

**SENATE**

*Saturday, August 29, 2020*

The Senate met at 10.30 a.m.

**PRAYERS**

[MADAM PRESIDENT *in the Chair*]

**COVID-19 SAFETY MEASURES**

**Madam President:** Hon. Senators, I have today advised the leaders of the benches and the coordinator, through the Clerk of the Senate, that in our continued efforts to provide a safe environment to conduct parliamentary business, further COVID-19 safety measures have been adopted by the Parliament, specifically in this Chamber and in keeping with the World Health Organization guidelines. These arrangements are as follows:

Effective immediately, all Senators will be required to make their contributions at their desk and keep on the face masks while so doing, and the number of persons permitted in this Chamber at any one time shall be 28 which includes eight Government Senators, three Opposition Senators, four Independent Senators, and the rest comprising the staff of the Parliament. Members are reminded that pursuant to Standing Order 9(1), the quorum of the Senate is 10 Members, excluding the Presiding Officer. To facilitate the COVID-19 safety measures previously referred to, we have provided suitable accommodation for Members throughout this Parliamentary Complex. These areas include the offices assigned to certain Members, the

Members' dining room, Opposition and Government caucus rooms and the meeting rooms on level two of the Cabildo building. Television screens or computers have been placed in these spaces so that Members can monitor the proceedings in the Chamber in real time. In addition to those spaces, Members are free to utilize the various lounges throughout the building. Hon. Senators, in the event that the division is called, Senators will be asked to return to the Chamber within a maximum of three minutes for the conduct of the division. In accordance with general practices, should the Clerk pass a Senator not in the Chamber during the usual voting sequence, he or she will be called upon to vote once present in the Chamber before the results of the division are announced. Hon. Senators, I thank you in advance for your cooperation.

### **PUBLIC HEALTH (AMDT.) BILL, 2020**

Bill to amend the Public Health Ordinance, Ch. 12 No. 4, to make provision for fixed penalties and fixed penalty notices for offences under the Public Health Ordinance, Ch. 12 No. 4, brought from the House of Representatives [*The Attorney General*]; read the first time.

*Motion made:* That the next stage be taken at a later stage of the proceedings. [*Hon. F. Al Rawi*]

*Question put and agreed to.*

### **ARRANGEMENT OF BUSINESS**

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

**The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan):** Madam President, I seek your leave in accordance with Standing Order 112(1) to move a Motion for the suspension of Standing Order 43(1) given the fact that we are still in the midst of a pandemic.

**Madam President:** Hon. Senators, leave is hereby granted. Leader of Government Business.

**Sen. The Hon. F. Khan:** Thank you, Madam President. Madam President, I beg to move that during the period of the current pandemic that has impacted Trinidad and Tobago, that this Senate suspend Standing Order 43(1) in order for the time limit for speeches in debates to be limited to 30 minutes for the mover, Member wrapping up and the first speaker on the Opposition and Independent Benches, and 20 minutes for all other speakers.

**Madam President:** Sen. Mark, I have to put the Motion.

*Question put.*

**Sen. Mark:** [*Inaudible*]

**Madam President:** Well, Senator Mark, this is a Motion that does not require a debate.

**Sen. Mark:** [*Inaudible*]

**Madam President:** Well, at this stage, the time for the discussions, it has reached the stage of the Motion, so we proceed with the Motion.

**Sen. Mark:** [*Inaudible*]

**Madam President:** Sen. Mark, I am not understanding what you are seeking.

**Sen. Mark:** No, you put the question—

**Madam President:** Yes.

**Sen. Mark:**—and we said no, and then I intervened to ask you to allow me to say a few words on this matter. You told me it is not allowed—

**Madam President:** So, you have said no—

**Sen. Mark:** So I am simply saying I am—*[Inaudible]*

**Madam President:** You are calling for division. Division.

**Sen. The Hon. F. Khan:** No, it is three minutes you have to wait.

**Madam President:** Based on my ruling and my announcement earlier, I will await the three minutes and so, we will begin at 10.40 to take the division.

**Madam President:** You have to wear your mask, you have to wear your mask. You have to wear your mask.

**Sen. Mark:** Madam President, I am saying in light of the position advanced a short while ago by your good self, is it possible that the leaders of the various benches, coordinator, have a meeting with you to discuss this matter before it is implemented? If you could suspend that decision?

**Sen. The Hon. F. Khan:** Sen. Mark, this is a health—a public health matter.

**Sen. Mark:** No, I am asking the President—

**Sen. The Hon. F. Khan:** It has nothing to do with—

**Sen. Mark:** I am not speaking to you. I am speaking to the President.

**Madam President:** Members, at this stage, the Motion has been put. Procedurally, we are now going to proceed with the division. We have exactly three seconds and the division is going to commence.

*The Senate divided:*      Ayes 17      Noes 13

AYES

Khan, Hon. F.

Gopee-Scoon, Hon. P.

Rambharat, Hon. C.

Sinanan, Hon. R.

Hosein, Hon. K.

West, Hon. A.

Browne, Hon. Dr. A.

Mitchell, Hon. R.

De Freitas, N.

Cox, Hon. D.

Singh, Hon. A.

Sagramsingh-Sooklal, Hon. R.

Bacchus, Hon. H.

Lezama-Lee Sing, Mrs. L.

Bethelmy, Ms. Y.

Welch, E.

Richards, P.

## NOES

Mark, W.

John, Ms. J.

Lutchmedial, Ms. J.

Nakhid, D.

Lyder, D.

Roberts, A.

Vieira, A.

Deyalsingh, Dr. V

Deonarine, Ms. A.

Seepersad, Ms. C.

Teemal, D.

Thompson-Ahye, Mrs. H.

Dillion-Remy, Dr. M.

*Question agreed to.*

**Sen. Mark:** [*Inaudible*]

**Madam President:** Sen. Mark and hon. Members, I am not going to allow us to start off today on any footing, but on the footing of following the Standing Orders and proceeding with the business of this Chamber today.

**10.45 a.m.**

**PUBLIC HEALTH (AMDT.) BILL, 2020**

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

That a Bill to amend the Public Health Ordinance, Ch. 12 No.

4, to make provision for fixed penalties and fixed penalty notices for offences under the Public Health Ordinance, Ch. 12 No. 4, be now read a second time.

Madam President, the Bill, as amended in the House of Representatives, comes before this honourable Senate in circumstances where it is highly unusual that the business of Parliament is:

- (a) firstly ever called in the month of August;
- (b) where the Standing Orders provide, generally, that the recess period ends by the end of the first week of September in a normal session; and
- (c) the day after the proclamation of Her Excellency the President to convene the Parliament and, lastly, on a Saturday.

All of these indicators demonstrate the gravity of the material before us and, certainly, that gravity is to be founded in the knowledge that we are dealing with a global pandemic. It is for that very reason that, a moment ago, we suspended the Standing Orders and adjusted the time frame for speaking, because the reality is that this is not business as usual.

In those circumstances, the Bill before us, comprising four clauses, treats with an amendment to the Public Health Ordinance. The Public Health Ordinance is the law of Trinidad established to treat with matters, in general, affecting the health and wellness of a

country, in circumstances set out by Ordinance No. 15 of 1915. We are, therefore, dealing with law that is 105 years old. The Public Health Ordinance itself which we seek to amend by this Bill, is something worth reading and I recommend to all hon. Senators—*[Interruption]*—Madam President, is there a Standing Order? Madam President? Sorry, it is highly unusual to see a Senator just stand up and scream across the floor as Sen. Mark has just done.

**Madam President:** Continue, Attorney General.

**Hon. F. Al-Rawi:** Thank you. Madam President, the Public Health Ordinance which I am surprised to hear Sen. Mark say he does not have, because we have amended the Public Health Ordinance on, at least, one previous occasion in March 2020. So I find it surprising that the hon. Senator does not have his copies provided then. But, Madam President, this Public Health Ordinance which is now 105 years old has in it littered elements of our own history. And I refer you to the definition section in section 2 of the Public Health Ordinance, where we still see the term “Barrack”. We see the term “Common lodging house”. If you look to the definition of a “Barrack”, Madam President, you will see it:

“...includes any building or collection of buildings divided into rooms occupied singly or in sets by persons of the poorer class and to which there are a common yard and common conveniences.”



In the “Common lodging house”, again, you see the reference to the poorer class and people who just spend the night at a place in lodging, and these are literally elements, definitional elements, from our own history as a country. And I say that knowing very well that we are coming upon the celebration of Independence on this weekend’s march.

Madam President, it is in the Public Health Ordinance that we see two very important definitions, that is, the definition for “Infectious Disease” and, importantly, a definition for “Dangerous Infectious disease”. “Dangerous Infectious disease” is defined to mean:

“...Yellow Fever, Small Pox...Cholera, Plague...and any other”—infectious—“disease which the Governor...”  
—by proclamation under section 103 declares to be a dangerous infectious disease within the meaning of the Ordinance.

It is important to bring to the attention of hon. Senators the fact that pursuant to section 5(5)(b) of the Constitution and also, when we look at section 3(1) of the Existing Laws Amendment Order, No. 8 of 1962, that:

Any—“...reference in any...law to...”—the word, the expression— “Governor...shall be read and construed as a reference to...Governor-General.”

And it is the Constitution at section 5(5)(b) of Chap. 1:01 which says that:

“any reference to...Governor-General shall be...a reference to the President;”

So when we are looking at the Public Health Ordinance and we see the reference to “Governor” it is, in fact, to the President.

Pursuant to our constitutional arrangements, the President acts in certain circumstances in our Republican Constitution either in own discretion, if the words are so expressly set out, either in consultation if those words are added in or when you see the President in a non-combined effect in the Constitution i.e. standing alone, “President” means the Cabinet of Trinidad and Tobago.

So this dangerous infectious disease is one which can be by proclamation made under section 103 by the Cabinet. The Cabinet, in fact, Madam Speaker, takes the step—sorry, Madam President, takes the step, advises Her Excellency the President of our dangerous infectious disease through the CMO advising the Minister of Health, the Minister of Health advising the Cabinet, Cabinet making the decision and then the President executes a proclamation. That proclamation, for the record, was made on 31<sup>st</sup> of January, 2020, under the hand of Her Excellency the President on the recitation of the words coming from the World Health Organization as to what the novel coronavirus virus—the COVID virus is, in fact, as defined in this Legal Notice, No. 11 of the 31<sup>st</sup> of January, 2020.

The law before us, Madam President, which we seek to amend now in this Bill, in these four clauses, the first clause is, of course, the

short title; the second clause is the interpretation which says, this Act means the Public Health Ordinance. Clause 3 and clause 4 are the substantive clauses. In clause 3, we seek to amend the section of the Public Health Ordinance where the penalty lies for a breach of regulations.

So, when one has regard to section 105 of the Public Health Ordinance, 103 having been triggered, a dangerous infectious disease having been triggered as is COVID-19, 105 says, the board—and in reference to board by way of an amendment in 1965—it is No. 1610 of 1965, any reference to board is to be construed as a reference to the Minister.

Section 105 which we seek to amend says, effectively, in subsection (1) that the Minister shall have direction of all measures dealing with dangerous infectious diseases and to make any regulations with regard to the control of any dangerous infectious disease, and then a suit of remedies are set out in section 105, including that the Minister may make regulations for the prevention of the spread of dangerous infectious disease as well as on seas and rivers, et cetera. So, it is a very wide ambit permitted in law to the Minister of Health to manage the regulation.

The board shall have powers and it shall be exercised by the Governor in council. The Governor in council is referenced to the Cabinet. The Cabinet has to agree upon these regulations and Her Excellency the President has to sign off or confirm the regulations

pursuant to section 167 of the Public Health Ordinance. We are seeking in clause 3 to amend subsection (3), and subsection (3) is where we had the description of the breach of a regulation. Prior to amendment a couple months ago, the original law said that a breach of any regulation shall be attracted with a fine not exceeding \$480. Stick a pin. We amended that in the last Parliament. This Senate with many Members still present amended that to \$50,000, and we kept the six months. Now, what does that mean in summary, Madam President? It means that a breach of the regulation in law is met with an arrestable offence, meaning you are under this ambit, if you breach a regulation, a policeman has to meet you with the breach, charge you, take you down to the station, go through the usual processes of inviting bail at the station or taking you before a magistrate where the matter is dealt with, et cetera.

What we seek to do in clause 4, Madam President, is to introduce an alternative route for the treatment of a breach of the regulations and that alternative route that we seek to do is to introduce a fixed penalty notice system. Now, the concept of a fixed penalty, Madam President, is well known to our laws. We have it in the Dangerous Drugs Act. We—Madam President, may I ask, what is going on please? I am very distracted by Sen. Mark walking up and down the aisle.

**Madam President:** Attorney General, if you would just focus on me, you would not be distracted. Please speak to me. Sen. Mark is dealing

with an issue that I just spoke to him about. Yes?

**Hon. F. Al-Rawi:** Thank you. It is very unusual, Madam President. Madam President, clause 4 seeks—*[Interruption]* Madam President—*[Crosstalk]*

**Madam President:** Continue, Attorney General.

**Hon. F. Al-Rawi:** Thank you, Madam President. Madam President, clause 4 seeks to introduce the fixed penalty system procedure. As I was saying, the concept of a fixed penalty is not alien to our laws. In a fixed penalty system, we can find examples in the Litter Act, in the Motor Vehicles and Road Traffic Act, in the Dangerous Drugs Act, just to name a few. In this fixed penalty route, we allow for an adoption of a system which has been brought into modern reflection and we, first of all, set out in the eight subsections that we are adding in—the eight new proposed sections that we are adding in, via clause 4, we set out the formula for the operation of a fixed penalty system. We, of course, have a definitions aspect which is now certain. The definition of clerk, court, fixed penalty, the notice, the proceedings, the rules of court, et cetera, and then we set out that:

“where a police officer has reason to believe that a person is committing or has committed an offence under section 105, he shall issue a person with a fixed penalty notice...”

I would like you to note that that construction of language, “reason to believe”, et cetera, comes literally out of the motor vehicles and road traffic formula that we have used, and we have used this

repeatedly across the laws of Trinidad and Tobago and so we kept with consistency. We then also allow for a system of having the ability to deal with the fixed penalty notice. You attend before the court or you do not, you agree to pay it. If you are going to pay the fixed penalty fine, you have two options. You can go what we called the old hand route, which is to pay the clerk at the district.

I now remind that in Trinidad we have three districts. We have north, south and Tobago, and we have three districts because we have introduced into law the transferability of matters. We did that as a Parliament in several of our laws in the last Parliament. It is to allow for someone who is charged in Rio Claro to actually pay a ticket in Tobago. That is done by way of a decentralized process across TTPost, et cetera. It is tagged into the CourtPay system, the payments into and out of court legislation which we did in 2018, and that is reflected, Madam President, when you notice that the Bill itself in section 105C as it is proposed, subsection (2) reflects upon both of the methodologies for payment. That electronic payments into and out of court system has worked in a robust manner. It was fully proclaimed and put into operations on May 26, 2020, and that system is very alive and working extremely well.

In the Bill as well, Madam President, we allow for the fact that you have the choice to pay for the fixed penalty, but you can also appeal it once paid, and that is to be found in the proposed section 105A(6), Now, there were some concerns expressed in the House of

Representatives. Some Members were quite bold to say that nowhere in the Commonwealth this exists and nowhere in our laws this exists, and I would just like to remind hon. Senators that this system not only exists in the Dangerous Drugs Act which we did in November last year and December last year and passed as a Senate after significant discussion, but it is in effect and working well.

So, therefore, whilst we have the ability to contest, which is clearly preserved, if you do not pay the penalty, you end up before the court, you can contest it in the usual procedures. The law allows for the issuance of a summons in a deeming fashion which is known to our formula of laws. Whilst you have the ability to contest, you also have the ability—and I am going to use a civil law concept—of paying without prejudice and then dealing with your rights in a prescribed form which is already in existence under the Dangerous Drugs Act and just needs to be modified. So I wanted to take that issue upfront because I heard speaker after speaker on the Opposition Bench raising that concern yesterday. I was quite surprised because the very speakers that were involved dealt [*Interruption*] with the issue in a slightly different manner in a different place.

**Madam President:** Sen. Mark, are you invoking a—

**Hon. F. Al-Rawi:** Madam President—

**Madam President:** Attorney General. Sen. Mark—

**Sen. Mark:** No, on a point of order.

**Madam President:**—are you invoking a Standing Order?

**Sen. Mark:** No, on a point of order, Madam President.

**Madam President:** And which is?

**Sen. Mark:** I am dealing with 46(1) in the context of the Attorney General. He is referring to a debate in the other place and referring to Members of the Opposition. That clearly—

**Madam President:** Sen. Mark, yes, thank you. Attorney General, continue please.

**Hon. F. Al-Rawi:** Thank you, Madam President. Madam President, what time is full time, please.

**Madam President:** Thirteen minutes past 11.

**Hon. F. Al-Rawi:** Thirteen?

**Madam President:** Yes.

**Hon. F. Al-Rawi:** Much obliged. Yes, Madam President, I was saying that insofar as that issue has arisen, it deserves some reflection upfront in the context of where the precedent for law exists, because obviously one of the concerns that hon. Members will no doubt have is, can you operationalize this system? Are there procedures in place to make this work? Now, let us go to why we are choosing this formula, Madam President.

The Public Health Ordinance has been with us, as I said earlier, for 105 years. Anybody that has operated a restaurant, a bar, et cetera, you would know of the Public Health Ordinance. It is a landmark cornerstone of the local government system. It is what managed our water and sewer up to a particular point when that was removed out of



the Ordinance and taken into the WASA Act, et cetera, but it still is, commendably so, a very robust piece of law, notwithstanding its historical, how should I say it, virtues. But if we were to look at operationalizing this via the, “I must arrest you” procedure, that is where you are going to end up in an operational failure, because if one considers that we have 1.3 million people in Trinidad and Tobago, and you look to enforce the management of mask wearing and you say everybody that you see you must take down to the station and go through the processing at court, that is going to be an extremely difficult structure. The two alternatives that exist are also worthy of mention if only by way of discount.

In our Constitution, in section 8 of the Constitution, the Republican Constitution, obviously, the concept of—as it is reflected—the declaration of a public emergency which may have arisen as a result of earthquake, hurricane, flood, fire, outbreak of pestilence or other infectious disease, that is found in section 8(2)(b) of the Constitution. So, yes, it is open to declare a public state of emergency, but in the declaration of a public state of emergency, you are going to find yourself with the suspension of constitutional rights, and then there is a whole severity in that context. So that one was discounted by the Cabinet as an option to manage the general COVID pandemic and why it is we selected the Public Health Ordinance route.

Secondly, one had the opportunity to consider the Disaster Measures Act, Chap. 16:50, Act No. 47 of 1978. But there was a limitation in the law which presented itself, because even though you can have a disease measures operation, it is (a), firstly confined to an area declared to be in disaster in Trinidad and Tobago. And in Jamaica they had the experience of having to amend that law to use their disaster measures Act because they wanted to have the ability to declare the entire island of Jamaica as a disaster zone and that is not permitted unless we amend that law. But, secondly, there is a limitation in that law, because in section 6 of the Disaster Measures Act, a person who suffers loss or damage by reason of the exercise of powers must be paid by the State and that, therefore, raises a hornet's nest, because obviously in the COVID structures, the ability to compensate the severity of this economic impact is something that you have to think about extremely carefully and elect alternative remedies in respect of.

So, Constitution declaration of state of emergencies is out, use of the Disaster Measures Act is out, Public Health Ordinance is robust and still available. I will say now, Madam President, that the constitutionality of the regulations has been challenged. My friend opposite to me, whom I welcomed and compliment at being elected, Sen. Lutchmedial is well aware of these matters. Without traversing the matters, I will just simply say that there has been challenge. It is worthwhile for us to consider that in a court of law. We will no doubt

get a position on it but for now, the Public Health Ordinance is the most robust and flexible methodology to use.

Now, let us get to the golden question, mask wearing, because this law has been touted as the enforcement of mask wearing. Clearly, it is not the specific law to cause mask wearing and to deal with it. What it is, is the creation of a formula for fixed penalty systems. Now, you would note, Madam President, that there is clause 3 of the Bill and alongside with that, clause 4. Clause 3 has the fixed penalty moving up—sorry, has the fine moving up to \$250,000 and six months, away from \$50,000, and then when you look to clause 4, section 105H(c), you would note that the Minister may from time to time amend an order, and that is an order by order amend a schedule to the regulation, but there is a cap for the fixed penalty.

The cap for the fixed penalty there is \$20,000 and permit me a moment to explain the difference between the \$250,000 and the \$20,000. You see, Madam President, in the fixed penalty system, we are dealing with, for example, mask wearing and let us use another example, the concept of self-quarantine. Now, the Quarantine Act allows you to be quarantined on entry into Trinidad and Tobago. The concept of self-quarantine, we are all talking about it, but how do you enforce it at law other than voluntarily? One of the methodologies is to use the Public Health Ordinance, because section 105 says that you can actually segregate people and treat with the dangerous infectious disease under the Public Health Ordinance and, therefore, we have in

this fixed penalty construct, the ability to treat with mask wearing as an example and also, self-quarantining as an example. But, obviously, the scales for those penalties need to be adjusted.

So, we are looking at, in the example of mask wearing, the process will be as follows. You already have the dangerous infectious disease so declared, January 31, 2020. You will have a regulation issued under section 105 of the Public Health Ordinance. Under section 105, the regulation will specify you shall wear your mask, it shall cover your nose, your mouth, your chin. There shall be that mask wearing in public by way of example. There will be exceptions in the regulations; children under five years old, people with physical or underlying medical conditions, et cetera, et cetera, where the construct is designed so that they are in a specialized place that they do not need to operate with mask wearing. All of the usual things that you see across the jurisdictions in the Commonwealth are going to be put into the regulations.

In the regulations, with this law, we would then say, if you do not wear your mask that you be subjected to a fixed penalty notice system and that fixed penalty notice system is proposed to be, first offence, \$1,000; second offence, \$2,000; third offence, \$5,000 and after that, you jump to clause 3 of the Bill where you are exposed to a maximum of \$250,000. I remind as a concept of law that is just a maximum ceiling expression of law under which the law operates. You may be reprimanded and discharged with no consequence. It may

be zero dollars and zero cents with nothing happening to you, but that is the criterion that is used. Obviously, we are going to have to look at the mens rea or mental intention aspect of the offence set out in the regulations. Is it wilful? Is it reckless? Do you have a lawful excuse? All of the vicissitudes that you can think of.

What the law proposes in that regulation is that in a Schedule to the regulation, you will set out for ease what the fixed penalties look like. That is where the \$1,000, \$2,000, \$3,000 will be set out, for example, for mask wearing and to allow for the regulation to continue to operate without having to revoke the regulation and put it back in which has dynamics that affect when you are being charged, but if you were charged under the regulation and it was revoked, does your charge still continue? While some of us may be clear on the law in relation to that, there may be arguments in relation to that. To allow for the penalty to be adjusted, the law proposes that the penalty in section 105H, as you would see in subsection (c), that that limit can be adjusted by way of Order. Is that permitted? There are umpteen examples in our laws where that is permitted.

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

**Hon. F. Al-Rawi:** Much obliged. Obviously, we are using the concept of subsidiary legislation. Subsidiary legislation is well known to us, a parent law exists. You have a subsidiary law that is created that could be regulations, statutory instrument, orders, whatever they may be, but the proportionality is preserved. The constitutionality is

preserved. Because if we were to allow that fixed penalty to be too high, by way of order, then you are going to be running into the concept of excessive criminality which has been determined by the Privy Council and umpteen other dicta from other courts to be a danger zone in terms of proportionality and, therefore, constitutionality. So to preserve constitutionality, we have squarely capped section 105H(c) to a limit of \$20,000 for these fixed penalty positions. If you want to adjust that \$20,000, you have to come back to both Houses of Parliament, move the law in the process of Bills, moving into legislation to deal with that. So there is full parliamentary scrutiny.

To assure hon. Members and the listening public as well, the concept of review and the concept of check and balance and due process is preserved, because obviously the courts are the interpreters of the law. And in our democracy, as it is structured, looking at the Executive, the Legislature and the Judiciary, we have the safeguard of due process, as you find yourself before the court. We have preserved the ability to pay without prejudice, to contest in the usual fashion. We have allowed for the public good to be looked after.

We are in community spread and, therefore, it is incumbent upon the Legislature and the Executive to act with certainty to protect the public good. So there is a legitimate aim. The measures which we are entertaining are rationally connected to that legitimate aim and we are proportionate within the democracy such as Trinidad and Tobago,

within the understanding of the words set out in our Constitution that these laws are known to us. We are also within the concept of section 53 of the Constitution where we are bound to make laws for the peace, order and good governance of our society.

So, from a whole of law perspective, a constitutional realm, a due process realm, a known rights realm, I am satisfied and I, therefore, make the submission to this honourable Senate that we are well within the parameters of law, not only because we have umpteen precedents in our own laws, but because the international comparative context demonstrates that in the Commonwealth and even in the civil law jurisdictions, there are umpteen precedents basis that we can point to, to demonstrate the rationality of the measures before us.

So, Madam President, those are my submissions in relation to the Bill before us. I thank hon. Senators for their attention. I am sure that there will be many questions which we will entertain, no doubt, not only in the course of debate, but in the course of reply and, certainly, in the amplified time that we have been exercising at committee stage. It is at committee stage that we really work out the bugs and the breadth and length of the law that we are treating with. So, Madam President, with those words, again, I express congratulations to all hon. Senators at their appointments. It is a pleasure to be back in this Chamber with you, and I beg to move.  
[Desk thumping]

*Question proposed.*

**Sen. Jayanti Lutchmedial:** Thank you, Madam President, for recognizing me and permitting me to join this debate on this Bill which seeks to amend the Public Health Ordinance. Permit me to thank my Senate colleagues for the warm words of welcome which were extended yesterday at the ceremonial opening and today by the hon. Attorney General. It is my sincere hope that the time that I spend here I would be able to add some value to the debates and that I would utilize some of the knowledge that I have acquired through my professional experience to add value to these very important matters that are up for debates before us.

It would be remiss of me not to thank my hon. leader, the hon. Leader of the Opposition, Mrs. Kamla Persad-Bissessar for giving me this opportunity to serve both my country and my party. Mrs. Persad-Bissessar has held steadfast to her commitment to developing younger persons, especially young female leaders, and I am extremely honoured and privileged to have even been considered and more so selected by Mrs. Persad-Bissessar to have this appointment being made.

Madam President, I have been very fortunate. In my life, I have had the benefit of a good education and I believe that to whom much is given, much is required. I live a very comfortable life, but the fellow citizens of this country have suffered a lot because of this COVID pandemic, and because of that, they are gripped with fear, inconvenience and every day we hear about the plight of citizens. So I



want to say upfront that I support, not only mandatory mask wearing, I support any legislative measure that will enforce the precautionary measures that we are taking to try to curb the spread of this deadly virus.

So on that note I was extremely happy post-election to hear the hon. Attorney General, the hon. Minister of Health and even the hon. Prime Minister say that face mask legislation would be brought to the Parliament to make mandatory wearing of face masks, that that law would be brought to the Parliament.

**11.15 a.m.**

But, Madam President, what we are faced with here is not a law that was being brought to Parliament for scrutiny that would make face mask wearing mandatory. What we are faced with is a Bill amending the Public Health Ordinance, and it amounts to a blank cheque that we are being asked to sign off on. Parliament has no input into the nitty-gritty of this mask-wearing legislation. It is being done through subsidiary legislation and amendments to the regulations which are going to be made by one member of the Executive.

Madam President, what is being proposed is merely a system to fine persons and to enforce a penalty system. That does not address the problems that we are facing right now with this COVID-19 pandemic. It seems that the accountability and the scrutiny and the oversight of Parliament with respect to these measures is being avoided by the Government.

Madam President, I am not in support of draconian measures, and it is draconian. I am not saying it is not necessary. It is extremely necessary to have mandatory face mask wearing legislation. But I am not in support of those measures being introduced through subsidiary legislation. [*Desk thumping*]

I cannot sit back and watch that. The hon. Attorney General has spoken about a 105-year-old law, does not mean that it is beyond scrutiny. [*Interruption*]

**Hon. Al-Rawi:** It is a caution. It is genuinely—

**Madam President:** The Attorney General is asking for—

**Sen. J. Lutchmedial:** I will give way.

**Hon. Al-Rawi:** I am so sorry, hon. Senator. I just mean this in the best way possible. Usually there is a system where we declare a conflict of interest if you are involved in matters. I do not know if you are involved in litigation per se which affects these matters, and it would be wise if that is the case, you are entitled to speak, but in case you are, you must declare the conflict.

**Sen. J. Lutchmedial:** Madam President, the Attorney General beat me to it. And in another place I was listening to the debate yesterday, went so far as to say that I was involved in matters before the court seeking to strike down the regulations, and that is completely untrue. That is not the case. I am aware, as I am aware of many matters filed before the courts. I am aware that there are matters in which persons seek to vindicate the violation of their rights, as they say, through the

courts, as they are entitled to do. But the hon. Attorney General decided to come to the House yesterday and said to the Leader of the Opposition that one of her Senators sitting in the Opposition Bench is involved in litigation—and that is completely untrue—to strike down the whole of the regulations.

But as we are on that point please, Milady—Madam President, forgive me if I say “Milady”, it is a force of habit. I do apologize. I will get the gist of it. But, Madam President, as we are on that point this is important legislation. We want a system in place that makes it mandatory to wear face masks. You are bringing this very important piece of legislation through regulations which you know are under challenge. You are well aware of it.

Rather than try to find a way to bring the legislation before this House and to work at this, this is legislation that the Opposition has asking for, for months. For months they said that, before Parliament was prorogued, the Opposition this is necessary bring it to the Parliament. [*Desk thumping*] You come now with this wishy-washy piece of legislation and say that, okay we will amend the regulations. You tell us that we can do this, and we can implement fixed penalty notices and we will go off and do it on our own. We do not want the input of the Opposition and the Independent Benches. So that the Opposition and the Independent Benches are being deprived of the opportunity to debate and to scrutinize and to say what constitutes a face mask.

I saw one of the hon. Senators with the face shield. I do not know if you are aware, a lot of people have a difficulty speaking and wearing these types of masks and so they prefer to wear the face shield.

Again, I make no apologies please, Madam President, for the work that I do. It is very important work, and a lot of my work involves people who feel that their rights are being violated by various arms of the State. I have been a champion in the courts for human rights and human rights violations. [*Desk thumping*] That is why I feel confident to stand here today and say that it is wrong for the Government, and it is the wrong approach for the Government to take, to come and try to introduce measures such as these through regulations.

If the courts, and these matters, and I do not know want to get into them, and I do not know why the hon. Attorney General insists on speaking about matters which are before the courts, and talking about who is representing and who is not representing. The hon. Attorney General has a habit of talking about the UNC lawyers. I do not know what is a UNC lawyer. I am an attorney at the Bar, and as the titular head of the Bar it is most unbecoming for the Attorney General to criticize certain lawyers for doing the work that we do.

Lawyers do not file cases. Lawyers advocate on behalf of their clients, and we are retained to do that. That is our job, that is our function. I do not know if nobody ever retained the Attorney General

and maybe that is why he is not familiar with how it is dealt with. That is how 99 per cent of us that is how we function, that is what we do. Not sitting on a bank panel waiting for work to fall on our lap. We go out there and we take up the cause and we fight on behalf of the people who feel that they are being taken advantage of, or that their rights are being infringed.

So, Madam President, when we come here now and we look at the measures and the things that ought to be put in place, we see that we are not being part of that process at all. We are not being included.

So what type of mask would be acceptable? Who has to wear the mask and where you must wear this mask? What is the process and the procedure by which you can get an exemption from wearing a mask? Are you going to tell people, well you have to go to a doctor, get a medical? How you go about it? Do they have to incur a cost? Do you know doctors charge people for seeing them and giving them a medical report to say that they cannot wear a face mask for whatever reason? Are you going to put those burdensome requirements on the population, a population that is suffering, a population that is suffering because of this pandemic? And not because of the pandemic, but because of the mismanagement of the pandemic by the Government. The economic hardship that people are facing in this country right now falls squarely at the foot of the Government, because they have not managed the economics properly. They have not secured the borders and they have acted too late.

This coronavirus horse bolted from the stable a long time ago, too little, too late. It did not just bolt and now you are trying to close the door. “It bolt, it make about three lap around Trinidad and two in Tobago and it come back now, and now you are trying to close de door in de stable?” And now you are coming to say, okay, well we will make face masks mandatory , after you all said there is no need to wear a face mask. “Bus up ah jersey and tie it up, dis, dat, we doh need this, we doh need dat. Well we going to use moral suasion, and da, da, da, da.” Pussyfooting around the issue for months, for months, and now they come to try to mamaguy the population post-election, and say, “Okay, we bringing face mask legislation.” “You ent bring no face mask legislation to this Parliament.” You have not brought face mask legislation to this Parliament, and it is most unfortunate that this is the mechanism by which the Attorney General would choose to try to deal with such a serious matter.

Madam President, the fact that the Public Health Ordinance is saved law does not mean that the regulations and whatever measures are introduced in regulations cannot be struck down for being “non-constitutional”.

The Attorney General made a comment yesterday in another place and said that, “20 cases and dey lossing all”, about regulations. Well, I do not know how he knows “we losing all”, none of these cases have been determined. So I do not know how he could make that statement. All of those cases are engaging the attention of the

court right now, and I am not going to get any further into them. But I do say it is not proper for an Attorney General to make statements such as that. He likes to do that.

You know, I remember the last time we were—

**Madam President:** Sen. Lutchmedial, I am very reluctant to interrupt you in your maiden contribution, but there is a convention. In the same way that no one is interrupted during their maiden contributions, that in your maiden contribution you not raise issues that will cause persons to have to interrupt you. So I am going to ask you to just adjust your tone a little bit in respect of the Attorney General because you can be imputing improper motives.

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

As I said there is case law that very clearly shows that regulations that are made pursuant to parent Acts that are saved law can be struck down. I was involved in one of them very recently, that is the case that involved the right to wear your hijab when you are in police uniform. That point was taken. It was overruled. The State took that point that it was saved law and it was overruled by the court, it is not an appeal. So that it is clearly set out in our law that if you bring measures such as these through regulations they can still be struck down.

Madam President, apart from that we have a situation here where there is no, as I said, parliamentary scrutiny by this subsidiary legislation. And I wish to get firstly into the first proposal that I will

make, which is that the regulations—as much as we are amending the Public Health Ordinance in section 105, it is possible to make an amendment I believe to section 132 which would mean that regulations become subject to affirmative resolution, because it would allow Members of both honourable Houses the opportunity to scrutinize what is being put into the regulations, and if there are formulations within those regulations that could possibly infringe upon rights, they can be dealt with, and they can be done in the appropriate way.

So the Government has chosen to say, okay, we are not going to bring a whole new parent Act. This concept of introducing fixed penalty notices, as the Attorney General pointed out, it was dealt with in the dangerous drugs amendment. They amended the parent legislation to bring it. They have introduced all sorts of other measures through amending parent legislation. Why not amend the parent legislation or why not bring a separate standalone piece of legislation to say it is necessary to wear face masks in public during this time?

It would be legislation that can be more robust. It would not be so easily subject to being struck down by the courts, and of course we would avoid the time we wasted. I am saying the matters that are presently before the courts, as the Attorney General has referred to, when they are determined, please Milady, if those regulations are struck down, everything we are doing here goes with it. Everything



that we are sitting here and doing for the last two days goes with it. And then where are we? Where do we end up? We end up in a situation where all of these measures that are intended to deal with this COVID crisis out the door and a whole set of people coming with claims against the State because you have charged them. You have tried to punish them. You have tried to do all sorts of things pursuant to a piece of law that was bad law. So that I wish to put forward that suggestion that the regulations be subjected to parliamentary scrutiny, and it can be done so via that amendment.

The Government cannot be so arrogant to think that they are infallible, and that they would draft proper regulations, and that they do not need the input of anybody else in either House to ensure that these regulations are proper, and that they will address the issue clearly and properly. Again, there is precedence where the courts have had to step in to strike down subsidiary legislation when it was badly made. “Again, dey doh like to talk about it, but de Police Service Commission Order. Dey say, well de court edited one line”. That is not true. The court ruled that that Order that was made was unconstitutional, ultra vires, and it had to step in and rewrite about four subsections of it to make it good. They made a bad law and the court had to step in.

Why are we doing things in a manner that forces people, litigants, the citizens of Trinidad and Tobago, to have to run to the steps of the Hall of Justice and cry out to the court and say, “Please”?

In the middle of such a pandemic, a global health crisis you are doing things in a way that might result in more and more people—and the Judiciary is overburdened as it is. Every day I get the notifications, this court is closed today. Nobody can come in here. Nobody can go there. We have to sanitize. Primary contact here. This one there. The system is breaking down. The system is cracking.

I spoke to someone “de other day” about a matter involving access to their child. They have not seen the child for two months; the court has to keep putting it off. These are the realities. These are the realities that people are facing, and what you are doing is now creating more room for litigation. More room for litigation, the litigation that you complained about, that the UNC lawyer is going to bring. Well, do not do that. Do not create room for litigation, create a good law. Create a proper law, bring it to Parliament and let us work on it together. That is the remit. That is what we are here to do, Madam President. We are here to scrutinize the laws and make sure that they are proper, and make good law. The Opposition is committed to ensuring that good laws are made.

Now, Madam President, it is accepted that you can delegate the law making function to the Executive, but we have to ask ourselves: Is this the type of matter that we want to leave in the hands of one member of the Executive? In a democratic society where we recognize rights and freedoms there is so much room in this area that we are dealing with here of mandatory mask wearing, and other things

that are meant to curb the COVID crisis, that can infringe upon the rights, can we safely say that we are comfortable about leaving those matters to be dealt with through orders and regulations? My answer is a resounding no.

Now, Madam President, it is very curious that—I just want to get back into some of the clauses of the Bill. The second thing that—one of the things that jumped out at me, and I compared section 105A and the creation of the fixed penalty notice with the Dangerous Drugs Act where it was done. So it is a kind of cut and paste, the same system they put it in place here that they have introduced before, so they want to have it done here. But the wording of how this fixed penalty notice goes, and subsection 105A, the proposed section 105A in clause 4, subsection (2) says:

“Where a police officer has reason to believe that a person is committing or has committed an offence under section 105, he shall issue to the person a fixed penalty charging him with the commission of such an offence...”

Now, in law a charge has a particular connotation. So you are charged when the fixed penalty notice is issued to you. When you are charged there are things like your due process rights that come into play. There are concerns such as when you pay the fixed penalty now—it says you will not face any sanction when you pay the fixed penalty, but that word there “charge”, a charge is something recorded against you. A charge is something that can have implications for bad character later

on. So I do believe that that word there “charge” is not the proper word.

In doing some research on it I found two things that were interesting. Firstly, I looked at the United Kingdom regulations which speak to the introduction of a fixed penalty notice, and the wording is very different. It says, and, Madam President, with your leave, if I may just read from this document, and this is, “The Health Protection (Coronavirus, Wearing of Face Coverings in a Relevant Place) (England) Regulations 2020”. It came into force on the 24 July, 2020. You see how long everybody else doing this? This is July last year, and they had it before. I think it was amended then. We were asking for this before that because we knew how dire the situation was.

Of course there was a lot of resistance around the world to this thing. Does it interfere with my rights? Interference with rights, it is a common theme that you have been hearing all over the world. But anyway, here we are now introducing it through subsidiary legislation.

But the fixed penalty notices clause in the English legislation says:

“A fixed penalty notice is a notice offering persons to whom it is issued the opportunity of discharging any liability to conviction for the offence by payment of a fixed penalty to the authority specified...”

Now it goes on to say what the fixed penalty notice must contain, just like our proposed Bill here does, and then it also goes on to say that if

it is not paid then there is a decision to be made whether or not to prosecute. It is different in what the Attorney General is proposing. It automatically is deemed to be a summons when you do not pay the fixed penalty notice. So you are charged when it is issued to you. I have to wonder if that system will also not, and that wording there if it is the proper wording. Should it not be that a police officer can issue a fixed penalty notice to you, and there is a time frame during which you are allowed to pay it, and there is no record of any sanction, there is nothing that comes of it, it goes by the way.

I mean, that raises all sorts of other concerns that I have. I mean, the Attorney General speaks very highly of the efficiency with which these systems are working. I have on good authority that under the Dangerous Drugs Act up to now police officers some of them do not have the ticket books to be able to issue these fixed penalty notices, and that legislation, the Attorney General reminds us, was passed in November of 2019. August 2020 police officers cannot, some of them, they do not have the books. There are areas some stations where they simply do not have the books.

I think everybody has had the encounter of going to pay a traffic ticket and the courts are riddled with claims that people are stopped two years' later and three years' later and told, "Oh, we have a warrant for your arrest. Yuh have this outstanding summons to attend court." "Dey say, 'But I pay dat ticket'". "Where, yuh could find proof?" You think three years later I could find proof that I paid

that traffic ticket? There are hiccups in the system. There are hiccups in every system, but there are quite a lot of hiccups when you are using the technology, and they have to be ironed out.

Electronic payments in and out of court legislation, I commend it. It is very useful but, Madam President, how many people are using it? Do we have that information? Can we say that yes it has been very successful, that we have not had hiccups? I myself have been using the one where you could do companies registries and incorporations and so on online. Oh my God, it is a disaster. They never have a record. You have a printout saying you have done something, you go to the registry, things missing. You have all of these issues to be ironed out.

So in the middle of this pandemic, in the middle of a situation where you want people to stay home, in the middle of a situation where you do not want people crowding up in public offices, you have implemented a system now that can give rise to so many other issues, causing persons to have to go to the courts and try to sort things out.

The other thing. Attorney General has addressed a concern—but before I move on I also want to commend something on the point of charge, of a charge. I also came across a very interesting case, and that is the case of *Lowell Lawrence v Financial Services Commission*. It is a Jamaican case that went all the way to the Privy Council, and it also dealt with—the person was trying to challenge whether a notice, a fixed penalty notice issue by the Financial Services Commission for

certain guidelines and regulations that were breached under the Insurance Act, whether that notice ought to be squashed because he was not given the opportunity to be heard. And the Privy Council held that a fixed penalty notice is not a charge. A fixed penalty is not a charge.

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

**Sen. J. Lutchmedial:** Thank you, Madam President. It is not a charge and therefore you are not at risk when the fixed penalty notice is issued to you. So that that seems to be the way that these fixed penalty notices are used and interpreted in various jurisdictions and I would ask the hon. Attorney General to give some consideration to the wording there.

Madam President, as I said I have spoken about the constitutionality and my concerns with respect to whether this mechanism employed by the Attorney General can withstand the scrutiny of the court if it came to that. I am saying that we are here, we are committed to—and I am not here to approbate and reprobate, if that is the concern that the Attorney General has. I want to see a good piece of law that can withstand the scrutiny of the court. I feel that the first step is making the input of all parliamentarians.

Introducing measures such as through regulations simply does not allow for that, but we are, as you say, on dire straits and therefore I do consider ask the Attorney General to consider an amendment that would introduce affirmative resolution for regulations that are made.

Madam Present, the last point that I wish to make deals with the feasibility of some of these measures. I would like to ask the hon. Attorney General in what we call the U-turn system that was now introduced to replace traditional traffic tickets, there is a 14-day period in which you can file a notice to contest, and you can do that at TTPost and all these other outlets. You do not have to come to the court to do it. I will ask the Attorney General again to consider that as an option instead of after a period of time then you can go and pay the fine, but then you can also go and file an appeal. I mean, those things are just so burdensome, tedious. They clog up the system. Those of us who are there on the ground every day in the courts know what it is like. We know what it is like.

When you pay a fine at the courts that matter, usually, it comes off of the system. Now you have to wait and see whether this person is going to file an appeal. Then you have to have it as a hearing to come up before the magistrate. Why create a system whereby you must pay a fine and then appeal? Either you contest it or you do not. File your notice to contest, and I feel that is a much more feasible solution if it is we are looking to have something that is workable. Allow people to still have their due process, have their right to be heard if they so wish before an independent tribunal, and therefore it would be a better law that would be in place that is workable. And at the end of the day what we want to do is stop this. As I said, “de Corona horse bolt long time, long, long time ago. Now dey trying to



close de door.”

We have to do everything possible, and coming here with some wishy-washy laws that we do not know what is going to happen to them , that you are coming with regulations that engaging the attention of the courts to amend those regulations. “By next month we doh know where all ah dis going to be.” Come with a better more substantial law that will assist everybody.

Madam President, I thank you very much for the opportunity to contribute today, and that is my contribution. [*Desk thumping*]

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

**Sen. Anthony Vieira:** Thank you, Madam President. First, I would like to congratulate Sen. Lutchmedial. I thought she made an excellent maiden contribution. I think that based on that we can expect some very positive and worthwhile contributions. Some very good suggestions coming out of there.

Now, the Chinese have a saying that I love. It goes like this: It does not matter whether a cat is black or white so long as it catches mice. So this debate is really shaping up as to: Should we have gone to separate substantive legislation treating with COVID and face masks, or whether we can go the route, as the Attorney General has done, under the Public Health Ordinance, and building on regulations?

Both routes have the same objective in mind. We are really

talking about behavioural change, and that is what I want to focus on. I want to talk about why we need this legislation, and put it into some context with COVID timeline.

I think while there is much that is attractive about the idea of having substantive law, like the Tuberculosis Control Act or the Malaria Abatement Act, we need to remember that this COVID has only been around a few months. We are playing catch-up. There is still a lot that we do not understand about this disease and so I tend to favour the Attorney General's approach with the regulatory regime where you adapt and you trim because it allows for a lot more flexibility.

Now having said that, I agree with Sen. Lutchmedial about the U-turn, the notice to contest. I like very much her suggestion about bringing the regulations to Parliament, whether by affirmative or negative resolution. Those are very good points, but, fundamentally I have no issue with the Public Health Ordinance. I have no issue with the legalities of the fixed penalties notice. In fact, I think there is much to commend that approach.

I believe that this is necessary legislation. I agree with the hon. Attorney General that the public health route is a better route than declaring a public health state of emergency for the use of disasters. But maybe we would get to a substantive law in its own right; that would be ideal. Clearly however regulations would have to be fleshed out and they would have to be workable.

Now, you know, I have to say it actually pains me that we have to come to Parliament and pass this law. When the COVID situation first came on the horizon and we were in this House debating it, we all talked about, you know, let us try and approach this thing in a way that people would be responsible. Let us hope that people would act with the community spirit. We are all in this thing together. The Government said they did not want to come oppressively, and we said, okay. We supported that.

**11.45 a.m.**

You know, in an ideal world, why do we need to have legislation to have people protect themselves? To stop people from infecting their spouses, their children, their parents, their neighbours, their friends, co-workers and other members of society? Why? You know. But unfortunately when you look at what is happening in the world, regulations are necessary because, and I am sure many of you would have seen the meme about this guy who was explaining about the three different types of citizens, and he talked about the word “idiot”, from ancient Greece, the word “*idios*” meaning self, a selfish, self-centred, self-interested person who cares about no one else. Well, it is idiots that have us in this House today because, if people had done what they were supposed to do we would not need to be debating this. We cannot underestimate the seriousness of this situation. On the 10<sup>th</sup> of August there were 281 positive cases. On the 28<sup>th</sup> of August, 1,554 cases, and it looks as though it is going to rise

exponentially unless something drastic is done.

Now, the Attorney General talked about this is a global pandemic, and it is, so let us look at what is happening around the world. In Sweden they had hoped that they would get herd immunity and they tried to keep their society open. But what happened? Over 5,500 people have died in Sweden, unlike Norway and Denmark. Right? Because Sweden was trying to rely on people's good sense, to rely on social distancing, and they now recognize that tougher restrictions would have saved lives. Spain went through a horror show. They seemed to have brought it down; Friday, 3,829 fatalities. France, Friday, 7,379 fatalities. People are dying. Vietnam, hailed as one of the model countries, 99 days without community transmission, and by mid-July the country had returned to normal life. But by the end of July cases surged mysteriously. No one can find the source. South Korea, held up as a model for its response, now on the brink of a national outbreak, a second wave. New Zealand, 120 days without community transmission, again hailed as a model, suddenly 14 new cases in a day, a mysterious resurgence.

This virus is not going away in a hurry. There is a lot we do not know about this virus. It affects people differently. We know that some people could be infected and be asymptomatic. Some people can have it and it is mild, it is like a cold. Some people can be seriously ill where it affects blood flow, lungs, organs, and for many it is fatal. And we have to remember in Trinidad and Tobago we have a lot of

people who are compromised—immune compromised—they have diabetes, they have all of this. And what do we know about the virus for sure? The best way of reducing spread is behavioural change. So compliance is a must, and until we have a viable vaccine, we are in this for a long haul. There is no magic pill, notwithstanding what some leaders are saying in some countries. There is no silver bullet in sight. We know that some therapies appear promising, antiviral drugs, immune boosters, multi-drug cocktails. But, from all I can see with my research, this virus is going to be around for the next year or two easily. So we have to come to terms with it, we have to live with it, we have to manage it. As they said in Sweden, this is a marathon not a sprint. And so, the future is going to depend on the prevention measures we implement today, and this is going to impact not just health but the economy. Our strategy has always been let us not overwhelm our health care capacity.

So, what the Attorney General has brought with these fixed penalty offences, to my mind, seems like a case of progressive discipline. These measures are calculated to cultivate behavioural change, to transform idiots into proper citizens. And I think there is something else that I would like to say about this disease. COVID is a great teacher. It has unmasked the racial inequalities in certain countries. It has shown up weaknesses in our systems. And you know what it did? COVID is also teaching us that masks and social distancing is about society. It is about us learning to work together in

unison. It is making us realize that all of us are connected. We have to look out for each other. COVID—this legislation must be a method for things to come. We are going to be facing serious challenges over the next five years. The next five years is a make or break for Trinidad and Tobago, and one thing we must learn from COVID is if we learn how to work together as true citizens—yes, know about your rights, but also be responsible to your fellow citizens. That is how we would get past. That is how we would develop as a society. So, we need more citizens and less idiots if we are to get through.

Now, these regulations—as I said I agree with the Attorney General. The fixed penalty route will avoid arrest, charge, bail. Absolutely most welcome where that is concerned. You are not going to hit with the highest fine. The first time a thousand dollars. But “you so stupid” to go back and get yourself fine again?—\$2,000. You have a third shot, \$5,000, and then it is open to the courts to say, well you are not taking this thing seriously. But you are putting people’s lives at risk. You should not have to be charged at all. So, anyway I would like to say that all the regulations, and I agree with Sen. Lutchmedial, I think we should have a fully fleshed out regulation treating with facemasks, with social distancing, and it should also expand on the exemptions. There are situations where it may not be necessary to wear face coverings. For example, where other protective measures are already in place, where social distancing can safely be managed. So for example, if I am in my own car, and it is only me and my wife

driving, why should I need to wear a mask? If I am jogging up a country road or I am walking my dogs and nobody is around me should I need to wear a mask?

Exemptions should be available for health reasons. There may be people who have sensitivities to a mask, they suffer with claustrophobia, they may have allergies. What about the deaf who need to be able to read lips? So somewhere in that mix we must provide for applications to be made for exemptions. What about those people who cannot afford a mask? If you are going to be bringing in laws where people are going to be fined and put to risk then everyone who cannot afford a mask should be able to get masks freely. So masks should be available at health clinics. Yeah? And clear instructions need to be given. I walk around and I see people with the mask under their nose, it under their chin. We perhaps need to give clear instructions on how to put on, how to remove, how to store, how to dispose of face coverings to avoid inadvertently increasing the risk of transmission.

This is necessary law. Sad to say, but such it is. This law is about protecting my right to health and protecting my family and my loved ones. It is proportionate. It is progressive discipline. There is a scale of fines going up. That is better than the old arrest and charge and bail situation. It is better than the state of emergency situation. If people behave as responsible citizens there is nothing to fear. It is time for us to show respect and care for others. We need to have some

discipline as a people. But, as Sen. Lutchmedial has so correctly pointed out, as lawmakers it is important that we get a chance to scrutinize the legislation, that we are satisfied that there are necessary checks and balances in place, and so I support her call for the regulations being subject to parliamentary scrutiny. I think this is a seminal moment for us. We stand on a precipice. The next five years is a make or break, as I say, for Trinidad and Tobago. COVID is an opportunity. Let us embrace it, let us stand together, and let us be disciplined together, let us be caring for each other. There should not be any need for this kind of legislation. But, the Government is doing what it must do to protect citizens, and so I commend them for it. I thank you. [*Desk thumping*]

**Madam President:** Sen. Seepersad.

**Sen. Charrise Seepersad:** Thank you, Madam President, for the opportunity to contribute to the debate on the Public Health (Amdt.) Bill, 2020. First, I would like to express my gratitude for being selected to serve in the Senate of the Twelfth Parliament of Trinidad and Tobago. I will also like to recognize you, Madam President, as well as returning and new Senators to this Chamber. As usual, I will endeavour to make my contributions meaningful and concise, and in keeping with the independent mandate of service to country.

The Bill before us seeks to amend the Public Health Ordinance, Ch. 12 No. 4, section 105, to increase the maximum penalty of four regulations breached from \$50,000 to \$250,000, and to introduce a



fixed penalty system for offences committed. As proposed in subsection 105H, the Bill is a generalized regulation so that the Minister of Health can amend the schedule to the regulations by Order to add or remove offences, and to alter the fixed penalties with a ceiling of \$20,000 for existing, and as yet undetermined breaches of the health regulations.

Madam President, the burning health issue currently in our country is the raging COVID-19 pandemic. Since March 12, 2020, the Minister of Health and the Government in conjunction with medical practitioners have continuously taken steps to mitigate the impact of the virus. The reported results prior to the election of August 10, 2020, speak for themselves. However, the country is now besieged by this plague and the statistics are not flattering. As at August 29, 2020, the total number of positive COVID-19 cases in Trinidad and Tobago is 1,577, of which 894 are active cases. The number of deaths has risen to 19 persons. The central theme of conversation now is the scare and fear of the virus, yet many citizens appear to be unconcerned that the virus has the potential to overrun the country. While some businesses are enforcing the recommended protocols, other businesses and their employees continue to flout the rules. A random drive through any part of the country will reveal that many people are not following the guidelines and protocols issued by the Ministry of Health.

Madam President, we can and must do better to protect our

citizens and the economy. The consequences of failure are catastrophic. Imaginative leadership and management must be brought to bear as the new normal takes hold. Both the World Health Organization and the Centre for Disease Control in the United States have advocated that mask wearing is a good form of protection against the spread of COVID-19. It is safe to assume therefore that the Minister will soon add regulations for the mandatory wearing of face masks. Other measures may and can include self-quarantine, restrictions to public business operations, and so on. With any of these measures, enforcement of the law will be challenging. Public awareness and persuasive tactics to change people's behaviour as clearly demonstrated have not been effective due to the laissez faire mindset of some of our countrymen. Several Ministers and medical practitioners including the Prime Minister and Chief Medical Officer have tried to persuade the general public to wear a mask, social distance, sanitize, stay at home if ill to save lives. Yet the situation seems to be going from bad to worse. A mask, it must be noted, is not by means full-proof. Masks are also of varying degrees of protection based on structure and usage.

Madam President, we are in this together for the long haul. The safest way to be saved is to avoid contact, but this is unrealistic in the modern world. So yes, we have laws and regulations and monetary penalties and other types of sanctions. But ultimately, the onus is on each person to take preventative measures for personal and general

preservation. The most vulnerable among us are faced with the ultimate penalty, death. Remember, I protect you, you protect me.

In closing therefore, while the objective of the law is to change people's behaviour, that is, move away from the carrot approach to that of the stick, I am not sure that there is a better option at this time. Thank you, Madam President. [*Desk thumping*]

**Madam President:** The Minister of Foreign and Caricom Affairs.

**The Minister of Foreign and Caricom Affairs (Sen. The Hon. Dr. Amery Browne):** Thank you, Madam President. It gives me great pleasure to recognize your election to the esteemed position that you hold, and I want to offer you my congratulations. I also want to commend all Senators in this august Chamber for taking up this responsibility and the privilege of serving the people of Trinidad and Tobago in the Upper House.

Madam President, people are seeking leadership from us in this country and that is why we are here. The way we can repay the trust that is vested in us as parliamentarians, both Chambers, is to serve the people, to do our jobs fairly, to do our duty, and in the manner in which we contribute to debates, the manner in which we share our expertise and our experience, that can really help improve the lives of the citizens of Trinidad and Tobago. I can tell you that is why I am here in this Chamber, and that is why all the Government Senators are here, to serve the people of Trinidad and Tobago.

Madam President, the Bill before us is an Act to amend the

Public Health Ordinance, Ch. 12 No. 4, to make provisions for fixed penalties and fixed penalty notices for offences under the Public Health Ordinance, Ch. 12 No. 4. A lot of words to describe a very simple but critical four clause Bill which is designed to make our society safer, and what more noble cause can we pursue than to gather here on a Saturday to help make the people of Trinidad and Tobago safer? [*Desk thumping*] Yes, Madam President, if this was easy, if it was just a matter of saying wear a mask, or take other measures to protect your health, if behaviour change, as Sen. Vieira alluded to, was as easy as simple communication, we would not be here. We would be spending time with our families, or elsewhere, if not with our families, but certainly not in this Chamber.

So, we do need to take action, and I think there is consensus across the Chamber that action is necessary. And if you were paying attention you would recognize that this virus is a lethal opponent to mankind. There was a point at which we thought this virus has all of the answers. You would see the map. The WHO put up a global map where you started at a few red dots in the far east, and then it just started spreading westward, northward, southward. We are now at a point where no country, no city, no district is immune from COVID-19, and Trinidad and Tobago certainly is no exception to this reality. This virus does not discriminate, and our contributions must reflect that, because we are all at risk. There were signs early on. When we see people like Tom Hanks, and, you know, wealthy millionaires, and

people who normally would not be at risk for common communicable diseases, being—early in the pandemic being infected by COVID. That was a sign that this is an unusual opponent, and therefore we have to take extraordinary measures. Many countries have done exactly that.

Madam President, I do not want to reflect negatively in any way on the maiden contribution of Sen. Lutchmedial, so I shall avoid doing so, but I want to commend the speakers before me, Sen. Vieira and Sen. Seepersad, for what I think were very balanced and very positive contributions which would help edify the citizens of Trinidad and Tobago. And even in their delivery there was some critical information that can inspire people to act in a safer manner, and really that is us doing our duty as Members of this Chamber.

Madam President, I heard in the contribution of Sen. Lutchmedial, that apparently she wants a separate Bill for mask wearing. She does not want to rely on subsidiary legislation, but a separate Bill. And she wants to deny our public health professionals, to deny the Government the flexibility of responding, not just to this particular eventually, but to the future as well, and good law is not just for today, it is also for tomorrow. And so it appears the vision on the other side, based on the contribution that we have heard, is for zero flexibility, a stand-alone law that is focused—a separate law focused only on the wearing of masks. And then what happens? [*Interruption*] Yes, in two Chambers, and then what happens after that as we learn

more about the virus? As a new measure comes into place? We come back here every time? That does not make sense, Madam President. It does not make sense. And then what about other measures that we may have to take, and that is why we have subsidiary law to provide for that flexibility, and there are other things, other practices that we need to focus on. Our public health professionals are telling us, things like spitting, and citizens make these observations. Spitting in public. Things like public urination, and that is why regulations exist, to give some degree of additional flexibility and adjustment, and allow our public health practitioners, afford them additional tools to help make society safer. But, Madam President, I did not agree with that submission from Sen. Lutchmedial. She is very admirable in her practice, but it was quite disappointing in the argument that she sought to present here today.

Madam President, this should be a very simple exercise here today, because the facts are well-known to the public of Trinidad and Tobago. This virus, as I alluded to, appeared to have all of the answers. It is extremely small. It cannot be seen with a normal microscope, it mutates changes overtime, and it is very easily transmitted from one person to another. But the virus does not have all of the answers, we have some of the answers. The virus cannot exist without us. The thing about the virus, Madam President, is that it is dependent on a host for it to replicate. It cannot exist on its own, so it depends on us. It depends on our behaviour, and if we are able to

modify our behaviour the virus becomes powerless. It cannot complete its life cycle without the contribution of human beings. And so our researchers have told us, there are simple steps that we can take, and I do not have to tell anyone in this chamber what those steps are because we have heard it day after day from public health practitioners, from a geologist who leads this Government and leads this country and who seems quite familiar with public health by now. Time after time, wear a mask, increase your physical distance, cough etiquette, sanitizing, the basics are there.

Sometimes I look at the Minister of Health, most of the times it was from thousands of miles away in Brazil on the television, and he would get red in the face saying the same thing over and over, and sometimes I would say, might feel a little bit of shame of having to repeat himself so many times, and yet you look at our streets, you look around us and you recognize people, some people are not complying. There was reference earlier to the word “idiot”. I do not like to use that word when focused on citizens, everyone would have their perspective, but people are not complying. And our public health professionals, the Government talks to them, we work with them, and they are telling us we need some additional tools. The communication needs to have some teeth behind it. So instead of saying wear a mask, now you are saying wear a mask or else. Now you are saying following public health provisions or else. You have that flexibility now to attach some of these fixed penalties, some of these fines, to

behaviours which are deemed under subsidiary legislation to contribute to ill health, and to not contribute to the health of the public of Trinidad and Tobago.

Madam President, I started my career as a public health practitioner, and these are some of the hardest paying—hardest working and lowest paid physicians on planet earth. It would be remiss of me not to stand here and salute the public health practitioners in Trinidad and Tobago [*Desk thumping*] who are at the front lines of the fight against this pandemic. Madam President, I speak to them, other Members of this side, and other Members of the Senate speak to them, and you hear some of their stories, they work so hard. They leave their homes and go to work, putting themselves at high risk, then come home to their families not knowing if they are carrying an invisible passenger with them, a lethal passenger to take back into their household. And on their way home they are seeing citizens “maskless”, like if we are in 2018 or 2015 once again, and it pains them, and they are saying we need some additional tools, we need some teeth, because talk alone has not made the difference. And I am hoping both in the provisions that we have, this very flexible, very innovative approach of the Attorney General, and the way that it is to be applied via regulations, we are providing the teeth required and requested by our public health practitioners.

Madam President, so I was saying we know some things about the virus, we know some things that work. We also know what does



not work. I do not need to get into the whole sunshine debate, which was really an unfortunate debacle by some on the other side. But again, that type of discourse is very discouraging to a public health practitioner who knows that confusion and mixing the issues, introducing pseudoscience, has dangerous implications for the behaviour of our citizens. So we need to be very clear about where we all stand on a matter like this.

Madam President, I spent four years in Brazil. I went there when there was a dangerous epidemic called Zika taking place in that country, and through no fault of my own, when I left Brazil that country is currently under very, very serious threat of COVID-19. Currently over 3.5 million citizens in that country are infected, and when you look around on the streets, guess what? Many are still not wearing their masks. Vulnerable communities, indigenous tribes being almost wiped out in some sectors of the country. Still that does not seem to be enough to change behaviours. We need some teeth, we need some penalty, we need some fine, there needs to be some direct consequence, not just with respect to mask wearing, but with respect to other behaviours that might be inimical to the public health and welfare of our citizens. That is why we are here. That is certainly why I am here. That is why the Government is here, and that is why we have this noble visitor, the Attorney General here with us today, Madam President.

**12.15 p.m.**

And even as I left Brazil under this plague of COVID, I ended up with my family with three small children spending time in two of the most dangerous locations on earth with respect to this pandemic, the Sao Paulo International—one of the international airports at Sao Paulo—and the Miami International Airport, two cities with some of the highest prevalent rates with this disease. Guess what? Even in those airports with thousands of people mixing and mingling and waiting—we spent several hours in both—we still saw people without masks. It tells us that talk alone is not effective, we need some additional tools, and it is my pleasure to participate in the provision of a system that will afford those tools to our public health practitioners.

We give this virus strength because it is dependent on us to complete its life cycle, but we can also be the weakness in this pandemic because if we just increase our distance and we build barriers against its transmission and wearing one of those barriers, Madam President, and if I am speaking with you and you are also have a mask on, there are two barriers. There are three barriers because distance is also a barrier. The droplets cannot carry very far. One metre or two metres is more than sufficient, and there we are. And our role in this, it is not just to going to be the Minister of Health alone you know, it is not just going to be the health sector because they may have certain areas under their ambit, but what about right here in the Parliament?

**Madam President:** Minister, you have five more minutes.

**Sen. The Hon. Dr. A. Browne:** Okay. Thank you. What about right here in the Parliament. Even as a workplace measures are being taken here. So there is responsibility across the board. We have a particular responsibility and I believe the Government is fulfilling that with legislation such as this one. Madam President, it is not just a matter of talk. We need to provide some teeth, some flexible tools that assist with the public health of Trinidad and Tobago.

Madam President, I heard mentioned by Sen. Lutchmedial, she seemed to question whether a system of fines would be effective at all and the research is quite clear on that. Do fines influence behaviour? Absolutely. With respect to public health, fines can influence behaviour, and there are studies by the University of Pennsylvania and many other sources that make that very clear. The other question: is there a precedent for the application of fines in public health? Absolutely. Both here in Trinidad and Tobago and elsewhere. In California, most of their counties and cities have fixed penalties and fines for violations of various provisions in public health. The other question: are masks effective? CDC, World Health Organization, all of the experts are crystal clear, not to mention our own Dr. Parasram; crystal clear, masks are effective. Here we are today, Madam President.

The little time I have left, Madam President, I just want to share a few final thoughts. One of them interestingly has to do with the environment. During the last lockdown we all observed how clean our

beaches, our streams, our wildlife became. Everything became green and clean, and then when we went back out it was like back to square one. We have an opportunity—COVID will not last forever—when we revert and we relax a little more, to treat our environment with more care because it is all a cycle. And if you look at the origins of this virus, some of it has to do with the interaction between man and the environment around him. We have to do our part in that regard.

Madam President, the key questions: is the intent of this amendment Bill noble? It absolutely is and that has been recognized by several of the speakers before me. The intent is noble. Has the remedy been shown to produce results, the intended remedy to a system of fines related to public health? Absolutely, has been shown to produce results. Can it be implemented? Certainly it can be implemented, Madam President. Can lives be saved? Yes, lives can be saved. Is it fair? Of course, it is fair, there is an appeal process built in. Is it good law? Attorney General, is it good law? It is great law, Madam President.

And I just in my last words want to reflect on section 105C(2)(b) where in the payment of these fines you do not have to go into an office at all physically. But in the year 2018, this Government, through this Attorney General, brought the Electronic Payments into and out of Court Act, 2018, which was visionary because it fit firmly into a multisectoral national effort against COVID of which our efforts today is a part. Madam President, with few words I commend

this Bill to this honourable Chamber. I thank the Attorney General and I beg to move. [*Desk thumping*]

**Sen. Jearlean John:** Thank you, hon. Madam President, for the opportunity. I am really happy to be back in the Chamber to contribute on I think such an important piece of legislation. I want to thank my colleague Senators and, of course, the hon. Leader of the Opposition for providing me with this access.

Now, Madam President, hearing the hon. Attorney General today coming here with this amendment, I felt there is something missing in that we should have had the regulations to accompany these amendments because it is not just arithmetic we are talking about. We are talking about people's lives. This pandemic is real. I mean, there is consensus that the mandatory wearing of masks is important and it should be implemented. The issue with which I have a concern about is the fact that it is being said in this Chamber that it is the people out there who are wrong, and harden, and stupid, and maybe we in here are right.

My colleague who spoke earlier also made the point that the United National Congress supports the measure to make mask wearing mandatory. But, Madam President, as I said before, I must express my scepticism that the regulations are not here, because it is not only the wearing of mask implementing that is a mandate. Someone also made the point earlier of what is a mask. You know people wear it under their chin. Even yesterday around the savannah I

saw someone wearing it on their arm and to me that was unique. So we need a robust, robust programme of education and I have not seen that communication. I have not seen that anywhere. Yes, people are talking. Some folks from the public sector, some folks in the medical sector are talking, but I have not seen where there is this robust drill down of information telling the people of Trinidad and Tobago really the hardship that comes with this COVID virus.

You are hearing it too piecemeal for it to have really caught on, because we cannot say the people are stupid. Have we done enough? Yes, we have done to the point where we are applying punitive measures, but we have to ask have we done enough? I am not saying moral suasion. I am simply asking have we done enough as a country because I felt that there was a lot of waffling. This disease, people are dying. I think today it is 19 and by the end of the day there will be more most likely, and we have been waffling.

There are countries—many countries in the world have started to implement this mandate since March of this year, since March. Many of them since March of this year. So we lost between eight and five months, or five and eight months.

While we waffled there was one time the hon. Minister of Health said a mask does not make a difference, and now we are saying Trinidad people are harden, but from the top that is what was said that the mask made no difference. I am happy to see that the Government, they have changed their mind and they have decided, just like the rest

of the world, that the mandatory wearing of face masks can make a difference, of course, with other elements like the social distancing, good personal hygiene, that is the constant washing of hands, et cetera, and it could make a difference.

The other thing, Madam President, I had also heard in many of the press conferences that there would be a second wave or a third wave in Trinidad and Tobago. Well, that was being projected. However, I did not see correspondingly any attempt being made to prepare us for this second wave and/or third wave. Because when you look at this COVID curve, the Trinidad COVID curve, and you look at it against the COVID world curve, the Trinidad and Tobago COVID curve is a steeply trending curve like that. There is nowhere in that curve that is bending to say it is flattening, you know. This thing is just shooting up. The world curve is down here and our curve is up there, and I think that is not only a matter of great concern. It is beyond that now. It is a crisis. This is a pandemic and I do not think we took it as seriously as we ought to have taken it. So blaming the citizens of this country I do not think is the right idea and to say well we have to beat them senseless into compliance.

The amendment is eight months late and 19 deaths later. We do not really mean that. After eight months we are still being told—well, I mean a few months ago we were told that we were No. 1 in the world in something. So how do you expect people to take this seriously? People are jumping up all over the place and saying we are

No. I in the world; we did this thing so beautifully. That is what we have been told all over. I saw someone, Madam President, saying “stay safe with Terrence”. I do not know who that person is but it was all over the papers. I do not know if you saw it. How it is when we are staying safe and somebody is saying that being safe with Terrence is like being safe in the arms of Jesus? You are safe, you are comfortable, we are at peace, we are at rest, and we are now saying that people wrong and we are right inside of here because we are here to implement and impose this punitive measure against them.

Where is the marketing, the education? Why have we not like the rest of world—because we have been doing everything the World Health Organization has told us to do I suppose. Why have we not had maybe Queen’s Park Savannah for that matter; having these temporary hospitals? Because something is happening. The curve is up there and what we—I do not know if the wearing of the mask alone will flatten it because I suppose there are bits and pieces but everything has been very piecemeal. We are not sure; we waffle. You know, we have a period before an election and after an election, because I think on election night I was seeing people saying about left foot balisier and right foot balisier. That had no social distancing. So the fish rottens from the head. There is where it all starts.

So being self-congratulatory and that is what was happening, all during this year until now we really bounced up with the pandemic because God, of course, is a Trini; and God is not from France, he is



not from Spain, he is not from Italy, of course he is not British, he is not from New York, he is a Trini. So we will escape this pandemic that has been just crushing, not only the loss of lives but also the loss of economies which really affects lives also.

Madam President, and again in all of this you still have to play cat and mouse with a Government who you had to say well there is an pandemic, open the Couva children hospital, open the Arima hospital, who really had not shown a consistent approach to treating with this disaster that is upon us. I am praying to God that somehow we avert it if indeed the mandate for universal wearing of masks works. Because what we need to understand, Madam, about the nature of this pandemic, you cannot create a distraction and hope that it will go away. We cannot cross our fingers or snap our fingers and hope that it will go away. We have to work actively at it and every hand must be on deck.

“It eh ha no yellow Trinidad and red Trinidad yuh know.” It is red, white and black Trinidad. Everybody—and we have come here to support measures that make sense which will help our children, our people, our old people. Because with this new mandatory wearing of the face mask, as I said, we do not have sight of the regulations so we do not know when it will be implemented and everybody saying is now. We needed it eight months ago as they had done in a lot of the other jurisdictions. When it is you are fining folks—now we live in a country, Madam President, where it is not mandatory to take your

national ID with you. If you meet a man on Frederick Street, for instance, and you say, “Well, I am fining you. You doh have your mask.” And he say, “I am living in Charford Court.” When you go to Charford Court, nobody knows him. Are you going to do like the old Tobago folk song, “Do you know Mr. John Lewis the man from Charlotteville?” What are you going to do? What are you going to do after two weeks, or two months, or whenever it is you have to address this matter probably within the court? You know, these are issues. If had we had sight of the regulations we probably could have bring our experience to bear, or maybe, of course, there are brighter people than us outside there somewhere.

So how are we going to pay—in terms of paying this fine how are we going to ensure that the folks who are charged they pay the fine? In terms of the exemption, is it that people who are exempted, they have to walk around with some card in their purse? What it is? These are questions that require answers. And if it is we are looking to pass this piece of legislation today so it can become law in quick time, without the regulations we are just not making any progress quite frankly because all we will have, all we could do is to wave and say well we have the law. But there is no regulation which gives effect to that to give the action that is needed and we need the action now. People are dying. Our people are dying. We cannot be immune to that. We cannot really not feel the fierce urgency of now. We have to act now on this. But without those regulations or without knowledge of

when these regulations are going to be ready to be proclaimed, I think we are still marching in one such stop. We are on a treadmill, Madam President, and we are going nowhere and more of our people are going to die. [*Pause*] My glasses are fogging up. Sorry, Madam President.

So as I make the point I am not going to belabour it because I mean, more or less there is not—I do not think there is much we can talk about on the Bill expressed here, express our concerns relative to the implementation ensuring that if it is we have a universal mandate that everyone has access to these face masks, that is very critical. Again, at one point you heard that they were going to be given out free. One other Member of the Government said that there was a tender out as it were. But what I am clear of—and another one said well you do not really need a face mask, you could tie an old t-shirt around your face. What I am clear about is that it is not easy—you know, for some us you walked in the Parliament you may be able to get a free mask, but for many people there is a problem, you know, to really access a mask, to purchase a mask. So we have to find out is this thing easily accessible. Will it be accessible to everybody so that no one will be left behind?

I mean, it is easy for us to stand up here and say, well the first fine is \$1,000 in 14 days. That is very hard for a lot of people. They cannot find a \$100 in a month much more \$1,000 in 14 days. You know, and then glibly 2,000 after it. Yes, people must be responsible,

and if someone wears a mask they are protecting me and vice versa. But notwithstanding that, we must really be concerned about people and to ensure that when we implement law it is not another way of separating the haves and the have nots. That just cannot be. Right? So we must look at that, Madam President, in terms of the access to face masks. Then the education of the public for the benefits of wearing these masks. What are the benefits?

We must educate the public. We have to look, really look deeply, look inside ourselves and say, have we done enough? Have we done enough for the people to understand the dire situation that we have found ourselves in and ensure that there is a robust programme of communication, marketing, education, to ensure that the people of Trinidad and Tobago understand what is facing us and facing them? And, of course, whilst we are taking all of those mitigation measures, we also have to ensure that there is capacity, because I remember when this pandemic started this was like a prop, you know—forgive me for saying that, Madam President. Well, it seemed as if it was like a prop because you used to see man just had to sneeze and you see bus with headlights, you were seeing prison van, you were seeing police outriders and everything, people neighbourhood shut down, et cetera. Now they are telling you go home, go home and rest. Take that and cool it. Just go home.

So I am not sure, and now people are saying the people in Trinidad and Tobago are not taking this seriously. Why are they not

taking it seriously? Is it because after all the big fanfare before election? Now, after election there is no fanfare, they say go home. This morning I was hearing that some lady had some symptoms and she called and called and called because you know the hotline and all gone cold. Right. So these are the issues. These are the things we have to fix before we start to brutalize people for not wearing a mask because people have no access. A lot of people have no access to things that are easy because when you have an MP sticker, everybody will bow and scrape, but there are people who just cannot afford basic living, things to live from day to day, much more for them a mask is extra. And these are the things we have to really be concerned about and ensure that we level the playing field, ensure that we have appropriate facilities so when our citizens are sick, they can be taken—you know, the lines now and when the hotlines are not cold they are working; people can get information readily, that people are nervous about this thing, very nervous and concerned, so that they can go somewhere and be treated—

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

**Sen. J. John:** Thank you, hon. President. So as we move forward, I mean, I wish the Government well and we are here ready to work with the Government because it is our country that is now at risk and our future, the future of ourselves, and our children and grandchildren, those futures are at stake and we all must work together to ensure that this scourge—it will not escape us because I think the time we should

have spent preparing, we have lost that time and it is upon us.

So as we move forward, those on the Government Bench kindly ensure that those who do not have or those who have so much less would have access to masks and that they know what a mask is. Is it a scarf; is it a shield? What is it? Because our policemen, the law enforcement, will have to go out there and implement, you know. Because if they are not efficient in really implementing these measures then we are still in the same khaki pants, and then we depend on them to ensure they are not overly aggressive. Is it that we are going to say on the first time you give a warning? It would be left up to them, I supposed. We do not know. There is so much that we do not know. So I really, really, really hope and pray that the regulations can be probably brought to this House—I do not know if it is too late now—that we can see as parliamentarians and have a chance to weigh in on them. Madam President, I thank you. [*Desk thumping*]

**Sen. Dr. Maria Dillion-Remy:** Thank you, Madam President, and I too wish to congratulate you and all Members of this honourable House on the appointment to this Twelfth Parliament of the Republic of Trinidad and Tobago. As we navigate this difficult period of our nation's history my prayer is that we will see ourselves as being here for such a time like this, being privileged to guide our nation through this stormy period that we would see nation building as our primary focus, and as Her Excellency the President, Paula-Mae Weekes ORTT, encourages yesterday, that we would put on our A game.

The purpose of my contribution will be threefold: to support the efforts of the Government so far that they have done so far; to discuss some factors that have been influencing the spread of this virus during phase two; and to suggest some additional national steps that need to be taken to slay this giant called COVID which will be with us for a long time.

Madam President, quite a few of the things I have to say have been covered already, but I still would be because there are some different points that I have to make. This Bill that has been brought by the Attorney General today, an Act to amend the Public Health Ordinance, Ch. 12 No. 4, to make provisions for fixed penalties and fixed penalties notices for offences under the Public Health Ordinance, Ch. 12 No. 4, and specifically now as it deals with the issue related to compulsory wearing of masks, but as the Attorney General said, it would be for other matters and other measures as is necessary.

We are living in unprecedented times. The most common phrase you can hear by leaders and CEOs of multilateral corporations is, I do not know. You ask them about what will happen tomorrow, I really do not know. Why? Because there is so much uncertainty as to what is happening with this virus.

And every nation has its own dynamics and cultural factors and we have seen differences occurring over the world, and it is very interesting that because of the differences in dynamics and cultural

factors, et cetera, we cannot necessarily take everything that happens in other countries and apply to us. We have to look at what is happening in our own country, look at what science says, and see how we can mix and blend what is going on here to make sure that we would put measures in place that would deal with the virus as it is happening now.

Now, as we would have in the first part of this epidemic we saw specific measures being taken by the Government, and in a contribution that I would have made in the last Parliament I congratulated them for that. We know we are now in a different phase and it really requires different actions to be taken. Madam President, this virus and what is happening worldwide has really been so very interesting. We look at the news and we see in some countries where mask wearing is associated with one party, no mask wearing is associated with another party. In other words, the thing has become so politicized it is not just public health any more, but it is politics influencing public health and at the same time this virus is wreaking havoc all over the world. We do not want to be that way in Trinidad and Tobago. In the first phase we did very well under good leadership and the population taking the measures that they had to take.

I would like to suggest that while we are in the phase that we are in right now is that there were some things happening particularly during the election campaign. We have pictures, we have videos, we have newspaper articles that show you exactly what happened. During



that campaign we had many of our leaders who were saying one thing and doing something entirely different. Madam President, one of the laws of leadership says that the law of the picture says people do what people see. So you could say as a leader wear mask, social distance as much as you can, and then if you are not wearing a mask as we saw many of our leaders—and on both sides of the spectrum or all the sides of the spectrum not wearing mask, not keeping social distancing, hugging. In other words, they fuelled and this was going on through every section of our nation, and I have no doubt that what is happening here is significantly contributed by our action during that time.

As mentioned already, on July 3<sup>rd</sup> when the election was called we had 136 cases in Trinidad and Tobago, by August 17<sup>th</sup> we have had 588, and as of yesterday 1,554. Almost 1,000 new cases in 10 days. So we have the action of our people at every level including at the level of our leaders. We also have the issue of illegal immigration and it is something that has to be addressed, and we know that it is there and measures will have to be put in place.

But a matter that I want to talk about, Madam President, in terms of this phase of the epidemic is the immense difficulty to change behaviour especially since many of the people that have the virus are not aware that they have it, and we had this problem with the HIV epidemic where people thought that I could look at somebody and know if they have HIV. Same thing here, you are my partner, you

are my friend, I could look at you and know whether you have coronavirus and that is not so. And hence the difficulty in people changing behaviour because it is very—in other words, you cannot see the virus and people look very healthy. I say that because there is a situation I had to face recently where a friend who is a nurse—former nurse. She is not practising now.

**12.45 p.m.**

She was having flu-like symptoms and went to the doctor to be swabbed. After being swabbed, she was told that she had to quarantine and sign a form for quarantine and she was most distressed. “Why do I have to sign a form for quarantine when I am not feeling ill?” Because she had things to do the day after and the day after. But I am saying it is not everybody who is irresponsible when they have to do something that changes behaviour because behaviour change is difficult. So it was only when I reminded her, I said listen, do you remember the lady who was swabbed and got in a plane and went to Tobago because she was not feeling that ill and ended having a 200-plus primary contacts, and this is when she said well okay, I will stay home and was quarantined for 14 days. So the point I want to make we can say wear masks as much as we want, behaviour change is difficult and it has to be taken into consideration.

We talked about indiscipline already among our society. And we also talked about the fact that the coronavirus, the pandemic, is new and that things keep changing. So yes, the Government did say

do not wear face masks initially but that was the guidelines—they were following the World Health guidelines. Things changed and now they are saying wear your mask because it has been helpful. So we must have the flexibility and must be aware of what is going on at all times.

Madam President, the Bill that we are talking about here to change the Public Health Ordinance to amend section 105 to include the fixed penalty, as other Members have said, I fully endorse because it gives the flexibility to the Government in order to work with the things that are changing and therefore, I have absolutely no problem with it. And I would also say in terms of wearing mask in effectiveness, we have measured it already, but I want to quote an article from The Royal Society Guidelines of June 26, 2020, entitled:

“Face masks and coverings for the general public: Behaviourial knowledge, effectiveness of cloth coverings and public messaging”

The key points coming out of that article were, one:

“Cloth face coverings are effective in reducing source virus transmissions, i.e. outward protection of others, when they are of optimal material and construction...and fitted correctly and for source protection of the wearer.”

The article goes on to mention:

“Socio-behaviourial factors are vital to understanding public adherence to wearing face masks and coverings, including

public understanding of virus transmission, risk perception, trust, altruism, individual traits, perceived barriers.”

In other words, it is not just telling them to wear a mask and we have to go deeper as some persons made already in their contributions.

The other point made was that:

“Face masks and coverings cannot be seen in isolation and but a part of ‘policy packages’...”

And the Ministry has said that in no uncertain terms and they have put other measures in place.

The other point that they made was that:

“Consistent and effective public messaging is vital to public adherence of wearing face masks and coverings. Conflicting policy advice generates confusion and lack of compliance. Populations without a previous history of mask wearing have rapidly adopted face coverings during the COVID-19...” pandemic.

And what we are seeking to do here—and let me say what has been done in the past is that people have been encouraged to wear masks and we have seen that some are wearing, some are not wearing, and I am saying specifically as they have not been led well by their leaders, many of them have not been wearing and now we are in a situation where we have to put legislation in place.

And I say to the Attorney General, legislation alone is not going to do it because people are going to put on their face mask because

“they see ah police and then when the police goes, they take it back off” because it is uncomfortable. What we have to do is try to get to the people to have them make internal changes that they are going to let themselves say that, listen, I am doing this because I understand it and I am doing this because I know it will affect not just me, prevent me from getting ill but also my family and my loved ones and eventually my community. It means therefore, just as some of the others have said, the message has to drill down in terms of people understanding why they are making that decision. We cannot necessarily accept that everybody is doing it because they do not care. In some cases, it is more than that and we just have to keep, keep looking at it, keep looking at it, keep working on it until such time as more and more people are doing it.

Madam President, the third point I wanted to make is in terms of going forward. We have a communal responsibility as well as an individual responsibility and an ethical responsibility for wearing mask. This matter about compulsory wearing of masks that people are saying it is their individual rights, et cetera. Your rights are your rights yes but for instance, your saliva when you speak, when you sing, when you laugh, you are emitting saliva that now gets onto somebody else’s face or whatever, it is no longer your right. The Government, the Public Health Ordinance has to kick in to prevent you from spreading something to others. It is not your rights alone that you have to be talking about. So the individual is affecting a community with

their droplets as they speak, it means that their individual rights have to be subsumed now to the collective rights of the public and public health measures taken and it is being done in many, many instances, including things like TB, et cetera. And as I said already, the persons must learn to internalize what they are doing.

Madam President, also, I would like to say that leaders need to listen to the people. They need to listen in focus groups in terms of interaction to make sure that the people truly understand and act out about using masks. We also need leadership at every level; all spheres of influence. The business is doing their part. I must say that I have seen lots of ads now where the business sector, they are responsible in terms of making sure that the ads are out there, but we also have to do it in terms of other groups.

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

**Sen. Dr. M. Dillon-Remy:** Thank you, Madam President. We think of the faith-based groups, very influential, making sure that their people are complying with what needs to be done and also families.

I am saying that because I heard one of our Senators say that Government has to make sure that people have masks. Now, people are so creative in this country. The number of people who are mask makers now, including a little 11-year-old boy in Bon Air has become an entrepreneur making masks. We should not just leave it up to the Government. There are communities that can supply masks to people who cannot afford it and there are people who are at home who can

make masks and give to the communities. So I am saying we have to take full responsibility at every level, including our families and the children have to see the parents doing what is right so that they can follow too. Again, leaders, people do what people see.

In summary, Madam President, we are facing an unprecedented crisis and this measure that is being taken here is one but important one to prevent the spread of the virus and help saving lives. While we do what we do here as Dr. Browne said, we have to make sure that we understand our action has ripple effects. Our health care workers and other frontline workers like the same policemen that we are giving now additional duty to do as a result of this, that they now have to police us to wear mask. They are at the frontline and in some cases, there are police officers who are married to nurses and firemen and you have two sets of parents, of frontline workers, and that is impacting negatively on their children and the older people in the family. So we have to take this thing very seriously knowing that our action can either make or break the lives of those people.

So in summary, I am pleading with every segment of our community to comply. If every one of us does our part, I am absolutely certain that we will see a difference in terms of what happens in the future in this epidemic. I thank you, Madam President.

*[Desk thumping]*

**The Minister of Social Development and Family Services (Sen. The Hon. Donna Cox):** Thank you very much, Madam President.

Permit me to congratulate you on your reappointment to the position of President in this august Chamber. In my brief tenure during the last parliamentary session, I was awed by your demeanour, your temperament and the professional manner in which you conducted business and I just want to commend you for it. I just want to say welcome to the new Members of the Senate and I would not say old Members but those who were here before, I would like to welcome you also.

And so, Madam President, I wish to thank you for the opportunity to enter the debate on this Public Health (Amdt.) Bill, 2020, which sets the framework to bring into law the necessity of wearing masks in public. Madam President, as legislators, there are pieces of legislation that we are eager to see come to the floor of this Chamber, especially legislation that would significantly alter and enhance the quality of life for our citizens.

Madam President, we should never have had to come to this Chamber to enact into law or anything dealing with the wearing of mask. I just want to agree with Sen. Anthony Vieira who also stated this. But in my relatively short sojourn here on this earth, I have learnt a few things and they are: You cannot legislate “broughtupsy” or good behaviour and that is a personal choice, and second, as we say in local parlance “who doh hear will feel”, “Peter pays for Paul and Paul pays for all”, and the fourth is, “it is better to be safe than to be sorry”. So these local sayings echoed constantly through my ears when I realized



that we had reached a point of inevitability in the fight against this invisible, odourless, colourless virus.

And this is personal to me because I remember at the close of every press conference that at some point from since March, it was daily, together with the Minister of Health and the public health officials, I would exhort the population to sanitize, wash your hands, practice social distancing methods and of course wear a mask.

But I would like to respond to Sen. Jearlean John who made comments about the education of the people. I would like to say that one of the areas that the Government has always been commended about during this pandemic was the communication efforts made by the public health officials, by the Ministry of Health, by the Ministry of Communication. You know, I think in every area. Even the Ministry of Health went into rural areas with a PA system to educate the public about this virus. Social media, websites, there was even a dedicated website for Spanish-speaking persons so that they can go up and understand what is happening. There were many advertorials on radio, on television. And I must say that I do not know where the Senator was but in Trinidad and Tobago, at the time even when there was a lockdown, there was nothing else to do but to listen to the radio, look at television and hearing what is going on and being told every day to wear a mask, you know, and I felt it was not correct to say that the public was not educated enough on the virus and wearing a mask. It is even actually now on the television, on radio, there are some

advertisements on the proper wearing of masks, and which it has been running during prime time and I saw one up to this morning.

This pandemic has a crippling effect on all countries throughout the world and the number of persons who have died because of the virus is approximately 836,475 persons and there are over 24 million cases of COVID-19 in the world today. So this can tell you how serious this is. In Trinidad and Tobago, we have had a total of 894 active cases and 1,577 samples have tested positive at public and private facilities in Trinidad and Tobago and this is at the figures this morning. So some citizens scoff at wearing masks, others question the Government's authority to enforce this very directive that will help to preserve the life of the people of Trinidad and Tobago, where our watchwords are "Discipline, Production and Tolerance".

This particular issue, Madam President, is one that we all agree needs complete support in order for us to contain the spread of the virus and some may view this Bill as a heavy-handed approach to the citizenry which Sen. Jayanti Lutchmedial stated. But the reality is that the moderate approach employed before of moral suasion and persuasion is one that we realized that the population has not been listening. So at this point in time, we now have to rely on compulsion as our last resort and this Bill will assist us.

As a Government, Madam President, giving priority to the safety and welfare of our citizenry is of utmost importance. In an attempt to slow down the spread of this virus, an increasing number of

countries have made wearing face masks mandatory with citizens facing a possible fine if caught without one. So this is nothing new and there are more than 100 countries that require persons to wear face masks and some of them, include, you know, Australia, Poland, France, Spain, Italy, England and even nearby Venezuela.

Madam President, for me, it was not a case of do as I say but not as I do because my mom lives with me and even if I was careless or irresponsible with my own health, then I would have been putting her life in danger. It is not easy to wear a mask all the time even having to deal with your mom at home. I have not been able to hug or kiss my mom since March, since this has come out, COVID-19 and that is not an easy situation. I am not even sure if she understands why I cannot hug her or kiss her so it has not been easy, but I have to be responsible, I may just be saving her life.

Day after day, press conference after press conference, the country's top medical health officials begged and pleaded and encouraged, recommending an advice to the population about the efficacy of wearing masks as part of the arsenal against this relentless virus. So on many occasions, these public servants were the brunt of adverse comments and unfair criticisms from persons who should know better and I would sit there and feel their pain for the thankless job they are performing.

So, Madam President, for those in our society who suggest that people being cautious are cowards, for people who refuse to take even

the simplest of precautions to protect themselves and those around them, I want to ask in all sincerity, you know, how dare you. How dare you risk the lives of others? How dare you decide for others that they should welcome exposure as getting over with? When literally no one knows who will be the lucky mild symptoms case and who may fall ill and die. Because while we know that some people are more susceptible, suffering a more severe case, we also know that there are 20- and 30-year-olds who are dying. There are babies who are dying. There are fit persons, people who marathon runners, who are health freaks who are dying also. And how dare you behave as though you know more than the medical experts when these experts have acknowledged that there is so much that they do not know? But what we do know, we should be smart enough to be concerned about how easily this virus could spread. So the more we act to save our risk of exposure, the better off we all are. We might just reduce unnecessary suffering and death and buy time for the scientific community to study the virus in order to come to a more full understanding of the breadth of its impact in both the short and in the long term.

But, Madam President, this Bill being debated today seeks to amend the Public Health Ordinance, Ch. 14 No. 4, to introduce a fixed penalty system for offences committed under section 105 of the Public Health Ordinance and this allows mask wearing to be a fixed penalty offence and people who are in breach of the same will have the opportunity to pay a fine or get a ticket of course. The Government

notes that while a vast majority of persons are complying with the issues, the guidance being issued by the public health officials, there are some who are reckless and thereby they are endangering the lives of others. By introducing this fixed penalty offence, the Government can now make other breaches of the Public Health Ordinance a ticketed offence instead of an arrestable offence and failure to wear a mask is one area where this fixed penalty can be applied.

Additionally, clause 3 of the Bill would amend section 105 of the Public Health Ordinance to increase the maximum penalty for breaches of regulations from 50,000 to 250,000 and which is to make it clear that—I think you know because someone messaged me and was talking about it, “it is so draconian and 250,000” because that is all they were seeing, but what has to be clear is that that is the maximum penalty, \$250,000 and the population needs to know that. And this Bill, of course, there is also an appeal process whereby persons charged with the offence can appeal his or her matter to the magistrate in the district in which the person paid the fixed penalty.

But there is a simple way to avoid falling victim to these penalties of course and that is just to wear a mask. And today, I want to encourage all business owners and people with small parlours and so on, to, of course, continue to deny entry of persons who do not want to wear a mask. Some of them, I have seen people arguing at business places at the entrances because they do not have a mask and they are not being allowed entry. I think that this should continue

because the pursuit of profit should never trump the protection of patrons.

In an ideal world, my health should not be dependent upon the intelligence of others but we do not live in an ideal world and sometimes it becomes necessary for the Government to protect us from ourselves and there can be no doubt, Madam President, that the simple act of wearing a mask can mitigate against the spread of the virus and I am truly heartened to see the masking industry this has spawned proving yet again the resilience of our fellow Trinbagonians and Sen. Dillon-Remy spoke about the mask industry being spawned because of this.

There are some things I want to go back to. Sen. John spoke about the mask and I would like to say that the Ministry of Finance through Nipdec in July distributed about 436,400 masks free of charge to the population [*Desk thumping*] and I know that they were supposed to be delivering 450,000 more. Now, I am not sure if that was given out as yet, might be but I know that by the 23<sup>rd</sup> of July, 436,400 masks were given out to the population. And yes, there are many persons, you know, with the community spirit, have been making masks, giving out masks, decorating masks, doing a lot of stuff. It has been a big industry. A lot of persons have been making money off of mask wearing. So the Government has provided masks for the population and employment for persons making masks.

Madam President, in the same way that I refuse to put the keys

to my happiness in someone else's pocket, I must also take responsibility for my health and well-being. In these circumstances, it must mean cultivating the habit of wearing of a mask whenever I am in contact with anyone else. It is the acceptance and in the discipline of that personal responsibility by every citizen that will lead to national transformation.

What I have found is that everything, you know, people talk about, you know, the Government and the Government, but what about our personal responsibility? Each of us has a personal responsibility, not only to save our lives but to save the lives of the persons who we come in contact with. And we do not change the world by trying to change everyone else, we change the world by taking personal responsibility for our thoughts, our words and our actions. Change is contagious and it begins with each one of us accepting personal responsibility for the outcomes that we desire.

And today, I join with my colleagues on this side and indeed with this honourable Senate in urging my fellow Trinbagonians simply, get in the habit of wearing a mask and the truth is, just as we flattened the curve before, we could do it again. Just as we have weathered many storms before, we can do it at this time.

And, Madam President, as I conclude, permit me to remind the citizens of this beloved country that we are all in this together and we have to fight it together. I mean, the virus is no respecter of persons regardless of race or creed or political affiliation or anything like that,

so we need to now get together, come together and fight this virus together. We must share the burden of this new normal, even in the way we now live in this fight to keep this dreaded virus away. It is either we mask it as they say or prepare for a casket. I thank you, Madam President. [*Desk thumping*]

**Sen. Damian Lyder:** Thank you, Madam President. It is really my honour to have this opportunity to debate on this Bill today. But firstly I start by congratulating all Senators in this Upper House for their opportunity to serve their country and I thank especially my esteemed political leader, the hon. Kamla Persad-Bissessar for giving me this opportunity here today to debate this Bill.

But, Madam President, as I listened to the debates, one would think that we are here debating the wearing of masks. If this were the case, Madam President, this debate would be over because it is clear that the Opposition is in full support of the mandatory wearing of masks. The purpose of this legislation is to create a fine for the breaches of the Public Health Ordinance and in layman's terms, what it does is create a mechanism that allows fines to any breach not just limited to wearing a mask. My colleagues have touched on many points in this Bill so I would not belabour you and be repetitive in this. However, I specifically want to deal with section 105H and to discuss that big elephant that is standing in the room here today.

And, Madam President, if I may read from the legislation or the proposed amendments, 105H:



“The Minister may from time to time by Order amend the regulations made under section 105...”

In part (a), he can add offences to the Schedule, to the regulations; in (b), he can remove any offence, and in (c), he can alter the fixed penalty for any offence so however that the penalty that is altered does not exceed \$20,000.

Now, Madam President, once again, I have come to this Senate for the third time—twice as a temporary Senator and now as a Senator and once again, we are seeing the Government putting the powers, these massive widespread powers in the hands of one person.

**1.15 p.m.**

This has been the mantra of the Government you know. He can wake up, this Minister can wake up at any point in time, tomorrow morning, add something to the Schedule, add a new regulation, add a new fine.

In 105H, he can add and change regulations. But we are here today, Madam President, to pass an amendment and we have not even seen the regulations. Because, Madam President, I am looking in section 105A, I am not seeing the regulations. So we are buying cat in bag.

**Madam President:** Sen. Lyder, you are the ninth person to be speaking in this debate, and I have to tell you that—

*[Sen. Lyder remains standing while Madam President is on her legs]*

Sen. Lyder, you can take your seat while I— Yes. So you are the ninth person and this point has been repeated by almost—by quite a number of speakers. So I would ask you not to spend too much time on this point, please, because you will be offending the Standing Order on tedious repetition.

**Sen. D. Lyder:** Thank you, Madam President. But Madam President, in my opinion this Government likes to put all the power in the hands of one, and this is my opinion, so that they can play politics with this country and make a smokescreen to distract the citizens of this country from seeing the failures, and in this particular case, the failures of the Government to effectively, to sufficiently and to successfully deal with the coronavirus pandemic.

This section 105 allows for one man to have all the powers to wake up on any given day and make sweeping changes and impose draconian fines to practically punish the citizens of this nation for their own failures. We have seen section 105 play off for the last five months.

The Government comes on media, on television, every week, sometimes every day and change the rules. One day it is the hardware must close and must only open three times a week. One week later, open the “hardwares” every day. One day they limit the times on supermarkets, the next day they open up everything again. So we have seen this at play.

But you see, as said, Madam President, from what I see, they

have come here today with a kneejerk reaction and a scrambling into Parliament to distract the citizens from the real issue causing the coronavirus runaway problem; this runaway train that has gone completely out of control and that now promises to expose the Government for their failures to deal with this crisis.

Remember, Madam President, this Government stated that they were number one in the world, according to Oxford, for dealing with the coronavirus. So, they can come here, change legislation to impose draconian fines on not wearing a mask, and using a mask to literally mask the real issue.

Madam President, is the mask the reason why we have community spread today? Is the Government saying that the population lacks discipline in wearing this mask, and as such we must come here today and pass legislation to impose draconian fines to punish them for their indiscipline? Is that what we are seeing here today?

Because, Madam President, I believe that we live in a disciplined society. I believe that the majority of citizens are disciplined and that they have taken this coronavirus pandemic seriously. When the Government shut this country, most of the citizens of this country adhered to the health ordinance. In fact, only recently, Dr. Bratt in an article in one of the newspapers recently, he stated, I think it was less than 2 per cent of the population is not openly wearing a mask. Madam President, this is a disciplined

society. Everywhere you go, you see people wearing masks. In the restaurants, when this Government open back up the country, the restaurants, the bars, the churches, the Government offices, they were all wearing masks. There are signs outside of every establishment stating “No mask, no service”. So why has the Government come here to literally put the blame on this population for this runaway problem that now exists? Why, Madam President?

Madam President, we need to deal with the real issues that plague this nation, and I am here to tell you one of the main issues causing this spread, this runaway train, is our porous and open borders. Madam President, the illegal immigrants are coming into this country by the thousands on a monthly basis. Madam President, this Government does not want to admit that the Ministry of National Security has failed to secure our borders, and now there are thousands of illegal immigrants coming in, mostly from Venezuela. And let me say, Madam President, I did some research. I looked on a website, an official website and there now currently over 43,879 active cases of coronavirus in Venezuela. Madam President—

**Madam President:** Sen. Lyder, please. So, we are dealing with a Bill to amend the Public Health Ordinance. It would be artificial to not talk about COVID-19, but now you are moving very, very far from the issues of the Bill itself. So I am going to have to tell you I have to caution you. This is my second caution. I am going to ask you to please limit yourself. Try and confine yourself to what is in the Bill.

**Sen. D. Lyder:** And, Madam President, the reason why I bring these statistics to the table is because the population needs to understand—

**Madam President:** Sen. Lyder, the population can understand it when we have a matter that is relevant to that. But I am trying to caution you. And when I give you advice and guidance please do not let your first word after be “but”. Move on and try and deal with matters that are relevant to the Bill.

**Sen. D. Lyder:** Thank you, Madam President. So, from what I said there, is this the issue why the Government has come here today, giving the Minister ultimate powers through section 105H? Or, Madam President, is there an even bigger elephant in the room that this Government has hidden from the population?

You see, Madam President, in this Bill, the Act to amend section 105, today they have cherry-picked one of the recommendations from the WHO in the form of wearing masks and trying to convince the population that this is the be-all and end-all of the crisis and we must punish you if you do not adhere to these draconian fines that this Minister now has the power to impose. Are they prepared, Madam President, to tell the truth, which is the even bigger elephant in the room that we should be more concerned about, which is the failure to adequately test the citizens of our nation?

Madam President, I took the liberty, because I want to know and I am sure the citizens want to know was the mask or the lack of discipline of wearing the mask the reason why we had this runaway

train? Or is it because we have not been doing adequate testing? Madam President, is it that we are now experiencing a second wave or is it that we are still riding this first wave, because the Government has hidden the statistics through the lack of testing? And I am going to run very quickly, Madam President, because I take your advice.

When I looked online on an official UWI website, and I looked at some of the statistics that they have kept regarding testing. In April of this year, in the height of the lockdown, when this Government closed down the country, closing down the economy and closing down businesses and sending people home, creating unemployment. Madam President, there were 621 tests being done there, .05 per cent; May, 1,800; June, 1,500; July 5,100 we reach. And in August, Madam President, on the eve of an election when this Government asked the nation to put them back into power and used the COVID crisis as one of their greatest successes and the reason to put them back in, Madam President, we had done 8,000 tests, or .57 per cent. Madam President, this has put Trinidad and Tobago as the second to last in the region for testing, only beaten by Haiti.

And, Madam President, would you believe my shock when only two weeks after the general election when this Government returned to power, would you believe, Madam President, that the testing jumped to 22,792 or a meager 1.6 per cent and our cases jumped to 1,600 with 19 deaths? Madam President, was that the mask that did it? Was that the mask or the indiscipline of our country?

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

**Sen. D. Lyder:** Thank you, Madam President. Was it the indiscipline of this country in not wearing masks that now brings the Government to impose draconian fines, the reason why we have jumped to 1,600? Look at it, the numbers do not lie, 22,792 tests miraculously two weeks after the election.

So Madam President, I have to say that there is a bigger problem here. We should be debating something else rather than coming to this august Chamber or this august House to debate about legislation to basically penalize a population for the shortcomings and the failures of this Government in dealing with the Coronavirus-19 pandemic. So Madam President, there was a lot more that I wanted to say but I took your advice. I took your advice and I cut it out.

So in closing Madam President, we support the mandatory wearing of masks. We support good legislation, well thought-out legislation, fair legislation, legislation that allows for transparency from both the Government and the Opposition. We support that. But what we do not support, Madam President, and what we want from this Government is for them to stop distracting this nation by coming here today to punish them for their failures and we want the Government to come to the nation, and we want them, Madam President, to unmask the truth. I thank you, Madam President.

**Sen. Evans Welch:** [*Desk thumping*] Madam President, I wish to congratulate you on your reappointment, as well as all other Senators

who are present here today. I also take this opportunity to express my gratitude to be afforded the opportunity to serve this country at this level, which is unprecedented for me.

Having stated this, I wish to state that in my brief history with the Bill—I will call it a brief history because I had the opportunity to look at this Bill sometime last night —however, that proved sufficient enough for me to have certain concerns about it. But, apart from those concerns, I want to say immediately that I support this legislative initiative as an important one in the context of the environment and atmosphere with which we are presently faced in this country.

It is important because at this juncture a change in human behaviour is essential if we are to alleviate some of the potential problems with which we can be faced with the present pandemic. And an important aspect of changing human behaviour is swift justice where there are breaches of regulations and offences. Because, there is a tremendous amount of literature which would support the view that the longer a matter remains in court, the longer it meanders through the system, the longer it takes for a penalty to be imposed through the normal processes that takes place in our courts, it is the less inclined people and the citizenry would be to conform their behaviour if they know that there are not immediate effective measures to deal with it, and we are faced with a situation where, even before this pandemic has occurred, matters in the Magistrates' Court in its criminal jurisdiction can take sometimes up to five years, six years, before it



reaches a conclusion. Sometimes it fails because of the length of time that it is going through the system. And where such events occur, there is less likely to be conformity with penal provisions if the likelihood of the imposition of a fine or a penalty is likely to falter because of lapse of time.

Therefore, it is an important legislative initiative that the Public Health Ordinance be amended to take offences created under that legislation out of the normal stream of the criminal justice system and allow for the immediate imposition of fines. Because when a person feels it where it hurts, which is essentially in the pocket, and that effect is brought about urgently and immediately, it is likely to influence their behaviour.

And, Madam President, by introducing a system of fixed penalty notices, it has that effect. Because immediately as you fail to comply, or immediately as you act contrary to the regulations, you feel the immediate impact when the ticket, so to speak, is served upon you and you realize you now have to pay \$1,000, \$2,000 or \$3,000 immediately, then your behaviour is likely to change.

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

So this approach, of course, also reduces the burden with which we are presently faced with the length of time matters take place in court. We who are attorneys would know that there have been several recent Practice Directions indicating that the courts are not operational as normal. We have also seen notices that X court in one jurisdiction

is closed today, and we all know what that means, closed until further notice, because of sanitization being required. So all these events have the tendency to slow down the process of justice and therefore when faced with a situation where we need these measures to have immediate impact, it is important to create a parallel approach.

And therefore, in that regard, I commend this legislative initiative for the effect, one would hope, it is likely to have on human behaviour. It is better the effort be made than not be made if we as a people, even with this cannot change, then at least it cannot be said that this body, this parliamentary body, which is responsible for creating laws for the good governance, has not tried.

So, and it is also important to observe, before I get to my concerns about the legislative measures, it is also important to observe and it is important that the rights of the citizens are not totally compromised as well. And the proposed legislation contemplates that a person who is served a ticket and does not wish to pay the fine or to pay the penalty imposed by the ticket, he still has the right. If he believes I am not guilty, he still has the right to ventilate that matter in court because the provisions provide that effectively, the implied effect of it, is that if you have not complied and paid this penalty notice, then that fixed penalty notice is treated as a complaint made by a police officer, as well as a summons for you to appear in court. And then when you appear in court, you go through the normal processes of pleading guilty and fighting your matter. And it is important that

that right is not compromised under any circumstances, even in the face of a pandemic.

So it creates a balance. For those who wish not to contest the matter and accept their guilt, we avoid the process of arrest. We avoid the process of bail. We avoid the process of a lengthy trial. And it also creates the balance of those who wish to contest go before the court and fight their matter, which is their normal right.

Even with persons wishing to plead guilty under the ordinary system, it is going to take time. Because when you appear in court and you plead guilty, quite often the position is that the magistrate has to adjourn the matter to hear the facts from the prosecution. Then it may have to be adjourned again for a plea in mitigation, et cetera whereas with this system, you effectively, by paying the fine, plead guilty and it is an extrajudicial process whereby the matter is effectively dealt with immediately.

My concern however with this legislation is whether the effect of section 105A(6) is not counterproductive and defeats the purpose of the objective of the legislation. Because effectively what 105A(6) does is that it says a person who pays a fixed penalty before the expiration of the time specified for the payment, may appeal to the magistrate in the district in which he paid the fixed penalty in respect of the offence for which he was charged. The effect of that is to introduce a third category and a third category which, in my respectful view, is an unnecessary one, Mr. Deputy President.

We now have a hybrid situation. It is either we stick the provisions, maintain the ideal of you either accept that you have acted in breach of the regulations, in which event a fine is imposed, in which event you pay the penalty, or you choose to go before the court, you do not pay the penalty and you choose to go before the court and contest the matter. So there are two clear streams. But what then is the purpose of this hybrid position of 105(6), where you pay a penalty and then you now, having paid a penalty, you are given the right to appeal and go before the magistrate to contest the matter in some way, it appears. Well, one of the effects of it is that such a person who pays a penalty is now back in court trying to get his money back. As I said, the court system is already overburdened and if the purpose of this legislation is to take effect immediately and have penalties imposed immediately, one ought not to be creating this third nebulous strain.

I can see no reasonable objective or purpose behind it. And therefore, it is my respectful view that we continue with two streams, which can only be achieved if this section 105A(6) is deleted from the proposed Bill.

The other difficulty with this proposed 105A(6), my concern is that the ordinary citizen must be clear as to the effects of the law, and the law—

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

**Sen. E. Welch:** Thank you. The effect of the law and how it affects him and this creates the impression, Mr. Deputy President—

**Hon. Al-Rawi:** Vice-President.

**Sen. E. Welch:** Sorry?

**Hon. Al-Rawi:** Mr. Vice-President.

**Sen. E. Welch:** Mr. Vice-President, sorry. This creates the impression, Mr. Vice-President, that he can pay the penalty and return to the court and fight the matter in a normal trial. This is the impression it creates in him, that you are not prejudiced if you pay the penalty, because you can return and fight. In fact during the presentation of the hon. Attorney General, he indicated that it is without prejudice to that right. But the reason why I question the accuracy of that, not as a matter of fact, but as a matter of law, is that if he does that under that said section, he is in the position who is coming before the magistrate and appealing. And therefore, the magistrate before whom he goes is exercising a jurisdiction in a sort of appellate capacity. And it is well-known, according to the principles of law relevant to appeal jurisdictions, a judicial officer, sitting in an appeal capacity, is not concerned about the facts of the matter again.

**1.45 p.m.**

It is not an opportunity to fight on the facts. You have to demonstrate some sort of irregularity in procedure either the form of the ticket was bad or something of that nature. But this provision may create in that person's mind that he can go now before and fully ventilate on the facts. And as I said, as a matter of appellate

jurisdictions and principles, that does not appear to be right.

And furthermore, by the use of the word “appeal” in that section, it creates the impression— use of the word “appeal” is that there is some sort of conviction. It is almost like you have pleaded guilty by paying. And where a person has put himself in the position of accepting almost as though, yes, I accept the fact I am guilty. Then, before you can persuade a magistrate to hear your appeal and reverse the penalty and refund it to you, you would have to demonstrate under what circumstances, therefore, you would have accepted liability by paying. What misconception were you under? And if you are unable to demonstrate that, it would seem to me that a magistrate is entitled to say to you, “You have not satisfied that burden.”

So when you pay a penalty and seek to appeal it under these provisions, you are not in the equivalent position of someone who has not paid the penalty and who gets the opportunity to fight his case and fight on the facts so to speak. And therefore, it would not be correct in my point of view to say that you are not prejudiced by your choice of paying. You are indeed prejudiced because you have lost that opportunity to fight, and the burden is now on you. And therefore, I take issue with the Attorney General’s interpretation of that proposed provision to the extent where he says that such a person is not prejudiced.

Now, Mr. Vice-President, a lot has been said about mask wearing but we recognize that these provisions are really not

concerned in substance about that but one can understand, in the other hon. Members, the time spent on it because—

**Mr. Vice-President:** Hon. Senator, as much as you are new to the Chamber, permit me at this point in time to congratulate you on your maiden contribution and also to add that your speaking time has ended, and when that happens, then your contribution also ends. But just as a reminder to the new Senators, if you will notice the Attorney General does this quite a lot where he would ask for the end of his speaking time and then you take a glance at the clock so that you keep track of your time and that that does not happen, but because you are new you may not have known this. So it is just guidance that I am giving you at this point in time that when your speaking time ends, your contribution also ends. But again, I congratulate you on your maiden contribution in this Chamber. [*Desk thumping*] Sen. Nakhid.

**Sen. David Nakhid:** I would like to thank Almighty God for giving me the opportunity to serve my country. I would like to have thanked, Madam Speaker, but she left, who had some kind words for me— Madam President, yes. And I would like to thank all the colleagues here who, from the Opposition side, my political leader for giving me this opportunity and please note that I have great respect for several of you across the aisle.

We have before us here a Bill, Public Health Bill with amendments where it has been stated that fines are the issue, not the issue of the masks, and the increase and quantum of the fines are the

issue. But I think what is common to this Chamber is that we look past the people that we are chosen, elected or appointed to represent. All of the language involved in this Bill, never once have I heard it from the Attorney General, the hon. Attorney General or many of the Senators on the Government side talking about who and what, and what class of people will be affected by this Bill.

Now, I know and I have been told on Standing Orders that there are certain things that can be said and not said, and I hope that I am given some latitude as this is my maiden speech, Mr. Vice-President. But I am faced here with a Government, from my experience and from what I have seen from their policies or their lack of policy implementation, a Government that has never really had the concerns of the people that I have lived amongst along the East-West Corridor, the people that they purportedly represent and how does that link with this Bill? I link it to the language of the Bill. The language of the Bill is quite expansive and it is a language that can only serve to further oppress the people that I have lived among the East-West Corridor. And this is my concern.

We pride ourselves here in this austere Chamber on belonging to the Westminster system, so then I will have to refer to that. We have the *R v Secretary of State for the Home Department*—in England—*Ex Parte Simms 1991* on the principle of legality:

“Fundamental rights cannot be overridden by general or ambiguous words...In the absence of express language or



necessary implication to the contrary, the courts therefore presume that even the most general words were intended to be subject to the basic rights of the individual.”

I see none of that here in the Bill. I see none of that here, I see expansive language that basically gives the Minister of National Security, the Attorney General the opportunity to further put our citizens at burden. And who will be affected? Again, I go back to the precedent that we have, that I have and many of our citizens have seen in Trinidad and Tobago. When we look at the papers who are the people, Mr. Vice-President? Who are the people that we see under the thumb of the TTPS or the people who are being highlighted? I see black and brown people. That is who I see in the papers.

I cite the instance on the 25<sup>th</sup> of August, the fisherman in Tobago swimming to secure his boat— his boat, his livelihood to take care of his family. To take care of his family, he was fined, given a bail of \$5,000. I did not see that same thing happen down the islands. Why is that? I hope as we go forward that we do not have legislation that will pander and cater to a smoke and mirrors government that pretends to serve the interest of public health. But at the same time, while we are not against the mandatory wearing of masks, we are definitely against of giving any latitude and leeway to a Government that intends, for all intents and purposes, to place our citizens at burden, unnecessary burden, and I will show you how.

In the case of *McKiernon v Secretary of State for*— Lord

Donaldson— *Secretary of State for Social Security*, I quote:

“...if there is any doubt about the scope of the power conferred upon the Executive or upon whether it has been exercised, it should be resolved by a restrictive approach.”

When we look at section 105H(a), (b) and (c) there is nothing restrictive about it. As a matter of fact, when we looked at the whole Bill, it is almost like a primary school effort. And I am being insulting to primary schools. You do not have to be a legal expert to realize that the language involved, there is nothing restrictive. It is commonsense that if you have a FPNs, the fixed penalty notice, it is commonsense that you want to expedite the case before it reaches a lengthy process of going to a court and having an appeal. It makes sense and commonsense, it is completely logical that you would have a lesser fine. Here you do not. You have fines increasing from 8,000 to 20,000 from 50,000 to 250,000 in an arbitrary fashion that will affect who? I repeat, that will affect who? I have yet to see anybody from down the islands or involved in parties in certain areas of the country attended by prominent politicians being put in the newspapers and being placed under the gun. Again, it is my black and brown brothers and I have no problem to say that. And it is our duty in this Chamber to protect them with every chance that we have, every power that we have.

In section 105A(6), it is confusing the language because an appeal, as was stated previously, is from a court or tribunal and what we have is an allegation, because no facts have been proved. It is

basically allegation. And that person who has been given that FPN or fixed penalty notice, if he decides to pay it or not pay it. So appeal cannot be the language as the police themselves are party to the case. And our AG, our esteemed AG, he should know that. He should know that.

So again, I ask myself why would people present in a document to the citizens of Trinidad and Tobago be so lax in his presentation with so many opportunities for loopholes that only—will not only burden the people who are already burdened by the effects of COVID by a poor economy, by the mismanagement of the economy, then I have to ask myself, you know, is this a distraction? Is it really a distraction, this Bill? Because there is no way we on the Opposition side can support a Bill where the language is so loose, and again I say expansive, that can lead to a lot of misinterpretations.

I refer to section 105A(7) of the Bill, the time frame to try the case. Well, we know of the judicial backlog, we have to ask ourselves what happens in that time frame? Why do we not make it— or I suggest, why do we not have it where the person who has to pay that fine is given more time than the two weeks, and is given that two months after the two weeks like a normal ticket fine, and you can pay it even the morning before he goes to court? But to burden someone with, for example, a \$20,000 fine, someone already suffering under COVID, has not yet received his relief grant or rental grant that was promised, has yet to receive any kind of subsistence from the

Government in order to pass him through these hard and worrying times, do we now ask him in 20 days— in 14 days to find \$20,000 or \$1,000 or \$2,000? How do you know how that fisherman—how do we know— was he able to meet that bail of \$5,000 trying to secure his boat? How do you know, Mr. Vice-President? I only hope that our poor people in Trinidad and Tobago, the people who seem to be not represented by this Government, they can ask somebody, maybe an MP for \$20 at some point in time. Maybe they will have it.

In the interest of justice, section 105A(7), we are depriving people of their property without a conviction. You are asking people to pay a fine and they have not been convicted of anything and then you are asking them, go make an appeal and get back your money, without having any idea, especially given our backlog, judicially, when they will have that. For someone, \$5,000, paying \$8,000, paying \$1,000 might be no problem. He can wait a year, two years. For some people it is a matter of how can that help them put food on their table for their children? So when I hear all the talk and crosstalk, I do not hear the human element in the country being addressed. And that is disconcerting to me, because if you are to take heed from what the President of the Republic said yesterday, can they trust us? Can the public trust us? Then they have to be fundamental in this equation. So for me, this smoke and mirrors here by the AG about this and that, about section 105H(a), (b), (c), I think they know by the language that it can never be accepted.

So then, we have to ask ourselves if they know that and therefore come to us with such loose and expansive legislation, what is the real distraction? Is it the mismanagement of the economy that is manifesting itself now? Is it mismanagement of COVID-19 which is manifesting itself now writ large? Will the question be asked, this mask that is supposed to be mandatory, has anyone asked the question that \$5 million allocated for those masks, who got those contracts and what was the tendering process? Were those masks available to the indigent among us? These are my questions because my concern is not the legal part. My colleague, Sen. Lutchmedial handled it very well. My concern is the human element of this, the people in Trinidad and Tobago who have been historically neglected by this Government. So I am not distracted by “left foot, right foot” because that “left foot, right foot” will soon have boots on it.

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

**Sen. D. Nakhid:** Pardon?

**Mr. Vice-President:** You have five more minutes.

**Sen. D. Nakhid:** Thank you, Mr. Vice-President. Because that “left foot, right foot” will soon have boots on it when the people realize that they have been sold down the river by this uncaring Government.

When I looked at the legislation and I see the drastic increase in fines when we have a precedent from the Westminster model that we pretend to follow where in cases like this the approach should be more restrictive, I ask myself, does the Government need money? Is that

why they are asking people to pay up front without due process because it is based on the unreasonable belief of a police officer? So there and again, we place the police service in a difficult position. We place the citizens in a difficult position. So therefore, we have that disconnect. We have a Government that will create a disconnect between the police service and the citizens of Trinidad and Tobago. For what? Is money needed by the Government? What happened to the funds of the Heritage and Stabilisation Fund? The 10 billion, where did it go? If money is needed, please let us know.

I take you to section 105B, and they talk about just a signature. The signature of the ticketing police officer is sufficient. But should not the name, rank, and regimental number be on that ticket? The Bill has to be more language specific if we have to have a fair process. The signature, is that enough? If the person who has to pay that fine does not recognize the signature, what is the situation? What is the recourse he has if he wants to file a complaint?

Now, that is about six or seven points, me with my layman's knowledge of the law can find from this effort given by the AG. I believe that such an effort, as I stated before although primary school in nature, serves no purpose to put us where we need to be in terms of how we serve the citizenry of Trinidad and Tobago. And I will wrap this up now, Mr. Vice-President. My only hope, as we go forward, that we have a more serious attempt by the Government to help us not only manage this lethal—as Dr. Amery Browne said, this lethal

opponent, but the COVID-19 is not the lethal opponent, it is the mismanagement of the virus is the lethal opponent to our citizens.

So instead of this abysmal language that has been presented in this legislation we ask, and we ask that the Attorney General wheels and come again. Thank you so much. [*Desk thumping*]

**Mr. Vice-President:** Hon. Senators, before I call on the next speaker, allow me to congratulate Sen. Nakhid on his maiden contribution in this Chamber. [*Desk thumping*] Sen. Nakhid, all I would advise is that when we are referring to Ministers in the Chamber, we refer to them by their title, “Minister of Foreign and Caricom Affairs”, as opposed to “Dr. Amery Browne.” that is the only guidance that I will give. The next speaker would be Sen. Deyalsingh. [*Desk thumping*]

**Sen. Dr. Varma Deyalsingh:** I thank you, Mr. Vice-President, for allowing me to present in this Public Health (Amdt.) Bill, 2020. And I also, like the Senator before, we must thank God that we are here another day and every day we are here in this COVID environment, we have to be thankful to God for that. I thank the President, Her Excellency for giving me an opportunity to be here again to serve the public and I want to thank my wife for giving me permission to be here because I had to get her permission to be here. [*Laughter and crosstalk*].

So, I thank the Government for bringing this Bill today. It is necessary and I think it is overdue. So while I am in the thanking mood, I must say I am a bit disappointed that it took so long to come.

Because it was since March, in this same Chamber, I had made mention to the fact that I think we needed to have legislation to make wearing a face mask mandatory and also, social distancing a fine. I brought these up. During my debates, I brought up other factors and the fact that, you know, water shortage could be a disservice to those persons in the COVID environment.

So, since March, I was hoping that some sort of measure would have been put in place, measures that would have probably prevent this virus from going like a runaway horse. And I look at this legislation today and I said, hey, we are probably trying to close the stable doors when the horse has already bolted. But we may have to try this rein that horse in for the country's benefit, for our whole benefit. We will have to try that.

So when I looked at this piece of legislation, I also saw in the past, regulations were passed before where we had regulation passed from this same old 105-year-old Act. Regulations were passed whereby we saw restrictions about bars opening, public access to the beach, casino, and all those regulations came into effect. So the CMO would have made recommendations to the Minister of Health who would have gone to Cabinet and, you know, it was confirmed by her Excellency that, you know, we would have these regulations. And, you know, looking at the fact that those regulations could have come into place, I am thinking we could have kicked in that legislation since March saying that, you know, wearing a face mask has to be



something that is, you know, mandated. That once you are in a public space you will have no choice but to wear a mask. So it could have been there, this law, without this present law.

Now, I wondered, I said but why they did not come before? Is it that—I know it was election season, I know people were busy but, you know, even the fact that WHO changed their guidelines—WHO even gave mixed signals. Even the Minister of Health when he came, you know, we had mixed signals from him saying you do not really have to wear mask and, you know, it is not necessary, and it changed along the way. But you see, commonsense would have dictated if it is are spread by droplets, if it is spread by coughing, I mean, we tried in the influenza epidemic to educate persons about coughing in their elbow, you are cough there. We tried to educate and we still saw the Ministry had a wonderful educational programme, beautiful literature educating people when we had the influenza, but people were still not obeying it then.

So we realized that persons may not obey regulations. They may not obey commonsense. Persons may have problems to have behaviour changed. So we may have seen that. But what I am saying is if I think that legislation had come in and kicked in in March, the same legislation, then we would have seen less of this virus spreading like wild fire throughout our country.

So then I wondered, I said, okay, if it is under the Public Health Ordinance, the problem there was it is a summary offence and being a

summary offence, it would have been necessary for a police officer to charge somebody, send them, you know, go before a magistrate— jail, magistrate and as persons were saying, the time of the magistrates having to spend on these cases, the police time all these are things that people mentioned that could have been a reason why, you know, it was not put under the old Ordinance as a regulation.

But I am saying, we have heard time and time again, Mr. Vice-President, the Attorney General did say the judicial system has improved, we have gotten more magistrates, we have faster tracking, and I think this would have given a testing period that hey, you know, you appear before a magistrate, fast track and you might be able now to let that magistrate decide jail term or fine. The discretion of the magistrate, but then that would have been kicking in and if we wanted to, you know, at least have this legislation now, we would have still had something in the works from the last few months.

So, another hesitancy I think, you know, that was probably stated is the fact that, you know, police may be there and, you know, sometimes they may charge persons on a weekend and they spend a whole weekend in jail. But what I am saying is it is time we have— Mr. AG, we may have to move to—we have already had the online court system and the AG must be congratulated for that. But we may have now to look at weekend courts. So a magistrate is there sitting and have weekend courts where they could have looked at cases and also online, and sort out those cases.

**2.15 p.m.**

But as it as it is, since it did not come to pass then. I look at what is happening now and I say I welcome this, I welcome this piece of legislation and I am saying as we have to rein back in that horse to come back in; the country needs this.

So, when I look at this legislation also I see the fact that you know, some Members say it is necessary, we have problems with the behaviour of persons. I heard my fellow Sen. Dillon-Remy actually mentioned a fact about a nurse who should have known better, questioning the fact that would we have to go quarantine. But this is human nature, people do not like to go under quarantine, people especially if they think they have a busy schedule, people do not like this lockdown. And you know, the thing is, even she had to tell a nurse who should have known better that this is not the way to go. You have to consider that quarantine.

So behaviour change we see it is an issue we have to deal with and people may not wear masks for different reasons. Some may think, you know I am protected by God, religious belief, and he will—I would not succumb to it. I have faith in God, other people may be the young and the restless because the figures are being shown now, that from the first phase where there were females, you have now and older males also 55, it has now gone into younger males, 33-year-old younger males, so this is the generation we now will have to look and see why the COVID is more on these individuals. Is it that they are

not wearing masks, is it that they want to party, they want to go to the bars, they figure they are infallible? So even we are going to be wearing the mask, we have to reach out at that population to see how we can get that population to, to buy into this.

And, Mr. Vice-President, people again may not see the virus as something real, they are not seeing somebody struggling as medical personnel, they have not seen people as it is described drowning for air. So, therefore, if we have not seen that it is not real to them. Some persons may be mentally—would not have the capacity like a mentally ill patient may not see the need to wear a mask. And then others may think that, you know, others just do not have the civic responsibility. And we see in our roads, people are still driving on the pavement, people are still driving on the shoulders. And we know some persons do not have the civic responsibility.

So this is why the strong arm of the law needs to kick in, needs to kick in, in this case, because you see, if this, you know, continues the whole economy will collapse. It is already in a state. So it is our own lives, our citizens, our economy, our family. I heard the hon. Minister of Social Services mention that her mother, she could not even hug her mother. I have my 95-year-old dad and I am worried about him when people come into his home. My wife is a diabetic, I have an auto-immune disease.

So, if there are irresponsible persons outside, my life is at risk and just as how I will defend my house, I put in burglar proofing and

what not, I wear my mask and so, if the members of the public want to come out, they have a duty to wear a mask, if you cannot wear a mask, you stay home please because you are now putting the country and my life at risk. And it costs a lot of money if somebody succumbs to this. To stay in an ICU bed, it costs \$15,000 a night. That is a lot of money for the taxpayers to bear. And if it is a few individuals who for whatever reason, they decide they do not want to wear it, well, let the strong arm of the law take hold and teach them that you have to obey. Just as how you have to come outside with your clothes, you come outside with your mask.

Now the difficulty I see sometimes is you—the legislation may trap people in their homes because some persons may not have the money to buy a mask and if I do not have the money and I have to come to the parlour to buy something, how am I going to wear a mask? I may step outside and a police may charge me.

So in cases like that, I am thinking the Minister of Social Development did mention the fact that a lot of face masks were given out. We have to reach out to those individuals in our communities. The elderly lady who may not be able to afford a mask, the individuals who you know—some people say is just \$7 for a mask but that is a lot of money for some people. Some people are there, poverty is hitting them, they have no jobs. So we have to get a way where these masks are distributed to persons in need. District health visitors can visit homes and ensure they have masks. You find that police

officers could also have a few of these masks that they can give out. Business places should be also mandated that just if a few individuals come in and the mask looks worn and tattered, just as how you have your soup dispenser, you should have masks that you can give to members of the public.

I, in my practice, have started giving my patients three masks. Cloth masks, and I say you wear one, one day, you put it aside, you wear the other one another day and the third day you wear the other one, you could recycle. Some people will take their mask and spray it, but sometimes the alcohol fumes could cause problems. So you can have ways whereby you know, those who have can give out the masks and those others who, you know, may not be able to afford it, we reach out to them and ensure that they have that mask available.

So I would like also to mention the fact that, you know, with this COVID spread, and persons now having to quarantine at home, it produces something new in the whole dynamic. So if I am quarantined at home, I may now have to wear masks at home to protect the rest of my family. And I think the educational thrust has to go into this, to inform persons that wearing masks at home to protect your other family members is something to be aware of. Also, we have to educate the public and somehow serve—another Senator mentioned educating, that COVID now has a new face, it may not come with coughing, it may not come with fever, COVID may come with just diarrhoea. Two days of diarrhoea, no fever. So therefore, we have to

educate the public, we have to educate the persons at home, that it is a new face of COVID and we have to look out for that.

So I must say that there are tremendous benefits to this piece of legislation. Benefits I think, you know, came long in coming. But to tie in this piece of legislation with it, with its fines, and incremental fines, I think it is welcome. But one of our Senators here mentioned, I think it was Sen. Dillon-Remy mentioned, about saliva, the spread of saliva, and you see, Madam President, if I am next to someone and they are speaking without a mask and the saliva gets on my clothes, my clothes are also contaminated and therefore in the presence of others, I can spread it via my clothes. The virus, I think it takes about three days to, you know, wear off from your clothes or different materials.

So what I am saying is, we have to also look at habits, so this idea about elbow bouncing, that elbow if you bounce 20 persons you may have a hotspot in that elbow. We may have to go around with you know, just clasping the arms like Namaste or bowing, some other form of greeting rather than that elbow problem. So, I—

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

**Sen. Dr. V. Deyalsingh:** Yes thank you. Madam President, I would also like to make mention of the fact that if you have the piece of legislation in place, and you have that legislation in place and you have more officers now, you know, going after those individuals, you know, so in public, a police officer may see someone, they may be

able to go after an individual, they may charge that individual, they may now be able to fine that individual. So I understand the need for this legislation as it came because remember, we saw this similar piece of legislation came where the Dangerous Drugs Act, when it came to the road traffic Act, so it is a similar way where you can fine and failure of somebody, you know, complying, you still have the summary offences where you can now go and jail that person as the old public ordinance would have allowed.

Now, the thing is, I want to mention the fact that if you have the persons out there not wearing masks, besides legislation, how could we get to them? Well, I have heard the Prime Minister before plead to the nation and it was mentioned by the hon. Amery Browne, he pleaded to the nation to wear masks. I have seen the Minister of Health—I put it like he goes on a voyeuristic expedition, where he goes looking at doubles vendors, looking at these food vendors, who do not have on masks and he makes statements, and some of them are actually scared of him. So it is like what we have what I call a “Terry phobia” when the Minister comes. But you see naming and shaming individuals is another way of reining them in. Social media is powerful, if you see somebody without a mask, take a picture, send it out. So you cannot always be dependent on police officers, and we may have to see if we could have a situation where we see something and we call the police officers and say, look, this is a public grocery, there is somebody in it without a mask, the guard does not seem to get



them out, the police are supposed—I am hoping they would be able to respond with due diligence, like if that person has a gun. Because just as you have gun and you could endanger lives, without a mask you can endanger lives, endanger the country.

So therefore, I am suggesting also, Madam, that there are mask stations, placed at different parts of the country. There are cheap masks, there should be wash stations, little videos where you have, you know in front—like a taxi, before the taxi stands you have little stations with a tank where people could wash their hands. And these are measures that I think we need to put into place. You see, I thought we had let down our guard when the virus had somehow you know, not taking any sort of lives and by letting down that guard, by not having the mask, I think we made a mistake and I think this is something now we will have together to work at to rein back in that virus and I think, I would like to plead with the citizens to please protect the vulnerable mass when dealing with their, with their elderly persons that young persons in their homes and I see the fact that if we could, again, educate persons out there, there is a changing dynamic to this virus.

And in closing I think we need now just the mask and social distancing not just adequate water supply and border control but we also need to look at these socially displaced, if they are out there they could be spreading this. So I am hoping the Minister, the relevant Minister takes note. Thank you, Madam President.

**Madam President:** Sen. Roberts.

**Sen. Anil Roberts:** Thank you, Madam President. We began today with a lovely prayer that spoke about impartiality, prosperity and peace, dealt with the dharma, and the karma but then, just like that, without any debate or discussion, I cannot have my colleagues here with me, we are down to three Members. The Government is down from 16 to eight, and I want to know on what science was this distance—

**Madam President:** Sen. Roberts, please take your seat. The arrangements for the Parliament, for the Chamber lie with the Presiding Officer. It is there in the Standing Orders and I do not think it is proper, in fact I am telling you it is improper for you to be questioning the decision of the Presiding Officer in respect to arrangements of this Chamber. So stop on that point and move on please.

**Sen. A. Roberts:** Thank you, Presiding Officer, and my point has been well made. So we move on to the hon. Attorney General, I was listening to quite intently, and while Sen. Lutchmedial made a brilliant contribution, I see that the hon. Attorney General took—he wondered and wanted her to clear the air on conflict of interest. This coming from an Attorney General who recused himself some 37 times from Cabinet based on conflicts of interest. So I am glad that he understands the principle because he was at great pains to let the population know—

**Madam President:** Sen. Roberts please, you have 20 minutes. I would ask you to treat with the matters before us. Okay, the Bill that is before the Chamber.

**2.30 p.m.**

**Sen. A. Roberts:** Madam, please guide me, because as far as I know and aware in debate, once the Attorney General opens up the debate and discusses, that that is also open for debate. Has it changed, Madam President?

**Madam President:** Sen. Roberts, continue.

**Sen. A. Roberts:** Thank you, Madam President. I hope I can get some extra time. Moving right along. The PNM Government, several Senators, commended the frontline workers. I would like to join them in commending the frontline workers—the doctors, the nurses, the ambulance drivers. They are brilliant. But while we applaud them, I wonder if the honourable Government would let the population know that while we applaud them, why do we not reward them? Because while applause is good, remuneration and respect and reward and funds and insurance and ensuring that if anyone should fall in the line of fire in this war, that they will be compensated. The Government has done no such thing. So while words are interesting, actions speak quite much more loudly. [*Desk thumping*]

I listened to the debate. I listened to Sen. The Hon. Minister of Foreign and Caricom Affairs and he gave me two minutes and 45 minutes about Brazil and who wears masks in Brazil and what they

were doing in Brazil, and I was wondering if we were in Brazil. Because we are here in Trinidad and Tobago, and as far as I can see—and I ask every Senator here—for the last three days, I have been driving around, whether it is in Diego Martin, down to south La Romaine, eating doubles in Crystal Stream, going to Massy Stores to buy bananas and so on for my daughter, and I have not seen one citizen as yet not wearing a mask. So I do not know where I am or if I am getting old and I need glasses, because we are here in a Parliament on a Saturday—fish biting out on the north coast—and we are here to discuss which is not only masks, but it is the ability for the Government to do whatever they would wish to protect us, and I so believe that we need protection from this pandemic. But I have not seen one human being in Trinidad and Tobago—I have not been to Brazil since 2012 for the World Championship, but in Trinidad and Tobago I see masks all over. Yet we are here in a panic, eight months after a pandemic became an issue, seven months after it was proclaimed as a serious issue to come to tell people you have to wear masks. The hon. Minister of Health said that if we reach 70 per cent, we will be fine. Well, I am seeing 100 per cent. I am yet to see in three days of “macoing”, a citizen without a mask. So I am not sure why exactly we are here. Why now and why not before?

Late December, pandemic began across in Wuhan, China and I told myself, Anil, you love this politics thing, no politics in pandemic. I said we cannot blame the PNM Government for a pandemic that is

on its way. I said we are not going to politicize that and that was my position. But then January came and when we go to discuss and Motions were moved to discuss something that should be apolitical, something that should be all hands on deck, we are all in this together, I saw that we were not all in this together. The Motions were denied, discussions were not had, plans were not made—

**Madam President:** Sen. Roberts.

**Sen. A. Roberts:** And I am interrupted. Yes, Ma'am.

**Madam President:** Sen. Roberts, you are so far from the Bill that is before us, I would ask you please to please come to the Bill, and I would also ask you to please to just lower your voice a little bit. The acoustics in here are quite good and there is no need to be shouting.

**Sen. A. Roberts:** Well, thank you for your guidance. I am definitely not shouting, Madam President. I was born with a loud mouth. I can blame my mother and father for that.

**Madam President:** Well, Sen. Roberts, Sen. Roberts, if that is the case, then try to whisper.

**Sen. A. Roberts:** I would certainly try to make you happy. I notice that I have been interrupted quite a bit. It is okay.

**Madam President:** Sen. Roberts, listen, you are in the Senate, you are in the Upper House. I would ask you to get your behaviour in line and to also heed the advice. You are getting advice from the Presiding Officer and there is no conversation going on between you and me. Okay? I make the rulings, you abide by it.

**Sen. A. Roberts:** Thank you very much, Madam President. And let me stay close to the Bill. The Minister, hon. Senator, the hon. Minister of Foreign and Caricom Affairs went all to Brazil, I will stay in Trinidad and Tobago and stay on the Bill. So, well, let us get into this Bill that we have not had much time to go through. However, I see that it is a Bill and the Bill that has been brought here has been stated that we must wear our masks and this is very critical. I am not sure at what point it became critical, because I do not take Prevagen, and I recall many Members of the Government, in fact, the hon. Minister of Health stating categorically, openly, that masks make no sense, absolutely no sense, we do not have to wear masks.

While I was looking at the information on Al Jazeera, BBC and South Korea handled their situation brilliantly, China handled their situation, in Croatia they were wearing masks. Not one scientist said that masks were never good, that it was absolutely nonsensical. Some said that the masks would not prevent you from contracting the disease or getting the disease, but that it would definitely stop you from spreading it. That was the only issue up for debate amongst doctors and scientists and virologists. But our Minister of Health told the population, masks make absolutely no sense, do not worry to wear masks. Then I was told, if you want to wear a mask, “take a jersey, rip it up and tie it on and yuh good”. Now, we are being told that if you are caught without a mask “it have” money to pay. Immediately police could tell you, give you a ticket one time, you have to pay the ticket.

So I am just a little confused.

So we are here and I would state categorically, I am in full support of mask wearing early o'clock from since the pandemic was coming. Even when we were told that we are No. 1 and there is no pandemic that we are safe here but we have eight deaths and 116 positive cases for exactly 14 weeks, I was still wearing masks, because I have asthma, my three children have asthma and my father is 79. So I am not playing with any COVID-19. A mask is very important. So I am in full support of this. I do not see it as necessary, because the population seems to be very responsible and have been wearing their masks.

But here it says in clause 2:

“...the Act means the Public Health Ordinance...”

And when you go to the Public Health Ordinance, that was way back 105 years and amended in 1940, this gives the Government such power. You have power to handle it. You could have handled it. You had all the power here before today to handle it and keep us safe. So why is there an explosion? Why are we all at risk? Why are people dying? Why the poor people died yesterday when we had this powerful Ordinance in the hands of the Government? But today we come to continue and they told us it is not only about masks. Okay? We will wait to see what it is all about.

When you go into the Bill, clause 2, you see:

“Where a police officer has reason to believe that a person is

committing or has committed an offence under section 105, he shall issue to the person a fixed penalty notice charging him with the commission of such offence...”

This is very interesting, because my doubles man that I eating by 33 years, three days ago he was wearing this beautiful shield that the hon. Minister of Health was wearing, that the Minister, Sen. The Hon. Rohan Sinanan, Minister of Works and Transport was wearing, and he was instructed by police officers. So that is not acceptable. He had to take it off and the next morning, “Ah come for meh doubles, he have on a purple mask”. What is the definition? Where is the definition? Have the police been educated? Are they going to be educated as to what is a mask, what is not a mask, how to give a ticket, when to give a ticket? Furthermore, is this the same police that are under pressure right now?

Even under COVID the murder rate skyrocketing, the detection rate is at 14 per cent. This is the same police who are trying to keep us safe, they now have to study masks and run down masks. So, somebody gone in Massy Stores down in Cunupia without a mask, we have to call the police, the same police who have to try and get people to stop chopping and stop killing? Is this not a little bit burdensome? What about health officials? What about nurses? What about doctors? Are they empowered to ensure compliance? I do not see it here. I am a little confused.

We then move on. We see in 105B:



“A fixed penalty notice issued under section 105A shall bear the signature of the police officer and shall specify—

- (a) the date, time...
- (b) the section of the written law...”

What is the purpose of this? Do we realize here in Trinidad and Tobago how long it takes to write a ticket? So you have people without a mask, the whole idea and the reason for this is, you do not want people to be in interaction. The whole reason we are talking 20 minutes when I prepare for 45 minutes is that we do not want to talk long. We want to go home, we do not want to be in contact. But here we bring a piece of legislation that will take a policeman about 32 minutes to fill out the form to give a person a ticket. So here we have somebody now, let us say six people now, without masks, one police officer, he say: “All yuh wait, ticket time.” He now has to write up six tickets. He say: “Doh move yuh know.” All of them have on no masks and they have to stay there with COVID buzzing around outside while they do up this ticket, this whole long process, and that is supposed to keep us safer than if he just send we home? Again, we have not thought it out very well.

We come here now to 105C(6):

“The time within which the fixed penalty is payable shall be fourteen days, or such...”—or such time.

Right? And lower down after that time:

“...it shall not be receivable...”

So after that 14 days you cannot pay your fine.

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

**Sen. A. Roberts:** Thank you very much, Madam President. Let me hurry. So after that, let us give a real life example. Somebody who does not wear a mask, the police officer give them a ticket, 35 minutes, two days later they find out, “eh, when they went to the pharmacy they came into contact with a COVID-19 patient”. They now have to go into 14 days quarantine, but they have 12 days to pay the ticket. What are they going to do now? Are they going to have to breach quarantine to go and pay the ticket so that they do not suffer any further penalty? What is this reason for this 14 days to pay the ticket? You are then going to make a person—you said that they could pay it online, but then I go to my colleague, Sen. David Nakhid’s point. Not everybody has credit card to go online. Not everybody has Internet. Not everybody even has laptops to do schoolwork. So to tell me that you could pay it online, if I am not online, how does that help me? If I do not have a bank account, how does that help me? If I do not have a credit card, how does that help me? So I am now at home now worrying, because jail coming down the line now: “Oh Lord, I have to pay this, but I have to be quarantine. But I have 12 days.” Are you then saying that I must take a risk to go outside before quarantine is over, possibly infecting others to pay your fine so I do not get lock up? It is not very well thought out.

Let me also ask, and I ask the Government, because you all

have the information and information is king. Jail is at the end of the process. What is the position with COVID-19 in jail? How many tests have been done? What is the ratio of prison officers who have tested positive? Because the jail situation is an incubator for COVID-19. Here we are in the most luxurious \$500 million Red House. It is so expansive, my voice echoing in the Chamber, but we have to be separated, we have to talk short.

When you are in a jail, the current capacity of the jail cell is two. You have 10 people on average in a jail cell. Are you now going to take people “who eh finish and pay this and who eh ha no money” and put them in a crowded jail cell? Is that going to achieve the goal that we want to keep our people safe or is that going to put us at greater risk? We want to help. This is not politics, this is pandemic. Yes, it was turned into politics and politics requires a response. So if you turn COVID-19 into politics by not debating it, by saying we are No. 1, I like No. 1. As a coach I have been trying to be No. 1 in the world for the longest time. “I eh get no Olympic Gold yet. Ah get bronze. Ah get World Championship bronze.” So when I hear that my country is No. 1, I get excited, but then when I checked the information is not real, because if we were No. 1, we would not be here eight months later trying to be No. 212 to get masks compulsory.

We would not be here with an explosion of COVID-19. Where did it come from if? If the borders have been closed, we were shut down, COVID has a shelf life of 36 hours. In the sun, it can only live

12 hours, but do not worry, “sun doh kill de COVID”. It just make it live shorter. So it do not kill it. Right? Then how are we here? Where the COVID come from? How did poor people die yesterday? This is not no politics thing. This is not no election. This is serious business.

So we are coming here to put legislation, to put people under more pressure. Who says that people have a thousand dollars spare? They have not even gotten the grant yet. Only 80,000 people have gotten the grant on the Government’s numbers. That means 71,309 people are still waiting for their 1,500 by 3, 4,500. So, if you do not have a thousand, you are putting me under pressure, threat of jail for a good citizen? Why? When we are behaving well. We are not Brazil. Our citizens, you go outside and look for yourself, they are listening, they are following instructions. Do not blame citizens for your incompetence. We were at No. 1. No. 1 should have no COVID. But anyway, as I wrap up—

**Madam President:** Sen. Roberts, your time is up. Minister of Agriculture, Land and Fisheries.

**Sen. A. Roberts:** Thank you very much, Madam President. [*Desk thumping*]

**The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat):** Thank you very much, Madam President, for the opportunity to join in this debate at this time. Madam President, I have the opportunity to come, not long after a former national footballer and a former national swimmer and swimming coach and

popular radio host. But, Madam President, I listened to the legendary Sen. David Nakhid. I consider him to be a friend of mine, and he reminded me, Madam President, of playing football in deep mud. His legs were firing away, but he never seemed to be anywhere near the ball or the goal. It was just mud splattering all over the place. So I thank you, Sen. Nakhid for your service to the country. I thank you for the eight goals you scored in 35 matches, and I hope that your success in football as a striker, eventually finds its way into this Chamber. Today was not your day.

And Sen. Roberts seemed to have immediately, Madam President, found a strong current that took him out and you tried your best, Madam President, and that is why we have re-elected you President of this House. He was like a fork in the sea. I do not know what kind of fork, a fork in the sea. Because, Madam President, I am sure Sen. Roberts—and I have confessed my sins in relation to this mask. I start off as an advocate of it, and then I got into grave difficulties particularly in the campaign, and I confessed that I was campaigning on quite a few occasions without the masks but, you Sen. Roberts, you have said that you have worn your masks all over, including when you are buying fig. But let me remind you about Moruga, August 8<sup>th</sup>, the UNC rally that you attended down there and you had live on your page. If five persons were wearing masks it was plenty. So this mask thing is not a PNM problem. This is our problem and you were part of the problem. [*Desk thumping*]

You went down to La Brea on August 9<sup>th</sup> UNC motorcade—the political leader was there on the white vehicle holding on to the rail and you were broadcasting live. She was not wearing a mask, and if you had three people in La Brea with that UNC motorcade wearing masks it was plenty. So, apparently, you only wear masks when you are buying fig, but the rest of the country—and Sen. Lyder must have been terribly mistaken, 2 per cent. I calculated 2 per cent of the population. Sen. Lyder wants to convince me that only 2 per cent of this population is not wearing the masks. Where do you live? I am in Port of Spain. Everybody knows that I have a routine that takes me through Port of Spain every morning for about two hours walking. I am lucky if I see three or four persons on a morning. You go up Chancellor Hill, you go around the Savannah, you go Waterfront as I go every morning, people do not wear masks in this country. Do not fool yourself and for the sake of bashing the PNM, do not make a fool of yourself. The masks are not worn.

**Madam President:** Sen. Mark, do you have a Standing Order you are invoking?

**Sen. Mark:** Yes, Standing Order 46(4).

**Madam President:** Minister, perhaps you can just refine your language just a little, that last sentence, but continue.

**Sen. The Hon. C. Rambharat:** Do not be lured into the opportunity to make yourself look less smart than you really are, because I know. I am dealing with two nationals. I have tremendous respect for both of

you, as you know, but do not be—

**Madam President:** Sen. Nakhid, you seem to think that you could sit very casually in your chair, wave your hand at me and call out a Standing Order. There is a proper way to do it. Discuss it with Sen. Mark and then start invoking the Standing Orders in the proper manner.

**Sen. Nakhid:** Thank you.

**Madam President:** Minister, continue.

**Sen. The Hon. C. Rambharat:** Thank you very much, Madam President. They will learn. So do not be hypocritical. You are well aware that the masks are not being worn and we have to do something about it, very reluctantly, I am sure.

So, Madam President, I want to congratulate you on your re-election and your return and also the Vice-President. I want to welcome all the new and returning Senators and thank them. I want to thank, in particular, Madam President, Senators Sobers and Obika who are no longer with us and also note that three of our colleagues, three I think from the Opposition Bench are now in the other place.

Madam President, the realities of this COVID-19, we started off here—you know, I listened to Sen. Lutchmedial to whom I will come back, talking as though in this Parliament we had done nothing in relation to COVID, and we recently turned up to deal with COVID from a legislative point of view. But we have made three trips at least and I forgive her because she was not here. We have made a few trips

to this House in relation to COVID that I will come to. And I remember on March 20<sup>th</sup> when we addressed directly the miscellaneous Bill on COVID, I used the word “uncertainty” and I said this COVID-19 is about uncertainty. So when my friend say “we shoulda, we coulda, we shoulda do this in March”, you know, the world was dealing with uncertainty, and while we always knew that masks play a role, look at the other countries that are scrambling to deal with masks.

You know in Paris, for example, it was only yesterday mandatory wearing of masks in Paris, a population of seven million, it was only yesterday, it started, you know and France only dealt with the issue of masks in July, towards the end of July. I could send you to an article in *The New York Times*, a July article in *The New York Times* dealing with Canada, a country that all of us respect, and this is an article in *The New York Times* on July 03, 2020. The writer is Ian Austen. The headline is “*Sorting Canada’s Patchwork of Face Masks Rules*” and I quote:

“In Canada, masks haven’t become as political or as contentious as they have in the United States. But in Canada mask policies have their own problems: rules that are inconsistent and sometimes unclear. With limited federal or provincial regulations, it’s mostly fallen on municipal governments and regional health agencies to set their own rules, resulting in a hodgepodge of poorly communicated policies.”



This is Canada, an old democracy, a population of 35 million. One of the leading countries when it comes to economic policy and governance in the world, being described as having a hodgepodge policy and struggling with communication, and you are telling me this little island has not done well in managing COVID? None of you could convince me. That is no fly-by-night publication. That is *The New York Times* making a commentary on Canada. So this COVID has been something that we have been dealing with both at the parliamentary level and within the Government and within the public service.

Madam President, this legislation is not complicated. It is not complicated. It seeks to do four things and I would identify it very quickly. The first is to continue retrofitting the Public Health Ordinance because when we were here in March, the hon. Attorney General made the point that this is 105-year-old legislation that maybe one day, to answer the question raised by Sen. Lutchmedial, maybe one day, we would have the luxury to sit and to create new framework legislation for dealing with public health matters in this country, but we did not have that luxury. And what we have had to do and what we are doing today is to continue to retrofit that 105-year-old legislation to deal with health matters, life and death, staying alive that are in front of us now. We do not have the luxury of time. So this is another effort, another attempt to retrofit.

We want to do—the second thing is to add clause 105(4) which

is clause 3. We have to add 105(4) via clause 3 and that is simply to make regulations to allow us to implement this fixed penalty system. That is not too complicated and it is not something we have not done and I will comment later on on the use of the regulations.

The third is that we want to prescribe the fixed penalty process. It includes payment and appeal and that is not very complicated, and we do that via clause 4 of the Bill. And the final thing is that we include at the end, through 105H, the power to amend the Schedule to change the offences in which the fixed penalty system is to be grounded. So that is what we are doing here. This is just another retrofit of the Public Health Ordinance to deal with COVID in line with what is developing now.

What was immediate, what was urgent in March, April, May has changed and it has changed across the world, and the Government said in April—the Prime Minister made it very clear in April at the press conference that the Government is going to be guided by the technical and scientific advice available to it, and that is why every time you see the Government speak on COVID-19, you will see the Chief Medical Officer and all the technocrats from the Ministry of Health doing an excellent job, guiding the policy of the Government, guiding the legislative changes and doing what has to be done. [*Desk thumping*]

So, Madam President, Sen. Lutchmedial made heavy weather of a few things and I want to use the opportunity to comment on it. The

first is to say, the first point was that this is not mask legislation, and dealing with masks should form, you know, it should be done by separate standalone legislation. Well, that is not necessary. There is a framework. The Public Health Ordinance provides the framework and even now today we have not specified masks, because we are dealing with the potential for a number of offences relating to the management of COVID, of which the wearing of the mask is one.

**3.00 p.m.**

So it leaves that. So the first thing to say is that we cannot come with a standalone piece of legislation on masks, and there is no need to. Framework legislation exists and we are able to deal with it in the context of the current legislation. You know what? We might be able to do better later on, but that is what we are doing here and nothing is wrong with that.

The second thing I want to say in relation to Sen. Lutchmedial is this, she made a very interesting commentary on this Government. She said, “You open yourselves to all sorts of claims pursuant to bad law”. And, Madam President, that brought me back to three words that I really “doh” like to use, “state of emergency”. You know, this bad law, let us assume this is bad law, well this is the Parliament’s work, at least we had the dignity to come here and bring the Parliament out in August and also on a Saturday, transparently broadcast live for everybody to see. Not as many viewers as your show, Sen. Roberts, but enough to see. This is not secret. And we

have done that.

But in the state of emergency, as you Sen. Roberts would readily admit, there was no lawmaking or nothing that “come through Parliament, yuh know”. It was just lock up, wrap up, grab up, tie up. “Man in vest and three-quarter pants”; you know that. “That was yuh calling card. Once yuh in a vest—how dey call it?—once yuh in a vest and three quarter pants, by the thousands, by the grap taken down.” And that was not even bad law. That is just bad politics—bad politics through a state of emergency, motivated by bad mind, as the AG say, that has cost the taxpayers millions, millions of dollars to this day and still continuing. From 2011 to now that has been riding on the taxpayers’ back.

So to come and predict that this so-called “bad law” will cost us something. Listen, I have said many times in this Parliament, that is why you have separation of powers. That is why you have the Executive, the Judiciary and the Parliament. When we come here—Sen. Lutchmedial talks about “it have no ticket book” printed. My job is not to print “no ticket book, yuh know”. My job as a legislator is not to worry about if they have ink and if they have paper, “yuh know”. My job is to pass “de” law. And if the police or whoever running the police, and whoever running the Government Printer have a problem with the tickets, that is their business. My job is to take care of the law. And if there is a citizen who feels sufficiently offended by it, that is what the courthouse is for. But I am confident—I am

confident—

**Madam President:** Minister, you have five more minutes.

**Sen. The Hon. C. Rambharat:**—because I am a lawyer too. I am confident that in the conduct of my duties as a legislator, I am completely within the Constitution of this country. I have no fear about that. I have no fear about that. So I am not going to worry about bad law, because “allyuh was not worrying about bad politics and locking up people for no reason”.

The next thing I want to say is this: We talk about this coming by way of regulations, and the regulations are not before us. That is nothing new. In many debates we have talked about it. As much as we could try to have primary legislation and subsidiary legislation at the same time, it is not possible. It is not possible. You have to come with the parent legislation first, and as far as possible have your subsidiary legislation behind. But the idea of creating offences in subsidiary legislation is not new, and it is something that is completely acceptable in the context of the law. The parent legislation contains the springboard and the regulations will create the offence and insert the fines and so on. And that is not something new, and it is not capricious, but it is also the model that the AG set in train when he explained the difficulties of the existing framework legislation, the Public Health Ordinance, and the need to retrofit the parent legislation where possible, but also operate by virtue of regulations which is what we have been doing.

Because if we come to Parliament for any one of the 21 or 22 versions of the COVID Regulations which have been running this country, and you know COVID. “You are talking as though we are doing, as though we tying dis mask around people neck and choking them.” This is the least of the apostles. In those COVID Regulations we have stopped people from working. We have stopped people from moving. We have restricted—we have stopped people from exercising. We have stopped you from assembling. We have prescribed 25(10)(5). “We even stop yuh from burying de dead and worshipping”. And nobody has had in this country, except the few lawyers who have fancy shoes could walk to de court, nobody across this country—because I doh only be in dis country when is motorcade time, yuh know. I live here and I around here.

I have heard nobody complain, no pastor, priest or anybody about interference with their constitutional rights based on what those regulations that did not come to this Parliament, and have been widely accepted by the population whom we represent. We represent them. They cannot be here. We come here to represent them, [*Desk thumping*] and we are strong. We are strong in the assurance that the public and the citizens of this country have given the Government in the management of COVID through those regulations.

You know you elect people and you put trust in them. I hear you criticize how one officeholder—how one officeholder could be doing that and doing this and doing that. But that one officeholder,

you put the responsibility for every surgery in this country, if something goes wrong in an operating theatre you call the Minister of Health to account for that. If medication is expired or unavailable you hold the Minister of Health personally responsible for that, bashing him all over. But you cannot hold him responsible for telling people to do the right thing—as all of you have agreed is the right thing, which is to wear a mask? [*Desk thumping*]

You could trust that man? You hold that man responsible. Everybody who “walk” into a surgical ward in this country you hold him responsible for that. But you “cyar” hold him responsible for writing on a piece of regulation together with the Attorney General and his technical staff, to write on a piece of paper a regulation that you must wear a mask or you face a fine for that?

All of you have sat here, approbating and reprobating as Sen. Lutchmedial said she is not going to do—all of you have said here with one side of your mouth supporting this legislation, but on the other side of the mouth finding something wrong with it. Well, we have reached that point. Today is the day—today is the day, and not one of you—not one of you could support anything that you have said today about poor management of COVID, because to do that it means you do not have TV and you do not have newspaper.” You not seeing what going on in Canada? “Yuh not seeing what going on?” Everybody ramping up, and it is common sense.

If you were locked down and not interacting with each other, if

you were locked down and not interacting then there was nothing to spread. But once you ease the restrictions—you saw what happened in Florida when they opened the beaches. You saw what happened in the schools in the US when they had the youth camps open, an entire camp, 183 young persons were infected. The thing about it that is what happens, and what we are dealing with—

**Madam President:** Minister, your time is up.

**Sen. The Hon. C. Rambharat:** —is trying to manage in the context of no lockdown. Madam President, thank you very much.

**Madam President:** Sen. Teemal.

**Sen. Deeroop Teemal:** Madam President, I thank you for the opportunity to contribute on this Bill, an Act to amend the Public Health Ordinance, Ch. 12 No. 4.

Madam President, before I get into my brief contribution, may I offer my congratulations to you on your reappointment; to Sen. De Freitas on his reappointment as Vice-President of the Senate; to all new Senators joining the Chamber and our returning Senators, congratulations.

Madam President, it is distressing in some regards and also disappointing that this Parliament has to contend with proposed legislation to bring about behavioural change among citizens of this country in a crisis situation, for we are indeed in a crisis. As deaths regrettably increase and the number of persons infected with this virus, and our economy takes a battering, we are indeed in a crisis



situation. In a crisis situation do the citizens of a country conditionally be responsible, or does it call for citizens of a country to unconditionally be responsible for the situation that we are in? In the case of this piece of legislation which essentially is much “more broader”, but the focus is on the wearing of masks, the whole question of responsible citizenship comes up.

In every country and particularly in Trinidad and Tobago there is a responsible minority amongst our citizenship, and we see it all the time. This responsible minority is the grouping that pays its taxes without having to be charged or billed, without having to be forced or coerced to pay their taxes. This responsible minority are the ones who when they go to the beach carry that garbage bag with them, put their litter into that bag and take it back home to be disposed of, and not leave it for crews or volunteers to have to go to a beach every so often and clean up the mess that they leave behind—that others leave behind. This responsible minority obeys the laws of the land. They obey the littering laws, and generally try to be good citizens, and they try to raise their families in a certain way so that they are good citizens and responsible citizens.

This responsible minority cannot carry the burden of this COVID-19 pandemic by themselves. This responsible minority cannot nationally shoulder this burden. This burden of this pandemic has to be shouldered by this entire population. We keep saying we are in this together, we really are in this together. And this responsible minority

has to transition because of the dynamics of this situation into a responsible majority. If it is necessary for legislation to be enacted for this transition from a responsible minority to a responsible majority, then it has to be so because we are in situation of a national crisis. No longer can the responsible minority carry this national burden. It has to be shared by all.

Madam President, I do not have to be convinced about the necessity for everyone to wear a mask, because two weeks into the first shutdown that we had, in the early period of March, I was part of an initiative with an NGO, SEWA Trinidad and Tobago, in which we undertook to voluntarily get over 20,000 masks sewn and distributed, and we achieved that target. This was in early March. Because we felt that even though it was not mandatory, it was absolutely necessary and it made sense for our frontline workers in particular and those engaged in the service industry to be able to have masks. All of these masks were done and given out without charging anybody. It was totally a voluntary effort.

SEWA Trinidad and Tobago I am sure was not unique in this regard because there were many other NGOs who saw the wisdom in having our citizens equipped with masks, and they would have probably done less or they would have probably done more. I think collectively our NGOs would have contributed hundreds of thousands of masks to citizens of this country for their safety and their protection against the COVID-19.

Madam President, several contributions before, Senators indicated that parallel with this piece of legislation we must have public education, and yes we have had efforts in this direction of public education. But what I want to suggest is public education with a little twist to it, because really and truly when you look at this legislation that is before us, the police has to be in quite a judgmental situation regarding the issue of this fixed penalty in terms of masks. It is not just a question of not having a mask, but the public education effort must be focused in a way of how to wear a mask properly.

I would really like to see the Government specifically engage in a public education programme on the proper wearing of masks, because we see masks being worn in all forms and fashions. Upside down, below the nose, below the chin, as a support for the chin. In all forms and fashions we see. And whether or not a policeman would see somebody with a mask and enter into a situation of judgment, as to whether or not the mask is being worn properly, whether it is not being worn properly, it puts that particular policeman or policewoman in a sort of difficult situation to really assess. So I think a lot of effort would be needed in that particular direction. But not just blindly enforcement of this piece of legislation, but sensible enforcement with the aim of achieving the objective of what this legislation is aimed at.

Madam President, the legislation itself, I think if we look at it a certain way it may appear, it would appear burdensome to those who are disadvantaged economically. But at the same time we have to

recognize within the legislation itself that there is also some degree of balance. I think in the crafting of this legislation there is a genuine attempt for some balance to be brought about. Because first to begin with the fixed penalty is contestable. Other than being contestable, there is a first offence, second offence, third offence. So that it is not just one sudden hefty charge, but it is gradual.

So that if somebody does break the law, they do not have a mask for some reason there is also that provision for second and third offences.

Madam President, as I conclude, on Monday 31<sup>st</sup> we will be celebrating our 58<sup>th</sup> anniversary of independence. Of course no pomp, no grandeur that we are accustomed, and maybe without all of it, it would be a time for deep reflection for all citizens of this country. As I said when I started in terms of a transitioning from a responsible minority to a responsible majority, particularly in terms of this pandemic. It is a time for enlightened citizens. It is a time for that transition into engage citizenship. It is that time for a transition into responsible citizenship.

Whilst we may have issues with how the country is governed, while we may have issues with how our institutions are functioning, whilst we may have issues with perceived bias or actual bias in terms of services afforded to citizens, particularly those who are disadvantaged, at the same time as citizens we really need to share the burden and not always be a burden to the State, but be responsible in

this pandemic situation, be enlightened, and work together to really tackle this problem that we have in front of us. I thank you, Madam President.

**Sen. Hazel Thompson-Ahye:** Thank you, Madam President, for allowing me to join this debate. Like speakers before me I wish to congratulate you on your re-election as President of this House, and say that the saying that the woman's place is in the home, is not really correct. A woman's place is in the House and in the Senate. [*Laughter*] This is something that you demonstrate that you are fully in charge, and I think people must take note of that and act accordingly.

Now, this Bill should not be before this Parliament today or any day for that matter. Today this Saturday I really should have been at home listening to music on the Barbershop where there is no barber, but where all the other middle aged and old women what they do, or I could have been tending to my very productive kitchen garden, which is my new hobby. At least somebody is listening to the Minister of Agriculture, Land and Fisheries. But I am here to do my duty and it is an honour and a privilege.

Vice Admiral of the Royal Navy, Horatio Nelson, in 1805 before the battle of Trafalgar said: England expects every man will do his duty. We are charged with the responsibility as Parliamentarians, elected or appointed, to do our duty. But this does not apply to just every man as Horatio Nelson said, because we know as a matter of

interpretation that the man embraces the woman. So here I am to do my duty as a woman.

I would have much preferred to have come here on a Bill to raise the age of criminal responsibility, from the disgraceful age of seven years, to make it impossible to charge with crimes children of a tender age.

Yesterday I was indeed distracted, Madam President, that you would have seen, and I apologize for my lapse. Contrary to what we were urged to do, I was not completely present in the Parliament mentally. At the same time that I was here taking my Oath, I was also presenting to a world conference online, pre-recorded, my presentation on family law and crisis going through pandemics. So there we were, my voice coming across the Internet talking about the vulnerable of the vulnerables, the most vulnerable, children going through pandemics and in particular children in care and in court. I was looking at that, several countries of the world listening to me.

My fellow panellist, Martha Pascual, President of the Juvenile Criminal Court in Buenos Ayres and President of the International Association of Magistrates and Officials of Family and Youth Justice, the minute I finished my presentation she asked me: What is the age of criminal responsibility in Trinidad and Tobago? I said I was hoping you would not ask me that question. I felt ashamed. I said seven years. In Argentina it is sixteen. And somebody asked me yesterday—

**Madam President:** Senator; Senator.

**Sen. H. Thompson-Ahye:**—what is the impact of this legislation on children.

**Madam President:** Sen. Thompson-Ahye, if I may. I am very interested in what you are saying, but I think that you need to come to the Bill, to the matter at hand. There will be another time for you to talk about those issues that you are raising, okay.

**Sen. H. Thompson-Ahye:** Thank you, Madam President. How are children going to be affected by this Bill? Are they going to be arrested? What is going to happen in turn when they do not wear masks? I was walking in the mall a few days ago and I saw a parent with three children, and one child kept taking her mask off. So it is a question, you know, I am wondering what is going to happen.

Now, when I say the Bill should not be before the Parliament today, I am not saying that we should not legislate the wearing of masks, but I was lamenting the fact that this Bill has become necessary. That we have to pass legislation to make people do the right thing because it is the right thing to do. We have repeatedly tried gentle persuasion, but we know that recommendation, we have seen without legal sanction, does not always produce the desired result. We have repeatedly been provided with empirical evidence from our local experts, although they have been contradictory in the beginning, the evidence from the Centre for Disease Control and Prevention, CDC, and the World Health Organization that wearing of face masks hinders the spread of this deadly virus, is now universally almost accepted.

Nina Bai in her article, “Still confused about Masks? Here’s the Science Behind How Face Masks Prevent Coronavirus”. She published this in Patient Care on June 26, 2020, and said:

“What may have finally convinced the CDC to change its guidance in favour of masks were rising disease prevalence and a clearer understanding that both pre-symptomatic and asymptomatic transmission are possible—common.”

So there is no doubt in my mind that this legislation is necessary. It can legitimately be called draconian. It is by no means unique to our jurisdiction.

According to Prof. Ruben A. Gaztambide-Fernandez writing in the *Conversation* on April 13, 2020, the European Centre for Disease Prevention and Control reported that face masks were obligatory in shops in Germany, Spain, Italy, Poland, Bulgaria and Belgium, and Prof. Fernandez stated further that the ECDC explained that the use of face masks was not a replacement for physical distancing. It was not a substitute for respiratory etiquette, meticulous hand hygiene and covering the face, nose, eye and mouth. All of these things we still have to do.

I was standing outside Royal Bank on Independence Square a few days ago, and a gentleman walked out from inside the bank. I was practising social distancing, so there was space in front of me, between me and the person ahead. He just spat right there. I can tell you I was very scared as to what would happen. So you still have to



do all of those things. The meticulous respiratory etiquette, the meticulous hand hygiene, covering the face, eyes and mouth.

Now, some States in the United States after much debate, and then England, Northern Ireland, Scotland and Wales now make it compulsory to wear face masks on public transport, in transport hubs, in shops and supermarkets and shopping centres, premises providing professional legal or financial services, premises providing personal care and beauty treatment. And that is a challenge for us women, you know. How do you handle that? When somebody comes to—you know, you go to do a facial or whatever, you cannot wear the mask all the time so that is a challenge. Visitor attractions, entertainment venues, libraries, places of worship, funeral service providers, community centres, youth centres, public areas in hotels and hostels, public storage, unless there is an exemption or reasonable excuse. I do not know if the regulations will provide for reasonable excuses or exemptions, but we wait to be told.

The law in the UK provides for the fine to be halved if paid within 14 days for a first offence. There is a graduated increase for subsequent offences. The law makes provisions in the UK for exemption for children under three years and other cases, including if you are delivering a sermon or a prayer in a place of worship or getting married in a relevant place.

So this Bill before us today seeks to amend a very ancient piece of legislation. So we could make regulations to legislate proper,

correct and sensible behaviour. For months we have heard the indefatigable Minister of Health, the Prime Minister, the Minister of Communications and others urging us to do the right thing. But it is like the old people say, “stick break in we ears”.

When one peruses social media, one realizes that all of the dialogue, all of the work, all of the information being put out there, instead of listening to the advice of our leaders and the information that we are getting during the daily press conferences, I was surprised that some people on social media were more interested in what the Minister was wearing, how many suits he had, if the tie was matching the suit, and how many hairpieces other people had. All of that nonsense instead of taking in the information.

**3.30 p.m.**

So we are here in the age of a new normal. Until recently when someone asked if you went to school in August that used to be an insult. It meant that the person went to school when the teachers were not there, so had learnt nothing. Now in time, our 11 year olds will tell their grandchildren, “I went to school in August, you know”, and they will say it with pride, because they have made history. Part of this new normal requires that we include masks as an essential part of our daily wear. Many have embraced this informal rule and used it to make a fashion statement. Even in this very Parliament the wearing of masks has found new entrepreneurs, and some have unearthed sewing skills that were hitherto buried. Others have strongly resisted the

sensible and very practical advice although being told of the implications. And I do not know where my brother Senator lives, but I like to monitor what is going on. So when I drive down South Quay I count how many people are not wearing masks. When I drive through Tunapuna, I count how many people are not wearing masks. When I go in Long Circular Mall and West Mall and Trincity Mall, I look to see how many people are not wearing masks and I fret and I quarrel, and my family say “doh bother your head with dem you know. Dey will get what they are looking for sometimes.”

Now, the election gathering provided a snapshot to the degree of compliance with inevitable result of a new wave. The police have been selective in their choice of what human rights they would infringe, and whose. They have chased people home, you know in the early days, without any authority, but they have ignored persons without masks gathering in bars and failing to practise social distancing, and this is the case even when such acts were occurring practically on their doorstep, as in the bar opposite the Tunapuna Police Station. I pass there and I count and I look on and I say, imagine, just imagine. So this Bill seeks to create severe penalties for breaches of the regulation made under the Act to increase the maximum penalty from \$50,000 to \$250,000 is the aim.

Now, when you look at clause 4, it amends section 105 of the parent Act by insertion of section 105A(2) which makes provision for the issuance of a fixed penalty notice, which under subsection (4) is

deemed to be a complaint under the Summary Courts Act. And section 105A(6) provides for an appeal to a magistrate if you wish to contest the notice, but provides that you must first pay the penalty within the stipulated period. And I must draw an issue with my friend. I really am concerned about that, you know, pay and then complain. Reminds me of other things. Now clause 4 which amends section 4 by insertion of 105A(7) provides that if you win your appeal the fixed penalty you have paid would be refunded. No mention is made however of when you will get your refund. You will not be human if you were not to wonder if your fixed penalty refund will suffer a fate similar to the sad tale of the VAT refunds, sub-numeric, involuntary acquisition of bonds. Further, no mention is made of interest on the sum owed. As taxpayers know, interest is collected by the Government on sums owed to the Government, but is not paid by the Government when sums are owed by them. So, Government for the people, by the people, for the people. One must never get one's proposition confused you know, whether one did Common Entrance or SEA, or else you would be sorely disappointed.

Section 105C(6) provides for payment of the fixed penalty to be made within 14 days or:

“...such other period that may be prescribed by Rules of Court from the date of the fixed penalty notice, and where payment reaches the Clerk after that time, it shall not be receivable and shall be returned to the payer.”

Now, I find this provision to be unduly harsh. Is there no reasonable excuse for non-payment within the time stipulated that will suffice? Is there no mercy in this court? What if the payer is hospitalized, or the machinery breaks down in a court? Is this Shylock legislation? Is the quality of mercy never to be strained? One—or must the defaulter wait until he is summoned to court and proceedings commenced under 105G to receive the mercy? Now, I have heard many Porsches in this House during the course of the day, so perhaps they will get assistance to receive mercy. Madam President, during the run up to our last general election, and even before we fear the worse that our financial situation was critical, we frequently heard the words from the political directorate—

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

**Sen. H. Thompson-Ahye:** We are all in this together. In this very Chamber I have questioned, who constitute the “we”? It is a question that to my mind has never been satisfactorily answered. Being in this together speaks to solidarity, so I crave your indulgence to speak a bit about solidarity which had guide the formulation of the regulations. Rubén Gaztambide-Fernández, whom I quoted earlier, explained in his paper what is solidarity, during coronavirus and always is more than we are all in this together. He spoke of different types of solidarity. He said:

“Universalistic solidarity suggests all human beings have a

moral duty to work together for the benefit of all.”

He warns though that while this view was compelling, it:

“...ignores differences and potential conflict between the needs and values of different groups”—and—“overshadows how the impact of a crisis isn’t equal among different groups.”

So, we must take special notice of the differently-abled, especially the mentally challenged when we draft our regulation.

He speaks of civic solidarity which recognized that we do not necessarily have a personal relationship with those on whose behalf we take action. He described practising physical distancing as an act of civic solidarity. He mentioned social solidarity, groups sticking together and acting to protecting their interest and political solidarity, which involve issues of discrimination, which sometimes is more apparent and real, and this is crucial to our understanding how pandemics exacerbates existing social inequalities.

Chika Onyejiuwa, in his article “Ubuntu: An African Culture of Human Solidarity” seeks to explain the concept. It is a concept embraced by Archbishop Emeritus Desmond Tutu, Martin Luther King, Mahatma Gandhi, Mother Theresa, Oscar Romero and Nelson Mandela, to name a few. He described the philosophy as coming from a:

“...realization, that each and everyone’s life is deeply tied to the other, and the choice to use personal power to commit to the common good as opposed to creating isolated individual good.”

Simply put by Archbishop Tutu, “ubuntu” means:

“You cannot be human all by yourself...”

We require to hold ourselves to account and to be mindful of the risk we pose to others. We are called upon to be eminently sensible. This does not mean crowding the beaches a day before a lockdown for a last dip. Surely, any logical person would have realized that that last dip might have ended up being indeed your last, and to expose your children to that risk was highly irresponsible. The sea will always be with us. Do they really think that the virus would take a holiday on that day? As we fight this pandemic, we are called upon to be caring for one another, to practise ubuntu. Legislation is not the answer, it is but a miniscule part. We need to change not only our practices, under force of penalty but our hearts and minds, and practice ubuntu.

So, I end as I began. This Bill should not be before our Parliament today. Our caring for one another should dictate that what we do naturally without fear of penalty, what we must do to safeguard one another. So we brought this upon ourselves. We! Before we cause even greater tragedy to our self and others, let us vow to henceforth practice ubuntu. Let us not only say, but live sincerely what our erstwhile colleague constantly preaches, “I love my country”, and add, I love my countrymen and women, and I will do all I can to safeguard the health of themselves. I will practise social distancing. I will wear my mask, and I will practise proper hygiene. I thank you. [*Desk*

*thumping]*

**Madam President:** Sen. Mark.

**Sen. Wade Mark:** Oh, thank you, Madam President. Madam President, may I begin by recording my appreciation to the hon. political leader and Leader of the Opposition, the hon. Kamla Persad-Bissessar, Member of Parliament for Siparia, for giving me this opportunity to serve once again in this honourable Senate. I also want to say that I would like to record the contributions made by my outgoing colleagues, Sen. Taharqa Obika and Sen. Sean Sobers. Again, I welcome my colleagues who have joined us on this bench, and all other Senators.

Madam President, I want to tell you that at one time I was worried about your good self. I saw a list and your name was not there, and I was very concerned whether you were going to be left out. But I am glad that you are around. And, Madam President, I want to tell you, as the President of the Senate, on our parliamentary website, there is still the name Sen. Daniel Dookie up as a Senator in this Parliament. This is something that has to be corrected. So we do not know whether there were two lists that the Prime Minister had in his back pocket. [*Desk thumping*]

**Madam President:** Sen. Mark, first of all you are completely—  
although I normally  
give a “lil” leeway to get into the Bill, but you are also involving the  
Presiding Officer in your contribution.



**Sen. W. Mark:** Much obliged. So, I am glad that you are there. Madam President, I want to indicate very early, that COVID-19, the novel coronavirus— Madam President, I think I am very claustrophobic, so you will have to excuse me sometime. You may have to pick me up one of these days on the ground here with this, you know, but I will talk about the various masks and types as I proceed.

Madam President, I listened to my friend, Sen. Clarence Rambharat, very closely, and I have come to the conclusion, he has been so battered and bruised by that massive defeat he experienced at the hands of Vandana Mohit he is yet to recover. [*Desk thumping*] Yet to recover. Madam President, I do not want to spend too much of my limited time responding to some of the points expressed by my colleague, Sen. Rambharat, but I want to let him know when he talked about state of emergency and people being locked up and short pants, I want him to know, as everybody knows, that prime ministers are advised by national security personnel, on threats to this society, and I think it is very unfair for the hon. Senator to give the impression as if the United National Congress deliberately, maliciously and calculatedly went out there to arrest people. Advice was offered, taken, effected, the results are yet to see. But I want to also ask, in his absence, what about the constitutional rights of all citizens who are currently outside of this country under the pretext of us protecting the citizens inside here, borders shut down, from COVID-19. Are not these citizens' rights being trampled upon without calling a state of

emergency in this country? [*Desk thumping*] So, we have to be very clear, because when we look at the preamble of our Constitution, these citizens have rights, and they have freedoms, but these rights and freedoms are being trampled upon by this Government who refuse to put into this Parliament the basis and the criteria for denying people entry into this country who are citizens on the pretext of COVID-19, and they are closing the borders.

Madam President, let me make it very, very clear. It is Bob Marley who told us that once there is economic injustice, once there is inequality and social and cultural and physiological oppression, the world will be facing war, and therefore we in the United National Congress do not see citizens as idiots. We do not see citizens as being irresponsible in terms of a minority. Madam President, the reality is, and you would have seen in the papers just yesterday on page 24 of the *Trinidad Express*, the headline reads:

WHO backs testing people without COVID symptoms.

Madam President—

**Madam President:** Sen. Mark, there is a Bill before this Chamber and I would ask you please to treat with the Bill. I gave you some time, some leeway, time to provide a context, but so far there is no context. I need for you to treat with the matter at hand.

**Sen. W. Mark:** Madam President, we are dealing with the piece of legislation that is designed to establish a fixed penalty system in an effort to establish regulations to give a Minister certain powers to deal

with certain matters, including creating offences as it relates to the wearing of masks, dealing with matters of self-quarantine, and a number of other matters related to the Bill that is before us. It is in that context I was raising the point about the failure of the Government to conduct testing of our people on a large scale, even if they are asymptomatic, and I was just bringing to your attention, Madam President, and the attention of this honourable Senate, that the WHO, only yesterday, said to countries like Trinidad and Tobago, test everyone whether you are symptomatic or you are asymptomatic.

**Madam President:** Sen. Mark!

**Sen. W. Mark:** Madam President, this is necessary—

**Madam President:** Sen. Mark. You have a Bill before you, which is fairly narrow, dealing with the public health issues, but you cannot go off on a tangent to treat with every single issue about COVID-19. So, I am asking you to try and let your contribution be specific to the matter at hand. Please!

**Sen. W. Mark:** Madam President, you know when you are engaging in Bills second reading, we deal with policies and principles and merits.

**Madam President:** And Sen. Mark, you know when you are treating with any debate that if the Presiding Officer gives you some guidance, take the guidance and move on, please.

**Sen. W. Mark:** Yeah. Being there before I have a good idea. Madam President, I shall proceed.

Madam President, I want to indicate to this honourable Senate that the United National Congress is willing to give to the Government the necessary tools to fight this pandemic because we understand the significance of it. Within the period of the election of August 10<sup>th</sup> to the present time there has been a 100 per cent or 150 per cent increase in the deaths of citizens as a result of this virus. So whilst, Madam President, we are here today under the Public Health Ordinance in an effort to amend that Act so that the Government can get more or secure more legislative tools to fight this pandemic, I want to make it very clear, that it is our conditional responsibility as the United National Congress to scrutinize these measures that the Government intends to take to ensure that their aims and objectives satisfy our Constitution and the provisions therein.

Madam President, I have always been opposed to subsidiary legislation being given to the Executive through regulations so that they can take action and measures in order to promulgate measures via regulations, via delegated legislation. And, Madam President, I was able to extract a case involving a lockdown matter in a country called New Zealand, and I want to deal with the question of the one—I am dealing with 105, Madam President, so you would not have to rise again, and I am dealing with 105A of the Bill. And, Madam President, the case out of New Zealand is known as *Andrew Borrowdale v the Director of General of Health* for New Zealand, 2020. I think it is very important that there is a particular paragraph in

that judgment that is extremely useful, gives us an understanding, the need for us to appreciate the role of our institution called Parliament, and the need for all of us to uphold the rule of law. Madam President, if you would allow me to deal with this matter, let me just quote briefly for you:

The rule of laws requires that the law is accessible, and, so far as possibly intelligible, clear, unpredictable.

As Lord Bingham has explained, extra-judicially:

“...if individuals are liable to be prosecuted, fined and perhaps imprisoned for doing or failing to do something, we ought to be able to undue difficulty to find out what it is we must or must not do on pain of criminal penalty.”

And the last sentence in this quotation, Madam President, states:

“Although the state of crisis during those first nine”—months.

No, “those nine days” rather.

“...goes somewhere to explaining what happened, it is equally so that in times of emergency the courts’ constitutional role in keeping a weather eye on the rule of law assumes particular importance.”

Madam President, when we look at this provision under section 105A we understand the importance of the role of the Legislature and the Parliament. Madam President, we have the role and function to ensure collectively proper laws are framed and proper laws are passed. Madam President, it means that the Government has a duty

when they are taking decisions that would infringe, or possibly impact on the movement of people, freedom of expression of the citizen, that those measures through regulations are brought before the Parliament so that we can have sight of those regulations.

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

**Sen. W. Mark:** Madam President, we have formulated a number of amendments. We have amendments to clause 4. We have amendments—several amendments—to clause 4. I believe the hon. Attorney General should take those amendments into consideration in order to strengthen the legislation that is before this honourable House. And, Madam President, we are also proposing that we insert a new clause called clause 5 in an effort to ensure that this Parliament is able to oversee and to have some insight into measures that the Attorney General and the Minister of Health, and by extension the Cabinet, would in fact be proceeding to implement through regulations, that we at the level of the Parliament have access, have sight, and therefore we will be able to debate those regulations.

So, we are proposing, Madam President, in clause 105H of the legislation that is before us, which says:

“The Minister may from time to time by Order amend the regulations...”

We are proposing, yes, the Minister can amend the regulations, but that must be subject to the affirmative resolution of the Parliament.

And, Madam President, when you look at section 105,

reference is made to sections 132 and 133 of the Public Health Ordinance. In this context, we are proposing that we insert a new clause in order to ensure that the Legislature, the Parliament, has an oversight role, a scrutinizing role, to ensure that any legislation through regulation that the Government intends to pursue must come to the Parliament, must be debated in the Parliament, so that all the citizens would have access and would have some knowledge. Madam President, we know the fine is between—has now increased from 50,000 to 250,000. You also know, Madam President, that the Government, through the Minister of Health, can in fact institute, establish, create, new offences, can alter and expand fines, can determine whether he will remove any offence from the schedule.

Madam President, these are very wide, creeping powers, and what we are saying, as the United National Congress, there is need for this Parliament to have a proper oversight supervision and role in ensuring that legislation through regulation is in fact transparent, there is accountability, there is scrutiny, and at the end of the day we will be looking after the interest of the ordinary people and the masses in this country. So, Madam President, we will circulate our amendments to the Clerk, and at the committee stage, those amendments will be addressed. I wish to thank you, Madam President. [*Desk thumping*]

**Madam President:** Attorney General.

**The Attorney General (Hon. Faris Al-Rawi):** Thank you, Madam President, for the opportunity to bring conclusion. I wish to thank all

hon. Senators for their contributions this afternoon and this morning, and especially to commend Senators who have made their maiden contributions today, Sen. Nakhid in particular, I believe it was his maiden contribution, and it was Sen. Lutchmedial. Certainly they demonstrated, both of them, the ability to debate well in this Senate, and to make points of law without the need for any assistance. I congratulate both Senators. Sen. Roberts, it is not his first contribution in a Parliament; well experienced politician that brings verve and dynamism to debate. Certainly, it is enjoyable to listen to Sen. Roberts. One may have disagreement with content from time to time, but he certainly animates the contents of debate in this Senate. I congratulate Sen. Roberts for his contribution.

Madam President, there have been a few submissions made that are important to respond to, and permit me to address them as follows. Sen. Lutchmedial raised a few issues. Firstly, the issue of the subsidiary legislation, not being, in her view, and in her submission, one that should be the route taken. This was echoed by a couple other persons on the Opposition Bench. The view is that the regulations should be subjected to the scrutiny of the Parliament. Sen. Lutchmedial said that it was a blank cheque that the Parliament is effectively giving, and that one member of the Executive makes these laws.



**4.00 p.m.**

Sen. Lutchmedial also reflected upon the benefit of the United Kingdom approach. The hon. Senator also reflected upon a Privy Council decision in the context of an appeal coming out of Jamaica which I will go to in a short while, and the hon. Senator, I think, perhaps mistook what I had said in another place but would certainly put something onto the record which I must and I am compelled to address in a very short way.

If I can deal with that last point in reference to Sen. Lutchmedial's position. I just wish to state for the record that my invitation to the hon. Senator to have a look at the conflict of interest provisions was not meant for it to be derogatory in any form or fashion. I accept that the hon. Senator is a practising attorney-at-law of repute and I fully support the fact that the hon. Senator engages in public interest litigation amongst other things. I make no complaint about that. I had raised it solely in the context of a particular High Court action in which the hon. Senator is in fact junior counsel to Senior Counsel Anand Ramlogan, and that is a matter which is on the record, one, concerning a challenge to the quarantine laws for a COVID positive patient. And because I set out that these laws will be treating in the amendments before us now with COVID Regulations, I felt compelled to simply just inform my learned Senator of the provisions of conflicts of interest. So it was not along the line that the hon. Senator went, and that is in fact a matter of public record. It is the

matter of *Sasha Seepersad v the Attorney General* and the hon. Senator appears in that matter.

With respect to the submissions made by the hon. Sen. Lutchmedial, including submissions echoed by Sen. Lyder, indeed Sen. Roberts and Sen. Mark, and then also too, Sen. Vieira in reflecting upon it in a slightly different fashion, permit me to treat with the issue of the Minister being given the legal authority under the Public Health Ordinance to in fact make the law. Now, Sen. Lutchmedial correctly stated that the law is saved law and that there is nothing to stop a challenge of the saved law principle. That is in fact the case. It is not that saved law is necessarily going to be upheld in any one circumstance as the law evolves. I think that that is best evidenced in the Jason Jones decision where there was a collateral attack to a saved law concept and, of course, the courts are from time to time constantly in the mode of revising the laws by way of construction of laws, if not strike out. It is a fact that the Public Health Regulations are under contest. That is a matter of record. Again, it is the very chambers that Sen. Lutchmedial comes from, that is Freedom Law Chambers, in a particular case, which I would not go into details of where there is a direct a challenge to the constitutionality of the Public Health Regulations. So that is something that we are all familiar with.

The point that we make here is that the law, the Public Health Regulations, are the existing law and have been the law since 1915,

when we are now 105 years away from that. I explained plainly and simply why it is we cannot use, and the Government has elected instead to use this route, but why we cannot use and have opted not to use the suspension of constitutional rights under section 8 of the Constitution where a state of emergency is declared. I have explained why the second option of the Disaster Measures Act has been not the choice of the Government, again, for limitations in the applicability of that law, and that is Chap. 16:50, Act of Parliament No. 47 of 1978. Section 105 of Public Health Ordinance actually says that the Minister—in reference there, the language is the board, but that was amended in 1965, it means the Minister—has the authority to make the law.

Now what I was surprised at in Sen. Lutchmedial's submission, in referring us to the English provisions, is that the subsidiary legislative approach—and let me explain that to the common man listening to these proceedings through you, Madam President. The position is that you can have a law, such as the Public Health Ordinance, which provides for a methodology to make further law and that is by the way of regulations. That is called subsidiary legislation. Senators have made complaints on the Opposition Bench that the use of the regulations, by way of subsidiary legislation, is odious and ought not to be used. Sen. Lutchmedial went so far as to say that it was lacking effectively, in my own words, in transparency, and the hon. Senator said that there was a denial of the right of the Opposition

to look at the regulations. That is because section 105 allows that route, and umpteen laws in Trinidad and Tobago allow that route, and that has been since we were a Crown Colony come forward. That is a perfectly lawful way of exercising legislative capacity.

The position, and hence my surprise, is that Sen. Lutchmedial found comfort in the English law approach, and what is interesting in the English law approach, Madam President, is that the law which treats with regulations for mask wearing, for instance, in the aspect of public transport—because they have it across several sections—is in fact the Health Protection (Coronavirus, Wearing of Face Coverings on Public Transport) (England) Regulations 2020, and that springs from the UK Public General Act, 2008, and that is the Public Health (Control of Disease) Act, 1984 in the United Kingdom. That public health protection law in the United Kingdom specifically allows only the Minister with responsibility for health to make regulations to deal with matters affecting infectious contamination, protection of the public, restrictions on the public, and that that law, the English law, in allowing only the Minister with responsibility in England, also has with it the ability for that Minister to make fines in the regulations not exceeding £20,000.

So to hear the hon. Senator say, “Look at England. We have a problem with this Government’s approach,” when you actually take the time to go to the English law referred to by the hon. Senator, the English law itself is demonstrative of exactly what this Government is

doing. In England, the Minister makes the laws by regulation—subsidiary legislation. In Trinidad and Tobago, the Minister of Health, under the Public Health Ordinance, makes the law by way of regulations. In England, the regulations are capped to £20,000. In Trinidad and Tobago, the regulations are capped to \$20,000. So I am entirely—how should I say it—incapable of understanding the hon. Senator’s point to say, “England got it right, do it that way,” when the hon. Senator is really referring us to English legislation which is exactly the same in construction as Trinidad and Tobago.

Now that is exacerbated, Madam President, by the fact that the English law sets out that the regulations must provide for a right of appeal to a magistrate. Let me repeat that. The English law sets out that the right of appeal is to a magistrate, exactly as we are doing in section 105A(6), in clause 4 of this Bill. So we are doing exactly the same thing. And more than that, the only constraint on the English version of this law—that is what they do in the public health setting for coronavirus—is that the Minister is only constrained by proportionality. And I want to refer specifically to section 45D—as in “Delta”—of that law, the Public Health (Control of Disease) Act, 1984 as it was amended in the United Kingdom where the only restriction and the power to make regulations effectively is that the Minister must consider it proportionate. Listen to who does it. The Minister must consider it proportionate.

So, Madam President, I take no advice from the hon. Sen.

Lutchmedial that this law is somehow dangerous, that there is a parliamentary exclusion. I do not accept what the hon. Senator says, that the English experience has got it right because when you take the time to go to the English experience, they do it in the context of the Public Health Regulations. As I have just described, they do it exactly the way Trinidad and Tobago does and as is proposed in this particular law.

Madam President, permit to deal with a few other issues. Coming out of the English experience as well, Madam President, on the 14<sup>th</sup> of June, 2020, face coverings were dealt with by No. 590 of 2020. This is in the Health Protection (Coronavirus of Wearing of Face Coverings in Public Transport) (England) Regulations, and I want to point out that in that law, offences were created by way of regulations and that a person who contravenes the requirement—“commits an offence” was the expression—subject to summary conviction and fine, and it also introduced the fixed penalty notices provisions and that an authorized person may issue fixed penalty notices reasonably where there is a belief there has been an offence committed.

So, Madam President, again, when you look to the English experience and you look at that in the context of what we do today, there is an exact source of Commonwealth authority, that is, the United Kingdom experience permitting us to recommend to this Senate to do as we do. Now, Madam President, I could not again

understand Sen. Lutchmedial's reference to the judgment of *Lowell Lawrence v the Financial Services Commission*. That is 2009, and it is a UK Privy Council decision 49. It was issued on the 14<sup>th</sup> of December, 2009, and the judgment, as delivered, was by Lord Clarke. That particular judgment, when you go to the judgment of the Privy Council, it specifically treats with a fixed penalty notice. It was done by the Financial Services' end to treat with the regulation for insurance companies and security industries. But in the Jamaican context of that law, both the High Court and Court of Appeal held that the fixed penalty notice was valid. The Privy Council upheld the validity of the notice.

In the Jamaican experience, the issue before the Privy Council was quite simply whether the legislation which validated the fixed penalty notice—because in the Jamaican case did not know that the law had not been assented to or put into effect—whether that was in fact valid. But what I found very instructive and the opposite of what I understood from Sen. Lutchmedial is to be found in paragraphs 31 to 35 of the judgment. In looking at the issue as to whether the appellant is entitled to have the notice quashed, the Privy Council said that the board is unable to accept the argument made by the appellant, that the offence—and I go there that:

“The principal argument advanced before both courts and on this appeal is that the FSC should have permitted the appellant to be heard before forming the view either that he had

committed the offence alleged or that with reasonable grounds for thinking that he had done so and before serving him with the penalty notice complained of.”

The Privy Council says, Lord Clarke:

“The Board is unable to accept this argument, essentially for the same reasons that were given by the Full Court and...Court of Appeal.”

Because essentially, the Privy Council agreed that there was a mechanism in place such that when you are given the fixed penalty notice, you have option not to accept it and to follow the due process procedure. If you paid it, that was one of the procedures offered. And the Privy Council was very careful to make reference, in particular, to the principles of natural justice and the authorities.

They went so far as to paint the underlying principle set out by Lord Bridge of Harwich in *Lloyd v McMahon 1987 Appeal Case 625* and effectively said that the so-called rules of natural justice are not engraved on tablets of stones, et cetera, but recognized that this fixed penalty notice system preserved the due process and fairness provisions. So I cannot understand the hon. Sen. Lutchmedial’s recommendation that this law is supportive of some position that we are infringing upon any rights in any form or fashion, or that the fixed penalty notice in having reference to an offence is somehow a breach of natural justice. I do not respectfully accept those recommendations.

Madam President, if I look further to—I thank Sen. Rambharat



for a very robust management of response. It is quite clear that we are not in a position of being worried as legislators about the consequence of this law, and that the courts are there to provide the aid and support for any infringement of rights. I lean upon the submissions made by Sen. Rambharat that the most egregious example of a breach of rights, resulting in millions and millions of dollars in damages, was the state of emergency which was triggered by the Opposition when they sat as Government, and the thousands of people that were arrested in circumstances where they could not be found to be a reason for that arrest.

What was extremely egregious about those cases, now that they have ended, is that the Leader of the Opposition and the Attorney General who managed that affair, then Sen. Ramlogan, neither of them made themselves available, as far as I am aware from the correspondence that I saw, to provide testimony in court for the reasons for the state of emergency, and that was deemed by the court to be one of the deficient areas in terms of the report given to me as to why we had to pay millions of dollars. So I cannot understand Sen. Lutchmedial's reference to those things. I will leave alone the ad hominem attacks made by my learned colleague. I am sure that that can be dealt with in another fashion.

Madam President, I wish to refer to the position of— a very important position raised by Sen. Evans Welch and I turn now to that square point. May I ask what time is full time, Madam President?

**Madam President:** You finish at 28 minutes past four.

**Hon. F. Al-Rawi:** Thank you, Madam President. Sen. Welch referred to, and Sen. Thompson-Ahye also referred to it, to the provisions of section 105A(6) as is proposed by clause 4 of the Bill, and both hon. Senators dealt with the position of saying that they felt that this “hybrid”, this formula where you can pay for the fixed penalty notice and preserve a right of appeal, that that was unusual. Permit me to explain what that is. When you look to—Sen. Welch made a very interesting submission that he felt that the appeal, as it is used in the language in section 105A(6), that one would be confined to issues of law or procedure with respect to the fixed penalty notice and that facts could not come in there.

Madam President, first of all, I answered that submission by saying the first judicial officer to consider the fixed penalty notice that will come before the court is the magistrate. The jurisdiction of the magistrate is grounded in section 6 of the Summary Courts Act, Chap. 4:20, jurisdiction in section 6:

“Every Magistrate and Justice shall have and exercise such powers, privileges, rights, and jurisdiction as are conferred upon each of them respectively under this Act or of any other written law...”

This written law and the Dangerous Drugs Act confer upon the magistrate in the language of section 105A(6) a specific thing.

“Notwithstanding any provisions of this Act or any

written law to contrary, a person who pays a fixed penalty before the expiration of time specified...”—et cetera—“may, in the prescribed form, appeal to the Magistrate in the district in which...the penalty in respect of that offence...”—when—“he was charged.

- (7) Where, in an action referred to in subsection (6), the Court decides in favour of the appellant, the amount representing the fixed penalty paid by the appellant shall be refunded to him.”

There is no limitation language to say that the appeal is confined to issues of law.

When you look then, Madam President, to section 137 of the Summary Courts Act and you look to the form of appeal and, that is—sorry, section 128 onward, appeal in special case, you get down to section 132, in the Summary Courts Act, that is where you find the words of limitation and that is where an appeal is going from the Magistrates’ Court to the Court of Appeal. There are no grounds or limiting words to say that appeal should not be in the broadest context of reasons for an appeal. The reason for using this in the Dangerous Drugs Act and in this particular law is quite simple. We could not use the notice to contest provision in the Motor Vehicles and Road Traffic Act because to do that would require us to build out an electronic system for notice of contest which we just do not have the time, in the context of this pandemic, to build out.

So, Madam President, there is a clear and cogent rational reason for the use of new section proposed, 103A(6) and (7), with precedent in the Dangerous Drugs Act, and if you could put into the degree of colloquialism, it makes it even more fair a process than if you did not have it because it allows you an alternative position. The issue of interest, as raised by Sen. Thompson-Ahye, is a very clear position. There is no issue coming inside of that. The law will provide itself in the usual context. So, Madam President, I wish that my learned colleagues were here to hear this contribution, but perhaps we will get to it at committee stage when the issue is again addressed.

Madam President, the issue of negative resolution and positive or affirmation resolution coming is perhaps the last point to be addressed—and if I could just say is it 4.28, Madam President? 4.28?

**Madam President:** Yes.

**Hon. F. Al-Rawi:** When we look at that issue, the exhortation last made by Sen. Mark, but certainly said by several Senators opposite, the exhortation is that section 105H as is proposed in clause 4, or in general, the regulations as Sen. Lutchmedial put it by way of an proposed amendment that I understood from her to section 132 of parent law where the promulgation of regulations is made, the recommendation coming from the Opposition is bring those regulations to the Parliament. I would like to say why we are not electing to do that at this stage.

Number one, the pandemic is such that it is raging. That fact is

that the CMO is required to be nimble in recommendations to the Government and we are required to amend the law with alacrity if not immediacy at times. Sometimes these are done overnight. Secondly, the existing structure is under challenged and there is litigation coming out of Freedom Law Chambers. I make no complaint about that. It is perfectly lawful a position to go and challenge the position. The law will be better settled for all to be had.

Sen. Lutchmedial made the point about what is a UNC lawyer and whether the titular head of the bar, as the Attorney General, should be making reference to that. When references are made on the political platform, they are one thing and when references are made in the Parliament, is another thing. I am sure that the hon. Senator will understand what I am saying. The simple position is the regulations are under challenged and we prefer to leave the law as it is. To move, as Sen. Mark has, to the stage where the regulations have to be tabled by way of affirmative resolution is nothing short of legislated insanity in the context of a pandemic where one is required to be agile in the promulgation of laws. That is underwritten by the fact that Sen. Mark himself recommended that a state of emergency should have been used and that the constitutional rights suspended as it could be done under section 8 of the Constitution. That is not a position that we wish to enter into. The fact is that the hon. Prime Minister has said very clearly to the country, "We managed COVID well when we were able to shut down the country. That is why Oxford managed to rank us at

number one.” The minute the cry became for individual health to be in competition with the economy, you are entering into a real contest.

You will note, Madam President, that by proposing this fixed penalty system for more than just mask wearing, we are saying that an alternative route ought to exist, and I thank Sen. Welch for his contribution because you need to have the immediacy of impact of the laws for there to be compliance. Sen. Roberts made the submission that everybody is wearing masks. That is perhaps so because everybody is aware that you are going to be fined or you are at risk of death now that we are in this position, but we have not shut down the economy in the fashion that we did when we first started the COVID pandemic management. And therefore, the management of the economy and livelihood, alongside the issue of preserving lives, becomes a real context for discussion and the real reason as to why we need to treat with it this way.

The fact is that people in Trinidad and Tobago are not complying with the law, and therefore, this law is for the lawless, not for the people who are willing to wear the masks and to observe protocols, et cetera. So, Madam President, there is a compelling reason as to why this law must be dealt with this way and if one were to go into the realm of affirmative resolution, you are going to be in legislative insanity as it relates to the management of the pandemic.

So, Madam President, those were essentially the grounds offered by my friends opposite. They were raised in the context of at

one point an approbation of the measures in policy terms and then a reprobation saying that we are in some form of legislative—how should I say—shortcoming or insanity because we are proposing subsidiary legislation. The point of reference given to us in England supports the subsidiary legislation, it supports fixed penalty notices, it supports fines by the Minister, it is in *pari materia*, it is dealt with in the proportionality context. There is nothing untoward in the system. We recommend that the law continue in the form as we do as it relates to the regulation for mask wearing. We will be regulating exceptions. Those exceptions are critical. For instance, in relation to masks, there must be an exception for age, for mental illness, for physical disability, for health underlying issues. There must be an exception in the circumstances of your motor vehicle and transport in terms of management. All of these things are standard. We are not reinventing a wheel, Madam President.

In those circumstances, Madam President, the process will allow us to prorogate those regulations after passage of this law. I look forward to committee stage where we can ventilate these issues with certain precision and I beg to move. [*Desk thumping*]

*Question put and agreed to.*

*Bill accordingly read a second time.*

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

**4.30 p.m.**

*Senate in committee.*

**Madam Chairman:** Hon. Senators, there is a list of amendments circulated on behalf of Sen. Lutchmedial. Everyone has—

*Clauses 1 to 3.*

*Question proposed:* That clauses 1 to 3 to stand part of the Bill.

**Sen. Mark:** Madam Chair, through you, may I ask the Attorney General the concept of face masks and the different types, would they find manifestation in the regulations? And could you give us a little idea as we speak, and I have been doing some research on it and they are saying that these things that we wear are very weak in terms of protection against this coronavirus. So I wanted to ask you, could you give us an idea of the kind of definition that you have in mind when it comes to the whole question of face mask?

**Mr. Al-Rawi:** May I?

**Madam Chairman:** Attorney General.

**Mr. Al-Rawi:** Yes, Madam Chair. I thank Sen. Mark for the question. I am sure many people looking on would be interested in exactly what he has asked so I thank the hon. Senator. That is right now before the CMO, we are taking advice from him. We do not intend to step outside of what other jurisdictions have done, in particular the United Kingdom which has been fairly defined in circumstances of exceptions and also in definitions and for the record, currently we are thinking but we will settle these things in Cabinet meeting post the Senate tonight where we deal with the concept of masks and face shields or coverings so that there is latitude for the differently-abled, sign language, all of those things which are normal



to be found in other jurisdictions. So we do not intend to re-invent the wheel on it but we are going to take the advice from the CMO in the Cabinet meeting just after the Senate sits this afternoon.

**Sen. Mark:** And, Madam Chair, if I can just engage again for a moment, the hon. Attorney General. Attorney General, I just to get clarification since we do not have the regulations before us, if you are driving or I am driving in my vehicle, do I have under the regulations to wear this? And if I am driving with my family, okay, can my family once they are asymptomatic, would they be required under the new regulation, under the penalty of being fined, to wear or not to wear? I just believe that the public needs a little clarification.

**Mr. Al-Rawi:** Sure. May I? Madam Chair, the English have dealt with that very nicely where persons in a private car who are members of the same household are not required to wear masks in that car. It would be artificial for one to suggest that they ought to be in an environment in the private home where they can freely interact and then in their own car which is again a private space not be able to interact. So certainly my own recommendation, yet to be considered by the Cabinet is along the lines of the English position but I have not had the liberty of speaking with the Cabinet members in respect of the recommendations which I as AG will put forward to them. I very much like the English regulations which speak to it that way.

**Sen. Roberts:** Thank you. Attorney General, well I am glad you cleared that up because it appears that your colleague, the Minister of National Security, has put out a statement that family members in cars

will have to wear masks, the driver may not but the others will be. So would you please clarify that so that there is no confusion for the population? Thank you.

**Mr. Al-Rawi:** Thank you. May I, Madam Chair? Thank you, Sen. Roberts for raising that to my attention. So this is the reason why I have been very careful to say that Cabinet has to decide. Obviously there would be some views that we have to decide. I think if the Minister did that at a press conference, I accept that Sen. Roberts would be giving me a factual position, it is obvious that as the Attorney General sits in this Chamber, I have not yet had an opportunity to at least put forward my own point of view and recommendation, but these are matters which will ultimately be subject to the Cabinet's decision and I will of course make as strong a recommendation in accordance with practicality and the law as I can with an effort to try and get it in line. So thank you, Sen. Roberts, for putting that to my attention.

*Question put and agreed to.*

*Clauses 1 to 3 ordered to stand part of the Bill.*

*Clause 4.*

*Question proposed:* That clause 4 stand part of the Bill.

**Madam Chairman:** Now, clause 4 is made up of several parts so Sen. Lutchmedial has filed the amendment in respect of 105A, so let us deal with 105, Attorney General, 105A(2). Sen. Lutchmedial, can you speak to your amendments?

**Sen. Lutchmedial:** Yes, this is the clause that I was speaking about

when I made reference to the UK regulations, specifically I was referencing the fixed penalty notices and the language used here that the notice charges the person, I felt that was not actually in line with what is in the UK and I mentioned that the use of the word “charge” has a certain connotation.

If it is that a fixed penalty notice and that is why I referenced the Privy Council judgment as well. The learning in the judgment which is really what I was referring to is exactly that. It was not quashed because the notice does not carry any charge. It simply provides a person an opportunity to pay a penalty and avoid a charge. So the use of the word charge here I thought was a little bit misleading. I think similar to what Sen. Welch raised with the use of the word “appeal”. In the normal practice and in the normal course of things, that word “charge” is—when you are charged, your due process rights come into play and that is why I suggested the amendment which would bring the section more in line with what applies in the United Kingdom so that it would then read:

Where a police officer has reason to believe that a person is committing or has committed an offence under section 105, he shall issue to the person a fixed penalty notice offering the person to whom it is issued the opportunity of discharging any liability to conviction for the offence by payment of the fixed penalty specified in the fixed penalty notice.

So that that I think would be more in line with what you are trying to accomplish and I think it would avoid any confusion as to

whether or not when you are issued with this notice, you are actually charged, because the case law, the regulations in the UK all seem to speak to the fact that you are not charged when that notice is issued to you. You are issued with a notice and then you have the opportunity to avoid liability by paying the notice within the time frame.

I think that is what also applies in other Commonwealth countries. I have not had an opportunity to find the legislation in Australia and Ireland I think but they have similar legislation but I could not look at it. So I think that that is how it applies the board. And in the FSC case, clearly in Jamaica, that is how they treat with their fixed penalty notices under their Financial Services Regulations and their Insurance Act.

**Mr. Al-Rawi:** Thank you, Madam Chair. Thank you, Sen. Lutchmedial, for explaining what came across in the debate and this is why I always value the committee stage because when we are with calm minds, we tend to make our submissions in a far different manner than we do on the floor. No complaint made of course to the hon. Senator. I enjoyed the debate.

Madam Chair, there are a few things that concerned me with the recommendation whilst I understand the recommendation. The first is that in Trinidad and Tobago, this is the formula that we use across our jurisdictions statutes: dangerous drugs, motor vehicle and road traffic, this one, even the litter Act if I remember. So number one is that I would be stepping outside of the formula that we use in Trinidad and Tobago. Number two is the United Kingdom has deliberately taken

an approach towards plain English, something which warms Sen. Vieira's mind. I know this. He has made this exhortation so many times before, the plain English statement of the law, plain language as opposed to legal language. You will never find *mutatis mutandis* in the English law or *inter alia, et cetera* and in fact, the English regulations on this point are so wonderfully drafted in plain English that they give you examples where x does y or z is in certain circumstances; things which are alien to our current legislative drafting style.

So one, the precedent across our range of laws are that this exact formula of language is used. Two, that the plain English approach of law in description of language is not yet with us. Three is that we have an issue of because this law contemplates the invocation of the Summary Courts Act in circumstances where you do not pay the fine, in other words then, you do not pay the fine and then you deem it to be a summons under section 32 of the Summary Courts Act, the issue of charge becomes material there and therefore the moment in time has to be that a charge is used, specifically in the context where the deeming of the summons is issued under the Summary Courts Act, section 32, 42, 44 of the Summary Courts Act. And it is for that reason that we kept with the formula that has been used across the other laws in your jurisdiction. I think that the language as captured is sufficiently clear.

And if we look from a mischief point of view and the plain and ordinary interpretation of subsection (2), we have here:

“Where a police officer has reason to believe that a person is committing or has committed an offence under section 105, he shall issue to the person a fixed penalty notice charging him”—because that is the charge—“with the commission of such offence, and requiring him to pay the fixed penalty within...”

So it is in the context of the language that the intention is made clear that this is in fact the moment at which the charge happens particularly when you deal with the fact that you may not pay the fixed penalty and therefore be deemed to be a summons under the Summary Courts Act.

**Sen. Lutchmedial:** Through you, Madam Chairman, I understand the explanation proffered by the hon. Attorney General, however I would just like to draw his attention then to what I had recommended, as what I would say, would have been a consequential amendment to subsection (4), and why I recommended that is because of what I suggested in subsection (2) if you added the words at the end of subsection (4). So subsection (4) reads that the fixed penalty notice issued under the section shall be deemed to be a complaint within the meaning of section 33 of the Summary Courts Act and I suggested that you added the words “after the time specified in the fixed penalty notice has expired”.

So that I understand that you are using the word “charge” because you say that the Summary Courts Act is being invoked but you do not actually have to invoke the charging and the fact that the notice becomes a complaint until the time period. So you are actually

giving the person the time period under which they are issued this notice, they have an opportunity to pay and the minute they do not pay, the 14 days or 28 days or how many ever days you want to put it at, you invoke the Summary Courts Act at that point in time.

There is a lot of merit, I think, in something like that because it would encourage people to avoid having an actually summary complaint brought against them. You have this opportunity of 14 days to just dispense with this allegation against you, pay your fine if you know that you have infringed upon the regulation or what is set out in the order, in the Schedule and you pay your fine and there is nothing that invokes. So I think that that suggestion to subsection (4) would cure that concern of the Summary Courts Act being invoked.

But in addition to that, I understand that there is need for consistency across the board. I also do not think that just because—I have never subscribed to the view that this is how we do it and this is how we have always done it is sufficient justification. I think that the concern about the use of the word “charge” and what it means and if the fact that you are charged from the moment that you are issued that notice, then I think that it warrants some further consideration.

**Madam Chairman:** Attorney General.

**Mr. Al-Rawi:** Thank you. Thank you, hon. Senator. I fully understand the nobility from which that submission springs, the clear mindedness. The difficulty that I have is also to be found in the fact that the minute I deal with an inconsistency in approach, am I going to invite the implied repeal or implied affection to other laws formula

which is a very real consideration when you are dealing with things that are—I am sorry to use the term—in *pari materia* because this material is exactly the same as the other laws that we have drawn the precedent from. Particularly because we are dealing with challenges that are afoot and I am very conscious of the fact that we have ongoing litigation on the legislation.

For those reasons, whilst I would love to see the law begin to evolve into a plain language and with a little bit more certainty, I am bound in the context of the need for caution in the pandemic to try and keep it as consistent as we can so that we do not run the risk of having too many arguments by 1.3 million people potentially in this country. So I would like to keep it at least on this occasion as close to consistency for fear of the implied repeal or constructive amendment principles that will come from an inconsistent approach of language in legislation.

**Madam Chairman:** Sen. Lutchmedial, before we deal with your proposed amendment to 105H, let us deal with the part where you say delete clauses 6 and 7 because I think that those two clauses fall within 105A. Is it (6) and (7) on page 4 that you wanted deleted?

**Sen. Lutchmedial:** Yes. I do apologize, Madam. And (6) and (7) are the sections that speak about the appeal to the magistrate. Well, as I said, my concern there is really just the convoluted nature of what an appeal can be after you pay a fine. I did not see it as being—the Attorney General thinks that it is necessary and that it is an extra layer of due process. I felt that it was unnecessary and that it would create



an unnecessary burden on the judicial system. I thought that without those two clauses, the law was fine. You issued a notice, you either pay it or you go to court.

It is unfortunate that we are in a situation where the Attorney General has said we do not have time to build out a system to use the notice to contest, that is most unfortunate. Had this legislation been considered much earlier, we would have had something like that in place and I do believe that that is really the best option. I understand that based on what I heard at the press conference today, this mask wearing legislation, they want it to come into effect almost tonight or tomorrow so that I take the point that the AG says he does not have the time to really flesh out a system to insert that.

**Madam Chairman:** So Sen. Lutchmedial, is it that you are—

**Sen. Lutchmedial:** Yes. So I am still asking the Attorney General to consider whether it is necessary to have (6) and (7) and this appeal process.

**Madam Chairman:** Attorney General.

**Mr. Al-Rawi:** Thank you, Madam Chair. I thank the hon. Senator for the explanation. If I could explain that not only have we drawn this from the precedent of the Dangerous Drugs Act just by way of example, I took the opportunity to confer with eminent counsel in relation to the concept of appeal. I did not want to advise myself alone in relation to this matter, both at the Dangerous Drugs Act stage and this stage, as to offering this ability to pay and the concept of appeal. That is why we were so clear that the jurisdiction in section 6

of Summary Courts Act allows a magistrate to have any jurisdiction which a written law provides and this law is very expressed that you are providing “an appeal”. It is not the circumstance where the appeal is confined to issues of law, there are full measures there. It is not far off from the concept of even being allowed the privilege of changing your plea when you go before a court where you have options to have certain things happening in certain circumstances.

The rationale for the time that I said, and I thank the hon. Senator for listening to that point, it took us two years to actually build out the notice to contest provisions electronically for the motor vehicle and road traffic demerit point and fixed penalty system because what we were using, they were hand-held devices which the whole of TTPS is going to go towards in the issue of fixed penalty tickets where there is an automatic system that goes from the hand-held device to the licensing authority in that example and to the Judiciary at the same time. It was that reason that I said we did not have the time to build this out. We are going to be doing this on a manual paper system by the Government printer where there are triplicate notices issued for the fixed penalty system.

It was to allow people the opportunity, Madam Chairman, in case they wanted to pay quickly, that they could go back and take legal advice and then therefore have the opportunity to have a lawyer say, “Well no, your circumstance was reasonable, you had a lawful excuse for not doing this thing and therefore you ought to consider this”.

Very importantly, section 23 of the Summary Courts Act kicks in here and that is that the rules of the Supreme Court come in to treat with how the honourable Chief Justice will marry up, not only the time frames, beyond 14 days for instance if that is the case but also what will be inside of the root of “appeal” in section 105A(6) and subsection (7). So this is intended to allow for the rules of the Supreme Court to work in conjunction with the parent law to allow us to build out the process.

I know Sen. Lutchmedial will not know this but other Senators will and it is only because she has only just arrived into the Senate. I have often given, and Sen. Mark can bear me out on this, a statement to the Senate and at times undertakings that everything that is under review and the eminently sensible suggestions that come from Members opposite and at the Independent Bench are always taken into consideration and if necessary, we come back and we fix it.

So I do hear the hon. Senator in reference to the recommendations. I did listen very clearly to Sen. Welch. I thought that his submission was very clearly put forward in his analysis of his concern over this and I am keeping it under very careful watch.

The intention of the Government is in fact should we be able to pass this law today to move to assent immediately because we have to take the step to get the population into compliance by way of express law, but we will certainly look at the recommendations made by hon. Senators in the couple of days go ahead as we settle upon where we want to go. So I am letting the Senate again know for the purposes of

the record that it will be under watch.

The idea is consistency with laws that we have already passed and to make sure that we have the spring board to go into regulations to provide for fixed penalty notices for mask wearing because it is an urgent requirement so that we can keep the economy open at the same time, so that livelihoods are matched up against lives at the same time.

**Sen. Lutchmedial:** Could I ask the Attorney General, you mentioned that you would be using a paper system and this is not part of my suggested amendments, it is just a question that popped into my head. You in 105C, you made reference that the payment can be made, either in the traditional way where you go to the court at the clerk or using the electronic payments in and out of court, in accordance with the Act, does that system—I am really not familiar with it so I am just asking and I think it is important for everybody to know. Does not system facilitate when you go with this paper document? Because there is a clause here that says the:

“Payment of the fixed penalty shall be accompanied by the fixed penalty notice completed by the person to whom the...notice applies, in the manner prescribed.”

So I understand from that, what you contemplate with this fixed penalty notice, there is a part that you must sign and fill out and whatnot. And do the systems that exist right now to facilitate electronic payments, would it allow you to, let us just say, scan that notice, upload it onto the system, together with your credit card or whatever it is and pay the fine?

**Mr. Al-Rawi:** The answer to that is yes. It is a very important question. In fact, Sen. Roberts raised a very important point in his debate. He was raising the point about the “bankless”, the people that do not have bank accounts, the people who are effectively stranded outside of the system, can they go online, no credit card, no debit card, et cetera. And to answer both that submission and your very pointed and sensible submission, yes, the system does permit, for instance, at the TTPost points where they can enter the data at that point. So let us say you are going to pay the fixed penalty at TTPost as an example, they would be able to enter the material coming from the fixed penalty and then have it credited to the system as you swipe or pay cash or use the debit card features at TTPost and then as we go online when we build it out in the other structures that you may use.

So the idea is to migrate entirely towards a decentralized electronic payment system but we are not quite there yet. We are there for the motor vehicle and road traffic arena and this system can be attached on to the electronic payments into and out of court legislation at the TTPost decentralized ventures. And to Sen. Roberts, it does also include the ability for us to treat with the people that are “bankless” and that is a very real concern that I share with the hon. Senator.

**Sen. Lutchmedial:** Okay.

**Madam Chairman:** And finally, Sen. Lutchmedial, can we treat with your proposed amendment to 105H?

**Sen. Lutchmedial:** Yes, Chair. This is the amendment where we

were asking whether or not the amendments which can be made to the Schedule by the Minister be subject to the affirmative resolution of Parliament as has been clearly articulated, we feel that some oversight by Parliament would be desirable. I think the hon. Attorney General has made his position on that clear in his reply. However, I would still suggest that some consideration be given to it because whereas regulations that are made and just subject to negative resolution, for example or no resolution at all and can just be made by a Minister by order, they are a common feature in the law. I reiterate that the regulations to deal with face mask wearing which we have not seen can possibly have some constitutional questions attached to them and so the oversight and scrutiny of Parliament is important.

**Madam Chairman:** Sen. Mark.

**Sen. Mark:** Thank you, Madam Chair. I just want to ask the hon. Attorney General whether he would agree with me that we should try to avoid legislating behind closed doors because, you may correct me if I am wrong, that the rule of law insist that as Members of Parliament, elected and appointed, we ought to have some sight of the legislation, even in the form that we are proposing because once you are dealing with the people's interest, we are here either appointed or elected to look after their interest.

And I think it is very unfortunate that we are going to be giving to a group of people, in this instance the Cabinet, to do these things behind closed doors, and that is why we were proposing for your consideration that there should be some kind of method where we

would be able, as both elected and appointed, to have sight either through an affirmative or a negative. It is not designed to do anything apart from having some degree of accountability, transparency and openness and representing the interest of the people. That is all, Madam Chair.

**Madam Chairman:** Attorney General.

**Mr. Al-Rawi:** Thank you. If I could openly say to Sen. Mark from a veil of ignorance point of view, if I was wearing a classic veil of ignorance point of view, I do certainly subscribe to the point of view that Parliament ought to have some degree of role, of involvement into legislation in general.

Whilst that is so, however, I am compelled to observe the exigencies of this particular situation. It is a public health pandemic. The two alternatives that were available to the country and to the Government were state of emergency section 8 of the Constitution or Disaster Measures Act. Both of which again are by way of regulations and in the state of emergency, there is no parliamentary oversight until you get down the line of coming back for a renewal of the state of emergency, et cetera.

The difficulty here is that yes, it is true that the Cabinet makes this decision albeit by saved law which is robust enough and has stood the test of time. But the need to move where alacrity, if not immediacy from time to time is so severe in this particular construct that I am compelled to advise to leave it as it is. Understand my advice is to the Government obviously. I am compelled to advise to

leave as it is for now. Because left up to me, I would certainly want to amend the Disaster Measures Act, something that I have looked at. I have in fact crafted an amendment to that, similar to what Jamaica has done.

But the minute I get into any other piece of law, even if I were to make recommendations to bring modernity to the public health regulations, we are going to be looking at severe three-fifths majority issues in the rights and powers that are provided in this legislation, and I do not know if we can get by with the “Suratting” of it in terms of due process, et cetera, on the occasions there.

So for those reasons, because of the exigencies of time, the affirmative resolution route which would be extremely cumbersome because we would have to convene both Houses of Parliament when we are required to move overnight, then go through a whole debate.

**5.00 p.m.**

And worse yet, what people have not spotted in the affirmative resolution route is that if you have to make an amendment to thing, which is to be affirmed, you technically have to either pull a “ratch” to amend the motion or you have to amend the whole thing and re-lay it again. And that is debatable. The jury is literally out on which one of those two is the correct process.

So, in the exigencies of the public health emergency, this dangerous infectious disease, we are compelled. My advice to the Government is that we are compelled to leave it the way it is. I do understand the genuine concerns raised by my colleagues opposite.



They have been very well put forward on to the record. If I was sitting on the other side I would make the same observations, but at this point I would yield to the fact that I have got to give the powers that are in the CMO, et cetera, the room to manoeuvre.

The last thing I will say is that I remind that the regulations, even though they are made, they are published, and that there is a Legal Notice to that effect and we do have the safeguard of two things. On the fixed penalty side, we have the safeguard of proportionality; in particular at section 105H, as is proposed with the cap limit to \$20,000.

And then secondly, we have the supervisory jurisdictional control of the courts, as interpreters of the law, and they can construe the law in any such fashion as to amend, strike out, et cetera. Not ideal, but it is the way our democracy is constructed. And for now, in the middle of this pandemic, I am compelled to go with that particular flow. So may I respectfully urge my colleagues opposite to allow us to continue without the amendment as proposed.

**Sen. Mark:** AG, did the Government consider at any time, given all the nuances that you have outlined, to establish a sunset clause? So that at least, because of the emergency nature and you have to go forward, you put a sunset clause. So we come back to Parliament to achieve the objective that we all are desirous of achieving—  
*[Interruption]*

**Mr. Al-Rawi:** Yes.

**Sen. Mark:**—to give the Parliament some oversight into future

regulations. Did the Cabinet consider that at all?

**Mr. Al-Rawi:** Understand. Madam Chair, that is a very important observation by Sen. Mark. I thank him for making the observation. If I can put it this way, every one of our regulations have been with sunset clauses; three months, 14 days. Right now, all of them have an expiry date. I have advised that that is a necessary from a proportionality point of view. It is in keeping with the English regulations as well, they all have sunset clauses. In the English case they expressly state it should be valid for 12 months. In ours we are down to three months, in fact, 14 days from now.

Whether a sunset clause is required for the Bill before us, I do not think it is, because what we are effectively doing is just inserting a fixed penalty notice system. It does not say mask wearing or self-quarantining. And if you permit me, Madam Chair, especially to Sen. Lutchmedial, again, just so confirm that my invitation that I made in the course of her contribution which she was very kind to give way for, was not intended to be pejorative or disrespectful to the hon. Senator, it was in the context of a piece of litigation that was afoot. Right? So, please accept it from the way that I put it at the Table here today. So we do intend that the sunset clauses will continue in the regulations, from regulation to regulation.

**Madam Chairman:** Hon. Senators, the question is that clause 4—  
[*Interruption*]

**Sen. Lutchmedial:** Madam Chair, I am sorry. I just wanted to ask one further question on this.

**Madam Chairman:** It will have to be the final question because I think we have had enough discussion.

**Sen. Lutchmedial:** Yes, just in the interest of time, and correct me if I am wrong, would it not be at least open then to say that it could be subject to negative resolution? Because once the regulations are made, and they are signed off by the Minister, they would come into effect and you would lay it in Parliament and then it is incumbent upon the Opposition, if they wish to raise a Motion, to have the regulations negated. Would that be something that the Government would be willing to consider, Attorney General?

**Mr. Al-Rawi:** So, yes negative resolution would be that somebody would then move in the circumstances that they do. But because we are under challenge right now with the general law as it is, we have not considered either the affirmative or negative at this point. It is something that we are looking at in general.

There are some deeper cutting amendments that we have to make to the Public Health Regulations, which we held back from this. As we have had the chance now to look at this very old law, it is 1915, I mean, I am sure that some of us will remember from the last Parliament in dealing with the animal control legislation, which Sen. Rambharat had the pleasure of piloting that took us quite some time to do some retrofitting. We intend to chop it up into pieces and to come back. And certainly Sen. Lutchmedial, we will be looking at that process. I do not, for one moment ever assume that the Government is a continuity of who sits in office right now, and

therefore the veil of ignorance must descend upon us to decide what the most transparent law is. So may I respectfully say that I would simply undertake to be looking at that, to come back to it? We are very anxious on this occasion to get Trinidad and Tobago into mask wearing.

*Question, on amendment [Sen. J. Lutchmedial] put and negatived.*

*Question put and agreed to.*

*Clause 4 ordered to stand part of the Bill.*

**Madam President:** Sen. Lutchmedial, you have one further amendment, which is to insert a new clause.

**Sen. Lutchmedial:** Yes, please, Madam Chair. This would be a clause very similar to what we have just discussed.

**Madam Chairman:** Yes.

**Sen. Lutchmedial:**—to make all of the regulations made under the Act subject to affirmative resolution.

**Madam Chairman:** Sure, but I—

**Sen. Lutchmedial:** I take the points that the Attorney General has already raised. Again, I would say if in the interest of expediency and the need to have alacrity, that the affirmative resolution does not work for the Government, in these circumstances they should at least give consideration to a negative resolution being put into place and an amendment to section 132 to allow for negative resolution of Parliament of any regulations made under—

**Madam Chairman:** Well, Sen. Lutchmedial, Attorney General, I

was going to refer Sen. Lutchmedial to Standing Order 68(3), which speaks to the relevance to the subject matter of a proposed amendment. The section of the Act that you are seeking to amend is outside the ambit of this Bill. And therefore I am ruling that it is not relevant to the circumstances of this particular Bill, so I will not even be putting it to the House.

**Sen. Lutchmedial:** I am guided.

**Sen. Mark:** Seeing that we are amending section 105 of the Public Health Ordinance and if you go to section 105(2), which is on page 69, reference is made to the provisions of sections 132 and 133 shall apply to all regulations.

**Madam Chairman:** But if you look at section 132 and 133.

**Sen. Mark:** Um-hmm.

**Madam Chairman:** If you look—[*Interruption*]

**Mr. Al-Rawi:** Madam Chair, if I could assist? Regrettably section 132 does only confine itself to the issue of publication. So unfortunately, 132:

“All regulations made under this part of this Ordinance...”

And it is only this part:

“shall be published in the *Royal Gazette*, and when so published shall...have same effect or operation as if they were enacted by and formed part of the Ordinance.”

So it is for that reason that the recommendation is out with the purposes of the Bill. But I do accept, for the record, what Sen. Lutchmedial has proposed. And I again say that we will certainly be

looking at that as we come back to the Parliament in the weeks ahead to treat with further amendments.

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

*Senate resumed.*

**Hon. Al-Rawi:** Madam President, I wish to report that a Bill to amend the Public Health Ordinance, Ch. 12 No. 4, to make provision for fixed penalties and fixed penalty notices for offences under the Public Health Ordinance, Ch. 12 No. 4 was considered in committee of the whole and approved without amendments. I now beg to move that the Senate agree with the committee's report.

*Question put and agreed to.*

*Bill reported, without amendment, read the third time and passed.*

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

### ADJOURNMENT

**The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan):** Thank you very much, Madam President. Madam President, I beg to move that this Senate do now adjourn to a date to be fixed.

**Madam President:** Hon. Senators, before I put the question on the adjournment, I now invite Senators to bring brief greetings on the occasion of Independence Day, which we are observing on August 31, 2020. May I just point out when I say brief, I am asking that Senator confine themselves to about two to three minutes time.

**Independence Day Greetings**

**The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan):** Thank you very much, Madam President. Madam President, it is indeed an honour for me to bring Independence greetings today in this honourable Chamber. Firstly, on behalf of the Government of Trinidad and Tobago, the People's National Movement, and my own family's behalf, I would like to wish every citizen of Trinidad and Tobago a happy and more importantly a safe Independence 2020.

This is an Independence like no other. The first, and I hope the only one of its kind. There will be no military parade, no Independence fireworks, no major events to mark the day. We know the reason for this.

But, Madam President, permit me, I know I have three minutes, to contextualize the Independence celebrations, and I quote from Dr. Williams' book, *History of the People of Trinidad and Tobago*. In its conclusion he said:

“On August 31, 1962, a country will be free, a miniature state will be established but a society and a nation will not be formed. After August 31, 1962, the people of Trinidad and Tobago will face the fiercest test in their history—whether they can invest with flesh and blood the bare skeleton of their National Anthem here, every creed and race find an equal place. This is their challenge. They may fail. Others more important

and better endowed have failed conspicuously. However, there would be no justification for their own failure.”

Madam President, let me say categorically, for this country, failure in this regard is not an option.

We are 58 years independent. Fifty-eight years is a short period in the life of a country. So we are still in our infancy. So let us not be too harsh on ourselves. As an independent nation we have accomplished a lot and there are challenges that lie ahead. The major challenge of course is what I call the two-headed dragon, COVID-19 health and COVID-19 economies. They go hand in hand. You cannot solve one without the other. And what makes this even more important is that even if we solve it and the world does not solve it, it means we have not solved it.

So it is in that context I call on the nation to band together. Do like Britain during World War II. We have to unite as Britain united during World War II if we are to survive this crisis.

Once again, I wish every citizen of this country a happy and safe Independence celebration. Thank you.

**Madam President:** Sen. Mark.

**Sen. Wade Mark:** Thank you, Madam President. Madam President, Trinidad and Tobago celebrates its 58<sup>th</sup> Anniversary of Independence on Monday, August 31, 2020. Trinidad and Tobago is experiencing an extremely dark period, both in terms of the pandemic crisis and the continued contraction of the national economy manifested in five



years of consecutive contraction, as well as the Government's inability to attract new foreign investment, not to mention the rapid erosion of our country's foreign exchange reserve.

Madam President, apart from the Independence legacy from the '62 Queen's Hall Conference to Marlborough House, we have adopted the Canadian Bill of Rights, 1960, which was modified to permit a three-fifths majority on any legislation that seeks to infringe fundamental rights and freedoms. That has stood as a protection to the citizens of this country for 58 years. It is in this Senate that the protection will always exist, because of the political arithmetic of the membership.

Madam President, looking to the future, we have to fix a number of problems. But one of the things that we would like to look at and suggest is that relationship between Trinidad and Tobago, which has remained disadvantageous to Tobago for 58 years. We were not able to complete the job in the Eleventh Parliament. Hopefully we will fix it in this the Twelfth Parliament.

So, Madam President, on behalf of the hon. Kamla Persad-Bissessar, political leader of the United National Congress and Leader of the Opposition, and all our Senatorial colleagues, my Senatorial colleagues on this Bench, we would like to extend to you the President of the Senate and your family, as well as all Senators on the Independent Bench and my colleagues on the Government Bench and their respective families, members of

staff, the police officers and their families, a happy, safe and positive Independence 2020. I thank you.

**Madam President:** Sen. Richards.

**Sen. Paul Richards:** Thank you, Madam President, for recognizing me and for allowing me to bring greetings on behalf of my colleagues on the Independent Bench.

I would like to start by quoting the man regarded as the “Father of the Nation”, Dr. Eric Williams, and his speech upon our Independence in 1962, which I believe is so appropriate and profound today, and I quote:

“The first responsibility that devolves upon you is the protection and promotion of your democracy. Democracy means more, much more, than the right to vote and one vote for every man and every woman of the prescribed age. Democracy means recognition of the rights of others.

Democracy means equality of opportunity for all in education, in the public service, and in private employment—I repeat, and in private employment. Democracy means the protection of the weak against the strong.

Democracy means the obligation of the minority to recognise the right of the majority. Democracy means responsibility of the Government to its citizens, the protection of the citizens from the exercise of arbitrary power and the violation of human freedoms and individual rights. Democracy means freedom o

worship for all and the subordination of the right of any race to the overriding right of the human race. Democracy means freedom of expression and assemble of organization.

All that is Democracy. All that is our Democracy, to which I call upon all citizens to dedicate themselves on this our Independence Day. This is what I meant when I gave the Nation its slogan for all time: Discipline, Production, Tolerance.”

This Monday, Trinidad and Tobago will celebrate and observe our 58<sup>th</sup> anniversary of Independence. We have accomplished much in our 58 years as an independent nation, taking responsibility for almost all our decisions and the consequences of these decisions. Trinidad and Tobago, like most countries in the world, faces significant global challenges, but it seems that the challenges of economic turmoil and the COVID-19 pandemic pales in comparison, to me, to what seems to be one of our greatest challenges, even after 58 years of trying to build a nation. That is a challenge that recently reared its ugly head: division, discrimination racial strife and hate.

With so many accomplishments of which we can be proud, from many notable nationals including Brian Lara; Hasely Crawford; Keshorn Walcott; George Bovell; Penny; Giselle; Wendy; VS Naipaul; Dr. Rudranath Capildeo; Bunji; Machel; Sparrow; Kitch; Rudder; Calypso Rose; Destra; Fay-Ann; Dr. Wayne Frederick, President of Howard; Brian Copeland; Stephen Ames; CLR James;

Geoffrey Holder; Nicki Minaj; Peter Minshall; Heather Headley, and so many more, including our World Cup squad which took us to Germany in 2006, that made us so proud and united us under the red, white and black. It shows there is so much we can accomplish as a little country, so much that serve to unite us. But we are so easily sometimes, that what is our greatest strength, our diversity, tears us apart.

As we observe our 58<sup>th</sup> Anniversary of Independence, let us all commit to be vigilant against those who may seek to divide us for their own selfish means. We have too much to lose.

I will quote just a piece of Dr. Eric Williams again:

“Our National Flag belongs to all our citizens. Our National Coat of Arms, with our National Birds inscribed therein, is the sacred thrust of our citizens. So it is today, please, I urge you, let it always be so. Let us always be able to say, with the Psalmist, behold, how good and how pleasant it is for brethren to dwell together in unity.

United at home in the common effort to build a democratic Nation and ostracize outmoded privileges, let us present to the outside world the united front of a Nation thinking for itself, knowing its own mind and speaking its own point of view.”

It may seem like a cliché, but I assure you it is not. Together we aspire, together we can achieve anything. On behalf of my colleagues on the Independent Bench, I wish Trinidad and Tobago a

happy and safe Independence, and may God continue to bless our beloved Trinidad and Tobago.

**Madam President:** Hon. Senators, on behalf of the staff and on my own behalf, on behalf of the staff of the Parliament and on my own behalf, allow me to congratulate Trinidad and Tobago on the occasion of our nation's 58<sup>th</sup> Independence Day. Although this year, and owing to the current pandemic, our celebrations have to be more curtailed than we would have wished, the same does not apply to the pride we should feel in our country.

In an age in which cynicism and lack of self-belief have grown fashionable, we would do well to remind ourselves about all that is good in us and that still makes us a model nation. We would do well to remember the intellectualism that underpinned our struggle for and attainment of independence, those 58 years ago, which still burns brightly in the minds of our nation's contemporary scholars and we would do well to remember the sense of community we have all felt over the years when our nation's sportsmen and sportswomen brought glory to our country on the international stage, and that we continue to experience, as we cheer on our team in the CPL competition this year, even though we do so from afar, through our television screens.

And we would do well to remember the bonds of mutual respect that have kept us united as citizens, as we have revelled and enjoyed each other's religions and cultures in all their kaleidoscopic glory since and even before our Independence.

As challenging as the current times are, it is our remembrance of and our belief in all that is good in ourselves that will enable us to overcome and not just to overcome but to excel. This year more than any other year, let us therefore commit ourselves to remembering and to living out the good in all of us. And let us not fall victim to the enemy of self-doubt and self-flagellation. Let us remember that we are and let us continue to be a model nation. Happy Independence Day to all of Trinidad and Tobago. [*Desk thumping*]

*Question put and agreed to.*

*Senate adjourned accordingly.*

*Adjourned at 5.25 p.m.*