**SENATE**

*Saturday, January 21, 2017*

The Senate met at 11.00 a.m.

**PRAYERS**

[MADAM PRESIDENT *in the Chair*]

**TOBAGO HOUSE OF ASSEMBLY ELECTION (VALIDATION) BILL, 2017**

Bill to validate the date for the taking of the poll in the election of Assemblymen to the Tobago House of Assembly and for related matters, brought from the House of Representatives [*The Attorney General*]; read the first time.

*Motion made:* That the next stage be taken forthwith. [*Hon. F. Al-Rawi*]

*Question put and agreed to.*

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

That a Bill to validate the date for the taking of the poll in the election of Assemblymen to the Tobago House of Assembly and for related matters, be now read a second time.

Thank you, Madam President. I was actually juggling between the two session papers between the House and this honourable Senate. We are here gathered under the extraordinary powers provided by the Standing Orders, specifically Standing Order 12, to deal with what is a simple but important matter for the democracy of Trinidad and Tobago. The Bill before us is a very short Bill. It is a Bill of four clauses in total including the short title, and it proposes in essence to seek an amendment of our current position by causing a validation under the Representation of the People Act specifically in relation to section 33(3)(b) of the Act, such that the period of time which is set out in that law can be validated because we are in a situation where the election should have been held within a 21-day period from the nomination day to the polling day, and in fact as we stand we are in a position where that day and that period is in fact 20 days. It involves an amendment, or I should say a validation of 12 writs of election, and these 12 writs of election are the writs issued by His Excellency the President by way of command to the Elections and Boundaries Commission.

Now, Madam President, I am duty-bound to put into the public record the rationale, and the reason, and the method, and the propriety by which we come to the Parliament under extraordinary session, yesterday in the House of

Representatives and today in the Senate. Madam President, specifically, we are moved here today by request of the Office of the President of Trinidad and Tobago, His Excellency the President, by virtue of written correspondence emanating from the Secretary to His Excellency the President, Gregory Serrete. It is specifically contained in a letter dated the 19th of January, 2017, which was yesterday—sorry, which was the day before—which was in fact delivered by way of email correspondence to me as Attorney General at about 7.30 p.m. on the 19th of January, 2017. In that letter and with your leave, Madam President, I read into the record as follows:

"Office of the President

Trinidad

Republic of Trinidad and Tobago

19 January 2017 Urgent

The Honourable Faris Al-Rawi M.P.

Honourable Attorney General & Minister of Legal Affairs"

Concerning—"Primary Election of the Tobago House of Assembly 2017

I am directed by His Excellency Anthony Thomas Aquinas Carmona ORTT, SC, President of the Republic of Trinidad and Tobago, to inform your good self of a missive dated 19 January 2017, received from the Chief Elections Officer, Elections & Boundaries Commission, surrounding the fixing of the date for the primary election of the Tobago House of Assembly (THA), scheduled for 23 January 2017.

For ease of reference and information, the chronology of events as it relates to the said date of the primary election 2017, for the Tobago House of Assembly, is set out as follows:

(i) By letter dated 14 November 2016, the Chief Secretary of the Tobago House of Assembly, The Honourable Orville D. London, advised His Excellency the President that in accordance with section 22(1) of the…(THA Act), the 2013-2017 session of the Tobago House of Assembly had been dissolved with effect from 11 November 2016. In accordance with section 22(2) of the THA Act, the Honourable Chief Secretary further recommended that the primary election for the Tobago House of Assembly be held on Monday, 23 January 2017.

(ii) On 12 December 2016, His Excellency the President wrote to Dr. The Honourable Keith Christopher Rowley, Prime Minister of...Trinidad and Tobago, informing him that the 23 January 2017 was suggested by

Chief Secretary Orville D. London as the date for the primary election of the Tobago House of Assembly. In said letter, His Excellency the President enquired whether the Honourable Prime Minister had any objection to the proposed date for the primary election of the"—THA—"that is, 23 January 2017. This procedure is in accordance with the letter and spirit of section 22(2) of the Tobago House of Assembly Act.

(iii) By letter dated 14 December 2016, the Honourable Prime Minister informed His Excellency the President that he had no objection to Monday, 23 January 2017, being set for the primary election of the"—THA.

"(iv) The Office of the President had been consulting with the Elections & Boundaries Commission on the suitability and propriety of 3 January 2017 being nomination day and 23 January 2017 as the date for the primary election. The EBC confirmed that same was in proper order.

(v) Thereafter, by letter dated 14 December 2016, His Excellency the President, informed the Honourable Prime Minister that he was fixing 23 January 2017 as the date for the primary election of the Tobago House of Assembly, with the nomination date being 3 January 2017.

(vi) On said 14 December 2016, the Chief Secretary was also informed in similar terms.

(vii) Writs of Election are prepared by the Elections & Boundaries Commission. On the said 14 December 2016, the Writs of Election, in respect of the THA Election, to be held…23 January 2017 in the twelve (12) Electoral Districts in Tobago, were sent by the"—EBC—"for…signature of His Excellency the President.

(viii) In accordance with section 33 of the Representation of the People Act, Chap. 2:01, the said Writs of Election were signed by His Excellency the President, sealed and returned forthwith to the EBC on the said 14 December 2016.

The Office of the President depends on the integrity and surety of information and timelines it receives from the relevant bodies and this process informed the fixing of the dates on the Writs of Election.

"The"—EBC—"has kindly forwarded to the Office of the President its confidential legal advice on the matter, which is hereto attached, having received the necessary authorisation from the said Commission. Respectfully,

kindly note that 2 January 2017 was not a 'declared' holiday, but was a public holiday by virtue of operation of the Public Holidays and Festivals Act, Chap. 19:05.

In the circumstances and on the basis on independent legal advice of Senior Counsel received by the Office of the President, the missive from the EBC dated 19 January 2017 is hereto attached for the Honourable Attorney General to take the appropriate, urgent action required in light of the imminent date for the primary elections of the Tobago House of Assembly, 23 January 2017.

Yours respectfully

Gregory Serrete

Secretary to His Excellency the President"

Attached to that letter is what the Office of the President calls the missive. That letter is a letter from the EBC to His Excellency the President. In that letter circumstances are set out, and in that letter, the second page of the letter if you would permit me because the time in this House is slightly different from the time in the House so I am just skipping over a few, it says at the end of the letter on page 2:

"It should also be noted that all the necessary preparations for the conduct of the poll have been completed. This includes the production of ballot papers, poll cards, Notice of Taking of a Poll, all of which reflect the election date of January 23, 2017. Additionally, voting by special electors commenced on Monday January 16, 2017.

The above is drawn to the attention of His Excellency so that His Excellency may take such steps as he may consider appropriate."

And this letter attaches the confidential advice received from Mrs. Deborah Peake SC to Mr. Ramesh Nanan, Chief Election Officer concerning the THA election. Attached to that is the opinion of Mrs. Peake SC, and in that she goes through the chronology. She sets out section 33 of Representation of the People Act which is the section of the Act which we now seek to cause validation by way of this Bill. In it, it sets out that section 33(2) provides that a minimum timetable of 14 days must elapse between the date of the issue of the writ and nomination day and a minimum of 21 days must elapse between nomination day and polling day.

Mrs. Peake SC further deals with section 159 and she goes into the fact as to how one computes time, the computation for time pursuant to the Representation of the People Act. In it she then looks at the Interpretation Act as it is to be

supported by the interpretation offered under section 159. She goes through the analysis and she comes to the submission that an election held on the 23 January, 2017 will not be in compliance with the minimum period of 21 days before nomination day and polling day as required by section 33(3) of the Act. In fact, that is to just clarify that it is in fact one day short.

Mrs. Peake then goes on to look at circumstances of adjournment, et cetera, and discounts those options—and I will come to them separately—and she ends by saying:

> "A Validation Act will ensure compliance with section 22(2) of the Tobago House of Assembly Act…"

She then goes into the computation of time frames, et cetera. So this is what is before us in terms of the facts emanating from the Office of the President His Excellency, and the EBC, and specifically it involves the passage through how the EBC is given the command in the writs of election to come up with the dates.

Now it is incumbent upon me to read into the record because I have heard some of the commentary in the public domain and perhaps one needs to clarify this. The question is being asked: whose responsibility is it for us coming to the Parliament now in emergency session to deal with validation? And one of the submissions offered so far is that the Government had some form of role or responsibility in dealing with this. May I start by saying that the arrangement of the Constitution of the Republic of Trinidad and Tobago is very, very clear in causing a separation of powers. Indeed, Madam President, the Office of the President is set out in Chapter 3, Chapter 4 deals with the Parliament; Chapter 5 deals with Executive Powers, Chapter 7 deals with The Judicature; Chap. 11A deals with The Tobago House of Assembly, and the EBC itself finds itself under Part IV of the Constitution in Chapter 4 where the EBC has constitutional set out.

Now I have referred to the Constitution first because there are clear constitutional parameters as to who acts in what circumstance. Secondly, the manner in which one acts is to be dealt with by an analysis and appreciation of the operation of section 68 of the Constitution versus section 22 of the THA Act, in contemplation also with section 80 of the Constitution. Let me explain that. The Prime Minister of the Republic of Trinidad and Tobago is involved in the selection by way of sole management of the date for a general election, and that is essentially contained in section 68 of the Constitution where the Prime Minister has the prerogative, the power, to actually dissolve the Parliament, and therefore, inform His Excellency the President of a date.

Section 80 of the Constitution sets out the circumstances where the President is obliged to act upon the advice of Cabinet, except in certain circumstances and one of them set out in the Constitution is where he must act in consultation with someone else. The THA Act which is completely different to the general election, powers and privileges as to who is involved, the THA Act in section 22 specifically sets out that His Excellency the President must consult with the Chief Secretary of the Tobago House of Assembly, and after he consults with the THA then he fixes the date for the election.

So we must be careful to understand that we are not talking about general election and Prime Minister's so-called date in a back pocket power. We are in fact talking about a wholly different regime which is section 22 of the THA Act, and under section 22 of the THA Act, the President, His Excellency consults with the Chief Secretary, and in consulting with the Chief Secretary, after hearing what he says, he deals with the process. This is where I came to dealing with the letter which I wanted to read into the record, which is that of the hon. Prime Minister Dr. Rowley to His Excellency the President. It is dated 14 December, 2016. It says:

> "I refer to your letter"—that is the President's letter—"December 12…to the Prime Minister on the subject…caption.
>
> In this regard, I wish to inform you I have no objection to the date of Monday January 23…being set for the primary election of the…THA."

That is to also be dealt with by reading into the record, the Cabinet Secretariat, Office of the Prime Minister's letter to the Chief Election Officer dated December 14, 2016:

> "Subject: Polling Day in respect to the THA Elections"

And it says;

> "The Prime Minister has agreed that polling day be Monday January 23, 2017 for elections in each of the 12 electoral districts of Tobago as defined in the Schedule to the Elections and Boundaries Commission, (Local Government and Tobago House of Assembly) (Tobago) Order, 2016 (Legal Notice No. 191 of December 9, 2016 refers).
>
> I shall be grateful if you will put in train the necessary procedures and take appropriate action to give effect to the decision of the Prime Minister."

Now, I should add, in this particular matrix the sole obligation of the Cabinet has nothing to do with section 22; it has nothing to do with the fixing of an

election date or the nomination date; it is confined solely to authorization for the conduct of electoral registration in respect of the Tobago House of Assembly election, and the Cabinet made a decision, authorizing that on 15th of December, 2016, by Cabinet Minute No. 1903 of December 15, 2016. So I am being very careful to set out the boundaries of this operation. That addresses the issue of who has responsibility, what the Constitution says. You are not to confuse general election with THA elections; they are to be dealt with on two separate regimes. Now what comes before us, Madam President—[*Interruption*]

**Sen. Mark:** Hon. Attorney General, may I?

**Hon. F. Al-Rawi:** Sure.

**Sen. Mark:** Madam President, through you, could I ask the hon. Attorney General whether we can have sight of the letter that the Prime Minister issued, as well as the letter issued by the Cabinet Secretary? We do not have access to it at all.

**Hon. F. Al-Rawi:** Yes. Sure, Madam President, I will have them circulated. I apologize, Sen. Mark.

Madam President, we next come to, what can we do? So we are here by virtue of His Excellency the President telling us to do something. I make the submission which is well known that there is a separation of powers and that there is a rule of law argument. In that separation of powers and rule of law argument, a government, which is a political party installed from time to time as the Government of Trinidad and Tobago, a government has for good reasons set out in the Constitution, absolutely no place in interfering with the Elections and Boundaries Commission because the Elections and Boundaries Commission is an entity appointed solely by His Excellency the President.

There is good merit in that, lest one finds oneself in the argument that there is political interference with the elections of a jurisdiction. This is well established. The fact is we had before us a few options. The Government becoming aware of the public statement by Hochoy Charles on the 17th of January, 2016, that there was concern about the date being one day too soon, the Government had to consider one, does it have locus to actually involve itself by causing some form of amendment? And the answer to that, for constitutional reasons as I have set out before, is no. A Government cannot intervene.

For that reason, when asked as to what my point of view was, I said to the media I am dealing with an election which has been called, that election is afoot;

it is valid insofar it has been called; it is open to challenge however. And by that, I recognized this Court of Appeal's fulminations and decisions in relation to the election petitions in 2015, where it said that there can be a breach of a law because it held that there was a breach of law in extending the poll by one hour, but that when one looks to the call for an election petition for the election to be set aside you must look to whether there is an election in fact and in substance and whether it was free and fair.

That being the case, as the EBC's letter has pointed out, it says to us an election has been fully had in terms of preparation, an election is there afoot for one day short; special electors have been had, polling papers have gone in, other entities have had no complaint, and therefore, when the Government considers its position it would have to stop, until directed by His Excellency the President and the EBC, to the fact of allowing the election to run. We can take no part because we are conflicted by way of interest in the process as seeking to be elected as the PNM to the Tobago House of Assembly. That is option one.

Option one says wait until the election is done and brace yourself for an election petition. An election petition in these circumstances, in my humble view, would be destined to failure. It would be destined to failure for good reason and that is because we have authority. For instance, in *Simpson v Attorney General (1955)* - New Zealand Law Reports, which is a Court of Appeal decision, it held in similar circumstances that provisions of the Election Act dealing with the timetable for the issue of a writ of election were directory, not mandatory. With the result that the failure to comply strictly with the timelines did not invalidate an election. So one could hang one's hat on the election petition which could potentially come, if at all, and then wait for it to deal with and then offer judicial authority to that effect.

Option two was to consider if and when the Elections and Boundaries Commission came up, whether one should engage in an amendment of the writ or writs—there are 12 of them—of election. That, Madam President, comes about by way of an operation between section 45(1) of the Interpretation Act in conjunction with section 75(1) of the Interpretation Act. 45(1) of the Interpretation Act provides:

> "Where a written law confers a power to make any statutory instrument, the power shall be construed as including power…"—et cetera, et cetera—"to amend"—or to—"rescind or revoke."
>
> A—"'statutory instrument'"—includes a "proclamation…"

That is pursuant to section 75(1). And therefore, the question is could the President invoke section 45(1) as read with section 75(1) to amend the writ.

Unfortunately, the position is that you would be in the circumstance where the amendment would be essentially an adjournment potentially of the election, and one would therefore have to flow into the argument as to whether the election in Tobago could have been adjourned. Had it been that an amendment was being sought prior to nomination day you could probably say that the amendment was lawful, or a lawful option, because the election cycle would not have started. When we look now to the fact that the nomination day has passed, we are into the circumstance of moving into what is option three. Option three is whether there can be an adjournment of the election.

Option three finds its substance really right squarely back in the Representation of the People Act. In the Representation of the People Act, we would be looking at section 34. Section 34 of the Representation of the People Act sets out the power of His Excellency the President to actually have—and I say that in terms of the ultimate flow—the ability to adjourn for certain reasons and they are very narrowly prescribed: war, state of emergency, earthquake or natural calamities, et cetera, a revised list of electors not ready, and the essential electoral equipment and supplies inadequate. Those are the sole reasons.

When one looks to the case law to see whether we can read in or imply the circumstance which we are in, which is an error of one date on the part of the EBC, then we are looking to whether that is permissible in law. And the case law in particular by our neighbours next door in Jamaica, the case law in the *Attorney General of Jamaica v Thompson (1981) 18 JLR 246* which was in similar circumstances to that which we are looking at now, the case law was very clear to say that you cannot read into law a restrictive interpretation. What really happens is you have to go with the letter of the law. That is in fact supported by our own Court of Appeal by the decision of the Chief Justice in the 2015 election cases, which really says you must abide by the spirit and principle of the main law itself.

So, regrettably, the position of adjournment is not a possible option. Adjournment could be an option and this flows into option four if you are looking to amend the primary legislation. In this case we would be looking to amend the THA Act, section 22, and we would be looking to amend section 34 of the Representation of the People Act to allow for less than 21 days to cure it, or to look for some other kind of assistance by putting some kind of power into the THA legislation. That, Madam President, would be to disturb what the existing law is in a rush and, respectfully, we do not think that that is the viable option on

this occasion because what we have before us is the last option which is a validation Act.

Now we know that His Excellency the President has asked us to put this into effect, we know that the EBC has asked us to put into effect. A validation Act can be had really in two times, two separate occasions, one or the other either before the election or after the election. Let us look at the latter option first. After the election we would in fact be in the position where our result would be known, persons would be identified, persons may in fact be threatening by way of election petition, and any law to validate would certainly be infringing what I think is a two-thirds constitutional support argument. That is, that you would probably be running afoul of the rule of law and the separation of powers principles. That, of course, has had useful interpretation by the Privy Council, certainly in what is referred to as the section 34 case, that is, the Northern Construction Limited case. Even though that says that that two-thirds argument, that rule of law and separation of powers argument only comes alive in circumstances where the legislation would be viewed as ad hominem, meaning legislation which was specifically intended to affect the rights of known people for known reasons in a way that would not be supportable at law.

So if we waited until after the election, we would certainly be having an argument similar to that which was offered by the appellants in the section 34 case where they alleged that the repealing legislation to revoke section 34 would in fact be an ad hominem piece of law which breached the rule of law and separation of powers argument. So we are back to option one of validation and that option one is in fact that we come to the Parliament as we do now, requested within the constitutional boundaries as we do now by His Excellency the President and by the EBC to validate the election before it happens.

**11.30 a.m.**

So let us look at that position. Would it be that any right in the Constitution is being infringed? Respectfully, we have had a look at it, we cannot consider that any of the rights established in the Constitution are being infringed, so therefore, one is obliged to turn to whether there is, in fact, a breach of separation of powers or a breach of the rule of law argument, and when we look at that, we have to see what is the position in that case. Do we need a simple majority or do we need a two-thirds majority?

The Bill was passed in the House already on simple majority but let me address the argument nonetheless. Respectfully, the position of the Government is that a simple majority is all that is required because there is no identified winner

or loser yet. We are safe in the position that a validation Act to correct the operation of one day being short, pursuant to the calculations in section 33(3) of the Representation of the People Act, that that, in fact, requires only a simple majority because the result is as yet unknown.

Anybody who is presently complaining about the validity of the writ may themselves win the election and therefore have no need to have recourse to the courts. Because you really cannot say leave it as it is and then allow me the position where I can come later and complain that a right was infringed or a rule of law separation of powers argument. Most respectfully, the Bill is certain in its scope; it is not ad hominem; it does not attack any one position. Results are not known yet. There is a valid purpose. It is there to correct what is, perhaps what we can refer to in law under the old rules, as a "slip rule" operation which in effect is being done by way of a validation Act of the Parliament.

The Government is duty-bound to, in fact, ensure that there is no collision with any existing law and then that comes to what was flagged by the EBC itself and flagged by His Excellency the President himself in the letters referred to by His Excellency's office as a missive from the EBC and the Office of the President himself and I refer to specifically the section 22 of the THA Act. You see, the fact is the time frames that we are looking at, if one were to seek a validation and it was not passed, then the position would be that we would have to restart an election all over again. That means you would need 14 clear days from the writ of election to the nomination date. That means you do not include the first day or the last day.

Then you need 21 clear days, not including the starting day and ending day and that would take us to a period beyond the maximum time frame prescribed by section 22 of the THA Act, which says you cannot have a THA election beyond three months from dissolution; and the THA was dissolved on the 11th of November, 2016, which means the three-month time frame is arguably the 11th of February, 2016. If you were to count 14 clear days and 21 clear days, we would long be past the position of the maximum time frame which is why I referred to, in one of the options, the potential to amend the THA Act and specifically one would be seeking to amend the maximum time frame in section 22 of that Act.

So, Madam President, in summary, this Bill is legitimate in its aim. It does not seek to go to intrude into any rights such as to require a special majority of any kind. In any event, the intrusion into those rights—if at all someone can point to it, which we do not share a view that there are any—any intrusion into those rights are going only as far as they need to go, and in a democracy such as

Trinidad and Tobago with the constitutional parameters being such that a government cannot, by law, breach a separation of powers and enter into the work of the EBC of its own volition without invitation via the Office of the President, one must await the trigger being pulled by the EBC and His Excellency's office. We are certainly being proportionate and measured to avoid any collision in the law.

Really, this argument is very straightforward. The Government is acting as it must by request of the Office of the President, by request of the submissions of the EBC. The Government is being proportionate and, Madam President, I do hope that this honourable House does as was reflected in the House of Representatives where there was unanimity in support for the legislation, and I pray that we can allow the people of Tobago to carry out the election which they expect, because any adjournment of that date at all would collide with the principle of them having been prepared already, there being no opportunity to offer it otherwise, of there being confusion in the electoral process. And I really do hope that all hon. Members agree that this position is a simple one and that we can deal with the business of Tobago and the democracy of Trinidad and Tobago in proper fashion. In those circumstances, I beg to move. [*Desk thumping*]

*Question proposed*.

**Sen. Wade Mark:** Thank you very much. Madam President, thank you very much for allowing me the opportunity to contribute to a Bill entitled an Act to validate a date for the taking of the poll of the election of Assemblymen to the Tobago House of Assembly and for related matters.

Madam President, as the hon. Attorney General said in his contribution that we are here today in an extraordinary sitting of the Senate, because of what I would like, and we would like, to describe as the ineptitude, lack of rigour, carelessness, incompetence and even to some extent recklessness by the present administration and we do not support—and I will demonstrate why—this attempt to place the entire burden on the shoulders of the office holder of the presidency of this country, as well as on the Elections and Boundaries Commission, and at the same time, seek to absolve almost completely the Government from any responsibility, accountability or blame for this egregious error. So as far as we are concerned, I want to advise, this is not the first time that an Attorney General or PNM administration has brought legislation to this Parliament to have matters of an illegal nature validated. It is not the first time and I am sure once this regime remains in office, it would not be the last.

Madam President, I recall what is called and what I would like to refer to as Act No. 13 of 2009. That dealt with the Commissions of Enquiry (Validation and Immunity from Proceedings) Act. That was brought by a former Attorney General, John Jeremie, when they made a boo-boo, faux pas, by not gazetting the names of the commissioners in the construction industry—[*Interruption*]

**Sen. Gopee-Scoon:** Point of order. Madam President, 46(1), relevance.

**Madam President:** I am allowing Sen. Mark to continue. Okay?

**Sen. W. Mark:** So, Madam President, this was not the first time, so we had the Uff Commission of Enquiry and a validation Bill was brought by the former Attorney General as I said.

Madam President, there is an Act called Act No. 27 of 2008. This time it dealt with the Elections and Boundaries Commission and it dealt with the local government Act and Tobago House of Assembly, where again, they were seeking to validate certain reports of the Elections and Boundaries Commission in respect of the electoral area of Tobago. This was in 2008. And then, we have another one, Act No. 8 of 2010 which is an Act to validate the ninth report, again of the EBC on the boundaries of electoral districts in the electoral area for Tobago under the EBC, local Government and the Tobago assembly Act because the EBC did not bring its report within the two years and maximum four-year period; they brought it after that period and there was validation required.

So what I am saying is that there is a history on the part of this administration.

**Hon. Al-Rawi:** Would you—

**Sen. W. Mark:** You have two bites at the cherry.

**Hon. Al-Rawi:** I gave you way. I gave you way.

**Sen. W. Mark:** Yeah, well, I know, I know, but you have two bites. So there are some areas as I said that the Government has committed some serious miscalculations and they had to bring legislation to validate.

In my contribution this morning, I would like to debunk the fallacious argument by the Attorney General that the Prime Minister of this country, the Chief Secretary of the Tobago House of Assembly, the Attorney General himself, and the entire Cabinet bear no responsibility for this situation that we find ourselves in. The evidence will be presented to show that ultimately the Government of Trinidad and Tobago bears full responsibility and they must account to this country [*Desk thumping*] for why they have brought us here today

when they are responsible for what has happened in this matter. Madam President, I will demonstrate how this law can possibly undermine democracy and subvert our Constitution in the process.

Madam President, this matter of the 21 days after nomination day and the fact that when you counted the number, only 20 days and not the 21 days were satisfied and therefore, instead of the 23rd, which is Monday, that the elections are going to be held in Tobago, under the law that the Attorney General spoke to, the Tobago House of Assembly Act, section 22, subsection 19(2)—no, I think it is the ROPA, Representation of the People Act. Under that Act, 22 clear days, 21 clear days after nomination, which would have taken the country, the people of Tobago, to January the 24th and not January the 23rd, Monday.

I have been advised that Hochoy Charles who represents a political party in Tobago telegraphed this lacuna since January the 13th when he held a public meeting in Tobago, and it would have been carried on Radio "tambarind" and Tobago would have been aware of it.

**Hon. Senators:** Tambrin.

**Sen. W. Mark:** Tambrin, or whatever they call it. "Tambran" or whatever they call it. Tambrin, yeah. It was carried, I am sure, on the air there. But we, in Trinidad, apparently not following properly what is taking place in Tobago, so we only got wind of it when the same Hochoy Charles had an interview with TV6 on the 17th of January, and it was published in the *Trinidad Express* on Wednesday the 18th entitled—on page 7, *Trinidad Express*, Wednesday the 18th of January 2017, the headline is:

"Former THA chief threatens court action

Hochoy: Stop illegal election"

This was on the 18th; he indicated this thing since the 13th and it was only brought to Trinidad and Tobago's attention on the 18th.

So, Madam President, here it is somebody in Tobago was able to discover that there was an illegality involved in this election but the Government have something called the SSA. Where is the intelligence to bring to the attention of the Attorney General there is a possibility of an illegality occurring? [*Desk thumping*] Where was the SSA? They listening to my conversation—[*Interruption*]

**Sen. Gopee-Scoon:** Point of order. Point of order, 53(1). I am sorry, Madam President, 46(1).

**Madam President:** Yes, Sen Mark, relevance, so—

**Sen. W. Mark:** Yeah, I am dealing with the relevance.

**Madam President:** No, the part about where—that part you are embarking on now, get back to the topic, you have been doing well so far.

**Sen. W. Mark:** Yeah, but Madam President—[*Interruption*]

**Madam President:** No but.

**Sen. W. Mark:** No, listen. Madam President, here it is we are being told by the Attorney General that under section 22 of the THA Act which I am referring to, the President of the Republic fixes the date for the election with consultation, after consultation with the Chief Secretary and the Prime Minister. That is what they say the law says and that is what the law says and the date, Madam President, who can dispute the dates. Is the hon. Member, Sen. Paula Gopee-Scoon, telling us that the date that was set was not the 23rd? The date for elections in Tobago is January the 23rd, Monday, and the date for nomination day was the 3rd of January. So I do not understand the relevance of the relevance. [*Laughter*] These are facts and we are dealing with a Bill to validate the very matter that I have raised and all I am doing, Madam President, is drawing to your attention a sequence of events that took place and caught the Government—[*Interruption*]

**Madam President:** Sen. Mark, just have a seat. It is not that you are questioning what I have just ruled at relevance, it is not that. Right?

**Sen. W. Mark:** Not at all, not at all.

**Madam President:** Okay, because I can tell you why you were irrelevant, if you want me to.

**Sen. W. Mark:** No, I am not questioning you.

**Madam President:** Okay.

**Sen. W. Mark:** I never will do that.

**Madam President:** Good.

**Sen. W. Mark:** I sat where you sat in the past.

**Hon. Senators:** What?

**Sen. W. Mark:** In the past.

**Sen. Gopee-Scoon:** Not there, not there.

**Sen. W. Mark:** In the past. I acted as Vice-President, as you know, in another incarnation and I got the opportunity to act as President of the Senate, so I understand the responsibility. I never query and I will never question because nobody "coulda query me". [*Desk thumping and laughter*] So I will never question you, I understand your power because I had your power, so I will never do that. So, Madam President, I want to make it very clear to all and sundry that this matter of the Attorney General indicating that only the President of the Republic, the holder of that office, and the EBC are responsible for what is before us today. I am demonstrating that is not so.

And, Madam President, after Mr. Hochoy Charles made his statement, what did we get from the Attorney General? We got from the Attorney General in the *Express* on the following day, which is Thursday the 19th of January 2017, the following headline:

"Faris: Process will be legal"

So on the one hand, we are being told by Hochoy Charles that the process is illegal; and the Attorney General is so convinced in his mind that the whole process is legal and proper that he was caused or was forced to have an interview with the media, and in the *Express* of Thursday the 19th of January 2017, the headline read:

"Faris: Process will be legal"

Let me go on further. It is by Ria Taitt.

> "Attorney General Faris Al-Rawi said yesterday that he was confident that Monday's Tobago House of Assembly (THA) election is properly constituted.
>
> The AG was responding to questions about the legality of Monday's elections."

**Hon. Al-Rawi:** Keep reading.

**Sen. W. Mark:** He went on further to—well he went on—well, we have the former—I do not want to read everything, Madam President. [*Laughter*]

**Hon. Al-Rawi:** No, read the whole thing.

**Sen. W. Mark:** Well, no, I am coming to you.

**Hon. Al-Rawi:** Make sure you read the whole thing.

**Sen. W. Mark:** "The Attorney General explained that the nomination date fell on a public holiday…"

Nobody arguing that, which was Monday the 2nd of January.

> "He said the rule, in relation to the calculation where a public holiday is involved, is that the nomination day goes to the first working day after."

Nobody could argue that, the AG is correct on that. And therefore, he said that:

> "…nomination day was pushed to Tuesday, January 3, because January 1 and 2 were both public holidays."

I want to quote this section in particular:

> "Stressing that the Government had no role in this exercise…"

That is what he said, again, today. He reiterated, today, that the Government had no role in this exercise, and I am saying, Madam President, I am going to debunk that today. I am going to show where the Government is involved and had a direct role in this matter. Hear what it says. The AG—I am quoting the hon. AG:

> "Stressing that the Government had no role in this exercise, the Attorney General said he had taken the opportunity to take advice from senior counsel on this issue."

Here it is the guardian of the public interest and the individual responsible to be the legal advisor to the Government, after Hochoy Charles said what he said, the hon. Attorney General is telling the entire country that based on legal advice from senior counsel, he is confident that the whole process is legal, proper and in context.

**Hon. Al-Rawi:** Read the quote in quotation.

**Sen. W. Mark:** You are not in charge, "yuh know. Yuh might be in charge ah yuh home, buh yuh ain in charge here."

**Hon. Al-Rawi:** Read the quote in quotation.

**Sen. W. Mark:** Anyway, Madam President, I am being disturbed by this—look, I am going to say "loquacious" but I believe that might be an unparliamentary word, but I would not do that to my colleague and friend.

**Hon. Al-Rawi:** Read the quotes. "Yuh fraid."

**Sen. W. Mark:** So, Madam President, here it is the Attorney General is telling the country he got senior legal advice and the whole process is legal. Madam President, through you today, we have a legal opinion today from Deborah Peake. I am calling on the Attorney General—[*Interruption*]

**Hon. Al-Rawi:** Yeah.

**Sen. W. Mark:**—to make that legal advice available to this Parliament so we can be able to understand what drove him to come to that conclusion. I challenge the Attorney General to table that legal advice and circulate it to all Members of this House. [*Crosstalk*] "Yuh understand, Madam President?" Because I want—[*Interruption*]—please, please, Madam President.

**Madam President:** Attorney General. Thanks.

**Hon. Al-Rawi:** I apologize.

**Sen. W. Mark:** Madam President, I want to demonstrate to you in a letter that the Attorney General placed on the record and read extensively, dated the 19th of January 2017, Office of the President of T&T and signed by Mr. Gregory Serrete. In that letter—and, Madam President, if I may be allowed again, because you see this Government believes either the people of this country are under-read or have sub-intelligence, and only they have an understanding of reality.

I want to warn this Government and even I want to give advice to the Prime Minister. I want to advise the Prime Minister that the sooner you can get rid of the Attorney General from his Cabinet is the better for this Government. [*Desk thumping*] We have been given too much substandard advice and opinion from this Attorney General and it continues, and I believe that Government of Trinidad and Tobago will be in severe difficulty if they continue—in fact, for this situation that we are coming here to deal with today, it does not rule out the possibility of petitions after the elections on Monday.

Madam President, I want you to follow this carefully, section 22(2), it reads—this is the Tobago House of Assembly Act:

> "The President, after consultation with the Prime Minister and the Chief Secretary, shall fix the date of a primary election which date shall not be earlier than the expiration of two months after the dissolution of the Assembly nor later than the expiration of three months after that dissolution."

Madam President, the President of the Republic of T&T cannot fix a date on his own and cannot say, well, look, Tobago House of Assembly election will be held on the 23rd. So when they say consultation, you know what that means in essence? The Chief Secretary, according to this letter before us, wrote a letter, according to this letter, on the 14th of November 2016.

**12.00 noon**

He recommended on 14th November, after he may have consulted with his political leader. The Chief Secretary of the Tobago House of Assembly could never have put in writing, Madam President, a date for the Tobago House of Assembly without consulting and getting the approval of the Prime Minister of this country. [*Desk thumping*] I challenge the Prime Minister to tell this country he did not consult with the Chief Secretary nor the Chief Secretary did not consult with him when that date was proposed to the President.

So to tell us that the President is the one "who does fix election and call election" and the Prime Minister has nothing to do with that. Who are you fooling? The Prime Minister is responsible, at the end of the day, for calling and fixing the election date. That is the reality. So here it is, and so on, since the 14th November, according to this letter, the Chief Secretary sent a letter and suggested and recommended that the primary election for the THA be held on Monday, 23rd.

Madam President, nomination day came after the date for the election and when they checked the date and they realized it has holidays, rather than go to the 1st or the 2nd, they had to go to the 3rd because of the holidays. But, Madam President, they had already taken a decision, mobilized their whole crew in Tobago and say the 23rd is the day, so they could not touch the 23rd because they had already put things in place for the 23rd. So do you know what they did, Madam President? When they realized that they have this day missing and it should be the 24th and not the 23rd, we are where we are today because of that. Rather than bring a Bill to this Parliament to give the people of Tobago the right to have a free and fair election and let them go to the polls on the 24th, which is Tuesday, so we can satisfy the ROPA, we are robbing the people of Tobago one full day. [*Desk thumping*] And you tell me that you are committed to democracy? How can you be committed to democracy and you are robbing the people of Tobago a full day? Madam President, do you know what one day can cause? One day can cause the PNM to lose the THA election. [*Interruption*] No we are not there, we are here.

Madam President, at the end of the day, let us face the reality. I am trying to show, and I am going to demonstrate again, Madam President, the fallacious argument advanced by this Attorney General is very hollow and weak and could be easily seen by a Standard 1 pupil, you know, weak, weak. I do not know—if the AG—

Madam President, I want to also indicate, with your leave, another letter that was sent by the EBC and he referred to it and we have it in our bundle here, signed

by the Elections and Boundaries Commission and I will show you how the Prime Minister is involved, and he knew about this and the Attorney General is the legal advisor to the Prime Minister. He cannot escape responsibility for advising the Prime Minister. He is the legal advisor to the Cabinet. He is the legal advisor to the Government and he is the guardian of the public interest. So you cannot come here to this Parliament and take yourself completely out of this play. You are part of this play. You are part of this drama. Stand up, take responsibility, take ownership, apologize to the country for the error that you have committed. [*Desk thumping*] That is what you should do here today. And if you cannot do that, Madam President, I think he should tender his resignation immediately to the Prime Minister. [*Desk thumping*] But "doh" come here and try to hoodwink the population and us and give us the impression that you are like Pontius Pilate. You are unclean, sanctimonious.

**Madam President:** Sen. Mark.

**Sen. W. Mark:** Madam President.

**Madam President:** Yes. Please have a seat. You are making reference to a Member of the House of Representatives and, therefore, I am asking you to, you know, be a little more circumspect in your language. Okay?

**Sen. W. Mark:** I am guided accordingly. Madam President, may I go to this letter? It reads as follows: Madam President, I asked the hon. Attorney General, the distinguished Attorney General—[*Interruption*]

**Hon. Senators:** We got it.

**Sen. W. Mark:** Did we get it?

**Hon. Senators:** We get it.

**Sen. W. Mark:** Okay. Madam President, I have not seen it. I have not seen it because I am on my legs in full flight. Madam President, may I also advise, I go to this letter dated 19th January, 2017, and in para 2 I read:

"My memorandum dated December 14…"

Madam President, December 14, eh.

"…2016, the Secretary to Cabinet advised the Chief Election Officer as follows:"

And I quote:

"'The Prime Minister…'"

Not the President, not the President, not His Excellency.

> "The Prime Minister has agreed that polling day be Monday January 23, 2017 for elections in each of the 12 electoral districts of Tobago as defined in the Schedule to the Elections and Boundaries Commission (Local Government and Tobago House of Assembly) (Tobago) Order, 2016, (Legal Notice No. 19…of December 9, 2016 refers)."

It goes on:

> "'I shall be grateful if you will put in train the necessary procedures and take appropriate action to give effect to the decision of the Prime Minister.'"

Madam President, what does that mean? The Prime Minister agreed to the 23rd, Madam President. He agreed. So did not the Attorney General advise the Prime Minister that the 23rd was wrong?

**Hon. Al-Rawi:** The 23rd is correct.

**Sen. W. Mark:** No, the 23rd was the date that you set.

**Hon. Al-Rawi:** The polling day, boss.

**Sen. W. Mark:** It does not matter. You are the Attorney General. This Bill here before us today, Madam President, is seeking to deny the people of Tobago one additional day of campaigning, which is Monday 23rd. The election should be held on Tuesday 24th. [*Desk thumping*]

So, Madam President, here it is the Prime Minister is giving directions to the Elections and Boundaries Commission to put in train the necessary procedures and take appropriate action to give effect to the decision, Madam President, of the Prime Minister to hold election in Tobago on 23rd January. How can you come and tell the country and this Senate that the President is responsible for what went on? The President is not responsible. You are using his name.

Madam President, I will bring a Motion at the appropriate time to expose this Government, as it relates to an orchestrated attempt to destabilize, discredit and remove the President of this country before his term is up in March of 2018. [*Desk thumping*] I will bring a Motion to expose this Government on their machinations, as it relates to their conspiracy against the President of this country. So, Madam President, this is only another example.

**Sen. Gopee-Scoon:** Madam President, 46(4), regarding the name of the President and the use.

**Madam President:** Is that, Sen. Mark, what you said?

**Sen. W. Mark:** No. Madam President, can I say what I said? I said, Madam President, I intend to bring a Private Member's Motion, a substantive Motion, to deal with what I consider to be a conspiracy.

**Madam President:** When you bring your Motion, whatever Motion you bring, you would talk about it then, Okay? Sen. Mark, continue.

**Sen. W. Mark:** Thank you. Madam President, it appears to me that the Government of Trinidad and Tobago had a fundamental part to play in this whole scenario. If you go to page 2 of the letter by the Chief Elections Officer, hear what it said on page 2. It reads:

> "Having regard to the date of the issue of the writs of election and the intervening public holidays, there was insufficient time between the issue of the writs and the date of the election to comply with section 33(3)(a) and (b) of the Act."

The question here, Madam President, that arises is whether the Government really had any consultation, meaningful consultation, with the Elections and Boundaries Commission when they were setting the date—[*Interruption*]

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

**Sen. W. Mark:**—for the election. Because it appears to me that they did not consult properly with the EBC.

Madam President, I want to say that we have to be very careful. How can a Parliament seek to validate a breach of the law? We are seeking to validate a breach of the law, Madam President, where the law says that you have to give 21 clear days' notice after you declared nomination day. So I am an Assemblyman and I am a candidate and I have been advised, through my returning officer, that the date of the election is the 23rd, right, but I discovered later on it is the 24th, and rather than the Government comes here and try to amend the law to give the people of Tobago an extra day, as the law permits, they are not doing that. They are seeking to compress and suppress the rights of the people not to have that extra day to go and campaign. [*Desk thumping*] Is that a suppression of the rights of the people to a free and fair election in Tobago?

I raise these issues, Madam President, because I am anticipating whoever wins that election and whoever loses that election on Monday, they are going to mount a legal challenge to this exercise here. And that is why I wanted to ask the Attorney General, even though he attempted in a very weak way to—[*Interruption*]

**Madam President:** Sen. Mark.

**Sen. W. Mark:** Madam President.

**Madam President:** You cannot do those things. Continue. Just try and edit yourself please.

**Sen. W. Mark:** Edit?

**Madam President:** Yes, edit.

**Sen. W. Mark:** I am hoping that I am an editor. Madam President, may I continue?

**Madam President:** Yes, you can.

**Sen. W. Mark:** Because I am being disturbed by both persons across there. So, Madam President, as far as we are concerned, we want the Government to pay attention to the following, and the Elections and Boundaries Commission in particular. Madam President, I am not here to attack the EBC. That is an independent commission. I will not attack the President. I will defend the Office of the President. But I would like to ask you, Madam President, after the judgment, recent judgment, resulting in a petition filed by a number of candidates against the PNM, and given the judgment given by both the High Court and the Court of Appeal, whether, for instance, mistakes can continue to be allowed to be made without consequences. [*Desk thumping*] We have to understand that if there are no consequences for your actions you will continue to make errors. And I am saying, there is need for some tightening to take place at that Elections and Boundaries Commission.

Madam President, I have also been advised that in Tobago as we speak there are hundreds of homes receiving EBC poll cards in Tobago and they are receiving poll cards in the names of people who do not live at their homes. It appears to me that there is some kind of attempted voter padding taking place and I wish to bring this—[*Interruption*]

**Sen. Gopee-Scoon:** Point of order, point of order.

**Sen. W. Mark:**—to the attention—[*Interruption*]

**Sen. Gopee-Scoon:** Point of order, 46(1).

**Madam President:** Sen. Mark—correct, but you should move on because the point of order is accepted.

**Sen. W. Mark:** Yes. So, Madam President, as far as I am concerned. We have a duty and a responsibility to protect our democracy and to avoid the subversion

of our Constitution. We have seen evidence of it by the Attorney General, so far, and the Government, where they are seeking to undermine the rights of the people.

Madam President, the loquacious Attorney General cannot shut his mouth.

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

**Sen. W. Mark:** Sorry, I withdraw.

**Madam President:** Sen, Mark.

**Sen. W. Mark:** I withdraw, I withdraw.

**Madam President:** Sen. Mark—

**Sen. W. Mark:** I withdraw.

**Madam President:** And sit. Sen. Mark, your time is up.

**Sen. W. Mark:** Thank you.

**Sen. Dr. Dhanayshar Mahabir:** Thank you very much, Madam President. I reviewed the Representation of the People Act, first passed in the Parliament in 1967. It is 50 years old and the sections in reference to election writs are really very clear to me. I think that particular Act is a very well drafted one. It was not confusing to me at all. When I look at the problem we have, I ask myself, there was an error. An error was made. But was it genuine or was it malevolent? When I looked at the error that was made and the time period over which it was made, from the middle of December to the end of December, the time period which was involved signalled to me that every agency of State, in fact every citizen of Trinidad and Tobago at that time, from the middle of December, is more involved in winding down with his operations, as opposed to looking at new material to be dealt with. And so I am of the view that the error which was made and which should not have been made, because the law is very clear to me, was a genuine error. I think there was no ill will or no malice intended.

That, notwithstanding, the point of Sen. Mark, is a very valid one and that is the rights of the parties in Tobago have in fact been compromised with the loss of a day. Whether the loss of a day is going to materially affect the outcome of the election, whether it is going to influence negatively their campaign, of course I cannot say. But I am of the view that the public interest would best be protected if in fact we accept that there was no malice or ill will and that the election is held as it was initially planned.

But, Madam President, while the error is really an error in the calculation of the dates, and one may think that we are all prone to mistakes, all of us have made mistakes in the past; this was a simple one. This was not complex. We, unfortunately, know that small errors can result in large undesirable outcomes. Anyone who challenges that should simply not check the water in his radiator periodically and run that car with a dry radiator and you will destroy a car worth $350,000 in less time. So we do need to ensure that these errors are not continuing.

The error that was made is resulting in the following: Parliament has had to be summoned in an emergency session and I checked 73 parliamentarians in Trinidad and Tobago, including the Speaker of the House, MP, together with the Parliament staff from working yesterday overtime and today. So it is costing the State some to correct this error. We, therefore, need to put into place, therefore, measures, mechanisms, to ensure that this does not happen again.

We have had, from the discussions so far, the involvement of a number of bodies in this process, none of which picked up on the problem until today. We have the Tobago House of Assembly, they are involved according to THA Act; the Office of the Prime Minister; the Elections and Boundaries Commission; and finally the Office of the President. There are four agencies of the State which were involved in this process. And when we look at the amount of hours that we now have to come to spend to correct this, I want to issue the call that, as far as is practical, obvious errors, this was an obvious error, should not be made again.

I do not know how many hours were spent in the other place yesterday but if we have 41 parliamentarians together with the Speaker, by two hours that is 120 hours, man-hours. Today let us hope we can minimize the time and this will be 30 amongst us with a similar number of man-hours to correct the problem. And it is always said, Madam President, that whenever an error is a complex one there is some forgiveability, but on simple ones—in the medical field you are always told to sterilize your equipment before you go into surgery. Do not go into surgery with contaminated equipment because you are going to cause much harm. We want to ensure that the simple errors are corrected.

I would like to refer, with respect to a solution to the problem, to this particular letter which was kindly circulated just a few minutes ago, from the Secretary to the Cabinet to the Chief Election Officer, Elections and Boundaries Commission, December 14, 2016. Sen. Mark alluded to it, but it was a letter from the Office of the Prime Minister to the Chief Elections Officer. Madam President, a long time ago, in a seminar at the university—[*Interruption*]

**Hon. Senators:** Secretary to the Cabinet.

**Sen. Dr. D. Mahabir:** From Secretary to the Cabinet, to the Chief Election Officer, EBC. It was always said that when a Minister of Government makes an error in the public domain, it is the Permanent Secretary who should hang his head in shame, because the Permanent Secretary is supposed to be responsible for understanding all the procedures in the Ministry. That is why he is permanent.

In the Parliament, we do not know all the rules and whenever we need clarification on the Standing Orders we have the Clerks to guide us on what the procedure and the protocol is. This particular letter from the Secretary to the Cabinet to the Chief Election Officer said that:

> "The Prime Minister has agreed that polling day be Monday January 23, 2017 for elections…"

And it continues:

> "I shall be grateful if you will put in train the necessary procedures and take appropriate action to give effect to the decision of the Prime Minister."

I would have expected that the Chief Elections Officer, understanding the rules, understanding the Representation of the People Act—we have been in this business now for 50 years—would have replied and would have indicated, understanding what the requirements are, that the dates which were prescribed were not going to be inconsistent with the law. I do not know what the response—[*Interruption*] Yes, but I do not know what the response of the Chief Elections Officer was. And, therefore, Madam President, I do not know what the response to this was. If I were in the position of this officer of the State whose job it is to ensure the following: all procedures are in place for an election. An election is not a simple exercise. You have to put polling agents. You have to get everything in order and I would have thought that this particular officer, looking at how an election is to be conducted, would also, understanding the rules—[*Interruption*] Yes.

**Madam President:** Sen. Solomon, here is a suggestion to you, perhaps, you want to leave the Chamber for five minutes and sort out your issues. Yeah?

**Sen. Solomon:** I apologize.

**Madam President:** Yes. Continue, Senator.

**Sen. Dr. D. Mahabir:** Thank you very much, Madam President. I am on the point of solutions. Because I do not think anyone in the country, Trinidad and

Tobago, would like a replication of what is happening. I do hope that the elections can proceed as planned, because in my mind there was no malice intended by anyone.

I, therefore—I have not seen a response to this particular note, but my first instinct as a public officer, would have been to look at the legal requirements of what the issue is, understanding the procedures involved, because the public officers deal with this on an ongoing basis, and to indicate to the Secretary of the Cabinet that something may be amiss with the dates requested, and, therefore, let us undertake necessary changes.

But I looked at the date, December 14th, and I am prepared to forgive. It is close to Christmas time. Everyone is planning more his Christmas party than anything else from December 15th and it may have missed the officers. May I, therefore, recommend, Madam President, that the problem we have has been caused by silos. The THA, the Prime Minister's Office, the EBC, the Office of the President, four separate compartments, no department, no office has plastered the cracks. Cracks exist and this is one situation where the situation fell through the cracks. We need to plaster the cracks. And I think a solution to the problem, so it would not happen again, is that when we are dealing with elections, which really happen to be the core of our democratic process, we assign, now we get in agreement that one officer of Government, the Chief Elections Officer, I think that individual should have the responsibility to ensure that all legal requirements are complied with. And I am talking, Madam President of the simple ones that I understand and the candidates understand, and we all understand, based upon the law, that those things be double-checked at the office of the EBC.

The EBC is an independent organization. But they do obtain State funds. We can in fact investigate the reason for this error through a public hearing but the issue is, I think, when we have one point of call, as opposed to four, we could be able to say well okay this Chief Elections Officer should be responsible for ensuring that all legal matters, obvious legal matters—there are going to be complex matters which will arise afterwards, for which he or she cannot reasonably be held accountable. But these, I think, are standard. They are mundane. They are straightforward. They are clear in law and we have 50 years of experience in them. And I think when we come to elections in the future, let us hold one officer responsible for all administrative requirements, administrative requirements with respect to how it is conducted on the ground, administrative requirements with how it is conducted with respect to the legal instruments and the Legal Notices which had to be issued. And once we can get the Chief Elections Officer responsible as the technical officer, knowledgeable of the law,

independent of all other agents in the election process, I think we can make some progress, Madam President, in ensuring that this problem and other problems are not replicated again, and I thank you. [*Desk thumping*]

**12.30 p.m.**

**The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat):** Thank you very much, Madam President, and happy Saturday to all of us. [*Laughter*] Madam President, just to respond to Sen. Mahabir, I would reserve it for the Attorney General in his wrapping-up, but I only want to say that based on the documents I have seen and the documents which have been circulated, I do not think that it was a lack of thought that was given to the dates involved, in particular, the nomination date. I think in his winding-up, the AG will make the point again that thought was, in fact, given to the fixing of the nomination date, and it is the fixing of the nomination date that has brought us into this Senate.

The legislative context is very clear, Madam President. The Constitution is involved to the extent that the Constitution creates the Office of the President, and in this Bill that is before us, it is clear that the President has been ascribed powers and he has exercised some of those powers. It involves the THA Act to the extent that there are two scenarios in the THA Act in which elections are involved. Those two scenarios are the calling of a by-election and in the calling of what is described in the Act as a primary election. And, beyond that, the THA Act sets out responsibilities across the board to the Chief Secretary, the Chief Administrator, the President of the Republic and, in some circumstances, the Prime Minister.

And, finally, Madam President, we are brought here on account of the Representation of the People Act, and whether it is municipal, THA or general elections, in our country the prime mover in relation to the conduct of elections in this country is the Representation of the People Act. So this is essentially a debate over a Bill that involves the exercise of constitutional powers, the exercise of responsibilities under the THA Act and the Representation of the People Act insofar as it relates to the THA election.

What this Bill does, Madam President, is very simply, it appeals to the role of the Legislature, an error has been made, and it is to this Legislature, at this time, we must turn in order to correct that error. Notwithstanding the need on this Saturday morning to play the politics, in reality the root of the blame is really immaterial. What is before us is not an opportunity to attack the Attorney General, the Prime Minister, [*Desk thumping*] the President, the Elections and

Boundaries Commission or the Tobago House of Assembly. This is our democracy, Madam President, and the THA elections, we all want it to go ahead, and we all want it to be conducted in a fair and appropriate manner. What we are asked to do is not to ascribe blame; there is another place for that, but this place is to deal with an error that stands before us.

That THA Act, Madam President, sets out the workings as I have said and in relation to conduct of an election, section 21 of the Act deals with the calling of a by-election and section 22(2) of the Act deals with the calling of the primary election, and section 22(2) is clear. In fact, unlike the municipal election and unlike the general election, as the Attorney General has said, 22(2) is unusual and most people in the country who have followed this discussion in the last 48 hours would have been surprised. Even legislators would have been surprised, particularly those who have not been previously involved in the conduct of a THA election. Section 22(2) says that:

> "(2) The President, after consultation with the Prime Minister and the Chief Secretary, shall fix the date of a primary election…"

And it is for His Excellency the President to fix the date. In fixing that date, His Excellency has conducted the appropriate consultation, and the Prime Minister, in a very short response, agreed to the date that was proposed. The problem that flowed from that is the problem of fixing the nomination date. It was not the fixing of the election date. It is a matter for the EBC, an independent body created by the Constitution, and the President, to deal with the issue of writs and the important date of the nomination day because everything flows from that.

I think that while I understand what Sen. Mark has said in relation to the loss of a day for campaigning, the fact is that in the other place and in this House, the Attorney General has set out another dilemma. There is a limit, an absolute limit from the dissolution of the THA to the date on which an election can be conducted. No reworking of the dates at this stage can allow an election to be conducted within that overall time frame. That is why we are here, because the best option available to us and the most sensible option is to correct what is clearly an error in the fixing of the date of the nomination.

Madam President, we have listened to Sen. Mark, very engaging, entertaining and inaccurate. I would just say this to say why much, if not all of what Sen. Mark has said today, is utterly unreliable. He has talked about the habit of the PNM to come to this Parliament for validation and he has put forward, in support of his thesis, Act No. 8 of 2010, an Act to validate the Ninth Report of the EBC. In his

haste to ascribe blame to the PNM, and to turn this into political warfare he has overlooked the fact that Act No. 8 was brought to the Parliament by the then Minister of Local Government, Chandresh Sharma. It was brought in July 2010 under a UNC Government. When that Bill, having been laid by Chandresh Sharma, when that Bill was debated, the PNM—Madam President—[*Interruption*]

**Sen. Ramdeen:** Madam President, 46(1).

**Madam President:** Minister Rambharat is responding to what I had ruled relevant for Sen. Mark to raise. Okay? Continue Minister. [*Desk thumping*]

**Sen. The Hon. C. Rambharat:**—and immediately in this Senate, Sen. Subhas Panday as he was then, having spoken to the Bill, in response, then Sen. Pennelope Beckles put it on the record right away that the PNM was in support of it, the Opposition was in support of the Bill, understanding that the EBC, a creature of the Constitution, has some interaction with the Executive but only minimal interaction. That interaction involves using the Executive to lay the reports of the EBC in the Parliament as the law requires it to be done. When those reports, compiled over a period of time, ran out of the period limited to be brought to Parliament, Chandresh Sharma, the Minister and MP, as he was then, brought the Bill.

At that time, the PNM did not take the position or there was absolutely no consideration that this was something underhand, illegal or anything like that. In fact, in the other place yesterday, the Opposition Leader talked about how many Bills and how many attempts have been made to validate Acts in this Parliament. In relation to the EBC it is very important that we recognize, even though Sen. Mark does not understand it, that in relation to the EBC the Executive has very, very minimal involvement and the EBC is allowed to do its work election after election.

In his contribution, of course, there was absolutely no regard to the facts or to the law. There was absolutely no reference to what the THA Act says in relation to the fixing of the date; there was absolutely no reference to the THA Act in relation to the role of the President and the Prime Minister; and there was absolutely no regard to the Representation of the People Act which is not surprising and which is, Sen. Mark, notwithstanding it is a Saturday, it is the same Sen. Mark that we have to listen to throughout the week.

What this Bill does, Madam President, this Bill, recognizing that we have before us an issue that involves the Constitution, the THA Act and the

Representation of the people Act, this Bill simply tries to overlay and correct an error so that we can give effect to the calling of this election and the writs which were issued in support of this election.

What is the purpose of the election? The purpose of the election is to give the electors in Tobago an opportunity to cast their votes and make their choice. The effort here is to validate so that the election can go on. The opportunity, Madam President, remains with anybody who wants to challenge the election through the petition process.

Let me say one more thing before I close, Madam President, in relation to the Representation of the People Act. You know, Sen. Mark, in particular, has called the Prime Minister's name and held the Prime Minister responsible. If you go through the Representation of the People Act, there is absolutely no reference to the Prime Minister. There is no role. The primary role in the conduct of elections in this country resides with the Elections and Boundaries Commission, and there is a role for the President of the Republic and that is it. The Prime Minister plays no role. In relation to the THA, the Prime Minister's role is restricted to section 22(2).

There are other places in the THA Act—for example, in the appointment of a Chief Administrator—that it is the Prime Minister who must consult with the Public Service Commission and the Chief Secretary prior to the appointment of a Chief Administrator, but in relation to this election, neither the Representation of the People Act or section 22(2) gives a role to the Prime Minister in the manner in which Sen. Mark suggests.

Before I close, Madam President, I want to thank the staff of the EBC, the staff of the Attorney General's Office, the President's staff and the staff of this Parliament for working what I imagine would have been hard in research in preparation to call the House back yesterday in extraordinary circumstances, and to bring us here into the Senate to do what is very simple, to correct what is an error in the identification of the nomination date so the people, those who can vote in Tobago, can have their say on Monday. I thank you. [*Desk thumping*]

**Sen. Gerald Ramdeen:** Thank you, Madam President. Madam President, we are here today on a Saturday to debate a Bill, "An Act to validate the date for the taking of the poll in the election of Assemblymen to the Tobago House of Assembly and for related matters", and Sen. Rambharat started by wishing everyone a happy Saturday and I, too, wish to do that, but I want to take up on a point that Sen. Mahabir made in his contribution, which is that we must understand the opportunity cost to all of us and to other persons who are affected

by us being here on a Saturday to debate this Bill, because I am not happy to be here on a Saturday to debate this Bill because I do something very sacred on a Saturday.

I am happy that it is the hon. Attorney General who is piloting this Bill in this Senate today, because on a Saturday morning, Madam President, my Saturday is devoted to feeding 50 homeless people every Saturday that I have been doing for the last five years in the constituency of San Fernando West. [*Desk thumping*] So, today, when I am here, the people who are opposite the court, underneath the photocopy shop, the people on Mucurapo Street, Harris Promenade and at the bottom of High Street, "Dey eh gehin no lunch today, they would geh dinner today", because I have to be here to debate this Bill at the behest of the Attorney General. [*Desk thumping*] So, that is how I want to start.

But I want to—I always like coming after Sen. Rambharat, because I always like to clog the holes that he has identified about the fact that—he made certain criticisms about the contribution of Sen. Mark, my leader in this Senate. So let me start off, Madam President, by doing what Sen. Rambharat said was not done by Sen. Mark, which is—this is a very important piece of legislation, and it is very important because let me start with the Constitution. Section 1 of the Constitution enshrines that:

"The Republic of Trinidad and Tobago shall be a sovereign democratic State."

That is what it states, section 1.

I always like when the Attorney General quotes the names of all these cases that he refers to over and over. I would just refer to a few. The first one I want to refer to and read into the records is a case of the *State v Khoyratty* (Mauritius), a decision of the Judicial Committee. It is to be found at 2007, 1 AC, at page 80. It was a decision, the majority of which was delivered by Yohan Steyn. I want to quote, Madam President, what the Privy Council said about section 1 of the Constitution that enshrines Trinidad and Tobago to be a sovereign democratic state.

> "The Board proposes to analyse the question in a number of steps. The idea of a democracy involves a number of different concepts. The first is that the people must decide who should govern them."

The first concept identified by Judicial Committee at the Privy Council is that the first principle of a democracy is that people must decide who must govern them.

In relation to section 1, this is what the Privy Council had to say: First, section 1 of the Constitution—and this is in relation to the Constitution of Mauritius, but we have the identical section here in our section 1:

> "…section 1 of the Constitution is not a mere preamble. It is not simply a guide to interpretation. In this respect it is to be distinguished from many other constitutional provisions. It is of the first importance that…Mauritius"—and I will substitute Trinidad and Tobago—"shall be…a democratic State" is an operative and binding provision. Its very subject matter and place at the very beginning of the Constitution underlies its importance. And the Constitution provides that any law inconsistent with…"—it, is void.

That is section one.

We are here today to deal with a Bill that affects the ability of the people of Tobago to decide who will govern them, and that underlies the importance of the process that we are engaged in here today. Madam President, it is through the parliamentary channel that many people, most people, are educated about what we do here as a Parliament. So that for those who are listening and for those who are viewing, section 33 of the Representation of the People Act, which is the core of why we are here, as well as section 22 of the Tobago House of Assembly Act reads:

> "33. (1) An election shall be instituted by a writ of election issued by the President under the Seal of the President of the Republic of Trinidad and Tobago addressed to the Returning Officer for the electoral district for which the election is to be held; and every such writ shall be forwarded to the Commission for transmission to the Returning Officer to whom it is addressed."

But, more particularly, and what we are concerned with here today is subsection (3) which says that:

> "Every writ of election shall be in the form set out as Form No. 2 in the Prescribed Forms Rules and shall specify—
>
> (a) the day of the nomination of candidates, being not less than fourteen days after the day of issue of the writ;
>
> (b) the day upon which, if necessary, the poll shall be taken, being not less than twenty-one days after nomination day;
>
> (c) the day the writ is returnable to the Commission."

That is the law in relation to the Representation of the People Act that we are concerned with.

Section 22, Madam President—and I am very disappointed to have to read this, because I sat here and listened to the hon. Attorney General—and the *Hansard* will correct me if I am wrong—make reference to section 22 and indicated that the President after consultation with the Chief Secretary. Well that is wrong, Madam President, and it must be corrected. The hon. Attorney General should be more responsible in piloting a Bill of this importance to say to the Senate that section 22, it is the President after consultation with the Chief Secretary. So let me read it.

Section 22(1):

> "The Assembly shall continue for four years from the date of its first sitting after any primary election, and shall then stand dissolved, unless the Assembly, by resolution, dissolves itself at an earlier date."

Let me read slowly what section 22(2) says.

> "The President, after consultation with the Prime Minister and the Chief Secretary, shall fix the date of a primary election, which date shall not be earlier than the expiration of two months after the dissolution of the Assembly nor later than the expiration of three months after that dissolution."

So, Madam President, let me correct the record:

> "The President, after consultation with the Prime Minister and the Chief Secretary…" [*Desk thumping*].

Now, let me continue on the same road that Sen. Rambharat pointed out was not travelled by Sen. Mark. Section 80 of the Constitution of the Republic of Trinidad and Tobago says:

> "In the exercise of his functions under this Constitution or any other law, the President shall act in accordance with the advice of the Cabinet or a Minister acting under the general authority of the Cabinet, except in cases where other provision is made by this Constitution or such other law, and, without prejudice to the generality of this exception, in cases where by this Constitution or such other law he is required to act—
>
> (a) in his discretion;"

That does not apply, and:

> "(b) after consultation with any person or authority other than the Cabinet;".

—(c) does not apply. It says:

"(c) in accordance with the advice of any person or authority other than the Cabinet."

Madam President, the drafters of the THA Act and the drafters of the Constitution had a very important intention in putting the President in a position to consult with the Prime Minister and the Chief Secretary in fixing the date for an election. It was not put there—the legislators, the drafters of the Constitution and the Parliament and the legislation that enacted the Tobago House of Assembly Act did not do that with no intention behind it.

When His Excellency is required to consult with the Chief Secretary and the Prime Minister, it is for a purpose. It is for a purpose. He does not go and talk to the Prime Minister or consult with the Prime Minister for old talk. This is an Act of Parliament that affects the election of those who will govern Tobago.

The people of Tobago have already suffered an injustice when the election time was extended in Trinidad and not in Tobago. By virtue of what we are here to legislate about today, the people of Tobago are going to suffer another injustice because they are going to be robbed of one day that they are entitled to under the law. So they lost one hour first, in the general election; they lose one day in the THA election, what next are the people of Tobago going to be—what costs are they going to be put through? I am very happy that the Attorney General indicated when Sen. Mark was making his contribution that he should read what is in quotes. He was prompting Sen. Mark, "read what is in quotes".

"Faris"—*Express,* 19th of February, 2017 written by Ria Taitt. [*Crosstalk*] Sorry, sorry, 19th January, 2017—"Faris: Process will be legal". So, I will do what Sen. Mark did not do and read what is in quotes. This is the hon. Attorney General:

"I am quite confident that it is a proper election afoot. The law is available for anyone to challenge it (the election date), but I feel confident that if this thing went to court the propriety of the election would be established,' he said."

The Attorney General. That is what was in quotes. He wanted it read, I have read it.

So why are we here? [*Desk thumping*] Why are we here when the legal advisor to the Cabinet, the guardian of the public interest and the legal advisor to the Government, has claimed paternity to this, that there is nothing wrong with

the election. If it goes to court, I am confident—"I am quite confident that it is a proper election afoot." So why are we here? Why are we engaged in this process? I just want to make sure, Madam President, not to be said to be wrong that there is anything else in quotes to be read, but I do not think there is.

> The Attorney General, from what Sen. Mark has said, indicated: "Stressing that the Government had no role in this exercise…said he had taken the opportunity to take advice from senior counsel on this issue."

Madam President, it just bothers me. If the Government had no role in this exercise, why is the Attorney General taking advice from senior counsel in something that does not concern the Government, according to the Government? And who paid for that legal advice? It was the taxpayers. [*Desk thumping*] It is the taxpayers, it belongs to us, but we will not see it, but I will get it. Have no fear.

Madam President, we were gratefully—[*Crosstalk*]—I want to know about when you are going on the range, do not study about taxpaying dollars. "What you does do on the range?"

**Madam President:** Sen. Ramdeen—[*Interruption*]

**Sen. G. Ramdeen:** But Madam—[*Interruption*]

**Madam President:** No, have a seat, please. First of all, address me. Second of all, if someone is addressing you across the floor, and you choose—it does not matter, I am hearing what you are saying. So, stop it, address me. Invoke a Standing Order if you need the protection of the Chair. Okay?

**Sen. G. Ramdeen:** I am obliged, Madam President. Madam President, we were provided. [*Crosstalk*]

**Madam President:** Hon. Attorney General, please. Could we listen to Sen. Ramdeen in silence? [*Desk thumping*]

**Hon. Al-Rawi:** Yes, Ma'am.

**Sen. G. Ramdeen:** We were helpfully provided, Madam President, and I am grateful to the staff, with material in the form of two letters, both dated the 19th of January. Sen. Mark quoted from one, and I would not repeat what Sen. Mark quoted. In the letter of 19th of January, 2017 written by Mr. Ramesh Nanan, the Chief Elections Officer, to His Excellency Mr. Justice Anthony Thomas Aquinas Carmona, ORTT, SC. Re: Tobago House of Assembly Election, 2017. On the first page of that letter it reads:

**1.00 p.m.**

"Also, on December 14, 2016 the Secretary to His Excellency the President advised the Chairman, Elections and Boundaries Commission in the following terms:"—and this is important, Madam President:

"'I am directed by His Excellency the President to inform you that after consultation with the Honourable Prime Minister and the Chief Secretary, Tobago House of Assembly and in accordance with section 22(2) of the Tobago House of Assembly Act, Chapter 25:03, His Excellency has fixed Monday 23rd January, 2017 as the date of election of Members to serve in the Tobago House of Assembly, with the consequent nomination day being Tuesday 3rd January, 2017."

Overleaf on the second page, fifth paragraph, Mr. Ramesh Nanan says this:

"The Commission has received legal advice from Senior Counsel that, while the calculation of the fourteen period day period from the issue of the writs of election was in accordance with section 159 of the Act..."—that is, the ROPA—"and nomination day was correctly computed as January 3, 2017 an election date of January 23, 2017 would not meet the requirements of section 33(3)(b) as it does not comply with the requisite twenty-one day period."

You see, Madam President, we will support this Bill because we care about the people of Tobago. We will support this Bill because we understand the importance of the democracy of Trinidad and Tobago. We will support this Bill, but those who have been responsible for us being in this position must take responsibility for what they have done. [*Desk thumping*]

Having said that, we must not try to get away from it by saying blame must not be ascribed. Responsibility must be ascribed to those who are vested with responsibility to do what is right. Having said that, I want to say that we should be grateful to the Elections and Boundaries Commission because they were vigilant enough, and they carried out their duty in a manner that has brought us here today and protect the people of Tobago from participating in an election that would be illegal. [*Desk thumping*]

So whereas the people of Tobago could not rely on the hon. Attorney General as being the guardian of their interest, we are thankful to the Elections and Boundaries Commission for doing what they are mandated to do under the law, and correct the error that was perpetrated upon them.

It was the Elections and Boundaries Commission that wrote to His Excellency the President and brought this to his attention. It was the Elections and Boundaries Commission that was responsible enough to seek legal advice and to find out whether what was transpiring was in accordance with the law. That was when the guardian of the public interest was going to allow an election to go on that would have been illegal according to the law. [*Desk thumping*]

I want to place a pin there, because I want to say frontally that I do not accept that what we are doing here today by debating this Bill—"An Act to validate the date for the taking of the poll in the election of Assemblymen to the Tobago House of Assembly and for related matters"—is going to solve the problem of the people of Tobago. I want to put that on the record that I do not believe that what we are enacting here is going to cure the illegality that has been perpetrated, and I will explain why.

Madam President, the position is that the EBC did what they were supposed to do, but one would expect that someone holding the position of the head of the Executive of the country, the hon. Prime Minister, when consulted as the law requires His Excellency to do and as His Excellency did, because Sen. Mark pointed out that when the EBC wrote to His Excellency the President, they were unequivocal in their language. "I shall be grateful"—this is the EBC writing to His Excellency the President:

> "I shall be grateful if you will put in train the necessary procedures and take appropriate action to give effect"—listen carefully; let the people of Trinidad and Tobago listen carefully—"to give effect to the decision of the Prime Minister."

That is the EBC writing to His Excellency:

> "I shall be grateful if you will put in train the necessary procedures and the appropriate action to give effect to the decision of the Prime Minister."

When a Prime Minister is consulted on a matter that affects the democracy of our country, and for which we are called here today to deal with, one expects that the Prime Minister will consult with an Attorney General. One expects—the people of Trinidad and Tobago expect that you will take advice and if something is wrong, the purpose for which you are being consulted is to ensure that that process contains no error or suffers from no irregularity.

So when that date was proposed and there was consultation by His Excellency the President with the hon. Prime Minister, and with the Chief Secretary of the Tobago House of Assembly, the people of this country, and more particularly the

people of Tobago, would expect that there would be some type of meaningful consultation. They would expect that what comes out of that consultation would be an outcome that would be in accordance with the law that governs us and governs them. [*Desk thumping*] What came out of that consultation was far from that. Like I said before, and I will say it again, they were robbed of one hour then and a day is being taken away now. That cannot be right, Madam President.

The people of Tobago, when the election writs are sent out, are entitled by law and the Constitution, the Representation of the People Act and the THA Act, to an election according to law. Those persons who have filed nomination papers have an expectation that that election is going to be held in accordance with law.

Today, when we come here with this Bill to validate, we were helpfully provided—and I thought that the hon. Attorney General would have also given thanks to Miss Deborah Peake SC, who provided the advice in this matter, [*Desk thumping*] because it is on her advice, as far as we are concerned, that we are here, because we have seen no other advice. We have been told, but we have not seen.

Much of what the hon. Attorney General said, I want to start again by correcting it, because it is like a tutorial. The hon. Attorney General cited again another case called *Simpson v Attorney General* from the New Zealand Court of Appeal and said that these time limits are time limits that are directory and not mandatory.

Well, let me just bring the Attorney General back all the way from New Zealand to the High Court of Trinidad and Tobago on Knox Street, in the Hall of Justice, and remind him of a decision given not too long ago, which he has not referred to, *Bonofacio Mahabir v Maxie Cuffie*—a matter of some national importance that was decided very recently in the High Court, where the hon. Madam Justice Dean-Armorer ruled that the election rules under the ROPA, the Representation of the People Act, that governs us and governs the people of Tobago, are mandatory and not directory. [*Desk thumping*] That was the reason why when the election petition against Mr. Maxie Cuffie, a Member in the other House, was one day out of time, it was thrown out, because the provisions are mandatory not directory. So let us not go to Simpson and the New Zealand Court of the Appeal we have our own learning right here. Perhaps—[*Interruption*]—I will not be disturbed, I have more important things to deal with.

I was amazed when I heard the contribution. I was listening to it on the Parliament Channel on 105 yesterday, listening to the very sterling contribution by the hon. Attorney General. I thought it was a brilliant contribution. I want to

put it on the record of *Hansard* that I was amazed in the short period of time that the Attorney General had to prepare—the extent of preparation, case law and opinion and legal foundation that was laid by the Attorney General. I wanted to come here and open my contribution today by congratulating the hon. Attorney General for bringing us here and being so prepared in presenting, in making his presentation.

Only that last night, when I read the opinion of Senior Counsel, who I have the greatest respect for, Miss Deborah Peake, I realized that it was simply a recitation of what Miss Peake had put in her document and her opinion to the EBC. So the cases that were cited and the learning that was cited was simply a recitation, bereft of any true ingenuity on the part of the hon. Attorney General, but we have come to expect that and that is what we are accustomed to on this side.

**Madam President:** Sen. Ramdeen, bring your contribution back to the issues without focusing so much on the Attorney General. Okay?

**Sen. G. Ramdeen:** The purpose for which we are brought here by this Bill is to validate, according to this Bill, the writs, and more particularly if I can take you, Madam President, to clause 3(1) of the Bill, it says with a marginal note that:

> "Election date and writs deemed to be lawful and valid"—and I quote from the Bill:
>
> "The date specified in the writs for the taking of the poll at the election shall be deemed to have been as lawful and valid as if the date so specified had been fixed in accordance with the requirements of section 33(3)(b) of the Act."

And clause 3(2) says:

> "The writs shall be deemed to have been as lawfully and validly issued as they would have been had the date specified for the taking of the poll at the election been fixed in accordance with the requirements of section 33(3)(b) of the Act."

Madam President, I respectfully say that this does not cure the difficulty that we find ourselves in. The reason for that is that when the writs were issued and the candidates would have filed their nomination papers, there would have been certain expectations that would have arisen as a result of those acts that would have been done. Persons would have relied upon the dates and had an expectation as a result of what would have been done by virtue of those writs being issued.

Coming here today to validate the writs will not cure the legal consequences that will flow from what transpired thus far. Therefore, whereas this might cure the issue with respect to the EBC and with respect to His Excellency issuing those writs, this document and what we are asked to pass here today by the Attorney General will surely open itself up to challenge in the courts.

I am of the view, that if we come here to try and cure something that we all accept has been wrong, we should try and do it the right way. We should try and correct it in a manner that is not open to challenge, and we should correct it in a manner that we all feel would cure the illegality that has been committed because there is no issue here that what has been done by those who are responsible for doing it—and let me again say—those responsible for doing it are clearly set out in the legislation.

In the opinion of Senior Counsel Deborah Peake at paragraph 10, she sets out the conclusion of what has transpired:

> "An election held on 23 January 2017 will not be in compliance with the minimum period of 21 days between nomination day and polling day as required by section 33(3) of the Act."

It will not; so, you validating the writs is not going to cure that either.

When you go down to paragraph 17 of the opinion of Senior Counsel Peake, you would see that having set out the options that were set out by the hon. Attorney General, the opinion, and I quote:

> "…the only practicable recourse appears to be for the Parliament to pass a Validation Act to validate the election..."

It is because this is really a matter that the people of Tobago have really—I do not want to use the term "have a gun to their head", Ma'am, but they are put in a position where there is absolutely nothing else that you can do.

And the serious consequences that Sen. Rambharat has indicated, stemming from the contribution of the hon. Attorney General, that even if we try to move the election date, you find yourself in a position that it cannot be done, is the seriousness of the consequences that we have been placed in. The serious consequences that we have been placed in, because if the guardian of the public interest had advised, had taken notice to start off with that there is an election in Tobago, and let us ensure that the election in Tobago is according to law—because I do not accept, I cannot stand here and accept that around Christmastime the tools are down and we must use that as a basis to excuse what has happened

here. [*Desk thumping*] We cannot. It is important at any time, because it is important for us to be here on a Saturday to try and fix what has happened.

An election is the cornerstone of our democracy. It is the cornerstone for the people of Tobago to understand and to have a right to elect the people who will govern them. And as a result of that, it must be that when consultation takes place, it must be consultation that is meaningful. What we are asked to do here as a Senate is an error that has been perpetrated by the Chief Secretary of the Tobago House of Assembly, participated in by the Prime Minister and put into effect by His Excellency the President, on consultation with those two people. [*Desk thumping*]

Like Sen. Mahabir has said and like Sen. Mark has said, we cannot continue to have mistakes being made in the democratic process that is enshrined for us to elect those who govern us. It is too important. What we should be hearing or what we should be doing is not coming to Parliament and continuing to fix the errors that have been committed. We have to do that, but we should be putting in place things to ensure that we do not have a recurring decimal of what is taking place.

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

**Sen. G. Ramdeen:** I am obliged, Madam President, thank you.

We expect better from the guardian of the public interest. We expect better from the EBC. We expect better from those who are responsible for the process that we have been asked to fix here. And like the Government always says, we do not propose any solutions on this side, because we are opposed to them.

Madam President, as with the SSA Bill, as with the Miscellaneous Provisions (Marriage) Bill, I will propose here again that we insert a clause in this Bill to insulate this process from legal challenge by those whose expectations would have been triggered by the process that would have been engaged by the writs of election that were issued, that we accept now were issued in error. That is the proposal on this side.

What we should be doing here is amending the Representation of the People Act, to make what has already occurred legal, and that would be a better solution than this validation Bill that we are here before. [*Desk thumping*] Again, I do not expect that it would receive any acceptance on the other side, as everything else that we have proposed. We will do our duty to the people of Tobago. We will do our duty by putting forward a proposal that what we should really be doing is either inserting a clause or amending the Representation of the People Act.

We have already indicated we will give you the support to do it; let us get it right. We on this side always have the slogan of "Let us get it right", and we always make that statement on the basis that we on this side propose and support legislation that is in the best interest of the people of Trinidad and Tobago.

I hope that what we contribute on this side, Ma'am, will find some form of value to those on the other side, and that we can get it right in the interest of not only the people of Tobago, but in the interest of the democracy of Trinidad and Tobago. I thank you.

**Sen. Taurel Shrikissoon:** Thank you, Madam President. Having received the Bill for today entitled "An Act to validate the date for the taking of the poll in the election of Assemblymen to the Tobago House of Assembly and for related matters", I thought it necessary that I make a contribution to this Bill at this time, because as an Independent Senator I thought the need to actually go through in sequential terms what has actually happened, and try to figure out what actually occurred and bring sense or meaning to it.

I am aware that the reason for today's Bill is as a result of—and I would like to use the term just as Sen. Mahabir did—an error that occurred, and I firmly believe it was an error and one that I do not think had any ill intent associated with it with respect to the fixing of the nomination day and the polling day as established according to the correspondence issued.

The hon. Attorney General went at length to read from a correspondence dated the 19th of January, 2017, addressed to him from the Office of the President. Given that he did so, I do not see the need for me to read it again. However, I would like to highlight that there was a particular date in the correspondence that stuck out or struck me, and that date was the 14th of December, 2016. Why that date struck me and remained with me is because—and if we go to III, IV, V, VI, VII and VIII, it said it was on the 14th of December that the hon. Prime Minister informed His Excellency the President that he had no objection to the date.

It was also on the 14th of December, 2016, that consultation was engaged with, with the EBC and the suitability approved. It was also on the 14th of December that His Excellency the President wrote to the Prime Minister acknowledging his correspondence indicating that the 23rd was a good date. It was also on the 14th of December that the Chief Secretary was also informed, and it was also on the 14th of December that the writs were issued and signed by the President.

So in my mind I am trying to figure out why is it that there is an electoral process that concerns the people of Tobago, and all of this activity is occurring on one day. It may not be strange or it may not be uncommon, but for me as a citizen I am saying that such an important event and such correspondence going to multiple stakeholders, why all on this particular day? I could not figure it out, and I was trying to find a rationale and a reasoning for it.

So what I did, I tried to work with the dates that were given, and I said okay, if it is that the proposed date of the election was the 23rd of January and the election day was supposed to take place 21 days post nomination, 21 from 23 would lead me to the 2nd, but the 2nd was a holiday, so was the 1st, and the 31st was a Saturday. So that left the only working day available to be the 30th of December for nomination day. I am seeing the hon. Attorney General agreeing with me.

If the 30th of December was the correct date, if the polling day was supposed to be the 23rd, then nomination day should have been 14 days before that, which would take us to 30 less 14, which would be the 16th. But, there was Christmas Day, there was the second holiday for Christmas and then the Boxing Day, which takes us three days earlier, which would bring us to the 13th of December. Therein lies an issue in my mind. If the proposed date, as it should have been, or if the proposed day was the 23rd, then the date that the writs were supposed to be executed, in order for the election to take place on the 23rd, should have been on the 13th of December. But herein lies all the correspondence, all the activities from the Office of the President, Office of the Prime Minister, EBC, THA—and writs occurring one day later.

Therefore in my mind, from the time the process was initiated on the 14th, there was no way, according to the laws of the Trinidad and Tobago books, that the election on the 23rd of January, 2017, could have in any way been lawful. [*Desk thumping*] Because according to the time frame and time utilized and specified, the 13th of December would have been the last day that everything could have occurred according to the laws of Trinidad and Tobago. Here it is we are seeing everything occurring on the 14th.

So having a mind like mine—and I am telling you that I may not be as smart as everybody else in this room—but I like to go through step by step in a sequential way in order to make logic out of something. Why is it that the 13th was not met with all of the requirements? So in trying to figure it out, I want to read into the record a letter dated 29th of November, 2016. Before I read this letter, I just want to refer to the first paragraph of the same letter the hon. Attorney General read from, 19th of January, 2017, from the Office of the President, which

indicated that by letter dated 14th of November, 2016, the Chief Secretary of the Tobago House of Assembly, the hon. Orville D. London, advised His Excellency the President that in accordance with the section, and it flows from there, that the proposed date should be January 23rd.

So then if the correspondence was received 14th of November, 2016, then why was there insufficient time to get the writs ready by latest, December 13th? Why? So, it is in that context I want to read this letter dated 29th November, 2016, addressed to the hon. Orville London, Chief Secretary. It was drafted and came from the Office of the President. It says:

> Dear Chief Secretary:
>
> Re: Pending primary elections for the Tobago House of Assembly.
>
> I refer to your letter dated 14 November, 2016, wherein you informed me of the dissolution of the Tobago House of Assembly with effect from 11 November, 2016, pursuant to section 22 of the Tobago House of Assembly Act.
>
> In this regard I hereby inform you that Cabinet on 24 November, 2016, accepted the Eleventh Report of the Elections and Boundaries Commission: the report on the boundaries of the electoral districts in the electoral area of Tobago, in accordance with the Elections and Boundaries Commission Act, Chapter 25:50. The relevant Cabinet Minute was received by the Office of the President on 28 November.

So here it is, having received the initial correspondence, the dissolution of the House on the 14th, we are now down to the 28th of November, bearing in mind that the 13th of December would have been the last official day that the writs could have been authorized or issued for the election to hold fast on the 23rd.

The second to last paragraph says:

> Further, in accordance with section 4(1) of the EBC Act, the report is yet to be laid in the House of Representatives for its approval of the draft of an Order by the President for, inter alia, giving effect to the recommendations contained in the report. Upon approval—and this is the 28th—of the report by resolution of the House of Representatives, the relevant Minister shall then submit the Order to the President for signature.

So after it is laid, then it has to go to the President for signature.

I want to just include or address the point raised by Sen. Rambharat that it is the role and function of the Executive to lay the papers in Parliament. So I went

on to the Parliament site to determine when was the paper laid, and the paper was laid on the 7th of December, 2016. So if the paper was laid on the 7th of December, 2016, then how can all procedural matters be met within that time frame if it is the last official day for the election to be legal on January 23rd, was the 13th?

The paper was laid on the 7th. After the paper was laid it had to be signed off by the President, and it is said that it was signed off on the 9th; the 9th was a Friday. The last line of this letter says:

> Subsequent thereto the consultative process—the process that everybody referred to according to the THA Act—for the date of the elections to the Tobago House of Assembly shall be invoked in accordance with section 22 of the THA Act.

**1.30 p.m.**

So here it is the President is saying, I am willing to engage in the consultative process, but the facts of the matter or what has to be done, prior to the consultative process, has not been done. And so he has drafted this letter on the 29th informing the hon. Orville London that to this date, the 29th, it has not been done. The 7th was the day it was laid. The 9th was the day on which it was signed, and now it is only after the completion of that which is at the 9th of December that the consultative process that we are referring to in this Senate could have been begun. And that was a Friday. And hence the letter dated December 12th out of the Office of the President could have been issued which was next working day which was Monday the 12th. And so the consultative process could have only begun on the 12th with full recognition that in order for the election to be legal and according to the laws that the writs had to be issued by the 13th, and that did not occur.

The President, in my mind, according to the laws issued correspondence on the 12th, still giving sufficient time for the election to be according to the date proposed. And hence we have the letter dated December 14th out of Office of the Prime Minister indicating—out of the Office of the Secretary to Cabinet and I think also from the Prime Minister—I cannot find it right now that says, the Prime Minister has agreed that polling date—oh, here it is. Thank you. Addressed to His Excellency Anthony Thomas Aquinas Carmona on December 14th.

> I refer to your letter dated December 12th…wherein the time frame was still in existence and the election could have been held legally, according to the laws

of Trinidad and Tobago. It could have still been done. But the correspondence out of the Office of the Prime Minister dated the 14th when he consented to the date was actually a time frame now pushing the election into—putting the date for the election at a date that does not conform to the laws of Trinidad and Tobago.

And so while I say this I am saying, I am not here to ascribe blame to a particular institution, government office, but there has been a fundamental flaw in the entire process of arriving at the dates for the election to be issued, for the writs to be issued, for the papers to be laid, it was all rushed and it was last minute. [*Desk thumping*] And it was last minute from the time in which the initial correspondence received on the 14th of November, gave sufficient time for the reports to be laid and for everything else to occur, but that did not occur and the consultative process which the Act refers specifically to, could not commence as a result of the delay in laying the paper and it being signed off by the President.

And so as a citizen of this country, as Sen. Ramdeen correctly said: "Are we here to make corrections to a situation that could have been avoided?" And I am saying here today, having followed the timeline with the facts stated, it could have been avoided if proper care and attention and due process [*Desk thumping*] were followed, and that would have enabled the issuing of the writs by the 13th of December which would have allowed the election and the people of Tobago to enjoy their election or to have their election on the said date as proposed.

So, I am not here to debate and postulate whether or not the 23rd was the correct day. I am saying, if there was a desire to hold the election on the 23rd and the consultative process also resulted in the 23rd, then working with timelines and the laws of Trinidad and Tobago, the correct process according to the correct time frames should have occurred and then we would not have been here today. But it did not occur. And as a citizen, as a young man in Trinidad and Tobago, I am saying, the last minute approach to governance, the last minute approach cannot work. It cannot be standard operating procedure in Trinidad and Tobago for the last minute approach to be the approach in formulating laws and policies that govern the people of Trinidad and Tobago. And so I am saying today and I want to refer to the fact that the position that FATCA is at right now, and I understand the dilemma—[*Interruption*]

**Madam President:** No. No. No. Have a seat, Senator. Listen, FATCA is right now being dealt with. Let us not anticipate any discussions on FATCA. Okay?

**Sen. T. Shrikissoon:** So guided by your ruling, Madam President. But what I am saying, in the context—[*Interruption*]

**Madam President:** No.

**Sen. T. Shrikissoon:** I understand. Yes. I do assure you. Yes. —Is that we should not be waiting for deadlines to be approaching us for us to get into high gear to resolve the situations. [*Desk thumping*] That is why I referred to it. So, I am so guided. I am so guided and that is why I just framed it differently.

So, I am saying as a citizen of Trinidad and Tobago, I would prefer that the style of governance and the approach to governance be addressed. And what happens when we do this in a rushed manner, if we look at the legislation that we are referring to today, at least 14 days post the writ for nomination and at least 21 days post nomination day we would realize that it is so last minute that according to the law, we chose the minimum time frame. Why could it not have been 15 days or 16 days? Why could it not have been 22 days or 23 days and build into the system areas for contingencies so that when matters arise we are still within the time frame? But we are last minute and because we are last minute, we are now going to the minimum time required according to the law, and that I have an issue with.

So, I am saying here today, and as I close because I am finished with respect to this. As a citizen I am concerned that this situation is before us because in my mind according to the timelines that I have demonstrated and illustrated here, that it could have been avoided if proper care and attention was given to due process. And as a citizen, as a Senator of this country I would prefer that this style of governance does not occur and that proper planning be done and contingencies be built into time frames so that a citizenry is not affected like this. I thank you, Madam President, [*Desk thumping*]

**Sen. Khadijah Ameen:** Thank you very much, Madam President. Madam President, I rise in this Extraordinary Sitting under extraordinary circumstances to join in the debate on:

> "An Act to validate the date for taking of the poll in election of Assemblymen to the Tobago House of Assembly and for related matters."

I join this debate at a time where this Extraordinary Sitting meets Trinidad and Tobago with extraordinary circumstances when just on Thursday we had six murders in one day and we are up to 36, an extraordinary high number of murders in this country, 36 murders in 21 days. [*Desk thumping*]

**Sen. Gopee-Scoon:** Point of order. Point of order.

**Hon. Senator:** What is the point of order?

**Sen. Gopee-Scoon:** 46(1).

**Madam President:** Yes. Sen. Ameen, let us deal with the matter and business that is at hand in today's sitting. Okay? Thank you.

**Sen. K. Ameen:** Madam President, I really raised that matter to say that although—[*Interruption*]

**Madam President:** Okay. So here is the story. When I rule that something is irrelevant, we do not go back to that. Okay? Thanks.

**Sen. K. Ameen:** Madam President, I am not going back there. I hope to, this morning I want to indicate that I have no problem in voting in favour of this validation given the fact that the provisions for the power to adjourn an election under section 34 of the Representation of the People Act namely:

"(a) the existence of a state of war…"—in—"Trinidad and Tobago;

(b) the declaration of a state of emergency…

(c) the occurrence of any earthquake, hurricane, flood, fire, outbreak of pestilence or outbreak of infectious disease…

(d) the likelihood that the revised lists of electors for all electoral districts…will not be ready…"—for—"the day…"

And—

"(e) the likelihood that any essential electoral equipment, supplies or materials will not be not available…"

And I have just paraphrased. But considering that, at present, those circumstances do not exist to give, to provide for the adjournment of the election.

Madam President, I plan to be brief because I really feel that this is a simple matter and it is unfortunate that you would have had Senators in this debate and even in the public domain trying to lay blame at the feet of the President of Trinidad and Tobago. Madam President, quite frankly, in the process used to determine the date, it is very clear in that the President in consultation with the Prime Minister and the Chief Secretary of Tobago House of Assembly, the President after consultation will determine the date.

Madam President, the Attorney General would have gotten some "blows", so to speak, from the media, from the public, indicating that he has a big role to play in this matter in terms of accepting responsibility. And quite frankly, I think, had the Attorney General simply come forward and say, listen, there was an error,

there are several entities involved in making this decision and there is an error that has to be corrected, rather than going to lay blame at the feet of the President. I think, maybe the public would have been a little more forgiving.

But as we are here now I want to indicate, Madam President, that there was the opportunity for this matter to be corrected before, instead of having to come here. And I refer to a document provided, circulated to all of us and it is the letter from the Secretary of the Cabinet to the Chief Elections Officer of the Elections and Boundaries Commission dated December 14th. And it reads:

> "The Prime Minister has agreed that polling day be Monday January 23, 2017 for the election of each of the 12 electoral districts of Tobago as defined in the Schedule to the…"—EBC, and so on.

Madam President, I just want to take the first line.

> "The Prime Minister has agreed that the polling day be Monday January 23, 2017…"

This came out of the Cabinet because it came from the Secretary to the Cabinet and the Attorney General as legal advisor to the Cabinet had the opportunity to indicate that based on—[*Interruption*]

**Madam President:** Sen. Ameen, you had previous speakers in the debate and they have raised this point quiet extensively. It has been raised by two former speakers. So, I would ask you in your contribution to not spend so much time on that particular point. Okay?

**Sen. K. Ameen:** Madam President, I did not plan to spend much time on this point. So, I was saying that the opportunity existed and for anyone to say, that it is solely for the President to determine, is incorrect. And quite frankly as I say, perhaps there is still opportunity in the winding up of this debate for the Attorney General to perhaps indicate, you know, that he is sorry that he missed the opportunity to give proper advice to the Cabinet. [*Crosstalk*] And I am being disturbed. Right.

So, Madam President, there are a number of other instances which I want to express concern where the decisions and the advice of the Attorney General is concerned. The Office of Attorney General is one with a heavy responsibility and I am sure that the holder of the office at this present time would know not to take some of the attacks from the public domain personally. But, quite frankly, where we see a pattern developing where there is already one piece of legislation being struck down in the courts because that is the Act to change the appointment of the

Commissioner of Police, where that was struck down in the court as being unconstitutional. Where you had recently Dr. Hamid Ghany out of the University of the West Indies expressing concern—[*Interruption*]

**Madam President:** Sen. Ameen, so you are going now—just try to get back to the issue at hand. Okay?

**Sen. K. Ameen:** Madam President, the issue at hand and I am indicating that I am expressing concern for a pattern developing including the issue, the fact that we are here today to validate the date for the THA elections. And I am saying that the Attorney General has to examine what is going on because there is a pattern emerging including the fact that we here today to validate this date. And the remark or the statement of Dr. Hamid Ghany is consistent with the slips and the slip up after slip up that is taking place. [*Crosstalk*]

And the statement I will read because the Attorney General is asking, what statement?—[*Interruption*]

**Madam President:** But the Attorney General—have a seat. The Attorney General through the crosstalk cannot ask you to make a statement that is irrelevant to the issue at hand. So be guided, Sen. Ameen, by the Standing Orders and not by any crosstalk. Okay? Thanks.

**Sen. K. Ameen:** The relevance of the statement before I make it, Madam President, it is to point out that you are seeing a pattern of slip ups from the Attorney General. In fact, in many places it is being called worse than slip ups. It is being called incompetence and much worse.

**Madam President:** All right. Sen. Ameen, have a seat. This matter, you can make your comments, you have made it, but your whole contribution cannot be on comments made about the Attorney General. Your contribution has to go back to the matter at hand. And, Sen. Ameen, I have been on my legs a few times now to try and get you to address the issue. Okay?

**Sen. K. Ameen:** Madam President, I indicated before that the purpose of this, is that this matter is not the first in a number of instances where the blame is with Attorney General and I expect, Madam President, unfortunately, that we may have instances in the future to deal with this matter.

Quite frankly, I look forward to a sitting, extraordinary or otherwise, that could deal with some really urgent matters in this country such as the spiralling murder rate and crime that is facing our country. I live in an area where there are a

number of murders and I look forward to use of this Parliament's time to debate something that is relevant. [*Interruption*]

**Madam President:** Sen. Ameen, please. Yes. [*Crosstalk*]

**Sen. K. Ameen:** I thank you.

**Madam President:** All right. Sen. Ameen, let me just issue this statement. Please, do not challenge the authority of the Chair when the Chair has made certain decisions with respect to relevance. I had made a decision prior to that when you were trying to raise about the issue of—I think you did it earlier in your contribution as well. So, please, do not challenge the decisions of the Chair. Okay?

**Sen. Melissa Ramkissoon:** Thank you, Madam President. I rise to just voice some of my concerns leading up to this debate, and I have heard a lot from the other place as well as today and some of it in the media. So, Madam President, in my introduction, please, allow me to just share some of my research that I did. And as always I would like to bring something a little different to the debate to add a different perspective.

So, I thought of the concerns that were raised and highlighted and it was basically a legal aspect, as well as a date aspect. So I said, okay, let me go a little back because, of course, I am not a lawyer so I looked up on the online dictionary, the legal online dictionary on what is law. And law is simply:

> "A body of rules of conduct of binding legal force and effect, prescribed, recognized and enforced by a controlling authority"

And I even went further to look at the Canadian Department of Justice and their website even had where they broke down public and private law.

Now, why—I promise you, Madam President, this is going to align, just allow me, please. Okay? Right. [*Laughter*] Laws in Trinidad and Tobago and throughout the world, right?—laws can be divided into public and private law. And as I said, the Canadians had a really nice way of outlining it and they stated that, public law sets the rules for the relationship between the individual and the society. And if someone breaks a law, just like Trinidad and Tobago, it can be considered a criminal law and it can be seen wrong to the society. And it could include criminal law, constitutional law and administrative law, and that is the one I wanted to highlight, the administrative law which deals with the actions and the operations of the government. Now, I will not deal with the private law that is a law that sets the rules between individuals and it is called civil law. And private

law settles disputes amongst groups of peoples and compensate victims. That is the aim of it.

And why did I look at laws and why did I want to know what is a definition or a legal definition of a law? And because laws are put in place, Madam President, to help to ensure a safe and a peaceful society where we can all live and enjoy. And the Canadian legal system respects—and I said their system has set up, sorry, to respect individuals' rights and ensure that our society is orderly. It applies the same law to everyone and this includes the police system, the government and the public officials, and all of them must carry out their duties according to the law.

So in terms of—I looked up the administrative law which is what I found that this is something and this issue is kind of leaning into —and Harvard University did a nice study on it and they presented a paper. And it said that administrative law refers to the body of laws, procedures and legal institutions affecting government agencies as they implement legislation and administer public programmes. So, administrative law, Madam President, as a body of law is part of the constitutional law, part of the statutory law, part of internal policy and, in some parts, part of the common law.

Now, I found that I needed to do this research and kind of understand how this was being formed into a legal issue because administrative law is very important and it should be considered to be mandatory because that is why we have these numbers written into our law, our legal system.

So, we are here today, Madam President, to talk about an unfortunate human error. And as we all know, 80 per cent of our errors or incidents, sorry, are caused by human error. Now in industry we have the 80/20 rule like in life and we put things in place when we find an error. We have systems, we have different divisions that deal with these things. Now what we witnessed is a failure in our system, a breakdown of our systems that are in place to prevent such a case.

Now, we are leaders, we are legislators, we are an example for others to follow. We as Senators, we are legislators to write the law. If we cannot uphold and follow the law that we are writing, then we are kind of putting ourselves in an uncomfortable position.

So, I do not know—we are here today to bring forward a validation Bill to change a date which is going against the written law of the date set. Now, we always have a case in Trinidad and Tobago based on the operationalization of our laws. I do not know if it is because of breakdowns of systems that we may see in

other cases, because this particular scenario may be as a result of a breakdown in the system and there was not sufficient checks and balances being put in place to prevent such.

We just heard from Sen. Shrikissoon who spoke about the dates and the various items which could have red flagged these items to note something is going to be wrong. We have different things that could have been done and now we are faced with decisions. What ifs? And we could always give different scenarios. We should have done this better. We could have done this better, but we are dealing with the situation at hand.

Now, this is not something new. This is not our first Tobago House of Assembly elections. And we have experienced personnel. Like we have the very experienced hon. Chief Secretary Orville London as a recommender and we have the EBC as the experienced functioning, independent body who is part of this.

And, Madam President, if you go to the THA website there is a very interesting article on the Dissolution of the Assembly. If you look at it and it was last updated on 20th of January, 2017. And it states—and this was an article pulled from or written in or posted on October 26, 2012.

> "In moving the Motion Chief Secretary London said he would be recommending a date for the election to the President and when that date was transmitted to the Prime Minister he hoped that as was the practice in the past it would be accepted."

So as other Senators before me said, we are not here to blame game or play the blame game. But if these persons are in charge of a responsibility and they need to know that this is what was done and we need to put things in place to prevent a repeat in the action. Because we also learnt in the other place, this is not the first validation being bought before Parliament. So this is it our second validation document or Bill coming before Parliament. How many more is going to come in place before we learn from it? We have to have lessons learnt, Madam President. I always speak about this. Yes. I am one of the youngest, but when we speak of the future, that is why we are here. We want to correct the wrongs of today and make sure we prevent them from future. [*Desk thumping*]

So, Madam President, we acknowledge that we have a breakdown of our system. Now, what can be done differently? And this again, is a recommendation that we all can think about. We can look at the Canadian system again. And they have fixed election dates.

Now, I am not playing in the political arena so I could speak bravely about this, because I do not have any worries about fixed election dates. But to avoid errors and people being blamed and lying on human error, then we should definitely look at fixed elections dates. There is no harm in it, Madam President, in putting it in our legal system or legislation, our Acts that the election should be held by the 30th of January or every three years, something like that, or four years. So that would avoid such debates like this being called out on a Saturday to talk about—I know we would love to see each other, but we want to ensure that the future is secure. So that is my recommendation.

Now, I wanted to bring an analogy to this debate to simplify what it is that we are here for and to show the importance. Because sometimes we say, small things do not matter, because like one day, what does one day have—how does it really impact me? Why should I have a three-hour debate to talk about one day? And I just found this was interesting and I hope that you can understand my analogy.

And how many persons can remember going back to the times when a place of worship was considered a very sacred place, where no one would speak out of turn? You would be very respectful. In Trinidad and Tobago, that was one untouched place. People go there to lay their problems, they would go there for concerns. They would go there for hope, faith and for connection with people.

**2.00 p.m.**

Today, world—today, society in Trinidad and Tobago, the 28th November, 2016 *Express* published robberies in churches, and they said another one happened in October. The reason I bring this analogy is because in the past, Madam President—

**Madam President:** Sen. Ramkissoon, yes, I want you to come to the reason you are bringing this analogy because the issue of relevance seems to be cropping up, so, yeah. Okay.

**Sen. M. Ramkissoon:** Thank you. I thought that would happen, so I really said it was an analogy. [*Laughter*] No, seriously, the analogy is just to point out that things that affected us that we never thought we did in the past we are doing now, and that is why I wanted to share that. Because what we are doing now we may think it is a simple due duty to be coming to Parliament to change a date just because we made an error, but how does it impact us in the future? And that is what I am very concerned about, because we cannot foretell the future, we cannot foresee and say, okay, what is going to happen to our election system, what is going to happen to the Government in the future, and that is, Madam President, why I wanted to make a simple analogy, not to speak about crime, as I want to

say, but just to say how I think this can impact on the dangers it may have if we do not align ourselves.

Madam President, I do want to say that I have to join my colleagues in saying that I do recommend that we put preventative measures in place, so I would like to look at the Representation of the People Act to be amended. But, I do have one question that I will like to put forward in the debate—and if the Government Ministers or any of the Senators can answer me I would appreciate it—and that is in relation to Chap. 2:01, Representation of the People Act, section 34, part (d) and (e). And this section 34 deals with Government authorized to adjourn polling day in an event of an emergency, and in the introduction we heard that none of these causes amounted to the adjournment, and I just wanted to know how come (d) and (e) were not, because (d) deals with:

> "the likelihood that the revised lists of electors for all electoral districts or for any particular electoral district will not be ready before the day appointed for the holding of the poll; or
>
> (e) the likelihood that any essential electoral equipment, supplies or materials will not be available in adequate quantities upon the day appointed for the holding of the poll,"

And, if it is just the date that is the error there and we are saying that these are the reasons, how come we cannot say one of these is a reason for the adjournment? And that is what—I would just like some more information if this can be looked at as an alternative measure, or alternative reason to adjourn the poll, because I thought this long listing had some merit in it. So, Madam President, as we all know we are living in evolving Trinidad and Tobago.

And my last point is that every statistical student, engineer like myself, any student who does Maths knows that there are many equations and we have variables, things that will just change. We have no control over them, variables. Like I did Maths and Further Maths in A levels, and we would have to prove an equation and we would have variables that would permit you to make some changes to try to "ratch" the answer. However, in that same equation we had constants, and some things are just constant. So, when we put in fees and numbers into our Bills we run the risk of having these constants come back at us, and this is one of these clear highlights.

So, Madam President, I cannot support this, because it stands against my view of consistency, and being consistent to show that we are adhering to our laws of Trinidad and Tobago. I believe in putting a message to Trinidad and Tobago to be

law-abiding citizens, and I believe it starts from the top. Unfortunately, if we do not support it from the top, it will never trickle down. We have challenges with operationalizing our laws, and I have always said it here, we need to make an example, and I think, unfortunately I cannot support this. I thank you. [*Desk thumping*]

**Sen. Wayne Sturge:** Good morning, Madam President.

**Sen. Dr. Henry:** It is afternoon.

**Sen. W. Sturge:** Oh, it is afternoon. Thank you, Sen. Henry. Madam President, I am not a Seventh-Day Adventist except on a Saturday. [*Laughter*] That is because I have five children and I keep the Sabbath holy. That is the day when, in spite of not being Seventh-Day Adventist on six days of the week, that is the day I make a soul connection and I spend most of my day, even when the night comes and I fall asleep with them in my bed, I make a soul connection with these five little souls I am responsible for.

You see, the thing is, I make that point because what would happen if I were actually a Seventh-Day Adventist? Then I would have to choose between my religious right and coming here today, and that I think is unfortunate. I am not going to play the blame game too much, but it would be remiss of me if I do not comment on something mentioned by Independent Sen. Mahabir earlier. I am always in awe of the contributions of Sen. Mahabir, and I am sure most people are. He is a learned and distinguished man.

**Sen. Dr. Mahabir:** I agree. [*Knocks desk*] [*Laughter*]

**Sen. W. Sturge:** And I see he is knocking the desk, let me knock it too. [*Knocks desk*] I rise to simply state this little piece, because when it comes from a learned and distinguished man it may sound as though we are accepting and being defeatist about something that has crept into our culture.

Sen. Mahabir stated in his contribution that he understands why this occurred, because of the time of year. I agree with him, but that is unfortunate, because we can make the same argument for Christmas, then there is carnival, then there is Easter, and then there is August, and when we look at the history and we go through the timelines, and I am very grateful for Sen. Shrikissoon for doing so, and I am not going to do it, at the risk of objections and so on—and not only the timelines, the persons involved, the parties involved in this operation, there were three or four missed opportunities to correct this wrong, and that is why I have

to—whilst I agree with the analysis of Independent Sen. Mahabir, because he is learned and distinguished, I have to say let us pause for a cause, and whilst he is right, maybe this is a time for us to start reassessing how we do things.

Because, as far as I understand it, the EBC has very limited functions. Now, I have looked at the Standing Order and it refers to judges, magistrates, Members of the Senate, Members of the House of Representatives, and so on, so if I say something that might be construed as an attack on the EBC, I am quite sure they are not covered by the Standing Orders. What I wish to say about this, your one function is to get this right, and you get it wrong [*Desk thumping*] and how often are you required to do this? With respect to local government election you are required to do this every three years. With respect to the THA, four years? I do not want to say with respect to a general election, five years, because that would not be correct since we still have back-pocket politics. I heard if you do not have a back pocket you could put it in your back fobs or your front fobs. But the short point is, Madam President, this institution had an opportunity to get it right and failed for whatever reason, and we cannot use Christmas, the time of year, as suggested by my learned friend, Sen. Mahabir, as an excuse.

I posted something recently, and this is a week that I do not know. It is a week I would never forget. It is a week I would never forget not only because I am here on a Saturday, I am tempted to do what Sen. Ramkissoon indicated she is going to do, but it is a week in which I abstained, and, apparently the public does not know what abstention means. They are saying because I abstained I support paedophilia. That is all it means I am saying. And I am raising that because in the context of this case, if I vote against I will be demonized; if I abstain, I will be demonized, just like I was demonized this week. And I am being demonized because somebody who has to do a job once every three years messed up, and that cannot be right. That simply cannot be right, and in any other country there would have been a call for all man jack to go. [*Desk thumping*] And I am tempted to say that every man jack including Mr. Nanan should go. I said it some time ago, and I said it in the context of what happened this week about my right to abstain and why I abstained, that we need to look again, we need to revisit, maybe we have outgrown our watch words, because we are very indisciplined, very unproductive, and fast becoming very intolerant.

So, the watchwords of discipline, tolerance and—well, it is now corruption [*Laughter*]—production are out the window, because if you get it wrong, as they did, the EBC, is that not indiscipline? And they were probably indisciplined because that was an unproductive time of the year, as Sen. Mahabir is saying. But

anyway, going back to—and the difficulty about talking after Sen. Ramdeen, in particular, is that there is very little law I can raise, and Sen. Shrikissoon knocked the wind out of me by going through the timelines. So, I am not going to go through all the correspondence, except to say, however you wish to spin it, this is what happened: the Chief Secretary suggested the date, the Prime Minister agreed, and the EBC said it is in order. [*Desk thumping*] So, first blame, Chief Secretary for suggesting a date like that. Well, if he missed it then we had the Prime Minister, who has to agree; and he missed it, and then the EBC whose responsibility it is to ensure that even if the other two got it wrong they should get it right, they missed it. So, what is that if not indiscipline, probably caused by unproductiveness?

You see the thing is, however we choose to construe it, or misconstrue it, in this country we have what is called a prime ministerial dictatorship, for want of a better word. And I am not going to say I coined that, I got that from one of my books, I believe it was from De Smith and Brazier on *Constitutional and Administrative Law*, when they referred to the style of former Prime Minister Margaret Thatcher, and how she ran her government and disregarded everyone else including her Cabinet Ministers and so on, and she had her little circle.

This is relevant in the context of this case. For us to read out, as I saw yesterday, I watched the contributions on TV yesterday, and for us to say, well, let us read what the Constitution spells out and let us read what the THA Act spells out, and it spells out that the President must set the date and so on, that is not true. That is playing with words. The President of this country cannot, whether it is in the Constitution, Representation of the People Act, the THA Act, he cannot come up by himself and say I am setting this date. [*Desk thumping*] So, read what you want and how you want it, that is misleading the public.

**Madam President:** Sen. Sturge, just be careful about how you are putting things across. All right? Because you are imputing improper motives in respect of a presentation that was made to the Parliament. Okay?

**Sen. W. Sturge:** And let me make it clear I am not targeting the Attorney General, I was referring to another contribution made. But, I agree with what you have said and I will move on.

**Madam President:** You understand Sen. Sturge that the Attorney General is not the only Member of Parliament, there are other Members of Parliament. Okay?

**Sen. W. Sturge:** Well, let me put it this way, for anyone to stand up and read out—whether inside or outside the Parliament—provisions of the Constitution or any other law which seems to give the public the impression that a president in this country can set an election date, that is not correct. There are few instances—and this should be made clear—in our Republican Constitution where the President can act on his own. One, obviously, is displayed when he appoints Independent Senators.

**Sen. Dr. Mahabir:** Good decision.

**Sen. W. Sturge:** Good decision, as Sen. Dhan is saying, and the others would be like in the appointment of the EBC and so on, but there are few instances. There are few instances when he has an absolute discretion, calling of an election is not one, so let us not give the public that impression.

So, when we look at the law, it says the Chief Secretary suggests. The Chief Secretary when we think about it, he is the deputy political leader of the PNM, if I am not mistaken. So, to suggest that the Chief Secretary, then Chief Secretary Orville London, could say, look, I am suggesting this date and I am going to consult the Prime Minister after, I am going to tell him, "Boss man, this is what I come up with".

**Hon. Senator:** They disown him.

**Sen. W. Sturge:** Yes. That does not happen. It must be, even if he writes and he says, well, I am going to—or as he did on the website—"Well, this is the day I have chosen, I am going to tell the Prime Minister after". I would be surprised if that is how it actually occurs. It occurs when he consults first of all, and the Prime Minister says, okay, let us go with this date. So, the Chief Secretary suggested the date, and that is borne out by the correspondence; the Prime Minister agreed; and the EBC said it is in order.

**Hon. Senator:** They confirmed.

**Sen. W. Sturge:** They confirmed it is in order, and now we are seeking to validate an illegality and make it legal. That is something that must never occur again [*Desk thumping*] regardless of whose fault it is.

So, from today let us resolve that we do not use Christmas as an excuse to say, well, it was Christmas time and we were drinking rum and "poncha crema". Let us not use carnival as an excuse to say, well, yes I am 70 years old but I have a 17-year-old to wine on down in Harris Promenade; [*Laughter*] and let us not use Easter as an excuse; and let us not use August as an excuse, particularly when we

have a single role to perform. It is not like the rest of us, things may miss all of us inside of here, because some of us in addition to being Senators, we have other things to do. So, you cannot mess up, for want of a better word, and then come and ask us to fix it. And very well, when we are fixing it, in the process we might miss things too, as we have missed, and Sen. Ramdeen pointed it out, and I would draw attention to a similar clause that was raised some time ago. But when you are validating, and there is a risk that legitimate expectations may arise and rights may accrue, you insert in the Bill a clause to say that no rights will accrue as a result, or no legitimate expectations would arise as a result. You basically negate those rights and legitimate expectations.

I think I have been speaking for more time than I anticipated. So I hope we can bring this to an end. I hope I am the last speaker, barring the Attorney General—

**Sen. Samuel:** No, I am.

**Sen. W. Sturge:** Oh, you are, praise the Lord, sorry. Praise the Lord, he is my colleague. So that we can all get back to our Saturday business of making soul connections and so on. I thank you. [*Desk thumping*]

**Sen. Sophia Chote SC:** Thank you, Madam President. It seems to me that yesterday a storm started brewing and, unfortunately, after looking at the documentation it seems to have been, or it seems to be, a storm in a teacup.

I think what we need to recognize is that all we are trying to say is that there was a bureaucratic error which resulted in the election being placed on one day as opposed to the other. In my respectful view, nobody's rights have been infringed, because anyone involved in the elections in Tobago will have operated under the same difficulty, that is to say nobody got an advantage out of this. Why I stand to speak today though is because I think in this Upper House we ought to make sure that when we speak, we speak about facts. So, one of the facts that we cannot ignore is that on the 14th December, 2016 the Secretary to the Cabinet of Trinidad and Tobago sent a letter to the Chief Elections Officer of the Elections and Boundaries Commission, with the subject matter being:

"Polling Day in respect of the THA Elections"

And I read it with your leave, Madam President, into the record:

"The Prime Minister has agreed that polling day be Monday January 23, 2017 for elections in each of the 12 electoral districts of Tobago as defined in the Schedule to the Elections and Boundaries Commission (Local Government

and Tobago House of Assembly) (Tobago) Order, 2016 (Legal Notice No. 191 of December 9, 2016 refers).

I shall be grateful if you will put in train the necessary procedures and take appropriate action to give effect to the decision of the Prime Minister."

I place that on the record, because much of the storm which was created yesterday was because it appeared that there was considerable finger-pointing at different public officials, and much of it was unnecessary, unwarranted, and untrue, whether by innuendo or by direct language. As an Independent Senator, I will like it to be placed on the record that the innuendo that His Excellency messed up, he had the responsibility to get the date right, he had the responsibility because he had been given a legal advisor, and that this was all his fault is absolutely unfair, untrue, and disappointing. [*Desk thumping*] What was more disappointing was to hear it come from the mouths of persons who I thought knew better. I think though that at the end of the day, even if this Bill is passed and comes into law, the fact is we have to accept that it is likely to be challenged. Because, when I read it and I saw that there was no reference to the standard clause of the—reference to sections 4 and 5 of the Constitution, I realize that this is a piece of legislation which is going to be passed by a bare majority, and therefore it is constitutionally vulnerable.

I pulled up the legislation from section 34, the infamous section 34, and realized that when the entire Parliament, both upstairs and downstairs, had enacted a law and apparently had not fully understood the repercussions of what that law was going to do, the Parliament then got into session and they, by a three-fifths, I think, majority, they corrected the law and they enacted a piece of legislation which became untouchable by the courts. So, I pulled that up for comparison, to see whether what we are doing here today is really going to resolve the issue and put an end to this matter. And, my respectful view—others are likely to differ—is that it is not going to do so. [*Desk thumping*] All, unfortunately, that we are able to do is to say that the election should be permitted to go ahead on the 23rd, as has been declared. And I do not think that that is a very big thing for the Government to ask of the Members of this honourable House. I think we ought to take into account what is going to happen, with respect to the arrangements for the elections on Monday, to the people of Tobago if elections cannot be held on that day. I think we have to take that into account instead of exercising or, you know, using wordplay in the House, and turning this whole thing into some finger-pointing exercise.

So, in my contribution, my very brief contribution today, I respectfully say that I support the Bill, the proposed Bill. I think we should support it because, unfortunately, it was a bureaucratic error. We have to think of the repercussions if we do not support it for the people of Tobago, and I regret that there is not some other way that we could have beefed up the Bill to ensure that whatever outcomes there are from the elections, would not be easily challenged in the courts, but there we are. Thank you, Madam President.

**2.30 p.m.**

**Sen. Rodger Samuel:** Madam President, I too am thankful for the opportunity to be part of this strange debate. Re:

> "An Act to validate the date for the taking of the poll in the election…of the Tobago House of Assembly and for related matters."

There are a few things I would like to point out, Madam President, and that is, the word "validate" sends a strong message to me. It gives the idea that we are asked to recognize or to establish or to illustrate the worthiness or the legitimacy of something. They are asking me as an individual to grant sanction to what we are about. But then one writer said, to validate is to prove that something is based on a truth or fact and that is not just acceptable.

So the question is asked: what are we here for? And likewise, "why are we here?" is tied into that. And if we are to think carefully, Madam President, and I agree with Senior Counsel Sen. Chote, that the language, I sat attentively looking at the television yesterday, as well as Saturday, attentively, and the language appeared to be one of blame.

As a matter fact, Madam President, as I sat there yesterday it reminded me as a young man sitting in the Queen's Park Oval. And in those days of cricket we had exceptional spinners. Raphick Jumadeen, Inshan Ali, those guys when it comes to the game of cricket were masters of the art of spin bowling. And I said to myself while sitting down there, I said, you know if the presenter of this Bill yesterday was a cricketer he would have been added to that list, because I felt as if there was a masterful kind of way of spinning and taking this Act to validate and placing it directly in the crease of the highest person in the land which is so strange.

Because, Madam President, what I found out is that later on in the years of my cricketing experience what we used to do is that we used to study the spin bowlers and we used to read them off the arm and we knew when they were coming with

special types of balls so we could play them and beat them. And I recognized as I sat here I am beginning to read the presenter's spin so that I can play it and I can play it well. And it is no longer the mystery bowler but people are reading it. That now, Madam President, spinning things are no longer easy because people are reading it off the arm.

Madam President, to blame anyone for this may be seen as a mistake, but if we do not find the cause of a problem we can never determine the solution and that all we would be doing is putting a plaster to try to heal it now but we are not too sure if the thing will get worse as we go along.

So, Madam President, the issue of the legality is important because for us to validate it we must be sure that it is based on truth, it is based on fact and it is not just based on finding a quick fix or a quick solution to remedy something, because we know that quick fixes are not necessary, are a sure solution to the problems that we have in Trinidad and Tobago. I too had to go back into the THA Act and the Representation of the People Act in order to sort of re-familiarize myself with the facts that had been presented.

As a matter of fact, Madam President, I took notice of this because I had to sit and listen to the facts presented when this Bill was put before the House and then I had to go back and sort of revitalize my understanding as to if what was being said, how it was being said, how it was being spun, how it was being crafted was now the way it should have been, rather than just come and say look, we found that there was a problem that has occurred and our purpose here is not to lay blame but it is to correct the problem. Easy, easy. That was not said. The spin, Chinaman and googlies that have "confuffled" the minds of the society.

Madam President, the question—and I have a few questions for the hon. Attorney General. We know for a fact that there was consultation at three levels; the Head of Cabinet, the Head of the THA and the EBC. We know that; that is a fact. There was some kind of consultation. But the question was that we take things lightly when we read statements that I have no objection to something. No objection tells me that hear what is going on, what you presented I agree with. That is a fact. No objection means, I agree, go ahead. No objection would then say, I have assessed what you have presented and I find no flaw in it. No objection says that.

But the question is that the head of Government, to declare that I have no objections would have had to now had advice from people who would have examined what was presented to him and based on that advice, then the no

objection letter would have been sent. I have to ask, was the position of no objection made on the advice of the Attorney General? Did the hon. AG then know that it was 23 days since the 14th of December and not 24? And if he did, did the hon. AG who I respect, did he inform the Prime Minister, the Chief Secretary and the President of his findings? If he did, if he did, so we would not have been in this situation today.

Madam President, I was quite puzzled when I received the correspondence from the hon. President, because if I may just read a little part of it, Madam President, to show why I was disturbed, from the Office of the President"

"By letter dated 14 November 2016…"[*Interruption*]

**Sen. Gopee-Scoon:** It was read already.

**Sen. R. Samuel:** I asked permission, please do not disturb me.

"…the Chief Secretary of the Tobago House of Assembly, The Honourable Orville D. London, advised His Excellency the President that in accordance with section"—and I go on and go on that the "…Assembly had been dissolved with effect from 11 November…"

So I said to myself, but to me I saw something different from that, that there was some confusion with the days of the dissolution of the House of Assembly because, and I feel that probably is where the problem started. Because, Madam President, on the Tobago House of Assembly's website dated November 30, 2016:

"Statement—Clarification on false claims about the THA's election date."

I did not write this.

"On many occasions"—if I may quote—[*Interruption*]

**Madam President:** Sen. Samuel, I am sorry, what you were quoting from?

**Sen. R. Samuel:** The THA's website, November 30, 2016. Is it okay, Ma'am?

**Madam President:** Yes.

**Sen. R. Samuel:** "On many occasions, I have chosen to ignore false and misleading informations placed in the public domain by political parties. However, I must respond to the often repeated statement by the Tobago Forwards that, because of influence from Trinidad, the date for the Tobago House of Assembly election could not have been named until after the Local Government election."

I am going to skip now.

> "The Assembly"—by the THA Chief Secretary—"was dissolved on Thursday November 17…"

And I was like, puzzled that on the website the Assembly was dissolved on the 17th, but in the letter the Assembly was dissolved on the 11th. I said to myself, I wonder if that is where the problem occurred, that in thinking about the 17th, then you added days, would have been beyond all of this confusion. So there was a problem with which one to believe, which one was sent to the Office of the President. Could it have been the wrong information? I do not know. There is a possibility that the wrong information was given to the President and based on that we are here where we are today.

So there was a confusion, not a confusion that came as a result of the letters. There seemed to be a confusion on the date of the dissolving of the THA, Madam President. But why are we here today again? We are here today, Madam President, because the President, the THA, the Chief Secretary, the Prime Minister and the fact that the President, Madam President, clearly stated in his letter that:

> "The Office of the President depends on the integrity and surety of information and timelines it receives from the relevant bodies and this process informed the fixing of the date of the writs of elections."

That is clear, that is very clear that:

> "The Office of the President depends on the integrity and surety of information and timelines it receives from the relevant bodies and this process informed the fixing of the date on the writ of elections."

**Hon. Senator:** Who are those bodies?

**Sen. R. Samuel:** Those bodies, Madam President, are clearly defined—[*Interruption*]

**Madam President:** Sen. Samuel you started off with your metaphors about spinning and everything and now you have gone into the letters that have been referred to—you are reading from the letters. But you are also repeating a lot of what has been said by other speakers before you. So I am going to ask you, please, avoid the tedious repetition, okay. So continue.

**Sen. R. Samuel:** And I thank you for your guidance even though I was taught at school that we learn through repetition, Madam President.

**Hon. Senator:** Not here.

**Sen. R. Samuel:** I am talking to Madam President.

**Madam President:** Yes, and Sen. Samuel you know repartee is a lovely thing, but right now tedious repetition as contained in the Standing Orders, I am invoking it with respect to your presentation. So let us try and move forward, please. Thank you.

**Sen. R. Samuel:** No problem, Ma'am. You are in charge.

**Madam President:** Sen. Samuel, please. I do not, that sort of comment is not proper to the Presiding Officer. So please—

**Sen. R. Samuel:** My apologies.

**Madam President:** Thank you and I accept it.

**Sen. R. Samuel:** Madam President, the other question I would like to ask the Attorney General is thus far and I hope he is hearing me, the people who would have voted, those early voters, would have voted in an election that is not validated. What is to happen if they have cast their votes already in an election that is not validated? I think he will clear it up as we go along down the road.

So, Madam President, the issue here is simple and we could have not been here if we had approached it the way it should have been approached and clearly defined the problem simply and say, a mistake is made and we could have been out of here already. Madam President, I thank you. [*Desk thumping*]

**The Attorney General (Hon. Faris Al-Rawi):** Thank you, Madam President. Madam President, I am obliged to respond to the arguments put forward so far by the hon. Senators, all of whom have spoken. I think that Sen. Chote perhaps encapsulated quite succinctly the fact that we are dealing with as she put it, "a bureaucratic error". The use of the word bureaucratic I think is quite appropriate because it involves a bureau or an office and there are several offices that have, certainly, line of authority and passage.

The validation Bill before us is the recommendation specifically of the attorney for the EBC, Mrs. Deborah Peake by way of written opinion to the EBC which has been disclosed to His Excellency, the President and His Excellency, the President has caused communication to emanate from his office and has been sent to the Attorney General's Office for action to be taken. Those are the specific and deliberate words used in the letter which has been read on many occasions so far.

Sen. Mahabir's point that perhaps this thing was something which escaped attention and that Christmas time was a joyous occasion and maybe it just missed someone, has been noted. The Opposition's entreaty involved one of them, please, just stand up and take blame and you are to blame, et cetera, et cetera, to the

Office of the Prime Minister, the Office of the Attorney General, et cetera. But I wish to just underscore that the position of the fixation of the date for polling for the primary election, that is the election date for the primary election as it is referred to in the THA Act, that date is the sole date which has to be referred to in consultation with the Prime Minister and in consultation with the Chief Secretary.

The process is that the Chief Secretary suggests a date. The process is that it is communicated to the Office of the President. The process is that the Prime Minister is written to by the President and the President asks for the Prime Minister's non-objection or views and the Prime Minister communicates that date. The election date itself is the sole source of consultation between those three offices. The fixation of the date for the nomination of candidates is really why we are here. That nomination date was one which is worked out by the Elections and Boundaries Commission, in consultation with the Office of the President.

When those two entities confirm the nomination date one has reference to sections of the law, I will just put it in very simple terms as to how one calculates the time for an election date to be issued in a writ of elections, with the specification of the nomination date. On this occasion here it is abundantly clear by the letter from His Excellency the President's Office to the Attorney General, dated January 19, 2017, that, and I just put this into the record again:

> "The Office of the President had been consulting with the Elections & Boundaries Commission on the suitability and propriety of 3 January 2017 being nomination day and 23 January 2017 as the date for the primary election. The EBC confirmed that same was in proper order."

It is simply within those four corners. It is not for the Prime Minister to interfere with the business of the EBC nor the Office of his Excellency the President, the process to be put in train as requested by the Prime Minister, is work your way back from that date. In working your way back from that date it was open for the month of December to be, the tail end of December to be a nomination date.

Sen. Shrikissoon has come to us with correspondence that none of us have seen, certainly, to give an explanation of his calculation as to the time frame by which the nomination date could have been fixed. All of that is essentially and quite respectfully irrelevant, because the fact is that His Excellency the President's office has stated in black and white at IV on page 2, that the consultation on the legality of the nomination date was had and that the Office of the President and the EBC confirmed that it was in proper order.

Okay, so did they get it right or did they get it wrong? It is arguable at law that there is an unlawful position or an irregularity of one day which can be challenged. That is a fact. I have already stated that no Government by virtue of the operation of the Constitution can involve itself to seek to interfere in the process that we considered by way of lawful operation that we could not get involved in that process. But I will tell you now, having spotted the position, I certainly had discussions with the attorneys-at-law operating in the dynamic and I certainly prepared as Attorney General a validation Bill which I held in reserve. I certainly looked at the options 1, 2, 3, 4 and 5 as I presented them. In option one as I stated earlier, it was to allow the election to go and wait for it to be challenged, because I as Attorney General holding this office presently, I consider that I am estopped from involving myself by way of demanding that the EBC do one thing or the other, but I can tell you I certainly had conversations with the EBC through my attorneys to their attorneys, not directly with them to say look, I am on standby, there are several options.

This Bill was not drafted overnight. This Bill was drafted and sitting in reserve, several options of them. The fact is that sort of approach is what you do to proactively anticipate what may come but you cannot cross the boundaries constitutionally and tell the EBC and tell the Office of the President, from my point of view, that they ought to do something. The line of authority requested was to say listen, you consider what you want to do and when you, Office of the President and EBC consider that you have acted one way or the other and that you wish to take another course of action, please let me know. The Executive will be in a position to take such steps as you consider appropriate. That was the best that could be done. That is why I took care to point out the five options open to us.

Now, I listened to Sen. Mark making a very incredible contribution, full of sound and fury, talking about ineptitude and carelessness and recklessness and demanding all sorts of things and not the first time the PNM dealt with illegalities as he called it, went into certain Validation Acts, including a Validation Act which he said was an illegal—which was an example of PNM illegality cured by a Validation Act, quoting No. 8 of 2010, which Sen. Rambharat clearly pointed out to him.

"Good Lord, please do your homework."

That was your own Government's Act where you sat as Speaker of the House of Representatives and participated as Presiding Officer in the thing which your Government did, but that passed clean over Sen. Wade Mark's head.

**Sen. Mark:** Clean over.

**Hon. F. Al-Rawi:** Clean over, ably assisted by the fact that there was no difficulty in passing over—[*Crosstalk and laughter*] aerodynamically designed construction as he has and I say that to my learned friend, he knows the regard that I hold for him. The fact is Sen. Mark, if your argument, respectfully through you, Madam President, is to be accepted then what you have really said is that the People's Partnership Government, that the UNC which you are a part of, participated in illegality. So it is kettle calling pot black, respectfully.

We went into the position of dishonesty and the statement by Sen. Mark that this Government considers that people do not read and that they are sub-intelligent. I had asked him to read the quotation from the article in the *Express* by Ria Taitt which he dealt with. Sen. Ramdeen then obliged putting eloquently as any good advocate would, the fact of the stress and intonation in the article. For the record, the quotation as read out by Sen. Ramdeen was as quoted. The question asked and the response given by me from that article is:

> "I am quite confident that it is a proper election afoot. The law is available for anyone to challenge it (the election date), but I feel confident that if this thing went to court the propriety of the election would be established..."

You see, it is exactly what I said in relation to the challenge in the 2015 general election. When asked my point of view in relation to that, raised by several others, I said the same thing. Because I was referring and I did not need to read and spell or dictate to an editor how to edit what I am saying, that the substantial outcome of any election petition is that the election will be upheld because the law is absolutely clear: you are looking to see if it is a free and fair election, was the election validly held and notwithstanding a court upholding that there was a breach of the election law in strict sense, that the election would be valid. That is what I meant and still say whether it is in relation to the 2015 general election petition or the comment as asked for by Ria Taitt in the *Express* as quoted in that article.

So I respectfully do not need Sen. Ramdeen to twist the argument, but he is entitled to do it and I respect the fact that he is entitled to do it. What I found absolutely astonishing as a proposition of law which to me is tantamount to a wilful misrepresentation of the law was the argument by Sen. Ramdeen where he said that the law is mandatory—[*Interruption*]

**Sen. Ramdeen:** Point of order. The hon. Attorney General cannot say that I made a wilful misrepresentation of the law. That is clearly imputing improper motive on my part.

**Madam President:** Attorney General, just rephrase what you said.

**Hon. F. Al-Rawi:** Sure.

**Madam President:** Yes.

**Hon. F. Al-Rawi:** I said, and I will rephrase it this way, that I considered the argument as posited a wilful misrepresentation of the law. Perhaps I should put it in another way. Let me remove the word "wilful". I consider it a gross misdescription of the accuracy of the law. [*Crosstalk and laughter*]

**Sen. Ramdeen:** No, Madam President.

**Madam President:** Hon. Attorney—

**Hon. F. Al-Rawi:** When I say gross, meaning wide.

**Madam President:** Hon. Attorney General, please. Sen. Ramdeen has made his contribution. If there are aspects of it with which you do not agree, you can state it in a more respectful manner, all right.

**Hon. F. Al-Rawi:** I will try to find the language to describe how large a mistake of the law that was.

**Sen. Ramdeen:** Madam President, the Attorney General cannot do that.

**Hon. F. Al-Rawi:** Madam President, the fact is—[*Interruption*]

**Madam President:** It was a mistake, please. Sen. Ramdeen if the hon. Attorney General is saying that what you have said is a mistake in the law, he can say that. That is his view. Just—[*Interruption*]

**Hon. Senator:** How he said it.

**Madam President:** Okay. Yes, he has taken off the other words that he had used initially. So he can say it. Continue, Attorney General.

**3.00 p.m.**

**Hon. F. Al-Rawi:** Thank you, Madam President. I do not know why Sen. Ramdeen is so hot and sweaty. I sat and I listened to exactly what he had to say, you know. But anyway—

**Sen. Ramdeen:** You ever do any case?

**Madam President:** Sen. Ramdeen. Hon. Attorney General—let us continue with the Attorney General's winding up. Okay? And let us just continue, Sen. Ramdeen.

**Hon. F. Al-Rawi:** Thank you for protecting me from the whinings of Sen. Ramdeen. [*Crosstalk*]

**Madam President:** Hon. Attorney General—no, listen—[*Crosstalk*]

**Hon. F. Al-Rawi:** I will rephrase it.

**Madam President:** Thank you.

**Hon. F. Al-Rawi:** Can I use the word "howling"? Or "complaints"—complaints of Sen. Ramdeen. [*Crosstalk*] You see, I am certain that I have never done a case for $34 million. I am certain of that. But anyway, Madam President, the large misrepresentation of the law—because Sen. Ramdeen said, "I don't need to go New Zealand. Let meh bring yuh back to Trinidad and Tobago. Let us talk about Bonifacio Mahabir right here in Trinidad and Tobago. The statement of the law is that the timetabling is mandatory not directory." Big point, save he forgot to mention that the case of Bonifacio Mahabir was dealing with an election petition and that the law is prescriptive in the time frames for election petitions, and that the Privy Council has said—and it is *Devan Nair v Yong Kuan Teik* [1967] 2 WLR at 846 per Lord Upjohn: The need for election petitions to be speedily determined is in the public interest, and that therefore there was a strict timeline to be viewed as mandatory for election petitions.

It is not an election petition that we are speaking about here. We are speaking about an election writ, and the election writ comes before polling day. The election petition comes to challenge the election afterwards and to avoid public uncertainty as to who is Government, who is not, election petitions have strict time frames and election writ—the law in relation to election writs is that the timetabling is directory and not mandatory. So he is comparing apples with oranges—

**Sen. Mark:** Not "he", "Senator".

**Hon. F. Al-Rawi:** The hon. Senator. That is a large misdescription of the law and I would be very nervous to take any legal advice from Sen. Ramdeen—very, very nervous. [*Interruption*] And the fact is, how could somebody get that so blissfully wrong? I would like to know. Blissfully ignorant of the law, an argument like that could be, Madam President.

**Madam President:** Hon. Attorney General, I think you have made your point about the particular case, so let us move on now.

**Sen. Mark:** "Ah" think you have a crush on Ramdeen.

**Hon. F. Al-Rawi:** "Nah, nah." You see—

**Sen. Mark:** Sorry, sorry, sorry. I withdraw it.

**Madam President:** Listen, we are almost—we are nearing the end of this. Let us just finish it, please. Hon. Attorney General.

**Hon. F. Al-Rawi:** Yes, Madam President. All crushes aside—[*Laughter*] it is good to bring a little humour into the debate, but I could promise you, some people are not my type. [*Laughter*] I am first of all a very happily married man. [*Crosstalk*] Anyway, Madam President—

**Sen. Ramdeen:** Madam President, is this the level that we are going to descend to?

**Hon. F. Al-Rawi:** Madam President, as I continue, because there is no Standing Order that has been raised.

**Madam President:** Apparently, because I have the Attorney General, Sen. Samuel and Sen. Ramdeen on their feet—really.

**Sen. Ramdeen:** A point of order, Madam President.

**Madam President:** Sen. Ramdeen, please. Hon. Attorney General, continue.

**Hon. F. Al-Rawi:** Thank you. I did not hear a point of order so I continued. Thank you, Madam President. But, you know, people "geh a lil jumpy when yuh giving arguments that demoralize the positions that they come from".

So, anyway, Madam President, the fact is that the submissions that we have heard so far from the Opposition just "doh" make any sense, with the greatest of respect. Sen. Samuel says, do not play the blame game. But maybe he did not listen to Sen. Mark and Sen. Ramdeen because there was a lot of blaming going on there. So I do not know who to listen to. We heard Sen. Mark say he is not prepared to support a particular position—the hon. Senator. We heard Sen. Ramdeen say they are prepared to support a position but he raised an interesting position as to whether there needs to be an exception from expectation clause. And Sen. Chote, in fact, referred to it.

I, too, looked at section 7 of Act No. 15 of 2012 which was the law which the Parliament introduced and passed with a three-fifths majority, to deal with the repealing of section 34. And I will remind that that was ex post facto in that particular case. And there was, indeed, a "no rights" created clause in section 7, of that position. However, on this particular Bill I can say that I would like hon. Senators to look at clause 4 of the Bill, and clause 4 of the Bill says that:

> "All statutory instruments purported to be issued and all acts and things purported to be done pursuant to the writs, before and after the coming into force of this Act, are deemed to be lawfully and validly issued and done to the extent that they would have been lawfully and validly issued and done had the writs complied with the requirements of section 33(3)(b) of the Act."

Now I accept that that is in reference to the writs, but, taking that as a springboard, one has to consider that when we look to this particular argument, the advice circulated by Mrs. Peake SC, which Sen. Ramdeen says he respects, says that the only other option essentially is to consider taking steps to validate as we do now. The fact is, this is to be done by considering the writ itself alone; the 12 writs of election as we do now.

But, particularly, I want to point out, the Bill before us right now does not address any current legal proceedings. There are no current legal proceedings. Secondly, no one in particular is targeted. Thirdly, the result of the election is as yet unknown. It is unknown whether anyone would have been moved to lodge an election petition to challenge the election simply because the election has not been had yet. The persons who are presently complaining about the validity of the writ may themselves win the election and therefore have, if they win, no need to have any recourse to the courts.

The important fact to look at here, if I put it as best as I can, is that the fact that if the writ is unlawful it may give someone in the future a right to challenge the election on the ground that once it is held that it was unlawful. But the invalidity of the writ does not immediately vest any rights in anyone that the Bill seeks to take away. The Constitution does not guarantee anyone the right to have an election conducted in violation of the law just so that they can retain a right to challenge the election in the event it does not go the way he or she expects.

So, respectfully, Madam President, I do not believe that there can prosper a legitimate expectation argument because there has been no vesting of right. Further, all persons who are participating in the election right now are doing so on the same footing: the same nomination day which they all participated in; the same election day which they all expect to be on Monday and the same understanding, as it is now public knowledge, that the House of Representatives has passed a position and that the Senate is being asked to consider one.

But what I find astronomical in terms of the submissions coming from the Opposition is that there is an inconsistency between the Houses of Parliament in

the same political parties that speak. Because, learned Senior Counsel, Leader of the Opposition, has said the opposite of what Sen. Ramdeen has said today. I accept that these are two different Houses, but I wonder, insofar as the public was informed that there was an emergency caucus of the UNC, what exactly would be—

**Sen. Ramdeen:** Madam President, 46(1).

**Madam President:** No. Continue, Attorney General.

**Hon. F. Al-Rawi:** I am wondering insofar as there is public statement all over the news that there was an emergency caucus of the UNC Opposition, what on earth the agreed position is? Because there was a unanimous collection of votes in the House of Representatives. Every single Member of the Opposition in the House voted for the Bill as has been brought to this House today. So what is it? What do we accept? Sen. Ramdeen posited that the primary legislation itself should be amended. He did not go into the details as to how. We are left to wonder about that.

**Hon. Senator:** So we cannot expect you to know.

**Hon. F. Al-Rawi:** But the fact is, Sen. Ramdeen makes statements with no explanation at all, and then when he makes statements, as I pointed out earlier, they constitute very large exceptions to accuracy, or perhaps misunderstandings of the law. So, most respectfully, I take no comfort in any advice that could be offered from Sen. Ramdeen at all.

Now, Madam President, the fact is, if the Government itself, the current Executive sitting as a government, being a political party that is fielding candidates in all 12 Assemblymen positions in the THA election, were to act prematurely without the due process of having His Excellency's Office—the President's Office, and the EBC's office consider and then direct, then we would be walking into constitutional chaos, because people may allege that the Government, or Executive, is exerting undue power and crossing constitutional boundaries that it should not. And as a political party in Government, fielding candidates, we have got to be careful not to fall for the argument coming from the UNC who, by the way, have no expressed candidate in the election in Tobago—if any. I do not know. I did not see anybody with a UNC label appearing for the positions of Assemblymen in any seat.

However, the position is, this country would do well to be extremely careful about taking advice from the Opposition because it is an Opposition such as this, when in government, can proclaim laws and then when in opposition, the same

attorneys-at-law who proclaim the law—as Ramlogan did as AG for Trinidad and Tobago—can end up in court challenging the same law that they proclaimed—a most unusual and startling situation. Proclaim it while in government and tackle it otherwise.

**Sen. Ramdeen:** 46(1), Madam President—46(1).

**Madam President:** Hon. Attorney General, let us continue with the winding up.

**Hon. F. Al-Rawi:** Sure. Thank you. So, Madam President, the relevance of this law that is being considered, this Bill before the Parliament, is really for the bona fides of an election in Tobago. The recommendation coming from the EBC and the Office of the President through constitutional boundaries is very clear. They have asked for a validation Act to confine to the writs themselves.

Clause 4 of the Bill seeks to address the position of where we stand in law in terms of validating certain acts. The Bill is certainly a very proportionate Bill. It does not require a special majority. It is one which is intended to carry out the expectations of everybody in the Tobago election race, that we should have an election on Monday, the 23rd of January, 2017.

Furthermore, failure to pass this legislation would revert us to option one, which is where we would simply have to rely upon the election as validly and fairly conducted, but standing in breach of a rule to be tested by way of election petition. I feel confident that if an election petition came in those circumstances, it would be destined to fail. But I point out and underscore, by way of reminder, that the section 22 argument of the THA Act providing the outside time frame for the carriage of an election is a very real one. If we do not see the passage of this law and, in fact, the assent of this law today, we would be out of time. All that I can ask hon. Senators to do is to express their views by way of votes in support of this particular Bill.

I so beg to move. [*Desk thumping*]

*Question put and agreed to.*

*Bill accordingly read a second time.*

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

*Senate in committee.*

*Clauses 1 to 4 ordered to stand part of the Bill.*

*Preamble approved.*

*Question put and agreed to*: That the Bill be reported to the Senate.

*Senate resumed.*

*Bill reported, without amendment.*

*Question put*: That the Bill be read a third time.

**Hon. Senators:** Division.

*The Senate voted:* Ayes 28 Noes 1

AYES

Gopee-Scoon, Hon. P.

Baptiste-Primus, Hon. J.

Rambharat, Hon. C.

Sinanan, Hon. R.

Moses, Hon. D.

Hosein, Hon. K.

Henry, Dr. L.

Singh, A.

Coppin, W. M.

Cummings, F.

De Freitas, N.

Baksh, Miss A.

Dookie, D.

Stewart, Miss N.

Romano, Miss A.

Mark, W.

Solomon, D.

Ameen, Miss K.

Samuel, R.

Ramdeen, G.

Mahabir, Dr. D.

Roach, HRI

Small, D.

Shrikissoon, T.

Chote SC, Miss S.

Creese, S.

Raffoul, Miss J.

Richards, P.

NOES

Ramkissoon, Miss M.

*Question agreed to.* [*Desk thumping*]

*Bill accordingly read the third time and passed.*

**ADJOURNMENT**

**Madam President:** Hon. Senators, this Senate now stands adjourned to Tuesday, January 24, 2017 at 1.30 p.m.

*Senate adjourned accordingly.*

*Adjourned at 3.24 p.m.*