SENATE
Tuesday, May 11, 2021

The Senate met at 10.00 a.m.

PRAYERS

[Madam President in the Chair]

LEAVE OF ABSENCE

Madam President: Hon. Senators, I have received requests for leave of absence from today’s sitting of the Senate from the following Senators: Sen. Dr. Maria Dillon-Remy and Sen. Anil Roberts. Hon. Senators, the leave which the Members seek is granted.

UPDATED COVID-19 SAFETY MEASURES

Madam President: Hon. Senators, I have advised the Leaders of the Benches and the Coordinator that in our continued efforts to provide a safe environment to conduct parliamentary business, COVID-19 safety measures have been updated by the Parliament specifically in this Chamber and in keeping with the World Health Organization guidelines. These arrangements are as follows.

Members are reminded that they have the option of speaking at one of the speaking booths, both of which are situated on either side of the Chamber. A Member who desires to speak from the booth may remove his or her mask only when speaking within the enclosure of the booth. Members are further reminded that should they choose to make their contribution at their desk, they will be required to keep on their face mask while so doing. You are not required to keep on your face mask when speaking in the booth. Members wishing to double mask and Members wishing to wear a face shield in addition to their mask will be permitted to do so.

A Member has the option of using either booth to speak as there is no booth

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exclusive to the Government/Opposition and Independent. Sanitization shall be undertaken after each use of the speaking booth. Therefore, in the event if a Member chooses to use a booth immediately after another Member, the Member wishing to speak must allow for the sanitization of the booth.

The number of persons permitted in this Chamber at any one time shall not exceed 28 which includes eight Government Senators, including the mover of the Motion, three Opposition Senators and four Independent Senators. Members are reminded that pursuant of Standing Order 9(1) the quorum of the Senate is 10 Members excluding the Presiding Officer.

To facilitate the COVID-19 safety measures previously referred to, we have provided suitable accommodation for Members throughout the Parliamentary Complex. These areas include the offices assigned to certain Members, the Members’ dining room, Opposition and Government caucus rooms and the meeting rooms on level two of the Cabildo building. Television screens or computers have been placed in these spaces so that Members can monitor the proceeding in the Chamber in real time.

In addition to those spaces, Members are free to utilize the various lounges throughout the building. Members are asked to ensure that all chairs and furniture placed in these designated spaces remain in position to facilitate adherence to the physical distancing requirements.

Hon. Senators, in the event that a division is called, Senators would be asked to return to the Chamber within a maximum of three minutes for the conduct of the division.

As a further precaution, the Office of the Parliament has installed air purifiers in the Chamber to inactivate air borne pathogens and microorganisms
such as viruses.
Hon. Senators, I thank you in advance for your co-operation.

PAPERS LAID

URGENT QUESTIONS
South-West Regional Health Authority
(Suspension of Patient Clinics)

Sen. Wade Mark: Thank you, Madam President. To the Minister of Health: Can the Minister give the reasons for the suspension by the South-West Regional Health Authority of its outpatient clinics with two exceptions?

The Minister of Health (Hon. Terrence Deyalsingh): Thank you very much, Madam President. Madam President, in times of emergency, including a global pandemic, one has to rationalize staff and use resources wisely. As we did last year, we have to free up staff to go to our COVID hospitals. This was done last year. It is being done again this year. But what we are doing is that we are ensuring our patients are not adversely affected. Emergency cases will be handled. We have re-engaged as we did last year with telemedicine, so we are keeping contact with our patients, and we are also doing automatic refills of prescriptions so our patients

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do not run out of medication. That is the reason and I welcome the opportunity.

**Sen. Mark:** For purposes of the public, can the Minister indicate in a little more detail how will the Government address emergency matters affecting patients, outpatients and persons who are seeking urgent medical treatment? Can the Minister elaborate on that?

**Hon. T. Deyalsingh:** Sure, I am happy to elaborate. As I said before, telemedicine. We keep in touch with them. And we also have access to our accidental emergency rooms where they will be triaged to make sure all the emergency or emergent cases will be handled.

**Sen. Mark:** Can the Minister indicate whether the Government has determined a time frame for this particular process to end?

**Hon. T. Deyalsingh:** That is solely dependent on the spread of the virus, which we know we cannot predict. But, if all people in Trinidad and Tobago adhere to the protocols and if all leaders, political and otherwise, lead people who believe in them to be responsible, we could cut the time frame significantly.

**Madam President:** Next question.

**Hon. T. Deyalsingh:** Madam President, could I suggest we take question three so we do not have to—

**Madam President:** Yes. Yes, Sen. Mark, I was going to ask if you would pose the next question—

**Sen. Mark:** To the Minister of Health?

**Madam President:** Yes, to the Minister of Health.

**Achievement of Herd Immunity**

(Time Frame for)

**Sen. Wade Mark:** Thank you, Madam President. To the Minister of Health: Given the ongoing spike in the number of positive COVID-19 cases and this country’s goal of controlling the virus through herd immunity, what is the time frame within
which same will be achieved?

**The Minister of Health (Hon. Terrence Deyalsingh):** Thank you very much. Madam President, herd immunity is about getting 60 to 70 per cent of our adult population vaccinated, that means about 600,000 to 700,000 persons. A Cabinet decision—I took a note to Cabinet to do just that. There are three variables however.

1. Availability of vaccines which we must have in commercial quantities, large quantities, which we are currently working on to good effect;
2. Public confidence in the vaccines; and
3. We need to get the UNC to stop undermining the Government’s vaccination plan.

That is the most important component to reach herd immunity. If the UNC, as led by the hon. Kamla Persad-Bissessar and her spokespersons, keep on undermining faith in the vaccines, we will not achieve it. So this is where we all need to come together again and provide leadership. However, if the Opposition works with us, we could administer 700,000 vaccines in this country to achieve herd immunity in about six to seven months based on deploying vaccines to all 104 health centers and 10 mass vaccination sites as I indicated in my Cabinet Note. So the plan is there but it calls for leadership, it calls for people to stop undermining the Government’s vaccination programme.

**Sen. Mark:** I would not respond to that nonsense. Madam President, may I ask the Minister whether outside of the Sinopharm vaccine monopoly, in terms of millions that have been ordered through a loan, can the Minister advise this Parliament whether the Government is exploring other avenues to ramp up the acquisition of vaccines, including Pfizer?
**Hon. T. Deyalsingh:** As I have said continuously in answer to these questions, we are in bilateral talks with Pfizer, Moderna. We are in talks with COVAX, we got 33,000 doses from COVAX yesterday and we are also in talks with the Africa Medicines Supplies Platform. We are exploring bilaterals, plus initiatives through Caricom with African medicine councils and COVAX.

**Sen. Mark:** Madam President, in terms of bilateral, can the Minister indicate where are we with those bilaterals, particularly in acquiring the Pfizer vaccine out of the United States? Can you tell us where are we? Are we near, are we far, are we, you know, what is the position?

**Hon. T. Deyalsingh:** We are in talks with Pfizer as we are in talks with Moderna and AstraZeneca. At this point in time there is no firm arrangement.

**Sen. Mark:** Minister, you have been saying that for years!

**Madam President:** Sen. Mark, Sen. Mark.

[Sen. Mark sucks teeth]

**Madam President:** No, no, Sen. Mark.

**Sen. Mark:** Sorry Ma’am, sorry, sorry.

**Madam President:** Yes.

**Sen. Mark:** I apologize.

**Madam President:** Sure, could you just take your seat for a minute, and allow for the booth to be sanitized before you pose your next question?

**Sen. Mark:** Thank you, Ma’am.

**Distribution of Government Grants**

**(System and Measures for)**

**Sen. Wade Mark:** Thank you. To the Minister of Finance: In light of the situation facing, facing thousands of laid off employees, can the Minister outline the system and measures that will be employed to ensure timely and equitable distribution of the various grants recently announced by the Government?
The Minister of Finance (Hon. Colm Imbert): Madam President, as indicated yesterday, the application process will be entirely online, especially in view of the COVID-19 restrictions and also the need to move towards fully digital transactions. It is expected that the online application forms will be available on the websites of the Ministry of Social Development and Family Services and the Ministry of Finance early next week.

Sen. Mark: Madam President, can the Minister indicate whether this will be done on a first come, first serve basis? And how would that—

Madam President: That is two. One question. Minister.

Hon. C. Imbert: No.

Sen. Mark: Can the Minister indicate how are we going to ensure that there is equity and not monopolization as we had in the last period in which a certain political party dominated that whole process?

Hon. C. Imbert: Madam President, it is very difficult to answer a question based on a fake and false premise. [Desk thumping] However, the Ministry of Social Development and Family Services will have the responsibility to determine those most in need who would get the assistance.

ORAL ANSWERS TO QUESTIONS

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Thank you, Madam President, there are four questions on notice for response today. The Government will be responding to all four.

Donation of COVID-19 Vaccines
(Details of)

98. Sen. Wade Mark asked the hon. Minister of Health:

As regard COVID-19 vaccines from the Serum Institute of India, can the Minister indicate:

(i) when will the Government be approaching the Government of India for a donation of 460,000 vaccines; and

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Oral Answers to Questions (cont’d) 2021.05.11

(ii) when will an order be placed with the institute for the supply of additional vaccines to meet the needs of the population?

The Minister of Health (Hon. Terrence Deyalsingh): In response to both parts of the question, the Serum Institute of India is currently unable to supply the COVID-19 vaccine under the COVAX facility or under any form of bilateral arrangement or entertain any such requests. The primary reason is due to the surge in COVID-19 cases and deaths in India for which, I think, we should all offer our condolences to our brothers and sisters in India. As of May 10, 2021, the Delhi Minister of Health, indicated that Delhi only had one day stock of COVAX in stock remaining and the Covishield has only three to four days of stock. So those are the reasons. Thank you very much, Madam President.

Sen. Mark: Madam President, can the Minister indicate what alternative measures are being employed to access vaccines—maybe from Korea—that is also responsible for the production of this AstraZeneca vaccine?

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

Sen. Mark: Madam President, in light of this crisis, as outlined by the Minister, re: the inability of the Serum Institute of India to supply further medicine, or vaccinations I should say, can the Minister indicate to this Parliament what concrete and urgent measures have been taken by the Government to address this vacuum that has now been created?

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

Sen. Mark: Madam President, the reality is this—

Madam President: Can I have a question please?

Sen. Mark: Yes, I am coming to the question, Ma’am. May I have a run up first?

Madam President: Do not run up, just, just launch the—

Sen. Mark: Okay, okay.
Madam President: Go into the question. You have two more.

Sen. Mark: Okay, thank you. Yeah, Madam President, can the Minister indicate specifically, in light of this development, has the Government revised alternative plans to ensure, Madam President, that the population is properly vaccinated having regard to the exponential growth and spread of the COVID-19?

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

Sen. Mark: Can I now move on to the next question?

Madam President: Yes.

Importation of COVID-19 Vaccines (Agent Responsible for)

99. Sen. Wade Mark asked the hon. Minister of Health:

Can the Minister advise whether Smith Robertson is the agent of the Government for the importation of the COVID-19 vaccines?

The Minister of Health (Hon. Terrence Deyalsingh): Thank you very much, Madam President. Madam President, this is another question that seeks to undermine faith in the country’s vaccination programme.

Over the last 20 years, it has been customary for the Pan American Health Organization to procure vaccines through its revolving fund on behalf of the Government of the Republic of Trinidad and Tobago. Further, since 1993, the National Insurance Property Development Company (NIPDEC), is the agent for the procurement, storage and distribution of vaccines on behalf of the Government. In this instance, the procurement of COVID-19 vaccines, whether from COVAX, the African council or any other arrangement as I have said ad nauseam, in the public domain, will follow the same traditional procedure and practice as stated.

Based on the above, as I have stated ad nauseam, no local distributor is involved in the importation of COVID-19 vaccines from COVAX, the African Council, or any other arrangement.

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Sen. Mark: Madam President, the only people who are undermining this effort is the Prime Minister and your Government, nobody else. [Crosstalk]

Madam President: Sen. Mark.

Sen. Mark: Yes, Ma’am?

Madam President: Can you take your seat please? This is the time for posing questions and seeking answers, not for making statements, okay? So, do you have a supplemental question to ask?

Sen. Mark: Madam President, can the Minister indicate whether the Government intends, with the advice of the WHO, to encourage private sector organizations to import or to access the provision of vaccines for emergency use given circumstances that we are all aware of.

Hon. T. Deyalsingh: Madam President, again, as I have stated ad nauseam, if the UNC would just pay attention and stop undermining the Government. I have said on multiple occasions—[Interruption]

Madam President: Sen. Mark, this is my second warning. Please, you have other questions to pose and I would like you to be in a position to so do. So can the Minister respond, you listen, and you can ask a supplemental.

Sen. Mark: Minister, continue.

Hon. T. Deyalsingh: Thank you very much. As I have said, ad nauseam, there may come a time, we do not know when, when local agents in any country may be able to purchase vaccines for commercial use. That time has not reached anywhere in the world as yet. Vaccine manufacturers at this point in time, May the 11th, 2021, are only dealing with governments or government agencies or trading blocs like Caricom, European Union. That is the state of play. So the question you are asking does not arise now. It may arise in the future.

Sen. Mark: Madam President, is the Minister aware of a statement made by the
CEO of Pfizer that that company has reached out to many developing countries to order Pfizer vaccine? Is the Minister aware of this—?

**Hon. T. Deyalsingh:** And that is what I just said—

**Sen. Mark:**—critical statement—

**Hon. T. Deyalsingh:** They are dealing with countries.

**Sen. Mark:**—and in Trinidad and Tobago—

**Hon. T. Deyalsingh:** They are dealing with countries.

**Sen. Mark:** Was the Government of Trinidad and Tobago contacted on this—

**Hon. T. Deyalsingh:** Yes, we have—

**Sen. Mark:**—matter, by the CEO.

**Hon. T. Deyalsingh:**—as I have stated publicly.

**Madam President:** Think. Sen. Mark, please take your seat. Minister please. Do not seek to answer a question that I have not deemed—

**Hon. T. Deyalsingh:** Of course.

**Madam President:**—relevant, okay. Sen. Mark, that question is not allowed. And I think you asked about two questions mixed up in there. So I think I will allow you one more supplemental to this.

**Sen. Mark:** Yeah, Madam President, the question I am posing to the hon. Minister is that, given the emergency nature of our situation, where citizens are in crisis, whether the Government is prepared to liaise with the WHO with a view to looking at that possibility of working with the private sector to access vaccines so that the population can be provided with same? That is the question I am trying to get clarification on from the hon. Minister.

**Hon. T. Deyalsingh:** As I have stated, ad nauseam, the Government of the Republic of Trinidad and Tobago has always been in bilateral talks with Pfizer. The Government of the Republic of Trinidad and Tobago does not dictate WHO
public policy. We are in talks with PAHO, WHO and bilaterals constantly. The issue that the hon. Member made—he said it himself—Pfizer was in talks with countries, and that is what we have been saying. They are not in talks with local distributors as yet at this point in time. They are the only dealing with countries or trading blocs like Caricom, United—European Union or other trading blocs. There is no access to vaccines at this point in time for the private sector. What we are doing is casting our net wide and we are very close with Sinopharm to procure large numbers of doses to do just what the hon. Member wants done, to vaccinate 700,000 persons in the shortest possible space of time.

Sen. Mark: Madam President, may I have a final question?

Madam President: Well.

Sen. Mark: I think I have a final one.

Madam President: Yes, all right. I will allow you one more question.

Sen. Mark: Thank you, Madam President, can the Minister indicate to this honourable Senate whether Trinidad and Tobago is being forced via this loan agreement with China to purchase over one million doses of vaccines from the Republic of China?

Madam President: I will not allow that question. Next question, next question.

Shortage of Foreign Exchange
(Measures taken to address)

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

   In light of a recent survey conducted by the Trinidad and Tobago Chamber of Industry and Commerce which highlighted a deepening shortage of foreign exchange in the market, can the Minister indicate what specific measures are being employed by the Government to address this situation?

The Minister of Finance (Hon. Colm Imbert): Madam President, the Central Bank of Trinidad and Tobago intervenes in the foreign exchange market currently
on a regular fortnightly basis by selling foreign exchange to authorized dealers in order to meet their customers’ excess demand, which is the gap between purchases and sales from the customers. Over the period 2015 to 2020, the Central Bank’s sales to authorized dealers amounted to US $10.564 billion. In January and February 2021, the bank’s market intervention totaled US $212 million. That is for the first two months of this year.

The Central Bank will continue its frequent dialogue with the authorized dealers to gain a better understanding of emerging developments in the foreign exchange market in order to improve the effectiveness, the appropriate sizing and timing of its market intervention programme. In addition to the Central Bank’s intervention, the Government has also been providing a US dollar foreign exchange facility for the public sector since 2017. This ensures that state enterprises and other businesses are able to access the required foreign exchange essential for continuation of their operations. Access to this facility grew from US $209 million in 2017 to US $575 million in 2020.

10.30 a.m.

As a result, the total intervention in the foreign exchange market averaged US 1.862 billion, over the period 2017 to 2020. This also includes the US dollar foreign exchange facility with the Export Import Bank of Trinidad and Tobago, which facilitates the allocation of foreign exchange to local manufacturers and exporting companies in Trinidad and Tobago. The Eximbank facility was initially established in 2018, with a ceiling of US 10 million and subsequently increased over the last two years to US 100 million.

By December 2020, the facility was fully disbursed to approximately 100 manufacturers with total export sales of TT $1.37 billion. This initiative supported an increased in export sales from 2018 to 2019 by TT 143 million or 11.7 per cent
increase in 17 sectors, including the food and beverage, building and construction materials, and packaging and plastic sectors.

In December 2020, Cabinet agreed to the extension of the facility for 2021 in the sum of US 100 million. As of March 09, 2021, Eximbank had accessed US 15 million of this facility.

Madam President, the Government has taken and will continue to take and pursue measures that will increase in inflow of foreign exchange in the country. These include, but are not limited to, the following:

- The Ministry of Energy and Energy Industries, working alongside major upstream energy companies with the aim of increasing production of oil and natural gas.

- Additionally, increasing the threshold of supplemental petroleum tax for small onshore oil producers to US $75 for fiscal years 2021 and 2022, in order to provide an incentive for small oil producers to invest in increased exploration and production.

- Pursuit of development opportunities for the introduction of green petrochemicals by substituting hydrogen in the natural gas process.

- The restructuring of Petrotrin into Trinidad Petroleum Holdings Limited and its subsidiaries whose oil exports, through Heritage Petroleum, are fetching much higher than expected prices.

- The introduction of a 12.5 per cent royalty rate on the extraction of natural gas condensate and oil in fiscal 2018.

- The establishment of the Trinidad and Tobago Trade Policy 2019—2023, which articulates as one of its primary objectives increasing the value and volume of non-energy exports of goods and services during the next three years.
**Sen. Mark:** Yes, thank you. Madam President, can I ask the hon. Minister whether the Central Bank and/or the Eximbank have established mechanisms to monitor the actual use of foreign exchange allocated to the private sector by both the Central Bank and the Eximbank? Are there mechanisms in place by Government to monitor how these scarce foreign exchange allocations are being utilized by the private sector? Can the Minister advise, Madam President, on this matter?

**Madam President:** Minister? Minister?

**Hon. C. Imbert:** I was wondering if he would repeat the question three times. The answer is yes.

**Sen. Mark:** Can you outline to this honourable Senate the mechanism or the elements of the mechanism utilized to monitor?

**Hon. C. Imbert:** The Eximbank reviews applications by companies to ensure that there is export potential in the allocation of foreign exchange to these manufacturers. That is how to Eximbank does it. And as you would have observed, Madam President, from the answer to the question, there has been an 11.7 per cent increase in the export of products, as a result of the Eximbank’s facility to manufacturers and exporters.

With respect to the Central Bank, the Central Bank gets regular reports, on a daily basis, of the allocation of foreign exchange to all of the customers of the commercial banks and monitors the proportionality and the distribution of foreign exchange to all categories of industry and makes appropriate adjustments.

**Sen. Mark:** Madam President, can I ask the hon. Minister, in light of the huge amount of foreign exchange being allocated, can the Minister indicate whether Trinidad and Tobago is enjoying a net gain in relation to what we are allocating and the increase in exports arising therefrom and what we are receiving back from that injection via the private sector? Is there a net gain in terms of increases in our
foreign exchange receipts or is there still a net loss? Can you explain?

**Madam President:** Sen. Mark, I would not—

**Hon. C. Imbert:** Once again—

**Madam President:** No, Minister—

**Hon. C. Imbert:**—I was waiting for you to say the question three times.

**Madam President:** Minister? Sen. Mark, I would not allow that question. You have one more.

**Sen. Mark:** Can I ask the Minister, through you, whether the Government has begun renegotiation of this infamous natural gas contract which has resulted in the Point Lisas estate and other players having been placed at a severe advantage as a result of increases in the gas—in the price rather of natural gas? Has the Government begun to renegotiate that arrangement to generate foreign exchange?

**Madam President:** Sen. Mark, I would not allow the question, but I need to point out that you do not need to repeat the question either.

**Hon. C. Imbert:** Exactly.

**Madam President:** You asked it. I would not allow it. Next question. That is it.

**Sen. Mark:** Madam—

**Madam President:** No, no. Sen. Mark, that is it.

**Sen. Mark:** That is my final?

**Madam President:** Yes. Sen. Seepersad.

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**Economic Commission for Latin America and the Caribbean (ECLAC) 2021 Report**

*(Details of)*

127. **Sen. Charrise Seepersad** asked the hon. Minister of Finance:

Given a 2021 report by the Economic Commission for Latin America and the Caribbean, ECLAC, which highlights significant financial losses to this
country as a result of transfer pricing in the energy industry, can the Minister indicate:

(i) what measures, if any, are being taken to recover said losses;

(ii) whether the Government is considering the introduction of legislation to guard against transfer pricing; and

(iii) if the answer to (ii) is in the affirmative, when will said legislation be brought to Parliament?

The Minister of Finance (Hon. Colm Imbert): Thank you, Madam President. It should be noted that the Inland Revenue Division has a unit dedicated to the auditing and monitoring of energy sector companies. These companies in the energy sector are monitored and audited by the Inland Revenue Division to determine whether their transactions are done at arm’s length, that is, whether transfer pricing is involved or whether the companies are in compliance with the Income Tax Act and the prices quoted for their products are consistent with world market prices.

If found to be non-compliant with the law, assessments are raised and penalties and interest charged. Accordingly, transfer pricing can be and is detected and challenged by the Inland Revenue Division under existing law. If the assessments raised by the Inland Revenue Division are challenged by the energy companies, then there is a process for objections and review by the Tax Appeal Board. It should also be noted that the Inland Revenue Division has several transfer pricing cases pending at the Tax Appeal Board. In fact, these cases make up the bulk of matters before the Tax Appeal Board and amount to billions of dollars in disputed assessments before that board.

Additionally, the Petroleum and Large Taxpayer Business Unit of the Inland Revenue Division, collaborates with the Ministry of Energy and Energy Industries
for the sharing of information on pricing and volumes of petroleum and natural gas and other related products, and profit sharing contracts—production sharing contracts for the conduct of investigations. During investigations, should information provided by the Ministry of Energy and Energy Industries be different, that is, the prices reported are greater than what have been furnished by the oil and gas companies in their returns, assessments can and are raised.

With respect to withholding tax, an analysis was conducted which identified fluctuations in withholding tax payments. Additional staff were engaged to better resource the International Tax Unit of the Inland Revenue Division in analyzing gross payments on furnished unaudited returns, and a number of companies were selected for further analysis. Companies that underreported or did not report withholding tax, can and are being assessed. The Inland Revenue Division has prepared a withholding tax rate sheet for placement on its website for general information.

ECLAC in its report focused mainly on loses occasioned by transfer pricing of natural gas exported as LNG. The report found that when the LNG was sold in the higher price markets, the benefit of the higher prices did not reach the Government. The higher LNG prices did not benefit the Government largely because of the long-term marketing contracts which referenced Henry Hub in the pricing of LNG.

With the advent of shale gas, Henry Hub has fallen to low levels compared to other pricing markets, such as Brent, Japan, Korea and the National Balancing Point in the UK. The findings of ECLAC were corroborated by Poten & Partners in the Gas Master Plan Report. Based on the findings of Poten & Partners, in that report, the Government of Trinidad and Tobago engaged the main shareholders, BPTT, Shell Trinidad and Atlantic Energy to improve in LNG netbacks to Trinidad
and Tobago. Arising from these negotiations, Government, to date, has received foregone revenue in the sum of $3.5 billion and a new improved pricing formula based on Brent, JKM and NBP was agreed for new LNG contracts.

The Government is considering the introduction of legislation to guard against transfer pricing and has since consulted with international and regional institutions to this end. The Government has considered proposals from the Inter-American Centre of Tax Administrations and the World Bank Group. The objective is to establish new policy and legal and administrative frameworks to regulate transfer pricing and to strengthen the Inland Revenue Division’s ability to monitor transfer pricing.

In the past, staff at the Inland Revenue Division, have participated in transfer pricing training conducted by the Inter-American Centre of Tax Administrations, and the Energy Petroleum Audit Unit has also been exposed to both local and international training in transfer pricing. In 2018, the Ministry of Finance hosted a World Bank scoping mission to identify and inform these policy priorities.

Subsequently, the Ministry explored the option of utilizing an approach similar to Jamaica. Discussions were held with the tax administration in Jamaica to gain a better understanding of the Jamaican experience. The approach that will be utilized for the introduction of a transfer pricing mechanism to complement what already exists is still to be finalized and the timing is to be determined.

**Sen. Seepersad:** Thank you, Madam President. Through you, Madam President, Minister, will the Government consider implementing an advance pricing policy where you fix transfer pricing over periods of time—I mean, five, two, three, whatever—as well as a procedure for monitoring transactions, establishing a reporting framework with actions and penalties for breaches of the agreement as well as establishing a dispute resolution procedure?
Madam President: Well, I do not know how many questions you have asked there, but Minister? I think you have asked three.

Hon. C. Imbert: I will try my best, Madam President.

Sen. Seepersad: Madam President, if I could just clarify. It is really if you would consider implementing an advance pricing policy? And I was just trying to elucidate on that.

Madam President: Sure. Minister?

Hon. C. Imbert: As I indicated, the Inland Revenue Division collaborates with the Ministry of Energy and Energy Industries to determine whether the prices that are submitted by the energy companies, in their tax returns, are consistent with reality. And if they detect that they are not, then they do an assessment and they charge penalties and interest. There are already several dispute resolution mechanisms in place, starting with objections where the taxpayers are allowed to object to an assessment, and go through a process and there are hearings. And then if at the end of that process, the taxpayer is dissatisfied, the taxpayer goes to the Tax Appeal Board.

With respect to advance pricing, I would have to seek advice on that. I cannot give you an immediate answer, but I thank you for the question.

Sen. Seepersad: Thank you. Madam President, through you, Minister, I also was wondering if the Government will consider requiring multilateral companies, particularly in the energy sector, to provide a master report every five years or so and this report will include things like: the financial affairs of the companies, including subsidiaries, as well as a statement of prices at which the commodity was sold in the international market—

Madam President: Sen. Seepersad, I think the Minister has gotten the—

Madam President: Yes. Minister.

Hon. C. Imbert: Thank you, Madam President. Under existing law, all a company is required to do is to submit its tax return and to declare its income and its expenditure. The idea of asking them to provide additional information by way of a report is quite novel and I would certainly explore the possibility of such.

Sen. Mark: Madam President, may I, through you, ask the hon. Minister whether the Government has abandoned, under the Petroleum Taxes Act, the use of the permanent petroleum pricing mechanism or committee to deal with prices both for natural gas and crude oil? Has the Government abandoned that very important mechanism called the permanent pricing petroleum committee?

Madam President: Sen. Mark, you are doing it again.

Sen. Mark: Sorry, Ma’am.

Madam President: You posed the question.

Sen. Mark: My apologies, my apologies.

Madam President: Minister?

Hon. C. Imbert: Once again, I was waiting for him to say it three times. The pricing committee is triggered by a report from the Inland Revenue Division. Based on my research, the Inland Revenue Division is already establishing prices based on collaboration with the Ministry of Energy and Energy Industries, and it has assessed energy sector companies as owing billions of dollars in taxes, which is making its way through the system and we expect some acceleration in the determination because of recent additions to the Tax Appeal Board, which should improve its capability.

Sen. Mark: Madam President, given the fact that Trinidad and Tobago has lost over $100 billion in revenue forgone through transfer pricing, can the Minister indicate whether the Government intends to approach these multinational
corporations with a view to recouping some of this $100 billion in moneys that we have suffered in loses through transfer pricing?

Hon. C. Imbert: Yes, Madam President. Am I required to answer that question?

Madam President: Yes.

Hon. C. Imbert: Thank you very much. I thank the Senator for asking it once. The question is based on a false premise. I do not know where on earth the Senator has gotten that figure of 100 billion from. And in the response to the question, I made the point that the long-term pricing agreements for LNG were based on Henry Hub. Even though after initial exports to North America, where the Henry Hub pricing mechanism is based, the LNG facility in Trinidad and Tobago started to export to other markets—South America, Europe and the Far East which had different prices. The long-term agreements are based on Henry Hub. So what the Government did, was to go to the companies and point out that the reference to Henry Hub was an anomaly and, as a result, the Government has already recovered three and a half billion dollars in revenue foregone. So we have done what you want us to do. That is a fake number.

FIREARMS (AMDT.) BILL, 2021

Bill to amend the Firearms Act, Chap. 16:01 [The Attorney General]; read the first time.

The Attorney General and Minister of Legal Affairs (Hon. Faris Al-Rawi): Thank you, Madam President. Madam President, I beg to move:

That a Bill entitled an Act to amend the Firearms Act—

Madam President: Attorney General, there is one preliminary issue that has to be dealt with before—the next stage of the proceedings.

Hon. F. Al-Rawi: I am sorry, Madam President, that is all that I have. I do not have a brief. [Crosstalk] Thank you, Madam President. Unfortunately, I did not
have the brief that the Presiding Officers have. I thank the hon. Vice-President. Thanks for your guidance.

Motion made: That the next stage be taken later in the proceedings. [Hon. F. Al-Rawi]

Question put and agreed to.

ARRANGEMENT OF BUSINESS

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Thank you very much, Madam President. Madam President, I want to thank you very much for assisting us during the last two weeks and ensuring that we have this sitting today. I want to thank you and the Clerk, the parliamentary staff and my colleagues, of course, in the Chamber and outside the Chamber.

Madam President, as you know, we have had, amongst ourselves, the three Benches, we have had almost daily discussions, some with your intervention, and I thank my colleagues, Sen. Mark and Sen. Richards for the work they have done. We have reached, as we have said to you, Madam President, quite a few agreements amongst ourselves, but the most important one for today’s sitting is that we have agreed that we will have the speakers as follows: The mover of this Bill, the hon. Attorney General, and two other speakers on the Government Bench, and we will have two speakers from the Opposition Bench and two from the Independent Bench. And at the end, Madam President, we have the greetings—the Eid greetings today, and we have agreed that we would not pursue any Motions on the adjournment and we intend to adjourn at 3.00 p.m. or before. Thank you.

Madam President: Thank you very much, Leader of Government Business, and may I commend the leaders of both Benches and the Coordinator for the cooperation that they have shown throughout this exercise. [Desk thumping] Attorney General.

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The Attorney General and Minister of Legal Affairs (Hon. Faris Al-Rawi):
Thank you very much, Madam President. Madam President, I now beg to move:

That a Bill to amend the Firearms Act, Chap. 16:01, be now read a second time.

Madam President, the Bill before us is 31 clauses long and it seeks to introduce the lawful mechanism by which non-lethal weapons of a particular type can be in the possession of persons who qualify for the—via the application process to the Commissioner of Police. This is the law to amend the Firearms Act—and I will explain why it is the Firearms Act in a short while—to allow for the carriage and use of pepper spray. And in getting to the particulars of the law we must, of course, manage who is prohibited, what the mechanism for application involves, what the terms and conditions of the application and the holding entails and then, of course, Madam President, the other circumstances that revolve around this.

It starts with, Madam President, the Firearms Act. And, as a matter of fact, as we look to the Schedule of laws to be amended, via clause 31, where we see the consequential amendments, it is important to note that there are four laws that specifically interact with this particular Bill. They are: The Offences Against the Persons Act, the Dangerous Drugs Act, the Domestic Violence Act, the Miscellaneous Provisions (Law Enforcement Officers) Act. But that there are also a few other laws that coordinate with this, in particular, the Children Act, sections 55 and 56 of the Children Act, in particular, as we treat with the law, as we manage it for children and possession that is proposed by this Bill. We are also looking, Madam President, at offensive weapons, under the Prevention of Crime (Offensive Weapon) Act, Chap. 11:09, and those two other pieces of laws squarely coordinate
So, let us get to the Firearms Act. The Firearms Act, in section 2 of the parent law, describes what a firearm is and a firearm is described as:

“...lethal barrelled weapon...or any prohibited weapon...”

A prohibited weapon is specifically defined in the Firearms Act to mean, and it includes:

“(c) any weapon of whatever description or design which is adapted for the discharge of any noxious liquid, gas or other thing;”

Pepper spray is, therefore, a noxious substance within the definition of a “prohibited weapon”. A prohibited weapon is included in a firearm description. That is why tear gas, for example, via a canister, is viewed to be a firearm because it is a prohibited weapon, because it discharges a noxious substance.

To allow for the deploying lawfully of pepper spray in controlled measures, we therefore have to amend the Firearms Act. In the Firearms Act, we propose, in clause 3 of the Bill, to amend the section on definitions, specifically to include a definition of pepper spray.

“‘pepper spray’ means any inflammatory agent which, when applied on the body of an individual may cause the mucous membranes in the eyes, nose, throat and lungs of the individual to become inflamed resulting in the immediate closing of the eyes, difficulty breathing runny nose, and coughing;”

And this definition of “pepper spray” is tied on to the fact that whatever is not authorized as pepper spray stands as a prohibited weapon. And that is to be found when one reads, in cross-reference, section 6A(3) of the Firearms Act. And if you go to section 6A(3) of the Firearms Act, Madam President, it says—as we have a

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consolidated version of the Bill circulated for all Members so that they can easily follow what is happening in these structures—6A(3) says:

“All pepper spray that is not approved by the Minister under subsection (1), is a prohibited weapon for the purposes of this Act.”

That is in clause 7 of the Bill.

So to make it clear, we are amending the Firearms Act. The Firearms Act has a definition of “prohibited weapon”. Prohibited weapon is a noxious substance, pepper spray is a noxious substance. Pepper spray is, therefore, excluded from the definition of “firearms”. Anything that is not permitted as pepper spray, in accordance with the Bill, is therefore a prohibited weapon and therefore remains unlawful. So that is the first point. What is pepper spray? How do we treat with it? And pepper spray is defined into the law in the amendments that we caused in clause 3 to the definition section.

Whilst we are on clause 3 in the definition section, permit me to say, that we are taking the opportunity to do some clean up to the Firearms Act. Wherever the term “President” is used in the Firearms Act, that means the Cabinet of the Republic of Trinidad and Tobago—because in accordance with section 80 of the Constitution, the President is not acting pursuant to the advice or in own discretion, and therefore, “President” simply means “Cabinet”, and therefore, we have taken the opportunity to harmonize the law by replacing “President” with the description of “Minister”, meaning the Minister of National Security. That is extremely important, because we contemplate, in a couple of months ahead of us, further amendments to the Firearms Act, to treat with issues including control deliveries: how you track weapons of war, how you engage in intelligence that converts to evidence and, therefore, we must anticipate the move of the law.

11.00 a.m.
Madam President, we are in a clause 4 amending Part I of the law, and including into the sectional description the possession, sale and transfer and use of pepper spray in addition to firearms.

Clause 5 of the Bill seeks to amend section 5 of the Act, and includes a very important amendment. In this amendment we are saying:

“For the purposes of any prosecution for an offence under this Part…”
—and that Part is the possession and sale of firearms and pepper spray—or section 16B, which deals with the list of who is prohibited from holding pepper spray, or section 16C, which deals with the obligation to return pepper spray as a prohibited person, in section 17A subsection (2), which deals with the use of pepper spray for self-defence purposes only, or in section 40A, where we deal with the custody of pepper spray—where you keep it in possession. And lastly, under Part IV, which is for the importation of firearms, we say in this important amendment to section 5, that being in possession, being found, having under control, having with him anything found, the firearm, et cetera, including pepper spray, shall be deemed to be in possession of such firearm, ammunition, or pepper spray, in the absence of lawful excuse. This is a standard feature of permitted constitutional reversal of burden. Where you are deemed to be in possession, the obligation is placed upon you to show the lawful excuse as to why you are in possession, in this instance, of the pepper spray. Lawful excuse has received a generous interpretation in the courts of the Republic of Trinidad and Tobago and, indeed, from the Privy Council and that law is very well settled and very clear. It is not offensive to section 5 of the Constitution in any event.

Madam President, we cause an amendment to section 6 of the Act, via clause 6. In that, we are looking at including in the list of law enforcement persons, estate police, special reserve police, municipal police, or any other person approved by
the Minister, to have in their possession pepper spray for the performance of their functions. That is necessary because the first part of section 6 deals with police, defence force, et cetera, having prohibited weapons and also firearms under their control, military grade, et cetera. It is therefore necessary to contemplate the lawful use of pepper spray, more than in the category set out in section 6(2), which is police officers, defence force, et cetera. We seek to now supplement by adding on estate police, SRPs, municipal police or any other person. This is to allow for the deployment and continuation of the non-lethal strategies of law enforcement operation.

Madam President, I turn to clause 7 of the Bill. Clause 7 of the Bill seeks to include section 6A. I have just referred to it a short while ago. Section 6A, a new section says:

“For the purposes of manufacturing, production, importation, exportation, diversion, sale or distribution of pepper spray”—and we have used that terminology because it is used elsewhere in the Act and, therefore, we have kept the same architectural language, that—“the Minister may by Order approve the type, strength, volumetric content of pepper spray permitted in a canister.”

It is here where the Scoville Heat Index or the Unit Index comes into operation, and the tolerable limits of the type of pepper spray that is used falls into analysis. The recommendations that we have received come from entities, including the OLEP Agency, the Office of Law Enforcement Policy, and the Minister of National Security therefore has the prescriptive power to describe what, in terms of content, volume and mechanisms for deployment, will be approved by way of a simple order, in keeping with the spirit and content of the Firearms Act.

We say that in the new section 6A subsection (3):

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“Any pepper spray that is not approved by the Minister...is a prohibited weapon...”—and that is where we tie back to the definition section in the parent law.

Madam President, we provide in clause 7 also for the inclusion of an application for or renewal of pepper spray, whether it is the import permit, or the possession or manufacture permits. We say here, and let me explain this, the intention is that a person will present himself or herself to the police station, fill out a form indicating the parameters for the application. In this instance, a person may be an adult over 18 years of age or, as is recommended and is here for discussion, a child of 16 years and above. That certainly is an issue which we will entertain in debate here today. You fill out this form, you give it to the police officer in charge of the station. A preliminary form of checking is done, but very importantly, that form pegs on to—[Interruption]

Sen. Richards: Thank you. Through you, Madam President. I just want the Attorney General to explain in terms of policy, why is there the manufacturing aspect included in that clause? Thank you.

Hon. F. Al-Rawi: Sure. We have scorpion pepper in Trinidad and Tobago and, therefore, it is reasonable that we not only export our scorpion pepper, but we have the ability to make the pepper spray as well. So why not include the local manufacturers, if it can be managed, and that is the reason for manufacture locally, because we have some of the hottest pepper in the world and, therefore, can in fact create an industry of manufacturing instead.

Sen. Richards: Thank you for your explanation. Is there going to be included in the regulations by the Minister specifications for manufacturing, standards, et cetera?

Hon. Faris Al-Rawi: Of course there will be, yes. One of the reasons why this law
took a little while to come forward is that we had to go through all of the angles of approach, from manufacture to importation, to possession, et cetera. So I am explaining the process now, Madam President, with your leave.

We are saying that this person will present to the police station, the police will go through the exercise. The real power of the law is caught in the new section 6C. And here is what 6C says in the context of clause 7:

“6C. Any person who, in applying for a Pepper Spray Import Permit or Pepper Spray Permit under section 6B, makes any statement or gives any information which to his knowledge is false, or in any material respect misleading, commits an offence...”

In other words, when you are filling out the form at the police station, if you lie, if you tell an untruth about your convictions, your charges, your circumstances, you commit an offence. So it is intended that you will present at the police station. You will form that bond and nexus with your local police. They will receive your forms. There will be an exercise of consideration. You will swear that you are telling the truth, because now you are under penalty of the law. If you do not tell the truth, you are, therefore, committing an offence and liable to conviction on summary conviction, and on indictment to serious consequences.

What this then allows is that you will take the permit and go to where it is sold. So it is a two-step authentication. The police give you the permission. You swear you are telling the truth, you are not a prohibited person, et cetera, and then you present at the location. It may be a pharmacy, it may be a firearms dealer, and that is where you give them. It is equivalent to a prescription. The same way you go to a doctor and you get a prescription, you present at the place where it is sold, and you are dispensed, and the recordkeeping is kept. That allows us to separate the permission giver from the person who sells and, therefore, provides a very safe
network for managing the information and knowledge of who is permitted pepper spray.

Madam President, we then turn to clause 8, which as I said earlier, replaces “President” with “Minister”, and you will see several instances of that across the amendment to the Firearms Act.

Madam President, I turn to clause 9. Clause 9 deals with the offence in relation to selling or transferring of pepper spray. Transferring of pepper spray is a very important concept, because you are not permitted, if you are the holder of the pepper spray, to give that pepper spray to someone else. Of course, the provision of lawful excuse applies, in self-defence, in other circumstances. Again, the Firearms Act has been the subject of significant judicial interpretation, and this law is quite well settled.

We say, Madam President, next in relation to clause 10, where we insert a new section 16B, this is the mechanism by which we decide who is going to be prohibited from having pepper spray. Effectively, there are three categories of prohibited people: No. 1, people who are described in the Schedule to the Firearms Act; No. 2, people who are described in the Schedule to the Bail Act; No. 3, people who are the subject of certain mechanisms under the Domestic Violence Act. And we say, Madam President—and we have thought this through. We are willing to listen. I have seen the recommendations coming from the Law Association, and I wish to distinguish our point of view from theirs—we are proposing in the law that a person who is charged and a person who is convicted, is a prohibited person for the following matters.

If we look to the Schedule of this particular this Act, the Firearms Act, and the Schedule is found in Act No. 19 of 2019. If I remember the number correctly, that is the Bail Act that we did, the first one, not the one that the UNC defeated for
automatic firearms, the first one. We seek to introduce the Schedule to this law, and this is: Prohibited persons, it is the subject of clause 27 of the Bill, Offences Against the Person Act, shooting or wounding, inflicting injury, attempting to choke, using drugs with intent to commit offence, administering poison, grievous bodily harm, offences of burglary, offences of kidnapping, offences under the Trafficking in Persons Act, dealing with children, inciting, et cetera, offences under the Children Act. We deal with offences under the Trespass Act.

Why have we selected charges? Because a certificate of character is a document which evidences convictions which you have. The story in Trinidad and Tobago is that there are a number of people awaiting the trial process, who have charges, in some instances, multiple charges, and from a risk perspective we are saying, we do not want to only go to convictions, knowing that there are dangerous characters on the outside who with a charge ought to be distanced from the possession of pepper spray. It is a policy decision taken by the Government. It is borne from experiences in the world that we have looked at. If one looks at the experience in Denmark, where they initially granted pepper spray and then they revoked it. The story in Denmark involved some of these considerations.

We also include amendments to the Schedules to the Bail Act. The specified offences in Part II of the Bail Act are critically important here. Again, for charge or conviction. If you are in Part II of “Specified Offences”: anti-gang; offences against the person punishable by a term of imprisonment for 10 years or more; Dangerous Drugs Act; the Kidnapping Act; sexual offences against a child; offences of sexual offences punishable by a term of imprisonment of 10 years; Anti-Terrorism Act; Trafficking in Persons Act, with a charge of over 10 years potentially; offences against the Firearms Act or any attempt to commit, we have said as a matter of policy, if you are on a charge for any of these matters, you
ought to be considered a prohibited person.

Now, let us deal with the Domestic Violence Act. The Domestic Violence Act is a critical underpinning of law for protection of the most vulnerable in domestic circumstances. As you know, Madam President, we amended the Domestic Violence Act in a very significant way, at the end of the last Parliament. That is up and running. You can gain your Domestic Violence Protection Orders at the police station at midnight on a Sunday. There are some significant positions. I am pleased to say that electronic monitoring bracelets are now being placed, by virtue of court orders, for the first time in this country, so there is a significant operationalization. [Desk thumping]

We recognize that domestic violence is a “he say/she say”, with very dangerous consequences. So we have it as a policy, and you see it in clause 10 in the section 16B subsection (2). We have said if you are the subject of an undertaking, an interim order or a protection order under the DV Act, you are prohibited from obtaining pepper spray, unless a court determines otherwise. Because usually in the domestic violence scenario, you will have one person against another person—let us use the example of a husband and wife—and very often the domestic violence application and the undertakings that are given, are cross undertakings: Husband against wife, wife against husband, both of who may be excluded from the pepper spray by virtue of the undertaking breach, or merely being the subject of domestic violence proceedings.

As a matter of policy, we have recommended that the court consider the propriety of possession of the pepper spray. The court may well consider, by way of application on behalf of one of the persons before the court, that there be an exception, and that somebody be permitted the use of the pepper spray. For instance, it may go along with keeping distance, et cetera, in the usual injunctive
senses. So we have left that to judicial discretion.

The Law Association recommended to us that we reconsider this. They said that there is innocence until proven guilty, that they wanted—their recommendation was that only people convicted should be excluded from possession. We respectfully disagree with the hon. members of the Law Association. The time for Trinidad and Tobago to be a little bit more careful, while we break the backlog, while we move to indictable offences disappearing, et cetera, preliminary enquiries in respect of indictable offences disappearing, we have an obligation to allow people a fighting chance.

Madam President, I would like to underscore, and this is out for public consumption right now, that we have proposed a number of far-reaching amendments to laws, by way of proposed Bills. There are three proposed Bill out in public circulation now from the Office of the Attorney General, to treat with the scourge of crime, in particular against the most vulnerable, that is our children and our women, and this law is intended to run in tandem with the structures.

Madam President, we say that if you are the subject of prohibition, and you are found with pepper spray, that that is an offence. We say, and the Law Association made a subject of comment in relation to clause 10, which is section 16C, as in “Charlie”. They have asked us to consider the circumstance where you may be incarcerated, under an obligation to return the pepper spray, but cannot. Therefore, we will look at that particular provision to see if we should include a lawful excuse for not returning it. For instance, “I was picked up and jailed, and I could not return it within seven days.” That is an easy tweak that we can have a look at, as we entertain the discussions coming from hon. Members in this House.

Madam President, may I ask what time is full time?

Madam President: You finish at 11.37 and 11 seconds.
Hon. F. Al-Rawi: Thank you so much. Madam President, I turn to clause 11. Clause 11 of the Bill allows for a Pepper Spray Permit to be granted by the Commissioner of Police or such officer authorized by him. Why? Under the Firearms Act, only the Commissioner of Police has the power of granting an FUL, a firearms user’s licence, or an FUEC, an employee user’s licence. We, therefore, contemplate the delegated responsibility, and we have had to include that an officer authorized—in this case, multiple officers across all the divisions, at all the stations.

Madam President, we seek to build a network of understanding between the Trinidad and Tobago Police and the residents and persons living near the police stations. Why? We want people to present at the police station. We want them to describe the circumstances as to why they believe they need pepper spray. Are you the subject of a domestic violence situation? Do you feel threatened? Are you vulnerable? This provides for an important information-gathering exercise and, particularly, because we are digitizing, and have digitized in some senses the Trinidad and Tobago Police Service, the electronic record is therefore available across stations. This now gives an important community to police connection, which allows for better policing and a better chance at circumstances of discovery and enforcement.

Madam President, we, of course, allow the Commissioner of Police to be satisfied and, again, this is intended to be linked to the provision of telling the truth, making sure that your application is truthful, make sure that you do not trip the law by an offence of not telling the truths. We allow in the exercise—and this is intended to be a very short exercise. This is not intended to be any lengthy exercise for approval—the Law Association has recommended that we put a time frame into this exercise. We respectfully disagree with that approach, because the
subject of judicial review is a large one.

We have allowed for the appellate process, if you are denied a Pepper Spray Permit to go before the Firearms Appeal Board and, therefore, we have a due process consideration here. But we intend for this to effectively be a fill out the form, a verification, a swearing of the truth, and then the permit is answered. If you are found to be untruthful, you are in deep trouble in relation to this particular point.

Madam President, if I turn to clause 12, that is where we deal with the insertion of a new section 17A. Here is where we put that an adult, i.e. a person over 18 years, may receive pepper spray or—and we welcome the views of hon. Senators:

“in the case of child who is sixteen years of age and over, the parent, guardian or person with responsibility for the child has given written permission for the child to be in possession of pepper spray.”

Why? Obviously we contemplate that there will be children—young women in particular—who are the subject of fear and intimidation. They may wish to be in possession of pepper spray. We are putting the person with responsibility for the child, with the obligation to speak to the permission. We are also holding to the provisions of sections 55 and 56 of the Children Act, where a parent is made liable for a child’s charge. That is an important position to again bind the concept of parental responsibility. Very often in this country, that is a subject of great concern.

I can tell you in the Cabinet we had significant discussions in relation to the child issue. There were proponents for and against lowering the age, certain circumstances. It is certainly going to be a hot topic for discussion. The Parliament, the Senate as the coordinator of this Bill, I am open to receiving the
recommendations of my learned colleagues in this Chamber.

Madam President, we then allow, very importantly in 17A subsection (2), the following:

“(2) A person authorised to purchase, acquire or have in his possession pepper spray, shall only use the pepper spray in self-defence.”

This is tied on to the use of pepper spray against law enforcement, which is why in the provisions of clause 31, we are amending the law enforcement protection legislation. So that if you use pepper spray in the commission of a crime, if you use pepper spray against law enforcement, that there will be significant consequences to be met, that you would have to consider carefully that you are not allowed.

Now this goes back to the international discretion. I can tell you, Madam President, that we looked at a number of jurisdictions in coming up with this law. Madam President, we looked at the following jurisdictions in particular—and if you permit me to put it on the record. We looked at the United States, where pepper spray is not in all States permitted, Brazil, where it is prohibited, India, where background checks in some States allow. We looked at Malaysia, only for self-defence, and a permit required; Singapore, not permitted, Ireland, not permitted; Denmark, where it was permitted and then they repealed the law; Switzerland, where you must be over 18 years with a permit; France you must be over 18 years with a permit; Italy, you must be over 16 with no criminal record; Austria, where it is classified as self-defence; Canada, where it is not permitted; Australia, where it is not permitted, except Western Australia in limited circumstances; New Zealand, where it is permitted with a permit; Greece, where it is not permitted; Jamaica where it is not permitted, as underwritten most recently in their Future Services Limited v the Attorney General 2011 case; Spain, where you must be over 18 years; UK, where it is not permitted, and I stick a point here.
In the United Kingdom in 2012, there was an unsuccessful attempt by way of petition made to the UK Parliament on this matter. The argument then was that crime was rising, law-abiding people have no means of self-defence. The proponents argued it was unacceptable and needed to be changed. The petition was against launched, but it has failed on several occasions in the United Kingdom. Spain, where it is permitted; Holland, where it is not permitted. Madam President, the Denmark experience as I have mentioned before is quite interesting. Where it was allowed, and then because of the use of pepper spray against law enforcement in particular, they banned pepper spray in the context.

This law, as we propose it, actually contemplates the recall of pepper spray, because the permitting of pepper spray by way of this provision can be recalled in the similar context to any licence for a firearm, for instance, in a state of emergency, other circumstances, et cetera. So we have built into the amendments to the Firearms Act, a living, breathing structure that allows for flexibility in terms of law enforcement, in terms of utilization, the giving of permits and the revocation or suspension of permits as well, or the call in.

Clause 13 treats with the Commissioner of Police. Exactly the point I was referring to, the revocation of any licence, certificate or permit. It is here that we amend section 21 of the Act to allow for us to consider where this law is going to take us. Now, I would like to say, Madam President, there has been a lot of talk about pepper spray, in particular by the Opposition, who had five years and three months to amend the law and did not amend the law. They did not amend the Domestic Violence Act. They did not bring about the Family and Children Division, the Criminal Division. They did not amend the Firearms Act to allow this.

This Government indicated quite early in its day that we would do
interrogation of the law. We would looked at how it would be operationalized. We would look at two-step authentication, who permits, who distributes, what records. We would look at the consequential laws to be amended. We would look at the building of relationships with the community and the police service, and bring this in. But in this understanding of the amendment of this law, I would like to say that this is a double-edged sword. It has always been one. As a policy consideration, we indicated very early the use of non-lethal structures. Commissioner of Police has unleashed that very commendably into law enforcement as well, but in the round I am saying that we must be conscious of the need to revoke permits at particular occasions, or on particular occasions.

We have amended in clause 14—we amend section 21A, which is to include the appellate process. A person who is aggrieved may apply for relief to the Firearms Appeals Board. We in clause 15 seek to maintain a register. In this register, we are taking the opportunity to clean up the firearms register at the same time as creating a pepper spray register. Again, we are relying upon the heavy push to digitization in this country, in particular the digitization of the Trinidad and Tobago Police Service. Why? We have digitized the Judiciary. The DPP’s Office is nearly fully digitized. The Attorney General’s Office is digitized. The Public Defender’s Office is digitized. Road Traffic and Enforcement is digitized. Licensing Division is digitized. The traffic wardens are digitized. The demerit points is digitized. We have done in five years, now six years, what has been spoken about for 40 years in this country. This is not a boast, it is to tell people in Trinidad and Tobago to have faith that with commitment to operationalize, that we can receive the relief that we require.

Madam President, we in clause 16 allow for the call in of pepper spray by the amendment to section 22. The Commissioner of Police at any time he considers
it necessary or expedient, to safeguard the safety of the public, et cetera, can do that by way of Gazette.

We then turn to clause 18. Clause 18 allows us to specify under special provisions in section 23 of the Act, that the holder of the firearm licence or the pepper spray selling, distribution, manufacture, et cetera, must do so at defined locations. This is so that you are not selling pepper spray anywhere and everywhere, so that it ends up in the hands of the wrong people.

We are fighting as a government without the support of the Opposition the battle of heavy weapons. We have tried on many occasions to treat with this from a bail perspective. We are on our own in this country, without the support of three-fifths requirements that the Opposition could give, but just will not give, for whatever reason they promote. We must contemplate that in the structures of this law as well, because I would like to say, just plainly and simply, this Government appears to be without any support from the Opposition on most occasions when it matters in critical ways.

11.30 a.m.

And therefore, we must think as broadly as we can. We must push for the survival of the people of Trinidad and Tobago, whether it is in COVID circumstances or pepper spray and therefore allow for the flexibility of structures to operate.

Madam President, it is here in clause 18 that we deal with the location of and sale, et cetera, of these positions. Madam President, we provide in clause 19 in the amendment to section 25 that you must have the sign in significant display where you are selling this. Say for instance, it is at a pharmacy where the prescription comes over the counter and there is a record, exactly as narcotics are sold over the counter by way of prescription, that the sign of authorization must be prominently

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Clause 20 amends section 26 which is the keeping of records. And it is in this context that we contemplate the digitized environment and the keeping of records, so you know who was sold, who returned, because the pepper spray is contemplated if you lose it, if you have it stolen, if it has expired, there are mechanisms set out in the Firearms Act as amended here which tell you, you must present to the police station if it is lost or stolen, you must make a report, you can apply for another one provided that the report is made. The canister that is sold to you will have a number and therefore we know who it has been dispensed to. These are not impractical things to do in a digitized environment. They are quite easy to do. So a simple barcode, a simple QR scanner, can easily pick up what is sold to who so that you, are in the circumstances, aware when the event happens what has gone on in the situation.

Madam President, we allow for an amendment to Part III under “Power Of Search To Obtain Information”, et cetera, In section 27 of the law—the parent law. Clause 21 allows for:

“The holder of a licence, or certificate or Pepper Spray…who is…authorised to carry…”

—it when he is in a public place, carry the certificate allowing him or her to have that pepper spray and, of course, it allows the Trinidad and Tobago Police Service to ask you to show it.

Madam President, we seek to amend further in clause 22 the provisions of the regulations. We are taking the opportunity to amend the regulations upwards.

**Madam President:** Attorney General—

**Hon. F. Al-Rawi:**—or I would say—

**Madam President:**—you have five more minutes.
Hon. F. Al-Rawi: Thank you so much. I will say, of course, in relation to manufacture, diversion, et cetera, there will be further recommendations. The regulations in respect of sale and distribution, what happens right now, the pharmacies, for example, will apply to be pepper spray dealers. They will be authorized after the security checks, et cetera, happen. Their sign goes up, they import, the shipment arrives, people present at the police station, the police station the application process happens, you build the relationship of community to police, the circumstances are aware, you collect your permit. Under penalty of law if you have not told the truth, you are not a prohibited person, you are allowed to have that permit, you turn up at the place where it is sold, they dispense it to you, and that structure operates in these circumstances.

We have amended the sale, the storage, the fee, et cetera, in the regulations. You will see, Madam President, clauses 22, 23, 24, 25, 26, all of which amend the regulations. Clause 27 sets out in the Second Schedule what I referred to earlier, the class of prohibited persons, which ties into the Second Schedule of the Bail Act which ties into the Domestic Violence Act as well.

Madam President, we had in clause 28 to treat with the regulation positions in the context of the fees, et cetera, how we are treating with it, what type of records are to be permitted. You will see that in clause 28 the recommendations there in specific form in the addition of the new section 17A through D, et cetera. And then, Madam President, we amend the Third Schedule to allow for the fee. Now, the Law Association asked us, why only $50 for the application fee? That was the policy. It was not intended to put people outside of the permit, and we wanted to quite simply have this thing available and not out of reach of any person. That barely covers the transactional cost, et cetera.

Clause 30 deals with the transitional provisions and clause 31 treats with the
consequential amendments. I have dealt with the consequential amendments but clause 30, transitional, we are saying, Madam President, if a person has in their possession pepper spray prior to the coming into force of the Act, they have six months to apply to the Commissioner of Police, authorized by him as the case may be, for a pepper spray permit. This is an important provision because we are aware that people have pepper spray in their possession. It is an open statement by many and we understand that. So we are allowing a six month bring-in provision to allow for this to happen.

I am minded to ask the honourable Senate to allow us to put an extension of time frame into this if necessary so that we can amend it by way of order. Madam President, I would like to say to Trinidad and Tobago, the advent of pepper spray is a significant position for this country, but it is not the panacea to all ills. This is in the structure of significant reform by this Government, the Family and Children Division, the domestic violence amendments, the Children Court, all of the structures of amendment, the criminal division that we have done. It took us time to carefully consider the structures for amendment. The proper place for this is, in fact, the Firearms Act. We look forward to the submissions and recommendations of our learned colleagues in this House, and in those circumstances, Madam President, I beg to move. [Desk thumping]

Question proposed.

Madam President: Sen. Lutchmedial. [Desk thumping]

Sen. Jayanti Lutchmedial: Thank you, Madam President. Madam President, it is—I think it is most unfortunate that at the height of an outbreak of this pandemic when we are telling everyone to stay at home and not leave their houses that the Members of this House, the Parliament staff, the support staff, and all the other auxiliary staff have to come out and debate a Bill when the UNC is on record for
asking for this, on the parliamentary record, since 2017. It is a matter of record that on the 15th of September, 2017 and again of the 24th of May, 2019, questions were raised by the UNC in the House asking for the Government to consider non-lethal weapons. This is, of course, in response to the rise in the number of crimes—reported crimes—against, particularly, women in our society.

Policy positions are meant to address societal problems and there is a general public policy framework that one must go through and it involves a lot of consultation. Again, it is very unfortunate that this Bill is brought here today and we do not know what was the level of consultation because all we kept hearing for year after year after year is that, we are looking at it, we are looking at it. I have heard one reference to a recommendation from OLEP, which is a unit within the Ministry of National Security. So they consulted with themselves. But outside of the Ministry of National Security and the Office of Law Enforcement Policy, which is a unit with the Ministry of National Security, who else was consulted on this matter? And I am very concerned about the level of consultation specifically because I vehemently disagree with the Attorney General that the place for this piece of legislation, so important, is really where—it is Firearms Bill, in this Firearms Act. I think that if there had been adequate consultation, the Government would have heard many varied opinions and would have heard that really the FUL process that we are all somewhat familiar with, that has been around for some time right now, is not the same process that we want to follow for something as important as this pepper spray at this point in time.

We have to—a greater level of consultation, you would have able to critically examine that FUL process and understand that in planting this pepper spray permit and pepper spray import permit into this Act may not generally be the right way to go. You see, the firearms regime in this country, Madam President,
has been a colossal failure since Independence, and it is characterized by two things, allegations of corruption and lengthy delays, not to mention the delays in having appeals heard before the Firearms Appeal Board which will now also apply to pepper spray.

The Commissioner of Police is on record as saying, he is trying to fast forward this process, I think in 2018 when he assumed office he said that he met something like 13,000 outstanding applications for firearm user licences. We are adding into that process now applications for the Commissioner of Police to consider pepper spray, a non-lethal weapon.

Madam President, it is also a matter of public record that the Commissioner of Police stated that many persons had to reapply of those 13,000 people for their firearms user licences because of the length of time the process was taking; the information was no longer relevant.

The rules that apply right now to this process, they are quite archaic. You know, you are dealing with psychometric tests which has a number of limits. Is that really the same process that you want to take up and look at and use when you are dealing with something like pepper spray? All of these views and opinions ought to have been solicited in the last four years [Desk thumping] and those things should have been done by the Government. They come here to complain about the Opposition does not support them and they have to think broadly and think broadly. What have they thought broadly about? Their thinking on addressing crime is nauseatingly restricted to restricting bail. So that everybody who is accused and innocent or set up by the police, by police officers who might be errant police officers or corrupt police officers, everybody must pay the price by sacrificing bail because of the Government’s failure to address crime in this country. And then they will come here and say that, they are thinking broadly so
that they can get around the Opposition because the Opposition will not support them. Everybody must suffer by a restriction on bail because they lack the intellectual capacity to properly address the crime situation in this country. [*Desk thumping*]

So you want to talk about the prevalence of high-powered weapons and the illegal importation of weapons is something that you must also consider with peppery spray because people will also illegally—could probably illegally bring in pepper spray and sell it. But you come here to lament about the fact that the Opposition did not support the restriction on bail for high-powered weapons, but nobody will tell us, nobody will tell us what they are doing to secure the south-western border where all the illegal weapons are coming through [*Desk thumping*] together with P1 variants. Nobody will tell us about that but you want to restrict bail. Nobody will tell us why it is that the Opposition had to expose the obscene neglect of our CCTV camera system before they started to fix them and become operational again when the issue of crimes against women and the issue of the failure of the Government to address those crimes was being raised in the public domain.

So it took a public outcry, it took marches, it took, you know, vigils and so on to get this Bill here today after four years. And what has happened in those four years? Well, according to CAPA, the police statistics, rape, incest and sexual offences is the categorization that they have put many of these offences under. From 2017 when the Opposition first raised this in the House to May 2021, the current statistics we had 2,078 reported cases of—that categorize as rape, incest and sexual offences. Of those 2,078 cases, 2,078 lives destroyed. And if you think rape is not murder and it does not destroy a life, well you probably never met a rape victim. But of 2,078 lives forever damaged, hurt, people trying to recover, we
have had 587 detected. Now that is roughly in the last five years, four years and some months we have a detection rate of approximately 28 per cent, and that is unacceptable. So, I agree with the Attorney General, this is not the panacea at all for the situation that we face right now.

Now, again as I said, public policy decisions and why you have consultation, it is aimed at solving major societal issues. The Attorney General made reference to Denmark, and I came across an article as well from the BBC when it talked about the pervasive rape problem in Denmark. It was written in March 2019, and it cites several studies, including studies from Amnesty International, that said that Denmark had one of the highest prevalence of sexual violence in Europe, and that is actually one of the countries that has now an absolute ban on pepper spray. Compare that to the Czech Republic in which pepper spray, I think, is actually quite legal. The Czech Republic has approximately, and some of the statistics, verifiable statistics, that I was able to get was old as maybe 2015. But back then, when the pepper spray was legal, they had about 5.7 cases of rape per 100,000, whereas Denmark had about 18.5 per 100,000.

So the issue of pepper spray and the Attorney General said that the Opposition has said a lot about it, and yes we have said a lot about it because we recognize—that there is empirical evidence out there to support the fact—that non-lethal weapons can address rape culture and could also be a deterrent.

Apart from that when you look at our detection rate, what pepper spray can actually and also non-lethal weapons could actually help address is really the apprehension and detention of an offender, because clearly at 28 per cent of detection we have a serious problem with arresting and finding people who are committing these types of offences. But even for inchoate offences, pepper spray can assist. It really does give someone a fighting chance of survival, but it also
gives, you know, law enforcement the opportunity to apprehend an offender or potential offender or a person who is in the process of committing an offence.

Madam President, it pains me to read every day in the newspaper—Yesterday there was one of a woman being attacked in her bathroom while five children were locked inside of her house. Today, I see another one where someone who lives obviously I believe with, you know, a sibling who may not be—I do not know—woke up in the middle of the night, I do not want to say too much, woke up in the middle of the night finding herself being sexually attacked by a sibling; a woman in her 60s. These are some of the things why we have to allow people to protect themselves. But what the Government has done, rather than going through the basic process of setting an agenda, having consultations, formulating a policy and so on, they have slammed this into the—or slapped it in, I should say, into the Firearms Bill. Now—the Firearms Act.

So what we have now really is a situation where people must go through this long process, institutional malaise, including that appeals process, when we could have had a simple shorter Bill that deals strictly with non-lethal weapons. A simple process to import, sell and have safekeeping. I find it to be not the correct approach, a bit amateurish to decide that what applies to firearms and ammunition must also apply to something that should not, and if it is properly managed would not have the same effect. It is also going to be a burden, additional burden on the Commissioner of Police whereas a small unit within the Ministry of National Security comprising of persons or input from the Judiciary, input from the TTPS, and perhaps the Ministry of Trade and Industry, and Customs, could have gotten this job done carefully. Again, in the last four years while we were twiddling our thumbs and sitting around and saying that we are consulting and we are looking at it, all of these things ought to have been addressed.
Madam President, I do certainly hope that this process of licensing does not take another two years and that regulations do not take another five years before this process can get off the ground. We are again boasting about the digitalization of everything. But, you know, Easter weekend I had cause to go to the police station where someone was arrested for—I do not know what it was, I think the usual obscene language, resisting arrest, or something like that, the normal things that police charge people for on a long weekend sometimes. And do you know that the system to check for certificate for pending matters was down from a month and a half, and that person could not be granted station bail on Easter weekend for something that is a summary offence carrying a penalty of $200, obscene language, because the police officer could not verify whether that person had a criminal record or not? It was reported in the newspaper that people in this country were losing job opportunities to go abroad. In this dire economic times people have—I think it was a pilot, something like that, could not get a certificate of character for over a month because the system was down.

This is the system that we are telling women who are scared to walk the streets at night and who are forced to use public transportation sometimes at night because of the jobs that they have, this is the system we are sending them to meet in order to get a tin of pepper spray that you can keep on your keys and defend yourself if a man puts a knife at your neck and pulls you into a cane field because of when you are taking a taxi in the middle of the night. That is the process that we are sending people to meet.

So, I do not believe that this system was very well thought at all. It is something that could have been dealt with on a lot cleaner and in a manner that would not really punish the person who—because that is what it is, you know. When you have to go through the process, I think right now the process of getting a
FUL you can categorize it as punishment. And this process right now that we are envisioning here, as nice as it sounds and all the flowery language and all the policies and all the Government’s accomplishments and all that, the reality on the ground is that it will be punishment for someone who wants to go and try to avail themselves of the opportunity to secure pepper spray for their own safety.

Madam President, again I agree that law enforcement and more categories of law enforcement personnel ought to have access to pepper spray, I have no issue with that. It is—however, I would want to recommend that we have a lot more training being done because you cannot simply put alternative weapons, and that is what it is, it is a form of a weapon, non-lethal weapon, in the hands of law enforcement without proper training. I think that there is far too much leeway given in terms of the discretion to use weapons versus non-lethal weapons and the categories of persons that we deal with; so—especially like the mentally ill. We keep hearing that persons who behave in a particular way, how we see the media reports the way that they are dealt with, whether they are arrested, and even sometimes taken down for want of a better word. It is not in keeping international best in how you deal with persons who are challenged, whether it is a legitimate health issue, a mental health issue or otherwise, and I could go on and on about the different examples.

I just want to get very quickly into a few aspects of the Bill. The penalties created in the Bill do not seem to be—the penalty for simple possession which is really section 6A(2). It creates that—this is the simple possession where a person only if he holds a pepper spray permit as the case may be from the Commissioner of Police and so on, and on the summary conviction. So that is if you are convicted under that section, subsection (4) of the new 6A, which is in clause 7, summary conviction $250,000 and imprisonment for five years and on indictment $750,000

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and imprisonment for 15 years.

Now that same penalty applies to persons convicted under the new section 17A, which is clause 12 of the Bill, where you use the pepper spray in the commission of a criminal offence, $250,000 and five years on a summary offence. That is far too low, Madam President. You cannot say that—so what you are saying is that, if I as a person who is merely—okay. Suppose I was captured by the transitional provision, or I did not know, or I did not make my application so I am in possession without the licence six months or eight months from now, however long it is, I will face the penalty as somebody as somebody who actually uses this pepper spray in the commission of an offence? That makes absolutely no sense.

If you are creating a specific offence for someone who uses pepper spray in the commission of a criminal offence which you want to be—that is the main issue. That is the issue that took you all four and a half years to figure out, how we are going to do this thing and prevent it from people taking the scorpion pepper and it more deadly than gun and shooting you in your eye and all this drama. If that is the issue, then raise the penalty. If you are using this for a criminal offence, then you really ought to be facing a much, much higher penalty including—and I would not even say it should be a fine. I think it should be an automatic—well I guess depending on the seriousness of the offence. But it ought to be higher. It cannot be that it is the same penalty as simple possession.

Under 16, the new section 16B that is created, I agree with the comments of the Law Association to an offence. Again, we must not take away from the presumption of innocence. A permit is property. That is the law. A licence is a form of property. You are saying that if a person is charged with an offence that you will automatically deprive them of their property, and I do not agree with that at all. It cannot be—now yes, the offences are serious offences, but a person who is
charged ought not to be automatically be deprived of their licence and be forced into surrendering it.

In the same way that it is left, and I had it in my notes to raise the issue of mutual undertakings in domestic violence matters, because that is actually quite prevalent. But I think that you really do need to leave it to the judicial discretion whether or not a person should be debarred from and prevented from or being forced to surrender their pepper spray licence and the thing itself if they are charged with a particular offence. That makes the most sense. You do not automatically have to surrender a firearm if you are the holder of an FUL if you are charged for an offence. The magistrate can order you. And in most cases if the firearm was allegedly used in the commission of the offence, if you are charged with assault by the use of that firearm, they will say, are you the holder of—like, you know, of whatever firearm it is and it is a licensed firearm, they will tell you to lodge it in the police station and it must remain there until the matter is heard. But leave that for judicial discretion. Do not prevent a person who is charged on a mere allegation with one of these many offences from holding pepper spray and from acquiring pepper spray.

So if I am charged with—I do not know. I do not even want to get—for anything. It does not mean that I do not have, you know, a need to arm myself with pepper spray because I have to be out at night, I have to be out late. I am sometimes here until two o’clock in the morning and drive to San Fernando. I really think I am a good candidate for pepper spray. But if I am, you know, charged with some offence under one of these schedules, I will be debarred from having it and, you know, that is not fair, it is not right and really and truly you cannot—it is not in the best interest of anyone to put these automatic bars into legislation when there are so many different permutations, and especially when
you have a judicial officer trained and competent to adjudicate upon those types of matters and ask people to surrender their pepper spray and so on.

And as I said and I think the Attorney General addressed it, with the DV matters. Yes, undertakings I was very concerned about with mutual undertakings because that is the norm at first hearings. In any court, Magistrates’ Court in Trinidad and Tobago, they usually have one court dealing with domestic violence matters, traffic matters, summary offences and family matters and on any given day you could have upwards of 25 domestic violence matters. So most of these domestic violence matters are not heard on the first hearing. Most of them they ask for undertakings to be given, and really you should not have to surrender your pepper spray or be prevented. In fact, the person going to the court who may have to be give the mutual undertaking not to harass the other one and so on, may be in need of pepper spray and it is on that day itself that they may wish to make the application for pepper spray.

So says that, you know, “unless the court determines otherwise”. The difficulty with that is, the woman who is going to a Magistrates’ Court—we need to stop thinking that everybody is a lawyer who goes to court. The simple woman who never went beyond Standard 5 who goes to a Magistrates’ Court and asks for a protection order may not know that she has to—and most of these people are unrepresented by lawyers in court, by the way. They go to the JP, they fill out the forms and you sit there and they ask for their protection order. She may not know that you have to get the court to otherwise determine—and based on this language here, she is debarred from having the pepper spray unless the magistrate orders otherwise. So I must now know as a, you know, person unfamiliar with law, unfamiliar with processes and procedures, of course unrepresented, go before a magistrate and I say, I want a protection order. Yes, I will give this mutual
undertaking because I want the other party to also give an undertaking, that way I can enforce something against him until my matter can be heard. I will have the intervention of the police, but could you also make an exception here so that I can get pepper spray? Is that really something that could work? Because let me tell you what would happen. That same said woman when she leaves that court would think to herself, let me go and make an application for pepper spray. And she will go to the police station, and the police will say, “Well, you know what? You are the subject of a mutual undertaking and therefore under this new section 16B you are not allowed to have it.” And that woman, that woman who I just here described there, is the person who needs the pepper spray the most because she has just put her alleged abuser before the courts.

So we have to be very careful when we draft these things. We must be familiar with the circumstances that people in this country meet every day and what they have to do. And let me tell you something. If you are in a court like, you know, Siparia, I will use an example that I am very familiar with. It is six months, eight months down the road before that woman gets a trial and get a hearing, if, and now with COVID and the amount of things that are happening, probably longer than that.
So, for that period of time until she gets advice and she goes before the court again and ask the court to specifically make some order that allows her to have that pepper spray she will be at risk and has no protection from this piece of legislation.

12.00 noon

Again, well I think I raised it already, the section—right, the same thing about the penalty under section 16B(2), the penalty under (3), I think also too low, because what you are saying here is that a person, and again I am leaving out the part about charge, but a person convicted under section 16B(1), if they are
prevented from having pepper spray the penalty that they face for having it is the same as a person with simple possession, and that cannot—again, it should be higher. If you are deemed to be a risk to society because of your convictions, and you are debarred from holding pepper spray and then you have it, you really ought to have a much higher penalty imposed upon you than somebody who simply has it because, listen, “Ah scared, ah waiting five years for the Commissioner of Police to determine meh application, and every night ah travel in a taxi ah scared, and I geh dis thing through the black market”. It is not right. I am not saying that at all that that is right, but I am saying the penalty cannot be the same for that person as opposed to the person who is automatically debarred by virtue of their criminal past, and therefore the penalty here should be raised as well, I believe, in section 16B(3).

Madam President, the regulations that have to be made under to deal and operationalize this pepper spray, I am not in agreement that there are certain things to be addressed by Order under 6A. I think these things ought to be fleshed out in regulations and brought to the Parliament. Because these regulations have to consider the potency concentration. In certain countries in Europe they look at the presence of flammable, corrosive, toxic, carcinogenic substances in the pepper spray. So the actual formulation of this pepper spray that is contained in the device has to be considered, and I think that, again, what we should have been doing in the last four years is considering how you can have different types of pepper spray for different people. Now the kind of pepper spray that the law enforcement is using when you have to do large crowd control, for example. The kind of pepper spray that people—that 16 year olds would be allowed to carry with the permission of their parents should not be the same. Would you want particular kinds of canisters to be sold to different age groups and be outfitted with safety devices to
prevent accidental discharge? All of these things are available, by the way, and so we must consider those things, and I think that those things ought to be fleshed out in the regulations as well as special training requirements as it pertains to the different age groups.

Anyone under the age of 21, or even 25, I should say, who is allowed to have pepper spray, and we are considering, and I am not by any means objecting to the—I mean, I heard the AG say that it is open for debate about persons as young as 16 years old, I really do not have an objection to that, but special training requirements and so on ought to be included for persons of that age group. Because, I think we all remember what it was like to be a teenager and we all know teenagers could perhaps, you know, what do you call it? Showing off, that is the word we use, and be a “lil” bit irresponsible. So, the level of training, what is required and so on, all of those things ought to be fleshed out with regulations. So, in relation to the new 6A, I do not agree that the Minister can make these—should be determining these things by Order to deal with the strength, the type, strength and volumetric content of the pepper spray permitted into the canisters. I think these things ought to be properly fleshed out into regulations.

Madam President, I do not propose to keep us back any longer than we ought to, save and except to say that this is long overdue. I do hope that the process thereafter, because passage of laws nothing irks me more than knowing that there is a law on our statute books that is accomplishing absolutely nothing when it comes to addressing safety and security particularly of our citizens and particularly this is a problem that we have rooted in violence against women and girls. And so I do hope that when we leave here today that this Bill with all of the issues that I have identified, or whatever happens, that something is operationalized, and that this thing happens very quickly, because it will undoubtedly redound to the benefit
of our citizens. So with those few words, thank you, Madam President. [Desk thumping]

**Sen. Anthony Vieira:** Thank you, Madam President. Let me start by saying that I do not like this legislation. I find it disingenuous, condescending to women, and disproportionate. If the primary purpose of this Bill is for women to have access to pepper spray for self-defence, it falls short. The regime for pepper spray proposed under this Bill is so convoluted, it is so layered with bureaucracy, and it carries so much unnecessary illegal risk that it virtually puts pepper spray beyond the reach of the women who may need it most.

As legislators there are two ways of looking at pepper spray: We could look at it as a shield or as a sword. That I think is the basic issue which should underline the proposed amendments. Clearly, the movers of the Bill see pepper spray as a sword. Indeed, the whole thrust of this legislation is based on the notion that it is a weapon. And because it is a weapon it poses a danger to the public and must be carefully registered and controlled. Under the current law, pepper spray falls under the definition of a prohibited weapon, a device adapted for the discharge of a liquid, gas or thing. And since that definition and the new definition of pepper spray, which is being proposed, is what is fuelling this Bill, we are constrained to cater for possession, use, importation, sale, and the need for a registry.

Now, a statute is ambiguous if it is susceptible of more than one reasonable interpretation. Consequently, I find the new definition, the definition proposed for pepper spray amateurish. As peppermint oil, shilling oil, vapour rub, and a number of different balms when applied on the body can all cause mucus membranes in the eyes, the nose, the throat and lungs to become inflamed resulting in immediate closing of the eyes, runny nose and coughing or sneezing. As the proposed definition says, “any inflammatory agent which when applied on the body”, is it...
expected that we are now going to have to get permits for those products as well? Will they stand as prohibited weapons?

In any event, I do not subscribe to the one dimensional view that pepper spray can only be regarded as a dangerous weapon. Pepper spray was originally developed in the 1960s by Allan and Doris Litman, under the brand name, Chemical Mace. And that happened after one of Doris’ colleagues had been robbed in Pittsburgh. Now, it was invented to be a shield not a sword. Pepper spray as we know it started becoming available commercially after Chemical Mace was acquired by Smith and Wesson in 1987. So the point is, that when our Firearms Act took effect in the 1970s Chemical Mace was not widely available or known, and I strongly suspect that when the framers of the parent legislation were contemplating the definition of prohibited weapon, they were thinking about weapons of war. Things like flame-throwers, tear gas and specialized munitions that use chemicals formulated to inflict death or harm on humans.

I do not think pepper spray was even on their radar. In any event, I think the concerns about pepper spray being a lethal or dangerous weapon can be easily addressed, and thus opening the way for its use as a shield that women can use as their first and perhaps their only line of defence when under attack. If you hold the view that the fundamental purpose of this legislation is, or it should be about enabling women to access pepper spray for self-defence, then you have to wonder if the administrative regime proposed under this Bill is not overly bureaucratic and cumbersome, and whether there might not be some cleaner or simpler alternative. I believe there is, but it will depend on whether you hold the view that pepper spray is a shield or a sword. Now for the record I am not dissing Government’s approach as being totally out of whack. I accept that one must accept the possibility of criminals using pepper spray for nefarious purposes. We cannot be blind to that.
risk, but I have not been able to find any data, any statistics about pepper spray being used as a weapon for the purpose of committing crime. And while it is fair to consider this as a possibility, no evidence, hard data or statistics about pepper spray being used by criminals has been provided.

So this concern, I think, is largely based on speculation. Yes, one can and one should consider the risk of dangerous characters, or a snatch and grab perpetrator using pepper spray to immobilize or disable his victim. But when that risk is weighed against the benefits in making pepper spray readily available to women, I believe, especially where pepper spray might mean the difference between life and death, or the difference between a woman managing to escape, or being overcome by a rapist, there is no doubt in my mind that the benefits outweigh the risks. It is also important and instructive to note that under this Bill the police and law enforcement will be able to use pepper spray when performing their functions. Now I find that of interest, because one of the things that struck me in my research is that in those very rare instances where pepper spray proved to be fatal, it was after being used by the police. In fact, concerns about the dangers of pepper spray and the need for regulations arose in those places where there was increased use by law enforcement when subduing suspects. And yet even there it was recognized that the use of pepper spray had reduced injury suffered by both suspects and officers, as well as complaints about the use of excessive force.

It should also be emphasized that law enforcement, prison officers and the military, they use pepper spray very differently to civilians. For civilians, pepper spray is usually a means of self-defence. It is a shield. Whereas law enforcement uses pepper spray to subdue. It is a means of attack, a means for maintaining control. In other words, it is used as a sword. Now this fundamental difference in approach, civilians using pepper spray as a shield as opposed to law enforcement
using pepper spray as a sword, is heightened by the fact that the pepper spray used by law enforcement is military strength, the strongest pepper spray. And this may also explain why in those rare instances where pepper spray proved to be lethal, it was after having been used by the police. Yet, notwithstanding documented and potential harm, when military strength pepper spray is being used by the police, prison officers and soldiers, this Bill blithely allows pepper spray to be included in the already formidable arsenal of law enforcement.

Consider further that the police always move in groups, never singly like our vulnerable girls and women, and unlike our vulnerable girls and women the police get to carry guns, they get to carry Tasers. But our vulnerable girls and women, before they can have access to this potential shield, this life-saving device, they have to apply for individual permits, they have to be registered as the owners of prohibited weapons, and they will have to pay application fees for possession, and import permits. I am going to resist saying anything about the delays and uncertainties involved when applying for permits. Suffice to say, that unless a woman has the money, the time and resources to deal with the administrative and bureaucratic red tape being established by this legislation, chances are she would not acquire pepper spray, even though she might desperately need it. The realities also revealed that while possession and use of unlicensed firearms is a serious offence, criminals still have easy access to all kinds of guns. So unless something drastically changes, guns will continue, I think, being their weapon of choice.


Hon. Al-Rawi: Thank you. Thank you, hon. Senator, for allowing me a small moment to ask a question. I just, one question and then one statement: Hon. Senator, the specific intention as it is ready to be operationalized is a tick-the-box form submitted to the police. There is no bureaucratic consideration at all, and it is
not an FUL process. It is merely lodged at the police. The penalty that we are using is if you tell an untruth. So if you lie about being a prohibited person that is where you are going to be put out after the fact. We will find out afterwards. This is not intended to be any complex process. I thank you for allowing me to say that. And the second point in relation to pepper spray’s definition is that it is confined to the Order. So it is not Vicks and oil, it is that which is in the Order in section 16. Thank you.

Sen. A. Vieira: Thank you, AG. Thank you. All right, I accept that it may not be as layered with bureaucracy as I may be suggesting. But coming back to the point I was trying to make is that, the fact is, guns are readily available to criminals out there, even though they are unlawful, and to say that we are going to be saying pepper spray is now going to be used by criminals, why would they use pepper spray when they have access to guns, when they can use cutlasses, when they can use knives. I think those would be their preferred choice of weapons over canisters of pepper spray. And in any event, the same way that the criminals can get unlicensed firearms to use against law abiding citizens, the wrong people are just as likely to get pepper spray that is unlicensed. So, while there might be a risk attaching to pepper spray as a weapon for crime, in the grand scheme of things I really do not see much of a risk there. I think the risk is slight, and I do not see it as being good and sufficient cause for denying women affordable and easy access to pepper spray. And Sen. Lutchmedial points out, the evidence shows that non-lethal weapons can address the rape culture, and it can be a deterrent.

Moreover, anything can be abused if you have a mind for it. It is possible to weaponize many household products. If one wanted to cause somebody serious harm or injury, muriatic acid, toxic insecticides and pesticides, kerosene, gasoline. As far as I am concerned, all these items can be bought over the counter, and they
are readily available, and so too should pepper spray. And just as one would be prosecuted for assault and battery for causing grievous bodily harm when using dangerous household products to hurt someone, we should be able to deal with the misuse of pepper spray in a similar fashion. Now, when our women are scared because they travel alone, or they live alone, or because they are in an abusive relationship, is it fair and reasonable for them to face final imprisonment when they acquire pepper spray without a permit?

When a woman who legitimately possesses pepper spray under this legislation has died, is it fair and reasonable for her family, besides grieving and having to make funeral arrangements, to just have seven days within which to hand over her pepper spray to the police or face summary conviction of a huge fine, or face imprisonment? Why forbid under penalty of fine and imprisonment a spouse, a parent, sibling, friend, co-worker from being able to give a canister of pepper spray to his wife, daughter, sister, friend or co-worker, knowing that it may give her feelings of security and comfort, knowing that it might protect her from harm and perhaps might even be life-saving? Why should it be unlawful to give pepper spray to a loved one as a safeguard when the pepper spray in her purse may be the only, may be her best chance to get away from somebody who is bigger, stronger and means her harm? Why are we so prone to overly complicate and make things difficult? The point is more apparent when one considers that while certain restrictions may apply, for example as to the amounts one can buy, the allowable strength, and that it is not sold to convicts or minors, in the United States pepper spray as a personal defence device is considered legal in at least 50 states, and can be bought over the counter. And as far as I am aware, there has been no pepper spray crime wave, there has been no epidemic of fatalities posed by pepper spray.

In the wake of Ashanti Riley’s and Andrea Bharatt’s deaths and the ensuing
public outcry for more to be done to protect our women, the decriminalization of pepper spray is one of the things our citizens have been clamouring for. Not pepper spray for use by the police and law enforcement, but as a personal defence device that is easy for women to acquire and to carry. In the battleground of opinion, I suspect that the ability of law enforcement being able to access pepper spray more readily than women is going to be greeted with cynicism, and one can anticipate that that is not quite what the public is expecting.

People may be hyped up in the belief that after all their prayers and protests and vigils and petitions that the availability of pepper spray is now finally being answered. And if this legislation proves to be a disappointing development, it will only reinforce the idea that Government and we in this Parliament, we are out of step with what is happening on the ground. And yet this is an easy ask. All that is needed is to pass an amendment decriminalizing pepper spray up to a certain allowable strength. As the hon. Minister of Agriculture, Land and Fisheries knows, all peppers are not equal. Peppers range from sweet to scorching hot: Bell peppers, pimentos, jalapenos, chilies, scotch bonnet, dougla chocolate, all the way to the scorpion. There are at least 600 varieties of pepper. And just as one can get slight or scorching hot pepper with your doubles, we should be able to legitimize the milder version of pepper spray while leaving the stronger versions to remain under the definitions of prohibited weapon. It does not have to be a one-size-fits-all situation. There is no need to legitimizemilitary-grade pepper spray when milder versions can suffice for self-defence purposes. There are five major strengths of pepper spray ranging from between 2 and 10 per cent of capsaicin on the Scoville scale.

Law enforcement tends to use pepper spray of between 5 and 10 per cent. But those higher concentrations are not really necessary for self-defence. Milder
strengths will cause temporary stinging, burning to the mucus membranes, but they are not going to kill. They are not going to seriously harm anyone. So, we only need to pass an amendment saying that anything under 3 per cent will not be considered a prohibited weapon, and that would allow for the milder grades of pepper spray to be readily available for sale over the counter, and it would avoid all the unnecessary and undesirable “officialism”, the red tape, the bureaucracy. For those who are overly cautious and insist on the need for safeguards, we can counteract potential risk by providing—increasing the penalties against anyone who uses pepper spray for unlawful purposes. Further or alternatively we could opt for hybrid system with two parallel tracks: One track allowing pepper spray under 3 per cent, to be freely available without the need for a permit or licence, and the other track, placing pepper sprays at 4 per cent and above, within the ambit of this legislation. But we need to focus—[Hon. F. Al-Rawi stands] Yes?

Hon. Al-Rawi: Just a point of clarity, thank you. Question for clarification, thank you. So, is it in the hybrid approach that you are approaching, you are proposing liberalization, no permits for certain types?

Sen. A. Vieira: Anything under 3 per cent is my proposal. Yes. Because it is not going to be a lethal weapon.

Hon. Al-Rawi: And then everything else above the particular person, which means that this law would be relevant?

Sen. A. Vieira: That is one of the approaches I am suggesting. But we really need to focus on the objective. What is the real purpose of this legislation? Because if the primary objective is to arm law enforcement with another sword for use in their arsenal, or if the purpose of this legislation is really to just lay the foundation for further amendments to the Firearms Act, then let us say so. And let us acknowledge that the use by women for self-defence is secondary or incidental.
But if the primary objective is about giving women a shield for self-protection, then we do not need to legalize the strongest pepper spray when slight pepper can suffice. And if slight pepper can suffice then this Bill is cumbersome. It is disproportionate and does not square with what people are expecting.

So in concluding let me end where I started. There are two burning questions being posed by this legislation: First, whether we should regard pepper spray as a shield for defence, or as a weapon for offence? And secondly, whether the control mechanisms being established are really needed, or whether they are consistent with what the public expects and wants. One gets a sense of mixed motives or indifference. To those who subscribed to the narrow views that pepper spray must be treated as a weapon, I would ask you to consider the possibility that you may be missing the bigger picture, and you might want to rethink the matter. Madam President, I thank you. [Desk thumping]

The Minister of Social Development and Family Services (Sen. The Hon. Donna Cox): Thank you, Madam President. Thank you for the opportunity to speak on this Firearms (Amdt.) Bill, 2021, in support of the issuance of pepper spray permits. And as I rise to contribute to this sitting, please allow me to first commend the hon. Prime Minister, Dr. Keith Rowley, for taking critical steps towards protecting the people of Trinidad and Tobago from the devastating impacts of the COVID-19 pandemic.

Madam President, when this Firearms (Amdt.) Bill, 2021, is ultimately enacted in law, it will have the effect of providing a layer of protection to women and girls in particular and add to the arsenal of tools in the hands of our protective services, with a view to preserving life despite criminal or harmful intent of some persons.

12.30 p.m.
Madam President, the issue of pepper spray has been bandied about for a while. And if one listens to some of the commentators, one would easily come away with the perception that with the stroke of a pen, the Attorney General or the Prime Minister of Trinidad and Tobago could have just signed this into existence. There are occasions, Madam President, when this and prior PNM administrations were castigated for being inordinately meticulous in our deliberations. And there are other occasions when the same critics, to suit their own political machinations, demand swift action.

The role of the Government, Madam President, is always to find the balance and present good law, and that is for the public good and in the best interest of the people of Trinidad and Tobago. As responsible leaders and citizens of this beloved country, we must all agree that any amendment to the existing legislation to change and improve the criminal justice system is most welcome.

Madam President, there were 8,336 incidents of criminal activity in 2020, according to the Trinidad and Tobago Police Service crime comparison statistics and 2,441 incidents of crime as of March 2021. So this means that so far this year, we have 27 crimes committed per day. And therefore, the Firearms (Amdt.) Bill, 2021, for the issuance of pepper spray permit, is now more significant than ever. The truth is, the protection of our women and girls is the collective responsibility of all of us, Government, Opposition, the business sector, civil society, the community at large, and of course, faith-based organization.

Madam President, Trinidad and Tobago is not the only country in the region currently grappling with increasing calls for the legalization of pepper spray. In Jamaica, as we speak, there are concerted efforts to have legislation brought to the Jamaican Parliament to do precisely what we have embarked upon today. Jamaican Justice Minister, Delroy Chuck sums up best the dilemma faced by governments
when he said and I quote:

“…while there’s a need to legalize pepper spray…the government ‘has to balance the opportunity for it to be used as a self-defence weapon against the risk that if it is widely available, it could get into the hand of criminals.”’

The Minister also said, and I quote:

“…the government’s main concern is that if legalized, such weapons could be used by criminals to disarm potential victims.”

So we are here today because we believe that, through this Bill, we have found the balance to which our Jamaican counterpart alluded.

Let me reiterate, amidst the groans which may come from some about the severity of the penalties associated with this Bill and then, of course, there are those who may think that the penalty is too low, I believe we have a general agreement that the introduction of this pepper spray will serve the public good and it is in the best interest of the people of Trinidad and Tobago.

When someone is pepper sprayed, usually to the face, the instant sensation is restriction of the airways and the general feeling of sudden and intent searing pain about the face, nose and throat. Recovery of vision and the coordination of the eyes is usually within seven to 15 minutes. So, Madam President, seven to 15 minutes makes a world of a difference in a life and death situation. It is important to note that pepper spray is just one self-defence tool in the toolbox of possibilities available to the protective service and to the wider public. And we on this side are by no means advocating that pepper spray is the be-all and end-all of all the problems faced by the victims or members of the protective services.

It is not a magical solution that will solve every self-defence situation and should not be relied as such. We do know, however, that there are several benefits to the use of pepper spray, both as a self-defence mechanism and as a non-lethal
means of subduing persons deemed threatening or dangerous. And we recognize both men and women, who may be potential victims, will find the use of pepper spray advantageous to their circumstance.

The Commissioner of Police in support of the use of pepper spray in a daily newspaper, Express, February 2021, stated and I quote, it:

“…will simply give citizens an opportunity to protect themselves when the Trinidad and Tobago Police Service…is unable to immediately respond.”

And he further stated:

“‘It gives you a fighting chance to escape and that is all people need sometimes…”’

Added to the fact that it is easily concealed and users can be easily trained in its proper use, pepper spray is generally non-lethal and does not have any long lasting effects. It can end an attack without the use of physical force, violent actions and more importantly, the loss of lives.

Madam President, there are two categories of the persons who would benefit from the enactment of this legislation. The first is the members of our protective services who would now be able to restrain a potentially dangerous person using this non-lethal method. And the second category is vulnerable persons and those who feel themselves endangered or threatened in anyway by another person. Both categories of persons, the members of the protective services and ordinary citizens, have come under heavy threat by persons sometimes known, but more often than not, unknown to them. And certainly with the latter of the two categories, the opportunities for self-defence are considerably less and therefore they have become victims of these assaults.

And allow me to speak then on some specific clauses contained in the Bill. Clause 6 of the Bill allows Estate Police, Special Reserve Officers, Municipal
Police Officers and such other person as approved by the Minister to have pepper spray in their possession when performing their legitimate functions. The availability of this additional method which has been tried and proven in other jurisdictions certainly improves the capacity of the arresting officer to safely and effectively incapacitate violent or threatening persons.

Madam President, one of the more important features of the Bill before us today is the insertion of clauses that prohibit persons who are charged or convicted with serious criminal offences from obtaining a pepper spray import permit or pepper spray permit. Notably, given the spike in domestic violence cases during the pandemic, section 16B also guarantees that persons, against home restraining orders have been granted, are also prohibited from being able to obtain a pepper spray permit or a pepper spray import permit.

It is important that we always look at legislation in its entirety. So when we add this piece of legislation to the previous pieces of those which gave their Judiciary the ability to order electronic monitoring of persons charged with domestic violence amongst other crimes or even the legislation that allows for a widening of the net of those who can report domestic violence, what we see is a concerted effort on the part of this Government to ensure the safety and security of the vulnerable sectors of our population. And this, I dare say, is the purpose of government. And it is for this reason that clause 12 of the Bill assumes even more greater significance with the rise in the number of sexual and physical violence against children.

Clause 12 allows for persons age 16, within the written consent of their parent or guardian, to be allowed to obtain pepper spray. And you and I would have heard many horror stories of young girls and boys being physically and sexually abused by uncles, fathers, stepfathers and other persons known to them.
And very often, for economic reasons, the perpetrator is protected. And perhaps, this ability to obtain pepper spray could now be an added form of defence for those defenseless children. A scan of the international community appears to yield no established or decisive pattern or trend for the usage of pepper spray within the general population of countries. Countries appear to make decisions on the use of pepper spray based on their specific circumstances and this appears to be the same the world over.

To Sen. Vieira, I noted his concerns and suggestions that pepper spray should be easily available but I just want to give some statistics internationally. Many countries such as, Nigeria, China, the UK, the Netherlands, Singapore, Norway, Canada and Brazil allow for its use by law enforcement but it is prohibited for use by the civilian population. Some countries such as, Israel, Japan, the Philippines, France, Czech Republic, Slovakia and Spain allow for unrestricted access and use by civilians, except for some restrictions on the size of the canister, the age of the purchaser and public usage.

The authorities in the Czech Republic actually recommend that vulnerable group such as, pensioners, children and women carry pepper spray and the Slovakian police advocates for its use. And these countries have come to recognize the value of pepper spray as the key asset for vulnerable citizens who are in need of protection against the criminal elements. Italy, for example, gives unrestricted access once the purchaser has no criminal record and many other countries allow for a civilian usage only in circumstance of self-defence.

So, Madam President, there are other countries which seek to combine self-defence requirement with other safe cards, such as, requirement for a permit, licence or background checks. And such countries include India, South Korea, Belgium, Switzerland, Finland, Australia, New Zealand and Portugal. And I want
to thank the hon. Attorney General for his clarification earlier on when he spoke about the—Sen. Vieira spoke about the fact that he felt it was too bureaucratic, but I want to say thanks to the AG for clearing that up.

I just want to speak about the information on pepper spray in the United States:

“Physical assault is widespread among adults in the United States: 51.9 percent of surveyed women and 66.4 percent of...men said they were physically assaulted as a child by an adult caretaker and/or as an adult by any type of attacker. An estimated 1.9 million women and 3.2 million men are physically assaulted annually in the United States.”

This information is taken from the United States’ Bureau of Justice Statistics, November 2000.

Eighty-nine per cent of sexual crimes have been committed by someone known to the victim.

This information is taken from the United States’ Bureau of Justice Statistics, report on the “National Crime Victimization Survey, Crime Victimization, 2003”.

Around 54 per cent of rape victims are under age 18.

Information is also taken from the United States’ Bureau of Justice Statistics, “Full Report of the Prevalence, Incidences and Consequences of Violence Against Women”. This was taken in 2000.

As a result of some of these statistics, it is clear that the sale of self-defence tools and weapons high skyrocketed in the United States and one product that is sold the most is pepper spray. And I too, while I was posted in the US, had kept my pepper spray to ensure my personal safety.

So what then can we learn from the international community? First, that this is not a one-size-fit-all approach. We can learn that we can go our own way and do
what is right for our country and our circumstances. It has been well established internationally that pepper spray can be used safely and securely within a civilian population by making a number of adjustments to suit the needs of that country.

Madam President, statistics glean from the National Institute of Justice’s Technology Assessment Program of the United States of America demonstrate that:

“Law enforcement agencies have…”—successfully used pepper sprays—
“on individuals who are extremely excited and agitated, under the influence of drug and alcohol, and”—or—“mentally impaired.”

Additionally, the statistics have indicated that since the adoption of pepper sprays there have been:

“…fewer allegations of police use of excessive force or police brutality charges, resulting in fewer law suits.”

The pepper spray allows officers to restrain subjects more easily and subdue a suspect in combative violent or uncooperative scenarios without using lethal force.

A major problem for most police forces around the world is the challenge to incapacitate violent assailants without causing unnecessary harm while minimizing personal risk. And one approach has been to develop less lethal and non-lethal weapon, such as pepper spray, aimed at having a short physical incapacitating effect without long-term injuries.

A 2017 study emanating out of the Lund and Malmö Universities in Sweden and published in the Police Practice and Research journal indicated that pepper spray:

“…reduced violent behavior in 93% of the 936 incidents investigated.”

And I am certain, like you and me, you would have heard screams in the communities crying over alleged police brutality in the execution of their duties
when police have to apprehend individuals, notwithstanding the Trinidad and Tobago Police Service stated use of force policy. It is customary to hear complaints about police officers using excessive force in their attempts to subdue persons of interest to them.

The introduction of pepper spray, into the range of tools now available to our police officers, has the potential to reduce those complaints. This added capacity to members of the protective services will not only aid in the ability to apprehend those with declared criminal intent but also persons whose mental illnesses or other underlining causes result in their erratic and potentially harmful behaviour. There is a very live case before us where this matter is being ventilated and it was reported in all arms of the media last Friday which took place in Tobago, in Speyside, where someone who is supposed to be a mental health person was shot by the police. You know, while not casting blame or apportioning guilt, one way or the other, I think that the availability of pepper spray to the attending officers might have allowed for a different result in those circumstances.

So, Madam President, there is a point to be made today which has not escape the minds of those who are intimately involved in discussions with persons who have been victims of crimes especially sexually-related crimes. And it would be remiss of me in my capacity, not only as a woman but as the Minister of Social Development and Family Services, if I allow this occasion to pass without raising it. Statistics from the Trinidad and Tobago Police Service indicate that for the period January to March 2021, they received 828 reports of violence against women compared to the same period last year, which was 556, an increase of 272 for the same period which is a 33 per cent increase. And we continue to witness this horrendous abomination against our women well into 2021, and too many of our women and girls are being needlessly taken away from us, Madam President,
and the data also revealed that the majority of women murdered are young persons between the 28 to 37 age group.

According to the Trinidad and Tobago Police Service, of the 745 persons reported missing for 2020, 416 of those were women and girls which is more than half of the missing persons. Violence against women has devastating consequences on their health and well-being. With an immediate physical and emotional scars, violence against women invariably have lifetime detrimental consequences on women’s overall quality of life. Some victims are left in a state of paralysis for life, they are never able to live a normal life. This, in turn, leads to breakdown in relationship and family life, supportive networks. Families and friends are required to alter their life to meet the needs of victims.

Madam President, the consequences are even more detrimental when children are involved. At the Ministry of Social Development and Family Services, these are very real to us. Our National Family Services Division spends a significant amount of time counselling victims of crime, in particular, family-related issues, including violence. In fiscal 2020 3,719 persons received counselling from the National Family Services. And so far, in fiscal 2021, 2,292 persons were counselled and these included persons who experienced some form of abuse or violence. In the workplace, productivity may be impacted and an uncaring and unaware employers may view this as incompetence.

But, Madam President, there is a broader socio-economic cost. Prof. Karl Theodore et al conducted a study in 2005 entitled, “The Cost of Sexual Abuse and Domestic Violence: An Economic Perspective with Implications for Trinidad and Tobago”. And this study found that the cost of sexual crime and domestic violence in Trinidad and Tobago—and this was 2005, was 488 million, the equivalent of about .5 per cent of GDP for that year. So, Madam President, could you imagine
what that cost would be like today? These costs reflect pain and suffering; premature mortality costs; the costs of several services and service providers utilized by victims and their families: health care, social services for victims and their dependents, criminal justice system and a host of other costs.

The introduction of pepper spray does not solve the institutional crisis of victim blaming, often associated with cases of domestic or intimate partner violence, rape and sexual assault. Various studies have indicated that almost 80 per cent of sexual assault prevention tips focus on what women can do to curb crime: do not walk at night, wear modest clothes, and other versions of gender policing. But, Madam President, the unfortunate case of Andrea Bharatt is a perfect example of this. And I raise her name not to unearth painful memories for anyone, least of all her family, but rather to highlight the point that based on all the reports, Andrea had done everything right. She was not alone, she was not provocatively dressed, she was not in a private car, it was neither the dead of night nor the wee hours of the morning. Her actions, deportment, et cetera, would have demonstrated that she followed all the sexual assault prevention tips. The harsh and unflattering truth is that if we as women follow every single rape prevention tip thrown at us, we would lead an extremely restricted life.

As potent as the possession of pepper spray will be in the fight against sexual predators, I am more convinced that women deserve additional effective strategies for combating sexual assault, including strategies that involve men in the effort to address abuse and sexual violence before an attack begins. And it is for this reason that the Family Services Division of the Ministry of Social Development and Family Services successfully conducted courses, particularly for men, a series of parenting workshops was held last year, and we will continue with these sensitization workshops for men allowing them the opportunity to refocus on
respect for themselves and for women. The abatement of crime in our society demands, just as the decline in the spread of COVID-19 virus does, an acceptance of our individual responsibilities.

Madam President, no one piece of legislation will guarantee everyone safety and security, but if we accept our personal responsibility—

Madam President: Minister—

Sen. The Hon. D. Cox:—we just might

Madam President: Minister, you have five more minutes.

Sen. The Hon. D. Cox: Thank you—we just might see a different outcome in our country.

So today, we are here in this House to debate a Bill which is both for our protection and it is also a weapon. We simply cannot be just coming to this House over and over to legislate, to protect ourselves. We cannot keep coming to legislate to ask people to do what is right. We cannot legislate “brought-upsy” and good behaviour. And I encourage each of us to be our brother’s keeper. By our responsible actions, we might just be able to save a life because there are times that we see things and we say nothing. We would be out there and we would see someone being violated, and just a call to the police, and some people just look the other way. And I agree with the Attorney General that this is not the remedy for all ills, and this was also agreed to by Sen. Lutchmedial. But I urge all of us gathered here today to extend full support for this legislation and this is just one tool for law-abiding citizens to protect themselves and it is also expected to assist the protective services in the efficient execution of their duties. Madam President, I thank you. [Desk thumping]
Sen. Wade Mark: Thank you, Madam President. Madam President, I am happy to join this debate on the Firearms (Amdt.) Bill, 2021, which, according to the Explanatory Note, is seeking:

“...to regulate the use and possession of pepper spray in Trinidad and Tobago, including...its manufacture, importation, distribution and sale.”

Madam President, this is a matter or an issue that large segments of the national community have been agitating and advocating for in this country. I know that in the United National Congress, this has been on the agenda and we have been pursuing it in terms of advancing our ideas some four years now. We know that the former Minister of National Security had said that this was under consideration for some two years by the Government. But here we are today seeking to address this important non-lethal device. We did not only call for the legalization and distribution through some fee of these pepper sprays but, Madam President, we had also advocated for the use of Tasers, stun guns for our women and vulnerable girls.

And now, Madam President, I would not believe that I would have lived to experience a grandmother—somebody who could be my grandmother, being raped by criminal elements in this society. I know that it is now becoming a feature because of home invasions that have occurred in our country, and therefore, that ability of citizens to have a device, a non-lethal device in order to defend their life, Madam President, is absolutely critical and important.

Madam President, somewhere I read that the Commissioner of Police himself had, in fact, advocated for the use by women of this non-lethal device and he sought to communicate the need to give our women and girls a fighting chance,
give them a fighting chance by providing them access to this non-lethal device.

[MR. VICE-PRESIDENT in the Chair]

1.00 p.m.

Mr. Vice-President, one of the issues that I would like to address, among a few that I will prosecute during my limited time this afternoon, has to do with the philosophy and policy which, Mr. Vice-President, could have been hammered out a little more robustly if the Government had given us the opportunity to engage in meaningful consultation with the population. The question that is being asked, Mr. Vice-President, even though we know that the Government is placing this particular regime under the control of the Commissioner of Police and then using the Appeal Board when you have complaints or you have refusal in the instance that we are dealing with could have been addressed differently, would it not have been better, Mr. Vice-President, given the fact that this is not a firearm arrangement that we are engaged in, but a device to defend and protect women against criminal elements who are seeking to harm them or to bring injury to them, Mr. Vice-President?

Would it not have been better, Mr. Vice-President, to have this regime placed under a different kind of management structure, a different kind of administrative structure or arrangement, rather than to crowd the Commissioner of Police with this responsibility? Mr. Vice-President, we know that the Commissioner of Police has a lot or many additional duties and responsibilities to perform including a measure that we passed a year ago in 2019 I think, or a year and half ago, where we placed the establishment of a sexual offenders register under his care and jurisdiction, and now we are seeking through the legislation to also establish a literal pepper spray register which again will be under his jurisdiction and care, not to mention that his responsibility would be to receive
applications and to take action to determine if one qualifies or not to access the pepper spray canister in question.

But, Mr. Vice-President, they are also aware that there is corruption involved in this particular firearms application arrangement, and this is not telling tales out of school. That has been said repeatedly. So the question here, Mr. Vice-President, is whether we are not going to be adding more burdens unto the Commissioner. And, Mr. Vice-President, even further, what about discrimination? Just as how you may have corruption, you may also have discrimination, and we are not seeing in the legislation the kind of mechanisms that ought to be established so that a person who is refused there can be an automatic kind of complaints mechanism established for that person to get some justice.

So that is an issue, Mr. Vice-President, from a policy perspective that we have some difficulties with although the hon. Opposition Leader and the party, and the Opposition, indicated that we will support the legislation. But from a policy perspective had we been given the opportunity for critical consultation, we would have proposed alternative mechanisms to achieve the same objective but with a greater degree of efficiency and speed in the issuance of such permits for our citizens. So, Mr. Vice-President, the approval process in accordance with the law, the proposed legislation before us, we anticipate unless there is some fundamental alteration to how things are done is going to be extremely and painfully slow, and therefore, it would compound the burden already being experienced by applicants for firearms and now with this piece of legislation applicants for pepper spray.

Mr. Vice-President, you would have seen in the legislation under clause 11(b), for you, for one rather, to obtain pepper spray there are some criteria that seem very vague and very uncertain, and I think the Attorney General would need to clear the air on some of these uncertainties. So, Mr. Vice-President, take for

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example the phrase “intemperate habits”, I do not know if this is known by law. Maybe when Sen. SagramSingh-Sooklal speaks, the hon. Senator would be able to indicate to this honourable Senate whether the phrase “intemperate habits” is known to law. Where did this come from? In other words, what criteria is this to be judged? Mr. Vice-President, it is an area that I believe that we would need some clarification on to avoid what could only be termed subjectivity and uncertainty in the application, and processing of applications by members of the public, particularly our women.

Mr. Vice-President, in terms of refusal—because they can refuse your application—one of the grounds is this, intemperate habits. Mr. Vice-President, we are advancing for the Attorney General’s consideration that in the event of refusal there should be access to the Appeal Board if there is such a refusal or some other internal appeal process. And, Mr. Vice-President, if a person who applies is refused, his application or her application is turned down, then there should be in the legislation provision for the Commissioner of Police to provide written reasons for the refusal of such an application. A statutory duty, Mr. Vice-President, to provide reasons for a decision would serve an important role in this exercise. It would also provide an element of accountability.

It would also ensure, Mr. Vice-President, that the decision maker, in this instance the Commissioner of Police, focuses his mind on the issue because he must give reasons. But right now in the legislation, in the Bill before us, the Commissioner can refuse but he is not compelled on the law to provide you, the person, who has been refused any reasons, and I am suggesting that in age of judicial review we should not wait for people to go to the courts. Let the Commissioner provide reasons, written reasons, for his decision to refuse an application. And therefore, it would give the citizen some degree of comfort that
because written reasons are proffered then it would rectify what I consider to be such shortcomings even where it exists.

Mr. Vice-President, I want to go to clause 30 because this piqued my interest. It is called “transitional provision”, and it says, Mr. Vice-President—in fact, in essence, we are told in clause 30(1) that if:

“A person who has possession of pepper spray prior to the coming into force of this Act…within six months”—period of its—“commencement”—can—“apply to the Commissioner of Police or”—to a—“police officer authorised by him...for a...permit.”

And if you do not that you are committing an offence according to 30(2), and that:

“The...Minister...by Order...extend...”—this period of six months.

Mr. Vice-President, for the avoidance of doubt, in section 30 of this legislation I am suggesting an amendment for consideration. I am suggesting that an amendment should be inserted to say that this section does not, may I repeat, this section 30, “transitional provision”, does not apply to a possession of pepper spray in commercial quantities.

Mr. Vice-President, I have been advised that pepper spray has been imported into this country illegally and they are waiting the passage of this law. So there are, according to my information, smart men anticipating this legislation who have illegally imported large quantities of pepper spray and they are waiting this Bill to be passed in the both Houses become law and then they will utilize this provision. I do not believe that we should be party to rubber stamping illegality. Mr. Vice-President, it is fine for me and for any rational human being to understand and to even exempt individuals who may have had a bottle or a canister or two out of fear—fright.

Somebody from United States of America or some friend send down a
canister for them because they want to take care of themselves, they want to protect themselves from harm, from these criminals, I could understand that. You have transitional arrangement for them. But this Senate should not be exempting persons that have been hoarding in commercial quantities, such illegalities or illegal importation of pepper spray in order, Mr. Vice-President, to gain an unfair advantage in the marketplace. That is dangerous and I am proposing, Mr. Vice-President, that we take measures in this Parliament to protect the national interest by inserting that these transitional provisions would not cover those persons who have imported pepper spray in commercial quantities in order to take advantage of this particular section of the legislation.

So I hope I have made my intervention and contribution in this respect as the former Prime Minister used to say, may his soul rest in peace, Patrick Manning, I hope I have make myself pellucidly clear on this matter—pellucidly clear. That is not the phrase of the Attorney General as somebody has falsely claimed. That was a statement repeatedly made by the former Prime Minister, Mr. Vice-President. So that is something I want the Government to pay attention to very seriously.

Mr. Vice-President, when we look at the legislation, I want to—

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

Sen. W. Mark: Thank you, Mr. Vice-President. Mr. Vice-President, I would like the Government to reconsider removing “President” and replacing it with “Minister”. I believe that the President is the Cabinet in this context and not the President of the Republic, and a Cabinet has a greater check and balance as compared to a Minister. So I would like the Government to retain “President” as opposed to “Minister” in this particular instance.

Mr. Vice-President, I would also like to indicate that wherever the “Minister”, which is the President I am dealing with here, but I am using Minister
because it is the legislation, any Order being made by the Minister as in clause 6 and clause 7, respectively, must be subject to an affirmative resolution. The Parliament must have oversight on this matter. It must not just be left up to a Minister or the President. So bring the Order to the Parliament and we shall debate the Order and its content. And, Mr. Vice-President, I also want to make very clear that we would like to suggest that the Government delete “negative” where regulation have to be made and laid and replace it with the word “affirmative” which will be subjected to a full-fledged debate in our Parliament.

Mr. Vice-President, another area that I am concerned about is the product standard. We have to deal with standards in this matter, like the chemical composition of a canister as example. We want to also ensure that there is a certain uniformity and standardization of the importation of canisters, and therefore, who will be responsible for ensuring that level of technical standards so that we have uniformity in what we are dealing with? And, Mr. Vice-President, the firearm dealers in the system today are we now creating new canisters dealers, pepper spray dealers, or are we going to continue with the tried and tested firearm dealers and allow those people to be responsible for the importation, distribution and sale of these canister called pepper spray to the public. Or are we going to see a mushrooming of new dealers, fly-by-night dealers onto the market?

I raised these things in passing because we want to ensure there is not only standardization, but we want to ensure that price control not in the strict sense, Sen. Gopee-Scoon, but at least some level of control in terms of what people pay for this particular product on the market.

So, Mr. Vice-President, I would like to indicate that there are several areas, other areas in the legislation that time did not permit me to go into further detail, but there are several other amendments that we like propose in strengthening the
legislation so at the end of the day we have a product that could stand public scrutiny and that can deal with accountability, transparency, probity and scrutiny, and there will be parliamentary oversight in the case of Orders and in the case of regulations.

Mr. Vice-President, with these few words, I wish to thank you for allowing me to make by brief intervention on this very important matter which as I said in principle the United National Congress supports. Thank you very much.

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

**Sen. Dr. Varma Deyalsingh:** Thank you, Mr. Vice-President. First I want to say this is the first time I am speaking since we had our new Member, Mr. Imam Sheraz Ali, and I welcome you, Sir. I know you do excellent work in the Islam mosque [*Desk thumping*] and my wife and I had done a lot of medical services there before. So I know the work you have done and I am sure you would enrich this Senate with your social interventions and what you have been doing in the community. So welcome, Sir.

At this stage I must say that when I heard the Attorney General mentioned a few months ago that pepper spray was being considered and legislation would be brought, I got a great deal of relief. You see the initial talk coming out of the Government side was you know it was not a good idea. The initial talk coming out from the Prime Minister’s speeches that he gave was that it was something dangerous; it could fall into the wrong hands; criminals could get this. So you see when I first heard that talk coming I say no, our ladies, our women deserve some way to defend themselves, but I am happy that he recanted his position and now we have this Bill before us.

It reminded me of the marijuana legislation we had some time before where, you know, there was initially some sort of hesitancy on the Prime Minister’s part,
but he again—it shows here that with the marijuana legislation was later recanted and it was brought to the Parliament. So it shows a Government that is listening to the people, the vox populi as they say. [Desk thumping] So I commend the Prime Minister as it shows a leader not ossified in his views. It shows that he is a leader willing to evolve his ideology, stay flexible, curious, and be intellectual, honest. Hats off to our PM for allowing his team to bring this forward. [Desk thumping] So I also would like to say since the area that changes can be brought, I am still whispering and hoping that the procurement legislation could see a return but I digress a bit.

So I welcome this piece of legislation and I make mention to the fact that when Ashanti Riley left her Santa Cruz home to go to her grandmother’s home for her birthday, little did the relative, the grandmother would know that is the last time they would see this young lady alive. It reminds me of a story in 1697 when author Charles Perrault wrote about young ladies leaving their homes being caught up by so-called wolves, and he said not all wolves are of the same sort. There is one kind not noisy, not filled with anger, some follow the young ladies into their homes, and these gentle wolves are the most dangerous. This was the story of Red Riding Hood.

So in 16th Century in Europe and even presently in Trinidad and Tobago, there are wolves sometimes driving PH taxis all over in the concrete jungles. We have to deal with them and this legislation would allow us to at least get at some of those wolves. Sen. Lutchmedial and even the AG mentioned this is not the be-all, end-all, we need other things, rapists and you know, other laws that could attack the rapist, the criminals.

1.30 p.m.

You see, what we are saying is that we need other pieces of legislation.
CCTV camera went in. Legislation, I am thinking they should disband that illegal activity. Let the normal taxi drivers take charge as they have been lamenting, the PH drivers are causing problems you see, we cannot—I am looking at the PH taxi—allow an illegal activity to keep running, especially when there are crimes like this. The rapist, the criminal does not fear the police, the judicial system, and I think it is time they learn to fear the victim. And I think victims should arm themselves, not just with pepper spray but with guns. The Police Commissioner said in the past he is willing to look at the licensing application. And I am saying, who can afford the firearms, apply for it please. Because they are looking at defending themselves. So this piece of—putting pepper spray here would get a certain segment of the population who may not be able to afford guns.

The Police Commissioner quite rightly said that he was for pepper spray. I remember in 2017, his wife, former Sen. Nicole Dyer did petition in 2017 to legalize pepper spray and even women’s groups wanted this to come on board; so it has come on board. So putting pepper spray here today is something, I think, a lot of women deserve. A lot of women could take this opportunity. I am saying with the decreased funding that is given to the police service, we cannot expect a fully functional police service to be at each and every corner. So therefore, giving the citizens a right to take up any sort of slack to defend themselves, I think is something we have to be thankful for.

Now, Sen. Vieira went into the person who actually invented the pepper spray and with what it was for. And then there was another chap called Kamran Loghman who developed it for riot control. So initially it was developed for animals to be spraying bears and other animals. Then it became a tool of the police. Now, it is used for self-defence against human predators who often stalk our women.
I am very thankful that the Minister of Social Development and Family Services of, Ms. Cox mentioned that recently there was a mentally ill patient who passed on within the hands of the police. And he was shot. I am thinking the pepper sprays, the non-lethal methods, these are the way we rather to take down these mentally-ill patients with pepper strays, Tasers, rather than bullets. So there is a need.

We had mentioned here the problem of fast tracking the system as mentioned by Sen. Lutchmedial, where she mentioned the fact that we have to really look at the ability of somebody to apply for it and get it in a timely manner. So I am suggesting we have some sort of timeline from the application process when it is there. If in six months’ time somebody is not given this opportunity, something is wrong with the system, and we have to improve that system. So, fast tracking the system, give him some feedback from the Commissioner of Police on persons who applied and how long it will take. I am suggesting some of that has to be built in.

When you are looking at the regulations, the type of pepper sprays available as mentioned by Sen. Vieira, in some countries there are pepper sprays with less concentrated amounts of the chemical where they used for dogs, where they used for animals that may attack. So there are different regulations and there are different areas, different countries, who have different methods how to apply. The level of the concentration some countries have, not just the amount in the canister, the size of the canister. All these are in different pieces of the legislation for different countries who allow this. Some countries only allow it for the police force; others allow it for citizens also with certain guidelines that I am seeing that are present in this legislation.

And I am looking at it and I saw not many people in the United States died
from pepper spray. So I do not think it is a reason for us to be too worried. Initially I was wondering why do we have to put it alongside firearms? Why do we have to put it in this legislation where you are dealing with lethal methods, rather than this non-lethal? But then I looked at other pieces of legislation. It was all encompassed under that legislation. I guess if we had time we could have gotten some other Act, a non-lethal Act where we look at Tasers, we took at different non-lethal methods to defend ourselves. But as it is now, I think we have to do things quickly.

And I agree with Sen. Mark’s suggestion that the firearms dealers who are there on board already should be the ones to also be given the ability, because they already have things in place. They already have storage for weapons. If a pharmacy is going to come on board, they will have to store these also, because you have to, if it is considered as a dangerous, under firearms, I think giving that extra burden to the pharmacists, I think it is a good idea, Sen. Mark said, to put it into the hands of those dealers, let them already have their system where they can put it into place, give the regulations, give guidelines how to apply. Yes, there are challenges even when people apply for their firearms. But I am saying all these things need to be done quickly.

Now, I want to make mention that, you know, when Sen. Vieira mentioned persons having muriatic acid in their homes and other items, I have some well-kept secret I would divulge here now. When I see rape victims, you know I think I am the only one in this Chamber who has actually seen rape victims under the trauma. We try to get them into a position to empower them. We try to let them, you know, get an idea that, you know, go to the place they fear; try to get out of that situation; try to, what you call engage them; try to put them exposure therapy. If you cannot pass through a certain area where you had that unfortunate instance, we try to get them to actually go there and get that sort of therapy. You try to empower them.
too. We try to let them take back their life, to learn to defend; give them a goal to keep fit. Learn Krav Maga. Carry a knife. Now, this is the danger I have. Persons who are honestly carrying a knife, or carrying other weapons just to defend themselves, a bat, you find those persons could be held, stopped in a road block, and have to defend their position of carrying a knife.

Even after the unfortunate incident of Ms. Bharath, we had another person travelling in a taxi who had to take out a knife and defend herself and she got away. So the police officers have to look now that we are living in dangerous times. We have to realize people are carrying knives. Yes, you can charge them. You can say you are not supposed to carry knives, but you have to look at things in a different level, giving persons the opportunity to defend themselves. This piece of legislation now gives somebody also means where they can defend themselves.

But as I say, the secret I want to say is that sometimes if I have a rape victim and I knew you were not able to carry back, to get weapons, people do not want the knives or sometimes, you know pepper spray was illegal, there is something call Nicorette, a quit smoking oral spray, which I recommend to those persons. If you take that Nicorette, which is quite legal, you spray it on a victim, you can have a disastrous effect. So, some rape victims, we had advised them to do this. Others took the law onto their own hands, where same muriatic acid, same lye, they sealed it in containers, sealed it with silicon, put a cap and seal it to keep in their purse, victims of crime; victim who have been raped. They look for ways that they can help themselves.

You see, sometimes we may have to choose between your life and the life of a loved one, or the enemy that attacked you. You have to choose: Do you want to live? Do you want to die? Do you want to kill that person or be killed by that person? Because at the end of the day this is a dilemma that a lot of persons have
to face. So sometimes we may need what we call castle legislation, where persons do not have to retreat to defend themselves. They can defend themselves. Police officers have to be aware that somebody carrying something like a bat in their car, a cutlass in their car, okay those persons—it is not like England where there are knife attacks and they are out of control in England. Here, persons I think, looking at our situation, may have to walk with certain items to defend themselves. This legislation gives us something that we could use.

You see, remember if guns and weapons did not work for self-defence, they would not be given to our judges, prosecutors, politicians, who desire to keep alive. The logic you are not allowed to keep/carry, anything dangerous for self-protection, because you might use it inappropriately could speak for guns also. You need a good reason to carry any dangerous item and self-protection I think, seems to be a good enough reason.

So, criminal I think, of course not being able to legally carry dangerous weapons is no impediment to criminals because criminals do not obey the law. Criminals apparently deserve a safe workplace, so we cannot let ordinary people protect themselves.

So I think citizens should not be criminalized for defending their own lives from criminals. Part of this legislation also speaks to the fact that if you use it as a defence. But if somebody went through rape and that trauma, they may somehow, you know, even though we do all the psychological checkups in a situation they may spray someone inadvertently just on the fear at the moment. So you can go through somebody. But if they now mistakenly spray someone we have to factor that in the—somebody who has it legally spray somebody mistakenly because of their past trauma, we have to factor somewhere in that we would mitigate against that because this is something that can happen.
And you see, I also have an idea that, you know, if you have victims who are domestic violence victims who are abused by perpetrators, who you know you could look and do a risk assessment to say that person is dangerous, that person choked, that person killed a pet, there are certain signs we use to have a risk assessment. I am saying the State should look at domestic violence victims and give them free of charge. Those persons who are being stalked, give those victims a pepper spray to keep. Because you find that when you leave your victim within the first year, it is the most dangerous time. So certain high-risk individuals, I am thinking, we have to do that. We have—I suggest women’s rights group also could assist in obtaining the pepper strays and fast-tracking it.

The problem I looked at when I saw this legislation is certain aspects I had some concerns and I make mention the fact that when I saw the definition also I had the same sort of concerns as Sen. Vieira, because I also wondered if my mother when she rubbed me down with Tiger Balm or Shilling Oil could I say I got pepper sprayed some time in my life. But the AG did clarify that.

When I looked at the fact that the possession is a strict liability offence, as other weapons, I wonder sometimes we have to look at the fact that a mother may have a pepper spray, leave it in her purse, a child may also take it and have it. I mean, you have to look at other individuals taking it and driving in a car and it is there because your mother left it there, or your wife left it there. So we have to look at that strict liability defence and see if there is any sort of mitigating factors that your wife left it in the car, you are in a road block, will you be charged for it.

I looked at section 6A where the Minister may approve the type, the strength and the volumetric contents of the pepper spray. Worldwide, there are different amounts you can carry. So even in Canada, where it is illegal, you can get for the animals a bigger amount, a bigger canister. So the legislation, looking at the
different strengths, those are things that the Minister would work out. And I hope he could be guided by the fact that there are some countries who dump pepper spray into Third World countries where, you know, right now you have to be appreciative we signed the Paris Agreement where there is the greenhouse effect, where if those pepper sprays have R134a/112, the Tetrafluoroethane gas propellant, it should not be allowed here. Because those persons who make this may be looking for an open market to dump that.

Also, the fact that there are different strengths, Sen. Vieira mentioned there are different strengths. And in fact, some persons who may not be able to afford pepper spray, there is something called a fab gel. A fab gel is really a defence spray where it gives a colour. You spray it on somebody and it leaves a colour stain on them that cannot be washed out in about seven days’ time. But we have it go beyond pepper spray. Because right now there are pepper spray gas pistols that are used for home defence. And again the firearm dealers, this is why I am suggesting, should be the one in case we decide to have these pistols without led bullets, you have actually pepper spray on them as a defence system that again could be factored into home defence.

The person who, I am looking at section A(2), the person commits an offence, a fine of $250,000. I think it is little high, but persons, because we are looking at pepper spray in comparison to a lethal device like a gun. But, you see, in cases where somebody uses it in pursuant of a crime, the full brunt of the law, and as Sen. Lutchmedial said, we can even go higher.

When I looked at the fact that you are looking at the applications coming in, and I am thinking there needs to be some sort of training. In the *International Journal of Industrial Ergonomics*, Volume 80, November 2020, “Civilian pepper spray for self-defense: Understanding user perception and impact of design on user
performance”, a study done by Anil R. Kumar and David Strybel in the US, they found persons sometimes will get the pepper spray but not even carry it at times when they most need it. Persons may not know actually where to aim the pepper spray. Sometimes they aim it at the eye, rather than the whole face. This research was a recent research, and I am looking at November 2020.

So even in the United States, where people buy it and could get it; just like that they could go it pharmacies and get it, they have to learn, because there is a mismatch between knowledge and practice cap was observed. Sometimes there are different types of pepper sprays, one where you flip up and one where you move from side to side and they found that the side to side with a thumb would be the better one that persons would have a better compliance with and better use to reach its target. So again, in guidance, we need to say that we have to look at that study and see what it suggests, the type we should get.

And I am now looking at the fact that clause 8, where it looks that any person found guilty of the offence of possessing—illegally possessing this pepper spray will be found guilty and liable to a fine and summary conviction to a fine of $250,000, I think it was, and 10 years imprisonment. I am thinking, you know, Mr. Vice-President, in the past we have heard police could plant a gun on you, go into your home and what not. There need to be safeguards in these legislation, because it is easier now to plant a spray on someone, and look at that. So I am suggesting, if somehow in legislation where we are really looking at police to go into search somebody, to search their car, we should have built-in in their law where there has to be existing video footage from their body cam. In that way, I think it will sort of thwart any sense where abuse can occur.

When I looked at the fact that persons may have these, bring it in illegally, I was very happy when the Attorney General mentioned that there were bar codes
that would be used now, so we can identify exactly where it is coming from. The fact that section 16B(3) looked at the prohibited groups that were not allowed to have that. And that is seen in other legislation, even in California, where there also is built in for certain persons not to be able to purchase the pepper tray. They even looked at persons who had different crimes attached to them before. So it is not to say that you could just go in and buy it. You have to have certain restrictions that is also seen in the California law.

I must say when I looked at that aspect where they looked at clause 11 of the Bill, it seeks to amend section 17(4A). And also further down it mentions:

“The Commissioner of Police or police officer authorised by him may refuse to issue the permit if they have reason to believe that the applicant is of unsound minor or intemperate habits.”

So this brings up the fact you may have to have a psychometric testing just as is done for firearms in order to meet that. So therefore the psychometric testing will ensure or, not really ensure, but there is nothing a hundred per cent guarantee but will somehow be able to give us an idea if this person is mentally fit. So psychometric testing, I see is built into this, just as how it is asked of the getting a firearm, the applying for a firearm, you need certain requirements that you have a certificate of character, which we heard it is a little difficult to get, but this other aspect I am seeing here.

When I looked at section 17A(1), where the age of 18 is eligible to be issued with pepper spray, different legislations have that also. We are seeing that in different jurisdictions and I am saying that, with the permission of your parents, you can it from the age of 16. But you see, I am saying that Colombia has it at 14. So I am thinking if you have a 14-year-old going to a school, I think we should look at the Colombia legislation, look at what is happening here, look at the safety
of a young girl travelling and I think it will be safer if she has that capable of maturity to handle it I am thinking that we would should look at lowering that age to 14 and the AG already mentioned the safeguard is the parental responsibility to have that control over your child to say yes or no and you are going to manage that child.

The clause 14 looks at section 21A. The appeal is there to the Firearms Appeal Board, if you are not getting it. The yearly dues, I have seen further down in 21C. Again, I am hoping section 25 speaks of the yearly dues. I am hoping it is not something.

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

Sen. Dr. V. Deyalsingh: Thank you, Sir. I am hoping it is not at a cost that persons cannot afford, because I am already mentioning if you could get guns, apply for your guns. If you could get pepper spray, look at that pepper spray, get it. But it should not be out of the hands of the ordinary persons.

The clause 18 looks at section 23 of the Act, by looking at places specified where persons who are selling it, they have to actually put a notification that they are actually selling this pepper spray, just as, you know. And I am looking at recently, certain firearm dealers advertised that they were selling guns and I think it was frowned on by the Police Commissioner. But I am thinking do we have permission to advertise that we could have certain places selling this? That is why I am thinking Sen. Mark’s suggestion could be something where we know we can go to these dealers.

When I look at clause 22, clause 22 of the Bill also has the effect of empowering the Minister to make regulations. And one of the regulations is a test for determining drunkenness. I think it should be a scientific blood test so you could get an individual, you do a blood test. That will take away all, if so wonder
what level it is. So having it scientifically documented from a blood test, to me, would help that.

I looked at clause 22 of the Bill also. I am in section 36, where they looked at fines where:

“...the Minister may prescribe within the Regulations, a fine of Two Hundred and Fifty Thousand Dollars (TT$250,000) and imprisonment for two (2) years”

—in certain regulations. I think it is too much for non-lethal object, and you know it is like you are creating it sometime like a firearm and I think we should probably downsize that except, as I say, if it is a criminal activity—no, used in a criminal activity.

Clause 26 looked at section 40A, where you are supposed to return this within seven days if you come in possession of pepper spray, or if somehow you find it, if a person who has a pepper spray permit to ensure the safety is stored away from children whenever the pepper spray is not being carried in person. So if you have pepper spray and a child gets it and actually carries it to school, the mother or the father would be fined $100,000 and imprisonment to six months.

I think children are children. They are curious. They may go and interfere with things. So somehow I am thinking this may be a bit too draconian. I would also like to mention the fact that the sections 17A, B, C, D make mention somebody has to possess one canister. I say no, people should be allowed to carry two canisters. If you have a gun, you are allowed to carry two magazines filled with bullets in it. So I am thinking, this part of the legislation, somebody could have it in a key chain, somebody could have one in the purse. So this should be left to the Police Commissioner to decide: Am I giving one? Am I giving two?

Again, looking at regulations 17D:

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“…a person who is authorised to…sell”
—must periodically, the Police Commissioner must actually get a sort of itemized list of what is happening. I say do not leave it periodically. Put a six-month, a six-month time when you have to carry that.

And I also looked at the clause 30 of the Bill, where a Minister may extend the period where persons are in possession of pepper spray coming into force of this Bill, must within six months, and then he has a power further to do it a further six months. I am thinking, we did not need that further six months because people should be advertised. So therefore, one thing I am seeing missing here is if you are a security officer or someone even selling these aspects, according to the OSHA, it requires that a pepper spray data sheet, SDS, be available to all employees who are selling in that establishment. So we have to look at that compliance at the OSHA compliance.

So Mr. Vice-President, I am saying that I welcome this Bill. I see it is needed. I see it is needed to empower our women. I see it is something that is long overdue. I am thankful it was brought here, I am thinking by passing this we would show the UK and Canada, which is totally against this, that we have come a long way. In fact, UK right now there is another online survey trying to get persons to get this to go back to the Parliament. Thank you, Mr. Vice-President.

The Minister in the Office of the Attorney General and Ministry of Legal Affairs (Sen. The Hon. Renuka Sagramsingh-Sooklal): Mr. Vice-President, I thank you for the opportunity to contribute to this Bill, the Firearms (Amdt.) Bill, 2021. Mr. Vice-President, in my contribution to this debate, I would further traverse certain aspects of the law already touched on by the Attorney General, but I will delve a little deeper, and those are the areas of the law, as it relates to fines and penalties. That is because, even though in Sen. Lutchmedial’s contribution she
would have touch and concern in that particular area, I want to be able to contribute and certainly clear the record on certain submissions made relative to that point of law made by the hon. Senator.

I would also focus on applications and appeals and certainly I will look at the exempted list, that is, the list of persons who cannot and will be prevented from getting a pepper spray. So that is the general gist of my contribution, or the scope of my contribution to this debate. But before, Mr. Vice-President, I traverse the law, as it relates to this amendment, I want to share a very special story with the people of Trinidad and Tobago and the Members of this honourable Senate. Now, in this particular story, Mr. Vice-President, the characters are all real and it is indeed a very, very true story and something I will never forget for as long as I live. Now, in a previous incarnation, Mr. Vice-President, I was a secondary school teacher. As a matter of fact, I taught in the secondary school system from September 2003 to 2010 as my first degree was in History.

You know, day before yesterday, Mr. Vice-President, we celebrated Mother’s Day. To be very honest, I celebrate mammy every single day, because I genuinely wish, if there were more human beings like my mother in this world. And the reason why I say that is because I remember being 21 years old and having my first appointment to teach in the secondary school system and my mother’s advice to me as a 21-year-old, now embarking upon this life as a secondary school teacher, she said to me: Love them, respect them, make them feel they can walk on water, because that is what I did with you and you did not turn out so bad after all.

And with this vigour, Mr. Vice-President, and mindset, I began teaching. And in 2006, I was teaching by that time at a girls school. And then because of this mindset I am pleased to say, and my students, my children, can attest to the
relationship that I developed with each and every single one of them. Up until this
day there are children who call me mummy. There are children who I have had the
pleasure to sit with at the Bar Table. I have children who are doctors. I have
children who are bankers. And my teaching experience is something that I truly
valued, because it taught me the value of loving and loving children that were not
your own.

Now, I will take this honourable Senate to Friday, the 10th of November, 2006. And why do I remember this day? It is because it was a Friday, a regular
Friday at school and I had planned to leave half-day on that Friday. And the reason
for that was because I was getting married that weekend.
And in a Hindu marriage ceremony, the wedding actually begins on a Friday night,
that is a Maticoor night. And I was about to leave—so that entire day, I was trying
to tie up some loose ends, making photocopies, making sure my classes were well
taken care of. And I had—one of my daughters—one of my students, throughout
the course of the day, “Miss, I need to talk to you, I need to talk to you, I need to
talk to you.” And to be very honest, Mr. Vice-President, I kept putting her off
because there were so many things I had to do before I left half day.

2.00 p.m.
And eventually with bags in hand, I was running out—my father was
waiting in the car park to pick me up. And I was running out and this child came
up to me and she says, “Sags”—because they called me “Miss Sags”—“Sags,
where you going? I need to talk to you.” And you know what? Bags and I stop and
I say, “Okay, princess. Tell me, what happen?” And it was at that moment she
started to cry and she indicated to me, “Miss Sags, yesterday I was raped.
Yesterday I was gang raped.” And right there, Mr. Vice-President, standing in that
courtyard, for the first time—because all day I was busy—I observed marks of
violence on our hands, I observed scars on her face. Well, I started crying, to be very honest. Because, as I said, these children, I treated them as my children and honestly, her story was that she got into a PH car that—she knew the driver, he drove off route. He, together with two other boys, took turns raping her over and over again. They dropped her off home and the rest was history.

Now, on that particular day, as a teacher, I was called upon to do everything that I had to do. So I would have informed the principal, we would have called the police, we would have called the parents, child support, we would have—student support, sorry. We would have done all the needful things on that day. But one of the things that I did not want to do and I was not prepared to do was to leave her in that school at that point, even though her parents were there. And I will never forget that it was my principal, Patricia Mc Intosh—actually, she was a previous MP in this honourable House. She literally had to walk me to my father’s car and said, “Renuka, you are getting married this weekend. Go. I will look after affairs while you are not here.”

And the reason why I bring up this story is because—to answer Sen. Deyalsingh—I too have witnessed rape victims. And it is—I think it is even worse when it is a child. I want to respectfully ask the Members of this honourable House, have you ever witnessed, innocence stolen from a child? Well, I did witness that, Mr. Vice-President. And here is what happens to them—because I saw her three years thereafter. They become livid, they are suicidal, they lose self-esteem. And for three years, as I said before, I saw her slip away bit by bit, despite everything we tried to do to save her in that school system. You know, I remember during that three years, she would come and we would try—I think it was her way of therapy. She would talk about it and she would always say, “Miss, I try. I real tried to fight them. I real try but was too much ah dem, too much ah dem.”
And here we now fast forward and we now fast forward, Mr. Vice-President, to this very moment. So I would have explained an experience I had and we now fast forward to this very moment. This moment, Mr. Vice-President, where as a lawmaker, I have an opportunity, my brothers and sisters of this Senate, we have an opportunity to equip young women, young, vulnerable women with the opportunity to protect themselves. But I thank God that it happened that I have this opportunity now and not when I was a teacher. Because when I was a teacher, I would have made a decision based on emotions alone and I would probably say, “Tom, Dick and Harry should be given pepper spray.” I even thank God that I did not have the opportunity to make—I cannot make these decisions as a lawyer alone because as a lawyer, I would probably even make a decision based on my own prejudice, probably as a defence counsel, probably as a prosecution lawyer. I am grateful that I have the opportunity to contribute to this Bill as a legislator because as a legislator, you see, Mr. Vice-President, we are held at a higher and a different standard. So while this child’s story resonates with me and remains with me, as a legislator, I have to recognize, we have to recognize, we have this pepper spray is both a sword and it is a shield. So the legislation that has been presented to this honourable House has to strike that balance.

There is no way at all, as a responsible legislator, can we bring legislation here and say, “Any Tom, Dick and Harry is entitled to a pepper spray.” And mind you I am speaking from a place where I experienced a child and worked with a child for X amount of years who was a victim to rape—gang rape. But yet I am saying and respectfully submitting to the Members of this honourable Chamber that as responsible legislators, emotions cannot move us alone. We cannot make decisions predicated on emotions alone. We have to see things from the bigger picture. And while yes, we want to equip women and vulnerable women with the
ability to protect themselves, we must also place checks and balances on this system. And as a result of that, I applaud the learned Attorney General for the manner in which this Bill is drafted. The manner in which this Bill is presented because he recognizes, in his wisdom, that this is that double-headed sword that we are dealing with. And as a consequence of that, Mr. Vice-President, in this law, while we are giving powers and privileges, we have to maintain oversight and we have to put measures in place so that this privilege is not abused.

So, with that being said, Mr. Vice-President, the areas of the law—I do intend to address, as I said before, some of the contributions made by Sen. Lutchmedial, Sen. Vieira, whom I respect, Sen. Mark, and Sen. Deyalsingh. But the first area of the law, Mr. Vice-President, that I want to peruse is clause 7 of this particular Bill, which appears before us, and it is the proposed section 6A and it deals with the issue of fines and penalties.

Now, what I want to put, what I want people of Trinidad and Tobago—citizens of Trinidad and Tobago to understand is that as legislators, when we draft legislation, we do not pull fines and fees out of a hat or the Attorney General does not wake up one morning and decide, “Yeah boy, ah go jam dem; $250,000 for this offence, or 10,000”—no, it does not happen like that. There is a legislative process and we are guided by the law when we are creating fines and penalties.

Now, Mr. Vice-President, throughout the length and breadth of this particular legislation, if we look at clauses 7, 9, 10, 12, 26, 28, all of these clauses are clauses that speak to different fines, speak to different penalties. And in explaining this issue, what—the question we have to ask ourselves is: As a legislature, as legislators, how did we arrive at this particular figure?

Now, Mr. Vice-President, I want to put on your record, that the Legislature is empowered not only to define the conduct—what conducts criminal offences,
but to also prescribe the punishment to be indicated on those who are guilty of committing an offence. So we do not have—there is not a cap that we have as legislators. We have the power to be able to determine, as drafters of the law, creators of the law, what fine or penalty we will apply to a particular offence.

Now, in the Supreme Court of Ireland’s case, Mr. Vice-President—I believe it was a case of Deaton v the Attorney General and the Revenue Commissioners, the ratio of that case stated, and I would like to place it in the public record:

“There is a clear distinction between the prescription of a fixed penalty and the selection of a penalty for a particular case. The prescription of a fixed penalty is the statement of a general rule, which is one of the characteristics of legislation; this is wholly different from the selection of a penalty to be imposed in a particular case. The legislature does not prescribe the penalty to be imposed in…”—a particular—“case; it states the general rule…the application of that rule is for the Courts…The selection of the punishment is an integral part of the administration of justice…as such, cannot be committed to the hands of the executive…”

In other words, Mr. Vice-President, this is in keeping with the separation—in keeping, sorry, with the separation of power, the legislator—we recognize we cannot willy-nilly impose fines and penalties, which are odious, that it stifles the discretion of the judicial officer.

So this is a type of mindset that I want to place into the public domain that goes into determining fines and penalties in a legislation. And we simply do not sit—as I said before, the Attorney General has a million things to do on a daily basis. So he does not just sit there and wake up one morning, as I said, catch “ah vaps” and decide, “Okay. This is how I going to jam them.” He is guided. We, as
legislators and as responsible legislators on this side of the Bench, we are guided by the law when we are crafting this legislation.

Now, Mr. Vice-President, in the case of Francis and Others v the State of Trinidad and Tobago—and I am very surprised—Sen. Lutchmedial, when she spoke about certain penalties being proportionate and all of that— I am very surprised she would even say that because there is learned—in this particular case, Mr. Vice-President, the learning is the ratio decidendi of this case is that a penalty imposed must be proportionate to the crime committed. And I would like the record to reflect, and it is my respectful submission, that there is proportionality throughout the length and breadth of every penalty that has been stated in the legislation which appears before us, and for that, I will continue to support and I will continue to praise my learned senior, the Attorney General.

Mr. Vice-President, the other question is—so I have dealt with the issue of how we come up with penalties and all of that within the legislation, the mindset that goes behind it. So proportionality is always an issue. The second issue we have or the question we have to ask ourselves is: How does the court apply? So after we set these fees, we have set parameters in which a court can charge for a particular offence, how does the court apply these fines and fees?

Now, Mr. Vice-President, if I may turn to, for example, let me use an example, section 6A(4). This particular offence, Mr. Vice-President, is read in conjunction with propose section 6A(2). The prohibition is that a person may not manufacturer, import or sell or distribute or purchase, or have in his possession pepper spray. And the sanction in that particular section is, he is liable—if he does this—he is liable:

“on summary conviction to a fine of two hundred and fifty thousand dollars and imprisonment for five years; or”

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— and is liable, sorry:

“on conviction on indictment to a fine for seven hundred and fifty thousand dollars and imprisonment for fifteen years.”

Now, so this is how the legislation reads. And the point that I am making now is how— so a person appears before the court, this is the offence they have committed, what is the mindset now that the judicial officer applies in determining what kind of sentence I am going to grant or what kind of sentence I am going to impose upon the accused?

Now, Mr. Vice-President, there is no hard and fast rule and a judicial officer sitting before the court, in the instance of this particular—in a court, in the instance of this particular legislation, can apply their judicial discretion in determining which end of the spectrum they are going to apply to the person that appears before him or her.

[MADAM PRESIDENT in the Chair]

And that, in a nutshell, is practically how the imposition of fines, penalties, sentencing works in our jurisdiction. And I believe it was necessary to highlight this because I felt as if it was being placed in the public domain—what was being placed in the public domain was the perception that we are just creating arbitrary fines and arbitrary impositions on persons. But I just wanted the public to rest assure that there is a mindset—there is a legislative mindset that is applied when we are drafting this legislation and we are always cognizant of the issue of proportionality when we are setting these fines and penalties.

Madam President, if I may now respectfully traverse the area of the law as it relates to clause 10 of the Bill that appears before us. Now, this particular clause 10, Madam President, it seeks to amend section 16A. And this is the area of the Bill that deals with all of the prohibited persons, persons who are prohibited by this
particular Bill from obtaining a pepper spray licence. Now, it is no secret, Madam President, as I would have indicated in the beginning of my contribution, that pepper spray, in the wrong hands, can mash up the place and there is no joke about that.

Now, as a government, Madam President, we had to find ways to prevent the use of pepper spray by criminal elements, even those who are alleged of committing serious criminal offences. Now, I heard Sen. Lutchmedial adopting the Law Association’s perspective that why are we imposing—why are we preventing persons who are charged from having a pepper spray, as opposed to a person who has been convicted of a particular criminal offence? And this is where I respectfully say to all of my seniors of the Law Association, and I respectfully submitted even the hon. Sen. Lutchmedial, this is where you draw a line from thinking like a lawyer and thinking—now thinking like a legislator. If I am to think like a lawyer alone, certainly I can say, “Yes, one is presumed innocent until proven guilty, and therefore, why we cyar put a pepper spray in his hands?” But you cannot do that. We do not have the luxury, as legislators, to think like a lawyer anymore. I now have to think like a legislator. The Attorney General has to think like a legislator and that means we have to look at things holistically. And even though we recognize that, yes, a man is presumed innocent until proven guilty, we cannot leave things to chance. And as a consequence, we are very clear in this particular Bill, a provision which I completely support, that even a person who is charged of a particular offence—offences, for example, in the Schedule II and also Part II of the Bail Act, persons who have been charged or convicted of those offences are prevented from getting a pepper spray.

You see, I do not want—I am not made up or built to deal with “coulda”, “woulda”, “shoulda”, that a man is charged of a particular offence, and in my
righteousness, because I feel he is innocent until proven guilty, I say, “Yeah, brother. Go through. You can get a pepper spray.” And then lo and behold, he is indeed a perpetrator for a particular offence—he is the perpetrator and then I have to live with some woman’s or somebodies blood on my hands. I am not prepared to do that. This Government is not prepared to do that. And as responsible legislators, I respectfully submit to my learned colleagues and seniors, even at the Law Association, we have a responsibility to look at things differently now, in the sense that—and this is my personal submission—in the sense that, even a person who is charged with an offence, I respectfully submit that pepper spray ought not to go into their hands.

And the reason for this is because also, once acquitted of that particular charge, John Doe still has the right to now go and apply for pepper spray, if he really or she really wants pepper spray. So once that charge—they are acquitted of that charge, there is nothing in this law that prevents him or her from applying for a pepper spray and successfully doing so. But at least to my mind, before he is cleared of the charges—because I “eh” know. I am not too sure whether he did it or did not do it, or whether she did or did not do it. So it is a safer position as a policy—from a policy perspective to say, you know what. “Hold up. We put in a stay. You are not entitled to this pepper spray but hear what. You are cleared of your charges. By all means, go through.” And that is why I kept repeating because it is something that has—being a very new politician—it is something that resonates with me day after day. I can—I do not have the luxury anymore of thinking like a defence counsel. I now have to think differently. And we have to see things both from a prosecutorial perspective, from a defence counsel, because that is our responsibility as legislators. [Desk thumping] So with that being said,
Madam President, I want to say I fully endorse clause 10 of this Bill that appears before us.

Now, on the issue of this—the same list of persons who are prevented, the issue of domestic violence came up often and I know Sen. Vieira spoke—he made a very substantial point. He made the point that why should a woman who has pepper spray illegally face a penalty? And I hope, respectfully—Sen. Vieira, I certainly respect your position but I hope you understand what we are trying to say here, that she has to be held accountable because there is a process and procedure to obtain this application and if we allow anybody to get a pepper spray, if we allow anyone to be entitled to pepper spray, what, in essence, we will be condoning as legislators is a Gotham City, a Wild, Wild West with no checks and balance, where anyone—

Madam President: Minister, you have five more minutes.

Sen. The Hon. R. Sagramsingh-Sooklal: Thank you, Madam President. So Sen. Vieira, respectfully, I hope you could readjust your position and rethink the view of why, at least on this side, why we have considered—we had to think differently and certainly impose certain restrictions on persons who can apply for pepper spray.

Now, what I wanted to make mention of in this clause 10, which speaks to the point of domestic violence and persons who have an order against them for domestic violence is because I know it is a very big social point. It is a social issue and people may think, “Oh my God, because I have a domestic violence order against me, I am prevented from applying—from obtaining my pepper spray.” What I want to remind the Members of this honourable Senate is in that particular clause it says:

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“For the purpose of subsection (1), a person who is subject to an Undertaking Interim Order or Protection Order in the proceedings under the Domestic Violence Act shall be prohibited from obtaining a Pepper Spray Import Permit or Pepper Spray Permit unless a Court determines otherwise.”

And that is a section of the legislation that I want to analyze:

“…unless a Court determines otherwise.”

Now, there is a very locus classicus case. It was the Attorney General of Trinidad and Tobago v Miguel Regis. And in this particular case, the court dealt with the issue of what is judicial discretion, because that particular section of this clause where it says: “unless the Court determines otherwise”, it gives the court the ultimate—the judicial officer the ultimate discretion in domestic violence cases, when a matter appears before him or her, to decide if this person can still, notwithstanding the order, this person can still make an application and successfully get pepper spray. And this particular case that I alluded to, it stated—the esteemed panel of judges stated in this case:

“Judicial discretion implies a power to choose, decide, determine according to one’s own judgment. It is a power to be exercised, not arbitrarily or according to the subjective whims of a judicial officer, but, in accordance with the will of the law. From this general proposition it follows that there are many aspects of judicial discretion. However, what is common to all is choice…”—decision.

So this particular case—and it went on further to talk about the length and breadth of judicial discretion. So to the members of the listening public, I want persons, especially persons who have been subject to domestic violence, to understand that, based on the way in which this law is crafted, we are not locking you out from the opportunity to be able to apply for a pepper spray. Because what we have, at the
very end of that particular section, is we have identified that the court can exercise its judicial discretion, based on the facts of the matter that appears before this court and decide, not withstanding an undertaking, notwithstanding a particular order that is given, this person can still be entitled to successfully apply for a pepper spray and have that pepper spray granted to them. And the reason for that is because, of course, the judicial officer is the person who is intimately connected to the case. They would know exactly all of the facts, they would know the seriousness of the matter, and certainly know whether a party to the proceedings can still have a pepper spray in their possession, notwithstanding having these orders made against them. So I do not want there to be pandemonium amongst the citizens of Trinidad and Tobago, in which they believe that because there is this particular order, as it relates to domestic violence, you are automatically locked out from having the use and benefits of a pepper spray.

Now, Madam President, I had intended to deal with the issues of applications and appeals, but the Attorney General did deal with that and there are certain things that I said I wanted to put on the record relative to contributions made. You know, Sen. Lutchmedial, I will be very honest as a woman also sitting in the Senate, I see Senator—the learned Senator as a very strong, young woman who has good contributions to make but I was very, very disappointed that in a Bill of this serious nature, that Sen. Lutchmedial spent 13 minutes simply lamenting on the failures and how long it took the Government to bring this piece of legislation, without offering to this country and to the 300,000 people that they claim that they represent, without offering an alternative solution, and I will say I am very disappointed. Sen. Lutchmedial also spoke about training requirements—

**Madam President:** Senator, your time is up.
Sen. The Hon. R. Sagramsingh-Sooklal: I thank you very much, Madam President. [Desk thumping]

Madam President: Leader of Government Business

**ADJOURNMENT**

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Madam President, I beg to move that this House to now adjourn Tuesday, May 18, 2021, at 10.00 a.m. And we would continue the debate on this Bill. Thank you.

Madam President: Hon. Senators, before I put the question, I will now invite Senators to bring greetings on the occasion of Eid ul Fitr, which will be celebrated on Thursday, May the 13th, 2021. Minister of Rural Development and Local Government. [Desk thumping]

**Eid ul Fitr Greetings**

The Minister of Rural Development and Local Government (Sen. The Hon. Kazim Hosein): Thank you very much, Madam President, As-salamu alaikum. May the peace and mercy and blessings of Allah be with us all. *Bismillah-ir-Rahmanir-Rahim*. I begin in the name of Allah, the most gracious, the most merciful.

Thank you, Madam President, for allowing me the opportunity to bring Eid ul Fitr greetings in this honourable House to the Islamic community of our beloved country. As we continue to battle the effects of the novel coronavirus, COVID-19, the Holy Month of Ramadan for another year is being observed with a difference. During the sacred period of fasting and prayer, many of my Muslim brothers and sisters, like myself, eagerly return to our places of worship. However, due to the increasing number of active COVID cases, places of worships experienced several reductions in occupancy, and eventually, closed its doors. Though we were sad to
spend the remaining days of Ramadan away from the Mosque, unable to see our friends and relatives, we knew that Almighty Allah subhanahu wa ta’ala would be our guide.

Once again, Muslims near and far had to alter the way that they would traditionally worship. Another difficult Ramadan that saw empty masjids, with terraria prayers is being performed virtually. The silence piercing through the walls of our places of worship, as gatherings of joy and laughter during the daily breaking of the fast, which is the Iftar, were no longer something we could look forward to. This continues to be a very difficult way of life, indeed a new normal. But we as Muslims are reminded of the teachings of Almighty Allah, that many people in the past have suffered and had their faith tested, so much each and every person in the present. It is narrated through the Holy Qur’an that Almighty Allah loves those who demonstrate Sabr, which is patience in times of distress and trials. Chapter 8 verse 46 says:

And obey Allah and His Messenger upon whom be peace, and do not dispute and lose courage and your strength will depart, Be patient, indeed, Allah is with those who have patience.

2.30 p.m.

As a devout Muslim, I remain trusting in Almighty Allah that we, as a country, along with the entire world, will overcome and win this fight. During this holy month of Ramadan, I truly believe that we were given yet another opportunity for increased prayer and deeper reflection with our loved ones. For me, I was reminded of the importance of family time, and cherish these moments, sitting together with my mother, wife and daughters at home, where we would pray and recite Qur’an, thus building a greater relationship with Almighty God.

Though this pandemic has removed us physically from the mosques, it has
taught us that our homes can become our new place of worship, one where we can share a space with our loved ones and encourage our children to join our daily rituals. It also taught them the values of compassion through charity and service to others, which are prescribed in the Holy Qur’an. For Muslims, the final 10 days of Ramadan is very auspicious and hold great significance as it is believed that Almighty God shows great mercy to his creation. It is a chance to benefit from the immense blessings of the sacred month and seek salvation.

During these days, Laylat al-Qadr, the Night of Power occurs, and Muslims meditate in prayer for an entire night. It is written that this odd night is better than 1,000 months and the one in which the Holy Qur'an was revealed to the Prophet Muhammed upon whom be peace. As the Muslim community of Trinidad and Tobago, and across the world, draws closer to the end of the holy month of Ramadan and the celebration of Eid ul Fitr, let this month reaffirm our faith, shape our character and draw us closer to Almighty Allah. May we remember to show gratitude and compassion to those less fortunate in our society.

In preparation for Eid ul Fitr, I want to remind my fellow brothers and sisters in Islam to adhere to the public health guidelines set out by the Ministry of Health: wear your masks; stay at home, unless absolutely necessary; properly sanitize, and please do not congregate. This virus has now impacted every single household, whether directly or indirectly, and we must not let it get the better of us. Let us reflect on the valuable lessons learned during this sacred month and strive to implement them in our everyday lives.

I prayer for Almighty Allah’s continued guidance and protection upon our Government, all frontline workers and, by extension, all citizens of Trinidad and Tobago. May Allah grant us patience, wisdom and understanding as we continue to work together in this global fight. May he bless all the persons who have
contracted this virus with strength and healing. May Allah accept our fast and ibadah and grant ease to all our brothers and sisters who are facing difficulties and suffering during this hardship.

Almighty Allah, I also prayer for those who have lost their loved ones during this pandemic. May they be granted jannatul firdaus, forgive their sins and make their grieves a garden of comfort and light.

In closing, Madam President, I want to thank the hon. Prime Minister for giving me this opportunity to serve in this Government for yet another term. I want to remember, especially Sen. Franklin Khan, who has passed away, especially during this month, because he used to give me the time to leave to break my fast. On behalf of the Government of Trinidad and Tobago, I take this opportunity to wish my brothers and sisters at home and abroad, Eid Mubarak, and a highest blessings of Almighty Allah in all our base. Thank you. [Desk thumping]

**Sen. David Nakhid:** Madam President, I thank you for the opportunity to extend greetings and my commiserations with my brother, Sen. Kazim Hosein. [Arabic spoken] In the name of God most gracious and merciful. [Arabic spoken] God’s blessings be upon our Prophet Muhammad and his family, noble and pure and his selected companions. On behalf of the United National Congress and the leader of the country’s Opposition, the hon. Kamla Persad-Bissessar, we extend sincere greetings to the Islamic community of Trinidad and Tobago and the worldwide Islamic diaspora on the advent of Eid ul Fitr. Madam President, this blessed holy month of Ramadan is about to leave us and already we have moaned its absence, as we grieve the departure of a loved one. The doors of repentance, which were opened to us during this blessed month, for the smallest of acts, will now be inaccessible to us.

The multitudes of bounties and blessings that were bestowed upon us while
we observe the fast, even where sleep is considered an act of worship, will now be constrained. Small wonder that tears will flow from our eyes as we bid this month farewell, and admit to the paucity of our stratagems and confess to our shortcomings in fulfilling our obligations and our recommended acts to Almighty God.

As we celebrate the days of Eid ul Fitr, as a nation, the Islamic community will begin to look forward to the next coming of the Holy Month, with the desire and need and expression of a mother who looks to the return of her prodigal son. We at the United National Congress recognize and pay tribute to the sterling magnificent contributions of the Islamic community of our country that they have made in all and every sphere of national development. And we note, with admiration, the call of the Muslim communities’ greatest and most heralded Prophet, Prophet Muhammad, sallallahu alaihi wasallam, that Omathe Waha, my community is one and all expressions of fitna or mischief must be avoided. As our Holy Qur’an states, fitna ajam, [Arabic spoken] fitna meaning mischief is more grievous than murder.

So as a united Islamic community continues its advancement and contribution to the national effort to establish justice and equity throughout all communities, we of the United National Congress, again, wish Eid Mubarak, the blessings of Eid— [Arabic spoken] 1,000 congratulations and salutations upon all our people of Trinidad and Tobago and may we continue this fight together. I thank you, Madam President. [Desk thumping]

Sen. Amrita Deonarine: Thank you for recognizing me, Madam President. Ramadan is the Holy Month when it is said that the Qur’an was given to the Holy Prophet Muhammad, peace be unto him. Allah prescribed the Holy Month in order to rectify our actions and purify our soul with a goal of attaining devoutness.
During this Holy Month of Ramadan, members of the Muslim community observed their fast, not to test their will, but to perform acts of faith which bring them closer to God. It is believed that the gates of mercy are open, so the charitable deeds which you do in the month of Ramadan multiply your blessings.

Last year’s Ramadan arrived during the world’s first round of pandemic related lockdowns. In many countries, like ours, Mosques, like other places of worship, were closed and cut off Muslims from communal prayer, meals and charitable work. This year, as new surges of the pandemic continue to necessitate limits on movements and gatherings, we continue to be especially grateful to the Muslim community for their fast, prayer, charity and sacrifice for the sake of the overall safety and well-being of Trinidad and Tobago.

One of the most important gains from Ramadan is the ability to evolve, to transform from a previous you, to a new you. The one who has gone through a spiritual rebirth will propel for the rest of the year. The end of Ramadan is celebrated on Eid ul Fitr on Thursday. The sacrifices of the month are supposed to prepare our citizens who are Muslims for the new start in life’s journey; one of patience, sympathy, compassion and humanity cleansed from the stresses of the past. It is in this context that on behalf of the Independent Bench, I say, Eid Mubarak to the Muslim community and Trinidad and Tobago. Amin. [Desk thumping]

Madam President: Hon. Senators, it is my privilege to join with those who have spoken before me in bringing greetings to members of the Muslim faith in the celebration of Eid ul Fitr. As we all know, Eid marks the end of Ramadan, that period of fasting, prayer and self-discipline. This year, and at this time in our nation’s history, the discipline and sacrifices shown and made by our Muslim brothers and sisters are an example to all of us, all of us who are also being called

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upon to make our own sacrifices for our health and safety.

We therefore thank those of the Muslim faith for the example that they have set for us all. Even though their celebrations may be more muted this year, we know that the deep-rooted faith and charity will persevere. On behalf of the Parliament of Trinidad and Tobago, I therefore wish all Muslims and all of Trinidad and Tobago, Eid Mubarak. [Desk thumping]

*Question put and agreed to.*

*Senate adjourned accordingly.*

*Adjourned at 2.43 p.m.*