**HOUSE OF REPRESENTATIVES**

*Friday, April 15, 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 following Members requesting leave of absence: the hon. Dr. Lincoln Douglas, Member of Parliament for Lopinot/Bon Air West and Miss Donna Cox, Member of Parliament for Laventille East/Morvant. They are both currently out of the country and have asked to be excused from sittings of the House during the period April 14th, 2011 to April 21st, 2011. The leave which the Members seek is granted.

**PAPER LAID**

Annual administrative report of the Point Fortin Borough Corporation for the period October 01, 2004 to September 30, 2005. [*The Minister of Housing and the Environment (Hon. Dr. Roodal Moonilal)*]

**ORAL ANSWERS TO QUESTIONS**

**The Minister of Housing and the Environment (Hon. Dr. Roodal Moonilal):** Mr. Speaker, forgive me for being repetitive but the Government is in a position today to answer all questions on the Order Paper for oral answers and there are no questions for written answers.

**UFF Commission of Enquiry**
**(Minister of Works and Transport)**

**78. Miss Marlene Mc Donald on behalf of Dr. Keith Rowley** (*Diego Martin West*) asked the hon. Minister of Works and Transport:

(a) With respect to the Uff Commission of Enquiry could the Minister state the total cost of any and all expenditure incurred (paid or outstanding), in relation to the participation of the Ministry or any agency under its purview to facilitate the said enquiry?

(b) Could the Minister identify the recipients and state the total sums paid or due for payment to each individual or entity?

**The Minister of Works and Transport (Hon. Jack Warner):** Thank you Mr. Speaker [*Desk thumping*] The last Minister of Works and Transport, the former,—the one before me, could not help to be involved in the expenditure of the Uff Commission and the records at the Ministry of Works and Transport indicate that:

(a) The total sum of $2,211,666.63 was incurred in relation to the participation of this Ministry in this enquiry.

(b) The total sums paid, and the corresponding recipients are as follows:

1) Avry M. Sinanan SC $115,000

2) Dharmendra Poonwassie $65,000

3) Frank Solomon SC $1,219,000

4) Devesh Maharaj and Devesh Maharaj & Associates $812,666.63.

This makes a grand total of $2,211,666.63. I thank you, Mr. Speaker.

## Uff Commission of Enquiry
## (Minister of Education)

**79. Miss Marlene Mc Donald on behalf of Dr. Keith Rowley** (*Diego Martin West*) asked the hon. Minister of Education:

(a) With respect to the Uff Commission of Enquiry could the Minister state the total cost of any and all expenditure incurred (paid or outstanding), in relation to the participation of the Ministry or any agency under its purview to facilitate the said enquiry?

(b) Could the Minister identify the recipients and state the total sums paid or due for payment to each individual or entity?

**The Minister of Education (Hon. Dr. Tim Gopeesingh):** Thank you, Mr. Speaker, with respect to part (a) of the question:

(a) The Ministry of Education and the state owned Education Facilities Company Limited incurred an overall of cost $683,047.66 with respect to legal fees for the Uff Commission of Enquiry. The breakdown is as follows:

1) The Ministry of Education’s total legal cost was $304,147.66.

2) Educational Facilities Company Ltd.'s total legal cost was $378,900.

b) The Ministry of Education solicited the services of Seecharan Scott chambers at the cost of $304,147.66 whilst the Educational Facilities Company Limited's legal team comprised of Mr. Andre des Vignes Senior Councel $172,500, Mr. Anand R. Singh attorney-a- law $156,400 and Mr. Keston D. Mc Quilkin, attorney-at-law $50,000. Thank you.

**UFF Commission of Enquiry**
**(Minister of Health)**

**80. Miss. Marlene Mc Donald on behalf of Dr. Keith Rowley** (*Diego Martin West*) asked the hon. Minister of Health:

(a) With respect to the UFF Commission of Enquiry could the Minister state the total cost of any and all expenditure incurred (paid or outstanding), in relation to the participation of the Ministry or any agency under its purview to facilitate the said enquiry?

(b) Could the Minister identify the recipients and state the total sums paid or due for payment to each individual or entity?

**The Minister of Housing and the Environment (Hon. Dr. R. Moonilal):** Mr. Speaker, in relation to question No. 80, on behalf of the hon. Minister of Health, we are advised that neither the Ministry of Health nor any agency under its purview has incurred any expenditure paid or outstanding to facilitate the Uff Commission of Enquiry.

**ARRANGEMENT OF BUSINESS**

**The Minister of Housing and the Environment (Hon. Dr. Roodal Moonilal):** Mr. Speaker, I beg to move that the House proceed to deal with Motion No. 1 listed under Private Business on the Order Paper. Upon its completion, the House will proceed to deal with Government Business, specifically Bill No. 1 the Census (2011) (Extension and Validation) Bill, 2011 and Bill No. 2, the Financial Intelligence Unit of Trinidad and Tobago (Amdt.) (No. 2) Bill 7, 2011.

*Agreed to.*

**COMMITTEE OF PRIVILEGES**
**(Member for San Fernando East)**
**(Legal Representation)**

**Mr. Patrick Manning** (*San Fernando East*) Thank you very much, Mr. Speaker. I beg to move a Motion standing in my name which reads as follows:

1. *Whereas* in accordance with Standing Order 27(4), on Friday November 26th, 2010, there was referred to the Committee of Privileges a matter of privilege involving the Member for San Fernando East;

   *And whereas* the Committee is empowered by the Standing Order to consider the matter so referred to it and report thereon to the House and such report may contain the opinions and observations of the Committee;

   *And whereas* in the course of the proceedings before the Committee, the Committee has in accordance with settled practice permitted the Member to have legal representation before the Committee, such legal representative(s) being permitted to be present at the sittings of the Committee and to advise the Member;

   *And whereas* the Member has requested the Committee to permit his legal representatives to address the Committee and make representations on his behalf before the Committee:

   **1.40 p.m.**

   *Be It Resolved* that this honourable House do authorize the Committee to allow the Member's legal representatives to address the Committee and examine any witnesses before the Committee on his behalf.

Mr. Speaker, this matter can be dealt with in a miscellany of ways. I propose to keep it as simple and as straightforward as possible so that hon. Members will understand the gravity of the issues that are involved, and that members of the public who no doubt will be listening to this debate will recognize that this is a matter of great significance, not just for the Member for San Fernando East, but as it relates to the established practice in the Parliament of the Republic of Trinidad and Tobago.

Mr. Speaker, the Committee of Privileges has the power to suspend a Member from this House for a maximum of six months. The Committee of Privileges has, on the basis of its recommendations, the authority to cause a Member of this Parliament on suspension to be deprived of the benefits to which he or she would

normally be entitled, that is to say, salary and allowances. Other benefits are also involved including the subventions that are used to pay staff employed by a Member of Parliament in his or her capacity as a Member of Parliament.

Finally and most importantly, if a Member is suspended from this House, then his constituents who elected him to office would be deprived of a voice in the highest forum of the country, which is the Parliament of the Republic of Trinidad and Tobago, which, of course, is a very serious matter of representation and constitutional responsibility and authority, and not a matter to be taken lightly.

It is clear, therefore, that the Committee of Privileges is a judicial body. It has very serious powers and, as a consequence of which, any person who is going before a committee such as that, must have the protection to which one is entitled under the Constitution of our country and the protection that is now accepted in the Republic of Trinidad and Tobago.

Mr. Speaker, section 5(2) of the Constitution—let us start with that—reads as follows:

"Without prejudice to subsection (1), but subject to this Chapter and to section 54, Parliament may not—

(d) authorise a court, tribunal, commission, board or other authority to compel a person to give evidence unless he is afforded protection against self-incrimination and, where necessary to ensure such protection, the right to legal representation;"

The right to legal representation, therefore, is a constitutional right enshrined in the Constitution of the Republic of Trinidad and Tobago, and it is in section 5, sections 4 and 5 being the sections under which the recognition and protection of the fundamental human rights and freedoms is dealt with.

So, Mr. Speaker, the Member for San Fernando East is therefore requesting that the fundamental rights to which he is entitled, guaranteed in the Constitution of the Republic under section 5, rights that cannot be changed by a simple majority of this House, but require a special majority to be changed, and if those rights are infringed requires a special procedure to have effect by way of the Constitution of this Parliament, the Member for San Fernando East is simply asking this Parliament to agree to accord to him the fundamental rights to which he is guaranteed in the Constitution. That is to say, to be allowed representation by legal counsel before the Committee of Privileges, a judicial body of this

Parliament. The Committee of Privileges, which, as I have pointed out before, has the right of the authority on its deliberations to lead to very, very serious sanctions, which could affect the very workings of this Parliament.

Mr. Speaker, what is the process? As it now stands—and guided by the practice in Westminster—a Member appearing before the Committee of Privileges is allowed legal counsel to accompany him, but the legal counsel can only advise him, as it were sotto voce. He has no voice in the committee itself, and whenever he advises his client in that body, he has to do it in such a way that his voice is not heard by the other members of the committee and, in particular, by the Chairman of the Committee, who is the Speaker of the House. That is what we are trying to change.

As it now stands, that is a practice that exists in Westminster. The difference between Westminster and Trinidad and Tobago is that in Westminster the Constitution is not written. There is no written Constitution in the United Kingdom and, therefore, Parliament is the highest judicial authority in the land. Whatever Parliament does in the United Kingdom is law, because the Parliament is the highest authority in the United Kingdom. In Trinidad and Tobago that is not so. There is a written Constitution and, therefore, the highest authority is not the Parliament but the Constitution and the Parliament can only conduct its business in a manner that is consistent with the provisions of the Constitution.

The Parliament, in seeking to follow the practice in Westminster, can only follow that practice properly if that practice is in accordance, not with practice in the United Kingdom, but in accordance with the Constitution of the Republic of Trinidad and Tobago. As it now stands, the practice that is being followed in the Committee of Privileges is inconsistent with the guarantees and the fundamental rights and freedoms guaranteed to individuals in the Constitution of Trinidad and Tobago.

Mr. Speaker, even in Westminster exceptions are made. *May's Parliamentary Practice*—I think it is on page 762—points out that with the leave of the House, the Committee of Privileges can afford an individual representation before the House, that is to say an advocate, and that advocate will have the authority not just to speak on behalf of the person against whom an allegation is made, but will also have the authority to question witnesses and to cross-question witnesses which is the judicial process.

In Westminster that is allowed in special circumstances. It is not normal in Westminster for committees to have, in the conduct of their business, legal representation of individuals, except in the case of the Committee of Privileges—

and there is another one. But they recognized the import of the issues involved in the deliberation of the Committee of Privileges that they made exceptions and put a mechanism in place that allows the House to delegate that authority to the committee and for the committee to decide whether it will allow that or not.

Mr. Speaker, what is practised in the United Kingdom and what is discretionary in the Parliament of the United Kingdom is mandatory in the Parliament of Trinidad and Tobago by virtue of our written Constitution. What therefore should have happened when the Member for Chaguanas West moved a Motion on November 26, 2010, at the same time the Motion was moved the Member should have asked the House to delegate to the Committee of Privileges its authority to allow legal representation of the person before the committee, and then the committee itself would, in its own deliberations, decide whether it will allow it or not. That would have been the practice in Westminster. Even though I am arguing this afternoon that the Privileges Committee would have had no discretion in the matter—because to seek to exercise the discretion is to fly in the face of the constitutional provisions of Trinidad and Tobago.

So, the Member for Chaguanas West did not do that. In the alternative, what could have happened when it was realized the error that was made by the Member for Chaguanas West, the Speaker could have easily attached that authority to the Motion and have the Parliament consider it at the same time—because it is a fundamental right—and to have the matter go before the Committee of Privileges, so that the Committee of Privileges in the normal course allow the representation. That was not done. When the matter was raised at the Committee of Privileges, the Committee of Privileges first of all denied the position, but then subsequently, the speaker said—after mature reflection I am sure—the Committee of Privileges said that it can only do it under the authority of the House, and until such time as it has the authority of the House, it is not prepared to do that.

Mr. Speaker, recognizing that it was an error on the part of the Government itself, I would have thought and I would have expected that the Government would have moved to correct it and have the Committee of Privileges conduct its business in a smooth and proper manner consistent with our Constitution provisions for the Republic of Trinidad and Tobago. That did not happen, and when that did not happen we went to court.

We took the Committee of Privileges to court, but when the matter was being argued in the court, counsel for the Committee of Privileges argued that the matter was before the court prematurely because all the remedies available to the Member for San Fernando East had not been pursued. We argued that the remedy

to which reference was being made was not a proper remedy at all. There was no guarantee that on a matter such as that coming before the Parliament, that the Parliament would agree to delegate its power to the committee and then the committee will then agree to allow the Member legal representation.

But, Mr. Speaker, deference to the view expressed by legal counsel, we thought we would withdraw the matter from the court and proceed in a different way. The minute the matter was withdrawn from the court an attempt was made to convene the meeting of the Committee of Privileges, very hastily. So we had—and in violation of some of our own procedures—hastily—and I am greatly indebted to the Member for Point Fortin—to file a Motion before the Parliament, effect of which would have been to prevent the Committee of Privileges from conducting its business until that Motion is deliberated upon.

I do not want to go into details of how it went. But eventually and for internal reasons we had to withdraw that Motion and, the minute that happened, an attempt was made to call the Committee of Privileges again and, therefore, the Member for San Fernando East finds himself in the very unusual position of having to come before the Parliament with a Motion to argue in his own cause. It is not a nice position in which you ought to put anybody, especially in circumstances where the error was not an error of the Member for San Fernando East at all.

It was an error of the Member for Chaguanas West or, certainly, the error lay at the doorstep of hon. Members opposite and, therefore, what one would have expected is that they would have moved to correct it. Since they did not move to correct it, I now find myself in a situation where I have to argue my own case before the Parliament.

May I point out, it goes way beyond the Member for San Fernando East arguing in his own cause. It goes way beyond that. It has to do with the practice in the Parliament of Trinidad and Tobago and the fact that the Standing Orders of the Parliament of Trinidad and Tobago are in need of review and updating, in need of serious review and updating, and in particular to make these Standing Orders consistent with the requirements of the Constitution; not with practice in the United Kingdom, not with practice with Westminster, but consistent with the provisions of the Constitution of the Republic of Trinidad and Tobago, and that is

what we are asking the Parliament to do today. What we are asking the Parliament to do is to delegate its authority to the Committee of Privileges to have a Member of the Parliament represented by legal counsel before the Committee of Privileges and to have any witnesses brought before that committee subject to cross-examination.

Mr. Speaker, it is a matter of fundamental rights, it is a matter of constitutional rights and I anticipate that hon. Members on both sides of the House will have no difficulty in agreeing to the Motion as placed before this honourable House.

I beg to move, Mr. Speaker. [*Desk thumping*]

**Mr. Speaker:** The Motion requires a seconder.

**Miss Alicia Hospedales** (*Arouca/Maloney*): Mr. Speaker, I beg to second the Motion.

**Mr. Speaker:** Do you reserve your right to speak?

**Miss A. Hospedales:** No, Mr. Speaker.

**Mr. Speaker:** Hon. Members, may I have your attention, please? Hon. Members, the Motion being seconded, I shall propose the question for debate.

*Question proposed.*

**1.55 p.m.**

**The Minister of Justice (Hon. Herbert Volney):** Thank you, Mr. Speaker. I rise in response to the Motion raised by the hon. Member for San Fernando East. There is, for the reasons I shall give, Mr. Speaker, no error on the part of the Member for Chaguanas West. [*Desk thumping*] Mr. Speaker, for the purpose of clarity, I think that it is important that all Members of this honourable House understand quite clearly what is being asked in the question placed before this House by the hon. Member for San Fernando East. The House is being asked to allow counsel to the Member to speak to the Committee of Privileges on his behalf; respond to questions asked by the committee on his behalf; ask questions to Members of the committee; and examine other persons who may be sent for by the committee in the course of its investigation.

Mr. Speaker, when this question is considered, as it must, in close regard to the Standing Orders of this honourable House, the Standing Orders of the United Kingdom House of Commons, the Constitution of our Republic of Trinidad and

Tobago, the practice of this House, and the relevant case law where applicable, a number of serious issues would concern you, Mr. Speaker, as well as all hon. Members of this House.

Firstly, Mr. Speaker, upon an examination of the Standing Orders of this honourable House, one can see that there are no provisions which state that at any stage of the proceedings of Parliament of any of its committees, counsel representing a Member before the committee is entitled to attend before or address the Parliament or any, and I repeat, or any of its committees. Mr. Speaker, counsel representing Members or other persons appearing before any committee are strangers to this House. Mr. Speaker, in order to protect the integrity and the privileges of this House, the rules relating to the proceedings before the House are specially worded, specially worded, to identify strangers, that is, persons other than Members and certain officials of the House. Thus as seen in the Standing Order 87.(1):

> "Strangers may be present in the Chamber of the House in the places set apart for them, under such rules as the Speaker may make from time to time for that purpose."

In this regard, we can see strangers here in their numbers today, Mr. Speaker.

It is clear from the Standing Order that strangers are there with the leave of the House and the Speaker. Further, Mr. Speaker, Standing Order 87.(4) states that:

> "Strangers must…silence, and…conduct themselves in a fit and proper manner…"

In relation to proceedings before the Committee of Privileges, these, are held in private, and therefore strangers are not permitted to attend save with leave of the committee or the House. By Standing Order 80.(9), Mr. Speaker, the sittings of this committee are in private subject to any order of the House or resolution of the committee. By definition, Mr. Speaker, attorneys at law or other persons attending with a Member before the committee are strangers.

Apart from Standing Order 87, there are other Standing Orders that make specific provision for the presence of strangers before the committee: Standing Order 80.(11) to 80.(14), speak of the summoning and examination of witnesses

before a Select Committee which by Standing Order 71.(1) includes the Committee of Privileges established by Standing Order 75. It should be noted, however, that by Standing Order 80.(12):

> "If the Committee desires to summon any witnesses, the Chairman"—the Chairman, Mr. Speaker, of the committee is required to—"supply the name, residence and occupation of every such witness to the Clerk of the House…The Clerk…subject to the directions of the Speaker, summon…"—the—"witness on behalf of the House."

Not the Committee.

Thus emphasizing, Mr. Speaker, that the committee is engaged in the business of the House. Standing Orders 79A.(5)(a), 79B.(7)(a) and 80.(3), also speak of the power of a committee to send for persons. Standing Order 79B.(7)(e) provides for the appointment by Joint Select Committees of specialist advisors for the purpose to supply information or to elucidate matters of complexity. Standing Order 79B.(8) permits, Mr. Speaker such:

> "…specialist advisers…with the approval of the Committee or Sub-Committee,…question persons appearing before…Committee or Sub-Committee."

Mr. Speaker, this is the only reference to a person other than a Member of the House or Committee of the House questioning persons appearing before it. Notably, none of the Standing Orders provides or even suggests that these strangers may question Members. Therefore, Mr. Speaker, it is quite clear that our Standing Orders are silent on the right of any Member to appear before the Committee of Privileges through counsel.

**2.05 p.m.**

The Standing Orders make no provision for such counsels who are strangers to this honourable House to make oral submissions on behalf of persons appearing before the committee, answer questions that may be posed by members of the committee, ask questions of the members of the committee themselves, make submissions or examine witnesses appearing before the committee.

It should be noted that the identical position applies in the Standing Orders of the House of Commons, notwithstanding that by Standing Order 149(5) the committee on standards and privileges of that honourable House and any subcommittee shall have power to adopt legal advisors.

The second issue—the right to legal representation. In addressing this Motion, I have examined whether the Constitution of the Republic of Trinidad and Tobago, in particular sections 4 and 5, has any provision that requires the House or the Committee of Privileges to afford a member the right, not only to have counsel of his choice in attendance before the committee to assist and advise him, but also to have full rights of audience before the Committee of Privileges as in a court of law.

Section 4(a) of the Constitution recognizes and declares that there has existed and will continue to exist, certainly under this People's Partnership Government:

> "(a) the right of the individual to life, liberty, security of the person and enjoyment of property and the right not to be deprived thereof expect by due process of law; and
>
> (b) the right of the individual to equality before the law and the protection of the law"

Mr. Speaker, apart from the obvious point that the committee has no power to deprive a member of his liberty or enjoyment of property, the particulars of due process and protection of the law are spelt out, though not exhaustively, in section 5 of the Constitution.

I wish to refer to section 5(2)(d) of the Constitution, which deals with the protection of the rights and freedoms contained in section 4. It states that:

> "…Parliament may not—
>
> (d) authorise a court, tribunal, commission, board or other authority to compel a person to give evidence unless he is afforded protection against self-incrimination and, where necessary to ensure such protection, the right to legal representation."

By section 5(2)(e), no person can be deprived:

> "…of the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations;"

Thus, Mr. Speaker, in section 5(2)(d) of the Constitution, legal representation is referred to in the context of protection against self-incrimination. I repeat that. In section 5(2)(d) of the Constitution, legal representation is referred to in the context of protection against self-incrimination. There is no mention of a right to legal representation in the context of a fair hearing in section 5(2)(e) of the Constitution.

Nowhere in the Constitution is there conferred on a person a right to have counsel participate fully before any tribunal and, a fortiori, a committee of the House. In declaring what are the fundamental human rights and freedoms which existed at the commencement of the Constitution, Parliament did not seek to make a fair hearing conditional on a person having the right to counsel.

In *Ferguson v the Attorney General* (2001) WIR 446, in discussing the concepts of due process, protection of the law and a fair hearing, Lord Steyn stated at paragraph 14, I quote—and this is the highest judicial authority on the subject:

> "…the question whether there has been a breach of constitutional guarantees in respect to due process, protection of the law, and a fair hearing, must be approached in the light of the proceedings considered as a whole. This is the view which the European Court of Human Rights has consistently taken in respect of the fair hearing guarantee under article 6 of the European Convention on Human Rights…In the context of the Constitution of Trinidad and Tobago there is a close link between the three guarantees of due process, protection of the law and fair hearing since the fundamental concept of a fair trial is common to them all; there is therefore no reason to doubt that the issue whether there has been a breach under any of these guarantees must be judged on a realistic assessment of the proceedings considered as a whole. This view does not undermine those guarantees. On the contrary, the cause of human rights is served by concentrating on matters of substance and approaching with skepticism technicalities and causally irrelevant breaches."

As Lord Millett observed in *Thomas v Baptiste*, another Trinidad and Tobago authority, reported at (1998) 54 WIR 357, I quote:

> "'due process' gives constitutional protection to the concept of procedural fairness. The entitlement is to a system of law which incorporates the fundamental rules of natural justice that formed part and parcel of the common law of England that was in operation at the commencement of the Constitution."

Mr. Speaker, the touchstone is fairness and one must consider the proceedings as a whole. Context, as it has been said, is everything. The point is that nowhere in the Constitution is there conferred on a person a right to have counsel participate fully before any tribunal and, a fortiori, a committee of the House.

Also, since there is not included in the catalogue of fundamental rights and freedoms in the Constitution a right of a Member before the Privileges Committee to have his counsel address the committee and examine witnesses, nor is that a constituent element of due process, or protection of the law, I submit, with the force of all of the very highest authority in this land, that there is no right in a Member to insist that these facilities be extended to him or his counsel. Mr. Speaker, again I repeat, there is no error in the thought process of the hon. Member for Chaguanas West.

The third issue is that the committee's role is investigative. Moreover, it should be underscored that the function of the Committee of Privileges, as are other committees of this honourable House, is one of considering and reporting, not deciding. Its role is investigative, not adjudicative. It does not decide legal rights or liabilities. The report of the committee has no definitive legal effects or consequences. It is this House, this honourable House, which is vested with the power to deal with the breach of its privileges, whether on the report of the Committee of Privileges or otherwise.

The fourth issue is the separation of powers. It was the hon. Member for San Fernando East who brought the Constitution here, and we respond with the constitutional arguments that have been dealt with by the Privy Council, our highest court in the land.

As is common knowledge, Parliament had exclusive control over what is said or done within the walls of Parliament. The courts will not allow any challenge to be made to what is said or done within the walls of Parliament. Once done in performance of its legislative functions and protection of its established privileges are established in the case of *Prebble v Television New Zealand Limited* [1995] 1 AC 321 per Lord Browne-Wilkinson at page 332. The lawmakers must be free. I repeat, the lawmakers must be free to deliberate upon such matters as they wish. Alleged irregularities in the conduct of parliamentary business are a matter for Parliament alone. This constitutional principle dating back to the 17th Century is encapsulated in the United Kingdom in Article 9 of the Bill of Rights 1689, I quote:

> "that…proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament…"

This principle is essential to the smooth working of a democratic society which espouses the separation of powers between a legislative Parliament, an executive government and an independent judiciary.

The courts and Parliament are astute to recognize their respective constitutional roles. The courts have recognized that they must be ever so sensitive to the need to refrain from trespassing or even appear to trespass upon the province of the legislators.

**2.20 p.m.**

In this regard, I wish to refer this honourable House and you, Mr. Speaker, and in particular the Member for San Fernando East, to the case of *Her Majesty the Queen v Her Majesty's Treasury ex parte Smedley* reported in 1985 *Queen's Bench* page 657 and page 666, per Sir John Donaldson the Master of the Rolls. See also Erskine May's *Treatise on the Law, Privileges and Usage of Parliament* the 23rd edition at pages 103 and following.

Mr. Speaker, I now get to the fifth issue raised, the practice in relation to the role of legal representatives at committee hearings. Permit me to remind this House of the practice that has developed in Trinidad and Tobago, this having been the practice in the House of Commons. In order to ensure fairness before this committee, Mr. Speaker, as you no doubt are aware, a Member's legal representative is permitted to be present at meetings of the Committee of Privileges and to advise the Member—to be present and to advise, however, Mr. Speaker, having not being called before the committee, having not been asked by the committee to assist, having no right of the hearing before this House, or its committee, such counsel cannot address the committee, or question witnesses. [*Desk thumping*] In simple language, he has the opportunity to be seen but not to be heard. [*Desk thumping*]

Mr. Speaker, this sensible, salutary practice ensures fairness, but also ensures that the Chairman could maintain control over the committee's proceedings. It is consistent with the House and by extension its committees having exclusive cognizance of its own proceedings, and is a fundamental matter touching and concerning the privileges of this honourable House.

The implications of the House permitting a Member's attorney-at-law to have full rights of audience before a Committee of Privileges, and to participate fully therein would be that there will be a real risk that the proceedings would assume the trappings and fall to be conducted like, and with the formalities and perhaps the technicalities of, a court of law. This is not a court of law, this is the House of Representatives where the representatives of the people legislate.

Mr. Speaker, the Committee of Privileges is a committee of the Members of the House, not a committee of strangers, and it is to these Members of the House

that the hon. Member for San Fernando East, not strangers, must give his account and provide such information to the committee as the hon. Members of the committee may consider necessary to assist it in its deliberations. It would be dangerous to all and to the conduct of the proceedings to make a Member's counsel stand in his place and answer to the committee for him.

The Members of the committee are not all lawyers and none of them are equipped to deal with matters or law. [*Desk thumping*] I repeat, Mr. Speaker, the Members of the committee are not all lawyers and none of them are equipped to deal with matters of law, legal submissions and legal procedure before our committee, I repeat, before our committee, meaning our committee of the House of Representatives.

Sir, this is not what we have assigned them to do. If this facility was allowed to a Member it may be necessary for the committee to also have the assistance of its own counsel in order to deal with and respond to the applications, the requests and submissions of the Member's counsel.

Mr. Speaker, this is to put an unnecessary burden on the committee and has the potential to make the proceedings protracted and contentious, and distract the committee from its business of simply considering the matter of privilege referred to it in order to make a report to the House thereof. Further, Mr. Speaker, the committee may have to extend a similar right to the Member making the allegation of a breach of privileges, and perhaps even others. If the role of counsel were expanded to the extent detailed in the motion so brought, then this is likely to result in the House and the committee losing control over the conduct of its internal proceedings.

Mr. Speaker, this will be quite a dangerous repercussion. Think of it. The committee, our committee may be influenced by a non-member on a matter of privilege of this House which is exclusively within the province of the House. If such a right were to be afforded to a Member before the Committee of Privileges, it will be very difficult to deny it to another Member who may be before the committee, or excluded before any other committee which also has a considering and reporting function, such as a joint select committee. Once the precedent has been set for the Committee of Privileges, there will be no reason to restrict it to this committee only.

Further, this may lead to Members asking for counsel to be heard when a motion of privilege is filed, when the Speaker is considering whether a *prima facie* case has been made out, and when the House is considering the report

submitted to it by the Committee of Privileges. The question is a recipe for disaster, Mr. Speaker, [*Desk thumping*] and if just for that singular reason it must be rejected as being totally out of order. [*Desk thumping*]

The sixth issue, Mr. Speaker, a fetter on the House's power to deal with questions of privilege. Further, you know that the House is empowered to deal with any issue of privilege which arises even without proceedings—even without referring it to the Committee of Privileges, by Standing Order 27. (5):

> "If during a sitting of the House a matter suddenly arises which appears to involve the privileges of the House and which calls for the immediate intervention of the House, the proceedings may be interrupted…by a motion based on such matter."

Additionally, Standing Order 43.(14):

> "Nothing in this—Standing—Order shall be taken to deprive the House of the power of proceeding against any Member according to any resolution of the House."

Since the House has the power to determine what sanction if any to apply for a breach of privilege, once the precedent has been set for counsel to participate in the manner, and for the reason stated in the question before us, what is to prevent a Member asking for counsel to be heard on his behalf during the debate by the House of a resolution pursuant to Standing Order 43.(14)? What is there to allow for that, Mr. Speaker?

If extended, this licence sought by the hon. Member for San Fernando East will impose an undesirable fetter on the ability of the House and the committee to deal effectively with issues of privilege as they arise in a prompt and expeditious manner, and will amount to a relinquishment of control over the internal procedures of the House and the right to regulate its own proceedings; a totally unacceptable state of affairs, and one which this House must strenuously guard against.

**2.30 p.m.**

I now come to my conclusion. It is quite unthinkable, having regard to the way parliamentary business has been conducted, for counsel representing a Member to question members of the committee. This does not even happen in a court of law. I repeat: the Committee of Privileges is not a court of law and is not analogous thereto in any sense. It is not an adversarial arena like the civil and

criminal courts over which the judge presides—and, trust me, I have presided—and in which the judge rules. While I may have ruled, Mr. Speaker, it is for you to rule and this honourable House to decide this issue today.

There is not a prosecution and not a prosecuting council. It is an investigative arm of the House and our committee has, consistent with settled practice, ensured fairness to the Member for San Fernando East. He has, by his own admission, confirmed that the committee has permitted his counsel to attend and even to advise him.

Mr. Speaker, permitting strangers to have the full rights of audience before the committee; to ask questions of members and cross-examine witnesses; make legal submissions and respond on behalf of a member to a question posed by a member of the committee is likely to interfere with and upset the decorum and orderly conduct of the business of this honourable House and this committee.

For all these reasons, this House should not and, I dare say, cannot agree to the question moved by the Member for San Fernando East and proposed from your Chair. In any event, the only person who can answer an allegation of a breach of privileges of the House is the Member himself and, through you Mr. Speaker, I urge my colleague, the hon. Member for San Fernando East, to do so as quickly as possible, so that the committee may do its work and submit its report to this House without delay, and not to attempt to lengthen the proceedings of this committee or to make them cumbersome and unwieldy.

Mr. Speaker, I thank you.

**Mr. Patrick Manning** (*San Fernando East*): Mr. Speaker, I listened with great interest to the very distinguished Member for St. Joseph and I listened very carefully to the arguments advanced by him, relying as he did on practices in the House of Commons in the United Kingdom; on the Standing Orders in the Parliament of the Republic of Trinidad and Tobago; and being very careful how he refers to the Constitution of the Republic of Trinidad and Tobago.

He used case law from all over the place and the fundamental issue that is before us, he carefully took some distance from. I was watching him as he argued the case and I could see, even by the way he was conducting his business, that he did not have the usual composure which you would have expected someone who spent some time in the Judiciary to display as he argued in this honourable House.

It is always possible to quote the Constitution selectively. I am not a lawyer, but even a non-lawyer like me would like to draw the attention of my good friend,

the Member for St. Joseph, to section 2 of the Constitution of the Republic of Trinidad and Tobago; not England; not the House of Commons' Standing Orders; not practices in Westminster, Sir; but the Constitution approved by the Parliament of Trinidad and Tobago in 1976. Here is what it says at section 2:

> "This Constitution is the supreme law of Trinidad and Tobago, and any other law that is inconsistent with this Constitution is void to the extent of the inconsistency."

In other words, Mr. Speaker—[*Interruption*]

**Mr. Speaker:** This is a very serious debate and I ask Members to give their full attention to the hon. Member for San Fernando East.

**Mr. P. Manning:** Mr. Speaker, thank you very much.

When the Member for St. Joseph talked about practice in Westminster; about the supremacy of Parliament in the United Kingdom and that the Judiciary would not dare to get involved in the conduct of business and in the way Parliament conducts its business, that is so because of the history of the United Kingdom. Indeed, that situation has arisen after a long British tradition and after one king lost his head for trying to conduct the business of judge, jury and executioner. That happened in the United Kingdom.

I was not the one; it was the Member for St. Joseph who talked about Montesquieu; but we are coming to Montesquieu in a minute. All that he has said, relying as he has done on practice in the United Kingdom, can only be applicable to the Parliament of Trinidad and Tobago to the extent that it is not inconsistent with the Constitution of the Republic of Trinidad and Tobago. If it is inconsistent and to the extent it is inconsistent, it is null, it is void and it is of no effect and the Member for St. Joseph knows that. The learned judge knows it.

I listened to you. You went all over the place talking about practice, practice, practice. The Judiciary in the United Kingdom would not dare get involved in the business of Parliament. They would not dare. In Trinidad and Tobago, the Constitution is the supreme authority and the Judiciary is the interpreter of the Constitution in Trinidad and Tobago. So the Judiciary can and does in fact get involved in the business of Parliament in the Republic of Trinidad and Tobago because they are the guarantors of the rights and freedoms of individuals; be they Members of Parliament or not, enshrined in this Constitution. The Member for St. Joseph, therefore, was being smart with foolishness when he was arguing the case the way he did. [*Desk thumping*] It is not that he does not know. He knows it very well.

Let me read something else to you. All the Member of Parliament is asking for; all the Member for San Fernando East is asking for is that he be accorded the rights and freedoms guaranteed to him in section 5 of the Constitution. That is all; and to do that he is coming to the Parliament to do it, the law-making body.

Mr. Speaker, I remind hon. Members that when they took a place in this Parliament, they all subscribed to an oath in the First Schedule of the Constitution of the Republic of Trinidad and Tobago. This is how the oath goes, for those who do not remember what they said. It goes like this:

> "I"—it has A.B.—"having been elected…a Member of Parliament do swear by"—and you then used whatever holy book to which you subscribe; in my case, it was the Holy Bible—"I will bear true faith and allegiance to Trinidad and Tobago"—that is an oath that everybody must take before sitting in this Parliament—"will uphold the Constitution and the law..."

Mr. Speaker, Members of Parliament are pledged to uphold the Constitution and the law; not practices of Westminster or anywhere else; but the Constitution and the law in the Republic of Trinidad and Tobago. It goes on:

> "and will conscientiously and impartially discharge the responsibilities to the people of Trinidad and Tobago upon which I am about to enter."

The oath that Members of Parliament have taken, what does it join them to? It joins them and commits them to upholding the Constitution and the law. It commits them to being conscientious and impartial in the conduct of their parliamentary business.

Therefore, when a Member comes before the Parliament seeking the authority of the Parliament to have access to his rights and freedoms guaranteed in the Constitution, it is a proper course of action to take. He has come to the right place to do it and he expects that, as he does that, he has the support of hon. Members who have pledged, by way of the oath they have taken, to uphold the Constitution and the law. Therefore, all the pretty language used by the distinguished Member for St. Joseph; the excursion on which he carried us into the flights of fantasy in the United Kingdom and the British Parliament; all of that is of no significance whatsoever. In fact, he might have done better if he were a stranger. It has no effect.

He talked about the Privileges Committee. The Privileges Committee makes a recommendation to the Parliament and the Parliament decides on the final position. Listen to what Montesquieu had to say. [*Interruption*] It was the

Member for St. Joseph. I did not raise it. He talked about the separation of powers. The separation of powers is a doctrine enunciated by the French philosopher, Montesquieu in 1948; just in case you do not remember it. [*Interruption*] Tell your colleagues that. They do not know. They do not seem to know. This is what Montesquieu said.

> "When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty."

Look at the composition of this House; look at the composition of this Parliament. Every Member on the Government side is a member of the Executive. Everyone has an appointment. There are no backbenchers. Therefore, the principle as enunciated by Montesquieu is one that is not adhered to in this Parliament as constituted by the hon. Member for Siparia, who I think they are referring to these days as Mother Goose. I think that is what you all call her, Mother Goose.

**Mr. Speaker:** Member, could you kindly withdraw those remarks?

**Mr. P. Manning:** Mr. Speaker, I unreservedly withdraw the remarks. In fact, I am prepared to say that hon. Members opposite do not refer to the Member for Siparia as Mother Goose. They do not do it.

**Mr. Speaker:** Member for San Fernando East, do not go there. You have withdrawn; do not make remarks on that question. Continue with your contribution, please.

**Mr. P. Manning:** Mr. Speaker, you are talking about the separation of powers. One of the shortcomings of the Constitution of Trinidad and Tobago is that that principle of Montesquieu is not scrupulously adhered to in the structure of our Parliament and in the conduct of constitutional business. In fact, that is the basis for the need for constitutional reform. It starts there. It starts with the situation in which too many members of the Legislature are members of the Executive and therefore, the Executive dominates this Legislature to an extent that is unhealthy, especially when you take into account the principle as enunciated by Montesquieu. That is the reality of it.

**2.45 p.m.**

In 2009 we embarked in this country on an educational programme to educate the population on the Constitution. We did it in the context of two draft documents that were before the national committee, proposing amendments to our constitution, and we articulated the policy. We were saying to members of the country, that if you want to be able to make an educated contribution to this

debate, then you have to be educated on it. And therefore, we went around talking this. [*Crosstalk*] If you did not listen, "da is your business". The PNM did its business then. And we were saying that the separation of powers doctrine, a doctrine to which this country subscribes, is a doctrine that is not scrupulously adhered to in this Parliament and that too much of the Legislature is dominated by the Executive. That is fact.

Let me tell you another area. Just for the benefit of my learned friend, there is another area. Mr. Speaker, a shortcoming in the Constitution is this [*Crosstalk*]—that we were very concerned about the separation of powers between the Executive and the Legislature, but the separation of powers between the Judiciary and the Legislature has not been addressed in the constitution at all. In fact, that is why you can take the Parliament to court, Mr. Speaker, and whether the court gets involved in the parliamentary business or not is only by way of their own judgment in the matter.

In other words, if the courts decide to use discretion and say, we are not getting involved in some aspect of the parliamentary business then that is a voluntary act on their part, it is not mandatory. It is not mandatory because nowhere in the Constitution are the powers separated between the Judiciary and the Legislature, and that nowhere in this Constitution is the area in which the Legislature autonomous is spelled out. The areas of autonomy therefore are not spelled out for this Legislature in this Constitution. [*Crosstalk*] And that it exists in Westminster, Mr. Speaker, because of practice, because of tradition and because of the history of the United Kingdom. It does not exist in the Republic of Trinidad and Tobago, and that is the point. [*Crosstalk*]

And therefore the matter before us is not as simple as it appears. The matter before us is fundamental, in fact, so fundamental that I want to put this Parliament on notice. I intend to attend the next meeting of the Commonwealth Parliamentary Association. [*Laughter*] I propose to go to the CPA at my own expense. [*Interruption*] I could pay.

**Member:** You have real money!

**Mr. P. Manning:** I could pay. [*Laughter*] [*Crosstalk*] What did you say? "Paisa nahal"? Paisa hal! [*Laughter*] You understand, Mr. Speaker. The matter is a matter—this issue is going to be of interest to the Commonwealth, and the Commonwealth Parliamentary Association is going to be of great interest.

And as we pursue constitution reform, we are going to have to decide what are going to be the areas of autonomy of the Legislature. Those areas are not spelled

out and, more than that—well I suspect, I do not know; I was not there, but I suspect there is a good reason why it was not addressed. Because when you now decide that the Legislature is autonomous in this particular area, what control do you have over that? What controls do you have over that in the context of a written constitution is a difficult question to answer. That is the problem. It is a difficult question to answer and I suspect that is why it had been left alone. [*Crosstalk*] But the time has come for us to face it. The time has come for us to face the question, Mr. Speaker. And we started it before we left. [*Crosstalk*] Those discussions started before we left. There is a whole history of that I could go through—[*Interruption*] Sir, we have a whole file on that. [*Crosstalk*]

**Dr. Moonilal:** Circulate it.

**Mr. P. Manning:** We have gone through this matter, we have discussed it. [*Crosstalk*] Well I am not responsible for your education. Please try and educate yourself on the matter. I am not responsible for your education. [*Desk thumping*]

Mr. Speaker, there are other difficulties with it, you know. I had not raised them before but I will raise some of them now. Because it was the Member for St. Joseph who talked about the process. [*Crosstalk*]

**Mr. Warner:** Now.

**Hon. Member:** Because of Calder Hart.

**Dr. Gopeesingh:** There is a whole issue of that.

**Mr. P. Manning:** Mr. Speaker, in the courts in Trinidad and Tobago—when you are before the courts for the highest sanction in the Republic, there is a process that is followed. Listen to the process—a police officer charges the individual. This is a murder case. A police officer charges the individual; the individual goes before the magistrate's court for a preliminary inquiry. And after the magistrate hears both sides of the case, Mr. Speaker, he decides whether the accused has a case to answer, he decides that, he decides whether it is a case to answer. And if he decides that the accused has a case to answer, then the accused is committed to stand trial at the next sitting of the Assizes in Trinidad and Tobago. Right or wrong?

See the process. Watch the process carefully. What is the process in this Parliament? [*Crosstalk*] The Member for Chaguanas West gets up and he lays a charge, in other words he is equivalent to what the police do. How you could mistake the Member of Chaguanas for "a police" is beyond me. [*Laughter*] In fact, it will appear to me as though he should fall in a different category. [*Crosstalk*]

But that is the process—that the Member for Chaguanas gets up and he lays a charge, the charge is heard by the Speaker, one side, you know. The charge laid by the Member for Chaguanas West and the Speaker decides that there is a case to answer. That is how it is. The accused has had no say, absolutely no say in the matter. [*Interruption*]

**Sen. Ramlogan:** Did you remember when Panday was suspended?

**Mr. Speaker:** Please, please, please.

**Mr. P. Manning:** Yes.

**Mr. Imbert:** Sharma was suspended.

**Mrs. Persad-Bissessar:** Sharma was suspended.

**Mrs. Gopee-Scoon:** Exactly, caution.

**Mr. P. Manning:** Mr. Speaker, it then goes to the Privileges Committee which is chaired by the Speaker. And then when the Privileges Committee reports, the House decides on a matter. Well it is chaired by the Speaker, so the Speaker decides it goes to the Privileges Committee, the Speaker chairs the committee and the Speaker presides over the House that sentences the particular individual. The Speaker is judge, jury and executioner and totally inconsistent, with the privileges and the rights of natural justice and the Constitution of the Republic. In other words—[*Crosstalk*] [*Interruption*]

**Mrs. Gopee-Scoon:** Listen! Too much noise.

**Mr. P. Manning:** Mr. Speaker, in other words the Standing Orders of this Parliament need to be addressed and we know it. And hon. Members opposite must not assume that because it is the Member for San Fernando East that is involved today that you take a particular position. Remember what your oath is? Your oath is "conscientiously and impartially". It is me today and you tomorrow.

Conscientiously and impartially discharge the responsibilities in the House, that is what you are called upon to do. And you agreed. You not only agreed to do that but you agreed in the conduct of your business to uphold the Constitution and the law. That is the point. And therefore it matters not who it is, it matters not where it comes from, but look at the process, Mr. Speaker. The process is flawed. It is flawed in a dangerous way. If, as we come to the Parliament today and we ask the Parliament to uphold the fundamental right of the Member for San Fernando East and this Parliament decides not to do it, you know what the next step is? Then we are going to take this Parliament to court. [*Crosstalk*] That is what is going—I am not threatening; no I am not doing that. No, no, no.

**Mr. Imbert:** That is his constitutional right.

**Mr. P. Manning:** I am not threatening. You see, Mr. Speaker, and then it could go to the Privy Council. I am sure of it. [*Crosstalk*] And when it goes to the Privy Council it goes before foreign judges. [*Crosstalk*]

**Mrs. Gopee-Scoon:** What a pity.

**Hon. Member:** London, London.

**Mr. P. Manning:** Not so, Mr. Speaker? It is a big pity that it would not go before the Caribbean Court of Justice. You know why? [*Crosstalk*]

**Mrs. Gopee-Scoon:** That is right.

**Mr. P. Manning:** And it would not go before the Caribbean Court of Justice because of a position by the Member for Siparia. [*Crosstalk*]

**Hon. Member:** What is that position?

**Mr. P. Manning:** The position was espoused in—when was it, 2006? You want to hear it?

**Mrs. Persad-Bissessar:** Yes.

**Mr. P. Manning:** That puts us in a situation today where a parliamentary matter, Mr. Speaker, will have to go before foreign judges for adjudication because that is where it is heading. That is where it is heading.

**2.55 p.m.**

Mr. Speaker, I want to quote from a newspaper article, "Trinidad Opposition Leader comes under fire for alleged racist remarks". This is the Member for Siparia, who is a Member of this House, and who is part of sentencing arrangement involving anybody coming from the Committee of Privileges who has been found guilty. I noticed the Member for Arouca South is smiling. Do you know why? He is also before the committee.

**Mrs. Persad-Bissessar:** The Member for D'Abadie/O'Meara!

**Mr. P. Manning:** The Member for D'Abadie/O'Meara, well all right.

**Mr. Roberts:** "But me eh fraid. Ah going strong."

**Mr. P. Manning:** Mr. Speaker, listen to what the Member for Siparia had to say! It goes this way:

> "A Brooklyn advocacy group has slammed Trinidad and Tobago's Opposition Leader, Kamla Persad-Bissessar…"

I raised it, because she is a Member of the House and a member of the sentencing body.

> "...over perceived racist remarks made while delivering an Indian Arrival Day speech..".

**Mr. Speaker:** Hon. Member, you are not permitted to raise a matter—[*Interruption*]—no, no, no, you are quoting, and from that quotation you are imputing. I am saying refrain from that and move on. Do not read that article if it is going to impute—[*Member stands*]—you cannot stand whilst I am standing. It is imputing improper motives; it is reflecting on the character of a Member. You cannot use an article to do that. So, I am simply saying to stay away from that and continue, please.

**Mr. P. Manning:** Mr. Speaker, I bow to your ruling. [*Laughter and desk thumping*] However, let me say that it was never my intention to impute improper motives, or to in any way adjudicate on the character of the hon. Member. I was not about to do that, but I was merely trying to point out to this honourable House why we find ourselves in a situation today where, arising out of the deliberations of this Parliament on this matter, Mr. Speaker, we could find ourselves before a body of foreign judges.

So, Mr. Speaker, hon. Members opposite are free to vote for, free to vote against or free to abstain. It is all up to them. Fortunately, Mr. Speaker, there are Members on this side, and I feel confident—

**Hon. Member:** That they will support you. [*Crosstalk*]

**Hon. P. Manning:** —that I can look forward to the support of my colleagues on this side. [*Desk thumping and crosstalk*]

**Mr. Speaker:** Order, please!

**Mr. P. Manning:** Mr. Speaker, the matter before the Parliament is simple, but very, very, important. Are we going to rely on the practice in Westminster? Are we going to hide behind the fact that Westminster does things in a certain way knowing full well that what Westminster does is only applicable in Trinidad and Tobago to the extent that it is inconsistent with our Constitution?

Mr. Speaker, hon. Members opposite are aware and I am sure that they know, after listening to this debate, that the way business is done in Westminster does not necessarily mean it is legal to do business in that way in Trinidad and Tobago. It does not mean that! I hope that what is going to emerge from all of this would

be a review of the Standing Orders of this House, but that could only happen after a proper review of the Constitution, and after a proper decision is taken as to the area in which Parliament will be autonomous.

If you ask me, and if I am just permitted, Mr. Speaker, to just advance a view on this matter, I think Parliament should be autonomous in the conduct of its committee business. I think so, but even in saying that, safeguards are necessary to ensure that no Member is disenfranchised, and all Members have access to their constitutional rights in the conduct of our parliamentary business, and that is the issue.

And so, Mr. Speaker, I believe that I have argued a convincing case. I have put it as fairly as I can and as dispassionately as I can. I have sought to respond to the allegations made and all the issues raised by the Member for St. Joseph. I would like to thank him for participating in this debate, and contributing to advancing the process of Parliament, because that is what you have done. We do not have to agree, but the debate must continue. At least you have participated in the process—and I want to thank you very sincerely for doing that—Mr. Speaker, and the debate will go on as we consider constitutional reform.

Incidentally, the answer, as I see it, to the situation where the Legislature is dominated by the Executive as, indeed it is, and when that happens as Montesquieu said, there can be no liberty—montesquieu said it, and it was referred to by the hon. Member for St. Joseph—the answer to that question is to have a Legislature from which members of the Executive do not emanate.

I also want to say something else. Just let me make one final point before I wind up. [*Desk thumping*] In the United Kingdom, the Parliament is about 650 strong. How many members of the Executive are there? There are no more than 50. In other words, there are about 600 backbenchers in the Westminster and, therefore, by no stretch of the imagination could anybody conclude that the Legislature in the United Kingdom is dominated by the Executive, but in Trinidad and Tobago where you have 41 seats in a House, and 26 of those seats are controlled by the Government, and every one of those 26 seats occupied by a member of the Executive—

**Hon Member:** It is 29! [*Crosstalk*]

**Mr. P. Manning:** It is 29; 29. All right, you would make me a liar for three? Okay, 29! Are you happy, 29? [*Crosstalk*] "Oh you are number 28, 29." The point I am making is that in a small Parliament like this one where every member of the

Legislature on the Government side is a member of the Executive, then the Legislature is dominated by the Executive and it runs contrary to the principle of the separation of powers as enunciated by Montesquieu in 1748.

Mr. Speaker, having laid this matter before this honourable House, I confidently look forward to the support of hon. Members on both sides.

I beg to move. [*Desk thumping*]

*Question put.*

*The House divided:* Ayes 4 Noes 27

NOES

Moonilal, Hon. Dr. R.

Persad-Bissessar, Hon. K.

Warner, Hon. J.

Mc Leod, Hon. E.

Sharma, Hon. C.

Alleyne-Toppin, Hon. V.

Gopeesingh, Hon. Dr. T.

Peters, Hon. W.

Rambachan, Hon. Dr. S.

Seepersad-Bachan, Hon. C.

Volney, Hon. H.

Khan, Dr. F.

Roberts, Hon. A.

Cadiz, Hon. S.

Baksh, Hon. N.

Griffith, Hon. Dr. R.

Ramadharsingh, Hon. Dr. G.

Ramadhar, Hon. P

De Coteau, Hon. C.

Indarsingh, Hon. R.

Baker, Hon. Dr. D.

Partap, Hon. C.

Samuel, Hon. R.

Ramdial, Miss R.

Roopnarine, Hon. S.

Seemungal, J.

Khan, Miss N.

*AYES*

Mc Intosh, Mrs. P.

Jeffrey, Mr. F.

Browne, Dr. A.

Manning, Mr. P.

*The following Members abstained:* Miss M. Mc Donald, Dr. K. Rowley, N. Hypolite, C. Imbert, Mrs. P. Gopee-Scoon.

*Question put*

*Motion negatived.*

**CENSUS (2011) (EXTENSION AND VALIDATION) BILL**

*Order for second reading read.*

**The Minister of Public Administration (Sen. The Hon. Rudrawatee Gosine-Ramgoolam):** Mr. Speaker, I beg to move,

> That a Bill to provide for the extension and validation of the Census taken pursuant to the Census (2011) Order, 2010 and matters related thereto be now be read a second time.

Mr. Speaker, the Census (2011) Order, 2010 was approved by both Houses of Parliament in accordance with the law. Members of Parliament did their work and, as a result of doing their work, the census began as scheduled on January 09, 2011. At the end of the fifth week, February 13, 2011, 60 per cent of the population was enumerated.

The Central Statistical Office is aiming for 100 per cent coverage of enumeration districts with the response rate of, at least, 95 per cent or more in this very important national exercise. We all know that a census really targets 100 per cent of the population. However, we were confronted with some challenges that have contributed to delays and, therefore, the need for an extension.

Mr. Speaker, let me share with this honourable House a few of the reasons why the extension is needed:

Insufficient and high turnover of field enumerators: In order to cover the 2,900 enumeration districts, a total of 3,064 field officers was trained but, as you know, when you employ persons, some may leave during the process; we had dropouts; some abandoned the exercise out of concerns for their safety in certain hot spot areas; others left to take up more permanent job opportunities.

**3.10 p.m.**

Some, again, left to take up classes and to attend classes and for furthering their education, Mr. Speaker, or, yet still, some left due to family commitment and family illness. Still others did not fully appreciate the demand of this exercise, very tedious and exhausting, and therefore there was need to continuously recruit other persons.

Other areas, Mr. Speaker, certain hot spot areas—and we are very much aware of hot spot areas in the country, zone two in particular, San Juan/Laventille—were experiencing gang-related and gun issues on a daily basis, compromising the safety of some of our enumerators. And these persons, generally, had to be accompanied by security forces.

Mr. Speaker, some areas also needed sea transport, like Paramin, to be accessed and also needed the support of national security. As a matter of fact, enumerators going into certain districts, particularly the gated communities, met with absenteeism and therefore had to constantly return to ensure that they meet the members of the household. Gated communities were a challenge for them and as such these conditions and these reasons actually inhibited the completion of this census within time.

Again, Mr. Speaker, the second extension is requested because, the CPC has indicated that the post-census survey—that is after the census has been done—usually is a separate activity done immediately after the survey. And this census is essential as a sample census survey done to test the accuracy of the wider census. In other words, what we are trying to do is to test the reliability and

validity of the entire census exercise. This activity helps to ensure that the findings of the CSO and the real situation on the ground reflect a high degree of correlation tending to one, in statistical terms, and as a result the extension is needed.

Mr. Speaker, I beg to move. [*Desk thumping*]

*Question proposed.*

**Mr. Fitzgerald Jeffrey** (*La Brea*)**:** Thank you very much, Mr. Speaker. The gathering of statistical information—[*Desk thumping and laughter*]—by the Central Statistical Office in Census 2011 is more or less complete. Therefore, it will serve no useful purpose not to provide for the extension and validation of the 2011 Order. A national census is too crucial and significant a document not to be supported. We on this side have no objection to the Bill before us.

Mr. Speaker, it is not the first time that census data gathering is being done in the months of April and May. Indeed, Mr. Speaker, the census was taken between April 14 and May 12 in 1980. In the year 2000, the census was done between May 02 and the June 09, 2000. Since January 09, 2009, the census proposal was approved by the Cabinet, and the 2010 population and housing census were scheduled to commence on May 16 and end on June 30, 2010. Everything was in place.

The ever ready and competent CSO staff was ready to go. Parliament was dissolved on April 08, 2010, to facilitate the May 24, 2010 general election. Thus, the Census Order and census regulations which give the authority had to be deferred. Nothing was sinister about that. The Minister of Planning, Economic and Social Restructuring and Gender Affairs, scheduled the census to be taken on January 09, 2011 to February 20, 2011, and for a number of reasons had to extend the exercise to May 31, 2011. Mr. Speaker, Trinidad and Tobago is not the first country to seek extension and validation and we certainly will not be the last. Indeed, there are developed countries that have had to seek extension and validation more than Trinidad and Tobago.

Census taking has been done on a regular basis as far back as 1844. The records will show that we have been conducting a proper census consistently, for example, 1851, 1861, 1871, 1881, 1891, 1901, 1911, 1921, 1931, 1946, 1960, 1970, 1980, 1990 and 2000. Mr. Speaker, it speaks volume for our development and governance. We need to congratulate the civil service staff at the Central Statistical Office who, over the years, have shown due diligence, producing accurate and timely report, for the government, public and international agencies.

Mr. Speaker, in a census, an attempt is made to find out how many people reside in Trinidad and Tobago, where they live in our country at the time the census is conducted, the housing conditions, the demographic characteristics, age, sex, ethnicity, marital status, migration, educational attainment, employment, unemployment, crime, et cetera. What is done with the data that is so meticulously and accurately recorded by the hardworking staff of the Central Statistical Office is the bigger question.

The CSO statistics are usually very reliable and should be used in the development of the whole country. What is the relevance of another census if we are not prepared to use the information from the last census? It is a fact, Mr. Speaker, that La Brea which extends from Aripero to Salazar Trace and from Quarry to Erin has the highest unemployment in the country. Some places like Rancho Quemado have an unemployment rate of about 40 per cent. La Brea has abject poverty even though they live very peacefully and happily with each other. Aripero is one of the fastest growing communities in south-western Trinidad, yet still lacks a proper recreation ground and community centre.

Despite the above information, this Government has not only refused to create employment in the area, they are now sending home CEPEP workers in the area. Five teams have been given notice of termination of their contracts or have been terminated already. We are taking about single parents with large families, average of about five children, who are dependent.

Mr. Speaker, it is not easy. In many instances, many of those single parents are trying to create a situation where their children, when they grow up, will not have to replicate the circumstances under which they exist. So, they are spending a lot of time with their children to make sure they get a good education and they gather good training. And now, Mr. Speaker, with one fell swoop, these single parents are without a job, and it also means therefore, those children have to either stop or reduce the number of times they are going to school.

I have a letter, a CEPEP termination notice, dated April 13, 2011 to one of the hard-working members of the CEPEP group. It is signed by Mr. Carlston Clarke, General Manager (Ag.), and I want to quote the significance. You see the census deals with unemployment and employment so we have to address that:

> "Following the assumption of control of the Programme, The CEPEP Company Limited continuously advised and insisted that the contracting companies should develop their capacities to grow beyond the operations of the Programme.

> Following the implementation of new contractual arrangements for the services of contracting companies in or around September, 2008 and no new written contract between contracting companies and The CEPEP Company Limited, this is to inform that the implicit oral monthly contract between Roopy's Contracting Services Limited and The CEPEP Company Limited can be determined by reasonable notice of one month.
>
> The CEPEP Company Limited has taken the decision to begin the transition of contracting companies throughout the country. In the circumstances, the Company has taken the decision to discontinue the engagement of the services of the Roopy's Contracting Services Ltd with effect from 13th May 2011."

Mr. Speaker, already we recognize, no smelter, no downstream. We recognize there is no Union Industrial Estate development. There is no development of recreational facilities in the area. There is no UTT campus coming down to Point Fortin—scrapped, and nothing on the horizon for La Brea and the south-western peninsula. This is a disaster for the people of the south-western peninsula, particularly, La Brea.

One would say that from the CSO statistics you would know that, listen, an area like the south-western peninsula requires urgent attention, and rather than create more unemployment, you would create employment to deal with the situation. And that is one of the sad things about the accurate and timely information that we get from the CSO, we are not using it for the development of Trinidad and Tobago—very sad. Mr. Speaker, you see, we need to understand that collecting data for itself is not the thing, it is what you do with the data. And we support the census, we support the extension but what we want to see is they use the data for the development of the Trinidad and Tobago. Indeed, if it is one thing that you cannot fault the People's National Movement government for, is their holistic development of Trinidad and Tobago. [*Desk thumping*]

Mr. Speaker, if you look, you have the oil company down in Mayaro. You go to central Trinidad you have the Point Lisas development. You go to the east you have the Tamana Park. You go to the La Brea estate—they were going to put down the Union Industrial Estate, the holistic development rather than looking at some sectorial or some regional interest. This is one of the things; the People's National Movement government always looked—used the statistical information from the CSO to develop Trinidad and Tobago, and that is an undisputable fact.

**3.25 p.m.**

Mr. Speaker, I want to take a little time off to compliment the Minister for saying that she was going to introduce imaging through scanners in the CSO. I think that is really and truly a very wholesome bit of work.

We do not have a problem with clause 7. [*Interruption*]

**Mr. Warner:** Member for La Brea, would it be correct to say that the PNM was in charge of La Brea for 45 of those 50 years, and the NAR for five years, under Albert Richards? So out of 50 years, five years La Brea was under the NAR, under Albert Richards, and 45 under the PNM? If the answer is yes, why is La Brea still in such a bad condition? [*Desk thumping*]

**Dr. Moonilal:** Good question!

**Mr. F. Jeffrey:** I see the Member for Chaguanas West has skillfully left out the six years under the UNC.

You see, Mr. Speaker, I am glad you raised that issue, because under the UNC Government, the Mississippi Chemicals Industry was supposed to come to La Brea. They turned the sod, and because of sectorial interest, they moved it from La Brea and put it in Point Lisas. That is the wickedness we are talking about, and this is what the PNM is not about.

**Dr. Moonilal:** "Yuh pull it back?"

**Mr. F. Jeffrey:** We want you to bring back development in the Union Estate. We understand what total development is concerned with.

**Hon. Member:** What about the last eight years?

**Mr. F. Jeffrey:** I will not be deterred.

We wanted to construct the Alutrint Smelter with downstream industries. They stopped it, and not a single thing was put in place for the people of La Brea. [*Desk thumping*] I made this pronouncement already in this honourable House, that five years would pass and not one single new industry would go on that estate; not one. Wickedness and vindictiveness is the order of this Government. Prove me wrong; prove me wrong. Member for Chaguanas West, we are on a different wavelength. I am speaking in toto of the whole UNC-led administration. [*Crosstalk*] You leave me and Chaguanas West alone.

When we look at clause 7 of the Bill before us, it says:

> "Notwithstanding any law to the contrary, no legal proceedings or other action shall be filed or maintained against a person for any act or thing done before the coming into operation of this Act in the purported exercise of powers conferred under the order,..."

This is included in every validating clause, since it is standard legal practice that every validating Bill must have a clause containing these words. As a matter of fact, as far back as 1980 those said words were used.

Looking at the confidential CSO documents dated May 16, 2010, I could not help but question the relevance of items 5 and 6. Mr. Speaker, item 5 and 6 deal with ethnic group and religion. After what has transpired over the last couple of weeks, I am very wary of us looking at ethnic group.

What purpose, what benefit, could this country get or any government get, by determining who is Caucasian, who is Chinese, who is East Indian or who is African? We are all equal. There is one race, the human race. We are supposed to be moving in that direction, rather than wanting to find out who is East Indian, African, Chinese and so on. This is a recipe for disaster, and the quicker we move away from that is the better.

We know all too well what transpired recently. It had this country on edge. I believe it is time for us to move away from this thing as quickly as possible. Let me ask a simple question. We have "mixed, "other"; who is that? So if you have, for example, an African mixed with a Caucasian, and an East Indian mixed with a Caucasian or a Chinese mixed with a Portuguese, what is the difference?

**Mr. Warner:** Imbert. [*Laughter*]

**Mr. Imbert:** I am an "other", boy. [*Laughter*]

**Mr. F. Jeffrey:** We are wasting time with item 5; it is more divisive. When this census data was being collected, I am certain in many households you had a problem with that. We need to understand, to get away from this thing and think "Trinidad and Tobago". One of the things that we could learn from Jamaica, and I lived in Jamaica for a number of years, is that all residents of Jamaica are Jamaicans. Trinidad and Tobago is the only place where we have all this "kankatang". We have to get away from this thing and think Trinidad and Tobago. This census is almost completed, but I hope by the next time we would get something else to put in place of "ethnic group".

Religion—what purpose is it whether you are Anglican, Catholic, Pentecostal or Moravian? I am saying, this is more divisive, in itself, than trying to pull this country together. Over the years, we have enjoyed some good times together. You look at Carnival, the 2006 World Cup, where we all moved together as one. This is what we want to promote, rather than decide, for example, who belongs to what

ethnic group or which religion. We need to get away from that. Therefore, we hope that in the not too far distant future, maybe the next census, we will see a change in this regard.

The Bill is to amend the Census (2011) Order, 2010, to do three things:

> "to provide for…retroactive commencement and its extension."—and we say bravo—"…validate the census which was purported to be taken pursuant to the Order"—we go along with that—"…provide immunity to persons who purported to exercise powers under the Order."—we go along with that.

I was very heartened, going through the *Hansard* record, to read that the 1980 census in Trinidad and Tobago, which was held between April 14 and May 12, 1980, when during the completion of forms, the complying of requests, no one objected to any of the questions asked. According to the very distinguished and late Attorney General and Minister of Legal Affairs, Mr. Selwyn Richardson:

> "because of the wide publicity and publication given to the whole census exercise, everyone approached during the period of the census"—that is from April 14—May 12, 1980—"to complete the forms, complied with the request and as far as we know, no one objected to any of the questions asked."

Mr. Speaker, I think if there is any shortcoming in this census gathering, it is the whole education process for its widespread acceptability. The question we must now ask is whether or not that great response we had in 1980 is going to replicate itself in 2011. I have a great fear that more difficulty would be experienced.

The hon. Minister told us about some of the problems experienced by our enumerators. Crime in the hot spot areas was, really and truly, a very significant one indeed. Some people were just not too trusting. We know that some of them, when they saw the amount of work to be done against the amount of money they were getting, that too was a turn-off for some of the people.

Trinidad and Tobago requires that this extension be granted, even though it is almost complete. Trinidad and Tobago requires that the census data be used for the benefit of Trinidad and Tobago, and when I talk about Trinidad and Tobago, I mean the whole of Trinidad and Tobago, from Matelot to Mayaro, from Chaguaramas to Icacos, from Parlatuvier to Scarborough. The whole of Trinidad and Tobago must benefit from the census.

Mr. Speaker, I beg to support this Motion.

**The Parliamentary Secretary in the Ministry of Planning, Economic and Social Restructuring and Gender Affairs (Miss Ramona Ramdial):** Mr. Speaker, I will be very brief in supporting this Bill to extend the life of the Census until May 2011.

As you know, the census began, as scheduled, on January 09, 2011, and at the end of the fifth week, February 13, 2011, 60 per cent of the population was enumerated. The CSO is aiming for 100 per cent coverage of the enumeration districts, with a response rate of 95 per cent or more in this very important national exercise. The census will give a comprehensive picture of the social and living conditions of our people in 2011. At the national level, current population statistics are essential for planning for the provision of health care, education, employment and other sectors within the country.

Regional figures are critical for determining regional policy and for the operation of regional authorities, for example, the health boards. The greatest strength is the provision of detailed population figures at a local level, and these will help to identify the likely demand for schools, hospitals, areas of relatively high unemployment and the best location for commercial development. So the Member for La Brea need not worry about his area, we will be coming soon to fix you.

**Mr. Jeffrey:** Thank you.

**Miss R. Ramdial:** As you know, the census during its course ran into some trouble, and some of the main challenges that have contributed to delays in the completion firstly were the insufficient and high turnover of field enumerators. In order to cover the 2,900 enumeration districts, a total of 3,064 field enumerators were trained; however, from the substantive list, there were a number of dropouts. Some field enumerators abandoned the exercise out of concerns for their safety, others left to take up more permanent job opportunities, others attended class to further their education or due to personal or family illness and still others did not fully appreciate the demands of the exercise at the commencement. This caused the reserved list to be quickly exhausted and new efforts to be initiated to recruit and train additional field enumerators. .

Secondly, one of the problems faced by the census activity was that certain crime hot spot areas, particularly in Zone 2 of San Juan/Laventille, was experiencing some gang-related gun battles on a daily basis, compromising the safety of some field personnel. The enumeration of these areas had to be carefully scheduled and had to await special arrangement by the police. As you know, Mr.

Speaker, the Government of the day is assiduously working on our national crime plan, and we have some great improvements in store for crime in Trinidad and Tobago. I am sure as we continue with the extension of census, this will be felt in all areas throughout Trinidad and Tobago, and it would be safer for our enumerators to go out there and collect data.

**3.40 p.m.**

Some areas needed sea transport to be accessed and also needed the support from national security personnel to be scheduled. The enumeration of prisons had to await the implementation of adequate safety measures by the authorities. And again, Mr. Speaker, the Government has considered these limitations to the census taking and is in the process of addressing such problems.

So, therefore, Mr. Speaker, the extension and the validation of the census 2011 would be of utmost importance and for the benefit of Trinidad and Tobago when granted later on today here in the House.

I thank you.

**Mrs. Joanne Thomas** (*St. Ann's East*): Thank you, Mr. Speaker. I thank you for the opportunity to contribute to this Bill.

Firstly, let me ask the question, what went wrong, Mr. Speaker? What went wrong with the census? From my observation several critical areas stand out. There seemed to have been a lack of proper planning, a lack of proper coordination, a lack of proper training and disinterest by some of the enumerators.

Mr. Speaker, we are all very cognizant of how very important this census information is to the proper management of the country's affairs. We all cannot reiterate enough how the capturing of this data is essential to everything that affects us. Mr. Speaker, I do not know if the Director of Statistics underestimated the seriousness of the function he or she was assigned in managing this process. We all went through this Bill way back in November, and those of us who spoke highlighted the many advantages of obtaining and collating the census information but, when I look at the situation we are placed in today in having to approve an extension, it gives the impression that not enough importance was placed on this activity.

Mr. Speaker, in the Census Regulation 7:1 it reads:

> "The Director of Statistics may appoint an authorized official to be—
>
> (a) a supervisor for one or more enumeration districts to assist in the training of enumerators and to supervise enumerators in the execution of their duties;…"

And the critical word here is "training". Mr. Speaker, I give an example. I have a friend who operates a guest house, and she was visited by these same enumerators. Of course, she was not at home but the employee who spoke to the interviewer, he asked questions about how many rooms are in the guest house, and what are the costs, and he moved away from the interview questionnaire and was then focused on his friend who was coming in, and how much was the occupancy cost and what amenities they had in the guess house. He totally moved away from what he came there for. And to reiterate, when he was asked for his badge, he mentioned that it was in the car of other censor who was in another street in the area.

Mr. Speaker, feedback received on the way the census is being conducted is really not what we expected. And I do not blame the enumerators one bit, but I blame the coordinators of the programme. I can tell you, to date I or my household have not been interviewed. To date.

Mr. Speaker, I ask another question; were persons from the various constituencies considered for hiring to assist in this project? I ask this question, for example, let us look at my constituency of St. Ann's East, where we have a lot of road repairs to be done. One area in particular I refer to is La Hoe Road in Laventille Road and La Canoa Road. There roads are in dire need of repair with La Hoe being totally impassible. The residents have to pass through a neighbour's yard to get to and from their own houses. Of course, I must mention that several pleas have been made by both the residents and myself to the hon. Minister of Works and Transport, and we are very hopeful that soon works will begin and this will be one of the projects he can comfortably say, "Done!"

It is quite possible, Mr. Speaker, that this whole community of La Hoe may have been left out in the census. If, however, persons from the area were hired, the data would have been readily retrieved, and I might add, the data may have been more easily given to someone you know than a total stranger.

Mr. Speaker, going back to the criticality of retrieving this data, we all acknowledge that this is a very necessary activity for better decision-making, and better policy-making. It will be particularly helpful to the Minister of the People who will be much more in tune with the needy and desperate throughout Trinidad and Tobago and not just his own constituency.

Mr. Speaker, statistics on our people also play a major role in our school system, more so in the secondary schools and the universities. It also reminds me here of the closing down of the National Aids Coordinating Committee. This

committee was specifically set up to deal with this aspect of our society. From them information on our behaviours and lifestyles would have also assisted us in understanding where we as a people are heading.

I recall a question posed in the other place by one of my colleagues when he answered the question which would have assisted our students in clarifying any doubts on the whole process of the census. He asked: "What is the importance of demographic data?" His answer, "When the CSO aggregates all this data, we would be able to see demographic shifts and trends over time and comparison could be made between decades."

Mr. Speaker, there could be no thought about supporting the extension of this Bill as the information must be collected to point the direction of governing. I, however, would like to recommend a few areas that should be addressed:

- a proper retraining exercise must be embarked on;
- review of the ground that was covered including time frames and to assume the best time frames for completion; particular dress code must be addressed for all supervisors and enumerators;
- a simple button-up T-shirt with the relevant emblem could be considered to be used;
- advertisement via a mike system throughout particular areas advising on the day the census takers are expected in the area. This would allow for proper scheduling by the various residents. And lastly, to give consideration to hiring a few more persons especially in the areas difficult to manoevure.

Mr. Speaker, we on this side give our support and approval for the extension but I ask, let us do it right this time.

Mr. Speaker, I thank you.

**3.50 p.m.**

**The Minister of Public Administration (Sen. The Hon. Rudrawatee Nan Gosine-Ramgoolam):** Thank you, Mr. Speaker. First I take this opportunity to thank all Members who have just contributed and from what we have heard, Members—especially on the opposite side—have pledged their support to this extension, so, Mr. Speaker, through you, I want to thank them.

But in thanking them, Mr. Speaker, the Member for La Brea identified problems of unemployment and other problems including contract, CEPEP workers, et cetera. With respect to unemployment specifically, I would assume

that the Member was using dated information, the last census was 10 years ago, and therefore, this is why we need current information, current data, current statistics and current census information in order for us to plan properly, [*Interruption*] and therefore, even if it would impact on contractors it is going to impact on our CEPEP workers. So, Mr. Speaker, I would like to inform the Member for La Brea that this census is important to even help us address the issue of unemployment in the south-western peninsula.

Discontinued programmes: the Member also spoke to the issue of discontinuing programmes in the south-western peninsula—the smelter plant—and spoke about other problems in that area. Mr. Speaker, I want to go back again to the census data. I am not sure that a proper feasibility study was done throughout the country given the characteristics and the geography of the country, when we look at development planning, which I would get into later, and I am not sure that a proper feasibility study was done to determine whether that was the most appropriate place to place the smelter. [*Interruption*] Probably, the census information would also help us to determine that together with developmental planning issues that I am going to come to later.

The Member indicated low or probably no holistic development—well, I would like to inform the goodly Member that I agree with him that holistic development is important, but I would like to ask the Member, through you, Mr. Speaker, he needs to tell us about developmental planning since the 1970s and ’80s, which is the last set of development plans I know was done—somewhere in the ’70s or the ’80s, and therefore, for the last 20 years and more I believe this country was on auto mode, operating and taking decisions vaille-que-vaille without any holistic planning. Somebody gets up one morning and we decided to put a smelter down in the south-west peninsula, so we put a smelter; somebody gets up another morning and decided to put something somewhere else and that was done. [*Interruption*] That was the mode of the last government. No holistic planning.

**Mr. Warner:** By “vaps”.

**Sen. The Hon. R. N. Gosine-Ramgoolam:** By “vaps”, and therefore, this census is going to help us organize in a particular way.

When the Member spoke to development planning, I am agreeing with him that the holistic development is a function of the information gleaned from the census, and therefore, we cannot put the cart before the horse. [*Dr. Rowley stands*] I have a very short time here so I want to do what I have to do here and leave. [*Crosstalk*]

**Mr. Speaker:** Please! Please! Please!

**Sen. The Hon. R. N. Gosine-Ramgoolam:** So, Mr. Speaker, we want to get into serious holistic planning and the faster we complete the census activity the faster we would be engaged in holistic planning and the faster we would be able to serve our people.

The Member for La Brea spoke to the issue of what would it benefit this country when we ask for information such as religion, who is Caucasian and who is that and that. Well, Mr. Speaker, I would like to inform the Member that human beings are unique and also antique, both. There is no one to replace us and as a result it is extremely important that for planning purposes we plan for individuals, not for groups and heads, and we need to know what people's cultural preferences are.

Our school feeding programmes, we need to know the students who consume pork, the students who consume beef, the student who does not consume either, and therefore this Government is concerned about individuals, so that planning is extremely important and this information, as a matter of fact, is common throughout the world in census taking. So it is nothing new. This Government has not embarked on anything new. [*Crosstalk*]

**Mr. Speaker:** Please, please, Members.

**Sen. The Hon. R. N. Gosine-Ramgoolam:** So, I want to let the Member on the other side know that we believe—

**Mr. Speaker:** Hon. Member, just—hon. Members on the Opposition Bench I would like to ask you to observe Standing Order 44 (b) and (c). Continue please.

**Sen. The Hon. R. N. Gosine-Ramgoolam:** Mr. Speaker, I want to emphasize that a census is one way to glean information so that we can treat citizens, individual citizens, with respect and dignity when we know their needs, and therefore, all censuses focus on individuals. We go to individual homes to identify—to glean information on individuals. So we want to assure the Member for La Brea that this information will be used to help every single citizen in this country.

I would like to respond to a couple of comments made by the Member for St. Ann's East. The Member asked what went wrong. Nothing went wrong and I would explain: lack of proper planning, training, coordination and supervision. Mr. Speaker, I would like to remind this honourable House, the Parliament, the office of the Clerk of the House is not under ministerial control. The census order

was approved by both Houses of Parliament, as I indicated before, in accordance with law and Members of Parliament did their work. The aspersion cast on no planning, lack of proper planning, et cetera, is really casting an aspersion, an unfair aspersion on the hard-working staff of the Parliament. This might have just been an oversight, and apparently we have some perfectionists on the other side who have never slipped. [*Interruption*]

Therefore, Mr. Speaker, proper planning was engaged, proper training was engaged, proper coordination of the activity; the persons out in the fields were supervised and are being supervised and there is proper management of the system, and therefore, when we move from house to house you will find among 3,000-plus enumerators who are going there. It is not congruent everybody will not behave like robots. We did not train them so that everybody is going to ask the same question in the identical way, in the same way, similar. It may not be congruent, but we try to be as standardized as possible.

The Member for St. Ann's East spoke about a friend who operates a guest house and was being questioned about rooms and cost, et cetera. I am almost certain that the questions asked by the enumerator were legitimate questions, because they had to use a checklist on the types of questions to be used. Furthermore, that anecdote really does not have much place in statistics. It is the exception to the rule. If the Member had come to tell us about the rule rather than the exception then we would think that probably something is wrong with the process, and therefore, one anecdote in hundreds of thousands of households I am not sure would be used as any valid reason to determine an outcome, so, therefore, it is an anecdote.

We are happy to learn from the Member—and this is why we do have the extension as well, because we have not enumerated everyone. Now that the Member has informed us in this honourable House that no one has visited her and her family, we would ensure that we will get her in the net and that her household would also be censored.

Mr. Speaker, this census is critical, I must say, for national planning, for providing the goods and services our citizens need. It is going to help us to engage in developmental planning, in social planning, in cultural planning and in all spheres of planning in our country. Therefore, I would like to ask this honourable House that this extension be granted, and, as the Opposition indicated, Members on the other side, that they have no problem in doing so, as a result, 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.*

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

**4.05 p.m.**

*Clauses 5 to 7, 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 amendments.*

*Preamble approved.*

*Question put, That the Bill be now read the third time*

**Mr. Speaker:** This Bill requires a special majority.

*The House voted*: Ayes 35

AYES

Moonilal, Hon. Dr. R.

Persad-Bissessar, Hon. K.

Warner, Hon. J.

McLeod, Hon. E.

Sharma, Hon. C.

Alleyne-Toppin, Hon. V.

Gopeesingh, Hon. Dr. T.

Peters, Hon. W.

Rambachan, Hon. Dr. S.

Seepersad-Bachan, Hon. C.

Volney, Hon. H.

Khan, Dr. F.

Roberts, Hon. A.

Cadiz, Hon. S.

Baksh, Hon. N.

Griffith, Hon. Dr. R.

Ramadharsingh, Hon. Dr. G.

Ramadhar, Hon. P.

De Coteau, Hon. C.

Indarsingh, Hon. R.

Baker, Hon. Dr. D.

Partap, Hon. C.

Samuel, Hon. R.

Ramdial, Miss R.

Roopnarine, Miss S.

Seemungal, J.

Khan, Miss N.

McDonald, Ms. M.

Rowley, Dr. K.

Hypolite, N.

McIntosh, Mrs. P.

Imbert, C.

Jeffrey, F.

Thomas, Mrs. J.

Gopee-Scoon, Mrs. P.

*Question agreed to.*

*Bill accordingly read the third time and passed.*

**FINANCIAL INTELLIGENCE UNIT OF TRINIDAD AND TOBAGO (AMDT.) (NO. 2) BILL**

*Order for second reading read.*

**The Attorney General (Sen. The Hon. Anand Ramlogan):** Mr. Speaker, I beg to move,

That a Bill entitled an Act to amend the Financial Intelligence Unit of Trinidad and Tobago Act, 2009, be now read a second time.

Mr. Speaker, I rise before this honourable House to present the Financial Intelligence Unit of Trinidad and Tobago (Amdt.) (No. 2) Bill, 2011, within the context, firstly, of the enhancement of the compliance rating of Trinidad and Tobago, with the 40 recommendations on money laundering, and the nine special recommendations on terrorist financing of the Financial Action Task Force (FATF).

The Financial Action Task Force (FATF), as you may recall, Mr. Speaker, is an international body that is charged with the responsibility for laying the ground rules and the framework for states, by which states must combat money laundering and take steps to combat terrorism. Trinidad and Tobago's effort towards compliance with these recommendations are well documented. It started with the Proceeds of Crime Act in 2005 and it ended with a recently enacted Financial Intelligence Unit (Amdt.) Act of 2011, Act (No. 3) of 2011.

The gap between the passage of these two Acts of Parliament perhaps is illustrative of what caused our present predicament. At the last review of Trinidad and Tobago's performance, the Financial Action Task Force commonly referred to as FATF identified certain strategic deficiencies in our legislation. The failure to fully operationalize the Financial Intelligence Unit proved to be a sore point.

Consequently, Mr. Speaker, the specific compliance mechanisms included in the Bill to eliminate the shortcomings of the FIU were designed to comply with the recommendations of the Financial Action Task Force (FATF). The objectives include:

- The promotion and advancement and operationalization of the FIU;
- To vest the FIU with the power to impose administrative sanctions on certain bodies for non-compliance with the legislation and
- Clearly, to establish the functions and powers of the FIU as a supervisory authority.

Mr. Speaker, there was an obligation to conduct an annual review in this Act. You may recall when I last contributed to the amendment to the FIU Act, we had indicated that that review, which was overdue, will be coming to this House in the shortest possible time. I am pleased to say that we have kept that promise, and today we come before this honourable Parliament with a review, with a list of amendments designed to fortify and strengthen the Financial Intelligence Unit Act (FIU) so that we may be able to further comply with the recommendations of the Financial Action Task Force (FATF).

I wish to inform this honourable House that in keeping with section 28 (A) of the Act, Cabinet, in November 2010, appointed an interministerial committee to evaluate our FATF—the level of FATF compliance by Trinidad and Tobago. This committee comprised of: the Minister of Finance, the Minister of National Security and the Attorney General. We reviewed the progress of the Act to evaluate how we were doing as against what the international requirements by the FATF organization were. Among the purposes, Mr. Speaker, and the things taken into account were the need to strengthen the legislation, to allow the FIU to function effectively and to correct any omissions in the Act, and to establish, in particular, the policy for a new supervisory authority and indeed a new regime for supervision, housed and located in the Financial Intelligence Unit (FIU).

Mr. Speaker, as the party—when we were sitting on the other side we had made the point that we felt that the administrative type model of the FIU which Trinidad and Tobago has may not be the best model for Trinidad and Tobago. We said this because we felt that the FIU, under the direct supervision as it were, of the Executive may not be the right thing. The hybrid model as opposed to the administrative model was recommended.

Unfortunately, we feel as though we have inherited a situation where we are always playing catch-up, because we had to avoid one possible blacklisting and we came to the Parliament with the first set of amendments and now we come again because we have a further meeting with the International FATF organization. If we do not get our act together in the quickest possible time frame then the country faces the threat and possibility of blacklisting.

It is for that reason, Mr. Speaker, given the exigencies of the situation in reviewing the Act, we have accepted the advice of the technocrats that we should preserve, operationalize and strengthen what we have at the moment, rather than to throw out the baby with the bath water and find ourselves in the unenviable and embarrassing position whereby we cannot come up with something new. So what we have done is to look at what obtains in other countries that have been given a

positive FATF compliant rating by the international body, and we will seek to strengthen and fortify our model so that we can in fact comply with those recommendations.

**4.15 p.m.**

Mr. Speaker, the existing administrative-type FIU will now operate in tandem with a dedicated law enforcement body for the investigation of money laundering and the financing of terrorism. We are also advised by those who have been working on this matter on behalf of the State that countries that have adopted a similar type of administrative model of FIU include countries in both the developing and developed world. Countries included in the Caribbean are Barbados, the Bahamas and, of course, outside of that we have Canada, Colombia, Venezuela and even the Czech Republic. We are further advised that this option is advantageous because at the moment little legislative reform is required, because it is there; it is in place and an organizational chart has already been approved for it. It therefore allows us to build on the existing framework and to focus mainly on the question of implementation and operationalizing the Financial Intelligence Unit.

The disadvantages of the hybrid model rest with the fact that a complete overhaul will be necessary to merge the FIU with any investigative arm of law enforcement and time simply does not permit that. Apart from time not permitting it, given our own culture in Trinidad and Tobago, it is felt that it is important that the FIU remain as an independent buffer between the financial sector and the Executive arm of the State and that the functions performed by the FIU would be to supervise and monitor, collate and analyze the data, and if they detect any suspicious activity, the idea would be that they then pass it to the dedicated law enforcement agency which we feel should be a separate unit, a separate body that can then take it from there.

In this regard, I am pleased to say that in the rationalization and review of the Special Anti-Crime Unit of Trinidad and Tobago, we will retain out of that structure the Financial Investigations Bureau, and that Financial Investigations Bureau will be beefed up and will, in fact, operate as a dedicated law enforcement unit, as a department of the Trinidad and Tobago Police Service that can service the Financial Intelligence Unit of Trinidad and Tobago. So if they detect any suspicious activity, they will be able to refer that matter to the Financial Investigation Bureau and they will conduct the investigations.

That model is one, we feel, that is important for Trinidad and Tobago, because the Police Service Act in this country mandates that only police officers can conduct criminal investigations. If we therefore seek to vest in the FIU an investigating capacity and capability, we will find ourselves in a position where we are authorizing the FIU to conduct investigations that will lead to criminal prosecution but that the evidence may not be admissible because the investigation would not have been conducted by a police officer.

Now, a police officer is not someone you can simply pluck from the police service and put him in the FIU. The police officer, under the Police Service Act, given the nature of our constitutional architecture, must be one from the police service under the direct operational jurisdiction and command of the Commissioner of Police himself. It is for that reason we have decided to maintain what we have; build on it and assign the Financial Investigations Bureau as the dedicated law enforcement agency that would have a direct liaison with the FIU when investigations are needed.

That way, we would have the further benefit that the Financial Investigations Bureau as a department of the police service will continue to be occupied doing other work and other investigations when there is little or no work from the FIU to be done. That is important, because if we put them in the FIU, as has happened in other entities, you find that these things look good on paper, but in reality they end up having precious little to do sometimes, and as the work fluctuates, so, too, do the role, duties and functions of the officers. It is better we leave them as a unit of the police service and with a dedicated liaison and relationship with the FIU so that, as and when required, they would be able to give priority to the investigations called for by the FIU.

The team considered the current problems with the Act that have been identified. We have regard to what was said in this honourable Chamber on Wednesday, September 30, 2009 by my predecessor, the then Attorney General, under the previous administration, when he advocated the adoption of this model and stoutly rejected the proposals made by the then Opposition, the model which we have inherited and we now seek to improve upon and build upon.

This is what was said, and I quote from the *Hansard* at page 880. I am quoting from the former Minister of Finance, the hon. Mrs. Karen Nunez-Tesheira. She said:

> "The model that we have determined is the most appropriate model for Trinidad and Tobago is what we call the administrative model. It is the model that is being used in Bahamas, St. Kitts, Barbados, Australia and Canada.

The main rationale for this type of model is that it creates that buffer zone so to speak."

She referred to the IMF report which she said gave the reason and quoted from it. I quote:

"'…usually part of the structure or under the supervision of an administration…or law enforcement or judicial authorities. They sometimes constitute a separate agency placed under the substantive supervision of a ministry or administration…The main rationale is to establish 'a buffer' between the financial sector…and the law-enforcement authorities in charge of financial crime investigations prosecutions. Often, financial institutions facing a problematic transaction do not have hard evidence of the fact that such a transaction (is a result out of a) criminal activity…therefore (they are) reluctant to disclose it to law-enforcement agencies.'

That is the reasoning in the IMF report—that is not Trinidad and Tobago—that did a study on various types of FIUs around the world.

There are a number of countries that have that model, some of which are Andorra, Aruba, Australia, Belgium, Bolivia, Columbia, Bulgaria, France, Israel, The Netherlands…"

She goes on to call a list of countries and she gave these as examples of those countries that created this buffer between the financial sector and the government, as it were. I continue:

"They gave examples of it and said that it is a structure fully integrated as an office of the Ministry of Finance; a director appointed by the government reporting to the Minister of Finance and the government. We are not reinventing the wheel; we are doing what is done by models all around the world that have been considered to be FATF compliant and CFATF compliant."

Which is the Caribbean Financial Action Task Force.

I have read carefully that contribution to the debate when this Financial Intelligence Unit Act was originally brought before this House, and whilst we would have preferred to go with some different model if time permitted, we feel that in the interest of Trinidad and Tobago at this present point in time, given what we have inherited, it is best to build on what we have and to strengthen and fortify it, and that is what we are about to do. It does not make sense sometimes to uproot and dislocate. That would be a case of throwing out the baby with the bath water.

That said, I turn to the need for strengthening the Act and to ensure that the problems in the Act are addressed. Under the old Act, some of the problems that were highlighted included the problems of stuffing, the operation of the Public Service Commission Regulations, given the way the Act was drafted; the manner and appointment of the leadership and other staff members, and many other areas in the Act that left a lot to be desired in terms of clarity and, indeed, the role of various institutions that may have some role to play in this legislation.

I assure the hon. Members that all of these issues were examined against the urgent need to meet the expectations of the Financial Action Task Force and to put the FIU into high gear immediately to avoid going over the precipice. Information on different approaches taken by other Caribbean states was solicited and we took into account that we are due for our next evaluation at the end of May, early June 2011. So we have very little time, because we must submit our report in advance of that meeting.

The Government recognizes that given the emergency with which we are now faced, speedy decisions have to be taken which would not prejudice the evaluation rating already given to the country. More than that, we are mindful of the sobering fact that time is of the extreme essence and the decisions that were taken favoured retention in terms of the basic tenets of the Act.

The complexity of the package of legislation that Trinidad and Tobago has enacted is seen in the piecemeal approach to this particular issue. We had, of course, the Proceeds of Crime Act, the Financial Intelligence Unit Act, the Anti-Terrorism Act, and then, of course, the Financial Obligations Regulations, all of this in a piecemeal manner, but to treat with our international obligations to ensure that Trinidad and Tobago is respected by the international community as a country that is serious about fighting terrorism and the scourge of money laundering.

The manner and sequence in which legislation was enacted and the linkages it created that have given rise to the necessity for constant cross-referrals between all of the pieces of legislation to which I have referred, created a virtual jigsaw puzzle of legislation, all germane to one relevant issue that must be viewed—and you must look at it in a holistic and panoramic way in order to get a picture of the whole to create any semblance of logic.

Just by way of example: the FIUs obligation to combat money laundering through services offered by financial institutions and listed businesses is contained in the Proceeds of Crime Act; it is not in the FIU, and the Financial

Obligation Regulations which are made under the Proceeds of Crime Act. Of course, then we have another reference in the Anti-Terrorism Act. So what we have is an interlocking and interdependent package of legislation that emerged on a piecemeal basis, because we were trying to address this matter in a particular way.

This is the second occasion in the short life of this Government that we have had to come to amend the FIU to ensure that it heightens our compliance rating with the international body. The first occasion, of course, we had amended section 8 of the Act to empower the FIU to perform its supervisory functions in relation to categories of businesses identified by the task force as being those which are most vulnerable to money laundering. Then during the course of the second reading of the Bill, Act No. 3 of 2011, the Government expressed its intention to pilot legislation in a short time frame to deal with the regulatory and oversight capabilities of the FIU. That is what these amendments are designed to do.

Recommendations 12, 16, 24 and 25 of the Financial Action Task Force specifically deal with the designated non-financial institutions and business professions. They include: real estate agents, motor vehicle sales companies; money or value transfer services; dealers in precious metals and precious stones; lawyers; notary publics, other independent legal professionals and accountants.

The businesses would include the buying and selling of real estate, managing client money, securities or other assets; management of bank savings or securities accounts; organization of contributions for the creation, operation or management of companies; the creation, operation or management of legal persons or arrangements and buying and selling of business entities; casinos and gaming houses; pool betting; National Lotteries online betting games; jewellery; private members' clubs; art dealers; trust and company service providers, and, of course, details of the functions that these kinds of bodies and businesses will perform.

Under "Recommendations", 12 and 16 state they are required, among other things, to apply to these businesses the obligations for customer due diligence and record-keeping, internal systems and procedures and suspicious transactions reporting in the same manner in which they are made obligatory for other financial institutions known to us. As the law now stands, the obligations are applicable to the financial institutions and listed businesses alike. But the FATF also requires under Recommendation 24 that member states put in place effective systems for monitoring and supervising listed businesses to ensure that they become FATF compliant.

**Mr. Speaker:** Hon. Members, this is a good time for us to suspend the sitting for us to have some tea. This sitting is now suspended until 5.00 p.m.

**4.30 p.m.:** *Sitting suspended.*

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

**Sen. The Hon. A. Ramlogan:** Mr. Speaker, the existing regime for listed businesses. Recommendation: 9 focuses on the establishment and powers of the supervisory authority to regulate those businesses which are required to be supervised by the Financial Intelligence Unit (FIU).

The supervision of financial institutions that fall within the licensing regime of the Central Bank presents no challenges, in view of the operation of the Financial Institutions Act, 2008, because the Central Bank is empowered to exercise in its capacity, as licensor of financial institutions, supervisory jurisdictions over the banks and other businesses under the jurisdiction of the Central Bank. The businesses identified by FATF, however, do not come within the aegis of a regulatory framework, and the standard of which meets FATF's requirements.

So, in that circumstance Trinidad and Tobago's position in this regard is as follows: there is legislation to regulate gaming houses and pool betting, the National Lotteries business, jewellers, private members' clubs and attorneys and other professionals like accountants are self-regulatory in accordance with their own professional bodies. So it is against that backdrop I turn to the Bill itself that is currently before the House.

Clause 1 of the Bill contains the short title and clause 2 indicates the Bill is to have effect even though it is inconsistent with sections 4 and 5 of the Constitution, because this Bill requires a three-fifths majority, amending as it were an Act passed with a special majority in this House.

Mr. Speaker, the Bill would provide in clause 3 for the Financial Intelligence Unit of Trinidad and Tobago to be referred to as simply the Act and clause 4, which is the long title, is now changed to give recognition to the fight not just against anti-money laundering but terrorism. So it now reads "an Act to establish the Financial Intelligence Unit of Trinidad and Tobago for the implementation of the Recommendations of the Financial Action Task Force on money laundering and the financing of terrorism and for related matters.

Clause 5 of the Bill will amend a number of definitions, firstly "law enforcement authority". The definition of law enforcement authority, it now

includes Comptroller of Customs and Excise, the Chairman of the Board of Inland Revenue, the Chief Immigration Officer, and indeed, any other body in law which is vested with coercive powers.

We have, of course, the change in the designated "Minister" and "Minister" shall now mean the Attorney General. We have inserted in appropriate alphabetical sequence the following definitions relating to the financing of terrorism which has the meaning assigned to it by the Anti-Terrorism Act: the Foreign Financial Intelligence Unit which means a competent authority, which in a country outside of Trinidad and Tobago exercises similar functions to our FIU. We have non-regulated financial institutions which now means— it has been expanded now to a credit union, and also a person who carries on postal services, as well as a society registered under the Building Societies Act.

Mr. Speaker, among these new definitions, is the definition of "financing of terrorism", which has become necessary in view of the functions of the FIU relating to the financing of terrorism under the Anti-terrorism Act and it should take care of that cross-reference.

Another new definition is that of a non-regulated financial institution. This definition is related to the new Part III A of the Act entitled Supervisory Authority. In accordance with that part, the supervisory authority's powers of the FIU are exercisable over listed businesses which includes: casinos, real estate, and other high-risk businesses, as well as, non-regulated financial intuitions, which are co-operative societies, postal services and building societies.

We have circulated an amendment to clause 5(c) whereby the proposed definition of non-regulated financial institution would be amended to capture societies registered under the Building Societies Act. That was drawn to our attention as being a business in the financial sector that ought properly to be captured by this Act, because it still exists as well as credit unions and banks and so forth.

We have amended, as I indicated, "law enforcement authority", and of course, we come now to the restructured Part III A. The restructured Part III of the Act will now locate the office of the FIU within the Ministry of the Attorney General. This was a decision that was arrived at after careful and deliberate consideration of all the models and what obtains in other jurisdictions. And it was felt the supervisory authority, with the kind of amendments that we are asking this House to approve it, would now be vested with a kind of responsibility, the exercise of which will require decision-making in a legal context, and it will require a legal responsibility, as it were, to be discharged by the FIU.

Apart from that, it was felt that the proper alignment of the FIU's functions, with what already exists in terms of the State apparatus, was such that in Trinidad and Tobago it would be better placed and housed in the Ministry of the Attorney General. And we say that because we have, under the Ministry of the Attorney General, already the Central Authority, and the Central Authority Unit is one which requires a close working relationship with the FIU, because the Mutual Legal Assistance treaty requests to find out what moneys are housed in foreign banks and so on, the FIU will have to have that close working relationship with the Central Authority in any event.

In addition to that, both the FIU and the office of the Attorney General have critical obligations regarding the listing and freezing of terrorist assets, in accordance with the United Nations resolution 13:73. So they were already in the international arena from the United Nations come down, a recognition that this kind of interrelationship is one that perhaps insured to the legal type of framework. And this is why we have chosen to follow other countries in housing it in the Ministry of the Attorney General. Of course, we also have as well the Anti-Corruption Bureau housed in the Ministry of Attorney General.

So this is why we saw the need to stream these disjointed arms of the anti-money laundering and counterterrorist financing machinery. And the aim is really to provide a formidable and unified system that will work seamlessly in the fight against money-laundering, and terrorist financing.

It should be noted that the head of the FIU in a number of regional states is appointed by a government minister in the sole prerogative of the hon. Prime Minister. One may ask: why put it under the Attorney General? One may equally ask: why put it under the Ministry of Finance? It really is a matter of prime ministerial and governmental prerogative and it was felt, given the amendments that we are making and given what already exists in the Ministry of the Attorney General, it would be a neater fit there. But permit me to say that many countries in the world have long recognized the need to have this kind of legal decision-making power, and in light of the legal environment that the FIU has to operate, it is always better to put it in one of the law enforcement type ministries—

**Mr. Imbert:** Not true.

**Sen. The Hon. A. Ramlogan:** The legal—

**Mr. Imbert:** Not correct.

**Sen. The Hon. A. Ramlogan:** —Ministries. In that case you will see in our regional counterparts, you will see—if the hon. Member for Deigo Martin North/

East will look— in St. Lucia, in the Cayman Islands, in the British Virgins Islands and in Bermuda, if you look at the legislation you will see that we are following a similar pattern, well established, in our Caribbean counterpart islands.

Furthermore, in countries where they have an Attorney General or a Ministry of Justice or a Ministry of Legal Affairs, you will find that they have always, in light of the role and function of the FIU having to operate as it were in a legal environment, they have always found it better to place it in one of these ministries thus, for example, in Belgium, in the United Kingdom, in Australia and in other countries where they have located it in the Ministry of the Attorney General or the Ministry of Justice which includes the Ministry of the Attorney General.

**5.10 p.m.**

So the point I am making is that many countries in the world our research has shown, in fact, locate the FIU, given its functions in the legal environment and in the legal sphere of the Government and the Executive arm of the State. So this is nothing so new that we are doing. It really goes to enhance the effectiveness of the FIU. It will streamline all of the desperate entities that we have and it will buttress and reinforce the functions of the FIU by rationalizing what exists presently in our state apparatus.

With respect to staffing of the FIU, clause 7 of the Bill clarifies a contentious issue that was perhaps the cause of some controversy in the past, and it is that the deputy director and the director of the FIU shall now be appointed by the Public Service Commission. Some say that was always so, and I will come to that in due course to show that could never be made a categorical statement. If that was so clear, it would have perhaps been important for others to voice their objection when they were doing it wrong. But I will come to that in due course.

Mr. Speaker, notwithstanding, the Public Service Commission may, with the approval of other Service Commissions, assign, transfer, and, of course, second officers within the public service and other statutory body to serve. What we have done is to have a separate provision for the establishment of the FIU from the provision dealing with the staffing in an attempt to achieve some clarity. So we have treated and separated, as it were, the director and the deputy director—treat them separately—and put them as the head of the organization in a different category.

Mr. Speaker, we all know that section 3(2) of the Act has been the subject of some controversy as I have indicated. Whilst the section dictated that these two officers, together with other members of staff, shall be public officers—so the Act

was clear on the fact that these two officers must be public officers—it was indeed silent on who or which institution is authorized to make those appointments.

Of course, there have been diversions of legal opinion on the matter, and it is for this reason that we have taken a position in relation to this which I will come to later, which will clarify and which will cede—depending on what your legal opinion is—jurisdiction in this matter to the Public Service Commission. We really have no great desire to do it other than that, or one way or the other. It does not matter to us quite frankly.

Mr. Speaker, we felt that it would not be in the country's best interest to have that matter go through one long and drawn-out argument and process, when really what is at stake is a matter that we are not interested in holding on to one way or the other. We are nonplussed about it. So far, without an adequate staff complement, the FIU has not and will not be able to demonstrate its effectiveness according to the standards set by the Financial Action Task Force.

Therefore, provision must be made for a measure of flexibility in the staffing arrangements, and the staff structure that has already been approved, efforts will now be made to expeditiously put warm bodies in those positions so that the FIU can become fully operational in the shortest possible time. The new provision is also intended to assist in this regard because it allows for staff to be contracted.

It is an open secret, a notorious one at that, that positions take a very, very long time to fill when they have to go through the bureaucracy and the red tape that is associated with filling positions through the normal channels of the SRC, CPO and the Service Commission. It just takes too long. That is a well established fact known to my colleagues on the other side and those of us who are in Government.

We have amended clause 8 to add an aspect for the oath of secrecy because we thought that confidentiality is important, and that was not an aspect that was addressed before in the oath. It also means that the oath taken will now be on par with the confidentiality requirement in the Civil Service Act.

The title to Part III, Functions and Powers of the FIU, is not just a cosmetic change. It is just that the drafting was badly done in the first start because the heading of Functions and Powers of the FIU was immediately followed by section 8, and that section really dealt with the SRC. So it was clearly wrongly placed.

Clause 10 of this Bill seeks to deal with one of the weaknesses of the Act, which is that the FIU was not empowered to take any action where there was non-

compliance with the Act. The Act creates a number of offences, but offences are not a tool that you can use to regulate and supervise these listed businesses. So a remedy was given under section 12, and that is the right to refer the matter to a law enforcement body for investigation. Apart from that, the supervisory role of the FIU calls for a different approach. It requires now, for example, the intervention of the court to compel and mandate that the compliance directions be observed by the body.

So if the directions given by the FIU are not adhered to by the regulated body or listed business, we have adopted the formula and the model used in the Integrity in Public Life Act, whereby you can approach the court for an order ex parte. The matter will be heard in camera—so there is no publicity about it—and the court can in fact give appropriate directions. Of course, in appropriate cases, it can find that the institution which refused to comply or was in wilful disobedience and neglect of a court order, it can in fact commit them to prison for a term of three years and they are liable to be fined $250,000.

I come now to clause 2. This clause simply seeks to increase the time limit within which a transaction and the conduct of a transaction will be suspended, and we have increased it from three to five days. We feel that this will be a more potent deterrent and that it will lead to a more effective functioning of the FIU.

Mr. Speaker, I turn now to clause 13 of the Bill. Clause 13 speaks to the completed analysis of a transaction, where the results indicate that the transaction requires criminal investigation. As I have indicated, you can refer the matter to one of the law enforcement bodies. The proposed redefinition, however, of that term, removes the role of the Minister to make that type of decision. Before, the authorized Minister, by order, could determine which law enforcement body is relevant to any specific type of investigation.

What we have done here is to strengthen the independence of the FIU, because the Minister will no longer be able, by order, to dictate which law enforcement authority the FIU will have to ask for investigation as a law enforcement body. That is now provided for in the Act itself. Under the previous regime, they had put it like that so that the Minister could add, subtract as it were, to the law enforcement agencies. So whichever one he feels and he deems fit on a “vaps” he can put there, we are changing that to take away the room and scope for arbitrariness.

Mr. Speaker, I come next to clause 14 which would amend section 17 of the Act and make consequential amendments. It in effect authorizes the FIU, in

addition to publishing a list of non-compliant countries which the Act already authorized, it must now publish a list of consolidated financial institutions or listed businesses against whom an order is in effect, declaring that it is a listed business entity under the Anti-Terrorism Act and so forth. This amendment vests the FIU with the responsibility to maintain a list of both local and foreign entities, who or which have been designated by the court as entities with which financial institutions and listed businesses are prohibited from undertaking transactions.

Clause 15 is very important and is perhaps the crux of these amendments because it introduces a new Part III A, and it details the functions of the FIU as a supervisory authority over non-regulated financial institutions and listed businesses. To take you briefly through it, the FIU will now be a supervisory authority in relation to the Act; all listed businesses and non-regulated financial institutions will now register with the FIU; the FIU will maintain a register in respect of all of this; and the supervisory authority that the FIU will now be, when it acquires knowledge or has reasonable grounds to suspect that a person is engaging in or has engaged in money laundering or terrorist financing, it shall request an investigation from the relevant law enforcement body.

Once they form that reasonable suspicion, they must make that request for investigation as soon as reasonably practicable, but in any event before the expiration of seven days; all of these listed businesses and non-financial institutions, the Central Bank will monitor, shall continue to monitor, the traditional financial institutions which fall under its purview; and now the FIU is responsible for monitoring to ensure compliance with all of the related Acts of Parliament, including the Proceeds of Crime Act, the Anti-Terrorism Act, the Financial Obligations Regulations, the FIU Regulations and any other relevant piece of law. Guidelines can be issued to listed business so as to ensure there is compliance with all of these laws.

In order to secure compliance, we have authorized that the FIU may take steps to enter business premises of a non-regulated financial institution during work hours, with the consent of the owner or occupier, to inspect the premises, inspect their books and records and make copies, and to observe the manner in which certain functions are being undertaken. They can request an explanation if they see something they feel is not right, and if they refuse to give consent, of course, we have authorized a police officer to execute a search warrant to enter, seize and inspect the relevant documents.

If non-regulated financial institutions or listed businesses have violated or are about to violate the Act, or any other guidelines or directives issued by the FIU,

then you can ask them to cease or refrain from such violation, and, failing that, you can in fact serve a notice which will contain the substance of your complaint against the listed business.

Once you do that, then you can perhaps give them an opportunity to make representations as to why they are finding themselves in trouble and in problems with the FIU. Once they make such representations, the FIU can decide to give them an opportunity to take remedial steps, failing which, the FIU can then as a last resort take them to court and get the High Court to make an order for them to cease what the violation complained of from happening again.

Mr. Speaker, we have circulated an amendment to clause 15, to insert the words "non-regulated" in the proposed section 18G. That is through an inadvertence that was left, because as I have indicated, the traditional financial institutions which come under the preview of the Central Bank will continue to remain there, whether it is a regulatory compliance mechanism that has been established and well entrenched in the system. So we felt rather than move that, we will leave it there with the Central Bank and the new FIU will deal robustly with the listed businesses and non-regulated financial institutions.

Mr. Speaker, I take you now to the validation clause, clause 18. It seeks to validate:

> "…prior to the coming into operation of this Act,"—any things done—"shall be deemed to have been lawfully and validly done, to the extent that it would have been lawfully and validly done if the person had been…validly appointed."

This is a provision that has become necessary, primarily because of—

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

*Motion made*, That the hon. Member's speaking time be extended by 30 minutes. [*Hon. A. Roberts*]

*Question put and agreed to.*

**Sen. The Hon. A. Ramlogan:** Thank you very much, Mr. Speaker. That is a well-timed extension, and I am grateful to my colleagues on both sides. There has been a great deal of talk about this issue of the validation clause, and it is necessary that we understand the history behind this legislation and what prompted this validation clause.

**5.25 p.m.**

Mr. Speaker, you would recall that earlier this year, the Government had introduced a Bill which sought to amend section 7 to give the FIU an expanded remit and to correct a small cross-referencing error that had occurred to enable the Minister to make regulations, and in the course of that debate, to make reference to the unenviable position we found ourselves in with respect to the appointment of director and deputy director of the FIU.

Mr. Speaker, we cannot stray from our responsibility and duties. What we inherited was a situation that led to a serious loss of credibility on the part of the state of Trinidad and Tobago on the international front. I have listened and read the rather provocative and inflammatory remarks made outside this Chamber, with respect to the insertion of this validation clause, and I wish to clear the air on it to say why it was necessary and why we have to behave in a responsible manner.

You see, Mr. Speaker, the law as it stands, prior to the introduction of this amendment, made one thing clear—there were some things that were unclear but there was one thing that was abundantly clear. And the one thing that was clear was that a public officer had to be appointed to serve as the FIU Director and Deputy Director. That much was self-evident because the section says:

> "The FIU shall consist of"—"such number of suitably qualified"— public—"officers"—including a director and deputy director—"as may be necessary, for the performance of its function and may include—
>
> (a) public officers appointed, assigned,…"

But the common thread throughout the appointment of director and deputy director was that you must be a public officer. What was unclear is who or how to make the appointment, but what was clear beyond the shadow of a doubt is the fact that a public officer was the relevant person to be considered for appointment.

Now, Mr. Speaker, to not appoint a public officer would have rendered the entire Act inoperable and nugatory. You see, the appointment of the Director and Deputy Director was critical to the functioning of this legislation and indeed the FIU because, without it, you would be non-compliant with the FATF recommendations and you ran the risk of blacklisting as a country. So, faced with what confronted us when we came into office, we had the Herculean task of trying to reconcile that which we inherited with that which was required by the international FATF organization.

What did we inherit, Mr. Speaker? We inherited a position in 2010 whereby one, Mr. David West, was appointed as director designate of the FIU, but allowed to function and represent or rather misrepresent himself as director of that body by signing off on correspondence and so on, as Director. That is the reality. There are several curiosities about that particular appointment, Mr. Speaker. The first, in the recommendation that went before the Cabinet of this country, by the previous government, they were fully aware that the Office of the Director was a necessary part of reporting suspicious activities in the financial sector, and in the recommendation that went forward to Cabinet, the Note to Cabinet described Mr. West as the Central Authority of the Ministry of the Attorney General.

So, he is described—and Cabinet was being told—and the impression conveyed to Cabinet is that the person they are considering to appoint to the FIU as Director was, in fact, the Central Authority of the State which comes under the Ministry of the Attorney General. It is ironic that they used the justification that Mr. West was the Central Authority housed in the Ministry of the Attorney General, and that was the justification for putting him as Director.

That, Mr. Speaker, supports the argument I submitted earlier on, that you needed to have this function properly housed in the Ministry of the Attorney General, because it is clear that they also understood that it is best suited there, because someone from the Central Authority would have a better and more efficient and symbiotic working relationship with the FIU, given the nature and functions of the Central Authority.

Now, Mr. Speaker, the next curiosity was—I will come back to why he was described as the Central Authority—he was appointed, not to either of the two offices which the legislation created of Director or Deputy Director, he was appointed to neither of those offices. He was, in fact, appointed to Director designate. More than that, we have since discovered—when we thought that was the only problem—the Deputy Director, Mr. Speaker, was also appointed as Deputy Director designate.

Nowhere in the Act is there any reference to Director designate or Deputy Director designate. You can make an acting appointment to the office but you cannot bypass the office by dubbing it Director designate and Deputy Director designate, and allow them now to fill the shoes, and walk around in the shoes, and act as if they are the Director and Deputy Director. That, quite frankly, is plainly illegal.

Mr. Speaker, permit me to say that the Mutual Assistance in Criminal Matters Act, Chap. 11:24, section 3 states that the Attorney General shall be the Central Authority. I do not recall Mr. West being appointed Attorney General but it is clear that there was a completely wrong description of him as the Central Authority in the note that went to the former Cabinet. I do not know to what extent that may have influenced the former Cabinet in making the appointment, but that is, in fact, there in the note.

Mr. Speaker, my information and the records of the Ministry of the Attorney General show that Mr. West was, in fact, a legal consultant with the Central Authority and with the Ministry of the Attorney General, and no more. He was clearly not a public officer because he was engaged in a full-time private practice, and this was a consultancy.

So, the unfortunate position we found ourselves in was that the two most important appointments under the Act were made contrary to the Act itself. It was either an act of blatant deception or an act of blithering incompetence. Whichever way you look at it, they clearly did their own thing and ignored the rule of law, and what the operational requirements of the FIU in a FATF compliant regime would have been. And that is why this validation clause is so important.

Mr. Speaker, when we met with the FATF organization, and it was discovered that these appointments were really illegal, and that they were not just bypassing the legal requirement of appointing a director and deputy director, but they had allowed them to function as such, but more than that, they represented to the international bodies that we, in fact, had complied with the law. So, we found ourselves in the unenviable position whereby we could be blacklisted, we were trying to now comply and rectify the errors and omissions that we inherited, but we were doing so in an environment and context where we had suffered a serious hit on our credibility. The country took a serious hit on its credibility.

Not wanting to be political about the matter, and not wanting to be dealing with such an important matter without the benefit of independent counsel, I went for advice on this issue on the legality of Mr. West's appointment outside of the Ministry, and I did so out of deference to, perhaps, the Members on the other side. I remember the vociferous objections from the Member for Diego Martin North/East, and perhaps Diego Martin West, who proclaimed the legality of the appointment. [*Interruption*]

**Mr. Speaker:** Please, please, please, Member for Diego Martin West. No, you cannot make remarks like that: "stupidness" otherwise I will ask you to withdraw those remarks. Continue.

**Sen. The Hon. A. Ramlogan:** I am grateful, Mr. Speaker. Mr. Speaker, it was in those circumstances, not wanting to deal with it on my own, I went for independent advice to Senior Counsel, Mr. Russell Martineau, a former Attorney General of this country. Mr. Martineau has advised—and I wish to disclose to this Parliament—that the views I expressed in this Parliament were indeed correct, and he is in concurrence with them. And that is to say that Mr. David West's appointment was, in fact, illegal, and it was illegal for many reasons.

Firstly, there was no office of director designate, there was simply an office of director under the Act, and that office was clearly never filled, but misrepresented by the former administration as though it was filled.

**5.35 p.m.**

Secondly, Mr. West could not have fallen under part (b), which is the other category of individuals, that is to say a public officer or another person appointed on contract, because he was never appointed on contract by the Permanent Secretary of the Ministry of Finance. In fact, Mr. West was not appointed on contract by the Permanent Secretary in the Ministry of the Attorney General. He was simply a lawyer in private practice, who was retained in a private consultancy arrangement by the former Attorney General. Those are the facts. I hear the Member for Diego Martin North/East saying this is foolishness. But the truth of the matter is—[*Interruption*]

**Mr. Imbert:** You are very foolish.

**Mr. Speaker:** Listen, Member for Diego Martin North/East, withdraw that remark, please.

**Mr. Imbert:** I would say it on the floor.

**Mr. Speaker:** I said withdraw the remark, please, Sir.

**Mr. C. Imbert:** I withdraw now and I will say it on the floor.

**Mr. Speaker:** What?

**Mr. Imbert:** I withdraw it.

**Sen. The Hon. A. Ramlogan:** I am grateful to you, Mr. Speaker. I do not wish to cast aspersions, because legal opinions can vary, but I respect the advice I have been given. I cannot act contrary to it. The advice has been fortified by other views I have canvassed in the legal profession from many persons. But, one thing is abundantly clear. Even when they seek to stand and justify and defend the indefensible in the appointments that they made to two offices that are not known

to law, they never once would cite a legal authority. The hon. Members who have defended that position are not, in their own right, lawyers. They are not attorneys. I am citing my own position and views as Attorney General now, confirmed by independent legal advice from former Attorney General, Senior Counsel, Russell Martineau, and they wish to describe it and use pejorative adjectives to describe it.

**Mr. Warner:** Word boy!

**Sen. The Hon. A. Ramlogan:** I shall not allow myself to descend and stoop to that level.

**Mr. Sharma:** That is why when you are outside of this Parliament, you would be further useless.

**Sen. The Hon. A. Ramlogan:** Mr. Speaker, we have decided to take corrective measures and that is why primarily, the primary reason for the validation clause is to validate the acts performed by the former director designate and deputy director designate, who were in fact appointed to those positions that are not known to law, but were in fact performing the duties, de facto, of director and deputy director. What you had was a situation where they tried to outmanoeuver the system, because they did not want to confirm someone in those offices, and they well knew that we had to comply with the FATF recommendations or face blacklisting.

They criticized us on the last occasion for taking so long to come. "Oh, yuh in Government eight months now." They expected us to do what, in eight months, they did not do in eight years. I want to say again, and set the record straight, before we could come to this stage, we have had to have meeting upon meeting to try and restore our credibility and to try and bring some measure and some semblance of normalcy to our relationship and international reputation and standing, because it is not an easy thing for an international body to be lied to. [*Interruption*]

**Mr. Speaker:** Withdraw that.

**Sen. The Hon. A. Ramlogan:** I am coming to the specific case now. I am speaking generally.

**Mr. Speaker:** Withdraw the word "lie".

**Sen. The Hon. A. Ramlogan:** I hear you. It is not an easy thing to deal with misrepresentation. [*Interruption*]

**Dr. Rowley:** Withdraw the word!

**Sen. The Hon. A. Ramlogan:** I withdraw that. When you have that kind of misrepresentation recklessly being made or negligently being made to an international body, it affects the image of the country and it affects our credibility and our international standing.

They act as if this is something that is being done because of the appointment of Miss Susan Francois by the Government. Permit me to elucidate. I asked the question: if it is so clear to those opposite, that the Public Service Commission, and not Cabinet or the Government, has to make the appointments to the offices of director and deputy director, why is it they did not engage the Public Service Commission, but that a PNM Cabinet sought to make and purported to make appointments to the offices of director and deputy director? I hoped that my learned friends would see the sense, reason and danger in what they are suggesting.

Because, if you knew that the law was that the Public Service Commission is the body that is competent to make those appointments, if you know that, and you chose to disobey it, and bypass it, you are guilty of wilfully and knowingly disobeying the law of the country as a Cabinet. We say on this side that we were perfectly entitled, in our view, to make the appointment of Susan Francois. But, we say that and we maintain the law is ambiguous.

We agree with the Chairman of the Public Service Commission in that regard. In that regard, we have come to clear it up, but they are not prepared—in the interest of partisan politics, "dey so want tuh play wrong and strong"—to say that the law was ambiguous. They prefer to say that the law is clear, it was always clear and that the Public Service Commission had to make these appointments, without realizing that, in saying that, they also raised, underscored and highlighted the bigger question: if you knew it to be so, why did you not follow it and obey the law? Why did the Cabinet do it?

It was in those circumstances, when I saw correspondence from the Chairman of the Public Service Commission giving rise to this matter of some ambiguity, I responded in a forthright manner. This is the text of my response by letter dated April 11, 2011, and I wish to read it into the record of this Parliament.

Mr. Christopher Thomas

Dear Chairman

My attention has been drawn to your letter of March 28, concerning the appointment of the Director of the Financial Intelligence Unit. I note that you have publicly described—this is the Chairman of the Public Service Commission talking—the provisions of the Act regarding the appointment of director as ambiguous. In fact, in your letter of March 15, to the hon. Leader of the Opposition—

The Chairman of the Commission wrote the hon. Member for Diego Martin West, and this is what the Chairman of the Commission told him when he wrote him.

The commission has been advised that there is some ambiguity in the section of the law, with respect to whether the Director and Deputy Director of the FIU are to the public officers or contract officers.

The chairman of the commission was saying to the hon. Leader of the Opposition: "We have been advised that this thing is ambiguous." If the law was so clear, the chairman of the commission would not have to go to a Senior Counsel to tell him what the law means. By virtue of the fact that he has to go for an independent counsel to tell him what it means, by itself, is illustrative of the fact that the thing was ambiguous or somehow unclear. But anyway, I continue:

I have also received advice from Senior Counsel, which confirms that Cabinet was the competent authority, and therefore, perfectly entitled to appoint a serving public officer on contract as the Director of the FIU.

I am further advised by senior public servants that there is ample precedence for the appointment of this kind to be made by Cabinet. I agree with you, however, that the Act as drafted is indeed ambiguous.

I conceded that.

It is silent on the role of your commission, if any, and fails to provide clear guidance on a number of important issues. The divergence of legal opinion, notwithstanding, I am of the view that it would not be in the interest of good public administration to have this issue litigated.

There was a suggestion in the letter from the chairman of the commission that if we have a different view let us go to the court now to have this matter resolved, and the court would interpret the provisions. That is what I had to say.

> The divergence of legal opinion notwithstanding, I am of the view that it would not be in the interest of good public administration to have this issue litigated. Litigation—

[*Interruption*] "I know you know plenty about losing case". I would not wish to bring non-Members into this House and of leave Mr. Elias out of it, please.

> Litigation between the Executive Arm of the State and an independent commission appointment by the Constitution, is bound to span the full gamut of our legal system and even reach the Privy Council. Protracted costly litigation over an issue which the Government is quite content to allow the commission to decide, would be an unnecessary academic exercise.
>
> In the circumstances—

I told him we would do the validation and I pointed out—I told him that we are happy that I am doing it. The point I wanted to make is: "Wha we really going tuh litigate dat for?" The commission and the Government, if we were as irresponsible as some persons have been when they were in government, we will go to court. "Look at the Uff Commission and how much money dey spen'."

**Mr. Warner:** Forty-six million dollars.

**Sen. The Hon. A. Ramlogan:** They spent $46 million and counting. And they have the temerity to come and ask questions of this Government to find out how much money "dem spen" when they were in government. That is the reality. It is confusion upon confusion. We saw confusion today and we are seeing more confusion. [*Interruption*]

**Mr. Roberts:** The PNM coalition.

**Sen. The Hon. A. Ramlogan:** The cracks and fissures in the coalition of the Opposition are now beginning to show. They too are in search, it seems, of a partnership. They need a partnership of some kind. But, the problem is, the people have divorced them and when you have been divorced for a little while it is difficult to find a good partner, so they remain divided among themselves.

I always thought that there were two aspiring leaders of the Opposition. Today I realize that one man who "say he was in the departure lounge, look like he now buy he ticket and about to board the plane. He eh look like he in no departure lounge at all!"

The short point is, to go to court on that matter, when the Government is quite content and comfortable to allow the commission to make these appointments, that is fine. If we take it to court, what will happen? It will go through the High

Court, the Court of Appeal and reach the Privy Council. That will be 10 years. We will still be sitting here. They will still be sitting there and the issue will now be before the Privy Council. Do you understand? In between all of that, they would spend about $10 million. That cannot serve the public's interest, and the status quo would have to be protected and preserved until that. It does not make sense, quite frankly.

We are prepared to be big and say: "Look, the law is ambiguous. We have clarified it and we have brought an amendment here to clarify it and to yield and concede that jurisdiction will properly vest in the Public Service Commission, will now have sole and exclusive jurisdiction to make the appointment of director and deputy director. "Not, no designate, but director and deputy director."

Of course, they act as though this Act validating the provision is some big deal, as if we are doing something that we have to hide, when we are really trying to clean up the mess created by them. It is not the first time validating—this is just a validated provision in an Act. When the other side sat here, they had to validate so many things that they did wrong, if I start, the list would go on.

**Mr. Warner:** Every week.

**Sen. The Hon. A. Ramlogan:** The Uff Commission of Enquiry was not Gazetted. They had to come and retroactively validate it after a big case. "Dem only like case. Dem like plenty case." The Uff Commission, when the failure to Gazette it was discovered, "dey eh come here, yuh know. Dey went tuh court. Big thing!" State enterprise, UDeCott, state-appointed commission of enquiry, and with all the interested parties in a judicial review over whether it is the effect of the failure to Gazette it. In the middle of the case, "dey come tuh Parliament tuh say well look, leh we validate dis ting. We now realize we could do dat." It was a comedy of errors. When we see the money we have spent today as a country, on the Uff Commission, we realize it was really tragicomic. It was both a tragedy and a comedy in one. [*Interruption*]

**Mr. Warner:** "Yuh coudda fix Kucharran Trace."

**Sen. The Hon. A. Ramlogan:** "Yea, we coudda take dah money and fix Kucharran Trace. Ah couda fix Toolsa Trace. Gih dem people ah little picnic place and ting man." I know certain people think we only have "douens" living outside of Port of Spain. But no, this People's Partnership Government recognizes that citizens occupy every nook and cranny of Trinidad and Tobago and we will service all. That is why I understand the anguish and the embarrassing distress on

the faces of some who "closed down" the Biche High School and today, through Dr. Tim Gopeesingh, the hon. Member for Caroni East, we are reopening Biche High School in September for the children.

**5.50 p.m.**

I will not bother to list the validations that have come to this Parliament under the tenure of the previous administration, I have 20 pages of them. It just does not make sense.

**Hon. Member:** One is enough.

**Sen. The Hon. A. Ramlogan:** Yes, one is enough. You see, Mr. Speaker, let us turn now to Miss Francois' appointment.

**Mr. Speaker:** You have four more minutes.

**Sen. The Hon. A. Ramlogan:** Indeed, Mr. Speaker, I only need two to deal with her appointment. You see she was a public officer—unlike Mr. West— and a senior one at that. Miss Francois was experienced, she had a Masters, was extremely well qualified for the position. She had sought and obtained no-pay leave from the Permanent Secretary in the Ministry of Legal Affairs, and she had in fact notified the Judicial and Legal Services Commission that the appropriate leave of absence had been granted to her by her Permanent Secretary to take up this position as the FIU Director for one year.

Mr. Speaker, the problem that we face is simply this: when you create an office by an Act of Parliament, the commission; no commission will make an appointment unless the terms and conditions are finalized. The Public Service Commission will not appoint someone to an office that has been created by law unless the terms and conditions, which is a matter for the Executive, have been finalized. But terms and conditions in this country with the CPO and SRC take a little while, we all know that.

So in the intervening period you have to protect yourself. We cannot wait. Had we waited for—I mean that is probably why they took so long to do it, I do not know, but it was that when they acted, they still did the wrong thing. They had the benefit and luxury of time, they took it, they utilized it and they still did the wrong thing.

But what we are going to do, Mr. Speaker: Miss Francois will occupy the office, the Public Service Commission will probably make an acting appointment for her to act. The terms and conditions for that office, being a matter for the

Executive, will be finalized in an interim way by the Cabinet pending the SRC finalizing the terms and conditions. When those terms and conditions are finalized then, of course, it is only at that point in time you can make that appointment.

But in the meantime what we would advise, and what I have seen with my own two eyes, is that since Independence in this country when an office is created and the terms and conditions have to be finalized, Cabinet has acted in the past to appoint someone on contract to fill the office, pending the finalization of terms and conditions by the Salaries Review Commission (SRC), or the CPO. That has been done and that is precisely what we sought to do.

In fact, the Cabinet Minute with respect to Miss Francois' appointment says precisely that, that she is appointed on a one-year contract pending the finalization of terms and conditions by the SRC. Because when we checked with the commission, they indicated that they could not make that appointment if terms and conditions were not finalized. So, Mr. Speaker, there is precedence as well in the office of the court executive administrator where that was done. Cabinet appointed someone on contract who was already in the office, even though it was a JLSC post.

So, Mr. Speaker, in closing, I say we must look at this in context and in the whole, in the round; this symbolizes the desire of this administration to protect its citizens against the international shame, scandal and disgrace that would come with being internationally blacklisted. The Bill seeks to move Trinidad and Tobago forward in its objective of compliance with the FATF organization, and I ask that we put the nation first and reflect on what the history of this Bill has been in considering this. I beg to move and ask that this House support it. Thank you very much. [*Desk thumping*]

*Question proposed.*

**Dr. Keith Rowley** (*Diego Martin West*)**:** Thank you very much Mr. Speaker. I listened to the hon. Attorney General spend 75 minutes on what really should have, been a matter that should have, and could have been dealt with at an earlier time. Most of what the hon. Attorney General said I will take no issue with it except when he sought to ascribe to me defence of some appointment of Mr. West. I want to make it quite clear that I speak for myself and I do not want the Attorney General to speak for me. If in making his case he cannot find enough evidence to make his case, just leave me out of it.

Mr. Speaker, this debate that is taking place here now, a lot of what was said by the Attorney General in this debate, under normal circumstances, would skate

very closely to a violation of Standing Order 36(3). I know, Mr. Speaker, that you are versed in the Standing Orders and you would have seen where it came that close. In early February we were in this House, with precisely this matter in front of us and 80 per cent of what was presented today by the Attorney General was presented then, and it might very well be that one could say it really was a reviving of a debate that took place here a few weeks ago. That is what it was. And he had to do that because he intended to "bramble" listeners in such a way as to escape from his bombastic behaviour the last time.

He makes a big to-do about the fact that somebody appointed Mr. West and the Cabinet this, and the Cabinet that, and they this and they that, and they this and they that. There ceased to be a Cabinet of the PNM in this country on May 24 last year, and to the extent that there was anything that that Cabinet was responsible for then, okay, we were responsible for it. What is different in this instance is that while we were in this Chamber under this Government, this issue came up and was presented to this Attorney General for his adjudication when he dealt with this issue under this Government. So, it is totally irrelevant for him to come here and try to justify his ridiculous behaviour of the last debate in February, by saying that the previous Cabinet did the same thing and he is asking us why we did not do this and why we did not do that when the last Cabinet was doing that.

Mr. Speaker, there is a bird that runs around this country sometimes. It comes from Argentina. It is called the southern lapwing. You would find it in open spaces. What it does is that, it lays on the ground with no nest, like this current Attorney General, and if you approach that bird when it has an egg or young one on the ground with no nest, it pretends to be injured, drops its wing on the ground, limps around and runs off in a direction trying to take you away from where the young or the egg is. So, whenever you see it going that way pretending to be injured you know the nest is somewhere else in the opposite direction. That is the behaviour of the Attorney General today, coming here with all of this kind of hoo-ha.

The simple matter before us this afternoon is whether in fact the Attorney General, in presenting a position to this House—which he volunteered—in February whether that position was the position of a person who was reasonable. It was during this debate in February on the amendments to the Financial Intelligence Unit Act that the Attorney General volunteered to this House and shocked us by telling us that an appointment was made of Miss Susan Francois to the position of director of the FIU.

Up to that point there was no issue, there was no contention, there was no nothing! But when we said that, it was brought to his attention that there was a concern, how was that done? Not that there should not be an appointment made, it was how was it done, because if it is to be done we expected a certain process to be entered into and all we expected him to do was to explain to us the process. Because there was a process underway which was known to us, and when I took part in that debate, Mr. Speaker, it was drawn to his attention that a process was taking place in December: the position was advertised, persons had applied for the position, they had screened people and so on and that process was aborted.

**6.00 p.m.**

We asked him to explain the process. He said that the people who were shortlisted were not public officers and, therefore, to have appointed any of them would have been in violation of the law. What he was saying there is that where a person is needed for an appointment to be made to a public office, such an appointment can only be made from existing public officers. Absolute rubbish! For that to be so, it means that you cannot hire any new person in the public service.

Let me draw this to your attention, Mr. Speaker, because it came up in the last debate. He is trying to make out this question about ambiguity in the law. We on this side made it quite clear that there was no ambiguity in the law whether his lawyer said so, whether he said so or the commission said so. It was quite clear what the position was and to the extent that a previous Cabinet did not comply, that is not the issue in front of me today. The issue is whether, when he told this House that an appointment was made, that this Opposition said to him: What process did you follow? Was the Public Service Commission involved? He started to "ho: and "ha" at the time and to "bramble".

Mr. Speaker, I want to take you to Government Notice No.132 of 1966:

"Government Notice No. 132

TRINIDAD AND TOBAGO

THE PUBLIC SERVICE COMMISSION REGULATIONS, 1966…

CHAPTER 1

PRELIMINARY

1. These Regulations may be cited as the Public Service Commission Regulations, 1966."

Items 1 and 2, says:

> "In these Regulations, unless the context otherwise requires"—and they list (a), (b), (c), all the way to (k).

Item (k) says:

> "'Officer'"—or public officer—"means a person employed in that part of the public service established respectively as the Civil Service, the Fire Service, the Prison Service, or any other service in the public service who is subject to the jurisdiction of the Commission…"

That is the definition under the Regulations of a public officer, known to us since 1966. I do not know why it is so important to pay a high-priced lawyer to tell you who a public officer is. More importantly, to the extent that there was—and we are not conceding that there is—any ambiguity in the debate, I brought the *Hansard* from both Houses of Parliament here and quoted it for the benefit of the Attorney General before he wound up.

Anywhere you go to clarify any ambiguity—as he is trying to imply as the basis for his carryings-on, his bombast, his insults and his political haranguing, which took place the last time—you look to see what Parliament intended. The law specifically spells out in the FIU Act that the director and deputy director shall be public officers. There is nothing ambiguous about that. That is the English language and the language of Parliament shall be English as per the Standing Orders.

To the extent as to who should appoint these public officers, the *Hansard* made it quite clear that they are to be appointed by the Public Service Commission. If there are persons who want to see ambiguity in that, they can see it if they wish, but we go by that.

He seems to have some obsession with Mr. West. I do not know if Mr. West appeared on his website when he was doing his matchmaking or searching for those fellows he was searching for. I do not know what is his problem with Mr. West, but half of his argument in this Parliament in the last debate and in this debate was about Mr. West.

I am here as Leader of the Opposition, drawing to the attention of the Attorney General that he has come here and has claimed to have made an appointment which, according to the law and the letter of Parliament recorded in *Hansard*, is an appointment to be made by the Public Service Commission. He carries on with his obsession with Mr. West.

Let me tell you what he said when I kept pressing him about who made the appointment. This is the Attorney General of Trinidad and Tobago telling the country how an appointment was made. It was not my intention to fight the Attorney General to make him look bad, to create any issue. I simply asked him whether we were complying. Listen to what he had to say. This was February 09, when he was winding up. I am quoting him:

> "It was in those circumstances that we had to move with great expedition, as a matter of urgency…"

He was trying to give the impression that what they did, which was being questioned at the time, was as a result of a requirement to move with urgency and great expedition, as if that somehow would justify his not complying with the regulations and the law; or by ascribing similar conduct to a previous Cabinet, somehow it would exonerate him from what he is doing now.

I cannot recall the Opposition then taking issue with the government prior to May 24 and saying: "Look, you appointed David West or West David against the law" and the Government took the position that he took. I can recall when the hon. Attorney General was reporting about the last appointment here, the matter became known to us and we sought to have it done properly.

He said they had to find a public officer:

> "In those circumstances, I looked at the referees for Miss Susan Francois."—he is a great name dropper; he dropped in the name of two judges; former Appeal Court judge and whatever—"When I spoke to him and heard the ringing endorsement, I said, 'Aha'. When I spoke to the hon. Madame Charmaine Pemberton, judge of the High Court, also a referee, and I heard the ringing endorsement without any hesitation, I said: 'Aha, this is a person who has a proven track record of excellence in the public service.'"

That is how the appointment was made; by the Attorney General talking to two judges and saying "Aha" and the person ends up in the job. That is not what the law requires. That is not what the Public Service Commission should do. That is not what the Parliament expected.

In the context of discussing Parliament's supremacy here, we as honourable people in this House should take umbrage at the Attorney General saying to us that there is some ambiguity in the law and making some interpretation in the environment of ambiguity, but that interpretation runs counter to the expressed position of the Parliament. It is an insult to the Parliament.

He places his wrong interpretation of what he calls an ambiguous situation above the Parliament. That is what is in front of us, making some case about ambiguity, but in the ambiguous situation, according to him, he is taking a position based on his interpretation diametrically opposed to the recorded, expressed position of Parliament. So let it be known that the Attorney General puts his wrong opinion above the Parliament. That is how he views this Parliament and no serious Parliament should accept that from a boisterous, immature Attorney General, who is sadly in need of proper legal advice.

We did not take his advice or his guidance and we did not allow his bombast to penetrate us. What did we do? I went back to office convinced that the Attorney General was "brambling" the House and the country. If, in fact, an appointment had to be made, there had to be a process. There was a process which was aborted. There was an appointment in which he was directly involved according to this "Aha" and "Aha" and "I" and "I" and "I".

If the law says it should be a public officer and that the Parliament says it should be done by the Public Service Commission, I went back to the office and wrote the following letter on February 21 to the Chairman of the Public Service Commission. With your leave, Mr. Speaker, I want to read this letter into the record because the Attorney General keeps trying to "bramble" the House and the country:.

"Dear Mr. Thomas

Appointment of Ms. Susan Francois as a Public Officer

In my capacity as Leader of the Opposition, I had to speak to the issue at subject"—which is the appointment of Miss Susan Francois as a public officer—following a surprise presentation by the Honourable Attorney General, Mr. Anand Ramlogan in the debate to amend the Financial Intelligence Unit Act which took place on Wednesday 9th February, 2011. In his presentation the Attorney General advised the Parliament that the Cabinet approved and appointed Ms. Francois to the position of Director of the Financial Intelligence Unit (F.I.U.) in accordance with the said Regulations.

For my part, I had serious difficulty with the procedure"—not the officer—"adopted by the Government and promptly stated this position clearly. It is our understanding, that a public officer to head the Financial Intelligence Unit could only have been properly appointed by the Public Service Commission as in accordance with the appropriate procedure. This is the advice which is available to us and is suggested by the letter and spirit of the

> intention of the Parliament as recorded in the Hansard reports of both Houses of Parliament."—and we indicated a willingness to challenge the position.
>
> "…crave your indulgence to indicate the Public Service Commission's position on this matter, where the authority of the Commission is being usurped by adverse procedures."

That is the letter I wrote on February 21. We were not pussyfooting. We were not being ambiguous. We put it straight to the commission that its authority under the Constitution was being usurped by the Attorney General and the Cabinet. That is what brought us here today for this amendment. All the frills from clause 1 to clause 17 are just that, frills.

Mr. Speaker, we debated this whole thing about David West and his appointment. The Attorney General spoke at length and in detail about David West and, if at the time he was seriously concerned about David West and his appointment, he could easily have done what is here now. Had the Susan Francois appointment not been challenged—and that is not to say that the David West appointment was correct, but the challenge took place later. I was dealing with his response to the challenge when we saw something was wrong when he brought Susan Francois.

So, having challenged the Susan Francois appointment; having dismissed it as the authority of the Parliament and the correctness of their cause, we go to the commission. The commission replied on February 24, and the commission had this to say, replying to me as Leader of the Opposition.

**6.15 p.m.**

And the commission had this to say replying to me as the Leader of the Opposition

> "Re: The appointment of a Director of the FIU.
>
> I refer to your letter dated February 21, 2011 on the appointment of a Director of the Financial Intelligence Unit (FIU) wherein you requested an indication of the Public Service Commission's position on the matter.
>
> In accordance with Section 121…of the Constitution the Public Service Commission is vested with the power to make appointments to public offices.

Section 3(2) of the FIU Act which deals with staffing of the unit states as follows:".

And the commission proceeds to quote to me what I have telling them about. And they said:

"3(2) The FIU shall consist of such number of suitably qualified public officers including a Director and Deputy Director as may be necessary, for the performance of its functions and may include:

(a) Public Officers, appointed, assigned, seconded or transferred from another Ministry…;

(b) Officers and other persons appointed on contract by the Permanent Secretary of the Ministry of Finance.

And then he goes on to say:

"The Commission has been advised that there is some ambiguity in the said section with respect to whether the Director and Deputy Director of the FIU are to be public officers or contract officers."

Mr. Speaker, you just quote to me and tell me exactly what the law says, that they are to be public officers. And then you quote to me after and tell me, commission has been advised that there is some ambiguity. What ambiguity? If there was some ambiguity the previous paragraph is null and void and of no effect. And in fact the previous paragraph is written in bold that the law says that they should be public officers. However, the letter goes on to say:

"The Commission has been advised that there is some ambiguity"…and listen to the "fig skin" that they are holding on to, or the "fig leaf" that they are trying to shelter under, that because it says public officers you are confined to taking an appointment from a person who is already in the public service. That is so erroneous.

**Dr. Browne:** Nonsense!

**Dr. K. Rowley:** Because, you see, a person becomes a public officer— [*Crosstalk*]

**Mr. Imbert:** When you are appointed.

**Dr. K. Rowley:** —when you are appointed to serve under the jurisdiction of the Public Service Commission. Mr. Speaker, if you "get vex with me" now and walk away from this Speaker job now and you go out there and apply to the

Public Service Commission and they appoint you to any post in the public service, the minute you are appointed to that post you become a public officer. And therefore, the post in which you are will be properly satisfied if it is required to be filled by a public officer.

Public officer does not mean—especially in a case where you create a new agency with new skills required and you are advertising the job. The advertisement does not say it is confined within the Public Service, it is advertised publicly. You want the best skill and you want the person. And when you get that person, by way of the process and the procedure that I was talking about, you then appoint that person and from the minute the appointment is made, satisfaction with the law. The person is a public officer holding the post in a public office.

So what the Attorney General and his friends are trying to do is to tell us that there is some ambiguity as to whether a public officer can be appointed in any other way. There is a known procedure for appointing public officers. There is no ambiguity. If a Cabinet has done otherwise before, then they did wrong and if this Cabinet is doing it now then they are doing wrong, but do not hide behind ambiguity. You cannot hide behind ambiguity. There is no ambiguity. Of course, you can get a lawyer to tell you whatever he wants, especially one like him [*Crosstalk*]

**Mr. Imbert:** Especially if you pay them enough.

**Dr. K. Rowley:** But the bottom line is, I was making the point—and he tries to "bramble us" her that if they had gone to court they would have gone to the High Court and the Appeal Court and the Privy Council for 10 years. And while that is going on, status quo and time—they will waste time. No. The first person that Susan Francois interfered with and they go before the court, within a matter of hours, judicial review. And all the defence lawyer would have asked is, "Who appointed you? Attorney General? Cabinet?" End of story, not properly appointed. So it would not have been five years or 10 years, it would have been five minutes in the courts.

The first matter that went to the court, under the appointment of the current arrangement, would not have seen the light of day because the appointment would have been an improper appointment. And that is why I was asking the Attorney General, in February of this year—not May of last year, or December the previous year, in February of this year when he stood in his shoes here as Attorney General Trinidad and Tobago, challenged by the Opposition to say something is wrong here and he accuses us of being wrong and strong.

This afternoon, tonight, he accused us of being wrong and strong but, Mr. Speaker, the bottom line is, the commission wrote me that letter about ambiguity when the commission itself—if you understand the English language, began by showing me, in bold letters, what the requirement was for a public officer to be appointed by the public service commission. Okay? I did not leave it there, I replied to the commission on March 15, and I quote for you what I said to the commission then because, unlike the Attorney General, I was not satisfied, because, you see, these are matters of Constitution. These are matters that need to be dealt with to conclusion if our independence is to grow and our maturity is to prosper.

So I wrote to the commission on March 15:

> Dear Mr. Thomas,
>
> The appointment of a Director of the FIU. I refer to my letter of February 21 wherein I raised the issue of the apparent usurping—and I go back to the word, and I will go back to the confidence of the Opposition—usurping of the authority of the public service commission by another authority in the matter the above subject, contrary to the requirement of the law and the express intention of the Parliament which enacted the applicable law in 2009.
>
> I have since received your reply dated February 24, 2011, wherein you have graciously acknowledged and I quote:
>
> The commission has been advised that there is some ambiguity in the said section with respect to whether the Director and Deputy Director of the FIU are to be public officers or contract officers.
>
> I notice no comment on the substantive complaint as to who is the competent authority to make the appointment whatever the designation.

I want to repeat that. In responding to the commission that said that he was ambiguous, that he is holding on to like a life raft now. I said to the commission:

> I notice no comment on the substantive compliant as to who is the competent authority to make an appointment whatever the designation. Assuming, but not accepting that there is ambiguity, one only has to look at the intention of Parliament to bring about the clarification since the matter relates to the appointment of a public officer. And the Public Service Commission itself is admitting that it is unclear as to its role and responsibility in the making of this very serious appointment. It is my humble view that the commission ought not to be satisfied to—and I quote the commission's own words—
>
> 'to stand ready to make such appointments once such ambiguity is resolved'.

In other words—I went on;

> The commission, under the circumstances has a public duty to take steps to have the ambiguity clarified, if there is a definite issue of a public officer apparently being appointed by an unauthorized entity. Further, the commission has a public duty to be proactive and assume the responsibility of filling the post to the standard acceptable procedures applicable to the appointment of all public officers.
>
> In the public interest, against the background of your implied need for clarification, it now falls to the Public Service Commission to institute the necessary legal proceedings by way of originating summons—commonly called construction summons—to have the questions of law interpreted by the High Court of Trinidad and Tobago. I am advised that under the Civil Proceedings Rule the court may be approached for an urgent determination of this matter. I trust that the Public Service Commission, an independent body under the Constitution, will act independently in the public interest as a matter of urgency and have this matter addressed with the seriousness it deserves.

That was my letter to the commission on March 15, refusing to accept that the commission had some problem with the ambiguity and the commission stands ready to make the appointment if somebody else clarified the ambiguity, and so on; the Attorney General who "ducking and hiding, and bobbing and weaving" having played mas in Parliament with his wrong footing.

**6.25 p.m.**

So, I received a reply from the commission on April 04, 2011, subsequent to that last letter I read. It was addressed to me in my capacity as Leader of the Opposition. It says:

> "I write with reference to your letters of 21st February and 15th March 2011, on the matter of the appointment of the Director of the FIU as prescribed in section 3(2) of the Financial Intelligence Unit Act No. 11 of 2009.
>
> I am now in receipt of advice from Senior Counsel which states that the Offices of Director and Deputy Director of the Financial Intelligence Unit (FIU) are Public Offices and as such the Public Service Commission is the competent authority to make appointments to these offices.
>
> The Commission is guided by the advice of Senior Counsel and will take appropriate measures in this regard.
>
> /s/Christopher R. Thomas
>
> Chairman"

Mr. Speaker, this letter, the commission finally accepts—notwithstanding the fact that they gone through advice from the Attorney General, Senior Counsel and who—nothing has changed. All that is being confirmed here is what was said to the Attorney General in this Parliament for free. [*Desk thumping*] But you see, Mr. Speaker, it had to take lawyers to tell us all what we have told ourselves, because it is this very Parliament that said to the country in the Parliament that the appointment should be made by the Public Service Commission, but he had to go and pay lawyers to tell the Parliament, to tell the parliamentarian, and to tell the country that what we said to ourselves is, in fact, what we said to ourselves.

So, the commission accepted that the posts are public service posts; the officers are public officers; and the only competent authority to make that appointment is the Public Service Commission under public service procedures, and nothing that the Attorney General says can change that. He was wrong then, and he is wrong now! All he has to do—he talked about being a big man, I do not want him to be a big man. I want him to be a responsible officer of state. The office of Attorney General is too important to be played with by the games being played by the Attorney General. These appointments are too important; these commissions are too important; and our Constitution is too important to be so dealt with in a cavalier manner—figuring who can shout loudest and give more political "picong" will prevail.

We are an independent sovereign nation taking part in international business. This particular unit, the FIU, deals with international contacts. It has the power to look into anybody's personal affairs in this country, business or otherwise, private or public. It has the power to penetrate your privacy in a way you have not even dreamt of yet, and you skylark with an appointment like that—handpicking somebody and violating the regulations and telling me you talked to A, B, C and D and when A, B, C and D talk to you, you say: "Ah ha, that is the person I want". That is another issue.

So, I look at the newspaper today, and based on the letter I saw from the commission on April 04, 2011, I sat quietly and I waited to see how the commission will discharge its responsibility, when he says the commission will take appropriate measures. Let me quote for you the commission's last line. It says:

> "The Commission is guided by the advice of Senior Counsel and will take appropriate measures in this regard."

He did not tell me what measures, but the independent commission, under the Constitution, puts out a release in today's newspapers and it says the following,

under the heading: "Public Service Commissions", and it gives you address and telephone numbers and it says, "Press Release". Mr. Speaker, with your permission, I quote:

"Press Release

Filling of the offices of Director and Deputy Director Financial Intelligence Unit, Ministry of Finance.

> The Public Service Commission has been advised by Senior Counsel that the offices of Director and Deputy Director, Financial Intelligence Unit, Ministry of Finance are public offices and that the Commission is the competent authority to make appointment to these offices.
>
> Pursuant to the above advice, the Commission at its meeting of 12th April, 2011, decided to proceed to fill the above offices in accordance with its Regulations, but was unable to do so, as there are no terms and conditions of service attached to these offices. Such terms and conditions are yet to be determined by the Salaries Review Commission. The Commission has so advised the Government.
>
> As soon as the relevant terms and conditions are approved by the Salaries Review Commission, the Commission will take the appropriate action to fill these offices."

That is not what the Attorney General told us this evening. He purported again to usurp the authority of the commission by trying to tell the country and the House what the commission will do—the commission will leave somebody in office on contract and on terms that are set already, and then when the terms are set the commission will abide by that. That is not what the commission says. The commission says the commission will take the appropriate steps, not to set terms and conditions, but to fill these offices.

If somebody is in the position now, how is the commission going to fill the position? It has already been filled by the Attorney General and his Government acting improperly and, I dare say, illegally. As a matter of fact, by the commission accepting Senior Counsel advice that the posts are public office posts to be filled by the commission, it follows from that with no ambiguity that the person in the office is there null and void and of no effect. [*Desk thumping*]

That is what the Attorney General has been carrying on the whole evening here to try to avoid coming to the conclusion; that the appointment made was a wrong appointment; the procedure was bad and it now falls to the Public Service

Commission to tell the country by a press release that the commission will take the appropriate action to fill these offices. It is a matter for the commission now to assert its independence.

Mr. Speaker, I must recall, when I had to reply to the commission the second time, I had to point out to them that the issue was really about who is the competent authority. It had nothing to do with the qualifications of Ms. Susan Francois; it had nothing do with how urgent the appointment was required; it had nothing to do with what the PNM did before; it had nothing to do with David West—I do not know why he loves David West so—but it had to do with a singular fact as to who is the competent authority to make the appointment. Everything else is chaff! [*Desk thumping*] He is attempting to confuse you, Mr. Speaker. Everything else is pretending to score points when brickbats are required. He could jump high; he could jump low, what is before us now is the fact that the Susan Francois appointment was an improper appointment made by the Government of Trinidad and Tobago. [*Desk thumping*]

Interestingly enough, you would recall, Mr. Speaker, in that the last debate and this debate, he went at length to show how such an improper appointment could embarrass us abroad and create problems for us, except that he is trying to say that the proper appointment could only do those bad things for us if David West is the appointee. Well, I dare say, whatever problem there was with the David West appointment, it is far worse now, because this is done in the face of trying to face down the Parliament; "mamaguying" the country and trying to promote himself.

I am advising the country of Trinidad and Tobago today that if you ever wanted any confirmation that you should not take the bombast of the Attorney General, it is this, because he is a person who will say anything to get what he wants; to say anything to get his point of view across; to say anything or probably do anything to prevail, because this was a very simple matter. When it was raised in this House, all he had to do was to acknowledge that there is an issue here and let us look at it. We were not in for any fight, but no, "Try and ram it home, try and denigrate their position, and give the impression that he is the last word in law. This country has had too many brilliant legal luminaries to fall for the blandishments of a third-class Attorney General like that. [*Desk thumping*]

**Mr. Roberts:** Mr. Speaker, Standing Order 36(4).

**Mr. Speaker:** Hon. Leader of the Opposition, I think that you should withdraw that in terms of "third class". I do not think that is proper.

**Dr. K. Rowley:** Mr. Speaker, are you in a position to tell me that he is first class?

**Mr. Speaker:** No, I am saying—

**Dr. K. Rowley:** That is my opinion what class he is.

**Mr. Speaker:** No, it is a personal reflection.

**Dr. K. Rowley:** Mr. Speaker, I do not want to quarrel with the Chair, but I am a Member of Parliament, and I have to express my opinion in this House on behalf of my constituents, and if I think he is "third class" he is third class.

**Mr. Speaker:** Leader of the Opposition, I have been very generous. You have made a remark against a Member of Parliament, and I have said to you it is a personal reflection on the Member, and I have just asked you to withdraw the remarks. That is all!

**Dr. K. Rowley:** Mr. Speaker, I withdraw it, not first, not second. Would no class do?

**Mr. Speaker:** I would not want you to codify or to go on. Just move on.

**Dr. K. Rowley:** I would move on to no class. I would not say first, second or third. Mr. Speaker, I would move on for the purpose of conducting public business. [*Crosstalk*] I would like to address you, Sir.

**Mr. Speaker:** Hon. Members, please allow the hon. Leader of the Opposition to speak in silence. Continue, hon. Leader of the Opposition.

**Dr. K. Rowley:** Thank you, Mr. Speaker. So, where are we now? We have a situation now where I think all the ambiguities have gone—Senior Counsel, junior counsel, no class or whatever legal input, the ambiguities are gone. I think it would take a very hard head not to accept that we did make a mistake with the appointment of Susan Francois.

Where are we? How do we go forward? It cannot be that the appointment made, which is now accepted as null and void, and made by the improper intervention of the Attorney General and the Cabinet, could now be accepted and authorized by parliamentary edict. That is like marrying the girl after you have raped her. It happens, you know! Rapists commit a rape, and when they get caught they say, "Ah would marry she", as if the marriage will somehow erase the horror of the rape.

The Opposition will not accept, the country cannot accept and the law cannot accept that an improper appointment made in the most arrogant of manners in the face of the position taken by an independent commission can prevail by simply coming to Parliament and validating what was clearly wrong.

The commission has said it will take steps to fill the posts, and the commission will have to do that under proper public service procedures. The commission cannot just accept from the Attorney General that, "Okay, we understand this now, in February you picked somebody and we, this commission, will simply authorize that person to remain in office". There is a procedure, and that procedure involves fairness; it involves competition; it involves openness; and it involves transparency, none of which applied to the appointment of the current officer.

Mr. Speaker, you may recall and, again, I am not here casting any reflection on the individual, the officeholder, because I do not know Ms. Francois at all.

**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.*

**6.40 p.m.**

**Dr. K. Rowley:** Mr. Speaker, I was saying we cannot now take the position that the requirement of the public service—which is now underpinned by a reluctant commission, because the commission's first letter was, "Okay, it is ambiguous, but if it comes to us to make the appointment, we will make it." Luckily we elevated past that and we are at the point of the last line of the commission's release which says that the Commission will make an appointment. For the commission to comply with that expressed view, to make an appointment, it will have to make an appointment to the post that is vacant, because whoever is there now ought not to be there.

To do that, to have transparency, fairness and competition, the commission will have, by its own process, to make it known that a vacancy exists there, so that all qualified citizens could apply, and the best one who is chosen by the process, whoever he or she might be, will be appointed as a public officer, as required by law, to serve in a public office, and everything is hunky-dory. I said that I do not know Ms. Francois. I cast no aspersions on her qualifications or her character, but

the process by which she was appointed has put her in a very invidious position. You would recall, Mr. Speaker, when we talked about this the last time, I drew to your attention that advertisements were put out. It turns out that they might not have been put out by the proper authority. It might have been done by the Ministry of Finance, in which case they were not the authority to do it; but they were put out. People responded. Ms. Francois was not even an applicant. That is why I asked the Attorney General: how was she selected? How did she end up with the job? She was not even an applicant.

There were other applicants for the job—whatever aspersions he wanted to cast on them, and he cast a lot of aspersions on them, because they had the temerity to apply for a job that was advertised—a job was advertised, and these citizens who had qualified themselves, in more ways than one, thought they were in line to, at least, offer their talents to the country and the Attorney General denigrated them, he castigated them and what he did not say about them to make his case and to defend his wrong position.

So if the commission now has to fill this post, we expect that the post would be vacated because it is legally vacant. The commission will do the necessary advertising, as they normally would. They would put up a panel to evaluate those who applied. That panel would select the best person and the commission would make the appointment to the office. That is how it has been and that is how it must be, if the independent commission is to be true to its oath of office under the Constitution, and protect all our citizens of whatever race, colour, creed, class or religion. That is how it has to be. The independent commission cannot be hamstrung or be dictated to by an Attorney General who was too previous. And whatever the Cabinet did wrong in law, wrong in regulation and wrong in simply fairness, it cannot be allowed to stand by any validation.

Mr. Speaker, "the AG playing smart with foolishness." I am not saying that he is foolish; I am using the colloquial term "playing smart with foolishness". He talked about the primary purpose of the Bill was to validate actions of a previous appointment, which might very well be so, but if there is a primary purpose, it leaves one to assume that there is a secondary purpose. He emphasized the primary purpose, after a long tirade about David West's appointment, but I want to ask him: what is the secondary purpose?

The secondary purpose has to be, if one understands the documents I have read—that whatever was done by Susan Francois, clauses 18, 19 and 20 were meant to validate that; simple. That is what it is all about, because if it was all about David West, we had the David West show here in February. The Attorney

General was on stage. He carried on for two hours, and David West's tenure was not validated; "uh uh". The secondary purpose now—he knows, he knows, that whatever has been done or purported to have been done under the hand of Ms. Susan Francois, in fact, is not covered by law and requires validation. We have to agree to that, the validation.

We are not agreeing to any cementing of the wrong procedure, with the commission acquiescing to the will and the bully pulpit behaviour of the Attorney General. The commission must act *tabula rasa*, clean table top, clean slate. Advertise the post, people will apply, select them and the commission has within it to act expeditiously. There is need for expeditious action; we know that; we have international obligations, so I do not expect the commission to drag its feet, especially in light of these correspondence I quoted this evening. The commission is on the ball and it must act expeditiously.

What cannot happen is the Attorney General's position to be veiled saying, "Well, we cannot not act because we will be blacklisted." We cannot break the law in that way for convenience, because some consequence like that would happen. We are required to comply with the law all the time, not in situations where it is convenient and where it is not convenient we do not comply, because it is not convenient. What kind of argument is that, coming from an Attorney General?

**Mr. Roberts:** What about sheep farming?

**Dr. K. Rowley:** And goat farming, what about that?

**Mr. Roberts:** The law.

**Dr. K. Rowley:** The law?

**Mr. Speaker:** Please, please, do not go there.

**Dr. K. Rowley:** Mr. Speaker, goat or sheep?

**Mr. Speaker:** We are not going there.

**Dr. K. Rowley:** Or we are not going there?

The question I want to ask the Attorney General—because he read us correspondence where he agreed and he would have seen the commission's position—is Ms. Francois still purporting to be Director of the FIU at this time? Is it the Government's intention for her to do that until whatever time this rectification takes place? It cannot be; zero times zero, times zero will always be zero. It is a nullity at birth and, therefore, there can be no extension of that nullity.

And worse, he gave us chapter and verse about why his empire should grow, because it is now in this Bill that the FIU should come from the Ministry of Finance to the Attorney General's Office, and he gave us some information made by his own case. I am sure he did not give us the whole story. That is his style, just tell you enough. But when you come to Parliament, to get Parliament to intervene in this way, you must come with clean hands—hands not clean; giving us half the story, just to make his case.

I want to draw something to the attention of members of the COP, who are part of the coalition, and some members of the UNC who spoke. When they were in the Opposition, the Anti-Corruption Investigation Bureau, which came into being under AG Ramesh Lawrence Maharaj, there were voices in the UNC that were saying that the AG's Office was using that ACIB for political persecution and such an office ought not to be under the Attorney General because it can be used to the detriment of citizens. That was their position, and I heard the same thing under the PNM.

But it was this grouping that said, "Put us into office and we will fix that; we will take the ACIB out of the Office of Attorney General". I can tell you, Mr. Speaker, the ACIB is still there. The Attorney General "playing mas" interfering in people's business, looking for "mark to buss". Now he says to us, in his justification this evening, that this FIU will now be taken from the Ministry of Finance and put under the Attorney General.

I simply want to advise the people of Trinidad and Tobago that putting the FIU under the control of this Attorney General is to make the last state worse than that the first. If you think we had problems before, look at the behaviour of the current Attorney General, look at his posture, look at his record, and ask yourself if you want to put under his control any agency like the FIU, that would have the kind of power that this agency has.

In fact, the Bill before us virtually expands and clarifies the power. Anybody who does not understand what I am saying, read the powers of the FIU and ask yourself, whether you are a businessman foreign or local, whether you are a person of means or no means, "whether you from North, East or Tobago", whether you want those powers under the control of this Attorney General, who is seeking to broaden his empire by having these so-called investigative agencies under his control.

He has demonstrated a propensity to not respect the Constitution, and he has a way of understanding for himself that everything is politics. High office is

supposed to take that out of the thinking of a statesman, but he believes that everything is politics, whether it is true or not true, whether it is ethical or not ethical. If this Bill is passed and puts the FIU under this Attorney General, watch out Trinidad and Tobago. Mr. Speaker, the PNM does not support that. We will not support it and, therefore, the Government could use its majority and do what it wants. They will not do it with our support.

Terms and conditions of the appointment—that should have been the issue when the matter came up. If it was accepted that it was a public service appointment, it would have flowed very simply and very straightforwardly, that the commission would have had to get terms and conditions. But by not accepting the commission as the authority, he went ahead and made the appointment and made terms and conditions. I understand that they are quite attractive, but it was all done under the control of the Attorney General and the officer in charge; set your own terms and conditions. So there was a downside to the fact that they did not acknowledge the PSC, because to acknowledge the PSC would have automatically taken you to the reasonable balance area, and "balance" is a word in vogue these days at the SRC.

The Attorney General is at large; he is at large. He was at large here in this Parliament when he tried to give us his free legal advice, which we rejected out of hand. The commission was timid in coming forward and saying when it was brought to their attention, "Hey, that is our domain; that is our bailiwick." I am not advocating that the commission come out and act in a certain way, creating confrontation with the Government. The commission wrote the letter I read to you, Mr. Speaker; the commission's first letter. You and I have been around long enough; we know how to read between the lines. It was clear what the commission's position was when the matter was drawn to their attention.

What I am pleased about is that an independent commission has been able to demonstrate its independence at the end of the discourse. It took us a while, but we have come to a point where the independent Public Service Commission has said, and I want to end on this note, because everything will follow from this, that it intends—and for the benefit of the public who will follow this matter to conclusion—the commission's press release of three days ago, notwithstanding all that happened in February, March and now in the Parliament again, the commission had this to say:

> "As soon as the relevant terms and conditions are approved by the Salaries Review Commission, the Commission will take the appropriate action to fill these offices."

The assumption is that there are vacancies to be filled. The current status quo, as far as we understand it, is that there ought to be no person in that post, the attempt to have appointed Ms. Francois is null, void and of no effect, and the Attorney General is trying to bramble his way out of the worst embarrassment ever faced by an Attorney General in the Parliament of Trinidad and Tobago.

I thank you, Mr. Speaker.

**6.55 p.m.**

**Mr. Colm Imbert** (*Diego Martin North/East*): Mr. Speaker, it is becoming a feature of debates in this Parliament that they are not debates. You do not have the kind of exchange of views across the floor, it is unfortunate. It is also unfortunate that the Attorney General is not here, because he made many statements, during his contribution which were misleading. He spoke many half-truths, he spoke some downright untruths, —which I will demonstrate in a while—and apart from the issues raised by the Leader of the Opposition, I have serious reservations with many of the clauses in this Bill. Quite apart from the issue of validation of the appointment of the director, the appointment made by Cabinet, I have issues with other aspects of the Bill, and that is where I will demonstrate that the Attorney General was not forthright with this Parliament.

Let me deal in the first instance—and I am glad that the Attorney General has at least returned to grace us with his presence. The presentation today is not something that I would expect from an Attorney General. As I have said before, Mr. Speaker, when the person who is the current Attorney General was in private practice, he distinguished himself by being successful in a number of constitutional matters. I have found that when he comes into this place, he does not demonstrate that same level of rigour and that same quality when he is making his contributions, and I will urge the Attorney General again, please lift the standard of your contributions. [*Desk thumping*] I am certain you are capable of it.

I am certain, Attorney General, that you are capable of doing better. In fact, I know that you can do better, and I have some advice for the Attorney General that the position that he holds is very serious, and there is no place for all this political "gallerying" which is a feature of the Attorney General's presentations in this Parliament. All of this carrying-on and "gallerying" serve you no good.

Now, Mr. Speaker, let me just deal with a few issues. The Attorney General, as the Leader of the Opposition has pointed out, appears to be obsessed with Mr. David West. The fact of the matter is, Mr. West is not the issue. Mr. West was not appointed as Director of the Financial Intelligence Unit. He was not. The issue—

**Hon. Ramlogan:** What was he signing as?

**Mr. C. Imbert:** You have not produced any evidence of that, that is a mere allegation, and the Attorney General has made these allegations so frequently that I would expect him to bring some evidence into this House of this alleged error on the part of the gentleman, but that is not the point. Mr. West was never appointed as Director of the Financial Intelligence Unit, never! So that, the question of his status, is entirely relevant to the improper appointment of the incumbent. Because we are talking about what is happening now, not talking about what happened then and, Mr. Speaker, what bothers me is the expenditure on legal fees with respect to this matter.

The Attorney General has read out the opinions he got from Senior Counsel. The Leader of the Opposition has read out correspondence from the Public Service Commission which confirms which they as well have resort to Senior Counsel and, Mr. Speaker, any person who has the need to engage a Senior Counsel will know that it costs about $300,000 to a pop, just to walk through the door, to get the kind of opinions that the Attorney General is speaking about and the Public Service Commission is speaking about.

So, hundreds of thousands of dollars have been spent, firstly to confirm the free advice that the PNM gave in this Parliament, that the director is a public officer, the Public Service Commission has confirmed that this is the advice that they have received from a Senior Counsel, that the director is a public officer and as a consequence must be appointed by the commission. They spent hundreds of thousands of dollars or thousands of dollars, let us put it that way, the commission spent thousands of dollars to confirm the free advice given by the non-lawyers on this side in this Parliament. The Attorney General has paid a Senior Counsel thousands of dollars to tell him that the law is ambiguous and he has alleged, Mr. Speaker, that some distinguished legal luminary has told him, that because the law is ambiguous the Cabinet was well within its rights to appoint Ms. Francois as the director of the FIU.

He alleged as well incorrectly, quite disingenuously, that we in this Parliament had nothing to say about the consequences of ambiguity in the law. Mr. Speaker, I spent at least 20 minutes on the last occasion, maybe 30, half an hour, pointing out the consequences of ambiguity in section 3 of the Financial Intelligence Unit Act, half an hour, half an hour. I quoted extensively—you see what bothers me and this is the point I am making to the Attorney General—nobody is going to take the hon. Attorney General seriously if he comes into this Parliament and makes these outlandish statements.

The record is there, this is not a political platform, there is a CAT reporter, there are video and audio recordings, we are live on the Parliament Channel and therefore, hon. Attorney General, you cannot rewrite history. I spent half an hour explaining the consequences of the decision of the House of Lords in the landmark case of *Pepper v Hart*, and since hon. Members opposite, I heard them banging the table when the Attorney General said that we said nothing about ambiguity, obviously your memories are defective.

So, Mr. Speaker, I shall re-educate hon. Members opposite. The landmark decision of the House of Lords in Pepper also known as her *Majesty Inspector of Taxes v Hart* the decision was delivered on November 26 1992, and since the Attorney General appears to be unfamiliar with this decision because he has engaged Senior Counsel to tell him what to do—I see he is running off again—the citation for the benefit of your staff, since the Attorney General is not interested, is 1992 UKHL3. So, you can take that down and you can give the Attorney General the full transcript of the decision of the House of Lords in *Pepper v Hart*.

Mr. Speaker, this was a very important case, seven judges of the House of Lords sat on it, and since the Attorney General appears unfamiliar with this case, and since the Senior Counsel whom he hired to advise him also appears to be unfamiliar with the case, I will name the judges: Lord Mackay, Lord Keith—

**Dr. Rowley:** Me?

**Mr. C. Imbert:** Lord Bridge—Lord Keith of Kindle, not you—Lord Griffiths, Lord Ackner, Lord Oliver and Lord Browne-Wilkinson. Seven judges of the House of Lords, rendered the decision in *Pepper v Hart*, and the issue, as I articulated on the last occasion, and I am repeating for the re-edification of Members opposite, this was the decision:

> "The court established the principle that when primary legislation is ambiguous… the court may refer to statements made in the—"

Parliament in order—

> "to interpret the meaning of the legislation."

And so if the Attorney General is right and if the Senior Counsel he paid hundreds of thousands of dollars to tell him that the law is ambiguous—because we on this side had said, that as far as we are concerned the law is clear the director is a public officer and the Constitution clearly states that the Public Service Commission is the only body that can appoint public officers. We said it was clear.

**7.05 p.m.**

But in the alternative, if we were wrong, I explained what would happen if the law is ambiguous. So, if the Attorney General is right and the advice he received is correct that the law is ambiguous, then the clear and unambiguous statements made by Minister Mariano Browne, who piloted the Financial Intelligence Unit Act in the Senate and myself, as Leader of Government Business, who piloted the amendments to the Financial Intelligence Unit Bill in this House—the clear and unambiguous statements made by the government representatives, Browne and myself, when we clarified in response to questions across the floor, was that the intention was that the director of the FIU would be appointed by the Public Service Commission. [*Interruption*] I said so. It is in the *Hansard* record. I piloted the amendments. Sen. Browne piloted the Bill in the other place. [*Interruption*] The question came up, there was an exchange between Independent Senators, Opposition Members, the present Speaker was there and the whole question as to whether the Public Service Commission would be the competent authority to appoint a director was settled.

So, I am shocked that this Senior Counsel that you paid so much money to tell you that the legislation was ambiguous did not also tell you that if this is true in accordance with the decision in *Pepper v Hart* then you have to go to the *Hansard* record to determine the intention of the Parliament. If you had gone there, you would have seen that I said the director will be appointed by the Public Service Commission and so it is—

**Hon. Ramlogan:** That is why I did not want to go there.

**Mr. C. Imbert:** That is why you did not want to go there? That is why you know you would lose the case.

Mr. Speaker, all of this carrying-on and all of this "gallerying" inside of here about the Government could allow this matter to be litigated and go to court, then go to the Court of Appeal and then go to the Privy Council and it would take 10 years and the status quo will remain—that is why I was telling the Attorney General across the floor that he would lose the case. Because the intention of the legislation was crystal clear, there was unanimity, the Opposition, the Government and the Independents came together in the other place and the Opposition and the Government came together in this place and stated unequivocally, unambiguously that our intention as a Parliament was that the director would be appointed by the Public Service Commission.

So, Mr. Speaker, all of this carrying-on, getting on, beating up, "gallerying" and wasting time; the reason we are here today is because the Attorney General has been advised that if he goes to court to try to affirm the appointment of Miss Francois, he will lose the case. He knows that. He is just wasting our time here. You know, the hard part about all of this is that you got the advice for free. You were given the two alternatives. You were told if it is clear, the appointment is improper and if it is ambiguous, then you go to the *Hansard* and the appointment is improper. [*Interruption*]

Mr. Speaker, it is a sad day when simple matters have to reach this point. One of the things that bothered me today as well, Mr. Speaker, was that the Attorney General told us—in the same way he told us that the appointment was proper when he knew it was improper—he told us today that the Public Service Commission is going to appoint Miss Francois to act. Now, I have a copy of the Constitution here. [*Holds up document*] I am not aware that the Public Service Commission is answerable to—

**Dr. Rowley:** He could borrow it.

**Mr. C. Imbert:** Lend it to the Member on the other side? He was quoting from it well today. We all got a copy.

Mr. Speaker, when I peruse this Constitution, I do not see anything in here which says that the Public Service Commission is answerable to the Attorney General. In fact, the Public Service Commission is addressed in Part I Chap. 9, page 89, section 120 of the Constitution and it states:

> "There shall be a Public Service Commission for Trinidad and Tobago which shall consist of a Chairman, a Deputy Chairman"—et cetera—
>
> "The members of the Public Service Commission shall be appointed by the President, after consultation with the Prime Minister and the Leader of the Opposition."

Then 121(1) tells us:

> "Subject to the provisions of this Constitution, power to appoint persons to hold or act in offices to which this section applies…shall vest in the Public Service Commission."

I do not see anything in here that tells me the Public Service Commission is answerable to the Cabinet or to the Attorney General. I see nothing in this Constitution that tells me that the Attorney General can get up in this House and

say that the Public Service Commission will now appoint Miss Francois to act, and I sincerely hope that that does not occur, because the travesty would just be continued. The whole question of due process, the whole question of fairness, the whole question of equity, the whole question of propriety in public appointments will be destroyed, if the Public Service Commission were to listen to the Attorney General and just appoint his selection to the position. So I hope that was just a slip of the tongue.

**Hon. Member:** Another wrong position.

**Mr. C. Imbert:** I hope that was just an expression of a desire, just a wish. I hope all the Attorney General was doing is articulating his personal feelings. It cannot be that the Attorney General is giving an instruction to the Public Service Commission to now appoint Miss Francois to act in the position.

Because you know, we had a lot of discussion here about the qualifications of the lady and the Leader of the Opposition has already referred to statements made by the Attorney General with respect to the references from judges and so on. But the fact of the matter is, Mr. Speaker, in this country we have no shortage of talent. I am certain there are magistrates, sitting magistrates, retired magistrates, sitting judges, temporary or otherwise, persons within the administration of justice, persons holding senior positions within law enforcement agencies who are equally or better qualified than Miss Francois to hold the position of director of the Financial Intelligence Unit.

**Hon. Ramlogan:** So why did you all not appoint them?

**Mr. C. Imbert:** Therefore, it is just wrong to say in a population of 1.3 million, the only person who is suitable to hold this position is the lady in question. It is just wrong. What is right is when the position is advertised and interviews are held and the lady emerges as the best person, then it is correct to appoint her. But I want to repeat, there would be sitting magistrates, retired magistrates, senior persons in law enforcement agencies or quasi-law enforcement agencies, sitting judges, people within the administration of justice who are as qualified or better qualified than the lady to be director of the FIU.

This position and especially now that the Attorney General is attempting to merge this unit with law enforcement agencies in a kind of a way, you need to have somebody with a track record in law enforcement as the head of the FIU. That is what you need, because when I listen to what the Attorney General is doing, he seems to be telling us one thing but really doing something else and I would come to that in a little while. I will come to that in a little while. [*Interruption*]

You see, one of the things that bothered me was the statements made at the beginning by the Attorney General that the administrative model may not be the best model of an intelligence unit for Trinidad and Tobago, and that a hybrid model would be better. But what actually is a hybrid model? A hybrid model is a model that captures some of the qualities of an administrative FIU and some of the qualities of a law enforcement FIU. That is a hybrid. I am putting it to the Attorney General that what you are in fact creating here is closer to a hybrid than an administrative unit, and I would explain why in a little while. There is a particular clause in here which bothers me and that is why I said that in the Attorney General's presentation he made statements that were just not accurate and I will go straight to it, because, Mr. Speaker, I do not want this point to be lost.

One of the points made by the Attorney General was that in the Bill before us in terms of giving the Financial Intelligence Unit additional powers, the Government was using the model in the Integrity in Public Life Act. Now, Mr. Speaker, when I saw the clause, the particular clause, it jumped out at me and I wondered why the Attorney General would be putting this kind of draconian and oppressive clause in legislation, and that is clause 11 of the amendment Bill before us.

Clause 11 states that it is amending or replacing section 12 and it is to read as follows:

> "Where a financial institution or listed business fails or refuses to provide any information or refuses to produce any documents required by the FIU under sections 8(3) and (11), the FIU may apply *ex-parte* to the High Court, for an order to require the financial institution"—et cetera—"to disclose the information requested by the FIU"—and the application "shall be heard in camera".

It just seemed wrong to me. I wondered where on earth did the Attorney General get this from, because you are dealing with people's financial records. Why should the FIU have the power to go ex parte to a judge to dig into people's records? And I heard the Attorney General explain that they are following the model in the Integrity in Public Life Act and I said to myself, that could not be right.

So, I went to the cabinet in the back there and I found the bound copy of the Integrity in Public Life Act, I read it, and I saw nothing in that Act that even closely resembles this and then I remembered, Mr. Speaker, that we had amended the Integrity in Public Life Act in or around January 2010, before the general

election. So I asked for a copy of the amendment to the Integrity in Public Life Act and I have it in front of me. The Integrity in Public Life (Amdt.) Act, 2010 which is Act No. 1 of 2010, and in that Act at section 11, we in this Parliament amended the Integrity in Public Life Act as follows:

> "Where a person fails or refuses to disclose any information or to produce any documents required under subsection (2), the Commission may apply to the High Court"—full stop—"for an order to require the person to comply with the request."

There is no ex parte in the Integrity in Public Life Act. I cannot trust the Attorney General, Mr. Speaker. I cannot trust him.

**Hon. Member:** I wonder why?

**Mr. C. Imbert:** You see, Mr. Speaker, I asked the Attorney General to tell me, why did he say they used the model of the Integrity in Public Life Act when they have not? There is nothing in the Integrity in Public Life Act that says that the commission can go ex parte and the hearing is held in camera. Why did he say that?

And worse, Mr. Speaker, I want the Attorney General to tell me, why so you wish to give the FIU the power to go ex parte to a High Court to get people's financial records? You see, Mr. Speaker, the whole concept of ex parte is something that I find is creeping into legislation. It is creeping into legislation. We dealt with the Anti-Gang and the Bail Acts and we were talking about how long you can detain a person without charging them, and we eventually agreed that you would be able to detain a person for three days and after the three days the police officer can go ex parte to a magistrate who could order a further three-day detention.

We on this side agreed reluctantly to that because of the specific circumstances. You are talking about a suspected gang member who may have committed a murder and so on, and you want to make sure that that person is not released back out so they could kill the witnesses or whatever, so we reluctantly agreed in the context of that peculiar piece of legislation. But I find this whole concept of ex parte is creeping into legislation, and for those on that side who do not know, there is a basic rule of court procedure that both parties should be present when any arguments are made before a judge.

Now there are exceptions which is where the whole concept of an ex parte hearing comes in where you just have one person, but that is used for restraining

orders, injunctive relief, orders for the custody of children and things like that, where there is imminent danger that irreparable harm would be done to the claimant if the ex parte application is not dealt with immediately.

**7.20 p.m.**

But I cannot see, Mr. Speaker, a situation where you are giving wide power to the Financial Intelligence Unit (FIU) to go ex parte, so that they will go and dig into the bank account, hypothetically speaking, of the Member of Parliament for Diego Martin West. I am just saying, hypothetically speaking, go to the court and say "Look we want to get the bank records of the Member of Parliament for Diego Martin West or even myself or Laventille West, or Chaguanas West." Let us use Chaguanas West. That is a good hypothetical example.

So the director of the FIU, if this legislation is passed, will be able to go to the court and say that they believe, hypothetically, that the Member for Chaguanas West may be involved in suspicious transactions and they go ex parte. So the Member for Chaguanas West has no idea, unbeknownst to him this officer is before the court seeking an order for the release for his banking records. That cannot be right. It cannot be right, Mr. Speaker, and we on this side object most strenuously and we demand that the words "ex parte" be deleted from that clause.

This would be the beginning of financial terrorism in this country if we allow a person who is in some way answerable to a politician, because this director of this Financial Intelligence Unit (FIU), no matter how the person is appointed, whether they are appointed by Cabinet or whether they are appointed by the Public Service Commission, will be within a department and under section 75, I believe, of the Constitution or 85, one of those—the department of Government or under the supervision or direction and control of a Minister.

So this person, this director of the FIU, will be to some extent under the direction and control or supervision of the Minister. This director now will be given the power under this law to go before a court in the dead of night, in secret, in camera, and get an order without the other person being given an opportunity to respond and to show reasons to the court why it is a frivolous claim, it is a mischievous allegation that has been made against them, politically motivated allegation and tell the court why their bank records should not be disclosed.

[*Mr. Deputy Speaker in Chair*]

That is the only fit and proper thing in a society that has respect for the rights and freedom of people, Mr. Deputy Speaker. So we object most strenuously to

clause 11 of this Bill and I wish to put on record, Mr. Deputy Speaker, that it is not in keeping with the Integrity in Public Life (Amdt.) Act, 2010. I do not know where this came from. You see, Mr. Deputy Speaker, the Attorney General told us that because of certain deadlines the Government had decided not to go with a hybrid model, but was going to strengthen the administrative model. They said that the FIU had no investigative powers, no quasi-police powers and so on. They will work in tandem with a law agency, with a special agency, which will be assigned to the Attorney General's office. It appears when they abolish the Special Anti-Crime Unit, when they abolish SAUTT—[*Interruption*]

**Hon. Ramlogan:** [*Inaudible*]

**Mr. C. Imbert:** Mr. Deputy Speaker, I am grateful for the clarification. But I recall during his presentation the Attorney General telling us that he has all of these anti-corruption units and quasi—police units under his control and it is—[*Interruption*]

**Hon. Ramlogan:** Mr. Deputy Speaker, I never said that. I never said that I had all of these units under my control. Furthermore, I repeatedly clarified during the course of my contribution that the Financial Investigations Bureau which is currently housed with the Special Anti-Crime Unit will be retained but will continue as a unit and a department of the police service. That is what I said. At no time did I use the word "control" over any independent bodies under the Ministry of the Attorney General.

**Mr. C. Imbert:** Mr. Deputy Speaker, as far as I know, the Anti-Corruption Bureau reports to the Attorney General.

**Hon. Ramlogan:** No it does not. No it does not.

**Mr. C. Imbert:** As far as I know, Mr. Deputy Speaker, it is within the Office of the Attorney General. [*Crosstalk*] That is another argument, Mr. Deputy Speaker, that is another argument because the Attorney General cannot have his cake and eat it too. You cannot say that the reason why you are moving the Financial Intelligence Unit out of the Ministry of Finance into the Attorney General's office is because of the synergies, because of the investigative capability, because of all the other agencies that you have within the office of the Attorney General. You cannot say that on the one hand and then on the other hand say that none of these agencies within the office of the Attorney General come under his direction and control. You cannot have your cake and eat it too.

**Hon. Ramlogan:** The Anti-Corruption Bureau.

**Mr. C. Imbert:** The Government had told us that they made a case for moving the FIU out of the Ministry of Finance where it is properly housed to the Office of the Attorney General because of the synergies with all of the quasi-law enforcement agencies and investigative agencies within the Ministry of the Office of the Attorney General. That is what he said. He cannot make that case and now say it is not so. It is either if it walks like a duck, if it quacks like a duck, it is a duck, Mr. Deputy Speaker; it is a duck.

I also have some difficulty with some of the statistics that the Attorney General quoted for us. You see, he said that in the United Kingdom and other countries—he gave us a list—the financial Intelligence Unit is within the Ministry of Justice. That is what he said. Am I right? You said that—I will sit down for you to clarify—what did you say? [*Crosstalk*]

Mr. Deputy Speaker, he told us that what he is doing, what the Government is doing, is placing the Financial Intelligence Unit within the Office of the Attorney General. They are following the pattern in other countries, both developed and not developed, and listed countries including the United Kingdom, Mr. Deputy Speaker. That is what he said. He said in those countries the FIU is not in the Ministry of Finance. It is in the Ministry of Justice or some similar agency. As I said, there is audio and video recording of what is taking place inside of here. Now what the Attorney General failed to tell us or maybe what his advisors fail to tell him—and I have for his perusal and I will give it to him as a gift, a report done for the International Monetary Fund and the World Bank, 2004 document which is quite widely applied in the creation of—[*Interruption*]

**Hon. Ramlogan:** It is a seven-year-old document.

**Mr. C. Imbert:** Yes, it is quite widely applied in the creation of financial intelligence units all over the world. In fact, Mr. Deputy Speaker, this is the manual—the handbook towards the creation intelligence units. It is called *Financial Intelligence Units*: An Overview by the International Monetary Fund and World Bank 2004.

Mr. Deputy Speaker, what this document tells us is that you have three types essentially of Financial Intelligence Units in the world. You have an administrative type unit, a law enforcement type unit and you have a judicial or prosecutorial type unit. Then of course you have the hybrid which could be a blend of one, two or all three, Mr. Deputy Speaker. And what the Attorney General failed to tell us is that there is a whole host of countries that follow the

administrative model including: Australia, Belgium, Canada, Colombia, France, Israel, the Netherlands, United States of America, et cetera; a list of quite significant countries in the world. Those follow the administrative type model. And then there are countries that follow another model including: Germany, Ireland, United Kingdom, Sweden and so on. But the model that they follow, Mr. Deputy Speaker, is not an administrative model. They follow the law enforcement type model.

**7.30 p.m.**

Because it has police powers, it was appropriate to put that unit either in the Ministry of National Security, the Ministry of Justice or the Ministry of the Attorney General. It makes perfect sense. So when you have a law enforcement type FIU, you put it in the place where you have law enforcement agencies. Simple common sense! But when you have an administrative type Financial Intelligence Unit, you put it in the Ministry of Finance.

What the Attorney General wants to do is to have the best of both worlds. He wants an administrative type FIU, but he does not want to put it in the Ministry of Finance; he wants to put it into the Office of the Attorney General. There is no place for our Financial Intelligence Unit within the Office of the Attorney General. [*Desk thumping*] No place! And the reason is obvious. The FIU has to communicate with banks. Which bank is going to be comfortable giving information to a quasi-law enforcement agency? I mean, the document speaks about that. It does not happen. So you have conflict and you have confusion in the system.

In fact, there are many countries that actually put the Financial Intelligence Unit within the Central Bank, and there is a reason for that, because the Central Bank is the regulator of financial institutions. The Central Bank has powers to inspect documents; to go into banks to look at records and so on. The banks are accustomed to interacting with the Central Bank or the Ministry of Finance, as the case may be, and, therefore, there is a level of comfort in terms of common sharing of values about confidentiality and so on. Banks are very averse to FIUs which are within Ministries of National Security and so on, because there is no nexus; there is no locus; there is no connection between financial institutions and a ministry such as the office of the Attorney General.

So that this FIU that the Attorney General is trying to create is going to start out in trouble, because there is no connection between the banking sector and the Office of the Attorney General, none whatsoever. And what this FIU is supposed

to do, if it really is an administrative model, is simply receive reports from the banks, and when it receives a suspicious transaction it sends it to the police. That is what the FIU is supposed to do.

But, you see, what the Attorney General has done in a very clandestine way is introduce all sorts of police powers into the legislation. He is telling us in one breath that it is an administrative model, but it is really a quasi-police model, because what is this power to go ex parte before a court in secret and dig up in your financial records? Only the police should have those powers, not the Ministry of the Attorney General. Why should the political directorate have those powers?

I heard the Member for Oropouche East, in his usual way, unable to deal with the information I have brought before the Parliament—I heard you across the floor. He said that this document which is the bible of FIUs—go and check with the World Bank and the IMF; go and tell the IMF; go and tell the Egmont Group; go and tell the World Bank that this manual for the establishment of FIUs is obsolete, redundant and dated. Go and tell them that, "nuh". So clever! So clever! "Why yuh doh stick tuh yuh field?"

But since the Leader of Government Business has told me that this document is dated, I will put into the record a working paper from the Basel Institute on Governance - The International Centre for Asset Recovery", which was published in November 2010. Is that current enough for you, Leader of Government Business—November 2010? Is that current enough for you? This working paper looked at the situation of Financial Intelligence Units in Central and Eastern Europe and the former Soviet Union, and there was a reason for that. Because you had former communist dictatorships which were now becoming democracies and had to join the rest of the world, one of the things they had to do almost immediately was to create Financial Intelligence Units, especially because several of these countries were becoming members of the European Union.

Originally we had 10 countries in the European Union, and now we have about 25 or more. Because these countries were applying to become members of the European Union and get the benefits of being an EU country, they had to establish FIUs very quickly. So this International Centre for Asset Recovery has been looking at the situation with Financial Intelligence Units in the former Soviet Republics and Central and Eastern European countries.

One of the things that they said, which is a worrying observation, is the fact that some FIUs are not sufficiently independent in their day to day work due to

political pressure. You see, what is happening in Trinidad and Tobago is not unique. You have the head of the FIU which you now want to give the power "to go and dig up in" people's bank account in secret, appointed politically, because what the Cabinet did, that was a political appointment that they made, and this paper goes in great depth into what has happened in Central and Eastern Europe when you had political appointees appointed to head these Financial Intelligence Units.

Another equally worrying development is the risk that some countries may abuse the Financial Intelligence Unit for political purposes, for example, by investigating the financial activities of Opposition politicians. So what is happening here; what we are discussing, these are concerns all over the world. And, you know, this Government said they came in on the altar of transparency, accountability and integrity. They said they would represent change; they said they would do the right thing, and one of the first things they do is make a political appointment to a unit that has the ability to "dig up in" your bank account. That is the first thing they do. [*Interruption*]

The Cabinet appointed Miss Susan Francois. Miss Francois is a political appointment. Is the Leader of Government Business asking me to give him an education on the meaning of the phrase "political appointment"? I will simplify it for him, through you, Mr. Deputy Speaker.

A political appointment is somebody appointed by politicians. The Cabinet of Trinidad and Tobago is comprised of politicians. The Cabinet of Trinidad and Tobago appointed Miss Susan Francois, and, therefore, Miss Susan Francois is a political appointment. So we have a situation where the first thing this Government which promised transparency did was to make a political appointment of someone who could "dig up in" your bank account. That is the first thing they do.

The second thing they did, not satisfied with making a political appointment—

**Dr. Moonilal:** David West was a political appointment.

**Mr. C. Imbert:** Of course. That is why we did not appoint him director, because we knew that the director had to be appointed by the Public Service Commission. He was a contract officer, notwithstanding any advice you got.

**Dr. Moonilal:** Which is worse.

**Mr. C. Imbert:** So the first thing they do, as I said, is put a hand-picked political appointee who never applied for the "wuk" as the head of this unit. Now,

look at what they are doing today. Having done that, they now want to give that person the power, as I said, to go to a court in secret to get an order for your banking information without your knowledge, and they want to tell the Public Service Commission to confirm that political appointee through this law that they are bringing in through the backdoor.

But, you know, the Government has the majority in this place, but I can assure you, they can use their majority to bully through these oppressive and improper amendments to the Financial Intelligence Unit; they can use this majority to pretend that they are not giving the Financial Intelligence Unit quasi-police powers—use the votes; say what you want and vote—but they are not going to have an easy time in the Senate, I can assure you of that, because I still believe that the Independent Senators in this country have some independence.

**Mr. Deputy Speaker:** Hon. Members, the speaking time of the Member for Diego Martin North/East has expired.

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

*Question put and agreed to.*

**Mr. C. Imbert:** You know, as I said, I still have some faith in the Independent Benches in the Senate and I am sure they are not going to agree to this travesty.

What is curious, you know, the Attorney General made some Freudian slips here today, because when he said that the Public Service Commission will appoint Miss Francois to act as director of the FIU while the Salaries Review Commission is establishing the terms and conditions of that office, he let the cat out of the bag. Because, you see, in order for the Salaries Review Commission to examine the terms and conditions of a public office, and in order for the terms and conditions of that public office to be confirmed and approved, it requires Cabinet intervention. The Attorney General knows that, you know.

You see, the Salaries Review Commission merely recommends. The recommendations of the Salaries Review Commission have to be laid in Parliament and approved by the Parliament. And for those of us who are not happy about the little pittance that we get inside here, we all know too well—you, Mr. Deputy Speaker, have been here a while; you will know from the many debates we have had on the various reports of the Salaries Review Commission that in order for the Salaries Review Commission’s recommendation to take

effect, you require Executive action and you require parliamentary approval. So all the Government has to do is to not bring the matter before the Parliament, or not approve it, or just leave it to languish.

So that if the Attorney General gets his way and his instructions that he gave to the Public Service Commission in this Parliament today are followed and Miss Francois is appointed to act until the terms and conditions of the director of the FIU are settled, then all the Cabinet has to do is to make sure those terms are never settled, so the lady will act in perpetuity for the next 10 years. So you let the cat out the bag, and I am hearing the Leader of Government Business saying, "Good advice".

So let us go through the stages. They make a political appointment to a public service post; they are now giving that political appointee the power to get confidential banking information in secret, and they have instructed the Public Service Commission to appoint their political appointee in accordance with the law, and the determination of how long that acting appointment will be is solely in the hands of the Government. Do you see the elaborate web that has been woven by the Attorney General?

**Dr. Moonilal:** Unravelled by you.

**Mr. C. Imbert:** Yes, unravelled by me. So I am hoping that the persons in Trinidad and Tobago who understand these machinations, who understand these manipulations, will rise up in protest. I am hoping they would rise up in protest, because the UNC-coalition Government is eating away at our rights and freedoms on a daily basis. [*Interruption*] The Attorney General—as I said, I have much regard for his legal prowess, but his performance in office leaves much to be desired. The Attorney General is obviously involved in empire building. There is absolutely no need for a unit that has to interface with the banking sector to be in the office of the Attorney General— absolutely no need; none whatsoever.

**7.45 p.m.**

There is absolutely no need for a unit whose responsibility is simply to receive reports on suspicious transactions, and if they see something suspicious send it to the police, to be located within the Office of the Attorney General. All the Attorney General is doing is expanding his empire, and he would not be the first Attorney General to do that, and I dare say he will not be the last Attorney General to do that.

So that there are many things that are wrong with the legislation before us, many, many things that are wrong with the legislation before us. Why, for example, is the Government giving the FIU the authority to monitor credit unions? Why? Where did this brainwave come from? There is nothing wrong with the FIU having the responsibility to deal with suspicious transactions in credit unions—I support that, but that is not what this legislation seeks to do.

What this legislation seeks to do is to give overarching powers to the Financial Intelligence Unit with respect to credit unions and let us go to section 18E(1) of the Bill before us. It says:

> "The FIU shall effectively monitor the persons and businesses for which it is the Supervisory Authority and shall take the necessary measures to secure compliance with this Act and the following written laws.:
>
> (a) the Proceeds of Crime Act, 2005;
>
> (b) the Anti-Terrorism Act, 2005;
>
> (c) the Financial Obligations Regulations, 2010
>
> (d) the Financial Intelligence Unit of Trinidad and Tobago, Regulations, 2011;
>
> (e) the regulations made under the Anti-Terrorism; and
>
> (f) any other written laws by which the recommendations of the Financial Action Task Force are implemented…"

And what the Attorney General is doing—he has said that it is okay for the Central Bank to monitor banks and insurance companies, that is what he said; the Central Bank could continue to monitor banks and insurance companies, but the Financial Intelligence Unit which will now be in his Ministry will now be mentoring credit unions. I want to know why: why are you expanding your empire to include the monitoring credit unions? What is that for?

**Hon. Ramlogan:** Like you have money in that credit union.

**Mr. C. Imbert:** No—you know, Mr. Deputy Speaker, the Attorney General is making a joke out of this—but there are all sorts of sneaky, underhanded, Machiavellian, insertions in this legislation. I really wonder if the credit union movement is going to agree to this, that they are going to be monitored by the Attorney General.

**Hon. Ramlogan:** Not by me.

**Mr. C. Imbert:** No, by you, because you know "talk is cheap eh".

**PROCEDURAL MOTION**

**The Minister of Housing and the Environment (Hon. Dr. Roodal Moonilal):** Mr. Deputy Speaker, pursuant to Standing Order 10(11), I beg to move that this House continues to sit until the conclusion of the Bill Financial Intelligence Unit (Amdt.) (No.2), Bill 2011 before us, and until the conclusion of a Motion on the Adjournment. I so move.

*Question put and agreed to*

**FINANCIAL INTELLIGENCE UNIT BILL OF TRINIDAD AND TOBAGO (AMDT.) (NO.2)**

**Mr. C. Imbert:** Mr. Deputy Speaker, I heard the Attorney General say "Not me." I refer to the legislation, clause 5:

"The FIU Act is amended in section 2—

(b) by deleting the definition of the word "Minister" and substituting the following:

""Minister" means the Attorney General;"

Secondly, in clause 6: The FIU Act is amended in section 3 by deleting—

(b) the words Ministry of Finance and substituting the words "Office of the Attorney General;

Therefore, if you apply those changes to Act No. 11 of 2009, which is the Financial Intelligence Unit Act, and you go to sections 2, 5, 3 and so on:

"3(1) There is hereby established a department in the Ministry of Finance,"

with this amendment it will now read there is hereby established a department in the Office of the Attorney General and if the Attorney General did not know, let me educate him on section 85 of the Constitution, and section 85 of the Constitution reads as follows:

"Where any Minister"—meaning Attorney General—"has been assigned responsibility for any department of government"— meaning the Financial Intelligence Unit now by way of this legislation—"he shall exercise general direction and control over that department;…"

**Dr. Rowley:** That is what he wants.

**Mr. C. Imbert:** Of course, that is what he wants, and he does not want the country to know that under section 85 of the Constitution a Minister has the

authority to exercise direction and control over all departments that have been assigned to him. The Attorney General is so clever, he does not want to leave this up to the Prime Minister. You know the Prime Minister assigns portfolios. You know when you get appointed as a Minister you get a schedule, and they give you a list of departments under your control, and they will list all the—let us say Ministry of Works: Drainage Division, Construction Division, Highways Division, et cetera.

The Attorney General is so clever he does not want to leave this matter to the discretion of the Prime Minister he is putting it into the law. So that henceforth until this law is changed, the Financial Intelligence Unit will be a department of the Office of the Attorney General, and by way of section 85 of the Constitution he will exercise direction and control over that department.

So the Prime Minister cannot do anything. All the Prime Minister could do is get rid of him as Attorney General. That is the only way the Prime Minister can remove this Minister as having direction and control over the Financial Intelligence Unit, Mr. Deputy Speaker.

Now as I was saying, the Attorney General is giving himself direction and control over the Financial Intelligence Unit, and is now giving that unit the authority to monitor credit unions and listed businesses, attorneys, pawnbrokers, jewellers—am I wrong? Are those listed businesses? Attorneys, pawnbrokers, real estate agents, et cetera?

So the Attorney General is now giving himself the authority to exercise direction and control over the unit which will be monitoring the financial activities of lawyers, of real estate developers, of pawnbrokers, of jewellers, and credit unions. I would like him to explain to me why. Why is it that the Central Bank is the correct authority to monitor a bank, the Central Bank is the correct authority to monitor an insurance company? Why is that right? But it is wrong when it comes to credit union and listed businesses? Why? What is his interest in these organizations? Why is it that a Ministry that is comprised almost entirely of lawyers, legal officers, people who have legal training and so on, is now going to be monitoring credit unions? What does he know about credit unions? What does he know about that? There are all sorts of things in this legislation that you know—and what bothers me about this Cabinet, they do not read anything. If a Note comes to Cabinet I am sure you not read it, I am sure you did not ask the Attorney General why does he want to control credit unions? And why it is the Central Bank is good enough to control banks, but they are not good enough to control credit unions? I am sure you did not ask him that. I am sure when it went

to the Legislative Review Committee it passed through "woosh". The Attorney General "come and say it good and everybody say right, let us go for lunch", and they take five minutes, and that is how they vetted this legislation. Mr. Deputy Speaker—

**Mr. Roberts:** That is like how you vet the *Su.* [*Laughter*] "Woosh"... it sail.

**Mr. C. Imbert:** True. Now, Mr. Deputy Speaker—[*Interruption*]

"Nah" not at all. I would like to know why this administrative unit is being given the following powers:

> "…if in the opinion of the FIU, a financial institution of listed business has violated or is about to violate the provisions of the Act… it may issue a directive to such financial institution or listed business to—(a) cease or refrain committing the act or violation or pursuing the course of conduct;"

**7.55 p.m.**

Now, why are you giving this administrative unit these quasi-police powers? Why, Attorney General? I want to know. Why is it that you come into this House and say you are strengthening the administrative model? The administrative model of the FIU simply receives reports on suspicious transactions, and if when it receives those reports, it comes to the conclusion that there is something that requires action by the law enforcement agencies, the matter is referred to the law enforcement agencies. But this FIU will now be able to issue a directive under clause 18G(1) to institutions, to cease or refrain from committing acts in violation of the Financial Intelligence Unit Act, cease from pursuing a course of conduct, perform such duties that in the opinion of the FIU are necessary to remedy the situation, and so on and so on and so on.

What is this all about? You could freeze the business of a bank for 21 days, because on page 8 of this Bill, it says;

> "18G(5) A directive made...continues to have effect for a period of twenty-one days..."

So this FIU, headed by a political appointee that could go to a court and get your banking information in secret could now tell a bank, a credit union, an insurance company, they must stop transacting business for 21 days. Why, Attorney General? Why is this administrative FIU being clothed with all of these quasi-judicial, quasi-police powers, powers of enforcement, powers to issue orders and suspend business?

I would like to know why because I am very, very suspicious about what the Attorney General is up to. It tells me that my initial suspicion that he is up to empire building is quite right, because this unit is going to wield tremendous power if this legislation is passed. This unit could shut down every bank in this country if it wants to, in accordance with clause 18G. The FIU will be given the power to tell a bank to cease or refrain from doing something, and to do such things as in the opinion of the FIU are necessary.

The other problem I am having, Mr. Deputy Speaker—there are all sorts of things wrong with this. The oath of office and secrecy: they have replaced the oath of office with an oath of secrecy, and it goes as follows:

> "I,…do solemnly and sincerely swear that I will faithfully and honestly fulfil the duties that devolve upon me…and that I will not without the authority in that behalf, in any manner publish or communicate any facts or information..."

"…I will not without the authority in that behalf...", what does that mean? Who is giving the authority? Now, that is ambiguity. If you want to know what that means—that someone will swear an oath of secrecy; that they will not disclose bank information unless they are authorized, by who and how, in what circumstances and when? [*Interruption*]

**Mr. Roberts:** By whom.

**Mr. C. Imbert:** By who, whom, thank you. Thank you very much. By whom? I have lapsed into Trinidadian, Mr. Deputy Speaker. I am grateful for the correction from the Member for D'Abadie/O'Meara.

**Mr. Roberts:** You are a "Trini".

**Mr. C. Imbert:** Mr. Deputy Speaker, we come to the end of the Bill—[*Interruption*] [*Dr. Moonilal applauded*] Not the end of my contribution, the end of the Bill.

**Dr. Moonilal:** Oooooh!

**Mr. C. Imbert:** What does clause 19 tell us?

> "19. Notwithstanding any law to the contrary, no legal proceedings or other action shall be filed maintained against any person for any act…done prior to the coming into operations of this Act…"

So, all the wrong things that Miss François did, immune from prosecution, or may have done—I am not saying that she did anything. Hypothetically! [*Interruption*]

**Mr. De Coteau:** By being politically appointed is wrong?

**Mr. C. Imbert:** Yes, that is correct. Clause 20 says:

> "Any evidence obtained...during any investigation carried out in purported exercise of powers conferred under Proceeds of Crime Act,...are deemed to have been lawful and valid, to the extent that...would have been lawful..."

So, the attorney General has taken us along a long circuitous road to tell us that clauses 19 and 20 only apply to Mr. West, only apply to Mr. West, according to you.

**Hon. Ramlogan:** You are obsessed with that man. You come back with— [*Interruption*]

**Mr. C. Imbert:** If we are to believe the Attorney General, the only person who has done wrong things is Mr. West. The only person who has obtained evidence improperly is Mr. West. You expect us to believe that?

**Sen. Ramlogan:** We expect that from you.

**Mr. C. Imbert:** No, I am saying according to you. I have stated, categorically, that Mr. West was never appointed as Director of the FIU. Never! [*Interruption*]

**Hon. Member:** That is not true.

**Mr. C. Imbert:** But, Mr. Deputy Speaker, I have asked the Attorney General on three separate occasions to produce evidence, and he has produced none. He has produced no evidence.

So, Mr. Deputy Speaker, the purpose of this debate today is simply to validate the improper appointment of Miss François and to validate all the improper things that have been done since that improper appointment. That is it. The other purposes in addition to what the Leader of the Opposition has said are to give this Financial Intelligence Unit powers that they really should not have. We on this side cannot support giving the FIU, now to be housed in the Office of the Attorney General, authority to monitor credit unions and listed businesses. That is not the business of the Office of the Attorney General. We cannot support that.

We cannot support giving the FIU the power to go to a court, ex parte, behind somebody's back, to get their bank information and the other person has no opportunity to be heard, to argue a case that it is mischievous or it is politically motivated. We cannot support that. We cannot support the extensive powers that the Attorney General is giving to this FIU, which will now be under his direction and control.

The Attorney General did not explain any of these things in his presentation. He did not tell the Parliament, he did not tell the country, he did not tell any of us what he was all about, and I am asking the Attorney General to come clean. I have specific questions. Why do you want to give the FIU the power to go to a judge behind somebody's back to get their bank records without the person even being aware of that fact? I want to know why. I want to know why he is putting this FIU into his Ministry and giving it now the authority to monitor credit unions. I want to know why. I want to know why he is giving the FIU the powers such as the Customs, the Inland Revenue and the Central Bank, that can now take action.

[MR. SPEAKER *in the Chair*]

The FIU will now be able to take action against businesses, financial institutions to shut down a business, to stop all transactions in a bank. I want to know why you are giving the FIU these powers when you claim that it is not a law enforcement type FIU but an administrative model? I really think the Government should suspend the debate on this Bill so that Attorney General could take another look at these oppressive clauses and come back on the next occasion and address this matter. There are too many unanswered questions. This legislation is badly drafted, it is dangerous, it is oppressive and it is the beginning of a police state in Trinidad and Tobago.

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

**Mr. Speaker:** Is there anyone else? Hon. Attorney General.

**Dr. Moonilal:** You abstain?

**The Attorney General (Sen. The Hon. Anand Ramlogan):** Mr. Speaker, permit me to deal fast with the last point raised first and the misconception of the hon. Member for Diego Martin North/East and the dangerous mischief that he is peddling about this legislation.

Mr. Speaker, what they did when they brought the original Financial Intelligence Unit Act was to make it an administrative unit, as he said quite rightly, to receive information from the banks and that he is proud about that. But when we went to the Financial Action Task Force, they said that was one of the strategic deficiencies—[*Interruption*]

**Mr. Imbert:** Not true.

**Sen. The Hon. A. Ramlogan:**—in the Act. [*Interruption*]

**Hon. Member:** Not true.

**Sen. The Hon. A. Ramlogan:** Because, if you are going to create a Financial Intelligence Unit and all it is going to do is be a repository to collect information without a supervisory function to ensure compliance, then something is wrong. You will be sitting there waiting. So, according to him and their legislation, you will write institution X and say, "Well look, I understand that some religious organization has deposited $12 million in cash and I want to know X, Y, Z." After 12 days the institution does not bother to respond; after 21 days it does not bother to respond. You want to know that the audited statements comply. You write them and they do not bother. According to them, you leave the matter—[*Interruption*]. He says take it to the police. If you take it to the police, what crime are they committing?

**Mr. Imbert:** Make a crime.

**Sen. The Hon. A. Ramlogan:** The police could only investigate a crime. He says make a crime.

**Mr. Imbert:** Create an offence.

**Sen. The Hon. A. Ramlogan:** Mr. Speaker, that is precisely—

**Mr. Speaker:** Hon. Member for Diego Martin North/East, I know that you had your full 75 minutes. Would you allow the Attorney General to speak—

**Mr. Imbert:** I spoke for 70 minutes.

**Mr. Speaker:** —and observe Standing Order 40(b) and (c). Hon. Attorney General, continue.

**Sen. The Hon. A. Ramlogan:** Thank you, Mr. Speaker. The short point is that the international FATF organization as a requirement for compliance, requires that the FIU has a supervisory function, to supervise and ensure that there is compliance. So when my learned friend makes alarmist and ridiculously outlandish statements about police state and all this foolishness, the FIU will have powers, specific and in relation and for the express purposes of this Act and other pieces of related legislation that pertain to criminal financial intelligence. That is what it is about.

Section 18E states that:

> "(1) The FIU shall effectively monitor the persons and businesses for which it is the Supervisory Authority and shall take the necessary measures to secure compliance with this Act"—meaning the FIU Act—"and the following written laws:
>
> (a) the Proceeds of Crime Act, 2005;

(b) the Anti-Terrorism Act, 2005;

(c) the Financial Obligations Regulations, 2010"—made under this Act;

"(d) the Financial Intelligence Unit of Trinidad and Tobago Regulations, 2011; and

(e) the regulations made under the Anti-Terrorism."

So this is really about the detection and prevention of two things; and he is trying to pull wool over the country's eye. It is two things, anti-money laundering and financing of terrorism and nothing but. So when the FIU has powers, it is related and specific only to money laundering and the prevention of the financing of terrorism, nothing further. It is all geared to that.

When he speaks, therefore, about having a bare FIU that will act as this little administrative organization to receive information alone, the FATF organization will blacklist the country. They require that there be a supervisory function and, in particular, there were no listed businesses outside of the traditional financial sector. So, real estate agents, lawyers, accountants, jewellers, all of these bodies where people can launder money, that they can use to finance casinos—there has been a proliferation of casinos—all of that. The Central Bank does not supervise that, and when it comes to credit unions—Mr. Speaker, permit me to perhaps educate the Member for Diego Martin North/East.

**Mr. Warner:** Good luck!

**Sen. The Hon. A. Ramlogan:** I know that poses a challenge by itself. Credit unions currently fall under the Co-operative Societies Act, but there is no specific regulatory regime in place for credit unions. [*Interruption*]

**Mr. Imbert:** So you want to put it in?

**Mr. Sharma:** Keep quiet and listen.

**Sen. The Hon. A. Ramlogan:** Whilst in the future legislation may come to deal with that, to create such a supervisory regime—

**8.10 p.m.**

Mr. Speaker, in the law right now that they passed, that they have been quoting, in the Proceeds of Crime Act, section 34 states that until regulations were made for the supervisory authority for financial institutions, those businesses would be supervised by the FIU. So, the law as it presently stands allows for it but he does not realize it, and that is the Proceeds of Crime Act. But he makes these

wild, reckless, alarmist statements that we are doing something so phenomenal, something so incredible, he uses the word empire, all of these statements trying to create all of this—you know, alarm, fear and mischief—when the law already provides for it, that until you have something else in place, the FIU is by law already responsible for dealing with them.

**Mr. Imbert:** For credit unions?

**Sen. The Hon. A. Ramlogan:** Yes.

**Mr. Imbert:** Nonsense!

**Sen. The Hon. A. Ramlogan:** Mr. Speaker, the financial institutions which occur at subparagraphs (d), (h) and (i) which are subject to this provision are as follows:

"(d) a society registered under the Co-operative Societies Act;

(h) a person who carries on cash remitting services"—under the Central Bank,

"(i) a person who carries on postal service;"

That is already the law. Go and check it. As such, the FIU is required by the existing law to supervise societies registered under the Co-operative Societies Act which includes credit unions. [*Interruption*]

**Mr. Speaker:** Member for Diego Martin North/East, please!

**Sen. The Hon. A. Ramlogan:** So, Mr. Speaker, the amendment which the hon. Member for Diego Martin North/East refers to, to give a supervisory function to the FIU, that is simply to empower it so that it can carry out its legal duties that are already enshrined in law.

The problem with my learned friends on the other side is that they realize that these legal duties and responsibilities were already given to the FIU by the Proceeds of Crime Act but that they never empowered in law the FIU so that it could carry out and execute those legal duties. You see, they never wanted the FIU to carry out those kinds of duties, they never did. That is why by his own admission—you know I find it passing strange that they seek to resile and bob and weave from this issue of the appointments they made. He stands proudly and says, "Well, we did not appoint a director and deputy director."

Mr. Speaker, so they are now admitting that they passed a law—required as part of an international obligation but having passed the law for almost two years,

they never appoint the head of the organization and the deputy director, that is their admission today, and that is the shame and disgrace that you all have to own up to here today, because what you are saying is that you never appointed anyone at all. You never appointed anyone so you pass a law and the head and the deputy head of the FIU, you never appointed anyone to it. That is the legal requirement and that is why we went onto the gray list by FATF, we were gray-listed because of that kind of subterfuge by the then government. That is the reality. When we seek to climb out of the mess, they want to accuse us of somehow trying to trick and hoodwink and so on.

Mr. Speaker, the functions of the FIU as a supervisory authority in that capacity are limited. With respect to the administrative sanctions, it stands to reason again that the organization would have looked upon us most unkindly if we gave the organization power to request information, but no power to impose any form of directive or sanction to have some coercive power. Mind you, all we did was to say that they can issue a directive, but after that, the FIU has no coercive power, it must go to court.

When I come to going to court, my learned friend made a big song and dance that the Integrity in Public Life Act has no ex parte procedure and he went to find the Act, he found the amendment, and he quoted and so on, and he is ably supported by the Member for Diego Martin West who, you know, raised his head and banged the table, and he accused my hon. colleagues on this side of the Government of not reading the law, not reading Cabinet papers and so on, and in the meantime, they are all, blindly, thumping the desk and accepting what he says as the gospel. Permit me, Mr. Speaker, to elucidate.

Mr. Speaker, this is section 11 of the Integrity in Public Life Act and if someone, including Members of Parliament, refuses to file their annual declarations of income, assets and liabilities, in the same way as you are requesting information from them, as the Integrity Commission, in the same way that the FIU will be requesting information from the listed business, if that information is not provided, this is what the Integrity in Public Life Act says—and I my learned friend was very careful, he said nowhere in this Act, it not there nowhere and he accused me of misleading this House and so on I said nothing. It says:

> "11(7) The Commission may, at any time after the publication referred to in section (6), make an *ex parte* application to the High Court for an order directing such person to comply with the Act and the Court may in addition to making such an order, impose such conditions as it thinks fit."

This is the same ex parte procedure, the same law that he said he read and "it have nothing about that in it." [*Interruption*]

**Mr. Speaker:** Diego Martin North/East, Member for Fyzabad and Member for Caroni South, I am just making the last intervention. After that, I am going to ask Members to withdraw for the rest of the evening. I will not tolerate this continuous interjection and interruption. You have made your contribution, nobody has interrupted you. But you, every word the AG says, you are responding. Just allow the AG to speak, please! Continue.

**Sen. The Hon. A. Ramlogan:** I am grateful, Mr. Speaker. Thank you very much. Mr. Speaker, having cleared the air on that—[*Dr. Rowley stands*]

**Dr. Rowley:** Mr. Speaker, I thank the Attorney General for giving way for clarification. The point we were making is an ex parte in secret. Are you saying that after the Integrity Commission publishes your name in the papers for not complying with the request—they write and you do not comply—if published in the newspaper, then they go to an ex parte injunction? Are you saying that that ex parte injunction is in secret?

**Sen. The Hon. A. Ramlogan:** What I am seeking to clarify is that the hon. Member for Diego Martin North/East said he read the Act in its entirety and there was no reference to an ex parte procedure. I wanted to point out that I was correct in my contribution when I said that we modelled it on the ex parte procedure that came from the Integrity in Public Life Act. Permit me to explain as well and answer your question.

The fact that the procedure is ex parte does not mean that the judge cannot invite the other side to be heard. He still has that power. But I want to say, Mr. Speaker, that if we make it an inter partes hearing, before the FIU could even get the information, that case could quite possibly drag on forever. It is just for information. The information may or may not reveal a suspicious activity, but we want to make it easier for the Financial Intelligence Unit of this country to detect suspicious activity and you all wish to make it harder and more complicated, under the guise that you are trying to protect the country.

The people who this Act targets are drug lords who wish to launder money into the system, and those who are interested in financing terrorist activity. "Doh pull wool over de country eye." A legitimate businessman and a citizen who is carrying on his business has nothing to fear by this law. He only has something to fear if he is putting money towards the financing of terrorism, or he is trying to launder drug money through the system, and that is what we have to be concerned about.

**8.20 p.m.**

Mr. Speaker, I will not—we have discussed this matter and it was a feeling of those on the committee that we ought to go with an inter partes procedure. We would leave it up to the judge, if he deems fit, in an appropriate case to that, because what we are dealing with here is terrorism and money laundering and we wanted to facilitate the FIU being an effective unit, rather than to complicate it and make it into a "pappy show". That is what they did. The FIU was previously just a mere "pappy show".

I want to turn to this issue that they have raised about Miss Francois. We are a new Government, coming up to one year. I want to point out something. What we do, we do with the benefit and the guidance of the years of institutional experience and memory that comes with a government. Governments change but the civil service remains. The institutional memory of what is done before is there. The problem is not a new one. If an office is created by law and it has to be filled by one of the service commissions, before that commission can fill that office, there must be terms and conditions, either finalized by the CPO or the Salaries Review Commission. We all know—and it is an open secret—that takes quite a long time in this country, and it is in those circumstances, not this Cabinet but Cabinets gone in the past, since independence—in recognition of that practical problem, appointed someone to the office to act, pending finalization of terms and conditions by the SRC or the CPO and the persons acts. Permit me to cite, perhaps, what I thought was the most clearest of examples.

**Dr. Rowley:** Most clearest?

**Sen. The Hon. A. Ramlogan:** The clearest of examples cited. In light of the obtuse contribution, I have to say it is the "most clearest for alyuh" because if I say clear, it does not seem as if you all understand clear things.

Mr. Speaker, on September 25, 2003, the office of Court Executive Administrator—we all know that the Executive arm of the State treads with extreme caution, when they are dealing with the Judicial arm of the State. I thought I would use the "most clearest" example because this is the Judicial arm of the State. I am saying "most clearest". [*Interruption*]

**Dr. Rowley:** Mr. Speaker, the language of Parliament shall be English.

**Sen. The Hon. A. Ramlogan:** Yes. Perhaps, my learned friend, the hon. Member for Diego Martin West, does not know when you put up your fingers up and do this, it means in inverted commas.

[*Sen. The Hon. A. Ramlogan illustrates motion for inverted commas*]

On September 25, 2003, for the position of Court Executive Administrator, this is what was done. Cabinet created, with immediate effect, a judicial office of Court Executive Administrator, and that was added to the Second Schedule of the Judicial and Legal Service Act. The Second Schedule of the Constitution was amended to bring that office within the purview of the Salaries Review Commission.

It was on all square fours with the Director and Deputy Director of the FIU, as it were. It was a position under the jurisdiction of the Judicial and Legal Service Commission, created with immediate effect, Court Executive Administrator, and that was September 25, 2000 under the People's National Movement. But, having created that office, the SRC realized that they are in the same problem that we are in, that the SRC would take some time to finalize the terms and conditions. What did they do? That was September 25, 2003.

On October 14, 2004, this was the PNM did. Cabinet Minute 2924 of October 14, 2004, this is what you all did.

> Employment on Contract of Mrs. Morris-Alleyne as Court Executive Administrator
>
> Cabinet agreed, pending determination by the Salaries Review Commission of the salary and other conditions of service of the judicial office of Court Executive Administrator created by Minute 2500 of September 25, 2003, to the employment on contract of Mrs. Christie-Ann Morris-Alleyne as Court Executive Administrator of the Judiciary for a period of one year with effect from…

The Cabinet appointed this person on contract, in recognition of the problems faced by the Salaries Review Commission having to finalize the terms and conditions. This is a Cabinet Minute and the Cabinet is appointing the person on contract, when they know—[*Interruption*]

**Mrs. Persad-Bissessar:** Give them the date.

**Sen. The Hon. A. Ramlogan:** The date of Cabinet Minute No. 2924 is October 14, 2004. It says:

"Cabinet agreed, pending…"

This is the decision of Cabinet. I do not know if the Member for Diego Martin West was in the Cabinet at that time or not. I do not know. The Member for Diego

Martin North/East, with his layman and self-professed and self-proclaimed lawyerly abilities may have been there, I do not know.

The point is this—and I want the country to understand this—that is why we say we felt we were perfectly—and we maintained that we were perfectly—entitled to make the appointment on contract of Miss Francois because there was precedent and there is ample precedent to guide on that matter. That is why we say so, because we utilized the same wording that has been used when these problems confront us, and that is you appointment the person, pending the finalization of terms and conditions by the SRC, or else we are going to find ourselves in the position where, every time Parliament creates a public office, there will be a void and a time period within which that office could never be filled.

Here is the procedure. The SRC has to negotiate terms and conditions, the relevant service commission will then have to advertize, public advertisement, then they have the interview process, shortlist, there might be a second interview process. In the meantime, Rome is burning while everyone is fiddling. That is the reality.

Could you imagine if this country is faced with this kind of crisis? We are on the verge of being blacklisted and they are taking cheap political points and not coming clean with the country, to tell them that they did exactly the same thing when it came, not to the public service, but the Judicial arm of the State. They, as a Cabinet, sat and agreed to appoint someone on contract, to an office that was created but fell under the Judicial and Legal Service Commission. I want to ask the question: when it is done by the PNM, they see nothing wrong with it, but when it is done by the People's Partnership Government, based on constitutional precedence, created by the PNM, they want to come here and cry wolf and cry crocodile tears. That is the worst form of political hypocrisy that the country has ever seen. That is why we will remind you of the facts.

They wish to create the impression. It is immature, reckless and irresponsible to borrow the words of the Member for Diego Martin West—immature, politically reckless, dangerous and irresponsible for a party that actually had no knowledge of this precedence that they themselves created, to stand here and criticize the Government for doing precisely the same thing.

But, you cannot alter the facts. As the Member for Diego Martin North/East said, the lights are here, the cameras are here and the video is here. Well, so too,

the records of Cabinet are here to show what you all did. We never criticized and we have no quarrel with it. We understand the exigencies of the situation. [*Interruption*]

**Dr. Rowley:** It is exigencies now.

**Sen. The Hon. A. Ramlogan:** We understand that, because having created the position of Court Executive Administrator, they could not wait until the SRC finalized those terms and conditions, and that is why the Cabinet made the appointment.

I notice the Member for Diego Martin West, throughout his contribution, steered clear of making a pronouncement on the appointment they made of Mr. West and sought to come back and say: "Well the validation provision has nothing to do with it."

**Dr. Rowley:** You were wrong. [*Interruption*]

**Sen. The Hon. A. Ramlogan:** The validation provision has everything to do with the two, not one, appointments made by the PNM Cabinet to the offices of director and deputy director. It has everything to do with it, because they made two illegal appointments that have cost this country. The appointments have cost this country. [*Interruption*]

**Mr. McLeod:** "Yuh running?"

[*Dr. Rowley departs Chamber*]

**Sen. The Hon. A. Ramlogan:** They will not come clean and say that you would obviously have needed to validate two appointments they made in the past to the FIU, to offices that did not exist. I notice my learned friend from Diego Martin North/East said: "Well, we did not appoint them as director and deputy director." Well, if you did not appoint them to the offices of director and deputy director, what did you appoint them to in the FIU? [*Interruption*]

**Mr. Sharma:** And who were the director and deputy director?

**Sen. The Hon. A. Ramlogan:** What did you appoint them to? More importantly, is it that you are admitting that you passed a law since 2009 and you allowed the two most critical offices of director and deputy director to remain vacant with no one performing those functions, when the law required it to be filled? That is the admission? Well that is reckless and irresponsible, quite frankly.

Mr. Speaker, when they speak about these matters and they claim that the commission and the Attorney General spent hundreds of thousands of dollars to get legal opinions, and they make all these accusations, permit me to say, firstly, the advice did not cost anywhere near that figure. I want to remind them, I wonder how it is the Member for Diego Martin West, the hon. Leader of the Opposition, who remained in his chair when the Member for Diego Martin North/East was speaking, suddenly gets up and leaves, when it is time to face the rebuttal and face the music. When I am citing the facts they get up and run. The Member for Diego Martin West, Leader of the Opposition, has left his chair and fled the Chamber.

I want to put the record straight. There has never been another government in the history of this country that has wasted money on legal fees and lawyers like the PNM; none. Look at the figures they have spent on the Uff Commission of Enquiry, all in an attempt to try and protect one man and one man only. That money was spent to protect one man and they spent it.

Not only that; imagine, when the former Chief Justice, Mr. Satnarine Sharma, when it was abundantly clear to anyone with a modicum of common sense, to realize that they had no case to remove a sitting Chief Justice, I did not hear the Member for Diego Martin North/East put on "he bush lawyer" clothes and jacket to advise the country and the then government: "Look, we should in fact not pursue this matter. We would spend money from here to the Privy Council and we will get nowhere." What did they do? They pursued and hunted and hounded down a sitting Chief Justice, took the case all over and convened a tribunal under Lord Mustill. "Ah hear one man called for—he say is ah pity that we have to go to de Privy Council, but he quoting Montesquieu. Montesquieu doh live in Laventille yuh kno." [*Interruption*]

**Mr. Sharma:** Or Fyzabad.

**Sen. The Hon. A. Ramlogan:** The reality is that they convened a tribunal under Lord Mustill and spent hundreds of thousands of dollars in legal fees, only "tuh boil down like bhagi" to realize that there was no case ever against the Chief Justice of the country. When they come here to talk about wasted legal fees, only to try and pass on the Public Service Commission Chairman's own statement that the law was ambiguous, I say shame on you, shame on you, shame on you.

**8.35 p.m.**

Mr. Speaker, I feel that this matter of the FIU is one that is sufficiently important to understand in the context of our financial regulatory regime. The Central Bank still retains responsibility for the fiscal and monetary policy and

supervision, but when it comes to these listed businesses and the detection of money laundering and financing of terrorism, we say the FIU must have a role to play in respect of listed businesses.

Mr. Speaker, the question is being asked: why is the FIU being given power to suspend transactions, and he pointed out it could go out to 21 days. Under section 14 of the FIU Act already given, gives the FIU the power to suspend the processing of a suspicious transaction. Perhaps I can find the relevant section, when my learned friend acts as if it is some big new thing. Section 14 says that:

> "The FIU may, where the circumstances set out in Regulations prescribed it may instruct—this is what the law is, not what we want it to be—a financial institution or listed business in writing, to suspend the processing of a—"suspicious"—transaction for a period not exceeding three working days..."

Mr. Speaker, I do not understand—they doth protest too much. In fact, in the Anti-Terrorism Act section 22E is in a similar vein and has a similar provision which empowers the FIU to suspend the processing of a suspicious transaction. The suspension under both pieces of legislation occurs while analysis is being completed and done. These are necessary provisions. There is nothing novel or new.

One thing they did not say in the course of their contributions is that we are doing something here that has not been done in other countries. They have not cited a single piece of legislation to say. Well look, in all these countries that are FATF compliant they never do any of this, or they do not have any of this". They never cited any of the laws in other countries that have been deemed FATF compliant and gotten FATF rating approvals to show that in those countries they do not have a supervisory function in the FIU, that they do not have the power to issue administrative directions; that do not have these powers.

What we have done in these amendments is to bring our legislation in-line with those countries that have been given a positive rating by FATF so that we can become FATF compliant, so that we can avoid the precipice of blacklisting. That is what this is about. So, there is nothing novel, there is nothing sinister, there is nothing ominous about it. It is plain and simple, consistent with the international standards applied by FATF to meet internationally recognized, so that we can, in fact, become compliant, and it is that simple.

All of this that they have raised about who is going to appoint and all of that, Mr. Speaker, you know I noticed that the hon. Leader of the Opposition fled the Chamber when I started quoting from the Cabinet Minute to show that they

appointed a judicial—they filled a judicial office, Cabinet, on contract, pending the finalization of the terms and conditions by the SRC which is all this Government has done.

I noticed the Leader of the Opposition did not say at that time he wrote to the JLSC, he protested to anybody. He was in Cabinet I noticed that he did not write when they appointed Mr. West and his deputy director. I noticed he did not write to the Public Service Commission to object. So, it seems as if this is a matter of political convenience and partisan politics in its worst form.

They know very well that they left this country on the brink of the precipice of blacklisting. They know full well that we have to do these things, we have no choice about it, they know full well we must validate the functions and the acts performed by two persons that they appointed on contract to offices that did not even exist in the FIU structure in law. And in the full knowledge of all of that they came here and actually spent all this time in Parliament peddling all sorts of misinformation that would reach us nowhere when what this is about it really boils down to two things: fighting financing of terrorism and terrorist activities, and money laundering. That is what it is.

If they have problems with the fight against that, let them come out and tell the country so, for they will be judged by reference to that. That is what they must do not go around in circles and bring out all sorts of tangential points that have no relationship to the real provisions and what it is designed to do.

So, Mr. Speaker, in closing I say that the FIU—and let me clarify one thing. It is not that we do not at all pretend so say what the Public Service Commission would do, but it seems to me that in the same vein someone has to be appointed to act, someone—whether it is Miss Francois or anybody else it does not matter. That is a matter for the commission—but someone has to be appointed in the office, because we do not wish to do what they did, they left the office vacant. They did not have somebody appointed to act. They did not have somebody substantively confirmed. We cannot leave the office vacant. Come next month, if we do that, this country could be blacklisted.

Mr. Speaker, permit me to place on the record we have had the hon. Minister of National Security and a team of senior technocrats meeting with FATF and the Caribbean Financial Action Task Force (CFATF) constant meetings here, Paris, Washington we have had meetings to try and get them to hold off so that we could put our house in order, because of what we inherited, and to restore the credibility that has been lost, because of the misrepresentations surrounding the two appointments prior.

Having done that, now we are ready to patch this up, we are ready to actually move on, so that the country can go forward. It cannot be that we will leave the office vacant and allow a lacuna and a void to just simply run its course like they did, because suspicious activity will not be detected. I do not know if that is their intention, but that certainly is not this Government's policy or intention, because we want the FIU to work.

So, with those few words I ask this honourable House to support these amendments, so that we can in fact get a functioning and an effective Financial Intelligence Unit for the benefit of the country. I thank you very much. I beg to move, Mr. Speaker.

*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:** May I suggest to hon. Members that having regard to the fact that we have two amendments circulated in writing, and we have 20 clauses, with the leave of the committee I would like to suggest that we go to clauses 1—4, we will then go to 5, because we have an amendment we will stop there, and then when we complete 5 we go 6—14, complete those and then we go to clause 15, where we have an amendment, then we go from 16—20, and then we go to the preamble.

**8.45 p.m.**

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

*Clause 5*.

*Question proposed,* That clause 5 stand part of the Bill.

**Dr. Moonilal:** Mr. Chairman, I beg to move that clause 5(c) be amended as follows:

In the definition of "non-regulated financial institution":

(a) in paragraph (a), delete the word "or";

(b) in paragraph (b), delete the word "and" and substitute the word "or"; and

(c) insert after paragraph (b) the following paragraph:

| | |
|---|---|
| "Chap. 33:04 | (c) a society registered under the Building Societies Act; and" |

*Question put and agreed to.*

*Clause 5, as amended, ordered to stand part of the Bill.*

*Clauses 6 to 14.*

*Question proposed*, That clauses 6 to 14 stand part of the Bill.

**Mr. Imbert:** Mr. Chairman, there are some very complex amendments that we would like to propose. We cannot go from 6 to 14. We would like to go one by one. Please?

**Mr. Chairman:** Okay, if that is the will of the House. [*Interruption*] No problem. The will of the House is that we deal with these clauses one by one. I have no problem with it.

*Clause 6.*

*Question proposed,* That clause 6 stand part of the Bill.

**Mr. Imbert:** Could the Attorney General explain why he is deleting "under this Act and any other written law" and substituting the words "under section 8"?

**Mr. Ramlogan:** Mr. Chairman, we are in fact substituting "under section 8 of the FIU". When one looks at section 8, one will see it speaks to the functions and powers of the FIU and that is the correct reference.

**Mr. Imbert:** So why are you taking out "any other written law"? That was put in the Bill you brought to this Parliament in 2011 for a reason? You put in "any other written law"; why are you taking it out?

**Mr. Ramlogan:** We wanted to be more specific.

**Mr. Imbert:** So, you are no longer giving yourselves the coverage with respect to any other written law. You are assuming that all is in order with every other written law?

**Mr. Ramlogan:** Yes.

**Mr. Imbert:** All right. No problem.

*Question put and agreed to.*

*Clause 6 ordered to stand part of the Bill.*

*Clause 7.*

*Question proposed,* That clause 7 stand part of the Bill.

**Mr. Imbert:** Mr. Chairman, clause 7 creates the new 3A. In 3A(3)(a), are you saying that the director will decide the appointment of every single member of staff of the FIU?

**Mr. Ramlogan:** He or she may or may not.

**Mr. Imbert:** No, no, no. Look at it:

"(3) Other members of staff… shall be appointed by the Permanent Secretary on a contractual basis—

(a) upon the advice of the Director;"

**Mr. Ramlogan:** Perhaps you missed subsection (4):

"Notwithstanding subsection (1), the Public Service Commission may, with the approval of any other Service Commissions as may be necessary, assign, transfer or transfer on secondment suitably qualified public officers to the office of Director, Deputy Director or any other public office…"

**Mr. Imbert:** I did not miss it at all. Please slow down a little and take a good look at 3A(3)(a). What this means is that the staff, with the exception of the director and deputy director must be appointed on the advice of the director. That means that the director, will decide on the appointment of every single staff member down to the cleaner, the security guard, the accountant. Is it appropriate that the director will have the power to appoint every single person in this unit?

**Mr. Ramlogan:** We see nothing wrong with it, but I wish to point out that if we are to make the FIU fully operational to avoid blacklisting, we cannot use the traditional methods or else we will be blacklisted. We all know how long it takes to fill offices using the traditional methods. That is why subsection (4) is there.

**Mr. Imbert:** Subsection (4) is simply transferring public officers. We are not speaking about public officers, we are speaking about other members of staff on a contractual basis. Do you realize that you are giving this person the only power? The Minister will not be able to do anything about it. The Permanent Secretary is simply a post office, a rubber stamp. This director will decide; it is upon the advice of the director. The director will decide upon the employment of every single person.

**Dr. Moonilal:** Member for Diego Martin North/East, we are also advised that it is part of the policy approach of the FATF to have the director involved in these appointments and, if you notice, it is for the contractual staff. That is the policy recommended.

**Mr. Imbert:** Leader of Government Business, the only public officers who are required by law are the director and the deputy director. That means that everybody else can be a contracted officer and everything else, according to this, must be appointed on the directive of the director.

**Dr. Moonilal:** The amendment does not preclude the appointment of public officers. They may be contractual.

**Mr. Imbert:** I am speaking about persons who are not public officers. I am talking about contract officers. You are making a dangerous error. This person will be appointed by independent body and then this person will have the independence of this independent body and will be able to appoint every single staff member in this organization.

**Dr. Moonilal:** You wanted "on the advice of the Minister"?

**Mr. Imbert:** No. There is no advice of the Minister here.

**Dr. Moonilal:** What do you recommend?

**Mr. Imbert:** Let the Permanent Secretary do it, in accordance with established procedures. [*Interruption*] I am trying to help.

**Mr. Ramlogan:** If you have someone else who does not have the expertise to select the staff for the director, it does not make much sense.

**Mr. Imbert:** With respect, the director will be the employer. There is no interview process here; there is no advertisement. You are setting up a system where the director will hand-pick people and the Permanent Secretary will employ them based on written instructions from the director. You are giving this person a power that not even the Public Service Commission or Cabinet has. You realize what you are saying there? You are saying, "upon the advice of the director"; there are no procedures. They can put anybody they want and according to the law—

**Dr. Moonilal:** You notice in the same part here that they are based on guidelines established by the CPO as well. They may be contractual.

**Mr. Imbert:** That does not matter; that does not supersede (a). Subclause (b) cannot supersede (a). It is on the advice of the director. I am simply raising a flag.

I think you need to look into this. This is badly drafted. This gives the director the sole power to appoint every single person. You can do what you want.

*Question put and agreed to.*

*Clause 7 ordered to stand part of the Bill.*

*Clause 8.*

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

**Mr. Imbert:** I would like to ask the Attorney General: can we go to the oath of secrecy in the Schedule? What is the meaning of the words "that I will not without the authority on that behalf"?

**Mr. Ramlogan:** It is self-explanatory. I do not understand what the question is.

**Mr. Imbert:** Who is giving the authority?

**Mr. Ramlogan:** It could be pursuant to a court order. It could be pursuant to the director of the organization.

**Mr. Imbert:** The person is swearing not to disclose confidential information without the authority. Who is the person giving this authority? Where did you get this form of words? Who is giving the authority to the person to disclose confidential information? The director?

**Mr. Ramlogan: A**s I said, it could be that it is done pursuant to a court order. It could be done on the authorization of the head of the organization, the director.

**Dr. Rowley:** Well say so.

**Mr. Imbert:** It is a meaningless clause.

**Mr. Ramlogan:** It does not need to be said. This is the form of oath in the

Civil Service Act as well.

**Mr. Imbert:** For disclosure of banking information? I doubt it.

**Mr. Ramlogan:** No, the confidentiality aspect.

**Mr. Imbert:** AG, you have made that statement, but it is not so. If you can produce the civil service oath of secrecy, I will go along with you.

**Dr. Moonilal:** We looked at various oaths and we formulated this and the confidentiality aspect is consistent with what obtains when you take an oath of confidentiality in this country.

**Mr. Imbert:** You do not want to listen. Go ahead.

*Question put and agreed to.*

*Clause 8 ordered to stand part of the Bill.*

*Clauses 9 and 10 ordered to stand part of the Bill.*

*Clause 11.*

*Question proposed*, That clause 11 stand part of the Bill.

**Mr. Imbert:** This is one of the clauses with which I have the most difficulty. The Attorney General has said that it follows the model of the Integrity in Public Life Act. I have indicated that it was not so. The Attorney General then read out section 11(7) of the Integrity in Public Life Act; but he did not read 11(6), which says that before the commission can approach the court ex parte, it must publish the person's refusal in the *Gazette* and in at least one daily newspaper in Trinidad and Tobago. Therefore, when the Integrity Commission is given the power to go to a court ex parte—and all this is doing is directing the person to comply with the order—they must first warn the person by publishing it in a newspaper and in the *Gazette*.

So, when the commission goes to the court, it is not a surprise; it is not a secret. There is no comparison between what you have here and what is in the Integrity in Public Life Act. There is an established system of warnings, including publication, before you go to the court.

The other problem I have is that this is not the applicable section. The applicable section of the Integrity in Public Life Act is section 34.

**Dr. Moonilal:** Member for Diego Martin North/East, are you saying that we should publish in the newspapers that we suspect Mr. X is financing terrorism?

**Mr. Imbert:** No. You are asking a financial institution; not Mr. X. It is a bank you are asking, not an attorney, to provide information and in the Integrity in Public Life Act the relevant section is section 34, not section 11.

**Mr. Ramlogan:** This issue was discussed and it was felt that if you publish something like that on a financial institution and name it, there would be a run on that financial institution the next morning, but there may be one customer in an entire bank who you suspect of financing terrorism or who you think is a drug lord laundering money in that bank. When you publish that, you will set off a chain reaction.

**9.00 p.m.**

There will be a run on the bank. So we felt that, look, as you can see from section 12(1), it says:

Where a financial institution or listed business fails or refuses to provide any information. So, Mr. Chairman, you would first be writing to them to request it. Obviously, the law does not need to say that before you write them, before you go to court you would have to write them again. That does not need to be said here because I will tell you why. The pre-action protocol practice direction in the civil proceedings rules of court already state that before you could take them to court you have to send them a pre-action letter as it were.

And one would expect in good public administration that before you take them to court, you would write them and say "Yuh doing this thing or yuh eh doin it", "Weh yuh decide to do?" "Look, ah telling yuh the last time, if yuh dont do it we taking yuh to court."

We do not need to legislate that. This is wasting time.

**Mr. Imbert:** Mr. Chairman, with due respect—[*Interruption*]

**Mrs. Persad-Bissessar:** If I may, before you respond—

**Mr. Imbert:** Sure.

**Mrs. Persad-Bissessar:**—CPC was just pointing out to us; it is not only referring to financial institutions but also to listed businesses. [*Crosstalk*] And I have just asked who these listed businesses are. And I am advised that they are the ones under the Proceeds of Crime Act, in the First Schedule—listed businesses—which is real estate, any natural or legal person, partner carrying on business under motor vehicle sales; any natural or legal person or firm carrying on business with a motor vehicle.

So people dealing in lands, dealing in motor vehicles, people dealing in money of value or transfer of services, gaming houses. So it is not just a bank that you are saying we will publish this bank, it is a whole list of persons who may deal in transactions that could be hiding money, laundering money.

**Mr. Imbert:** I thank the Prime Minister for intervening. I want to go back to section 34 of the Integrity in Public Life Act, because that is the applicable section. In that section the commission is authorized to look into an alleged or suspected offence. And in that section it reads as follows:

> "Where a person fails or refuses to disclose any information—same words you have here—the commission may apply to the high court for an order to require the person to comply to the request."

So the procedure in the Integrity in Public Life Act I is not ex parte when the commission is investigating or suspects that an offence has been committed.

**Mrs. Persad-Bissessar:** MP, if I am correct and memory serves me right. The person being referred to—if a person fails to do X, Y, to disclose is a person actually making a declaration. We are speaking of—not people doing declarations, these are people who are dealing in high finance, in real estate, in gambling, in banking, in motor vehicles. [*Crosstalk*]

**Dr. Moonilal:** Yes.

**Mr. Imbert:** No problem.

**Mrs. Persad-Bissessar:** That person is the offender. The person referred to in the Integrity Act is the offender being given a chance to rectify their problem. [*Crosstalk*]

**Mr. Imbert:** Okay, Prime Minister, I am afraid you are being misinformed by your legal advisors. [*Crosstalk*]

**Mrs. Persad-Bissessar:** It is a personal declaration.

**Mr. Imbert:** Section 34 flows from section 33. Section 33 is as follows:

> "The commission may on its own initiative or on complaint of any member of the public, consider and enquire into any alleged breaches of the Act or any allegation of corrupt or dishonest conduct."

It has nothing to do with persons in public life or declarations. It is dealing with allegations of corrupt or dishonest conduct. This is investigation into any government agency, any Ministry—[*Crosstalk*] No! The commission may on its own initiative, shall or shall upon the complaint of any member of the public, consider and enquire into an alleged breach of the Act or any allegations of corrupt or dishonest conduct. So it is not only declaration, it is allegations of corrupt and dishonest conduct. And in that one, what the commission is authorized to do when they cannot get the information, is apply to the High Court but it is inter partes, it is not ex parte. [*Crosstalk*]

**Mr. Ramlogan:** Member, the fact that you provide for an ex parte procedure does not deprive the court of its jurisdiction to have an inter partes hearing. What we are trying to avoid—because this was also discussed. These are not novel thoughts—I hate to disappoint you. We thought of this, but what happened, Mr. Chairman is this: if you say up front, say the procedures must be inter partes,

meaning you will have to bring the bank or the car dealer or the jeweller or the casino, and so on, that process will be dragged out in the court for a very long time.

If you make the procedure ex parte—because bear in mind the institution will have to show to the judge that, looks "we have been writing them, judge, we have been giving them chances and they are just not taking us on." Bear in mind that the judge has the power at that stage, for example, to still say, "This is a fairly reputable institution you are dealing with. I will feel more comfortable if I hear what they have to say."

The fact that you say it is an ex parte procedure does not deprive the judge of that kind of jurisdiction. So in appropriate cases the judge may, nevertheless, order and still have an inter partes hearing. But what this is designed to do, is, in obvious cases where the judge feels sufficiently comfortable, based on the evidence before him, to act and make the order that he does so rather than to allow people to drag out this and to fritter away and go in a next country or something. That is what it is for.

**Mr. Imbert:** Mr. Chairman, I will just say one final thing. It is all very well to say the judge has the discretion, but you are now giving the FIU the power to go to High Court ex parte. And the judge may or may not decide to call the other person and, you know that in most cases, they do not. [*Crosstalk*]

**Mr. Ramlogan:** Yes, they do.

**Mr. Imbert:** "Nah, nah, nah, doh try dat". But in the Integrity In Public Life Act, the person is officially warned. And they are warned by way of a notice. If you are saying that it is inappropriate to warn the person by publication in a daily newspaper, then you have to put into the law a requirement for a warning. [*Crosstalk*] You should put in the law a requirement for a warning.

**Mr. Chairman:** What is the position of the Government on this?

**Dr. Moonilal:** Proceed as is.

**Mr. Imbert:** This is not just drug dealers, this is everybody. You go ahead.

**Mr. Chairman:** Okay, I am going to put the question.

*Question put and agreed to.*

*Clause 11 ordered to stand part of the Bill.*

*Clauses 12 and 13 ordered to stand part of the Bill.*

*Clause 14.*

*Question proposed,* That clause 14 stand part of the Bill.

**Dr. Rowley:** On a point of clarification, Mr. Chairman, 14(a) says: "deleting the word Tobago, and substituting the words Tobago". Am I missing something here?

**Mr. Chairman:** I think they have a comma. It is a comma. It is a punctuation mark. That is all.

**Dr. Rowley:** So you delete a whole word to move a comma? [*Crosstalk*]

**Mr. Chairman:** It is just a comma, a punctuation mark.

**Dr. Rowley:** This has to be a joke.

**Mr. Chairman:** That is how it is done, we understand, hon. Member. Could we proceed?

*Question put and agreed to.*

*Clause 14 ordered to stand part of the Bill.*

**9.10 p.m**

*Clause 15.*

*Question proposed,* That clause 15 stand part of the Bill.

**Mr. Imbert:** Are we going to take the amendment first?

**Mr. Chairman:** I am going to put the entire question and then—

**Mr. Imbert:** Because I would like to deal with the clause as is.

I would like to suggest to Members, that I put the question. Clause 15 is amended as circulated:

In the proposed new section 18G, insert the word "non-regulated" before the words "financial institution" wherever they occur.

I think, if I may, the Member for Diego Martin North/East—

**Mr. Imbert:** Yes.

**Mr. Chairman:** I would just put the question before I put the vote.

**Mr. Imbert:** Could the Attorney General explain what is meant by—in 18E. (1)?

**Mr. Ramlogan:** What is meant by what?

**Mr. Imbert:** In 18E. (1), where it says:

"The FIU shall effectively monitor the persons and businesses for which it is the Supervisory Authority…"

What is the meaning of the word "monitor"?

**Mr. Ramlogan:** The word "monitor" ascribes its plain and literal meaning in the English language, Sir.

**Mr. Imbert:** Which is?

**Mr. Ramlogan:** To monitor.

**Mr. Imbert:** If the Central Bank is the authority which monitors banks and insurance companies, does this have the same meaning for these persons and businesses? So, in the same way that the Central Bank monitors banks and insurance companies, is the FIU now going to monitor credit unions in the same way that the Central Banks monitors banks? Could you please explain?

**Mr. Ramlogan:** I have explained.

**Mr. Imbert:** You have not.

**Mr. Ramlogan:** The word "monitor" is used in its plain, literal and ordinary meaning in the English language, and that is why we used it. It has no special meaning other than that.

**Mr. Imbert:** Right! Can you explain why you are leaving the Central Bank to monitor banks in something as serious as this money laundering and terrorism thing?

**Mr. Ramlogan:** It is monitoring them for the purposes of the Financial Intelligence Unit Act. It is not monitoring them for anything else.

**Mr. Imbert:** No, I would just like to know why are you leaving the Central Bank as the authority to monitor banks and financial institutions, and you are not also making the FIU the authority to monitor banks and insurance companies.

**Mr. Ramlogan:** No, no, the amendment cures that. The amendment says—if you look at the amendment—you insert the word "non-regulated" before the words "financial institutions". So, it is "non-regulated" meaning things that do not fall under the Central Bank.

**Mr. Imbert:** Precisely. So the Central Bank will be monitoring banks.

**Mr. Ramlogan:** Yes.

**Mr. Imbert:** And the FIU would not be monitoring banks.

**Sen. Ramlogan:** No.

**Mr. Imbert:** Why? Why the FIU would only be monitoring credit unions and not banks?

**Mr. Ramlogan:** Because the Central Bank already has its regulations which were passed by the previous administration, which already gave the power to the Central Bank to actually monitor the banks for the purposes of the FIU compliance.

**Mr. Imbert:** Right!

**Mr. Ramlogan:** And we have already received a positive credit rating from FATF with respect to what the Central Bank has been doing in relation to that, so there is no point in interfering with that. Do you follow?

**Mr. Imbert:** "Oh, I see". So the FIU will act as an FIU for credit unions only and the Central Bank will act as an FIU for banks.

**Mr. Ramlogan:** All the listed businesses in the schedule. All!

**Mr. Imbert:** But not for banks.

**Mr. Ramlogan:** No.

**Mr. Imbert:** So, all of these reporting requirements, and this ex parte application to the court, all of these powers—

**Mr. Ramlogan:** Does not apply to banks.

**Mr. Imbert:** This does not apply to banks. That makes sense to you?

**Mr. Ramlogan:** No, that is correct. So you do not have anything to worry about.

**Mr. Imbert:** That makes sense to you. "So is a pappy-show we are doing here!"

**Mr. Ramlogan:** No, because the Central Bank has those powers under the Central Bank Act—

**Mr. Imbert:** The Central Bank can go ex parte?

**Mr. Ramlogan:** Not ex parte, but they could make an application to the court.

**Mr. Imbert:** But they cannot go ex parte. You just told me that for a terrorist, a money launderer, you need to go ex parte, and you are excluding all of the banks, 90 per cent of the financial transactions, from the ex parte procedure.

**Mr. Ramlogan:** And I told you also that the Central Bank has ample powers. I also told you that this ex parte procedure could be converted inter partes by the judge.

**Mr. Imbert:** But the Central Bank does not have ex parte powers.

**Mr. Ramlogan:** There is nothing such as an ex parte power. I cannot convert you into an LLB graduate in the space of one session. Ex parte is a procedure; it is not a power. It is a procedure in law.

**Mr. Imbert:** Mr. Chairman, the specific question I am putting to the AG—I would just ask you one question. This Act is giving the Financial Intelligence Unit the power to approach a court ex parte.

**Mr. Ramlogan:** Yes, that is right.

**Mr. Imbert:** If it is of the view that there is suspicious transaction and it requires information, but only for credit unions, not for banks. The Central Bank does not have a corresponding power to approach—

**Mr. Ramlogan:** All right, let me answer. I understand.

**Mr. Imbert:** Do you understand what I am saying now?

**Mr. Ramlogan:** I do. What I am telling you is that there is absolutely nothing that prevents the Central Bank from making an ex parte application. Nothing! That can be done by the Central Bank as well under its powers, supervisory powers, as they exit in the Central Bank Act, they can do that.

**Mr. Imbert:** So, you are telling me that the Central Bank has the power to approach a court ex parte—

**Mr. Ramlogan:** I am saying yes they can.

**Mr. Imbert:** —to get banking records.

**Mr. Ramlogan:** They can approach the court and it will be for the judge to decide, yes.

**Mr. Imbert:** I see, in law. That is stated in law in the Central Bank Act? It is not, so that we are dealing with only 10 per cent of the problem here.

**Mr. Chairman:** What is the position of the Government?

**Mr. Imbert:** You do not know what you are doing. You do not know what you are doing.

**Dr. Rowley:** Before we move on, Mr. Chairman, given the description of what the word "monitor" means, I would like to ask the Attorney General when the text says that "the FIU shall effectively monitor the persons and businesses", are you talking about monitoring the literal persons, because you said "monitor" means the meaning as in the dictionary—to observe, to follow the persons, or are you trying to say the affairs of persons? According to this and according to the description you gave for the meaning of "monitor", you are asking here for a power to monitor persons, and I take that in the literal sense. Does that mean that FIU operatives will walk behind people to see where they are going, who they are talking to and so on?

**Mr. Ramlogan:** That was the modus operandi of a different administration. Let me answer the question, Sir. It refers to persons, but it must be persons who are captured by the scheduled businesses. So, you could have a sole trader who is a real estate agent. You may have a sole trader who is a jeweller who owns a casino.

**Dr. Rowley:** My question is, is it the person you want to monitor or the affairs of the person, the financial affairs of the persons? According to this, this is so broad, you are monitoring the person. I am asking you, does that mean that you can expect that FIU operatives could go monitoring a person by following them, going to their doctor; going to their lawyer. What do you mean by "monitoring persons"?

**Mr. Ramlogan:** It needs to be read together, hon. Members. It says "monitor the persons and businesses". In law you will read that together as meaning the person's business.

**Dr. Rowley:** No, no, "and persons and businesses". You just tried to tell me about a person who could be a sole trader. Do not be smart. You just tried to tell me a person could mean a sole trader. It cannot be sole trader and the business of the sole trader.

**Mr. Ramlogan:** Of course you can.

**Dr. Rowley:** Mr. Chairman, the Attorney General is skylarking.

**Dr. Moonilal:** Member for Diego Martin West, our understanding is that you are monitoring the persons. Now, you are monitoring in the context of this legislation and the objective, their business, their transactions and their accounts and so on. It is not that you are walking behind them to see if they are going to the cinema; if they are going to the theatre; or if they are going.

**Dr. Rowley:** You might very well find—

**Dr. Moonilal:** Because this is not the power of other agencies to do that sort of thing like electronic surveillance and so on—

**Dr. Rowley:** And that is the question I am asking.

**Dr. Moonilal:** —to do electronic surveillance and so on. You are involved in monitoring their business as it relates to the objective, and to comply with the objectives of the Act. So, I do not think that you can interpret it as electronic surveillance to have to look at the people where they are going and so on. It is the transactions and their business.

**Dr. Rowley:** That is you, that is me. What is it to prevent an interpretation as per the text of the Attorney General that what we are monitoring is terrorism and money laundering, and I need to know who the person is dealing with; who the person is receiving from, who the person is transacting with; and who the person is collaboration with? You are monitoring the person.

**Dr. Moonilal:** You are raising the issue, but even if you put the business or the affairs of the person, it could still be interpreted that you have to go around and film them and videotape and look at everything they do, because they may be in some discussion with someone. So it can still leave that interpretation, but there is a structure, a framework and an objective of this act that does not permit that type of thing.

**Dr. Rowley:** But you see, the protection is, if you say the financial affairs of the person, and someone goes outside of that and abuses the authority of this legislation, that person would then have to account. But if you leave it as open as this, they could do whatever they want under the guise of monitoring the persons. We are required to protect people here.

**Dr. Moonilal:** Would you then have an objection if there is a slight amendment to say "monitor the listed businesses"?

**Dr. Rowley:** The financial affairs of listed business.

**Dr. Moonilal:** Monitor "the listed businesses for compliance".

**Dr. Rowley:** The listed businesses?

**Dr. Moonilal:** Yes.

**Dr. Rowley:** So you would take out "persons?"

**Dr. Moonilal:** Yes.

**Dr. Rowley**: That is why I am asking. I am trying to prevent abuse.

**Mr. Ramlogan:** I do not want to monitor them.

**Dr. Moonilal:** We are removing "the persons and", those three words, and inserting "listed businesses".

**Mr. Imbert:** Mr. Chairman, there are several subclauses in 15, so before we complete clause 15, I would like to raise some more. This is on page 6.

**Dr. Moonilal:** Is that acceptable first?

**Mr. Imbert:** Oh! I think that was resolved—"monitor listed business for compliance".

**Dr. Moonilal:** So it would be "effectively monitor listed business"—

**Mr. Imbert:** —for compliance.

**Dr. Moonilal:** Do you want the words "for compliance" or do you have to put "for compliance"? It is below—"measures to secure compliance with the Act."

**Mr. Imbert:** "Yeah", sure.

**Dr. Moonilal:** So there is nothing else.

**Mr. Imbert:** No. It is for compliance. That is the point I am making.

**Dr. Moonilal:** So, "to secure compliance"

**Mr. Imbert:** No, problem!

**Dr. Moonilal:** All right, fine!

**Mr. Imbert:** Can we go to page 6 please?

**Dr. Moonilal:** Okay, that is accepted.

**Mr. Chairman:** To what?

**Mr. Imbert:** To page 6, 18E(2) which says:

"The FIU may, from time to time, issue guidelines as to compliance with the written laws listed under subsection (1)."

**Mr. Ramlogan:** That is on page 7.

**Mr. Imbert:** Okay, page7? Well I have a different pagination. How would they do this? How will they issue these guidelines? Would they be published in the *Gazette*? Would they be somewhere that people could understand them? You

are now making every single attorney at law—and I think there are about 2,000 the last time I checked—subject to you. So, when the FIU issues these guidelines, how are they issuing them and how do all of these people know that you have issued guidelines? Is it going to be gazetted?

**Mr. Ramlogan:** Remember the Central Bank—

**Mr. Imbert:** I heard that. They have about 20 banks in this country.

**Mr. Ramlogan:** But they do that without publication in a formal way and the guidelines are followed.

**Mr. Imbert:** Yes, the Central Bank issues guidelines to banks, that is true, about 20 of them, but this is about 10,000 people and businesses.

**Mr. Ramlogan:** What has been taking place is that the register will take care of that, because you would have a register of listed businesses and you would have on the register the listed businesses to whom you must send your advisory.

**Mr. Imbert:** No, but we are dealing with law here. The FIU is going to be issuing guidelines as to compliance with the laws. What is the problem with gazetting these guidelines, especially when you are dealing with 10,000 people now instead of 20 banks? What is the problem?

**Mr. Ramlogan:** Member, would it make you happy if we say "publish it twice in a daily newspaper"?

**Mr. Imbert:** No problem.

**Mr. Ramlogan:** All right, fine! [*Crosstalk*] Instead of "issue guidelines", we will say, "publish guidelines"—

**Mr. Imbert:** This is sloppy legislation. It is sloppy.

**Mr. Ramlogan** —twice in a daily newspaper. [*Crosstalk*]

**9.25 p.m.**

**Mr. Chairman:** Can we proceed?

**Mr. Imbert:** No, no; I am going to 18F. Attorney General, in clause 18F you say that the FIU may, with the consent of one of these listed businesses, enter the premises, inspect and take documents, et cetera, and where the person refuses to give consent, a police officer may apply for a warrant to enter the premises, seize and take copies of any documents. Do you see the path I am on?

**Hon. Ramlogan:** What was the last thing you said?

**Mr. Imbert:** Clause 18F(2):

"Where a person refuses to give consent under subsection (1), a police officer may apply for a warrant to enter the premises...

(a) seize or take copies of any documents which may be evidence of non-compliance..."

You have not said who the police officers are applying to.

**Hon. Ramlogan:** Because the procedure for applying for a search warrant is well known in law.

**Mr. Imbert:** You have not said who, but it is okay.

**Mrs. Persad-Bissessar:** There is only one place you could get a warrant.

**Mr. Imbert:** But if a police officer can apply for a warrant to go into a bank, well, a credit union, and take confidential financial information, why do you have the other section with approaching the court ex parte? You could use this section.

**Hon. Ramlogan:** Because they may not have the information at the business; they may have carted it off elsewhere. You do not know where they may have it. Furthermore, you want to give the option to the FIU.

**Mr. Imbert:** Let us go back to the section, if you will just bear with me:

"12(1) Where a financial institution or listed business fails or refuses to provide…information...documents..."—et cetera—"the FIU may apply *ex-parte*..."

So if the credit union refuses to give the information, they could go ex parte and get an order to get it, but in this one all they need is a warrant to go and get it. Why do you have this duplication?

**Hon. Ramlogan:** It gives them the option really, does it not? You may not want to go to the High Court. Depending on the person you are dealing with, you may feel more comfortable having the police deal with it.

**Mr. Imbert:** AG, I would really like you to look at this legislation before it goes to the other place. There is a lot of duplication.

**Hon. Ramlogan:** It comes back to the point. The order from the court for disclosure in section 11 may be specific, because it really is about information that you requested, that they did not provide. If you look at the scope of clause 18F it is a little wider, whereby you are given permission to enter and search, as it were.

**Mr. Imbert:** But you must have a basis. In section 11 you obviously suspect that something is going on; you have asked for information, they refused to give you the documents—

**Hon. Ramlogan:** No, you may not suspect, but the point is, 11 is simply directed to giving the court, instead of the FIU, the power to actually make an order that has the binding effect of law and the coercive effect of law. So rather than the FIU making such an order, we give them the power to approach the court, so the court would make the order and it would be enforceable in the court. That is specific to information that you may have requested. When you come to 18F, it is a little broader.

**Mr. Imbert:** AG, if you look at section 11, it ties back to section 8(3) of the Financial Intelligence Unit Act, which deals with suspicious transactions. Section 11 deals with analysis of suspicious transactions. So the power you are giving the FIU to go to the court ex parte to get documents is after the FIU has received information about a suspicious transaction and they want to get some more information, they ask for documents.

**Hon. Ramlogan:** I understand. If the FIU requests information and they do not get it, they approach the High Court and get an order. When they get that information, it may confirm their suspicion, but they may not have enough to actually make out an offence. It is after you get that order of the High Court you may then wish to exercise the powers under 18F to let the police go in and search and seize all the documents they may have, or search for other documents.

Sometimes in this business you may not always know what to ask for, and that is what 18F is really geared towards, where you can enter, search and seize documents and inspect the premises. That power to inspect the premises is very important. Remember we are dealing with money laundering and terrorism.

**Mr. Imbert:** AG, I see you want to be difficult. I would advise you, between now and the other place, take a look at this, please, and see if you are not duplicating it.

Can we go to 18G? You very proudly read out for me the ability of the FIU, under section 14 of the Parent Act, to suspend a transaction. So under the existing law, section 14, the FIU can require a listed business or financial institution to suspend the processing of a suspicious transaction; that is there. Now you come here and you are giving the FIU a power that is way beyond the suspension of a suspicious transaction.

You are saying that the FIU can issue a directive. You do not qualify the directive. You say they can now issue a directive to a financial institution or a business "to cease or refrain from committing the act or violation". That appears, again, to be a duplication of section 14 of the parent Act.

Clause 18G appears to duplicate section 14 of the parent Act, because in section 14, the FIU, as you said, has the power to instruct a bank or business to suspend the processing of a suspicious transaction for a period not exceeding three working days. But you now give them the power to do it for 21 days. So clause 18G is in conflict with section 14. Under section 14 they can suspend the transaction for three days, under this they could suspend it for 21 days, but you have not repealed section 14. So you have the two sections existing side by side. Which one is applicable, 14 or 18?

What is worse, under section 14, AG, the person who is the subject of this attack by the FIU—[*Interruption*]

**Hon. Ramlogan:** If you look at section 14, it deals with the suspension of the processing of a suspicious transaction. That is quite different to the scope of this present provision.

**Mr. Imbert:** No, you are giving the financial institution—

**Hon. Ramlogan:** You see, there is no opportunity in that section, for example, for the person to take remedial action.

**Mr. Imbert:** Yes there is, and that is the point I was coming to. Look at 14(2). In 14(2) the person can go to a judge to discharge the instructions of the FIU; in this new one you are not doing that.

**Hon. Ramlogan:** He has to go to the judge to get that, under that section. Here, he does not have to incur such legal expenses. The FIU itself, after hearing representation, can allow him the opportunity to take remedial action.

**Mr. Imbert:** And they can also suspend his business for 21 days and he has no recourse to the court. The directive remains in force for 21 days.

**Hon. Ramlogan:** It is not that the business is suspended, Member. The directive simply remains in force for 21 days, after which they can go to the court.

**Mr. Imbert:** Bear with me. Under the new section that you are putting in, you are giving the FIU the power to issue a directive to a bank or a business, "to cease or refrain from committing the act or violation or pursuing the course of conduct". That would include the processing of a suspicious transaction, because the processing of a suspicious transaction is a violation of the Act.

So under this one, you are giving the FIU the power to tell a financial institution to cease processing a suspicious transaction for 21 days, and during those 21 days the person cannot go to the court, but under section 14 the person can go to the court immediately. It says:

> "Where such instructions are given, a financial institution, listed business or any other aggrieved person may apply to a judge to discharge the instruction of the FIU."

Under 14(2) they can go to the court right away. As soon as they are aware that their transaction has been stopped, they can go to the court. Under this, they cannot do anything for 21 days.

**Hon. Ramlogan:** You see this procedure, this is a totally different kettle of fish. You are comparing apples with grapes. Here, before the directive is issued, you have a notice going to you, you have an opportunity to be heard and it remains in force. But look at it, it is to "cease or refrain from committing the act or violation, or pursuing the course of conduct". There is no sanction really; the directive remains in effect for a period of 21 days, but if you notice, the FIU really has no power to do anything to the institution. It is simply that the directive remains in place for 21 days and, thereafter, they can take them to the High Court.

**Mr. Imbert:** AG, if you will go to the next page, to 18G(6) it says:

> "Where a person to whom a directive is issued fails to comply with the said directive, the FIU may...apply to the High Court...requiring the financial institution or listed business...to cease the contravention..."—et cetera.

But all through the 21 days, there is no court involved. The processing of the transaction or whatever act that raised the red flag—

**Mrs. Persad-Bissessar:** There is also no cessation of whatever is happening.

**Mr. Imbert:** No, it says so.

**Mrs. Persad-Bissessar:** No, it is where the person fails to go to court, but during the 21 days all you have is a directive which says, "Cease and desist", but they are not compelled to cease and desist. Therefore a remedy is provided after the 21 days, which is clause 18G(6). Where the person fails, in addition to any action you may want to take, you go to court requiring them—now you get an order of the court to stop them completely, but within the 21 days, all you have is a directive. For example, I am directing you to please stop speaking now, I have no sanction. You could continue speaking.

**Mr. Imbert:** What section 14 of the existing law says is that when the FIU instructs a financial institution to suspend the processing of a transaction, an aggrieved person can apply to a judge to discharge those instructions immediately. In this one, the aggrieved person cannot do anything for 21 days. That is what it is.

In this one, the aggrieved person has the right to go to a judge. Where in clause 18G does the aggrieved person have the right to go to a judge? They do not.

**Mrs. Persad-Bissessar:** I think you are very familiar with the remedy of judicial review. Where a discretionary power is exercised, the aggrieved person has the right for JR.

**Mr. Imbert:** But if in the existing law it is recognized that an instruction could cause distress—

**Mrs. Persad-Bissessar:** The reason is different, because in this one you are actually suspended. That is the difference he was saying that you have a suspension. This directive has no suspension.

**Mr. Imbert:** It says cease and refrain from committing the act.

**Mrs. Persad-Bissessar:** Yes, but they do not cease. I am asking you to cease and desist from speaking, but you are not. That is the directive, but you do not comply.

**Mr. Imbert:** No, Prime Minister, the act—

**Mrs. Persad-Bissessar:** So your business is not stopped, it does not cease and it is not suspended.

**Mr. Imbert:** Prime Minister, in this amendment, the FIU may issue a directive to an institution to cease or refrain from committing an act, which means cease or refrain from transacting business with this person.

**Mrs. Persad-Bissessar:** And I go and say it is wrong, "You cannot ask me to do that"—JR.

**Mr. Imbert:** Right, but in the existing law it says that as soon as that happens the person may go to have it discharged. There is no JR here.

**Mrs. Persad-Bissessar:** It is not my understanding of 14.

**Mr. Imbert:** This is not JR. They can apply to a judge to discharge the instructions. So why can they not apply to a judge to discharge these instructions, because they can discharge those instructions? It is not compatible.

**Mrs. Persad-Bissessar:** To suspend.

**Mr. Imbert:** The FIU is instructing an institution to suspend the processing of a suspicious transaction for a period not exceeding three working days, pending the completion of an analysis, evaluation.

**9.40 p.m.**

**Mr. Imbert:** So for three days the bank has to stop processing a wire transfer or something. When that happens the person can go to a judge immediately and say this is what—

**Mrs. Persad-Bissessar:** All right, we can strike a balance. Do you want a provision which says. Where such a directive is given a person, an aggrieved person can apply to a judge to discharge a directive?

**Mr. Imbert:** Yes, exactly the same words.

**Sen. Ramlogan:** Would that make you happy?

**Dr. Moonilal**: But do you support the Bill?

**Mr. Imbert:** This will not make me happy. This is appropriate.

**Mrs. Persad-Bissessar:** Will you vote yes?

**Mr. Imbert:** I will not object to this subclause if you put that in it.

**Mrs. Persad-Bissessar:** So we will insert it in 18—what it was (F)—18 (G), where a person the directive fails to comply—6 and we will put a 7 now and we can insert 7 in the same wording that is there in the existing—

**Mr. Imbert:** Where such a directive is issued a financial institution, listed business or any other aggrieved person may apply to a judge to discharge in the instructions, et cetera. Duplicate what is in 14.

**Mrs. Persad-Bissessar:** And then you go to court. CPC is pointing out something here, saying remember before the directive is issued the person has a right to be heard, they are given notification and they come and heard, and therefore if it is that everything works out there, there is no need to put this person to go to court.

**Mr. Imbert:** No, because the discretion is with the FIU, it is recognized in 14(2) that the court is the competent authority to determine whether there is procedural fairness. It is procedural fairness that we are talking about.

**Mrs. Persad-Bissessar:** But is it not true that in 14 they have no right to be heard?

**Mr. Ramlogan:** That is correct.

**Mr. Imbert:** No—yes, but they can go to the judge immediately, they get the instruction then they go to the judge right away.

**Mrs. Persad-Bissessar:** That is why they go right away because they are being called upon to suspend and they had no right to be heard, in 18(G) whatever, whatever they are given an right to be heard prior to the enforcement to the directive.

**Mr. Imbert:** But then the FIU can suspend the transaction and the person cannot do anything. Why would you not want to allow the person to go the judge, what is wrong with that?

**Mrs. Persad-Bissessar:** Well, what you are saying, the right to be heard before the FIU now would be truncated—

**Mr. Imbert:** They are judge, jury and executioner.

**Mrs. Persad-Bissessar:** All right, let us say that we give you notice to be heard—

**Mr. Imbert:** And you are heard.

**Mrs. Persad-Bissessar:** But you do not care about that**.**

**Mr. Imbert:** No, no.

**Mrs. Persad-Bissessar:** You are asking me to put a clause, a provision which says, I am aggrieved by your directive, I am aggrieved by your notice, I am going to court anyhow. What happens to the notification and that amicable arbitration that could take place, it would be truncated?

**Mr. Imbert:** What I am saying is that you can have the natural justice provisions of the right to be heard, nothing is wrong with that, but if at the end of the day the FIU still decides to go ahead and suspend your business then you can go to a court.

**Mrs. Persad-Bissessar:** So that is after you are heard?

**Mr. Imbert:** Yes.

**Mrs. Persad-Bissessar:** You have that right anyway, but you want it expressed, to "provide".

**Mr. Imbert:** Yes.

**Mrs. Persad-Bissessar:** Miss Blake. Let us put a 7. So let us go with, "Where a person with whom a directive is issued"—

**Mr. Imbert:** No, "Where such a directive is issued"—

**Mrs. Persad-Bissessar:** —is aggrieved—

**Mr. Imbert:** No, I would use the wording of 14(2), "Where such a directive is issued".

**Mrs. Persad-Bissessar:** All right, CPC has given us some words here. They are better than us in drafting. We are just policy people. Where a person is aggrieved by the decision of the FIU under subsection (4)"—what is that word?

**Mr. Imbert:** It is 4.

**Mrs. Persad-Bissessar:** —"the person aggrieved may apply to the court for a consideration of the merits of the directive and the court on hearing the matter may affirm or dismiss the directive."

**Mr. Imbert:** That is fine.

**Mrs. Persad-Bissessar:** Let us see if we are comfortable with that.

**Mr. Imbert:** That is fine, not a problem, somewhat long-winded, but it will do.

**Mrs. Persad-Bissessar:** Discharge or affirm. Whilst they are doing that, you saw an inconsistency with 18(E) and 11.

**Mr. Imbert:** 18(E)?

**Mrs. Persad-Bissessar:** And 11. And you are saying in this case they can go ex parte to the court in a case where they fail to provide information and disclose—sorry 11?

**Mr. Imbert:** I said in the case of 11—

**Mrs. Persad-Bissessar:** Yes, you go ex parte to court.

**Mr. Imbert:** No, but it is following a particular—

**Mrs. Persad-Bissessar:** When you came to 18(G)—

**Mr. Imbert:** In 11, the FIU can go ex parte to disclose the information that they want.

**Mrs. Persad-Bissessar:** Sure, and then you said what is the difference now with 18?

**Mr. Imbert:** And in 18(A) a police man could just get a warrant and go and get it.

**Mrs. Persad-Bissessar:** And the difference is from just a perusal of it, if you look at 11, that power is confined to documents required under sections 8(3) and 11. I am reading 12(1) now. It is clause 11 but it is 12(1), order for disclosure. That order for disclosure we made in circumstances that are relevant to 8(3) and 11, but when you come now to 18(E) and then you went to 18(F)(2), what you are speaking about here is a host of other scenarios within which information can be obtained by going on to the premises and so on.

Look at it, 18(E) says FIU shall monitor businesses and take measures to secure compliance with this Act and the following written laws, Proceeds of Crime, Anti-Terrorism, Financial Obligations, Financial Intelligence Unit Regulations, Financial Obligations, any other written laws where recommendations of the Financial Action Task Force are implemented. So this is a supervisory measure and under all these other scenarios the police now can go in—which takes you to 18(F)(2)—they can now go in where they refuse. So, it is a whole bundle of scenarios, as versus in 11 which deals only with scenarios under 8(3) and 11.

**Mr. Imbert:** That may be so but one of laws referred to is the same law that has clause 8(3) and clause 11 in it.

**Mrs. Persad-Bissessar:** Which one is that?

**Mr. Imbert:** This Act, because section 18(E) starts off with "This Act".

**Mrs. Persad-Bissessar:** 18(E)?

**Mr. Imbert:** 18(E).

**Mrs. Persad-Bissessar:** They shall monitor businesses for which the supervisory authority takes measures to secure compliance with this Act and…

**Mr. Imbert:** To secure compliance with this Act and then all the other Acts.

**Mrs. Persad-Bissessar:** And all the other.

**Mr. Imbert:** Right, and in this Act you will have –

**Mrs. Persad-Bissessar:** But this Act is not only 8(3) and 11?

**Mr. Imbert:** Right, but it will include 8(3) and 11.

**Mrs. Persad-Bissessar:** It can include 8(3) and 11.

**Mr. Imbert:** So, it gives the FIU two powers. It can go ex parte or it could go with a warrant.

**Mrs. Persad-Bissessar:** My concern with this is that this police officer is applying for a warrant. My concern is that. I think normally we would put and officer above the rank of a superintendent, that would be more my concern, but I can see two scenarios where a different remedy can be applied, one under the 18 and one under the 11.

**Mr. Imbert:** I am not going to argue with you on that, but I certainly agree with you with respect to the rank of the police officer.

**Mrs. Persad-Bissessar:** Yes.

**Mr. Imbert:** And I think that needs to be put in and there are many laws that you can copy that from.

**Mrs. Persad-Bissessar:** Yes, we can do that.

**Mr. Ramlogan:** Sure, I do not mind. It is a procedural safeguard to which I have no objection.

**Mr. Imbert:** It is important you do not want a constable doing this. I think it is superintendent and above, or inspector and above.

**Mr. Ramlogan:** Sergeant, that will cover inspectors and above?

**Mr. Imbert:** Above the rank of sergeant.

**Mr. Ramlogan:** Above the rank of sergeant.

**Mr. Imbert:** So just add a police officer above the rank of sergeant.

**Mrs. Persad-Bissessar:** Are we okay with that?

**Dr. Moonilal:** They are putting in another subsection (8).

**Mrs. Persad-Bissessar:** To say what now?

**Mr. Ramlogan:** Let us complete this one first. Let us finish off this first.

**Mrs. Persad-Bissessar:** CPC is suggesting if we do this new 7 in 18, to suggest an insertion of (8), to create an offence for failure to comply with the court's order. So, can we get that now? Are we ready, Mr. Chairman?

**Mrs. Persad-Bissessar:** Mr. Chairman, I beg to move that 18(G) be amended by inserting a new part which will be (7), which is what we read previously and a new 8 which will read as follows:

**9.50 p.m.**

"A person who refuses to comply with an order of the Court commits an offence and is liable to a fine of one hundred and fifty thousand dollars and to imprisonment for three years."

**Mr. Imbert:** Prime Minister, since we are in such a listening mode I would like to go back to section 11, if the House would allow that?

**Mrs. Persad-Bissessar:** Let us finish this.

**Mr. Imbert:** No, I know.

**Mrs. Persad-Bissessar:** Then we have a further amendment to 18—the thing about the police officer. Clause 18F.(2), after the words "a police officer" insert "above the rank of sergeant".

**Mr. Chairman:** Can I read? The question is that clause 15 be amended as follows: "In the proposed new section 18E.(1) delete the words 'persons and' and insert the word; 'listed'. Is that okay? [*Members respond in the affirmative*]

In the proposed new section 18E.(2) after the words "subsection (1)" insert the words and I quote: "which shall be published in two daily newspapers in circulation in Trinidad and Tobago." Members? [*Interruption*] No, we have a full stop after "Tobago". No, no we have no comma there.

**Mrs. Persad-Bissessar:** Mr. Chairman, I just want us to reconsider this publication in the newspaper. The official record of the Government is the *Gazette* and that is kept. Every lawyer collects the *Gazette*, every law maker should be collecting *Gazettes*, so when you are looking at the law that provides part of the law, so I would prefer—and if you choose two newspapers when there are five newspapers in the country—

**Mr. Imbert:** What is done and what I have seen in other legislation is in the Gazette and in one newspaper.

**Mrs. Persad-Bissessar:** I think we would go with the *Gazette*, Sir.

**Mr. Imbert:** *Gazette* only.

**Mrs. Persad-Bissessar:** When you go and choose one newspaper you are discriminating against the others.

**Mr. Imbert:** Well, it is commonplace in legislation.

**Mrs. Persad-Bissessar:** No, but the legal voice of the Government is the *Gazette*.

**Mr. Imbert:** Yes, but let me tell you why I was in agreement with the newspaper. It is not just lawyers involved. It is pawnbrokers, it is real estate people, it is people who would not normally be looking at the *Gazette*. [*Interruption*] In the Integrity in Public Life Act the same clause that myself and the Attorney General were taking about—the whole ex parte application thing—it says, "*Gazette* and at least one daily newspaper in circulation in Trinidad and Tobago." So, I would prefer both rather than either/or.

**Mrs. Persad-Bissessar:** Which one?

**Mr. Imbert:** No.

**Mrs. Persad-Bissessar:** Which newspaper?

**Mr. Imbert:** No, they would pick one.

**Mrs. Persad-Bissessar:** You see, this is the problem.

**Mr. Imbert:** Well, you cannot do anything that appears in legislation all over the place. It is commonplace.

**Mr. Ramlogan:** No, you have to pick one.

**Mrs. Persad-Bissessar:** Okay, I do not think there is any harm really, it is just that we would spend a little more money in advertising. Sir, we would insert "and one".

**Mr. Imbert:** "*Gazette* and one", because that is in the Integrity and Public Life. Mr. Chairman, "in the *Gazette* and at least one daily newspaper".

**Mr. Chairman:** "and one"?

**Mr. Imbert:** No, it says "at least one".

**Mr. Chairman:** "published in the *Gazette* and"—

**Mrs. Persad-Bissessar: "**One newspaper in daily circulation".

**Mr. Imbert:** I would suggest we use the words from the Integrity in Public Life Act.

**Mrs. Persad-Bissessar:** Which says?

**Mr. Imbert:** "in the *Gazette* and at least one daily newspaper in circulation in Trinidad and Tobago." That is in the Integrity in Public Life Act, "at least one", so it gives them the option to put it in two if they want.

**Mr. Chairman:** So. Could we go back to 18(e) in the proposed new section 18(e)(2) after the words "subsection (1)", insert the words, and I quote: "which shall be published in the *Gazette* and at least one daily newspaper in circulation in Trinidad and Tobago." Is this okay? [*Members indicate in the affirmative*]

**Mr. Chairman:** Then we go on.

**Mrs. Persad-Bissessar:** It should be "one newspaper in daily circulation."

**Mr. Chairman:** "in one newspaper in daily circulation". Is that okay?

**Mrs. Persad-Bissessar:** "In Trinidad and Tobago".

**Mr. Chairman:** "in Trinidad and Tobago". Okay? Let me just repeat that for the *Hansard*. In the proposed new section 18E(2) after the words "subsection (1)", insert the words, and I quote: "which shall be published in the *Gazette* and at least one newspaper in daily circulation in Trinidad and Tobago."

Then we go in the proposed new section 18G, insert a new section, subsection (7):

> "Where a person is aggrieved by the decision of the FIU under subsection (4), the aggrieved person may apply to a Judge to discharge or affirm the directive and shall serve notice on the FIU to join in the proceedings, save however, that the directive shall remain in force until the judge determines otherwise."

Is that okay?

**Mr. Imbert:** No.

**Mr. Chairman:** So after the judge to discharge or affirm—"

**Mr. Ramlogan:** Take off "affirm", it is just "to discharge".

**Mr. Chairman:** So it is just "discharge". [*Interruption*] So we are talking about "to discharge the directive and shall serve notice on the FIU to join in the proceedings, save however, that the directive shall remain in force until the judge determines otherwise."

Shall I read it again finally?

**Hon. Member:** Thank you, Sir.

**Mr. Chairman:** In the proposed new section 18(G) insert a new subsection (7), and I quote:

> "Where a person is aggrieved by the decision of the FIU under subsection (4) the aggrieved person may apply to a judge to discharge the directive and

shall serve notice on the FIU to join in the proceedings, save however, that the directive shall remain in force until the judge determines otherwise."

Is that clear?

**Mrs. Persad-Bissessar:** Yes.

**Mr. Chairman:** Okay, so let us proceed to new 8, subsection (8), okay? It reads:

"A person who refuses to comply with an order of the court, commits an offence and is liable to a fine of one hundred and fifty thousand dollars and to imprisonment for three years."

Shall I read it again? New 8:

"A person who refuses to comply with an order of the court, commits an offence and is liable to a fine of one hundred and fifty thousand dollars and to imprisonment for three years."

Is that okay?

**Mrs. Persad-Bissessar:** Yes, we just need to make one change to bring consistency. Under 11, "failure to comply with an order of the Court" the fine is two hundred and fifty thousand and three years, imprisonment, so we want to do the same here, to change one hundred and fifty thousand dollars to two hundred and fifty thousand dollars.

**Mr. Chairman:** Is it "liable on conviction to a fine"?

**Mrs. Persad-Bissessar:** Yes, "liable on conviction to a fine".

**Mr. Chairman:** Shall I read again, please? New 8: "A person who refuses to comply with an order of the Court, commits an offence and is liable on conviction to a fine of two hundred and fifty thousand dollars and to imprisonment for three years."

Is that okay?

**Mrs. Persad-Bissessar:** One second, Sir. I am still trying to have a little consistency with the previous offence that was created.

**Mr. Chairman:** Yes. Okay. [*Interruption*]

**Mrs. Persad-Bissessar:** Mr. Chairman, the hour is quite late and we are repeating our proposals, to your good self, and suggestions that have been made. I think it may be prudent for us to do this properly and we have to be back on Monday and we would take it at the committee stage on Monday if there is no objection?

Can I say further, what has happened, I think the Attorney General in his contribution would have indicated that we are under constraints, not constraints that we have created for ourselves—the international organizations are very keen to have the amendments made to make us fully compliant, otherwise Trinidad and Tobago has the possibility of going on a blacklist, which I know the Member for Diego Martin North/East has been speaking about for quite a while now, so I want to err on the side of caution and we take this weekend and when we come back on Monday on the other matter we could wrap up the committee stage.

**10.05 p.m.**

**Mr. Imbert:** In that context. I would just like to raise two matters then for — in Clause 11, if you could introduce the concept of a warning because in the Integrity in Public life Act, the person is warned by way of the publication. You are saying that you do not want to publish it, but it should be some requirement— [*Interruption*]

**Mr. Ramlogan:** We never had a mandatory warning like this—[*Interruption*]

**Mr. Imbert:** The person should be warned. That if they do not comply, you are going to court, okay, in section 11—Attorney General and putting that in the law.

**Mr. Ramlogan:** Yes, yes.

**Mr. Imbert:** Concept of a warning.

**Mr. Ramlogan:** Yes sure, sure. Some reaction, yes.

**Mr. Imbert:** Something, but they must be told that if they do not comply therefore, they will go to court.

**Mrs. Persad-Bissessar:** Just indicate, we will take a note and we will consider it—[*Interruption*]

**Mr. Imbert:** I am just saying it for the record. The last thing I want to say is on the oath of office and secrecy. Could you take a look at the oath of secrecy in the Integrity in Public Life Act? For me, it is much better than this. I understand it. It says: "that the person shall not disclose information to an unauthorized person". I understand that. I do not understand: "I shall not without the authority on that behave". So could you take a look at the oath of secrecy in the Integrity in Public Life Act and see if you could borrow from that and put it into this?

**Mrs. Persad-Bissessar:** I know we are coming back on Monday and Wednesday so we may want to get the *Hansard* record—if we get it Monday

morning, some of it, so that they can look at it. So either Monday or Wednesday we can give further consideration. If I may ask the hon. Leader of the Opposition, Member, whether there were any other concerns that you may have wanted us to look at, in terms of amendments.

**Mr. Rowley:** Diego Martin North/East has made all the points we need to make and there is one point which turns for us and that is the point of putting this unit under the Attorney General. We will not support that.

**Mrs. Persad-Bissessar:** And where would you prefer it to be?

**Mr. Rowley:** It stays in the Ministry of Finance.

**Mrs. Persad-Bissessar:** It is not being executed. That is the problem.

**Mr. Rowley:** Is not what?

**Hon. Member:** [*Inaudible*]

**Mrs. Persad-Bissessar:** I would not want to say that. It has been there for the past how many years?

**Mr. Imbert:** Yeah, yeah, yeah.

**Mrs. Persad-Bissessar:** It has been there for years. That is why we are on the brink of this—it is a sort of brinksmanship where we are—[*Interruption*]

**Mr. Imbert:** I understand.

**Mrs. Persad-Bissessar:** It is a very legalistic kind of piece of work. Okay, thank you.

**Dr. Moonilal:** Mr. Chairman, pursuant to Standing Order 53 (12), I beg to move that progress on the Bill be reported to the House.

*Question put and agreed to.*

*House resumed.*

**PROCEDURAL MOTION**

**The Attorney General (Sen. The Hon. Ramlogan):** Mr. Speaker, pursuant to Standing Order 53(12), I wish to report to this honourable House that the Government and the Opposition are working in committee stage on this Bill, and we wish to resume the committee stage on Monday to continue that work in committee.

*Question put and agreed to.*

**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 Monday, April 18, 2011 at 1.30 p.m. On that afternoon it is the intention of the Government to resume the debate on the Trafficking in Persons Bill, 2011, and to continue at the committee stage on the Financial Intelligent Unit (Amdt.) (No. 2) Bill, 2011 and, time permitting, to debate the Motion on the amendments on the Electronic Transactions Bill, those three items.

## Remedial School Teachers
## (Non-Renewal of Contracts)

**Hon. Dr. Keith Rowley** (*Diego Martin West*)**:** Thank you, Mr. Speaker. Mr. Speaker, at this late hour I would like to raise a matter which is of critical importance to us as a people in Trinidad and Tobago since it strikes at the very root of one of the major problems that we have. I refer here, Mr. Speaker, to the matter of origin or the major contributory factors to the crime scourge that has gripped Trinidad and Tobago for many, many years.

Mr. Speaker, I represent the Constituency of Diego Martin West, and a number of my constituents get their schooling in east of Diego Martin West—in secondary schools, in Mucurapo, Diego Martin and Port of Spain. In meeting my constituents on a Thursday afternoon and other times, it has been drawn to my attention that not only in Diego Martin West, but elsewhere in the country, the Ministry of Education has made some decisions which could have serious negative impacts on the young people who are going into the school system or who are in the school system.

Mr. Speaker, you will be aware that it was under the current Prime Minister of Trinidad and Tobago when she was Minister of Education, the national policy had reached the point where we were able to put into secondary schools all the children who reached age 11-plus. Because of the declining number of students as a result of the fall in the birth rate, our numbers went from 28,000 in one year, and I think this yearwe had 17,000 people writing SEA. This is a major, major change which is going unnoticed in this country. A few years ago 28,000 children wrote the Common Entrance Exam, a significant reduction. So, all our children are going to secondary schools.

However, also known to us in that system, in that policy, are a number of children who have not properly graduated with primary school standard. to warrant their presence in a secondary curriculum. The Government understands

that, the Government acknowledges that, and in treating with that had put in place in the secondary school system a remedial stream of teachers. Those teachers were specifically to catch those students who have been brought forward, knowingly brought forward from primary school, who could hardly read and write and many of them have problems of dyslexia and other kinds of handicaps—they are in the secondary schools, forming a population of students who cannot absorb the secondary curriculum and who are, in fact, under tremendous personal stress not only by the fact that they are not able to assimilate socially, intellectually or otherwise in the school.

**10.15 p.m**.

In Mucurapo West, one of the schools that my constituents attend, there are five such streams, five such classes of students. So on the teaching establishment there are five teachers whose job it is to treat with these students who are, in fact, secondary substandard.

I move this Motion because I was shocked at the information that I was looking at. I actually saw the data; I saw the work. Fifteen-year-olds in the school could hardly read and write. In an examination of basic English—and by basic English I mean being able to use the singular and the plural in the simplest terms—they are scoring less than 10 per cent out of 100. This is a serious matter.

If you are in that situation at age 15 in a secondary school—and I am talking here about males and females—we try to find out where do these young people get their anger from; where do they get this desire to fall into gangs; where do these young females get this behaviour of teenage pregnancy, because some of them in that situation are already pregnant—it is because of an inability to cope with the circumstances in which they have found themselves. A young boy at age 15, not being able to read and write properly or to perform creditably to his own self-esteem in that school, becomes an easy prey for persons who will recruit him into an area where he feels he has some self-esteem, into violence; the rank thing; the "bling" thing; the gang thing.

I am putting it to you tonight that many of these young people who end up in that situation enter the secondary school system, pass through the school system and end up in places where they contribute to the national crime scourge. If we turn a blind eye to that, no amount of foreign commissioner, no amount of mentoring, no amount of any of these programmes will have the desired effect if the stream of young people who are coming through the school system are the ones whom I am describing here who are abandoned now by not having their remedial teachers.

I could not believe what I was seeing, being told that the Ministry of Education has refused to renew the contracts of these remedial teachers. In one instance, I know a teacher who is so dedicated and is so moved to tears, knowing what she had left in the school, that even though the Government has refused to renew her contract, she has been going to the school since last September for free, trying to deal with the students out of a sense of patriotic duty.

I am saying that the Minister of Education, if he is aware of this—and I am told that he is aware of it; I am told that the contracts of these people are before the Minister; I do not know how that could be, but if that is so, something is radically wrong, because I do not know what Minister of Education in Trinidad and Tobago will take the position that the contracts of remedial teachers cannot be funded, especially under the guise that there is no funding for it. It could not be that, because the Government has priorities.

Only recently the Member of Parliament for Toco/Sangre Grande made a trip to India. The cost of that trip for the Minister and two of his staff members—I am not talking about the whole entourage; just the Minister and two of his staff members, in that shebang—would pay the salary of those five teachers for one year—for one whole year! So here it is we could find money to send the MP for Toco/Sangre Grande to India to find tourists, but when the tourists come here, what do they come to meet? An ongoing scourge of crime which we have been grappling with but we are refusing to fund one of the major contributory sources of the criminal action of young people who find themselves grinding between the gears of primary school and secondary school; no remedial teacher to even teach them to read, to write basic English. The work I saw, it was questions—what you call it?—the one like SEA where the answer is there—multiple choice answers. Even though the answer is there, you could see straight that this is somebody who is just guessing and hoping that they hit the target.

This is worrisome. I am appealing to the Prime Minister tonight; I am appealing to the Minister of Education, that whatever you do, put back the remedial teachers into the secondary school system as a matter of urgency. We have five classes in one school and other classes in other schools; children who need immediate attention and guidance so as not to become the new wave of the criminal scourge.

It cannot be that bad. The Minister of Education has taken it upon himself to terminate contracts of persons; hundreds of persons who were supporting the teaching system as junior staff providing support work. They have had their contracts terminated because they got the work under the PNM so they could be

violated. They have been asked to reapply for the job, and this is going on. That is one set. Those are clerical-type people and support-type people. I am here talking about remedial teachers.

I think this country would be scandalized to find out that we, in the Ministry of Education, knowing what we know that is going on in the streets, knowing what we know about the behaviour of young people, and the one rudimentary thing we have in place to try to prevent any further erosion of the youth population to steer them away from the frustration that will take them down the wrong course, the Government is deliberately not funding it.

I am not asking the Government to open any new programme. It was there as of last year May. They met it in place. I am not asking Government to conceptualize any new programme. Common sense—they are always quick to talk about what the PNM did and what the PNM did not do. They will not tell you that a previous administration had put in place this support system to ensure that people who need remedial attention in the secondary school system, there were teachers there to teach them at their level.

But, no, we can have today persons not being taught, and God alone knows what happens in those schools when you have five streams of unattended, unsupervised, untaught remedial standard students. That immediately makes a nonsense of the attempt of the other students and the other teachers to have a learning environment in which those students who are slightly better off, or much better off, can, in fact, enjoy their educational opportunity.

So tonight I am asking the Minister of Education, and I am directing it as well to the Prime Minister of Trinidad and Tobago to intervene immediately and correct this oversight or whatever it might be.

**The Prime Minister (Hon. Kamla Persad-Bissessar):** If I may, I am not usurping the right of my colleague to reply, would you permit me a few moments on this?

**Dr. Rowley:** Yes.

**Hon. K. Persad-Bissessar:** Thank you. You have indicated some programme I started. I think it is a programme we would like to see continue. I do not have all

the facts. It has not been brought to my attention and should it be as you say, we will take every step to remedy it. I wonder if you would be kind enough to allow us the time on Monday so we can look into it and respond on Monday. The Minister can respond appropriately.

Thank you very much.

*Question put and agreed to.*

*House adjourned accordingly.*

*Adjourned at 10.25 p.m.*