

*Leave of Absence*

*Friday, February 04, 2011*

**HOUSE OF REPRESENTATIVES**

*Friday, February 04, 2011*

The House met at 1.30 p.m.

**PRAYERS**

[MR. SPEAKER *in the Chair*]

**LEAVE OF ABSENCE**

**Mr. Speaker:** Hon. Members, I have received communication from the hon. Prakash Ramadhar, Member of Parliament for St. Augustine, who is currently out of the country. The Member has asked to be excused from sittings of the House during the period, February 01—08, 2011. The leave which the Member seeks is granted.

**JOINT SELECT COMMITTEE**

**PREVENTION OF CORRUPTION ACT—LEGISLATIVE PROPOSALS**

**(APPOINTMENT OF)**

**Mr. Speaker:** Hon. Members, I wish to read a following correspondence from Sen. The Hon. Timothy Hamel-Smith, President of the Senate, dated February 02, 2011, it is addressed to the hon. Wade Mark, MP, Speaker of the House:

Dear Mr. Speaker,

Appointment of Joint Select Committee-Legislative Proposals for the Amendment of the Prevention of Corruption Act, Chap. 11:11

I refer to a letter from Dr. Fuad Khan, MP, Deputy Speaker, addressed to Senator Lyndira Oudit, Vice-President of the Senate dated January 14, 2011, on the subject at caption.

Please be informed that at a sitting held on Tuesday February 01, 2011 the Senate agreed to the following resolution, which was moved by the Honourable Attorney General:

BE IT RESOLVED that a Joint Select Committee be established to consider the Legislative Proposal for the Amendment of the Prevention of Corruption Act, Chap. 11:11 and report to Parliament within three (3) months from the date of appointment:

*Joint Select Committee*

*Friday, February 04, 2011*

AND BE IT FURTHER RESOLVED that the Joint Select Committee be authorized to:

- (a) consult with stake-holders and interested persons.
- (b) send for persons, papers, records and other documents; and
- (c) recommend amendments to the proposal.

The decision of the Senate is forwarded for the attention of the House of Representatives.

Yours Respectfully,

Senator the Hon. Timothy Hamel-Smith

President of the Senate”

**COMMITTEE OF PRIVILEGES**

**(Member for D’Abadie/O’Meara)**

**Mr. Speaker:** Hon. Members, at the sitting of the House held on Friday, January 21, 2011, the hon. Member for Diego Martin West was granted leave to raise a matter of privilege in accordance with Standing Order 27(2) against the hon. Member for D’Abadie/O’Meara. I indicated then that I would give my ruling at a later date. After due consideration, I do so now.

Hon. Members, by way of reminder, I wish to reiterate that the Speaker does not rule on whether a breach of privilege or contempt has in fact been committed. The Speaker only determines whether an application based on a claim of contempt or breach of privilege is, on first impression, of sufficient importance to require the attention of the Committee of Privileges and go forward for a decision of the House. That is the narrow point that the Chair must decide. A brief summary of the facts will now follow.

At the sitting of the House, which took place on January 14, 2011, the Member for D’Abadie/O’Meara made detailed reference to a construction project in Shorelands in the constituency of Diego Martin West. He alleged that the Member for Diego Martin West, in his capacity as Minister of Planning and Development in 2003, overruled the officials and technocrats of the Town and Country Planning Division and the Environmental Management Authority and granted approval for 15 storeys for this project owned by someone known to the then Minister, where only three or four storeys were reasonable. In a personal explanation dated January 19, 2011 the hon. Member for Diego Martin West stated that he never issued any directive to overrule any decision by any department or division involved in the said process and vehemently denied the misconduct levied against him by the Member for D’Abadie/O’Meara.

In his Motion of Privilege raised on January 21, the Member for Diego Martin West alleges that the Member for D'Abadie/O'Meara committed contempt on the following grounds:

- (a) deliberately and wilfully misleading this House;
- (b) grossly and recklessly abusing the privilege of freedom of speech in this House.

Noting that the Member for D'Abadie/O'Meara referred to files and records, I requested the Member to provide me with any information in his possession that provides factual support for the statement he made relevant to the conduct of the Member for Diego Martin West.

I have also sought and obtained information from the Town and Country Planning Division and from the Member for Diego Martin West. Let me deal with the issue of freedom of speech.

The Constitution of the Republic of Trinidad and Tobago grants to all Members the privilege of freedom of speech in the House. This allows Parliament to be a responsible outlet for the expression of legitimate and constructive criticism. But this privilege to speak freely in the House is not without restraint. The provision also states that this privilege is subject to the Constitution and the rules that govern the conduct of the proceedings in the House.

**1.40 p.m.**

The rules referred to include the rule against imputing improper motives against Members, and the rule against the raising of the conduct of a Member outside of a substantive Motion on the subject. So hon. Members, there are boundaries to your exercise of the freedom of speech in debate, and you are well advised not to attempt to overly stretch these boundaries. Another noteworthy rule states that a Member must not intentionally mislead the House.

On this point, it is of paramount importance to our system of parliamentary democracy that Ministers give accurate and truthful information to Parliament, correcting any inadvertent error at the earliest opportunity. In correlation, it is often said that the House is generous and forgiving to those Members who admit their mistakes and apologize.

The Motion raised before me alleges, first of all, that the Member for D'Abadie/O'Meara not only misled the House, but did so wilfully. What has the information before me revealed?

*Committee of Privileges*  
[MR. SPEAKER]

*Friday, February 04, 2011*

Hon. Members, on the face of it, the information provided to me does not support the statements made by the Member for D'Abadie/O'Meara. What has been revealed is that the Member for D'Abadie/O'Meara faced with incomplete records stretched the details contained in the documents in his possession, drew bold inferences from letters and documents and placed them on the record of this House as facts.

Was he right to do so, hon Members? I am quite convinced that he was not. However, as has been explained in several rulings before this one, recklessness in the use of words in debate, though reprehensible in itself, falls short of the standard required to hold a Member responsible for deliberately misleading the House.

For a Speaker to find a prima facie case sufficient to warrant an investigation there must be more than a remote or distant probability of an intention to mislead. This has not been found.

I am also not satisfied, on the face of it, that there was a reckless abuse of the privilege of freedom of speech as is alleged. The Member misspoke—in other words; he rushed to conclusions in a matter involving a parliamentary colleague using incomplete records. He spoke as though his conclusions were factual and placed them as such on the record of this House. All Members are strongly advised to avoid this error. It is not the parliamentary way. It goes against long established codes of parliamentary conduct. But as objectionable as this may be, it is not sufficient to require any further attention of this House, without other essential ingredients.

Hon. Members, I think this is an opportune time to briefly reiterate the point that, logically, not every incorrect statement made in this House should generate a question of privilege.

For a breach of privilege to occur, one of your privileges must have been tampered with. Contempt is a bit more technical. It requires some proof of intention to mislead. Depending on the nature of the contempt alleged, it may further require evidence to show that the House or a Member has been obstructed or impeded in the performance of parliamentary functions or are likely to be so obstructed or impeded. Hon. Members, the threshold is therefore high and ought rightly to be so in order for the Committee of Privileges to be tasked with investigating a matter on behalf of this House.

Hon. Members, the people's faith in our democracy rests on the confidence that the man in the street has in the effectiveness of our parliamentary system. One way that the system could be effective is if all Members gain a

comprehensive command of the rules and procedures governing the conduct of the proceedings of the House. Ignorance or even inadequate knowledge of key rules by hon. Members will no longer be accepted by the Chair. In this regard, I once again emphasize some fundamental rules for Members' guidance and strict adherence, namely:

- (a) No Member shall impute improper motives to any Member of Parliament. To avoid this, Members should speak on issues and avoid becoming personal against each other. In other words, Members, I am reminded by the famous statement made by Hon. Richard Baker, one must play the ball and not the person.
- (b) Avoid at all times, raising the conduct of Members in debate unless such conduct is the substantive subject matter of the debate before the House. What this means is that you cannot launch a scathing attack on the conduct of your parliamentary colleague in a casual manner, in the cut and thrust of debate where it may go unanswered because it was unanticipated. Such an approach to parliamentary debate must be avoided at all times.
- (c) Aim to be relevant to the subject being debated. This will help you avoid unnecessary pitfalls and difficulties.

The obligation to observe the rules applies to all Members without exception.

Finally, may I remind Members of the need to always exercise good temper and moderation in parliamentary debates. Erskine May, *Parliamentary Practice*, Twenty-third edition on page 440 states that these constitute the key characteristics of parliamentary language, and I quote:

“Parliamentary language is never more desirable than when a Member is canvassing the opinions and conduct of his opponents in debate.”

I so rule.

#### **PETITION**

#### **Association of Real Estate Agents**

**The Minister of Trade and Industry (Hon. Stephen Cadiz):** Mr. Speaker, I wish to present a petition on behalf of the members of the Association of Real Estate Agents of Suite A4, Kencita Court, 76 Picton Street, Newtown, Port of Spain, herein referred to as AREA.

The petitioners are desirous of constituting AREA into a corporate body by a private Bill so that its aims and objectives can be more effectively achieved.

*Petition*  
[HON. S. CADIZ]

*Friday, February 04, 2011*

I now ask that the Clerk be permitted to read the petition.

*Petition read.*

*Question put and agreed to, That the promoters be allowed to proceed.*

**PAPERS LAID**

1. Report of the Statutory Authorities Service Commission for the period October 2009 to September 2010. [*The Minister of Housing and the Environment (Hon. Dr. Roodal Moonilal)*]
2. Audited financial statements of National Helicopter Services Limited for the financial year ended September 30, 2009. [*The Minister of Finance (Hon. Winston Dookeran)*]
3. Annual financial statements of National Information and Communication Technology Company Limited for the financial year ended September 30, 2010. [*Hon. W. Dookeran*]

*Papers 2 and 3 to be referred to the Public Accounts (Enterprises) Committee.*

4. Administrative report of the Chaguanas Borough Corporation for the year 2008/2009. [*The Minister of Local Government (Hon. Chandresh Sharma)*]
5. Annual report of the Police Service Commission for the period January 01, 2009 to June 30, 2010. [*Hon. Dr. R. Moonilal*]
6. Financial obligations (Financing of Terrorism) Regulations, 2011. [*Hon. Dr. R. Moonilal*]

**1.55 p.m.**

**CENTRAL TENDERS BOARD ACT  
(PROPOSAL TO REPEAL AND REPLACE)  
Joint Select Committee Interim Report  
(Presentation)**

**The Minister of Education (Hon. Dr. Tim Gopeesingh):** Mr. Speaker, I wish to present the Interim Report of the Joint Select Committee appointed to consider and report to Parliament on the Legislative Proposals to provide for Public Procurement and Disposal of Public Property and the Repeal and Replacement of the Central Tenders Board Act.

**ORAL ANSWERS TO QUESTIONS**

**The Minister of Housing and the Environment (Hon. Dr. Roodal Moonilal):** Mr. Speaker, just to inform the House and our friends opposite, the

Government is prepared to answer all five questions for oral answer on the Order Paper—[*Desk thumping*]*—*and for the record, Mr. Speaker, there are no questions for written answers on the Order Paper today.

**Mr. Speaker:** The hon. Member for Diego Martin West.

**Dr. Rowley** (*Diego Martin West*): Mr. Speaker, before I pose the question to my colleagues on the other side, there were a number of questions which were timed out at the last session and if my understanding of the Standing Orders is clear, is that when that happens the Government spokespersons are required to make those questions available before the end of the session. Mr. Speaker, I think the answers for those questions were not all provided before the end of the session, and it happened not once, but twice, and I raise it in the context of the Government saying “We answer all the questions”. Because when “you answer all the questions”, the only reason why they come back on the Order Paper at any time is that the answers are not provided as per the Standing Order. I simply make that reference to you, Mr. Speaker. I put question No. 39 to the Minister of Finance.

**Hon. Dr. R. Moonilal:** Mr. Speaker, I think my friend from Diego Martin West means sitting and not session, the last sitting of the Parliament, when it was there, the timeout. But on that day, Mr. Speaker, I recall that we had deferred a question from the Member for Diego Martin North East and subsequently answered that question. We will check the record, of course, but our understanding now is that we did comply by answering all the questions for oral answers. But we can check.

### **Caribbean Airlines Limited (CAL)/Air Jamaica**

#### **(Details of)**

- 39. Dr. Keith Rowley** (*Diego Martin West*) asked the hon. Minister of Finance:
- (a) Is the Minister of Finance, in his capacity of Corporation Sole, aware that Caribbean Airlines Limited (CAL) through its Air Jamaica operations is proposing or taking steps to initiate a jet-prop service using ATR equipment between Kingston and Montego Bay in Jamaica?
  - (b) If the answer is in the affirmative, could the hon. Minister state the date of the Board Minutes wherein such a decision was taken?
  - (c) Could the Minister further state whether any subsidy of any kind will be associated with the Kingston to Montego Bay Service, and if there is none, could the Minister indicate the projected annual profit from the service?

**The Minister of Finance (Hon. Winston Dookeran):** Mr. Speaker, the Government has agreed that Caribbean Airlines Limited (CAL) enter into an agreement with Avions de Transport Regional (ATR) for the purchase of nine ATR 72-600 turboprop aircraft, for its domestic and regional operations.

These nine ATR 72-600, 68 seat aircraft, will be operationally allocated as follows:

- (a) five ATR aircraft for the Trinidad and Tobago domestic service.
- (b) one ATR aircraft for the Eastern Caribbean regional service from Trinidad; and
- (c) three aircraft for the Jamaican domestic and regional service.

Mr. Speaker, the Government agreed to expand the turboprop fleet of Caribbean Airlines in September of last year at which time the board was not yet appointed. However, since then a board was appointed on October 26, 2010, and I have been advised that the matter was approved by the board in the first week of December.

Mr. Speaker, in April 2010, the Government of the Trinidad and Tobago agreed to an extension of the fuel hedge arrangement to the Jamaican operations with effect from the start of the transition period on May 01, 2010, from which date CAL will assume management control. The Ministry of Finance met the cost of the hedge to CAL in accordance with the agreed framework. There is no separate claim for the Air Jamaica operations. Mr. Speaker, according to estimates received from Caribbean Airlines Limited, the Kingston to Montego Bay service is expected to increase CAL's revenue by more than 60 per cent as this route will facilitate daily connection opportunities from major markets of New York, Philadelphia, Fort Lauderdale, Toronto and Nassau.

Thank you.

**Dr. Rowley:** Mr. Speaker, is the Minister telling this House that in the absence of a board at Caribbean Airlines Limited, a decision was taken by that state company to expand the airline and also to initiate a service from Kingston to Montego Bay, in the absence of a board? Is that what the Minister is telling this House? Who took that decision and how was it transmitted to the Cabinet?

**Hon. W. Dookeran:** Mr. Speaker, the decision was taken by Cabinet in the absence of the board.

**Dr. Rowley:** Mr. Speaker, I would like the Minister to understand what I am asking. The Cabinet does not operate Caribbean Airlines Limited. A decision was taken at Caribbean Airlines Limited and it went for a Cabinet decision. The



question I am putting to the Minister of Finance is, in the absence of a board where a decision was taken to expand the size and operations of the airline, who took that decision and how was it transmitted to the Cabinet?

**Hon. W. Dookeran:** Well, I thought it was the same question; the decision was taken by Cabinet on the recommendations by the line Minister. [*Desk thumping*]

**Mr. Speaker:** May I suggest for your consideration—given the time, it is 2.03 p.m., question time ends at 2.15 p.m. I would like Members who are responding to questions, rather than reading those questions that are already on the Order Paper—just answer. Just answer part A:X, part B—and do not repeat the questions that are already on the Order Paper. [*Desk thumping*]

### European Union Grant

#### (Details of)

**40. Dr. Keith Rowley** asked the hon. Minister of Food Production, Land and Marine Affairs:

- (a) Is the hon. Minister aware that the European Union has made a significant monetary grant available to the Government of Trinidad and Tobago as financial support to the country in response to the closure of the state owned sugar industry, Caroni (1975) Limited?
- (b) Could the Minister indicate:
  - i. The total value of the funding facility available to the Trinidad and Tobago Treasury under the European Union facility?
  - ii. How much of the grant has been received as at January 1, 2011?
  - iii. What is the value and the nature of the outstanding payment tranches?
  - iv. How much of this European Union's grant funding is available, earmarked or intended for cash payment to the former cane farmers of Caroni (1975) Limited?

**The Minister of Trade and Industry (Hon. Stephen Cadiz):** Mr. Speaker, in response to part (a), the hon. Minister of Food Production, Land and Marine Affairs is aware that the European Union allocated a sum of €43.289 million to be used for diversifying away from the sugar industry. These funds are tied to specific performance criteria and are to be used as budgetary support.

In response to the question (b) i. the funding available under the European Union facility is €43.289 million. The period of disbursement spans the years 2008—2011. The allocation in each of these years is as follows: 2008, 6 million; 2009, 9.974 million; 2010, 10.764 million; 2011, 16.551 million.

**2.05 p.m.**

The sum of €2.2 million has been drawn down as at January 01, 2011. This value represents the fixed part of the first tranche of 6 million for the year 2008. The remaining part, which is variable, is pending, subject to approval from the European Union. An application has been made to the European Union for the second tranche of €9.974 million. This is the allocation for the year 2009. The value of the outstanding tranche for the period 2008—2011, is €41.089 million.

All tranches are tied to specific performance targets aimed at improving and sustaining the economic, social and environmental landscape of the now defunct sugar industry. In discussion with the European Union, these funds were not specifically earmarked or intended to be cash payments to former Caroni cane farmers. However, a ministerial committee comprising the Minister of Finance, the Minister of Science, Technology and Tertiary Education, and the Minister of Food Production, Land and Marine Affairs, was mandated by Cabinet to meet with the cane farmers with a view to addressing their concerns.

**Dr. Rowley:** In light of the fact that the terms of the European grant are as described by the Minister, is it the Government's intention to make cash payments to cane farmers of former Caroni (1975) Limited?

**Hon. S. Cadiz:** Mr. Speaker, I think that would fall under a new question.

**Bagatelle Community Centre**  
**(Details of)**

**41. Dr. Keith Rowley** asked the hon. Minister of Community Development:

- (a) Is the hon. Minister aware that there is an incomplete Community Centre project called the Bagatelle Community Centre located at Bagatelle, Diego Martin?
- (b) If the answer is in the affirmative, could the Minister state:
  - i. When will work on the incomplete project be re-started?
  - ii. What is the projected completion date of the new facility?

**The Minister of Community Development (Hon. Nizam Baksh):** Mr. Speaker, the former administration started a vigorous programme of construction and refurbishment of community centres in 2007. When Cabinet approval was received by the Ministry to construct 100 centres over a period of three years, 2007—2010, by the last year of that cycle, 2009 and 2010, only 42 facilities were completed. The main constraint on the progress was the lack of funding which was never allocated in proportion with the magnitude of this programme.

In the 2010 budget, only \$55 million was allocated for the programme, and that was a PNM budget. Construction of community centres, \$40 million; refurbishment of community centres, \$50 million. By the end of the 2010 fiscal year, in order to avoid embarrassment and meet some of the commitments to contractors for work completed, the Ministry of Community Development sought and obtained approval to vire \$15 million from allocation under the Ministry's Infrastructure Development Fund. This means that the total sum expended for fiscal year 2010 under the Community Centres Construction and Refurbishment Programme, is \$70 million.

The Ministry has a total of 60 projects under construction with insufficient funding to support the programme. Associated with this status is a situation where arrears are owed to contractors in the sum of \$41.9 million from these 60 projects. The 60 community centres are at various stages of completion. Given the different levels of completion, these centres were prioritized into three categories. Category I—in this category there are 16 centres that are over 70 per cent completed. Some of these centres can be completed within 12 months at a total cost of \$21.8 million.

Category II—this category consists of 16 centres that are between 27 per cent—68 per cent completed. They can be finished within 13 to 24 months at a total cost of approximately \$80 million. Category III—there are 28 centres in this category which the Ministry of Community Development is proposing to complete during the fiscal year 2013 at a total cost of \$187.339 million, provided that this sum is made available. To date, foundation works on 23 of these centres have commenced. Preliminary works on five centres have commenced.

In fiscal 2011, the Ministry of Community Development is allocated the sum of \$75 million, disaggregated as follows: construction of community centres, \$60 million; refurbishment of community centres, \$15 million, making a total of \$75 million. Out of this allocation, the Ministry is proposing to complete 23 community centres. Release of funds to date amounted to \$23.921 million,

*Oral Answers to Questions*  
[HON. N. BAKSH]

*Friday, February 04, 2011*

disaggregated as follows: construction of community centres, \$20.258 million; refurbishment of community centres, \$3.663 million. The release of \$23.92 million is being used to facilitate payments by the National Commission for Self-Help Limited to contractors for construction and refurbishment works undertaken at various community centres for the period June to November 2010.

Currently, this unspent balance of the allocation is \$51.78 million. Responsibility for the construction and refurbishment of 21 centres currently falls under the purview of the National Commission for Self-Help Limited and the centres are due to be completed in fourth quarter of fiscal 2011.

Given the decline in Government's revenues and the Ministry's limited capital allocation programme for fiscal 2011, the Bagatelle Community Centre, which is only 22 per cent complete, is a Category III project and the Ministry is currently unable to continue the construction of this centre. Work on this centre will commence in fiscal year 2013.

Mr. Speaker, the hon. Member is quite aware that there is an incomplete community centre project called "the Bagatelle Community Centre" located at Bagatelle, Diego Martin. Work on the Bagatelle centre, located at Bagatelle, Diego Martin, commenced in June 2007. The project was terminated in April 2008 because of the tardiness of the contractor. The contractor was not making any progress on the works to be completed and there was continued failure to meet his obligations under the contract. There was dissatisfaction with preparation of the substructure works and, in particular, to undertake the plumbing installation in accordance with the drawings and specifications.

The approved contractual cost of this centre is \$3,016,607.14. The contractor was paid the sum of \$1,501,463.41 for all works completed up to the termination date. This centre is 22 per cent complete. Work on this centre will only be restarted pending the availability of funding.

Mr. Speaker, in light of the present reduction of revenue in the economy, it will not be feasible, at this time, to give an accurate date for the completion of the Bagatelle Community Centre.

**Dr. Rowley:** If the Minister is making a case of unavailability of funds for the completion of the community centre, is the Minister able to tell us today whether the Bagatelle Community Centre is the only Category III centre that would have to wait until 2013 to be completed or are there other centres in the same category of 20 per cent completion which will have to wait until 2013?

**Hon. N. Baksh:** I indicated in my response that there were 28 centres under Category III, and Bagatelle was only one of those.

**Dr. Rowley:** The question I am asking is, of those 28 centres in Category III, are they all delayed until 2013?

**Hon. N. Baksh:** I said so in my response, yes.

**Mr. Speaker:** Hon. Members, it is now 2.15 p.m. I seek the indulgence of the House, seeing that there are two further questions, Nos. 43 and 44, could we agree that those two questions be answered? Do I have the agreement of the House?

**Mr. Sharma:** They never allowed that; look at the difference.

*Assent indicated.*

### **Diego Martin Highway (Details of)**

**43. Mr. Colm Imbert** (*Diego Martin North/East*) asked the hon. Minister of Works and Transport:

- (a) When did the project to widen and improve the Diego Martin Highway, between Powder Magazine in Cocorite and Acton Court in Petit Valley, commence?
- (b) What was the original date for completion of the project?
- (c) What is the revised completion date for the project?
- (d) What is the reason for the delay in completion of this project?

**The Minister of Works and Transport (Hon. Jack Warner):** Mr. Speaker, once again I respond to the former Minister of Works and Transport.

In December 2009, the Member for Diego Martin North/East, the former Minister of Works and Transport, in that capacity, I am advised, held a meeting in his Ministry with the programme manager of PURE, Mr. Hayden Phillip. At that meeting, he instructed PURE to widen and improve the Diego Martin Highway on a phased basis which is detailed as follows:

Phase I—the widening of the roadway from two to three lanes, with shoulder and associated drainage works from Western Main Road to Victoria Villas.

Phase II—the realignment and widening of the south-bound lane of the highway from Morne Coco Road to Western Main Road.

Phase III—the extension of several culvert crossings and the construction of major concrete works along the proposed road; and

Phase IV—the dualling of the highway through the construction of two new north-bound lanes and associated works, including demolition of existing structures from Victoria Villas to Acton Court.

*Oral Answers to Questions*  
[HON. J. WARNER]

*Friday, February 04, 2011*

Mr. Speaker, only Phase I of the project was approved by the former Minister of Works and Transport, the Member for Diego Martin North/East. Only Phase I of the project was approved for execution. In case the Member has forgotten, I want to advise him that under him that phase was commenced on March 15, 2010, 10 weeks before the general election.

The original date for completion of Phase I of the project was July 27, 2010. The revised completion date for the project was November 16, 2010. This was due to a change in the scope of works to include:

- 1) Construction of a retaining wall along the drainage channel on the western side of the Diego Martin Highway between the Powder Magazine walkover and the entrance to Victoria Villas;
- 2) Desilting of three major culvert crossings within the limits of the works due to heavy rainfall; and.
- 3) Reconstruction of a failed concrete block drain on the western side of the approach to Victoria Gardens.

In the circumstances as described, there was no delay.

**Mr. Imbert:** Supplemental, Mr. Speaker.

The Minister is mistaken. Is he aware that the entire project, from Cocorite to Acton Court in Petit Valley, was approved by Cabinet, including land acquisition, long before the May 24, 2010 election and that instructions were given to do the entire project?

**2.20 p.m.**

**Hon. J. Warner:** Mr. Speaker, the records which the former of Minister of Works left, when he was forced to demit office, are those I used to give this answer.

**Mr. Imbert:** Further supplemental, Mr. Speaker. Is the Minister aware that there is a Cabinet decision to do the entire project which was approved by Cabinet before the general election?

**Hon. J. Warner:** I am not aware.

**Mr. Imbert:** I will get it for you.

**Hon. J. Warner:** Thank you.

**Northern Recreation Ground—Diego Martin  
(Termination of Contract)**

**44. Mr. Colm Imbert** (*Diego Martin North/East*) asked the hon. Minister of Sport and Youth Affairs:

- (a) Is the Minister aware that a contract to grade and re-grass the Northern Recreation Ground in Diego Martin, so that it could be used for cricket, football and other sporting activities, was awarded by the Sport Company or his Ministry in or around January 2010, and that work on this re-grassing project was well advanced by May 24, 2010?
- (b) Is the Minister aware that this re-grassing contract was terminated or suspended at or around the end of May 2010, after the General Election, and that all work on the project stopped shortly thereafter?
- (c) When will work on this project resume?
- (d) When will the Northern Recreation Ground be restored to a condition that it can be used for sporting activities?

**The Minister of Sport and Youth Affairs (Hon. Anil Roberts):** Thank you, Mr. Speaker. With regard to part (a) of the question, yes, the Minister has been advised by SPORTT that a contract was awarded to grade and re-grass the Northern Recreation Ground in Diego Martin so that it could be used for cricket, football and other sporting activities.

SPORTT has advised that this project was awarded to Monteco Creations Limited on/or around March 10, 2010 and that the scope of the project included design/preliminaries, outfield construction, cricket turf pitch, irrigation, drainage; maintenance period six months.

Mr. Speaker, with regard to part (b) of the question, the Minister is aware that this re-grassing project has been suspended. This project was suspended based on a directive from the Ministry of Finance regarding guidelines of new contracts and payments in respect of existing contractual obligations.

Finally, Mr. Speaker, as it relates to parts (c) and (d) of the question, as a consequence of this directive, SPORTT has engaged consultants to undertake an assessment of all projects, inclusive of the Northern Recreation Ground. The completion of this assessment and recommendations from the consultants will inform the date for the resumption of works on this project. And I can assure the Member for Diego Martin North/East, do not worry, we shall bring a renaissance to the Northern Recreation Ground.

*Oral Answers to Questions*  
[HON. A. ROBERTS]

*Friday, February 04, 2011*

Thank you, Mr. Speaker.

**Mr. Imbert:** Supplemental, Mr. Speaker. Could the Minister be more specific as to the reasons why the grassing contract was terminated shortly after the general election?

**Hon. A. Roberts:** No.

**Mr. Imbert:** Could the Minister give an estimated date for the resumption of this project?

**Hon. A. Roberts:** No, I await the consultants.

**Dr. Roodal Moonilal:** May I, with your leave, just respond to the concerns raised by the Opposition Leader earlier in the proceedings

Mr. Speaker, I have been able to obtain from the Hansard both a copy of the Order Paper for Friday, January 28, 2011 and the *Hansard* record of the proceedings, and to confirm that all questions were answered in the proceedings; there was no question that was not answered. So I am sure the Member did not deliberately seek to say something that is not true. This is the record we have from the *Hansard*, the Order Paper and proceedings: that all the questions were answered. Thank you.

**Dr. Rowley:** Mr. Speaker, I simply do not want to get into any to and fro, I simply want to make the point that the circulation of the answer is what I am talking about. When the answer is said to be available, it has to be circulated, then, as though I received an answer to the question. I was raising a query it is said it is answered and it appears back on the Order Paper because the circulation did not take place. That is what I am saying. If that is the case [*Interruption*]

**Dr. Moonilal:** Mr. Speaker, let me correct my friend again, there was no need to circulate an answer; they were presented orally. The circulation of an answer is in the event that time runs out, and we do not have time to answer orally. But they were all answered. The *Hansard* is there.

**Mr. Speaker :** All right. Let us continue.

**STATEMENT BY MINISTER**  
**Land Settlement Agency**  
**(Judgment of)**

**The Minister of Housing and the Environment (Hon. Dr. Roodal Moonilal):** Thank you very much, Mr. Speaker. Over the last week, there has been extensive media coverage of a judgment delivered by the Hon. Justice Carol



*Statement By Minister*

*Friday, February 04, 2011*

Gobin in relation to the actions of the Land Settlement Agency (LSA), *vis á vis* persons who illegally entered upon state lands.

Mr. Speaker, as line Minister with responsibility for the Land Settlement Agency, I now wish to make a statement on this matter and issues arising from both the judgment and the discourse in the public domain. The judgment, Mr. Speaker, alluded to the role of the LSA in its mandate to contain and regularize squatting. The role of the Commissioner of State Lands in eradicating squatting and, most important, Mr. Speaker, the incontrovertible illegality of squatting.

Mr. Speaker, as most Members of this honourable House are aware, the LSA was established by the State Lands (Regularization of Tenure) Act, Chap. 57:05, commonly referred to as Act No. 25 of 1998. The preamble of this Act states *inter alia*, that

“...whereas in furtherance of its commitment to improving living standards and fostering healthy development, the Government is undertaking a programme to regularize certain squatter settlements and to prevent further squatting...”

Mr. Speaker I repeat: to prevent further squatting. Mr. Speaker, ironically not one of those provisions or sections in the Act gives the LSA the jurisdiction to eject, evict or demolish the homes of squatters. Therefore, in so doing the LSA acted outside of its purview. And, Mr. Speaker, the LSA would have acted outside of the law.

In essence, therefore, the LSA was mandated to regularize squatters in occupation of state lands prior to January 1, 1998. They were also mandated to provide for the granting of leases to tenants on state lands and building communities through the establishment of community councils. Section 10 of the Act, Mr. Speaker, suggests that the LSA may do other matters including:

- “(i) enter into contract to carry out and do other acts or things incidental to the purpose of the Agency...
- (l) all such things as are incidental or conducive to the carrying out of its functions as prescribed in the sections and the Act...”

However, these are still limited to the specific types of work as set out in the Act. All the other sections, Mr. Speaker, provide powers of the LSA—and I quote: “...to cause the following to be done:

- (a) title investigations;
- (b) sociological and physical surveys;

*Statement By Minister*  
[HON. DR. R. MOONILAL]

*Friday, February 04, 2011*

- (c) preparation of planning and design layouts with a view to developing, viable communities;
- (d) infrastructural upgrading works;
- (e) cadastral surveys;
- (f) establishment of Settlement Councils in communities for the purpose of—
  - (i) fostering community spirit and development;
  - (ii) settling of disputes.”

The LSA is also involved in matters pertaining to:

- “(g) preparation and issuance of Certificates of Comfort and Deeds of Lease;
- (h) preparation and upkeep of a Register containing all relevant information pertaining to the Certificates of Comfort, Statutory Leases and Deeds of Lease;”

Among other matters:

- (j) research and development; and
- (k) facilitation of micro-enterprise within communities.”

But as hon. Members would realize, none of these address the important issue of ejection, eviction, or demolition as a function of the Land Settlement Agency.

Mr. Speaker, I am taking my time to go through the piece of legislation so that this honourable House would clearly understand the basis upon which the honourable judge ruled which was against the actions of the LSA but, clearly and expressly, not sanctioning squatting.

Mr. Speaker, the LSA acted in reliance on section 10 which I quoted previously and which was stretched to the limit by the Land Settlement Agency. The LSA sought to interpret that there was an authorization by the State to empower the LSA to exercise its common law powers of eviction, demolition and specifically on its appointment as agent contained in the Cabinet Minute of 2006.

Mr. Speaker, in a nutshell, the material facts of the case which led to Justice Gobin’s judgment were as follows: Sixty persons—the claimants to be more correct—were in illegal occupation of state lands in Couva, California, St. Joseph, Princes Town and Barrackpore. On July 17, 2008 some of the claimants alleged that the LSA unlawfully entered lands occupied by them and demolished their homes. Others alleged that the LSA unlawfully notified them of impending eviction, either orally or in writing.

*Statement By Minister*

*Friday, February 04, 2011*

The LSA sought to plead that it was acting in accordance with its own statute, No. 25 of 1998. And further that squatter containment, in particular under section 10 and the Cabinet's expressed approval of the LSA's revised implementation strategy, amounted to an expressed authorization to the LSA to eject squatters from all state lands.

Mr. Speaker, I do have in my possession the Cabinet Minute of May 2006 where a Note was taken by the former Minister of Housing, Member for Diego Martin West and Opposition Leader, containing a document entitled "Implementation Strategy for the containment of squatting in Trinidad".

**2.30 p.m.**

Mr. Speaker, the Cabinet Note advised that Cabinet agree that the Land Settlement Agency (LSA), would be engaged in the demolition and removal of illegal structures on state lands. *[Interruption]* Yes, at that material time the Member for Diego Martin West was indeed, the Minister of Housing and the Environment who would have taken the note to Cabinet, *[Interruption]* and based on the advice of the then Minister of Housing and the Environment, Cabinet would have passed the relevant decision which later, the court would have ruled to be unlawful.

Mr. Speaker, let me just for the record state that I am sure it is not and it was never the intention of the then Minister of Housing and the Environment, and now Leader of the Opposition, to participate in any decision or to advise the Cabinet led by the Member for San Fernando East to break the law. *[Interruption]* I am sure that would have never been the intention. But the effect of it is that that decision led to breaking the laws of the land of Trinidad and Tobago. *[Interruption]*

Mr. Speaker, the issue was decided by Madam Justice Gobin and she decided that the LSA had no legal authority to dispossess the claimants. Our investigation is that this Cabinet Minute was taken to the Cabinet by the then Minister of Housing and the Environment identified before. The Cabinet which took the decision at the time and in effect sought to break the law. The LSA was not legally empowered by the Act to eject, demolish or evict, but the Cabinet Minute required them for whatever reason, political expediency or otherwise, to do just that. Furthermore, Mr. Speaker, a Cabinet Note submitted to the Ministry at the same time and carefully prepared by the LSA specifically advised what was

*Statement By Minister*  
[HON. DR. R. MOONILAL]

*Friday, February 04, 2011*

absolutely necessary if the LSA were to be able to properly and legally effect the Cabinet directive. What did the Cabinet do? I am advised that they ignored all of this and proceeded to direct the LSA to break the law.

Mr. Speaker, needless to say the honourable judge ruled that section 10 of the State Land (Regularization of Tenure) Act could not be interpreted to mean that the LSA was acting as an agency of the State on behalf of the Commissioner of State Lands. Secondly, the Cabinet Minute of May 2006 brought by the Member for Diego Martin West and passed on his advice, in no way could have been relied on by the LSA. To use the judge's own words, she found and I quote:

“It is impossible to make that link. The very Cabinet decision was premised upon a document prepared by the LSA called “The Implementation Strategy.””

In that very document submitted to the then line Minister and Cabinet, the LSA recorded the need for legislative review before legitimate containment could be achieved. I repeat, the LSA recorded the need for legislative review before legitimate containment could be achieved. That document also outlined the type of litigation to which the LSA can and was exposed for lack of legislative support.

The Cabinet failed to recognize and take into account the relevance and importance of how its mandate was to be implemented according to the law. The LSA has over the years recognized the very weakness of the Act which never gave the LSA the teeth to carry out its mandate. As such, numerous amendments were proposed, most notably—state land—in that there should be a clear definition of state land and a concurrent exercise to demarcate all state land in Trinidad and Tobago and to identify in whom it was invested and/or under whose jurisdiction it lies. There are also recommendations to deal with legislation and policy co-ordination. The LSA, Mr. Speaker, has also recommended legislative amendment and changes to empower the LSA to operate as the implementation arm of the Commissioner of State Lands and other matters.

Mr. Speaker, the Cabinet directive to the LSA was done without any reference to these amendments, additions or changes that were required. I am advised that legal advice was consistently given by the LSA and included the LSA's lack of legal or other jurisdiction to contain, demolish and serve notices. I am advised that the Commissioner of State Lands also did not have that authority, stating clearly the Commissioner of State Lands' jurisdiction redress.

Mr. Speaker, the LSA was a body corporate not a public officer. The Cabinet Minute and policy could not direct a corporate body, especially with such directions that were outside of its statute; legislative amendment is still required.

*Statement By Minister*

*Friday, February 04, 2011*

Such advice was given also by the LSA that there was no precedent in law to give notice to the squatter and the mere service of notice was not enough. In November 2007, mere weeks after assuming office, the new Ministers of Planning, Housing and the Environment were apprised of the legal constraints in its operations. Minister Gronlund-Nunez led a committee from February to June 2008 to examine the State Land (Regularization of Tenure) Act and determine the way forward. A report on the work of that committee was done by the LSA legal unit to the senior line Minister, Mrs. Dick-Forde. This report which traced and examined the complete history was delivered to the hon. Ministers on August 04, 2008. In these documents the first issue was always squatter containment and the LSA's lack of jurisdiction.

All along, Mr. Speaker, the Government knew they were advised in writing from the LSA legal unit that they were acting outside of the law. Mr. Speaker, may I also take this opportunity to place on public record that it was the work of the Member for Siparia—then in Opposition—as an attorney-at-law [*Desk thumping*] who brought this matter to the fore and took up the challenge of representing those persons affected. The Member for Siparia represented those persons in the community, in the Parliament and in the court of law. It is a tribute that the hon. Prime Minister now and Member for Siparia—then Opposition Member—that her work at the court has proven to be a vindication of the position of the Member for Siparia and the Opposition at the time. [*Desk thumping*]

What this statement reflects is that in the face of overwhelming guidance, relevant to the Cabinet and Cabinet Ministers, it was ignored to the detriment of the country. It is vitally important at this stage to indicate that squatters in no way must believe that they now have the right to squat or that it is legal. Madam Justice Gobin, in no uncertain terms reiterated that this decision gives the claimants no rights in the land they occupy. As a matter of fact it simply decided that the LSA, in actually evicting some of them and threatening to evict the remaining, acted unlawfully in that it purported to exercise a power it did not have.

The Preamble of the Act recites very laudable objectives of the Government in its policy towards squatter regularization in designated areas. Madam Justice Gobin recognized that squatting has been in existence for some time now and called for some action to be taken to address the challenges from the point of view of legislation. Madam Justice Gobin also noted firmly that the decision, the judgment, does not in any way provide a carte blanche position for squatting in

*Statement By Minister*  
[HON. DR. R. MOONILAL]

*Friday, February 04, 2011*

that squatting is not permitted by the law. The policy must be maintained and implemented within the limits of the law so that it will not be left to any state agency to abuse the law.

Mr. Speaker, this Government does not permit and will not permit illegal land grabbing or any other excuse for breaking the law. The judgment clearly emphasizes the illegality of squatting while highlighting some of the social consequences arising; the consequences of the failure of the last government and the Ministry of Planning, Housing and the Environment under the previous Minister has caused this country a considerable amount of money in legal fees and potential compensation. In a speedy response to address the land-grabbing problem that was taking place months ago in Race Course Lands, Arima; Cashew Gardens and elsewhere, the Government succeeded in obtaining a Presidential Order dated June 17, 2010 to address the situation.

Mr. Speaker, the Government of the People's Partnership acted within the law in dealing with the issue of squatting. This is why we cannot be challenged on this matter. [*Desk thumping*] As I said before, there remains an urgent need to revise the State Land (Regularization of Tenure) Act, certain sections of the State Lands Act, the Regional Corporations Act and other pieces of legislation. The Government is committed to pursuing that course of action to correct what was a blatant and reckless failure on the part of the last administration in which the Member for Diego Martin West presided as Minister of Planning, Housing and the Environment.

Mr. Speaker, I thank you.

**Mr. Speaker:** Hon. Members, it is my understanding that it is the intention of the Government to make another statement at a later stage of the proceedings.

*Assent indicated.*

#### THE WAY OF TRINIDAD AND TOBAGO (INC'N) BILL

*Question put and agreed to,* That a bill to provide for the incorporation of The Way of Trinidad and Tobago and for matters incidental thereto, be now read the first time.

*Bill accordingly read the first time.*

**DATA PROTECTION BILL**

*Order for second reading read.*

**The Minister of State in the Office of the Prime Minister (Hon. Collin Partap):** Mr. Speaker, I beg to move,

That a Bill to provide for the protection of personal privacy and information be now read a second time.

Mr. Speaker, the great Roman philosopher Marcus Cicero is said to have espoused the notion that the welfare of the people shall be our greatest law. Indeed, Mr. Speaker, this affirmation is the foundation of the People's Partnership Government and it is consistently expounded by our hon. Prime Minister's, maxim: "To serve the people, serve the people, serve the people." [*Desk thumping*]

We believe that it is the responsibility of government to make law, to enforce law and to itself be restrained by law, and where there is no law a government must be trusted to act responsibly and in the interest of the people. Suffice it to say, there is no real specific law in the past that prohibited the government from misusing and abusing an individual's personal information in pursuit of political interest, criminal gains or other nefarious benefits. There was only the hope that the government would do the right thing. However, the PNM proved that they could not be trusted to do the right thing in the absence of law. It is in this vein the Data Protection Bill is before this honourable House today. [*Interruption*]

Mr. Speaker, there are those who wish us to cease and desist from reminding the nation of the constitutional atrocities propagated by the previous PNM administration, like the Member for Point Fortin opposite. They say we should forget about it and move on, but I remind them of the immortal words of George Santayana who warned: "Those who cannot remember the past are condemned to repeat it."

Mr. Speaker, on May 24, 2010 the nation did move on and left the PNM behind, but we must never forget what happened during the most disgraceful period in the history of Trinidad and Tobago. It is in this respect that I agree with a former President of the United States who advocated that: "The clearest way to show what the rule of law means to us in everyday life is to recall what has happened when there is no rule of law."

**2.45 p.m.**

Under the previous administration there was no data protection law and with the absence of such legislation it was exploited with impunity. Therefore, Mr. Speaker, this piece of legislation is just one of the safeguards that the People's

*Data Protection Bill*  
[HON. C. PARTAP]

*Friday, February 04, 2011*

Partnership Government will establish to ensure that our citizens are protected from what occurred under the PNM. During the former administration's tenure, we had hoped—

**Mr. Speaker:** I am not supposed to engage you in crosstalk, but I am saying that the Minister of State has the right to read his statement and he is doing so. You will have the right to reply. Continue.

**Hon. C. Partap:** Thank you, Mr. Speaker. During the former administration's tenure we had hoped that the logic of another great Roman statesman, Lucius Seneca, would have applied, that is:

“Shame may restraint what law does not prohibit.”

Sadly, Mr. Speaker, the former PNM Government proved that they had no shame especially when it came to the privacy of the nation's citizens.

Mr. Speaker, I am certain that you will agree with this, that is why we need the Data Protection Bill. It gives me no great pleasure to recall that in 2005, the then PNM administration launched a malicious and public attack on the Chief Justice of Trinidad and Tobago, Justice Satnarine Sharma. I recall the newspaper headline where the Member for San Fernando East is alleged to have threatened the Chief Justice to resign, or else; dark days indeed, Mr. Speaker. Attack after shameless attack, they went after the Chief Justice in the most disgraceful way possible, including daily assaults in the media, as well as sending armed policemen to his home. But what concerned me the most, Mr. Speaker, was when the Chief Justice refused to be intimidated by the bullying tactics of the then PNM Government when he refused to be hounded out of office. Personal details about the Chief Justice, personal medical records, his personal telephone calls were leaked to the media. Poor Chief Justice Sharma had to issue a release to the media condemning the affront to his dignity. And I quote:

"The Chief Justice also wishes to point out that the easy access to his private telephone number, his telephone call records and his personal medical records so brazenly published in the press, is a frightening and alarming sign for the future, and is a clear indication of the violation of his fundamental right to privacy."

Release published in the *Newsday* of Saturday February 26, 2005.

Now remember when the hon. Prime Minister came to this House and reported the shocking activities of the SIA to the nation, it was revealed that Mr. Sharma, like myself, was among the victims.



Mr. Speaker, it was a violation of trust which the people had placed in the Government. While our brothers and sisters and children were being kidnapped and murdered instead of the State using its resources responsibly to gather intelligence on the criminals, the PNM administration presided over the worst “maco-fest” in the nation’s history. This is what happened under the watch of the Member for San Fernando East. This is what happened in the absence of codified laws.

Mr. Speaker, as a result of Chief Justice Sharma’s personal information being bandied about in the media, the Law Association rushed to the defence of the besieged head of the Judiciary and issued a release of its own. And I quote from the article in the *Newsday* of the same Saturday, February 26, 2005, which states:

“The Council of Law Association deplores and condemns in the strongest possible terms the continued attacks on the Judiciary and judges of the Supreme Court which have been appearing in the media on an almost daily basis.

It slammed news reports whose purpose was solely to ‘make mischief, create confusion and scandal and destroy reputations.’ Disrespect for the Judiciary, said the association, could subvert the rule of law, and cause a breakdown of law and order in the society. The Law Association said it had to speak out for the judges who were constrained by their own public positions from defending their own names.”

This is what it came to, Mr. Speaker, a sad and shameful disgrace. And although there were calls from the Law Association and other outraged citizens for an investigation into such malevolent acts the culprits who were directly responsible for this spiteful invasion of privacy were never revealed. Never again, Mr. Speaker, never again will the public be victim to such shameless, brazen attacks via public releases of personal and confidential information. Never again would an individual’s business be used as a weapon to intimidate and embarrass him. Never again, Mr. Speaker. This is why the Data Protection Bill is before this honourable House.

We have seen, Mr. Speaker, the previous government could not be trusted to act honourably where there was no specific law. But indeed even where there were existing laws, Mr. Speaker, the former government and, indeed, the Member for San Fernando East himself ran roughshod over it. For example, in 2002, the Member for San Fernando East then Prime Minister vetoed the promotion of Devant Maharaj to act as Deputy Director of the NLCB. Mr. Maharaj assumed the

*Data Protection Bill*  
[HON. C. PARTAP]

*Friday, February 04, 2011*

post of Marketing and Public Relations Officer of the board on December 3, 1993. Due to the suspension of the Deputy Director a vacancy was created for an officer to act. Of the officers eligible, Maharaj was the most senior. Accordingly, Mr. Speaker, the Statutory Authorities Service Commission—it consults with the Prime Minister on appointments—Mr. Maharaj's name was submitted but was vetoed by the Prime Minister with no reason given.

When Mrs. Gemma Joseph's name was submitted to the Prime Minister formal approval was given on January 28, 2004 and Mrs. Joseph was appointed to the post. Mr. Maharaj challenged the decision in the court and won his case. Madam Justice Dean Armourer in her ruling quashed the decision of the commission to appoint Mrs. Joseph to act as Deputy Director of the board instead of Mr. Maharaj, and further ruled the practice of consulting the PM on such an appointment was not legal. The then Prime Minister had no business vetoing any appointment, but he did and never gave a reasonable explanation as to why.

Further, Mr. Speaker—there is more. In September 2009, another judge ruled that the State had to pay the Sanatan Dharma Maha Sabha which operates Central Broadcasting Services Limited close to \$3 million in damages for its unequal treatment and delay in granting an FM radio broadcast licence. In justifying the award the judge stated:

“The award was meant primarily to deter public authorities and persons exercising public functions from engaging in or persisting with unequal treatment.”

The *Guardian* of September 23, 2009.

I could go on, Mr. Speaker, Marlene Coudray, Faraz Ramjohn, Ganga Persad Kissoon and many more; many, many more, all victims of discrimination under a PNM administration and all successfully defeating the State in the courts. You should note that every time a citizen took the PNM Government—the then PNM Government—to court, they won and the taxpayers bore the cost. And as the Leader of the House noted earlier in his ministerial address, there was a recent victory by the squatters over the LSA where Justice Gobin also ruled against the State. And I will go on to say what the Minister of Housing and the Environment, Dr. Moonilal, said on Monday January 31, 2011, written by Mr. Andre Badoo:

“Squatters Victory:

(Minister Moonilal) warned that the case brought against the LSA has cost the taxpayers millions and further costs are anticipated from thousands of squatters who may have been evicted by the LSA for years under the PNM. ‘This could go into the millions, ’...’

**2.55 p.m.**

I continue:

“As Minister of Housing I am shocked that the LSA, under the former ministers Dr. Keith Rowley and (former Senator) Dr. Emily Gaynor Dick-Forde,...””

**Dr. Rowley:** Do not call my name in “stupidness”!

**Hon. C. Partap:** Mr. Speaker, it seems like I have touch a sore note—very sore note.

**Dr. Rowley:** You talking foolishness!

**Hon. C. Partap:**—“was allowed to break the law and violate the constitutional rights of the citizens.””

I see Dr. Rowley has an explanation now, but then—

**Mr. Speaker:** We do not refer to Members of Parliament by their names. It is either his office, Leader of the Opposition, or Member for Diego Martin West. No name calling.

**Hon. C. Partap:** My apologies, Mr. Speaker. The newspaper article went on to say the Leader of the Opposition “did not answer calls yesterday.”

Well, I hope he would make a statement pretty soon in the Parliament. I would also like to note that that case against the LSA was brought by the then Member for Siparia—still Member for Siparia—and now Prime Minister of Trinidad and Tobago when she served on the Opposition Benches and took up the cause of the unjust discrimination by the former PNM government.

That is why they continued to do as they pleased, because they had the Treasury to foot the bill for their malicious vendettas against certain groups and individuals. They were never held personally accountable in the courts of law but they had to pay the political price in the court of the people when they passed judgment on May 24, 2010. It was on that day that the people of Trinidad and Tobago ruled: PNM guilty on all charges.

The former government did not care for laws, especially legislation like the Data Protection Bill that protects the rights and lives of our citizens. Their lack of commitment to laws which would protect our most vulnerable citizens was demonstrated by their unwillingness to proclaim the UNC passed laws like the Equal Opportunity Act, the Occupational Safety and Health Act, the Children's

*Data Protection Bill*  
[HON. C. PARTAP]

*Friday, February 04, 2011*

Authority Act, laws which would have protected the poor, the downtrodden, the workers and our most innocent, the children. They sat on the legislation for years while public servants were being discriminated against; workers were dying and our children were being slaughtered. Never again! Never again!

Interestingly enough, this Bill in its previous incarnation was laid in the House almost two years ago on February 13, 2009 by the then government now in opposition. It was debated and then sent to a joint select committee and it subsequently was allowed to lapse. It did not matter to them. Whether there were laws or no laws, the PNM did what they wanted. The people said no smelter, the PNM insisted on smelter; the people said stop wasting money, the Member for San Fernando East wanted to buy a jet; the people said lock up criminals, the PNM had a party for community leaders in Crowne Plaza. The PNM was moving like a way in style: "We do what we want to do." But on May 24, when 432,000 eligible voters said, "We did not want the PNM", they had no choice but to listen.

Indeed, our citizens knew from past experience that the PNM routinely ignored their directives. That is why the People's Partnership victory was so incredibly resounding. [*Desk thumping*] Our citizens do not want to take that chance with the PNM and would dismiss their mandate. That is why the people's victory was overwhelming as it was. The trust of the people of Trinidad and Tobago was placed in the People's Partnership and the trust is a sacred one. That is why this Government is committed to putting the necessary legal frameworks in place to protect present and future generations from abuses that might occur by the Members on the other side. The rights of our citizens are our primary responsibility and we duly pledged to uphold them. That is why we need the Data Protection Bill.

In its present incarnation, in the Bill of 2011, there are some substantial changes, 23 to be exact, affecting 18 clauses. The Data Protection Bill before us forms part of a two-pronged legislative approach by this Government to better facilitate and to promote electronic government and access to government services. The other half of this approach will be brought through the Electronic Transactions Bill and will be presented by my friend and colleague, the hon. Minister of Public Administration.

Information is all around us; different kinds of information. We can Google anything and we will be rewarded with volumes of information on particular topics, issues, items, persons, places; and if you Google the works of the other government, you probably would not find anything substantial, except for corruption, but you could always check that when you go on to the web.

It is said that information is power and I quite agree, but this knowledge can be used for good or it can be used for ill; it can be used to build; it can be used to destroy and, as I outlined earlier, it nearly annihilated the constitutionally protected institution of the Judiciary. The idea of data protection and the issues associated with it, that is, data collection, data storage and data processing, is nothing new. Global technological advancements have changed the way in which we access and process information. There is a need to ensure that our citizens are protected against the unauthorized collection, the unauthorized use and the unauthorized disclosure of their personal and sensitive information, except in circumstances that are clearly outlined in the Bill. Included in the vast array of information outlined here, there is also that of personal information, that is to say, personal data and information about you and me.

Let me quote from the Bill, the definition of “personal information”.

“‘Personal information’ means information about an identifiable individual that is recorded in any form, including—

- (a) information relating to the race, nationality or ethnic origin, religion, age or marital status of the individual;
- (b) information relating to the education or the medical, criminal or employment history of the individual or information relating to the financial transactions in which the individual has been involved or which refers to the individual;
- (c) any identifying number, symbol or other particular designed to identify the individual;
- (d) the address and telephone contact number of the individual;
- (e) the name of the individual where it appears with other personal information relating to the individual or where the disclosure of the name itself would reveal information about the individual;
- (f) correspondence sent to an establishment by the individual that is explicitly or implicitly of a private or confidential nature, and any replies to such correspondence which would reveal the contents of the original correspondence;
- (g) the views and opinions of any other person about the individual; or
- (h) the fingerprints, deoxyribonucleic acid or blood type of the individual;”

*Data Protection Bill*  
[HON. C. PARTAP]

*Friday, February 04, 2011*

The proposed legislation goes even further in identifying the types of personal information which can be considered to be of a sensitive nature. Sensitive personal information will therefore relate to, and again, let me quote from the Bill:

“‘Sensitive personal information’ means information on a person’s —

- (a) racial or ethnic origins;
- (b) political opinions, political affiliations or trade union membership;
- (c) religious beliefs or other beliefs of a similar nature;
- (d) physical or mental health or condition;
- (e) sexual orientation or sexual life; or
- (f) criminal or financial record.”

This personal data is lodged with private and public sector companies, businesses and institutions, such as banks, insurance companies, utility companies, private and public hospitals, cable and telephone companies, hotels, service sector businesses and a host of others. Businesses both in the public and private sector ask for your name, address or even your telephone number to put on your bill or receipt and a copy is kept by these businesses. All this information is out there, stored and unregulated and left to the whims and fancies of those who have it. There is no proper framework to protect people’s personal data from being given to a third party for the third party’s personal gain. Personal information is shared between businesses and institutions in the public and private sectors. It is a marketing thing. When a person’s private data is amalgamated it is frightening to think what could be done with it in the unscrupulous hands of others. This is when it becomes very dangerous.

Now I am painting with a very wide brush. Do not get me wrong. But you could see, having in-depth personal information about thousands of individuals and citizens can lead to significant abuse of personal and deeply private information. We saw it happen under the last administration. I am told that companies sometimes sell this information to other businesses. This is people’s personal information that is being shared and sold to third parties without their knowledge or authorization. Businesses are capitalizing on information that should, in fact, remain private. As a responsible Government, we cannot, in good conscience, allow such a practice to continue to be perpetrated among the unassuming population. We must take action in guiding the use of personal information. There must be a proper legislative framework to safeguard personal data and personal information from being accessed and used by others.

I am certain that neither you nor any Member of this honourable House wants their personal information in the hands of others who are not authorized to have it. Can you imagine information about your finances, your family, your health, your address, your insurance, your mortgage, your debts, all out there and are being shared with others without your knowledge or approval? I have heard of kidnapped survivors saying that their kidnappers knew confidential details about their finances. Therefore, I again have to underscore how crucial it is to protect through law, such information. This amalgamation of personal information can paint quite a picture of the life of the person in question. It is very frightening, indeed.

Well, it is happening and I want to reiterate that we, as a responsible Government, must do something about this and we are doing something about it starting today, with the passage of this Bill. The aim and purpose of the Data Protection Bill, 2011 is to ensure that personal information in the custody or control of an organization, whether public or private, shall not be disclosed, processed or used except for the purpose for which it was collected, except with the consent of the individual and where exemptions are clearly defined.

As you are aware, the Government is the biggest custodian of personal information. It is therefore incumbent upon any government to provide the requisite level of protection to personal and sensitive information it holds, thus facilitating the protection of personal privacy as enshrined in our Constitution. This Government, under the competent and astute leadership of the Prime Minister, the hon. Member for Siparia, is now leading the way in providing such protection. [*Desk thumping*]

Clearly, the previous government did not see this as a priority, otherwise the Data Protection Bill, as this was laid in the honourable House in 2009, would not have been allowed to lapse. In the context of global imperatives including pursuant to our regional international treaty obligation, there is a great need for improvement of privacy protection in Trinidad and Tobago if we intend to become significant players in the global economy, thus providing better leverage for business opportunities.

### **3.10 p.m.**

The practice of holding or using data is certainly not a new concept. In technology and Internet access and its usage it has become even easier to share information. This legislation seeks to protect individuals by requiring organizations

*Data Protection Bill*  
[HON. C. PARTAP]

*Friday, February 04, 2011*

both public and private to notify persons as to the purpose for collecting the information and their policies and practices for sharing such information.

Mr. Speaker, other countries have similar legislative framework namely, the European Union, Canada and Australia. Additionally, some Caricom countries also have related legislative enactments including for example, the freedom of information legislation and the electronic transaction legislation. Mr. Speaker, the European Union (EU) Data Protection Directive coupled with the principles outlined in the Organization for Economic Co-operation and Development (OECD) Guidelines on the Protection of Privacy and the Transborder Flow of Personal Data have informed most of the legislation and practice in privacy protection in developed and developing countries, including our own and data protection policy and Data Protection Bill.

Some countries with the exception of the United States have set up data protection agencies, with varying degrees of oversight, advisory and regulatory or enforcement powers. In Trinidad and Tobago, the data protection policy and the Data Protection Bill draw on a number of sources including the aforementioned OECD guidelines, and the EU Directives, the Canadian Standards Association, standards on protection of personal privacy and legislation in a number of jurisdictions, including Canada, New Zealand, Australia, the United Kingdom and Ireland.

Privacy protection is an area where the Government can provide leadership and guidance through information using e-government and other information and distribution media, early adoption of privacy-enhancing techniques and policies, selective legislation in key sectors such as the financial sector and health and promotion of contractual safeguards and dispute settlement mechanisms. In addition, key regulation in self-governing professional bodies can play an important role in fostering privacy principles and applications through a network of regulatory requirements and internal compliance policies.

In general therefore, Mr. Speaker, this Bill through the proposed office of the Information Commissioner, will provide specific guidelines for treating with the public sector, whereas a participative co-regulatory approach will be adopted for the private sector. The Information Commissioner will prepare codes of conduct for private sector organizations. These codes will necessitate varying obligations on the part of these organizations. There is no doubt that we are living in an electronic era. The European Union, Canada and Australia, to name a few, and other developed First World nations, have similar frameworks to codify



protection of personal information. Having such legal frameworks entrenched, Mr. Speaker, act as a welcome catalyst and enabler for technology, knowledge and training.

Mr. Speaker, is it noteworthy that the Economic Partnership Agreement between Caricom and the Dominican Republic (CARIFORUM) insists on such frameworks. This Data Protection Bill, 2011 and the Freedom of Information Act are inextricably intertwined. The Freedom of Information Act was established to encourage transparency in the operations of the public service. It provided access by members of the public to information in the possession and control of public authorities. The Data Protection Bill balances the granting of access to personal and sensitive information of an individual to members of the public, as well as to other third parties. It could therefore be seen that both the Freedom of Information Act and the Data Protection Bill are concerned with information management. They work hand in hand with each other. The former deals with obligations placed on public authorities, whilst the latter places obligation on both the public and private sector.

The Data Protection Bill, 2011 has 102 clauses, but I will not contemplate inflicting any sort of undue burden on Members by going through clause by clause. I would, therefore, briefly go through the six main parts of the Bill.

Part I, of the Bill comprises the preliminary clauses; it contains six clauses including a short title and the interpretation of terms. It also outlines the general privacy principles which the Bill seeks to enshrine in the execution of public and private sector enterprises. These principles include one, the responsibility of organizations for personal information under their control; two, the identification of purpose and gaining of affirmative consent for information collection; three, limitation of use and storage of information collected; and four, accuracy of information collected and the right of the individual to verify that accuracy.

Notably, Mr. Speaker, clauses in this part establish that the Bill in clause 3 binds the State, and that in clause 4 will set out the objects of the Act to ensure that the protection is afforded to an individual's right to privacy and the right to maintain sensitive information as private and personal. Accordingly, Mr. Speaker, clause 5 does not apply to limit information available by law to parties in proceedings, nor limits the power of tribunals and the courts to compel the production of documents. Mr. Speaker, clause 6 of the Bill would establish the aforementioned general principles which are applicable to all persons who handle, store and process personal information belonging to another person.

*Data Protection Bill*  
[HON. C. PARTAP]

*Friday, February 04, 2011*

Part II, Mr. Speaker, of the Bill contains 22 clauses, establishes the office of the Information Commissioner, which is in clause 7; the minimum qualifications of the incumbent in the position of Information Commissioner, clause 8. The powers of the office and functions, roles and responsibilities of the Commissioner, his staff and or agent, clause 9

- (1) “The Commissioner, shall monitor the administration of this Act to ensure its purposes are achieved.
- (2) In carrying out its powers...the Commissioner may—
  - (a) conduct audits and investigations to ensure compliance with any provision of this Act;
  - (b) ...comment on the privacy protection implications of proposed legislative schemes or government programmes and receive representations from the public concerning data protection and privacy matters;
  - (c) after hearing representations from the Head of a Public Body or an organization subject to a mandatory code of conduct and who may be engaged in processes that may be in contravention of this Act, order the public body or organization to cease collection practices or destroy collections of personal information that contravenes this Act;
  - (d) authorize the collection of personal information otherwise than directly from the individual in appropriate circumstances;”

Mr. Speaker, I could go on all the way to (j) but I will not bore this House with them. [*Crosstalk*]

Mr. Speaker, I see data protection hits a raw nerve on the other side, a Bill which was brought in 2009 and could not—[*Interruption*]

**Mr. Speaker:** I would like to hear the hon. Minister in silence. Could you continue.

**Hon. C. Partap:** Thank you, Mr. Speaker. Clause 10 empowers the Information Commissioner and his agents to undertake audits to ensure public and private sector enterprises adhere to the requirements of the Bill, its regulations or codes and the conduct made pursuant thereto. Yes, Mr. Speaker, the Information Commissioner will have teeth to go along with his bark. [*Crosstalk*]

Clause 11 of the Bill empowers the President—[*Crosstalk*]

**3.20 p.m.**

The Bill will empower the President to also appoint a maximum of two Deputy Information Commissioners to act in the absence of the Information Commissioner, who would hold office for not more than five years and who would have the same qualifications and experience as the Information Commissioner. The clause also empowers the President to appoint an acting Deputy Information Commissioner in the absence of the Deputy Information Commissioner.

Clause 20:

“Where the Information Commissioner is conducting an audit or enquiry into the practices of a public body for the purposes of ensuring compliance with the General Privacy Principles set out..., the Commissioner may—

- (a) with the permission of the head of the public body or on application for a warrant under subsection (4), enter and inspect any premises occupied by a public body for the purposes of an audit or enquiry;
  - (b) require the production of any document or record relevant to the enquiry that is in the custody or control of a public body; or
  - (c) seize and detain relevant documents on obtaining a warrant under subsection (4).”
- (2) The Commissioner shall not retain any information obtained from an audit or enquiry under subsection (1) beyond the period for which it is required.
  - (3) The Commissioner may exercise his powers under this section with respect to Parliament, a Joint Select Committee of Parliament or a committee of either House of Parliament; the Cabinet; the Court of Appeal; the High Court; the Industrial Court; the Tax Appeal Board or any court of summary jurisdiction, the Tobago House of Assembly; the Executive council of the Tobago House of Assembly only with the consent of the Speaker of the House of Representatives or the President of the Senate, the head of the Cabinet, the Chief Justice, the Presiding Officer or Head of the Executive Council, as the case may be.

- (4) Where the head of a public body refuses to —
- (a) allow the Information Commissioner or any person acting for or under him to enter and inspect premises under subsection (1)(a), the Information Commissioner shall, where he believes such entry is necessary, apply to a Magistrate for a warrant to so enter, seize and inspect; or,
- Where the head of a public body refuses to—
- (b) produce the document or record under subsection (1)(b), the Information Commissioner shall, where he believes the request to be reasonable, apply to the Court for an Order requiring the public body to produce such documents.”

Clause 21 of the Bill sets out the power of the Information Commissioner where he is conducting an audit or an enquiry, pursuant to Part IV. These include the power to require the production of documents, enter and inspect, and summon and examine persons under oath. The clause, however, prohibits the Information Commissioner from retaining any information obtained or data received under this clause.

Mr. Speaker, it is to be noted that in establishing the functional autonomy of the Information Commissioner, the heads of public authorities are envisaged in the guiding policy. This part establishes the office of the Information Commissioner as a corporate body, meaning the office of the Information Commissioner is a legal person and can be sued in his name as a whole and transfer property.

Part III of the Bill contains 40 clauses and outlines rules to which the heads of public bodies must adhere in implementing privacy principles outlined in Part I.

Clause 30 of the Bill would limit a public authority’s collection of personal information to that which is authorized by law, law enforcement, and where the information is directly related to an operating programme or activity of the public authority.

Clause 31 of the Bill would require that personal information be collected directly from the individual except in certain circumstances.

Clause 32 of the Bill would require a public authority to inform a person from whom it collects personal information, as to why it is being collected, the legal authority for collecting it and the title, business address and business phone number of an individual who can answer questions about such collection. This clause goes on to provide in certain circumstances an exception to this requirement to provide information.

Clause 33 of the Bill would require a public authority to retain personal information it has used for a period of time as prescribed by the Minister by order.

A public authority under clause 34 requires where it intends to use personal information to make a decision that would affect the individual, to ensure the information used is correct and complete.

Clause 35 of the Bill would mandate a public authority to keep all personal information secure and make arrangements against unauthorized access, collection, use, alteration, disclosure or disposal of such personal information.

Mr. Speaker, with regard to the storage of personal information, clauses in this part limit public authorities to undertaking such activities in either Trinidad or other jurisdictions with equivalent privacy protection laws.

In the latter situation of a foreign jurisdiction with equivalent privacy protection, the public authorities are obliged to provide the affected individuals with the identity of their administrator of the privacy protection laws in the other jurisdictions.

Clause 38 would prohibit a public authority which has custody and control of personal information from use of such information, except for the purposes for which it was obtained, unless consent is received from the individual.

Clause 41 of the Bill would prohibit the disclosure of personal information in Trinidad and Tobago, by a public authority without the consent of the individual in respect of whom the individual relates except in certain circumstances. The clause goes on to require that the public authority must before divulging information of a party residing in another jurisdiction, inform the individual to whom the information relates as to the identity of the relevant statutory authority in the other jurisdiction.

Clause 47 obliges all public bodies to prepare privacy impact assessments of existing or planned operations in accordance with the guidelines of the Information Commissioner.

Clause 45 outlines conditions under which personal information held by a public authority can be disclosed, but would significantly restrict the disclosure of medical records—not like they did with the Chief Justice, Mr. Sat Sharma. Clauses therefore, facilitate the sharing of information between ministries in accordance with guidelines established by the Information Commissioner. These are critical to the implementation of joint government service provisions.

Additionally, Mr. Speaker, this part also clarifies that an individual's request for his personal information under the Freedom of Information Act be treated as a request made under this Bill.

Clause 56:

“Where a request is made for access to personal information pursuant to section 52, the head of the public body shall, within thirty days of the request being received where access is—

- (a) granted in whole or in part, give the information to the individual who made the request; or
  - (b) refused in whole or in part, give the individual who made the request a written response stating—
    - (i) ...information does not exist; or
    - (ii) ...specific provision of the Act which a refusal could reasonably be expected to be based if the information existed; or
  - (c) refused in whole or in part, give the individual who made the request information regarding the right of appeal to the Information Commissioner.
- (2) where access is granted in whole or in part, the head of the public body shall ensure that the information is available in a comprehensive form, including where reasonable, comprehensible to the individual with a sensory disability.

Accordingly, clause 58 provides for appeals from the decisions of public authorities in regard to the Freedom of Information Act, be forwarded to the Information Commissioner, rather than the Ombudsman as currently pertains in the Freedom of Information Act. Consequential amendments to that Act to ensure conformity with the Bill are therefore made in a subsequent part.

Mr. Speaker, clause 59 of the Bill would provide that an appeal to the Information Commissioner is to be made within six weeks of the date on which the notice was given of the decision and specific timelines for the appeal.

Clause 63 of the Bill empowers the commissioner to authorize a mediator to investigate circumstances of an appeal, with the intention of settling the matter.

You see, Mr. Speaker, mediation is a new concept, but one that will save time, litigation and money, similar to what the United Kingdom Employment Tribunal employs, and it is something we are trying here.

Part IV: Protection of Personal Data by the Private Sector. This part of the Bill contains 19 clauses and provides for the Information Commissioner's development of sector specific codes of conduct, including both voluntary and mandatory codes, in furtherance of the private sector adhering to the general principles as outlined in Part I. The Information Commissioner may petition the sector or industry's regulator, where such has been established for the development of codes of conduct. This part provides that where codes of conducts are deemed mandatory, the Minister may establish these codes by order, subject to a negative resolution of Parliament. The Bill will give individuals the right of access to their personal information held by an organization.

Mr. Speaker, conversely, clause 78 of the Bill would allow an individual aggrieved by the actions of an organization which is subject to mandatory codes in respect of his personal information and which is in the custody and control of an organization to request to the Information Commissioner to conduct a review of the decision, act or failure to act of the organization, or to make a complaint to the Information Commissioner in respect of the organization's failure to comply with the mandatory code of conduct.

It also provides in clause 72, that cross-border storage or private information, this is, storage or private information in foreign jurisdictions may require similar notifications and assurances as pertaining in the public sector pursuant to Part III.

Clause 82 of the Bill would require the Information Commissioner to notify the head of an organization where a request has been made for a review of a decision of the organization, or where a complainant have made such a complaint against such an organization.

Clause 83 would empower the Information Commissioner to conduct an inquiry into a request or complaint. This clause goes further to provide that persons aggrieved by decisions of the Information Commissioner, may apply to the High Court for judicial review.

Clause 84 would empower the Information Commissioner to authorize a mediator to investigate the circumstances of the request and try to effect a settlement in this matter.

Part V, Mr. Speaker—Contraventions and Enforcement. This part of the Bill has 10 clauses and it outlines the framework for managing contraventions of the Act. Notably, while some breaches are considered criminal offences, subject to fines and imprisonment if convicted, others warrant the levy of civil fines which may be imposed by the courts.

Some of the offences, Mr. Speaker,—clause 88: The Bill makes it an offence if a person wilfully obstructs the Information Commissioner or any person acting, for and under his direction, while carrying out an audit or an investigation.

Clause 89 of the Bill makes it an offence for a person to make a request for information under false pretences. The clause makes it an offence where a person wilfully makes a false statement to mislead or attempts to mislead the Information Commissioner in the performance of his duties.

Clause 90 makes it an offence for a person to fail to comply with an order of the Information Commissioner.

Clause 91 of the Bill makes it an offence for a person who contravenes section 100 which deals with whistle-blowers.

Clause 92 of the Bill will make it an offence for non-compliance with the mandatory codes under section 74.

Clause 93 makes it an offence for a person to wilfully disclose information or collect, store, or dispose of personal information in a manner which contravenes this Act.

Clause 94 would make it an offence for a person to breach confidentiality obligations under section 25.

### **3.35 p.m.**

Penalties, Mr. Speaker; for example, in clause 95(1):

A person who commits an offence under this Act is liable upon—

- (a) summary conviction, to a fine of not more than fifty thousand dollars or three years' imprisonment.
- (b) For conviction on indictment, the fine is not more than one hundred thousand dollars or five years' imprisonment.

A corporation is liable to a fine of two hundred and fifty thousand dollars on summary conviction and five hundred thousand dollars for conviction on indictment.

Part VI, Mr. Speaker. Before I go on, there is the procedure for enforcement under the Data Protection Bill. If a person makes a complaint to the Information Commissioner, to the public body or private entity subject to the mandatory codes



of conduct, and it is not in compliance with the Act and the person breaches the Act, a person may seek review of the decision—this is for individuals who are subject to the mandatory code in relation to the access or correction of his personal information—the Information Commissioner will then conduct an enquiry into the complainant and the decision upon which the complainant makes orders against the public body or private entity, mandating it, if necessary, that the public or private body take certain action.

Where the person, the body or individual fails to comply with the order of the Information Commissioner or has otherwise been deemed to have wilfully breached specific provisions of the Act, the person would have committed an offence, which I just read out. As such, the Information Commissioner will then refer the information or complainant containing the particulars of the alleged offence under this Act to the Commissioner of Police and to the Director of Public Prosecutions for taking further steps in relation to the prosecution and conviction of such persons who have deemed to have committed offences under this Act.

Where persons who have been charged on information or indictment by the DPP upon summary conviction in the Magistrates Court—and I read out the fines—and also, Mr. Speaker, some civil remedies—if the Information Commissioner finds upon an enquiry that a corporation has contravened the person's privacy under the Act, the person aggrieved may sue in the High Court for civil penalties.

Mr. Speaker, Part VI of the Bill: Mr. Speaker, this part of the Bill has five clauses and clarifies to the party that it will cover cost of any audit pursuant to Parts III and IV.

Clause 89 establishes the jurisdiction of the courts in the administration of the Act. It sets out the provisions for whistle-blowing and protection of individuals who assist the Information Commissioner in the furtherance of the objects of this Act. It empowers the Minister to make regulations for further implementation of the Act and it amends the Freedom of Information Act, substituting the Information Commissioner in the role of the Ombudsman, in the review—access decisions by public authorities and in the making of decisions by the Information Commissioner in that regard binding on public authorities.

Mr. Speaker, I think I submitted to the Clerk, some amendments which we want to have circulated in relation to clause 102 of the Bill and, with your permission, if the Clerk would—

*Data Protection Bill*  
[HON. C. PARTAP]

*Friday, February 04, 2011*

Mr. Speaker, one of the major problems identified by the stakeholders was the lack of enforcement powers conveyed by the Freedom of Information Act to those who administer it. At present, there are no statutory enforcement mechanisms in respect of the obligations of the public authorities to follow the advice of the Ombudsman on matters relating to the Freedom of Information Act.

Under the Act, section 38(A)(3) gives the public authorities the discretion to consider the recommendations given and to act on them if they see fit. As you can see, Mr. Speaker, the Freedom of Information Act gives with one hand and takes away with the other, as it allows members of the public a cheaper alternative to find redress through the Office of the Ombudsman. But then, waters down the enforcement powers of the office by giving the public authorities an escape clause if a decision or recommendation is given against them by the Ombudsman through section 38(A)(3)?

In the absence of this, there is no enforcement authority, apart from the High Court, that can enforce compliance with the provisions of the Freedom of Information Act by public authority. This however, is a very costly measure that, in most instances, cannot be accessed by the ordinary citizens.

As such, this Bill proposes to amend the Freedom of Information Act by allowing complaints from individuals who have been refused access to an official document under the Act to be reviewed by the Information Commissioner. This function was previously performed by the Ombudsman. Under this amendment, the Information Commissioner would be able to ensure improved compliance with the Act as he would have the power to force the public authorities to comply with the rulings of the Commissioner. It should also be noted that this is the form of redress that will be available to all citizens at a minimal cost. This is in keeping with the international best practice which outlines that all members of the public should have access to redress at as minimal a cost as possible thereby ensuring access for all.

It is, however, recognized that both applicant and the public body should be able to appeal to the courts against decisions made by the administrative body. Such appeals should include the full power of review in the case on its merit including the question of whether the administrative body has, in all circumstances, acted reasonably. This will ensure that due attention is given to resolving difficult questions and that a consistent approach to the freedom of expression issues is promoted. As such, we have taken steps to ensure that all parties would still retain the option to seek judicial review under the Judicial Review Act, if needed.

Mr. Speaker, those are the six parts of the Bill as I have just outlined. In its basic form, it provides for:

- the appointment of an Information Commissioner and the establishment of the Office of the Information Commissioner;
- disclosure of personal information and sensitive personal information under certain defined circumstances;
- disposal of personal information;
- privacy impact assessments;
- data matching;
- the right of access to personal information; and
- contravention and enforcement.

Mr. Speaker, Parliament is the highest law-making body in the land but it cannot do so by whims and fancies. When making laws, Parliament must be guided by the need, the benefit and the impact of such laws on the lives of the ordinary citizens of this country.

Indeed, Mr. Speaker, as I have mentioned earlier, the People's Partnership Government takes the mantra of service to the people seriously. [*Desk thumping*] So whenever we as a Government seek to do anything, we are always guided by what is in the best interest of the people. Far too long the interest of the citizens of this country has been neglected and overlooked; those days are long gone.

Mr. Speaker, this Bill will benefit the citizens of society in a number of ways. It will protect the individual's right to privacy; provide protection for physical and electronic security of personal information; ensure personal information is used correctly and that the information is accurate and limit access to those with a legitimate right to the information; pave the way for e-commerce; is an important tool in the reduction of electronic crime; promotes a healthy democracy; protect the dissemination of personal data such as medical history, religion, political party affiliation—just to name a few—which may be used as a means of discrimination. Thus the Bill enables the upholding of the principles of the Equal Opportunity Act. And finally, ensure successful facilitation of trading relations with international partners that have similar legislation.

Mr. Speaker, Members opposite would say that this Bill is theirs. In fact, the Bill was first laid in this honourable House in 2009, and you know what happened to it. They, on the other hand, allowed the Bill to lapse and they dragged their

*Data Protection Bill*  
[HON. C. PARTAP]

*Friday, February 04, 2011*

collective feet on a number of important issues. The people did not come first then. I guess they never had a meaningful heart-to-heart relationship with the citizens of this country.

**3.45 p.m.**

Mr. Speaker, this Bill is closely linked and aligned to the seven interconnected pillars, as outlined in the People's Partnership manifesto, now national government policy, particularly pillars 4 and 6. Pillar 4 speaks to information and communication technologies, connecting Trinidad and Tobago and building a new economy.

The Government recognizes that information and communication technologies and the system that they create are fundamental to the development of every modern and progressive society. ITC, as it were, will provide the required support for effective communication, information sharing and information management. With the expansion of this country's Internet facilities, citizens will now be able to access and conduct business for a wide range of government services, knowing that their personal and private information is safe and it remains just that, private and personal.

Mr. Speaker, pillar 6 speaks to good governance—people's participation. Critical to good governance is ensuring transparency, accountability, participation and effective representation. As such, this Bill aims to ensure that, in promoting effective government and building a new economic order, we create the enabling environment, where citizens can freely exchange their information in a global communications environment, secured in the knowledge that their personal information is afforded the basic and necessary protections.

Mr. Speaker, what this Government has made clear in our national policy is that our ITC plan will be focused on creating opportunities for our people and enhancing—[*Interruption*]

**Mr. Speaker:** You have 10 more minutes. It is 3.57 p.m. Your 75 minutes will be up.

**Hon. C. Partap:** What this Government has made clear in our national policy is that our ITC plan will be focused on creating opportunities for our people, and enhancing the quality of their lives and to make full use of IT to assist in eliminating corruption. Our plan is to make Trinidad and Tobago cyber secure, and in doing that, we will do all within our power to deflect, combat and protect against cyber crimes, in both the public and private sectors.

The former PNM government, their entire regime, has been an unholy banquet of feasting on the wealth of the people, while their citizens, the rightful heirs to the nation's fortune, struggled to survive. It was an era of disregard for the precepts of law, in favour of rule by Executive fiat. Mindful of those abuses of the past, and cognizant of our duty as a responsible Government, we offer the Bill, based on Theodore Roosevelt's promise that no man is above the law and no man is below it, nor do we ask any man's permission when we ask him to obey it. Obedience of the law is demanded, not asked as a favour.

Under the People's Partnership deference to this law, it is no longer optional. This Government has committed itself to reviewing all legislation to enable a thriving and secure environment for all the people of Trinidad and Tobago.

We have the Data Protection Bill, 2011 before us today, and shortly we will look at the Electronic Transactions Bill and amendments to the Exchequer and Audit Act. This Government is all about good governance and people's participation. We are about ensuring transparency, accountability, participation and effective representation. This Government has thrown open the doors of national dialogue, albeit with a framework of civility and consensus building. We have taken the initiative in building and nurturing a culture that is participatory. In this culture, we can only strengthen our democracy and its processes. Under the People's Partnership Government, all citizens will know that they have a right to participate in the governance of this country. It is all about people-centered development, where every single person is needed and where everyone can contribute.

Mr. Speaker, this country will change under the Government. Barriers will be broken down through meaningful dialogue and consultation, through participation and involvement. This will help us to achieve unity of purpose in our efforts and engender partnership and trust in our society.

Mr. Speaker, thank you. I beg to move.

*Question proposed.*

**Mrs. Paula Gopee-Scoon** (*Point Fortin*): Mr. Speaker, I am very pleased to join in this debate on the Data Protection Bill, to provide for personal privacy and information. Of course, I am pleased to acknowledge in fact, that the Bill was our Bill and was brought by the then Minister of Information and supported by the Minister of Public Administration.

*Data Protection Bill*  
[MRS. GOPEE-SCOON]

*Friday, February 04, 2011*

I do acknowledge, as well, that the Bill had gone to—in conjunction with the then Opposition, we had decided that the Bill—a joint select committee. There were several meetings which were held and, of course, it was aborted, but at least it has resurfaced and I am happy about that, because this is in the interest of the people.

The Bill, when we brought it, the Data Protection Bill, was twinned with the Electronic Transactions Bill, and the overriding objective was to better facilitate and to promote electronic government and access to government services. Data protection has been around for a while. The Member for Cumuto has detailed this in his presentation and it is all about data collection, data storage and data processing. It has come with technological advancements and age of globalization, information technology, information flows, et cetera, and it has generally changed the way in which we do things.

Notwithstanding, it means that citizens have to be protected as well. They have to be protected against the unauthorized use of very sensitive information, the unauthorized use of their personal information, and, of course, the unauthorized disclosure of information; so it is very important. I would not go into personal information. All of that is detailed in the legislation. The fact is that persons engaged on a day-to-day basis in a lot of business transactions that require personal information and, therefore, their protection is needed.

Our government, in 2003, against the backdrop of what has been taking place, in terms of information technology, took a snapshot of where Trinidad and Tobago was, developed something called “Fast Forward” and we dealt with it rather comprehensively, and it was detailed in this document. Fast Forward was put out by the Ministry of Public Administration, and what was enclosed was Trinidad and Tobago’s National Information and Communication Technology strategy. This is the work of the People’s National Movement administration as far back as 2003.

In 2004, Cabinet had taken a decision on establishment of an Information and Communication Technology Division in the Ministry of Public Administration and Information, as it was then called. The responsibility of that division within the Ministry was to develop this national information communication technology strategy called Fast Forward. This division was formed to focus on several initiatives, including ICT governance; telecommunications liberalization; e-government; public sector reform; community connectivity; growing the e-market place; promotion and awareness; ICT sector development; e-legislative review;

and reform and information security. That was the groundwork for the development of information and communications technology under the PNM administration of that day.

These efforts were just not internal. The success was just not internal. In fact, this contributed and pointed the way forward and created a number of successes throughout Trinidad and Tobago and in the improvement of the country's overall e-readiness, as it would be called. I would mention some of these: Efforts to liberalize the domestic telecommunications market has led to mobile penetration of over 1,600,000 subscribers. That was the figure in 2008, and it is more now. There were also strong increases in household Internet usage and also overall Internet penetration, and the groundwork for that was laid by the Ministry of Public Administration.

There was also the development of the national e-government portal, ttconnect online. That was made available to the public in January 2007, on a phased basis. It was introduced in several communities, and Point Fortin was the beneficiary of that as well. What ttconnect online does is that it provides online access to information on over 400 government services, and that was the work of the PNM administration.

In 2000, the e-business round table was formally launched to facilitate greater collaboration between the public and private sectors in implementing the national ICT strategy called Fast Forward. At that time, we were also developing policies for electronic signatures, as well, and also for data protection and privacy. All of that began from as early as 2004, and we went along with that.

Sometime in March 2008, Cabinet took a decision to develop what is now called the National ICT Centre within the Ministry as well, and that would have been the new body that is responsible for the Fast Forward initiative and for taking its mandate forward. That centre sought to maximize the probability of successful delivery of government services and to foster a competitive local ICT environment and achieve greater international influence through technology as an enabler. We then went into a revived national ICT plan, which we called Fast Forward II and that is where we were.

Further, in December of that same year, 2008, our government, the PNM government of the day, signed a memorandum of understanding with the Government of Singapore and that was to give us vital support in the area of ICT development and implementation, so that we were very much on score and very, very progressive with all of this.

*Data Protection Bill*  
[MRS. GOPEE-SCOON]

*Friday, February 04, 2011*

Mr. Speaker, the public has seen the fruits of this because only last week, the Member for Chaguanas East, I think this week, had a “launch” of the single electronic window facility; I can call it SEW. That SEW is a demonstration of how the transferring and sharing of data is positively used in advancing the government’s interest, and in advancing the interest of the private sector as well. This SEW started in 2008, with the visit of the then Minister of Trade—I think it was. Dr. Lenny Saith—to Singapore. This SEW, which was introduced, our brainchild, was initiated then, and all of the technical officers in the Ministry of Trade were liaising with their counterparts in Singapore to develop this SEW. That SEW, I really hope that the Member for Chaguanas East—he really should have called it a re-launch or an implementation, because it was in fact launched by us, in 2009, with implementation to take place some 18 months then. So it is not a launch that he had, but rather a re-launch or an implementation. [*Desk thumping*] It is our baby, and that SEW, again, is going to benefit us in many ways.

**4:00p.m.**

With regard to the global competitive index, we had gone up from 62 to 86 and we expect to see it rise on account of this SEW facility as well. Generally what you are going to find is that this one-stop shop, where private stakeholders and government agencies collaborate, you are going to find that all of the permits that are necessary to do business and all of the approvals can be done online in a very seamless and efficient manner, Mr. Speaker, and that is as a result of all this sharing of data between ministries; all of that started under the PNM administration.

So let us go straight into the data sharing now that I have put this Bill into a background. The Minister has expounded a lot on it, but I will just say a bit; that personal data can be shared in very many ways, and it is at the forefront of many activities, business activities and State activities as I have just demonstrated in the case of the SEW, where all of the ministries will be sharing data. So that the Government I am sure, and we agree with them that this all good, all of this data sharing is all good. But it also means that there are some accompanying risks and concerns attached, because it involves the use of the data of persons, and naturally, the focus is on minimizing these risks.

The Bill will speak to data matching and data profiling and so on, and it is in that regard these laws were set up. He had said that the changes in technology and the way we do business and how governments operate, with all of these



significant technology flows, we need to put these Bills in place, especially since it is not just internal, it goes across national borders, it is country to country as well, that this information is being shared.

So that there must be some attempt at standardization of global rules and practices not just for Trinidad and Tobago, but a standardization, that is the way we do business now right throughout the world, a standardization of global rules and practices. The real concern is that you cannot separate the data sharing concerns between the public sector and the private sector, because that, too, is becoming increasingly blurred, Mr. Speaker, because there are now many public sector bodies and they employ private agencies outside, private firms to in fact manage their databases. So there is no division now, it is very, very blurry.

So it is life now; it is life on the Internet; it is life with the development of e-government and it is a fact that databases are matched, and shared, and rented, and sold and it is a central feature of business activity today. Even in all of your personal credit referencing and so on, it is on all of your data that is being shared, Mr. Speaker, even in the case, I understand, so I am told, of the police service that they also want to access data from the private sector databases. So generally it is a free-for-all, and therefore we must be concerned about the privacy of persons and their information.

There is a fundamental principle, Mr. Speaker, that the data should really just be restricted to the reason, the purpose for which it was intended, so therefore, there must be immense control to ensure that it is, in fact, used strictly for the purpose for which it is intended. That is one of the reasons why this Bill is so very important. So you want to ask yourself some questions, Mr. Speaker: with more data sharing what happens to that data, and how do you trace it? You also want to ask who is accountable, who is responsible? A lot of questions that you must ask about this data and where it goes.

Mr. Speaker, all those loyalty cards you get from malls, and for shopping in certain places, it is the sharing of your information. You are buying your costume online, all of your information all across the globe, even with regard to cultural things, Mr. Speaker, that is where we are.

Apart from the question of privacy of personal information, there is the whole question of surveillance that is linked with it as well. And that I would want the Government to also consider. As a matter of fact, it would have been good if we could have done some kind of consultation on this whole business of privacy with

*Data Protection Bill*  
[MRS. GOPEE-SCOON]

*Friday, February 04, 2011*

regard to data, with regard to surveillance. Because, Mr. Speaker, you walk into a bank, you walk into a government agency, you walk into so many public and commercial environments, and you are being looked at. So it is a full, full invasion of your privacy, and therefore the public needs to be involved in all of these Bills like the one we are formulating here today and putting forward once again.

So, Mr. Speaker, I go straight into the actual Bill; it is a very, very long Bill and I do not propose to look at everything, but I have some serious concerns with it. I want us to look and to go straight to Part I which would be the preliminary clauses and look at clause 2; interpretation of words and phrase . Part I, clause 2 “Head of a Public Body”:

“Head of a Public Body means” it says:

“...Permanent Secretary... Head of Judiciary, Chief Executive Officer of a corporation...;”

I do not know what a “corporation” means there, Mr. Speaker. I am sure that the Minister or the person who is presenting next—what do you mean by “corporation” there, CEO of a corporation, are you talking about a municipal corporation? I think you need some clarity there. But it also includes under “Head of a Public Body” the President, and I am not sure that the President should be subjected to this. And I would want an answer as to your thinking behind including the President under head of a public body. I am not sure that the intention is that the President will be subjected or accountable to the Information Commissioner, and we would need some clarity on that.

And then if one goes down further—we are still in the clause (2) interpretation of words and phrases, Mr. Speaker—and we look at “Public Body,” there seems to be—and there should be some alignment between “Head of a Public Body” and “Public Body”. But there is a misalignment, because for instance under “Public Body”, there is no body that is aligned to the President which is under “Head of a Public Body”. In other words, the President is there as head of a public body, but under body there is no alignment of a body with the office of the President.

And then also under “Public Body”, Mr. Speaker, there is the Cabinet. Now the Head of the Cabinet is the Prime Minister, but then the Prime Minister is not listed under “Head of a Public Body,” so that there is definitely some misalignment there, and we would need some explanation on that.

And then you go to (d), the Tobago House of Assembly, then I would imagine that the head is the Chief Secretary, although the Government might have a different opinion on that, but it is the head, the Chief Secretary, but the Chief

Secretary is not listed under “Head of a Public Body”. So I mean, we are just starting, Mr. Speaker, and this seems like really poor legislation even though it has come back to us repaired by the other side.

But the question that arises, apart from these discrepancies, Mr. Speaker, is do you really want politicians involved in this, and accountable to the Information Commissioner? Or should it really be administrators? You see, the politicians really are policymakers and they really should not be caught here, and I think this is a matter for administrators. So we would want to look at that as well.

**4.10 p.m.**

Then you go to “health care body”, under the interpretation as well, regional health authorities, clinics et cetera, but I do not see doctors’ offices, so I am not sure whether they are meant to be—you do have several offices of several doctors and I am not sure that this is meant to be captured here or not, but it is left out. They will have to instruct us on that.

Then you go down to the definition of “sensitive personal information”. It says—I totally disagree with this—

(b)...“information on a person's political opinions.”

It also speaks to political affiliations. Now I can understand political affiliations and that is sensitive information, and political affiliation would mean: are you a member of the PNM? Are you a member of the TOP? Are you a member of the COP?—et cetera. You noticed I did not say, are you a member of the People's Partnership. [*Crosstalk*] So I can understand political affiliations, Mr. Speaker, but what I do not understand is political opinions. That is rather vague. I am not sure that it is intended to be here. It is rather vague, and I really think it should be expunged from the legislation. For instance, I may have a view and I may be very much sympathetic to the view that the Aluminum Smelter project should be kept in La Brea for whatever reason. I might share that view with someone else, and there is some amount of political opinion with that. But I am not sure that it should be carried under particularly sensitive information. This thing of political affiliations could stay, but political opinions, I think that should be extracted all together, because it is very nebulous, and it is very blurry and so many things could be caught under that caption of political opinions, Mr. Speaker, so that should be left out. I am really concerned about this legislation, and whether or not they had a thorough look at it. I am beginning to think that it is almost daft.

*Data Protection Bill*  
[MRS. GOPEE-SCOON]

*Friday, February 04, 2011*

You go to clause 6,—[*Crosstalk*] I do not want to tell you Member for Chaguanas West; I do not want to tell you who else worked on this Bill, right. [*Crosstalk*] Sorry, Oropouche East, I know you were on the Joint Select Committee—you were on the Joint Select Committee, and there were some other persons involved as well, close affiliations to you. So I think you should be quiet and listen on this one. Take note of what is being said. It is a reflection of you. You could have contributed better; spoken about it at home, and so on.

We go to clause 6 which are the general privacy principles—and we go to (a). It says that:

(a) an organization shall be responsible for personal information.

I do not know what organization they are speaking of here, Mr. Speaker. Is it an NGO? I have no idea. So I think there should be some sort of description in the definition section of what is an organization. That should be definitely there. Right through the legislation there is a word that is repeated and that is “processing”, because you are processing data and that is a very, very broad definition, and it could include,—I thought, to find how broad it is, and it is any type of operation performed upon the personal data, and that includes collection, recording, organization, storage, adaptation, alteration, retrieval, consultation use, disclosure by transmission dissemination, and otherwise, blocking, erasing, destruction, et cetera, Mr. Speaker. A word used right through the legislation but not in the definition section, and my suggestion is that word “processing” should be there.

So there we are, Mr. Speaker. Where are we on this Bill? I think we are just about page 9, and I am wondering really, if it makes sense going further because all of these things need to be looked at, and we are only on page 9 of a Bill that is fifty something pages long. I am not sure that the goodly Minister really did his homework on it.

We go now to a very, very serious part of the Bill, the appointment of the Information Commissioner. Clause 8(1)(b), says that the Information Commissioner shall be appointed by the President, and the question I am asking for the sake of clarity: is this the President in his own discretion, or is this the case of the President meaning the Cabinet? There is consultation with the Cabinet and with the Opposition. I just need some clarity, it is just very, very important and I am taking it seriously, and there needs to be some clarity on what is required here, whether it is the President in his own discretion, or acting in consultation with Cabinet, and the Opposition and so on.

I am happy to see clause (8)(1)(c), which talks about the qualification and experience of the Information Commissioner. I know that the Government will be taking this question of qualifications very, very seriously. It is rather explicit in the Bill. I love the bar—you are talking about an attorney with 10 years' of experience. I am very pleased about what you have stated there, but I want to know that you take it seriously and that it is followed to a "T".

We go down now and we are speaking about clause 9(2). The powers of the Information Commissioner, and 2(a) says that the commissioner can in fact conduct audits and investigations, and the question again I want to put to the Member, that we all need to know: will the President or will Cabinet be audited? I am not sure what the intention is here, but you are saying that the Information Commissioner has the power to conduct these audits and investigations. You need to guide us on whether the commissioner will in fact be auditing the President, and the Cabinet, you know. Simply bad legislation and not looked through at all. I do not know why the Member for Cumuto/Manzanilla finds this funny, but it is not. You explain, it is your Bill now. [*Crosstalk*]. It is your Bill now.

Again, if you go to 2(c) and you speak of "after hearing representations from the "Head of a Public Body"—again I am asking whether or not the President will be called upon to make representation because it is absolutely ludicrous. Again, this clause also goes on to say, that the Information Commissioner may order the public body to cease collection practices or destroy collections of personal information. I am wondering if the commissioner will be making such orders to Cabinet again, or perhaps the SSA, in terms of destroying information and so on.

The functions of the Information Commissioner: again clause 10(f). A commissioner can carry out special studies or research, et cetera,...on his own initiative, or upon the request of the President. Again, I am not sure if you are referring to the President here, the Cabinet, or what, and whether you intend for the President to be involved in these matters. Again we need clarity, because as it is, this just seems to me to be very, very poor legislation, Mr. Speaker. We are on page 9, around there, Mr. Speaker, I do not know if I should stop here or continue to go on. You think I should continue. All right, so we are going to clause 19.

**Mr. Speaker:** I did advise hon. Members that a statement is to be made by the Government, and you did agree that we should take that statement at a later stage in the proceedings. I think this is an appropriate time to deal with that particular matter, revert to that item on Statements by Ministers. I call on the hon. Prime Minister.

*Statement By Minister*

*Friday, February 04, 2011*

**STATEMENT BY MINISTER  
Strategic Services Agency  
(Post of Director)**

**The Prime Minister (Hon. Kamla Persad-Bissessar):** Thank you very much hon. Speaker. When we were elected to govern Trinidad and Tobago, the population placed a level of expectations upon us higher than that of any other government, because five leaders of this nation came together and promised a new day and a new way forward. Each day, Mr. Speaker, as I serve as Prime Minister I am reminded of the hope, I am reminded of the aspirations, and I am reminded of the expectations of the people who voted us into office. I am proud that we are held up to higher ideals, better performance, greater integrity and accountability.

**4.20 p.m.**

The People's Partnership is measured differently, as we should be, simply because the barometer for us is different to that of former governments. We are today, Mr. Speaker, found wanting with respect to the appointment of the Director of the SSA. However, we are not guilty of any carefully orchestrated clandestine operation of tapping the phones of citizens. That is an episode of abominable shame that must never be forgotten nor ever allowed to be foisted upon our citizenry again.

Mr. Speaker, in all times, the irony of the situation is overwhelming, especially when I hear some on the other side ranting and railing over the appointment or disappointment made with respect to the Director of the SSA. I think in this context we must remember that it was the then government, now in Opposition, which presided over the clandestine operation of the SIA. They appointed the previous director on whose watch the SIA carried out illegal tapping into the private conversations of journalists, judges, business people, politicians, private citizens and even the President of the Republic of Trinidad and Tobago. Mr. Speaker, that experience was a most painful one and posed challenges for everyone concerned.

When I assumed this position, I said the buck stops with me, so there is no point in laying blame or in pointing fingers. There is no apology that would suffice. There is only one way forward, and this is that we should commit ourselves to learn from this, and create systems that would ensure that something like this should never occur again. How we do that is by implementing a more

rigorous selection process in the appointment of a director of the SSA. Mr. Speaker, I will always strive to do the right thing, and if things go wrong I am willing to do whatever it takes to make things right. [*Desk thumping*]

I will always put the national interest ahead of my own or my party's interest. This is not about me, this is about what is best for the country which we have been honoured to serve. I am not above human failing, neither am I beneath understanding of what needs to be done when we falter. The population expects more from us as a Government than perhaps ever expected before, and they are right to have these very high expectations since it is in my intention and my mandate to my Ministers to serve the people and to focus on delivery consistent with the expectations of the people.

We are committed to making our beloved nation safer; we are committed to making our economy stronger; we are committed to making our health care system better, indeed we are committed to making our citizens happier and to improving their quality of life as we make their lives easier. To do this, we must make systems work. We must build and strengthen institutions to ensure that the rights of individuals are respected and protected, and we must ensure that our ministries and agencies are result-oriented.

For most of our independent lives as a country, one political party has dominated government and systematically dismantled institutions which were designed to limit the power and the influence of politicians. Simultaneously, they created state-funded agencies with the authority to act on behalf of the State, and which acted in the interest not of the people, but in the interest of the political directorate. Many times this was done outside of the law as with the SIA which operated completely outside the law.

Under the PNM, no one knew who the directors were; no one knew what they were up to. In trying to remedy the situation, we embarked on a process. It was never our intention to deceive. What we are doing with the SSA and the SIA is first bringing them under the ambit of the law with proper oversight to ensure that citizens' fundamental right to privacy is respected. [*Desk thumping*] We have brought and passed legislation to start that process to ensure that what occurred under the PNM never happens again; to ensure that every citizen can rest assured that their right to privacy as enshrined in the Constitution is guaranteed.

Mr. Speaker, no one must fear that someone is illegally listening to a private conversation as happened under the last PNM administration. We need an intelligence system that works on behalf of law-abiding citizens and against the

*Strategic Services Agency*  
[HON. K. PERSAD-BISSESSAR]

*Friday, February 04, 2011*

criminal elements. We do not need a system to spy on you. We do not need another autocratic regime ever governing this country again and, yes, I agree, you do not need another misstep from your Government.

Mr. Speaker, with respect to that, I say that there are several prospective candidates who are being considered to take up the position of Director of the Strategic Services Agency (SSA). In that regard, we will make an announcement in due course, but we will only do so after we have utilized a more rigorous selection process. Therefore, we will ensure that in all our action merit trumps political affiliation. Our people deserve no less. For too long the politicization of the State's apparatus has held back development. Too many times good ideas have been stifled by persons who feel that by stalling delivery they are helping their party. When this happens it is the people who suffer first, and these are the people who are waiting on their new schools; these are the people who need the new roads to get to the hospital faster; and these are the people whose lives could have been saved if there were more police cars on the streets and more spaces in our hospitals.

To the citizens of our country, I say, even as we aspire to live up to the high expectations which you have of us, we know there may be times when things will not be perfect, but as you did last year, we ask you to join us, pull us up when we land as we shall pull you up when you falter, but I want to assure you that we move forward together as one nation, one people working together for a better, brighter Trinidad and Tobago.

Mr. Speaker, I thank you. [*Desk thumping*]

**Mr. Speaker:** This is a good time for us to pause and have some tea. This sitting is now suspended until 5.00 p.m.

**4.27 p.m.:** *Sitting suspended.*

**5.00 p.m.:** *Sitting resumed.*

[Mr. DEPUTY SPEAKER *in the Chair*]

#### DATA PROTECTION BILL

**Mrs. P. Gopee-Scoon:** Mr. Deputy Speaker, we were at that point where we were talking, and I think I must have said that I feel inclined to stop and not go further, because we were at page 9 and we were not happy with the law that has been brought. I had more or less said that it was bad law and so on. I do not want the Member to use that opportunity—the fact that we had brought the Bill—as an excuse for any of the discrepancies that I have raised and to say that it was



originally PNM legislation. What I want the Member to realize is that they are, in fact, the Government of the day, and that the onus is on them to “relook” and redo everything we had put in place. As I said, the business of the joint select committee had been aborted and, therefore, the onus is really on the Government of the day to present good law, and I do not want to hear anything about the original legislation which we had presented. [*Desk thumping*]

I remember the Minister talking about the Information Commissioner and saying that the Information Commissioner will have teeth. I am not sure what kind of teeth he intends the commissioner to have, because I have some concerns about the kind of teeth that he really does have in this piece of legislation, because he is the one charged with the responsibility of promoting and enforcing the Bill before us. It is the Information Commissioner’s business to promote the protection of personal information by increasing public awareness about this whole issue of privacy and so on. It is an invasion of their rights. He is also the one to give guidance to individuals and organizations and he is also to take remedial action. The responsibility is on him to take remedial action when there is, in fact, a breach of the Act. So, yes it takes a particular type of person to be the Information Commissioner, because it is a very onerous responsibility and it ought not to be taken lightly. As I said, the public has to be educated and so on.

The Minister spoke about clause 9(2)(c) and he also referred to clause 71 as well which deals with the mandatory code of conduct. If I go to clause 9(2)(c) it says:

“after hearing representations from the Head of a Public Body or an organization subject to a mandatory code of conduct...”

That mandatory code of conduct is separate and apart from the general principles of privacy, and it is extremely important, but it does not amount to the code of conduct or code of practice and so on. So, it is being assumed here, and I am not sure where the responsibility lies to ensure that we have this code of conduct and that it is standardized.

So I feel something like the mandatory code of conduct, in the interest of the public and their privacy, should be in the primary legislation. That is something I want the Government to look at seriously; whether or not it should be in the primary legislation, because really and truly, the commissioner is the one who should be under a statutory duty to produce data sharing code of practice, and he should be under a statutory duty to periodically update that code of conduct, especially since the whole business of technology continues to evolve at a rate.

*Data Protection Bill*  
[MRS. GOPEE-SCOON]

*Friday, February 04, 2011*

So there should be periodic updates, which must be made and approved by Parliament. There should be some level of parliamentary oversight to ensure that there is clarity and scrutiny. So I would like to see that code of practice. I want you to consider it seriously and that it be included in the primary legislation, and then I would consider it to be more of a pro-active approach which clearly is needed here as we are dealing with the business of privacy.

**5.05 p.m.**

In support of that proposition, Mr. Deputy Speaker, I want to quote from the 2008 Data Sharing Review Report, which is done by the UK Information Commissioner and also someone called Mark Walport, the Director of the Welcome Trust, and it is called the Thomas Walport Review and I quote:

“The code of practice should:

- establish standards setting out how organizations involved in sharing personal information should handle and protect the data under their control; and
- apply to all those involved in data sharing, who should adhere to it as a matter of good practice and consider it as an authoritative interpretation of the relevant data protection principles.”

To the root of it, Mr. Deputy Speaker, I am just saying how important this code of practice is and if I jump to clause 71(1), when we were speaking about the private sector, Minister, and you said that the Information Commissioner will prepare—“will” is the word you use if you check the *Hansard*—will prepare codes of conduct and that is not what is in 71(1) at all. You would see the word “may” there, so you need some clarification on whether the responsibility is his in terms of the private sector or whether it is just the word “may” is what is in the legislation. So you got to look at that.

So, it is very important that the Parliament, I think, approve this data sharing code of practice and as I said it will act as an authoritative guide for all those—public sector, private sector—who are involved in data sharing, Mr. Deputy Speaker, and it will involve for transparency as well the way in which these data principles are in fact protected. Further, this privacy issue is very much developmental and therefore, as I said before, there should be ongoing policy evaluation and adjustments and there should be some sort of instruction for any of the public sector people or the private sector people to consult with the Information Commissioner. As time goes on, in the business of the evolving technology matters. I hope you are with me.

Clause 19(3)(e)—Designation and powers of inspectors—again, the inspector shall have the power to examine either in the presence of any other person—if you read the actual legislation, the words used—shall have the power to examine either in the presence of any other person, and what I want to ask you is, who is this other person? Is he going to examine persons in front of his wife or his child or vagrant? It is not clear and I do not think it should just be loosely any other person. We need to have some serious commentary on that.

The other very important, talking about teeth again, power of the Information Commissioner, is that of the audit and inspection powers. The commissioner should really have all of the powers, Mr. Deputy Speaker, through you to the Member who has brought this Bill, all of the powers necessary if he is going to be effective at all to make unannounced inspections on organizations and I am not sure, given the wording in the Bill, that he could make any sort of unannounced inspections and so on to see if there is compliance.

Clause 20(3)—Power of Commissioner to conduct an audit or enquiry of a Public Body pursuant to Part III—and it says that the Commissioner may exercise his power only with the consent of the Speaker of the House or President of the Senate. I do not know if you are reading with me—yes—but it is through you, Mr. Deputy Speaker, to the Member, only with the consent of the Speaker of the House or President of the Senate.

So what we are saying, if in fact there is no consent by the President of the Senate or the Speaker—and I am just using an example—for instance, then there would be no recourse and he would be caught with his hands up. Really it would be a “hands-off” situation if the Speaker refuses or so. So you need to go back and look at that clause again because there it is the commissioner who is supposed to have full teeth, his hands would be tied in a case like that. Then you go on to subclause (4); allowing the commissioner to apply to a magistrate to enter, seize and inspect or apply to the Court for an order, requiring the public body to produce such documents. But in subclause (5) just below that, that exempts all the public bodies referred to in (3) above so therefore he has no teeth when it comes to (3) above because subclause (5) exempts those particular bodies that are there and so there is absolutely no recourse there at all. As I was saying you need to look at 20(3), 20(4) and 20(5), as well because he really should be acting as a true deterrent to bad practice and the law does not make for that. It definitely should be looked at.

*Data Protection Bill*  
[MRS. GOPEE-SCOON]

*Friday, February 04, 2011*

In going back to the business of consent; we spoke about consent, and we were speaking about having to have the consent of the persons in clause 20(3) and I am saying in a case like that, if it is a joint select committee, what if the Speaker says, yes, and the President of the Senate says no? That is just one of the examples. Again, I am asking the question, what is the recourse here? So I really think that this piece of legislation is very, very clumsy; you need to look at it and for your sake through you, Mr. Deputy Speaker, it is clause 20. You need to really look at that poorly constructed legislation. As I said you know he really ought to have full teeth so that he can do his spot checks and so on of the public sector organizations and so on. I mean in the case of the private sector organizations, there needs to be some sort of indication of when and where and so on, how he can go in, but generally we need to ensure that he can in fact exercise and be a true deterrent.

With regard to the private sector a suggestion I want to make is that there should be a requirement which says that the company's auditors, in the case of private sector, can report on compliance with the particular Act, the Data Protection Act. So that is a suggestion that you can take on board that you could include that and that the company's auditors will be required to report on it, so that there is another check, another independent check on whether or not the Act is being followed. It is so important as both of us, both sides have identified because what is the point of having a regulator and not having the full powers to inspect—you see?

Therefore, I want to reiterate that this law ought to be taken more seriously and so on. Again because of the growing exchange between public sector, private sector and so we need to make sure that both sets of organizations are looked at rather closely.

If we are speaking about other little anomalies, Mr. Deputy Speaker, clause 35 speaks to a public body protecting personal information by making reasonable security arrangements. I just want to make an enquiry of you, Sir, whether for the very sensitive information which is different to the ordinary run of the mill, we are talking about the political affiliation, et cetera and so on, whether or not you would have a stricter standard of security imposed by the law as well.

#### **5.15 p.m.**

There is something that I want you to look at which was completely left out and, that is, the whole business of notification. The whole question of notification is completely extracted. We missed it and you missed it. I picked it up in some

criticism on the United Kingdom (UK) legislation, the question of notification. I want to quote from the “Surveillance: Citizens and the State”, House of Lords Select Committee on the Constitution, Volume I, No.146:

“So as to ensure that the processing of personal data is open and transparent, the Act establishes a system of notification...whereby all organisations engaged in the handling of personal information are required to notify the Information Commissioner’s Office...and to provide details of the type of data processing being undertaken. This information is then published in the register of data controllers and is available for public inspection. Failure to notify is a criminal offence under the Act...The objective of the system is that members of the public are able to find out who is processing personal information and for what purpose.”

In that case, if you are going to consider bringing it on board, you will need to include who is a data controller in your definition section as well.

I cannot overemphasize that Parliament has a very, very serious role to play in this, as it involves the public. I have spoken about this code of conduct being part of the primary legislation and I seriously want to take that on board. There is a view that there must be a sufficient amount of detail in the legislation and it just should not be left for secondary legislation or some other powers that he may have after. I find that what is before us almost looks like a blank cheque, and you have to fill in the details after. I do not think that is good enough. Even though we had initiated this law, you are in Government, the responsibility is yours. I want you to fill in all the blanks I have identified in the legislation.

I might be wrong in some cases; it is for you to correct, but I know I have put some things on board that you may seriously consider. We want more specification and agreement reached on items so that regulations would be subject to affirmative resolution. [*Interruption*]

**Mr. Warner:** I thank you!

**Mrs. P. Gopee-Scoon:** Member for Chaguanas West, if you wish to speak you could speak after.

I was talking about the secondary legislation; I think we want to see more in the primary legislation. We want to see more scrutiny. I understand that it could be problematic if the primary legislation is too detailed, but one has to keep in mind the fact that this is a Bill about privacy and persons and it is highly sensitive. I am looking for some details, not too many, and for the very least all safeguards should be in place.

*Data Protection Bill*  
[MRS. GOPEE-SCOON]

*Friday, February 04, 2011*

I want to begin to conclude—[*Interruption*]

**Mr. Sharma:** You started about half an hour ago!

**Mrs. P. Gopee-Scoon:** When one examines the growth in surveillance—  
[*Interruption*]

**Mr. Speaker:** Hon. Members, the speaking time of the hon. Member has expired.

*Motion made,* That the hon. Member's speaking time be extended by 30 minutes. [*Miss M. Mc Donald*]

*Question put and agreed to.*

**Mrs. P. Gopee-Scoon:** Mr. Speaker, I thank you and my colleagues. I noticed I really did not have any support from the other side, but what can you expect.

Generally—and I am beginning to wind up—when one examines the growth in surveillance and data processing and its impact on the individual, we believe that the public really must be a part of these policy decisions, because that is what we are doing here, formulating policies that affect privacy, data protection and protection of information. The public must be involved.

They have spoken on the other side about consultation; this is something you should be consulting the public about, this whole business of surveillance and privacy. This involves businesses as well, private organizations and non-governmental organizations, all these organizations share information and, therefore, you should be consulting with them to ensure that there is public understanding and transparency.

There is something called “the doctrine of informational self-determination”, meaning that the citizens control how his or her personal data is used and that is important. We do acknowledge the role of consent; we have spoken about it in the legislation, but the input of the public is very valuable to prevent any sort of distress which may occur in all of the direct marketing which takes place and the automatic data processing.

In the interest of those that are affected who have been affected by the misuse of information, we have not spoken at all about compensation for damage done, so I expect some response on that and this whole personal right to have these files. Not the right of anybody else, but the personnel right to have personal files destroyed; that is something else.

The whole question of consent needs to be looked at. There are benefits to this whole electronic age in terms of cost cutting of paper, time and human resource as

well. We accept that it is the age of globalization and direct marketing and doing business from country to country, but, yes, there is a strong price to pay with privacy and, therefore, our citizens need our protection, Mr. Deputy Speaker.

I looked a little at the *Hansard* and hon. Dr. Moonilal's response, the Member for Oropouche East, when he was on this side. These are his words, I am quoting from the *Hansard*:

“...it is the position of the Opposition that this Bill be sent to a Joint Select Committee of the Parliament for further examination,...to look at some of these issues, to draft and redraft, and particularly, to deal with this issue of the power of the data commissioner and inspectors.”

This is exactly how I feel, that this has to be sent back to be drafted and redrafted.

I know the Government has the majority and in all likelihood they would want to force this upon the public and force this upon us as well. You are going to use your upper hand, but my position is that this is a tenuous situation. You have not looked at it carefully; a lot of it is bad legislation; it needs to be more explicit. I am not sure you are going to have our support on it.

As I close, I am not too concerned that this Government, generally, has any real concern about the right to privacy of individuals. [*Interruption*] Mr. Deputy Speaker, I need some protection from the Member for Couva South and the Member for Fyzabad as well.

**Mr. Sharma:** Are you serious? You need a lot more.

**Mr. Speaker:** You are protected.

**Mrs. P. Gopee-Scoon:** Thank you, Sir.

I am really not sure whether this Government, this UNC-led coalition, has any real concern with the right to privacy of individuals. They may mouth it and say so, but I am not sure about it, because time after time we sit in this Parliament and we hear them exposing the names of persons, without their consent; time and time again, about those who have died, sensitive matters, those who were kidnapped, those who have been murdered. They prey on children in particular, innocent children whose lives have been shortened. They do not talk about children whose lives have been shortened in the mothers' womb, but they talk about those children whose lives have been shortened, totally oblivious to all the grief and pain which the families continue to feel. And you ask yourself: Is this Government really concerned about privacy of the individual? Not at all, Sir.

**Mr. Sharma:** Shed a tear.

**Mrs. P. Gopee-Scoon:** Another example is when we saw on the front page of the *Guardian* of Saturday, November 13, a list of 57 names exposed by the Member for Siparia: the President, politicians, the Judiciary, trade unionists, prominent people and so forth. I mean, by gosh, if you want to bring the legislation, bring the legislation, give us a little slack. But to sit here and list people's names and [*Desk thumping*] incite within them that there is information about them being used and there is all this hard evidence, when there was, in fact, no hard evidence, no evidence whatsoever—The Prime Minister, the hon. Member for Siparia, had to refute it later on; we know that. But, again, you ask yourself the obvious question: are they really concerned about the business of privacy?

Remember, Mr. Deputy Speaker, you saw those cameras going in on the National Security Council meeting, never done before, exposing all those around the table, members who are looking after that security of the nation at the highest levels. Naked public relations, not at all concerned, and they accuse us of exposing the matter of Reshmi Ramnarine. They accused our side of doing that when, in fact, they bring the cameras in to do this negative PR of those sitting around the table dealing with confidential matters of security. They are not interested in privacy at all. [*Desk thumping*]

The only time when I could say that they are interested in privacy is when I am told that the CCTV cameras in the internal building of the Diplomatic Centre are no longer functioning. I left them functioning. [*Crosstalk*] We left them functioning on May 24—the government that is. [*Desk thumping*] We are concerned about the security of those who reside within. In the interest of privacy, I guess they have chosen not to use them. I do not know why; maybe the Member would tell us why. [*Crosstalk*]

It is a very, very serious Bill. I ask that the Government take it seriously and go back and look at it again.

Thank you, Mr. Deputy Speaker.

**The Minister of State in the Office of the Prime Minister (Hon. Rodger Samuel):** Mr. Deputy Speaker, I am, indeed, thankful, likewise, for the opportunity to contribute to this debate on this Data Protection Bill, 2011.

First of all, I congratulate the Member for Cumuto/Manzanilla for the fact that—[*Interruption*]



**Dr. Rowley:** For what?

**Hon. R. Samuel:**—he presented a Bill that is very, very essential to where we are as a nation. For all of us know that we are living in a time where trust—we are living in a time where integrity and honesty—we are living in a time where respect has gone and continues to deteriorate at the feet of craftiness and skullduggery and abuse. [*Interruption*]

I am not the kind of person to beg for protection, like those on the other side, I can stand my ground. I do not have to be crying out for help, while they mamaguy and talk all kinds of stuff. We want to listen carefully and think seriously about what this Bill intends to do and how the citizens of Trinidad and Tobago will become far more protected, far more secured, as they exercise their rights and live and as they utilize all the modern technologies that we are exposed to in this 21st Century.

Now we realize that the fact we have to instill more laws, though we understand the reasons for it, we must also understand the fact that although we feel we are advancing in life, there are other aspects of society that are deteriorating. That is why everyday more and more legislation has to be enacted.

The right to personal data protection is one of the fundamental rights of every human being. All of us who sit here would agree.

**5.30 p.m.**

I am quite concerned that the Member for Point Fortin started by saying that she agrees and ended up by saying she is not so sure that she will support. But she started saying that she supports. I am kind of confused by her statements. But the purpose of Personal Data Protection lies in the protection of private life. And it is very, very important, Mr. Deputy Speaker, that we understand the fundamental human rights declaration of December 10, 1948, in the Universal Declaration of Human Rights of the United Nations where it says and I quote, Mr. Deputy Speaker:

"No one shall be subjected to arbitrary interference with his privacy, his family, his home or correspondence, nor to attacks upon his honour and reputation."

Article 8, Mr. Deputy Speaker, of the European Convention for the Protection of Human Rights and Fundamental Freedoms of November 4, 1950 says:

"Everyone has the right to respect for his private and family life, his home and his correspondence.

*Data Protection Bill*  
[HON. R. SAMUEL]

*Friday, February 04, 2011*

There shall be no interference by public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

Mr. Deputy Speaker, I want to quote from a document entitled "Ethics and Statistics" by Prof. Dr. Jozef Olinsky and he says that:

"Freedom is based on truth. The right to truth is the fundamental human right and the prerequisite of freedom and democracy..."

And this human right was expressed *inter alia* in the Universal Declaration of Human Rights of the United Nations. As a matter of fact, the same document says that:

"In Latin civilization the human right to truth is petrified in the law proclaimed by the States as citizens' law to information. The citizen's law to information is the basis of democracy.

With that in mind, Mr. Deputy Speaker, we understand that the purpose of the Data Protection legislation is to ensure that personal data is not processed without knowledge, except in certain cases, without the consent of the data subject, to ensure that personal data which is processed is accurate, one, and to enforce a set of standards for the processing of the same information.

It is very, very important for us to realise that in Trinidad and Tobago, though we have the Freedom of Information Act, yet the FOI, as it is called, really does not have the teeth to now enforce all of the things that they may recommend.

As a matter of fact, Mr. Deputy Speaker, the FOI can make recommendations to companies, when requests are made by citizens with regard to information but the FOI does not have the necessary tools to ensure and enforce the laws to demand that these enterprises, and these authorities give the necessary information.

This Bill will in clear terms, Mr. Deputy Speaker, give some redress to citizens of this country and will ensure through the Information Commissioner that all of the requirements that are laid out in this particular Bill can be enforced. What we are doing, Mr. Deputy Speaker, is giving the kind of teeth and the kind of grit, and the kind of power, the kind of authority, so that all of the things that are required for redress for the citizens of Trinidad and Tobago can be had in a far more amicable way.

It is important for us to know, Mr. Deputy Speaker, that each individual in Trinidad and Tobago based on this particular legislation, will have the right to the information, the right to access a copy about themselves that is held, regardless of where it is held. And these rights are known from two different standpoints: one, they are known as subject access rights, and two, they are known as subject access requests. It is important for us to know that we can make requests based upon this Bill and it will enforce and empower individuals the right to do it.

**Mr. Imbert:** Standing Order 33(6).

**Mr. Deputy Speaker:** Overruled.

**Hon. R. Samuel:** Thank you, Mr. Deputy Speaker. Sometimes, you just have to wonder. Mr. Deputy Speaker, at present, we need to take a look, clearly, at some of the situations that are taking place around the world, because of the global village that we are in, because of the situations that we face, not only from a local standpoint but from an international standpoint. And I agree that the Member for Point Fortin talked about the global market, and the global communication access that we have around the world, so that we need to take cognizance of the fact that it must not just be from a local standpoint but we need to see how we deal with it from a broad base, from an international standpoint.

So we agree with that, Mr. Deputy Speaker. But one of the things that we must be clear on, is that much of the information that is shared—sometimes people just want to but—[*Crosstalk*] much of the information, even via the Internet, many of us are not aware of the detriment and the danger that we face in sharing such information. And that we need to, in every instant, look at the broad-based situations and see how they affect the citizens of Trinidad and Tobago.

Mr. Deputy Speaker, in the interest of understanding, something happened in Canada in 2008. And it is something that we need to take note of, with modern technologies and Facebooks and all of the things that are taking place all around us every day. It is interesting to note, that, in 2008, the Canadian Internet Policy and Public Interest Clinic, and I read with your permission, Mr. Deputy Speaker: the CIPPIC filed a 38-page complaint with the office of the Privacy Commissioner in Canada against Facebook. Based on 22 breaches of the Canadian Personal Information Protection and Electronic Document Act. The Assistant Privacy Commissioner of Canada, Elizabeth Denham, released a report of her findings. The report says: “Report of the findings into the complaint filed by the Canadian Internet Policy and Public Interest Clinic (CIPPIC) against Facebook Incorporated by Elizabeth Denham, Assistant Privacy Commissioner”. In it she says that she

*Data Protection Bill*  
[HON. R. SAMUEL]

*Friday, February 04, 2011*

found that several of the complaints were well founded and Facebook agreed to comply with some of the recommendations. Specifically, the Assistant Commissioner found that Facebook did not do enough to ensure users are granted meaningful consent for the disclosure of personal information to third parties and did not place adequate safeguards to ensure unauthorized access by third party developers to personal information.

**5.40 p.m.**

Mr. Speaker, anyone can remember the situations that we have had with people from an international standpoint having their rights stolen and having their personal things being placed on public domain. You have all of these scams now that are coming out whereby these people email you and they get access to a lot of your stuff and then they spread all of your stuff on the Internet.

One of the main ways it is said that Facebook makes its money and earns dollars is by gathering the information of all these people who use Facebook, and what they do is that they package it and it is said that they sell this information to companies and businesses who then tailor their ads to suit individual users. So you may go up on your Facebook page and you may sign up and say, “I am interested in Nike products” when they ask you one of the things about yourself and they tailor this information and sell it out in many instances, or it is alleged that they sell it out in many instances for the purpose of gaining market share for big business. It is alleged.

**Dr. Browne:** Member, would you give way? Thank you for giving way, Member. You appear to be speaking contemporaneously, I am wondering if the Member is aware that Facebook has already altered its privacy provisions, because you are saying “is selling” and so on. I am just wondering if the Member was informed of this.

**Hon. R. Samuel:** I am going to say that. Mr. Deputy Speaker, when all of the accusations and all of the enquiries were made into Facebook they had to now alter and comply with the recommendations of the Canadian Commissioner so that now there is much more protection for the data that they acquire and access and accumulate over the period of time that they accumulate it.

So, it is important for us, Mr. Deputy Speaker, to realize that now in Trinidad and Tobago it is never too late for us to step in line and ensure that we too are protected as citizens of Trinidad and Tobago. But I find it very questionable—and this is not challenging the Member for Point Fortin, but just in some way questioning her deliberations to an extent. Because one of the things that she did

when she presented her discourse is that she boasted about a document called “Fast Forward” that was produced by the former regime and she boasted proudly that it all started under the regime, and I have no qualms about that, for anyone taking kudos for anything that happens, but some of the questions—and I would probably want to ask her at sometime—and the particular queries that she raised, which are sometimes good—

**Mr. Deputy Speaker:** Member for Arima, the Member for Point Fortin. A Member should not be referred to by their gender or name, just Member for Point Fortin.

**Mr. Warner:** For the last time.

**Hon. R. Samuel:** Thank you for the guidance, Mr. Deputy Speaker—the Member for Point Fortin.

**Mr. Warner:** For the last time. [*Desk thumping*]

**Hon. R. Samuel:** Many of the queries and questions raised by the Member for Point Fortin I have found that in their booklet and in the Fast Forward document—and I have extracts of it—some of the questions raised are some of the things that I found written word for word in the document called Fast Forward. I am not too sure if the Member for Point Fortin is familiar with the document or if she read it in detail, but it is up to her.

Mr. Deputy Speaker, the object of this Bill as highlighted in the presentation by the Member for Cumuto/Manzanilla really gives the opportunity and is set out for the protection of citizens of Trinidad and Tobago. One of the fundamental policies of the People's Partnership Government is the protection of the citizens of Trinidad and Tobago. It is part of the policy document laid out from the manifesto of 2010 and we continue to hold on to this document because it is in harmony, first of all, with the seven pillars that are part of the policy document of the People's Partnership Government.

It is important for us to realize too, that in our beginning to present all of these aspects of legislation the main aim and the main purpose of all that we have come to Parliament with is really with the intention of safeguarding the citizens of Trinidad and Tobago, and we will not, on this side, renege on that responsibility to protect the citizens of Trinidad and Tobago, we will continue to bring legislation as needs be, to continue to protect and safeguard all of the citizens of Trinidad and Tobago. It does not matter our political affiliations, it does not take into consideration what you believe or your religious persuasions.

*Data Protection Bill*  
[HON. R. SAMUEL]

*Friday, February 04, 2011*

The duty of this Government is to protect all of Trinidad and Tobago and ensure that there is fairness, there is openness, there is transparency and that in every instance the citizens of this nation have the right to redress and the right to recourse.

Mr. Deputy Speaker. I thank you.

**Mr. Colm Imbert** (*Diego Martin North/East*): Thank you Mr. Deputy Speaker, I was not aware that the Member had finished. [*Interruption*] It is all right, the Member for Fyzabad is not here. [*Interruption*] Not at all!

Mr. Deputy Speaker, the Minister who presented this Bill made a number of statements which have no basis. In fact, the Member for Arima continued in that vein. Just before the Member for Arima took his feet he spoke about this Bill being one of the pillars or flowing from one of the pillars in the People's Partnership manifesto. [*Interruption*] It is so interesting, in everything that they do they have to copy the PNM. [*Desk thumping*] In Vision 2020 these are five development pillars so they decided they would have development pillars too, so they had seven. But there is no way that this legislation could be part of any pillar—

**Dr. Rowley:** Or post.

**Mr. C. Imbert:**—or post of the partnership. That is impossible!

Mr. Deputy Speaker, this Bill was first presented in this Parliament in February 2009; February 13, 2009 to be exact. [*Interruption*] This Bill! There was no Member for Arima in his current incarnation in this House at that time. There was no Member for Cumuto/Manzanilla in his current incarnation at that time.

**Dr. Moonilal:** Thank you very much for giving way. Is the Member aware that the Bill was first laid in the Parliament in 2001?

**Mr. C. Imbert:** Mr. Deputy Speaker, on February 13, 2009—and that must have been one of those collapsed Bills. I remember that 2001 period very well. [*Laughter*] I remember, I was right here and I remember there were three fellows in the back there, [*Member Points at Opposition Back Bench*] The Member for Couva South, the Member for San Fernando West and the Member for Oropouche before Oropouche was split into two. I remember the Government bringing some Bills and all of them failing because we had the majority, so perhaps this is one of those Bills that you are referring to. Because if you are saying it was laid in 2001, your Government collapsed in 2001. [*Interruption*]

So, this Bill, Mr. Speaker, was first debated—[*Interruption*] You were not listening, Member. It was first debated in this Parliament—[*Interruption*] I did not say that, he said that—on February 13, 2009 and some Members had a lot to say. And one of the persons who had a lot to say was the then Member of Parliament for Oropouche East—[*Interruption*] Yes, he was wet behind the ears in those days—spoke at length on this Bill. I would go into the points made by the Member for Oropouche East at that time, because not a single one of the objections to this legislation that were raised in his seventy-five minute contribution has been addressed in this legislation. But I would deal with that in due course. [*Desk thumping*]

The fact of the matter is, Mr. Deputy Speaker, the then Minister of Information, the hon. Neil Parsanlal, presented this Bill on February 13, went through all of the clauses, I could have removed the Member for Cumuto/Manzanilla and replaced the hon. Member with the then Member for Lopinot/Bon Air West. [*Interruption*] Because they said exactly the same thing. It was as if the same person wrote the same speech for the two of them. [*Desk thumping*] Everything in this *Hansard*, almost word for word was uttered by the Member for Cumuto/Manzanilla. They call that plagiarism. [*Crosstalk*]

The then Minister of Information went through every single clause, dealt with every issue and because of the objections raised by the Member for Oropouche East—and there were many—the Government decided in the spirit of compromise, to send the legislation to a joint select committee and the Member for Oropouche East was a Member of that joint select committee, and I have some of the minutes and he made some important points in the meetings, none of which has been incorporated into this legislation that has been brought by the other side.

There is really no significant difference between this legislation and the legislation that was presented in 2009. [*Interruption*] As I said, Mr. Deputy Speaker, because this is almost a carbon copy with a few editorial changes of a Bill that was debated in this Parliament, a PNM Bill, and was sent to a joint select committee, it is impossible, therefore, that this legislation flows from all those lofty places that the Member for Arima spoke about, that it is testimony to the commitment of the People's Partnership to data protection—it comes from their manifesto. [*Interruption*] Your manifesto did not even exist in February 2009. Your coalition—your UNC coalition came together in February of 2010, one year afterwards. [*Desk thumping*]

I was a bit concerned in the manner in which the Minister presented the Bill as if this was a creation of theirs, as if this never existed. Along the way in his

*Data Protection Bill*  
[MR. IMBERT]

*Friday, February 04, 2011*

speech he had to contradict himself and say they will say this is their Bill, because he knows. He knows that it is PNM legislation, but there were problems with the legislation, that is why it was sent to a Joint Select Committee.

Let me now read into the record some of the points made by the Member for Oropouche East, and perhaps the Minister can tell us why he has ignored the issues raised by the Member for Oropouche East when he spoke in the debate in 2009. He started off with a general rubric, and I quote:

“I want to say at the beginning that the Opposition has several problems with several parts and provisions of this Bill.”

That was the opening statement of the Member for Oropouche East.

**5.55 p.m.**

And he went on to say:

“I want to say at the beginning that I find it slightly disturbing that every time we meet, it seems to me, it is really to give somebody the power to break down a door, come into your motor car, detain someone and seize something. We are meeting with a certain amount of frequency to empower official of the State to kick down door, enter a vehicle, seize and detain. It is troubling, because we should be meeting to provide and expand rights and benefits, rather than only to give officers of the State this ability to invade privacy for all sorts of reasons.”

Now that is very applicable. So now we are meeting with disturbing frequency to discuss legislation, to give somebody the power to kick down your door and search and seize and detain you and detain something. That is so applicable to what is happening now, Mr. Speaker, and here we have yet another piece of legislation, and this was one of the problems and why it was sent to a Joint Select Committee and this has not been addressed in the legislation.

The Member for Oropouche East went on to say:

“I will argue that this is not the Data Protection Bill, this is the ‘Data Prevention Bill’.”

I could just put you over here, because it is so true. It is so true.

“This Bill is to prevent the disclosure of information, not to protect and certainly not to confer rights,”—you have it in front of you eh? —“as they have done in the United Kingdom, Canada and elsewhere. It goes against transparency and good governance.”



So, Mr. Deputy Speaker—

**Mr. Deputy Speaker:** Are you reading your speech?

**Mr. C. Imbert:** No. I am reading his speech. I am not reading my speech. I am reading the *Hansard* record which I believe I am allowed to do. Now, Mr. Deputy Speaker, if this legislation went against transparency and good governance, then how come it is not going against transparency and good governance now?

**Dr. Moonilal:** Because the PNM is not in power.

**Mr. C. Imbert:** Ah, the PNM is not in power. And he went on to say:

“In the United Kingdom, when they outline data protection measures, they often tie it with freedom of information and equality of opportunity.”

He goes on to say—Mr. Deputy Speaker, the usual, you know the gruesome twosome, one behind, one in front.

**Mr. Deputy Speaker:** I will keep an eye on them.

**Mr. C. Imbert:** You will deal with them in due course. I continue:

“There are several areas in this Bill that are draconian and frightening. We are empowering persons, including what you call an information czar. I call it a ‘national maco’.”

It is when we heard the Member’s contribution that we decided this Bill needed to go to a Joint Select Committee. And the committee got bogged down in its work because these are very fundamental issues that go to the core of people’s rights and freedoms in this country. That is why the committee could not complete its work, because it was concluded by the committee that a complete redraft was necessary for this Bill. But what they have done is they just tinkered with it, just changed one or two clauses here, changed a name there, but the issues have not been addressed, Mr. Deputy Speaker. Let me go on to continue to read.

**Mr. Warner:** [*Inaudible*]

**Mr. C. Imbert:** Why should I, when I have this beautiful material?

“This person is in command of all the information and knows everything... we are now legislating to create that person. I thought he already exists, but (now) it seems we are going to legalize a ‘national maco’ who appears to be untouchable.”

*Data Protection Bill*  
[MR. IMBERT]

*Friday, February 04, 2011*

And he goes on to say:

“You have to put the checks and balances in the law to ensure that no one gets that sort of power and certainly not unchecked power where they can do anything.”

And it goes on and draws reference to the United Kingdom and so on, and he makes a fundamental point. Later you will realize that there is no provision in the Bill dealing with employers. The Member for Oropouche East is supposed to be a champion of industrial relations matters. This was an important point, that nowhere in the Bill there was a provision dealing with employers. That has not been corrected in the legislation. The fact that there are two types of codes for the private sector, a mandatory code and a non-mandatory code, that has not been addressed in this legislation. All they have done is taken our legislation, changed the cover, changed 2009 to 2011, tinkered with a few clauses and they have brought back essentially the same piece of legislation.

The Member for Oropouche East went on to say:

“There are enormous powers for a Data Commissioner. The Data Commissioner can tell a public authority that he approves what you are doing with respect to the collection of information, and to go ahead and do it.

If they are collecting information on a specific group of people in a specific locality, the Data Commissioner can say yes, I approve of that. That is a powerful position... there is no reference to a data tribunal.”

He made a stirring plea throughout his contribution for the creation of a tribunal, because he felt that a single person such as a Data Commissioner was insufficient to deal with the issues of rights and freedoms, especially the right to privacy. And he asked—[*Interruption*] I am not finished. You cannot stop me. And he asked for:

“... a tribunal of persons who are trained and who are experienced with the expertise in related areas of law, information technology, data management...”

And so on. He made the point that, the Data Commissioner is just one person. “Who will it be?”

**Dr. Moonilal:** Who will that person be?

**Mr. C. Imbert:** He went on to say:

“I understand...the regulations have already been drafted and the advertisement for recruiting a data commissioner is already on the way.”

Well, if that is so, because the Member for Oropouche East had special access to knowledge with respect to this matter, he knows exactly what I am talking about, he had special knowledge with respect to the state of preparedness of the ministry at the time in terms of the regulations that accompany this legislation and the recruiting of a Data Commissioner. He says:

“As soon as we have signed off on this, it is going to be in the newspapers in the morning.”

Now if that is true, I do not know if that is true, but if what he said was true that the former Minister had prepared regulations and that arrangements were in place for the recruitment of a Data Commissioner, then how can the two Ministers over there, come and tell us that this is a fundamental pillar of the manifesto of the People's Partnership? It cannot be true! It cannot be true!

All this Government is doing, Mr. Deputy Speaker, all they are doing, they are going and ferreting through their Ministries, collecting all the legislation and all the work that was done by their predecessors, changing the front page, changing the date, bringing it here, and then trying to get—you certainly not going to get us to believe that because we know better—but trying to get the population to believe that this is somehow the product of their work, their policy, their initiative and so on, Mr. Deputy Speaker.

**Dr. Gopeesingh:** So PNM has a right to the legislation?

**Mr. C. Imbert:** No, but do not come here and say that this is a fundamental pillar of your manifesto. That is nonsense! It is not true! Speak the truth! Everybody in this Parliament agrees, Mr. Deputy Speaker, everybody in this Parliament agrees that there is need for the protection of personal information. Nobody could be against that. Nobody could be against that. But what you are doing is you are picking up pieces of legislation that had serious flaws in it. This is why the PNM Government did not continue with this legislation, because of the deliberations in the Joint Select Committee and especially because of many points made by the Member for Oropouche East.

In the Joint Select Committee meetings it was decided to make a complete redraft of the legislation. But it was not done. As I have said they have just tinkered with a few clauses. [*Desk thumping*]

*Data Protection Bill*  
[MR. IMBERT]

*Friday, February 04, 2011*

And then another very important point made by the Member for Oropouche East, which has not been addressed in the Bill:

“There is a provision in here for inspectors, and I think it is akin in some way to the inspectors pursuant to the Occupational Safety and Health Act. How many inspectors do we need? Is it that you go along and you see what is happening with other codes and so on.... At this juncture, it is useful for the Minister to give the country some idea of the staff.”

At another point he made the point that there is no reference to the qualifications of inspectors. For example, clause 19(1) of the PNM Bill said:

“The minister may designate public officers...according to their qualifications for the purposes of this Act...”

And he complained:

“What is the qualification? We have to look further. They need to probably put an information inspector to differentiate it from the health and safety inspectors, police inspectors and so on...”

He complained bitterly about this.

**6.05 p.m.**

What is in the 2011 Bill? Exactly the same thing. Let me go to the clause with the appointment of inspectors, if you would just bear with me. And it is the same number too, clause 19(1). They did not even change the number:

“The Commissioner may appoint officers within the Office of the Information Commissioner to be inspectors according to their qualifications for the purposes of this Act...”

That is now. Let us read what was there before:

“The Minister may designate public officers to be Inspectors according to their qualifications for the purposes of this Act...”

Same thing! Exactly the same thing! Same number of clause!

[MR. SPEAKER *in the Chair*]

Then he spoke about the powers:

“An inspector shall...have the power to do all or any of the following things...”

- (a) if he considers necessary, take with him when entering any vehicle, land or premises, a police officer;
- (b) to require the production of or to seize, inspect or examine and to copy registers...(and)...documents;

(c) to make such...inspections, investigations...necessary...”

What happens here now?

“An inspector shall...have the power...

- (a) if he considers necessary, take with him when entering any premises, a police officer;
- (b) to require any person whom he finds in or on such premises to give such information as is in his power to give...
- (c) to make such examinations, inspections, investigations and enquiries as may be necessary...”

And so on. You changed two words; a semicolon and a full stop, but it is the same thing. The same problems that the Member for Oropouche complained about, that these inspectors will have the power to break and enter; have the power to seize, go into people's premises; take away documents, and one of the things that—

**Mr. Hypolite:** Cut and paste.

**Mr. C. Imbert:** Yes, it is a cut and paste Bill. One of the things that the Member for Oropouche East complained about at that time was the fact that under clause 19(3)—and it is the same 19(3)—the inspector has the power to examine either alone or in the presence of any other person as the inspector thinks fit, and he complained that:

“He could carry his brother or his sister. That is if his sister is not busy bailing out money by a bank. He could carry his sister...Are you saying that no inspector should have a sister with money in a bank?”

Now, the point is that it really was quite painful to listen to the Minister present this Bill without dealing with any of the issues that had been raised by the Parliament on the last occasion. There were so many issues. The Member for Point Fortin made a point with respect to definitions and so on, and in the second meeting of the joint select committee, April 2009, the committee commenced consideration of the Bill. There were extensive discussions during its examination of the definitions. The committee made reference to the way in which the defined words were used in the Bill. I just want to make a point here. I am reading from the document.

“Dr. Moonilal again raised the issue with respect to the definition of the term ‘personal information’ as it relates to private sector employment practices.”

You have not addressed that in this legislation.

**Dr. Moonilal:** I made a great contribution.

**Mr. C. Imbert:** Yes, it was a very interesting contribution; I am not going to take that away from you. You had your usual flippancy, but in between the flippancy there were some important points.

**Dr. Moonilal:** I worked it in.

**Mr. C. Imbert:** Yes, you worked in some substance into your flippancy.

He gave an example.

“So, it could well be that employers and members in the private sector who abuse employee information...are not covered by a mandatory code of practice, because a code of practice that is not mandatory...carries no specific legal status. If you tell people put a code and regulate yourself, that has no enforcement value.”

An important point, especially with respect to the private sector, and the Member for Oropouche gave this example:

“You have an employer; he is running a garage somewhere in Port of Spain; he employs a worker; the worker has failed one of two drug tests; the worker has been charged for an offence but not convicted, and that worker leaves his job and goes somewhere else; the new employer calls the old employer and says, tell me something about this ‘fella’ here; you know him; what is the situation with him.’ Now, that sharing of information involves information where you are giving matters pertaining to the alleged criminal record, to health, use of drugs and so on and that would not be captured under private sector mandatory code of conduct.”

Important points. None of this has been addressed in the new legislation. So it seems to me that this Government is simply bringing this legislation just for bringing it sake, as if the Ministers in that ministry want to demonstrate that they are doing something. It would appear that the UNC coalition has been in government now for how long, about nine months? And it would appear that there is some sort of competition among them to bring legislation to the Parliament. So I can only assume they just picked up this thing; they did not bother to go into it; they did not read the *Hansard* record to hear contributions from more experienced Members like the Member for Oropouche East on the last occasion; they did not bother to read the minutes of the joint select committee and that is why they have brought back the Bill which is more or less a carbon copy of the previous legislation.

Another point raised by the Member for Point Fortin—I want to ask the Government whether or not they have set up infrastructure to deal with the introduction of closed-circuit television—important point. The Member for Point Fortin made the point that when you enter a bank they are recording you, and the hon. Member for Oropouche East went on to say, you put televisions in a public place, and so on, which is acceptable; you are monitoring, but you have to be very cautious of who are controlling monitors, who are taping, who are retaining these images; whether they are being destroyed in a periodic way; who are viewing it; what are they doing with it; whether it is being used for other purposes, and so on. None of this has been dealt with in the legislation.

Another point that was made was that you need to have a clear and defined policy on the use of closed-circuit television cameras if you are going to be serious about protecting personal privacy and personal data.

**Mr. Warner:** Why do you not make your point?

**Mr. C. Imbert:** I do not need to. All of the points that I wished to make were made by the Member for Oropouche East. You may have been sleeping, hon. Member, in February 2009. You might have been out of the country; you might have been in Russia or somewhere like that, a place that you like to go to often. *[Interruption]* No, no, Russia is your favourite place now. Therefore you may not have been aware of all these points that the hon. Member for Oropouche East made.

**Mr. Warner:** I thought it was the Member for Point Fortin.

**Mr. C. Imbert:** No. The Member for Point Fortin also made a similar point, but in the debate, the Member for Oropouche East pointed out that if you are going to protect privacy, then you need to regulate the use of closed-circuit television cameras, because they are all over the place. That has not been addressed at all and that was a request coming from the Member for Oropouche East during the debate on the last occasion.

So what do we really have here in front of us? Let us go through some of the clauses in the Bill which raised red flags on the last occasion and continue to raise red flags on this occasion. You had the definition of “sensitive personal information” which was referred to today by the Member for Point Fortin, and the point that “sensitive personal information” means a person with political opinions, political affiliations and trade union membership. Then you go into the committee deliberations and you see the committee agreed. The Member for Oropouche East as a member of the committee agreed to delete the words, “political opinion”, but

*Data Protection Bill*  
[MR. IMBERT]

*Friday, February 04, 2011*

they did not do their homework, so you put it back into this legislation. It is there in the minutes of the meeting of April 03, 2009. In the definition of “sensitive personal information” delete the words “political opinions” and revisit the words dealing with these words, for example: “The draftsmen to revisit the inclusion of the phrase ‘sexual life’ in paragraph (d) in light of the concerns raised.”

These were concerns brought by the Members of the Opposition then, and what do I see when I go into the definition of “sensitive personal information?” I see “political opinions” still there and “sexual life” still there.

**Mr. Warner:** The same point over and over.

**Mr. C. Imbert:** No. The point I have to keep making is that all they have done, as my colleague from Laventille West has pointed out, was just cut and paste; stick a bit here; stick a bit there. They have not gone into the policy; they have not consulted with anyone with respect to this legislation. You consulted with no one, because if they had consulted, the Minister would have told us. There have been no consultations with interest groups with respect to data protection whatsoever, which is what the joint select committee was about to do. The Member for Oropouche East can correct me if I am wrong, that when you are bringing fundamental pieces of legislation like this, you need to consult with the public; you need to find out what the public has to say; you need to look at this whole question of employers and how employers collect personal data in the private sector, and what it is used for, and whether you have the kind of protection that is required for persons in the private sector, which make up the vast number of workers in this country. You need to speak to the employers and to trade unions and speak to the non-governmental organizations to find out what they think about this legislation.

This is a Government that came in on the altar of people’s participation; the altar of consultation; the altar of listening to the people. But have they listened to the people on this legislation? They have not even spoken to the people, far less listened to the people to see what the impact of this legislation would be. [*Desk thumping*] The Government can use its majority if it wishes. You can railroad through this legislation. Good for you. But both sides of the House had concluded that there were fundamental flaws with this legislation that need to be worked out before you pass it, and I am suggesting, hon. Minister, that you pause; you go and get the verbatim notes from that joint select committee; you speak to some of the



persons who were in the committee, like the Member for Oropouche East; you look at his contribution in the *Hansard* of February 2009 and see whether these are not fundamental issues that deserve a little more attention, rather than trying to push through this legislation.

You can go ahead and do it if you wish, but I can assure you, it will be fraught with problems. The question raised by the Member for Point Fortin, I think needs to be clarified. That is a simple matter. You do not need to consult with anybody for that, except your advisers. It was the question of the use of the word “President”, whether it means the President of the Republic of Trinidad and Tobago or whether it means the Cabinet. That is something that we need clarified, because the way it is written, it appears to me that it would be the Cabinet. The President would just be effectively a rubber stamp, as it were, under a certain section in the Constitution, where the President will act on the advice of the Secretary to the Cabinet. That is how it reads to me and you need to clarify that.

A little housekeeping in clause 8(3). It is never a good idea in legislation to put a fixed term. It is better to put a maximum term. So rather than saying that the person should hold office for five years, it would be far better to say, “for a maximum of five years”, and then you have the flexibility to appoint the person for three years, two years as the case may be, or five if you wish. I think that is something that was clearly an oversight on the part of the drafters.

With respect to clause 18, the question of delegation, you are saying that:

“Subject to subsection (2), the Commissioner may authorize any person to exercise or perform, subject to such restrictions or limitations as the Commissioner may specify, any powers, duties or functions of the Commissioner.”

I do not think it should be as open-ended as that. I do not think the commissioner should be given that power to just delegate his functions and powers to any person. I do not think so. I think that should be seriously constrained. I see an attempt made in subsection (2), but that is simply insufficient. And the point I made before—I do not know if the Minister was here when I was speaking—with respect to clause 19(1), there needs to be some sort of definition of the qualifications of these officers within the office of the information commissioner, because it just speaks to the commissioner appointing officers according to their qualifications. There seems to be some mix-up here, because it speaks about appointing officers within the office to be inspectors according to their qualifications for the purposes of this Act. What does that mean?

*Data Protection Bill*  
[MR. IMBERT]

*Friday, February 04, 2011*

**6.20 p.m.**

So you really need to be a little more specific. Perhaps, you may wish to specify the qualifications in regulations, but with the fiasco that we had recently with the appointment of a very unqualified person, who is not as unknown to leading Members of the Government as they would like us to believe, she is well known to Members in high office—with the recent fiasco with the appointment of an unqualified person to the SSA—

**Dr. Browne:** What Member? Which Member?

**Mr. C. Imbert:** Very top—at the “tippy top” [*Laughter*—I do not think we should allow a situation to develop where we leave qualifications to be loose and ambiguous. These inspectors should have minimum qualifications; it cannot be somebody that you pick up from the side of the road, a personal friend, or somebody that might have been suggested to you by another friend; it is really fraught with problems. Because these inspectors are the ones who can take police officers with them into premises and then seize documents and things like that. This is serious business. These inspectors have serious powers, and therefore, in the way that the Data Commissioner has been—his or her qualifications have been properly spelt out, an attorney-at-law with ten years’ experience, et cetera, you definitely need to spell out the qualifications of these inspectors because of the very draconian powers that they have.

I would just go to clause 19(1)(f) that the inspector shall have the power:

“to seize and detain for such time as may be necessary any article by means of which, or in relation to which he reasonably believes any provision of this Act has been contravened.”

And this brings me to an important issue; this legislation is all about protecting personal privacy, but you are also exposing personal information to these inspectors, because these inspectors are going into premises and seizing documents, and who is to say what kind of documents? For example, is an inspector going to be empowered to walk into a bank and seize personal banking records of someone on the pretext that privacy is being infringed? Because that is the flip side of this legislation. That is the danger in it, that you are giving these inspectors these very strong powers and they can be abused and there is no check and balance in terms of abuse. You need to put into the legislation that when the inspector is doing this it has to be in furtherance of the policy that is in this Bill; you are trying to protect people's information, not to get access to it, to use it for devious or despicable purposes.

So that was another problem that we had in terms of the commissioners and the inspectors being given these powers to just go in and seize documents; you do not want that. What you want is that they would act on a complaint, that someone has a complaint about their privacy or so on and the inspector is going to protect that person; not to just walk into a building, business place, a house or whatever it is and just seize documents on the pretext that the provisions of this Act have been contravened. It cannot be as simple as that.

The other point made by the Member for Point Fortin, and I would reiterate it, in clause 20, it speaks about the commissioner exercising his powers with respect to Parliament, a Joint Select Committee, the Cabinet, the Court of Appeal, et cetera. And then it says where the head of a public body refuses to allow the commissioner to enter and inspect premises the commissioner may apply to a magistrate for a warrant to enter, seize and inspect. And then it says very curiously, subclause (4), the one I just read shall not apply to any body referred to in subsection (3), which is the Parliament, the Cabinet, the Industrial Court, et cetera.

What does this mean? Are you saying that if the Parliament, the Court of Appeal, the Industrial Court, et cetera, refuse to give access that is the end of it, the Inspector cannot go to the court for a warrant? Or alternatively you are saying that whether or not there is an issue, the inspector can just walk into the Court of Appeal or the Tax Appeal Board, the Tobago House of Assembly and so on? This is a section that is extremely confusing and needs to be clarified, because we are not in government now, but I hate to think [*Interruption*]

**Mr. Warner:**—Or ever.

**Mr. C. Imbert:** Okay. Yeah, yeah. I was hearing somebody saying that in 2001 and then a few months later, I was over there. So it is all right; it is a cycle. You will not be here, you are close to retirement age. You will not be here. It is a cycle.

**Mrs. McIntosh:** Do not play God.

**Dr. Browne:** He feel he is God.

**Mr. C. Imbert:** The other clause that is very peculiar is clause 23, that statements made to a commissioner are not admissible as evidence in any court or any other proceeding—what does that mean? Are you going to allow people to make scandalous and defamatory statements and then if somebody has libelled someone or slandered them, that person cannot redress for defamation of

*Data Protection Bill*  
[MR. IMBERT]

*Friday, February 04, 2011*

character, because you are saying it is not admissible in a court of law? You need to clear this up. Why do you have clause 23 inside of here? And what is the effect, the true effect and import of clause 23?

One of the things that the Member for Oropouche East had complained against as well, is clause 26, which essentially, is the ouster clause ousting the jurisdiction of the court. And while that appears in many pieces of legislation, he had fundamental problems with it, and felt that a clause of that nature had no place inside of there because of the very draconian powers of the commissioner.

So, Mr. Speaker, I would ask the Government—I do not think there is need to go into any great detail about this Bill. This Bill did not fall out of the sky on May 25, it did not drop from Mars and land in the Office of the Prime Minister on the lap of the Member for Cumuto/Manzanilla. He did not come upon this Bill in a dream in June of 2010. He did not go to a Cabinet meeting and somehow this thing miraculously emerged in the Cabinet meeting. It was not given birth; it was not delivered; it was not birthed by the coalition opposite. This Bill was the subject of deliberation in this House for several years. There is no point in continuing a discussion about, “this is a fundamental pillar of the manifesto of the Partnership”, I mean, that is so silly and fraudulent, you are fooling no one.

What I would ask the Minister to do—and I am serious about this, and it is up to the Minister. I do not wish this Bill to go to a joint select committee, we have enough. And I saw an Independent Senator complain the other day about the plethora of joint select committees. And sometimes on Mondays we have three and they are all going on, and you are all members of the same committee. For example, I am a member of the Anti-Gang Bill Committee, I am a member of Legislative Proposals for Public Procurement and then your honourable good self, Mr. Speaker, also having Privileges Committee sometimes on a Monday. And we have to be running from room to room to room. And then you get a message, next meeting Tuesday, next one Wednesday. This morning there was a meeting and I just could not make.

**Dr. Baker:** You have nothing to do.

**Ms. Mc Donald:** You have nothing to do; you see how you are facetious?

**Mr. C. Imbert:** And the thing is, Mr. Speaker, I do not wish this Bill to go to a committee; it already went to a committee. A lot of the flaws in the legislation were ventilated in that committee and many of the points—*[Interruption]* Mr. Speaker, could I have some protection please. I want protection from him.

**Mr. Speaker:** Hon. Members, could you allow the Member for Diego Martin/North East to speak.

**6.30 p.m.**

**Mr. C. Imbert:** No, it is you and him. Yes, Mr. Speaker, I would ask the Minister to go and read the contribution of Dr. Moonilal, the Member for Oropouche East, Friday February 13, 2008. In between all the “picong” and the “ol’ talk”, he made some very fundamental points about the need to deal with employers in the private sector, who collect personal information, and share sensitive personal information about people’s medical history, medical records, criminal convictions and so on. You need to deal with this. If you are serious about data protection, you need to deal with that.

The Member for Oropouche East also made some important points about the powers of these inspectors, their qualifications and so on, and if you are going to give these people these draconian powers, then you need to make sure that they are competent and professional people and proper background checks are done on them and so on.

So all I would suggest to the Minister is, take a read of this *Hansard*. I really could not put it better myself in terms of the points here. Go and look at what was discussed in the committee, and suspend the deliberations on this Bill because there are two ways of dealing with Bills like this that are technical and need a bit of work. You could send it to a committee but, as I said, we have too many committees at this time. You could also suspend, pause for a little while, take into account all the points that have been made and come back in a couple weeks with some amendments. That is what I am recommending to the Minister and I hope he would take these recommendations on board.

I thank you, Mr. Speaker. [*Desk thumping*]

**The Minister in the Ministry of the People and Social Development (Hon. Dr. Lincoln Douglas):** Mr. Speaker, I rise today to speak on this Data Protection Bill, and before I continue, I want to apologize for my dress today. I was out of all my good clothes, so I found this at the back of the closet. [*Laughter*] You would understand my angst, having to put on a suit and tie. Nevertheless, it could be that this week I turn 50—[*Desk thumping*]

**Dr. Gopeesingh:** Happy birthday.

**Hon. Dr. L. Douglas:** Talking about 50, Mr. Speaker, it brings me back to our Data Protection Bill here, and my age is part of my private information that I choose to share with this noble House. However, there are a lot of times that we

*Data Protection Bill*  
[HON. L. DOUGLAS]

*Friday, February 04, 2011*

do not choose to share our information and it gets spread all over the place. So, I think this Bill is very, very critical and important. Just to illustrate, I would give you a story that happened to me recently.

I was selling a car and I put the car information along with my phone number on the newspaper. Someone called me and said, "Hello, you selling ah car?" I said, "Yes, I am selling ah car". He said, "How much you selling it for?" And I gave him the figure. In the course of the conversation, he said to me, "Hello, hello, wait, wait, wait, I will call you back jus' now." Sure enough, in about five minutes he called back and said to me, "Look, you owing \$50,000 on that car and you are paying it off in such and such a time, what about if I pay the bank that money for you?" I was shocked. I was like, "How do you know this information." He said, "Doh worry, doh worry, I have my people in certain places." Within that short space of time, he was able to call a bank, get my personal information about the amount of money I was owing, et cetera, et cetera, and call me back to make a deal about paying off the bank for me.

I mean, this is in Trinidad and Tobago, how did it reach this place? So it is obvious to us that we cannot rely on good conscience, or the idea that we might have good people in Trinidad and Tobago that would naturally do good. We have long passed that stage. As a matter of fact, we have seen recently, that even the guards they put to protect us have been seriously infringing upon our rights, and God knows how they have been using that information. So, we do have a fundamental problem, and I am happy that the Bill before us, with whatever imperfections it might have and whoever crafted this first design—I think the Member for Diego Martin North/East crafted it.

**Mr. Imbert:** I thank the Member for giving way. The illustration given to the Parliament, hon. Member, is a perfect reason why we need to pause—  
[*Interruption*]

**Mr. McLeod:** Speak in the mike. Do not be afraid.

**Mr. Imbert:** He is behind me. I did not want to disrespect the hon. Minister.

**Mr. Warner:** That is a first for you.

**Mr. Imbert:** The example given by the Minister, Mr. Speaker, through you, is a perfect example of why we need to regulate the collection of information at the private sector, because that would not have been a State organization. That would have been a private bank that we are speaking about. This Bill does not deal with that and that is one of the points I made.

**Hon. Dr. L. Douglas:** Thank you.

**Mr. Warner:** He said nothing.

**Hon. Dr. L. Douglas:** So, Mr. Speaker, I was making the point—and I agree with you. All data needs to be protected. Just recently where I used to live—abroad—the government of that country produced a document on the people’s privacy. It was a huge document. Even down to the use of the carbon; after you typed a document, they stated very clearly what to do with the carbon paper.

So it understood that this is a very, very critical issue for the nation and for the citizens of this country, because too many people are being hurt. Not only that, our Constitution gives us this fundamental right to our privacy. It says:

“4(c) the right of the individual to respect for his private and family life;”

That is stated here in Part I, section 4(c), of our Constitution. So I am happy that the Bill is here and I am hoping that we would move towards greater perfection. But for the purpose of this House and for those who listen to us, I want to speak a little more about why this is so important and so critical to us.

Privacy is so important because the information about us is one kind of privacy, the information about who we are is another form of privacy, the space that surrounds us is also very critical on how we protect that, so we need to find ways to make sure that our people are safe because more and more we cannot assume that the people we put here to take care of us will naturally do that. The communications that we have, whether we are talking on the phone, whether we are sending mail, whether we are sending an email or any other form of communication—there are so many that exist right now. These things need to be protected. So that is very, very critical.

I am reading Global Internet Liberty Campaign—Privacy and Human Rights which says:

“Privacy is a fundamental human right recognized in the UN Declaration of Human Rights, the International Covenant on Civil and Political Rights and in many international and regional treaties. Privacy underpins our human dignity and other key values such as freedom of association and freedom of speech. It has become one of the most important human rights issues of the modern age.”

So, I am establishing the point that this is very, very critical, both in the public sector and in the private sector. It is important to protect our sensitive and personal information. The document outlines what is sensitive, personal information, racial and ethnic origins. I was looking over these definitions and I

*Data Protection Bill*  
[HON. L. DOUGLAS]

*Friday, February 04, 2011*

was wondering why these things were outlined. What would racial and ethnic origins have to do with anything, political opinions, political affiliations or trade union membership?

Mr. Speaker, we understand why these things are important, because there are people who would deny you opportunities, simply because you are from a different ethnic background to them. There are people who would use information about who you are and about your political opinions. I know this in applying for jobs in Trinidad and Tobago and not getting these opportunities, only to realize that it was because of my political affiliation. Of course, I have never been politically aligned to the people sitting right in front of me.

**Mrs. Gopee-Scoon:** Never!

**Hon. Dr. L. Douglas:** So in a lot of ways I have been disenfranchised because people have used my political opinions, my political affiliations, memberships in organizations and my religious belief. You show up for a job somewhere and all the people in there have the same belief, and you wonder why you do not get it. It is because you do not share the same belief system, physical or mental health conditions, sexual orientation or sexual life, criminal, crime or financial record and other kinds of disabilities. This is information about me, information about my body, information about my space, information about my people, information about my history and this information is now being used. When people acquire that knowledge, they use that information to discriminate, prejudice or disenfranchise you in some way or the other.

So, the sensitive and personal information should definitely remain within the boundary of privacy, so that it could fit into this document and protect our people. The principles within the Bill are also very profound, because they remind us that the responsibility for protecting data collecting is on the organization. The organization has a responsibility to keep me safe, to keep the data that they have collected, and this is a country that, to use to local parlance “is full of maco”. People who just like to get your information for no other reason than the trading of information which seems to be a costly thing. The trading seems to be a way that people get to people, get at people, get back at people and cause havoc in this country. This is a nation that is like that. We love to get involved. It is part of our strengths and it is part of our weaknesses.

Of course, my wife wrote a whole dissertation on people watching other people’s business. Sometimes it serves to protect us. This is what protects our communities. The people look out for each other and throw an eye on your business, but there are other times—and a lot of times—that people are using this



information for their own benefit. So, I like the fact that the responsibility is on the organization. It also gives us an opportunity for redress, because too many times, Mr. Speaker, when people do things to you in this country, you have no redress. There is no way of getting back, or getting a solution, or getting compensated somewhere or the other. So the onus is on the organization to take care of people's data. The onus is also on the people who are collecting data, to collect it in such a way that respects the individual they are collecting it from.

Now this is standard. When I was doing research, we had to get a consent form from everybody who was going to participate in the research. I do not see that happening here at all. People want to ask you all kinds of information; they want to do research on you; they want to collect information and they have never once ask you for your consent. This is something that must permeate all institutions, our educational institutions and, as the Member for Diego Martin North/East said, even the private institutions. We cannot go around collecting private information from people and not getting their consent, also, not explaining to them how we are going to use this information.

This is the disrespect of the highest order, for people to be collecting information, putting it in a database that is perpetually available and not telling them what we are going to be doing with this information, when the life of the information is going to be ended, and what they are going to do when the use has come to an end. Does it go on to become something else? I like the fact that the Bill concentrates on knowledge and consent of the individual are required for the collection, use or disclosure of personal information, collection of personal information shall be legally undertaken, and be limited to what is necessary in accordance with the purpose identified by the organization.” In other words, people should not collect more information from you than they ought to; not because you could ask for it, you should ask for it.

#### **6.45 p.m.**

The information you are collecting should only relate to the purpose for which you are collecting the information and that is a very critical and important thing. And this information “shall only be retained for as long as necessary for the purpose collected and shall not be disclosed for purposes other than the purpose of collection without the prior consent of the individual.” “Personal information shall be accurate, complete and up-to-date as is necessary for the purpose of collection.” And when I look at this, I am looking not only at people who work in organizations, but I am looking at people who do research, people who do studies and people who do all kinds of things and they just go about collecting

*Data Protection Bill*  
[HON. L. DOUGLAS]

*Friday, February 04, 2011*

information on people, gathering information on people; we do not know what it is for, we do not know how long it will last and they go on and on and on. We have seen these breaches in our country.

I think this Bill is calling the nation to grow up a little, to begin to take our people seriously, to respect the dignity of our people, their rights that they have so that we cannot just go around taking advantage of people. “Sensitive personal information is protected from processing except where otherwise provided for by written law.” I would not go through all of the other things on the principles but these principles are very, very critical and they demonstrate that we need to exercise higher level thinking when it comes to dealing with the citizens of this country, when it comes to dealing with our people. When it comes to negotiating any form of contract, arrangement, relationship, we need to take the information of people seriously.

Of course, there are ongoing threats to this protecting of people's data. Because we live not only in a society that is at our core, intrinsically, a kind of data-gathering society, and I am using that in a supportive way, I do not want to use too much of a derogatory term, we like to gather information about each other and we trade in information.

Apart from that, we also live in a global culture that continues to trade information; selling information is big business. Selling information about people is big business and so we need to guard against that. We need to guard against, of course, what they call globalization because from all over the world people can capture your information and do various things with it.

Various kinds of information are being collected. Now we are moving into smart ID cards, we are moving into smart number plates. We are moving into—kudos to the Minister of Works and Transport—we are moving into smart number plates. That was your idea?

**Mr. Imbert:** My project.

**Hon. Dr. L. Douglas:** How you end up there, boy? [*Laughter*] We are moving into all kinds of smart things. We moving into biometrics where people have to identify themselves by scanning their eyes or scanning their hand or scanning their fingerprints or whatever, and all of this is a collection of data and these things are very, very critical and have to be protected. And it poses also a threat to our citizens, it poses a threat to our way of life and therefore it is very critical not only that we put these pieces of legislations in place but we find ways to enforce them and make sure that they happen.

I am happy to support this Bill for data protection. I am also happy to support the ongoing work in making it a more perfect piece of legislation, but I think it is something that we cannot deny is very critical and I think all of us in the House understand that this is very, very important. So I look forward to the ongoing debate and the ongoing development of this so that it will work as an ongoing protection for the people of this nation. Thank you, Mr. Speaker.

**Mr. Fitzgerald Jeffrey (La Brea):** Thank you very much, Mr. Speaker. I want to respond to the Member for Cumuto/Manzanilla before I get in to the Bill. Mr. Speaker, the Member for Cumuto/Manzanilla gone back on this smelter thing again. He mentioned that the people of La Brea did not support the smelter. Nothing could be further from the truth! As a matter of fact, he should be brought before the Committee of Privileges for misleading the House. Because, we know quite well, all the protest actions by the anti-smelter lobby were people from outside; people from Arima; people from D'Abadie/O'Meara; Fisherman and Friends of the Sea but very little from the people of La Brea, overwhelmingly, the pro-smelter people were in the majority. That is the first point, Mr. Speaker.

The second point I want to make, has to do with the whole question about labelling the PNM as corrupt. But, Mr. Speaker, I want to go back to the *Hansard* of Monday, September 24, 2001. You see, when your enemy tells you something, you could disbelieve it, it is hard to believe it, but when it is your friend, you better take note.

The Minister of Planning, Economic and Social Restructuring and Gender Affairs, when she was an Independent Senator, this is what she had to say about the government in 2001:

“This Government, as no previous government, has been plagued with numerous allegations of corruption and the large construction programmes defined in this very budget demand that better management and monitoring systems be put in place and we mean very soon.”

**Dr. Browne:** Who said that?

**Mr. F. Jeffrey:** That was 2001.

**Hon. Member:** Which Government was there in 2001?

**Mr. F. Jeffrey:** Ah, that is the question.

**Mr. Speaker:** Hon. Member, are you quoting from some newspaper? That is the *Hansard*? Okay, sorry.

**Mr. F. Jeffrey:** Yes, Mr. Speaker. That was in 2001 and we know which government was in power in 2001? That was Sen. Mary King.

Mr. Speaker, sometimes I have to wonder about the Congress of the People. You know, they say “new politics”. And as the scripture says “You cannot sew new cloth on old garments.” And I could see the problems in the UNC-led coalition.

**Dr. Browne:** They give up on that “new politics” thing already.

**Mr. F. Jeffrey:** The UNC-led coalition will continue to have problems because the Congress of the People who are supposed to display “new politics” could never really and truly be absorbed into the UNC-led coalition. No way could that happen! No way. No way!

**Dr. Browne:** They have some kind of conscience, you see. Some of them. You all could keep Anil Roberts.

**Mr. F. Jeffrey:** Coming back to the Bill, Mr. Speaker. In 2009—I happen to have those two Bills here: the Data Protection Bill, 2009 and Data Protection Bill, 2011.

Both of them seek to protect the privacy of personal and private information of individuals, which is entered into electronic format. Both Bills have those said things. But, they are trying to take credit for the Bill. [*Interruption*] No, no, no, you are trying to take credit for the Bill.

**6.55 p.m.**

We must always remember that the Member for Oropouche East was the one who was begging for this to go to a joint select committee, for it to be drafted and redrafted. Mr. Speaker, they come in this House and give us a Bill with very little alteration. As a matter of fact, the Member for Oropouche East, on Friday, February 13, had this to say:

“Why is it that you are creating an office of data commissioner, whereas in the United Kingdom and elsewhere, they have created the equivalent of a data commissioner with a tribunal? It is an information tribunal, where you can appeal to...and not to a person, but a tribunal that is comprised of other professionals who are schooled and learned in areas of information technology, data management and have the interest of data controllers, to use your term, at heart.”

Mr. Speaker, when we come to the Bill, in clause 7, in 2009, Part II, it is stated:

“There is hereby established a body to be known as the Office of the Data Commissioner.”

That was in 2009.

In 2011:

“There is hereby established a body corporate to be known as the Office of the Information Commissioner.”

One of the big grounds on which they were protesting; they found that you should not put power in one man or in one person's hand. So what they simply did was take it away from the—they changed the name from Data Commissioner to Information Commissioner. Mr. Speaker, that is wasting Parliament's time. Therefore, we ought to understand what we are looking at.

I want to go a step further, in looking at the qualifications for the commissioner. We mentioned that the commissioner should have at least 10 years, shall be an attorney-at-law within the meaning of the Legal Professional Act, with at least 10 years standing at the Bar and shall have training or experience in economics, finance, information security technology, audit or human resource management. They went into very much detail about the attorney at law, the qualifications. But what about the qualifications in terms of this thing about experience and training? Mr. Speaker, we all know what happened with the Reshmi Ramnarine situation, and you need to be careful and spell out what you mean by training and experience. What level of training are you going to require for somebody in economics, in finance, information security, technology and so on? Is it going to be O Levels, Advanced Levels a diploma, a degree. We need to spell that out, because this is extremely important.

When you go through the Bill, you recognize that there are a number of areas in which the human resource element is important. In clause 17(1), we see about the power of employment. Clause 19(1) deals with the appointment of inspectors. In clause 63, we are talking about the appointment of mediators. We have to be careful about this thing, about the HR element and, therefore, I believe that should be spelt out very clearly, as to what are the requirements for, what you call “acceptable”, in terms of training and education.

*Data Protection Bill*  
[MR. JEFFREY]

*Friday, February 04, 2011*

On the whole question of clause 64(3)—and I ask, who will look after the poor? Clauses 64(3) and 82(3) mention:

“A person aggrieved by a decision of the Commission under this section may apply to the High Court for Judicial Review.”

Where does the poor man fit into that whole scenario? People who are wealthy and well-to-do, that is all right, but I am here to appeal on behalf of the poor and the downtrodden. We must take them into consideration, and I want us to revisit clauses 64(3) and 82(3).

I want us to recognize that we on this side are not anti the intention of this Bill. What we are against is what is inside of the Bill, and what has happened. What the Member for Oropouche East had mentioned in 2009, still holds true in 2011.

Mr. Speaker, I want to crave your indulgence by asking this honourable House for us to take what the Member for Oropouche East had mentioned in 2009, and let us not pass this Bill tonight, but either put it to a joint select committee, or hold it back for a while and then you know, when you have time to go through it again, bring it back before this House.

I thank you.

**Mr. Speaker:** Anybody else? The hon. Minister.

**The Minister of State in the Office of the Prime Minister (Hon. Collin Partap):** Thank you, Mr. Speaker. After listening to the Members on the other side with their inferences that my speech was plagiarized in any sort, form or fashion, I would like to dispel their arguments right now. It is not true. You can look at the *Hansard* later on and you will see that it is a significantly different speech to what was delivered here on Friday, September 13, 2009. But that is just the way the Opposition deals with legislation when it is brought by this Government. They try to trivialize matters. *[Interruption]* Read the contribution, Member for La Brea. Yes, you have it there. You should read sometimes, instead of just looking and listening.

Mr. Speaker, I want to address a few concerns that were raised by the Members opposite, especially relating, firstly, to sensitive personal information, political opinion—I think that was raised by both the Member for Diego Martin North/East and the Member for Point Fortin, in relation to (b) under “sensitive personal information”.

In the last draft in 2009, “political opinions” was the only one that appeared in (b). We have added “political affiliations or trade union membership”. “Political opinions”, we thought it best to keep it in there. As you know, when people write letters to the editor, to major newspapers, they normally express their political views in one shape, form or fashion, and we think it best—sometimes it is not reproduced in the newspapers, and it has to be stored somewhere, and that is one of the reasons why I think that should remain in there. So, we will not interfere with the “political opinions,” but we have added “political affiliations or trade union membership” in “sensitive personal information”.

With respect to clause 6, the Member for Point Fortin pointed out the general principles in (a) and (b). She looked at the general principles relating to where it is applicable for all persons who handle; store or process personal information belonging to another.

It is only natural, when you do laws, to have the meaning of the words “(a) in an organization”, and I think in part—organized processing, which was in (h); it is only natural that the meaning of the word is kept broad, so as to capture all. It is a broad net that we are trying to cast, and we need those words in there to capture everything.

I know the Member for Point Fortin spoke of the mandatory code. The Member wanted a mandatory code, but each sector is specific, and we must be sector-specific in a consultative process, to work together to develop codes. The Telecommunications Authority of Trinidad and Tobago will have authority over newspapers and electronic media, and their codes might be significantly different from that of the Central Bank who will lead the codes and pursue them for financial institutions. So, as you can see, in those two areas alone, you will have two different types of codes emanating. So, to legislate one specific mandatory code will not be the correct way to do laws. That is why you have general principles by which these laws could flow.

**Mrs. Gopee-Scoon:** Member? Member?

**Hon. C. Partap:** No, no, no, I am speaking.

**Mrs. Gopee-Scoon:** You have not clarified.

**Hon. C. Partap:** To develop codes, one needs an open-ended approach, and each sector is dynamic in its own way and environment.

The other issue that was raised was the appointment by the President. You know, in the Constitution, when we say “appointed by the President”, it means on the advice of the Cabinet. So, I do not think I need to go any more into that matter.

*Data Protection Bill*  
[HON. C. PARTAP]

*Friday, February 04, 2011*

Clause 9(2)(a) and (h), the power of—we speak about the Office of the President and it is merely the administrative process of it, and not the personality included.

I raise the issue of clause 18, which deals with—the Members for Diego Martin North/East and Point Fortin, I think, raised these two issues—the commissioner not being for more than five years. We have put the commissioner not being more—hold on let me get the correct—all right. The Information Commissioner—it is under clause 11(3) where the President may appoint:

“A Deputy Information Commissioner appointed under subsection (1) shall hold office for a period not exceeding five years and may be reappointed.”

We thought it best for the Deputy Information Commissioners to have that latitude of being five years or less. Rather, we wanted the Information Commissioner to serve for five years, after which he will be able to be reappointed.

Mr. Speaker, the new Bill is quite different from the old Bill in relation to the appointment of inspectors under 19(1). In the old Bill, the Minister designates to public officers and inspectors. In the new Bill, the Commissioner appoints officers within the office of the Information Commissioner as inspectors.

**7:10p.m.**

Mr. Speaker, there was some talk about the qualifications, but we have to keep it wide. As you know, when the Information Commissioner appoints investigators, they have to have a varied background from finance, to information technology to media, to industrial relations, so we cannot have one sort of qualifications for all the inspectors; it has to be varied as the Bill itself will be casting a very wide net and must be varied.

Mr. Speaker, the power to inspect and search requires a warrant and you just cannot go in and break down people’s doors, as the Members opposite, I think the Member for Diego Martin North/East—clauses 19(3), 20 and 21 cover this. So it is not an unchecked exercise of power, there must be a warrant.

Mr. Speaker, there was some talk about employers. Clause 75(1), which is a new section, deals with public authorities; the old Bill dealt with public authorities, and this section was put in especially for private companies and organizations, and I think it deals ably with the questions that were raised as to information under the Bill.



And let me just go to it. Right of access to personal information: 75(1) An individual who has personal information stored in an organization...has a right to and shall on request, be given access to—

- (a) personal information about that individual in the custody and the control of the organization;
- (b) any other personal information about the individual under the custody or control of the organization with respect...to the individual...;”
- (2) A request for access to personal information shall be made to the organization...
- (3) The Organization may, where reasonable and in appropriate circumstances, provide the personal information in accordance with the provisions of this Act...”

**Mr. Imbert:** I thank the Minister for giving way. Clause 75 deals with access to information, but that was not the primary issue that was the concern of the Parliament on the last occasion. It was the abuse of information collected in the private sector and shared among other private sector employers and this does not deal with that.

**Hon. C. Partap:** Member for Diego Martin North/East, you know that we have in the Bill, built-in safeguards—[*Interruption*] Yes, for the public and private sector. They are built in for both the public and private sector.

**Mr. Imbert:** Which clause?

**Hon. C. Partap:** Mr. Speaker, the exceptions under clause 23 where the Members opposite raised questions about the evidence:

“A statement made to or an answer given by a person during an investigation or enquiry by the Commissioner”—may be—“inadmissible as evidence in court or any other proceeding, except in—

- (a) a prosecution for perjury in respect of sworn testimony;
- (b) a prosecution for an offence under this Act; or
- (c) an application for judicial review or an appeal from a decision with respect to that application.”

Mr. Speaker, this is put in here because whenever there is a commission, and there is an investigation or enquiry by the commissioner, we need full cooperation, and this just helps to get the information because we need full and frank disclosure. And if you keep the information that is admissible, you would

*Data Protection Bill*  
[HON. C. PARTAP]

*Friday, February 04, 2011*

not get the full and frank disclosure which is needed and cooperation for the people with the Information Commissioner. So, Mr. Speaker, those are the exceptions to the rules. I do not think there is any more that was raised.  
[*Laughter*]

**Mr. Imbert:** I thank the Minister for giving way again. Clause 41 of the Bill prohibits disclosure of personal information by a public authority without the consent of the individual. There is no such corresponding clause with respect to the private sector.

**Hon. C. Partap:** Mr. Speaker, this deals specifically with disclosure of information in other jurisdictions. Now 41—in this clause, you must have the consent of the individual for information to be disclosed. Which one are you looking at? Yeah, but you have to have the individual's consent. [*Crosstalk*] Mr. Speaker, this Bill is one which is needed for the furtherance of data protection in Trinidad and Tobago and, as such, Mr. Speaker, 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 House.*

*House in committee.*

**Mr. Chairman:** Now before we get into clause by clause, there are six parts to this Bill comprising of 102 clauses, with your leave, I would like to suggest that we deal with the Bill in parts. Anywhere Members want to intervene, they can do so. Do we have agreement?

*Assent indicated.*

**7.20 p.m.**

*Question proposed,* That clauses 1 to 6 stand part of the Bill.

**Dr. Moonilal:** Mr. Chairman, an amendment to clause 2—

**Mrs. Gopee-Scoon:** May I?

**Mr. Chairman:** No, we have some—coming to you.

**Dr. Moonilal:**—In the definition of “Head of Public Body”, I think the opposition had raised this matter earlier and we would like to amend—

**Mr. Chairman:** Before we—may I suggest, that I put clause 1 alone, at this time.

**Dr. Moonilal:** Okay.

*Clause 1*

*Question proposed,* That clause 1 stand part of the Bill.

**Mr. Chairman:** You can now proceed with your amendment.

**Dr. Moonilal:** The definition of “Head of Public Body”, insert after the words “the President”, the words “the Prime Minister”—

**Mr. Chairman:** Hon. Member, I want to do this part clause by clause because, of the changes in Part II.

*Clause 1 ordered to stand part of the Bill.*

*Clause 2.*

*Question proposed, That clause 2 stand part of the Bill.*

**Dr. Moonilal:** In the definition of “Head of Public Body”, insert after the words “the President”, the words “the Prime Minister”, “the Chief Secretary of the Tobago House of Assembly”, “the Chief Administrator of the THA”, “the Presiding Officer of the THA”, “Speaker of the House of Representatives”, and “the President of the Senate”.

**Mr. Chairman:** Go slowly for us, so that we can—

**Dr. Moonilal:** In the definition of “Head of a Public Body”, insert after the words “the President,” insert “the Prime Minister,” “the Chief Secretary of the THA,” “the Chief Administrator of the THA,” “the Presiding Officer of the THA,” “the Speaker of the House of Representatives,” and “the President of the Senate.”

**Mr. Chairman:** Hon. Members, the amendment reads that we insert after the words, “the President,” “the Prime Minister,” “the Chief Secretary of THA,” “the Chief Administrator of the THA,” “Presiding Officer of the THA,” “the Speaker of the House of Representatives,” and “the President of the Senate”.

*Question on, on amendment, put and agreed to.*

**Dr. Moonilal:** She is asking—Member for Point Fortin.

**Mr. Chairman:** Okay Member for Point Fortin, my apologies.

**Mrs. Gopee-Scoon:** Thank you for those amendments, but I expect that there would a corresponding change in “Public Body” as well. In the case of the President, I would like to know what is the body to which that Head of the Public Body, the President refers to. We should have an accompanying—

**Dr. Moonilal:** This is amendment we are going to put in now.

**Mrs. Gopee-Scoon:** Sorry?

**Mr. Chairman:** This is the amendment we are putting in now.

**Mrs. Gopee-Scoon:** Oh, you are going to put this in now?

**Dr. Moonilal:** Yes.

**Mrs. Gopee-Scoon:** Before that—then, can I please look at “health care body” and enquire whether we are going to include doctors' offices?

**Dr. Moonilal:** We are dealing with the public bodies and not private sector.

**Mrs. Gopee-Scoon:** But you have private hospital in there as well.

**Dr. Moonilal:** To amend it. No, but she made the point.

**Mr. Chairman:** Any other—?

**Dr. Moonilal:** Yes. Mr. Chairman, under “Public Body” we are proposing to renumber paragraphs (a) to (i), as (b) to (j), and insert a new paragraph (a), “the Office of the President.”

Under “Public Body,” the renumbering of paragraphs (a) to (i), as (b) to (j), and inserting a new paragraph (a), as “the Office of the President”.

**Mr. Chairman:** You are renumbering under "Public Body", (b) to (j), and you are inserting a new (a), “the Office of the President”. Any other amendments or proposed amendments?

**Mrs. Gopee-Scoon:** Yes, please.

**Mr. Chairman:** Yes.

**Mrs. Gopee-Scoon:** Are you going to look at including in that section as well a definition of organization?

**Dr. Moonilal:** I am afraid we are not.

**Mrs. Gopee-Scoon:** What is your justification for it? It is rather vague.

**Dr. Moonilal:** It takes on its ordinary natural meaning.

**Mrs. Gopee-Scoon:** What about the word “processing”?

**Dr. Moonilal:** Processing?

**Mrs. Gopee-Scoon:** Sorry?

**Dr. Moonilal:** Member, it is intended to be broad to prevent any type of manipulation.

**Mrs. Gopee-Scoon:** Okay. The Minister, when he was winding up, attempted to give a justification of why he should include "political opinions". He gave an example, but I still find it rather vague. Being not so non-specific, could you not consider leaving it out altogether, and just leave political affiliations in?

**Dr. Moonilal:** The matter you raised concerned political opinion and we believe that the opinion you raised, the political expression and opinion is still considered sensitive personal information.

**Mrs. Gopee-Scoon:** It is considered sensitive for a person but it is so very wide, it is hard to capture.

**Hon. Member:** It is wide.

**Mr. Imbert:** Mr. Chairman, could I remind the Leader of Government Business, that he had asked for this to be removed on the last occasion? Yes, could I remind the Leader of Government Business that he—*[Interruption]*

**Dr. Moonilal:** Could I respond to Point Fortin, please? *[Crosstalk]*

**Mr. Imbert:** You asked for this to be removed.

**Dr. Moonilal:** What are you saying?

**Mr. Imbert:** The words "political opinions", you asked for them to be removed.

**7.30 p.m.**

**Dr. Moonilal:** I had asked for that to be removed?

**Mr. Imbert:** Yes.

**Dr. Moonilal:** Well then remove—*[Laughter]*

**Mr. Imbert:** Also "sexual life".

**Dr. Moonilal:** No, let us not go too far.

**Mr. Imbert:** That is in the same section.

**Dr. Moonilal:** We are prepared to delete "political opinions".

**Mr. Imbert:** In the same clause 2, the words "sexual life" in (e) were found to be completely ambiguous. You had asked for them to be removed.

**Dr. Moonilal:** What?

**Mr. Imbert:** The words "sexual life".

**Dr. Moonilal:** I am afraid we are not willing to accept your amendment.

**Mr. Imbert:** “What does it mean?” I think that is the question you asked the last time.

**Dr. Moonilal:** It means more than sexual orientation information on your sexual life, and it is important in that context. So we are not willing to accept.

**Mr. Imbert:** So you are disagreeing with yourself? Okay.

**Dr. Moonilal:** I have reconsidered, having moved from that seat. [*Crosstalk*]

**Mr. Chairman:** Members, under “Public Body”, we will renumber clauses (a) to (j) and insert new (a) which reads: “the office of the President”. Also under “sensitive personal information”, we delete the words “political opinions” in (b).

*Question put and agreed to.*

*Clause 2, as amended, ordered to stand part of the Bill.*

*Clauses 3 to 7 ordered to stand part of the Bill.*

*Clause 8.*

*Question proposed, That clause 8 stand part of the Bill.*

**Mr. Jeffrey:** I am looking at clause 8(2), we do not have a problem with the 10 years for an attorney-at-law, but I think we should codify this training for economics, finance, information, et cetera. I think we should spell that out. What do you mean by training? What do you mean by experience?

**Dr. Moonilal:** You do not know what “training” means.

**Mr. Jeffrey:** What I am looking at is the level of training that is required.

**Dr. Moonilal:** “...have training or experience in economics, finance, information security...”

**Mr. Jeffrey:** Let us say, for example, in economics, somebody with O Level Economics, would that suffice or do you want somebody with a degree or somebody with A levels? What do you mean?

**Dr. Moonilal:** The training would reflect itself in both experience and qualifications.

**Mr. Jeffrey:** But, how much?

**Dr. Moonilal:** It is a matter that could be assessed. You have to be an attorney-at-law with 10 years standing at the bar, and have training or experience in finance. If you entertain that, then you have to put qualifications for finance, economics, audit, human resource management, et cetera; so an attorney-at-law with training or experience in several fields. So you have a broader spectrum to choose from. It is very difficult to narrow that and put degrees, range and scale and so on. The criterion is that you must be an attorney-at-law with 10 years standing, and apart from that there may be other persons as well, and they would be assessed based on their level of training.

**Mr. Jeffrey:** So why do we not just leave attorney-at-law and put a full stop.

**Dr. Moonilal:** You require someone with more than just the legal training and skill, but some skills in another relevant area to the job.

**Mr. Jeffrey:** I think we are trivializing the matter, particularly the human resource management, I see that as extremely important given the scenario with the selection of the staff by the Information Commissioner. He has to select staff and appoint inspectors and so on. I think that requires some skills.

**Dr. Moonilal:** We believe that the range is adequate here. It is quite normal in matters like these to state training or experience as a broad categorization rather than look at a degree and identify one as opposed to another. Finance is also important. So the long and short is that we are not willing to change it.

**Mr. Imbert:** Why are you using the word “training” instead of “qualifications” which is not what you want?

**Dr. Moonilal:** The qualification is the attorney-at-law with some training or experience in another area which we state, but the core qualification is an attorney-at-law. It is not necessary to have qualifications as an attorney-at-law and another set of qualifications, specifically in another area.

**Mr. Jeffrey:** Are you saying, for example, that somebody could very well have no human resource management skills and be appointed as the Information Commissioner?

**Dr. Moonilal:** There will be an attorney-at-law with 10 years standing at the bar, and will have training or experience in another relevant area to the job. The job has human resource management, but it is not only human resource management, but there is also finance, information security, audit, technology, economics, et cetera.

**Mr. Jeffrey:** Just for the record, I just want to say that given the importance in terms of the employment of staff, I see that as an extremely important scenario, but it is up to you.

**Dr. Moonilal:** I am sure during the recruitment process that would be considered.

**Mr. Imbert:** What about 8(3)? Do you wish to have a fixed term?

**Mr. Chairman:** Where are you?

**Mr. Imbert:** On the same clause 8(3).

**Mr. Chairman:** Clause 8(3), okay.

**Mr. Imbert:** Do you wish to make this a fixed term of five years?

**Dr. Moonilal:** Yes, the intention is to have a fixed term for the commissioner and for the deputy commissioners a maximum of—

**Mr. Imbert:** I do not think that is good law. Why would you want to make it a fixed term of five years? Why not a maximum of five years?

**Mrs. Persad-Bissessar:** Because you have something where you cannot give a complete security of tenure for the fixed term of five years unless for cause; you would have some measure of security of tenure that could ensure some kind of independence in functioning.

If you look at the case law, the jurisprudence, you would see in senior appointments such as these that they are given. You would find case law saying you give two years or a maximum of five years. You have a kind of control over them. You can look at the Central Bank Act, for example, and the setting of that board. Several of the very important boards with financial implications, you would find the findings of judges that you do not want to put one or two, because then you always have them in grip. The possibility for abuse is far greater than if you give them this fixed five-year term, unless you show cause or otherwise as to why they should be removed.

**Mr. Imbert:** Would the President be able to remove this person?

**Mrs. Persad-Bissessar:** I am sorry.

**Mr. Imbert:** The President, which is the Cabinet—that was the other point.

**Mrs. Persad-Bissessar:** Only for cause.

**Mr. Imbert:** Right.



**Mrs. Persad-Bissessar:** You cannot get up with a “vaps” one morning and if you do not like a decision, revoke it; it would have to be for a cause.

**Mr. Imbert:** Why is this person being appointed—?

**Mrs. Persad-Bissessar:** I am being advised it is in clause 12(1), you will see it.

**Mr. Imbert:** Why is this person being appointed by the Cabinet rather than the President of the Republic?

**Dr. Moonilal:** The commissioner is appointed by the President.

**Mr. Imbert:** The way it is written this means Cabinet. This would be on the advice of the Secretary to the Cabinet. This is not the President of the Republic.

**Dr. Moonilal:** That is the policy.

**Mr. Imbert:** Why? You are appointing this person for five years; one Cabinet is binding another Cabinet. Why would you want to do that?

**Dr. Moonilal:** I am told that is the policy position that we would wish the person to be appointed by the President.

**Mr. Imbert:** Yes, but the way it is written it means Cabinet.

**Dr. Moonilal:** And that is the policy at this time.

**Mr. Imbert:** So that the Cabinet will appoint this person for a fixed term of five years?

**Dr. Moonilal:** The President makes the appointment.

**Mr. Imbert:** No, the Cabinet makes the appointment. The President just signs the instrument.

**Dr. Moonilal:** That is the policy.

**Mr. Imbert:** So the Cabinet will appoint this person with all these powers for a fixed term of five years.

**Dr. Moonilal:** You understand clearly the intention.

**Mr. Imbert:** That is your policy.

**Dr. Moonilal:** You understand well.

**Mr. Imbert:** We cannot agree with that.

*Question put and agreed to.*

*Clause 8 ordered to stand part of the Bill.*

*Clause 9.*

*Question proposed,* That clause 9 stand part of the Bill.

**Mrs. Gopee-Scoon:** Mr. Chairman, I still have an issue with 9(2)(a) and 9(c) with regard to conducting audits and investigations and hearing representations where audits could be conducted against the Cabinet and the Office of the President. Is that really what you intend to do, conduct audits and investigations upon the Cabinet and the President? In clause 9(2)(c) you are talking about representation from the head of a public body, et cetera. Is the President or the Prime Minister going to be called upon to make representation?

**Dr. Moonilal:** If you look at clause 20 it requires consent to undertake such an audit. You can undertake the audit, but it requires consent pursuant to clause 20.

**Mrs. Gopee-Scoon:** Okay. I still have another query under clause 9.

**Mr. Chairman:** Okay. Are you still on clause 9?

**Mrs. Gopee-Scoon:** Yes, I am.

**Mr. Chairman:** Okay.

**Mrs. Gopee-Scoon:** Clause 9(2)(c) reads and suggests that the mandatory code of conduct is going to be dealt with after. In other words, it does not form part of the legislation, and I had raised my concern about that. Yes, we had talked about having different codes of conduct, and I can see it being applicable to the private sector, because of the variances in the private sector and so on, but with regard to the public service, my feeling is that there can be and that there is merit in having a standardized code of conduct and, of course, having it included in the primary legislation. I know it will take much doing if you are going to agree to this, but I still think it is very worthy of consideration.

**Dr. Moonilal:** Member for Point Fortin, I am advised that because of the differences in the private sector and the complexity, which you yourself have identified, that would have to be developed as we go along to deal with the specific sectors and so on, it cannot be generalized.

**Mrs. Gopee-Scoon:** I accept the argument somewhat for the private sector, but for the public sector, and I am agreeing that as go along with the developments in the whole technology area and so on, you will have developments which, again, I said should come before Parliament.

If you had looked at overseas legislation—I do not know if you looked at the UK legislation and also the joint select committee which I referred to in the House of Lords—you would have seen the arguments clearly enunciated after they have done this for so many years, that there is relevance in having a standardized code with regard to public bodies and then you have subsequent representations made after.

**Dr. Moonilal:** Member for Point Fortin, Part III deals with that standardized code for the public sector.

**Mrs. Gopee-Scoon:** Sorry?

**Dr. Moonilal:** Part III of the Bill deals with the standardized code for the public sector.

**7.45 p.m.**

**Mrs. Gopee-Scoon:** Well, it is not clear that that is a standardized code, the language does not say that.

**Dr. Moonilal:** They deal with the rules for the public sector, Part III.

**Mrs. Gopee-Scoon:** There were rules that were laid out I believe it was six, but I am saying if the intention was that this is the mandatory code of conduct, then the words would say that. It would be very clear language and I have not seen the language except you could enlighten me.

**Dr. Moonilal:** Part III of personal data by public bodies, so it spells out the roles, the requirements and the rules. The entire part deals with that.

**Mrs. Gopee-Scoon:** No—well let me tell you—I mean the language would be very clear. If you have something and you are making reference right throughout the legislation about these codes of conduct and so on, why if it is that you are enunciating that in the legislation, why have you left out the language, the clear words?

**Mr. Chairman:** Members, we have a small procedural matter to address.

*House resumed.*

#### PROCEDURAL MOTION

**The Minister of Housing and the Environment (Dr. Roodal Moonilal):** Mr. Speaker, pursuant to Standing Order 10(11), I beg to move that this House continue with the business at hand, the Data Protection Bill 2011, continue through all stages and proceed to the next Bill, the Miscellaneous Provisions (Ministry of Justice) Bill, through all its stages.

*Question put and agreed to.*

**DATA PROTECTION BILL**

*Committee resumed.*

**Mr. Chairman:** Member for Point Fortin.

**Mrs. Gopee-Scoon:** I am waiting for a response.

**Dr. Moonilal:** The response is that the mandatory code is for the private bodies as it states here in clause 9, the commissioner in carrying out his powers, after hearing representations from the head of a public body or an organization subject to a mandatory code of conduct; that organization is the private sector because the public is already captured in Part III.

**Mrs. Gopee-Scoon:** Well, under private bodies, the question of the mandatory code of conduct is dealt with there, and we could deal with it there, but we are dealing now with the public bodies and I am asking you and you are saying it is under Part III, but if you want we may leave it for then and then we could look at it but there are no clear words which say this is the mandatory code of conduct. It does not say it.

**Dr. Moonilal:** Organized private bodies not public bodies, he is just hearing representations from them.

**Mrs. Gopee-Scoon:** Oh no, it also qualifies public bodies, I am not sure if your read it. I mean—

**Dr. Moonilal:** An organization subject to a mandatory code of conduct.

**Mrs. Gopee-Scoon:** Well, then, you see the merit in giving a clear, clear definition for organization because now you are trying to delimit between the both, that is why I asked for the clarity of the word “organization” in the definition section.

**Dr. Moonilal:** Head of a public body is already defined and clear so it cannot be head of the public body, it has to be organization. I want to move on, Mr. Chairman.

**Mrs. Gopee-Scoon:** Could you repeat that please? Could you repeat what you just said?

**Dr. Moonilal:** The head of a public body is defined and identifiable and clear so that the mandatory code of conduct relates to an organization. There is no ambiguity.

**Mr. Chairman:** Member for Point Fortin.

**Mrs. Gopee-Scoon:** I still believe that you should be very explicit about what is an organization then, and you refuse to; you said it was very wide. I am not satisfied about it but again—

**Mr. Chairman:** All right, I would like to put the question at this time.

**Mr. Imbert:** Mr. Chairman, I would like to deal with a number of clauses. You are going to 22, right?

**Mr. Chairman:** Let us go with clause 9.

**Mr. Imbert:** You just dealing with 9?

*Question put and agreed to.*

*Clause 9 ordered to stand part of the Bill.*

**Mr. Chairman:** The question is that clauses 10 to 22 stand part of the Bill.

**Mr. Imbert:** Clause 18.

**Mr. Chairman:** We put that question again. The question is that clauses 10 to 17 stand part of the Bill.

*Clauses 10 to 17 ordered to stand part of the Bill.*

*Clause 18.*

*Question put, That clause 18 stand part of the Bill.*

**Mr. Chairman:** I think the hon. Member would like to raise a matter.

**Mr. Imbert:** Yes, the qualifications of the commissioner are spelt out in 8(2). We had quite a discussion on the qualifications and what is the meaning of training and experience, et cetera, and we did not agree, and now in 18(1) you are delegating the powers and duties and functions of the commissioner to any person, with or without qualifications, experience or training. So this means that the commissioner, the highly qualified attorney-at-law with economics, training, et cetera, will now delegate this function to somebody in primary school, because there are no qualifications, training or experience for the person he is delegating the powers and functions to. You have not qualified the person.

**Dr. Moonilal:** Yes, Mr. Chairman, the commissioner himself or herself, would already be qualified by virtue of their ten years and their other experience and training and so on, and would be reasonable and rational. You do not expect that person to appoint a Member of the Opposition to—*[Interruption]*

**Mr. Imbert:** No! No! No! No way, this is giving the commissioner carte blanche to delegate his functions to anybody without qualifications. This is unacceptable, unacceptable.

[*Crosstalk*] [*Short pause*]

Leader of Government Business, this will include recruiting staff, appointing inspectors, et cetera, et cetera.

**7.55 p.m.**

**Dr. Moonilal:** Member for Diego Martin North/East, we are proposing to qualify that person to be delegated with the authority of the commissioner. To use the same language of the Bill in another section, “according to their qualifications for the purposes of this Act”, and to indicate that we are willing to consider this further and, if need be, to make an appropriate amendment.

**Mr. Imbert:** You need to, because that is a little too ambiguous.

**Dr. Moonilal:** So it should read:

“Subject to subsection (2), the Commissioner may authorize any person according to their qualifications, for the purposes of this Act, to exercise or perform...”

**Mr. Imbert:** I prefer: “with appropriate qualifications”

**Dr. Moonilal:** What is “appropriate qualifications”?

**Mr. Imbert:** That is the English meaning. That would be determined by a court. “with appropriate qualifications for the purposes of the Act”.

**Mr. Chairman:** Let me put the question on the amendment. In clause 18(1) after “person” insert “according to their qualifications for the purposes of this Act.”

So it reads:

“Subject to subsection (2), the Commissioner may authorize any person according to their qualifications, for the purposes of this Act, to exercise or perform, subject to such restrictions or limitations as the Commissioner may specify, any powers, duties or functions of the Commissioner.”

**Mr. Imbert:** Could you please explain what that means, because it does not make sense?

**Dr. Moonilal:** It qualifies the person, so that person is not the janitor or the driver in the car park; the person’s qualifications pursuant to the purposes of the Act.

**Mr. Imbert:** What is the meaning of the words, “according to their qualifications for the purposes of this Act”? It seems rather meaningless to me.

**Dr. Moonilal:** If the commissioner is required to be a lawyer with training and experience in economics, finance, information technology, audit, human resource, one would think that those would be qualifications pursuant to the purposes of the Act, as opposed to nuclear technology or something.

**Mr. Imbert:** What is the meaning of the phrase? I understand “for the purposes of this Act”. What is the meaning of “according to their qualifications”? What is the meaning of the word “according” in there?

**Dr. Moonilal:** The same meaning as “appropriate”.

**Mr. Imbert:** Accordingly, I cannot agree with you that it means “appropriate”. I do not think you are appropriate.

**Mr. Imbert:** It does not mean the same thing. This is badly drafted law.

**Dr. Moonilal:** We are going with that.

**Mr. Imbert:** You are going down the same road we went in 2009.

**Dr. Moonilal:** We make the commitment that we are prepared to consider further.

**Mr. Imbert:** You are taking bad advice.

*Question put and agreed to.*

*Clause 18, as amended, ordered to stand part of the Bill.*

*Clause 19.*

*Question proposed, That clause 19 stand part of the Bill.*

**Mrs. Gopee-Scoon:** Clause 19(3)(e), “to examine either alone or in the presence of any other person”, could we find another word for “any other person” so that we can rule out a vagrant, let us say. I do not think that is the intention, so perhaps “witness”.

**Mr. Imbert:** Certainly you would want to, at least, use the word “suitable” inside here; at the very least. I can assure you, Leader of Government Business, you spoke about this at length, this formulation “any other person” and you were not in agreement with it.

**Dr. Moonilal:** What does suitable mean?

**Mr. Imbert:** English meaning, a court will determine that; at least you have something. Right now you have nothing.

**Dr. Moonilal:** “to examine either alone or in the presence of any other suitable person”—it could be a spouse.

**Mr. Imbert:** That would not be suitable for the purposes of the Act. It has to be consistent with the policy of the Act.

**Dr. Moonilal:** The “any other person” has to be pursuant to the Act.

**Mr. Imbert:** You are not qualifying the person. You did not say that; you have not said that. When you put the word “suitable” it brings it into the policy of the Act.

**Dr. Moonilal:** It creates more complexity.

**Mr. Imbert:** It does not. It is in many pieces of legislation.

**Mr. Chairman:** May I put the question now?

**Mr. Imbert:** No, no; we still have queries on this clause. Let us deal with this first.

**Dr. Moonilal:** “deems necessary for the purposes of this Act”—

**Mr. Imbert:** Do you want to put in “reasonably” after “Inspector”?

**Dr. Moonilal:** “to examine either alone or in the presence of any other person as the Inspector deems necessary for the purposes of this Act”.

**Mr. Imbert:** “reasonably deems necessary”.

**Dr. Moonilal:** “deems necessary for the purposes of this Act”.

**Mr. Imbert:** It has to be reasonable. You are giving this inspector the power to bring anybody he wishes. You had used the example of a sister and a brother going to examine bank records. You yourself used that example.

**Dr. Moonilal:** We are prepared to go with:

“to examine either alone or in the presence of any other person...”

We are just inserting after “deems necessary”, the words, “for the purposes of this Act”. It cannot be somebody who is the janitor.



**Mrs. Gopee-Scoon:** Could you not still consider “suitable”?

**Dr. Moonilal:** “for the purposes of this Act” will bring suitable.

**Mr. Imbert:** Mr. Chairman, I have a query on 19(3)(f). Would 19(3)(f) apply equally to the private sector?

**Dr. Moonilal:** The answer is “yes” and there are circumstances that prescribe how that is to be done.

**Mr. Imbert:** I saw only the application for a warrant with respect to a public body. Where is the application for the warrant with respect to the private body?

**Dr. Moonilal:** The application for the warrant in respect of private property? It is here. We are getting it for you. It. Is here. We are looking for it. We can proceed.

#### **8.10 p.m.**

**Mr. Imbert:** The point I am making is that the power of the Inspector to seize and detain in the article is contained in clause 19. If you go to clause 20 and 21 you will see that when this kind of action is taking place the head of the public body can refuse and then the inspector will have to go and get a warrant. But there is no other clause in the Bill which overrides clause 19(f) as it relates to private bodies. It deals with other clauses but not the power given in 19(f). In fact, none of the powers in 19(f) are overridden by any other clause.

**Dr. Moonilal:** Clause 21(2):

“Where a private enterprise refuses to allow the Commissioner or any other person acting for or under him to enter and inspect premises...the Commissioner may apply to a Magistrate for a warrant to so enter and inspect.”

**Mr. Imbert:** That is under clause 21. Because it says to enter and inspect premises under subsection 1(a) of 21, but there is nothing that restrains the inspector acting under 19.

**Dr. Moonilal:** But you asked about the private.

**Mr. Imbert:** No. 19 is followed by 20 and 21, where public bodies can refuse to allow an inspector to act under his powers in section 19, but there is no provision for the private sector which allows them to object to the powers of the inspector in clause 19. Only the public sector can object, not the private sector. Because if you look at 21, it is specific to 21, not to 19.

**Dr. Moonilal:**—and you are conducting the audit?

**Mr. Imbert:** No an enquiry and an inspection.

**Dr. Moonilal:** Subject to 20 and 21.

**Mr. Imbert:** No, no, no. Show me where 19 is subject to 20 and 21, please.

**Dr. Moonilal:** Look at 19(3). You are seeing it? You spent a lot of time reading my speech, you see.

**Mr. Imbert:** Yes, I apologise.

**Mr. Chairman:** Before I put this question, Members, this is 19(3)e, I think the amendment as proposed seems to be redundant, because what you are saying is that “deems necessary for the purposes of this Act with respect to the observance of the provisions of this Act”. I see that as redundant. What does that do?

**Dr. Moonilal:** The point there is that it qualifies the person, which was the problem raised by the Member earlier, as opposed to the—it sounds redundant—it has a flow—but it is not—

**Mr. Chairman:** May I put the question? In clause 19(3)e after the words “deems necessary” we insert the following words “for the purposes of this Act.”

**Mr. Imbert:** Can we go back to this?

**Mr. Chairman:** No, let me put this question

**Mr. Imbert:** Which one is this?

**Mr. Chairman:** 19(1). You want to go back to 19? I am dealing with clause 19. You are stopping—

**Mr. Imbert:** I am on 19 still. Because 21(2) and 21(1) refer to an audit or enquiry of compliance practices but 19 refers to an inspection. And it says at 21(2) “Where a private enterprise refuses to allow the Commissioner or person acting for...him to enter and inspect premises under subsection 1(a)...”of 21, which is an audit or an enquiry. But what about a basic inspection that is neither an audit nor enquiry?

**Dr. Moonilal:** [*Inaudible*] has to obtain a warrant

**Mr. Imbert:** I am not disputing that. What I am saying is that the inspector can conduct an audit, conduct an enquiry or a simple inspection. And 21(2), does

not cover the inspection aspect of the thing. In other words you could just walk into a place and inspect books. It is not covered for the private sector.

**Dr. Moonilal:** The inspection is not covered?

**Mr. Imbert:** No. The objection to an inspection, because in clause 20 you give the Cabinet, et cetera, the right to object to the officer doing an inspection. But in 21, you only give them the right to object to an audit or an enquiry, not an inspection. A person can just come in and take the books. They are not auditing, they are not enquiring, they are coming to inspect.

**Dr. Moonilal:** We are advised that 19 is subject to 20 and 21 and it covers that.

**Mr. Imbert:** I am well aware of that. But 21, does not cover an inspection; 21 speaks to an audit or enquiry only.

**Dr. Moonilal:** (2) says enter and inspect.

**Mr. Imbert:** For the purpose of an audit or an enquiry.

**Dr. Moonilal:** You are saying inspect for just inspection sake?

**Mr. Imbert:** Yes, that is what 19 allows the inspector to do, to go into any place and seize any book at any time. It does not have to be for the purpose of an audit or an enquiry.

**Mr. Moonilal:** —for no enquiry.

**Mr. Imbert:** No, just to go in there to inspect.

**Dr. Moonilal:** Just to go in there to inspect.

**Mr. Imbert:** To see whether there is an enquiry—no, no, no. You are going to gather information to see whether there is a breach of the Act. It is neither an audit nor an enquiry. And that is the real danger in this legislation. These inspectors can just enter premises and take away information. They do not have to be doing an audit, they do not have to be doing an enquiry. Because you are giving the inspector to do anything they consider to be necessary, if you look at 19. Leader of Government Business, let me take you to 19 (3)(c). Look at 19(3)(c).

**Dr. Moonilal:** (1) and (2) give broad powers to enter and inspect.

**Mr. Imbert:** Just look at 19 (3)(c) for me, please; 19(3)(c) and (d).

**Dr. Moonilal:** Yes?

**Mr. Imbert:** It is not tied to an audit or an enquiry. The inspector has the power to make such examination, inspection, investigations and enquiries as may be necessary.

**Dr. Moonilal:** [*Inaudible*] powers there and is subject to 20 and 21.

**Mr. Imbert:** But 21 does not capture it at all. I see you want to be difficult, it is okay, no problem. Press on. Bad law.

**Dr. Moonilal:** Let us press on.

**Mrs. Persad-Bissessar:** If you are looking at (c) what is the purpose of giving the power under (c)? It is for enquiries as are necessary to ascertain whether the Act is being complied with. In other words, being in compliance with the Act. And when you go down into 21(1), “conducting an audit or an enquiry into compliance”. So there is nothing different in 19(c)—the power given in 19(c). What is the power given for?—compliance, to check for compliance, to inspect for compliance 19(c) “to make such examinations, inspections”—for what? —“as may be as necessary to ascertain whether in this Act is being complied with.” In other words, for compliance. And when you come to 21, that is what it is saying as well. Commissioners conducting audit or enquiry into compliance—enquiries into compliance.

**Mr. Imbert:** That is the formal stage that takes place afterwards. I am talking about before that.

**Mrs. Persad-Bissessar:** That is before that. What is an enquiry? Conducting an audit or enquiry. Why is he enquiring? It is for compliance. With due respect, unless I am advised otherwise, I do not see a problem with what is happening here.

**Mr. Imbert:** Okay.

**Mrs. Persad-Bissessar:** Both are for the purposes of compliance. Inspecting and doing whatever for ascertaining compliance. I have read 19, 20 and 21.

**Mr. Imbert:** Understood. If you read clause 19 in its entirety you will see that the Inspector has powers beyond conducting an audit or an enquiry. He can simply enter and see whether a person is in—

**Mrs. Persad-Bissessar:** It is subject to 20 and 21. Whatever power is given in 19, it reads specifically is subject to 20 and 21. 19(3); An inspector shall, subject to 20 and 21, have power to do all these things. Subject to 20 and 21.

**Mr. Imbert:** Correct.

**Mrs. Persad-Bissessar:** But whatever power you have devolved upon you only because of what happens in 20 and 21.

**Mr. Imbert:** In 21 you can object only if an audit or an enquiry is being carried out; not if somebody simply enters your premises.

**Mrs. Persad-Bissessar:** Audit or enquiry, it is not an audit.

**Mr. Imbert:** If you look at 19(3)(e) for example—I know you want to go with what you have, you know; but it is obvious that this inspector can go in without conducting an enquiry or an audit and just seize books. If you say so. You are going down the same road.

**Mr. Chairman:** May I put the question?

*Question put and agreed to.*

*Clause 19, as amended, ordered to stand part of the Bill.*

*Clause 20.*

*Question proposed, That clause 20 stand part of the Bill.*

**Dr. Moonilal:** Mr. Chairman, insert after the words “with respect to” the words “the Office of the President,” in the second line. This is consequential upon our earlier amendments. 20(3) in the second line, after the words “with respect to” we insert the words the “Office of the President,”.

**Mrs. Gopee Scoon:** Then correspondingly you would also want to look at including it after only “with consent”?

**Dr. Moonilal:** Yes, we are coming to that, in the seventh line, insert after the words “consent of” the words “the President”. And in the ninth line insert after the words “Presiding Officer” the words “the Chief Administrator.”

**Mrs. Gopee-Scoon:** One question. I was distracted a little there. But would you want to exempt the Head of the Executive Council? When you speak about only with the consent of the President, the Speaker, the President of the Senate, the Head of the Cabinet, Chief Justice, presiding officer or head of the Executive Council, do you want to allow them that exemption?

**Mrs. Gopee-Scoon:** In other words I find it justified with the President; the Speaker of the House of Representatives or the President of the Senate, the Head of the Cabinet, the Chief Justice, but I think it should end there.

**8.20 p.m.**

**Dr. Moonilal:** Number nine, line 9; the Chief Administrator, we also have to include the “Chief Secretary,”

**Mr. Chairman:** Members! A response; I am waiting on a response.

**Dr. Moonilal:** Mr. Chairman, the Head of the Executive Council is included because the Executive Council is named above.

**Mrs. Gopee-Scoon:** Sorry?

**Dr. Moonilal:** The Executive Council is named above, so we needed to include that. It is on the 6th line, so we would go with that.

**Mr. Chairman:** The question is that clause 23 be amended as follows.

**Mr. Imbert:** Have we passed clause 20?

**Mr. Chairman:** Yes—sorry, no, we are now at clause 20.

**Mr. Imbert:** Oh, clause 20, yes. Oh, clause 20(3).

**Mr. Chairman:** Yes.

**Mr. Imbert:** Clause 20(5): “The Parliament; the Cabinet; the Court of Appeal; the High Court; the Industrial Court; the Tax Appeal Board; any court; the THA”; et cetera, would all substantial numbers of people where there would be personal records, including sensitive personal information—why are you exempting these employers from the provisions of this Act? The Parliament is an employer?

**Mrs. Persad-Bissessar:** The heads.

**Mr. Imbert:** No, no. The head is being empowered to refuse permission to the commissioner to enter and inspect records of Parliament, the Cabinet, courts, Industrial Court, THA, et cetera; they all employ large numbers of people.

**Dr. Gopeesingh:** An employee must have a place of residence. They can go to the residence.

**Mr. Imbert:** No, I am talking about official records.

**Dr. Gopeesingh:** No, if an employer is within a public body they have an official residence.

**Mr. Imbert:** No, no, you misunderstand. It is all right I would explain to you, but you do not understand. *[Laughter]*

**Mr. Chairman:** Are you proposing an amendment here?

**Mr. Imbert:** Yes, I would like to know what the policy is? Since this Act is about protecting private information, does that mean the employees of the Parliament, the employees of the judicial system, the employees of the Cabinet? They are not going to be protected by this law because it means that the head of those bodies can simply refuse. Why? What is the policy? I would like to know. In the Parliament we have all ranges of people and there would be all sorts of sensitive information with respect to employees of the Parliament. For example, within the court system we have a whole range of workers with sensitive information. Why are you exempting the employers in these institutions from this Act? Why?

**Dr. Moonilal:** As a matter of policy it is not wise to compel those heads. This is consistent with the 2009 Bill that was presented.

**Mr. Imbert:** That is why we sent it to a joint select committee, because this is an offensive clause.

**Dr. Moonilal:** No, that was not why.

**Mr. Imbert:** That is one of the reasons. What about the THA? Every employee in the THA is now exempt from this thing; you cannot get access to their personal records.

**Dr. Moonilal:** They are not exempt; it is just that you cannot—

**Mr. Imbert:** The Head of the THA can refuse to allow the inspector to enter the THA and access the records of the employees there. Why? I think you are discriminating against employees in these places. That is not fair. *[Interruption]* No, because (5) says that subsection (4) does not apply to anybody in subsection (3). You cannot go to the court. Hon. Prime Minister, I have a suggestion. Can we take the vote on this at the next sitting of the Parliament? Because we can reduce our issues to writing, send them to you and perhaps some amendments can be made at the next sitting. One week or four days is not going to kill you. You have a sitting on Wednesday and could we finish the committee stage then?

**Dr. Moonilal:** This reflects the policy of Government.

**Mr. Imbert:** Is it your policy that employees of the Tobago House of Assembly will not be protected by this law?

**Mrs. Persad-Bissessar:** No, because there is a clause—they are looking for it—which I am advised, gives a remedy to a person who is aggrieved.

**Mr. Imbert:** Yes, but that is very complex. Why should an employee in these places have to trigger a grievance mechanism?

**Mrs. Persad-Bissessar:** You know why? It is where the head of the public body refuses—for example that public body is the Chief Justice, that public body is the Speaker, that public body is the President of the Senate, every one of the institutions.

**Mr. Imbert:** No, that is the head.

**Mrs. Persad-Bissessar:** Wait a second, (4) says where the head refuses to allow the information you can then apply for a warrant.

**Mr. Imbert:** No!

**Mrs. Persad-Bissessar:** Wait a second let me finish and then you may speak. Section 20(3) and (4)—

**Mr. Imbert:** No, you have to stay there, go to (5).

**Mrs. Persad-Bissessar:** Well, I have to go to (3) and (4) before I can get to (5), with due respect. So (3) is saying: a Commissioner can exercise his powers and so on here, and then we have added “with the consent”; then we come to (4), but if the head refuses—the head being the President, the Speaker, the Prime Minister, whoever these are, so to do, then (4) says, you can get a warrant, and that is the policy decision. Then (5) says we will not apply this getting of a warrant for the public bodies referred in subsection (3), which is the President, the Speaker, the Chief Justice; so the commissioner cannot go for a warrant against these offices.

**Mr. Imbert:** Which means that employees of the Parliament, the Tobago House of Assembly, the Tax Appeal Board, et cetera, they are not given the same protection under this law as other employees. They have to institute a grievance.

**Mrs. Persad-Bissessar:** They have a remedy.

**Mr. Imbert:** They have to go through a grievance mechanism.

**Mrs. Persad-Bissessar:** They have a remedy. I am advised that it is clause 64.

**Mr. Imbert:** Yes, but that is a complex procedure.



**Mrs. Persad-Bissessar:** “A person aggrieved by a decision of the Commissioner...may apply to the High Court for Judicial Review.”—Which is the other one?

**Mr. Imbert:** No, but that is a decision of the commissioner. That does not apply.

**Mrs. Persad-Bissessar:** Okay, let me finish 83(3)—

**Mr. Imbert:** That does not apply. There is no 83(3).

**Mrs. Persad-Bissessar:** But this would not be a decision of the commissioner.

**Mrs. Persad-Bissessar:** This is where the head of the body refuses; does not give consent.

**Mr. Imbert:** This is a flaw. I do not see what the problem is you know.

**Mrs. Persad-Bissessar:** We would not want the commissioner going for a warrant against the President, the Chief Justice and so on. I see your concern—

**Mr. Imbert:** But surely you could have another person—a permanent secretary or someone—the Clerk in the case of the Parliament for example, in case of the Judiciary, the chief administrative officer or the corresponding person—

**Mrs. Persad-Bissessar:** Now, there may be another formula, but most certainly, it cannot be that you are authorizing a commissioner to obtain a warrant against the Chief Justice of this country, a President of the Republic, it cannot be right.

**Mr. Imbert:** Nobody would want that, but what you do not also want is that these employees are not given the protection of the law.

**Mrs. Persad-Bissessar:** Then there would be a different formula, we can offer them a different remedy.

**Mr. Imbert:** No, putting in that in that particular case the head will be the senior administrative person, like the Chief Administrator in Tobago.

**Mrs. Persad-Bissessar:** That is another problem.

**Mr. Imbert:** Why is that a problem? How can you have different classes of people in this country? Just because you are an employee of the Parliament or of the courts you are not afforded protection under this law? That is wrong! That is injustice! That is why I am saying, come back on Wednesday and fix it.

**Dr. Moonilal:** Member for Diego Martin North/East, it is something to consider further and we are prepared to look at a remedy and place it in the Bill when this goes to the Senate.

**Mrs. Persad-Bissessar:** Within the Bill. I understand your point, you are providing a remedy and counsel has advised of two remedies, but they are all remedies as against the commissioner. I take your point it is a remedy as against the refusal. In law, you may well know that once there is discretion and that discretion is the JR, you have to access the courts for any discretionary decision that is made. What is being suggested, we may put a clause in for the avoidance of doubt and out of an abundance of caution that we give them that right expressly rather than leaving it for by implication for the JR Act to kick in. So it is something that we can look at, but I think, in the public interest it must be that the public policy is such that you cannot really take these offices to court to obtain a warrant against them in court for matters such as this.

**Mr. Imbert:** Yes, but I have a different suggestion. I agree that it might not be a good idea to have a warrant taken out against the President or the Chief Justice, but I do not agree that employees in these public offices should not be protected by the law and what I am suggesting is rather than causing them to go through a grievance mechanism, that an offence be created to protect them by way of designating another person within these public offices—I see no reason why the Clerk in the Parliament could not be the public officer.

**Mrs. Persad-Bissessar:** And I am saying to you we would consider it.

**Mr. Imbert:** Fine!

**Mrs. Persad-Bissessar:** We would look for a remedy to ensure—

**Mr. Imbert:** I think that is the way to go.

**Mrs. Persad-Bissessar:** We would look for a remedy, that is one suggestion that was made; you have made another and we would look at it. I mean there is no intention that we discriminate against any employees. So we would look at what is possible; we give that undertaking in terms of ensuring that no employee is discriminated against.

**Mrs. Gopee-Scoon:** Can I please make a suggestion? I have looked at another jurisdiction, I do not now remember if it is the UK, but there is someone who is appointed called a data comptroller rather than saying, the head of the particular bodies and so on, that there is somebody appointed in every organization and that person is called a data comptroller, so perhaps you can look at that.

**Mrs. Persad-Bissessar:** We would look at the positions and deal with them before the Bill is dealt with in the Senate.

*Question put and agreed to.*

*Clause 20, as amended, ordered to stand part of the Bill.*

**8.35 p.m.**

*Clauses 21 and 22 ordered to stand part of the Bill*

*Clause 23*

*Question proposed, That clause 23 stand part of the Bill.*

**Mr. Imbert:** In clause 23, Mr. Chairman, why you are making potentially libellous or slanderous information inadmissible as evidence in court? I am talking about in defamation proceedings. I would think that if somebody writes a letter that has libellous statements in it and the person who has been libelled comes in possession of that letter, you are now preventing them from taking action for defamation of character.

**Mr. Hypolite:** Mr. Chairman, once again I want to share with my colleague from Diego Martin North/East, for us to consider going back with the Bill, doing some cleaning up of it and coming back. We will also put forward some suggestions and come back on Wednesday. We meet again on Wednesday and you know, I would like to it put forward—*[Interruption]*

**Mrs. Persad-Bissessar:** When would you be able to give us your concerns in writing?

**Mr. Imbert:** By Monday.

**Mrs. Persad-Bissessar:** In writing?

**Mr. Imbert:** I have answered the question.

**Mrs. Persad-Bissessar:** Are you all agreeing? Are you agreeing? You have a different view?—

**Mr. Imbert:** On Monday, in writing—*[Interruption]*

**Mrs. Persad-Bissessar:** I heard you Sir, but I heard some noises—

**Hon. Member:** He is speaking for himself, he is not speaking for—

**Mr. Imbert:** You have some concerns, Donna?

**Mrs. Persad-Bissessar:** [*Interruption*] Yes he will be ready, he works hard. Through you, Mr. Chairman, I respectfully agree, that we will take your concerns in writing—

**Mr. Imbert:** Thank you very much.

**Mrs. Persad-Bissessar:**—and take the rest of the committee stage on Wednesday when the House will sit again. In the meantime we will also get the *Hansard* and have the counsel look at it—CPC look at it—in terms of issues raised.

[*Short Pause*]

Hon. Members, if I may suggest—you said you would be prepared to put some of your concerns in writing by Monday and we appreciate that. I am wondering if there will be any usefulness in meeting—a small team of you meeting a small team with the AG and the others to go through those, so when we come Wednesday night, on Wednesday we will not be here—[*Interruption*]

**Mr. Imbert:** If we are having a meeting, it cannot be on Monday because we have all this Joint Select Committees, and so on. If you are doing that, it will have to go to Friday, we do not mind. But you could put it to Friday and then we can have a meeting sometime during the week.

**Mrs. Persad-Bissessar:** What are we doing on Friday? That will be better than we come here and be doing this. So, can we get a day when you will be prepared to meet?

**Mr. Imbert:** Wednesday? No, Wednesday is Parliament. Tuesday?

**Mrs. Persad-Bissessar:** Tuesday is Senate. But then—

**Mr. Imbert:** We have no Senators here.

**Mrs. Persad-Bissessar:** We have no Senators here, but I do not know if we may want Senators—our AG will be in the Senate too. What about Wednesday, before the Parliament sitting? What about before the Parliament sitting? The sitting is at 1.30 p.m, do you want to meet Tuesday morning or Wednesday morning? It is up to you.

**Mr. Imbert:** Wednesday will not be good. What is the problem with Tuesday?

**Mrs. Persad-Bissessar:** No problem.

**Mr. Imbert:** Well Tuesday then.

**Mrs. Persad-Bissessar:** Tuesday morning, great, 10.00 a.m.

**Mr. Imbert:** 11.00 a.m. I have just been reminded I have set a meeting of the Public Accounts Committee for Tuesday. So Tuesday is out, but it could be in the afternoon, Hon.

**Mrs. Persad-Bissessar:** My Senator, the AG.

**Mr. Imbert:** Oh, right the AG.

**Dr. Moonilal:** Wednesday morning.

**Mrs. Persad-Bissessar:** Wednesday, before Parliament; 11.00 a.m. on Wednesday, Committee Room 3. The AG will be present. Thank you— [Crosstalk] completion of the Committee stage the following Friday.

**Mr. Chairman:** Having regard to what has transpired, the House shall now resume.

*House resumed.*

**8.45 p.m.**

#### ARRANGEMENT OF BUSINESS

**The Minister of Housing and the Environment (Hon. Dr. Roodal Moonilal):** Mr. Speaker, pursuant to Standing Order 37(3) I beg to move that debate on the Data Protection Bill, 2011 be adjourned to Friday February 11, 2011.

*Agreed to.*

#### MISCELLANEOUS PROVISIONS (MINISTRY OF JUSTICE) BILL

*Order for second reading read.*

**The Minister of Justice (Hon. Herbert Volney):** Thank you, Mr. Speaker.

I beg to move, That a Bill to amend certain enactments to provide for the vesting of functions and powers in the Minister of Justice be now read a second time.

The Bill, shortly entitled the Miscellaneous Provisions (Ministry of Justice) Bill, 2011, seeks to amend five pieces of legislation in order to enable the Minister of Justice to effectively discharge certain responsibilities assigned to him under section 79 of the Constitution of the Republic of Trinidad and Tobago.

The first piece of legislation is Act No. 21 of 1999 and that is the Criminal Injuries Compensation Act. Clause 2 of the Bill seeks to amend this Act, that is, the Criminal Injuries Compensation Act, Chap 5, No. 31 by deleting the existing definition of “Minister” and substituting a new definition which would enable the Minister of Justice to discharge his responsibilities under the Act.

Previously this unit came under the Ministry of Social Development. It now falls under the Ministry of Justice. The Criminal Injuries Compensation Board was established in 2006 to provide a simple, effective, equitable and humane means whereby a victim of crime or violence can obtain compensation for injuries suffered. These are outlined in the Second Schedule to the Act. At present, the board, which comprises seven members and a secretary, has been appointed and is being convened. The secretary to the board is also the head of the unit.

The vision of the Criminal Injuries Compensation Unit is to meet the needs of the client, that is, victims of crimes or their dependants in Trinidad and Tobago with respect to compassion, professionalism and efficiency. The unit is the administrative arm of the board and the unit processes and investigates all applications and makes a recommendation to the board for its consideration. The decisions of the board are final.

The second bit of legislation is the Justice Protection Act that this Bill seeks to amend. Clause 3 of the Bill seeks to amend the Justice Protection Act, Chap. 5:33, by deleting the existing definition of “Minister” and substituting a new definition which would enable the Minister of Justice to discharge his responsibilities under the Act. The Justice Protection Act is another piece of legislation which seeks to vest functions and powers in the Minister of Justice. This piece of legislation which came into force in 2000 seeks to provide for the establishment of a programme for the protection of certain witnesses and other persons and to provide for matters incidental thereto.

At present, a complete review and analysis of this programme is being conducted in order to ascertain its efficiency and its effectiveness in meeting the needs of those who fall under this programme. Mr. Speaker, you may appreciate that not much more can be said in this regard due to the sensitivity of this area that the Act seeks to address.

We now come to clause 4 of the Bill which seeks to amend the Deoxyribonucleic—you must forgive me if I did not get it right either the first or the second time—otherwise called the DNA Act, that is Chap. 5:34, by deleting the existing definition of “Minister” and substituting a new definition which

would enable the Minister of Justice to discharge his responsibilities under the Act. The DNA Act now falls under the Ministry of Justice. This is the third piece of legislation which seeks to vest powers and functions in the Minister of Justice. This previously fell under the Ministry of National Security. During this year one can expect an amendment to this Act which seeks to empower the court to obtain intimate DNA samples from both accused and convicted persons. The Bill will seek also to expand the definition of the words “skin impression” to include fingerprints, palm prints and hand prints. The amendment Bill has already been drafted and is now before the legislative review committee of the Cabinet.

Next is clause 5 of the Bill, which seeks to amend the Community Service Orders Act, Chap. 13:06, by deleting the existing definition of “Minister” and substituting a new definition which would enable the Minister of Justice to discharge his responsibilities under the Act. The Community Service Orders Act, Chap. 13:06, is the fourth piece of legislation which this Bill seeks to amend and this amendment is seeking the vesting of powers and functions in the Ministry of Justice. Previously, this fell also under the Ministry of Social Development.

It is envisioned that the Community Service Orders Act will shortly be amended—during the course of the year—to make provisions for widening the scope of the powers of judicial officers to deal with issues surrounding the incorporation of title of Community Service Officer along with Probation Officer. The age for placing the offender on community service, the number of hours of community service to be performed under the Act, the days on which service is to be performed to include Saturdays, Sundays and public holidays; compulsory attendance at drug treatment centres or rehabilitation programmes; to upwardly vary the fines for breach of community service; the extension of community service; service of summons for failure to perform common service; the police to be notified of nullification of conviction and liability of organization where offenders suffer injuries. These issues are to assist the strengthening, enforcement and compliance of offenders in the implementation of the Act.

Clause 6 of the Bill seeks to amend the Police Complaints Authority Act, Chap. 15:05, by deleting the existing definition of “Minister” and substituting a new definition which would enable the Minister of Justice to discharge his responsibilities under the Act. Here, I am pleased to say that the Police Complaints Authority was duly established on September 29, 2010 by the appointment of former acting Justice Gillian Lucky and retired Master Ralph Doyle, to the offices of director and deputy director, respectively.

There was a significant period of some four years where there was no authority in place. Unfortunately, not much could have been done during that time as there was no Authority in place. It was this Government that realized the critical role to be played by this Authority in the fight against crime, especially as it related to the eradication of police corruption and serious misconduct by police officers in the execution of their duties.

In the one month that the Authority has been in operation, significant strides have been made toward achieving its mandate and objectives as defined by the Act which governs it. The widespread publicity of the appointment has buoyed the public's confidence in the possibility of recourse with respect to complaints involving police officers and the Authority has seen a doubling in the number of complaints received on a daily basis.

Recognizing the duty to provide the public with prompt, confidential action, the Police Complaints Authority immediately instituted a hotline: 800-2PCA, thereby enabling the public to have 24-hour access to make complaints against police officers for improper and questionable behaviour. Additionally, on its appointment, the Authority was met with a backlog of close to 1,000 complaints. In the short period that has elapsed, measures have been put in place by the Authority to address the speedy resolution of these outstanding complaints, and protocols have been developed for their transparent and effective processing.

Plans are afoot to recruit suitable persons who can assist with the rapid mobilization of this Authority, since the criminality which exists in Trinidad and Tobago Police Service has been identified as one of the most significant impediments in the national fight against crime. It must therefore be attacked with precision and alacrity. The Government is seeking to swiftly find an ideal location for the Authority and to provide it with the requisite resources so it can discharge its functions as mandated in the Act. Furthermore, the Police Complaints Authority Act is being reviewed in order to strengthen the existing powers of the Authority. All proposed amendments to the Act would fortify the Authority as an independent entity of the highest integrity.

Other areas which fall under the Ministry of Justice's portfolio are the Criminal Justice System Reform and Transformation Unit as well as the quicker justice initiatives. This also would include being the driving force behind the construction of new courthouses, badly needed in the country. The public can expect several areas of reform and intervention in this area, starting with the reform of the system of preliminary enquiries. This will take place before the end of the first quarter of this year, 2011, and this is a major area of reform.



Other areas which now fall under the Ministry of Justice are Parole and Prisoner Management; Prison Service Reform and Rehabilitation and the Youth Re-offender Programme. A subsequent piece of legislation shortly will be coming and it will seek to vest powers and functions, as indeed, in this Bill, in the Minister of Justice. This piece of legislation will include the Sentencing Commission Act, Chap. 4:32, the Legal Aid and Advisory Act, Chap. 7:07; the Young Offenders Detention Act, Chap. 13:05; the relevant sections in the Prisons Act and the Prison Service Act, Chap. 13:01 and 13:02, respectively, dealing with prisoner reform and prisoner management, and also the relevant sections in the Immigration Act which deal with deportees and illegal immigrants, all of which now fall under the Ministry of Justice.

**9.00 p.m.**

So very shortly, Mr. Speaker, I give notice that another Bill, another Ministry of Justice (Miscellaneous Provisions) Bill will be presented to this honourable House. This subsequent bit of legislation will also allow the Minister to deal effectively and efficiently with these new areas under the remit and portfolio of the Minister of Justice.

Mr. Speaker, under the Legal Aid and Advice Act, an amendment to which will be coming shortly, the public can expect regulations to deal with the increased fees, payable to attorneys in criminal matters. This is being fast-tracked and is currently within the drafting department in the Ministry of the Attorney General, at the Office of the Chief Parliamentary Counsel.

The public can expect more within the next few months, in that there will be an increased statutory income limit; so that more people will have access to legal aid and advice services especially in civil cases. This will seek to open the doors of access to legal aid. Other interventions in this area will be an increase in the number of in-house attorneys who will do more court work, and also the introduction of a 24 hour roster of attorneys to deal with arrests in different districts. Advertisements for more attorneys for such a roster will go out in the next two weeks.

In the area of criminal offender rehabilitation, I propose to bring a Parole Bill that will be far-reaching in its impact, and a Criminal Records (Rehabilitation of Offenders) Bill. This Bill will seek to establish a criminal records rehabilitation of offenders board, which would consider applications of persons who wish to have their criminal records expunged. This Bill will be deemed a significant component

*Miscellaneous Provisions Bill*  
[HON. H. VOLNEY]

*Friday, February 04, 2011*

of any penal reform programme and seeks to minimize the problems experienced by persons who have been convicted for minor criminal offences, but remain affected by the stigma of a criminal record.

There are many good things coming, [*Desk thumping*] and in order to enable the Minister of Justice to take the steps that the country would like to have this Government take in this shortest possible time, the ministry will have to bring, and the Minister will have to bring enabling legislation to allow the Minister to take his proper place among the statutes, where his name is not, unfortunately, at this time placed. I thank you, Mr. Speaker, and I beg to move.

*Question proposed.*

**Dr. Keith Rowley** (*Diego Martin/West*): Thank you, Mr. Speaker. The Ministry of Justice is a new addition to the arm of the Executive, and therefore, it would not be a surprise to us that we have to make some adjustments. And I think this is what we are doing in identifying specific responsibilities that now lie elsewhere. If one looks at the schedule for the Ministry of Justice which has been in place since I think early June, one would see listed as the responsibility of the Minister of Justice, these very matters that we are called upon to address tonight, transferring them largely from the Ministry of National Security to the Ministry of Justice.

Mr. Speaker, one does not question the authority of the Prime Minister to delegate portfolio responsibilities as her schedule describes, but there is something that is a little worrisome in the way this is being done. And I asking, and I hope there is an answer to be provided, whether, what is written here is a deliberate policy or whether it is an oversight indicating that those who did it, did not really understand the import of what they were doing.

Let me say at the outset, all of the Acts that are being amended, if you go to actual Acts themselves, you will see that when they were passed in the Parliament, they were specifically done in a way that the responsibility was identified by the Parliament to fall under a particular Minister, an identified Minister. Parliament did not give the Executive the authority to throw these things around as the Executive feels by way of assignment simply by gazetting them.

If you look at the Criminal Injuries Compensation Act you will see in the existing law where it says “Minister” it does not say “Minister to whom it is assigned”; the Minister is identified by Parliament, because Parliament understood the nature of that function and where that function would properly fit, and where Parliament wanted it to be. The same thing you would see with the

Justice Protection Act, the DNA Act. In the case of the Justice Protection Act and the DNA Act, they were specifically put under the Ministry of National Security, the reason being, that the DNA Act is in fact a tool; it was not created as a biological item for biology in the Ministry of Health. DNA is an identifying tool of police work, and nothing has happened since that Act was passed and now to make it any less so. And even if we do it as the Government is suggesting tonight, what it means is that this tool, which more properly belongs under the Ministry of National Security, will now be in the Ministry of Justice but its operational side, those who operate the Act, will be under the Ministry of National Security.

In fact, between the appointment of the current Minister and now, notwithstanding the fact that it was on the schedule for the Minister of Justice, that this is his portfolio, it could not be, because the existing law which we are seeking to amend now has it under the Ministry of National Security. What we are seeking to do is to put it under the Ministry of Justice, as part of the Ministry of Justice's responsibility by way of an assignment. And let me read how the assignment goes. Let me deal specifically with the DNA Act. It says:

“The Deoxyribonucleic Acid (DNA) Act, (2007) is amended in section 4, by deleting the definition of “Minister” and substituting the following: ‘Minister’ means the Minister to whom responsibility for DNA services under this Act is assigned;”

And all of these amendments have that description.

What that means, Mr. Speaker, is that the Prime Minister is now asking the Parliament to give power to the Executive, and at any time the Executive could choose to put these items of responsibility anywhere within the Executive. Whereas in the existing law, the Parliament places it in a particular location for a particular reason.

### **9.10 p.m.**

So the DNA Act is under the Ministry of National Security for good reason because it is part of policing work, police information gathering and criminal identification using biological markers. That is what it is for, not to give the Minister of Justice something to do. If it is that the Government is now of the view that it will be better placed under a Minister of Justice and not under the Minister of National Security as the law circumscribes it, then I expect the Government to say that “‘Minister’ under this Act means the Minister of Justice”, and if that is accepted in this Parliament, that is what the Parliament says the Executive can do, that is a reasonable action.

*Miscellaneous Provisions Bill*  
[DR. K. ROWLEY]

*Friday, February 04, 2011*

I think the Government can justify, or will try to justify where it is going to go. But we certainly cannot be expected to dismiss all logical arguments that were passed through this House, at the time when the Bill was passed which specifically puts it to a Minister, and now very flippantly or even unknowingly or unwittingly says, “Minister means anybody to whom the Prime Minister wishes to assign it to.”

Suppose the Prime Minister goes to a party tonight, gets a little tipsy and tomorrow decides to put it under the Minister of Labour, Small and Micro Enterprise Development, Parliament would have to approve that. If this is passed as is, we will be giving the Prime Minister the authority to put these things anywhere and I am saying the Parliament should not do that. [*Desk thumping*] When the Parliament did it for the first time, it was done right. You identified the specific Minister and you put it there.

Mr. Speaker, this DNA Bill was passed with a special majority for good reason. If you look at the functions of the Deoxyribonucleic Acid (DNA) Act, No. 24 of 2007, Chap. 5.34, you would see that it is about obtaining non-intimate samples—the police do that—or identifying officers at the Forensic Science Centre, obtaining samples from a volunteer, obtaining an intimate sample by order of the court, special circumstances, who may take the sample, duties of a qualified person, standard of proof; it is a part of the work of the Ministry of National Security in the crime fighting arrangements.

Parliament understood that, and this is why Parliament put it specifically under the Ministry of National Security, so as to prevent the Executive from putting it under the Ministry of Housing and the Environment or under the Ministry of Health or under the Minister of Labour, Small and Micro Enterprise Development. Parliament says it must go where it is to function. Now, you created the Ministry of Justice and you want to shift some of the responsibilities from the Ministry of National Security to the Ministry of Justice. Then the law must say, not the Minister to whom it is assigned, giving the Prime Minister a blank cheque to put it anywhere, but the Parliament must say it must go to the Minister of Justice. And all of them are like that where it says the Minister to which it is assigned.

Mr. Speaker, this Government has shown an ability to do the most outrageous things. [*Desk thumping*] So when I say that the Prime Minister could get up one morning and put it under the Minister of Labour, Small and Micro Enterprise Development, the Minister of Tourism, the Minister of—it is quite possible and even likely. Because any government that could attempt to appoint a technician to

head the national intelligence apparatus [*Desk thumping*] and then worse, try to hide it from the country and spend governmental time, money and effort trying to cover it up; come with a mountain of misleading information and untruths, that Government could do anything. So when the Government comes now and says it wants permission to assign these important crime fighting tools, legislation for important crime fighting tools, the Minister—and the law is now being amended to say; not the Minister of Justice, because I have no problem if that is what the Government is saying it wants to do and can justify it. We still believe it belongs in the Ministry of National Security because that is where its function is.

What the Government is asking us to do is not that. They are asking us to give the Executive the authority to put it under any Ministry, because it says the Minister to which it is assigned, and that is true in the case of the Criminal Injuries Compensation Act, the Justice Protection Act, the DNA Act and the Community Service Orders Act. But the most egregious one is the Police Complaints Authority, the last one, clause. 6 of the Bill. It says the Police Complaints Authority is amended by deleting the definition of “Minister”, and there is a definition of “Minister” in the Police Complaints Authority Act. This Bill was passed by a special majority for good reason because it offended sections 4 and 5 of the Constitution and, therefore, it was passed by a special majority. That was done in 2006. Page 1 of Act No. 8 of 2006 says and I am reading from the Police Complaints Authority Act. It says:

“An Act to establish an independent body...”

This Government must take notice and respect that.

The Police Complaints Authority is not a part of any Ministry. It is an independent body and its work offends sections 4 and 5 of the Constitution, and to make it legally acceptable in this country, it was passed by a special majority to be an independent body. If you go into the Act, Mr. Speaker, you would see it makes reference to the Minister, but “‘Minister’ means the Minister to whom responsibility for national security is assigned”. Again, Parliament circumscribed the thing. Reference to Minister with respect to this independent body specifies by special majority in this House, that that “‘Minister’ is the Minister of National Security.

The Government is asking us now to say, “‘Minister’ means any Minister to whom the Police Complaints Authority is assigned”. So the Police Complaints Authority, by this proposed amendment, could find itself under any Minister. But then, if you go into the Bill, you would see that section 6 says, “The Authority

shall comprise a Director and a Deputy Director to be appointed by the President on the joint advice of the Prime Minister and the Leader of the Opposition” emphasizing its independence from the Executive, an independent body as spelt out in the intent.

Mr. Speaker, if you go further in the Police Complaints Authority Act, you would see where section 17 says that, “The funds of the Authority shall consist of such monies as are appropriated to it by Parliament from time to time.” Separate funding, not any Ministry funding, separate funding for the Authority. It shall keep its own account. Section 19 says that “The Authority is not subject to the direction or control of any other person in the performance of its functions under” sections 21 and 22. Parliament was very careful to do that to preserve the independence of this Authority and not to make it a creature under the direction or control of a Minister. That is why when you look at the powers and the functions of the Authority, section 21 is quite expansive. It is an investigative body doing enquiries and so on, gathering evidence, and section 22 gives it the power of a commission of enquiry, not under the control and direction of a Minister.

Then, if you look at what the Government is saying, you will find that the way it is in the proposed Bill, that “‘Minister’ means the Minister to whom responsibility for the Police Complaints Authority is assigned”, this independent body is now to fall under, in this case, the Minister of Justice. Tomorrow, by just gazetting it to another Minister, the Prime Minister can remove it and put it under another Minister. But then, you have—what is the role of the Minister in here? The role of the Minister in the Police Complaints Authority Act is very simple and very clear. It says that the Minister will bring a report of the Authority to Parliament. That is the only thing that the Minister is required to do under the Police Complaints Authority Act.

The Minister in the Act of 2006 has been circumscribed to recognize the independence of the Authority, and to not be given any power to do anything other than to bring the report of the Authority to Parliament. That will not be so if this amendment as proposed takes place. Because once it is to fall under the Minister as an assignment as part of his portfolio, the Minister with a portfolio schedule description of this Authority can now assume general direction and control of his portfolio, and a Minister is not to be put in a position to assume general direction and control of an independent body.

I am sure the Government does not mean that. I think this is done in an administrative way, not realizing the importance of what you are doing. Because if you say you understand what you are doing and you intend to do it, then I am

saying that you all need to have your heads examined. It is one thing to make a mistake through ignorance, but to seek to change the intent of Parliament and to place this independent body under a Minister for direction and control of ministerial authority when the parent Act itself specifies the need for this to be an independent body set up to operate that way, and you ask the Parliament to remove that and leave it to the Executive to put it anywhere in the Executive—today it is under the Minister of Justice, tomorrow it could be anywhere for direction and control. I do not think the Government understands what it is doing, and I can see no reasonable argument saying that this is what the Government really wants to do because to do that, would be to fly in the face of the independence of the Police Complaints Authority, a body with wide powers.

If you read sections 21 and 22 of the Police Complaints Authority Act, you will see the powers of this body and why the Parliament wants it to be independent of the Executive. So therefore, this Parliament must not allow an amendment which will give the Prime Minister the authority to assign it to a Minister and to any Minister of her choice. The original intention of the Parliament was to have this independent body placed in an identified location, circumscribed and to remain there until Parliament intervenes again.

In this case, the other Bills that we are changing, if they go to the Minister of Justice and not to whom it is assigned as the text says, it means that if the Prime Minister wants to move it to another Ministry, she would have to come back, or whoever the Prime Minister is, will have to come back to the Parliament, so the Parliament can be properly notified before it is gazetted and see whether the action is justifiable. Not a blank cheque to place things all over the place, when in fact, the parent Act specifically places them where they really ought to be. But in the case of the Police Complaints Authority, this cannot be justified in any way whatsoever.

**9.25 p.m.**

I am asking the Government to get proper advice when they are doing these things. The Government has a whole army of lawyers available to it and the Government ought not to look so incompetent day after day after day in front the national community. [*Desk Thumping*] Because this tells me very clearly that whoever is involved in this, has no idea what they doing. I would not be surprised if they get up and try to defend the indefensible and say what they really want to

*Miscellaneous Provisions Bill*  
[DR. K. ROWLEY]

*Friday, February 04, 2011*

do is to put the Police Complaints Authority under the Minister for ministerial control and guidance, to fly in the face of the law which was passed by a two-thirds majority in here which specifically says that the Police Complaints Authority must be an independent body—PP or no PP. [*Desk thumping*]

We say to this Government, the Police Complaints Authority is a major crime fighting tool in this country. It is meant to ensure that we root out from the police service, those elements in the police service that are damaging the relationship between the police and the citizenry, where today people do not trust the police, because there are elements in the police service who are misconducting themselves and complaints made against them must not be subjected to ministerial guidance and control. That is what the law says: Complaints against policemen must fall to an independent body. So, we reject this amendment out of hand and ask the Government to withdraw. I thank you, Mr. Speaker.

**The Minister of Justice (Hon. Herbert Volney):** Mr. Speaker, as I wind up the debate on this Bill, I would like much to allay the fears of the hon. Leader of the Opposition. First of all, I do not take too kindly to the suggestion, the veiled suggestion of incompetence by our members of the Chief Parliamentary Counsel's Office who are trained attorneys of some ability, who have engineered the amendments to these Bills in the proper parliamentary way of legislative drafting. The way that it has been done is consistent with good drafting mechanics, Mr. Speaker, and it provides a way that whosoever is responsible for the assignment of ministerial portfolios will not in the future have to return to Parliament every time that there is a change of assignment in such portfolio that amendments would have to be made to the respective bits of legislation. So, Mr. Speaker, the thinking here and the logic, and the argument as presented by hon. Member for Diego Martin West, is not that of a lawyer, but, quite clearly, that of a geologist. And much as you know, he has said that we need to have our heads examined, I want to say that there is one thing about racing and it is "donkey doh run in horse race". And I would ask the hon. Member to reconsider the argument that he has made in this respect in the process insulting our hard-working members of the Ministry of the Attorney General who have formulated these amendments.

Mr. Speaker, one of the things that we have to do in this Parliament is to bolster confidence in our constitutional institutions, in our ministries; not everything that is done is done with a wrong motive. This is a very simple package of amendments. It is a package that enables the Minister of Justice to



whom the Prime Minister in her wisdom has assigned the portfolios, which formerly fell under other Ministers, that the Minister of Justice will be the one to take the baton, so to speak, and for good reason.

You see, Mr. Speaker, when the hon. Member speaks of removing the DNA lab from that of the Ministry of National Security, the portfolio from that of Ministry of National Security to that of the Ministry of Justice, what he fails to appreciate is that the DNA is about evidence. And to have the evidence, the keeping, the gathering of evidence in the same Ministry of those who gather the evidence is to take away from sanitizing the evidence, keeping it clean, making its gathering incorruptible. Hence, the wisdom of removing that very important aspect of the tools of police officers away from police officers. So that once they gather it, it is then sanitized by placing it in a separate ministry over which the police can no longer touch or interfere. So that when it reaches the court it is a clean bit of evidence that has been properly managed once it has been obtained by the law interdiction arm of the State. That point, I think, is totally lost to the hon. Member and Leader of the Opposition, Mr. Speaker.

I do agree that DNA is a tool of police work and it is on the operational side and that, as such, it fell under the Ministry of National Security. But that is the gathering side of the evidence. But the processing of the evidence, the DNA, is now away from those who gathered it, so it cannot be tampered with. What better arrangement, Mr. Speaker, so that when the DNA evidence hits the floor of the court, it could be presented uncorrupted, clear, valid and good evidence that can withstand the scrutiny of the best of cross examiners. [*Desk thumping*]

Now, Mr. Speaker, the Criminal Injuries Compensation Act now falls under the Ministry of Justice for good reason. It once fell under the Ministry of Social Development which basically is a Ministry that helps people by giving help to people. The Criminal Injuries Compensation Board is not meant to be a board that just gives away money and that is how it had earlier been configured, it was placed under the Ministry of Social Development. Yes, I will give way.

**Dr. Browne:** Thank you for giving way. I did not intend to trouble you at all but are you implying that the Ministry of Social Development is in the business of giving away money?

**Hon. Member:** Nonsense!

**Hon. Volney:** If that is the implication of what I said, I would withdraw it. However, the Ministry of Social Development's portfolio really is to help people and if systems are corruptible, they can be corrupted.

**Dr. Browne:** In what ministry?

**Hon. Volney:** Not in the Ministry of Justice because the Ministry of Justice's portfolio is quite different. That is not something that you will win on, hon. Member for Diego Martin Central. It is properly placed in the Ministry of Justice for good reason. And, Mr. Speaker, the hon. Prime Minister, with her background in law and not in the sampling of soil or on rocks, her background is in law.

**9.35p.m.**

The problem that we have is, on that side, the leadership has been trained in rocks and stones, and having to deal with these intricate and technical legal matters—*[Interruption]* *[Mr. Speaker rises.]* Geologist.

**Mr. Speaker:** I have already stated that I will not be permitting the imputations or insinuations to any Member's character or conduct. I think you could put what you are saying in a better way. He is a trained geologist, that is the hon.—but this stones and rock, you are imputing something. I am saying that I will not be permitting these things in this honourable House. Could you continue?

**Hon. H. Volney:** Yes, Mr. Speaker. But, the point I was making is that the training of our hon. Prime Minister is in the law, and in matters constitutional, and quite clearly, the hon. Prime Minister has understood the importance of placing the Criminal Injuries Compensation Unit and the Board under the Ministry of Justice, as part of the speedier justice initiative and the transformation of the criminology justice delivery system. Because, here it is, when the time comes, and certain cases may have to be compromised for whatever reason, that is to say, for example, if a case can no longer be prosecuted, there will be victims of the crime, and the least the State could offer the victim of the crime is a soft cushion for the hurt suffered because the criminal justice system neglected all these areas, that has not been able to deliver justice during a timely period. That is why the Ministry of Justice is now the one to deal with the Criminal Injuries Compensation Board, and the remit of that board, as part of the speedier justice initiative of the Ministry and the transformation effort. *[Interruption]*

**Dr. Browne:** Minister, are you willing?

**Hon. H. Volney:** Yes, hon. Member.

**Dr. Browne:** You keep referring to speedier justice—thank you for giving way again—the question really is, why was the previous system ground to a halt, and now, over eight months later, the Government is now bringing a measure to move it into the Ministry of Justice, when there would have been victims of crime

over the last eight months—[*Interruption*] hold on—who would not have had the benefit of approaching this facility? Why was the decision taken to disband the board, to wait eight months, and now establish a new system in the Ministry of Justice? Would there not have been another way to go about it, Minister?

**Hon. H. Volney:** If I may, the wheels of the Criminal Injuries Compensation Unit of the Ministry have been moving since May 24. They never stopped. What has happened, is that in the normal course of the remit of the unit, the administrative unit, the work has been processed. The board has now been found and appointed, the membership of the board, and this board is now headed by a retired High Court Judge, not someone who was once working in the Ministry of the Attorney General. We have the right board in place now and all that needs to be done is the decision has to be taken as what is to be paid and to whom. I hope that the hon. Member for Diego Martin Central will be happy now and he will be able to go home earlier, rather than later, having said so.

Again, the drafting measures are designed to allow for the more efficient assignment of the portfolios in the future, and there is no need, after this, to amend the law every time the Prime Minister decides that she would like to shift, for better governance of the country, the portfolio of this very important unit.

The Police Complaints Authority, who more independent could the President, on the advice of the Prime Minister and the Leader of the Opposition, than Justice Lucky could have been appointed? This is quite clear—and her deputy, retired Master Doyle. Mr. Speaker, this is Government's recognition that this is an independent body to advise His Excellency, hand in hand, with that of the Leader of the Opposition, I am advised; unanimous understanding and agreement. This is an independent body.

Someone has to bring the money Bill to the Parliament to fund these independent boards, much as the hon. Attorney General has to bring the budget from the Judiciary to this honourable House. He has to ask for any moneys needed. A Minister must be assigned the portfolio for the Police Complaints Authority and it was felt that you cannot have the same Minister who is responsible for the police, having the responsibility for the Police Complaints Authority. Again, the Prime Minister in her wisdom, understanding the dynamics of this, has decided to assign the portfolio to the Ministry of Justice and the Minister. This measure, in no way, tampers with the independence and the independent provisions of the parent Act. It does not interfere in any way with the reason why it was the measure, the parent Act, was passed with a special majority. [*Interruption*]

**Dr. Rowley:** I thank the Minister for giving way to one of lesser pedigree. However, could the Member for St. Joseph, the Minister of Justice, direct me to any independent body that forms part of the portfolio of any Minister, any other example? I might be assisted by that.

**Hon. H. Volney:** Well, hon. Leader of the Opposition, I can assist you at another time, but at this time in the night, I am sure, with your vast experience in constitutional matters, you might be able to help me, but that is not the matter that is before me today. As a judge, I try to remain focused, as I will now, on the measure before the House. *[Interruption]* This is your last “give way” Member. *[Laughter and Desk Thumping]*

**Dr. Rowley:** Notwithstanding, the attempt to misrepresent what I said, in the case of the other item besides the Police Complaints Authority, I did say if the Government were to make the change, as you want to make, that we should make it through the Ministry of Justice. I am not arguing any case against it going to the Ministry of Justice, but in the case of the Police Complaints Authority, my argument was preservation of the independence. Am I to understand that you really cannot find me another example where an independent body forms part of the portfolio of a Minister? You cannot, can you?

**Hon. H. Volney:** Mr. Speaker, as configured in accordance with the parent Act, it is now under the Ministry of National Security, so I do not understand what is giving the hon. Member difficulty at this late hour. Quite clearly, the hon. Member does not understand the measure that is before the House, which is simply to provide a change of ministerial portfolio responsibility for being the line Minister to the Police Complaints Authority, to assist them in whatever way is allowed under the parent Act, and nothing more; from the Ministry of National Security to the Ministry of Justice. That is very, very simple to understand. If I cannot convince the hon. Member, Leader of the Opposition, I do not think anyone can at this hour in the night. I think, quite clearly, the hon. Member is tired and he is not thinking as he would have been earlier in the day.

Mr. Speaker, I beg to move.

*Question put and agreed to.*

*Bill accordingly read a second time.*

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

*House in committee.*

*Clauses 1 to 6 ordered to stand part of the Bill.*

*Question put and agreed to, That the Bill be reported to the House.*

*House resumed.*

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

**CENTRAL TENDERS BOARD ACT  
(PROPOSAL TO REPEAL AND REPLACE)  
Joint Select Committee Interim Report  
(Adoption)**

**9.50 p.m.**

**(The Minister of Education): Hon. Dr. Tim Gopeesingh** Mr. Speaker, I beg to move the following Motion standing in my name:

Be it resolved that this House adopt the Interim Report of the Joint Select Committee appointed to consider and report to Parliament on the legislative proposals to provide for public procurement and disposal of public property and the repeal and replacement of the Central Tenders Board Act.

Mr. Speaker, it is necessary to provide at this time a short descriptive summary of this Motion.

During the general election campaign of 2010, the People's Partnership led by Mrs. Kamla Persad-Bissessar, promised the people and the nation that the time had come for transparency, accountability, probity and efficiency in public expenditure. And that we would bring to Parliament legislative proposals to deal with public procurement within 30 days of coming into government.

The People's Partnership Government was sworn in on May 27, and within the proposed 30 days, and on June 25, 2010 the legislative proposals were laid in the House of Representatives and in the Senate on July 6, 2010. The proposals were two:

- (a): "a legislative proposal to provide for public procurement and disposal of public property."

This prescribes a procurement system that seeks to provide certainty with a view to increasing public confidence in governance. It also provides for the appointment of a procurement regulator, who will be an officer of Parliament who is considered to be independent. This proposes to decentralize the process of procurement in that every state enterprise and agency will be responsible for its own procurement process.

Proposal (b):

“a legislative proposal to repeal and replace the Central Tenders Board Act”

And that seeks to provide for the establishment of a National Tenders Board for the Government of Trinidad and Tobago and a Parliamentary Commission to monitor the activities of the Board.

Mr. Speaker, at a sitting held on Friday, October 29, 2010, the House of Representatives agreed to the appointment of six Members of the House, and six Members of the Senate on the establishment of a Joint Select Committee to do as follows: to examine the legislative proposals, to consult with stakeholders and interested persons, to send for papers, records and other documents and to recommend amendments to the proposals with a view to improving the drafts. Finally, to submit a report to Parliament within three months from the date of appointment.

On Tuesday, November 02, 2010, the Senate agreed to a similar resolution.

Mr. Speaker, on behalf of the Government, we would like to thank sincerely all Members, including Opposition Members, and Members of the Senate who worked tirelessly over the five sessions that this committee met. And I want to thank the Members of the Opposition, including the Leader of the Opposition and the Member of Diego Martin North/East as well, for their contributions on this interim report.

The Committee held five meetings, one in November and four in January; January 10, 17, 24 and 31, week to week we met. Further to its mandate to consult with stakeholders, the Committee developed a list of stakeholders. Submissions were invited with a December 23 deadline; additionally advertisements inviting submissions were published in the press and broadcasted on the Parliament Channel.

The following organizations responded:

- (i) the Joint Consultative Council for the construction industry, and that included the Association of Professional Engineers of Trinidad and Tobago;
- (ii) the Trinidad and Tobago Contractor’s Association;
- (iii) the Trinidad and Tobago Society of Planners;
- (iv) the Institute of Surveyors of Trinidad and Tobago;
- (v) the Trinidad and Tobago Institute of Architects.

Other organizations namely:

- (i) National Insurance Property Development Company Limited, submitted;
- (ii) the Chief Parliamentary Counsel Department;
- (iii) the Ministry of Finance
- (iv) Trinidad and Tobago Transparency Institute;
- (v) Trinidad and Tobago Chamber of Industry and Commerce; and
- (vi) Trinidad and Tobago Manufacturers Association.

Mr. Speaker, in addition the Committee sourced certain background information on the legislation, conventions, rules, regulations among other things, from other jurisdictions concerning public procurement systems and models. Information was sourced from Canada, Jamaica, Australia, United Kingdom, UNCITRAL and the European Union.

Mr. Speaker, arising out of the meetings on five occasions, the Committee made certain conclusions and recommendations for this interim report. The Committee reports that it has not completed its work relative to the mandate it was given. The Committee believes that due to the comprehensive nature of the task before it, additional time is needed to satisfactorily complete its work. The Committee having reviewed both legislative proposals and after consultations with stakeholders, particularly the legal consultant from the Chief Parliamentary Counsel's Department—and we want to thank Chief Parliamentary Counsel Mrs Blake, for her contribution to this as well—the Ministry of Finance, as well as other stakeholders who have submitted written proposals, some of whom are yet to come before the Committee, we concluded that the two legislative proposals are mutually exclusive and in the pursuit of the requirements of an appropriate legislative framework for a modern and relevant public procurement system in Trinidad and Tobago, further parliamentary legislative consideration is required and necessary.

And the recommendations, Mr. Speaker, and Members of this honourable House, following its deliberations and further to its finding, the Committee humbly recommends for the consideration of this House:

- (i) that it be granted a three month extension to complete its mandate;
- (ii) during the period of extension the Committee proposes to continue its work, in collaboration with the Ministry of Finance and the Ministry of the Attorney General, and other stakeholders. It proposes to complete the review of the two legislative proposals against best practice, and with due regard for Government's policy positions on this issue, and that the

*JSC Interim Report (Adoption)*  
[HON. DR. T. GOPEESINGH]

*Friday, February 04, 2011*

committee be permitted to submit recommendations for an appropriate draft Bill to be considered by Parliament in a form to be determined.

Mr. Speaker, in closing, I want to again thank everyone for their thorough work that they did in coming to an interim report to be provided in Parliament for its consideration. Mr. Speaker, I beg to move.

**10.00 p.m.**

**The Minister of Arts and Multiculturalism** (*Hon. Winston Peters*): Mr. Speaker, I beg to Second the Motion and reserve the right to speak.

**Mr. Speaker:** Any Member would like to say any words on the Opposition bench?

**Dr. Keith Rowley** (*Diego Martin West*): Mr. Speaker, as a member of the Committee for the point of clarification, I just want to add to what the Chairman of the Committee has said; I want to point out, that notwithstanding the commitment to bring legislation within 30 days to Parliament, what in fact, we were asked to work with were, the amendment to the Central Tenders Broad Act, a draft that was done from 10 years before, and that approach to improving the procurement process in the public sector was about a centralized arrangement by way of a Central Tenders Board amended and upgraded. That was one of the options. The other one was, a newer version which was—and I think the Chairman, very skilfully, did not mention that. There was an “orphan” arrangement, we were not even sure where it came from, but it sought to have put before us an arrangement which was quite different to the Central Tenders Board’s approach, where you would have procurement issues in the various dispersed agencies.

In the context of the role of state enterprises in the business of Trinidad and Tobago today, we found that there was a need for not— a Central Tenders Board centralized arrangement, that the new version was in fact, Mr. Speaker, not what we wanted. Therefore, what we are really setting out to do for the first time here—that is why I am making it clear, we are now agreeing with the Government—that we will buckle down and draft, a new procurement Bill as we await the appropriate policy from the Government.

One of the difficulties we had at the committee stage was the absence of a guiding policy. We anticipate that policy will be available now, and it would guide the draft that the Chairman mentioned. I simply wanted to clarify that, Mr. Speaker, and therefore commitment to do things within time frames of 30 days and 60 days mean absolutely nothing. We are now committing and embarking on the exercise, and I hope that the three month period would be



enough for us to get that draft. If the draft is satisfactory, then we expect that with the cooperation of all sides we could come back to the House, and have, for the first time, in a decade or more, workable, usable and possibly debatable legislation. I simply wanted to clarify that point, Mr. Speaker.

**Hon. Dr. T. Goopeesingh:** Thank you very much, Leader of the Opposition, well of course I mentioned, we are grateful for your contribution and together with the Member for Diego Martin North/East, in this interim report and the work that has been over the last three months.

Mr. Speaker, there was a question of—we have a centralized model in the Central Tenders Board of 1997 and the procurement regulation, the other legislative proposal was a decentralized model. Questions arose as to where we are going, whether we should incorporate, or have a mix between the centralized and the decentralized model. United Nations Commission on International Trade Law (UNCITRAL), which is the United Nations Model embodied part of that. Also Jamaica, which has a different model, has been finding itself with difficulty over a period of time. So we are looking carefully at all the different models that are around, some have been obsolete, some have been made obsolete, and of course the Leader of the Opposition has put forward a proposal. We assure you that our policy will come back to this committee from Cabinet, and with the help of the Chief Parliamentary Counsel and the Ministry of Finance, and hearing submissions from the various stakeholders hopefully we would be able to complete this exercise with a proposed draft Bill to be brought back to Parliament for its consideration, debate and passing to be made an Act on the important matter of procurement which will withstand the scrutiny, nationally and internationally for the rest of the world. International partners as well have procurement exercises with this country in many areas, and therefore we must not only satisfy the national agenda but the international agenda on procurement. Mr. Speaker, I beg to move.

*Question put and agreed to.*

*Report adopted.*

#### ADJOURNMENT

**The Minister of Housing and the Environment (Hon. Dr. Roodal Moonilal):** Mr. Speaker, I beg to move that this House do now adjourn to Wednesday, February 09, 2011, at 1.30 p.m. On that afternoon, Mr. Speaker, we wish to serve notice on Members opposite, it is the intention of the Government to debate and take through all its stages, the Financial Intelligence Unit of Trinidad

*Adjournment*

*Friday, February 04, 2011*

and Tobago (Amdt.) Bill, 2011 and, time permitting, Bill No. 3 on the Order Paper, an Act to give legal effect to electronic documents, electronic records, electronic signatures, and electronic transactions.

I beg to move.

*Question put and agreed to.*

*House adjourned accordingly.*

*Adjourned at 10.06 p.m.*