

SENATE*Wednesday, August 20, 2014*

The Senate met at 1.30 p.m.

PRAYERS[MR. VICE-PRESIDENT *in the Chair*]**PRESIDENT
(ABSENCE OF)**

Mr. Vice-President: Hon. Senators, I wish to advise that the President of the Senate, Sen. The Hon. Timothy Hamel-Smith, is out of the country.

SENATOR'S APPOINTMENT

Mr. Vice-President: Hon. Senators, the correspondence has not yet reached and, therefore, we would revert to that at a later stage.

**MISCELLANEOUS PROVISIONS
(PROCEEDS OF CRIME, ANTI-TERRORISM,
FINANCIAL INTELLIGENCE UNIT
OF TRINIDAD AND TOBAGO) (NO. 2) BILL, 2014**

[Second Day]

Order read for resuming adjourned debate on question [August 19, 2014]:

That the Bill be now read a second time.

Question again proposed.

Mr. Vice-President: Hon. Senators, the Minister of Finance and the Economy has commenced his response. He has 41 minutes of original time left. [*Desk thumping*]

Sen. The Hon. L. Howai: Thank you, Mr. Vice-President. When we adjourned yesterday evening—and I would like to thank hon. Senators for coming back again this afternoon. I appreciate the sacrifice of the time that you have made. [*Desk thumping*]

Sen. G. Singh: And income for some.

Sen. The Hon. L. Howai: And income for some, yes. I really appreciate this because the Bill is a very important Bill and it will do a lot for us, in terms of moving forward in specific areas where the issue of money laundering and the financing of terrorism is concerned.

Yesterday, when we adjourned, I was speaking on the issue of the blacklisting. I know that concerns have been raised as to whether this had to be rushed, as I said, last night, because of the fact that we would be blacklisted. I have to say that, perhaps, I myself, Mr. Vice-President, may have been guilty of actually contributing to that thinking, because I have been pressing on my side to get the Bill passed and to get the work done so that I could move this process forward as quickly as possible. I probably had an “Al-Rawi moment”, I suppose, now that I am thinking about it. *[Laughter]* I do not mean to—but certainly.

The thing is—no, my mind just went back to the \$800 million for Life Sport, and so on. Senator, the reason I got up to correct it—and I try not to kind of get in the middle of Senators’ contributions—I was concerned that the \$800 million might have been a billion by the time you were finished. The fact that I got it to \$500 million, I left there thinking that I had a major success, you know, even though the number was still higher than the actual number.

Anyway, the thing is, no, there is not a haste with respect to us being blacklisted or anything. It is that there are a number of Bills coming up and I need to get this done and I would like to certainly get it done before the end of September, so that by the time we exit in November, the third round, then we get into the fourth round in January, that we would have had some period of implementation of the Bill itself, this new Act, over the next few months. And I think we are certainly in a position to do that, because there will be some crowding of the agenda in the next few months. We have, of course, the Constitution (Amdt.) debate.

We also have the budget coming up and we have the new guidelines for how the budget will be done with expanded roles for the Finance Committee, and so on, and then I am coming back with the new Insurance Bill, which includes the work of the Joint Select Committee now. So, I am amending that Bill and I will bring the amended Bill back, reflecting the deliberations and discussions and agreements that came out of the Joint Select Committee.

I would also like to lay the Credit Union Bill, which is more or less done and we are just awaiting the outcome of the Coleman Report which has now been completed. So, I am pushing the CPC to get the final touches done on that. There are some additional discussions that the Credit Union Leagues have asked me to have with them, but I am looking to complete that soon and then also lay this here. And, of course, we have Motor Vehicle Authority, which we would like to get done before the end of this year. So there are quite a number of Bills coming up and I would really like to get this out of the way as early as possible and give us a track record of some implementation over the next few months.

There were also some questions that came up, with respect to what extent there was consultation. I want to say that, actually going back to 2005 and 2007, around that time of the previous administration, a national anti-money laundering and counterterrorism financing committee had actually been set up and that committee had started to work and that committee has continued its work, and in fact that committee reports to the inter-ministerial team that I mentioned earlier, which is chaired by the AG but also includes the Minister of National Security as well as myself as Minister of Finance and the Economy, and we meet religiously every Tuesday—[*Interruption*]

Sen. Al-Rawi: Good PNM legacy. [*Desk thumping*]

Sen. The Hon. L. Howai:—to implement and to continue that focus. So that the various agencies that are included in there include the AML/CFT Compliance of the Ministry of National Security; the Office of the Commissioner of Police; the Immigration Division; the Office of Director of Public Prosecutions; the Financial Investigations Branch; the FIU; Customs and Excise; Ministry of Finance and the Economy; the Legislative Drafting Department; the Central Authority; the Ministry of the Attorney General; the Central Bank; the Trinidad and Tobago Securities and Exchange Commission. Well, I had the Office of the Director of Public Prosecutions already. So, I am advised that at each stage of the development of this Bill, the various agencies were invited to contribute and so on and, therefore, what we have in front of us, I am advised, reflects the inputs coming from each one of these 13 agencies.

There was also an issue concerning Trinidad and Tobago playing catch-up, really, and, you know, I want to say—well again, the thing is that this work has been ongoing since 2007, under this committee that I had mentioned before. The individuals have changed but the structure remains in place and has been enhanced because of the fact that we have the inter-ministerial team that looks directly at what is happening on a weekly basis.

We have seen a gradual series of progression steps over the past few years, of course, with the establishment of the FIU, the amending of the POCA, the Financial Obligations Regulations, the appointment of the FIU as the regulator of listed businesses, the revised guidelines, these new amendments, and so on.

So, what we have been doing on an ongoing basis—and sometimes there is so much noise around us that we are not aware of the gradual progress that is being made over time. I want to say that, in fact, in 2005, we were non-compliant with 41 out of the 49 recommendations that the FATF had in place. Today, we are more

or less—there are three big major ones which this Bill will fix for us, and then we had a few minor smaller ones, which the Financial Obligations Regulations coming out of this Bill, when we lay them, we would have dealt with. So that when we go into the fourth round, most of those things—we would be more or less compliant with these 49 recommendations.

Where we will still have some challenges remains the enforcement level, which is why, to the extent that we have more time before the fourth round starts, what that does is it gives us the opportunity to, perhaps, deal with some of the issues around enforcement. Because, really, the big issue for us was these predicate offences—to try the predicate offence and then deal with the money laundering issue became an issue. That is where the difficulty arose for us and this gives us a tremendous leg up, as far as dealing with that particular issue is concerned.

So, as I said, we have had four persons, as I said, charged. We do not have the level of convictions that we would like to have and, therefore, the purpose of this particular Bill is to ensure that we could enhance that particular area.

There has been some talk, perhaps unfairly, that the FIU is not doing what it should do, it is not as effective as it should be, the FIB is not as effective, and, again, we are looking to this Bill to help us with that. I want to say that the FIU—sometimes we confuse what the FIU and the FIB does and I think everybody thinks the FIU is the FIU and the FIB is really just the FIU, and, therefore they do put together their intelligence reports and pass them on to the FIB, which then is responsible for the investigation and eventual laying of charges, and so on.

I want to say that up to the end of last year—the last fiscal would have been September 30, 2013, for the FIU—the FIU had disseminated 124 intelligence reports, that is over the period of time since its establishment. But I want to say that 2013, last year, 2012/2013, we had 99 of the 124, 80 per cent of these intelligence reports were completed last year, and the reason for that is that there has been a significant investment since 2012, in building the capacity of the FIU in the training, in the development of staff, the recruitment of staff, and in fact, recently Cabinet approved another 10 persons to help strengthen the office of the FIU, so that we can achieve the objectives, the goals and the output that we are looking for from the FIU.

I also want to say there was a comment which Sen. Al-Rawi had made about membership in the Egmont Group. The fact is that we are members of the Egmont Group. I think I understood him to say that perhaps we are not. But we are members and we have been members since May 2013, and, in fact, it allows us to

exchange information and some of us may recall the charge which was laid against a New Jersey man, David Migliore, who was utilizing a private members' club in T&T to evade taxes and the reason why that prosecution was as swift and as effective as it was, was, again, because of that cooperation which we are able to achieve now, because of the fact that we are part of the group, the Egmont Group.

Therefore, you know, I think that as we start to move forward, we start to see more and more of this type of cooperation which helps us to become more and more effective as far as dealing with this particular issue is concerned.

1.45 p.m.

The issue of training came up and I just want to say that both the FIU and the FIB, we have invested quite a significant amount in training in the last year or so. The staff has attended specialist training with the US FBI, Federal Bureau of Investigations, this is in the case of the FIB, and also training has also focused on gang investigations, financial investigations, economic crimes, training in the use of software for financial analysis, and general money laundering investigations. We have, of course, to continue to do more. We have to continue to invest in the training and development of the people because a lot of persons are new, now coming in as I said.

Cabinet has approved 10 new positions for compliance and for legal staff to bolster the capacity of the institution, and as they come in, they have to be trained too. So there will have to be an ongoing investment, and I know sometimes staff feel they are not getting as much training as they would like; they would like to have more, but, of course, you have to balance a number of issues as far as that is concerned.

There was—I also want to say that the FIU does collaborate with many businesses and interest groups, and I think an issue was raised with the credit unions, and they do, in fact, collaborate with the Credit Union League and with the Association of Credit Union Presidents, to conduct training outreach and deliver guidance to the credit union sector. So, in fact, you know, I have been advised that that interaction between the FIU and the members of the credit union sector remains very vibrant and continues on an ongoing basis.

There was a question about whether the desk-based reviews and moving it into some of the other organizations might be an issue. I want to categorically emphasize again, you know, you do not really want to bog down one desk with 1,800 reviews. You really want to effectively use all of the agencies that are at your disposal. One of the things that the criminal element has been able to exploit

is the fact that we tend to work in silos. We do not tend to exchange information and we do not tend to work cooperatively together. I think that is something that we started to see a lot more happening as these institutions develop, and particularly because we have brought the inter-ministerial team together. So you have three Ministries, National Security, Finance and the Economy and the Attorney General's office which crosses a number of institutions. And, therefore, we are able to start building a lot of that cross-fertilization that allows us to become a lot more effective in terms of dealing with the issue of money laundering. So I just thought I wanted to deal with that.

The section 43—34 reversed, I am told—[*Laughter*] is something that we are open to discussions on. I would not go into it. I think the Leader of Government Business had explained—has read into the *Hansard*, the opinion that was received from the CPC's office, and we discussed at length the question of section 2(3), and whether that is appropriate or not. We are flexible and prepared to consider the points which were raised, concerning putting the amendment into section 43 as has been recommended. So although I should say, the technical staff has advised me that it ought to be left in section 2, right? But again, we are open to discussion on that, and if you want it moved to that section, that is something that we are prepared to perhaps have a fuller discussion on, and determine how we proceed from there.

There were a few comments made with respect to cash transactions and putting some controls in place for cash, for the sharing of information with the Police Complaints Authority and the Integrity Commission, and so on. I had a further discussion on those matters with my staff, and they did provide me with—in the case of the Jamaican legislation with respect to cash, the statements which came out from the Bankers' Association of Jamaica, where the Bankers' Association was expressing some concern regarding how it was going to be implemented in Jamaica, the additional cost, whether it would be effective or not. There were quite a number of issues raised by the Bankers' Association of Jamaica. So the suggestion was that—and similarly with respect to the PCA, the issue of if we open things up to the PCA, whether similar bodies with similar authorities could ask for the same thing and so on.

So I have gotten myself in some trouble before making changes on the floor, one of which Sen. Al-Rawi is accustomed to pounding me about, which deals with the companies which are no longer active and so on, you know. But that was one that we made on the floor as part of a finance Bill debate some years—a couple of years ago.

Sen. Al-Rawi: In the House.

Sen. The Hon. L. Howai: In the House.

Sen. Al-Rawi: By your Government.

Sen. The Hon. L. Howai: Yes. So well, we made it, but it came up and having had the experience of that and a couple of other things, we will prefer not to make—we would prefer to take a closer look at these issues, and understand what the policy implications are, and how it is likely to impact, and perhaps have some consultations with the relevant parties and so on, before we actually proceed with it. So we just wanted to make that point. It is not that we are irrevocably opposed to it, it is just that before we do anything, we probably should do a little bit of research and perhaps get some feedback from the relevant parties and so on. So we would like to ask that perhaps we could defer that for further consideration at perhaps another time. So we will discuss it—*[Interruption]*

Sen. Al-Rawi: This is the fourth time—seriously?

Sen. The Hon. L. Howai: Okay. No, I was not aware of that.

Sen. Al-Rawi: It was raised four times, and this is the fourth time we have deferred it.

Sen. The Hon. L. Howai: All right, but no, I was not aware of that, but we thought we needed to do some work on it before we proceed.

There was a—Sen. Al-Rawi had raised a concern about the definition of security being changed, and I am told that the definition of security is being brought into alignment with the new definition of security in the Securities Act, 2012. So that is what they were doing. So it does not affect the categories of financial institutions which are captured under the Proceeds of Crime Act. Whilst insurance and credit unions are not securities companies per se, they are still financial institutions under the POCA, and have all the same obligations for compliance and reporting as banks, securities, intermediaries and all of the listed businesses. So this is my advice from the FIU, and based on my discussions with them, it seems that it is okay.

There was also a question raised about the six-year limitation, and I think the impression we have is not—the impression that may have been given was not correct. It is not that—it is not a statute of limitations as far as money laundering charges are concerned. This particular limitation deals with if, for example, a person is charged with drug trafficking, and he knows he might be convicted, he could perhaps transfer assets into his friend's name or his daughter's name, or in somebody else's name, and the statute of limitations that is in the previous Act, and this is something, this is not a new change. Right? I know you did not say that. What you said was that you were concerned about it in light of the omission

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of the section 43(c) issue, right? So this is some—I was just trying to make clear that—because some people may have understood it differently, and I just wanted to make clear that it did not deal with the statute of limitations on a charge for money laundering, for example. So I just wanted to make that point clear as part of the discussions, right? So once we deal with the section 43 issue, I presume that the concern would disappear.

So I think, Mr. Vice-President, the hon. Leader of Government Business had dealt in more detail with one or two other areas relating to things like the Minerals Act, relating to the section 43 issue, and a number of other areas. So I do not want to belabour those points any longer, any more. I think that we have taken up enough time of this honourable Senate, and I think it is about time that we get down to dealing with the Bill and the changes and amendments that we think we would like to make.

So I would like to ask, Mr. Vice-President, to bring my discussions to an end, and ask that we—[*Interruption*]

Sen. Al-Rawi: The money Bill issue.

Sen. The Hon. L. Howai: Sorry?

Sen. Al-Rawi: The money Bill issue.

Sen. The Hon. L. Howai: No, okay, yeah, I asked—sorry—thank you for that point. I checked that with the CPC, and I got feedback before I came in, that their interpretation of section 66 is that it is not an issue. So that was the advice that we got.

So with that, Mr. Vice-President, I beg to move. [*Desk thumping*]

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

2.00 p.m.

Senate in committee.

[*Amendments distributed*]

Mr. Chairman: Hon. Senators, could we just suspend the committee stage to revert back to the Senate because the instrument has arrived.

Sen. G. Singh: Mr. Chairman, may I suggest that the committee stage be suspended for a reconvening of the Senate.

Question put and agreed to.

Senate resumed.

SENATOR'S APPOINTMENT

Mr. Vice-President: Hon. Senators, I have received the following correspondence from His Excellency the President, Anthony Thomas Aquinas Carmona, O.R.T.T., S.C.:

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency ANTHONY THOMAS AQUINAS
 CARMONA, O.R.T.T., S.C., President and
 Commander-in-Chief of the Armed Forces of
 the Republic of Trinidad and Tobago.

s/ Anthony Thomas Aquinas Carmona O.R.T.T. S.C.
 President.

TO: MS. KEITHA SMITH

WHEREAS Senator the Honourable Timothy
 Hamel-Smith is incapable of performing his
 duties as a Senator by reason of his absence
 from Trinidad and Tobago:

NOW, THEREFORE, I, ANTHONY THOMAS AQUINAS CARMONA, President as aforesaid, in exercise of the power vested in me by section 44(1)(a) and section 44(4)(a) of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, KEITHA SMITH, to be temporarily a member of the Senate, with effect from 20th August, 2014 and continuing during the absence from Trinidad and Tobago of the said Senator Timothy Hamel-Smith.

Given under my Hand and the Seal of the
 President of the Republic of Trinidad and
 Tobago at the Office of the President, St.
 Ann's, this 20th day of August, 2014.”

OATH OF ALLEGIANCE

Senator Keitha Smith took and subscribed the Oath of Allegiance as required by law.

**MISCELLANEOUS PROVISIONS (PROCEEDS OF CRIME,
 ANTI-TERRORISM, FINANCIAL INTELLIGENCE UNIT OF
 TRINIDAD AND TOBAGO) (NO. 2) BILL, 2014**

Committee resumed.

Mr. Chairman: Hon. Senators, we are about to begin.

Clause 1.

Question proposed: That clause 1 stand part of the Bill.

Sen. Al-Rawi: Mr. Chairman, if I may, through you, I thank the hon. Minister for the circulation, a couple minutes ago, of the proposed amendments to be passed and tabled by the Parliament. I also thank the hon. Minister for providing prior to yesterday's debate the marked-up versions of the Proceeds of Crime Act, the Anti-Terrorism Act and the FIU legislation. May I say that I am concerned that to appreciate the context of the amendments before us today, I consider it perhaps in our best interest to consider the amendments, in particular to the Proceeds of Crime Act, to be included in the marked-up version?

And if I may, by way of reference only to the first two clauses, which it has taken me a little while to interline into the marked-up version, point out to the hon. Minister that we are seeking to, in dealing with "specified offence" by way of example only, in the amendments just circulated, in striking a balance it seems between the move away from a prescription of an indictable offence, from the original amendment to move to "any offence", including summary offences, we are now seeking to put in "scheduled offences".

The second schedule, which is proposed to now be amended by the recent circulated amendments, removes the requirement that Parliament do so under—sorry—actually includes the affirmative resolution. I have now spot it. The thing is that, hon. Minister, I do not want to pour any cynicism into the amendments that you are pouring, but I just want to be careful with the amendments that we are making; that we have appreciated it in the context. Is it too much trouble for your team to put in the interlined version into the marked-up version? It will make the committee stage an extremely quick venture if that could be done. It would mean lifting from the new circulated amendments, which are over, how many pages? Twenty-nine pages is it?

Sen. Howai: All we did is simply insert it in the Bill. The Bill itself is 29 pages.

Sen. Al-Rawi: I understand. So the amendments as circulated by the Government a short while ago, and which I thank you for, is five pages long.

Sen. Howai: Yeah.

Sen. Al-Rawi: I am just wondering, is it too much trouble for your team to put it, six pages, into the Proceeds of Crime Act?

2.15 p.m.

Sen. Howai: It will take some time. In fact, the time we have to wait for that to come.

Sen. Al-Rawi: Sure. It is only my own personal view. May I suggest it is ultimately up to the will of the Senate as a whole, but I would need some time to factor where the amendments go in, and I am not ready yet because of the recentness of the circulation.

Sen. Howai: Sure, I understand that. He has the parent Act, and he would have the parent Act with some of the changes, not the final set of changes.

Sen. Al-Rawi: Sure, I have them. It is the problem of tracking the Bill as proposed to be amended itself into the Act as it is proposed to be amended.

Sen. Howai: Sure. You could proceed.

Question put and agreed to.

Clause 1 ordered to stand part of the Bill.

Clause 2 ordered to stand part of the Bill.

Clause 3.

Question Proposed: That clause 3 stand part of the Bill.

Mr. Chairman: The Minister.

Sen. Howai: We have an amendment.

Sen. Drayton: Mr. Chairman, I propose the following amendments which read as follows:

- A. In proposed section 2(1) paragraph (g) in the definition of “financial institution” delete the word “as” after the words “Securities Act” and substitute the word “including”.
- B. In paragraph (f)—in proposed section 43(2) insert new subparagraph (c)
 “whether the criminal conduct occurred before or after the date of commencement of this Act.”
- C. In paragraph (m)—insert new section 55G
 “limit on cash transactions

Subject to section 2 a person shall not—

- (1) (a) Pay or receive cash in excess of the sum of sixty thousand dollars or such other amount as the Minister may by Order prescribe for the purchase of any goods or services or for the payment or reduction of any indebtedness, accounts payable, other financial obligation; or
(b) Artificially separate a single activity or course of activities into a set of transactions so that each transaction involves a payment and receipt of cash that is less than the prescribed amount but which activity or course of activities in the aggregate involves payment and receipt of cash that exceeds the prescribed amount.
- (2) Subsection (1) shall not apply to—
 - (a) a payment made to or by a permitted person
 - (b) an exempted person
 - (c) an exempted transaction
- (3) Where the Minister is satisfied that it is in the public interest to do so, the Minister may, by order, subject to affirmative resolution, exempt a person or a particular type of transaction from the requirements of this section.
- (4) Nothing in this section affects the enforceability of transactions in civil proceedings.
- (5) In this section, cash means notes and coins—
 - (a) of the currency of the Republic of Trinidad and Tobago issued by the Central Bank of Trinidad and Tobago; or
 - (b) issued by the authority responsible for the issue of notes or coins of any other country which is designated as the legal tender of the country and which circulates and is customarily used and accepted as a medium of exchange in the country of issue.
- (6) “exempted person” or “exempted transaction” means a person or transaction in relation to which the Minister has made an order under subsection (3);
“permitted person” means a Financial Institution acting in accordance with the regulatory requirements applicable to that institution.
“prescribed amount” means—

- (a) the amount of sixty thousand dollars or its equivalent (as at the date of the relevant transaction) in any other currency; or
 - (b) such other amount as the Minister may, by order subject to affirmative resolution, prescribe.
- D. In paragraph (n), proposed section 57—delete the words “and 55C” and insert the words “, 55C and 55G” after the words “55C”.

I just had one suggestion and that is under the definition of “financial institution” item (g), to substitute the word “as” for “including”. So, a person licensed under the Securities Act including a broker/dealer, underwriter and investment advisor. This is in the Proceeds of Crime Act, under item (g). The reason for that was the fluidity of the industry, and I was not too sure whether we had captured here all the players—the market players in the securities industry—but it is a minor thing.

Sen. Howai: I was just trying to locate it.

Sen. Drayton: It is in the Proceeds of Crime Act, so it is an inclusion. It is a new section then to the amendment.

Sen. Howai: So you are saying a person licensed under the Securities Act as a broker/dealer, underwriter and investment advisor, you are asking that that be—
[Interruption]

Sen. Drayton: Remove the word “as” and just say “including a broker/dealer, underwriter and investment advisor”. This is allowed for any market players we might very well have missed out, and also that industry is changing so rapidly in terms of the players, that we do not want to be every minute amending to include others. So when we just restrict it to broker-dealer, underwriter and investment advisor, it means no one else in the securities industry could possibly fall under this Act. So, I think the word “including” makes more sense.

Sen. Howai: I am told that if we do that, we will then capture a number of other people who would not be part of the—who would that be?

Sen. Al-Rawi: It will include everybody captured under the Securities Act which ties in to financial institution as a clause which I have a concern over that you have, in the definition of securities, deleted the reference to the insurance companies, credit unions, et cetera. I did hear what you said in your wind-up, but what Sen. Drayton is doing is actually reinforcing the fact that the definition of a security industry player, as narrowly defined in this position means that number one, you do not have room to expand but, number two, if you cast it the way that

she does, is that you are properly going to capture everybody under the Securities Act.

Sen. Howai: What I am told is that you do not want to do that.

Sen. Al-Rawi: Understood.

Sen. Howai: There are some people who do not fall as part of the FIU AML reporting requirement. So it means that they will now have to become part of it which—*[Interruption]*

Sen. Al-Rawi: It is going to be a policy decision as to who you think ought to be covered by this Act then—*[Interruption]*

Sen. Howai: Yeah.

Sen. Al-Rawi:—but you are limiting it only to those specific bank broker/dealers, et cetera. And then the question, hon. Minister, because I did not catch it in your wind-up: where would the players that we are deleting from—you have said—and if you could have your team, perhaps, through you, point it to us—that you are covering a financial institution, a credit union and an insurance company. You are covering it under the FIA. You said that in your wind-up, but where is that covered in this position? Because the inclusion of a financial institution, a credit union and an insurance company in the definition of security, which we are deleting from the Act and replacing with the Securities Act, 2012 definition which does not include them, you have said that it is covered by their inclusion under the FIA—that was your response—so where is that covered if you could point it to us please?

Sen. Howai: It is under the definition of “financial institution” which is in the existing Act. It is actually the same section that Sen. Drayton is referring to. You will see it under that section which is on page 3, I think.

Sen. Al-Rawi: I got you. Thank you. A society registered under the Co-operative Societies Act is the same as a credit union within the meaning of the Co-operative Societies Act. Is that what your team is saying?

Sen. Howai: Yes.

Sen. Al-Rawi: So why were they separately defined in the original Proceeds of Crime Act? Why was there a distinction? *[Crosstalk]*

Sen. Howai: So, Senator, what they are saying is under the—I am not sure if I am understanding you correct—Co-operative Societies Act, the definition, that will pick up the credit unions and so on. What you are saying is that in the previous Act there was not a reference to it?

Sen. Al-Rawi: The way that I read the previous Act is, you have covered the institution itself under the definition of financial institution.

Sen. Howai: Yes, that is right.

Sen. Al-Rawi: And then you sought to cover the products of the institutions under the definition of securities. So under the definition of securities which we are deleting and replacing with the definition in the Securities Act 2012, what we have said there is that the product, the security product, which is a document, instrument or writing evidencing an option subscription or other interest in a financial institution, in an insurance company, in a credit union society, that those products are now being excluded from security items. What you have pointed me to, by way of an answer—because the Securities Act does not include them as products—that is why it is excluded, right? I want to be sure that there is a mechanism to cover the product and not the player only. So, I am not talking about the players.

Sen. Howai: But once you pick a player—[*Interruption*]

Sen. Vieira: Minister, excuse me. I was wondering if what this is really referring to is referenced in the FIU Act as non-regulated financial institutions because they talk there about societies registered under the Co-operative Societies Act; a person who carries on money or value transfer services or a building society registered under the Building Societies Act. So I am just interested that the two dovetail, because since you are also amending the FIU Act, perhaps, you could have a look at that definition.

Sen. Al-Rawi: I saw the point that the new Securities Act does not cover it, and I accept that because I have read the new Securities Act. What I am talking about is where under the Proceeds of Crime Act would we have coverage not for the player, but for the product of the player? That is what I am looking at.

Sen. Howai: Once you refer to anything under the Securities Act, we will capture it.

Sen. Al-Rawi: And the Securities Act does not include these products now. [*Crosstalk*] And if I could tell you why I have referenced the product, a very large annuity fitting within the description of a \$100-million annuity is a significant sum of money in an insurance product to be left out. Why would I not want to have that product included in the supervision?

Sen. Howai: No, it is the institution that is under the supervision, you know, not the product.

Sen. Al-Rawi: I understand, but you are creating a requirement for the institution to report in respect of its products. So, attorneys-at-law as listed players, as listed professionals, are not obliged to report per se on their litigation portfolios so much as their corporate commercial mortgaging and conveyancing portfolios. That is how the Proceeds of Crime Act Schedule is set out. It is the company's registration, it is the mortgage, it is the transfer of value. So it is not every product that we are dealing with. Probate, for instance, is excluded. So, there is a distinction clearly in the minds of the original drafters between the product and the player. I accept that the player may be caught under the definition of a financial institution. All that I am concerned to be sure of, because I do not know the answer, is that we have also caught the products which have been specifically excluded in the new definition of security which came up in the Securities Act, 2012. That is all I am concerned with.

Sen. Vieira: I understand that concern. I just want to come back again, because it seems to me that there is a built-in contradiction here where we are defining financial institutions as meaning including these persons, but permitted persons means a financial institution acting in accordance with the regulatory requirements applicable to the institution save and except are non-regulated financial institutions defined in section 2 of the Financial Intelligence Act which, as I say, excludes these persons. So, I am just drawing to your attention it seems to me that there is a bit of a contradiction there. [*Crosstalk*]

Sen. Howai: He is talking about—[*Interruption*]

Sen. Al-Rawi:—the harmony between the FIU coverage and the proceeds of crime coverage. There seems to be a contradiction. [*Crosstalk*]

Sen. Howai: Sorry, just to answer Sen. Vieira's point, what is being said is that the definition that you are looking for is in the FIU Act.

Sen. Vieira: Correct, which is being amended in this very legislation—non-regulated financial institution means—so I am just saying if you say that this is a non-regulated financial institution meaning this, here we are defining financial institutions as meaning this, and you are putting in the same thing that you are changing here.

2.30 p.m.

Sen. Al-Rawi: Hon. Minister, I understand that you are going to give us the response that some are regulated, some are not, et cetera, and that there are categories and subcategories, what I am concerned as a Senate that we do, is that we know exactly what is covered and what is not covered, so we appreciate what

we are leaving out, both in terms of players and in terms of products. So that we are clear in our intentions to exclude certain things or include certain things as we have done in the Second Schedule to the Proceeds of Crime Act, where we focused on certain “big ticket” white-collar fraud items.

Sen. Howai: Could we just proceed and let me just have them sort it out, and we would come back to it subsequently?

Sen. Al-Rawi: Sure.

Mr. Chairman: You are asking for a—

Sen. Howai: Yeah. So we will come back to this particular point.

Mr. Chairman: Okay.

Sen. Drayton: Just in terms of my proposed amendment, I think it might be okay because I see that we have under (k):

Any other person declared by the Minister by Order.

So, I would imagine that if there are any other market players who should be here, then the Minister in fact, by order, can do that through negative resolution.

Sen. Howai: That is right. Thank you.

Sen. Drayton: So that would take care of it. I am satisfied.

Sen. Howai: Yes, thank you. Okay.

Sen. Al-Rawi: We were actually on the issue first before we went on a sojourn of your circulated amendments to this particular section, and those circulated amendments propose that we move away from the definition of specified offence. Let me put it this way; in the original Bill—

Sen. Howai: Yeah, we had—

Sen. Al-Rawi: Right. A specified offence was an indictable offence. In the modified first version, as we debated, we said, “Forget indictable, all offences”. The amendment which has now come onto the table says, “Forget all offences, go with only scheduled offences”, and the scheduled offences now are a much narrower category than—

Sen. Howai: If you say, all offences—

Sen. Al-Rawi:—all offences which are indictable or all offences which are summary indictable or triable, either way. What I am concerned about is that that is a very significant limitation on the predicate crimes which we are delinking in

the money laundering aspect, and also which we are treating with in general, in the first part of the Proceeds of Crime Act. And that may be a very dangerous thing to do because we may be automatically limiting the category of crimes, predicate crimes which we can deal with. Now, that is amplified by the fact that to include the predicate crimes which we, “oops, forgot” by making this kind of amendment.

I do not mean anything pejorative by that, right? To include those, we must come to Parliament by way of affirmative resolution, and the minute we assent to this law, as is now proposed to be amended, a lacuna would exist where people would say, “Well, I am no longer from the assent of this new amended Act covered and, therefore, I apply for the right to be discharged”. It is similar to the section 34 manoeuvres which happened in court. [*Crosstalk*]

Listen, do not get touchy, I am talking about a point of law. When I am talking about the point of law, the challenge which went to court was that, I am now removed from an operation and as and until you amend the Second Schedule, there is a lacuna in the law. So if by chance we forgot a category of crime. which really ought to have been included in the Second Schedule, there would be a lacuna between the assent and the move of the Parliament for the affirmative resolution to include it in the Second Schedule. So I am very concerned about that.

Sen. Howai: What we did is the list we used is the list that the FATF had developed. I am correct on that, right?

Parliamentary Counsel: Yes.

Sen. Howai: So what we did is we said, “Okay, tell us what are the crimes”, and those are the ones we have actually put in because we also want to ensure that, look, we are balancing this thing between—this is a very serious piece of legislation, right, and we need to balance it between the rights of the individuals and the need to implement this and pursue. So what we did is we went to the FATF and said, “Look, let us see what are the things that need to be covered”, and we said, “Okay, if this is what we need to do, this is what we would put in the Act”. So this is clear, but what we have done is put the arrangement in place so if that changes and more are added, we will simply add it in, but we will use the FATF guidelines.

Sen. Al-Rawi: So you are giving the Parliament an assurance?

Sen. Drayton: Could I just make an observation then, because I thought the very shift to defining criminal conduct was more consistent with the all crimes

model than a model that is limited still to specific crimes. So the whole concept of criminal conduct seems to conflict with a restricted list of crimes.

Sen. Vieira: Minister, if I could help. I mean, it really is a challenging conundrum you are wrestling with. I tend to agree with what you have put forward and with the listing, because if you put the all crimes, all conduct model, you can get overwhelmed with small little matters and pulling people who really ought not to be in the net. Having said that, Sen. Drayton and Sen. Al-Rawi's concerns are noteworthy because you could find, for example, things that we do not have as offences today, human trafficking, stealing body parts; things of that nature that you might want to include. But I agree. I think you have the way out to add that later on. So I tend to support this provision, though I understand the concerns expressed.

Sen. Howai: I was just trying to balance the two and that, basically, at the end of the day we said, "FATF gave us the guidelines and that is what we used".

Sen. Al-Rawi: So, in summary, our concern is, hon. Minister, in moving to a restriction which is only scheduled offences and removing—

Sen. Sturge: That is one of the categories of scheduled offences.

Sen. Al-Rawi: Sure, but I am just putting it in context for you. The existing law is all indictable offences to give the flexibility in the architecture of the legislation to not have to come back to Parliament every time on affirmative resolution. So our concern in relation to this is that it is a step away from a broad careful approach into only a scheduled approach, and I am deeply concerned about it because I think that we may be unwittingly—nothing necessarily decided or sinister in this approach—we may be unwittingly narrowing ourselves into a corner.

Sen. Sturge: Can I just say that the categories of offences that we see here, are worded in a very general way and cover a multiplicity of offences, whether you think they appear or not. My learned friend, Sen. Vieira, just made reference to human trafficking and trafficking in human body parts and so on, whilst it may not be immediately apparent, if one looks at, for instance—and this is just by way of example—the third offence listed under the schedule, it says trafficking in human beings and migrant smuggling—

Sen. Drayton: Where is the list?

Sen. Sturge: Sorry?

Hon. Senator: The schedule?

Sen. Sturge: Yes, it is a very broad list.

Sen. Al-Rawi: Is this the schedule that is proposed to be amended or the existing Second Schedule?

Mr. Chairman: Senators! Senators! Hon. Senators—you finished, Senator?

Sen. Sturge: I was almost finished.

Mr. Chairman: All right, go ahead. Continue.

Sen. Sturge: So what I am saying, if we look through the list the offences are stated—sorry—the categories are listed in a very general way so that you do not need to specifically go through every Act of Parliament that creates criminal offences and identify them. So that my learned friend, Sen. Vieira, made a point about human trafficking and trafficking in body parts, whilst “body parts” is not here, when you deal with—

Sen. Al-Rawi: Just to be on the same page with you, which schedule are you reading from?

Sen. Sturge: Schedule two.

Sen. Al-Rawi: Of the existing law or of the law as is proposed—of the amendments that have just been circulated or the first amendments?

Sen. Sturge: As has been circulated.

Sen. Al-Rawi: Okay, I have not read that yet. [*Crosstalk*]

Mr. Chairman: Hon. Senators, please, please, I need to hear the voice of Sen. Balgobin; his hand was up for a while so I would give him an opportunity to play a part in the discussion. Sen. Balgobin, please.

Sen. Dr. Balgobin: I am very grateful to be recognized, Chairman, I thank you. You know, to the hon. Minister of Finance and the Economy—[*Crosstalk*]

Mr. Chairman: Senators, please, this is a very serious discussion, allow Sen. Balgobin to make his input.

Sen. Dr. Balgobin: You know, what I would say is that—and also to Sen. Sturge—I think what we are getting at here when we look at the definition of financial institutions is that a profession exists, we call it the legal profession, that looks for exceptions. It looks for loopholes. It looks for things that are not explicitly there, and so we have narrowly defined three sets of people. It is not inconceivable that somebody can come tomorrow and call themselves something else and find themselves not governed by this. I think that is really the question

that we are just trying to rationalize in our minds that, you know, because, just to say, the history of this Parliament is not spectacular when it comes to amending stuff. We pass new legislation but, you know, we are very slow. We can pass legislation quickly but we are slow to amend. So that is why we just want to see if we are leaving any obvious loopholes so that we tie those things up before we go forward. Thank you, Chairman.

Sen. Sturge: Can I just answer Sen. Balgobin? I do not think we need to concern ourselves too much. I understand what you are saying but there are several rules of interpretation, and even if we feel we have not captured everything, the courts adopt a purposive approach to legislation, and they look at the mischief which we are here to deal with and adopt a purposive approach.

So even if you do not specifically mention an item or even if you try to be all embracing, we are going to land ourselves in a scabrous situation, a quagmire. So that there are rules of statutory interpretation that exist, even if something is not mentioned by looking at the spirit and intendment of the Act; it can be inferred, Parliament intended to include this particular mischief.

Sen. Dr. Balgobin: I am not persuaded. I have seen situations where I know what the Parliament intended and it was interpreted otherwise by the court. So I—

Sen. Sturge: Well that is the function of the courts, it is not the function of Parliament to interpret itself. The courts would interpret whatever measure—

Sen. Dr. Balgobin: But we must know what we mean when we pass something. “Come on man.” We must know what we mean. So we have to decide what we mean here and then somebody else can interpret it. So, okay, fine, so I just want to be clear that we are not leaving any obvious gaps before we pass this—

Mr. Chairman: Each and every Senator has the right to have an input into the discussion and each and every one has an opinion until there is an agreement. I will now turn to Sen. Robinson-Regis, who has indicated.

Sen. Robinson-Regis: Thank you very much, Mr. Chairman.

Mr. Chairman: Before you start, please, I want that we conduct because I understand this is a very serious piece of legislation. I do not want anybody just jumping up when they feel they have something, please pass it to the Chair so that we would be able to give others the opportunity who are desirous of speaking. Continue.

Sen. Robinson-Regis: Thank you. Thank you very much, Mr. Chairman. Mr. Chairman, despite what Sen. Sturge said about the court adopting a purposive approach, there are times when the court also adopts a literal approach to the

interpretation of legislation. I think we must bear that in mind, especially given the fact that we are narrowing what was previously in the Proceeds of Crime Act, and despite the fact that this schedule is headed “categories of offences” and might give us an opportunity to interpret this in the broadest possible way, if we look at, and if my memory serves me correctly, the Indictable Offences (Preliminary Enquires) Act, where we had listed quite a wide range of offences, including things like buggery and things like that, those are not included here. I mean, if we were really looking at all the criminal offences.

In addition to that, I think part of what we want to capture are white-collar crimes, and not very many of those white-collar crimes are captured in these categories of offences. I know we have the fraud, the tax crimes and so on, but I think it might be better for this Parliament or this Senate to err on the side of caution and leave the interpretation to the wider rather than try to narrow it and find ourselves in a difficult position, when we are really trying to capture everything that might possibly occur in terms of crimes and money laundering, and white-collar crimes, in particular.

Sen. Al-Rawi: Is the Second Schedule replaced?

Sen. Robinson-Regis: I believe so. Is it not a replacing of—

Mr. Chairman: You want to reply?

Sen. Sturge: Yes, I would like—

Sen. Robinson-Regis: Chair, could I just ask another question?

Sen. Sturge: Yes.

Sen. Robinson-Regis: Sorry, Mr. Chairman.

Mr. Chairman: Go ahead. Go ahead.

Sen. Robinson-Regis: The Second Schedule—it is delete the words “Third Schedule” then replace with the words—[*Crosstalk*]

Mr. Chairman: Senators who are not participating in the discussion, the echo here is interfering with the contributions of the Senators who are participating, so please do it softly. It is echoing down here because you all are not participating in the discussion that is presently before us. Okay? Thank you.

Sen. Robinson-Regis: Thank you very much, Mr. Chairman. Is this a replacement of the entire Second Schedule that exists now?

Hon. Senator: Yes.

Sen. Robinson-Regis: Because, Mr. Chairman, I would like to point out to the Minister that in the existing Second Schedule, the tax crimes are all excluded from this, the copyright is excluded—

Sen. G. Singh: No, tax crimes are here.

Sen. Robinson-Regis: Yeah, but it is tax crimes and is says relating to direct taxes and indirect taxes, okay, but infringement of copyright is out. Is there a reason why certain things have been taken out which we thought at the time were necessary when we passed this previously? *[Interruption]* Certainly, I would appreciate it.

2.45 p.m.

Sen. Sturge: Just by using the example that you just gave, Senator, when you talked about intellectual property crimes and so on. Most intellectual property crimes, copyright crimes, can fit under counterfeiting and piracy of the goods, of products. So that it was very carefully drafted, and drafted in a very general way, so most of the criminal offences that are serious criminal offences, and which in the experience of the FATF are the ones which are prevalent, they are captured by the very general wording of the 21 different types of offences, so that there is no need to adumbrate and enumerate every single type, every single offence. So that it is captured and it is not necessarily limited. If one looks at the Act as a whole, yes we have moved away from indictable offences, that category, because there are quite a number of summary offences, if we go with the old approach, would not be captured. So it has to be worded in this way. And if we go back to yesterday, one such offence, which is not indictable, would be the illegal quarrying which carries a minimal fine.

Sen. Robinson-Regis: Then I guess you would say that it comes under environmental crime.

Sen. Sturge: It would be. It is an environmental crime. So that I have looked at it overnight, and in essence almost every species of crime is attracted under these general provisions.

Mr. Chairman: Sen. Drayton. *[Crosstalk]* You have something? *[Crosstalk]* You want to follow up on something?

Sen. Robinson-Regis: I just wanted to say thank you. Yes, thank you, Mr. Chairman. I just wanted to say that I am understanding your explanation, but I think that there is a genuine concern that something may be left out, and that is why myself, and I think I speak on behalf of my fellow Senators, we have been

indicating that there is a genuine concern on our part to make sure that we are not leaving anything out. Because that is definitely—and I think if we want the legislation to work, the real objective is to make sure that we capture everything.

Sen. Sturge: I appreciate that, and if I can just rejoin briefly. If the only other alternative is to enumerate all of the offences we want to capture, that is not quite possible, that in itself would be an exercise of a limiting nature. That is the first thing. And if we name any other offence, I am sure any other offence anyone names, they can come under one of these categories.

Mr. Chairman: Sen. Drayton. Thank you.

Sen. Drayton: Okay. Yes. I note for instance you have “illicit arms trafficking” which is self-explanatory, but what about just “illegal possession of arms”? I can have a whole cache of arms. I am not trafficking them, so and of course, to have a licensed firearm is a serious crime. So where would possession, illegal possession of arms fall?

Sen. Vieira: If I may?

Sen. Sturge: Yeah.

Sen. Vieira: Because I am picking up on you.

Sen. Drayton: Sure. And the other one—

Mr. Chairman: Please allow her to finish.

Sen. Drayton:—would illegal bunkering fall under piracy of products? I am just seeking clarification.

Sen. Vieira: And to support Sen. Drayton, because I understand what you are trying to accomplish. This is an FATF list. I gather that we are moving away from quoting sections in particular Acts which would have been ad nauseam and difficult. So in principle I like this approach. My concern, as is Sen. Drayton’s, is that in the broad classifications—you see, FATF and the regional bodies do not really drill down to our local laws. So some of these classifications, for example, need a little tweaking. You have murder and grievous bodily injury, but manslaughter is left out. We talk about counterfeiting and piracy of products, as Sen. Robinson-Regis said, I would have talked about intellectual property offences to capture trademark, patents, copyright. There is no mention of telecommunication offences. There is no mention of offences under the Fair Trading Act. There is no mention of piracy.

Sen. Sturge: Piracy is—[Crosstalk]

Sen. Vieira: Oh, sorry.

Mr. Chairman: Piracy is at 20.

Sen. Vieira: And maybe insider trading. But all I am saying is—

Sen. Sturge: It is there.

Sen. Vieira:—while in principle I very much like this, all we are asking is that maybe we give it a second closer look to tighten the language and make sure that the categories—

Sen. Sturge: Can I just answer? I take the point. I appreciate the point about the intellectual property point, but if I can deal with that point first, and then go to Sen. Drayton's concerns. Most—this is dealing with the proceeds of crime. It is difficult for me to imagine trafficking in patents and so on, and infringing patents in that way. [*Interruption*] I know it is a multibillion dollar—yes, but in any event, even if you infringe patents to make money and so on, that is still pirating a patented product.

Sen. Vieira: May I make an example? This is a real example. If you look at what happened recently with the juice, liquid cocaine in the juices, you realize that was a very serious trademark offence?

Sen. Sturge: Yes.

Sen. Vieira: You could have captured them. We talk about the Al Capone scenario. You could use IP offences to really bring home a lot of these illicit trades. So that would have been a very important tool in the arsenal.

Sen. Sturge: Right. So let me just say, in that instance, that would have been counterfeiting a product. The counterfeiting is—[*Crosstalk*] hold on. It is very general because it has to be counterfeiting because it was not juice being trafficked; that is the first thing.

Sen. Vieira: Well exactly. So the point is, with counterfeiting if you would have had false juice [*Crosstalk*] but it was not juice being counterfeited—

Sen. Sturge: Exactly.

Sen. Vieira:—it was cocaine being used in a juice container, carrying a juice container trademark.

Sen. Sturge: Yes. It was the trademark being counterfeited. The brand name being counterfeited there. But anyway, let me just move on.

Mr. Chairman: Please. Please.

Sen. Sturge: I understand what you are saying.

Mr. Chairman: Explain and the other one would come next.

Sen. Sturge: Well we can go on ad nauseam about this. If I can return to the point made by Sen. Drayton, why “trafficking in firearms” is not here—sorry, why “simple possession of firearms” is not here. We are dealing with proceeds of crime. So if someone possesses firearms for his own use, then that does not come under proceeds of crime. If he is trafficking—[Crosstalk] if he is possessing—

Mr. Chairman: Please allow him to finish, then opportunity will come.

Sen. Sturge: If you simply possess a firearm illegally, that is not captured here. I am told that was the rationale given by the FATF. [Crosstalk] Yes.

Mr. Chairman: It emanated from you, so you please go ahead.

Sen. Sturge: I am not finished with my response.

Sen. Drayton: Sure. Finish with your response. Yes.

Sen. Sturge: Right. So it is meant to capture, if you are trafficking, if you are seeking to make a profit from trafficking in firearms and so on, that is why that particular offence is here, that broad category.

The second with respect to the manslaughter—manslaughter would mean that that is not criminal responsibility to the highest extent, murder and so on. So manslaughter would arise in situations of unlawful and dangerous manslaughter, provocation, and things of that nature. That would not be appropriate.

Sen. Vieira: What about corporate manslaughter?

Sen. Drayton: Can I again follow up with my question?

Sen. Sturge: Yes.

Mr. Chairman: Please.

Sen. Drayton: I will follow up with a question and make an observation because I get the feeling we are trying to defend every single thing that is raised, instead of looking at the whole principle of what we are doing in order to ensure that we have a Bill and a law that is better than what we have right now. So I do not think it is a question of defending every single thing. I do not see if a person has a whole cache of arms, it cannot be linked to the proceeds of crime which is what they would have probably used to purchase the arms in the first place, but they are not trafficking it.

And I asked the question about illegal bunkering. All I want to know, if that is under “piracy”, I thought that was a specific crime. And we know we have a situation with that where billions of dollars have been earned as a result of illegal bunkering, and it would have been money laundered somewhere. So that if, for instance, illegal bunkering is captured under one of these fines, but I think we are dealing here with a principle. We are not dealing necessarily with every single crime. So that the hope is that we will find a solution as to how we could incorporate the principle. [*Crosstalk*]

Mr. Chairman: Just a minute. I have Sen. Al-Rawi before you. And Sen. Sturge, you just take the notes, and then you answer everyone at the same time. [*Laughter*] So therefore, you will get good. Sen. Al-Rawi.

Sen. Al-Rawi: Thank you, Mr. Chairman.

Mr. Chairman: [*Crosstalk*] You can summarize what is being said.

Sen. Al-Rawi: Having taken some notes in the period of my silence, Mr. Chairman, as is a good recommendation, may I say this? The architecture of this legislation is the English architecture. The English architecture which we are borrowing here, which the hon. Minister in his address to the Parliament set out as the formula; the English architecture is very careful to have a two-pronged approach to catching predicate offences. The first prong is to say a certain general categorization of indictable offences or serious crimes as they put it. And the second way is by way of scheduling. In moving to the scheduling offences we are eliminating a very serious first prong that exists in the general categorization of offences, and we would therefore be doing a disservice to the architecture which we seek to borrow and causing a serious jeopardy to our laws.

Secondly, the scheduling offences having just been circulated and there is no sinister intention I am attributing to the Government for having circulated it; we are here to make good law. It is not that it needs to be defended per se. The fact is we have a genuine concern that in betraying the architecture which we are borrowing and putting only scheduled offences, that we would be creating a back door of serious escape. And secondly, we would be requiring the Parliament to be convened ad nauseam as we come up with new laws to be put in by way of affirmative resolution.

May I humbly suggest that if we are considering amending the Proceeds of Crime Act which had a prescription of indictable offences, and then moving away now to an all offences as the first amendment suggested, and now moving away from that entirely, that we ought to go back to considering perhaps a hybrid

approach, that is to leave all indictable offences as they are, but we can amend the Second Schedule now to include those summary offences which we think ought to be put in there by way of the FATF recommendation. That would include, for instance, environmental crimes, et cetera. But we ought not to abandon the original architecture that we have suggested. So my suggestion by way of a solution for the Parliament to consider, for the Senate to consider, is adopt a hybrid approach, keep your indictable offences, amend your Second Schedule to include certain of the summary offences which are serious enough by way of categorization to be included. Perhaps that way we may lessen the opportunity for error.

Mr. Chairman: I will take note of what he has said. Sen. Singh.

Sen. G. Singh: Chairman, thank you. I do not think it is the intention of the Government to leave out anything. When you see the broad category of offences, some 21 offences, a broad category, 21 categories of offences, you see the breadth and depth of these things. For example, Sen. Drayton asked the question about illegal bunkering, that would fall under 16 snugly. So that therefore, when you look at the broad category it is our intention to—when you are dealing with proceeds of crime, not all indictable offences give rise to proceeds of crime. So that therefore, what you have now is, from FATE, a listing of categories that give rise to proceeds of crime, and that is where the direction and the prosecution from the experience comes.

Sen. Howai: If I could just add. Remember we still, as far as the money laundering offence is concerned, that is an all crimes approach and we maintain that. Right? So that is all crimes. The issue is, we are confiscating property, and when you are looking to confiscate property which goes to the heart of our Constitution, you have to find some kind of balance, and what we said is, look, the FATF and I am assured by my staff here, the list we have here is the full list of the FATF, and FATF has said, look, these are the types of crimes for which we believe the whole issue of confiscation should be considered, balancing the two things.

3.00 p.m.

And therefore, what we have in front of us, in a sense, is a policy position which was approved by Cabinet, which is saying, listen, we are balancing two issues here, two very serious issues. One is, we want to get away from this whole issue—

Sen. Al-Rawi: You went to Cabinet overnight to move away from the—

Sen. Howai: No, no, this was approved by Cabinet—

Sen. Al-Rawi: But the amendment that you have tabled to the hon. Minister is the opposite of what was tabled and debated. How could that be correct? The policy as put forward by Cabinet came in the original draft which we debated, which had a broad categorization, limb one, and a schedule, limb two. So, you are saying that this was considered by Cabinet?

Sen. Howai: Yes, we met subsequently and this was the list that was approved.

Sen. Al-Rawi: Between last night and today?

Sen. Howai: No, no, not last night.

Sen. Al-Rawi: Because what we are talking about, hon. Minister, is the removal of the definition of specified offence. Forget money laundering, we are talking about the existence of a crime for the proceeds of crime to operate in Part I of the legislation, not Part II. I accept what you are saying about Part II, I am good with that, that is all crimes. But Part I, which we are restricting now is to say, “delete all indictable offences, make it now only scheduled offences only.” Whereas you had indictable and scheduled before—you have just said that Cabinet approved that policy, but that was not debated.

Sen. Howai: No, because it was circulated subsequently.

Sen. Al-Rawi: Today to us, just before committee stage.

Sen. Howai: Yes.

Sen. Dr. Tewarie: But, I even read out the list yesterday during my contribution, so it was on the Table.

Sen. Robinson-Regis: A list?

Sen. Al-Rawi: The listing and the scheduling is different from the removal of a specified offence in the broad category, which is the net all. Specified offence is clear, no problems, but the net-all provision was approved by Cabinet.

Sen. Howai: That was the original—yes, that was the original approval.

Sen. Al-Rawi: Correct. [*Crosstalk*]

Mr. Chairman: Please! Please!

Sen. Dr. Tewarie: Mr. Chairman, it is also clearer to say that the list is a list of categories of offences, rather than to say that the list is a list of offences.

Sen. Robinson-Regis: Okay, but that is what we have been saying all the time.

Mr. Chairman: Sen. Robinson-Regis, you had indicated, you still want to make your—

Sen. Robinson-Regis: Just in the example that was given by Sen. Ganga Singh, where he said that the bunkering would fall under the category of smuggling, it brought home the point, Mr. Chairman, that it seems as though when you look at the list you have to kind of figure out—let us say you caught somebody, you look at the list and you have to figure out where would this fall, where would that. It would be so much easier if we knew—

Sen. Al-Rawi: Suppose you all kept the bunkering fuel for your supply of illegal trucks which—

Sen. Robinson-Regis: It means that it leaves persons who may be actually using this legislation to have to attempt to figure out—

Sen. G. Singh: No, I think it gives flexibility to the enforcement authorities.

Sen. Robinson-Regis: Yes, but it does not make it easier for them, and the intention is to start getting convictions, and if the persons who have to interpret this legislation on the spot have difficulty with that, then we may be moving in the opposite direction.

Sen. G. Singh: Can I ask—

Mr. Chairman: Just a minute, even before, as a layman, I mean to just make a comment. I just want to make a comment, please, and to ask. Some of the suggestions that have been made relative by the Independent Bench and the Opposition, because you are hearing certainly about defending—the question that I want to pose, would it make a difference to the suggestion being made to add to what is there? What difference would it make relative to what is in the Bill? The reason I am asking that, from a layman's position, if it does not make a difference why are we going round and round, why we cannot just have it in?

Sen. G. Singh: Chairman, I think we are guided by your wisdom, and I think that the suggestion made by Sen. Vieira with respect to the question of patent breaches and so on, that could be incorporated once it meets the appropriate drafting.

Sen. Vieira: Yes, because we are all on board with the categories. We just want to make sure that we are here about good law and we want to make sure that the categories suit the purpose.

Sen. Drayton: Could I ask how are we going to approach the making up of the categories? How are we going to approach the—you know, making any additions as necessary?

Sen. G. Singh: This is the FATF list. If you feel that you can—and they have the experience—that it is necessary to add to this comprehensive category and the experts see that it may not be covered here, we can include that.

Sen. Drayton: Okay, so are we going to have some time to do that?

Sen. G. Singh: Yes, and it can, later, on be added by Order. But the point is that we are willing to—*[Interruption]*

Mr. Chairman: Yes, Minister, you were making a point?

Hon. Senator: No, I was simply asking—

Mr. Chairman: No, I said the Minister was asking.

Hon. Senator: No, no, sorry.

Sen. Roach: Mr. Chairman, I just want to get a clarity, please?

Mr. Chairman: Yes, we have not—

Sen. Roach: Thank you. Is it that we are not going to include the indictable offences as was in before?

Sen. Sturge: Can I answer by saying that all of the indictable offences that are capable of producing offences requiring confiscation in the schedule, I cannot think of any indictable offence that is not captured by the categories of offences listed in the schedule. That is the first thing. The second thing, because of the general way in which the categories are listed, they capture summary offences. If we go to the old formula and we limit ourselves to indictable offences, which my friend Sen. Al-Rawi had suggested, and then we think today about summary offences, then we will be limiting ourselves to the ones we think about today—the summary offences—and it would not apply in a general way. If you leave it this way, these categories capture both indictable offences and summary offences.

Sen. Roach: All of the indictable?

Sen. Sturge: All of them. If I can go again, any crime named. In fact, there was an issue raised by Sen. Robinson-Regis about the prosecuting authorities having difficulties and she used the illegal bunkering. Illegal bunkering can come under 16, which is smuggling; it can come under 15, which is theft. So that the prosecuting authorities, depending on how the facts of the particular

investigations unfold, would know under which category of offence to charge as opposed to what was stated by Sen. Al-Rawi, which is, we deal with indictable and then we list out, and if we list out some which are serious summary offences and we leave out others, and the facts presented to the prosecuting authority do not fit into the ones we include, then we will still have to come back here and amend.

If we go with the general way, we capture both indictable and summary, and there is no need to amend. There are a series of categories of offences, which the prosecuting authorities can choose which offence—in the illegal bunkering example just given—the factual matrix would fit into. Would illegal bunkering better fit into theft, which is number 15, or would it better fit into smuggling and that would be fact specific? But if we go any other way we run the risk of missing out offences, and the reason why we legislate in a very general way is because Parliament cannot think of every factual scenario that would present itself and then we would have to keep coming back to amend. So, we legislate in a very general way so that we capture as broad as possible the likely offences that may occur.

Mr. Chairman: Sen. Al-Rawi.

Sen. Al-Rawi: Mr. Chairman, thank you. I beg to differ with my learned colleague, Sen. Sturge. I cannot understand the logic of saying that it would be a broader approach to use the scheduled categorized offences and not keep the catch-all network. The reason that I say that is, if we look at the original law as is proposed to be repealed, “specified offence” means—

- “(a) an indictable offence committed in Trinidad and Tobago whether or not the offence is tried summarily;
- (b) any act committed or omitted to be done outside of Trinidad and Tobago, which would constitute an indictable offence...; or
- (c) an offence specified in the Second Schedule;”

If we were to look at that as the existing law and keep it, and substitute the Second Schedule with the categories of schedules that we now propose, we would have caught everything. We would have caught everything and we would have kept the original architecture, and let me give an example: theft or larceny is a specified offence in a particular series of actus reus elements that must come out, and must have an intention to permanently deprive somebody and must be in possession or not—there are certain loads of positions that go down there.

If I were in the Valencia forest, conducting illegal quarrying, I had a whole bunker full of diesel there for the use of the trucks and tractors up there so that I do not raise a red flag, and I had that, in fact, from somebody who is anonymous, how do I prove the fact that I have stolen the fuel? I may be illegally bunkering it, because I am not in the position where I have had a licence for the bunkering, et cetera, but I have not stolen it and I am not smuggling it. I am using it. So, to take the approach where we eliminate the general net provision as is proposed to be repealed, and only go with the schedule, is to invite a recipe for disaster.

There is a final point I wish to make, Mr. Chairman. I am very uncomfortable, as a Senate, in making up law on the fly. I cannot accept that it is responsible for Senators to sit today, and as we think it up, pluck it into the schedule. That is a dangerous position. I think that we would be better to make sure that we have legislated for future events which may happen, and I think that the Opposition's position is one where we cannot support making up law on the fly, where we just think it up, as we are sitting here today, having seen the schedule. It is dangerous. Thank you, Mr. Chairman.

Mr. Chairman: Sen. Roach, you have indicated?

Sen. Roach: Pardon me, Mr. Chair?

Mr. Chairman: You indicated you want to say something further?

Sen. Roach: No, no.

Mr. Chairman: All right, Sen. Rev. Abdul-Mohan, please.

Sen. Rev. Abdul-Mohan: Thank you, Mr. Chairman. I just had a question and maybe again to create a middle path here. The categories of offences, that category, that list is identical to the UN/IMF Model Legislation on Money Laundering and Financing of Terrorism, December 01, 2005. But the UN is suggesting under (c), "predicate offence" shall mean "any offence which generates proceeds of crime", whatever, whatever. But it advises that under each of the categories, each country should at the minimum include a range of offences within each of the categories. So, that is throwing in my two cents as it were.

Mr. Chairman: Thank you, thank you.

Sen. Rev. Abdul-Mohan: The list is exactly the same and the advice is that each country should, at a minimum, include a range of offences within each category of offences. Thank you. I do not know if that will help.

Sen. G. Singh: I think that I agree with Sen. Abdul-Mohan, and the range is under section 3A as amended.

“an offence in any of the categories... in the Second Schedule for which the constituent elements are more specifically provided for in any written law or under the common law and which is punishable upon conviction with a fine of not less than five thousand dollars or to imprisonment for not less than twelve months;”

So, that is the amendment threshold, so it fulfils the UN model. Okay? So, any written law or common law, so it is a broad category of offences. A threshold of \$5,000 and 12 months imprisonment.

Sen. Al-Rawi: Mr. Chairman, just to clarify, hon. Sen. Singh. You are saying that the inclusion of (a), which is an offence in any of the categories set out in the Second Schedule, and then you go, “for which constituent elements”, et cetera, you described as offences—so you are trying to flesh out what is in the Second Schedule. You are saying that that is equivalent to a catch-all. My reading of that is that is confined to the catch-all as is in the Second Schedule, and what we have pointed out is that infringements of intellectual property, which is not counterfeiting, as Sen. Sturge puts, is by way of an example, showing a deficiency in the Second Schedule. What I am saying is, making up that list on the fly here now is dangerous.

Sen. G. Singh: I mean, I think it is disingenuous for Sen. Al-Rawi to indicate that we have made up this list. It is a UN model, it is a FATF model—

Sen. Al-Rawi: I want to apologize if you get that impression.

Mr. Chairman: Sen. Al-Rawi, allow him to finish.

Sen. G. Singh:—if there is merit in a suggestion. That is the role. If there is merit in a suggestion to incorporate something that can enhance the law, we will embrace that, and I find—[*Crosstalk*]

Sen. Howai: The thing is, Mr. Chairman. Again, this is the full FATF. I mean, I have just checked it back again to make sure I did not miss anything out—

Sen. Dr. Balgobin: Does the UN law please the mind?

3.15 p.m.

Sen. Al-Rawi: But Minister, do we have a—does the UN law and the English law have a catch-all? The answer is, yes, they do not confine themselves to a Second Schedule. That is the point.

Sen. G. Singh: Well, what we are saying, our catch-all in the context of that is the category of offences that receives a conviction with a fine of not less than

\$5,000 or to imprisonment for not less than 12 months. That is the category of crimes together with the category that is in the Second Schedule, and that is our policy position.

Sen. Al-Rawi: Sure.

Sen. G. Singh: Okay, let us proceed.

Mr. Chairman: So the question is—*[Interruption]*

Sen. Al-Rawi: No, Mr. Chairman, sorry, we are only on the first element of the amendment as circulated. We have not even gotten to the rest yet. So there are quite a few more clauses perhaps. This may be a divisible point on the rest of it.

Mr. Chairman: Do you want to go through all the items?

Sen. Al-Rawi: Yes, Sir, and we are only dealing with the Government's amendments yet. We have not done any of the circulated amendments by others.

Mr. Chairman: Well, we will be dealing with the Government's—

Sen. Al-Rawi: Yes, Sir. So, we will just stick a peg on the fact that the Government has put its hat on the policy saying as it has, per Sen. Singh. There are further observations in relation to clause 3. Minister, do you want to explain part B that you are proposing to include as an amendment to clause 3 of the Bill, subclause B?

Sen. Howai: You mean subject to the affirmative resolution? Which one you are referring to?

Sen. Al-Rawi: Well, the fact is hon. Minister—*[Interruption]*

Sen. Howai: Which document are you using?

Sen. Al-Rawi: The fact is—*[Interruption]*

Mr. Chairman: We are doing the amendment circulated.

Sen. Al-Rawi: Sure, it is the circulated list of amendments that I am looking at which amends the Bill, which amends the Act. And it is very hard to follow the amendments as they have been tabled this afternoon. So, please bear with me as I try to catch to the line.

Sen. Howai: Yes.

Sen. Al-Rawi: So, we are saying that section 2 of the definition section which is section 3, is it, of the Act—section 2 of the Act. I just want to clarify what it is being proposed to be amended. Section 2(2) of the Act is being proposed to be amended as, and if I could read the Act, is it going to say in the new 2(2):

“The Minister may by Order...amend the First and Second Schedules.”

And then, is it then the qualification that only the Second Schedule is going to be amended by affirmative resolution and that the First Schedule is done by negative resolution?

Sen. Howai: The other way around.

Sen. Al-Rawi: The other way around. So the First Schedule, sorry—

Sen. Howai: Subject to affirmative resolution.

Sen. Al-Rawi: Yeah, that is right. So the First Schedule is subject to affirmative resolution, and that First Schedule is the listed businesses.

Sen. Howai: Yes, that is right.

Sen. Al-Rawi: And the Second Schedule which is the broad categorization of offences, that can be done by way of negative resolution.

Sen. Howai: Yes.

Sen. Al-Rawi: Right. And is there a rationale, hon. Minister, from moving away from the affirmative resolution as was originally prescribed in 2000 and 2009?

Sen. Howai: Yeah, this is to amend the categories of offences, right?

Sen. Al-Rawi: So for the flexibility of doing that—

Sen. Howai: That is right, in the same way that you raised this issue.

Mr. Chairman: Sen. Vieira.

Sen. Vieira: Thank you. I just want to say, I am satisfied that the list in the categories of offences is a list that was provided in good faith, it follows the FATF and the UN, and when I read the catch-all, with the summary offences, I am satisfied that it would do the job. I think we should still try to tweak some of the language, but I am satisfied.

Sen. Al-Rawi: Just for the record, I have not intended and I thought I was careful in saying that I did not ascribe any sinister purpose to the Government. I want to make that abundantly clear. However, I am saying that I beg to differ with the position, and I differ with Sen. Vieira.

Sen. G. Singh: You will always disagree.

Mr. Chairman: Okay, okay, Senator. Could we continue?

Sen. Howai: Yeah, okay.

Mr. Chairman: Is there any other aspect of the amendments that we should deal with?

Sen. Al-Rawi: Hon. Minister, did you look at the definition of “Minister” assigned for responsibility in the definitions?

Sen. Howai: Yes, this is separate and apart from what we have here.

Sen. Al-Rawi: Yes.

Sen. Howai: Right, okay.

Sen. Al-Rawi: So is the Minister of National Security still the person with responsibility for this?

Sen. Howai: Yes.

Sen. Al-Rawi: And for the money laundering aspect, it will be the Minister of Finance and the Economy?

Sen. Howai: For the Seized Assets Funds.

Sen. Al-Rawi: For the Seized Assets Funds. Thank you.

Sen. Howai: So do you want to go to the other clauses or you want me to proceed?

Mr. Chairman: Well, I would like you to proceed to see how quickly we can move here. That is the purpose and the objective.

Sen. Howai: Yeah, all right. So we dealt with (aa), (ab) and there is (ac) Sen. Al-Rawi, or any other Senator. I mean, I do not know if there are issues.

Mr. Chairman: Is there any other thing?

Sen. Al-Rawi: Minister, could you explain paragraph C on page 2 of your circulated amendments, where does that fit into? Which section of the Act does it amend?

Sen. Howai: So you want to know the Act itself or the Bill?

Sen. Al-Rawi: Yes, Sir, the Act. So it is section 19, right, so we can come to that under a different point. So I could put a dividing line between the words in green and paragraph C of the amended, and then paragraph D refers to section 43 as it is proposed to be amended, right?

Sen. Howai: Yeah.

Sen. Al-Rawi: And just to be sure, E is 47. In F, what does F refer to, that is section 55C only or 55 general?

Sen. Howai: F 55C, yeah we have C and D.

Sen. Al-Rawi: Great, and G and H on page 4.

Sen. Howai: You are going too fast for me, boy.

Sen. Al-Rawi: No, just so that I can know which sections we are going to amend.

Sen. Howai: Yeah, G is 56.

Sen. Al-Rawi: G is 56?

Sen. Howai: We have two Gs here, you know.

Sen. Al-Rawi: Because there is G number one and G number two.

Sen. Howai: There is probably a typo here.

Sen. Al-Rawi: So G is section 56, which is the consequential amendment I pointed out, and the other G is—*[Interruption]*

Sen. Howai: To 55.

Sen. Al-Rawi: To 55, consequential?

Sen. Howai: Yes, it is consequential.

Sen. Al-Rawi: (o) refers to what? As described there, 58I and 58J, so that is 58 in general. And then I is the schedules, right?

Sen. Howai: Um hmm.

Sen. Al-Rawi: Okay, thank you for that orientation exercise.

Mr. Chairman: Are we now satisfied?

Sen. Al-Rawi: So that deals with the Government's amendments as circulated to clause 3, which is dealing with the definition section of the Act itself.

Sen. Howai: Yeah.

Sen. Al-Rawi: Okay, thank you, and then I think there would be any Independent circulations?

Mr. Chairman: Is there any other Senator that wishes to make any other clarification? You okay?

Sen. Al-Rawi: Yes, Sir. So we can put it to the vote? Oh I see, I am so sorry, because clause 3 refers to everything in the Proceeds of Crime Act, we have a problem. It means we must do everything.

Sen. Howai: That is right.

Sen. Al-Rawi: I see. Okay, that is unfortunate.

Sen. Howai: You had me a little bit shocked. Could we go one by one?

Sen. Al-Rawi: Well then, can we go to the next section?

Sen. G. Singh: Section by section.

Sen. Howai: So we can go to, I suppose D which is section 43. [*Crosstalk*]

Mr. Chairman: Yeah, they are doing the whole of clause 3, all the amendments.

Sen. Al-Rawi: Everything in the Proceeds of Crime Act. [*Crosstalk*]

Mr. Chairman: Is it D, Mr. Minister?

Sen. Howai: Yes.

Sen. Drayton: That D is on page 9 of the Bill? Which Bill?

Sen. Al-Rawi: Hon. Minister, I am sorry, just on a point of process and procedure, because we have deferred the issue of financial institutions which is an integral part. We had two real big issues so far. One is the financial institutions, products versus persons issue.

Sen. Howai: That is right.

Sen. Al-Rawi: And secondly we have had the respectful disagreement as to the net-all and schedule position.

Sen. Howai: Yeah.

Sen. Al-Rawi: Those two things alone, the first one precludes a decision being made on clause 3 of the Bill, per se. Do you have an estimation as to when you would be ready to deal with that?

Sen. Howai: Okay, let me deal with that subsequently.

Sen. Al-Rawi: Sure, so we can go through the rest of clause 3 and then come back to that. Thank you for the guidance.

Sen. Drayton: So exactly where are we?

Sen. Al-Rawi: We are still dealing with the Proceeds of Crime Act.

Sen. Drayton: I know, but what number in the amended Bill? What page in the amended Bill?

Mr. Chairman: We are on page 2 of the circulated amendment.

Sen. Al-Rawi: Page 2, paragraph three. Paragraph three deals with section 19 of the Act.

Mr. Chairman: Five on the Bill and two on the amendment by the Minister, sorry. The other two amendments are from Sen. Drayton.

Sen. Howai: Mr. Chairman, we are all using the Bill, right? We are all using the Bill. We have just completed “specified offence” which is A and B on page 2 of the Bill. Is everyone with us? Sen. Drayton, are you with us too, please? I am just making sure, I do not want to—*[Interruption]*

Sen. Drayton: Yeah, I am trying to—

Sen. Howai: We are using the Bill itself, right?

Sen. Drayton: Yes.

Sen. Al-Rawi: Hon. Minister, there is a small problem. There are apparently two versions of the Bill. Sen. Robinson-Regis has a Bill next to me which has section 19 on page 5, the proposed amendments to section 19. My Bill has it on page 7.

Mr. Chairman: I have 7 also.

Sen. Al-Rawi: Right, so could we just make sure that we all have the same Bill?

Mr. Chairman: Let us ensure that the contents are the same. Numbers could always change, but the contents must be the same.

Sen. Drayton: But I thought we are on page 10 of the Bill. *[Laughter]*

Mr. Chairman: Not yet. We are on page 7.

Sen. Al-Rawi: Okay, so we are on page 7 of the original Bill, which is page two of the circulated amendments, which is paragraph C at the top of the page, correct?

Mr. Chairman: That is correct.

Sen. Howai: Everybody is on the same page?

Sen. Al-Rawi: Well it affects section 19.

Mr. Chairman: Hold on, hold on, let us give Sen. Drayton an opportunity to get all.

Sen. Drayton: So we are in the bamboo at this point because we are not too sure which document we are looking at.

Mr. Chairman: But let us ensure that we have the right Bill.

Sen. Drayton: When you say C, then you are dealing with the amendment. Are you—the circulated amendment or are we dealing with section 43?

Sen. Howai: No.

Sen. Drayton: No?

Sen. Howai: No.

Sen. Drayton: So, one of which document, we are dealing with the amended documents circulated or the Bill? [*Crosstalk*]

Sen. G. Singh: The Bill.

Sen. Drayton: So what page on the Bill?

Sen. Dr. Balgobin: So this track changes document, you mean I could throw this as far away from me as—

Sen. Al-Rawi: No, that helps you to consider it in context. That track change tells you what you are putting into the Act itself.

Sen. Drayton: So what page on the Bill?

Sen. Al-Rawi: On the original Bill, page 7. [*Crosstalk*] On the original Bill, page 7, on the amended circulated list, page 2 at the top of the page and on the track change Bill you are dealing with page 29, track change Act.

Sen. Howai: Or the Act. Well no, “doh” confuse everybody with the Act. [*Crosstalk*]

Sen. Al-Rawi: Section 19 is on page 3?

Sen. Howai: Yeah, of the track change—

Sen. Al-Rawi: Mine is on page 29. I am not talking about the Bill, I am talking about the track change Act.

Sen. G. Singh: No, no.

Sen. Dr. Balgobin: We are well in the bamboo now.

Sen. Al-Rawi: The original Bill as we debated, page 7. In the circulated amendments, page 2.

Sen. Howai: Mr. Chairman, let us all work with the same document and let us make sure that we have the same document, right? Would Members prefer to use the original Bill or the Bill with the track changes in it?

Sen. Drayton: Yeah, the original Bill because that is what we debated and then we could refer to the track changes.

Mr. Chairman: The original Bill. [*Crosstalk*] A list of the amendments along with the original Bill which would be page 7 on the original Bill.

Sen. Howai: Could we just make sure every Senator has a copy of the original Bill if that is what we decide we are using? Could we just see who does not have the original Bill, please? [*Senators indicated by raising their hands*] Miss Nataki, could we have extra copies to give to them? [*Crosstalk*]

Mr. Chairman: Well, it is the original Bill that we have to get. Could we provide them with hard copy?

Sen. Howai: How many extra copies do you have? Could I have one? [*Laughter*]

Mr. Chairman: Minister, you have sold us out. Sen. Drayton, thanks because the Minister did not have the original one.

Sen. Howai: I was using the track change Bill.

3.30 p.m.

Sen. Drayton: So which item are we on, on page 7?

Sen. Al-Rawi: Page 7, bottom of the page, subclause (b)

Sen. Drayton: So that has to do with this under “specified offence”?

Sen. Al-Rawi: It has to deal with an amendment to section 19 of the Act. So it says: “in section 19 by repealing...”

Mr. Chairman: Yeah, that is correct.

Sen. Drayton: Okay, right.

Sen. Howai: Does everybody have the same document?

Mr. Chairman: You have it now, Sen. Balgobin?

Sen. Dr. Balgobin: I always had it, Chairman. *[Laughter]*

Mr. Chairman: Let us go. We have to get it right today. Yes, we will get it right. Minister, you are guiding, so let us go.

Sen. Howai: So, actually, there is a change which we are putting in where we are deleting the words “a criminal charge or any proceedings connected thereto” and putting, “any legal proceedings”.

Sen. Al-Rawi: Where does that appear? In the blue item on the track change Act? Where does that appear?

Sen. Howai: You are going back to the track change Act?

Sen. Al-Rawi: Yes, because I want to put it in context.

Sen. Howai: Okay. It is subclause 2(b).

Sen. Al-Rawi: 2(b), which is on page 30, yes?

Parliamentary Counsel: “make provision for reasonable expenses...”

Sen. Al-Rawi: Go ahead. It is okay. So 2(b)—

Parliamentary Counsel: “make provision for reasonable expenses, including expenses incurred in defending”. Instead of “a criminal charge in any proceedings connected thereto”, you are just saying, “any legal proceedings including any proceedings under the Act.”

Sen. Al-Rawi: I see. So delete “a criminal charge or any proceedings connected thereto”, and substitute, “any legal proceedings”.

Sen. Drayton: Sorry, I am lost again. Let us go to the track change. To put it in context, on the track change you are dealing with clause 19. Correct?

Sen. Howai: Um hmm.

Sen. G. Singh: 19(2)(b).

Sen. Drayton: 19(2)(b). Okay.

Sen. G. Singh: “make provision for reasonable expenses, including expenses incurred in defending any legal proceedings including any proceedings under this Act.”

Sen. Al-Rawi: And strike from the word “criminal” to “thereto”.

Sen. Howai: Yeah.

Sen. Al-Rawi: Right. Question on this clause here, hon. Minister. Is it that the litigation experience prompted us to delete subclause (2) as it originally existed, which allows the court a general discretion to come up with factors which may be included? Is it that the litigation experience and the report from the FIU tells us that a judge was incapable of granting the type of support mechanisms that we now do under the existing subclause (2)? Subclause (2) said:

“Without prejudice to the generality of subsection (1)...a restraint order may make”—such provision as the Court thinks fit for living expenses and legal expenses.

Would it have been inappropriate to simply delete the words “for living expenses and legal expenses” and leave it entirely to the discretion of the judge, as opposed to prescribing a whole formula which may turn out to be inadequate in the future? In other words then, leave it entirely to the discretion of the court.

Sen. Howai: We did not think we wanted to leave it entirely to the discretion of the court. I mean, the court has some discretion because you could see in the chapeau where it speaks to “may make it subject to such conditions and exceptions as the Court sees fit”. But we thought it was important to be clear—

Sen. Al-Rawi: Right, and we are cautious of the ejusdem generis rule which would confine us to the type of categories which are specified here.

Sen. Howai: Yeah. But we also have a subclause (d).

Parliamentary Counsel: Catch all.

Sen. Al-Rawi: I see. Thank you, Sir.

Sen. Vieira: I thought this was one of the more imaginative and reasonable provisions in the Bill. I congratulate you on this.

Sen. Al-Rawi: I also think it is already caught by the common law, but I have no objection to describing it the way it is. [*Interruption*] Yes, Sen. Hadeed, only after you, though. I enjoy your contributions the most.

Sen. Drayton: Just for my clarification, Chair, could I raise a question here?

Sen. Howai: Um hmm.

Sen. Drayton: Certainly, I agree with it, but what I am trying to understand, under 19(1) it says:

“The High Court may by order...prohibit any person from dealing with any realisable property, subject to such conditions and exceptions as may be specified in the order.”

So that when we list all these living expenses here, this is in relation to the use of the criminal property?

Sen. Howai: Yes. In other words—

Sen. Drayton: Alleged criminal property.

Sen. Howai: Yeah, before conviction. Because you have someone who may be innocent and you do not want to unduly restrict them from being able to at least carry on their normal living and even to be able to defend themselves.

Sen. Vieira: If I may help Sen. Drayton. Senator, imagine that you were the subject of one of these enquiries. What will happen is that all your bank accounts, everything would be frozen and you would not have access even to pay your helper or to put gas in your car.

Sen. Al-Rawi: Correct.

Sen. Vieira: Now, as it stands, you pretty much fall completely subject to the whims of a particular judge. You may find one that is reasonable; you might find one that is very hard-nosed. So this gives the accused person and the alleged criminal's property at least some breathing room to live and to meet his expenses pending the determination of his trial. And I thought it was a very good effort.

Sen. Howai: [*Parliamentary Counsel in discussion*] She was just making the point that the clauses we have put in here are based on the UN recommendations as to what should be listed, and we used that to list it.

Mr. Chairman, if we can go to (c) in the Bill.

Sen. Al-Rawi: Subclause (c) in the Bill which is reference to Section 29 as proposed to be amended. Right?

Sen. Howai: Yes, section 29. Yes, that is right.

Sen. Al-Rawi: So that is page 8 of the Bill, which is page 39 of the track change Act.

Sen. Howai: Let me just check that to make sure. I would take your word for it. I have not reached there yet.

Hon. Senator: He is correct.

Sen. Howai: He is correct?

Sen. Al-Rawi: Okay. Which is the deletion of "Consolidated Fund" inclusion of "Seized Assets Fund"—

Sen. Howai: Yes, that is right.

Sen. Al-Rawi:—saying it must come from the Seized Assets Fund as first call, and second, any balance to be paid out of the Consolidated Fund.

Sen. Howai: Yeah. Okay, (d), which is section 32.

Sen. Al-Rawi: Which is page 43 of the track change Act. I had a question in relation to this, hon. Minister. We are seeking to include something which is laudable which is the—

Sen. Howai: Electronic format.

Sen. Al-Rawi:—electronic format, but I wondered, again, was this borne out of any experience that we have had which suggested that subsections A and B of the existing subsection 32(10) A and B—is it that it was found that there was a limitation on provision that—

Sen. Howai: That was the feedback I got from the staff. But in any event I thought it was something that made sense on its own.

Sen. Al-Rawi: Sure. Thank you.

Sen. Howai: I am also being told that the court is saying that they did not have the discretion.

Sen. Al-Rawi: Okay, thank you.

Sen. Howai: But it makes absolutely no sense for them to—

Sen. Al-Rawi: Sure. It is a laudable objective.

Sen. Howai: Yeah. So the next one is (e), section 38.

Sen. Al-Rawi: Which is page 9 of the Bill, 52 of the track change Act. I had a question in relation to this. This is the section that was prescribed for the seizure of cash, that we delete the prescription that the officer must be on duty and simply any officer.

Sen. Howai: Um hmm.

Sen. Al-Rawi: I understood that all officers, when they came to action, were on duty.

Sen. Howai: What had happened is, we did have an unfortunate experience where a magistrate—that the officer was not rostered to work and therefore—

Sen. Al-Rawi: Was it appealed? Because I would find that quite an—

Sen. Howai: I cannot answer that question.

Sen. Al-Rawi: I will tell you why, hon. Minister.

Sen. Howai: But I agree with you, it should not have.

Sen. Al-Rawi: A citizen has a right of arrest, even. I could see an arrestable offence in commission and I can exercise a right of arrest, not being a precepted officer or a police officer within the definition of the legislation, or someone with certain powers. So I am concerned that we are eroding on a very first instance, a puisne judge—not even a puisne judge, a magistrate’s decision, something which has not been appealed and therefore the law has not been clarified. We are dealing with section 38 of the Proceeds of Crime Act and we are removing a very careful inclusion of protection which is that the officers must be on duty, and the reason that that came about, when I looked at the *Hansard* from 2000 and I looked at the general discussions around it, customs officers who have the right of seizure, there were allegations—I want to be careful how I say this—of corrupt activity in relation to certain officers, and seized cash sometimes finds a way of going missing or there are discrepancies. So the prescription of an officer on duty was a very good prescription, so I am loath to remove that protection just because a magistrate may have got it wrong on a decision which was not appealed. Because I would find it hard to believe that the High Court or Court of Appeal would have upheld that kind of decision. [*Discussions between Parliamentary Counsel and Sen. Howai*]

I heard that—“It is not all the time you have a Grade III officer”—but we have left Grade III officer in the Act, so how does that make sense? Section 38 says:

“A Customs and Excise Officer of the rank of Grade III or higher...”.

We are deleting “on duty at a port of entry into Trinidad and Tobago”. So you are still keeping the Grade III Officer, and it is not every time you have a Grade III Officer, which is why—I have dealt with forfeitures of customs—you have to wait until the Grade III Officer arrives at the airport, which is usually very good for sweating people for making sure they tell the truth, so I have no objection to that, per se. And we are keeping “a police officer of the rank of sergeant or higher”. We have deleted, as is proposed to be deleted, “on duty at any place” may seize. The prescription for “on duty” was that you would have—this is control of cash. I could understand the “on duty at any place” as is secondly proposed to be deleted, because a police officer may find himself somewhere, but do we really want to remove for a customs and excise officer the requirement that he must be off duty, or include him to act in an off duty capacity for the seizure of cash with no other witness present?

Sen. Howai: The point that was being made was that in this particular case the person was on duty but at another port and not at the port at which the issue came up—the seizure took place. But in any event, I mean, I suppose a customs officer, like anybody, should be able to take some kind of action and so on.

Sen. Al-Rawi: Okay. I have registered my concern. I do not want to detain the Senate unduly in relation to the position.

Sen. Howai: Okay. All right. [*Crosstalk*]

Sen. Roach: Can I get some clarity, please? Is it that we are deleting the off duty aspect of it, or leaving it on?

Sen. Howai: Deleting.

Sen. Roach: Right, okay.

Sen. Al-Rawi: But the vote on this comes when we take the vote at the end for the whole of the amendments for the Proceeds of Crime Act.

So the next one is (f) which is page 10 of the Bill.

3.45 p.m.

Sen. Howai: So we are dealing with “committed” in the definition of subsection (1), in the definition of “criminal conduct”, and replace it with the words “it occurred”. You have any questions on the first part of it, (a)(i)? Any questions on (a)(i)?

Sen. Al-Rawi: Is this on (f)?

Sen. Howai: Yes, paragraph (f). Proposed section 43.

Sen. Drayton: We are now dealing with 43?

Sen. Howai: Yes. So we are on (i).

Sen. Al-Rawi: Sorry, just to get the orientation as to where we are. Sorry, Sir. Page 10 of the Bill, page 2 of the amendments, page 58 of the track change. Right?

Sen. Howai: Yes, you are right.

Mr. Chairman: Sen. Drayton.

Sen. Drayton: So I could just speak now on the (ii)(c), or that is prematurely?

Sen. Howai: No, it is coming up. Well, we are dealing first with—
[*Interruption*]

Sen. Drayton: Well, the Government has sent an amendment to that, to reinstate the (ii)(c), yes? So, it really was just to make a comment and that is to thank the Government for listening and for the inclusion, and I think that is very commendable.

Mr. Chairman: Thank you very much. So it is that you are saying, Sen. Drayton now, that you will withdraw what you have circulated in keeping what they have done? You have no new request?

Sen. Drayton: It is basically the same.

Mr. Chairman: Thank you. So could we also say the same to Sen. Vieira, pertaining?

Sen. Vieira: Are we talking here about the Government's proposed amendment?

Mr. Chairman: Yes.

Sen. Vieira: Yes, delighted to see it. Thank you.

Mr. Chairman: Okay. Thank you very much.

Sen. G. Singh: I just want to indicate that we gave two options to the Senate, so that you had a choice in the matter, in subsection 2(3)—[*Interruption*]

Sen. Vieira: Where is that?

Sen. G. Singh: That is in the first page:

(ac) in subsection 2(3) by deleting all the words occurring after the word "offence" where it first occurs, and substituting the following words "or criminal conduct includes a reference to an act or criminal conduct which would constitute an offence committed before the commencement of this Act."

Sen. Vieira: But it is not a case of either or. We can have both.

Sen. G. Singh: The advice we have, we have either or, because for purposes of clarity at the time of interpretation, and we get the impression that it is—[*Interruption*]

Sen. Vieira: It is more important to have the—you see—[*Interruption*]

Sen. G. Singh: It is the sentiments expressed by Sen. Drayton and yourself that this is the one that you want.

Mr. Chairman: Sen. Robinson-Regis, do you still want to make the further comment or are you satisfied?

Sen. Robinson-Regis: Yes, Mr. Chairman. I just wanted to say that—[*Interruption*]

Mr. Chairman: We are getting there. Do not get too irritable, Senators. We are getting there.

Sen. Robinson-Regis:—the Opposition was very concerned about the exclusion of this clause, particularly in circumstances where the UK legislation included it and, as a consequence of that, we are very pleased to see this clause included. We did see that there was a choice and our contention is that we would have liked both, but I think it is—for the arguments that we made in the Opposition, we feel more comforted by this inclusion.

Mr. Chairman: The Government listened on your advice.

Sen. Al-Rawi: Mr. Chairman? Hon. Minister, would you mind, please? I just want to be absolutely careful. I, of course, join in the acknowledgment of the amendments, so I just want to be sure that I have got the amendments that are proposed correct. So I understand if I am looking at the track change Act, that 43(1)(b), delete the word “committed” insert “it occurred”. Right?

Sen. Howai: Yeah. And you are okay with that?

Sen. Al-Rawi: Yes, Sir. If I look at (ii) of the Bill, page 2 as it is proposed to be further amended, in subsection (2), subsection (2) of what? Of 43?

Sen. Howai: 43.

Sen. Al-Rawi: In subsection (2) of 43, I am deleting the words “subsection (1)” under subsection (1) and substituting the following “,”.

Parliamentary Counsel: Deleting paragraphs (a), (b) and (c) and repeating it.

Sen. Howai: Yes, we just took it out and put it back in.

Sen. Al-Rawi: That is what I was trying to figure out if you did that.

Parliamentary Counsel: The whole chapeau will only govern (a) and (b) and then (c) will be “whether”. So we just changed it around.

Sen. Al-Rawi: Right. So “, it is immaterial”; scratch “who”.

(a) who carried out the criminal conduct”.

Scratch “or”.

Sen. Vieira: Faris, if you look at the original Act, you have to do it for the language to flow properly.

Sen. Al-Rawi: Yeah, I understand. I just want to make sure that I have got it correct.

Mr. Chairman: Are we comfortable?

Sen. Howai: Sen. Al-Rawi—*[Interruption]*

Mr. Chairman: I think he said he is okay.

Sen. Al-Rawi: No, Sir. Not just yet. Excellent! Thank you. And the alternate, Sen. Singh, that we referred to. So, the one that we are accepting is literally the literal version from section 340 of the English 2002 Proceeds of Crime Act.

Sen. Howai: As I understand it, yes.

Sen. Al-Rawi: Thank you.

Sen. Vieira: Not literal because the English Act just says “after the passing of this Act”. It did not specify.

Sen. Al-Rawi: Yeah, yeah. Of course, putting in the Miscellaneous Provisions (Proceeds of Crime) Act in our case. Thank you.

Sen. Howai: So we can go to the section—*[Interruption]*

Sen. Roach: If I may, Mr. Chairman? I just want us to appreciate that the fact that the amendment is being made as it is, that anybody who is engaged currently in any criminal conduct that amounts to money laundering, certainly will walk free, would not be caught by this because it relates to an offence, and an offence of money laundering does not exist at this point in time unless it is made retroactive.

Sen. Al-Rawi: No, the offence exists, but it is attached to the predicate crime. So the new section as is proposed to come in 43 and 45, the combination of those is to delink the ability to prosecute for money laundering by removing the requirement to have a conviction for a predicate offence.

Sen. Howai: That is right.

Sen. Al-Rawi: And what we are doing now is to free it up to allow for prosecution of money laundering without the predicate offence being factored into the equation. What I wondered though—*[Interruption]*

Sen. Roach: If I may, Senator? It is moving forward, not retroactively, not currently.

Sen. Al-Rawi: Well, as I understood and please correct me if I am wrong, the inclusion of subclause (c) into this new section 43, as we are proposing to be amended, allows for any offences or the commission of alleged offences prior to this amendment to also be caught, specifically. So that is as I understand it.

Sen. Roach: I do not see it like that.

Sen. Al-Rawi: Okay. Please, I would very much like to hear to make sure that I am correct. What I had a question on, hon. Minister—[*Interruption*]

Sen. Dr. Le Gall: Chair, if I may respond to Sen. Al-Rawi? (c) says:

“whether the criminal conduct occurred before or after the commencement of the...”—following. [*Interruption*]

Sen. Al-Rawi: You are about to raise the same question that I have, which is whether the prescription of this Act.

Sen. Dr. Le Gall:—and the definition of “criminal conduct” means “conduct which constitutes an offence”. Since money laundering does not constitute a stand-alone offence, then—[*Interruption*]

Sen. Roach: It will not work.

Sen. Dr. Le Gall: Yes, unless this is made retroactive.

Sen. Al-Rawi: My question which probably dovetails into the issue—this is for clarification—is whether the prescription in subclause (c)—Now, Sen. Vieira pointed out to something that was very important a second ago when I asked if we were putting in the exact version of section 340 of the English 2002 Act. The English 2002 Act would, of course, not have had the words “the Miscellaneous Provisions (Proceeds of Crime) Act”. So we are putting forward a moment in time of this amending legislation. If I were to catch what I appreciate from the interventions of Senators Le Gall and Roach to be, the question would be: are we somehow leaving a gap between the old law and this Act?

Now, the offence of money laundering exists as it is, but you must have a predicate crime attached to it if we did not amend the law. In amending the law we are removing the predicate crime attachments. So we are keeping the ancillary offence floating by itself. What I just want to be sure is, do we need to have the words “the Miscellaneous Provisions (Proceeds of Crime) Act”? In other words then, do I need to freeze-frame it in reference to this amending piece of legislation?

Sen. Howai: Yes.

Sen. Al-Rawi: So could I ask Sen. Roach and Sen. Le Gall to explain their concerns a little further then so that we are on the same page?

Sen. Howai: Yes.

Sen. Al-Rawi: Sen. Roach, Sen. Le Gall, could you explain your concerns a little further?

Sen. Roach: You see, the predicated offence is not in existence at this point in time, and as it is drafted here it speaks to:

“whether the criminal conduct occurred before or after the date of commencement of...”—so and so and so—“Financial Intelligence Unit”.

It has to be related to something. It has to be related to an offence. What is the offence that will be captured today with this provision, money laundering?

Sen. Dr. Le Gall: But that does not exist as a stand-alone offence. Okay, my question—*[Interruption]*

Sen. Howai: It is an offence.

Sen. Dr. Le Gall: If I may? Let us assume that investigations are going on now regarding some kind of criminal conduct that may involve money laundering but legislation for money laundering as a stand-alone offence does not yet exist, will the passage of this legislation allow investigations that have been ongoing to be used in future prosecution?

Sen. G. Singh: The simple answer to that is, yes.

Sen. Dr. Le Gall: Is yes? Okay.

Sen. Al-Rawi: In fact, it makes it easy.

Sen. Vieira: Let me see if I could put some light on it. The section 2(3) in the original Act which certain people were relying on, that talks about offence and that is where you have the predicate thing. You must have the prior charge. Now we are coming down to this new definition of criminal conduct linking with criminal property in relation to the stand-alone offence, that would not have dovetailed neatly with the predicate offence in 2(3). So that is why the English legislation said:

“whether the conduct occurred before or after the passing of this Act...”

So that is where now we can go before or after.

Now, in terms of the language, it is not literal. Where is it different? The English say:

“whether the conduct occurred”—they do not say criminal conduct—“before or after the passing of this Act.”

I do not have a problem because we defined “criminal conduct” above and we could have said—my style would have been to just say, “the passing of this Act”, which is this Bill, but I do not think it hurts by putting out them, specifically. So, I am very happy that the section is in. That is the main thing.

Mr. Chairman: Is there is a measure of satisfaction there, comrade Roach—I am saying comrade, yes—Sen. Roach?

Sen. Roach: I am not sure that I am—sorry. I am not sure. I mean, I would need time to think more on this.

Mr. Chairman: Okay. Sen. Robinson-Regis.

Sen. Robinson-Regis: Could I ask a question, Mr. Chairman? When this Bill is consolidated with the Act, would it read:

“whether the criminal conduct occurred before or after the date of commencement of this Act.”

Is that how it would read, or it would read exactly what we have here?

Parliamentary Counsel: As it is here.

Sen. Howai: That will be a concern for you or you—*[Interruption]*

Sen. Robinson-Regis: I think it may give more comfort if it just reads—*[Crosstalk]* It cannot be done like that? Explain, please.

Parliamentary Counsel: Because it is put into the Proceeds of Crime Act and this is an amendment to the Act. So, in section 43 you would see the number of the Act—what number this is?

Second Parliamentary Counsel: 7 of 2014.

Parliamentary Counsel: No. 7 of 2014, and you will see the amendment. So it cannot be proceeds of this Act because the amendment was done via this Bill which is Miscellaneous Provisions (Proceeds of Crime).

So when you read it now, if it says just “this Act” and you read, then it does not matter when—*[Interruption]*

4.00 p.m.

Sen. Robinson-Regis: You would think it is this alone.

Parliamentary Counsel: It comes across as though it was part of the original Act, whereas it has to be clear that this section, and this whole thing on criminal conduct was introduced in the 2014 Bill. But the effect is the same because it says before or after the passage of this Bill.

Sen. Robinson-Regis: So it will still capture the concerns that we had.

Parliamentary Counsel: Yes, it captures from time immemorial to present and—

Sen. Robinson-Regis: To present and after.

Parliamentary Counsel: Yes.

Mr. Chairman: Sen. Drayton.

Sen. Drayton: Okay, that was my clarification.

Mr. Chairman: All right.

Sen. Drayton: I just wanted to make sure that by including the words “this amended Act”, whether it would capture everything before this Act including before the 2012 Act, and that is what I wanted clarification on, because the English also amended their Act in 2002 to include this and they just used the words “the Act”. So I am just seeking clarification that by expanding the words “the Act” whether, in fact, there is no technicality there and it is only referring to the period between 2012 and the date of this Act. I just want clarification on that.

Parliamentary Counsel: The difference was that in 2002, the UK Proceeds of Crime Act was like a repeal and replace so therefore they could have said “this Act”, but the effect is the same, whether you say “this Act” or “for the passage of this Bill”, it just makes it at a point in time.

Sen. Drayton: So it is time immemorial. In any time going back prior, it could be—whatever, 1980.

Mr. Chairman: Minister.

Sen. Howai: Yes, section 44. It seems we can go to section 44 in the Bill.

Mr. Chairman: Sen. Moheni, sorry.

Sen. Moheni: Under the definition for “criminal property”.

Mr. Chairman: You would want to define exactly which part. Is it on 44 or 43?

Sen. Moheni: It is section 43. Should it not be “benefit to a person from criminal conduct” rather than “for criminal conduct”?

Mr. Chairman: You want a difference between for or from?

Sen. Howai: Yeah, it should be for or from. “...a person for criminal conduct...”. It sounds correct.

Sen. Moheni: “‘Criminal property’ means property which constitutes the benefit to a person for criminal conduct...” From criminal conduct?

Sen. Howai: Okay, from.

Sen. Cudjoe: Good observation coming from Tobago heritage.

Sen. Howai: So, we are okay with that?

Mr. Chairman: Thank you, Sen. Moheni, for your observation. We are going now to 44. Is there any—

Sen. Howai: Yeah. Sen. Al-Rawi.

Sen. Al-Rawi: Section 44—sorry, just to catch up. I kind of went ahead to interline—

Sen. Howai: I mean, it was not a big issue. 58 on your Consolidated Act. Page 58.

Sen. Al-Rawi: Sorry, on the Bill itself, it is what page? I skipped ahead. On the circulated amendment, Sen. Howai, on which page is it?

Parliamentary Counsel: There is no amendment to 44 in circulation.

Sen. Al-Rawi: Right, so it is the original Bill. Forgive me. I see, so it is page 10, understood.

Mr. Chairman: Section 44 on page 10, Sen. Drayton, on the original Bill. That is where we are now.

Sen. Al-Rawi: I was okay with that.

Mr. Chairman: You said it is okay. Is it okay with everybody?

Hon. Senators: Yes, Chair.

Mr. Chairman: Okay, thank you.

Sen. Howai: So we are going to 45.

Mr. Chairman: Page 11 on the original Bill. Are there any amendments here?

Parliamentary Counsel: There is an amendment on page 3 of the circulated amendments.

Sen. Al-Rawi: Which is under E, top of the page.

Parliamentary Counsel: Sorry, page 2 of the circulated amendments at the bottom.

Mr. Chairman: At the bottom of page 2, there is an amendment there, where it says:

“in proposed section 45(2) delete all the words from “Where a person” to the word “fails”...”

That is where we are. Are there any concerns there? Are we okay with it? The amendment.

Sen. Al-Rawi: I just want to be sure.

Mr. Chairman: No, I know, you ought to be sure. That is what we have been doing all the time, we will not run away from you. *[Laughter]*

Sen. Al-Rawi: Thank you, Mr. Chairman. The word “fails” stays in, right?

Sen. Howai: Yes, it stays in.

Sen. Al-Rawi: Good, because I wanted to be sure about that.

Sen. Howai: It is just a language issue.

Sen. Al-Rawi: May I look at the prescription in subclause (4)? This is on page 59 of the track changed Act which would be on page 12 of the Bill. Is it subclause (4)? Yeah, the balance of probabilities. If you look at section 9 of the Act itself. Section 9 prescribes—

Sen. G. Singh: Yeah, we can put the civil standard as you suggested.

Sen. Al-Rawi: Yeah, it allows for variations in standard as may graduate upwards, because sometimes the civil standard that I have seen in money laundering cases is slightly higher than a balance of probabilities.

Sen. Howai: So which you want to use?

Sen. Al-Rawi: So I wanted to keep with the language in section 9 of the Act itself which says:

“shall be that applicable in civil proceedings.”

And that is specifically because the civil judges sometimes grade up the standard away from a balance of probabilities, and to make it slightly more serious. It allows for evolution.

Parliamentary Counsel: So you want it to read “shall be that” which is—
[Interruption]

Sen. Howai: “shall be that applicable in civil proceedings”.

Sen. Al-Rawi: Yes, and that would be commensurate with the architecture in section 9 of the Act itself allowing for judicial discretion.

Mr. Chairman: That is on the original Bill or on the—

Sen. Al-Rawi: Yes, Sir. I am referring to section 9 of the Act. It is not proposed to be amended but I am showing what the Act itself used. So the words there are “that applicable in civil proceedings”.

Parliamentary Counsel: Deleting “on the balance of probabilities”?

Sen. Al-Rawi: Yes, so you would be striking the words “on a balance of probabilities” and you will be inserting instead “that applicable in civil proceedings”. [*Crosstalk*] I am okay with the amendment in (2).

Sen. Howai: Sorry?

Sen. Al-Rawi: No, Sen. Maharaj was asking if I am okay with the amendment in (2) and yes, it is a reversal of the prescription as to what constitutes the mens rea or the actus.

Sen. Howai: So you are speaking to (g) in section 47?

Sen. Al-Rawi: Do not worry, it is a non-issue. I was responding to something he said.

Sen. Howai: All right, okay.

Mr. Chairman: So it will read as follows now, see if everybody has it:

“For the purposes of subsection (3), the standard of proof required by the person referred to in that subsection, shall be” that applicable in civil proceedings.

Is that what it is?

Sen. Al-Rawi: Yes, Sir.

Mr. Chairman: So could we please continue, Minister?

Sen. Howai: Okay, we go to section 46.

Mr. Chairman: Section 46 on page 12. Sen. Drayton, are you with us?

Sen. Drayton: Yes. As a matter of fact, I just want to ask for an explanation, because I had raised it in my contribution. There was no need for an amendment, it was more clarification in that 46(1) is dealing with the acquisition of property and 46(2)(b) is dealing with the use of the property, yet (b) is predicate on (1). I just needed some clarification there.

Mr. Chairman: That is your right, Senator. I want you to leave satisfied, that what you have done is a good day’s work. [*Laughter*]

Sen. Al-Rawi: The problem that she is referring to narrowly is that (2)(b)

implements the use of the word “uses” whereas 46(1) does not use “uses”, it just has “possession”.

Parliamentary Counsel: No, but it is acquired and came into possession. So you could be using something that you have possession of but you did not necessarily acquire it. The thinking here was, for example, where you are renting a property.

Sen. Al-Rawi: I am just translating what I heard her say.

Parliamentary Counsel: All right. That is the thinking.

Sen. Drayton: So it is just clarification I needed. So if it is fine—

Sen. Howai: All right, okay.

Parliamentary Counsel: So if you acquire it, then (2)(a) applies and if you just have possession of it, then (2)(b) applies.

Mr. Chairman: Okay, could we continue please, Minister?

Sen. Howai: Section 47.

Mr. Chairman: Is there an amendment on 47?

Sen. Al-Rawi: It is a new consequential, is it? Page 3 of the Bill, E. So, should this not be taken procedurally as a new clause?

Sen. Howai: I suppose if you—well—

Mr. Chairman: It is the same clause 3.

Sen. Al-Rawi: Okay, insofar as it was not in the Bill.

Sen. Howai: Yeah, it was not in the Bill.

Mr. Chairman: Yeah, it was not in the Bill so it is an addition.

Sen. Howai: So we are saying:

“(i) in subsection (1)...”

Sen. Al-Rawi: So the new subsections—

Mr. Chairman: Yeah.

Sen. Al-Rawi: That is interesting. I will borrow that one for future reference.

Sen. Howai: “by deleting the words “specified offence”...”

Sen. Al-Rawi: In section 47, it says here, as is proposed on page 3 of the amendments that are circulated:

“(g) in section 47-

(i) in subsection (1) by deleting the words “specified offence...”

Just let me find that. That is line 3 of the Act.

“and substituting the words “criminal conduct”

“...another person’s proceeds of a...” criminal. Well, is the letter “a” going to be kept there? If you read section 47.

Sen. Howai: The letter “a” of “a specified offence”.

Sen. Al-Rawi: So:

“Where a person discloses to a Police Officer...or discloses...”

Sen. Howai: Okay, take off “a”.

Sen. Al-Rawi: Yeah? So, it should be delete—

Parliamentary Counsel: Yeah, we are deleting the words “a specified offence”.

Sen. Al-Rawi: Yeah, so include “a” in your roman (i) of (g).

“(ii) by inserting after subsection (3) the following new subsection (4)”

Sen. Howai: Yeah, we did not take out “a”, we need to take out “a”, yeah, so it would just be “criminal conduct”.

Mr. Chairman: That is on the amendment.

“a specified offence” and substituting the words “criminal conduct”.

Okay. Do you have that, Senator?

Sen. Al-Rawi: Yes, Sir. I am just reading it through. And then there is the new subsection (4).

Sen. Howai: And then in 47, we go to the new subsection (4).

Sen. Al-Rawi: In the new (4), are we looking at only suspicious transaction reports or also suspicious activity reports? SARs and STRs?

Sen. Howai: Or you say both.

Sen. Al-Rawi: Both?

Sen. Howai: Yeah, this is transaction or activity.

Sen. Al-Rawi: Yeah, so:

“This section also applies where a person discloses to the FIU in the form of a suspicious transaction report his knowledge or suspicion that the property is criminal property, in whole or in part, directly or indirectly.”

So I was just wondering if there is a distinction between an SAR and an STR.

Sen. Howai: No, actually I have both here on my document—transaction report or a suspicious activity report.

Parliamentary Counsel: So I think [*Inaudible*] so you need to amend the Bill.

Sen. Al-Rawi: So it should include a suspicious activity report?

Sen. Howai: Yeah, yeah.

Parliamentary Counsel: It should read:

The section also applies where a person discloses to the FIU in the form of a suspicious transaction or activity report.

Sen. Al-Rawi: Yeah.

Sen. Howai: Yeah.

Parliamentary Counsel: That is the correct reading.

...suspicious transaction or activity report his knowledge or suspicion...

4.15 p.m.

Sen. Al-Rawi: So, in the third line of the new 4, as is in the Bill on page 3, insert after the word “transaction”, the words “or activity”.

Mr. Chairman: Could you please repeat it?

Sen. Al-Rawi: On page 3 of the circulated amendments, at the top of the page at (g)(ii), where the new subsection (4) is being inserted, in the third line of that subsection (4), as is put there, insert after the word “transaction”, the words “or activity”.

Sen. Howai: Yeah.

Mr. Chairman: We are good with that? Could we please continue?

Sen. Howai: Okay, if we can go to (h) in section 50. We are taking off 43, 45 and 46.

Mr. Chairman: We are on page 13, Senator?

Sen. Al-Rawi: Yes Sir, at the letter (h).

Sen. Howai: In your consolidated Act, we are taking out 43, 45 and 46 and just saying “under section 45” and we are also deleting “specified offence”, the same changes we have made before “criminal conduct”.

Mr. Chairman: Are we comfortable with it?

Sen. Al-Rawi: Yes, Sir.

Mr. Chairman: I know it would take some time because it was circulated late.

Sen. Al-Rawi: I appreciate that.

Sen. Howai: So in section 51, we are changing “is guilty of” to “commits”.

Sen. Al-Rawi: Page 13 letter (i) of the Bill.

Mr. Chairman: Section 51 by deleting the words “is guilty of” wherever they occur and substituting the word “commits”.

Sen. Al-Rawi: Sure.

Sen. Howai: At this stage he is not guilty yet.

Sen. Al-Rawi: Correct because it is “commits”.

Sen. Howai: Right, so we are okay with that.

Sen. Al-Rawi: That is standard Elton Prescott SC observation.

Mr. Chairman: I missed him today. He would have missed an S or some mix up.

Sen. Howai: Well 53 was that.

Sen. Al-Rawi: Section 53, which is letter (k), page 13.

Sen. Howai: Then (l), in section 53, again it is “guilty of” and “who commits an offence”.

Sen. Al-Rawi: Yes, section 55.

Sen. Howai: Yeah. So we could go to (l), 55. You are ahead of me, Sen. Al-Rawi.

Sen. Al-Rawi: Sorry, sorry.

Sen. Howai: (l) 55. It should be (l) in section 55.

Mr. Chairman: We have (k) in 55 and (l). On page 13 there is (k).

Sen. Al-Rawi: I do not have two Ls.

Sen. Howai: No, you have the correct version.

Sen. Al-Rawi: If we are at (l), which is the amendments to section 55—

Sen. Howai: That is right.

Sen. Al-Rawi: If we look at the, this is a linguistic issue, at the track changed Act, which is on page 64(ii):

“Every financial institution”—I am reading the chapeau—“or listed business shall:

(ii)...”

Sen. Howai: “pay special attention to all—”

Sen. Al-Rawi: “pay special attention to all—
complex, unusual large transactions...”

So it is meant to be unusual, large transactions?

Sen. Howai: Yes.

Sen. Al-Rawi: Not just unusual transactions? Because there is a difference between the two, hence the comma.

Sen. Howai: Unusual or unusual large. Yeah.

Sen. Al-Rawi: Yeah. So I would have thought it prudent to include all unusual transactions and not just only unusual large transactions.

Sen. Howai: Yeah. Why did we make that change?

Sen. Al-Rawi: I am on page 64 of the track changed Act and I am looking at the prescription that is only unusual large transactions. It is section 55 of the Act subsection (2)(ii), first line. So we are prescribing that we have only complex, unusual large transactions.

Sen. Howai: I am just trying to see if I could sort it out.

Parliamentary Counsel: The ones that you would like to pay special attention to—[*Interruption*]

Sen. Howai: Are the suspicious transactions.

Parliamentary Counsel:—either it is complex or it is unusual large but you would not report anything that is suspicious. Unusual by itself without being large, we call them suspicious because you can have a small transaction that is suspicious.

Sen. Howai: And where are we seeing “suspicious”?

Parliamentary Counsel: At 55C.

Sen. Al-Rawi: I would think it prudent to not provide an opportunity for escape for smurfs, as defined by Senators Small and Vieira, that we keep the words “unusual” and “large” separated by the comma and the “or”.

Sen. Howai: Yes, because if you are unusual and large, you would get caught.

Sen. Al-Rawi: Yeah, and I could have an unusual small transaction by a smurf.

Sen. Howai: Yeah, what is large?

Parliamentary Counsel: Over \$90,000?

Sen. Howai: Over \$90,000. So you are saying unusual is less than \$90,000.

Sen. Al-Rawi: So the harm of keeping it as it is, is certainly not outweighed by the benefit of amending it. Or is it just the volume concern to the FIU?

Sen. Howai: So does it mean every financial institution has to start now collecting everything under 55 that for some reason they think is suspicious, right? No, but they are collecting it anyway. So if we are doing it there is probably no harm.

Parliamentary Counsel: If we leave it as it is, then the financial institutions would do extra due diligence on every transaction over \$90,000, take into context most financial institutions, take into context real estate, take into context motor vehicles, as every single transaction would be large for them. So they would be doing extra due diligence on every single transaction.

Sen. Al-Rawi: But they have to do it in any event under 55.

Parliamentary Counsel: But this is extra due diligence and they have to pay special attention, not the basic customer due diligence for each transaction. But this is where you are talking about extra due diligence that you would have to use for certain types of transactions, if they are unusually large, or they are complex or they come from an FATF non-compliant country.

Sen. Al-Rawi: Is this a recommendation that came from FATF?

Sen. Howai: Yeah.

Sen. Al-Rawi: So FATF’s purpose was to weed out the bulk, right?

Parliamentary Counsel: Yes.

Sen. Al-Rawi: I see.

Parliamentary Counsel: This is a special type of attention.

Sen. Al-Rawi: And this is to reduce the paper log, backlog or management of issues?

Sen. Howai: More effective, basically.

Sen. Al-Rawi: Right.

Parliamentary Counsel: It is to ease the amount of extra due diligence that the business must do and then today we must pay attention to the complex unusually large ones and determine what is suspicious and sensitive.

Sen. Al-Rawi: And large is defined as \$90,000 anyway. So my point is \$90,000 is literally nothing in Trinidad and Tobago, where you cannot buy a car for \$90,000, as brand new.

Parliamentary Counsel: But FATF recommendation is US \$50,000.

Sen. Howai: Yeah, so they would have to pick it up anyway, but they do not have to do extra due diligence because it is just a normal over \$90,000, not a complex or unusual over \$90,000.

Sen. Al-Rawi: Sure, okay, sure.

Sen. Howai: I think that is basically what they are saying. But they still pick it up anyway but they do not have to do extra work.

Sen. Drayton: So what are you saying? You are saying complex, unusually large.

Parliamentary Counsel: Unusual large.

Sen. Howai: Unusual large.

Parliamentary Counsel: That is the FATF wording.

Sen. Drayton: Okay, so it is unusual—

Sen. Al-Rawi: Large transactions.

Sen. Drayton:—and large? So unusual and large are separate words?

Sen. Al-Rawi: No.

Parliamentary Counsel: It is read together—unusual large.

Sen. Howai: It is unusual large. It is unusual large. So it is large and unusual.

Sen. Al-Rawi: It must be both.

Sen. Howai: Now, it does not mean that you are not picking up large, but you are not doing extra due diligence on any large. You are doing it where there is—

Sen. Drayton: So should it not be “unusually”?

Sen. Al-Rawi: The language “unusual” comes from FATF.

Sen. Drayton: It is the language that is bothering me now.

Parliamentary Counsel: How we talk, unusually large might make more sense but we just try to stay as close as possible to the FATF language, which is unusual large.

Sen. Al-Rawi: Sure.

Parliamentary Counsel: It means the same thing, unusual large.

Sen. Al-Rawi: So we are entrenching something from somebody else.

Sen. Drayton: It is unusually large.

Sen. George: Unusually?

Sen. Drayton: Yes, that might have been an error.

Sen. Al-Rawi: It is a term of art. Hon. Minister, it is a term of art. The unusual large transaction is a term of art from FATF and CFATF.

Sen. Drayton: Is it?

Sen. Al-Rawi: Well, that is what I am being told.

Sen. Howai: Yes, that is right, you are quite right.

Parliamentary Counsel: It is the language. What they meant is not that it has to be unusually large, it is just that it is unusual and large.

Sen. Al-Rawi: I understand.

Sen. Robinson-Regis: A large transaction that is unusual.

Sen. Howai: Yes.

Sen. Al-Rawi: I think Sen. Robinson-Regis put it right. It is a large transaction that is unusual.

Parliamentary Counsel: Correct.

Sen. Howai: I think we are okay with it. So, could I say yes?

Sen. Al-Rawi: Yes, Sir.

Sen. Howai: Okay. Could we go to (m), which would be 55?

Sen. Al-Rawi: At the bottom of page 13.

Mr. Chairman: Hon. Senators, should I take the opportunity to ask an unusual question?

Sen. Howai: Once it is not large. *[Laughter]*

Sen. Al-Rawi: Should we take the break?

Mr. Chairman: Should we take a break or should we continue?

Sen. Howai: We are almost finished.

Mr. Chairman: We are almost finished. Okay.

Sen. Al-Rawi: Hon. Minister, it would give you—*[Interruption]*

Mr. Chairman: We decide to make the sacrifice.

Sen. Al-Rawi: If I could just point out that it would give you some time—*[Interruption]*

Sen. Howai: 'Cause we do have to come back to the transaction.

Sen. Al-Rawi:—to focus on the financial institutions and that catch-all point. Hon. Minister, we would like to lend assistance with support.

Sen. Howai: Sure.

Sen. Al-Rawi: So please consider the two issues that we have put on the table carefully, please.

Sen. Robinson-Regis: That is unusually large. *[Laughter]*

Sen. Howai: I hear you.

Sen. Al-Rawi: So, perhaps, we could take the break to allow your team to consider it without tracking everything because we are going forward while pausing to come back. So if we took the break now they could fix some of the stuff without having to go forward.

Parliamentary Counsel: Can I ask to look at section 20? The definition of “security” in the definition section relates to the use of the word “security”.

Sen. Al-Rawi: Could we talk at the break, because I would also like a little—

Sen. Howai: Okay, Chairman, let us take the break.

Mr. Chairman: Hon. Senators, at this stage the committee is suspended until 5.00 p.m.

4.27 p.m.: *Committee suspended.*

5.00 p.m.: *Committee resumed.*

Mr. Chairman: Hon. Senators, the sitting of the committee has reconvened. Minister?

Sen. Howai: Okay. We were on 55 which should be inserting after section 55, the following new sections. Is that where I am, right? Yeah, which are pages 13 and 14 and actually quite a few, 15, which relates to reporting suspicious activities.

Mr. Chairman: From pages 13 to 15, Senator, page 13 on the original Bill?

Hon. Senators: Yeah.

Mr. Chairman: Fifty-five takes you right back to page 15 of the same original Bill.

Sen. Drayton: Yes.

Sen. Howai: Okay, all right. This relates to the reporting of suspicious activities.

Mr. Chairman: Are there concerns or amendments that are being proposed?

Sen. Drayton: We have 55(g) I know, but I do not know if we have reached there as yet.

Mr. Chairman: Is Sen. Vieira here?

Sen. Al-Rawi: Mr. Chairman, just to—

Mr. Chairman: We will still continue with the Minister's amendment.

Sen. Al-Rawi:—in terms of order, so the first amendment that pops up, we have done 55 which was the 95—90, have we?

Parliamentary Counsel: Yes.

Sen. Al-Rawi: Right. Now we are in the inclusions of 55(A), et cetera, move forward.

Sen. Howai: That is right.

Sen. Al-Rawi: And in the circulated amendments we have on page 3, an insertion after 55C(2) and 55C(3), I just wanted to get that correct. So if you could

just give me a moment there, right? So (3) says, this is the compliance programme, that is the definition of “senior management”.

Sen. Howai: Yes, we also included a definition of “senior management”.

Sen. Al-Rawi: Right, for a financial institution, okay.

Mr. Chairman: Are you with us Sen. Drayton?

[*Sen. Drayton nods*]

Mr. Chairman: Right.

Sen. Al-Rawi: Then there was an insertion in 55D, which was to delete the words “and with the consent of the owner...”.

Sen. Howai: Yeah, we deleted the “consent”, because normally for the regulatory bodies they do not usually require supervisory, they do not require the approval.

Mr. Chairman: We are on page 16 of the original Bill 55D where:

“The relevant Supervisory Authority or a person authorized by the relevant Supervisory Authority...”

Is that where you are, Sen. Al-Rawi?

Sen. Al-Rawi: If I may, thank you, Mr. Chairman. The insertion of the (3), I am happy with the definition. It is 55D as it is proposed to be amended.

Sen. Howai: That is right, okay.

Sen. Al-Rawi: So 55D removes the conditionality for consent and then, of course, there would be the other section which follows, which says, if you do not have consent, then you go to the court and you deal with it.

Sen. Howai: That is right.

Sen. Al-Rawi: Is it that you are removing the consent requirement because of that subsequent section?

Sen. Howai: Well, basically the regulatory authorities do not need the consent under their existing legislation and so on. If I put it in here actually—now, Central Bank going in to do an investigation into any of the financial institutions now has to get consent. They would normally do that in the normal course and, therefore, I did not want them to have to do that. In fact, they themselves made representation that I was now going to be putting them back.

Sen. Al-Rawi: Would it help you that the section you have repealed, subsection (7) of the original 55, prescribed that the FIU or a person authorized by the FIU may enter into premises of any financial institution to inspect, to determine, to determine. Is it in that vein? Because it does not bother me when it comes to financial institutions. Where it bothers me, and I declare my interest openly, is as a listed professional—

Sen. Howai: Where the FIU is doing it.

Sen. Al-Rawi:—an attorney-at-law, where anybody is coming in, where it is an environment of LPP, legal professional privilege. So I would want it a requirement that they had consent and if they did not get my consent, they are free to go to court. So it makes sense for the financial institution, but the listed professionals, I am concerned about that.

[Sen. Howai confers with the Parliamentary Counsel]

Sen. Howai: It is only for the Central Bank and the SEC, yeah.

Parliamentary Counsel: But for the FIU, you must have consent. So look at the schedule of amendments—

Sen. Al-Rawi: Catch you, but look at the chapeau of 55D:

“The relevant Supervisory Authority or a person authorized by the relevant” — supervisor “may enter into the premises of any financial institution—” good— “or listed business...”

Parliamentary Counsel: “...during working hours.” That is how it would read now, “...during working hours.”

Sen. Howai: Yeah, but I am removing the requirement for consent.

Parliamentary Counsel: Right, and it follows: where the supervisory authority is the FIU, the FIU shall obtain the consent from the owner of the premises for entry.

Sen. Al-Rawi: And because the FIU is the designated authority for listed businesses, you think it is covered there? Okay, thank you.

Mr. Chairman: A measure of precaution. *[Laughter]*

Sen. Howai: Well, I suppose he is protecting the rights of—

Sen. Al-Rawi: Hon. Minister, does it really hurt—

Mr. Chairman: And he makes sense.

Sen. Al-Rawi:—insofar as subsection (2) says: where you refuse to give consent, something happens. In other words then, it makes it automatically implied that consent exists in (1).

Sen. Howai: Yeah, and if you do not, in (3) we are saying, where the listed business refuses to give consent, is that what you are asking under subsection (2)?

Sen. Al-Rawi: No, what I am saying is, is the deletion of the words “and with consent of the owner or occupier” such a harm in 55D(i)? Is it such a harm because (ii) makes it an implied conditionality anyway? So we are moving from expressed to implied.

Sen. Howai: Yeah, but the Central Bank, they—you see, for the Central Bank and the TTSEC, if you leave it the way it is here, people will stand up on it, and I do not want them to do that.

Sen. Al-Rawi: Okay, and I have no problem with the financial institutions.

Sen. Howai: But you are dealing with the listed businesses.

Sen. Al-Rawi: What I have a problem with is the fact that we have bundled the two together. I accept what my learned colleague has pointed out, that 55D(ii) says that you must have—sorry, it is the FIU that does it and, therefore, listed businesses are covered there. I could live with it, but I am not too happy with the removal of the expressed consent, but I will move on from that point because it is on the record that they require consent for those —

Sen. Howai: That is right. That is right. If we refuse, yeah—and in the FIU Act itself, right?

Sen. Al-Rawi: Okay. Thank you, Minister.

Sen. Howai: Okay. If we can go to—where am I? Paragraph (m) in section 56. No, we have a 55(e) in, eh?

Parliamentary Counsel: Yes, and we say 55 (a), (b), (c) and (d).

Sen. Howai: Okay. We are okay with 55(e) and (f)?

Mr. Chairman: What we said, we will deal with the amendments of the—

Sen. Al-Rawi: Minister, could I invite you to make specific—because you have it—that it is the circulated amendments that you have put and the introduction of the new subclauses (2) and (3) that provide the FIU with requirement to obtain consent?

Sen. Howai: Yeah, so you are saying that you want it on the *Hansard*.

Sen. Al-Rawi: So if you agree with that, I just want to be clear it is, in fact, the circulated amendment which requires the FIU to obtain the consent, the consent of the owner or occupier for FIU purposes that satisfies this.

Sen. Howai: That is what we intend.

Sen. Al-Rawi: Thank you. I had not seen it there. So I understand that now, thank you.

Sen. Howai: It is—and for the record, yes. So it excludes SEC and—

Sen. Al-Rawi: Understood, understood.

Sen. Howai:—but picks up FIU.

Mr. Chairman: Before we move on, Sen. Drayton did, in fact, circulate an amendment in 55C and 55G to insert a “(g)”.

Sen. Howai: Oh, to insert a “(g)”. Which is?

Sen. Drayton: It is to do with the limits of cash.

Sen. Howai: For cash? Oh, well, we did discuss it and we felt that in my own—when I was wrapping up, that we would like to do some more research into that because of the negative feedback we got from the research we did on Jamaica, and particularly the Bankers’ Association, that we would like to do some more research before we actually move to put something like that in place.

Sen. Drayton: I am sorry Sen. Vieira is not here because I know he has a similar suggestion, but I did put it out there for exactly that, so that it could be flagged, and there could be, you know, consideration and maybe when we come back in January or whenever, because I think you mentioned that at some point in time—

Sen. Howai: We have the fourth-round evaluation.

Sen. Drayton:—the fourth-round evaluation, because these large cash transactions where you are talking \$90,000 and \$100,000 or more. Why would anybody want to, you know, settle or pay for activities and transactions with, you know, such large amounts of money? It does raise suspicion, and I would imagine that these large transactions represent the whole underground economy by and large. So that I think it has a lot of merit for consideration, but I realize that we do have to do a certain amount of research, and also to put it in, without thinking through the underlying regulations to operationalize such a law, will take some time. So that I am prepared to, you know, waive this particular amendment. It is now down, it is—

5.15 p.m.

Sen. Howai: It is on the *Hansard* for us to look at.

Sen. Drayton: It is on the *Hansard* to be considered and I am quite happy with that. But I think it is really important and I do hope that the Government—

Sen. Howai: We take the point, particularly with the gaming and gambling that we have to look at, so we accept that. But we saw, I think it was in *The Gleaner*, the Jamaica *Gleaner*, where it was reported on some of the challenges they were having with this and we thought, let us look into it first before we proceed.

Sen. Drayton: Of course, there is a major other aspect with the gambling and that is that banks have been reluctant to accept cash from casinos and that in itself poses a serious problem.

Sen. Howai: Actually, they are having problems with all transactions with casinos.

Sen. Drayton: So that it needs a lot of thought; but it is a serious matter. [Sen. Vieira enters] We were just talking about cash—

Mr. Chairman: I will so inform him. Sen. Vieira, we were now discussing 55G where both yourself and Sen. Drayton had proposed an amendment to G, but we have had a compromise by Sen. Drayton and, therefore, we are thinking in terms of if you would like to continue with your proposal based on your coordinator harmonizing and discussing what will be done in the future, if it is acceptable to you or if you wish to pursue it because I know both of you all had the same concerns.

Sen. Vieira: I am very mindful of time, thank you, Mr. Chairman. I will go along with the coordinator's position. Thank you.

Mr. Chairman: Thank you very much. Can we please continue?

Sen. Al-Rawi: Mr. Chairman, permit me to make an observation that this is an incredible supervision of a committee stage and I just want to compliment you openly on this. It is phenomenal. Thank you very much. [*Desk thumping*]

Sen. Howai: So we are at 56, which is G.

Sen. Al-Rawi: There are two Gs.

Sen. Howai: All right. [*Whispered consultation*] These are the issues you had raised, Sen. Al-Rawi, which we have corrected.

Sen. Al-Rawi: The consequential amendments. Yes, yes. Thank you very much.

Sen. Howai: Then we go to, is it in 58, paragraph (o)?

Sen. Al-Rawi: Which is page 19 of the Bill and page 4 of the circulated amendments.

Sen. Howai: This is in relation to the Seized Assets Fund, right? So we are deleting the words “section 55, 55A and 55C”.

Sen. Al-Rawi: Minister, did you deal with (n), which was in section 57, the amendments? For the record, I do not think we did, you know. Page 19 of the Bill.

Sen. Howai: Yes, okay; by inserting after the word “55”, the words “55A and 55C”?

Sen. Al-Rawi: Yes.

Sen. Howai: Yeah. “Is guilty of an offence and commits an offence”.

Sen. Al-Rawi: Minister, if I could just ask you to note something for consideration by the Government. I do think that the Legal Profession Act, the subsidiary legislation that exists there relative to fees, needs to be looked at in relation to the operationalization of the FIU and Proceeds of Crime Act, particularly as it relates to the maximum fees permissible for regulated transactions.

Non-contentious business is, as you are aware, regulated by that Act, that subsidiary legislation of 1997, and it has not been amended for a very long time and so there are prescriptive fees that you cannot go beyond; for instance, \$500 for a certain thing or \$750, which would make the burden of carrying supervision, which other entities can easily pass on to the customers, for instance, financial institutions. It puts a restraint upon lawyers to try and be inventive in terms of how they define the complexity of a transaction to comply with the law. Unwittingly, people may approach the Law Association or make a complaint that you have breached the Legal Profession Act by prescribing fees that are beyond the non-contentious scale of fees and that is something that must be done by legislation in conjunction with—

Hon. Senator: What would the Law Association—

Sen. Al-Rawi: I understand but, as Sen. Singh remembers, the Law Association is sometimes a little lax in getting its own affairs in order as opposed to others. But it is something for the Government to perhaps take note of and please come back to me. I am just asking you to take that note.

Sen. Howai: Sure. Okay. All right. Yeah. So 58, this is the Seized Assets Fund: we made some changes in here just to clarify it and set it out as we have done in (a) to (h).

Sen. Dr. Mahabir: Mr. Chairman, under 58, I do have some concerns. I do not know if the Minister of Finance and the Economy would be willing to take them on at this time. I raised them in my contribution yesterday and it really pertains to 58E and 58G(2), if you are willing to hear it now. If you are willing to hear them now, I will; if not—

Sen. Howai: Yes, please, yeah.

Sen. Dr. Mahabir: You see I am not really quite sure—and I am not at all going to prevail upon Government's policy—what it means to have the funds allocated to community development and law enforcement. It appears to me the law enforcement would already have been taken into account in the fiscal package and so would community development; and we are speaking here about a seized assets fund from individuals who had engaged in nefarious criminal profit-making activity.

I had recommended; I did not write it; I thought I would raise it on the floor because it all, of course, depends upon Government's policy. But my own position is that I think this is a valuable opportunity for us to clearly indicate what we think about victims compensation.

I am quite aware that the Ministry of Justice has a victims compensation plan, but I am also aware that the funds paid under that have been not deemed, in some instances, adequate. So I am simply raising it for the consideration of the Government as a policy perspective whether—since community development seems to be vague, ill-defined and, in fact, can be prone to mischief, and law enforcement has already had funds appropriated for it—whether the Government will consider that it is going to allocate funds for rehabilitation projects: drug treatment, compensation under section 29, which we, of course, have no issue with, restoration of moneys and also the compensation to victims of all types of crime, not only crimes that are directly related to drug activities. But because the drug trade can have effect across the broad range of crimes across the country, that we would be looking at this particular fund as an opportunity for the compensation of victims of crime.

Sen. Howai: Yeah, criminal victims compensation. I am told that there is a Criminal Injuries Compensation Act, but there is no funding, or is there—

Sen. Dr. Mahabir: But it is funded from the Consolidated Fund, is it not?

Sen. Howai: Yes, it is.

Sen. Dr. Mahabir: And hence since we now have a dedicated fund from the Proceeds of Crime Act, I am thinking that the Government, as a policy perspective, should be looking at funding the Victims Compensation Plan from the proceeds here, but also to a large extent from the proceeds of this plan.

The concern I have, Mr. Minister of Finance and the Economy, is that if we are to allocate funds for community development and for law enforcement, a case can always be made in the future that all of these things can be used to supplement the budget of the Ministry of National Security and the Ministry of Community Development and it gets lost in the maze and it is not dedicated towards those who have suffered the most from criminal activity. And that is my concern here.

If you accept my line of argument here that we specifically, in this law, mention criminal victims compensation, then it would have implication on the type of people you would want administering the particular board, this Seized Assets Fund.

Sen. Vieira: I would like to support my brother's suggestion, particularly in line with the whole concept of restorative justice. I would also like to make a plug for the Judiciary. They have some challenges coming up, for example, now with the mediation programme that they want to be implementing, sourcing moneys out of dirty money—

Sen. G. Singh: We have to be careful.

Sen. Vieira: Well, I know, but, again the idea is to be imaginative and to really plough back something into positive use. [*Crosstalk*]

Sen. Howai: Sen. Sturge, I hear you.

Sen. Sturge: The Criminal Injuries Compensation Board, yes, the funds come from the Consolidated Fund and yes, we are due for an increase. The increase is \$25,000, which is largely inadequate, but the offences we deal with are offences of a violent nature, stemming from violent crime, so I do not know if that will provide some sort of assistance or if you have any further questions.

Sen. Dr. Mahabir: Well, I do recall an incident where a British couple from Tobago—

Sen. Sturge: The Greens.

Sen. Dr. Mahabir:—yes, the Greens, were injured in a manner that I think was really serious injury. The compensation was rather paltry. Now, I think if we do have a significant Criminal Injuries Compensation Fund, or if we have additional resources that we can draw upon, the compensation that your committee, for example, can offer as per what a medical doctor will indicate or an insurance company will indicate as just and fair will be something more than TT \$25,000, which is £2,500. So in that context I think, in order to be fair to the victims, who have been the direct repository of the ill effects of the nefarious activities, I would like to see the bulk of this money go to victims of all types.

You see, it is not only victims who have suffered physical harm, but mental harm as well; the mental trauma of a kidnapping; the mental trauma of someone who has been, in some way, subject to a rape or some kind of activity like that; or on account of people who are under the influence of narcotics.

This is something we have not been looking at. Colleagues, Vieira is indicating that we are moving into a system of mediation, restorative justice. I recall when we were discussing the Prisons Bill, we were talking about rehabilitating prisoners as well. I think we need to be looking at victims. I am making a plug here for victims. These are the people who seem to fall through. We are defending criminal rights and all the rights of criminals and so on, but who is looking at the victims in this society. As a defender of the public interest, I would say this is a valuable opportunity for the Government to give it some serious consideration; not to adopt it, but to hear the—

Sen. Sturge: We would be grateful for the increase.

Sen. G. Singh: I want to thank the hon. Senator for his freshness of perspective. I think it is something that we can consider. We will have to consider it in the context of what currently exists before we make any kind of adjustment to the policy. But I certainly think that it is something worthy of merit and for consideration.

Sen. Howai: In fact, in passing, when action was taken against Dole Chadee and his property was seized and so on, it has been used for the rehabilitation of young people and so on and that falls under community development, interestingly enough. You would not think it falls under that, but certainly I think, as my colleague said—

Sen. Dr. Mahabir: But Minister, if I may interject here, I have a serious problem with vague statements like “community development” because there is a Ministry of Community Development. The problem with that, Mr. Minister, is that anything can go inside there and the moneys can get lost.

Sen. Howai: I suppose it is true because everything here falls under something else in another Ministry, for example, drug abuse, rehabilitation—

Sen. Dr. Mahabir: However, when you are talking about drug abuse treatment, that is very specific. If you go out of that particular remit, I will know that you are spending money on things which cannot reasonably be considered drug rehabilitation.

Sen. Howai: But when you get to broader issues—

Sen. Dr. Mahabir: But when I get to the broader issues, you are going to come with a package and in that package I am sure there will be a large allocation for two things: law enforcement and community development. I would strongly recommend you remove these two; you remove them.

5.30 p.m.

Sen. Vieira: Compensation for victims.

Sen. Dr. Mahabir: And put compensation for victims. Yeah, I think I would agree with Sen. Vieira, you can put compensation for victims. It is more specific and it certainly will put a little more discipline in the management of the fund.

Sen. Drayton: Mr. Chairman, I want to endorse that 100 per cent. [*Crosstalk*]

Sen. Al-Rawi: Thank you, Mr. Chairman, hon. Minister. Hon. Minister, we are entering into this particular discussion because we have fundamentally shifted from the architecture of the original Act, the Proceeds of Crime Act, which is framework legislation, and we are now entering into a prescriptive model in this particular section. The original Act—[*Interruption*]

Sen. Howai: I am told this was here before.

Sen. Al-Rawi: I am just about to point you to what was there before.

Sen. Howai: Yeah, okay, fine.

Sen. Al-Rawi: So, the original Act in section 58 which we are repealing has four subsections to it. It is on pages 71 and 72 of the track change Act. When we look at it, we established a fund: for the purposes of the Act, the Comptroller of Accounts shall establish a seized assets fund. The money paid in satisfaction of whether a confiscation or cash or property, et cetera shall be placed with the Seized Assets Fund to be dealt with in accordance with subsection (3). Anything placed pursuant to that shall be used for the purpose of community development, drug abuse, rehabilitation, law enforcement; the Attorney General may enter into cooperative arrangements and then the Minister may make regulations.

We are now coming into—and I just wanted to caution and to ask what your policy position on this is—establishing the fund again, no problems. The Minister with responsibility comes into effect here now. The fund shall have into it certain things—that is in 58A—real property, et cetera, personal property, et cetera. But with 58D, Attorney General, is a repeat of the whole section. But what we are coming into now in 58E—yes I accept that that was there previously in a slightly abridged version—is now a whole prescription as to how many meetings you are going to have; how often they must meet; what the Minutes are, and what we have done is to introduce the Minister of National Security into this equation as opposed to the Minister of Finance and the Economy. So we are removing the Minister of Finance and the Economy’s coordination of this Seized Assets Funds Committee and we are replacing it with the Minister of National Security.

We are now saying this body shall have a certain number of members no less than X, no more than Y. What we are doing next is to say out of that, you are also removing the Leader of the Opposition’s nomination of a member of the committee entirely. You are limiting the term to two terms of two years only. So you need to have an immediate body of people able to comprise this fund who are limited to only a four-year period of service, and we have never launched, as a nation, the requirements that we set up a joint select committee of Parliament to supervise this whole issue. So, I am concerned, first of all, to understand why we are moving from the Ministry of Finance and the Economy to the Ministry of National Security.

Secondly, why are we prescribing in the parent law something which can be done in the regulations and to leave flexibility therefore, because the Interpretation Act allows for the operation of appointment, operationality, et cetera, of bodies that are created under parent legislation, and thirdly, the rules and regulations that come in relation to whether they be subsidiary laws or they be rules per se, they can actually function. Why do we want to put this in the parent law which requires a three-fifths majority each time we want to tinker with it?

I am concerned that we are hamstringing the operationality and fluidity of this mechanism by putting all of these prescriptive measures into the parent Act. I think whilst I understand what is there, all of this could safely go into subsidiary legislation; all of it could safely be amended by less than a three-fifths majority from time to time. I would not want to necessarily hamstring the Government nor would I want to see the feature which appears here, which is that the Minister of National Security can get involved. And this is no derogation to my learned colleague, the Minister of National Security—he, himself, whomever that person

may be from time to time. Why does he have the right in the parent law to convene a meeting of this committee? Why is it there at all?

Sen. Howai: Yeah, what we did is, actually there are some changes which put the Minister of Finance and the Economy in the decision-making area as far as financial matters are concerned—so disposal of assets and so on and investments and so on, reporting of the books of accounts and so on—we have split it out that way so that those areas—*[Interruption]*

Sen. Al-Rawi: So the amendments to Parliament in 58L, we changed national security to finance. I see that. Now I am looking at the Seized Assets Fund Committee.

Sen. Howai: Right. So, I am saying that the Seized Assets Fund Committee, because it was being derived from actually the confiscation of assets and so on, the feeling was, the thinking was, to let the Minister of National Security deal with those things. Once it is in there, the reporting and the disposal and so on and the disbursement of funds and so on will then be dealt with by the Minister of Finance and the Economy. We made some other changes which are coming up.

Sen. Al-Rawi: I interlined the changes coming ahead, and the only change that I saw—and thank you for the change—is in 58L which was Ministry—*[Interruption]*

Sen. Howai: No, (m).

Sen. Al-Rawi: Right. Where the Minister of Finance and the Economy makes the regulations. But hon. Minister, what is the rationale for putting what should be in subsidiary legislation into the parent Act? Why are we hamstringing?

Mr. Chairman: Sen. Drayton wants to make a comment. Sen. Drayton, is it on 58?

Sen. Drayton: Are we on 58L yet or—?

Sen. Howai: No, no, I was just dealing with the broad question which Sen. Al-Rawi had raised.

Mr. Chairman: All right, when we reach 58.

Sen. Howai: What I am advised is the Treasury Solicitor's advice was that because this relates to confiscation of property and so on, and dealing with matters relating to that, their feeling was that it should be in the legislation itself. So, I think that was on advice from the Treasury Solicitor.

Sen. Al-Rawi: I think, most respectfully, that you are fettering the operationality of this law. That is the advice that you have received and, ultimately, you will have a policy position on it, but I think that we are making a bad move in terms of fettering the operationality for fluidity's sake later on when you want to make amendments, et cetera. I do have an issue with the Minister per se, any Minister, having the type of involvement.

You see, the Minister of National Security does not have the aid of the Treasury, the permanent employees of the State who operate in the fiduciary capacity as they do in the Ministry of Finance and the Economy. The Ministry of Finance and the Economy is an incredibly well-structured entity that has layers of supervision and functionality vested in it that other Ministries do not have, and this shift away from the Ministry of Finance and the Economy to the Ministry of National Security means that we will have a Minister of Finance and the Economy, a Minister of National Security and a Minister of Public Administration; all three dealing with different aspects. It lends itself to confusion, particularly when you are dealing with payments that come out of the compensation fund as to be supplementing the Seized Assets Fund where the assets are not sufficient.

So, whilst I understood Sen. Mahabir's position in relation to victim compensation, my spin on using or my caution on using this Seized Assets Fund for victims compensation is that this fund is almost a trust fund because it holds assets as we have delinked the money laundering offences from predicate offences which are seized upon a mere allegation. There is no predicate offence yet convicted. So I would be loath to touch someone's property held in trust which may be liable to be repaid in certain circumstances prescribed in the Act as quickly as has been suggested by the hon. Senator. I am not sure if he saw it in the particular line that I am seeing it as. But I am concerned that the Ministry of National Security has no place really in dealing with this, particularly, when we bear in mind that the disposal of public property and the public procurement is going to be vested with the Ministry of Finance and the Economy as well.

Sen. Vieira: Thank you. I had a question in my mind, but then when I read further it was answered, and that was about the accountability of the fund, and I see it is going to be laid before Parliament and also that it will be audited annually by the Auditor General. But just to reinforce my friend's suggestion, the whole purpose of this fund, as I understand it to be, is that out of bad comes good. Here is an opportunity using money that you garnered to put to advantage, to plough into worthwhile efforts, and I think that is laudable. I really agree with my learned

friend that really what we want to do is for people who would ordinarily not have recourse either because they cannot prosecute a case or that they need help, that this is where the help can come from, because here is where somebody has a discretion to use available resources for good.

Sen. Dr. Mahabir: Could I intervene again, Mr. Chair?

Mr. Chairman: Yes.

Sen. Dr. Mahabir: With respect to the concerns raised by Sen. Al-Rawi, I understand very well that some of these funds may have to be returned. It is for this reason there is a management committee of the fund, and it is for this reason this fund is going to be administered by a quasi-independent body. But, you see, specifically it is stated on page 19 that one of the purposes is drug abuse treatment. So, are we going to say that because the funds may have to be returned we are not going to use any of it for rehabilitation, drug abuse treatment and so on? If that is the position, then what you have to do is scrap all of 58E and indicate that this particular fund will be held in trust so that in the event that funds have to be repaid, the moneys will be available, similar to what you have in one of your exchequer accounts, Mr. Minister. So that when funds are to be paid to service your debt, the moneys are there.

You do have the debt-servicing money already in one of the exchequer accounts, but this is not so. This particular account is a multifaceted account, and it is for this reason the people who administer the fund will have to be carefully chosen. There will have to be provisions for the repayment, but also provisions for restitution as well. It is a dual-purpose fund according to the intent that I have seen, and it is for this reason the management committee of the fund will have to be individuals who fully understand and are cognizant of this particular dual role.

And, again, I do not know if the Government is prepared to take the amendment on the floor at this time or if to provide a concrete and firm commitment that the committee charged with the administration of this fund will focus their efforts on victim compensation and rehabilitation and, therefore, the management of the committee will be so guided, and this could come under regulations under the management of the fund.

Sen. Howai: Okay.

Mr. Chairman: Are you going to take that into consideration?

Sen. Howai: Yeah, we will take it, sorry.

Sen. Robinson-Regis: Could I ask one question?

Mr. Chairman: Yes, please do.

Sen. Robinson-Regis: These seized assets, would these not be after the persons have been found guilty and the assets have been seized legitimately?

Sen. Howai: That is right. You are quite right.

Sen. Robinson-Regis: It is not that you are holding them awaiting trial. [Crosstalk] I understand that. But would the funds for the holding period be in this fund or in a separate fund?

Sen. Howai: A separate fund.

Sen. Robinson-Regis: Yes. So the Seized Assets Fund is when it is final.

Sen. Howai: When it is forfeited.

Sen. Robinson-Regis: Exactly. And anything else, when it is pending, you will be holding it separately.

Sen. Howai: That is right.

Sen. Robinson-Regis: And if they are not guilty, you give them back. If it is partially guilty, you give them whatever. Yeah. So the Seized Assets Fund is a separate account that is seized, and there is no way the person is getting it back.

Mr. Chairman: That is quite clear. You have made it abundantly clear. Could I go now to Sen. Drayton? Sen. Drayton. [Crosstalk] Let us hear Sen. Drayton.

Sen. Drayton: I would like some clarification and probably it should be put in specifically, that is under 58L. It says, that is, submit to Parliament a report on the management of the fund. Now, that is totally different from audited accounts. Exactly what will be submitted to Parliament? I would imagine it should be the audited accounts and a management report.

Sen. Howai: Help me find it.

Mr. Chairman: It is 58L, it reads as follows.

Sen. Drayton: It is 58L, and it is on page 25 of the amended document.

Mr. Chairman: The Minister with responsibility for national security—
[Interruption]

Sen. Howai: Oh, yes, right, right.

Sen. Drayton: So this should be an audited account.

Sen. Howai: Yeah. So submit to Parliament—[Interruption]

Sen. Drayton:—audited accounts.

Sen. Howai: Well it will be more than the audited.

Sen. Drayton: It is a management account, management report and audited accounts.

5.45 p.m.

Sen. Howai: I mean, yeah, but what you want to state, specifically, is included in the report will be the audited accounts.

Sen. Drayton: The audited accounts, yes.

Mr. Chairman: Mr. Minister, if you look at 58K:

“All accounts relating to the Seized Assets Fund shall be -

- (a) kept separately by the Comptroller of Accounts but shall be shown to the general accounts of Trinidad and Tobago and laid therewith before Parliament; and
- (b) audited annually by the Auditor General in accordance with the Exchequer and Audit Act as if the Fund were established under section 43 of that Act.”

Sen. Drayton: I do not think that is the same as submitting audited accounts.

Mr. Chairman: It is not the same?

Sen. Drayton: No.

Sen. Al-Rawi: Unless it forms a part of the Auditor General’s—

Sen. Drayton: Unless the management report contains audited accounts.

Sen. Howai: Yeah, but under 58K it would be kept separately but shall be shown in the general accounts, right?—and laid before Parliament, and (b) would be audited annually, so what we are laying in Parliament would be audited annually.

Sen. Al-Rawi: And laid by the Auditor General.

Sen. Drayton: Well once that is clear—

Sen. Howai: “Audited annually by the Auditor General in accordance with”—yeah.

Sen. Al-Rawi: And the Auditor General lays every report of audit in any event.

Sen. Howai: Yes.

Mr. Chairman: So that should take care of this.

Sen. Howai: So it will be laid.

Sen. Drayton: Okay. All right.

Sen. Al-Rawi: But, hon. Minister, would you address a response to the limitation on the term of members? Has FATF said to us that this thing must be prescribed in the parent law?

Sen. Howai: No. No. No. That came out of the recommendation from, as I said, the Treasury Solicitor.

Sen. Al-Rawi: From the Treasury Solicitor. Then, secondly, why are we limiting the term of four years only to somebody who may be useful for more than four years?

Sen. Howai: No, well he will come back up for renewal at that time.

Sen. Al-Rawi: No, you can only under this law serve for two consecutive periods.

Sen. Howai: Oh, two consecutive periods. Yeah.

Sen. Al-Rawi: Four years is a very short cycle in terms. [*Crosstalk*]

Sen. Howai: I need to check that. Yeah, we need to probably check that.

Sen. Al-Rawi: In a society where we have limited resources and where people are scant, having something that is prescriptively as small as this may be problematic, and also the ability in the parent law for the Minister of National Security. Why would the Minister of National Security have the option to convene a meeting of this committee? What is the purpose? [*Crosstalk*]

Sen. Vieira: He might need to buy a helicopter. [*Laughter*]

Sen. Howai: Yeah, among other things. [*Crosstalk*] No, that was the thinking actually, strangely enough, that if there are specific things that they needed to do that he can call a meeting of the committee. So, for example, buy a helicopter, yeah.

Sen. Al-Rawi: Yeah, but you see, hon. Minister, this is bona vacantia, or this is assets which now belong to the State in similar fashion as the Consolidated Fund does, right? So the Exchequer and Audit Act allows for the creation of funds, in general, as 58K contemplates. The Auditor General and the Treasury, in

personam—that is, the Minister of Finance and the Economy, you, or any person occupying your seat—you have the direct responsibility under the Exchequer and Audit Act, and I am concerned that the Minister of National Security can deal with a fund which is akin to a Consolidated Fund, or a creature of the Exchequer and Audit Act. I do not think that he or she has any place there.

Sen. Howai: The matter was discussed at length and it was agreed to proceed in that way, so—

Sen. Al-Rawi: But what is the rationale? What is the explanation for the Exchequer and Audit Act?

Sen. Howai: I think, basically, it is the same thing we are saying. In terms of the disbursement, in terms of the disposal and so on, the changes that we have in (d) and (e) put the Minister of Finance and the Economy to deal with those issues, but as far as—and also in 58(2), where the disbursement and so on would take place through the Minister of Finance and the Economy.

Sen. Al-Rawi: Hon. Minister, in the laws of Trinidad and Tobago, and this is a question, is there any comparative example? This is why I asked the whole question about money Bill in the original factor. Is there any other example where something which is tacked on to the Consolidated Fund or becomes assets of the State where a Ministry can just use that money by itself?

Sen. Howai: No, but when you say we can use it by itself—

Sen. Al-Rawi: The Ministry of National Security.

Sen. Howai: No. No. No. The Ministry of National Security would not be doing that. That is the Ministry of Finance and the Economy.

Sen. Al-Rawi: Great. So if the Ministry of National Security has nothing to do with that, why is he there at all?

Sen. Howai: No. No. No. That is a decision that was made separately. Yeah.

Sen. Vieira: Not only that, but because you are talking about law enforcement, it would be important that the law enforcement line Minister would have a voice—

Sen. Al-Rawi: Which is the Attorney General.

Sen. Vieira:—but the point that Sen. Robinson-Regis made only underscores that if we get this legislation right and everybody working together, this could be a substantial amount of money, eh. So we really need to consider the checks and balances, and as my friend says—

Sen. Howai: And that is where the Minister of Finance and the Economy comes in.

Sen. Vieira: It is not just law enforcement, because law enforcement could wolf up the whole fund with one helicopter or an OPV—

Sen. Al-Rawi: That is right.

Sen. Howai: No. No. I know, but that is the use of the funds now. I mean, we take your point and, you know, certainly we will look at it, right, in terms of what may be the appropriate arrangements to make before—

Sen. Al-Rawi: Hon. Minister?

Mr. Chairman: Sen. Al-Rawi, if I may just step in there very quickly. I thought the purpose of the discussion that you have tabled that the Minister of National Security was for the purpose of calling some sort of meeting as he may think necessary, not for the purpose of really dispersing funds or requesting funds. Any request for the funds, as far as I learn or think, has to go to the Minister of Finance and the Economy.

Sen. Al-Rawi: No, Sir. No, Sir. The committee, which is under the control of the Minister who can convene a meeting at any time, has the discretion to deal with it. Just remember—please, could we keep our eyes on—we are moving from a situation where the Seized Assets Fund was part of the Consolidated Fund, payments were coming out of the Consolidated Fund, the Minister of Finance and the Economy was responsible for everything in the law that we are proposing to move away from now, not the Minister of National Security.

The Minister of National Security had no right of calling meetings or interfering with a body, and we are moving from a body where we had Members where at least one Member was appointed by the Leader of the Opposition. So we are now in a position where we have a body appointed entirely by the Minister of National Security, where the Minister of National Security can call to order these meetings and suggest things that are to be paid out of it. The Minister of Finance and the Economy's supervision comes in laying the reports, et cetera.

Mr. Chairman: Yeah, but does the committee have the authority, based on what you have said, the meeting that was held to really indicate—

Sen. Maharaj: No, but Sen. Al-Rawi—

Mr. Chairman: Just a minute, please.

Sen. Al-Rawi: Good question.

Mr. Chairman:—that they would be able to have moneys requested based on that?

Sen. Al-Rawi: Good question, Mr. Chairman.

Mr. Chairman: And what is the objective and the purpose of the Minister of National Security?

Sen. Al-Rawi: Mr. Chairman, could I ask the Minister that same question? I think that hits the nail on the head. Does the Minister of National Security have any authority to direct the payment out of this fund for any purpose?

Sen. Maharaj: Sen. Al-Rawi, if you look to clause 58M, it says:

“The Minister with responsibility for finance may make Regulations for –

(a) the management and control of the Fund;”

Sen. Al-Rawi: Right.

Sen. Maharaj: So it seems to imply that the real management and control of the funds is not with the Minister of National Security.

Sen. Al-Rawi: So having made regulations, because his purport in here is to make regulations only, when he makes this regulation, does that mean that the Minister of National Security is necessarily cut out of that equation? If he makes a regulation that says, “The Minister of National Security may direct the fund as managed by these people to do X”, would that not defeat the purpose?

Sen. Maharaj: But the regulation may similarly say also that in order to carry the expenditure where the Minister of National Security is involved that concurrence has to be obtained from the Minister of Finance and the Economy.

Sen. Al-Rawi: And in dealing with the hypotheticals of “may”, all that I know is that we are moving away from the Ministry of Finance and the Economy, we are moving to the Minister of National Security; we are moving away from a board that had some degree of balance where you had a Leader of the Opposition appointing someone to a sole appointment by a Minister of National Security, and we are moving in a position where the Minister of Finance and the Economy just makes regulations. It does not say that the fund is to be limited, per se.

Sen. G. Singh: Okay, I just want to deal with two things: one, I think that it is not the Minister of National Security, when it says Minister of National Security, it means Cabinet. Secondly, in the context of disposal of the assets, the Minister of Finance and the Economy, under the law, will make rules and regulations that will in fact confine as to what the Seized Assets Fund Committee can deal with,

and I think it is a fundamental error to mix the Executive and the Parliament together.

So that, therefore, you immediately politicize the committee when you put a member with political affiliation in that kind of way. We see this problem in the Commissioner of Police, and that kind of hybrid does not work in our system.

Sen. Howai: Okay. All right, so—

Sen. Dr. Mahabir: Mr. Minister, one last point here. You see, the members of the committee, the advice committee, I think they are going to be important. It does not, in my mind, it is not important as to who is the line Minister but, really, what is the quality of advice that this particular committee gives, how you choose the committee, the composition of the committee, the focus of the committee, I think is going to be paramount.

We have had instances where, for example, the EMA is an EMA but it is taking administration from the Ministry of the Environment and Water Resources. So that, to my mind, who the line Minister is here is not as important as the quality of advice that the committee gives, and once we focus on that we are going to have good policy.

Sen. Howai: Yeah, which would be done by Cabinet, I suppose, in terms of the appointment. It may come from the Minister of National Security but it would be done by Cabinet. All right, so, I mean, we take some of the points on board but we would not change our position at this time.

Sen. Robinson-Regis: Just for clarification, the ability of whoever the Leader of the Opposition would be—I heard what Minister Ganga Singh said about mixing the political with the Cabinet, but I think the objective may have been to have somebody of another ilk on the committee. Is there any other mechanism that we may be able to use to allow for that kind of placing someone else on the committee? You know, another mechanism, because it may only be—

Sen. G. Singh: The only alternative that I can think off the top of my head, really, is for the President to appoint the Seized Assets Committee. But, I think, this model, we can go with this model and let us see it evolve at this stage. To bring this under the consideration of the presidency brings a whole new game into it.

Mr. Chairman: Whilst all the concerns and the commiserations that are given, I do not believe that we would be able to put each and every thing that we think of inserted into it. But what we would really want to ensure, that we put the

best that we think is, you know, that would be able to carry it through. What further amendments could be made at some given time would be fine, but I think we are going very, very good, and I believe that there are certain things we will have to withhold until such time. Mr. Minister of Finance and the Economy, could we please continue.

Sen. Howai: Yeah, okay. The next item is (p) in the First Schedule:

“in respect of the type of business ‘A Private Members’ Club’...”

Mr. Chairman: In the First Schedule?

Sen. Howai: Yeah.

Mr. Chairman: We are going to page 26 of the Bill, we are speaking about (p) in the First Schedule. Are there any concerns?

Sen. Drayton: This is on page—

Sen. Howai: The First Schedule.

Mr. Chairman: Page 26 of the original Bill, (p) the First Schedule.

Sen. Drayton: Yes. I want to bring attention to the second column with respect to a members’ club. I mentioned this in my contribution and I am concerned, it says:

“A members’ club which is granted a certificate under section 5(4) of the Registration of Clubs Act, Chap 21:01.”

What about where you have a situation where a certificate has not yet been obtained for one reason or the other, would that be captured there? I had suggested that a members’ club which is granted a certificate under section 5(4) and a members’ club that is required—in other words, you are required to have a certificate and you have been granted a certificate. What if for some reason a certificate has not been granted, it could be an interim situation? I know this is a serious concern of the FIU.

6.00 p.m.

Sen. Howai: Yeah. Sorry. Senator, what is being asked is, if someone does not comply with the Registration of Clubs Act, is that it?

Sen. Drayton: Not necessarily. You know, knowing the bureaucracies that exist, you know, this goes to the heart as well of efficiency and how well the Inland Revenue or whoever it is. Which body monitors these clubs?

Sen. Howai: Yeah. It would be Board of Inland Revenue that does it, in terms of the paying the licences on an annual basis.

Sen. Drayton: Okay. So, we know how challenged that arm of the Ministry of Finance and the Economy is, the Inland Revenue, and you have many of these clubs that are mushrooming overnight. So it is a question, a club might very well have applied for a licence or applied for a certificate or they might have been given the licence and they have not yet gotten the certificate, and the period of time could be two, three, four—this goes to the heart of efficiency, and this is very much a live situation. So, I want to know—

Sen. Howai: So for some reason they cannot get—they went to pay and they could not pay, they were closed.

Sen. Drayton: Yeah. There could be any reason why. Not only that, they could have applied and questions were raised, and they were asked to provide some more information, and there was a lapse of time—two, three, four, five months, all that is quite possible. I know this is a matter which is of serious concern to the FIU. So what I want to know is, you have two elements here. You are required to have a certificate and you have been granted a certificate.

Sen. G. Singh: Okay we have to start with basic presumptions, eh.

Sen. Drayton: I only stating that for clarification.

Sen. G. Singh: There is a presumption, in order to be a listed business that you have to be registered as a members' club. If you are a registered members' club and there is a kind of interregnum which is hopefully a reasonable period in which you are seeking to access your licence, then you would have a continuum in that period, but if it is that you are seeking to operate like a registered members' club, but you are not seeking registration, then you have to be shut down by the police.

Sen. Vieira: That is right. If I can help. This schedule which deals with listed business really dovetails with the Financial Obligations Regulations. It is about everybody who is in this schedule has to comply with this very fixed regulations or to be in breach. So if you do not have that licence, then as Minister says, you should not really be operating at all, but once you do, then you fall in the compliance regime.

Sen. G. Singh: And you see, we cannot legislate for the inefficiency [*Crosstalk*] at the level of the magistrate level with something like that. But what it is really, there are certain obligations, and once they are operating with the—I

mean, there must be a presumption of resemblance also in the operation of this thing. So, I think that it will allow for that, but what we have to prevent is to—not create an opening for the non-registered membership club—if there is such a term—to operate.

Sen. Al-Rawi: Well they ought not to be operating anyway.

Sen. Drayton: And if I may, that is where the concern—and I agree with you. You cannot legislate for dotting every i and crossing every t, you know, with respect to all the businesses that are out there, but we are aware there are real situations before you get that licence. And it is just a question that a member is supposed to comply, is supposed to have a certificate. If you do not have a certificate, you still have to comply with respect to the FIU regulations. But this specifies you must have a certificate. And I think it is a legitimate concern on the part of the FIU.

Sen. Al-Rawi: May I ask a question, hon. Minister?

Sen. Howai: Uh-hmm.

Sen. Al-Rawi: In this schedule we have a very interesting expansion of a term which did not make very much sense to me in the first case. This is—if you look at page 78 of the marked-up Act. What we are doing is, we are deleting:

“An Accountant, an Attorney-at-law or other Independent Legal Professional”.

And we are inserting:

“An Attorney-at-law, Accountant or other person performing the functions of an Accountant or other Independent Legal Professional.”

May I enquire, what an “other Independent Legal Professional” is?

Sen. Howai: Paralegal. Yeah. It is a paralegal.

Sen. Vieira: No. No. No. That is a term of art. If you look in the English legislation and in the English rules, they talk about independent legal professionals. So it might be somebody who is not a practising attorney-at-law, but they might be a legal consultant. There are a number of different aspects involved.

Sen. Al-Rawi: The reason why I have asked it is that in England, et cetera, they actually have legislation which governs other independent legal professions. So, I am aware that it is a term of art from other jurisdictions where they have locus to call it that, but under our Legal Profession Act you have nothing other

than attorneys-at-law who are called to the Bar. And secondly, I believe under the accounting governing body you cannot have people practising accounting who are not accountants. How is that done? [*Crosstalk*] For accountants. Okay. So no equivalent of the Legal Profession Act for accountants, but on the Legal Profession Act, which I know quite well, I know that there is no creature called an “other Independent Legal Professional”.

Sen. Howai: Well what would you like to call them?

Sen. Al-Rawi: Well it should not be there at all. I mean, I accept what we are trying to get. We are trying to capture people who are acting as “bush lawyers”, if you want to call it that way.

Sen. Howai: What is that?

Sen. Al-Rawi: I said, if I could use the vernacular, we are trying to capture the “bush lawyer”, but there is a whole dilemma inside of there.

Sen. Howai: Okay. So what do you want to suggest?

Sen. Al-Rawi: I am not sure what we should really be saying.

Parliamentary Counsel: Minister, if you look at the functions under this clause, right—

Sen. Howai: Yeah. You see it is who is performing these functions.

Parliamentary Counsel:—you do not have to be called to the Bar to be an attorney-at-law.

Sen. Vieira: Exactly.

Parliamentary Counsel: That exists, to perform these functions in a capacity where you have an LLB, and like management of banking securities and savings, you can do those things. And some in-house—[*Crosstalk*]

Sen. Al-Rawi: What is a legal professional? A legal professional is somebody who is called to the Bar. You cannot have a profession of an attorney-at-law unless you are called to the Bar.

Sen. Vieira: No. You can have a masters and not be a lawyer practising—[*Crosstalk*]

Sen. Al-Rawi: Are you a legal professional? You are somebody with an LLM or an LLB, but you are not a legal professional.

Sen. Vieira: You may very well be a legal professional, even though you are

not a practising attorney-at-law under the Legal Profession Act where you are advising on legal matters.

Sen. Al-Rawi: Well then could we find words that meet the satisfaction of what the law actually says and captures that category?

Sen. Howai: I am open to it, but—[*Crosstalk*]

Sen. Vieira: Look, this is the term of art that was used all along. It is the term of art that is in the other jurisdictions. I would be very loath to tinker with it or to take it out at this stage.

Sen. Howai: Okay. I will leave it as it is. Let us leave it as it is, Faris.

Sen. Al-Rawi: Okay.

Sen. Howai: I hear what you are saying.

Sen. Al-Rawi: I just wanted to log it. Maybe you could put the o in order as a common o as opposed to capital to keep it consistent with the rest because it looks as if it is a defined term of art. [*Crosstalk*]

Sen. Howai: So you say, a common o, i, l and p? Is that what you are saying, Faris? Sorry, Senator? Common o, i, l, and p?

Sen. Al-Rawi: Yeah. Well keep it as it was before. I agree with Sen. Vieira's observation about tinkering. I understand what the intention is.

Sen. Howai: We will fix it to keep it that way. Put a common o. All right. Okay. Yes. So, I think that is (p); we have to 4, go to the Anti-Terrorism Act. [*Crosstalk*] Oh, sorry, my apologies.

Mr. Chairman: We want to put 3 now—

Sen. Howai: No. No. We have to go the Second Schedule. (q), yes, (q).

Sen. Al-Rawi: Can I ask a question? Sorry. What was—sorry to—just look at this. If you look to the right hand column, Second Column, opposite the “attorneys-at-law” that we were just speaking about. We are deleting in persons accountable of performing functions on behalf of a client involved in (d) organization of contributions for the creation, operation or management of companies. Okay. We are striking “legal persons” or “arrangements”. Is it that the new subsection (e) captures that, “creation or operation of management or legal persons or arrangement and buying and selling of business entities”?

Parliamentary Counsel: It is supposed to be split. And this is exactly as FATF has it.

Sen. Al-Rawi: Right.

Parliamentary Counsel: In the previous version, I think, the wording moved around a little bit, so it was being a little bit nonsensical.

Sen. Al-Rawi: Right. So, we cleave the two with keeping the intention to capture the two, but we are just neatening it up. Correct?

Sen. Howai: Uh-hmm.

Sen. Al-Rawi: Okay. Thank you very much.

Sen. Howai: In keeping with FATF.

Sen. Al-Rawi: Thank you.

Sen. Howai: All right. (q): should we include the—IP, intellectual property?

Sen. G. Singh: Sen. Vieira, the recommendation you made with the inclusion with the categories of offences, the Second Schedule dealing with patents.

Sen. Vieira: Are we going back to the schedule?

Sen. Sturge: The thing is, it would already be covered by the catch-all that comes before.

Mr. Chairman: Are we adding another category?

Sen. Howai: This is whether we would want to add a cap, but I want to make sure that the category—[*Crosstalk*] You see, this is the complete list from FATF. I can give you the FATF list so you can see it.

Sen. Al-Rawi: Hon. Minister, I accept that this is the FATF list. I am just concerned, from a policy point of view, very much wanting to support this legislation. The main mountain for me right now is simply this: the keeping of a net catch-all provision, in keeping with the UK model and the UN model where we kept indictable offences in the original language, and we included the use of a Second Schedule as we do. So that would mean keeping the original law as it was, as it relates to this section, and only repealing and replacing the schedule.

Sen. G. Singh: As I indicated earlier, Senator, that this is our policy position, and that the only area that if we can enhance the FATF category, we will be willing to do so, once it is such—

Sen. Al-Rawi: May I ask a question, please, hon. Minister? In considering the FATF model, are you sure that the FATF model uses only a scheduled approach as opposed to a schedule and net?—because my understanding of it is that it uses both.

Sen. G. Singh: There are three options.

Sen. Howai: Yeah. But if you go this route it—

Sen. Al-Rawi: And I understand that if I look now to the balancing of mischiefs, if I look to what the beneficial and prejudicial values would be. As I see it and I am hoping to persuade you to think this way. [*Crosstalk*] As I see it the—[*Laughter*—as I see it, not listening to Sen. Singh just yet. Right? But as I see it—

Sen. G. Singh: It was meant for your ears.

Sen. Al-Rawi:—whispers at the bar table included, the prescription of, the mischief of including slightly more offences than less is something to be preferred because the rest of the operation of the legislation works well because you are dealing with certain categories and size and suspicious, and unusual, so there is a nice filter as it comes down to what goes on there. But the schedule and the purpose of defining a specified offence as we are looking at now—[*Interruption*]

Sen. G. Singh: Categories of fines.

Sen. Al-Rawi:—really is to broaden the approach, to catch things which we may not have considered as at today's date, being for instance the two examples, one by Sen. Vieira and the other one by Sen. Robinson-Regis, of bunkering and of breach or infringement of copyright or patents or trademarks. Right? Remember, it is the lawyer's obligation to look for the exceptions in the categories, as opposed to something else.

Sen. Howai: And the thing is we can add these to enhance these by way of negative resolution.

Sen. Vieira: So in terms of—well I did not really have too much time, but just in terms of how I would tweak the categories. I would say, for example, at 3, “trafficking in human beings, body parts and migrant smuggling”. That would deal with this thing about taking tissue and organs. At 10—no, 11—I would say, “intellectual property offences including counterfeiting and piracy of products” because the intellectual property would cover trademarks, patents, copyright, industrial designs, the whole raft. At 13, because there is corporate manslaughter with people being killed by—I would include manslaughter for that reason. Though I take Senators—

Mr. Chairman: Just a minute, please. What I want to find out is, the suggestions that are being made, is it that the Government is going through with that? Because we want to—

Sen. Howai: Let us hear what they are.

Mr. Chairman:—ensure—so it is just suggesting, and then we will determine because the Clerk was writing, so I wanted to ensure that we have an agreement on it.

Sen. Vieira: It was in response to the query.

Mr. Chairman: Okay. Thank you.

Sen. Vieira: And it is not many. It was just to include manslaughter, and then I thought—

Sen. Howai: But you want to make manslaughter something where you have confiscation of property?

Sen. Vieira: Well you have corporate manslaughter.

Sen. Sturge: But then we have never had any prosecution or any charge for corporate manslaughter in this jurisdiction. That is the only observation that I have, but I agree in principle with including corporate manslaughter.

Sen. Vieira: Yeah. Because the reason is, particularly with certain types of accident. But I am also thinking now about where people are being killed, not because it was the intent, but defective manufactured drugs, all that sort of thing—

Sen. Sturge: Gross negligence.

Sen. Vieira:—which can come in down the road.

6.15 p.m.

And, I wanted to put in something with telecommunications, but all the telecommunications offences are summary.

Mr. Chairman: Please, let us not make it too cumbersome that we have too many things that would really spoil the pot and let us try to operate within that, because we could put a million things that we could find—

Sen. Vieira: I am guided, and I think that was it for my list. So, those are my suggestions.

Sen. Sturge: With respect to intellectual property, can we simply say, offences under the Trade Marks Act and the Patents Act?

Sen. Vieira: Trade marks and patents are just two, but copyright is the big thing with piracy.

Sen. Sturge: Well, piracy is captured here.

Sen. Vieira: No, but copyright offences go beyond counterfeiting and piracy. So, you would be on safer ground having the generic intellectual property offences. [*Crosstalk*]

Sen. Howai: Intellectual property offences including counterfeiting—so, we would include it in 11, “intellectual property offences including counterfeiting and piracy of products.” We would include in 3, “trafficking in human beings, body parts and migrants smuggling.” Could we take another look at the corporate manslaughter issue?

Sen. Vieira: That is it. That is it for me.

Sen. Howai: So, that is under counterfeiting and piracy of copyright.

Mr. Chairman: Number 11 you have counterfeiting, piracy of product, intellectual property offences.

Sen. Howai: Yes, intellectual property offences. [*Crosstalk*]

Mr. Chairman: Yes, I know it is going in front, I just put it on the side. I just rest it there for a while.

Sen. Howai: And we are including body parts in 3. [*Crosstalk*]

Mr. Chairman: It is 6.17 p.m., Minister Singh. [*Interruption*] Minister Singh, Minister Singh, it is 6.17 p.m.

Hon. Senator: The Chairman is talking to you.

Sen. G. Singh: Yes. Mr. Chairman, you may need to reconvene the Senate for a Procedural Motion.

Mr. Chairman: The Senate will now resume for the Procedural Motion.

Question put and agreed to.

Senate resumed.

PROCEDURAL MOTION

The Minister of the Environment and Water Resources (Sen. The Hon. Ganga Singh): Mr. President, in accordance with Standing Order 9(8), I beg to move that this Senate continue until the completion of the business at hand.

Question put and agreed to.

Senate in committee.

**MISCELLANEOUS PROVISIONS
(PROCEEDS OF CRIME, ANTI-TERRORISM,
FINANCIAL INTELLIGENCE UNIT
OF TRINIDAD AND TOBAGO) (NO. 2) BILL, 2014**

Mr. Chairman: Are we taking the corporate manslaughter?

Sen. G. Singh: No.

Mr. Chairman: Okay. So, the only one is 11? And what 3 says?

Sen. Howai: To include the body parts. [*Crosstalk*]

Sen. Robinson-Regis: Mr. Chairman, could I ask—[*Interruption*—I would just like to ask a question, please. I am hearing the Minister indicating that we had to make a choice with regard to the catch-all or the schedule, may I ask why? What is the rationale? Because, if we do not capture everything with the categories of offences, you have the catch-all which, just in case you capture, so could I ask, why you have to make a choice? Has it been proven to create a difficulty if you have both?

Sen. G. Singh: After significant discussion at the level with the FIU and other agencies, this is the approach we took that you have the threshold of \$5,000—an offence that has a penalty of \$5,000 or 12 months' imprisonment, and together with the categories, and the categories are FATF categories 21, and we have enhanced together with the categories.

Sen. Al-Rawi: If it was together with the categories then that would be fine. What it is, it is included in the categories. So, it must be a category offence with that threshold. It is not the two and that is the problem that we are having. We really just want to get that right. [*Interruption*]

Parliamentary Counsel: If it is taken outside of the categories then we will have a lot of things—[*Inaudible*]

Sen. G. Singh: Yes, then you would have problems.

Sen. Al-Rawi: It has to be listed persons or financial institutions.

Sen. G. Singh: It is the approach that we have taken as a policy.

Sen. Al-Rawi: For Part I operation, Proceeds of Crime, I understand what you are saying.

Parliamentary Counsel: Right, so it is any person who commits a very petty crime that could still carry a penalty of over a year. Remember, it is not what they

get sentence to, but it is what the penalties are on the books. It carries over a year, then you can try and confiscate the property, so we thought that the number of abuses—[*Interruption*]

Sen. Al-Rawi: But have we had any cases of abuses? Is there a problem that we are fixing? [*Crosstalk*]

Sen. G. Singh: Yes, Trinidadians go to Venezuela and they get—

Sen. Howai: And now we are going to the confiscation by way of—

Parliamentary Counsel: The only thing is that confiscations and—remember we used to—[*Inaudible*]

Sen. Howai: Yes, you are going into a different kind of arrangement that existed before.

Sen. Al-Rawi: All I know is that we are tinkering with something that we had no reported problem on.

Sen. Howai: I would say no, but because we are introducing this new arrangement—[*Interruption*]

Sen. G. Singh: The new category of categories.

Mr. Chairman: Could I just repeat now what we have inserted as it relates to the Second Schedule—3: “trafficking in human beings, body parts and migrant smuggling.” Right, we have that? And then we amended 11 by saying, “intellectual property offences, counterfeiting and piracy, including intellectual property offences, counterfeiting and piracy of products.” [*Interruption*] So I think we have that, so could we go now with clause 3? Is that it, Minister? Is there any other concern on clause 3 as we have had a long, long—

Sen. Al-Rawi: We just need to—

Mr. Chairman: I know we want to get it right, I have no—.

Sen. Al-Rawi: Sorry, sorry, Chairman, we just need to come back to the financial institution issue.

Sen. Howai: Oh, yes. You want to finish everything and then come back to it?

Sen. Al-Rawi: As you please.

Sen. G. Singh: Yes, let us finish everything and then we will come back to that, because that is a—[*Inaudible*]

Mr. Chairman: Okay, no problem. They want to finish everything.

[*Interruption*]

Sen. Howai: So 4, the Anti-Terrorism Act is amended in section 2 in the definition of “terrorist property”.

Mr. Chairman: Minister, are you deferring 3?

Sen. G. Singh: Yes, we will come back to it when we are finished everything.

Clause 4 ordered to stand part of the Bill.

Clause 5.

Question proposed: That clause 5 stand part of the Bill.

Sen. Howai: Yes, we will be taking out the word “18E” wherever it occurs and substituting 18F. It is just a renumbering issue. Yes, so that is it. So, just to change 18E to 18F, it is a numbering issue. [*Interruption*]

The Clerk: They have amendments to clause 5, with the definitions, Sen. Drayton and Sen. Vieira.

Mr. Chairman: Sen. Drayton, did you have an amendment to clause 5?

Sen. Howai: This is the police complaints, is that not it?

Sen. Drayton: This is the FIU, and this has to do with the expanding of the definition of public authority, yes? We are dealing with FIU?

Sen. Howai: Yes, you are quite right.

Sen. Drayton: Yes, I suggested, and I think Sen. Vieira had suggested as well, that we want to delete the word “means” and substitute the word “includes”. So, “public authority” includes—and we want to include the Integrity Commission so that the FIU can share information with the Integrity Commission, also the Police Complaints Authority, or any other body/agency with investigative powers.

Sen. Howai: What is the implication of A now, if we say A “means” and substitute “includes”?

Sen. Vieira: Yes, if I can, this is under the FIU Act, and we were looking at who the FIU can share information with. The way sections 8 and 9 are written—
[*Interruption*]

Sen. Howai: Sorry, Senator.

Sen. Vieira:—we just wanted to make it clear that “local authority” would also include the Integrity Commission and the Police Complaints Authority, both

in terms of being able to disseminate and share information with them, and conversely, to be able to request information from them.

Sen. Drayton: We did not think that under the definitions in the original Act that either the Integrity Commission or the Police Complaints Authority fell under any of the bodies mentioned.

Sen. Howai: We did have a discussion on it similar to the discussion we had on the cash. We wanted some time to actually go through that and take a look at it. I understand, of course, that we are trying to finish this today, and we want to move to that, but it is a serious policy position that we are going to have to—we probably want to do some more work on before we actually suggest that we make this amendment at this time. It seems to me to be a relatively small one too, if we do need to do it. So, if we came back subsequently it should be something that could relatively be easily done, I would think.

Sen. Drayton: Could I ask a question? What is the problem? What problem or issue would be created if the FIU had to share information with the Integrity Commission and it was a matter that was of critical importance in the fight against crime?

Sen. G. Singh: I think that there is no real issue if, in the context of sharing of information, but the whole question of the confidentiality, the privilege of the information, the whole question of—for example, you bring into it, you bring commissions of enquiry into the embrace also, so that, therefore, when you reach that stage you have to think through all the ramifications before you go that route, and I do not think that we are in a position so to do right now, because, the Police Complaints Authority, I mean, off the top, you could see you will have problems.

Sen. Dr. Mahabir: And one of the problems in getting people to serve in public office is that they must file their things with the Integrity Commission. Not that they do not want to file, but that they are fearful that the information so filed will be disseminated to individuals who ought not to have it. That is a major concern and we have to recognize that.

Hon. Senator: It has happened before.

Sen. Dr. Mahabir: So, therefore, if the Government does not wish to have the Integrity Commission included, I would fully endorse the Government's position on that. *[Laughter]*

Sen. G. Singh: No, we are not saying that. What we are saying, we are saying, look, we need time to think through this, it is a policy position. I can see the merit in the proposal, but it requires thought, it requires the ramifications, it

requires consideration.

Sen. Vieira: And I accept that. I am glad that you have put it on the radar and you are going to give it thought and consideration. Just to assure my friends, I do not think it is having access to the information of the Integrity Commission, but if there was a report about corruption then the FIU would have an interest in having access to that information and vice versa. But I hear you. We have got to make sure that we dovetail things, like secrecy provisions, confidentiality, but we talked earlier about not operating in silos, so I am hoping—

6.30 p.m.

Sen. Dr. Balgobin: Because, let me just make a point here.

Mr. Chairman: Yes, Sen. Balgobin, please do.

Sen. Dr. Balgobin: Thank you. If you are investigated by the Integrity Commission and the Integrity Commission shares these details with the FIU and whoever else, right,—they launch their own investigation. The Integrity Commission takes its usual 10,000 years, but then concludes that you have no question to answer, but you are still subject to another, and another, and another investigation. It is rough, it is not, you know, this kind of disadvantage and so on, unless there is some way to coordinate all of these things so that they all die at the same time. You know, it is one investigation, otherwise you cannot have someone's privacy trampled upon for quite some time while all these bisons wander around the place trying to figure out [*Laughter*] whether you have done something wrong or not.

Sen. Sturge: Can I make an observation, Mr. Chairman? The reality is in practice—the information is shared, but it is shared with a limited few. And the other issue is that the more people who have access to information, the greater the likelihood that it will be disseminated to the wrong people even the persons under investigation. So it is something that must be given greater consideration.

Mr. Chairman: Well, in accordance with what the Leader of Government Business has said, they have not thrown it away, they will be taking it into consideration.

Sen. Small: We want them to throw it away.

Mr. Chairman: So it is recorded and it will be dealt with.

Sen. Small: Mr. Chairman, I share in the concerns, but “kindah” in the reverse in the situation where the Integrity Commission is looking at someone and

it asks the FIU for information. My issue is that the Integrity Commission now is a sieve, information that goes in there is virtually public information.

Mr. Chairman: That is correct.

Sen. Small: And if they request information from the FIU on a particular person or a party and it gets into the commission it is public information. I hear the Leader of Government Business that they are going to look at it and I hope that they look at it and throw it over where it needs to go.

Mr. Chairman: No, no, this is serious business.

Sen. Small: I am concerned—

Mr. Chairman: The Government has given the assurance it will be looked into. So could we please—

Sen. Howai: We need to go back to the financial institutions matter.

Mr. Chairman: No, we have not yet passed the question.

Sen. Howai: Oh, sorry. I apologize.

Mr. Chairman: Thank you. [*Crosstalk*]

Question put and agreed to.

Clause 5 ordered to stand part of the Bill.

Clause 3 reintroduced.

Sen. Howai: This was the question of products, I think, being included. Well, I went back during the break to see whether it was included before, but I am not seeing it as having been included. So I do not know, Senator, what I missed. I was not quite clear, because, in addition, some of the points you raised I think were picked up under the definition of property, right? Yeah, but anyway just explain it for me.

Sen. Al-Rawi: If I could shed some light. The definition of “security” which we are looking at, we are seeking to repeal the definition of security which when you look towards the tail end of the definition, if you look at the track change version of the Act, on page 6, you will see that we were dealing with—

“...without limiting the generality of the foregoing, includes any—

(d) document, instrument or writing evidencing an option, subscription or other interest in”—this is (d)—“in respect of—

(i) a financial institution;

- (ii) a credit union within the meaning of the Co-operative Societies Act; or
- (iii) an insurance company;”

So we are looking at securities which may exist in certain instruments in those three categories of institutions.

The Securities Act 2012, in its definition, I think it is on page 61, somewhere around there, when you look at the definition of security there we specifically excluded out “cooperative societies and insurance companies” for good reasons, because we now are going to deal with the legislation that governs them in a different manner, and that is why we dealt with the Insurance Act in the way that we have in the Joint Select Committee for as long as we have.

I think we have come up with a good product there and the legislation to deal with credit unions and cooperative societies is under review. What I am concerned to just be assured about, is whether we have any other clause in this new Proceeds of Crime Act as we seek to amend, which will deal with the products coming from those three categories—that is, credit unions, financial institutions in general and also insurance companies. Are those products which are in the nature of securities covered somewhere else? Because, to give you an example, an asset-backed security in an insurance company may exist. They may be assets bundled together under a Deed of Trust which then back up part of an item which may be deemed to be security that was, for instance, long-term insurance products are sometimes backed that way or even short-term investment products as you have defined them in the legislation to deal with the Central Bank (Amdt.) Act. [Crosstalk] Sorry—

Mr. Chairman: No, continue.

Sen. Ahmed: “Transact” or is it “by contracts”?

Sen. Al-Rawi: Yes, so the insurances are done by contract, but there are other products of insurance companies which we have treated with legislatively, which may be backed and therefore be deemed to be securities at law. I have actually litigated on the point several times in court where we were dealing with the definition of a product as to whether it is a deposit, a failed security or a security being products of insurance companies themselves. So insofar as, it is a constantly evolving product that insurance companies deal with. Just as an example of the three categories, credit unions have similar issues—is there going to be some other reference point in this new law as amended that would cover those products? That is all I am asking.

Parliamentary Counsel: The definition of security here does not relate to what was captured in terms of the regulations for anti-money laundering. The definition of security here is if you go to section 20 where they deal with—where you can put a charging order over a security. In the Securities Act as amended it does not include these things because they had redefined what is a security.

Sen. Al-Rawi: Correct.

Parliamentary Counsel: I think it was litigation concerning some insurance products coming through the NIB and Cllico matter—[*Interruption*]

Sen. Al-Rawi: Correct, exactly.

Parliamentary Counsel: So that is where that came out and that amendment was made here. In section 20 where they deal with a security, they are saying there are certain types of security that you can put charging orders over. But in any event, any security product that is offered by—in the definition of a “financial institution” and what Sen. Drayton had referred to with the broker/dealer investment, any product or any business that those people do with you would be captured under this because those people are captured in terms of persons who are regulated for AML/CFT compliance. You do not—except for attorneys and accountants you do not regulate the activity, you regulate the person.

Sen. Al-Rawi: So to put what you are saying, which is very useful, on the record, just if I may, right, you are saying that I should be comforted because the amendments to the Securities Act which treated in the definition of security by way of eliminating the classes of products that insurance companies and cooperative societies, et cetera, should not trouble me, because insofar as we are regulating the person, any product that that person may be engaged in which causes it to register itself with the purpose of a security as defined or to capture this concern, notwithstanding the fact that, the definition of a security excludes them.

Parliamentary Counsel: Yes, because the definition of a security—[*Interruption*]

Sen. Dr. Balgobin: No, no, I want—let me interrupt you please. I need to interrupt, Chairman.

Sen. Al-Rawi: Sure.

Mr. Chairman: On clarification, please do.

Sen. Dr. Balgobin: Yes, please. I just want to observe that these comments

are not coming through the Government and therefore may not form part of the *Hansard* record, and this is important.

Sen. Howai: Yeah, I could deal with it.

Sen. Dr. Balgobin: So they really should speak through you.

Mr. Chairman: Thank you for a very, very, relevant—

Sen. Al-Rawi: That is why I was repeating it. I was repeating it for that purpose.

Mr. Chairman: So they will relay to the Minister and then the Minister will repeat so they could pick it up. Thank you very much. I need this type of assistance. [*Crosstalk*]

Sen. Howai: So I think you understand Sen. Al-Rawi, right? Basically what you were saying was correct, that—[*Inaudible*] yeah, I know, I understand.

Sen. Al-Rawi: So as repeated by me, you are saying that that understanding that I have is the explanation?

Sen. Howai: Yeah, yeah. What we are saying is that once any product that is issued or sold by the agents that are regulated—for example, the insurance company and so on—will automatically be captured, so we would not have a problem. And in section 20 where we are dealing with the charging provision and so on, it is very clear and particularly where you deal with things like the—there is a definition in the section, there is also a reference to section 20—

Parliamentary Counsel: 20(6).

Sen. Howai: Yeah, 20(6)(b), yes, yes, securities. You know, it is also picked up there and where it may be left out, you are really dealing with realizable property which is defined in the definition section. So in realizable property we are saying, any property held by the defendant and any property held by a person to whom the defendant has directly or indirectly made a gift caught by the Act.

Sen. Al-Rawi: Thank you for the assurance, Minister, thank you.

Mr. Chairman: Could I now pose the question?

Hon. Senators: Yes.

Question put and agreed to.

Clause 3—

Sen. Howai: There was, sorry, when we actually went back, sorry, just one

thing. When we went through section 20 (6), because you asked the question—

Sen. Al-Rawi: Yes.

Sen. Howai: It says securities of the following kind. But we are saying, perhaps we should say, “securities of any kind including but not limited to these things here”. I think that was a suggestion that we—as we started to talk, because when you raise the issue of annuities and so on, we suggest, to be on the safe side, that perhaps we should—

Hon. Senators: Guide the Chair.

Sen. Howai: So what we are suggesting, Chair, is that we are saying that 20(6)(b), instead of saying “securities of any of the following kinds”, we say “securities of any kind including”—this is a new amendment—

Mr. Chairman: A new amendment?

Sen. Howai: Yeah—“including, but not limited to the following”.

Sen. Al-Rawi: I think that would definitely, definitely help, Minister.

Sen. Howai: I am glad that you raised the annuity thing. When I sat down I started to think about it. I realize, I just need to be sure.

Sen. Al-Rawi: It would be a new clause. Did we amend section 20 anywhere else before? [*Crosstalk*] It would fall under (b), it would be a new clause to the drafters, it would be a new clause (bb) inserted at page 8 then of the Bill, because you deal with section 19 in 3B of the Bill amends section 19 of the Act. So if you are amending section 20, by inserting a new clause it would be to insert a new clause (bb) in section 3. [*Crosstalk*] Sorry, it would be (ba). The insertion could come after on a new question, but just to get it right. So it would be (ba) and it would be in section 20(6) of the Act. [*Crosstalk*]

Mr. Chairman: So that aspect of the new clause will now be inserted in the Bill, and that will follow—[*Crosstalk*]

Sen. Al-Rawi: And hon. Minister, before we take the question on clause 3, may I say that we are relying, the Opposition, upon your statement that the methodology of using the Second Schedule is the recommendation with the FATF model and that that classification—

Sen. Howai: I could show you that. We can show it to him.

Sen. Al-Rawi:—captures the types of offences that are specifically intended.

6.45 p.m.

Sen. Howai: We could show you the book.

Sen. Robinson-Regis: Could we see the book?

Sen. Howai: Yes, I will show you the book.

Sen. Robinson-Regis: Thank you. If we could see it, we will appreciate it.

Sen. Howai: I prefer that, yeah. [*Book passed*] It is at the bottom of one and the top of the other, and you could just check it back against the—but it would not have the body parts piece. We just put it, yeah.

Mr. Chairman: So could I now put the question, Minister?

Sen. Howai: Yes, sure.

Mr. Chairman: Hon. Senators, please, could we now listen? After a long period with clause 3, we think we have just concluded what it should be to the satisfaction of all. The question is that clause 3 be amended as circulated and further amended as read: subsection (b)(f), new subsection (g) and the new Second Schedule, and be further amended by inserting new paragraph after paragraph (b), the following new paragraph (ba) in section 20(6)(b):

Delete “any of the following kinds” and substitute the following, “any kind, including but not limited to”.

Sen. Howai: That is right.

Mr. Chairman: Thank you very much.

Question put and agreed to.

Clause 3, as amended, ordered to stand part of the Bill.

Preamble approved.

Question put and agreed to: That the Bill, as amended, be reported to the Senate.

Senate resumed.

Sen. Howai: Mr. Vice-President, probably just before I actually move this, I just want to very sincerely thank the supporting staff from the FIU and from the Ministry [*Desk thumping*], without whom we would have not reached this far. Thank you all very much.

Bill reported, with amendment.

Sen. G. Singh: Division.

Mr. Vice-President: The Clerk will now conduct a division.

Question put: That the Bill be now read a third time.

The Senate voted: Ayes 30

AYES

Singh, Hon. G.

Coudray, Hon. M.

Howai, Hon. L.

Griffith, Hon. G.

Hadeed, Hon. G.

George, Hon. E.

Karim, Hon. F.

Tewarie, Hon. Dr. B.

Moheni, Hon. E.

Maharaj, Hon. D.

Ahmed, Hon. R.

Ramnarine, Hon. K.

Sturge, W.

Solomon, D.

Smith, Miss K.

Robinson-Regis, Mrs. C.

Al-Rawi, F.

Henry, Dr. L.

Baldeo-Chadeesingh, Mrs. D.

Cudjoe, Miss S.

Singh, A.

Drayton, Mrs. H.

Balgobin, Dr. R.

Wheeler, Dr. V.

Mahabir, Dr. D.

Vieira, A.

Small, D.

Abdul-Mohan, Rev. J.E.

Roach, HRI

Le Gall, Dr. S.

Question agreed to. [Desk thumping]

Bill accordingly read the third time and passed.

ADJOURNMENT

Mr. Vice-President: Leader of Government Business.

The Minister of the Environment and Water Resources (Sen. The Hon. Ganga Singh): Thank you, Mr. Vice-President. Mr. Vice-President, I want to take this opportunity to thank you—*[Desk thumping]*—for the manner in which you have presided over the Senate and chaired the committee session, and I want to thank all Members for their participation. Once again, it is a very historic day in which we have a unanimous decision. I want to pay special thanks to the Minister of Finance and the Economy who piloted a Bill *[Desk thumping]* that is not within his normal profession, but I think that he did yeoman service for the Government and for the country. *[Desk thumping]* And in order for him to accomplish his task, he was well served by a group of—*[Interruption]*

Sen. Coudray: Only women.

Sen. The Hon. G. Singh:—competent professionals. And I am reminded by my colleague, the Minister of Local Government, Marlene Coudray, it was only women. *[Desk thumping]* Their competence was exceptional.

Having said these few words, Mr. Vice-President, I wish to adjourn the Senate to Tuesday, August 26, 2014 at 1.30 p.m. On that occasion we will be dealing with the Constitution (Amdt.) Bill, 2014. I wish to give notice that having regard to the nature of that Bill, that we would be sitting also on Wednesday.

Sen. Robinson-Regis: Mr. Vice-President, before you put the question, if I may—if my colleague Senators do not mind—Mr. Vice-President, I would just like to place on the record that those of us in the Opposition did have some

serious concerns with the Bill and we did raise the concern with regard, specifically, to section 43(2), and we would like to say that we were heartened that on this occasion the Government did listen and as a consequence of that, where we did say that we would not support this piece of legislation, despite the fact that we know that it is important for the country, we felt that it was important enough to have that section inserted, and we are heartened that the Government listened, and we are trusting that this insertion will, in fact, capture what we are trusting it is intended to capture, as promised by the Minister and his colleague, Minister Singh.

I would also like to place on the record, the Opposition's support for the way that you handled this [*Desk thumping*] session because without you using your—which has become quite apparent today—considerable skills in mediation, I think the result could have been a lot different. I would really like also, as the lady vice-chairman of the People's National Movement, to commend the women who sat here with us today as the technical staff [*Desk thumping*] and did—if I may be allowed to coin a new word—"yeowoman" service [*Laughter*] for the Parliament of Trinidad and Tobago. So I join with my colleague in what he has said.

Thank you very much, Mr. Vice-President. [*Desk thumping*]

Mr. Vice-President: Thank you, hon. Senators.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 6.57 p.m.