear, that is the law [Desk thumping] you know, and to say that the law is gobbledygook or whatever, I am reading in the papers it is being described as, it is not wrong, it is the law. If the law says to break that deadlock in Tobago, you have to go and climb the tree out in Woodford Square and who reaches there first wins, that is the law.
So we cannot now ridicule the pulling of lots because, in fact, the Standing Orders of the House of Representatives says, ends up with, you have to draw lots, that is what it says, and that is the law. If it comes, if there is a deadlock, they have to just pursue that path. There is nothing else that they can do.

So, Madam President, I am hoping that the hon. Attorney General will assist us in terms of how they are going to get around this particular issue given that they are intent on going to fresh elections and the law is there. There is no need for these amendments. Yes, you may have some clumsiness here and there but do it within your legislative schedule. It must not be this hurried path to this honourable House to interfere with the will of the people. That is interfering with the will of the people. [Desk thumping] The will of the people said, six and six. All right? And according to the hon. Vanus James and his colleague, they have said, let Tobago solve Tobago's problems. What is this issue we have that Tobago cannot—I am trying to find the letter—solve its own issue, that we need a Trinidad Parliament, I mean, without consultation that is.

We have, we are here, you understand, again, Madam President, you will recall we had the 18:18 tie. These ties are not new to us. We had the 18:18 tie, and the then Prime Minister Mr. Basdeo Panday he would have suggested to the Opposition Leader, let us have a Government of national unity, and he was turned down. He said no. So okay, I think it went on and then they decided that the President of the day will break the deadlock.

And eventually on the 24th of December, 2001, the President addressed the nation and he announced what his decision had been. And yes, people would have been disappointed but people followed the law because that is what they had agreed on. Why can we not have had mature discussions with one six and the other
six and go through the part as laid down in law to get the solution? This was the big national election, general election, and we were able to work this out.

As a matter of fact by way of history, the then, and based on some of the things I saw recently in the conduct of the Tobago House of Assembly election, Mr. Basdeo Panday as Prime Minister was once the Minister of Tobago Affairs. He took that Ministry whilst he was Minister of Tobago Affairs, Madam President. And in the last election where we had that result of 6:6, you would have seen where—I do not know if you follow these things, Madam President, but I saw where there were people with fliers with the image of the Leader of the Opposition on it and others. Madam President, I am still relevant, I am talking about the 6:6. And to me that was a dog whistling. I do not know if that is why we do not have vaccine today in Trinidad and Tobago. They “must be feel” that Calcutta ship has to bring it.

**Madam President:** Sen. John, now you are steering off of the matter at hand. So I will ask you to just confine your comments to the matter at hand, please.

**Sen. J. John:** Yes, Madam President. That was a comment coming out of Tobago but I am guided.

You see, there they were, what does it mean to have the image of the Leader of the Opposition? As if that is a bad thing. Nevertheless, Tobago spoke and they spoke loudly and they said, you will get six and you will get six and that is what we have to work with. [*Desk thumping*] They never asked that we come to this Parliament to resolve any issue. They said we are mature enough. And Dr. Vanus James and Dr. Winsford James they have said, “Prime Minister, at least six of the 12 elected representatives of Tobago want to pursue a different solution to the one proposed by you, as well as a different pathway to autonomy”.

**UNREvised**
They want a Tobago solution. That is what they are asking for, that is what Tobago is asking for. And in particular, (a), cooperative dialogue, they are talking dialogue. The Government is not giving them dialogue before the fact. They are giving them dialogue tomorrow. Tomorrow is when they are going to talk, after this Bill is passed here. So, such is their confidence. 

Cooperative dialogue and brokerage of a deal to resolve the existing 6:6 tie. If necessary, guided by Tobagonian elders with a view to ensuring the following key tasks are agreed by both parties undertaken within two years.

Immediate adjustments to the Constitution to provide Tobago the right to design its own governance arrangements.

So they asked for certain things. Madam President, I do not have an opinion on what they have asked for. I believe whatever the outcome should be, should be as a result of dialogue. No six is bigger than the other six. How come suddenly there is a thumb weighed in one direction over the other because they want to be sure that should there be an election, and I cast no aspersion, you know. Because in this same newspaper and I will—

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

Sen. J. John: Thank you. This same newspaper of Sunday Express, 20th February, the hon. Prime Minister said we are not allowing anybody to vote in two seats. It is the same people who voted in the 12 seats who will vote in the 15 seats. So what is this perceived advantage of the PNM? Yeah, because it is a PNM council in Tobago. It is a PNM Prime Minister, it is a PNM Cabinet, it is a PNM majority and it is a PNM Government that has—they have not spoken to the other six.

That is why everybody is concerned and they are looking at viewing what is happening here with great suspicion, because you cannot talk to people after the
fact. And we cannot call people's feeling and thinking and concern, hog wash. We cannot not be mindful because, you know, there is this saying, do onto others. In Tobago my grandmother used to say, “today for you, tomorrow for me”. So always, just as the wonderful tagline, “do the right thing”, you know, let us show reasonableness.

And again, as the President, our former President had said, the Constitution has a preamble which carefully sets out the ideas which were at the basis of the formulation of our Constitution of 1962. This is the man who I remembered when I came here in another incarnation. This Chamber was not like this. It was torn apart, it was ruined as part of the remembrance or what we had of the 1990 coup where that same Prime Minister really had been shot. So if anybody has a reason to speak or can speak, it is him. He said—and those that remained in our Republican Constitution of 1996:

“Whereas the people of Trinidad and Tobago—

have affirmed that the Nation…is founded upon principles”—notice that word—“upon principles…”—Madam President.

So we stand here of the shoulders of Arthur Napoleon Raymond Robinson as we debate this Bill. You see, he said, it goes further and says that they acknowledge:

“…that men and institutions remain free only when…respect…”—is shown.

Notice those words, I am reading from him; respect is shown and respect for the rule of law. Are we respecting the rule of law when we decide to direct the EBC to do whatever? So:

Statutory powers…

As I conclude, Madam President, I quote again the hon. President, former President:
Statutory power where conferred is conferred as it were upon public officials as a trust. It is not absolute. So nowhere is public power absolute when it is conferred on a public officer. And we are all public officers, from the President down.

I am quoting here.

So no power we possess is absolute.

I have heard it said that what the Prime Minister wants, he must get. This is a “seer man”, Madam President. Now this is the role—

**Madam President:** Sen. John, please. Please withdraw that last statement? Thank you.

**Sen. J. John:** Thank you, Madam President.

**Madam President:** Sen. John, just withdraw the statement, please.

**Sen. J. John:** I withdraw it, Madam President.

So no power we possess is absolute. I have heard it said that what the Prime Minister wants, he must get. Now that is the road to what we call absolutism. That is where dictatorship arises. If power is not absolute, if the statute is not absolute, what are the constraints of that power?

Madam President, what is the constraint of that power? The constraint is this Parliament today, we ought not to abide by what the Attorney General has asked us to do. We must not pass these amendments because this Parliament must act as a constraint to that power.

Madam President, again I want to quote my wonderful grandmother who always told us that, you know, we could do for as much but we cannot do for as long. And again, coming in with the hon. President, statutory power can only valuably be used in the right and proper way. So when we have power, we do not
use it to get an unfair advantage, we use it in the right and proper way. Madam President, I thank you. [Desk thumping]

**Madam President:** Sen. Dillion-Remy. [Desk thumping]

**Sen. Dr. Maria Dillon-Remy:** Madam President, I thank you for the opportunity to contribute to this important debate on a Bill entitled the Tobago House of Assembly (Amdt.) Bill, 2021. I really thought that the first time I would be the lead speaker on the Independent Bench would be when we would be debating the Tobago Self-Government Bill, however, the introduction of the Tobago House of Assembly (Amdt.) Bill has offered me this opportunity and, Madam President, I accept the offer gratefully.

Madam President, I remember the excitement and pride I felt as a Tobagonian as the Tobago House of Assembly Bill was debated and passed in 1980. People of Tobago were glued to their radios as Parliament was not then televised. There was much rejoicing in Tobago on that day. The long awaited restoration of the Tobago House of Assembly Legislature had happened.

In another—in 1996 another Tobago House of Assembly Bill was introduced and passed in Parliament which repealed and replaced the Act enacted in 1980. The then Attorney General Ramesh Lawrence Maharaj underscored the aim of the Bill then being presented with this statement:

> We have gone the furthest route that we could have possibly have gone to act within the constitutional constraints in order to give the Tobago House of Assembly greater autonomy.

Madam President, I was able to experience first-hand the workings of the THA Act 40 of 1996 as a public servant working in Tobago House of Assembly in health care between 1997 and 2012. I experienced the joy of being able to make
our decisions. One decision that stands out most to me was the decision to start the ambulance service in Tobago in 1999. It was the first of its kind in Trinidad and Tobago and that happened because of the relative autonomy that Tobago had. Ambulances services in Trinidad are and have always been provided by an external provider. But Tobago did it differently and this was possible because they were legally authorized to do so because of that Act. But, Madam President, I also experienced the tension between the Ministry of Health and the Division of Health and Social Services that came as a result of section 25(1) of the Act that said:

“Without prejudice to section 75(1) of the Constitution, the Assembly shall, in relation to Tobago, be responsible for the formulation and implementation of policy in respect to matters set out in the Fifth Schedule.”

As a result of that section there were many times where there was great conflict that occurred. How much conflict? That depended on how well the Minister of Health and the Secretary of Health were able to communicate and collaborate and that did not always go well.

So it goes without saying that the concept of autonomy in relation to Tobago is a work in progress and I like all other Tobagonians have been waiting expectantly for the coming into reality of internal self-government for Tobago however, according to the Prime Minister in his contribution to the House on 12 February, 2021, and I quote:

“This Bill...is...not immediately concerned with the issue of Tobago self-governance but seeks, in the interim, to provide a solution to the current issue faced by the deadlocked THA, the Tobago parliament and administration after the recent election results.”

Therefore, the Bill before the Senate today seeks to bring a solution to the
standoff that has occurred in Tobago because of the 6:6 tie of the polls of January 25, 2021. And the Attorney General was very clear in making that point, that this Bill was being brought as a result of that tie and the unresolved issues there.

Madam President, despite the progression of Tobago’s autonomy over the years, here we are in 2021 in a situation where the Government is prescribing a solution to the deadlock of Tobago’s elections rather than advancing one that is arrived as a result of the consultation with the THA or the members elected in the Tobago House of Assembly.

As mentioned already by the previous speaker, the PDP—the party holds six of the seats in the Assembly—is on record as saying that they have not been consulted, and the same has been said by members of The Forum of the Parties, some of whom held a meeting in James Park on Friday February the 19th, 2021. In fact, again as previously mentioned, the Prime Minister is going to Tobago tomorrow to meet with the 12 Assemblymen and previous Chief Secretaries and the Chairmen of the Tobago House of Assembly, after the Bill was passed in the Lower House, in the House of Representatives and is now being debated in the Senate. I trust that this is not too little, too late. We wait to see the outcome of those meetings.

Madam President, my contribution today takes the form of an appeal, both to the Government and to the elected members of the Tobago House of Assembly. Again, we are here because of a solution that was proposed and presented in the Bill before the Senate for the deadlock in Tobago. The Explanatory Notes give an idea of the problem or mischief that this Bill before us is seeking to solve. And clause 4 states the Bill:

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“…would amend section 5 of the Act to increase the number of Assemblymen from “twelve” to “fifteen”.—Such change provides—“for an uneven number thereby lessening the possibility of an election resulting in a tie.”

The Attorney General just said that even if it is 15, you could still have a 7:7:1 or some other combination. But the proposal here is for 15 to lessen the possibility, the change provides us:

“For an uneven number thereby lessening the possibility of an election resulting in a tie.”

In his contribution to the House of Representatives again on February 12th, the hon. Prime Minister stated and I quote:

“Madam Speaker, you will recall the Constitution (Amdt.) Tobago-Self Government Bill, 2018, hereinafter the Tobago Self-Government Bill, which is currently before the Joint Select Committee of the Parliament, was produced after two years of extensive consultations in Tobago and recommends inter alia the creation of 15 electoral districts in the island of Tobago. The suggestion that this number of seats be altered is not a unilateral one plucked from the imagination of the Government. It is has been founded in extensive discussion and offered for parliamentary consideration by the people of Tobago at an earlier time. The reasonable recommendation is currently before the Parliament.

In the circumstances it is advisable so adopt the proposal from the Tobago Self-Government Bill that there be an increase to 15 electoral districts in keeping with clause 141B of the…Bill. That is a true reflection of the will of the people of Tobago.”
In other words, again as the Attorney General said and what the Prime Minister in his contribution to the House on that day said, it is specifically a section that has been taken out of the Tobago Self-Government Bill that is being proffered here as a solution to this crisis or this impasse.

Madam President, may I remind the Attorney General that the proposal from moving from 12 to 15 Assemblymen in the context of the self-government Bill is for the Assembly to have lawmaking powers. It is not just arbitrary. The Assembly will—the proposal of the self-government Bill is entirely different from what we have here now. They will have more responsibility and therefore they will have more need for persons to populate their committees in the legislature. That context has nothing to do with the situation that we face now.

Furthermore, the Constitution (Amdt.) (Tobago Self-Government) Bill requires a special majority. And, Madam President, the UNC is on record saying that they will not be supporting any Bill that the Government brings to Parliament requiring a special majority. So if the UNC does not change their mind or if the Government is unable to get them to change their mind, we do not know what is going to happen then. And if it is not passed, what is going to happen is that we will be—if this Bill goes through, and if Tobago has election with 15 Assemblymen and that Bill is not eventually passed because of what is happening in the Parliament now, it means that Tobago will be left with 15 Assemblymen, four councillors to do the same job that they are doing right now given this 1996 Act that is currently in play.

3.50 p.m.

And what is the reason for this? Just to break a deadlock. That is what the Attorney General said, and that is what the Prime Minister said. No, Madam, it
does not—Madam President, it does seem justifiable. I submit that this clause of the Bill is an overkill for the problem or mischief that it seeks to solve. If an odd number is what is required, then why not 11 or 13? Pulling 15 because of what is in the self-government Bill just to break a deadlock does not make sense to me. In addition, Madam President, there is still no solution in this Bill if there is an uneven number again. In other words, 7:7:1 or 5:5:5, and the Attorney General said that, there is still no solution since the Assemblymen must still elect a presiding officer, and if there is no obvious majority that either parties cannot agree, we may still have a stalemate. The Attorney General said that they will have 105 days to make up their mind. If at the end of the 105 days they still do not make up their mind, what happens? Attorney General, what happens then? We are saying that they need to sit and sort themselves out, or there is no solution. And right now the solution that is brought before us still does not give us a remedy for breaking the situation if there is no specific majority in the Assembly, in the House.

Madam President, this Government is on record saying again that they are interested in granting internal self-government to Tobago. Therefore, I would have thought that they would have taken the lead in consulting with the 12 elected Assemblymen. That approach would have shown that they were working with a particular principle. However, what has happened is that, as already said, the Attorney General said that they took the decision after consultation with their legal people, and consultation with the PNM in Tobago, and they have brought a one-sided solution to the Parliament that is a problem for many Tobagonians. Madam President, there is a saying that it is not because you have the right to do something is the right thing to do. The PNM has used their majority, having exercised the right of Cabinet and Parliament. However the question is, how is this helping
Tobago as far as self-determination is concerned? How have you helped the people of Tobago, when at the first sign of a problem you ran and bailed them out without even providing guidance? How does this solution promote and inspire leadership and advance the principle for self-governance? If you truly believe and value consultation, Mr. Attorney General, then it should be a principle that is consistently applied in all matters concerning Tobago. Permit me to quote the Hansard of November 26, 1996, on page 75. I highlight the words of then Member of Parliament, Mrs. Camille Robinson-Regis as she contributed to the debate on Act 40 of 1996, the THA Act, and I quote:

“Principle, as an issue, is in some instances immutable...If something is principled it must be principled at all times, and indeed, the principle of ensuring that Tobago gets what it justly wants and what it justly deserves did not start today.”

And she continued:

“I dwell on the issue of principle because unfortunately, we have seen that depending on the circumstances, principle tends to go out of the window. I am saying this at this time, because we need to be sure that whatever agreement is arrived at today will not be changed if there is some change in circumstances, and those who claim to be the ones who are carving out this legislation do not renege on some of the things that they term to be principle today.” The PNM was here making sure that the principles were followed in that in that debate.

—and I end quote, Madam President. Mr. Attorney General, if you believe in the principle of internal self-government for Tobago then this belief must inform your response to the situation as they arise in Tobago. I am tempted to suggest that you
missed out on this opportunity, but I hope that you are open to reconsider the decision that is brought before us, and the proposed remedy prescribed in this Bill.

Madam President, I turn to clause 5. The 12 Assemblymen have not been able to elect a presiding officer after three meetings of the group. This has led to a caretaker executive council. So though the Divisions are being managed, the Assembly cannot meet to perform its duties of governance as itemized in the THA Act, and the Attorney General spoke about that as being very important, because really and truly we are not seeing the appropriate actions being taken within the THA right now because of the Assembly Legislature has not been elected. And since the legislation did not provide an alternate means to elect a presiding officer, the amendment to clause 5 is being proposed to the Senate. And this clause amends section 22(3) of the THA Act by providing that:

“Where the Assembly remains dissolved after a primary election and no Assembly is constituted within fourteen days of such primary election, the Chief Secretary, after consultation with the President and Prime Minister, shall fix a date of a fresh primary election, which date shall not be earlier than the expiration of two months after the coming into force of an Order made under section 4 of the Election and Boundaries (Local Government and Tobago House of Assembly) Act nor later than the expiration of three months after the coming into force of that Order.”

Madam President, when I was doing this preparation I wondered why this 6:6 was left to be that way, especially after there was an 18:18 in Trinidad before? Why was Tobago left with this situation of 6:6? It was only in preparation when I went back to the Hansard of the Senate of that debate, Sen. Dr. Eastlyn Mc Kenzie in her contribution detailed in the Hansard of November 28, 1996, at page 87, she
asked the then Attorney General, hon. Ramesh Lawrence Maharaj, and I quote:

“What…if there is a tie?

We know that this is not a strange question. What about clause 9 if there is a tie?

To which hon. Ramesh Lawrence Maharaj, then Attorney General, responded, and I quote from page 104 of the *Hansard* of the Senate, dated November 28, 1996:

> “Sen. Mc Kenzie mentioned certain points. I indicate to her that with regard to the question in respect of the tie, it is a matter which the Government considered. The policy of the Bill is that we do not want to have strict divisions in Tobago. As a matter of fact, at one time we were reluctant to have a minority leader. Because of representations made by the Opposition we decided that we would give it a try because we could be wrong and they could be right. We decided that the philosophy and policy of this Bill is to have more consensus and unity. If there is a tie it would probably force the people to work together. For that reason, it was deliberately left out. If Parliament has to deal with it, it would do so.”

In other words, it was a considered situation to leave this numbers at 6:6, and they said if there was a tie they wanted the people to sit and work out literally what is happening right now, sit and work out the situation. And literally what would happen if you have 15 Assemblymen and you do not have a majority with 7:7:1, it would be the same prescription, sit and work it out. In other words, the same thing that was prescribed then is what is being prescribed now.

Madam President, what led Mr. Maharaj to consider that Tobago had what it takes to cooperate or collaborate in the interest of the people of Tobago? This has never been the preferred modus operandi of both Government and Opposition over the years? Madam President, maybe, just maybe he inadvertently stumbled on that
untapped potential of Tobago representatives to lead Trinidad and Tobago in areas of unity and consensus, since in the words of Lord Nelson, “All ah we is one family”. Perhaps he tapped into that, and this is what they were hoping that would happen in that time. Further, the Prime Minister in his statement to the House on February 12th, said, I quote:

“In its current construct, the Tobago House of Assembly Act whilst it makes provision for and directs the election of a presiding officer, it does not cater for what may happen where the elected assemblymen are split evenly between two parties and neither side is prepared to yield ground to the other. The legislature must have anticipated that as a possibility and accordingly must be taken to have envisaged that the two parties would collaborate to construct a coalition Government, whether by sharing the offices of presiding officer, chief secretary, deputy chief secretary and secretaries, or otherwise.”

So both the framers of the 1996 legislation and the Prime Minister talked about the policy and principle, which was that persons would sit and come up with a solution. So the 6:6 tie is an opportunity for Tobago to put a joint solution together.

However, clause 5 of this Bill now presents a solution which will serve to evade the drafters intent by introducing the legislative alternative now for such a situation, and the parties will most likely choose the legislative way as the preferred route. Because it is hard work to sit and work out things, however it is what is required. And even if the parties wanted to try to cooperate to find a solution, the amendment provides a mere 14 days before the Chief Secretary then goes to the President and the Prime Minister to ask for a new election date. Madam President, this amendment, I think, puts a dagger to the gem of an opportunity to
try to come together. It is unfortunate, especially when democracy has presented us with a two-fold opportunity: The first limb allows us to give credence to the intention behind the construction of the current legislation, and the second limb allows us to confirm our position, and substantiate the readiness for self-governance. Tobagonians have been asking for full autonomy. They have been petitioning to anyone who would listen, saying, trust us with more responsibility. Here it is, an opportunity like this one before them now, presents itself, and they have to match the talk with action and figure it out for themselves, or very least bring a solution to be advanced to the Cabinet, and they look to the central government to find a solution. At least a part of them looks to the central government. So people are asking the question, Madam President, are you really ready for self-government, internal self-government? This is what they are asking of the 12 elected Assemblymen in Tobago.

Madam President, the stalwarts who went before seeking autonomy for Tobago: APT James, James Piggott, Winston Murray, ANR Robinson. If they were here now they would be extremely disappointed with what is going on in Tobago. And, Mr. Hochoy Charles, who was there in 1980 and there in 1996 is on record as saying that he is very disappointed with the Assemblymen in terms of how they have responded so far to the challenge that is in front of them. Madam President, it seems that both sides of the six, one six and the other six, they are content to just listen to what is being said externally, and follow what they are being told. They are not sitting together to try to work out a Tobago solution. Nothing is wrong with getting advice from people you trust. That is great. Get the advice, but at the end of the day you still have to sit and put on a solution. But what is happening? On one side you have a pre-action protocol letter to the Clerk of the Assembly, they
marched around the Assembly seven times on Friday, and they on one side and then on the other side, they are seeking Cabinet’s intervention instead of sitting together.

Madam President, it does not hold right. What if these 12 persons were given the autonomy that was requested by their predecessors, would they go back to Parliament at the first side of every problem that arises? What happens when a husband and wife have a problem, what do they do? The parents send them back home and say work out your situation. They will probably give them guidance.

And, Madam President, I think that is exactly what is required here now, that the Government should be giving guidance to the 12 people, and have them—and if they cannot, then it comes to Parliament. Madam President, many persons in Tobago are saying that the Assemblymen are failing the people of Tobago. I said that already. And, do you want to know what the people of Tobago want from their elected officials? Please permit me to quote a report from an online poll that was designed by a Tobago civil society network called CIVILNET. This is a civil society group that has been able to—they got in the run up to the elections in Tobago in 2020, they were able to get the candidates to debate. And in the run up to the THA elections they were able to get debates by the candidates. Something that has not happened yet if Trinidad, they were able to get that in Tobago, so they are to be commended. And it is a young group, they are to be applauded.

That report, I have in my possession, and it was also quoted on their Facebook page, and it gives some insight into what the people of Tobago want. The poll was conducted between the 17\textsuperscript{th} of February to the 25\textsuperscript{th} of February, 2021, and they had 828 respondents, 98 per cent of them identified as residents of Tobago. Some relevant comments I would just pull out, some relevant comments
from the results, and I quote:

The leaders should behave maturely and share power. That is the mandate of the people.

Another quote:

No other measure can offer a permanent solution. It is important to prevent the issue from tearing the society apart.

Another quote:

I would love to see consultations between the two parties on a way forward. I am disappointed that they failed to do so at this time. The parties can at least decide on a presiding officer and move forward from there.

Another quote:

The representative should bear in mind that their sole objectives are for the people of Tobago. Both parties should have a conversation.

Another one:

One party cannot be making decisions at the moment. Decisions must be shared as they both have the same number of seats.

And another one:

Nothing should be done by Cabinet until both parties are consulted.

These are some of the pertinent comments I pulled out from that poll.

Madam President, I now turn to clause 6 of the Bill that seeks to provide for consequential amendments which are contained in the schedule, and the Attorney General explained exactly why that was happening. He explained exactly the role of the Elections and Boundaries Commission, et cetera, and why this clause was being brought in. The schedule to the Bill would contain the amendment to the Elections and Boundaries (Local Government and Tobago House of Assembly)
Act, Chap. 25:50. I want to remind the Attorney General of the resolve of the House of Representatives on Wednesday 9th December, 2020, concerning the draft Elections and Boundaries Commission (Local Government Tobago House of Assembly) Tobago Order, 2020. The House approved that Order that was report, election and boundaries report to the Minister which recommended that for the purpose of the elections to the Tobago House of Assembly, no alteration is required to the existing number of electoral districts, in which the electoral area mentioned in Part 3 of the First Schedule, to the Act is divided, and should be defined in the Schedule to this Order.

Madam President, we put our trust in the Elections and Boundaries Commission to conduct the most important processes within our democracy. This same commission investigated and reported that there is no need for the change in electoral districts, yet clause 6 of the Bill seeks to amend section 3 of the Elections and Boundaries Act to do the same. And I cannot understand how you are moving the same number of people into 15 electoral districts purely to break a tie. That is what you are doing it for. No other reason, just to break a tie. I do not understand it, Attorney General. Madam President, Tobago is faced with an unprecedented situation. So far we have seen how both Government and the Assemblymen have responded. Let us put it down to lack of experience of the newly elected representatives as the reason why they could not sit down and hammer out a solution. It is new territory for the elected members, and they have never had anything like this before. It is the first time there is a 6:6 tie in 40 years of the Tobago House of Assembly, and in this 41st year we have this tie. I think that God has presented the Tobago House of Assembly with an opportunity before the self-government Bill is passed [Desk thumping] just to see, just to see whether they

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will take up the offer and run with it. The same for Trinidad. Let us see what Trinidad will do with this offer that is presented. And so far, Madam President, it is not going well. When President Paula Mae Weekes swore in the Assemblymen on Thursday, January the 28th, she observed, and I quote from the Trinidad and Tobago Guardian of January 28th:

President Weekes observed that while the THA results have brought forward an unprecedented situation it is not necessarily a bad thing, as the world has been getting accustomed to first, be it the global pandemic or the political landscape in the United States. The word ‘unprecedented’ is not a bad word. Of course, it brings with it challenges and trials, but it also brings opportunities. Opportunities to reimagine and reengineer how we do business. It gives a wonderful opportunity to think whether or not we can serve better. Her Excellency said—and I end quote.

Madam President, I am reminded of the children of Israel who wandered in the wilderness for 40 years. I see a similarity here. Tobago has been wandering 40 years looking for internal self-government, and this is the year that this is supposed to happen, and a test has been given. It is almost, you know, they see some giants in front of them. The giants came, and so far they are running away from the giants. And I stand today and I speak to the 12 Assemblymen, to the leader in each of you, the leader that seeks to serve and say people first and party second. Sit together and try to work out the solution in good faith. Leaders solve problems, but it requires you toiling and tarrying and stripping away pride for the greater good. If I may, allow me to share some quotes: Tom Peter says when a window of opportunity appears do not pull down the shade. Albert Einstein encouraged us that in the middle of difficulty lies opportunity. And Ann Lander says “opportunities
are usually disguised as hard work, so most people do not recognize them”. So if we lose this opportunity that is in front of us, it may just go and we may continue to wander for another 40 years. I do not think anybody in Tobago wants that, Madam President. I implore the Assemblymen, sit out and work your salvation with fear and trembling, to quote a scripture passage from the book of Philippians. The solution that this crisis requires a different mind-set, a different spirit, a spirit that puts Tobago first rather than the individual partisan views.

One big benefit from coming together is that after you get the Assembly Legislature sorted out, you can then with one voice champion the cause of internal self-government. Many people think that this cannot happen, but I trust that it can. And I believe in the Assemblymen. I know that they can develop the skills that are required to lead Tobago through these times. Tobago needs leaders who live by good values, leaders who value people, and leaders who are there to serve the people, and I know that that is deep within each of those Assemblymen. They can come up with workable solution. And I submit that the answer that they propose may become an ideal to which generations and nations can learn from.

And to the Government, hon. Attorney General, as you pause, and the Prime Minister consults with the 12 Assemblymen and the previous Chairmen and Chief Secretaries of the Tobago House of Assembly tomorrow, I am not sure what can happen, but I pray that they may find an opportunity to give this situation in front of us a second chance, and that a different route will be found to the one that is prescribed now.

I also plead with the Opposition. I believe that it is time, at this time, there is little merit in only highlighting the perceived errors made. Tobago is seeking persons of influence who will be available if needed to assist in the implementation
of workable solutions expeditiously and defectively to current impasse. There is need for leadership that calms—

**Madam President:** Sen. Dr. Dillon-Remy, you have five more minutes.

**Sen. Dr. M. Dillon-Remy:** Thank you, Madam President. There is need for leadership that calms and empowers, not leadership that exacerbates or worsens the situation. Tobago can come out of this situation with the right people around them, helping them to make the right decisions. It is an unprecedented situation that has never happened before. These are 12, many of them are brand new. They will have to work it out, and they can work it out.

Madam President, I find it difficult to support this Bill for the reasons stated, and I would repeat for clarity:

1. The Bill is brought without consultation with the duly elected members of the Tobago House of Assembly;
2. There is no consultation with the Forum of parties, the framers of the Bill that is before the Joint Select Committee, though one significant clause has be taken out of that Bill;
3. The Bill still does not provide a solution, if there is no majority party within the Assembly;
4. The Bill seeks to change the boundaries of the electoral districts, though a recent report of the EBC indicated that there is no need to do so; and finally:

The Bill in no way advances others the cause for self-government in Tobago.

Madam President, I thank you. [*Desk thumping*]
Madam President: Sen. De Freitas, may I now remind you—[Inaudible]

Sen. Nigel De Freitas: Thank you, Madam President, for the opportunity to contribute to this piece of legislation, this Bill that is currently engaging this honourable Chamber, which is a Tobago House of Assembly (Amdt.) Bill, 2021. I agree with all Senators that have spoken before in relation to the fact that it is a critical and important piece of legislation that seeks to treat with conundrum, a crisis, a quagmire, a tie, definitely. Whatever you want to call it, one thing is for certain, it needs to be resolved, and the people need to be involved in that resolution.

Madam President, let me move quickly, because the Bill is not a large Bill, and there are only two clauses in the Bill that have caused a lot of commentary both in this Chamber and in the public domain. So let me start with clause 4, which seeks to increase the number of seats from 12 Assemblymen to 15. And so far, from what I have hearing, there are three main issues that have come out of that particular clause: The first is why 15? The second that I heard from Sen. John, is in relation to the question, who will the repositioning of the boundaries benefit? And the third issue, as Sen. Dr. Dillon-Remy just spoke to, is the fact that you can still get a tie even if you move to 15 seats. So let me begin with the first issue as to why 15. Sen. Remy indicated as well as Sen. John, that we know where the number 15 came from. And the real issue centred around the question, why 15 comes from what both Sen. Remy and Sen. John indicated is a lack of consultation.

Madam President, you have to understand the process as to what took place. You have heard it said both in the other place and in the public domain that there was consultation. This process did not start last year, yesterday, or last month. This process went through a very robust series of consultations beginning in Tobago. The full length and breadth of Tobago. It resulted in two Bills emerging. And in
the final set of consultations those that attended those consultations would have had to choose between the two Bills. The one that they thought was best to be forwarded to the Parliament of Trinidad and Tobago for consideration. I have heard the argument made that there is no consultation with the PDP. Understand this. At the starting of that process the PDP did not exist. Where was the leader of the PDP at that point in time? He was in Trinidad. That leader of the PDP entered the election race in 2015 as an Independent, subsequent to which he formed the party PDP, and the party started to build out itself.

4.20 p.m.

But even after that fact, when the Bill was chosen and the process taken to send it to the Parliament of Trinidad and Tobago, even after it landed in the Parliament and it was sent to a joint select committee, the process of consultation continued. The Joint Select Committee did not just take the fact that there were consultations done in Tobago by the Tobago Forum of Parties, and say, okay, that is it, let us just move forward with the Bill. No, they started a new round of consultations and invited commentary at which the PDP would have existed at that particular point in time and could have very well sent their opinions in relation to the Bill.

Secondary to that, the Tobago Forum of Parties—which is an amalgamation of parties in Tobago, to speak with one voice in relation to this Bill—was formed. So even if the PDP came subsequent to 2015, subsequent to the Bill being sent to the Parliament they could have become part of the Tobago Forum of Parties. The question is not, why they were not consulted. The question is, why are they not speaking with one voice along with the Tobago Forum of Parties who by the way, have appeared in front of a joint select committee in the Eleventh Parliament for
continual consultation. Even after they won seats in the 2017 election, it did not matter at that point to join the Tobago Forum of Parties to speak with one voice coming out of Tobago in relation to autonomy. That question is only arising now.

So when you ask the question why 15, it is not a number pulled out of a hat, it came from a very extensive and long process. The question we should be asking ourselves is what would have happened if you did not have the autonomy Bill, you did not have the consultation process taking place to even suggest the number 15 coming out of that Bill. We would have had to start over to go through the length and breadth of Tobago to find out what number would suffice. How long would that have taken? Because we all admit that the situation that Tobago is in right now is a crisis, it is a conundrum, it has to be solved as quickly as possible. So thank God consultation was done, thank God that we could pull that from the autonomy Bill and bring it forward.

Let me just respond to Sen. Dr. Dillon-Remy, because she admitted that if we were to bring the autonomy Bill and say okay, let us use that Bill as the solution to this, she would have admitted that the Opposition has indicated that they are not supporting any special majority Bill in this Chamber or the other place. So could you imagine trying to solve this problem by bringing the autonomy Bill where that number is inside there and the Opposition says no out of spite? So then Tobago does not get to resolve its problem and we would end up right back here, right with a Tobago House of Assembly (Amdt.) Bill, albeit months later. So you cannot use the autonomy Bill in that sense because Tobago could be held to ransom by an Opposition that does not care. [Desk thumping]

Madam President, let me move on to the point made by Sen. John in relation to who is going to benefit from the repositioning of seats. The Attorney General
made the point that the EBC is an independent institution and she had utilized the report put out by the EBC prior to this election on January 25, 2021, indicating that the EBC suggested no repositioning of boundaries. The fact is that the EBC uses a formulaic structure to determine if reposition of boundaries is required, it is based on population size towards the objective of equality between electoral districts. That is how a recommendation of boundaries would come to change; has nothing to do with the number. If it is that the population of Tobago grows beyond a certain point that you cannot get that equality of electoral in terms of population size between electoral districts within the 12, then they would suggest an increase in the number which has a process to be followed, which the Attorney General spoke to. But the EBC in their commentary to the Joint Select Committee in the Eleventh Parliament indicated that if it is you want to move to 15, there is a process to follow. And guess what, that is the process being followed right now. That is what the EBC is saying.

And I remember in the Eleventh Parliament when Sen. Mark brought a Private Members’ Motion in relation to the EBC. It was the Leader of Government Business, and it is his contribution I remembered, because he was indicating that when the EBC restructures boundaries they do not take into account politics at all. They are just following a formula. So it can fall to the detriment of one or it can fall to the detriment of the other. And the reason for that is because the Elections and Boundaries Commission is a referee. It is up to the political parties to convince the population to vote for them regardless of how the boundaries drop.

So to accuse the EBC of anything untoward or to say that any one political party benefits, that has nothing to do with the Elections and Boundaries Commission, they are doing a job as laid out by law. And you have to fight that
election regardless of how those boundaries drop. Stand up and convince the people to vote for you. That is the purpose of the political parties and the EBC would be the referee to make sure that it is all fair.

Madam President, let me move on in response to Sen. Dr. Dillon-Remy who indicated that you can still get a tie in relation to 15. Sen. Dr. Dillon-Remy, let me make this point. You are thinking of it mathematically. And you are right in the sense that 15 is divisible by three to give you five seats each. You cannot think of it mathematically, you have to think of it politically. We operate in an adversarial nature of governance. That is how we operate and that is the reality of the situation. So in that particular context it is less risky with 15 seats split three ways. Why? Because two of the parties in that particular situation could join to form the government. And if you look at the history of Trinidad and Tobago we have seen that. It is called coalition governments, parties joining together pre-election, to face an election, that have won and formed the government. We had it in the People’s Partnership, we had it in the National Alliance for Reconstruction. And if you go back to the January 25th election, you would notice that the PDP joined with other parties under one banner. So, from a— [Interruption] Go ahead.

**Sen. Dr. Dillon-Remy:** And what if they do not come to a conclusion? That is the issue. If they do not come to a conclusion, then what?

**Sen. N. de Freitas:** I will get to that, Sen. Dr. Dillon-Remy, later on in my contribution. I will actually address that particular point. But the point is that it is less likely, because we have instances in the past where coalition governments have been formed, where three parties come together or less parties come together to form a government. My only concern with 15 being split three ways is what comes after because of the nature of politics, where you have crossing of the floor
and when you cross the floor allegiances change and then executive appointments change. But my concern is not about the forming of a government with a three-way split, because I could give you an example. With 12 seats as it is you could have gotten 4:4:4. And I am absolutely certain that we would not be here today amending the THA Bill because you would have gotten a coalition government to move forward. The problem is where you have two parties in a two-way split, because both of them have opposing views and none is going to budge because the point as put forward by Sen. Mark in a meeting we had with the CPA the other day, is political war. The spoils of war is that I get to govern.

Madam President, let me move forward to clause 5 in addressing another point made by Sen. John. And she said in her contribution that six versus six is the will of the people. Now, I thought about that and I could understand where you may think that. But as I thought about it more I said to myself that could never be right. And let me explain why. Think about it for a second. There is not a person that went in to that voting booth on January 25th, voted for the PDP, for example, and thought to themself, well, you know, I am voting for the PDP but I do not want them to win, I do not want them to get the majority of seats. So too, there is not one person that went into that voting booth, branded their X by the Balisier and said to themself, well, I do not want the PNM to get the majority of seats. Every single person that voted in that election voted for the party that they wanted to win because they expected their party to win. They never expected a 6:6 tie.

That 6:6 tie is only as a result of legislators who predicted a tie, who knew that a tie was possible but who never expected a tie to occur. It had nothing to do with the people of Tobago. Because when you went into that voting booth on January the 25th, 2021, everybody came out expecting that there would be a winner.
because they knew that somebody had to govern. And the whole point of voting is that somebody would lead the affairs of Tobago. So saying that 6:6 is the will of the people is incorrect. Nobody went in there expecting a tie.

Madam President, some of the other arguments I have heard put forward in relation to clause 5 and the pathway that is being created to break this deadlock. The argument being put forward, and I have heard Sen. Dr. Dillon-Remy put it forward and Sen. John put it forward, is that there is another pathway which is the drawing of lots. Now, let me say this and I want to be absolutely clear, because I have a different perspective on that. It is not because I am a member of the PNM or anything like that. It is because of another position that I hold and an understanding of Standing Orders and how they are used. And let me say this. There is a fundamental issue in relation to the drawing a lots being put forward. And that is the Standing Orders of any legislature must be taken in context. It cannot be taken apart and used and interpreted by anyone other than the presiding officer who has the final say upon that interpretation.

The interpretation of the Standing Orders are the sole right of the presiding officer who is the only person vested with that authority and there is a reason for this. There is a reason that the first order of business of the first sitting of any legislature after an election is to appoint a presiding officer. There is a reason that there is no ambiguity or no room open for interpretation in that process for the appointment of a presiding officer. That process is spelt out as directly and specifically as possible, A, B, C, D, E, to get to F. It is not A, B, C, E, D to get to F. That is not the alphabet, that is wrong. And the reason that is so direct and not open to interpretation is because without that post there is no one with the authority to properly interpret the Standing Orders going forward and to maintain dignity.
and decorum in the Chamber. And if you want proof of that, just take a look at what occurred after the first failed attempt to appoint a presiding officer in Tobago.

You had Assemblymen sleeping in the precincts of the Chamber. And why is this occurring? Because the PDP has an interpretation, the Tobago Council has an opposing interpretation, the PDP does not like that so they decide to sleep in the Chamber overnight. Up comes the Opposition Leader in Trinidad, she has an interpretation. Everybody is going to lawyers, they have an interpretation and everybody is basing their interpretation off of differing opinions that benefit them. This is why you must appoint a presiding officer who has the authority of finality when it comes to interpreting the Standing Orders. And if you just take a look at the Standing Orders of this Senate, and you have to understand the Tobago House of Assembly Standing Orders are built around the National Parliament Standing Orders. And if you look at Standing Order 2 that speaks to the “Interpretation and Application of Standing Orders”, it begins by saying:

“(1) The President (or other Member presiding) is responsible for ruling whenever any question arises as to the interpretation or application of a Standing Order and for deciding cases not otherwise provided for.”

So it means that until there is a presiding officer, you cannot jump to a Standing Order that you want to use to benefit you, because the presiding officer is the only person with the authority to interpret when that is to be used. And I know that and I could tell you Sen. Mark knows that.

So when it speaks to where the Standing Orders are silent, that is for the presiding officer to be guided and we are guided by precedent in the next Parliament up. So for Tobago that is the National Parliament, for the National Parliament that is the House of Commons. That is how that Standing Order is to be
used. So if you do not have a presiding officer and one does not exist because you cannot pick one, you cannot go to that Standing Order and interpret it for yourself because you are going to get an opposing interpretation from the other side and from everybody else. And if you want to know I am right about that, you can take a look at the THA’s Standing Orders and it is right there, it is the very first Standing Order after all of the positions are filled. Standing Order 9, and it reads, Madam President:

“The Presiding Officer shall have power to regulate the conduct of business in all matters not provided for in the Standing Orders.”

The power is invested in that person and that person only; nobody else.

So, Madam President, the final issue that I have heard in this Chamber so far is in relation to legislating for a process to break the tie and saying that it is wrong. In other words, what we are doing here today is wrong. So let me just say this because the Attorney General spoke to it. And one of the suggestions is that we should go to court. And he is absolutely right when he says the separation of powers principles come into play here. It is a fundamental principle of the separation of powers that the Legislature is responsible for conducting its own affairs as it sees fit. This particular issue falls squarely within that. But here is something that I have noticed since I have been in this Chamber. Since the Judiciary does have the ability from time to time for different pieces of legislation, to interpret legislation, I have noticed that a request would be sent to a presiding officer for the Hansard records surrounding the particular debate of that particular legislation they want to interpret. And they do that because they want to understand the intent and the purpose of the legislators at the time before they make an interpretation.
Madam President, Sen. Dr. Dillon-Remy raised it, and there was a debate surrounding this piece of legislation on November 28, 1996, in the *Hansard* record, she gave the page number as 104. She did indicate on page 83 that Dr. McKenzie a Tobagonian Independent Senator raised the issue of a tie but Dr. Dillon-Remy, you have to read all the way down, because there was no mincing of words by the Attorney General in that particular debate. And you read out the first line but I will go further, the part that was not read out, Madam President. And after the Attorney General indicated that it was government policy at the time to keep it this way because they wanted Tobago to solve the problem from a stand point of unity, the question was raised that there was an 18:18 tie in Trinidad and Tobago from the national standpoint as a rebuttal to that, to which the Attorney General responded and I will read that response because it is important. He said:

“According to the Bill, the members of the Assembly would perform certain roles and functions and, obviously, they would have to get together. If they cannot resolve the problems, then the Parliament would have to do so. Our policy is not to put something which would promote that kind of division into this legislation.”

So I understand what Sen. Dr. Dillon-Remy is saying, where the intent was to see if Tobago could work together. But it was reiterated that if they cannot solve the problem together, then the Parliament would have to intervene. That is the process. But there have been four attempts to pick a presiding officer. At what point do you say, it is not going to be solved. And from what I said earlier you are dealing with a two party situation with fundamentally different policies in relation to governance and I can tell you, reasonably to the average person you would believe that there is no resolution to this. So you are only following along what the
Attorney General by government policy indicated at the point of time in the debate. So even if the court was to pick it up and try to interpret, he was very specific. He said it in plain English. If they cannot resolve it the Parliament would have to come to resolve it and that is exactly what we are doing here today. So it cannot be said that this process is wrong. Why?

Madam President: Sen. de Freitas, you have five more minutes.

Sen. N. de Freitas: Thank you, Madam President. It cannot be said that it is wrong because it is not us saying it. This was a UNC Government at the time of which Sen. Mark was sitting in the Chamber. So he heard that debate live. It was not something that came up in the Chamber floor as a surprise, it was something that that government at that time considered and chose to leave out because they wanted a process, a process—that was reiterated by the Prime Minister of this country—followed, and we are now at the stage indicated by the Attorney General at that time where the Parliament must come back to resolve it. So then, how could you stand up as an Opposition, being the government then, based on your policy, to turn and say that this process is wrong. The Attorney General is well right in terms of what he is doing here by moving this legislative process.

So, Madam President, it cannot be done any other way. This is the only way for it to get it done, whether you talk about the courts, and I cannot presume to tell the Judiciary what to do, but I gave you all the process in terms of how the court usually deals with this. The Attorney General from the government at the time laid it out in plain English, it is right there. That process has been followed and that is what we are doing here today.

So, Madam President, in conclusion let me just say this. Tobago finds itself in a serious situation. Time is of the essence. It is not something that can continue
ad nauseam while we wait on two politically opposing sides to find a way to resolve the issue. Tobago needs a resolution; Tobago needs a solution, but most importantly Tobago needs to make a choice and that is what we are doing here today in terms of creating that opportunity. With those few words, Madam President, I thank you. [Desk thumping]

Sen. Anil Roberts: [Desk thumping] Thank you, Madam President. It is indeed a privilege today to join this debate. The hon. Attorney General said that democracy is at stake and it is not often that I agree with the hon. Attorney General. He spoke in eloquent language and loud tones. However, he gave us a history lesson but that is why I love history, because different people can read history and interpret it differently. So we will deal with the historical perspective and how our democracy is at stake as stated by the hon. Attorney General.

Sen. de Freitas spoke about process and consultation and he spoke about a long process and said basically if you were not there, PDP was not there when the process began, that really and truly he made the argument that their position was moot at this point because they were not involved or created at that time. I would deal with that as we go along.

Sen. de Freitas: Senator, would you gave way? Thank you, Senator. I did not make the point that the position was moot, the point I made is that the consultative process continues and they could have joined that process at any point in time to have their opinion put forward. So it is not moot, they could have joined at any time and I just made the point that they did not exist as a party prior to when that process started. But they can definitely join the process now.

Sen. A. Roberts: Thank you. And the point that I will make as we go along is that the process itself is not for the Government and the Executive. So to conclude that
the process about seats allocation, seats equations, number of electors, electorates, electoral districts is not the purview of the Executive to conduct any consultation but that of the EBC. It is ironic that my colleague, Senator from Tobago, said and I quote, he says proudly:

That if Tobago cannot resolve their issues then Trinidad will solve it.

Well, that hurts half of my Tobagonian heart and I am going to speak from that half today, from my grandfather, my grandmother, my father from Tobago, because it sounds like what the hon. Senator from Tobago is saying, is if the children are squabbling in Tobago, daddy in Trinidad will fix it, and that could never be the position of a proud Tobagonian people.

But how did we reach here? Debating a Bill to bypass and usurp the authority, the role and function of the independent EBC with a simple majority, mind you, simple majority, not a constitutional majority to boot. I would tell you how we reached here. We are simply continuing the backbone principle of the PNM governing its policy since its inception on January 15, 1956. That philosophy being the tyranny of the majority over the minority. We are hear fulfilling that here in Trinidad today, over the minority of Tobagonians once again. At this juncture I am reminded of the statement made famous by the Spanish philosopher, Jorge Santayana. And I paraphrase:

“That who…”—do not—“remember…”—their history—“are condemned to repeat it.”

Clearly this PNM Government does not know their history or maybe they do and this is why we are here once again to disrespect Tobago, to bully Tobago, to impose the will of the majority on the minority without regard for their hopes, dreams and autotomy. Tobago has been disrespected and ignored from the very
beginning. The hon. Attorney General gave us a little history of Tobago today. Well, let me give him the real history.

In 1889, the annexation of Tobago became a reality. Back then Tobago was politically advanced, more so than Trinidad. Tobago at that time had its own House of Assembly, they were flourishing, the sugar case industry was booming, Madam President. Tobago was a jewel; Tobago was moving ahead. Trinidad was a backwater, was backward and a banana republic. But Tobago fell on hard times when the main sugar cane plantation company fell under hard times. And the British who had so many territories to deal with, rather than focus on managing the economy of Tobago and bringing Tobago back, decided to discard and disrespect Tobago by annexing it to Trinidad. This was later codified in 1899 by the Act of Union.

So whilst we follow the history we are seeing that today when Tobagonians can stand up here and put party ahead of Tobago, that the history is repeating itself as we in Trinidad seek to solve Tobago’s problems. The irony of that statement alone should make all of us pause here today.

4.50 p.m.

In 1924, the Legislative Council was agreed to by the British, and it was nominated that 13 members will make up that Legislative Council. Seven elected and six nominated for a total of 13, but only one from Tobago. Again, Tobago’s fate has been sealed as a minority for the majority to do with Tobago as they pleased. In 1946, a constitutional reform committee headed by Sir Lennox O’Reilly was given authority to create and to conduct constitutional reform, but the committee decided that they were in favour of holding and remaining under the crown colony system. But this was opposed by Dr. Patrick Solomon and Ranjit
Kumar who were the minority and they did a minority report, and as we go through history you will see that the minority made more sense. The minority took more time to consult, the minority took in disparate views of different groups to create recommendations that could have offered Trinidad and Tobago a smoother journey forward, but the minority was always quelled and squashed by the majority as we here today. In Kumar’s minority report he stated and I quote:

“In Trinidad we have a minority problem, and it is the duty of the majority to gain the confidence of the minorities by showing them that in any proposal for self-government, the minorities would have equal rights. I am afraid in this colony, the majority community has not yet done that. It has made no effort to try to instill confidence in the heart of minorities. In fact, there have been leaders whose actions and utterances have given minority suspicion.”

And again here today all of the scrolls, the wise people of Tobago, even Independent Senators here from Tobago are saying they are suspicious of this that we are doing here today for many different reasons. But the suspicion remains because the majority is once again imposing the will on the minority.

We go quickly to 1955 and I wish the hon. Attorney General was here because he tried to give us a history lesson with only part of the history. In 1955, the constitutional reform committee appointed by Sir Edward Beetham on the 17th January, 1955. Out of this committee a huge committee, approximately 33 members. Sen. de Freitas, only one Tobagonian out of 33, a minority. Could that one person, APT James, give his opinion and get it over the majority? Well I think not. So today the majority exists, but we the minority have to give the ideas and concepts in order to respect the minority position of Tobago which has been
In 1959 another constitutional reform committee appointed. The major issue at that time was being—and listen carefully—the redrawing of the electoral boundaries. The main Opposition party in the minority, the DLP, recommended an independent commission from Britain or the UN to decide and determine the boundaries, but the PNM, under Dr. Eric Eustace Williams, disagreed. They wanted to control the boundaries. They wanted to design for themselves and appoint a commission, an EBC, to create boundaries. They did not want international people, independent people doing it.

In 1961, there was an election utilizing these boundaries. The main issue of debate between the PNM and the Opposition parties was the election, the election boundaries, the decision to design boundaries in a certain way, and this led to violence and thuggery across the country. The PNM supporters took advantage of the East Indian docile supporters and the police were called in. A state of emergency was brought in Caroni East, in St. Augustine and in Barataria, and the police force was utilized without warrant, without reason to go into the houses of East Indian Opposition Members and supporters and harass them. Again, the tyranny of the majority over the minority. Today there is no thuggery, there is no violence, there is no shouting, but the oppressive, dictatorial, disrespectful, undemocratic end result is the same, that the majority will have their way and impose it upon the minority.

On the 26th April, 1962, a constitutional conference at Queen’s Hall was summoned. The PNM was in charge under Premier Dr. Eric Williams. They invited the DLP, the Bar Association, the law society, the African National Congress, the Indian Association, trade unions, and social and religious bodies.
You did not hear me say Tobago. Once again, Tobago was not invited to the table to discuss their future, to discuss the creation of a Constitution to move towards independence. Again, total disrespect for Tobago. This meeting was chaired by Premier Dr. Williams and Sir Ellis Clarke—he was not Sir at that time, but Ellis Clarke was the main speaker because he had done the draft. At that meeting, the minority wanted to discuss and wanted the media there so that the population can know and learn about what was taking place to them, what was being done, what was being debated.

John Broomes of the African National Congress—and I take note that the African National Congress and the Indian Association were united in their fight at that time to go work for a better Trinidad and Tobago, and it was only after the drafting of this Constitution by the PNM that the divisions of race began and continued in Trinidad and Tobago. Broomes said he wanted the media inside so that they could report on the discussions and what was taking place, and PNM and Dr. Williams said no. Broomes stated:

Should not the entire country be appraised of what is taking place here this morning?

Dr. Eric Eustace Williams throw him out of the conference, throw him out of Queen’s Hall and got rid of him.

Ashford Sinanan, a member of the DLP and the Opposition, demanded more consultations, Sen. de Freitas, and inclusion stating:

We are not going to listen to you, Mr. Clarke. The whole trouble is that we are being dictated to all the time. That nonsense that you have prepared as a Draft Constitution we do not want to hear it. Williams then told Sinanan to sit down and to hush.
And Ashford Sinanan said, and I quote:

I am not sitting down and nobody can put me out of here. No policeman, no commissioner of police, no People’s National Movement brigade. You must listen to me. And, oh yes, a Government must tell me that on a matter of this importance, like preparing a Constitution, I must only talk for five minutes, when for 500 years you will destroy this country.

Prophetic words as we look at the total collapse and decay of our democracy, our country, our economy, [Desk thumping] our institutions, our education system, our young people. Ashford Sinanan predicted that because of the lack of consultation, the lack of involvement of minority peoples and groups in the creation of the Constitution, and today again, myself included, while I may be a half Tobagonian by birth, I am a Trini, Trinidad. We are in Trinidad, in a Senate in Trinidad deciding Tobago’s fate, and I had to listen to my brother from Tobago, Sen. de Freitas, say that when Tobago cannot handle their business Trinidad will handle it for them. It is time to stop that. Tobago can handle their own business. [Desk thumping]

In 1961 to 1962 the Government then, the PNM Government, approached the British for independence and the British said go ahead. The PNM in its normal manner decided, with its advisors, to create and draft a Draft Constitution. They wrote it, they drafted it and they published it in the extraordinary Royal Gazette, and this is the key. Without input from the Opposition or civil society groups, this is what we are doing here again, where there has been no consultations since January 25th with the PDP. We come here today and the PNM is saying that we were discussing autonomy of Tobago and self-governance from 2015 or 2014. That is not good enough. We are repeating history. There was no consultation. It
was gazetted on February 19th, 1962 in the extraordinary *Royal Gazette* and then the People’s National Movement, under Dr. Williams, told everybody else, all the citizens, all the disparate groups, you have until March 31st, one month and nine days, to read the Draft Constitution, come up with comments and to give options and recommendations. One measly month to draft a Constitution that would chart the future of generations of Trinbagonians. This is why we are here today.

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

Dr. Williams’ philosophy, the tranny of the majority over the minority was put in that draft document. He wanted the first past the post and winner take all, all the other groups, African National Congress, Indian Association, DLP. All the other groups in the society, different religious groups, they wanted a unity Government, proportional representation. People like Broomes, Ken Gordon who represented at that time the business chamber, Ashford Sinanan, Rudranath Capildeo. G. Furness-Smith was representing the Law Association and he wanted proportional representation, but Dr. Williams, and Ellis Clarke, and Max Richards’ father said no. They were going with this first-past-the-post system, and Ellis Clarke make what I may—I will leave for the interpretation of the population. But when I read this quote it is one of the most painful quotes that I have ever read because growing up as a young boy, young teenager, respect for Ellis Clarke was tremendous.

So reading these words in my research for debate today I could tell you it brought a tear to my eye that someone so intelligent, someone who I held in such high esteem could state this at the onset, and this is Ellis Clarke. He said in response to Ashford Sinanan, and Broomes, and Furness-Smith and so on:

The system which I have proposed in the Draft Constitution accords exactly
to all that which we have been trained to follow. We are coming out of slavery, indenture, colonialism, feeling proud to be independent, intelligent, legal minds.

And a legal luminary says the words that what he has drafted is what he was trained to follow. I need not go into more detail. I could see the pain on some of your faces. We were trained by the colonial masters to follow that Constitution. That is the Constitution that was handed to us because of lack of consultation, because lack of democracy, because of lack of propriety, because of lack of respect of the minority, because of lack of listening, and this is why we are in this problem here today.

He said that:

We have been trained to follow, and it seems quite inappropriate to me—said Ellis Clarke—in presenting a draft to invent a new rule.

And that is what I am hearing here even from my Tobago colleague, Sen. de Freitas, that why create a new rule because the old rule is if Tobago cannot handle their business, Trinidad will solve it. The children fighting, daddy will come in. This is the same thing. We are repeating history today. I beg of Senators here, Independent and PNM, let us stop this disrespect to Tobago. Let us stop it today. We cannot continue this way. [Desk thumping]

I recall just after this Constitution, Dr. Eric Williams in Woodford Square made his great speech, “Massa Day Done”, but according to the Draft Constitution and the person who wrote it, massa day was just changing colour. Kenneth Lalla in his book, A Republic in Constitutional Transition states:

What Ellis Clarke had for whatever reason failed to have taken into consideration was the complex nature of multiracial, multi-religious,
multicultural structure of the society, and more particularly the historical factors which had brought the Africans and Indians to the colony and had kept the two races socially and politically apart. Indeed, one of the major concerns of the Indians was the absence of any sufficient safeguards in the Constitution against the tyranny of the majority over the minority.

If we replace Indians in that statement by Kenneth Lalla with Tobagonians, we can understand that we need to stop, reflect, withdraw, and go and allow Tobago to discuss, sort out and formulate their business. Not play daddy, not control, not continue the disrespect of Tobago.

Some people had the audacity to tell us in the UNC, for example, stay out, stay away, stay quite because only the PNM cares. Only the PNM cares about Tobago. Only the PNM has candidates in Tobago. The UNC does not have. Please have some respect. The mere fact that the United National Congress understands the history, understands and respects the autonomy, the brilliance and the genius of Tobagonians, and respectfully allows Tobago to decide its future, that is a far futuristic approach and not a historical disrespect that the PNM has held over Tobago for the last 80 years.

May 11, 1962, the debate came for the Constitution right here in this Red House. The Opposition—the main concerns of the Opposition downstairs at that time, the delimitation of the constituencies—May 11, 1962. We are here in 2021 discussing in a scared manner that the majority wants to impose the limitation of constituencies and electoral boundaries across the water in Tobago. That is what we are debating here, the same thing, the appointment of the Elections and Boundaries Commission at that time. We are discussing now, unfortunately, the independence of the Elections and Boundaries Commission because if you read
your Constitution 71(1), I will just glance it because people have mentioned it before, 71(12) says:

“In the exercise of its function under this section the Commission shall not be subject to the direction or control of any other person or authority.”

Clear, clear English. Clear.

The EBC is independent. They determine boundaries, they determine numbers. The Government cannot say or take a number and have a consultation and bring a number. That is the EBC’s job. The EBC can go and consult, do their research, go about their equations whether it is 10 per cent of 100,000 and going down, however they do it. That is the EBC’s job, but there I opened a Newsday article, section A, Sunday, February 21st, page 3, and I hear the corporate communications officer of the EBC and I got scared. Because the Government, the Executive is saying 15. We tell you is 15, go and do your job. Today the hon. Attorney—

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

Sen. A. Roberts: Thank you—General put the cart before the horse, and it was beautiful how he did it. He did it smoothly, that if you were not listening you might have actually believed him and thought we were in a democracy. He said that when they finished passing here with a simple majority, the 15, they will give it to the EBC.

The EBC has stated that they could do their work quickly in three months. They will then take instruction from the Executive, which is the PNM, to go and find and create an equation to come with up 15 seats. Divide the electoral districts in Tobago, come back in three months. The PNM will bring it and give them an order so to go ahead with an election. There is one problem: The EBC takes no
instruction from anyone. That is in the Constitution, the supreme law of this land. So all of that rigmarole is back to front, wrong, illegal and unconstitutional, and if something is unconstitutional we have courts. So for an Attorney General saying that you cannot go to court, I do not want to laugh in the Senate. I am just saying here that the corporate communication of the EBC said, “Well we are waiting for the PNM to give us our instructions.” Ma’am, I think you need to read your Constitution, understand your job specs, understand your constitutional independence, and you are to take no instruction from any Government whether it is UNC, PNM or any other Government. [Desk thumping]

We went to Marlborough House May 28, 1962, and there was no budging, but Dr. Williams then used the PNM trick. Minister of Energy and Energy Industries will know that, used it on Petrotrin, used it in Point Lisas. He told Rudranath Capildeo, doh worry. Come nah boy. Sign this thing here in England. When we reach back home we go deal with all those things about the Elections and Boundaries Commission, the boundaries, all of those concerns you have. Well, Rudranath Capildeo fell for it. Sign off and as usual the PNM renege because they did not close the fridge door and all that happened came down and elections were held under the PNM’s majority upholding the law and oppressing the minority.

Then for five years there was no election. Independence came under the same Government that existed. It was granted on June 8th, political independence—June 08, 1962—and then came the voting machines. Because we talked about the EBC, and the pretence here is that the EBC—the Attorney General said there has never been a problem with the EBC ever in Trinidad and Tobago. The EBC is the most pristine. Most pristine in 2010 when I was in D’Abadie/O’Meara, it took four hours and 13 minutes for people in Carapo RC School to vote because the EBC
determined that in one box they would put names from S to W, and in the back there only have Seecharan, Singh, Ramsingh, Rawle, all sorts of things. That is what the EBC did. So I do not know how.

The PNM have had no problem with the EBC, but the Opposition throughout the years had had problems with the EBC. So they brought the voting machines under the same—our first independent election in 1966, the Opposition was, we do not want voting machines. Our Indian population is functionally illiterate and the voting machines were very difficult. Dr. Williams and PNM did not want to hear that, EBC did not want hear that. They went ahead with voting machines. They also made a case that the voting machines, there could be some skullduggery and gerrymandering. And just to let you know in Tobago, A.N.R Robinson of the PNM was declared winner. In Tobago under the voting machine there was one problem. He garnered more votes himself than registered voters, human beings to vote, but there is no problem with the EBC. But now the EBC is taking instruction from the PNM and we see that a PNM family member is heading the EBC and we say that is okay. Tobago we will solve your problems. There is consultation with the Tobago. No consultation with the PDP.

In conclusion, I leave you with the words of Tobagonian legend, Winston Bailey. Yes he in born in Belmont, but he is a Tobagonian. Yes, Vice-President, proud Tobagonian Mighty Shadow, in his classic rendition, “What’s wrong with me?” As you listen to the lyrics picture them being sung by the entire population of Tobago as they listen to this debate in a Senate, based in Trinidad, led by a Trinidad PNM with the majority of Senators from Trinidad determining Tobago’s fate, and Shadow said:

They try to offend me, but I will defend me.
It is a long time they trying. I know dat they lying.
I look dotish or what?
I look foolish or what?
What’s wrong with me?

Well, let me answer you legendary Winston Bailey, the Mighty Shadow, this PNM Government by its unconstitutional actions here today has continued the philosophy exposed by its founding father, Dr. Eric Williams, when he said in 1955 and I quote:

In Trinidad and Tobago we have difficulty in getting sufficient competent men of integrity to fill a single House. Therefore, we cannot possibly find enough men of the desired calibre to fill by election two Houses.

That is PNM. To paraphrase:

The PNM continues to believe that we dotish, we foolish and we are not worthy of self-governance and respect.

Tobago is worthy of respect. Mr. Vice-President, I thank you. [Desk thumping]

**Mr. Vice-President:** Sen. Welch.

**Sen. Evans Welch:** Mr. Vice-President, thank you for the opportunity afforded me of addressing this honourable House and its Members on the Tobago House of Assembly (Amdt.) Bill which is before us today. Mr. Vice-President, I welcome this opportunity because first of all it gives me the first opportunity I have ever had to look at the relationship between Tobago and the national Parliament in terms of the legislation, how they relate to each other, as well as the Tobago House of Assembly Act, its Standing Orders and how they relate to the Standing Orders of the House of Representatives. It is not something which I have looked at previously and I am not sure when in the normal course of things I would have
examined that relationship. So this presents itself as an opportunity I seized and grab, and I am happy to be making a contribution which would be part of what informs whatever decision is ultimately arrived at by this honourable House in respect of this matter.

Mr. Vice-President, let me begin by saying during my tenure as a law student while I was engaged in legal studies, there was a topic called the rule of law which I steadfastly avoided because it appeared to be a little abstract and conceptual. However, since I have become a legal practitioner, I have appreciated the importance of that doctrine of the rule of law, and the part and its significance it plays in any democracy, and it is relevant to this debate in my opinion today. In part that doctrine holds that where you have law or legal principles governing a particular fact situation or scenario, if that fact situation or scenario arises then those laws as they exist which have been created to apply to it, must be applied to it and there can be no compromise in that regard.

5.20 p.m.

In other words, no one can argue that the rule of law should not applied because it may lead to an inconvenient result, it may be impractical, it might be inappropriate, it may not be the most suitable thing for the situation as given. That is not an argument which can trump the rule of law.

The fact is if there is need to amend the law, then that need must be spotted in an advance of the fact situation arising and it must be dealt with in advance. If there is a need to amend the law, then that amendment should take place after the fact situation arises. But the law of the day, as it is unamended and the relevant principles, should apply to that situation and you cannot bypass that. And that doctrine is very important because it promotes accountability, it promotes fairness,
it promotes predictability of the law and it is in the interest of good governance. How is that doctrine therefore relevant to the debate with which we are concerned today?

Now, I have no doubt, Mr. Vice-President, that all sides in this debate recognize the importance and the principle of the rule of law to the current situation. What has happened, however, is that there are various interpretations as to what that law means in the particular factual situation that has arisen and those interpretations are divergent and are different to each other. And when it comes to law, as I heard the hon. Prime Minister mentioned during his debate in the House of Representatives, once you have lawyers, there are going to be different opinions on the interpretation of the law and its application. There is no right view. No attorney can take—senior counsel or not—the approach that they have, in monopoly, on what view is right. Reasonable legal arguments can originate from any quarter. The only institution that is decisive of the law really is the courts when they adjudicate on a situation. It may be said, therefore, that this is an apt situation seeing there are divergent views as to whether you draw lots or whether legislation is needed, which is the real contest that we are dealing with. This is an apt situation for perhaps what I understand to be—it is called an “interpretation summons” to be placed before the court to have a decisive pronouncement on this issue.

I have heard the Attorney General say that to refer the matter to the courts may involve a breach of the separation of powers principle. However, I question whether—if it is referred to in a collaborative manner to seek the court’s guidance by reference to the parties coming together—the Opposition, the Government and all other stakeholders—to seek the court’s assistance in the interpretation of this matter, where that is the choice of the parties involved, I doubt one can say where
the court is invited, there is a breach of the separation of powers principle and that approach, as certainly, would avoid the situation which has arisen where each side is being accused of putting an interpretation on the law which favours their view as to how the matter should be handled and which they think it would favour them—the outcome would favour them if they pursue. So my view, in the first instance, is that would be a commendable approach to the present situation. However, that has not been the case and we are faced with what we are faced with, different interpretations.

Mr. Vice-President, in light of the fact that there is open field, so to speak, on what is the proper interpretation and the application of the Standing Orders in this situation, I have, myself, over the past 48 hours considered the matter over and over. I have found it not to be a very straightforward one, not to be a no-brainer, to use the common expression, by any means. But notwithstanding all of that, I have arrived at my own view as to the proper interpretation and it is a view which may be right or may be wrong but it is one which, as an attorney, I am also entitled to advance. And because that view is different perhaps from what the Attorney General has advanced, after expressing that view, I think it is only proper, in deference to the Attorney General, that I explain the manner in which I have surmounted his arguments and come to a different conclusion. But first, I would express my own view on the issue.

Now, Mr. Vice-President, the Standing Orders—section 92 of the Tobago House of Assembly Standing Order in its clear terms says:

“In any matter not herein provided for, resort shall be had to the usage and practice of the House of Representatives of Trinidad and Tobago which shall be followed as far as the same may be applicable to this Assembly…”

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But are we dealing with a situation therefore which is not provided for in the Tobago House of Assembly Standing Orders? In which event, if the answer to that is yes, then section 92 has to be invoked. What situation do we have here?

First of all, an attempt has been made to select a presiding officer after the primary elections. We have had a split between the parties, six on each side. There is a four-step approach to select a presiding officer. That four-step approach has been exhausted. The first step of that approach is that you have an election for the first person who has been proposed. If a second person has been proposed, you have an election for that person as well and if the votes are equal, which have turned out to be the case, the Clerk of the House then resorts to putting the question on the open floor as opposed to a secret ballot with respect to both nominees, and that has been done, that has been exhausted. And therefore, after the prescribed process has taken place, you have had a deadlock. No one has emerged as the Presiding Officer because of that deadlock and because of that even split.

While the Standing Orders provide for the procedure for the election of the Presiding Officer, what it does not provide for is what is next to happen in the event of a deadlock in the process. And therefore, it would seem to me, quite naturally, since it does not provide for what is to happen after all the steps have been taken and a deadlock has resulted, then it would seem to me, on the face of it, that section 92 of the Standing Orders has to be invoked. Because section 92 says, you resort to the usage and practice of the House of Representatives and follow it where there is nothing in the place in the Tobago Standing Orders to deal with the situation.

It seems to me therefore that the equivalent person of the Presiding Officer in the Tobago House of Assembly is the Speaker of the House of Representatives,
granted the Presiding Officer in the Tobago House of Assembly has a wider power than the Speaker because in the election of a Chief Secretary, he has a casting vote—the Presiding Officer—whereas the Speaker has no casting vote in the House of Representatives. The Speaker just presides. But the point is, it is not so much whether one has more power than the other. In substance, that is the equivalent positions. The equivalent position of the Presiding Officer in the Tobago House of Assembly is the Speaker and therefore where there is a deadlock with the Presiding Officer, you have to resort to the situation where there is a deadlock with the Speaker. And when you resort to that position under Standing Order 4 of the House of Representatives—forgive me, it might be Standing Order 10—it speaks to the drawing of lots. And therefore, it seems to me, quite naturally therefore, that what next has to happen for the Presiding Officer in Tobago is that same process of drawing lots, as would have applied to the Speaker, [Desk thumping] where there is a deadlock.

A number of reasons have been advanced as to why this is inappropriate. It says the Presiding Officer in Tobago has a wider power to select the Chief Secretary and therefore his selection should not depend on luck and chance. It is also said, and I have heard the argument advanced in the Lower House, that Tobago has a thrust for self-determination and therefore one should not be resorting or incorporating something from the House of Representatives to settle the issue. But those are emotional sentimental arguments. They fly in the face of the fundamental doctrine, which I have already identified, which is the rule of law. You follow what is provided no matter how sentimentally inconvenient it appears or how inappropriate it appears.

And quite apart from the argument that it is inappropriate, there is an
advantage in it because it certainly—no one can complain because the drawing of lots, which I had to find out from someone exactly what that means, but the drawing of lots is the equivalent of a toss of a coin. Each person has an equal chance and that is at least one advantage of it which has to be advanced against the complaint that it is too much of a luck of the draw process for an important position. Therefore, it is my view, Mr. Vice-President, applying that doctrine of the rule of law, that that is what needs to be resorted to, the drawing of lots. When lots are drawn, you have your presiding officer. And as Sen. Remy pointed out, the 6:6 was not an accident. It was an idea that originated with the idea that the parties could collaborate and get along well in Tobago and set an example. So you draw your lots, you select your presiding officer and let Tobago work itself out with its split.

Now, one argument which has been advanced as to why this is not the appropriate procedure—and the hon. Prime Minister has indicated that he has sought legal advice on the issue, and indeed I commend him for doing so because it is a troubling issue and for which independent advice is needed. So no one can question that decision and it would be rather bold and out of order of me to suggest I need to see the legal advice myself. One relies on the words of the hon. Prime Minister to reflect what legal advice he has received and one can confidently rely on his words in that regard. But, as I said, that is just one opinion which the learned hon. Prime Minister himself has acknowledged when he said, once you have different lawyers, you have different opinions.

But one of the arguments which has been advanced in the Lower House is that it was suggested that there is no need to resort to the House of Representatives Standing Orders because there is a process in place for the election of the Presiding
Officer in Tobago. But that is not the issue. We know there is a process in place. The issue is when that process has been exhausted and a deadlock has resulted, there is nothing in the Standing Orders to cover that situation. So that is how I deal with that first argument and therefore resort can be had.

Another argument which was advanced—I am not sure how forcefully in this House but I took the opportunity to try and listen to some of the debate in the Lower House—is that it was suggested that the Tobago Standing Order 3(6) does prescribe what is to happen if there is a deadlock. And it was suggested that what it does is to say, you go on and on forever and emphasis was placed on the word “until” and therefore there is no need to resort to section 92 because 3(6) says, you go on and on forever until someone is selected. I beg to differ with a different interpretation of 3(6), if I may read it very quickly:

“If the proposal is negative, the Clerk shall propose a like question in respect of any other member or other person who has been proposed and seconded, in the order in which they were proposed until the question is carried in favour of one of the members or other persons proposed.”

“until the question is carried in favour” has to be given a purposeful interpretation and it does not mean you repeat the process until somebody gets exhausted and say, “I am resigning from this Assembly, I have had enough”. That is not what that means.

Because when you look at section 6 of the Tobago Standing Orders or section 3 which speaks to the election of the Presiding Officer, after the nominees have been identified and they have been subjected to a vote as well as a question, there is no requirement under these Standing Orders to keep repeating that process. The effect of the section 3(6) is that that process comes to an end after you have
subjected the two nominees to a vote. If by agreement, they decide, “Well, we can go on and try again,” fine. But under section 3(6), there is no provision for repeating this process. The process ends after they have been subjected to a vote, a re-election, a recasting of the ballots and subject to the question being put on the open floor. So there is finality and therefore I disagree with the view that 3(6) caters for a situation that must be perpetuated forever and forever, and that could last for the next four years until another election is due.

The other argument which has been advanced, and this one is one that took prominence in this House is that Standing Order 9—and this is what the Attorney General has advanced, very ably I must say. The Attorney General has advanced that Standing Order 9 of the Tobago House of Assembly Act precludes the application of section 92 which allows reference to the House of Representatives Standing Orders. And if I am to quote or understand the Attorney General’s argument, I perhaps need to read section 9 of the Standing Orders. It reads:

“The Presiding Officer shall have power to regulate the conduct of business in all matters not provided for in the Standing Orders.”

And section 92 says all matters not provided for in the Standing Orders should be referred to the House of Representatives Standing Orders.

And as the AG, if I may repeat it, says—9 says the Presiding Officer has to be one responsible for the conduct of such business when reference is made to the Standing Orders in Trinidad and therefore section 9 means that the Clerk cannot draw any lots because it is the Presiding Officer who has to be responsible.

My argument—I should not say argument, but my response to that is section 9 of the Standing Orders has to be given a purposive interpretation and it can only refer—section 9 contemplates a situation where the Presiding Officer has already
been selected and where he is already in place, any matters after he has been selected, which is not catered for in the Standing Orders, the Presiding Officer shall, under section 92, invoke the House of Representatives Standing Order and deal with that. So section 9 is to be interpreted as a situation and is premised upon a situation where you already have the Presiding Officer in place and matters not catered for by the Standing Orders have arisen after he is already in place. But that is not the situation here.

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

**Sen. E. Welch:** Yes. Thank you, Mr. Vice-President. But that is not the situation here. We have no presiding officer in place as yet and therefore this is a matter which the Standing Orders do not cater for before the appointment of a presiding officer, and section 92 is wider than section 9. Section 92 covers situations which arise after the Presiding Officer has been selected as well as a situation which arises before the Presiding Officer has been selected. In this case, he has not been selected as yet but you can still refer the matter to the House of Representatives Standing Orders and the Clerk would be the one to conduct the selection of ballots. And that is how that is to be interpreted and that is my response to the Attorney General’s view on that issue. I think it is a narrow interpretation of section 92. Section 92 is wide enough to cover situations both before and after the selection of a presiding officer.

So having expressed these views on the question of what is to happen and having firmly stated that we should now resort to drawing of lots, if I am wrong about that view and we have to go a legislative solution, then I also take issue with the legislative solution that has been advanced by the Attorney General for several reasons, including those which have been advanced by Dr. Remy.
First of all, the Elections and Boundaries Commission has already stated by its reports to this House and an order has been made as recent as December 2020, that there is no need for the change of the electoral seats from 12 to 15. This legislation contemplates such a change. Between the elections which have passed and now, there has not been any change in the demographics, there has not been any increase in the population in Tobago. You cannot impose a change of boundaries which has nothing to do with an expansion of the population but simply divide up the same population for the purposes of dealing with an election which took place only two months ago when the next EBC report is due in two or three years. You cannot force the EBC to act prematurely and to act at a time when the demographics have not changed.

And then, no matter what, I have great confidence in the EBC but it will be a situation of “damned if they do not and damned if they do”. People are going to think that such a boundary change has been designed to favour someone and probably the Government, and the people need to have confidence in the system. I am not suggesting that I have no confidence in the EBC but it is the people’s confidence that matters.

So I suggest you leave that sort of legislation in the long run when the EBC has time to review the number of seats and my suggestion for what I consider to be a fair legislative proposal is one in which you carry out a re-election if you have to, propose legislation to allow for a re-election with the same number of seats and if there is a tie, you incorporate in that legislation a provision which says, the majority—whoever wins, the popular majority—shall be the ones to select a presiding officer. I believe that is far fairer than the attempt which is being made by the hon. Attorney General; the proposal to force a situation that is uncatered for.
Mr. Vice-President, does it mean my time is up? I notice you have—there was one more point I wish to make but I respect the Chair. [Desk thumping]

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Thank you very much, Mr. Vice-President. I want to start off right away by saying that I have to disagree vigorously with my colleague, Sen. Welch. I appreciate all the contributions that have gone before, particularly his, but I must say, Mr. Vice-President, that I disagree with his interpretation.

Mr. Vice-President, in summary, the legislation before us deals with what I consider to be an absurdity and I mean no disrespect to the drafters, to the people of Tobago or to anybody else. It happens. We work with law all the time in here and we are dealing with an absurdity that has to be corrected, and I believe there are two options available to us and two ways to get to the solution.

So that, Mr. Vice-President, this legislation calls upon us to consider the Constitution, the Tobago House of Assembly Act, the Elections and Boundaries Commission (Local Government and Tobago House Assembly) Act, the Legal Notice from December 2020, and the Standing Orders of the Tobago House of Assembly.

5.50 p.m.

And Mr. Vice-President, it is very important that we understand the framework of the Tobago House of Assembly. It very important we understand how the Assembly is constituted. And the Tobago House of Assembly Act, in sections 5 to 24, sets out the constitution of the Assembly. And the Assembly is essentially 12 assemblymen elected, the four councillors and the Presiding Officer. So, Mr. Vice-President, what this Bill proposes to do, one of the things the Bill proposes to do, is to increase that number from 12 to 15. And we have had
different opinions expressed here and in the other place about that decision of the Government to present a Bill which moves from 12 to 15.

It is important to note, Mr. Vice-President, that the term of office of the assemblymen actually commences on the date of the election. On the date of their election, by virtue of section 13(2) of the THA Act, the term of the assemblymen commences. So nothing has to happen more than the election takes place and they are successful.

But then there is a next step, which is under 13(2) of the THA Act and that is the duties. They embark upon their duties when they are sworn in. So we have had a swearing in and they embarked on the duties once they are sworn in. But Mr. Vice-President, it is important to note that the Assembly is only fully constituted when the Presiding Officer is elected. And that Mr. Vice-President, you see I have listened to everybody, here and the other place, talk about the 6:6 result and the prospects with 15 members of a 5:5:5 or a 7:7:1. But that is not the issue. The issue is not to deal with 6:6, because even in the 6:6, it is possible to elect a presiding officer; it is possible. But in this scenario, after the THA election in January, a presiding officer has not been elected, and the Presiding Officer has not been elected simply because an absurdity has been exposed. So that, in the same way Sen. Welch did it, I am going to talk about the Standing Orders, because the Act simply provides for the election of the Presiding Officer. The Standing Orders provide the process for doing that. And in the election of the Presiding Officer, two things can happen from the outset. The first thing can happen is that someone is nominated and that someone is nominated unopposed, but the “someone” is important. You see, the Presiding Officer could be an elected member or someone from the outside who was not elected in the way our Speaker could be elected. And
if the Presiding Officer, if the name is put forward and that person is not opposed
the matter comes to an end. That is the end of the matter.

If however, a second name is proposed then we must go under the Standing
Orders, Standing Order 3, to an election by way of secret ballot. And that is under
Standing Order 3(4). And if in that election by secret ballot, whether it is 6/6,
5/5/5, whatever, if in that election by secret ballot someone comes out the winner,
that is the end of the matter, the Presiding Officer is elected. But when, in counting
the ballots, there is an equality of votes, Standing Order 3(5) provides for the
retake of the vote. And it is very important, Mr. Vice-President, because I tell you,
you have two options. I say it is an absurdity but some people believe there is need
for interpretation.

I want to direct my colleague Sen. Welch to Standing Order 3(4) in the last
line where the reference is to the ballot being retaken in respect of the relevant
candidates. So the expression “relevant candidates” is used there. And then you go
to the retake and if there is an equality of votes on the retake, 3(6) is very clear,
you continue until the question is carried in favour of one of the members or other
persons proposed. So we are not talking here about candidates. And that is why
some people may be led to believe that this requires an interpretation. Are we
stuck, when we come to the second retake, with the names first proposed and
described as relevant candidates, or are we now talking about all the persons who
can be considered? And that is a pool that is as large as Trinidad and Tobago.

And to understand the absurdity you must have been watching television in
18:18; the 18:18 split. When there were attempts to elect a Speaker, I thought my
name was going to come up because names, anybody, because you are allowed to
choose from elected or anybody who meets the criteria for election, then you could
go on and on. And I would respectfully submit that in its current form, Standing Order 3, leads us to an absurdity. It is not defective. You see, you only get to Standing Order 92 when the matter has not been provided for.

The matter of an election of a presiding officer has been comprehensively provided for in Standing Order 3. And when you take the THA Act provision and you take Standing Order 3, you have there the process to be followed, except that that process leads to an absurdity. In other words, having done this, you do not have a presiding officer. It is not that the process is not provided for. It is not that the process is incomplete. It is very complete, because it says until the question is carried in favour of one of the members or other persons proposed. And I submit that other persons proposed could be anybody in Trinidad and Tobago who qualifies. And it is that purpose that brings us to the Bill that is before us, nothing capricious, no attempt to escape. In fact the Government, the party that is in Government is very desirous of carrying out the will of the people.

You see, the legislation also provides that if the Assembly is not constituted, until I should say the Assembly is constituted after an election, the Executive Council that was in place before continues on. So there should really be no rush if the view was that the PNM wishes to maintain its control of the THA. If that was the view then we would not be here today trying to fix this problem. It is we are here today because we understand that the will of the people, that is what elections are about, and that is why legislative law and legislative instruments relating to elections are strictly interpreted to give effect to the will of the people. And all the Government is striving to do is to get Tobagonians who are duly qualified to vote back to the polls, and the only way we could do that is by amending the legislation so that it can provide for what has to be done.

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Mr. Vice-President, the other issue is in relation to the Standing Orders themselves, and the reality is this, the Standing Orders for the THA—Standing Orders are very limited, in the sense that the THA Act itself, and this is my view, the THA Act itself, which provides for the creation of the Standing Orders is very clear, and I will get to it. When you read the provision for the creation of Standing Orders and regulations, you would see that it was nowhere intended by drafters of that provision that the Standing Orders would lead us to a decision being made in this Parliament by the drawing of polls. It could not have been intended. Because section 69 of the THA Act reads, and I will quote:

“Subject to this Act, the Assembly shall make Rules and Standing Orders to provide for—

(a) the safe custody and use of the Seal;
(b) the regulation and conduct of the proceedings and meetings of the Assembly including records of proceedings of the Assembly;
(c) the maintenance of order in the Chamber of the Assembly;
(d) the conduct of debates in the Assembly;
(e) the suspension of members;
(f) such other matters as the Assembly considers fit.

So, Mr. Vice-President, the Standing Orders were meant to deal with matters relating to the proceedings of the Assembly. In other words, the Assembly was constituted as I have described it. There is a presiding officer in place and the Standing Orders are meant to regulate what goes on. The Standing Orders, of course, can be amended, but there is no provision for the Standing Orders to be amended except the Assembly having been constituted. [Desk thumping] Because if you wish to amend the Standing Orders, for example, you said to me that since I
have identified or advanced the view that the fault lies in Standing Order 3, and the correction should be made there, to resolve what I describe as an absurdity, then you would say amend the Standing Orders. But the Standing Orders could only be amended under Standing Order 90, by advancing a draft and going through a process overseen by the Presiding Officer.

And if you have not constituted the Assembly, then you cannot go anywhere. You cannot fix this problem by fixing the Standing Orders. You must have a presiding officer. For anything to happen you must have a presiding officer, and my view is that having already said that you are not even in a position to have recourse to the Standing Orders for this Parliament, I am saying it could not even be contemplated that you would have recourse to this Parliament when the Standing Orders were clearly meant to manage the functions of the Assembly and not allow something like the drawing of lots. If the framers, if the crafters of the THA Act or the Standing Orders believe that it was going to be resolved by the drawing of lots, it was open to them to put it there. And I do not think that having regard to section 69 of the THA Act and the function of the Standing Orders, that we should go to that extreme to create something that I believe could never have been contemplated.

In those circumstances, Mr. Vice-President, we come here, and I would say I agree that you could have a view that this could be subjected to an interpretation proceedings. But I would also say that the Government as the Executive always has the power to fix things by legislation. And while some people believe that they should go by way of interpretation and some people believe that we should go by way of drawing of lots and everybody has a view, the Executive, and I thought that is what one of my colleagues was going to say earlier, we understand that people
believe that the Executive should not do its work; we should always be out there trying for consensus and trying for discussion, and so on. Yes, we should be doing that.

But I cannot believe that the framers of the THA Act and the Standing Orders believe that the best thing could happen is that there is a 6:6 stalemate and we have to work it out by discussion or some sort of Ouija board or something. I do not think there—I think it is always understood that the Executive, as we have done so many times; we have had an issue with the last THA election with the date and we came on a Saturday to fix that, that we have come to fix an absurdity. And there are two ways that you could do it, you could do it by way of amending the Standing Order. That option is not available to us.

So we have come here because, in my view, we have had no choice but to come here and to fix it by way of legislation. And this Bill, Mr. Vice-President, proposes, as I have said before, in clause 4, to increase the number from 12 to 15, in clause 5, to introduce a new provision and a necessary provision. Because clause 5 says if after an election no Assembly is constituted within 14 days then you go back to the polls. And the thinking that that provides for an even split, but there may be many scenarios in which post-election an Assembly has not been constituted. You are dealing with human beings you know. You are dealing with human beings and there are many reasons, various reasons where you may have a situation where an Assembly cannot be constituted and you have to provide for a way in which you deal with that, and clause 5, among other things, deals with providing that way, if we ever have a situation where we cannot constitute an Assembly in the time frame.

And then clause 6 deals with the consequential amendments. And again, the
consequential amendments, the most important one and significant one is the fact that we are dealing with the situation we find ourselves in having, by Legal Notice published in 2020, the report of the EBC having been laid in the Parliament on the 9th of December, 2020. Legal Notice was published on the 10th of December, 2020. It means that we have just done it and the current provision says that you cannot lay another report less than two years or more than four years after the previous report. And the consequential amendment, by virtue of clause 6, one of the amendments, is to move from 12 to 15, that is in the clause 6 amendments. And the other important one is that in relation to the year 2021, you are allowed to lay, the EBC is allowed to lay another report that would give rise to another order, which will allow us to conduct the election for an Assembly in Tobago for the conduct of the matters in Tobago.

Mr. Vice-President, I listened to Sen. Roberts, and I thank him for the history lessons. I enjoyed it thoroughly.

[Madam President in the Chair]

I do not think any of it was relevant to the Bill, but I myself was enjoying it so much I did not bother with our Standing Orders which provides for that. But I would say one thing to Sen. Roberts, and that is this, the very thing that he complained about on and on and on and on is enshrined in the THA legislation and that is the involvement of Trinidad, this Parliament, in the affairs of Tobago. The existing THA legislation and even the self-government Bill that is before us contemplates a Trinidad involvement. Trinidad and Tobago remains a unitary state and there will be involvement of the central government. The major discussion point in the legislation on the issue of finances really deals with how Trinidad, how central government, the Government that is based here, deals with the issue.
Madam President: Minister, you have five more minutes.

Sen. The Hon. C. Rambharat: Thank you very much, Madam President—deals with the issue of the sharing of the finances, having regard to the peculiarities of Tobago. So, in the THA legislation, for example, when you get to the dispute resolution provision, and I am just using that one example, in the dispute resolution provision, you see the word Cabinet there. You see the word. Cabinet is not a Tobago thing. Cabinet is a Trinidad and Tobago thing. You see Prime Minister. So when there is a matter of disagreement between government and the THA, the reference is first to the Prime Minister and from the Prime Minister to the Cabinet. And if it is not resolved there, if Cabinet is not in a position to resolve it, it then goes to the Chairman of the Dispute Resolution Commission. So even in the current construct and what is proposed, it is not a matter of Trinidad interfering in the affairs of Tobago, but it recognizes that in a proposal for self-government, Trinidad and Tobago remains a unitary state. I thank you very much, Madam President. [Desk thumping]

Sen. Damien Lyder: Thank you, Madam President. We have been called to Parliament here, once again, to make law where the Government seeks to change what would require a special majority by a simple majority, Madam President. Madam President, the UNC being the loyal Opposition of Trinidad and Tobago, it is our duty to come here into this Parliament to play a part in setting good law, Madam President. And it is also the loyal Opposition's duty to hold this Government accountable and to interrogate legislation when it is brought to Parliament.

And, Madam President, I have to say that this Bill that the Government has brought to this House has once again missed the mark on a few issues. It has missed the mark in protecting the rights of the citizens who voted in Tobago. It has
missed the mark when it comes to the EBC, where this Government aims to direct them. It has missed the mark, in terms of consultation, as we have not seen that consultation other than maybe the PNM general council or other PNM party groups. And Madam President, this Bill has missed the mark by this Government trying to change the outcome of an election, and as a result of this, Madam President, we simply cannot support this Bill.

Madam President, we furthermore commit that if this Government should attempt to pass this Bill here today and get through to it, as Sen. Welch indicated, we can surely resort to the courts. I think the Leader of the Opposition has already stated that. But you see, it seems as though the PNM has come here to claim that they own Tobago. But it is that very attitude, Madam President, that resulted in that whooping they got at the polls on January 25, 2021. That is the arrogance and the maladministration in the THA that has transformed itself into trying to set laws now to remain in office there.

Madam President, this Bill is an abuse of Parliament. It is a waste of parliamentary time because we already have laws in place. And unfortunately, this Bill seems to be a grab for power by hook or by crook, and I would speak more about that.

You see, Madam President, we on this side have noted that the Assemblymen were duly elected on January 25, 2021, in accordance with the THA Act. Madam President, they have subsequently been administered their oath of office. Those 12 Assemblymen are bona fide office holders. I believe they are being paid already. The voice of the people spoke in Tobago; the voice of the electorate. Of course, this must be the reason why they have not consulted with anyone over there right now, Madam President. They are looking to consult
tomorrow. Why? Because, Madam President, you know, who will allow the executioner to use law to hang oneself? That is why they have not consulted.

Madam President, we have heard a number of other issues as well and we have heard come up the issue of the independence of the EBC. And, Madam President, we see that the Government is undermining the independence of the Elections and Boundaries Commission by bringing this Bill to Parliament with all of its particular contents, Madam President. Based on this Bill, which the Government hopes to pass by simple majority, they are effectively unilaterally directing the hand of the EBC.

Madam President, I have a question and my question is simply: Can the Parliament instruct the EBC in the course of engaging and changing boundaries? I have heard my colleague, Sen. Roberts speak about this and he referenced section 71(12), when he said that the EBC shall not be subject to the direction and control of any other person or authority. So the EBC would not be able to exercise discretion, based on the dictates of the PNM team. This is a dangerous precedent to set, Madam President.

But there are several other issues that I have in this Bill, some of which have already been mentioned here and for the sake of not being repetitious, I would just glance over them, Madam President.

Firstly, Madam President, the Prime Minister in another place in his debate accused the UNC lawyers, right, and criticized them in the other place. Yet the Prime Minister in that other place or nowhere else has remained very silent on his legal advice. Who has advised them and what has the advice been, Madam President?

Secondly, Madam President, I have heard Sen. John. I would make reference
to Sen. John, where she spoke about the Prime Minister blatantly calling for a consultation with the current and past THA Assemblymen, after the fact.

This is after the Bill has already been debated and passed in the Lower House and now being put on the Order Paper here today to be debated in the Senate. This, Madam President, is almost the case of putting the cart before the horse, once again.

6.00 p.m.

You see, Madam President, thirdly, what we are called to participate in here is passing law in a retrospective manner. I heard Sen. Welch speak at length about that. This raises the questions of if the Government is operating guided by the principles of fairness. The people would have voted based on a particular law at that time. The collective will was expressed. The passing of a law in a retrospective manner in this way can amount to subversion of the will of the electorate. And if this is true, Madam President, this is a dangerous precedent to set. It makes us beg the question that what else again will the PNM bring retrospective to fix for themselves, Madam President?

Fourthly, Madam President, the PNM is seeking to direct the EBC, a supposedly independent institution, in not only increasing the seats you know, Madam President, by odd numbers, but they are prescribing exactly how many seats must be placed. I think I heard a report just now saying that the EBC did not require—in the last report—did not require any increases in seats.

Madam President, you know, if the PNM is brilliant in doing this and can be trusted in managing elections and so, what is the use of an independent EBC? Might as well just let them form all the rules. Madam President, I look on and I note the Standing Orders of the Tobago House of Assembly. I heard Sen. Welch
again speak about this, Sen. John spoke about it, right? And you know, these Standing Orders in the Tobago House of Assembly provide clear guidance as to the procedure. And if I may read, Madam President, where they are silent they revert to the Standing Orders of the Parliament—

Madam President: Sen. Lyder, Sen. Lyder, I have given you an opportunity to put your contribution in context and you yourself are making reference to the fact that other Senators have raised these issues. So, you are now going into tedious repetition. I am going to have to ask you please, to make some new point or different points.

Sen. D. Lyder: Thank you, Madam President, and I thank you for your guidance here today. And I will certainly seek to follow your guidance. So, Madam President, when we look at the matter of drawing lots, Madam President, right, we see this has been something in the law with drawing lots, Madam President, we have seen this already practised in Trinidad. We have seen it in the Siparia Regional Corporation decide many elections over the years, Madam President. But, Madam President, what we have to say here is that week after week, we face this Government continuously eroding the constitutional rights of our democracy. Why we need to bring us here to change it by a simple majority again. What is the justification for this?

Madam President, the Leader of the Opposition has clearly stated regardless of whether you bring 13, 15, 17, 21 seats, there can still be a deadlock. Madam President, persons could be sick, persons could not come to the Parliament that day, they can abstain, you can have a three-way tie, Madam President. So what is the issue with the system of drawing lots?

Madam President, the system of drawing lots has been utilized in many
other areas in the world, in many leading parts of democracy. I heard the Attorney General speak about—what it was? That “democracy is at stake”. Well, no problem, we will use some examples here now of leaders of democracy in the world. Sen. Welch spoke at length about drawing lots, but what I will do, Madam President, is I will bring some examples of this being done in other jurisdictions in the world.

Madam President, when we look at the United Kingdom, the birthplace of democracy, where the Westminster system drawing of lots is upheld as a most democratic principle, Madam President. If I would be allowed to read, Madam President:

In the United Kingdom in a local election in the Bradford seat—“…after three recounts could not separate…two candidates”—the result was obtained by drawing of lots.

In an article titled “UK local elections: Bradford seat decided by drawing lots”, in the Irish Times of the 3rd of May, 2019, it was revealed that:

“Labour’s Kausar Mukhtar”—I hope I pronounced it right—“and the Green Party’s Matt Edwards received an equal number of votes for the Tong ward seat.

The deciding vote went to Ms. Mukhtar, with 743 votes to Mr. Edwards’s 742.

Joanne Hyde, deputy returning officer for Bradford Council, said: ‘When two or more candidates have the same number of votes, then we must decide between the candidates by lots.”’

She went on to say, Madam President:
“That’s called an equality of votes situation. Whichever candidate wins the lot, it’s treated as though they have an additional vote.’

Ms. Hyde said she drew the winning vote, observed by”—both—
“…candidates…”—fairly—“…from a box containing one Labour ballot and one Green party ballot.

Ms. Mukhtar’s victory means the Labour Party held the Tong ward.”

Madam President, more examples in the United Kingdom in the North Hambleton County Council in May 2017:

“…the South Blyth ward could not be split so the candidates had to draw straws to find a winner.”

But, Madam President, let us move on from the birthplace of democracy. And let us move on to now the largest—single largest democracy in the world, that of India. And, Madam President, if I may read again this example, February 14, 2020, in the Deccan Herald under the heading: “HC rejects the challenge to the TN election rule on draw of lots to decide winner in case of tie”. Madam President, I quote:

“The Madras High Court on Friday dismissed a PIL challenging a Tamil Nadu Panchayats election rule which provided for draw of lots to decide the winner in case of a tie on vote count in polls, holding it cannot be considered anti-democratic…”

Madam President, let me repeat that:

“…it cannot be considered antidemocratic or purely fortuitous or casual.”

So, Madam President, in very much the same way that the High Court of India upheld the laws of the land at that time, it is the same way the courts of Trinidad and Tobago must uphold the law of the land now, Madam President. And
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Sen. Lyder (cont’d)

that is why the Leader of the Opposition has said that she would take this matter to the court. So, Madam President, I have shown you, you know, examples of the UK that support lots. I have shown you the High Court of India challenge against the drawing of lots.

And now, Madam President, I want to go to the mother of democracy, the most powerful place of democracy in the world, Madam President. The country that upholds democracy within their own borders and outside. It is the greatest promoter for democracy in the world, the United States of America who removed recently, I would say, a Rowley-style dictator who used his presidential powers to circumvent—

**Madam President:** Senator. Sen. Lyder, I will ask you please to withdraw that statement.

**Sen. D. Lyder:** I withdraw it, Madam President.

**Madam President:** And can you move on, and I am also noticing that your volume is getting a little higher.

**Sen. D. Lyder:** Okay, Madam President, I will be guided accordingly. Thank you for your very kind advice. So, Madam President, they removed a leader who used his presidential powers to circumvent the will of the people. Democracy prevailed there you know, Madam President. Here we have a leader of democracy in the nation of the United States of America who uses drawing lots, and so again, I will cite a few examples of that, Madam President.

In 2014, a City Council election in Neptune Beach Florida was decided by drawing ping pong balls from a bag. Richard Arthur took his place on the council after drawing a higher number ball than his opponent Rory Diamond. We could draw balls too, Madam President. We have the National Lotteries we could find a
few balls there.

Madam President, two Nevada elections, one seat on a county commission, the other city council primary have been decided by drawing playing cards where the highest card wins. Nevada, we know that is the home of gambling. Madam President, in a 2014 study by the *Washington Post* they found that 35 states have some procedure of selecting candidates by chance.

So, Madam President, if it is good enough for all of these democracies, these leaders of democracies in the world, why is it not good enough for us here? Sorry, Madam President, especially when it is already law. Again, the courts can decide this. Madam President, I have cited the UK, I have cited the powerhouse of India who we should be getting closer with right now hoping to get these vaccines, but we are not here to debate vaccines today, Madam President, so I will not bring that up any further. I will move on.

Madam President, we talked about the United States of America but they did not choose to follow these nations. They did not choose to follow democracy. In fact, I wonder how come none of my colleagues on the other side have stood up today on section 46(1) and called me up for irrelevance when it comes to me speaking about democracy. Because it sincerely seems as though democracy is no longer relevant inside of here, Madam President.

Madam President, because what we are seeing in this Parliament here is a Maduro-style action in this Parliament today. To come here to change laws by simple majority, to force the people of Tobago back into an election and to gerrymander seats in PNM strongholds. Madam President, the Government does not want to use the examples, they prefer to use the “Maduros” of the world. This is why they are taking us there, Madam President.
Madam President, but what really justifies us coming here to change the laws? I mean, we are searching hard and long to find out why we cannot use the laws that exist currently. I think the hon. Minister of Agriculture, Land and Fisheries stated there is no other motive, but I “doh” know, Madam President, it is my humble opinion that the Government wants to continue holding this dictatorial grasp over the people of Tobago.

**Madam President:** Sen. Lyder, I will ask you to refine your language, some of the words that you are using, you are moving into a sort of inflammatory—

**Sen. D. Lyder:** Okay, thank you, Madam President, so I would just leave it at grasp over the people of Tobago. We see this Government, Madam President, we see the Government wanted to control these purse strings, come on, man, Madam President, come on, $2.5 billion allocated to Tobago. We see the Tobago airport being built, we see Tobago seaports and so forth, they want to control the THA billions. Especially, Madam President, when they have gutted the procurement legislation and no one has to look in to it or question them over these projects. This could be why they are bringing this law here to ensure they have an unfair advantage to win a re-election and subvert the will of the people of Tobago, Madam President.

Madam President, I am connecting the procurement legislation here today and the gutting of it, because this could be why as I said, the changing of the laws.

**Madam President:** Sen. Lyder, you may be connecting what you are connecting, but I have to tell you that you are far from the Bill that is before us. So, I will ask you to connect to the Bill please.

**Sen. D. Lyder:** Thank you, Madam President. And as we on this side promote the drawing of lots, Madam President, when the Assemblymen draw lots, Madam
President, it is the will of God that decides what happens. And in the old Latin phrase, *vox populi, vox Dei*, the voice of the people is the voice of God. The voice of the people, Madam President, spoke on January the 25th 2021. We have a tie and now we need the voice of God to make this decision here today, Madam President, not the Prime Minister and the Trinidad PNM Government, Madam President.

Madam President, it cannot be democratic to erode the rights of these Assemblymen. I know Sen. Lutchmedial is going to speak more about the law when comes to her time, Madam President. But, Madam President, it is my respectful view that we are heading towards a Venezuelan dictatorship-type regime.

**Madam President:** Sen. Lyder, you are now repeating yourself, you are repeating what you have said in your contribution, and again, I am saying to you, you are using inflammatory language. I am going to ask you please to dial it back.

**Sen. D. Lyder:** Thank you, Madam President. And you know, Madam President, it is funny to hear the other side talk here today because you know, it was not so long ago in 2014, when the law was passed for drawing lots that it was unanimously agreed on both sides of the House, in another place as well as in the Senate, on both sides of the Senate and the Independent Senate, Madam President. It was agreed. Some of them spoke about it being a watershed moment. Some of them spoke about being the best legislation, some of them are here today supporting the change in the law when they unanimously agreed to this law back then, Madam President.

So, Madam President, I will not go back down the road. I wanted to say more about us moving away from democracy and the examples of the commonwealth and America and exactly where we were going, but I do not want
us to go back down the roads where you have to stop me, Madam President. I took your advice.

But when we stand up, Madam President, and speak about the democratic rights of our citizens, you know what the other side does, Madam President? They deem us as unpatriotic. They deem us as rabble rousers. Those on the other side will shout out and tell us to quiet down. Madam President, they eject us as irrelevant. That is what they do. But they know who they are so who the cap fits, let them wear it, Madam President.

But, Madam President, the Government having been battered and bruised by more than 12,000 Tobago citizens and almost more than half of the geographical map of Tobago, and nearly losing a seat by, I believe I saw it was a Ms. Tracy, she got roped into it to, but she almost lost a seat. How I feel about this, Madam President, is almost as though it is like a schoolyard bully who just got beat up from a small man. And now the schoolyard bully who has lost has now realized they are losing their grip and stranglehold over the citizens of Tobago, who by the way, desire to be autonomous, and who desire to be liberated from the bondage of this Trinidad PNM.

Those who are brave enough to rise up, Madam President, and who are not fearing the possibility of victimization by losing their jobs by the PNM-controlled Government. Those are the people that say they cannot agree with 20 Trinidadian MP Members coming here and deciding the fate of half of the people in Tobago. These autonomy seekers, Madam President, speaking out and saying that they reject an attempt by this Government to pass legislation by simple majority to unjustifiably gerrymander seats in Tobago—

**Sen. Mitchell:** Madam President, on a point of order please, 53(1)(b).

Madam President: No, Sen. Lyder, I have to uphold that objection. You are going around in circles in our contribution. You are repeating what you have said before. So I will ask you to now and I have been cautioning you a few times, so I will ask you now to bring—either bring in a new point but you cannot be saying the same things over and over.

Sen. D. Lyder: Okay. Madam President, how much time do I have left?

Madam President: If you—

Sen. D. Lyder: They “doh” want to hear it. Sorry, Madam.

Madam President:—manage to bring up new different points you will finish at 6.44.

Sen. D. Lyder: Six what—sorry?

Madam President: 6.44.

Sen. D. Lyder: 6.44, all right. Thank you, Madam President. Madam President, in my humble opinion this Bill attacks democracy. And the reason why I speak about democracy in this situation, Madam President, is because given the economic situation that Trinidad and Tobago is in now, and the depression that this PNM has taken us down into pre-COVID-19 and now post-COVID-19, the only thing holding us together right now, Madam President, as a nation is the private sector and whatever is left of the international investors into this country. And Madam President, I talk democracy because any businessman, local or international, one of the key things an investor looks for when investing in a country like Trinidad and especially Tobago, is the state of the island’s democracy, Madam President. And what we are seeing here today in this Bill tramples on this said democracy.
And I will not talk about the constitutional rights but I will say that it spells a disaster for business people in this country who now have to decide if they are going to invest in that island.

**Sen. Mitchell:** Madam President, on a point of order please, 46(1) and 53(1)(b).

**Madam President:** Sen. Lyder, I again have to agree that you are repeating yourself and sometimes repeating some irrelevant parts of your contribution. I will ask you please, please, to be relevant to the matter at hand.

**Sen. D. Lyder:** Madam President, I was trying to connect democracy, the loss of democracy from passing this Bill in a simple majority to the fact that business people do not want to invest in places where democracy is absent as we have seen in other countries such as Venezuela. That is what I was connecting, Madam President.

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

**Sen. D. Lyder:** Thank you, Madam President. We are seeing the examples that happen in Venezuela, they are begging people to come back and invest in the country, and no amount of oil and gas can bring them back to Venezuela, Madam President. And we see that this could happen here in Tobago when we lose democracy.

Madam President, I have lived amongst the people of Tobago for two years and worked in Tobago for two years, and one thing I know about them, Madam President, they are a unique people. They are a people with their own—they are special people. They are people with their own special culture. And when I lived there in Tobago as a businessman, I could not come with my ways and impose it on the people of Tobago unless they invited me. I had to conform with the people of Tobago, I had to conform with them and their ways, but this Government comes
here—

**Madam President:** Sen. Lyder, please, please, I think at this stage I will ask you to wrap up because you are not really progressing in your contribution in terms of new things.

**Sen. D. Lyder:** But, Madam President, I was stopped in speaking democracy. Madam President, all right, as usual I take your advice, Madam President.

As I close, Madam President, I put Tobago on notice that if you allow the PNM to get away with this Bill, this will discourage investment in the island. And as we speak towards democracy in this island we want to remind the PNM the words of their first Prime Minister, their first leader and I am going to only quote a very small part, and I am sure that they will not stop me for this because it was their leader that said this:

“Democracy means the protection of the weak against the strong…Democracy means responsibility of the government to its citizens, the protection of the citizen from the exercise of arbitrary power and the violation of human freedoms and individual rights…”—Madam President.

Madam President, I call on all of those who were present in 2014, who agreed with the drawing of lots in the other place and in this Senate. I believe there may have been one Senator who is present—Independent Senator who was present on that day, but I call on them to follow the rules of democracy, use the current laws that exist now and not make it retroactive.

The hon. Leader of the Opposition has declared that she herself has the court clothes, and I want to put the Government on notice that we on this side, the six of us, we support our political leader. We have court clothes too. Because we will go to court to ensure that the decision for the THA is not at the hands of the Prime
Minister and his Trinidad PNM Government, but it is decided by the hand of God. I thank you, Madam President. [Desk thumping]

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

**Sen. Anthony Vieira:** Thank you, Madam President. Madam President, the events which have brought us here today should serve as a cautionary tale. This is an example of the absurdity which may arise when legislation has not been sufficiently thought through or has been poorly drafted. Let there be no doubt about this, we are here today as a consequence of less than meticulous drafting of the Tobago House of Assembly Act and the Standing Orders of the Tobago House of Assembly.

When I look at certain provisions of the THA Act which came in to operation in December 1996, and the absence of provisions which should have been there, I wonder if specialist drafting and Parliamentary Counsel was sought or if it was provided, if it was bypassed. In any event, I would like to believe that if that legislation was brought here today in this Senate, we would have picked up on those deficiencies and cured them.

But as the saying goes, “it is what it is”. Poor legislation has provoked an avoidable political crisis. Specifically, how to deal with this zombie Executive Council which is neither dead nor alive. An Assembly which is not fully constituted and an Executive Council which cannot act or function even though constitutionally it remains alive and even though constitutionally it cannot be dissolved. This Bill comes to Parliament in the wake of that crisis.

Now, this kind of legislation necessarily involves consideration of policy, but before delving into policy considerations put forward by other parliamentarians, political and social commentators relevant to the Bill, it may be
helpful to put the THA in historical context, and to consider the disposition of the people of Tobago—if I can put it that way, as they have their own way of looking at things when it comes to their island.

A universe and generations ago as a law student and later friend of the distinguished English barrister Anthony Bland who taught trust and conflicts of law, I was totally mesmerized by his first lecture on conflicts. He began by opening the front page of one of the textbooks and he pointed out a photograph of the Tobago House of Assembly, which incidentally is the country’s oldest political institution. It goes back to 1768 with a 13-member elected Lower House and appointed legislative council Upper House, and of course, as we have heard things for Tobago changed fundamentally in the late 1880s, when the island was joined with Trinidad by the British Government. And of course, in the 1700s we are talking about white colonialist planters and merchants who ran Tobago for the benefit of a small ruling class, but I digress.

Coming back to the point that Tony Bland was making in his inaugural lecture. His ulterior motive in showing us that picture was revealed by questions he posed. For example, if the Tobago House of Assembly as it was then constituted were to pass laws for the peace, order and good governance of the island, would those laws be binding on the rest of the world? If someone got a judgment in Tobago based on Tobago law, would that judgment have binding force in England or elsewhere? And I was blown away by the thought not least because it revealed my lack of real knowledge about Tobago. And it drilled into my mind that Tobago has a very proud and ancient political history. So that is the general framework within which I would like to make my contribution.

Yes, the Bill requires us to specifically consider amendments to increase the
number of assemblymen, for the holding of a fresh primary election, and orders which will redefine Tobago’s electoral boundaries. Those are the key features of the Bill, but they do not occur in isolation. They take place in an environment. They affect people. It is clear to me notwithstanding its ties to Trinidad within the framework of a unitary state including financial dependency, we are not dealing with a subservient or easily influenced population. Tobagonians have very set ideas about what works and what does not work for them.

6.50 p.m.

Ironically, perhaps it is the very spirit of independence which may be responsible for the shortcomings in the current legislation; shortcomings which we are now being called upon to rectify. So take for example, by penciling out the President of the Republic of Trinidad and Tobago from the Tobago Assembly arrangements, the framers of the THA Act did Tobago a real disservice.

Under the current Act, the President’s role is largely confined to the swearing in of Assemblymen. Aside from administering oaths and fixing the date of a primary election after consultation with the Prime Minister and Chief Secretary, the President has little, if any role, in relation to the Assembly and yet the President’s Office is such an important check and balance.

Under the Constitution, at section 68:

“The President, acting in accordance with the advice of the Prime Minister may, at any time pirogue or dissolve Parliament.”

This feature is absent in Tobago.

Under section 22 of the THA Act, the Assembly dissolves automatically after four years or the Assembly dissolves itself at an earlier date. The problem, in this instance, is that the Assembly is unable to dissolve itself and there is no
provision which allows the President to do the needful. A serious structural flaw in the THA Act.

Under the Constitution, at section 76, after an election, it is the President who appoints the Prime Minister and Leader of the Opposition. However, under section 33 of the THA Act the President does not appoint the Chief Secretary. The President’s role is relegated to just administering the oath. Now, I have a problem with that. As Head of State, the President should appoint the Chief Secretary and the Executive Council, and the President should have the power to dissolve the Assembly in appropriate circumstances. And this is not Trinidad trying to hold sway over the people of Tobago. This is about proper drafting, best parliamentary practice and the rule of law.

Best parliamentary practice and drafting irregularities aside, and getting back to the people of Tobago, in my respectful view, when laws are being passed for them in Trinidad, we should get away from the presumption that we necessarily know better than the people of Tobago, what is best for them. That is patronizing and may also be wrong.

So in weighing these deceptively simple and innocuous-sounding provisions, we cannot lose sight of the fact that the impact of this Bill is going to reverberate beyond the current political impasse. These provisions will impact our sister isle in a very real and profound way. And so, this Senate is duty-bound to consider whether this Bill genuinely represents the views, the desires and the ambitions of most Tobagonians, and whether it will serve them well or hurt them in the years ahead.

As this Bill represents Government’s attempt to craft a legislative solution to a problem which is contentious and has political overtones, we are obliged to
Weigh policy options and alternative courses of actions. We are not to take things at face value and we are not to act as a pliant rubber stamp.

Other parliamentarians, social commentators, political commentators, question whether this Bill is the only option available to Government and whether there may be other equally, valid, perhaps even better alternatives. It is a fair question. It is a fair question deserving of attention. And by my reckoning, there are at least six alternatives which have been put forward, and I have one of my own:

1. Let the Tobago electorate go back to the polls under the current law as it stands;
2. Do nothing;
3. Let the Clerk of the Assembly resolve the deadlock by drawing lots;
4. Let the courts decide;
5. Let the parties engage in cooperation dialogue;
6. Let us amend the THA Act, as this Bill seeks to do; and
7. My suggestion: Let the Assemblymen appoint a caretaker administration.

Let us look at going back to the polls: Now, I agreed that going back to the polls under the law as it stands—that is without these proposed amendments—sounds like a reasonable alternative. Yes, there is a risk we may end up right back where we started but that risk is offset by the possibility of the deadlock being broken. What is attractive about this touted alternative is that it will leave the decision-making power squarely in the hands of the Tobago voter and thus avoid any accusations of gerrymandering, which are likely to occur should this Bill become law.

My difficulty with this option is that it does not address the Assembly’s
inability to dissolve and it may not be able to get around the provisions of sections 17 and 19 of the THA Act, which treat with the tenure of members and the specific circumstances under which seats can be vacated.

Doing nothing: Doing nothing can be a strategic option. Given all the noise in the public space, given the farcical standoff in the Assembly that we saw and given strident demands from Government’s political base in Tobago to find a legislative solution, one understands why Government feels impelled to bring this Bill. A failure by Government to take decisive action could be seen by some as cop out. In times of crisis the instinct is to act. Leaders must appear to be in control, even if it means being blind to the possibility that a bad situation might become worse where when decisions are made hurriedly, shortsightedly and emotionally.

It has been said that the Senate is a place of sober second thought, where legislation receives proper, careful consideration before finally becoming law. This debate offers an opportunity for Government to step back, to overcome emotions and short-term political expediency in favour of decisions, which is better for everyone in the long term.

Doing nothing is always an option. It may not be a popular option but it should not be overlooked as a meaningful stopgap measure while we evaluate the best-case and worse-case outcomes. Let the THA Clerk resolve the dispute by drawing lots.

It has been suggested that there is no need to change the law because the existing law, in particular, Order 92(2) of the THA Standing Orders may allow the Clerk to determine the manner, by, lot in keeping with the Standing Order 4(10) of the House of Representatives. I respectfully disagree. Even if Order 92 was applicable, and I do not believe it is, that Order only kicks in where there is a gap
in the Standing Orders, and in my view there is no gap. The THA Standing Orders have clear rules for the election of a presiding officer. There is a legal maxim that goes: “the expression of one thing implies the exclusion of the other”.

Order 3 is specific, it sets out applicable timelines, the manner and order for the election and more to the point. It provides a strange formula when there is a tie, secret ballot, then roll call and if the proposal is negative, then a call by the Clerk for nominees.

The Tobago Standing Orders are clear. Only members can elect a presiding officer of the Assembly. Now, with hindsight, it can now be appreciated that the rules could have, maybe they should have provided for the drawing of lots. But to suggest that the Clerk has such a power via this roundabout route, I think it is factually and legally incorrect.

When an instrument speaks of specific things and specific situations, it is a legitimate inference that the particulars exhaust the legislative will. It can never be for the Clerk to decide. No Standing Order anywhere would give the Clerk such a power. Only the members have such a power.

I have the highest regard and respect for the Clerk of House and the Clerk of the Senate, but neither can preside over their respective Chambers. It is and can only be the Presiding Officer who has that ultimate power and authority. And it cannot be right for such power and authority to be extended to the Clerks by implication or side wind. To conflate or extend the powers and duties of Clerks with those of members and presiding officers, I think, is misconceived and misguided. The respective functions are separate and apart. You cannot give the Clerk the functions of a presiding officer.

Further, can you imagine the Pandora’s box we will be opening were we to
leave it to the Clerk to decide by the drawing of lots whenever the electorate fails to give a clear majority, which can happen in any jurisdiction? The consequences would be far-reaching and potentially disruptive.

So while I appreciate the catch-22 situation the THA finds itself in, I do not see leaving it to the Clerk to decide by drawing lots as a tenable option. If drawing lots are to be used as a lawful mechanism, that could apply perhaps for minor matters but certainly not for something as serious and important as this. The only people who can elect the THA’s Presiding Officer are the Assemblymen, no one else.

I agree with the hon. Attorney General, that it is not appropriate to take the Chief Secretary’s post and put it in the hands of straws. In any event, since the THA Act and the THA Standing Orders pronounce definitively on the rules which apply, we are bound by those rules, even where the express language of the sections may lead to absurdity. Legislative amendment is unavoidable.

Let the courts decide: Now, I have a high regard for our courts and the very important role they play when resolving constitutional, administrative and civil disputes but we operate under a separation of powers principle. It is one thing for the courts to decipher and to give guidance on provisions in a statute, which are vague, ambiguous or logically inconsistent. But our system of separated powers does not give the court a part in either drafting or revising legislation. The same way our Standing Orders require us to steer clear of anything which may be sub judice, that is to say, a matter which is before the courts and awaiting adjudication, the courts will or should decline to supplement gaps in the law by deciding what Parliament would have wanted. The courts can puzzle over, they can consider, argue about and determine the meaning and scope of words in legislation, but they
are not agents of the legislature and they have no power to write laws on their own. For this conundrum to be fully and finally resolved, legislative amendment is unavoidable.

Cooperative dialogue: I endorse everything Sen. Dillon-Remy said. Cooperative dialogue, with a view to brokering a deal, should not be regarded as idealistic or impossible. As successful politics necessitates, give and take, negotiations must always be on the cards. Not just for the election of a presiding officer but as a matter of best practice in these difficult and uncertain times. I do not know if this impasse crystalized because of inexperience or hard-nosed political brinkmanship, each side waiting to see who blinks first, or if it betrays a lack of sophistication or political maturity or statesmanship—whatever the reason, I wonder how the 12 Assemblymen would fear if they were adrift in a leaky lifeboat with just a couple paddles and limited food and water in the middle of the ocean. Would they persist in arguing over who is right and who is wrong or, would they come together with a focus on survival? Two different approaches yielding two different outcomes. I do not think one is being melodramatic or rhetorical in suggesting that Tobago may well be a lifeboat situation, where cooperative dialogue is or should be the island’s best hope in rowing towards safety.

The Bill before us today: This Bill seeks to amend the THA Act among other things by increasing the number of Assemblymen and revising the electoral districts for Tobago. And the AG has spoken at length about the mischief. I have said it, and I will say it again, for this conundrum to be fully resolved, legislative amendment is unavoidable. But I do have serious doubts about this legislation. I have doubts about content, doubts about purpose and doubts the way it is being brought.

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As a general principle, revision of law must be considered through calm and careful deliberation. It should not take place in an ad hoc or in a reactionary fashion, and it certainly should not take place under highly political and contentious circumstances with the threat of lawsuits hanging in the air. So in the circumstances, I would invite the Government to look at the situation from an observer’s perspective. The fact that we are muscling these amendments over the people of Tobago, in the face of Government’s apparent failure to consult broadly and equitably, with little or no attempt at consultation with the PDP who has an equal number of seats in the Assembly, is disturbing.

Even more disturbing—and I want to be careful about how I say this because I do not want to breach the rule against anticipation. When holistic recommendations from a joint select committee on constitutional amendments for the Tobago are expected shortly, without anticipating what those recommendations might be, let me just observe that the JSC has been studying this situation long and hard for a while now. The JSC is neutral. The JSC has consulted with most, if not all, key stakeholders and I am confident their recommendations will soon come to Parliament in a sober, calm and consensual way.

Let us assume this Bill passes today, will this Bill would have to be undone after the JSC's recommendations are implemented? That will be a recipe for confusion. Moreover, if this is an attempt by the Government to preempt the work of the Joint Select Committee on Tobago, then this Bill may also be undermining Parliament. I agree that amending Tobago House of Assembly Act is necessary, but not this way. Let me be clear—

Sen. de Freitas: Member, could you give way? I just rise to basically respond to the questions you were just asking. The work of the Joint Select Committee is live
and therefore it is responsive. So if the case arises, remember, you are bringing a Bill to Parliament, as suggested by the Members of the Joint Select Committee in terms of the report that they will put forward. So if, for example, that you are putting forward 15 seats today, then anything could be adjusted in the Joint Select Committee in relation to that. So it is not that you are pre-empting the work of the Joint Select Committee. The Joint Select Committee’s work continues, separate from what is happening now, but taking into account the fact of what is happening in Trinidad and Tobago.

**Sen. A. Vieira:** I thank you. And—

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

7.10 p.m.

**Sen. A. Vieira:** And let me be clear, I am not ascribing any ulterior or sinister motive by Government in bringing this legislation. I do not know why when you have two equally plausible explanations for an event, people are prone to latch on to the one which is less complementary. As I have maintained throughout for this conundrum to be resolved, legislative amendment is unavoidable, and we cannot be blind to the pressures on Government to act.

Caretaker administration: If I am right in thinking that this is not the time or the manner to bring legislation, amending the THA Act, and if I am right that to all intense and purposes, the Executive Council is now a zombie, neither dead or alive, then the question remains: What can or should be done? I think the solution lies within the hands of the Executive Council, but it means putting aside political and personal differences for the common good by appointing a committee, comprising Assemblymen or well-respected and neutral Tobagonians who are prepared to act on a temporary basis, to perform agreed upon duties and functions

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and, in turn, in keeping with the recommendations from the JSC on Tobago, omnibus revisions to the THA Act to pass, thereby effectively, holistically and conclusively resolving the current impasse.

Caretaker governments are not new. Time is short, so I am not going to go into it, but I would just say that there is no fixed formula. The Council can agree on rules and restrictions for the administration. For example, no new appointments, no new projects, no new staff, salary increases and no new policy announcements. Instead they would focus on expenditure, only for activities which are necessary and the handling of daily issues.

So I would say, hit the pause button for a while, and let us see what can be done to re-establish faith and confidence in the Assembly. These self-imposed restraints and boundaries will require a level of sophistication and self-constraint, but it will keep the ship of Tobago afloat and on an even keel over the next few months while things are being properly sorted out. It is not the fault of the Assemblymen that they cannot dissolve, but it is certainly within their power to take ownership and control of this situation.

So to conclude, ultimately legislative amendment is necessary. For that, I have no doubt, but it must be the right law at the right time and brought to Parliament in the right way. This Bill is not that one. Madam President, I thank you. [Desk thumping]

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Thank you very much, Madam President. Madam President, I rise to join this debate to make a brief intervention. As I see, we are now entering the realm of the possibility of tedious repetition. But, Madam President, I have heard various legal opinions over the course of this debate, legal permutations and the like. I am
not a lawyer, so I would not attempt to add in that context. But let me start by saying this is a Tobago issue. Not being a Tobagonian myself, I personally cannot feel the intensity and the attachment as say Sen. de Freitas, Sen. Dillon-Remy or Sen. Jearlean John. But, Madam President, being the Chairman of the PNM for 10 years, I have spent a lot of valuable and quality time in Tobago.

As a matter of fact, it was at a PNM’s convention in Tobago, which I chaired, that the PNM passed a resolution to firmly commit itself to granting autonomy to the people of Tobago. That is the genesis of the Bill that is now before a joint select committee. And it is because of that, I understand Tobago’s passion, Tobago’s autonomy issues, Tobago’s ambition, Tobago’s love and Tobago’s commitment to their island. There is no question about that. And it is my humble view that in the context of which we find ourselves, this Bill satisfies all of the above.

But before I proceed further, I want to put some historical context too. Sen. Dillon-Remy, Sen. Vieira and all did that. But Tobago has had a tumultuous history and as I say this, the political evolution of Tobago continues. It is not at an end. It continues and I could forecast it is going even beyond when the Tobago autonomy Bill itself passes and I hope it does.

Madam President, I am reading from some notes here, very briefly. Tobago was first sighted by Columbus in 1498. Since then, the island has been fought over by numerous nations and on many different occasions. The original Carib population was forced to defend the island against other Amerindians tribes, but then during the late 1500s and 1600s, they were faced with European colonists. Over the years, the Dutch, English and French transformed Tobago into a battle zone and the island changed hands—and Sen. Dillon-Remy mentioned it. My notes here says—31 times before it was finally seceded to Britain in 1814 under the
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Treaty of Paris.

It goes on to say that from about 1672, during a period of stability under temporary British rule, plantation culture began. Sugar, cotton and indigo factories sprang up and Africans were imported to work as slaves. The economy flourished and by 1777 Tobago was exporting great quantities of rum, cotton, indigo and sugar. However, the French invaded again in 1781 and destroyed the plantations. They forced the British Governor to surrender and the island’s buoyant economy fell into decline.

In 1814, when the island was again under British control, another phase of successful sugar production began. However, a severe hurricane in 1847, combined with the collapse of plantation underwriters, marked the end of the sugar trade. Without the highly profitable sugar production, Britain had no further use for Tobago, and in 1889 the island was made a ward of Trinidad. That is Tobago’s history, bruised and battered over the centuries. Tobago’s time has come and Tobago’s time will continue.

But, Madam President, I will just deal briefly now with the unification. There was a need, according to the British Crown Colony, there was a need to unite Tobago with a more prosperous British possession, and this would have strengthened the Tobagonian economy. In 1886, the Secretary of State for the Colonies, announced the intention to annex Tobago to Trinidad and give it two options: one, the colony of Tobago may be wholly and completely incorporated with the colony of Trinidad or two, the colony of Tobago may be annexed to the colony of Trinidad as a dependency having a separate Treasury and subordinate legislation. On the 19th of January, 1887, the Tobago Legislative Council agreed unanimously to the second option, as well as negotiating that there be free trade
and common external tariffs.

We move on, and this is a very important point, but I remember this one. In 1945—not that I remember 1945—when the County Council system was first introduced, Tobago was administered as a single county of Trinidad and Tobago. That was a travesty. I remember as a young boy in Mayaro, we had Nariva/Mayaro County Council, we had St. Patrick County Council, St. George County Council, we had Victoria County Council, we had Caroni County Council, we had Saint Andrew/Saint David County Council and you had Tobago County Council. That was the relegation of Tobago to the bottom of the barrel.

And history will record, ANR Robinson, that famous debate that Sen. Dillon-Remy spoke about, and in 1980 the establishment of the Tobago House of Assembly, and the Tobago House of Assembly was the first step, I think, on the road to Tobago’s autonomy. And this is something now no speaker has mentioned, and I will mention it for the first time.

point that when the PNM formed the Government of Tobago, for the first time, in 2001, PNM eight, NAR four. You know what was the genesis of that victory? The formation of the PNM Tobago Council where the People’s National Movement gave full autonomy to the Tobago Council of the PNM.

The Tobago Council of the PNM has their own screening committee. Balisier House has absolutely no say on who the candidates are. Not even the political leader is on that screening committee. And this shows, pellucidly clear, that the people of Tobago want to chart their own destiny. And it is that context that we have this Bill that is before a joint select committee. But, Madam President, 20 years of NAR/DAC rule, 20 years of PNM rule. Madam President, 2021, the situation is PDP, six and PNM, six.

From all the legal discourse before me, it is clear that—and Sen. Vieira indicated that the only way out is a legislative remedy. As Sen. Rambharat and Minister of Agriculture, Land and Fisheries said, it is an absurdity. We cannot be prisoners of the law. We are in a first-past-the-post system. What do we do when you tie at the post? And that is the question. We are in a first-past-the-post government system. There may be room for negotiations, there may be room for a government of national unity, there may be room for power sharing, but that room is a negotiated position. It is not legally binding. So how do you share power? You must have some contract. Because suppose you say, okay, you rule for two and I rule for two, and after you rule for two, “you eh want to give up”. What is my recourse? So the maturity has to set in, but until such time, there has to be a legitimate legislative solution.

And, you see, I have heard a lot of Senators here today say about the legislative solution is an affront to the democracy. The legislative solution is the
democracy. The only how you are put into an executive position of power is through elections, and the only way to break the deadlock of an election is to call another election. It happens all the time, especially in Israel and in Italy. They have elections up to their throat. Every six months is an election, sometimes in Italy and in Israel. So the democracy is really about the people’s will, and the only how you know the people’s will is by going back to the polls. And Sen. Vieira is right. If you have decided to go back to the polls, you have to amend the THA Act to allow you to so do, and that is what has been articulated by the hon. Attorney General. So we have a situation where the President in consultation with the Chief Secretary and the Prime Minister can set the date for the new election. But the key issue here now is three options were available and Sen. Vieira is correct. You can go back to the polls with the same 12 seats, you know, and the chances are the deadlock might be broken. You can go back to the polls with a more realistic chance of going with an odd number, so the deadlock would not arise, save and except for these funny permutations of 6:6:1 or 7:7:1. So you have the option of going back with 12, going back with 13 or going back with 15. We chose 15 because 15 was based on consultation with the wide cross-section of Tobagonians. And this we see as an interim arrangement before the forthcoming Tobago autonomy Bill. I really do not want to get too political in this Bill, because this Bill is about Tobago and Tobago’s voting pattern is clearly indicative that the Tobagonians vote for who they think seeks the interest of the Tobago people.

And the UNC is on record, and I will repeat it again, that they are not going to support any Bill that requires a special majority. So while the UNC playing dead to ketch corbeaux alive, and they have no nexus in Tobago, on the Tobago autonomy Bill they have very, very significant influence, because the Tobago
autonomy Bill will make or break based on the UNC’s position. That is the power they have, and that is the power they know they have and that is the power I think they will want to use in their favour, whatever that means, but I will say no more on that. All the PNM administration is trying to do is bring a solution to the impasse and the conundrum that currently exist in Tobago.

Under the THA Act, the Executive Council remains, you know. The Executive Council could remain there for four years. But would that be democracy? If we allow that to stay in power for four years in a tie situation, then you could say we are breaching democratic principles. But we are coming back to the Parliament and say, let us call a new election with an odd number of seats so that we can have a clear winner, and you accused the Government of being undemocratic. They were undemocratic options to keep us in power, you know, and we did not take it, because the PNM is about democracy. And to tell you how the PNM is about democracy, when Sen. Lyder closed his contribution and quoted the definition of “democracy”, who you think he was quoting? Dr. Eric Williams, quote unquote. Thank you, Sen. Lyder.

So, Madam President, as I said, I would not get into the clause by clause. I would not get into the legal arguments as to which options are the best. I have put an historical spin to the political evolution of Tobago. I have shown the results of the THA election, in particular, since 1980 to now, 41 years, to show what their voting pattern looks like, and to show that what we are doing here as an administration is, in our view, is in the interest of the people of Tobago. And I hope when this Bill passes, later tonight, and Tobago goes back to the polls, it is now incumbent on the various political parties that will be contesting the election to go back to the people of Tobago and articulate their cause. We are not afraid of
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that in the PNM, you know. We will face our challenges. We will go back to the people and articulate our cause. We will state our case. We will define our policies and programme to the people of Tobago and they will make the choice, and that is what the PNM is all about.

We are a democratic party. We are in this business long and hard. We have contested every single election, both local and general in every constituency and electoral district, both in Trinidad and Tobago from 1956 to present. We will continue to so do, and we will always provide to the people of Trinidad and the people of Tobago a credible political option for their undertaking. Madam President, I thank you very much for making this short intervention. [Desk thumping]

Sen. Jayanti Lutchmedial: Thank you, Madam President, for the opportunity to join in this very important debate. Madam President, I do not propose to use my speaking time to traverse all of the material that has already been covered quite competently and comprehensively by my colleagues, both on the Opposition and Independent Bench. I wish to speak, very briefly, on two points: that is the application of the existing rules and Standing Orders and then the amendments being proposed which would basically, in my respectful view, direct the EBC to do certain things and the constitutionality and the impact of those provisions that are being proposed here today in this Bill.

Madam President, in the legal arena, sometimes we start off by saying where you have multiple parties that I wish to adopt the submission of my learned friend. Now, today, because I am speaking later than I usually would, I have to say that I wish to adopt the submission of my learned friend Sen. Welch with respect to the application of Standing Order 92. Now, Sen. Welch has quite clinically examined
the THA Standing Orders and he has identified the fact that it is silent on the matter of what happens when the process of electing a Presiding Officer as provided by Standing Order 3 is exhausted and there is still a deadlock. 

Now, Sen. Vieira had an interesting take on it. He said that look, Standing Order 3 provides for how you elect the Presiding Officer and there is no need to have recourse to Standing Order 92. But, Madam President, it does not speak about what you must do at the end of when you have exhausted the entire procedure in Standing Order 3 and there is still no Presiding Officer elected. That is where the silence has arisen. And, therefore, I have to agree with Sen. Welch, and many of my colleagues in the other place would have argued this point already and even here, that the recourse must be to Standing Order 92. And where there is an existing provision in the law, Madam President, it is most improper for us to try to get around that law by bringing an amendment to this honourable House.

Madam President, these are not just the views of current parliamentarians. They are views shared by many other distinguished persons in our society. Sen. Dillon-Remy earlier on mentioned when the 1996 Bill was being debated, she quoted some of the positions of then Attorney General Ramesh Lawrence Maharaj. And I must say that I was happy to see early on after the elections that former Attorney General Maharaj SC would have commented on the deadlock. I consider him to be one of the greatest constitutional lawyers of our time. And he has quite clearly and he is quoted in, I think this is the Newsday on the 6th of February, 2021, saying exactly what my colleague Sen. Welch has said and what my colleagues and I are arguing here today, and I quote from the article saying what he has said:

“The intention of standing order 92 is to provide recourse to the standing orders of the House…in order to resolve an issue where there is a
tie…No new law could be enacted to determine how a new presiding officer can be elected because the existing laws already do that.”

The existing law already does that.

“He said the standing order is a ‘remedy’ to break such a deadlock and that it was not up to the State or any public official to ‘say the existing law is not an appropriate law and therefore requires a new law.’”

So what former AG Maharaj is saying, is essentially that look, we have the solution. It may not be the solution that everybody likes. It may not be the solution that accords with, you know, what some of us may think is proper and really they do not like the element of chance involved. But that does not negative the arguments that a solution exists.

Madam President, these comments were echoed by one Dr. Jefferson Davidson, who is now 92 years old, and he served as the second Chairman of the THA, again, quoted in the newspaper as saying, commenting on the sitting—this is after the process had been exhausted under Standing Order 3 and no one was elected—and I think this is very instructive to listen to someone who has sat in the position within the THA. It is very instructive to hear what he has to say and Dr. Davidson went on to say:

“…In our democracy, you cannot choose to agree or disagree with the Constitution to suit your fancy. You must follow the law. Farley was correct.”—referring of course to the head of the PDP.

“Where the THA Standing Orders are silent on any issue you could look to the Standing Orders of the House of Representatives for further guidance.

Davidson said, ‘The law states that when the THA Act #40 of 1996 is
silent on an issue, you look to the National Parliament’s Act. If that fails, then you look at the British Parliament. The other party (PNM) cannot decide they are not accepting the law.””

But, Madam President, by virtue of this Bill that is brought here today in the Parliament, that is exactly what the Government is doing. The PNM, a participating party in an election, has essentially said, we do not accept the law, so we are going to change it, because we do not like it. How could that by any stretch of the imagination be proper? It cannot be, Madam President.

So I want to say today to the Attorney General and to the Government by extension, whatever your views are on the drawing of lots and, as you say, flipping a coin or however you chose to describe it, you do not have to like it, you do not have to find it palatable. And you know in fact, I am sorry the AG is not here to hear me say this. I am sure someone will tell him when he listens. I never thought I would say it, but I share his view to an extent that the Presiding Officer’s role is somewhat different from that of the Speaker of the House, because of the role that they can play in casting the deciding vote in the election of the Chief Secretary. I accept that. I accept that there may be some merits, some merit, and it may warrant further review. It may, at the appropriate time, warrant further review as to whether it is appropriate to draw lots for the election of a Presiding Officer, but the fact is that is the law right now. It is the law as it stands right now.

So we cannot simply say well, listen, this situation has arisen, I do not like the law as it is—I am an affected and an aggrieved party in this situation, because six of my Assemblymen not bigger than the other six on the other side, and I do not want to take the chance and, therefore, I have brought a Bill to Parliament to fix it in such a way that I do not have to deal and I do not have to abide by the law
as it stands right now. That is highly improper, Madam President, and it is an abuse of the Government’s—

Madam President: Sen. Lutchmedial, could you just hold on for a second? A procedural matter.

Sen. J. Lutchmedial: I am guided, Madam President.

7.40 p.m.

PROCEDURAL MOTION

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Madam President, in accordance with Standing Order 14(5), I beg to move that the Senate continues to sit until the completion of the business at hand, inclusive of matters on the adjournment.

Question put and agreed to.

TOBAGO HOUSE OF ASSEMBLY (AMDT.) BILL, 2021

Madam President: Sen. Lutchmedial.

Sen. J. Lutchmedial: Thank you, Madam President. So, as I was saying, it is an improper use of the Government’s majority in both Houses to really bring by simple majority—by simple majority, a Bill that will fix a situation that they do not like and in a situation in which they are affected. You see, just as we say that, “justice must not only be done, but must seen to be done”, so too the appearance of democracy must be preserved. So you cannot use that majority to get around the laws you do not like. If you are identifying an issue prior to the occurrence of the event at hand, then I would say, “Okay, this is a possibility and we have to look at it.” And maybe—and if a Bill had been brought here to say, “Look, if a tie were to occur in this election, we would have to resort to the casting of lots, and that is not proper and we do not want that to happen. So let us have an amendment in place to
fix it.” And I think that Sen. Welch alluded to this as well—I could say perhaps, well, that is something we ought to look at and we could debate it and it could be perhaps passed. But we are in the heat of the matter, as they say. So you are now affected by a situation directly as the Government is, the PNM is, and you have brought an amendment to fix it in such a way that it accords with what you want to do.

Now, Sen. Welch has spoken about my favourite topic from law school which is the rule of law. I heard the Attorney General when Sen. Welch said, “We avoided it because it was so abstract,” he said, “Yes, all of us avoided.” Well, I want to tell him, I never avoid it, but it seems like he is still avoiding it because, you know, you are not bringing a Bill to Parliament in such a way that it accords with the rule of law.

The rule of law is quite simply that we must recognize the supremacy of the laws as they stand, not as you want them to be, not as you would like it to be; as it stands. Every person, every institution, every state official, everybody must respect the law as it stands. [Desk thumping] It recognizes the supremacy of that law, not just the laws that you like and the ones that suit your needs; every single law. The rule of law means that the law of the land has to be equally enforced and adjudicated upon in a manner that is fair, independent, where there is no bias or favour, in favour of any person. Can we say that the Government’s intervention, by way of this Bill, is independent? Can we actually say that here today? Because they have adjudicated upon the application and the interpretation of Standing Order 3 and Standing Order 92 in—and, I think, further, section 6 of the THA Act. And they have found that it does not, you know, based on their interpretation and their dislike of the result—and they do not find it to be palatable and they have brought
this amendment. Is that fair? Is that in accordance with the rule of law?

Again, the independent voices in our society have voiced concerns about this. And again, in his usual style, Senior Counsel Martin Daly has written on the matter. His article—his commentary carried in the Sunday Express titled:

“Topic, topic, topic”—because he was traversing a number of topics. But he started off by saying—it is dealing with the Tobago issue, and he said:

Well, should I—“…focus this week’s column…”—on this amendment—

“which seeks to break the six-six electoral deadlock in Tobago?”

And this is important:

“This legislation is probably constitutionally improper because it is driven by a conflict of interest on the part of the PNM majority in the House of Representatives who supported it. Should I highlight that the majority are also relying on a previous consultation, which is now as stale as an old hops bread?”

Well, okay. But he has identified the conflicted nature of the Government’s interest in this matter and in bringing these amendments.

So when we speak about the rule of law, we must understand that when you are conflicted in a situation and you are bringing an amendment to fix it in a way that you find to be more palatable to address the situation that you have found yourself in, together with others, it does not accord with the rule of law.

Again, we have had commentary by Prof. Hamid Ghany, my politics lecturer at UWI, and he said—he examined some time ago and he noted that—he wrote this article—this commentary, prior to the debate in the House. So he was basing it on the Explanatory Notes, as he understood it. But he identified, again, another very important point which is that—he ended the article by saying:
“The only problem that needs to be fixed is the completed methodology for electing a presiding officer that will include breaking a tie to elect someone to that office. The bill does not address that specific issue so it can happen again even if there is an odd number of seats.”

So, Madam President, many independent voices, many persons who have studied the politics of this country, who are well aware—I mean, we have traversed so much history here today, but those who have examined this issue very clearly agree with what we are saying.

Recourse to section 92, as much as some people may not think that drawing of lots is appropriate, it is the law and we ought to abide by it. So today, I say to the—and also, as Prof. Ghany has said, that the amendments proposed here will not fix a situation where you have a tie in the election of a presiding officer. And that really ought to be something that the Government should be addressing its mind to today, not simply a quick fix Band-Aid over a festering sore that can reoccur, which is what this really is. It is a mechanism for them to get around a situation, not really to deal with the problem that has presented itself.

So I call upon the Attorney General today to—if you find that, you know, recourse to Standing Order 92 and recourse of the Standing Orders of the House to be such an unacceptable position, then allow the THA to be constituted in accordance with what we say is the procedure and then let them make amendments to their Standing Orders and address that issue. It is not for you or for us sitting here to say that the Standing Orders are deficient and that we must amend the parent law to fix what we see as the problem.

The Standing Orders—I think it is Standing Order 90—Standing Order 90 of the THA Standing Orders make provisions for them to amend their Standing

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Orders. And they are the proper—the assemblymen and women of the THA are the proper ones to make amendments if it is that they do not like what exists in the law today, not us sitting here in Trinidad saying to them, “Well, look, this thing does not suit us and we do not like it so we will tell you now do not go to Standing Order 92.” Let them be constituted and let them examine whether this is not proper and let them regulate their own procedures. That is a standard feature of parliaments, that they are allowed to regulate their own procedure through the Standing Orders and make amendments to their Standing Orders. So they should be allowed to do so by way of Standing Order 90.

Now, another concept that I learnt—I think it was on my very first day at UWI, I was told by my lecturer that you must read Pepper v Hart and that we were going to discuss statutory interpretation. Sen. Welch, again, spoke about the purposive rule, the purposive approach to statutory interpretation, and I want to also mention what we learnt again, very early on, the golden rule where you shall depart from the literal interpretation of something where there is an absurdity, and it is a recognized rule for interpretation.

Now, that jumped out at me or came back to me, I should say, when I was looking at how Standing Order 9 ought to be read. It has been argued here by the Government Bench that Standing Order 9 speaks to the Presiding Officer having the power to regulate the business of all matters not provided for in the Standing Orders. So the argument put forward, as I understand it—and I am subject to correction—but as I understand it, what they are saying is that if under Standing Order 9, the Presiding Officer has the power to regulate the conduct of the business in matters not provided for, then there can be no recourse to Standing Order 92 because there is no election of a presiding officer not provided for by Standing
Now, this is a chicken and egg argument. That is exactly what it is and that is exactly the absurdity that the golden rule is meant to address. You cannot say that you cannot go to Standing Order 92 because you need a presiding officer, but the issue to be resolved by recourse to Standing Order 92 is the non-election of a presiding officer; that is what it is.

**Sen. de Freitas:** Would you give way?

**Sen. J. Lutchmedial:** I give way, please, Madam President.

**Sen. de Freitas:** Yes. So that, hon. Senator, is the exact point. The Standing Orders are interpreted by a presiding officer. The reason they are interpreted by a presiding officer is because everybody would have their own interpretation. That is why that particular Standing Order that gives that power to the Presiding Officer comes first; 92 is further down than 2 as it relates to the Senate Standing Orders, and 9 as it relates to the THA Standing Orders. It is not chicken and egg. It is very clear: the Presiding Officer first, give them the authority to interpret, then that person would be guided if the Standing Orders are silent to go to 92. That was the point.

**Sen. J. Lutchmedial:** Okay. But, Madam President, I did not give way to the hon. Senator so that he could remake his points of my understanding. The point that they are making is that it cannot be done and I am saying it could be done, because it is my—and, again, we have different interpretations. And as I have heard it said here many times before, if all the lawyers and everybody else in here and in the other place cannot agree, well then, the court may have to decided. But the point that I am saying is that when we are interpreting any Standing Order, no one Standing Order because it comes first, carries more weight that another Standing
Order. We must interpret the Standing Orders in such a way that it gives effect to the purpose for which it was placed there to begin with.

So, Madam President, the fact of the matter is you cannot say that there is no opportunity to have recourse. My respectful submission—my point here today is that having recourse to Standing Order 92 is the law. It is properly provided for. We must interpret Standing Order 9 in such a manner that is in keeping with the purpose that is set out in the Standing Orders that you have to look at it in the context. Standing Order 9 cannot be read in such a restrictive and limiting manner to say that without the election of a presiding officer, because Standing Order 3 is silent, you cannot go to Standing Order 92. That is ridiculous, Madam President, and it is not in keeping with proper rules of statutory construction and interpretation. It is certainly not in keeping with the purposive approach to interpreting legislation or orders or rules. And as I said, if it is that we have differing views on that, it may very well be that it is a matter to be resolved at the courts.

Madam President, let me move on to the issue of what this Bill provides for by way of the EBC. Madam President, the Attorney General has spoken about the importance of the EBC and I agree with him that it is such an important institution that it is enshrined in our Constitution. Madam President, it is therefore very disturbing that when you recognize the independence of the EBC, that you would bring legislation to the Parliament by way of simple majority that essentially violates section 71 of our Constitution. There is a violation, by way of this Act, of section 71 and in particular, section 71(12) which says:

“In the exercise of its functions under this section the Commission shall not be subject to the direction or control of any other person or authority.”
And that includes the Parliament and it includes the Government.

Madam President, by moving for these amendments by way of simple majority, the Government, through the Parliament, is essentially directing and making the EBC subject to its direction or control. These amendments interfere substantially—substantially with the role and function of the EBC. And let us look at section 72. Section 72 provides that where the EBC provides a report and it is submitted to the Minister and it could be laid in the House, where modifications can be made to the draft order which is to be sent to the President, which can accept or modify the recommendations of the EBC—so the EBC is in the position where they can recommend how many electoral districts need to exist in Tobago, for example. That is part of their remit. That is what they are there to do and they have done it quite recently in their Twelfth Report, but this Bill is directing them how to do that.

So section 72 which says that the House—“when the report is laid in the House can be modified”, is essential being made null and void. Section 72 of our Constitution, the supreme law of this land is being violated by these amendments, because you are saying now that it shall have 15 and you are passing a law to say how many electoral districts it must have, without the EBC having any input whatsoever into that process. Madam President, clause 4 and clause 6 is legislating what ought to be a decision of the EBC and subject to debate in the House of Representatives. And saying, you know—coming here to say, “Well, look, we did not just pull this 15 out of the air, you know, it come from the whole debate on internal self-governance and the Bill that is before the JSC,” and all that—but that does not cure the constitutional infraction that is being committed here today. You have taken sections 71 and 72 of our Constitution, and you have made certain
aspects of those provisions null, void and of no effect by way of a simple majority Bill. A simple majority Bill brought here today is directing the work of the EBC, [Desk thumping] which it cannot by—which is set up in the Constitution.

So, Madam President, the end—I have to say, the end does not justify the means. And you cannot say that because we have a deadlock and that there is a need for it to be broken, that we must ignore—

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

Sen. J. Lutchmedial: Thank you, Madam President—that because the deadlock needs to be broken that we must ignore the rule of law, ignore the Constitution, ignore the manner in which the Constitution has set out the role and function of the EBC. Now, Madam President, the importance of the delimitation of boundaries and the role of the EBC—and I was warned when I first came here, through a Member, that this is not the Court of Appeal and it is not a legal submission. But I have looked at certain cases that deal with boundary disputes and the role of the EBC, and I think that they are some very important learnings. So very quickly I just want to run through it.

The case of Baron in Dominica: a legal challenge was brought to the delimitation exercise carried out by the equivalent of their EBC, the Constituency Boundaries Commission. And, Madam President, the question to be determined really in that case was whether the jurisdiction of the court had been ousted, but having determined that that jurisdiction had not been ousted, there was a very important comment being made by Justice of Appeal Satrohan Singh in the OECS Court of Appeal. He went on to the point as to whether or not—because the argument being placed before the court is that there was some bias of the Commission in the carrying out of the delimitation exercise.
He spoke about the evidence, when they looked at the evidence of bias and he said:

“There was...ample evidence to show that a proper inquiry was not held before the recommendations in the report were made. The minutes disclosed that the inquiry was rushed through...”

“Rushed through”, we have a provision here that says that this exercise must be completed in 90 days, eh. So he said that:

The evidence there, was an—“...inquiry was rushed through because of a limited time frame, and that an opinion of opportunity for gerrymandering was not without foundation. Despite the minutes showing that the members were addressing their minds to the relevant factors for their consideration as provided”—for—“by Schedule 2...”

And these are all the factors that, of course, in the Twelfth Report of the EBC, we would have seen the factors that you would normally consider, you know, in determining where boundaries ought to fall.

“...the factual situation was that there were no consultations with the people in the respective constituencies. There was no evidence, material, data or information presented to the Commission to enable it in its deliberations on the...factors prescribed by Schedule 2 of the Constitution e.g....”

And they gave the example of some of the factors that the EBC ought to consider—ought to consider when they are determining boundaries.

“...the density of the population and in particular the need to ensure the adequate representation of sparsely populated rural areas, the means of communication, geographical features and the boundaries of administrative areas.”
It went on to say:

“Well, from the evidence, the report does not appear as...”—though—“it was crafted out of any evidential or factual basis or from any logically probative material.”

How can we say that when a law is passed, to tell the EBC, “Go and make 15 seats”? How can we accept a report from the EBC like that, saying that it was crafted out of any evidential or factual basis or logically-probative material, when the Parliament telling you how much seats you must go and make? Madam President, it cannot be proper.

He went on to say—Justice of Appeal Singh:

“It appears to be a totally arbitrary recommendation. In my view, if true, such a recommendation is totally unacceptable to the rule of law. The...Attorney General submitted that the report was not conclusive, it only made recommendations which recommendations need not be acted upon by the House.”

So, you see, the Attorney General in Dominica also recognized that even if the EBC rushed down and they did not consider everything and all of that, you lay the report in the House and the House has a chance to debate it. But how can our House of Representatives change and modify, for example, the number of seats that is put into this report that the EBC is mandated to do, when you have altered the law? You have amended the law to make 15 seats, so you have usurped the entire function of the House in those circumstances.

Madam President, and I think this is important to quote again what the judge said:
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“The right to vote as contemplated by the Constitution is a right to vote in a constituency without gerrymandering. Gerrymandering, or any unfair attempt to alter the boundaries of any constituency, contrary to the provisions of the Constitution, violates the very fabric of our Parliamentary system of democracy.”

Madam President, what we have here today is a Bill that proposes to violate the very fabric of our parliamentary democracy by telling the EBC how they must do their work, and it cannot be acceptable. One—very quickly—one other case, Madam President—based on the size of this document alone, you would see that I cannot get into detail of it but it comes out of our—

Madam President: Sen. Lutchmedial, your time has expired.

Sen. J. Lutchmedial: Madam President, I am guided. [Desk thumping]

Madam President: Sen. Richards.

Sen. Paul Richards: Thank you, Madam President, for recognizing me and affording me the opportunity to make what I hope will be a short contribution to this debate. And at that this time, fortunately when you go late in the batting line, your contribution can be easily truncated and modified. You know, I can hear, I can see Dr. Hollis Liverpool, the “Mighty Chalkdust”, writing the calypso for this now, “Twelve from fifteen equal naught”. And it is always easy to tell when something resonates with the country as a whole. One of the signals of an issue being important and critical is by the number of speakers contributing to the important issue. So what is the role of Parliament? The legislative body, representing the electorate, voters and citizens, making law for good governance and order—good governance and order. And I certainly realize, I think that the situation that has unfolded in Tobago does not represent order. It represents some
kind of disorder, so it needs to be rectified—accountability and transparency of the business of the people and oversight, holding the Government accountable.

This is the Parliament of the Republic of Trinidad and Tobago representing both the people of Trinidad and Tobago. Sen. Dillon-Remy, Sen. de Freitas and Sen. John all were born in Tobago, and persons like myself and Sen. Roberts could claim some sort of lineage to Tobago. So Tobago, again at the centre of controversy and contention. Tobago, liability versus asset, burden or beautiful; 6:6, is it a deadlock as it is often being classified or it is a message? We often say the voice of the people is the voice of God, then what is the message and to whom is the message being directed? You see, when I avail myself—and I was able to truncate my contribution because of the wonderful history, journey that Sen. Roberts took us on, not needing to go into the history of Tobago—you would realize how many times Tobago changed hands and how many people fought over Tobago because of its value.

Unfortunately, we in Trinidad have always had a certain level of arrogance toward Tobago, if we are honest with ourselves. We have always looked at Tobago, very often, as a problem to be solved as opposed to an equal partner in the unitary state of Trinidad and Tobago. And, yes, this seems to be another problem that we are trying to solve regarding Tobago. Tobago, the beautiful but problematic sister. We continue to miss the boat with Tobago. Even when we had an 18:18 deadlock in the year 2000 in Trinidad, our arrogant approaches did not see that the 12 seats in Tobago could one day be an issue; again arrogance, it could never happen, “Tobago in de bag”. Why are we in Trinidad and Tobago seemingly running from fire to fire, outing fire after fire, never seeming to get ahead of the curve, positioning the country in a positive situation and making decisions that can
sustainably position us ahead of the curve instead of always playing “catch-up”, reacting as opposed to responding?

Even this Bill, the Tobago House of Assembly (Amdt.) Bill, 2021, is a plaster to a much larger fundamental and philosophical issue, what is Tobago’s role in the unitary state of Trinidad and Tobago. And I know we have been referred several times to the Joint Select Committee dealing with the Tobago autonomy issue. But if we really look at it, Tobago has the potential to be an equal partner but we have never treated it like that. So I ask the question, are we really even interested or is this just this process here to amend the Bill to basically and functionally find out who will gain control of the Tobago House of Assembly for the next couple of years or is it really another political charade, a theatrical performance that may end up with the same outcome in five years or in 10 years?

A legislative “corbeaux sweat” basically because it is going to be short lived and have very short-term effects; superficial. Because even if this Bill passes and Tobago goes back to the poles with 15 electoral districts, there are no guarantees; absolutely none. And many have spoken about the many permutations that can evolve, 7:7:1; 6:6:3. It is time for us to be serious about Tobago. Imagine for a moment if we really looked at Tobago’s potential and stopped treating Tobago like a problem, perhaps like we did with Point Lisas, and not giving Tobago the minimum attention and the minimal budgetary allocation as prescribed in the budget or in the legislation and investing in Tobago; suppose we had prioritized that Tobago autonomy Bill, would we be here today as opposed to coming from behind?

It is one of our most pressing issues today. There have been so many comments—there has been so much commentary from so many different persons
in different parts of society. And I have to admit at this point, there have been compelling contributions on both sides of this argument, both from the Government Benches and the Opposition Benches about the pros and cons about whether this Bill breaches constitutionality, whether it breaches the Constitution itself.

8.10 p.m.

Unfortunately, this Bill really should be seeking to solve the problem in a more sustainable manner, and not in a short-term measure, this Tobago House of Assembly (Amdt.) Bill, as it seeks to resolve the current situation by expanding the number of districts. But I ask the question, I know Sen. de Freitas, the Vice-President, spoke about the consultations that came up with the 15, as opposed to going to 13, as opposed to going to 17, but when those consultations were taking place, did they contemplate this particular issue? Did those contemplations or those considerations actually envision what could happen now, or what could happen in the future? I do not know. Was it so anathema to the process, even in an expedient circumstance, to include the people of Tobago in the discussion where this is concerned, even before coming to the Parliament of Trinidad and Tobago? I do not know if that was done.

My understanding from what I read in the media is that the hon. Prime Minister is scheduled to head to Tobago to talk to the 12 Assemblymen elected in the 6:6 so-called deadlock, tomorrow, if I am not mistaken. Why could that not have happened before, to seek some sort of amicable resolution, to take advantage of what is to me an opportunity for maturity, for maturing as a country? Maybe we would have gotten the solution. It is now clear to me that even if and when we pass this—because it is a simple majority Bill as presented—when the Bill is passed,
nothing is guaranteed. We can very well end up in the same position three months from now.

I also agree with Sen. Welch that boundary changes now will only be used, in some instances, as political ammunition, because all that would happen, no matter who wins, is that there would be a conversation as to whether the boundary changes were designed to favour X or Y, and unfortunately the independent institution of the EBC will be dragged into a political maelstrom, which is not good for our democracy.

I would have liked to see, quite frankly, data to show population trends to validate and justify these changes, even in the face of those consultations. Is Tobago’s population increasing? Is Tobago’s population decreasing? Is the population moving to different areas that could justify any sort of changes in boundaries? I do not know, because nothing was presented. This Bill is nothing but a superficial solution, and unfortunately it goes to uphold the status quo of us in Trinidad and Tobago constantly making short-term legislation. But my friends, it is not only a deadlock, it is an opportunity, not only to think about Tobago, but to think how we do business in Trinidad and Tobago.

Sen. Rambharat calls the situation an absurdity. According to Oxford, an absurdity is the quality or state of being ridiculous, illogical, silly or widely unreasonable. It is only an absurdity because of Trinidad’s treatment of Tobago over the decades, but the real absurdity is the fact that we continue only to respond crises, a lack of collective vision and foresight.

So I hope that this situation and this Bill, wherever it ends up at the end of these deliberations tonight, provide the opportunity for us to realize that the prioritization of the autonomy situation in Tobago is one of the most pressing
issues in Trinidad and Tobago, and we make a fervent step towards resolving that as soon as possible. Only then can we look at Tobago as a formidable, equal partner, with limitless potential that is not only exploited, but developed. If we do not, we will end up hearing the old refrains of that calypso from Gypsy: “Captain, the ship is sinking”. And when we ask captain what is the plan, we realize that this Bill is just a patch to delay the inevitable, if we do not take more formative action.

If we do not change course and take stock, and do away with the typical responses, that well the rest of the world is struggling, it is a dangerous situation, and we will one day survive. It is time for us to put country first, and put politics aside, and look out for the interest of both Tobago and Trinidad equally.

Madam President, I thank you.

Madam President: Minister of Social Development and Family Services.

The Minister of Social Development and Family Services (Sen. The Hon. Donna Cox): Thank you, Madam President, for the opportunity to join in this debate. With a mere six clauses, this is certainly one of the shortest Bills we have been called upon to debate in in this Chamber, but it appears that the brevity of the Bill has confounded some Members into thinking it is a simple Bill. So much so, that some have offered very simple solutions to what is truly a serious constitutional issue with respect to the governance of our sister isle, Tobago.

We are here 35 days after the Tobago House of Assembly election, because the people of Tobago gave six seats to the People’s National Movement and six seats to the Patriotic Democratic Party, creating for the first time in the history of Tobago’s politics a deadlocked House of Assembly. Madam President, we are here because the 12 elected Members of the Tobago House of Assembly have been unable to elect a presiding officer and, therefore, have not been able to move to the
point of having a properly constituted Assembly. We are here because after three attempts in an admittedly polarized political situation, these 12 elected Assemblymen have been unable to arrive at a compromise to manage an election result, not envisaged by the THA Act in its current form.

I think it is important, therefore, for us to identify the critical part which the THA Act in its current form outlines as the road map for having a properly constituted Assembly. That critical part identifies six gates through which the Assembly must first pass, if it is to achieve its ultimate objective. There must first be a dissolution of the Assembly and the calling of fresh elections. Secondly, there must be an election supervised by the Elections and Boundaries Commission, and the successful candidates certified by that body as well. Thirdly, those elected Assemblymen, having taken their oath of office, and duly sworn in by the President of the Republic, must, as their first order of business, elect a presiding officer to carry on the work of the House.

Having elected a presiding officer, the fourth step would be the election of a Chief Secretary and a Minority Leader. Following that, the councillors would be appointed for both sides. The Secretaries of the various divisions would be appointed, and the THA would be on its way to serve the interests of the people of Tobago. Since the inauguration of the Tobago House of Assembly, some 40 years ago, this has been a very orderly and simple process, as there has always been a winner with a clear majority, until 2021. Today, Madam President, only half of the process has been completed. We are stuck at the stage of the election of a presiding officer, without whom the process simply cannot go forward.

Following the THA election on January 25th, as a responsible Government that continues to advocate for transparency, fairness and mature governance, we
agree that there is a need for a speedy resolution and, of course that we should put country first, as Sen. Richards stated. This debate on the amendment is of paramount importance.

At the outset, the Bill seeks to resolve the issue of a tied election by increasing the number of Assembly seats to an odd number. We would agree that several views by experts and lawyers and others have, and continue to be, expressed about how such a stalemate could be handled in the best interest of the citizenry. As a responsible Government, this is a matter for urgent attention to ensure that the people of Tobago are not victims of an ongoing hindrance to their constitutional rights and obligations, but to guarantee that they benefit from good governance under a progressive and functioning Assembly. The ultimate goal is also to avoid any re-occurrence of such a situation within the political landscape of Tobago.

I have heard grown, intelligent, upstanding members of our national community insist that this matter should be resolved by the 12 Assemblymen continuing to meet ad infinitum, until one side wears the other out and a presiding officer is elected. I have heard persons of great intellect pontificate on the Clerk of the Assembly having the capacity to resort to the Standing Orders of this House, as a means of remedying this impasse. Indeed, those persons who are considered, some among the leadership of the PDP and their supporters, have been joined by no less than our self-awarded Senior Counsel, the esteemed Leader of the Opposition, putting forward, as only she can, the simple solution of drawing lots, to end the constitutional crisis we face, as to who should be charged with managing Tobago’s affairs for the next four years.

Madam President, if this Government was to take God out its thoughts and
accept this piece of advice, who gets to determine at what point the process is exhausted, and lots should be drawn? Who gets to decide that enough is enough, that we have been trying to elect a presiding officer for one day, two days, 20 days, 50 days, so now we should resort to lots?

I also observed that this method of drawing lots and deciding what should be happening, has been posited by some persons, even in this House, as both the solution to the present conundrum that we are facing, and the solution to the collective will of the people of Tobago.

But, Madam President, in a deadlock situation, such as what currently exists, where both sides have six seats each, whose will, will be reflected by a Clerk of the Assembly drawing lots? The Presiding Officer would be the only one who would be able to do this, and this was explained by the Attorney General with the relevant legal information.

Madam President, the simplest, cleanest and most transparent solution to the crisis which we now face, is contained in the six clauses of the Bill before this honourable House, because clause 4 amends section 5 of the THA Act, to increase the number of seats from 12 to 15.

The new section 23 introduces a specific procedure to deal with a situation where, after an election, no Assembly is established. So this removes the possibility of there being a stalemate, regardless of whether their seat is an odd or an even number. This is useful because even with the number of seats increasing to 15, there is the possibility of an election result such as 7:7:1, if three parties or two parties and an independent candidate happen to win seats. Such a situation may still result in a stalemate.

So accordingly, subsection (3) removes the possibility of such a stalemate
persisting under any circumstance, by providing for fresh elections following consultations with the Chief Secretary, the Prime Minister and the President. So it is therefore quite clear that this specific provision leaves no room for doubt, question or misinterpretation.

Clause 5 of the Bill proposes to repeal section 22 of the existing Act to include a new subsection (3), which will provide the procedure to be followed in a situation such as what we have now, when the outcome of the THA election results in a position where no Assembly can be properly and legally constituted. This new subsection states that if no Assembly is installed within 14 days after an election, the incumbent Chief Secretary, after consultation with the Prime Minister and the President, will be required to fix a date for a fresh election.

This provides an immediate remedy to any deadlock created by political parties acquiring a similar number of seats in any future THA election, whether it is two parties gaining six seats a piece, or three parties gaining five seats a piece. Once there is a deadlocked Assembly after an election, this amendment provides a remedy that will be binding to all parties, and remove the potential for the travesty we saw a few weeks ago, when in an unsurprising, but equally objectionable display, a sleepover was held in the Assembly’s Chamber. In other words, we must remove the opportunity for tomfoolery and grandstanding, and place in its stead, predictability and stability. This is the express desire of the people of Tobago.

Madam President, this subsection replaces an onerous duty in the hands of the two persons who are constitutionally responsible for the governance of the twin-island of Trinidad and Tobago, and the island of Tobago of course. Respectively, namely the Prime Minister and the Chief Secretary, whomsoever they are at the time. So this is not about the People’s National Movement seeking
to pass legislation to entrench itself in power. A thorough, honest and dispassionate appraisal of the PNM history does not reveal any such attempt. This was clearly evident, though, in the case of the UNC’s infamous section 34, where they sought to enact legislation that would benefit themselves, their friends and their financiers.

The PNM does not and has never passed legislation to get its members out of jail, or spare them from jail. We on this side hold firmly to the position that legislation that is good for the country is legislation that is good for the People’s National Movement. It is an unfortunate fact that those on the other side see the matter in the reverse. [ Interruption ]

Sen. Mark: Madam President, Standing Order 46(6) as well as 46(4).

Madam President: Minister, continue.

Sen. The Hon. Donna Cox: Thank you. Clause 6 of the Bill provides for consequential amendments to the Elections and Boundaries Commission Act, and it is necessary to make amendments to the Elections and Boundaries Commission Act, as this Act sets out the division of the country, from a local government perspective into cities, boroughs, municipalities and electoral districts. Trinidad will continue to be divided into five cities and boroughs, and nine regional municipalities. These will continue to be dealt with by the local government elections.

In support of these recommendations, Tobago will be divided into 15 and not 12 electoral districts. This amendment is indeed necessary as it seeks to mirror the amendments of the THA Act.

A further improvement is that the electoral districts of Tobago will now be specified in the Act, just as in Trinidad. This amendment ensures that the EBC report caters for inclusion of Tobago’s electoral districts, when reporting on
division in electoral areas.

Amending this Act is also necessary to allow for a report from the EBC to be laid in the Parliament in 2021, because the fresh elections will be held this year and will also cater for situations where no Assembly is constituted. So, therefore, the EBC is required to lay a report in Parliament in this regard.

Previously the laying of the reports was tied to the date of the results of the election, and this worked because the aftermath of elections always resulted in the constituting of an Assembly. However, this is not the case this time. As a progressive nation, we must seek to improve our governance arrangements as necessary so we remain relevant.

Madam President, when I was first elected to the House of Representatives as a Member of Parliament in 2007, I vowed to do all that was necessary to ensure that those I was elected to serve, and to represent, will never have to question either the veracity of my statements or the motive behind them. I made that vow, armed with an understanding of the grave responsibilities that I had undertaken. It is always, therefore, a great source of consternation to me, when I hear those on the other side deliberately confound matters, and clothe them with motives that are a far from the truth as the Earth is from the sun.

Madam President, the United National Congress has, with neither merit nor foundation, criticized Members, and undermined the leadership of the Elections and Boundaries Commission, in ways too numerous to mention. Even today I heard a Member still talking against members of the EBC, which I have found to be in very poor taste. They have tagged the Chief Elections Officer with a PNM brush, declaring her without evidence to be related to a former PNM Member of Parliament, and they have sought to tar and feather anyone who has dared to call
them out. But even when that myth was debunked, they have persisted against certain public servants at the EBC. Now they are seeking once again to draw the EBC into their “kuchoor” by equating the purpose of clause 6 of the Bill with a move by the EBC to hand the PNM election victory in Tobago. Interestingly enough, in the face of all their unfounded criticism, the head of the PSA who represents some of these public servants has not uttered a single word in their defence.

Madam President, let me see if I can say this as simple enough. The current EBC Act only speaks to the two constituencies of Tobago East and Tobago West. The current Act does not set out the number of electoral districts for Tobago. It falls to this House therefore in this amendment, to indicate to the EBC the desired number of electoral districts for Tobago, and to allow the EBC to determine where the boundaries of those 15 electoral districts will lie. This is not the role of the People’s National Movement. This is the role of the EBC. I just would like to make that clear. Let me repeat: The PNM is not determining the location of any new boundary lines of the 15 electoral districts. That is for the EBC and the EBC alone.

In their typical modus of misinformation and living in a world of alternative facts, the UNC is questioning the genesis of the number 15 in terms of the proposed number of seats. Well, some of my colleagues who spoke before, I think that they were very clear. If it was not so glaring, I would be amused, because if you have not paid attention to Tobago for all your time in this House, if you have a predetermined view that Tobago is unimportant to your political fortunes, if you hold firm to the position that Tobago should not be treated with the respect, then I cannot expect anyone to have read many of the hundreds of documents emerging from all the public consultations. Hours of public consultations that took place, that
resulted in the people of Tobago saying that they wanted 15 seats.

Let me repeat, Madam President. It is the people of Tobago who indicated that they wanted 15 seats, not the PNM.

Madam President: Minister, I think Sen. Thompson-Ahye is asking if you will give way.

Sen. Thompson-Ahye: And to clarify, Madam President. I just wanted you to clarify, because I think I heard you say that the EBC does not determine the number of seats and the boundaries. Is that what you said?

Sen. The Hon. Donna Cox: That the EBC does not? I said that the EBC does. It is not the PNM. That is what I said.

Sen. Thompson-Ahye: So the EBC does determine the number of seats?

Sen. The Hon. Donna Cox: No, I said the EBC determines the boundaries, not the number of seats.

Sen. Thompson-Ahye: I see. This legislation is saying how many seats?

Sen. The Hon. Donna Cox: What did you say?

Sen. Thompson-Ahye: This law is saying how many.

Sen. The Hon. Donna Cox: Yes, but with regard to the boundaries, where the locations of these seats are. This is not what this note is saying, and that is what I said. The 15 electoral districts emerged as a result of years of consultations by the people of Tobago in the dealing with the development of the THA and its autonomy. So that is where the 15 came from.

So what the Government is doing now is facilitating that aspect of those discussions. So the number 15 was not just pulled from a hat. I wish to assure the national community that this Tobago House of Assembly (Amdt.) Bill is the easiest, cleanest and most equitable solution to the present crisis in Tobago.
In conclusion, Madam President, I wish to posit that the recommended amendments to the THA Act and the amendments to the Elections and Boundaries Commission (Local Government and Tobago House of Assembly) Act, to cater for the 15 electoral districts will ensure that the machinery is in place for all eventualities in the future. As a responsible Government, I am completely satisfied that we have done our part and fulfilled our sacred duty to the people of Tobago. I would like to remind some of the Senators opposite, that we are indeed serious about Tobago.

I thank you for the privilege of being allowed to contribute to this debate today, and urge all right-thinking Members of this Senate to lend their full support to this amendment as we on this side intend to wholeheartedly do. I thank you.

Madam President: Sen. Nakhid.

Sen. David Nakhid: In the name of God, most gracious, most merciful. Madam President, thank you for the opportunity to join this debate on a Bill entitled the Tobago House of Assembly (Amdt.) Bill, 2021. I would like to jump right in where my hon. colleague Sen. Cox left off.

I think it is not the first time that Sen. Cox has not been forthright with this austere Chamber, when asked by the Independent Senator about the electoral districts. I obviously heard what the Independent Senator had heard, that the PNM had named and had given and indicated to the EBC 15 electoral districts. I have here, and I quote:

If the Twelfth Report of the EBC, having undertaken and recognized a legitimate process of reviewing boundaries, did not see it fit to make adjustments, then it is improper for the Parliament to make that adjustment for them. The case law cited tells us that boundary adjustments are supposed
to pursue a legitimate aim. Adjustments cannot be used to get around an available remedy that does not accord with the views of the Government.

Madam President, through you, Sen. Cox made some very controversial statements regarding the United National Congress, which I will deal with later. But this Bill from all I have heard from all contributions, upon closer scrutiny, can more appropriately be titled, and I hope we recognize that this is indeed a debate, and even though it is a Chamber of second thought, it must be vigorous and rigorous debate.

This Bill, given that all PNM Senators they have totally eradicated the premise of the situation in Tobago, and jumped into the consequential amendments, then all I can say that this Bill should be titled the PNM’s vengeance act on Tobago. That is what this essentially is. The PNM is dissatisfied with the election—[Interruption]


Madam President: Please continue, Sen. Nakhid.

Sen. D. Nakhid: Madam President, this Bill, and I will proceed on the assumption that all of us here we have read the George Orwell classic, Animal Farm, where the expression “some animals are more equal than others” was coined. Well, Madam President, the fact that the Government has chosen to bring this Bill, when there were always clear alternatives open to resolve the deadlock in Tobago, gives life to the expression that some animals, in this case people, are more equal than others. I quote here from the Newsday of Saturday, February 20, 2021, where our hon. Prime Minister he said, referring to the Assemblymen:

“They will meet there from time to time, and big six and little six will compare against one another to see who is big six and who is little six,
because six is six, and it is six on one side and six on the other side. The Assembly is deadlocked.”

Well, that in itself was disingenuous, because he had previously said it falls on me as Prime Minister of Trinidad and Tobago to change the law.

Madam President: Sen. Nakhid, when was the previous statement made? You need to be able to—

Sen. D. Nakhid: It was made on that same day—

8.40 p.m.

Madam President: No, just one second. Yes, just one second. If you are quoting from a newspaper article, you have to quote the date, you have to quote who wrote the particular article. And when you are quoting now, further quoting, then is it from the same article. Hansard is taking down what you are saying and they need to be clear.

Sen. D. Nakhid: It is from the same article. Should I repeat the date? Okay. It is from the same article.

“It falls on me as Prime Minister of Trinidad and Tobago to change the law, so Tobago can move on.”

Madam President, with all respect, it does not fall on the Prime Minister of Trinidad and Tobago to change any law. That is the duty of the Parliament. So his further utterances about six being six, and one six is not bigger than the other, and then clearly sidestepping the wishes of the people of half the electorate of Tobago means that he has made himself the third six. The devil is in that detail. [Interruption] The devil is in that detail. Did you not hear? We will hear from the Minister of Standing Orders just now.

Madam President: Sen. Nakhid, please. Please, take your seat. Do not go along
that path. Okay? Make your contribution. All right?

**Sen. D. Nakhid:** I was responding to some crosstalk. I thought we were—

**Madam President:** I already indicated—please take your seat again. I have already asked Members, the crosstalk starts with banter and degenerates into insults. So those who cannot handle it, do not take part in it. Okay? Continue, Sen. Nakhid.

**Sen. D. Nakhid:** Thank you so much, Madam President. So as I continue, a little over a month ago the people of Tobago exercised their franchise and expressed democratically their hopes, aspirations on the way forward, with some choosing to preserve the status quo as is their right, and others opting to express their displeasure towards the incumbent, seeking a new way forward, hoping to chart a course in a different direction.

Prior to the last election the incumbent remained in office for an uninterrupted rule spanning 20 years, and that was referred to here by the Minister of Energy and Energy Industries, Franklin Khan. He went—touring all the way back in our history to describe how Tobago has been bruised and battered. We do not need to go so far. We can go back in the last 20 years and see what has been done in Tobago. Tourism destination, the sea bridge collapsed under the weight of the PNM. So Tobago has been bruised and battered but not before 200 years, before 20 years. So the people decided on a new course, they voted for the PDP, 10:2 became 6:6. So now how do we go forward?

The Bill before us, Madam President, as innocuous as it may appear at first glance, is in fact Machiavellian in the extreme as it seeks to ensure by subterfuge that the democratic will as expressed by half of the electorate of Tobago is side-stepped and rendered otiose for another 20 years. Bringing this Bill to the
national Parliament to resolve the deadlock in the Assembly in Tobago is both a display of a lack of leadership and a snub of the people of Tobago and the ability and desire to resolve their own issues.

Now, we have heard about that ad nauseam but I have not heard anyone on that side, while they claim to be the ones interested in Tobago, even mention the people of Tobago. You cannot claim to speak for Tobago and ignore the will of the people of Tobago as expressed in Belle Garden East and west, Roxborough, Delaford, Mt. Irvine, Parlatuvier, Speyside, Mason Hall, Moriah. No matter how this Bill is dressed up, Madam President, what this Bill seeks to do is disenfranchise half of Tobago. To the disinterested observer looking on, if he thinks for a minute that this Bill is simply seeking to remove an anomaly, fix an absurdity, move the mischief as stated by the hon. Attorney General and lessen the probability for a deadlock in the future, then that conclusion would sadly be misinformed. And our hon. Attorney General who for once seemed quite perplexed even in his presentation, it seems that he was given a mandate as a maze and told to find a way through that maze to whatever that goal is which is, a virtual nullification of the elections ab initio from the beginning and I will tell you why.

The law provides for everything that we are talking about, and that is just the reality of it. Sen. Donna Cox she spoke about, we will have a situation where the two sides, the six on each side would go about and they would go about ad infinitum, I think that is the word she used and we will not have the election of—

**Sen. Dr. Browne:** Standing Order 46(5), Madam President.

**Madam President:** Yes. I agree with the Standing Order. I have also pointed this out to Members. You refer to Ministers by their appointment. Okay? So, Sen. The
Hon. Donna Cox is the Minister of Social Development and Family Services. Okay?

Sen. D. Nakhid: Guided. So the Minister, just to inform her, the Minister of Social Development and Family Services, that the fix is in the law. The House of Representatives Standing Order that she obviously missed—sorry, the Minister of Social Development and Family Services missed, it states, the Standing Order, section 4, subsection (10), shall apply to empower the Clerk to determine by lot which candidate for the position of presiding officer is to be eliminated.

Now, I realize a lot of us have spoken about the law but we have not gone into detail exactly how it works. What that essentially means, because I think maybe the Senators on that side did not really understand. It does not go on ad infinitum as she has said, as the Minister has said. What happens, they have the initial ballot. The Clerk is mandated by law, it says “shall apply to empower the Clerk”. “Shall”, virtually it is mandatory, it must be done.

So after that first ballot is taken or the second, the Clerk shall apply. She must, she must apply the law. So it is not left up to the discretion of anyone and it has been said by the Independent Bench, it has been said by us on this side, and that is what is missing here. So we are speaking about moving directly from the Bill into the consequential amendments. We are not looking at the premise or the original cause for the mischief, as the hon. Attorney General said.

And the mischief is not the election or not the results of the election. It is the PNM’s failure to accept the results of that election, that is what is creating the mischief, and that is very important for us here to understand because as all have said and we recognize, if the rule of law is to apply, if we are to maintain a society that we perceive as democratic, as we perceive as developing, then we cannot have
any descent into autocracy. So when I see this statement and I quote again from the 
Newsday originally, this is very dangerous, Madam President.

“It falls on me as Prime Minister of Trinidad and Tobago to change the law, so Tobago can move on.”

It is this dismissive attitude, it is this failure to recognize the rule of law that has brought us to this path.

Madam President, I have noted that this Bill seeks to have the national Parliament dissolve this issue without regard to the stakeholders in Tobago and without them being given a fair opportunity to attempt a resolution. Now, it has been alluded to by the Minister of Social Development and Family Services that they were in fact, that the stakeholders were in fact involved in the consultation, and the hon. Sen. de Freitas said the same. But the PDP has specifically said that they were not included in these consultations. And we cannot succumb to the illusion that they can join a debate. That is like asking somebody to join a football match when the match is in 92nd minute, and tell them go and suit up and join a football match and it is already in the 92nd minute; the game is done. The elections, the result is out, and then you tell the PDP, okay, you are a stakeholder, come and join the consultation. I think that is very disingenuous and it can be completely rejected.

So I would like—and just to that end, I quote from the contribution of the PDP which we have not really addressed here. We are talking about what is the PNM and their interest and so, but the PNM is secondary to this process. The PDP is the one who won six seats. They must be the ones that we address, that we look to, and this is what they said. And again I address Sen. de Freitas and the good Minister, the hon. Minister of Social Development and Family Services. And this
was said by their counsel, attorney Lionel Luckhoo in the same newspaper of Saturday, February 20, 2021, the *Newsday*. And he said;

“Last month, the PDP recommend drawing lots in accordance with Section 92(1) of the THA’s Standing Orders, but the PNM rejected this.”

The PNM rejected this. The law is there.

**Madam President:** Sen. Nakhid, I have to caution you at this stage as I have cautioned previous speakers. The issue of—please. Yes. The issue of drawing lots has been spoken about over and over by so many speakers. Unless you have a different slant to it— *[Interruption]* I hope you do because so far you have not, you have not shown me that. Please, please move on to another subject.

**Sen. D. Nakhid:** And here is the different slant. Nobody referenced the PDP, that is the slant. *[Desk thumping]*

**Madam President:** Sen. Nakhid. Sen. Nakhid, not quite. Please, it is the same issue. So unless you are bringing up something new, and you just need to really finesse your arguments and move on because it is tedious repetition at this stage.

**Sen. D. Nakhid:** Well, I am guided. I am not in agreement but I am guided. So—

**Madam President:** Sen. Nakhid, you know—please take your take again. I really ask that when I make a ruling or when I give guidance to Members, that you just take it and move on, please.

**Sen. D. Nakhid:** I will take it, Madam President. So, Madam President, the advantage to the People’s National Movement in this present situation is that the incumbent has the advantage of using and deploying resources to the detriment of its opponents in this moribund state of affairs. The current incumbent PNM in the Assembly who is a part of this Government who has a majority and controls the parliamentary agenda will remain in office in the interim without the scrutiny of
Sen. Nakhid (cont’d)

the Assembly for however long the EBC takes to deliver its report, and it is voted upon in this Parliament. And I would shudder to think of a scenario where there is no opportunity to debate the proposed changes.

So while we await the Elections and Boundaries Commission, the Executive of the Tobago House of Assembly is enjoying an illegitimate and an unjustified extension of the life of the previous Assembly. To allow the incumbent PNM to remain in office without scrutiny by the Assembly allows for an unfair advantage as the purse can be used to bolster political support. So the very issue, Madam President, of poor accountability which half of the Tobago electorate voted on, will be allowed to continue. This flies in the face of the integrity of those who voted for accountability.

And it goes back to my point, Madam President, that by what we are doing here, by trying to solve a political problem through legislation, we are continually disenfranchising half of the electorate of Tobago, and rubbing salt in the wounds of those who voted for an opportunity to have scrutiny carried out on the goings-on of the incumbent.

Madam President, before I go further into the Bill, I would like to make a complaint. And I have been made to understand that the hon. Prime Minister had the advice of senior counsel and I am told that he has a legal opinion from that senior counsel, and I quote in the same newspaper.

Madam President: Sen. Nakhid, is it the same newspaper, the same article, the same page and the same date?


Madam President: Yes, but you need to—is it the same article?

Sen. D. Nakhid: Yes it is, Madam President.

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Madam President: Go ahead.

Sen. D. Nakhid: Thank you, Madam President. The PM, when he spoke about the six on one side and the six on the other side, he followed that by saying and I quote:

That he was—“…following the senior counsel’s advice…”

If we are here to debate an issue which touches and concerns the sovereign democratic rights of the people of Tobago, where the Prime Minister is the head of one of the two political parties who stands to be affected by this Bill, if we are indeed a country with respect for the rule of law and the democratic rights of its citizens, in this case the citizens of Tobago, I would have expected that this legal opinion referred to by the Prime Minister, if it indeed exists, would have been made available to the Parliament as a whole. [Desk thumping] Let us have sight of this legal opinion not just the Opposition but the Independent Senators as well.

How do we know that it says what the Prime Minister says? That is in the interest of transparency for Tobago. How do we know that the senior counsel in question has any expertise on the subject matter if we do not even know who the senior counsel is? If it is in English, how do we know that the Prime Minister made the correct interpretation? Until we see this opinion, Madam President, should we all just accept that this is the only way forward as postulated by the hon. Prime Minister? What about the other political party involved? Have they, the PDP, been provided with a copy of the legal opinion? And if not, why not? Did they not say, the Senators on that side, said that they were involved in consultation? If we are dealing with an issue touching the expression of democratic rights, then why are we hiding a legal opinion paid for with our taxes? If the PDP who has a stake in this is to source a legal opinion, should they also pay for that legal opinion out of
their own pockets, when they now represent taxpaying citizens of Tobago?

Madam President, when the EBC, Elections and Boundaries Commission, redraws the boundaries and we have the three additional seats, what is next? From my understanding, any redrawing of boundaries that would affect electoral districts should be laid and debated. This is where we face the proverbial elephant in the room now. And listen to this, Madam President. When the EBC report is debated, the party with the majority in the Parliament will win the debate and the Bill becomes law. The PDP—

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

Sen. D. Nakhid: Thank you, Madam President. The PDP as a party does not have a voice in the national Parliament. So they have no voice, no opportunity to add their voices on an issue that directly affects their party and those who voted for them. That is an absurdity. Not what the Minister of Agriculture, Land and Fisheries alluded to. The absurdity lies in the fact that we are coming with legislation in the national Parliament with no input whatsoever from the party holding six seats in Tobago. [Desk thumping]

Madam President, any suggested amendments or variations to the report will be carried by one of the parties to contest the new election. The party has a parliamentary majority in the Parliament, how is that fair? That is like a cricket match and you are sending two bowlers against one batsman. Is that fair? Is that what is going on here? You cannot come to a playground like the PNM has done, and when the tide goes against you, you take up your ball and you go home. I think all of us can relate to that. It is an affront to the self-determination of Tobago.

And, Madam President, I would like to end, I close by saying, in my respectful view this Bill is high-handed, unnecessary and I would like to quote
from a wise man of the Middle East. When asked—his name was Amir al-Mu'minin—you can look it up—And he was asked, what is poison? He said poison is anything beyond what we need. It can relate to power, laziness, food, ego, ambition and anger. In other words, this Bill was completely unnecessary, not needed and what it does, it poisons our democracy. [Desk thumping] That is what it does, and I thank you, Madam President.

**Madam President:** Sen. Teemal.

**Sen. Deoroop Teemal:** Thank you, Madam President, for the opportunity to contribute to the debate on this Bill that is before us here today, it is a very important Bill. Madam President, as a practising civil engineer sitting in this Chamber listening to the debate, I have to thank my senatorial colleagues, for I stand much more informed and educated about the rule of law by the legal minds present here in the Chamber here today, and also the many historical lessons particularly about our sister isle of Tobago. And also I stand informed that when it comes to the legislature and errors within legislature and the law, it is referred to very often as mischief. Whereas in the field of engineering we just say it is an outright mistake, an error.

Madam President, the Tobago House of Assembly Act, section 4, states specifically that:

“No provision of this Act or of an Assembly Law shall be construed or interpreted so as to authorise—

(a) anything which is inconsistent with, or contrary to or in derogation of the Constitution of the Republic of Trinidad and Tobago;”

And, Madam President, I specifically start with stating this section from the Tobago House of Assembly Act because in Part IV of the Constitution of Trinidad
and Tobago, sections 70 to 72, the Elections and Boundaries Commission is seen and is constitutionally enshrined as an independent autonomous body and of course its role in the THA elections cannot be diminished in any way by the THA Act, and as such should not be diminished by the proposed amendments before us in this Bill.

Madam President, I go to the Elections and Boundaries Commission (Local Government and Tobago House of Assembly) Act, Chap. 25:50, and it states specifically again that this is:

“An Act to extend the functions and powers of the Elections and Boundaries Commission for the purposes of Local Government Elections and the Tobago House of Assembly Elections and for matters incidental thereto.”

Madam President, the intention is exceedingly clear that it is not an Act to curtail the functions and powers of the Elections and Boundaries Commission but rather to extend the functions and powers of the Elections and Boundaries Commission under sections 70 to 72 of our Constitution. Madam President, within the provisions of this Act we also see a very detailed procedure outlined for the review of electoral boundaries.

[MR. VICE-PRESIDENT in the Chair]

Again, the initiative for the review of electoral boundaries comes from the Elections and Boundaries Commission based on reports to be submitted within a stipulated time frame and subject to the initial approval of the House of Representatives based on a draft of an order by the President for giving effect to the recommendations of the report made by the EBC.

So thus, Mr. Vice-President, running through these respective pieces of
legislation there is a common constitutional trend in that the EBC is the independent body responsible for initiating the process that calls for recommendations to increase the number of electoral districts and to conduct the revision of boundaries and make appropriate recommendations.

So then, Mr. Vice-President, I ask the question. Whether Parliament has the authority to amend the Elections and Boundaries Commission (Local Government and Tobago House of Assembly) Act as proposed in clause 6, B, section B of this Act before us to increase the number of electoral districts in Tobago from 12 to 15 without the prior purview and the input of the Elections and Boundaries Commission.

Mr. Vice-President, the Explanatory Notes with regard to clause 6 of this Bill, that is the Bill before us, state that the parent Act:

“…currently contains a lacuna in that it does not set out the electoral districts for Tobago. The amendment would therefore repeal section 3 and replace it with a new section which would recognise the electoral districts for Tobago which are contained in Part III of the First Schedule.”

And I am still referring to the Explanatory Notes that are included in the preamble to the Bill.

Mr. Vice-President, this is being done through redefining the definition of electoral districts to include the Tobago House of Assembly. And I ask the question, does this fully address the lacuna referred to in the Explanatory Notes? Does this amendment provide the justification for the increase from 12 to 15 electoral areas without the support of a report of the Elections and Boundaries Commission as required by legislature and which would contain recommendations for an increase in the electoral areas and subject to due process as outlined in the
Mr. Vice-President, against that, I ask the question again: Why is consideration not being given to a return to the polls with the same 12 electoral areas? Before we rush off thinking that the result would be the same, we need to acknowledge that the situation is not a static one, but rather a dynamic one that is subject to changes in thinking, subject to changes—other forces that come into play, and due consideration needs to be given to the low voter turnout for this particular 2021 THA election which—roughly it was put at about 52 per cent. We should also note that for 2017 THA elections, there was also a low voter turnout of 49.7 per cent, and the opportunity to break this deadlock may well result in a larger voter turnout and a definitive result if there is a return for fresh elections based on the 12 electoral districts. Mr. Vice-President, allow me to quote from an article by Corey Connelly from the Newsday, February 07, 2021, in which he refers to a quote from former Independent Senator, Martin Daly, who has also been making the call amongst others for a return for fresh elections still keeping the 12 electoral districts, and I quote:

“It is reasonably justifiable, in a democratic society, that taking legislative action to add seats to the 12 existing ones should await at least one further try to complete the election of an assembly on the existing basis.”

Mr. Vice-President, we have a situation in which the PNM as a party with a vested interest has control of the Parliament and has come with a legislative proposal to break the tie, and I am not debating that a legislative proposal to break the tie is not on the books. But this approach really stretches the arena of democratic principles, and it is bound to draw severe criticisms from others, as it is
doing right now. It is a pity, Mr. Vice-President, that we do not have the constitutional option of referendum as it pertains in other jurisdictions. This would have ensured, to a great extent, the voice of Tobagonians. A referendum in which the entire electorate is asked to accept or reject a particular proposal by a direct vote by each qualified voter. In effecting a tiebreaker, can we look at a referendum by the people of Tobago for the benefit of Tobago? I thank you, Mr. Vice-President.

**Sen. Wade Mark:** Mr. Vice-President, this Bill that seeks to amend the Tobago House of Assembly Act as well as consequential changes to the Elections and Boundaries Commission (Local Government and Tobago House of Assembly) Act, 25:50, is an extremely disturbing, concerning, dangerous, and from the Opposition perspective, represents a clear and present danger to our democratic way of life. Not only have the rights of the people of Tobago been subverted, or it is being attempted at that level of subversion and erosion, but, Mr. Vice-President, entrenched constitutional bodies, in this instance the Elections and Boundaries Commission, are being undermined and compromised on flimsy grounds that cannot stand judicial scrutiny. We have the Attorney General who is the guardian of our democracy, telling this Parliament that the entrenched section 71 of our Constitution which requires a two-thirds majority to be changed, is only for national elections and constituencies.

Mr. Vice-President, the Attorney General might be a lawyer, but we are not fools on this side. And I do not think that the Attorney General should insult the intelligence of Senators, and by extension the population. [*Desk thumping*] As my colleague Sen. Teemal indicated, we have a Bill before us today amending the Elections and Boundaries Commission (Local Government and Tobago House of Assembly) Act, 25:50.
Assembly) Act, 25 of 50, which states very clearly that this Act extends the powers and functions of the Elections and Boundaries Commission in order to carry out certain functions and responsibilities as it relates to boundary changes. The only where, the only place you find the Elections and Boundaries Commission and its functions is under sections 70, 71 and 72 of our Constitution. And under section 54 of our Constitution, Mr. Vice-President, if you want to amend that part of our Constitution, you need three-quarters in the House of Representatives and two-thirds in the Senate.

Mr. Vice-President, this question about a tie, a deadlock, as we are debating here today, even when the original parent Act that we are amending here today, Act 40 of 1996, was being debated here back in 1996, our sister and retired Sen. Eastlyn Mc Kenzie did in fact raise this question about a tie, and if a tie was to emerge, what will take place. I have the Hansard here, I have done my research, and, Mr. Vice-President, on page 87 of this debate on Thursday the 28th of November, Eastlyn Mc Kenzie asked the Attorney General, then Ramesh Lawrence Maharaj:

“...I would like to ask the question, what will be the procedure if there is a tie?”

She was a lady of great wisdom, and she was able to deal with this question that we are now dealing with in 2021. She made reference in 1996. Here is the response of the then Attorney General, Ramesh Maharaj, on page 104. He said, Mr. Vice-President, and I quote:

“Sen. McKenzie mentioned certain points. I indicate to her that with regard to the question in respect of the tie, it is a matter which the Government considered.”

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He goes on:

“The policy of the Bill is that we do not want to have strict divisions in Tobago.”

Hear what the man is saying, the policy—this will go to court, you know, if they do not withdraw it, you know. He is telling the country they did not want divisions in Tobago.

“As a matter of fact, at one time we were reluctant to”—even—“have a minority leader. Because of representations made by the”—then—“Opposition”—the PNM—“we decided that we would give it a try because we could be wrong and they may be right. We decided that the philosophy and policy of this Bill is to have more consensus and unity.”

Mr. Vice-President, may I repeat?

“…more consensus and unity. If there is a tie, it would probably force the people to work together.”

And that is the reason they did not enshrine any divisions in the way that they were proposing, because they were on unity for the people of Tobago.

Mr. Vice-President, I would like to tell you, that when I looked at this matter I was trying to determine in my period of time in this Senate, with my experience back in 2001 when we were 18:18 and we had this tie, we could not have elected a speaker. The President of the Republic took a decision, Patrick Manning became Prime Minister on the 24th of December, 2001. He lasted in office until the budget ran out, which was the UNC budget, and then he went to the polls. Mr. Vice-President, the next election was held in 2007. It was the independent—we have problems with the EBC, eh. Let me tell you that. But let us understand something, we will defend them even though we have problems with them. We
Mr. Vice-President, let me tell you, we did not have Mr. Patrick Manning and his PNM Government coming to this House with a Bill to increase the number of seats from 36 to 41. You know who did that on their own volition? The Elections and Boundaries Commission. [Desk thumping] They did not have to get any instructions from the PNM to carry out their constitutional mandate as enshrined under section 71 of our Constitution. Mr. Vice-President, the same took place when we increased the number of local government seats. It was 134 at one time, it is now 139. The Minister of Rural Development and Local Government, either of the UNC Partnership or the PNM, never came to this Parliament with a Bill to create five more seats for local government elections, and to increase it from 134 to 139. You know who did that, Mr. Vice-President? The Elections and Boundaries Commission carrying out their constitutional mandate. How can we sit here in 2021 and allow the PNM to bring legislation to tell this Parliament, and through this Parliament, instruct the Elections and Boundaries Commission to create three more seats, because some JSC has a report that is saying they must go from 12 to 15? Mr. Vice-President, that is the basis for absolutism. That is the basis for dictatorship. That is the basis for authoritarianism in a country. That is how you lose your democracy and you get dictators emerging. [Desk thumping]

So if the PNM were to get away with that today, Mr. Vice-President, what would stop them from coming with a Bill for the general election and saying, “well, look, we eh want 41, we want 31”, or “we eh want 41, we want 61”, and they tell the EBC to do it. Mr. Vice-President, let us be serious. We cannot in 2021 allow the PNM to do this. Mr. Vice-President, I went to the Hansard of the 12th of September, 2008. It was a debate on the Elections and Boundaries Commission
(Local Government) (Amendment and Validation) Bill, this was changed, the title, to what we are now trying to amend. The Elections and Boundaries Commission (Local Government and Tobago House of Assembly) Act, 25:50. That is what they were debating in 2008. This same question came up about numbers. Who could increase the number of seats at the local government level? You know what the then Attorney General of our country, Bridgid Annisette-George, she was the Attorney General. You know what she told the country? You know what is recorded in Hansard on page 70 on the 12th of the ninth, 2008? Let me tell you what she said:

“I think any proposal to increase the number of assemblymen,”—they were talking about Tobago—“I guess will only follow if that is a recommendation of a report…”

Where that report is going to come from? It is going to come from the EBC. [Desk thumping] So the Attorney General, Bridgid Annisette-George, told the Parliament in this period that if you want to increase the number of assemblymen in the THA, it must be generated through a report by the Elections and Boundaries Commission.

Mr. Vice-President, you know, you are young in this business [Laughter] but I will tell you something, if we have to understand and appreciate what we are doing, just think about it. We are in a Parliament, my colleague Sen. Anthony Vieira made the point, a matter is before a joint select committee, how can we just pluck out of that report, which is not before us? The Joint Select Committee has not generated a special report for the consideration of this Parliament, and the Government whimsically, arbitrarily, arrogantly decided to pluck 15 out of a report, a Constitution Bill to grant Tobago greater autonomy in 141B, talks about
15 assemblymen, and my friend and colleague, Sen. Jearlean John talked about the other section in terms of any other number. You take that, Mr. Vice-President, and you bring it into here. Mr. Vice-President, legally, nobody should stop us as a Parliament from making laws. But, Mr. Vice-President, is it morally right? Is it proper? Is it ethical for the Government to pluck out of a report that is not before this House, “15”, and bring it here? And then come and tell us, Mr. Vice-President—hear what the Prime Minister said, I have it here on page 19 of the Hansard. The Prime Minister is speaking in the other place, and hear what he says:

“So in short, Madam Speaker, what is required to be done is to amend the EBC Act”—he is talking about the same Act here—“to create instructions...”

Mr. Vice-President, listen to the language, eh:

“...to create instructions by law...”

The Prime Minister of the country is saying we must:

“...create instructions by law so that the EBC can accept Parliament’s wishes, give Tobago 15 electoral districts...”

That is what the Prime Minister has said. Mr. Vice-President, so we are being told that we have to create instructions and instruct the EBC to do what the Prime Minister wants to do. That is why when I read the statement of the Prime Minister, all I saw was him talking about himself in the first person and the third person. It is either “I” and “I”, like he is a Rasta, or he is talking about “the Prime Minister”, as “the Prime Minister”, as “the Chief Executive”. As if, Mr. Vice-President, the hon. Prime Minister was unsure of himself. I do not understand what is taking place.

Mr. Vice-President, I want to remind you that it was some time in December, December the 9th, I have the Order Paper, the Draft Elections and Boundaries Commission (Local Government and Tobago House of Assembly)
(Tobago) Order, was placed on the Order Paper as a paper. On that same day it was placed as a Motion, under Government Motion in the name of, you know who, Mr. Vice-President? Let me tell you. The Prime Minister:

“Be it resolved that the Draft of the Elections and Boundaries Commission (Local Government and Tobago House of Assembly) (Tobago) Order, 2020, be approved.”

This is the Order, Mr. Vice-President, the legal Order that they approved. You know when that was approved, Mr. Vice-President? On the 8th of September, 2020. You know when the Government brought it into Parliament? On the 9th of December, 2020. You know when it was debated? On the 9th of December, 2020. September, October, November; December, they brought it. What is interesting, there were two speakers, the Prime Minister and Sen. Saddam Hosein. Only two speakers. And, Mr. Vice-President, it is interesting to see and to read what the Prime Minister has put on record for our consumption. The Prime Minister made it very clear in his statement—I will find it in a short while—when he spoke on that day. He said that it was the constitutional duty of the Elections and Boundaries Commission, and only, no political parties—I am paraphrasing him—determine boundaries in this country. The only body that does that and who has the constitutional duty to do that is the Elections and Boundaries Commission. That is what the Prime Minister went on record as saying when he spoke on that day, Mr. Vice-President, he said that, and he was complimenting Saddam Hosein for supporting the measure.

So, that was on the 9th of December. Mr. Vice-President, in that report, as you recall, the EBC said there were no reasons for any adjustment in the boundaries that would lead to changes in the number of electoral districts in Tobago,
and this was unanimously agreed upon by the House of Representatives. That was on December 9th, the election was on January 25th, 6:6, and we are in this Parliament today being told by the Prime Minister, being asked by the Government, that, “you see what the EBC told us just two months ago, that we approved unanimously in the House of Representatives, that there is no need for any changes to boundaries, and the number of electoral districts must remain the same”? “We must now change our minds and tell the EBC to change their minds.” So instead of 12, which they said there was no need to change or to add, you go and create three more. Three more and make it 15.

Mr. Vice-President, that is a recipe for disaster. It is making a mockery of our democracy in Trinidad and Tobago. [Desk thumping] Mr. Vice-President, I want to call on this Government and the Attorney General this evening to forthwith withdraw this Bill. Withdraw it! We demand that you withdraw this absurdity, this abomination that is before us this evening. And as my colleagues have said on the Independent Bench, let us go to the polls with the same 12 seats and let the people decide. You know what people in Tobago are saying right now? They say Trinidad, Trinidad is determining for Tobago their future and their interest. They are calling Trinidad the imperialist. Trinidad is an imperialist country, and they are being seen as a colony because we are debating the future of Tobago without Tobago being involved in this decision-making. [Desk thumping] So it is like big brother is looking over you. Big brother—be careful, Mr. Attorney General, I do not think I want you to fall.

So, Mr. Vice-President, this is a very serious matter. Another matter of grave importance that we want to prosecute this evening, is the rights, what is called propriety rights, or what our leaders refer to as accrued rights of the assemblymen.
Mr. Vice-President, if I was a Tobagonian and I took part in the elections on January the 25th, and I won my seat, and I took my oath that was administered by Her Excellency at Magdalena Hotel on the 28th of January, I, Mr. Vice-President—

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

Sen. W. Mark: I, Mr. Vice-President—

Sen. Mitchell: Mr. Vice-President, 46(1) and 53(1)(b) please.

Mr. Vice-President: Repeat, I did not hear the point of order.

Sen. Mitchell: 46(1) and 53(1)(b).

Sen. W. Mark: I think you should speak to—

Mr. Vice-President: No. Sen. Mark, Sen. Mark, you know the process. Okay?

Sen. W. Mark: As I would.

Mr. Vice-President: Right. So, just continue with caution please.

Sen. W. Mark: Yes I would. Mr. Vice-President, that chap needs help. You need help.

Mr. Vice-President: No, Sen. Mark.

Sen. W. Mark: All right, all right, all right, let me just—

Hon. Senator: Move on. Move on.

Sen. W. Mark: Mr. Vice-President—

Mr. Vice-President: Sit. Sit. Sit. Take your seat. Now, it is not a matter of making the comment and then quickly withdrawing after. That is not going to be allowed. So if that is the case, just do not make the comment in the first place. Continue.

9.40 p.m.

Sen. W. Mark: Mr. Vice-President, we have an amendment to circulate. Our amendment is calling for the removal—deletion of most of the clauses. And since the Attorney General and the Government have been saying that they need—they
are claiming—which we do not support—they are claiming, Mr. Vice-President, that the Standing Orders in the Tobago House of Assembly cannot, in terms of Standing Order 92, where there is silence, they have to revert or resort to the House of Representatives Standing Orders. That is the law; that is the law. And the AG will have to prove otherwise in the courts if he passes this Bill this evening.

So what we are proposing, Mr. Vice-President, since they are saying that it is not in the THA Act and that the THA Standing Orders says otherwise, we are proposing a new clause that would read:

That the Act is amended by inserting after section 7 the following new section:

7A. If after holding a ballot to elect the Presiding Officer, there is an equality of votes or votes remain equal, the Clerk must determine by lot which candidate is to be eliminated.

That is our amendment that we want in the law that we are debating now. Since you do not want it in the Standing Orders or you say it does not apply, we now bring that into the law, the THA Act. That is our amendment.

Mr. Vice-President, I want to make it very clear, we on this side will not—I want to repeat—I will not be voting for this abomination which is making a mockery of our democracy and literally insulting the people of Tobago, their dreams, their hopes and their aspirations for self-determination through greater autonomy and responsibility outside of foreign affairs and defence. They want to be in charge of their affairs. So we shall not be abstaining. This is not a time to abstain. This is a time when the UNC must stand firm with the people of Tobago. [Desk thumping] Martin Daly warned us, abstention is not an opinion when you are dealing with critical matters. Martin Daly, Senior Counsel, a former Independent Senator said to
us, Mr. Vice-President, in matters like these what we are dealing with here today, you stand up—

**Hon. Senator:** Your volume.

**Sen. W. Mark:**—and you vote. Yeah. All right. Sorry, “leh meh low it down”. You stand up, Mr. Vice-President, and you vote. You vote against dictatorship; you vote against absolutism; you vote against any undemocratic tendency to undermine our hard fought democracy in T&T. *[Desk thumping]* So we are clear, no support for the PNM on this matter. *[Desk thumping]* I thank you, Mr. Vice-President.

**Sen. Dr. Varma Deyalsingh:** Thank you, Mr. Vice-President. Mr. Vice-President, today I must say I learned a lot of history from some Members here today: history of Tobago, the hardships encountered, I have also learned law. And I am thinking that, you know, it is a good lesson today of a population who have probably felt that they were aggrieved by the British Empire when they were just chucked with Trinidad into a marriage, as you can put it, where they were forced into this arrangement and had no say. They had no say about their laws because their laws—it was really Trinidad laws that took precedence.

So you have a population who would have had that—probably distaste for us in Trinidad and, you know, throughout the years, I do not know if the older generations would have had that level of distrust for Trinidadians or probably a level of animosity towards us, even though it really was not our fault, it was the British Colonial system which bought this in. However, if you look at the history of Tobago, I want to know why—how am I to vote on this Bill? How would a Tobagonian want me to vote on this Bill? Would they want me to say, “Well, let us break that deadlock. Let us use an influence from a Trinidad majority Parliament to
try and break that deadlock,” or would they feel somehow we again having that influence, or would they say let themselves be able to manage their affairs.

So I was trying to figure, you know—and I have analyzed people in my job. I analyze how people think. I try to analyze their motives, what people will, you know—how they would act. But, you know, a Tobagonian is a very difficult individual to try to analyze, because history has shown—their whole political history, they can change in one moment, they can vote for somebody else in one moment. They may dislike the PNM for one moment, they may love them next moment. So therefore, what really goes on in a mind of a Tobagonian in terms of the electoral process, it is a little difficult. So I say, let me try to see what is happening in the history. And when I looked there was a part of time—there was a certain instance in time when there was a lot of animosity between our then Prime Minister, Dr. Eric Williams and ANR Robinson who had broken away from him.

So ANR Robinson, as we know, was the right hand man and he broke away and he actually formed his own party, the DAC, and in an election sometime then, he won two seats in Tobago. And he actually was one of the forerunners of trying to get this whole Tobago House of Assembly, trying to get the rights of Tobago, trying to get Tobago to be a nation that could stand on its own but there was bad blood. There was a lot of bad blood between them and at certain stages, I must say, when you look at the history, between ’56 and ’86, Mr. Robinson even said that, you know, at the time the PNM really did not need Tobago to win elections. And they actually neglected, ignored the people of Tobago.

So Mr. Robinson made those statements when he highlighted his 1977 Motion for self-governance and at the time he said, the Senate had no Senators. But we have changed, we have three Senators here. We have two Members of
Parliament from Tobago who are now representing Tobago. So times have changed and we have since—and PNM has come a long way from the days when—after the DAC won elections, Mr. Robinson even said that the Ministry of Tobago Affairs was disbanded by the then Prime Minister. So the bad blood was there. We had—if we are looking now at elections and emailgate and whatnot—even at that time there was a lot of ole talk where people said, you know, Williams—it was spread, they did not have emails but they said Williams caught Robinson rummaging through papers in the White Hall. He was about to try to take over the government in 1970. He had a cache of arms if DAC had lost—he stole all the $2 bills in the Treasury. Those were the old talks we had then, the animosity against a Tobagonian. And again, politics being as it is, with the recent elections we heard old talks. We did not have email then, but we heard the old talks then.

But the thing is, what I found strange is just a few years ago the Tobago electorate told the TOP, we do not have any use for you. The TOP had two seats, they voted them out. So it came on the time when the TOP was voted out and all 12 seats went to the PNM. So this showed me there was a level of support for the PNM that came after. But then, what happened after—and this is what I was trying to explain. If you had after that two Members of Parliament elected, you had 12 seats, you had central government being the one who could give you all the funds—so the Tobagonians had everything there that, you know, they could have looked at themselves and say, “We getting what we want.” Everything we had there is Tobagonians, we are controlling the seats, PNM had it. But yet still, after that election from 12: 12, the Tobago House of Assembly elections, it went 10 for the PNM and two.

So we saw that progression and I am trying to understand—and now it is
6:6. What caused that change? What is the trend and this is what I am looking at. What would Tobago want? Is it that now Tobago looks at a wind of change where they are saying, “Well, yes we had the PNM. We have excellent representation because we recently voted in two ladies who are full of energy, who are our Members of Parliament.” But are they looking to say, “Well, Members of Parliament may have a use but the local representatives, we are not really getting the deliverable that we want. We are not getting what we really need for day-to-day”? So something has caused that.

For instance, in my case, even right now as I am here, my Member of Parliament is Ms. Ameen and right now the Members in our chat group are trying to tell her there is some dirty water coming into Valsayn. My Councillor is Seema Ramsaran. We are bothering her about mosquitoes, the drains are not being cleaned and whatnot. So they have different functions and we bothered them for different things.

So we have to try and figure out, what is it—what is it? Why did the Tobago electorate now, you know—it is suddenly like the PDP has zip lined into the national psyche of the Tobagonian persons. And I called persons in Tobago and strange enough the six persons I called, and three persons who are older individuals, told me they think the PNM is on the right track by this piece of legislation and three younger persons said, no we think we need change. So something is happening there. And I am thinking if I attempt to stop the change from the 6:6 to cause it to somehow come to 15 seats, would I be impeding the will of the people, the movement, the winds of change? And this is the dilemma I have.

But I am thinking, you know, the PP was—the TOP was actually told we did not like what you were doing. The PP Government, in fact, when they lost—when
TOP, who was aligned with the PP, lost, I tried to figure, why did they lose? And I realized—remember, there were some racial talks, there were some talks of the fact that, you know, corruption. But I think the significant fact the Tobagonian did not like was the PP Government came and interfered with certain things that, you know—they bypassed Hochoy Charles for a water treatment plant, for a forestry state lands, for a university that they were building. And, you know, so a lot of things were going on—but even contracts to pave roads. So if you insult Hochoy Charles, one of our boys, and you come, you know—and central government just disregards THA, the electorate in Tobago might take offence and decide, “Listen, we are going to change that.” So, I am looking at the fact that it is a hard position to analyze, and seeking help, I did not get much.

So I look back now at the Tobago House of Assembly, how did it come? So I tried to look at the history. Tobago House of Assembly—and I got some information, I am saying, from the very impressive Ministry of Rural Development and Local Government—consultation in local government reform, which a Member here, Sen. Franklin Khan, gave an excellent address when he was actually the Minister of Local Government and that address that was given on the 27th of January, 2016. It is there in social media for you to see, a very energetic address. You had himself and also Minister Stuart Young was there at the time, and actually they gave an analysis. They were looking at the Tobago situation as well as the situation why we should change the local government system. And really speaking, they—Sen. Franklin Khan as Minister then made—mentioned that Tobago’s local government machinery has progressed well beyond Trinidad’s and it was really due to changing the old Tobago County Council to form the THA, that there is now a different system of delivery.
So praises were there where he mentioned that, you know, that the places were cleaner, the hospitals were better, the social service delivery is much better, you do not have a problem with schools not being opened on time, and he made mention of all these positive things, you know, that actually had me envious of Tobago. Because here you are, we are in Trinidad, and Tobago was painted in such a nice a picture and it is such a beautiful country, it is cleaner, it is better—to me, it is a place that is safer and cleaner than Trinidad.

So therefore, when I looked at this discourse he gave, I must say, he said, that Tobago is unique and there is a unique person there in Tobago called a “Tobagonian”, and is it not time that we have somebody called a “Sangre Grande-ian”. So he was trying to make a play for the local government election to come on board so Sangre Grande itself could reach on par with Tobago.

Mr. Vice-President: All right. Senator, as much I am trying to follow along—

Sen. Dr. V. Deyalsingh: Sure, okay. Sure.

Mr. Vice-President:—with what you are saying. I need you to tighten it up because as you are explaining your points, you are going farer.

Sen. Dr. V. Deyalsingh: Okay, sure.

Mr. Vice-President: So I just need you to tie it back to the Bill, even as you make your points, just so that we could follow along exactly the point that you are trying to make.

Sen. Dr. V. Deyalsingh: Thank you, Mr. Vice-President. The point I am trying to make, at that same meeting, Ms. Glenda Jennings-Smith actually spoke about—according to the “UNESCO Human Development Atlas”, Toco and Sangre Grande has been cited as being one of the poorest communities in Trinidad. And the point I am trying to make is if we are going to give Tobago more representation by
making 15 seats, you would find that they would be allocated more funds, but what will happen to Toco?

So my logic is if we have to look at equality of persons, if somehow we are looking at this UNESCO report and we are looking at more representation being given—15—what is going to happen to the individual in Toco or Sangre Grande who may think, what is happening to us? Is Tobago now going to be given better representation, because now it is 15 persons to a population of 50,000, while you are looking at Toco itself or even different areas having a lot more persons that are there?

So Sangre Grande has about 300,000 persons. And if you are looking at the new scheme suggested with 15 persons being now in Tobago’s council, you are looking at—the proposed number of burgesses is 3,400 per representative. It is unfair to me that my representative will have a lot more persons to take care of, in comparison to Tobago. So that inequality—because San Fernando itself has 50,000 people. So therefore, every Trinidadian and Tobagonian should be treated equally. And I am looking at—representative equity and excess should be something that I am thinking that, if I vote for this 15, we will be having what you may call “over representation” in Tobago which would be unfair to the average Trinidadian, especially the ones in Sangre Grande, which was named as one of the poorest countries. So this is a level of unfairness I am thinking there.

The other thing I want to bring up, Mr. Vice-President, if we look at the situation in Sangre Grande, in Toco, whilst we know that the Tobago House of Assembly came from the Tobago County Council—so the county council or the regional corporation by itself gave birth to the Tobago House of Assembly. So therefore if we are to look at the functioning of the Tobago council before, I would
look at the functioning of the corporations before. And I looked at the tie they had in Sangre Grande and if—I just want to develop this point. You see, if we look at this situation in Sangre Grande, the corporation there, a few years ago we had five persons in an election, voted in by the PNM and three for the UNC. Then it went—the other elections it went to 4:4. And what happened to that elections—

Mr. Vice-President: Senator, you—sorry to interrupt again, but you are going to have to develop these points much quicker. I “ kinda” get where you are going with this and what point you are trying to make, but you do not need to go into the history of what occurred in Toco/Sangre Grande. This Bill is about Tobago. So you really going to have to get more succinct in terms of developing those points because, like I said, you are veering in and out of relevance.

Sen. Dr. V. Deyalsingh: Thank you, Mr. Vice-President. The point I am trying to make is that we have to look at how Sangre Grande handled their 4:4 situation. Because it is a historical—because the Tobago House of Assembly came from a similar situation and Members here did mentioned the fact that if we look at THA ’92, if they are silent on that, you could look at the House of Representatives 4(10) of the drawing of lots.

So I am looking at the drawing of lots but the point I really wanted to mention is this, is if there was a 5:3 and then there was a 4:4, and they were allowed to have castings of straws—and they chose, I think Terry Rondon then as the Presiding Officer and he used his casting vote, and actually from the 4:4, it became 5:4. So it became a PNM victory even though it was a 4:4. But then look at the other elections. The UNC came five winning this time, to three for the PNM.

So what I am trying to develop in this point, if we look at the natural progression of democracy, the natural will of the people in Sangre Grande, what
did that show us? From 5:3, 4:4, which was—somehow people may say Mr. Rondon used his vote to influence that election, but eventually it progressed to a UNC victory. If that was the will of the people and at the time we had passed some set of legislation to say, “No, no, we do not want 8:8, we want 15 seats or an odd number,” we might have stifled this progression, this evolution, democracy that occurred in Grande. So I am saying that changing a system may thwart this effect. And I am thinking, you know, I may not want to thwart the effect of Tobago because if it has to follow the evolution—the political evolution in Grande, we may have been—this Bill may be an injustice.

Another point I want to make, people were saying about the even numbers, but then there are a lot of other corporations with even numbers. So do we go and change all of them in Trinidad now, Mr. Vice-President? So, Mr. Vice-President, I now would like to look at some of the points that were raised by the Progressive Democratic Patriots, I think, 10 days ago. It was in the newspapers where it was mentioned that they are going to deliver a pre-action protocol. I do not know if it was delivered but I am thinking if that was there, if this was the intention—and even though I heard the Prime Minister had gotten the opinion of a QC, but the Tobago House of Assembly according—sorry, the PDP report indicated that they also hired a QC, Edward Fitzgerald. So therefore, I am thinking that we may have to look at laws and realize that they are different interpretation and if something is already in the legal machinery, I am again hesitant to say let me go and try to break any deadlock by this legislation.

Another fact I would like to mention also is the fact that when you look at the cost factor of running an election, it is—right now, we are in an economic downturn. If we are going to run a next election again, that is money wasted that
could go into CCTV cameras to protect our females. The costing is another reason why I am hesitant to support this. There are a lot of other things we could do in this economic downturn. Another factor is with the COVID, do we want to expose our voters to elections again? All of those are factors that are, you know—I am looking at not wanting to support this. I am hoping that the Tobagonian themselves can decide how they are going to manage this.

[MADAM PRESIDENT in the Chair]

I am looking at also the fact that we have not even brought in party financing legislation and next year we are going at another election. So all these factors I am looking at to say—to give my hesitancy in going—in support of this.

I must also say, I looked at the report that I saw from the PDP a few days ago and I realized their legal intention. I realized that they were saying that there was a rush to amend the rules in the middle of the game and I also—besides looking at their objections, I also looked at the reports given by Dr. Vanus James, Winford James, Reginald Dumas, Martin Daly, and a lot of other persons who are of the opinion that we should hold our hand and not go into this way, and it was again elaborated by some Members here. And, you see, I also had discussions—conversations at 11.30 a.m. today with Mr. Watson Duke. And I wanted to find out, was there any sort of a consultation given? Because you see according to a newspaper, Madam President—a newspaper, the Guardian by Loyse Vincent, 11 days ago, Thursday, February 18th:

“Augustine tells Tobagonians: Stand and resist”

In that article, he made mention that they had requested that they be consulted.

“…the PDP…to be consulted should the Cabinet return to Parliament with amendments to the THA Act, however the PDP was not consulted.”
So I found out they were not consulted and I felt a little bit disturbed, and certain other Members here did make mention to the fact that consultation is something that should have been done. Because if you want to appease a situation, you cannot just negate the views of those persons who are now coming forward, those persons who may be hoping for change. We have to have different ways where we could engage all stakeholders. You see, it is the proper thing to engage those persons and get their opinion and then you make an informed decision. And even if you look at the fact that the Prime Minister is a Tobagonian—we consider him as a statesman, an elder statesman, he is the oldest serving Prime Minister we have, he may be able on a personal front to actually convince certain Members to do the right thing or even decide what could be the middle ground. Could the middle ground be, well, we have two seats already, as Members of Parliament, should we give in the Tobago House of Assembly to the other party and all workers won?

I mean, there are different scenarios that can come into this, all for the benefit of the people of Tobago. Because all of those would be Tobagonians who want a betterment for their lives. And looking at the article, Madam, that I just quoted:

“Augustine tells Tobagonians: Stand and resist”

He makes mention that would this give Parliament—

Would Parliament be used—“to authorise the ‘gerrymandering of the boundaries to suit the parties nefarious plans.’”

Now, so I question, could really—is he is calling the EBC into question? So we have—is it that he thinks that the EBC would somehow—is not to be trusted?

So there were two views on the EBC, Madam President. The fact is, EBC—
we should not tell EBC what to do because we would now be interfering with that body which gave a report a few years ago that there were no changes to be had yet. And there is another view that they are not to be mistrusted. So, when I looked at him I said, why did he come to the conclusion that there could be gerrymandering of the boundaries? But then, you have to recall, Madam President, that after the 2000 general election, the MP of Diego Martin West, now the Prime Minister—

Madam President: Sen. Deyalsingh, you have five more minutes. May I caution you in those five minutes, please, you are really now repeating things that have been said for the last many hours. So I would ask you in your last five minutes just to wrap it up and not to be into tedious repetition.

10.10 p.m.

Sen. Dr. V. Deyalsingh: Thank you, Madam President. I am just elaborating the point that we had an EBC—Commission of Enquiry into the EBC ran by the Manning government. We had our Prime Minister then bringing a Motion of no confidence. We had even the Leader of the Opposition—

Madam President: Sen. Deyalsingh, I do not know how that is relevant to what we are treating with right now. So I am going to ask you, please, to tighten up your contribution in your last few minutes.

Sen. Dr. V. Deyalsingh: Thank you, Madam. Madam, I am trying to bring the point that if our leaders—the present Opposition Leader and leaders before said they had serious sort of misgivings about the EBC, then the average Tobagonian may also have misgivings, and the average Tobagonian may think, well, our leaders said so. So therefore, any sort of changing of the boundaries to 15, they already have it in their minds from leaders that the EBC leaves a lot to be desired.

So it is really the confidence in the EBC and if the EBC is allowed to change
these boundaries, you already would have a mindset of some individuals that the EBC may be up to some no good. And I am thinking to protect the EBC, to protect those persons of integrity in the EBC, we should not put them through this sort of a manner where we are putting them to run into a 15—you know, divide the country into 15 where people may now point fingers at them and say they are going to gerrymander the boundary with a collusion of the Government, as was given here.

So in conclusion, Madam, I want to say that Tobago has always voted their conscience. Tobago has always done things, I think, that they think was right for Tobago and I think that right now, I am seeing the PDP back on the scene. I am not thinking I should give any sort of support to stop that in its tracks, because if we had stopped the Sangre Grande situation, we would not have had the full manifestation of the electorate at that area. And I am thinking that if we look at the Tobago situation, I am thinking, I do not want to increase any sort of dissatisfaction of Tobagonians to think that we in Trinidad are now trying to tell them, again, how to handle their affairs. They are quite capable of doing it.

I mean, I am looking at the situation in Tobago and I saw a story once, *The NeverEnding Story*, and I was thinking—I wonder, will this end? But we have had persons out there, and our own Senators, say give them a chance. Give them a chance to settle their affairs. We have some time, you know, Madam, because it is quite—and I think it is October this year when the THA needs to vote their budget again. So there is still some time to give them that. And all I can ask is if we can give them a time to do this, because I think it would be a travesty to democracy if I try to get involved in a process that may exile some persons from the political process for years to come. So I am thinking, give Tobagonians a chance, let them decide and I wish them luck. Thank you.
Madam President: Attorney General.

The Attorney General and Minister of Legal Affairs (Hon. Faris Al-Rawi): Madam President, thank you. Thank all our hon. Senators for their— Madam President, thank you very much for this opportunity to bring closure to the very excellent contributions coming tonight and today. I propose to dive directly into reality. Not that today has not been an excellent exercise in what legislators must do, we must wear a veil of ignorance jurisprudentially. We must consider law for the benefit of all. We must consider law as speaking as fully as it can for as long as it can. In other words then, we must contemplate future scenarios. But law must be grounded within the Constitution of Trinidad and Tobago in proportionality and in reality, so says section 13 of the Constitution in relation to laws which must be reasonable in a society such as others, albeit in the context of a three-fifths majority consideration. It still is that a law can be disproportionate, and therefore, be wrong.

So let us see what we have on deck. We certainly have different points of view on the law. My learned colleague, Sen. Evans Welch, gave a very robust and careful contribution as to his own view in relation to the Standing Orders of the House of Representatives of Trinidad and Tobago being able to allow for the drawing of lots; Standing Order 4(10) of the House of Representatives, feeding into the THA via Standing Order 92 of the THA Act, under the operation of the submission that says the THA does not provide for something specifically. We must in a purposive construction of law go to remove an absurdity by applying something which can help. I am just characterizing the submission as simply as I can.

Sen. Vieira and I hold the same view on the law, exactly, coincidentally. I
certainly had not discussed my view on the law with Sen. Vieira at all. Sen. Lutchmedial has spoken to the law, introduced the concepts echoed by Sen. John and Sen. Lyder of constitutionality being somehow interrupted and the need for special majority. Sen. Mark had echoes and reflections of that.

So let us deal with the fact that there are divergent positions on the law. Where does a divergent position end up? It ends up in court. That is the place that we can end up. My submission on the law is that if you attempted to go to court, you will be knocked out under the separation of powers principle. There are umpteen precedents to that. Sen. Welch has answered me by saying, “Well, hold on. Why do you not volunteer to go to court on what we used to call an interpretation summons? Let the court interpret it for you.” But the court would have to decline that argument of its own volition because of the separation of powers principle, because the EBC would have to be involved and the EBC, acting in an independent capacity, would have to make that submission. Why do I say that? Because it has happened before.

I have been involved in umpteen election petitions, in umpteen electoral processes in court, and the court would have to say there is an alternate remedy to be exercised in the constitutional separation of powers, and therefore, respectfully, please go back and try what you have to because section 3 of the Standing Orders provides pellucidly clearly how a presiding officer is to be elected, and so too does the THA Act.

Let us get to the submission of constitutionality. First of all, there is no special majority. Number one, the THA Act has been cited as requiring a special majority in relation to the property right. Sen. Lyder raised the property right, Sen. John raised the property right. They say quite simply assemblymen have the right
to a salary, emoluments, positions, and that is their property having been sworn in by Her Excellency the President.

The answer to that is to be found in the fact that the THA Act is a simple majority Act, and the THA Act provides for dissolution, and dissolution provides for loss of property on a simple majority basis. Therefore, because the parent law is a simple majority law which provides for the removal of a right, there is no special majority required. How do I know that? It has been tried and tested in court. I do not need to call the umpteen case names to prove that.

Let us deal with the other allegation of special majority. That is the EBC. We have heard the submissions coming from colleagues, that sections 71 and 72 of the Constitution of the Republic of Trinidad and Tobago say that the EBC ought not to be under the control of anyone. That is true. But section 71 and section 72 of the Constitution are for the purposes of general elections only. Why do I say that? That is what the law says. Section 71, section 72.

When we look at the Constitution of the Republic of Trinidad and Tobago we must read carefully the fact that it says in section 71—and permit me to pull it up. It is much easier with paper. Digitalization has its advantages. So section 71 says that for the purposes of the EBC acting—we see it here from the Part under the Constitution, headed under the paragraph dealing with EBC, “Part IV, Elections and Boundaries Commission”. Section 70:

“(1) Trinidad and Tobago shall be divided into thirty-six constituencies…”—et cetera.

“(2) Not less than two such constituencies shall be in the Island of Tobago.”

Section 71:
“(1) There shall be an Elections and Boundaries Commission...

(12) In the exercise of its functions under this section the Commission shall not be subject to the direction or control of any other person or authority.”

Section 72:

“(1) The Commission shall, in accordance with the provisions of this section, review the number and boundaries of the constituencies into which Trinidad and Tobago is divided and submit to the Prime Minister and the Speaker for presentation…”—its—“reports…”

When we get to local government elections and the THA, there is only one law to speak to that. That is the Elections and Boundaries Commission (Local Government and Tobago House of Assembly) Act, Chap. 25:50. This is an Act of Parliament, 18 of 1967, and it is in this law and this law alone that we look to what the EBC is bound to do. The EBC is bound to look at the division of Trinidad and Tobago in section 3. It was badly drafted. All that they said before we proposed an amendment, is divide it into five cities and boroughs, and nine regional municipal corporations, and they said nothing about Tobago until they got to the Schedule. And in the Schedule, they said divide Tobago into 12 electoral districts.

Now, the submission has been going around the Senate tonight and today that nobody ought to be able to tell the EBC what to do in Tobago. Everybody has said, “Look, the EBC report, we just debated it, just before the THA elections, and that report came and said no boundary adjustments are necessary in Tobago for 12 seats matter of fact.” There were no boundary adjustments suggested because Tobago, as analyzed in the context of 12 electoral districts, did not require an adjustment. This law says that:
“The President may by Order—
amend…the number of electoral districts…”

“By Order”—that is section 5 of this Act. It does not refer to section 70, section 71, section 72 of the EBC law in the Constitution.

This Act says it can be done. Now folks, ladies and gentlemen, hon. Senators, all, through you, Madam President, can the EBC be told the number of seats? Can they be told 15 seats as opposed to 12? The simple answer to that is yes.

Sen. Mark: We do not agree.

Hon. F. Al-Rawi: And let me tell you why. The simple answer is yes because there is precedent in the body of the laws of Trinidad and Tobago, and let me tell you where. I refer to Act No. 22 of 1967. Act No. 22 of 1967 is an Act to re-enact and amend the law relating to county councils, and to representation electoral—persons elected to county councils. And in this Act:

“For the purposes of this Act, Trinidad and Tobago shall be divided into seven electoral areas mentioned in the first column of the First Schedule and described in the second column of the…”—second—“Schedule.”

And here is what it says, first column, First Schedule:

“Tobago…”

“…Island of Tobago.”

One county council. Where is the precedent? Let us go to another law and that is Act No. 32 of 1980.

“This Act may be cited as the Tobago County Council (Extension of Term of Office)…”

Number two, it kept Tobago at one county council seat.

The next law is what is relevant, Act No. 37 of 1980:
“An Act to establish the Tobago House of Assembly for the purpose of making better provision for the Island of Tobago…”

It went from one county council to 12 electoral districts, and that number 12 was done by way of an Act of Parliament exactly as we are doing tonight.

In 1980, one became 12. In 1996, 12 stayed at 12, but the only law that speaks to 12 is the Elections and Boundaries Commission (Local Government and Tobago House of Assembly) Act, Chap 25:50. And I just read to you from the plain text of the simple majority law that the President may by Order amend the Schedule, 12 going to 15, going to 13, going to 14.

So let us get to the number of 15. I heard hon. Senators say that there was no consultation in respect of 12. The fact is—and I am referring to an old JSC, not the current one—the records demonstrate now in the public domain that there was public consultations since 2016. But, Madam President, it is a matter of law and a matter of fact that Tobago represented one electoral seat, one constituency at a point in time in this country, and even though the population of Tobago did not have the numbers that Trinidad had, the Constitution changed to say that Tobago shall have no less than two seats.

At a time when Tobago did not have the number of bodies of electors as Trinidad did, Tobago became Tobago East and Tobago West. And I heard a submission tonight showed me some data that shows Tobago’s population is increasing, that Tobago needs to move upward, that there is an upward trend. I can show you the history of the law that in 1980, when one went to 12, the numbers were not there. In 1980, county councils became electoral districts. In the move from Tobago as one constituency in general elections, it went to two when the numbers were not there. So, number one, the consultation in Tobago, from 2016 go
forward, from the people, vox populi, as Sen. Lyder put on the record tonight, the voice of the people says 15 electoral districts.

Let us go into second point now, 12 can became 15. There is no infringement of the Constitution. Twelve can become 15 not only because the voice of the people says so, but the law says so, Chap. 25:20.

Let us get now to the position of do we wait? Sen. Vieira and I, I confess, think quite a lot alike in terms of the logical points that we often traverse—what are options available to us? Sen. Vieira went through several of those options. One of them was leave it alone; one was take the Bill as is; the last one was a caretaker government, and I would like to traverse those three things.

Number one, leave it as it is. The mischief before us right now is what Sen. Vieira so capably demonstrated vividly a zombie Executive. At law in the THA Act, there is Executive Council in operation. That Executive Council has duties set out in sections 33, 34, 35, 36, 37, 37A, 37B. They have control over the pull strings. They, at present, have nobody supervising them. They, and only they, can exercise the functions from sections 25 to 32 of the Act. They and only they. So the concept of a caretaker government is something that we looked at. And permit me to put on record now, the Senior Counsel that we consulted across the various entities: Mr. Martineau of Senior Counsel, Mr. Mendes of Senior Counsel, Mrs. Peake of Senior Counsel, Mr. Prescott of Senior Counsel, Mr. Peterson of Senior Counsel; Juniors: Michael Quamina, Rishi Dass; seven counsel all on the same page with my submissions tonight. All saying that the position is to be supported because there is only one way to fix this situation and that is by legislation, and Sen. Vieira posited it tonight.

When we get to the positions now of a caretaker Assembly, the caretaker
Assembly runs the risk now of acting in an ultra vires fashion. Number one, let us look at the sensibility of it, the reality of it. The Executive Council is a PNM Executive Council, some of whom did not run for the election or lost their seats. They are lawfully in office described as a zombie Executive, neither dead nor alive, but very much alive when it comes to spending money. So option number one of leaving it as it is, when we stand in a state of not constituting the Assembly, is that they can continue for four years and maybe even longer exercising that power. Would that be anomalous in Trinidad? No.

We had local government councils continued for more than their three years. We had that by way of legislation.

**Sen. Thompson-Ahye:** If I may?

**Hon. F. Al-Rawi:** I have very short time. Could I take it in committee stage, most respectfully? I am saying that we have a position that the council can continue to discharge its functions, and when we are looking at the discharging of functions, there are unsupervised at present.

I heard Sen. Deyalsingh say that the council has until October to look at its budget. Regrettably, that is not the case. I refer the hon. Senator to—Sen. Thompson-Ahye, go ahead.

**Sen. Thompson-Ahye:** You referred to section 5:

“The President may by Order—

amend the third column of Part II of the First Schedule by varying the number of electoral districts set out therein;”—as the authority.

But when you look at Part II of the First Schedule, I see that Tobago falls into Part III. So if you may assist me, please. If you can assist me?

**Hon. F. Al-Rawi:** Yes please. The fact is that the Act has consolidated at section
5:

“The President may by Order—

amend the third column of Part II of the First Schedule varying the
number of electoral districts…”—amend or modify rules set out in the
Second Schedule.

First column, second column. First column, name of electoral district; the
description of electoral district. When you get right down to the island of Tobago it
was an anomaly, and the statutory interpretation is that the third column is what
was intended and the precedent has been set out there. I do not have the time to
explain it or put it up for you, but I will at committee stage for you. If you please, I
have nine minutes left. Thank you, Senator.

When we look at the submissions coming forward, we have a position of the
zombie council. Section 41 deals with estimates of the Tobago House of Assembly
Act and the estimates must be considered in the month of June. We are in the
month of March—April, May, June. We are in the reality check of being in the
most severe economic condition that Trinidad and Tobago has faced since perhaps
the World War II event in a COVID crisis where the electorate is crying out for
resources. The budgets are due, pursuant to section 41, in the month of June.

Tobago has a zombie electoral structure, it has an Executive which is
continuing lawfully into office comprised of only PNM members, some of whom
have not been re-elected. The room and capacity for the exercise of discharge of
functions becomes extremely complicated if we say stop and talk. We are now on
the 2\textsuperscript{nd} of March, away from the 25\textsuperscript{th} of January. On the 28\textsuperscript{th} of January, the
members were sworn in according to law, the Assemblymen. Only the
Assemblymen can appoint a presiding office—one person. If the Assemblymen

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cannot appoint a presiding officer after more than a month—of having sat in that Chamber together for more than a month, how are we going to get power sharing? How are we going to have a caretaker government when the finances are due in June? How do we do it in a COVID environment? How do we do it in the hardest economic time in Trinidad and Tobago, and is the remedy to be found in democracy? What does the Government suggest tonight?

The Government suggests that in the face of a standoff where there has been no compromise, go back to the polls. Let the people democratically decide who should win and who should lose. Is this the first time that we are going back to the polls in examples as this type? No, we went back in 18:18. Why did we not amend the law when it was 18:18? Do you know why? Because the Constitution was guiding the general elections, 70, 71 and 72, and not the THA Act. Big difference!

Very importantly, Sen. Mark read out something and then left out the end. Quite typical of Sen. Mark. He read the contribution in the exchange between Ramesh Lawrence Maharaj and Eastlyn Mc Kenzie, and in typical fashion, Sen. Mark failed to read the material line of the law and here is what the contribution said—

Tobago House of Assembly—I read from page 104, and this goes down to purposive and literally interpretation, an as aids to interpretation. The Act is pellucidly clear. There is a literal point, they provide for the presiding officer, but here is what Sen. Mark left out. Sen. Mc Kenzie mentioned certain points, this is Ramesh Lawrence Maharaj, and at the end he says this:

“If there is a tie it would probably force the people to work together. For that reason, it was deliberately left out.”

Listen to what he said.

“If Parliament has to deal with it, it would do so. We have recognized this.
From what I have heard, I wish to give her the assurance that this is not likely to occur.”

Let me repeat that.

“If Parliament has to deal with it, it would do so.” [Desk thumping]

Mr. Ramesh Lawrence Maharaj, as Attorney General, said:

“I want to”—assure her—“that”—it was—“not likely to occur.”

We now know the likely has happened. The unlikely has happened, and then they are back to, “If Parliament has to deal with it, it would do so”. Where are we? We are in Parliament. We are suggesting a move to 15 electoral districts. The law says that the only place that you need to amend 15 electoral districts is in Chap 25:20. It says that the formula is to be applied. Section 4 of the Second Schedule tells you how to come up with the electoral boundaries, and tonight, we have Sen. Mark saying the EBC cannot be trusted. Let me ask a question. If we waited for the Tobago autonomy Bill which is in a joint select committee, the Tobago autonomy Bill—and I am not dealing with the Joint Select Committee—

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

Hon. F. Al-Rawi: Five minutes? With the Tobago autonomy Bill, it is a companion Bill to the THA Act. The recommendation from public consultation is moved to 15 seats. Let me ask you this. Assuming the Tobago autonomy Bill is passed tomorrow, is it not the same EBC that is going to have to move from 12 to 15 seats?

Sen. Mark: That is a different thing. The Constitution—[Inaudible]

Hon. F. Al-Rawi: The THA Act requiring a simple majority—

Sen. Mark: No, no, no.

Hon. F. Al-Rawi: The THA Act, not the Tobago autonomy Bill. The THA Act is
not proposed to be repealed in the fashion of abandoning 15 electoral districts.
The 15 electoral districts is a simple majority Bill. The simple majority Bill is Chap. 25:50. It would be the same EBC to move 12 to 15. [ Interruption] And in the EBC moving from 12 to 15, they have to apply the same Second Schedule. Take the number of electors, divide it by 15, make all seats equal, margin of difference, 25 per cent. That is the law since 1967. Have we amended the number by a stroke of pen before? Yes. In 1980, we went from one to 12 by a stroke of a pen. Did we have the numbers then? No, we did not have the numbers. Tobago grew into it.

10.40 p.m.

Secondly, knowing that the Tobago autonomy Bill requires deep entrenchment support—let me put it this way. If the UNC when in power with a 29-seat Parliament special majority did not do it then, are they going to do it now?

**Sen. Mark:** “Buh you vote against the Bill when we brought it.”

**Hon. F. Al-Rawi:** And I am raising it as a legitimate question because if we are saying wait until the Tobago autonomy Bill, what do we do with the June financial situation? What do we do with COVID? What do we do with the people of Tobago being offered democracy as the solution? A return to the polls as a solution? A return in higher percentage turnout most probably as a solution? The PNM is not afraid of defeat, we have been down to one seat in the THA already, one seat, one lonely seat and then found ourselves with 12 seats. That is democracy. We do not rush off to election petitions and challenges, et cetera. We have never “bad talk” the EBC in our political existence ever. But the point is when we were looking at the EBC—

**Sen. Mark:** “Oh my God.”
Hon. F. Al-Rawi: The EBC is the entity—

Sen. Mark: “Yuh serious?”

Hon. F. Al-Rawi:—that is clothed in law—

Madam President: Sen. Mark. Attorney General, just hold on one second. I have allowed you, you have been doing it right through the Attorney General’s—[Interruption] No, Sen. Mark, please stop it. [Interruption] Sen. Mark—no. Can you look at me, please?

Sen. Mark: I do not have to look at you.

Madam President: Yes, you do.

Sen. Mark: Why?

Madam President: I am asking you to please—Sen. Mark, leave the Chamber, you can come in when the Attorney General is finished.

[Senator departs]

Hon. F. Al-Rawi: Madam President, the EBC is the sole entity—[Crosstalk]


Sen. Mark: Yes?

Madam President: Please apologize for what you have just said.

Sen. Mark: I said I do not have to look at you.

Madam President: Sen. Mark, please apologize for what you have just said.

Sen. Mark: That I do not have to look at you?

Madam President: Okay, Sen. Mark, with that, you are to leave the Chamber and you are not to return for the rest of the sitting. Attorney General.

[Technical device goes off]

Hon. F. Al-Rawi: The EBC is the sole entity with the authority—

Madam President: Please, whose phone is it? Please leave the Chamber as well.

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Hon. F. Al-Rawi: Madam President, how much time do I have?

Madam President: One more minute.

Hon. F. Al-Rawi: Thank you, Madam President. Thank you, Sen. Mark. On this most serious matter of democracy, the simple submission is that the time is realistically now. There is a proclamation clause proposed in this legislation. The opportunity to conclude conversations is yet in the balance. We are in a time sensitive clock. I am urging consideration to the realities of the situation. I do not take the argument that the EBC has been sold to gerrymandering. When one says wait for the exercise of autonomy to be completed to move to 15 electoral districts with the same EBC to do the same division, it does not make sense, respectfully. There is a constitutional crisis upon us. We have the power in law to bring a solution as the framers of the law said on the 28th of November, 1996. If Parliament has to decide it, then so it will be, is what Attorney General Ramesh Lawrence Maharaj suggested.

Hon. Senators, I am respectfully urging consideration for the realities of Trinidad and Tobago, for the robustness of our situation.

Madam President: Attorney General, you need to finish off now.

Hon. F. Al-Rawi: Thank you. The EBC report when laid will be subject to affirmative resolution and there is still a proclamation clause.

With those words, Madam President, I beg to move. [*Desk thumping*]

*Question put and agreed to.*

*Bill accordingly read a second time.*

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

*Senate in committee.*

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Sen. Dr. Dillon-Remy: Madam Chairman—sorry.

Madam Chairman: Sen. Roberts.

Sen. Roberts: Just a question, Ma’am.

Madam Chairman: Yes?

Sen. Roberts: Will Sen. Mark be able to come back in if there is a vote please?

Madam Chairman: Sen. Mark was asked to leave here. If Sen. Mark comes back in before the vote and is prepared to apologize for his behaviour, he will be allowed to take part in the vote.


Sen. Dr. Dillon-Remy: Madam Chairman, I would just like to ask one question please before we start. The question is to the Attorney General. Whether he would consider delaying this until after the meeting tomorrow—

Madam Chairman: All right, so let us just hold on one second, the Attorney General is gathering himself with his technocrats. Let us just organize. Sen. Roberts has gone in search of Sen. Mark. So I will allow Members, we can sit here for five minutes. I am not going to suspend the sitting.

So Members, we will begin deliberations at 10.53. In the meantime, may I just ask if all Members—there are two sets of amendments. One by Sen. Mark. Sen. Lutchmedial, I presume if Sen. Mark does not return to the Chamber, you will handle the amendments?

Sen. Lutchmedial: Yes, Madam Chairman.

Madam Chairman: Very well, and another set of amendments by Sen. Dillon-Remy.

Sen. Mark: I wish to apologize.

Madam President: Are we in a position to begin? Sen. Dillon-Remy, would you like to pose your question once more?

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Sen. Dr. Dillon-Remy: Thank you, Madam Chair. To the Attorney General, I am just asking whether it is possible to delay this committee stage of this Bill until after that meeting tomorrow with the Prime Minister and the 12 Assemblymen and the persons, former chief secretaries and chairmen of the Tobago House of Assembly, and depending on what happens tomorrow, then you can come back and finish off the Bill. I am just asking for that consideration, please.

Madam Chairman: Attorney General.

Mr. Al-Rawi: Thank you, Madam Chair. I note Sen. Remy’s enquiry, I also note Sen. Remy’s proposed amendments which include not going to 15 electoral districts, instead deleting them to 12, i.e. having an election as is. What I can say in anticipation of room for consideration, we specifically inserted a proclamation clause that we would not proclaim the law until Cabinet advises Her Excellency the President to do so. In those circumstances, I propose that we proceed because from a policy perspective, I note the Senator’s amendments to just maintain a 12-seat perspective and therefore I am in a bit of a torn position in terms of what is proposed by way of amendments. But to allow the room for consideration, certainly this Act is the subject of a proclamation clause if it does pass and therefore we have ample room to perhaps shift gears.

Clauses 1 to 3 ordered to stand part of the Bill.

Clause 4.

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

Madam Chairman: Sen. Mark, you have a proposed amendment?

Sen. Mark: Yes, Ma’am. We are proposing that—and I would like you to advise me. I have circulated an omnibus amendment which identifies the deletions of 4, 5 and 6, so I wanted to ask you if I should deal with all.

Madam Chairman: No, let us do it separately because Sen. Dillon-Remy has also
circulated amendments as well deleting clause 4.

**Sen. Mark:** Madam Chair, this is a new clause. Are we dealing with new clauses now, because this is a new clause?

**Madam Chairman:** No, this is clause 4 we are dealing with.

**Sen. Mark:** No, but I have a new clause 4.

**Madam Chairman:** Well, that will be dealt with after. Remember we deal with the new clauses after we have dealt with what is in the Bill. Okay?

**Sen. Mark:** Okay. All right. Well, we are cool.

**Madam Chairman:** So do you wish to comment on your proposed amendment, Sen. Mark?

**Sen. Mark:** Yes. In my proposed amendment, I am suggesting for the consideration of the Senate that in an effort to ensure that there is no ambiguity in the future as it relates to the Standing Orders of the House of Assembly within the framework of Standing Order 92 making—

**Madam Chairman:** Sen. Mark, I am sorry. You are treating with new clause 4 which we have to deal with after we have disposed of all the other clauses in the Bill. But you have clause 4 of the Bill which we are dealing with now of the existing Bill, you have proposed that it be deleted.

**Sen. Mark:** Can I borrow—I kinda put aside—no, no, hon. Senator, the Chair is talking about the Bill. But Ma’am, in my rush out, I packed all my things so I have to go through all my papers to retrieve.

**Madam Chairman:** Okay. Let me speak to Sen. Dillon-Remy who has the same—

**Sen. Mark:** So let me see if I can get it, right?

**Madam Chairman:** Yes. Sen. Dillon-Remy, would you please speak to your amendment to clause 4?
Sen. Dr. Dillon-Remy: Yes. Madam Chair, it is just to delete clause 4 and if they have to go back, we go back with 12. So delete clause 4.

Madam Chairman: Yes. Is there anything further you wish to say?

Sen. Dr. Dillon-Remy: No, Madam Chair.

Madam Chairman: Okay. All right. Is there any other comment? Yes, Sen. Deonarine?

Sen. Deonarine: Thank you, Madam Chair. Through you, I did not get clearly in the Attorney General’s wind up what exactly was the disadvantage of keeping the 12 seats and repeating the elections based on the existing number of seats. Could he just clarify that for me, please?

Madam Chairman: Attorney General.

Mr. Al-Rawi: Thank you, Madam Chair. The first reason is that contrary to the piloting of the THA Act by Ramesh Lawrence Maharaj, Attorney General, 28th of November, 1996, where he said it was unlikely that there could be a deadlock, we now know that the unlikely has happened, there is therefore a known factual incident of a 6:6 tie. In Trinidad, when that happened at 18:18, there was no provision to amend the law in the fashion that we now have. In that 18:18 scenario, the EBC has to do its reports in the Constitution, sections 70, 71, 72, provide a report to the Prime Minister and then lay it. In the 18:18 tie, it lasted one year because of the budget. In the Tobago House of Assembly situation of a 6:6, a tie, the financial provisions are due in June, we are in March, we are in a COVID situation. So we know as a matter of fact that the boundaries need to be adjusted. That is point one.

Two, it is better to go to an odd number, even better for a prime number but a prime number is not capable here. When we go into the odd number scenario, the mechanism exists to do that and we have the advantage of a JSC which I am not
permitted to go into but we do have public consultations that say go to 15. We know that the exercise of the JSC will take longer than June and therefore, we are lifting out of that the recommendation of the Tobago consultations to move to 15.

In answer to Sen. Dillon-Remy, that is the reason why I have most respectfully do not yet—well, that is the reason why I do not respectfully agree with the deletion to move from 12 because there is still the risk of the unlikely becoming likely and if ever we can take an attempt to move Tobago forward, we are putting our hands in the independence of the EBC who has confirmed their preparedness to deliver a report in the time frame that they can, that is three months after an eventual proclamation of this law if it is proclaimed at all, to move to that position. In the time frame that we have before proclamation, there are discussions still afoot and then it is open to consider what the recommendation, if any, will be with respect to proclamation.


Sen. Dr. Dillon-Remy: Madam Chair, could the Attorney General, instead of considering 15 given the context of 15 in the internal self-government Bill, the context is very different from what we have now. If it is a number, you want to get it to an uneven number, could you consider 13 instead of 15?

Mr. Al-Rawi: So, Madam Chair, we did not pluck the 15 out of the blue, we plucked the 15 out of the public consultations from 2016. I have read them. I have had a look at them and we know that that is going to be an eventuality. The second aspect is I accept that there may be different contexts but the context that we are looking at here is what representation means. The Second Schedule to Chap. 25:50 says that when you are drawing the electoral lines, you would take the Tobago population of electors, 51, nearly 52,000, you divide it by 15 and then establish, no variance between them, any one electoral district greater than 25 per cent.
means that you are realistically moving from 4,000 electors to 3,500 and therefore, in effect, you could even argue that you are creating greater marginality in electoral districts. Harder fight but certainly better representation because the more people there are to represent, fewer numbers is the more the voices are heard. So our rationale is grounded there.


Sen. Welch: Yes. Attorney General, how do you reconcile the EBC saying in the report tabled in December 2020 which is very recent, that they do not recommend any changes in the electoral boundaries with a position now where you are saying they have given a recent indication that they are prepared to review the boundaries.

Mr. Al-Rawi: Understood.

Sen. Welch: Because it raises the issue as to whether the EBC—I am not saying that they are but whether they are in some way or have felt pressured to change their position [Desk thumping] by this legislative initiative.

Madam Chairman: Sen. Welch, if I could intervene, I think at this stage, the question that you posed is about reconciling the reports of the EBC in 2020 with now, what is being proposed. Let us leave it at that and let the Attorney General answer.

Sen. Welch: Very well.

Mr. Al-Rawi: Thank you, Madam Chair. I thank Sen. Welch for the question. It is a live one. People are asking it. It is actually quite simple to answer. The EBC report was based upon an analysis of Tobago in the context of their instructions. Their instructions are there are 12 electoral districts. The EBC similarly made no recommendation in moving from one county council to 12 electoral districts in 1980. The EBC did not recommend the creation of two electoral districts in

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Tobago, as far as I am aware, in moving from one constituency in Tobago to two because the numbers were not there. Tobago was underpopulated.

So the simple point is that the EBC in the context of Chap. 25:50 takes the instructions of the Parliament. Whatever number the Parliament says by way of primary legislation is what the EBC will act upon. Same as they did in 1980, same as they did when they moved from one constituency to two because there was no population, similar to Trinidad, to justify those positions.

But I would like to make the very important point. The THA is not a municipal corporation, it is a creature of its own. The THA Act of 1996 is not a municipal corporation and therefore the structures and governance and input and financial autonomy exercised in sections 25 onwards and in the Fifth Schedule provisions are entirely different from how a municipal corporation operates under law.

Madam Chairman: Sen. Roberts.

Sen. Roberts: Madam Chair, I just want some guidance please because it appears in this Committee, it seems like we are re-debating because if I have to respond the hon. Attorney General’s assumption that in this aspect, the EBC can be instructed or asked if they will be able in three months to produce a report, putting the cart before the horse. We have already debated these issues but he seems to be returning to the debate. If he continues, are we on this side to respond and then we are here until next day?

Madam Chairman: No, actually, Sen. Roberts, you have raised a very good point. The general merits of the Bill, we have already had discussions on that when everyone debated for the last 11 hours. So now that we are in Committee, we are treating with the details of the Bill, specific details. Sen. Welch, though, asked a question of the Attorney General and he sought to respond to it. It is not now a
situation where other Members are going to respond to what the Attorney General has said. Members, you can raise your issues. Once they are relevant and I deem it relevant, the Attorney General will then seek to answer it as best as he can. Okay? Sen. Roberts, you had any more questions?

**Sen. Roberts:** No, Ma’am. That is clarification because I would not want to revisit the debate. Thank you.

**Madam Chairman:** Okay, after Sen. Roberts, Sen. Mark.

**Sen. Mark:** Yeah, Madam Chair, one of the reasons we suggested the deletion of this entire clause also had to do and I just wanted to ask not going into a debate but to ask the Attorney General in light of the economic constraints, one, facing the country, whether the Government had done a financial cost of these three additional assemblymen.

And then the second point has to do with the point that was made by Sen. Dillon-Remy which is a very crucial point. That has to deal with the context. Madam Chair, I do not want to delay your meeting or this meeting but if you examine the law that is before—the Bill that is before the Joint Select Committee, we have to appreciate that it is a very important expansion of responsibilities and duties within the Tobago House of Assembly and it is against that background the number 15 may have come up. We have now plucked that out and there is no basis for this 15 in the current legislation. And that is why, Madam Chair, we said let us continue with our 12 until that Bill comes properly before the Parliament.

**Madam Chairman:** Your point is noted. And Sen. Nakhid. That is it? Attorney General, anything to say before I—what I will do is we will put the amendment as proposed by Sen. Dillon-Remy and we will take it from there. Attorney General, you wanted to say anything?

**Mr. Al-Rawi:** Yes, please. In answer to Sen. Mark’s enquiry, yes, we have looked
at the financial impact of this. It is capable of being underwritten. Secondly, we are adamant in causing the passage of the Tobago autonomy Bill and therefore we are preparing for the 15. We do hope that the UNC supports the Bill.

Question, on amendment, [Sen. Dr. M. Dillon-Remy] put.

11.10 p.m.

Madam Chairman: Sen. Mark?

Sen. Mark: I supported it.

Madam Chairman: No, no, what about your amendment? In light of the vote for Sen. Dr. Dillon-Remy’s, yours mirrors hers.

Sen. Mark: Yes.

Madam Chairman: So will you withdraw yours?

Sen. Mark: So I am calling for a division on her own.

Madam Chairman: I beg your pardon?

Sen. Mark: I would like a division on this vote.

Madam Chairman: On which vote? Sen. Dillon-Remy’s?

Sen. Mark: Yes.

Madam Chairman: Okay.

Sen. Mark: Because I am supporting that; the deletion of it.

The Committee divided: Ayes 14    Noes 16

AYES

Mark, W.
John, Ms. J.
Lutchmedial, Ms. J.
Nakhid, D.
Lyder, D.
Roberts, A.
Vieira, A.
Deyalsingh, Dr. V.
Deonarine, Ms. A.
Seepersad, Ms. C.
Teemal, D.
Thompson-Ahye, Mrs. H.
Dillon-Remy, Dr. M.
Welch, E.

NOES
Khan, F.
Rambharat, C.
Sinanan, R.
Hosein, K.
West, Ms. A.
Browne, Dr. A.
Mitchell, R.
de Freitas, N.
Cox, Ms. D.
Singh, A.
Sagramsingh-Sooklal, Mrs. R.
Bacchus, H.
Lezama-Lee Sing, Mrs. L.
Bethelmy, Ms. Y.
Gopee-Scoon, Mrs. P.
Richards, P.

Amendment negatived.
Madam Chairman: Sen. Mark, in light of what has happened there, are you proceeding with your amendment?

Sen. Mark: Of course.

Madam Chairman: It mirrors exactly what Sen. Dillon-Remy—

Sen. Mark: Of course, of course.

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

Sen. Mark: Division.

The Committee divided: Ayes 13 Noes 17

AYES
Mark, W.
John, Ms. J.
Lutchmedial, Ms. J.
Nakhid, D.
Lyder, D.
Roberts, A.
Deyalsingh, Dr. V.
Deonarine, Ms. A.
Seepersad, Ms. C.
Teemal, D.
Thompson-Ahye, Mrs. H.
Dillon-Remy, Dr. M.
Welch, E.

NOES
Khan, F.
Rambharat, C.
Sinanan, R.
Amendment negatived.

Question put.

Sen. Mark: Division.

The Committee divided: Ayes 16  Noes 14

AYES
Khan, F.
Rambharat, C.
Sinanan, R.
Hosein, K.
West, Ms. A.
Browne, Dr. A.
Mitchell, R.
Question agreed to.

Clause 4 ordered to stand part of the Bill.
Clause 5.

*Question proposed:* That clause 5 stand part of the Bill.

**Madam Chairman:** Sen. Mark, you have an amendment circulated?

**Sen. Mark:** Yes. Madam Chair, we have made our position very clear on this matter as it relates to this particular clause. We do not support. First of all we do not support a holdover Executive Council, a person who is temporary in office has lost count of an election having the power to determine a fresh election. We find that is incongruous and untenable. So we do not support this entire clause 5 in all its subsections, 22(5), that is clause 5, 22(1), (2), (3). We do not support that whatsoever.

**Madam Chairman:** Any other contribution? Attorney General.

**Mr. Al-Rawi:** I respectfully disagree with Sen. Mark’s submissions. This is in aid of democracy in a constitutional crisis.

Further Madam President, Sen. Mark’s positions of not supporting subsections (1) and (2) just makes no sense because it has been the existing law since 1967.

*Question, on amendment, [Sen. W. Mark] put.*

**Sen. Mark:** Division.

*The Committee divided:* Ayes 10 Noes 19

**AYES**

Mark, W.
John, Ms. J.
Lutchmedial, Ms. J.
Nakhid, D.
Lyder, D.
Roberts, A.
Deyalsingh, Dr. V.
Deonarine, Ms. A.
Seepersad, Ms. C.
Teemal, D.

NOES
Khan, F.
Rambharat, C.
Sinanan, R.
Hosein, K.
West, Ms. A.
Browne, Dr. A.
Mitchell, R.
de Freitas, N.
Cox, Ms. D.
Singh, A.
Sagramsingh-Sooklal, Mrs. R.
Gopee-Scoon, Mrs. P.
Bacchus, H.
Lezama-Lee Sing, Mrs. L.
Bethelmy, Ms. Y.
Richards, P.
Thompson-Ahye, Mrs. H.
Dillon-Remy, Dr. M.
Welch, E.

Sen. A. Vieira abstained.
Amendment negatived.
Cette question a été soumise.

Sén. Mark: Division.

Le Comité a été divisé: Ayes 18 Noes 12

AYES

Khan, F.

Rambharat, C.

Sinanan, R.

Hosein, K.

West, Ms. A.

Browne, Dr. A.

Mitchell, R.

de Freitas, N.

Cox, Ms. D.

Singh, A.

Sagamsingh-Sooklal, Mrs. R.

Gopee-Scoon, Mrs. P.

Bacchus, H.

Lezama-Lee Sing, Mrs. L.

Bethelmy, Ms. Y.

Richards, P.

Dillon-Remy, Dr. M.

Welch, E.

NOES

Mark, W.

John, Ms. J.

Lutchmedial, Mrs. J.
Question agreed to.

Clause 5 ordered to stand part of the Bill.

Clause 6.

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

Madam Chairman: Sen. Dillon-Remy, you have a proposed amendment?

Sen. Dr. Dillon-Remy: Madam Chair, in keeping with my request to delete clause 4 and the consequential changes to electoral—the Elections and Boundaries changes, I am asking for clause 6 to be deleted also.

Madam Chairman: Attorney General.

Mr. Al-Rawi: Madam Chair, I wish to put on the record that I thank Sen. Dr. Dillon-Remy for her submissions and again remind that the proclamation clause is one that we intend to take very seriously in that we always engage in discussions prior to proclamation. Thank you.

Madam Chairman: Any further questions or comments?

Sen. Mark: No, we support.

Question, on amendment [Sen. Dr. M. Dillon-Remy] put.

Sen. Mark: Division.
The Committee divided: Ayes 13 Noes 16

AYES
Mark, W.
John, Ms. J.
Lutchmedial, Ms. J.
Nakhid, D.
Lyder, D.
Roberts, A.
Deyalsingh, Dr. V.
Deonarine, Ms. A.
Seepersad, Ms. C.
Teemal, D.
Thompson-Ahye, Mrs. H.
Dillon-Remy, Dr. M.
Welch, E.

NOES
Khan, F.
Rambharat, C.
Sinanan, R.
Hosein, K.
West, Ms. A.
Browne, Dr. A.
Mitchell, R.
de Freitas, N.
Cox, Ms. D.
Singh, A.
Sagramsingh-Sooklal, Mrs. R.
Gopee-Scoon, Mrs. P.
Bacchus, H.
Lezama-Lee Sing, Mrs. L.
Bethelmy, Ms. Y.
Richards, P.

Sen. A. Vieira abstained.

Amendment negatived.

Madam Chairman: Sen. Mark, your amendment mirrors that of Sen. Dillon-Remy. Are you proceeding with it?

Sen. Mark: I support; no I am not proceeding with that one.

Madam Chairman: Are you withdrawing your proposed amendment?


Madam Chairman: So it is withdrawn?

Sen. Mark: Yes.


Question put.

Sen. Mark: Division.

The Committee divided: Ayes 16 Noes 13

AYES

Khan, F.
Rambharat, C.
Sinanan, R.
Hosein, K.
West, Ms. A.
Browne, Dr. A.
Mitchell, R.
de Freitas, N.
Cox, Ms. D.
Singh, A.
Sagramsingh-Sooklal, Mrs. R.
Gopee-Scoon, Mrs. P.
Bacchus, H.
Lezama-Lee Sing, Mrs. L.
Bethelmy, Ms. Y.
Richards, P.

NOES
Mark, W.
John, Ms. J.
Lutchmedial, Ms. J.
Nakhid, D.
Lyder, D.
Roberts, A.
Deyalsingh, Dr. V.
Deonarine, Ms. A.
Seepersad, Ms. C.
Teemal, D.
Thompson-Ahye, Mrs. H.
Dillon-Remy, Dr. M.
Welch, E.

*Sen. A. Vieira abstained.*

*Question agreed to.*
Clause 6 ordered to stand part of the Bill.

Schedule.

Question proposed: That the Schedule stand part of the Bill.

Question put.

Sen. Mark: No. Division.

The Committee divided: Ayes 16 Noes 13

AYES
Khan, F.
Rambharat, C.
Sinanan, R.
Hosein, K.
West, Ms. A.
Browne, Dr. A.
Mitchell, R.
de Freitas, N.
Cox, Ms. D.
Singh, A.
Sagramsingh-Sooklal, Mrs. R.
Gopee-Scoon, Mrs. P.
Bacchus, H.
Lezama-Lee Sing, Mrs. L.
Bethelmy, Ms. Y.
Richards, P.

NOES
Mark, W.
John, Ms. J.
Lutchmedial, Ms. J.
Nakhid, D.
Lyder, D.
Roberts, A.
Deyalsingh, Dr. V.
Deonarine, Ms. A.
Seepersad, Ms. C.
Teemal, D.
Thompson-Ahye, Mrs. H.
Dillon-Remy, Dr. M.
Welch, E.

*Sen. A. Vieira abstained.*

*Question agreed to.*

*Schedule ordered to stand part of the Bill.*

New clause 4.

**Madam Chairman:** Sen. Mark, you have circulated a new clause 4, but it is my view that this new clause 4 is contrary to Standing Order 68(3) and therefore I am not going to put it to the committee, because it is not relevant to the Bill at hand.

**Sen. Mark:** Madam Chair, may I?

**Madam Chairman:** Sure.

**Sen. Mark:** Madam Chair, one of the driving forces behind the legislation is to deal with the tiebreaker and I thought that that being a very important element of the legislation that this particular amendment would be very relevant. So that, for instance, in the future, if there is any doubt as it relates to the Standing Orders, it will be enshrined and entrenched in the legislation for clarity. So in the future, if there is some kind of tie or deadlock, there will be a provision in the THA Act to
deal with the matter. So it is against that background it has been proposed.

**Madam Chairman:** It is noted, what you have said.

*Question put and agreed to:* That the Bill be reported to the Senate.

*Senate resumed.*

**Hon. F. Al-Rawi:** Madam President, I wish to report that the Tobago House of Assembly (Amdt.) Bill, 2021, was considered in committee of the whole and approved without amendments. I now beg to move that the Senate agree with the committee’s report.

*Question put.*

**Sen. Mark:** No. Division.

*The Senate divided:* Ayes 16 Noes 14

**AYES**

Khan, Hon. F.

Rambharat, Hon. C.

Sinanan, Hon. R.

Hosein, Hon. K.

West, Hon. A.

Browne, Hon. Dr. A.

Mitchell, Hon. R.

Cox, Hon. D.

Singh, Hon. A.

Sagramsingh-Sooklal, Hon. R.

Gopee-Scoon, Hon. P.

Bacchus, Hon. H.

Lezama-Lee Sing, Mrs. L.

Bethelmy, Ms. Y.
Sen. Mark: No, and a division please.

*The Senate divided: Ayes 16   Noes 14*

**AYES**

Khan, Hon. F.
Rambharat, Hon. C.
Sinanan, Hon. R.
Hosein, Hon. K.
West, Hon. A.
Browne, Hon. Dr. A.
Mitchell, Hon. R.
de Freitas, N.
Cox, Hon. D.
Singh, Hon. A.
Sagramsingh-Sooklal, Hon. R.
Gopee-Scoon, Hon. P.
Bacchus, Hon. H.
Lezama-Lee Sing, Mrs. L.
Bethelmy, Ms. Y.
Richards, P.

NOES
Mark, W.
John, Ms. J.
Lutchmedial, Ms. J.
Nakhid, D.
Lyder, D.
Roberts, A.
Vieira, A.
Deyalsingh, Sen. Dr. V.
Deonarine, Ms. A.
Seepersad, Ms. C.
Teemal, D.
Thompson-Ahye, Mrs. H.
Question agreed to.

Bill accordingly read the third time and passed. [Desk thumping]

11.41 p.m.: Senate suspended.

11.45 p.m.: Senate resumed.

[MR. VICE PRESIDENT in the Chair]

COMMITTEE OF PRIVILEGES

(SEN. ANIL ROBERTS)

Mr. Vice-President: Hon. Senators, I crave your indulgence to, at this point in time, return to item 9 on the Order Paper in relation to the Motion moved by the Leader of Government Business. Hon. Members, I am now prepared to rule on the question of privilege raised by the Leader of Government Business earlier in this day’s proceedings.

The Leader of Government Business alleges that statements made by Sen. Anil Roberts on Tuesday February the 23rd and Friday February the 26th 2021, on a social media show “douglAR Politics” reflect negatively on the Presiding Officer in the discharge of her duties and bring the Senate as a whole into odium and disrepute.

Hon. Senators, I received a copy of this privilege Motion and the broadcast via the Office of the Clerk of the Senate. All that I am required to do at this stage is to rule if a prima facie case of breach of privilege exists. The decision on whether the matter referred to is indeed a breach of the privileges of this Senate falls to the Committee of Privileges.

Hon. Senators, I have carefully considered this matter and having regard to the fact presented and well-established parliamentary practice and procedure, I am
satisfied that a prima facie case of breach of privilege has been made. Accordingly, I now refer this matter to the Committee of Privileges for investigation and report.

**ADJOURNMENT**

**Mr. Vice-President:** Leader of Government Business.

**The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan):** Mr. Vice-President, I beg to move that this Senate do now adjourn to Tuesday March 9th 2021, at 10.30 a.m. During that sitting we will be doing the Anti-Gang Bill and take it through all its stages.

**Hon. Member:** What time?

**Sen. The Hon. F. Khan:** 10.30. [Interruption]

**Mr. Vice-President:** One second, Sen Mark. Yes, you have Matters on the Adjournment; that is fine. I understand that. Hon. Senators, before I put the question, we do have two Matters on the Adjournment. First matter will be dealt with by Sen. Mark. Are you ready?

**Sen. Mark:** Mr. Vice-President, I have been advised that the Minister of Finance, who is—[Interruption] no, no, no, no, you “cyah” change—

**Mr. Vice-President:** No, no, no. No, no, no, no, no, no, if you are speaking, you are speaking to me at this current point in time.

**Sen. Mark:** I was advised—

**Mr. Vice-President:** Go ahead, go ahead.

**Sen. Mark:** Yeah, I was advised by Sen. Clarence Rambharat the matter that I agreed to raise, the shipbuilding contracts—

**Mr. Vice-President:** “Um hmm.”

**Sen. Mark:**—could not have been pursued because the Minister of Finance is not in town. So, I told him in those circumstances I will think about whether I will pursue the matter. He then suggested to me, as if he is in charge of me, what I
should pursue.

Mr. Vice-President: Sen. Mark, Sen. Mark you do not need to—

Sen. Mark: So what I am simply saying, Mr. Vice-President, given the hour of the morning almost, I will bow to your ruling that I will not pursue on my course.

Mr. Vice-President: Okay. Good, so hon. Senators we have a second Matter on the Adjournment. Sen. Thompson-Ahye, are you ready?


Mr. Vice-President: And yes she is. [Desk thumping]

**Legislation to Provide Protection against Sexual Harassment**

*(Need for Government to enact)*

Sen. Hazel Thompson-Ahye: Motion on the Adjournment. The need for the Government to enact within the shortest possible time legislation to provide protection against sexual harassment. When Kitchener sang “Mt. Olive” and Iwer “Bottom in De Road”, they were singing on you girl? “Yuh look good coming and going. Yuh want tuh sing in my tent? You wah me to promote yuh Kaiso on de radio? What I getting fuh dat?” “If you want to make partner in this law firm the seniors have to check you out, assess your competence. Ah coming by you tonight.” “Those pictures with naked women in all kind of sexually explicit poses make me uncomfortable. I wish the manager would remove them.” “If you had not blank me you might have gotten a better grade. He wants to be with every lead actress in his plays. I not in dat. Gosh, I could imagine the fun he does have with yuh. Mmm.” “Miss Prim, customers complaining you too standoffish. You want dem tuh eat in ah next restaurant? If dey touch yuh posterior dat is part of it.” “You very handsome. How you n ever asked me out? You on the other side or what? We doh have dat kinda people here yuh know.”

These scenarios illustrate different forms of sexual harassment: Verbal,
Legislation to Provide Protection Against Sexual Harassment (Need for Government to enact)
Sen. Thompson-Ahye (cont’d)

sexual comments, jokes, flirtations, unwanted invitations, demands for sexual favours, physical unwelcomed touching, hugging, fondling, groping, stroking, kissing, patting, pinching, brushing against someone, non-verbal, “sooting”, sexually aggressive gestures, stalking, written or graphic, sexual emails, letters, messages, texts, display of explicit photographs and pornographic materials.

The essence of sexual harassment is that it is unwelcomed. It is not about affection, flirtation or romance, but about power and society’s attitude to women as sexual objects though some men do suffer sexual harassment. It is not about colleagues or friends complimenting each other. “Attorney General, I love that tie.”—or Sen. Mark. “Senator, I love your national colours.” That is not sexual harassment.

Tuesday March 8th, which is Tuesday coming, International Women’s Day marks two years since the then Minister of Labour proudly laid in the Senate a sexual harassment policy. It defines sexual harassment as any verbal or non-verbal conduct of a sexual nature and other conduct affecting the dignity of women and men which is unwelcomed, unreasonable, and offensive to the recipient. And where a person’s rejection of or submission to such conduct is usually explicitly or implicitly as a basis for a decision which affects that person’s job or conduct that creates an intimidating hostile or humiliating working environment for the recipient.

Two years, women continue to suffer the indignity. Physical, mental, and emotional distress, financial loss caused by sexual harassment at workplaces, institutions of learning and various places where people interact with one another. What protection does the law offer? The Equal Opportunity Commission and Equal Opportunity Tribunal differ on whether cases come within the ambit of the

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Legislation to Provide Protection Against Sexual Harassment (Need for Government to enact)  
Sen. Thompson-Ahye (cont’d)

Equal Opportunity Act. Eight cases are pending before the Commission; we await the decision of the Court of Appeal.

Some hope lies in the Occupational Safety and Health Act under which employers must ensure, so far as is reasonably practicable, the safety health and welfare at work of all its employees. If the harassment alleged is a sexual offence, the perpetrator can be charged under the Sexual Offences Act as happened with a Leader of the Opposition some time ago.

Mr. Vice-President, the sexual harassment policy was touted as a savior for sexually harassed women but during the last Parliament, the Joint Select Committee on Human Rights enquired into sexual harassment in the workplace and in the educational sector, and we concluded that given that there are no punitive measures for employers or persons who are not implementing the guidelines of the policy, the Committee recommended that draft sexual harassment legislation be finalized during fiscal 2020. We are in fiscal ’21.

When a parliamentary committee deliberates on an issue, compiles a report and lays it in Parliament, the recommendation made should be acted upon. Where is the law? So much legislation has been brought to address other issues. No, it is certainly not a priority for this Government. It is in these circumstances that I move the Motion. Mr. Vice-President, we are tired of promises. A promise is a comfort to a fool. Successive governments have taken us for fools for far too long. May 18, 1991, Express headline:

Coming, law against sexual harassment. Minister in the Office of the Prime Minister, Margaret Hector speaking on the protection of women and children at risk at Hilton Hotel says, legislation to protect women from sexual harassment in the workplace was being prepared by the Government.
Legislation to Provide Protection Against Sexual Harassment (Need for Government to enact)  
Sen. Thompson-Ahye (cont’d)

July 15, 1991, Trinidad *Guardian* headline:

Women Bill is coming says PM. Prime Minister ANR Robinson opening the women resource centre at Charford Court, announced Government would shortly introduce the sex discrimination Bill in Parliament.

Harassment is rampant but the promised Bill, M-I-A. Sunday *Mirror*, April headline, April 14, 1991:

Credit Unions workers complain about sexual harassment. Our boss wants to sleep with us.

Trinidad *Guardian*, January 26, ’93:

PSA official, 20 reports of sexual harassment NIB.

*Guardian*, August 1992:

Sexual harassment in union offices. PNM women threaten LIDP officials two of them demanding sex in exchange for job.

Trinidad *Guardian*, July 26, 1996:

Government told to act on sexual harassment.

That was a report quoting one Hazel Thompson-Ahye addressing an ECA seminar on sexual harassment at Hilton. This was followed by *Guardian* editorial:

Where is the law?

The *Guardian* editorial, Sunday *Guardian* editorial of July 28, 1996. Since then there have been many sexual harassment scandals, allegations about breast touching aboard flights, sex for HDC houses, Minister making sport, boss drinking bitters.

In 1993, I conducted a survey on sexual harassment UWI campus for the women on development studies group. Interviewing students, faculty and staff, more than half of the interviewees reported a range of complaints, suggestive
Legislation to Provide Protection Against Sexual Harassment (Need for Government to enact)
Sen. Thompson-Ahye (cont’d)

remarks, touching, kissing, invitation to sex, grabbing of breasts and buttocks. At the lunchtime seminar, I revealed my findings to a packed hall, it was broadcast on radio. Prof. Reddock got an urgent phone call from Mona, she asked my sample size. When I told her she breathed a sigh of relief and said, “It was satisfactory.”

Today, you hear of a comprehensive harassment policy.

I followed Anita Hill’s testimony at Judge Thomas’ confirmation hearing, I remember the shocking revelation I had heard while conducting the survey on campus. A couple years ago I met a very accomplished lawyer from Trinidad on a flight, she shared her over 40-year old story, her pain still evident.

When I conducted enquiries into sexual harassment as a result of a Ministry and other bodies, I observed common trends. Perpetrators saw nothing wrong with their conduct, there was never just one victim. I conducted training for women police in—

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

Sen. H. Thompson-Ahye: I was a second year law school student and home for Christmas using the Industrial Court library. As I was leaving a burly police officer walked ahead of me, supposedly to press the elevator button, touched me inappropriately. I walked to the Court of Appeal and complained, the officer denied my allegation, guilt was written all over him, he was told to apologize. He said, ‘If I do it ah sorry.” Adding insult to injury. The official called me aside and say, “If yuh pursue this he will lose his gratuity and pension. He had a wife and children who will suffer. I beg you leave it alone nah.” Out of respect, I complied.

The enquiry within the educational sector, we learned they had many challenges. Teachers were suspended, very few of them, many went back to work. It is vital that we have legislation to provide protection against sexual harassment.
Sexual harassment is on a continuum of violence against women which ranges from sexual harassment to domestic violence to murder. It is an urgent matter needing an urgent legislative response.

We are supposed to be looking at international instruments for our compliance in universal declaration of human rights. Our Constitution also talks about equality before the law. CEDAW urged us to pass legislation. Inter-American Convention said, we should have prevention, punishment, and eradication of violence against women, urge us to have legislation. The celebrated case of Bank Employees Union v Republic Bank, sexual harassment is a serious transgression of the right of workers to enjoy a safe working environment and to be protected against sexual offensive conduct at the hands of fellow employees.

Mr. Vice-President, Government committed to the Sustainable Development Goal, goal five, to achieve gender equality and empower all women and girls. Unhappily, Government’s fidelity to promises is questionable. Its record in regional international women’s human rights is unenviable. Its commitment to protection of women and girls in Trinidad and Tobago from sexual harassment is an empty promise. Its saving grace lies in its moving with alacrity to enact within the shortest possible time legislation to provide protection against sexual harassment. I thank you. [Desk thumping]

Mr. Vice-President: Attorney General.

The Attorney General and Minister of Legal Affairs (Hon. Faris Al-Rawi): Thank you, Mr. Vice-President. Mr. Vice-President, I thank the hon. Senator for bringing this Motion to the Parliament, and I wish to state that whilst we were regaled a lot of very fair commentary which is very, very, germane and relevant today, we do not stand in the 1990s.
I stand before you now as an Attorney General and Minister of Legal Affairs that is headed up to my 600th law regulation and orders drafted as Attorney General. In that time, we as a Parliament have engaged in the largest package of reforms that is this country has ever engaged in. We have invested in plant and machinery, people, processes and law.

In 2012, by way of example, I sat as an Opposition Senator and participated in the passage of the Children Act. On that day the Independent Bench did not support the legislation. It was the Opposition PNM and UNC Government. Imagine this, one of the most powerful pieces of law in operation today to protect children, victims of sexual harassment, there were two very strong principle positions taken by the Independent Bench that night, legislate for LGBT issues and abolish child marriage. And those two very important principles prevented the Independent Bench from supporting that law which has now saved thousands and thousands of lives for children.

I gave a commitment that night that if I became Attorney General I would undertake those reforms requested and it is now a matter of record that in 2015 we abolished child marriage, and that we are on our way via the Jason Jones judgment to treat with the LGBT issues, because it is not one law, it is 27 laws affected there.

Similarly, tonight I give the commitment to complete the work of consultation already begun in sexual harassment. For the record, after carrying out the birth of the Family and Children Division, the Criminal Division, the full magisterial immunity, the merger of jurisdictions between the High Court and the Magistracy. After being the Government that birthed the amendments to the Domestic Violence Act after 21 years of agony, nobody was bothering to do it, we did it.
We gave the commitment to engage in the sexual harassment legislation, a committee was established in January 2020, nearly a year ago we started our work Ministry of Labour, Equal Opportunities Commission, members of women’s advocate groups, Attorney General Secretariat, and members of the private arms. We are at the table drafting the law as we speak. There are a few issues causing us to consider a few amendments.

Number one, we now have migrant workers in large numbers. They must be factored into the equation. Number two, the amendments and harmonization with Minimum Wage Act, retrenchment and severance benefits, those are two important considerations to be brought into the mix. Number three, we must look at updating the IRA. Number four, we are across checking the references now to the Cayman Islands Sexual Harassment Bill, the Caricom Model Legislation on Sexual Harassment, and the Belize Protection Against Sexual Harassment Act. In other words then, we are hard at work.

Our next attempt at settling provisions will be on March 16, 2021, and I give the commitment on behalf of the Government. Just like every other commitment that has been met by this Government, in the face of everybody saying, “No, it cannot be done.”—and, “No, wait for protection.” —and, “No, kick it down de road.”—and, “No, wait some more.” No, we will not wait anymore.

It is tied into a whistleblowing protection, our Cybercrime Bill that we cannot pass for nine years. It is tied into the systems of law, and today I can say that whilst we have made radical reforms to the law, whilst we are now doing 15,000 cases every three months from the prisons, instead of moving prisoners from the prisons to court, whilst we are doing virtual trials, whilst people are being cross-examined on their phones, whilst we are doing judge only trials for murder.
Things which people said would never happen in this country, we have the courage to do it. And we have been in the fields toiling away at our task. Yes, the road is rocky at times and yes, we can move a little bit faster. But I want to give the assurance that we as a Government are prepared to take the task into completion, in a consultative way, and as several Senators know, this is not a Government that gives its word and then breaks it.

In this Parliament there are umpteen examples of law which we have undertaken to come back to, have second work at or to complete. And so, Sen. Thompson-Ahye is right, it is time to get the job completed. But this must work in a systemic reform basis, plant and machinery, people, processes and law.

The last thing I will say, Mr. Vice-President, it is time for us to inspire some hope. How do we expect systems to work, people to report sexual harassment if they are intimidated, if they cannot give evidence because there is no whistleblowing protection, or evidence to protect witnesses that want to come forward in terms of anonymity or protections or vulnerable witnesses? It is time for us to recognize some of the good things in this country.

We are headed in the right directions but no one will utilize a system if all we do is to criticize and complain and find every negative possible. This Senate is a place of hope. Each one of us has the power to make law and some of us who are attorneys-at-law have the power and privilege to practise the law. There can be no greater coincidence of privilege than the power to make the law and practise the law.

And therefore, Mr. Vice-President, this is something that we will get done and that we are committed to. And the hon. Senator who has worked hard for her lifetime and dedication to these areas, I wish to pay public compliment to Sen.
Legislation to Provide Protection Against Sexual Harassment (Need for Government to enact)
Hon. F. Al-Rawi (cont’d)

Hazel Thompson-Ahye for being the champion of rights [Desk thumping] that she is. Never backing away from the fight, always on point and managing to put some beautiful thereafter into it as well.

I thank the hon. Senator for bringing this Motion to close the business of this House today, of this Senate, and I give the hon. Senator the undertaking that we will continue the exercise and invite the hon. Senator to the table, so that it is not just a matter of the date, it is a matter of getting it right together. Thank you Mr. Vice-President. [Desk-thumping]

Mr. Vice-President: Hon. Senators, before I put the question permit me to respond to Sen. Mark. Sen. Mark, the piece of legislation that you were asking about that the Leader of Government Business proposes to deal with at the next sitting has been circulated and you could also find on the Rotunda website that we have.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 12.10 a.m.